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

In the matter of an application for a Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialists Republic of Sri Lanka.

Siam City Cement (Lanka) Limited
(Formally known as Holcim Lanka Limited),
No. 413, R. A. De Mel Mawatha,
Colombo 03.

PETITIONER

Case No. CA (Writ) No: 163/18

Vs.

1. Hon. W. D. J. Seneviratna
Minister of Labour,
Labour Secretariat,
Colombo 5.

1A. Hon. Nimal Siripala De Silva
Minister of Labour,
Labour Secretariat,
Colombo 5.

2. Mr. R. P. A. Wimalaweera
Commissioner General of Labour,
Labour Secretariat,
Colombo 5.

2A. Mr. B. K. Prabath Chandrakeerthi
Commissioner General of Labour,
Labour Secretariat,

Colombo 5.

3. Mr. S. Kariyawasam
No. 28, Abeyratne Mawatha,
Boralesgamuwa.

4. Inter Companies Employees Union
No. 12/2, Weera Mawatha,
Sri Subuthi Pura,
Battaramulla.

RESPONDENTS

Before	:	Dhammika Ganepola, J. Adithya Patabendige, J.
Counsel	:	Uditha Egalahewa, P.C. with Amaranath Fernando instructed by D.L. & F. de Seram for the Petitioner. Shantha Jayawardena with Azra Basheer instructed by Dinesh De Silva for the 4th Respondents. Mihiri de Alwis, S.S.C. for the 1st and 2nd Respondents.
Argued on	:	10.10.2025
Written Submissions tendered on	:	Petitioner : 02.12.2025 4th Respondent : 17.11.2025
Decided on	:	14.01.2026

Dhammika Ganepola, J.

In the instant application, the Petitioner challenges the Award of the Arbitrator dated 14.06.2017, marked P4, on the basis that the said Award is arbitrary, illegal, irrational, and contains errors on the face of the record. The Petitioner seeks a Writ of Certiorari quashing the aforesaid award marked P4.

The Petitioner contends that a dispute arose between the 4th Respondent and the Petitioner as a result of the transport allowance amounting to Rs. 10,000/-, which was paid to the employees of the Petitioner in Grade 14 and above. Accordingly, the dispute had been referred for arbitration for determination by the Minister of Labour. Said reference is as follows:

> *"Whether employees belonging to the lower grades of the Home and Supervisor category of Holcim (Lanka) Limited, who contribute in the production of work itself, have been caused unjust by not receiving the allowance of Rs. 15,000 paid to supervisors (Grade 14) of the Forman and Supervisor category of the company who engage in production supervision*."

At the end of the inquiry, the Arbitrator, the 3rd Respondent, had concluded that it is not reasonable to pay an additional amount of Rs. 10,000 (currently Rs. 18,000) solely for the contribution of the production work itself, to the employees of the Petitioner in Grade 14 and above. By his Award, the 3rd Respondent had determined that employees belonging to Grades 8, 9, 10, 11, 12, and 13 are also entitled to receive an allowance of Rs. 10,000/-, and it is also equitable that such payment be made with retrospective effect.

The Petitioner states that the Front Managerial Level Grade (FML) employees, i.e., Grade 14 and above, were paid the said transport allowance of Rs. 10,000/- instead of the withdrawn facility of motorbikes and fuel provided to them previously since the inception of the Petitioner Company by the Petitioner, but not as an additional or new payment. It is submitted that the Non-Managerial Level Grade (NML) employees who belong to the Grade 13 and below were provided with a transport facility daily, and they were never entitled to the benefit enjoyed by the FML

employees and the allowance was not paid to them. It is claimed that despite such circumstances, the 4th Respondent had demanded a sum of Rs. 10,000/- to be paid to NML employees as well.

Nevertheless, the testimony of the 4th Respondent's witness, Y.A. De Silva, clearly demonstrates that FML employees have consistently used the common transport facility provided by the Petitioner Company from the outset and had continued to rely on the said transport facility even after receiving motorbikes and following the withdrawal of such a facility for FML employees.

ප්‍ර : ඔබ කොහෙද ?

උ : මීගමුව

ප්‍ර : මේ ආයතනයට පැමිණීමට ප්‍රවාහන පහසුකම් තිබෙනවාද?

උ : පොදු ප්‍රවාහන පහසුකම් තිබෙනවා

ප්‍ර : කොහේ සිටද?

උ : කොළඹ සිට

ප්‍ර : මොකක්ද වාහනය

උ: වෑන් එකක්

ප්‍ර : ඔබලාගේ ප්‍රදේශයේ FML අය ඉන්නවාද?

උ: ඔව්

ප්‍ර:එයාල එන්නේ මොකේද?

උ: ඒ වාහනේමයි

ප්‍ර : එහෙම එන්නේ මෑතක සිටද

උ: එදා ඉදන්ම ආවා ඉහල නිලධාරීන් පවා අප සමඟ ආවා

ප්‍ර: ඒ පුද්ගලයන්ට බයිසිකල් දුන් අවස්ථාවේදී පවා ආවාද?

උ: ඔව්

ප්‍ර: බයිසිකල් තියාගෙන ඇයි වෑන් එකේ එන්නේ කියලා ඇහුවද?

උ: සහෝදර සේවකයන් නිසා ඇහුවේ නෑ

ප්‍ර: ඇයි එහෙමනම් ප්‍රශ්නය?

උ: දීමනාව

ප්‍ර: ඒ අයට බයිසිකල සහ ඉන්ධන දීමනාව දෙන අවස්ථාවේදී ඒ අය වෑන් එකේ ආවාද?

උ: ඔව්.

ප්‍ර: පසුකාලීනව ඉන්ධන බයිසිකල් අයින් කළාද?

උ: ඔව්

ප්‍ර: ඒ අරගෙන වෑන් එකේ ආවාද?

උ: ඔව්

(evidence of Y.A. De Silva, pages 145, 147 of document marked 'Y', proceedings before 3rd Respondent)

Further, the Human Resources Manager of the Petitioner Company, L.D.T.S. Balasooriya, who gave evidence at the inquiry, has also conceded that some of the FML employees have been using the common transport facility provided by the Petitioner Company.

ප්‍ර: දැන් සාක්ෂිකරු එතකොට ඔය 14 ශ්‍රේණියේ ඉන්න අය බොහෝවිට ඔබගේ ආයතනය තුල සපයලා තිබෙන පොදු ප්‍රවාහන සේවයන් භාවිතා කරලා තමයි වැඩට එන්නේ නේද?

උ : මම දන්නා කිහිප දෙනෙක් එහෙම එනවා. බහුතරයකට ඒ අයගේම ප්‍රවාහන සේවයෙන් තමයි එන්නේ. අතරින් පතර සේවකයෝ කිහිප දෙනෙක් පොදු ප්‍රවාහන සේවා වල ගමන් කරනවා.

ප්‍ර: අතරින් පතර නොවේ. බොහෝවිට 14 ශ්‍රේණියේ අය එන්නේ මේ සේවකයෝ එන බස් එකේම තමයි නේද?

උ : හැමෝම එහෙම එන්නේ නැහැ. 14 ශ්‍රේණියේ ඉන්න හැම සේවකයෙකුම ආයතනයෙන් සපයා තිබෙන පොදු සේවා වල එන්නේ නැහැ. සමහර අවස්ථාවලදී කිහිප දෙනෙක් එසේ ගමන් කරන බව මම දන්නවා .

ප්‍ර : පොදුවේ ගත්තාම මේ 14 ශ්‍රේණියේ අයත් 14 ශ්‍රේණියෙන් පහළ ශ්‍රේණි සම්බන්ධයෙන් සපයා තිබෙන පොදු ප්‍රවාහන සේවයේම ගමන් බිමන් වල යෙදෙනවා නේද?

උ: මම කලින් කිව්වා වගේ 14 ශ්‍රේණියේ අය හැමෝම පොදු ප්‍රවාහන සේවා භාවිතා කරන්නේ නැහැ. ඒ 14 ශ්‍රේණියේ සමස්ත සේවක සංඛ්‍යාවන් යම් පිරිසක්, සුළු පිරිසක් බහුතරයක් නෙවේ පොදු ප්‍රවාහන සේවා අතරින් පතර පරිහරණය කරන බව මම දන්නවා.

(evidence of L.D.T.S. Balasooriya, pages 379,381 of document marked 'Y', proceedings before 3rd Respondent)

Additionally, the Human Resources Manager of the Petitioner Company, L.D.T.S. Balasooriya, who had given evidence at the inquiry, had conceded

that although they were not provided with motorbikes or a fuel allowance, all Grade 14 employees in Galle also received a Rs. 10,000 allowance. One of the inferences that could be arrived at by the above-mentioned testimony is that the facility of motorbikes and fuel was not provided to all the FML employees of the Petitioner Company.

ප්‍ර : සාක්ෂිකරු මේ රු. 10000.00 දීමනාව ගාල්ලේ ඉන්න මේ ශ්‍රේණියේ අයටත් ලබා දුන්නා?

උ : ගාල්ලේ අයටත් ලබා දුන්නා.

ප්‍ර: සාක්ෂිකරු ඔබ සාක්ෂි දෙමින් කිව්වා ඒ 10000.00 ලබා දෙන්න හේතුව තමයි ඉන්ධන සඳහා ලබා දුන්න දීමනාව කපා හැරීම හා යතුරුපැදි ආපසු ආයතන වෙත ලබා ගැනීම කියලා ?

උ: හරි

ප්‍ර: ඔබ දන්නවාද සාක්ෂිකරු ගාල්ලේ FML 14 ශ්‍රේණියේ කිසිම කෙනෙකුට 2007 වර්ෂයේ දී යතුරු පැදි දීලා තිබුණෙත් නෑ. ඉන්ධන දීමනාව ඔවුනට ලැබුනෙත් නෑ කියලා ?

උ : දන්නවා

ප්‍ර : එතකොට තමුන් මීට පෙර කිව් කාරණය බිඳ වැටෙනවා නේද අපි මේ 14 ශ්‍රේණියේ අයට මේ දීමනාව දුන්නේ ඉන්ධන සඳහා යතුරු පැදි ආපසු ලබා ගැනීම වෙනුවෙන් කියන එක ?

උ : බිඳ වැටෙන්නේ නෑ

ප්‍ර : සාක්ෂිකරු 14 ශ්‍රේණියේ ගාල්ලේ සේවකයන්ට ඔය කාලයේදී එනම් මෙම ප්‍රශ්න පැන නගින 2007 වර්ෂයේදී කාටවත් ඉන්ධන දීමනාව දුන්නේ නෑ. මොකද ඔවුනට එවැනි අවශ්‍යතාවයක් පැන නැගලා තිබුණේ නෑ නේද?

උ: ඔව්

ප්‍ර : ඔවුන් කාටවත් යතුරු පැදි දීලා තිබුණෙත් නෑ.

උ: ඔව්

(evidence of L.D.T.S. Balasooriya, pages 345,346 of document marked 'Y', proceedings before 3rd Respondent)

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ප්‍ර: දැන් සාක්ෂිකරු ඔබ පිළිගත්තා පුත්තලමේ පොදු ප්‍රවාහන ක්‍රමයක් තිබුනට ගාල්ලට යද්දිත් ගාල්ලේ කාටවත් ප්‍රවාහන පහසුකම් සපයලා තිබුණේ නැහැ කියලා 14 ශ්‍රේණියේ හෝ ඊට පහළ අයට ?

උ: ඒක මම පිළි ගන්නවා

ප්‍ර: දැන් නමුත් ප්‍රශ්නගත දීමනාව ගාල්ලේ 14 ශ්‍රේණියේ අයටත් පුත්තලමේ 14 ශ්‍රේණියේ අයටත් ලබා දුන්නා නේද?

උ: මුලින්ම පුත්තලමේ කම්හලට ලබා දුන්නා. පසුව ගාල්ල කම්හලටත් ලබා දුන්නා ඒ අවශ්‍යතාවය මතම.

(evidence of L.D.T.S. Balasooriya, pages 381,383 of document marked 'Y', proceedings before 3rd Respondent)

In the above context, the testimony of the Petitioner's own witness contradicts the stance taken up by the Petitioner that the said allowance was given to the FML employees for withdrawing the facility of motorbikes and fuel provided to them. Further, it cannot be considered that the impugned allowance of Rs. 10,000/- had been paid to all the FML employees of the Petitioner instead of the motorbike facility, and that it constitutes a special allowance introduced to all or some of the FML employees of Grade 14 who formed part of a selected category covered by the collective agreement entered into between the Petitioner and the 4th Respondent.

The stance of the 1st and the 2nd Respondent is that the impugned allowance had been paid to the employees of Grade 14 and above of the Petitioner Company who contributed to the production operation works. The 3rd Respondent Arbitrator has concluded that the Petitioner had granted the impugned allowance to the employees of Grade 14 and above on the basis of their contribution to the production operation works. As such, the 3rd Respondent has decided that since all employees of Grades 10, 11, 12, 13 and 14 contribute to the production operation works, the impugned allowance should be paid to all such employees and the non-payment of the same to such employees is unreasonable.

"වගඋත්තරකාර ආයතනයේ නිෂ්පාදන මෙහෙයුම් කටයුතු කෙරේ එම ආයතනයේ 10, 11, 12, 13 හා 14 යන සියලුම ශ්‍රේණිහි සේවකයින් දායක වන බැව් විභාගය පුරාවට පවත්වන ලද සාක්ෂිවලින් හෙළි වූ කරුණක් වුවද 14 වන ශ්‍රේණියට පමණක් නිෂ්පාදන මෙහෙයුම් කටයුතු වලට දායකත්වය දැක්වීම යන පදනම මත රු. 10, 000/ ක (වර්තමානයේ රු. 18,000 ක) අතිරේක දීමනාවක් ගෙවීම සාධාරණ නොවන බැව් තීරණය කරමි."[P4]

However, the 3rd Respondent has not given any reason nor has explained the basis upon which he came to the conclusion that the said allowance had been paid based upon the contribution of the production works done

by the Grade 14 employees (*vide* the award marked P4/2R3). Further, no material has been placed before this Court to substantiate the position that the impugned allowance was paid in view of the contribution of the Grade 14 employees towards the productivity of the Petitioner.

It is the duty of the 3rd Respondent Arbitrator to clearly identify the rationale behind the payment of the allowance in issue and to determine whether such allowance is covered under the collective agreement before he determines whether any injustice was caused to the employees of the Petitioner. This is of much importance as the Minister has appointed the Arbitrator to determine the dispute in respect of "*whether the employees belonging to the lower grades of the Foreman and Supervisor category of Holcim(Lanka)Ltd who contribute in the production work itself, have been caused unjust by not receiving the allowance of Rs.15,000/- paid to the supervisors (Grade 14) of the Foreman and Supervisors category of the Company, who engage in production supervision" (emphasis added).*

> *"හොල්සිම් ලංකා ලිමිටඩ් ආයතනයේ නිෂ්පාදන මෙහෙයුම් කටයුතු වල නියැලෙන ෆෝමන් හා සුපර්වයිසර් යන සේවා කාණ්ඩ වල සුපරීක්ෂක (14 වන ශ්‍රේණියේ) සේවකයන්ට ලබා දෙන රු. 15000/- ක දීමනාව නිෂ්පාදන මෙහෙයුම් කටයුතු වලට දායකත්වය දැක්වීම යන පදනම මතම එම සේවා කාණ්ඩවලට අයත් පහළ ශ්‍රේණි වල සේවකයන්ට ලබා නොදීම සාධාරණද නැතහොත් ඔවුන්ට ලබා දියයුතු සහන කවරේද? යන්න පිළිබඳව වේ."*

It is my view that the 3rd Respondent Arbitrator has failed to clearly identify the purpose of granting the impugned allowance. In the absence of such clear identification, the conclusion arrived by the Arbitrator in his Award P4 that the payment of Rs. 10,000/- to some of the employees (Grade 14) is unreasonable, shall be irrational and arbitrary.

Despite such, the 4th Respondent advanced the argument that the introduction of any new allowance or benefit by the employer to some of the employees (Grade 14) who are covered by the collective agreement is contrary to the principles of collective bargaining and fair labour practices, and also discriminatory. It is on common ground that the Petitioner and the 4th Respondent had entered into two collective agreements for the period between 01.01.2012 and 31.01.2012(X3), and for the period between 01.01.2016 and 31.12.2018(X6). In general, the

Collective Agreement applies solely to the parties that are privy to it and is restricted to the specific scope outlined in the respective agreement.

Section 8 of the Industrial Dispute Act gives effect to the collective agreements and provides that every collective agreement which is for the time being in force shall be binding on the parties, trade unions, employers, and workmen referred to in that agreement. Said Section 8 is as follows.

> *"8(1) Every collective agreement which is for the time being in force shall, for the purposes of this Act, be binding on the parties, trade unions, employers and workmen referred to in that agreement in accordance with the provisions of section 5 (2); and the terms of the agreement shall be implied terms in the contract of employment between the employers and workmen bound by the agreement.*
>
> *(2) Where there are any workmen in any industry who are bound by a collective agreement, the employer in that industry shall, unless there is a provision to the contrary in that agreement, observe in respect of all other workmen in that industry terms and conditions of employment which are not less favourable than the terms and conditions set out in that agreement."*

Accordingly, it appears that if the impugned allowance is covered under the applicable collective agreement, the grant or introduction of a new allowance or benefit by the employer to some of the employees covered under the collective agreement may have an adverse effect towards the employees who have not been granted with the allowance. Then the question arises as to whether the existing collective agreement under the instant application covers the allowance in dispute. It is also common ground that the collective agreement dealt with *inter alia* the following matters between the Petitioner and the 4th Respondent.

a. Salary
b. Bonus payment
c. Payment of gratuity
d. Shift allowance

e. Company contribution for annual trip
f. Disciplinary procedure
g. Dispute settlement procedure and
h. Trade union actions.

Despite the failure of the 3rd Respondent to identify the rationale behind the payment of the impugned allowance, the 4th Respondent has not proved that the allowance in question is covered under the scope of the collective agreement. Unless such a connection is established, the violation of any collective bargaining cannot be determined. No material has been placed before this Court to establish that the allowance in question falls within the scope of the aforesaid Collective Agreement. In the context where the fact that the grant of the impugned allowance by Petitioner is not an obligation covered under the existing Collective Agreement has not been proven with evidence, there arise no issue of violation of principles and clauses of collective bargaining and fair labour practices.

Another position advanced by the 4th Respondent is that the unilateral introduction of a new allowance or benefit only to FML employees by the employer is discriminatory. It is on common ground that the aforesaid Collective Agreement covered permanent employees of the Petitioner Company who are also members of the 4th Respondent and who serve as Grades 14 and below employees. FML Grade and NML Grade are also encapsulated within the term 'Grade 14 and below'. Grade 14 is considered a managerial grade. The 4th Respondent contends that there is no material difference in duties or responsibilities between employees in Grade 14 and lower grades, and therefore, the differentiation affected by the Petitioner in confining the allowance of Rs. 10,000/- to only one group of employees covered by the collective agreement is unlawful and discriminatory.

I am mindful of the fact that all parties to the collective agreement must be treated equally in respect of the specific terms and conditions outlined therein. However, in the instant application, sufficient materials have not been placed before this Court to conclude that the allowance in issue falls within the scope of the aforesaid Collective Agreement. The Collective

Agreement itself speaks about the classification of the employees of the Petitioner Company into several grades. The above classification demonstrates that the employees belong to different categories, distinctively classified by grades. Ordinarily, a grade - wise classification accounts for numerous other factors (such as the years of service, performance, etc.) that go beyond the mere functional differences or similarities amongst employees. Therefore, although all employees belonging to Grades 14 and below entered into the collective agreement, all such employees cannot be treated equally circumstanced.

Hence, in my view, there is no hindrance for the Petitioner to provide benefits or allowances in addition to those specified under the Collective Agreement to the FML employees. Accordingly, the argument of the 4th Respondent that the NML employees were discriminated cannot sustain.

Further, it is observed that the impugned Award had been granted antedated by the 3rd Respondent, while no specific date has been mentioned commencing from which such allowance in issue should be paid to the NML employees.

Owing to the reasons specified above, I conclude that the Award of the 3rd Respondent Arbitrator cannot stand as it is illegal, irrational and lacking any legal basis. Accordingly, I am inclined to grant the Writ of Certiorari as prayed for in the prayer of the Amended Petition. I make no order as to costs.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal