

Court upholds tribunal ruling that transfer of mandore was not a termination

TAIPING, Mon. — The High Court today upheld the decision of a subordinate tribunal which ruled that a supervisor in a rubber estate who was transferred to carry out a similar duty in an oil palm plantation was not entitled to compensation under the Employment Act.

Judge Datuk V.T. Singham said the assistant director of labour who presided over the matter applied the correct contract test in determining M. Meerakutty's claim for payment of termination benefits.

Singham said there was no break in the continuity of the contract of service and the transfer of job from tapping mandore to a harvesting mandore could not constitute a termination.

The judge said the transfer also did not entail any uprooting of Meerakutty's family.

Singham said Meerakutty elected to reaffirm the contract after having accepted the position of a harvesting mandore without protest, having worked and received his wages for 18 months and lived in the quarters provided by the estate management, Kamiri Estate, in Sungai Siput.

He said Meerakutty was guilty of unreasonable and unexplained delay in lodging his complaint with the Labour Office in Kuala Kangsar after having acquiesced in the present position.

Singham said he considered Meerakutty an indolent litigant.

He filed his appeal with the High Court on March 10 last year following the decision by the assistant director of labour on March 1.

Meerakutty, 55, started work as tapper in the estate in 1962 and in 1993 was promoted to supervisor.

In December 1998, he was given additional work to supervise workers at the oil palm division in the same estate.

From February 1999, Meerakutty was given duties as mandore of the oil palm estate.

However, after having worked as mandore for 18 months, Meerakutty had on Oct 12, 2000, lodged a complaint with the Labour Office that his services had been terminated without any notice when he was transferred to work as a harvesting mandore.

He claimed termination benefits amounting to RM33,988.20 and indemnity payment of RM2,204.64, relief provided under the Employment (Termination and Lay-Off Benefits) Regulations 1980.

During the inquiry at the Labour Office, Meerakutty had cited that his new job was difficult, he had to handle foreigners, had to do more documentation work compared to his previous function and that his present employment terms and conditions were less favourable.

A. Ramadass represented Kamiri Estate while Edwin Siebal Nathan appeared for Meerakutty.