1962 *Present :* **T. S. Fernando, J.**

THE CEYLON TRANSPORT BOARD, Petitioner, *and* W. P. N. DE SILVA (President, Labour Tribunal) and 2 others, Respondents

S. C. 436 of 1961—Application for the grant and issue of Mandates in the nature of Writs of Certiorari and Mandamus

Labour tribunals—Application for relief by dismissed workman—Domestic inquiry already conducted in good faith by employer—Application by workman to lead fresh evidence—Should the labour tribunal allow such application?—Industrial Disputes Act, No. 43 of 1950, as amended by Act No. 62 of 1957, ss. 24 (1), 31B (1), 31C (1).

In an application made by a workman claiming relief under section 31B of the Industrial Disputes Act, No. 43 of 1950, as amended by Act No. 62 of 1957, the labour tribunal is obliged, under section 31C (1), to hear only such evidence, notwithstanding its tender, as is logically relevant to such inquiries as the tribunal in its discretion considers necessary to make. Accordingly, the tribunal is not obliged to allow an application of the workman to lead fresh evidence if it is content to follow the practice observed in Ceylon that in the case of dismissals of employees for misconduct after the employer has conducted a domestic inquiry in good faith a Labour Tribunal will not act as a board of appeal and substitute its own judgment for that of the management.

APPLICATION for writs of *Certiorari* and *Mandamus* in respect of an order made by a Labour Tribunal.

H. W. Jayewardene, Q.C., with *W. T. P. Goonetilleke*, for the petitioner.

S. Kanakaratnam, for the 3rd respondent.

Cur. adv. vult.

February 20, 1962. T. S. FERNANDO, J.—

The 3rd respondent to this application, who was a bus conductor employed under the petitioner and who has been dismissed on the ground of misconduct, made through his Union, the 2nd respondent, an application to the Labour Tribunal in terms of section 31B (1) of the Industrial Disputes Act, No. 43 of 1950 as amended by Act No. 62 of 1957. When the application came on for hearing, counsel for the 3rd respondent proposed to lead fresh evidence before the Tribunal, a procedure which was objected to on behalf of the petitioner. After hearing argument on the matter, the learned President of the Labour Tribunal made on August 3, 1961 what is described as an interim order allowing the Union's application to lead evidence. The petitioner seeks to question the legality of this interim order by invoking the power of this Court to quash

proceedings by way of a mandate in the nature of a writ of *certiorari* and, further, seeks to obtain from this Court by way of *mandamus* a direction to the Tribunal to proceed with the hearing of the application on the evidence and material already recorded at the inquiry held by the appellate authority constituted according to the disciplinary rules of the Ceylon Transport Board, the petitioner.

The real question that comes up to be considered on the application made to this Court is the interpretation of section 31C (1) of the Industrial Disputes Act. That sub-section provides that " where an application under section 31B is made to a Labour Tribunal, it shall be the duty of the Tribunal to make all such inquiries into that application as the Tribunal may consider necessary, hear such evidence as may be tendered by the applicant and any person affected by the application, and thereafter make such order as may appear to the Tribunal to be just and equitable." I do not think that the slight difference in phraseology that is to be discovered by a comparison between sections 24 (1) and 31C (1) of the Industrial Disputes Act makes any material distinction between the powers and duties of an Industrial Court and those of a Labour Tribunal. Even Mr. Kanakaratnam felt compelled to concede that the Tribunal was obliged to hear only such evidence, notwithstanding its tender, as was logically relevant to such inquiries as the Tribunal in its discretion considered necessary to make. He did, however, contend that in the present case the Tribunal had by its interim order decided that the evidence which the Union sought to offer was logically relevant to the question of the order the Tribunal was ultimately required by section 31C (1) to make. The difficulty I experience in agreeing with Mr. Kanakaratnam's contention on this last point is due to the existence in the interim order of a reference to a practice of the Industrial Court in Ceylon that in the case of dismissals of employees for misconduct after the employer has conducted a domestic inquiry in good faith a Labour Tribunal will not act as a board of appeal and substitute its own judgment for that of the management. The observations of the learned President appear to me to indicate that while he himself might have been content to follow this practice he felt compelled by the wording of section 31C (1) to allow the parties to offer such evidence as they considered necessary. As I have indicated already, the Tribunal is obliged to receive only such evidence as it considers to be relevant to the issues or inquiries which, in its discretion, the Tribunal considers it necessary to adjudicate upon or make. It follows that the Tribunal must first decide what is the inquiry or what are the inquiries that are necessary to be made ; thereafter, the question of the reception or rejection of evidence would present no difficult problem. Viewed in that light, if the Tribunal had in the present case decided that it would follow the practice which it says has been observed in a series of awards of the Industrial Court in Ceylon, I find it difficult to see how the evidence proposed to be tendered becomes relevant. On the other hand, if the Tribunal had not so decided and had considered that it was necessary to inquire into the question whether the dismissal was right or wrong on the merits,

then undoubtedly the evidence proposed to be tendered becomes relevant. I do not find it possible to gather from the interim order whether the learned President has decided the material question one way or the other.

It has been submitted to me on behalf of the 3rd respondent that no *certiorari* lies in this case as the Tribunal has acted within jurisdiction in deciding to admit evidence. In any event, the Tribunal had jurisdiction to decide the question of the admission of evidence, and whether it acted rightly or wrongly no *certiorari* can issue. I have been invited to hold that there is error on the face of the interim order, but for reasons which will appear from the observations I have already made here I am unable to agree that there is such error in the order sought to be canvassed.

The proceedings must therefore be remitted to the Labour Tribunal. If the learned President has decided that it is necessary to inquire into the question of the wrongfulness of the dismissal on the merits, then of course he will continue the hearing of the application from the stage it had reached with the making of his order of August 3, 1961. If, on the other hand, he decided to receive evidence sought to be led on behalf of the Union because he felt he was obliged so to receive it irrespective of whether he felt that in the end he would follow the practice observed in a series of awards of the Industrial Court in Ceylon, I am of opinion that there is no legal obligation on him to receive the evidence tendered. I need say no more at this stage than that, notwithstanding the interim order he has made, it is open to him to review that order in the light of the interpretation of the relevant part of section 31C (1) of the Act which I have indicated above. I must add that I refrain from expressing any opinion on the correctness in law of the practice observed by the Industrial Court in Ceylon and referred to by the learned President in his interim order. That question can be left to be decided, if necessary, where it actually arises for decision.

There will be no costs of this application.

Proceedings remitted to the Labour Tribunal.