1968 *Present :* de Kretser, J.

SUPERINTENDENT, MULANA ESTATE, MAKANDURA, Appellant, *and* JANIS APPU DIDDENIPOTA, Respondent

S. C. 6/68—Labour Tribunal Case No. G/2901

Industrial Disputes Act, as amended by Act No. 62 of 1957—Section 31D—Appeal thereunder to Supreme Court—Time limit for filing petition of appeal—Computation—Industrial Disputes Regulations, 1958, Regulation 33.

Where an appeal to the Supreme Court is preferred under section 31D of the Industrial Disputes Act from an order of a Labour Tribunal, the period of fourteen days within which the petition of appeal must be filed must be reckoned from the date of the order and not from the date on which a certified copy of the order is transmitted to the appellant in compliance with the requirements of Regulation 33 of the Industrial Disputes Regulations of 1958.

Observations on the need for amending legislation.

APPEAL from an order of a Labour Tribunal.

Lakshman Kadirgamar, for the Employer-Appellant.

Prins Gunasekera, for the Applicant-Respondent.

Cur. adv. vult.

December 14, 1968. DE KRETSER, J.—

Mr. Prins Gunasekera for the applicant-respondent in this appeal takes the preliminary objection that the appeal has been filed out of time and should be rejected on this account. In the instant case the order appealed from has been signed by the President and dated 9.1.68. Section 31D (3) of the Industrial Disputes (Amendment) Act, No. 62 of 1957, with reference to an appeal from an order of the President of a

Labour Tribunal states : Every petition of appeal to the Supreme Court .....shall be filed in the Supreme Court within a period of 14 days reckoned *from the date of the order* from which the appeal is preferred.

And Section 31D (4) states : In computing the time within which an appeal must be preferred to the Supreme Court *the day on which the order appealed from was made shall be included*, but all Sundays and public holidays shall be excluded.

In the instant case the appeal was filed in the Supreme Court on 26.1.68.

There was during the period 9.1.68 to 26.1.68 two Poya days (14.1.68 and 22.1.68) which now take the place of Sundays for the purposes of the calculation of the time, and one public holiday (15.1.68—Thaipongal Day).

Mr. Kadirgamar for the appellant concedes that the appeal is a day out of time if the day 9.1.68 is taken as the date from which time begins to run. He submits, however, that in view of the fact that the party affected by the order has no way of knowing the order made until a certified copy of it is transmitted to him as provided for by Regulation 33 of the Industrial Disputes Regulations, 1958, which reads as follows: " Every order or decision of a Labour Tribunal shall be made in writing. The secretary shall notify the applicant and the employer of the order or decision by forwarding a certified copy thereof....." " Effect should be given to a ' salutory and just principle ', namely, that if a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore must be presumed to have had knowledge of the order."

The above quotation is from the judgment of Rajamannar C.J. in the case of *Muthiah Chettiar v. The Commissioner of Income Tax, Madras* [1]. The question for decision there was whether an application for a revision of an order passed by an Income Tax Officer on 4th February 1948 but received by the assessee on 24th February 1948 was out of time on the ground that the application for revision was not made *within one year from the date of the order*. By section 33A of the Indian Income Tax Act, 1922, an application for the revision of an order had to be made within one year from the date of the order. The application was out of time if the year was calculated from the 4th February 1948, but well in time if it was calculated from the 24th February 1948. The court gave effect to the principle I have quoted above.

Mr. Kadirgamar also cited the case of *Francis de Silva v. Wijenathan* [2] in which Dias, J., dealt with a preliminary objection to the hearing of an appeal over an order made in terms of the Local Authorities Elections Ordinance, No. 53 of 1946. Section 21 (1) of the Ordinance provided as

[1] *Income Tax Reports Vol. 19 of 1951.* [2] *(1948) 51 N. L. R. 49.*

follows :—" If any claimant or objector.....is dissatisfied with the decision of any Electoral Officer or any claim or objection relating to the electoral lists of the wards of any electoral area, he may, *not later than ten days from the date of such decision*, appeal therefrom to the Supreme Court on any question of law involved in such decision, but not on any other ground ". The election officer had put his decision into writing on September 6th, 1948 ; his decision, however, was only communicated to the appellant by the election officer's letter dated 20th September, 1948. It was contended that the appealable time began to run against the appellant as from September 6th and therefore he was out of time. Dias, J., said " The elections officer is not a Judge who sits in his court from day to day.....after attending to his duty he departs, one does not know where. The parties concerned have no place to go to where they can obtain information as to what the elections officer decided.... Obviously it is the duty of the elections officer.....to intimate to the parties concerned what his decision was. The appealable time begins to run from that date and not before ; therefore in my opinion the appeal has been preferred in time and must be heard."

In the case of *Mohanlal v. The Commissioner of Income Tax* [1] Fazal Ali, J., in dealing with a preliminary objection that an appeal was out of time because section 66 clause 2 of the Income Tax Act 11 of 1922 required that the application under that section should be made *within one month* of the passing of an order under section 31 or 32, said as follows :— " Our attention is drawn to the fact that the Assistant Commissioner fixed no time for passing the order, and the order was passed in the absence of the petitioners. It is said that it is only just that in these circumstances the period of limitation should be computed not from the date on which the order purports to have been recorded but from the date when the order was communicated to the petitioner, namely the date on which the post-card was received. It is also pointed out that according to the prevailing practice, the office of the Income Tax Department do not insist on the presence of the party on the date on which the order is to be passed, and as no date is fixed for the passing of the order, the order is always communicated to the party by post. This being so it is urged that if the period of limitation is not computed from the date of the communication of the order it may mean great hardship to the party in certain cases because it is possible that the party may not know anything about the order until the period of limitation has expired. Now if the learned advocate for the petitioners means to point out to us what should be the law we would say that his argument deserves serious consideration. In the present case, however, our concern is not to lay down what should be the law but to interpret the law as it stands. In doing so, I have to say that I do not find anything in the language of the section to enable me to hold that the expression ' passing of the order ' should be interpreted as the communication of the order to the party.... It is true that ordinarily the judgment of a court in order to be properly

[1] *A. I. R. 1930 Patna 14.*

delivered must be pronounced in court and in fact there is a specific provision to this effect in section 33 and 0 20 R 1 Civil Procedure Code. There is, however, no such clear provision in the Income Tax Act and I cannot hold without considerably straining the law that the order passed by the Income Tax Commissioner can be ignored for the purpose of limitation until it has been duly communicated by post to the assessee. All I can say is that what seems to be the hardship of the existing law can be only met by vigilance of the assessees on the one hand and by the realisation by the Income Tax Department..... It is only fair that the orders should be communicated as soon as possible after they have been passed." It is of interest to note that in that case the order was dated 5th July, 1928. The intimation of the order was sent by post to the petitioners on 7th July 1928 and it reached them some time after 8th July 1928.

In the case of the *North-Western Blue-Line Bus Co. Ltd. v. The Green Line Omnibus Co. Ltd.*[1] Sansoni J., held that the appealable period of 21 days in section 212 (2) of the Motor Traffic Act runs from the date of determination or order of the Transport Appeals Tribunal and not from the date on which notice of the determination or order is served on the appellant. The following passage from the judgment of Sansoni J. is of importance —

"It was submitted for the appellant that the decision of the Tribunal does not become effective until it is formally given in the sense of being pronounced in the presence of or otherwise communicated to the parties ; and the period of 21 days will commence to run only from the day it was so pronounced or communicated. Section 212 (2) is not, in my opinion, open to such a construction ; the words 'the date of the Tribunal's decision' are clear and unambiguous. The phraseology is markedly different from that adopted in sections 184 and 754 of the Civil Procedure Code. Section 184 requires a Court to 'pronounce judgment in open court either at once or on some future day of which notice shall be given.....' Section 754 requires a petition of appeal to be presented within a specified number of days 'from the date when the decree order appealed against was pronounced'. It will be seen on the other hand that the sub-sections of section 211 of the Motor Traffic Act contemplate a giving of a decision of the Tribunal to be followed by the secretary giving notice of such decision to the parties to the appeal. It is not contemplated that parties should have prior notice of the date on which the decision was given ; nor again is it provided in section 212 (2) that the period of 21 days should run from the date on which the parties received notice of the decision, of the Tribunal. It seems quite clear from an examination of sections 211 and 212 that the calculation of the appealable time has nothing to do with 'the date on which the parties received notice of the decision'. To read the words 'the date of the Tribunal's decision' appearing in section 212 (2) as though they were 'the date of service of notice of the Tribunal's decision' would be to do far more than interpret the words."

[1] (1954) *56 N. L. R. 116.*

This passage *mutatis mutandis* applies in all respects to the case before me. There is the additional factor in this case that the act makes pro vision for how time is to be computed. For section 31D (4) states : In computing the time within which an appeal must be preferred to the Supreme Court, *the day on which the order appealed from was made shall be included* ..... This appears to clearly point to the fact that it was not the intention of the Legislature that time should run from any other day, for example the day on which the secretary notifies the applicant of the order by forwarding a certified copy thereof.

In my view the relevant words in the sections concerned are clear and unambiguous and must be given their ordinary meaning. I realise that when that is done the resulting position is that the party affected by the order made by a President would not have 14 days in which to present his appeal for there would be the time lag between the day the order was made and the day on which a certified copy of it was transmitted to the party affected quite apart from the time lag between the transmission and the receipt of the order by the party affected. But that appears to me to be a matter which should be set right by amending legislation. Mr. Kadirgamar pointed to the fact that the day might dawn when in consequence of delay in the transmitting of an order the parties affected may find that they are out of time before they were aware of the order. That only highlights the need for amending legislation and the need in the meantime for Presidents to see that their orders are made known to the parties affected with the minimum of delay. It also shows the need for vigilance on the part of the legal advisers of the party affected. In the instant case the party affected had the certified copy sent to him on 11.1.68. From that certified copy he had to know that the order was made on 9.1.68. It is surprising to know that in spite of the three extra days he fortuitously had due to Poya and statutory holidays he was unable to file his appeal in time.

For the reasons I have set out above the appeal is rejected.

Appeal rejected.