

1971

Present : Wijayatilake, J.

G. NANAYAKKARA, Appellant, and K. D. P. HETTLARATCHI
et al., Respondents

S. C. 113/69—Labour Tribunal, 1/31693

Industrial Disputes Act—Right of appeal—"Point of law"—Award of compensation—Duty of Labour Tribunal to consider basis of compensation.

When a Labour Tribunal awards a sum of money as compensation to an employee whose services have been terminated, the failure of the Tribunal to consider the basis of computation in awarding the sum amounts to a question of law.

APPEAL from an order of a Labour Tribunal.

G. G. Mendis, for the applicant-appellant.

L. W. Athulathmudali, with *N. T. S. Kularatne*, for the employers-respondents.

February 22, 1971. WIJAYATILAKE, J.—

In this case the learned President has held that the termination of the applicant's services is not justified, but having regard to the circumstances he has however held that the relief of re-instatement will not be appropriate and therefore suitable compensation would be just and equitable. He has accordingly awarded a sum of Rs. 3,255 as compensation.

Mr. Mendis, learned counsel for the appellant, submits that the sum awarded is utterly inadequate in the circumstances of the instant case and he strenuously submits that the learned President has conspicuously failed to give the basis of his computation in awarding this sum. He has drawn my particular attention to the judgment of *S. S. Shetty v. Bharat Nidhi Ltd.*,¹ where it was held—

“That the monetary value of the benefit of reinstatement is to be computed not on the basis of a breach of the employment nor on the basis of a tort alleged to have been committed by the employer by reason of the non-implementation of the direction for reinstatement contained in the award. The computation has to be made by the Industrial Tribunal having regard to all the circumstances of the case, such as, the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the employee and even of the employer himself ceasing to exist, or of the employee being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunals in the event of industrial disputes arising between the parties in the future.”

¹ 1958 A. I. R. (Supreme Court) 442.

In the order made by the learned President he has not set out any of these items. Counsel accordingly contends that this is an arbitrary figure without any relation to the facts.

The applicant had been appointed Assistant Manager of Premasiri Stores, Colpetty, on 22.11.58 on a monthly salary of Rs. 100 and he had continued to be in service till 28.5.67 when he was drawing a salary of Rs. 465/- per month, on which date he was dismissed. At the time of dismissal he was 47 years of age. Counsel further submits that the applicant in various ways has been of great assistance to the proprietor in his advancement both in his business and otherwise and the treatment meted out to him ultimately is not at all justified. He states that a sum of about Rs. 15,000 would be an appropriate figure on the basis of the principles set out in the Indian case aforementioned.

Mr. Athulathmudali, learned counsel for the respondent, submits that the appeal does not raise a question of law, as the President is not bound by the Evidence Ordinance. He submits that the sum awarded is quite adequate and the President is not bound to set out in his order the various heads which are referred to in the Indian case. The principal matter which has to be taken into consideration is the liability of the employer to pay and the conduct of the employee. It would appear according to the employer, the applicant had taken a loan of Rs. 1,650. He received the full Provident Fund benefits. At the time of his wedding he had been given a gift of Rs. 750 and every year he had a month's salary as bonus and also a suit. He also states that the capital of this firm was only Rs. 30,000 in 1953 and on 1.4.67 the 1st respondent transferred it to his brother the 2nd respondent for a sum of Rs. 49,000. He stresses the fact that although the learned President had held that the termination of services was not justified, he had come to the conclusion that it would not be in the interests of this firm to reinstate the applicant. This is a feature to be kept in mind when computing the compensation.

In my opinion the preliminary objection taken by Mr. Athulathmudali that this appeal cannot be entertained is without merit, as the failure to consider the basis of computation would amount to a question of law. I have given my anxious consideration to the principles set out in the Indian case with which I agree with respect, and in all the circumstances I think it would meet the ends of justice and equity if a further sum of Rs. 1,000 is added to the Award made by the learned President. I make order accordingly.

Subject to this variation the appeal is dismissed. I make no order as to the costs.

Order varied.