

CEYLON WORKERS CONGRESS
(on behalf of M. G. Kalisinghe)
v.
THE SRI LANKA STATE PLANTATION AND ANOTHER

COURT OF APPEAL
H. W. SENANAYAKE, J.
C. A. NO. 49/87.
LT NO. R/22571
AUGUST 18 AND 08 SEPTEMBER, 1993.

Industrial Dispute – Suspicion of complicity in unlawful activities during communal disturbances – Certificate that no criminal cases have been filed – Termination.

No action can be taken against a workers if there is no criminal offence committed by the worker within the estate or even if he committed an offence outside his employment unless that offence is of such magnitude that would bring disrespect to the management. Where there is no offence except that an over zealous Police had taken the applicant into custody because his son who was a priest had come back from Colombo with some goods, the sins of the son cannot fall on the father. The respondents by refusing work constructively terminated his services. Failing to produce a certificate from the Police that no cases were filed against him is not a good ground to refuse. There is no obligation on the part of the worker to produce such a certificate.

APPEAL from order of Labour Tribunal.

M. K. Jeyakrishnan for appellants.

S. M. Fernando, P.C. with Hyacinth Fernando for respondent.

Cur. adv. vult.

October 29, 1993.

H. W. SENANAYAKE J.

This is an appeal from the order of the Learned President dated 15th January, 1987 where the Tribunal dismissed the application.

The facts briefly are as follows. The Applicant Union made the application on behalf of the worker M. G. Kalisinghe alleging that the workman's services had been terminated with effect from 1st August, 1987 without any valid reasons by the management of Hunuwella State Plantation. The Union prayed that the Applicant be re-instated with back wages.

The Respondents in their answer admitted employment and averred that the workman was remanded by the Police on suspicion that he had committed illegal and unlawful acts during the communal disturbances in August 1983. They admitted that the workman had reported for work but he was requested to produce a letter from the Police certifying that no case had been filed against him in respect of the said unlawful acts and as the workman failed to produce a letter to that effect, the Respondents deemed the workman to have abandoned his employment. They denied having terminated his services and prayed that the application be dismissed.

The Learned Counsel for the Appellant submitted that the Learned President had been carried away by the document R1 dated 6th October, 1981 where the contents reads as follows. " By this opportunity we would like to advice all Superintendents that if any member of staff including watchers and supervisors were taken into custody on suspicion of looting or in any other illegal activity they should not be offered work on release until the conclusion of the inquiry or any Court case pending against them. "

" Please ensure that no officer is reinstated with out the approval of the Resident Director or the Chairman of the Regional Board, even if they are exonerated of the charges preferred against them. " It is common ground that the Applicant was working as a watcher in this estate for 18 years. It is also common ground that he was taken into custody during the communal riots in July, 1983 by the Police and after being on remand for three weeks he had been released thereafter as the worker had not committed any theft or looting of any property or any goods from any persons living in the estate or from any residence of the estate. It was an accepted fact that the worker had a son who was a Buddhist Priest who was in Colombo and had come during the communal period to the worker's house and he too had been taken into custody by the police and had been on remand. During this particular period one must not forget that the Police were acting under stress and under the powers of Emergency Regulations. There were a number of persons taken into custody without any evidence except on mere suspicion and after they being kept in custody under Emergency Regulations some were even not produced before the Magistrates but released subsequently by the Police when they had insufficient material or evidence to file action against persons who were taken into custody. The Learned Counsel for the Appellant submitted that the workman had not committed any

offence and there were no charges levelled against him. There was no plaint filed against him and there was a duty cast on the Superintendent to grant him work when he came after his release from the remand prison. The Circular marked R1 definitely does not refer to the communal disturbances of 1983. It is a Circular dated 6th October, 1981. As paragraph 2 of the circular states that even if they are released the offender should not be offered work until the conclusion of the inquiry or any court case pending against them. There was no evidence to establish that there was any Court case against the worker. There was evidence that he was released from remand. Paragraph 3 states " even if they are exonerated against the charges preferred against them they should not be reinstated without the approval of the Resident Director or the Chairman of the Regional Board. " This Circular stated that the Superintendent had no power to reinstate the worker concerned. There was a duty cast on him to inform the Resident Director or the Chairman of the Regional Board that the worker had been released by the Police after being kept on remand and he had come back seeking work. It was incumbent for him to inform his superiors. But there was no evidence in this case to establish this position. The Superintendent admitted that the worker had come and met him on a number of occasions seeking employment but he had insisted that he should get a certificate from the Police that there was no case pending against the worker. One must not forget that the Police acted under stress that the Police Stations were barricaded to such an extent that no person could enter and make a complaint during the relevant period. The Learned Counsel for the Appellant submitted that the Tribunal had erred in acting on the Circular R1. I am of the view that the Respondents cannot take action against a worker if there is no criminal offence committed by the worker within the estate or even if he committed an offence outside his employment unless that offence is of such a magnitude that would bring disrespect to the management. In the instant case there was no offence except that a over zealous Police had taken this Applicant to custody because his son who was a priest had come back from Colombo with some goods. The sins of the son cannot fall on the father. The Respondents by refusing to give him work has constructively terminated the services of the workman.

The Learned President in my view had erred in law when she arrived at the determination that the worker had failed to produce a certificate from the Police. There was no obligation that the worker should produce such certificate. One must not forget there were a

number of high officials taken into custody kept on remand who later became Members of Parliament and even held portfolios as Cabinet Ministers. A person kept in remand does not mean that he has committed an offence until he is found guilty by a court of law and till he is found guilty in the proper court of law, he is presumed to be innocent. I set aside the order of the Tribunal as I am of the view that the Tribunal had erred in law. There is evidence that the worker had been working for nearly 14 years and he was drawing a monthly salary of Rs. 500/- to Rs. 600/- There facts have not been controverted. When the worker gave evidence in 1984 he was 50 years old today he would be 59 years old and I do not see any practical effect in ordering reinstatement. I am of the view that there had been constructive termination and its is just and equitable to grant him compensation. Considering the age and considering the number of years he had served in the estate, considering the fact that he being without a job from August, 1983 I direct that the Respondents pay 6 years salary as compensation computed on the basis of Rs. 600/- x 12 x 6 Rs. 43,200/-. I direct the Respondents to deposit the said sum on or before 20th December, 1993 with the Assistant Commissioner of Labour, Ratnapura. The worker would be free to withdraw this amount thereafter. I allow the appeal with costs fixed at Rs. 1500/-.

Appeal Allowed.
