

1963

Present : Sri Skanda Rajah, J.

CEYLON TRANSPORT BOARD, Appellant, and SAMASTHA LANKA
MOTOR SEVAKA SAMITHIYA, Respondent

S. C. 32 of 1961—Labour Tribunal, 3625

Labour Tribunal—Arbitral character of its functions—Validity of appointment of such tribunal by Minister—Ceylon (Constitution) Order in Council, 1946, s. 55—Industrial Disputes Act, No. 43 of 1950 (as amended by Acts 25 of 1956, 62 of 1957 and 4 of 1962), ss. 15A, 24, 31A, 31B, 31C, 31D, 36 (4), 43 (4), 46A—Misdirection.

The provisions of the Industrial Disputes Act vest the Labour Tribunals with arbitral power only and not with judicial power. Accordingly, a decision of a Labour Tribunal ordering the re-instatement of a workman and the payment to him of accumulated wages cannot be regarded as invalid merely because the Tribunal was not appointed by the Judicial Service Commission under Article 55 of the Ceylon (Constitution) Order in Council, 1946.

Where a workman who has been dismissed twice by his employer makes a separate application for re-instatement in respect of each dismissal, a Labour Tribunal would be misdirecting itself in law if it takes into consideration the matter of the second application in arriving at its decision in the first application.

APPEAL from an order of a Labour Tribunal.

G. E. Chitty, Q.C., with *Desmond Fernando*, for Employer-Appellant.

K. Shanmugalingam, with *Prins Gunasekera* and *M. T. M. Sivardeen*, for Applicant-Respondent.

Cur. adv. vult.

January 7, 1963. SRI SKANDA RAJAH, J.—

This is an appeal from the decision of the Labour Tribunal ordering the re-instatement of a workman and the payment to him of accumulated wages.

The workman, D. S. Randeniya, was employed as an omnibus driver under the Ceylon Transport Board. He was dismissed after inquiry on charges of insubordination. Therefore, the respondent-union, of which Randeniya is a member, applied to the Labour Tribunal on his behalf to have him "reinstated with all privileges and back wages".

During the pendency of this application the workman was re-employed by the employer-appellant as a lorry driver. He was later dismissed even from that employment on 12.7.1961, and another application dated 10.10.1961 was made to the Labour Tribunal in respect of that dismissal.

In the course of the inquiry into the present application it was admitted by the employers' representative that the inquiry in respect of the first dismissal was not a proper one and that, therefore, "there was no valid dismissal".

It was agreed at the argument in this Court that when the inquiry by the domestic tribunal was not valid it was open to the Labour Tribunal to hold an inquiry into the facts afresh. That is what happened in this matter. But, though the matter of the second dismissal was not before the Labour Tribunal at this inquiry, it being the subject of another application, the Labour Tribunal proceeded to take that also into consideration and held that the second dismissal too was wrong.

Mr. Chitty argued that :

(1) The Labour Tribunal is a body vested with judicial power. Under Article 55 of the Ceylon (Constitution) Order in Council, 1946, such a body could be validly appointed by the Judicial Service Commission alone. That has not been done. Therefore, the Labour Tribunal is an unconstitutional body and is not competent to make the orders it purported to make, and

(2) Even if this contention fails, the Labour Tribunal has misdirected itself in law in taking into consideration the second dismissal and making an order in respect of that too at the inquiry into the matter of the first dismissal, though a separate application is pending regarding that.

It was not contested that appointment of persons vested with judicial power can be validly made by the Judicial Service Commission alone. Suffice it to mention three cases in which this has been decided :

(1) *Senadhira v. The Bribery Commissioner* ¹.

(2) *Don Anthony v. The Bribery Commissioner* ².

(3) *Piyadasa v. The Bribery Commissioner* ³.

Therefore, it is unnecessary to set down Article 55 of the Ceylon (Constitution) Order in Council, 1946.

It is not disputed that the Labour Tribunal has not been appointed by the Judicial Service Commission.

¹ (1961) 63 N. L. R. 313.

² (1962) 64 N. L. R. 93.

³ (1962) 64 N. L. R. 385, 62 C. L. W. 73.

In order to consider Mr. Chitty's first submission, it is necessary to examine the nature and scope of the Industrial Disputes Act, No. 43 of 1950, as amended by Acts 25 of 1956, 62 of 1957, and 4 of 1962.

As was pointed out by Viscount Simonds in the case of *Attorney-General of Australia v. Reginam (The Boilermakers Case)*¹, the title of the Act is not without importance. It is intituled: "An act to provide for the Prevention, Investigation and Settlement of Industrial Disputes and for matters connected therewith or incidental thereto".

Part II of the Act deals with the functions of the Commissioner of Labour and circumstances in which Industrial Disputes will be referred for "settlement by conciliation or arbitration". In the sections in Part II phrases such as the following are used: "with a view to promoting a settlement", "settlement of disputes", "to settle by conciliation", "settlement by conciliation", "settlement by arbitration to an arbitrator . . . or to a Labour Tribunal".

Part III of the Act deals with (a) Collective Agreements, (b) Settlement by Conciliation, and (c) Settlement by Arbitration.

Section 15A, which comes under Part III (c), runs thus: "In the succeeding provisions of this Act the expression 'Arbitrator' includes a Labour Tribunal."

Part IV of the Act deals with Industrial Court. Section 24 states that the Industrial Court shall "takes such decision or make such award as may appear to the Court *just and equitable*".

Part IV A deals with Labour Tribunals. This part is reproduced in its entirety:

"31A. (1) There shall be established for the purposes of this Act such number of Labour Tribunals as the Minister shall determine. Each Labour Tribunal shall consist of one person.

(2) Regulations may be made prescribing the manner in which applications under section 31B may be made to a Labour Tribunal.

31B. (1) A workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to a Labour Tribunal for relief or redress in respect of any of the following matters:—

(a) the termination of his services by his employer;

(b) the question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of such benefits;

(c) such other matters relating to the terms of employment, or the conditions of labour, of a workman as may be prescribed.

(2) A Labour Tribunal shall—

(a) where it is satisfied after such inquiries as it may deem necessary that the matter to which an application under sub-section (1)

¹ (1957) 2 A. E. R. 45 at 47.

of this section relates is under discussion with the employer of the workman to whom that application relates by a trade union of which that workman is a member, make order suspending its proceedings upon that application until the conclusion of that discussion, and upon such conclusion shall resume the proceedings upon that application, and, if a settlement is reached in the course of that discussion, shall make order according to the terms of such settlement, and

(b) where it is so satisfied that such matter constitutes, or forms part of, an industrial dispute referred by the Minister under section 4 for settlement by arbitration to an arbitrator, or for settlement to an Industrial Court, make order dismissing the application without prejudice to the rights of the parties in the industrial dispute.

(3) Where an application under sub-section (1) relates—

(a) to any matter which, in the opinion of the Tribunal, is similar to or identical with a matter constituting or included in an industrial dispute to which the employer to whom that application relates is a party and into which an inquiry under this Act is held, or

(b) to any matter the facts affecting which are, in the opinion of the Tribunal, facts affecting any proceedings under any other law, the Tribunal shall make order suspending its proceedings upon that application until the conclusion of the said inquiry or the said proceedings under any other law, and upon such conclusion the Tribunal shall resume the proceedings upon that application and shall, in making an order upon that application, have regard to the award or decision in the said inquiry or the said proceedings under any other law.

(4) Any relief or redress may be granted by a Labour Tribunal to a workman upon an application made under sub-section (1) notwithstanding anything to the contrary in any contract of service between him and his employer.

(5) Where an application under sub-section (1) is entertained by a Labour Tribunal and proceedings thereon are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under sub-section (1).

(6) Notwithstanding that any person has ceased to be an employer—

(a) an application claiming relief or redress from such person may be made under sub-section (1) in respect of any period during which the workman to whom the application relates was employed by such person, and proceedings thereon may be taken by a Labour Tribunal.

- (b) if any such application was made while such person was employer, proceedings thereon may be commenced or continued and concluded by a Labour Tribunal, and
- (c) a Labour Tribunal may on any such application order such person to pay to that workman any sum as wages in respect of any period during which that workman was employed by such person or as compensation as an alternative to the reinstatement of that workman or as gratuity payable to that workman by such person and such order may be enforced against such person in like manner as if he were such employer.

31c. (1) Where an application under section 31b is made to a Labour Tribunal, it shall be the duty of the Tribunal to make all such inquiries into that application and hear all such evidence as the Tribunal may consider necessary, and thereafter *make such order as may appear to the Tribunal to be just and equitable.*

(2) Subject to such regulations as may be made under section 39 (1) (ff) in respect of procedure, a Labour Tribunal conducting an inquiry may lay down the procedure to be observed by it in the conduct of the inquiry.

31d. (1) Save as provided in sub-section (2) an order of a Labour Tribunal shall be final and shall not be called in question in any Court.

(2) Where the workman who, or the trade union which, makes an application to a Labour Tribunal or the employer to whom that application relates is dissatisfied with the order of the Tribunal on that application, such workman, trade union or employer may, by written petition in which the other party is mentioned as the respondent, appeal to the Supreme Court from that order on a question of law.

(3) Every petition of appeal to the Supreme Court shall bear uncanceled stamps to the value of five rupees and shall be filed in the Supreme Court within a period of fourteen days reckoned from the date of the order from which the appeal is preferred.

(4) In computing the time within which an appeal must be preferred to the Supreme Court the day on which the order appealed from was made shall be included, but all Sundays and public holidays shall be excluded.

(5) The provisions of Chapter XXX of the Criminal Procedure Code shall apply *mutatis mutandis* in regard to all matters connected with the hearing and disposal of an appeal preferred under this section."

PART VI—General

" 36 (4) In the conduct of proceedings under this Act, any Industrial Court, Tribunal, arbitrator or authorised officer or the Commissioner shall not be bound by any of the provisions of the Evidence Ordinance."

“ 43 (4) Any person who in any proceedings before an arbitrator, Industrial Court or Labour Tribunal offers any insult or causes any interruption to such arbitrator, Court or Tribunal or any member thereof, may be tried and punished under sub-section (1) or by such arbitrator, Court or Tribunal and where such person is tried and punished by an arbitrator, Industrial Court or a Labour Tribunal, such arbitrator, Court or Labour Tribunal shall exercise the same powers and perform the same duties as a District Court exercises and performs in similar circumstances under Section 381 of the Criminal Procedure Code.”

“ 46A. No suit, prosecution or other legal proceeding shall lie against any person for anything which is *in good faith* done or intended to be done in pursuance of this Act or any regulations made thereunder.”

This section affords only a qualified protection to a Labour Tribunal. But, in the case of an officer vested with judicial power the protection is absolute. His acts are privileged even if his acts are not done *bona fide*.

It would, therefore, appear that the chief objects of the Act are to establish an expeditious system for preventing and settling industrial disputes by conciliation and arbitration.

Section 15A, which has been reproduced above, indicates that the intention of the Legislature in creating a new body called the Labour Tribunal was to constitute it an arbitral body and not one vested with judicial power. It is also clear that the orders and awards made under this Act have to be “*just and equitable*”, quite unlike the decisions of a Court.

To borrow the words of Viscount Simonds in the *Boilermakers Case* (*supra*) at p. 48, such being the title of the Act and such its chief objects, it cannot be denied that its primary purpose, and in effect, its only purpose is the settlement of industrial disputes by conciliation and arbitration. It is necessary, however, to see what part is to be played by the Labour Tribunal established under the Act in a field apparently so remote from the proper exercise of the judicial function.

It is apparent that there have been vested in the Labour Tribunal arbitral functions. “ The function of an industrial arbitrator is completely outside the realm of judicial power and is of a different order. As was said by Isaacs and Rich J.J. in *Waterside Workers Federation v. Alexander*¹. . . . the essential difference is that the judicial power is concerned with the ascertainment, declaration and enforcement of the rights and liabilities as they exist, or are deemed to exist, at the moment the proceedings are instituted; whereas the function of the arbitral power in relation to industrial disputes is to ascertain and declare, but not to enforce, what in the opinion of the arbitrator ought to be the respective rights and liabilities of the parties in relation to each other.’ ” : *Boilermakers Case* (*supra*) at 49 and 50.

¹ (1918) 25 O. L. R. 434 at 463.

Said Lord Sankey, L.C., in the case of *Shell Company of Australia, Ltd. v. Federal Commissioner of Taxation*¹: “The authorities are clear to show that there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power it may be useful to enumerate some negative propositions on this subject.

1. A tribunal is not necessarily a Court in the strict sense because it gives a final decision.
2. Nor because it hears witnesses on oath.
3. Nor because two or more contending parties appear before it and between whom it has to decide.
4. Nor because it gives decisions which affect the rights of subjects.
5. Nor because there is an appeal to a Court.
6. Nor because it is a body to which a matter is referred by another body.

(See *Rex v. Electricity Commissioner* ²)”

At page 118 the Lord Chancellor said further :

“An administrative tribunal may act judicially but still remain an administrative tribunal as distinguished from a Court, strictly so called. Mere externals do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a Court of judicial power.”

It will be seen that enforcement of the decision or award of the Labour Tribunal is by recourse to the ordinary Courts and all contempts of its authority, except under Section 43 (4), are punishable by the Supreme Court.

I would point out that Section 43 (4) above is ultra vires, as being an attempt to vest the Labour Tribunal with judicial power. The rest of the provisions of the Act regarding the Labour Tribunal are valid because they do not vest the Labour Tribunal with judicial power but only with arbitral power. For these reasons, I hold that Mr. Chitty's first submission is not valid.

There is substance in the second submission made by Mr. Chitty. I am of opinion that there was a misdirection in law in the Labour Tribunal taking into consideration the matter of the second dismissal, which was the subject of another application, in arriving at its decision in this application.

Therefore, I set aside the order. I further direct that the other application be dealt with first by another Labour Tribunal and that this application be dealt with thereafter by still another Labour Tribunal.

The respondent will pay Rs. 157·50 as costs of this appeal to the appellant.

Order set aside.

¹ 47 *Law Times Reports* 115 and 117.

² 39 *Times Law Reports* 715.