

earlier application No. 849/77 and that is why the Supreme Court directed "the Commissioner to inquire into the history of the vesting order and also satisfy himself as to the validity of the Secretary's criticism and decide whether circumstances justify that an order should be made by him under section 17A".

On the facts of this case the Commissioner has the power to act under section 17A(1) and review the vesting order made under section 17.

For the above reasons I affirm the order made by the 1st to 3rd respondents dated 6.10.82 marked P4 and direct the Commissioner to take appropriate steps.

The application of the petitioner is dismissed with costs.

Application dismissed.

**SUPERINTENDENT, ABBOTSLEIGH GROUP AND OTHERS
V.
ESTATE SERVICES UNION**

COURT OF APPEAL,
A. DE Z. GUNAWARDANA, J.,
C.A. 381/83,
L.T. HATTON 10/4515/83

23 MAY 1991,
(WRITTEN SUBMISSIONS TENDERED ON
24 JUNE 1991 AND 02 AUGUST 1991)

Industrial Disputes Act - Suspension of service - Interdiction - Constructive termination.

The workman's services were suspended when he did not comply with the order given by the Superintendent, to act in terms of the settlement entered into in a Labour Tribunal case, and vacate the quarters given to the workman in one division of the estate and occupy quarters in another division. The workman refused to occupy the quarters allocated to him in the other division, as he alleged that some of the necessary repairs were not effected, as undertaken by the employer.

Held:

1. That the two grounds urged by the workman to assert that his services have been constructively terminated, do not directly relate to the duties he has to perform as Plucking Kanakapullai, or to his salary and emoluments. What is

disputed is, the degree of suitability of the quarters provided for occupation of the workman, and not that quarters were not provided at all. In such a situation it would not be appropriate to infer that there had been a constructive termination of services.

2. That ordinarily what suspension of work would mean, is that the employer caused a cessation of work of the workman, temporarily, till such time a term or condition is observed or adjusted.
3. That interdiction cannot be considered as termination of services either directly or constructively, in the given circumstances.

Cases referred to:

1. *Ceylon Workers Congress V. Janatha Estates Development Board* (1987) 2 Sri LR 73.
2. *Ceylon Estates Staff Union V. The Superintendent, Meddecombe Estate, Watagoda* 73 NLR 278

APPEAL from order of the Labour Tribunal of Hatton

Chula de Silva, P.C. with M. Hussein and C. Liyanapatabendi for respondents - appellants

A.A. De Silva with N.V. de Silva for applicant - respondent.

Cur. adv. vult.

30 September 1991

A. DE Z. GUNAWARDANA, J.

This is an appeal by the Respondents-Appellants (hereinafter referred to as Appellants) against an Order made by the Labour Tribunal dated May 9, 1983, ordering the Appellants to pay Rs. 19,632/- as compensation in lieu of reinstatement, for wrongful termination of the services of the Applicant-Respondent. (hereinafter referred to as Applicant).

The Applicant made this application to the Labour Tribunal, Hatton on January 11, 1983, stating that he was employed on Abbotsleigh Estate, Hatton, as a Plucking K.P. and his services were constructively terminated on December 1, 1982. He contended that his dismissal was wrongful and claimed Rs. 75,000/- as compensation for loss of career, gratuity and other statutory benefits. The Appellants filed answer denying that the services of the Applicant were terminated and further stated that the Applicant was suspended from work for refusal to comply with the order made by the Labour

Tribunal in the earlier case No. LT/10/4049/82. According to the said Order the Applicant had to move into quarters on Florence Division on or before November 1, 1982.

Prior to the filing of the instant case in the Labour Tribunal, the Applicant had made another application to the Labour Tribunal on the ground that his services were wrongfully terminated by the Appellants. In that case, the Appellants took up the position that the Applicant's services were not terminated by them, and that the Applicant had vacated his post by refusing to accept the transfer to another division, of the same estate. (vide R2, at page 49 of the brief). When the said case was taken up for inquiry it was settled on following terms amongst other matters agreed upon. (vide A1, page 38 of the brief). The Applicant was to be reinstated in Florence Division with effect from August 23, 1982. The Applicant was permitted to continue to occupy the quarters in Abbotsleigh Division till November 1, 1982. The Appellants undertook to do all repairs necessary for a family to occupy the quarters allocated to the Applicant in Florence Division, by November 1, 1982. Although the Applicant resumed work as agreed, the Applicant failed to vacate the quarters occupied by him in Abbotsleigh Division by November 1, 1982 and was suspended from work. The Applicant refused to move into quarters allocated to him in Florence Division as he alleged that it was not repaired in terms of the said settlement in the Labour Tribunal. The Applicant has taken up the position that his suspension from work by the Appellants amounted to constructive termination of his services.

The Applicant in his evidence at the inquiry in the Labour Tribunal has stated that the Appellants have failed to repair the quarters allocated to him in Florence Division, in terms of the settlement in the earlier Labour Tribunal case. He has set out the repairs need to be done in a letter dated November 24, 1982, produced marked A3. In reply to A3, the Superintendent of the estate by letter dated November 26, 1982, marked A4, has informed the Applicant that he will be interdicted if he failed to carry out his instructions, and to move into quarters allocated to him in Florence Division. The Applicant did not want re-instatement but asked for compensation in lieu. The Applicant produced documents marked A1 to A7 in support of his case.

The Superintendent of the estate gave evidence on behalf of the Appellants and stated that when he wrote the said letter A4 the quarters in Florence Division was in a suitable condition to be occupied by a family. According to him the quarters were white washed, windows were repaired, locks fitted, and water was supplied, in terms of the said settlement. He was willing to do the balance repairs after the Applicant went into occupation. He also stated that Kanagaratnam, a K.P., was in occupation of the said quarters. The said repairs have been effected before November or by the middle of November 1982.

Thus it is seen that both parties are relying on the non-compliance of the terms of the aforesaid settlement in the earlier case, to justify their action. It is to be noted that the Applicant had not complied with the terms of the settlement when he did not vacate the quarters in Abbotsleigh Division. However he proffers as an excuse, the fact that quarters at Florence Division was not repaired as undertaken by the Appellants. The position of the Appellants appear to be that they have substantially complied with the terms of the settlement and that if there was anything more to be done they will attend to it even after the Applicant moves in.

According to the evidence adduced in the case there is no direct termination of the services of the Applicant in this case. All that seem to have happened is that his services have been suspended as he continued to occupy the quarters in Abbotsleigh Division, contrary to the terms of the aforesaid settlement. Hence the legal issue that arises from that situation is, does the suspension of work amount to constructive termination of the services of the Applicant? The learned Counsel for the Appellants submitted that it does not, and cited the case of *Ceylon Workers' Congress vs. Janatha Estates Development Board* (1), where the facts of that case were very much similar to the instant case; it was held that suspension from work did not amount to constructive termination.

It may be noted that the ordinary meaning of the word suspend, is to cause to cease for a time or to debar temporarily. Thus ordinarily what suspension of work would mean is that the employer caused a cessation of work of the employee, temporarily, till such time a term or condition is observed or adjusted. In this context it is relevant to refer to the letter marked A7 dated January 17, 1983, where the Superintendent of the Appellant's estate states that, ". . .you, yourself too could resume work." This shows that even as late as January

17, 1983, what was intended by the Employer was a temporary cessation of work, till the Applicant vacated the quarters of Abbotsleigh Division. Even in the letter marked R4, dated November 26, 1983, the Superintendent had merely indicated that, "please note to move into Florence Division for occupation, and if you fail to do so as from 1st December 1982, you will be interdicted." It is seen from this letter that the intention of the employer was not to terminate the services, but take disciplinary action by way of interdiction with a view of getting the Applicant to comply with his order. Furthermore, interdiction cannot be considered as termination of services either directly or constructively in the given circumstances. There is no evidence of any direct communication by the Appellants of their intention to terminate the employment of the Applicant.

The Applicant in his evidence (page 17 of the brief) has adduced two reasons as to why he states that his services have been constructively terminated. The first reason he states is, because his official quarters were not repaired properly. In this regard the evidence of the Superintendent is that the quarters were repaired partly and that he was willing to attend to the other necessary repairs even after the Applicant went into occupation. He had added that at the time the letter marked A4 was sent, which is dated November 26, 1982, the quarters at Florence Division was suitable for occupation by a family. (vide brief page 24). However it must be noted that when the Labour Tribunal President visited the said quarters on March 23, 1983, 8 items of repair were shown as necessary by the Applicant. (vide brief page 13 & 14). At that stage the Superintendent offered to do all necessary repairs within two weeks, but the Applicant refused to go into occupation of the quarters even if repairs were done. The Applicant has further stated that in view of the state of the relationship between him and the Appellants he does not wish to resume work under the same employer and required that inquiry be proceeded with (vide brief page 14). Similarly when he was asked in cross-examination whether he would go back to work, if the quarters are repaired, his answer was that in view of the state of affairs prevailing now he was not willing to resume work. (vide page 20 of the brief). Further he has stated in evidence that after the earlier case was filed his desire to work in the estate was breached.

It is evident from the document marked R2 that the earlier case No. LT/10/4049/82 also had been filed by the Applicant alleging termination of his services, when he was transferred to Florence

Division. This was an erroneous assertion on the part of the Applicant in the light of the decision in *Ceylon Estates Staffs Union vs. The Superintendent, Meddecombra Estate, Watagoda* (2) which clearly recognises the right of an employer to transfer an employee within his service.

The second reason adduced by the Applicant in his evidence to assert that his services were constructively terminated, is that he was not permitted to reside. (vide page 17 of the brief). It is not clear from his answer as to where he was not permitted to reside, whether it is in the Abbotsleigh Division quarters or Florence Division quarters.

Thus the two grounds urged by the Applicant to assert that his services have been constructively terminated, do not directly relate to the duties he has to perform as a Plucking Kanakapullai, or to his salary and emoluments. There is also no direct evidence that provision of quarters is a term of his contract of employment. Even if this is implied, the position arising in this case is not that quarters were not provided, but that the quarters provided did not adequately meet the needs of the Applicant. In fact there is the evidence of the Superintendent, that Kanagaratnam K.P. is now in occupation of the quarters allocated to the Applicant, in Florence Division, although his wife is living elsewhere. (vide page 25 of the brief). This would mean that a workman of equal status had found it fit for his occupation. It tends to show to what extent the claim of the Applicant is bona fide. All these in effect means that what is disputed is the degree of suitability of the quarters provided for occupation of the Applicant. In such a situation, I am of the view that, it would not be appropriate to infer that there had been a constructive termination of services.

Thus having considered all the facts and circumstances of this case, I am of the view that an inference of constructive termination of the Applicant's services by the Appellants, is not warranted. Therefore the Labour Tribunal had no jurisdiction to entertain this application. Accordingly the said Order of the Labour Tribunal is hereby set aside and the application of the Applicant to the Labour Tribunal is dismissed without costs. This appeal is allowed but I make no order for costs.

Appeal Allowed.