1970 *Present :* Wijayatilake, J.

VIJAYA TEXTILES LTD., Appellant, *and* GENERAL SECRETARY, NATIONAL EMPLOYEES UNION, Respondent

S. C. 30/66—Labour Tribunal Case No. 7/20775

Industrial dispute—Dismissal of workman—Charge that he assaulted superior officer—Proof—Effect of absence of moral turpitude—Evidence Ordinance (Cap. 14), s. 3—" Just and equitable order ".

Where the question for decision before a Labour Tribunal was whether a workman was guilty of misconduct and insubordination in assaulting a superior officer—

Held, that a criminal offence not involving moral turpitude need not be proved beyond reasonable doubt. It may be proved in terms of the definition of " proved " in section 3 of the Evidence Ordinance.

APPEAL against an order of a Labour Tribunal.

D. Sena Wijewardene, for the employer-appellant.

C. A. Amarasinghe, for the applicant-respondent.

Cur. adv. vult.

January 27, 1970. WIJAYATILAKE, J.—

This is an appeal by the employer, Vijaya Textiles Ltd., from the Order of the learned President of the Labour Tribunal wherein he has held that the dismissal of the workman R. A. Seemon was wrongful and unjustified ; and he has directed that this workman be reinstated and his back wages be paid for a period of 6 months.

The employer sought to justify the dismissal on the ground that the workman was guilty of gross misconduct and insubordination in assaulting one Selvanayagam, a Staff Officer, on 3.4.64. The dismissal had been made after a domestic inquiry held by the Managing Director. The learned President has held that the burden of proving the assault or other conduct warranting the dismissal was on the employer and that on the evidence it could not be said that the employer has discharged this burden.

It is common ground that there was an incident on 3.4.64 within the premises of this factory in regard to a dispute over the Sinhalese New Year festival advance. In December 1963 one Vincent had joined this Company and he had made an application for a festival advance of Rs. 40. The workman Seemon had signed the application as guarantor or surety. It would appear that this application had been submitted to

Selvanayagam who had pointed out that an advance could not be paid to him as he joined recently. Advances had been paid to other workmen on 3.4.64. Vincent had come to know that one Wimalasena a newer entrant, had been paid this advance and he had requested his guarantor Seemon to inquire from Krishanaswamy, the Works Manager. Therefore on 4th April both Vincent and Seemon had gone to see Krishnaswamy and at this stage Seemon would appear to have made some remark to Selvanayagam which he resented and there had been a scuffle. There are different versions of what really happened in the course of it. As would appear from a reference to the proceedings at the domestic inquiry Seemon had sought to give a more colourful version subsequently before the President. He has referred to a slap for the first time before the President. Learned Counsel for the appellant had addressed me at length on this "addition" to show that this workman Seemon is utterly unworthy of credit and the learned President has failed to appreciate this in his assessment of the evidence. I agree with Counsel that a slap in the context of our society is most degrading unlike a mere "push" or a "pull" in the course of a scuffle and it is not a matter Seemon would have easily forgotton. There can be little doubt that this is an exaggeration to add weight to his version; but at the same time it is difficult to believe that Selvanayagam played a passive part in this transaction when Seemon dared to question him why he was seeking to deprive Vincent of the festival advance when a newer entrant had been paid this advance. One can well conceive of Selvanayagam's reaction to this query. Industrial peace cannot be maintained when there is partiality shown to workmen. In the instant case it would appear that a newer entrant has in fact been paid the festival advance. The question is whether it was by "error" or by "favour". One has to assess the reactions of workmen in the environment of a factory—particularly on the eve of a festival like the Sinhalese New Year when there are so many items of expenditure to meet. I should think taking these circumstances into consideration the learned President has adopted a mature and practical approach to the facts before him and arrived at a conclusion which I am unable to say is erroneous. It is noteworthy that Seemon has been in this Company since 1942. He had started on a salary of sixteen cents a day when he was only about 12 years of age and at the time of dismissal he had served for nearly 22 years. Considering his long service one can appreciate that he was something more than a mere cog in the machine. In his own sphere he must have wielded influence among his colleagues. He would have sponsored the cause of Vincent in this context and when he found that a newer entrant of this Factory had been given special treatment he would have felt that this was flagrant injustice and seriously provoked to acting in the manner he did. As for Selvanayagam's version one must not forget the fact that he was comparatively a new hand, having joined the Firm in February 1961 and Krishnaswamy, the Works Manager, had joined the Firm only three months before the incident and the workman Wimalasena to whom the Festival advance had been paid

said to be by an oversight had joined the Firm after Vincent a few months before this incident. These circumstances create certain adverse presumptions against the officers concerned and one can visualise how the workers who were deprived of this Festival advance would have reacted to this state of affairs shortly before the Sinhalese New Year.

Another feature in this case is that a complaint had been made to the Police in regard to the alleged assault on Selvanayagam but the Police, despite an investigation, had not filed plaint. One can safely presume that the Police had good reason not to pursue this matter. On the Police failing to file plaint why Selvanayagam who complains of obscene language and a violent assault on him did not file a private plaint is a further question.

The relations between Selvanayagam and Seemon too were admittedly strained. Selvanayagam alleged that Seemon was ill disposed towards him as he had not helped him (Seemon) to take in one of his friends for a job in the Company. On the other hand Seemon alleged that Selvanayagam was angry with him as he (Seemon) had reported him for theft of petrol and also in connection with an incident which led to the dismissal of one Punchisingho.

It would appear that the learned President has held in favour of the workman on the balance of evidence as in a Civil proceeding. Mr. Amerasinghe, learned Counsel for the respondent union, submits that in a case before the Labour Tribunal where the charge is one of assault which is a criminal offence which could be the subject of prosecution it has to be proved beyond reasonable doubt like in a criminal proceeding. He submits that in the instant case even adopting a lower standard of proof the learned President has held that the employer has failed to prove the charge. Mr. Amarasinghe submits that the principle upheld by me that a charge such as misappropriation involving moral turpitude should be established beyond reasonable doubt should be extended to offences of a criminal character such as in this case even though there is no element of moral turpitude. *Ceylon University Clerical & Technical Association v. University of Ceylon.*[1] Mr. Wijewardene, learned Counsel for the appellant, while not questioning the principle set out by me in the University case submits that proceedings before the Labour Tribunal are of a civil nature and therefore the burden of proof would be as in a civil case—on a balance of probabilities. I am inclined to agree with him that a charge tantamount to a criminal offence not involving moral turpitude need not be proved beyond reasonable doubt. However, the President has to make a just and equitable order. In making such order he has to keep in mind the facts of each case—for instance in this case the long service of the workman, the strained relations between the parties and the failure of the Police to launch a prosecution against the workman.

[1] *(1963) 72 N. L. R. 84.*

I should think that in the circumstances although a Labour Tribunal is not bound by the Evidence Ordinance, Section 3 of this Ordinance would be a safe guide to enable it to make a just and equitable order. What is essential is to exercise the wisdom of a prudent man and Section 3 provides for this. I am inclined to the view that where there is no element of moral turpitude, an offence of a criminal nature has to be proved in terms of this section. As I have already observed I see no reason to disagree with the conclusions arrived at by the learned President.

The question does arise whether the workman should be reinstated—particularly in view of the long time he has been under dismissal. Unfortunately, since this Inquiry was concluded before the Labour Tribunal on 3.10.65, the question in regard to the regularity of the appointment of the President was raised and ultimately the order was delivered by the President only on 10.9.66. Although the Appeal was filed on 2.10.66, it came up for hearing on 21.11.68 and the adjourned hearing could not be continued till 25.11.69, as it was not possible to get a date convenient to both Counsel.

In all the circumstances I order that the workman R. A. Seemon be reinstated with effect from 1.2.1970 with back wages as fixed by the learned President upto 1.10.66, and thereafter at the rate of one week's wages for every month during period 1.10.66 to 31.1.70 at the rate of Rs. 167 per month, or in the alternative it shall be open to the appellant Company to discontinue him with effect from 1.2.70 subject to the Company paying him compensation and other benefits he may be entitled to taking into consideration his long period of service and the period of his wrongful dismissal.

I have given my anxious consideration as to whether I should send this case back to the Labour Tribunal to fix the compensation but I think to avoid further delay it would be satisfactory if I fix the quantum to be paid for the period of this dismissal. I accordingly fix it at a two week's wages for every month at the rate of Rs. 167 per month from the date of dismissal 27.4.64, till 31.1.1970. In regard to the other benefits, if any, which he may be entitled to it would be open to him to pursue the same before the Labour Tribunal.

I confirm the Order for costs made by the learned President. The appellant shall be entitled to the costs of this Appeal which I fix at Rs. 300.

Order varied.