

1970

*Present: Alles, J.*

CEYLON TRANSPORT BOARD, Appellant, *and* T. K. THUNGADASA  
Respondent

*S. C. 20/69—Labour Tribunal Case No. 2741*

*Industrial Disputes Act (Cap. 131)—Section 31 C (1)—“Just and equitable orders”—  
Labour Tribunal—Duty to act judicially in evaluating evidence.*

Where a workman joins a transferable service in a Corporation such as the Ceylon Transport Board, it is necessary in the interests of discipline and proper administration that the employer should be able to authorise such transfers. If the workman refuses to obey a transfer order improperly, a Labour Tribunal must not take into consideration irrelevant matters and extraneous issues in making an order against the employer. The Tribunal cannot under the guise of making “just and equitable orders” make orders which in effect dictate to the management how a Department or Corporation should be run.

It is the duty of a Labour Tribunal to act judicially in evaluating evidence before making just and equitable orders.

**A**PPEAL from an order of a Labour Tribunal.

*N. Satyendra*, for the employer-appellant.

No appearance for the applicant-respondent.

*Cur. adv. vult.*

March 19, 1970. ALLES, J.—

This is an appeal from the order of a Labour Tribunal directing (a) that the respondent be reinstated as a technician in the Ceylon Transport Board from 3rd April 1969 or earlier without any break in his service; (b) that he be continued to be employed in the same place of work; (c) that he should be presented for a vocational test within three months of the order and that he should be afforded an opportunity to qualify himself for the higher grade; and (d) that a sum of Rs. 1,500 be paid as a compassionate payment in lieu of payment of salary for the period of unemployment. It appears to me that some of the directives ordered by the learned President constitute a serious interference with the working of the Board and fall outside the purview of just and equitable orders that may be made under the provisions of Section 31 (C) (1) of the Industrial Disputes Act.

The respondent was a trained technician appointed to the Galle Depot of the Ceylon Transport Board from 1st January 1957. One of the matters that arose for decision in the course of the inquiry was whether he was in the 1st class of the trained technical service or whether he was a 3rd grade assistant technician. In view of the order made by the Tribunal directing him to appear for a vocational test, the President has held that the respondent had not qualified for appointment to the higher grade of 1st class trained technician. This finding is supported by the documents R6 and R7 produced by the Transport Board which gives the respondent the designation of an "Assistant technical employee" in receipt of a salary of Rs. 5.64 per day.

The main question that has been argued in this appeal is whether the termination of the respondent's services on the 21st of July 1966 was justified. It is admitted that the respondent belongs to a transferable service. On 23rd August 1965 by R1 he was transferred to the Kurunegala Depot as a mechanic. It has been established in evidence from R4 and R5 that in August 1965 the cadre of the Engineering section at Kurunegala was short by two skilled mechanics and four assistant

mechanics and that for the better administration of the engineering section these shortages in the cadre had to be filled. Therefore, prima facie, the respondent's transfer would appear to be justified. When a person joins a transferable service in a Government Department or a Corporation it is necessary in the interests of discipline and proper administration that the employer should be able to authorise such transfers. The learned President in his order, in my view, has taken into consideration several irrelevant matters and extraneous issues in making the order against the employer. One cannot under the guise of making "just and equitable orders" make orders which in effect dictate to the management how a Department or Corporation should be run.

When the respondent received the order of transfer he failed to obey the order and proceed to Kurunegala but commenced to forward several petitions to persons in authority, including the Minister of Nationalised Services, against his transfer. The appeals contained in these petitions against the transfer are, no doubt, matters that would be taken into consideration by the employer in deciding whether such orders should be implemented but if after due consideration the employer considers that these representations are without merit the employee is bound to comply with the order of transfer. The employer, after waiting for nearly ten months, by A4 of 22nd June 1966 informed the respondent that, if he failed to report for duty at Kurunegala within 7 days of the date of the receipt of the letter, or send an acceptable letter regarding the reasons for his refusal, he would be considered to have vacated his post. The respondent paid no heed to this letter and by A5 of 21st July 1966 the Board informed him that he was considered to have vacated his post from that date. The respondent then awakened from his lethargy and spurred to activity, immediately made representations to the Labour Tribunal on the 25th of July 1966. While proceedings were pending before the Tribunal offers were made by the Board to grant the respondent re-employment and such an offer was in fact made on 7th January 1967, On 1st July 1967 he was offered re-employment from that day, but no assurance was given that he would be posted to the Galle Depot or anywhere close to Galle. On the 18th of July 1967, however, by A9 he was appointed as a new entrant to assume duties at the Galle Depot. According to the rules of the Board when a person vacates his post he could only be re-employed as a new entrant. It seems to me that, in spite of the respondent failing to obey the orders of his employer, the Board has been extremely generous to him and offered him employment again at Galle, which was the main object of his protests against his transfer.

The respondent stated that the reason for his sudden transfer was because the authorities had chosen to victimise him for his participation in the arrangements in organising the Bandaranaike Commemoration celebrations to be held on 25th September 1965. He stated in examination-in-chief that the preliminary discussions held in connection with these celebrations were towards the end of August 1965 mentioning the specific date as being the 28th or 29th of August. In cross-examination however he maintained that he was not quite certain of the dates on which the preliminary discussions were held. Subsequently he took up the position that the reason why he could not go on transfer was because of certain personal difficulties. It has been established by documentary evidence (vide R1) that the transfer was made on 23rd August 1965 at a time when there was a shortage of mechanics at the Kurunegala Depot and the transfer presumably had nothing to do with the respondent's subsequent participation in the celebrations. There was therefore a serious misdirection on the facts when the President came to the conclusion too readily, "that the transfer had been given to the applicant not in the interests of the Ceylon Transport Board or for reasons relevant to its progress but because of some extraneous pressure". The President has further failed to consider the documentary evidence available in R4 and R5.

In regard to his personal difficulties the respondent stated that he had three children attending school who needed his personal attention; that he was paying a monthly rental of Rs. 30 for the house he was occupying; that he had taken loans at Galle from various institutions and that the transfer would seriously disrupt his domestic life. While, no doubt, these are matters that will be taken into account by a sympathetic employer, no Government Department or Corporation can run efficiently unless proper discipline is maintained and rules and regulations laid down for its efficient administration are obeyed by its employees.

The learned President has misdirected himself on the findings of fact:—

- (a) in accepting as established in evidence that the transfer of the respondent to Kurunegala was as a result of victimisation for his participation in the Bandaranaike Celebrations;
- (b) in failing to consider the terms of employment between the employer and employee and that when an employee joined a transferable service, it was fair and reasonable to refuse to proceed on transfer if he had personal difficulties;
- (c) that the respondent was justified in not accepting service in a lower grade and as a new entrant when the rules of the Board provided otherwise;

- (d) in holding, contrary to R4 and R5, that a vacancy for an employee in the Engineering Section at Kurunegala was not necessary;
- (e) that the offer of re-employment by the Board after the termination of employment was indicative of the fact that the Board had acted maliciously and was a confession that the Board had victimised the employee; and
- (f) that the transfer was the result of the "desire of officials to cause inconvenience to the employee and finally to render him unemployed" when there was not even a suggestion to any of the Board officials that such was the case.

Some of the findings are inconsistent with the evidence and contradictory and there has been a failure to consider relevant and admissible evidence. This Court is therefore entitled, as a question of law, to examine and interfere with such an order. Since the decision in *United Engineering Workers Union v. Devanayagam*<sup>1</sup> there has been a growing tendency on the part of presidents of Labour Tribunals to embark on lines of inquiry and explore avenues of investigation not covered by the provisions of the Act and make orders, regardless of the rules of evidence, in the guise of making just and equitable orders. For instance, in this case I cannot see on what ground the President could direct that an employee should continue to be employed in his same place of work or that he should be presented for a vocational test within three months of his order so as to afford him an opportunity to qualify himself for a higher grade. These are surely matters which should be left to the discretion of the employer without any directives from a Tribunal which is expected to act judicially. Recently this Court has had occasion to draw the attention of Presidents of Labour Tribunals to the duty of acting judicially in evaluating evidence before making just and equitable orders. Vide *Ceylon Transport Board v. Abdeen*<sup>2</sup>; *Associated Newspapers of Ceylon Ltd. v. National Employees' Union*<sup>3</sup>; *Ceylon Transport Board v. Ceylon Transport Workers' Union*<sup>4</sup> and *Ceylon Transport Board v. Gunasinghe*<sup>5</sup>. I would, for the purposes of this case, adopt the observations of my brother Weeramantry J. in the latter case that proper findings of fact are a necessary basis for the exercise by Labour Tribunals of that wide jurisdiction given to them by statute of making such orders as they consider to be just and equitable". On the proper findings of fact in this case the termination of the respondent's services on 22nd July 1966 was justified.

<sup>1</sup> (1967) 69 N. L. R. 259.

<sup>2</sup> (1968) 71 N. L. R. 70.

<sup>3</sup> (1968) 70 N. L. R. 407.

<sup>4</sup> (1968) 71 N. L. R. 158.

<sup>5</sup> (1968) 72 N. L. R. 76.

Since the respondent has been offered re-employment in the services of the Board as a new entrant at Galle he has no reason to complain. I am however compelled to delete the order made in this case directing the payment of Rs. 1,500 on compassionate grounds because this order has clearly been made on the footing that the termination of the respondent's services was not justified. The appeal is therefore allowed but there will be no order as to costs.

*Appeal allowed.*