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

In the matter of an Appeal in terms of Section 31DD of the Industrial Disputes Act, read together with Section 9 of the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

SC/APPEAL/117/2024

SC/SPL/LA/147/2023

HC/LTA /01/2022

LT Kurunegala No: LT 23K/10274/2017

S.A. Sandaruwan Suriyaarachi
Waththegedara,
Wellawa.

APPLICANT

Vs.

1. Niyas Cader
   No. 20 Negombo Road,
   Kurunegala.

2. Ishak Cader
   No. 20 Negombo Road,
   Kurunegala.

3. Illiyas Cader
   No. 20 Negombo Road,
   Kurunegala.

4. Nawas Cader
   No. 20 Negombo Road,
   Kurunegala.

RESPONDENTS

AND BETWEEN

S.A. Sandaruwan Suriyaarachi
Waththegedara,
Wellawa.

APPLICANT- APPELLANT

Vs.

1. Niyas Cader
   No. 20 Negombo Road,
   Kurunegala.

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   No. 20 Negombo Road,
   Kurunegala.

3. Illiyas Cader
   No. 20 Negombo Road,
   Kurunegala.

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   No. 20 Negombo Road,
   Kurunegala.

RESPONDENT-RESPONDENTS

AND NOW BETWEEN

1. Niyas Cader
   No. 20 Negombo Road,
   Kurunegala.

2. Ishak Cader
   No. 20 Negombo Road,
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3. Illiyas Cader
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   Kurunegala.

4. Nawas Cader
   No. 20 Negombo Road,
   Kurunegala.

RESPONDENT-RESPONDENT-APPELLANTS

Vs.

S.A. Sandaruwan Suriyaarachi
Waththegedara,
Wellawa.

APPLICANT-APPELLANT-RESPONDENT

Before: Achala Wengappuli J.

Dr. Sobhitha Rajakaruna J.

Menaka Wijesundera J.

Counsel: Samhan Munzir for the Respondent-Respondent-Appellants

S.N. Vijithsingh for the Applicant-Appellant-Respondent

Written Submissions: Respondent-Respondent-Appellants – 10 April 2025

17 September 2025

Applicant-Appellant-Respondent – 22 May 2025

04 September 2025

Argued on: 07 August 2025

Decided on: 04 May 2026

Dr. Sobhitha Rajakaruna J.

The Applicant-Appellant-Respondent ('Applicant') filed an application in the Labour Tribunal of Kurunegala ('Labour Tribunal') seeking an order for his reinstatement together with back wages. The Respondent-Respondent-Appellant (hereinafter referred to as the 'Appellant') denied that the Applicant's services had been terminated. Consequently, the Applicant proceeded to lead evidence.

By its order dated 15 December 2021, the Labour Tribunal dismissed the Applicant's application. Aggrieved by that order, the Applicant preferred an appeal to the Provincial High Court of the North-Western Province holden in Kurunegala ('High Court'). By its judgment dated 28 April 2023, the High Court allowed the appeal and awarded compensation to the Applicant. Dissatisfied with the judgment of the High Court, the Appellant sought leave to appeal to this Court. Leave was granted on the question of law set out in paragraph 12(c) of the Petition dated 07 June 2023, namely, whether the learned High Court Judge erred in law in holding that the Applicant had left his employment owing to constructive termination.

The Appellant contends that the High Court erred in law in concluding that the Applicant's departure constituted constructive termination and in awarding compensation without due

regard to relevant factors such as the Applicant's age, employability, and skills. The Appellant further submits that the High Court misdirected itself in calculating the Applicant's last-drawn salary and erroneously ordered the payment of Rs. 624,000/- as compensation. In addition, the Appellant challenges the High Court's finding that the Applicant had been in continuous employment since 26 December 1996 and was therefore entitled to gratuity.

The Applicant maintains that he worked every day at the Appellant's establishment, Mohandiram Motor Stores—including Sundays and Poya days—from the time he joined in 1996. He alleges that the Appellants (who took over the business from their father) were uncooperative and subjected him to continuous harassment by denying him adequate time for lunch, refusing leave, deducting salary for days of leave taken, and otherwise compelling him to leave the job. He claims that these actions created unbearable working conditions, forcing him to resign. The Applicant relies on the evidence appearing at pages 109, 110, 112, and 113 of the brief in support of his position. He argues that his departure from employment on 30 June 2017 does not amount to a voluntary vacation of post, but rather constitutes constructive termination of his services by the Appellants.

The Labour Tribunal found that the Applicant's inability to continue to work stemmed primarily from dissatisfaction with service conditions, particularly the refusal of adequate leave and the deduction of salary for leave taken (including periods of hospitalisation for chickenpox and suspected cancer, as well as three days during the Sinhala New Year). However, the Applicant produced no detailed evidence of the leave taken or any medical reports to substantiate his claims of illness. The Tribunal also examined the Applicant's alleged financial hardship, noting in particular that he had purchased a Toyota van. Although the Applicant stated that the purchase was funded by his wife's sister, he neither denied the purchase nor produced evidence showing that the funds came from a source other than his employment income. The Tribunal considered it implausible that a person facing genuine economic hardship and an intolerable work environment would acquire a vehicle at that time, and accordingly concluded that the Applicant possessed some degree of economic stability.

In their answer filed before the Labour Tribunal, the Appellants expressly denied that the Applicant's services had been constructively terminated. They stated that the Applicant had

left the employment after receiving a proper farewell and further expressed their willingness to re-employ him. Accordingly, there was neither a formal termination of the Applicant's services by the employer nor a clear case of the Applicant voluntarily vacating his post. The pivotal question that arises for determination, therefore, is whether the alleged changes to the conditions of service were sufficiently serious to constitute constructive termination of employment.

Upon a careful review of the evidence, it is clear that the Applicant never complained of having to work every day without holidays. His principal grievance was the non-payment of salary for days of leave taken, particularly when he was unwell, and the inadequacy of time given to him for lunch. The deductions complained of (Rs. 500/- or Rs. 1,000/- per day) appear to have commenced around early 2017. Importantly, the Applicant made no formal complaint to the Commissioner of Labour regarding these alleged breaches of service conditions, despite there being no apparent impediment to his doing so.

In ***Walker and Sons & Company Ltd. v. Gurusinghe*** [2008] 1 Sri L.R. 37, Shirani Bandaranayake, J. observed that the question of what constitutes constructive termination does not lend itself to a simple or brief answer. Bandaranayake, J. referred with approval to the conceptual definition articulated by S.R. de Silva:

> 'However, the doctrine of constructive termination, in its conceptual from has been identified in the following terms (*The Contract of Employment*, S. R. de Silva, The Employers' Federation of Ceylon, monograph No. 4, pg.158):
>
> > The difficult question arises in connection with what amounts to a constructive termination of employment .... In conceptual terms, it can be said that when an employer breaches a fundamental obligation of the contract of employment, the employee is entitled to treat such a breach as a constructive termination by the employer, which puts an end to the contract.
>
> In his examination of the doctrine of constructive termination, S.R. de Silva (supra) had set out examples that clearly illustrate its meaning. According to his examination:
>
> > If an employer refuses to pay an employee his salary in circumstances which make such refusal illegal, the employee can treat the employer's refusal as a constructive termination of the contract or again, the employer may seek to unilaterally vary the

> contract on a fundamental matter, e.g. demote him. In such cases, the employee often purports to resign from the service of the employer for the reason that the latter has compelled him to do so. Such a resignation is, in law, a constructive termination by the employer and does not preclude the employee from claiming relief before a Labour Tribunal on the basis that there has been a termination by the employer. The mere use of the term 'resignation' by an employee does not by itself preclude him from claiming relief on the footing of a constructive termination by the employer" (emphasis added).'

Constructive termination must therefore be determined on the specific circumstances of each case. The essential inquiry is whether the employer's conduct was such as to shake the foundation of the contract of employment to the extent that the employee had no real option but to leave. Having examined the evidence led before the Labour Tribunal, I am of the view that the alleged deprivations of service conditions in the present case do not meet that threshold. Any grievances concerning leave or salary deductions could properly have been addressed by a complaint to the Commissioner of Labour. The evidence adduced falls short of establishing that the Appellants' actions left the Applicant with no alternative but to leave his employment as a last resort.

The High Court set aside the Labour Tribunal's order, holding that it was both legally unsustainable and factually perverse, and that there was unchallenged evidence of arbitrary termination. However, for the reasons set out above, I am satisfied that the High Court misapprehended both the facts and the applicable law. In particular, the High Court failed to have due regard to the legal principles governing termination of employment and constructive termination, including the burden of proof, and incorrectly shifted that burden onto the Appellants at a stage when they had expressly denied any termination.

It is my considered view that the Appellants did not terminate the services of the Applicant, either expressly or constructively. The Applicant's departure was not occasioned by any fundamental breach of contract on the part of the employer that would entitle him to treat the contract as at an end.

In light of the foregoing, I see no reason to interfere with the order dated 15 December 2021 of the Labour Tribunal. I hold that the High Court has erred in law in arriving at its final

conclusion, and thus I proceed to answer the aforesaid Question of Law in the affirmative. The judgment of the High Court dated 28 April 2023 is hereby set aside. The order of the Labour Tribunal dated 15 December 2021 is affirmed, without prejudice to any statutory payments to which the Applicant may lawfully be entitled. The Appeal is allowed to the extent indicated above. I order no costs.

Judge of the Supreme Court

Achala Wengappuli J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera J.

I agree.

Judge of the Supreme Court