1971 *Present* : **Alles, J.**

THE BATTICALOA MULTI-PURPOSE CO-OPERATIVE SOCIETIES UNION LTD., Appellant, *and* V. VELUPILLAI, Respondent

S.C. 128/70—Labour Tribunal Case 16/281/69

Labour Tribunal—Duty of President not to trespass beyond the bounds of the judicial sphere—Evidence led at domestic inquiry—Evidentiary value of it at subsequent inquiry held by a Labour Tribunal—Industrial Disputes Act (Cap 131), ss. 31 B, 31 C (1), 36 (4).

A workman (the applicant-respondent) claimed relief under section 31B of the Industrial Disputes Act in respect of the termination of his services by his employer (a Multi-Purpose Co-operative Societies Union). The evidence led at the inquiry before the Labour Tribunal included the production of the record of the proceedings at the domestic inquiry at which the workman and a witness for the employer had given evidence.

One of the charges framed against the workman was that he was guilty of conduct which amounted to an attempt to disorganise the working of the Co-operative Societies Union in a manner which was likely to cause financial loss to the Union. In regard to this charge the President who held the inquiry made the observation that even if it was proved he did not consider it an offence that would warrant the termination of the services of the workman.

Held, (i) that pronouncements of the nature made by the President do not fall within the purview of the judicial sphere in which a President of a Labour Tribunal is expected to function and are likely to affect that detachment which should characterise the conduct of a person vested with judicial functions.

(ii) that, in considering what " just and equitable " order should be made, there is no objection to the President of a Labour Tribunal examining or even acting on the evidence led at the domestic inquiry, after satisfying himself that the evidence has been properly recorded, ensuring that the workman had a fair opportunity of meeting the allegations made against him and seeking support for his findings from the evidence so led.

APPEAL from an order of a Labour Tribunal.

S. C. Grossette-Thambiah, for the employer-appellant.

M. P. Emmanuel, for the applicant-respondent.

Cur. adv. vult.

August 30, 1971. ALLES, J.—

The applicant-respondent to this appeal (hereafter referred to as the applicant) was employed as a lorry driver under the Batticaloa Multi-Purpose Co-operative Societies Union Ltd. (hereafter referred to as the Union) from May 1966. His services were terminated with effect from 3rd December 1968 ; a charge sheet containing six charges was served on him on 17th December 1968 (marked R 2A) ; he replied to the Charge sheet on 24th December (his reply is marked R 3A) ; a domestic inquiry was held on 18th February 1969 at which evidence was led in support of the charges and at which the applicant gave evidence (the proceedings are marked R 4A) and by R 6 of 19th February 1969 the applicant was informed that his services were terminated with effect from 3rd December 1968 as four of the charges against him had been proved.

On 21st February 1969 the applicant made his application under Section 31 B of the Industrial Disputes Act seeking relief from the Labour Tribunal. In that application he stated that the decision to terminate his services was excessive " for the offence of being under the influence of liquor whilst on duty ". In a subsequent application made on the same date he has denied that this was so in fact and claimed reinstatement and arrears of wages or in the alternative that he be paid Rs. 10,000 as compensation for loss of career.

The Union in its reply in March 1969 referred to the charges framed against the applicant ; the result of the findings of the domestic inquiry at which he was found guilty of four charges ; that he had been previously fined Rs. 5 in January 1968 for having caused damage to the Union lorry and submitted that there was ample justification for the termination of the applicant's services.

At the inquiry before the President, Counsel appeared for the parties. The Union led the evidence of the Secretary, Subramaniam Prathapan, the record of the proceedings at the domestic inquiry and the admissions made by the applicant both at the inquiry and in the pleadings. Prathapan's evidence at the domestic inquiry was marked R 4A and the evidence of the applicant R 5A. The applicant too gave evidence and was cross-examined at length by Counsel for the Union.

The President in his Order has unnecessarily dealt with all six charges which formed the subject matter of the domestic inquiry.

Since, however, the applicant was found not guilty of two of these charges and the Union only relied for their case on his conviction on the remaining four charges, it would be sufficient for the purposes of this appeal to consider the correctness of the President's order in respect of these charges. The charges in question are set down below :—

(*a*) That he did on 12th November 1968 carry an unauthorised load in the Union's lorry on his way to Colombo for sugar purchases ; and that he also received a gratification for carrying the above load ;

(*b*) That by careless and negligent driving he caused the following damage to the said lorry

(i) damage to the offside mudguard on 9th November 1968,
(ii) damage to the hood rack ;

(*c*) That he did on 2nd December 1968 drive the said lorry in a state of drunkenness from the employer's Sugar Depot to the Main Depot and was unable to reverse the lorry into the Main Depot and had it not been for the timely intervention of the Liaison Officer Mr. S. D. Dharmaratnam to have him removed from the lorry, the Union would have suffered heavy financial loss as a result of any damage that might have been caused to the lorry ;

(*d*) That he did on 1st December 1968 on his way back to Batticaloa from Colombo request the Sugar Depot Manager not to hand over the cement delivery order to the Manager of the Union knowing fully well that he would be asked to proceed to Trincomalee for the transport of cement and did thereby attempt to disorganise the working of the Union which was likely to cause financial loss to the Union.

In regard to Charge (*a*) there was an admission in R 3A that he " carried a load composed of three bundles of betel to Colombo " but did not accept money for the service but received only a cup of tea. In his evidence at the domestic inquiry (R 5A) he admitted that at Polonnaruwa he loaded three bundles of betel and took the betel and one Danapala to Colombo. At the domestic inquiry the cleaner Sinnatamby said that the applicant received money. In spite of the admission of the applicant the President holds that this charge has not been proved because " it has not been established whether the transportation of the passenger and the goods did in fact occur ". This finding is in the teeth of the admissions. The President appears to take the view that, because the Sugar Store Manager was in the lorry at the time, and did not give evidence, the charge has not been proved. Prathapan stated in evidence that it was the Sugar Store Manager who brought it to his notice and that the latter was unaware whether, what the applicant did was regular or not. Apparently it was because the Sugar Store Manager thought

it was irregular that he brought the matter to the notice of Prathapan. However, be that as it may, in view of the applicant's admissions there can be no doubt that the charge has been proved. This is such an elementary error that it deserves no comment.

In regard to Charge (*b*) the President accepts the evidence that damage was caused to the lorry by the applicant in November 1968 but considers it unnecessary to come to a finding because the applicant was fined and made good the loss. If this charge stood by itself, I think it was proper that it should not have been made the subject matter of a charge in the proceedings before the Tribunal, but the Union apparently referred to this charge in its answer because it was connected with the facts which formed the subject matter of Charge (*c*) where too it was alleged that he would have caused damage to the lorry and the Union premises by the negligent manner in which he attempted to reverse the lorry, while in a state of intoxication, and which damage was prevented by the timely intervention of the Union officials. Therefore, in considering the entirety of the case against him it was not irrelevant to take into account that he had admittedly caused previous damage to the Union lorry.

In regard to Charge (*c*) the Union Manager Dharmaratnam and Prathapen gave evidence at the domestic inquiry. Dharmaratnam's evidence was to the effect that the applicant was finding it difficult to reverse the lorry into the Union garage and was almost about to knock the wall of the southern end. He immediately instructed him to stop the lorry and asked another driver to garage it. He came into the Union premises staggering and drunk and was unable to stand erect. This same evidence was given by Prathapan. Dharmaratnam was not called at the inquiry before the President and the President took the view that he was not prepared to act on Dharmaratnam's evidence at the inquiry in regard to the applicant's state of intoxication in the absence of cross-examination. This is understandable but there was no invitation by Counsel that he should act on Dharmaratnam's evidence alone. Counsel relied strongly on Prathapan's evidence at the inquiry which was supported by Prathapan's testimony before the President. Prathapan gave direct evidence of the condition in which the applicant behaved, being an eyewitness to what happened. He stated that when the applicant came with the lorry on that occasion he observed that he was finding it difficult to reverse the lorry into the premises of the Union through its gates and he knew he was not normal; that Dharmaratnam asked him to get off the lorry and asked another driver to reverse the lorry and take it over and that when the applicant got off from the lorry he was not able to stand straight and he was smelling of liquor; that when the Liaison Officer wanted to take him before a Doctor the applicant said " Please excuse me this time, and that he was asking pardon for his drunkenness ". In cross-examination this evidence was not challenged and he repeated the evidence in chief that it was the Liaison Officer who asked the applicant

to stop and not himself. These were the only questions asked from Prathapan in regard to this matter although he was cross-examined at great length by Counsel. Nothing was suggested against Prathapan as to why he should give evidence against the applicant. For some unaccountable reason the President has chosen to ignore Prathapan's unchallenged evidence completely but proceeded to enter upon a lengthy dissertation on the undesirability of a driver who had returned from Colombo to Batticaloa being requested to bring the lorry from the Sugar Store to the Main Store, a distance of about ¼ mile, and asked to reverse the lorry into the Union garage. He accepts the position that the applicant had consumed liquor because the applicant himself admitted having consumed a dram of liquor and " consuming liquor is not itself a crime or violation of the rules of society " but Counsel for the Union submits, with considerable force, that the applicant must have consumed a fair quantity of liquor on the evidence that was led at the inquiry and comments on the untruthful nature of the applicant's evidence. This has not been considered by the President. The applicant has taken up various contradictory positions whether he had taken liquor or not and the reason for his partaking of liquor on this occasion. In examination in chief he stated that he took a dram of liquor because he was tired, in cross-examination he denied he was staggering and that he was quite fit, later he admitted that he was staggering when he got down from the lorry but that it was not due to tiredness, then in re-examination he stated that he usually staggers when he is tired. These contradictions were not considered by the President in deciding the material question whether he was not under the influence of liquor at the time he was asked to reverse the lorry into the garage. Had the President paused to evaluate the evidence on this charge there was ample justification for affirming the decision of the Union Committee who unanimously found the applicant guilty on this charge.

Finally, there remains for consideration Charge (*d*) which, if proved, indicated an attempt on the part of the applicant to sabotage the smooth functioning and the discipline necessary for a large body like the Union, entrusted with serving the public, from performing its duties conscientiously and efficiently. In his answer to this charge the applicant has stated " that he was not aware on 2nd December 1968 whether he would be asked to proceed to Trincomalee for the transport of cement ". This is in conflict with his testimony at the inquiry before the President, that he told the Sugar Manager Dharmasena to tell the Secretary to release him from driving the lorry from Batticaloa to Trincomalee. The applicant admits that the delivery orders had to be handed by the Sugar Manager to the Union office when the Secretary in turn would direct him to transport the cement to Trincomalee. There was evidence led at the domestic inquiry that on the evening of 2nd December the applicant was after liquor and drunk and was sleeping in the lorry when a messenger was sent to fetch him to transport the cement. The applicant had given the excuse that he was unable to proceed to Trincomalee because his child

was sick. The Sugar Manager stated in evidence at the domestic inquiry that the applicant stated that he (the applicant) was not well, that he was going to have a drink of arrack and asked him not to give the cement order to the Union office. There was sufficient evidence placed before the President, which, if it had been properly considered, would have been sufficient to find the applicant guilty of the fourth charge.

In regard to this charge the President has made the unfortunate observation that " even if it was " (i.e., proved) " I did not consider it an offence that would warrant the termination of the service of the applicant ". An observation of this nature, coming as it does from a functionary who is expected to act judicially can cause considerable damage in the eyes of the public. It almost amounts to a licence to a workman, if in his view he thinks the order of his superior officer to be unjustified and inconvenient, to openly flout such an order with impunity. Such an observation can only result in encouraging indiscipline in the relations between employer and workman. I have no doubt that the President did not realise the implications of what he had stated, but functionaries vested with the exercise of judicial power should be extremely cautious not to trespass beyond the bounds of the judicial sphere. The Government is quite conscious of the conditions of the working classes and the outcome of labour legislation in recent times indicate quite clearly that the Legislature is aware how and in what manner the condition of the workman requires amelioration. It is the function of the Executive to implement the matters of policy laid down by the law makers through the appointment of administrative officials and thereby ensure that laws are properly enforced. The Industrial Disputes Act has for its main object " the prevention, investigation and settlement of industrial disputes " and not the declaration of the ideal or desirable conditions under which workmen should perform their duties. Pronouncements of the nature made by the President in this case do not fall within the purview of the judicial sphere in which Labour Tribunals and Presidents of Labour Tribunals are expected to function and are likely to affect that detachment which should characterise the conduct of a person vested with judicial functions. I would in this connection commend to the attention of Presidents of Labour Tribunals the valuable observations made by my brother Weeramantry in *Ceylon Transport Board v. Gunasinghe* [1] (72 N. L. R. 76 at pp. 80 to 84), as an useful guide as to how Presidents of Labour Tribunals should perform their duties.

Before making my final order in this case, I would like to make certain observations in regard to the evidentiary value of depositions proved at a domestic inquiry, which are often marked and produced at the inquiry before the Labour Tribunal, as was done in the present case. These inquiries perform an useful purpose. They deal with the matter at issue, which invariably resolves itself to a decision on the facts and has the great advantage of expeditious disposal, before interested parties can

[1] *(1968) 72 N. L. R. 76 at pp. 80 to 84.*

influence the workman to put forward false explanations. There is also some element of natural justice, since the workman is given an opportunity of questioning the witnesses who have given evidence against him. Of course one cannot maintain that the conditions at a domestic inquiry are ideal because the workman may get the erroneous but unjustifiable impression that the entire management is arraigned against him and out to find him guilty and therefore he may not be able to effectively cross-examine the witnesses.

Proceedings before a Labour Tribunal do not require that strict degree of proof which is required in a Court of law. Section 36 (4) of the Act specifically states that strict compliance with the provisions of the Evidence Act is not necessary, and having regard to the duties and powers vested in Labour Tribunals under Section 31 C (1) " to make all inquiries into the application ", " hear all such evidence as the Tribunal may consider necessary " before making just and equitable orders, a wide discretion is vested in the President of a Labour Tribunal. Needless to say that does not mean that Presidents must not conform to the elementary principles of natural justice and evaluate the evidence in a judicial manner before making proper orders. There are several decisions of this Court which have laid down that this is an essential requirement of the law. In considering, however, what " just and equitable " orders should be made, I see no objection to Presidents of Labour Tribunals examining or even acting on the evidence led at the domestic inquiry, after satisfying themselves that the evidence has been properly recorded, ensuring that the workman had a fair opportunity of meeting the allegations made against him and seeking support for his findings from the evidence so led. No doubt, in certain matters the President has naturally to be cautious in accepting the deposition of a witness who has not been called at the inquiry before him. For instance, in this case, I appreciate the action of the President in not being prepared to act upon the evidence given by Dharmaratnam led at the domestic inquiry " that the applicant was staggering and drunk " in the absence of Dharmaratnam being called as a witness before him. This evidence was however amply supported by the other evidence led before him at the inquiry.

There only remains for consideration the ultimate decision which I propose to make on this appeal. In my view, there has been a failure by the President to consider relevant evidence particularly that of Prathapan, a failure to consider the admissions made by the applicant both in the pleadings and the evidence given by him at the domestic inquiry, an omission to consider material contradictions in the evidence of the applicant and a failure to make proper findings on the facts and to evaluate the evidence which makes the order of the President unsustainable. In the words used in the leading case of *Edwards v. Bairstow*[1] ((1955) 3 A.E.R. 148) " the conclusion reached on the evidence

[1] *(1955) 3 A. E. R. 148.*

is *so clearly erroneous that no person properly instructed in the law, and acting judicially could have reached that particular determination* ". No useful purpose will be served by remitting this case for a fresh inquiry before another Tribunal. In my opinion, the evidence against the applicant was so overwhelming that there was ample justification for the action taken by the Union in terminating his services.

The order of the President directing a reinstatement of the applicant with payment of back wages is therefore quashed and the appeal of the Union is allowed with costs.

Appeal allowed.