1969 *Present:* de Kretser, J.

HATTON TRANSPORT AGENCY CO. LTD., Appellant, *and* R. GEORGE, Respondent

S. C. 132/67—Labour Tribunal Case No. 10/487

Industrial Disputes Act (Cap. 131)—Section 31B (1)—Resignation of his services by employee—Acceptance by employer—Right of the employee to claim retiring gratuity subsequently—Definition of "workman" in s. 48.

Where an employee whose resignation from service on grounds of ill-health had been accepted by his employer made an application subsequently under Section 31B (1) of the Industrial Disputes Act for an order for a reasonable retiring gratuity in addition to the sum which he had already drawn from the Provident Fund when he retired—

Held, that the Labour Tribunal had jurisdiction to grant the application. In such a case it cannot be contended that a Labour Tribunal has no jurisdiction to hear an application made by an employee whose services had been terminated not by his employer but by himself with the permission of the employer.

"It is open to a workman on termination of his services with his employer for any reason whatsoever to raise the question whether or not in the particular circumstances of that termination it is not just and equitable that a gratuity should be paid to him."

APPEAL from an order of a Labour Tribunal.

H. V. Perera, Q.C., with *S. Sharvananda* and *Isidore Fernando*, for the employer-appellant.

N. Satyendra, with *K. Vaikunthavasan*, for the applicant-respondent.

R. S. Wanasundera, Senior Crown Counsel, with *K. M. B. Kulatunga*, Crown Counsel, as *amicus curiae*.

Cur. adv. vult.

February 7, 1969. DE KRETSER, J.—

R. George was in the employ of Messrs Hatton Transport Agency Co. Ltd., from 1935 when he started off as a daily paid mechanic to 1967 when he was the foreman having obtained that appointment in February 1965. On the 14th of December 1966 he wrote to the Company intimating that he wished to retire from its service on the grounds of ill-health with effect from 28.2.67 and the Company replied to him on 16.12.66 informing him that his resignation had been accepted by the Company and would be effective from 1.3.67. George accordingly retired on the 1st of March 1967 and was paid a sum of Rs. 982·40 cents which had been lying to his credit in the Provident Fund.

On the 10th of May 1967 George made this application to the Labour Tribunal at Hatton under section 31B of the Industrial Disputes Act asking the Tribunal to be pleased to make an order for a reasonable

retiring gratuity. The Company filed answer on the 25th of May 1967 and took up the position that George having retired from 1st March 1967 and having drawn the sum of Rs. 982·40 cents which was to his credit in the Provident Fund could not have and maintain this application before the Labour Tribunal, and that the Labour Tribunal had no jurisdiction to entertain it. At the inquiry which took place before Mr. E. A. Wijekulasuriya the President, the preliminary objection was taken that a Labour Tribunal has no jurisdiction to hear and entertain an application made by a person whose services had not been terminated by the employer. The President after hearing argument on both sides decided that he had the jurisdiction to entertain, hear and make an order on the application and going into to the merits ordered the employer to pay a sum of Rs. 2,470 to the applicant.

The employer Company has appealed. For the purpose of this order the object and intention with which Labour Tribunals were set up loom large, and I therefore quote from the judgment of Lord Guest and Lord Devlin in *United Engineering Workers' Union v. Devanayagam*[1] reported in 69 N.L.R. at page 304 which sets out the reasons for the need for the machinery to enable an individual workman to obtain a remedy against his employer and how it was sought to be met by the setting up of Labour Tribunals. The Industrial Disputes Act 1950 "employed the known ways of settling the ordinary trade dispute. But it did not include any simple way of remedying a grievance which an individual workman might have against his employer. Suppose, for example, that a workman was dismissed with such notice as the common law thinks reasonable but which a fair-minded employer nowadays probably accepts as inadequate ; or suppose he was dismissed because of reduction in the labour force but without the *ex gratia* payment which a reasonably generous employer would nowadays think appropriate. The aggrieved workman in such a case could seek the help of his Trade Union which could threaten industrial action. Then there might be a reference which might result in the workman obtaining better treatment and in an award to govern similar cases in the future. But there might be no question of principle involved calling for a general award ; the case might involve nothing more than a decision on what was the fair thing to do in the particular circumstances. A swift way of dealing with an individual grievance without calling out the whole force of trade unionism would certainly help to promote industrial peace. It was supplied by an amending Act of 1957. This Act enlarged the definition of industrial disputes so as to make it clear that it included a dispute or difference between an individual employer and an individual workman. It inserted into the Act a new part, Part IV A, entitled 'Labour Tribunals'. The function of the Labour Tribunals is to entertain applications by a workman for relief or redress in respect of such matters relating to the terms of employment or the conditions of labour as may be prescribed. The particular matters specified in the Act are those which we have already

[1] *(1957) 69 N. L. R. at p. 304.*

mentioned by way of example, namely questions arising out of the termination of the workman's services and relating to gratuities or other benefits payable on termination. On such matters the Tribunal is to make order as may appear to it to be just and equitable."

In the questions arising out of the termination of the workman's services and relating to gratuities or other benefits payable on termination was it the intention of the legislature to concern itself with only the remedying of grievances that arise in consequence of termination of services by an employer? That it was, is the main plank on which the contention of the Company in this case rests.

Section 31 B (1) which has been described by Viscount Dilhorne in the case I have already quoted from as "the gateway through which a workman must pass to get his application before a Tribunal", reads as follows:

> A workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to a labour tribunal for relief or redress in respect of any of the following matters:—
>
> (*a*) the termination of his services by his employer;
>
> (*b*) the question whether any gratuity or other benefits are due to him from his employer on termination of his services, and the amount of such gratuity and the nature and extent of any such benefits;
>
> (*c*) such other matters relating to the terms of employment, or the conditions of labour, of a workman may be prescribed.

The submission on behalf of the Company in this case is that the phrase *termination of services* must be read as referring only to termination of service by an employer. It is submitted that clause B must be read as ancillary to clause A which refers to termination of services *by an employer*. Apart from the submission that to so interpret the section is to give effect to the intention of the legislature support for such an interpretation is sought in the fact that by the amending Act which brought into existence Labour Tribunals, the definition of *workman* found in section 48 of the Industrial Disputes Act was amended by the addition of the words "and for the purposes of any proceedings under this Act in relation to any industrial dispute, includes any person whose services *have been terminated*".

The use of the passive voice (have been terminated) it is submitted shows that it was the intention of the legislature to give relief only to workmen who had grievances in consequences of their services having been terminated by employers for where workmen terminated their own services they could not be described as persons whose services have been terminated without some violence to the English language. I am not impressed with this submission for it seems to me that if the legislature was concerned, as it appears to me it was, with giving relief to workmen

who had grievances which flowed from the termination of their services and was not concerned with how that termination came about, it would decide to include any person whose services had been terminated in the category of those to whom relief should be given and that is exactly what the amending Act has done in reference to the definition of workmen.

The termination of services by an employer was no doubt one of the causes of dispute or grievance between the individual workman and his employer, and may well have been the most prolific cause and therefore the one that focussed the attention of the legislature on the need for the machinery to redress such a dispute but I find it impossible to accept the submission that the legislature when it did bring in the necessary legislation did not intend to deal with all matters in which the individual grievance could tend to disturb Industrial Peace but confined its intention in regard to grievances arising out of the termination of services to those arising out of termination of services *by the employer*. Part IV (*a*) of the Act 62 of 1957 which established Labour Tribunals gives evidence of the wider intention for section 31 B (1) (*c*) shows that it was intended that Labour Tribunals should deal with applications for relief relating to terms of employment or conditions of labour as may be prescribed—the fact that up to date none have been prescribed does not take away from the point.

No reason is urged nor can I find one, why a distinction should be drawn between the workman whose services had been terminated and—if the contention of the appellant is sound—therefore qualified under clause (*b*) to raise a question as to whether a gratuity was or was not due, and the workman whose services had been terminated by determination of the contract in its agreed terms or by the resignation of the workman, in reference to the same question. If that contention is sound there could arise the absurd position that in regard to two workmen serving on identical terms of service under one employer the one by reason of the fact that the employer terminated his services causing no grievance to him at all in that respect, could raise a question as to whether it was not just that he should be given a gratuity though it was not provided for in the contract, while the other who resigned with the permission of the employer could not in as much as it was not the employer who terminated his services.

No reason is given why the legislature should permit the possibility of an employer who wished to avoid paying a gratuity goading workmen into resignation with that object in view.

Once the basis for claiming that termination of services by an employer was the "open sesame" to claiming relief in matters arising out of termination of services is shown to be unsound in that that was not the intention of the legislature, there is no reason at all to claim that clause (*b*) of 31 B (1) is ancillary to clause (*a*) if indeed the word "*any*" used in section 31 B (1) in reference to the matters on which application could

be made to the Labour Tribunal did not put that position beyond question. Mr. Wanasundara C. C. appeared as *amicus*. He pointed out the absence of the word "such" between the words "from his employer on" and the words "termination of services" in clause (*b*) as a pointer to the fact that that clause is not dependent on clause (*a*). I entirely agree.

Viscount Dilhorne has commented on section 31 B (1) (*b*) as follows:

> "Section 31 B (1) (*b*) is curiously worded. It does not say that a workman can apply for a gratuity or other benefits legally due to him but that he can apply in respect of the question whether they are due. The question is one for the Tribunal to determine and in the light of section 31 C (1) to decide on the basis of what appears to be just and equitable. If section 31 B (1) (*b*) stood alone then the words '*are due*' might be interpreted as meaning '*are legally due*' but this sub-section must be read with 31 B (4) and 31 C (1) and reading it with those subsections it is clear that the Tribunal's decision is not to be whether a gratuity or other benefit is legally due but whether it is just and equitable that it should be paid. It is not whether it is legally due but whether it ought to be paid that the Tribunal is required to decide."

It would be a very strange state of affairs indeed that it should be open only to a workman whose services had been terminated by his employer to enjoy such a privilege. In my opinion it is open to a workman on termination of his services with his employer for any reason whatsoever to raise the question whether or not in the particular circumstances of that termination it is not just and equitable that a gratuity should be paid to him. No doubt, the Tribunal dealing with the application would take into account the reasons for the termination in deciding the question. In the instant case the question of whether on the facts the termination of the contract was not by the employer in that it was the employer who by accepting the resignation of the workman terminated the contract of service, was raised before the President but he did not deal with that aspect of the matter probably because it was not pursued, and Mr. Satyendra who appeared for the respondent commented on it only in passing for his submission was that the applicant-respondent was entitled in any event to come under section 31 B (1) (*b*). I therefore do not go into that aspect of the matter or into the interesting question of whether there can ever be a termination of a contract of service by the unilateral act of the employee and whether while it may be the employee who provides the cause for the termination it is not the employer who by taking action on that cause terminates the contract.

For the reasons that I have set out I am of the view that the applicant was entitled to make the application he did and that the President was right in holding that he had the requisite jurisdiction to entertain it. The appeal is dismissed with costs.

Appeal dismissed.