SRIYAWATHIE
v.
SUPERINTENDENT HAPUGASTENNE ESTATE AND OTHERS

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
AMERASINGHE, J. AND
KULATUNGA, J.
S.C. APPEAL NO. 22/93
H.C. KANDY NO. 74/91 (REV.),
L.T. HATTON NO. 10/7765/89
MARCH 29, 1994.

Industrial Disputes Act – Section 31D and 31DD as amended by Act No. 32 of 1990 – Appellate and revisionary jurisdiction of the High Court over orders of a Labour Tribunal – Articles 105(1) (C), III (I), 138, 154P and 125 of the Constitution – Interpretation of the Constitution – Appeal to the Supreme Court from High Court.

It was argued on behalf of the appellant, a clerk employed on an estate that the High Court of the Central Province cannot entertain her employer's application, to set aside by way of revision, an order of the Labour Tribunal in that –

(a) Notwithstanding the Provisions of Act No. 19 of 1990, the High Court had no power to entertain the application as the said Act purports to erode the exclusive jurisdiction of the Court of Appeal vested by Article 138 of the Constitution by adding to the jurisdiction conferred by Article 154 P(3) (b) of the Constitution.

(b) The Judges of the High Courts of Provinces have not been duly appointed for want of legislation contemplated by Article III(I) of the Constitution (as amended by the 11th amendment to the Constitution) conferring powers on the "High Court of Sri Lanka" established by Article III(I).

Held:

(1) Section 31DD of the Industrial Disputes Act as amended permits an appeal to the Supreme Court from a final order of the High Court, made in the exercise of its appellate or revisionary jurisdiction, in relation to an order of a Labour Tribunal. As the order of the High Court is not a final order, the appellant has no right of appeal.

(2) The High Court has jurisdiction to review orders of Labour Tribunals by way of appeal or revision in terms of the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 read with Section 31D of the Industrial Disputes Act as amended.

(3) The Court referred to in Articles 105(1) (c), III(I) and 154(2) of the Constitution is one and the same Court Viz. the High Court of the Republic of Sri Lanka. The Judges of the High Courts of the Provinces have been properly appointed.

Cases referred to:

1. *Swastika Textiles Industries Ltd., v. Dayaratne* (1993) 2 Sri L.R. 348.
2. *Martin v. Wijewardena* (1989) 2 Sri L.R. 409.
3. *Wadigamangawa v. Wimalasuriya* (1981) 1 Sri L.R. 287.
4. *Piyadasa Gunaratne v. Allen Thambinayagam* (1993) 2 Sri L.R. 355.
5. *Siriwardena v. Air Ceylon Ltd.*, (1982) 2 Sri L.R. 544 (CA); (1984) 1 Sri L.R. 286 (SC)
6. *Seeta Wijetunge v. Meeyan* S.C. Appeal No. 55 of 1988 S.C. Minutes of 1st December, 1989.

APPEAL from the judgment of the High Court, Kandy.

S. K. Sangakkara with *J. C. Boange* for appellant.

Asoka de Silva, D.S.G with *U. Egalahewa* for respondents.

Cur. adv. vult.

May 3, 1994.
KULATUNGA, J.

The services of the appellant, a clerk employed on an estate which is presently being managed by the 5th respondent (Sri Lanka State Plantations Corporation) were terminated on 19.04.89 by the management. She made an application to the Labour Tribunal. Before the commencement of the inquiry she moved to amend her application to add the 4th and 5th respondents and a prayer for reinstatement. This was allowed by the Tribunal. The 2nd and 3rd respondents (The Janatha Estate Development Board No. 1 Dikoya and the Janatha Estate Development Board Colombo, respectively) applied to the High Court of the Central Province to set aside the said order of the Labour Tribunal, by way of revision (in the exercise of the revisionary jurisdiction vested in that Court by S. 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990. The procedure for the exercise of such jurisdiction is found in S.5 of the

said Act and S. 31D(4) and (7) of the Industrial Disputes Act as amended by Act No. 32 of 1990.

The appellant raised a preliminary objection to the High Court entertaining the revision application, on the following grounds.

(a) that notwithstanding the provision of Act No. 19 of 1990, the High Court has no power to entertain the said application in that the said Act (not being a constitutional amendment or an Act passed with the requisite special majority) purports to erode, the exclusive jurisdiction of the Court of Appeal vested by Article 138 of the Constitution by adding to the jurisdiction conferred upon the High Court by Article 154P (3) (b) of the Constitution; and that the decision of this Court in *Swastika Textile Industries Ltd. v. Dayaratne*[1] which upheld the jurisdiction of the High Court to review orders of Labour Tribunals by way of appeal or revision in terms of the provisions of Act No. 19 of 1990 read with S.31D of the Industrial Disputes Act as amended **is per incuriam**. It was argued that the attention of this Court had not been drawn to the decision in *Martin v. Wijewardena*[2] and the dicta of Samarakoon C.J. in *Wadigamangawa v. Wimalasuriya*[3].

(b) that the Judges of the High Courts of the Provinces have not been duly appointed under the Constitution. It was submitted that under A.154P(2) Judges of the High Court of Provinces have to be nominated from among the Judges of the **High Court of Sri Lanka** established by A. III(1) of the Constitution (as amended by the 11th Amendment to the Constitution) to exercise "such jurisdiction and powers as the Parliament may by law vest or ordain"; that pending such legislation, Judges cannot be appointed to the "High Court of Sri Lanka"; that the Court which is still operative is the **High Court of the Republic of Sri Lanka** referred to in A.105(1) (c); and hence the Judges of the High Courts of the Provinces have not been properly appointed.

The High Court overruled the preliminary objection whereupon the appellant applied to the High Court for leave to appeal to this Court, "in terms of S.9 of Act No. 19 of 1990". The High Court granted leave which enable this appeal.

In *Piyadasa Gunaratne v. Alan Thambinayagam*[4] this Court h that S.9 of Act No. 19 of 1990 does not permit direct appeals to Court from orders made in the exercise of revisionary jurisdictio the High Court of a Province. S.9 permits an appeal from a final orde or judgment etc; made in the exercise of the appellate jurisdiction of that Court which involves "a substantial question of law". with the leave of the High Court. S. 31DD of the Industrial Disputes Act as amended permits an appeal from a final order of the High Court made in the exercise of its appellate or revisionary jurisdiction, in relation to an order of a Labour Tribunal with the leave of the High Court or the Supreme Court.

In view of the aforementioned decision and the fact that the appellant has purported to appeal under S.9(a) of Act No. 19 of 1990 this Court inquired from Mr. Sangakkara learned Counsel for the appellant, during the hearing before us, whether this appeal can be maintained, if not whether it is possible to support it under S.31DD of the Industrial Disputes Act. Mr. Sangakkara was not prepared to give a clear answer but thought that the appellant had a problem. He submitted that this Court can entertain the appeal in the exercise of its "inherent jurisdiction".

It is correct that the appellant has a problem (which I think is insurmountable) whether the appeal is attempted under S.9 of Act No. 19 of 1990 or S.31DD of the Industrial Disputes Act because the order appealed from is not a final order as required in both such sections but only an interim order. The High Court merely overruled the preliminary objection and this would not finally dispose of the rights of parties "leaving nothing more to be done" *Siriwardena v. Air Ceylon Ltd.*[5]; *Seeta Wijetunge v. Meeyan*[6]. In the instant case, the High Court has yet to decide the case on its merits and hence the order is not final. As such the appellant has no right of appeal. This Court has "no inherent jurisdiction" to entertain the appeal. The respondents have not raised any preliminary objection to the appeal. However, such conduct cannot give jurisdiction to this Court.

What I have stated above is sufficient to dispose of this appeal. However, in view of the fact that we have heard Counsel on important questions relating to the interpretation of the Constitution which are

otherwise within our exclusive jurisdiction under A.125 of the Constitution I would express my views on these questions before making my order on the appeal.

I cannot accept the submission that the decision in *Swastika Textile Industries Ltd.* case (*Supra*) is per incuriam. The ratio in *Martin v. Wijewardena* (*Supra*) cited by the appellant's Counsel in support of his argument is that a right of appeal is a statutory right and must be expressly created and granted by Statute; and that A.138 is only an enabling article which confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or take advantage of that jurisdiction is governed by the several statutory provisions in various legislative enactments. The question of jurisdiction of the High Court of a Province in terms of A.154P (3) and the relevant statutes was not in issue in that case. The decision in *Wadigamangawa v. Wimalasuriya* (*Supra*) deals with the rights of a person who challenges the election of a Member of Parliament. It has no bearing on the question of the jurisdiction of a Provincial High Court. It has been cited by Counsel in view of certain dicta by Samarakoon C.J. (who with two other Judges dissented from the majority judgment) that the Constitution prevails over ordinary law, in the context of that case. As such the decision of the High Court that it was bound by the ruling in the Swastika Industries case is correct.

The other submission is that the Judges of the High Courts of the Province have not been properly appointed and hence have no competence to exercise jurisdiction in the case. This submission is based on the theory that "The High Court of Sri Lanka" referred to in A.III(1) of the Constitution is either a new Court or a substitution for the "High Court of the Republic of Sri Lanka" referred to in A.105 (1) (c); and that pending the enactment of legislation relating to the jurisdiction and powers of the "High Court of Sri Lanka" Judges cannot be appointed to that Court and consequently the Judges of the High Courts of the Provinces cannot be validly nominated under A.154(P) (2). It seems to me that the object of the amended A.III(1) is to put an end to the character of the High Court as a "Court of first instance exercising criminal jurisdiction" (which was the description of that Court prior to the amendment). In view of the amendment it may now be invested with civil jurisdiction as well. As it is no longer

described as a "Court of first instance" it could, subject to the Constitution, be even invested with appellate, revisionary or supervisory jurisdiction". (This interpretation finds support in the provisions of A.138 as amended by the 13th Amendment). If in enacting such amendment, the reference to the "Republic" has not been repeated, it may be an oversight.

As far as I am aware, there are no judges of "the High Court of Sri Lanka"; for they still receive their appointment as "Judges of the Republic of Sri Lanka"; and they are in turn nominated as Judges of the High Courts of the Provinces. The original criminal jurisdiction presently exercised by the High Court of the Provinces is the jurisdiction provided by the Judicature Act No. 2 of 1978. There is no intention to establish a new Court or to substitute a Court for the High Court referred to in A.105 (1) (c). The High Court referred to in that Article continues subject to the modification, in view of the amended A.III(1), that it has ceased to be a "Court of first instance exercising criminal jurisdiction". No legislation was enacted to confer any new jurisdiction on the High Court subsequent to the amendment of A.III(1). However, the 13th Amendment included provision empowering the High Courts of the Provinces to exercise appellate, revisionary and supervisory jurisdiction. The Provisions of S.2(2) and (3) of Act No. 19 of 1990 indicate that in other respects Parliament itself intended the continued exercise by these Courts of the same powers as were enjoyed by the High Court of the Republic of Sri Lanka under the Judicature Act.

In the circumstances, the Court referred to in Articles 105(1) (c), III(1) and 154P (2) is one and the same Court viz. the High Court of the Republic of Sri Lanka. It also appears that in the light of A. 1 of the Constitution, "the High Court of Sri Lanka" referred to in A. III(1) must be deemed to be "the High Court of the Republic of Sri Lanka". There is no justification either in law or common sense to take the view that the Judges of the High Courts of the Provinces have not been properly appointed.

For the foregoing reasons, I reject the appeal and affirm the judgment of the High Court. It is a matter of regret that in view of the objection taken on behalf of the appellant, consideration of relief

against her dismissal in 1989 has been inordinately delayed. In view of this and in view of the provisions of S. 31D(7) of Act No. 32 of 1990 the High Court of the Central Province is directed, to hear and determine the respondents' application on the merits within 6 months of the receipt of the record herein. I make no order as to costs.

G. P. S. DE SILVA, C.J. – I agree.

AMERASINGHE, J. – I agree.

Appeal rejected.