CEYLON PLYWOODS CORPORATION
v.
SAMASTHA LANKA G.N.S.M. & RAJYA SANSTHA SEVAKA SANGAMAYA

COURT OF APPEAL
S. N. SILVA, J.
C.A. NO. 498/81
L.T. NOS. R/19968 ; R/20032
21 MAY, 17 JUNE AND 02 JULY 1991

Industrial Law – Option to retire on agreed scheme on fixed quantum of benefits – Can a Labour Tribunal entertain application for further gratuity?

Held:

Workmen who elected to retire according to an agreed scheme set out in a circular and received payments in terms of it, cannot make a further application to the Labour Tribunal for gratuity. The retirement and the gratuity and other benefits became the subject-matter of a compromise and an arrangement evolved by the employer on the one hand and the workmen on the other. The retirement itself resulted from a specific election made by each workman to receive the benefit of that arrangement.

An application can be made to the Labour Tribunal for relief under s. 31B(1)(b) of the Industrial Disputes Act for relief when there is a "question" as to any gratuity or benefits that are due. But there is no such question where the gratuity and other benefits were the subject-matter of an arrangement set out in a circular which the workmen elected to accept. The workmen by making their applications to the Labour Tribunal were attempting to circumvent the terms and conditions of the circular after having received the benefits due upon it. A legal procedure in the nature of an application to the Labour Tribunal in terms of section 31B(1) cannot be resorted to for such a purpose. The doctrine of approbate and reprobate *(quod approbo non reprobo)* is based on the principle that no person can accept and reject the same instrument.

Assuming that the workmen had a right to make an application for gratuity, it was incumbent on the President to consider whether the arrangement to pay gratuity and other amounts as set out in the circular was just and equitable. For this the following matters would have been relevant:

(1) the scheme of retirement, the method of computing gratuity and the payment of other amounts, was evolved after discussion with all the representatives of trade unions;

(2) the workmen had a right to accept the scheme or in the alternative to continue in employment;

(3) the workmen individually elected to accept the scheme of retirement and the payments under it;

(4) the workmen in fact received the said payments prior to making their applications to the Labour Tribunal.

The schemes set out in the circular does not constitute a general scheme but a particular scheme evolved after discussions with the trade unions on the basis of a decision of the Cabinet.

Cases referred to:

1. *Ceylon State Mortgage Bank v. Fernando* 74 NLR 1.

2. *The National Union of Workers v. the Scottish Ceylon Tea Co., Ltd.* 78 NLR 133.

APPEAL from an Order of the President of the Labour Tribunal.

H. L. de Silva, P.C. with *H. D. A. de Andrado* for respondent-appellant.

P. D. Gomes for applicant-respondent.

Cur adv vult.

20th September, 1991.
S. N. SILVA, J.

This appeal is from the order dated 11.09.1981 made by the President of the Labour Tribunal, Ratnapura, in applications R/19968 to R/20032 (excluding R/20030). The workmen in whose favour the order is made are represented by the Respondent Union.

The workmen were employees attached to the carpentry division of the Ceylon Plywoods Corporation at the Ampara unit. There were

six other units of the carpentry division, located at different places. The carpentry division incurred extensive leases, to the tune of about ten million (R2, page 114) and upon a memorandum of the Minister of Industries and Scientific Affairs the Cabinet granted approval to the winding up of the division (R1, page 172). The winding up thus approved involved *inter alia,* the retirement of workmen over the age of 50 and the absorption of the others to development projects connected with the Mahaweli and other State undertakings. The trade unions of the Corporation objected to this scheme of winding up and a discussion was held on 19.04.1978 by the management (represented by the Chairman, General Manager and others) and 35 representatives of the trade unions to which the workmen belonged. According to the minutes of this meeting (R2 page 173) it was agreed to postpone the implementation of the decision to wind up the carpentry division for a period of four months. It was also decided to permit the workmen, irrespective of age, to elect to retire, on or before 31.05.1978.

On the basis of the said agreement a circular and notices were issued (R3 & R4). The circular R3 sets out the terms and conditions of voluntary retirement offered to the workmen. They are:

(1) that the workmen may apply on or before 31.05.1978, to the General Manager for such retirement, irrespective of age;

(2) that the workmen who retire will be paid one month's wages for each year of service (after deducting the amounts paid by the Corporation as E.P.F. contributions) in respect of the period 1958 to 31.10.1972;

(3) that in respect of the period after 01.11.1972 they will be paid half month's wages for each year of service; and

(4) in addition to the foregoing payments they will be paid three months' wages.

The workmen in whose favour the order has been made applied to the General Manager (letters marked R6 to R69) indicating their willingness to retire with effect from 31.05.1978 on the basis of the

terms contained in the circular R3. It is not disputed that they have been paid all the sums due according to the said circular. After receiving the payments these workmen made their applications to the Labour Tribunal. According to the evidence, in all 565 workmen retired under this scheme. It appears that the others have made no applications to the Labour Tribunal.

The workmen concerned were originally employed in the River Valleys Development Board for different periods ranging from 1951. In 1958 the National Small Industries Corporation was established. On 01.03.1972 these workmen were absorbed into the National Small Industries Corporation. Thereafter they were absorbed into the Ceylon Plywoods Corporation. The claim of the workmen is that their period of employment in the River Valleys Development Board prior to 1958 has not been taken into account for the purpose of computing the gratuity payable. The Corporation answered stating that retirement was a choice offered to the workmen, irrespective of age, on the terms and conditions in the circular R3 and that the workmen elected to retire. The circular specifically states that the period of service on the basis of which a gratuity will be computed is from 1958. Therefore the Corporation urged that the applications be dismissed. Learned President of the Labour Tribunal has observed that the periods of employment of the workmen from 1958, upto 1972 in the River Valleys Development Board have been taken into account for the purpose of computing the gratuity. Therefore, he has held that the periods anterior to 1958 should also be taken into account for this purpose. On that basis, he had ordered that the workmen be paid one month's wages for each year of service, for the periods prior to 1958 in which the respective workmen were employed in the River Valleys Development Board. The different periods in which the workmen were so employed have been set out in the schedule annexed to the order.

Learned President's Counsel appearing for the Appellant submitted that the scheme for voluntary retirement and payment of gratuity as contained in the circular marked R3 is not unfair or unjust. It takes into account a period of 20 years in which the workmen were employed in the River Valleys Development Board, National Small Industries Corporation and the Ceylon Plywoods Corporation. It is

further submitted that the workmen elected to retire under that scheme, after they were fully appraised of the terms and conditions and could not now seek an alteration of those terms and conditions by means of an application to the Labour Tribunal.

Learned Counsel for the Respondents submitted that on the basis of the decision of the Supreme Court in the case of *Ceylon State Mortgage Bank v. Fernando,*[1] a workman can make an application to the Labour Tribunal to get an enhancement of the gratuity that is paid by an employer. He also submitted that a workman is not shut out from seeking a gratuity in the Labour Tribunal, merely because he accepted the terms of retirement offered by the employer and relied on the provisions of section 31B(4). Counsel cited the decisions of the Supreme Court in the case of *The National Union of Workers v. The Scottish Ceylon Tea Co., Ltd.*[2] in support of the proposition that a gratuity should be computed on the whole of the period a workman is employed and not only on a part of that period. On the facts, it was submitted that the union which represented the workmen did not participate in the conference at which the retirement was discussed. It was also submitted that the deduction of the contribution made by the Corporation to the E.P.F., in respect of the period 1958 to 1972 is illegal.

The main issue to be decided is whether the workmen who elected to retire according to the scheme set out in the circular R3 and received the payments in terms of it, were entitled to seek further benefits by making an application to the Labour Tribunal. If the workmen are so entitled it has to be considered whether the scheme contained in R3 is in itself just and equitable and in any event whether the learned President erred in law in awarding further sums to the workmen.

The workmen filed their applications in the Labour Tribunal on 27.02.1979 complaining that their services were terminated without reasonable cause, on 31.08.1978. It appears that 31.08.1978 was mentioned as the date of termination because the workmen received three months wages from 31.05.1978, according to R3. At the outset, it has to be noted that the basis of the applications to the Labour Tribunal is completely incorrect. The workmen have failed to disclose

in their applications that they voluntarily elected to retire with effect from 31.05.1978 pursuant to a scheme of retirement offered to them and that they received all payments due under that scheme.

Be that as it may, the inquiry in the Labour Tribunal proceeded solely on the question of gratuity that is payable by the employer although there was no specific claim for gratuity, as such, in the applications.

The matter of gratuity is dealt with in section 31B(1)(b) of the Industrial Disputes Act. This provision enables a workman to make an application to the Labour Tribunal for relief or redress in respect of:

> "the question whether any gratuity or other benefits are due to him from his employer on the termination of his services and the amount of such gratuity and the nature and extent of any such benefits".

It is the submission of learned President's Counsel that in this case there is no "question" as to the gratuity that is due since that matter is the subject of a separate arrangement arrived at by the employer and each of the workmen concerned.

The workmen have not disputed that they became aware of the scheme of voluntary retirement as contained in R3 and that they individually responded to it. The circular specifically states the period in respect of which gratuity is payable, the basis of computation and the other benefits that the workmen will be entitled to, upon retirement. In the letters R6 and R69 the workmen have specifically elected to retire on the basis of the scheme set out in the circular R3. Therefore the retirement and the gratuity and other benefits became the subject-matter of a compromise and an arrangement evolved by the employer on the one hand and the workmen on the other. The retirement itself resulted from a specific election made by each workman to receive the benefit of that arrangement.

It is clear from the provisions of section 31B(1)(b) that an application can be made to the Labour Tribunal for relief when there is a "question" as to any gratuity or benefits that are due. In this

instance there is no "question" whatever as regards the gratuity and other benefits that were due. The gratuity and other benefits were the subject-matter of circular R3 (referred above) which the workmen elected to accept.

The workmen by making their applications to the Labour Tribunal were attempting to circumvent the terms and conditions of the circular after having received the benefits due upon it. A legal procedure in the nature of an application to the Labour Tribunal in terms of section 31B(1) cannot be resorted to for such a purpose. The doctrine of approbate and reprobate (*quod approbo non reprobo*) is based on the principle that no person can accept and reject the same instrument.

In this instance the conduct of the workmen is certainly one of approbating and reprobating. Furthermore, as noted above, the very basis of their applications upon a wrongful termination, is incorrect. I hold that the workmen had no right to make any application to the Labour Tribunal for redress or relief, because their retirement from employment and the payment of gratuity and other benefits were, the subject-matter of the circular R3 which the workmen elected to accept and act upon.

Learned Counsel for the respondent relied on the decisions of the Supreme Court in the two cases referred to above.

In the case of *Ceylon State Mortgage Bank v. Fernando (supra)* an application was made to the Supreme Court for Writs of Certiorari and Prohibition against the Labour Tribunal to prevent the Tribunal from proceeding with an application for gratuity that was pending before it. The workman had retired from the service of the bank on the ground that he was lacking in proficiency in the official language. On retirement he was paid a gratuity which was determined by the bank. The application for a Writ was made on the premise that the amount paid as gratuity was approved by the Minister as required under the rules, and that the Bank is statutorily prohibited from paying anything more. The Writ was refused on the basis that the bank as the employer determines the quantum of gratuity that has to be paid to its employees. It was held that a payment in excess of the amount

already determined would not be "contrary to the statute". It is to be seen that this decision does not in any way support the claim of the workmen to an enhanced amount as gratuity, when the amounts that have been paid were in accordance with the terms and conditions which the workmen elected to accept.

The other decision relied upon is that of the Divisional Bench of the Supreme Court in the case of *National Union of Workers v. The Scottish Ceylon Tea Co., Ltd. (supra).* In this case the Supreme Court held that gratuities contemplated in section 31B(1)(b) are only retiring gratuities and that they must be legally due. In a dissenting judgment Sharvananda, J. held that the payment of a gratuity is not restricted to a retiral situation but extends to resignation and premature retirement provided the workman has rendered faithful service for a considerable period.

None of the judgments delivered in that case supports the proposition advanced by learned Counsel for the respondent that a workman who has accepted the terms of retirement offered by the employer is entitled to make a claim for further payments to the Labour Tribunal. Such an issue never came up for consideration in that case for the simple reason that no gratuity whatever was paid to the workman concerned. It was the case of the employer that they were not entitled to a gratuity since the payment of gratuity was not provided for in the collective agreement. However, the following observation of Tennekoon, C.J. with regard to schemes that have been operated on by the employer is relevant to this case (page 150):

> "An individual application under section 31B is not an occasion for revising schemes which have been accepted and are being operated on by the employer without any industrial dispute arising thereon. That kind of operation should be left to be dealt with by Collective Agreements and by awards which seek settlement of industrial disputes. It seems to me that a Labour Tribunal in dealing with individual applications under section 31B(1)(b) would be acting unreasonably if it seeks to depart from contractual or settled schemes of gratuity payments without compelling reasons to do so. To act otherwise would

result in Labour Tribunals creating or promoting industrial disputes where none existed".

The observations of Tennekoon, C.J. relate to a general scheme for the payment of gratuity, in operation. With regard to such schemes it was observed that Labour Tribunals should not depart from them without "compelling reasons to do so". In this case circular R3 does not constitute a general scheme operated by the employer. It was a particular scheme evolved after discussions had with the trade unions on the basis of a decision of the Cabinet. The decision of the Cabinet was to permit retirement only to workmen over 50 years of age. By R3 the management extended this facility to every workman irrespective of age. Therefore, in my view the arrangement evolved in this case by circular R3 and the election of the workmen to accept that arrangement has a greater binding effect than a general scheme as discussed by Tennekoon, C.J. Such an arrangement could not be departed from after the workmen have obtained benefits under it.

Thus it is seen that both judgments relied upon by Learned Counsel for the Respondent do not support the proposition advanced by him. I have to now deal with the provisions of Section 31B(4) relied upon by Learned Counsel for the Respondent. This section reads as follows:

"(4) Any relief or redress may be granted by a labour tribunal to a workman upon an application made under subsection (1) notwithstanding anything to the contrary in any contract of service between him and his employer".

The purpose of this section is to empower a Labour Tribunal to grant relief or redress notwithstanding anything to the contrary in the contract of service. This provision is necessary considering that ordinarily contracts of service provide for termination, upon notice, by an employer. In this case, the parties are not concerned with the contract of service. Their concern is focussed on the arrangement for retirement as contained in circular R3. Therefore I am of the view that Section 31B(4) has no application to the facts of this case.

On the facts, Learned Counsel for the Respondent submitted that the trade union now representing the workmen was not a party to the discussion held on 19.04.1978. It appears that the workmen were members of another union at that time. This matter has not been urged in the Labour Tribunal. In any event, it is to be seen that circular R3 is addressed directly to the workmen and not to any trade union. The workmen individually responded to the circular by letters R6 to R69. In the circumstances the absence of the Respondent union at the discussion is irrelevant in view of the conduct of the workmen themselves. For the reasons stated above I see no merit in the submissions made by Learned Counsel for the Respondent with regard to the main matter that has to be decided.

Assuming that the workmen had a right to make an application to the Labour Tribunal with regard to the matter of gratuity, it was incumbent on the President of the Labour Tribunal to consider whether the arrangement to pay gratuity and other amounts as contained in circular R3 is just and equitable. In considering this question the following matters are relevant:

(1) the scheme of retirement, the method of computing gratuity and the payment of other amounts, was evolved after discussion with all the representatives of trade unions;

(2) the workmen had a right to accept the scheme or in the alternative to continue in employment;

(3) the workmen individually elected to accept the scheme of retirement and the payments under it;

(4) the workmen in fact received the said payments prior to making their application to the Labour Tribunal.

Learned President has failed to examine these matters in deciding whether the gratuity paid and other benefits given are just and equitable. He has been merely guided by the fact that certain periods of service rendered by the workmen to the R.V.D.B. prior to 1958 have not been taken into account in computing the gratuity payable. This matter was well known to the workmen when they

elected to retire in terms of the circular. Therefore, I am inclined to agree with the submission of Learned President's Counsel that the President of the Labour Tribunal made his order ignoring relevant and significant matters with regard to the question of gratuity and other benefits. Hence in any event there is an error of law in the order of the President of the Labour Tribunal in awarding further gratuity to the workmen concerned. Accordingly I allow the appeal and set aside the order dated 11.09.1981 made by learned President of the Labour Tribunal. The applications made by the workmen to the Labour Tribunal are dismissed. The Respondent will pay a sum of Rs. 1750/- as costs to the Appellant.

Appeal allowed.