

1971

*Present : Thamotheram, J.*

THE SUPERINTENDENT, ST. THERESE ESTATE and 3 others,  
Appellants, and CEYLON ESTATES STAFFS' UNION,  
Respondent

*S. C. 96/69—Labour Tribunal Case No. 9/1148*

*Labour Tribunal—Just and equitable order—Part of it must not be left to the decision of the employer—Industrial Disputes Act (Cap. 131), ss. 31 B, 31 C (1), 31 D (1), 33 (1) (3) (5) (6).*

Relief was claimed under section 31 B of the Industrial Disputes Act in respect of the termination of a workman's services by his employer. The President of the Labour Tribunal who heard the inquiry ordered reinstatement of the workman and further stated : "If however the respondent is unable to reinstate the worker for any valid reason, I order that a further sum of Rs. 3,000 be paid as compensation."

*Held*, that when a Labour Tribunal purports to make a just and equitable order, the decision of a part of the order must not be left to the decision of the employer. The order made in the present case was therefore a nullity.

**A**PPEAL from an order of a Labour Tribunal.

*Lakshman Kadirgamar*, with *P. Ramanathan*, for the respondents-appellants.

*S. S. Rajaratnam*, for the applicant-respondent.

*Cur. adv. vult.*

March 7, 1971. THAMOTHERAM, J.—

The Ceylon Estates Staffs' Union made an application on behalf of one of its members R. M. Luxman, claiming relief in respect of the termination of his services. He was employed as a Factory Officer at St. Theresa Estate, Harasbedda and his services were terminated from 21.8.67.

The Respondents admitted the termination and said that it was for gross insubordination, misconduct and fraud.

After inquiry the learned Labour Tribunal President made the following order. "I order that the applicant worker, Mr. R. M. Luxman, be reinstated with immediate effect. I further order that he be paid full back wages for the period of non-employment at the rate of Rs. 211.25 for a period of 22 months amounting to Rs. 4,647.50. If, however, the respondent is unable to reinstate the worker for any valid reason. I order that a further sum of Rs. 3,000 be paid as compensation".

Mr. Lakshman Kadirgamar, for the Respondents, argued that the above order was bad as it was not a final order. It left the decision as to the terms of the order to the employer. It was not a clear order to reinstate or an order for compensation or an order for compensation as an alternative to reinstate. It was an order which left the decision as to whether the order should be one of reinstatement or one of payment of compensation to the employer. The employer's decision was to be dependent on the existence of valid reasons of which he alone was the judge.

Under Section 31 (C) (1) of the Industrial Disputes Act, where an application under 31 (B) is made to a Labour Tribunal it shall be the duty of the Tribunal to make an order "as may appear to the Tribunal to be just and equitable after hearing evidence and making a full inquiry". Under Section 31 (D) (1) the order of the Labour Tribunal shall be final and shall not be questioned in any court.

The order of the Labour Tribunal may contain a decision as to reinstatement in service of any workman whose dismissal is a matter in dispute (33 (1) (b)). It may also contain a decision as to payment of compensation to any workman by an employer (33 (1) (d)).

Under Section 33 (3) where any award or order of a Labour Tribunal contains a decision as to reinstatement in service of any workman in any employment, then, if the employment is in the capacity of personal secretary, personal clerk, personal attendant or chauffeur of the employer or domestic service or in any prescribed capacity of a description similar to those mentioned, the award or order of the Labour Tribunal shall also contain a decision as to payment of compensation to the workman as an alternative to his reinstatement.

Under Sub-Section 5 of Section 33 where a Labour Tribunal considers that the decision should be made for the reinstatement in service of any workman, then, if the workman so requests, the Tribunal may in lieu of making that decision make a decision for payment of compensation to that workman. Sub-Section 6 of Section 33 states that the provisions of Sub-Section 3 and 5 already referred to shall not be construed to limit the power of a Labour Tribunal to include in an award a decision for payment of compensation as an alternative to reinstatement.

A close examination of the sections referred to above bring out the following features of an order or award under Section 31 (C) :—(a) It is the duty of a Labour Tribunal to make such order as may appear to the Tribunal to be just and equitable.

(b) An order of a Labour Tribunal shall be final and shall not be called in question in any court (subject to the right of appeal from the order on a question of law). (c) An order of a Labour Tribunal may contain decisions (1) as to reinstatement. (2) As to the payment of compensation. (3) As to payment of compensation to the workman as an alternative to his reinstatement when the workman falls into one of the categories enumerated under Section 33 (3). (4) The order of payment of compensation as an alternative to reinstatement when the workman so requests. (5) A general discretion to make an order to pay compensation as an alternative to reinstatement, in any fit case.

It is the duty of the Labour Tribunal to make an order which appears to it to be just and equitable and such an order may include a decision to direct reinstatement or a decision to order payment of compensation in lieu of reinstatement or to make an order for reinstatement and as an alternative, payment in compensation.

Where a Labour Tribunal is empowered to give the option of paying compensation in lieu of reinstatement it is a pure choice that is left to the employer. Where the Labour Tribunal orders reinstatement and states that if for any valid reasons the workman cannot be reinstated the employer is to pay a stipulated sum as compensation, then the order is not one giving the employer a pure choice of one of two alternatives. It is in reality a delegation of the function of deciding whether the order should be one of reinstatement or not to the employer. If he had no valid reasons he must reinstate the workman. If he had, then, he must pay compensation. The decision as to whether he had valid reasons or not is something which the Tribunal has surrendered to the employer.

In *Jayasena v. Sideek*<sup>1</sup> 63 N. L. R. 425, T. S. Fernando, J. held that an Industrial Court cannot delegate to a 3rd party its functions of deciding a dispute which has been referred to it for settlement. Where an award is made in violation of this rule any sum of money due upon it cannot be recovered in a Magistrate's Court in terms of Section 33 Sub-Section 2 of the Industrial Disputes Act. In the instant case the decision of a part of the just and equitable order had been left to the decision of the employer.

For the reasons given above I hold that the President's order is a nullity. I direct that the application be heard *de novo* before another President.

*Order set aside.*

<sup>1</sup> (1961) 63 N. L. R. 425.