

JANATHA ESTATES DEVELOPMENT BOARD AND ANOTHER
v.
CEYLON WORKERS CONGRESS

COURT OF APPEAL.

SENANAYAKE, J.

C.A. NO.49/84

L.T. CASE NO. 9/11894/82

JULY 1, 1993.

Industrial Dispute – Insubordination – Refusal to accept transfer to quarters on another estate.

The workman had been instructed to shift to new quarters on another estate. He did not comply pleading his son's forthcoming marriage, loss on the garden and cows maintained by him. The evidence clearly discloses that the workman had not made any attempt to vacate the premises even after the appellant had given a number of occasions and time to shift and vacate the premises.

Held:

The workman was guilty of insubordination and his services were rightly terminated.

The management granting permission to a workman to cultivate the land during his stay in the estate does not give him a privilege or right to have an equivalent

portion of land for him to do gardening in the event of a transfer. The workman cannot expect the management to provide cattle sheds or construct cattle sheds in the event of a transfer.

APPEAL from judgment of the Labour Tribunal.

S. M. Fernando, P.C. for the appellants.

Faiz Musthapa, S.C. with *M. Hakeem* for the applicant-respondent.

Cur adv vult.

August 25, 1993.

SENANAYAKE, J.

This is an appeal from the order made by the learned President dated 07.11.86 where he held that the termination of the workman's services were unjustified and ordered a sum of Rs. 37,961/28 as compensation and a further sum of Rs. 12,655/76 as back wages aggregating to a sum of Rs. 50,615/04. The applicant Union which made the application on behalf of its member S. Arumugam stated that his services as Chief Clerk of Eskdale Estate had been terminated by the respondent-appellant wrongfully and unjustifiably and prayed that he be reinstated with back wages. The respondent in the answer averred that the workman Arumugam had been informed by letter to occupy the quarters at Eskdale Estate from Halgranoya Estate on 01.01.81. They averred further that the workman had been given time till 15.09.81 to hand over these quarters. But he had failed and refused and neglected to do so. The respondent-appellant admits termination and averred that the workman failed to comply with the lawful instruction and prayed that the application be dismissed.

The learned Counsel for the appellant submitted that the learned President erred in law in evaluating the evidence and construing the documents that were tendered before the tribunal. He further submitted that the learned President has misdirected himself on the evidence and thereby erred in law when he held that the workman was prepared to go on transfer and there was no insubordination. It was common ground that by R1 letter dated 12.11.80, the workman Arumugam was transferred to Eskdale Estate Kandapola with effect from 10.01.81 in the same capacity and on the same terms and

conditions. By R3 the workman was informed on 14.02.81 that he should vacate the quarters that he has occupied at Silverkandy estate and occupy the quarters allocated to him on Eskdale and they also informed him that the present quarters occupied by him was necessary or required by the Superintendent of Brook Side Group to accommodate the staff and he had been also informed that the Estate lorry was available to transport his personal effects from Silverkandy to Eskdale estate. The workman by document R4 on 28.02.81 informed that he was not able to move from his present quarters as he has fixed the marriage of his son at the end of June. He has further informed that he had been residing in this quarters for 32 years and that it would not be easy to move his family suddenly to the new quarters and he was in possession of 6 cows and there was no cattle shed provided and it would cause immense hardships. He has further stated that he had been granted land to do gardening and if he was moved suddenly he will be losing heavily in his income and he was requesting that he should be granted or allowed him to reside in the present quarters till retirement. By letter R9 and R9(A) dated 12.05.81, he had been given further time to shift and vacate the quarters before the 15th of May. By document R11 dated 18.6.81, the workman was given further 10 days to vacate the premises and occupy quarters at Eskdale Estate.

The workman had acknowledged the receipt of R11 on 25.06.81. By R13 letter dated 02.07.81 the workman was given further 10 days to shift and vacate the quarters that he was presently occupying. By R14 letter dated 08.07.81 the workman was informed by the Superintendent that he should vacate the quarters on or before 12.07.81. By R16 letter dated 28.08.81 the workman was informed that the quarters given on Eskdale estate was suitable for occupation by a Chief Clerk that he should vacate the present quarters on or before 15.09.81. Failure would result in disciplinary action being taken against him.

The workman's failure to vacate the quarters has resulted in the appellants sending the letter of termination dated 15.09.81. Documents marked R17. The workman had not given evidence in this case. It is common grounds that the workman was occupying present quarters for nearly 32 years. The workman did not give evidence

indicating as to how many cows he had or the extent of land that he had been provided for gardening. However document A3 provided on behalf of the workman shows that he has cultivated about half an acre on Silverkandy estate. It's dated 12.09.80, the workman called the General Secretary Sellasamy as a witness. But witness Sellasamy had not examined the quarters at Eskdale estate. But he was relying on the agreement that when the workman was absorbed, they should be entitled to same conditions and the rights they had earlier enjoyed. The evidence clearly disclosed that the workman had not made any attempt to vacate said premises even after the appellant had given number of occasions and time to shift and vacate the premises.

It is my view that the learned President had failed to consider the primary facts in this case. He had failed to consider that the workman had refused to carry out the instructions given by the appellants and the workman had failed to give evidence. Workman's witness Sellasamy had not examined the quarters provided at Eskdale estate. The documents produced by witness Sellasamy clearly indicated that the workman was not prepared to shift as he had lived in the present quarters well over 32 years and he had not been provided with a cattle shed and granted land to do gardening. The workman Arumugam had failed to give any evidence. The learned President had failed to consider that the workman in the instant case had not given evidence before the tribunal. In my view the management granting permission to a workman to cultivate land during his stay in the estate does not give him a privilege or right to have an equivalent portion of land for him to do gardening in the event of a transfer. The workman cannot expect the management to provide cattle sheds or construct cattle sheds in the event of a transfer. If he had 5 cows it clearly shows to establish that this is not for consumption, but for commercial use. There was no obligation on the appellants to provide a cattle shed for the workman to have his cattle.

The learned President in my view had erred in law when he considered the evidence and came to the determination that the workman was ever ready to go on transfer and there was insubordination on the part of the workman. The question of transfer was not in issue because the workman had accepted the transfer by

document R1. It is a question of shifting the quarters to the place that he was working. The workman in this case had to vacate and carry out the instruction given by his superior. The workman did not give any evidence and place before the tribunal that the house allocated to him was not suitable and that there was no land for gardening or enough land for him to construct a cattle shed. The letter written by him and his Union indicate that since he has few more years to grant permission to retire without shifting from this quarters. In my view the workman's application has not been based on any legal principles except on emotional grounds. Estates cannot be managed on emotions; they have to be managed as viable economic units.

I hold that the learned President had erred in arriving at the determination that the termination is unlawful and not justifiable.

I am of the view that the termination was justifiable. The management will not be able to maintain discipline in the estate, if the workman refuses to vacate as the management failed to provide a cattle shed and equivalent land for gardening.

I hold the termination to be justified and I set aside the order of the learned President and allow the appeal with costs fixed at Rs. 1050/-. The workman however is not barred from obtaining his statutory dues from the proper forum.

Order of Labour Tribunal set aside.