1967 *Present :* **Alles, J.**

THE HIGHLAND TEA CO. OF CEYLON LTD. and another, Appellants, *and* THE NATIONAL UNION OF WORKERS, Respondent

S. C. 56-57/1967—Labour Tribunal Case No. 9/682

Estate Labour (Indian) Ordinance—Section 23 (1)—Lawful termination of a labourer's contract of service—Termination of his wife's contract of service thereafter despite joint statement by husband and wife—Remedy of the wife—Power of a Labour Tribunal to grant compensation to her—Meaning of the word " labourer "—Industrial Disputes Act, s. 31 D (2).

Where, after the contract of service of an estate labourer has been lawfully terminated, a joint statement in terms of the proviso to section 23 (1) of the Estate Labour (Indian) Ordinance is submitted to the employer by the discharged labourer and his wife, wishing that the services of the wife, who is already under a contract of service on the estate, be continued, the employer is not bound to continue the employment of the wife. Consequently, the wife, if her services are lawfully terminated, cannot claim as a matter of right to be re-instated by a Labour Tribunal. It is, however, open to the Tribunal to grant her equitable relief by making an order for the payment of a sum of money as compensation.

The benefits of the Estate Labour (Indian) Ordinance are available to a person who is born in Ceylon of parents who are of Indian origin and who becomes a citizen of this country by registration.

APPEAL from an order of a Labour Tribunal.

L. Kadirgamar, for the respondents-appellants.

N. Satyendra, for the applicant-respondent.

Cur. adv. vult.

September 29, 1967. ALLES, J.—

The respondent Union filed an application on 11.10.66 before the Labour Tribunal on behalf of one Iruthayam, wife of Muthiah, alleging that the termination of her services by the appellants was without valid reason and praying, *inter alia*, for her re-instatement. On 8th April, 1967, after hearing the submissions of the legal representatives of the parties concerned, the President made order that the termination of Iruthayam's services was wrongful but without ordering re-instatement he directed the appellants to pay her a sum of Rs. 300 as compensation. The present appeal to this Court is made under section 31D (2) of the Industrial Disputes Act and has raised several questions of law. It has been submitted by Counsel for the appellants that the learned President erred in law when he held that the termination of the contract of employment of the said Iruthayam was wrongful when a joint statement had been filed under section 23 of the Estate Labour (Indian) Ordinance ; that the said Ordinance did not apply to her as she was a citizen of Ceylon and that the relief granted to Iruthayam was not of a nature that was authorised under the provisions of the law.

There is no dispute that the services of Muthiah were properly terminated by the appellants and that termination has been justified by the order made by the Tribunal in his case. It is also admitted that thereafter a joint statement under the proviso to section 23 (1) of the Estate Labour (Indian) Ordinance has been tendered to the Superintendent signed by Muthiah and Iruthayam but that no work has been given to Iruthayam and that her services have been terminated by the Superintendent, the 2nd appellant.

The Estate Labour (Indian) Ordinance (hereafter referred to as the Ordinance) was enacted in 1889 and was intended to consolidate the law relating to Indian labourers employed on Ceylon estates. The Ordinance applied to emigrants from India who emigrated to Ceylon to work on Ceylon estates and the definition of the word ' labourer ' in the Ordinance clearly indicated that it applied to persons of Indian origin. My Lord the Chief Justice in *Superintendent, Oakwell Estate, Haldumulla v. Lanka Estate Workers Union* [1] has held that the Ordinance applied not only to actual emigrants from India but also to children of emigrants born in Ceylon. With that observation, I am in respectful agreement.

[1] *(1963) 65 N. L. R. 429 at 430.*

Indeed the provisions of the entire Ordinance in regard to the payment of wages, the contracts of service, the maintenance of registers, the provisions of accommodation for the labourers and the forms to be forwarded to the Emigration Commissioner justify the observation that the main object of the Ordinance was to safeguard the interests of the Indian immigrant labourer. Section 23 was intended to preserve the family unit of the labourer and reads as follows :—

> "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."

Under the main section, there is a duty imposed on the employer of a labourer, who lawfully quits his service, to issue him a discharge certificate and when the spouse or child of such a labourer is also under a contract of service there is a further duty cast on him to issue a discharge certificate to such spouse or child as well. There is therefore a corresponding right in the labourer or the spouse in such a case to claim that they are entitled to receive such certificates. The breach of this duty is punishable as an offence under section 23 (2). Under the proviso, when a joint statement is filed the law imposes no duty on the employer to continue the employment of the spouse or to refrain from issuing a discharge certificate. The terms of the employment of the spouse in such a case would be governed by the common law. Consequently, the spouse of a labourer whose services have been lawfully terminated cannot claim as a matter of right in such an event to be re-instated. There may be good grounds why the employer is unable to re-instate the spouse of such a labourer. Quite apart from the desirability of maintaining the family unit, an employer may find it difficult to provide accommodation for the spouse, particularly if she is the wife, and as in the instant case it may become necessary in the interests of discipline not to order re-instatement. These are matters, particularly in the present state of labour relations, which should be left to the discretion of the employer and subject to review by a Labour Tribunal. This view is not necessarily in conflict with the view expressed by my brother T. S. Fernando, J. in the *High Forest* case[1]. In that case no joint statement was filed and my brother held, if I may

[1] *(1963) 66 N. L. R. 14.*

say so with respect, correctly, that when the wife's contract was determined in consequence of the lawful termination of the husband's services it was not open to a Labour Tribunal to grant just and equitable relief to the wife. Such a course the learned Judge remarked would be " in conflict with the law as declared by the legislature and as interpreted by the Courts ".

In the concluding part of the present order the President has stated as follows :—

> "In making an order of reinstatement, I should take into consideration the fact that this Tribunal has justified the termination of this worker's husband's services for gross misconduct so that if I decide to reinstate her, I cannot deprive her husband of a legitimate right to visit and live with his wife in the estate. This position, in my view, would create a very anomalous situation and would not be conducive to a harmonious relationship. It would, in other words, nullify the effect of my order made in respect of the husband. It could even lead to a very serious breach of discipline as the man unwanted by the Superintendent is again within the precincts of the estate, probably spreading discontent and disharmony amongst the peaceful and peaceloving set of innocent workers.
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> I am of the sincere opinion that I would be failing in my duty if I were to reinstate this woman even with the most stringent conditions attached to such an order.
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> For the reasons stated above, I hold that the dismissal is wrongful but I refrain from making an order of reinstatement. Instead, taking into consideration the period of service, i.e., from August, 1961, I order the respondent to pay to the worker concerned, a sum of Rs. 300 as compensation."

The facts in the present case therefore are different from the facts in the *High Forest* case and in the view that I have taken of the circumstances of the instant case, it was open to the President to make an order that was just and equitable.

The only other point raised in this appeal was whether the Ordinance applied to Iruthayam who was born in Ceylon and admittedly was a citizen of Ceylon by registration. I do not think that the fact that a person who is born in Ceylon of parents who are of Indian origin—(I assume this to be the case since a joint statement was filed under section 23)—and who has become a citizen of this country by registration precludes such a person from enjoying the benefits of the Ordinance. There is nothing to prevent an Indian emigrant or the child of one acquiring citizenship rights in this country and at the same time claiming the benefits under the Estate Labour (Indian) Ordinance.

I am therefore of the view that the termination of the services of Iruthayam by the 2nd respondent-appellant was not wrongful or unlawful and I would set aside the order of the President declaring it to be such.

I also hold that the President has not erred in law in making the order of compensation in this case which is an order which he was entitled to make under the provisions of the law.

Since the appellants have succeeded in the declaration which they have sought that the order terminating Iruthayam's services was not wrongful, I dismiss the appeals without costs.

Appeals dismissed.