EKSATH KAMKARU SAMITHIYA

v.

COMMISSIONER OF LABOUR

COURT OF APPEAL
GUNAWARDANE, J.
C.A. 544/99
TEU/C/68/95
FEBRUARY 1, 2000

Termination of Employment of workmen Act, No. 45 of 1971 - S.5 and S.6 - Scheduled employment - Termination illegal - Should the workmen be terminated - Difference - 'May' should be given a permissive meaning or mandatory meaning?

The Petitioner Union on behalf of 26 workmen made an application to the Commissioner of Labour on the basis that their termination by the Employer was illegal. The Commissioner of Labour found the termination of 23 workmen was illegal and ordered to pay compensation. The Petitioner sought to quash the said order and further sought an order on the authorities to make a proper recommendation, according to Law.

Held :

(i) The ultimate decision would be wholly conditioned or determined by the significance or connotation to be attributed to the word 'May' that occurs in S.6.

(ii) Although the word 'may' taken in isolation expresses permission or liberty, yet that term 'may' acquires a compulsory force in circumstances where a duty devolves on the authority to exercise that power which the authority was permitted or enabled by the statute to exercise.

(iii) Manifest purpose of S.5 is to wholly protect the workman against the termination of his service contrary to provisions of the relevant Act and to keep the contract of employment intact notwithstanding such illegal termination.

Per Gunawardane J.,

"One cannot conceive of a better way to preserve the contract of employment and keep alive the duties and objections of the employer thereunder, than as S.6 itself required, to order the employer to continue to employ the workmen."

(iv) The duty to reinstate the workmen as are the duties i.e. to

'pay wages and other benefits' imposed upon him under S.6 is mandatory and compulsory and he has no option in the matter.

APPLICATION for mandates in the nature of Writ of Certiorari and Mandamus.

Cases referred to :

1. *Blanka Diamonds* - 1996 1 SLR 200
2. *Macdougall vs. Patterson* (1851) 11 CB 755
3. *Sheffield vs. Luxford* - 1929 - 2 KE 180
4. *Smelting Co of Austraia vs. Commissioner of Inland Revenue* 1897 1 QB 271

L.V.P. Wettasinghe for the Petitioner.

Adrian Perera, SSC for the 1st & 2nd Respondent.

U. Wimalarajah with K. Sureshchandra for the 3rd Respondent.

Cur. adv. vult.

February 02, 2001.

U. De. Z. GUNAWARDANE, J.

The petitioner union viz. Eksath Kamkaru Samithiya, on behalf of 26 workmen, whose services had been terminated by their employer viz. Jet Match Co. Ltd. (3rd respondent), had on 24.10.1995 made an application, to the termination unit of the Labour Department, making a complaint in that regard on the basis that such termination was illegal and asking that the workmen in question be re-instated. However in response to the intimation by the 1st respondent (Commissioner of Labour) that complaints from each one of the individual workmen was necessary, only 23 of the workmen submitted complaints.

The inquiry into the matter of the termination of services of the workmen was held by the Assistant Commissioner of Labour (2nd respondent) who was authorised by the 1st respondent to conduct the inquiry. The 2nd respondent, after inquiry reached

the finding that the termination of services of the 23 workmen was illegal and consequent upon that finding recommended that Jet Match Co. Ltd. (3rd respondent) be ordered to pay compensation on the following basis:

(a) 6 months' salary to workmen where length of service ranged between 1-3 years;

(b) 12 month's salary to workmen whose length of service ranged between 3-6 years and

(c) 18 months' salary to workmen whose length of service exceeded 6 years.

However, the Commissioner of Labour (1st respondent) by his order reduced the sums above - mentioned by half which order of the Commissioner was conveyed to the Secretary of the union by letter dated 24.04.1999.

By this application to this court the petitioner union has prayed for :

(i) a writ of certiorari quashing the aforesaid recommendation of the Assistant Commissioner of Labour (2nd respondent) and also the aforesaid order of the Commissioner of Labour awarding compensation, in the manner indicated above, to the workmen concerned;

(ii) an order of mandamus, to use the very expression in the prayer to the petition: "ordering the 2nd respondent to make a proper recommendation according to law based on his finding that the termination was contrary to law, or in the alternative ordering the 1st respondent to make order under, section 6 of Act No.45 of 1971 as amended on the basis of the 2nd respondent's finding that the termination was contrary to law".

Prayer seeking an order of mandamus is, to say the least, vague. The petitioner has prayed that the 2nd respondent, the Assistant Commissioner of Labour, be directed to make a "proper recommendation according to law" or in the alternative that the 1st respondent, the Commissioner of Labour, be directed to

make an order under section 6 of Act No.45 of 1971. The prayer should have been more explicit or specific and indicated the exact nature of the relief sought. It is not easy to divine or discover what the phrase "proper recommendation according to law" connotes; nor is the nature of the order sought in the alternative, under section 6 of Act No.45 of 1971 i.e.. Termination of Employment of Workmen Act, less obscure, if one has to go, solely by the prayer to the petition.

The ultimate decision in this case would be wholly conditioned or determined by the significance or connotation to be attributed to the word "may" that occurs in section 6 of the Termination of Employment of Workmen Act No.45 of 1971 which section is as follows : the Commissioner may order such employer to continue to employ the workmen...

The learned counsel for the petitioner contended for the view that the word "may" in the context has to be interpreted in a mandatory sense whilst the learned senior state counsel and the learned counsel who appeared for the 1st and 2nd respondents and the 3rd respondent, respectively, contended for the opposite view viz. that the word "may" has to be given a permissive sense which vested a discretion in the Commissioner either to direct the employer to re-instate the workman or not. If the word "may" is interpreted in the latter sense, it merely gives permission or discretion or authorization to do something and no obligatory duty would then, arise.

The case of *Blanka Diamonds*[1] was cited in support of the proposition that word "may" operates merely to confer a discretion on the Commissioner to decide whether or not "to order such employer to continue to employ the workman". The above decision, if I may say so, is rested on a rather simplistic view of the matter - ignoring significant issues. In the decision in Blanka Diamond Case, the court had held itself aloof from the legislative intent. In the aforesaid case the view had been taken that the word "may is indicative of choice between alternative decisions because the word "may" is permissive and not mandatory, as the word "shall" is. But one knows that courts do very often interpret the word "may" as "shall" or "must" in order to prevent justice becoming a slave of grammar.

It is a way of thinking, viz. that the word "may" in section 6 of the Act vests a discretion in the Commissioner, to either reinstate or not, that is begotten of an isolationist interpretation which had paid no attention, whatsoever, to the legislative intent. To quote from Bindra, which is a well known treatise on the canons applicable to construction of statutes: "In some cases the legislature may use the word "may" as a matter of pure conventional courtesy and yet intend a mandatory force."

In order, therefore, to interpret the legal import of the word "may" the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of the word and the like.

In the Blanka Diamonds Case, above-mentioned, the court had been oblivious of the well known rule that the meaning of a word must be judged by the company it keeps in the same way as a man is judged by his company. The context in which the word appears is the controlling, if not the decisive factor. *Ex anticedentibus et consequentibus fit optima interpretation* which means that the best interpretation is made from the context. It is to be observed that section 6 reproduced above in which the word "may" occurs comes in the wake of section 5 of the relevant Act which reads thus: "Where an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act, such termination shall be illegal, null and void and accordingly shall be of no effect whatsoever."

It is to be repeated that it is only when (to use the very words of section 6 of the relevant Act) "an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act" that "the Commissioner may order such employer to continue to employ the workman....." Section 6 of the Act must necessarily be read as referring back to the preceding provision i.e. Section 5. It is clear that the

Section 6 of the Act has to be understood or interpreted in the light of or against the backdrop of the circumstance adumbrated or contemplated in section 5 of the Act - the circumstance being that the termination of employment of a workman, in contravention of the provisions of the relevant Act viz. Termination of Employment of Workmen Act No.45 of 1971 shall be of no effect whatsoever. From what has been said above, it would be clear that section 6 of the Act caters to the circumstance or situation specified in section 5 which, as shown above, states emphatically that termination of employment of a workman in contravention of the provisions of the relevant Act is illegal and null and void, that is, destitute of any effect whatsoever. In other words such a termination being wholly incapable of giving rise to or affecting any rights or obligations - the contract of employment will subsist and remain intact. Section 5 renders any termination of employment in contravention of the relevant Act absolutely illegal. And section 6 states that the Commissioner "may order the employer to continue to employ the workman" in case the termination was in breach of the provisions of the Act. Although the word "may" taken in isolation expresses permission or liberty, yet that term "may" acquires a compulsory force in circumstances where, a duty devolves on the authority to exercise that power which that authority was permitted or enabl by the statute to exercise. The case *Macdougall vs. Patterson* would be instructive in this regard and it is illuminative to cite an excerpt from the judgment of Jarvis C.J.: "where a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorized, to exercise the authority when the case arises, and its exercise is duly applied for by a party interested and having the right to make the application. For these reasons, we are of opinion that the word "may" is not used to give discretion, but to confer a power upon the court and judges and that the, exercise of such power depends not upon the discretion of the court or judges, but upon proof of the particular case out of which such power arises."

There have been a number of decisions concerning the interpretation of the word "may" in which the word "may" was

given a compulsory or mandatory force. To advert just to one more case which is illustrative of the point, viz. that when the circumstances specified by the statute exist or come into existence a duty arises to exercise the power although that power had been conferred on the authority by the use of permissive language in the form of the word "may". It was held in *Sheffield vs. Luxford*[3] that upon proof of the relevant facts the county court was bound to make the order where the enabling Act provided that the county court "may" make an order for possession in favour of the landlord. In that case, the proof of the specified circumstances created a mandatory duty to make the order for possession.

When a statute entrusts or vests a power in a court or tribunal or some other authority for the purpose of, say, preventing any mischief or to effectuate or give effect to a legal right or protect the rights of any particular person or group of persons in certain specified or given circumstances it becomes the imperative or inescapable, or rather the statutory duty, of the authority concerned to whom that power is granted, albeit in permissive and not in mandatory language, when the circumstances contemplated or specified in the Act arise, to exercise that power to achieve that end or purpose for which the power was granted although the granting of such power is couched in permissive language. In the case in hand, the circumstance which makes it obligatory on the Commissioner of Labour to order the employer has arisen in consequence of the termination of the employment of the workmen in contravention of the provisions of the Act. (At the hearing before me the finding of the Assistant Commissioner that the termination was illegal was not contested and, in any event, no argument was put forward to the effect that the termination was lawful). When that condition, viz. the occurrence of the fact of illegal termination of employment is fulfilled or satisfied the duty of the Commissioner to order the employer to continue to employ the workman is activated as if no termination had taken place at all. In this context, it is apposite to re-iterate that section 5 of the Act keeps the contract employment intact or preserves

it or maintains the same state of things, notwithstanding the termination of employment, so far as the contract of employment is concerned, by denuding the purported termination of any effect whatsoever. The fact that section 5 of the Act, as pointed out above, formally and unreservedly declares any termination of employment, in breach of the Act, to be "null and void" calls for remark in this context. Section 5 of the Act, which precedes section 6, is designed to ward off all possible termination of employment in contravention of the provisions of Act No. 45 of 1971. It is somewhat irrational to suppose that the legislature, after having so sternly, decidedly and uncompromisingly declared in section 5 of Act that any termination of employment, in contravention of the provisions of the relevant Act to be utterly void, would have relented in the very next succeeding section of the Act and in the same breath, so to speak, would have given the Commissioner a discretion whether or not to order the re-instatement of the workmen. When Section 5 of the Act declares that all termination of services of workmen in breach of the provisions of the relevant Act is "illegal null void and accordingly shall be of no force or effect whatsoever", there is, at the lowest, an implicit recognition of the legal right of the workman to remain in employment notwithstanding the purported termination. A declaration of a right is ineffectual without provision of machinery for the protection and enforcement of those rights. This is reflected in the oft-quoted Latin phrase *ubi jus, ibi remedium* which freely translated means where there is a right, there is a remedy. And, in fact, such machinery for enforcement of the workman's rights, in the given circumstances, had been provided for by Section 6 of the Act - which requires the Commissioner to re-instate the workman although the draftsmen has, perhaps, by force of habit used the word "may" to which draftsmen seem to be addicted to. The Courts and tribunals ought to be ever conscious that they have a general duty to enforce legal rights. If the word "may" in section 6 of the Act is construed to invest the Commissioner with a discretion, either to re-instate the workman or not, that would lead to intolerable, if not UNDREAMT of results: for, if the Commissioner in the exercise of his discretion, which discretion will be conferred

on him, if the word "may" is interpreted in a permissive, as opposed to an obligatory sense - then, it is the Commissioner, and not the employer who will, in fact, terminate the employment, by not performing his (Commissioner's) statutory duty under section 6 of the Act - the duty being "to order the employer to continue to employ the workman" because, in so far as the purported termination by the employer is concerned, the law will take its inexorable course to ensure that such termination is null and void. It is worth repeating that termination by the employer in contravention of the provisions of the Act is wholly destitute of any effect since such termination is rendered "null and void", as noted above, by section 5 of the Act. Because the termination by the employer is void, it is as if such termination had never been made in the first place, and never existed. And as the termination by the employer in circumstances specified in section 5 of the Act is no termination, in the eye of the law, it is the failure on the part of the Commissioner to order re-instatement, if, in fact, the Commissioner is vested with a discretion under section 6 of the Act, either to order or not to order the employer to continue to employ the workmen, that will produce the effect of and be tantamount to, termination of employment. Phraseology and choice of words in section 6 of the Act is revealing. The said section empowers the Commissioner, if termination of service had been in breach of the provisions of the Act, to "order such employer to CONTINUE TO EMPLOY the workmen" which pre-supposes that the employment had never been terminated. Section 6 of the Act does not contemplate a restoration or replacement of the workman to a lost position or to a position held by him previously. Under section 6 of the Act the Commissioner will order the employer to "continue to employ the workman" which by necessary implication means that the workman, notwithstanding the illegal dismissal, yet remains in the employ or service of the employer. Employment can be ordered to be continued (as ordered by section 6 of the Act) as there had been no break in the service.

This serves to further reinforce the point of view, (although no such point of view or argument was put forward at the

hearing before me) that notwithstanding the termination of employment contrary to the provisions of the Act - contract of employment remains un-affected. So that it is only if the Commissioner fails to appreciate that termination of employment in contravention of the provisions of the Act imposes upon him an obligatory duty - to order the employer "to continue to employ the workman" - and so fails to order the employer to that effect - that termination will actually result.

Interpretation of permissive language, introduced by the term "may", as having a mandatory and imperative force, is also assisted by the fact that permission or power granted by such language has to be exercised not to defeat but rather to carry the object or policy of the statute or of the provision of the law into effect. The power must be exercised in accord with the policy of the Act. Sometimes the statutes have a long title in which the primary objects of the statute is spelt out. The relevant Act viz. Termination of Employment of Workmen Act No.45 of 1971, too, contains a long title in which the object of the statute is spelt out in a rather gingerly manner, as follows: "An Act to make special provision in respect of the termination of the services of workmen in certain employments by their employers". One can almost divine that the object of the statute is to guard against and protect workmen from arbitrary and illegal termination of service of the employees by their employers. And, in fact, special provision has been made in the most stringent terms, leaving no discretion or loophole, making all termination of services of workmen contrary to the provisions of the relevant Act, null and void. The phraseology of section 5 of the Act, as explained above, is more explicit, open and undisguised than the wording of the title. Section 5 of the Act does not mince matters and uses the strongest language conceivable in making it clear that all termination of employment in breach of the law is abhorrent to and utterly repugnant to the policy of the Act. It is worth recalling how forcibly the termination of employment, in breach of the provisions of the relevant Act, is condemned in section 5 of the Act: "..... such termination shall be null and void and accordingly shall be of no effect whatsoever." It is, to say the

least, implicit in the long title that the object of the Termination of Employment of workmen Act No.45 of 1971 was to redress a particular mischief viz. termination of employment of workmen without cause in the exercise of arbitrary, if not despotic, discretion, whenever the employer wished, which object had been made more explicit in the enacting provision i.e. section 5 of the Act reproduced above. Manifest purpose of section 5 of the Act is, to wholly protect the workmen against the termination of his service contrary to provisions of the relevant Act and to keep the contract of employment intact notwithstanding such illegal termination.

And one cannot conceive of a better way to preserve the contract of employment and keep alive the duties and obligations of the employer thereunder than, as section 6 of the Act itself required, "to order the employer to continue to employ the workman".

The long title of the relevant Act shows that it is a remedial statute and even assuming that there is uncertainty as to whether the word "may" in section 6 of the Act is enveloped in doubt or ambiguity as to whether it should be given a compulsory force or not, it is cardinal canon of interpretation that such statutes, or any statute, for that matter, has to be interpreted so as to suppress the mischief and advance the remedy. And, in this context, that would involve the term "may" in section 6 of the Act being interpreted in an obligatory sense i.e. "as shall" which will cast a mandatory duty on the Commissioner "to order the employer to continue to employ the workman". The mischief aimed at and sought to be redressed, by the Act is termination of employment of workmen at the will and pleasure of the employers.

There is at least one other factor contributing or helping to construe the term "may" in section 6 of the Act in an obligatory or imperative sense i.e. the incapability of using section 6 of the Act to make an award of compensation as the 1st respondent

(Commissioner of Labour) had erroneously done. The Commissioner is not at all authorized or empowered to make an order for compensation under section 6 of the Act which reads thus: "..... Commissioner may order such employer to continue to employ the workman with effect from a date specified in such order ..... and to pay the workman his wages and all other benefits which the workman would have otherwise received if his services had not been so terminated ....." It is worth observing that section 6 (excerpt of which is reproduced above) speaks of "wages and other benefits". That expression "wages and other benefits" cannot be construed as embracing compensation. The meaning of the expression "other benefits" has to be restricted to things which is ejusdem generis with the word "wages".

In the interpretation of statutes and so forth where general words follow persons or things of specific meaning, the general word or words will be construed as applying only to things of the same class or kind as those specifically mentioned. Ejusdem generis doctrine has been explained by Lopes L. J. in the case of *Smelting Co. of Australia Vs. Commissioner of Inland Revenue*[4] as follow: "that where general words immediately follow or are closely associated with specific words, their meaning must be limited to the specific words."

The term "wages" employed in section 6 of the Act means remuneration payable for a given period to a workman for personal services. The term "wages" can include salaries, commissions, bonuses, tips i.e. presents for service and any other similar payment received from the employer. The term "wages" indicates payment for services rendered usually under or in terms of the contract of employment whereas compensation would ordinarily mean reparation for an injury or damage of any description. In section 6 of the Act the term "wages" is obviously used in the sense of a fixed payment to be made by the employer at regular intervals, very often monthly, to a workman in return for the work or services rendered by the workman. It is to be observed that in section 6 A(1) of the

relevant Act the term "compensation" is used in contradistinction to the term "wages". To quote the said section 6A(1), introduced by Amendment Law No.4 of 1976, which is worded thus: "where the scheduled employment of any workman is terminated in contravention of the provisions of this Act in consequence of the closure by his employer of any trade industry or business, the Commissioner may order such employer to pay such workman..... any sum of money as compensation as an alternative to the reinstatement of such workman....." (Section 6A (1) in the Amendment Law No. 4 of 1976 takes effect as section 6A of the principal enactment. As this section had been referred to in the submissions of the learned counsel as 6A(1), I shall also identify or refer to the section as such.) section 6A(1) has in contemplation a situation where a closure of the business or trade had been brought about. In such a case, section 6 A(1) makes it incumbent on the employer to pay the workman, what one may call compensatory damages, that is, a payment, made once and for all, not regularly, as in the case of wages, or salary - to compensate the workman for the injury or loss that he had sustained directly in consequence of the loss of employment caused by the closure. What I am seeking to explain is this, that is, that "compensation" is not a thing of the same class or kind as "wages" and as such in the expression that is employed in section 6 of the Act i.e. "wages and all other benefits" - the term "benefits" cannot be interpreted as embracing "compensation" which is paid as damages to make good the harm or injury caused by the loss of employment, and not paid, like wages, under the contract of employment itself, whilst such contract subsists. In this context, i.e. in section 6 of the Act the general words, are : "all other benefits" whereas the particular or the specific word or expression is "wages". As such, by virtue of the well established rule in the construction of statutes, the general term, which, in this instance, is "benefits" is to be read as comprehending only things of the same kind as that designated by the preceding particular or specific expression, or rather the word viz. "wages". As the words "other benefits" in the expression "wages and other benefits" cannot be interpreted to

mean compensation, there is no scope under section 6 of the Act to award compensation to a workman whose service had been terminated in contravention of the provisions of the Act. Even assuming, for the sake of argument, that the word "may" in section 6 of the Act can be interpreted as merely permissive and enabling - yet, even then, the Commissioner can, under the said section 6, only decide whether or not to order the employer to continue to employ the workman. The commissioner cannot under section 6 of the Act order Compensation to be paid in case he decides not to reinstate the workman because, as I have explained above, the expression in section 6 of the Act viz., "wages and other benefits" is not susceptible of the interpretation of compensation. I have also shown above that the relevant Act in section 6 A(1), that is, where there is a closure of the business or trade etc., has specifically and in exact terms authorized or ordained the payment of compensation whilst section 6 of the Act which has in contemplation an illegal termination of services of a workman, omits all mention of compensation. The order that the Commissioner had made directing the employer (3rd respondent) to pay compensation finds no sanction in section 6 of the Act. Such an order is clearly tantamount to an ultra vires exercise of power. When the services of a workman is terminated, in contravention of the provisions of the relevant Act, the Commissioner is empowered under section 6 of the Act, to reproduce the relevant excerpt of the said section, only: "to order such employer to continue to employ the workman with effect from a date specified in such order, in the same capacity in which the workman was employed prior to such termination and to pay the workman his wages and all other benefits which the workman would have otherwise received if his services had not been so terminated;"

So that if, in fact, the Commissioner is vested with a discretion either to order the employer to continue to employ the workman or not, which discretion too, the commissioner will attract to himself only if the word "may" is construed in a permissive sense, the workman will not get any relief whatsoever, in the event of the Commissioner deciding not to re - instate the

workman, even when the termination of service is illegal and null and void - because, as explained above, the Commissioner is not at all authorized by the relevant section (6) to award compensation, and if he does so, i.e. if the Commissioner awards compensation, it would, clearly, be beyond his powers. That indeed would be an intolerably oppressive result from the stand - point of the workman and law is not such a veritable ass, although it is reviled as such, at times. There are certain consequences which the legislature could be presumed never to have intended and an interpretation which would be productive of such a consequence is always to be avoided - if it is possible to do so. It is unthinkable that the law would so precisely and forcibly condemn termination of service, in contravention of the provisions of the relevant Act, as, in fact, it had done in section 5 of the Act, as being null and void and wholly destitute of any effect and yet leave the workman who had been so dismissed in that awkward position, that is, without re-instatement, and also without compensation for loss of employment. As explained above, of one thing one can be certain, if of no other, that is, that the terms of section 6 do not contemplate or authorize the payment of compensation. And if the word "may" in section 6 of the Act is interpreted in a permissive sense that will vest the Commissioner with a discretion to re-instate or not-even when the termination of service of the workman is utterly illegal. So that if the Commissioner decides, in the exercise of his discretion, not to "order the employer to continue to employ the workman" - the workman will lose the job and will also not be compensated. Such a course of action will be somewhat reminiscent of the famous amusing anecdote of SEVERING the neck of the goat and also smashing the pot to smithereens to retrieve the head. The legislature could not be presumed to have intended such a construction which would be contrary to good sense and justice. The very fact that law, as enunciated in section 6 of the Act, does not have in contemplation the payment of compensation to a workman whose service had been illegally terminated is final proof of the fact that re-instatement of such workman is mandatory because it is unthinkable that law would refrain from

awarding any relief whatever. As re-instatement or rather "to order the employer to continue to employ the workman" is compulsory - the question of payment of compensation for wrongful dismissal does not arise, as it does in the case of closure of business - which latter situation, as explained above, is catered for by section 6 A(1) of the amending Act No. 4 of 1976.

That the words "and other benefits" in the expression "wages and other benefits" occurring in section 6 of the Act does not connote compensation (that a workman in certain circumstances would be awarded, be it noted, in consequence of the termination of his service) is revealed by the wording employed in the said section which, to repeat the relevant extract, is as follows: "where an employer terminates the scheduled employment of a workman..... the Commissioner may order such employer to continue to employ the workman, with effect from date specified in such order..... and to pay the workman his wages and all other benefits which the workman would otherwise have received if his services had not been so terminated".

In terms of section 6 of the Act the workman can get only such benefits as he would have got if his service had not been terminated and not compensation if the service had, in fact, been terminated. This means that the workman would be awarded such wages as he would have received had his services not been terminated. Likewise, the workman would also be awarded such "other benefits" as he would have been entitled to, had he remained in service or as if his service had not been illegally terminated. So that under section 6 of the Act, both the wages and benefits would be awarded as if the workman had remained in service and not lost his employment. This feature of section 6 of the Act viz. that payment of compensation for loss of employment is not sanctioned by section 6 of the Act, further fortifies the view that re-instatement is the solitary remedy available thereunder and payment of compensation is not at all envisaged. As the re-instatement is the one and only

remedy for termination of employment, in contravention of the provisions of the Act, the word "may" in section has of necessity to be given a mandatory sense.

It remains to consider whether the Commissioner of Labour has to be directed by an order of mandamus to order the 3rd respondent (Jet Match Co. Pvt. Ltd.,) to continue to employ the workman as ordained by section 6 of the Act. In the circumstances of this case, as explained above, there was a mandatory duty cast upon the Commissioner of Labour to have acted under section 6 of the Act and to have ordered the employer (3rd respondent) "to continue to employ the workman and to pay the wages and all other benefits" which mandatory duty the Commissioner had neglected to perform. In cases of this sort the usual order to the inferior tribunal that would be made, almost routinely, would be couched in language such as this: "hear and determine according law or to act according to law". If I were to make an order of that sort the Commissioner will be initiating a repetitive process and there is the greater risk of the Commissioner repeating the same mistake as he had made in the order complained of, considering the negligent way he had acted. As such I propose to adopt a more interventionist stance. It is to be observed that the learned counsel for the petitioner had pointed out that the order of the Commissioner awarding compensation only had been made under section 6 A(1) of the Act which is, in fact, the section mentioned in the order. The learned counsel for the petitioner submitted that the commissioner had awarded compensation under section 6 A(1) of the Act, as the Commissioner was in fact empowered, or rather required, to do, when, in fact, the Commissioner should have acted under section 6 of the Act. It will be recalled that section 6 A(1) comes into play only when the service of the workman is terminated in consequence of the closure of the business. In this case, admittedly, there is no closure of business, as such. The Commissioner in his affidavit submitted to this court had averred that the reference to section 6 A(1) in his order, is a typographical error. If, in fact, it is a typographical error, then it is proof of the slipshod and slovenly manner he does things. He

should have read over his order and corrected it before he signed the order, if it can be called so. I cannot bring myself to believe that section 6 A(1) was mentioned un-intentionally or was a slip of the pen, so to speak. Typographical error is an error made in typing or printing. The reference section 6 A(1) is a deliberate reference to it. The stenographer or the typist could not on his own have typed section 6 A(1) if, in fact, the Commissioner did not, in fact, mention section 6 A(1) in his order. Typist or the stenographer would not have known of section 6 A(1) or would not have typed 6 A(1) instead of 6 if, in fact, the Commissioner had not referred to section 6 A(1). There is, in fact, a section numbered 6 A(1) in the amendment law No.4 of 1976 and section 6 A(1) would have crept in to the order of the Commissioner as a result of somebody who knew about section 6 A(1) making a specific reference to it. And that somebody must necessarily be the Commissioner because it was he who had signed the order. The fact, that the Commissioner did not correct 6 A(1) to read as 6, after reading it over, if, in fact, he did so, is further proof of the fact that mention of section 6 A(1) is attributable to his negligence and/or ignorance. The averment in the affidavit that reference to section 6 A(1) is a typographical appears to be false and the conduct of the Commissioner deserves to be censured in the most stringent terms. By seeking to airily explain away things the Commissioner is seeking to brazen things out. The mention of section 6 A(1) in the order of the Commissioner led to needless confusion at the argument before me and complicated an otherwise straightforward matter.

I would prefer to directly order the Commissioner, by an order of mandamus, to make order in pursuance of section 6 of the Termination of Employment of Workmen Act No. 45 of 1971, and I do so accordingly. To elucidate the matter further, lest he goes astray, once again, the Commissioner is bound by this order of mandamus to order the 3rd respondent to continue to employ all the workmen, on whose behalf this application has been made to this court, and also order the 3rd respondent to pay the workmen their wages and "all other benefits" which the

workmen would have received if their services had not been terminated. The Commissioner has found as a fact or had reached the finding that the termination of services of all the workmen concerned was illegal and contrary to the provisions of the relevant Act. In that state of facts, the Commissioner's duty is one prescribed or laid down by law - his legal duty, being also a mandatory one, without an option, to order the employer to continue to employ the workmen and pay all other benefits to which the workmen would have been otherwise entitled.

For the foregoing reasons I do hereby grant the following reliefs:

(i) an order of certiorari quashing or nullifying the decisions made by the Assistant Commissioner and the Commissioner of Labour on 22.01.1999 and 24.02.1999 marked P13 and P14, respectively;

(ii) an order of mandamus directing the Commissioner of Labour (1st respondent) to act under section 6 of the Termination of Employment Act No. 45 of 1971.

The Commissioner will bear in mind, as noted above, that the duty to reinstate the workmen, as are the other duties i.e. to pay "wages and other benefits", imposed upon him under section 6 of the Act, is mandatory and compulsory and that he has no option in the matter.

Application allowed.