S. B. PERERA
v.
STANDARD CHARTERED BANK AND OTHERS

SUPREME COURT.
AMERASINGHE, J.
WADUGODAPITIYA, J. AND
WIJETUNGA, J.
S.C. APPEAL NO. 106/94
S.C. SPL. LA. APPN. NO. 165/94
C.A. APPN. NO. 456/92
ARBITRATION NO. A/2184
DECEMBER 05, 1994.

Industrial Dispute – Retirement on pension before reaching age limit – Resignation – Reference to arbitration by Minister under S. 4(1) of the Industrial Disputes Act – Effect of resignation on reference to arbitration – Industrial Disputes Act, Sections 48, 19, 17(2), 18(2) – Meaning of industrial dispute.

After a service of 32 years where he rose from the position of clerk to Operations Manager the appellant applied for premature retirement with pension benefits. On this being refused he resigned and the Minister of Labour reciting that an industrial dispute existed referred the matter to arbitration. The arbitrator found in favour of the appellant but the Court of Appeal dismissed the award as owing to the resignation there was no dispute capable of reference for arbitration. The reference was there without jurisdiction and the award was a nullity. On appeal to the Supreme Court –

Held:

(1) In respect of an industrial dispute referred under Section 4(1) for settlement by arbitration, Section 17(1) of the Industrial Disputes Act requires an arbitrator to make such award as may appear to him just and equitable. The matter for settlement was whether having regard to the length and quality of the service he had rendered, especially in the light of the fact that two other employees who had retired prematurely had nevertheless been granted retirement benefits, it was fair that the appellant was denied the retirement benefits he claimed.

(2) An industrial dispute is defined in Section 48 of the Industrial Disputes Act to be, among other things, any dispute or difference between an employer and a workman . . . connected with the employment . . ., or the terms of employment, . . . or the termination of services . . ., of any person . . ." The award was made by the arbitrator under Section 19 of the Act. The section is in two parts separated by a semi-colon. The two parts relate to two different matters and serve different purposes. The first part makes the award binding on the parties, trade unions,

employers and workmen referred to in the award, whereas the second part relates to the employers and workmen bound by the award. The first part deals with the prime object of the legislation. The second part deals with an incidental matter. The inability, in the circumstances of a case, to deal with the incidental matter is not a reason for supposing that the mechanism for achieving the prime object of the legislation is frustrated. The first part (a) declares the award of an arbitrator made in an industrial dispute and for the time being in force to be binding for the purposes of the Industrial Disputes Act; and (b) states that the award is binding on the parties and trade unions to which, and the employers and workmen to whom, the arbitrator, acting in compliance with the terms of Section 17(2) makes reference. The words after the semi-colon make the term of the award implied terms in the contract of employment between the employers and workmen bound by the award. What the words after the semi-colon do are to create new rights and duties between the employers and employees bound by the award that will be operative from the date of the award or such date, if any, as may be specified in the award, provided that, if the operation is retrospective, then the terms of the award will be implied terms from a date not earlier than the date on which the dispute to which the award relates first arose, (Section 18(2)). The operation of the second part of Section 19 is conditional upon the existence of a contact of which the terms of the award could become implied terms. However it does not mean that the award of the arbitrator is not binding if there is no contract of employment. The binding effect of an arbitrator's award is created by the first part of Section 19 and is quite independent of the additional consequence of the award sent out in the second part. The binding effect of an arbitrator's award does not depend on the existence of a contract of employment.

(3) From the time the appellant's request for retirement benefits was rejected, the question whether the appellant ought to have been granted retirement benefits was a matter in dispute. A dispute exists where there is a difference, and this may be long before there is a combat between the sides. The dispute which had arisen when the appellant was an employee of the bank was not resolved when the Minister referred it for settlement by arbitration.

(4) By using the expression "any person" instead of the term "workman" (in part of the definition of "Industrial dispute" in Section 48) the legislature used an expression wide enough to include a person who is not a *de facto* or *de jure* workman in its primary sense and into this class would fall both a person who has never had employment before and also a person who having been in service has been discharged (though it would not mean anybody and everybody in this wide world).

(5) The expression "where services have been terminated" means not only an involuntary termination such as dismissal but also a voluntary termination such as resignation from service.

(6) A dispute that had arisen while the contract of employment existed could be referred for settlement even though the contract had been later terminated and whether such termination had been initiated or brought about by the employer or by the workman himself.

Cases referred to:

1. *Walker Sons & Co., Ltd. v. Fry* (1965) 68 NLR 73, PP 90-91.
2. *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate* A.I.R. 1958 S.C. 353.
3. *R. v. Industrial Disputes Tribunal* (1953) 1 All ER 593.
4. *Thirunavakarasu v. Siriwardena and Others* (1981) 1 Sri L.R. 185, 193.
5. *Colombo Apothecaries Co. Ltd. v. Wijesooriya* (1968) 70 NLR 481, 487, 496, 503, 508.
6. *George Hudson Ltd. v. Australian Timber Workers' Union* (1932) 32 C.L.R. 434.
7. *R. v. National Arbitration Tribunal, Ex parte Horatio Crowther & Co. Ltd.* (1947) 2 All E.R. 693.
8. *State Bank of India v. Sundaralingam et al* (1970) 73 NLR 514, 516.
9. *Beetham v. Trinidad Cement Ltd.* (1960) 1 All ER 274.
10. *Narendra Kumar Sen and Others v. All India Industrial Disputes (Labour Appellate) Tribunal* quoted in (2).
11. *Cawnpore Tannery Ltd. Kanpur v. Guha and Others* AIR 1967 S.C. 667.

APPEAL from judgment of the Court of Appeal.

S. L. Gunasekera for petitioner.
H. L. de Silva, P.C. with *S. Mahenthiran* for 1st respondent.
A. Gnanathasan, S.S.C. for 3rd and 4th respondents.

Cur. adv. vult.

February 22, 1995.
AMERASINGHE, J.

The appellant had been employed by the Standard Chartered Bank in 1957 as a clerk promoted from time to time until he was appointed Manager Operations in 1986. By his letter dated 19th October 1989, the appellant applied for permission to retire from the Bank's service 'as early as possible, preferably within one month', and requested the Bank to grant him a pension commensurate with the thirty-two years of service which he had rendered with 'utmost dedication'.

In terms of the Pension Fund Rules of the Bank set out in a Trust Deed to which the appellant was a party, an employee who had

completed not less than ten years of service was entitled to a pension computed on the basis set out in the Rules either upon reaching his 'normal retirement age of 55 years' or upon premature retirement on account of infirmity or disability.

The appellant was fifty years of age at the time of his application for retirement. He was not seeking to retire prematurely on account of infirmity or disability. In the circumstances, in his letter dated 19th October 1989, the Manager Administration of the Bank wrote to the appellant pointing out that no provision existed in 'the terms and conditions of service' for the payment of the requested pension and that 'we will therefore require to consider [the] application and thereafter refer it to our 'Head Office' in London. On 3rd November 1989, the Bank wrote to the appellant informing him that his 'request for premature retirement on pension terms has not received approval'. On 10th November 1989, the appellant wrote to the Bank tendering his resignation with effect from 13th November 1989. On the same day he wrote another letter explaining that he had decided to retire and seek employment with another Bank, *inter alia*, because two other senior employees of the Bank had been permitted to retire prematurely in order to take up employment in the Bank's office in Oman. He referred to the fact that he had served the Bank well for 32 years and appealed to the Manager of the Sri Lanka Branch to use his 'good offices with the Head Office to obtain for [him] reasonable terminal benefits commensurate with [his] long and loyal service to the Bank'. On 5th December 1989, the Bank acknowledged receipt of the appellant's letter of resignation and accepted his resignation. There was no acknowledgement or response to the other letter written on the same date as his letter of resignation relating to his appeal for 'reasonable terminal benefits'. On 8th December 1989, the appellant wrote to the Bank stating, *inter alia*, as follows:

> "When I, by my letter of the 19th October 1989 requested you to permit me to retire prematurely and to pay me a pension commensurate with my services to the Bank, you replied me by your letter of the 19th October 1989 stating *inter alia* that ". . . no provision exists for this request in your terms and conditions of service . . .". This is presumably the basis on which the Bank has refused to grant me the said terminal benefits. However,

you permitted Mr. A. Mallawaarachchi to retire prematurely at the age of 49 years after 29 years of service and Mr. S. Gulasingham to do so at the age of 54 after 34 years of service and granted them pensions even though they were leaving the Bank prematurely for re-employment in the Bank in Oman.

There was no difference between my terms and conditions of service and those of Messrs Mallawaarachchi and Gulasingham. Thus, if there was no provision in my terms and conditions of service for the grant of the aforesaid terminal benefits, how is it that terminal benefits were granted to the said two gentlemen? What is the reason for my being singled out for discriminatory and unequal treatment to my detriment?

Even assuming without conceding that your contention that there is no provision in my terms and conditions of service for the payment of the aforesaid terminal benefits to me is correct, you are well aware that the guiding principle on which our Industrial Law is based is justice and equity and not the strict observance of the terms of a contract of employment . . .

In the aforesaid circumstances I appeal to the Bank to reconsider its earlier decision and to grant me the same terminal benefits it would have granted me had I been 55 years of age on 13.11.1989".

On 7th February 1990, the appellant wrote to the Regional General Manager of the Bank in London setting out his case and requesting that the terminal benefits be granted having regard to considerations of 'equity and justice'. There was no response from the Bank with regard to the appeals dated the 10th of November, 8th of December 1989 and 7th February 1990, despite attention being invited to them in other letters written by the appellant.

On 23rd April 1990, the appellant wrote to the Minister of Labour setting out his complaint and requesting him to refer 'this industrial dispute' to settlement by arbitration or by an Industrial Court in terms of Section 4 of the Industrial Disputes Act'.

On 22nd December 1990, the Minister of Labour, reciting that 'an industrial dispute in respect of the matter specified in the statement of the Commissioner of Labour' existed between Mr. S. B. Perera and Standard Chartered Bank, stated that, by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act, he made order appointing C. Carthegasan to be the Arbitrator and referred 'the aforesaid dispute to him for settlement by arbitration'.

The Order of the Minister, in accordance with the requirements of Section 16 of the Industrial Disputes Act, was accompanied by a formal statement prepared by the Commissioner of Labour, dated 30th November 1989, under the caption 'In the matter of an industrial dispute between Mr. S. B. Perera, "Prasanna", 48/11, Minuwangoda Road, Ja-Ela and Standard Chartered Bank, 17, Janadhipathi Mawatha, Colombo 01', setting out the matter which to his knowledge was in dispute between the parties, in the following terms:

> "The matter in dispute between the aforesaid parties is whether the non-granting of permission to Mr. S. B. Perera for premature retirement by the management of Standard Chartered Bank and thereby depriving the right to retiring benefits is justified and if not, to what relief he is entitled."

The Bank, *inter alia,* advanced the view that by his resignation the appellant had brought about a 'cessation of his employer-employee relationship'. The continuation of the employer-employee relationship and a subsisting contract of employment is necessary for the Minister to refer a matter for settlement by arbitration, since, in terms of Section 19 of the Industrial Disputes Act, the terms of an award made by an arbitrator could become binding and effective only by becoming implied terms of the contract of employment. With his resignation, the appellant ceased to be a 'workman' and there was, therefore, no dispute between a 'workman' and 'employer' that could be regarded as an 'industrial dispute'. The Minister had referred the matter to arbitration 'after cessation of employment' when there was no subsisting contract of employment, and after the workman-employer relationship had ceased. Therefore, as at the date of the Order made by the Minister there was no dispute 'capable in fact and/or in law' of being referred for settlement by arbitration under

Section 4(1) of the Industrial Disputes Act. In the circumstances, the matter was not one which could have been properly referred by the Minister for settlement by Arbitration in terms of Section 4(1) of the Industrial Disputes Act and consequently the Arbitrator had no jurisdiction.

On 10th April 1992, the Arbitrator made his Order holding, *inter alia,* that, although the appellant had ceased to be an employee of the Bank, there was 'a live industrial dispute to be settled'; there was an 'industrial dispute' within the meaning of the Act in so far as it was raised when the employee was in the service of the Bank and it remained unresolved at the time he ceased to be in the employ of the Bank and therefore continued to be an industrial dispute even after he ceased to be in service so long as he pressed his case thereafter, which he has done by his appeal to the Minister of Labour . . .'. The submission of the Bank that the binding effect of an award depended on the existence of a contract of employment by becoming implied terms of such contract was rejected. In the circumstances, the objection of the Bank on the grounds of jurisdiction was overruled.

However, on 27th April 1994 the Court of Appeal gave judgment issuing *writs of certiorari* quashing the Order of the Arbitrator and the Order of reference for settlement by arbitration made by the Minister of Labour.

The Court of Appeal was of the view that, because the appellant was not within the terms of the Rules of the Bank pertaining to retirement benefits, 'He cannot have a grouse . . .[and] cannot have a grievance or dispute with the petitioner'. The Court of Appeal, was, in my opinion, mistaken. In respect of an industrial dispute referred under Section 4(1) for settlement by arbitration, Section 17(1) of the Industrial Disputes Act requires an arbitrator to 'make such award as may appear to him just and equitable'. The matter for settlement was not whether, having regard to the terms of the Rules set out in the Trust Deed, the appellant was entitled to retirement benefits, but whether, having regard to the length and quality of the service he had rendered, especially in the light of the fact that two other employees who had retired prematurely had nevertheless been granted

retirement benefits, it was fair that the appellant was denied the retirement benefits he claimed. In his view, the appellant ought to have been granted retirement benefits. His employer, however, did not agree. There was a difference of opinion. Obviously, it is not every controversy that qualifies for reference as an 'industrial dispute', but it need not be one that is based on the enforcement of the terms and conditions of employment. An 'industrial dispute' is defined in Section 48 of the Industrial Disputes Act to be, among other things, 'any dispute or difference between an employer and a workman . . . connected with the employment . . ., or the terms of employment . . . or the termination of services . . ., of any person . . .' and, I entertain no doubt that the controversy in the matter before me was of a nature that was capable of being referred for settlement by arbitration as an industrial dispute. The learned Judge of the Court of Appeal himself said: "I am of the view that the dispute regarding terms of employment (premature retirement comes within the terms of employment) . . .", although he added that, in his view, the dispute had ceased on account of the resignation. The question of whether the dispute was extinguished is a matter that will be considered later.

The Court of Appeal was of the view that the "plain reading and meaning of Section 19 of the Industrial Disputes Act amply demonstrates that **'every'** [the emphasis is that of the Court of Appeal] award of an Arbitrator made in an industrial dispute (whatever the nature of the award, provided it is made in respect of an industrial dispute) shall be binding on the parties, and the terms of such award shall be implied terms in the contract of employment. It follows that the terms of every award made in an industrial award must be capable of being incorporated in the contract of employment. There is no option, but to incorporate the terms of the award in the contract of employment." The Court of Appeal went on to state as follows:

> "According to . . . Section 19, every award of an Arbitrator shall be binding on parties, employers and workmen referred to in the award. The binding effect is incorporated in the section itself, and in the context of the relationship between an employer and workman (employee) there should be a contract of employment existing between the two of them. The binding

effect of the award gathers strength with such contract of employment in the case of employer and employee.

No doubt an abrogation of a contract of employment unilaterally made does not in law terminate the contract. With regard to a contract which has been abrogated unilaterally an award made by an Arbitrator under Section 19 of the Act has binding effect, because the contract has not been lawfully terminated and therefore it still exists. But in the instant case the contract of employment was not unilaterally terminated. The [employee] on his own resigned after the [employer] refused to grant him permission to retire prematurely. His resignation was duly accepted, and the contract of employment came to an end. It follows that there was no live contract at the time reference of the alleged dispute was made to the Arbitrator. Under such circumstances, could it be held that there was a live dispute which can culminate in an award affecting the terms of employment contained in a dead contract. It cannot be held so.

Insofar as the scope of Section 19 of the Industrial Disputes Act is concerned, the learned Arbitrator says: "This part of Section 19 appears to cover only arbitration awards dealing with terms of employment which would retrospectively or in future form part of a contract of employment, i.e. awards comparable to Collective Agreements between Employers and Trade Unions".

I cannot agree with his conclusion with regard to the provisions of Section 19 of the Act (i.e. the later part of this section) as interpreted by him. I am of the view he has attempted to re-draft Section 19 in order to make way for his conclusions. But the intention of the Legislature was not what the learned Arbitrator expressed in his order with regard to the said section. The intention of the Legislature with regard to the provisions of this section [is] unequivocal, and the interpretation given by the learned Arbitrator is not what is conveyed in this section. In the circumstances, I am of the view that the learned Arbitrator has erred in interpreting this section and as a result his conclusions which he arrived at regarding this section are also incorrect."

Section 19 of the Industrial Disputes Act states as follows:

> Every award of an arbitrator made in an industrial dispute and for the time being in force shall, for the purposes of this Act, 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.

A 'plain reading' of that section leads me to the conclusion that Section 19 of the Industrial Disputes Act, is, as the Arbitrator correctly supposed, in two parts. The two parts are separated by the semi-colon.

In my opinion, they relate to two different matters and serve different purposes. The first part makes the award binding on the parties, trade unions, employers and workmen referred to in the award, whereas the second part relates to the employers and workmen bound by the award. The first part deals with the prime object of the legislation. The second part deals with an incidental matter. The inability, in the circumstances of a case, to deal with the incidental matter is not a reason for supposing that the mechanism for achieving the prime object of the legislation is frustrated.

The first part (a) declares an award of an arbitrator made in an industrial dispute and for the time being in force to be binding for the purposes of the Industrial Disputes Act; and (b) states that the award is binding on the parties and trade unions to which, and the employers and workmen to whom, the arbitrator, acting in compliance with the terms of Section 17(2), makes reference.

The words after the semi-colon make the terms of the award implied terms in the contract of employment between the employers and workmen bound by the award. What the words after the semi-colon do are to create new rights and duties between the employers and employees bound by the award that will be operative from the date of the award or such date, if any, as may be specified in the award, provided that, if the operation is to be retrospective, then the

terms of the award will be implied terms from a date not earlier than the date on which the dispute to which the award relates first arose. (See Section 18(2)). See also the observations of H. N. G. Fernando, S.P.J. in *Walker Sons & Co. Ltd. v. Fry* [1].

If there is a contract of employment, then the terms of the award would become implied terms of that contract. If there is no contract of employment, obviously, the terms of the award cannot become implied terms. The operation of the second part of Section 19 is conditional upon the existence of a contract of which the terms of the award could become implied terms. However, it does not mean that the award of an arbitrator is not binding if there is no contract of employment. The binding effect of an arbitrator's award is created by the first part of Section 19 and is quite independent of the additional consequence of the award set out in the second part. The binding effect of an arbitrator's award does not depend on the existence of a contract of employment.

The meaning of the legislature is clear. However, it would be of interest, perhaps, to remind ourselves of the background, for the words of a statute, if there is any doubt as to their meaning, should be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. (See per Das, J. in *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate* [2] quoting with approval Maxwell, *Interpretation of Statutes,* 9th Ed. p.55)

In England, in the post-war era, when the sense of emergency had ceased, and with it the need for compulsory arbitration through State intervention to prevent interruptions of work, collective bargaining once again became the usual method of establishing the terms and conditions of employment. However, since the right to strike was restored, employers insisted that the obligation to observe recognized terms and conditions should be repealed. Although the general obligation disappeared, if it was reported to the Minister that an employer in a district or trade in which agreed terms and conditions operated was not observing such terms and conditions, the Minister was empowered to refer the matter to the Industrial Disputes Tribunal which could have required the employer to observe

such terms and conditions as might be defined. When the Tribunal made its award, then, in terms of Article 10 of the Industrial Disputes Order of 1951, as from the date of such award or from such other date, not being earlier than the date on which the dispute or issue to which the award relates first arose, [Cf. *R v. Industrial Disputes Tribunal*[3]] as the tribunal may direct, it became an implied term of the contract between the employer and the workers to whom the award applied that the terms and conditions to be observed under the contract should be in accordance with the award until varied either by agreement between the parties or by a subsequent award of the Tribunal. (For a fuller account of the history of the settlement of industrial disputes by arbitration in England, see **Outlines of Industrial Law** by W. Mansfield Cooper and John C. Wood, 1966 5th Ed. at pp. 439-444).

In Sri Lanka too, industrial peace has been deemed, as a matter of policy, to be of national importance, and although voluntary, rather than compulsory, settlement has been the preferred form of dispute resolution. Yet, circumstances have made it necessary for State intervention and the making of the terms of awards implied terms of contracts of employment.

'Compulsory arbitration' was introduced by the Essential Services (Avoidance of Strikes and Lockouts) Order of 1942 which was promulgated under the Defence Regulations to ensure that production and essential services were not hampered by industrial strife during the war. Under this Order, all services essential to the war effort and the life of the community were declared 'essential services' in which strikes and lock-outs were prohibited. At the same time provision was made for compulsory arbitration in regard to disputes in essential services by Special Tribunals. Awards made by these Tribunals were binding not only on the parties concerned but also on all employers in the same or similar industries.

With the cessation of hostilities, the mechanism for settlement by Special Tribunals ceased and the country was left with only the essential voluntary machinery for settlement provided for by the Industrial Disputes (Conciliation) Ordinance No. 3 of 1931. The growing tendency to reject recommendations made by the Boards

appointed under the Industrial Disputes (Conciliation) Ordinance, and the circumstances of the post-war period, especially the political, social and economic changes brought about by Independence, made it necessary to review the relevance of the prevailing provisions, and a Bill was introduced in the House of Representatives on 20th June 1950 'to provide for the prevention, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto'. The Minister of Labour, Mr. M. D. Banda, said that it was the view of the Government, that, since the Unions on both sides were fairly well organized, it was incumbent on the Government to provide the machinery that would enable them to come together, of their own volition or with the assistance of a mediator, to settle their disputes. In certain cases, where the work was regarded as essential to the life of the community, it was necessary to provide for the State to step in and attempt to bring about a satisfactory settlement. The Bill was passed and became the Industrial Disputes Act, No. 43 of 1950. The Act, as amended, among other things, provides various methods for the settlement of disputes.

The prime object of the provisions relating to the settlement of industrial disputes, and in particular those relating to compulsory settlement, (howsoever the provisions have been alleged to have been used – e.g. see the observations in the **Report of the Commission on Industrial Disputes Ceylon 1966-1969,** Sessional Paper IV – 1970, page 119, paragraph 412) was, and has continued to be, the encouragement and maintenance of industrial peace by the elimination of stoppage in industries that serve the people as a whole. On 5th May 1957, when the second reading of the Bill which became Act No. 62 of 1957, amending the Industrial Disputes Act of 1950 "designed to provide adequate machinery for the speedy settlement of industrial disputes both collective and individual", especially by the establishment of Labour Tribunals, was taken up by the House of Representatives, Mr. T. B. Ilangaratne, Minister of Labour, Housing and Social Services, in explaining the need for compulsory arbitration, said:

> "It is the Government's policy that disputes should be settled by voluntary conciliation or arbitration as that is the way to lasting settlement. This country has not made any appreciable

advance in this direction primarily because of certain inherent defects in the trade union structure. Hence, till conditions improve, it is necessary to have the power to refer disputes for compulsory arbitration although I can give the assurance that such power will be used sparingly. The procedure outlined by me for the settlement of disputes lays clear emphasis on voluntary conciliation and arbitration . . ."

The Minister also said:

"Where neither party wants to accept arbitration or wants a reference of the matter to the Industrial Court or Labour Tribunal, they should be allowed to fight it out, except when Government considers the industry to be a public utility service and on its own motion and not because of the pressure of a union refers the matter to an Industrial Court or to a Labour Tribunal."

In *Thirunavakarasu v. Siriwardena and Others* [4], Wanasundera, J. observed as follows:

"The Industrial Disputes Act provides for State intervention in the resolution of disputes between management and workmen. The procedures that are devised therein for the settlement of industrial disputes reach beyond the interests of the contesting parties and are matters of real concern to the community at large."

In *Colombo Apothecaries Co. Ltd. v. Wijesooriya* [5], Tennekoon, J. (as he then was) said:

"It has been said frequently, and quite recently reiterated by their Lordships of the Privy Council that the purpose and object of the Act is the maintenance and promotion of industrial peace; and it may be added that the preservation of industrial peace is directed not to the redress of private and personal grievances but to the securing of the uninterrupted supply of goods and services to the public by employers engaged in such enterprises. The Act takes as the prime danger to industrial

peace that kind of situation which is capable of endangering industrial peace and gives it the name 'industrial dispute'. In the definition of industrial dispute the emphasis is thus not on the denial or infringement of a right of a workman by his employer but on the existence of a dispute or difference between given parties connected with the rights not merely of a party to the dispute but also of third parties. I use the word 'right' and 'wrong' in this context not in the sense of legal rights and wrongs but in the larger sense in which right and wrong may be determined by reference to equitable standards of employment and labour. The reliefs contemplated are not mere redress of individual wrongs. The purport and direction of the proceedings in relation to an industrial dispute is **settlement** of the dispute and the avoidance of a disturbance of industrial peace; relief or redress to individual workmen is only incidental to the more important function of restoring peace."

The prime object of the maintenance and promotion of industrial peace by the elimination of stoppage in industries that serve the people of the country as a whole, is achieved by making the provisions of a settlement (Section 14) or the terms of an award (Section 19) binding on **the parties, trade unions, employers and workmen** referred to in the settlement or award, as the case may be, 'in accordance with the provisions of section 17(2)'. An arbitrator is required by Section 17(2) to refer in his award to 'the parties and trade unions to which, and the employers and employees to whom, such award relates.' Understandably a settlement or award, in order to achieve industrial peace may, in the circumstances of a case, need to bind, not only persons who are bound to each other by contracts of employment, but also others.

Provision is also made by the legislature for the terms of a settlement by conciliation (see Section 14) or the terms of the award of an arbitrator (see Section 19) or Industrial Court (Section 26) to become 'implied terms in the contract of employment between employers and workmen bound by' the settlement or award, as the case may be. However, the modification of legal relations and the alteration of rights and obligations is incidental in the process of resolving industrial disputes. As Justice Issacs observed in the

Australian case of *George Hudson Ltd. v. Australian Timber Workers' Union* [6].

> "The interests of the disputants are great; but it is because struggles over their individual interests are detrimental to the great general interests of the [country], that the incidental alteration of legal relations of those engaged in industry is undertaken."

Those observations are quoted at page 112, paragraph 388, of the **Report of the Commission on Industrial Disputes Ceylon 1966-1969,** Sessional Paper IV 1970.

The achievement of the principal and wider purpose, in the circumstances of a case, (e.g., see per Wanasundera, J. in *Thirunavakarasu v. Siriwardena and Others,* (*supra*)), may well be through the formulation of a new set of terms and conditions of employment. It may, in the circumstances of a case be the obvious, or even the only practical means to the end. However, it need not always be so, and the terms of an award may be effective with regard to those who are not bound to each other by contractual obligations. The prime object should not be confused with an important, but, nevertheless, incidental, effect of altering the rights and duties of the **employers and workmen** bound by the award. The decision of the Court of Appeal leads one to the unacceptable view that if the incidental effect cannot be achieved, the prime object of the provisions must be frustrated.

The Industrial Disputes Commission, after referring to the prevailing circumstances of the country, concluded that it was 'still too early in the day for the excision of compulsory arbitration proceedings from our statute-book'. (See paragraph 407 of the **Report of the Commission on Industrial Disputes Ceylon 1966-69,** Sessional Paper IV of 1970). In Section 42(1) of its proposed legislation, the Commission set out the 'Effect of an award of an arbitrator or body of arbitrators'. (See page 335 of the Report of the Commission). As in the case of Section 19 of the present Act, there are also in the proposed legislation, two parts divided by a semi-colon. The first part is in terms identical to the pre-semi-colon

part of Section 19, except for the addition of the words 'or a body of arbitrators' after the word 'arbitrator'. The post-semi-colon parts reads as follows: 'and the terms of the award shall be implied terms in the contract of employment, if any, between the employers and workers bound by the award.' It is in terms identical to the corresponding part of Section 19, except for the addition of the phrase, 'if any'. The proposed amendment did not seek to alter the existing law, but it did anticipate the argument adduced in the matter before us.

There had, it seems, been no difficulty about the matter in Sri Lanka when the Commission made its recommendations or thereafter. The Arbitrator in his Order observed that 'There are countless cases of, say, dismissed workers dealt with by Arbitrators appointed under Section 3(1)(d) or 4(1) of the Industrial Disputes Act, culminating in awards granting relief of various kinds to employees who were not in the service from which they were dismissed when their cases were referred for arbitration." Such references and awards had proceeded on, what H. N. G. Fernando, C.J. in *Colombo Apothecaries Co. Ltd. v. Wijesooriya* [5] described as "the common sense principle that once a dispute has arisen, an employer cannot avoid the operation of the machinery for settlement by terminating the employment of his workmen."

However, notwithstanding the practical soundness of the way in which the matter had been approached in Sri Lanka, an argument on the lines similar to the one under consideration had been raised in England and not surprisingly, rejected. In *R. v. National Arbitration Tribunal, ex parte Horatio Crowther & Co. Ltd.*[7] Lord Goddard said:

> "It was submitted by counsel for the company that as at the date of the reference due notice had been given to the workmen to terminate their employment and their employment had thereby been terminated, there could be no trade dispute to refer, because there could not be a dispute or difference on any subject between those employers and workmen as the workmen were not in the service of the employers, and he reinforced this argument by reference to the definition of 'workman' which he submitted contemplated an existing contract so, as he put it, there must be some contract on which

> the reference could 'bite'. I cannot agree with that submission. If effect were given to it, it would mean that any employer, or, indeed any workman, could nullify the whole provision of the Order and the object of the regulation under which it was made by terminating the contract of service before a reference was ordered, or even after the matter was referred but before the tribunal considered it."

The observations of Lord Goddard were quoted with approval by Siva Supramaniam, J. in *Colombo Apothecaries Co. Ltd. v. Wijesooriya* (*supra*) at page 496.

In the matter before us, the Court of Appeal was of the view that the reference by the Minister was bad and conferred no jurisdiction on the arbitrator, because, having regard to the manner in which the contract of employment had come to an end, there was no 'industrial dispute'. The Court of Appeal said:

> "In the instance case, the [appellant] on his own resigned from the services of the Bank, and his resignation was accepted by the latter. Then the position is, that from the day his resignation was accepted by the [employer] Bank, he has ceased to be in the [Bank's] employment. Once he ceases to be in the employment of the Bank, it cannot be held that there is a live dispute between the parties which can culminate in an award affecting the terms of employment. Therefore it follows that [the] reference of a dead dispute to an Arbitrator by the Minister is not an 'industrial dispute' which is anticipated by section 4(1) of the Act, and also that such a dispute (one which is dead) is not one which comes within the definition of 'industrial dispute' under Section 48 of the Act. Thus it is clear that for a reference of an industrial dispute to be valid there must be a live dispute at the time of reference . . ."

The Court of Appeal was misled by the *obiter dicta* of Alles, J. in *State Bank of India v. Sundaralingam et al.*[5] in support of its view. After referring to the definition of 'industrial dispute' in the Act, Alles, J. said:

> "I cannot see how this definition can ever apply to 'any dispute or difference' between an employer and an ex-employee who has retired from the services of his employer. Thuraisingham ceased to be the petitioner's employee on 10th April 1962. This is a case of cessation of employment and not one of termination or reinstatement. When a person ceases to be in employment, there cannot be a live dispute between the parties which can ever culminate in an award affecting the terms of employment."

In the matter before Alles, J., a Trade Union had applied on behalf of Sub-Accountants who had retired from the service of the Bank sixteen months earlier for the benefits of a salary revision awarded in I.D. 306 and I.D. 306A. The dispute in I.D. 306 and I.D. 306A did not concern Sub-Accountants and the awards made no reference to them. There was, as Alles, J. held, no dispute to which they had been parties before they retired. In the circumstances, admittedly, there was no 'industrial dispute' which could have been referred by the Minister for settlement by arbitration. Consequently, the objection to the jurisdiction of the arbitrator was well founded in the circumstances of the case, although, with great respect, the suggestion that the definition of 'industrial dispute' could never apply to a dispute between an employer and ex-employee, cannot be supported. In my opinion, the *ratio decidendi* of that case is that an arbitrator appointed by the Minister under Section 4(1) of the Industrial Disputes Act has no jurisdiction to entertain a matter in which the dispute arose after the cessation of employment.

The case before the Court of Appeal was clearly distinguishable on the ground that the ex-employee before it was a party to a dispute that arose while he was in active service. In the matter before the Court of Appeal, the dispute arose on the 19th of October 1989 when the Bank responded negatively to the appellant's request. If the Bank's response on that occasion was not of a firm and definite nature, the letter of the Bank dated 3rd November 1989 left no uncertainty or doubt that there was a difference. The appellant, by his letter dated 10th November 1989, tendered his resignation with effect from 13th November 1989, and the Bank, in its letter dated 5th December 1989, accepted the resignation 'with effect from that date'. Perhaps, if the appellant's letters on and after the 10th of November

are anything to go by, the controversy, at least as far as the appellant was concerned, became more heated as the appellant became argumentative. The Bank, having rejected the appellant's request finally on 3rd November, 1989, did not openly and formally express or state its views reiterating and giving renewed expression of its views, but affirmed its negative position by remaining silent and unresponsive. And so, from the time the appellant's request for retirement benefits was rejected, the question whether the appellant ought to have been granted retirement benefits was a matter in dispute. A dispute exists where there is a 'difference', and this may be long before there is a combat between the sides. (E.g. see *Beetham v. Trinidad Cement Ltd.*[9].) The dispute which had arisen when the appellant was an employee of the Bank was not resolved when the Minister referred it for settlement by arbitration.

The Court of Appeal was of the view that the dispute had been 'extinguished'. It said that:

> "With his resignation voluntarily, and that resignation has been accepted by his employer, the dispute, if at all, ceases to continue after the contract of employment is extinguished. I am of the view that the dispute regarding terms of employment (premature retirement comes within the terms of employment) does not continue after the contract of employment between the two parties ceased to be in force with the 2nd respondent's resignation."

The Court of Appeal referred to the analysis of the definition of 'industrial dispute' in the Industrial Disputes Act by Tennekoon, J. in *Colombo Apothecaries Co. Ltd. v. Wijesooriya* [5]. The phrase, it might be observed in passing, had been already analysed in India in 1959 by Justice Das in the *Dimakuchi Case* [2] (*supra*) in almost identical terms, Tennekoon, J. said that the definition fell into three parts: The first referred to the *factum* of a dispute or difference; the second part to the parties to the dispute; and the third, to the subject-matter of the dispute. With regard to the third part, Tennekoon, J., having said that "the dispute or difference must be connected with the employment or non-employment or the terms of employment, or with the conditions of labour or the termination of the services or the reinstatement in

service of any person", drew attention to the fact that, "while in the second part the parties are described by reference to such words as 'employers' and 'workmen', the legislature in describing the subject-matter of the dispute did it by reference not to 'any workman' but by reference to **'any person'**". After explaining why the phrase 'any person' was "not as wide as it at first sight appears", Tennekoon, J. deemed it "unnecessary, at least for the purposes of this case, in which the question does not directly arise for consideration, to give an unduly restricted meaning to the words 'any person';". His Lordship, however, added that:

> "What is important to note, of course, is that the legislature, in using the expression 'any person' instead of the term 'workman' in that portion of the definition of 'industrial dispute' which relates to the subject-matter of the dispute, used an expression wide enough to include a person who is not a *de facto* or *de jure* workman in its primary sense and into this class would fall both a person who has never had employment before and also a person who having been in service has been discharged."

It is not necessary for the purposes of the matter before me to consider what the expression 'any person' means, although I might say that I have no difficulty in accepting the view of S. K. Das, J. with whom S. R. Das, C.J. agreed (Sarkar, J. taking a somewhat different view) in the *Dimakuchi Case* (*supra*), that the expression 'any person' "cannot mean anybody and everybody in this wide world", for as Chagla, C.J. pointed out in *Narendra Kumar Sen and Others v. All India Industrial Disputes (Labour Appellate) Tribunal* [10] (and quoted with approval by S. K. Das, J. in the *Dimakuchi Case*), it would lead to absurd results. However, whether in England, (e.g. see *R v. National Arbitration Tribunal, supra*), India (e.g. see *Cawnpore Tannery Ltd. Kanpur v. Guha and others* [11] or in Sri Lanka, there has been no doubt for about half a century that the termination of a contract of employment does not *per se* extinguish a dispute which could be referred for settlement.

Indeed, the Court of Appeal in this case too seemed to be prepared to accept the view that the termination of a contract of employment did not necessarily extinguish a dispute. The Court of

Appeal, however, was of the view that 'discharge' meant 'dismissal' and that there was no 'industrial dispute' in this case, since the contract of employment had come to an end, not by reason of 'dismissal' but because the appellant had **resigned.**

The Court of Appeal also referred to the Act that 'industrial dispute' was defined in Section 48 of the Act as 'any dispute or difference between an employer and workman', and observed that 'workman', in terms of that section, included 'any person whose services have been terminated'. The Court of Appeal was of the view that the words 'whose services have been terminated' meant "an involuntary termination such as dismissal from service and not a voluntary termination such as resignation from service."

As we have seen, Alles, J. in *State Bank of India v. Sundaralingam et al* [8] had drawn a distinction between 'cessation' of employment, which he said occurred when a person retired, on the one hand, and 'termination' on the other. The Court of Appeal seems to have taken this to mean that, where a dispute arose while the contract of employment was in force, the way in which the contract of employment came to an end is a decisive factor in the determination of the question whether the dispute was extinguished. According to the Court of Appeal, where an employer-employee relationship comes to an end, initiated by the voluntary act of the employee, the dispute ceases to exist, but not, if the contract is brought to an end on the initiative of the employer.

As we have seen, in *R. v. National Arbitration Tribunal* [7], Lord Goddard, rejected the submission that there must be an existing contract of employment because "if effect were given to it, it would mean that any employer, **or indeed, any worker,**" (The emphasis is mine) "could nullify the whole provision of the Order and the object of the regulation under which it was made by terminating the contract of service before a reference was ordered or even after the matter was referred but before the Tribunal considered it." Lord Goddard made it very clear that a dispute that had arisen while the contract of employment existed could be referred for settlement even though the contract had been later terminated and whether such termination had been initiated or brought about by the employer or by the workman himself. His Lordship said:

> "It is, in my opinion, quite clear that there was here a trade dispute existing at any rate down to the date of the dismissal of the workmen . . . If there was a trade dispute it can, in my opinion, be referred to the tribunal whether or not the dispute has resulted in workmen being dismissed **or in their having discharged themselves.**"

The emphasis is mine.

The matter was not raised in the case of *State Bank of India v. Edirisinghe and Others* [11]. However, in that case the fact that the employee had resigned was not considered to be an obstacle to the reference of the dispute for settlement by arbitration.

For the reasons set out in my judgment, I set aside the judgment of the Court of Appeal with costs.

WADUGODAPITIYA, J. – I agree.

WIJETUNGA, J. – I agree.

Judgment of Court of Appeal set aside.