YASEEN OMAR
v.
PAKISTAN INTERNATIONAL AIRLINES CORPORATION AND OTHERS

SUPREME COURT
DHEERARATNE, J.,
WADUGODAPITIYA, J. AND
BANDARANAYAKE, J.
S.C. APPEAL NO. 28/96
C.A. NO. 457/93
CASE NO. TEU/C/8/90
JUNE 14, 1999.

Industrial Dispute – Termination of employment – Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 – Order under section 6 of the Act – Writ of certiorari – Natural justice – Section 17 of the Act.

The 1st respondent company (the employer) purported to terminate the services of the appellant (the workman) who was employed as its District Sales Manager. In an action instituted by the workman, the District Court granted a declaration that he continued in service under the 1st respondent as District Sales Manager. On an appeal by the employer, the Supreme Court affirmed the judgment of the District Court subject to a variation that the purported termination was unlawful; hence, the workman continued to be in the service of the employer as District Sales Manager. Whereupon, the workman requested the employer to reinstate him with back wages. The employer failed to do so; and the workman made a complaint to the 2nd respondent (the Commissioner of Labour). After inquiry the Commissioner acting in terms of s. 6 of the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971 directed the employer to reinstate the workman and to deposit a sum of Rs. 4,858,875 as back wages. That order was based on the findings of the 3rd respondent (Assistant Commissioner of Labour) who inquired into the complaint and recommended that in view of the judgment of the Supreme Court the workman should be reinstated. He also recommended the payment of back wages. The quantum of the payment was supported by two documents setting out the details of salary and allowances of the workman produced at the inquiry which documents were not challenged by the employer.

Held:

1. Neither the Common Law nor principles of natural justice require as a general rule that administrative tribunals or authorities should give reasons for their decisions that are subject to judicial review.

2. There is no statutory requirement imposed on the Commissioner to give reasons for his decision; nor do the circumstances reveal that he acted in contravention of section 17 of the Act which requires him to hold the inquiry in a manner not inconsistent with the principles of natural justice.

3. The Court of Appeal erred in setting aside the order of the Commissioner on the ground that "giving of reasons is a *sine qua non* for a fair hearing".

Cases referred to :

1. *Padfield v. Minister of Agriculture* – (1968) AC 997.
2. *R v. Secretary of State for Social Services ex parte Connolly* – (1986) 1 WLR 421.
3. *Public Service Board of New South Wales v. Osmand* – (1985-86) 159 Commonwealth Law Reports 657.
4. *Samalanka Limited v. Weerakoon, Commissioner of Labour and Others* – (1994) 1 Sri LR 405.
5. *R v. Higher Education Funding Council, ex parte Institute of Dental Surgery* – (1994) ALL ER 651.
6. *R v. Civil Service Appeal Board ex parte Cunningham* – (1991) 4 ALL AER 310.
7. *Doody v. Secretary of State for the Home Department* – (1993) 3 ALL ER 92.

APPEAL from the judgment of the Court of Appeal.

R. K. W. Goonesekera, with *G. Alagaratnam* and *S. Jayatilake* for appellant.

Faisz Musthapha, PC with *N. Joseph* and *J. C. Boange* for 1st respondent.

Harsha Fernando, SC for 2nd and 3rd respondents.

Cur. adv. vult.

September 22, 1999.

BANDARANAYAKE, J.

Special leave to appeal was allowed by this Court on the following questions :

1. did the Court of Appeal err in setting aside the impugned order Y4 on the ground that the giving of reasons is a *sine qua non* for a fair hearing;

2. in any event was the Court of Appeal in error in setting aside the entire order including the determination for reinstatement;

3. was the Court of Appeal in error in holding that the impugned order was vitiated by the failure to give reasons in the facts and circumstances of this case;

4. is the impugned order vitiated by the failure on the part of the 2nd respondent and/or 3rd respondent to place material before the Court of Appeal in support of the said order.

The 1st respondent petitioner (petitioner) was appointed by the petitioner – 1st respondent (1st respondent) as its District Sales Manager with effect from August, 1971 and was functioning as its Manager. By letter dated 20.11.1974, the 1st respondent purported to terminate the services of the petitioner with effect from 01.01.1975. The petitioner instituted action in the District Court of Colombo for a declaration that he held the office of District Sales Manager of the 1st respondent and that his services had not been lawfully terminated. The District Court granted the declaration as prayed for and held that the petitioner continued in service with and under the 1st respondent as District Sales Manager. On an appeal the Court of Appeal affirmed the said judgment. The respondent appealed to the Supreme Court and the Supreme Court by its judgment dated 25.02.1987 affirmed the said judgment subject to a minor variation and held that termination of the services of petitioner was not lawful and that he continued to be in the services of the respondent as Direct Sales Manager. The

petitioner, thereafter, had repeatedly requested the respondent to comply with the judgment of the Supreme Court and to reinstate him with back wages. The 1st respondent had failed to do so.

By letter dated 12.01.1998 the petitioner requested the 2nd respondent to make an appropriate order under the provisions of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971. On a letter sent by the petitioner on 24.09.1990, the 2nd respondent instituted an inquiry and made order (Y4) dated 30.04.1993 directing the respondent to reinstate the petitioner with effect from 17.08.1993 and to deposit a sum of Rs. 4,858,875 as back wages of the petitioner.

The 1st respondent did not comply with the order of the Commissioner of Labour (2nd respondent) but, appealed against the order of the 2nd respondent to the Court of Appeal for the issue of a mandate in the nature of a *writ of certiorari* quashing the order of the 2nd respondent (P1, P2, P3, P3*a*). The Court of Appeal by its order dated 24.10.1995 held that the failure of the 2nd respondent to give reasons for his order was in breach of section 17 of the Termination of Employment Act, No. 45 of 1971 and allowed the application for the issue of the *writ of certiorari* and quashed the order of the 2nd respondent. The petitioner came before this Court against the said order of the Court of Appeal.

Learned counsel for the petitioner submitted that the order made by the Court of Appeal granting the application of the 1st respondent for the issue of a *writ of certiorari* to quash the order given in Y4 dated 30.04.1993 made by the 2nd respondent, was on the sole ground that the "Commissioner had failed to give reasons for the impugned order". Learned counsel for the petitioner was of the view that although giving of reasons by a tribunal may be desirable, failure to give reasons will not *ipso facto* render void the decision of the tribunal when there is no statutory requirement mandating the tribunal to set down the reason for its decision. Also, when there is no general rule of common law or natural justice, requiring reasons to be given for every administrative decision, failure to give reasons would not render the decision of a tribunal invalid.

Learned President's Counsel for the 1st respondent submitted that the Assistant Commissioner of Labour (3rd respondent) purported to set out only the computation of the back wages and did not give any reasons for the findings of termination or for ordering reinstatement. The position taken by the learned President's Counsel was that the 2nd respondent, who made the order did not file an affidavit and as such furnished no reasons to the Court.

The impugned order (Y4), made by the 2nd respondent with regard to the termination of services of the petitioner was in the following terms:

යසීන් ඕමාර් මයාගේ සේවය අවසන් කිරීම.

ඉහත කාරණය සම්බන්ධයෙන් සේවකයා විසින් 1988.01.12 හා 1990.03.24 දිනෙන් මා වෙත ඉදිරිපත් කරන ලද පැමිණිල්ල ගැනයි.

02. 1988 අංක 51 දරණ හා 1976 අංක 04 දරණ පනත්වලින් සංශෝධිත 1971 අංක 45 දරණ සේවකයන්ගේ සේවය අවසන් කිරීමේ (විශේෂ විධිවිධාන) පනතේ 6 වන වගන්තියෙන් මා වෙත පැවරී ඇති බලතල අනුව පහත උප ලේඛනයේ නම සඳහන් සේවකයා 1993.05.17 දින සිට පෙර සේවයෙහිම ස්ථාපනයකර සේවය නතර කර සිටි කාලය සඳහා හිහ වැටුප් වශයෙන් එම නම ඉදිරියෙන් දක්වා ඇති මුදල එම සේවකයාට ගෙවීම සඳහා 1993.05.17 දින හෝ ඊට පෙර කම්කරු කොමසාරිස් වෙත තැන්පත් කරන ලෙස මෙයින් නියෝග කරමි.

In setting aside this order (Y4), the Court of Appeal held that the giving of reasons is a *sine qua non* for a fair hearing. Referring to the decision in *Padfield v. Minister of Agriculture*[1], the Court of Appeal had stated that:

> "Thus, if the Commissioner fails to disclose his reasons to the Court exercising judicial review, an inference may well be drawn that the impugned decision is *ultra vires* and relief granted on this basis."

It is common ground that an inquiry was held with regard to the termination of the petitioner from the services of the 1st respondent Corporation. Discussing the need to give reasons for administrative decisions, it is stated in de Smith's Judicial Review of Administrative Action, that –

> "It has long been a commonly recited proposition of English law that there is no general rule of law that reasons should be given for administrative decisions. On this view, a decision-maker is not normally required to consider whether fairness or natural justice demands that reasons should be provided to an individual affected by a decision. This is because the giving of reasons has not been considered to be a requirement of the rules of procedural propriety . . .
>
> As a general proposition, it is still accurate to say that 'the law does not at present recognize a general duty to give reasons for an administrative decision'." (5th edition, 1995 at pp 457-458).

An examination of several decisions taken in different jurisdictions reveal that neither the common law nor principles of natural justice require, as a general rule, that administrative tribunals or authorities to give reasons for their decisions that are subject to judicial review (*R. v. Secretary of State for Social Services, ex parte Connolly*[2], *Public Service Board of New South Wales v. Osmond*[3]).

The necessity for the Commissioner of Labour to give reasons for his decision was considered by this Court in *Samalanka Limited v. Weerakoon, Commissioner of Labour and Others*[4]. In this case the appellant was a company established with foreign collaboration. The agreement with the foreign collaborator broke down and production came to a standstill in November, 1983. On an application made by the appellant company, the Commissioner of Labour granted permission to terminate the employment of its workmen under the Termination of Employment of Workmen (Special Provisions) Act subject to the payment of compensation of gratuity. An application was made for a *writ of certiorari* to quash the decision by the appellant

on the ground that the award of 15 months gross salary for each workman was unjustified as it was fixed arbitrarily and no reasons were given. It was held that in the absence of a statutory requirement there is no general principle of administrative law that natural justice requires the authority making the decision to adduce reasons, provided that the decision is made after holding a fair inquiry.

In *R. v. Higher Education Funding Council, ex parte Institute of Dental Surgery*[5], the Queen's Bench Division had examined the decisions in *R. v. Civil Service Appeal Board, ex parte Cunningham*[6], *Doody v. Secretary of State for the Home Department*[7] and several other judgments regarding the need to give reasons for the decision. In this case the respondent council, which was established by section 131 of the Education Reform Act 1988, was responsible for administering state funding for the provision of education and research by universities. By section 131 (6) the council had power to make grants for research to universities. The council appointed a panel of academic specialists to assess and rate universities and other research institutions falling within the council's remit for the purpose of providing funding on the basis of the quality of the research undertaken. In 1992 the applicant institute, a university college entirely dedicated to post-graduate teaching and research in dentistry, was rated 2.0 on a 5 point scale. The applicant institute had previously been rated 3.0 and the lower rating was directly reflected in a reduction in funding of approximately 270,000 sterling pounds. No reasons were given for the reduction in the applicant institute's rating and in further correspondence the chief executive of the council refused to disclose the panel's reasons for the lower rating and refused to consider any appeal against the assessment unless it was shown that the assessment had been made on the basis of erroneous information. The applicant institute applied for judicial review of the council's decision to assess its rating as 2.0 contending, *inter alia*, that the council had acted unfairly in failing to give reasons for its decision and stating that in the absence of its reasons its decision was irrational.

It was held that there was no duty cast on administrative bodies to give reasons for their decisions either on general grounds of fairness

or simply to enable any grounds for judicial review of a decision to be exposed. After an exhaustive examination of the legal position relating to the 'duty to give reasons', Sedley, J. stated in a summary that –

1. there is no general duty to give reasons for a decision, but there are classes of cases where there is such a duty;

2. one such class is where the subject-matter is an interest so highly regarded by the law – for example personal liberty – that fairness requires that reasons, at least for particular decisions, be given as of right;

3. another such class is where the decision appears aberrant.

It has been observed that the 2nd respondent had disclosed the material which he took into consideration in calculating and making the award for back wages. The documents relied upon by the 2nd respondent were produced at the inquiry (A16 and A17). The salary details and the allowances the petitioner was entitled to were given in these two documents (A16 and A17). It is common ground that these two documents were not challenged by the 1st respondent.

The 3rd respondent who inquired into the complaint of the petitioner had sent a report to the 2nd respondent. In this report, the 3rd respondent had stated that:

> "Since the Supreme Court by its judgment dated 25th July, 1987, upheld the judgment of the District Court, it should be held that the applicant in terms of the judgment of District Court continued in employment with the Company and that there had been no termination in law of the applicant's employment (SC 56/85).
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> The workman had marked two documents A16 and A17 at the inquiry. Salary details and the allowances were given in those two documents. Those documents were not challenged by the employer.

Considering above facts, evidence and the documents placed before me I recommended that the workmen should be reinstated with effect from 17.05.1993 with back wages. The details of the back wages are given below.

Calculating the back wages, calculation was done according to the marked documents (A16 and A17) and the letter of appointment . . . "

The function of the 2nd respondent was to determine the total amount due to the petitioner by loss of employment. For this purpose the petitioner had furnished evidence for the calculation of the amount and as submitted by the learned counsel for the petitioner, the 1st respondent did not challenge the accuracy or the correctness of these figures at the inquiry.

The Court of Appeal had held that the "failure to give reasons is a breach of section 17 of the Termination of Employment of Workmen Act, No. 45 of 1971, because it is inconsistent with the principles of natural justice". Section 17 of the Act reads as follows:

"The proceedings at any inquiry held by the Commissioneer for the purposes of this Act may be conducted by the Commissioner in any manner, not inconsistent with the principles of natural justice, which to the Commissioner may seem best adapted to elicit proof or information concerning matters that arise at such inquiry:

The duty of the Commissioner for the purposes of the Termination of Employment of Workmen Act is to see that the proceedings at any inquiry to be conducted in a manner "not inconsistent with the principles of natural justice". Referring to the need for reasons for decisions, Wade has stated that:

"Although the lack of a general duty to give reasons is recognised as an outstanding deficiency of administrative law, the Judges have gone far towards finding a remedy by holding that reasons must be given where fairness so demands; and the case more often than not" (Administrative Law, 7th edition, 1994 pp 544-545).

In fact, according to section 2 (2)*d* of the Act,

> "the Commissioner shall give notice in writing of his decision on the application to both the employer and the workman."

Therefore, there is no such statutory requirement imposed on the 2nd respondent to give reasons for his decision. The circumstances, however, does not reveal that the 2nd respondent had acted in a manner in contravening section 17 of the Act. In contrast it could be said that his action has been "not inconsistent" with the rules of natural justice.

For the aforesaid reasons I hold that the Court of Appeal erred in setting aside the impugned order (Y4) on the ground that giving of reasons is *sine qua non* for a fair hearing. Furthermore, the Court of Appeal had set aside the entire order including the order for re-instatement. I, accordingly, hold that the order marked Y4, must be restored and be given full effect. The appeal is allowed, but in all the circumstances, without costs.

DHEERARATNE, J. – I agree.

WADUGODAPITIYA, J. – I agree.

Appeal allowed.