IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Ceylon Electricity Board,
No. 50,
Sir Chiththampalam A. Gardiner
Mawatha,
Colombo 2.
Petitioner

CASE NO: CA/WRIT/85/2016

Vs.

Hon. John Seneviratne,
Minister of Labour and Trade Union Relations,
Ministry of Labour and Trade Union Relations,
Labour Secretariat,
Colombo 5.
And 4 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Ranga Dayananda for the Petitioner.
Sunil Wanigatunga with Arosha Silva for the 5th Respondent.

Decided on: 17.06.2019

Mahinda Samayawardhena, J.

The petitioner employer filed this application seeking to quash the arbitration award marked P2 made in favour of the 5th respondent employee by writ of certiorari. By this award, the arbitrator, after inquiry, ordered to make the employee permanent in his employment as a Fire Extinguishing Officer from the year 2005 and make the due payments.

The employee has particularly relied on the public administration circulars 27/2001 marked P7 and 13/2005 marked R9 in seeking reliefs.

The learned counsel for the employer, before this Court, challenges this award on several grounds.

The first one is that the said circulars are inapplicable to the employer, which is the Ceylon Electricity Board. This argument is unacceptable. The Ceylon Electricity Board is a Government-owned Corporation, and the said circulars, on the face of them, expressly state that they are also applicable to Government Corporations.

The next argument, which is the principal argument, is, as there was no vacancy for the post which the employee sought to be made permanent, and also there was no existing scheme of recruitment, those circulars are inapplicable. This argument has been rejected by the arbitrator.

According to the circulars, *inter alia*, there shall be vacancies to the post in the permanent cadre and the employee shall also fulfil the requirements in the scheme of recruitment.

The witness for the employer Ceylon Electricity Board has stated in evidence at the inquiry that there was an approved cadre for four Fire Extinguishing Officers in 2011 and 2012. The argument of the learned counsel for the employer is that according to the circulars there should have been approved vacancies at the material time, which means in 2005, and not in 2011. The arbitrator in the award has adverted to this aspect, but considered the other relevant documents including P19 to come to the conclusion that there was a vacancy at the material time although such a vacancy was not created. That is due to indifference or disinterestedness on the part of the employer Ceylon Electricity Board and not due to any fault on the part of the employee. The employee was recruited as a Fire Extinguishing Officer on contract basis in the year 2000 and he discharged his duties in that capacity to the satisfaction of the employer.

I need hardly emphasize that, according to section 17(1) of the Industrial Disputes Act, No. 43 of 1950, as amended, "*When an industrial dispute has been referred under section 3(1)(d) or section 4(1) to an arbitrator for settlement by arbitration, he shall make all such inquiries into the dispute as he may consider necessary, hear such evidence as may be tendered by the parties to the dispute, and thereafter make such award as may appear to him just and equitable*." In that process, the arbitrator need not follow the rigid rules of law. Vide *Brown & Company PLC v. Minister of Labour [2011] 1 Sri LR 305, Asian Hotels & Properties PLC v. Benjamin [2013] 1 Sri LR 407*.

In *United Engineering Workers Union v. Devanayagam (1967) 69 NLR 289*, the Privy Council stated: "*The powers and duties of an*

arbitrator under the Industrial Disputes Act, of an Industrial Court and of a Labour Tribunal on a reference of an industrial dispute are the same. In relation to an arbitration, the arbitrator must hear the evidence tendered by the parties. So must a Labour Tribunal on a reference. An Industrial Court has to hear such evidence as it considers necessary. In each case the award has to be one which appears to the arbitrator, the Labour Tribunal or the Industrial Court just and equitable. No other criterion is laid down. They are given an unfettered discretion to do what they think is right and fair."

I do not think, in the facts and circumstances of this cases, the award of the arbitrator is perverse. There is no an error of law on the face of the record.

The final submission of learned counsel for the employer is that the arbitrator violated the principles of natural justice in that the arbitrator did not consider when making the award all the documents marked by the employer at the inquiry. However the learned counsel does not point out a single document which the arbitrator has failed to consider and which is in his favour.

I see no reason to interfere with the arbitration award. Application of the employer to quash the said award by certiorari is refused but without costs.

Judge of the Court of Appeal