

WEERADASA
v.
SUPERINTENDENT,
MORAGALLA STATE PLANTATION AND OTHERS

COURT OF APPEAL.
H. W. SENANAYAKE, J.
C.A.899/85
L.T. NO. 16678/85
JULY 01, 1993.

Industrial Law – Industrial dispute – Withdrawal of application without reservation of liberty to file a fresh application – Natural Justice – Failure to hear both parties.

Where a Workers Union withdrew an application made on behalf of a workman on the grounds of unlawful termination with reserving liberty to file a fresh action on the same dispute and the applicant filed a fresh application for re-instatement with back wages or in the alternative for compensation and the President dismissed the application on the date fixed for answer without giving a hearing to the applicant on the ground that the withdrawal of the first application constituted an estoppel –

Held:

There is a duty cast on the President to make inquiries. The Tribunal had acted in breach of section 31 C(1) of the Industrial Disputes Act and contrary to the principle of *audi alteram partem*. The Tribunal had failed to give a fair hearing and acted peremptorily and capriciously in dismissing the application.

Case referred to :

1. *Ceylon Workers Congress v. A. V. Subramaniam Pillai* 77 NLR 335.

APPEAL from order of Labour Tribunal.

R. Sahabandu for appellant.

S. M. Fernando for respondent.

Cur adv vult.

August 24, 1993

H. W. SENANAYAKE, J.

This is an appeal from the order of the Learned President dated 12.12.85 where the Tribunal held that the Applicant was estopped in proceeding with the present application and dismissed his application.

The Applicant-Appellant stated in his application that he was employed as a Labourer in the Respondent plantation since 1975 and he alleged that his services were unjustifiably and wrongfully terminated on 20.5.75. He stated that he was paid Rs. 24/44 daily at the time of termination. He prayed that he be reinstated with back wages or in the alternative prayed for compensation.

The Employer-Respondent filed answer and averred that an application was made on behalf of the worker by Lanka Jathika Workers Union on 24.8.85 on the grounds that the services of the Worker were terminated on 20.5.85 in case No.G/ 16636 and the Union had withdrawn the application and the application had been dismissed without the liberty to file a fresh action on the same dispute. They averred that the Applicant legally cannot proceed with the action. They further averred that the Applicant's services were not terminated. They alleged that the Applicant failed to come to work after 9.5.85. Neither had the Applicant failed to inform his inability to report to work. They further alleged that he was detected felling trees from the estate forest reservation and thereafter he had not reported to work. They prayed that the application be dismissed.

The learned Counsel for the Appellant submitted that the Learned President dismissed the application on the date of the answer without giving an opportunity to file replication or explain the position to the Tribunal. He submitted that the Tribunal erred in not giving a hearing to the Appellant. The Appellant was not given an opportunity to file a replication and/or explain his position. He referred to Section 31C (1) of the Industrial Disputes Act. He submitted that the Tribunal has,

- (a) duty to make all such inquiries into that application;
- (b) hear all such evidence as the Tribunal may consider necessary;
- (c) make a just and equitable order.

The submission was that the Tribunal had acted arbitrarily without even making any inquiry and giving an opportunity for the Applicant to explain his position.

I am of the view that there is force in the submission that there is a duty cast on the President to make all inquiries. That does not mean he should only make inquiries from one party. If he does so it would be an improper procedure adopted by the Tribunal. In the instant case there had been no evidence led as to why the first application made by the Union was withdrawn and the present Applicant in the instant case did not get any chance of explaining his position and could not file any replication. The Tribunal on the submissions made by the Counsel for the Respondent held that the Applicant was estopped as the first application filed by the Union was withdrawn without liberty to file a fresh application.

I am of the view that the Tribunal had only acted in breach of Section 31C (1) of the Industrial Disputes Act, but also acted contrary to the principles of "*Audi Alteram Partem*". As wade in his book "*Administrative Law*" Sixth Edition page 497 states,

"It is fundamental to fair procedure that both sides should be heard, *audi alteram partem* 'hear the other side'. This is the more far reaching of the principles of natural justice, since it can embrace almost every question of fair procedure, or due process and its implications can be worked out in great detail. It is also broad enough to include the rule against bias, since a fair hearing must be an unbiased hearing."

The Tribunal had failed to give a fair hearing. The Tribunal acted peremptorily and capriciously in dismissing the application.

The Learned Counsel for the Respondent relied on the decision of *Ceylon Workers Congress v. A. V. Subramaniam Pillai*⁽¹⁾, where the Supreme Court held that when an application before a Labour Tribunal has been dismissed with the consent of the parties another application cannot be made subsequently as between the same parties in respect of the same dispute.

The facts in that case were the Socialist Workers Congress originally made an application in respect of the 11 workers and the parties agreed that facts relating to all the Applicants are the same and they could be disposed of together. Thereafter a motion was filed to withdraw the 11 applications and the Tribunal dismissed the said applications. There was no appeal from the dismissal. Thereafter the Ceylon Workers' Congress made the application on behalf of the 11 Applicants. The Union filed replication and stated that they did not consent to the withdrawal but did not deny that at the relevant period the Socialist Workers Congress did not represent them, and they were members of the said Union. The matter was fixed for inquiry and the learned President had made an order after considering the legal submissions and the replication filed by the Union on behalf of the Union.

It's clear from the facts that those facts have no bearing on the instant case. There is always a danger in relying on authorities blindly where the facts are different. In the instant case the matter was not fixed for inquiry nor was an opportunity given to the Applicant workman to file a replication nor was he heard. I am of the view that the Tribunal had erred in law in dismissing the application.

I set aside the order and direct the Tribunal to fix the matter for inquiry and hear both sides and make an order regarding the objections taken by the Respondents. I direct the Registrar of the Court of Appeal to forward the record forthwith to the Labour Tribunal for disposal without any delay.

I allow the appeal with costs fixed at Rs. 1050/-

Case sent back for inter-partes inquiry.