1962 *Present :* **T. S. Fernando, J.**

CEYLON COCONUT PRODUCERS' CO-OPERATIVE UNION, LTD.
Appellant, *and* C. JAYAKODY, Respondent

S. C. 14 of 1960—Labour Tribunal Case No. 2/1915

Workman employed by a registered co-operative society—Right to apply for reliefs obtainable under Industrial Disputes Act—Co-operative Societies Ordinance (Cap. 124), s. 53—Industrial Disputes Act (Cap. 131), as amended by Act No. 62 of 1957, ss. 31B, 33 (1)—Applicability of maxim Generalia specialibus non derogant.

Section 53 of the Co-operative Societies Ordinance, which declares that the decision of the arbitrator and/or the Registrar in a certain class of disputes between a registered co-operative society and any employee thereof " shall be final and shall not be called in question in any civil court ", does not oust the jurisdiction of a Labour Tribunal to grant relief to the employee if he is a workman within the meaning of the Industrial Disputes Act, and, as such, chooses to make an application for relief in terms of section 31B of the Industrial Disputes Act (Cap. 131), as amended by Act No. 62 of 1957. In such a case, the maxim *Generalia specialibus non derogant* is not applicable.

In a dispute falling within section 53 of the Co-operative Societies Ordinance the arbitrator or the registrar must decide in accordance with the *legal* rights of the parties and cannot give the ampler reliefs available to a workman through the machinery of the Industrial Disputes Act.

APPEAL from an order of a Labour Tribunal.

H. W. Jayewardene, Q.C., with *E. R. S. R. Coomaraswamy* and *C. P. Fernando*, for the appellant.

L. G. Weeramantry, with *R. L. Jayasuriya*, for the respondent.

A. L. S. Sirimane, acting Solicitor-General, with *H. Deheragoda* and *A. Mahendrarajah*, Crown Counsel, as amicus Curiae.

Cur. adv. vult.

May 14, 1962. T. S. FERNANDO, J.—

This appeal from an order made by a Labour Tribunal raises a question of some importance to employees of societies registered under the Co-operative Societies Ordinance of 1936 (now Cap.124).

The respondent alleging that his employment as Assistant Secretary of the appellant society was summarily terminated without notice or reasonable cause made an application to a Labour Tribunal claiming in terms of section 31B of the Industrial Disputes Act, No. 43 of 1950 (now Cap. 131) as amended by the Industrial Disputes Act, No. 62 of 1957, (*a*) reinstatement in employment, (*b*) arrears of salary as from date of termination of employment, and (*c*) a return of a sum of Rs. 1,500 deposited by him with the appellant as security. The appellant society raised two objections to the maintainability of the application— (i) that the respondent was not a workman within the meaning of section 31 B of the Industrial Disputes Act, and (ii) that section 53 (formerly 45) of the Co-operative Societies Ordinance has the effect of depriving a Labour Tribunal of any jurisdiction to entertain the application. The tribunal after hearing argument held against the appellant on both objections, and the appeal before me was designed to canvass the correctness of the order of the Tribunal. At the commencement of the argument, learned counsel for the appellant-society indicated that he did not propose to pursue the point raised in the petition of appeal that the respondent was not a "workman" as defined in the Industrial Disputes Act. He confined his argument to the second objection referred to above, viz., the question of section 53 of the Co-operative Societies Ordinance operating as a bar to a Labour Tribunal exercising jurisdiction in terms of the Industrial Disputes Act.

Section 53 referred to above enacts, inter alia, that if any dispute touching the business of a registered society arises between the society and any employee thereof, whether past or present, such dispute shall be referred to the Registrar for decision. The Registrar can either decide the dispute himself or refer it for disposal to an arbitrator. A party aggrieved by an award of the arbitrator can appeal therefrom to the Registrar. The decision of the Registrar and an award of the arbitrator (where no appeal is preferred to the Registrar)— to reproduce the words of the statute—"shall be final and shall not be called in question

in any civil court". This section came up for consideration by the Supreme Court in the case of *Sanmugam v. Badulla Co-operative Stores Union, Ltd.*[1] and the Court there held that it had the effect of ousting the jurisdiction of the ordinary courts over a dispute touching the business of a registered society arising between the persons enumerated in the section. The correctness of this decision of the Supreme Court is not doubted, and indeed learned counsel for the respondent advanced his arguments in support of the order on the basis that this decision, which was not concerned with the Industrial Disputes Act passed after the institution of the action in that case, in no way affects the soundness of his contention that the Labour Tribunal's jurisdiction acquired under Act No. 62 of 1957 and now invoked by the respondent is not thereby ousted. Relying on the decision of this court in *Sanmugam's case* (*supra*), Mr. Jayewardene argued that in the class of disputes contemplated in section 53 the jurisdiction of the arbitrator and/or the Registrar, as the case may be, was exclusive, and could not be taken away except by express words.

The argument on behalf of the respondent was that the question of any conflict between the jurisdiction of the tribunals contemplated in section 53 of the Co-operative Societies Ordinance and that of the Labour Tribunals established after 1957 under Part IV A of the Industrial Disputes Act does not really arise as the powers of the tribunals under the first-mentioned statute are not co-extensive with those of the Labour Tribunal. As an instance thereof, Mr. Jayasuriya contended that under our common law a dismissed servant cannot claim from any court of law a right to reinstatement in employment. "The Court will not decree specific performance of a contract for personal service, or of any contract which it would be impracticable or inexpedient for the Court to enforce specifically"— see Lee and Honore on *The South African Law of Obligations*, 1950 ed., page 49, section 195. Section 33 (1) of the Industrial Disputes Act (as amended) enables a Labour Tribunal, on the other hand, to order reinstatement in employment of an employee who has been discontinued. A further contention advanced by him was that an arbitrator or the registrar referred to in section 53 of the Co-operative Societies Ordinance has to decide the matter of a dispute referred to him according to the legal rights of parties and that, therefore, he has no power to make an award which a court of law itself cannot make. I think the contention that an arbitrator or registrar referred to above has not the power to order reinstatement in employment derives support from an examination of the general powers and duties of arbitrators. " It is the duty of an arbitrator, in the absence of express provision in the submission to the contrary, to decide the questions submitted to him according to the legal rights of the parties, and not according to what he may consider fair and reasonable in the circumstances "—see Russell on *Arbitration*, 16th ed., p. 126. I might include here also certain observations made in *R. v. National Arbitration Tribunal, Ex Parte Horatio Crowther & Co., Ltd.*,[2] a case where a *certiorari* to quash on the ground of want or excess of

[1] *(1952) 54 N. L. R. 16.*

[2] *(1947) 2 A. E. R. 693 at 696.*

jurisdiction was allowed in respect of that part of an award made by the National Arbitration Tribunal as related to reinstatement in employment :—

> " There are no express words either in the regulation or in the Order which in terms give the tribunal any power to reinstate, but it is said that as they have power to deal with any question relating to employment or non-employment it follows that they must have the power to make an award of reinstatement. It seems to me a strange thing to say, looking at this regulation which alone gives force to the Order, that a power is thereby impliedly given to the tribunal to grant a remedy which no court of law or equity has ever considered they had power to grant . . . . . It is true that this tribunal can do what no court can, namely, add to or alter the terms or conditions of the contract of service. Express power to do so is given by the regulation, while there are no words conferring a power to reinstate or revive a contract lawfully determined."

It is not, in my opinion, an unreasonable inference to make that by taking away the power of the courts in disputes falling within section 53 of the Co-operative Societies Ordinance and by placing the decision of these disputes in the hands of the arbitrator or the registrar the legislature did not intend either to enlarge or restrict the legal rights of the parties.

So long as it is not disputed that the respondent is a workman within the meaning of the Industrial Disputes Act, is there any good reason to reach a conclusion that remedies wider than those available through resort to the ordinary or regular courts that may be invoked through the medium of inquiries possible on an application made under section 31B of the Industrial Disputes Act are not open to employees of societies registered under the Co-operative Societies Ordinance ? I was impressed by the argument advanced by Mr. Jayasuriya for the respondent that to uphold the contention that section 53 of the Co-operative Societies Ordinance excludes employees of societies registered under that Ordinance from maintaining applications for the ampler reliefs obtainable through the machinery of the Industrial Disputes Act would operate as a discrimination, unwarranted in law, against employees of co-operative societies who today form numerically a substantial body of persons in this country.

The learned Solicitor-General, who appeared as *amicus curiae* at the instance of the court and whose assistance at the argument I acknowledge thankfully, suggested that the real question arising hereon may be framed as follows :— Does section 53 of the Co-operative Societies Ordinance create a statutory bar to the respondent taking his dispute with the appellant to the Labour Tribunal ? He submitted that the Co-operative Societies Ordinance is a special statute dealing—so far as the subject-matter of section 53 is concerned—with a special class or special classes of persons described in the said section, while the Industrial Disputes Act is a general statute. Referring to the maxim,

"*Generalia specialibus non derogant*", he submitted that the special statute must be given effect to unless expressly repealed by the later general statute. The matter is referred to thus in Craies on *Statute Law*, 5th ed. pp. 348–349 —"The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent is general." In the other equally well-known treatise on the *Interpretation of Statutes* by Maxwell, 10th ed., pp. 176–177, it is stated that "a general later law does not abrogate an earlier special one by mere implication", or to use the words of Lord Selborne, L.C. in *Seward v. Vera Cruz* [1], "where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specifically dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words without any indication of a particular intention to do so". In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act. Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one.—Maxwell, 10th ed, p. 177.

Even on the assumption that, in the sense referred to in the passage above quoted, the Co-operative Societies Ordinance is a special Act and the later Act, the Industrial Disputes Act, is a general Act, I find myself unable, with all respect, to agree with the submission made that the respondent on the present appeal has to confine himself to the machinery of settlement of disputes as established under the Co-operative Societies Ordinance. In Maxwell's treatise itself, 10th ed., p. 180, dealing with the maxim "*generalia specialibus non derogant*", there is the following comment:—"To be affected by this rule, *Acts must cover the same territory*". In the case of *Walker v. Hemmant* [2], where the appellant relied on a right of appeal that lay to him under the Criminal Justice Administration Act of 1914, and it was argued *contra* that an earlier special Act, the Coal Mines Act of 1911, deprived him of the right of appeal in the particular circumstances, the King's Bench Division held that the case was not one where a later and general Act has derogated from earlier and special legislation, but that the later Act provides an extension of the right of appeal granted by the earlier

[1] (*1884*) *10 A. C. 68.* [2] (*1943*) *1 K. B. D. 604.*

statute. Three Judges of the Court agreed that the maxim did not apply as the two enactments concerned "did not cover the same territory". It is, in my opinion, not reasonable to conclude that the wider reliefs obtainable by recourse to the machinery of the later Act which it is claimed embodies modern ideas designed for the purpose of preventing, investigating and settling industrial disputes, e.g., an order as may appear to the Tribunal to be just and equitable—(section 31c) or an order directing a reinstatement in service—(section 33 (1)—were intended to be excepted in cases of disputes which would but for this later Act have fallen to be dealt with under the earlier special Act. The maxim referred to above does not therefore, in my opinion, apply.

For the reasons I have indicated above, the second objection also fails, and this appeal is dismissed with costs.

Appeal dismissed.