

(1958) 08 KAR CK 0008
In the Karnataka High Court
Case No : Case No. L.C.S. 16 of 1957

Hospet Estate, Chickmagalur

APPELLANT

Vs

Its Workers (Karnataka Provincial Plantation Workers" Union)

RESPONDENT

Date of Decision : 20-08-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 16 (2), 2 (k)

Citation : (1959) 1 LLJ 95

Hon'ble Judges : G.S. Hiremath, J

Bench : Single Bench

Judgement

1. This is a dispute referred by the Government of Mysore by its order No. LLH. 332 ILD 57, dated Bangalore, 18/25 September 1957, for adjudication to this Labour Court, Bangalore. The letter of reference was taken on this Court file on 4 October 1957 and as usual the parties were summoned. Both the parties put in their appearance and filed their respective statements.

2. The brief facts of the case are that the union first party contended that the petitioner Keshava Maistri was in service of the respondent-estate, throughout the year 1956 and in the early part of the year 1957. His services were summarily terminated with effect from 3 January 1957, without holding even a formal enquiry. The petitioner requested the employer to take him back in service but his request was not heeded. So the petitioner at the earliest opportunity approached the conciliation officer through the Karnataka Provincial Plantation Workers" Union for redress. The conciliation proceeding ended in failure. The action of the employer second party being prompted with a view to punish the applicant for his legal trade union activities, is illegal and unjust.

3. The respondent management of Hospet estate, Chickmagalur (hereinafter referred as estate), on the other hand, stated that there is no industrial dispute as defined under the Industrial Disputes Act (Central Act XIV 1947). Hence the claim of the petitioner is not sustainable. The claimant was not an employee of the management at any time but it was the labour contractor Velayudha who had

contracted to supply the workmen fifty in number and three maistris for the season of the year 1956-57. The claimant was taken away by the said contractor as he could not supply the requisite number of labourers. There was only 36 labourers inclusive of children and to supervise those workers three maistris were unnecessary. All the workers for the year 1956-57 season, having been disbanded, the employment of the claimant could not have been continued after 31 March 1957 and there could be no order of reinstatement as the workers over whose work the claimant was to supervise have ceased to work from 1 April 1957 and the essential condition for his services does not exist now.

4. The following issues have been determined on the pleadings :-

(1) Whether there is no industrial dispute between the parties as alleged and objected by the respondent.

(2) Whether the said worker is an employee of the respondent management.

(3) Whether the termination of Keshava Maistri, employee of the said management, was justified. If not, whether the said worker is entitled to be reinstated with or without back wages.

(4) To what other relief is the said workman entitled ?

5. Both the parties have examined two witnesses on their behalf in the oral evidence and filed the documents as scheduled in the annexures.

6. Parties have addressed me. The contention of the learned advocate for the respondent-estate was that the Karnataka Provincial Plantation Workers' Union represented the entire workers of the plantation in general. The workers of the respondent-estate are not the members of the Karnataka Provincial Plantation Workers' Union (hereinafter referred to as the union). Hence this dispute is at the most an individual dispute but not the industrial dispute as defined under the Industrial Disputes Act (Central Act XIV, 1947).

7. Secondly it was further submitted that there is no evidence as to the workers of the respondent-estate have taken the cause of Keshava Maistri. The union has not filed any resolution to the effect that workers of the respondent-estate had held a general meeting wherein they had moved a resolution to espouse the cause of the alleged dismissed workman.

8. Lastly it was contended that the different groups of workmen in the respondent-estate worked under different maistris. In the month of January 1957 there was remaining a small number of workmen engaged by the labour contractor Sri Velayudhan and after the month of January 1957 none of his group men remained in the respondent-estate. As such there was no opportunity to have such a concerted demand by the workmen of the respondent-estate, for the workmen of other groups working under other maistris did not take up the cause of Keshava Maistri. In support of his contention the learned advocate relied upon the rulings cited in the following case-laws :-

(1) 1956 I L.L.J. 498.

(2) 1949 L.L.J. 875.

(3) 1958 I L.L.J. 587.

9. I shall first deal with this problem because the question of jurisdiction and maintainability of the reference are involved therein. This problem as to whether there is an industrial dispute existing or is apprehended, is a mixed question of fact as well as of law. The issue runs as follows :-

10. Issue (1) :

"Whether there is no industrial dispute between the parties as alleged and objected by the respondents."

11. The respondent-estate, in his counter-statement, has stated in Paras. 1 and 2 that the termination of the services of the claimant was not taken up by the workers as an industrial dispute. The workers did not demand the reinstatement of the claimant; when the union made a claim, the workers employed by the management had not authorized the union to raise any dispute. The workers employed by the management were not members of the union. None of the members of the said union at present or at the time of the reference was or is in the employment of the management.

12. The union has denied these averments made in the counter. The learned representative for the union contended that it is not necessary to pass a resolution in order to show that the workmen have taken up the cause of the dismissed workman when the union has taken his cause and moved the Government machinery for redress. The workers of the estate or the members of the union and by the virtue of the union being a trade union, it is capable of moving the cause of the workman, without holding a general meeting in order to resolve to that effect.

13. It was further argued that the State Government may refer the dispute defining the parties individually or collectively as it considers appropriate. There is no bar that the State Government should not implead the union as a party to the dispute. It was further said that the facts of the case-laws referred by the learned advocate for the estate are not applicable to the facts of the instant case.

14. Lastly, it was submitted that the estate should prove that there was no industrial dispute and if there was any onus of proof it is laid upon the opposite party who asserted that there was no industrial dispute.

15. I had considered this point anxiously. This question is often raised in so many references : The first point to be considered is who is to prove the issue, either the first party by whose instance the Government refers the dispute after having considered on the merits of the case and arriving at the conclusion that there existed or was apprehended the industrial dispute or by the management who asserted as in the counter-statement that there was no industrial dispute. As a

matter of fact, the onus of proof should lay upon the party who denies the existence of the industrial dispute or asserts there was no apprehension of such dispute. The simple reason for this observation is that it is presumed that the entire machinery of the Government applies its mind and concludes that there exists the industrial dispute between the parties. As its result the matter is referred to the tribunal or courts for adjudication. By the order of reference it is presumed that there exists the industrial dispute between the parties and same is referred for adjudication. It was decided in the case quoted in 1956 I L.L.J. 319 (322).

"if, therefore, there was any onus of proof it is laid on the company to make out that there was no dispute between it and its workmen collectively."

16. I have to further say that the individual dispute might develop into one, if the other workmen or the union of workmen would take it up or it, the industrial dispute, only includes such disputes as have been taken up by the union or the general body of workmen [vide Bengal Club Ltd. Vs. Santi Ranjan Somaddar and Another, . In the case The Management the Hindustan Times Ltd., New Delhi Vs. The Chief Commissioner, Delhi and Others, , their lordships have observed :

"There must be a presumption that when the union takes up the cause of the aggrieved workmen members it is as a representative of and with the support of its members."

17. The learned advocate for the respondent-estate advanced a point of argument that it would not do to say that the aggrieved workman is a member of the union and that union has taken up the cause of that workman, so it is an industrial dispute.

In support of his contention he relied upon the rulings quoted in the case Sri Rama Vilas Service, Ltd. (Kumbakonam Branch), petitioners v. State of Madras 1956 I L.L.J. 498 wherein their lordships observed as follows :

"Thus where an employee of a Kumbakonam branch of a Madras concern is dismissed, whatever be the extent of the interest evinced in him by the Madras union and whatever be the justice of the cause that the Madras union espouses, a dispute between the Madras union and the management of Madras office would not amount to a dispute between the workers of the industrial establishment at Kumbakonam branch and its management and that is not enough to make the dispute an industrial dispute, that is, collective dispute, between the workers of Kumbakonam branch or even an appreciable number of them on the one hand and the management on the other."

18. I accept this view and the same is elaborated in the case The Management the Hindustan Times Ltd., New Delhi Vs. The Chief Commissioner, Delhi and Others, , wherein their lordships clearly observed :

"There is some support for the view and that is the case Sri Rama Vilas Service, Ltd. v. State of Madras 1956 I L.L.J. 498, In which Rajagopalan, J., has cited with

approval the dictum of Vishwanath, J., in an earlier case as follows :

"If, however, the dismissal of an employee is the result of victimization, if the employees in service or a substantial section of such employees threaten to strike work, or having struck work refuse to resume work, unless the person dismissed is reinstated, in other words, if the remaining workman or substantial body of them or a union of workmen takes up the cause of the victimized employee and demands his reinstatement, there is an industrial dispute.

It does not detract from the strength of this observation that Rajagopalan, J., found on the facts of that particular case that there was not an industrial dispute, since apparently the union which had taken up the cause of the dismissed workman among the employees was numbered only forty out of several hundred employees of the company concerned."

19. In the case *Sri Rama Vilas Service, Ltd. v. State of Madras* 1956 I L.L.J. 498, the brief facts were that the Kumbakonam branch of Sri Rama Vilas Services, Ltd., had a separate union of its workers by name "welfare union" which has resolved that the cause of the said dismissed workman should not be espoused. The works committee had also expressed that the dismissal of the said workman was Justified. Accordingly the said company had dismissed the said workman. But the cause of this dismissed workman was taken up by the Simpson and Group Companies Workers" Union, along with other demands submitted by it to the Director of Amalgamation, Ltd., Madras, to which Sri Rama Vilas Service, Ltd., was a member. The Simpson and Group Companies Workers" Union claimed forty members, including the petitioner of Kumbakonam Branch of Sri Rama Vilas Services. Ltd. In that case Rajagopalan, J., had observed that there was no industrial dispute, since a substantial section of such workmen had not taken up the cause of the dismissed workman.

20. The next argument advanced by the learned advocate for the respondent-estate was that there was nothing whatever to show that any of the workman had taken the side of the dismissed workman and therefore there is no industrial dispute between the estate and workman.

21. The answer to the above question is found in the case *The Management the Hindustan Times Ltd., New Delhi Vs. The Chief Commissioner, Delhi and Others*, , High Court, Punjab, in which his lordship Justice Sri Falshaw has observed as follows :

"The absence of any threat of striking or taking other action by the fellow-employees of M. L. Madan does not prevent the dispute from being an industrial dispute between the company and its workmen."

22. It is further observed regarding the resolution :

"I cannot for a moment accept the contention of the learned counsel for the company that the union has to prove that those of its members who are employed by the company are supporting M. L. Madan. by providing that they

have passed a resolution in his favour or some such means. In my opinion there must be a presumption that when the union takes action, it is as a representative of, and with the support of, its members and that it is for the company to prove that the facts are otherwise and that the members of the union are not behind it in its action."

23. The learned advocate for the respondent-estate argued that the mere fact, that a union, which is not a union confined to the workmen of this particular employer, has taken up the said workers' case, does not make the dispute an industrial dispute within the meaning of the Act and further, that although a number of employees of the respondent-estate were members of the union, there is nothing whatever to show that any of them took the side of the said worker in the dispute and therefore it is said that there was no industrial dispute.

24. This view, I think, is expressed by the respondent-estate finding some support by one of the cases relied on behalf of the respondent in the case Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, . Their lordships have observed as follows :-

"Notwithstanding that the language of S. 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the union or a number of workmen. If that were the correct position, the respondent was not entitled to apply under S. 16(2) of the Act as the workmen in the industry had not adopted his dispute as their own and chosen to treat it as their *casus belli* with the company."

25. It was, further, observed by their lordships in the same case that the appeal was directly concerned with the "Central Provinces and Berar Industrial Disputes Settlement Act of 1947. So there was no need to express a final opinion on the question whether a dispute simpliciter between an employer and a workman would be an industrial dispute within S. 2(k) of Act XIV of 1947."

26. Now it has become a settled law that a dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the union or a number of workmen.

27. Now the question is whether the dispute taken up by the union comprising the workmen of the same or identical industry when there is no representation or considerable representation of the workmen working in the concern in which the dismissed employee was a workman, may become the industrial dispute.

28. Before discussing this point I have to clear my views that any seven workmen may form a union and such unions may be many even in a single factory, trade and industry or there may be a union or unions comprising all

workmen in general of an industry or of the identical industry or of a different industry or industries subject to the territorial limitation.

29. Regarding the question said above, I shall here cite some of the case-laws wherein this point has been elaborately discussed. His lordship Sri Justice Mack of the Madras High Court, in the Kandan Mills. Ltd., case 1949 L.L.J. 875 observed :

"The Industrial Disputes Act was never intended to provide a machinery for redress by a dismissed workman or even group of workmen who may be simultaneously punished or dismissed. They cannot by joining in a demand for reinstatement create an industrial dispute after their dismissal. If such a dismissal, however, of an individual workman is taken up by the workers' union or a substantial body of workmen who continue in employment and espouse his cause, an industrial dispute may arise."

30. The observation of Lord Shaw in *Conway v. Wade* 1909 A.C. 506 is also pertinent. His lordship observed as follows :

"An individual dispute originally may come to be a subject in which sides are taken and may develop into a situation of a general aspect, containing the characteristics of a trade dispute, but until it reaches that stage, I cannot hold that a trade dispute necessarily exists."

31. In the case of *National Association of Local Government Officers v. Bolton Corporation* 1943 A.C. 166 it was observed that a mere adoption by the union of an individual dispute will not do. The workmen must back up the union. There could be an industrial dispute over the retrenchment of a single individual worker, if that dispute had been converted into a collective dispute by the union acting on behalf of the workmen backing up the union by obeying the call to come out or strike."

32. In the case of *Krudd Industries, Ltd. v. Shivapada Das (Krudd Industrial Workers' Union)* 1958 I L.L.J. 181, Fifth Industrial Tribunal, West Bengal, Sri C. Palit, quoting all the case-laws cited above observed :

"An individual dispute as such is outside the ambit of an industrial dispute which alone can be decided by the industrial tribunal; only when such a dispute has been espoused by the union and the workmen have actively joined in such support of the union, the dispute sheds its "individual" character and becomes a collective dispute."

33. I shall here quote one foreign judgment which appeared in the 1958 I L.L.J. 7 (Jl. Sn.) (May 1958) [*R. v. Industrial Dispute Tribunal and another ex parte Queen Mary College, University of London, Queen's Bench Division*]; their lordships Lord Goddard, Chief Justice, Justice Byreme, Develin, observed :

"It may well be that this definition is contemplating all along a class of workmen. Industrial disputes do arise because large number or class of workmen support a

particular workman who may be dismissed or downgraded by the employer or sometimes because some particular workman is promoted and in the opinion of the body of workmen someone ought to have been preferred in his place. It may be that it is such matters as that the order is contemplating in its definition of "dispute." That point we need not decide. What we do decide is that there must be a dispute between an employer and more than one workman in his employ though it may be that the dispute originates with a single workman and that the others only become parties to the dispute in support of one member of their body."

34. The observation said above I have referred only to show what is an industrial dispute. The decisive point would be in this case whether the dispute which was admittedly an industrial dispute has been espoused by the union on behalf of the workmen comprising it and whether the workmen have overtly signified their active support of such a man. For that I have to turn to the evidence led on the present matter.

35. The first party has examined Keshava Maistri W.W. 1 and Sri M. V. Bhasker. By the documentary evidence it is disclosed that the Karnataka Provincial Plantation Workers' Union had lodged a complaint petition, dated 11 January 1957, to the office of Assistant Commissioner of Labour, Plantation Division, Chickmagalur. The said office held the conciliation but the said office decided to report a failure in the matter. The Exs. W. 2 and 3 are the applications presented by the said worker Keshava Maistri, one to the management and another to the union requesting that the termination of his services was illegal, so he should be permitted to resume work.

36. Turning to oral evidence, the testimonies of W. Ws. 1 and 2 are evident that Keshava Maistri was the active member of the union and by his efforts so many workmen have enrolled their names as members of the union. The said union had espoused the cause of the said dismissed workman on behalf of its workmen and by the instance of the union the conciliation was held and for the repeated absence by the management the conciliation officer decided to report a failure in the matter.

37. Keshava Maistri has deposed that he entered the service in the month of April 1956 and the management terminated his services on 3 January 1957; that he had sent a registered letter to the management requesting that he should be taken back in service; he had also sent an application to the union requesting it to take his cause and also for necessary action.

38. The same witness has further said that he was a member of the union. About 76 workmen of Hospet estate have enrolled their names as members of the union. The workers had verbally requested the union to take the proceeding about the dismissed workman but no resolution in writing was passed.

39. Sri M. V. Bhasker is W.W. 2. He was then assistant secretary of the Karnataka Provincial Plantation Workers' Union. He had sworn in that Keshava Maistri was

the office-bearer in the executive committee of the union, that he (witness) visited the Hospet estate and 78 workers of that union became the members of the said union. The membership register is maintained. By referring the register pp. 74 to 78, the witness said that 78 workmen were the members. Keshava Maistri was the cause for those employees being enrolled in the union. The dispute was taken up by the union and it was represented to the conciliation officer who held the conciliation. The proceedings were adjourned so many times for the absence of the management and as its result the said officer reported a failure. All workmen had given a consent to take the proceeding in the matter. The same witness in the cross-examination has said that Keshava Maistri has become a member in the month of August 1956 and he has paid his subscription fully. All the 78 workers of the Hospet estate are the members of the union and they have paid the subscription in various months. The workers had raised some demands, so he had contacted them; Keshava Maistri had given application to the union that his cause should be taken up and other workers had requested the union verbally to espouse the cause, of the dismissed workman. No resolution to that effect was passed. Since there was no such practice when the union has to espouse the cause, some of the workers went away to the other estate after the month of March 1957 and some remained in the same estate.

40. Sri Lobo is M.W. 1. He has been examined on behalf of the respondent-estate. He is a writer in the respondent-estate working since the year 1954. He has sworn in that the total strength of all workmen in the month of June 1956 was 105 and in the month of January 1957 there were 73 workmen from all gangs present working. The same witness has further said in the cross-examination that after March 1957 there were eight or ten workers that remained. The total strengths in the months of February and March 1957 were 48 and 40, respectively.

41. The learned advocate Sri G. K. Govinda Bhat on behalf of the respondent-estate contended that in the month of January 1957 different groups of workmen worked under different maistris. None of the members or workmen supplied by the labour recruiter Sri Velayudha remained in the respondent-estate after the month of January 1957. The other workers working under other maistris did not take up the cause of Keshava Maistri who was removed from service on 3 January 1957. In the absence of such evidence it is not safe to find that there is an industrial dispute existing between the workmen and the management of the Hospet estate. In support of his argument he relied upon the rulings - 1956 I L.L.J. 498 ; 1949 L.L.J. 875 ; 1958 I L.L.J. 587.

42. I am reluctant to concede with the view as it was submitted by the advocate Sri G. K. Govinda Bhat. The Hospet estate is a single concern and a distinct undertaking : all the workmen employed therein would be taken as a class of workmen. No sections are found in the Hospet estate as to who should classify the workmen section-wise. There is no any such analogy of facts in this case as we find in the case - Sri Rama Vilas Service, Ltd. (Kumbakonam branch),

petitioners v. State of Madras 1956 I L.L.J. 498. In that case Kumbakonam branch was a separate establishment subject to only general management of the Madras concern. The workers of that establishment had denied (sic) to espouse the cause of the given workmen. Here in this case the 78 workmen of the Hospet estate have become the members of the union and that union has espoused the cause of the said workman in the month of January 1957, by submitting a complaint petition to the conciliation officer with a view to settle the dispute. Both the witnesses Keshava Maistri and Sri Bhasker have deposed that all the workmen verbally requested the union to espouse the cause of the dismissed workmen.

43. It was contended on behalf of the management that the K.P.P.W. Union comprises the entire workers of the plantation industry in the Mysore State. Unless there is a positive proof that the workers of the Hospet estate have taken up the cause of Keshava Maistri, it should not be concluded that there was an industrial dispute.

44. Regarding this point I have already referred so many case-laws. The workers of Hospet estate were the members of the union. This union represents also a group of workmen of Hospet estate and by the instance and request of those workmen employed in the respondent-estate, the union has taken up the cause. So it should be presumed that the union has taken up the cause of the said workman, representing and with the support of those workmen who are members of it and in employment of respondent-estate. The facts otherwise be proved by the opposite party. It is not necessary that there should be any positive overt act by the workmen to evidence their support thereby.

45. In short, I conclude that at the time of terminating the services of Keshava Maistri, there was a considerable section of workmen employed in the estate which has taken up the cause of the dismissed workman, through their union. Hence this issue (1) finds in favour of the first party,

46. Issue (2) :

"Whether the said worker is an employee of the respondent management."

This issue has been framed on the averments made in the counter-statement. The respondent-estate has alleged in the counter-statement that Keshava Maistri was not an employee of the respondent-estate; Sri Velayudha is the labour recruiter who has executed an agreement to supply fifty workmen and three maistris for the year 1956-57 to the respondent-estate; it was the labour supplier to fix up the wages and pay the wages. So there was no direct relation of master and servant, employer and employee existing between the management and the dismissed workman Keshava Maistri.

47. The first party union has denied this fact, stating that it was the proprietor of the said estate who took the workman in service and disbursed the wages : Sri Velayudha, labour contractor, has no business whatsoever with the employment

or non-employment or conditions of service of the workman employed in the estate.

48. Parties have let in the evidence in the matter. The learned advocate Sri G. K. Govind Bhat did not press the matter. The existing record and the testimonies of the parties' witnesses are evident that the management of the estate was in full control of the services of the workmen supplied by the labour recruiter. A mere supply of the labourers to the estate is not a proof that there was no relation of master and servant; employer and employee existing between the workmen supplied by the labour recruiters and the management. M.Ws. 1 and 2, Sri Lobo and Velayudha, have spoken respectively that it is the writer to allot the work to the workmen and supervise their work. The proprietor was to pay wages. Sri Velayudha, M.W. 2 has said that he contracted only to supply the workers and to that effect he had received the advance to meet the expenses as of to and fro charges and offering advances to workmen; that the amount would be adjusted at the time of disbursement of the wages or monthly wages as the case may be; as a supplier he has to exercise his moral influence on the workmen in executing the work properly and maintaining a good behaviour.

The above facts negative the contention of the respondent-estate. Hence this issue (2) is adjudicated in favour of the first party.

49. Issue (3) :

"Whether the termination of Keshava Maistri, employee of the said management, was justified. If not, whether the said worker is entitled to be reinstated with or without back wages."

50. The management has said in Para. (3) of the counter-statement :

"According to practice and terms of the contract there ought to be 50 workers for three maistrie. But till the end of December 1956 the labour supplier Velayudha did not supply the contracted number of labourers. There were only 36 labourers inclusive of children and to supervise the workers three maistris were unnecessary. In the absence of the workers over whose work the maistri was intended to supervise there was no scope for employing the claimant and therefore the labour contractor Velayudha was informed about it. Consequently the claimant was taken away by the contractor as he could not supply the requisite number of labourers."

51. Apart from this reason the respondent-estate has not assigned any reason for terminating the services of Keshava Maistri. in its counter. As a fact this reason is not at all a valid ground for terminating the services of Keshava Maistri. It was not his fault that Velayudha did not supply the required labourers. Keshava Maistri was not a party to the contract. It was Sri Velayudha who contracted to supply the labourers; failing which he has agreed to pay the damages. I did not understand how Keshava Maistri was to be bound over for the failure of Sri Velayudha, in supplying the labourers. The workers and Keshava

Maistri were not the chattels to be shuffled. There was no slave trade between the employer and Sri Velayudha. I am, therefore, constrained to say that the management has completely ignored to observe the rules of natural justice and equity in its action. This may be due to the impression that the management held that all the workmen supplied by the labour recruits, were contracted labourers, so the management was not responsible for their services. It was for the contractor to reply.

52. Admittedly the management of the respondent-estate did not hold the enquiry. No show-cause notice was served. The charge was not framed and served to the delinquent. No explanation was obtained. The witnesses were not examined to substantiate the allegation. In the absence of such evidence I have a reason to say that the management acted arbitrarily.

53. An effort has been made in the evidence on behalf of the respondent-estate that Keshava Maistri absented on various occasions without obtaining the authorized leave. Sri Lobo, M.W. 1, has sworn in to that effect, I fail to understand why this fact was not said in the counter-statement. I recognize that all citizens are not expert lawyers but this was the material fact to be brought in and the absence of such outstanding fact is not conveniently ignored. Moreover there is no reference to the effect that Keshava Maistri absented on so many times on unauthorized leave, in their reply furnished to the Assistant Commissioner of Labour, Chickmagalur, and that reply is marked as Ex. M. (3).

54. Sri I. Lobo is M.W. 1. He is the estate writer. In his testimony he has deposed that Keshava Maistri joined the service on 28 May 1956; Keshava Maistri was in a habit of often visiting Chickmagalur without obtaining permission from him; he had informed this fact to Sri Velayudha and he had personally warned him but Keshava Maistri did not improve his character. All the warnings were oral.

The same witness has said that there were only two maistris from June 1956. As a contract there should be three maistris but only two maistris supervised the work of the labourers supplied by Sri Velayudha. Hombal Maistri had also absented but he obtained the permission.

55. This witness has tried to give the evidence that Velayudha was the sole judge to decide whether the labourers and maistris supplied by him should be kept in service or not. He has striven to say that Velayudha did not supply the labourers, so he asked Keshava Maistri to leave the job. Accordingly Keshava Maistri left the service. He has given a comparative figure of workmen working in each month and under different groups of maistris supplied by different labour recruiters. This piece of evidence discloses the fact that there was no fast and strict rule that under each maistri there should be a fixed number of labourers working for supervision. When there was no such rule, I find no reason that Keshava Maistri should be asked to leave the job on the same basis.

56. The union has alleged that Keshava Maistri was a member in the executive committee of the union and he had at his credit the trade union activities and he

had also helped the union increasing the number of memberships by enrolling the workers of Hospet estate as members. A removal of such workman without holding an enquiry and assigning any wrongly to his credit will be an instance of unfair labour practice. I am however, reluctant to hold, having concluded, that the management of respondent-estate was not justified in its action. The request of Keshava Maistri would have been conceded. Sri Velayudha is but a supplier and he is not at all an employer. So a reference to Sri Velayudha was a mere eyewash.

57. Next it was contended that all the workmen supplied by Sri Velayudha, have gone away. So there is no justification at this stage to order for reinstatement, secondly that the appointment of Keshava Maistri was for the season ending by the month of March 1957. So his reinstatement would be embarrassing.

I agree with this view but the point is that the refusal of work to Keshava Maistri as it has been determined was not justified. So it is deemed that Keshava Maistri is even in service and there is no question of his services being broken. At this stage it is not proper for me to consider whether the employer may retain him in service after reinstating the said workmen in service when it is determined that terminating the services of the said worker was not justified and illegal. There will be no question but ordering for reinstatement. Thus I conclude the issue (3) as above. Keshava Maistri deserves to be reinstated in continuity of his past service. 65. Last issue is general. The said workman was removed from service on 3 January 1957 and nearly one and a half years passed away to his removal from service. According to his length of service, he would have put in two years' service at his credit. So I flatly fix up compensation equal to one month's wages to be given to the said maistri by the respondent-estate.

58. Accordingly I pass the award. The order of dismissal passed by the management is set aside and Keshava Maistri is ordered to be reinstated. As a compensation, the respondent-estate second party should pay an amount equal to one month's wages what Keshava Maistri was drawing at the time of his dismissal. Parties should bear their own costs.