

**EBERT, ACTING COMMISSIONER OF  
CO-OPERATIVE DEVELOPMENT AND REGISTRAR  
OF CO-OPERATIVE SOCIETIES**

**v.**

**RANAWEERA AND OTHERS**

SUPREME COURT.

SARVANANDA, J., WANASUNDERA, J., WIMALARATNE, J., COLIN-THOME, J.  
AND ABDUL CADER, J.

S C No 18/83 - C A (S C) APPLICATION No 506/73

FEBRUARY 14, 1984.

*Application to Labour Tribunal by employee dismissed by Co-operative Textile Societies Union Ltd. - Finding of President, Labour Tribunal that termination of services was unlawful - Section 31B of Industrial Disputes Act - Section 53 of Co-operative Societies Ordinance (Cap 124) - Rule 38 (1) (b) of the Co-operative Societies Rules 1950 - Reference of dispute between Co-operative Society and its employee to arbitrator by Registrar - Validity of such reference - Does finding of President of Labour Tribunal terminate dispute and leave no dispute for arbitration? - Difference between inquiry by Labour Tribunal and arbitration.*

The petitioner (1st respondent to this appeal) was the storekeeper of the Kurunegala District Co-operative Textile Societies Union Ltd. (3rd respondent to this appeal). He was interdicted and dismissed on 6.4.67 on the ground of a shortage of textiles. He applied to the Labour Tribunal for reinstatement and back wages. The Labour Tribunal held that the termination of employment was unlawful and on 8.8.70 ordered back wages and gratuity. In the meantime on 14.7.71 an award was made by an arbitrator (2nd respondent to the present appeal) appointed by the Registrar of Co-operative Societies to inquire into the dispute relating to the shortage, directing the petitioner and the Administrative Secretary jointly and severally to pay Rs. 38,607 as the value of the shortage and costs. On an appeal being preferred to him the appellant (Registrar) reduced the amount of the award to Rs. 18,445.98. The petitioner moved the Court of Appeal to quash the orders of the arbitrator and the appellant. The Court of Appeal held that-

- (1) There had been no proper reference to arbitration in terms of the Co-operative Societies Ordinance (Cap. 124) and the Rules made thereunder ;
- (2) In any event there was no dispute which could have been referred to arbitration.

Held –

(1) The Committee of Management has power to refer the dispute between the Society and one of its employees to the Registrar for decision. Hence the reference to arbitration was valid.

(2) The jurisdiction, duties and powers of a Labour Tribunal are quite different from those of an arbitrator. Proceedings before the Labour Tribunal are very clearly different in every respect from arbitration proceedings under the Co-operative Societies Law. It is incorrect to say that once the Labour Tribunal made its order holding that the termination of the employee's service was wrongful there was no dispute in law which could have been referred to arbitration.

### Cases referred to

*The Commissioner of Co-operative Development v. Jayaratne Peiris and others*, [1984] 1 Sri L.R. 167

APPEAL from the judgment of the Court of Appeal.

*Douglas Premaratne, Deputy Solicitor-General* for appellant.

*Nimal Senanayake, Senior Attorney*, with *L. V. P. Wettasinghe, Kithsiri P. Gunaratne, Miss S. M. Senaratne, Karunatileke de Silva and Saliya Mathew* for petitioner-1st respondent.

*Cur. adv. vult.*

March 2, 1984.

### WIMALARATNE, J.

The petitioner-respondent was employed under the 2nd respondent-respondent (hereinafter referred to as the Society) as a storekeeper from 1.2.58. He was interdicted on 26.3.66 and dismissed from service on 6.4.67. On 11.4.67 he filed an application in the Labour Tribunal under section 31 B(1) of the Industrial Disputes Act stating that the termination was unlawful and prayed for reinstatement and back wages. The Society filed answer seeking to justify the termination on the ground that there was a shortage of textiles entrusted to the petitioner. After inquiry the Labour Tribunal held on 8.8.70 that the termination of the petitioner's services was unlawful, and awarded the petitioner a sum of Rs. 13,250 as back wages and gratuity. An appeal to the Supreme Court against this order was dismissed on 28.11.72.

In the meantime, on 14.7.71 the 1st respondent-respondent who had been appointed an arbitrator by the 3rd respondent-appellant who is the Registrar of Co-operative Societies, to inquire into the dispute relating to the shortage of yarn, clothes and weaving accessories valued at Rs. 43,528.27 made an Award holding that the petitioner and the Administrative Secretary of the Society were jointly and severally liable to pay the Society a sum of Rs. 38,607.69 and costs. The petitioner appealed against this order to the 3rd respondent-appellant who held that the petitioner was liable to pay the Society a sum of Rs. 18,445.98.

The petitioner invoked the jurisdiction of the Court of Appeal in these proceedings and sought to have the orders of the 1st respondent and the 3rd respondent quashed. Two submissions were made before that Court by Counsel for the petitioner, and they have been upheld. They are :-

- (1) that there had been no proper reference to arbitration in terms of the Co-operative Societies Ordinance (Cap. 124) and the Rules made thereunder ; and
- (2) that in any event there was no dispute which could have been referred to arbitration.

The first submission was based on the fact that the dispute relating to the shortage of goods being a dispute between the Society and one of its employees, it was incompetent for the Committee of Management of that Society to have referred that under section 53 (1) (c) of the Ordinance to the Registrar for decision ; and that in terms of Rule 38 (1) (b) of the Co-operative Societies Rules, 1950 it was the Society which could have referred it to the Registrar by resolution passed at a general meeting of the Society. The Court of Appeal has accepted this submission and quashed the award. We have held in our judgment in *The Commissioner of Co-operative Development v. Jayaratne Peiris and others* (1) delivered today that the Court of Appeal erred in holding that the Committee of Management had no power to refer such a dispute between the Society and one of its employees to the Registrar for decision. For the reasons given in those appeals we hold that the Court of Appeal has erred in this application as well, and we take the view that there was a valid reference.

The second submission was based on the fact that the dispute between the Society and the petitioner came to an end, when the Labour Tribunal came to a finding that the termination of the petitioner's services was wrongful. The Court in accepting that submission took the view that " the Labour Tribunal had to go into the question as to whether the petitioner was responsible for the shortage of goods as alleged by the Society " ; and that " once the Labour Tribunal made its order, there was no dispute in law which could have been referred to arbitration " .

It seems to me that the Court of Appeal has erred, because the jurisdiction and powers of a Labour Tribunal are quite different from those of an Arbitrator. Proceedings before a Labour Tribunal are initiated under section 31B of the Industrial Disputes Act by a written application made by a workman or a trade union on his behalf for relief or redress in respect of—

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

On the other hand proceedings before an arbitrator are initiated by the Registrar of Co-operative Societies referring any dispute touching the business of a registered society to the arbitrator for disposal under section 58 (2) (b) of the Co-operative Societies Law, No. 5 of 1972, after such dispute has been referred to him in terms of section 58 (1) (b).

The duty of the Labour Tribunal as laid down in section 31C of the Industrial Disputes Act is to make all such *inquiries into that application* and to make such order as may appear to the tribunal to be just and equitable. (The emphasis is mine). So it is the workman's application that is inquired into by the Tribunal, and likewise, it is on the workman's application that a just and equitable order is made. There is absolutely no provision for a counter claim or claim in reconvention to be made by the employer in the course of proceedings before the Labour Tribunal.

The duty of an arbitrator is to hear the evidence of the parties to the dispute and their witnesses, and upon that evidence to give such decision or award in accordance with justice, equity and good conscience (Rule 49 (X) of the Co-operative Societies Rules, 1973).

Whereas only a workman or a trade union on his behalf may institute proceedings before a Labour Tribunal, not only an employee or an officer but also any Co-operative Society or its committee or any member of a Society may refer a dispute to the Registrar for decision.

Proceedings before the Labour Tribunal are very clearly different in every respect from arbitration proceedings under the Co-operative Societies Law. The Labour Tribunal is empowered to decide specific issues, such as whether termination of employment was lawful or not, whether compensation and gratuity are lawfully due, whether reinstatement should be ordered etc. The arbitrator is concerned with a dispute referred to him and after hearing the parties to the dispute he makes an award against the employee or the employer. The Labour Tribunal can never make an order requiring the employee to make good any loss suffered by his employer whereas an arbitrator can. So that it would be incorrect to say that once the Labour Tribunal made its order holding that the termination of the employee's service was wrongful there was no dispute in law which could have been referred to arbitration.

For these reasons I would allow this Appeal and set aside the judgment of the Court of Appeal, with costs payable by the petitioner-respondent to the appellant in a sum of Rs. 525.

**SHARVANANDA, J.**—I agree.

**WANASUNDERA, J.**—I agree.

**COLIN THOME, J.**—I agree.

**ABDUL CADER, J.**—I agree.

*Appeal allowed.*