THE
NEW LAW REPORTS
OF CEYLON

VOLUME LXXIV

1970 *Present :* Sirimane, J., and Wijayatilake, J.

CEYLON STATE MORTGAGE BANK, Petitioner,
and T. V. FERNANDO, Respondent

S. C. 322/70—Application for Writs of Certiorari and Prohibition

Industrial dispute—Employee of State Mortgage Bank—Retirement from service—Gratuity paid by the Bank—Jurisdiction of a Labour Tribunal to award a greater sum—State Mortgage Bank Ordinance (Cap. 398), s. 94 (1) (c)—Industrial Disputes Act (Cap. 131), s. 31B (1) (b).

Where the State Mortgage Bank has paid an employee a certain sum as gratuity on his retirement from service of the Bank, and the sum was paid on the basis of a Rule passed by the Minister in 1944 under section 94 (1) (*c*) of the State Mortgage Ordinance, a Labour Tribunal has nevertheless jurisdiction under section 31B (1) (*b*) of the Industrial Disputes Act to hear a subsequent application made by the employee for an enhanced sum as gratuity.

APPEAL from an order of a Labour Tribunal.

C. Ranganathan, Q.C., with *Lakshman Kadirgamar* and *Chula de Silva*, for the petitioner.

H. W. Jayewardene, Q.C., with *Cecil de S. Wijeyeratne* and *G. M. S. Samaraweera*, for the 1st respondent.

Cur. adv. vult.

August 28, 1970. SIRIMANE, J.—

The 1st respondent to this application was an employee of the petitioner (the State Mortgage Bank) from 1.10.51 to 16.7.63, when he retired on the ground that he was lacking in proficiency in the official language.

1*—K 1764—2,255(2/71)

On retirement he was paid a gratuity of Rs. 8,616·25. No rules have been framed for the basis on which the amount to be paid as gratuity should be calculated, but, R2 shows that in 1959 the Manager of the bank had written to the Permanent Secretary to the Minister of Finance for guidance on this point. By R3 in the same year the Permanent Secretary replied that the Minister recommended that a rule should be framed for payment of gratuity calculated at the rate of one month's pay for each year of service, but the total amount should not exceed one and two-third times the basic annual salary of the employee.

A month's salary for each year of service had been, in fact, the basis on which gratuities had been paid up to that time. R4 shows that the Board by a resolution accepted this basis of computation on 7.1.60 and though no rule was framed, it was conceded that the quantum of gratuity paid to employees who retired was computed on this basis. The respondent's affidavit gives a number of such instances. In every one of these cases the quantum had been determined by the Board of Directors, and payments sanctioned and approved by the Minister.

On this basis the amount which would ordinarily have been paid to the first respondent whose period of service was eleven years nine months and sixteen days would be Rs. 15,275. He went before the Labour Tribunal and claimed the difference between that sum, and the sum of Rs. 8,616·25 which was the amount actually paid to him.

The petitioner took up the position that the Tribunal had no jurisdiction to hear the first respondent's claim.

By order dated 10.2.70 the Tribunal held against the petitioner, and fixed the matter for hearing on 29.4.70. On 26.4.70 the Petitioner made the present application to this Court for a Writ of *Certiorari* to quash the order of the Labour Tribunal.

Section 94 (1) (*c*) of the State Mortgage Bank Ordinance (Cap. 398) authorizes the making of rules for the payment of gratuities. P1 sets out the rule relating to this matter, on which the petitioner strongly relies, the relevant part of which reads as follows :—

> " The Board may with the sanction of the Minister of Finance pay a gratuity of such amount as the Minister may approve,
>
> (*a*) to any officer or a servant of the Bank on his retirement from service of the Bank ;
>
> and
>
> (*b*) to any officer or a servant who has retired from the service of the Bank before the date on which this rule is made. "

It is contended for the petitioner that the amount paid to the first respondent is the amount approved by the Minister under that rule, that the petitioner is statutorily forbidden from paying anything more,

and that any order by the Labour Tribunal to pay more would override the rule as quoted above. The jurisdiction of the Labour Tribunal in a matter like this is set out in Section 31B (1) (*b*) of the Industrial Disputes Act, Cap. 131, as follows :—

> "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 :—
>
> (*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 the extent of such benefits. "

The employer of the first respondent is the Bank, and not the Minister. It is transparently clear from the affidavit and the documents filed that it is the employer who actually determines the quantum of the gratuity to be paid to an employee. The Minister has really nothing to do with the performance of that function. It was conceded, for instance, that if the employer decided not to pay any sum at all as gratuity, the Minister could not compel the employer to do so. But, once the employer decides to pay a certain sum as gratuity, the payment has to be made out of public funds, and such payments must be authorised by the Minister of Finance. The words "sanction" and "approve" in the context in which they appear in the rule (P1), in my view, mean no more than that the Minister of Finance authorizes the payment of the gratuity as determined by the employer, out of public funds. The Minister's sanction for payment is only a procedural requisite.

In this instance the Minister's "sanction and approval", if I may put it that way, has been obtained by the employer for the payment of the amount as determined by the Board. But this fact does not in my view preclude the employee from seeking relief from the Labour Tribunal against a decision by an employer which he (the employee) alleges is unjust and inequitable.

I cannot agree with Counsel for the Petitioner, that if the Labour Tribunal decides that the quantum of gratuity should be larger than that determined by the employer, such a decision would be "contrary to the Statute".

The Industrial Disputes Act is a piece of social legislation first enacted in 1950 and amended thereafter from time to time to meet the changing conditions in the structure of our society, and to grant employees—"workmen" as they are called—certain privileges and facilities that they had hitherto not enjoyed. The section relating to the review of gratuities by a Labour Tribunal quoted above came in as an amendment in 1957.

I cannot imagine that a procedural rule (P1) passed in 1944 even before we gained independence, has the effect of ousting the jurisdiction of Labour Tribunals constituted by the legislature long after that in order to settle, precisely this type of dispute between employer and employee.

Counsel for the petitioner further submitted that the Minister may refuse to sanction payment of a sum determined by a Labour Tribunal. Such a possibility seems most unlikely. If an employee succeeds in getting an order in his favour from a Tribunal specially created by the legislature to make just and equitable orders unfettered by legal technicalities, one must assume that the Minister will not act in such a manner as to stultify such orders. Craies on Statute Law, Fifth Edition, at page 278 cites a passage from the case of *Land Realization Co. Ltd. v. Postmaster General* [1], where Romer, J. said—

> "One has to bear in mind that when the Legislature confers powers on a Minister it is conferring powers on a person who, presumably will use these powers, not only bona fide but in a responsible spirit and in the true interests of the public and in furtherance of the objects for the attainment of which the powers were conferred."

I am also attracted by the alternative argument of Mr. Jayewardene for the respondent. He submitted that a gratuity, in the strict sense of the term, being a voluntary payment depending on the inclination of the giver, perhaps needed ministerial review for disbursement out of public funds, but, once a Labour Tribunal determines a just and equitable sum as gratuity in the exercise of the jurisdiction conferred on it by Legislature, the payment of that sum no longer needed review ; and "approval" or "sanction" for payment thereafter was purely an administrative step.

As I have reached the conclusion that the Labour Tribunal has jurisdiction to hear the first respondent's claim, it is unnecessary to discuss the further points raised by Mr. Jayewardene, that there has been undue delay and lack of good faith, in making this application.

Mr. Ranganathan for the petitioner pointed out that there is an error on the face of the order of the learned President, for he seems to have assumed that there were two conflicting rules, viz., the one framed in 1944 (P1), and another rule which sets out the basis of computation of gratuities. That, of course, is an error, for a second rule was not framed : but, the error does not affect the jurisdiction of the Labour Tribunal to hear the first respondent's claim.

The application is dismissed with costs.

WIJAYATILAKE, J.—I agree.

Application dismissed.

[1] *(1950) 1 Chancery 435.*