

WIJEWARDENA, LIQUIDATOR, JANAWASA COMMISSION AND  
ANOTHER  
v.  
CHANDRADASA

COURT OF APPEAL.

MOONEMALLE, J. AND BANDARANAYAKE, J.

C.A. 641/80. L. T. RATNAPURA 19895.

MARCH 5, 1985.

*Award by Labour Tribunal against Janawasa Commission – Dissolution of Janawasa Commission – Is liquidator liable to pay amount of award ?*

The applicant applied to the Labour Tribunal alleging unlawful termination of his services by his employer the Janawasa Commission. An award was made against the Janawasa Commission but before it could be enforced the Janawasa Commission was dissolved and a liquidator appointed. The question was whether the liquidator was liable to pay

the amount of the award. The Janawasa Commission appealed against the order of the Labour Tribunal awarding the applicant compensation and on the dissolution of the Commission the liquidators were substituted in its room as applicants.

**Held -**

The liquidators who have been appointed in place of the dissolved Janawasa Commission have succeeded to the assets and liabilities of the Janawasa Commission. An award already made against the Janawasa Commission before its dissolution is therefore enforceable after the dissolution against the liquidators.

**Cases referred to :**

- (1) *Mrs. Bobby Arnolda v. Gopalan* (1961) 64 NLR 153.
- (2) *K. Satchithanandan, Liquidator, Air Ceylon Ltd. v. Siriwardena* CA 302/81 D. C. Colombo 3336/2.

APPEAL from the Labour Tribunal, Ratnapura.

*S. S. Sahabandu* for appellants.

*K. Balapatabendi* for respondent.

*Cur. adv. vult.*

May 2, 1985.

**MOONEMALLE, J.**

The applicant made an application to the Labour Tribunal on 27.12.1978 against unlawful termination of his services by the Janawasa Commission. An *ex parte* inquiry was held on 5.8.1980 as the respondents were absent, and order was made on 14.10.1980 awarding the applicant a sum of Rs. 21,960 as compensation. The applicant on 29.10.1980 appealed against that order claiming an enhancement of the amount awarded as compensation. That appeal was dismissed. The Janawasa Commission which was the respondent had also filed a cross-appeal against the order of the Labour Tribunal seeking to set aside that order on the ground that the said order was made *ex parte*. That appeal is before us now.

The Janawasa Commission was dissolved as a result of the Janawasa Law No. 25 of 1976 being repealed by the Janawasa Repeal Act No. 9 of 1984. The liquidators appointed in succession to the Janawasa Commission have been duly substituted as appellants in this appeal. At the hearing of this appeal, Learned Counsel for the appellants did not pursue his ground of appeal; instead, he submitted

that after the repeal of the Janawasa Law, the Janawasa Commission who had employed the respondent ceased to exist, and as there was no contract of employment between the liquidators and the respondent, the liquidators are not liable to pay the compensation ordered to the respondent in the absence of specific provision in Repeal Act No. 9 of 1984. Learned Counsel for the respondent submitted that though the Janawasa Commission has been dissolved, liquidators had been appointed, and therefore the liquidators have succeeded to all the assets and liabilities of the Janawasa Commission. He also relied on section 31B (6) of the Industrial Disputes Act in support of his submission that the liquidators are liable to pay the compensation ordered to the applicant respondent.

The question that arises in this appeal is whether the liquidators are liable to pay the respondent the compensation ordered by the Labour Tribunal against the Janawasa Commission.

The contract of employment between the respondent and the Janawasa Commission ceased with the termination of the employment of the respondent. The Janawasa Commission, as the employer, took part in the inquiry before the Labour Tribunal into the complaint made by the respondent that his services were unlawfully and unjustly terminated. Learned Counsel for the appellants did not pursue his ground of appeal, and he did not challenge the validity of the order of the Tribunal as being a just and equitable order. Therefore the order of the Tribunal remains a just and equitable order. If the contention of learned counsel for the appellant is accepted then this just and equitable order would be rendered nugatory. Thus, it is to prevent the frustration of actions by workmen that the legislature in its wisdom enacted section 31 B (6) (a) (h) (c) of the Industrial Disputes Act which reads :

- (6) *Notwithstanding that any person has ceased to be an employer –*
- (a) an application claiming relief or redress from such person may be made under sub-section (1) in respect of any period during which the workman to whom the application relates was employed by such person, and proceedings thereon may be taken by a labour tribunal.
  - (b) If any such application was made by such person while such person was such employer, proceedings thereon may be commenced or continued and concluded by a labour tribunal, and

(c) a labour tribunal may on any such application order such person to pay to that workman any sum as wages in respect of any period during which that workman was employed by such person, or as compensation as an alternative to the reinstatement of that workman or as any gratuity payable to that workman by such person, *and such order may be enforced against such person in like manner as if he were such employer.*

These provisions in clear and unambiguous language provide for the enforcement of an order made by a Labour Tribunal awarding compensation against a person who has ceased to be an employer in like manner as if he were employer. The liabilities against the Janawasa Commission have not been waived or denied to any claimant by the Janawasa Repeal Act No.9 of 1984. I am of the view that the Liquidators who have been appointed in place of the dissolved Janawasa Commission have succeeded to the assets and liabilities of the Janawasa Commission. The contention that before the liquidators are made liable to pay compensation on an order made against the Janawasa Commission there should first be specific provision to that effect in the Janawasa Repeal Act, is untenable.

Learned counsel for the appellant cited the case of *Mrs. Bobby Arnolda v. Gopalan* (1) in support of his submissions. This was a case where after the death of the employer, the employer's widow informed the workman that his services had ceased in view of the death of her husband. An application was made by the workman to the labour tribunal claiming wages, compensation and gratuity from his employer's widow for the period he was employed under the deceased employer. As a result of a settlement, the President of the labour tribunal ordered the widow to pay the sum of Rs. 2073.50 to the workman. It was held that in an application made by a workman after the death of his employer, a labour tribunal has no jurisdiction under the Industrial Disputes Act to order the widow or legal representative of the deceased employer to pay the workman wages, compensation or gratuity due to the workman for the period he was employed under the deceased. This case can be distinguished from the facts of the present case. In the present case, the application to the labour tribunal and the award were made long before the Janawasa Commission was dissolved by the Repeal Act No. 9 of 1984. Thus the judgment in this reported case has no relevancy to the matters in issue in this appeal.

Learned Counsel for the appellant also cited the case of *K. Satchithanandan, Liquidator, Air Ceylon Ltd. v. G. D. S. Siriwardene* (2). In that case ex parte judgment was entered in the District Court of Colombo against Air Ceylon Ltd. for non-appearance on the summons returnable date. An application to set aside the ex parte judgment was refused. At the hearing into the application in revision before the Court of Appeal, it was contended on behalf of the petitioner that His Excellency the President, as Minister of Defence, dissolved Air Ceylon Ltd. under the Finance Act No.38 of 1971, and appointed the petitioner as Liquidator. It was also contended that according to section 19 of the Finance Act, a dissolution of a public corporation precedes the appointment of a Liquidator and, that as such, when it is shown that a Liquidator has been regularly appointed by the Minister of Defence, it would under section 114 (e) of the Evidence Ordinance raise a presumption that a valid order of dissolution has been made prior to the appointment. Thus, it was contended that the effect of the dissolution was that the defendant corporation ceased to exist as a legal person on the summons returnable date, and therefore that the judgment entered was one entered against a non-existent person and is a nullity. It was held that section 19 should be construed to mean that the appointment of the liquidator, when necessary, should precede the dissolution of the corporation, and that section 114 (e) of the Evidence Ordinance can be of no assistance to the petitioner. The application in revision was accordingly dismissed. This judgment too is of no assistance to the appellant. For the reasons stated above I, thus, hold that the compensation of Rs 21,960 awarded to the respondent against the Janawasa Commission is binding on the Liquidators-appellants who have succeeded to the assets of the Janawasa Commission. The appellants are liable to pay the applicant respondent the said sum of Rs 21,960. The appeal is dismissed with costs fixed at Rs. 315.

The Liquidators-appellants to deposit the sum of Rs. 21,960 and the costs of Rs. 315 at the office of the Asst. Commissioner of Labour, Ratnapura within two months of receipt of this order.

**BANDARANAYAKE, J.** – I agree.

*Appeal dismissed.*