

IN THE PRIVY COUNCIL

No. 8 of 1969

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

THE COLOMBO APOTHECARIES COMPANY
LIMITED (Petitioner) Appellant

- and -

1. E.A. WIJESOORIYA (Arbitrator)
2. M.T. MARIKAR BAWA
- 10 3. HON. M. HANIFFA MOHAMED (Minister
of Labour, Employment and Housing)
4. N.L. ABEYWIRA (Commissioner of
Labour)
5. W.E.M. ABEYSEKERA (President,
Labour Tribunal II)
(Respondents) Respondents

CASE FOR THE THIRD RESPONDENT

Record

pp.19,52

1. This is an appeal from a Decree in
accordance with a majority Judgement of the
20 Supreme Court of Ceylon, dated the 29th
February, 1968, dismissing the Appellant's
Application for a Mandate in the nature of a
Writ of Prohibition on the 5th Respondent
forbidding him from entertaining or hearing or
determining or continuing the proceedings or
from continuing to exercise jurisdiction in
relation to a dispute between the Appellant and
the 2nd Respondent which this Respondent, as
30 Minister of Labour, Employment and Housing, had
referred to the 5th Respondent for settlement
by arbitration.

2. The main point for determination on this
appeal is whether or not the said dispute which
is concerned with the Appellant's dismissal from
its employ of the 2nd Respondent is an
"industrial dispute" within the meaning of the
Industrial Disputes Act (C.131), as amended,

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which this Respondent is empowered by the said Act to refer to the 5th Respondent for settlement by arbitration.

3. Relevant provisions of the Industrial Disputes Act (C.131), as amended at the date of the hearing of this case in the Court below (hereinafter also referred to as "the Act") will be found in an Annexure hereto.

Copies of the Industrial Disputes (Amendment) Act No. 39 of 1968, and the Industrial Disputes (Special Provisions) Act No. 37 of 1968, both of them bearing on the subject matter of the present appeal but enacted after the date of the Judgement appealed from, will be available at the hearing before the Board. 10

4. It is helpful to refer at the outset to the following observations on relevant provisions of the Act contained in the majority judgement of the Board in United Engineering Workers Union v. K.W. Devanayagam, President, Eastern Province, Agricultural Co-operative Union Ltd. (1967) 69 N.L.R. 289:- 20

"The long title of the Industrial Disputes Act (C.131) No.43 of 1950 reads as follows:-

'An Act to provide for the Prevention Investigation and Settlement of Industrial Disputes, and for matters connected therewith and incidental thereto' 30

"That Act provided for the reference of industrial disputes to arbitration or to an Industrial Court. It was amended by the Industrial (Amendment) Act No.62 of 1957. By the amending Act the Commissioner of Labour was given power to refer an industrial dispute to a Labour Tribunal as an alternative to referring it to arbitration and the Minister was given power to refer a minor industrial dispute to a Labour Tribunal as an alternative to referring it to arbitration or to an Industrial Court. On any such reference 40

the Labour Tribunal has the same powers and duties as an arbitrator under the Act (S.15A).

10 "An industrial dispute was defined by S.48 as meaning any dispute or difference between employees 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 of any person.

"The Act of 1957 amended this definition by adding 'connected with the termination of the services or the re-instatement in service of any person', and in 1962 a further amendment was made which made it clear that the definition included a dispute between an employer and a workman.

20 "An industrial dispute may arise over a number of matters connected with employment. In many cases, it may be the majority of cases, the dispute will be over wage rates and matters connected therewith. In other cases it may be over the dismissal of a workman or workmen and it is clear that an industrial dispute within the meaning of the Act may arise even though the employer has done no more than exercise his legal rights.

30 Satisfactory provision for the settlement of industrial disputes must cover all industrial disputes whether they arise over wages or on account of the dismissal of a workman or for other causes".

5. The facts of the instant case, briefly stated, are as follows:-

40 On or about the 5th April, 1965, the Appellant Company, on grounds of alleged insolence, insubordination, disobedience, etc., terminated the services of the 2nd Respondent who was in its employ. The dismissal was brought to the notice of the 4th Respondent and he reported the matter to this Respondent in the following terms (Ex.P1A) :-

Record
Ex.P1A,
p.71

"The Industrial Disputes Act, Chapter 131
of the Legislative Enactments of Ceylon
(1956 Revised Edition).

"In the matter of an Industrial Dispute
between

MR. M.T. MARIKAR BAWA

and

THE COLOMBO APOTHECARIES COMPANY LTD.

"STATEMENT OF MATTER IN DISPUTE"

"The matter in dispute between Mr.M.T. 10
Marikar Bawa . . . and the Colombo
Apothecaries Company Ltd is whether
the termination of the services of Mr.M.T.
Marikar Bawa is justified and to what relief
he is entitled.

"Dated at Colombo this 11th day of June,
1965.

N.L. ABEYWIRA

Commissioner of Labour.

Ex.P2A
p.72

6. Acting under powers vested in him under 20
Section 4 (1) of the Act this Respondent, by his
Order, dated the 15th June, 1965 (Ex.P2A),
referred the said dispute to the 1st Respondent
for settlement by arbitration and so informed
the Appellant.

Ex.P5,
pp.75-76

When the reference came up for hearing
before the 1st Respondent he, basing himself
upon certain decisions of the Supreme Court, held,
by his Order, dated the 4th June, 1966 (Ex.P5), 30
that he had no jurisdiction to entertain the
Reference as it related to the termination of the
services of an employee. He, therefore, made
no award.

p.3

By his Order, dated the 19th April, 1967,
this Respondent revoked his said previous Order
of the 15th June, 1965, and directed that no
proceedings should be taken upon it. On the
same date he made an Order, under Section 4 (1)
of the Act, referring the said dispute to the

5th Respondent, President, Labour Tribunal II,
for settlement by arbitration.

Record

7. Statements were filed by both sides to the
dispute under Regulation No.21 (1) of the
Industrial Disputes Regulations, 1958.

The Appellant's Statement was as follows:-

p.4

- 10 "1. The termination of the services of Mr.
M.T. Marikar Bawa is lawful, rightful,
legal and justified both in fact and in
law.
- "2. The said Mr.M.T. Marikar Bawa had been
guilty of gross insolence, rudeness,
insubordination, disobedience, defiance
of authority and disrespect.
- "3. The said Mr.M.T.Marikar Bawa had been
guilty of gross misconduct and acts
subversive of discipline.
- 20 "4. The conduct of the said Mr.M.T.Marikar
Bawa was inconsistent with the relation-
ship of master and servant and with the
express and implied conditions of
service.
- "5. The Management lost all confidence in
the said Mr.M.T. Marikar Bawa.
- "6. The Respondent" present Appellant
"states that no industrial dispute
exists between the Company and Mr.M.T.
Marikar Bawa.
- 30 "7. The Respondent" present Appellant
"respectfully submits that the Labour
Tribunal to which the alleged matter in
dispute has been referred for settlement
by arbitration has neither the power nor
the jurisdiction to entertain, hear or
determine the said matter referred to it.
- "8. The Company reserves to itself the right
to lead all such evidence, both oral and
documentary, as it may be advised, or as
it may deem necessary".

p.5

<u>Record</u> pp.5-7 p.5	8. The Statement of Mr.M.T.Marikar Bawa (the present 2nd Respondent) was as follows:- "1. He was employed at Messrs. Colombo Apothecaries' Co. Ltd. Colombo as a Senior Assistant in the Outfitting Department in June, 1951, on a monthly salary of Rs.250/- when the Tailoring and Outfitting Department were one unit.	
p.5-6	"2. He also states that in July, 1953, these two Departments had been separated and that he had been put in charge of the Outfitting Department with full control of that Department and being directly responsible to the General Manager and that since that date up to 10th December, 1963, he had functioned in the capacity of manager of the Outfitting Department.	10
p.6 11 1-3	"3. He also states that since May, 1954, he had been paid a monthly allowance of about Rs.200/- in addition to his basic salary which had by then increased by Rs.100/- making a total basic salary of Rs.350/- per month.	20
p.6	"4. He also further states that in June 1955 his basic salary had been increased to Rs.425/- per month with a promise of a further increase of Rs.75/- on 1st June, 1956, provided the trading figures showed an improvement but that this increment of Rs.75/- had been given in January, 1956, instead of in June, 1956, as earlier intimated by the Board of Directors.	30
p.6	"5. He further states that since April, 1957, he had been paid a commission of $2\frac{1}{2}\%$ on the net profit of the Outfitting Department in addition to his basic salary of Rs.500/- which he had then been drawing and also the allowance of about Rs.200/- per month referred to at paragraph 3 above.	40
p.6	"6. He also further states that in July,1958, his basic salary had been increased by a further Rs.100/-, with retrospective	

effect from April, 1958, and (he) had also been placed temporarily in charge of the Tailoring Department as from May, 1958, with an extra allowance of Rs.200/- apart from the Government rate of Dearness Allowance and Special Living Allowance amounting to about Rs.200/- plus 2½% commission.

Record

10 "7. He also states that from 1st April, 1959, the commission of 2½% which he had hitherto drawn had been increased to 5% and his basic salary increased by a further Rs.100/- in May, 1960". p.6

9. The Statement of Mr. M.T. Marikar Bawa (the present 2nd Respondent) continued as follows:-

20 "8. He also further states that in 1961/1962 the Board of Directors had changed and that Mr. Eric C.T. LaBroo had been appointed Managing Director of the said Company. p.6

30 "9. He also states that on the 10th December, 1963, after about an hour's notice he had been transferred to the Furnishing Department as its Manager in the absence on leave of its Manager one Mr. Pitt, and that he had continued to work in the Furnishing Department till 30th March, 1965, when he had been suspended from work by a letter, dated the same day and hand-delivered to him, without any reasons being adduced for such suspension. p.6

"10. He further states that by letter, dated 31st March, 1965, addressed to the Managing Director he had asked for the reasons of such suspension. p.6

"11. He further states:- p.7

40 "(a) that he received no reply to the letter referred to at paragraph 10 above;

"(b) that he had received a letter dated 5th April, 1965, from the Managing

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Director intimating to him that his services had been terminated with effect from 5th April, 1965, on the ground of gross misconduct;

"(c) That he had categorically denied the allegation of gross misconduct."

p.7 10. Concluding his said Statement, Mr.M.T. Marikar Bawa (the present 2nd Respondent) submitted, in paragraphs 12 and 13 thereof, that:-

"(a) no explanation had been called for from him by the Company; 10

"(b) no enquiry of whatever nature had been held prior to the termination of his services;

"(c) he had not been given an opportunity of defending himself; and

"(d) there had been a denial of the principles of natural justice to him".

p.7.11. 19-20 In his respectful submission therefore the termination of his services was "mala fide, unlawful and unjustified". 20

11. In his said Statement, Mr. M.T. Marikar Bawa (the present 2nd Respondent) prayed "that the Arbitrator be pleased to make award -

p.7. 11. 22-27 "(a) reinstating him in employment with payment of his salary from 1st April, 1965, to date of re-instatement or in the alternative,

"(b) granting him by way of relief gratuity and compensation for loss of career in a sum of Rs.200,000/- and such other relief as to the Arbitrator shall seem meet". 30

pp.8,9 12. Further Statements, under Regulation 21(2) of the Industrial Disputes Regulations, 1958, were filed by both the Appellant and the present 2nd Respondent.

In his further Statement, the Appellant stated, inter alia, that (1) the 2nd Respondent was not entitled to the reliefs he had claimed in sub-paragraphs (a) and (b) of the Prayer in his first Statement; and (2) the Arbitrator had no jurisdiction or power to hear or determine the 2nd Respondent's claims or to award him any relief in respect of them.

Record

p.8
11.25-29

10 The 2nd Respondent, on the other hand, submitted that an "industrial dispute", as defined in the Act, did exist as between himself and the Appellant, and that the Labour Tribunal to which the dispute had been referred was empowered and/or had jurisdiction to entertain hear and determine it.

p.9
11.24-32

13. On the 20th June, 1967, the Appellant Company instituted proceedings which have led to the present appeal. It filed a Petition in the Supreme Court praying for a Mandate in the
20 nature of a Writ of Prohibition forbidding the present 5th Respondent from entertaining, hearing or determining proceedings in relation to the said dispute which had been referred to him by this Respondent for settlement by arbitration.

pp.11-15

pp.14-15

Paragraphs 11, 12 and 13 of the said Petition were as follows:-

"11. The Petitioner is advised and states that - p.14

30 "(a) the aforesaid purported revocation" on the 19th April, 1967, by this Respondent of his previous Order, dated the 15th June, 1965, see paragraph 6 hereof "is ex facie invalid as it purports to be a revocation of an Order made under Section 4 (1) of the said Act;

40 "(b) having made the aforesaid Reference, dated 15th June, 1965, the 3rd Respondent has no further powers and that having exercised his powers under Section 4 (1) of the Industrial Disputes Act has exhausted the power given to him by the said Statute and that the 3rd Respondent is not

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entitled in law to make the Second Reference, Dated 19th April, 1967, to the 5th Respondent;

"(c) that the aforesaid References is ex facie invalid;

"(d) in any event the arbitrator has neither the power nor the jurisdiction to deal with the alleged matters in dispute referred to him, viz: 'Whether the termination of the services of Mr.M.T.Marikar Bawa is justified and to what relief he is entitled'.

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p.14

"12. The Petitioner is entitled to a Mandate in the nature of a Writ of Prohibition on the 5th Respondent forbidding him from entertaining, hearing or determining or continuing the proceedings and prohibiting him from continuing to exercise jurisdiction in the said Case No.1 DLT. 2/121/67 and in the matter of the dispute and referred to him by the 3rd Respondent.

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p.14

"13. The 1st, 3rd and 4th Respondents are made parties to this application to give them notice of this application but no costs nor any relief is claimed against them and no act or appearance by them is required before Your Lordships' Court."

p.41, 1.21
to
p.42, 1.9

14. When the Petition came up for hearing in the Supreme Court before a Board of two Judges, Appellant's Counsel submitted that despite the Board's decision in the United Engineering Workers Union v. K.W. Devanayagam (1967) 69 N.L.R. 289, it was still open to him to question the validity of the Act insofar as it authorises a Minister to refer a dispute relating to the termination of the services of a workman for settlement by a Labour Tribunal. The said decision of the Board overruled certain Supreme Court decisions which had been relied on by the present 1st Respondent when he had declined jurisdiction upon the reference of the dispute to him for settlement by arbitration. This

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development, involving as it did constitutional issues, led the Chief Justice of the Supreme Court, in the public interest, to direct that the issues which had arisen in the case should be tried before a Special Bench of Seven Judges.

10 15. During the course of the opening arguments before the Special Bench of Seven Judges in the Supreme Court, Counsel for the present Appellant said that he found it "unnecessary to support his case on the ground that so much of the Industrial Disputes Act which authorises the Minister to refer a dispute relating to the termination of the services of a workman for settlement to a Labour Tribunal was unconstitutional and void." He stated that he intended to support the Application solely on a narrower, but equally important, ground, viz. that the 5th Respondent's lack of jurisdiction arose not from any unconstitutionality in the enabling Act but because the dispute referred to the 5th Respondent was not an "industrial dispute" within the meaning of the Act.

p.42
11.10-21

20 16. By their Judgement, dated the 29th February, 1968, the learned Judges of the Supreme Court, by a majority of four to three (T.S.Fernando, G.P.A.Silva, V.S.Supramaniam and G.T. Samerawickrame JJ. - H.N.G.Fernando C.J., A.W.H. Abeyesundere and V.Tennekoon JJ. dissenting) decided that the Application should be dismissed, with costs payable to the present 2nd and 3rd Respondents.

pp.19-52

30 17. In his Judgement, dismissing the Application, G.T. Samerawickrame J, (with whose reasoning and decision T.S. Fernando J, was in agreement) referred to, but rejected, the argument advanced on behalf of the present Appellant that this Respondent was not empowered by the Act to refer the dispute for settlement by arbitration as it was not a dispute between an employer and workman but between an employer and a former employee whose services had been terminated.

pp.36-40

p.26,11.
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p.36,11-17

40 18. Examining the definitions of "workman" and "industrial dispute" in Section 48 of the Act, the learned Supreme Court Judge (G.T. Samerawickrame J.) referred to the rule of

Annexure

<p><u>Record</u> p.36 11.22-32</p>	<p>interpretation that although the meaning of a term is defined in the interpretation clause of an Act that meaning is not necessarily applicable on every occasion where the particular term is used. He drew attention to the fact that the definition of "workman" in Section 48 of the Act contains the words "and for the purpose of any proceedings under the Act in relation to any industrial dispute, includes any person whose services have been terminated", and continued as follows :-</p>	<p>10</p>
<p>p.36,1.37 to p.37 1.3</p>	<p>"It appears that Sections 2 (1), 3 (1), 4 (1) and 4 (2) of the Act provide that proceedings in respect of an industrial dispute may be initiated or commenced either by the Commissioner or the Minister, in the circumstances and for the purposes set out in those provisions. I am therefore of the view that the words set out above do no more than state in compendious form what may be stated at length by the following:- 'for the purposes of any proceedings that may be initiated or commenced by the Commissioner or by the Minister under Sections 2 (1) or 3 (1) or 4 (1) or 4 (2) of the Act.'</p>	<p>20</p>
<p>p.37, 11.4-11 Annexure</p>	<p>"It follows that for the purposes of proceedings that may be commenced or initiated by the Minister under Section 4 (1) of the Act, a workman includes a person whose services have been terminated. Section 4 (1) of the Act is as follows:-</p> <p style="padding-left: 40px;">'The Minister may, if he is of 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.'</p>	<p>30</p>
<p>p.37 11.12-20</p>	<p>"This provision sets out the first step to be taken in a proceeding in relation to an industrial dispute: it states that the Minister may, if he is of opinion that an industrial dispute is a minor one, refer it by an Order in writing for settlement by arbitration. Accordingly, as for the purposes of such a</p>	<p>40</p>

proceeding, a 'workman' includes a person whose services have been terminated, the Minister should, in forming an opinion whether a dispute is an industrial dispute, consider whether the dispute is between an employer and a workman whose services have been terminated."

Record

- 10 19. On the preservation of industrial peace by legislation, the learned Supreme Court Judge (G.T. Samerawickrame J.), for reasons that he gave, said that there was no ground for assuming that the Legislature in Ceylon was unlikely to make a dispute between an employer and a dismissed employee an industrial dispute or to provide a remedy for it on the ground that it presented no direct threat to industrial peace. The learned Judge pointed out that "the application for relief or redress to Labour Tribunals in respect of the termination of services of a workman provided for by Part IVA of the Act is an application to be made directly by the workman or his Union on his behalf. Examining the provisions of Sections 4, 17 and 31 B(2) (b) of the Act, he expressed the view "that the provision in Section 31 B(2)(b) was made because the Legislature contemplated a workman whose services have been terminated being a party to an industrial dispute which may be referred by the Minister for settlement by arbitration". He stressed his view however that to fall within the Act a dispute should be not merely a theoretical or academic disagreement but a real dispute between an employer and workman or ex-workman and must be connected with the terms of employment; and that a dismissed workman who did not seek reinstatement cannot be said to be personally interested in the terms of employment or to have such an interest in, or duty towards, the workmen who continue in employment that he can be a party to a dispute in respect of their terms of employment within the meaning of the Act even if there is a disagreement between the employer and himself as to the propriety of such terms.
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- p.37,1.21
to
p.38,1.3
pp.37-38

p.38,
11.23-26

p.39
11.4-7

p.39, U,
12-15

p.39
11.15-21

20. In conclusion, the learned Supreme Court Judge (G.T. Samerawickrame J.) said that on behalf of this Respondent it had been submitted that the 2nd Respondent's dismissal should be

Record
p.40.
11.15-41

considered to be in consequence of an "industrial dispute" for the documentary evidence before the Court showed that the 2nd Respondent had been suspended by the Appellant without any reason being assigned for his suspension; that the Appellant had summarily dismissed the 2nd Respondent and had not replied to his request for a statement of the grounds for his suspension; and that any faulty formulation of the dispute when it was referred to arbitration did not afford a sufficient basis for the exercise of the power of the Supreme Court to issue a Writ of Prohibition. The learned Supreme Court Judge said that it was not necessary to come to any decision on these submissions for, on behalf of the 2nd Respondent, Counsel "was content to have the matter decided on the following footing that the dismissal of the employee, the 2nd Respondent, was not consequent upon a prior dispute between the parties." 10 20

p.40
11.27-34

21. G.P.A.Silva J. concurred. In a separate Judgment he expressed views to the following effect:-

p.28,
11.26-33

(A) The sole object of the Act is the promotion and maintenance of industrial peace. It is reasonable to assume that the definition of "industrial dispute" in the Act is, and was intended to be, wide enough to include every serious problem that can arise between an employer and an employee in relation to the employment. In this connection it should be remembered that the Act deals specifically with termination of employment - which "is the most serious matter that can affect the relations between an employer and employee." 30

p.28, U.
38-42

p.29
11.4-9

(B) A sagacious and prudent Minister, having all the data before him would probably be in the best position to judge whether the termination of the services of a particular workman is, or is not, of such a nature as to be likely to lead to industrial unrest and whether or not the circumstances were such as to set in motion the machinery contemplated in Section 4 of the Act. 40

(C) In interpreting any Section of the Act it is necessary to appreciate the scheme of the Act as a whole.

Record
p.29
11.10-13

"The words 'that any industrial dispute is apprehended' in Section 2 (1) and similar words in Section 3 (1) 'where he apprehends an industrial dispute' have a very important significance in considering the present question". Under the said Sections the Commissioner of Labour "would be the final arbiter as to whether there is such an apprehension or not and that apprehension may well be based on the dismissal of one workman. Where such an apprehension is entertained, therefore, the dispute which he will have to refer for settlement or endeavour to settle by conciliation will be the dispute as to the dismissal and no other. The only basis on which this dispute can be called an industrial dispute over which alone the Commissioner can exercise his power under Section 3 is in terms of the last limb of the definition of 'workman' which includes a person whose services have been terminated, read together, of course, with the definition of 'industrial dispute'."

p.29
1.26

p.29
11.31-41

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22. Further views of the learned Supreme Court Judge (G.P.A. Silva J.) were as follows:-

(D) A "dispute" reaches ministerial level only upon the Commissioner's failure to settle it. In both Sections 3 and 4 of the Act, the Legislature intended to give the same meaning to the words "industrial dispute". When a matter reaches the Minister he considers it only for the purposes of Section 4 in relation to the dispute. He must satisfy himself first that there is an "industrial dispute" and, if so, for the purposes of exercising his powers under Sub-section (1), he forms an opinion as to whether or not it is a minor dispute. In the instant case he would be fully justified in deciding that there is an "industrial dispute" by reference to the

p.30
11.3-34

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definition of "industrial dispute" read with the definition of "workman" which includes, for the purpose of any proceedings under the Act in relation to an industrial dispute, a person whose services have been terminated. In the learned Judge's view, it would be "an unwarranted restriction of the meaning of this definition to hold that the Minister should first consider whether an industrial dispute in terms of the definition exists independently of the purpose for which he is indulging in such consideration he has necessarily to consider the meaning of the words, having the purpose of that consideration in the forefront, namely, to take proceedings under Section 4. Else there is no occasion for him to consider whether there is an industrial dispute or not".

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p.30,1.35
to
p.31,1.9

(E) In several Sections of the Act the reference was to a workman in the employer's service and in these Sections the concept of a "discontinued workman" would be inapplicable. A definition had therefore to be evolved where a workman whose services had been terminated before any relevant question arose, had to be excluded.

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"At the same time the Legislature was anxious to empower the Minister to exercise powers under Section 4 in regard to a dispute of such a person whenever the dispute was one which threatened industrial peace. The definition was I think the outcome of these two considerations and there is no justification in my view to impose any limitation on this definition. Indeed such a limitation would defeat the very object that the definition was intended to achieve and would deprive a dismissed worker of the possibility of availing himself of a right which the legislature conferred on him."

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23. Other views of the learned Supreme Court Judge (G.P.A. Silva J.), in accordance with those of the majority of the Special Bench, were as follows:-

10 (F) A dismissed workman with a legitimate grievance was not necessarily restricted to the provisions of Part IVA of the Act and to seeking redress before a Labour Tribunal. Certain considerations could persuade a Minister in possession of all the relevant material to take proceedings under Section 4 even where the dismissed workman could independently have recourse to a Labour Tribunal. Nothing in Part IVA suggests that individual grievances relating to termination of services should be exclusively dealt with by Labour Tribunals nor is there any earlier provision of the Act which excludes such grievances from the purview of industrial disputes regarding which the Minister is empowered to take certain proceedings.

Record
p.31,
11.10-28

20 (G) If it was the Legislature's intention that a dispute which arises upon a workman's dismissal and which is not taken up by a Trade Union should be cognizable only by a Labour Tribunal established under Part IVA, then Section 33 (1) (b) or (c) and (3), (5) and (6) all of which make pointed reference to dismissal and reinstatement of a workman would cease to have any meaning in the context in which they occur. The unescapable conclusion is that the Minister's reference in this case was lawful.

p.31,
11.29-41

30 24. Siva Supramaniam J. was also in agreement with the views of the majority of the Special Bench. Delivering a separate Judgement, he expressed his views to the following effect:-

40 (A) The 1962 amendment of the Act enlarging the definition of "industrial dispute" by the express addition of the words "any dispute or difference between an employee and a workman" clearly indicated the legislature's intention (which should, where possible, be given effect to) to make the machinery available to an individual workman in addition to the remedy provided under Part IVA of the Act.

p.32
11.12-28

Record
p.32,1.38
to
p.33,1.18

(B) The 1957 amendment of the Act by adding, to the definition of "workman", the words "and for the purpose of any proceedings under the Act in relation to any industrial dispute includes any person whose services have been terminated" made it clear that a person (other than a casual employee) who had ceased to be in the employment of his employer was, nevertheless, a "workman" for the purpose of the Act and could have been a party to an "industrial dispute". 10

p.34,
11.6-28

(C) In any event the dispute in the instant case arose when an employer and workman relationship subsisted between the present Appellant and the 2nd Respondent. Where the propriety of a summary dismissal is questioned by a workman, the dispute or difference arises at least contemporaneously with the communication of the order of dismissal. The fact that when the Minister's Order under Section 4 (1) of the Act was made the employer and workman relationship had ceased to exist cannot affect his power to make an Order in respect of the "industrial dispute" which had already arisen. 20

25. H.N.G. Fernando C.J., Abeyesundere and Tennekoon JJ. dissented from the reasoning and decision of the majority of the Special Bench. Each delivered a separate Judgement. 30

pp.20-25,
41-52

The views of the learned Chief Justice and Tennekoon J. (with whose reasoning the learned Chief Justice was in agreement) were to the following effect:-

p.52
11.16-25

(A) At the time when the present dispute arose the relationship between the Appellant and 2nd Respondent was, having regard to the definition of "industrial dispute" in the Act, not that of employer and workman but of an ex-employer and ex-workman. If the said definition is read with the first two limbs of the definition of "workman", it is clear that a dispute between an 40

p.21
11.32-40
p.22,
11.24-29

employer and his dismissed workman cannot be an "industrial dispute".

Record

- 10 (B) The definition of "workman" has three limbs: (a) any person who has entered into, or works, under a contract with an employee in any capacity, postulating a subsisting contract of service; (b) any person ordinarily employed under such contract whether he is, or is not, in employment at any particular time; and (c) for the purpose of proceedings under the Act in relation to an industrial dispute, any person whose services have been terminated.
- 20 (C) The third limb (c) of the said definition cannot have the effect of giving to the word "workman", where it occurs in the definition of "industrial dispute", the meaning "ex-workman" or "dismissed workman".
- (D) The Minister cannot take any action in relation to a dispute which is not within the statutory definition of the words "industrial dispute".
- 30 (E) In the instant case there were no "proceedings under the Act" at any stage before the Minister made a reference under Section 4 of the Act. A proceeding under the Act can only come into existence after the reference under Section 4 is made, and the third limb of the definition of "workman" can operate only in respect of such a proceeding.
- 40 (F) For the purposes of this case the definitions in the Act of "industrial dispute" and "workman" must be read together. But the third limb of the latter definition (unlike its first two limbs) only assigns a third meaning to "workman" for the purposes of any proceedings in relation to any "industrial dispute", and thus presupposes the existence of an industrial dispute.

p.44,
11.4-16

p.44,
11.24-28

p.22,
11.9-41

p.23,
11.1-8

p.23,
11.10-14

p.23.1.42
to
p.24.1.5

Record

26. Further views of the learned Chief Justice and Tennekoon J. were to the following effect:-

p.47,1.12.
to
p.48,1.41

(G) The purpose and object of the Act is the maintenance and promotion of industrial peace and not the redress of private and personal grievances. In the definition of "industrial dispute" the emphasis is not on the denial or infringement of a right of a workman by his employer but on the existence of a dispute between given parties connected with the rights not merely of a party to the dispute but also of third parties. The reliefs contemplated are not mere redress of individual wrongs - the proceedings in relation to an industrial dispute are concerned with the settlement of the dispute and the avoidance of a disturbance of industrial peace.

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p.47,
11.38-41

The words "employer" and workman" in the definition of "industrial dispute" should receive a limitation in their meaning from the context which limited meaning would still be within the definitions of both words. The expression "a dispute or difference between an employer and a workman" means only a dispute or difference between an employer and one of his workmen and not between an employer and any person who is a prospective or discharged employee of his or a person who is a workman under some other employer.

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p.48,11.1-6,
36-41

(H) In the instant case, the statement of the matter in dispute, namely, "Whether the termination of the services of the 2nd Respondent was justified" does not indicate that there was any prior industrial dispute.

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p.24,U.
24-27

(I) The machinery of settlement by arbitration is not available in the case of a dispute between an employer and an individual workman whose services are terminated before the dispute arises - a conclusion which means that in the instant case, there is not now

40

p.25,11.20
-25.

available to the employee (the present 2nd Respondent) the remedy provided in Part IVA of the Act.

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10 (J) Section 47C of the Act supports the submission made on behalf of the present Appellant that "a dispute connected with the termination of services can be referred to an Industrial Court or a Labour Tribunal for settlement only if the dispute arose while the relationship of employer and workman subsisted; and on the principle inclusio unius exclusio alterius a dispute on such a matter which arises between an ex-employer and an ex-workman after the employer - workman relationship has ceased to exist is not an industrial dispute within the meaning of the Act".

p.50,1.11
to
p.51,1.11

20 27. Abeyesundere J., who also dissented from the views of the majority of the Special Bench, appears to have been in general agreement with the views of H.N.G. Fernando C.J. and Tennekoon J.

pp.26-28

The learned Supreme Court Judge referred to, and accepted, the argument (advanced on behalf of the present Appellant) as to the third limb of the definition of "workman" in the Act. He said:-

30 "With regard to the third part of the definition of 'workman' on the Act, Mr. Perera's submission was that it was necessary as awards and other proceedings under the Act in relation to an industrial dispute were sometimes required to apply to persons whose services had been terminated. Mr. Perera also examined the question whether the third part of the definition of 'workman' in the Act applied to the 2nd Respondent. He submitted that the consideration by the 3rd Respondent whether the dispute between the 2nd Respondent and the
40 Petitioner was an industrial dispute was not a proceeding under the Act in relation to an industrial dispute as there should first be an industrial dispute before any proceeding in relation thereto under the Act could arise and

p.27,1.21
to
p.28,1.3

Record

that therefore the third part of the definition of 'workman' in the Act could not be relied on to determine the question whether the dispute between the 2nd Respondent and the Petitioner was an industrial dispute. I agree with Mr. Perera that such question must be determined without having regard to the third part of the definition of 'workman' in the Act Mr. Perera's interpretationdoes not have the effect of making any part of that definition 10
redundant. I accept Mr. Perera's interpretation. The dispute between the 2nd Respondent and the Petitioner is not an industrial dispute within the meaning of the Act because the parties to it are not competent under the Act to be parties to an industrial dispute as, at the time when the dispute arose, the 2nd Respondent had ceased to be a workman of the Petitioner and also the Petitioner had ceased to be the 2nd Respondent's 20
employer."

pp. 52-53

28. A Decree in accordance with the Judgment of the majority of the Special Bench (T.S. Fernando, G.A.P. Silva, Siva Supramaniam and G.T. Samerawickrame JJ. - H.N.G. Fernando C.J., Abeyesundere J. and V.Tennekoon JJ. dissenting) dismissing the Appellant's Application was drawn up on the 29th February, 1968, and against the said Judgement and Decree the Appellant Company applied for leave to appeal to Her Majesty in Council which, by Orders of the Supreme Court, 30
dated the 22nd May, 1968, and the 15th July, 1968, was granted.

29. Subsequent to the said grant of leave to appeal to Her Majesty in Council, in furtherance of which this appeal is before the Board, the Legislature in Ceylon enacted, on the 4th September, 1968, the Industrial Disputes (Special Provisions) Act No.37 of 1968 and, on the 12th October, 1968, the Industrial Disputes (Amendment) Act, No.39 of 1968. 40

The long title of the earlier of these two Acts (No.37 of 1968) runs as follows:-

"An Act to provide for the removal of certain difficulties in the settlement of industrial disputes and other matters under

the Industrial Disputes Act which have arisen in consequence of decisions made by the Supreme Court and decisions made on appeal to Her Majesty in Council, and to provide for matters connected therewith or incidental thereto."

10 The Act is concerned mainly with the validation of appointments of Presidents of Labour Tribunals, and consequential provisions as to applications which had been rejected or dismissed, the constitution of, and references to, Industrial Court panels, and included, inter alia, special provisions relating to certain relevant Supreme Court decisions in respect of Orders of Labour Tribunals and Awards of Arbitrators, Labour Tribunals and Industrial Courts.

20 30. The Industrial Disputes (Amendment) Act, No.39 of 1968, which followed, amended several provisions of the principal Act relevant to this appeal. Among the said amendments was the following amendment to Section 48 of the principal Act contained in Part II, Section 1 of the Schedule to the said amending Act:-

30 "1. Section 48 of the principal Act is hereby amended in the definition of 'workman' by the substitution, for the words 'and, for the purposes of any proceedings under this Act in relation to any industrial dispute includes any person whose services have been terminated', of the words 'and includes any person whose services have been terminated.'"

By Section 2 (b) of the amending Act (No.39 of 1968) the above amendment to Section 48 of the principal Act was to be deemed, for all purposes, to have come into operation on December 30, 1957.

40 In this Respondent's respectful submission the effect of these amendments is to make it clear beyond any reasonable doubt, that, whatever the position was before, the 2nd Respondent must now be regarded as having at all material times been a "workman" who was engaged in an industrial dispute with the Appellant which

Record

dispute this Respondent had lawfully and properly referred to the 5th Respondent for settlement by arbitration.

This Respondent respectfully submits that the appeal should be dismissed, with costs, for the following among other

R E A S O N S

1. BECAUSE the dispute between the Appellant and the 2nd Respondent is an "industrial dispute" within the meaning of the Industrial Disputes Act (C.131) which this Respondent was empowered by the said Act to refer for settlement by arbitration. 10

2. BECAUSE for the various reasons stated therein the Judgments of the learned Judges of the Supreme Court who were in a majority on the Special Bench are correct and ought not to be disturbed.

3. BECAUSE in any event the effect of the amending legislation - the Industrial Disputes (Special Provisions) Act, No.37 of 1968 and the Industrial Disputes (Amendment) Act No.39 of 1963 - is to make academic any decision on the points that arise on this appeal. 20

E.F.N. GRATIAEN

R.K. HANDOO

Annexure

THE INDUSTRIAL DISPUTES ACT

(C.131)

An Act to provide for the Prevention, Investigation and Settlement of Industrial Disputes and for matters connected therewith or incidental thereto.

PART II

10 Functions of the Commissioner And
Circumstances In Which Industrial Disputes
Will Be Referred For Settlement By Conciliation
Or By Arbitration Or By Adjudication Or By An
Industrial Court.

20 2. (1) Where upon notice given to him or
otherwise, the Commissioner is satisfied that
any industrial dispute exists or is
apprehended, it shall be the function of the
Commissioner to make such inquiries into the
matters in dispute, and to take such other
steps, as he may think necessary with a view
to promoting a settlement of the dispute,
whether by means referred to in this Act or
otherwise

Functions
of
Commissioner
in regard
to
industrial
disputes.

3. (1) Where the Commissioner is satisfied
that an industrial dispute exists in any
industry or where he apprehends an industrial
dispute in any industry, he may -

Powers of
Commissioner
in regard
to
industrial
disputes.

30 (a) if arrangements for the settlement of
disputes in that industry have been made
in pursuance of any agreement between
organizations representative respectively
of employers and workmen engaged in that
industry, cause the industrial dispute
to be referred for settlement by means of
such arrangements, or

(b) endeavour to settle the industrial
dispute by conciliation, or

(c) refer the industrial dispute to an

authorized officer for settlement by conciliation, or

- (d) if the parties to the industrial dispute or their representatives consent, refer that dispute, by an order in writing, for settlement by arbitration to an arbitrator or a body of arbitrators nominated jointly by such parties or representatives, or, in the absence of such nomination, to an arbitrator appointed by the Commissioner or to a Labour Tribunal. 10

Powers of Minister in regard to industrial disputes.

4. (1) 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.

(2) The Minister may, by an Order in writing, refer any industrial dispute to an Industrial Court for settlement. 20

Duties and powers of Arbitrator

17. (1) 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. 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. 30

(2) Reference shall be made in every award of an arbitrator to the parties and trade unions to which, and the employers and workmen to whom, such award relates.

Establishment and Constitution of Labour Tribunals

PART IVA

Labour Tribunals

31A (1) There shall be established for the 40

purposes of this Act such number of Labour Tribunals as the Minister shall determine. Each Labour Tribunal shall consist of one person.

(2) Regulations may be made presenting the manner in which applications under Section 31B may be made to a Labour Tribunal.

10 31B (1) A workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to a Labour Tribunal for relief or redress in respect of any of the following matters:-

Applica-
tions to a
Labour
Tribunal

(a) the termination of his services by his employer

.....

(2) A Labour Tribunal shall -

20 (a) where it is satisfied after such inquiries as it may deem necessary that the matter to which an application under Sub-section (1) of this Section relates is under discussion with the employer of the workman to whom that application relates by a trade union of which that workman is a member, make Order suspending its proceedings upon that application until the conclusion of that discussion, and upon such conclusion shall resume the proceedings upon that application, and, if a settlement is reached in the course of that discussion, shall make Order according to the terms of such settlement, and -

30
40 (b) where it is so satisfied that such matter constitutes, or forms part of, an industrial dispute referred by the Minister under Section 4 for settlement by arbitration to an arbitrator, or for settlement to an Industrial Court, make Order dismissing the application without prejudice to the rights of the

parties in the industrial dispute.

PART VI

General

The terms
of an
Award or
Order of
a Labour
Tribunal

33. (1) Without prejudice to the generality of the matters that may be specified in any Award under this Act or in any Order of a Labour Tribunal, such Award or Such Order may contain decisions

(a) as to wages and all other conditions of service,..... 10

(b) as to the reinstatement in service, or the discontinuance from service, of any workman whose dismissal or continuance in employment is a matter in dispute, or who was dismissed or ceased to be in service at the commencement or in the course of any strike or lockout arising out of the industrial dispute;

(c) as to the extent to which the period of absence from duty of any workmen, whom the Arbitrator, Industrial Court or Labour Tribunal has decided should be reinstated, shall be taken into account or disregarded for the purposes of his rights to any pension, gratuity or retiring allowance or to any benefit under any provident scheme; 20

(d) as to the payment by any employer of compensation to any workman, the amount of such compensation or the method of computing such amount, and the time within which such compensation shall be paid. 30

(2)

(3) Where any Award, or Order of a Labour Tribunal contains a decision under paragraph (b) of Sub-section (1) as to the reinstatement in 40

service of any workman in any employment, then if the employment is in the capacity of personal secretary, personal clerk, personal attendant or chauffeur, to the employer, or of domestic servant, or in any other prescribed capacity of a description similar to those hereinbefore mentioned, the Award, or Order of a Labour Tribunal shall also contain a decision, under paragraph (d) of that Sub-section, as to the payment of compensation to the workman as an alternative to his reinstatement.



(5) Where the Arbitrator, Industrial Court or Labour Tribunal considers that a decision should be made, under paragraph (b) of Sub-section (1), for the reinstatement in service of any workman, if the workman so requests, the Arbitrator, Industrial Court or Labour Tribunal may, in lieu of making that decision, make a decision, under paragraph (d) of that Sub-section, for the payment of compensation to that workman; and in any such case, the provisions of Sub-section (2) shall apply as though the decision were for the payment of compensation as an alternative to reinstatement.

(6) The provisions of Sub-sections (3) and (5) shall not be construed to limit the power of the Industrial Court or a Labour Tribunal or an Arbitrator under paragraph (d) of Sub-section (1), to include an Award or Order a decision as to the payment of compensation as an alternative to reinstatement in any case when the Court, Tribunal or Arbitrator thinks fit so to do.

47C. Notwithstanding that any person concerned as an employer in any industrial dispute has ceased to be such employer -

(a) such dispute may be referred for settlement to an Industrial Court for settlement by arbitration to an Arbitrator or for settlement by adjudication to a Labour Tribunal and proceedings on such

Provisions relating to industrial disputes in which the employers concerned have ceased to be such employees.

reference may be taken by such Court or Arbitrator,

(b) if such dispute was so referred for settlement while such person was such employer, proceedings on such reference may be commenced or continued and concluded by the Industrial Court or Arbitrator or Tribunal to which or whom such reference was made, and

(c) in any Award made by such Court or Arbitrator or Tribunal such person may be ordered to pay to any other person concerned in such dispute as a workman employed by the first-mentioned person while he was such employer any sum whether as wages in respect of any period during which such other person was employed by the first-mentioned person or as compensation as an alternative to the reinstatement of such other person, and such Order may be enforced against the first-mentioned person in like manner as if he were such employer.

48.

.....
"employer" means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation or trade union) and any person who on behalf of any other person employs any workman.

.....
"industrial dispute" means any dispute or difference between an employer and 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 re-instatement of the services, or the re-instatement in service, of any person, and for the purposes of this definition "workmen" includes a trade union consisting of workmen

10

"workman" means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour, and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time, and, for the purposes of any proceedings under this Act in relation to any industrial dispute includes any person whose services have been terminated.

No. 8 of 1969

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N

THE COLOMBO APOTHECARIES
COMPANY LTD. (Petitioner)

Appellant

- and -

1. E.A. WIJESOORIYA (Arbitrator)
 2. M.T. MARIKAR BAWA
 3. HON. M. HANIFFA MOHAMED
(Minister of Labour, Employment
and Housing)
 4. N.L. ABEYWIRA (Commissioner
of Labour)
 5. W.E.M. ABEYSEKERA
(President, Labour
Tribunal II)
- (Respondents)
Respondents

CASE FOR THE THIRD RESPONDENT

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.