1970 *Present :* Alles, J.

THE STATE BANK OF INDIA, Petitioner, *and* S. SUNDARALINGAM *et al.*, Respondents

S. C. 300/69—Application for the issue of Mandates in the nature of Writs of Certiorari *and Prohibition*

Industrial Disputes Act—Section 4 (1)—Dispute between an employer and an ex-employee—Whether it is an "industrial dispute"—Writs of Certiorari *and Prohibition.*

An arbitrator appointed by the Minister under section 4 (1) of the Industrial Disputes Act has no jurisdiction to entertain an alleged industrial dispute between an employer and an ex-employee who has already retired from the services of the employer and thus ceased to be an employee. Such a case is one of cessation of employment and not one of termination or re-instatement and, therefore, is not an "industrial dispute".

APPLICATION for writs of *Certiorari* and Prohibition.

Lakshman Kadirgamar, for the petitioner.

E. A. G. de Silva, for the 2nd respondent.

Cur. adv. vult.

September 24, 1970. ALLES, J.—

The simple question that arises for consideration in this application is whether the arbitrator appointed by the Minister under Section 4 (1) of the Industrial Disputes Act had jurisdiction to entertain an alleged industrial dispute between the petitioner and the 2nd respondent. When this same question was raised before the Arbitrator he overruled

the objection and held that he had jurisdiction. The present application, for mandates in the nature of Writs of Certiorari and Prohibition, is from this order.

The facts as set out in the petition are to the following effect :—

One Thuraisingham, a Sub-Accountant employed by the petitioner Bank, retired from the service of the Bank on 10th April 1962. Sixteen months later, on 15th August 1963, the 2nd Respondent Union on his behalf and that of other Sub-Accountants applied for the benefits of a salary revision subsequent to the orders in I.D. 306 and I.D. 306A. In the application the 2nd Respondent included an application for revision of pension and the consequent arrears of salary and pension.

The Award in I.D. 306 and its clarification I.D. 306A contain no order or direction affecting the salaries or payment of increments to Sub-Accountants and consequently the awards in these two Disputes have no application to Thuraisingham. Indeed at the abortive proceedings first held before M. R. A. Carim (Arbitrator) on 12th October 1966, the 2nd Respondent Union specifically admitted that the award in I.D. 306 did not apply to Thuraisingham. Although the awards in I.D. 306 and I.D. 306A did not apply to the emoluments of Sub-Accountants, the petitioner Bank offered two increments of salary to such Sub-Accountants who were re-engaged by the petitioner Bank on 26th March 1962 after a strike which was then existing among the members of the 2nd respondent Union, and which was called off on that day. Thuraisingham, being on medical leave between 27th December 1961 (the date of the commencement of the strike) and 30th December 1961 and thereafter being on leave until the effective date of his retirement on 10th April 1962 was not a person on strike and therefore the petitioner's offer of two months increment of salary was not applicable to him. According to the statement filed by the Commissioner of Labour which accompanied the order of the Minister under Section 4 (1) the matter in dispute is "whether Mr. L. T. Thuraisingham should have been granted two increments on the basis of Industrial Court Award in I.D. 306....." Since the Industrial Court Award in I.D. 306 admittedly contained no order or direction affecting the salaries and payment of increments to Sub-Accountants the question whether Thuraisingham should have been granted two increments on the basis of the said Award cannot possibly arise because it has no relevance or application to the services rendered by Thuraisingham.

Quite apart from his inherent flaw in the reference under Section 4 (1), learned Counsel for the petitioner raises a further question of fundamental importance. It is his submission that at the time of the reference under Section 4 (1) (19th May 1966 and 31st December 1968) there was no industrial dispute between the petitioner and Thuraisingham inasmuch as Thuraisingham had long since ceased to be an employee under the provisions of the Industrial Disputes Act. According to the petitioner a panel of three Judges of the Industrial Court in

I.D 337 had held that there cannot in law be an industrisl dispute in connection with the " terms of employment " of a person after he has ceased to be an employee of the employer with whom the alleged industrial dispute is raised. There was no appeal to the Supreme Court from this decision and it is the submission of the petitioner that in the absence of such an appeal this decision should be binding on the Arbitrator. Nevertheless, since this question has now come up for consideration before this Court, I propose to examine this issue in the light of the provisions of the Industrial Disputes Act.

An " industrial dispute " under the Act is defined as " any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, or the termination of the services, or the reinstatement in service, of any person and for the purposes of this definition ' workmen ' includes a trade union consisting of workmen ".

I cannot see how this definition can ever apply to " any dispute or difference " between an employer and an ex-employee who has retired from the services of his employer. Thuraisingham ceased to be the petitioner's employee on 10th April 1962. This is a case of cessation of employment and not one of termination or reinstatement. When a person ceases to be in employment, there cannot be a live dispute between the parties which can ever culminate in an award affecting the terms of employment. Learned Counsel for the petitioner submitted that before Thuraisingham retired there was a dispute between the Bank and its employees in relation to the salary scales and superannuation allowances which affected his pension. Thuraisingham was not a party to that dispute. The Bank, though not bound to extend the benefits of that Award to Sub-Accountants, decided to do só in respect of those Sub-Accountants who were on strike and who were in active service at the time the strike was settled. Thuraisingham ceased to be in active service from 27th December 1961 up to the date of his retirement and seeks to obtain certain benefits to which he is not justly entitled.

It is unnecessary to consider the decision in the Divisional Bench case of *The Colombo Apothecaries Co., Ltd. v. Wijeysooriya and others* [1] which was cited by Counsel for the petitioner, for that case dealt with a case of termination of employment and not cessation.

For the above reasons, I hold that the dispute referred to the Arbitrator under Section 4 (1) is not an industrial dispute within the meaning of the Act and that therefore its reference for settlement by arbitration is invalid. I therfore quash the proceedings held on 27th March 1969 and direct that the petitioner is entitled to the writ of prohibition prayed for by him. The petitioner will also be entitled to the costs of this application which I fix at Rs. 210, payable by the 2nd respondent.

Application allowed.

[1] *(1968) 70 N. L. R. 481.*