

SRI LANKA BROADCASTING CORPORATION

v.

DE SILVA

COURT OF APPEAL

VICTOR PERERA, J. AND L. H. DE ALWIS, J.

C. A. APPLICATION 176/81.

JULY 6, 1981.

Labour Tribunal—Application made to revise order of such Tribunal after appealable period—Does revision lie—Constitution of Sri Lanka, 1978, Articles 138, 139, 140, 145.

The petitioner filed an application to revise an award made by the President of a Labour Tribunal. The application was filed several months after the appealable period. The preliminary objection was taken that such an order could be called in question only by way of appeal on a question of law.

Held

The preliminary objection must be upheld and that the powers of Court of Appeal by way of revision did not extend to orders of the Labour Tribunal.

Cases referred to

(1) *Mrs. Thameena v. Koch*, (1969) 72 N.L.R. 192.(2) *Timber Craft Ltd. v. Peiris*, (1981) 2 Sri L.R. 219.

APPLICATION to revise the order of a Labour Tribunal.

Lyn Weerasekera, with *M. Devasagayam*, for the petitioner.*K. Shanmugalingam*, with *K. Thevarajah*, for the respondent.*Cur. adv. vult.*

July 15, 1981.

VICTOR PERERA, J.

This is an application by way of revision filed by the petitioner on the 11th February, 1981, to have an award made by the President at a Labour Tribunal dated 31st October, 1980, quashed several months after the appealable period.

The respondent-workman had made an application to the Labour Tribunal for relief alleging that his services had been illegally terminated by the Sri Lanka Broadcasting Corporation, the petitioner. An inquiry was held by the President of the Labour

Tribunal under the provisions of the Industrial Disputes Act (Chap. 131) as amended by Acts Nos. 14 of 1957, 62 of 1957 and 27 of 1966. At the conclusion of the inquiry the President made an order on the 31st October, 1980, that the respondent-workman should be re-instated. The petitioner in his affidavit admits having received the order on the 7th November, 1980, but states that the matter had remained in the office unattended to as the officer normally dealing with matters of this nature was on leave. The appellant admits that he did not appeal against that order for that reason within the appealable period.

Counsel for the respondent took up the preliminary objection that the petitioner-employer had a right of appeal against that order within the period of 14 days specified in section 31D. He submitted that under the provisions of section 31D (1) and (2) of the Industrial Disputes Act the order could be called in question *only by way of an appeal* on a question of law and that after the lapse of the appealable period when no appeal had been filed, the order became final and conclusive and could not be called in question in any Court. He further contended that the petitioner having failed to appeal against the order had been guilty of laches and having delayed taking any steps instead of making an application for a writ of certiorari had sought the intervention of this Court by way of revision. He cited the judgment of the Supreme Court in the case of *Mrs. Thameena v. Koch (1)* where Tennekoon, J. held that the revisionary powers of the Supreme Court do not extend to revision of orders made by Labour Tribunals.

Mr. Lyn Weerasekera, counsel for the petitioner, contended that that was a decision in 1969 before the Constitution of the Democratic Socialist Republic of Sri Lanka (1978) was proclaimed and was therefore not applicable in respect of such orders after the promulgation of the Constitution. He relied on Article 138 of the Constitution in support of his contention.

The then Supreme Court's powers in regard to appeal and revision are contained in section 19 (b) of the Courts Ordinance (Chap. 6) (Revised Legislative Enactments). In dealing with the jurisdiction and powers of the Supreme Court, section 19 (b)

provided that the Supreme Court shall have and exercise—

- (b) an appellate jurisdiction for the correction of all errors as hereinafter specified, which shall be committed by any original Court, and sole and exclusive cognizance by way of appeal and revision of all causes, suits, actions, prosecutions, matters and things of which such original Court may have taken cognizance.

This Article 138 of the Constitution provides that the Court of Appeal shall have and exercise an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any Court of First Instance, Tribunal or other institution and sole and exclusive cognizance by way of appeal, revision and *restitutio in integrum* of all causes, suits, actions, prosecutions, matters or things of which such *Court of First Instance, Tribunal or other institution* may have taken cognizance, *subject to the provisions of the Constitution or of any law*. Though the jurisdiction was extended to cover Tribunals and other institutions the exercise of that power was made subject to the provisions of the Constitution or of *any law*. The Industrial Disputes Law had provided only for an appeal on a question of law but not for applications for revision. On the other hand the Civil Procedure Code (Chap. 101) in section 753 provides for applications by way of revision in addition to the right of appeal in all civil cases in the District Court. Sections 364 and 366 of the Code of Criminal Procedure Act, No. 15 of 1979, has given this Court power to act by way of revision in criminal cases. A consideration of the next following Articles of the Constitution indicate the correct construction and application of the powers referred to in Article 138. Article 139 deals with the exercise of the powers of this Court *in appeals* from an order, judgment, sentence of a court of First Instance, Tribunal or other institution. Article 140 has granted the Court of Appeal full power and authority to call for and inspect the records of *any Court of First Instance or Tribunal or other institution in the exercise of its powers to issue writs*. But in regard to the exercise of its revisionary powers, the Court of Appeal had been given the power to call for and inspect any *record of any Court of First Instance only* and not the records of Tribunals and other institutions. This would therefore exclude the

examination of the record in a Labour Tribunal by way of revision.

Mr. Lyn Weerasekera, then sought to rely on Article 145, but that Article gave powers to this Court to examine and inspect records only of a *Court of First Instance* and make orders in its exercise of its *revisionary powers*. This Article therefore limits the exercise of such powers by this Court to records of Courts of First Instance only. He referred us also to the case of *Timber Craft Ltd. v. Premasiri Peiris (2)*, a judgment of Ranasinghe, J. and Tambiah, J., where this Court had purported to have entertained an application for revision and made an order. In fairness to the said learned Judges who heard that case, it would appear that this objection had not been raised before them and therefore no opportunity afforded to that Bench to consider this question. There has been no pronouncement made in regard to the question of jurisdiction and that Bench had proceeded to inspect the record of the Labour Tribunal and had made order.

I am of the view that the preliminary objection was well founded and I therefore uphold it.

The application is dismissed with costs.

L. H. DE ALWIS, J.—I agree.

Application dismissed.