

1956

Present : T. S. Fernando, J.

ANGAMUTTU, Appellant, and THE SUPERINTENDENT
OF TANGAKELE ESTATE, Respondent

S. C. 398—M. C. Hatton, 7787

Criminal trespass—Misconduct of estate labourer—Refusal to quit estate after dismissal—Estate Labour (Indian) Ordinance (Cap. 112), ss. 2, 4, 5—Service Contracts Ordinance (Cap. 59), ss. 3, 4—Penal Code, s. 433.

The provisions of section 5 of the Estate Labour (Indian) Ordinance set out below :—

“ and every such contract shall be deemed and taken in law to be so renewed (from month to month) unless one month's previous notice be given by either party to the other of his intention to determine the same at the expiry of one month from the day of giving such notice. ”

are not inconsistent or in conflict with the provisions of section 4 of the Service Contracts Ordinance relating to the determination of a contract on the grounds of misconduct. There is nothing “ otherwise expressly provided ” in the Estate Labour (Indian) Ordinance which could make the provisions of section 4 of the Service Contracts Ordinance inapplicable to the case of an Indian estate labourer.

When an estate labourer who has been dismissed for misconduct remains on the estate contumaciously in circumstances which cannot but annoy the Superintendent, he would be guilty of criminal trespass.

APPEAL from a judgment of the Magistrate's Court, Hatton.

N. D. M. Samarakoon, with *J. C. Thurairatnam*, for the accused-appellant.

S. J. Kadirgamar, with *P. Somatillekam*, for the complainant-respondent.

Cur. adv. vult.

July 17, 1956. T. S. FERNANDO, J.—

The appellant, a labourer within the meaning of the Estate Labour (Indian) Ordinance (Cap. 112), who was employed on Tangakele Estate, Lindula, was summoned to the office of the Superintendent on 28th October 1955 and was requested by the latter to leave the service of the estate. He was offered on that day his discharge certificate and the balance of the wages due up to that day. The cause of this summary discontinuance of the services of the appellant is not clear, but it would appear from the evidence that the appellant had had some trouble with the conductor of the estate resulting in a prosecution and a conviction of the appellant in a court of law. Although not so put in express words in the evidence, the discontinuance appears to have been occasioned by his misconduct. The appellant refused to accept his discharge

certificate or the balance of his wages and refused also to leave the estate. Having waited exactly one month in the hope that the appellant would receive better advice and leave the estate, the Superintendent made a complaint to the Magistrate's Court on 28th November 1955 that the appellant continues unlawfully to remain on the estate with intent to annoy him, thereby committing the offence of criminal trespass punishable by Section 433 of the Penal Code. After trial the Magistrate convicted the appellant and sentenced him to six weeks' rigorous imprisonment.

The appellant in the course of his evidence at the trial which took place on 1st February 1956 stated that even if he is given his discharge ticket, his pay, his wife's discharge ticket and her pay, he will not leave the estate. Subject to the consideration of a point of law advanced on behalf of the appellant at the hearing of the appeal, I am of opinion that the learned Magistrate was clearly right in convicting the appellant on a charge of criminal trespass because the answers reproduced above given in evidence by the appellant are as clear an indication as possible that he is remaining on the estate contumaciously in circumstances which cannot but annoy the Superintendent.

I did not understand Counsel for the appellant as arguing that the services of a person coming within the meaning of a labourer under the Estate Labour (Indian) Ordinance cannot be discontinued summarily for misconduct. Indeed, there are many cases in the law reports which show that a right of an employer to dismiss Indian estate labourers summarily for misconduct has been recognised. One such case is that of *Marimuttu v. Wright*¹, and the observations of Canckeratne J. in that case appear to indicate that a labourer's services can be so discontinued. I understood Counsel's argument to be that even if the Superintendent dismissed the labourer summarily for misconduct, the labourer was entitled to remain on the estate for one month by reason of the operation of Section 5 of the Estate Labour (Indian) Ordinance.

The Service Contracts Ordinance (Cap. 59) recognizes the right of an employer to dismiss or discontinue for misconduct a labourer whose employment is governed by that Ordinance. In the event of discontinuance for misconduct, the Ordinance recognizes that the employer is not liable to give a month's notice to the labourer or to pay him wages for any period beyond the day of such discontinuance, i.e., the last day of his employment—vide Section 4. Section 2 of the Estate Labour (Indian) Ordinance provides that the Ordinance shall, so far as is consistent with the tenor thereof, be read and construed as one with the Service Contracts Ordinance, and Section 4 extends certain provisions of the Service Contracts Ordinance to labourers and employers under the Estate Labour (Indian) Ordinance.

Counsel for the appellant seeking to make use of the expression "except as in this Ordinance otherwise expressly provided" occurring in Section 4 of the Estate Labour (Indian) Ordinance argues that Section 4 of the Service Contracts Ordinance can extend to the case of Indian

¹ (1917) 48 N. L. R. 253 at 256.

labourers employed on estates only if express provision otherwise has not been made in respect of their contracts of service by the Estate Labour (Indian) Ordinance. He states that such express provision is contained in the following words occurring in Section 5 of the Estate Labour (Indian) Ordinance :

“ and every such contract shall be deemed and taken in law to be so renewed (from month to month) unless one month’s previous notice be given by either party to the other of his intention to determine the same at the expiry of one month from the day of giving such notice.”

Quite apart from the fact that the very same words appear in Section 3 of the Service Contracts Ordinance, it is sufficient to say that that part of Section 5 of the Estate Labour (Indian) Ordinance reproduced above is not in my opinion a provision inconsistent or in conflict with the provisions of Section 4 of the Service Contracts Ordinance relating to the determination of a contract on the grounds of misconduct. There is therefore in my opinion nothing “otherwise expressly provided” in the Estate Labour (Indian) Ordinance which could make the provisions of Section 4 of the Service Contracts Ordinance inapplicable to the case of an Indian estate labourer. Moreover, it seems to me that if a contract has been determined by an employer, whatever the grounds for such determination may be, there is no contract in existence capable of renewal. The contracts that are deemed to be renewed as contemplated in Section 4 of the Estate Labour (Indian) Ordinance are contracts which are in existence up to the moment of renewal. I am therefore of opinion that the point of law raised on behalf of the appellant fails.

It should be noted that in the case before me the appellant, though not entitled thereto, has had one month’s time to quit the estate. If the appellant is advised that he has been wrongfully dismissed, it is open to him to pursue any civil remedy he may have. He cannot be heard to say that he is entitled to remain on the estate defying the Superintendent. His appeal is therefore dismissed.

Appeal dismissed.