

1968 *Present* : H. N. G. Fernando, C.J., and Abeyesundere, J.

A. I. JAFFERJEE and others, Appellants, *and* THE CEYLON
MERCANTILE UNION, Respondent

*S. C. 419-422/67—Applications for Mandates in the nature of
Writs of Certiorari and Prohibition*

*Industrial dispute—Dismissal of a workman by his employer—Reference for arbitration—
Legality of arbitrator's power to pronounce upon the rightfulness or wrongfulness
of the dismissal—Industrial Disputes Act, s. 4—Certiorari.*

Where a dispute that has been referred for arbitration under section 4 of the Industrial Disputes Act concerns the question whether the dismissal or proposed dismissal of a workman by his employer is justified, the arbitrator's disposal of it in the manner provided for by the Industrial Disputes Act is legal and does not constitute the exercise of judicial power.

APPPLICATIONS for writs of *Certiorari* and Prohibition.

S. Sharvananda, with *A. Paranavitane*, for the Petitioners.

N. Satyendra, for the 1st Respondent.

¹ (1891) 2 Q. B. 326 at 335, 336.

² (1947) 48 N. L. R. 66.

³ (1963) 67 N. L. R. 191.

January 24, 1968. H. N. G. FERNANDO, C.J.—

In these four applications counsel for the Petitioners has argued that in each case the reference of the particular dispute for arbitration under Section 4 of the Industrial Disputes Act is *ultra vires*. In each case the dispute concerns the question whether the dismissal or proposed dismissal of certain workmen by their employer is justified. The argument of counsel is that since the arbitrator may be pronouncing upon the rightfulness or wrongfulness of the dismissals the arbitrator will be exercising judicial power.

In the case of *United Engineers Workers Limited v. Devanayagam*¹ the Privy Council considered a case where an application had been made under Part IV A of the Industrial Disputes Act to a Labour Tribunal for relief. The relief described in the Act for which an applicant may apply is relief in respect of the termination of the services of a workman. The decision of the Privy Council is to the effect that the entertainment of such an application, and its disposal in the manner provided for by the Act, did not constitute the exercise of judicial power. It would appear that the *ratio decidendi* of the Privy Council decision is that the powers committed by the Act to Industrial Courts and arbitrators are perfectly legal and that the powers committed to Labour Tribunals by Part IV A of the Act are no different from similar powers which may be exercised by Industrial Courts or arbitrators. It seems, therefore, that the point of law which counsel for the petitioners now urges is answered by the decision of the Privy Council. The applications are refused, with costs fixed at Rs. 52·50 in each application.

ABEYESUNDERE, J.—I agree.

Applications refused.
