IN THE SUPREME COURT OF SEYCHELLES

SINGARAM PONSELVAN **PETITIONER**

VERSUS

MINISTER OF EMPLOYMENT AND SOCIAL AFFAIRS **RESPONDENT**

Civil Side No 242 of 2000

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Mr. A.Derjacques for the Petitioner
Miss F.Laporte for the Respondent

JUDGMENT

Perera J

This is an application for the issue of a writ of certiorari to quash a decision made by the Minister of Employment and Social Affairs on 15th June 2000, and for a writ of mandamus to compel him to give effect to an earlier decision made by him on the same matter on 16th May 2000.

The matter before this Court is limited to the consideration as to whether the Minister had legal authority to review his own decision in the circumstances it was done.

In paragraphs 6, 7 and 10 of the Minister's affidavit the reasons given for the review of his decision are –

> ***"Paragraph 6***
>
> *Subsequent to the above decision, I was advised that in the light of* ***Ailee Development v. M.E.S.A,*** *my decision increasing the quantum from Rs.13,302.45 to Rs.28,502.51 conveyed in the letter dated 16th May 2000 contained an error and was ultra vires as I had no authority to award compensation for salary for the period beyond the termination of an employee's employment.*

Paragraph 7

I decided that the petitioner is not entitled to Rs.28,502.51 but to Rs.13,302.45 as originally decided by the Competent Officer.

Paragraph 10

The decision to increase the award of the petitioner was a genuine and bona fide error".

In ***Ailee Development v. M.E.S.A (C.S. 245 of 1996) Amerasinghe J*** on a consideration of Section 61(2) (iii) of the Employment Act 1995, held that the awarding of a salary for any period after the employee's services had been terminated legally or illegally was invalid. In that case, the Minister decided that the termination was not justified and awarded a salary amounting to Rs.95,500 from 17th November 1995, (date of termination) to 17th May 1996 *(date of the decision in Appeal).* However, if the Minister had acted under Section 61(2) (ii) and held that the termination was unjustified, and ordered reinstatement, the awarding of such arrears of salary from the date of termination to date of decision would have been justified.

In the present case, the Competent Officer determined that the contract of the Applicant worker, whose contract was designated as "*shop Manager"* had been varied by the employer without his consent and agreement, and that accordingly the employer had breached the contract, and in such circumstances, the applicant *(employee)* was justified in terminating his contract under Section 60(2) (b), and that hence he was "*entitled to the payment of one month's salary in addition to any benefits or compensation the worker may have earned"* as envisaged in Section 61(2) (b) (i) of the Act.

The Employment Advisory Board, advised the Minister that the decision of the Competent Officer was correct. However, considering the cross-appeal, the board advised that the Applicant's claim for –

"Compensation on additional expenses for staying in the country to seek compensation for his grievance is justifiable. It is concluded that he should be paid his salary of Rs.2000 per month for the 8 months he remained without employment, amounting to Rs16,000."

Accordingly, the Minister, by his decision conveyed on 16th May 2000 awarded that amount in addition to other benefits, but subsequently revised that ruling by the decision conveyed on 15th June 2000, deleting that sum, so that the award was reduced to Rs.13,302.45.

The petitioner contends that –

(1) *The second decision was **ultra vires** and unlawful.*

(2) *It was made without granting a right of hearing.*

(3) *The decision was unreasonable, irrational, and contrary to the weight of evidence.*

The respondent, on the other hand avers that the first decision was based on a genuine and a ***bona fide*** error, and that hence, the Minister was entitled to revoke a previous ruling pursuant to Section 65(8) of the Employment Act 1995 (*as amended by the Employment Act (Amendment)* Act no. 8 of 1999, which provides that –

> *"(8) The Minister may **revoke a ruling** referred to in Sub Section (6) **within a period of 14 days** after the date of the Ruling and give a new Ruling if he is satisfied that **relevant facts in existence at the time** when the original authority, approval, decision or determination was given, were not made known to the Competent Officer or the Minister and that it is just and equitable that a **new ruling** be given. The Minister **shall hear the parties concerned before giving the Ruling."***

This amendment is of limited application. First, the *"new ruling"* was conveyed to the employer, with a copy to the petitioner *(employee)* one month after the previous ruling. However as the actual date of the "*new ruling"* is not known, it cannot be invalidated. In any event, the petitioner has not sought to impugn that ruling on that ground.

Secondly, the new ruling should have been given after hearing both parties. Admittedly this was not done. The review was done on a point of mixed law and facts. Hence the failure to hear the parties may not be fatal to the decision. However in what circumstances could the Minister exercise his power to revoke his own decision under the amendment? Clearly it is in circumstances where "*relevant facts*" in existence at the time the first decision was made, had not been known to him. The "*fact"* relied on by the

Minister in the present case concerned his power to make any award beyond the date of termination of the worker's contract of employment. Although that was a mixed fact and law, for purposes of Section 65(8), it was a "*relevant fact"* not made known to him at the time of making the first decision. I do not find that a revocation under Section 65(8) should be limited to facts alone. Although technically, the first decision was not "*revoked"* and a "*new ruling"* substituted as envisaged in that Sub Section, it was procedurally "*reviewed"* and ***partially altered***. That amounted to a partial revoking of the previous ruling, which in effect constituted a "*new ruling"* within the ambit of Section 65(8). Hence the second decision of the Minister made on 15th June 2000 cannot be held to be ***ultra vires*** his powers. It is also not unreasonable nor irrational in the light of the provisions of the Employment Act. On the contrary, it would have been unreasonable and irrational to award arrears of salary to a worker after his contract had been terminated either by himself or his employer, merely on the ground that he was awaiting the outcome of the grievance procedure initiated by him. That would amount to granting a premium to a terminated employee for the delays of the machinery of justice.

The petition is accordingly dismissed, but without costs.

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A.R.PERERA

JUDGE

Dated this 26th day of January 2004