1968 *Present :* **H. N. G. Fernando, C.J., and Sirimane, J.**

HEATH & CO. (CEYLON) LTD., Petitioner, *and* P. KARIYAWASAM and 2 others, Respondents

S. C. 375/64—Application for the issue of a Writ of Certiorari in terms of Section 42 of the Courts Ordinance

Industrial Disputes Act—Arbitrator appointed thereunder—His duty to weigh evidence—Misconduct of workman—Circumstances when it should not be condoned—Certiorari.

In the assessment of evidence, an arbitrator appointed under the Industrial Disputes Act must act judicially. Where his finding is completely contrary to the weight of evidence, his award is liable to be quashed by way of *certiorari.*

In a labour dispute, the misconduct of a workman must not be condoned in the name of industrial peace, if such condonation can only lead to industrial chaos.

APPLICATION for a writ of *certiorari* to quash an award of an arbitrator appointed under the Industrial Disputes Act.

H. V. Perera, Q.C., with *Lakshman Kadirgamar*, for the Petitioner.

No appearance for the Respondents.

Cur. adv. vult.

June 11, 1968. SIRIMANE, J.—

This is an application by the petitioner (a Company with limited liability hereinafter referred to as " The Company ") for a Writ of Certiorari quashing an award made by the first respondent, an arbitrator appointed under the Industrial Disputes Act by which he ordered (*inter alia*) the reinstatement, and payment of back wages to a workman of the Company who had been dismissed. The dismissal was in consequence of the workman being found guilty, after a domestic inquiry into charges of unruly behaviour, the use of obscene words and threatening language to the Personnel Manager of the Company.

The second respondent is a trade union which had represented the workman in this dispute.

The Minister of Labour and Social Services had referred the dispute for arbitration to the first respondent in the following terms :— .

" Whether the termination of employment of Mr. P. H. Sumanadasa (worker No. 288) is justified and to what relief he is entitled."

At the inquiry held by the first respondent the evidence led on behalf of the Company revealed that the workman had applied for leave and also requested that the customary deductions from his salary on account of outstanding loans should not be made. When the Personnel Manager informed him that this request had been refused by the Secretary, he wanted to see the Managing Director immediately without any appointment. The Personnel Manager explained that this could not be done at once but that he would arrange an interview later. The workman then became aggressive and defiant, and when the Personnel Manager tried to pacify him, he raised his voice, became even more aggressive and used obscene words.

On this point, there was the evidence of the Personnel Manager, one Alles, H. L. de Kretser, an executive assistant, E. C. Foenander and Brian Jones, two stenographers who were in the same room with Alles at the time.

Alles reported the matter immediately to Ravenscroft, the Secretary of the Company. The workman, having apparently learnt that Alles had reported him, came back to the office in the afternoon and held out a threat to Alles, saying that though Alles may make reports against him inside the Office, he would deal with him (Alles) outside. In addition to the witnesses mentioned earlier, one Mrs. Christofelsz, the Private Secretary to the Managing Director, who was present in the room at that time, also heard the threat and gave evidence to that effect.

The workman merely denied that he used the obscene words complained of, and admitted—as indeed he must—that had such words been used, the dismissal of an employee would be justified. He also

said that in the afternoon he merely asked Alles not to " do injustices " and that if Alles tried to sack him, he would fight him outside—meaning the Courts of law.

So, the issue before the arbitrator was a simple one, viz., whether the workman had or had not used the words attributed to him and behaved in the manner alleged by the Company's witnesses. The arbitrator, however, has not dealt with the evidence at all. He has not even suggested any ground on which the evidence of the Company's witnesses should be rejected or even doubted. It is indeed quite impossible to find one. He states at one stage of his award, " It is a sad note that a trade union leader of the standing of Mr. Sumanadasa was unable to exercise tact and patience expected of him in his dealings with the management of the Company "; and again, " To my mind Sumanadasa has in some measure contributed towards these alleged incidents." There is a clear indication here, that the arbitrator rejected the evidence of the workman. But his finding, to quote his words, is " According to the evidence placed before me, I am unable to hold that Mr. Sumanadasa is guilty of the charges brought against him and that his dismissal is justified ".

No reasonable man could have, in my opinion, reached that conclusion on the evidence placed before him.

In the assessment of evidence an arbitrator must act judicially. Though the point of view of a workman in a labour dispute must always be given the highest consideration, and his conduct judged with tolerance and understanding, yet, the use of obscene language when addressing the employer's representative, a contemptuous disregard for any form of discipline, coupled with threats of violence should not be condoned in the name of industrial peace. Such a course can only lead to industrial chaos. The finding here is so completely contrary to the weight of evidence that one can only describe it as perverse.

I would grant the relief prayed for and quash the award made by the first respondent. The petitioner is entitled to costs against the second respondent.

H. N. G. FERNANDO, C.J.—I agree.

Application allowed.