

THE BOARD OF TRUSTEES OF THE
TAMIL UNIVERSITY MOVEMENT

v.

F. N. DE SILVA AND ANOTHER

SAMARAKOON C. J.,
ISMAIL J., WANASUNDERA J.,
WIMALARATNE J. AND VICTOR PERERA J.
S. C. APPEAL NO. 79/80
C. A. APPLICATION NO. 1556/79
L. T. NO. 13/6716 – 25/77
OCTOBER 28, 1981

Writ of Certiorari – Writ Jurisdiction – order refusing writ to quash order permitting amendment – Is an order refusing writ a final order or interlocutory order? – Articles 128 (1) and (2) and 140 of the Constitution.

The power to issue writs like *certiorari* vested by Article 140 of the Constitution in the Court of Appeal is a supervisory power and not an appellate jurisdiction. The jurisdiction in respect of writs is an exceptional one and the granting or refusal of writ is a final order within the meaning of Article 128(1) of the Constitution and not an interlocutory order in respect of which leave to appeal is granted under Article 128(2) by the Supreme Court.

Preliminary objection to appeal from judgment and Order of Court of Appeal

*K. Kanag – Iswaran for Petitioner-appellant.
S. Mahenthiran for 2nd Respondent-Respondent.*

Cur. adv. vult.

November 13, 1981

SAMARAKOON, C. J.

The second Respondent, the Ceylon General and Industrial Workers' Union (hereinafter referred to as the Union) presented 10 applications on behalf of its members to the Labour Tribunal No. 13 alleging wrongful and unjustified termination of employment. The Respondent to each application was the "Tamil University Movement" of No. 16, Fountain House Lane, Colombo 10. The Secretary of the Movement filed answer pleading *inter alia* that "the application cannot be maintained against the Tamil University Movement and it has been filed against the wrong party". At the inquiry the Secretary contended that the Movement was neither a juristic nor a natural person and therefore the application could not be maintained in law. The Union then moved to amend the Caption to the applications and the President granted the Union two weeks time to make the amendments.

After a long delay amended applications were filed in which the Appellant, the Board of Trustees of the Tamil University Movement, was named as the Respondent. The Appellant objected to this amendment and moved that the original applications and the amended applications be dismissed. The President, by his order of 4th April, 1979, allowed the amendment. The Appellant thereupon applied to the Court of Appeal for a Writ of *Certiorari* to quash the Order of the Tribunal. This application was refused by the Court of Appeal. It also made a further order allowing the amendment. Leave to appeal to this Court was sought from and allowed by the Court of Appeal. This appears to have been done in terms of Article 128(1) of the Constitution. Counsel for the Union has taken an objection *in limine* to the hearing of this appeal. He contends that the Order of the Court of Appeal is an interlocutory Order which could not be the subject of an application or order under Article 128(1) but an interlocutory Order in respect of which leave to appeal could only have been made in terms of Article 128(2) and leave granted by the Supreme Court.

We have heard a lengthy and interesting argument by opposing Counsel on the interpretation of the provisions of Article 128(1) and (2) of the Constitution. Counsel for the Union argued that this order was not a "final order or judgment" within the meaning of Article 128(1). He contends that in arriving at a decision as to whether an order is final or interlocutory recourse must be had to the nature of the original order made by the Labour Tribunal. He states that the Order of the Labour Tribunal was an incidental one which did not finally decide the dispute between the parties for the purpose of resolving which the application was made by the Union. He called in aid decisions of the former Supreme Court in respect of appeals to the Privy Council. These are not helpful in deciding this matter because Rule 1(a) of the Schedule to the Appeals (Privy Council) Ordinance (Chapter 100) makes the final order referable to the matter in dispute between the parties or the claim in respect of the property or civil right pleaded. The nature of the order has therefore to be garnered from the original action itself. However I do not need to make a decision on this aspect of the matter in view of the opinion I have formed.

The Writ was applied for in terms of Article 140 of the Constitution which reads thus:—

"140. Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution, and grant and issue, according to law,

orders in the nature of writs of *certiorari*, prohibition, *procedendo*, *mandamus* and *quo warranto* against the judge of any Court of First Instance or tribunal or other institution or any other person."

This is a supervisory power and not an appellate jurisdiction. The matter has not come up to the Court of Appeal by way of appeal from the Order of the Labour Tribunal, but it has originated in the Court of Appeal itself by virtue of what may be termed an original jurisdiction of that Court. In respect of applications for Writs of *Habeas Corpus* or *Quo Warranto* for instance there need not be any prior proceedings in a Court or Tribunal. A final Order is made. In the case of a Writ of *Certiorari*, if a Writ is allowed the Order complained of is quashed and that is final. Refusal is equally final. As far as the Court of Appeal is concerned its order ends the dispute which is the subject of the application. The jurisdiction in respect of Writs is an exceptional one and the granting or refusal of a Writ is a final order within the meaning of Article 128(1) of the Constitution. I would therefore reject the objection taken by Counsel for the Union and the appeal must now proceed to be heard. Costs will abide the final decision in the appeal.

ISMAIL, J. — I agree.

WANASUNDERA, J. — I agree.

WIMALARATNE, J. — I agree.

VICTOR PERERA, J. — I agree.

Preliminary objection overruled.