

1970

Present : Wijayatilake, J.

**THE CEYLON WORKERS' CONGRESS, Appellant, and
THE EASTERN PRODUCE AND ESTATE CO. LTD.,
and another, Respondents**

S. C. 60/68—Labour Tribunal Case, 4154 Kandy

*Estate Labour (Indian) Ordinance (Cap. 133)—Section 23—Scope—Industrial dispute—
“ Just and equitable order ”.*

When the services of an estate labourer are terminated, the contract of service of his unmarried daughter, who is not a minor, is not liable to be terminated under section 23 (1) of the Estate Labour (Indian) Ordinance. In such a case it is not open to a labour tribunal to refuse reinstatement and, instead, award compensation on “ just and equitable ” grounds.

Observations on the necessity for framing issues in inquiries before Labour Tribunals.

APPPEAL against an order of a Labour Tribunal.

N. Satyendra, for the applicant-appellant.

Lakshman Kadirgamar, with *K. S. Dissanayake*, for the employer-respondents.

Cur. adv. vult.

August 3, 1970. WIJAYATILAKE, J.—

On 12.3.1965 the respondents terminated the services of one Letchumy an Indian labourer employed on Hope Estate. The Applicant Union on her behalf pleaded that the said termination was unjustified and prayed that she be re-instated with back wages. The respondents alleged that the termination was justified as it was consequent on the termination of the services of Letchumy's father Kanapathy, in terms of S. 23 (1) of the Estate Labour (Indian) Ordinance.

Mr. Satyendra, learned Counsel for the appellant, has drawn my attention to S. 23 (3) of this Ordinance which provides that in this section “ child ” means a minor. According to the certificate of birth A 1 of this labourer, she was born on 8.3.1944 on Hope Estate and the informant was one G. R. B. Williams, Superintendent of Hope Estate. It would appear from the proceedings that the incident in respect of which her father's services were terminated occurred on 11.3.65; so that clearly she had attained majority on this date and therefore the termination of her services under S. 23 of the Estate Labour (Indian) Ordinance was illegal. The present superintendent has spoken of a register maintained by this estate according to which her age at the time of this incident was only 20, but he conceded that the Birth Certificate should be with the

estate authorities. It is quite clear that the superintendent has taken action precipitately in this matter without reference to the Birth Certificate. Furthermore, the register he has been referring to has not been produced.

The learned President has very correctly come to the conclusion that Letchumy was not a minor and therefore the respondents could not have terminated her services under the said Ordinance. However, he holds that the employers have acted in good faith as the estate records show that she was a minor and he proceeds to state that the services of her parents having been justifiably terminated he does not propose to order re-instatement, as she is not a married person and lives with her parents, and that if she is re-instated it would create problems both for herself and for the management. He accordingly makes an award of compensation in a sum of Rs. 180/- which he holds would suffice to meet the ends of justice. I have already observed that the estate register has not been produced.

Mr. Satyendra submits that the order terminating this labourer's services is clearly illegal and therefore it is not open to the President to circumvent the law and make an order which appears to him to be just and equitable. I am in entire agreement with this submission.

Mr. Kadirgamar learned Counsel for the respondents submits that the question raised in this appeal is not a question of law and therefore this Court has no jurisdiction to entertain this appeal—vide Section 31D Industrial Dispute Act. In my opinion the learned President has clearly exceeded his jurisdiction by violating a legal provision and therefore the question which has been now raised in appeal would fall within S. 31D.

I might state that the issue in this case was quite simple and a perusal of the Birth Certificate would have been sufficient to answer it; but evidence has been led at great length which is of little relevance. This is a noticeable trend in proceedings before Labour Tribunals and every attempt should be made to check it lest one misses the wood for the trees. I need hardly comment on the consequent long delays in the disposal of Inquiries, and the cost of litigation and the hardships caused to the parties as in the instant case where the labourer's services had been terminated as far back as 12.3.1965. It would be a useful practice for the President to frame the points in dispute in consultation with the parties before proceeding to Inquiry.

I would set aside the Order of the learned President and make order re-instating the said Letchumy with back wages from the date of dismissal upto the date of re-instatement. I award the applicant Rs. 300/- as costs.

Appeal allowed.