

1968 Present: H. N. G. Fernando, C.J., and de Kretser, J.

MUNICIPAL COUNCIL OF COLOMBO, Petitioner, and  
T. P. DE S. MUNASINGHE and 4 others, Respondents

*S. O. 485/64—Application for a Mandate in the nature of a  
Writ of Certiorari*

*Industrial dispute—Arbitrator's award—Requirement that it should be "just and equitable"—Scope of arbitrator's discretion.*

The discretion which the Industrial Disputes Act confers on an Arbitrator to make an award which is "just and equitable" must be exercised in a reasonable manner. The award must be "just and equitable" as between the parties to the dispute in question. The fact that one party might have encountered "hard times" because of personal circumstances for which the other party is in no way responsible is not a ground on which justice or equity required the other party to make undue concessions.

"An Arbitrator holds no licence from the Legislature to make any such award as he may please, for nothing is just and equitable which is decided by whim or caprice or by the toss of a double-headed coin."

**A**PPPLICATION for a writ of *certiorari*.

H. V. Perera, Q.C., with H. Wanigatunga, for the Petitioner.

No appearance for the Respondents.

*Cur. adv. vult.*

September 3, 1968. H. N. G. FERNANDO, C.J.—

The petitioner in this application is the Colombo Municipal Council and the 2nd respondent is a person who from 27th November 1957 was employed in the post of Peon in the Municipal Engineer's Department of the Council, to which post is attached the salary scale Rs. 540 rising by annual increments to Rs. 804. Shortly afterwards the 2nd respondent made representations to the Council in an effort to be appointed to some other post, and he ultimately requested that he be placed retrospectively on a higher point in the scale of salary for Peon than the initial of that scale.

In the result the Minister of Labour referred to the arbitration of the 1st respondent a dispute between the 3rd respondent (the National Employees' Union) and the Council, the matter in dispute being specified as follows:—

"The matter in dispute between the National Employees' Union, 532, Galle Road, Colombo 3, and the Municipal Council, Colombo, is whether the Municipal Council, Colombo, is justified in placing

Mr. Sarnelis Dias on the initial point of the scale of salaries applicable to peons, viz., Rs. 540—12—Rs. 804, with effect from 27.11.57, and to what relief is Mr. Sarnelis Dias entitled.”

The Arbitrator in his award has *inter alia* recorded the following unequivocal findings as to the facts of this case :—

- (a) Sarnelis Dias, the employee concerned in the dispute, had been in employment under the Council as a Bicycle Orderly from May 1944.
- (b) In June 1955 a charge sheet was served on him alleging the misappropriation by him of a sum of Rs. 120 being moneys entrusted to him by the Council, and he pleaded guilty to this charge.
- (c) The proper punishment for Dias' offence was dismissal with loss of pension rights, but as a merciful alternative Dias was instead retired for inefficiency. He thus retained his pension rights in respect of his services for about 10 years as Bicycle Orderly.
- (d) In 1957, Dias in a letter to the Commissioner of the Council begged for reinstatement in the capacity of an orderly, peon or binder. Thereafter in November 1957 he was re-employed as a peon, his letter of appointment specifying the salary scale of Rs. 540 with annual increments to Rs. 804—(E.B. before Rs. 636 and Rs. 732), the appointment to be on probation for a period of six months.
- (e) Dias applied for and accepted this post of peon on definite conditions of service specified in his letter of appointment.
- (f) Dias should not have been re-employed by the Council as he had been previously guilty of misappropriation of money.
- (g) On 25th April 1961 Dias appealed for better terms of employment on the ground of his 25 years' service under the Council.

The mere perusal of these findings of the Arbitrator suffices to establish that Dias was fortunate indeed to have been re-employed by the Council, that the Council would not have so re-employed him except on probation and except on the basis that he was being newly employed and therefore on the initial of the salary scale attaching to the post of peon, and that Dias himself voluntarily accepted the new appointment on those terms and in fact received salary payments for some years on the basis of a new employment. That being so I regret that I am utterly unable to understand the last paragraph of the Arbitrator's award which reads as follows :—

“ Mr. Dias and his family have gone through very hard times since 1955 and some sort of relief is called for. My award is that Mr. Dias should be paid the maximum of the scale Rs. 504—12—804, viz., Rs. 804 per annum from the date of re-employment, 27th November 1967. The other conditions attached to his re-employment should remain unaltered.”

No doubt the Arbitrator has relied on the provision in the Industrial Disputes Act which requires an Arbitrator to make an award "just and equitable". But there is literally no single sentence in the whole of the award, except only the reference to 'hard times' which refers to any matter which might render it just and equitable that the Council should have treated Dias in any manner more favourable than any other person to whom the Council gave employment as a peon in 1957. On the contrary all the findings of the Arbitrator afforded sufficient grounds, in my opinion, for the Council to treat Dias even less favourably than other persons in its employment as peons.

I hold that when the Industrial Disputes Act confers on an Arbitrator the discretion to make an award which is 'just and equitable', the Legislature did not intend to confer on an Arbitrator the freedom of a wild horse. An award must be 'just and equitable' as between the parties to a dispute; and the fact that one party might have encountered 'hard times' because of personal circumstances for which the other party is in no way responsible is not a ground on which justice or equity requires the other party to make undue concessions. In addition, it is time that this Court should correct what seems to be a prevalent misconception. The mandate which the Arbitrator in an industrial dispute holds under the law requires him to make an award which is just and equitable, and not necessarily an award which favours an employee. An Arbitrator holds no licence from the Legislature to make any such award as he may please, for nothing is just and equitable which is decided by whim or caprice or by the toss of a double-headed coin.

There being nothing in the findings of the Commissioner to render 'just and equitable' an award compelling the Council to treat Dias on terms in any way more favourable than the terms on which Dias actually accepted re-employment, there is error appearing on the face of the record which vitiates the Arbitrator's award.

For these reasons the award is quashed.

DE KRETZER, J.—I agree.

*Application allowed.*

---