

CEYLON ESTATES STAFF UNION

v.

SUPERINTENDENT, PALLEKELLE STATE PLANTATION, KANDY, AND TWO OTHERS

COURT OF APPEAL

G P S DE SILVA, J. AND SIVA SELLIAH, J.

C A APPLICATION No. 366/79-L. T. 3/657/78.

JANUARY 17, 1984.

Industrial Disputes Act (Cap. 131)—Termination of services—Industrial Disputes (Special Provisions) Law, No. 53 of 1973—Computation of time for application to Labour Tribunal against order of termination of services—Interpretation Ordinance (Cap. 2).

The applicant-appellant whose services were terminated on 28.2.78 made an application dated 30.8.78 to the Labour Tribunal for reinstatement with back wages or compensation. The Labour Tribunal dismissed the application on the ground that it was time barred since under the Industrial Disputes (Special Provisions) Law, No. 53 of 1973, such application had to be filed within six calendar months. The applicant-appellant then appealed to the Court of Appeal.

Held—

Reference to a month in a statute must be understood as a calendar month unless there are words to show that a lunar month is intended—section 2 (p) of the Interpretation Ordinance. In computing time by the calendar month, the time must be reckoned by looking at the calendar and not by counting days. Where the relevant period is a month or a specified number of months the general rule is that the period ends on the corresponding date in the appropriate subsequent month, that is, the day of that month that bears the same number as the day of the earlier month from which the period began. The exclusion of the first day is in-built in this computation. On the basis of the corresponding date rule the application filed on 30.8.78, when the termination was on 28.2.78, was outside the six month time limit allowed by the Industrial Disputes Act.

Cases referred to

- (1) *The Highland Tea Company of Ceylon, Ltd. v. Jinadasa*, 35 CLW 47, 48,
- (2) *Migotti v Colville*, (1879) 4 CPD 233.
- (3) *Burne v Munisamy*, (1919) 21 NLR 193.
- (4) *Perera v. Mackinnon Mackenzie & Co.* (1922) 24 NLR 381.
- (5) *Forbes v. Rengasamy*, (1940) 41 NLR 295.
- (6) *Dodds v. Walker*, (1981) 2 A11 E.R. 609, 610
- (7) *Lester v Garland*, (1808) 15 Ves 248, (1803 - 13) All E. R. 436
- (8) *Freeman v. Reed*, (1863) 4 B. & S. 174, 184.

R. K. S. Sureshchandra for applicant.

S. L. Gunasekara for respondent.

Cur. adv. vult.

February 15, 1984.

SIVA SELLIAH, J.

This is an appeal from the order of the President of the Labour Tribunal of Kandy dated 15.7.79 dismissing the application of the applicant therein for re-instatement of workman W. P. Martinstyne with back wages or compensation. The application was dismissed on the ground that it was time-barred. The termination of services had taken place on 28.2.78; the application was dated 30.8.78. The application should be filed within 6 calendar months.

The contention of counsel for the applicant was that as the termination took place on 28.2.78 that date should be excluded from the reckoning and consequently the reckoning of 6 months must commence from 1.3.78 and therefore the application was within time. His further contention was that the calendar month is computed by taking the corresponding date of the month to the corresponding date of the next month and that the reckoning commenced from 1.3.78, 6 calendar months would expire on the midnight of 31.8.78 and therefore the application is within time. This contention was refuted by the counsel for the respondent who contended that in the computation of 6 calendar months from the date of the month to the corresponding date of another month the exclusion of the first date was in-built in such reckoning and consequently it cannot be contended that the 28th of February should be excluded and the reckoning commence from 1.3.78. and in such an event it placed the appellant in an advantageous position purely because 28.2.78 happened to be the last day of February in that year. His further contention was that since the exclusion of the first day was in-built in the computation of the calculation for the corresponding date of the month (i. e., 28.2.78 in this case) to the corresponding date of the following month, the application is out of time and therefore the learned President was right in rejecting the application.

The Industrial Disputes (Special Provisions) Law 53 of 1973 enacts in section 3 that "Every application to a Labour Tribunal under para (a) and (b) of subsection 1 of this Act in respect of any

workman shall be made within a period of 6 months from the date of termination of the services of that workman. The question accordingly for determination here is whether in the computation of "within a period of 6 months from the date of termination of the service" the date 28th February is to be excluded.

Section 2 (p) of the Interpretation Ordinance (Ch. 2 Vol. 1 of the Legislative Enactments) defines month to mean "a calendar month, unless words be added showing lunar month to be intended." The learned counsel for the appellant quoted Maxwell on Interpretation of Statutes, 10th Ed., p. 351 which stated that it is a well established rule that when a particular time is given from a certain date within which an act is to be done, the day of the date is to be excluded. He also quoted several cases regarding the computation of a calendar month's notice as applied to tenancy cases. In the case of *Jinadasa (1) Dias, J.* stated "The question is what is meant by the calendar month's notice in P1 and P2. In *Migotti v. Colville (2)* it was held that the 'calendar month' is a legal and technical term, and in computing time by calendar month, the time must be reckoned by looking at the calendar and not by counting days. Therefore 'one calendar month's imprisonment' is to be calculated from the day of the imprisonment to the day numerically corresponding to that day in the following month. When there is no such corresponding day in the last month of imprisonment the prisoners term will end on the last day of such last month. This case was followed in *Burne v. Munisamy (3)* where notice was given on June 11, and it was held that "calendar month" expired at midnight July 11. *Burne v. Munisamy* has been cited with approval in *Perera v. Mackinnon Mackenzie and Co. (4)* and *Forbes v. Rengasamy (5)*. " In the case of *Dodds v. Walker (6)* Lord Diplock stated as follows : "Reference to a month in a statute is to be understood as a calendar month. The Interpretation Act 1978 says so. It is also clear under a rule that has been consistently applied by the courts since *Lester v. Garland (7)* that, in calculating the period that has elapsed after the occurrence of the specified event such as the giving of a notice, the day on which the event occurs is excluded from the reckoning. It is equally well established and is not disputed by the counsel for the tenant, that when the relevant period is a month or a specified number of months after the giving of the notice the general rule is that the period ends on the corresponding date in the appropriate subsequent month, i.e., the day of that month that bears the same

number as day of the earlier month on which the notice was given. The corresponding date rule is simple. It is easy of application. . . . This simple general rule, which Cockburn, C.J. in *Freeman v. Reed* (8) described "as being in accordance with common usage. . . . and with the sense of mankind," works perfectly well without need for any modification so long as there is in the month in which the notice expires a day which bears the same number as the day of the month on which the notice was given. "

In accordance with these well established principles therefore it is clear that the counsel for appellant's contention that the reckoning of 6 months in this case must commence from 1.3.78 and therefore that the application made on 30.8.78 is within time is clearly erroneous and cannot succeed. I hold that the submission of learned counsel for the respondent, that the corresponding date rule itself is based on the exclusion of the date on which the event occurs, is well-founded. I am in agreement with the view expressed by the learned President of the Labour Tribunal that the application must be rejected as it is time-barred and accordingly dismiss this appeal.

G. P. S. DE SILVA, J.—I agree.

Appeal dismissed.
