



RECENT DEVELOPMENTS IN LABOUR LAW

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Sri Lankan labour law is a complex web of legislation dating over 50 years. Most of these laws aim to protect the interest of the employees over seeking to achieve a balance between the competing interests of employers and employees. In many ways, the current legal framework hinders the progress of businesses and industries. Start-ups, especially, which by nature are vulnerable to business and financial risk, suffer the most due to these stringent rules. Thus, in most occasions, some of Sri Lanka's labour laws act as barriers to entry for new companies.

Moreover, rather than protecting employees through a progressive and robust social security mechanism, the entire burden of employee welfare has been placed on employers in the private sector.

In this context, it is my view that the Sri Lankan labour market is in urgent need of pragmatic employment law reform. However, with labour unions having an archaic attitude towards employer-employee relations and a cash strapped government waiting for an IMF bailout, such an overarching overhaul of the system is, at present, a pipe dream.

Having said that, the Sri Lankan parliament is not an entirely hopeless institution. During the last two years, parliament has endeavored to make progressive changes to the age-old legal regime. Even if these new changes are very much within the employee friendly policy of the government, it has helped to clarify some long-standing issues in the existing legal framework. This article provides a summary of such legislation which was enacted during the past two years.

Introduction of Minimum Age of Retirement of Workers

In Sri Lanka, sixty (60) years is considered the age of retirement for government employees while fifty-five (55) years is offered as the retirement age for many semi-government and state owned enterprises. Until the Minimum Age of Retirement of Workers Act No. 28 of 2021 was introduced, there was no certainty among the private sector employers regarding the recommended retirement age. Most private sector employers chose 55 years as the retirement age on the basis of employee eligibility at that age for retirement benefits from the Employees' Provident Fund. In terms of the new Act, sixty years has been considered as the minimum age of retirement. The Act permits premature retirement only in very limited

circumstances. Any contrary term in a contract of employment is considered void. The Commissioner General of Labour is vested with wide powers in relation to the administration of this Act, with non-compliance of the minimum retirement age requirement by an employer being considered an offence.

For the purpose of avoiding any unnecessary conflicts, along with the introduction of the Minimum Age of Retirement of Workers Act, the Termination of Employment of Workmen (Special Provisions) (Amendment) Act, No. 29 of 2021 was enacted to exempt the application of the Termination of Employment of Workmen (Special Provisions) Act for terminations effected due to the statutory minimum retirement age.

Employment of Young Persons

In Sri Lanka, the legal age of majority is eighteen (18) years. Thus, any person below eighteen years of age is deemed a child. In general, children cannot be employed. However, several dated laws relating to employment permitted persons above the age of fourteen (14) years to be in employment. These laws distinguished persons under eighteen years of age into two categories; namely, (a) children; and (b) young persons. Accordingly, under these laws any person under fourteen was considered a child, while a person who was over fourteen years of age but was less than eighteen years of age were considered a 'young person'. While restricting the employment of children, these laws permitted the employment of young person and vested rights and protection to such employees.

In 2021, the legislators decided to change the existing regime and increase the age of a 'child' for the purposes of these laws to sixteen (16) years. Accordingly, the Shop and Office Employees Act (Regulation of Employment and Remuneration) Act No. 19 of 1954, the Employment of Women, Young Persons, and Children of No. 47 of 1957, the Minimum Wages (Indian Labour) Ordinance, and the Factories Ordinance were amended to increase the age of 'young persons' from fourteen years to sixteen years. Thus, only 'young persons' who are above the age of sixteen (but who are less than the age of eighteen) can engage in employment. In effect, at present, any child who is less than 16 years of age cannot engage in employment in any industrial or business undertaking.

Even if these amendments can be considered a progressive legislative development for the protection of children, considering the ongoing developments of the labour market, especially in the information technology sector, the Government should take a more pragmatic approach towards the overall approach relating to employment of women, young persons and children in the country. (E.g.: night work restrictions). In my view, putting legislative plasters to the gaps in the existing overprotective legal regime, which was intended to prevent industrial labour exploitation decades ago, may not be the best approach to bring the Sri Lankan labour market up to global standards.

Social Security Payment for Foreign Employees in Sri Lanka

The question of applicability of social security legislation, such as the Employees' Provident Fund Act and the Employees' Trust Fund Act, to foreign employees who are making social security payments in their home country is a frequently raised issue by many expat-oriented employers. The Employees' Provident Fund (Amendment) Act No. 23 of 2021 has now clarified the issue. In terms of this amendment, an international employee is exempted from the Employees' Provident Fund Act, if they can satisfy the following requirements: i.e., (a) the employee is contributing to a social security scheme in his home country; and (b) he is exempted from making contributions under the Employees' Provident Fund Act in terms of a bilateral Social Security Agreement between Sri Lanka and the home country of such employee.

Increase of the National Minimum Wages

The national minimum wages of the workers are determined by the National Minimum Wages of Workers Act No. 3 of 2016. In terms of National Minimum Wages of Workers Act No. 16 of 2022, the national minimum wage of Sri Lanka is now increased to Rupees Twelve Thousand Five Hundred (Rs. 12,500/-) per month. Further, the national minimum daily wage is increased to Rupees Five Hundred (Rs.500/-).

Resolution of Industrial Disputes

The Industrial Disputes Act No. 43 of 1950 governs the law relating to the resolution of industrial disputes in Sri Lanka. In 2022, two amendments were introduced to the Industrial

Disputes Act. In terms of the Industrial Disputes (Amendment) Act No. 22 of 2022, in relation to the following matters, employers are now required to make an advance security deposit prior to making such appeal and/or application to the higher court; i.e., (a) appeals to the Supreme Court from the High Court in relation to Labour Tribunal matters; (b) the application to the Court of Appeal from the awards made by the industrial arbitrators or the Industrial Court; or (c) the applications to the High Court in relation to the Magistrate's Court orders regarding the applications made by the Commissioner of Labour in relation to the contraventions by the employers.

The Industrial Disputes (Amendment) Act No. 24 of 2022 has removed the ambiguity in Section 46 of the Industrial Disputes Act regarding the representations of parties in an industrial dispute. Accordingly, now any party to any proceeding under the Industrial Disputes Act taken by or before any authorized officer, arbitrator, industrial court or labour tribunal or the Commissioner may act through an Attorney-at-law or a representative of the party.

In addition to the above amendments introduced to the Industrial Disputes Act, a new enactment titled the Industrial Disputes (Special Provisions) Act, No. 19 of 2022 was also introduced to extend the powers of the labour tribunal. In terms of this enactment, in addition to the power already vested in a labour tribunal, it can now exercise the powers conferred upon a Magistrate for certain specified purposes¹.

Workmen's Compensation

The Workmen's Compensation (Amendment) Act No. 10 of 2022 introduced significant amendments to the Workmen's Compensation Act. One of the main amendments relates to extending the application of the Act to accidents on the way to work and on the way back home. Previously, the Act was only applicable to accidents that happened in the 'course of

¹ Enforcement of any award made by any arbitrator or industrial court or any order made by the labour tribunal under the provisions of the Industrial Disputes Act (Chapter 131) or any decision of the Commissioner or recovery of payment upon a certificate issued by the Commissioner or implementation of the provisions incidental hitherto of the enactments specified in Schedule I of the said Act. Schedule I contains the forty-eight (48) labour related enactments, including the Employees' Provident Fund Act and the Employees' Trust Fund Act. Nevertheless, this Act will come into operation only upon an Order published by the Minister to this effect.

employment'. These amendments will be more beneficial to employees as the compensation amounts payable under the Act were also amended.

Conclusion

Whilst the summary of legislative amendments set out above demonstrate that the Parliament has taken some initiative to change the labour law regime, these minor changes will not address the larger issues that are prevalent in the labour sector in Sri Lanka. As indicated by the President in the Budget speech of 2022, Sri Lanka urgently needs labour law reforms of a more fundamental nature to face the challenges ahead.