CEYLON WORKERS' CONGRESS

v.

JANATHA ESTATES DEVELOPMENT BOARD AND ANOTHER

SUPREME COURT.
WANASUNDERA, J., ATUKORALE, J. AND H. A. G. DE SILVA, J.
S.C. APPEAL No. 64/85.
C.A. APPEAL No. 52/80.
L.T. BADULLA CASE No. B/11328.
FEBRUARY 6, 1987.

Industrial Disputes Act–Suspension of services–Constructive termination–Domestic inquiry.

Where a workman continued in forcible occupation of a line room in defiance of the orders of the Superintendent to get back to the line room earlier occupied by him and the Superintendent thereupon suspended him from work until he vacated the line room being forcibly occupied by him–

Held–

The suspension from work did not amount to constructive termination. In the face of the clear manifestation of the workmen's intention not to vacate the line room there was no purpose in holding a domestic inquiry. The application under s.31 (B)(1) of the Industrial Disputes Act is not sustainable.

Case referred to:

Ceylon Estate Staffs' Union v. The Superintendent, Meddecombra Estate, Watagoda – 73 NLR 297.

APPEAL from the judgment of the Court of Appeal.

K. N. Choksy, P.C. with *S. Mahenthiran* and *Miss M. Sivalingam* for the appellant.

Mark Fernando, P.C. with *S. L. Gunasekera* and *Miss S. Wijayagunasekera* for the respondents.

Cur. adv. vult.

April 3, 1987.

ATUKORALE, J.

The appellant, on behalf of its member (Sangapillai) made application to the Labour Tribunal, Badulla, alleging that his services as a labourer were terminated by the management of Unugolla Estate (the respondents) with effect from 21.9.1978 without any valid reasons. Averring that this termination was wrongful, the appellant asked for reinstatement of the workman with back wages. The management denied termination and pleaded that the workman's services were suspended from 21.9.1978 as he was in forcible occupation of the line room presently occupied by him and that he would be offered work once he vacated that room and got back to his former line room. The President, Labour Tribunal, after inquiry, held that the conduct of the management in suspending the services of the workman for an unlimited period of time amounted to a constructive termination of his services and on that basis ordered his reinstatement with back wages. On an appeal by the management the Court of Appeal took the view that there was no constructive termination of services for the reason that the management did not have sufficient time to hold a domestic inquiry into the conduct of the workman before which the workman filed this application in the Labour Tribunal and as such it could not, in the circumstances of this case, be said that the suspension was tantamount to a dismissal of the services of the workman. The Court of Appeal therefore held that the application made on behalf of the workman could not be sustained under s.31 (B)(1) of the Industrial Disputes Act and set aside the order of the President, Labour Tribunal. The present appeal is from this judgment of the Court of Appeal.

Mr. Choksy, P.C. for the appellant submitted that the Court of Appeal was in error when it held that the management did not have a reasonable opportunity for holding a domestic inquiry prior to the institution of the application for relief. He pointed out that this was not the case of the management as set out in its answer. The answer stated specifically that the workman will be given work only when he vacates the line room of which he was, according to the management, in forcible occupation. He further submitted that up to this date the management had taken no steps to hold a disciplinary inquiry against the workman for his alleged misconduct. During this entire period the workman had, it was urged, been given no work or pay. Nor did the management intend doing so in the future. These circumstances, it was contended, unmistakably pointed to the fact that the 'suspension' was tantamount to a constructive termination and that the Court of Appeal had misdirected itself in concluding that the management had been deprived of a reasonable opportunity of holding a domestic inquiry. Mr. Mark Fernando, P.C. for the respondents (the management), in turn, drew our attention to the fact that the application filed by the appellant refers to an actual and not a constructive termination of the workman's services on 21.9.1987. He stressed the fact that the workman himself during the course of his evidence admitted that Hettiarachi, the Assistant Superintendent of the estate, asked him on 21.9.1978 to vacate the present line room which he was occupying and to go to his former line room and that if he failed to do so he would not be given any work. This was a lawful order which the workman failed to comply with. There was thus no necessity to have a domestic inquiry into this refusal of the workman to carry out the lawful order given by Hettiarachi. Under the circumstances the suspension of the workman's services, it was urged, was justified and cannot be construed to be a constructive termination of services since the workman was informed that he would be given work once he vacated the present line room and returned to his former one. Learned President's Counsel relied on the decision in the *Ceylon Estates Staffs' Union v. The Superintendent, Meddecombra Estate, Watagoda* (1) in support of his submissions.

The sole question that arises for our consideration is whether, in the circumstances of this case, the conduct of the management in refusing to give the workman any work on the estate with effect from 21.9.1978 until such time as he left the line room which he was occupying and went back to his old room amounted to a mere

suspension of his services as maintained by the management or whether it constituted a constructive termination of his services as maintained by the appellant. Upon a close scrutiny of the facts and circumstances of this case I am satisfied that there has been only a suspension and not a constructive termination of the workman's services. At the inquiry before the President, Labour Tribunal, too much importance seems to have been placed on the question as to whether the workman's entry into occupation of the present line room was or was not with the leave and licence of Hettiarachi, the Assistant Superintendent. The President has found as a fact that such entry was with the permission of the latter and that therefore the workman's occupation of the room was not forcible. He has, however, failed to appreciate the significance of the admitted evidence of both the workman as well as Hettiarachi that the day after he came into occupation, Hettiarachi asked the workman to vacate the room and get back to his former room—a request which the workman failed to obey. Hence the workman's continued occupation of the room on and after 21.9.1978 was in defiance of the order of Hettiarachi even though his entry may have been lawful. The legality or propriety of this order was not put in issue either at the inquiry before the President, Labour Tribunal or the Court of Appeal. The workman himself stated that he entered with the permission of Hettiarachi. He appears to have acknowledged that the allocation of line rooms in the estate is one that appertains to the internal arrangement of the estate and is a matter within the control and discretion of its management. Unless the terms of employment provide otherwise, there can be no legal foundation for a workman's claim to remain in occupation of a particular line room in defiance of an order of the management made in good faith. It is worthy of note that in the instant case both line rooms were located in the same division of the estate. The right of the management to transfer a workman from one place of residence to another in the same estate and the corresponding liability of the workman to be so transferred is incidental to and an implied condition of the workman's service. In my view it is absolutely essential that the management should be possessed of such a right and should have control over the allocation of line rooms for the purposes of efficient and proper administration of the estate with a view to achieving maximum productivity. In *Ceylon Estates Staffs' Union v. The Superintendent, Meddecombra Estate, Watagoda (supra)* this court recognised the legal right of an employer to transfer his staff from one place of work to another within his service subject to certain limitations which do not

arise for consideration in the instant case. If so it must necessarily follow that an employer has the right to transfer his workman from one place of residence to another within his service. No doubt it would be open to such a workman to make representations to the appropriate authorities against the transfer but he cannot, in my view, be permitted to set the employer at defiance by blatantly refusing to comply with the order as in the instant case. The failure or refusal of the workman to comply with such an order amounts to a disobedience of the lawful order of his employer and constitutes by itself misconduct on the part of the workman. There is no necessity in such circumstances for the employer to go through the formal process of holding a domestic inquiry for ascertaining whether there has been on the part of the workman a refusal to carry out the employer's order of transfer. The conduct of the workman in continuing to remain in occupation of the line room in question from 21.9.1978 clearly manifested his intention not to obey the transfer order. His refusal was so obvious that there was no purpose in holding a domestic inquiry. The workman's position appears to be that since he came into occupation of the present line room with the permission of Hettiarachi, the Assistant Superintendent, he is entitled to remain there in spite of Hettiarachi's orders to the contrary. I do not think such a status of irremovability attaches to line rooms given out for the residence of workmen at the discretion of the management. Viewed in this light I do not think that the order of suspension made by Hettiarachi can be construed to amount to a constructive termination of the workman's services. It is not in the nature of an interdiction order pending a domestic inquiry into the alleged misconduct of an employee. In such a case it may reasonably be inferred, by the failure of the employer to hold the inquiry, that the order of interdiction is tantamount to a constructive termination. The facts and circumstances of the instant case are different. For the reasons set out by me there was no necessity to hold a domestic inquiry in this case. I would accordingly make order dismissing the appeal with costs fixed at Rs. 525.

WANASUNDERA, J. – I agree.

H. A. G. DE SILVA, J. – I agree.

Appeal dismissed.