1968 *Present :* **Siva Supramaniam, J.**

THE ASSOCIATED NEWSPAPERS OF CEYLON, LTD., Appellant.
***and* THE NATIONAL EMPLOYEES' UNION (on behalf of G. H. R. Susiripala), Respondent**

S. C. 75 of 1967—Labour Tribunal Case 1/19723

Labour Tribunal—Misdirection in law—Failure of President to consider all the evidence placed before him—Wrongful termination of a workman's services—Reinstatement in service is not compulsory in every instance—Industrial Disputes Act, ss. 31B, 31D (2), 33 (6).

In an application under section 31B of the Industrial Disputes Act for relief in respect of the termination of a workman's services on the ground of misconduct—

Held, (i) that the statements filed by the parties in applicatons before a Labour Tribunal are not pleadings in a civil action and it is the duty of the President to consider all the facts relative to the dispute placed in evidence before him at the inquiry even though those facts may not be expressly referred to in the statements.

(ii) that it would be a misdirecton in law if a Labour Tribunal holds that if the termination of a workman's services cannot be sustained, there is no alternative but to order his reinstatement in service. Section 33 (6) of the Industrial Disputes Act expressly authorises a Labour Tribunal to order payment of compensation as an alternative to reinstatement in appropriate cases.

APPEAL from an order of a Labour Tribunal.

S. Nadesan, Q.C., with *D. S. Wijewardene*, for the respondent-appellant.

K. Thevaraja, for the applicant-respondent.

Cur. adv. vult.

June 12, 1968. SIVA SUPRAMANIAM, J.—

The appellant is a newspaper company, in the Despatch Department of which one Susiripala had been employed as a labourer. On 1st December 1963 the Police arrested Susiripala and some other employees of the company in the act of gambling outside the premises of the company and prosecuted them in the Municipal Magistrate's Court. Susiripala pleaded guilty to the charge. Thereupon the company called upon him to show cause why disciplinary action should not be taken against him for grave misconduct (R.3). He denied having gambled (R.4), despite the fact that he had pleaded guilty to that charge in Court. His attention was then drawn to the fact that he had been found guilty by the Court and fined. He was again required to show cause why his services should not be terminated for misconduct (R5). His explanation (R6) was considered unsatisfactory and he was informed as follows (R7) :— "It is accordingly proposed to terminate your services as from 7th February in view of your conviction by the Courts of the offence you have been charged with..... unless you have any further cause to show before that date." He submitted a further explanation (R8) which too was considered unsatisfactory and he was informed as follows (R9) :—"Although the offence committed warrants dismissal it has been decided to terminate your services with immediate effect. You will be paid in full for February 1964 and also a month's wages and allowances in lieu of notice plus two months' wages ex gratia....."

The respondent-union of which Susiripala was a member then filed the present application before the Labour Tribunal under S. 31B of the Industrial Disputes Act No. 43 of 1950 (hereinafter referred to as the Act) seeking, *inter alia*, reinstatement of Susiripala along with the payment of back wages. The President of the Labour Tribunal by his Order dated 3rd July 1967, ordered, among other reliefs, reinstatement of Susiripala but without payment of back wages.

The Company has appealed from that order. Under S. 31D (2) of the Act, an appeal lies to this Court only on a question of law. It is submitted on behalf of the appellant that the order should be set aside in view of certain misdirections in law on the part of the learned President.

According to the evidence, shortly before Susiripala was arrested by the Police and convicted in Court on the charge of gambling, the Company had issued a notice to its employees in connection with gambling (R1). The notice stated that complaints had been received in regard to gambling by the Despatch Department staff on the road ouside the premises during their meal interval but during the period of their duty hours and warned the staff against the continuing or indulging in such activity and that "very severe disciplinary action will be taken against any members of the staff detected and reported as having indulged in such illegal activity".

The learned President in the course of his order stated : "There does not appear to be much doubt that gambling was endemic in the workplace. Indeed, the applicant admitted that on several occasions the company has had to take minor disciplinary action against workmen for gambling." In considering, however, whether Susiripala was guilty of misconduct, the learned President treated the notice referred to above as containing a set of "rules" and held that the Company would have had the right to punish him only if he had acted in contravention of those "rules". He found that as the "rules" prohibited gambling only "during the period of duty hours" any gambling outside these hours would be "permitted conduct" and that as the charge on which Susiripala had been convicted related to gambling when he was not on duty he had committed no offence which rendered him liable to disciplinary action.

In support of his view that the misconduct of which Susiripala had been found guilty related to only what was prohibited in the notice, the learned President relied on paragraph 4 of the statement filed by the Company which was in the following terms :—

> "The Company submits that the conduct of the said worker in openly defying the Company's warning constitutes a serious breach of the Company's regulations and that under the circumstances relevant to the matter and the maintenance of proper discipline amongst the workers in the Despatch Department the termination of the said worker was just and reasonable."

The statements filed by the parties in applications before a Labour Tribunal are not pleadings in a civil action and it is the duty of the President to consider all the facts relative to the dispute placed in evidence before him at the inquiry even though those facts may not be expressly referred to in the statements.

The learned President was clearly in error in construing the notice as containing a set of rules by which alone the workmen would be bound and holding that any conduct not covered by the express terms of the notice was "permitted conduct". In reaching the conclusion that the appellant's termination of Susiripala's services was based solely on an alleged breach by the latter of the "rules" contained in the notice,

the learned President overlooked completely the effect of letters R3, R5, R7 and R9 sent by the Company to Susiripala and his replies R4, R6 and R8. None of those letters had any reference to the notice in question. Indeed in the letter R3 the basis on which Susiripala was asked to show cause " why disciplinary action including termination of service " should not be taken against him was the fact that he had been arrested by the Police for gambling in a public place and that he had been convicted and fined by a Court of law.

The above error of the learned President which was a misdirection in law affected his whole approach to a consideration of the dispute between the parties and is reflected in his conclusion which he set out as follows :—

> " So that even if the applicant's conduct would have amounted to a breach of discipline prior to the rules, as from the publication of the rules such conduct must be regarded as not to be damaging to the Company's interests since they have not been declared to be offensive under the circular. Had the Company, when drafting its circular prohibited not only gambling immediately outside the premises but also at all hours of the day or night whether within or without working hours, then under those rules Mr. Susiripala would have really been guilty . . . . . I therefore hold that the termination of the applicant's service cannot be permitted to stand."

In view of the order I propose to make, I do not wish to say more on this aspect of the learned President's order.

In considering what " just and equitable " order he should make in the circumstances of the case, the learned President again misdirected himself on the law. He said : " If the termination of the applicant's services cannot be sustained, *there is no alternative* but to order his reinstatement in service ". It was submitted by learned Counsel for the appellant with much force that the learned President precluded himself from considering other reliefs which could appropriately have been granted in the circumstances of this case by his erroneous view of the law that where the termination was not justified there was no alternative to reinstatement. In arriving at that conclusion the learned President appears to have overlooked the provision of S. 33 (6) of the Act which expressly authorises a Labour Tribunal to order payment of compensation as an alternative to reinstatement in appropriate cases.

The misdirections in law to which I have referred have materially affected the learned President's conclusions and order in this case. I set aside the order made by the learned President and direct that the application be inquired into afresh by another President.

The appellant will be entitled to its costs in appeal.

Case remitted for fresh inquiry.