

1958

Present: Weerasooriya, J.

COMMERCIAL BANKS ASSOCIATION, Petitioner, and
W. THALGODAPITIYA (District Judge, Colombo) and 2 others,
Respondents

S. C. 218—Application for a Writ of Certiorari

Industrial dispute—Reference for settlement by arbitration—Errors and omissions in award—Power of arbitrator to correct them subsequently—Industrial Disputes Act No. 43 of 1950 (as amended by Acts 25 of 1956 and 62 of 1957), ss. 3 (1) (d), 17 (2), 18 (1), 18 (2), 19, 21, 33 (1) (a), 34 (1), 34 (2)—Certiorari.

Where, in an industrial dispute referred for settlement by arbitration under section 3 (1) (d) of the Industrial Disputes Act, the arbitrator inadvertently makes obvious errors and omissions in his decisions, such errors and omissions may be corrected by the arbitrator if the award is referred to him for interpretation under section 34 (1) of the Act.

APPPLICATION for a writ of *certiorari* on (1) Walter Thalgodapitiya, Esq., District Judge, Colombo, (2) Ceylon Bank Employees' Union, and (3) the Commissioner of Labour.

H. V. Perera, Q.C., with *S. J. Kadirgama* and *W. T. P. Goonetilleke*, for the petitioner.

No appearance for the 1st respondent.

S. Nadesan, Q.C., with *J. C. Thuraiatnam*, for the 2nd respondent.

V. Tennekoon, Senior Crown Counsel, for the 3rd respondent.

Cur. adv. vult.

October 24, 1958. WEERASOORIYA, J.—

On the 11th April, 1956, the Commissioner of Labour (the third respondent) in terms of section 3 (1) (d) of the Industrial Disputes Act, No. 43 of 1950, (hereinafter referred to as "the Act"), as amended by Act No. 25 of 1956, submitted to the first respondent, who was then the District Judge of Colombo, for settlement by arbitration, an industrial dispute relating to superannuation schemes. The parties to the dispute were described in the reference as the Commercial Banks' Association (the petitioner) and the Ceylon Bank Clerks' Union. It

would appear, however, that although membership in the Ceylon Bank Clerks' Union was originally confined to bank clerks only, from 1954 other categories of bank employees too were admitted as members and in consequence the designation of the Union was changed into the Ceylon Bank Employees' Union by a resolution passed at the annual general meeting held on the 26th January, 1956. According to the affidavit of its President, the Union under its new designation has been registered as a trade union in accordance with the provisions of the Trade Unions Ordinance (Cap. 116) and counts as its members such bank employees as clerks, peons and "minor staff", which expression would appear to comprise money testers, watchers, labourers and boys. The Ceylon Bank Employees' Union is the second respondent in these proceedings.

The dispute referred to the first respondent for arbitration was dealt with by him in his award dated the 29th November, 1956, under the headings (a) pension schemes, (b) provident fund schemes and (c) death gratuities. He decided that the Banks should provide a pension scheme and also a provident fund scheme on the lines indicated in the award, but he rejected the claim of the 2nd respondent for the payment of death gratuities as well. As regards the provident fund scheme, the date on which it should come into force was specified as the 1st April, 1956. But the award is silent as to the date on which the pension scheme should come into force. It would appear, however, that this omission was due to inadvertence on the first respondent's part and that he intended that the pension scheme should also be operative from the date (the 1st April, 1956) specified for the provident fund scheme.

Section 18 (1) of the Act provides that the award of an arbitrator shall be transmitted to the Commissioner who is then required to cause it to be published in the *Gazette* forthwith. Section 18 (2) provides that the award shall come into force on the date of it or on such date, if any, as may be specified therein not being earlier than the date on which the industrial dispute to which the award relates first arose.

Section 34 (1) of the Act (as amended by Act No. 62 of 1957) provides, *inter alia*, that if any question arises as to the interpretation of an award made by an arbitrator the Commissioner, or any party, trade union, employer or workman bound by the award may refer the question for decision to such arbitrator, and the arbitrator is thereupon required to decide such question. Under section 34 (2) the decision on a reference made under section 34 (1) shall be deemed to form part of and shall have the same effect in all respects as the original award. After the award of the first respondent had been transmitted to the third respondent, he in terms of section 34 referred it back to the first respondent for interpretation of it in respect of the two questions—

- (a) whether the pension scheme set out in the award has effect from the 1st April, 1946, and
- (b) who are the workmen to whom the award relates.

By his further award dated the 7th April, 1958, the first respondent in deciding question (a) in the affirmative, stated that he had intended that the pension scheme should start from the same date as the provident fund scheme but had omitted to specify expressly in the original award the operative date of the pension scheme. In regard to question (b) his decision was that the original award applies to all workers in the Ceylon Bank Employees' Union. It is in respect of these decisions of the first respondent in the award dated the 7th April, 1958, that the present proceedings in the nature of an application for a writ of certiorari have been initiated by the Commercial Banks' Association on the footing that the first respondent, in deciding the aforesaid questions in the manner in which he did, misconstrued section 34 and acted contrary to section 18 (2) of the Act. As the first respondent has set out in the award the grounds for his decisions on the two questions submitted to him, it would appear to constitute a "speaking" order in the sense explained in the well known case of *R. v. Northumberland Compensation Tribunal, Ex parte Shaw*¹, and a writ of certiorari would lie to quash any decision which is shown on the face of the award to be erroneous in law.

Mr. H. V. Perera for the petitioner submitted that since no date on which the pension scheme should come into force had been specified in the original award, section 18 (2) of the Act, which provides that where no date is specified the date shall be the date of the award, must be given effect to. But what section 18 (2) deals with is the date on which the award shall come into force. The Act seems to draw a distinction between the award itself and the decisions which it is comprised of—*vide* section 33, as amended by Act No. 62 of 1957. Paragraph (a) of section 33 (1) provides that an award may contain decisions as to wages and other conditions of service "including decisions that any such wages and conditions shall be payable or applicable with effect from any specified date prior to the date of the award".

In the light of section 33 the original award dated the 29th November, 1956, would appear to contain what may more correctly be described as decisions made under paragraph (a) of sub-section (1) of that section relating to the pension scheme, the provident fund scheme and the date on which the provident fund scheme should come into force. On this view it would be doubtful whether section 18 (2) has any application to these decisions. Unlike section 18 (2), it is not expressly provided in paragraph (a) of section 33 (1) that in the absence of a specified date any decision relating to the payment of wages or other conditions of service shall take effect from the date of the award. But even if section 18 (2) applies to such a decision, it is clear to me that it cannot apply in a case where, in respect of that decision, there has been an inadvertent

¹ (1952) 1 A. E. R. 122.

omission to specify the date from which it shall take effect and despite the omission the date which should have been specified may be gathered with reasonable certainty from the terms of the award.

The Act does not contain express provision for the correction or modification of an award once it has been made. Such provision is contained in section 14 of the Arbitration Ordinance (Cap. 83) and sections 687 and 688 of the Civil Procedure Code. But section 21 of the Act provides that neither the Arbitration Ordinance nor the provisions of the Civil Procedure Code relating to arbitration shall apply to proceedings before an arbitrator under the Act. Notwithstanding the absence of express provision in the Act for the correction or modification of an award I am unable to take the view that an award once made must remain unalterable even in respect of obvious errors and omissions. It seems to me that an arbitrator to whom an award is referred for interpretation under section 34 (1) of the Act is entitled to correct such errors and omissions in the award in giving his decision on any question submitted to him.

In the present case, apart from the weight to be attached to the first respondent's statement that he had intended that the pension scheme should come into force on the same date as the provident fund scheme, the original award dated the 29th November, 1956, on the face of it discloses no ground at all for differentiating between the two schemes in regard to the date on which they should come into force. It is stated in the award that all the Commercial Banks were already operating provident fund schemes for the benefit of their employees, while only five of them had pension schemes. One of the demands made by Counsel on behalf of the second respondent was that all Banks should provide pension schemes as well, and this demand was accepted by the first respondent as not unreasonable. No question was ever raised by either party to the dispute that the pension scheme should come into force on a later date than the provident fund scheme. I think that an anomalous position would have resulted if different dates had been specified in the award for the two schemes. In the circumstances there was an obvious slip by the first respondent when he omitted to specify the 1st April, 1956, as the date on which the pension fund scheme also should come into force. In my opinion it was open to the first respondent to correct this omission in giving his decision on the first question referred to him for interpretation under section 34 (1) of the Act, and I am unable to hold that such decision was an erroneous one.

As for the decision of the first respondent on the other question submitted to him, the correctness of it is challenged by the petitioner on the ground that the award of the 29th November, 1956, on the face of it, relates to bank clerks only and that the first respondent was in error in holding that it applies to "all workers who are in the Ceylon Bank Employees' Union". It is pointed out that throughout the award the various types of superannuation benefits have been discussed by the first respondent only with reference to bank clerks, and that

any doubt as regards the employees to whom the award relates is resolved by the opening sentence of the last paragraph of the award which reads thus : " I have set out above what seems to me to be an equitable superannuation scheme for the Bank Clerks " .

While the contention of the petitioner is not without substance, it is clear that the parties to the dispute relating to superannuation schemes which was referred for arbitration to the first respondent were the Commercial Banks' Association on the one side, and the Ceylon Bank Clerks' Union (now the Ceylon Bank Employees' Union) on the other, the members of which, even then, consisted of different categories of employees such as clerks, peons and " minor staff " . On the first day of the proceedings which took place on the reference to arbitration Mr. Nadesan, in opening the case for the Ceylon Bank Clerks' Union, stated that the matter in dispute related to a request by bank employees for a scheme of pension, provident fund and gratuity. No objection was taken by Counsel for the petitioner to this statement on the ground that the dispute concerned a smaller section of bank employees, namely, bank clerks. It seems to me that having regard to the terms of the reference such an objection would have been quite untenable. The award had, therefore, necessarily to deal with a dispute involving various categories of bank employees.

Section 17 (2) of the Act requires that reference shall be made in every award of an arbitrator to " the parties and trade unions to which, and the employers and workmen to whom, such award relates " . Section 19 of the Act provides that the award of an arbitrator for the time being in force shall be binding on " the parties, trade unions, employers and workmen referred to in the award in accordance with the provisions of section 17 (2) ; and the terms of the award shall be implied terms in the contract of employment between the employers and workmen bound by the award " .

The award of the 29th November, 1956, sets out in paragraph one the parties to the dispute as the Commercial Banks' Association and the Ceylon Bank Clerks' Union. In my opinion paragraph one contains a sufficient designation, in terms of section 17 (2), of the parties to whom the award relates. The reference to the Ceylon Bank Clerks' Union must be deemed to be a reference to the Ceylon Bank Employees' Union in view of the subsequent change of name. Neither the Commercial Banks' Association nor the Ceylon Bank Employees' Union has been incorporated, and the virtual parties to whom the award relates are the members thereof. The 1st respondent would appear, therefore, to have come to a correct conclusion when he decided that the award applies to all workers who are in the Ceylon Bank Employees' Union.

The application fails and is dismissed with costs payable to the second respondent which I fix at Rs. 525.

Application dismissed.