

SC.Appeal No.137/2010

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

SC.Appeal No.137/2010

In the matter of an application for an Order in the nature of a Writ of Certiorari under Article 140 of the Constitution.

International Dresses (Private) Limited,
No.27, Angulana Station Road,
Angulana,
Moratuwa.

Petitioner

Vs.

1. W.D.J.Seneviratne,
Minister of Power and Energy,
(Formerly Minister of Labour)
493/1, T.B.Jayah Mawatha,
Colombo 10.
2. Athauda Seneviratne,
Minister of Labour,
Labour Secretariat,
Narahenpita,
Colombo 5.

SC.Appeal No.137/2010

3. Secretary,
Ministry of Labour,
Labour Secretariat,
Narahenpita,
Colombo 5.
4. Commissioner of Labour,
Labour Secretariat,
Narahenpita,
Colombo 5.
5. T. Piyasoma,
No.77, Pannipitiya Road,
Battaramulla.
6. S.R.Karunatillake,
No.455, Chandrawanka Road,
Pallimulla,
Panadura.
7. M.H.Cyril,
No.3/1, U.C.Quarters,
Katubedda,
Moratuwa.
8. Sudath Dissanayake,
No.176, D.S.Wijesinghe Mawatha,
(Mola Road) Katubedda,
Moratuwa.

SC.Appeal No.137/2010

9. W.Hethuka Prabath Fernando,
No.351/5, , Station Road,
Angulana,
Moratuwa.
10. W.G.Wimalaratne,
No.7/3, Kanagaratne Place,
Laxapathiya,
Moratuwa.
11. P.H.L, A.De Silva
No.99, Dawatagahawatta,
Halpita,
Polgasowita.
12. W.Chandrasiri
No.52, Kandawala Road
Ratmalana.
13. Shelton Senaratne
No. 147/5, Station Road,
Angulana, Moratuwa.
14. A.D.Sunil Ranjith
No.188/B, Jayanthi Road,
Hapugoda, Kandana.
15. Shaul Hameed,
No.33/6, Station Road,
Angulana, Moratuwa.

SC.Appeal No.137/2010

16. H.K.Sanath, Jayaratne,
No.35, Arthur's Place,
Kaldemulla, Moratuwa.
17. H.T.H.Fernando
No.89,Galle Road,
Sarikkamulla, Moratuwa.
18. G.H Ranjith De Silva,
No.275, Galle Road, Dodanduwa.
19. H. Wasantha,
No. 188/2, Na Uyana,
Waskaduwa, Maha Waskaduwa.
20. R.K. Siripla,
Udukumbura, Ahangama,
21. T.G.Sarath Wickramaratne,
No.84/7 De Mel Road,
Laxapathiya, Moratuwa,
22. A.B.A.Sampath De Silva,
No.68, Rajamahavihara Road,
Pitakotte.
23. K.L.Rohana Perera,
No.6, Church Road,
Angulana, Moratuwa.

SC.Appeal No.137/2010

24. K.M.Ariyaratne,
No.5, Arthur's Place,
Angulana., Moratuwa.
25. Rohana Pushpakumara,
No.204, Sunil Villa,
Mahajana Mawatha,
Angulana, Moratuwa.
26. Ravindra Kumara Rossiro,
No.41, Uggalawatta,
Bandaragama.
27. All Ceylon Commercial and
Industrial Workers Union, No.457,
Dr. Colvin R. De Silva Mawatha,
Colombo 2.

Respondents

AND NOW

CA Application No.414/2007
SC (Spl.LA)No.142/2010
SC.Appeal No.137/2010

In the matter of an Appeal after the grant
of Special Leave to Appeal in terms
of Article 128(2)of of the Constitution of
the Democratic Socialist Republic of
Sri Lanka

International Dresses (Private) Limited,
No.27, Angulana Station Road,
Angulana,
Moratuwa.

Petitioner-Appellant

SC.Appeal No.137/2010

Vs.

1. W.D.J.Seneviratne,
Minister of Power and Energy,
Formerly Minister of Labour)
493/1, T.B.Jayah Mawatha,
Colombo 10.
2. Athauda Seneviratne,
Minister of Justice,
(Formerly Minister of Labour),

Ministry of Justice,

Colombo 12.
- 2A. Minister of Labour
Labour Secretariat,
Narahenpita,
Colombo 5.
3. Secretary,
Ministry of Labour,
Labour Secretariat,
Narahenpita,
Colombo 5.
4. Commissioner of Labour,
Labour Secretariat,
Narahenpita,
Colombo 5.

SC.Appeal No.137/2010

5. T. Piyasoma,
No.77, Pannipitiya Road,
Battaramulla.
6. S.R.Karunatilake,
No.455, Chandrawanka Road,
Pallimulla,
Panadura.
7. M.H.Cyril,
No.3/1, U.C.Quarters,
Katubedda, Moratuwa.
8. Sudath Dissanayake,
No.176, D.S.Wijesinghe Mawatha,
(Mala Road) Katubedda,
Moratuwa.
9. W.Hethuka Prabath Fernando,
No.361/5, , Station Road,
Angulana,Moratuwa.
10. W.G.Wimalaratne,
No.7/3, Kanagaratne Place,
Laxapathiya,
Moratuwa.
11. P.H.L, A. De Silva
No.99, Dawatagahawatta,
Halpita,Polgasowita.

SC.Appeal No.137/2010

12. W.Chandrasiri
No.52, Kandawala Road
Ratmalana.
13. Shelton Senaratne
No. 147/5, Station Road,
Angulana, Moratuwa.
14. A.D.Sunil Ranjith
No.188/B, Jayanthi Road,
Hapugoda, Kandana.
15. Shaul Hameed,
No.33/6, Station Road,
Angulana, Moratuwa.
16. H.K. Sanath Jayaratne,
No.35, Arthur's Place,
Kaldemulla, Moratuwa.
17. H.T.H.Fernando
No.89,Galle Road,
Sarikkamulla,
Moratuwa.
18. G.H Ranjith De Silva,
No.275, Galle Road, Dodanduwa.
19. H. Wasantha,
No. 188/2, Na Uyana,
Waskaduwa, Maha Waskaduwa.

SC.Appeal No.137/2010

20. R.K. Siripla,
Udukumbura, Ahangama,
21. T.G.Sarath Wickramaratne,
No.84/7 De Mel Road,
Laxapathiya, Moratuwa,
22. A.B.A.Sampath De Silva,
No.68, Rajamahavihara Road,
Pitakotte.
23. K.L.Rohana Perera,
No.6, Church Road,
Angulana,
Moratuwa.
24. K.M.Ariyaratne,
No.5, Arthur's Place,
Angulana.,
Moratuwa.
25. Rohana Pushpakumara,
No.204, Sunil Villa,
Mahajana Mawatha,
Angulana,
Moratuwa.
26. Ravindra Kumara Rossiro,
No.41, Uggalawatta,
Bandaragama.

SC.Appeal No.137/2010

27. All Ceylon Commercial and Industrial Workers Union, No.457,
Dr. Colvin R. De Silva Mawatha,
Colombo 2.

Respondents-Respondents

Before : **Hon. S. Tilakawardane, J.**

Hon. S.I.Imam, J.

Hon. P. Dep, PC, J.

Counsel : S.L.Gunasekera with Maithri Wickramasinghe instructed by Paul Ratnayake Associates for the Petitioner-Appellant.

Canishka G. Witharanana with Ms. Medha N. Gamage for the 6th to 26th Respondents-Respondents.

Argued on : 04.08.2011.

Written Submissions of the Petitioner-Appellant

tendered on: 18.11.2010 and 03.10.2011.

Decided on : 20.02.2013.

S.I.Imam, J.

The Petitioner-Appellant (henceforth sometimes referred to as the “Appellant”) sought a Mandate in the nature of a Writ of Certiorari and thereby sought to quash the Award made by the Arbitrator the 5th Respondent-Respondent dated 10.01.2007 made under Section 18(1) of the Industrial Disputes Act in the Court of Appeal. The 1st Respondent-Respondent appointed the Arbitrator under Section 4(1)

SC.Appeal No.137/2010

of the Industrial Disputes Act. The Petitioner contended in the Court of Appeal that the main basis for such an application was that the aforesaid Award was made by the Arbitrator without arriving at a Judicial determination of the facts upon an analysis of all the evidence adduced which was in breach of Section 17 of the Industrial Disputes Act. The 5th Respondent-Respondent in his Award held that the termination of services of the 6th to 20th Respondents was unfair; that the services of the 21st to 26th Respondents had been terminated unjustly, and directed that the 6th to 26th Respondents be **re-instated in service** together with **back wages** on 10.01.2007. The Arbitrator further directed that the heir of T.M.Karunadasa who died during the Arbitration be paid the benefits due to Karunadasa. On being aggrieved by the Award the Petitioner made an application by Writ of Certiorari to the Court of Appeal having sought to quash the Award which according to the Petitioner was Irrational and Ultra Vires the powers of the 5th Respondent. The Court of Appeal however **affirmed** the aforesaid **Award** on 28.06.2010 having dismissed the **Petitioners application**. It was also held in the **Award** that “.....the Arbitrator in considering the Evidence has observed that it appears that the parties have presented facts after exaggerating them in their favour”. The Petitioner averred in the Court of Appeal that the Arbitrator (5th Respondent) **failed to**

SC.Appeal No.137/2010

consider whether the Petitioner should be given the **option** of paying the Workmen **Compensation** in lieu of Re-instatement.

On 07.10.2010 on Counsel for both the Petitioner and the Respondents being heard, this Court granted **Special Leave to Appeal** from the Judgment of the **Court of Appeal** dated **28.06.2010** from the questions set out in paragraph 31(b),(c) and (f) of the Petition dated 06.08.2010. Paragraphs (b),(c) and (f) read as follows.

31(b) Whether an observation by an Arbitration in an Award made upon a reference to Arbitration under Section 4(1) of the Industrial Disputes Act that the parties had presented facts after exaggerating them is sufficient to establish that the findings of the Arbitrator relate to and are supported by the evidence?

31(c) Whether the Court of Appeal erred in Law in failing to conclude that the said Award was irrational and/or contained Errors of Law on the face of the record by reason of the 5th Respondent failing to consider whether the Petitioner should be granted the option of paying the Workmen Compensation in lieu of Re-instatement and ordering Re-instatement without giving the Petitioner that option in the facts and circumstances of this Arbitration?

SC.Appeal No.137/2010

31(f) Whether the Court of Appeal erred in Law in failing to conclude that the 5th Respondent Arbitrator had failed to duly consider the Evidence before making an order?

The Petitioner (henceforth referred to as the “Appellant” in the Petition dated 06.08.2010 besides having sought

(a) **Special Leave to Appeal** from the Judgment of the Court of Appeal dated **28.06.2010** which was **granted** on **07.10.2010** by this Court, also sought to

(b) Set aside the aforesaid Judgment of the Court of Appeal dated 28.06.2010.

(c) Grant and issue an Order in the nature of **Writ of Certiorari** quashing the **Award** of the **5th Respondent** dated 10.01.2007 published in Gazette Extra Ordinary No.21/1487 dated 07.03.2008.

(d) Make order for costs; and

(e) Grant such other and further relief as to this Court shall seem meet to the Petitioner.

The Appellant in the statement before the Arbitrator claimed that the 13th Respondent-Respondent was suspended from service by initially having sent letter dated 24.04.1999(R2) having averred that the

SC.Appeal No.137/2010

13th Respondent on 23.04.99 entered the office of the Company Accountant at about 4 pm after liquor, shouted at the Executive Officers in obscene language, prevented the work in the Office from running smoothly and thus created a state of unrest. The 13th Respondent-Respondent by letter R2 was asked to show cause why Disciplinary action should not be taken against him. Consequent to the issue of R2 the **6th to 12th** and **14th to 20th Respondents** together with a number of other Employees stormed into the **main office** of the Factory and while behaving violently hurled abusive words at some Senior Executive Officers inclusive of the General Manager, Personnel Manager and aggressively sought that the letter of suspension served on the 13th Respondent-Respondent be immediately withdrawn. The Appellant contended that the aforesaid Employees allegedly caused pain of mind to the other Senior Executive Officers by threatening to cause physical harm to them, and having displayed aggression, obstructed the normal production from the Factory, which caused the work of the Factory to come to a halt.

The Appellant claimed that it was under the aforesaid circumstances that the services of the 6th to 12th and 14th to 20th Respondents were **suspended** from **27.04.1999**. Consequently the aforementioned Workmen allegedly **gathered outside** the Factory premises and prevented the majority of other Workmen from reporting to

SC.Appeal No.137/2010

work. It was submitted by the Appellant that a purported strike was averted on 19.5.1999 by the Mediation of the Commissioner of Labour (4th Respondent) with the Workmen having compromised to resume work on **28.05.1999**, and the suspended 14 Workmen having **agreed** to be subjected to **Disciplinary Proceedings** by the Appellant. Subsequently a formal **Charge Sheet dated 04.06.1999** was served on the 13th Respondent-Respondent, and identical **Charge Sheets** dated **07.06.1999** were served on the **6th to 12th** and **14th to 20th Respondents-Respondents**, the Charge Sheets having contained **Charges of Misconduct**. Two formal **Disciplinary Inquiries** were held into the charges against the 13th Respondent-Respondent, and **6th to 12th** and the **14th to 20th** Respondents-Respondents respectively by Mr. F.N.De Silva, Retired President of the Labour Tribunal, and the services of the **Workmen** found **guilty** were **terminated**. The **22nd to 26th Respondents-Respondents** having **failed** to report **for work** on **28.05.1999** were treated as having **vacated** their **employment**. The **21st Respondent-Respondent** too **failed to report for work** on **28.05.1999** without any intimation to the Appellant, and hence was treated as having **vacated** his **post**.

The 6th to 27th Respondents in their Statement before the Arbitrator (5th Respondent) was that the 27th Respondent Union having formed a **Branch** at the Appellant's Factory which comprised of over 40%

SC.Appeal No.137/2010

of the Appellants Workmen had intimated to the Appellant thereof by letter dated 09.03.99 which received no reply from the Appellant. The Assistant Commissioner of Labour fixed a Discussion for **28.04.99** on representations pertaining to this matter being brought to the Notice of the Labour Department. The aforesaid Respondents contended that the 6th, 7th, 8th, 10th, 14th, 17th and 26th Respondents on 23.04.99 (A4) requested through the Branch Union to partake in the aforesaid discussion on 28.04.99. As the 7 Workmen had been suspended on 27.04.99, the members of the 27th Respondent-Respondent Union commenced a **strike** postulating the **Re-Instatement** of the aforesaid Workmen. The Respondents claim that the Appellant did not **honour** the **Agreement** with the Commissioner of Labour (R47). The Respondents claimed that the Award of the Arbitrator was **not challenged** on the ground of the wrongful manner in which the Inquiry had been conducted and that there had been no allegation against the Arbitrator, the Arbitrator having given both parties ample opportunity to produce Oral and Documentary Evidence in support of their claims. It was further submitted by the Respondents that there had been a **proper Evaluation** of the **evidence** by the **Arbitrator**. The Respondents contended that the Award was given pertaining to **three sets of Employees**, namely:-

SC.Appeal No.137/2010

- (1) The 6th to 12th Respondents whose services were terminated for their **alleged misconduct committed on 26.04.1999**, subsequent to the Interdiction of the 13th Respondent.
- (2) The termination of services of the 13th Respondent consequent to an incident of having abused and threatened the Accountant and several other Management Officers on 23.04.1999.
- (3) The vacation of post of the 14th to 26th Respondents who vacated their post by **not reporting** for work on **28.05.1999** without any **intimation** to the **Appellant**.

The Respondents submitted that the Arbitrator had given exhaustive reasons for arriving at his conclusions regarding the Award and that there being no error on the face of the Record that the Arbitrator had evaluated the Evidence correctly. It was stated by the Respondents that the Arbitrator concluded that

- (i) The Establishment of the Appellant was initially responsible for creating a dispute with the 13th Respondent on 23.04.99, when although the General Manager had approved the payment of the Advance Salary by the Accountant to the 13th Respondent there was a dispute regarding the same.

SC.Appeal No.137/2010

- (ii) A contributory factor for the dispute was because the Management of the Appellant did not approve of the Respondents forming a branch of the “All Ceylon Commercial and Industrial Workers Union” Trade Union at the office of the Appellant.
- (iii) The 6th to 12th Respondents were intentionally victimized for their involvement in a Trade Union affiliated to the 27th Respondent.
- (iv) There was no evidence to support the position that the 14th to 25th Respondents vacated their respective Posts. The Arbitrator concluded that these Respondents had been victimized for participating in Trade Union Action which is a lawful weapon in the hands of Employees.

The Respondents averred that the responsibility of the Arbitrator acting under the provisions of the **Industrial Disputes Act** in making an Award was to decide on a **fair** and **Justifiable basis** which was **different** from the **standard** required on **Strict legal basis**. It is claimed by the Respondents that in this case the Arbitrator carefully scrutinized the alleged incidents pertaining to the behavior of the Respondents and the surrounding events that contributed to the alleged dispute which formed the cause of Action to this Application. The

SC.Appeal No.137/2010

Respondents submitted that the Arbitrator concluded that the conduct proved on the part of the Employees did not warrant a stern punishment like termination of their Employment. The Respondents submitted that on examination of the Award the Arbitrator ordered that the Workmen numbered 1 to 15 (6th to 20th Respondents) be Re-instated in service with Back wages and other allowances from **the date of termination** because their services had been terminated unreasonably.

The Appellant's contention was that the Arbitrator did not determine the issues nor considered the evidence led in respect of whether the 13th Respondent came into the Accountant's Office under the influence of liquor after consuming Alcohol and whether he abused the Personnel Manager or the General Manager and hence behaved in a manner unbecoming of an Executive. The Appellant further contended that the Arbitrator had failed to consider whether the Workmen who entered the Board Room on 26.04.99 threatened the Management.

The Arbitrator on a consideration of the Evidence had observed that the parties presented facts "upon exaggerating them in their favour". It was hence implied by the Appellant that the Arbitrator had considered the concerns of the Appellant, but rejected those allegations as not serious enough to terminate the services of the employees. The Appellant averred that the Arbitrator in his Award made order to re-instate the 22nd to 26th Respondents on the basis that the

SC.Appeal No.137/2010

termination of their services were on the basis that they had vacated post, but that there was no evidence to show that they possessed the required mental element to do so. The Appellant stated that the evidence revealed that there was a strike subsequent to the Interdiction of the 6th to 12th and 14th to 20th Respondents. Consequently the dispute was settled in the Department of Labour. In the terms of settlement the Union agreed to end the strike on 24.05.1999, and the Appellant agreed to let the Workmen return to work on 28.05.99 having conceded to take them back in batches over a period of one week.

The Hon. Judge of the Court of Appeal in his order dated 28.06.10 stated that this arrangement caused **confusion** with regard to the date of reporting. The Hon. Judge of the Court of Appeal by his aforesaid Order dated 28.06.10 held that the Arbitrator had **correctly concluded** that the said Employees had **no mental element** to **vacate post** and ordered **Re-instatement** with **Back wages**.

I have examined the **facts relevant** to the **dispute** between the **Appellant** and **Respondents**, the evidence led in this case, the results of the 2 Domestic Inquiries conducted by Mr. F.N.De Silva Retired President of the Labour Tribunal, the relevant law pertaining to this matter and the Order of the Hon. Judge of the Court of Appeal dated 28.06.10 who affirmed the Award of the Arbitrator. The Hon. Judge of the Court of Appeal concluded that “The Petitioner has failed to establish

SC.Appeal No.137/2010

any ground on which this Court could issue a **Writ of Certiorari** to **quash** the **Award**. Hence this Court **dismisses this Application** without costs.”

In **Hayleys Ltd., V De Silva 64 NLR P.130** , His Lordship H.W.R.Weerasooriya, J. held that “ I have already had occasion to refer to section 24(1) of the Act under which one of the duties cast on an Industrial Court is to take such decision and make such Award as may appear to the Court **Just** and **Equitable**. I think that these provisions by necessary implication also **require an Industrial Court to consider and decide every material question involved in the dispute.....** referred to it by the Minister. **A failure on the part of the Industrial Court to consider and decide a question which the Statute requires the Court to decide would in my opinion be an Error of Law.** Moreover the error would be one due to a **Disregard of Statutory Provisions.** An Award of the Court which is **based on such an Error**, if apparent on the face of the record is **liable to be quashed** by an **order of Certiorari**”.

In Municipal Council of Colombo Vs.Munasinghe 71 NLR P. 223 H.N.G. Fernando, CJ. **quashing** an Award of an Arbitrator by way of a Writ of Certiorari held as follows:-

SC.Appeal No.137/2010

“I hold that where the Industrial Disputes Act confers on an Arbitrator the discretion to make an Award which is **Just and Equitable the Legislature did not intend to confer** on an **Arbitrator the freedom of the wild horse**. The Mandate which the Arbitrator in an Industrial Dispute holds under the Law requires him to make an Award which is Just and Equitable and not necessarily an Award which favours an Employee. **An Arbitrator holds no license from the Legislature to make any such Award as he may please, for nothing is Just and Equitable which is decided by whim or caprice or by the toss of a double headed coin**”

In Ceylon Transport Board V Ceylon Transport Workers Union 71 NLR P. 158, **Tennakoon, J.** (as he then was) having quoted section **31C(1) of the said Act** held as follows. “This section **must not be** read as giving a Labour Tribunal **a power to ignore the weight of evidence.....**” on the vague and unsubstantial ground that it would be inequitable to do so. There is no Equity about a fact. The Tribunal **must decide all questions of fact solely on the facts of the particular case, solely on the Evidence before him,** and apart from any Extraneous considerations. In short in his approach to the evidence **he must act Judicially.** It is only after **he has so ascertained the facts** that he

SC.Appeal No.137/2010

enters **upon the next stage of his functions which is to make an order that is fair and equitable** having regard to **the facts so found**".

It is my view that on a consideration of the Award the Arbitrator (5th Respondent-Respondent) initially outlined some of the Evidence in brief when he analysed the Termination of services of the 6th to 20th Respondents-Respondents. The Arbitrator observed that "in considering the Evidence and Written Submissions of the two parties, it appears that they have presented facts **after exaggerating** them in a **manner favourable to them**. The evidence revealed that there were apparent minor clashes between the Employer and Employees as the Management of the Appellant were opposed to the formation of a Branch of the 27th Respondent-Respondent Union at its Factory and obstructed it. It appeared that the **13th Respondent-Respondent** although an **Executive** was far more **acceptable** among the **Workmen than the other Executives**. The Accountant did **not pay**, the **Advance salary** to the **13th Respondent-Respondent** on **24.04.99**, although money had been brought for this purpose on the orders of the General Manager. Dharmasundera and the 13th Respondent-Respondent had a cross talk, which **only Dharmasundera** heard the **13th Respondent say "Sathosin Avith Inna Pakaya."** On 26.04.99 a group of Workmen including the 6th to 12th and 14th to 20th Respondents-Respondents(Workmen number 1-7 and 9 to 15) had an animated Discussion regarding the **Suspension**

SC.Appeal No.137/2010

of the **13th Respondent-Respondent**, as a result of which they were taken to the Moratuwa Police, and **MC Moratuwa Case No.2287** instituted against them, consequent to which they were **Discharged by Court**. The services of the 15 Workmen were terminated consequent to a Domestic Inquiry conducted by Mr.F.N.De Silva. The Arbitrator however held that “According to the aforesaid facts I order that the Workmen numbered **1 to 15** in the reference be **re-instated** in service with **back wages** and **other allowances** from the **date of termination**, because their **services** have been **terminated unfairly**”.

The finding of the Arbitrator (5th Respondent-Respondent) in respect of the 22nd to 26th Respondents-Respondents was as follows” These Workmen were treated as having vacated their employment because the factory was closed after a strike. The mental element of their **wanting to report for work** is extremely clear from the letters sent by them to the Company.

In Best Footwear (Pvt.) Ltd., V The Minister of Labour and others 1997(2)SLR P.137 The Court of Appeal Judge F.N.D.Jayasuriya, J.declared the legal position that a **strike is** the final weapon or remedy of a Workman, that accordingly the right to strike is a weapon available to a Workman and that **termination** because of a **strike is unjust**. His Lordship held that “Accordingly I order that the 6 Workmen whose

SC.Appeal No.137/2010

services were terminated by treating them as having vacated their employment be **re-instated** with **Back wages** and **all Allowances**".

In my view in this case the reasons for the Award given by the Arbitrator (5th Respondent-Respondent) had been arrived at by a careful analysis by the Arbitrator of the evidence led at the Inquiry, and the reasons for the tension between the Appellant and the existent Respondents. Consequent to the settlement between the two parties, the Employees found it difficult to report for their normal work, as only some employees were given their previous Jobs and others promised to be given their Jobs but the promise of the Appellant was not fulfilled. Moreover the factory was **closed** consequent to the strike which made it impossible for some Employees to report to work, as they had to report to work in batches.

In my view what triggered the ill feeling between the Appellant and Employees was that the 13th Respondent-Respondent although an Executive himself was not given the advance of the salary by the Accountant in spite of the General Manager having permitted it on 24.04.1999. As the 13th Respondent was popular among the Employees, the Employees expressed their solidarity with the 13th Respondent. There is no evidence to prove that the 13th Respondent was produced before a Doctor to prove that he was drunk at that time.

SC.Appeal No.137/2010

In my view the Award of the Arbitrator is consequent to a well considered Examination of the Evidence and the Law.

The Arbitrator had on **10.01.2007** ordered **Reinstatement of Workmen** with Back wages including Allowances commencing from 27.04.1999. On a consideration as to whether this Award is a **Just and Equitable** Order, the attendant circumstances of this case have been scrutinized by me. The evidence revealed that the workmen by their conduct created unrest in the company which disrupted the activities of the company. In my view although **termination of services of the workmen is not justified**, it would be pertinent to consider whether the Relief granted to the workmen was **Just and Equitable**. Apparently the Arbitrator had not considered the following factors in making the Award.

- (a) Workmen whose services were terminated could be expected to mitigate their losses having sought alternative work or employment.
- (b) The possibility of workmen being gainfully employed during this period.
- (c) The company during this period did not have the benefit of their services.

Under these circumstances the granting of **Back wages with all allowances and other benefits** would in my view be unreasonable. I hence amend the Award by ordering **Reinstatement** with **Back wages**

SC.Appeal No.137/2010

only based on the Basic Salary. Neither did the Arbitrator nor The Hon. Judge of the Court of Appeal in his Judgment dated 28.06.2010 consider the alternative relief of compensation. This is however in my view not a ground to completely set aside the Award of the Arbitrator. There could be a situation where the Appellant would not be able to Reinstatement the workmen due to a closure of the company, lack of vacancies or for any valid reason. Hence it is my considered view that if the Appellant is **unable to Reinstatement all or some of the workmen, Compensation** for a period of **10 years service based on Basic Salary per month in lieu** of Reinstatement should be granted, in view of the finding of the Arbitrator that termination was too severe a punishment. Clearly there was some culpability on the part of the workmen, although the culpability was not sufficient to warrant a dismissal or termination of their services.

It is my view that the heirs of Karunadasa who died during the Arbitration should be paid the compensation that would be due to Karunadasa which is the Basic Salary of Karunadasa for a period of 10 years. I answer the questions in paragraphs 31(b), (c) and (f) of the Petition in the negative.

I see no reason to issue a Writ of Certiorari quashing the Award dated 10.01.2007. I dismiss the Appeal without costs, and

SC.Appeal No.137/2010

affirm the Judgment of the Court of Appeal dated 28.06.2010

subject to the aforesaid variations.

JUDGE OF THE SUPREME COURT

S.Tilakawardane . J.

I agree.

JUDGE OF THE SUPREME COURT

Priyasath Dep, PC,I

I agree.

JUDGE OF THE SUPREME COURT