

WILSON  
v.  
CEYLON ELECTRICITY BOARD AND OTHERS

COURT OF APPEAL.  
DR. RANARAJA, J.  
C.A. NO. 285/97.  
OCTOBER 20, 1997.

*Industrial Disputes Act – Section 49 – Employee of Electricity Department – After the enactment of the Ceylon Electricity Board Act 17 of 1969 worked for the Board – Services terminated – Reinstated by Labour Tribunal – Ordered to pay compensation, backwages and pension – Can pension be paid? – Validity of that part of the Order of the Labour Tribunal.*

**Held:**

(1) Order granting a pension as a public servant to the petitioner who has also drawn E.P.F. contributions as an Employee of the Board is *ex facie ultra vires* the Industrial Disputes Act.

\*An order which is a Nullity hurts nobody so long, it is not sought to be enforced. The party against whom it was made may choose, if it was made without foundation, to have it quashed by a writ of certiorari or declaratory action, but he is entitled to wait until proceedings are taken to enforce it against him and then attack its validity.

(2) A public servant has no absolute right or legal right to a pension enforceable by Mandamus.

(3) The petitioner having successfully filed the application before the Labour Tribunal and having obtained relief as an employee of the Board and not as an employee of the State, cannot now claim that he was an employee of the State.

**APPLICATION** for Writs of Certiorari/Mandamus.

**Cases referred to:**

1. *Bandahamy v. Senanayake* – 62 NLR 313.
2. *Rajakulendran v. Wijesundara* – 1 SRI – LR Part 12 – 169.
3. *Brown & Company v. Ratnayake* – 1994 3 SLR 91.
4. *Mohamed Ali v. Rasheed Ali* – 1981 1 SLR 262.
5. *Attorney-General v. Abeysinghe* – 78 NLR 361 at 364.
6. *Gunawardane v. Attorney-General* – 49 NLR 359.
7. *Udayakumar v. Major General Nalin Seneviratne* – 1987 1 SLR 390.

L. C. Seneviratne, P.C. with Lakshman Perera for petitioner.

L. M. K. Arulanandan, S.S.C. for Attorney-General.

*Cur. adv. vult.*

October 23, 1997.

**DR. RANARAJA, J.**

The petitioner was employed by the Electricity Department on 1.7.64 as a temporary office labourer and as an office peon with effect from 3.1.68. He was appointed as a grade III storekeeper in the said Department on 3.5.69. After the enactment of Ceylon Electricity Board Act, No. 17 of 1969, the petitioner **claims** to have opted to continue as a public officer of the Department of Government Electrical Undertaking and to work for the Board. The petitioner was interdicted from service on 14.5.73. Although he was reinstated in service on 12.10.80, he was dismissed from service after a domestic inquiry on 8.5.85. On an application made by him to the Labour Tribunal, the petitioner obtained order (P6) in his favour on 28.5.92. An appeal by the 1st respondent Ceylon Electricity Board to the Provincial High Court was dismissed on 17.9.93. The 1st respondent thereupon wrote P6(b) to the petitioner stating that it would pay the petitioner a sum of Rs. 319,200/- as compensation, backwages from 14.5.73 and also a pension on the basis that he was a Government employee who has been absorbed into the Board. The petitioner had in the meantime retired from service on 4.7.91.

The petitioner wrote P7 to the 2nd respondent, Director Pensions, requesting him to pay the petitioner's pension. The petitioner was directed by letter P7a of the 2nd respondent to forward the relevant pension papers to the Divisional Secretary, through the Head of Department. The petitioner then wrote letter P7b to the General Manager of the 1st respondent to comply. The Deputy General Manager of the 1st respondent wrote P8 stating that the pension papers were being prepared. However by P9 that officer forwarded the relevant file to the Personnel Manager of the 1st respondent for further action. Subsequently, the Deputy General Manager by letter P10, whilst indicating that the petitioner had served a period of 84 months and 17 days, sought further clarification from the Deputy General Manager (personnel) regarding the preparation of the

pension papers. The petitioner has not filed any reply to P10 from the Deputy General Manager (personnel). The petitioner complains that by P10 the 1st respondent **has refused** the entitlement of the petitioner to his pension and such refusal is illegal, unreasonable and a denial of his legitimate expectation to a pension, **in the light of the order of the Labour Tribunal and High Court**. He seeks *inter alia*, (a) a writ of certiorari quashing the "decision" of the 1st respondent contained in letter P10, **not to pay the pension to the petitioner**. (b) a writ of mandamus directing the 1st respondent to send the relevant pension paper of the petitioner to the relevant Divisional Secretariat.

At the outset it must be noted that there was **no refusal** by the Deputy General Manager of the 1st respondent to pay the petitioner a pension in P10, as alleged by the petitioner. What the Deputy General Manager has sought is further advise on awarding the petitioner a pension. Therefore P10 does not contain a final decision which is amenable to writ jurisdiction.

The petitioner has however based his application on the order P6 of the Labour Tribunal President. Order P6 has been made under the Provisions of the Industrial Disputes Act. Section 49 of that Act states "Nothing in this Act shall apply to or in relation to the State or the Government in its capacity as employer, or to or in relation to a workman in the employment of the State or the Government."

The petitioner having successfully filed the application before the Labour Tribunal and having obtained the preliminary order 1R1 from the Labour Tribunal that he was an employee of the 1st respondent Board, and not an employee of the State or Government, cannot now claim that he was an employee of the State. The tribunal has awarded a sum of Rs. 319,200/- as compensation together with backwages from 14.5.73 amounting to Rs. 888,605/50 (A25), which includes E.P.F. contributions. These sums have been paid by the 1st respondent to the petitioner. An employee of a statutory Board who has drawn E.P.F. contributions is not entitled to draw a pension on the basis he is also a public servant.

Since order P6 granting a pension as a public servant, to the petitioner who has also drawn E.P.F. contributions as an Employee of

the 1st respondent is *ex facie* made *ultra vires* the provisions of the Industrial Disputes Act, this Court will not enforce that part of the order by way of extraordinary writ jurisdiction.

"An order which is a nullity hurts nobody so long as it is not sought to be enforced. The party against whom it was made may choose, if it was made without jurisdiction, to have it quashed by a writ of certiorari or declaratory action. but he is also entitled to wait until proceedings are taken to enforce it against him, and then attack its validity ... I dissent from the view that an award made without jurisdiction must be executed merely because it does not bear any fatal flaws on its face" – Per Sansoni, J. in *Bandahamy v. Senanayaka*<sup>(1)</sup>, which was followed by G. P. S. de Silva, J. in *Rajakulendran v. Wijesundara*<sup>(2)</sup>. The order of the Labour Tribunal awarding the petitioner a pension is a nullity which this Court will not enforce.

Learned counsel for the petitioner submitted that the 1st respondent has considered the petitioner entitled to a pension and so informed the petitioner by P15, therefore, the 1st respondent is bound by that letter to pay the petitioner a pension. That document is an uncertified photocopy of a document, which cannot be considered as part of the evidence in support of his counter objections, in terms of Supreme Court Rule 3(1) (a). (See: *Brown & Co. v. Ratnayake*<sup>(3)</sup>, *Mohamed Ali v. Rasheed Ali*<sup>(4)</sup>). In any event, the principle laid down in **Bandahamy** and **Rajakulendran** will apply to that document. The same applies to document P13.

It is also to be noted that a public servant has no absolute right or legal right to a pension enforceable by mandamus. (See: *Attorney-General v. Abeyasinghe*<sup>(5)</sup> at 364, *Gunawardane v. Attorney-General*<sup>(6)</sup>, *Udayakumar v. Major General Nalin Seneviratne*<sup>(7)</sup>). In the circumstances, the petitioner has no right to relief (b) in the petition.

For the reasons given this application fails. The application is dismissed without costs.

*Application dismissed.*