

1968

Present : Alles, J.

UPLANDS TEA ESTATES LTD., Appellant, and CEYLON WORKERS' CONGRESS, Respondent

*S. C. 70/67, 71/67, 72/67—Labour Tribunal Cases
Nos. K/3416, K/3417, K/3425*

*Labour Tribunal—Application by dismissed workman for reinstatement in service—
Jurisdiction of labour tribunal to award compensation for past services—
Industrial Disputes Act, ss. 31B, 31C (1), 33 (1), 33 (5).*

Where, in an application under section 31B of the Industrial Disputes Act, a workman seeks relief in respect of the termination of his services by the employer and prays for reinstatement in service, it is open to the parties, by subsequent agreement between them, to confer jurisdiction on the labour tribunal to award compensation to be paid to the workman on the basis of his past services, in lieu of reinstatement.

APPEAL from an order of a Labour Tribunal.

H. V. Perera, Q.C., with *L. Kadingamar*, for the respondents-appellants.

N. Satyendra, for the plaintiff-respondent.

Cur. adv. vult.

January 27, 1968. ALLES, J.—

Counsel for the respondents-appellants has submitted that the President acted without jurisdiction in ordering compensation to the worker in this case. The Union on behalf of the petitioner-worker made an application under Section 31B of the Industrial Disputes Act for relief in respect of the termination of his services by the employer and prayed for reinstatement. On the date of inquiry counsel for the employee did not insist on reinstatement. The record thereafter reads :

“The only question that is left is the quantum of compensation, if any, that is to be paid for the past services of these employees.”

“Both parties agree to leave the quantum of compensation to be given to the workers, if any, in the hands of the President.”

The President thereafter, in view of the submissions of counsel, made order directing compensation to be paid to the workers on the basis of their past services.

Mr. Perera's main contention is that it is only under Section 33 (5) of the Act that the President could make an order of compensation. Such an order could only be made at the instance of the worker and in

lieu of making a decision for reinstatement. He submits that the present application for reinstatement was not accompanied with any such request and, therefore, the President acted without jurisdiction in ordering compensation. Counsel for the Union, however, submits that this is not a case to which Section 33 (5) applies. The order that was made by the President was one made with the consent of the parties and was an order that could properly be made under Section 31 C (1) of the Act. I am inclined to agree. Section 33 is permissive in nature and is only intended to enlarge the scope of the President's powers and enables the Tribunal to include in the order such decisions as may be necessary to give full effect to the order of the Tribunal. The wording contained in the introductory portion of Section 33 (1) makes this position clear. It is correct, as counsel submits, that the nature of the payment made to the worker in this case is more akin to the payment of a gratuity than to compensation; but it is abundantly clear from the agreement between the parties that they intended that some payment for the past services of the worker should be made the basis of a just and equitable order.

I dismiss the appeal.

Appeal dismissed.

