1968 *Present:* **H. N. G. Fernando, C.J., and Abeyesundere, J.**

AIR CEYLON LTD., Petitioner, *and* F. X. J. RASANAYAGAM and 2 others, Respondents

S. C. 134/67—Application for the issue of Mandates in the nature of Writs of Certiorari and Prohibition on F. X. J. Rasanayagam, President, Labour Tribunal I, and two others

Industrial dispute—General Manager of "Air Ceylon" Corporation—Termination of his services—Whether he can apply to a Labour Tribunal for relief—Whether he is an employee of the Government—"Employer"—"Workman"—Industrial Disputes Act (Cap. 131), ss. 31B, 49—Air Ceylon Act (Cap. 280), ss. 3, 14.

The Corporation "Air Ceylon" is, within the meaning of the definition of "employer" in the Industrial Disputes Act, the employer of the General Manager of Air Ceylon. The General Manager was therefore entitled, on termination of his services by Air Ceylon, to make an application to a Labour Tribunal under Part IV A of the Act.

APPLICATION for Writs of *Certiorari* and Prohibition on a Labour Tribunal.

H. V. Perera, Q.C., with *R. A. Kannangara* and *L. Kadirgamar*, for the Petitioner.

N. Satyendra, for the 2nd Respondent.

Cur. adv. vult.

[1] *(1964) 2 Q. B. 203 C. A.*

March 14, 1968. H. N. G. FERNANDO, C.J.—

The 2nd respondent to this application was appointed in 1961 to be the General Manager of Air Ceylon Limited, and on 29th January 1966 he was informed by the Chairman of the Board of Directors of Air Ceylon Ltd. that, with the approval of the Minister, the Board had decided to terminate his services as such General Manager with effect from 31st January 1966.

The 2nd respondent thereupon made an application to a Labour Tribunal under Part IV A of the Industrial Disputes Act (Chap. 131) for relief or redress in respect of certain matters specified in the application. At the inquiry before the Labour Tribunal the present petitioner, Air Ceylon Ltd., took the preliminary objection that the Tribunal had no jurisdiction to hear and determine the application, and the Tribunal thereafter made order overruling the objection and fixing the 2nd respondent's application for inquiry. The present application to this Court is for a mandate to quash the proceedings held by the Labour Tribunal and for a writ of prohibition against the Tribunal from assuming jurisdiction, or for granting relief or redress, in the application made to it by the 2nd respondent.

In the argument before us Counsel for the petitioner urged two main grounds in support of the application for the writs. For the first of these grounds, Counsel relied on the provisions of section 49 of the Industrial Disputes Act :—

> " Nothing in this Act shall apply to or in relation to the Crown or the Government in its capacity as employer, or to or in relation to a workman in the employment of the Crown or the Government."

Counsel's submission was that the undertaking carried on by Air Ceylon Ltd. was in fact an undertaking by the Government, because in terms of the Air Ceylon Act (Chapter 280)—

(*a*) The Government has made contributions to the capital of Air Ceylon, and further such contributions of capital can become due under the Act ;

(*b*) Members of the Corporation (Air Ceylon) are appointed by the Minister and their appointments may be terminated by the Minister ;

(*c*) Sums remaining out of the nett receipts of Air Ceylon for each financial year, less certain authorised deductions, have to be paid by the Corporation into the Consolidated Fund.

I am unable to agree that the provisions of the Air Ceylon Act which are mentioned above, and other provisions thereof, have the effect that in law the Crown or the Government is the employer of persons employed on the staff of Air Ceylon. The Act establishes a Corporation to be known as " Air Ceylon Limited " and section 14 empowers the Corporation to appoint and dismiss its staff and to determine the remuneration

and other conditions of service of the staff. As the President of the Tribunal has pointed out in his order, the Corporation has under the Act (s. 3) the duty to secure the fullest development of efficient Air transport services to be operated by it, and has all necessary powers to facilitate the performance of that duty. There are of course certain powers vested in the Minister to supervise and in some instances to direct the policy of the Corporation but the existence of these powers does not, in my opinion, have the consequence that the Crown or the Government is the employer. The staff of the Corporation is in fact employed by and under the Corporation itself, and it is clear beyond doubt that the relationship of employer and employee does exist between the Corporation on the one hand, and on the other hand, the members of its staff.

For present purposes it is convenient to reproduce the definition of 'employer' (in the Industrial Disputes Act) in a form which clearly indicates its scope :—

" Employer " means—

(1) any person who employs a workman ;

(2) any person on whose behalf any other person employs a workman ; and

" Employer " includes—

(3) a body of employers ;

(4) any person who on behalf of any other person employs any workman.

The point urged by Counsel for the petitioner is that, because of the provisions of the Air Ceylon Act, the undertakings of Air Ceylon are a Government undertaking, and that, although the Government is not directly the employer of the staff, that staff is employed by the Corporation *on behalf of the Government*. But even if this point is conceded to be correct, all it establishes is that, under the paragraph I have numbered (2) above, the Government is an " employer " ; and on that concession s. 49 will apply, with the consequence that the Act will not apply to say in relation to the Government as such employer. Nevertheless there remain the paragraphs which I have numbered (1) and (4) above ; in terms of paragraph (1) Air Ceylon Limited is an 'employer', because undoubtedly it does employ its staff ; and also, in terms of paragraph (4) the Corporation is an 'employer', if, on Counsel's own argument, the Corporation employs staff on behalf of the Government.

I would hold therefore that, even if it be correct to say that Air Ceylon Limited employs staff on behalf of the Government, the Corporation is nevertheless an employer as defined in the Act, and that there is nothing in s. 49 of the Industrial Disputes Act to exempt Air Ceylon Limited, in its capacity as " employer " from the provisions of the Act.

Counsel's second argument is much narrower in its scope and depends on the proviso to s. 14 (1) of the Air Ceylon Act :—

> " provided that the appointment or dismissal of the General Manager shall not be made without the previous approval in writing of the Minister."

His argument was that a person is not an ' employer ' within the meaning of the definition in the Industrial Disputes Act, if there is any statutory restriction of his power to employ or dismiss an employee. The fallacy in this argument, it seems to me, lies in the supposition that the existence of some statutory restriction as to the mode of selection of an employee has the consequence that the person who ultimately employs is not an employer. Such a statutory restriction can operate to prevent employment being given to a particular person ; but in a case where the statutory restriction is spent, so to speak, in this particular case where the Minister's approval to the appointment of a person as General Manager was obtained, then thereafter the Corporation was legally entitled to employ that person ; and in terms of the definition of ' workman ', the person employed clearly had a contract of employment with the Corporation.

Counsel for the petitioner also referred to the fact that, under the proviso of s. 14 (1) of the Air Ceylon Act, the General Manager can only be dismissed or re-instated with the approval of the Minister. He pointed out that if in the present case the Labour Tribunal orders re-instatement of the 2nd respondent, the Corporation may be unable to carry out the order because the Minister may not give his approval for re-instatement. It was urged on this ground that the nature of the particular employment was such that the Industrial Disputes Act does not contemplate that the termination of the 2nd respondent can be the subject of an application to a Labour Tribunal.

I do not propose here to express any opinion on the question whether or not a Labour Tribunal may or will order re-instatement in such a situation. It suffices to observe for the present that relief other than re-instatement is available upon an application under s. 31B, and that the difficulties to which Counsel has referred, if substantial, are matters of which the Tribunal will take account in the exercise of its power to make a just and equitable order.

For these reasons I hold that the Tribunal has jurisdiction to entertain the application made to it by the 2nd respondent. The petitioner's application to this Court is dismissed with costs fixed at Rs. 500 payable to the 2nd respondent.

ABEYESUNDERE, J.—I agree.

Application dismissed.