

January 16, 1978. COLIN THOME, J.

The President of the Labour Tribunal in this case has ordered the reinstatement with back wages of the applicant-respondent on the basis of certain findings of fact which the appellant contends are so untenable that no reasonable tribunal could have arrived at such a finding. On this basis the employer-appellant prayed that this Court be pleased to set aside the order of the learned President submitting that the material before the President established that the applicant-respondent's dismissal was fully justified.

On the 30th of April, 1968, R. J. Peiris, the applicant-respondent joined Reckitt and Colman of Ceylon Limited, the employer-appellant Company, as an unskilled process worker and was paid a monthly salary of Rs. 150—5—200. From the inception he worked in the Disprin Department and according to the management he was expected to clean the room where Disprin was manufactured.

On the 1st November, 1968, he was confirmed as a semi-skilled process worker and was paid a monthly salary of Rs. 184—8—200—10—340 per month.

On the 1st July, 1970, as the worker refused to clean the walls of the Disprin Department he was suspended without pay with immediate effect.

On 13th July, 1970, after a domestic inquiry conducted by the management the applicant-respondent was found guilty of refusing to carry out certain duties such as washing the walls of the Disprin Department and wilfully disobeying the orders of the appellant-Company's Production Manager.

Thereafter, the appellant-Company wrote to the applicant-respondent and offered him as an alternative to dismissal an opportunity of continuing in its service on the following conditions contained in their letter dated 13th July, 1970 (R5) :—

- “ (1) You will tender a written apology to the Production Manager for your misconduct and insubordination ;
- (2) You will confirm in writing that you are prepared to do all duties assigned to you by the Management which are part of the normal duties assigned to the category to which you belong and in particular that the washing of walls and cleaning of your Department is part of such normal duties ;
- (3) You agree and undertake that should you in the future give any cause for complaint whatsoever against you, you will be liable to be summarily dismissed without notice.”

As the applicant-respondent failed to avail himself of the opportunity afforded to him, the appellant-Company terminated his services with effect from 1st July, 1970. Thereafter, the applicant-respondent filed an application before the Labour Tribunal on 30th August, 1970.

After inquiry the President of the Labour Tribunal delivered his order on 1st July, 1970, holding that the dismissal of the applicant-respondent was unjustified. The President made order :

- “ (1) That the applicant R. J. Peiris be reinstated as from the date of his dismissal 1.7.1970.
- (2) That in lieu of his back wages for the period of his non-employment be paid a sum of Rs. 17,000.
- (3) The Company is free to impose on the applicant the condition that he shall rinse the walls of the Disprin Unit along with the other process workers.
- (4) In the event of the applicant rejecting this condition the Company would be free to terminate the applicant's services if no suitable alternative employment is possible within the Company, (without prejudice to the applicant's claim for back wages set out in paragraph 2 above and other claims or terminal benefits on the basis of services deemed to be uninterrupted by the period of his non-employment.)
- (5) The respondent should pay the applicant a sum of Rs. 2,000 as costs.”

The main issue in this case as agreed upon by Counsel for both parties at the inquiry was whether the applicant-respondent and the other process workers had been required to wash the walls of the Disprin Department and whether there had been such a practice prior to the 1st of July, 1970.

The applicant-respondent's position was that this dispute arose on the 1st July, 1970 because the Production Manager Balasuriya ordered the applicant-respondent to wash the walls of the Disprin Department which was a departure from earlier practice.

According to the management, however, it had always been the function of the process worker to clean not only the machinery of the Disprin Manufacturing Department but also the ceiling, windows and walls of the room. Only the floors were washed by outside labourers. Being air-conditioned the windows were sealed. The walls which were gloss painted white needed a thorough scouring with Vim and Rinso. On the 1st July, 1970 the applicant-respondent (hereinafter referred to as the worker) unaccountably refused to clean and wash the walls of the Disprin Department claiming that it was not one of his duties.

The worker submitted that on and prior to the 1st July, 1970, the washing of the walls and ceiling was done by outside labourers after the process workers cleaned the machinery and installed polythene covers over it. On 1st July, 1970, the Production Manager came into the Disprin Unit and instructed all the process workers to wash the walls. The worker refused to do so whilst the others obeyed. As a result of the worker's refusal to wash the walls his services were suspended and later terminated.

The management called three witnesses at the inquiry held by the Labour Tribunal. According to N. M. Balasuriya he was employed by Reckitt and Colman Limited since 1962. During the relevant period he was the Production Manager. He was in charge of the entire factory which manufactured Disprins, Dettol, Goya products and other articles. The machinery for the manufacture of Disprin consisted of a vacuum oven, mixer, slugger, tableting machines, a foiling machine, tablet dusting machine and a dehumidifying machine. These machines were installed in a separate air-conditioned room. Five process workers were employed in this room. Their function was to take raw materials from the stores and to manufacture Disprin in the sealed room. Once a week all the process workers had to do a thorough cleaning of the machines and the room including the walls and the ceiling. Thereafter, labourers scrubbed the floors with soap and water. The reason why the labourers were brought to scrub the floor was because they had to get down on their hands and knees to scrub it. The process workers had also to clean the machines after manufacture every day in addition to the weekly cleaning.

Throughout the period from 30th April, 1968 to 1st July, 1970, the duties of the applicant-respondent were the daily cleaning of the machines and the weekly cleaning of the department along with the other process workers.

On 1st July, 1970, morning the worker walked into Balasuriya's office room and informed him that he could not do any cleaning. He also claimed that he represented all the other process workers. Balasuriya asked the other process workers whether they had sent Peiris to see him and all of them denied this. Then Balasuriya told Peiris that he had done this cleaning earlier and requested him to continue his work. However, Peiris, refused to do any cleaning. The result was that he was served with a letter of suspension dated 1st July, 1970 (R3).

Balasuriya stated that even after the suspension of Peiris the other process workers continued as before to clean the walls of the department.

On 4th July, 1970, Peiris was informed by letter R4 that the management will be holding an inquiry into this matter at 10 a.m. on the 7th July, 1970 at the Ratmalana factory. He was directed to be present. This inquiry was held by the Managing Director Mr. Adeney, who later left the Island. After this inquiry on 13. 7. 1970 the worker was informed by letter R5 with reference to the inquiry held on 7th July, 1970, that he had on his own evidence been found guilty of the charge brought against him which would therefore justify his summarily dismissal. However, as a merciful alternative to dismissal he was offered an opportunity to continue in his employment with a severe warning and on certain conditions already referred to.

The worker on 19th July, 1970, replied by letter R6 stating that he had always carried out his duties diligently, faithfully and loyally in terms of his contract of employment.

Under cross-examination Balasuriya said that all the process workers wore overalls when working in the factory. He denied that the labourers cleaned the walls or washed them. The workers only washed the floor with soap, vim and rinso. The same detergent was used to wash the walls. The labourers wore blue shorts and shirts and sometimes khaki. They did not wear overalls like the process workers. The reason why the labourers wore a different uniform was because they had to get on their hands and knees to scrub the floor.

Balasuriya stated that he knew the worker's family very well and he had nothing against him. He was a very good friend of the family and he knew the worker since he was a boy and had cordial relations with him. It was only on the 1st July, 1970, that the worker refused to co-operate with the management. He had never punished the worker at any time before the termination. He had pulled him up earlier for weighing himself on the weighing scale of the Disprin Department. He had not punished him by keeping him in the sun for two hours after that incident. His work was good and he had earned his increments.

In re-examination Balasuriya stated that about August, 1970, after this incident, the Ceylon Mercantile Union formed a branch union at the factory. This local branch had at no stage ever raised a dispute with the management in respect of the cleaning of walls.

D. W. Dissanayake the Manufacturing Pharmacist of Reckitt and Colman since 1968 was the next witness. He stated that he was in charge of all products of the firm including Disprin. The room manufacturing Disprin was 20 feet by 10 feet; the ceiling was about 12 feet high. The floor had rubber tiles. Every day at

the end of production the semi-skilled process workers cleaned all the machines and they swept the floor. They also cleaned the walls and ceiling with Vim and Rinso. This was necessary because in the process of manufacturing Disprin a lot of powder collected in the room.

Prior to 1st July, 1970, the worker Peiris had attended to his cleaning duties, which included the cleaning of the machines as well as the walls and the ceiling. On 1st July, 1970, work started as usual at 7.45 a.m. The semi-skilled workers who worked that morning were Sirisena, Wijesekera, R. J. Peiris, Piyadasa and Ranaweera. On that day they started cleaning. He saw the applicant cleaning the foiling machine. After that he saw him cleaning the wall near the foiling machine. At about 9.45 a.m. when he came back to the manufacturing room Peiris told him that he cannot clean the wall and that there was some oily patches on the wall near the switch. He then went to the workshop to get a piece of sand paper. When he came back Peiris was on the other side of the foiling machine and he stated that he could not clean the walls "any more." Dissanayake then told him that it was part of his job and that he must continue to clean the walls but Peiris insisted that he cannot continue cleaning and he wanted to see the Production Manager. At this time the other semi-skilled process workers were cleaning the room.

Dissanayake said that Peiris came from a different social background from the other semi-skilled process workers who were not English-speaking and came from poor families. The semi-skilled process workers gave statements in writing that they had attended to the washing of the walls earlier.

In answer to the Tribunal, Dissanayake said that on the 1st of July, 1970 he saw Peiris cleaning the walls with Rinso. He did not complete cleaning his section of the wall. He had only done about half of it and he had only to cover an area of the wall about 6 feet by 4 feet. He had finished cleaning the lower portion of the wall but not the upper portion.

J. C. M. de Mel, the Managing Director at Reckitt and Colman was the next witness. He had joined the firm in 1964 and was appointed Managing Director at the end of 1969. He stated that there was a special building for pharmaceutical products because they were subject to certain high standards which had to be maintained and which were inspected regularly by representatives of the Formulary Committee. As these products were used throughout the world and were manufactured by a process which involved danger it was important that there should be no contamination in any way. The whole process of pharmaceutical products had to be rigorously controlled from the time

the raw material was put into the machines up to the time which the product was packed in order to prevent contamination and deterioration. This process had to be done by trained and competent people in a separate section of the factory which was an highly sterilized and air-conditioned controlled area. The walls of this room were painted and had to be scrupulously cleaned. If Vim or any detergent got mixed up with the raw material the result could be disastrous. The walls were a part of the manufacturing area. Some of the machines were only about 2 feet from the walls which necessitated that the walls had to be cleaned. Cleanliness both in the process of manufacture and in the sealed room was of paramount importance in the interest of public health.

From 1964 to 1970 he was Acting Manager Director and he had visited the Disprin Manufacturing Department many times. During this period the cleaning of the walls was done by the process workers. Prior to 1st July, 1970, there was no incident or dispute with the semi-skilled process workers about cleaning the walls. The cleaning of the walls and the ceiling was done by the semi-skilled process workers and this is still done by them. Unskilled labourers only cleaned the floor.

The evidence of Peiris at the Domestic Inquiry on the 7th July, 1970, was admitted in evidence by the President of the Labour Tribunal and marked R9. Peiris admitted signing this document but claimed that he had been forced to do so. In R9 Peiris had stated that on the 1st of July, 1970, Balasuriya had told him and the other workers to clean all the walls with Vim and Rinso, but he had refused to do so as it was not part of his job. He denied having done this work before. He admitted having that morning taken out three marks from the wall with acetone. He conceded that he made the following admission :

“Q. Do the other process workers wash the wall with Vim and Rinso ?

A. Yes.”

He admitted that he kept the department clean and brushed the windows. He admitted that it was his duty to clean the department but that did not include the washing of the walls.

“Q. What is the difference between keeping the department clean, why did you not use Vim and Rinso and clean the department ?

A. No answer.

Q. It is your job or part of your job to keep the department clean, why did you not use Vim and Rinso and clean the department ?

Q. Are you not wanting to answer me ?

A. I do not have any answer."

Before the Labour Tribunal Peiris said that the process workers were not expected to touch Vim and Rinso because it might get mixed up with the ingredients. It was the labourers who used Vim and Rinso to wash the floor under the supervision of Dissanayake. Under cross-examination he said that even prior to the 1st July, 1970, he was not required to wash the walls. It was exclusively the labourers who washed the walls, floor and brushed the windows. Even the other process workers were not required to perform these duties. He also denied that he brushed the windows. He was reminded of his evidence in the Domestic Inquiry where he admitted that the other process workers washed the walls and that he himself brushed the windows. He denied making these statements. He said that he had a dislike for cleaning walls. He also denied using acetone for cleaning the walls. He said that it was below his dignity to clean walls. He claimed that Dissanayake had fabricated evidence against him. He admitted that at the domestic inquiry on the 1th of July, 1970, held by Mr. Adeney, the Accountant, Mr. Nimal Cook, was also present and recorded what he said. He said that he was forced to sign the record. He admitted his signature on R9. Cook and Adeney fabricated the document R9.

In answer to the President of the Labour Tribunal Peiris stated that he had no experience in washing walls and he was asked the following questions :

"Q. How long will it take you to gain experience ?

A. I cannot say."

He was again asked by the Tribunal.

"Q. So even if you are given back the job on this condition (of washing the walls) you will not do it ?

A. No, I will not do it."

Thereafter, Peiris called V. G. Somadasa a former employee of Reckitt and Colman to give evidence. He was a labourer from 1964 to 1973 in this firm and left on his own. He stated that he was farming near Matara. While at Reckitt and Colman he washed the floor of the Disprin Department as well as the ceiling and the windows. Curiously, in his earlier answers he did not mention that he washed the walls. Finally, Counsel for Peiris asked him the following question in a leading form which was the last question in examination-in-chief :

"Q. So the labourers did the washing of the floors and walls ?

A. Yes."

Mr. Ranganathan submitted that there were several material misdirections of fact in the President's Order. For instance, the President stated: "My own impression is that the company wished to initiate a change in the process of cleaning in the Disprin Department on 1.7.1970." He added: "Had the Company placed its case on the basis of the new Standing Orders regarding the cleaning of the walls and the applicant's dismissal for refusing to do so, it is possible that the applicant would not have been compensated." We agree with Mr. Ranganathan that there was no evidence to substantiate this finding.

Mr. Ranganathan also submitted that the three witnesses for the Management, namely, Balasuriya, Dissanayake and de Mel, had stated that they were aware personally for a considerable period of time that the semi-skilled process workers had washed the walls in the past and were still doing so. However, the President misdirected himself when he held that de Mel had no personal knowledge of this matter. De Mel's evidence was misconstrued as he stated at the Labour Tribunal inquiry that he had personal knowledge that the process workers had to clean the walls.

Mr. Ranganathan also criticized the order of the President refusing the application of the management to call Cook, who recorded the evidence at the domestic inquiry, in order to rebut Peiris' evidence. The President had admitted this document R9 and the contents of the entire document were elicited, including the fact that the applicant had signed R9. The President had also adopted portions of R9 in his order. We hold that in view of the applicant's allegation that R9 was a fabrication by Cook and Adeney the refusal of the President to allow the management to call Cook to rebut this allegation was inexplicable, especially as the document had been admitted in toto and he himself had relied on portions of it in his order.

Under Section 36(4) of the Industrial Disputes Act, a wide latitude is given in the conduct of proceedings under this Act, to an industrial court in the eliciting of evidence and it shall not be bound by any of the provisions of the Evidence Ordinance.

Furthermore, the President had in his order relied on portions of the transcript R9 which were favourable to the applicant but had not referred to the admissions by the applicant which were unfavourable to him. For instance, the President referred to the portion of R9 where the applicant had stated that he was not asked to wash the walls. However, he did not refer to those portions of R9 where the applicant categorically stated that the

other process workers washed the walls with vim and rinso, and that he had to keep the department clean and brushed the windows.

We agree with the submission of Mr. Ranganathan that the President had not critically evaluated this vital aspect of the case by failing to take into account those portions of the applicant's evidence at the domestic inquiry which corroborated the evidence of the witnesses for the management.

Mr. Subasinghe relied strongly on the evidence of Somadasa as corroborative of the evidence of Peiris. Here again, the President was in two minds about the varacity of this witness.

The President first held that, "Somadasa was not a witness who could be called impressive." Later he stated that, "The impression that he created was certainly not that of a witness of convenience." The President has also not taken into account the fact that Somadasa worked in the Dettol Department which adjoined the Disprin Department and that he could see from the outside what took place inside the Disprin Department.

This witness also claimed that he was busy working on a farm near Matara and also attended to his father's land as this work was very remunerative. Somadasa's explanation, however, why he continued to remain in Colombo continuously for three months for the purpose of this inquiry is in our view feeble. We agree with the President's first assessment of this witness that he was not impressive.

We also hold that the submission of counsel for the applicant-respondent that Balasuriya's evidence is tainted as he had animosity towards Peiris is not substantiated by convincing evidence. The management in its letter dated 13th July, 1970 (R5) to Peiris had offered him an opportunity of reinstatement. If the motive of the management was to get rid of the worker this merciful alternative would not have been afforded him. Even the allegation that he was victimised because he was trying to form a branch union of the C.M.U. at the factory is disproved by the evidence that the branch union was formed in August 1970 after the incident on the 1st July, 1970. The President in his order correctly rejected this suggestion of victimization.

There was also reference to "vagueness" in the order of the President in connection with washing the walls in the management's letter of interdiction as well as in the domestic inquiry. However, in the management's letter dated the 13th July, 1970, there is a clear reference to "the washing of the walls and cleaning of your department" as part of the workers' normal duties (vide R5). In the domestic inquiry notes R9 there are

pointed references to the washing of walls in the Disprin Unit. So that here again the President's inference was contradicted by the evidence.

According to Dissanayake, shortly after 7.45 a.m. on 1st July, 1970, he saw the applicant washing the wall after he had cleaned the foiling machine which was only two feet from the wall. Dissanayake also stated that the applicant had finished cleaning the lower portion of the wall. The President without adducing any cogent reasons held that this part of Dissanayake's evidence was inexplicable, and cast grave doubts on the reliability of Dissanayake's evidence and that "it strikes at the very root of the issue between the parties." We are unable to agree with this conclusion. In our view it lends strong support to the case of the management that it was one of the duties of the workers to wash the walls of the Disprin Unit.

It is true that there were no Standing Orders or any writing directing the semi-skilled process workers to wash the walls. For that matter there were no Standing Orders for them to clean the machines they used.

On this issue we have to consider the oral evidence, the domestic inquiry notes R9 and the correspondence between the parties in order to draw a reasonable inference.

We are in agreement with the dictum in "The Law of Master and Servant" by F. R. Batt—(5th Edition) at page 52, which states:

"In constructing a contract of service the Court will, if necessary, supply an implied condition as to reasonableness where duties are not fully defined."

Mr. Subasinghe also submitted that an appeal from the order of the President of the Labour Tribunal could only be made on a question of law and not on facts. He submitted that the Supreme Court can only interfere within narrow limits.

In the case of *D. S. Mahawithana v. Commissioner of Inland Revenue*, 64 N.L.R. 217 at 222, H. N. G. Fernando, J. following the decision in *Naidu & Co. v. Commissioner of Income Tax*, (1959) AIR 359, held "that the Supreme Court could consider the correctness of the inference drawn by the Board of Review as to the assessee's intention only:

- (a) if that inference had been drawn on a consideration of inadmissible evidence, or after excluding admissible and relevant evidence;
- (b) if the inference was a conclusion of fact drawn by the Board but unsupported by evidence; or

(c) if the conclusion drawn from relevant facts was not rationally possible, and was perverse and should therefore be set aside.”

In the case of *Ceylon Transport Board v. W. A. D. Gunasinghe*, 72 N.L.R. 76, Weeramantry, J. followed the statement of principle made by Lord Normand who in *Inland Revenue v. Frazer*, (1942) 24 Tax cases 498, where he observed that :

“In cases where it is competent for a Tribunal to make findings of fact which are excluded from review, the Appeal Court has always jurisdiction to intervene if it appears that the Tribunal had made a finding for which there is no evidence or which is consistent with the evidence and contradictory of it.”

This latter decision has also been followed by the Court of Appeal in *Brooke Bond (Ceylon) Limited v. Tea, Rubber and Coconut and General Produce Workers' Union*, 77 N.L.R. 6.

We are in respectful agreement with the above dicta which we have applied to the present case.

In the instant case, the case of the management as stated by the three witnesses, Balasuriya, Dissanayake and de Mel, has been supported by the admissions of the applicant-respondent in R9, and R9 at the same time contradicts the evidence of the applicant-respondent on vital matters.

Mr. Subasinghe submitted that the applicant-respondent was overawed at the Domestic Inquiry. This is not borne out by the evidence of the applicant-respondent, as recorded in the Domestic Inquiry transcript R9 shortly after the 1st July, 1970. There has been no finding on this matter by the President as it was not seriously adopted at the Labour Tribunal inquiry. The worker relied heavily on the assertion that R9 was a fabrication. He cannot have it both ways.

We hold that the finding of the President of the Labour Tribunal was not supported by the evidence in this case on several vital issues and was inconsistent with and contradictory of the evidence.

The appeal of the Employer-appellant is accordingly allowed and the order of the Labour Tribunal is set aside. The application of the applicant-respondent is dismissed.

The applicant-respondent will pay Rs. 105 to the Employer-appellant as costs.

THAMOTHERAM, J.—I agree.

Appeal allowed.