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

In the matter of an Application for Leave to Appeal made in terms of Section 9 of the High Court of the Provinces [Special Provisions] Act No. 19 of 1990 and Section 34D of the Industrial Disputes Act (as amended).

SC Appeal No. 133/2016

SC/HC/LA 133/2013
HC Kurunegala Case No. 37/2012 LT
LT Kuliyapitiya Case No. 46/60/2010

Jathika Sevaka Sangamaya,
(On behalf of P. Titus Jayantha)
No. 416, Kotte Road,
Pitakotte.

APPLICANT

-VS-

Sri Lanka Transport Board,
No.200, Kirula Road,
Colombo 05.

RESPONDENT

AND

Sri Lanka Transport Board,
No.200, Kirula Road,
Colombo 05.

RESPONDENT- APPELLANT

-VS-

Jathika Sevaka Sangamaya,
(On behalf of P. Titus Jayantha)
No. 416, Kotte Road,
Pitakotte.
APPLICANT-RESPONDENT

AND NOW BETWEEN
P. Titus Jayantha.
Kudagammana,
Giriulla.
APPLICANT-RESPONDENT-APPELLANT

-VS-
Sri Lanka Transport Board,
No.200, Kirula Road,
Colombo 05.
RESPONDENT-APPELLANT-RESPONDENT

BEFORE : **S. THURAIRAJA, PC, J.**
A.H.M.D. NAWAZ, J.
MAHINDA SAMAYAWARDHENA, J.

COUNSEL : Chathura Galhena with Menuja Gunawardena for the Applicant-Respondent-Appellant.
Yuresha De Silva for the Respondent –Appellant- Respondent.

ARGUED ON : 28th April 2021.

WRITTEN SUBMISSIONS : Applicant-Respondent-Appellant on the 03rd of January 2017.
Respondent –Appellant- Respondent on the 30th of January 2017.

DECIDED ON : 9th July 2021.

S. THURAIRAJA, PC, J.

Background of this Appeal

This is an appeal filed against the judgment of the Provincial High Court dated 03/09/2013.

Jathika Sevaka Sangamaya i.e. Applicant-Respondent-Appellant (hereinafter sometimes referred to as Applicant) filed this action on behalf of P. Titus Jayantha (hereinafter sometimes referred to as Appellant) since he was a member of the said trade union instituted the above action bearing No. LT Kuliyapitiya 46/60/2010 by application dated 27/09/2004 under Section 34D of the Industrial Disputes Act (as amended) against the Respondent –Appellant- Respondent (hereinafter sometimes referred to as Respondent) praying for a judgment in favour of the Appellant against the termination of service of the Appellant on the alleged ground of vacation of post and claimed for re-instatement with back wages and/ or any other reliefs. The Respondent filed answer dated 17/01/2005 and admitted the termination and stated that the Appellant has vacated his post due to non-reporting to work from 17/08/2004 to the date of termination which was 27/08/2004.

The Appellant stated that, he joined the Sri Lanka Transport Board (Respondent) on 29/06/1991 as a bus conductor and on 01/09/2002 he was promoted to the post of depot route inspector- 4th Grade attached to the Giriulla Bus Depot. As per the evidence of the Appellant there was a General Election on 02/04/2004 and with the change in the ruling party certain members of the Giriulla Bus Depot have threatened the Appellant and his party members to not to report to work. Thereafter, the Appellant

has made a complaint to the Police on 09/04/2004 and the reference number was CIB (2) 137/85 (A3) and requested to allow him to report back to work. Further, the Appellant had lodged a complaint (A4) on 27/04/2004 to the Deputy Commissioner of Labour requesting him to allow, to report back to work and on the same day the Appellant has lodged another complaint to the Giriulla Police Station under the reference number. CIB (1) 243/572. Pursuant to the above complaints made by the Appellant, a settlement was entered between the parties and the officers of the Respondent and agreed to allow the Appellant to report back to work from 01/06/2004.

The Appellant was stabbed by a person with a sharp piece of glass on 20/06/2004 and he was admitted to Dambadeniya District Hospital where he was given in-house treatment for 11 days until 30/06/2004. The Appellant had tendered five medical reports of his illness including documents marked as A7, A8 and A9. 1st medical certificate (A7- vide page 173) was issued for a period of ten days from 20th to 30 June 2004. The 2nd medical certificate (A8-vide page 174) was issued till 14th July 2004 and 3rd medical certificate was issued for another two weeks up to 28th July 2004. Then 4th medical certificate (vide page 102) was issued from 29th to 31st July 2004. Finally, 5th medical certificate (vide page 103) was issued for 5th to 16th August 2004.

The Respondent admitted the receipt of the aforementioned medical certificates and granted leave accordingly. The Appellant was required to report to work on 17th August 2004 and he failed to do the same hence, the Respondent on 23rd August 2004 sent a telegram message to the Appellant informing him to report to work. The Appellant had failed to respond to the aforementioned telegram message and failed to tender any medical certificates. Then, a letter dated 27th August 2004 (A11) was sent to the Appellant by the Depot Manager of the Giriulla Depot informing that, to report to work within 7 days from the issuance of the letter 'A11' and if not, this will result in the Appellant to vacation of post, voluntarily. The Appellant did not inform his response to the Employer and the Respondent issued a notice of vacation of post on the Appellant by letter dated 6th September 2004 (A 12) upon the expiration

of 3 weeks from the failure to work by the Appellant. The Respondent pleaded for a dismissal of the action of the Appellant.

Decision of the Labour Tribunal

The main contention of the Respondent was that the Appellant did not obtain leave and hence as per disciplinary regulation he had vacated his post, voluntarily. But the Appellant stated that, he never had an intention to vacate his post and he tried to restore back to work from the very inception of the said political obstructions occurred soon after the elections in April 2004.

At the conclusion of the case, the learned President of the Labour Tribunal delivered his order on 31/05/2011 and decided the case in favour of the Appellant stating that there was a constructive termination of service of the Appellant by the Respondent by relying on the dissenting judicial pronouncement in **Nandasena v Uva Regional Transport Board (1993) 1 SLR 318** and awarded a sum of Rs. 221,250/- as compensation which is equal to 30 months of salary of the Appellant. The learned President stated in his order as follows.

> *"මෙම විනිශ්චය සභාවට ඉදිරිපත් වූ සාක්ෂි අනුව ඉල්ලුම්කරුට ස්ව කැමැත්තෙන් සේවය අතහැර යාමේ චේතනාවක් තිබුණ බවට කරුණු අනාවරණය නොවන අතර ඉල්ලුම්කරුට වගඋත්තරකාර ගිරිඋල්ල ඩිපෝවේ සේවකයෙකු විසින් සිදු කරන ලද ශාරීරික හානිය හේතු කොට ගෙන සේවයට වාර්තා කර රාජකාරී වල නිරත වීමේ නොහැකියාවක් උද්ගත වේ ඇති බව අනාවරණය වේ. මෙම තත්වය නන්දසේන එදිරිව ඌව ප්‍රාදේශීය ගමනාගමන මණ්ඩලය 1993 SLR 318 නඩුවේදී ගරු මාක් ප්‍රනාන්දු විනිසුරුතුමා ප්‍රකාශ කර ඇත්තේ තාවකාලික ලෙස සේවයට නොපැමිණීම සේවය අතහැර යාමක් නොවන බවයි. "*

The English translation of the above paragraph as follows;

> "*Evidence presented to the tribunal does not reveal that the applicant had any intention of leaving the service voluntarily and that the applicant was unable to report for duty and engage in duties due to the physical damage caused to him by an employee of the Giriulla Depot. In the case of Nandasena v. Uva Local*

Transport Board 1993 SLR 318, Hon. Mark Ferando J. has stated that temporary absenteeism is not a vacation from service."

Decision of the High Court

Being dissatisfied with the order of the Labour Tribunal, Respondent appealed to the Provincial High Court of Kurunegala. The Judge of the Provincial High Court of Kurunegala delivered his judgment on 03/09/2013, and allowed the appeal while setting-aside the order of the learned President of the Labour Tribunal on the basis that the Appellant had voluntarily vacated the post as pleaded by the Respondent.

The High Court relied and referred to the case of **Building Materials Corporation vs Jathika Sewaka Sangamaya (1993) 2 SLR 316** wherein Supreme Court held that, long absence without obtaining leave or authority is evidence of desertion or abandonment of service. Further, High Court has quoted from the assertion of Senanayake J, in **Jayawardane vs ANCL (CA 562/87)** which reads as follows.

"No employer could indefinitely, kept a post vacant without any information from the worker of his inability to come to work, especially. Where the employer has given an opportunity for the applicant to tender any explanation or inform the employer about his inability to report to work."

Case before this Court

Being aggrieved by the said judgment of the Provincial High Court of Kurunegala, the Appellant filed this case before this court and leave was granted on the following questions of law stated in paragraph 18 (i, iii, iv) of the petition dated 14/10/2013. Those are reproduced verbatim for easy reference;

i. Did the Provincial High Court misdirect itself on the proof and evidence regarding the vacation of post by the petitioner?

iii. Did the Provincial High Court misdirect itself by failing to consider the analysis of the learned President of the Labour Tribunal regarding the Petitioner's reasons for the absence of work?

iv. Did the Provincial High Court misdirect itself in applying the decided cases into the instant case?

Heard the submissions of both Counsel and perused the materials before this Court including the Judgments of the Labour Tribunal and the Civil Appellate High Court.

Vacation of Post

Having particular regard to the attendant circumstances of the instant application, this court is called upon to determine whether a voluntary and intentional vacation of post on the part of the Appellant has been established by the Respondent.

The Appellant was an employee attached to a government institution namely Sri Lanka Transport Board. The Appellant was employed for a long period of time and he was involved in trade union activities had adequate knowledge about the work environment, Law and rules & regulations. As per section 21 (1) of the Disciplinary Rules of Sri Lanka Transport Board, in the event of an employee of the Sri Lanka Transport Board fails to report to work for 3 days, steps should be taken to send a Telegram to the last known address, informing the employee to report to work or to inform reasons for the failure to report to work and in this matter, it is proved that the Respondent had complied with the said requirement on 23/08/2004 by sending a telegram message. Then, 'A11' letter was sent to the Appellant by the Depot Manager of the Giriulla Depot complying with the procedure stipulated in the Disciplinary Rules. Due to the failure on the part of the Applicant to respond the aforementioned notifications, the Notice of Vacation of Post had been sent by the Respondent on 06/09/2004.

The concept of vacation of post was examined by Justice Jayasuriya in the case of **Nelson de. Silva v Sri Lanka State Engineering Corporation (1996) 2 Sri LR 342 at 343** as follows;

> *"The concept of vacation of post involves two aspects; one is the mental element, that is intention to desert and abandon the employment and the more familiar element of the concept of vacation of post, which is the failure to report at the work place of the employee. To constitute the first element, it must be established that the Applicant is not reporting at the work place, was actuated by an intention to voluntarily vacate his employment."*

When discussing the above, Jayasuriya J was guided by the decision of the Supreme Court in **The Superintendent of Hewagama Estate v Lanka Eksath Workers Union SC 7-9/69 [S.C minutes 02.02.1970]** and referred to the said decision in his judgment as follows;

> *"The learned President of the Labour Tribunal hold on the facts that there was no abandonment of employment by the workman as the workman in question had no intention of abandoning his employment. The learned President correctly applying the legal principles observed that the physical absence and the mental element should co- exist for there to be a vacation of post in law. Besides, he held on this issue the Tribunal ought to be guided by the common law of the land which is the Roman Dutch Law and consequently the English doctrine of frustration, relied upon by the learned Counsel, has no application whatsoever to the situation under consideration. An appeal preferred by the employer against this order of the learned President of the Labour Tribunal was considered by the Supreme Court in* ***The Superintendent of Hewagama Estate Vs. Lanka Estate Workers Union*** *and the order of the learned President was affirmed in Appeal."*

Kulatunga J in **Wijenaike v Air Lanka Ltd. (1990) 1 Sri L.R. 293**, referred to the principle of Vacation of Post and emphasised that physical absence alone is

insufficient and that the party seeking to establish a vacation of post must prove that the physical absence co-existed with the mental intent.

As established above, the concept of vacation of post involves two aspects; Physical element and mental element. These elements must co-exist with each other for the employer to establish that there is vacation of post by the employee; **Kalamazoo Industries v Minister of Labour & Vocational Training (1998) 1 SLR 235.**

The physical element was proved with the absence to report to work but the Appellant denied the mental element. Hence the issue here is to identify what was the mental element of the Appellant (The Employee) and whom should be satisfied with the reasoning?

It has been an established principle in Industrial law that the right to Hire and fire an employee is vested with the Employer provided that the grounds on which an employee is fired is just and reasonable. Hence a reasonable person should take an objective view by considering the evidence that lies before him. In order to understand who a reasonable person should be, it is sufficient to equate him to the man on the Clapham bus-the proverbial reasonable man we often meet in law

It could be seen that in order for a reasonable person to uncover both the physical and mental element as to the Vacation of Post by the employee they need to be attributed with knowledge of all relevant background facts and information. Such facts in this case would be: 1) whether the employee obtained leave for the days he did not report to work? 2) whether he had communicated his reason for not reporting to work within a stipulated time period?

The learned President of the Labour Tribunal held that, no mental element established on the part of the Appellant in vacation of post. It is pertinent to note that the learned President of the Labour Tribunal relied on the dissenting judgment of Mark Fernando, J in **Nandasena v Uva Regional Transport Board** (supra) and stated that, though there is a physical element the mental element of the Appellant to vacate his post was not proved. The learned President of the Labour Tribunal without taking into

consideration of the information a reasonable person should have held that the mental element was not proved due to the surrounding circumstances and due to the threats of the Appellant's life he was compelled to keep out of work. The Learned President of the Labour Tribunal has arrived at this decision by considering the past hinderances that had caused the Appellant not to report to work. However, it should be taken into consideration that in those situations the Appellant had lodged complaints to the police and the Commissioner of Labour with regard to the hinderances caused by other employees, which clearly demonstrate the intention of the Appellant to continue his work at the Respondent Board. It should be noted that with regard to the present period of time in which the Appellant had not reported to work and for which the Appellant is now claiming that he did not report due to fear of life had not followed any of the previously followed procedure to bring it to the notice of any relevant authorities nor the employer. Further the learned President of the Labour Tribunal considered and decided that the application of Rule 21 of the Disciplinary Rules of Sri Lanka Transport Board into this situation is not just and equitable hence decided that the termination based on vacation of post was not justified.

The learned Judge of the Provincial High Court of Kurunegala did not agree with the order of the learned President of the Labour Tribunal and set aside the order of the learned President of the Labour Tribunal stating that, the Respondent had informed the Appellant to report to work by a telegram on 23/08/2004 and by a letter on 27/08/2004 within seven days but the Appellant did not respond to any of those messages and having received the letter for vacation of post-dated 06/09/2004, the Appellant filed this application before the Labour Tribunal, Kuliyapitiya.

The learned Judge of the Provincial High Court of Kurunegala relied on the dictum in **Nelson De Silva v Sri Lanka State Engineering Corporation** (supra) to identify the intention of the employee to not to abandon the employment. It was stated that *"a reasonable explanation may negative the intention of the employee to abandon his employment"*. It was observed by the learned Judge of the Provincial High Court of Kurunegala that the Appellant had not challenged the notice of vacation of

post issued on 06/09/2004 with bona fide, satisfactory explanation and the Appellant even after receiving the telegram message and a letter requesting him to return to work did not make any response to the Respondent. Hence, it was obvious that the Appellant had not shown his intention to return to work.

Given the importance of the case of **Nandasena v Uva Regional Transport Board** (supra) as the Learned President of the Labour Tribunal relied on the dissenting judgment pronounced by Justice Mark Fernando, it is pertinent to consider the said judgment in its entirety to see if the Learned President of the Labour Tribunal has been correctly influenced by the said judgments.

As per the facts of the case provided in the Sri Lanka Law Reports at pages 318 & 319, Nandasena was employed by the Uva Regional Transport Board as a bus conductor attached to the Embilipitiya Depot. On 3/4/1984 he was interdicted on two charges namely, assault and conspiracy to assault the Depot Manager on 26/3/1984. and failing to reveal to the respondent the correct facts relating to the incident of 26/3/84. After a domestic inquiry he was found guilty of the second charge of misleading the Board by concealing the truth and/or making a false statement relating to the incident of assault which took place on 26/3/1984. Consequently, he was held to be not a fit and proper person to hold employment under the Board. On 26/12/84 the Personnel Manager informed the appellant of the result of the domestic inquiry and indicated that the punishments meted out were disentitlement to salary during the period of interdiction and a disciplinary transfer to a new station of which he will be informed subsequently. On 31/12/84 he was informed that his new station was the Ratnapura Depot with effect from 1/1/1985.

On 2/1/1985 Nandasena wrote to the Personnel Manager asserting his innocence and that he was not at Embilipitiya on the day of the incident and stating that the unlawful deprivation of wages and transfer constituted a constructive termination of his services and he would be appealing against the order of 26/12/84. He asked for stay of the transfer pending the appeal. He called for a reply on or before 15/1/1985. On 11/1/85 the Personnel Manager replied that he had no power to stay

the transfer citing the Board's rule 14 which provided that upon an appeal being made a punishment transfer would not be stayed. Nandasena wrote again to the Personnel Manager on 21/1/1985 asking for a reconsideration and that pending the result of the appeal he be transferred to the Godakawela Depot as this was within the limit of his free travel pass whereas Ratnapura was not and would involve him in additional expenses. The Personnel Manager did not reply.

On 8/2/1985 the Depot Manager Ratnapura issued a vacation of post notice giving seven days to explain his absence. On 10/2/85 the Nandasena replied he was awaiting the Personnel Manager's final decision. On 22/2/85 the Depot Manager Ratnapura informed the Appellant that he was deemed to have vacated his post on 5/1/85 by failing to report for work on or after that date. On 28/2/85 Nandasena wrote to the Personnel Manager seeking reinstatement and a posting to either Kahawatta or Godakawela pending the result of his appeal. On 1/4/85 the Personnel Manager replied rejecting the appeal and reiterating the position set out in the letter of 11/1/1985. On 28/2/1985 the appellant made an application to the Labour Tribunal in respect of the termination of his services. The Board took up the position that Nandasena had been transferred to Ratnapura as a punishment upon being found guilty of serious misconduct. The transfer order continued to be operative despite Nandasena's appeal and upon his failing to report for work at the Ratnapura Depot he was properly deemed to have vacated his post. The notes of inquiry of the domestic hearing were not produced before the Labour Tribunal and the application by the appellant to have them so produced was objected by the Uva Regional Transport Board and disallowed by the Tribunal. Nandasena appealed to the Court of Appeal and Court of Appeal dismissed his appeal stressing that "the facts leading to the disciplinary transfer was not the issue to be determined by the Tribunal."

Mark Fernando J, in his dissenting judgment discussed about the question whether the appellant's failure to report for work amounted to a repudiation of the contract of employment; or whether it was a transgression only justifying disciplinary action short of dismissal; or whether it was a bona fide challenge to a disputed order;

or whether it was a justifiable or permissible response to a wrongful or unreasonable punishment. His Lordship identified that, "r*ecognition of an employee's right to refrain from complying with a transfer order would result in serious abuse, in that there would be non-compliance with every transfer order. It is contended in reply that non-recognition of a limited right of bona fide challenge of an improper transfer order would enable an employer to dismiss an employee for frivolous reasons, with impunity, by falsely finding him guilty of some trumped-up charge; and then, without imposing the desired punishment of dismissal, to subject him to a vexatious punishment transfer. The employee will then be in a dilemma: if he proceeds on transfer, he thereby acquiesces and accepts his guilt; if he does not, he will be deemed to have abandoned his post….".* Further, his Lordship identified that, there was a failure to address the issue of misconduct by the Labour Tribunal and Court of Appeal before giving their judgments because, the disciplinary inquiry notes and findings of the domestic inquiry was not produced before them or the witnesses who gave evidence at the disciplinary inquiry would not be called to testify before the Tribunal. (Ibid page 328). Hence, his Lordship arrived to a conclusion that,

> *''the punishment transfer was unjustified; the refusal to proceed on transfer was based both on a bona fide challenge of the transfer order as well as on circumstances which arguably supported a stay or a variation; that refusal was therefore at most a technical breach not motivated by an intention to repudiate the contract, or to abandon his post, or defy the employer; it did not warrant termination.''*

Goonewardena J, (with Wadugodapitiya J agreeing) in his majority judgment in the said case held that,

> *"There is no material to say that the disciplinary order of transfer was unjustified or constituted arbitrary punishment. Even assuming the transfer was invalid the employee must obey it. He could appeal against the order but he cannot refuse to carry it out. He must comply and complain. The failure to report at the Ratnapura Depot was a deliberate and calculated act of disobedience and a virtual*

repudiation of his contract. The appellant of his own volition secured his own discharge from employment under the Board by vacating his post."

The majority view in the **Nandasena** case has set out the dictum that an aggrieved employee as was in the above case should comply with the decision of the employer and then follow the necessary appeal procedures to contest such decision. This is because in appeal if the decision is held in favour of the employee, he would be entitled to reasonable compensation he has suffered during that time period but by not complying with the orders of the employer's he would cause irremediable losses to the employer. Further it could be seen that the Learned President of the Labour Tribunal has wrongfully relied on this case as the dissenting judgment of the Justice Mark Fernando is not the *ratio decidendi* in that case thereby not an opinion for the Labour Tribunal to follow.

It was further observed in the majority decision in **Nandasena v Uva Regional Transport Board** (Supra) that,

"I however incline to the view, one which learned Counsel for the respondent strenuously contended for, that rather than the respondent Board terminating his employment under it, the appellant of his own volition secured his own discharge from employment under the. Board by vacating his post, which according to the disciplinary rules binding on him had to be the result of his being absent from work without having obtained leave and failing to show justification for such absence. There is no doubt in my mind that the appellant conducted himself in a way which resulted in his discharge from employment, forcing upon the Board a step he compelled it-to take, leaving it no other choice."

The Indian Supreme Court in **Jeewanal Ltd v Their Workmen (1961) 1 L.L.J. 517 (SC)** observed the following:

"If an employee continues to be absent from duty without obtaining leave and in an unauthorised manner for such a long period of time .... an inference may

reasonably be drawn from such absence that due to his absence he has abandoned service"

This Court taking into consideration of the above observations of the Indian Supreme Court in the case of **Building Materials Corporation v Jathika Seveka Sangamaya (1993) 2 SLR 316**, held that long absence without obtaining leave or authority is evidence of desertion or abandonment of service. In that case also, the Applicant, employee had been absent for a long period from work. The Court held that the workman had failed to satisfy the employer that he was in fact ill and that he was not fit to report for work. The Supreme Court held that it was clear that the employee by his conduct had severed the contract of service.

This Court in the above-mentioned case observed the following:

"An intention to remain away permanently must necessarily be inferred from the Employee's conduct and I hold that long absence without obtaining leave or authority is evidence of desertion or abandonment of service.

As observed above where an employee endeavours to keep away from work or refuses or fails to report to work or duty without an acceptable excuse for a reasonable period of time such conduct would necessarily be a ground which justifies the employer to consider the employee as having vacated service. In the circumstances, I am of the view that the Respondent has in this case proved that the Appellant was absent without leave from 17/08/2004 for a period of approximately 21 days and that it is reasonable on the facts established in this case to draw the inference that the Appellant had no intention to report for work at the Giriulla depot. Further, there is no evidence produced before the Court to prove that the Appellant was subject to fear of life between the period from 17th August 2004 to the 06th September 2004 in which period he was absent for work.

If Appellant did have a fear of life, he could have complained to the Police, Higher authorities in the Sri Lanka Transport Board, Human Rights Commission, Ombudsman or Courts Etc. There is no evidence presented in this regard by the Appellant before the Labour Tribunal other than a mere statement. However, in regard

to the aforesaid mental element on the part of the Appellant to abandon his employment has not adequately considered by the learned President of the Labour Tribunal in his order and hence it is liable to be judicially reviewed before this Court. Hence, I am of the view that the Respondent has proved and submitted evidence regarding the vacation of post by the Appellant and the Appellant has failed to prove judicially acceptable reasons to his absence for report to work sufficiently.

In view of the facts and above-mentioned judicial pronouncements made in this regard, I am of the view that the learned Judge of the Provincial High Court had correctly arrived at the conclusion that the learned President of the Labour Tribunal had failed to consider the relevant material and had set aside the Order of the Labour Tribunal on the basis that the Appellant had not shown any intention to return to work. In the circumstances, I dismissed the appeal of the Appellant and uphold the judgment of the learned Judge of the Provincial High Court dated 03/09/2013.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

A.H.M.D. NAWAZ, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT