

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

S.C Appeal No. 40/2004  
SC/HC/CA/LA No. 33/2003  
LT No. 9/TK/1280/95  
HCALT No. 60/97

In the matter of an appeal under Section  
31 DD of the Industrial Disputes Act No.  
43 of 1950 (as amended from time to  
time)

1. Talawakelle Plantations Limited  
Mount Mary Road,  
Nuwara Eliya.

**RESPONDENT-RESPONDENT-  
PETITIONER**

Vs.

Ceylon Estates Staff Union  
6, Aloye Mawatha,  
Colombo 3.

On behalf of R. Rajendran  
Assistant Field Officers Quarters,  
Coombewood Division,  
Logie Estate  
Talawakelle.

**APPLICANT-APPELLANT-RESPONDENT**

2. The Superintendent  
Logie Estate  
Talawakelle.

3. Hayleys Plantation Services Limited  
400, Deans Road,  
Colombo 10.
4. Sri Lanka State Plantations Corporation  
Gregory's Road,  
Colombo 7.
5. The Land Reform Commission  
C82, Gregory's Road,  
Colombo 7.

**RESPONDENT-RESPONDENT-  
RESPONDENTS**

**BEFORE:** S. E. Wanasundara P.C. Acting C.J.  
Priyantha Jayawardena P.C., J. &  
Anil Gooneratne J.

**COUNSEL:** Avindra Rodrigo with Ms. Rozali Fernando  
And Anuradha Wijesooriya instructed by  
F. J. & G de Saram for Respondent-Respondent-Petitioner

Udayasiri Rajapakse with Ms. Ishara Abeysinghe  
For 4<sup>th</sup> Respondent-Respondent-Respondent

Ms. Yuresha de Silva S.S.C. for 3<sup>rd</sup> Respondent-  
Respondent-Respondent

**ARGUED ON:** 15.11.2016

**DECIDED ON:** 02.12.2016

**GOONERATNE J.**

This is a case of termination of employment of an employee. The employer is Talawakele Plantations Limited (Respondent-Respondent-Petitioner – hereinafter referred to as the employer). The applicant employee who was represented by the Ceylon Estates' Staff Union (Applicant-Appellant-Respondent) was employed as an Assistant Field Officer of 'Logie' Estate and particularly attached to the 'Coombewood' Division which is one of the three divisions of 'logie' estate. It is pleaded that the employee was liable to be transferred and was required to accept and work in any part of the estate. In this appeal the facts submitted to court reveal that the employee's services were terminated on or about 01.04.1995. Employee's services being terminated, an application was made to the Labour Tribunal by the employee for relief as per Section 31B of the Industrial Disputes Act as Amended on the basis that his services were unjustly terminated by the employer.

The Labour Tribunal by its Order dated 28.05.1997 (X4) held that employer's decision to terminate the employee's employment was just and equitable. Employee concerned appealed to the High Court. The learned High Court Judge as submitted to this court by learned counsel for the Respondent-Respondent-Petitioner agreed with the findings of the Labour Tribunal but

vacated the Order of the Labour Tribunal purely on sympathetic grounds. Appeal to the Supreme Court is from the Judgment of the High Court dated 24.06.2003. On or about 03.06.2004 Supreme Court granted Leave to Appeal on questions of law stated in paragraph 8 of the Petition. The said questions reads thus:

- (i) The said order is wrong, contrary to law and against the weight of the evidence placed before Court;
- (ii) The learned Judge failed to subject the evidence to an objective and judicial evaluation and/or to arrive at a judicial determination of the question of law that arose for determination in this case;
- (iii) The learned Judge erred in law by failing to take into consideration any of the items of evidence adduced in this case that were in favour of and/or supportive of the case of the Employer;
- (iv) The learned Judge erred in law by failing to address his mind to and/or determine according to the evidence the issues that arose for determination in this case;

I would state the facts very briefly. Employee being attached to one of the divisions of the three divisions of the estate was liable to be transferred to any one division, where he is given quarters, and required to reside in the respective division. When the employee was transferred to a particular division, he is expected to take up residence in the house provided for the Division. The evidence led indicates that on transfer, the employee assumed duties in the

division to which he was transferred but refused to vacate the house in which he resided prior to transfer. In other words the employee refused to accept and reside in the residence provided within the particular division, on transfer. This led to action being taken by the employer and ultimately resulted in the termination of employment of the employee. I have no hesitation to observe that this is a case of clear insubordination.

In the Labour Tribunal the employee inter alia prayed for back wages and re-instatement or compensation for loss of employment. On behalf of the employer the Superintendent of Logie Estate gave evidence, and testified that the employee concerned failed to comply with lawful directives given by the employer. Persistent refusal to give up the quarters occupied by employee and refusal to move on to the house provided within the division the employee who was expected to work on transfer, would amount to insubordination. The case of J.E.D.B. and another Vs. Ceylon Workers Congress 1994 (3) SLR 24, it was held that a workman was guilty of insubordination and his services were rightly terminated for refusal to accept a transfer to quarters on another estate. As observed by the learned counsel for the Employer the evidence led reveal that the employee failed to establish that his termination of services was unjustly and unlawfully terminated. Employee's persistent refusal and stubborn attitude

not to comply with directions given by the employer resulted in the Labour Tribunal holding in favour of the employer.

The learned High Court Judge in his Judgment agrees with the findings of the learned President of the Labour Tribunal and in no uncertain terms state that the Labour Tribunal has considered all relevant facts and arrived at a correct decision. Further it is held that the dismissal of the employee's application is justified. The following excerpt from the Judgment of the learned High Court Judge is noted.

අයදුම්කරුට නව සේවා ස්ථායේ නිවසක පදිංචියට යාමටත් නියම කොට තිබූ නුමුදු එක් නියමය නොතකා අයදුම්කරු තමා කලින් සිටි නිවසේ ම රුදි සිටීමෙන් පෙනී යන්නේ අයදුම්කරු නිතුවක්කාර ලෙස සහ අනන්‍යෝමනික ලෙස ක්‍රියා කොට ඇති බවයි. ස්වමියා විසින් ස්ථාන මාරුවක් දුන් පසු කලින් සිටි නිවස භාර දීමට නියෝගයක් කල විට එයට පටහැනිව තමන්ගේ මනාපය සේ ක්‍රියා කිරීමට සේවකයෙකු හට ඉඩ ලබා දුනහොත් එම සේවා ස්ථානයේ නිසි පාලනයක් හෝ විනයක් තබා ගැනීමට හැකි නොවනු ඇත. එහෙයින් මෙවන් නිතුවක්කාර ක්‍රියාවක් හට කිසිදු ඉඩක් නොතැබිය යුතුයන්න මගේ අදහසයි. එහෙයින් කම්කරු විනිශ්චය සභාව ඉදිරියෙහි ඉදිරිපත් වී ඇති සියලු කරුණු අනුව අභියාචකයාගේ ඉල්ලීම කම්කරු විනිශ්චය සභාව විසින් නිශ්චයා කිරීමට සාධාරණ බව මගේ හැඟීමයි.

The learned High Court Judge having stated, so as above, proceeded to vacate the Order of the Labour Tribunal as stated by the Judge only on sympathetic grounds which refer to the following positions.

- (a) Applicant was only 46 years of age and had been unemployed for 8 years.
- (b) The period of 8 years as above is enough punishment for acts of insubordination committed by employee.
- (c) Employee to move out of the official quarters occupied by him at the Coombwood Division and report to the employer.
- (d) Having complied with (c) above employer is required to employ the applicant with no back wages and at the discretion of employer in any estate of the employer not below the position held by employee prior to dismissal.

The order made by the learned High Court Judge which could be described in the way it is described by the High Court Judge on sympathetic grounds cannot be permitted to stand. I am unable to accept the position that a court of law should deliver Judgment on sympathetic grounds. Any Judge is required to consider the merits of the case, and based on acceptable evidence, pronounce Orders and Judgments according to law. However if settlements are reached, cases could be concluded if either party agree with each other to do so, even on 'sympathetic' grounds without offending laws of the country.

In the field of Labour Law and practices insubordination is a ground for dismissal in all jurisdiction, unless provoked by the management. Even a refusal to obey reasonable orders justifies dismissal 63 NLR 164; 8 CWR 240. It is not incorrect to observe that both aspects i.e insubordination and disobedience justifies dismissal. If not the employer cannot go ahead with his business or an organisation with indisciplined employees, and the basic structure of employment would crash. Tolerance of either of above will result in poor management and mismanagement of the business.

The employee was absent and unrepresented before this court on the date of hearing and also on previous occasions. However the record indicate that the employee Applicant-Appellant-Respondent has filed written submissions on 25.02.2005.

I have considered the written submissions of the employee filed of record but there is no merit in same to consider his position. Nor has the employee met the position of the employer on the question of insubordination or disobedience.

I answer all the questions of law as referred to in paragraph 8 of the petition in the affirmative and in favour of the employer- Respondent- Respondent-Petitioner. The Judgment of the learned High Court Judge dated 24.06.2003 is set aside. I affirm the Order of the Labour Tribunal dated

28.05.1997 wherein the termination of the employee was held to be just and equitable. This appeal is allowed as above without costs.

Appeal allowed.

JUDGE OF THE SUPREME COURT

S.E. Wanasundara P.C.

I agree.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena P.C. J.

I agree.

JUDGE OF THE SUPREME COURT