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

In the matter of an application for Special Leave to Appeal to the Supreme Court in Terms of Article 128 (2) of the Constitution of Sri Lanka.

M. G. P. Rajashilpa,

Commissioner of Labour,

Colombo East Labour Office,

Narahenpita.

Complainant

S.C Appeal 88/2005

S. C. Spl. L. A. No:185/2005 Vs

HCMCA:412/2003

M. C. Colombo: 10046/5

Ceylon Heavy Industries and Construction Co. Ltd

Oruwela, Athurugiriya.

Respondent

AND

Ceylon Heavy Industries and Construction Co Ltd.,

Oruwela, Athurugiriya.

Respondent-Appellant

Vs

M. G. P. Rajashilpa

Commissioner of Labour,

Colombo - East Labour Office,

Labour Department,

Narahenpita.

Complainant-Respondent

AND NOW

Ceylon Heavy Industries and Construction Co. Ltd., Oruwela,

Athurugiriya.

Respondent-Appellant-Petitioner

Vs

M.G.P. Rajashilpa

Commissioner of Labour,

Colombo East Labour Office,

Narahenpita.

Complainant-Respondent-Respondent

L.D.C Perera

No.13/1 Gnanawimala Mawatha

Athurugiriya

Added Respondent

BEFORE: Buwaneka Aluwihare P.C. J

Sisira J De Abrew J

Anil Goonerathne J

COUNSEL: Uditha Egalahewa P.C for the Appellant

Mrs. Murdhu Fernanado P.C Additional Solicitor General with Rajitha Perera S.S.C for the Respondent.

Eraj De Silva for the added Respondent

ARGUED ON: 28- 07-2015

WRITTEN SUBMISSIONS: 07- 09- 2015

DECIDED ON: 28th -10-2015

Buwaneka Aluwihare J

This is an appeal from an order of the High Court of Colombo, dated 20-07-2005. The High Court had affirmed the order of the learned Magistrate dated 11-07-2003, by which the Respondent-Appellant-Appellent (hereinafter referred to as the Appellant) was directed to re-instate the Workman-Added-Respondent (hereinafter referred to as the 'Workman') in the post of 'General Manager' giving due regard to his

seniority. The Appellant aggrieved by the said direction, is challenging the legality of the orders of the High Court and the Magistrate's Court.

The sequence of events is as follows: -

The Commissioner of Labour, Complainant-Respondent-Respondent (hereinafter referred to as the 'Respondent') instituted action in the Magistrate's Court of Colombo, against the Appellant Company, on the basis that the Appellant failed to comply with 'a part of the order' made by the Labour Tribunal in favour of the Workman, and thereby contravened Section 40(1)(q) and consecuently committed an offence punishable under section 43(1) read with section 43(2) of the Industrial Disputes Act No.43 of 1950, as amended.

For clarity, the relevant portion of the Labour Tribunal order is reproduced below.

> "එම නිසා අයදුම්කරුට සහනයක් සැලසීම යුක්තිසහගත හා සාධාරණ බව නිගමනය කරන මෙම විනිශ්චය සභාව අයදුම්කරුට සේවයේ කඩවීමකින් තොරව නියමිත ජ්‍යෙෂ්ඨත්වයේ පිහිටුවා ඔහු කලින් දරණ ලද තනතුරේම නැවත පිහිටුවීමට වගඋත්තරකරුට නියෝග කරයි"

This Court granted Special Leave to Appeal on 03-11-2005 on the following issues set out in paragraph 12 (c) and (e) of the Petition of the Appellant, dated 29-11-2005 which are reproduced below.

> "(c) that the learned Magistrate erred in law in ordering the Petitioner to appoint the employee to the post of General

Manager which was not the order made by the Labour Tribunal, as the order of the Labour Tribunal was to re-instate the employee with backwages without a break in service in the same post that he held and giving him his due seniority, and the learned High Court Judge erred in law in affirming the said wrongful order of the learned Magistrate;

(e) The learned Magistrate acted beyond his jurisdiction in considering whether the order of the Labour Tribunal had been complied with by the Petitioner by ordering the Petitioner to promote the employee to the post of General Manager, which fact was not considered by the learned High Court Judge"

(As per the Petition these grounds have not been formulated in the form of questions of law.)

However, during the pendency of the trial (before the magistrate) the workman had been reinstated, as manager, the same post he was holding in 1986, when his services were terminated.

At the end of the trial, the learned Magistrate in his judgement interpreted the word 're-instatement' in the order of the labour Tribunal to mean, appointing the Workman to the post of 'General Manager' instead of the post of 'Manager' as he then was, in 1986. In arriving at this conclusion, the learned Magistrate had given his own interpretation to the words 'due seniority' that occurs in the order of the Labour Tribunal referred to above.

The relevant part of the magistrate's order is reproduced below:-

> ''තවද එකී පනතේ 43 (2) වගන්තිය ප්‍රකාරව මෙම නඩුවේ සාක්ෂිකරු වන එල්. ඩී. සී. පෙරේරා යන අයට නියමිත ජ්‍යෙෂ්ඨත්වයේ පිහිටුවා, එනම් වගඋත්තරකාර ආයතනයේ සාමාන්‍යාධිකාරී තනතුරේ පිහිටුවා ජ්‍යෙෂ්ඨත්වය මත මෙම සාක්ෂිකරු පිහිටුවීමට ද, වගඋත්තරකරුට නියම කරමි. තවද මෙම ජ්‍යෙෂ්ඨත්වය පිළිබඳව සළකා බලා මෙම නඩුවේ එල්. ඩී. සී. පෙරේරා යන අයට වහාම ක්‍රියාත්මක වන පරිදි අද දින සිට මෙම වගඋත්තරකාර ආයතනයේ මෙම සාක්ෂිකරුට නියමිත ජ්‍යෙෂ්ඨත්වයේ ස්ථාපිත කර සාමාන්‍යාධිකාර තනතුරේ පිහිටුවීමට නියම කරමි.''

The Appellant before this court, is challenging the validity of the interpretation given by the learned Magistrate, to appoint the workman in the post of General Manager. Thus the only issue before this Court is to decide the legality of the order of the learned Magistrate in ordering the Appellant to have the workman appointed as 'General Manager'.

When a Labour Tribunal makes an order exercising just and equitable jurisdiction, the law requires the parties affected to comply with such orders. In instances of non-compliance however, section 40 (1) (q) read with section 43 provides for the imposition of penal sanctions against the party responsible.

In deciding this appeal, the court should be guided solely by the two relevant sections.

Section 40 (1) (q) of the Industrial Disputes Act stipulates that-

> *"Any person, who being an employer, fails to comply with any order made in respect of him by a labour tribunal, shall be guilty of an offence under this Act."*

And

Section 43 (1)-

> *"Without prejudice to the provisions of subsection (5) every person who commits any offence under this Act, other than an offence under section 40 (1) (SS), shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment."* (As the law stood then).

Section 43 (2)-

> *"On the conviction of any employer for failure to comply with such term or condition of an award or any industrial court or arbitrator or labour tribunal as requires the re-instatement of any workman in any service or an order of any labour tribunal requiring such re-instatement, such employer shall be liable-*

(i) To pay, in addition to any punishment that may be imposed on such employer under subsection (1), a fine of rupees fifty for each day on which the failure is continued after conviction thereof; and

(ii) To pay such workman the remuneration which would have been payable to him if he had been in such service on each such day and on each day of the period commencing on the date on which he should have been reinstated in the service, according to the terms of the award or order and ending on the date of the conviction of such employer, computed at the rate of salary or wages to which he would have been entitled if his services had not been terminated.

Any sum which an employer is liable to pay under paragraph (ii) of this subsection may be recovered on the order of the court by which he was convicted as if it were a fine imposed on him by that court and the amount so recovered shall be paid to the workman."

I do not see any ambiguity in the provisions referred to above and the plain meaning of these sections is clear. Accordingly, when an employer is ordered to reinstate an employee consequent to an order of the Labour Tribunal, Section 43 (2) operates to ensure that the

workman gets the benefit of the Order he has so obtained from the Labour Tribunal in the event of non-compliance.

The scope conferred by the sections referred to above is very limited , all that the magistrate could have done is to impose the punishment prescribed in Section 43 (1), and order payments to be made as stipulated in Section 43 (2) and no more.

In this context the order of the learned magistrate is fundamentally flawed for two reasons; by directing the Appellant to appoint the workman to a particular post , which the magistrate is not empowered to order under Section 43(1) of the Industrial Disputes Act and secondly by interpreting that part of the order of the Labour Tribunal President which directed the Appellant to *"reinstate the workmen in the same post that he held and giving him his due seniority"* to mean that the workman should be reinstated as "General Manager".

The Industrial Disputes Act provides the mechanism to resolve any ambiguity arising from a Labour Tribunal order and Section 34 of the Industrial Disputes Act refers to the forum which is vested with the jurisdiction to interpret an order/award in instances where such order/award is vague or unclear.

Section 34(1)-

> *"If any question arises as to the interpretation of any award made under this Act by an arbitrator or by an industrial court, or of an* ***order made under this Act by a labour tribunal,*** *other than an order made on an application made under Section 31(B) of this Act, the Commissioner or any party, trade union, employer or workman, bound by the award or order, may refer such question for decision to such arbitrator or the person or persons who constituted such industrial court or* ***to such labour tribunal,*** *and if such reference is not possible for any reason whatsoever, may refer the question for decision to an industrial court; and the arbitrator to whom or the industrial court or the labour tribunal to which the question has been referred shall decide such question after hearing the parties, or without such hearing if the consent of the parties has been first obtained ;"*

The Magistrate is not vested with the powers to interpret an order with a view to granting additional reliefs not referred to in an order of the Labour Tribunal.

Hence it is evident that the learned Magistrate had acted beyond the powers vested in him and the order made by the magistrate directing the re-instatemnt of the workman in the post of 'General Manager' is one made clearly without jurisdiction.

All that the learned Magistrate could have done was to give a literal meaning in deciding the issue of non-complaince. He should have been guided solely by the applicable statutory provisions.

The magistrate appeared to have overlooked the fact that when it comes to interpretation of penal provisions, the cannons of interpretation stipulate that, punishment can be imposed only if the circumstances of the case fall clearly within the words of the enactment. Justice Widgery in the case of *R v. Chertsey 1961 2 Q.B 152* held that *" a penal provision of this kind should not be given a wider interpretation in the absence of clear words, and we prefer a construction which avoids the possible duplication of penalties..."*

In the case of *Regina vs. Williams (1962) 1 W.L.R. 1268;* Paull, J. considering the question whether the Court has any power to disqualify from holding a driving licence on a conviction of larceny of a motor car, the appellant not having convicted of the lesser crime of taking and driving away a motor vehicle without the consent of the owner held that,

> "We are of the clear opinion that the disqualification imposed was not a disqualification permitted in law. The matter is governed by the Road Traffic Act, 1956; in Schedule IV to that Act are set out the offences in respect of which disqualification may be ordered. Curiously enough, none of the offences is stealing a

motor-car. The result is that this appeal will have to be allowed, and the order of the court in so far as it disqualified the appellant from driving for five years must go."

It must be stressed that, a magistrate when imposing punishment upon conviction, is required to act strictly in terms of the statute.
In the light of these authorities this Court is of the view that, that part of the order which directs the Appellant to re-instate the Workman in the post of 'General Manager' is ultra-vires and is contrary to law and has been made without regard to the applicable statutory provisions. The learned High Court Judge however has neither considered nor addressed these issues in the order made on 20th 07-2005.

The learned Additional Solicitor General contended that the magistrate is not empowered by law to give an interpretation of an order of the Labour Tribunal and the scope of a summary trial as contemplated by section 34 of the Industrial Disputes Act before a Magistrate is limited. On this basis, it was the position of the learned Additional Solicitor General that the orders made by the learned Magistrate dated 11-07-2003 and the order of the learned Judge of the High Court made on 20-07-2005 should be set aside. This Court concurs with this argument.

The relevant portion of the order made by the Magistrate dated 11-07-2003, directing the Appellant to "re-instate the Workman to the post

of General Manager" and the order of the High Court dated 20-07-2005 affirming the above order are hereby set aside. Subject to the above variation the rest of the said order of the learned magistrate is affirmed. The two issues set out in paragraph 12 (c) and (e) of the Petition of the Appellant, dated 29-11-2005 is answered in the affirmative.

This appeal is accordingly allowed.

I make no order with regard to costs.

Judge of the Supreme Court

Justice Sisira J De Abrew

I agree

Judge of the Supreme Court

Justice Anil Goonerathne

I agree

Judge of the Supreme Court