

1963

Present : T. S. Fernando, J.

THE SUPERINTENDENT, HIGH FOREST ESTATE, KANDAPOLA, Appellant, *and* MALAPANE SRI LANKA WATU KAMKARU SANGAMAYA, UDA PUSSELLAWA,
Respondent

S. C. 15/62—In the matter of an Appeal under Section 31 D (2) of the Industrial Disputes Act, as amended by Acts Nos. 14 and 62 of 1957 and 4 of 1962

Estate Labour (Indian) Ordinance (Cap. 133)—Section 23 (1)—Termination of contract of service of spouse of dismissed labourer—Incapacity of Labour Tribunal to grant equitable relief—Industrial Disputes Act (Cap. 131), as amended by Act No. 62 of 1957, s. 31 C (1).

It is not open to a Labour Tribunal to grant equitable relief under section 31 C (1) of the Industrial Disputes Act to a labourer's spouse when her contract of service has been compulsorily terminated by the employer, in terms of section 23 (1) of the Estate Labour (Indian) Ordinance, in consequence of the dismissal of her husband.

APPEAL from an order of a Labour Tribunal.

Lakshman Kadirgamar, for Employer-Appellant.

S. Kanagaratnam, for Applicant-Respondent.

May 13, 1963. T. S. FERNANDO, J.—

The point arising on this appeal has been decided by the judgment of the Divisional Bench of this Court in S. C. No. 3/1962—Labour Tribunal No. 3/5853,—vide S. C. Minutes dated 27th March 1963¹.

In that case this Court declined to follow the decision in the case of *The Ceylon Workers Congress v. Superintendent of Kallebokka Estate*² and held that “a labourer lawfully quits the services of his employer when he leaves after his services come to an end either when he or the employer in the exercise of the right to terminate the contract of service lawfully terminates it. Whether the employer lawfully terminates the contract of service or the labourer does so, the Statute imposes on the employer the duty under pain of punishment of determining the contract of service of his spouse where the spouse is also a labourer under a contract of service with that employer and no application is made under the proviso to section 23 (1)” of the Estate Labour (Indian) Ordinance.

The Labour Tribunal, from the order of which this appeal is taken, held itself bound by the decision of this Court in the case *The Ceylon Workers Congress v. Superintendent of Kallebokka Estate (supra)*. As that case has now been overruled by the judgment of the Divisional Bench referred to above, I would set aside the order of the Labour Tribunal made on the 5th September 1962 and direct that the application of the applicant-respondent be dismissed.

The decision of the Divisional Bench notwithstanding, Mr. Kanagaratnam for the applicant-respondent attempted to maintain an argument that that decision does not affect the jurisdiction of a Labour Tribunal in the exercise of its powers under section 31C (1) of the Industrial Disputes Act of 1950 as amended by the Act No. 62 of 1957, “to make such order as may appear to the tribunal to be just and equitable”. To accede to this argument would involve the maintenance of the proposition that although this Court has judicially ruled that “the statute imposes on the employer the duty under pain of punishment of determining the contract of service” of the spouse as well, the Labour Tribunal can lawfully make an order the effect of which is to sanction the breach of a law of this land. I am quite unable to accept the argument as sound. So long as Section 23 (1) of the Estate Labour (Indian) Ordinance stands in its present form, an order which would enable that section to be flouted would not, in my opinion, be a just and equitable order.

¹(1963) 65 N. L. R. 8.

²(1962) 64 N. L. R. 95.

Mr. Kanagaratnam seemed to me to suggest that it is open to a Labour Tribunal to make orders appearing to it to be just and equitable in order to give effect to modern ideas of social justice. That may well be so but, I venture to think, not when those orders are in conflict with the law as declared by the legislature and as interpreted by the Courts.

It was agreed that there should be no costs awarded on this appeal.

Order set aside.