REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CvA. No. 87 OF 1999

IN THE MATER OF THE INDUSTRIAL RELATIONS ACT CHAP. 88:01

AND

IN THE MATTER OF A TRADE DISPUTE UNDER THE INDUSTRIAL RELATIONS ACT CHAP. 88:01

BETWEEN

CARONI (1975) LIMITED — APPELLANT

AND

ASSOCIATION OF TECHNICAL ADMINISTRATIVE SUPERVISORY STAFF — RESPONDENT

CORAM:

de la Bastide, C.J.
Jones, J.A.
Warner, J.A.

APPEARANCES:

L. Maharaj, S.C, with F. Hosein for the Appellant
S. Jairam S.C., with him C. Debideen for the Respondent.

Date Delivered:

17th July 2002.

JUDGMENT

Delivered by Jones, J.A. and Warner, J.A.

These two appeals which have been consolidated, arise from proceedings in the Industrial Court ('the Court'). The respondent union is the recognized bargaining agent for persons who hold technical, administrative and supervisory positions in Caroni (1975) Ltd. ('the appellant').

The first appeal is from an order of the 24th November 1997, by which the Court continued an injunction granted on the 3rd October 1997 restraining the appellant from dismissing the Company Secretary, Sandra Pujadas. The second is against the decision of the Court in the trade dispute arising out of her dismissal. One of the main issues in this dispute was whether the Company Secretary was a worker within the meaning of Section 2 of the Industrial Relations Act Chap. 88:01 ('the Act').

On the 28th June 1999, after a protracted hearing over the period October 1997 to November 1998, the Court gave its decision. It held that Mrs. Pujadas' dismissal was harsh and oppressive and not in accordance with the principles of good industrial relations practices. The Court awarded her damages in the sum of $450,000, and on the 5th March 2001, ordered the appellant to pay her the costs of the application for the injunction which it assessed at $230,000, and the costs of the trade dispute, which it assessed at $750,000. The order relating to the costs of the injunction reversed an earlier decision of the Court made on the 24th November 1997, when the injunction was continued and the Court directed that there be ***'no order as to costs'.*** Initially, there was no appeal against the quantum of costs awarded, but during the course of the proceedings before us, leave was sought to appeal against the amount of costs awarded. We refused leave for reasons which will be set out below.

Background

Sandra Pujadas was appointed Company Secretary by letter dated 19th February 1992. On the 19th September 1997, she was served with a letter of dismissal, pursuant to a provision in her contract of employment with the appellant. The matter was reported by the Union to the Minister of Labour under section 51 of the Act, but before a certificate of an unresolved dispute was issued or the time for the Minister to take steps to achieve a settlement had expired, the respondent applied to the Court for an interim injunction restraining the appellant from dismissing or purporting to dismiss her pending the hearing and determination of the trade dispute.

The terms of the order which the Court made on the 3rd October 1997 were as follows –

> ***"IT IS HEREBY ORDERED AND DIRECTED***
>
> ***(1) THAT Caroni (1975) Limited ("the Company") whether by itself, its directors, officers, servants and/or agents or any of them or howsoever otherwise be restrained and an injunction is hereby granted restraining the Company, whether by itself, its directors, officers, servants and/or agents or any of them or howsoever otherwise from dismissing or purporting to dismiss Sandra Pujadas from the 31st October, 1997 or any other date as 'Company Secretary' for any cause pending the hearing and determination of this trade dispute, the subject matter of a report of trade dispute to the Honourable Minister of Labour and Co-operative by the Association of Technical Administrative and Supervisory Staff by a letter dated the 24th September, 1997 or until further order."***

On the 15th October 1997, the Court varied the order of the 3rd October by consent. The effect of the variation was to prevent Mrs. Pujadas from reporting for duty at the appellant's offices for the duration of the dispute. She continued to receive her monthly remuneration of $10,826.80. By the 11th October 1997, a certificate of unresolved dispute was issued by the Minister under Section 59 of. the Act. At the conclusion of the hearing of the

substantive dispute, the Court did not order reinstatement, but made its award of damages, and on the 5th March 2001, made its award of costs.

In summary, the grounds of appeal relate to the jurisdiction of the Court; the grant of the injunction; the Court's finding that the dismissal was harsh and oppressive and costs.

The Issues

The substantive appeal raises the following issues –

(i) whether the Company Secretary was a ***"worker"*** within the meaning of the Act.

(ii) whether the Court had power to grant the interim injunction and/or to continue it.

(iii) whether the Chairman was disqualified by bias from sitting on the case.

(iv) whether, having regard to the decision of the Court that the dismissal was harsh and oppressive, the appellant had a right of appeal to this Court.

At the hearing before the Court, a great deal of time was spent on the question of whether or not the Company Secretary was a "worker" within the meaning of the Act. The arguments centred around whether or not Mrs. Pujadas could be classified as a "worker" having regard to her functions and duties.

In the Act, worker is defined in Section 2 as follows —

"worker", subject to subsection (3) means –

(a) any person who has entered into or works under a contract with an employer to do any skilled, unskilled, manual, technical, clerical or other work for hire or reward, whether the contract is expressed or implied, oral or in writing, or partly oral and partly in writing, and whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour;

...

and includes

(d) any such person who –

(i) has been dismissed, discharged, retrenched, refused employment, or not employed, whether or not in connection with, or in consequence of, a dispute; or

(ii) whose dismissal, discharge, retrenchment or refusal or employment has led to a dispute; or

...

as the case may be."

There are however, certain exceptions -

Subsection (3) provides –

"For the purposes of this Act, no person shall be regarded as a worker, if he is –

...

(e) a person who, in the opinion of the Board –

(i) is responsible for the formulation of policy in any undertaking or business or the effective control of the whole or any department of any undertaking or business; or

(ii) has an effective voice in the formulation of policy in any undertaking or business;"

The Board referred to at (e) above is the Registration Recognition and Certification Board, whose duties are set out in section 23 (1) as follows –

"The Board shall be charged with responsibility for –

(a) the determination of all applications, petitions and matters concerning certification of recognition under Part III, including the taking of preferential ballots under section 34(2).

(b) the certification of recognised majority unions;

...

(f) such other matters as are referred or assigned to it by the Minister or under this or any written law."

Section 32 of the Act prescribes the manner in which applications for certification of recognition are to be determined. An essential element in the determination of any claim for recognition is the determination of the bargaining unit by the Board. The proposal as to who shall comprise the bargaining unit is initially made by the Union applying for certification of recognition (s.32). The determination of that unit is made the first responsibility of the Board by section 33, which also sets out the criteria which the Board shall use for this purpose. These include the community of interest between workers in the proposed bargaining unit and the views of the employer and trade union involved. These criteria are set out in 5 paragraphs lettered (a) to (e). It is obvious that persons who are in the employ of a Company may be excluded from the bargaining unit, even though they are ***"workers"*** as defined in the Act.

In the Court this jurisdictional question first arose on the application to continue the injunction. The appellant raised the issue when it filed its affidavit in reply - the contention was that Mrs. Pujadas was not a "worker" within the meaning of the Act. In response, Counsel for the union submitted that if that were an issue, one of the orders that the Court could make was to refer the question to the Board for its determination, but at the same time, the Court should continue the injunction. Mr. Martineau disagreed and contended that the jurisdiction point ought to be determined first. The Chairman however indicated that he would hear arguments in full and at the end, deal with all matters. After hearing Counsels' submissions, on the 24th November 1997 the Court ruled inter alia, that it was the proper forum for adjudication of all issues and objections raised before it and there was no need to refer any question for the determination of any external body.

The Court made no order as to costs.

Counsel for the appellant in this Court, contended that the Company Secretary was not a "worker" on the ground that the post of Company Secretary was excluded from the bargaining unit of the majority union by the

certification of the Board. Reliance was placed on the certificate dated 11th February 1974, which, on its face, excluded the post of Company Secretary, among others, from the bargaining unit. It is clear from what has been said above that the proposition that a person is not a "worker" simply because he is excluded from a bargaining unit comprising other persons employed by the same employer is simply not tenable. Indeed in the instant case there were excluded from the bargaining unit several employees, for example, factory managers, and secretaries about whose status as '***workers'*** within the meaning of the Act there could be no question.

Whether or not the Company Secretary is a "worker", in the light of the provisions of the Act, is not to be determined by the Court. The determination of that question, as provided in the Act, must be made by the Board. Our attention was drawn to section 23 (1)(f) of the Act which charges the Board with responsibilities for such matters as are referred or assigned to it by the Minister. We were informed that no attempt was made by anyone, neither the parties nor the Minister, to refer this question to the Board for determination, before the dispute was referred to the Court, and as we have indicated the Court ruled that no such reference was necessary.

The case of ***The Registration Recognition and Certification Board v Bank Employees CvA. No. 183 and 184 of 1994 (unreported)*** is not on all fours with the instant case because the Minister had referred the question of whether a bank's Operations Manager was a worker to the Board. In it, however, Ibrahim, J.A. expressed a view with which we concur as to the way in which the Board can be approached. He said -

> ***"Whilst the duty is placed on the Board to make such a determination the person and the procedure for bringing such a question before the Board is not spelled out in the Act. It is, therefore, open to any one who can raise such a question before the Board to approach the Board in any manner in which the Board can be approached."***

In ***Albert v ABEL CvA. Appeal No. 37 of 2000 (unreported)***, this Court had to determine whether an employee was entitled to severance benefits. This

question turned on whether or not he was a ***"worker."*** Chief Justice de la Bastide said -

> ***"It is fairly clear from the evidence that the appellant as General Manager of the Concrete and Clay Products Division was responsible for the effective control of that Division and almost certainly had an effective voice in the formulation of policy in the respondent's undertaking or business. The way in which paragraph (e) is structured, however, makes the 'opinion of the Board' a 'sine qua non' for the exclusion of anyone from the definition of "worker" under that paragraph. To be excluded a person must fit the description contained in that paragraph in the opinion of the Board, and no one else. Therefore, until and unless the opinion of the Board to that effect is obtained, the exclusion cannot operate. That seems to me to be the inevitable result of giving paragraph (e) its normal meaning. It is to be noted that the opinion of the Board is given special protection by the Act. Firstly, section 23(7) reserves to the Board the exclusive right "to expound upon any matter touching the interpretation and application of this Act relating to the functions and responsibilities with which the Board is charged ..." Secondly, section 23(6) forbids any decision of the Board being "challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever. The problem is that it is by no means clear how the opinion of the Board as to the application of paragraph (e) is to be obtained unless the question arises in the context of a claim for recognition. Regardless of how, when or whether an opinion can be obtained from the Board that an employee falls within section 2 (3) (e), no one can be excluded under that paragraph without it. The opinion of the Board not having been obtained in relation to the appellant, severance benefits in accordance with the scale prescribed by the 1985 Act are prima facie payable to him."***

The misconception that the Court could decide whether a person was excluded from the definition of "worker" under paragraph (e) may have arisen because of the way in which "worker" was defined under the now repealed Industrial Stabilisation Act No. 8 of 1965. There was no provision for reference to the Board for the determination of any aspect of the question of who was a worker. In fact that Act made no provision for a Recognition Registration and Certification Board. Under its provisions, the Minister determined claims for recognition, and if his findings were not accepted then he referred the matter to the Court. (See section 3).

It used therefore to be the function of the Court to determine whether an employee fell within the definition of ***"worker."*** The case of ***Electric Ice Co. Ltd. v Federated Workers' Trade Union 12 WIR 362*** illustrates how the

Court went about this process. We have already set out the provisions of the Act which deal with the functions of the Board. It cannot be disputed that the sole authority for determining whether or not an employee is excluded by paragraph (e) from the definition of a "worker", is the Board.

In the instant case, both Mrs. Maharaj and Mr. Jairam ultimately conceded that the Court had no power to decide whether the Company Secretary was a "worker".

We therefore disagree with the view expressed by the Court that the words ***'in the opinion of the Board'*** in Section 2(3) refer solely to a situation in which the Board is dealing with an application for recognition, registration and certification of a trade union as bargaining agent for a group of workers. The question is what is the proper course for us to follow in the absence of a determination of this crucial issue by the Board. Although it was the Union who suggested that the issue under paragraph (e) be referred to the Board for determination, the right course to follow was indicated to the Court but was unfortunately rejected by it. We do not think it right that in a trade dispute this Court should be deterred by any technicality from doing what is necessary in order to ensure that a matter in dispute of such fundamental importance to the case is determined by the body competent to decide it.

We propose therefore to remit the question of whether Mrs. Pujudas is excluded by paragraph (e) from the definition of "worker" to the Board for its consideration and determination. We are satisfied that we have the power to do so under section 18(3) of the Act which provides in part as follows-

> "18(3) On the hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power-
>
> (a) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held."
>
> (b) To order a new hearing on any question without interfering with the finding or decision upon any other question,
>
> and the Court of Appeal may make such final or other order as the circumstances of the matter may require".

It can be argued that we are ordering a new hearing under paragraph (b), although it is not a new hearing by the Court but by a different body – the Board. But even if the residual case is not covered by paragraph (b), the residual power of the court of Appeal as set out in the last two lines of the provision is wide enough to embrace the order we propose to make.

Injunctive Relief

The next point argued was whether the Court had jurisdiction to make the ex-parte order of the 3rd October, and the order of the 24th November 1997, to continue the injunction.

Mrs. Maharaj contended that the only provision for injunctive relief is to be found in section 65 which provides, inter alia, as follows –

> *"(1) where industrial action is threatened or taken, whether in conformity with this Act or otherwise, and the Minister considers that the national interest is threatened or affected thereby, he may make application to the Court ex parte for an injunction restraining the parties from commencing or from continuing the action; and the Court may make such order thereon as it considers fit having regard to the national interest."*

She contended further that because at the time the Court acted, the Minister had not issued a certificate of an unresolved dispute under section 59 (1) of the Act, the Court ought not to have assumed jurisdiction in the matter.

The chronology of events is as follows - the respondent reported the dismissal of the Company Secretary to the Minister as a trade dispute on the 24th September 1997; on the 3rd October 1997; the application was made for the ex parte order; on the 11th October 1997 the Minister issued a certificate of unresolved dispute; on the 15th October 1997 the order was varied by consent; on the 28th November 1997, the appellant filed a notice of appeal against the order. We do not agree with Mrs. Maharaj's submission that the only power given to the Court to grant injunctive relief is under section 65.

We draw attention to section 10(1)(b) of the Act which provides:

> *"10(1) The Court may in relation to any matter before it –*
>
> *(a)...*
>
> *(b) make an order or award (including a provisional or interim order or award) relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or determination;"*

In our view, this provision is wide enough to include the grant of injunctive relief.

We turn now to whether the respondent could have approached the Court prior to the Minister's certification that there was an unresolved dispute.

The relevant sections of the Act are sections 55(1) and (2) and 59 (1).

Section 55(1) provides –

> *"The Minister shall as soon as possible after a trade dispute has been reported or deemed to have been reported to him take such steps as he may consider advisable to secure within fourteen days next after the date of the report, a settlement of the dispute by means of conciliation."*

Section 55(2) provides –

> *"The parties to a dispute that has been reported to the Minister may agree in writing to extend the time, specified in subsection (1) (including any further extension of time under this subsection), within which the Minister may take steps to secure a settlement of the dispute by means of conciliation."*

Section 59 (1) provides –

> *"A dispute, reported pursuant to section 51(1) or deemed to have been so reported under this part, that remains unresolved after the time within which the Minister may take steps by means of conciliation to secure a settlement thereof, including any extension of such time under section 55(2), has expired, shall be so certified in writing by the Minister (referred to in this Part as an 'unresolved dispute') and notice thereof served on the parties to the dispute and the Minister may also state any reasons which in his opinion have prevented a settlement."*

The Act therefore allows a period of 14 days (or such other period as agreed between the parties) for the Minister to secure a settlement by conciliation.

In a recent decision of this Court in the case of ***Steel Workers Union v Caribbean Ispat Ltd CvA. No. 247 of 1998*** **(unreported)** the point at issue was whether a certificate of an unresolved dispute must first be issued before the Court had jurisdiction to hear and determine a trade dispute. It was held that once the Industrial Court was satisfied that all the requirements of Section 59 had been satisfied, and the dispute remained unresolved, then the Court had jurisdiction to hear the dispute, even though the Minister had not issued a certificate.

When therefore the respondent obtained the ex-parte order, the Court had no jurisdiction to entertain the proceedings, not because no certificate had been issued, but because the order was made before the period which the Act allowed for conciliation (14 days) had expired. Accordingly, the order was improperly granted. However, on the 15th October 1997, the Court varied the order by consent, and on the 24th November after hearing both parties, it continued the order as varied. The time allowed for the Minister to conciliate expired on the 8th October and the certificate of unresolved dispute was issued on the 11th October 1997. In the result, when the Court first varied and then concluded the order on the 11th and 15th October respectively, it was acting well within its statutory remit. We therefore reject this ground of appeal.

Costs on the Injunction

On the 5th March 2001 when the Chairman gave his ruling on costs, he reversed his previous order that there be ***'no order as to costs,'*** on the application for the injunction, and fixed the costs at $230,000. The appellant contended that the Court was then 'functus,' so that the original order should stand.

The interim order granted by the Court restrained the appellant from dismissing the Company Secretary. At the end of the matter the Court did not order reinstatement, so that in effect, the interim injunction was not made permanent. Given the variation, all that the injunction achieved was the continued receipt by Mrs. Pujadas of her monthly salary pending the determination of the trade dispute. No reason was given why the Court opted for an award of damages instead of reinstatement, but it is a fundamental principle of equity that an injunction ought not to be granted where damages would be an adequate remedy. That, however, is not a principle which the Court is bound to espouse.

In this case, the judge gave no reasons for reversing his order save that in his opinion, he was entitled to review the entire history surrounding the matter, and to make the appropriate order. If this was the view that he held, then he ought in the first place to have reserved the issue of costs. Even more fundamentally, the judge ought not to have varied his order as to costs without giving the appellant an opportunity to be heard on this issue. That opportunity was never given. Another important point is that the appellant had on the 28th November 1997 filed an appeal against the whole of the decision of 24th November 1997. In the case of ***McKnight v McKnight CvA. Nos. 136 of 1981 and 8 of 1982 (unreported),*** a matrimonial matter, on an inter partes hearing to continue an ex parte order granting an injunction, the Court made various orders restraining the husband from molesting the wife and excluding the wife from the matrimonial home. After the husband had filed a notice of appeal, the learned judge varied his order. This Court held that the effect of the filing of a notice of appeal with the Registrar operated in the circumstances to render the trial judge 'functus officio' in relation to the matter thereafter, but without prejudice to his inherent power to correct any clerical mistakes or errors under Order 20 Rule 11 of the rules. In the instant case, the Court varied the order after the appeal was filed. For these reasons, the order for costs on the injunction must be quashed.

Bias

Counsel for the appellant in her written submissions on this matter, relied on the dictum in ***R v Gough [1993] 2 All E.R. 724*** which established that the proper test for investigating allegations of bias, is whether there is ***'a real danger'*** of bias on the part of the person against whom the allegation is made. We adopt that test. However, a preliminary question here is whether the issue was properly raised in the Court so as to enable it to be made the basis of a ground of appeal. The matter was raised in this way. On the 25th January 1998 during the hearing of the substantive dispute, Senior Counsel Mr. Martineau in chambers, invited the Chairman to disqualify or recuse himself from hearing the matter. The reason advanced was that the Chairman's wife was an employee of the appellant. The Chairman declined to do so, and it appears that no further discussion on the issue took place in his chambers.

When the matter was called in open Court, Mr. Martineau addressed the Court as follows –

> **"The third matter, of course I am not going into any detail but I owe it to my client to put it, relating to the discussions in Chambers before the matter started. I leave it there. I say no more for obvious reasons because that is something that will go to jurisdiction as well."**

He neither elaborated on the nature of those discussions, nor did he expressly renew the objection. It would appear that the matter rested there. If it was intended to pursue the objection, Counsel ought to have stated the objection and the basis of it quite expressly in open Court – this he failed to do. The other side should then have been invited to address on the objection and the judge should then have ruled on it – all in open Court. It is understandable that Counsel out of a desire not to offend or embarrass the judge, may feel a certain reticence about making an allegation of bias in open Court. When however, it is intended to pursue such a challenge, he must overcome that reticence. While this is a borderline case, we think that

Counsel probably did just enough in the passage quoted above to have fairly raised the issue of bias. It is necessary therefore to consider it on its merits. The relationship of employer and employee does have the potential for engendering feelings of hostility by one party to the other, at least from time to time. There was no evidence, or even a suggestion in this case, that the judge's wife had any reason to bear, or did bear, any such feelings towards her employer. In the circumstances, there is no basis for finding that there was a danger of bias on the part of the Chairman against the appellant, although an objection on this ground might have been made with greater justification by the Union. There is therefore no merit in this ground of appeal.

Application for leave to appeal on quantum of costs

As stated above, we refused the appellant leave to appeal on the quantum of costs. The reasons were as hereinafter set out.

Costs were assessed at $750,000. in respect of the substantive appeal. The time for appealing against the quantum of that award expired on the 16th April 2001. The application for leave was filed on the 21st May, more than one month out of time. No reason was advanced for the late application, except that it was erroneously felt that one of the grounds of appeal already filed, was framed in such a way as to permit argument on the amount of the costs awarded.

We were told that if leave was granted it was proposed to argue that the Court erred in law in holding that the power granted to the Court by section 10(5) of the Act to undo an assessment that is 'fair and appropriate' free from the constraints of any rule of law, extended to an award of costs. Counsel criticised the judge's failure to provide the basis upon which he arrived at the quantum. The trial judge indicated in his reasons that the sums were

'reasonable, fair and appropriate,' a reference, clearly, to Section 10 (5) of the Act which provides as follows –

> ***"An order under subsection (4) may be made where, in the opinion of the Court, a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice; and in the case of an order for compensation or damages, the Court in making an assessment thereon shall not be bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that is in its opinion fair and appropriate."***

It may well be that this Section does not apply to quantification of costs. However, there are other provisions of the Act (e.g. section 8) which free the Court from the necessity of adhering to the practice and procedures used in the High Court, for the taxation of costs - that is not to say that the quantification of costs by the Court can never be subjected to review.

If it is apparent for instance, from the amount awarded that the award of costs has been used for some improper purpose such as to punish the party against whom the Order is made, then that would be a ground, in my view, on which this Court might interfere. There are all sorts of other circumstances in which it might appear that the Court had not directed its mind to certain essential matters to be considered in the quantification of costs in order to arrive at a fair and just result.

In the case of ***Caroni v ATASS, CvA. No. 15 of 1996 (unreported)***, this Court stated that there must be some proportion between the amount of the award and the amount of the costs; there must be some relation, however loose, between them. However, none of the matters which it was proposed to raise in the Notice of Appeal for which leave was sought had any hope of success. For this reason as well as because of the failure to demonstrate any ground, for less exceptional, reason for the delay in appealing, leave was refused to file the notice of appeal out of time.

Does the appellant have a right of appeal to this Court against the Industrial Court's finding that the dismissal was harsh and oppressive and not in accordance with the principles of good industrial relations practices.

The ground of appeal which challenged the substantive decision of the Court on its merits was that no judge directing himself properly on the law could reasonably have arrived at the conclusion that the dismissal of the aggrieved employee was harsh and oppressive. This raises the question whether the judgment of the Court can be challenged on this ground having regard to both section 18(2) and section 10(6) of the Act.

Section 18(2) provides-

> Section 18 (2) provides –
>
> ***"Subject to this Act, any party to a matter before the Court is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other:***
>
> ***(a)*** ***that the Court had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;***
>
> ***(b)*** ***that the Court has exceeded its jurisdiction in the matter;***
>
> ***(c)*** ***that the order or award has been obtained by fraud;***
>
> ***(d)*** ***that any finding or decision of the Court in any matter is erroneous in point of law; or***
>
> ***(e)*** ***that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings."***

Section 10(6) provides-

> ***"The opinion of the Court as to whether a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice and any order for compensation or damages including the assessment thereof made pursuant to subsection (5) shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever."***

Mrs. Maharaj relied heavily on ***Edwards v Bairstow [1955] 3 All E.R. 48*** a tax case in which it was held that although an appellate Court might allow an appeal from the Commissioner's determination only if it was erroneous in law, yet where a case stated showed on its face no misconception of law, but it appeared to the appellate Court that no person if properly instructed in the law, and acting judicially, could have reached that particular determination, the Court might proceed on the assumption that a misconception of law had been responsible for the determination.

She contended that the decision of the Court in the instant matter, fell squarely within this principle. The jurisdiction of the Court was therefore invoked, notwithstanding that the challenge was of the Court's finding that the dismissal was harsh and oppressive. She submitted that section 18 was the dominant section. She argued that it was inconceivable that a Court might arrive at perhaps a perverse decision, and yet a party aggrieved would have no recourse to an appellate tribunal.

Mr. Jairam for the respondent, on the other hand, referred us to the case of ***Smith v London Transport Executive [1951] AC 555*** in which the words ***'subject to the provisions of this Act,'*** were construed to be ***'words of restriction.'*** According to Viscount Simonds at page 569, the words ***'assumed an authority immediately given, and give a warning that elsewhere a limitation on that authority would be found.'*** In his submission therefore, section 10(6) was the dominant section.

We accept that ***Edwards v Bairstow*** (supra) is authority for the proposition that this ground does raise a question of law and therefore is one of the grounds on which an appeal may be brought under section 18(2).

The conjoint effect of these two provisions was considered in the earlier case of ***All Trinidad Sugar and General Workers' Trade Union v Caroni [1977] Ltd. CvA. No. 114 of 2000 (unreported).*** In that case Chief Justice de la Bastide expressed the view that section 10(6) was the dominant section, both because it was the more specific provision and also because section 18(2) is

introduced by the words ***'subject to this Act'*** while section 10(6) is not similarly qualified. In the earlier case, the learned Chief Justice said –

> ***"I would nevertheless express the view, without going so far as to rule out the possibility of an appeal ever lying from the Industrial Court in a matter in which the dismissal of a worker is challenged, that where the ground of appeal is that there was an absence of evidence to support the conclusion of the Court that the dismissal either did or did not have the character mentioned in Section 10(6), then the effect of Section 10(6) is to bar the appeal.***
>
> ***It seems that that is clearly the minimum effect which one would have to give to Section 10(6). In other words, once the ground of appeal involves considering the potential of the evidence to justify the finding that the dismissal either was or was not harsh or oppressive or in accordance with the principles of good industrial relations practice, then the appeal could not be brought. Whether or not there is the possibility of appeal if there is alleged to be an absence of evidence to support some primary finding on which the opinion of the Court as to the character of the dismissal was based - whether or not that will provide an exception to Section 10(6) is a matter which we need not go into in this case. Similarly, whether the availability of one of the other grounds mentioned in Section 18(2) has the effect of overriding Section 10(6), is a question which also does not arise in this case. These are questions, however, which will arise in the future, but I prefer to leave them untouched for now."***

It is true that the view then expressed was not necessary for the actual decision in that case as there was found to be no merit in the submission that there was no evidence to support the Court's decision. Counsel for the appellant in this case was therefore free to and did, attempt to persuade us to take a different view from that which was then expressed and with which the two judges who were then sitting with the Chief Justice agreed. We are of the view that, Counsel has failed in that attempt.

Accordingly, we hold that this ground of appeal does not lie and it is therefore unnecessary to examine it on its merits.

In the result, we make the following orders –

(1) the question whether Mrs. Pujadas was at the time of her dismissal by the appellant such a person as is described in paragraph (e) of section 2(3) of the Industrial Relations

Act is remitted to Registration Recognition and Certification Board for its opinion;

(2) in the event that the Board's opinion is that she was not such a person then the judgment of the Industrial Court is affirmed save that the order for payment by the appellant of the costs of the injunction in the sum of $230,000.00 is in any event quashed;

(3) if the opinion of the Board is that Mrs. Pujadas was such a person then the judgment of the Industrial Court is quashed.

(4) There will be no order as to costs of this appeal.

This is the judgment of Warner J.A. and myself.

L. Jones,
Justice of Appeal.

M. Warner,
Justice of Appeal