

1973

Present: Rajaratnam, J.

J. F. WICKREMASEKERA, Petitioner, and E. GANEGODA
(President, Labour Tribunal), and 2 others, Respondents

S. C. 255/73—Application for a Writ of Certiorari

Industrial Disputes Regulations—Regulation 16—Decision thereon by Court of Appeal overruling a decision of a Divisional Bench of the Supreme Court—Earlier decisions following the overruled decision—Whether they can be set aside by way of Revision, Certiorari or Mandamus—Criminal Procedure Code, s. 356—Courts Ordinance, ss. 37, 42.

When a judicial decision has overruled a decision which in its time was binding, an order made earlier following the overruled decision is not liable to be set aside by way of an application for Revision or Mandamus or Certiorari. Accordingly, the decision of the Court of Appeal in *The Ceylon Workers' Congress v. The Superintendent, Beragala Estate* (76 N. L. R. 1) holding that Regulation 16 of the Industrial Disputes Regulations imposing a time limit of three months for making a certain class of applications to Labour Tribunals was *ultra vires* cannot be availed of in this manner in order to quash earlier orders following the decision of a Divisional Bench in *River Valleys Development Board v. Sheriff* (74 N. L. R. 505) which was overruled by the decision of the Court of Appeal.

APPPLICATION for a Writ of Certiorari to quash an order of a Labour Tribunal.

Bala Nadarajah, with *K. C. Kamalasabesan*, for the petitioner.

M. Kanagasunderam, for the respondent.

Cur. adv. vult.

October 15, 1973. RAJARATNAM, J.—

The petitioner in this case seeks a Writ of Certiorari on the 1st respondent who is a President of a Labour Tribunal to quash his order refusing his application on the ground that the application was out of time. He also prays for a Writ of Mandamus on the 1st respondent directing the President to make his order on the evidence and material already heard and inquired into by him.

When the President made his order refusing the application of the petitioner he did so following the decision in S. C. 178/69 later reported in 74 N. L. R. 505. It may be stated that the question whether an application is out of time by virtue of Regulation 16 made under the Industrial Disputes Act has been a matter of some controversy till it was finally settled by the decision in the Court of Appeal.

In *Ran Banda v. River Valleys Development Board*,¹ reported in 71 N. L. R. 25, Weeramantry J. held that this Regulation was *ultra vires* and the 3 months rule therefore did not apply to Labour Tribunal Applications. Thereafter a Divisional Bench held in the case of *River Valleys Development Board v. Sheriff*² reported in 74 N. L. R. 505 that Regulation 16 was not *ultra vires* and the 3 months rule applied to Labour Tribunal Applications. This decision was again reversed and overruled by the Court of Appeal in the case of *The Ceylon Workers' Congress v. The Superintendent, Beragala Estate*,³ 76 N. L. R. p. 1, so that now the decision of Court of Appeal is the binding and settled law on this point whereunder the 3 months rule does not apply to Labour Tribunal Applications. The order of the President which is the subject matter of the complaint was made on the 14th September, 1972 when the law as interpreted by this Court was that the 3 months rule did apply to Labour Tribunal Applications. At the time the President made this order the Court of Appeal decision had not been made. Learned Counsel for the petitioner has strenuously argued before me that in view of the now binding decision made by the Court of Appeal there was an error of law in the order made by the President and therefore he is entitled to seek a Writ of Certiorari. I am not unmindful that before the Court of Appeal decision there were a considerable number of cases where applications were refused for the reason that they contravened the 3 months rule. Certain decisions of this Court also have been on the basis that the 3 months rule did apply to such applications.

I have not been sufficiently convinced to allow a Writ of Certiorari in that there has been an erroneous decision by the Tribunal, the erroneousness of which has been revealed long after the binding decision at that time. At the time the President made the order he was compelled by the law at that time as judicially interpreted to refuse the application. It does not seem to be an appropriate course for this Court to put the clock back, so to speak, for the purpose of quashing the President's order which at the time he made he was compelled to make according to the law. These considerations apply even when it comes to a question of issuing a Writ of Mandamus. It is not appropriate again for this Court to put the clock back, so to speak, and compel the President to perform a duty which at the time he refused to perform he was so compelled by a binding authority. Unfortunately this Court has no powers in revision in Labour Tribunal matters even if it can be argued that these

¹ (1968) 71 N. L. R. 25.

² (1971) 74 N. L. R. 505.

³ (1973) 76 N. L. R. 1.

matters could be revised by reason of a subsequent binding judicial decision as was held by Sansoni J. in the case of *Cassim v. Government Agent, Batticaloa*,¹ 69 N. L. R. 403, that applications in revision should be made promptly and that there must be finality in litigations even if incorrect orders have to go unreversed. Section 356 of the Criminal Procedure Code does not apply to Labour Tribunal matters. The Labour Tribunal is not an original Court for the purposes of satisfying s.37 of the Courts Ordinance. Much as I would like to rectify matters and bring earlier orders to date in conformity with the subsequent binding decision, I do not think that this is a matter where these two Writs apply. When there is a binding judicial decision overruling an earlier decision which in its time was binding the gates do not automatically open for applications inviting this Court to exercise its revisionary powers or its inherent powers under s. 42 of the Courts Ordinance to grant and issue Mandates in the nature of a Writ of Mandamus or Certiorari to quash earlier orders made according to judicial interpretation at that time.

I refuse the application. I make no order as to costs.

Application refused.

