

1967/7

IN THE PRIVY COUNCIL

No. 20 of 1966

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N :

THE UNITED ENGINEERING WORKERS UNION

Appellants

- and -

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

Respondents

RECORD OF PROCEEDINGS

A. L. BRYDEN & WILLIAMS,
20, Old Queen Street,
London, S.W.1

Appellants' Solicitors
and Agents.

FARRER & CO.,
66 Lincoln's Inn Fields,
London, W.C.2

Respondent's Solicitors
and Agents

CLASS MARK

ACCESSION NUMBER

91387

UNIVERSITY OF
INSTITUTE OF LEGAL STUDIES
LEGAL STUDIES
15 MAR 1966
25 RUSSELL SQUARE
LONDON, W.C.1.

1967/7

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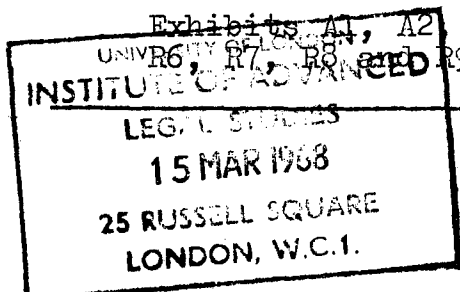
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NO. 1
APPELLANTS' APPLICATION.

In the
Labour
Tribunal.

IN THE LABOUR TRIBUNAL AT COLOMBO
THE INDUSTRIAL DISPUTES ACT No.43 of 1950.

No.1
Appellants'
Application.

4th November
1961

L.T. Case No.

THE UNITED ENGINEERING WORKERS UNION,
123, Union Place Colombo 2.

APPLICANT.

Vs.

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K. W. Devanayagam, Eastern Province
Agricultural Co-operative Union Ltd.
Kaliyan Kadu, Batticaloa.

RESPONDENT

May it please the Labour Tribunal.

The Applicant above named begs respectfully
to submit as follows:-

- (1) That N. Rasamanickam is a member of the
Applicant Union.
- (2) The said N. Rasamanickam was employed as a
20 Mechanic under the Respondent since 6th
February 1953, on a salary of Rs.125/- per
month.
- (3) The Services of the said N. Rasamanickam
was discontinued on the 14th Sept. 1961,
without justified reason or cause.

The Applicant therefore prays that the
Labour Tribunal be pleased to make order:-

- (A) Re-instatement with back wages.

For such other and further relief as to this
Tribunal shall seem meet.

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The Applicant hereby declares that the state-
ment contained in this application are true and
correct.

Sgd:

Secretary,
UNITED ENGINEERING WORKERS UNION.

4th November, 1961
123, Union Place, Colombo 2.

In the
Labour
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NO. 2
RESPONDENT'S ANSWER

No.2
Respondent's
Answer.

IN THE LABOUR TRIBUNAL AT COLOMBO

THE INDUSTRIAL DISPUTES ACT No.43 of 1950

23rd
January
1962

L.T. Case No.

Mr. N.R. Rasamanikam.

(Rest of title as No. 1)

This 23rd day of January 1962 the respondent to the application states as follows:-

1. Answering para one of the application, the respondent is unaware of the averments contained therein and strictly puts the applicant to the proof thereof. 10
2. Answering para 2 of the application, the respondent denies the averments contained therein.
3. Answering para 3 of the application, the respondent states that the said applicant was employed as an mechanic on monthly paid basis of Rs.164/- and his services were terminated on 14.9.61 for insubordination and disobeying orders and was paid three months salary. 20

Therefore the respondent prays that the application of the applicant be dismissed with costs and for such other further relief as to the Tribunal shall seem meet.

Sgd: K. W. Devanayagam

President

EASTERN PROVINCE AGRICULTURAL
CO-OPERATIVE UNION LIMITED
Batticaloa.

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NO. 3
APPLICANTS' REPLY

In the
Labour
Tribunal

UNITED ENGINEERING WORKERS UNION,
123, Union Place,
Colombo 2.

No.3
Applicants'
Reply
1st March
1962

1st March, 1962.

IN THE LABOUR TRIBUNAL AT COLOMBO:

THE INDUSTRIAL DISPUTES ACT No. 43 of 1950.

L.T. Case No. 6/9091.

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(Rest of title as No. 1)

This 1st day of March, 1962.

The applicant contends that its statement of 4th November, 1961 would suffice as an answer to the statement of the Respondent.

Sgd.

Secretary

THE UNITED ENGINEERING WORKERS' UNION

1st March, 1962.

123, Union Place,

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Colombo 2.

In the
Labour
Tribunal

NO. 4
O R D E R

BEFORE THE LABOUR TRIBUNAL 6, COLOMBO

Monday, the 17th day of September
1962.

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P R E S E N T.

F.X.J.RASANAYAGAM ESQUIRE.

The United Engineering Workers Union, No. 123,
Union Place, Colombo 2. Applicant.

Vs.

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K.W.Devanayagam, Eastern Province Agricultural
Co-operative Union Ltd., Kaliyan Kadu,
Batticaloa. Employer/Respondent.

Labour Tribunal Cases Nos. 9090, 9091,
9092, 9093, 9088 and 9089.

O R D E R

When these applications were taken up for the
enquiry Mr. Vernon de Livera appeared for the
applicant and Mr. Crosette Thambyah instructed by
Mr. K.V.M.Subramaniam appeared for the respondents.
The parties agreed that in respect of all the
cases they are prepared to abide by the decision
of application No. 9091.

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The applicant union complained to
this Tribunal the workers in these cases were
employed under the respondent Society and their
services were terminated without justifiable
reason or cause on 14th September 1961. The
respondent's position was that the workers
concerned were terminated for insubordination and
disobeying orders. Since the respondent had
taken up the position that he was justified in
dismissing the applicants concerned for
insubordination I ruled that he should first lead
evidence.

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The respondent called D.R.Mack who was the
Manager of the respondent society. This witness
stated that on 9th August 1961, he was given a
memorandum signed by a number of employees. The
memorandum was produced by this witness marked R.1.

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10 This witness stated that after reading the memorandum he thought it was a very strange request to ask that the business place be closed down for half day and he enquired from the Foreman Mr. Athputhanathan whether there was any urgent work pending. This witness stated that this memorandum was a request signed by a number of employees asking for half day's leave because the wife of a fellow employee had died and they wanted to attend the funeral. According to this witness the funeral house was just across the fence and he thought that it was not necessary to close for half day and he decided that the workshop can be closed down at 3 o'clock and accordingly he made an endorsement on R.1 to the effect 'close it down at 3 o'clock'. After making the endorsement he gave it to the Foreman asking him to explain the position to the rest of the employees and put it up on the notice board. This witness stated that half an hour or forty five minutes later he had occasion to hear a discussion inside the workshop that they were closing up at 12 o'clock and he understood by this conversation that he had given permission to close down at 12 o'clock. According to this witness he shouted out from the office saying 'who gave permission to leave at 12 o'clock.' Then the Telephone Operator had replied saying that the President had given permission to leave at 12 o'clock; whereupon this witness had said that no such order was given and had asked her who gave this information. The Telephone Operator had then informed this witness that the Job Clerk Ponnudurai had given this information. This witness stated that at this stage he summoned both Ponnudurai and Rasamanickam and asked them as to the person who told them that the workshop was to be closed at 12 o'clock. They had replied that the President had said that it could be closed at 12 o'clock. This witness stated that he looked into R.1 and found that the President had written there whether it could be closed and open as on a Saturday and he stated that this request could not be allowed. According to this witness the endorsement on R.1 made by the President read 'this may be considered as if half a day Saturday substituted'. This witness explained to the employees concerned that this is merely an enquiry by the President asking him as to what

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could be done about it. This witness stated that at that stage he telephoned Mr. Devanayagam and the latter told him that he only made a suggestion whether this could be done. This witness also stated that he informed Mr. Devanayagam by telephone that this could not be done because there was heavy work pending and Mr. Devanayagam agreed with him that the business be closed down at 3 o'clock. At that stage he had informed all the employees that the place was to be closed down at 3 o'clock. This witness stated that he was under the impression that all the employees were agreeable to his order that the place is to be closed down at 3 o'clock. He also stated in evidence that he asked Rasamanickam as to why he took the memorandum and went to the President and the latter had replied that he took it on his own. This witness also stated that he had asked the Foreman to inform the workers that the workshop will be closed at 3 o'clock and the Foreman had conveyed the message to the rest of the employees. According to this witness at about 1 p.m. after lunch the Foreman came to his house and told him that the men were not getting into the workshop. At about 1.45 p.m. when he was on his way to the workshop about 100 yards away from the workshop he had seen the whole crowd walking along the road. He had stopped and asked them as to where they were going and they had replied that they were going to the funeral. Thereupon this witness had informed these workmen that they were not allowed to go at 12 o'clock but that they should go at 3 p.m. The only reply he had received from these workmen was that they were going to the funeral. Thereupon he had replied 'alright go if you want, but you are not given permission to go'. This witness stated that when he got back into his car he got a jeering from the crowd but he did not take any notice. When he returned to the office he informed the President Mr. Devanayagam about what happened and Mr. Devanayagam instructed him to interdict the workmen concerned and hold an enquiry. This witness stated that he got the letters of interdiction typed out immediately and he produced the letter of interdiction marked R.2 served on Rasamanickam and letter of interdiction marked R.3 served on Ponnudurai. This witness further stated that similar letters like R.3 were

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served on the other employees to this dispute but in the case of Rasamanickam he was asked to show cause in addition why he removed R.1 the memorandum without permission from the notice board and took it to the Managing Director. This witness also stated that an enquiry was held on 11th August 1962 and there was a Committee set up to enquire into the happenings of the 9th August. According to this witness, at the enquiry the charges were read out and evidence was taken and the workmen concerned were asked to appoint one of them to represent them at the enquiry and they appointed Rasamanickam to be the spokesman. This witness also produced marked R.4 a memorandum of consent signed by the workmen appointing Rasamanickam as the spokesman. After the evidence was heard according to this witness, the Committee decided to dismiss these eight employees and in the case of Rasamanickam and Ponnudurai, they were to be given three months wages and in the case of the other six employees it was suggested that they be given one week's pay. This witness was subjected to cross-examination at length by the applicant's counsel. It was suggested to him that there was a custom prevailing that whenever a wife or a relation of an employee died the workshop was closed down for half a day. Particular instances were put to him but he denied that the workshop was closed for half day. Other instances were also put to him but his reply was that there were special circumstances which necessitated the closing down of the workshop for half day. This witness stated under cross-examination that he did not find out from Mr. Devanayagam whether there was a practice to give half a day to attend a funeral of a relation of the employees, but this witness stated that if there was such a practice he would have allowed the same privilege. This witness admitted under cross-examination that there were 29 persons who were involved in this incident and some of them have been taken back into employment, but the explanation of the witness was that the persons who were taken back into employment stated that they were not aware that the place was closed at 3 o'clock and if they had known it they would not have gone off. This witness stated under cross-examination that the foreman had informed all the employees that they should not leave at 12 o'clock. He also

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stated if all the workers turned up and stated that they were not aware that this place was to be closed at 3 o'clock he would have accepted their explanations. He also stated that he had trouble with Rasamanickam and Ponnudurai. Rasamanickam according to this witness had trouble with him personally while Ponnudurai, other than pulling up for careless work had no trouble with him. This witness was also asked under cross-examination whether it is fair to treat one set of workers differently from another set of workers in regard to the punishment for the same offence. This witness took up the position that it depended according to the circumstances. This witness also stated that the dismissal of the apprentices was justified if they were trouble makers. The respondent Mr.K.W.Devanayagam, the President of the Society also gave evidence. This witness stated that Mr. Mack the last witness was the Manager of the workshop and there is work only for six months in the garage and for the other six months the garage idles. This witness also stated that there was a loss of Rs. 18,000/- from the garage but the loss was made up by other means. The witness stated that the Manager attends to the internal administration. The Manager is immediately under the Board and there are no superior officers above the Manager. According to this witness on 9th August 1961, Rasamanickam brought him a paper and he identified this paper as R.l. This witness admitted that he made the endorsement 'this may be considered as half day substituted', and having endorsed it he asked Rasamanickam to take it to the Manager. According to this witness sometime later in the day the Manager rang him up and said that the matter was discussed and all the employees agreed to work till 3.30 p.m. The Manager also informed him that there was heavy work on that particular day. This witness said in evidence that he fully agreed and endorsed the view taken up by the Manager that the workers should go at 3 p.m. According to this witness the last thing he heard was that the workers concerned had disobeyed the orders of the Manager. This witness also stated that an enquiry was held on 11th August and Rasamanickam represented the workers concerned. This witness also stated in evidence that Athputhanathan was called to give evidence about the charge against Rasamanickam

about the notice being taken out of the board. According to this witness Athputhanathan could not say whether it was taken from the board. Under cross-examination this witness said that he could not deny that there was a custom among the people that when a relative dies they go to that particular house, chop firewood and assist them in many ways. This witness stated under cross-examination that when he made the endorsement on R.1 he did not know the merits of the application but he left the discretion completely in the hands of the Manager. This witness also stated that if there was no work on that particular day he would have allowed the application but the Manager had indicated to him that there was work pending on that day. This witness also was confronted with instances where the workshop was closed down due to the death of relatives of the workers concerned but this witness pointed out that in some cases the circumstances were peculiar to the incident and he mentioned the name of Velupillai and said that Valupillai's father died but the funeral house was about 15 miles away. This witness also spoke of one Derrick Peiris but the business was closed for one or two days because certain statements had to be recorded. This witness was also asked whether he and the Manager were misled as to the work in hand on that particular day. This witness' position was that he was subsequently satisfied that there was enough work on that particular day. This witness also stated in his evidence that to a question put to Rasamanickam at the enquiry the latter said that whoever who gave the order they would have walked out. The respondent also called Athputhanathan, the foreman. This witness stated that he also signed the memorandum R.1 and he supported the position of the Manager that he pinned the notice on the board. This witness also stated that he could not recommend leave on that particular day because there was heavy work and he thought that the Manager would not approve of it and that is why he suggested that all the employees get together and submit a memorandum asking for half a day's leave. This witness stated in evidence that Rasamanickam came on that particular day and asked his permission to go to the Post Office and he gave the permission required by Rasamanickam. According to this witness Ponnudurai the Job Clerk showed him the

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memorandum with a minute made by the President and Ponnudurai told him that the President had given half day's leave and Ponnudurai from the workshop telephoned the office and informed the Telephonist that half day's leave was granted. At this stage Mr. Mack called him and asked him 'what about this'. A message was sent by the Manager to the workshop to himself, Rasamanickam and Ponnudurai to come to the Manager's office. According to this witness the Manager questioned Rasamanickam but Rasamanickam did not say anything about the memorandum and Rasamanickam stated that he had taken the memorandum on his own to Mr. Devanayagam. According to this witness, the Manager then telephoned to Mr. Devanayagam and after the telephone message he informed the employees that his previous order stands. This witness also stated that he submitted a report which was marked R.9 and produced by him showing the work in hand on that particular day. This witness also stated in evidence about the instances where half day leave was granted and for all these instances there were peculiar circumstances where half day leave was necessary. In some of the instances the funeral house was 15 miles away and in the case of Derrick Peiris the investigations took place two days and also the body was at Kalmunai. This witness also gave instances where relations or children of employees have died but no half day leave was granted. This witness admitted under cross-examination that he had not dated R.9. His explanation was that he was in a hurry and he forgot to put the date. This witness also stated that he has never come across business houses in Batticaloa being closed for half day when an employee dies. This witness also stated that Rasamanickam worked with him and that he had no occasion to make any complaint against Rasamanickam and he found him to be an efficient worker and he never gave any trouble. He could not say whether he had given any trouble to the management. This witness also stated that R.1 was not pasted on the notice board but was pinned and there was every possibility of it falling on the ground and he could not say whether Rasamanickam took it from the notice board.

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Rasamanickam's case was that after the memorandum R.1 was shown to the Manager, the

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10 Manager had endorsed it to the effect 'close at 3 p.m.'. Rasamanickam went to Mr. Devanayagam, the president of the Society and got permission from him to close the workshop at 12 o'clock. In support of this position Rasamanickam gave evidence. He stated in evidence that he was the President of the United Engineering Workers Branch Union which was formed in this workshop two months prior to this incident. He also stated in evidence that the memorandum R.1 was prepared by the Job Clerk Ponnudurai and it was signed by all the employees and was also signed by the Foreman and was submitted to the Manager and the Manager endorsed to the effect that the workshop will be only closed at 3 o'clock. This witness stated that all the other workers were not acceptable to this suggestion and after that he took the list to the President Mr. Devanayagam and the President Mr. Devanayagam went through the list and made some endorsement and gave it back to him stating 'you can go'. This witness stated that he came back with the endorsement and informed the rest of the workers what Mr. Devanayagam had said. This witness also stated that after the lunch interval he did not go back to work and also the rest of the workers did not report for work. This witness also admitted that he was served with a charge sheet marked R.2. This witness took up the position that he was dismissed without cause and also half day's leave which he had applied on the 29th August was "something that we were customarily accustomed to get". Under cross-Examination this witness admitted that he worked directly under the foreman who gave him all instructions as regards his work and he also admitted that the Foreman takes his orders from Mr. Mack, the Manager. He also took up the position that this was the first occasion that a leave application of his was refused. This witness was asked that when he submitted the memorandum whether he was prepared to abide by the decision of the manager and the answer of this witness was "we were sure that he would allow it." The witness also stated that he was not determined in any event to go on leave. This witness also stated that after the Manager had endorsed the memorandum that the workshop will be closed at 3 o'clock, he took the permission from the Foreman and took the memorandum to the President. According to him Mr. Devanayagam

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merely made an endorsement on the memorandum and asked him to go away and he did not ask him to take it back to the Manager. This witness was emphatic that Mr. Devanayagam had granted the half day's leave. After bringing the memorandum from Mr. Devanayagam this witness stated that he placed it on the Foreman's table and all the workers crowded round the table and he informed the workers that half day's leave was granted. This witness also stated under cross-examination that he, the foreman and Ponnudurai were summoned by the Manager and the Manager informed them that he had spoken to Mr. Devanayagam and that his earlier order stands i.e. "leave only from 3 p.m.". This witness stated that he did not believe that Mr. Mack was speaking the truth and he thought that he was telling a lie. This witness was asked "You had decided when Mr. Mack told you that it was 3 o'clock that you were not going to obey him". His reply to this was "since the President had granted us permission to go we were prepared to abide by the decision of the President." This witness also stated that he did not think of disobeying Mr. Mack's orders. This witness stated under cross-examination that he did not check with Mr. Devanayagam whether he had agreed with Mr. Mack's decision that the workshop is to be closed at 3 p.m. He was also asked why he did not check from Mr. Devanayagam that his order had been varied. His reply was that he had no time to do so. This witness also was confronted with the evidence of Mr. Devanayagam that this witness had stated at the enquiry that whatever the decision of the management was he was determined to go on half day's leave. To this the witness stated that if Mr. Devanayagam has stated it in his evidence it was not correct. The position taken up by this witness was that since Mr. Devanayagam had granted us permission to go on half day's leave and since Mr. Devanayagam is a superior officer he took his order. Further this witness was asked that "even Mr. Mack had told you that he had telephoned Mr. Devanayagam is it your position that you were entitled to disbelieve him without communicating with Mr. Devanayagam again". The answer to this question was "we did not have any chance of communicating with Mr. Devanayagam and since he had given his permission in writing we were entitled to disobey Mr. Mack. In re-examination this witness stated 'when I said I disbelieved Mr. Mack what I meant was that our impression was that once Mr. Devanayagam had granted us leave he would not have gone back on his words and cancel the

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permission". He further stated that he always found Mr. Devanayagam to be an honourable gentleman. The applicant union also called Ponnudurai, the Job Clerk. This witness stated that he remember the 9th August where a memorandum was drawn up by him asking for half day's leave. This witness stated that he had been granted half day's leave and that was why he went off at 12 o'clock. He also remember that after he had written R.1 the Manager Mr. Mack had granted permission only to leave at 12 o'clock. This witness also stated that he had a subsequent impression that half day's leave was granted by the President. This witness stated that the memorandum was brought back from the President by Mr. Rasamanickam and he informed the workers that the President had granted half day's leave. Under cross-examination this witness mentioned instances where employees wives or relations have died and half day's leave was granted by the management. This witness also stated under cross-examination that Mr. Rasamanickam brought R.1 and gave it to him and he read what Mr. Devanayagam had written on this document. R.1 was produced and the witness was confronted with the endorsement of Mr. Devanayagam. This witness stated that at the time the memorandum was given to him by Rasamanickam only the words 'half day leave allowed' was there and the words "this may be allowed" was not there. He also identified the signature of Mr. Devanayagam under the endorsement. This witness also admitted under cross-examination that Mr. Mack had telephoned Mr. Devanayagam in his presence about the memorandum R.1, but he did not hear what Mr. Devanayagam told Mr. Mack over the telephone. This witness also denied the subsequent incident which the Manager Mr. Mack complained of i.e. the hooting and jeering near the gates of the workshop. This witness stated in evidence that he went for the funeral after 12 o'clock. This witness also stated that if Mr. Devanayagam had cancelled his earlier order of half day's leave and stated that leave only from 3 p.m. he would have obeyed Mr. Devanayagam. This witness also was further asked that "if Mr. Mack had told you that Mr. Devanayagam had cancelled his earlier order and leave only from 3 p.m., would you have obeyed Mr. Mack". The answer of this witness was "how can I believe him." This witness denied that he stated at the enquiry

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that "even if Mr. Devanayagam had not given us permission I would have yet gone for the funeral".

After a careful consideration of the evidence led by the respondent and the applicant union, I find that there is no evidence established by the applicant union that a custom prevailed in this workshop that half day leave was allowed in case of the funeral of an employee's wife or a relation. The evidence on this particular claim by the applicant union is not satisfactory and in no way establishes that such a custom did prevail in this business establishment. The important question for the determination of this Tribunal is whether the worker in this case is guilty of a wilful disobedience of a lawful order of the Manager Mr. Mack. The simple position taken up by the workman concerned was that after the endorsement made by the Manager that the workshop is to be closed at 3 o'clock, he went to the President and got half day's leave. This witness did not know what endorsement the President had made on R.1, but his impression was that leave was granted and his position was that since he had an impression that leave was granted by the President he went off at 12 o'clock. Counsel for the respondent after Mr. Ponnudurai's evidence was concluded moved to call Mr. Devanayagam to satisfy this Tribunal that the endorsement he made on R.1 was the identical endorsement he made on 9th August 1961. The applicant's Counsel had no objection. Mr. Devanayagam was subsequently recalled and he stated that the endorsement as it stands on R.1 was the endorsement he made on 9th August and it read "this may be considered as half day substituted". It follows that the evidence of Ponnudurai should be rejected on this point for the simple reason that Rasamanickam stated in his evidence that Mr. Devanayagam the very honourable man and that he is incapable of going back on his word. There still remains the question whether there has been a wilful disobedience of a lawful order. Mr. Devanayagam supported the position of the Manager that he agreed with the Manager that since there was heavy work on that particular day that leave should only be granted from 3 p.m. Mr. Devanayagam also stated in evidence that this witness had stated at the enquiry that whoever gave the order he would have gone for the funeral at 12 o'clock.

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I find from the evidence before me that the applicant had not obeyed the order made by the Manager, but the circumstances under which this order was made I find that there has been no wilful defiance on the part of Rasamanickam against the management. It must be remembered that the leave was asked for to attend a funeral of the wife of Thangarajah who was the head baas of this workshop and under whom most of the employees had learnt their work. I can only hold that there has been certainly a disobedience on an order made by the Manager but does this disobedience on this particular instance justify dismissal. There is evidence on record that some of the other employees who were charged with the very same offence were taken back because they had given some explanation to the effect that they did not know that the workshop was to be closed at 3 p.m. I also find that from the evidence led by the respondent that Rasamanickam was a good worker and his immediate superior who was the Foreman stated that he was not aware that the employees concerned had any trouble with the management. The Manager also stated in evidence that other than one or two incidents the applicant was a good worker. I am required by the Act to make an order which is just and equitable after considering all the evidence placed before me. Although I agree that internal discipline in a business house is a matter for the management, this Tribunal has to consider whether the punishment given in cases where misconduct is alleged is just and equitable. After a careful consideration of the evidence led by both parties I hold that although Rasamanickam failed to obey the order of the Manager, he is not guilty of a wilful insubordination taking into consideration the circumstances under which the order was given. The management has dismissed the workmen concerned after offering in the case of Rasamanickam and Ponnudurai three months salary and the other workmen one months' salary. I accordingly hold that the workmen on whose behalf the applicant union has made these applications be re-instated with effect from 17th October 1962 with three months salary in the case of Ponnudurai and Rasamanickam and in the case of the other workmen concerned with one months' salary.

In the
Labour
Tribunal
No. 4
Order
17th
September
1962
continued

50 It is accordingly ordered that the respondent

In the
Labour
Tribunal

No. 4
Order

17th
September
1962

continued

shall re-instate the workmen concerned with effect from 17th October 1962 with three months salary in the case of Ponnudurai and Rasamanickam and in the case of the other workmen viz. Kanapathi Pillai, S.R.Moses, D.K.Darlin Silva and F.X.Thomas with one months' salary.

Sgd: F.X.J.Rasanayagam

President

Labour Tribunal 6, Colombo.

Dated at Colombo, this 17th day of September, 1962. 10

In the
Supreme Court

No. 5
Petition of
Appeal

2nd October
1962

NO. 5
PETITION OF APPEAL.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

S.C.21
1962.

K. W. Devanayagam, President, Eastern
Province Agricultural Co-operative Union
Ltd., Kaliyan Kadu, Batticaloa. Appellant

Labour Tribunal
No. 6
Cases Nos.9091

Vs.

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The United Engineering Workers Union, No.
133, Union Place, Colombo 2. Respondent

TO:

The Honourable The Chief Justice and the
other Judges of the Hon'ble The Supreme
Court of the Island of Ceylon.

The 2nd day of October, 1962.

The petition of appeal of the appellant
above named respectfully states as follows:-

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1. The Respondent Union above named
complained to the Labour Tribunal in Cases 9088
to 9093 that the services of their members, the
workers Kanapathipillai, R.K. de Silva,

S.R.Moses, Rasamanikkam, Ponnudurai, and F.X. Thomas had been discontinued by the appellant on the 14th of September 1961, without just cause or reason and prayed for the reinstatement of the said workers with back wages.

In the
Supreme Court
No. 5
Petition of
Appeal

2nd October
1962

continued

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2. The appellant filed answers to the said complaint stating that the services of the said workers were terminated for insubordination and disobeying orders and that upon termination the workers Rasamanikkam and Ponnudurai were paid 3 months salary and the other 4 workers were paid 1 month's salary each.

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3. The said workers Rasamanikkam and Ponnudurai were at the time of termination, employed by the Eastern Province Agricultural Co-operative Union Ltd., of which the Appellant was the President, in the capacity of Mechanic and Job Clerk respectively, in the garage maintained by the said Union for the servicing and repairing of tractors. They had as at that time been employed by the said Union for a period of 7 years 9 months and 3 years 4 months respectively. Of the other 4 workers who were all employed by the said Union in the capacity of apprentices at the time of termination, Kanapathipillai had been employed for a period of 1 year 3 months; Silva for a period of 4 years 10 months; Moses for a period of 3 years 1 month; and Thomas for a period of 1 year 9 months.

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4. The incident that resulted in the termination of the services of the said workers was briefly as follows: on the 9th August 1961 they had, having been refused a half days leave to attend the funeral of the wife of a fellow worker, defied the management and absented themselves from work after the noon break despite the express orders of the Manager of the said Union that they could only leave at 3 p.m. on that day to attend the funeral.

5. The matter was taken up for inquiry by the President of Labour Tribunal No. 6 and after hearing the evidence adduced by both the Appellant and the Respondent, the President made order on the 17th September 1962 that the Appellant shall re-instate the workers Rasamanikkam and Ponnudurai and pay them 3 months

In the
Supreme Court

No. 5
Petition of
Appeal

2nd October
1962

continued

salary, and in the case of the other 4 workers shall re-instate them with one months salary. The order of re-instatement in all cases to take effect from 17th October 1962.

6. Being aggrieved with the said order of the President the Appellant appeals therefrom to your Lordships' Court on the following among other grounds that may be urged by his Counsel at the hearing of this appeal:-

7. Having regard to the evidence in the case, the order of the President was not just and equitable within the meaning of S.31 C(1) of the Industrial Disputes Act. 10

8. On the evidence in the case the termination of services of the said workers was justified in Law and in such circumstances the President had no jurisdiction to grant any redress or relief.

9. The President misdirected himself in holding that on the evidence there was no wilful disobedience and/or insubordination in Law by the said workers. 20

10. Having held that the workers had not obeyed the order of the Manager of the said Co-operative Union, the President had no jurisdiction to substitute his own judgment for that of the management with regard to the nature and measure of punishment.

11. In determining the question of just and equitable relief warranted by the circumstances of the case, the President gave no reasons to show why in his opinion it was just and equitable that the said workers should be re-instated and in particular failed to consider the following circumstances: 30

- (a) the attitude of defiance of the workers at the domestic inquiry held by the management;
- (b) the attitude of the workers Rasamanikkam and Ponnudurai at the Labour Tribunal inquiry who in their evidence stated that as the Manager had not given them his order in writing; they were justified in 40

disobeying him;

(c) the previous misconduct of Rasamanikkam.

12. The President awarded 3 months salary to Rasamanikkam and Ponnuthurai and one months salary to the other 4 workers by error, being under the mistaken impression that this sum of money which had been offered by the management had not in fact been paid to them. The said sums were paid to the said workers on the termination of their services.

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WHEREFORE the Appellant prays that the order of the President be set aside and the applications of the Respondent be dismissed with costs and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd: K. W. Devanayagam

Appellant.

I certify that the points of Law raised in the Partition of Appeal are fit matters for the adjudication of the Supreme Court.

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Sgd:

Proctor for Appellant.

In the
Supreme Court

No. 5
Petition of
Appeal

2nd October
1962

continued

In the
Supreme Court

No. 6
Order of
Reference
(undated)

NO. 6.
ORDER OF REFERENCE

ORDER OF THE HON. T. S. FERNANDO, Q.C., PUISNE
JUSTICE, REFERRING THE MATTER TO A BENCH
CONSISTING OF MORE THAN ONE JUDGE

S.C.Nos.18 to 23 of 1962 - Labour Tribunal
Case No. 6/9091.

S.C.No. 9 of 1962 - Labour Tribunal Case No.1/6209

Present: T.S.Fernando J.

Counsel: In S.C.Nos. 18 to 23 of 1962

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C. Ranganathan with S.C.Crossette-
Thambiah for Appellant;

S. Kanakaratham for respondent;

In S.C.No. 9 of 1962

H.V.Perera Q.C. with R.A.Kannangara
for appellant;

M. Tiruchelvam Q.C., with George
Candappa and K. Thevarajah for
respondent;

T. S. Fernando J.

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In appeals Nos. 18 to 23, Mr. Ranganathan was permitted by me to argue the question whether the Labour Tribunal, not having been appointed by the Judicial Service Commission, had any jurisdiction to exercise judicial power which, it was argued, was the power exercised when it inquired into the application and made the order appealed from. Sri Skanda - Rajah J. in a recent decision - The Ceylon Transport Board Ltd. v. The Samastha Lanka Motor Sevaka Samitivu (63.C.L.W.42) - has decided that the jurisdiction exercised by a Labour Tribunal appointed in terms of the Industrial Disputes Act, No. 43 of 1950, as amended by Act No. 62 of 1957, does not amount to an exercise of judicial power. It has however been contended by Mr. Ranganathan that this question should receive reconsideration by this Court by reason

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of certain statements in the judgment of Tambiah J. in Pivadasa v. The Bribery Commissioner (64 W.L.R. at 392) and in the judgment of H.N.G.Fernando J. in Jailabdeen v. Danina Umma (64.N.L.R. at pp 424 and 425) which appear to doubt the validity of the reason which influenced Sri Skanda Rajah J. to reach the decision in the first mentioned case.

In the
Supreme Court
No. 6
Order of
Reference
(undated)
continued

10 There is a constant stream of appeals to this Court from decisions made by Labour Tribunals, and the question now argued goes to the root of the jurisdiction of the Tribunals. The question appears to me to be one of doubt or difficulty and is one meriting an authoritative pronouncement from this Court. Accordingly, I reserve the question for the decision of more than one Judge of this Court, the Bench to be constituted by the Chief Justice as provided for by section 48A of the Courts Ordinance.

20 Counsel in another appeal from the decision of a Labour Tribunal - Appeal No. 9 of 1962 - where the identical question arises have requested me to include that appeal also in the reference to the Divisional Bench so that their assistance too may be available at the argument. I accede to that request and include that appeal also in this reference.

Sgd. T.S.Fernando.
Puisne Justice.

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NO. 7
JUDGMENT

No. 7
Judgment

30th November
1965

(See separate document in the pocket in back cover of this Record, being the report in 68 New Law Reports of Walker Sons & Co., Ltd. and others Appellants, and F.C.W.Fry and others, Respondents)

NO. 8
DECREE

In the
Supreme Court
No.8
Decree
4th January
1966

No. S.C. 18-23/'62
(Labour Tribunal)

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES, HEAD OF THE
COMMONWEALTH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

D. W. Devanayagam,
President, Eastern Province
Agricultural Co-operative Union Limited,
Kaliyan Kadu, Batticaloa.
Respondent-Appellant

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Versus

The United Engineering Workers Union,
No. 123, Union Place, Colombo 2.
Applicant-Respondent

(Labour Tribunal cases Nos. L.T./6/9088-9093)

Counsel for Appellant: Mr. Advocate C. Ranganathan,
Q.C. with Mr. Advocate S.C. Crossette-Thambiah

20

Counsel for Respondent: Mr. Advocate N.
Satyendra with Mr. Advocate J. Perisunderam

V. Tennekoon Esqr., Q.C., Solicitor-General with
Messrs. Advocates R.S. Wanasundera, Crown Counsel,
V.S.A. Pullenayegam, Crown Counsel, H.L. de Silva,
Crown Counsel, and G.G.D. de Silva, Crown Counsel,
as amicus curiae.

This case having come before the Hon.
Miliani Claude Sansoni, Chief Justice, the Hon.
Hugh Norman Gregory Fernando, Senior Puisne
Justice, the Hon. Thusew Samuel Fernando, Q.C.,
the Hon. Henry Wijeyakone Tambiah, Q.C., and the
Hon. Ponnuduraisamy Sri Skanda Rajah, Puisne
Justices of this Court, for hearing and determi-
nation on 12, 13, 17th, 18th, 19th, 20th, 21st
May, 26th, 27th, 28th, 29th, 30th July, 2nd, 3rd,
4th, 5th, 6th August, 7th, 8th, 9th September
and 30th November, 1965.

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It is considered and adjudged that these
appeals be and the same are hereby allowed with
costs.

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(Vide copy of order attached to S.C.9/62 Labour Tribunal case No. LT/1/6209).

In the Supreme Court

Witness the Hon. Miliani Claude Sansoni, Chief Justice, at Colombo, the 4th day of January in the year One thousand Nine hundred and sixty six, and of Our Reign the Fourteenth.

No.8
Decree

4th January
1966
continued

Sgd. D. Meynert
Deputy Registrar S.C.

SEAL

NO. 9
ORDER GRANTING SPECIAL LEAVE TO APPEAL

In the Privy Council

AT THE COURT AT BUCKINGHAM PALACE

No.9
Order granting Special leave to appeal

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The 28th day of July, 1966

PRESENT

28th July
1966

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT MR. SHORT
LORD SHEPHERD MR. DIAMOND

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 11th day of July 1966 in the words following, viz.:-

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"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of The United Engineering Workers Union in the matter of an Appeal from the Supreme Court of Ceylon between the Petitioner and K. W. Devanayagam President Eastern Province Agricultural Co-operative Union Limited Respondent setting forth that the Petitioner is a Trade Union duly registered under the Trade Unions Ordinance (Chapter 138 of the Legislative Enactments of Ceylon 1956 Revised Edition) and the Respondent is the President of the Eastern Province Agricultural Co-operative Union Limited: that the Petitioner desires to obtain special leave to appeal against the Judgment and Order of the Supreme Court of

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In the
Privy Council

No. 9
Order grant-
ing Special
leave to
appeal

28th July
1966

continued

Ceylon dated the 30th November 1965 whereby the Supreme Court on an Appeal by the Respondent against the Order of the Labour Tribunal at Colombo dated the 17th September 1962 set aside the said Order of the Labour Tribunal by which the Respondent had been ordered to reinstate in employment a member of the Petitioner Union namely N. Rasamanickam: that the Petitioner did not have the financial resources to prosecute an Appeal to Your Majesty in Council so had to discuss the advisability of an Appeal and the financing of it with other Trade Unions and before a decision could be reached the time limits prescribed for seeking leave from the Supreme Court to appeal to Your Majesty in Council had expired if such leave were applicable: And humbly praying Your Majesty in Council to grant it special leave to appeal from the Judgment and Order of the Supreme Court of the Island of Ceylon dated the 30th November 1965 or for further or other relief:

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Judgment and Order of the Supreme Court of Ceylon dated the 30th day of November 1965 upon the conditions that it deposits in the Registry of the Privy Council the sum of £400 as security for costs within two months of the date of Your Majesty's Order herein and that its Case is lodged in the Registry of the Privy Council by the 1st day of October 1966:

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"And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record

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proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.

"And in case Your Majesty should be pleased to approve of this Report then Their Lordships do direct that there be paid by the Petitioner to the Respondent his costs of opposing this petition in any event."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

In the
Privy Council

No.9
Order grant-
ing Special
leave to
appeal

28th July
1966

continued

IN THE PRIVY COUNCIL

No. 20 of 1966

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON

B E T W E E N :

THE UNITED ENGINEERING WORKERS UNION

Appellants

- and -

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

Respondents

RECORD OF PROCEEDINGS

A. L. BRYDEN & WILLIAMS,
20, Old Queen Street,
London, S.W.1

Appellants' Solicitors
and Agents.

FARRER & CO.,
66 Lincoln's Inn Fields,
London, W.C.2

Respondent's Solicitors
and Agents