

1973 Present: H. N. G. Fernando, C.J., Deheragoda, J. and
Wimalaratne, J.

AMBLAMANA TEA ESTATES LTD., Petitioner, and CEYLON
ESTATES STAFFS' UNION and 2 others, Respondents

S. C. 530/72—*Application for a Writ of Certiorari*

Industrial Disputes Act (Cap. 131)—Section 31B—Gratuities payable thereunder—Not restricted to retiring gratuities—Termination of a workman's services solely for the employer's purposes and not because of any voluntary act or any fault on the part of the workman—Right of the workman to claim gratuity then.

A person employed in a particular field of employment even for a short period can make a claim under section 31B of the Industrial Disputes Act for a gratuity in respect of that period, if his services are terminated by the employer for reasons not within the employee's control.

Where a Company owning an Estate terminated the services of its employees on account of the impending sale of the Estate to certain purchasers—

Held, that the termination of employment was caused solely by the act and will of the employers, in pursuance of their desire to sell the Estate. In such a case, an employee whose services are terminated does have a just claim to the gratuity referred to in section 31B of the Industrial Dispute Act. Section 31B does not restrict the benefit therein mentioned to a gratuity due to a workman when he retires on reaching the retirement age.

APPPLICATION for a Writ of Certiorari to quash an award made by an Arbitrator in an Industrial Dispute.

H. W. Jayewardene, with D. C. Amerasinghe, for the petitioner.

N. Satyendra, with S. Rajaratnam, for the 1st respondent.

N. Sinnnetamby, State Counsel, with F. Mustapha, State Counsel, for the Attorney-General (3rd respondent).

Cur. adv. vult.

September 24, 1973. H. N. G. FERNANDO, C.J.—

This was an application by an employer for a Writ of Certiorari to quash an award by an Arbitrator in an Industrial Dispute. By this award the employer, a Company owning an Estate, was required to pay certain sums to some of its employees whose services on the Estate had been terminated by the Company.

Notices were given to these employees in February, 1970 terminating their employment on the Estate with effect from the

end of March 1970. The reason for the termination of employment in each case was that the Company sold the Estate to certain purchasers in pursuance of an agreement of sale which became effective on 1st April 1970.

The sum payable to an employee under the award comprised—

- (a) amount payable as gratuity, and
- (b) wages for two months on the basis that three months' notice of termination should have been given in the circumstances of this particular case.

In assessing the amount of the gratuities, the Arbitrator took account *inter alia* of the fact that for several years the employer had made contributions to a Provident Fund at a rate much more favourable than the minimum rate prescribed whether by law or by practice ; a gratuity was only allowed in respect of years of service during which Provident Fund contributions had either not been made at all by the employer, or had been made only at the minimum rate. In our opinion, if it was just and equitable to award gratuities to these employees, the considerations by which the Arbitrator was guided in making his assessments appear to be perfectly reasonable.

This application was first listed for hearing before a Bench of two Judges. It was heard by a Bench of three Judges, because the former Bench thought it desirable that fuller consideration be given to the opinion expressed by Alles, J. in *Independent Industrial & Commercial Employees' Union v. Board of Directors, Co-operative Wholesale Establishment, Colombo*¹ 74 N. L. R. p. 344, that the payment of a gratuity under Section 31B in the Industrial Disputes Act "is a fundamental right which every employee whose services have been terminated in whatever manner or who has voluntarily retired is entitled to claim from his employer." The learned Judge added that "it will be the duty of the Tribunal in such a case to decide firstly whether the employer's financial resources permit the payment of a gratuity and if so the quantum of gratuity payable."

As already stated, the termination of employment in the instant case was caused solely by the act and will of the employer, in pursuance of his desire to sell the estate. In our opinion, an employee whose services are terminated for this cause does have a just claim to the gratuity referred to in Section 31B. Although the judgment of Alles, J. (which dealt with a case of retirement at the age limit) refers to a gratuity as

¹ (1971) 74 N.L.R. 344.

being intended for the benefit of an employee after his retirement, we must note that Section 31B does not restrict the benefit therein mentioned to *retiring gratuities*. What is contemplated in the section is an application by a workman for a gratuity on termination of his services, and no reference is made to the circumstance whether or not the termination is due to the retirement of the workman from his employment.

Mr. Jayewardene referred during the argument to a collective agreement which included a clause providing for a maximum specified gratuity to certain estate workers on retirement after 35 years of service. In our view, the principle which has gained or is gaining recognition is that a person who enters a particular field of employment can reasonably expect to remain employed until he reaches the age of retirement and that if his services are satisfactory, he may expect to receive a gratuity on retirement calculated by reference to the length of the whole period during which he continues to be so employed. If then his employment under a particular employer is terminated by that employer solely for the latter's purposes, and not because of any voluntary act or any fault on the part of the employee, it is not reasonable for the employee to be deprived of a claim to a gratuity in respect of the period of that employment.

For instance, suppose that employee A is employed on one Estate for 30 years and then retires on reaching the retirement age, subject to other relevant considerations, he will then have a claim for a gratuity calculated by reference to the whole length of his service. Suppose also that employee B is employed in a similar capacity on one Estate for 10 years, and that his services are then terminated, solely for the reason that the Estate is sold, and that he thereafter obtains alternative employment in which he serves for 20 years; if he can have no claim for a gratuity in respect of his earlier employment for the 10-year period, the total amount which he can receive as gratuity will be less than that which employee A will receive. We think therefore that a person employed in a particular field of employment even for a short period can make a claim under Section 31B for a gratuity in respect of that period, if his services are terminated by the employer for reasons not within the employee's control.

In view of the fact that in the particular circumstances of this case the present award appears to us to be eminently just and equitable, no occasion arises for us to consider different circumstances in which, or on account of which, it may or may not be just and equitable to award gratuities. Any expression of opinion on such matters, which have not arisen in this case, would be

obiter. To avoid misunderstanding we must repeat that this judgment is not intended to resolve problems which have not arisen for our consideration.

The application is dismissed with costs fixed at Rs. 105 payable to the 1st Respondent.

DEHERAGODA, J.—I agree.

WIMALARATNE, J.—I agree.

Application dismissed.

