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1967/7

IN THE PRIVY COUNCILNo. 20 of 1966,ON APPEAL FROMFROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
 LEGAL STUDIES
 15 MAR 1968
 25 RUSSELL SQUARE
 LONDON, W.C.1.

B E T W E E N:

THE UNITED ENGINEERING WORKERS' UNION
Appellant

- and -

K. W. DEVANAYAGAM, PRESIDENT,
 EASTERN PROVINCE AGRICULTURAL CO-OPERATIVE
 UNION LIMITED
Respondent

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C A S E FOR THE RESPONDENTRecord

1. This is an Appeal by Special Leave against a judgment of the Supreme Court of Ceylon dated 30th November 1965 whereby the majority of a Bench of 5 judges set aside an order made by Mr. F.X.J. Rasanayagam on 17th September 1962 purporting to exercise the jurisdiction of a Labour Tribunal under Part IV A read with Section 33 (i) (b) of the Industrial Disputes Act, 1950 (Cap.131) as amended by the Industrial Disputes (Amendment) Act, 1957. The Act, as amended in 1957, will be referred to hereafter as "the Act".
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2. A workman named N. Rasamanickam had been employed by the Respondent on a monthly paid basis until 14th September 1961 on which date he was dismissed from the Respondent's service for insubordination and disobedience. Rasamanickam was at all material times a member of the Appellant Union, which is registered as a Trade Union under the Trade Unions Ordinance (Cap.138). On 4th November 1961 the Appellant made an application on Rasamanickam's behalf under Section 31B of the Act asking for an order for his reinstatement and for certain other relief. The proceedings between the Appellant (representing
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- pp.23-25
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 p.22 l.1 -
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Rasamanickam) and the Respondent were numbered
Labour Tribunal Case No. 6/9091.

- p.2 11.1-32 3. On 23rd January 1962 the Respondent filed a statement claiming that the dismissal of Rasamanickam was justified on the grounds of his insubordination and wilful disobedience.
4. The proceedings in Case No. 6/9091, together with the proceedings in certain connected cases involving the dismissal by the Respondent of certain other workmen, were held before the
aforementioned Mr. F.X.J.Rasanayagam purporting to exercise the jurisdiction of a Labour Tribunal under Part IVA of the Act. Having considered the evidence of the witnesses called by the parties, he held as a fact that Rasamanickam had
as alleged disobeyed an order made by the Respondent's Manager but that, "taking into consideration the circumstances under which the order was given, he was not guilty of wilful insubordination". He then made an order under
Section 33 (1) (b) of the Act that Rasamanickam be reinstated by the Respondent with effect from 17th October 1962 and should also be paid 3 months' salary. The Respondent appealed to the Supreme Court on 2nd October 1962 against the said order.
5. Part IVA and the relevant amendments to Section 33 (1) of Part VI of the Act passed into law on 30th December 1957, and the question of law which the Supreme Court was called upon to decide on Appeal was whether (in view of Section 55 of the Constitution which gives the Judicial Service Commission the exclusive power to appoint judicial officers) a person is qualified to exercise the jurisdiction of a Labour Tribunal upon an application made under Section 31B (1) (a) of the Act for "relief or redress" in respect of the termination of a workman's services by an employer unless he had been appointed to that office by the Judicial Services Commission. (Mr. F.X.J.Rasanayagam and all other persons purporting to perform functions as Labour Tribunals throughout the relevant period had in fact been appointed by the Public Services Commission and not by the Judicial Services Commission.)

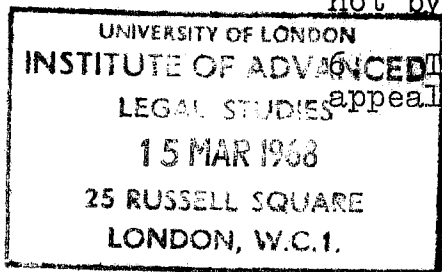
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The above question of law which arose in the
appeal in the present case, together with the same



or similar questions which had arisen in certain other appeals, was referred by the learned Chief Justice to a Bench of 5 judges under the provisions of Section 51 of the Courts Ordinance (Cap.6). Section 51 is to the following effect:-

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10 "51. (1) It shall be lawful for the Chief Justice to make order in writing in respect of any case brought before the Supreme Court by way of appeal, review or revision, that it shall be heard by and before all the Judges of such Court or by and before any five or more of such Judges named in the order, but so that the Chief Justice shall always be one of such five or more Judges. The decision of such Judges when unanimous, or of the majority of them in case of any difference of opinion, shall in all cases be deemed and taken to be the judgment of the Supreme Court.

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(2) Where an order has been made under sub-section (1) that any case shall be heard by and before an even number of Judges and where such Judges are equally divided in their opinions, the decision of the Chief Justice or the decision of any Judge with whom the Chief Justice concurs shall be deemed and taken to be the judgment of the Supreme Court."

30 7. The principal judgment in favour of the Respondent was pronounced by Sansoni C.J., with whom H.N.G.Fernando J., and T.S.Fernando J., agreed. The basis of Sansoni C.J.'s decision is as follows:-

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40 (a) that a person vested with the powers of a Labour Tribunal in regard to applications under Section 31B(1) of Part IV A of the Act is the holder of an "office" as that term was explained by the Board in Bribery Commissioner v. Ranasinghe 1965 A.C.172, and that such a person being the holder of a permanent office which entitled him to receive a salary, is, when exercising jurisdiction under Part IV A of the Act, a "judicial officer" within the meaning of Section 55 read with Section 3 (1) of the Ceylon (Constitution) Order in Council

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(Cap.379). Accordingly, the Judicial Service Commission was alone vested with power to appoint a person to the paid judicial office of a Labour Tribunal;

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(b) that Mr. F.X.J.Rasanayagam's purported appointment as a Labour Tribunal by the Public Services Commission under Section 60 of the aforesaid Order in Council did not vest him with jurisdiction to adjudicate upon applications made under Section 31B of Part IV A of the Act. The order of reinstatement which he had purported to make on 17th September 1962 was therefore a nullity;

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(c) that the judicial power exercised by a Labour Tribunal under Part IV A is clearly distinguishable from the arbitral power vested in an Industrial Court or an Arbitrator under other parts of the Act.

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8. H.N.G.Fernando J., in a separate judgment reached the same conclusions as Sansoni C.J. He held that the power vested in a Labour Tribunal under Part IV A of the Act was the same as the power of a Civil Court exercising jurisdiction in a common law action for breach of a contract of employment "with the addition of a new (statutory) power to order reinstatement" under Section 33(1)(b) of the Act as amended in 1957.

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9. T.S.Fernando J., agreed with the Judgment of Sansoni, C.J., and, in accordance with the judgments of the majority of the Court the order of reinstatement made against the Respondent on 17th September 1962 was set aside with costs.

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10. In his dissenting judgment Tambiah J. expressed the view that a Labour Tribunal does not exercise judicial power, and that "it is clear that the functions of a Labour Tribunal and a Court of Law are entirely different and the objects for which they are created and their powers are not the same". He therefore held that a Labour Tribunal is not a "judicial officer" within the meaning of Section 55 of the Order in Council, and that a Labour Tribunal need not be appointed by the Judicial Service Commission.

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11. Sri Skanda Rajah J., who had previously

decided in Ceylon Transport Board's case (1963) 65 Ceylon N.L.R. 185 that a Labour Tribunal need not be appointed by the Judicial Service Commission, agreed with Tambiah J., that the appeal in the present case should be dismissed.

12. The Respondent respectfully submits that the judgments of Sansoni C.J., H.N.G.Fernando J., and T.S.Fernando J., are right, and that Mr. F.X.J. Rasanayagam, not having been duly
10 appointed to the paid judicial office of a Labour Tribunal, was not qualified to make a valid order under Section 33 (1) (b) for the reinstatement of a workman upon an adjudication of the merits of an application made on behalf of a workman under Section 31B (1) (a) of the Act.

13. The Respondent further submits that the correctness of the decision and order of the Supreme Court dated 30th November 1965 cannot be
20 challenged in an appeal to the Queen in Council. Section 31D(i) of the Act provides that "save as provided in sub-section (2) an order of a Labour Tribunal shall be final and 'shall not be called in question in any Court'". Sub-section (2) referred to above empowers either party to the dispute to appeal to the Supreme Court whose special jurisdiction under the Act is limited to decisions on questions of law. It is respect-
30 fully submitted that the combined effect of sub-section (1) and (2) of Section 31D is to give finality to any decision of the Supreme Court on any question of law in the exercise of its appellate jurisdiction under the Act, and that it was the clear intention of the legislature to take away in respect of such special proceedings the ordinary incident of appeal to the Crown.

14. It is further submitted in the alternative that the decision of the Supreme Court in the present case ought not in any event to be disturbed.

40 15. The Respondent respectfully submits that the Appeal should be dismissed with costs for the following among other

R E A S O N S

1. BECAUSE the ordinary incident of appeal to the Crown is not available to the Appellant.

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2. BECAUSE Mr. F.X.J. Rasanayagam was not validly appointed to exercise the power of a Labour Tribunal to adjudicate upon the issues arising for decision on an application under Section 31B(1)(a) of Part IV A of the Act, and his order dated 17th September 1962 for the reinstatement of the workman Rasamanickam was of no force or avail in law.
3. BECAUSE the Judgments of Sansoni C.J., H.N.G. Fernando J., and T.S.Fernando J., in favour of the Respondent were right. 10
4. BECAUSE in any event the decision of the Court pronounced under the provisions of Section 51 of the Courts Ordinance ought not to be disturbed.

E. P. N. GRATIAEN.

WALTER JAYAWARDENA.

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BETWEEN:

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Appellant

- and -

K. W. DEVANAYAGAM Respondent

C A S E

FOR THE RESPONDENT

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