

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

In the matter of an Application for Appeal under and in terms of the provisions of the Civil Procedure Code read with Section 5C of High Court of the Provinces (Special Provisions) Act No. 54 of 2006.

H.A.P. Amarasena
No.16, Edinburg Estate,
Nanuoya.

Plaintiff

**SC APPEAL No. 89/2020
SC/HCCA/LA/349/19
CP/HCCA/FA/144/2016
D.C. Nuwara Eliya Case No. 1348/Misc**

Vs.

1. Kelani Valley Plantations PLC
No.400, Deans Road,
Colombo 10.
2. Anura Senanayaka
Estate Superintendent
Edinburg Estate,
Nanuoya.
3. Dudley Ananda Subhasinghe
(Former Estate Superintendent of
Edinburg Estate)
Human Resource Manager
Noritake Company
Mathale.

Defendants

AND BETWEEN

H.A.P. Amarasena
No.16, Edinburg Estate,
Nanuoya.

Plaintiff-Appellant

Vs.

1. Kelani Valley Plantations PLC
No.400, Deans Road,
Colombo 10.
2. Anura Senanayaka
Estate Superintendent
Edinburg Estate,
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3. Dudley Ananda Subhasinghe
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Noritake Company
Mathale.

Defendants-Respondents

AND NOW BETWEEN

1. Kelani Valley Plantations PLC
No.400, Deans Road,
Colombo 10.

**1st Defendant-Respondent-
Appellant**

Vs.

H.A.P. Amarasena
No.16, Edinburg Estate,
Nanuoya.

**Plaintiff-Appellant-
Respondent**

2. Anura Senanayaka
Estate Superintendent
Edinburg Estate,
Nanuoya.

**2nd Defendant-Respondent-
Respondent**

3. Dudley Ananda Subhasinghe
(Former Estate Superintendent of
Edinburg Estate)
Human Resource Manager
Noritake Company
Mathale.

**3rd Defendant-Respondent-
Respondent**

Before : **A.H.M.D Nawaz, J**
A.L. Shiran Gooneratne, J
K. Priyantha Fernando, J

Counsel : Ms. Manoli Jinadasa with Nilushi
Dewapura instructed by Rasika
Wellapili for the
1st Defendant-Respondent-
Appellant.

H.A.G. Amarasena appears in
person.

Argued on : 14.05.2024

Decided on : 01.07.2024

K. PRIYANTHA FERNANDO, J

1. The 1st Defendant-Respondent-Appellant (hereinafter referred to as the 1st defendant) in this case preferred an appeal to this Court challenging the decision of the learned Judges of the Civil Appellate High Court of Central Province holden in Kandy, in granting Rs. 250,000 as damages to the Plaintiff-Appellant-Respondent (hereinafter referred to as the plaintiff) in terms of the Estate Quarters (Special Provisions) Act No.2 of 1971.
2. The plaintiff in this case has been an Ayurvedic Practitioner. He has been appointed as the estate doctor on a service of contract. In terms of the service of contract, the plaintiff has been provided with official quarters. By letter dated 27.09.2008 (at page 345 of the brief), the plaintiff has been noticed that his services on contract would be expired on 30.11.2008, and was asked to hand over the official quarters. Thereafter, on an appeal made by the plaintiff, his service of contract has been extended by a further month until 31.12.2008 (page 346 of the brief). Admittedly, the plaintiff has continued to reside at the official quarters even after he was asked to hand over possession of the same. Thereafter, the defendants have interrupted the electricity supply of the appellant.
3. The plaintiff instituted action in the District Court of Nuwara Eliya against the 1st defendant that is the Kelani Valley Plantations, and the 2nd and 3rd Defendants-Respondents-Respondents (2nd and 3rd defendants) who were Estate Superintendents of the 1st defendant estate.

4. In the plaint that was presented to the District Court, the plaintiff prayed for a judgment and a decree that the plaintiff is the lawful possessor of the official residence as set out in the 2nd schedule to the plaint, damages in a sum of Rs. 500,000 for the violation of the conditions of the contract, damages in a sum of Rs. 500,000 for the termination of his services and interrupting the electricity supply, and compensation in a sum of Rs. 1,000,000 as back wages that were due to the plaintiff by the 1st defendant.
5. In the District Court, as the 1st defendant and the 2nd defendant had failed to file the answer within the specified time, the trial has been fixed *ex parte* between the plaintiff and the 3rd defendant. At this point, the plaintiff has withdrawn his claim against the 3rd defendant despite there being specific allegations on him. Upon these circumstances, the plaintiff has tendered unchallenged evidence to Court.
6. The learned District Judge, by her judgment dated 30.08.2016, dismissed the plaint of the plaintiff. Aggrieved by the decision of the learned District Judge, the plaintiff preferred an appeal to the Civil Appellate High Court of Central Province holden in Kandy.
7. The High Court, by judgment dated 30.07.2019 set aside the judgment of the learned District Judge. The appeal of the plaintiff was partially allowed. The learned Judges of the High Court granted the only relief (අඵ) in which the plaintiff prayed for damages in a sum of Rs. 500,000 for the termination of his services and interrupting the electricity supply and held that, the plaintiff was entitled to damages in a sum of Rs. 250,000 in terms of section 2 of the Estate Quarters (Special Provisions) Act No. 2 of 1971 for the hardships faced due to the disconnection of the power supply.

8. Aggrieved by the decision of the learned Judges of the High Court, the 1st defendant (hereinafter referred to as defendant) preferred an appeal to this Court. The main issue for the defendant was in respect of the relief granted in the High Court regarding the 3rd relief (relief (ϕ)) prayed for in the prayer to the plaint. The learned Counsel for the defendant submitted to this Court that she would be satisfied if the 3rd relief prayed, which has been granted to the plaintiff by the judgment of the High Court is varied.
9. At the hearing of this appeal, leave was granted on the questions of law set out in Paragraph 15(a) and (b) of the petition dated 30.08.2019.

Questions of law

Paragraph 15

- a) Whether their Lordships of the Civil Appellate High Court erred in law in concluding that the Estate Quarters (Special Provisions) Act No.2 of 1971 applied to the Respondent and/or his cessation of employment under the Petitioner?
- b) Whether their Lordships of the Civil Appellate High Court erred in fact and in law in granting a sum of Rs. 250,000/- as damages and further costs to the respondent in terms of the 3rd relief prayed for by the respondent in his District Court Plaint without any rational basis for the same?

a).Whether their Lordships of the Civil Appellate High Court erred in law in concluding that the Estate Quarters (Special Provisions) Act No.2 of 1971 applied to the Respondent and/or his cessation of employment under the Petitioner ?

10. It was the submission of the learned Counsel for the defendant (appellant) that, according to sections 2 and 5 of the Estate Quarters (Special Provisions) Act No.2 of 1971(the Act), the plaintiff (respondent) is not an employee to whom the above Act applies. It was submitted that, for an employee to fall within the protection of the said Act, first, he should establish that he was an employee who was paid wages on an hourly or daily basis and secondly, he should establish that his services have been terminated by the employer. It was the submission of the learned Counsel that in light of the evidence, none of these two requirements are fulfilled and therefore the learned Judge of the High Court has erred in holding as he did and granting the relief prayed for in prayer (e) of the plaint.
11. Section 2 of the Estate Quarters (Special Provisions) Act No.2 of 1971 sets out that,

“2. Where the services of any person who is an employee on an estate and who is provided with quarters on the estate are terminated by the employer, whether with or without notice, then, notwithstanding the termination of such services, such person shall-

(a) have the right to occupy such quarters together with his dependents until he is ejected therefrom on a decree of a court of competent jurisdiction; and

(b) during the period he exercises the right conferred on him by paragraph (a), be entitled to have all the facilities which are necessary for the exercise of that right and which he had prior to the termination of his services.”

12. Section 5 of the Act sets out the interpretation of an ‘employee’ for the purposes of the Act.

“employee” means a person who is employed on an estate by an employer under a contract, whether oral, written, express or implied, to perform any work and who is paid wages at an hourly or daily rate ; ”

13. Accordingly, for a person to qualify as an employee for the purposes of the Act, he must be employed under a contract and he must also be paid wages at an hourly or daily rate. It is admitted that the plaintiff employee in this case was recruited under a contract of service. However, evidence was brought before the District Court to demonstrate that the plaintiff employee was paid wages at a monthly rate and not at an hourly or daily rate despite the assertion of the plaintiff to the contrary.

14. However, it was the submission of the plaintiff who appeared in person that he was in fact paid wages at an hourly rate.

15. The learned Counsel for the defendant drew the attention of this Court to pages 152, 153, and 154 of the brief. It is pertinent to note that, the plaintiff in his own evidence in the District Court has stated that he was not an employee who was paid wages daily or hourly. When considering the document marked [P-29] at page 401 of the brief, which is the application filed by the plaintiff himself in the Department of Labour, the plaintiff has clearly stated that he was paid on a monthly basis.

“මා හට වාචිකව පොරොන්දු වූයේ වතු දෙකක (එඩින්බරෝ සහ ග්ලැසෝ) වෛද්‍යවරයා ලෙස සේවය කිරීමට බවත්, ඉන් එඩින්බරෝ වත්තේ සේවයට මසකට රු. 15,000/- සහ ග්ලැසෝ වත්තේ සේවයට මසකට රු. 5,000 ක් හා ඊට අදාළ ජීවන වියදම් දීමනාද දෙන බවත්,...”

(page 401 of the brief)

16. Thus, when considering the evidence of the plaintiff from pages 152-154 of the brief, coupled with the document of the plaintiff marked [P-29], it is clear that the plaintiff employee was paid wages at a monthly rate. Therefore, as he has clearly admitted that he was paid his wages at a monthly rate, he fails to fall within the description of an employee under section 5 of the Act. This in turn deprives the plaintiff employee of being entitled to the protection afforded under section 2 of the Act. As the plaintiff has failed to qualify as an employee for the purposes of this Act, and thereby does not qualify under section 2 of the Act, I will not resort to consider the aspect of termination of employment.
17. Therefore, in answering the question of law (a) in paragraph 15 of the petition, it is my position that, in light of the evidence, the learned Judges of the High Court have in fact erred in law in concluding that the Estate Quarters (Special Provisions) Act No.2 of 1971 was applicable to the plaintiff (respondent) in the instant case.

b). Whether their Lordships of the Civil Appellate High Court erred in fact and in law in granting a sum of Rs. 250,000/- as damages and further costs to the respondent in terms of the 3rd relief prayed for by the respondent in his District Court Plaint without any rational basis for the same?

18. The learned Counsel for the defendant submitted that, awarding a sum of Rs. 250,000 to the plaintiff by the learned Judges of the High Court was done without any legal basis. It was submitted that, there is no evidence to establish that the plaintiff is entitled to the said sum, and the basis for this calculation of compensation as to how the loss has been quantified has also not been provided by the learned Judges of the High Court.

19. It was also submitted by the learned Counsel for the defendant that, in light of the case of **Narthupana Tea and Rubber Estates, Ltd. Vs. L.E. Perera [1962] 66 NLR 135** that once employment comes to an end, the ex-employees that do not hand over official quarters are considered trespassers. Therefore, no complains can be made regarding the privileges being cut off.

20. In **Narthupana Tea and Rubber Estates Ltd. Vs. L.E. Perera [1962] 66 NLR 135** Sansoni J. stated that,

“ I am satisfied that the Plaintiff, who was provided with a furnished bungalow for his occupation, occupied it as a servant and not as a tenant. Upon the termination of his services the Defendant was entitled to retake possession-see Diamond's Law of Master and Servant (2nd Edition) p. 29. The Plaintiff therefore had no right to remain in occupation. He cannot complain in these circumstances if the lights and water service were cut off and rations refused, because he was on the premises thereafter as a trespasser. His claim on this account must therefore fail. ”

21. The case of **Forbes V. Rengasamy [1940] 41 NLR 294** was also brought to the attention of this Court by the learned Counsel for the defendant. She submitted that, the official quarters are provided to fulfil obligations set out in the contract of service, and once the contract of service comes to an end, the privileges too come to an end. It was her submission that, in line with what was stated in *Forbes(supra)*, the plaintiff falls under the category of a trespasser and is not entitled to occupy the official quarters or to water or electricity for the said official quarters.

22. In **Forbes(supra)**, Keuneman J. stated that,

“ I think it is clear that residence on the estate is in the interest of the estate, and that such residence is conducive to that purpose and the more effectual performance of the service...”

... I hold that the accused was not a tenant of the premises, but that his residence in the room was in his capacity as servant. Even if he was a tenant, his tenancy terminated when his contract of service was legally ended, and his subsequent residence was a trespass."

23. When considering the evidence of the instant case, it is noted that the plaintiff has been occupying the premises since the 31st of December 2008 which was the date in which the further extension came to an end. The cases aforementioned take the position that, upon the termination of services, an ex-employee cannot continue to occupy such premises he held by virtue of his office. In the event he does continue to occupy such premises even after employment has been terminated, he becomes a trespasser.
24. At this juncture, it is noteworthy that both cases cited above have been decided much before the Estate Quarters (Special Provisions) Act was introduced, which was in the year 1971. Therefore, this position that an ex-employee occupying premises after the termination of his employment becoming a trespasser has no general applicability in all instances. By virtue of the Act, certain classes of employees are protected under the provisions of the Act.
25. However, as I have described above in answering the question of law (a) in paragraph 15 of the petition, the plaintiff in this case is not cloaked under the protection provided by the Act as he does not qualify as an employee for the purposes of the Act. Therefore, the plaintiff is not in lawful occupation of the premises and resides in the premises as a trespasser.
26. Further, as it was correctly pointed out by the learned Counsel for the defendant, when considering the Judgment of the High Court it is seen that the learned High Court Judges have not specified as to how the sum of Rs. 250,000 was awarded as damages to the plaintiff in respect of relief (අදා) as prayed for in the plaint. There exists no explanation as to how the damages have been computed.

27. In any event, as the Act has no applicability to the plaintiff in this case, the plaintiff is not entitled to any damages. Hence, in this light, the question of law (b) is also answered in the affirmative.

28. Both the questions of law have been answered in the affirmative. The appeal of the defendant (appellant) is allowed. The judgment of the Civil Appellate High Court is set aside and the judgment of the District Court is affirmed. The defendant is entitled to costs in the District Court, High Court and this Court.

The appeal is allowed.

JUDGE OF THE SUPREME COURT

JUSTICE A.H.M.D NAWAZ,

I agree

JUDGE OF THE SUPREME COURT

JUSTICE A.L. SHIRAN GOONERATNE,

I agree

JUDGE OF THE SUPREME COURT