## THE ASSOCIATED NEWSPAPERS OF CEYLON LTD.
v.
## JAYASINGHE

SUPREME COURT
SAMARAKOON, C.J., WANASUNDERA, J., AND SOZA, J.
S.C. APPEALS 10/81 AND 13/81.
C.A. 183 AND 185 OF 1978.
L.T. 12/6759/77 AND 13/6772/77
JUNE 22, 1982.

*Industrial Dispute – Industrial Disputes Act, section 31B – Regulations 15 and 57 – Constitution of 1972, Article 11 – Language of Courts (Special Provision) Law No. 14 of 1973.*

The petitioners were employees of the respondent who terminated their services. The Labour Tribunal held that their termination was unjustified and awarded them back wages in lieu of reinstatement and compensation to both.

On appeal to the Court of Appeal the following findings were affirmed –

1. unjust termination
2. compensation in lieu of reinstatement

and the order relating to back wages was deleted.

Both parties appealed against these orders to the Supreme Court.

It was contended on behalf of the employees that the application should be dismissed in limine as the language of the application was not Sinhala.

**Held –**

(1) The word 'pleadings' in Article 11(1) of Constitution of 1972 does not include an application for relief or redress under section 31(B) of Industrial

Disputes Act. Nor does Article 11(1) preclude an application being made to the Labour Tribunal in English.
(2) No prejudice was caused to the other party by having the proceedings in English.
(3) When a tribunal is called upon to determine compensation it should take into account back wages lost but it is not entitled to make a separate award of back pay in addition to compensation.

**Cases referred to:**

(1) *Dixon v. Calcraft (1892) 1. Q.B. 458, 462, 463*

(2) *Nelungaloo Pty Ltd. v. The Commonwealth (1947–1948) 75 C.L.R. 495, 569, 571.*

APPEAL from judgment of the Court of Appeal.

*H.L. de Silva* with *Mark Fernando* for appellant in 10/81 and 11/81 and for respondent in 12/81 and 13/81.

*R. Weerakoon* for respondent in 10/81 and 11/81 and for appellant in 12/81 and 13/81.

*Cur. adv. vult.*

September 3, 1982

**SOZA, J.**

These appeals arise out of applications for relief founded on unjust termination of their services made by two employees (M.B. Jayasinghe and Upali Ariyachandra) against their employer The Associated Newspapers of Ceylon Ltd. In both cases the President of the Labour Tribunal held that the termination was unjustified and by way of relief ordered the payment of Rs. 19,000/- as back wages and Rs. 68,400/- as compensation in lieu of reinstatement to M.B. Jayasinghe (LT 12/6759/77) and Rs. 12,900/- as back wages and Rs. 46,440/- as compensation in lieu of reinstatement to Upali Ariyachandra (L.T. 13/6772/77). On appeals being preferred against these orders the Court of Appeal affirmed the finding of unjust termination of services and the payment of compensation in lieu of reinstatement ordered by the Labour Tribunal but deleted the order relating to the payment of back wages in both cases. In both these cases the newspaper company has appealed to this Court from the orders of the Court of Appeal in respect of termination of services and the award of compensation. These are appeals 10 and 11 of 1981. M.B. Jayasinghe and Upali Ariyachandra have also appealed to this Court in respect of the deletion of the orders for the payment of back wages. These are appeals 12 and 13 respectively of 1981. The appeals were considered together as the same points were involved.

In the two appeals by the newspaper Company we are called upon to decide whether an application for relief in the Labour Tribunal made under section 31B of the Industrial Disputes Act during the period when the Constitution of Sri Lanka of 1972 was in operation (from 22nd May 1972 until its replacement by the Constitution of 1978) is null and void if made in English. Article 11 (1) of the Constitution for 1972 stipulated inter alia that the language of tribunals established under the Industrial Disputes Act should be Sinhala and accordingly their records including pleadings, proceedings, judgments, orders and records of all judicial and ministerial acts should be in Sinhala. In the Northern and Eastern provinces however parties and applicants were permitted to submit their pleadings, applications motions and petitions in Tamil but even then the Tribunal was under a duty to cause a Sinhala translation to be made for the purposes of the record (Article 11 (3) of the Constitution of 1972, and the Language of the Courts (Special Provisions) Law No. 14 of 1973). Article 11 (6) of the Constitution of 1972 empowered the Minister of Justice to authorise Presidents of Labour Tribunals and pleaders to use a language other than Sinhala or Tamil but this of course did not apply to the parties themselves.

Learned Senior Counsel for the appellant submitted that the applications for relief made by the respondents to the Labour Tribunal upon which the proceedings we are called upon to review were taken are pleadings and therefore had to be in Sinhala. The applications in the instant case had been made in English and should not have been taken cognizance of. They should have been rejected in limine as they contravened an imperative provision of the Constitution.

The validity of the contention that the applications for relief are bad in law and nullity must be examined with reference to the provisions of the Industrial Disputes Act relating to the making of application for relief or redress to the Labour Tribunal. Section 31B (1) of this Act stiputates that a workman or 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. The procedure is laid down in Regulation 15 of the Industrial Disputes Regulations, 1958 made by the Minister and approved by the Senate and the House of Representatives and published in Government Gazette No. 11688 of 2.3.1959. It must be observed that these Regulations have been made in compliance with the provisions of section 39 of the Industrial Disputes Act and are therefore as valid and effectual as if they were enacted in the main Industrial Disputes Act. Regulation

15 reads as follows:

> "Every application under section 31B of of the Act shall be substantially in Form D set out in the First Schedule hereto and shall be sent to the Secretary in duplicate".

Form D provides inter alia for the application to be made under the signature of the applicant. Where the Union to which the workman belongs makes the application, it must be signed by the President or Secretary - see Regulation 17.

The combined effect of all these provisions is to make it imperative that an application for relief or redress by a workman should be in writing and be signed by him. The expression " pleading" is generally understood as including the statements in writing of the petition, application, claim or demand of any plaintiff, petitioner or applicant and of the defence thereto and counterclaim if any of the defendant or respondent and the reply to the counterclaim and therefore it would be imperative that these should be in Sinhala where Tamil is not permitted. But where the petition, application, claim or demand is expected by law to be made in writing by the applicant himself rather than by his pleader then the language requirement cannot be insisted upon for the applicant himself cannot be expected to take personal responsibility for the contents of his petition, application, claim or demand if he is required to make it in a language with which he is not sufficiently conversant.

In the election petition Appeals No. 2 of 1977 (Medawachchiya), No. 3 of 1977 (Kotmale) and No. 2 of 1978 (Anamaduwa) Consolidated as one appeal - (S.C. Minutes of 7.8.1978) a Divisional Bench of five judges of the former Supreme Court had occasion to consider the legal provisions relating to language in the Constitution of 1972 in cases where the election petition had been filed in English. Referring particularly to the stipulations in paragraphs (c) and (d) of section 80B of the Ceylon (Parliamentary Elections) Order in Council, 1946, that an election petition should contain a concise statement of the material facts on which the petitioner relies and be signed by him vis-a-vis the provision in Article 11 (1) of the Constitution of 1972 that pleadings should be in Sinhala, Samarawickrema, J. (with whom the other Judges agreed) stated as follows:

> Having regard to the provision in section 80B (e) and (d), it would appear that the requirement that the petition should be signed by all the petitioners is made for the reason that they are required to take responsibility for the statements contained

in the petition. In view of this, it would appear that if the provision of section 80B alone applied, a petition should be in a language which is understood by the petitioners. Article 11(1) of the Constitution, however, provides that pleadings should be in Sinhala. The word 'pleadings' is one of wide connotation and it is a canon of interpretation that words which are general and not precise are to be restricted to the fitness of the matter. I am, therefore, of the view that the word "pleadings" in Article 11(1) would not include an election petition which is required to be signed by the petitioners, obviously as an indication that they take responsibility for the statements contained therein, should be in a language understood by the petitioners."

With great respect I would adopt the reasoning of Samarawickrema, J. It is a legal requirement that an application for relief or redress under section 31B of the Industrial Disputes Act must be signed by the applicant. The law expects the applicant to take responsibility for the material stated in his application upon which he claims relief or redress. Therefore he must be permitted to make it in the language he prefers. The word "pleadings" in Articles 11(1) of the Constitution of 1972 does not include an application for relief or redress under section 31B of the Industrial Disputes Act. Nor does the requirement of Article 11(1) of the Constitution of 1972 that the language of the Tribunal should be Sinhala and its records kept in that language preclude an application being made to it in English. The responsibility is on the Tribunal to cause a Sinhala translation to be made for the record. If this was not done the applicant cannot be faulted or prejudiced. In fact Samarawickrema, J. pointed out that Article 11 of the Constitution of 1972 carries no provision as to the effect of non-compliance with it and accordingly where no prejudice has been caused the failure of the Tribunal to comply with the language requirements of Article 11(1) of the Constitution will result only in an irregularity and will not be fatal. With this conclusion of Samarawickrema, J., I am again in respectful agreement. In the instant case the respondent too filed his objections in English and obviously the proceedings were better understood by everybody for being in that language. No prejudice was caused to the parties least of all to the Newspaper Company.

I will now turn to the question whether back wages could be awarded along with compensation as an alternative relief to reinstatement. The relief of reinstatement is granted where the contract of

employment has been unjustifiably breached by the employer. Back wages can then be awarded on the basis of an unbroken contract of employment. Of course the quantum of back wages and the period for which they will be awarded will depend on the circumstances of each particular case. For instance if the employee had obtained other employment after the date of termination that will be a relevant circumstance. But when the Tribunal orders compensation can it also order back wages? The purpose of compensation is to place in the hands of the victim what he has lost so far as money can do it. It connotes money equivalence. It is a recompense or indemnity for loss. It must be remembered that there is a distinction between compensation and damages though there are occasions when the two words are synonymous. As a concept compensation is remedial but damages can be enhanced and punitive or be diminished and even nominal. Damages are not always related to the actual money equivalent of the loss - (see the discussion by Lord Esher, M.R. in *Dixon v Calcraft* (1) and by Dixon, J. (later C.J.) in *Nelungaloo Pty. Ltd. v The Commonwealth.* (2) What the Industrial Disputes Act speaks of is compensation as an alternative to reinstatement (ss. 31B(b)(c)). To order back wages and compenstation as an alternative to reinstatement would be to duplicate one factor which should enter into the computation of compensation. One among the several factors which should enter into the computation of compensation in the type of case we are considering is the period of unemployment and that would include back wages. The object of the exercise should be to ascertain as far as possible the money equivalent of the loss of employment from the date of unjust dismissal. The calculation must depend on the particular circumstances of each case. Wages can provide a useful unit for the calculation but it is neither possible nor desirable to lay down a formula for application in all cases. When a Tribunal is called upon to determine compensation it should take into account the back wages lost but it is not entitled to make a separate award of back pay in addition to compensation. Hence the back wages awarded by the Tribunal were rightly struck off by the Court of Appeal.

I am therefore of the view that the judgment of the Court of Appeal should be affirmed. The appeals of the appellants as well as of the respondent are dismissed. There will be no costs as no party has been completely successful.

**SAMARAKOON, C.J.** — I agree.

**WANASUNDERA, J.** — I agree.

*Appeal dismissed.*