

1968

Present : Siva Supramaniam, J.

THE SUPERINTENDENT, DEESIDE ESTATE, MASKELIYA,
Appellant, *and* ILANKAI THOZHILAR KAZHAKAM, Respondent

S. C. 63/67—Labour Tribunal Case, 3876/K

Labour Tribunal—Order made by it—Requirement that it should be against a natural or legal person—Industrial Disputes Act, s. 33 (2).

Under the Industrial Disputes Act the party against whom a Labour Tribunal is empowered to make an order must be a natural or legal person, for it is only against such a person that the order can be enforced.

A Labour Tribunal made order against "The Superintendent, Deeside Estate, Maskeliya", directing him to re-instate a labourer, whose services had been summarily terminated, and to pay him "back wages".

Held, that the order was unenforceable, because the office of "The Superintendent of Deeside Estate" was not a legal person. A Corporation Sole must be expressly created by legislative enactment.

APPEAL from an order of a Labour Tribunal.

Siva Rajaratnam, for the appellant.

No appearance for the respondent.

Cur. adv. vult.

January 31, 1968. SIVA SUPRAMANIAM, J.—

This is an appeal from an order made by the President of the Labour Tribunal of Nuwara Eliya under s. 31 of the Industrial Disputes Act, No. 43 of 1950 (hereinafter referred to as the Act), directing that one Meiappen, a labourer on Deeside Estate, Maskeliya, whose services had been summarily terminated on 22nd January 1965, be reinstated and be paid “one and a half years’ back wages” amounting to Rs. 1,080.

The application for relief was made by the respondent Trade Union of which Meiappen was a member. “The Superintendent, Deeside Estate, Maskeliya”, was named as the Employer against whom the application was made. In the written application that was filed it was stated that Meiappen “was summarily dismissed from work by the Management with effect from 22nd January 1965” and that the applicant-Union considered the dismissal “unlawful and unreasonable”. The name of the employer who made the order of dismissal was not mentioned.

The person who held the office of Superintendent of the said estate filed a statement that Meiappen was lawfully dismissed on the ground that on the night of 24th December, 1964 he, along with three young female labourers of the estate, had entered the bungalow of A. Wijesundera, the Assistant Superintendent of the estate, in the latter’s absence and had danced and made merry in the sitting room of the bungalow and consumed beer and arrack belonging to the Assistant Superintendent. After enquiry, the President of the Tribunal held that he found it difficult to accept the evidence of the Assistant Superintendent and his witnesses and made the order referred to earlier.

At the hearing of this appeal, which was filed by the person who held the office of Superintendent, Counsel for the appellant strongly attacked the finding of the President on the facts as unreasonable. Under s. 31D of the Act, however, no appeal lies on questions of fact.

The appeal was also pressed on a question of law which, in my opinion, is entitled to succeed. Under the Act, the Tribunal is empowered to make any order as may appear to it to be just and equitable. The party against whom the order can be made is the employer or, under certain circumstances, a person who has ceased to be the employer. The order, therefore, has to be made against a natural or legal person for it is only against such a person that the order can be enforced.

In the instant case, the party against whom the application was made by the respondent and against whom the order has been made by the President is "The Superintendent, Deeside Estate, Maskeliya". The office of "The Superintendent" is not a legal person. Under our law, a Corporation Sole must be expressly created by legislative enactment—Vide the Judgment of the Privy Council in *The Land Commissioner v. Ladamuttu Pillai*¹. The order made by the President is, therefore, unenforceable.

Under s. 33 (2) of the Act, where an order is made for payment of money by any employer to any workman, the amount of such money, if unpaid, can be recovered by a Magistrate's Court in like manner as a fine imposed by the Court. In the instant case, since "The Superintendent of Deeside Estate" is not a Corporation Sole, there is no one from whom the amount ordered can be recovered. It is a fundamental principle that a Court should not make an order which it cannot enforce.

I set aside the order made by the President of the Labour Tribunal and dismiss the applicant-respondent's application. I make no order in regard to costs.

Order set aside.

