HEWAGAM KORALE EAST MULTI-PURPOSE CO-OPERATIVE SOCIETY LIMITED, HANWELLA

v.

HEMAWATHIE PERERA AND ANOTHER

COURT OF APPEAL.
BANDARANAYAKE, J. AND PERERA, J.
C.A. 239/81.
R/12613 – 19/AV/40/79.
FEBRUARY 17, 1986.

Appeal from order of Labour Tribunal – Appeal filed in time but Trade Union applicant on behalf of the workman not made respondent to appeal – Can amendment be allowed?

Where the employer filed an appeal from the order of the Labour Tribunal within the prescribed time but failed to make the Trade Union which acting on behalf of a workman had instituted the proceedings in the Labour Tribunal a respondent.

Held –

When a vital step is prescribed by law to be taken for the constitution of a valid appeal and it is not so taken the appeal will be rejected. The application to include the Trade Union as a party respondent after the expiry of the prescribed period for filing appeals cannot be permitted.

Case referred to:
Usoof et al v. Nadarajah Chettiar et al–(1957) 58 NLR 436.

APPEAL from judgment of the Labour Tribunal.

I. G. N. de Jacolyn Seneviratne for appellant.
Prins Gunasekera for 1st respondent.
N. R. M. Daluwatte, P.C. with *Miss S. Nandadasa* for the party noticed.

Cur. adv. vult.

March 21, 1986.

BANDARANAYAKE, J.

The employer-respondent-appellant, the Hewagam Korale East Multi-Purpose Co-operative Society filed this appeal on 12th June, 1981 within 14 days against the order of the Labour Tribunal delivered on 29.5.81. The appellant named H. Hemawathie Perera, the workman, as the 1st respondent to the appeal and W. D. Ariyadasa, President, Labour Tribunal as 2nd respondent to the appeal.

The application to the Tribunal under the Industrial Disputes Act was made by the Ceylon Co-operative Employees' Federation on behalf of the workman Hemawathie Perera, whose services had been discontinued. The trade union which made the application has not been made a party-respondent to this appeal. In 1985 a motion was filed on behalf of the respondent-appellant seeking to name the trade union as a respondent to the appeal and the trade union was accordingly noticed to appear at the hearing into this application.

Counsel for the party-noticed objected to being added as a party at this stage as it is out of time. Counsel for the 1st respondent-workman objected to the hearing of this appeal on the ground that the appeal was not properly constituted in that the applicant was not Hemawathie Perera but the trade union which has not been made a party to the appeal.

Counsel for the employer-respondent-appellant argued that when a trade union acted on behalf of an employee the trade union acted as an agent for and on behalf of the employee so that the Union had no interest outside that of the employee on whose behalf the application

was made. When a Union comes in as an applicant it does not come in as a principal or a separate legal person. The appellant in naming the workman as a respondent to the appeal has satisfied the requirements of s.31D(2) relating to the need to mention the other party as a respondent as the employee is the other party though represented by a Union. Relief was given to the employee by way of reinstatement or compensation. As there is no separate legal persona this application if allowed does not amount to substitution of a party in the petition of appeal as presently filed. The naming of the trade union as an agent has been omitted by error and the Courts discretionary powers are sought to rectify the error by including the trade union as a respondent to the appeal.

In examining this question one must bear in mind that the Industrial Disputes Act represents fundamental social legislation creating rules of work balancing the interests of employers and employees on the one hand and their interests with that of the State on the other. Nearly everyone is concerned with employment and the average workman who seeks the protection of the law in this area comes from the less advantaged and weaker sections of society. Thus in my view legislative expression has been given to these realities in the area of the issue raised at this hearing. I refer to s.31(B)(*i*) of the Act which states that a workman or trade union on behalf of a workman..... may make an application for relief or redress to a Labour Tribunal. Again s.31(D)(2) provides for a workman or *the Trade Union* or the employer dissatisfied with the order of the Tribunal to appeal from the order mentioning the other party as a respondent to the appeal. Again the definition of "workman" in s.48 of the Act includes a trade union consisting of workmen. Here the statute contemplates a trade union representing a workman. What is the rationale for the creation of this statutory relationship? In the context of the need to balance the interests of the employee and employer it appears that the statute recognises that the Union is usually better equipped to prosecute the claim of the workman. For example, the Union has varied experience in prosecuting labour disputes and the Union can meet the costs both before the Tribunal and in appeal. The policy of the law seems clear. The Union is a party to the proceedings representing the workman being so permitted by statute. Once so included as the applicant to

the proceeding before the Tribunal the trade union assumes the status of the applicant party and must necessarily continue throughout all other phases of legal proceedings as a party to the same dispute. In view of the statutory provisions referred to above I cannot agree that the Union is a mere agent looking after the workman's interests at the Tribunal like Counsel representing his client and that he is not a party to the proceedings. In the petition of appeal in the instant case the trade union being the other party should have been mentioned as a respondent to the appeal. This has not been done. In fact in the caption of the petition before this Court Hemawathie Perera has been mentioned as the applicant before the Tribunal. This is an error. Although the petition of appeal has been presented within 14 days as I have already said, the other party to the proceedings before the Tribunal, namely, the trade union, has not been made a respondent. The case of *Usoof et al petitioners and Nadarajah Chettiar et al respondents* was cited before us by learned counsel for the party-noticed where it has been held that an application for conditional leave to appeal to the Privy Council which is insufficiently stamped will be rejected even if it is filed in time and the deficiency is subsequently made good after the expiry of the prescribed period. This is authority for the proposition that when a vital step prescribed by law to be taken for the constitution of a valid appeal is not so taken the appeal will be rejected.

Can the appellant now be permitted after the lapse of nearly 5 years to rectify the petition of appeal to introduce the proper party? The Act prescribes a period of 14 days within which a petition of appeal as prescribed by law may be preferred. In such circumstances the rectification sought cannot be permitted. The proper parties are not before the Court. The appeal is accordingly rejected. The appellant to pay 1st respondent's costs fixed at Rs. 210 and costs of the party-noticed fixed at Rs. 210.

PERERA, J. – I agree.

Appeal rejected.