1976 *Present :* **Sharvananda, J., and Ratwatte, J.**

K. PREMASIRI, Appellant, *and* UNIVERSITY OF SRI LANKA, Respondent

S. C. 127/74—L. T. 1/6852/73

Industrial Disputes (Special Provisions) Law No. 53 of 1973—Is Section 3 prospective or retrospective in its operation—Section 6(3) of the Interpretation Ordinance—Sections 2 (1), 2 (2) and 4 of Law No. 53 of 1973.

The applicant filed his application on 02.03.73 in the Labour Tribunal for relief under Section 31B(1) of the Industrial Disputes Act. He complained that his services were unlawfully terminated by the employer on 30.06.72. The employer by its answer dated 20.11.73 denied the allegation of unlawful termination of services made by the applicant and prayed for a dismissal of the application.

The matter came up for inquiry on 26.06.74 when a preliminary objection was taken on behalf of the employer that the application was out of time by reason of Section 3 of the Industrial Disputes (Special Provisions) Law No. 53 of 1973. The said law came into operation on 11.12.73. The President of the Labour Tribunal upheld the preliminary objection and dismissed the application.

Held : Section 3 of the Industrial Disputes (Special Provisions) Law No. 53 of 1973 has prospective operation only and does not apply to the application made to the Labour Tribunal on 02.03.73.

APPEAL from an order of a Labour Tribunal.

D. Q. Palliyaguru for the Applicant-Appellant.

Respondent-Respondent absent and unrepresented.

N. Sinnetamby, Deputy Solicitor-General, with *K. C. Kamalasabaysan*, State Counsel, as *Amicus Curiae*.

Cur. adv. vult.

June 18, 1976. SHARVANANDA, J.—

The applicant-appellant filed this application on 2.3.73 in the Labour Tribunal for relief under section 31(B) (1) of the Industrial Disputes Act (Chapter 131) as amended subsequently.

He complained that his services were unlawfully terminated by the employer-respondent on 30.6.72. The employer-respondent, by its answer dated 20.11.73, denied the allegation of unlawful termination of services made by the applicant and prayed for a dismissal of the applicant's application.

The matter came up for inquiry on 26.6.74, and on that date Counsel for the employer-respondent took a preliminary objection that, by virtue of the Industrial Disputes (Special Provisions) Law No. 53 of 1973, the application was prescribed and/or out of time and moved that it be dismissed. The President of the Labour Tribunal upheld the objection of Counsel for the respondent and dismissed the application. The applicant has now appealed from that order of dismissal to this Court.

Section 3 of the Industrial Disputes (Special Provisions) Law No. 53 of 1973 amends section 31 (B) of the Industrial Disputes Act (Chap. 131) by the insertion of the following new section :—

"(7) Every application to a Labour Tribunal under paragraph (*a*) or paragraph (*b*) of sub-section (1) of this section in respect of any workman shall be made within a period of six months from the date of termination of the services of that workman."

The Industrial Disputes (Special Provisions) Law No. 53 of 1973 came into operation on 11.12.73.

The question that arises here is whether this amending law applies to the application made by the applicant to the Labour Tribunal on 2.3.73 long prior to its enactment. If it does not apply, the preliminary objection fails. In the body of the amending statute there is no 'express provision' giving retrospective operation to the amending provision, viz. section 3 of the Industrial Disputes (Special Provisions) Law No. 53 of 1973.

Section 6(3) of the Interpretation Ordinance (Chap. 2) provides as follows :

"Wherever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any expression to that effect, affect or be deemed to have affected—

(*a*) the past operation of or anything duly done or suffered under the repealed written law ;

(*b*) .....

(*c*) Any action, proceeding, or thing pending or incompleted when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal."

The Privy Council, in *Shanmugam v. Commissioner for Registration of Indian and Pakistani Residents* (64 N.L.R. 29), laid down that what was required by section 6 (3) was express

provision but not a specific one. Lord Radcliffe said there : " To be ' express provision ' with regard to something, it is not necessary that the thing should be specially mentioned ; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom." Even applying this extended definition of ' express provision ', I cannot gather any intention to give retrospective operation to section 3 from the language of the provisions of the amending law.

Mr. Sinnetamby, Deputy Solicitor-General, who was kind enough to appear as amicus curiae in this appeal and assist this Court, drew our attention to section 4 of the amending Law and submitted that the proviso to section 4 has to be given effect to, that it amounts to an ' express provision ' within the meaning of section 6(3) of the Interpretation Ordinance and hence an intention to give retrospective effect can be spelt out of the proviso.

Section 4 of Law No. 53 of 1973 to this proviso reads as follows :

" 4. The provisions of this Law shall be in addition to and not in derogation of the provisions of the principal enactment or any other written law and accordingly shall be read and construed as one with the principal enactment ;

Provided, however, that in the event of any conflict or inconsistency between the provisions of this Law and those of the principal enactment or of any other written law, the provisions of this Law shall prevail over those of the principal enactment or such other written law to the extent of such conflict or inconsistency. "

To appreciate the submission of the learned Deputy Solicitor-General it is necessary to go into the circumstances leading to the enactment of the Industrial Disputes (Special Provisions) Law No. 53 of 1973.

The Industrial Disputes Act (Chap. 131), as amended by Section 14 of the amending Act No. 62 of 1957, provided for the establishment of Labour Tribunals and for their jurisdiction.

Section 31 (B) (1) provides for a workman or Trade Union on behalf of a workman making an application in writing for relief or redress in respect of the termination of his services and connected matters. It is, in the words of the Privy Council in *The United Engineering Workers' Union v. Devanayagam* (69 N.L.R. 289 at 299), ' the gateway through which a workman must pass to get his application before a tribunal '. It, however, omitted to specify the time limit within which an application should be

made. By Regulation 16, purported to have been made under section 39 of the Industrial Disputes Act, the Minister fixed the time limit within which applications for relief or redress must be made to Labour Tribunals to be " within three months of the date of termination of the services of that workman".

Weeramantry J., in the case of *Ram Banda v. River Valleys Development Board* (71 N.L.R. 25), held that " Regulation 16 was ultra vires the rule-making powers conferred on the Minister, in as much as it, in effect, took away from the workman, on the expiry of the stated period of three months, the right given to him by the Legislature to apply to a Labour Tribunal for relief." This judgment was delivered on 10.7.68. In the case of *River Valleys Development Board v. Sheriff* (74 N.L.R. 505), a Divisional Bench of the Supreme Court, by a majority judgment dated 24.11.71, over-ruled *Ram Banda v. River Valleys Development Board* and held that Regulation 16 was valid and intra vires and that it validly regulated the time within which applications to Labour Tribunals should be made. The Court of Appeal, by its judgment dated 8.2.73 in *Ceylon Workers Congress v. Superintendent, Beragala Estate,* (76 N.L.R. 1), over-ruled *River Valleys Development Board v. Sheriff* and held that Regulation 16 was invalid for the reason that it was ultra vires the rule-making powers vested in the Minister and restored the ruling of Weeramantry J., in *Ram Banda v. River Valleys Development Board.* It was after the judgment of the Court of Appeal given on 8.2.73 that the Legislature enacted the Industrial Disputes (Special Provisions) Law No. 53 of 1973 which came into operation on 11.12.73. This Law amended the Industrial Disputes Act to provide that an application to a Labour Tribunal should be made within a period of six months from the date of termination of the services of a workman.

According to the ruling of the Supreme Court in 71 N.L.R. 25, as affirmed by the Court of Appeal in 76 N.L.R. 1, there is no provision in the Industrial Disputes Act stipulating the time limit within which an application to a Labour Tribunal should be made. The Industrial Disputes (Special Provisions) Law No. 53 of 1973 fills this omission. The appellant filed his application in the Labour Tribunal on 2.3.73 when, according to the view of the Court of Appeal expressed in its judgment dated 8.2.73, the Legislature had not fixed any time limit for the making of such applications.

In my view, there is no conflict or inconsistency between the provisions of the Industrial Disputes (Special Provisions) Law No. 53 of 1973 and those of the Industrial Disputes Act (Chap. 131)

as amended subsequently, and hence no necessity arises for the application of the proviso to section 4 of the Industrial Disputes (Special Provisions) Law. For any conflict or inconsistency to arise, there should be competing provisions. That is not the case here. Here a lacuna, as demonstrated by the judgment of the Court of Appeal, has been sought to be filled up prospectively.

Further, the provisions of sections 2(1) and 2(2) of the Industrial Disputes (Special Provisions) Law reinforce the submission that the Legislature never could have intended to apply section 3 of the Industrial Disputes (Special Provisions) Law to pending cases. Sections 2(1) and 2(2) of the Industrial Disputes (Special Provisions) Law seek to give relief to applicants whose applications had not been entertained or been dismissed or set aside by order of a Labour Tribunal on the ground that such application was not made within the three months prescribed by the aforesaid Regulation 16, and the Labour Tribunal was vested with jurisdiction to hear and determine such applications afresh. If the Legislature intended, by sections 2(1) and 2(2), to revivify applications which had, at the time of enactment of the Industrial Disputes (Special Provisions) Law, been dismissed on the ground of being outside the said time limit, there is no palpable reason to presume that the Legislature intended that the Labour Tribunal should reject applications on the ground of the time bar where proceedings were still pending in relation to them on 11.12.73, namely, the date on which the Industrial Disputes (Special Provisions) Law came into operation. The intention of the Legislature is manifest in that applications made to Labour Tribunals prior to the coming into operation of the Special Provisions Law should not be dismissed or rejected on the ground of the time limit fixed by the aforesaid Regulation 16 and that the ruling given by the Court of Appeal in 76 N.L.R. 1 should govern all those cases and that the amending section should have prospective operation only.

The present question was considered by the Honourable the Chief Justice and Vythialingam J. in S.C. 135/74, LT. 1/6274/73—S.C. Min. of 17.3.76. I agree with their judgment and am of the view that section 3 of the Industrial Disputes (Special Provisions) Law does not apply to the application made by the applicant-appellant and that the President had erred in upholding the objection raised by Counsel for the employer-respondent.

I allow the appeal with costs fixed at Rs. 210 and send the proceedings back for inquiry de novo on an early date.

RATWATTE J.—I agree.

Appeal allowed.