

JANATHA ESTATES DEVELOPMENT BOARD
v.
CEYLON ESTATES STAFFS UNION
AND ANOTHER

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL NO. 41/93.
C.A. NO. 111/84.
L.T. CASE NO. 9/111 75/84.
NOVEMBER 24, 1993.

Industrial Dispute – Time bar in section 31 (D) (3) of Industrial Disputes Act.

The 1st respondent on behalf of its member: Shanmugaratnam, filed action against the employer for wrongful termination. On the 2nd respondent (Shanmugaratnam) desiring to conduct his own case, the Union stepped out of the case. The President decided to treat the application as an individual application but did not amend the caption. The Labour Tribunal on 29.09.83 dismissed the application stating that the employee had vacated his employment and the application was time barred.

Held :

- (1) The workman is the principal and has the choice of deciding –
 - (i) to appeal against the order of Tribunal,
 - and (ii) who is to prosecute the appeal i.e. either himself or by a chosen agent.
- (2) The workman was not fettered in pursuing an appeal in time by the failure of the Labour Tribunal to amend the caption.
- (3) Both the union and the 2nd respondent (operating from the same address) were obviously aware of the order of the Tribunal by 7.10.83 and there was no legal fetter against either of them appealing within time.

Cases referred to:

1. *United Plantation Workers Union v. Superintendent Craig Estate* 74 NLR 499
2. *Peiris v. Laksalite Roche Co.* 2 Sri Kantha's Law Reports 91.
3. *Somapala v. The Superintendent New Valley Estate, Norwood et al.* SC Appeal No. 13/89 SCM 03.04.92.

APPEAL on preliminary objection from order of Court of Appeal.

S. M. Fernando P.C. with *Miss H. Fernando* for appellant.

P. Valentine P.C. with *Varuna Senadheera* and *P. Senanayake* for 2nd respondent.

1st respondent absent and unrepresented.

Cur. adv. vult.

December 02, 1993.

KULATUNGA, J.

This is an appeal against the judgment of the Court of Appeal overruling a preliminary objection raised by the employer-appellant that the appeal against the order of the Labour Tribunal filed by the 1st respondent union (on behalf of its member Shanmugaratnam, the 2nd respondent) was time barred by section 31 (D) (3) of the Industrial Disputes Act.

The 1st respondent Union applied to the Labour Tribunal on behalf of the workman (2nd respondent) for relief in respect of the alleged

wrongful termination of his services by the employer-appellant. The employer-appellant denied the allegation and pleaded that the 2nd respondent had vacated his employment under the Emergency Regulations by participating in a strike and that he had failed to submit a valid medical certificate for reinstatement. At the inquiry on 04.05.83, the 2nd respondent desired to conduct his case whereupon Mr. Somasunderam, Counsel for the 1st respondent union withdrew. Thereafter, the president of the Labour Tribunal decided to treat the application as an individual application. However, no amendment to the caption was effected. On the same day, the evidence of the 2nd respondent was led by Mr. Kadiravel Attorney-at-Law. The inquiry was concluded and the order was reserved.

Although the 1st respondent union appears to have moved out of the case on 04.05.83, according to the proceedings dated 17.08.83 the 1st respondent union had the case called before the Labour Tribunal on a motion to enable the union to settle the dispute. On that day the parties were present and represented by Counsel. However, as they were unable to reach a settlement, Mr. Kadiravel moved to file written submissions of the 1st respondent union. The Tribunal allowed one month for written submissions. On 17.06.83, Mr. Kadiravel filed written submissions "on behalf of S. M. Shanmugaratnam".

On 29.09.83, the Labour Tribunal made its order dismissing the application, being of the view that the 2nd respondent had vacated his employment and that the application to the Tribunal was itself out of time as it had not been filed within 6 months from the date of the alleged termination of services. That order was communicated to the 1st respondent union. The Court of Appeal judgment states that the 2nd respondent came to know of the order only through the union.

On 07.10.83 the 2nd respondent had given a proxy to Mr. Someskadigaman Attorney-at-Law authorising him to file an appeal in his name against the order of the Labour Tribunal. However, Mr. Someskadigaman prepared an appeal dated 07.10.83 in the name of the 1st respondent union (who was the applicant on record). This appeal was filed on 27.02.84 together with the said proxy of the 2nd respondent. The appeal was registered as the union's appeal and the Court of Appeal Registry kept the 1st respondent union

informed of the steps; and the appellant's brief was collected by an authorised representative of the 1st respondent union. At the hearing before the Court of Appeal Counsel who supported the appeal marked their appearance as Counsel for the appellant union.

However, when the objection as to the time bar was taken against the appeal, appellant's Counsel made the submission that after the 2nd respondent had been allowed to conduct his case before the Labour Tribunal treating it as an individual application, the Tribunal had failed to amend the caption by substituting the 2nd respondent and to communicate its order to the 2nd respondent. Counsel conceded that the appeal was outside the statutory time limit namely 14 days from the date of the order but submitted that the delay should be excused in view of the principle that time will run only from the date of the receipt of the order by the appellant. *United Plantation Workers Union v. Superintendent Craig Estates* ⁽¹⁾. The Court of Appeal accepted this submission and held that the delay can be excused and added that even if the 2nd respondent was aware of the order against him as early as 07.10.83 (the date of his proxy) he could not legally prefer an appeal as the Labour Tribunal had failed to amend the caption substituting him as the applicant.

There is no doubt that a workman is the principal in an application made by a union on his behalf to the Labour Tribunal and is entitled to be substituted in place of the Union and proceed with the application. *Peiris v. Laksalite Roche Co.* ⁽²⁾. However, it is not clear whether in the instant case the 2nd respondent intended to exercise this right or whether all that he desired was to conduct the case though a Counsel retained by him. Thus, even after the Labour Tribunal reserved its order the 2nd respondent's interests were being looked after by the 1st respondent union as is evident from the proceedings of 17.08.83 when the case was called for settlement by the union and Mr. Kadiravel obtained leave to file written submissions on behalf of the Union. It is true that written submissions were subsequently filed on behalf of the 2nd respondent. However, the next step viz. the appeal against the Labour Tribunal order was taken by the 1st respondent union even though the 2nd respondent's proxy shows that an appeal in his name was contemplated.

This Court has held that a workman, on whose behalf a Trade Union has filed an application before the Labour Tribunal, may appeal to the Court of Appeal **as appellant** (the union not being designated as a party in the appeal) from the order of the Tribunal. The workman is the principal and as such has the choice of deciding –

- (i) to appeal against the order of the tribunal; and
- (ii) who is to prosecute his appeal i.e. either himself or by a chosen agent.

Somapala v. The Superintendent New Valley Estate, Norwood et al⁽³⁾, In that case the Labour Tribunal held on the application of the union that the termination of the workman's services was justified. The union did not appeal, instead the workman himself by his agent, an Attorney-at-Law who filed proxy appealed to the Court of Appeal.

In the circumstances, I am unable to agree with the reasoning of the Court of Appeal that the 2nd respondent was fettered in pursuing an appeal in time by the failure of the Labour Tribunal to amend the caption of the case. As was held in *Somapala's* case, he had the right to file the appeal himself. The fact that he gave his proxy dated 07.10.83 shows that he was aware of his rights. However, the attorney-at-law filed an appeal in the name of the 1st respondent union without a proxy. The absence of a proxy for the union appeal was not raised at the hearing before us but I have found from the Court of Appeal record that the 1st respondent union itself had not given a proxy. If so, the appeal also may be bad for want of authorization. It is possibly in view of this defect that Counsel for the appellant union in the Court below has informed the Court that the 2nd respondent (who was not a party to the appeal) will adopt the averments in the petition of appeal filed by the union and on that basis obtained an order to proceed with the appeal as though it was the 2nd respondent's appeal. This is confirmed by the fact that in this Court no written submissions were filed on behalf of the 1st respondent union who was also absent and unrepresented.

Both the union and the 2nd respondent (operating from the same address) were obviously aware of the order of the Tribunal by

07.10.83 and there was no legal fetter against either of them filing the appeal within time. The appeal filed on 27.02.84 is clearly out of time and the delay cannot be excused. In overruling the preliminary objection the Court of Appeal has misdirected itself on the facts and the law.

For the foregoing reasons, I allow the appeal, and set aside the judgment of the Court of Appeal. The appeal to the Court of Appeal is dismissed on the ground that it is time barred. No costs.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.
