

1967

*Present : Tennekoon, J.*

WATARAKA MULTI-PURPOSE CO-OPERATIVE SOCIETY LTD.,  
Appellant, and W. WICKREMACHANDRA, Respondent

*S. C. 48/67—Labour Tribunal Case LT/G/2569*

*Industrial Disputes Act—Section 33 (1) (d)—Dismissal of workman on ground of inefficiency—Proof, by employer, of absence of malice not necessary—Compensation to dismissed workman—Circumstances when award would be an error of law.*

When a workman's services are terminated by the employer on the ground of inefficiency, there is no burden on the employer to prove that he acted without malice in dismissing the workman. In such a case, if there was neither illegality nor any finding that the dismissal for inefficiency was an unfair labour practice it is an error of law to award any compensation to the workman under section 33 (1) (d) of the Industrial Disputes Act.

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

*L. W. Athulathmudali*, for the Appellant.

No appearance for the Respondent.

<sup>1</sup> (1966) 69 N. L. R. 164.

<sup>2</sup> (1958) 60 N. L. R. 307.

November 4, 1967. TENNEKOON, J.—

In this case the respondent made an application to the Labour Tribunal in respect of the termination of his services with the appellant society. He was employed on the 12th November, 1965 on a temporary or probationary basis and his services were terminated with effect from 30th March, 1966. The applicant stated at the hearing before the Labour Tribunal that he was unjustifiably dismissed from service and that he seeks re-instatement and back pay for the period that he was not employed, and any further relief that may be obtainable.

There is no doubt that the respondent was either on probation or was a temporary employee. The society served a charge sheet on him on 13th March, 1966 alleging inefficiency to which the applicant made answer on the 19th of March, 1966. The committee of the appellant society on the 20th of March, 1966 decided to terminate the services of the respondent with effect from 30th March, 1966. The correctness of the appellant society's findings that the applicant was inefficient finds corroboration in a report of the Area Co-operative Inspector who having investigated the functioning of the society at or about the time of the dismissal of the applicant came to the conclusion that the applicant was inefficient and ought to be dismissed. The Labour Tribunal accepts as correct this view of the respondent's efficiency when it says: "It is especially because the applicant was not conversant with and accustomed to writing out of the books that the Area Co-operative Inspector recommended for the approval of the A. C. C. D. the dismissal of this applicant". These being the facts, the Tribunal went on further to say "It was their duty to have clearly proved to me that the dismissal was made after due consideration and that it was made entirely free from malice". There was no allegation of malice or any suggestion that the dismissal was made for personal reasons influencing one or more members of the society or its Committee of Management.

I think the Tribunal has erred in law in placing such a burden on the employer. It is on this approach only that the Tribunal came to the conclusion that the dismissal of the applicant had not been 'honestly' made. The conclusion cannot be allowed to stand in view of the error in law earlier referred to. Further the Tribunal has awarded compensation under paragraph (d) of section 33 (1) of the Industrial Disputes Act without any finding that the termination of the respondent's services was either unlawful or contrary to accepted standards of fair labour practices. If the respondent was in fact inefficient and there was neither illegality nor any finding that termination of services for inefficiency was an unfair labour practice it is an error of law to award any compensation under Section 33 (1) (d) of the Act.

The order of the Labour Tribunal is set aside. The applicant-respondent's application made to the Labour Tribunal is dismissed. No costs.

*Order set aside.*