

1967

*Present : Alles, J.*

THE CEYLON WORKERS' CONGRESS, Appellant, *and*  
THE SUPERINTENDENT OF ROEBERRY ESTATE, Respondent

*S. C. 37/1964—Labour Tribunal Case No. 6/3796*

*Estate labourer—Termination of his services for misconduct—Termination of his wife's contract of service also—Belated joint statement by husband and wife—Remedy of the wife—Estate Labour (Indian) Ordinance, ss. 2, 4, 5, 23 (1)—Industrial Disputes Act, ss. 31 B (1) (b), 31 B (4), 31 C (1), 33 (1).*

An estate labourer was summarily dismissed for misconduct on 16th September 1960. On the same day the services of the wife (the appellant) were also terminated under section 23 (1) of the Estate Labour (Indian) Ordinance and she was given one month's wages in lieu of notice. No joint statement was filed by the husband and wife in terms of the proviso to section 23 (1) until three years later. Nor was the question raised at the hearing before the Labour Tribunal whether compensation should be given to the appellant for her past services.

*Held*, (i) that no effect should be given to the belated joint statement.

(ii) that, in view of the limited powers of the Supreme Court to deal only with questions of law, the case should not be remitted again to the Labour Tribunal to decide whether any relief in the nature of compensation should be granted to the appellant.

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

*N. Satyendra*, for the applicant-appellant.

*Lakshman Kadirgamar*, for the employer-respondent.

*Cur. adv. vult.*

October 9, 1967. ALLES, J.—

The appellant in this case is the wife of one Kitnan who was summarily dismissed for misconduct on 16.9.60 by the Superintendent of the Estate. On the same day, the appellant's services were also terminated under section 23 (1) of the Estate Labour (Indian) Ordinance and she was given one month's wages in lieu of notice. Counsel for the appellant has argued two questions of law before me. Firstly, it was submitted by him that by terminating the appellant's services on the same day that her husband's services were terminated the appellant was deprived of an opportunity of filing a joint statement under the proviso to section 23 (1). Secondly, it was urged that the President had erred in law when he confirmed the order of dismissal with only a month's wages in lieu of notice and without ordering any compensation for her past services. This latter ground was not one that was raised at the hearing before the Tribunal.

It was alleged that Kitnan had abused the Superintendent near the factory on 26.8.60. An inquiry was held into this allegation and on 16.9.60, Kitnan was found guilty and his services and the services of the appellant terminated on the same day. Kitnan was asked to call at the office after seven days for the discharge certificates and requested to leave the estate. He refused to comply with these directions, made representations to the Labour Union, who wrote to the Superintendent on 18.9.60 and continued to remain on the estate for a considerable period thereafter. It was only on 24.6.63, nearly three years later, after he was convicted in the Magistrate's Court of insult and his appeal to the Supreme Court dismissed, that the joint statement was filed.

While I agree that the appellant's services were prematurely terminated on 16.9.60 before the time elapsed within which she and her husband were asked to call for the discharge certificates and leave the estate, it seems to me that neither the appellant nor the Union, which watched her interests, considered the filing of the joint statement of any importance. Had they done so, they would not have failed to take the necessary steps earlier for the continuation of the appellant's services. The parties were apparently more interested in disputing the right of the Superintendent to terminate the services of the appellant and her husband and claiming back wages than seeking to claim re-employment for the appellant. The joint statement that has been filed in the instant case can therefore be hardly considered a serious expression of the willingness of the appellant to seek re-employment on the estate and I therefore do not think that any effect should be given to such a belated statement. The question therefore whether an opportunity was afforded to the appellant or not to file a joint statement in this case is only one of academic interest.

The other question that has been argued before me is one that has caused me some anxiety but having regard to the limited powers of this court to deal only with questions of law, I do not propose to accede to

Counsel's submissions and remit the case again to the Tribunal to decide whether any relief in the nature of some compensation should be granted to the appellant. In doing so I am not unaware of the fact that the appellant's parents have been themselves labourers on this estate, that the appellant was born on the estate, that the appellant herself has worked on the estate for a considerable period and that the termination of her services was due to no lapse on her part. In the circumstances, it might appear, to say the least, an unfair labour practice to terminate her services with only a month's wages in lieu of notice. Counsel for the respondent however submitted that in doing so the employer has done no more than what was required under the provisions of the law. Contracts of service under the Estate Labour (Indian) Ordinance are governed by section 5 and are terminable with one month's notice. The Ordinance has to be read in conjunction with the Service Contracts Ordinance (*vide* sections 2 and 4 of the Estate Labour (Indian) Ordinance) and under the terms of service governed by the latter Ordinance it was open to the employer to terminate the services of any labourer on payment of a month's wages in lieu of notice. But considerable progress in labour relations has taken place since the passing of the Service Contracts Ordinance in 1866 and the Estate Labour (Indian) Ordinance in 1889 and today with the development of modern concepts of social justice and the development of industrial law it is open to a labourer to seek redress for any kind of unfair labour practice. In *Highland Tea Co. of Ceylon Ltd. v. The National Union of Workers*<sup>1</sup> I have not interfered with the order of the President who granted to the innocent spouse one month's wages for every year of service as compensation. In that case I was of the view that the innocent spouse could not claim to be re-instated as a matter of right on the filing of the joint statement but that when the President made an order directing that compensation should be made to the innocent spouse it was an order that was just and equitable. This "compensation" must not be considered as a recompense for the lawful termination of the services of the innocent spouse under the contract for to so hold would in the words of T. S. Fernando, J. in the *High Forest* case<sup>2</sup> amount to "lawfully making an order the effect of which is to sanction the breach of a law of this land". This payment is more in the nature of some kind of compensation for past services in keeping with the spirit of labour practice prevailing today. I do not think that Fernando, J. when he made the observations in the *High Forest* case ever intended to close the door to Labour Tribunals granting any such relief. It seems to me that the learned Judge was directing his mind to the important question that a Labour Tribunal should not, under the guise of making just and equitable orders, either directly or indirectly sanction a breach of the law. The Privy Council in *United Engineering Workers Union v. Devanayagam*<sup>3</sup> accepted the view taken by Abeyesundere, J. in *Shell Co. of Ceylon Ltd. v. Pathirana*<sup>4</sup> that a Labour Tribunal has jurisdiction under section 31 B (4) read with section 31 C (1) of the Industrial Disputes

<sup>1</sup> (1967) 70 N. L. R. 161.

<sup>2</sup> (1963) 66 N. L. R. 14.

<sup>3</sup> (1967) 69 N. L. R. 289.

<sup>4</sup> (1962) 64 N. L. R. 71.

Act to grant relief to a workman in spite of the fact that his services have been lawfully and justifiably terminated by his employer. For the same reason it would be open to a Labour Tribunal to give relief in an appropriate case to an innocent spouse whose services have been lawfully terminated under section 23 (1) of the Estate Labour (Indian) Ordinance whether a joint statement is filed or not. I agree with Counsel for the respondent that such orders must not indirectly flout the provisions of the law and for that reason I am unable to agree with Mr. Satyendra's contention that since the appellant has expressed her willingness to be re-employed on the estate an order directing re-employment in any form would be a just and equitable order. Counsel for the respondent submitted that it was open to the appellant to claim any benefits under section 31 B (1) (b) of the Industrial Disputes Act but that the appellant chose only to claim re-instatement with back wages. The President too under the wide powers given to him under section 33 (1) of the Act could have granted relief to the appellant. No case has therefore been made out for a remission of the case to the President for any relief.

I dismiss the appeal.

*Appeal dismissed.*

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