

**SRI LANKA STATE PLANTATION CORPORATION
VS
DHARMAWANSA AND OTHERS**

COURT OF APPEAL,
SRIPAVAN J. AND,
DE ABREW J.,
C.A. 12040/2005,
NOVEMBER 8, 2005
AND JANUARY 16 AND 23, 2006

Industrial Dispute -Employee seeking administrative relief to compel employer to keep him in employment till 60 years-Application also filed in the Labour Tribunal for re-instatement-Industrial Disputes Act, section 31(B)5-Writ application withdrawn-Objection that employee cannot maintain the Labour Tribunal application-Filing of writ application-Is it a bar to the maintainability of the Tribunal application ?

HELD:

- i. The case before the Labour Tribunal is decided not on the principles of administrative law but on the principles of equity.

- ii. The provisions of section 31(B) (5) of the Industrial Disputes Act does not operate as a bar to the maintainability of the case filed in the Labour Tribunal and seeking a remedy under the Administrative Law does not prevent the employee from seeking relief under the Industrial Disputes Act.

APPLICATION for a writ of certiorari.

Cases referred to :

1. *Saleem vs Hatton National Bank* -(1994) 1 Sri LR 409
2. *Tri Star Apperal Exports vs Gajanayake* - Sc 85/2003 SC (HC) LA 38/2003-SCM 08.03.2004.

Govinda Jayasinghe with I Devapriya for petitioner.

1st and 3rd respondents absent and unrepresented.

Champaka Ladduwahetti for 2nd respondent.

Cur.adv.vult

MARCH 22, 2006,

SISIRA DE ABREW J.

This is an application for writs of certiorari and mandamus to quash the order dated 03.06.2005 made by the 1st respondent in the application bearing No. LT 18/KT/3323/04 and to direct the 1st respondent to dismiss the said application pending in the Labour Tribunal, Kalutara. The facts of this case may be summarized as follows.

The 2nd respondent in this case (hereinafter referred to as the applicant) was in employment of the petitioner company (hereinafter referred as the employer) as the Superintendent of the estate called and known as Perth estate. The applicant was employed on yearly contract basis. The applicant received a letter dated 10.05.2004 directing the applicant to hand over the said estate to one Senarathne, the newly appointed Superintendent. Upon receiving the said letter the applicant filed a writ application in the Court of Appeal bearing No. 1658/2004 praying *inter - alia* for,

1. a mandate in the nature of a writ of mandamus compelling the Chairman of the employer to permit the applicant to be in employment of the employer until the applicant reaches age of 60 years.

2. a mandate in the nature of a writ of certiorari quashing the decision of the employer by which the applicant was required to hand over Perth estate to the incoming Superintendent.

The applicant, whilst the aforementioned writ application was pending in the Court of Appeal, filed an application in the Labour Tribunal, Kalutara, under the provisions of the Industrial Disputes Act, claiming *inter - alia*, reinstatement in the employer's corporation on the basis that his termination of services was unjustifiable. The applicant thereafter withdrew the said writ application. When the application before the Labour Tribunal was taken up for trial, learned Counsel for the employer raised an objection to the maintainability of the application on the basis of section 31B(5) of the Industrial Disputes Act. The learned President of the Labour Tribunal, by his order dated 03.06.2005, overruled the said objection. The employer, by this writ application, seeks a writ of certiorari to quash the said order dated 03.06.2005.

Learned Counsel for the employer contends that in view of section 31B(5) of the Industrial Disputes Act, filing of the writ application No.1658/2004 operates as bar to the maintainability of the application filed in the Labour Tribunal. I will now advert to this contention. Section 31B(5) of the Industrial Disputes Act 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).”

In writ application No. 1658/2004 the applicant challenged the decision of the employer to terminate his services on the principles of administrative law. The applicant, in the said writ application, moved court to quash the said decision of the employer on the basis that it was contrary to the principles of administrative law. The case before the Labour Tribunal is decided not on the principles of administrative law but on the principles of equity. In the Labour Tribunal case the applicant has moved the tribunal,

inter - alia (a) to declare that his termination of services is unjustifiable and unreasonable and (b) to order the employer to pay Rs. 864683.10 as compensation. In the writ application No. 1658/2004, if the applicant was successful, the decision of the employer to terminate the services of the applicant would have been quashed. On the other hand, if the applicant was unsuccessful in the said writ application the said decision of the employer would have been in operation. Does this mean that the applicant's rights such as any gratuity or other benefits due to the applicant from the employer on the termination of services ; and question whether any amount of compensation is due to the applicant even if the termination is held to be justified, should not be looked into ? The Labour Tribunal can award compensation even if the termination is justified. *Vide Saleem v. Hatton National Bank.*⁽¹⁾ Considering these matters. I hold that seeking a remedy under the Administrative Law does not prevent an employee from seeking relief under the Industrial Disputes Act.

In the case of *Tri Star Apparel Exports-v-Gajanayake*⁽²⁾ the workman sought an interim injunction from the District Court restraining the employer from dismissing him from his employment. Justice Thilakawardene (Justice Wigneswaran and Justice Jayasinghe agreeing) held that seeking the above mentioned relief in the District Court was not a bar for the workman to seek relief under section 31 B(5) of the Industrial Disputes Act, in the Labour Tribunal. Considering the principles laid down in the above judicial decisions. I am of the view that the provisions of section 31B(5) of the Industrial Disputes Act does not operate, in the circumstances of this case, as a bar to the maintainability of the case filed in the Labour Tribunal. I therefore refuse to grant the interim relief sought in paragraph (e) of the prayer to the petition.

SRIPAVAN J. — I agree.

Interim relief sought refused.