

1971

Present : Wijayatilake, J.

THE SUPERINTENDENT, WE-OYA GROUP, YATIYANTOTA and
another, Appellants, and THE CEYLON ESTATES
STAFFS' UNION (on behalf of C. W. W. Dissanayake), Respondent

S. C. 146-147/69—Labour Tribunal Case No. R. 1176 (Ratnapura)

*Industrial Disputes Act—Section 31D—"Point of law"—Conduct of workman
subsequent to his dismissal—Relevancy as to re-instatement.*

In this appeal from an order of a Labour Tribunal the question arose
whether the joinder and substitution of parties in the course of the inquiry was
warranted by law.

Held, that, inasmuch as the matters raised in the appeal pertained not only to questions of fact but to both questions of law and questions of mixed law and fact, the appeal could be entertained.

Held further, that, in considering whether a dismissed workman should be re-instated, the reprehensible conduct of the workman subsequent to the dismissal is not wholly irrelevant.

APPEAL from an order of a Labour Tribunal.

G. E. Chitty, Q.C., with *B. J. Fernando* and *M. A. Mansoor*, for the 1st and 2nd respondents-appellants.

N. Satyendra, with *P. Rajasuriya*, for the applicant-respondent.

Cur. adv. vult.

February 13, 1971. WIJAYATILAKE, J.—

The workman C. W. W. Dissanayake was employed on We-Oya Group as a Rubber Factory Officer on a monthly salary from 8.5.1963. His services were terminated on 27.9.65 with effect from 31.10.65 on the grounds of gross misconduct, insubordination and unsatisfactory work in general. The workman filed an application before the Labour Tribunal on 6.10.65, pleading that the termination of his services was both unjust and wrongful. Several issues were framed when the case came up for inquiry on 14.8.67. All these issues have been answered in favour of the workman. The learned President holds that the Superintendent of this estate has been possessed by such an overpowering obsession against this particular workman that there has been a total absence of good faith on the part of the Superintendent in his dealings with him. In the circumstances, the learned President holds that this element of bad faith demands reparation of a more substantial kind than mere compensation and he has ordered re-instatement and *inter alia* awarded a sum of Rs. 6,000 in lieu of backwages.

In limine the question has arisen as to whether the joinder and substitution of parties in the course of the inquiry was warranted by law. Mr. Chitty has submitted that the irregularity is not a mere technicality as it goes to the very root of the application before the Tribunal; and this is a question of law which this Court is entitled to deal with under Section 31 D of Industrial Disputes Act. I agree that the matters raised in this appeal pertain not only to questions of fact but to both questions of law and question of mixed law and fact and therefore this

Appeal can be entertained by this Court. See the judgment of H. N. G. Fernando J. in *Mahawithana v. Commissioner of Inland Revenue*¹.

With regard to the alleged misjoinder of parties and the complaint made on behalf of Messrs Caldera Estates Ltd. that they had come to know about this inquiry shortly before 22.7.68 it is quite evident that neither of these objections can be sustained. When this inquiry commenced as far back as 14.8.67, it is significant that the 1st witness was Dr. Caldera, the Managing Director of the 2nd respondent Company, and the Company was added as a party and he had participated in this inquiry on several dates thereafter. It is also significant that the Superintendent L. V. Wijeratne was on this estate only from March 1965 to May 1966 and the interest he took in these proceedings was only in the capacity of a witness while the entire burden of the defence was shouldered by Dr. Caldera in his capacity as Managing Director. The submission made by the Counsel appearing for this Company on 22.7.68 that the Company is making an appearance for the first time is to say the least fantastic. One cannot conceive of a stronger case of acquiescence.

On the facts the learned President has held in favour of the workman, but, at the same time, he holds that an incident did occur in which the Superintendent and the workman were involved, and the reactions of the workman were the emanations of an angry man. On a totality of the evidence I do not see any substantial reason to come to a different conclusion. With regard to the order for re-instatement Mr. Chitty has submitted that the conduct of the workman has been such both before and after his termination that it would not be in the interests of industrial peace to re-employ him. It would appear that after the termination of his services this workman had figured in an incident with one Augustine a workman on this estate in which he had conducted himself in a reprehensible manner. Mr. Satyendra submits that any evidence of incidents after the wrongful dismissal would be irrelevant. Mr. Chitty in reply has drawn my attention to the cases of *Pearce v. Foster*² and *All India Reporter Ltd. v. Datar*³ which deal with the conduct of a workman after dismissal in the field of the law of Master and servant. In my opinion one cannot rule out this evidence as wholly irrelevant on the question of re-instatement. However, a Tribunal will have to be extremely cautious in entertaining and acting on such evidence for reasons which are quite obvious as the door will be left open for employers to create situations with a view to trapping employees.

¹ (1962) 64 N. L. R. 217.

² (1886) 17 Law Rep. Q. B. 536 at 542.

³ 1951 A. I. R. Nagpur 412.

I have had the benefit of very learned submissions by Counsel both on the facts and the law ; and after a careful consideration of the conduct of this workman I should think that it would be just and equitable to both the parties and also in the interest of the public to provide an option to the employer as an alternative to the award made by the learned President to terminate the services of this workman as from the end of February 1971 subject to the payment of a sum, calculated on the basis of Rs. 250 per month from the date of termination (1.11.1965) till the end of February 1971 in lieu of backwages and all other benefits if any due to this workman and costs of Inquiry fixed at Rs. 500. This sum to be deposited with the Asst. Commissioner of Labour, Avissawella. A minimum of Rs. 6,000 to be deposited before 1.4.71 and the balance to be deposited before 1.6.71. Subject to this option to the employer the appeal is dismissed with costs fixed in a sum of Rs. 500.

Appeal mainly dismissed.