

SRI LANKA STATE PLANTATION CORPORATION
v.
LANKA PODU SEVA SANGAMAYA
(on behalf of 25 workmen)

SUPREME COURT.

TAMBIAH, J., H.A.G. DE SILVA, J. AND KULATUNGA, J.

S.C APPEAL No. 29/87 - C.A.No. 302/79 -

L.T. Nos. 191 - 203/78, 3/271 - 280/78, 3/333/78, 3/433/78.

MARCH 7, 1989.

Industrial Dispute - Termination of employment - Reinstatement - Compensation in lieu of reinstatement - Industrial Disputes Act, sections 33 (3), (5) and (6).

(1) Where the termination of service is found to be unjustified, the workman is, as a rule, entitled to reinstatement. An order for payment of compensation is competent in situations referred to in sections (33) (3) (workman in personal service) and (33) (5) (workman requesting compensation instead of reinstatement) or where such order would be otherwise just and equitable in the circumstances as contemplated by section (33) (6) of the Act.

(2) An appeal lies against an order of a Labour Tribunal on a question of law. Thus the Appeal Court may intervene if the Tribunal appears to have made a finding for which there is no evidence - a finding which is both inconsistent with the evidence and contradictory of it. If no such ground is made out the Appellate Court is not competent to vary an order for reinstatement made by a Tribunal on the ground of subsequent events, save in exceptional circumstances.

(3) Thus an order for payment of compensation in lieu of reinstatement may be substituted in appeal if reinstatement has become demonstrably impracticable due to changes in the employer's establishment or the closure of the business or by reason of the workman having reached the age of retirement. However mere lapse of time (8 years) since the dismissal of an order for reinstatement would not warrant reversal of an order for reinstatement.

(4) Out of 25 workmen involved, 2 had died, 6 had reached the age of retirement and 2 workmen had already been re-employed. Only 15 had to be reinstated. Having regard to the positions held by these workmen (watcher, store-keeper, tractor driver, clerk, assistant project managers, assistant clerks, field officers, field supervisors) and the fact that the 1st Respondent - Corporation appeared to have the monopoly of managing a very large extent of estate lands there could be no difficulty in reinstating these workmen.

Cases referred to:

1. *Ceylon Transport Board v. Gunasinghe* - 72 N.L.R. 76.
2. *Vijaya Textiles Ltd. v. General Secretary, National Employees Union* - 73 N.L.R. 405.
3. *The Superintendent - We Oya Group, Yatiyantota and another v. The Ceylon Estates Staff Union* - 74 N.L.R. 189.
4. *The Ceylon Transport Board v. Wijeratne* - 77 N.L.R. 481.
5. *The Caledonian (Ceylon) Tea and Rubber Estates Ltd. v. Hillman* 79 (1) N.L.R. 421.

APPEAL from Judgment of the Court of Appeal.

Faiz Mustapha, P.C. with *Mahanama de Silva* for Applicant - Respondent - Petitioners.

H.L. de Silva, P.C. with *Shirley M. Fernando* for the 1st Respondent - Appellant Respondents.

Cur. adv. vult.

April 21, 1989.

KULATUNGA, J.

In early 1978 Lanka Podu Seva Sangamaya the Applicant - Respondent - Petitioner made applications to the Labour Tribunal on behalf of 25 workmen complaining that the services of the said workmen who were its members employed on estates which had vested in the Land Reform Commission had been terminated without any justifiable reason or cause. The respondents to the applications before the Tribunal were the Sri Lanka State Plantations Corporation 1st Respondent - Appellant - Respondent, the Liquidator Udarata Co - operative Development Board and the Land Reform Commission.

The workmen consisted of one watcher, one store-keeper, one tractor driver, one clerk, two assistant project managers, five assistant clerks, six field officers, seven field supervisors and one workman in respect of whom no proof of position held is available.

At the inquiry before the Tribunal, the Applicant Union called workmen. Sumana Banda, Upali Disssanayake and S.H. Weeratunge whilst the 1st Respondent - Corporation called M.B. Wanninayake its Personnel Manager.

The workman Weeratunge who testified before the Tribunal and who was 46 years of age then, had been first appointed in 1966 whilst the other workmen appear to have been employed from 1972 onwards. At the time of the alleged termination they were in employment on lands which had vested in the Land Reform Commission. These lands were subsequently placed under the management of the Udarata Co - operative Development Board (USWASAMA) which went into liquidation on 1st November, 1977 on which date the 1st Respondent - Corporation took over the management of the estates.

It was alleged that the services of one of the workmen was terminated on 25th August, 1977 whilst the services of the other workmen were terminated between 18th and 25th of November, 1977.

The position of the 1st Respondent - Corporation was that although the management of the estates was taken over on 1st November, 1977 they were physically taken over between 21st and 30th November, 1977 and that most of the workmen had vacated employment by failing to report for work on their own whilst others had been forcibly ousted from the estates by some outsiders during the disturbances which followed the General Elections.

However, it is in evidence that the 1st Respondent - Corporation had in fact assumed management of the estates as from 1st November, 1977. This evidence consists of orders for the transfer of workmen effected on 14th November, 1977 and the payment of their wages for November, 1977 by the 1st Respondent - Corporation.

The Tribunal found that immediately after the General Elections in July, 1977 there existed a situation on the relevant estates where the

workmen were not permitted to continue in employment. That was from somewhere about 30th August, 1977 from which time they had been attached to the office of the USWASAMA up to its liquidation. Two of the persons who forcibly entered the estates during this period namely, T.Abeysundera and R.E. Jayasinghe had obtained appointments as Project Managers and were responsible for the termination of the workmen concerned.

On the basis of the evidence led, the Tribunal reached the conclusion that the 1st Respondent - Corporation had taken on itself the responsibility to continue the workmen in employment on the liquidation of the USWASAMA, the services of the workmen were terminated and that such termination was wrongful and unjustified. The Tribunal held that the 1st Respondent - Corporation should bear the entire responsibility for the consequences following from such termination and ordered their reinstatement and further ordered that each of them be paid one year's salary by way of back wages.

The 1st Respondent - Corporation appealed to the Court of Appeal against the order of the Tribunal alleging the following defaults by the Tribunal :-

- (a) Failure to assess the evidence and to give reasons for the findings;
- (b) failure to consider the fact that there was no contract of employment between the workmen and the 1st Respondent - Corporation ;
- (c) failure to consider the fact that the workmen had not worked even a single day under the 1st Respondent - Corporation and that they had not been paid wages at any time by the 1st Respondent - Corporation.

The 1st Respondent - Corporation prayed that the order of the Tribunal be set aside and he be granted relief as prayed for in his answer to the Tribunal. In his answer the 1st Respondent - Corporation had prayed for the dismissal of the applications for relief made on behalf of the workmen.

I am of the opinion that there was no merit in the appeal of the 1st Respondent - Corporation. In fact the Court of Appeal dismissed the

appeal except as regards the workmen P.S.Withanage and S.B. Dodanwela who had, according to the evidence led before the Tribunal, been re - employed.

However, by its judgment dated 10th September, 1985 and the subsequent order dated 28th July, 1986 the Court of Appeal proceeded to revise the order for reinstatement on the ground that an order for reinstatement of the workmen after the lapse of 8 years is impracticable and that an order to reinstate the workmen whose ages are unknown is not a just and equitable order. The Court also observed that many changes had taken place in the administration of the estate during this period of time and substituted an order for compensation being one month's salary for every year of service upto the date of that order. It was also ordered that if the wage structure had been varied after 1977, compensation has to be made on that basis. The order of the Tribunal awarding a sum equivalent to one year's salary to each of the workmen concerned by way of back wages was affirmed.

The Union appealed to this Court alleging that the Court of Appeal misdirected itself in holding that the employees cannot be reinstated because 8 years have lapsed since the date of termination of the workmen and that in any event compensation ordered in lieu of reinstatement is grossly inadequate. It is also urged that the Court of Appeal was in error in taking into account events which are said to have occurred subsequent to the order of the Labour Tribunal.

At the hearing before us, Mr. Faiz Musthapa, P. C. learned Counsel for the appellants strenuously contended that the Court of Appeal was in error in revising the order of reinstatement of the workmen concerned. He urged that the matters taken into account by the Court of Appeal had not been pleaded by the employer either before the Labour Tribunal or in the Petition of Appeal against the order of the Tribunal. It was also submitted that in any event, there is no evidence on the basis of which the Court of Appeal could have reached the conclusion that the reinstatement of the workmen is impracticable or that the order of the Tribunal is not just and equitable.

Learned Counsel also submitted that the workmen insist on the right to reinstatement in employment. He drew our attention to the affidavit of Jayaratne Maliyagoda dated 26th January, 1987 which, inter alia, avers

that the 1st Respondent-Corporation presently comprises of the Central Board and six other Boards which together manage 157 estates throughout the Island comprising 397,172 acres. This affidavit has not been contradicted. If so, the fact that according to the affidavit of M. J. Hemapala dated 25th November, 1986 filed on behalf of the 1st Respondent-Corporation some of the estates concerned have been handed over to the Land Reform Commission would not make the order for reinstatement impracticable.

As regards the observation of the Court of Appeal that an order for the reinstatement of the workmen whose ages are unknown, I am of the view that the mere fact that there is no evidence of the ages of workmen would not vitiate such order. In the instant case three workmen who testified before the Tribunal stated their ages. As regards the others, their ages were not put in issue at the inquiry or in the Petition of Appeal against the order of the Tribunal. In the circumstances, the Court of Appeal was in error in revising the order for reinstatement on the ground that the ages of the workmen were unknown.

In terms of section 31C (1) of the Industrial Disputes Act, it is the duty of a Labour Tribunal to hear all such evidence as the Tribunal may consider necessary and to make such order as may appear to the Tribunal to be just and equitable. Section 33 provides for the kinds of relief a Labour Tribunal may order. These include reinstatement in service and compensation in lieu of reinstatement. Section 33(6) empowers the making of an order for compensation in lieu of reinstatement where the Tribunal thinks it fit to do so. Under section 33(3) a Tribunal making an order for reinstatement in favour of a workman engaged in personal service is also required to make an order for compensation in lieu of reinstatement. Under section 33(5) a Tribunal making an order for reinstatement is empowered to make an order for payment of compensation in lieu of reinstatement if the workman so requests.

Having regard to the foregoing provisions, I am of the view that the question whether the order of the Tribunal is just and equitable has to be determined on the basis of the evidence led before it. Where the termination of service is found to be unjustified, the workman is, as a rule, entitled to reinstatement. An order for payment of compensation is competent in situations referred to in section 33(3) and 33(5) or where

such order would be otherwise just and equitable in the circumstances as contemplated by section 33(6) of the Act.

An appeal lies against an order of a Labour Tribunal on a question of law. Thus the Appeal Court may intervene if the Tribunal appears to have made a finding for which there is no evidence – a finding which is both inconsistent with the evidence and contradictory of it. *Ceylon Transport Board v. Gunasinghe* (1). If no such ground is made out the Appellate Court is not competent to vary an order for reinstatement made by a Tribunal on the ground of subsequent events save in exceptional circumstances.

Thus an order for payment of compensation in lieu of reinstatement may be substituted in appeal if reinstatement has become demonstrably impracticable due to changes in the employer's establishment or the closure of the business or by reason of the workmen having reached the age of retirement. These are circumstances which the Tribunal itself could have taken cognizance of had such circumstances existed at the time of the inquiry. However, mere lapse of time since the dismissal or hardships to the employer would not warrant a revision of an order for reinstatement.

Mr. H. L. de Silva, P. C. learned Counsel for the 1st Respondent Corporation/ who supported the judgment of the Court of Appeal has not been able to draw our attention to any evidence which would establish that the reinstatement of the workmen would be impracticable. In his written submissions he contends that this Court should not restore the order of reinstatement merely because it is considered to be the conventional mode of granting relief. He adds that in the particular circumstances of this case the employer has offered to consider the employment of these workmen on other estates when appointments for such employment do arise in the future.

Counsel have also informed us that since the order of the Tribunal some of the workmen have died whilst others have reached their age of retirement. According to the particulars furnished with the written submissions of Mr. Musthapa, P. C. for the Appellant Union, 2 workmen have died whilst 6 have reached the age of retirement. Two workmen have already been re-employed. If so, only 15 workmen have to be reinstated. Having regard to the positions held by these workmen and the

fact that the 1st Respondent-Corporation appears to have the monopoly of managing a very large extent of estate lands there can be no difficulty in reinstating these workmen whose number would not in any event exceed 23.

I am of the view that the available evidence would not warrant a reversal of the order for the reinstatement of the workmen who are eligible for re-employment, nor would the vague promise of re-employment contained in the submissions for the 1st Respondent-Corporation provide a legal basis for such reversal.

In view of the long period which has lapsed since the order of the Tribunal the workmen have been deprived of the full benefit of the order of the Tribunal. This is a problem which is as old as the Industrial Disputes Act itself. In view of this, the authorities may consider whether appropriate legislative amendments may be enacted to enable the enforcement of an order for reinstatement made under the Act pending a challenge to such order subject however to further provision for an order by a Court to stay such enforcement in an appropriate case.

In the absence of such legislation the Supreme Court has made appropriate orders for adjustment of rights without remitting the case back to the Tribunal whenever it has been possible to do so in the light of the available evidence. (*Vijaya Textiles Ltd. v. General Secretary, National Employees Union* (2) *The Superintendent – We Oya Group, Yatiyantota and Another V. The Ceylon Estates Staff Union* (3) *The Ceylon Transport Board v. Wijeratne* (4) *The Caledonian (Ceylon) Tea and Rubber Estates Ltd. v. Hillman* (5)).

These decisions have adjusted the rights of workmen till the time of the judgment of the Supreme Court. In the instant case it would not be possible to make such adjustment due to the lack of evidence on the record as regards the relevant circumstances in respect of the workmen concerned.

For the above reasons, I set aside the judgment of the Court of Appeal except as regards the workmen P. S. Withanage and S. B. Dodanwela who have been re-employed. Accordingly, the workmen who have not reached the age of retirement will be entitled to reinstatement with effect from 1st May, 1989 on terms not less favourable than those enjoyed by

them before termination and taking into account their right to a scale of salary which they would have been entitled to had they been reinstated as ordered by the Tribunal. They will also be entitled to back wages already ordered by the Tribunal.

The Labour Tribunal is directed to hold further inquiry into the cases of workmen who have reached the age of retirement and to make an appropriate order for compensation. This would be in addition to the back wages already ordered by the Tribunal.

The appeal is allowed with costs fixed at Rs. 1,050/- in addition to the costs in the Court below and the Labour Tribunal.

TAMBIAH, J. – I agree.

H. A. G., DE SILVA, J. – I agree.

Reinstatement of workmen below age of retirement (except the two already employed) ordered with back wages. Compensation to those who have retired ordered to be fixed by L.T. with back wages.
