

INTERNATIONAL COSMETIC APPLICATORS (PVT) LTD.  
v.  
ARIALATHA AND OTHERS

COURT OF APPEAL.  
SENANAYAKE, J.  
C.A. APPLICATION 850/94  
APRIL 3, 1995

*Termination of Employment of Workmen Act 45 of 1971 – Strike – Settlement – Reported back to Work – Go slow campaign – Undertaking given by Workers to increase production – Go slow campaign again – Termination – Applicability of Act 45 of 1971 amended by Act 4 of 1976 and 51 of 1988.*

The entire Workforce of the Petitioner Company had gone on strike. As a settlement was reached, the workers reported back to work on the same day. Workmen had commenced a go slow campaign but after letters of warning were issued the workers gave an undertaking to increase production to normal level, but as the Workers continued with the go slow campaign, their services were terminated, on disciplinary grounds. On representation made the Commissioner of labour purported to act in terms of Act. No. 45 of 1971 as amended.

**Held:**

The termination was on disciplinary grounds as they were engaged in a go slow campaign despite having given individual undertakings to bring the output to normal production level. In such circumstances the employer need not get prior written approval of the Commissioner.

**Per Senanayake, J.**

The Commissioner is a creature of the Statute and he has no inherent powers as that of a Court of Law. The Commissioner is exercising powers under the statute

and it is in his own interest and the public interest that he should give reasons so that the parties would know the basis of the determination – there must be transparency of the acts done by public officers.

**Case referred to:**

CA 260/93, C.A.M. 8.9.95.

**AN APPLICATION** for Writ of Certiorari.

*Gomin Dayasiri* for petitioner.

April 28 1995.

**H. W. SENANAYAKE, J.**

This is an application for a mandate in the nature of a Writ of Certiorari to quash the order dated 31.8.94 marked P. 100 made by the 12th respondent.

The petitioner is a limited liability Company and the 1st to 10th Respondents were employees of the petitioner Company whose services were terminated and who were parties at the inquiry held by the 12th respondent in terms of the Termination of Employment of Workmen Act, No. 45 of 1971 as amended by 4 of 1976 and 51 of 1988 (hereinafter referred to as T.E. Act). The 11th Respondent is the Commissioner who delivered the order at the conclusion of the inquiry in terms of the T.E. Act. The facts relevant to the Application were as follows, on or about 22.11.93 the entire workforce around 200 workers went on strike. Thereafter on 1.12.93 a comprehensive settlement was reached and the workers reported back to work on the same day. The petitioner found that the 1st to 10th respondents commenced a go slow campaign. A notice was put up on 7.12.93 requiring that production be brought to the normal level. Letters of warning dated 9.12.93 were issued to the said respondents and the said respondents with their explanation gave an undertaking to increase production to normal level. But the respondents continued with their go slow campaign. Thereupon the services of the respondents were terminated on disciplinary grounds.

The Learned Counsel for the Petitioner submitted that the termination of the services was on disciplinary grounds as they were engaged in a go slow campaign despite having given individual undertaking to bring the output to normal production level. Section 2

sub-section 4 excludes the jurisdiction of the Commissioner when the matter arises or the termination arises on disciplinary grounds. The letters of termination served on the 10 respondents gives the reason for termination. The Learned Counsel submitted that the 11th and 12th respondents exceeded the jurisdiction.

I am of the view that there is force in the said submission. A reading of section 2 sub-section (4) of the T.E. Act would show that the Commissioner's powers are ousted when the termination has been made on disciplinary grounds under the terms of the T.E. Act. In such circumstances the Employer need not get the prior written approval of the Commissioner. The commissioner is a creature of the Statute and he has no inherent powers as that of a Court of Law.

I am of the view that the Commissioner had exceeded his jurisdiction and therefore the order P100 dated 31.8.94 has to be quashed by a mandate in the nature of a Writ of Certiorari.

It was submitted by the Learned Counsel that the 11th Respondent did not give reasons for its order. This Court had already taken the view in C/A 260/93 that there is an obligation on the Commissioner to give reasons for its determination. The Commissioner is exercising powers under the Statute and it is in his own interest and the public interest that he should give reasons so that the parties would know the basis of the determination. He is engaged in official duties under the T.E. Act. It is not a private matter and it is in the best interest that reasons should be given. There must be transparency of the acts done by public officers this could be achieved by giving reasons for their determination rather than making a "Blank Order".

The present trend has changed from the earlier restricted view that administrative tribunals need not give reasons for its order. However in the instant case the 11th respondent had filed the recommendations of the 12th respondent.

In the circumstances I allow the application by quashing the order of 31st August 1994 by issuing a Writ of Certiorari. I refrain from making an order for costs.

*Application allowed.*