TIMBER CRAFT LTD.

v.

PIERIS

COURT OF APPEAL.
RANASINGHE, J. AND TAMBIAH, J.
C. A. APPLICATION 2210/80
DECEMBER 11, 1980.

Labour Tribunal—Ex-parte order against employer—Application in revision made to Court of Appeal—Non-compliance with Regulation 28 of Regulations made under Industrial Disputes Act—Material before Court of Appeal to show that order not just and equitable—Circumstances in which relief should be granted.

The petitioner filed this application invoking the powers of the Court of Appeal by way of revision to have an *ex-parte* order made by the Labour Tribunal against it in favour of the applicant-respondent set aside and for the direction that an inquiry be held *de novo*. The said petition also contained averments together with exhibits annexed in support showing that the *ex-parte* evidence of the applicant-respondent on which the order of the Tribunal was based did not stand close scrutiny and that in the result the order of the Tribunal was not a just and equitable order.

Held

(1) Regulation 28 of the Regulations framed under section 39 of the Industrial Disputes Act provided that the President of the Labour Tribunal was only entitled to proceed with an inquiry *ex-parte* if he was satisfied that no sufficient cause for his absence had been shown by a party in default. The consideration of the *ex-parte* order in the present case and the proceedings of the said date did not show that the learned President had given his mind to the provisions of this regulation before he decided to proceed with the inquiry *ex-parte*.

(2) The material placed before the Court of Appeal in the averments of the petition filed in revision together with the exhibits annexed thereto showed that several of the grounds set out in the said *ex-parte* order based as it was on the evidence of the applicant-respondent given *ex-parte* did not stand close scrutiny. There was material which gave strength to the petitioner-Company's assertion that that there had been no termination of the applicant-respondent's services and the learned President had not had the opportunity of considering all these documents at the time he made his order.

(3) In the circumstances, even though the petitioner had not, after it defaulted in appearance, gone before the Labour Tribunal and sought the opportunity to cure its default, it would be very difficult to accept an order made without considering the material placed before the Court of Appeal by the petitioner-Company as a just and equitable order. This was a circumstance which weighed very heavily in deciding whether relief by way of revision should be granted to the petitioner and accordingly the order of the Tribunal should be vacated and the application refixed for inquiry subject, however, to an order for costs in favour of the applicant-respondent.

Case referred to

Bata Shoe Company of Ceylon Ltd. v. Sirisena, (1970) 74 N.L.R. 94.

APPLICATION to revise an order of the Labour Tribunal.

Lyn Wirasekera, for the respondent-petitioner.

Sidat Sri Nandalochana, with *W. G. Deen*, for the applicant-respondent.

January 13, 1981. *Cur. adv. vult.*

RANASINGHE, J.

The applicant-respondent, who was an employee of the petitioner-Company, complained to the Labour Tribunal that his services have been unjustifiably terminated by the petitioner with effect from 2.12.79, and prayed for re-instatement with back wages. The application had been taken up for inquiry on 21.2.80. On that date an officer of the petitioner-Company had appeared on behalf of the petitioner-Company; and the parties had been informed that the inquiry would commence on 2.4.80. On that date however the petitioner-Company had not been present. Thereafter this matter had come up for inquiry on 30.6.80. On that date too the petitioner-Company had been absent and also unrepresented. The applicant-respondent had been present; and upon an application made by the applicant-respondent for an *ex-parte* hearing, the Labour Tribunal had proceeded to hear the application *ex-parte* and had made an order in favour of the applicant-respondent.

The petitioner-Company has now moved this Court by way of revision to have the said *ex-parte* order revised and for a direction to the Labour Tribunal to hold an inquiry *de novo* at which the petitioner-Company could be present and be represented.

A perusal of the aforementioned *ex-parte* order made on 30.6.80 by the learned President of the Labour Tribunal shows that, after the inquiry was postponed on 2.4.80 to 30.6.80, the petitioner-Company "was informed under registered cover that in the event of his absence on that date, the inquiry would be proceeded with *ex-parte*". The said order however does not state the exact date on which the petitioner-Company had been so informed. Nor does it state that the notice so sent under registered cover had in fact been served on the petitioner-Company.

The petitioner-Company has, in paragraph 10 of the petition, set out why the petitioner-Company failed to appear on 2.4.80.

There is, however, no averment with regard to it having thereafter gone before the Labour Tribunal and seeking to purge such default.

As was set out in the case of *Bata Shoe Company of Ceylon Ltd. v. Sirisena* (1), Regulation 28 of the Regulations framed under section 39 of the Industrial Disputes Act provides that the President is only entitled to proceed with an inquiry *ex-parte* if he is satisfied that no sufficient cause for a party's absence has been shown by the party in default. A consideration of the aforesaid *ex-parte* order and the proceedings of 30.6.80 do not show that the learned President in this case too has given his mind to the provisions of this Regulation before he decided to proceed with the inquiry *ex-parte* on 30.6.80.

Furthermore, a consideration of the averments set out in the petition together with the exhibits annexed thereto, in my opinion shows that several of the grounds, set out in the said *ex-parte* order and upon which the applicant-respondent has succeeded in obtaining relief, do not stand close scrutiny so much so that the said order does not appear to be a just and equitable order.

The said order proceeds, based as it is on the *ex-parte* evidence of the applicant-respondent, on the footing that the applicant-respondent had been re-instated, after his earlier dismissal, upon an order made by the Commissioner of Labour: that, after such re-instatement, the applicant-respondent had been transferred by the petitioner Company to its branch at Meegoda with effect from 1.12.79: that on the same day (1.12.79) the services of the applicant-respondent was terminated by the petitioner-Company in such an unlawful and unjustifiable manner that it amounted to an unconscionable act on the part of the petitioner-Company.

A perusal of the exhibits "B" and "C" annexed to the petition, however, shows that: the re-instatement of the applicant-respondent had actually been based upon a settlement arrived at between the applicant-respondent and the petitioner-Company (of which "B" is a copy), and not upon an order made by the Commissioner of Labour without the consent of the petitioner-Company: that the "transfer" of the applicant-respondent to Meegoda was something done in terms of the said settlement "B". Furthermore the documents "D" and "F 1" to "F16" do give

strength to the petitioner-company's assertion that there has been no termination of the applicant-respondent's services by the petitioner-Company as maintained by the applicant-respondent. The learned President has not had the opportunity of considering these documents in making the order he did make on 30.6.80 in the absence of the petitioner-Company.

Even thereafter, as indicated earlier, the petitioner-Company has not, after 2.4.80 gone before the Labour Tribunal and sought an opportunity to cure its default and the explanation set out in paragraph 10 of the petition itself does not sound very convincing, yet it seems to me that the fact it would be very difficult to accept an order made without taking into consideration the abovementioned documents marked "B", "C", "D", and "F1" to "F16", relied on by the petitioner-Company, as an order which is just and equitable is a very strong circumstance which should weigh very heavily in deciding whether or not this Court should grant the petitioner-Company the relief prayed for by the petitioner-Company.

In this view of the matter, it seems to me that any hardship, which may be caused to the applicant-respondent by relief being granted at this stage to the petitioner-Company by this Court, could be alleviated by an appropriate order for costs, in respect of the proceedings had so far, in favour of the applicant-respondent.

I therefore make order that the petitioner-Company do deposit with the Secretary of the Labour Tribunal a sum of Rs. 525 as costs of the applicant-respondent (which said sum the applicant-respondent will be entitled to withdraw) within three weeks from the date of the receipt of a notice from the Labour Tribunal, and that, if the said sum is so deposited the President of the Labour Tribunal should vacate the *ex-parte* order made on 30.6.80 and refix the applicant-respondent's application for inquiry at which said inquiry the petitioner-Company would be entitled to appear and participate. If, however, the petitioner-Company does not so deposit the said sum as directed above, the petitioner-Company's application will stand dismissed, and the aforesaid *ex-parte* order made on 30.6.80 will remain operative. The learned President of the Labour Tribunal is directed to issue forthwith a notice on the applicant-respondent as set out above.

The Registrar of this Court is directed to communicate this order forthwith to the learned President of the Labour Tribunal.

TAMBIAH, J.—I agree.

Application allowed.