

SRI LANKA STATE PLANTATIONS CORPORATION
AND ANOTHER
v.
THE NATIONAL UNION OF WORKERS

COURT OF APPEAL

GUNASEKERA, J.

C.A. NO. 975/83

LT 10/4861/83

13 NOVEMBER, 1990, 11 DECEMBER, 1990 & 21 FEBRUARY, 1991

Industrial Law – Just and equitable order – Suspension – Jurisdiction of Labour Tribunal under Industrial Disputes Act, section 31(B) 1.

Held:

A Labour Tribunal has no power to ignore the weight of evidence or the effect of cross-examination on the vague and insubstantial ground that it would be inequitable to one party to do so. There is no equity about a fact and the Tribunal must decide on all questions of fact solely on the facts of the particular case, solely on the evidence and apart from extraneous considerations. In his approach to the evidence the President must act judicially. It is only after he has so ascertained the facts that he enters upon the next stage of his function to make an order that is fair and equitable having regard to the facts so found.

The charge against the workman was that he was running a boutique in a line room meant for residence. He was suspended from work until he closed down the boutique. The workman had failed to establish that he had obtained the previous Superintendent's permission to run the boutique. The workman had failed to heed several warnings to close down the boutique. The order of suspension was in the circumstances not a constructive termination. Hence the application to the Labour Tribunal was not maintainable and failed for want of jurisdiction.

Cases referred to:

1. *Ceylon Transport Board v. Ceylon Transport Workers' Union* 71 NLR 158, 163.
2. *Ceylon Workers' Congress v. JEDB and Another* (1987) 2 Sri LR 73.

APPEAL from order of President, Labour Tribunal.

S. M. Fernando with *A. M. Gunawardena* and *N. H. Hapuaratchchi* for appellant.

P. K. S. Sureschandra for respondent.

Cur adv vult.

5th April, 1991.

GUNASEKERA, J.

An application was made by the applicant respondent Trade Union that the services of its member S. Sebastian who was employed in St. Heliers State Plantation, Watawala was terminated on 18.6.1983 and claimed reinstatement with back wages by way of relief.

The employer appellants in their answer denied the termination of the services of the workman on whose behalf the application had been made and averred that since the workman was using the residence given to him for purposes other than residential purposes that his services were suspended until he commences to use the residence solely for residential purpose and moved that the application be dismissed.

After inquiry the learned President by his order dated 18.11.1983 held that the services of the workman had been terminated by the employer and ordered that he be reinstated with the payment of a sum of Rs. 2400/- as back wages.

It is against this order that the employer respondents have appealed.

Mr. S. Fernando Learned Counsel for the respondent appellant submitted that the Learned President erred in law in holding that there has been a termination of the services of the workman on whose behalf the application was made. He contended that the principal issue for determination by the Learned President was whether there was a termination of the service of the workman concerned by the employer as alleged in the application or whether there was only a suspension of his services as alleged by the respondent appellants and that in answering the issue the Learned President has totally failed to consider the evidence led before him. Learned Counsel submitted that the Labour Tribunal is vested with jurisdiction under section 31(B)1 of the Industrial Disputes Act only

and only if there is a termination of the services of a workman by the employer.

The Learned Counsel for the appellant drew the attention of the Court to the evidence of the Superintendent R. J. Depp at page 31 and 32 of the Brief where he has specifically stated that "I have not terminated the services of the workman on any day" and "I suspended his services as the workman was carrying on a boutique in his line room. If the workman stops running the boutique in his line room I am prepared to give him work".

Learned Counsel contends that this position taken up by the respondent in the evidence of the Superintendent is supported by the evidence of the workman himself when he stated in his evidence at page 16 as follows:

"The Superintendent told me that I would not be given work so long as I carried on the boutique in the line room. He said that after I close down the boutique that he would give me work. The Superintendent did not terminate my services. He only suspended my services".

Therefore Learned Counsel submitted that the Learned President's finding that there has been a termination of the services of the workman is erroneous and that on the evidence of both the Superintendent and the workman himself that he could not have come to such a finding. In support of this submission Learned Counsel relied on the dicta of Tennekoon, J. (as he then was) in the case of *The Ceylon Transport Board v. Ceylon Transport Workers' Union*⁽¹⁾ where he observed that "section 31(C)1 must not be read as giving a Labour Tribunal a power to ignore the weight of evidence of the effect of cross-examination on the vague and insubstantial ground that it would be inequitable to one party to do so. There is no equity about a fact, the Tribunal must decide on all questions of fact "solely on the facts of the particular case, solely on the evidence before him and apart from any extraneous considerations". It is in his approach to the evidence he must act judicially. In short only after he has so ascertained the facts that he enters upon the next stage of his function which is to make an order that is fair and equitable having regard to the facts so found.

Thus I agree with the contention of the Learned Counsel for the appellant that the Tribunal has shut its eyes to the positive evidence in the case in holding that there was a termination of the services of the workman.

Learned Counsel for the appellant next submitted that the Learned President has misconstrued the evidence of the workman on whose behalf the application was made in coming to a finding that the workman had obtained permission from the previous Superintendent of the estate to run a boutique in his line room for there was no such evidence in the record. Having examined the evidence of the workman, his evidence at page 21 under cross-examination was that he obtained the approval of the previous Superintendent Parameswaran to construct an addition to the line room to be used as a kitchen and therefore I agree with the contention of Learned Counsel that this finding of the Learned President is unsupported by the evidence and is erroneous.

Learned Counsel for the appellant also complained that the Learned President has come to a finding that there was a constructive termination of the services by the worker on 2 grounds. Firstly, that the suspension was indefinite and secondly that the suspension was for insufficient reasons. On the question of indefinite suspension Counsel submitted that the evidence of the workman himself at page 16 was that he would be given work after he closes down the boutique and as for the reasons for suspension it was the Superintendent's evidence that the workman was running a boutique in the line room meant for residence without authority from the management and thus the finding that the workman's services has been constructively terminated in my view is untenable.

Learned Counsel for the respondent further submitted that the Learned President was in error when he in his order made the observation that it appears that the Superintendent had all of a sudden decided to take steps in 1983 to request the workman to close down the boutique which he has been running for a long period of time. He contended that in doing so the Learned President had failed to take into account the evidence of the Superintendent that after he came to this estate as its Superintendent in November 1981,

finding that the workman concerned was running a boutique in his line room he had warned the workman to close it down several times from May 1982 to June 1983 and has disregarded R1 dated May 1983 addressed to the workman on 30.5.1983 referring to the previous warnings to close the boutique and therefore this finding has been arrived at without consideration of relevant and positive evidence. I am inclined to agree with this submission of Learned Counsel.

Lastly Learned Counsel contended that the employer was justified in suspending the services of the worker for failure to carry out a lawful order made by the management and relied on the case of *Ceylon Workers' Congress v. JEDB and Another*⁽²⁾ 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 thereupon the Superintendent suspended his work until he vacated the line room forcibly occupied by him. It was held that the suspension of work did not amount to a constructive termination.

Thus having regard to the evidence led at the inquiry I am of the view that there was only a suspension of the work of the workman concerned, and therefore the application made under Section 31(B)1 was not maintainable.

For the reasons stated above I set aside the order of the Learned President dated 18.1.83 and dismiss the application of the respondent Trade Union made on behalf of the workman S. Sebastian to the Labour Tribunal. There will be no costs.

Appeal allowed.