JAYAWARDENE
VS
PUTTALAM CEMENT COMPANY LIMITED

COURT OF APPEAL
SOMAWANSA J. (P/CA) AND
WIMALACHANDRA, J.
CA (PHC) APN 265/2004
REV. H. C. CHILAW HCA 22/2.
LABOUR TRIBUNAL COLOMBO 21/1251/94.
MARCH 19, 2005.

Constitution, Article 138-Article 154 P, Article 154 P(3)(b)-13th Amendment - Order made by Provincial High Court in an industrial dispute - Does revision lie to the Court of Appeal? - High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, section 9 (a). – Specific remedy provided to canvass the grievance before the Supreme Court - Industrial Disputes Act - Section 531DD(1)-Canvass.

HELD:

(1) The Law provides for a specific remedy for any party who is aggrieved by an order of the Provincial High Court. The appellant - petitioner should have appealed with the leave of the High Court or the Supreme Court first had and obtained, to the Supreme Court.

Per Somawansa, J. (P/CA) :

"One cannot come to this court for redress when the relief lies elsewhere and this court cannot by implication, surmise or conjecture assert itself with jurisdiction that has not been granted in law".

APPLICATION in revision from an order from the High Court of Chilaw.

Chintaka Siriwansa for appellant - respondent - petitioner.

Nayana Abeysinghe for respondent - appellant - respondent.

Cur. adv. vult.

August 05, 2005.

ANDREW SOMAWANSA, J. (P/CA)

At the hearing of this application counsel for the respondent-appellant - respondent took up a preliminary objection that this Court lacks jurisdiction to entertain the instant application as the right of appeal from an order made by a Provincial High Court lies only to the Supreme Court as stipulated by the Constitution. On this preliminary issue of law both parties agreed to tender written submissions and both parties have tendered their written submissions.

It is contended by counsel for the applicant - respondent - petitioner that a medical certificate has been tendered to this Court to establish the fact that the applicant respondent - petitioner had met with an accident and was bed ridden for a long period of time and that when a situation of such a nature arises, the Constitution is silent as to the recourse available to an injured party who was prevented from adverting to the remedies provided to him by law, that in such a situation of the said nature this Court could exercise its extraordinary revisionary jurisdiction to grant redress to an aggrieved party. He further submits that the jurisdiction vested in this Court under Article 138 of the Constitution has not placed any restrictions whatsoever in such circumstances. The 13th Amendment which brought in the Provincial High Courts have granted the Supreme Court the final appellate power against the order made in the Provincial High Courts in an industrial dispute matter but has not taken away the revisionary jurisdiction specifically. Thus he submits that in the absence of any specific provisions taking away the revisionary jurisdiction of the Appeal Court this Court is vested with the jurisdiction to hear, determine and grant redress to an aggrieved party like in the instant case. I am not at all in agreement with the aforesaid submission for the simple reason that the 13th Amendment to the Constitution which grants appellate powers against an order made in a High Court in an industrial dispute make no provisions for granting appellate jurisdiction either by away of appeal or revision to this Court. I would say the preliminary objection raised by the respondent - applicant - respondent is sustainable and far reaching for one cannot come to this Court for redress when the relief lies elsewhere

and this Court cannot by implication, surmise or by conjecture assert itself with jurisdiction that has not been granted in law. Accordingly I would reject the proposition of counsel for the applicant-respondent - petitioner.

At this point, it would be useful to consider some of the provisions of Act, No. 32 of 1990 and Section 9(a) of Act, No. 19 of 1990 having a direct bearing on the issue at hand.

Section 31 DD(1) of the Industrial Disputes (Amendment) Act, No. 32 of 1990 reads as follows:

"(1) Any workman, trade union, or employer who is aggrieved by any final order of a High Court established under Article 145P of the Constitution, in the exercise of the appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law, in relation to an order of a labour tribunal, may appeal therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained."

Section 9(1) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 reads as follows :

9(a) "a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154 P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court *ex mero motu* or at the instance of any aggrieved party to such matter or proceedings;

Provided that the Supreme Court may, in its discretion grant special leave to appeal to the Supreme Court, from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or any law where such High Court has refused to grant leave to appeal to the Supreme Court, or where

in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court;

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance."

Thus it is to be noted that law provides for a specific remedy for any party who is aggrieved by an order of the Provincial High Court and the applicant - respondent petitioner could have appealed against the order of the Provincial High Court with the leave of the High Court or the Supreme Court first had and obtained. It is to be seen that the applicant - respondent -petitioner did exercise an option available to him by law and sought leave to appeal from the Provincial High Court which was refused. When leave to appeal is refused by the Provincial High Court there is a specific course of action stipulated in law to such a person in terms of Section 9 (a) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 as stated above by way of seeking special leave to appeal to the Supreme Court.

Thus it could be seen that there was a specific remedy provided by law for the applicant - respondent - petitioner to canvass his grievance before the Supreme Court. This was the correct and proper legal remedy. However instead of resorting to the legal remedy that was available to him the applicant - respondent - petitioner has filed a revision application in this Court.

The right of revision is a discretionary remedy which is allowed by Court only in exceptional circumstances and the right of revision is not available specially when there is an alternative remedy available in law which remedy the applicant-respondent-petitioner failed to have recourse to.

It is also well settled law that the discretionary remedies such as writs and revision are not available when there is an undue delay in invoking the jurisdiction of Court. In the instant application the delay is as much as 10 months. Furthermore, the reasons adduced for the inordinate delay in

invoking the revisionary jurisdiction is ill health of the applicant–respondent-petitioner. However the medical certificate submitted by him dated 15. 06.2004 marked P5 reveals that it was issued on 15. 06. 2004 and the ayurvedic physician has recommended leave for two months from 03. 05. 2004. The learned High Court Judge had delivered his order on 30. 10. 2003 and thereafter the leave to appeal application to the High Court had been refused on 29. 04. 2004. The instant revision application was tendered on 13. 09. 2004.

In paragraph 8 of the petition the applicant - respondent petitioner states that there is a delay in filing this application since he met with an accident and was bedridden for several months and due to the ill health he was unable to instruct an Attorney - at - Law to proceed with the revision application immediately, in proof of which the applicant respondent-petitioner has annexed the medical certificate marked P5. As per the medical certificate dated 15. 06. 2004 leave has been recommended for 2 months from 03.05. 2004. The learned High Court judge's order is dated 30. 10. 2003. The medical certificate does not indicate that there was anything to prevent the applicant respondent-petitioner from seeking leave to appeal to the Supreme Court. No explanation was given as to why he did not seek leave to appeal to the Supreme Court in terms of section 9 (a) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990. In any event, no exceptional circumstances have been pleaded or shown for this Court to invoke its revisionary jurisdiction. Be that as it may my considered view is that the remedy lies elsewhere and if we were to allow this application we would be opening the flood gates for parties to come to this Court circumventing the remedies stipulated by law.

For the above reasons, I have no hesitation in dismissing this application with costs fixed at Rs. 20,000/-.

WIMALACHANDRA, J. – *I agree.*

Application dismissed.