

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

In the matter of an Appeal from the
Judgment of the Civil Appellate High
Court of Kurunegala dated 26.07.2013.
In case No. NWP/HCA/KUR/32/2012 LT.

A.K. Mohammed Illyas ,
No. 114, Nikagolla,
Yatawatte.

APPLICANT

SC APPEAL No. 165/2013
SC Leave to Appeal No. 228/13

H. C. Kurunegala Case No.HCA/LT/ 32/2012
Civil Appeal High Court Case No.
NWP/ HCCA/ KUR/ 25/2010 /LT

Vs

Agricultural and Agrarian Insurance
Board, No. 27, Vauxhall Street,
Colombo 02.

RESPONDENT

L T KURUNEGALA Case No.
25/Ku/63333/1998

AND BETWEEN

A.K. Mohammed Illyas.
No. 114, Nikagolla,
Yatawatte

APPLICANT – APPELLANT

Vs

1. Agricultural Insurance Board,
267, Union Place,
Colombo 02.
- 1A. Agricultural and Agrarian Insurance
Board, Subadrarama Road,
Nugegoda.

RESPONDENT – RESPONDENT

AND NOW BETWEEN

A. K. Mohammed Illyas,
No. 114, Nikagolla,
Yatawatte.

APPLICANT – APPELLANT – APPELLANT

Vs

1. Agricultural Insurance Board,
267, Union Place,
Colombo 02.
- 1A. Agricultural Insurance and Agrarian
Insurance Board, Subadrarama Road,
Nugegoda.

RESPONDENT- RESPONDENT-RESPONDENT

In the matter of an Appeal from the
Judgment of the Civil Appellate High
Court of Kurunegala dated 26.07.2013.
In case No. NWP/HCA/KUR/32/2012 LT.

A.K. Mohammed Illyas ,
No. 114, Nikagolla,
Yatawatte.

Vs

Agricultural and Agriarian Insurance
Board, No. 27, Vauxhall Street,
Colombo 02.

RESPONDENT

SC APPEAL 164/13
SC LEAVE TO APPEAL No. 364/13

HC KURUNEGALA Case No.
HCA/LT/32/2012.

AND BETWEEN

A.K. Mohammed Illyas.
No. 114, Nikagolla,
Yatawatte

APPLICANT – APPELLANT

Vs

1. Agricultural Insurance Board,
267, Union Place,
Colombo 02.
- 1A. Agricultural and Agrarian Insurance
Board, Subadrarama Road,
Nugegoda.

RESPONDENT - RESPONDENT

CIVIL APPELLATE HIGH COURT Case No.
NWP/HCCA/KUR/25/2010/LT

AND NOW BETWEEN

L T KURUNEGALA Case No.
25/Ku/63333/1998

1. Agricultural and Agrarian Insurance
Board, No. 27, Vauxhall Street,
Colombo 02.

- 1A. Agricultural and Agrarian Insurance
Board, No. 117, Subadrarama Road,
Nugegoda.

RESPONDENT-RESPONDENT-APPELLANT

Vs

A.K. Illyas,
No. 114, Nikagolla,
Yatawatte.

APPLICANT-APPELLANT-RESPONDENT

**BEFORE : PRIYASATH DEP PCJ
S. EVA WANASUNDERA PCJ &
K. T. CHITRASIRI J.**

COUNSEL : D. K. Dhanapala for the Applicant Appellant Appellant
In SC Appeal No. 165/13 and for the Applicant Appellant
Respondent in SC Appeal No. 164/13
Sobitha Rajakaruna DSG for the Respondent Respondent Respondent
In SC Appeal No. 165/13 and for the Respondent Respondent Appellant
In SC Appeal No. 164/13.

ARGUED ON : 27. 01. 2016

DECIDED ON : 28. 03. 2016

S. EVA WANASUNDERA PCJ

This is an Appeal in which leave to appeal was granted on 28.11.2013. on the questions of law enumerated in paragraph 16 of the Petition dated 05.09.2013.

It has arisen from the Civil Appellate High Court judgment dated 26.07.2013. In this Appeal, the Appellant has appealed from that judgment. The Respondent in this case also had appealed from the same judgment and leave was granted in that case as well and the number of that case is SC Appeal No. 164/2013. **Since both cases have arisen from the same judgment of the Civil Appellate High Court, the parties agreed that they be consolidated and heard together by one bench of judges and that they will abide by one judgment of this court.** Therefore, I will consider the judgment of the High Court dated 26.07.2013 on submissions made by parties alleging different grounds for appeal.

The employee complains that the learned High Court Judge has erred in law by failing to appreciate the evidence in the correct perspective and by having calculated the compensation on the basis of last drawn salary disregarding the document marked as R 39 and also by having unreasonably limiting the amount of compensation ordered for a period of 10 years. The employer complains that the High Court Judge erred in law by considering extraneous factors and by disregarding the conclusions made by the LT President ,and by allowing the appeal of the employee concluding that the employee did not have the mental element of intention to vacate and therefore he cannot be held to be deemed to have vacated the post ,amongst many other reasons. Both parties have submitted that the High Court judgment is unsatisfactory.

The facts pertinent to this case is as follows; The employee Illyas was employed by the employer Agricultural and Insurance Board as a Development officer on or about 15th September, 1986. He served in different offices of the employer till 23rd November, 1997.The employer by its letter dated 16th January, 1998, informed the employee that he is deemed to have vacated his office w.e.f 23.11.1997. The employee claimed that his services have been terminated unjustly and unreasonably and filed an application in the Labour Tribunal against the employer. The employer filed answer and stated that on 25.11.1997 the employee had sent a telegramme submitting that he is ill and thereafter he had not requested for leave. He had not written any letters to the employer. No notification was made to his employer about his absence from work from 25.11.1997 to 01.01.1998 and as such he was informed by his employer that he is deemed to have vacated his post. On 16.02.1998 the employee had written a letter as an appeal , submitting seven medical certificates indicating different sicknesses for different periods. The employer had rejected the said appeal. Aggrieved by that, Illyas, the employee, had come before the Labour Tribunal.

I observe that the Labour Tribunal, has analyzed the evidence giving its mind to the seven medical certificates which were brought to the attention of the employer by the employee after the letter of vacation of post was sent to him. **It was dated 16.01.1998. and it was marked R30.** The medical certificates were dated, 15.11.1997, 22.11.1997, 24.11.1997, 15.12.1997, 17.12.1997, 02.01.1998 and 09.01.1998. which covered the period when he was absent from work, i.e. from 15.11.1997 to 23.01.1998.

It can be understood, in the background of **taking all of them to be true**, that these medical certificates would have been in the possession of the employee, Illyas by the time he received the letter of vacation of post dated 19.01.1998 which he had stated in his appeal to have received by him on 21.01.1998. I observe that none of these medical certificates were produced by him to the employer till after 37 days (**last medical certificate was dated 09.01.1998 and his letter to the employer was dated 16.02.1998.**), i.e. after one month and 7 days, by way of a letter as an appeal , dated 16.02.1998.

Three questions arise in my mind. Why did he not send the medical certificates as and when he got them from the doctor into his hand? Why did he not send a letter to the employee asking

for leave on medical grounds? Then, even after getting the medical certificates, why did he wait for another 37 days to write to the employer?

He had waited from 21.01.1998 until 16.02.1998 to write to the employer. He received the letter of vacation of post marked as R30 dated 19.01.1998 by post delivered to him on 21.02.1998. By R30, he was informed that he is deemed to have vacated his post w.e.f. 23.11.1997. He submitted the medical certificates with an appeal written after 26 days of coming to know that he has lost his occupation. Under these circumstances I hold that he had no intention of staying in his post at work. I fail to see that he had any intention to remain as a worker with this employer. On the contrary, I observe that he was not interested about his occupation; he did not care whether he could get back to work or not and he was not bothered about going back to work even after getting out of all the different sicknesses he had got during the time period of 15.11.1997 to 23.01.1998. Instead of being conscious of his duty to report to work, he did not even try to contact the employer and secure his place with the employer. He finally got the letter of vacation of post and even thereafter he had not responded to that letter for the next 37 days which I consider to be quite abnormal for someone who would have wanted to get back to work under the same employer.

It is incredible that someone who had the mental element of intention to stay at work with the same employer, could ever have taken that long to write to the employer. In the circumstances I hold that he had hardly any intention to get back to work.

In the case of ***Nelson de Silva Vs State Engineering Corporation 1996 2 SLR 342***, the concept of vacation of post has been determined to include two elements. Vacation of post or desertion or abandonment of service consists of;

- a. Failure to report to work (absence without leave) and
- b. An intention to desert and abandon employment.

In the case of ***Building Materials Corporation Vs Jathika Seveka Sangamaya 1993 2 SLR 316***, the Supreme Court 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.

The employee, Illyas, by his own inaction and by his own documents have displayed that he had no intention to report to work. He failed to inform the employer by any letter or any message which could have been sent through a messenger why he could not report to work which he had failed to do. It is obvious that he had not reported to work without obtaining leave or without giving any reasonable grounds for his absence from work

I am of the opinion that no employer could indefinitely keep a post vacant without receiving any information from the worker of his inability to come to work. The employer did not send

the vacation of post letter to the employee right after the first date of him not reporting to work. The employer waited without sending the employee any letter, thus giving him enough and more time to tender any explanation for his absence or any information to be sent to the employer about his inability to report to work, from 23.11.1997 to 16.01.1998, i.e. one month and three weeks prior to sending him the letter of vacation of post. Yet, the employee did not make use of that opportunity given to him by the employer.

In the circumstances discussed above, I hold that the employee had vacated his post on his own accord having acted in the way he did. It is amply evident that Illyas, the employee had failed to report to work thus absenting himself without leave and also had no intention to return to work and thus deserted and abandoned his employment. I hold that the learned Civil Appellate High Court judges had considered all extraneous matters and come to a wrong finding in this matter. I set aside the High Court judgment dated 26.07.2013 and affirm the order of the learned President of the Labour Tribunal dated 10.07.2010.

I dismiss the Appeal in case No. SC Appeal 165/2013 and I allow the Appeal in case No. SC Appeal 164/2013. I order no costs in either case.

Judge of the Supreme Court

I agree.

PRIYASATH DEP PC J,

Judge of the Supreme Court

I agree.

K. T. CHITRASIRI J

Judge of the Supreme Court