

1948

Present : Nagalingam J.

JAMILA UMMA, Petitioner, and MOHAMED *et al.*, Respondents.

S. C. 254—*Application for a writ of certiorari on the Commissioner for Workmen's Compensation.*

*Writ of certiorari—Order made by Deputy Commissioner for Workmen's Compensation—Commissioner made respondent to petition—Wrong party—Writ will not lie.*

In an application for a writ of *certiorari* it is essential that the party against whom relief is sought should be identified clearly and no room left for uncertainty. Where, therefore, it was sought to quash proceedings held before the Deputy Commissioner and notice of the application was served on the Commissioner—

*Held*, that the Commissioner was wrongly made a party. In such a case no amendment of the application will be allowed.

THIS was an application for a writ of *certiorari* on the Commissioner for Workmen's Compensation.

*S. W. Jayasuriya*, with *N. Kumarasingham* and *C. Chellappah*, for the petitioner.

*M. M. Kumarakulasingham*, for first respondent.

*H. W. R. Weerasooriya*, *Crown Counsel*, for second respondent.

August 27, 1948. NAGALINGAM J.—

This is an application for a writ of *certiorari* on the respondents of whom the second is designated "Commissioner for Workmen's Compensation". The notice ordered by this Court on the respondents was served on the Commissioner, Mr. B. Ponniah. There is no question but that he is the Commissioner for Workmen's Compensation. He has, however, filed an affidavit in which he has averred that he made no order which is the subject of complaint in these proceedings and states further that the proceedings complained of were held before the Deputy Commissioner, Mr. de Fonseka. The Deputy Commissioner has filed an affidavit himself supporting the statement of the Commissioner.

In these circumstances counsel for the Commissioner raises the question whether the Commissioner has not wrongly been made a party to the proceedings and, if so, whether the application against him should not be dismissed. Mr. Jayasuriya concedes the correctness of the facts as averred by both the Commissioner and the Deputy Commissioner but contends that in view of the definition of the term "Commissioner" in the Workmen's Compensation Ordinance, Cap. 117, the designation "Commissioner for Workmen's Compensation" as the respondent includes the Deputy Commissioner and that at worst, the notice ordered by this Court has been wrongly served by the Fiscal on the Commissioner in ignorance of the fact that it was intended to be served on the Deputy Commissioner.

In the first place the Ordinance merely enacts that, for the purpose of the Ordinance itself, the term "Commissioner" is to mean not only the person appointed to be or to act as Commissioner or as Deputy Commissioner but that it includes also any person appointed to be or to act as an Assistant Commissioner. The legislative amplification of the term "Commissioner" has been made with a view to empower an Acting Commissioner, a Deputy Commissioner and an Assistant Commissioner to be vested with certain powers which are conferred on the Commissioner with a view to the expeditious administration of the provisions of the Ordinance; but it is also equally clear that a Commissioner is entirely a distinct individual from a Deputy Commissioner or an Assistant Commissioner. Apart from any necessity that may compel one in construing the provisions of the Ordinance to read the term "Commissioner" as including the Deputy Commissioner or Assistant Commissioner, no reason exists to construe the term "Commissioner" as Deputy Commissioner or Assistant Commissioner if the object of the construction is to identify the particular individual as Commissioner, Deputy Commissioner or Assistant Commissioner. For instance, it

would be absurd to publish the appointment in the *Government Gazette* of a Deputy Commissioner as that of the Commissioner. In such a publication the term "Commissioner" must be restricted and confined to the particular individual appointed as Commissioner and obviously cannot include an officer who functions as a Deputy Commissioner—and this notwithstanding the meaning of the term Commissioner given in the Ordinance.

The petition before Court for the issue of a writ of *certiorari* is a document that must be construed having regard to the ordinary meaning attached to the words and language used therein. The officer designated "Commissioner for Workmen's Compensation Claims" is a particular officer who is distinct from a Deputy Commissioner. On an application such as the present one, it is essential that the party or parties against whom relief is sought must be identified clearly and no room left for uncertainty. In the present application the officer whose order is sought to be quashed is the Commissioner, but it now transpires that the order complained of was made not by the Commissioner but by the Deputy Commissioner, and the relief must consequently be applied for against the Deputy Commissioner and not the Commissioner himself. The second respondent, the Commissioner, therefore, has been wrongly made a party and the application against him must be refused.

The question whether an amendment of the application should be allowed does arise, but the object of the amendment is to substitute a new party or a wrong party on record and an amendment in these circumstances does not lie and cannot be permitted.

The only other question is whether the application against the first respondent too should be dismissed. If the order complained of cannot be quashed in the absence of the proper party who made that order, then the relief applied for against the first respondent too necessarily fails.

In this view of the matter the application against both respondents is refused with costs.

*Application refused.*

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