1960 *Present :* **T. S. Fernando, J.**

RICHARD PIERIS & CO. LTD., Appellant, *and*
D. J. WIJESIRIWARDENA, Respondent

S. C. (Labour Tribunals) 5—Labour Tribunal Case 123 of 1959

Industrial Disputes Act, No. 43 of 1950, as amended by Act No. 62 of 1957—Termination of workman's services—Gratuity or other benefits due from employer—Computation—Sections 31 B (1) (b), 31 B (5), 31 C (1).

By section 31 B (1) (*b*) of the Industrial Disputes Act, No. 43 of 1950, as amended by the Industrial Disputes (Amendment) Act, No. 62 of 1957—

"A workman . . . may make an application in writing to a Labour Tribunal for relief or redress in respect of . . . the question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of any such benefits."

Held, that the word "due" meant "legally due".

APPEAL from an order made by a Labour Tribunal.

G. E. Chitty, Q.C., with *Carl Jayasinghe*, for the respondent-appellant.

No appearance for the applicant-respondent.

Cur. adv. vult.

September 5, 1960. T. S. FERNANDO, J.—

This is an appeal against an order made by a Labour Tribunal established in terms of section 31A of the Industrial Disputes Act, No. 43 of 1950, as amended by the Industrial Disputes (Amendment) Act, No. 62 of 1957. An appeal can be preferred only on a question of law, and the substantial question of law raised is that the Tribunal in making an order for the payment of a gratuity to the applicant has acted in excess of its jurisdiction which, it is claimed, is limited to ordering payment of a gratuity that is due to the applicant from his employer.

Section 31B provides for the making by or on behalf of a workman of applications to a Labour Tribunal for relief or redress in respect of any of the following matters :—

(*a*) the termination of his services by his employer ;

(*b*) the question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of any such benefits ;

(*c*) such other matters pertaining to the relationship between an employer and a workman as may be prescribed.

It was not claimed that the application was in respect of the matters referred to in (*a*) or (*c*), but that it fell within the matters described in (*b*) above.

The following facts appear not to have been in dispute at the inquiry by the Tribunal :—

The applicant was an employee of Richard Pieris & Co. Ltd. as Chief Foreman for a period of 7 years and 9 months terminating on 31st March 1959. His services were terminated by the company after a notice served on him five months before 31st March 1959, and the reason given by the company was that he had reached the age of 64 years. Sometime prior to the date of termination, the Board of Directors of the company had decided that with effect from 1st April 1959 no employee of the company shall be continued in service after he had attained the age of 60 years.

The applicant had, prior to his employment with the company, been employed by the Ford Company for some 17 years, but when the Ford Company ceased to do business in Ceylon (Richard Pieris & Co. Ltd. having taken over the business in Ceylon of the Ford Company) that company had paid an admittedly adequate gratuity to the applicant in consideration of his 17 years of service.

At the time the applicant came to be employed under Richard Pieris & Co. Ltd. in 1951 there existed a Provident Fund Scheme for all employees of the company, the company contributing roughly about 12% of the salary of an employee, while the employee himself contributed 10%. Under this Scheme, the applicant had become entitled to receive at the time his services with the company were terminated a sum of Rs. 6814/15, and this sum had been drawn by the applicant.

Apart from the Pension Fund Scheme, there was a Long Service Bonus Scheme under which every employee who had completed 25 years' service with the company was entitled to three months' basic salary. The applicant's service had lasted less than 8 years, and he was therefore not entitled to any bonus under this Scheme.

A Gratuity Scheme also came into operation *after the date the applicant's services with the company terminated* according to which an employee at the time of retirement becomes entitled to one month's basic salary for each completed year of service less the company's contribution to the Provident Fund. It is clear that, even if this Scheme had been in existence while the applicant was in the company's service, the applicant would have received nothing thereunder as the gratuity would have amounted to Rs. 3115/- while the company's contribution to the Provident Fund was some Rs. 3474/45.

The facts appearing to be as stated above, the position taken up by the company was that under the existing Schemes no sum of money remained due and payable to the applicant. The applicant claimed that an order should be made entitling him (*a*) to a suitable gratuity and (*b*) to suitable compensation for loss of career. When the application came up for inquiry the applicant withdrew any claim for compensation for loss of career. At the conclusion of the inquiry, the Tribunal stating that "it is now settled as a matter of principle that, when the finances of a business concern permit, two retiring benefits to employees may be

allowed on the footing that a provident fund provides a certain measure of relief only and a portion of that constitutes the employee's wages that he or his family would ultimately receive and that this provision in the present conditions is wholly insufficient relief", held that the applicant is entitled to a gratuity at the rate of two-thirds of the basic salary for a period of 7 years. Calculating at this rate for the period stated, the company was ordered to pay a sum of Rs. 2076/66 to the applicant.

It was argued for the company that the application to the Tribunal is for relief or redress against the withholding of a gratuity or other benefit that is *due* to the applicant from the employer, and it was contended that this meant legally due. It is unfortunate that I was left without the assistance of any argument on behalf of the applicant on this question in which there appears to be no earlier decision of this Court. I drew the attention of learned counsel to section 31 C (1) which empowers the Tribunal to "make such order as may appear to the Tribunal to be just and equitable". Counsel in reply has contended that, broadly speaking, the jurisdiction of the Tribunal is limited by the Act to the ascertainment of dues as distinguished from the formulation of schemes and that nothing can be said to be just and equitable which is outside the framework of the Act itself. As illustrative of the situations in which section 31 C (1) may have application, counsel instanced the case where a gratuity or other benefit had become due but not legally enforceable, and, again, where such a benefit is payable under existing conditions of service but was not available to those who had been in employment under different conditions of service. The Act itself gives me no certain guide as to the meaning to be attached to the relevant provisions of section 31, and in this situation I have arrived at the conclusion that my duty is to place on the word *due* in section 31 B (1) (*b*) of the Act the meaning "legally due" as claimed by the company. In support of the conclusion to which I have been driven in this matter, I might refer to the provision in sub-section (5) of section 31 B which precludes the applicant seeking any other *legal* remedy where he has made an application under section 31B and again shutting him out from the remedy under this Act where he has first resorted to any other *legal* remedy. A legal remedy presupposes a legal wrong, and in the context under discussion the legal wrong would be the refusal to pay a sum of money or grant some benefit legally due. In regard to the power of the Tribunal to make such order as may appear to it to be just and equitable there is point in Counsel's submission that justice and equity can themselves be measured not according to the urgings of a kind heart but only within the framework of the law.

For the reasons indicated above, I hold that the Tribunal acted in excess of its jurisdiction under the Act in ordering the payment of a gratuity which was not due to the applicant. The order of the Tribunal appealed from is set aside, but I refrain from making an order for costs in this case.

Order set aside.