1962 *Present :* **Tambiah, J.**

THE CEYLON WORKERS' CONGRESS (on behalf of K. Ramasamy), Appellant, *and* THE SUPERINTENDENT, KALLEBOKKA ESTATE, Respondent

S. C. 3/1961—Labour Tribunal, 2351

Industrial Disputes Act (Cap. 131 of Legislative Enactments, 1956 Edn.), as amended by Act No. 62 of 1957—Sections 31 B (1) (a), 31 C (1)—Termination of a workman's services by his employer—Inquiry by Labour Tribunal—Scope of the functions and jurisdiction of a Labour Tribunal—Duty of Tribunal to follow principles of natural justice.

In an inquiry held under section 31 C (1) of the Industrial Disputes Act, as amended by Act No. 62 of 1957, it is incumbent upon the Labour Tribunal to follow principles of natural justice.

Although a bona fide inquiry may have been held by the employer before he dismissed a workman, the Labour Tribunal cannot refuse to hear evidence tendered by the workman, if the workman wishes to prove that the termination of his services was not just and equitable.

The Labour Tribunal is given a wider jurisdiction than Courts of Law and can order the re-instatement of workmen even if their services have been lawfully terminated.

The services of R, who was a worker employed by the respondent on Kallebokka Estate, were terminated on the 4th April 1960. Before R was dismissed an inquiry was held by the Assistant Superintendent of Kallebokka Estate on the 27th February 1960 in regard to the question whether R had attempted to incite a labourer or labourers to violence. At that inquiry, which commenced

at 2.30 p.m., R, when he was asked at 7 p.m. to make a statement, refused to do so on the ground that his child was ill and that he had to trudge a long distance to reach his place of residence. R's services were thereafter terminated on the 4th April 1960 on the grounds that he (*a*) attempted to incite a labourer or labourers to violence, (*b*) failed to remain till the conclusion of the inquiry held on the 27th February.

At the inquiry held by the President of the Labour Tribunal in regard to the question whether R incited labourers to violence, Counsel for the respondent produced the record of the evidence led before the Assistant Superintendent on the 27th February and invited the Labour Tribunal to act on the evidence of five women who were called before the Assistant Superintendent. The Labour Tribunal accepted and acted on the contents of the inquiry notes of the Assistant Superintendent although the five women were neither called to give evidence before the Labour Tribunal nor tendered to be cross-examined on behalf of R.

Held, that a workman is liable to be dismissed if he incites a labourer against his employer. However, in accepting the contents of the Assistant Superintendent's inquiry notes, which contained the testimony of the five women, who were not called before the Labour Tribunal, the President of the Labour Tribunal had grossly misdirected himself. The Labour Tribunal erred in not following the *audi alteram partem* rule, one of the fundamental principles of natural justice, and, for this reason alone, the order of the Labour Tribunal should be set aside.

Held further, that there was no act of indiscipline on the part of R when, on the 27th February, he left the inquiry after 7 p.m. without making a statement.

APPEAL from an order of a Labour Tribunal.

Colvin R. de Silva, with *S. C. Crossette-Thambiah*, for the appellant.

H. V. Perera, Q.C., with *L. Kadirgamar*, for the employer-respondent.

Cur. adv. vult.

January 15, 1962. TAMBIAH, J.—

This is an appeal from the order of the Industrial Tribunal dismissing the application of the appellant Union who claimed that the services of one Ramasamy, a worker employed by the respondent, were wrongfully terminated on the 4th of April 1960, on the grounds that he had attempted to incite a labourer or labourers to violence and also that he had refused to remain till the conclusion of the inquiry held into this matter on the 27th of February 1960. The appellant Union, on behalf of its member Ramasamy, prayed for the re-instatement of Ramasamy on the ground that his dismissal was wrongful and unjustified. The respondent, however, maintained that the dismissal was justified for reasons set out in the notice of discontinuance.

At the inquiry held by the President of the Labour Tribunal, Mr. G. Rathwatte, the Assistant Superintendent of Kalebokke Estate, and some other witnesses were summoned to prove that an inquiry was in fact

held by Mr. Rathwatte before Ramasamy's services were terminated. Mr. Rathwatte, in his evidence, stated that the inquiry had commenced at 2.30 p.m. and at 7 p.m. when he asked Ramasamy to make a statement, the latter refused to do so on the ground that his child was ill and that he had to trudge a long distance to reach his place of residence. Ramasamy gave evidence denying the charges framed against him.

The President of the Labour Tribunal, in the course of his order, stated that the questions for determination before him were whether Ramasamy was guilty of the charges that he : (*a*) attempted to incite a labourer or labourers to violence ; (*b*) failed to remain till the conclusion of the inquiry held on the 27th of February 1960.

On the issue whether Ramasamy incited a labourer or labourers, the respondent called no witnesses who testified that they saw or heard Ramasamy inciting a labourer or labourers. In the course of the inquiry, counsel for the respondent produced the record of the evidence led before Mr. Rathwatte, held on 27.2.1960, marked R3, and invited the Tribunal to act on the evidence of five women who were called before Mr. Rathwatte. These five women had stated before Mr. Rathwatte that they saw Ramasamy saying something to a labourer. The interpretation of the words alleged to have been used by Ramasamy was a matter of controversy before the Tribunal. The President of the Labour Tribunal acceded to the request of the counsel for the respondent by perusing the evidence of these five women and acting upon it.

In the course of his order, the President of the Labour Tribunal stated as follows :

> " I have perused the inquiry notes wherein the statements of the 5 women workers had been recorded. I must say the common denominator in these statements is that Ramasamy did use the words " why did you not cut or slipper ". I regret that I cannot accept the defence that there has been any misconstruction placed on the word " vettu ". Furthermore, all 5 workers whose statements had been recorded had been subject to a lengthy cross-examination of Ramasamy. No suggestion of any misunderstanding of the word " vettu " has been made. It was also submitted by the Legal Secretary of the applicant Union that these remarks of Ramasamy had been exaggerated by the Estate Committee. I regret I cannot accept these defences. I accept the inquiry notes as a correct record of the proceedings and hold that Ramasamy did use the words complained and thereby did attempt to incite a labourer or labourers to violence on the 18th of January 1960."

In accepting the contents of the inquiry notes, which contained the testimony of the five women who were not called before him, the President of the Labour Tribunal had grossly misdirected himself. These women were neither called to give evidence before the Labour Tribunal nor was any opportunity given to the appellant to cross-examine them on behalf of Ramasamy. The Labour Tribunal has erred in not following the *audi alteram partem* rule, one of the fundamental principles of natural

justice, at the inquiry and, for this reason alone, the order of the Labour Tribunal should be set aside and the application of the appellant Union should be sent for a proper inquiry before another Labour Tribunal.

At an inquiry, the Labour Tribunal is under a duty to make all such inquiries into an application as the Tribunal "may consider necessary, hear such evidence as may be tendered by the applicant and any person affected by the application, and thereafter make such order as may appear to the Tribunal to be *just and equitable*" (vide section 31C (1) of the Industrial Disputes Act (Cap. 131 of the Revised Legislative Enactments (1956 Ed.), as amended by Act No. 62 of 1957). Although the provisions of the Evidence Ordinance (Cap. 14 of the Revised Legislative Enactments (1956 Ed)), are not applicable at such inquiries, it is incumbent upon the Tribunal to follow principles of natural justice.

The President of the Labour Tribunal further misdirected himself when he said "I must say that this Tribunal was the forum where evidence of Ramasamy's innocence could have been led. No evidence has been led and I have only the uncorroborated bald denial of Ramasamy". There was no Tribunal envisaged by the law before which Ramasamy has failed to establish his innocence and, even if one assumes that the inquiry held by Mr. Rathwatte could be considered to be a Domestic Tribunal, nevertheless the decision of Mr. Rathwatte was greatly influenced by the Superintendent of Kallebokke Estate. Indeed, it is difficult to find out whether the decision to discontinue Ramasamy's services was that of Mr. Rathwatte or of the Superintendent of Kallebokke Estate.

The counsel for the appellant contended that there is no requirement of our law that there should be an inquiry by an employer before the services of a labourer are terminated, although it is one of the circumstances which should be taken into account in deciding the issue whether an employer acted bona fide. He pointed out that in India it is obligatory on some business establishments, which have adopted certain schedules of the Indian Industrial Employment (Standing Orders) Act, XX of 1946, to hold an inquiry before dismissing a labourer and that, in Ceylon, there is no such statutory requirement but it is a factor which may well be taken into account in considering the bona fides of an employer who dismisses an employee. The counsel for the appellant also urged that the framework of the Industrial Disputes Act (Cap. 131 as amended by Act No. 62 of 1957) does not envisage the holding of a domestic inquiry obligatory and, therefore, the President of the Labour Tribunal has misdirected himself in law by holding that the proper tribunal, before which the innocence of Ramasamy should be established, was the inquiry held by Mr. Rathwatte.

The counsel for the respondent, however, contended that if an employer has held an inquiry and he has made a bona fide decision to discontinue the services of an employer, the Labour Tribunal cannot go into the merits of the issues which were tried at the inquiry. The counsel for the

respondent also submitted that an Industrial Tribunal, in making any order which is just and equitable, cannot canvass the findings of a domestic inquiry if they were made bona fide. In support of this contention, he cited the case of *Indian Iron and Steel Company, Limited, and Another and their workmen*[1]. In that case, the question as to when a Court will interfere with the order of dismissal made by an employer after a managerial or domestic inquiry, was considered by three judges of the Supreme Court of India, who, in the course of their judgment, made the following observations :

> " Undoubtedly, the management of a concern has power to direct its own internal administration and discipline, but the power is not unlimited and when a dispute arises, industrial tribunals have been given power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct the Tribunal does not however act as a Court of Appeal and substitute its own judgment for that of the management.
>
> It will interfere :—
>
> (i) when there is a want of faith,
>
> (ii) when there is victimisation or unfair labour practice,
>
> (iii) when the management has been guilty of a basic error or violation of the principles of natural justice, and
>
> (iv) when on the materials the finding is completely baseless or perverse ".

The ratio decidendi in the above case has been followed in other cases in India (vide *Doom Dooma Tea Co., Ltd. v. Assam Chah Karmachari Sangha and another* [2] ; *Woodbrair and Sussex Estates v. their workmen (Tamilnad Plantations Workers' Union)* [3] ; *Hendricks & Sons v. Industrial Tribunal, Andra Pradesh, and others (Automobile Workers Union, Secunderabad)* [4].

In order to appreciate the rule laid down by the Supreme Court of India in *Indian Iron and Steel Company, Limited, and Another v. their workmen* (supra), it is necessary to consider briefly the framework of the Indian legislation and the practice and procedure pertaining to these matters adopted in India. The Indian Industrial Employment (Standing Orders) Act (XX of 1946), as amended by the subsequent Acts, requires employers in industrial establishments, which employ one hundred or more workmen, to define formally the conditions of employment. Item 10 in the Schedule of this Act states that one of the matters to be provided for in the Standing Orders under the Act is the " Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct". Under the Act, notice of such Standing Orders has to be forwarded

[1] *(1958) I. L. L. J. 260.*
[2] *(1960) 2 Indian Labour Law Journal, p. 56.*
[3] *(1960) 2 Indian Labour Law Journal, p. 673.*
[4] *(1960) 2 Indian Labour Law Journal, p. 484.*

by the employer to a " certifying authority " within six months of the date of the Act. The " certifying authority ", on the receipt of such draft, has to forward a copy of the same to the workmen or trade union concerned, and after hearing both the employer and the workmen, certify the draft standing orders, after making the necessary modifications (if any). (Vide sections 3 and 5 of the Industrial Employment (Standing Orders) Act XX of 1946). Section 3 (2) of this Act lays down that where model Standing Orders have been prescribed, the proposed Standing Orders shall be, so far as is practicable, in conformity with such model. In exercise of the powers conferred by section 15, read with clause (*b*) of section 2, of the Industrial Employment (Standing Orders) Act, 1946, the Central Government made certain rules called the Industrial Employment (Standing Orders) Central Rules of 1946. Schedule 1 of these rules provides a set of " Model Standing Orders ". Item 14 of these model Standing Orders provides that " no order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him ". The approval of the Manager of the establishment or where there is no Manager, of the employer is required in every case of dismissal (Ibid.). In awarding punishment under this Standing Order, the Manager has to take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances, that may exist (vide 14 (6) of the Schedule 1 of the Industrial Employment (Standing Orders) Central Rules, 1946).

The Industrial Disputes Act (XIV of 1947), as amended by the later Acts, provides for the settling of labour disputes by tribunals and, under section 7A of this Act, Industrial Tribunals could be created by the appropriate (provisional) government for the adjudication of industrial disputes in matters set out in schedules 2 and 3 of the said Act. One of the matters dealt with in schedule 2 is " the discharge or dismissal of workmen, including re-instatement ". When an industrial dispute is referred to a Labour Tribunal, it has to hold an inquiry and send its award to the appropriate Government (vide section 15) which award, after a certain number of days, becomes enforceable (vide section 17A).

Hence, in India, there is a legal obligation cast on the employer, who employs a hundred or more workers, to hold an inquiry before he dismisses the employee and, under the Standing Orders, a workman has to appear at such an inquiry. The statutory provisions of India require the holding of a domestic inquiry and the Indian courts have taken the view that the findings of a domestic tribunal would be canvassed by the courts only in the circumstances set out by the Supreme Court in *Indian Iron and Steel Company, Limited, and Another v. their workmen* (supra).

In Ceylon, however, there is no statutory provision similar to the Industrial Employment (Standing Orders) Act (supra) as found in India, and consequently there is no statutory obligation to hold inquiries in the

manner prescribed by the Indian statute. The amended Industrial Disputes Act (Cap. 131 of the Legislative Enactments of Ceylon (1956 Ed), as amended by Act No. 62 of 1957), empowers the Industrial Court to grant relief or redress to a workman in respect of " the termination of his services by his employer "—(vide section 31B (1) (*a*) Ibid.). When an application is made to a Labour Tribunal it is the duty of the Tribunal to make all inquiries and hear such evidence as may be tendered by the applicant and any person affected by the application and thereafter make such order *as may appear to the Tribunal to be just and equitable* (vide section 31C Ibid.).

Therefore, although an inquiry may be held by an employer, who acts bona fide in dismissing a workman, the Labour Tribunal cannot refuse to hear evidence tendered by the worker concerned, who might wish to prove that the termination of his services was not just and equitable. Although, by subjective standards of an employer, a dismissal may be bona fide and just and equitable, nevertheless when looked at objectively, it may be unjust and inequitable. In making an order of dismissal, an employer should not act capriciously ; lack of bona fides, victimisation, unfair labour practices or a perverse finding of an employer at an inquiry held by him, are all circumstances which may be taken into consideration by the Labour Tribunal in reversing the order of an employer, but they are by no means exhaustive.

In *Horner v. Franklin*[1] the Court of Appeal of England construed the meaning of the phrase " just and equitable " as may appear to the County Court appearing in Sect. 2, sub-sect. 2, of the Factory and Workshop Act of 1891. This section casts the burden of providing fire escapes on the owner of a building where the factory is situated. If the owner alleges that it is the duty of the occupier to comply with this requirement, he could apply to the County Court which, after hearing the application, is empowered to make such orders as appear to the Court just and equitable in the circumstances. Referring to the jurisdiction of the High Court to enforce the terms of the contract, Romer J. said ((1905) 1 K. B. at p. 489) : " If the jurisdiction of the High Court in such a case as this was not ousted, there would be two different jurisdictions dealing with the same question between the same parties on different footings, the one bound to decide the point strictly according to the terms of the tenancy, the other, according to the very words of the Act, having a large discretion, and being entitled to do what is ' just and equitable under all the circumstances of the case ' ". Whenever a Tribunal is given the power to decide a matter justly and equitably, it is given a discretion (vide *Daniel v. Rickett Cockerell & Co., and Raymond*[2]). Therefore, the Industrial Disputes Act, as amended, gives a discretion to the Labour Tribunal to make an order which may appear just and equitable and such a jurisdiction cannot be whittled away by artificial restrictions.

[1] *(1905) 1 K. B. 479.*
[2] *(1938) 2 K. B. 325 per Hilbery J., at page 326.*

It was also urged on behalf of the respondent that the term " termination " in section 31 (*c*) of the amended Industrial Disputes Act (supra) means unlawful termination and, therefore, the Industrial Tribunal can only deal with cases of unlawful termination of services. There is no necessity to read into an enactment words which do not occur in it unless, in the context, it is necessary to import such words. The Industrial Tribunal is given a wider jurisdiction than Courts of Law and could order the re-instatement of workmen whose services have been even lawfully terminated. Section 31B of the amended Industrial Disputes Act (supra) gives the power to a Labour tribunal to grant any relief or redress to a workman upon an application made under the said section, notwithstanding anything to the contrary in any contract of service between him and his employers. The purpose of the amended Industrial Disputes Act is not merely to enforce legal obligations but to do social justice and preserve " industrial peace ".

The observations of the Supreme Court of India in *Punjab National Bank, Ltd. v. Sri Ram Kunwar, Industrial Tribunal, Delhi, and others*[1] are helpful in understanding the functions of a Labour Tribunal. The Court said " It may be conceded that the jurisdiction of an Industrial Tribunal is not invoked for the enforcement of mere contractual rights and liabilities of the parties to the dispute referred to the Tribunal for adjudication ; its jurisdiction in the matter of adjudication of an industrial dispute is wider and more flexible. All the same it is not an arbitrary jurisdiction ; it may be readily conceded that an employee is as much entitled to a fair deal as an employer and he must be protected from victimisation and unfair labour practice, but " social justice " does not mean that reason and fairness must always yield to the convenience of a party—convenience of the employee at the cost of the employer as in this case—in an adjudication proceeding. Such one-sided or partial view is really next of kin to caprice or humour ".

In the instant case, the President of the Labour Tribunal has correctly addressed his mind in stating that one of the issues is whether Ramasamy incited a labourer or labourers. Inciting a labourer against his employer is a serious matter and entitles an employer to terminate his services. However, as the Labour Tribunal has not considered the evidence of Ramasamy and has misdirected itself by acting on the statement of the five women who were not called before the Tribunal, I have to set aside its order and remit this matter for a fresh inquiry before another Labour Tribunal.

In my view, the President of the Labour Tribunal has erred in holding against Ramasamy on the second issue before him, namely whether Ramasamy had failed to remain till the conclusion of the inquiry held on 26.2.1960. There is no act of indiscipline on the part of Ramasamy when he left the inquiry at that late hour on the inquiry date. There is no

[1] *Supreme Court Digest of Labour Law Cases by Kher (Thacker & Company, Ltd., Bombay) p. 1 & 2.*

legal obligation for Ramasamy to have remained after 7 p.m. and make a statement in the course of a protracted inquiry which lasted about four and a half hours. Mr. Rathwatte should have allowed the reasonable application of Ramasamy for a postponement of the inquiry.

I set aside the order of the President of the Labour Tribunal and send the case for a fresh inquiry before another Labour Tribunal on the issue whether Ramasamy incited a labourer or labourers as alleged by the respondent. At the fresh inquiry, the Labour Tribunal will hear any evidence which will be tendered by either side on this matter and may make such inquiries as are necessary before making an order which is just and equitable. The appellant is entitled to costs fixed at Rs. 105.

Case sent back for a fresh inquiry.