

SC.Appeal No. 22/2016

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

In the matter of an application for Leave to Appeal from the Judgment of the High Court of the Western Province, holden in Colombo under and in terms of, inter alia, Section 31DD of the Industrial Disputes Act as amended and Act No. 19 of 1990.

SC.Appeal No. 22/2016

SC.HCLA.No. 42/2014

HC.Appeal No. HC.ALT. 37/2012

LT.Colombo Case No. LT/32/RM/82/2009

Ceylon Bank Employees Union,
No.20, Temple Road,
Colombo-10

on behalf of

K.L.S. Mendis.

Applicant

-Vs-

Hatton National Bank, PLC,
Head Office,
Colombo-10.

Respondent

AND BETWEEN

K.L.S. Mendis,
No. 28, St. Peters Lane,
Moratuwella,
Moratuwa.

Applicant-Appellant

-Vs-

Hatton National Bank, PLC,
Head Office,
Colombo-10.

Respondent-Respondent

AND NOW BETWEEN

K.L.S. Mendis,
No. 28, St. Peters Lane,
Moratuwella,
Moratuwa.

Applicant-Appellant-Petitioner

-Vs-

Hatton National Bank, PLC,
Head Office,
Colombo-10.

Respondent-Respondent-Respondent

Before: **Sisira. J de Abrew, J**
Nalin Perera, J &
Vijith K. Malalgoda, PC, J

Counsel: Shantha Jayawardena for the Applicant-Appellant-Petitioner-Appellant.

Shammil J. Perera PC with Duthika Perera for the Respondent-Respondent-Respondent-Respondent.

Argued &
Decided on: 02.10.2017

Sisira J. de Abrew, J

Heard both counsel in support of their respective cases. In this case Ceylon Bank Employees Union filed a case in the Labour Tribunal on behalf of Mrs. K.L.S. Mendis who was an employee of the Hatton National Bank alleging that her services were unjustifiably terminated by the Bank.

Learned President of the Labour Tribunal after inquiry dismissed the said application of the Bank Union. The application was filed in the Labour Tribunal by the Ceylon Bank Employees Union on behalf of Mrs. K.L.S.Mendis.

Being aggrieved by the said order of the Labour Tribunal, Mrs. K.L.S. Mendis (hereinafter referred to as the Applicant-Appellant) appealed to the High Court. The High Court by its order dated 26.05.2014 dismissed the appeal of the Applicant-Appellant. Being aggrieved by the said judgment, the Applicant-Appellant has appealed to this Court. This Court by its order dated 03.02.2016 granted leave to appeal on the questions of law set out in paragraphs 8 (a,b,c and d) of the Petition of appeal dated 03.07.2014 which are set out below.

- a) Did the High Court of the Western Province (Holden in Colombo) err in law by failing to appreciate that the learned President of the Labour Tribunal was wrong in law and fact in holding that the termination of the Petitioner's service was justified ?

- b) Did the High Court of the Western Province (Holden in Colombo) err in law by failing to appreciate that the Learned President of the Labour Tribunal was wrong in law and fact in holding that the Petitioner is guilty of the charges levelled against her ?

- c) Did the High Court of the Western Province (Holden in Colombo) err in law by failing to appreciate that the Order of the Labour Tribunal was unjust and inequitable ?

- d) Did the High Court of the Western Province (Holden in Colombo) err in law by holding that the termination of the Petitioner's service was justified ?

In addition to the said questions of law, the learned counsel appearing for the Respondent-Respondent-Respondent (hereinafter referred to as the Respondent-Respondent) raised the following question of law which is set out below. “ In any event can the Petitioner maintain this application in the light of the fact that the evidence led by the Respondent with regard to the charges set out in the charge sheet have not been contradicted in the evidence before the Labour Tribunal.”

The case for the Applicant-Appellant was that Mrs. K.L.S. Mendis who was a typist attached to the Hatton National Bank committed certain frauds. During the course of the investigation by the Audit Officer, said Mrs. Mendis has admitted the fraud committed by her. However she was exonerated by the domestic inquiry held by the Bank. Learned counsel for the Applicant-Appellant contends that the termination of her services was not justified especially when she was exonerated by the inquiring officer who conducted the disciplinary inquiry. However the Bank relied upon the admission signed by Mrs. Mendis which was produced as R31. The most important charge that must be considered in this case is that Mrs. Mendis being a Bank typist transferred Rs. 73,000/- from the account of one Jayasinghe to the account of Mrs. Mendis's husband (Mr. Mendis). This transaction had taken place on 15.07.2005. Later said Mrs. Mendis transferred Rs. 73,000/- from her account to Mr. Jayasinghe's account. The Bank has considered R31. In R31, Mrs. Mendis has admitted the offences committed by her. But she takes up the position that it was taken under duress. The charge No. 5 in R31 is important. She has, in R31, admitted that she transferred Rs. 73,000/- from Jayasinghe's account to her husband's account and later she transferred the said amount from her account to Jayasinghe's account. This was an admission by her. If she takes up the

position that the above matters are false and R31 was obtained under duress, she could have produced statements of accounts relating to her and her husband and disproved the above facts. But she has not produced the said documents. Therefore her allegation that the above facts are false and R31 was obtained under duress cannot be accepted. The Bank relying on the said document marked R31 terminated the services of Mrs. Mendis. The argument on behalf of the Applicant-Appellant is that Mrs. Mendis transferred Rs. 73,000/- from her account to Jayasinghe's account as there was a transaction between Jayasinghe and Mr. Mendis. But it is important to note that although learned counsel takes up the said argument, Mr. Mendis who is the husband of Mrs. Mendis did not give evidence at the inquiry to prove that there was a transaction between him and Jayasinghe.

When we consider the above matters, there is sufficient evidence to prove that she had engaged in misconduct in the Bank service. If a Bank employee commits misconduct whilst being employed in Bank service, it is not proper for the Bank to keep such a person in the bank service. The Bank has come to the conclusion that it is not proper for the Bank to keep Mrs. Mendis in the bank service and decided to dismiss her.

When we consider all the above matters, we feel that the termination of Mrs. Mendis by the bank is justified on the ground that the Bank has lost confidence. When we consider all the above matters, I feel that there are no reasons to interfere with the judgment of the learned High Court Judge.

Considering all these matters, we answer the questions of law raised by the Applicant-Appellant in the negative. The questions of law raised by the Respondent-Respondent does not arise for consideration. For the above reasons, we affirm the judgment of the High Court dated 26.05.2014 and dismiss this appeal.

Considering the facts of this case we do not make an order for costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

Nalin Perera, J

I agree.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda, PC, J

I agree.

JUDGE OF THE SUPREME COURT

kpm/-