SAMALANKA LIMITED
v.
WEERAKOON, COMMISSIONER OF LABOUR AND OTHERS

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL NO. 34/94
CA APPLICATION NO. 622/85.
SEPTEMBER 23RD, 1994.

Industrial Dispute – Writ of Certiorari – Grant of permission to terminate employment under the Termination of Employment (Special Provisions) Act, No. 45 of 1971, SS. 2(1)(b), 2(4)(b), 2(2), 6A(1), 2(2)(f) – Non-employment – Interpretation Ordinance, Section 22.

The appellant was a company established with foreign collaboration. The agreement with the foreign collaborator broke down and production came to a standstill in November 1983. On an application made by the appellant company the Commissioner of Labour (1st respondent) granted permission to terminate the employment of its workmen under the Termination of Employment of Workmen (Special Provisions) Act subject to the payment of compensation and gratuity.

Application was made for a writ of certiorari to quash the decision by the appellant (Samalanka Ltd.) on the ground that the award of 15 months gross salary for each workman was unjustified as it was fixed arbitrarily and no reasons were given.

Held:

(1) In the absence of a statutory requirement there is no general principle of administrative law that natural justice requires the authority making the decision to adduce reasons, provided that the decision is made after holding a fair inquiry.

(2) No inquiry under S. 6A(1) of the Termination of Employment (Special Provisions) Act was competent. The impugned decision is attributable to S. 2(2) alone for the reason that on the available facts it cannot be said that there was a termination of employment of workmen in contravention of the Act which is a condition precedent to a valid inquiry under S. 6A(1). Where the employer does not or cannot provide work but nevertheless continues to pay wages there is no termination of employment within the ambit of S. 2(4)(b) i.e. non-employment in consequence of the closure.

(3) Permission of the Commissioner is required not for the closure but for the termination of employment of a workman in consequence of a closure.

(4) The appellant's application is a valid application for permission to terminate employment within the ambit of S. 2(1)(b).

(5) Section 2(2)(f) provides that the decision shall be final and conclusive and shall not be called in question whether by way of writ or otherwise. Read with S. 22 of the Interpretation Ordinance the appellant cannot impeach the decision on the ground of error of law on the face of the record.

(6) The order cannot be said to be bad for want of procedural fairness or for breach of the rules of natural justice.

Case referred to:

1. *Peiris v. The Commissioner of Inland Revenue* 65 NLR 457.

APPEAL from Judgment of the Court of Appeal.

Romesh de Silva P.C. with *Palitha Kumarasinghe* for appellant
P. A. Ratnayake S.S.C.. for 1st and 2nd respondents.

Cur adv vult.

October 19th, 1994.
KULATUNGA, J.

On an application made by the appellant company the 1st respondent (Commissioner of Labour) decided to grant permission to terminate the employment of its workmen under the Termination of Employment of Workmen (Special Provisions) Act, subject to the payment of compensation and gratuity. The appellant then made an application to the Court of Appeal for a writ of certiorari to quash the said decision. The Court of Appeal dismissed the application. The appellant now appeals to this Court from the judgment of the Court of Appeal.

The application before the Court of Appeal was supported on the ground that the decision is bad for failure to adduce reasons and that the award of 15 months gross salary for each workman is unjustified in that the same has been fixed arbitrarily. The Court held that there was no legal duty to adduce reasons and hence there was no breach

of natural justice. The Court also held that having regard to the material placed before it by the affidavit of the 2nd respondent (Deputy Commissioner of Labour) who held the inquiry, it could not be said that the 1st respondent had failed to exercise his discretion lawfully.

No doubt it is desirable to give reasons for a decision, e.g. where a right of appeal is provided against such decision. However, in the absence of a statutory requirement, there is no general principle of administrative law that natural justice requires the authority making the decision to adduce reasons, provided that the decision is made after holding a fair inquiry. Hence, the reasoning of the Court of Appeal cannot be faulted.

Before this Court, the appellant raised an additional ground namely, that the respondent committed an error of law on the face of the record when he permitted the termination of employment on an inquiry conducted under S. 6A(1) of the Act. Special leave to appeal was allowed only on that question. The impugned decision made by the 1st respondent itself does not specify the section under which it is made but the point now taken has been raised on the basis of a statement made by the 2nd respondent during the inquiry into the appellant's application and certain averments contained in his affidavit filed in the Court of Appeal. Before I consider the submissions made by the parties on the question raised by the appellant, it is necessary to set out the relevant facts.

The appellant is a company established with foreign collaboration and engaged in producing fishing gear. The foreign collaborator, Samal & Company had agreed to supply the raw material and to purchase the finished products. The appellant states that this agreement with Samal & Company had been breached by the Company. In the result, the business suffered and the factory became idle and production came to a standstill, in November, 1983. Nevertheless, the appellant continued to pay the wages of its workmen but advised them not to report for duty so that they could save on travelling and other expenses.

At a Board meeting held on 25.05.84 it was decided to seek the permission of the Greater Colombo Economic Commission to close down the factory until such time production could be resumed. Accordingly, the appellant addressed a letter dated 29.05.84 to the G.C.E.C. for permission to close the factory. The G.C.E.C. by its letter dated 01.06.84 advised the appellant to apply to the Commissioner of Labour for a temporary lay off of workers. In the meantime the appellant had been paying the salaries of workmen without interruption upto and including June, 1984.

On 25.06.84 the appellant sought the permission of the 1st respondent for "temporary closure" with an undertaking to re-employ the workmen upon resumption of production. As it appears from the submissions of the Counsel for the appellant at the inquiry held by the 2nd respondent, the application was for permission to terminate the employment of workmen upon closure. This was an application under S. 2(1)(b) of the Act for in terms of S. 2(4)(b) "termination" includes non-employment of a workman in consequence of a closure by his employer of any trade, industry or business.

The said application by the appellant was treated by the 1st respondent as an application for permission to terminate employment upon a closure in respect of which the 1st respondent is empowered to make a decision under S. 2(2). However, in view of certain statements of Counsel for the parties and an opinion expressed by the 2nd respondent (inquiring officer) at the commencement of the inquiry (held on 13.08.84) learned President's Counsel for the appellant argued before us that the inquiry was conducted under S. 6A(1) of the Act.

At the inquiry, Counsel for the appellant first said that the management was seeking permission to close down the factory and to terminate the services of the workmen. Counsel for the workmen alleged that the workmen had been sent on "compulsory leave" to

which the appellant's Counsel replied that although the workmen did not work, wages were paid. At the stage the 2nd respondent said –

> "As the wages had not been paid for the month of July, I consider that the contract of employment the company had with the workmen is frustrated and the application fails".

Whereupon the appellant's Counsel requested the 2nd respondent to make an order under S. 6A(1).

In the appellant's application to the Court of Appeal, it has been averred that the order made by the 2nd respondent (which is said to have changed the character of the inquiry into one under under S. 6A(1)) was wrong in law. That position has not been repeated in the appeal to this Court. The appellant's Counsel merely submitted that by the remarks quoted above a decision to hold an inquiry under S. 6A(1) had been taken; and that this fact is confirmed by the affidavit of the 2nd respondent filed before the Court of Appeal wherein he states that by the failure to offer work or pay since July, 1984, there had been "a *de facto*" termination of employment, contrary to S. 2(1). Counsel submitted that on the facts of the case, the inquiry was under S. 6A(1) (in view of alleged illegal termination of employment) and the only relief which could be granted upon such inquiry is compensation as an alternative to reinstatement. As such, the impugned decision of the 1st respondent which, in addition to ordering compensation, grants approval to terminate the employment of the workmen, is vitiated by error of Law on the face of the record.

Learned Senior State Counsel for the respondents submitted that even where the inquiry is held under S. 6A(1), approval to terminate the services may be granted. His reasoning is that the termination of employment which gives rise to such inquiry is void in terms of S. 5. Hence, the workmen have legally not ceased to be in employment; as such the 1st respondent was competent, in addition to ordering compensation under S. 6A(1), to grant approval to terminate their services under S. 2(2). Counsel argued that if the 1st respondent has the power to grant such approval, the failure to refer to S. 2(2) would not invalidate the impugned order. In support, he cited the decision in *Peiris v. The Commissioner of Inland Revenue*.[1]

Counsel for the appellant replied that s. 5 would not operate in a case covered by s. 6A(1); that once compensation is paid thereunder as an alternative to reinstatement, the employer is thereby fully discharged; and hence no permission to terminate the employment of workmen is legally required or grantable. He also submitted that where the inquiry is held under S. 6A(1), the award of compensation cannot be justified by invoking S. 2(2). His reasoning for this contention is that compensation under S. 6A(1) and S. 2(2) are conceptually different in that under the former section it is awarded in view of an unlawful termination whereas under the latter section compensation is awarded in respect of a lawful termination, with the approval of the Commissioner.

On a careful consideration of the facts and the relevant legal provisions, I find that no inquiry under S. 6A(1) was competent, and the impugned decision (which makes no reference to any section) is attributable to S. 2(2) alone for the reason that on the available facts it cannot be said that there was a termination of employment of workmen in contravention of the Act which is a condition precedent to a valid inquiry under S. 6A(1). The reason for this finding may be elaborated thus:

(a) from November 1983, the working of the factory came to a standstill, after which the workers were requested not to report for work, but they were paid their wages upto the time the appellant applied to the 1st respondent on 25.06.84 for permission to terminate their services;

(b) where the employer does not, or cannot provide work but nevertheless continues to pay wages, there is no termination of employment within the ambit of S. 2(4)(b) i.e. non-employment in consequence of the closure. S. R. de Silva in his work "The Contract of Employment" (1983) p. 212 says –

> "... apart from exceptional cases a contract of employment does not oblige an employer to provide work but only to pay wages. There appears to have been no necessity for the legislature to cover cases of non-offer work so long as wages are paid as it causes no real prejudice or damage to the

employee. The object of the Act was to exercise control over situations of a non-disciplinary nature where there is a loss of employment involving a loss of earnings".

This in my view is a correct interpretation of the expression "non-employment". As such, there was no termination of employment of workmen in consequence of a closure by the appellant.

(c) permission of the Commissioner is required not for the closure but for the termination of employment of a workman in consequence of a closure. Thus S. R. de Silva says (page 214) –

"It is not a closure but only a non-employment of a workman consequent upon a closure that is covered by the Act".

In the circumstances, the appellant's application dated 25.06.84 made to the 1st respondent is a valid application for permission to terminate employment within the ambit of S. 2(1)(b). The inquiry was commenced in terms of that section. It has been suggested that at that stage the character of the inquiry changed to one under S. 6A(1) in view of the allegation that wages of employees had not been paid for the month of July. There is no admission of the alleged default by the witness who testified on behalf of the management. But even if there had been a failure to pay wages pending the inquiry, I do not think that in the circumstances of this case, it could constitute a "termination" which would entitle the inquiring officer to convert the inquiry into one under S. 6A(1). I therefore agree with the appellant's submission before the Court of Appeal that the order made by the 2nd respondent which is said to have changed the character of the inquiry was wrong in law.

I hold that the inquiry held by the 2nd respondent was under S. 2(2). At the conclusion of the inquiry the 1st respondent by his letter dated 22.10.84 approved the termination of services with effect from 31.10.84 subject to the payment of compensation, in addition to gratuity payable in terms of the law. In terms of S. 2(2)(e) such order

is made by the Commissioner "in his absolute discretion and S. 2(2)(f) provides that such decision "shall be final and conclusive, and shall not be called in question whether by way of writ or otherwise. . . ". In view of this preclusive clause read with S. 22 of the Interpretation Ordinance the appellant cannot impeach the decision on the ground of "error of law on the face of the record".

The total sum awarded as compensation for about 128 workmen is Rs. 1.4 Million. The 2nd respondent states that this represents 15 months salary for each workman inclusive of 3 months salary in lieu of notice. Learned Counsel for the appellant submitted that even though special leave to appeal was allowed on a limited question, this Court ought to consider whether the compensation awarded is arbitrary. Even if I were to entertain this request, I do not find any ground for quashing the impugned order in view of the manner in which compensation has been awarded. The inquiring officer has questioned the witness for the management on the question of assets of the appellant. The fixed assets and stocks and raw materials total 32 Million. There is due from Samal & Company 9.7 Million. The liabilities of the appellant appear to total 26.6 Million.

Accordingly, I do not think that this Court can consider the merits of the award of compensation. It cannot be said that the order is bad for want of procedural fairness or for breach of the rules of natural justice. Accordingly, I affirm the judgment of the Court of Appeal and dismiss the appeal with costs.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Appeal dismissed.