IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for a mandate in the nature of a Writ of *Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.
CA/WRT/0352/2024

Trend Setters
(Private) Limited,
117, Old Galle Road,
Walana, Panadura.

Petitioner

Vs.

1. H. K. K. A. Jayasundera,
   Commissioner General of Labour,
   Labour Secretariat,
   No: 41, Kirula Road,
   Colombo 5.

2. Priyani Fernando,
   Assistant Commissioner of Labour,
   Termination Unit,
   Department of Labour,
   Labour Secretariat,
   No: 41, Kirula Road, Colombo 5.

3. P. Mangallika Fernando
   No.170, Walapala, Panadura

4. U.B.R. Fernando,
   No.720/1, Galle Road, Molligoda
   Wadduwa.

5. H. Sobani Silva,
   Sri Saranapala Mawatha, Pinwatta,
   Panadura.

6. G. D. P. De Silva,
   No,4/4, Meegahakovila Rd,
   Pinwatta, Panadura.

7. M. G. Anura Jayaweera,
   186/A, Mahara Nugegoda,
   Kadawatha.

8. K. Siriyawathi,
   No. 332/11/K, Samodayapura,
   Palanwatta, Pannipitiya

9. W. Nimasha Kumari,
   Kolomgahawaththa,
   Jalasagama, Kirama

10. K. J. P. S. W. De Vass,
    No. 50/3, 2nd Lane, Batalanda,
    Hirana, Panadura

11. Nishantha Ranjan Fernando,
    “Nishantha", Thulapitiya Diyalagoda,
    Maggona.

12. R. L. Nirosha,
    No. 325, Pathinigewaththa
    Jayamawatha, Kudahilla, Beliaththa.

13. Sarath Upali Jayasinghe,
    No.164/2, Udaththawa,
    Batumulla,

14. R. Buddhika Anuranga Silva,
    No. 7
    Pinwala Road, Walkada,
    Panadura

15. W. M. Ruvini,
    No.265/B, Jayasekara Mawatha,
    Maha Gedarawaththa

16. A. R. Fernando,
    No, 413, Moderawila Moravinna,
    Panadura.

17. Y. S. D. M. Silva,
    No. 140/B, Wadugedara State,
    Kalavila,
    Aluthgama.

18. K.A.A. Madhushika Fernando,
No.79/1/1, Galagedarawaththa,
Moravila, Panadura.

Respondents

Before : M. T. Mohammed Laffar, J (ACT.P/CA).
K. M. S. Dissanayake, J.

Counsel: Faisz Musthapha, PC with Thushani Machado and Zainab Marker Akram for the Petitioner.

Tashya Gajanayake, SC for the 1st and 2ndRespondents.

Pubudu De Silva, instructed by D. K. S. de Silva for the 3rd to 18th Respondents.

Argued on : 18.02.2025

Written submissions of the Petitioner tendered on : 06.03.2025

Written submissions of the 1st and 2nd Respondents tendered on : 20.03.2025

Written submissions of the 3rd to 18th Respondents tendered on : 19.03.2025

Decided on : 27.03.2025

K. M. S. Dissanayake, J.

Being dissatisfied by the Order dated 21.02.2023, annexed to the petition of the Petitioner-Trend Setters (PVT) Limited (hereinafter called and referred to as 'the Petitioner') marked as **P8** thereto (hereinafter called and referred as 'the order'), made by the 1st Respondent – the Commissioner General of Labour (hereinafter called and referred to as 'the 1st Respondent'.) by virtue of the powers vested in him by section 6A of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 as lastly, amended by the Termination of Employment of Workmen (Special Provisions) (Amendment) Act No. 23 of 2022 (hereinafter called and referred to as 'the Act') in pursuant to the several applications dated 01.11.2022 and 02.11.2022, made to him under and in terms of the provisions of the Act by the 3rd to 18th Respondents being employees of the Petitioner-Trend Setters (PVT) Limited (hereinafter called and referred to as 'the 3rd to 18th Respondents'), the instant application had under and in terms of the Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as 'the Constitution'), been preferred to this Court, by the Petitioner by presenting to this Court a petition dated 04.06.2024 under and in terms of section 10B(1) of the Act naming therein the 18 persons as the Respondents thereto praying *inter alia,* for the issue of an order in the nature of a writ of *Certiorari* quashing the order of the 1st Respondent directing the Petitioner to deposit a sum of Rs. 9,643,500/- with him on or before 24.03.2023, and for an interim order staying the proceedings of the Magistrate's Court of Panadura in case bearing No. 7712 until the final hearing and determination of this application.

When this matter came on before us on 18.02.2025 for support of the application for notice and the stay order, both the learned State Counsel for the 1st and 2nd Respondents as well as the learned Counsel for the 3rd to 18th Respondents, raised to Court a preliminary legal objection as to the maintainability of the instant application as it was presently, constituted on the basis that the instant application ought to be dismissed *in-limne* in view of the non-compliance by the Petitioner of the provisions of section 10B(2) and 10B(3) of the Act. It was thus, urged by the Counsel for the Respondents that the instant application be dismissed even without issuing notices to the Respondents together with the interim application for stay order. On the other hand, the learned President's Counsel for the Petitioner sought to counter the preliminary legal objection by contending that the writ jurisdiction conferred upon this Court by Article 140 of the Constitution remains unfettered by any ordinary legislative provisions including section 10B(2) of the Act for; the provisions of the Constitution, especially, Article 140 thereof guarantee right of access to the Court for judicial review, and therefore, no Statue can lawfully, restrict or oust the jurisdiction so conferred upon this Court It was thus, urged by the learned President's Counsel for the Petitioner that preliminary legal objection so raised, be rejected *in-limne*.

We had having heard respective Counsel on the question of preliminary legal objection, directed the parties to file written submissions as urged in support of the respective positions so adverted to, by each Counsel for and against the preliminary legal objection.

Upon a careful scrutiny of the instant application made to this Court under and in terms of section 10B(1) of the Act by the Petitioner for relief, it manifestly, appears to me that the Petitioner had not furnished to this Court a security in cash along with the same as required by section 10B(2) of the Act nor, had the instant application been supported by a certificate under the hand of the Commissioner General to the effect that the security as specified in subsection (2) had been duly, furnished by the Petitioner being employer as

required by section 10B(3) of the Act. Hence, it is abundantly clear that the Petitioner had made the instant application to this Court under section 10B(1) of the Act for relief in total contravention of those two requirements embodied in section 10B(2) and (3) of the Act. The preliminary legal objection so raised to this Court by Counsel is entirely, based on this premise.

In view of the preliminary legal objection so raised to this Court by Counsel, the pivotal question that would now, arise for our consideration and determination is; Whether the non-compliance by the Petitioner, of those two requirements embodied in section 10B(2) and (3) of the Act instant application, would be fatal to the maintainability of the instant application made to this Court, under section 10B(1) of the Act for relief by the Petitioner; and if so, whether the same would be liable to be dismissed *in-limne* for non-compliance of those two requirements embodied in section 10B(2) and (3) of the Act, as raised by Counsel in the preliminary legal objection; or else, whether the writ jurisdiction conferred upon this Court by Article 140 of the Constitution remains unfettered by any ordinary legislative provisions including section 10B(2) of the Act; and if so, whether any ordinary legislative provisions embodied in a Statute including section 10B(2) of the Act can lawfully, restrict or oust the jurisdiction so conferred upon this Court for; the provisions of the Constitution, especially, Article 140 thereof guarantee right of access to the Court for judicial review; as contended by the learned President's Counsel for the Petitioner.

It is in this backdrop of this case, I would now propose to deal with the preliminary legal objection so raised by the Counsel for the Respondents and the submissions made by the respective Counsel for and against it.

It is in this context, I would think it expedient at this juncture to examine the provisions embodied in section 10B(1),(2),(3),(4)and (5) of the Act and they may be reproduced *verbatim* the same as follows;

"10B. (1) Where an employer is dissatisfied with an order made by Commissioner-General under section 6 or 6A, such employer may make an application to the Court of Appeal against such order for the issue of an order in the nature of a writ.

(2) Every employer who makes an application under subsection (1) for the issue of an order in the nature of a writ shall furnish to the Court of Appeal, a security in cash, where the order which is the subject of such application directs

(a) both the payment of a sum of money as compensation and the reinstatment, of an amount of money, as salary or wages which is to be calculated from the date of such order to the date on which such workman shall be reinstated, and an amount of twelve times the monthly salary or wages of such workman for the reinstatement; and

(b) only the payment of a sum of money to the workman as compensation, of an amount equal to such sum.

(3) Every application for the issue of an order in the nature of a writ, made under subsection (1) shall be supported by a certificate under the hand of the Commissioner General to the effect that the security as specified in subsection (2) has been duly furnished by such employer.

(4) The Commissioner-General shall cause to be deposited the sum as specified in subsection (2), in an account bearing interest, maintained by the Commissioner-General, in any approved bank in Sri Lanka.

(5) The Commissioner-General shall refund the sum furnished under subsection (2) together with the interest on such sum to the relevant party in terms of the final determination of the application to the Court of Appeal or the Supreme Court, as the case may be.".

Position before and after the Amendment.

Section 10B of the Act had been enacted by way of an amendment brought to the Act by section 4 of the Termination of Employment of Workmen (Special Provisions) (Amendment) Act No. 23 of 2022.

Hence, section 10B of the Act is an entirely, new provision brought to it as recent as 2022 by way of the said amendment, and there had been no provision as such before the amendment, and its primary objective therefore, being to provide for a specific relief to an employer and to lay down a specific procedure for obtaining the same.

What then, is the specific relief provided for, and the specific procedure laid down by the section 10B of the Act by itself for obtaining the same?.

Upon a careful analysis of section 10B of the Act in its correct perspective, it becomes abundantly, clear that, the principle objective intended to be achieved by the legislature in enacting section 10B of the Act by way of an amendment brought to it as recent as 2022, being to provide with an employer who comes within the definition of the word "Employer" given in the section 19 of the Act, and who being dissatisfied with an order made by Commissioner-General of Labour under section 6 or 6A of the Act, a specific statutory relief to make an application to the Court of Appeal against such order for the issue of an order in the nature of a writ quashing the same and to lay down a specific statutory procedure for obtaining the same as embodied in the section 10B of the Act by itself.

What then, is the specific statutory relief provided for, and the specific statutory procedure laid down by the section 10B of the Act by itself for obtaining the specific statutory relief as provided for by it as enumerated above?.

Section 10B(1) of the Act creates a specific statutory relief wherein it provides that, "Where an employer is dissatisfied with an order made by Commissioner-General under section 6 or 6A, such employer may make an application to the

Court of Appeal against such order for the issue of an order in the nature of a writ."

Section 10B(2) and (3) of the Act lays down a specific statutory procedure to be followed by such an employer for obtaining such specific statutory relief as created by section 10B(1) of the Act wherein it provides that,

> "(2) Every employer who makes an application under subsection (1) for the issue of an order in the nature of a writ shall furnish to the Court of Appeal, a security in cash, where the order which is the subject of such application directs
>
> (a) both the payment of a sum of money as compensation and the reinstatement, of an amount of money, as salary or wages which is to be calculated from the date of such order to the date on which such workman shall be reinstated, and an amount of twelve times the monthly salary or wages of such workman for the reinstatement; and
>
> (b) only the payment of a sum of money to the workman as compensation, of an amount equal to such sum.
>
> (3) Every application for the issue of an order in the nature of a writ, made under subsection (1) shall be supported by a certificate under the hand of the Commissioner General to the effect that the security as specified in subsection (2) has been duly furnished by such employer."

Upon a careful analysis of section 10B(1) of the Act in conjunction with 10B(2) and (3), it becomes abundantly, clear that section 10B of the Act sets out the essential requisites and/or constituent elements of an application made under section 10B(1) of the Act for it to be properly, constituted thereunder.

Hence, for an application made under section 10B(1) of the Act to be properly constituted, an employer shall **not only**, furnish to the Court of Appeal along therewith, a security in cash where the order which is the subject of such

application directs (a) both the payment of a sum of money as compensation and the reinstatement, of an amount of money, as salary or wages which is to be calculated from the date of such order to the date on which such workman shall be reinstated, and an amount of twelve times the monthly salary or wages of such workman for the reinstatement; and (b) only the payment of a sum of money to the workman as compensation, of an amount equal to such sum, as the case may be, **but also** shall every application made under 10B(1) of the Act be supported by a certificate under the hand of the Commissioner General of Labour to the effect that the security as specified in 10B(2) of the Act has been duly, furnished by such employer, as required by section 10B(2) and (3) of the Act [Emphasis is mine].

When section 10B(1) of the Act is read together with section 10B(2) and 10B(3) thereof, it becomes abundantly, clear that the plain and clear intention of the legislature intended to be achieved by enacting so, was to make it incumbent upon an employer who wishes to avail himself of the specific statutory relief created by section 10B(1) of the Act, to strictly, follow the specific statutory procedure laid down by section 10B(2) and (3) of the Act for obtaining such specific statutory relief as created by the legislature by section 10B(1) of the Act.

It is well established principle, that when law provides a specific statutory procedure for obtaining a particular relief, that specific statutory procedure must strictly, be followed in obtaining the same. In the result, Courts are bound to adhere to these procedures and cannot deviate from them as they are the legal framework for obtaining the specific relief created thereby, inasmuch as this principle ensures fairness and predictability in the legal system as it prevents parties from circumventing the law by using alternative methods.

Hence, not only such employer but also this Court are bound to adhere to such specific statutory procedure as laid down by section 10B (2) and (3) of the Act in obtaining such specific statutory relief as created by section 10B(1) of the

Act, for; this Court cannot deviate from such specific statutory procedure as laid down by section 10B (2) and (3) of the Act in determining as to whether such specific statutory relief ought to be granted or not to an employer as created by section 10B(1) thereof in view of the fact that the specific statutory legal procedure laid down therein is a legal framework for obtaining such specific statutory relief as created by section 10B(1) thereof. Not only that but also, the principle enumerated above ensures fairness and predictability in the legal system, as it prevents such employer from circumventing the specific statutory procedure laid down by section 10B(2) and (3) thereof by using alternative method.

In view of the foregoing, it is my considered view that an application purportedly, made under section 10B(1) of the Act, which does not strictly, adhere to and conform to such essential requisites and/or constituent elements as laid down by section 10B (2) and (3) of the Act, cannot in any manner, be considered in law as an application properly, constituted thereunder, for want of compliance of a condition precedent to the proper constitution of an application under Section 10B(1) thereof as laid down in section 10B(2) and (3) thereof.

There is a further reason which would I think, assist me immensely, in determining the tenability in law, of the preliminary legal objection so raised as to the maintainability of the instant application as it is presently constituted.

It may, now be considered.

It is an established rule of interpretation of Statues that when an Act in unambiguous terms states that every appeal or application to a Court shall be accompanied by a certificate under the hand of a particular judge or a person confirming that required security has been furnished, the Court cannot and need not embark upon a voyage of discovery in interpreting such statutory requirement as to furnishing security as a condition precedent to the proper

constitution of an application as such, differently when there is no ambiguity in the language or intent of the legislature.

It was held in **Miller Vs. Salomons (1853)7 Ex.475, Pollock C.B.** at page 560 that, "if the meaning of the language used by the legislature be plain and clear, we have nothing to do, but to obey it, to administer it as we find it, and I think, to take a different course is to abandon the office of judge and to assume province of legislation."

When section 10B(2) and (3) of the Act in unambiguous terms enacts that, application under section 10B(1) thereof, shall be accompanied by a certificate under the hand of the Commissioner General of Labour to the effect that the security as specified in 10B(2) thereof, has been duly, furnished by such employer, this Court cannot and need not embark upon a voyage of discovery in interpreting such statutory requirement as to furnishing security made as a condition precedent to the proper constitution of an application under section 10B(1) of the Act, differently, for; there is no ambiguity in the language used in section 10B(2) and (3) thereof or intent of the legislature.

In view of the above, I would further, hold that an application purportedly, made under section 10B(1) of the Act, which does not strictly, adhere to and conform to such essential requisites and/or constituent elements as laid down by section 10B (2) and (3) of the Act, cannot in any manner, be considered in law as an application properly, constituted thereunder for want of compliance of a condition precedent to the proper constitution of an application under Section 10B(1) thereof as laid down in section 10B(2) and (3) thereof.

There is a further point which would I think, fortify and strengthen immensely, the view so expressed by me as aforesaid and I would now propose to deal with it.

Similar provisions to that of the one embodied in section 10B(2) and (3) of the Act are found in section 31D(4), (5), and (8) of the Industrial Disputes Act as amended.

Section 31D(4) of the Industrial Disputes Act as amended enacts,

"31D(4). Every employer who—

(a) appeals to a High Court established under Article 154P of the Constitution, against an order of a labour tribunal or makes an application in revision against any such order; or

(b) **makes an application for the issue of an order in the nature of writ of certiorari, prohibition, procedendo or mandamus against** the President of a Labour Tribunal, in respect of an Order made by such President,

shall furnish to such Labour Tribunal security in cash.

(i) in any case where the order which is the subject of such appeal or application directs only the payment of a sum of money to the workman, of an amount equal to such sum; (ii) in any case where the order which is the subject of such appeal or application directs only the reinstatement of the workman, of an amount equal to twelve times the monthly salary or wages of such workman at the time his services were terminated; (iii) in any case where the order which is the subject of such appeal or application directs both the payment of a sum of money to the workman and his re-instatement, of an amount equal to such sum and twelve times the monthly salary or wages of such workman at the time his services were terminated. Where an employer is required under the preceding paragraphs of this subsection to furnish security of an amount equal to twelve times the monthly salary or wages of a workman, such monthly salary or wages shall, in the case of a daily paid workman, be deemed to be twenty-six times the daily wages of such workman.

(5) The President of every labour tribunal shall cause all moneys furnished as security under subsection (4), to be deposited in an account bearing interest, in any approved bank in Sri Lanka.

Sections 31D(8) of the Industrial Disputes Act as amended enacts:

(8) **Every appeal or application referred to in subsection (4) shall be accompanied by a certificate issued under the hand of the President of the labour tribunal, to the effect that the appellant or the applicant as the case may be, has furnished the security which he is required to furnish under that subsection.** " [Emphasis is mine]

The similar question to that of the one arisen in the instant application as raised by the Counsel for the Respondents in the shape of a preliminary legal objection as to the maintainability of the instant application due to non-compliance by the Petitioner, of section 10B(2) and (3) of the Act, had arisen in an appeal bearing number **SC/APPEAL/ 111/2022 - decided on 02.12.2024** in the Supreme Court. The question arose therein for decision was whether section 31D(8) of the Industrial Disputes Act as amended was a condition precedent to the maintainability of an appeal or application under section 31D(4) thereof; and if so whether compliance thereof was mandatory and non-compliance was fatal to the maintainability of an appeal or application before High Court established under Article 154P of the Constitution.

The Supreme Court had having cited with approval the decisions in Wimalasiri Perera and Others Vs Lakmali Enterprises Diesel and Petrol Motor Engineers and Others 2003 1 SLR 62 and Linea Aqua (Pvt) Ltd Vs. Lakdeva De Silva SC/APPEAL 178/2018 – SC Minutes of 13.11.2019, and having quoted and cited Maxwell on The Interpretation of Statues, 12th Edition (1969), pages 81, 201, 314, 328 and N.S. Bindra- Interpretation of Statutes, 13th Edition (2023), page 456, held at page 23 that If the appeal, application for revision **or writ** is not accompanied by a certificate issued under the hand of the President of the Labour Tribunal confirming that the appellant or the applicant, as the case

may be, has furnished the required security under the provisions of section 31D(8) of the Industrial Disputes Act as amended, **the High Court shall reject the appeal or application**[Emphasis is mine].

In support of thereof, the Supreme Court had in the said appeal bearing number SC/APPEAL/ 111/2022 (supra), *inter-alia* relied on a passage from Maxwell (ibid) at page 328 which is to the following effect;

> "Where the act or thing required by the statute is a condition precedent to the jurisdiction of a tribunal, compliance cannot be dispensed with and, if it be impossible, the jurisdiction fails. It would not be competent to a court to dispense with what the legislature has made the indispensable foundation of its jurisdiction."

Furthermore, with regard to the intent of the legislature in enacting such a provision thereto, namely; section 31D(8) of the Industrial Disputes Act as amended, the Supreme Court had in the decision in SC/APPEAL/ 111/2022 (supra), observed at page 9 as follows;

> "The intent of all these legislative changes was to curtail frivolous appeals and to expedite the disposal of remaining appeals."

What can be deducible from the above is that, what the legislature intended to achieve by enacting section 10B(2) and (3) of the Act is to clearly, prescribe and or demarcate with precision and certainty the essential requisites and/or constituent elements of such an application as contemplated by the legislature in section 10B(1) of the Act as are inherently, necessary for it to be properly, constituted thereunder only, so that the legislature had never intended to impose any fetter on the jurisdiction of this Court conferred upon it by Article 140 of the Constitution or else to restrict or oust the jurisdiction of this Court vested thereunder as contended by the learned President's Counsel for the Petitioner.

This view is further strengthened by the decisions of the Supreme Court referred to above for; it had never been held by the Supreme Court that the legislature by enacting a similar provision, namely; section 31D(8) of the Industrial Disputes Act as amended, as in section 10B(2) and (3) of the Act, had intended to impose any fetter on the jurisdiction of this Court conferred upon it by Article 140 of the Constitution nor had it been held that legislature had thereby intended to restrict or oust the jurisdiction of this Court so vested in it under Article 140 of the Constitution, but, the Supreme Court had clearly, and unequivocally, held that what legislature intended to achieve by enacting section 31D(8) of the Industrial Disputes Act as amended was to set down in clear and unambiguous terms, a condition precedent to the institution of an application under section 31D (4) of the Industrial Disputes Act as amended in the shape of a mandatory provision to be strictly, complied with by an employer who wishes to make an application thereunder for statutory relief prescribed therein in his favour and a departure from it, is fatal to any proceeding thereunder to obtain the benefit of it.

Besides, the Supreme Court in the decisions referred to above, had not in any manner, held that the writ jurisdiction conferred upon the High Court established under Article 154P of the Constitution remains unfettered by any ordinary legislative provisions including section 31D(8) of the Industrial Disputes Act as amended nor was it anywhere held that section 31D(8) of the Industrial Disputes Act as amended can lawfully, restrict or oust the jurisdiction vested on the High Court established under Article 154P of the Constitution.

Moreover, N.S. Bindra Interpretation of Statutes, 13th edition (2023), page 456 states:

> "No statutory provisions are intended by the legislature to be disregarded…"

It is no doubt that similar provision as contained in section 31D(8) of the Industrial Disputes Act as amended is contained in section 10B(2) and (3) of the Act as well.

What is more; It was held in ***R v Loxdale* [1758] 1 Burr 445** at 447 - per Lord Mansfield,

> "*Where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system, and as explanatory of each other.*". See also; R v Palmer (1785) 1 Leach 352 at 355 (a bench of 12 judges).

In the light of the principle laid down by Court in ***R v Loxdale*** (Supra), where two or more statutes are *in pari materia*, each may be interpreted in reference to the other. In other words, the statutes dealing with the same topic should be interpreted in a consistent way considering each other. Hence, Acts *in pari materia* are to be taken together as forming one system and as interpreting and enforcing each other.

In the circumstances, I am of the view that section 10B(2) and (3) of the Act should be interpreted in reference to the section 31D(8) of the Industrial Disputes Act as amended and in the same and the consistent way as section 31D(8) of the Industrial Disputes Act as amended had been interpreted by the Supreme Court in the decision referred to above, for; both section 31D(8) of the Industrial Disputes Act as amended and section 10B(2) and (3) of the Act are dealing with the same topic and or the subject inasmuch as both sections make it obligatory on an employer as a condition precedent to the institution of an application there under in Court, to furnish a certificate under the hand of President Labour Tribunal or Commissioner General of Labour as the case may be, confirming that required security had been furnished along with the application.

For the reasons stated above, and particularly, relying on the decision in SC/APPEAL/ 111/2022 (supra) which dealt with the similar provision contained in section 31D(4) and 31D(8) of the Industrial Disputes Act as amended, as contained in section 10B(2) and (3) of the Act, I would hold that the provisions contained in section 10B(2) and (3) of the Act are condition precedent to the institution of an application under section 10B(1) of the Act and therefore, strict compliance of the provisions contained in section 10B(2) and (3) of the Act are essential and mandatory for the proper constitution of an application under section 10B(1) of the Act and non-compliance of the provisions contained in section 10B(2) and (3) is fatal to the maintainability of an application for specific statutory relief created and granted to an employer under section 10B(1) of the Act, for; the prime intent of the legislative changes brought to section 10 of the Act as recent as 2022 was to curtail frivolous applications being made to Court by an employer for relief under section 10B(1) of the Act and to expedite the early disposal of properly constituted appeals and applications before Court; and that the legislature had by enacting section 10B(2) and (3) of the Act never intended to impose fetter upon the jurisdiction of this Court conferred upon it by Article 140 of the Constitution nor had it ever intended thereby, to restrict or oust the jurisdiction of this Court so conferred upon it by Article 140 of the Constitution.

I would further, hold that Article 140 of the Constitution would confer jurisdiction upon this Court to hear and determine an application of kind as contemplated by section 10B(1) of Act to be read together with section 10B (2) and (3) thereof only where there is a properly constituted application before this Court as contemplated by section 10B(1) of Act to be read together with section 10B (2) and (3) thereof, and in case there is no properly constituted application as contemplated by section 10B(1) of Act to be read together with section 10B (2) and (3) thereof, this Court is not vested with jurisdiction to exercise its extra-ordinary writ jurisdiction conferred upon it by virtue of Article 140 of the Constitution.

Hence, it is my considered view that the availability of a properly constituted application under the Act before this Court is a pre-condition for this Court to exercise its extra-ordinary writ jurisdiction conferred upon it by virtue of Article 140 of the Constitution.

A careful scrutiny of the decisions cited to us by the learned President's Counsel for the Petitioner in resisting the preliminary legal objection so raised by the learned Counsel for the Respondents clearly, shows that they relate to the question whether preclusive clause contained in a Statute can oust or restrict the extra-ordinary writ jurisdiction vested in this Court by Article 140 of the Constitution whereas, the question that arose in this case for our decision in view of the preliminary legal objection so raised by the learned Counsel for the Respondents is whether this Court can exercise its extra-ordinary writ jurisdiction vested in this Court by Article 140 of the Constitution in the absence of a properly constituted application under section 10B(1) of the Act to be read together with section 10B(2) and (3) thereof and as such the decisions cited to us by the learned President's Counsel for the Petitioner can be clearly distinguishable and if I may say so, with all due respect that they have therefore, no bearing for the resolution of the matter before us.

In view of the foregoing, I would hold that the preliminary legal objection so raised by the Counsel for the Respondents is tenable in law and therefore, entitled to succeed in law.

In the circumstances, I would find myself unable to agree with the contention so raised by the learned President's Counsel in resisting the preliminary legal objection so raised by the learned Counsel for the Respondents and the submissions so made by him in support thereof for; they cannot sustain in law and as such they should be rejected *in-limne*.

In view of all the above facts and circumstances, I would hold that, the preliminary legal objection so raised by the learned Counsel for the Respondents is entitled to succeed in law.

I would thus, uphold the same.

Hence, I would refuse to issue notices on the Respondents as prayed for, by the Petitioner in paragraph (a) of the Petition of the Petitioner.

Consequently, I would proceed to refuse the application for interim order as prayed for in paragraph (c) of the Petition of the Petitioner.

In the result, I would dismiss the instant application of the Petitioner *in-limne* with costs.

JUDGE OF THE COURT OF APPEAL

M. T. Mohammed Laffar, J

I agree.

PRESIDENT (ACTING) OF THE COURT OF APPEAL