SHANMUGAM
V.
MASKELIYA PLANTATIONS LIMITED

SUPREME COURT.
G. P. S. DE SILVA C.J.,
RAMANATHAN J.,
ANANDACOOMARASWAMY J.,
S. C. APEAL NO. 45/96.
C.A. APPLICATION NO. 73/95.
ARBITRATION NO. 2346/93.
25 JULY AND 01 AUGUST, 1996.

Industrial Dispute - Extensions of service - Reference to arbitration under the Industrial Disputes Act, section 4(1) - Contractual entitlement to extension - Industrial Disputes Act, section 17(1).

The appellant had been granted three extensions and his application for a fourth extension was refused. The arbitrator held with the employer that the employee had no contractual right to an extension.

Held:

The award is vitiated by an error of law which goes to jurisdiction in that the arbitrator approached the applicant's case from the stand point of a contractual right when the relevant section 17(1) of the Industrial Disputes Act enjoined him to make such award as may appear to him just and equitable.

APPEAL from judgment of the Court of Appeal.

Faiz Mustapha P.C. with R. K. S. Suresh Chandra for the Appellant.
Gomin Dayasiri with S. Perera for the 2nd Respondent.

Cur. adv. vult.

26 August, 1996.
G. P. S. DE SILVA, C. J.

The appellant was employed as the personnel officer under the 2nd respondent, the Maskeliya Plantations Ltd., at the time material to the dispute. He had been previously granted three extensions of service after he had reached the optional age of retirement, namely 55

years. However, his application for the fourth extension of service was refused.The appellant made representations to the Commissioner of Labour in this regard and the dispute was ultimately referred to arbitration in terms of section 4(1) of the Industrial Disputes Act. The relevant part of the reference to arbitration reads thus: "Whether the denial of future extensions of service to Mr. K. T. Shanmugam from November 1993 by the Maskeliya Plantations Ltd., is justified and if not what relief should be granted to him." (emphasis added). After an inquiry, the arbitrator held that "the circulars quoted by the workman do not support the **right** he claimed for him to go on in the service of Maskeliya Plantations Ltd., till he is 60 years of age." In the award the arbitrator stated, "The main matter in dispute is the denial of future extensions of service to the workman. The learned Counsel for the company stated in his preliminary address to court that there must be proof of a right claimed, for there to be a denial. I agree." The arbitrator examined the circulars relating to extensions in service after reaching the age of 55 years from the point of view of **a right** claimed by the appellant; he held that there was no such right and that the matter fell entirely within the discretion of the 2nd respondent.

Aggrieved by the decision of the arbitrator the Appellant sought a writ of certiorari to quash the award. The Court of Appeal dismissed this application. Hence the appeal to this Court. Special leave to appeal was granted on the following question. "Was the Court of Appeal in error in considering the question of extension in service solely as a matter of contractual right and not on the basis whether the refusal of extension of service was justified."

The approach of the Court of Appeal to the matter in dispute is clearly indicated in the following passage in the judgment. "The crucial question in issue, has the petitioner a right to continue in employment till he reached 60 years? . . . In my view the petitioner was aware that the extension was at the discretion of the management. As a matter of right he was not entitled to get an extension."

Mr. Mustapha for the appellant submitted that both the Court of Appeal and the arbitrator were in serious error in considering the matter in dispute from the standpoint of a contractual right. Counsel urged that this was clearly contrary to the relevant statutory provision, namely,

section 17(1) of the Industrial Disputes Act which required the arbitrator to "make such award as may appear to him just and equitable". Mr. Mustapha also drew our attention to the terms of reference of the dispute, where the words used are "whether the denial of future extensions of service . . . is justified."

Mr. Mustapha rightly conceded that the Appellant has no contractual right to an extension in service after the optional age of retirement, namely 55 years. Admittedly, the appellant was granted 3 extensions of service after he reached 55 years but was refused his 4th extension of service. The question then is whether the refusal of the 4th extension was justified in the particular facts and circumstances of this case. This was the true issue before the arbitrator and I agree with Mr. Mustapha that the arbitrator erroneously viewed the dispute largely, if not, entirely, as a matter of contractual entitlement.

What then are the facts which resulted in the refusal of the appellant's application for his 4th extension in service? By P 7 dated 7.4.92 he applied for his 3rd extension in service. The endorsements made on P7 expressly states that his work and general conduct are good and the extension in service applied for was recommended by the Chairman of the Sri Lanka State Plantations Corporation. The Secretary to the Ministry of State Plantations by his endorsement on P7 dated 25.5.92 allowed the Appellant's application for the 3rd extension in service. It is of relevance to note that the 3rd extension was to expire on 18.11.93.

The decision to grant the Appellant his 3rd extension in service was communicated to him by P6. It is a letter dated 23.9.92 addressed to the Appellant by the General Manager of Maskeliya Plantations Ltd. It seems to me that it is P6 that has given rise to the dispute between the parties and the Appellant's complaint is founded largely on P6. P6 reads thus:

"23rd September, 1992.
Mr. K. T. Shanmugam,
Personnel Officer,
Maskeliya Plantations Limited,
"Glencroft", Norwood.

Dear Sir,

Application for extension of service

We refer to your application dated 7.4.92 requesting the S.L.S.P.C. Management to grant you an extension in your current employment by another 01 year.

Considering your request, we have decided to grant you another extension upto 18th November, 1993. Please note that we are unable to extend your services after 18th November, 1993, and that no further extension would be granted.

You are therefore, requested to finalise your retirement arrangements by that date.

Yours faithfully,
Maskeliya Plantations Limited
General Manager."

The Appellant's reply to P6 is P8 which reads as follows:

"Through the Plantations Director.
The General Manager,
Maskeliya Plantations Limited,
45/12, Ocean Lines Building,
3rd Floor, Colombo 2.

Dear Sir,

Application for extension of service

I have for acknowledgement your letter dated 23rd September, 1992 on the above subject.

I observe from the 2nd paragraph of your letter, that you are unable to extend my services after 18th November, 1993, and that no further extension would be granted. I have also been advised to finalise my retirement arrangements by that date.

In this regard I respectfully submit that my 3rd extension which expires on 18.11.93 had already been granted by the Ministry of Plantations Industries on 25th May, 1992 and your letter under reference confirms only that position. Since the extension granted upto 18.11.93 is my 3rd extension, I am entitled to further 2 extensions, i.e. 4th and 5th. In these circumstances, I will be forwarding my application for the 4th extension at the appropriate time and I will not be finalising retirement arrangements as advised by you.

Yours faithfully,
Maskeliya Plantations Limited,
K. T. Shanmugam
Personnel Officer."

The heading of P6 is "Application for extension of service." It expressly states that the application for the 3rd extension in service made by P7 has been granted. This means that the appellant can now remain in service until 18th November, 1993. At the same time, P6 states that the Appellant will not be granted any further extensions of service after 18th November, 1993. The relevant circulars provided that the extension of service on completion of 55 years "shall be at the discretion of the management and **will be considered annually on receipt of applications from those who wish to have their services extended.**" What needs to be stressed is that P6 effectively precluded the management from considering on its merits the Appellant's subsequent application for his 4th extension in service. The Appellant in fact applied for his 4th extension in service by letter dated 26.4.93. By P9 dated 3.5.93 the appellant was informed that **"As already indicated** you will not be given extension of service beyond November, 1993". P6 in effect made retirement compulsory at the age of 58, in so far as the Appellant was concerned. This was a decision which was unreasonable and arbitrary. Neither the arbitrator nor the Court of Appeal viewed this matter in the light of the mandatory provisions contained in section 17(1) of the Industrial Disputes Act and the terms in which the reference to arbitration was made. This clearly is an error of law which goes to jurisdiction. The arbitrator has posed the wrong question and has failed to consider the true question which arose for decision.

Mr. Gomin Dayasiri for the 2nd Respondent strenuously contended that P6 was in accord with the relevant circular which required the

management to give the Appellant one year's notice of retirement. Counsel urged that the Appellant in his evidence conceded that the relevant circular required the management to give one year's notice to the workman in the event of a refusal of extension of service and that precisely was the purpose of P6. I find, however, that the appellant in his evidence has also stated, "My position is that the notice refusing extension given to me was irregular as that notice was tagged on to extension granted to me . . .It should have been given to me only when I made my application for the 4th exension." More importantly, the unreasonable and arbitrary character of P6 is explicitly set out by the appellant in his statement filed before the arbitrator. Referring to the contents of P6, the Appellant states: "In other words what the Secretary of the Ministry of Plantations granted me once has been re-granted again by the General Manager of Maskeliya Plantations Ltd., with notice that no further extensions would be granted **or put it in another form, they converted my 3rd extension into a period of notice, but they themselves gave no extension which means that they did not give extension but revoked what was given.**" (emphasis added).

It is also a matter of significance that no reasons were given for the refusal of the 4th extension of service. The Appellant repeatedly so stated in his evidence and the documents support that position.

On a consideration of the matters set out above, I am of the opinion that Mr. Mustapha's submission that the award is vitiated by an error of law which goes to jurisdiction is well founded. I accordingly set aside the judgment of the Court of Appeal and direct that a *Writ* of *Certiorari* do issue to quash that part of the award which relates to the Appellant's claim for extension in service.

In all the circumstances I make no order as to costs of appeal.

RAMANATHAN, J. – I agree.

ANANDACOOMARASWAMY, J. – I agree.

Appeal allowed.

Certiorari issued.