

1973

Present : **Rajaratnam, J.**

S. S. WIJEDEERA, Appellant,

and

S. K. BABYHAMY, Respondent

S.C. 234/70—L. T. 204/Matara

Labour Tribunal—Domestic servant—Whether she can claim relief if she is also her employer's mistress—Jurisdiction of Tribunal to award proved arrears of wages.

The applicant-respondent was a domestic servant of the respondent-appellant and was also kept as a mistress by him.

Held : That the applicant was a "workman" within the meaning of the Industrial Disputes Act. The fact that she was a mistress could not prevent her from claiming relief as an employee.

Held further : That a Labour Tribunal has jurisdiction to award proved arrears of wages as a part of a just and equitable order.

A PPEAL from an order of a Labour Tribunal.

L. W. Athulathmudali, with *Mahinda de Silva* for the respondent-appellant.

R. Gooneratne, for the applicant-respondent.

Cur. adv. vult.

November 26, 1973. RAJARATNAM, J.

At the conclusion of the argument I dismissed this appeal with costs. Learned Counsel for the appellant submitted that in the particular circumstances of this case the President should not have treated the applicant as a workman inasmuch as she was also the mistress of the respondent and during the time she was a mistress she would have obtained various advantages and benefits from her employer. The employer gave no evidence. The uncontradicted testimony of the applicant was to the effect that she was employed under the respondent as a domestic servant and had lived in his house from the time she was 7 years old. The respondent had promised to pay a salary when she was about 25 years old and thereafter she had remained as a domestic servant. She was promised a salary of Rs. 35. She also stated that while she was a domestic servant she was kept by the respondent as his mistress. In view of the dual functions that the applicant performed according to her uncontradicted testimony,

the learned Counsel for the appellant submitted that she was not entitled to any relief or redress from the tribunal. If learned Counsel is right the master of the house absolves himself from his liabilities as an employer if he develops an association with his cook-woman. I am unable to accept this proposition.

The applicant in this case quite rightly came to the tribunal on the termination of her employment asking for relief and redress. The President made all necessary inquiries and granted her 3 months' wages as compensation amounting to Rs. 105 and a sum of Rs. 840 which includes wages for 3 years. The President did not award her arrears of wages for the full period she was in employment under the respondent on the ground that these wages are prescribed in law.

I hold that proved arrears of wages can be part of a just and equitable order which a tribunal is entitled under the Industrial Disputes Act to make. I have expressed this view in a previous judgment of mine. It will neither be just nor equitable to preclude the tribunal from awarding *proved* arrears of wages where an employee comes to the tribunal crying for relief and redress on the termination of his services. Presidents can have regard to unpaid wages when they grant equitable relief to the applicants. There is no necessity to look for any provisions of the law to consider whether the tribunal has jurisdiction to award proved arrears of wages as a part of a just and equitable order. I do not, however, propose to enhance the award made by the President in this case. On the uncontradicted evidence of the applicant she has been a domestic servant besides being the mistress of the respondent who is a landed proprietor. This fact does not prevent her from the relief that she is entitled to from the tribunal as an employee.

The order of the President is affirmed. The respondent will pay the applicant the sum ordered, i.e., Rs. 970 together with the costs of this appeal which I fix at Rs. 105. A sum of Rs. 1,075 will therefore be deposited, to be paid to the applicant, with the Labour Officer, Matara, within one month of the date of this order. The Labour Department will be informed of this order against the respondent, Samy Sugunapala Wijedeera, Galwala-kuttiya, Makandura, Beragama.

Appeal dismissed