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

In the matter of an Application for Order in the nature of Writs of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. Writ Application No.

0305-19

Rekadahena Plantation (Private) Limited
Rekadahena,
Kahaduwa.

Petitioner

Vs.

1. S. Kariyawasam
   No. 28,
   Aberathna Mawatha,
   Boralasgamuwa.

2. Ananda Wimalaweera
   Commissioner General of Labour,
   Labour Secretariat,
   Narahenpita,
   Colombo 05.

3. K.D. Manoj Priyantha
   Commissione of Labour,
   Division of Industrial Relations,
   Department of Labour,
   Colombo 05.

4. Y.A.M.M. Yapa
   Acting Deputy Commissioner of Labour,
   Legal Division,
   Department of Labour,
   Colombo 05.

5. Rawendra Samaraweera
   Minister of Labour,
   Labour Secretariat,
   Narahenpita,
   Colombo 05.

6. Lanka Estate Staffs' Union,
(On behalf of Anura Wasantha Adihetti)
No. 06, Aloe Avenue,
Colombo 03

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

D.V.R. Issuru Lakpura for the Petitioner

Suranga Wimalasena DSG for the 2nd- 5th Respondents

Written submissions tendered on:

26.01.2022 by the Petitioner

Argued on: 30.03.2022

Decided on: 31.08.2022

S.U.B. Karalliyadde, J.

In this writ application, the Petitioner, Rekadahena Plantations (Pvt.) Ltd, seeks reliefs, *inter alia*, writs of Certiorari to quash the award of the 1st Respondent who was appointed by the Minister of Labour under section 4(1) of the Industrial Disputes Act (the Act) in favour of the 7th added Respondent and quash the Gazette Notification bearing No. 2086/41 dated 31.08.2012 published the said award by the Commissioner General of Labor (the 2nd Respondent). The 7th added Respondent worked as a Field Officer in the Rekadahena Plantation (Pvt) Ltd. Through Lanka Estates Staffs' Union (the 6th Respondent) he complained to the Commissioner of Labor (the 3rd Respondent) that he was ejected from his official quarters. Nevertheless, Rekadahena Plantation (Pvt.) Ltd denied that allegation. Then the matter was referred by the Minister of Labor

(the 5th Respondent) to the 1st Respondent for arbitration in terms of section 4(1) of the Industrial Dispute Act, No. 43 of 1950 (as amended) (hereinafter referred to as the Act). At the end of the Arbitration process the 1st Respondent held that the 7th added Respondent should be entitled to an award of Rs. 200,000/- (document marked as P9). After the award was published in the Gazette Notification marked as P10, the Petitioner field repudiation papers against the award. By P9, the 1st Respondent ordered the Rekadahena Plantation (Pvt) Ltd to pay Rs. 200,000/= to the 7th added Respondent for the mental injuria caused to him as a result of sudden ejectment from the quarters and the damages caused to his furniture. One of the arguments of the learned Counsel for the Petitioner is that under the labour legislation of the Country, an Arbitrator has no power to grant awards for mental injuria.

In addition to the written submissions filed by the Petitioner, at the argument the learned Counsel appearing for the Petitioner made a lengthy oral submission. On behalf of the 2nd - 5th Respondents the learned Deputy Solicitor General submitted to Court that he is ready to abide by any decision of the Court. The Petitioner has tendered further written submissions after the conclusion of the argument.

One of the arguments of the learned Counsel for the Petitioner is that there are factual errors in the 'reference' made by the Minster to the 1st Respondent for Arbitration and even though, citing those errors on behalf of the Petitioner an application had been made before the commencement of the arbitration proceedings to the 1st Respondent to re-refer the 'reference' to the Minsters to correct those errors, the 1st Respondent did not allowed that application but commenced the inquiry on the defective 'reference' and concluded the inquiry.

Section 4(1) of the Act provides thus;

"the Minister may, if he is of the opinion that an industrial dispute is a minor dispute, refer it, by an order in writing, for settlement by arbitration to an arbitrator appointed by the Minister or to a labour tribunal, notwithstanding that the parties to such dispute or their representatives do not consent to such reference."

If there were any errors in the 'reference' made by the Minster to the 1st Respondent and if the Petitioner was not satisfied with the Order made by the 1st Respondent regarding the preliminary objection raised on the 'reference', the Petitioner could have taken legal actions against the 'reference' and the Order of the 1st Respondent.

Nevertheless, he has not taken any action against the 'reference' and/or the Order. Therefore, it is the view of this Court that the Petitioner is not entitled to canvass those facts belatedly in this writ application.

The learned Counsel appearing for the Petitioner submitted to Court that the 1st Respondent has decided that the 7th added Respondent was given official quarters and he was ejected on the facts stated in the 'reference' of the Minister, but not on the evidence placed before the 1st Respondent Therefore, the learned Counsel for the Petitioner argued that the award marked as P9 is against the provisions of section 17 (1) of the Act. Section 17(1) stipulates thus;

"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, here 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. A labour tribunal shall give priority to the proceedings for the settlement of any industrial dispute that is referred to it for settlement by arbitration."

This Court cannot subscribe to the above stated submission of the learned Counsel for the Petitioner for the reason that when arriving at the decision marked as P9, the 1st Respondent has considered the evidence of the 7th Respondent, the Police complaint marked as ෟ5/ෟ6 made by the 7th Respondent after he was ejected, the evidence of the President of the Trade Union Mr. Dhammika Karunasiri Jayawardhana that he had visited the quarters during the time which the 7th added Respondent was occupying the quarters and he was ejected from the quarters (at page 261 of the brief), the evidence of the Assistant Manager Dushana on behalf of the Petitioner that the 7th added Respondent was given one of the quarters allocated to the Watchers (at page 262 of the brief). In the Written submissions tendered to the Court on behalf of the Petitioner, it has been stated that nowhere in the evidence of the Assistant Manager Mr. Dhushan that the 7th added Respondent was ejected. The witness has admitted that the 7th added Respondent was given quarters. The letter issued by the Superintendent marked as ෟ4 when allocating the quarters to the 7th added Respondent corroborates the said evidence of Mr. Dhushan. His evidence has been that on the instructions of the Chairman he had taken steps to seal the quarters, which were in a dilapidated condition using wooden hasp (at page 180 of the brief). There is no evidence that the 7th Respondent handed

over the vacant possession of the quarters to the Petitioner or that he was dispossessed through any legal process. Therefore, the evidence of Mr. Dhushan on behalf of the Petitioner establishes the fact that the 7th Respondent has been ejected.

When exercising writ jurisdiction, the Court considers the legality of the decision and the question as to whether the act or order under attack should be allowed to stand. In *Best Footwear (Pvt) Ltd., and Two Others Vs. Aboosally, Former Minister of Labour & Vocational Training and Others*[1], F. N. D. Jayasuriya, J. held that,

"The remedy by way of certiorari cannot be made use of to correct errors or to substitute a correct order for a wrong order. Judicial review is radically different from appeals. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. In judicial review, the court is concerned with its legality. On appeal the question is right or wrong. On review, the question is whether the act or order is lawful or unlawful. Instead of substituting its own decision for that of some other body as happens when an appeal is allowed, a court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not."

Therefore, in view of the above stated authority in the instant application this Court cannot consider the above stated submissions and arguments of the learned Counsel for the Petitioner. In this writ application, the Court can only consider the legality of the order of the 1st Respondent to pay Rs.200,000/= for the mental injuria caused to the 7th added Respondent considering the unexpected ejectment and the damages caused to his furniture and whether that award should be allowed to stand. The argument of the learned Counsel for the Petitioner is that the 1st Respondent has no jurisdiction to make an award for mental injuria. The learned Counsel submitted to the Court that this Court in the applications bearing No's 451/07 and 452/87 held that the Industrial Law does not make provisions to order compensation for pain of mind and humiliation. The Petitioner has failed to tender copies of those Orders/Judgments to Court The learned Counsel has also quoted a portion of the judgment of *Jayasuriya Vs, Sri Lanka State Plantations Corporation*[2], which states;

[1] (1997) 2 SLR 137.
[2] (1995) 2 Sri L.R. 379.

"Now, losses can be of various kinds; but the matter for consideration in this kind of case is the financial loss, and not sentimental harm caused by the employer. In his petition to this Court, dated 25, September1990, the Petitioner refers to the fact that he was "undergoing hardships, both financially and mentally…"

In terms of section 17 (1) of the Act, an Arbitrator could make an award which appears to him 'just and equitable'. In the case of *United Engineering Worker's Union Vs K.W. Devanayagan*[3] Court opined that the award of an arbitrator has to be one which appeals to the arbitrator 'just and equitable' and they are given an unfettered discretion to do what they think is right and fair. What is meant by 'just and equitable' was discussed in the case of *Peris Vs Podisinhgo*[4]. It was held that the test of 'just and equitable' order is that those equalities would be apparent to any 'fair-minded person' reading the order (at page 48). Nevertheless, the order should be within the framework of law (*Richard Pieris & Co. Ltd Vs. Wijesiriwardena*[5]). The powers and duties of an arbitrator under the Act and of a labor tribunal in a reference of an industrial dispute are the same. In *Arnolda Vs Gopalan*[6] it was held that the Labour Tribunal derives its jurisdiction from the Industrial Disputes Act. The powers of the Labour Tribunal to make a just and equitable order has to be looked at within the four corners of the Act and its amendments. In the instant application, the learned Counsel appearing for the Petitioner does not submit that the findings of the 1st Respondent that damages have been caused to the 7th added Respondent's furniture is against the evidence before the 1st Respondent. In addition to that there is evidence that the 7th added Respondent has been ejected by the Petitioner. Therefore, an Order to pay compensation for ejectment and for the damages caused to the 7th added Respondent's furniture is within the four corners of law and not violating the provisions of section 17(1) of the Act. It would be apparent to any fair-minded person that making an award for the ejectment and damages caused to the furniture is 'just and equitable'. Under the above stated circumstances, the award of the 1st Respondent in view of the ejectment and damages caused to the furniture could be considered as legal and should be allowed to stand. Therefore, the Petitioner is not entitled writs as prayed for in the Petition dated 09.07.2019.

[3] (1967) 69 N.L.R. 289.
[4] 78 NLR 46.
[5] 62 NLR 233.
[6] (1963) 64 N.L.R. 152.

Accordingly, the Application is dismissed. The Petitioner should pay Rs.50,000/= to the 7th added Respondent as costs of this Application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL