

1967

Present : Alles, J.

S. E. FERNANDO, Appellant, and N. M. JINADASA, Respondent

*S. O. 47/1967—Labour Tribunal Case, 2903**Industrial Disputes Act—President of Labour Tribunal—Appointment by the Public Service Commission—Subsequent appointment by the Judicial Service Commission—Validity.*

A person appointed by the Public Service Commission as President of a Labour Tribunal continues to have valid and effectual jurisdiction under that appointment if, while that appointment remained unrevoked, the Judicial Service Commission purported to appoint him to the same office subsequently in consequence of the decision in *Walker Sons & Co. Ltd. v. Fry*.

A P P E A L from an order of the President of a Labour Tribunal.

H. W. Senanayake, for the defendant-appellant.

No appearance for the applicant-respondent.

Cur. adv. vult.

September 9, 1967. ALLES, J.—

The point of law raised at the hearing of this appeal by Counsel for the appellant was that the President of the Labour Tribunal acted without jurisdiction when he made the order against his client in view of the decision of the Privy Council in *The United Engineering Workers Union v. Devanayagam* ¹.

The President was appointed by the Public Service Commission by notification in the *Government Gazette* No. 14,004 of 10.4.64, but subsequent to the decision of the Divisional Bench of the Supreme Court in *Walker Sons & Co. Ltd v. Fry*,² he was again appointed as President by the Judicial Service Commission (vide *Government Gazettes* Nos. 14,693 of 29.4.66 and No. 14,732 of 20.1.67). The application by the respondent was made on 6.11.66 and the appellant filed answer on 8.12.66 and the President delivered the order in the instant case on 12.2.67 at a time when he was appointed by the Judicial Service Commission. The majority decision of the Privy Council in the above-mentioned case overruled the majority decision of the Supreme Court in *Walker Sons & Co. Ltd. v. Fry* and held that the President of a Labour Tribunal does not hold judicial office within the meaning of section 55 (5) of the Ceylon (Constitution) Order in Council, 1946 and therefore does not require to be appointed by the Judicial Service Commission.

¹ (1967) 69 N. L. R. 289.

² (1965) 68 N. L. R. 73.

It has been submitted on behalf of the appellant that the subsequent appointment of the President by the Judicial Service Commission makes invalid the prior appointment of the President by the Public Service Commission in that pending the appeal to the Privy Council Presidents of Labour Tribunals ceased to carry out the duties and obligations of their office as Presidents. I am unable to agree. The appointment of the President by the Public Service Commission was never revoked by that body and the appointment of the President by that body continued to be valid and effectual notwithstanding the purported re-appointment by another body in the exercise of their powers under the Constitution. The fact that the Presidents did not exercise their powers as Presidents subsequent to the decision in *Walker Sons & Co. Ltd. v. Fry* was out of an abundance of caution in the event of the Privy Council upholding the decision of the Divisional Bench and cannot affect any orders properly made by them in the exercise of their powers since they were always properly appointed by the appropriate authority. I am therefore unable to subscribe to the view put forward by learned Counsel for the appellant that the President in the instant case acted without jurisdiction. The appeal is therefore dismissed.

Appeal dismissed.