

26

48 OF 1970

No.....

Supreme Court of Ceylon,  
Applications Nos. 498 of 1967,  
and 207 of 1968.

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
-7 APR 1972  
25 RUSSELL SQUARE  
LONDON, W.C.1.

In the Matter of An Application for a  
Mandate in the Nature of a Writ of  
Certiorari and/or Prohibition,

and

In the Matter of An Application for  
Conditional Leave to Appeal to Her  
Majesty in Council.

**IN HER MAJESTY'S PRIVY COUNCIL  
ON AN APPEAL FROM  
THE SUPREME COURT OF CEYLON**

*Between*

**MALIBAN BISCUIT MANUFACTORIES, LTD.  
No. 11, VAN ROOYEN STREET, COLOMBO 13.**

*(Petitioner)- Appellant*

*And*

1. **R. SUBRAMANIAM ESQUIRE, PRESIDENT, LABOUR TRIBUNAL,  
No. 11, ROSMEAD PLACE, COLOMBO 7.**
2. **THE CEYLON MERCANTILE UNION, No. 22-1/1, UPPER CHATHAM  
STREET, COLOMBO 1.**
3. **N. L. ABAYWIRA ESQUIRE, COMMISSIONER OF LABOUR, DEPT. OF LABOUR,  
LOWER LAKE ROAD, COLOMBO 3.**
4. **THE SECRETARY, LABOUR TRIBUNAL, No. 11, ROSMEAD PLACE,  
COLOMBO 7.**

*(Respondents) - Respondents*

---

---

**RECORD  
OF PROCEEDINGS**

---

---

## INDEX - PART I

Serial No.	Description of Document	Date	Page
1	Application to the Supreme Court for a Mandate in the Nature of a Writ of Certiorari and/or Prohibition:		
	(i) Petition of the Petitioner (See Part II of the Record of Proceedings for Documents filed with the Petition) .. ..	19-12-67	1
	(ii) Affidavit of K. G. N. Seneviratne, Secretary of Maliban Biscuit Manufactories, Ltd. ..	19-12-67	8
2	Judgment of the Supreme Court .. ..	9- 4-68	14
3	Decree of the Supreme Court .. ..	9- 4-68	19
4	Application for Conditional Leave to Appeal to the Privy Council .. .. .	30- 4-68	20
5	Statement of Objections of the 2nd Respondent Filed in the Application for Conditional Leave to Appeal to the Privy Council .. .. .	25- 6-68	23
	Affidavit of P. B. Tampoe, General Secretary of the Ceylon Mercantile Union (2nd Respondent) Filed in the Application for Conditional Leave to Appeal to the Privy Council .. .. .	22- 6-68	25
7	Affidavit of K. G. N. Seneviratne, Secretary of Maliban Biscuit Manufactories, Ltd., Filed in the Application for Conditional Leave to Appeal to the Privy Council (with Schedules Marked A, B, C, D, E & F) .. .. .	16- 7-68	27
8	Judgment of the Supreme Court Dismissing Application for Conditional Leave to Appeal to the Privy Council .. .. .	19-12-69	40
9	Decree of the Supreme Court Dismissing the Application for Conditional Leave to Appeal to the Privy Council .. .. .	19-12-69	43
10	Order of Her Majesty in Council Granting Special Leave to Appeal to the Privy Council .. ..	25- 2-70	45

( ii )

**INDEX - PART II**

**EXHIBITS**

(DOCUMENTS ANNEXED TO THE PETITION OF THE PETITIONER DATED 19-12-67 IN HIS APPLICATION TO THE SUPREME COURT FOR A MANDATE IN THE NATURE OF A WRIT OF CERTIORARI AND/OR PROHIBITION)  
(Item No. 1 (i) in Part I of the Record of Proceedings)

<b>Exhibit Mark</b>	<b>Description of Document</b>	<b>Date</b>	<b>Page</b>
"A"	Extract from the Ceylon Government Gazette ..	23- 6-67	49
"B"	Letter Addressed to the General Secretary, Ceylon Mercantile Union, and the Managing Director, Maliban Biscuit Manufactories, Ltd., by the Permanent Secretary to the Ministry of Labour, Employment and Housing .. .. .	14- 6-67	56
"C"	Notice Sent to the Petitioner by the 4th Respondent	24- 6-67	57
"D"	Statement of the Petitioner .. .. .	17- 7-67	58
"E"	Statement of the 2nd Respondent .. .. .	20- 7-67	62
"F"	Answer of the 2nd Respondent .. .. .	14- 8-67	80
"G"	Answer of the Petitioner .. .. .	31- 8-67	85
"H"	Order Made by the 1st Respondent .. .. .	12-12-67	102

No. **48** OF 1970

Supreme Court of Ceylon,  
Applications Nos. 498 of 1967,  
and 207 of 1968.

In the Matter of An Application for a  
Mandate in the Nature of a Writ of  
Certiorari and/or Prohibition,

*and*

In the Matter of An Application for  
Conditional Leave to Appeal to Her  
Majesty in Council.

**IN HER MAJESTY'S PRIVY COUNCIL  
ON AN APPEAL FROM  
THE SUPREME COURT OF CEYLON**

*Between*

MALIBAN BISCUIT MANUFACTORIES, LTD.  
No. 11, VAN ROOYEN STREET, COLOMBO 13.

*(Petitioner)- Appellant*

*And*

1. R. SUBRAMANIAM ESQUIRE, PRESIDENT, LABOUR TRIBUNAL,  
No. 11, ROSMEAD PLACE, COLOMBO 7.
2. THE CEYLON MERCANTILE UNION, No. 22-1/1, UPPER CHATHAM  
STREET, COLOMBO 1.
3. N. L. ABEYWIRA ESQUIRE, COMMISSIONER OF LABOUR, DEPT. OF LABOUR,  
LOWER LAKE ROAD, COLOMBO 3.
4. THE SECRETARY, LABOUR TRIBUNAL, No. 11, ROSMEAD PLACE,  
COLOMBO 7.

*(Respondents) - Respondents*

---

---

**RECORD  
OF PROCEEDINGS**

---

---

## No. 1

**Application to the Supreme Court for a Mandate in the  
Nature of a Writ of Certiorari and/or Prohibition**

(i) **Petition of the Petitioner**

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(i) Petition of  
the Petitioner.  
19-12-67

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

10

In the matter of an application for a Mandate in the nature of a Writ of Certiorari and/or Prohibition and in the matter of an Application in terms of Section 42 of the Courts Ordinance, Chapter 6, Legislative Enactments of Ceylon, 1956, Revised Edition.

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 13.

S.C. No. 498/1967  
No. ID/LT/8/178

*Vs.*

*Petitioner*

20

1. R. SUBRAMANIAM, ESQUIRE, PRESIDENT,  
Labour Tribunal of No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

*Respondents*

*To :*

30

HIS LORDSHIP THE CHIEF JUSTICE AND TO THEIR LORDSHIPS  
THE PUISNE JUSTICES OF THE HONOURABLE THE  
SUPREME COURT OF CEYLON

On this 19th day of December, 1967.

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(i) Petition of  
the Petitioner,  
19-12-67  
— *Continued*

The Petition of the Petitioner abovenamed appearing by Don Hector Nicholas Jayamaha and Senerath Lakshman Moonesinghe, its Proctors practising in partnership under the name, style and firm of "Moonesinghe & Jayamaha" states as follows—

1. The Petitioner is a Company duly incorporated in Ceylon under the Companies Ordinance (Cap. 145) having its registered Office at P.O. Box 1210, No. 11, Van Rooyen Street, Colombo 13, and inter alia carries on the business of producing, manufacturing, distributing and selling biscuits.

2. The 1st Respondent was at all material times to this application the President of Labour Tribunal No. 8 established under the Industrial Disputes Act No. 43 of 1950 to whom the Honourable Minister of Labour, Employment and Housing referred under Section 4(1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon, Revised Edition 1956 (hereinafter referred to as the Act) an alleged Industrial Dispute between the Petitioner and the 2nd Respondent for settlement by Arbitration in terms of the said Act.

3. The 2nd Respondent is a Trade Union Registered in terms of the Trade Union's Ordinance No. 14 of 1935 Chapter 138 Legislative Enactments of Ceylon, Revised Edition 1956.

4. It was represented to the Petitioner by the Permanent Secretary to the Minister of Labour, Employment and Housing by letter dated 14-6-67 that the Honourable the Minister of Labour, Employment & Housing had by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act, referred an Industrial Dispute between the Petitioner and the 2nd Respondent to Labour Tribunal No. 8 for settlement by Arbitration. A copy of the statement of the alleged matters in dispute between the Petitioner and the 2nd Respondent purporting to be signed by the 3rd Respondent and dated 14-6-67 was annexed to the said letter.

5. It was represented to the Petitioner by the 4th Respondent by notice dated 24-6-67 that the Honourable the Minister of Labour, Employment and Housing had by his order dated 14-6-67 by virtue of the powers vested in him by Section 4(1) of the said Act referred the alleged matters in dispute between the Petitioner and the 2nd Respondent set out in the statement of the Commissioner dated 14-6-67 for settlement by Arbitration to Labour Tribunal 8.

No copy of such Order of the said Minister was served on the Petitioner.

6. The Petitioner produces herewith

(1) Marked "A" a true print being an extract from the Ceylon Government Gazette No. 14754 dated 23-6-67.

(a) of the order of the Minister of Labour, Employment and Housing under Section 4(1) of the Industrial Disputes Act dated 14-6-67 and signed by the said Minister.

(b) of a statement of the matters alleged to be in dispute between the 2nd Respondent and the Petitioner dated 14-6-67 and signed by the 3rd Respondent.

(2) Marked " B " a true and certified copy of a letter dated 14-6-67 from the Permanent Secretary, Ministry of Labour, Employment and Housing to the Petitioner to the effect that an Industrial Dispute has been referred by the said Minister to the 1st Respondent for settlement by Arbitration.

10 (3) Marked " C " a true and certified copy of a notice dated 24-6-67 from the 4th Respondent to the Petitioner to the effect that the Industrial Dispute specified in the document marked " A " has by order of the Minister, been referred to the 1st Respondent to submit a statement of its case in respect of the matters in dispute.

7. According to the said document marked " A " filed herewith, the 4th Respondent set out the matters purported to be in dispute between the 2nd Respondent and the Petitioner.

8. For reasons more fully set out hereinafter, the Petitioner submits that—

- 20 (1) The Minister had no power in law to refer the alleged "matters in dispute" for Arbitration under the said Act.
- (2) The reference by the Minister of the said "matters in dispute" for Arbitration to the Labour Tribunal was bad in law.
- (3) The 1st Respondent had no jurisdiction of Power in law to commence any proceeding or make any Award or Order under or in terms of any provisions of the said Act.

9. The 1st Respondent purporting to act under or in terms of the provisions of Section 17 of the said Act assumed jurisdiction and powers to adjudicate upon the said matters in dispute as aforesaid which he had not 30 the power or jurisdiction or right in law to do.

10. The Petitioner and the 2nd Respondent duly submitted the following in response to the said notice marked " C ".

- (1) A statement on behalf of the Petitioner dated the 17th day of July 1967, a true and certified photostat copy of which is produced and filed herewith marked " D ".
- (2) A statement by the 2nd Respondent dated 20-7-67 a true and certified photostat copy of which is produced and filed herewith marked " E ".
- 40 (3) The 2nd Respondent's answer dated 14-8-67 to the Petitioner's statement, a true and certified photostat copy of which is produced and filed herewith marked " F ".

No. 1.  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(i) Petition of  
the Petitioner,  
19-12-67  
— Continued

- (4) The Petitioner's answer dated 31-8-67 to the 2nd Respondent's statement, a true and certified photostat copy of which is produced and filed herewith marked " G ".

11. The said dispute was marked No. ID/LT/8/178 in the records of the said Labour Tribunal No. 8 and the 1st Respondent purporting to sit as Arbitrator in terms of Section 17 (1) of the said Act as aforesaid commenced proceedings on the 20th day of September 1967 and continued proceedings on the 27th and 28th days of October 1967. On the aforesaid dates certain preliminary objections raised by the Petitioner were argued.

12. The Petitioner and the 2nd Respondent were duly represented and appeared before the 1st Respondent, produced documents and made representations and submissions.

The record of the proceedings of the said Labour Tribunal No. 8 and documents produced by the respective parties are now under the control of and in the custody of the 4th Respondent as Secretary of the Labour Tribunal.

13. After the said proceedings had concluded the 1st Respondent purported to make an Order which he delivered on 12th December 1967. The said order was dated 12-12-67. A certified copy of the said order is produced and filed herewith marked " H ".

20.

14. It is submitted that the said Order dated 12-12-67 made by the 1st Respondent is bad and of no force or effect in law in that—

- (i) the purported reference by the Minister of the alleged industrial dispute to the 1st Respondent as President of Labour Tribunal No. 8 in terms of the said Act is bad in law;
- (ii) there was no industrial dispute within the meaning of the said Act between the Petitioner and the 2nd Respondent as alleged in the letter dated 14-6-67 marked " B " accompanying the said purported reference.
- (iii) The matters alleged to be in dispute were not industrial disputes within the meaning of the said Act;
- (iv) the 1st Respondent did not have and does not have any valid power or authority or jurisdiction to hear, adjudicate or decide any of the said matters or to make any Award.
- (v) the 1st Respondent has acted in excess of his jurisdiction under and in terms of the said Industrial Disputes Act in holding that he has jurisdiction to determine the alleged matters in dispute.
- (vi) the 1st Respondent has erred in law in making the said Order and there are errors of law on the face of the record;



- (vii) the said 1st Respondent has misdirected himself in regard to his powers and functions in making the said Order and in assuming jurisdiction and in these premises the Petitioner submits that it is entitled to a mandate in the nature of a writ of certiorari as prayed for hereinafter.

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition --  
(i) Petition of  
the Petitioner  
19-12-67  
— Continued

15. The reasons and grounds for the Petitioner submitting that the said Order of the 1st Respondent is bad in law are, *inter alia* as follows—

- 10 (i) the 1st Respondent had no jurisdiction to entertain a reference and to make an Award relating to such matters as “ demotion ”, transfer, interdiction, non-offer of work, non-employment and termination of services.
- (ii) the 2nd Respondent had no right to represent any of the persons named in the said Reference by the Minister and the 2nd Respondent cannot be a party to these proceedings, in any event until its right of representation is first established.
- 20 (iii) the Minister had no power to refer “ en masse ” disputes of a varying nature involving so many persons in the said reference. A large number of the alleged disputes are individual “ disputes ” of individual workers such as demotion, transfers, terminations etc., which had arisen, if at all before they became members of the 2nd Respondent. A variety or multitude of individual disputes cannot in law be combined in one reference as an Industrial Dispute for an award.
- (iv) the said reference by the Minister amount to a direction to the 1st Respondent,
- (a) to make or hold inquiries in regard to justification for dismissal.
- (b) to compel the Petitioner to justify the action it has taken.
- 30 (v) the alleged dispute in any event is not a minor dispute and therefore cannot be the subject matter of a Reference by the Minister under Section 4 (1) of the said Act;
- 40 (vi) matters relating to some of the workers in the said reference by the Minister having been the subject of a reference previously to an Industrial Court and an Award having been made namely ID No. 361 dated 19-2-67 no Industrial Dispute in respect of the said matters and the said workers survives in law and/or the Award made by the Industrial Court is Res Judicata and/or the Minister has no power in law to make this reference and is “ Functus officio ”; A true copy of the said Award is produced herewith as part and parcel of the 2nd Respondent’s Answer already marked “ F ”.

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(i) Petition of  
the Petitioner,  
19-12-67  
— Continued

- (vii) Some of the workers named in the said reference had made applications for relief to the Labour Tribunal, and the applications were dismissed. The Minister therefore had no power in law to make any reference and the same is bad in law, and no award could be made thereon by the 1st Respondent,
- (viii) the 1st Respondent has erred in law in “splitting” the said reference and in holding that only a minor part of the said reference is bad in law. The 1st Respondent has erred in holding that the reference taken as a whole is valid and that he has jurisdiction to inquire into all the other matters in the said 10 reference.
- (ix) in regard to item 7 of the reference marked “ A ”, there are matters of a general nature. It has been admitted by the Union (2nd Respondent) that it has no members in the Petitioner Company and therefore it is submitted as a matter of law that there cannot be an Industrial Dispute in regard to these matters.

16. In the foregoing premises, the Petitioner pleads that the said Order made by the 1st Respondent is wrong in law, and that the 1st Respondent has acted without jurisdiction or in excess of his jurisdiction if any and there are errors on the face of the record. 20

17. The Petitioner states that the said 1st Respondent has made order fixing further inquiry into the above matter for the 28th day of December 1967 and is preparing to assume jurisdiction and to proceed with this matter, which he will do unless prohibited by an Order of Your Lordships' Court. The Subject matters of the Minister's Reference are so vast and complicated by reason of their diversity and variety that inquiry by the 1st Respondent will take a great deal of time and will involve the Petitioner in a great deal of expense and it will be just if the 1st Respondent is prohibited from assuming jurisdiction until Your Lordships have decided whether he has jurisdiction.

18. The 3rd and 4th Respondents are made parties hereto in order that 30 Your Lordships' Court may cause them to produce before Your Lordships, the proceedings, documents and Order of the 1st Respondent to enable Your Lordships to have before Your Lordships the material necessary for the final judgment of Your Lordships' Court. No relief whatsoever is sought against the 3rd and 4th Respondents and the Petitioner seeks no Order or relief against the 3rd and 4th Respondents and no representations or appearances whatsoever are required of the 3rd and 4th Respondents by the Petitioner.

WHEREFORE the Petitioner Prays that Your Lordships' Court be pleased—

- (a) To inspect and examine the record of the 1st Respondent and/or 40 of the President of the Labour Tribunal No. 8 who purported to sit as an Arbitrator and grant and issue according to law a Mandate in the nature of a Writ of Certiorari against the 1st Respondent quashing the said proceedings held by him and his order dated 12-12-67.

- (b) To grant and issue a Mandate in the nature of a Writ of Prohibition against the 1st Respondent prohibiting him from having any further proceedings in this matter.
- (c) To make an order that further proceedings be not had and that all further proceedings be stayed pending the hearing of this application and its final determination.
- (d) To award costs against the 1st and 2nd Respondents.
- (e) To grant such other and further relief as to Your Lordships' Court shall seem meet.

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(i) Petition of  
the Petitioner,  
19-12-67  
— Continued

10

Sgd. MOONESINGHE & JAYAMAHA,  
*Proctors for Petitioner.*

### Documents Filed with Petition

1. Appointment of Proctors of the Petitioner.
2. Affidavit of the Secretary of the Petitioner.
3. A true print being an extract from the Ceylon Government Gazette No. 14754 dated 23-6-67 marked "A".
4. A true and certified copy of a letter dated 14-6-67 from the Permanent Secretary, Ministry of Labour, Employment and Housing to the Petitioner marked "B".
- 20 5. A true and certified copy of a notice dated 24-6-67 from the 4th Respondent to the Petitioner marked "C".
6. A true and certified photostat copy of a statement on behalf of the Petitioner dated 17-7-67 marked "D".
7. A true and certified photostat copy of a statement by the 2nd Respondent dated 20-7-67 marked "E".
8. A true and certified photostat copy of the 2nd Respondent's answer dated 14-8-67 marked "F".
9. A true and certified photostat copy of the Petitioner's answer dated 31-8-67 marked "G".
- 30 10. A true and certified copy of the order of the 1st Respondent dated 12-12-67 marked "H".

Sgd. MOONESINGHE & JAYAMAHA,  
*Proctors for Petitioner.*

*(See Part II of the Record of Proceedings for Documents  
Filed with the Petition.)*

## No. 1

**Application to the Supreme Court for a Mandate in the Nature  
of a Writ of Certiorari and/or Prohibition**

**(ii) Affidavit of K. G. N. Seneviratne, Secretary of  
Maliban Biscuit Manufactories, Ltd.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(ii) Affidavit  
of K. G. N.  
Seneviratne,  
Secretary of  
Maliban  
Biscuits  
Manufactories,  
Ltd.  
19-12-67.

In the matter of an application for a Man-  
date in the nature of a Writ of Certiorari  
and/or Prohibition and in the matter of  
an application in terms of Section 42 of  
the Courts Ordinance, Chapter 6 Legis-  
lative Enactments of Ceylon 1956, Revised  
Edition.

10

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 13.

*Petitioner*

S.C. No. 498/1967  
No. ID/LT/8/178

*Vs.*

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal of No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQR., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
11, Rosmead Place, Colombo 7.

20

*Respondents* 30

I, KANKANAN GAMAGE NICHOLAS SENEVIRATNE of No. 46/1, 2nd  
Lane, Ratmalana do hereby solemnly, sincerely and truly declare and affirm  
as follows—

1. I am the Secretary of Maliban Biscuit Manufactories, Ltd., the Peti-  
tioner, and can speak to the facts from my personal knowledge.

2. The Petitioner is a Company duly incorporated in Ceylon under the Companies Ordinance (Cap. 145) having its registered office at P. O. Box 1210, No. 11, Van Rooyen Street, Colombo 13 and inter alia carries on the business of producing, manufacturing, distributing and selling biscuits.

3. The 1st Respondent was at all material times to this application the President of Labour Tribunal No. 8 established under the Industrial Disputes Act No. 43 of 1950 to whom the Honourable Minister of Labour, Employment and Housing referred under Section 4(1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon, Revised Edition 1956 (hereinafter referred to as the Act) an alleged Industrial Dispute between the Petitioner and the 2nd Respondent for settlement by Arbitration in terms of the said act.

4. The 2nd Respondent is a Trade Union Registered in terms of the Trade Union's Ordinance No. 14 of 1935, Chapter 138 Legislative Enactments of Ceylon, Revised Edition, 1956.

5. It was represented to the Petitioner by the Permanent Secretary to the Minister of Labour, Employment and Housing by letter dated 14-6-67 that the Honourable the Minister of Labour, Employment and Housing had by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act, referred an Industrial Dispute between the Petitioner and the 2nd Respondent to Labour Tribunal No. 8 for settlement by Arbitration. A copy of the statement of the alleged matters in dispute between the Petitioner and the 2nd Respondent purporting to be signed by the 3rd Respondent and dated 14-6-67 was annexed to the said letter.

6. It was represented to the Petitioner by the 4th Respondent by notice dated 24-6-67 that the Honourable the Minister of Labour, Employment and Housing had by his order dated 14-6-67 by virtue of the powers vested in him by Section 4(1) of the said Act referred the alleged matters in dispute between the Petitioner and the 2nd Respondent set out in the statement of the Commissioner dated 14-6-67 for settlement by Arbitration to Labour Tribunal 8.

No copy of such Order of the said Minister was served on the Petitioner.

7. The Petitioner produces with the Petition the following documents (now produced and shown to me)—

- (1) Marked "A" a true print being an extract from the Ceylon Government Gazette No. 14754 dated 23-6-67,
  - (a) of the order of the Minister of Labour, Employment and Housing under Section 4(1) of the Industrial Disputes Act dated 14-6-67 and signed by the said Minister,
  - (b) of a statement of the matters alleged to be in dispute between the 2nd Respondent and the Petitioner dated 14-6-67 and signed by the 3rd Respondent.

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(ii) Affidavit  
of K. G. N.  
Seneviratne,  
Secretary of  
Maliban  
Biscuit  
Manufactories,  
Ltd.  
19-12-67  
— Continued

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(ii) Affidavit  
of K. G. N.  
Seneviratne,  
Secretary of  
Maliban  
Biscuit  
Manufactories,  
Ltd.  
19-12-67  
— *Continued*

- (2) Marked " B " a true and certified copy of a letter dated 14-6-67 from the Permanent Secretary, Ministry of Labour, Employment and Housing to the Petitioner to the effect that an Industrial Dispute has been referred by the said Minister to the 1st Respondent for settlement by Arbitration.
- (3) Marked " C " a true and certified copy of a notice dated 24-6-67 from the 4th Respondent to the Petitioner to the effect that the Industrial Dispute specified in the document marked " A " has by order of the Minister, been referred to the 1st Respondent to submit a statement of its case in respect of the matters in dispute. 10

8. According to the said document marked " A " filed herewith the 4th Respondent set out the matters purported to be in dispute between the 2nd Respondent and the Petitioner.

9. For reasons more fully set out hereinafter, the Petitioner submits that—

- (1) The Minister had no power in law to refer the alleged " matters in dispute " for Arbitration under the said Act.
- (2) The reference by the Minister of the said " matters in dispute " for Arbitration to the Labour Tribunal was bad in law.
- (3) The 1st Respondent had no jurisdiction or power in law to 20 commence any proceeding or make any Award or Order under or in terms of any provisions of the said Act.

10. The 1st Respondent purporting to act under or in terms of the provisions of Section 17 of the said Act assumed jurisdiction and powers to adjudicate upon the said matters in dispute as aforesaid which he had not the power or jurisdiction or right in law to do.

11. The Petitioner and the 2nd Respondent duly submitted the following in response to the said notice marked " C ".

- (1) A statement on behalf of the Petitioner dated the 17th day of July 1967, a true and certified photostat copy of which is produced and filed herewith marked " D ".
- (2) A statement by the 2nd Respondent dated 20-7-67 a true and certified photostat copy of which is produced and filed herewith marked " E ".
- (3) The 2nd Respondent's answer dated 14-8-67 to the Petitioner's statement, a true and certified photostat copy of which is produced and filed herewith marked " F ".
- (4) The Petitioner's answer dated 31-8-67 to the 2nd Respondent's statement, a true and certified photostat copy of which is produced and filed herewith marked " G ". 40

12. The said dispute was marked No. ID/LT/8/178 in the records of the said Labour Tribunal No. 8 and the 1st Respondent purporting to sit as Arbitrator in terms of Section 17 (1) of the said Act as aforesaid commenced proceedings on the 20th day of September 1967 and continued proceedings on the 27th and 28th days of October 1967. On the aforesaid dates certain preliminary objections raised by the Petitioner were argued.

13. The Petitioner and the 2nd Respondent were duly represented and appeared before the 1st Respondent, produced documents and made representations and submissions.

10 The Record of the proceedings of the said Labour Tribunal No. 8 and documents produced by the respective parties are now under the control of and in the custody of the 4th Respondent as Secretary of the Labour Tribunal.

14. After the said proceedings had concluded the 1st Respondent purported to make an Order which he delivered on 12th December 1967. The said order was dated 12-12-67. A certified copy of the said order is produced and filed herewith marked "H".

15. It is submitted that the said Order dated 12-12-67 made by the 1st Respondent is bad and of no force or effect in law in that—

- 20 (i) the purported reference by the Minister of the alleged industrial dispute to the 1st Respondent as President of Labour Tribunal No. 8 in terms of the said Act is bad in law;
- (ii) there was no industrial dispute within the meaning of the said Act between the Petitioner and the 2nd Respondent as alleged in the letter dated 14-6-67 marked "B" accompanying the said purported reference;
- (iii) the matters alleged to be in dispute were not industrial disputes within the meaning of the said Act;
- 30 (iv) The 1st Respondent did not have and does not have any valid power or authority or jurisdiction to hear, adjudicate or decide any of the said matters or to make any award;
- (v) the 1st Respondent has acted in excess of his jurisdiction under and in terms of the said Industrial Dispute Act in holding that he has jurisdiction to determine the alleged matters in dispute;
- (vi) the 1st Respondent has erred in law in making the said Order and there are errors of law on the face of the record;
- 40 (vii) the said 1st Respondent has misdirected himself in regard to his powers and functions in making the said Order and in assuming jurisdiction and in these premises the Petitioner submits that it is entitled to a mandate in the nature of a Writ of Certiorari as prayed for in the Petition.

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(ii) Affidavit  
of K. G. N.  
Seneviratne,  
Secretary of  
Maliban  
Biscuit  
Manufactories.  
Ltd.  
19-12-67  
— Continued

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(ii) Affidavit  
of K. G. N.  
Seneviratne,  
Secretary of  
Maliban  
Biscuit  
Manufactories,  
Ltd.  
19-12-67  
— Continued

16. The reasons and grounds for the Petitioner submitting that the said Order of the 1st Respondent is bad in law are, *inter alia* as follows:—

- (i) the 1st Respondent had no jurisdiction to entertain a reference and to make an Award relating to such matter as “demotion”, transfer, interdiction, non-offer of work, non-employment and termination of services;
- (ii) the 2nd Respondent had no right to represent any of the persons named in the said Reference by the Minister and the 2nd Respondent cannot be a party to these proceedings, in any event until its right of representation is first established; 10
- (iii) the Minister had no power to refer “en masse” disputes of a varying nature involving so many persons in the said reference. A large number of the alleged disputes are individual “disputes” of individual workers such as demotion, transfer, terminations etc. which had arisen if at all before they became members of the 2nd Respondent. A variety or multitude of individual disputes cannot in law be combined in one reference as an Industrial dispute for an award;
- (iv) the said reference by the Minister amount to a direction to the 1st Respondent; 20
  - (a) to make or hold inquiries in regard to justification for dismissal,
  - (b) to compel the Petitioner to justify the action it has taken.
- (v) The alleged dispute in any event is not a minor dispute and therefore cannot be the subject matter of a reference by the Minister under Section 4 (1) of the said Act;
- (vi) matter relating to some of the workers in the said reference by the Minister having been the subject of a Reference previously to an Industrial Court and an Award having been made namely ID No. 361 dated 19-2-67 no Industrial Dispute in respect of 30 the said matters and the said workers survives in law and/or the Award made by the Industrial Court is Res Judicata and/or the Minister has no power in law to make this Reference and is “Functus officio”; A true copy of the said Award is produced herewith as part and parcel of the 2nd Respondent’s answer already marked “F”;
- (vii) Some of the workers named in the said Reference had made applications for relief to the Labour Tribunal, and the applications were dismissed. The Minister therefore had no power in law to make any reference and the same is bad in law, and 40 no award could be made thereon by the 1st Respondent;



(viii) the 1st Respondent has erred in law in "splitting" the said Reference and in holding that only a minor part of the said reference is bad in law. The 1st Respondent has erred in holding that the reference taken as a whole is valid and that he has jurisdiction to inquire into all the other matters in the said reference.

10 (ix) In regard to item 7 of the reference marked "A" there are matters of a general nature. It has been admitted by the Union (2nd Respondent) that it has no members in the Petitioner Company and therefore it is submitted as a matter of law that there cannot be an Industrial Dispute in regard to these matters.

No. 1  
Application to  
the Supreme  
Court for a  
Mandate in the  
Nature of a Writ  
of Certiorari  
and/or  
Prohibition —  
(ii) Affidavit  
of K. G. N.  
Seneviratne,  
Secretary of  
Maliban  
Biscuit  
Manufactories,  
Ltd.  
19-12-67  
— Continued

17. In the foregoing premises the Petitioner pleads that the said Order made by the 1st Respondent is wrong in law and that the 1st Respondent has acted without jurisdiction or in excess of his jurisdiction if any and there are errors on the face of the record.

18. The Petitioner states that the said 1st Respondent had made order fixing further inquiry into the above matter for the 28th day of December 1967 and is preparing to assume jurisdiction and to proceed with this matter, which he will do unless prohibited by an Order of Your Lordships' Court.  
20 The subject matters of the Minister's reference are so vast and complicated by reason of their diversity and variety that inquiry by the 1st Respondent will take a great deal of time and will involve the Petitioner in a great deal of expense and it will be just if the 1st Respondent is prohibited from assuming jurisdiction until Your Lordships have decided whether he has jurisdiction.

19. The 3rd and 4th Respondents are made parties hereto in order that Your Lordships' Court may cause them to produce before Your Lordships, the proceedings, documents and Order of the 1st Respondent to enable Your Lordships to have before Your Lordships the material necessary for the final judgment of Your Lordships' Court. No relief whatsoever is sought  
30 against the 3rd and 4th Respondents and the Petitioner seeks no Order or relief against the 3rd and 4th Respondents and no representations or appearances whatsoever are required of the 3rd and 4th Respondents by the Petitioner.

Signed and affirmed to at Colombo }  
on this 19th day of December 1967. }

Sgd. K. G. N. SENEVIRATNE

Before me.

Sgd. E. P. ELANGAGE,  
*Justice of the Peace*

**Judgment of the Supreme Court**

**In the Matter of An Application for a Mandate in the Nature of a Writ  
of Certiorari and/or Prohibition on R. Subramaniam, Presi-  
dent, Labour Tribunal, and Three Others.**

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

*Counsel :* C. Ranganathan, Q.C. with S. J. Kadirgamar, Q.C.  
K. D. P. Wickremasinghe, C. A. Amerasinghe and  
H. A. Abeywardena for the Petitioner.

10-

N. Satyendra for the 2nd Respondent.

H. L. de Silva, Crown Counsel, for the 3rd Respondent.

*Argued On :* 26th and 27th January, 1968.

*Decided On :* 9th April 1968.

**H. N. G. Fernando, C.J.**

By order made under the Industrial Disputes Act (Cap. 131) and dated 14th June 1967, the Minister of Labour referred for settlement by arbitration by a Labour Tribunal an industrial dispute between the Ceylon Mercantile Union (the 2nd Respondent to the present application) and Maliban Biscuit Manufacturers Ltd. (the present Petitioner). In terms of the Act, the matters<sup>20</sup> in dispute were specified in a statement published in the Gazette, and some of the matters were:—

- (1) Whether the termination of employment of about 300 named employees of the Petitioner was justified;
- (2) Whether the non-offer of work to over 60 named employees was justified;
- (3) Whether the transfer, demotion of and subsequent termination of the employment of about 25 employees was justified;
- (4) Whether the transfer, and demotion of and subsequent non-offer<sup>30</sup> of work to about 20 employees was justified;
- (5) Several demands of the employees regarding their conditions of employment.

The Petitioner thereupon submitted to the Labour Tribunal a statement of its case. Paragraph two of the statement referred to two matters.

Firstly that there had previously been another reference to an Industrial Court in the case of a dispute between the Petitioner and some of its employees, and that an award had been made in that dispute;

Secondly, that some persons named in the reference now under consideration had instituted proceedings in a Labour Tribunal, i.e. under Part IV A of the Industrial Disputes Act, and that the proceedings so instituted had been terminated according to law.

10 With regard to the second of these matters, the arbitrator to which the present reference was made has upheld the Petitioner's contention that the questions which had been decided by another Labour Tribunal upon the applications made to it cannot be the subject of a new reference to arbitration. There is accordingly no need for any prohibition from this Court against the determination of such matter on the present reference.

With regard to the first of these matters, I shall deal later with the legal implications which are involved.

The third and fourth paragraphs of the Petitioner's statement of case were as follows—

20 The Company submits that this Tribunal has no jurisdiction, in any event, to entertain the reference or make any award in regard to termination of services or non-offer of work or transfer, demotions or interdictions.

The Company also submits that the Hon'ble the Minister has no power to make a reference 'en masse' involving so many persons.

The grounds stated in the third and fourth paragraphs quoted above have also been taken in the present application to this Court. But Counsel who appeared for the Petitioner before us addressed no argument in support of these grounds. Instead, he desired it to be recorded, and I now so record,  
30 that these grounds were raised because of a possible eventuality that the Petitioner may be advised in future proceedings to canvass before the Judicial Committee of the Privy Council the correctness of the decision of Their Lordships in the case of *The United Engineering Workers' Union Vs. Devanayagam* (1967), 69 N.L.R., p. 289.

The matter mentioned in the fifth, sixth and seventh paragraphs of the Petitioner's statement of case also challenged the jurisdiction of the arbitrator to entertain the reference made to him by the Minister under the Act. But these matters were apparently not pressed at the proceedings before the Labour Tribunal, and they were not mentioned at all in the application made  
40 to this Court or during the argument before us.

The eight to the last paragraphs of the Petitioner's statement of case referred to various matters pertinent to the actual dispute which was referred for arbitration, which matters would of course have been considered by the

arbitrator upon the present reference, if the Petitioner had not objected, by the plea against jurisdiction which the Petitioner raised before the arbitrator and in this Court, to the taking of proceedings by the arbitrator.

The objections raised by the Petitioner in his statement of case (not including of course the matters referred to in paragraphs 8 *et seq* of the statement) were dealt with by the arbitrator in his Order of 12th December 1967. He over-ruled all the objections, save that concerning the binding effect of previous determinations of another Labour Tribunal. The arbitrator has thus indicated that he will not re-consider the correctness of those determinations.

10

Thereafter the Petitioner made the present application to this Court for a writ of prohibition against the taking of any further proceedings by the arbitrator on the reference made to him. The grounds upon which the writ was sought are set out in 9 sub-paragraphs of paragraph 15 of the petition to this Court. But during his argument, Counsel for the Petitioner frankly and properly admitted that he could not press the grounds stated in 5 of the sub-paragraphs. In addition, the ground stated in sub-paragraph (vii), which referred to the previous determinations of another Tribunal, had already been decided by the arbitrator in favour of the Petitioner and did not therefore call for argument before us.

20

Of the other 3 grounds, one of them (in Sub-paragraph ii) was formally taken with a view to reserve the right to challenge before the Privy Council the correctness of Their Lordships' decision in *Devanayagam's* case. We are of course unaware of the course which the Petitioner proposes to take in that connection. But I must express emphatically the opinion that, even if the Petitioner did intend to ask for a re-consideration of the decision of the Privy Council the proper stage for so doing would be after the arbitrator makes his award on the dispute referred to him.

There remain two grounds for this application, namely those set out in sub-paragraphs (i) and (vi) of paragraph 15 of the petition. The ground stated 30 in sub-paragraph (i) is that the arbitrator "had no jurisdiction to entertain a reference relating to demotion, transfer, interdiction, non-offer of work, non-employment and termination of services." Counsel however did not urge, as a general proposition, that such matters cannot form the subject of an "industrial dispute" within the meaning of the Act. The objection taken in sub-paragraph (i) relates only to the special circumstances of this case, and is connected with the grounds stated in sub-paragraph (vi), which reads as follows—

"Matters relating to some of the workers in the said reference by the Minister having been the subject of a reference previously to an Indus- 40 trial Court and an award having been made namely ID No. 361 dated 19-2-67 no Industrial Dispute in respect of the said matters and the said workers survives in law and/or the award made by the Industrial Court is *Res Judicata* and/or the Minister has no power in law to make this reference and is "Functus officio"; a true copy of the said award is produced herewith as part and parcel of the 2nd Respondent's answer already marked 'F'."

Some mention of the history of this dispute is now necessary. Sometime before November 1966 about 30 workmen had been either transferred or demoted or interdicted by the Petitioner. Those workmen were at that time members of the National Employees Union, and a dispute between that Union and the Petitioner concerning the cases of those workmen was referred to the Industrial Court by an order made by the Minister on 22nd November 1966. By the time the case was taken up for hearing by the Industrial Court, it appears that the workmen had ceased to be members of that Union. For this reason, a representative of the Union informed the Court on 18th February 1967 that "they were withdrawing the applications". It seems fairly clear that in fact the workmen no longer had confidence in that Union.

No. 2  
Judgment of the  
Supreme  
Court —  
9-4-68  
— Continued

In these circumstances, the Industrial Court on 19th February 1967 executed a document having the formal appearance of an award made under the Act. But the only effective statement in that "award" is "As there is now no dispute between the Union and the Company *I make no award.*"

Events now took a much more serious turn. In circumstances to which I will not here refer, because it will be the task of the arbitrator to consider them, nearly 400 workmen were dismissed by the Petitioner, including the 30 workmen concerning whom there had been the earlier dispute, and the principal matter now referred to arbitration is whether those dismissals were justified. In setting out the matters now in dispute, the Commissioner of Labour has referred separately to the cases of these 30 workers in the following or similar terms—

"Whether the transfer, demotion and the subsequent termination of employment of the following employees is justified and to what relief each of them is entitled."

The objection now taken in sub-paragraph (vi) of paragraph 15 of the petition is that because the matters of the transfers and or demotions of the 30 workmen were the subject of the former reference to the Industrial Court, those same matters cannot be the subject of another reference under the Act. But considerations both of law and of common-sense render this objection untenable.

Section 26 of the Act declares that the award of an Industrial Court shall be binding on the parties, trade unions, employers and workmen referred to in the award. But although the Industrial Court, in the case of the dispute referred in November 1966, made its order in the form of an "award", there was surely no legal award made in that case. On the contrary, the Court explicitly stated that it made no award. In such circumstances, the Act has no provision which prevented the Minister from referring to arbitration the disputes concerning the 30 workers to whom the former dispute related. Nor, even if the doctrine of *res judicata* is to apply, does that doctrine operate where there has not been either an adjudication or a dismissal of an action.

In fact, at the time when the Minister made the present reference, there was quite clearly in existence a dispute between the Ceylon Mercantile Union and the Petitioner concerning the termination of the services of these 30

workmen and also concerning the earlier transfers and/or demotions of those workmen. One object of the Act is the settlement of such disputes, and so long as there had not come into force an award which adjudicated upon and settled the disputes, it was entirely reasonable and necessary that the Minister included them in his reference of the wider disputes which subsequently arose.

Counsel for the Petitioner was driven into the position of having to argue that the former reference to the Industrial Court is still pending in that Court, and that the matters of the transfer and/or demotion of the 30 workmen must be adjudicated upon by that Court, and not by the arbitrator upon the present reference. If then relief is yet available in law with respect to these 10 matters, the Petitioner's objection to the question of relief being now considered and decided by the arbitrator is purely technical and obstructive. The course of proceedings in the present and other cases which have come to the notice of this Court create in my mind the fear that any attempt to resume proceedings in the Industrial Court will be resisted by the Petitioner with the argument, embodied in paragraph 15 (vi) of the present petition, that the "award" made by the Industrial Court on 19th February 1967 is *res judicata*.

I hold that the present reference properly included the specified matters in dispute concerning the 30 workmen regarding whom a dispute existed in 20 November 1966.

Before the arbitrator, and again in the application to this Court, the Petitioner sought to prevent altogether the taking of proceedings by the arbitrator for the investigation and settlement of the disputes which had arisen. In the petition to this Court, several objections to jurisdiction were taken, which the Petitioner's Counsel did not consider to be worthy of argument before us. One of the objections, namely that the dispute in this case is not a minor dispute is almost absurd. Indeed, as I have shown, the one objection pressed before us related only to the cases of 30 workmen from among nearly 400 cases; and even if that objection had been upheld, that 30 would have afforded no ground whatsoever for an order of this Court restraining the arbitrator from investigating the disputes concerning the dismissal of over 300 other workmen and various other disputes concerning the terms and conditions of their employment. In fine, not one of the several grounds of objection could have justified any hope of a decision, either by the arbitrator or by this Court, that proceedings should not be taken by the arbitrator upon the reference. It is regrettable that advantage is often taken of the right of recourse to this Court without any substantial expectation of success, and with the consequence only that harassment is caused to opposing parties in the form of delays, inconvenience and expense. 40

I cannot leave this case without stressing the need for employers and their legal advisers to become reconciled to the existence of the Industrial Disputes Act and to the machinery which Parliament has therein provided in the public interest for the settlement of industrial disputes and the preservation of industrial peace. Obstructive tactics by an employer involved in such a dispute serve only to create the impression that the employer *either* has no faith in the merits of his own case, *or else* that he is in rebellion against the law of the land.

I dismiss the Petitioner's application with costs fixed at Rs. 1,050/- payable to the 2nd Respondent.

Sgd. H. N. G. FERNANDO,  
*Chief Justice.*

No. 2  
Judgment of the  
Supreme  
Court —  
9-4-68  
— *Continued*

**Abeyesundere, J.**

I agree.

Sgd. A. W. H. ABEYESUNDERE,  
*Puisne Justice.*

**No. 3**

**Decree of the Supreme Court**

No. 3  
Decree of the  
Supreme  
Court —  
9-4-68

10 IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate in the nature of a Writ of Certiorari and/or Prohibition and in the matter of an Application in terms of Section 42 of the Courts Ordinance, Chapter 6, Legislative Enactments of Ceylon, 1956, Revised Edition.

20

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyan  
Street, Colombo 13.

S.C. Application No. 498/1967

*Vs.*

*Petitioner*

1. R. SUBRAMANIAM, ESQUIRE, President, Labour Tribunal, No. 11, Rosmead Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION, 22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner of Labour, Department of Labour, Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal, No. 11, Rosmead Place, Colombo 7.

30

*Respondents*

No. 3  
Decree of the  
Supreme  
Court —  
9-4-68  
— Continued

This application in which the petitioner abovenamed prays *inter alia* that the Court be pleased to inspect and examine the record of the 1st Respondent and/or of the President of the Labour Tribunal, No. 8 who purported to sit as an Arbitrator and grant and issue according to law a Mandate in the nature of a Writ of Certiorari against the 1st Respondent quashing the proceedings held by him and his order dated 12-12-67, and to grant and issue a Mandate in the nature of a Writ of Prohibition against the 1st Respondent prohibiting him from having any further proceedings in this matter, and to make an order that further proceedings be not had and that all further proceedings be stayed pending the hearing of this application and its final determination, having come up for final disposal before the Honourable Hugh Norman Gregory Fernando, Chief Justice, and the Honourable Asoka Windra Hemantha Abeyesundere, Q.C., Puisne Justice, of this Court, on 26th and 27th January 1968, in the presence of C. Ranganathan, Esquire, Q.C., appearing with S. J. Kadirgamer, Esquire, Q.C., K. D. P. Wickremasinghe, Esquire, C. A. Amerasinghe, Esquire, and H. A. Abeywardene, Esquire, Advocates for the petitioner, and N. Satyendra, Esquire, for the 2nd Respondent and H. L. de Silva, Esquire, Crown Counsel, for the 3rd Respondent :

It is considered and adjudged for the reasons set out in the order delivered on 9th April 1968, that this application be and the same is hereby dismissed with costs fixed at Rs. 1050/- payable to the 2nd Respondent.

Witness the Honourable Hugh Norman Gregory Fernando, Chief Justice, at Colombo this 21st day of April in the year One thousand Nine hundred and Sixty eight and of our Reign the Seventeenth.

Sgd. LAURIE WICKRAMASINGHE,  
*Deputy Registrar of the  
Supreme Court.*

(Seal)

No. 4  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council —  
30-4-68

No. 4

**Application for Conditional Leave to Appeal to the  
Privy Council**

30-

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to Her Majesty the Queen-in-Council under the Provisions of the Appeals (Privy Council) Ordinance (Chapter 100) of the Legislative Enactments of Ceylon (1956 Revised Edition).



In the matter of an application for a Mandate in the nature of a Writ of Certiorari and/or Prohibition and in the matter of an application in terms of Section 42 of the Courts Ordinance, Chapter 6, Legislative Enactments of Ceylon (1956 Revised Edition).

No. 4  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council—  
30-4-68  
— *Continued*

10

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 13.

*Petitioner*

S.C. Application No. 498/1967  
No. ID/LT/8/178

*Vs.*

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal of No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

20

*Respondents*

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 13.

*Petitioner**(Applicant for Conditional Leave)**Vs.*

30

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal of No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

40

*Respondents*

No. 4  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council —  
30-4-68  
— *Continued*

To :

HIS LORDSHIP THE CHIEF JUSTICE AND TO THEIR LORDSHIPS  
THE PUISNE JUSTICES OF THE HONOURABLE THE  
SUPREME COURT OF CEYLON

On this 30th day of April 1968.

The Petition of the Petitioner (Applicant for Conditional Leave) abovenamed appearing by DON HECTOR NICHOLAS JAYAMAHA and SENERATH LAKSHMAN MOONESINGHE its Proctors practising in partnership under the name, style and firm of "MOONESINGHE & JAYAMAHA" states as follows—

1. That feeling aggrieved by the Judgment and/or Order and/or Decision and/or Decree of this Court pronounced on the 9th day of April 1968 the said Petitioner (Applicant for Conditional Leave) abovenamed is desirous of appealing therefrom to Her Majesty the Queen-in-Council.

2. The said Judgment is a final judgment, and the matter in dispute on the appeal amounts to or is of the value of upwards of five thousand rupees, and the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of upwards of five thousand rupees.

3. That notice of the intended application for leave to appeal was given to each of the Respondents in terms of Rule 2 of the Rules in the 20 Schedule to the Appeals (Privy Council) Ordinance on the 17th day of April 1968 by sending notices to each of the Respondents abovenamed by—

- (a) Registered Post
- (b) Ordinary Post, and
- (c) Personal Service

WHEREFORE the Petitioner (Applicant for Conditional Leave) prays that your Lordships' Court be pleased to grant Conditional Leave to appeal against the said Judgment and/or Order and/or Decision and/or Decree of this Court dated the 9th day of April 1968 to Her Majesty the Queen-in-Council and for such other and further relief as to your Lordships' Court shall seem meet.

Sgd. MOONESINGHE & JAYAMAHA,  
*Proctors for Petitioner.*  
(Applicant for Conditional Leave)

#### Documents Filed with the Petition

- 1. Motion
- 2. Appointment
- 3. Affidavit

Sgd. MOONESINGHE & JAYAMAHA,  
*Proctors for Petitioner.*  
(Applicant for Conditional Leave)

## No. 5

**Statement of Objections of the 2nd Respondent, Filed in the  
Application for Conditional Leave to Appeal  
to the Privy Council**

No. 5  
Statement of  
Objections of  
the 2nd  
Respondent,  
filed in the  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council —  
25-6-68

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

10

In the matter of an application for Conditional Leave to Appeal to Her Majesty The Queen-in-Council under the Provisions of the Appeals (Privy Council) Ordinance (Chapter 100) of the Legislative Enactments of Ceylon (1956 Revised Edition).

In the matter of an application for a Mandate in the nature of a Writ of Certiorari and/or Prohibition and in the matter of an Application in terms of Section 42 of the Courts Ordinance, Chapter 6, Legislative Enactments of Ceylon (1956 Revised Edition).

20

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 12.

*Petitioner*

S.C. No. 207/1968  
S.C. No. 498/1967  
ID/LT/8/178

*Vs.*

30

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal, No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

*Respondents*

-40

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 13.

*Petitioner*

Vs.

No. 5  
Statement of  
Objections of  
the 2nd  
Respondent,  
filed in the  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council—  
25-6-68  
— *Continued*

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal, No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABAYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

10

*Respondents*

On this 25th day of June, 1968.

TO HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE  
SUPREME COURT OF THE ISLAND OF CEYLON

The Statement of Objections of the abovenamed Second Respondent  
appearing by its Proctor Ramalingam Sarawanabaghavan states as follows—

1. The Judgment and/or Order and/or Decision and/or Decree of this  
Court pronounced on the 9th day of April 1968 in the matter of the above-  
named application for a Writ, is not a final Judgment within the meaning<sup>20</sup>  
of that expression in Rule 1 of the Schedule to the Appeals (Privy Council)  
Ordinance.

2. The matter in dispute on the Appeal does not amount to, and is  
not of the value of upwards of Rs. 5000/-.

3. The Appeal does not involve directly or indirectly any claim or ques-  
tion to or respecting property, or any civil right amounting to or of the value  
of Rs. 5000/- or upwards.

4. In any event the abovenamed application for a Writ is not a civil  
suit or action within the meaning of Section 3 of the Appeals (Privy Council)  
Ordinance.

30

WHEREFORE the abovenamed Second Respondent prays that Your Lord-  
ships' Court be pleased to make Order refusing the abovenamed Petitioners  
application for Conditional Leave, for Costs and for such other and further  
relief as to Your Lordships' Court shall seem meet.

Sgd. R. SARAWANABAGHAVAN,  
*Proctor for Second  
Respondent.*

## No. 6

**Affidavit of P. B. Tampoe, General Secretary of the Ceylon Mercantile Union  
(2nd Respondent) Filed in the Application for Conditional  
Leave to Appeal to the Privy Council**

No. 6  
Affidavit of  
P. B. Tampoe,  
General  
Secretary of the  
Ceylon  
Mercantile  
Union (2nd  
Respondent)  
Filed in the  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council —  
22-6-68

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to Her Majesty the Queen-in-Council under the Provisions of the Appeals (Privy Council) Ordinance (Chapter 100) of the Legislative Enactments of Ceylon (1956 Revised Edition).

10

In the matter of an application for a Mandate in the nature of a Writ of Certiorari and/or Prohibition and in the matter of an application in terms of Section 42 of the Courts Ordinance, Chapter 6, Legislative Enactments of Ceylon (1956 Revised Edition).

20

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 12.

*Petitioner*

S.C. No. 207/1968  
S.C. No. 498/1967  
ID/LT/8/178

*Vs.*

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal, No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

30

*Respondents*

No. 6  
Affidavit of  
P. B. Tampoe,  
General  
Secretary of the  
Ceylon  
Mercantile  
Union (2nd  
Respondent)  
filed in the  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council —  
22-6-68  
— Continued

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 13.

*Petitioner*

*Vs.*

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal, No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

10

*Respondents*

I, Phillips Balendra Tampoe do hereby make oath and state as follows—

1. I am the General Secretary of the Ceylon Mercantile Union which is a Trade Union, registered under the Trade Union Ordinance, and which is the Second Respondent abovenamed. 20

2. The Judgment and/or Order and/or Decision and/or Decree of this Court pronounced on the 9th day of April 1968, in the matter of the abovenamed application for a Writ, is not a final judgment within the meaning of that expression in Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance.

3. The matter in dispute on the Appeal does not amount to and is not of the value of upwards of Rs. 5000/-.

4. The Appeal does not involve directly or indirectly any claim or question to or respecting any property, or any civil right amounting to or of the value of Rs. 5000/- or upwards. 30

5. In any event the abovenamed application for a Writ is not a civil suit or action, within the meaning of Section 3 of the Appeals (Privy Council) Ordinance.

Signed and sworn to at Colombo  
on this 22nd day of June, 1968

Sgd. P. B. TAMPOE

Before me.

Sgd. ILLEGIBLY,  
*Justice of the Peace.*

**Affidavit of K. G. N. Seneviratne, Secretary of Maliban Biscuit Manu-  
factories, Ltd., Filed in the Application for Conditional  
Leave to Appeal to the Privy Council**

(With Schedules Marked A, B, C, D, E & F)

No. 7  
Affidavit of  
K. G. N. Senevi-  
ratne, Secretary  
of Maliban  
Biscuit Manu-  
factories Ltd.,  
Filed in the  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council —  
16-7-68.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

10

In the matter of an application for Condi-  
tional Leave to Appeal to Her Majesty  
the Queen-in-Council under the Provi-  
sions of the Appeals (Privy Council) Ordi-  
nance (Chapter 100) of the Legislative  
Enactments of Ceylon (1956 Revised  
Edition).

20

In the matter of an application for a Man-  
date in the nature of a Writ of Certiorari  
and/or Prohibition and in the matter of  
an application in terms of Section 42 of  
the Courts Ordinance, Chapter 6, Legis-  
lative Enactments of Ceylon (1956 Revised  
Edition).

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 13.

*Petitioner*

S.C. No. 207/1968  
S.C. No. 498/1967  
No. ID/LT/8/178

*Vs.*

30

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal, No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

*Respondents*

No. 7  
Affidavit of  
K. G. N. Seneviratne, Secretary  
of Maliban  
Biscuit Manu-  
factories Ltd.,  
Filed in the  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council —  
16-7-68.  
— *Continued*

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 13.

*Petitioner*  
(Applicant for Conditional Leave)

*Vs.*

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal, No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION, 10  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

*Respondents*

I, KANKANAN GAMAGE NICHOLAS SENEVIRATNE do solemnly and truly  
declare and affirm as follows—

1. I am the Secretary of the Petitioner, Maliban Biscuit Manufactories, 20  
Ltd., (applicant for conditional leave) abovenamed.

2. By his Order dated 14-6-67 the Minister of Labour, Employment  
and Housing acting under Section 4 (1) of the Industrial Disputes Act (Cap.  
131 Legislative Enactments of Ceylon 1956 Revised Edition) referred to  
Labour Tribunal VIII for settlement by arbitration an industrial dispute  
alleged to exist between the Petitioner and the Ceylon Mercantile Union  
of 22-1/1, Upper Chatham Street, Colombo 1, in respect of the matters  
specified in the statement of the Commissioner of Labour dated 14-6-67  
which accompanied the said order. The said order and statement were pub-  
lished in the Ceylon Government Gazette No. 14754 dated 23-6-67. 30

3. The Petitioner has produced with his Petition in application num-  
bered S.C. 498/1967 a true print of the said Gazette marked "A".

4. The matter numbered (1) said to be in dispute according to the said  
statement is whether the termination of employment of certain named persons  
is justified and to what relief each of them is entitled.

5. The names of the said persons, together with the monthly salary  
each was paid during his employment and the date on which they commenced  
employment are set out in a schedule hereto marked "A".

6. The services of these persons were terminated on various dates bet-  
ween the 20th and 30th March 1967. 40



7. In its statement of the Labour Tribunal dated 20-7-67 and produced by the Petitioner marked "E" in application numbered S.C. 498/1967 the Union has requested their re-instatement with effect from the date of termination.

8. The matter numbered (2) said to be in dispute according to the said statement is whether the non-offer of work to certain named persons is justified, and to what relief each of them is entitled.

9. The names of the said persons, together with the monthly salary each was paid during his employment and the date on which they commenced  
10 employment are set out in a schedule hereto marked "B".

10. The services of these persons were terminated on various dates between the 20th and 30th March 1967.

11. In its statement to the Labour Tribunal dated 20-7-67 and produced by the Petitioner marked "E" in application numbered S.C. 498/1967 the Union has requested that they be offered work in their respective positions with retrospective effect as from the dates they were refused work.

12. The matter numbered (3) said to be in dispute according to the said statement is whether the transfer, demotion, and the subsequent termination of employment of certain named persons is justified, and to what relief each  
20 of them is entitled.

13. The names of the said persons, together with the monthly salary each was paid during his employment and the date on which they commenced employment are set out in a schedule hereto marked "C".

14. The services of these persons were terminated on various dates between the 20th and 30th March 1967.

15. In its statement to the Labour Tribunal dated 20-7-67 and produced by the Petitioner marked "E" in application numbered S.C. 498/1967 the Union has requested their re-instatement with effect from the date of their termination.

30 16. The matter numbered (4) said to be in dispute according to the said statement is whether the transfer and demotion of, and subsequent non-offer of work to, certain named persons is justified and to what relief each of them is entitled.

17. The names of the said persons, together with the monthly salary each was paid during his employment and the date on which they commenced employment and the date of termination of service, are set out in a schedule hereto marked "D".

18. In its statement to the Labour Tribunal dated 20-7-67 and produced by the Petitioner marked "E" in application numbered S.C. 498/1967 the

No. 7  
Affidavit of  
K. G. N. Seneviratne, Secretary  
of Maliban  
Biscuit Manu-  
factories, Ltd.,  
Filed in the  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council —  
16-7-68.

— Continued

No. 7  
Affidavit of  
K. G. N. Seneviratne, Secretary  
of Maliban  
Biscuit Manu-  
factories Ltd.,  
Filed in the  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council—  
16-7-68.  
— Continued

Union has requested that they be offered work in their respective positions with retrospective effect as from the dates they were refused work.

19. The matter numbered (5) said to be in dispute according to the said statement is whether the interdiction of and the subsequent non-offer of work, to certain named persons is justified, and to what relief each of them is entitled.

20. The names of the said persons, together with the monthly salary each was paid during his employment and the date on which they commenced employment and the date of termination of service, are set out in a schedule hereto marked " E ".

21. In its statement to the Labour Tribunal dated 20-7-67 and produced 10 by the Petitioner marked " E " in application numbered S.C. 498/1967 the Union has requested their reinstatement with effect from the date of interdiction.

22. The matter numbered (6) said to be in dispute according to the said statement is whether the interdiction and subsequent termination of employment of certain named persons is justified and to what relief each of them is entitled.

23. The names of the said persons, together with the monthly salary each was paid during his employment and the date on which they commenced employment and the date of termination of service, are set out in a schedule 20 hereto marked " F ".

24. In its statement to the Labour Tribunal dated 20-7-67 and produced by the Petitioner marked " E " in application numbered S.C.498/67 the Union has requested their re-instatement with effect from the date of interdiction.

25. By reason of the facts stated above, the matter in dispute on the appeal amounts to or is of the value of upwards of five thousand rupees and the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of upwards of five thousand rupees.

30

26. I am advised and I verily believe that the abovenamed application for a writ is a civil suit or action within the meaning of Section 3 of the Appeals (Privy Council) Ordinance.

Signed and affirmed to  
at Colombo on this  
16th day of July 1968

Sgd. K. G. N. SENEVIRATNE

Before me.

Sgd. K. S. V. DE SILVA,  
*Justice of the Peace.*

## SCHEDULE "A"

Serial No.	Name	Salary per Month	Remarks
1.	Mr. W. P. Amaradasa ..	142.65	
2.	Mr. M. A. Abeydeera ..	122.50	
3.	Mr. C. B. Anthony ..	150.00	
4.	Mr. W. K. Ariyapala ..	135.00	
5.	Mr. G. A. Amarapala ..	145.00	
10 6.	Miss M. H. Anula ..	110.00	
7.	Mr. K. A. D. Ariyadasa ..	95.00	
8.	Mr. P. A. Albert ..	95.00	
9.	Miss N. B. A. Agienona ..	112.50	
10.	Miss A. Ariyawathie ..	60.00	
11.	Miss V. W. Ariyawathie ..	70.00	
12.	Miss W. T. De Alwis ..	60.00	
13.	Miss A. P. Leela Abeyasinghe ..	100.00	
14.	Miss L. Amarasinghe ..	70.00	
15.	Mr. P. M. Dayabandara ..	91.27	
20 16.	Mr. E. A. Bodipala ..	130.00	
17.	Miss D. Borelessa ..	70.00	
18.	Mr. J. A. Buddhadasa ..	95.00	
19.	Miss D. M. A. Balasuriya ..	100.00	
20.	Mr. L. E. D. Balasuriya ..	305.00	
21.	Miss Ranmuthi Chitra ..	60.00	
22.	Miss G. A. Chandrawathie ..	100.00	
23.	Mr. W. Carolis ..	173.92	
24.	Mr. K. D. Chalosingho ..	148.92	
25.	Miss M. K. A. Dayawathie ..	70.00	
26.	Mr. P. B. E. Dharmasiri ..	335.00	
30 27.	Mr. Deemon Singho ..	148.92	
28.	Mr. S. H. Dayaratne ..	95.00	
29.	Miss Beatrice Dias ..	210.00	
30.	Miss G. Deldeniya ..	90.00	
31.	Miss P. A. Dias ..	100.00	
32.	Mr. M. David Singho ..	148.92	
32.	Mr. M. David Singho ..	148.92	
33.	Mr. K. V. G. Dharmasiri ..	148.92	
		4288.52	
40 34.	Miss T. D. Dayawathie ..	80.00	
35.	Miss B. L. Devakaluarachchi ..	70.00	
36.	Miss T. G. Dayawathie ..	80.00	
37.	Miss G. A. Daya ..	70.00	
38.	Miss K. P. Dayawathie ..	112.50	
39.	Mr. K. L. K. De Silva ..	90.00	
40.	Miss Anna De Silva ..	112.50	
41.	Mr. W. Dayananda ..	148.92	
42.	Miss N. H. M. De Silva ..	70.00	
43.	Mr. S. H. Hector Dias ..	365.00	
44.	Mr. A. G. Pemasiri Dias ..	345.00	
50 45.	Mr. T. G. P. Edwin ..	125.00	
46.	Miss T. Emalin ..	70.00	
47.	Miss Seetha Edirisinghe ..	112.50	
48.	Miss K. D. E. Ekanayake ..	112.50	
49.	Mr. P. Akmon ..	95.00	
50.	Mr. T. W. W. Chandratilleke ..	148.92	
51.	Mr. D. A. M. Colonne ..	130.00	

No. 7  
Affidavit of  
K. G. N. Seneviratne, Secretary  
of Maliban  
Biscuit Manu-  
factories Ltd.,  
Filed in the  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council—  
16-7-68.  
— Continued  
Schedule  
Annexed  
Marked "A"

No. 7 Affidavit of K. G. N. Senevi- ratne, Secretary of Maliban Biscuit Manu- factories Ltd., Filed in the Application for Conditional Leave to Appeal to the Privy Council — 16-7-68. — <i>Continued</i> Schedule Annexed Marked "A" — <i>Continued</i>	Serial No.	Name	Salary per month	Remarks
	52.	Miss B. A. Chitra .. ..	100.00	
	53.	Miss K. D. Caroline .. ..	90.00	
	54.	Miss R. A. Charlett .. ..	80.00	
	55.	Miss W. I. P. Caldera .. ..	100.00	
	57.	Mr. S. B. Ekanayake .. ..	390.00	
	58.	Mr. G. B. Fernando .. ..	60.00	
	59.	Mr. C. M. Fonseka .. ..	350.00	
	60.	Miss R. E. T. W. Ferdinands .. ..	70.00	10
	61.	Mr. M. C. Fernando .. ..	70.00	
	62.	Mr. G. G. Feltman .. ..	75.00	
	63.	Mr. C. W. Fonseka .. ..	245.00	
	64.	Miss M. S. Fernando .. ..	60.00	
	65.	Mr. G. S. Fernando .. ..	75.00	
	66.	Miss W. W. Fernando .. ..	60.00	
	67.	Mr. S. G. Fernando .. ..	75.00	
			8626.36	
	68.	Miss Grace Gunawardene .. ..	112.50	
	69.	Miss G. K. Gunawathie .. ..	60.00	20
	70.	Mr. N. A. C. Godamanna .. ..	215.00	
	71.	Mr. Harry Guilbert .. ..	240.00	
	72.	Miss K. A. Gettinona .. ..	100.00	
	73.	Mr. K. A. Gunasekera .. ..	157.50	
	74.	Mr. K. H. Gunadasa .. ..	148.92	
	75.	Mr. R. D. Gunadasa .. ..	115.00	
	76.	Mr. L. K. A. Gunatilleke .. ..	280.00	
	77.	Miss K. Gunawathie .. ..	60.00	
	78.	Mr. P. J. Gunendra .. ..	96.27	
	79.	Miss H. A. K. Gunawathie .. ..	60.00	30
	80.	Mr. S. P. Gunaratne .. ..	91.27	
	81.	Miss Evelyn S. D. Gunasekere .. ..	107.50	
	82.	Miss E. H. Hettiarachchi .. ..	70.00	
	83.	Miss B. Hettiarachchi .. ..	70.00	
	84.	Mr. H. D. Hemapala .. ..	132.50	
	85.	Miss S. Horadagoda .. ..	100.00	
	86.	Miss W. D. Violet Hemantha .. ..	90.00	
	87.	Miss H. A. Hemalatha .. ..	70.00	
	88.	Miss M. K. Harriet .. ..	70.00	
	89.	Miss H. K. Hemalatha .. ..	70.00	40
	90.	Miss S. Hewahalpage .. ..	70.00	
	91.	Miss G. P. Indrani .. ..	70.00	
	92.	Miss K. D. Iranganie .. ..	112.50	
	93.	Miss L. D. Indra .. ..	70.00	
	94.	Miss L. H. Indrawathie .. ..	100.00	
	95.	Miss D. D. Illeperuma .. ..	70.00	
	96.	Miss Isaac Bertha .. ..	112.50	
	97.	Miss J. L. Jayalath .. ..	70.00	
	98.	Mr. K. N. Jayananda .. ..	305.00	
	99.	Miss D. G. Jayawardene .. ..	100.00	50
	100.	Miss Mary Joseph .. ..	100.00	
			12222.82	

Serial No.	Name	Salary Per Month	Remarks	No. 7 Affidavit of K. G. N. Seneviratne, Secretary of Maliban Biscuit Manufacturing Ltd., Filed in the Application for Conditional Leave to Appeal to the Privy Council — 16-7-68.
101.	Mr. R. C. Jinadasa ..	70.00		
102.	Miss S. M. D. Mary Juliet ..	70.00		
103.	Mr. K. T. Jineris ..	75.00		
104.	Mr. L. S. K. Jinadasa ..	95.00		
105.	Miss S. M. E. Jayasinghe ..	60.00		
106.	Miss H. Sunitha Jinadasa ..	60.00		
107.	Miss. W. A. Janenona ..	60.00		
10 108.	Miss W. A. D. Rupa Jayalath ..	60.00		
109.	Mr. L. R. Jayasena ..	148.92		
111.	Miss S. K. Karunawathie ..	90.00		
112.	Mr. G. H. Karunatileke ..	120.00	Resigned on 30-6-67.	— Continued Schedule Annexed Marked "A" — Continued
113.	Mr. S. D. G. Karunaratne ..	230.00		
114.	Miss M. V. Karunagoda ..	80.00		
115.	Mr. K. A. Karunasinghe ..	75.00		
116.	Miss D. P. Lili Nona ..	80.00		
117.	Mr. P. P. Leeladasa ..	148.92		
118.	Miss D. M. D. Leelawathie ..	70.00		
20 119.	Miss J. D. Lalitha ..	70.00		
120.	Mr. S. A. Manoratne ..	185.00		
121.	Miss W. A. Mary Anna ..	112.50		
122.	Miss I. P. N. Manaweera ..	80.00		
123.	Mr. I. H. Mendis ..	148.92		
124.	Mr. S. K. Martin Singho ..	162.50		
125.	Mr. R. P. M. Meththasuriya ..	75.00		
126.	Miss P. Matilda ..	100.00		
127.	Miss A. P. Magilin ..	70.00		
128.	Miss M. D. Mabel ..	70.00		
30 129.	Miss M. Meulawathie ..	102.52		
130.	Mr. B. A. Mahindadasa ..	125.00		
131.	Miss G. A. Malinie ..	100.00		
132.	Miss L. Maasinghe ..	100.00		
133.	Miss U. Managama ..	112.50		
		15579.58		
134.	Miss K. Navaratne ..	80.00		
135.	Miss N. B. Nandawathie ..	70.00		
136.	Miss W. A. Nandawathie ..	112.50		
137.	Miss W. H. Nandanie ..	100.00		
40 138.	Miss M. P. Nandawathie ..	70.00		
139.	Miss A. Nandawathie ..	80.00		
140.	Miss R. P. D. Nandawathie ..	80.00		
141.	Miss V. Nimalawathie ..	—	Not employed by us.	
142.	Mr. N. B. Nandadasa ..	85.00		
143.	Mr. P. K. Lenapala ..	220.00		
144.	Mr. S. P. Nandasiri ..	85.00		
145.	Miss K. D. N. Nanayakkara ..	60.00		
146.	Miss K. Premalatha ..	70.00		
147.	Mr. E. Piyasiri ..	75.00		
50 148.	Mr. K. M. G. Perera ..	148.92		
149.	Miss L. A. M. Perera ..	70.00		
150.	Mr. S. A. Somapala Perera ..	75.00		
151.	Miss H. A. Premalatha ..	70.00		
152.	Miss U. L. Premawathie ..	112.50		
153.	Miss U. L. Lalitha Perera ..	100.00		
154.	Miss W. A. Perera ..	—	Not employed by us.	
155.	Miss P. Nesta Perera ..	250.00		
156.	Mr. T. M. Nelson Pieris ..	185.00		

No. 7 Affidavit of K. G. N. Senevi- ratne, Secretary of Maliban Biscuit Manu- factories, Ltd., Filed in the Application for Conditional Leave to Appeal to the Privy Council — 16-7-68. — <i>Continued</i> Schedule Annexed Marked "A" — <i>Continued</i>	Serial No.	Name	Salary Per Month	Remarks
	157.	Miss R. A. Chandrawathie Perera	90.00	
	158.	Mr. G. B. Podiappuhamy .. ..	115.00	
	159.	Miss P. D. Perera .. ..	100.00	
	160.	Miss U. L. R. Perera .. ..	100.00	
	161.	Miss S. W. Pathirana .. ..	80.00	
	162.	Miss A. A. Podihamine .. ..	80.00	
	163.	Miss K. N. Sunethra Perera .. ..	100.00	
	164.	Miss K. T. Padmawathie .. ..	70.00	10
	165.	Mr. G. A. Piyasena .. ..	95.00	
	166.	Miss N. Dayawathie Perera .. ..	112.50	
			18651.00	
	167.	Miss K. N. Selin Perera .. ..	90.00	
	168.	Miss D. Perera .. ..	100.00	
	169.	Miss M. D. Keerthiwathie .. ..	70.00	
	170.	Miss G. Kusumawathie .. ..	70.00	
	171.	Miss K. Kumarasinghe .. ..	70.00	
	172.	Miss R. D. Karunawathie .. ..	70.00	
	173.	Miss A. D. Karunawathie .. ..	80.00	20
	174.	Miss A. Kalyanawathie .. ..	70.00	
	175.	Mr. N. Kalyanaratne .. ..	95.00	
	176.	Mr. P. Kalugampitiya .. ..	120.00	
	177.	Miss S. Kotalawala .. ..	60.00	
	178.	Miss R. D. Kamalawathie .. ..	80.00	
	179.	Miss A. M. Lokumenike .. ..	100.00	
	180.	Mr. M. A. Leelaratne .. ..	95.00	
	181.	Miss W. P. Leelawathie .. ..	100.00	
	182.	Mr. K. W. Liyanage .. ..	95.00	
	183.	Miss T. Lilian .. ..	112.50	30
	184.	Miss W. A. D. Punyalatha .. ..	70.00	
	185.	Miss U. Piyawathie .. ..	90.00	
	186.	Miss H. S. L. Pieris .. ..	60.00	
	187.	Miss K. Premawathie .. ..	70.00	
	188.	Miss R. A. Nalanie Perera .. ..	60.00	
	189.	Miss P. R. Nimal Padminie .. ..	60.00	
	190.	Miss S. A. Agnes Perera .. ..	60.00	
	191.	Mr. N. M. J. Podiappuhamy .. ..	91.27	
	192.	Mr. P. V. Premaratne .. ..	150.00	
	193.	Miss Margaret Palihena .. ..	60.00	40
	194.	Mr. N. V. Padmadasa .. ..	75.00	
	195.	Mr. S. K. Piyasena .. ..	95.00	
	196.	Miss G. Joslin Perera .. ..	60.00	
	197.	Mr. J. Ruban Perera .. ..	95.00	
	198.	Miss Clara Perera .. ..	110.00	
	199.	Miss K. H. Padminie .. ..	100.00	
			21334.77	
	200.	Miss E. R. Perera .. ..	112.50	
	201.	Mr. K. Sirisena Perera .. ..	85.00	
	202.	Mr. E. A. A. Perera .. ..	148.92	50
	203.	Mr. Palihakkara .. ..	148.92	
	204.	Miss D. P. Ranatunga .. ..	80.00	
	205.	Miss N. A. Ranatunga .. ..	70.00	
	206.	Miss W. H. Rupawathie .. ..	70.00	
	207.	Miss D. P. Ratnayaka .. ..	100.00	
	208.	Mr. V. Rupasinghe .. ..	85.00	

Serial No.	Name	Salary Per Month	Remarks	No. 7 Affidavit of K. G. N. Seneviratne, Secretary of Maliban Biscuit Manufacturing Ltd., Filed in the Application for Conditional Leave to Appeal to the Privy Council — 16-7-68. —Continued Schedule Annexed Marked "A" — Continued
209.	Mr. D. W. Rajapaksa ..	148.92		
210.	Miss K. Ranaweera ..	75.00		
211.	Mr. D. S. Ranasinghe ..	155.00		
212.	Mr. P. Ranbanda ..	75.00		
213.	Mr. P. Ramanayaka ..	166.42		
214.	Miss L. H. S. Ramyawathie ..	70.00		
10 215.	Miss K. D. L. Ranjane	70.00		
216.	Miss R. A. Rupawathie ..	70.00		
217.	Miss Mallika Ruberu ..	60.00		
218.	Mr. P. M. Sirisena ..	91.27		
219.	Miss W. Somawathie ..	70.00		
220.	Miss H. Ariyawathie ..	112.50		
221.	Mr. R. D. Sirisena ..	95.00		
222.	Miss M. T. S. J. Siriwardene ..	80.00		
223.	Miss I. C. Perera ..	80.00		
224.	Miss O. V. C. Premalatha ..	80.00		
225.	Miss R. J. M. Chandra Perera ..	-----	Not employed by us.	
20 226.	Miss T. W. Premawathie ..	70.00		
227.	Miss K. S. Perera ..	70.00		
228.	Miss B. N. Perera ..	80.00		
229.	Mr. R. A. Wilmot Perera ..	240.00		
230.	Mr. M. D. M. Perera ..	148.92		
231.	Mr. K. A. D. Perera ..	148.92		
232.	Mr. K. W. Piyasiri ..	148.92		
		24635.98		
233.	Mr. P. P. Piyasena ..	85.00		
234.	Mr. K. J. D. Perera ..	112.50		
30 235.	Mr. K. D. P. Piyasena ..	145.00		
236.	Mr. K. G. N. Perera ..	110.00		
237.	Miss A. V. Premawathie ..	70.00		
238.	Miss W. P. Pieris ..	70.00		
239.	Miss K. Karunawathie ..	102.50		
240.	Miss B. G. Somawathie ..	70.00		
241.	Miss D. G. Tekkaratna ..	70.00		
242.	Miss S. M. Tekkarawathie ..	80.00		
243.	Miss I. M. Tennakoon ..	70.00		
244.	Mr. S. Tunis ..	148.92		
40 245.	Mr. H. A. Tissera ..	148.92		
246.	Mr. S. P. Tilakaratne ..	130.00		
247.	Miss C. J. Mary Theresa ..	112.50		
248.	Mr. S. A. Upasena ..	91.27		
249.	Miss J. A. Udulawathie ..	70.00		
250.	Miss V. G. Violet ..	70.00		
251.	Miss K. G. Wimalawathie ..	112.50		
252.	Miss S. Wimalawathie ..	112.50		
253.	Mr. W. N. M. Weerasinghe ..	325.00		
254.	Mr. D. C. Wickremasinghe ..	170.00		
50 255.	Miss B. Weerasinghe ..	100.00		
256.	Miss Violet Wijesinghe ..	80.00		
257.	Miss W. A. Wijendra ..	70.00		
258.	Miss D. G. Wimalawathie ..	70.00		
259.	Miss P. Wickrematilleke ..	70.00		
260.	Mr. M. A. Wickremaratne ..	115.00		
261.	Miss D. Withanachchi ..	100.00		
262.	Miss D. Prema Wijeratne ..	112.50		
263.	Miss D. D. Wimalawathie ..	70.00		

No. 7 Affidavit of K. G. N. Seneviratne, Secretary of Maliban Biscuit Manu- factories, Ltd., Filed in the Application for Conditional Leave to Appeal to the Privy Council — 16-7-68. —Continued Schedule Annexed Marked "A" — Continued	Serial No.	Name	Salary Per Month	Remarks	
	264.	Mr. M. William Singho ..	90.00		
	265.	Miss W. G. D. C. J. Weeraratne..	60.00		
			28059.09		
	266.	Mr. M. Wijesena ..	120.00		
	267.	Mr. S. A. Francis Wilson ..	85.00		
	268.	Miss T. W. Yasawathie ..	100.00		
	269.	Miss G. D. Yasawathie ..	100.00		
	270.	Mr. P. D. M. Perera ..	115.00	Dismissed on 30-10-66.	10-
	271.	Miss Padminie Weerakkody ..	80.00		
	272.	Miss K. Suraweera ..	80.00		
	273.	Mr. H. A. Subaneris ..	85.00		
	274.	Miss L. P. Silva ..	112.00		
	275.	Miss E. D. Somawathie ..	—	Not employed by us.	
	276.	Miss H. W. K. Saumyalatha ..	80.00		
	277.	Miss R. A. Somawathie ..	70.00		
	278.	Miss A. Y. Siriwardene ..	70.00		
	279.	Miss H. G. Somawathie ..	70.00		
	280.	Mr. P. V. Seneviratne ..	75.00		20-
	281.	Mr. S. L. Sathyapala ..	365.00		
	282.	Mr. D. A. Somaratne ..	148.92		
	283.	Mr. K. K. Susiripala ..	115.00		
	284.	Mr. A. G. Sirisena ..	95.00		
	285.	Miss D. Senn ..	100.00		
	286.	Miss G. A. Sumanawathie ..	70.00		
	287.	Miss N. D. Seelawathie ..	90.00		
	288.	Miss W. P. G. Somawathie ..	70.00		
	289.	Miss H. D. Sumanawathie ..	70.00		
	290.	Miss N. C. D. Somawathie ..	—	Not employed by us.	30-
	291.	Miss Chandrawathie Silva ..	60.00		
	292.	Miss N. E. M. De Silva ..	70.00		
	293.	Miss R. L. A. C. Malinie Silva ..	60.00		
	294.	Miss K. D. Seneviratne ..	60.00		
	295.	Mr. W. D. Siriwardene ..	230.00		
	296.	Mr. M. Simon ..	75.00		
	297.	Mr. W. Samson ..	148.92		
	298.	Miss Anna De Silva ..	112.50		
	299.	Miss G. Somawathie ..	70.00		
			31206.93		40-

Schedule  
Annexed  
Marked "B"

### SCHEDULE "B"

Serial No.	Name	Salary per Month	Remarks	
1.	Miss D. D. Aslin ..	60.00		
2.	Mr. Ariyasena ..	—	Not employed by us.	
3.	Miss D. C. W. Basnayake ..	70.00		
4.	Mr. S. A. P. Dissanayaka ..	145.00	Not dismissed. Still in service.	
5.	Miss Wansawathie Dharmasena ..	70.00		
6.	Miss Mary Elizabeth ..	—	Not employed by us.	
7.	Mr. Joseph Fernando ..	—	Not employed by us.	50-
8.	Miss K. D. Florence ..	—	Dismissed on 11-11-1966.	
9.	Miss M. D. L. Gunatileke ..	70.00		
10.	Mr. M. W. P. Gunawardena ..	—	Not employed by us.	



<i>Serial No.</i>	<i>Name</i>	<i>Salary Per Month</i>	<i>Remarks</i>	<i>No. 7 Affidavit of K. G. N. Seneviratne, Secretary of Maliban Biscuit Manufacturing Co. Ltd., Filed in the Application for Conditional Leave to Appeal to the Privy Council—16-7-68. —Continued Schedule Annexed Marked "B" — Continued</i>
	11. Miss. G. L. Gunaratne ..	70.00		
	12. Miss S. A. Hemawathie ..	70.00		
	13. Miss H. Hettiarachchi ..	80.00		
	14. Mr. M. R. P. Janis ..	166.42		
	15. Mr. H. D. Jinadasa ..	—	Not employed by us	
	16. Mr. R. K. Jayasena ..	—	Not employed by us	
	17. Miss G. Mallika Jinadasa ..	70.00		
10	18. Miss P. M. K. Jinadasa ..	—	Not employed by us	
	19. Miss Kusuma Kariyawasan ..	105.00		
	20. Miss K. O. Lalitha ..	70.00		
	21. Mr. D. D. Martin ..	—	Not employed by us	
	22. Mr. M. H. Martin ..	—	—do—	
	23. Miss M. H. Malini ..	70.00		
	24. Mr. B. Newton Perera ..	—	Not employed by us	
	25. Mr. A. H. Piyadasa ..	115.00		
	26. Miss K. G. Premawathie ..	—	Not employed by us	
	27. Miss H. A. Wimalawathie Perera ..	80.00		
20	28. Miss T. Wimala Pieris ..	100.00	Resigned on 27-1-67	
	29. Miss H. A. N. A. Perera ..	62.50		
		1543.92		
	30. Miss R. Irene Perera ..	70.00		
	31. Miss W. D. Ratnawathie ..	80.00		
	32. Miss Kusuma Rajapaksa ..	—	Not employed by us	
	33. Miss Catherine Ranasinghe ..	112.50		
	34. Mr. L. S. K. Rabielsingho ..	—	Not employed by us	
	35. Mr. Senarath Silva ..	—	—do—	
	36. Miss G. K. Somawathie ..	80.00		
30	37. Miss Ratnawathie Soysa ..	112.50		
	38. Mr. A. K. Sarath ..	—	Not employed by us	
	39. Miss S. P. Seelawathie ..	70.00		
	40. Miss A. G. Sirimawathie ..	—	Not employed by us	
	41. Miss K. G. P. De Silva ..	—	—do—	
	42. Mr. J. W. Sandeman ..	148.92		
	43. Mr. W. A. Somapala ..	166.42		
	44. Miss K. G. Tilakawathie ..	70.00		
	45. Miss G. V. Vinitha ..	112.50		
	46. Miss M. H. Violet ..	70.00		
40	47. Miss Muriel Williams ..	100.00		
	48. Miss B. A. Wimalawathie ..	100.00		
	49. Miss I. D. Abeyedeera ..	—	Not employed by us	
	50. Miss Ramyalatha Vithana ..	70.00		
	51. Mr. R. Arumugam ..	—	Not employed by us	
	52. Mr. A. A. Cader ..	—	—do—	
	53. Mr. W. Joseph Fernando ..	—	—do—	
	54. Mr. R. K. Jayasena ..	—	—do—	
	55. Mr. Cassim Mohamed ..	—	—do—	
	56. Mr. S. Perumal ..	—	—do—	
50	57. Mr. Malcolm Perera ..	—	—do—	
	58. Mr. S. Ranasinghe Silva ..	—	—do—	
	59. Mr. L. Tudor ..	—	—do—	
	60. Mr. A. M. Mansoor ..	—	—do—	
	61. Mr. H. A. Dharmadasa ..	—	—do—	
	62. Mr. A. Ranjit ..	—	—do—	
		2906.76		

## SCHEDULE "C"

No. 7  
Affidavit of  
K. G. N. Senevi-  
ratne, Secretary  
of Maliban  
Biscuit Manu-  
factories, Ltd.,  
Filed in the  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council —  
16-7-68.  
— Continued  
Schedule  
Annexed  
Marked "C"

Serial No.	Name	Salary per Month	Remarks
1.	Mr. A. C. Abeywickrema ..	255.00	
2.	Miss Indrani Dalugoda ..	112.50	
3.	Mr. K. G. David Appuhamy ..	95.00	
4.	Miss H. W. S. M. Caldera ..	60.00	
5.	Mr. Cecil S. Fernando ..	145.00	
6.	Miss Susima Gunatilleke ..	170.00	10
7.	Mrs. L. N. Janenona ..	112.50	
8.	Mr. L. D. Jeevananda ..	95.00	
9.	Mr. A. Kulatunga ..	145.00	
10.	Miss Pathma Kumarasinghe ..	100.00	
11.	Mr. Senaka Kithsiri ..	180.00	
12.	Miss M. Mayawathie ..	112.50	
13.	Miss E. Munasinghe ..	—	Not employed by us.
14.	Miss Malinie Nanayakkara ..	90.00	
15.	Mr. Bandula Perera ..	175.00	
16.	Mr. Sirisena Pieris ..	95.00	20
17.	Mr. G. Somadasa Perera ..	85.00	
18.	Mr. H. A. Razak ..	105.00	
19.	Miss R. A. Seelawathie ..	60.00	
20.	Miss P. M. A. Siriyalatha ..	100.00	
21.	Mr. N. G. Seetin ..	100.00	
22.	Miss H. D. Siriyawathie ..	100.00	
23.	Miss K. A. L. Samarawickrema ..	100.00	
24.	Miss W. Wimalawathie ..	—	Not employed by us.
25.	Miss N. Wanigasinghe ..	60.00	
26.	Miss Dayawathie Ealpolu ..	100.00	30
		5424.26	

Schedule  
Annexed  
Marked "D"

## SCHEDULE "D"

Serial No.	Name	Salary per Month	Remarks
1.	K. Arulandi ..	75.00	
2.	Miss Soma Amarasekera ..	112.50	
3.	Miss Leelani Jayasinghe ..	112.50	
4.	N. P. Pekin Sena ..	75.00	
5.	Miss S. Somawathie ..	60.00	
6.	Miss K. Bamunusinghe ..	90.00	Deserted post on 5-12-66
7.	Miss L. N. P. Lalitha ..	70.00	— do — 5-11-66
8.	Miss P. G. Dhanawathie ..	70.00	— do — 25-10-66
9.	Mr. Lalith Rupasinghe ..	145.00	— do — 9-11-66
10.	Mr. K. M. Donald Perera ..	137.50	— do — 1-11-66
11.	Mr. M. V. P. Gunasekera ..	305.00	— do — 1-11-66
12.	Mr. C. D. Gonage ..	148.92	— do — 14-11-66
13.	Mr. H. Ananda Perera ..	180.00	— do — 27-10-66
14.	Mr. B. Sunil Perera ..	152.50	— do — 19-9-66
15.	Mr. D. B. R. Jayawardene ..	156.42	— do — 1-11-66
16.	Mr. R. M. D. Piyasena ..	156.42	— do — 11-11-66
17.	Mr. G. G. Sugathapala ..	148.92	— do — 2-11-66
18.	Mr. R. B. Patrick Perera ..	190.00	— do — 1-2-66
		2386.68	

## SCHEDULE "E"

<i>Serial No.</i>	<i>Name</i>	<i>Salary per Month</i>	<i>Remarks</i>
1.	Miss Florence Column .. ..	95.00	Dismissed on 12-2-67
2.	Mr. Saranapala Costa .. ..	90.00	Deserted post on 10-11-66
3.	Miss Pearl Cleyn .. ..	102.50	— do — 1-11-66
4.	Miss Sheila Rodrigo .. ..	102.50	— do — 30-10-66
5.	Mr. L. R. Perera .. ..	120.00	Vacated post 19-6-66
10		<u>510.00</u>	

No. 7  
Affidavit of  
K. G. N. Senevi-  
ratne, Secretary  
of Maliban  
Biscuit Manu-  
factories Ltd.,  
Filed in the  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council —  
16-7-68.  
— *Continued*  
Schedule  
Annexed  
Marked "E"

## SCHEDULE "F"

<i>Serial No.</i>	<i>Name</i>	<i>Salary per Month</i>	<i>Remarks</i>
1.	Mr. N. B. Boange .. ..	200.00	
2.	Mr. S. A. Benedict .. ..	172.92	
3.	Mr. P. Nanayakkara .. ..	115.00	
4.	Miss D. M. S. Weerasinghe .. ..	90.00	
5.	Miss Iranganie Seneratne .. ..	80.00	Dismissed on 5-1-66
20	6. Miss R. J. Nandawathie .. ..	60.00	
		<u>798.92</u>	

Schedule  
Annexed  
Marked "F"

## SUMMARY

Schedule A .. ..	31206.93
"   B .. ..	2906.76
"   C .. ..	5424.26
"   D .. ..	2385.68
"   E .. ..	510.00
"   F .. ..	798.92
	<u>43227.55</u>

**Judgment of the Supreme Court Dismissing Application  
 for Conditional Leave to Appeal to the  
 Privy Council**

In the matter of an application for Conditional Leave to Appeal to Her Majesty the Queen-in-Council under the provisions of the Appeals (Privy Council) Ordinance (Chapter 100) in S.C. Application No. 498/1967.

10

MALIBAN BISCUIT MANUFACTORIES, LTD.

*Petitioner*

*Vs.*

R. SUBRAMANIAM (President, Labour  
 Tribunal) *et al.*

*Respondents*

*Present :* Samerawickrame, J. and Pandita-Gunawardene, J.

*Counsel :* C. Ranganathan, Q.C., with S. J. Kadirgamar, Q.C.,  
 S. S. Basnayake, H. A. Abeywardene and K. D. P. Wickramasinghe *for the Petitioner.*

N. Satyendra *for the 2nd respondent.*

20

*Argued On :* 19th, 20th and 23rd August, 1968.

*Decided On :* 19th December, 1969.

**Samerawickrame, J.**

The petitioner applies for leave to appeal to Her Majesty-in-Council from an order of this Court refusing an application for Writs of Certiorari and Prohibition. The Minister of Labour had referred certain disputes between employees of the petitioner represented by the 2nd respondent and the petitioner-company to the 1st respondent who is President of a Labour Tribunal for settlement by arbitration. At the inquiry the 1st respondent took up for adjudication as preliminary matter objections by the petitioner 30 that the order of the Minister referring the dispute was not valid and that the Tribunal had no jurisdiction to inquire into the dispute. The 1st respondent over-ruled the objections and the petitioner made an application to this Court for a Writ of Certiorari to quash the order of the 1st respondent and a Writ of Prohibition against the 1st respondent prohibiting him from having any further inquiry in the matter.

Learned counsel for the 2nd respondent submitted that the order of this Court dismissing the application of the petitioner was not one made in a civil suit or action and relied on the decision of the Divisional Bench in *Silverline Bus Co. Ltd. v. Kandy Omnibus Co. Ltd.* LTD.<sup>1</sup> Learned counsel for the petitioner submitted that that decision had in effect, though not expressly, been over-ruled by the Privy Council in *Tennekoon v. Duraisamy*.<sup>2</sup>

No. 8  
Judgment of  
the Supreme  
Court  
Dismissing  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council —  
19-12-69.  
— Continued

In the *Silverline Bus Co.* case, Basnayake, C.J., considered the nature and scope of an application for a writ and said, “The dicta I have cited go to show that proceedings in certiorari do not fall within the category of pro-  
10 ceedings known as suits or actions. In certiorari the Court exercises its super-  
visory functions in order to determine whether the inferior tribunal has exceeded its jurisdiction or committed an error of law apparent on the face of the proceedings, and is not called upon to pronounce judgment on the merits of the dispute between the parties before the inferior tribunal.”

Later in his judgment Basnayake, C.J. referred to *In re Goonesingha*,<sup>3</sup> in which Moseley, J., held that an application for a Writ of Certiorari fell within the definition of action in Section 6 of the Civil Procedure Code which reads—

“Every application to a court for relief or remedy obtainable through  
20 the exercise of the court’s power or authority, or otherwise to invite  
its interference, constitutes an action”.

With reference to Moseley, J’s decision Basnayake, C.J., said, “With great respect I find myself unable to agree with the conclusion of the learned Judge. A Writ of Certiorari is not a means of obtaining any relief or remedy through the Court’s power or authority. It is a purely supervisory function of the Court, while Section 6 of the Civil Procedure Code contemplates an entirely different function. In my view it would be wrong to read Section 6 by itself without reference to the other provisions of the Civil Procedure  
30 Code leaves no room for the view that a Writ of Certiorari falls within the definition of action in the Code.”

Basnayake, C.J., then considered the meaning of the expression “Civil Suit or Action” in Section 52 of the Charter of 1833 and Section 3 of the Appeals (Privy Council) Ordinance. Having referred to certain decisions of the Privy Council he said, “The above decisions of the Privy Council confirm me in the opinion I have formed that the words ‘Civil Suit or Action’ in Section 3 of the Ordinance should be construed in their ordinary sense of a proceeding in which one party sues for or claims something from another in regular civil proceedings and that an application for a Writ of Certiorari  
40 does not fall within the ambit of those words in the context in which they occur.”

It would appear that Basnayake, C.J., held that an application for a Writ of Certiorari did not fall within the ambit of “Civil Suit or Action” on the following grounds—

No. 8  
 Judgment of  
 the Supreme  
 Court  
 Dismissing  
 Application for  
 Conditional  
 Leave to Appeal  
 to the Privy  
 Council—  
 19-12-69.  
 — Continued

- (a) Proceedings for certiorari are not suits or actions as in them the Court exercises its supervisory functions and is not called upon to pronounce judgments on the merits of the dispute between the parties before the inferior tribunal,
- (b) Such an application does not fall within the definition of action in Section 6 of the Civil Procedure Code,
- (c) A "Civil Suit or Action" must be construed to be a proceeding in which one party sues for or obtains something from another in regular civil proceedings and an application for certiorari therefore does not fall within that expression.

10-

In *TENNEKOON v. DURASAMY* (supra) the view expressed by Basnayake, C.J., in regard to the meaning to be given to the expression "Civil Suit or Action" has been expressly disapproved and accordingly the last ground given by him for regarding an application for certiorari as not being a civil suit or action must be regarded as over-ruled. The Privy Council expressly refrained from otherwise dealing with the decision in the *SILVERLINE BUS Co.* case (supra). It said, "After the application for leave to appeal to the Privy Council had been granted in the present case a bench of five judges (one of whom dissented) in the case of *Silverline Bus Co., Ltd. v. Kandy Omnibus Co., Ltd.*, after a very full and careful review of two conflicting lines of authority, 20 decided that an application to the Supreme Court for a Writ of Certiorari was not a "Civil Suit or Action" within the meaning of Section 3 of the Appeals Ordinance. Counsel for the Commissioner in the present case did not contend that the decision in the Silverline case was wrong: the point actually decided is not before their Lordships, and they have heard no argument upon it. It follows, however, from the views which they have already expressed that they cannot accept the view of Basnayake, C.J., that the words "Civil Suit or Action" in Section 3 of the Appeals Ordinance should be limited to "a proceeding in which one party sues for or claims something from another in regular civil proceedings." 30

Earlier in the judgment of the Privy Council the definition of action in Section 6 of the Civil Procedure Code was set out and it was stated, "This is what their Lordships think is the meaning of "action" in the Charter and in the Appeals Ordinance though, as will have been seen, they do not found their decision on this section." The judgment did not consider whether an application for a writ did or did not fall within the definition for the Board had not before it an appeal from an order on such an application. Nor did the Privy Council deal with Basnayake, C.J.'s view that such an application did not fall within the definition.

It would thus appear that though one ground given in the judgment in 40 the *Silverline Bus Co.* case (supra) must be regarded as over-ruled, the other two grounds for the finding that an application for certiorari is not a civil suit or action remain untouched by the Privy Council decision. The Divisional Bench decision was made by a Bench of five judges on a reference under Section 31 of the Courts Ordinance and must be conformed to by this Court constituted as it is by two judges. I am therefore of the view that we

are bound by that decision and that it is not open to us to take any other view than that an application for Writs of Certiorari and Prohibition is not a civil suit or action.

In *Colombo Apothecaries Co., Ltd. v. E. A. Wijesooriya et al.*,<sup>1</sup> Tennekoon, J., took the view that in *TENNEKOON v. DURAISAMY* (supra) the Privy Council has expressly over-ruled the *ratio decidendi* in the *Silverline Bus Co.* case. With respect, I am unable to agree for the reason, as set out above, that some grounds of the decision in the latter case remain untouched. In the case decided by Tennekoon, J., leave was granted also on the alternative  
10 ground that it was a matter of public importance.

Learned counsel for the 2nd respondent also contended that the matter in dispute on the appeal did not amount to rupees five thousand and that the appeal did not involve any property claim or question of that value. It is unnecessary to consider that contention.

I hold accordingly that the order sought to be appealed from is not one made in a civil suit or action and that the petitioner is not entitled for leave to appeal. The application is therefore dismissed with costs.

Sgd. G. T. SAMERAWICKRAME,  
*Puisne Justice.*

20 **Pandita-Gunawardene, J.**

I agree.

Sgd. PANDITA-GUNAWARDENE,  
*Puisne Justice.*

- (1) — 58 N.L.R. 193.
- (2) — 59 N.L.R. 481.
- (3) — 44 N.L.R. 75.
- (4) — S.C. Minutes of 22-5-68 in S.C. Application 127/1968.

### No. 9

#### Decree of the Supreme Court Dismissing the Application for Conditional Leave to Appeal to the Privy Council

30

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to the Privy Council in S.C. Application No. 498 of 1967. ID/LT/8/178.

No. 8  
Judgment of  
the Supreme  
Court  
Dismissing  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council—  
19-12-69.  
— *Continued*

No. 9  
Decree of the  
Supreme Court  
Dismissing the  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council—  
19-12-69.

No. 9  
Decree of the  
Supreme Court  
Dismissing the  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council —  
19-12-69.  
— Continued

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen  
Street, Colombo 13.

*Petitioner*

S.C. Application No. 207/1968      *Vs.*

1. R. SUBRAMANIAM, ESQUIRE, President,  
Labour Tribunal, No. 11, Rosmead  
Place, Colombo 7.
2. THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street, Col. 1.
3. N. L. ABEYWIRA, ESQ., Commissioner  
of Labour, Department of Labour,  
Lower Lake Road, Colombo 3.
4. THE SECRETARY, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.

10

*Respondents*

This application in which the petitioner abovenamed prays the Court *inter alia* to grant Conditional Leave to appeal to Her Majesty the Queen-in-Council, against the Judgment and/or Order and/or Decision and/or Decree of the Supreme Court dated 9th April 1968, in Supreme Court Application No. 498/1967—an application for a mandate in the nature of a Writ of Certiorari and/or Prohibition against the President of a Labour Tribunal and certain others—having come up for final disposal before the Honourable George Terrence Samerawickrame, Q.C., and the Honourable Vinman Tudave Pandita-Gunawardene, Puisne Justices of this Court, on the 19th, 20th and 23rd days of August 1968, in the presence of C. Ranganathan, Esquire, Q.C., appearing with S. J. Kadirgamar, Esquire, Q.C., and Messrs. S. S. Basnayake, H. A. Abeywardene and K. D. P. Wickremasinghe, Advocates, for the Petitioner and N. Satyendra, Esquire, Advocate for the 2nd Respondent:

It is considered and adjudged for the reasons set out in the order delivered by this Court on 19th December, 1969, that this application be and the same is hereby dismissed with costs.

Witness the Honourable Hugh Norman Gregory Fernando, Chief Justice, at Colombo this 11th day of January in the year One thousand Nine hundred and Seventy and of our Reign the Eighteenth.

Sgd. LAURIE WICKRAMASINHA,  
*Deputy Registrar of the  
Supreme Court.*



## No. 10

**Order of Her Majesty in Council Granting Special Leave  
to Appeal to the Privy Council**

No. 10  
Order of Her  
Majesty in  
Council  
Granting  
Special Leave to  
Appeal to the  
Privy Council—  
25-2-70.

AT THE COURT AT BUCKINGHAM PALACE

THE 25TH DAY OF FEBRUARY 1970

**Present**

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	MR. SECRETARY THOMAS
LORD BESWICK	MR. HOY

10 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 23rd day of February 1970 in the words following viz—

20 “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 Maliban Biscuit Manufactories Ltd. in the matter of an Appeal from the Supreme Court of Ceylon between the Petitioner and (1) R. Subramaniam (2) The Ceylon Mercantile Union (3) N. L. Abeywira, Commissioner of Labour and (4) The Secretary, Labour Tribunal, Respondents setting forth that the Petitioner prays for special leave to appeal to Your Majesty in Council against the Judgment of the Supreme Court of Ceylon dated the 19th December 1969 whereby the said Court dismissed with costs the Petitioner’s Application for leave to appeal to Your Majesty in Council against a Judgment and Order of the said Court dated the 9th April 1968 refusing the Petitioner’s Application for mandates in the nature of Writs of Certiorari and Prohibition: And humbly praying Your Majesty in Council to order that the Petitioner should have special leave to appeal against the Judgment of the Supreme Court of Ceylon dated the 19th December 1969 or for further or other relief:

30 “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 no one appearing at the Bar 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 of the Supreme Court of Ceylon dated the 19th December 1969 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

No. 10  
 Order of her  
 Majesty in  
 Council  
 Granting  
 Special Leave to  
 Appeal to the  
 Privy Council —  
 25-2-70.  
 — *Continued*

“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 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.”

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. 10

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.

Sgd. W. G. AGNEW.

**PART — II**  
**EXHIBITS**



“ A ”

**(Petitioner's Document)**

“A”  
(Petitioner's  
Document)  
Extract from the  
Ceylon Govern-  
ment Gazette—  
23-6-67

**Extract from the Ceylon Government Gazette**

**PART I: SEC. (I)—(GENERAL)—CEYLON GOVERNMENT  
GAZETTE, JUNE 23, 1967.**

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131  
OF THE LEGISLATIVE ENACTMENTS OF CEYLON  
(1956 REVISED EDITION)**

**ORDER UNDER SECTION 4(1)**

10 WHEREAS an industrial dispute in respect of the matters specified in the statement of the Commissioner of Labour which accompanies this Order exists between Ceylon Mercantile Union, 22-1/1, Upper Chatham Street, Colombo 1, and Maliban Biscuit Manufactories Ltd., 11, Van Rooyen Street, Colombo 13:

Now, therefore, I, Mohamed Haniffa Mohamed, Minister of Labour, Employment and Housing, do, by virtue of the powers vested in me by Section 4(1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition), as amended by Acts Nos. 14 of 1957, 62 of 1957 and 4 of 1962, hereby refer the aforesaid dispute to  
20 Labour Tribunal VIII for settlement by arbitration.

**M. H. MOHAMED,**  
*Minister of Labour, Employment and Housing.*

Colombo, 14th June, 1967.

"A"  
(Petitioner's  
Document)  
Extract from the  
Ceylon Govern-  
ment Gazette—  
23-6-67  
—Continued

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131  
OF THE LEGISLATIVE ENACTMENTS, CEYLON  
(156 REVISED EDITION)

In the matter of an industrial dispute

between

THE CEYLON MERCANTILE UNION,  
22-1/1, Upper Chatham Street,  
Colombo 1.

and

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
11, Van Rooyen Street,  
Colombo 13.

10-

**Statement of Matters in Dispute**

The matters in dispute between the Ceylon Mercantile Union and Maliban Biscuit Manufactories Limited are—

- (1) Whether the termination of employment of the following employees is justified and to what relief each of them is entitled—

Mr. W. P. Amaradasa	Miss Ranmutu Chitra	
Mr. M. A. Abeydeera	Miss G. A. Chandrawathie	
Mr. C. B. Anthony	Mr. W. Carolis	20-
Mr. W. K. Ariyapala	Mr. K. D. Chalo Singho	
Mr. G. A. Amarapala	Mr. T. W. N. Chandratilake	
Miss M. H. Anula	Mr. D. A. M. Colonne	
Mr. K. A. D. Ariyadasa	Miss B. A. Chitra	
Mr. P. A. Albert	Miss K. D. Caroline	
Miss T. M. Ariyawathie	Miss R. A. Charlotte Nona	
Miss N. B. A. Agi Nona	Miss H. I. P. Caldera	
Miss A. Ariyawathie	Miss M. K. A. Dayawathie	
Miss V. W. Ariyawathie	Mr. B. P. E. Dharmasiri	
Miss W. T. de Alwis	Mr. M. Deemon Singho	30
Miss A. P. Leela Abeysinghe	Mr. S. H. Dayaratne	
Miss L. Amerasinghe	Miss Beatrice Dias	
Mr. P. M. Daya Bandara	Miss G. Deldeniya	
Mr. E. A. Bodipala	Miss P. A. Dias	
Miss D. Borelassa	Mr. M. David Singho	
Mr. J. A. Buddhadasa	Mr. K. V. G. Dharmasiri	
Miss D. M. A. Balasuriya	Miss T. D. Dayawathie	
Mr. L. E. D. Balasuriya	Miss B. L. Devakularatchchi	

Miss T. G. Dayawathie  
 Miss G. A. Daya  
 Miss K. P. Dayawathie  
 Mr. K. L. E. de Silva  
 Mr. Anna de Silva  
 Mr. W. Dayananda  
 Miss M. E. M. de Silva  
 Mr. S. A. Hector Dias  
 Mr. A. G. Premasiri Dias  
 10 Mr. T. P. G. Edwin  
 Miss T. Emalin  
 Miss Seeta Edirisinghe  
 Miss K. D. E. Ekanayake  
 Mr. P. Ekmon  
 Mr. S. B. Ekanayake  
 Miss G. B. Fernando  
 Mr. C. M. Fonseka  
 Miss R. E. T. W. Ferdinands  
 Mr. M. C. Fernando  
 20 Mr. G. G. Feltman  
 Mr. C. W. Fonseka  
 Miss M. S. Fernando  
 Mr. G. S. Fernando  
 Miss W. W. Fernando  
 Mr. S. G. Fernando  
 Miss P. Grace Gunawardene  
 Miss G. K. Gunawathie  
 Mr. N. A. C. Godamanne  
 Mr. Harry Gilbert  
 30 Miss K. A. Getisnona  
 Mr. K. A. Gunasekara  
 Mr. K. H. Gunadasa  
 Mr. R. D. Gunadasa  
 Mr. L. A. K. Gunatillake  
 Miss K. Gunawathie  
 Mr. J. P. Gunendra  
 Miss H. A. K. Gunawathie  
 Mr. S. P. Gunaratne  
 Miss Evelyn S. D. Gunasekare  
 40 Miss E. N. Hettiaratchi  
 Miss B. Hettiaratchi  
 Mr. H. D. Hemapala  
 Miss S. Horadagoda  
 Miss W. D. Violet Hemantha  
 Miss H. A. Hemalatha  
 Miss M. K. Harriott  
 Miss D. K. Hemalatha  
 Miss S. Hewahalapage  
 Miss G. P. Indranie  
 50 Miss K. D. Iranganie  
 Miss L. D. Indra

Miss L. H. Indrawathie  
 Miss D. D. Illeperuma  
 Miss Isec Bertha  
 Miss J. L. Jayalath  
 Mr. K. N. Jayananda  
 Miss D. G. Jayawardane  
 Miss Mary Joseph  
 Mr. R. G. Jinadasa  
 Miss S. M. D. Mary Juliat  
 Mr. K. T. Jinoris  
 Mr. L. S. K. Jinadasa  
 Miss S. M. E. Jayasinghe  
 Miss H. Sunitha Jinadasa  
 Miss W. A. Jane Nona  
 Miss W. A. D. Rupa Jayalath  
 Mr. L. R. Jayasena  
 Mr. K. D. Francis Joseph  
 Miss S. K. Karunawathie  
 Mr. G. P. H. Karunatilake  
 Mr. S. D. G. Karunaratne  
 Miss M. V. Karunagoda  
 Mr. K. A. Karunasinghe  
 Miss M. D. Keerthiwathie  
 Miss G. Kusumawathie  
 Miss K. Kumarasinghe  
 Miss R. D. Karunawathie  
 Miss D. Karunawathie  
 Miss A. D. Karunawathie  
 Miss A. Kalyanawathie  
 Mr. N. Kalyanaratne  
 Mr. P. Kalugampitiya  
 Miss S. Kotalawala  
 Miss R. D. Kamalawathie  
 Miss A. M. Loku Menike  
 Mr. M. A. Leelaratne  
 Miss W. P. Leelawathie  
 Mr. K. W. Liyanage  
 Miss T. Liliyan  
 Miss D. B. Lilinona  
 Mr. P. P. Leeladasa  
 Miss D. M. D. Leelawathie  
 Miss J. D. Lalitha  
 Mr. S. A. Manoratne  
 Miss W. A. Mary Anna  
 Miss I. P. W. Munaweera  
 Mr. I. H. Mendis  
 Mr. S. K. Martin Singho  
 Mr. R. P. M. Methasooriya  
 Miss P. Matilda  
 Miss A. P. Magilin  
 Miss M. D. Mebal

“A”  
 (Petitioner's  
 Document)  
 Extract from the  
 Ceylon Govern-  
 ment Gazette—  
 23-6-67  
 —Continued

“A”  
(Petitioner's  
Document)  
Extract from the  
Ceylon Govern-  
ment Gazette —  
23-6-67  
—Continued

Miss M. Meulawathie	
Mr. B. A. Mahindadasa	
Miss A. G. Malinie	
Miss L. Masinghe	
Miss U. Managama	
Miss K. Navaratne	
Miss N. B. Nandawathie	
Miss W. A. Nandawathie	
Miss W. H. Nandanie	
Miss M. P. Nandawathie	
Miss A. Nandawathie	
Miss R. P. D. Nandawathie	
Miss V. Nimalawathie	
Mr. N. B. Nandadasa	
Mr. P. K. Nanapala	
Mr. S. P. Nandasiri	
Miss K. D. N. Nanayakkara	
Miss K. Premalatha	
Mr. E. A. Piyasiri	
Mr. K. M. G. Perera	
Miss L. A. M. Perera	
Mr. S. A. Somapala Perera	
Miss H. A. Premalatha	
Miss U. L. Premawathie	
Miss U. L. Lalitha Perera	
Miss W. A. D. Perera	
Miss P. Nesta Perera	
Mr. T. M. Nelson Peiris	
Miss R. A. Chandrawathie Perera	
Mr. G. B. Podiappuhamy	
Miss P. D. Perera	
Miss U. L. R. Perera	
Miss S. W. Pathirana	
Miss A. A. Podi Hamine	
Miss K. N. Sunethra Perera	
Miss K. T. Padmawathie	
Mr. G. A. Piyadasa	
Miss M. Dayawathie Perera	
Miss K. N. Selin Perera	
Miss H. D. Perera	
Miss I. C. C. Perera	
Miss O. V. C. Premalatha	
Miss R. J. M. Chandra Perera	
Miss T. W. Premawathie	
Miss K. S. Perera	
Miss B. N. Perera	
Mr. R. A. Wilmot Perera	
Mr. M. D. M. Perera	
Mr. K. A. D. Perera	
Mr. K. W. Piyasiri	
Mr. H. P. Piyasena	
Miss K. J. D. Perera	
Mr. K. D. P. Piyasena	
Mr. K. G. M. Perera	
Miss A. V. Premawathie	
Miss W. P. M. Peiris	
Miss W. A. D. Punyalatha	
Miss U. Piyawathie	
Miss H. S. L. Peiris	
Miss K. Premawathie	
Miss R. A. Nalanie Perera	10
Miss P. R. Nimala Padminie	
Miss S. A. Agnas Perera	
Mr. N. M. J. Podiappuhamy	
Mr. P. V. Premaratne	
Miss Magret Palihena	
Mr. M. V. Padmadasa	
Mr. S. K. Piyasena	
Miss G. Joslin Perera	
Mr. J. Ruban Perera	
Miss Clare Perera	20
Miss K. H. Padmini	
Miss E. R. Perera	
Mr. K. Sirisena Perera	
Mr. E. A. A. Perera	
Mr. Palihakkara	
Miss D. P. Ranatunga	
Miss N. A. Ranatunga	
Miss H. W. Rupawathie	
Miss D. P. Ratnayake	
Mr. V. Rupasinghe	30
Mr. D. W. Rajapaksa	
Miss K. Ranaweera	
Mr. D. S. Ranasinghe	
Mr. P. Ran Banda	
Miss L. H. S. Ramyawathie	
Mr. P. Ramanayake	
Miss K. D. L. Ranjane	
Miss R. A. Rupawathie	
Miss Mallika Ruberu	
Mr. P. M. Sirisena	40
Miss W. Somawathie	
Miss H. Ariyawathie Soysa	
Mr. R. D. Sirisena	
Miss M. T. S. J. Siriwardene	
Miss K. Suraweera	
Mr. K. A. Subaneris	
Miss L. P. Silva	
Miss E. D. Somawathie	
Miss H. W. K. Saumyalatha	
Miss R. A. Somawathie	50
Miss A. Y. Siriwardene	



Miss H. G. Somawathie  
 Mr. P. V. Seneviratne  
 Mr. S. L. Satyapala  
 Mr. D. A. Somaratne  
 Mr. K. K. Siripala  
 Mr. A. G. Sirisena  
 Mr. D. Senn  
 Miss G. A. Sumanawathie  
 Miss N. D. Seelawathie  
 10 Miss W. P. G. Somawathie  
 Miss H. G. Sumanawathie  
 Miss N. G. D. Somawathie  
 Miss S. Chandrawathie Silva  
 Miss N. E. M. de Silva  
 Miss R. L. A. G. Malini Silva  
 Miss K. S. Seneviratne  
 Mr. W. D. Siriwardene  
 Mr. M. Simon  
 Mr. W. Samson  
 20 Miss Anna de Silva  
 Miss G. Somawathie  
 Miss K. Karunawathie Silva  
 Miss B. G. Somawathie  
 Miss B. G. Tokkekeratne  
 Miss S. M. Tokkekawathie  
 Miss I. M. Tennekoon  
 Mr. S. Tunis

Mr. M. H. A. Tisera  
 Mr. S. P. Tollekeratne  
 Miss C. J. Mary Theresa  
 Mr. G. A. Upasena  
 Miss J. A. Udulawathie  
 Miss V. G. Violet  
 Miss K. G. Wimalawathie  
 Miss S. Wimalawathie  
 Mr. W. N. M. Weerasinghe  
 Mr. D. C. Wickramasinghe  
 Miss B. Weerasinghe  
 Miss Violet Wijesinghe  
 Miss W. A. Wijendra  
 Miss G. D. Wimalawathie  
 Miss P. Wickramatilake  
 Mr. M. A. Wickramaratne  
 Miss D. Withanachchi  
 Miss D. Prema Wijeratne  
 Miss D. D. Wimalawathie  
 Mr. M. William Singho  
 Miss W. G. D. C. J. Weeraratne  
 Mr. M. Wijesena  
 Mr. S. A. Francis Wilson  
 Miss T. W. Yasawathie  
 Miss G. D. Yasawathie  
 Mr. P. D. M. Perera  
 Miss Padmini Weerakkody

“A”  
 (Petitioner's  
 Document)  
 Extract from the  
 Ceylon Govern-  
 ment Gazette—  
 23-6-67  
 —Continued

(2) Whether the non-offer of work to the following employees is justified and to what relief each of them is entitled—

30 Miss D. D. Asilin  
 Mr. P. Ariyasene  
 Miss D. C. W. Basnayake  
 Mr. S. A. P. Dissanayake  
 Miss Wansawathie Dharmasena  
 Miss Mary Elizabeth  
 Mr. W. Joesph Fernando  
 Miss K. D. Florence  
 Miss M. D. L. Gunatilake  
 Mr. M. P. W. Gunawardene  
 40 Miss G. L. Gunaratne  
 Miss S. A. Hemawathie  
 Miss H. Hettiarachchi  
 Mr. M. R. P. Janis  
 Mr. H. D. Jinadasa  
 Mr. R. K. Jayasena  
 Miss G. Mallika Jinadasa  
 Mr. P. M. K. Jinadasa  
 Miss Kusuma Kariyawasam  
 Miss K. O. Lalitha

Mr. D. D. Martin  
 Mr. M. H. Martin  
 Miss M. H. Malani  
 Mr. B. Newton Perera  
 Mr. A. H. Piyadasa  
 Miss K. G. Premawathie  
 Miss H. A. Wimalawathie Perera  
 Miss T. Wimala Peiris  
 Miss H. A. N. A. Perera  
 Miss R. Irene Perera  
 Miss W. D. Ratnawathie  
 Miss Kusuma Rajapakse  
 Miss Kathirine Ranasinghe  
 Mr. L. S. K. Rabel Singho  
 Mr. Senaratne Silva  
 Miss G. K. Somawathie  
 Miss Ratnawathie Soysa  
 Mr. A. K. Sarath  
 Miss S. P. Seelawathie  
 Miss A. G. Sirimawathie

"A"  
(Petitioner's  
Document)  
Extract from the  
Ceylon Govern-  
ment Gazette—  
23-6-67  
—Continued

Miss K. G. P. de Silva  
Mr. J. W. Sandiman  
Mr. W. A. Somapala  
Miss K. G. Tilakawathie  
Miss H. V. Wineetha  
Miss M. H. Violet  
Miss Muriel Williams  
Miss E. A. Wimalawathie  
Miss Ramyalatha Withana  
Mr. I. D. Abeyweera  
Mr. R. Arumugam

Mr. A. A. Cader  
Mr. W. Joseph Fernando  
Mr. R. K. Jayasena  
Mr. Casim Mohamed  
Mr. S. Perumal  
Mr. Malcom Perera  
Mr. S. Ranasinghe Silva  
Mr. L. Tudor  
Mr. A. M. Mansoor  
Mr. H. A. Dharmadasa  
Mr. A. Ranjith

- (3) Whether the transfer, demotion and the subsequent termination of employment of the following employees is justified and to what relief each of them is entitled—

Mr. A. C. Abeywickrama  
Miss Indrani Dalugoda  
Miss M. Iranganie Dharmawathie  
Mr. K. G. David Appuhamy  
Miss H. W. S. M. Caldera  
Mr. S. Cecil Fernando  
Miss Susima Gunatilake  
Mrs. L. N. Jane Nona  
Mr. L. D. Jeewananda  
Mr. A. Kulatunga  
Miss Pathma Kumarasinghe  
Mr. Senaka Kithsiri  
Miss Mayawathie  
Miss Sumana Munasinghe

Miss Malani Nanayakkara  
Mr. B. Bandula Perera  
Mr. Sirisena Peiris  
Mr. G. Somadasa Perera  
Mr. H. A. Rasaak  
Miss R. A. Seelawathie  
Miss P. M. A. Siriyalatha  
Miss H. D. Siriyawathie  
Mr. N. G. Seetin  
Miss K. A. L. Samarawickrama  
Miss W. Wimalawathie  
Miss N. Wanigasinghe  
Miss Dayawathie Walpola

- (4) Whether the transfer and demotion of, and subsequent non-offer of work to, the following employees is justified and to what relief each of them is entitled—

Mr. H. K. Arulandi  
Miss Soma Amarasekara  
Miss Lilani Jayasinghe  
Mr. N. P. Pekin Sena  
Mr. Merryl Perera  
Miss K. Somawathie  
Miss K. Bamunusinghe  
Miss L. N. D. Lalitha  
Miss P. G. Dhanawathie  
Mr. Lalith Rupasinghe

Mr. K. M. Donald Perera  
Mr. M. V. D. Gunasekara  
Mr. C. D. Godage  
Mr. H. Ananda Perera  
Mr. B. A. Cyril  
Mr. B. Sunil Perera  
Mr. D. B. R. Jayawardene  
Mr. R. M. D. Piyasena  
Mr. G. H. Sugathapala  
Mr. Patrick Perera

- (5) Whether the interdiction of, and the subsequent non-offer of work to, the following employees is justified and to what relief each of them is entitled—

Miss. Florence Collom  
Mr. Saranapala Costa

Miss Pearl Clyne  
Miss P. Sheela Rodrigo

L. R. Perera

"A"  
(Petitioner's  
Document)  
Extract from the  
Ceylon Govern-  
ment Gazette—  
23-6-67  
—Continued

- (6) Whether the interdiction and subsequent termination of employment of the following employees is justified and to what relief each of them is entitled—

Mr. N. B. Boange  
Mr. S. A. Benedict  
Mr. P. Nanayakkara

Miss D. A. M. Weerasinghe  
Miss Indrani Seneratne  
Miss R. J. Nandawathie

- 10 (7) The following demands of the aforesaid Union made on behalf of its members—

- (a) Letters of Appointment be issued to all employees specifying—

- (i) rates of pay  
(ii) hours of work  
(iii) leave entitlements, and  
(iv) other terms and conditions.

- (b) All monthly paid, weekly paid, daily paid and piece rate workers to be made permanent.

- 20 (c) The condition of employment which prohibits a female employee from continuing in employment on her marriage be withdrawn forthwith.

- (d) Uniforms should be provided to all employees who are required to wear uniform at the factories.

- (e) Separate and proper Rest Room facilities to male and female employees should be provided.

- 30 (f) The present practice of intimating refusal of work to employees through the watcher at the gate be discontinued forthwith and instead a suitable alternative system introduced; and any interdiction or suspension from work of an employee should be effected after such employee has been issued with show cause notice and after considering the explanation tendered by him/her, and only on grounds warranting exclusion of such employee from the workplace.

Dated at the office of the Commissioner of Labour, Colombo.

This 14th day of June, 1967.

N. L. ABEYWIRA,  
*Commissioner of Labour.*

" B "

"B"  
 (Petitioner's  
 Document)  
 Letter Addressed  
 to the General  
 Secretary, Ceylon  
 Mercantile  
 Union, and the  
 Managing Direc-  
 tor, Maliban  
 Biscuit Manufac-  
 tories, Ltd., by  
 the Permanent  
 Secretary to the  
 Ministry of  
 Labour, Employ-  
 ment and  
 Housing—  
 14-6-67

(Petitioner's Document)

**Letter Addressed to the General Secretary, Ceylon Mercantile Union, and the Managing Director, Maliban Biscuit Manufactory, Ltd., by the Permanent Secretary to the Ministry of Labour, Employment and Housing**

Ministry of Labour, Employment  
 and Housing

My No. C/1 688

212, Bullers Road,  
 Colombo 7.

10

14th June, 1967.

Sir,

**In the matter of an industrial dispute between  
 The Ceylon Mercantile Union  
 and Maliban Biscuit Manufactory, Ltd.**

I am directed by the Honourable Minister of Labour, Employment and Housing to inform you that he has by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts, Nos. 14 and 62 of 1957 and 4 of 1962 referred the above industrial dispute to

20

Labour Tribunal VIII

2. A copy of the statement of the matter in dispute is annexed for information.

I am, Sir,  
 Your obedient servant,

Sgd. N. L. ABEYWIRA,  
*Permanent Secretary.*

1. The General Secretary,  
 Ceylon Mercantile Union,  
 22-1/1, Upper Chatham St., Colombo 1.
2. The Managing Director,  
 Maliban Biscuit Manufactory, Ltd.,  
 11, Van Rooyen Street, Colombo 13.

30

" C "

(Petitioner's Document)

## Notice Sent to the Petitioner by the 4th Respondent

"C"  
 (Petitioner's  
 Document)  
 Notice Sent to  
 the Petitioner  
 by the 4th Res-  
 pondent,  
 24-6-67

## Registered Post

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131,  
 LEGISLATIVE ENACTMENTS, CEYLON (REVISED  
 EDITION 1956) as amended by the INDUSTRIAL  
 DISPUTE (AMENDMENT) ACTS NOS. 14 and 62 of  
 1957 and 4 of 1962

10 Before Labour Tribunal (VIII)

Notice under Regulation 21 (1)

In the matter of an industrial dispute between

THE CEYLON MERCANTILE UNION

and

MALIBAN BISCUIT MANUFACTORIES, LIMITED

To :  
 Maliban Biscuit Manufactories, Ltd.,  
 Colombo.

WHEREAS by order dated the 14th day of June 1967 made by the Honour-  
 20 able Minister of Labour, Employment and National Housing under Section  
 4 (1) of the said act, the industrial dispute between the aforesaid parties in  
 respect of the matters specified in the statement dated the 14th day of June  
 1967, of the Commissioner of Labour, copy of which accompanies this notice,  
 has been referred for settlement to Labour Tribunal VIII.

PLEASE TAKE NOTICE that, under Regulation 21 (1) of the Industrial  
 Disputes Regulations, 1958, made under Section 39 of the aforesaid Act and  
 published in Government Gazette Extraordinary No. 11,688 of March 2,  
 1959, as amended by Regulation published in Government Gazette No.  
 12,731 of October 27, 1961, you are hereby required to submit to me on or  
 30 before the 10th day of July 1967, THREE copies of a statement setting out  
 in full your case in respect of the matters in dispute.

Sgd. S. THANABALASINGHAM  
*Secretary,*  
*Labour Tribunals.*

Office of the Labour Tribunals,  
 11, Rosmead Place,  
 Colombo, 24-6-1967.

"D"  
(Petitioner's  
Document)  
Statement of the  
Petitioner,  
17-7-67

" D "  
(Petitioner's Document)

Statement of the Petitioner

THE INDUSTRIAL DISPUTES ACT CHAPTER 131,  
OF THE LEGISLATIVE ENACTMENTS, CEYLON  
1956, REVISED EDITION, AS AMENDED BY ACT  
NO. 4 OF 1942, AND ACTS NOS. 14 AND 62 OF 1967

In the matter of an Industrial Dispute

*Between*

THE CEYLON MERCANTILE UNION,  
No. 22-1/1, Upper Chatham Street,  
Colombo 1.

10

*Applicants*

No. ID/LT/8/178

*Vs.*

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P.O. Box 1210, No. 11, Van Rooyen St.,  
Colombo 13.

*Respondents*

On this 17th day of July, 1967.

The statement of Maliban Biscuit Manufactories, Ltd. hereinafter called 20  
the Company, appearing by Don Hector Nicholas Jayamaha and Senarath  
Lakshman Moonesinghe, its Proctors, practising in partnership under the  
name and style and firm of "Moonesinghe and Jayamaha", states as follows—

1. The categorization of the matters alleged to be in dispute in the statement  
of the Commissioner of Labour and itemised under heads numbered  
1 - 6, is not understood, and requires clarification, and, therefore, the  
Company submits that the Union must, in due course, give particulars  
to enable the Company to identify the persons distinguished in the said  
statement, as falling under the several heads specified, as alleged dis-  
putes 1 - 6. 30
2. (a) The Commissioner of Labour and the Honourable the Minister of  
Labour made a reference of alleged disputes for settlement by  
Mr. W. Thamotheeram in proceedings numbered I.D. 361. That  
reference related to a number of persons who have been named  
again in the statement of the Commissioner of Labour, dated 14th  
June, 1967.
- (b) The Company also submits that the persons named in the reference  
of the Commissioner of Labour, dated 14th June 1967, had also  
instituted proceedings in the Labour Tribunal.

- (c) The said Mr. Thamoatham, made and delivered an award.
- (d) The proceedings instituted in the Labour Tribunal have also terminated according to Law.
- (e) The Company pleads that in regard to all persons who were the subject of the proceedings of ID 361, as well as those who instituted proceedings in the Labour Tribunal, no Industrial Dispute survives in Law and/or the awards by the Industrial Court and/or the Presidents of Labour Tribunals are Res Judicata, and/or the Honourable the Minister has now power in Law to make this reference and is 'Functus Officio' and/or this Tribunal has no power to entertain the reference or to have any proceedings thereon or to make any award.

10

The Company emphatically protests that the Tribunal has no jurisdiction whatsoever.

3. The Company submits that this Tribunal has no jurisdiction, in any event, to entertain the reference or make any award in regard to termination of services or non-offer of work or transfer, demotions or interdictions.
4. The Company also submits that the Honourable the Minister has no power to make a reference 'en masse' involving so many persons.
- 20 5. The Company challenges and repudiates the right of the Ceylon Mercantile Union to represent any of the persons named in the reference of the Commissioner of Labour and the Company puts the Ceylon Mercantile Union to the strict proof of its right, if any, of representation and submits that this Tribunal has no power or jurisdiction to commence any proceedings until and unless the Ceylon Mercantile Union establishes that it has the right of representation. The Company, being unaware, denies that all the persons named in the said reference were members of the Ceylon Mercantile Union.
- 30 6. The Company further submits that the reference to the Tribunal by the Honourable the Minister is bad in Law, because the Minister and/or the Commissioner of Labour is directing the Tribunal
- (a) to make or hold enquiries in regard to justification for dismissal.
- (b) to compel the Company to justify action which it has taken within its common law rights.
7. The Company also submits that the dispute alleged by the Minister and/or the Commissioner of Labour are not minor disputes and, therefore, the Minister is not entitled to make this reference to this Tribunal.
8. The Company carries on business, inter alia, of manufacturing biscuits for consumption by the public and employs very expensive and valuable

"D"  
(Petitioner's  
Document)  
Statement of the  
Petitioner,  
17-7-67  
—Continued

"D"  
(Petitioner's  
Document)  
Statement of the  
Petitioner,  
17-7-67  
—Continued

machinery for the purpose. The Company's products are distributed widely and consumed by a large number of people.

The Company has suffered at the hands of a section of its employees, sabotage and malicious action directed by some of its employees against other employees, as well as the Company.

This action was directed towards injuring the Company, as well as its employees. There was poisoning of the food of a considerable section of the Company's employees, which from all circumstances, appears to be directed to bring about the death of its employees.

The Company submits that it was well entitled in law to take protective 10  
action to ensure the safety of the lives of its employees, and in these  
circumstances the Company did decide to terminate the services of  
a section of its employees, which action it will justify by evidence before  
this Tribunal, if this Tribunal, is empowered to have or maintain pro-  
ceedings.

9. The Company submits it has a duty by the public, to which it sells its biscuits. The Company submits that it cannot take any risks and that in no event can the Company, which is engaged in the manufacture of food, ever reinstate workers suspected of such malicious acts of sabotage calculated to endanger the lives of humans. 20
10. The work-force of the Company is divided into two rival camps and there is a great deal of hostility between those working for the Company now and those whose services were terminated in consequence of sabotage and malicious action which resulted in injury to those working for the Company.
11. The Ceylon Mercantile Union has used its position and called a boycott in the Port of Colombo against the Company. The said boycott operated approximately from 12th April, 1967 to 16th June, 1967, the object of which was to injure and cripple the Company in its business.

The said boycott was an unfair labour practice in the extreme, and was 30  
illegal. The boycott has resulted in loss, damage and injury to the Com-  
pany in a sum estimated at over a lakh of rupees. The Ceylon Mercantile  
Union initiated the said boycott and operated the same. The Company  
submits that in these circumstances it cannot ever be just or equitable  
for this Tribunal to order reinstatement of any workers who are members  
of the Ceylon Mercantile Union or to grant them any relief in any cir-  
cumstances as it will not be just or equitable for any such order to be  
made.

12. In regard to item 7 of the statement under reference, the Company 40  
submits
  - (a) that matters alleged therein are not industrial disputes within the meaning of the Act and accordingly the Honourable the Minister's



reference is bad in law, and this Tribunal cannot make a lawful or valid award.

"D"  
(Petitioner's  
Document)  
Statement of the  
Petitioner,  
17-7-67  
—Continued

- (b) Some of the matters referred to therein had earlier been referred to Mr. W. Thamotharam, in I.D. 361, and therefore, the Honourable the Minister had not the power to make this reference to this Tribunal nor has this Tribunal the power to make any award and in regard to all matters specified in item 7 of the reference the jurisdiction of this Tribunal is challenged by the Company.
- 10 (c) that in any event the said matters are all matters of internal management in regard to which this Tribunal should not make any award.
13. The Company submits that much has to be clarified and made clear to this Tribunal by the Union and/or the Honourable the Minister and/or the Commissioner of Labour, before the Company can answer fully.

20 The Company, therefore, submits that this Tribunal must, in the first instance, determine whether it has power or the jurisdiction to enter upon the reference and/or this Tribunal must determine the legality thereof or the Honourable the Supreme Court must do so before this Tribunal could enter upon enquiries in regard to the facts involved in the reference. The Company reserves to itself the right to call for all such clarification and for determination of jurisdiction before it adduces evidence. The Company strongly asserts that there is no bona fides on the part of its employees whose services it had terminated for good and just cause and there is no bona fides on the part of the Ceylon Mercantile Union, and the Company submits that the objective of the Union and the employees whose services have been terminated is to enter upon the Company's premises with the object of disrupting the Company's business, sabotaging its business and assets, causing injury and death of its employees and consequential injury and even death of the members of the public who consume the Company's products.

30

The Company has very great and justifiable fear and apprehension of the motives of its employees and the Ceylon Mercantile Union.

Among the consumers of the Company's products are thousands upon thousands of school children. The Company as an impersonal body cannot centre, nor guarantee to the consuming public the safety of its products, unless it has the utmost confidence in the honesty, loyalty and humanism of its employees all along down the line.

40 The social and moral responsibility of the Company is very high. The conduct and behaviour and the calculated malice of a large section of its employees, aided, abetted and encouraged by the Ceylon Mercantile Union is such as to shake the Company's confidence in those of its employees, whose services have been terminated, to such an extent that the Company cannot under any circumstances reconcile itself to reinstatement of suspect employees.

“D”  
(Petitioner's  
Document)  
Statement of the  
Petitioner,  
17-7-67  
—Continued

It is submitted that these matters and several such allied matters must be carefully scrutinised by the Tribunal.

WHEREFORE THE RESPONDENT PRAYS—

- (a) That this Tribunal be pleased to make a just and equitable award in the circumstances in accordance with the submissions herein made and the evidence that will be adduced at the enquiry on behalf of the Respondent.
- (b) For costs and
- (c) for such other and further relief as to this Tribunal shall seem meet.

Sgd. MOONESINGHE AND JAYAMAHA, 10  
*Proctors for Respondent.*

“ E ”

“E”  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67

**(Petitioner's Document)**  
**Statement of the 2nd Respondent**

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131 OF THE  
LEGISLATIVE ENACTMENTS, CEYLON (1956  
REVISED EDITION)**

In the matter of an Industrial Dispute

*Between*

THE CEYLON MERCANTILE UNION, 22-1/1,  
Upper Chatham Street, Colombo 1.

20

No. ID/LT/8/178

*Vs.*

M/S. MALIBAN BISCUIT MANUFACTORIES,  
LTD., 11, Van Rooyen Street, Colombo 13.

**The Statement of the Union**

1. The employees referred to in the statement of the Commissioner of Labour dated 14-6-67 are all members of the Ceylon Mercantile Union.
2. Prior to joining the C.M.U., the workers of the Company were members of the Maliban Wiskothu Karmantha Sala Sevaka Samithiya, a Company sponsored Union which came into being several years ago.

30

3. A branch of the National Employees Union was formed in August 1966 and immediately thereafter several disputes, such as dismissals, transfers and demotions arose. Some of these matters were settled at a conference held under the aegis of the Labour Department on 8-10-66.
4. In view of disputes arising out of the implementation of the terms of settlement arrived at the conference referred to in (3) above, the National Employees Union had referred these disputes, amongst others, for settlement by Arbitration. The Minister of Labour had by Gazette of 2-12-66 referred these disputes for settlement by Arbitration.
- 10 5. Several members of the National Employees Union had by that time joined the Ceylon Mercantile Union, whereupon the National Employees Union had subsequently withdrawn from the Arbitration referred to in (4) above.
6. On 4-12-66 a Branch of the Ceylon Mercantile Union was formed. The Company was informed by letter dated 13-12-66 from the Union regarding the formation of a C.M.U. Branch in its establishment.
7. On 27-1-67 the Union made written representations to the Company on various individual disputes, including some of the disputes which were referred for settlement by Arbitration referred to in (4) above.
- 20 8. After several efforts made by the Union to seek settlement on various outstanding disputes with the Company the union wrote to the Chairman of the Company by a letter dated 5-3-67 listing out the various disputes, including dismissals, transfers, demotions, suspensions, non-employment and general demands that the Union had with the Company and giving notice of the Union's intention to resort to direct action without further notice in the event of failure to reach a settlement within one week from that date.
- 30 9. On 12-3-67 at a conference held under the aegis of the Labour Department the Union suggested to the Company's representatives in the interests of good relations, to restore the status quo by reinstating the employees whose services were terminated pending decision of the Labour Department on the merits of each case, after which the Union to refer any particular case to Arbitration in the event the Union did not agree with the Labour Department's decision. The Company's representatives indicated that they had no mandate to agree to the suggestion and therefore undertook to put this suggestion to the Management and convey its decision on 14-3-67.
- 40 10. On the morning of 13-3-67, when our members reported for work at the Company's factory at Ratmalana, they were informed that the factory was closed as from that day and no work was offered to them, a notice being displayed at the entrance to the factory to the effect that due to unavoidable reasons the factory will be closed.

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
—Continued

11. At a conference held on 14-3-67 under the aegis of the Labour Department, the Company's lawyers informed that after the last conference on 12-3-67, the night shift workers, all of whom were not members of the Union, took ill that day as a result of the night meal, having being poisoned. They stated that in view of this event the Company could not give any consideration to the Union's suggestion made at the conference on 12-3-67. The Union pointed out that the incident of alleged poisoning is unknown to the Union and in any case there can be no question that hundreds of workers who are members of the Union are responsible for this occurrence even if it was true. The Union's position was that for 10 whatever reason the Company has declared a lock-out at Ratmalana Factory, the Union therefore wanted to be informed by 15-3-67 as to what the Company had to say regarding the Union's suggestions on the disputes and as to when our members at Ratmalana Factory were to report for duty.
  
12. On 19-3-67 the Company declared a lock-out of the Members of the Union attached to the Company's factory at Kotahena. A notice was displayed at the entrance stating that "Due to an unavoidable reason this establishment is closed until further notice".  
  
On 20-3-67 the Company declared a lock-out of the members of the 20 Union who were attached to the Company's stores at No. 105, Vivekananda Hill, Kotahena. A notice was displayed at the entrance to the establishment stating that "due to an unavoidable reason Store No. 105 will be closed until further notice".
  
13. Although notices intimating closure of the establishments referred to in (10) and (12) above were displayed and C.M.U. Members were prevented from entering their work-places, certain non-Union members were, however permitted to enter their work-place and it was reported that they were offered work.
  
14. On 21-3-67, the Union wrote to the Commissioner of Labour requesting 30 his immediate investigation of the circumstances and motives of the lock-out which the Company has effected.
  
15. The Company issued letters dated 20-3-67 onwards to members of the Union attached to the Company's establishments at Ratmalana Factory, Kotahena Factory, 105 Stores, Kotahena, show Rooms at Nos. 85 and 135 Olcot Mawatha Colombo, Show Rooms at Y.M.B.A. Building, Fort and the Kandy Agency, intimating termination of their employment on grounds of "suspicion against some of the workers on alleged acts of sabotage and the poisoning of the meals taken by some of the workers in this Factory". These letters also contained cheques, in lieu of salary/ 40 wages for March 1967, one month's salary/wages in lieu of notice, two weeks salary/wages for each completed year of service, less deductions. Such letters of termination have been received by the employees listed in the statement dated 14-3-67 of the Commissioner of Labour as follows—

- (a) The members whose names are listed under (1) with the exception of P.D.M. Perera and Miss Padmini Weerakkody.
- (b) The members whose names are listed under (3).
- (c) The members whose names are listed under (6).

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
—Continued

16. By letter dated 30-3-67 the Union wrote to the Commissioner of Labour pointing out that the letters of termination thus served on our members by the Company were unlawful and absolutely unjustified and deliberately calculated to break the Branch Union in their establishment and requesting the Commissioner of Labour to intervene and at least restore the status quo prior to the lock-out effected by the Company.
17. At the interrogations conducted by the Labour Department on the 6th and 10th May 1967, the Union pointed out that apart from the persons who received letters of termination of employment referred to in (15) above, 55 other members have not been offered work, neither has their position been notified by the employer. The Company's representatives informed that their services were also terminated. By letter dated 12-3-67, the Union forwarded to the Commissioner of Labour a list of names of these persons who have not been offered work.
18. The position relating to the members whose names appear under (1) of the Statement of the Commissioner of Labour dated 14-6-67 is as follows—

The services of the members named under (1) of the statement from Mr. W. P. Amaradasa upto and including Miss G. D. Yasawathie, were terminated by letter dated 20-3-67 onwards, issued to each of them by the Company on grounds referred to in our submissions (15) above.

The position relating to P. D. M. Perera and Miss Padmini Weerakkody whose names also appear under (1) of the Statement of the Commissioner of Labour dated 14-6-67 is as follows—

**P. D. M. Perera** was employed since 4-6-62 as an Assistant Storekeeper at the Ratmalana Factory. On 23-9-66 he was transferred on verbal instructions to the Kotahena Factory without assigning any reason, to work in the Cones Machine. Despite his request for re-transfer to his former post as he had no knowledge of the operation of the Cones Machine, he was made to continue to work on the Cones Machine. On 30-10-66, he was interdicted pending inquiry on charges specified in the Company's letter of 30-10-66, to which he replied by letter of 1-11-66 requesting an inquiry. By letter dated 2-1-67, he drew attention to the fact that no inquiry has been held so far. An inquiry was subsequently held on 21-1-67. On 30-1-67 he was notified by letter that he had been found guilty and he was called upon to show cause within 3 days as to why he should not be dismissed or otherwise punished. His explanation in the matter is set out in his letter dated 1-2-67 to the Company. His services were terminated with effect from 30-10-66 by letter dated 3-2-67 from the Company.

"E"  
 (Petitioner's  
 Document)  
 Statement of the  
 2nd Respondent,  
 20-7-67  
 —Continued

**Mrs. Padmini Weerakkody** was employed since 26-11-63. She was attached to the Machine Section, Ratmalana Factory. On 20-2-67 she got married. On 26-2-67 the Secretary of the Company had wanted her to resign from the Company on the ground that she had got married. On 27-2-67 when she reported for work, she was not permitted to work. She received a letter dated 27-2-67 from the Company intimating termination of her services with effect from 27-2-67 on the ground that she had got married.

19. The position relating to the members whose names appear under (2) of the Statement of the Commissioner of Labour dated 14-6-67 is as follows—

The members named under (2) of the statement from D. D. Asilin upto and including Miss Ramyalatha Withana, have not been notified of their position by the Company nor have they been offered work since the Company declared a lock-out of the Union's members in its establishments at the Ratmalana Factory on 13-3-67, Kotahena Factory on 19-3-67 and 105 Stores, Kotahena on 20-3-67.

The position relating to the rest of the members whose names appear under (2) of the statement of the Commissioner of Labour dated 14-6-67 is as follows—

20

2/50 **Mr. I. D. Abeyweera:** On 6-3-67 when he reported for work he was not allowed to enter the factory premises by the Security Officer who informed him (Mr. Abeyweera) that he has been discontinued and did not assign any reasons for his discontinuance. He has addressed a letter dated 7-3-67 to the Company in this connection.

2/51 **Mr. R. Arumugam:** He was employed by the Company as a labourer in January 1954 and was promoted as a porter in January 1956. On 19-9-66 Mr. Mahindapala, Officer-in-Charge of the Stores, had wanted him to engage the services of 10 casual labourers on a rate of pay which was less than the normal rate paid to casual employees by the Company. Mr. Arumugam was not in a position to do so. Mr. Mahindapala had discontinued him verbally.

2/52 **Mr. A. A. Cader** was employed as a porter in 1961. He was discontinued on 19-9-66, by Mr. Mahindapala for the same reasons as in the case of Mr. R. Arumugam above.

2/53 **Mr. W. Joseph Fernando** was employed as a labourer since 17-2-65, and was attached to the Air Conditioning Room, Ratmalana. On 4-3-67 he was paid his dues by Mr. Weerasamy, who informed Mr. Fernando that on the instructions of Mr. A. G. Wimalasiri, Factory Manager, and Director of the Company, his services were discontinued as from that day, without assigning any reasons. Mr. Fernando has addressed the Company by letter dated 6-3-67 in this regard.

- 2/54 **Mr. R. K. Jayasena** was employed by the Company as a labourer attached to the Ratmalana Factory as from 3-1-66. On 3-3-67, after completing overtime work, he was informed by Mr. Marcus Chandrasekera, Assistant Factory Manager, that his (Mr. Jayasena's) services were discontinued as from 4-3-67, without assigning any reasons. Mr. Jayasena has by letter dated 5-3-67 to the Company requested reinstatement.
- 10 2/55 **Mr. A. Cassim Mohamed** was employed by the Company as a porter in the 105 Stores, Kotahena, as from February 1959. On 19-9-66, he was discontinued by Mr. Mahindapala for the same reasons as in the case of Mr. R. Arumugam above.
- 2/56 **Mr. S. Perumal** was employed by the Company as a porter in the 105 Stores, Kotahena since 1961. On 19-9-66 he was discontinued by Mr. Mahindapala for the same reason as in the case of Mr. R. Arumugam above.
- 20 2/57 **G. Malcolm Perera** was employed by the Company since 3-1-66. On 11-1-67, the Secretary of the Company informed him that he should not report for work for two weeks as from 12-1-67, without assigning any reason. At the expiry of this period when he reported for work on 25-1-67, the Secretary again informed him to report for duty 2 weeks hence on the ground that there was a decrease in production. Accordingly on 10-2-67 when Mr. Perera reported for work he was informed by the Secretary of the Company that no work would be offered to him; no reasons were, however given. Mr. Perera has written a letter dated 14-2-67 to the Company in this regard.
- 30 2/58 **Mr. S. Ranasinghe Silva** was employed by the Company as from 5-1-65 in the Tin Section of the Ratmalana Factory. On 23-1-67 when he reported for work, Mr. Seneviratne (Supervisor) informed him that his (Mr. Silva's) services were discontinued. On asking for reasons, Mr. Seneviratne informed that he was discontinued because he (Mr. Silva) had joined the Branch Union. Mr. Silva has addressed a letter dated 3-2-67 to the Company in this connection.
- 40 2/59 **Mr. L. Tudor** was employed in the Despatch Section of Ratmalana Factory as from 26-11-65. On 4-3-67 he was informed by Mr. Solomon (Security Officer) that he was discontinued, without assigning any reasons. On 5-3-67, when he called over to collect his wages as instructed, Mr. Solomon obtained Mr. Tudor's signature to a document when he was not permitted to read, and he was questioned by Mr. Solomon as to why he had joined the Union, and as to who else had joined the Union. On 5-3-67 Mr. Tudor wrote to the Company requesting reinstatement.

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
—Continued

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
—Continued

- 2/60 **Mr. A. M. Mansoor** was employed as a porter in the 105 Stores, Kotahena, as from February 1959. On 19-9-66 Mr. Mahindapala terminated his services for the same reason as in the case of Mr. R. Arumugam above.
- 2/61 **Mr. H. A. Dharmadasa** was employed as a porter in the 105 Stores, Kotahena, as from 1961. On 19-9-66 Mr. Mahindapala terminated his services for the same reasons as in the case of Mr. R. Arumugam above.
- 2/62 **Mr. A. Ranjith** was employed as a labourer in the Despatch Section, Ratmalana Factory, since 1-1-65. On 25-11-66 while on duty he was informed by Mr. R. S. Jayasooriya (Paying Officer) that he should not report for work for a period of 2 weeks, without assigning any reasons, which he did on 10-12-66, but was not offered work. Messrs. Jayasooriya and A. G. Wimalasiri (Director) had instead asked him to report for duty three days later. On 13-3-66, he was not allowed to enter the factory premises; no reasons were given. Mr. Ranjith has written a letter dated 8-1-67 to the Secretary of the Company in this connection.
20. The position relating to the members whose names appear under (3) of the statement of the Commissioner of Labour dated 14-6-67 is as 20 follows—
1. **Mr. A. C. Abeywickrema** was employed in the capacity of Foreman, Transport Section, Ratmalana Factory, since 29-7-63. As from 20-10-66, he was transferred to Transport Section, 105 Stores, Kotahena, without stating any reasons and with no duties assigned. His services were terminated by letter dated 23-3-67 on grounds referred to in our submissions (15) above.
  2. **Miss Indrani Dalugoda** was employed since 7-1-57. On 30-10-66, she was demoted from post of Head-Girl to the position of packer in the Ratmalana workshop, without giving any reason. The extra 30 cash payment of Rs. 12/- which she received as a Head-Girl was withdrawn as from 30-10-66. Her services were terminated by letter dated 20-3-67, on grounds referred to in our submissions (15) above.
  3. **Miss M. Iranganie Dharmawathie** was employed since 25-11-63 as from 15-10-66, she was demoted from post of Head-Girl to the position of packer in the Ratmalana workshop, without giving any reason. The extra cash payment of Rs. 7/- she received as a Head-Girl was withdrawn as from 15-10-66. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions 40 (15) above.
  4. **Mr. K. G. David Appuhamy** was employed since 12-2-63. As from 30-11-66, he was demoted from the post of Mechanic to Labourer, Mixing Room, Ratmalana; no reasons were given. His services



were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
—Continued

- 10
5. **Miss H. W. S. M. Caldera** was employed since 9-3-66 and was attached to the Ratmalana Factory, Tin Label Section. His services were terminated on 30-9-66 at which time she was a member of the National Employees Union, on whose intervention she was reinstated. On her reinstatement on 14-10-66, however she was transferred to No. 105 Stores, Kotahena; no reasons were given. Her services were terminated by letter dated 22-3-67 on grounds referred to in our submissions (15) above.
6. **Mr. S. Cecil Fernando** (ASSISTANT SECRETARY OF OUR BRANCH) was employed since 9-3-64. On 30-9-66, he was demoted from the post of sales supervisor to that of Junior Clerk, Ratmalana Factory, without giving any reason. Subsequently, on 3-12-66, he was transferred to Transport Department, Ratmalana, as a clerk. His services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
- 20
7. **Miss Susima Gunatilleke** was employed since August 1961 in the Kotahena Factory. As from 1-9-66, she was demoted from the post of Time Keeper and transferred to the Show Rooms, 135, Norris Road, Colombo, as a Sales Girl, without giving any reasons. Her services were terminated by letter dated 22-3-67 on grounds referred to in our submissions (15) above.
8. **Mrs. L. N. Jane Nona** was employed since 24-9-66. As from 5-12-66, she was demoted from the post of sorter, Machine Section, Ratmalana, to that of packer, Tin Label Section without giving any reasons. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
- 30
9. **Mr. L. D. Jeevananda** was employed since 15-3-63. As from 5-11-66 he was demoted and transferred from the post of Mechanic, Kotahena Factory, to that of labourer, Stores Department, Ratmalana, without giving any reasons. His services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
10. **Mr. A. S. Kulatunga** was employed since 10-3-64. As from 29-11-66 he was relieved of his duties as Purchasing Officer, Ratmalana, without giving any reasons, and transferred to the Ratmalana Factory with no work assigned. His services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
- 40
11. **Miss Pathma Kumarasinghe** was employed since 21-5-62. As from 11-11-66 she was demoted from the post of sorter, Machine Section, Ratmalana to that of packer, without giving any reasons. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— Continued

12. **Mr. S. Senaka Kithsiri** was employed since 22-5-1959. As from 1-9-66, he was demoted and transferred, without giving any reasons, from the post of Supervisor No. 1, Packing Section, Kotahena, to that of Salesman at the Show Rooms in Y.M.B.A. Building Fort. His services were terminated by letter dated 22-3-67 on grounds referred to in our submissions (15) above.
13. **Miss M. Mayawathie** was employed since 29-2-58. As from 29-11-66, she was demoted from the post of Head-Girl, Machine Section, Ratmalana, to that of packer, without giving any reasons. The special allowance of Rs. 7/- she received as a Head-Girl was with- 10 drawn as from 29-11-66. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
14. **Miss Sumana Munasinghe** was employed since 5-5-58. As from 21-11-66, she was demoted from the post of Head-Girl No. 1 Section, Ratmalana, to that of packer, without giving any reasons. The special allowance of Rs. 7/- she received as a Head-Girl was with- drawn as from 21-11-66. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
15. **Miss Nalani Nanayakkara** was employed since April 1963. As from 20-12-66, she was demoted from the post of Head-Girl No. 1 20 Section, Ratmalana, to that of packer without giving any reasons. The special allowance of Rs. 7/- she received as a Head-Girl was withdrawn as from 20-12-66. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
16. **Mr. B. Bandula Perera** was employed since 23-3-63. As from 23-9-66, without giving any reasons, from the post of Typist, Ratmalana Office, to that of a Junior Clerk at 105 Stores, Kotahena. His services were terminated by letter dated 22-3-67 on grounds referred to in our submissions (15) above.
17. **Mr. Sirisena Pieris** was employed since 2-4-62. As from 30-9-66, 30 he was demoted from the post of Assistant Oven operator, Ratmalana Factory, to that of labourer No. 1 Stores, without giving any reasons. His services were terminated by letter dated 20-3-67 on grounds referred to in our submission (15) above.
18. **Mr. G. Somadasa Perera** was employed since 25-3-64. As from 8-12-66, he was transferred from the post of Mixing Room Labourer to Tinker Section, Ratmalana, without giving any reasons. His services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
19. **Mr. A. H. A. Razak** employed since 2-2-62. As from 21-1-67 he was 40 demoted from the post of labourer, Stores Department, Ratmalana, to that of garden labourer, without any reasons. His services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.

20. **Miss R. A. Seelawathie** was employed since 14-11-65. As from 14-10-66, she was demoted and transferred from the post of packer, Ratmalana, to 105 Stores, Kotahena, without any reason. Her services were terminated by letter dated 22-3-67 on grounds referred to in our submissions (15) above.
21. **Miss P. M. A. Siriyalatha** was demoted from the post of Head-Girl, Ratmalana Factory to that of packer, without any reasons being assigned. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
- 10 22. **Miss H. D. Siriyawathie** was employed as from 6-6-62. As from 3-10-66, she was demoted from the post of Pantry Keeper, Ratmalana Factory, to that of packer, Ratmalana, without any reason. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
23. **Mr. N. G. Seetin** was employed as from 21-7-61. As from 5-11-66, he was demoted and transferred from the post of Mechanic, Kotahena Factory, to that of labourer, Stores Department, Ratmalana, without any reasons being assigned. His services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
- 20 24. **Miss K. A. L. Samarawickrema** was employed since 2-5-62. As from 20-11-66, she was transferred from Kotahena Factory to Ratmalana Factory, without any reason, and was made to perform work of a strenuous nature, despite the medical advice that she be given light work in view of the delicate state of her health. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
- 30 25. **Miss W. Wimalawathie** was employed since 10-2-66 in the Ratmalana Factory as a packer. As from 14-10-66, she was transferred to 105 Stores, Kotahena, without any reason. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.
26. **Miss M. Wanigasinghe** was employed since 9-3-66. As from 21-10-66, she was transferred from Ratmalana Factory to 105 Stores, Kotahena, without any reason. Her services were terminated by letter dated 22-3-67 on grounds referred to in our submissions (15) above.
- 40 27. **Miss Dayawathie Walpola** was employed in 1963. As from 16-10-66, she was demoted from the post of Head-Girl to that of packer, Ratmalana Factory, without any reason. Her services were terminated by letter dated 20-3-67 on grounds referred to in our submissions (15) above.

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— Continued

21. The position in relation to the members whose names are listed in (4) of the statement of the Commissioner of Labour is as follows—

1. **Mr. M. K. Arulandi** was employed since 28-12-64. As from 22-9-66, he was demoted from the post of Mixing Room labourer to that of garden labourer, Ratmalana Factory, without any reason. Since the lock-out at the Ratmalana Factory declared by the Company as from 13-3-67, he has not been offered work.
2. **Miss Soma Amarasekera** was employed since 24-8-55. As from 21-11-66, she was demoted from the post of Head-Girl to that of packer, Ratmalana, without any reason, from which date the special allowance of Rs. 7/- she received as a Head-Girl was withdrawn. Since the lock-out at Ratmalana Factory as from 13-3-67, she has not been offered work.
3. **Miss Leelani Jayasinghe** was employed since 2-4-58. As from 10-12-66, she was demoted from the post of Head-Girl to that of packer, Ratmalana, without any reason, on which date the special allowance of Rs. 12/- she was paid as a Head-Girl was withdrawn. She has not been offered work since the lock-out at Ratmalana Factory on 13-3-67.
4. **Mr. N. Pekinsena** was employed since 7-4-65. As from 7-10-66, he was demoted from the post of cook to garden sweeper, Ratmalana Factory, without any reason. He has not been offered work since the lock-out at Ratmalana Factory on 13-3-67.
5. **Mr. Merrill Perera** was employed since 3-3-63. As from 19-11-66, he was demoted and transferred from the post of Cones Baker, Kotahena Factory, to that of labourer, Ratmalana Factory, without any reason. He has not been offered work since the lock-out at Ratmalana Factory on 13-3-67.
6. **Miss K. Somawathie** was employed since 3-3-66 as a packer in the Ratmalana Factory. As from 14-10-66, she was transferred to 105 Stores, Kotahena, without any reason. She has not been offered work since the lock-out at No. 105 Stores, Kotahena, as from 20-3-67.
7. **Miss K. Bamunusinghe** was employed since 22-3-63. She was performing the duties of a clerk in the Record Room at Ratmalana. On 20-11-66, when she reported for duty following a period of medical leave, the Secretary of the Company informed her that she has been transferred to the post of packer in the Ratmalana Factory. When she protested about the sudden demotion and transfer, the Secretary of the Company had instructed her to leave the work-place. She had made an entry regarding this at the Mt. Lavinia Police Station. On 5-12-66, she was written to by the Management as to why she was absent from work as from 21-11-66, to which she

had replied by letter of 8-12-66 requesting that she be reinstated in her former appointment. As she received no reply to this letter, she drew attention by letter of 2-1-67 which has also not been replied to date, neither has she been offered work.

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— Continued

8. **Miss L. N. D. Lalitha** was employed since 1-4-65 as a packer in the Machine Section, Ratmalana Factory. On 25-10-66, she was informed by the Secretary of the Company that she has been transferred to the Kitchen Staff. When she appealed against her sudden demotion and requested that she be given other work, the Secretary of the Company ordered her out of the Factory. She had made a complaint to this effect at the Mount Lavinia Police Station. On 28-10-66, she wrote to the Company regarding her transfer and requesting that she be allowed to resume work, to which no reply has been received by her, despite her reminder on 4-12-66.

9. **Miss P. G. Dhanawathie** was employed since 6-4-65 in the Pantry Section, Ratmalana Factory. On 15-10-66, she was informed by the Secretary of the Company that she was transferred to the Kitchen Staff. When she appealed against her demotion and transfer, she was asked to go home. On 19-10-66, she was written to by the Secretary of the Company asking her explanation as to why she had kept away from work without permission and asking her to report for work immediately, to which she replied by letter of 22-10-66, when she called on the Secretary of the Company on 23-10-66, she was asked to report for work on 24-10-66, which she did and was assigned work in the Kitchen once again. When she brought this to the notice of the Secretary who had assured her that she would be given suitable work, the Secretary had asked her to stay at home. She had made an entry to this effect at the Mount Lavinia Police Station. She has also written a letter dated 31-12-66 to the Company stating her case and requesting that she be informed as to when she should report for work, to which letter there has been no reply.

10. **Lalith Rupasinghe** (VICE PRESIDENT OF OUR BRANCH UNION) was employed by the Company since 25-8-59 as a mechanic in the Kota-hena Factory. On 1-8-66 he was transferred to Ratmalana Factory and was demoted to the post of factory employee, without any reason. His request for restoration of his former duties, even on medical grounds, was not acceded to, even though the Company's doctor had recommended that he be given light work. On 9-9-66, he was refused entry into the Factory by the watcher who informed him that his services were terminated; no reasons were, however, given. The question of the termination of his employment was one of the matters disputed by the National Employees Union, of which Mr. Rupasinghe was then a member and the Branch President, and was settled at a conference held under the aegis of the Labour Department on 8-10-66 on the basis on his reinstatement. By letter dated 12-10-66 from the Company he was asked to report for duty as from 15-10-66 at the Show Room, No. 62, Maliban Street, Colombo. In reply to a telegram dated 14-10-66 sent by Mr. Rupasinghe regard-

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— Continued

ing the appointment he was offered, the Company in its letter dated 27-10-66 informed that if Mr. Rupasinghe fails to report for work as specified on 1-11-66, he will be deemed to have vacated his post. The Joint Secretary of the National Employees Union had then joined issue with the Company on this matter. Subsequently after Mr. Rupasinghe had joined the C.M.U. he had written a letter dated 8-1-67 to the Company in regard to the question of his resumption of work to which no reply has been sent by the Company.

11. **Mr. K. M. Donald Perera** (SECRETARY OF OUR BRANCH) was employed since 2-6-64 as an Assistant Store Keeper and was attached to the 10 Kotahena Factory. Whilst being a member of the National Employees Union, he was appointed to the Wages Board for Biscuit Manufacturing Trade, by letter dated 9-8-66 from the Permanent Secretary, Ministry of Labour. By letter dated 10-7-66 from the Company, he was demoted to the post of Salesman and was transferred to the Kandy Agency Office, without any reason. This transfer order was complied with under protest. By letter dated 7-9-66, the Company informed him that his services were terminated with effect from 9-9-66. The dispute was settled at a conference under the aegis of the Department of Labour on 8-10-66 on the basis of his reinstatement. 20 By letter of 12-10-66, from the Management, however, he was informed to take up duties at the Kandy Agency Office on 15-10-66, which matter was then disputed by the National Employees Union. By letter dated 27-10-66, the Management informed him that if he fails to report for duty at the Kandy Agency Office by 1-11-66, he will be deemed to have vacated his post. The National Employees Union had then referred this dispute, amongst others, for settlement by Arbitration. The submissions made in (4) above would apply in this case.
12. **Mr. M. V. D. Gunasekera** was employed since 12-8-58 as a Sinhala 30 Typist at the Ratmalana Office. Whilst he was a member (Treasurer) of the National Employees Union, he was informed by the Secretary of the Company that his services were terminated as from 31-8-66. This matter too was settled at the conference held under the aegis of the Labour Department on 8-10-66 on the basis of his reinstatement. However, by letter dated 12-10-66 from the Company he was asked to resume work at Nuwara Eliya as from 15-10-66. In reply to the telegram sent by Mr. Gunasekera, the Company informed him by letter dated 29-10-66 that he should report for work on 1-11-66 at the Show Rooms, 135, Norris Road, Colombo. By 40 letters dated 1-11-66, 29-12-66 and 5-1-67, Mr. Gunasekera requested reinstatement. No replies have been received to these letters.
13. **C. D. Godage** was employed since 2-3-62 as a Driver attached to the Transport Section, Ratmalana. Whilst he was a member (Committee Member) of the National Employees Union, he was informed by letter dated 7-11-66 from the Company that he has been transferred to Kandy Agency Office as from 12-11-66. By letter dated 9-11-66, Mr. Godage requested cancellation of his transfer order,

in reply to which the Company informed him by letter of 14-11-66, that if he fails to take up duties at Kandy within 7 days of receipt of this letter, he will be deemed to have vacated his post. By letters dated 15-11-66 and 4-1-67 to the Company, Mr. Godage requested cancellation of his transfer order and intimation as to when he should report for work. No reply has been received to either of these letters.

“E”  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— *Continued*

- 10 14. **Mr. H. Ananda Perera** was employed since 1-6-61 as a clerk attached to the Head Office, Ratmalana. Whilst he was a member of the National Employees Union, he was interdicted from service by letter dated 17-9-66, which matter was settled at the conference held under the aegis of the Labour Department on 8-10-66 on the basis of his reinstatement. However, by letter dated 12-10-66 from the Company, he was informed that he should report for work on 15-10-66 at the Show Rooms in Kotahena. In reply to his telegram protesting against the change of work-place, the Company informed him by letter dated 27-10-66 that if he fails to report for duty at the Show Rooms, Kotahena by 1-11-66 he would be deemed to have vacated his post. The National Employees Union disputed his appointment and the matter was referred to settlement by Arbitration referred to in our submissions (4) above.
- 20
- 30 15. **B. A. Cyril** was employed by the Company since April 1961 as a driver attached to the Transport Section of the Ratmalana Factory. Whilst he was a member of the National Employees Union, he was transferred to Kandy Agency Office on 22-9-66. On 17-10-66, whilst on duty at Kandy, he was attacked by certain unknown persons who questioned him regarding his membership in the N.E.U. He had complained to the Kandy Police regarding this matter. On 17-10-66, he had returned to Colombo and informed the Secretary of the Company of this incident and requested that he be allowed to work at Ratmalana. By letter dated 22-10-66 to the Company he asked the Company to re-transfer him to Ratmalana. The Company by letter dated 29-10-66 insisted that he take up duties at Kandy, to which he replied by letter dated 1-11-66 stating reasons for his inability to do so and requesting that he be transferred to Ratmalana. His dispute was also referred for settlement by Arbitration referred to in our submissions (4) above.
- 40 16. **Mr. B. Sunil Perera** was employed since 8-6-64 as Assistant Cashier at the Kotahena Office. He was subjected to a series of transfers. Thereafter, and at the time he was a member of the National Employees Union, on 18-9-66 he was transferred from the post of Supervisor, Cake Section, in the Bakery Department, to that of Supervisor, Bakery Oven. When he protested against this transfer, Mr. Abeynayake, O.I.C., Bakery Department, ordered him out of the factory. Mr. Sunil Perera had then made a complaint to the Kotahena Police in this regard. His dispute was also referred for settlement by Arbitration referred to in submission (4) above.

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— Continued

17. **Mr. D. B. R. Jayawardene** was employed since 14-9-58 as a Driver attached to the Transport Department, Ratmalana. Whilst he was a member of the National Employees Union, he was informed by letter dated 18-10-66 that he should report for work at the Kandy Agency Office, within 2 days on receipt of this letter. Despite the written requests made by him by letters dated 19-10-66 and 25-10-66 for the cancellation of his transfer, the Company insisted that he proceeds to Kandy. His dispute was also referred for settlement by Arbitration referred to in our submissions (4) above.
18. **Mr. R. M. D. Piyasena** was employed since 14-1-58 as a Driver attached to the Transport Department, Ratmalana. Whilst he was a member of the National Employees Union, he was transferred to the Kandy Agency Office with effect from 19-9-66. By letter dated 22-10-66 to the Company, he requested that he be transferred back to Colombo for reasons stated therein, which request was denied. His dispute was also referred for settlement by Arbitration referred to in our submissions (4) above.
19. **Mr. G. H. Sugathapala** was employed since 5-3-63 as a Driver attached to the Transport Department, Ratmalana. While he was a member of the National Employees Union, he was informed by letter dated 18-10-66 that he should report for work at the Kandy Agency Office. Despite the justifiable reasons as to his inability to take up duties at Kandy, which he conveyed to the Company by letters dated 19-10-66 and 25-10-66, the Management insisted that he proceeds on his transfer by 1-11-66. His dispute was also referred by the N.E.U. for settlement by Arbitration, referred to in our submissions (4) above.
20. **Mr. R. B. Patrick Perera** was employed since 3-7-58 as an Assistant Store Keeper in the Ratmalana Factory. While he was a member of the National Employees Union, on 5-9-66 the Secretary informed him verbally that he will not be offered work as from that day. This matter was settled after a discussion held under the aegis of the Department of Labour on 8-10-66 on the basis of his reinstatement. However, by letter dated 12-10-66 from the Company, he was informed that he should report for work on 15-10-66 at 105, Stores, Kotahena. In reply to his telegram, the Company informed him by letter dated 27-10-66 that if he fails to report for work at 105 Stores, Kotahena, by 1-11-66, he will be deemed to have vacated his post. The N.E.U. had then disputed this matter.
22. The position relating to the members whose names appear under (5) of the statement of the Commissioner of Labour dated 14-6-67 is as follows—
  1. **Miss Florence Collom** was employed in Ratmalana Factory since 16-4-62. On 1-12-66, she was verbally interdicted from service. A charge sheet dated 12-12-66 was issued to her, which she replied by letter dated 14-12-66. Although an inquiry into this matter was conducted only on 12-2-67, to this date she has not been informed of its outcome.



2. **Mr. Saranapala Costa** was employed since 25-4-63 in the Machine Section, Kotahena Factory. As from 28-11-66 he was not allowed to work. He was served with a charge sheet dated 5-12-66 informing him that he was interdicted as from 5-12-66 for the charges alleged therein, to which he replied by letter dated 7-12-66. Although an inquiry into this matter was held on 29-12-66, he has not been informed of its outcome to this date.
  
- 10 3. **Miss Pearl Kleyn** was employed since March 1958 in the Machine Section, Kotahena Factory. By letter dated 1-11-66 from the Company, she was informed that she was interdicted as from 31-10-66 pending inquiry into charges alleged therein, to which she replied by letter dated 5-11-66. An inquiry into the matter was held on 27-12-66. By letter dated 6-1-67, she was informed that according to the findings of the inquiry held on 27-12-66, she was guilty of all charges and she was asked to show cause within 3 days as to why she should not be dismissed or otherwise punished. Her position was conveyed by letter dated 7-1-67 to the Company, which has not been replied to this date.
  
- 20 4. **Miss P. Sheela Rodrigo** was employed since 23-7-57 in the Machine Section, Ratmalana Factory. At the time she was a member of the National Employees Union, on 25-10-66, while she was leaving the factory premises, at 1.00 p.m. after having obtained leave, she was searched by the watchers at the gate who questioned her regarding the cellophane paper she used for the purpose of bringing her lunch to work. The Security Officer alleged that the cellophane wrapping in question was the property of the Company. Despite her explanation to the Secretary of the Company who questioned her regarding this, she was forced, under a threat of reporting the matter to the Police, to write and sign a letter stating that she was caught at the gate whilst she was in the act of taking a cellophane paper out of  
30 the factory, and requesting that she be pardoned. On 29-10-66, she had made a complaint to the Mount Lavinia Police in this regard after the Secretary of the Company had verbally confirmed what he said on 26-10-66 that she could not be given work. By letter dated 30-10-66 from the Company, she was asked to explain regarding the cellophane wrapper within 3 days as to why she should not be dismissed or otherwise punished, to which she replied by letter dated 3-11-66 denying the charges made against her. To this date the Company has not notified her of its position.
  
- 40 5. **Mr. L. R. Perera** was employed since 13-6-61 as a Despatch Supervisor of the Kotahena Factory. On 6-6-66, he was interdicted by letter, pending inquiry, on the ground that he had threatened and taken a fellow female worker for a film show. By letter dated 7-6-66, he denied the charge made against him. On 18-6-66, he was summoned for an inquiry, which was not held although he presented himself for the inquiry. On 19-7-66, he wrote to the Company requesting that he be allowed to resume work. Despite his letters

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— Continued

“E”  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— Continued

dated 15-11-66 and 31-12-66 to the Company requesting that he be allowed to resume work, the Company has failed to notify him of its position or even to hold an inquiry to this date.

23. The position in relation to the members whose names are listed in (6) of the Statement of the Commissioner of Labour dated 14-6-67 is as follows—
1. **Mr. N. B. Boange** was employed since 23-8-65 as a Sales Supervisor of the Ratmalana Factory. On 27-2-67, he was verbally informed by the Secretary of the Company that he had been interdicted, without assigning reasons, in which regard he addressed a letter 10 dated 27-2-67 requesting that he be allowed to resume work. By letter dated 5-3-67, the Company requested him to show cause as to why he should not be dismissed or otherwise dealt with for an alleged act of misconduct and assault and also confirmed his interdiction as from 26-2-67. Mr. Boange tendered his explanation in the matter by letter dated 8-3-67 to which there has been no reply to this date. However, his services were terminated by letter dated 20-3-67 on grounds referred to in our submission (15) above.
  2. **Mr. S. A. Benedict** was employed since 1959 as a Lorry Driver in the Transport Section, Kotahena. On 23-11-66, he was verbally 20 informed by Mr. Solomon, Security Officer, that he (Mr. Benedict) was interdicted in which regard he made a complaint at the Mount Lavinia Police Station on 23-11-66. By letter dated 28-11-66, the Company confirmed his interdiction as from 23-11-66 and asked him to show cause regarding charges alleged therein. Mr. Benedict's explanation was sent by letter of 30-11-66. Inquiries were arranged for 12-12-66, 18-2-67 but were not held although he was present on both occasions. However, by letter dated 22-3-67 from the Company, his services were terminated on grounds referred to in our 30 submissions (15) above.
  3. **Mr. P. Nanayakkara** was employed since 10-8-61 in the Wafer Machine Section of the Kotahena Factory. On 20-12-66 when he reported for work, he was refused entry; no reasons were given. The Secretary of the Company whom he was asked to meet, informed him verbally that he (Mr. Nanayakkara) had been interdicted, in which regard Mr. Nanayakkara had addressed a letter dated 20-12-66 to the Secretary. By letter dated 29-12-66, the Company confirmed his interdiction as from 20-12-66 and asked him to show cause in respect of charges alleged therein. By letter dated 31-12-66, Mr. Nanayakkara tendered his explanation. An inquiry into this was fixed 40 for 20-2-67. However, his services were terminated by letter dated 22-3-67 from the Company on grounds referred to in our submissions (15) above.
  4. **Miss D. A. M. Weerasinghe** was employed since 1-8-62 in the Kotahena Factory. Since 4-8-64 she was promoted as Head-Girl, Raw Material Section. On 5-12-66, she was issued with a letter of interdiction on charges alleged therein, to which she replied by letter

dated 7-12-66. An inquiry regarding this matter was fixed for 30-12-66 but was not held although she presented herself for the inquiry. Subsequently, on 19-2-67 an inquiry was held but to this date she has not been notified of its outcome. However, her services were terminated by letter dated 21-3-67 from the Company on grounds referred to in our submissions (15) above.

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— Continued

- 10 5. **Miss Indrani Senaratne** was employed since 5-2-64 as a packer in the Kotahena Factory. By letter dated 22-11-66, the Company informed her that she was interdicted from that date on grounds alleged therein. Her explanation in the matter was conveyed by letter dated 23-11-66 to the Company. She has not been notified as to her position on the charges framed against her. However, her services were terminated by letter dated 21-3-67, from the Company on grounds referred to in our submissions (15) above.
- 20 6. **R. J. Nandawathie** was employed since 2-8-65 in the Machine Section, Kotahena Factory. By letter dated 24-11-66 from the Company, she was asked to explain regarding charges alleged therein. Her explanation was tendered by letter dated 28-11-66. When she reported for work on 7-12-66, she was not permitted to enter the factory. No reasons were given to her. She had then made a complaint in this regard at the Mount Lavinia Police Station. Although on 28-12-66 an inquiry into the charges alleged against her was held at the Company at which she was present, to this date she has not been notified of its outcome. However, her services were terminated by letter dated 21-3-67 on the grounds stated in our submissions (15) above.
24. As regards the general demands (a), (b), (c), (d), (e) and (f) listed under 7 of the statement of the Commissioner of Labour dated 14-6-67, we do not think it necessary to elaborate as the matters are self-explanatory.
- 30 25. The Union submits that the termination of employment of the employees listed under (1) in the Statement of the Commissioner of Labour of the matters in dispute dated 14-6-67, is unjustified and requests their reinstatement with effect from the date of termination.
26. The Union submits that the non-offer of work to the employees listed under (2) in the statement of the Commissioner of Labour of the matters in dispute dated 14-6-67 is unjustified and requests that they be offered work in their respective positions with retrospective effect as from the dates they were refused work.
- 40 27. The Union submits that the transfer, demotion and the subsequent termination of employment of the employees listed under (3) in the Statement of the Commissioner of Labour of the matters in dispute dated 14-6-67 is unjustified and requests their reinstatement in their respective positions with effect from the date of their termination.

"E"  
(Petitioner's  
Document)  
Statement of the  
2nd Respondent,  
20-7-67  
— Continued

28. The Union submits that the transfer, demotion and the subsequent non-offer of work to the employees listed under (4) in the Statement of the Commissioner of Labour of the matters in dispute dated 14-6-67 is unjustified and requests that they be offered work in their respective positions with retrospective effect as from the dates they were refused work.
29. The Union submits that the interdiction and the subsequent non-offer of work to the employees listed under (5) in the Statement of the Commissioner of Labour of the matters in dispute dated 14-6-67 is unjustified and requests that they be reinstated with effect from the date they were 10 interdicted.
30. The Union submits that the interdiction and the subsequent termination of employment of the employees listed under (6) in the Statement of the Commissioner of Labour dated 14-6-67 is unjustified and requests that they be reinstated with effect from the date they were interdicted.
31. The Union submits that its demands which are listed under (7) in the Statement of the Commissioner of Labour dated 14-6-67 are justified and requests that an award be made on these demands.

THE CEYLON MERCANTILE UNION

*President* 20

20th July, 1967.

"F"

(Petitioner's Document)

Answer of the 2nd Respondent

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131 OF  
THE LEGISLATIVE ENACTMENTS, CEYLON,  
1956, REVISED EDITION

In the Matter of An Industrial Dispute

*Between*

THE CEYLON MERCANTILE UNION,  
No. 22-1/1, Upper Chatham Street, Col. 3.

30

*Applicants*

No. ID/LT/8/178

*Vs.*

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen, St.,  
Colombo 13.

*Respondents*

"F"  
(Petitioner's  
Document)  
Answer of the  
2nd Respondent,  
14-8-67

By way of reply to the Employers' answer in the above-mentioned dispute the Union states as follows—

"F"  
(Petitioner's  
Document)  
Answer of the  
2nd Respondent,  
14-8-67  
— Continued

1. The Union denies the averments in the Employers' answer unless specifically admitted by the Union.
2. The Employers' answer is prolix and repetitive.
3. The Union denies the Employers' contentions in paragraphs 1- 3 - 4 - 5 - 6.
4. Paragraph 7 does not call for an answer from the Union.
- 10 5. The Union welcomes the Employers' undertaking to justify the dismissals as given in paragraph 8 of the Employers' answer, but denies the truth of the rest of the averments in paragraph 8.
6. The Union submits that the contents of paragraphs 9 - 10 and 11 do not call for an answer from the Union and puts the Company to the strict proof thereof.
- 20 7. The Union denies the averments in paragraphs 12 and 13 and in respect of paragraph 12 (b) states as follows. The Union annexes as part and parcel of this reply a copy of the extract of the Gazette of 12th May 1967, No. 14748 containing the award of the Hon. the Arbitrator, Mr. W. D. Thamotheram. There was no award made as one of the parties withdrew from the proceedings. In any case, the parties in I.D. 361 are not identical with the parties to the present dispute.
8. By way of further answer the Union replying to paragraph 2 of the employers' answer submits that it is unaware of any proceedings in the Labour Tribunal.
9. The Union prays that the matters under reference be enquired into and the Tribunal be pleased to make an award which is just and equitable.

THE CEYLON MERCANTILE UNION

30 *President*

14th August, 1967.

**TRUE COPY****Extract of Gazette No. 14748 of 12th May, 1967**

My No. C/I. 688

“F”  
(Petitioner's  
Document)  
Answer of the  
2nd Respondent,  
14-8-67  
— Continued

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131**

THE AWARD transmitted to me by the Industrial Court constituted for the purpose of settling the Industrial Dispute between the National Employees' Union, 532, Galle Road, Colombo 3, and Messrs. Maliban Biscuit Manu- factories Ltd., P.O. Box 1210, No. 11, Van Rooyen Street, Colombo 13, which was referred by Order dated November 22nd 1966, made under Section 4 (2) of the Industrial Disputes Act, Chapter 131 as amended by the Industrial Disputes (Amendment) Act, Nos. 14 and 62 of 1957 and 4 of 1962, and published in Ceylon Government Gazette No. 14,724 of December 2, 1966, for settlement by an Industrial Court, is hereby published in terms of Section 25 (1) of the said Act.

N. L. ABEYWIRA,  
*Commissioner of Labour*

Department of Labour,  
Colombo 3, 28th April, 1967.

**INDUSTRIAL COURT AT COLOMBO**  
I.D. 361

20

**In the Matter of An Industrial Dispute***Between*

THE NATIONAL EMPLOYEES' UNION,  
No. 532, Galle Road, Colombo 3.

*And*

M/s. MALIBAN BISCUIT MANUFACTORIES,  
LTD., No. 11, Van Rooyen Street, Col. 13.

**AWARD**

This report relates to an industrial dispute between the National Employees' Union, 532, Galle Road, Colombo 3, (hereinafter called "the Union")<sup>30</sup> and Messrs. Maliban Biscuit Manufactories Ltd., No. 11, Van Rooyen Street, Colombo 13, (hereinafter called "the Company").

2. The Honourable the Minister of Labour, Employment and Housing by his Order dated 22nd November, 1966, made under Section 4 (2) of the aforesaid Act, referred the said dispute to this Court for settlement.

"F"  
(Petitioner's  
Document)  
Answer of the  
2nd Respondent,  
14-8-67,  
— Continued

3. According to the statement dated 17th November, 1966, furnished by the Commissioner of Labour under Section 23 of the aforesaid Act and appended to the Minister's Order, the matters in dispute between the Union and the Company are—

- (1) Withdrawal of notice of interdiction served on Mr. H. Ananda Perera.
- 10 (2) Removal of the condition which forbids the marriage of women employees.
- (3) Female workers not to be employed on work normally done by males.
- (4) (a) Interest to be paid on security deposits.  
(b) Security deposit not to be increased according to the whims and fancies of employer.
- (5) (a) Outstation Batta to drivers should be paid with special allowance for staying overnight.  
(b) Lunch allowance to all drivers.
- 20 (6) Uniforms to drivers.
- (7) Drivers not to be given any work other than driving.
- (8) Employees who have served over six months be made permanent.
- (9) Resting facilities to be provided to female workers working in the factory.
- (10) Short leave of two hours duration to be given twice a month to each employee.
- (11) Bonus to be calculated on a uniform basis to all employees.
- (12) Guarantee promotional prospects to all employees.
- (13) Withdrawal of transfers effected in respect of the following—
- 30 1. Mr. B. Bandula Perera
2. Mr. R. M. D. Piyasena
3. Mr. B. A. Cyril
4. Mr. Thillino de Alwis
5. Miss K. Somawathie
6. Mr. M. Wanigasinghe
7. Miss W. Wimalawathie

"F"  
(Petitioner's  
Document)  
Answer of the  
2nd Respondent,  
14-8-67  
— Continued

8. Miss R. A. Seelawathie
9. Mr. H. W. S. M. Caldera
10. Miss B. Philimena Petersz
11. Miss. K. M. Padmini
12. Mr. D. B. R. Jayawardene
13. Mr. G. H. Sugathapala
14. Mr. R. M. Piyasena

(14) Withdrawal of the demotions and the transfers of the following—

- |                                |    |
|--------------------------------|----|
| 1. Mr. K. M. Donald            | 10 |
| 2. Miss S. B. Senaka Kithsiri  |    |
| 3. Miss D. Leelani Jayasinghe  |    |
| 4. Miss Iranganie Dharmawathie |    |
| 5. Miss H. D. Siriyawathie     |    |
| 6. Miss Daya Walpola           |    |
| 7. Miss P. M. A. Siriyalatha   |    |
| 8. Mr. K. G. David Appuhamy    |    |
| 9. Mr. H. K. Arulandy          |    |
| 10. Mr. M. W. Jayasena         |    |
| 11. Mr. Pekinsena              | 20 |
| 12. Mr. M. Sirisena Pieris     |    |
| 13. Mr. P. D. M. Perera        |    |
| 14. Mr. Merrill Perera         |    |
| 15. Mr. A. Weerasinghe         |    |
| 16. Mr. Cecil Fernando         |    |
| 17. Mr. B. Sunil Perera        |    |
| 18. Miss Susima Gunatilleke    |    |

4. When this matter was taken up for inquiry on the 7th of February, 1967, the Company was represented by Mr. S. L. Moonesinghe but the Union was not represented. A letter dated 28th January, 1967, addressed to the Registrar, Industrial Court, alleged to have been written by the Union was submitted to me. This letter read as follows: "Reference the above dispute, as the Branch Union concerned has ceased to function, this Union respectfully moves for withdrawal of the application". As this letter was not supported in open Court and in order to satisfy myself that the letter came from the proper source I directed the Registrar to issue summons on the Secretary of the Union to be present on 18th February, 1967, and support this letter. On 18th February, 1967, Mr. W. N. K. Perera appeared for the Union and stated that the letter was genuine, and written by them. He further stated that as all the members have resigned from the Union, they were withdrawing their application.

5. As there is now no dispute between the Union and the Company I make no award.

W. D. THAMOTHERAM

Colombo, 19th February, 1967.



" G "

(Petitioner's Document)

Answer of the Petitioner

"G"  
(Petitioner's  
Document)  
Answer of the  
Petitioner—  
31. 8. 67

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131 OF THE  
LEGISLATIVE ENACTMENTS, CEYLON (1956)  
REVISED EDITION

**In the Matter of An Industrial Dispute**

THE CEYLON MERCANTILE UNION,  
No. 22-1/1, Upper Chatham St., Col. 3. *Applicants*

10 No. ID/LT/8/178

Vs.

MALIBAN BISCUIT MANUFACTORIES, LTD.,  
P. O. Box 1210, No. 11, Van Rooyen St.,  
Colombo 13. *Respondents*

On this 31st day of August, 1967.

The statement of the Maliban Biscuit Manufactories, Limited, appearing by DON HECTOR NICHOLAS JAYAMAHA and SENERATH LAKSHMAN MOONESINGHE its Proctors practising in Partnership under the name, style and firm of MOONESINGHE AND JAYAMAHA, in reply to the statement dated 20th July, 1967 of the Mercantile Union is as follows—

20 1. The Company is unaware of and accordingly denies and put the Ceylon Mercantile Union to strict proof of the averments in paragraphs 1, 5 and 6 of the aforesaid statement.

2. Answering paragraphs 2, 3 and 4 of the statement the Company states that there was and still is a registered Trade Union called the Maliban Biscuit Manufactories Union and also that a branch of the National Employees Union was established at the Company's work place. It is a matter for verification as to who were members of the Maliban Biscuit Manufactories Union, who joined the Branch of the National Employees Union.

30 The Company's position in regard to the reference to Arbitration by Mr. Thamoatham, has already been set out in the Company's statement.

3. In reply to paragraphs 7, 8 and 9 of the said statement, the position has not been fully set out by the Union. There was correspondence whereby the Company set out its position in reply to the Union, which correspondence has not been referred to in the statement.

“G”  
(Petitioner's  
Document)  
Answer of the  
Petitioner—  
31.8.67  
—Continued

4. In regard to the averments in paragraphs 11 to 17 here too the position has not been fully or fairly set out by the Union. The Company's position has been set out in paragraphs 8 to 13, of its statement to this Tribunal.

If the matters referred to by the Union are relevant or requires investigation by this Tribunal, the Company will produce correspondence, notes of conferences and other material to establish what exactly was the situation from March 1967. The C.M.U. has glossed over the true position as it existed.

5. In regard to paragraphs 18, 19, 20 and 28 of the statement, the Company states as follows—

Please see Annexure “ A ”

10

The Company denies all and singular the averments in paragraphs 24 to 31 of the said statement and the Company reiterates its position, as set out in its statement to this Tribunal.

WHEREFORE THE RESPONDENT PRAYS—

- (a) That this Tribunal be pleased to make a just and equitable award in the circumstances in accordance with the submissions herein made and the evidence that will be adduced at the enquiry on behalf of the Respondent.
- (b) For costs, and
- (c) For such other and further relief as to this Tribunal shall seem meet. 20

Sgd. MOONESINGHE AND JAYAMAHA,  
*Proctors for Respondent*

#### ANNEXURE “ A ”

18. **P. D. H. Perera** was recruited as an unskilled worker on 4-6-62. He was transferred from Ratmalana to Kotahena in the same capacity on 20-9-66, on the ground that his attendance was irregular, unruly behaviour, abusive towards female workers, disobedience to superiors, neglect of work, loitering about the place, disturbing others. On this, a charge sheet was served on him on 30-10-66, requesting him to explain within 7 days. Thereafter a date for the enquiry was fixed, but he failed to turn up. He was given another date—21-1-67. He was present for the enquiry, and was found guilty of the charges and was accordingly dismissed from the service, with effect from 30-10-66. His complaint to the Commissioner of Labour had been the subject matter of an enquiry before Arbitrator in ID Case No. 361. The case was dismissed. 30

**Padmini Weerakkody** was recruited as an unskilled worker on 25-11-63. Her services were terminated in accordance with the provisions in the service agreement. The termination was effective from 27-2-67.

“G”  
(Petitioner's  
Document)  
Answer of the  
Petitioner—  
31. 8. 67  
—Continued

- (19) 2/50 **R. Arumugam** was not an employee of ours. He may probably have worked attached to a gang of men whom the Company employs only when work is available, and paid for on a piece rate. There are scores of such men on the alert to get the first opportunity to load, unload and stack, goods on arrival, and the Company is unaware who they were and where they come from.
- 10 This matter came up for disposal before Labour Tribunals, Colombo, in L.T. Case No. 7/29089. The case was dismissed.
- 2/51 **I. D. Abeydeera** is not an employee of ours. He may probably have been a casual worker engaged to perform a particular job of work, during a particular period.
- 2/52 **A. A. Cader.** Same position as on 2/50 above. L.T. Case 7/29075. Dismissed.
- 2/53 **W. Joseph Fernando** „ „ „ 2/51 „
- 2/54 **R. K. Jayasena** „ „ „ 2/51 „
- 2/55 **A. Cassim Mohamed** „ „ „ 2/50 „ L.T. Case 7/29077. Dismissed.
- 20 2/56 **S. Perumal** „ „ „ 2/50 „ L.T. Case 7/29090. Dismissed.
- 2/57 **S. Malcolm Perera** „ „ „ 2/51 „
- 2/58 **Ranasinghe Silva** „ „ „ 2/51 „
- 2/59 **L. Tudor** „ „ „ 2/51 „
- 2/60 **A. M. Mansoor** „ „ „ 2/50 „ L.T. Case 7/29078. Dismissed.
- 2/61 **H. A. Dharmadasa** „ „ „ 2/51 „ L.T. Case 7/29076. Dismissed.
- 30 2/62 **A. Ranjit** „ „ „ 2/51 „

(19) The position relating to those whose names appear under (3) of the statement of the Commissioner of Labour.

- (1) **A. C. Abeywickrema** was recruited on 1-8-63 as a Foreman. He was transferred to Kotahena from Ratmalana in the same capacity.

His services were terminated on the ground that he was one of the suspects in the poisoning and sabotage activities by our letter dated 23-3-67, informing him of his dismissal, together with a cheque in payment of his wages, one month's salary in lieu of notice and payment for the service—two weeks salary for each completed year of service.

"G"  
 (Petitioner's  
 Document)  
 Answer of the  
 Petitioner—  
 31. 8. 67  
 —Continued

- (2) **Indrani Dalugoda** was recruited on 7-1-57, as an unskilled worker. Her services were terminated on grounds of suspicion connected with poisoning and sabotage activities on 12-3-67. A letter was sent to her intimating to her of the decision of the management, enclosing a cheque in settlement of wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.
- (3) **Indrani Dharmawathie** was recruited on 25-11-63, as an unskilled worker and remained so until 12-3-67. She was suspected of having had a hand in the poisoning and sabotage activities. The management, therefore, terminated services. A letter was sent to her intimating to her of the decision of the management with a cheque in payment of wages, one month's salary in lieu of notice and payment for the service on the principle two weeks salary for each completed year of service. Her transfer from one section to another was contested in ID Case No. 361, which was dismissed.
- (4) **K. G. David Appuhamy** was recruited on 13-3-63, as an unskilled worker. His transfer from one section to another was contested in ID Case No. 361. The case was dismissed. He was one of those suspects in the recent poisoning and sabotage activities resorted to. He was, therefore, dismissed from the service of the Company. A letter intimating the decision of the management, together with a cheque in payment of his salary, one month's salary in lieu of notice and payment for the service on the principle two weeks salary for each completed year of service was sent to him on 20-3-67.
- (5) **H. W. S. M. Caldera** was recruited on 9-3-66, as an unskilled worker, and was retrenched on 30-9-66, along with several others, owing to non-availability of raw materials. She was reinstated on 20-1-66, as per settlement arrived at, at a conference we had with the Commissioner of Labour, and posted to another section. She contested this in ID Case No. 361, which was dismissed. She went before the Labour Tribunal too, in LT Case No. 7/29544. The case was dismissed.
- She was a suspect in the alleged poisoning and sabotage activities. Her services were terminated by our letter of 23-3-67. A cheque was sent in payment of salary, one month's salary in lieu of notice and payment for the service on the principle two weeks salary for each completed year of service.
- (6) **S. Cecil Fernando** was recruited as a daily paid casual hand in 1964. In 1965, he was confirmed as a permanent employee, and was posted to the Sales Section, as a clerk. Subsequently he was appointed as an acting Sales Supervisor, with no guarantee of permanency. He was found inefficient and unequal to the task in the performance of his duties. He was, therefore, reverted to

his substantive post of Junior Clerk, and posted as such, to the transport section. He challenged this action of the management in ID Case No. 361. The case was dismissed.

"G"  
(Petitioner's  
Document)  
Answer of the  
Petitioner—  
31. 8. 67  
—Continued

He was suspected to be one of those responsible for poisoning and sabotage activities. A letter was sent to him intimating to him of his dismissal with a cheque in payment of his salary, one month's salary in lieu of notice and payment for the service on the principle two weeks salary for each completed year of service.

- 10 (7) **Susima Gunatilleke** was recruited in August, 1961, as an Asst. Supervisor. Subsequently she was appointed as Time Keeper Clerk in the factory. She was found wanting in her work and was transferred to 135, Show Rooms, as an assistant to the Manager. She went before the Industrial Court in Case No. 361. The case was dismissed. She was one of those suspects in the recent case of poisoning and sabotage activities. A letter intimating to her of the decision of the management to terminate her services was sent to her on 22-3-67, together with a cheque in payment of her salary, one month's salary in lieu of notice and payment for the service, on the principle two weeks salary for each completed year of service.
- 20 (8) **L. H. Jane Nona** was recruited as an unskilled worker on 24-9-66, and she remained so till 12-3-67. She was a suspect in the recent poisoning and sabotage activities. A letter was sent to her intimating to her of the decision of the management, to terminate her services, together with a cheque in payment of her wages, one month's salary in lieu of notice and payment for the service on the principle two weeks salary for each completed year of service.
- 30 (9) **L. D. Jewananda** was recruited as an unskilled worker in 1963, and he remained so till 12-3-67. He was a suspect in the recent case of poisoning and sabotage activities. A letter was sent to him intimating to him of his dismissal, together with a cheque in payment of his wages, one month's salary in lieu of notice and payment for the service—two weeks salary for each completed year of service.
- 40 (10) **A. C. Kulatunga** was recruited on 14-2-67, as a purchasing clerk, and remained so till 12-3-67. He was one of the suspects in the recent poisoning and sabotage activities. A letter was sent intimating to him of his dismissal, together with a cheque in payment of his wages, one month's salary in lieu of notice and payment for service on the principle two weeks salary for each completed year of service.
- (11) **Pathma Kumarasinghe** was recruited on 22-5-59, as an unskilled worker attached to the factory, and she remained so till 12-3-67. She was a suspect in the recent poisoning and sabotage activities. A letter was sent to her informing her of her dismissal from the

"G"  
 (Petitioner's  
 Document)  
 Answer of the  
 Petitioner—  
 31. 8. 67  
 —Continued

service of this Company, together with a cheque in payment of her wages, one month's salary in lieu of notice and payment for the service—two weeks salary for each completed year of service.

- (12) **Senaka Kithsiri** was recruited on 25-5-60, as a Supervisor in the factory, and he remained so till 1-9-66, when he was transferred to the Fort Show Rooms, to assist the manager, as he was found to be a surplus hand in the factory due to lack of work. He challenged this action of the management and filed action in ID Case No. 361. His action was dismissed. He was a suspect in the recent case of poisoning and sabotage activities resorted to by the Ceylon Mercantile Union. A letter was sent to him on 20-3-67, intimating to him of his dismissal, together with a cheque in payment of his wages, one month's salary in lieu of notice and payment for the service—two weeks salary for each completed year of service.
- (13) **M. Mayawathie** was recruited on 29-5-58, as an unskilled worker and she remained so till 12-3-67. She was a suspect in the recent poisoning and sabotage activities. A letter was sent to her on 20-3-67, intimating to her of her dismissal, together with a cheque in payment of wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.
- (14) **Sumana Munasinghe** was recruited on 7-5-58, as an unskilled worker, and remained so till 12-3-67, when she was found to be one of the suspects in the recent case of poisoning and sabotage. Her services were terminated. A letter to this effect was sent to her enclosing a cheque in payment of her wages, one month's salary in lieu of notice and payment for the service—two weeks salary for each completed year of service.
- (15) **Nalini Nanayakkara** was recruited in 1963, as an unskilled worker and she remained so, till 12-3-67. She was a suspect in the recent case of poisoning and sabotage activities. A letter was sent to her on 20-3-67, intimating to her of her dismissal, together with a cheque in payment of her wages, one month's salary in lieu of notice, and payment for the service on the principle two weeks salary for each completed year of service.
- (16) **D. Bandula Perera** was recruited as a typist on 23-3-63. He was subsequently transferred to 105 Stores, in the same capacity on 29-3-66. This action of the management was challenged by him in ID Case No. 361. The case was dismissed. He was a suspect in the recent case of poisoning and sabotage. A letter was sent to him on 22-3-67, informing of his dismissal from the service of this Company, together with a cheque in payment of his wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.

- (17) **Sirisena Pieris** was recruited on 1-11-66, as an unskilled worker and remained so till 12-3-67. He was a suspect in the recent case of poisoning and sabotage activities. A letter was sent to him informing him of his dismissal, together with a cheque in payment of his wages, one month's salary in lieu of notice and two weeks salary for each completed year of service. His transfer was challenged in ID Case No. 361. The case was dismissed.
- 10 (18) **G. Somadasa Perera** was recruited on 23-3-64, as an unskilled worker and remained so till 12-3-67. He was one of those suspects in the recent case of poisoning and sabotage activities. A letter was sent to him on 20-3-67, informing him of his dismissal, together with a cheque in payment of wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.
- 20 (19) **A. H. A. Razak** was recruited on 7-2-62, as an unskilled worker and remained so till 12-3-67. He was one of the suspects in the recent case of poisoning and sabotage activities. A letter was sent to him on 20-3-67, informing him of his dismissal, with a cheque in payment of his wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.
- 30 (20) **R. A Seelawathie** was recruited on 14-11-65, as an unskilled worker and remained so till 12-3-67. She was retrenched on 30-9-66, owing to lack of work, due to non-availability of raw materials. Nevertheless she was reinstated on 14-10-66, in accordance with the settlement arrived at, at a conference we had with the Commissioner of Labour, and was posted to 105 Stores. She challenged this action of the employer in ID Case No. 361. The case was dismissed. She filed action in L.T. Case No. 7/29549 as well. This too was dismissed. She was a suspect in the recent case of poisoning and sabotage activities. A letter was sent to her on 20-3-67, informing her of her dismissal from the service of this Company, with a cheque in payment of her wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.
- 40 (21) **P. M. A. Sriyalatha** was recruited on 7-8-62, as an unskilled worker and remained so till 12-3-67. She challenged the management of her transfer to another section in ID Case No. 361. The case was dismissed. She was a suspect in the recent case of poisoning and sabotage activities. A letter was sent to her on 20-3-67, informing her of her dismissal from the service of this Company, with a cheque in payment of her wages, one month's salary in lieu of notice and payment for the service—two weeks salary for each completed year of service.
- (22) **H. D. Siriyawathie** was recruited on 5-7-65, as an unskilled worker, and remained so till 12-3-67, though transferred to another section. This action of the management was challenged by her in ID Case

"G"  
 (Petitioner's  
 Document)  
 Answer of the  
 Petitioner—  
 31. 8. 67  
 —Continued

No. 361. The case was dismissed. Subsequently she was found to be one of the suspects in the recent case of poisoning and sabotage activities. A letter was sent to her on 20-3-67, informing her of her dismissal, together with a cheque in payment of her wages, one month's salary in lieu of notice and payment for the service—two weeks salary for each completed year of service.

- (23) **N. G. Seetin** was recruited as an unskilled worker and he remained so till 12-3-67, though transferred from one section to another. He was a suspect in the recent case of poisoning and sabotage activities. A letter was sent to him informing of his dismissal from the service of this Company, together with a cheque in payment of his wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.
- (24) **K. A. L. Samarawickrema** was recruited in 1962, as an unskilled worker, and remained so though transferred from one section to another, till 12-3-67. She was a suspect in the recent case of poisoning and sabotage activities. A letter was sent to her on 20-3-67, intimating to her of her dismissal, with a cheque in payment of her wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.
- (25) **W. Wanigasinghe** was recruited on 5-3-66, as an unskilled worker, but retrenched on 30-9-66, owing to lack of work, due to non-availability of raw materials. This was the subject matter of a conference, we had with the Commissioner of Labour, when a settlement was arrived at to reinstate her along with several others. She was accordingly reinstated on 25-10-66. But she challenged the propriety of action on the part of the management in ID Case No. 361. The case was dismissed. She filed action in the Labour Tribunals, too. This too was dismissed. LT. Case No. 7/29542, refers. She was one of those suspected of collaborating with those who were responsible for the recent case of poisoning and sabotage. A letter was sent to her informing of her dismissal, on 23-3-67, with a cheque in payment of her wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.
- (26) **H. Wimalawathie** was recruited on 16-3-66, as an unskilled worker. But was retrenched on 30-9-66, owing to lack of work, due to non-availability of raw materials. She was re-instated on 25-10-66 in accordance with a settlement arrived at, at a conference we had with the Commissioner of Labour, and was posted to 105 stores. This action on the part of the management was challenged by her in ID Case No. 361. This action was dismissed. She filed action in the Labour Tribunals too, in LT Case No. 7/29592. This too was dismissed. Subsequently she was found to be collaborating with those who were suspected to be involved in the



recent case of poisoning and sabotage. A letter was sent to her on 22-3-67, with a cheque in payment of her wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.

"G"  
(Petitioner's  
Document)  
Answer of the  
Petitioner—  
31. 8. 67  
—Continued

10 (27) **Dayawathie Walpola** was recruited in 1963, as an unskilled worker and remained so till 12-3-67. She was transferred to another section, as a matter of course. She resented this and challenged the Management in ID Case No. 361. The case was dismissed. Later she was found to be one of the suspects in the recent poisoning and sabotage activities. A letter was sent to her on 20-3-67, intimating to her of her dismissal, with a cheque in payment of her wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.

(21) The position in relation to the members whose names are listed in (4) of the statement of the Commissioner of Labour :—

20 (1) **M. K. Arulandi** was recruited on 24-8-55, as an unskilled worker. He was on routine transfer in the same capacity. He had been warned on several occasions against bad behaviour. He took objection to the transfer and was the subject matter of a case filed in ID case No. 361. The case was dismissed. A letter informing him of his dismissal, together with a cheque in payment of his wages, one month's salary in lieu of notice and two weeks salary for each completed year of service, was sent to him.

(2) **S. Amarasekera** was recruited on 24-8-55, as an unskilled worker, and remained so till 12-3-67. There are no Head-Girls in the factory. Sectional Supervisors are in charge of sections. All workers are transferable from one section to another, which is a common occurrence.

30 She was one of those suspects in the recent case of poisoning and sabotage activities. A letter was sent to her informing her of her dismissal, with a cheque in payment of her wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.

40 (3) **Leelani Jayasinghe** was recruited on 2-4-58, as an unskilled worker, and remained so till 12-3-67. She was on routine transfer as all others are. This was the subject matter of an enquiry before the Industrial Court in Case No. 361. The case was dismissed. She was one of the suspects in a recent case of poisoning and sabotage. A letter informing her of her dismissal, together with a cheque in payment of her wages, one month's salary in lieu of notice and two weeks salary for each completed year of service, was sent to her.

"G"  
 (Petitioner's  
 Document)  
 Answer of the  
 Petitioner—  
 31. 8. 67  
 —Continued

- (4) **S. Pekinsena** was recruited on 7-8-65, as an unskilled worker and remained so till 12-3-67. He was on routine transfer as all others are. This complaint was the subject matter of an enquiry in ID Case No. 361. The case was dismissed. A letter was sent to him informing him of his dismissal, as he was a suspect in the recent case of poisoning and sabotage, with a cheque in payment of his wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.
- (5) **Meril Perera** was recruited on 4-5-63, as an unskilled worker and remained so till 12-3-67. He was on routine transfer. He resented this and challenged the management in ID Case No. 361. The case was dismissed.

Later he was suspected to be involved in the recent case of poisoning and sabotage. A letter was sent to him informing of his dismissal, with a cheque in payment of wages, one month's salary in lieu of notice and two weeks salary for each completed year of service.

- (6) **K. Somawathie** was recruited on 3-3-66, as an unskilled worker and remained so till 12-3-67. She was on routine transfer. Her complaint was the subject matter of enquiry before Industrial Court Case No. 361. The case was dismissed. She was suspected to be one of those involved in the recent case of poisoning and sabotage. A letter was sent to her, informing her of her dismissal, with a cheque in payment of her wages, one month's salary in lieu of notice and payment for the service, two weeks salary for each completed year of service.
- (7) **K. Bamunusinghe** was recruited on 23-3-63, as an unskilled worker, in the factory. She was transferred from the factory to the Record Room to assist the Record Keeper. But she was found to be unsuitable for work at that Unit, and was accordingly transferred back to the Factory on 9-11-66. She was on medical leave from 14-11-66 — 18-11-66 but failed to report for work after the expiry of her leave. By our letter of 5-12-66, she was informed that if she failed to turn up within 7 days from the date thereof, she would be deemed to have vacated her post. She failed to turn up and thus she has vacated her post. This was the subject matter of an enquiry fixed for trial in LT Case No. 7/29624. The case was dismissed. She has not drawn her salary to date.
- (8) **L. W. De Lalitha** was recruited on 1-6-63, as an unskilled worker and remained so till 12-3-67. She was on routine transfer. She resented this and shouted at her immediate superior and left the factory. She was written to on 30-10-66, requesting her to report for work immediately. There was no response.

By our letter of 5-11-66, she was informed that if she failed to turn up for work within 7 days from the date thereof, she would be

deemed to have vacated her post. There was no response. She has thus vacated her post.

“G”  
(Petitioner's  
Document)  
Answer of the  
Petitioner—  
31. 8. 67  
—Continued

This was the subject matter of a complaint made by her to the Labour Department in LT Case No. 7/29547. The case was dismissed. She has not drawn her wages due to her.

- 10 (9) **P. G. Dhanawathie** was recruited on 1-6-65, as an unskilled worker and she remained so till 15-10-66, on which date she was transferred to another section. She resented this transfer and left the factory abruptly. She was written to on 19-10-66, requesting her to report for work immediately. She had failed to do so. She has vacated her post. Her complaint was the subject matter of enquiry in LT Case No. 7/29551. The case was dismissed. She refused to collect her wages.
- 20 (10) **Lailth Rupasinghe** was recruited on 1-9-60, as an unskilled worker and remained so till 9-9-66. After September he became uninterested in his work. Several warnings proved of no avail. By our letter of 1-9-66 he was severely warned against misconduct. He was transferred from Kotahena to Ratmalana on 1-8-66, in the same capacity. This transfer is strictly in accordance with provisions contained in the service agreement.

On reports received from the Electrical Engineer in charge of the Machinery, he was severely reprimanded, and finally action had to be taken against him as he was becoming most intolerable. By our letter of 8-9-66, we were compelled to take extreme steps against him, owing to justifiable fears entertained by the management on alleged large scale sabotage activities planned by this worker in collaboration with several others.

30 Our letter of dismissal was served on him on 8-9-66. He had thrown the letter away after reading it and then had caused a stir in front of the main gate.

On 9-9-66 when the Chief Executive of the Company was coming into the factory he had jumped in front of the car, obstructed, abused in filth and threatened to throw hand/bombs on him. The Chief Executive lodged a complaint at the Mt. Lavinia Police Station, in the afternoon on the same day. On a subsequent date this worker had poured forth a torrent of disgusting imprecations against the Chairman and the Board of Directors. This was brought to the notice of the Inspector General of Police, by letter dated 14th September 1966.

40 With all these indisciplined acts on the part of this worker, he was reinstated on 15-10-66, in accordance with the settlement arrived at, at a conference held with the Commissioner of Labour. Our letter of 12-10-66, refers. His reply to this gesture was a flat refusal. Vide his Telegram of 16-10-66. He was written to

"G"  
 (Petitioner's  
 Document)  
 Answer of the  
 Petitioner—  
 31. 8. 67  
 —Continued

again on 27-10-66, requesting him to report for work, telling him at the same time that if he failed to do so, he will be treated as one having vacated his post.

On 19-11-66, he was sent a cheque for Rs. 93/20, being his balance salary due to him. This cheque was returned undelivered, although it was sent to his correct address.

He has, therefore, by these acts, forfeited all his claims for re-employment.

His complaint was the subject matter of an enquiry before Labour Tribunal, Colombo, in Case No. 7/28798. The case 10 was dismissed.

- (11) **K. M. Donald Perera** was recruited on 2-7-64, as one of the assistants to the Store Keeper. He was transferred to Kandy, as per provisions contained in the service agreement. This was necessitated due to not having sufficient work in the stores consequent on slashing of our import quota by the authorities. He took over duties at Kandy on the due date, but started getting absent every now and then, sending Telegrams and Medical Certificates. He was warned against irregularity but paid no heed. Accordingly as the position was becoming most intolerable, his services were 20 terminated with effect from 9-9-66.

Nevertheless, he was reinstated in accordance with the settlement arrived at, at a conference with the Commissioner of Labour. He was instructed to proceed to Kandy, Vide our Letter of 12-10-66, to take over duties on 15-10-66. He flatly refused to do so, insisting on staying over in Colombo. He was written to on 27-10-66, requesting him to report for work in Kandy on 1-11-66. He did not do so. He has thus vacated his post. His complaint was the subject matter of an enquiry came up before the Industrial Court in Case No. 361. The case was dismissed. 30

- (12) **M. V. D. Gunasekera** was recruited on 12-8-58, as a clerk and remained so. He was suspected to be passing vital information to others, and was by our letter of 6-6-66, severely warned against a repetition. His conduct has been really bad right through. He was warned by our letter of 13-2-66 against conducting "Cheetus" during office hours in the Company premises.

He was severely reprimanded against utilising Company stationery, ink, and Roneo equipment for private work, Vide our letter of 8-8-63. He was finally caught in the act of passing secret information to an outsider by his letter addressed to his brother 40 in Kandy, for transmission to the party concerned. He was finally dismissed on 31-8-66. He refused to accept his due wages and went away. Subsequently, he was reinstated in accordance with the settlement arrived at, at a conference held with the Com-

missioner of Labour on 8-10-66. By our letter of 12-10-66, he was requested to report for work in our Nuwara Eliya Unit by 15-10-66. He refused to do so by his telegram of 16-10-66. Again by our letter of 29-10-66, he was asked to report for work at our No. 135, Show Room, Colombo, at the request of Mr. Premadasa, Junior Minister of Local Govt. He turned a deaf ear to this too, insisting on staying over in Colombo, in his old post. By our letter of 29-10-66, he was further informed that if he failed to take over duties at 135, Show Rooms by 1-11-66, he will be treated as one having vacated his post. He failed to do so, and thus he forfeits all claims for reinstatement.

"G"  
(Petitioner's  
Document)  
Answer of the  
Petitioner—  
31.8.67  
—Continued

His complaint to the Commissioner of Labour, through the National Employees Union, was the subject matter of an enquiry in LT Case No. 7/28779, before the Labour Tribunals, Colombo.

- (13) **G. D. Godage** was recruited on 1-3-62, as a driver, and remained so till 20-11-66, the day he vacated his post.

This worker was on routine transfer to Kandy, Vide our letter of 7-11-66. He refused to proceed to Kandy, Vide his letter of 9-11-66, on lame excuses.

By our letter of 14-11-66, he was instructed again to proceed to Kandy, with a warning that if he failed to do so, he will be treated as one having vacated his post.

He did not go, thus he has vacated his post.

- (14) **H. Ananda Perera** was recruited on 1-6-61, as a Junior Clerk, and he remained so till 17-9-66, the date of his interdiction. On 15-9-66, he was asked to explain why he should not be dismissed or otherwise dealt with, for carrying on a campaign of recruitment for some organisation, and threatening Mr. Sirisena, Asst. Cashier, when he refused to agree to be a member of the said organisation. He had further gate-crashed into the cashier's room, which is out of bounds to all members of the staff. A charge sheet was served on him on 17-9-66, requesting him to show cause within three days. He refused to accept the charge sheet and left office in a hurry. He was interdicted with effect from the said date.

By his letter of 22-9-66, he disowned complete responsibility pleading not guilty to the charges contained in our letter of 15-10-66. Again by his letter of 22-10-66, he denied responsibility of refusal to accept our letter of 15-9-66.

Nevertheless, he was reinstated in accordance with the settlement arrived at, at a conference with the Commissioner of Labour on 8-10-66. He was accordingly written to requesting him to report for work at No. 50, Show Rooms, Kotahena, by 15-10-66.

"G"  
 (Petitioner's  
 Document)  
 Answer of the  
 Petitioner—  
 31.8.67  
 — Continued

In reply to this letter, a telegram was received from him demanding and insisting that he be allowed to resume work in his former place before interdiction. By our letter of 27-10-66, he was informed that if he failed to take over duties at No. 50, he would be treated as one having vacated his post. There was no response. He has thus vacated his post.

His complaint was the subject matter of an enquiry before Mr. Thamoatham the Arbitrator, in ID Case No. 361. The case was dismissed.

- (15) **B. A. Cyril** was recruited on 3-7-61, as a driver, and he remained 10 so. He was transferred to Kandy on 22-9-66. On 17-10-66, he was said to have been attacked by some unknown persons in Kandy. A complaint to this effect said to have been made by the driver at the Police Station, Kandy. He refused to work in Kandy and insisted that he be allowed to work in Colombo. He ignored our instructions, vide our letter of 29-10-66. He informed us of his inability to take over duties at Kandy, vide his letter of 1-11-66. By our letter of 2-11-66, he was instructed to take over duties at Kandy and that if he failed to do so, he would be deemed to have vacated his post. He failed to do so, and thus he has 20 vacated his post.

His complaint had been referred for Arbitration in ID Case No. 361. The case was dismissed.

- (16) **Sunil Perera** was recruited on 8-8-64, as an assistant cashier. But he was found to be inefficient and incapable of handling cash and maintaining a register of receipts and payments. He was given another chance, instead of sending him away, by transferring him to 105, Stores, his duties there being mainly to receive and issue of made tins. He was found wanting even in this simple job. Thereupon he was transferred to 50, Show Rooms on 29-3-66. 30 He disappeared on 19-9-66, and has not been heard of since. By our letter of 24-9-66 he was asked to explain his unauthorised absence, within three days from the date thereof, but this letter which was sent under registered cover was returned undelivered. He has thus vacated his post.

His complaint had been referred to ID 361, and was listed for hearing by the Arbitrator on 7-2-67. The case was dismissed.

- (17) **D. B. R. Jayawardene** was recruited on 3-9-59, as a driver. He was accused of abusive behaviour towards the Sales Manager. An enquiry into his conduct was held on 12-7-66. He was found 40 guilty of the charges. The offence committed was a serious one and the punishment would have been immediate dismissal. But the management took a sympathetic view of his case, and transferred him to Kandy, with effect from 16-10-66. He refused to go to Kandy, giving various unimaginable excuses and insisted

that he be allowed to stay on in Colombo. By our letter of 25-10-66, he was asked to take over duties at Kandy. He refused to do so. He has thus vacated his post.

"G"  
(Petitioner's  
Document)  
Answer of the  
Petitioner —  
31-8-67  
— *Continued*

His complaint was the subject matter of an enquiry before Industrial Courts, in Case No. 361. The case was dismissed.

- 10 (18) **H. N. D. Piyasena** was recruited on 14-1-58, as a driver. He was transferred to Kandy, with effect from 10-10-66. This was only a routine transfer. By his letter of 22-10-66, he refused to go to Kandy, giving various excuses. By our letter of 25-10-66, he was informed that he need not entertain any fears he anticipated in his letter of 22-10-66, and that he should report for work on 1-11-66. He was further told that if he failed to report for work in Kandy on this date, he would be deemed to have vacated his post. Having received no response, his name was taken off the check roll.

His complaint was the subject matter of an enquiry before the Industrial Court in Case No. 361. The case was dismissed.

- 20 (19) **G. H. Sugathapala** was recruited on 5-3-63, as a driver. He was transferred to Kandy on 16-10-66. He refused to go. By our letter of 18-10-66, he was asked to take over duties at Kandy. By his letter of 19-10-66, he refused to go, insisting that he be allowed to stay on in Colombo. By our letter of 29-10-66, he was again asked to proceed to Kandy. He failed to do so. By letter of 2-11-66 he was informed that if he failed to take over duties at Kandy within 7 days from the date thereof, he would be treated as one having vacated his post. He failed to do so. His name was accordingly taken off the Check Roll.

30 His complaint to the Commissioner of Labour was the subject matter of an enquiry before Labour Tribunals, Colombo, in LT. Case No. 29332. The case was dismissed.

- (20) **R. B. Patrick Perera** was recruited on 5-2-63, as an Assistant Store-Keeper and continued as such.

40 Charges were framed against him for misconduct. At the subsequent enquiry he was found guilty and was accordingly dismissed from service, with effect from 5-9-66. He refused to draw his wages due to him. Subsequently he was reinstated in accordance with the settlement arrived at, at a conference held with the Commissioner of Labour, with effect from 15-10-66. Vide our letter of 12-10-66. He refused to take over duties by his telegram of 15-10-66. By our letter of 29-10-66, he was instructed to report for duty on 1-11-66, and that if he failed to do so, he will be treated as one having vacated his post. There was no response.

This matter came up before Labour Tribunals, Colombo, in LT Case No. 7/28820. The case was dismissed.

(22) The position relating to members whose names appear under (5) of the statement of the Commissioner of Labour —

- (1) **Florence Column** was recruited on 27-4-62, as an unskilled worker, and she remained so, till she was dismissed.

On receipt of a complaint from her immediate superior, she was asked to explain her conduct. She wrote back saying that she was innocent of the charges framed against her, by our letter of 15-12-66, 30-12-66 was fixed for the enquiry, but she failed to turn up. She was again written to informing her of the next date. She presented herself. The enquiry was held and consequently she was found guilty of the charges. She was accordingly dismissed.

- (2) **Saranapala Costa** was recruited on 24-4-63, as an unskilled worker. He remained so till he was dismissed. An enquiry was held into a complaint received from the factory Management. At the enquiry held on 29-12-66, he was found guilty of misconduct. He was accordingly dismissed.

- (3) **Pearl Cleyn** was recruited on 24-3-58, as an unskilled worker and she remained so till her services were terminated. On receipt of a complaint from the factory management, a charge sheet was served on her by our letter of 1-11-66. She was at the same time interdicted with effect from that date. An enquiry was held on 27-12-66, at which she was found guilty. She was accordingly dismissed.

- (4) **Sheela Rodrigo** was recruited on 23-7-57, as an unskilled worker. She remained so till she was dismissed. On 25-10-66, the Security guards at the Main Gate detected this girl going away with a cellophane paper, the property of the Company. She admitted having taken the paper. Vide her letter of 25-10-66. By our letter of 30-10-66, she was asked to explain why she should not be dismissed or otherwise dealt with. She pleaded not guilty by her letter of 3-11-66.

She was dismissed with effect from the date of interdiction. This matter came up for hearing before the Labour Tribunal, Colombo, in Case No. LT. 729541. The case was dismissed.

- (5) **L. R. Perera** was recruited on 13-7-61, as a Supervisor. He was interdicted on 6-6-66, for alleged misconduct with a female worker. Charges were framed against him, vide our letter of 6-6-66. An enquiry was fixed for 13-6-66. He failed to turn up. Another date was fixed by telegram on 13-6-66. Viz. 18-6-66. He



failed to turn up. On 19-6-66 he was produced from Police custody, along with a young girl, also an employee of ours, before the Additional Magistrate Colombo. Their arrest and internment was connected with following a nocturnal incident in a room at the Tower Flats, Maradana.

"G"  
(Petitioner's  
Document)  
Answer of the  
Petitioner —  
31-8-67  
— Continued

The commission of these two indiscipline acts by this worker has brought discredit on the good name of the Company. Under these circumstances, coupled with his failure to turn up for the enquiry on 3/6 and 18-6-66, the management had no other alternative but to terminate his services, with effect from 19-6-66. He has not come to collect his balance wages. His name was mentioned at the conference held under the Chairmanship of the Commissioner of Labour on 8-10-66, but in view of the nature of the offence which ended in the Magistrate's Court, his name was left out of the discussion. His complaint made to the Commissioner of Labour, through the National Employees Union, was the subject matter of LT. Case No. 7/78831, which came up for hearing before Labour Tribunal. The case was dismissed.

10

(23) (1) **N. B. Boange** was recruited on 24-8-65, as a Sales Supervisor. On a complaint received from Mr. G. N. D. de Silva, a fellow Sales Supervisor, of an unprovoked assault on him by this worker, as he was on his way home after work on 26-2-67, he was written to requesting him to explain. The alleged assault took place inside the premises on the day in question. He was placed under interdiction. The victim was hospitalised for a number of weeks. He is charged by the Police and the case is pending in the Magistrates Court, Colombo South. As he was one of the suspects in the poisoning and sabotage case, the management terminated his services. A letter was sent enclosing a cheque, in payment of his salary, one month's salary in lieu of notice and payment of the service — two weeks salary for each completed year of service.

30

(2) **S. A. Benedict** was recruited on 21-9-59, as a driver. A very serious complaint was received from the Foreman in Charge of the Transport Branch, of attempting to use force on him. He was interdicted on 22-11-66. A charge sheet was served on him by our letter of 28-11-66. He pleaded not guilty. Thereupon by our letter of 12-12-66, an enquiry was fixed for 18-2-66. In the meantime the poisoning and sabotage took place involving all those who were hostile towards the management. A letter was sent on 23-3-67, informing him of his dismissal, together with a cheque in payment of his wages, one month's salary in lieu of notice and payment for the service, two weeks salary for each completed year of service.

40

(3) **P. Nanayakkara** was recruited on 10-8-62, as an unskilled worker. He remained so till his services were terminated. This worker was written to requesting him to answer the charge sheet served on him on 20-12-66. In the meantime poisoning and sabotage

"G"  
 (Petitioner's  
 Document)  
 Answer of the  
 Petitioner —  
 31-8-67  
 — Continued

took place. As he was one of the suspects, his services were terminated. A letter to this effect was sent to him with a cheque in payment of his wages, one month's salary in lieu of notice and payment for the service, two weeks salary for each completed year of service.

- (4) **R. A. N. Weerasinghe** was recruited on 1-8-62, as an unskilled worker. A charge sheet was served on her for misconduct. Subsequently an enquiry was fixed for 30-12-66, but it had to be postponed, as she was not ready with her witnesses. 18-2-67, was fixed for the adjourned enquiry. In the meantime poisoning and sabotage took place. She was one of the suspects and her services were terminated along with several others. A letter to this effect was sent to her, along with a cheque in payment of her wages, one month's salary in lieu of notice and payment for the service, two weeks salary for each completed year of service.

Her complaint was the subject matter of an enquiry which came up before the Industrial Court in ID Case No. 361. The case was dismissed.

- (5) **Indrani Senaratne** was recruited on 2-3-64, as an unskilled worker. Charges were framed against her for continued unruly behaviour in the factory. She was found guilty and accordingly her services were terminated with effect from 5-1-67.
- (6) **R. J. Nandawathie** was recruited on 2-8-63, as an unskilled worker. Several warnings were given to her against her unruly behaviour in the factory. She paid no heed. Finally a charge sheet was served on her on 24-11-66 at which she was found guilty. Accordingly her services were terminated.

" H "

(Petitioner's Document)

### Order Made by the 1st Respondent

30

The Maliban Biscuit Manufactories Ltd., has disputed the validity of the order of the Honourable Minister by which he has referred to this Tribunal for settlement by arbitration the dispute that exists between the Company and the Ceylon Mercantile Union. Several contentions have been raised on the basis of which it has been submitted that the order is not valid in law and the Tribunal has no jurisdiction to inquire into the dispute and made award. The contentions are :

- (1) The Tribunal has no jurisdiction to entertain a reference relating to such matters as demotion, transfer, interdiction, non-offer of work, non-employment and termination of services. 40
- (2) The Union has no right to represent any of the persons named in the reference.

"H"  
 (Petitioner's  
 Document)  
 Order  
 Made by the  
 1st Respondent,  
 12-12-67

- (3) The Minister has no power to refer *en masse* disputes of a varying nature involving so many persons as in the reference.
- (4) The reference amounts to a direction to the Tribunal to require the Company to justify the action it has taken.
- (5) The dispute is not a minor dispute for the Minister to refer it to this Tribunal under Section 4(1).
- (6) Matters relating to some of the workers in this reference having been referred previously to an Industrial Court and award having been made, and some workers having made applications for relief to a Labour Tribunal and the applications having been dismissed, the Minister has no power to make this reference.

"H"  
(Petitioner's  
Document)  
Order  
Made by the  
1st Respondent,  
12-12-67  
— Continued

10

In the statement of the Commissioner of Labour, accompanying the Minister's order the matters in dispute have been given under 7 heads. The matters in 7 are general demands for certain new terms and conditions of employment. The matters in 1 to 6 are the transfer, demotion, interdiction, non-employment and termination of services of and non-offer of work to certain named workers. There are 420 of them and they are in 6 groups according to what has happened to them.

The first of the contentions of the Company relates to the matters in 1 to 6 of the Commissioner's statement. The argument is that arbitration under the Act was intended to be in respect of future terms and conditions of employment and not in respect of such matters as termination of services, non-offer of work, interdiction, demotion and transfer. No effort has been made to show that this was the intention of the Legislature or that this is evident from the scheme of the Act. The object of the Act is to provide for the prevention, investigation and settlement of industrial disputes, and there is no reason to think that the provisions in the Act are for the settlement of only one class of industrial disputes, disputes relating to future terms and conditions of employment. It is commonplace that industrial disputes are raised in respect of such matters as termination of services, interdiction and demotion, and the definition of "industrial dispute" in the Act is inclusive of these matters. If there is anything in the Act which may be said to lend some support to the argument for the Company, it is the provision that the terms of an award shall be implied terms in the contract of employment between the employers and workmen bound by the award. The Privy Council in the case of the United Engineering Workers' Union vs K. W. Devanayagam, President, Eastern Province Agricultural Co-operative Union Ltd., considered the view that awards were concerned not with the reparation of wrongs but instead with a determination of future terms and conditions, and rejected that. Their Lordships observed that an industrial dispute "may be oversomething that has happened in the past and something unrelated to the future, as, for instance, over the question whether wages should be paid in respect of a period of absence from work due to a strike or a lockout or over the dismissal of a workman who has received all to which he is legally entitled." They said further that, "Section 33(1) expressly gives power to order the payment of wages for a period of

“H”  
 (Petitioner's  
 Document)  
 Order  
 Made by the  
 1st Respondent,  
 12-12-67  
 — Continued

absence due to a strike or lockout and neither an arbitrator, nor an Industrial Court nor a Labour Tribunal on a reference is restricted to awarding a dismissed workman no more than is legally due to him for they may consider that his legal rights give him less than is just and equitable.” Counsel for the Company has claimed that these and other similar observations of their Lordships are obiter. Even if they are obiter dicta they are weighty enough for the Tribunal to reject the argument that the Act does not contemplate arbitrations in respect of termination of services and similar matters. But the fact seems to be that what has been claimed to be obiter was an essential part of the decision in the case. The decision was that the office of a Labour Tribunal is not a judicial office. One of the grounds for that decision was that the powers and duties of a Labour Tribunal in relation to references under Part II of the Act and to applications under Part IVA are the same. I have no hesitation in rejecting the contention that the Tribunal has no jurisdiction to entertain a reference involving such matters as termination of services, non-offer of work, interdiction, demotion and transfer. 10

The second contention, in the form given above, which is as in the Company's statement under regulation 21(1), gives the impression of a presumption that the Union is in the dispute as an agent. The Union is a party to the dispute and its status is that of principal and not agent. There can, 20 therefore, be no question of any right of representation as an agent; but there can be such a question as to whether the Union is a proper party and the dispute is an industrial dispute.

In the interpretation section of the Act “ industrial dispute ” is defined thus—

“ Industrial dispute ” means any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen connected with the employment or non-employment or the terms of employment, or with the conditions of labour, or the termination of the services, or the reinstatement in service, of any person and for the purpose of this definition “ workmen ” includes a trade union consisting of 30 workmen.

Looking at the definition one sees that three things must be satisfied for there to be an industrial dispute.

- (1) There must be a dispute or difference.
- (2) The parties must be among those in the definition.
- (3) The subject matter in the dispute must be one coming under the definition.

The fact of the existence of a dispute is not open to question, but obviously there is a dispute. The Union has made claims and these have been resisted 40 by the Company, and thus there is a dispute. For this dispute to be an industrial dispute the other two ingredients of the definition must be satisfied. The matters in dispute are plainly matters coming within the definition. As

for the parties, a trade union of workmen, which the Ceylon Mercantile Union is, can be a party. If for a trade union of workmen to be a party, it must consist of workmen of the employer with whom the dispute is or the matter in dispute must relate to members who have been workmen of the employer, as I think it should be for the dispute to be a real dispute, this is also satisfied. The workmen whose names are in the Commissioner's statement have been claimed to be members of the Ceylon Mercantile Union and this has not been seriously disputed. It is evident from the Company's statements under regulations 21(1) and (2) that at least some of the workmen  
 10 are admitted to be members of the Union. The dispute, therefore, is *prima facie* an industrial dispute.

"H"  
 (Petitioner's  
 Document)  
 Order  
 Made by the  
 1st Respondent,  
 12-12-67  
 — Continued

Counsel for the Company has argued, quoting from page 140 of Vithal-  
 bhai B. Patel's "Industrial Disputes Act, 1947", that where the matter in  
 dispute relates to a single workman the dispute is basically a dispute between  
 the workman and his employer and that for other workmen or a union of  
 workmen to take up the dispute of the single workman as their own there  
 must be community of interest. What is in the book and has been quoted  
 is a passage from the majority judgement of the Supreme Court of India in  
 Workmen of Dimakuchi Tea Estate vs. Dimakuchi Tea Estate (1958—1.L.L.J.  
 20 500). In that case the workmen of a tea estate had raised a dispute over the  
 dismissal of a medical officer employed on the estate, and the question for  
 decision was whether a dispute in relation to a person who was not a work-  
 man fall within the scope of the definition of "industrial dispute." The  
 definition of "workman" in the Indian Act excludes certain categories of  
 employees, and the medical officer was not a workman. The majority deci-  
 sion in the case was that where workmen raise a dispute as against their em-  
 ployer, the person regarding whose employment, non-employment, terms of  
 employment or conditions of labour the dispute is raised, need not be, strictly  
 speaking, a "workman" within the meaning of the Act but must be one in  
 30 whose employment, non-employment, terms of employment or conditions of  
 labour the workmen as a class have a direct or substantial interest, and hence  
 the dispute raised by the workmen over the dismissal of the medical officer  
 was not an industrial dispute. In the course of the judgement this was said —

40 "If, therefore, the dispute is a collective dispute, the party raising  
 the dispute must have either a direct interest in the subject matter  
 of the dispute or a substantial interest therein, in the sense that the  
 class to which the aggrieved party belongs is substantially affected  
 thereby. It is the community of interest of the class as a whole —  
 class of employers or class of workmen — which furnishes the real  
 nexus between the dispute and the parties to the dispute. We see  
 no insuperable difficulty in the practical application of this test.  
 In a case where the party to the dispute is composed of aggrieved  
 workmen themselves and the subject matter relates to them or any  
 of them they clearly have a direct interest in the dispute. Where,  
 however, the party to the dispute also composed of workmen espouse  
 the cause of another person whose employment, or non-employment,  
 etc. may prejudicially affect their interest, the workmen have a  
 substantial interest in the subject matter of the dispute. In both  
 such cases the dispute is an industrial dispute."

“H”  
 (Petitioner's  
 Document)  
 Order  
 Made by the  
 1st Respondent,  
 12-12-67  
 — Continued

This is the passage that has been quoted. Basic to the decision in the case was what was then already settled law and that was, in the way stated in the judgement, that “an individual dispute, not espoused by others of the class to which the aggrieved party may belong, is not an industrial dispute.” In the case *Central Provinces Transport Services, Ltd. vs. Raghunath Gopal Patwardhan* (1957 — 1 L. L. J. 27) the Supreme Court, reviewing the conflict of judicial opinion on the question whether a dispute by an individual workman would be an industrial dispute, had held that “notwithstanding that the language of the definition of ‘industrial dispute’ is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act when the same had not been taken up by the union or a number of workmen.”

The context in which the rule of community of interest was laid down by the Supreme Court of India will now be clear, and it will be seen that that rule cannot have application in this country, at any rate the same application as in India. The definitions of “industrial dispute” and “workman” are different in our Act. Except for employees of the Crown and the Government, all employees, whatever their positions and wages or salaries may be, are covered by our Act and the definition of “industrial dispute” includes expressly a dispute between a single workman and an employer, as well as a dispute between an employer or employers and a union of workmen. Counsel for the Company seemed to doubt that a dispute between a single workman and an employer could be an industrial dispute, but such a dispute has been expressly included in the definition, and that by an amendment, and there is nothing in the rest of the Act which renders this express inclusion a mistake or a nullity. There cannot, of course, be a real industrial dispute without the parties having each an interest in it, but, so long as the subject matter in dispute is a matter coming within the definition of “industrial dispute”, there is no need to inquire what precisely the interests are. The interest a union of workmen has may be in some general principle that is involved, which may concern not one class of workmen but all workmen, or it may be that out of a sense of solidarity a dispute is raised.

The Judicial view in England on the matter of interest appears to be very much broader than that in India. In a case under the Industrial Disputes Order of 1951 whereas in the Indian Act, a single workman's dispute is not included in the definition of “dispute”. Devlin, J, had this to say —

“The mere fact that a person is not materially affected by decisions on the subject-matter of the dispute does not appear to us to automatically prevent him from being a party to the dispute. There are all sorts of industrial disputes which arise out of a difference between the employer and the employees in a factory in relation to a claim made merely by one man, cases, for example, where one man is unfairly victimized, or is unfairly victimized in the estimations of his fellow-employees, and his fellow-employees make themselves parties to the dispute because they may say: ‘Unless this man is treated in the way in which we think that he ought to be treated, there is going to be trouble,’

or there may be other reasons. . . . . They may be interested in the principle of the thing . . . . . Or there may be . . . . . some general principle involved in the dispute on which this particular claim happens to be founded which is selected as a test action . . . . . The proposition for which Counsel for the Minister contends really come to this : If the Union chooses to make the matter a union issue, if it chooses to take up cudgels on behalf of its member and thereby to become belligerent in the matter, it is a dispute to which more than one workman is a party. No doubt, the union will not do it unless there is a matter of some general principle involved ; but if the union chooses  
 10 to make it a general issue, it becomes a dispute to which the whole body of workmen or group are made parties. We think that this is the right view of the matter." It is worthwhile to mention also what the minority view in the Dimakuchi Tea Estate case (supra) was. Sarkar, J. said in his dissenting judgement : "I find it impossible to define that interest. If it cannot be defined, it cannot, of course, be made a condition of the existence of any industrial dispute for we would then never know what an industrial dispute is." In a case like the present one, where as many as 420 workers are involved and their union has raised a dispute and pursued the dispute in the manner it has done, seeking settlement first by negotiation, then conciliation and  
 20 finally arbitration, as is evident from the statements under regulations 21(1) and (2), it should be obvious that the union has a genuine interest and the dispute is a real dispute.

"H"  
 (Petitioner's  
 Document)  
 Order  
 Made by the  
 1st Respondent,  
 12-12-67  
 — Continued

Counsel for the Company has conceded that in respect of the termination of the services of certain of the workers in the Commissioner's statement of the matters in dispute there is an industrial dispute between the Company and the Union. The services of these workers in respect of whom it has been admitted that there is an industrial dispute were terminated in March 1957, and according to the Company the termination was on suspicion of involvement in a case of poisoning of food supplied to workers. The admission  
 30 perhaps is on the basis that a large number of workers is directly interested in the matter in dispute and the rule of community of interest is therefore satisfied. In respect of the rest of the workers in the Commissioner's statement it has been submitted that there cannot be an industrial dispute. The rest are distinguished on the ground that they were not members of the Union at the time their services were terminated or they were interdicted, demoted or transferred, and also on the ground, it appears, that the terminations, interdictions and so on having been effected at different times and circumstances there is nothing common for there to be a community of interest. The latter  
 40 ground has been considered in a general way and I have already concluded that, when a union raises a dispute over the case of a workman, the interest it has may be in some general principle involved or in maintaining solidarity and there is no need to inquire what precisely the interest is. But I must say that by distinguishing the matters relating to the 2 groups of workers on the basis of "community of interest" Counsel would appear to give "community of interest" such a meaning that there can rarely be an industrial dispute between an employer and a union over some matter relating to a single workman.

The other ground, that the workers concerned were not members of the Union at the time their services were terminated or they were demoted, trans-

"H"  
 (Petitioner's  
 Document)  
 Order  
 Made by the  
 1st Respondent,  
 12-12-67  
 — Continued

ferred or interdicted, has to be dealt with now. Counsel has cited two Indian cases in support. The cases are Shamsuddin vs. The State of Kerala and others (1961—1 L. L. J 77) and Padurthy Ratnam & Co. vs. Industrial Tribunal and others (1958 — II L. L. J. 290). The decisions in these cases do not appear to have been on the ground of absence of community of interest. To give the facts in the Shamsuddin case, the cause of 3 dismissed workmen employed in a commercial concern was taken up by a union consisting of members employed in similar commercial concerns in the locality. The concerned workmen were not members of the union on the date of their dismissal but they became members subsequently. The Court held that the dispute was not an industrial dispute on the ground that it was necessary to insist upon the community of interest between the aggrieved party and his associations being existent at the time the event causing the dispute happened. The Court said that otherwise there was the possibility of the interest shifting from one association to another and such consequences are undesirable. With respect, I must say that the undesirable consequences referred to in the judgement cannot arise when once a binding award is made. Besides, it does not appear to me to be quite legitimate to rule out what under the provisions of the Act is an industrial dispute on the ground that by so doing one is ensuring that one union after another will not take up the cause of a workman. It may be that where the law is that a dispute between a single workman and his employer is not an industrial dispute it is in the nature of a concession to entertain the dispute as an industrial dispute when it is supported by other workmen or a union, and, therefore, restrictive conditions are justified. Under our Act there is no justification for any such restrictions. Indeed, if it is insisted that an individual dispute should be supported by a union from the very beginning for it to be an industrial dispute, it will compel a workman to rush to his union immediately something happens to him, without ever trying to adjust his differences direct with the employer, and also compel the union to support him without careful consideration. Such a consequence is far more undesirable. However, at page 141 of Patels book, from page 140 of which Counsel has quoted, there is a case cited (Bombay Union of Journalists vs. the "Hindu" — 1961 — 2. L. L. J. 436) where the Supreme Court of India is stated to have held thus —

“ In ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up as supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable member of workmen. ”

On reading the judgement I am not sure whether the case decided by the Supreme Court is an authority for the view that support by a union need not be from the beginning, but there it is in the book apparently as an authority for that proposition. The decisions cited by Counsel, which are also mentioned in the same page of the book, are those of High Courts and are in conflict with the decision of the Supreme Court. Really no authority is necessary for it to be seen that the fact that a workman joined the union after the event over which he is grieved occurred is irrelevant to the question as to whether the dispute is an industrial dispute or not.



With regard to the general demands also it has been submitted that there can be no industrial dispute. This is on the ground that the Union has no members among the workers who are at present in employment. The Union has agreed that it has no members among the workers now in employment and that the general demands like issue of letters of appointment, uniforms for employees, rest room facilities and so on would apply only if any of the workers for whom reinstatement in employment has been demanded are reinstated. It appears that these general demands were made when most of the workers in the reference were in employment and were members of the Union. A dispute that arises when workers are in employment cannot cease when the workers are dismissed and in respect of the dismissals too there is dispute. If it can be said to cease, an employer has only to dismiss workers in order to avoid having the demands of the workers for improvement in the terms and conditions of their employment settled. There is, without doubt, a valid dispute between the Union and the Company on the matter of the general demands. It may so happen that no award in respect of the general demands will be made, but at the moment the Tribunal has to proceed on the basis that the general demands are also matters in dispute.

"H"  
(Petitioner's  
Document)  
Order  
Made by the  
1st Respondent,  
12-12-67  
— Continued

To summarise, the real points that arise for consideration on the second 20 of the contentions of the Company are —

- (1) Whether in respect of the matters relating to the workers who were not members of the Union at the time their services were terminated or they were demoted or transferred, but joined later, there can be an industrial dispute ;
- (2) whether, the dispute over the general demands, which arose when the Union had members, still exists, when the members have since been dismissed and their dismissals are also in dispute.

My answer to both the questions is in the affirmative.

The next point to consider is the submission that the Minister has no 30 power to refer *en masse* disputes of varying nature involving so many persons as in the reference. It is true that there are many matters of varying nature in dispute. There are 420 workers in all in the reference. The services of 384 out of the 420 were terminated allegedly for the reason that they were suspected to have been involved in a case of poisoning. Where the matters in dispute relating to these 384 workers are the termination of their services the issues are largely the same, but there are 32 among these in respect of whom there are such questions as demotions and transfers. There are also the balance workers out of the 420, numbering 36, whose cases can be substantially different. But, if the dispute between the 40 parties happens to be over all these matters and settlement of any by direct negotiation or conciliation has not been possible, there is nothing else that could have been done but to have referred the dispute as it exists for settlement by arbitration. The inquiry may be prolonged but that will be no reason for the dispute to be considered as a number of disputes and a number of references to be made. There may well be an advantage in all these matters being considered at one and the same time, though transfers,

"H"  
(Petitioner's  
Document)  
Order  
Made by the  
1st Respondent,  
12-12-67  
— Continued

demotions, interdictions and terminations of services may have been on different dates. There can be common questions involved in all these. I see no valid reason for the objection to the reference on the basis that the subject matters are of varying nature and involve many persons. The dispute is one which happens to be over a number of matters.

The next contention is that the dispute is not a minor dispute for the Minister to refer it to this Tribunal. The reference is under Section 4(1) and that section empowers the Minister, if he is of opinion that an industrial dispute is a minor dispute, to refer it for settlement by arbitration to an arbitrator appointed by the Minister or to a Labour Tribunal. There is no definition of minor dispute in the Act and if the Minister is of the opinion that the dispute is a minor dispute, his opinion cannot be canvassed. The decision the Minister has made is an administrative decision.

Coming to the 4th of the Company's contentions the submission is that the reference amounts to a direction to the Tribunal to require the Company to justify the action it has taken. It has been argued that, where the matters in dispute are described as whether the termination of the services of specified workmen is justified and to what relief each of them is entitled, the Minister has in effect directed the Tribunal to call upon the Company to justify the action it has taken and there is a suggestion that the workmen are entitled to relief. The dispute over the termination of the services of the workers has arisen because the Union contends that the termination is unjustified and demands relief for the workmen. The position of the Company is that the termination is not unjustified and the workmen are not entitled to any relief. In such a circumstance the matter in dispute could not have been better described than in the way it has been described. One party asserts that the termination of services is unjustified and demands relief and the other denies. The dispute therefore is whether the termination is justified and to what relief the workman is entitled. In this description there is no direction or any suggestion that the workman is entitled to some relief or other. The answer to the question what relief the workman is entitled to can be this or that relief, or no relief.

Of the contentions raised by the Company one more remains to be considered. That is that the inclusion in the reference of matters that were included in an earlier reference to an Industrial Court and of cases covered by orders made on applications for relief to a Labour Tribunal renders the reference bad. A dispute between the Maliban Biscuit Manufactories Ltd., and another union, the National Employees Union, was referred to an Industrial Court constituted of one person. Among the matters in that reference to the Industrial Court were matters relating to 30 workers whose names are included in the reference to this Tribunal. While the workers are the same the matters in dispute concerning them are not quite the same. In the reference to the Industrial Court the matters in dispute relating to the 30 workers whose names appear in the present reference were described as withdrawal of notice of interdiction in the case of one worker, withdrawal of transfers effected in the case of 12 workers and the withdrawal of the demotions and transfers of the balance 17 workers. In the present reference the matters in dispute in respect of the 30 workers are wider and include, in some cases, termination of employment and, in the others, non offer of work.

However, in the case of 29 of the 30 workers some of the matters relating to them, that is transfers, demotions and interdictions, are common to the two references. Of the general demands which appear as item 7 in the present reference, one is similar to a demand included in the reference to the Industrial Court and two are inclusive of demands found in the earlier reference. The demand common to the two references appears in the earlier reference as "removal of the conditions which prohibits the marriage of women employees" and in the present reference as "the condition of employment which prohibits a female employee from continuing in employment on her marriage be with-

10 drawn forthwith."

The other two demands referred to above appear in the reference to the Industrial Court as :—

- (1) Uniforms to drivers, and
- (2) Resting facilities to be provided to female workers working in the factory.

These are included in the following demand in the present reference.

- (1) Uniforms should be provided to all employees who are required to wear uniforms at the factories.
- (2) Separate and proper rest-room facilities to male and women employees should be provided.

20

The reference to the Industrial Court was by an order made on the 22nd of November, 1966 under Section 4(2). The Court made a report on the 16th of February, 1967 which was published as an award in Government Gazette No. 14748 of 12th May, 1967. In what was published as an award the Court, referring to a report that had been made by the National Employees' Union that all the members had resigned from the union and they were withdrawing their applications, stated, "As there is now no dispute between the Union and the Company I make no award." Counsel for the Company has submitted that what was published as an award is an award and has interpreted the award as one refusing relief to the workers concerned. For the Union it has been submitted that, even if what was published is an award, it has no binding effect under section 26 on the workers as no reference has been made in the award to the workmen to whom the award relates. The Industrial Court set down in the award what the matters in dispute according to the statement furnished by the Commissioner of Labour under Section 23 were, and there the names of the workers appear. But the position of the Union is that under Section 24(3) reference should be made in an award to the parties and trade union to which and the employers and workmen to whom such award relates, and that, while reference has been made to the parties, there is no reference as such to the workmen to whom the award relates. In that case the union concerned did not pursue the dispute and clearly the merits of the matters in dispute were not inquired into. It appears to me, therefore, that when the Court said that as there was no dispute between the union and the company it made no award, it did not mean that relief to the workers was refused. It is to be noted that what was published as an award begins thus :

“H”  
 (Petitioner's  
 Document)  
 Order  
 Made by the  
 1st Respondent,  
 12-12-67  
 — Continued

“ This report relates to an industrial dispute between . . . ”

It seems to me that the Court was making only a report that there being no dispute it was making no award.

There are Indian cases where in similar circumstances it was held that what was published as an award was no award and the subsequent reference of the same dispute was not invalid or barred by principles of *res judicata*. The case of British India Corporation Ltd. vs. Labour Court Kanpur & Others, decided by the High Court of Alahabad and reported in 1964 1. L. L. J. at page 601, is one such case. But Counsel for the Company has cited the Judgment of the Supreme Court in S. C. application No. 291 of 1963, which 10 was an application by the Eksath Engineru Saha Samaniya Kamkaru Samithiya for writs of certiorari and mandamus on S. C. S. de Silva and others. It was held there that, when the Minister in the exercise of his power refers an industrial dispute under Section 4(2) of the Act, the occasion for exercising such power in respect of that industrial dispute is exhausted and the Minister cannot again exercise such power in respect of that industrial dispute. Considering the circumstances of the case that was decided by the Supreme Court it appears that the question whether a binding award is in force or not is irrelevant. If the dispute that has been referred to this Tribunal for settlement by arbitration is the same as the dispute referred to the Industrial Court on the 22nd of 20 November 1966, there can be no argument; I shall have to hold that this reference is invalid. But the dispute is not the same. This dispute is between the Company and the Ceylon Mercantile Union whereas the dispute that was referred to the Industrial Court was between the Company and another union, the National Employee's Union. The two disputes are different not only because the parties are different but also because the matters in dispute are substantially different. It is true that there are a few common matters but the common matters constitute a very small part of the matters in dispute in the present reference. The disputes being different the judgment of the Supreme Court in S. C. application No. 291 of 1963 does not apply, and, there 30 being in my view no award of the Industrial Court which is binding on the workers concerned, I hold that this reference is not affected by the reference made by the Minister to the Industrial Court on the 22nd of November 1966. Even if it could be said that the Industrial Court made an award which is binding on the workers, the inclusion of a few of the matters contained in the reference to the Court cannot render the present reference, where the matters in dispute are overwhelmingly more invalid. All that would have to be done, if in fact there is an award binding on some of the workers, would be to leave out of consideration such matters as are covered by the award. But in my opinion there is no award which has settled the matters in question. 40

The Company has furnished a list of the workers on whose behalf applications under section 31B(1) had been made and the applications had been dismissed. There are 21 names in the list. Three of the names in the statement filed under regulation 21(2) do not appear in the list, and, adding the 3 to the 21, there are in all 24 workers, the effect of the dismissal of the applications made on whose behalf has to be considered. The applications were for relief in respect of alleged termination of services and were made by the National Employee's Union in which the workers were then. The dismissals

were for default of appearance. The workers concerned and the dates of alleged termination of services, as found in the relevant records in the custody of the Secretary, Labour Tribunal, are as follows. The numbers within brackets against the names are numbers by which the names in the statement of the Commissioner of Labour can be found conveniently.

"H"  
(Petitioner's  
Document)  
Order  
Made by the  
1st Respondent,  
12-12-67  
— Continued

	Name	Application Nos.	Date of termination alleged in application
	1. W. T. de Alwis .. ..	(1/13) 28795	27-8-66
10	2. K. H. Padmini .. ..	(1/216) 29550	2-10-66
	3. K. D. Florence .. ..	(2/8) 29543	31-10-66
	4. R. Arumugam .. ..	(2/51) 29089	20-9-66
	5. A. A. Cader .. ..	(2/52) 29075	"
	6. Cassim Mohamed .. ..	(2/55) 29077	20-9-66
	7. S. Perumal .. ..	(2/56) 29090	"
	8. A. M. Mansoor .. ..	(2/60) 29078	"
	9. H. A. Dharmadasa .. ..	(2/61) 29076	"
	10. H. W. S. M. Caldera .. ..	(3/5) 29544	30-9-66
	11. R. A. Seelawathie .. ..	(3/20) 29549	"
20	12. W. Wimalawathie .. ..	(3/25) 29592	"
	13. M. Wanigasinghe .. ..	(3/26) 29542	"
	14. K. Somawathie .. ..	(4/6) 29553	"
	15. K. Bamunusinghe .. ..	(4/7) 29624	20-11-66
	16. L. N. D. Lalitha .. ..	(4/8) 29547	25-10-66
	17. P. G. Dhanawathie .. ..	(4/9) 29551	24-10-66
	18. Lalith Rupasinghe .. ..	(4/10) 28798	9-9-66
	19. K. M. Donald Perera .. ..	(4/11) 29333	9-9-66
	20. M. V. D. Gunasekera .. ..	(4/12) 28779	1-9-66
	21. G. H. Sugathapala .. ..	(4/19) 29332	18-10-66
30	22. Patrick Perera .. ..	(4/20) 28820	5-9-66
	23. Sheela Rodrigo .. ..	(5/4) 29541	29-10-66
	24. L. R. Perera .. ..	(5/5) 28831	19-6-66

In the case of 12 of these workers, the dismissals of their applications have no bearing on the reference, the termination of services alleged in the applications being not among the matters in dispute. Matters in dispute concerning these 12 workers include termination of services, non-employment or non-offer of work, but the terminations complained of in the applications are different, as is evident from the statements filed by the parties. It appears that after the termination of services alleged in the applications the workers were taken back into employment. Among the balance 12 workers there are some in whose cases it is doubtful, on what material is available, whether the termination of services, non-employment or non-offer of work include in the matters concerning them in the reference is the same as the termination of services in the relevant application. In the case of 6 of them at least it is clear that the termination of services, non-employment or non-offer of work given in the reference as being a matter in dispute is the same as the termination of services in the applications. Order on the preliminary objections raised by the Company need not await clarification of the doubtful cases.

"H"  
(Petitioner's  
Document)  
Order  
Made by the  
1st Respondent  
12-12-67  
— Continued

Evidence may have to be heard. Whether the number of workers, whose termination of services alleged in the applications is the same as the termination of services, non-employment or non offer of work included in the matters in dispute concerning them is 6, 12 or any number in between makes no difference to the legal question that has to be decided.

It has been submitted for the Union that, though the workers in question had authorised the National Employees Union of which they were members then to make applications on their behalf, they were not aware that applications had been made and hence did not know also the dates on which their applications had come up for hearing. Having authorised the union to make 10 applications, the workers should have kept themselves informed of what the Union was doing in the matter. They did not and they have to bear the consequences of their negligence. The applications have been dismissed and they cannot now seek other legal remedy. They are debarred by Section 31B(5) of the Act. The question here, however, is whether the same matters as in the dismissed applications can be the subject-matter of an industrial dispute. If they cannot be, a further question arises, and that is whether their inclusion in the matters specified in the reference as matters in dispute invalidates the whole reference.

Counsel for the Union has referred to Section 31B(2) (b), where it is 20 provided that, where the Labour Tribunal is satisfied that the matter to which an application relates constitutes or forms part of an industrial dispute referred by the Minister under Section 4, the Tribunal shall make order dismissing the application without prejudice to the rights of the parties in the industrial dispute, and has argued that, if the Minister can refer a matter in dispute for settlement by arbitration when an application relating to the same matter has been made and is pending disposal, he can also refer when the application has been disposed of. It has been submitted further that in any case there is nothing in the Act to prevent the Minister from referring such a matter for settlement by arbitration if he considers it expedient to do so in the national 30 interest. What a Labour Tribunal has to do when an application is made to it is in section 31C(1), and what it has to do when a reference is made under Section 4(1) is in Section 17(1). The duties are the same and the order in one case and the award in the other which the Tribunal makes are order and award which appear to the Tribunal to be just and equitable. The considerations are the same whether a matter comes up by way of an application under section 31B(1) or a reference under Section 4(1). That being so, if once a matter is settled on an application being made, it cannot be the subject of an industrial dispute thereafter. The order the Labour Tribunal makes is final unless upset on an appeal to the Supreme Court on a question of law (Section 40 31D). What is final under one provision of the Act cannot be re-agitated under another provision of the Act. The dismissals of the applications were default of appearance, but the order remains as final orders. I take the view that where an application under section 31B(1) is made and a Labour Tribunal makes a final order in respect of it under Section 31C(1), the matter so disposed of cannot be the subject-matter of an industrial dispute thereafter.

On the view I have taken the termination of services complained of in the applications which the National Employees' Union made and were dismissed

cannot be the subject matter of an industrial dispute. If these were the only matters in dispute I should hold the reference to be bad. What the position will be if they constituted a substantial part of the matters in dispute is not easy to decide, and for the purposes of this case I don't have to decide. The matters over which an industrial dispute cannot be raised, being the matters in 12 of the applications at most are few in comparison with the rest of the matters in the reference, so few that it is easily seen that they cannot render the whole of the reference bad.

"H"  
(Petitioner's  
Document)  
Order  
Made by the  
1st Respondent  
12-12-67  
— *Continued*

10 In no field of human experience is it that a thing is abandoned because there is in it some small defect. If things were abandoned because of small defects in them, life would be impossible, and the law cannot be above the realities of life.

Having considered all the contentions of the Company, I hold, rejecting the contentions, that the reference taken as a whole is valid and the Tribunal has jurisdiction to inquire into all the matters in the reference except such as are covered by orders on applications under Section 31 B(1) made on behalf of a few of the workers.

CERTIFIED TO BE A TRUE COPY OF THE ORDER MADE ON  
PRELIMINARY OBJECTION ON 12-12-67.

20

*Sgd.* SECRETARY,

*Labour Tribunal,  
Colombo.*

---

No. **48 OF 1970**

Supreme Court of Ceylon,  
Applications Nos. 498 of 1967,  
and 207 of 1968.

In the Matter of An Application  
for a Mandate in the Nature of  
a Writ of Certiorari and/or  
Prohibition,

*and*

In the Matter of An Application  
for Conditional Leave to Appeal  
to Her Majesty in Council.

*In Her Majesty's Privy Council  
on An Appeal from  
The Supreme Court of Ceylon*

*Between*

**MALIBAN BISCUIT MANUFACTORIES, LTD.**  
No. 11, Van Rooyen Street, Colombo 13.

*(Petitioner) - Appellant*

*And*

1. **R. SUBRAMANIAM ESQUIRE**, President, Labour Tribunal,  
No. 11, Rosmead Place, Colombo 7.
2. **THE CEYLON MERCANTILE UNION**, No. 22-1/1, Upper  
Chatham Street, Colombo 1.
3. **N. L. ABEYWIRA ESQUIRE**, Commissioner of Labour,  
Dept. of Labour, Lower Lake Road, Colombo 3.
4. **THE SECRETARY, LABOUR TRIBUNAL**,  
No. 11, Rosmead Place, Colombo 7.

*(Respondents) - Respondents*

---

---

**RECORD  
OF PROCEEDINGS**

---

---