1959 *Present :* **Basnayake, C.J., Pulle, J., and H. N. G. Fernando, J.**

COMMERCIAL BANKS ASSOCIATION (CEYLON), Petitioner, *and* D. E. WIJEYEWARDENE and others, Respondents

S. C. 326—In the matter of an Application for the issue of a Mandate in the nature of a Writ of Certiorari, and in the nature of a Writ of Prohibition, and in the nature of a Writ of Mandamus

Industrial dispute—Reference to District Judge for settlement by arbitration—Award made thereunder—Subsequent reference on a matter falling within the scope of the subject matter of the earlier reference—Jurisdiction of the District Judge to entertain it—Industrial Disputes Act, No. 43 of 1950, as amended by Industrial Disputes (Amendment) Act, No. 25 of 1956, ss. 3 (1) (d), 16, 17, 19, 20, 47.

An industrial dispute between the petitioner (employers) and the 2nd respondent (employees) relating to " Superannuation Schemes " was referred for settlement by arbitration to the District Judge of Colombo in terms of section 3 (1) (*d*) of the Industrial Disputes Act, 1950, as amended by Act No. 25 of 1956. After the District Judge had made his award, there was another similar reference to the District Judge in respect of a dispute between the same parties arising out of a demand made by the employees for dearness allowances on pensio ns and for the grant of three months leave prior to retirement.

Held, that the District Judge had jurisdiction to entertain the second reference also and make an award on it. It could not be contended that without repudiating the earlier award under section 20 of the Industrial Disputes Act a party to that award was not entitled to raise any dispute falling within the scope of superannuation schemes.

Application for the issue of three mandates, one in the nature of a Writ of Certiorari, another in the nature of a Writ of Prohibition, and the third in the nature of a Writ of Mandamus.

H. V. Perera, Q.C., with *E. F. N. Gratiaen, Q.C.*, and *S. J. Kadirgamar*, for Petitioner.

S. Nadesan, Q.C., with *J. C. Thurairatnam*, for 2nd Respondent.

A. C. Alles, Deputy Solicitor-General, with *R. S. Wanasundera*, Crown Counsel, for 3rd Respondent.

Cur. adv. vult.

March 23, 1959. BASNAYAKE, C.J.—

This is an application by the Commercial Banks Association of Ceylon, a registered Trade Union, for the issue of three mandates, one in the nature of a Writ of Certiorari, another in the nature of a Writ of Prohibition, and the third in the nature of a Writ of Mandamus, on D. E. Wijeyewardene, District Judge of Colombo, the Ceylon Bank Employees' Union, and the Commissioner of Labour. The first respondent did not appear at the hearing. The second respondent Trade Union had ceased

to be a registered Trade Union at the date of hearing, but we granted audience to the counsel who appeared for the Union. The third respondent was represented by the Deputy Solicitor-General.

At the argument learned counsel pressed only the application in respect of a mandate in the nature of Writ of Prohibition.

Shortly the facts are as follows :—Prior to 1955 a dispute having arisen between the petitioner and the second respondent, by consent of parties, it was referred by the Commissioner of Labour for settlement by arbitration. As no arbitrator was nominated by them, the reference was made to the District Judge of Colombo. That reference was in the following terms :—

" *The Industrial Disputes Act No. 43 of 1950*

As amended by Industrial Disputes (Amendment) Act No. 25 of 1956.

Order under Section 3 (1) (d)

Whereas an Industrial Dispute in respect of the matters specified in the statement which accompanies this Order exists in the District of Colombo, between the Commercial Banks' Association (Ceylon), c/o The National Bank of India Limited, P. O. Box 112, Colombo 1, and the Ceylon Bank Employees' Union, 94 2/4, York Building, Colombo 1 ;

And whereas the parties to the said dispute have consented to the reference of the said dispute for settlement by arbitration ;

And whereas the parties to the said dispute have not jointly nominated any person to be the Arbitrator for the said purpose :

Now, therefore, I, Muttiah Rajanayagam, Commissioner of Labour, do, by virtue of the powers vested in me by Section 3 (1) (*d*) of the said Industrial Disputes (Amendment) Act No. 25 of 1956, hereby refer the aforesaid dispute to the District Judge of Colombo, for settlement by arbitration.

Dated at the office of the Commissioner of Labour, Colombo, this eleventh day of April One thousand Nine Hundred and Fifty-six.

M. RAJANAYAGAM,
Commissioner of Labour.

The Statement, in terms of Section 16 of the Industrial Disputes Act, No. 43 of 1950 referred to above—

The matters in dispute are Super-annuation Schemes.

Dated at the Office of the Commissioner of Labour, Colombo, this eleventh day of April One thousand Nine Hundred and Fifty-six.

M. RAJANAYAGAM,
Commissioner of Labour ".

In pursuance of this reference after hearing the parties to the dispute the District Judge on 29th November 1956 made an award—

" (*a*) that all Banks should provide a Pension Scheme as well as a Provident Fund Scheme,

(*b*) that the Banks' contribution should be 10% and the employees' contribution 5% and the rate of interest 5%. The contributions to be made from 1st April, 1956,

(*c*) that the Provident Fund rules of the Mercantile Bank be adopted by all Banks with necessary modifications,

(*d*) that the Pension Scheme drawn up by Mr. Crossette Thambiah be adopted with a few modifications. The Pension Scheme to be non-contributory,

(*e*) that the modification to the Pension Scheme be—

(i) that the pension should be calculated on the average of the salary drawn in the last three years' service,

(ii) that the proportion of the pension should be—

$$\frac{\textit{the number of years' service plus 5 years}}{60}$$

(*f*) that the pension should be as of right and legally enforceable and should not be made payable at the discretion of the directors. "

Thereafter on 15th October 1957 the Acting Commissioner of Labour with the consent of the parties referred the award to the District Judge for his interpretation of two questions that had arisen since it was made. They are—

" (*a*) Whether the Pension Scheme set out in the award has effect from 1.4.56 ?

(*b*) Who are the workmen to whom the award relates ? "

The first question the District Judge answered in the affirmative. In regard to the second he said it was binding on the Ceylon Bank Employees' Union and the Commercial Banks' Union and all workers who are in the Ceylon Bank Employees' Union.

On the same day the Acting Commissioner of Labour made another reference to the District Judge as the parties had not nominated an arbitrator. It is in the following terms :—

" No. C/I. 5 (3).

The Industrial Disputes Act, No. 43 of 1950

As amended by Industrial Disputes (Amendment) Acts Nos. 25 of 1956 and 14 of 1957

Order under Section 3 (1) (d)

Whereas an industrial dispute in respect of the matters specified in the statement which is appended to this Order exists in the District of Colombo, between the Commercial Banks' Association (Ceylon),

C/o The National Bank of India Limited, P. O. Box 112, Colombo 1, and the Ceylon Bank Employees' Union, 94 2/4 York Building, Colombo 1 ;

And whereas the parties to the said dispute have consented to the reference of the said dispute for settlement by arbitration ;

And whereas the parties to the said dispute have not jointly nominated any person to be the Arbitrator for the said purpose ;

Now, therefore, I, Charles Banda Kumarasinha, Acting Commissioner of Labour, do, by virtue of the powers vested in me by section 3 (1) (*d*) of the said Industrial Disputes Act No. 43 of 1950 as amended by the Industrial Disputes (Amendment) Act No. 25 of 1956 and the Industrial Disputes (Amendment) Act No. 14 of 1957, hereby refer the aforesaid dispute to the District Judge of Colombo, for settlement by arbitration.

Dated at the office of the Commissioner of Labour, Colombo, this fifteenth day of October, One thousand nine hundred and fifty-seven.

Sgd. C. B. KUMARASINHA,
Acting Commissioner of Labour.

" The Statement, in terms of Section 16 of the Industrial Disputes Act No. 43 of 1950, referred to above—

The matters in dispute are as follows :—

(*a*) Dearness allowance should be paid on pensions at the rates paid by Government to its pensioners, and

(*b*) The practice of granting 3 months' leave preparatory to retirement should be continued."

Dated at the office of the Commissioner of Labour, Colombo, this fifteenth day of October, One thousand nine hundred and fifty-seven.

Sgd. C. B. KUMARASINHA,
Acting Commissioner of Labour."

This reference was made in consequence of the following joint application made by the Commercial Banks' Association (Ceylon) and the Ceylon Bank Employees' Union. It reads as follows :—

" To : The Commissioner of Labour Colombo.

The Commercial Banks' Association (Ceylon) and the Ceylon Bank Employees' Union do hereby consent to the reference of the industrial dispute which exists between the said Association and the said Union in respect of the matters specified in para 2 hereunder, for settlement by arbitration in terms of section 3 (1) (*d*) o f the Industrial Disputes

Act, No. 43 of 1950, as amended by the Industrial Disputes (Amendment) Act No. 25 of 1956 and the Industrial Disputes (Amendment) Act No. 14 of 1957."

The matters in dispute referred to above are as follows :—

"(*a*) Dearness allowances should be paid on pensions at the rates paid by Government to its pensioners,

(*b*) The practice of granting 3 months' leave preparatory to retirement should be continued."

This request is signed by the Chairman and Secretary of the Commercial Banks' Association (Ceylon) and by the President and General Secretary of the Ceylon Bank Employees' Union. The District Judge who made the original award took the view that these were new matters which did not arise out of the previous award and left it to his successor to deal with the reference. When the matter came up for consideration before his successor the first respondent, counsel for the Commercial Banks Union submitted that he had no jurisdiction to make an award as the matters in dispute came within the reference of the dispute on "Superannuation Schemes". After hearing counsel the District Judge held that he had jurisdiction to entertain the reference and make an award. Thereupon the instant application was made to this Court.

It was contended by learned counsel for the petitioner that the award made on 29th November 1956 was, by the operation of section 19, binding on the employers and workmen referred to in the award and that the terms of the award became implied terms of the contract of employment between those employers and workmen and that without repudiating the award under section 20 a party to that award was not entitled to raise any dispute falling within the ambit of the dispute "Superannuation Schemes". He contended that the District Judge had therefore no jurisdiction to make an award on the reference.

The District Judge's authority to make an award arises only upon the reference of a dispute under section 3 (ii) of the Industrial Disputes Act No. 43 of 1950. Under that provision the Commissioner is empowered to refer a dispute for settlement by arbitration, if both parties to the dispute consent to such a reference being made, to a person nominated jointly by the parties, or in the absence of such a nomination to the District Judge. In the instant case the parties not having nominated an arbitrator the dispute was referred to the District Judge and the District Judge has authority to decide the reference. Where the District Judge acts as arbitrator of a dispute referred to him under section 3 (ii) for settlement by arbitration he exercises the function of an arbitrator as a *persona designata* and not *qua* District Judge. He exercises powers given by the Industrial Disputes Act and not by the Courts Ordinance. In the instant case the reference by the Commissioner, the legality of which is not challenged, empowered the District Judge to exercise the functions of an arbitrator. Section 17 of the Act provides that when an industrial dispute is referred under section 3 to an arbitrator for

settlement by arbitration he shall make all such inquiries into the dispute as he may consider necessary, hear such evidence as may be tendered by the parties to the dispute, and thereafter make such award as may appear to him just and equitable. If he is District Judge he is required to give the mattes of arbitration, as far as may be, priority over his other work. In the instant case the District Judge was bound to carry out the directions contained in section 17 on receipt of the reference under section 3 (ii) and he acted within the ambit of his powers in proceeding to inquire into the disputes referred to him and make his award. The application must therefore fail and I accordingly refuse it.

The action of the petitioners in signing a formal consent to a reference to arbitration and thereafter challenging the jurisdiction of the District Judge is puzzling. The petitioner was not bound to consent to the reference and was free to refuse to do so on the ground that dearness allowance and leave preparatory to retirement were matters arising on the reference of the dispute on " Superannuation Schemes " and that they could not properly be the subject of a reference so long as the award on " Superannuation Schemes " remained in force. But they chose the strange course of consenting to a reference and denouncing it later.

The question whether prohibition lies in this case was not argued before us. Counsel proceeded on the assumption that it does lie. Lest silence be misconstrued I wish to add that this judgment should not be taken as deciding that prohibition lies to the District Judge to whom a dispute under section 3 (1) (*d*) of the Industrial Disputes Act is referred, nor should it be regarded as a precedent for the proposition that certiorari and prohibition lie against an arbitrator appointed under section 3 (1) (*d*) of the Act.

Before I conclude this judgment I wish to observe that the form in which the disputes have been referred to the District Judge for arbitration is unsatisfactory and unhelpful. In the very first reference the dispute is stated as " Superannuation Schemes ". Surely that is not a dispute. That was what both employers and employees were seeking to establish. But in the formulation of such a scheme there must be certain matters on which the parties were in agreement and others on which the parties were at variance. The matters for the decision of the arbitrator would be only those on which the parties were at variance. Those should have been specifically stated in the reference together with a statement of the facts relating to the matters in dispute in the following order. First so much of the matters on which the parties are in agreement as are relevant for the decision of the matters in dispute, next the matters in dispute, then the position taken up by the employer and the claim of the employees and finally in the form of questions for decision the matters on which an award is sought. Such a statement is contemplated in section 16 and would considerably reduce the time taken in determining an award. It is imperative that all steps that would conserve the time of the District Judge should be taken as District Judges find it difficult to spare time for extra judicial work.

I therefore dismiss the application. The first respondent did not appear at the hearing. The third respondent did not ask for costs. The second respondent is no longer a registered Trade Union. I therefore make no order for costs.

PULLE, J.—

The main ground on which the application of the Commercial Banks Association (Ceylon) for a writ of prohibition is opposed is the fact that the applicants consented to a settlement by arbitration, in terms of section 3 (1) (*d*) of the Industrial Disputes Act, No. 43 of 1950, as amended by the Industrial Disputes (Amendment) Act, No. 25 of 1956, of the industrial dispute which had arisen between them and the Ceylon Bank Employees Union. It was submitted on behalf of the Union that once a reference is made by a Commissioner of Labour it was competent for the District Judge in the role of an arbitrator, carrying out the duties laid down by section 17, to decide not only matters of a factual character but also any question of law germane to the issue whether there is any legal bar to the making of an award in favour of one side or the other and that a decision of such a question of law, even if erroneous, is binding on the parties to the dispute.

In dealing with the form of the relief claimed in this case it has to be kept prominently in view that the proceedings, the continuation of which the applicants seek to arrest, were not forced on them but to which they were a consenting party. Even assuming that, as a matter of law, the Bank Employees Union were disentitled to an award in their favour on either of the matters referred to arbitration so long as the award of 29th November, 1956, remained unrepudiated, there was none the less an " industrial dispute " within the meaning of section 47 which the Commissioner of Labour could, with the consent of the parties, refer to arbitration for settlement. It seems to me, judging by the arguments put forward before the District Judge, that it was an integral part of the dispute whether or not in the absence of a repudiation under section 20 by the Bank Employees Union it was competent for the District Judge to grant their new demands. I am of the opinion that the applicants having consented to the determination by arbitration of the question of law grounded on section 20 are now precluded from questioning its correctness in exactly the same way that the Bank Employees Union would have been precluded by a writ of *certiorari* or *mandamus* from challenging a determination upholding the submission of the applicants that the Union was not, in the absence of a repudiation of the existing award, entitled to a fresh award in their favour.

I agree with the conclusions reached by my Lord, the Chief Justice, and my brother H. N. G. Fernando that prohibition does not lie and that the application should be dismissed.

H. N. G. FERNANDO, J.—

The facts relevant to this application are stated in the judgment of My Lord, the Chief Justice and I need not recapitulate them.

The ground of the application is that the first respondent has no jurisdiction whatsoever in law or in terms of the Industrial Disputes Act to hear or to make any award upon the two matters in dispute, i.e. whether dearness allowances on pensions should be paid by employers and whether three months leave prior to retirement should be granted. The argument for the petitioner has been that the aforesaid two matters fall within the scope of the subject " Superannuation Schemes ", that the earlier award dated 29th November 1956, made on that subject, is in terms of Section 19 of the Act binding on the second respondent, that so long as that award is binding no matter which fell within the scope of the subject of superannuation schemes can be dealt with in a new award, and that therefore the first respondent does not have jurisdiction to make an award allowing the demand made by the second respondent in respect of the two matters.

The two matters in question were referred to the first respondent in terms of Section 3 of the Industrial Disputes Act, 1950, as amended by Act No. 25 of 1956, the relevant provision of which reads as follows :—

> " Where the Commissioner is satisfied that an industrial dispute exists. . . . he may—
>
> (*a*) . . . .
> (*b*) . . . .
> (*c*) . . . .
>
> (*d*) if the parties to the industrial dispute or their representatives consent, refer that dispute, by an order in writing, for settlement by arbitration to an arbitrator nominated jointly by such parties or representatives, or, in the absence of such nomination, to the District Judge of the district in which that dispute exists or is apprehended. "

It must be noted that there is not under paragraph (*d*) any compulsory reference to the District Judge. It is only with the consent of parties that a dispute is referred for arbitration, and the parties, by giving such consent and by omitting jointly to nominate some arbitrator, virtually elect that the District Judge be arbitrator. They also consent impliedly to the making by the District Judge of an award which will be binding in terms of Section 19. The objections urged against the jurisdiction or power of the District Judge to make a new award have to be considered in the light of the fact that such a reference is made only with the consent of both parties. An existing award is, in terms of Section 19 of the Act, binding on the parties for the purposes of the Act. I will assume (without so deciding) that Section 19 prevents a party to an existing award from seeking to obtain, through the machinery of the Act, an alteration of a term of an existing award. But even if that be so, the Respondent Union in the first instance merely put forward two demands which the petitioner might at its option have granted. The Act does not preclude the alteration of the terms of an award by mutual voluntary

agreement, and in presenting the two new demands the Respondent Union did not act in contravention of Section 19. The petitioner did not of course agree to grant the new demands. But neither did the petitioner deny that the machinery of the Act was available with respect to the new demands. Instead the petitioner consented that the dispute which arose with respect to those demands should be referred to the District Judge.

It seems to me therefore that neither party can now contend that the Commissioner had no power to make the reference; the District Judge had necessarily to regard the reference as one validly made under the Act and accordingly to decide whether or not the two new demands should be granted. In contending that the District Judge has no jurisdiction to make an " affirmative " award with respect to the new demands, the petitioner in reality denies that the machinery of the Act is applicable to the present dispute. But the joint consent to the reference has carried the matter beyond the stage at which such a denial might properly have been made.

There is another aspect of the matter which merits examination. Was the dispute, which the petitioner agreed to refer to the District Judge, a dispute which raised or involved the question of law whether the Act prohibited the making of a new award granting two new " superannuation " privileges ? If so, the petitioner, in consenting to the reference, consented also to be bound by the award of the District Judge *on that question of law,* and cannot challenge that award on the ground that the question in dispute was wrongly decided. A similar answer has to be given to Mr. Perera's argument that a party may urge before the arbitrator legal reasons (in addition to or instead of factual reasons) why any particular privilege should not be granted in an award. The arbitrator has the power to reject any reasons as unsound, whether they be legal or factual.

I therefore concur in the order proposed by My Lord, the Chief Justice.

Application dismissed.