

**THE SUPERINTENDENT, STONYCLIFF GROUP, KOTAGALA**  
**v.**  
**NADARAJAH**

COURT OF APPEAL.  
H. W. SENANAYAKE, J.  
CA NO. 359/86.  
LT NO. 9/13507/85.  
JULY 05, 1993.

*Industrial Dispute – Transfer – Vacation of Post*

The management has a right to transfer a worker from one Estate to another on the same conditions and also provided the transfer is not a demotion or results in financial loss to the worker. Refusal to comply will result in a vacation of post.

APPEAL from order of Labour Tribunal.

S. M. Fernando, PC with Hyacinth Fernando for Appellant.

T. Sathichinanandan for Applicant – Respondent.

*Cur. adv. Vult.*

October 29, 1993.

**H. W. SENANAYAKE J.**

This is an appeal from the order of the Learned President dated 06.8.86 where the Tribunal held the termination to be wrongful and unjustified and ordered the Applicant to be reinstated with back wages in a sum of Rs. 21,567.70 cents, in the alternative he was awarded 4 years salary as compensation amounting to Rs. 86,270.40.

The relevant facts briefly are as follows, the Applicant was employed from 01.8.62 as Estate Medical Assistant by The Ceylon Tea Plantation Company Ltd. Prior to the Appellants taking over the Estates the Applicant was employed by the Ceylon Tea Plantation Company Limited according to his application, where in terms of the contract he was not bound to be transferred to any other estate not owned by the Ceylon Tea Plantation Company and after the vesting the Applicant continued to be employed on the same conditions of employment the Applicant had with the Ceylon Tea Plantation Company Limited. The Applicant averred, the First Appellant in breach of the contract on 11.12.84 transferred him to the Ingestry Group Dickoya with effect from 15.1.85. The Applicant without prejudice to his rights

inquired whether the Appellants were prepared to employ him in Ingestry Group on the same terms and conditions that he had with the Ceylon Tea Plantation Company Ltd.... The First Appellant refused to employ the Applicant on such terms on Ingestry Group and the Applicant continued to work in Stonycliff Group and he informed the Appellants that he cannot comply with the order. On 18.1.85 the Applicant was relieved of his duties and ceased to be employed on Stonycliff Group. The Applicant alleged that his services were constructively terminated unlawfully or in breach of the contract without justification and he prayed that he be reinstated in the post as Estate Medical Assistant on Stonycliff Group, Kotagala.

The Appellants denied termination and pleaded vacation of employment by failing to accept the transfer to another Estate in their Organisation. They prayed that the Application be dismissed.

The Learned Counsel for the Appellants main submission was that the Applicant was in a transferable service and he refused to comply with A19 letter dated 11.12.84. By A19 he was transferred from Stonycliff Group to Ingestry Group with effect from 15.12.84 on the same terms and conditions enjoyed by him at Stonycliff Group. The Applicant by letter dated 20.12.84 whilst reserving the right to question the legitimacy of the order contained in A19 had questioned whether he would be provided the same facilities he enjoys presently and the other benefits that he had enjoyed under the Ceylon Tea Plantation Company. The Applicant in his application took up the position that he was not in a transferable service and in page 18 of the brief he has stated that he cannot be transferred. The Learned Counsel submitted that the Tribunal had erred in determining that the said transfer was not done in good faith and the Appellants had terminated the services of the Applicant and that he had not vacated his post.

The Applicant was asked to send a certified copy of the original letter of appointment issued by the Ceylon Plantation Tea Company Ltd by document A21 and the Applicant by A22 informed that he was unable to produce the letter and according to his evidence on being appointed on 1.8.62 he received the document A14 dated 01.8.62 which is silent about transfers but clause 1 states that he has been appointed to Class 11 Grade 5 which was in accordance with the C.E.E.F. and C.E.S.U. Joint Agreement on Conditions of

Service for Estate Medical Staff. The Applicant was in the belief that he was not in a transferable Service and by A24 dated 07.1.85 where he had stated " In any event my contract does not provide for a transfer as proposed by you. Therefore, I regret to inform you that I cannot comply with your order transferring me to Ingestry Group Dickoya. Enforcement of the said order will be construed by me as constructive termination of service." There is force in the submission of the Learned Counsel, the Applicant had challenged the authority of the Appellants to transfer. The Applicant was unable to adduce any evidence to establish that he was not in the transferable service. He had failed to establish the transfer was done in bad faith or it was Mala Fide or was an act of victimisation.

The Tribunal in my view had made an order not on the relevant evidence but had taken into consideration irrelevant evidence. It is well settled law that management has a right to transfer a worker from one Estate to another on the same conditions and also provided the said transfer is not a demotion or there is a financial loss to the worker. In my view the order of the Tribunal was perverse when the Tribunal held that the management should inform the workman the reasons for transfer. The evidence disclose that the transfer was not on disciplinary grounds and it was a routine transfer. The Applicant by his conduct had refused to comply with a lawful order and thereby vacated his post. I set aside the order of the Tribunal and allow the appeal with costs fixed at Rs. 150. The Applicant will not be debarred from obtaining his Statutory dues from the proper forum.

*Appeal allowed.*