THE ATTORNEY-GENERAL
v.
RUBBERITE LIMITED AND ANOTHER

COURT OF APPEAL.
DR. GUNAWARDENA, J.
CA APPLICATION NO. 730/90
MC KANUWANA 90119
OCTOBER 17TH, 1994.

The Termination of Employment of Workmen (Special Provisions) Act, sections 6A(1), 6A(2), 7 and 8 – Action filed by the Commissioner of Labour in the Magistrate's court to enforce his order for payment of compensation, made under Section 6A(1).

The Commissioner of Labour filed action under Section 7 of the Termination of Employment of Workmen (Special Provisions) Act, for failure to comply with an order made by him, to pay compensation under Section 6A(1), of the said Act. The learned Magistrate discharged the accused stating that the said Order of the

Commissioner of Labour had been made in excess of his powers.The two grounds on which the learned Magistrate held that the said Order of the Commissioner of Labour was invalid were –

(1) that the plaint filed by the Commissioner of Labour in the Magistrate Court did not disclose that the terminated employees belonged to a schedule employment.

(ii) that before an order for compensation under Section 6A(1) is made, an order for reinstatement had to be made.

Held:

(1) That the said order of the Commissioner of Labour specifically stated that he was acting under section 6A(1), and therefore it is not necessary to state separately in the plaint that the workmen belong to a schedule employment.

(2) That the provisions of section 6A(1) do not require that an order for reinstatement should be made first, before an order for compensation could be made, where the workmen's employment is terminated upon closure of trade, industry or business.

(3) That the action filed by the Commissioner of Labour under Section 7 is a criminal prosecution, and is different in character, from an application made by a workman under Section 6A(2), to enforce an order made by the Commissioner of Labour under Section 6A(1).

Cases referred to:

1. *Attorney-General v. Chandrasena* (1991) 1 Sri LR 86
2. *Attorney-General v. Wilson Silva* (1992) 1 Sri LR 44

APPLICATION for Revision of the Order of the Magistrate, Kanuwana

P. G. Dep S.S.C. for the Petitioner.
Isidore Fernando for the 2nd Respondent.

October 12th, 1994.
DR. GUNAWARDENA, J.

This is an application to revise the order of the learned Magistrate of Kanuwana, made on 22nd April 1992. In the said order the learned Magistrate has stated that, he has already decided in case No. 82019 and 82022 that the order sought to be enforced in this case had been made by the Commissioner of Labour, in excess of the

powers vested in him. Therefore, he has decided that the prosecution cannot proceed with the case and discharged the accused.

The learned Counsel for the petitioners submitted that, the said order of the learned Magistrate was erroneous in law. He pointed out that, in the order in case No. 82019, the learned Magistrate has held that, the order of the Commissioner of Labour dated 10.09.1990 is bad in law on two grounds. The first ground was that, the petition in the said case did not disclose that the petitioner belonged to a schedule employment. In this regard the learned State Counsel pointed out that the order of the Commissioner of Labour dated 10.09.1990 specifically stated that he was acting under section 6A(1) of the Termination of Employment Act and therefore it is not necessary to state separately that the workman belonged to a schedule employment. The second ground was that, the Commissioner of Labour could not have made the said order, without first making an order for reinstatement. The learned State Counsel submitted that the provisions of section 6A(1) does not require that an order for reinstatement be made first, before an order for compensation is made, in a situation where the termination of employment was due to the closure of industry or business. He submitted that both grounds upon which the learned Magistrate has held that the order of the Commissioner of Labour was invalid, are erroneous in law. Therefore he submitted that the order of the learned Magistrate cannot stand in law. Upon a consideration of the said submissions by the learned State Counsel, this Court is of the view that the said submissions reflect the correct legal position. It may be noted here that the learned Counsel for the Respondent did not seek to challenge those arguments, but relied on other grounds to show that the petitioner had no right of Revision in this case.

Furthermore, it was erroneous for the learned Magistrate to have applied the said order to the instant case, namely case No. 90119. The instant case is an application made by the Commissioner of Labour under Section 7 read with section 8 of the Termination of the Employment Act. It is a criminal prosecution arising from the failure of the employer to comply with an order made under Section 6A(1). Thus the requirements for making an application to the Magistrate's

Court by the Commissioner of Labour are different to those that would apply to an application by a workman, under section 6A(1).

The learned Counsel for the respondent submitted that the Court should not exercise the power of Revision vested with this Court in this case, as the petitioner has not disclosed material particulars. The material particulars referred to is that, the petitioner has not mentioned that a sum of Rs. 150,000/- was payed on 17.8.89, and a further sum of Rs. 50,000/- was payed on 11.09.89, by the second respondent, to the Commissioner of Labour. The learned State Counsel pointed out that the said sum of money had been paid prior to the order of the Commissioner of Labour dated 10.09.90, and therefore the Commissioner of Labour would have taken that amount into consideration when he decided the amount payable as compensation, as contained in the said order dated 10.09.90. Thus the said payment is not relevant to the consideration of this application.

The learned Counsel for the respondent submitted that an affidavit has not been filed along with the application, by the petitioner, who is the Attorney-General. Learned State Counsel cited the case of *Attorney-General v. Chandrasena* [1] where it was held "that the absence of an affidavit by Attorney-General did not violate the provisions of the Rules 46 of the Supreme Court Rules, as the Court was invited to decide only a question of law ... The said decision was followed with approval in *Attorney-General v. Wilson Silva* [2]. The learned State Counsel submitted that, the Attorney-General who is the petitioner in this case is relying on a question of law and therefore an affidavit was not necessary.

The learned Counsel for the respondent further submitted that there is a delay of nearly one year and four months, in the Attorney-General making this application to this Court. The petitioner has explained the delay in paragraph 14 of the petition, by stating that the Revision Applications in the said two cases M.C. Kanuwana 82019 and 82022, where the learned Magistrate had made the said orders were pending before this court. Therefore the petitioner had not appealed and was awaiting the decision of this Court in those

cases. Since those cases were not decided by this Court, the petitioner had sought to file this Revision Application, in this case.

For the reasons stated above, this Court hereby set aside the said order of the learned Magistrate dated 22nd April 1992. The learned Magistrate is hereby directed to proceed with the trial, as early as possible, and make order according to the law.

Order set aside.

Case remitted for trial.