

1963

Present : H. N. G. Fernando, J.

SUPERINTENDENT, OAKWELL ESTATE, HALDUMULLA and
two others, Appellants, and LANKA ESTATE WORKERS' UNION,
Respondent

S. C. 13/62, 35/62, 1/63—Labour Tribunal 1/8082, 4/2609, 6/4876

Estate Labour (Indian) Ordinance (Cap. 133)—Section 23—Termination of services of an employee—Right of employer to terminate services of the employee's spouse also—Meaning of term "labourer"—Indian Immigrant Labour Ordinance (Cap. 132), s. 2.

Under section 23 of the Estate Labour (Indian) Ordinance it is lawful for an employer to terminate the services of the spouse of an employee who quits his employment even when the employee quits in consequence of the termination of the employment by the employer.

Section 23 of the Estate Labour (Indian) Ordinance is applicable to persons born in Ceylon who are commonly known as "Indian estate labourers".

APPPEALS from three Labour Tribunal orders.

H. V. Perera, Q.C., with *L. Kadirgamar*, for the employers-appellants in S. C. 13/62 and 1/63.

H. V. Perera, Q.C., with *H. W. Jayewardene, Q.C.*, and *S. Sharvananda*, for the employer-appellant in S. C. 35/62.

Colvin R. de Silva, with *R. Weerakoon*, for the applicants-respondents in S. C. 13/62 and 1/63.

Colvin R. de Silva, with *M. T. M. Sivardeen* and *R. Weerakoon*, for the applicant-respondent in S. C. 35/62.

Cur. adv. vult.

September 30, 1963. H. N. G. FERNANDO, J.—

The ground of appeal in each of these three cases is the same, namely that according to the judgment of 3 Judges of this Court in the case of *Superintendent, Walapane Estate v. Walapane Sri Lanka Watu Kamkaru Sangamaya*¹, it is lawful for an employer to terminate the services of the spouse of an employee who quits his employment, even when the employee quits in consequence of the termination of the employment by the employer. According to that decision, the orders for the reinstatement of the respondents in each of these cases are erroneous in law.

¹ (1963) 65 N. L. R. 8.

But there has been one question, not considered previously, which has been argued by counsel for the Respondent partly in consequence of some encouragement from me. The question is whether Section 23 of the Estate Labour (Indian) Ordinance, (Cap. 133), can be held to apply to persons born in Ceylon who have not actually emigrated from India, but are only descendants of such actual emigrants.

The term "labourer" is defined as follows:—

"Labourer" means any labourer and *kangany* (commonly known as Indian coolies) whose name is borne on an estate register, and includes the Muslims commonly known as "*Tulicans*".

This definition is not in keeping with current usage in that the word "cooly" is not, or at least is not supposed to be, now applied to any category of workers. But apart from that consideration, the definition did not at the time of its enactment, and does not at the present time, give much room for doubt as to the persons who fall within its scope. There is still a category of persons commonly known as "Indian estate labourers" just as much as there was formerly a category known as "Indian coolies", the difference being purely one of name and not of substance. Indeed, in some contexts, such as that of the case of *Mudanayake v. Sivagnanasunderam*, it has been contended on behalf of this category of persons that they are a "community" within the meaning of section 29 of the Constitution.

There is nothing in Chapter 133 itself to show that "Indian coolies" was a term employed with the intention of including only actual emigrants from India. What misled me at first was the definition in Chapter 132 of the term "Indian immigrant labourer" which clearly refers only to actual emigrants from India. But that *later* Ordinance deals with the emigration to Ceylon, and the first employment in Ceylon of persons coming from India, and the narrow definition was sufficient and necessary for its purposes. Section 2 of Chapter 132 provides that the Ordinance shall, so far as is consistent with the tenor thereof, be read as one with Chapter 133. But there is no indication at all of any intention to modify any provision of the earlier Chapter 133.

I hold therefore that section 23 of Chapter 133 does apply to persons born in Ceylon who are commonly known as "Indian estate labourers".

Following the decision in the *Walapane* case, I would set aside the orders made by the Labour Tribunals in each of these three cases. I make no order for costs.

Orders set aside.