

1962

Present : Tambiah, J.

THE CEYLON WORKERS' CONGRESS (on behalf of K. Ramasamy's wife), Appellant, and THE SUPERINTENDENT, KALLEBOKKA ESTATE, Respondent

S. C. 4/1961—*Labour Tribunal, 2352*

*Estate Labour (Indian) Ordinance (Cap. 133 of Legislative Enactments, 1956 Edn.)—  
Section 23 (1)—Meaning and effect of the term "quit".*

Where a labourer's services have been terminated against his wish, section 23 (1) of the Estate Labour (Indian) Ordinance does not *ipso facto* confer a right on the employer to terminate the services of the labourer's spouse.

**A**PPEAL from an order of a Labour Tribunal.

*Colvin R. de Silva*, with *S. C. Crossette-Thambiah*, for the appellant.

*H. V. Perera, Q.C.*, with *L. Kadirgamar*, for the employer-respondent.

*Cur. adv. vult.*

January 15, 1962. TAMBIAH, J.—

The appellant, the Ceylon Workers' Congress, on behalf of one Ramasamy, made an application to the Labour Tribunal for his re-instatement. The President of the Labour Tribunal held that Ramasamy's dismissal was justifiable and dismissed his application. On an appeal by the appellant to this Court, I set aside the order of the President of the Labour Tribunal, who held that Ramasamy's dismissal was justifiable, in S. C. No. 3/1961/Labour Tribunal No. 2351<sup>1</sup>, and I have directed another Labour Tribunal to hear the application of Ramasamy.

Having terminated the services of Ramasamy, the Superintendent of Kallebokke Estate, purporting to act under the provisions of the Estate Labour (Indian) Ordinance (Cap. 133 of the Revised Edition of the Legislative Enactments (1956 Ed.)) terminated the services of Patchamma, the wife of Ramasamy. The appellant made an application to the Labour Tribunal and prayed that Patchamma be re-instated. The President of the Labour Tribunal made the following order :

"For reasons set out above, I hold that the dismissal of Ramasamy is for justifiable reasons and the Union's application is therefore dismissed. So also is the application of the Union on behalf of Patchamma, whose services have been also terminated along with her husband's in accordance with the provisions of the Estate Labour (Indian) Ordinance".

The appellant has appealed from the above order of the President of the Labour Tribunal. As I have set aside the order of the Labour Tribunal

<sup>1</sup> (1962) 63 N. L. R. 536.

in S. C. No. 3/1961/Labour Tribunal No. 2351, this order has also to be set aside. It is unnecessary for me to send this matter before another Labour Tribunal for an inquiry as it could be decided on a question of law.

The counsel for the appellant contended that there is no evidence to show that the Estate Labour (Indian) Ordinance (supra) applied to the appellant. Section 23 (1) of the said Ordinance runs as follows :—

“ At the time when any labourer lawfully quits the service of any employer, it shall be the duty of that employer to issue to that labourer a discharge certificate substantially in form II in Schedule B, and, where at such time the spouse or a child of such labourer is also a labourer under a contract of service with that employer, it shall be the duty of the employer, subject as hereinafter provided, to determine such contract and to issue a like certificate to such spouse or child :

Provided that where such spouse or child wishes to continue in service under such contract and produces to the employer a joint statement signed by both husband and wife to that effect, nothing in the preceding provisions of this subsection shall be deemed to require the employer to determine such contract or to issue a discharge certificate to such spouse or child.”

The counsel for the appellant contended that the word “ quit ”, in this context, means voluntarily quitting the services of an employer and that this section cannot be applied to a case where a person's services have been terminated against his or her wish. The term “ quit ”, in ordinary parlance, means to give up or hand over (vide the Pocket Oxford Dictionary (4th Edition) page 658) and the object of the above provision is to force the hands of an employer to give a discharge certificate to the spouse and children of a person who *voluntarily* and lawfully quits the employer's services. Without a discharge certificate, that person's spouse and children could not be employed in other estates and it is of the utmost importance that they should obtain such certificates in order to earn a livelihood. It was never the intention of the Legislature to confer a right on an employer to terminate the services of a person after terminating the services of his or her spouse. The above provision, in my view, imposed a duty on the employer and does not confer a right.

The counsel for the respondent contended that the word “ quit ”, in this context, would cover the case of an employer terminating the services of a person's spouse after terminating that person's services. I cannot agree.

I hold that the provisions of the Estate Labour (Indian) Ordinance (supra) do not empower the Superintendent of Kallebokke Estate to terminate the services of Patchamma, in the circumstances of the case. I set aside the order of the President of the Labour Tribunal and order the re-instatement of Patchamma. The appellant would be entitled to costs fixed at Rs. 105.

*Order set aside.*