

1971

Present : Sirimane, J.

H. W. PATHINAYAKE, Appellant, and KARMIKA HA SAMANYA
KAMKARU SAMITHIYA, Respondent

S. C. 16/De Novo/69—L. T. G/1136

Industrial Disputes Act (Cap. 131)—Sections 31 (C), 31 (D) (2), 10 (q)—Unjust dismissal of an employee—Order for re-instatement and payment of “back wages”—Award of “continuing damages” in event of failure to re-instate—Illegality of such award.

Where a Labour Tribunal orders re-instatement and payment of "back wages" in favour of an employee who has been unjustly dismissed, it has no power to award "continuing damages" in the event of the failure to re-instate. Such an award of "continuing damages" is not in consonance with the scheme of the Industrial Disputes Act and cannot be claimed to be just and equitable under section 31 (C) of the Act.

APPEAL from an order of a Labour Tribunal.

G. G. Mendis, with (Miss) S. M. Senarutne and D. C. Samerawickrame
for the respondent-appellant.

No appearance for the applicant-respondent.

Cur. adv. vult.

March 20, 1971. SIRIMANE, J.—

This is an application by the employer against an order of a Labour Tribunal.

On the evidence led, the learned President has held that the dismissal of the employee was not justified, and it cannot be said that he erred in law in reaching that conclusion. That finding must, therefore, be affirmed.

He has ordered reinstatement of the employee and awarded him a sum of Rs. 1,970 as "back wages" for a period of one year. I see no legal ground for interfering with these orders.

The learned President has added at the end of his order—

"In the event of the failure to re-instate, continuing damages are to be on the basis of Rs. 160 per month from 15th October, 1965."

The legality of this part of the order has been strongly challenged.

Section 31 (C) of the Industrial Disputes Act, Chapter 131, gives very wide powers to a Labour Tribunal to make an order which is just and equitable; but such an order must be in consonance with the scheme of the Act itself.

Once an order for re-instatement is made, it must be assumed that the employer will carry out that order, subject, of course, to the limited right of appeal granted by section 31 (D) (2).

If the employer fails to obey the order, provision is made in the Act to punish him, for an offence under the Act (*vide* section 40 (Q)).

To anticipate a non-compliance with the order for re-instatement, and award "continuing damages", would have the effect of penalising the employer twice over, and this in my view would not be just or equitable.

I have reminded myself of the fact that an appeal by an employer would result in some hardship to an employee during the pendency of the appeal, but that kind of disadvantage is inevitable whenever a right of appeal is granted.

I do not think that an order such as the one complained of, which appears to be directed at discouraging appeals by an employer, was contemplated by the legislature when it enacted section 31 (C).

I delete that part of the order relating to "continuing damages" referred to above.

Subject to this variation, the appeal is dismissed.

Order varied.

