



JOHN WILSON PARTNERS,
Attorneys-at-Law & Notaries Public



John Wilson

W.A. K. Sanjeeva Kumara v. Kuruppu – SC Appeal 202/2015 – Supreme Court Judgement on 10.10.2018.

The Applicant-Appellant (the Applicant) had been employed by the Respondent-Respondent (the Respondent) from August 2006 until his services were terminated by the Respondent on 1st March 2011.

The Applicant made an application for relief in respect of the alleged unlawful termination of his services to the Labour Tribunal under section 31B(1) of the Industrial Disputes Act in terms of which an employee whose services have been terminated by his employer could make an application for relief in respect of such termination.

The Respondent's position was that the Applicant was an independent contractor and not an employee and that, as such, he could not maintain the application.

The Labour Tribunal held that the Applicant was an employee and not an independent contractor, that the termination of his services was unlawful, and awarded a sum of Rs. 337,500 as compensation. The Respondent appealed to the High Court which allowed the appeal and set aside the order of the Labour Tribunal.

The Applicant, (having obtained special leave to do so), appealed to the Supreme Court, which noted the following facts:

- a) It was common ground that there was no written contract between the parties.
- b) The Respondent's position was that he worked as a contractor for the Ceylon Electricity Board; that when he did obtain such contracts, he sub-contracted the work to 3rd parties and shared the profit and that, in the circumstances, the Applicant too was an independent contractor.
- c) On the other hand, the Applicant asserted that he and other "workmen", (i.e. employees), who worked for the Respondent gathered at the house of the

Respondent every morning to obtain instructions regarding their daily work – whether they were clearing the main lines or giving connections to houses - and also reported back to the Respondent at about 5.30 p.m. Further, the equipment used by them was supplied by the Respondent. The Applicant's position was that he was subject to the directions and control of the Respondent.

- d) The Applicant also produced a document which was, admittedly, in the handwriting of the Respondent, which referred to payments made for clearing electrical lines and supplying electricity during the period 2006 -2007. The name at the top of the document was "Sanjeewa". The Respondent's position was that this document had no connection to the Applicant but referred to monies reserved for the vehicles.
- e) The President of the Labour Tribunal had considered the positions of both parties and had rejected the Respondent's position and had also observed that the Respondent had kept no proper record of payments made to his employees till July 2011 – after the termination of the Applicant's services.

On the central issue of whether the Applicant was an employee or an independent contractor, the Supreme Court – having referred to several of its own previous decisions and also one decision of the Court of Appeal - held that the Applicant was an employee. In arriving at this decision, the Supreme Court was mindful of the degree of control found by the Labour Tribunal to have been exercised by the Respondent over the Applicant. It (the Supreme Court) further stated that:

"The Appellate Courts are reluctant to interfere with the findings of Trial Courts including the Labour Tribunal, unless a serious miscarriage of justice has taken place when the Tribunal was analyzing the evidence and the law relating to its findings".

As regards the judgment of the High Court, the Supreme Court observed that the learned High Court Judge had failed to appreciate the role of the High Court in an appeal process and had merely given his interpretation to the evidence led before the Labour Tribunal and interfered with the finding on mere questions of fact.