INDEPENDENT NEWSPAPERS LIMITED
v.
COMMERCIAL AND INDUSTRIAL WORKERS' UNION

SUPREME COURT.
DHEERARATNE, J.
WADUGODAPITIYA, J.
GUNAWARDENA, J.
S.C. APPEAL 106/96.
H.C. COLOMBO (A) 795/93 TO 887/93.
L.T. 8/3859/91 ET AL
MAY 30 AND JUNE 19, 1997.

Industrial Dispute – Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 Section 2(1) – Section 31 B(5) of the Industrial Disputes Act – Section 6B(2) of Termination of Workmen (Special Provisions) Act.

Subsection 2(1) of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 enable the employer to apply to the Commissioner for approval to terminate the services of workmen as was done in this case. This application should obviously be made before the termination of the services of a workman. In the case of a workman, the provision specifically enabling him to apply to the Commissioner against the termination was brought in by subsection 6B(1) (see Amendment No. 51 of 1988). However, before the amendment came into force, the Commissioner did entertain applications made by workmen for relief. In terms of that new subsection, such applications should be made to the Commissioner within six months of termination of services.

The effect of the words of subsection (5) of Section 31B is to affect the jurisdiction of the labour tribunal where a workman has first resorted to any other legal remedy. Subsection 6B(2) of the Termination of Employment (Special Provisions) Act affectively removes that obstacle in so far as a workman had first resorted to a legal remedy before the Commissioner.

Case referred to:

1. *Hendrick Appuhamy v. John Appuhamy* 69 N.L.R. 29

APPEAL to the Supreme Court from the judgment of the High Court of Colombo.

S. L. Gunasekera with *M. E. Wickramasinghe* for appellant.

S. Sinnathamby with *P. H. Thenuwara* for respondent.

Cur. adv. vult.

July 09, 1997.
DHEERARATNE, J.

Facts

This is an appeal from an order of the High Court allowing an appeal of the respondent and directing the Labour Tribunal to inquire into the merits of the applications made on behalf of the workmen by the respondent. The appellant employer Company (the appellant), on the 21st December 1990, wrote to the Commissioner of Labour (the Commissioner) stating that it was unable to continue its business operations or employ or pay its workmen any further, due to recurring losses, lack of working capital etc. and requesting the Commissioner to "be pleased to make such orders as may be necessary under the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971". That letter also included a specimen of a letter addressed to its workmen and the list of their names. The respondent Trade Union (the respondent) on behalf of the workmen wrote to the Commissioner the letter A10/R12 titled "In the inquiry under Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971". That letter referred to the fact that the appellant had made an application to the Commissioner and the respondent requested him to "make an order on the employer to pay the wages with effect from the date of the closure until disposal of the matter". This disposal of the "matter" is obviously a reference to the inquiry initiated by the appellant. In the course of the inquiry before the Commissioner, a representative of the respondent orally claimed three years' salary for each workman. After the respondent wrote letter A10/R12 claiming some interim relief, and after the oral submission was made by the representative of the respondent at the inquiry before the Commissioner claiming three years salary for each workman, the respondent on behalf of the workmen, filed applications in the Labour Tribunal in terms of subsection 31B(1) of the Industrial Disputes Act.

Applicability of subsection 31B (5) of the Industrial Disputes Act.

It was submitted on behalf of the appellant that the workmen were not entitled to a remedy under subsection 31B (1) of the Industrial

Disputes Act, inasmuch as they have first resorted to some other legal remedy. This argument commended itself to the learned President of the labour tribunal, who dismissed the applications of the workmen on that score. Subsection 31B (5) reads as follows:–

> *Where an application under subsection (1) is entertained by a labour tribunal and proceedings thereon are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under subsection (1).*

Did the workmen first resort to any other legal remedy? In the context of the sentence in which the word "resorted" appears, out of the several ordinary meanings of that word, it would attract the meanings of "to have recourse" or "to apply" (see Chambers 20th Century Dictionary). The Chambers 21st Century Dictionary (1996) gives the second ordinary meaning of that word as "the action of resorting to or having recoursed to someone or something for help". Subsection 2(1) of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 enables the employer to apply to the Commissioner for approval to terminate the services of workmen as was done in this case. This application should obviously be made before termination of the services of a workman. In the case of a workman, the provision specifically enabling him to apply to the Commissioner against the termination was brought in by subsection 6B (1) (see Amendment Act No. 51 of 1988). However, before the amendment came into force, as a practice, the Commissioner did entertain applications made by workmen for relief. In terms of that new subsection, such applications should be made to the Commissioner within six months of termination of services. It would appear that the application to the Commissioner was made by the appellant and the respondent wrote the letter A10/R12 and the submission setting out a claim was made by the respondent's representatives purely in response to the appellant's application. In these circumstances, I am of the view that the workmen had not first resorted to a legal remedy within the meaning of subsection 31B (5).

Applicability of Subsection 6B (2) of the Termination of Employment of Workmen (Special Provisions) Act.

It was contended on behalf of the respondent that even if the workmen had resorted to a legal remedy before the Commissioner in pursuance of their rights under the Termination of Employment of Workmen (Special Provisions) Act, yet, in terms of subsection 6B (2) of that Act, they could apply to the labour tribunal for relief in respect of their termination. In other words, that subsection 6B (2) has the effect of impliedly amending the second limb of subsection 31B (5) of the Industrial Disputes Act. On the other hand, Mr. Gunasekera for the appellant submitted that subsection 6B (2) does not serve to amend subsection 31B (5) of the Industrial Disputes Act. Subsection 6B (2) reads:–

> *Nothing in this Act shall be read and construed as effecting (sic) section 2 or section 5 of the Act or the rights of a workman whose employment has been terminated to apply for any other legal remedy in respect of that termination or as effecting (sic) the jurisdiction of any court, tribunal or institution to grant relief in respect of such termination.*

The word "effecting" appears to be an obvious error and it should read as "affecting". It was Mr. Gunasekera's contention that for an implied amendment to take place, when the legislature has not expressly amended subsection 31B (5) of the Industrial Disputes Act, there must be a clear and patent incompatibility between subsection 31B (5) of the Industrial Disputes Act (the earlier Act) and subsection 6B (2) of the Termination of Employment of Workmen (Special Provisions) Act (the later Act); he submitted that there is no such incompatibility. Learned counsel contended that the two provisions can co-exist; or if there is an interpretation that enables them to co-exist, there cannot be an amendment to subsection 31B (5) of the earlier Act intended by the legislature in the absence of an express amendment; that (citing *Hendrick Appuhamy v. John Appuhamy*)[1], where a statute creates a right and in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that tribunal and not to others; and that the purpose and object of the legislature in enacting subsection 6B (2) of the later Act is to enable a workman to seek relief from a District Court or a Labour Tribunal notwithstanding the

special remedy provided by the Act. Mr. Gunasekera's submission was that the plain meaning of subsection 6B (2) of the later Act was that the availability of the remedies provided by the Act does not deprive a workman of his rights to other remedies.

I find it difficult to agree with the interpretation advanced by learned counsel for the appellant. Words of subsection 31B (5) of the earlier Act, material to this case are "where he (the workman) has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under subsection (1)". The words material to this case in subsection 6B (2) of the later Act are "nothing in this Act shall be read and construed as affecting the rights of a workman whose employment has been terminated to apply for any other legal remedy in respect of that termination **or as affecting the jurisdiction of any court, tribunal or institution to grant relief in respect of such termination**". (Emphasis added). Had the subsection ended after the word "termination" where it appears first, one may have agreed with the construction sought to be placed by Mr. Gunasekera. But, if the words I have emphasised are to be given any meaning, it makes it impossible for them to co-exist with the words of subsection 31B (5) of the earlier Act; the effect of the words of subsection 31B (5) **is to affect the jurisdiction of the labour tribunal**, where a workman has first resorted to any other legal remedy. Subsection 6B (2) of the later Act effectively removes that obstacle to the jurisdiction of the labour tribunal, in so far as a workman had first resorted to a legal remedy before the Commissioner.

For the reasons stated above, the appeal is dismissed with costs of this Court fixed at Rs. 10,000/- payable to the respondent. The Registrar of this Court is directed to send the records back to the Labour Tribunal as soon as possible. We direct the Labour Tribunal to give precedence to these cases and to hear and determine them as expeditiously as possible. It is unfortunate that the workmen have not been able to obtain any relief so far, either from the Commissioner or from the Tribunal on account of the termination of their services.

WADUGODAPITIYA, J. – I agree.

GUNAWARDENA, J. – I agree.

Appeal Dismissed.