

[IN THE COURT OF APPEAL OF SRI LANKA]

1972 Present : Fernando, J., Samerawickrame, J., and  
Siva Supramaniam, J.

UNITED INDUSTRIAL LOCAL GOVERNMENT AND GENERAL  
WORKERS' UNION, Appellant, and INDEPENDENT NEWSPAPERS  
LTD., Respondents

C. A. APPEAL No. 8 OF 1972

S. C. 109/70—L. T. Colombo Case No. 2/31623

*Labour Tribunal—Finding that the termination of the services of a workman was unjustified—Discretion of tribunal to order payment of compensation as an alternative to reinstatement of the workman—Failure to exercise such discretion—Jurisdiction of Supreme Court to intervene when there has been a failure to consider material and relevant evidence—Industrial Disputes Act (Cap. 131), ss. 31 B (1), 31 C, 31 D, 33 (3), 33 (5), 33 (6).*

In an application made under section 31 B (1) of the Industrial Disputes Act on behalf of a workman who had been dismissed from service by his employer, the President of the Labour Tribunal found on the evidence that the termination of the workman's employment was unjustified. He ordered the employer to reinstate the workman and to pay him a sum of Rs. 1,500 as back wages. On an appeal preferred by the employer the Supreme Court stated that the continuance in service of the workman under the employer might not be in the interest of industrial peace or of the workman himself and, therefore, varied the order of the Labour Tribunal by permitting the employer, at his option, to pay the workman, as an alternative to reinstatement, an additional sum of Rs. 1,000 as compensation. The ground on which the Supreme Court varied the order of the Labour Tribunal was the latter's failure to consider the practically uncontradicted evidence in regard to the several previous acts of misconduct on the part of the workman.

*Held*, that the Supreme Court did not act in excess of its jurisdiction by varying the order made by the Labour Tribunal. Section 31D of the Industrial Disputes Act which provides that an appeal lies to the Supreme Court only on a question of law does not preclude the Supreme Court from intervening in a case where there has been a failure to consider material and relevant evidence.

"Before making an order that is just and equitable as provided for in section 31 C of the Act, the tribunal must consider, in cases where reinstatement may be one of the reliefs, the question whether it is a fit case for an order for compensation to be made as an alternative to reinstatement. Evidence placed before the tribunal in regard to the previous conduct of the workman will be very relevant in this connection."

**A**PPPEAL from a judgment of the Supreme Court.

*Nimal Senanayake, with Miss S. M. Senarathne, for the appellant.*

*H. L. de Silva, with V. Basnayake, for the employer-respondent.*

*Cur. adv. vult.*

November 13, 1972. SIVA SUPRAMANIAM, J.—

The appellant, a trade union, instituted these proceedings before the Labour Tribunal under Section 31 B (1) of the Industrial Disputes Act (hereinafter referred to as the Act) on behalf of one of its members, a workman named N. K. Girigoris, who had been dismissed from service by the respondent, a newspaper company which was his employer. The dismissal was on the ground that Girigoris had been found sleeping at a time when he should have been on duty. The President of the Labour Tribunal before whom the parties and the witnesses gave evidence retired from office before delivering his order and his successor, on the invitation of the parties, read the evidence that had been recorded and made his order. He found on the evidence that the employer had failed to establish the charge and that the termination of the workman's employment was unjustified. He ordered the employer to reinstate the workman and to pay him a sum of Rs. 1,500 as back wages and Rs. 105 as costs.

On an appeal preferred by the employer, the Supreme Court varied the said order by permitting the employer, at his option, to pay the workman, as an alternative to reinstatement, an additional sum of Rs. 1,000 as compensation. The union appealed to this Court against the order of the Supreme Court. Counsel for the appellant argued that the Supreme Court acted in excess of its jurisdiction in effecting the said variation in the order made by the Labour Tribunal. He submitted that under Section 31 D of the Act an appeal lay to the Supreme Court only on a question of law and that in the present case no question of law arose to enable the Supreme Court to exercise jurisdiction. His criticism of the judgment of the Supreme Court proceeded on the basis that the Supreme Court had interfered with the finding of the Labour Tribunal on the facts. Counsel for the respondent too appears to have assumed in his written submissions that the Supreme Court had reversed the Tribunal's finding of fact. This was, perhaps, due to the reason that in the first part of the judgment of the Supreme Court the learned judge expressed the opinion that the President of the Tribunal had misdirected himself on the facts in arriving at his conclusion that the respondent had failed to establish the charge against the workman. But, as pointed out by counsel for the respondent in the course of his submissions in Court, the learned Judge, despite his view that the President had wrongly assessed the facts, refrained from interfering with his finding that the termination of service was unjustified. He affirmed the order in regard to reinstatement and the payment of back wages and costs but granted to the respondent an option to pay a sum of Rs. 1,000 as compensation in lieu of reinstatement. In making the said order the learned Judge stated that the continuance in service of the workman under the respondent may not be in the interest of industrial peace or of the workman himself.

Counsel for the appellant strongly criticised the aforesaid reasons given by the learned Judge for his intervention. He submitted, and there is much force in that submission, that questions relating to industrial peace are matters within the purview of the Labour Tribunal and the other tribunals established under the Act and that those tribunals are better equipped to deal with such questions than the Supreme Court. It was also urged that the workman is the best judge of what is in his own interest and that the Supreme Court was not justified in varying the order of the tribunal on that ground.

On a close examination of the judgment of the Supreme Court, however, it seems to us that the true ground on which the learned Judge varied the order of the tribunal was the President's failure to consider the practically uncontradicted evidence before him in regard to the previous conduct of the workman before he decided upon the proper relief to be granted to him.

Section 33 (3) of the Act provides that where an order of the Labour Tribunal contains a decision as to the reinstatement in service of any workman employed in certain prescribed capacities, the order shall also contain a decision as to the payment of compensation as an alternative to reinstatement. Under Section 33 (5) where an order for reinstatement is made, if the workman so requests, the tribunal may, in lieu of reinstatement, order the payment of compensation to him. Section 33 (6) provides that the aforesaid two sub-sections of section 33 shall not be construed to limit the power of the tribunal to order the payment of compensation as an alternative to reinstatement in any case where the tribunal thinks fit so to do. A finding that the termination of service of a workman is unjustified will not, therefore, entitle the workman to demand as of right his reinstatement; nor will such an order be obligatory on the part of the tribunal. The tribunal is vested with a discretion to decide whether payment of compensation should be ordered as an alternative to reinstatement.

The Labour Tribunal has a wide discretion in this matter. But in order to exercise that discretion reasonably, the tribunal should consider all the relevant evidence placed before it. In the words of Lord Greene M. R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury*<sup>1</sup> "a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably".

Before making an order that is just and equitable as provided for in Section 31 (C) of the Act, the tribunal must consider, in cases where reinstatement may be one of the reliefs, the question whether it is a fit case for an order for compensation to be made as an alternative to

<sup>1</sup> (1948) 1 K. B. 223 at p. 229.

reinstatement. Evidence placed before the tribunal in regard to the previous conduct of the workman will be very relevant in this connection. In the present case, documentary evidence was placed before the tribunal of several previous acts of misconduct on the part of the workman. But in arriving at his decision the President totally ignored this evidence. Where a tribunal is empowered to make findings of fact that are excluded from review, a Court of Appeal will have jurisdiction to intervene where there has been a failure to consider material and relevant evidence. It is on this ground that the Supreme Court appears to have intervened and varied the order made by the President in regard to the reliefs that should be granted to the workman. In making that order, therefore, the Supreme Court cannot be said to have acted in excess of its jurisdiction.

The appeal fails and is dismissed. In all the circumstances of this case, we make no order as to costs.

*Appeal dismissed.*

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