1969 *Present :* **Sirimane, J., and Pandita Gunawardene, J.**

A. I. JAFFERJEE and 7 others, Petitioners, *and*
R. SUBRAMANIAM and others, Respondents

S. C. 299/68—Application for a Writ of Prohibition

Labour Tribunals—Mode of appointing them—Scope of their jurisdiction—Power of Minister to select any particular labour tribunal to hear an industrial dispute—Industrial Disputes Act (Cap. 131), ss. 4 (1), 4 (2), 22 (3), 31A (1), 39—Regulation 10 (2)—Ceylon (Constitution) Order in Council (Cap. 379), s. 51 (2)—Industrial Disputes (Special Provisions) Act, No. 37 of 1968, ss. 2(1), 5 (2)—Courts Ordinance (Cap. 6), s. 52.

Once the Minister establishes a number of labour tribunals in terms of section 31 A (1) of the Industrial Disputes Act, every person duly appointed by the Public Service Commission to be President of a Labour Tribunal has island-wide jurisdiction. The appointment is not made to a particular, designated post. It is only for administrative convenience that tribunals are numbered.

Under section 2 (1) of the Industrial Disputes (Special Provisions) Act, No. 37 of 1968, every President of a Labour Tribunal appointed by the Judicial Service Commission prior to the relevant date is deemed to have been validly appointed by the Public Service Commission.

When the Minister refers an industrial dispute in terms of section 4 (1) of the Industrial Disputes Act, he may select any particular labour tribunal to hear the dispute. It is not necessary that the Commissioner of Labour should select the particular tribunal.

APPLICATION for a Writ of Prohibition against a Labour Tribunal.

Walter Jayawardena, Q.C., with *R. L. Jayasuriya*, for the petitioners.

N. Satyendra, for the 2nd respondent.

H. L. de Silva, Crown Counsel, for the 5th respondent.

Cur. adv. vult.

January 27, 1969. SIRIMANE, J.—

By an order made under section 4 (1) of the Industrial Disputes Act, Chapter 131 (hereinafter referred to as the Act) the Minister of Labour (the 5th respondent) referred an industrial dispute between the petitioners and the 2nd respondent for arbitration to a Labour Tribunal (the 1st respondent).

In this application the petitioners pray for a mandate in the nature of a Writ of Prohibition, prohibiting the 1st respondent from inquiring into or making any award in this dispute.

At the hearing of this appeal, learned Counsel for the petitioners supported the application only on two grounds :

(*a*) That there was no valid appointment of the 1st respondent as a Labour Tribunal.

(*b*) That even if there was, the reference of the dispute by the Minister to a particular Labour Tribunal offended against section 51 (2) of the Ceylon (Constitution) Order in Council, Chapter 379.

Section 31A (1) of the Act empowers the Minister to establish Labour Tribunals in the following terms :—

> " There shall be established for the purposes of this Act such number of labour tribunals as the Minister shall determine. Each labour tribunal shall consist of one person."

By regulation 10 (2) made under section 39 of the Act and published in *Government Gazette* No. 11,688 of 2nd March, 1959, the person holding this office is designated " President of the Tribunal ".

Once the Minister establishes the tribunals, the Public Service Commission has to make the appointments of the Presidents.

It is contended for the petitioners that the appointment must be made to a *particular* post.

We are unable to agree with this contention.

The Minister establishes the *office* of Labour Tribunal ; that is the public office contemplated by section 31A (1). There are no designated posts, and the Minister merely determines the *number* of such posts. The Public Service Commission then appoints a person to that office. Each person so appointed has identical powers and islandwide jurisdiction.

For administrative convenience, the tribunals may be numbered. A fair distribution of work, or convenience in dealing with disputes in particular localities, may be considerations that are taken into account when tribunals are so numbered.

But the Public Service Commission is not required to make an appointment to a *designated* post. These appointments are very different from those made by the Judicial Service Commission to District Courts, Courts of Requests and Magistrate's Courts, established by the Minister of Justice for different districts under section 52 of the Courts Ordinance, Chapter 6. Those appointments have to be made to certain designated posts.

Learned Crown Counsel stated at the Bar, and the statement was accepted that the 1st respondent had been appointed by the Public Service Commission on 10th April, 1963 in an acting capacity, and his appointment confirmed on 10th August, 1967. In our view, the appointment of the 1st respondent was valid and effective in law.

There is another aspect to this question.

In 1965, in the case of *Walker Sons & Co. v. Fry* [1] this Court held (by a majority) that Presidents of Labour Tribunals performed judicial functions, and should, therefore, be appointed by the Judicial Service Commission. Thereafter, the Presidents were appointed by the Judicial Service Commission. It is admitted that the 1st respondent was so appointed.

In 1967, the Privy Council (also by a majority) decided that a Labour Tribunal did not hold judicial office, and, therefore, need not be appointed by the Judicial Service Commission (*The United Engineering Workers' Union v. Devanayagam* [2].)

In order to resolve certain practical difficulties, which had arisen as a result of these and other judicial decisions, Parliament passed the Industrial Disputes (Special Provisions) Act, No. 37 of 1968. The relevant part of section 2 (1) reads as follows :—

> "Every president of a labour tribunal shall be appointed by the Public Service Commission and . . . . every president of a labour tribunal appointed by the Judicial Service Commission prior to the relevant date shall be deemed to have been, and to be validly appointed by the Public Service Commission."

The relevant date is 9th March, 1967. So that, even assuming for the purposes of argument that the 1st respondent's appointment was invalid, this section, in our view, has the effect of validating the appointment.

The first ground on which the writ is sought must, therefore, fail.

In regard to the second ground, it is conceded that the Commissioner of Labour transfers officers (as he lawfully might) to tribunals which are numbered for the sake of convenience. The Minister, therefore, in

[1] *(1965) 68 N. L. R. 73.* [2] *(1967) 69 N. L. R. 289.*

referring a dispute to a particular tribunal is not in a position to select any particular officer to hear a particular dispute.

We cannot agree with the submission that the Minister is bound to refer the dispute to *a* Labour Tribunal without reference to a number, and that the Commissioner of Labour should select the particular tribunal.

Section 51 (2) of the Ceylon (Constitution) Order in Council enacts,

> " Each permanent secretary shall, subject to the general direction and control of his Minister, exercise supervision over the department or departments of government in charge of his Minister."

By referring a labour dispute under section 4 (1) according to the method adop ed in this case, the Minister, in our view, in no way interferes with the day to day executive and administrative functions of public officers.

We also agree with the submission made by the learned Crown Counsel that sub-sections (1) and (2) of section 4 of the Act, in fact, empower the Minister to refer a dispute to a named person if he so desires. These sub-sections read as follows :—

> " 4 (1) The Minister may, if he is of opinion that an industrial dispute is a minor dispute, refer it, by an order in writing, for settlement by arbitration to an arbitrator appointed by the Minister or to a labour tribunal notwithstanding that the parties to such dispute or their representatives do not consent to such a reference."

> " 4 (2) The Minister may by an order in writing refer any industrial dispute to an industrial court for settlement."

Section 22 (3) of the Act empowers the Minister to select from a panel either one or three persons to constitute an industrial court.

On this second question, too, the provisions of the validating Act (No. 37 of 1968), if I may use that term for convenience, stand in the way of the petitioners. The Act was passed by a two-third majority in Parliament, in accordance with the provisions of section 29 (4) of the Ceylon (Constitution) Order in Council. Even assuming, once again, that the reference by the Minister was invalid, section 5 (2) enacts :

> " Subject to the provisions of sub-section 3 every reference of any industrial dispute under the principal Act, whether before or on or after the relevant date to any arbitrator referred to in sub-section (1), or to any labour tribunal *shall be deemed to have been and to be a valid reference*, and every arbitrator and labour tribunal shall be deemed to have been and to be duly authorized to settle every industrial dispute referred to such arbitrator or labour tribunal under the principal Act."

The second ground also fails, and the application must be dismissed with costs payable to the 2nd and the 5th respondents.

As all the applications numbered 299–305 were taken up together, there will be only one set of costs.

PANDITA GUNAWARDENE, J.—I agree.

Application dismissed.