

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

*In the matter of an Application for Leave  
to Appeal to the Supreme Court from an  
order of the Provincial High Court under  
and in terms of Section 31DD of the  
Industrial Disputes Act No. 43 of 1950, as  
amended.*

**LT CASE NO. 18/KT/3111/04.**

**WP/HCCA/KAL No. LT/17/2008.**

**SC APPEAL NO. 170/2010.**

Lanka Banku Sevaka Sangamaya,  
(On behalf of T Jagath Chandrakumara)  
No. 20, Temple Road, Maradana,  
Colombo 10.

**APPLICANT**

**V.**

People's Bank, Head Office,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.

**RESPONDENT**

**AND BETWEEN,**

Lanka Banku Sevaka Sangamaya,  
(On behalf of T Jagath Chandrakumara)  
No. 20, Temple Road, Maradana,  
Colombo 10.

**APPLICANT -APPELLANT**

**V.**

People's Bank, Head Office,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.

**RESPONDENT -RESPONDENT**

**AND NOW BETWEEN,**

People's Bank, Head Office,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.

**RESPONDENT –RESPONDENT –APPELLANT**

**V.**

Lanka Banku Sevaka Sangamaya,  
(On behalf of T Jagath Chandrakumara)  
No. 20, Temple Road, Maradana,  
Colombo 10.

**APPLICANT –APPELLANT –RESPONDENT**

**BEFORE** : **SISIRA J DE ABREW, J.**  
**PRASANNA S. JAYAWARDENA, PC, J. and**  
**S. THURAIRAJA, PC, J.**

**COUNSEL** : Mrs. Manoli Jinadasa with Ms. Shehara Karunaratne for the  
Respondent –Respondent –Appellant.

Ms. Sulari Gamage with Ms. Eranga Jayasundara for the Applicant –  
Appellant –Respondent.

**ARGUED ON** : 13<sup>th</sup> June 2019.

**WRITTEN**  
**SUBMISSIONS** : Respondent –Respondent –Appellant on 17<sup>th</sup> January 2011.  
Applicant –Appellant –Respondent on 11<sup>th</sup> May 2011.

**DECIDED ON** : 9<sup>th</sup> July 2019.

**S. THURAIRAJA, PC, J.**

I find it pertinent to set out the material facts of the case prior to addressing the issues before us.

The workman, T. Jagath Chandrakumara i.e. the Applicant-Appellant-Respondent (hereinafter referred to as the 'Respondent') was an employee of the People's Bank i.e. the Respondent-Respondent-Appellant (hereinafter referred to as the 'Appellant') from 17.06.1991 and is a member of the Trade Union, Lanka Banku Sevaka Sangamaya. It is revealed from the evidence that during the course of his employment at the Appellant's establishment, the Respondent had misconducted himself on several occasions, some of which include- disobeying the orders of his superiors, misbehaving in the presence of customers and abusing his superiors using foul and obscene language. For these reasons, the Bank, on following the usual procedure, including the Respondent being found guilty of misconduct at a domestic inquiry, had terminated the services of the employee by letter dated 10.11.2003, with effect from 08.10.2001. Being aggrieved by the said termination, the workman had preferred an application to the President of the Labour Tribunal of Kalutara (hereinafter referred to as the 'Labour Tribunal'). The learned President of the Labour Tribunal, on conducting a proper and full hearing, held that the termination of the workman was just and equitable.

In appeal, the learned Judge of the Provincial High Court (hereinafter referred to as the 'High Court') had held that the Respondent was "mentally retarded" and that owing to his mental retardation, he could not be held responsible for the alleged misconduct. Accordingly, the Judge of the HC set aside the order of the President of the Labour Tribunal of Kalutara and allowed the appeal, ordering payment of compensation equivalent to the salary of five years (i.e. sixty months), totaling to Rs. 1,096,035.00.

Being aggrieved with the said order, the Appellant had preferred this appeal before us in terms of Section 31DD of the Industrial Disputes Act, No. 43 of 1950, as amended and leave to proceed was granted on 06.12.2010, on the issues set out in paragraph '9' of the petition dated 26.02.2010. Both parties have filed their written submissions and have advanced their oral arguments.

Considering the facts of the case, I find that the conduct of the Respondent was found to constitute grave misconduct, by the President of the Labour Tribunal while the learned High Court Judge stated that, the fact that the Applicant had behaved in an "adamant and furious manner" is evident. However, the learned Judge of the High Court had found that the mental status of the employee is a mitigating circumstance for his conduct and therefore, held that he could not be held responsible for his acts.

The theory advanced by the learned High Court Judge is applicable when determining the criminal responsibility of a person in a criminal case. However, I am of the view that in cases involving an employer-employee relationship, such standards set out in criminal law cannot be applied since, such a relationship is founded on the principles of trust and discipline. As a result, any breach of these principles will affect, not only the relationship between the employer and the employee but also the quality of the services provided by the employer along with the reputation of his establishment. In the case of **Bank of Ceylon vs. Manivasagasivam**, (1995) 2 SLR 79, it was observed that:

*"Utmost confidence is expected from any officer employed in the bank. There is a duty, both to the bank to preserve its fair name and integrity and to the customer whose money lies in deposit with the bank"*

In the instant case before us, the Respondent, at one incident shouted to the customers, who were 50-60 in number about the manager saying, 'see how an officer works'. This conduct of the workman which *inter alia* resulted in his termination, would, without an

iota of doubt, affect the integrity and reputation of any establishment, particularly that of a Bank.

The Counsel for the Respondent, in his written submissions before this Court, has relied on "**Uva Regional Transport Board v. PDP Almeida**, Case No. 509/86 decided on 14.06.1993" which states that the facts of each case have to be decided on its own merits. However, in the instant case, the Respondent had, not only refused to obey the legitimate instructions of his superiors at several instances but had also insulted and humiliated a superior officer in the presence of customers and it is a general rule that refusal to obey reasonable orders justifies the dismissal from service, as observed in the case of **Kosgolle Wanigasinghe v. Hector Kobbekaduwa Agrarian Research Institute**, S.C. Appeal No. 73/2014, decided on 02.09.2015.

In the case of **People's Bank v. Lanka Banku Sevaka Sangamaya**, SC Appeal No. 209/12, decided on 16.11.2015, it was observed that, when considering an allegation of unfair dismissal, the concerns of a Labour Tribunal should be:

*"(a) Were the alleged grounds of misconduct sufficiently established by evidence? What was the quality and nature of the misconduct?"*

*(b) Are there proved reasons or legitimate inferences from the evidence available as regards how and why the business of the employer was, or might be reasonably expected to be adversely affected directly or indirectly by the act in question?"*

I am of the view that the above concerns, though not stated in those precise terms, have been sufficiently incorporated in the decision of the President of the Labour Tribunal and the principles of natural justice have also been adhered to.

The learned High Court Judge observed in page six of the order dated 03.02.2010:

*“The fact that the Applicant behaved in adamant and furious manner remains unchallenged. So it does not make room for the Respondent to reinstate him in service but it does not mean that the Applicant should be dismissed from service on a mistake or on a misconduct which does not amount to a grave misconduct.”*

I am of the view that this finding of the learned High Court Judge is erroneous since the misconduct, which the Respondent engaged in, during the course of his employment is of such a nature that would directly affect and jeopardise the business of the employer. Therefore, under these circumstances, the effect of the Respondent’s termination becomes justifiable, particularly in the light of the consequences faced by the employer, arising out of the misconduct of the Respondent. Moreover, the learned High Court Judge had also observed in page seven of the order dated 03.02.2010:

*“Such an unfortunate employee should not be sacked unless and until he is granted some sort of relief which would assist him to run the rest of his life.”*

I am again, of the view that this observation of the learned High Court Judge is erroneous. The case law cited below reflects that in cases where the employee’s termination is justified on grounds of misconduct, compensation is not usually awarded. In the case of ***Electricity Equipment and Construction Company v. Cooray***, 1962 63 NLR 164, it was observed:

*“Where the termination of an employee’s services is both legal and justifiable, a Labour Tribunal has power to award, not any benefit or compensation which it may consider equitable, but only a gratuity or other benefit legally due to the employee.”*

In the case of ***Premadasa Rodrigo v. Ceylon Petroleum Corporation***, (1991) 2 SLR 382, it was held:

*“Although in certain circumstances, compensation may be payable where reinstatement is not feasible, if the employee’s conduct had induced the termination, he cannot in justice and equity have a just claim for compensation.”*

On carefully analyzing the material that was produced before the President of the Labour Tribunal of Kalutara and the material submitted before the learned High Court Judge, I am of the view that the findings of the President of the Labour Tribunal is correct. Moreover, higher standards which are applicable in criminal cases cannot be applied to cases before the Labour Tribunal. Accordingly, I find that, the findings of the learned High Court Judge are incorrect and set aside the order of the High Court Judge dated 03.02.2010.

Therefore, I affirm the findings of the President of the Labour Tribunal of Kalutara in order dated 14.11.2008, in case no. 18/KT/3111/04.

***Appeal allowed.***

**JUDGE OF THE SUPREME COURT**

**SISIRA J DE ABREW, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**PRASANNA S. JAYAWARDENA, PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**