1976 *Present* : **Deheragoda, J. and Malcolm Perera, J.**

NELSON WEERASINGHE, Applicant-Appellant

and

CEYLON TRANSPORT BOARD, Respondent-Employer

S. C. 9/74—L. T. 1/6252/73

Labour Tribunal—Application in respect of termination of workman's services—Such application dismissed on ground of prescription subject to right of applicant to re-open the same if law revised—Fresh application made thereafter—Industrial Disputes (Special Provisions) Law No. 53 of 1973—Order made dismissing second application—Effect of section 2(1) of Amending Act.

The applicant-appellant who had been an employee of the Ceylon Transport Board made an application to the Labour Tribunal in respect of the termination of his services. His services had been terminated on 19th July, 1971, and the application for relief made in 1972. When the matter came up for inquiry the employer raised the objection that the application to the Labour Tribunal had been made after the prescribed time limit of three months had expired and accordingly the said application was dismissed subject to the right of the applicant to re-open the same if the law existing at that time was revised.

Law No. 53 of 1973 amending the Industrial Disputes Act in respect of the time limit within which an application could be made became law on 11th December, 1973, and this law provided, inter alia, that if an application to a Tribunal has been dismissed on the ground that it was not made within the prescribed period of three months such order of dismissal should be deemed to be null and void and the Tribunal was empowered to hear and determine such application *de novo.*

The applicant-appellant made a fresh application to the Labour Tribunal on 6th May, 1973, in respect of the termination of the services as aforesaid. This came up for inquiry on 14th December, 1973, and on 31st December, 1973, order was made dismissing his application on the basis that the matter had been disposed of in the earlier case.

Held : That the order dismissing the application of this workman was illegal and should be set aside. The order was made after the Amending Law No. 53 of 1973 became law and the Labour Tribunal should therefore hear and determine the original application which had been made by the applicant-appellant as the order dismissing the same on the ground that it was prescribed was now deemed to be null and void.

Cases referred to :

Ram Banda vs. River Valleys Development Board, 71 N.L.R. 25.
River Valleys Development Board vs. Sheriff, 74 N.L.R. 505.
Ceylon Workers Congress vs. Superintendent, Beragala Estate, 76 N. L. R. 1.

APPEAL from an order of a Labour Tribunal.

K. Shanmugalingam, for the applicant-appellant.

A. Mahendrarajah, for the respondent-employer.

Cur. adv. vult.

September 10, 1976. MALCOLM PERERA, J.

The applicant-appellant was employed in the Ceylon Transport Board as a Depot Inspector. On the 19th July, 1971, his services were terminated. In 1972 the applicant filed an application before the Labour Tribunal for reinstatement with back wages, which application was numbered as LT 16/1908/72. When this application came up for inquiry the employer took up the position that the application has been made to the Labour Tribunal after the expiration of the prescribed time limit of three months. The President of the Tribunal upholding the objection made order as follows:

"I dismiss the application subject to the right of the applicant to re-open this application if the present law is revised."

On the 6th of May 1973 the appellant made the present application to the Labour Tribunal complaining of wrongful termination of his services and praying for reinstatement and back wages. On the 14th of December, 1973, the matter came up for inquiry. On the 31st of December the learned President made the following order:

"When this matter was taken up for inquiry on 14.12.73 Mr. Samson Silva appeared for the applicant. Mr. Sunderalingam appeared for the Respondent.

The applicant in this case has filed this application before this tribunal on 8.5.73. He had pleaded that his services were terminated by the respondent on 14.10.71. The instant application therefore has been filed after a lapse of about one and a half years.

Counsel for the respondent marked in evidence document R1, which was a certified copy of an order given by Labour Tribunal (16) in Case No. 16/1908/72 where the application had been dismissed reserving the right to file a fresh application provided the law was amended with regard to prescription.

Submissions by the proctor for the applicant was that order in case No. 16/1908/72 was not a final order in that it was qualified giving the right to the applicant to re-agitate the matter provided the law was amended.

As far as this dispute is concerned, this matter has been disposed of in case No. 16/1908/72. The law has not been amended enabling the applicant to re-agitate this matter.

This application is dismissed."

In the case of *Ram Banda vs. The River Valleys Development Board,* 71 N.L.R. 25, where it was contended on behalf of the appellant that Regulation 16 of the Industrial Disputes Regulations 1958 was ultra vires the rule making powers conferred on the Minister, it was held " that regulation 16 is ultra vires the rule making powers conferred on the Ministry by sections 31A(2), 39 (1) (*a*), 39(1) (*b*), 39(1) (*f*) and 39(1) (*h*) of the Industrial Disputes Act inasmuch as it in effect takes away from the workman, on the expiry of the stated period of three months, the right given to him by the legislature to apply to a Labour Tribunal for relief, and to that extent nullifies or repeals the principal enactment. The true nature of the regulation is one of substantive law and not merely of procedure. Section 39(2) of the Industrial Disputes Act which provides that every regulation made by the Minister should be placed before Parliament for approval and that, on such approval and publication in the Gazette, it shall be " as valid and effectual as though it were herein enacted " does not confer validity on a regulation which is outside the scope of the enabling powers. The mere passage of such regulation through Parliament does not give it the *imprimature* of the legislature in such a way as to remove it, through the operation of section 39(2), from the purview of the courts. The duty of interpreting the regulation and the parent act in order to see whether the former falls within the scope allowed by the latter devolves on the courts alone. "

In the case of the *River Valleys Development Board vs. Sheriff,* 74 N. L. R. 505, the decision in *Ram Banda vs. The River Valleys Development Board* (*supra*) was reviewed by a bench of three judges. The majority decision in that case was " that regulation 16 was valid and within the authority given to the Minister by paragraph (*h*) of section 39(1) of the Industrial Disputes Act to make regulations in respect of all matters necessary for carrying out the provisions of this act or giving effect to the principles thereof."

In the case of *Ceylon Workers Congress vs. Superintendant Beragala Estate,* 76 N.L.R. 1, the Court of Appeal held " that Regulation No. 16 is invalid for the reason that it is *ultra vires* the rule making powers vested in the Minister. The Industrial Disputes Act itself does not contain any provision which limits the time within which an application may be made under

section 31B(1). An unlimited right granted by a statute cannot be validly limited by a regulation without an express power conferred for that purpose by the Act.

A regulation which restricts generally a workman's right to apply for relief, irrespective of the facts and circumstances applicable to any particular case, far from giving effect to the principles of the Act will go counter to those principles by precluding a Tribunal from making a just and equitable order in cases where there may be some delay but such delay is excusable or justifiable.

The provision in section 39(2) of the Industrial Disputes Act that every regulation made by the Minister and approved by Parliament shall be as valid and effectual as though it were enacted in the principal Act cannot preclude the Courts from examining the *vires* of Regulation No. 16. Section 39(2) can apply only to regulations made within the ambit of section 39(1). The question whether a Regulation is within the ambit of section 39(1) has to be decided by the Court on an application of an objective test and not by reference to the intentions of the Minister."

On the 11th of December, 1973, Act No. 53 of 1973 became law, and section 2(1) reads as follows :

" Where any application made to a Labour Tribunal during the relevant period under paragraph (*a*) or paragraph (*b*) of section 31B(1) of the principal enactment has not been entertained by order of such Labour Tribunal on the ground, and on the ground only that such application was not made within the period of three months prescribed by the relevant regulation, such order shall be deemed to have been and to be null and void, and the Labour Tribunal is hereby empowered, authorized and required and shall have jurisdiction to entertain, hear and determine such application de novo under the provisions of the principal enactment."

The order in the present application was made on the 31st of December, 1973. This order is illegal. We therefore set aside the order and allow the appeal. We direct the Labour Tribunal to hear and determine the original Labour Tribunal application No. 16/1 908/72. The Appellant is entitled to the costs of this appeal which we fix at Rs. 200.

DEHERAGODA, J.—I agree.

Appeal allowed.