LANKA MULTI MOULDS (PVT) LTD
v.
WIMALASENA, COMMISSIONER OF LABOUR AND OTHERS

SUPREME COURT
FERNANDO, J.
EDUSSURIYA, J., AND
WIGNESWARAN, J.
S.C. APPEAL No. 60/2001
C.A. APPLICATION No. 20/96
8TH OCTOBER, 2002

Termination of Employment – Termination of Employment of Workmen (Special Provisions) Act – Meaning of "prior consent" in section 2(1) – Commissioners' power under section 6 to order re-employment of the workmen and to order payment of wages and other benefits – Construction of "may" and "and" in section 6 as regards relief – Whether these words are conjunctive or disjunctive – Commissioner's duty to give reasons.

The 2nd respondent ("the workman") a British national was employed by the appellant company ("the employer") on 1.9.92 on contract for a period of 3 years, subject to termination with 3 months' notice by either party. The agreement restrained the workman from working for a competitor in a rival business for 2 years on pain of liquidated damages in a sum of £2500/-

On 29.4.94 the employer terminated the employment of the workman with effect from 30.7.94. However, the workman was exempted from working in June and July but was paid his salary for that period. He was also granted cost of repatriation in a sum of Rs. 193,000/- and relieved from the obligation not to work for a competitor.

He was paid one month salary as gratuity. He left the island on 18.6.94 having complained to the Commissioner of Labour on 17.06.94 against his termination. He did not agree to the retrenchment but merely signed for the payments made.

On 22.11.95 the 1st respondent ("the Commissioner") ordered re-instatement of the workman with effect from 15.01.96 with back wages for 17 $^{1}/_{2}$ months from 30.7.94 to 15.1.96 a sum of Rs. 3,533,750/- (at the rate of Rs. 202,500/- a month).

The Court of Appeal affirmed the order that the termination of employment is illegal for want of prior consent of the workman under section 2(1)(a) of the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971 ("The Act"). The Court quashed the order for re-instatement and reduced back wages to 13 months. viz. the balance period of his contract of service, on the ground that in fixing back wages the Commissioner failed to give reasons or to adduce reasons in court.

Held:

1. "Prior consent" required by section 2(1)(a) of the Act need not necessarily be contained in a single sheet of paper. It could be inferred from the attendant circumstances in each case.

   Quaere - In the instant case the offer of benefits in writing by the employer and the receipt thereof by the workman who signed receipts for the several payments did not constitute "prior consent in writing" to termination within the meaning of section 2(1)(a) of the Act.
2. In interpreting section 6 of the Act which gives the Commissioner the power to order re-instatement in respect of an unlawful termination and to order payments and benefits in view of such termination, the word "may" should be construed to confer a discretion on the Commissioner and that "and" shall be interpreted disjunctively; hence the Commissioner has the power to order wages and benefits without making an order for re-instatement. The Commissioner's decision is not unfettered. He must give reasons for his decision.
3. The payments and benefits received by the workman on termination could reasonably be assumed as equivalent to nine months salary against thirteen months computed by the Court of Appeal. Hence the salary ordered by the Court should be reduced to Rs. 810,000/-

Case referred to:

1. *Samalanka v Weerakoon* (1994) 1 Sri LR 405
2. *Karunadasa v Unique Gemstones Ltd* (1997) 1 Sri LR 256
3. *Ceylon Printers v Commissioner of Labour* (1998) 2 Sri LR29
4. *Mendis v Perera* (1999) 2 Sri LR110,148
5. *Yaseen Omar v Pakistan International Airlines* (1999) 2 Sri LR 375
6. *Brook Bond Ceylon Ltd v Tea Rubber* (etc) Workers Union (1973) 77 NLR 6
7. *Ratnanayake v Fernando* SC 52/86 SCM 20.5.91

Sanjeewa Jayawardena for appellant

Nimal Malalsekera for 2nd respondent

S. Barrie, State Counsel for 1st respondent

Cur.adv.vult

January 29, 2003

FERNANDO, J.

This appeal involves three questions of law in regard to the interpretation of sections 2 and 6 of the Termination of the Employment of Workmen (Special Provisions) Act, No. 45 of 1971 ("the Act")

The 2nd Respondent-Respondent ("the 2nd Respondent") is a British national who was employed by the Petitioner-Appellant company ("the Petitioner") on a monthly salary of 2,500 sterling pounds, under a contract commencing on 1.9.1992 for "an initial period of three years", subject to termination by either party by giving three months notice. One of the terms of the contract was that the 2nd Respondent undertook not to work for any competitor (or have any interest in a rival business) in Sri Lanka for a period of two years after the termination of his employment, without the written consent of the Petitioner, and that in the event of any breach of that undertaking the 2nd Respondent would pay as liquidated damages a sum of Rs.1,500,000.

In April 1994 the Petitioner discussed with the 2nd Respondent an impending decision to terminate his services. By his letter dated 22.4.1994 the 2nd Respondent expressed his dismay about such termination. By letter dated 29.4.1994 the Petitioner informed the 2nd Respondent of its decision to terminate his services, and gave him three months notice of termination, effective 30.7.94; and it further undertook to enter into a separate agreement regarding the settlement of all amounts due as

remuneration, benefits, leave, repatriation costs, etc. He was given an employment certificate dated 30.5.94, which stated that consequent to a recently concluded joint venture agreement and merger with another company which provided for a transfer of technology, the services of the 2nd Respondent had become redundant. By another letter dated 30.5.94 the Petitioner agreed to pay the 2nd Respondent (a) his salary for June and July 1994, although he was released from the obligation of reporting for work in June and July, and was permitted to leave Sri Lanka on 18.6.94 (b) one month's salary as gratuity, and (c) the costs of repatriation to the United Kingdom, amounting to about Rs. 193,000. He did not expressly signify his agreement by suitably endorsing or replying to those letters; all he did was to sign receipts in respect of all those payments. On 17.6.94 he made a complaint to the Commissioner of Labour, the 1st Respondent, under section 6 of the Act.

In the meantime, after discussion, the Petitioner had also issued a letter dated 26.5.94 giving the 2nd Respondent its written consent to work for any competitor and to have any interest in a rival business in Sri Lanka without having to wait for a period of two years after the termination of his employment.

The relevant provisions of the Act are as follows:-

"2(1) No employer shall terminate the scheduled employment of any workman without – (a) the prior consent in writing of the workman....

6. Where an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act the Commissioner *may* order such employer to continue to employ the workman with effect from a date specified in such order in the same capacity in which the workman was employed prior to such termination *and* to pay the workman his *wages and all other benefits* which the workman would otherwise have received if his services had not been terminated and it shall be the duty of the employer to comply with such order." [emphasis added]

By his order dated 22.11.95 the 1st Respondent held that the 2nd Respondent was "workman" within the meaning of the

Act, and had not at any stage submitted a letter expressing a wish that his services be terminated. He ordered, in terms of section 6 of the Act, that the 2nd Respondent be reinstated with effect from 15.1.96, and paid back wages for $17\frac{1}{2}$ months (from 30.7.94 to 15.1.96) in a sum of Rs. 3,543,750 (at the rate of Rs. 202,500 per month). He made no reference whatever to the fact that the 2nd Respondent's contract was to expire on 31.8.95 and to the terminal payments and concessions.

The Petitioner applied to the Court of Appeal for Certiorari to quash that order. The Court of Appeal held that the Petitioner had failed to establish that the termination of the services of the 2nd Respondent had been with his "prior consent in writing", and that therefore the 1st Respondent had jurisdiction to entertain the complaint, but that –

> "It is obvious from the order that the Commissioner has not given his mind at all to the question that the contract was 'initially' for three years. In directing that the 2nd Respondent be reinstated with effect from 15.1.1996 the Commissioner had effectively and unlawfully extended the duration of the 2nd Respondent's contract of employment with the Petitioner indefinitely and beyond the fixed term period of three years which had already expired on 30.7.1995 [31.8.95?]. As such the Commissioner has purported to undermine the contractual volition of the contracting parties and exceeded the jurisdiction vested in him by statute.
>
> It is to be noted that no proper reasons had been adduced in support of the Commissioner's impugned order and therefore relevant adverse inference will have to be drawn against the order. No steps were taken to even produce the reasons before this Court and the Court has to come to the conclusion that he has no defensible reasons to give."

The Court of Appeal confirmed the order that the termination was illegal, quashed the order for reinstatement, and held that the 2nd Respondent "was entitled only to get wages for the balance period of his three-year contract, viz, for thirteen months."

The 2nd Respondent did not seek special leave to appeal against the order denying him reinstatement and restricting back wages, and this appeal proceeded on the basis that he was not entitled to reinstatement.

On behalf of the Petitioner it was contended that:-

1. The Petitioner's letter dated 29.4.94 and 30.5.94, the 2nd Respondent's acceptance of the several amounts paid to him, and his signature on the receipts for those payments, constituted "prior consent in writing" to termination, within the meaning of section 2(1)(a) of the Act;
2. While the Commissioner had a discretion whether or not to order reinstatement under the first limb of section 6 , he was not entitled to make an order for compensation under the second limb unless he had first made an order for reinstatement; and
3. In any event, in making an order under the second limb of section 6, the Commissioner was under a duty to consider the circumstances of the termination and the benefits received by the 2nd Respondent, and to give reasons for his decision; but failed to do so.

I am inclined to agree that the "prior consent" required by section 2(1)(a) need not necessarily be contained in a single sheet of paper. If for instance an employer were to make a written offer of a "golden handshake", stating "if you agree to the termination of your services, please accept the enclosed cheque for X rupees as your terminal benefits and sign and return the annexed receipt," the written offer together with the acceptance of the cheque and the signing of the receipt would constitute a "prior consent in writing" to termination within the meaning of section 2(1)(a). However, it is not necessary to decide that question because, as learned State Counsel submitted on behalf of the 1st Respondent, there is a difference between consent to the termination itself (which is what section 2(1)(a) requires), and an agreement – as in this case – as to the quantum of terminal benefits in circumstances in which the termination itself is no longer negotiable or has already been unilaterally determined or effect-

ed (which is not enough). The Petitioner's letters and the 2nd Respondent's acceptance of the payments were all subsequent to the Petitioner's unilateral decision to terminate the 2nd Respondent's services, and are not proof of anything more than his agreement to the benefits payable consequent upon that decision. The 2nd Respondent did not give prior consent, in writing or otherwise, to the termination of his services, but subsequently agreed to and accepted the terminal benefits offered.

Learned Counsel for the Petitioner contended that the word "may" in section 6 conferred a discretion on the Commissioner to order the employer to continue to employ the workman; that the word "and" had to be interpreted conjunctively; and that an order for wages could not be made as an alternative to, but only in addition to, an order for continued employment. It was his submission that section 6 authorized an order for "compensation" in addition to reinstatement, but not as an alternative to reinstatement. Compensation, he said, could only be awarded under section 6A, introduced by amendment in 1976, upon a termination in consequence of *a closure* of business. He drew our attention to provisions of the Industrial Disputes Act which expressly empower the award of compensation as an alternative to reinstatement, a feature lacking in section 6.

Section 33(1)(a) of the Industrial Disputes Act affords some guidance. It provides that awards and orders "*may* contain decisions as to wages *and* all other conditions of service." The word "may" confers a discretion to make a decision as to "wages", but it can hardly be argued that a decision as to "other conditions of service" can be made if and only if there is first a decision as to wages. If a tribunal has a discretion to grant relief in respect of several matters – e.g. "wages, provident fund benefits, leave, hours of work, *and* transfers" – it cannot be said that unless the tribunal exercises the discretion to grant relief in respect of the first, no relief can be granted in respect of the second, and that unless relief is granted in respect of the first and the second, no relief can be granted in respect of the third, and so on. The word "and" in such a context means "and/or".

Furthermore, section 6 must also apply in situations where reinstatement has become impossible *pendente lite*. A workman

due to retire in one year's time might complain of wrongful termination. The anomalous consequence of the Petitioner's interpretation would be that if the Commissioner's order was made *before* the due date of retirement, the workman could be awarded reinstatement and back wages up to that date; but if it was made even one day thereafter, he could get nothing. The contrary interpretation, however, avoids anomaly, inconvenience and injustice: if the Commissioner finds himself unable to order reinstatement although he holds the termination to be unlawful, he can nevertheless order the employer to pay the workman "his *wages and all other benefits* which the workman would otherwise have received". It is unnecessary to consider whether that amounts to "compensation" or not, because section 6 expressly empowers the Commissioner to order payment of "wages" and "benefits". The Petitioner's restrictive interpretation would create other anomalies too. Thus the Commissioner may find that although termination was not justified the workman was guilty of some lapse which merited some punishment, and that therefore part of the back wages should be withheld. However, the Petitioner's interpretation would deprive the Commissioner of the equitable power to order anything less than full back wages. In my view, the conferment of the power to grant the greater relief includes the power to grant the lesser relief.

Accordingly, I hold that "may" in section 6 confers a discretion on the Commissioner; that "and" must be interpreted disjunctively; and that the Commissioner had the power to order payment of wages and benefits for the balance period of the 2nd Respondent's contract without making an order for reinstatement. The Court of Appeal was therefore entitled to order such payment when setting aside the order for reinstatement.

I turn now to the quantum of back wages. Back wages cannot be awarded mechanically without taking all the circumstances into consideration. If the services of two workmen, with identical fixed-term contracts expiring in one year's time, were terminated in identical circumstances, but one received from the employer terminal benefits amounting to six months' salary while the other received nothing, could the Commissioner award each of them one year's back wages (giving the former a windfall of six months'

salary)? Again, if an employer asserted that the age of retirement was 55 years and retired a workman at that age, and immediately paid him pension, gratuity, and other retiral benefits, could the Commissioner hold one year later that the age of retirement was 57 and order reinstatement with one year's wages and benefits, without giving credit for the retiral benefits already received? It would be inequitable to interpret section 6 as requiring a mechanical order for back wages from the date of wrongful termination up to the date of reinstatement or the date on which the employment comes to an end. There is no doubt whatever that the object which section 6 intended to achieve was to annul an unlawful termination and to restore – insofar as it was reasonably possible – the *status quo*: to put a workman in the position in which he would have been if his services had not been terminated. If there had been no termination, the workman would not have received any terminal benefits, and accordingly any terminal benefits actually received must be refunded or set off. The workman cannot retain the benefits received by him from the employer on the basis that the termination was lawful, and at the same time receive the additional benefits ordered by the Commissioner on the contrary basis that the termination was unlawful. Accordingly, when his termination is annulled, the *status quo* must be restored, and for that purpose the Commissioner must take into consideration all benefits which the workman received on termination.

In this case, upon the wrongful termination of his services the Petitioner released the 2nd Respondent from his contractual obligation not to work for a competitor in Sri Lanka for two years after termination. The 1st Respondent's order for reinstatement, without any cancellation of that release, amounted to an indefinite renewal of the original contract, with a significant variation, namely on the terms that the 2nd Respondent was no longer restrained from competing with the Petitioner immediately after termination. That shortcoming was partly corrected when the Court of Appeal quashed the 1st Respondent's order for reinstatement. However, when the Court of Appeal ordered back wages for the full period of thirteen months from 31.7.94 to 31.8.95, that Court too did not take into account the value to the 2nd Respondent of the benefit of release from his obligation not to compete. It is likely that at the

time of termination it was not worth Rs. 1,500,000 (over seven months' salary), but it had some value which was not taken into consideration. Further, neither the 2nd Respondent nor the Court of Appeal took into account the facts that the 2nd Respondent was paid for the months of June and July although he was allowed to leave Sri Lanka in mid-June, that he was paid one month's salary as gratuity, and that he was paid certain cost of repatriation.

Although the Commissioner has a discretion in respect of both limbs of section 6, that is not an unfettered or unreviewable discretion. As the Court of Appeal observed, he must give reasons for his decision. Although in *Samalanka Ltd v Weerakoon*[1], it was held by Kulatunga, J, (with G.P.S. de Silva, CJ. and Ramanathan, J. agreeing) that the Commissioner was not under a duty to give reasons, I took the contrary view in *Karunadasa* v *Unique Gemstones Ltd.*[2], (with Wadugodapitiya, J. and Anandacoomaraswamy, J. agreeing). That decision was considered and followed by Gunasekera J. in *Ceylon Printers* v *Commissioner of Labour*[3]. Since G.P.S.de Silva, CJ. agreed with Gunasekera, J. on that occasion it is clear that he no longer agreed with *Samalanka.* In *Mendis* v *Perera*[4], I observed that the *audi alteram partem* rule does not merely entitle a party to a purely formal opportunity of placing his case before a tribunal, and that natural justice would be devalued if the tribunal does not consider the evidence and the submissions, evaluate it properly and not in haste, and give reasons for its conclusions. However, in *Yaseen Omar v Pakistan International Airlines,*[5], *Samalanda* was followed, apparently without the attention of the Court being drawn to the subsequent decisions to the contrary and the relevant citations.

It is therefore necessary to reiterate what has long been recognized: that the statutory conferment of a right of appeal against the decision of a tribunal has the effect of imposing a duty on that tribunal to give reasons for its decisions (*Brook Bond Ceylon Ltd v Tea, Rubber (etc) Workers Union,*[6] *Ratnayake* v *Fernando*[7]). The conferment of a right to seek revision or review necessarily has the same effect. As the decisions cited show, if the citizen is not made aware of the reason for a decision he cannot tell whether it is reviewable, and he will thereby be deprived

of one of the protections of the common law – which Article 12(1) now guarantees. Today, therefore, the conjoint effect of the machinery for appeals, revision, and judicial review, and the fundamental rights jurisdiction, is that as a general rule tribunals must give reasons for their decisions.

In the absence of reasons, the order for back wages, even as modified by the Court of Appeal, cannot stand. However, to remit the case to the 1st Respondent for a fresh determination, seven years after his original order, would not serve the end of justice. The payments and benefits received on termination could reasonably be assessed as equivalent to nine months' salary (at the rate of Rs, 202,500 p.m. fixed by the 1st Respondent). I therefore vary the order of the Court of Appeal by substituting for the thirteen months' salary ordered by the Court of Appeal, four months' salary (Rs. 810,000); the 1st Respondent's order will be varied accordingly. Subject to that variation, the appeal is dismissed, but without costs.

WIGNESWARAN, J.

I have had the opportunity to read the judgement of my brother Fernando, J. He referred to three submissions made by the Counsel for the Petitioner pertaining to (i) "prior consent in writing" as per section 2(1)(a) of Act No. 45 of 1971, - (the Act), *vis-a-vis* this case; (ii) the scope of the preposition "and" in Section 6 of the Act; and (iii) the failure of the Commissioner (1st Respondent) in this case to have considered the circumstances of the termination and the benefits received by the 2nd Defendant. Brother Fernando, J. proceeded to deal with each of the said submissions in his judgement

With respect, there are certain matters therein I am unable to agree, particularly his interpretation of the word "and" disjunctively in Section 6 of the Act. Hence this dissenting view

I agree with brother Fernando, J. that "prior consent" required by Section 2(1)(a) need to be contained in a formal sheet of paper in every instance. "Prior consent" could be implied from the attendant circumstances of each case.

In this instance, the 2nd Respondent was employed by Petitioner on a fixed term contract. It provided for termination by either party giving 3 months' notice. Such a notice was in fact given with the offering of benefits – more or less a "golden handshake". (Vide para 3 of brother Fernando, J.'s judgment). Such benefits were accepted. The 2nd Respondent by P22 did not pray for reinstatement in his application to the Commissioner. He only prayed for compensation for "termination" of employment. P23 confirmed this. The application was made to the Commissioner even prior to termination. What happened in this case *appears to be* that the 2nd Respondent readily accepted all benefits given to him by his employer in consequence of a forced cessation of employment but wanting a little more like Oliver Twist, the 2nd Respondent made an application on 17.06.1994 to the Commissioner of Labour, a day after receiving his somewhat of a "golden handshake" (16.06.1994), and a day before leaving the shores of the Island (18.06.1994). The cost of his air passage to leave the Island was met by the employer. But as pointed out by brother Fernando, J. "he did not expressly signify his agreement by suitably endorsing or replying" the letters sent to him. He only signed receipts in respect of the payments made. He felt that he was not adequately compensated for the sudden termination while his contract was still valid.

The application to the Commissioner, (P22), did not mention the Section under which relief was claimed. But what was claimed was compensation. At page 27 of the proceedings the 2nd Respondent stated as follows in his examination in chief before the Commissioner, Mr. M.R. Kannangara -

"Q - What is the relief you request from the Commissioner to award you?

A - I am asking for the payments *for the remaining part of my contract of employment*. In other words as stated earlier balance of 13 months.

Q - What is the other due you ask?

A - I was made to come to Sri Lanka for this inquiry.

Q - How much have you spent?

A - 503 pounds for my flight. I spend nearly 100 dollars per day

Q - How long have you stayed here?

A - (illegible)

Q - You ask expenses up to 4th February?

A - Yes.

Q - *You are not asking for reinstatement?*

A - No."

Curiously on the next date (27.01.1995) the examination-in-chief went contrary to the evidence given on 26.01.1995. It ran as follows:

"Q - You have further stated that at the moment you are depending on the social insurance paid to you by the U.K.?

A - Yes.

Q - In that situation what is the relief that you would ask from the Commissioner?

A - Reinstatement with back wages.

Q - You know that after appearing before the Commissioner you would return to U.K.?

A - Yes

Q - In the event the Commissioner makes an order for reinstatement it would be necessary to travel back to Sri Lanka to resume employment?

A - Yes.

Q - Taking those matters into consideration what further relief would you ask from the Commissioner?

A - The expenses or cost incurred in that travel, meaning, having to go back to the U.K. and return to Sri Lanka to resume employment."

When the Court of Appeal quashed the order for reinstatement, the 2nd Respondent did not seek special leave to appeal against the order denying him reinstatement. Thus reinstatement was not in the contemplation of the 2nd Respondent at the time of application nor seriously pursued thereafter. The reason for the *volte face* on 27.01.1995 appears to be the realization that Section 6 of the Act did not permit the Commissioner to grant benefits unless he made an order for reinstatement. Thus to my mind the Commissioner was *legally* correct to the extent that he granted wages and benefits only with an order for reinstatement, while the Court of Appeal was *legally* in error in quashing the order for reinstatement and yet allowing consequential benefits to stand.

In my opinion the word "and" in Section 6 of the Act must necessarily be interpreted conjunctively and not disjunctively as done by brother Fernando, J. The reasons are not far to seek.

The Section reads as follows:

> "6. *Where an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act, the Commissioner may order such employer to continue to employ the workman, with effect from a date specified in such order, in the same capacity in which the workman was employed prior to such termination and to pay the workman his wages and all other benefits which the workman would have otherwise received if his services had not been so terminated; and it shall be the duty of the employer to comply with such order. The Commissioner shall cause notice of such order to be served on both such employer and the workman."*

The preposition "and" between the words "termination" and "to pay the workman" must be interpreted conjunctively due to the wording appearing after the word "and" *viz.* "*and* to pay the workman his wages and all other benefits which the workman would otherwise have received if his services had not been terminated". The words "all other benefits" in this clause must be interpreted *ejusdem generis*. The "benefits" contemplated are such benefits akin to wages which were payable if the workman was still in ser-

vice. Benefits receivable by a person *out of service* could not be included therein. Wages mean remuneration payable while still at work or in service. Arrears of wages could be ordered only for the period during which the workman still continued to work or is deemed to have worked while being in service. "Wages" implies the continued service of the workman. Compensation for termination of a contract prematurely will not fall into the category of "wages" payable. In this instance the Commissioner could have ordered arrears of wages coupled with reinstatement. An order for reinstatement (unless otherwise ordered) gives continuity to the previous service of the workman and he is entitled to the wages unpaid during a period of unlawful termination and also to "all other benefits which the workman would otherwise have received if his services had not been terminated". The moment his services are terminated or deemed to be terminated or an order for reinstatement is quashed by a higher Court, the benefits receivable by him may include arrears of wages upto time of termination and other benefits which the workman would have been entitled to receive upto the date of termination and may be even wages for a period in lieu of a period of expected notice (of termination) but any other benefits such as compensation or even gratuity which is a bounty paid on discharge from service in acknowledgement of service rendered, would not fall into the category of "other benefits which the workman would otherwise have received if his services had not been terminated".

Thus when the Court of Appeal quashed the order of the Commissioner for reinstatement, the payment ordred by the Commissioner only in consonance with his order for reinstatement could not have been retained by the Court of Appeal, because such payments could not fall within the category of "wages and all other benefits" which the workman would otherwise have received if his services had not been terminated.

Such payments are contemplated in Section 6A(1) which runs thus –

> "*6A (1) Where the scheduled employment of any workman is terminated in contravention of the provisions of this Act in consequence of the closure by his employer of any trade, industry or business the Commissioner may order*

such employer to pay to such workman on or before a specified date any sum of money as compensation as an alternative to the reinstatement of such workman and any gratuity or any other benefit payable to such workman by such employer."

The Section speaks of a "sum of money as compensation as an alternative to the reinstatement of such workman" and does not refer to wages. A sum of money calculated on the basis of the amount of wages paid to the workman cannot still be considered as wages. Such a payment is neither "wages" nor "other benefits" a workman would otherwise have received if his services had *not* been terminated".

When the Legislature brought in Section 6A into the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971 by Section 4 of Law, No. 4 of 1976, there was no need for such Section if "compensation as an alternative to the reinstatement of such workman and any gratuity or any other (similar) benefit payable to such workman by such employer" was also contemplated under Section 6. In fact the Legislature thought it fit to have a separate Section (6A) without amending the wording of Section 6, due to the fact that compensation, gratuity etc. fell outside the purview of Section 6. But Section 6A only refers to the closure of trade, industry or business by the employer and its consequences.

In this case it could have been argued that there was in effect a closure of the old business (or trade or industry) due to it being amalgamated or merged with another business (or trade or industry). Compensation then may have been payable under Section 6A *but not under Section 6.*

The limited scope of the phrase "and all other benefits" etc. in Section 6 could be inferred when the contents of Sections 7 and 8 of the Act are considered. Failure to comply with the provisions of Section 6 of the Act is deemed to be an offence under Section 7 and is punishable. Section 8 refers to additional punishment. Section 8(1)(b) is relevant. It runs thus:

"8. (1) On the conviction of an employer for an offence under section 7 in respect of any workman, such employer shall be liable –

(a) to pay, in addition to any punishment that may be imposed on such employer under that section, a fine of fifty rupees for each day on which the failure is continued after conviction thereof;

and

(b) to pay such workman the remuneration and such other benefits which would have been payable to him if he had been in employment on such day and on each day of the period commencing on the date on which he should have been employed according to the provisions of section 6 and ending on the date of conviction of such employer."

The above Section clearly shows that Section 6 contemplated reinstatement and payment of arrears of wages and attendant benefits lost due to termination. Such payments were directed to be paid *with* an order for reinstatement (cf "payable to him if he had been in employment")

The wording of the above Section 8(1)(b) implies that what was contemplated by the word "wages" in Section 6 was remuneration and not compensation. And the "benefits" referred to in that Section were benefits payable to him while he was in employment or deemed to have been in employment after the order for reinstatement (back wages etc.). Section 8 does not make any provision for the recovery of compensation or gratuity.

On the other hand Section 6A(1) and (2) deal with compensation and recovery of such compensation. It is my view therefore that Section 6 cannot be interpreted to include compensation payable as an alternative to reinstatement.

Section 33(1)(a) of the Industrial Disputes Act cannot be juxtaposed with Section 6 of the Act and compared since the clause after the word "and" in Section 6 as above referred to, specifically refers to the previous part of the Section which deals with reinstatement. There is no part, portion or clause in Section

33(1)(a) of the Industrial Disputes Act similar to the phrase "would have otherwise received if his services had not been terminated" as in Section 6 of the Act. Hence I find it inappropriate to bring in Section 33(1)(a) of the Industrial Disputes Act to interpret Section 6 of the Act. The meaning of a doubtful word must be ascertained by reference to the meaning of words associated with it. (*Noscitur a sociis*). The sense and meaning of a law can be collected only by comparing one part with another and by viewing all the parts together as one whole and not one part only by itself. (*Nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegerit*).

Therefore Section 6 must be construed after viewing all the parts of the Section together as one whole and not one part only by itself or by reference to other sections in other statues which may not give a clue as to the meaning of Section 6 as constituted in the Act. Merely because a perceivably deserving case cannot be granted relief in terms of Section 6, we should not bend the law to go against the norms of interpretation.

I too am of view like brother Fernando, J. that the benefits granted to the 2nd Respondent by the employer were not sufficient. But he cannot retain the benefits already received by him from the employer on the basis that the termination was lawful, if he was to be granted any benefits by the Commissioner. I am also of the view that the Court of Appeal could not have quashed the order for reinstatement and yet retained benefits attendant to reinstatement in terms of Section 6. I am also unable to determine in this case that there was in fact a closure of the trade, industry or business on account of merger without adequate evidence being placed before us.

As pointed out by brother Fernando, J. there are, no doubt, anomalous consequences that could arise if the interpretation of Section 6 is restricted to reinstatement and attendant benefits. But it is my view that benefits *could* be granted in such instances to meet the ends of justice without in any way perverting the interpretation of Section 6. Thus in respect of the case mentioned by brother Fernando, J. where termination takes place just before the due date of retirement, the Commissioner could hold under Section 5 that the termination was illegal, null and void and then

proceed to order reinstatement as on the date of retirement giving the workman all benefits right upto his date of retirement. Such a discretion is vested in the Commissioner and of course he must give his reasons for doing so. But to remit the present case to the 1st Respondent for a fresh determination would not be prudent.The same *modus operandi* on the other hand could be used in this instance too.

I would therefore set aside the order of the Court of Appeal and correct and amend the determination made by the Commissioner of Labour (P26) to read as follows:-

Commencement of Service of Applicant – (2nd Respondent) in this case	-	01.09.1992
Date of Termination	-	30.07.1994
Period of non employment as per contract from 30.07.1994 to 31.08.1995	-	13 months
Monthly Wages paid	-	Rs. 202,500/-
Date of reinstatement as per Section 6 of the Act	-	31.08.1995 subject to terms of contract (P6) pertaining to termination
Order regarding back wages (arrears) and benefits	-	13 months' wages less all beneficial payments paid by employer (on the basis that termination was lawful) assessed to amount to 9 months' salary (vide judg ment by Fernando, J.) amounts to 4 months' wages 202,500 x 4 Rs. 810,000/-

It is to be noted that the date of reinstatement (31.08.1995) is the last possible date of employment in terms of the work contract P6. The determination of the work contract would take place accordingly on 3.08.1995 (the date of reinstatement).

I agree with the quantum of amount payable as ordered and all other views expressed by brother Fernando, J. in his judgement save and except those dissented from hereto before.

WIGNESWARAN, J.

EDUSSURIYA, J.

Having carefully considered the reasons given by my brothers Fernando J. and Wigneswaran J. in their judgements I find myself in agreement with the judgment of Fernando J.

Appeal dismissed subject to
variation of wages payable by appellant.