

**BANDARA**  
**v.**  
**STATE ENGINEERING CORPORATION OF SRI LANKA**

SUPREME COURT  
S. N. SILVA, C.J.,  
BANDARANAYAKE, J., AND  
WIGNESWARAN, J.  
SC APPEAL NO. 57/2001  
HC (COL) LT NO. 1709/99  
LT (COL) NO. 2/170/95  
JUNE 04 AND 25 JULY 30, 2002

*Industrial dispute – Termination of employment – Nature of employment – “Casual” or “permanent” – Guidelines for decision.*

The appellant (the workman) was employed as a “casual Engineer” and was assigned to work at worksites managed by the respondent (the employer) on a salary calculated at Rs. 200 per day. He was recruited on 01. 08. 1992 on a recommendation made prior to his graduation until the work was completed in the site known as “cluster I” The workman graduated on 14. 12. 1992 obtaining a BSc. Engineering degree from the University of Moratuwa However, he was continued on “casual” employment. No letter of appointment was issued to him. The employer terminated his employment on 07. 04. 1995 on the basis that his services were no longer required.

During the employment the workman applied for a permanent post under the employer but he was not selected, after an interview.

During the proceedings before the Labour Tribunal, the workman admitted that he was an Engineer working on a casual basis. He also admitted that he was not paid allowances and bonuses which were paid to permanent employees of the employer.

**Held:**

*Per Bandaranayake, J.*

“Considering the circumstances in the instant case, the appellant’s position cannot be categorized as “permanent” and the real character of his position falls well within the parameters of a “casual” employee.”

**Cases referred to :**

1. *Ratnasbapathy v. Asilin Nona* – (1958) 61 NLR 548.
2. *Superintendent of Pussella State Plantation, Parakaduwa v. Sri Lanka Nidahas Sevaka Sangamaya* – (1997) 1 Sri LR 108.
3. *National Water Supply and Drainage Board v. D. P. David* – CA No. 1/87 CAM 02. 06. 1993.
4. *Stoker v Wotham* (1919) 1 KB 499 at pg. 502.

**APPEAL** from the judgment of the High Court.

*Saliya Peiris* for appellant.

*Janaka de Silva*, State Counsel for respondent.

*Cur. adv. vult.*

September 16, 2002

**SHIRANI A. BANDARANAYAKE, J.**

The applicant-respondent-petitioner-appellant (hereinafter referred to as the appellant), is a B.Sc graduate in Engineering from the Faculty of Engineering of the University of Moratuwa. The appellant was recruited as a Trainee Engineer by the respondent-appellant-respondent-respondent (hereinafter referred to as the respondent) on 01. 08. 1992, prior to his graduation. The appellant obtained his degree on 14. 12. 1992 and he claims that thereafter the respondent recruited him as an Engineer.

The appellant, on his employment with the respondent Corporation, was initially assigned to the Manning Town Construction Site and thereafter to the Maligawatta Construction Site. Later, the appellant was transferred to the Construction Site at Soysapura. The respondent terminated appellant on 07. 04. 1995 on the basis that his services were no longer required. The appellant made an application to the

Labour Tribunal seeking reinstatement and back wages. The Labour Tribunal by its order dated 29. 04. 1999, allowed the appellant's application and ordered reinstatement and back wages amounting to Rs. 62,400. The respondent preferred an appeal to the High Court, which by its order dated 24. 05. 2001 reversed the order of the Labour Tribunal. The present appeal is by the appellant to this Court. 20

The principal matter, which arises for consideration in this appeal is whether the appellant was a casual employee of the respondent corporation. I wish to add that this issue was answered in favour of the appellant at the Labour Tribunal, but the High Court reversed this finding.

The appellant, while he was an undergraduate at the University of Moratuwa applied for a post of Site Engineer at the respondent corporation. This letter, which was produced before the Labour Tribunal was in the following terms :

“Application for the Post of Site Engineer 30

I am a B.Sc (Civil Engineering) undergraduate of the University of Moratuwa. I have already completed the relevant course and I have had some field experience during the six month period of in-plant training . . .”

According to the minutes made on this letter, it appears that a recommendation was made to the effect that he should be taken as a “casual engineer” until the work was completed in the site known as “cluster I”. Based on this recommendation, approval was granted to engage the appellant as a trainee after 22nd July, 1992 and to pay the normal daily allowance. The respondent corporation issued no letter of appointment to the appellant. However, on 21. 04. 1995, the respondent corporation issued a letter to the appellant on his work experience. His letter was issued on the request made by the appellant and reads as follows : 40

"21st April, 1995

To whom it may concern :

Mr. K. M. H. Bandara had been employed in this Corporation from 01. 08. 1992 to 31. 01. 1994 as a Trainee Engineer and from 01. 02. 1994 to 07. 04. 1995 as Engineer on casual basis.

During this period Mr. Bandara was attached to the following <sup>50</sup> worksites :

- Manning Town Housing Project – From 01. 08. 1992 to 21. 07. 1993
- Maligawatte Housing Project – From 22. 07. 1993 to 05. 12. 1993
- Soysapura Housing Project,  
Ratmalana – From 06. 12. 1993 to 07. 04. 1995

This certificate is issued at the request of Mr. Bandara."

At the Labour Tribunal inquiry, the appellant had stated that he had served the respondent corporation for about 3 years without a <sup>60</sup> break. He had drawn a monthly salary, calculated at Rs. 200 per day. The Resident Engineer at the Soysapura Construction Site, where the appellant worked prior to his termination, stated in his evidence at the Labour Tribunal inquiry that, there were permanent employees, employees recruited on contract basis and casual employees working at the Soysapura construction site. According to him, there were employees recruited on casual basis who belonged to different categories and that included labourers as well as Engineers.

Learned counsel for the appellant cited passages from S. R. de Silva's *Legal Framework of Industrial Relations of Ceylon (XI)*, *Handbook* <sup>70</sup> *of Industrial Relations* published by the Employees' Federation (X2)

and the *Handbook on Labour Relations* published by the Friedrich Ebert Stiftung Institute (X3). According to these passages a casual employee is a person who is employed 'by chance or on no regular contract of employment'. A basic feature in casual employment would thus be that –

- (a) employment is by chance;
- (b) absence of a contract of employment between the employer and the employee;
- (c) work would be irregular by nature.

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On a comparison, while an 'odd-job' gardener, whose services are irregular would be regarded as a casual employee, a person who has an arrangement that he should come regularly once a month would not be regarded as a casual employee due to his employment being 'stable and periodical'.

Learned counsel for the appellant also relied on *Ratnasabapathy v. Asilin Nona*<sup>(1)</sup> and *Superintendent of Pussella State Plantation, Parakaduwa v. Sri Lanka Nidahas Seveka Sangamaya*.<sup>(2)</sup> In the latter case G. P. S. de Silva, CJ. held that the mere label is not sufficient to classify a workman as a casual employee, if the real character <sup>90</sup> of his employment is that of a permanent employee.

Learned State Counsel for the respondent mainly relied on the Court of Appeal judgment in *National Water Supply and Drainage Board v. D. P. David*<sup>(3)</sup> (CA) where it was held that a worker who had worked for over five years was a casual employee since he was paid on a daily basis according to the number of days he worked.

I am of the view that the *Superintendent of Pussella State Plantation, Parakaduwa* case (*supra*), on which learned counsel for the appellant placed heavy reliance, can be distinguished. In that case the employee had worked along with the others to make logs of and remove about <sup>100</sup>

3,000 rubber trees, which had fallen due to a gale. He had worked there for about a month, but he continued to be employed for a further period totalling 173 days, when his services were terminated. During that period he was paid monthly, but on a daily rate of Rs. 48. He was employed as a labourer for removing uprooted trees, weeding, cleaning roads, tapping rubber, replanting trees and applying fertilizer. This kind of work was given to him only on a limited number of days in a month and therefore he received wages ranging from Rs. 420 to Rs. 850. However, there was evidence to show that there were Employees' Provident Fund deductions, Trade Union Subscriptions, 110 Defence Levy and Welfare Society contributions made from wages. He was paid New Year and festival advances and a monthly deduction was made for as charges due to the person who washed the clothes of the estate labourers.

The evidence before us in the present case however, is different. It was not disputed that the appellant was given a salary calculated at Rs. 200 a day. The appellant admitted in cross-examination that at the time Mrs. Singharachchie warned him, he was an Engineer working on a casual basis. During his examination in chief, the appellant admitted that although the respondent corporation paid 120 allowances or bonuses to its employees, he was never paid such allowances as they were given only to permanent employees. It is also to be taken into consideration that the applicant, while functioning in this capacity at the respondent corporation, responded to a news - paper advertisement placed by the respondent calling for applications for the post of Engineer (Civil) on a contract basis. This post carried a monthly salary of Rs. 4,550 with a special allowance of Rs. 600. Admittedly, he was not selected for an appointment to be given on a contract basis.

On a perusal of the evidence led in this case, it is evident that 130 the appellant was employed on a recommendation made on his initial application to the respondent corporation. As pointed out earlier at that time the recommendation was to, "have him as a casual Engineer

at this cluster until completion of work". Accordingly, he commenced work at the Manning Town Construction Site. There was no letter of appointment issued to the appellant. It is common ground that the respondent, being a public corporation, has been issuing letters of appointment to all their permanent employees indicating the terms and conditions of their employment. At the time the appellant's appointment was made, there is no evidence to show that the appellant had faced an interview. However, when he applied for a position on contract basis, the respondent corporation summoned him for an interview at which he failed to secure an appointment as noted above. <sup>140</sup>

In *Ratnasabapathy v. Asilin Nona (supra)*, T. S. Fernando, J. cited with approval the comments made by Swinfen Eady, M.R. in *Stoker v. Wortham*<sup>(4)</sup> where he observed that :

" . . . There is a class of cases where it is quite clear the employment is regular, permanent, stable and not casual. There is another class of cases on the other side of the line where manifestly the employment is of a casual nature. Between these two it may become more and more difficult to say on which side of the line the individual case falls. In those cases it is a question of fact to be determined by considering not on the nature of the work, but also the way in which the wages are paid, or the amount of the wages, the period of time over which the employment extends, indeed all the facts and circumstances of the case." <sup>150</sup>

There was no change in the "nature" or the "character" of the appellant's employment, until the time his services were terminated by the respondent. The appellant had never queried as to why he was not given a letter of appointment, but decided to apply for an Engineering (civil) position on a contract basis where these posts were advertised. During the period he served for the respondent corporation, he had worked in three construction sites. Considering the circumstances in the instant case, it is quite clear that the description of the appellant's <sup>160</sup>

position cannot be categorized as "permanent" and the real character of his position falls well within the parameters of a "casual" employee.

In the circumstances he is not entitled to reinstatement and back wages as ordered by the Labour Tribunal.

For the aforementioned reasons, the appeal is dismissed and the order of the High Court dated 24. 05. 2001 is affirmed.

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I make no order as to costs.

**SARATH N. SILVA, CJ.** – I agree.

**WIGNESWARAN, J.** – I agree.

*Appeal dismissed.*