

1972

Present : Rajaratnam, J.

W. D. SIRISENA, Appellant, and M. SAMSON SILVA,
Respondent

S. C. 62/68—Labour Tribunal Case No. 1 G/23587

Industrial Disputes Act (Cap. 131)—Sections 31B (1), 33 (1) (a)—Application for relief made by a workman in respect of the termination of his services—Award of arrears of wages—Validity of such award.

Arrears of wages incidental to the relief and redress which a workman claims in respect of the termination of his services can be awarded when an application is made in terms of section 31B (1) of the Industrial Disputes Act.

Karunaratne v. Jackolis Appuhamy (74 N. L. R. 46) not followed.

APPEAL from an order of a Labour Tribunal.

R. L. Jayasuriya, with *N. T. S. Kularatne* and *M. E. W. Peiris*, for the respondent-appellant (employer).

P. R. Vickramanayake, for the applicant-respondent (workman).

Cur. adv. vult.

July 21, 1972. RAJARATNAM, J.—

The applicant workman had been awarded arrears of salary amounting to Rs. 4,200 and a sum of Rs. 2,703.39 due on account of transport charges altogether a sum of Rs. 6,903. This order was made after an *ex parte* inquiry. The employer respondent appeared in person on 25.11.65 and

since the parties were not ready, the inquiry was postponed. On the next date 2.5.1966, the employer was absent after sending a letter that he was unwell. On 6.6.1966 he was absent. On 28.6.1966 he was again absent on which date the applicant stated that since he worked in the Galle area and the respondent had his branch office at Beruwala it will be more suitable for the inquiry to be held by the Labour Tribunal in Galle.

Summons and notices had been served on the employer and he never presented himself but went on writing that he wanted the case transferred back to Colombo. The respondent in effect refused to participate in the proceedings.

The President heard the applicant and made the award referred to above. Following his own procedure he made an Order Nisi and the employer was informed that the Order will be made absolute on a specified date on which date too the employer absented himself and the said Order became absolute.

The employer now comes by way of appeal complaining about the *ex parte* order. Learned Counsel for the appellant quite properly, if I may say so, stressed on two legal matters.

- (a) That arrears of wages cannot be awarded by a Labour Tribunal.
- (b) That the award for Rs. 2,703.39 on account of transport charges was bad in law.

The definition of the term employer in the Industrial Disputes Act is wide enough to catch up the agent or the principal and in the totality of the pleadings and the evidence together with the conduct of the respondent there cannot be any difficulty to conclude that he was an employer within the meaning of that term in the Industrial Disputes Act.

Moreover it is clear in the circumstances that the applicant was employed by the respondent and his services were terminated.

Mr. Jayasuriya cited two cases before me. In *Karunaratne v. Jackolis Appuhamy*¹, 74 N. L. R. p. 46, Pandita-Gunawardena J. held that an application for the recovery of balance wages does not come within the purview of the Section. In that case the applicant, on the facts stated in the judgment asked for the balance wages in arrears simpliciter. But the present case is different, the applicant asks also for compensation on account of dismissal without notice. Section 31 B (1) enables a workman to come to the Labour Tribunal to claim relief and/or redress in respect of—

- (a) the termination of his services
- (b) the question whether any gratuity or other benefits are due to him from his employer on termination of his services
- (c) such other matters relating to terms of employment as may be prescribed.

¹ (1970) 74 N. L. R. 46.

Under 31 B (1) (a), a workman has a right to go to the Labour Tribunal for *relief or redress* in respect of the termination of his services and under the Industrial Disputes Act, it shall be the duty of the Tribunal to make all inquiries and thereafter to make such order as may appear to the Tribunal to be just and equitable.

If the Tribunal when the applicant cries for redress and relief with respect to the termination of his services, being under a duty to make a just and equitable order as it must appear to it, makes an order including unpaid wages—will it be wrong to say that an order for the payment of unpaid wages can be included in a just and equitable order? With great respect to all contrary opinion, I am of the view that unpaid wages can be awarded by the Labour Tribunal in the just and equitable order it makes in respect of the termination of the services of a workman. For the mere reason that there is an alternate remedy for an unpaid workman to go to the Labour Department, it cannot be said that the Labour Tribunal cannot include payment of unpaid wages in its order, when there is an application under 31 B (1) (a) in respect of the termination of services. Under Section 33 (1) (a) an order of a Labour Tribunal, it is stated specifically, “may contain decisions as to wages and all other conditions of services”. It is not necessary for me in the present case to examine the scope of 31 B (1) (c) “such other matters relating to the termination of employment or the condition of labour of a workman as may be prescribed”. Suffice it to say that if a monthly payment of a salary to a workman is one of the terms of employment or condition of labour prescribed by regulation of law, arrears of salary may be claimed under Section 31 B (1) (c) also.

I have considered the judgment reported in Supreme Court Minutes of 9.10.70 in S. C. 61/69 *de novo* Labour Tribunal Case No. 7/15546 where Silva J. held the same view as Pandita-Gunawardene J. With great respect I am unable to agree with the view expressed therein. I find it very difficult to hold that a just and equitable order which the President of a Labour Tribunal is required by law to make must necessarily exclude arrears of wages. There is no doubt that there is an easier way for a workman to recover his unpaid wages and if a workman makes no claim on his leaving his employment except for back wages which are unpaid he should resort to the easier course to recover the same and it will be reasonable for the Labour Tribunal to refer him to that easier course of action. But where a workman comes to the Labour Tribunal for relief and redress in respect of the termination of his services, the Act does not prevent the President of the Labour Tribunal to give him that relief and redress as will appear to it, just and equitable and this relief may include compensation, wages in lieu of notice and unpaid wages. It will be certainly neither just nor equitable for a Tribunal to make an order in favour of a domestic servant who had not been paid his salary for years only for gratuity and compensation excluding wages unpaid for years!

For these reasons I hold that arrears of wages incidental to the relief and redress a workman claims in respect of the termination of his services can be awarded.

The 2nd legal submission made by the learned Counsel for the appellant has to succeed in my view, i.e., that the award for Rs. 2,703.39 on account of transport charges was bad in law. It succeeds for the reason that this relief was not claimed in the application when the applicant asked for relief on matters which related to his employment. Moreover, from the evidence it transpired that the said sum was for some charges due for transporting some boats which appears to be due to the applicant on some private arrangement with the respondent and not necessarily with the principal, i.e., Nawalanka Builders Limited.

I therefore delete this sum from the order. Subject to this variation the appeal is dismissed. The applicant will be entitled on this order for a payment of Rs. 4,200 and costs fixed at Rs. 315.

Appeal mainly dismissed.