

1963 Present : Basnayake, C.J., Abeyesundere, J., and
G. P. A. Silva, J.

SUPERINTENDENT, WALAPANE ESTATE, Appellant, and
WALAPANE SRI LANKA WATU KAMKARU SANGAMAYA,
Respondent

S. C. 3 of 1962—Labour Tribunal No. LT. 3/5853

Estate Labour (Indian) Ordinance—Section 23—Authority of employer to terminate the services of the spouse of a discharged labourer.

Section 23 of the Estate Labour (Indian) Ordinance affords authority to an employer who lawfully terminates the contract of service of a labourer to terminate the contract of service of the labourer's spouse at the same time.

Ceylon Workers' Congress v. Superintendent, Kallebokka Estate (64 N. L. R. 95), overruled.

APPEAL from a decision of a labour Tribunal. This appeal was referred to a Bench of three Judges under section 48A of the Courts Ordinance.

H. V. Perera, Q.C., with *S. Sharvananda* and *L. Kadirgamar*, for Employer-Appellant.

S. Kanakaratham, with *Nimal Senanayake*, for Applicant-Respondent.

Cur. adv. vult.

March 27, 1963. BASNAYAKE, C.J.—

This appeal first came up for hearing before my brother T. S. Fernando. At the hearing before him learned counsel for the appellant canvassed the correctness of the decision in *The Ceylon Workers' Congress v. The Superintendent, Kallebokka Estate*¹. As he formed the view that the question arising for adjudication was one of doubt or difficulty he reserved the question under section 48 of the Courts Ordinance for the decision of more than one Judge. I accordingly made order under section 48A of that Ordinance constituting a Bench of three Judges and the appeal now comes up for hearing before us in pursuance of that Order.

This appeal is from the decision of a labour tribunal and is lodged under the right granted by section 31D(2) of the Industrial Disputes Act as amended by the Industrial Disputes (Amendment) Act. The material subsections of section 31D reads :—

“(1) Save as provided in subsection (2) an order of a labour tribunal shall be final and shall not be called in question in any court.

¹ (1962) 64 N. L. R. 95.

(2) Where the workman who, or the trade union which, makes an application to a labour tribunal or the employer to whom that application relates is dissatisfied with the order of the tribunal on that application, such workman, trade union or employer may, by written petition in which the other party is mentioned as the respondent, appeal to the Supreme Court from that order on a question of law.

(5) The provisions of Chapter XXX of the Criminal Procedure Code shall apply *mutatis mutandis* in regard to all matters connected with the hearing and disposal of an appeal preferred under this section."

The question of law that arises for decision on this appeal is whether section 23 of the Estate Labour (Indian) Ordinance affords no authority to an employer who lawfully terminates the contract of service of a labourer to terminate the contract of service of his spouse at the same time. The President of the labour tribunal has found that in the instant case the contract of service of the labourer Sinnasamy was lawfully terminated by the employer, and that the services of his spouse were terminated in consequence of the termination of her husband's services. But in view of the decision in *Ceylon Workers' Congress v. Superintendent of Kallebokka Estate* (supra) he holds that the termination of the services of Sinnasamy's wife Velamma is illegal and unjustified and has ordered that she be reinstated with back wages which he fixes at Rs. 600.

The present appeal is from that order. An appeal lies only on a question of law, and five questions have been certified by counsel as fit questions for adjudication by this Court. The questions certified overlap, are not elegantly worded and are not confined to questions of law. As the certificate is one required by section 340 (2) of the Criminal Procedure Code, Counsel should be careful to state with precision the question or questions of law without stating questions of mixed law and fact. The only question of law that emerges from them is that stated above. I shall now turn to that question. Section 23 of the Estate Labour (Indian) Ordinance reads :

" 23 (1) At the time when any labourer lawfully quits the service of any employer, it shall be the duty of that employer to issue to that labourer a discharge certificate substantially in form II in Schedule B, and, where at such time the spouse or a child of such labourer is also a labourer under a contract of service with that employer, it shall be the duty of the employer, subject as hereinafter provided, to determine such contract and to issue a like certificate to such spouse or child :

Provided that where such spouse or child wishes to continue in service under such contract and produces to the employer a joint statement signed by both husband and wife to that effect, nothing in the preceding provisions of this subsection shall be deemed to require the employer to determine such contract or to issue a discharge certificate to such spouse or child.

(2) Any employer who refuses or neglects to give a discharge certificate to any labourer as required by this section shall be guilty of an offence, and shall be liable on conviction thereof to a fine which may extend to one hundred rupees, and a further fine not exceeding five rupees for every day during which such default shall continue.

(3) In this section, " child " means a minor and includes an adopted or illegitimate child who is a minor."

In the case of the *Ceylon Workers' Congress v. The Superintendent of Kallebokka Estate* (supra) my brother Tambiah held that the above section does not apply to a case in which the employer terminates the services of a labourer and that its application is confined to the case in which a labourer voluntarily quits the service of an employer.

The word " quits " occurs not only in section 23 but also in sections 22 and 25(3), and neither in section 23 nor in the other section does it admit of the restricted meaning given to it in the case referred to above. The word " quits " is not a term of art and given the ordinary meaning that is appropriate to the context of section 23 it means " to leave ". A labourer lawfully quits the service of his employer when he leaves after his services come to an end either when he or the employer in the exercise of the right to terminate the contract of service lawfully terminates it. 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 section 23 (1). That provision is designed for the benefit of the spouse of a labourer. It prevents the employer from discharging the husband without at the same time releasing the wife. In our opinion the case of *The Ceylon Workers' Congress v. The Superintendent of Kallebokka Estate* has been wrongly decided and on the findings of fact in the instant case it was the duty of the employer to determine the contract of service of the labourer's spouse and to issue to her a discharge certificate.

The appeal is allowed and the decision of the Labour Tribunal, that the determination of the contract of Sinnasamy's wife Velamma is illegal and unjustifiable together with the award of Rs. 600 as back wages, is set aside.

ABEYESUNDERE, J.—I agree.

G. P. A. SILVA, J.—I agree.

Appeal allowed.