

1970

Present: Samerawickrame, J.

THE CEYLON WORKERS' CONGRESS, Appellant, *and* THE
SUPERINTENDENT, GONAKELLA ESTATE, PASSARA,
and another, Respondents

S. C. 80/68—Labour Tribunal No. B. 1375

Estate Labour (Indian) Ordinance (Cap. 133)—Scope of s. 23 (1)—Dismissal of a labourer—Effect on his wife's contract of service.

When an estate labourer was summarily dismissed on 13th November 1966, the employer gave notice on that date to the labourer's wife that her services would be terminated as from 14th December 1966. On 17th December 1966 a document purporting to be a joint statement in terms of the proviso to section 23 (1) of the Estate Labour (Indian) Ordinance was produced to the employer. The only point taken at the inquiry before the Labour Tribunal was that the employer had no right to and was not obliged to terminate the services of the labourer's wife.

Held, that at the time the employer gave notice, he was bound by the provisions of section 23 (1) of the Estate Labour (Indian) Ordinance to terminate the services of the labourer's wife. As the notice terminating her services took effect on 14th December 1966, the termination of her services was both lawful and justified. The subsequent tender of the joint statement could not render that termination not lawful or unjustified.

APPEAL from an order of a Labour Tribunal.

N. Satyendra, for the applicant-appellant.

Lakshman Kadirgamar, with *P. Ramanathan*, for the employer-respondent.

Cur. adv. vult.

August 29, 1970. SAMERAWICKRAME, J.—

On 13th November, 1966, notice was given to Kuttiammah that her services would be terminated as from 14th December, 1966. Notice of termination was given by the employer in terms of Section 23 (1) of the Estate Labour (Indian) Ordinance, as Kuttiammah's husband Vadivel had been summarily dismissed on 13th November, 1966. Notice of termination took effect on 14th December, 1966, and up to that date no joint statement in terms of the proviso to s. 23 (1) of the Estate Labour (Indian) Ordinance had been produced to the employer. On the 17th of December, a document purporting to be a joint statement was tendered. In the case of *Superintendent, Walapane Estate v. Walapane Sri Lanka Watu Kamkaru Sangamaya*¹ a Divisional Bench of this Court took the view that "Whether the employer lawfully terminates the contract of service or the labourer does so, the statute imposes on the employer the duty under pain of punishment of determining the contract of service of his spouse where the spouse is also a labourer under a contract of service with that employer and no application is made under the proviso to s. 23 (1)". At the time the employer gave notice, he was, in terms of the decision referred to above, under a duty to terminate the services of Kuttiammah and as notice terminating her services took effect on 14th December, 1966, I am of the view that the termination of her services was both lawful and justified. The subsequent tender of the joint statement cannot render that termination not lawful or unjustified.

Learned counsel for the appellant submitted that a joint statement which is tendered within reasonable time would suffice and he referred to the case of *The Ceylon Workers' Congress v. The Superintendent of Roeberry Estate*², in which Alles, J., held that no effect should be given to a belated joint statement which had been filed three years after the dismissal. In that case however, the wife was summarily dismissed and given one month's salary in lieu of notice and it was argued by the appellant union on her behalf that no opportunity had been given to

¹ (1963) 65 N. J. R. 8.

² (1967) 70 N. L. R. 211.

file a joint statement under s. 23 (1). Alles, J., held that in view of the fact that three years had elapsed before the joint statement had been filed it was belated and could not be treated as a serious expression of willingness of the appellant to seek re-employment.

Learned counsel for the appellant also submitted that the matter must be looked at as at the date of the inquiry before the Labour Tribunal and that as a joint statement had been in fact filed, the Labour Tribunal would not be making an order the effect of which is to sanction a breach of a law of the land. In *The Superintendent, High Forest Estate, Kandapola v. Walapane Sri Lanka Watu Kamkuru Sangamaya, Uda Pussellawa*¹, where apparently no joint statement had been tendered, T. S. Fernando, J., took the view that an order for reinstatement would be one which would enable s. 23 (1) to be flouted and therefore would not be just and equitable. The present case differs from that in that a joint statement had been filed though late. Whether the spouse of an Indian labourer lawfully and justifiably dismissed at the time of the dismissal where a joint statement is later filed, may be ordered by a Labour Tribunal to be reinstated and in what circumstances an order of reinstatement would be just and equitable are not questions free of difficulty. It is however, in my view, unnecessary to decide these questions in this case. The Union filed the application to the Labour Tribunal on behalf of Kuttiammah and stated that her services had been terminated without valid reason and that her dismissal was wrongful and unjustified. The employer filed answer stating that he terminated her services as he was obliged to do so consequent to the termination of the services of Vadivel her husband and because it was deemed necessary in the interests of discipline, economy and the due and proper administration of the estate. At the inquiry counsel for the appellant took up the position that the employer had no right to and was not obliged to terminate the services of Kuttiammah. The point that, even assuming that the employer was obliged to terminate the services of Kuttiammah and therefore her dismissal was both lawful and justified, the Labour Tribunal should nevertheless make order reinstating Kuttiammah was not raised at any stage of the inquiry nor has it been specifically raised in the petition of appeal. Further the President of the Labour Tribunal took the view that discipline and efficient management of the estate would be affected if Kuttiammah was retained in service.

In the circumstances, the appeal is dismissed with costs fixed at Rs. 105.

Appeal dismissed.

¹ (1963) 66 N. L. R. 14.