

1972

Present : Samerawickrame, J.

THE CEYLON WORKERS' CONGRESS, Appellant, and THE
ANGLO - CEYLON AND GENERAL ESTATES CO., LTD., and
another, Respondents

S. C. 17/70—L. T. 9/1389 and 1390

*Industrial dispute—Domestic inquiry—Refusal of workman to take part in it—Dismissal
of workman on that ground alone—Invalidity.*

The refusal of a workman to take part in a domestic inquiry without good reason does not, by itself, amount to grave misconduct meriting the termination of his services.

APPPEAL from an order of a Labour Tribunal.

N. Satyendra, for the applicant-appellant.

S. C. Crossette-Thambiah, for the employers-respondents.

Cur. adv. vult.

February 17, 1972. SAMERAWICKRAME, J.—

The employers-respondents stated that they terminated the services of Govindan for gross misconduct in that (a) he referred to the Supervising Kangany in obscene and disparaging terms, and (b) he created a disturbance in the estate office at a domestic inquiry and refused to comply with instruction given to him by the Assistant Superintendent and the Personal Officer. They terminated Veeramamah's services as they were obliged in law to do so.

The President of the Labour Tribunal was unable to find in favour of the respondents on the first ground. The balance of evidence seemed to indicate that the Supervising Kangany had used abusive language to Govindan when the latter had raised a question in regard to the work allotted to him. There was some evidence that it was Govindan who had in the first instance used abusive language. In the state of the evidence the President was unable to make a finding that there was misconduct.

The President has also not found that Govindan was guilty of gross misconduct by reason of the fact that he created a disturbance at the domestic inquiry. He found that Govindan had refused to take part in the domestic inquiry and rejected the reasons put forward on behalf of Govindan in justification for his refusal. He then stated, "Therefore, it is my view that any worker refusing to take part in a disciplinary inquiry conducted by the Personal Officer would be committing an act of insubordination and therefore of misconduct justifying termination. For these reasons, I hold that the termination of the services of the applicant was for just cause."

A domestic inquiry by a third party is no doubt an accepted practice and beneficial both to the employer and the workman. A refusal to take part in such an inquiry without some good reason is to be deprecated. Further a workman who refuses to participate takes the risk of an adverse finding being made without an opportunity to the person holding the inquiry to consider his version. It does not, however, appear to me that the refusal to take part in the inquiry by itself amounts to grave misconduct which merits dismissal. As the sole ground on which the applications to the labour tribunal were dismissed fails, reinstatement must be ordered. As Govindan was to some extent to blame for the termination of services by his unjustifiable refusal to take part in the domestic inquiry, I am not prepared to order back wages except to some extent in respect of the period subsequent to the order of the labour tribunal. I think the ends of justice will be met if the respondents are ordered to pay each of the workmen a sum of Rs. 900 as back wages. I accordingly set aside the order of the President of the Labour Tribunal and make order directing the reinstatement of Govindan and Veeramamah with effect from 15th March, 1972, and further order the respondents to pay to each of them the sum of Rs. 900.

Order set aside.