ALBERT

v.

VEERIAHPILLAI

SUPREME COURT.
SAMARAKOON, C. J., SHARVANANDA, J. AND WANASUNDERA, J.
S.C. APPEAL 73/80—C.A. 1644/79 REV.— L. T. HATTON K/4330.
SEPTEMBER 2, 1981.

Labour Tribunal—Vacation of earlier order made without jurisdiction—Inherent jurisdiction of Tribunal to vacate such order—Natural justice—Subsequent order directing reinstatement of applicant—Appeal therefrom dismissed for want of appearance—Effect—Power of Supreme Court to allow grounds of appeal not set out in application for leave to appeal—Circumstances when that power will be exercised—Articles 118 and 127 of the Constitution.

The Labour Tribunal on 12th December, 1966, vacated an ex-parte order made by it earlier and in so doing it purported to exercise jurisdiction under regulation 29 made under the Industrial Disputes Act. This regulation however enabled the Tribunal only to correct clerical errors and mistakes specified therein. The order vacated was one by which the applicant's application to the Tribunal was dismissed for want of appearance and the reason for vacating it was that the applicant had subsequently satisfied the Tribunal that the reason for his default was that he had no notice of the hearing.

On a subsequent date the applicant was present but the respondent though he had notice of the date was absent and the inquiry proceeded ex-parte. The Labour Tribunal then made order directing the reinstatement of the applicant. The respondent appealed from the said order to the Supreme Court (as formerly constituted) but this appeal was dismissed for want of appearance.

Held

(1) The authority to vacate an earlier order is attributable to the inherent jurisdiction of the Tribunal to set aside such order if it had been made without jurisdiction in as much as the breach of principles of natural justice goes to jurisdiction and renders an order or determination made in proceedings of which the person against whom the order or determination was made has had no notice, void.

(2) Further, the appeal preferred by the respondent to the Supreme Court having been dismissed, the Supreme Court must be deemed to have rejected the respondent's argument canvassing the Tribunal's order of 12th December, 1966 whereby it vacated its earlier ex-parte order and to have affirmed the validity of the said order of the Tribunal. The respondent being bound by the said judgment of the Supreme Court is precluded from reagitating the question of authority of the Tribunal to vacate the ex-parte order of dismissal made by it.

Held further

The cumulative effect of Articles 118 and 127 of the Constitution enables the Supreme Court to allow an appellant to urge before it grounds of appeal other than the one on the basis of which the Court of Appeal granted leave, if the material on record warrants the determination of the same, subject however to the limitation that it may not permit a party to raise a new point if the other party has had no proper notice of the new ground, or would suffer grave prejudice by the belated stage at which it is raised.

Cases referred to

(1) *Sri Lanka Ports Authority v. Peiris (1981) 1 Sri L.R. 101.*
(2) *Craig v. Kanseen, (1943) 1 All E.R. 108.*
(3) *Kofi Forfie v. Seifah, (1958) A.C. 59; (1958) 2 W.L.R. 52; (1958) 1 All E.R. 289n.*
(4) *Peiris v. The Commissioner of Inland Revenue, (1963) 65 N.L.R. 457.*
(5) *Nagalingam v. Ledchumipillai, (1951) 54 N.L.R. 28.*

APPEAL from a judgment of the Court of Appeal.

N. R. M. Daluwatte, for the applicant-appellant.
V. S. A. Pullenayagam, with *R. Manickavasagar* and *Miss Mangalam Kanapathipillai,* for the respondent.

Cur. adv. vult.

September 23, 1981.

SHARVANANDA, J.

By his application dated 6th July, 1965, the applicant-appellant applied to the Labour Tribunal for relief against the termination of his services by the employer-respondent. The application was taken up for inquiry on 2nd October, 1966. On that date the respondent was present, but the applicant was absent. The Tribunal, by its order dated 31st October, 1966, dismissed the application for want of appearance. The applicant, however, later appeared before the Tribunal and satisfied the Tribunal that the reason for his default was that he had had no notice of the hearing on 2nd October, 1966. On it being so satistied, the Tribunal made order dated 12th December, 1966, vacating its earlier order of dismissal of the application and restored the application to the roll of pending inquiries. The hearing of the application was put off on a number of dates as the respondent was away in India and was unable to appear. Finally, on 3rd August, 1970, the matter was taken up for inquiry. On that date the applicant was present, but the respondent, though he had notice of the date, was absent. The inquiry proceeded ex-parte. By its order dated 10th September, 1970, the President, Labour Tribunal, directed, *inter alia,* the re-instatement of the applicant. The respondent thereupon preferred an appeal to the Supreme Court from the said order. The appeal came up for hearing before the Supreme Court on 25th January, 1972. Neither party was present and the appeal was dismissed. The respondent did not give up. By making frivolous applications to the Tribunal and appealing to the Supreme Court from the orders of the Tribunal, the respondent has, to date, succeeded in stalling the enforcement of the order of the Tribunal

dated 10th September, 1970. In 1979 his ingenuity suggested a new course.

By his application dated 13th August, 1979, the respondent moved the Court of Appeal to revise the aforesaid orders of the Tribunal dated 12th December, 1966 and 10th September, 1970. He succeeded in persuading that Court to hold with him. The Court of Appeal, by its judgment dated 5th November, 1980, held that the order dated 12th December, 1966, by which the Tribunal vacated its earlier order dated 31st October, 1966, entered for default of appearance was null and void, as having been made without jurisdiction inasmuch as Regulation 29 of the Industrial Disputes Act under which the President, Labour Tribunal, purported to vacate his earlier order did not give jurisdiction to the Labour Tribunal to vacate such an order. The Court of Appeal was of the view that since the order dated 12th December, 1966, was made without jurisdiction, the subsequent order made on 10th September, 1970, was also made without jurisdiction and was therefore void. The applicant-appellant has now, with the leave of the Court of Appeal, preferred this appeal to this Court from the order allowing the employer-respondent's revision application.

At the outset of the hearing of this appeal, counsel for the respondent stated that he was constrained to raise a preliminary objection to the hearing of the appeal. He submitted that the Court of Appeal had granted leave to Appeal under Article 128(1) of the Constitution as "there was a substantial question of law involved, inasmuch as whether the Labour Tribunal had the jurisdiction to vacate an order that it had made on the ground of default of appearance of any particular party concerned". He contended that it is not open to the appellant to agitate any other question of law than the one which, in the view of the Court of Appeal, was involved in the appeal. He also submitted that the appellate jurisdiction of this Court is confined to the adjudication of the question of law stated by the Court of Appeal and that the appellant cannot canvass any other question. He argued that if this Court hears new contentions or points of law other than that which, in the view of the Court of Appeal, warranted leave to appeal and sets aside the judgment appealed from on those new grounds, it would, in effect, be exercising powers of revision in excess of the jurisdiction vested in it by the Constitution. In my view this objection of counsel for the respondent is without

merit. Articles 118 of the constitution provides that "the Supreme Court shall be the highest and final court of record in the Republic and shall, subject to the provisions of the Constitution, exercise, *inter alia,* final appellate jurisdiction." Appellate jurisdiction may be exercised by way of appeal or revision. Article 128 of the Constitution prescribes how the appellate jurisdiction of this Court is invoked by way of appeal. The leave of this Court or of the Court of Appeal is a sine qua non for a party to come to this Court by way of appeal. But once leave is granted, on whatever ground it be, the appeal is before this court and this Court is seised of the appeal. Its appellate jurisdiction extends to the correction of all errors in fact or in law which shall be committed by the Court of Appeal or any Court of First Instance (vide Art. 127 of the Constitution). Therefore, it is competent for this Court to permit parties to bring to its notice errors of law or of fact and raise new contentions or new points of law, or *suo motu* to raise them if there is proper foundation for them in the record. Thus, this Court will allow an appellant to urge before it grounds of appeal not set out in the application for leave if the material on record warrants the determination of same. This Court is not hamstrung by the fact that the Court of Appeal had not granted leave to appeal on the ground urged before the Supreme Court. This Court however, doing justice between the parties, may not permit a party to raise a new point if the other party has had no proper notice of the new ground, or would suffer grave prejudice by the belated stage at which it is raised. The appellate jurisdiction of this Court is very wide in its amplitude, as it should be, it being the final Court of Appeal. The narrow construction contended for by Counsel erodes its width and usefulness. What I stated in *Sri Lanka Ports Authority v. Peiris* (1) is apposite in this context:

> "Leave to appeal is the key which unlocks the door to the Supreme Court, and once the litigant has passed through that door, he is free to invoke the appellate jurisdiction of this Court for the correction of all errors in fact and/or in law which have been committed by the Court of Appeal or any Court of First Instance. This Court, however, has the discretion to impose reasonable limits to that freedom."

In my view the Court of Appeal has misdirected itself on the question of the jurisdiction of the Labour Tribunal to set aside its order dated 31st October, 1966. According to its judgment, the Tribunal's jurisdiction to alter orders made by it rested only on

Regulation 29 of the Industrial Disputes Act and the Tribunal had no power other than the power conferred on it by that Regulation to alter or vacate its orders. This Regulation 29 enables a Labour Tribunal only to correct clerical errors and mistakes specified therein. This regulation does not vest any jurisdiction on a Labour Tribunal to make an order vacating an earlier order made by it. But that does not mean that the Tribunal has no jurisdiction to do so. The Court of Appeal has not addressed its mind to the inherent jurisdiction of the Tribunal to set aside the order of dismissal for default of appearance on the part of the applicant when the applicant had no notice of the hearing. Breach of principles of natural justice goes to jurisdiction and renders an order or determination made in proceedings of which the person against whom the order or determination was made has had no notice, void. As the applicant had no notice of the hearing on 2nd October, 1966, the proceedings of that date are a nullity, and the Tribunal had, in the circumstances, no jurisdiction to make an order dismissing the application of the applicant. Hence the order of dismissal dated 31st October, 1966, was made without jurisdiction and the Labour Tribunal had the inherent jurisdiction to set aside that order, on it being satisfied that the applicant has had no notice of the hearing. A Tribunal has inherent jurisdiction to set aside a judgment or order which it had delivered without jurisdiction. As stated by Lord Greene M. R. in *Craig v. Kanseen* (2):

> "A person who is affected by an order which can properly be described as a nullity is entitled, ex debito justitae to have it set aside. So far as the procedure is concerned, it seems to me that the Court in its inherent jurisdiction can set aside its own order and that it is not necessary to appeal from it."

The above statement of the law was quoted with approval by the Privy Council in *Kofi Forfie v. Seifah* (3).

The Tribunal thus had the inherent power to declare the proceedings of 2nd October, 1966, a nullity. The fact that the Tribunal had incorrectly referred to Regulation 29 of the Industrial Disputes Act for its jurisdiction to make the order of vacation does not vitiate the order. The authority to vacate its earlier order, which was a nullity, is attributable to another source, viz., the inherent jurisdiction of the Tribunal to set aside an order made without jurisdiction. By virtue of this authority the Tribunal had the power to do the thing that it did. The exercise of a power will

be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. *(Peiris v. The Commissioner of Inland Revenue* (4)). In my view the Court of Appeal was in error in holding that the order of 12th December, 1966, was made without jurisdiction.

The Court of Appeal has further overlooked the fact that the respondent had preferred an appeal to the Supreme Court from the final order made by the Labour Tribunal on 10th September, 1970, and that the appeal was dismissed by the Supreme Court. The Court of Appeal has not appreciated the legal significance of this dismissal. When an appeal is dismissed, there being no appearance for the appellant, the dismissal of the appeal must be regarded as involving the rejection of all the arguments which might have been raised at the hearing of the appeal. The absent party must bear the consequences of his own laches (vide *Nagalingam v. Ledchumipillai* (5).) The effect of the Supreme Court judgment dismissing the respondent's appeal was that the Supreme Court should be deemed to have rejected the respondent's argument canvassing the Tribunal's order of 12th December, 1966, and to have affirmed the validity of that order.

The respondent is bound by the judgment of the Supreme Court dated 25th January, 1972, affirming the order of the Labour Tribunal dated 10th September, 1970, which proceeded on the basis that the order of 12th December, 1966, was a valid order. In the circumstances, the respondent is precluded from re-agitating the question of the authority of the Tribunal to vacate the *ex-parte* order of dismissal made by it.

I allow the appeal, set aside the judgment of the Court of Appeal and dismiss the respondent's revision application. The respondent shall pay the applicant-appellant the costs of this appeal and of the revision application in the Court of Appeal.

There has been undue delay in the enforcement of the order of the Labour Tribunal dated 10th September, 1970. I direct that steps be taken to enforce the said order without any further delay.

SAMARAKOON, C. J.—I agree.

WANASUNDERA, J.—I agree.

Appeal allowed.

J. P. de Almeida,
Attorney-at-Law.