

NATIONAL LOTTERIES BOARD
V.
KULATUNGA, LABOUR OFFICER, COLOMBO SOUTH

COURT OF APPEAL
WIJAYARATNE, J.
C.A. NO. 176/84
M.C. COLOMBO CASE NO. 23011/4
MAY 24, 1991.

Termination of employment - Labour Tribunal order - Enforcement - Industrial Disputes Act, ss 40(1)(e) 43(1), (2), (4), 47A, 31(B) (6) (C) - Penal Code, S. 72.

Where a Labour Tribunal ordered an applicant compensation in Rs. 14,569/- in lieu of reinstatement by order dated 30.12.76 and after a change of Government in 1977 the applicant was re-employed on a directive from the Minister of Labour from 12.09.77 and paid a higher salary and also received a sum of Rs. 18,931/67 as compensation from

the employer as directed by the Political Victimization Committee, and where the employer was convicted by the Magistrate for failing to comply with the order of the Labour Tribunal -

Held:

The applicant had already received from the employer reliefs in excess of that ordered by the Labour Tribunal. Under the circumstances, the employer was justified in law in not complying with the order. Section 72 states that nothing is an offence which is done by any person who is justified by Law.

Per Wijeyaratne, J. "I wish to stress that the law requires everyone to comply with an order of a Labour Tribunal. This is a unique case where by an unusual combination of circumstances the workman (Fernando) obtained more than the relief he had claimed in the Labour Tribunal by other means. Thereby the accused-appellant indirectly complied with the order of the Labour Tribunal.

APPEAL from an order of the Magistrate's Court, Colombo.

J. Joseph for accused - appellant.

N. Laduwahetty, S.C. for complainant - respondent.

24 May 1991.

WIJEYARATNE, J.

In this case the accused-appellant is the National Lotteries Board. The accused-appellant was charged in the Magistrates Court of Colombo with having on or about 31.01.77 failed to comply with the order of the Labour Tribunal, Colombo, dated 30.12.76, to pay a sum of Rs. 14,560/- to W.S.R.M. Fernando, in breach of section 40(1)(q) and punishable under section 43(4) read with sections 43(1) and 43(2) of the Industrial Disputes Act, as amended.

At the trial Asoka Karunaratne (Assistant Secretary of the Labour Tribunal), Mrs. K.A.D.N.H. Jayatillake (Labour Officer) and W.S.R.M. Fernando gave evidence for the prosecution. They produced the order of the Labour Tribunal dated 30.12.76, marked P1, the Judgment and the decree of this court dated 7.5.81 whereby the said order of the Labour Tribunal was confirmed by this court, marked P2 and P3, and other documents marked P4, P5 and P6.

According to the prosecution evidence, W.S.R.M. Fernando had been appointed by the accused-appellant as a Staff Assistant (Accounts) from 5.2.69 and his services were terminated on 30.04.73 without

any just or reasonable cause. At the time of termination of his services he was drawing a monthly salary of Rs. 500/-. Consequently he filed an application in the Labour Tribunal of Colombo claiming reinstatement, or in the alternative, compensation and also gratuity or any other relief that the tribunal would deem fit.

After inquiry the learned President of the Labour Tribunal by his order P1 dated 30.12.76 directed the accused-appellant to pay a total sum of Rs. 14,560/- in lieu of reinstatement. This amount was to be deposited with the Assistant Commissioner of Labour, Colombo South, on or before 31.01.77, which was not done.

On behalf of the accused-appellant I.K. Wimaladasa (Personnel and Welfare Officer of the National Lotteries Board) gave evidence and produced documents marked D1 to D5.

Briefly the position taken up by the accused-appellant before the Magistrate at the trial was that in 1977 there was a change of Government and Fernando had made an application for re-employment. On a directive from the Minister of Labour, Fernando was re-employed from 12.09.77 at a starting salary of Rs. 760/-. Fernando had also made an application to the Political Victimization Committee appointed by the Government, which Committee ordered the payment of Rs. 18,931/67 to him as compensation, which amount had been paid to him by the accused appellant and accepted by him. Fernando had also agreed in writing to withdraw his application before the Labour Tribunal. These facts were unchallenged and not in dispute. Therefore it was contended on behalf of the accused-appellant that there was no "mens rea" and that the accused-appellant believed in good faith there was no necessity to comply with the order.

After trial the learned Magistrate held that the payment of Rs. 18,961/67 does not mean that the accused-appellant has complied with the order of the Labour Tribunal and found the accused-appellant guilty and ordered it to pay Rs. 14,560/- as compensation and a further sum of Rs. 500/- as a fine, from which order this appeal has been filed.

At the hearing Mr. Joseph for the accused-appellant submitted that section 31(B)(6)(c) of the Industrial Disputes Act provides for

compensation as an alternative to dismissal and that in this case Fernando has received both benefits by other means. He submitted that in these circumstances the accused-appellant was justified by law in not complying with the Labour Tribunal order as Fernando has been given all the reliefs he had claimed. Mr. Joseph also cited section 47.A of the Act which states that any contract or agreement whereby any right conferred on any worker by a Labour Tribunal is in any way affected or modified to his detriment shall be null and void to that extent. He submitted that in this case Fernando had been re-employed on a higher salary and also been paid Rs. 18,931/67 by the time the accused-appellant was charged in the Magistrate's Court and his rights had not been adversely affected in any way.

Mr. Ladduwahetty, State Counsel, on the other hand submitted that these two matters are not connected to each other and they are different matters.

I have considered the submissions of learned counsel on both sides. In this case Fernando had not only been reinstated but he had also been compensated in Rs. 18,931/67 by the accused-appellant, which was in excess of the relief awarded by the Labour Tribunal. Under these circumstances I am of the view that section 72 of the Penal Code is applicable. Section 72 of the Penal Code states that nothing is an offence which is done by any person who is justified by law.

In this case I am of the view that under these circumstances the accused-appellant was justified in law in not complying with the order of the Labour Tribunal and not paying the amount of Rs. 14,560/- to Fernando as he had already received the sum of Rs. 18,960/67 from the accused-appellant and also been reinstated at a higher salary. In these circumstances it cannot be said that the accused-appellant failed to comply with the order of the Labour Tribunal.

I therefore set aside the conviction and sentence and the accused-appellant is acquitted and discharged of the charge.

I wish to stress that the law requires everyone to comply with an order of a Labour Tribunal. This is a unique case where by an unusual combination of circumstances the workman (Fernando) obtained more than the relief he had claimed in the Labour Tribunal

by other means. Thereby the accused-appellant indirectly complied with the order of the Labour Tribunal.

Conviction and sentence set aside.