

1969

Present : Alles, J.

BADDEGAMA TEA SMALL HOLDERS' CO-OPERATIVE
SOCIETY LTD., Appellant, and U. L. EMALIN, Respondent

S. C. 108/68—Labour Tribunal, No. C/3526

Labour Tribunal—Termination of female employes's services on the ground that she has reached retiring age—Burden of proving lawful termination—Employees' Provident Fund Act, No. 15 of 1958, s. 10 (1).

Where the services of a female employee to whom section 10 (1) of the Employees' Provident Fund Act is applicable are terminated on the ground that she has reached the age of 50 years, the burden of proving the retiring age of the employee is on the employer.

APPEAL from an order of a Labour Tribunal.

L. W. Athulathmudali, for the employer-appellant.

No appearance for the applicant-respondent.

Cur. adv. vult.

October 19, 1969. ALLES, J.—

The only issue that arises for consideration in this appeal is, whether the learned President arrived at a correct conclusion when he held that the services of the applicant-respondent were unlawfully terminated. The respondent was employed as a factory worker under the appellant-Society for about four years, when, according to her, her services were terminated by letter A2 dated 12th June 1967, which gave her notice that the Board of Management of the Society had taken a decision to retire her from the end of that month, on the ground that she had reached the age of 50 years. According to the Secretary of the Society this was done in pursuance of a practice in the institution that work was not to be given to females who had passed the age of 50 years. In cross-examination the Secretary also said that there was also a code of regulations which gave effect to this practice.

The evidence with regard to the age of the applicant-respondent at the time of discontinuance is extremely meagre. The applicant was unable to produce her birth certificate and she stated that she gave her age from her horoscope at the time she filled the forms for the purpose of the Employees Provident Fund. The learned President in accepting that her age was under 50 on the date of termination has relied on a copy of a letter sent to Neal de Alwis, the Member of Parliament for Baddegama by the Commissioner of Labour marked A1. According to

A1 the age of the respondent at the time she became a contributor to the Employees Provident Fund was given as 45 years and the date of birth as 15th March 1920. It was also stated in A1 that the respondent would complete her 50 years on 15th March 1970.

The burden of proving the lawful termination of the respondent's services was on the appellant-Society. If there was a practice which permitted the employer to terminate the services of a female employee on reaching the age of 50, it was incumbent on the employer to place evidence before the Tribunal, documentary or otherwise, that the termination was lawful as a result of the employee reaching the retiring age. If there was a practice in existence or a regulation to that effect one would have expected the employer to have some record of the employee's age at the time of employment. This becomes all the more necessary in view of the provisions of the Employees' Provident Fund Act No. 15 of 1958. The proviso to Section 10 (1) states that male employees who have attained the age of 55 and female employees who have attained the age of 50 shall not be liable to make contributions to the Fund. When, therefore, an employer commences to make deductions from the employee's wages for the purposes of the Fund it would be necessary for him to have a record of the age of his employees. This burden being on the employer he has failed to discharge it in this case. On the contrary in view of A1, it would appear that the employer was in error in terminating the services of the respondent prematurely. The Secretary admitted that he had experience of maintaining the books relating to the Provident Fund and that the ages of the employees had to be furnished to the Provident Fund but he did not make an effort to ascertain the age of the respondent from the Department, before termination of the respondent's services.

I am therefore of the view that the learned President was justified in making his order in favour of the respondent. The appeal is dismissed without costs.

Appeal dismissed.