1963 *Present:* Basnayake, C.J., Abeyesundere, J., and G. P. A. Silva, J.

TAOS LTD., Petitioners, *and* P. O. FERNANDO and 3 others, Respondents

S. C. 127/62—Application for a Writ of Certiorari on P. O. Fernando and 3 others

Industrial dispute—Non-employment of a workman—Validity of award ordering payment of compensation to him without a decision as to his reinstatement— Certiorari—*Industrial Disputes Act, s. 33.*

In an industrial dispute arising from the non-employment of a workman by his employer, an order of the Industrial Court for payment of compensation to the workman would be *ultra vires* and be liable to be quashed by *certiorari* proceedings unless there is also a decision as to his reinstatement. The decision as to payment of compensation to the workman must be an alternative to a decision as to his reinstatement.

APPLICATION for a writ of *certiorari*.

H. W. Jayewardene, Q.C., with *L. Kadirgamar* and *L. C. Seneviratne*, for Petitioners.

R. S. Wanasundere, Crown Counsel, for Attorney-General.

February 15, 1963. BASNAYAKE, C.J.—

This is an application by Taos Limited for a mandate in the nature of a writ of certiorari and relates to an award made by the 1st respondent P. O. Fernando, a member of the panel appointed by the Governor-General in terms of section 22 of the Industrial Disputes Act, to whom an industrial dispute between the petitioner and the United Engineering Workers' Union was referred by the Minister for Labour and Nationalised Services under section 4 (2) of the Industrial Disputes Act in the following terms :—

" I, Chandradasa Wijesinghe, Minister of Labour and Nationalised Services, do, by virtue of the powers vested in me by section 4 (2) of the Industrial Disputes Act, No. 43 of 1950, hereby refer the aforesaid dispute for settlement to an Industrial Court which shall be constituted in accordance with the provisions of section 22 of that Act. Statement of matter in dispute : The matter in dispute between the United Engineering Workers' Union and Taos Limited, Kew Road, Colombo 2, is whether the non-employment of the following workers is justified and to what relief they are entitled. . . . "

In the award made in pursuance of that reference and published in *Gazette* No. 12622 of 15th September 1961, the 1st respondent stated—

" It is clear that the Company had very little work to give its employees and the management appears to have taken this opportunity

to get rid of its employees without paying them any relief. Ordinarily they would be entitled to reinstatement and I would have ordered reinstatement but for the fact that I was informed that the Company had practically lost all orders from the Fisheries Department and would have to close down in the near future. The Company was started a few years ago and none of the employees have been there for a long period. Considering all the circumstances of the case I consider the employees should be granted relief by the payment of two months' salary as compensation. But in the case of those who had already been given notice of discontinuance at the end of December, 1960, I consider it would be sufficient if they were paid one month's salary as they have already been given one month's notice of discontinuance. "

It is submitted by the petitioner—

" (*a*) that in his award the 1st respondent had not considered and/or has failed and/or omitted to take into account a vital and relevant matter, namely, whether the action of the aforesaid workers referred to in paragraph 4 (*a*) above in quitting work on the 27th December 1960 and refusing to return to work for a number of days thereafter amounted in fact and/or in law to a 'strike' within the definition of that term under the Trade Unions Ordinance,

(*b*) that, therefore, the 1st respondent has committed an error of law on the face of the record,

(*c*) that in his award, the 1st respondent has not considered and/or has failed and/or has omitted to take into account a vital and relevant matter, namely, whether the misconduct and misbehaviour of the workers referred to in paragraph 4 (*a*) above from the 27th December 1960 to the 30th December 1960 referred to in paragraph 5 (*a*) above justified the petitioner in law in not re-employing the said workers.

(*d*) that the award and the determination of the 1st respondent acting in pursuance of the aforesaid reference is null and void and of no effect in law. "

Learned counsel submitted that the Industrial Court, particularly the 1st respondent being a Judge exercising judicial power, had not been properly appointed, as the office held by him was a judicial office and that under the Constitution such appointment is vested in the Judicial Service Commission. It is not necessary to decide this point in the instant case as there is a vital defect in the award itself which strikes at the root of the matter.

Section 33 of the Industrial Disputes Act provides that an award may contain decisions on the following matters—

" (*a*) as to wages and all other conditions of service including decisions that any such wages and conditions shall be payable or applicable with effect from any specified date, which may, where necessary, be a date

prior to the date of the award, and decisions that wages shall be payable in respect of any period of absence by reason of any strike or lockout ;

(*b*) as to the reinstatement in service, or the discontinuance from service, of any workman whose dismissal or continuance in employment is a matter in dispute, or who was dismissed or ceased to be in service at the commencement or in the course of any strike or lockout arising out of the industrial dispute ;

(*c*) as to the extent to which the period of absence from duty of any workman, whom the arbitrator or industrial court has decided should be reinstated, shall be taken into account or disregarded for the purposes of his rights to any pension, gratuity or retiring allowance or to any benefit under any provident scheme ;

(*d*) as to the payment by any employer of compensation to any workman as an alternative to his reinstatement, the amount of such compensation or the method of computing such amount, and the time within which such compensation shall be paid."

In the instant case there was no decision as to reinstatement and the Industrial Court had no power to make a decision for payment of compensation. The power to make an order for compensation is confined to a case in which there is a decision as to reinstatement. The decision as to payment of compensation to a worker must be an alternative to a decision as to his reinstatement. Without a decision as to reinstatement there can be no decision as to compensation. The order of the Industrial Court is *ultra vires* and must be quashed. We accordingly do so.

The petitioner is awarded costs.

ABEYESUNDERE, J.—I agree.

G. P. A. SILVA, J.—I agree.

Application allowed.