



*N. Satyendra*, with *L. A. T. Williams* and *P. Suntheralingam*, for the petitioner.

*N. Singaravelu*, for the 1st respondent.

*V. C. Goonetillake*, Deputy Solicitor-General, with *Lal Wimalaratne*, State Counsel, for the 3rd and 4th respondents.

April 30, 1976. RAJARATNAM, J.

This application for a Writ of Certiorari is made by Messrs. Moosajees Limited seeking to quash the order made by the Commissioner of Labour under the provisions of section 6 of the Termination of Employment of Workmen (Special Provisions) Act requiring the petitioner to reinstate ten workmen belonging to the respondent union.

The main ground relied upon by the petitioner was that the company was not the employer of any of these ten workmen and that it had not terminated the services of the workmen and that in these premises the Commissioner of Labour had no jurisdiction to make any order under section 6 of the said Act.

The respondents to this petition are the union which represented the workmen and the Labour Officials. The 2nd respondent was one Mr. Upasaka Appu who according to the petitioner was an independent contractor providing for the company the services of these workmen for unloading, baling and loading of coconut fibre for export. According to the petitioner payment was made on the basis of piece rate.

The petitioner filed two affidavits one from a director of the company, Mr. Asker Salehbhoy Moosajee, and the other from the 2nd respondent Mr. Upasaka Appu.

According to the affidavits of both these persons, the 2nd respondent was the sole employer of the workmen and exercised disciplinary control of the workmen and exercising his sole right to do so terminated their services at the end of the second respondent's contract with the petitioner.

Learned counsel for the petitioner submitted before us that in the circumstances of this case, and where the Commissioner of Labour is given special statutory jurisdiction to make orders under section 6 of the Act, it was not open for him where facts are in issue with regard to the question of who the employer is and whether there was a termination, to subjectively adjudicate on these matters and assume jurisdiction to make orders under section 6. He submitted that there must be an objective existence of facts for the exercise of jurisdiction under the provisions of the Act.

While we agree that an erroneous finding on the law and on the facts on the face of the record may be a matter for a Writ of this nature, we do not think we can agree to the proposition that the jurisdiction of the Commissioner of Labour can be limited to a situation when there is no dispute with regard to employment and termination. If that were so, it is open to every dishonest employer to dispute these questions and oust the jurisdiction of the Commissioner. It will lead to the provisions of the Act being stultified especially in cases where the remedial relief is most deserving. It is our view that on the facts placed before the Commissioner, it is within his powers to make his order under section 6 even against an employer who disputes that he is an employer. In this case the facts and circumstances amply prove not only that the petitioner is an employer but that he is wrongly and/or falsely disputing that fact.

We have perused the findings of the Assistant Commissioner of Labour (p. 43), the 4th respondent in this application and the reasons set out therein. On the documentary and oral evidence led, the evidence was overwhelmingly convincing that the petitioner company was the employer. The Works Manager of the company has suspended even Upasaka Appu's son from work. The General Manager and the Director have sent letters of warning to the workmen with copies to the Works Manager and all the evidence shows that the workmen were under the direct supervision and disciplinary control of the management of the petitioner Company. Upasaka Appu did not appear to know why he was paid Rs. 75 a week by the company. The notice terminating the services of K. Hemapala the son of Upasaka Appu who claims to be the employer of his son was proved to have been sent by Moosajeets Ltd., although signed by the father. There is an admission in the written submissions furnished on behalf of the employer that the work place was made out of bounds for Upasaka Appu (*vide* p. 6). At every turn there is evidence that every incidence of employment was by Moosajeets and that Upasaka Appu was a puppet. It appears fairly clear that this was a device adopted by the petitioner to escape the liabilities of an employer.

The findings of the labour authorities were justified on the evidence led and we see no error on record. We are of the view that the averments in the affidavits filed in this application with regard to the employment of these workmen cannot be accepted.

It is evident on the material before us that Moosajeets Ltd. employed Upasaka Appu to serve as a tool in their hands to themselves escape liabilities of employment. The pleadings in

their petition and affidavit do not contain a full disclosure of the real facts of the case and to say the least the petitioner has not observed the utmost good faith and has been guilty of a lack of *uberrima fides* by a suppression of material facts in the pleadings. It was neither fair by this Court nor by his counsel that there was no full disclosure of material facts. Learned counsel for the petitioner acted very properly when he did not pursue a certain line of argument when we referred him to certain documents and facts which he was not aware of and which were elicited in the course of the inquiry before the Labour Officials.

If I may repeat the words of Wigram V. C. in the case of *Castelli v. Cook*, (1849) 7 Hare, 89, 94 :—

“A plaintiff applying *ex-parte* comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact had been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go”.

In the circumstances, we have refused this application with costs payable by the petitioner-employer fixed at Rs. 1,000 to the first respondent and another sum of Rs. 1,000 to be paid to the 3rd and fourth respondents. The application is refused accordingly.

SIRIMANE, J.—I agree.

COLIN THOME, J.—I agree.

*Application refused.*