

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

S.C Appeal No. 59/2016
SC Application No. SC/SPL/LA/120/2015
HC Appeal No. 29/2014
LT Application No. LT 26/123/2009

In the matter of an Application for Special Leave to Appeal/Leave to Appeal from a Judgment of the Provincial High Court of the Southern Province holden in Matara dated 3rd June 2015 (in Appeal No. 29/2014), in terms of the Industrial Disputes Act and the High Court of the Provinces (Special Provisions) Act No. 10 of 1990 read with the Rules of the Supreme Court.

Ceylon Estates Staffs' Union
(Lanka Wathu Sewa Sangamaya)
No. 6, Aloe Avenue, Colombo 3.
(On behalf of N C Kodituwakku)

APPLICANT

Vs.

1. The Superintendent
Belmont Tea Factory
Hulandawa Estate, Akuressa.
2. Namunukula Plantations PLC
No. 310, High Level Road,
Navinna, Maharagama.

RESPONDENTS

AND BETWEEN

Ceylon Estates Staffs' Union
(Lanka Wathu Sewa Sangamaya)
No. 6, Aloe Avenue, Colombo 3.
(On behalf of N C Kodituwakku)

APPLICANT-APPELLANT

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**RESPONDENTS-RESPONDENTS-
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(Lanka Wathu Sewa Sangamaya)
No. 6, Aloe Avenue, Colombo 3.
(On behalf of N C Kodituwakku)

APPLICANT-APPELLANT-RESPONDENTS

BEFORE: Sisira J. de Abrew J.
Anil Gooneratne J. &
Nalin Perera J.

COUNSEL: Suren Fernando with K. Wickramanayake
For the Respondent-Respondent-Appellants

D.P.L.A.K. Perera for the Applicant-Appellant-Respondent

ARGUED ON: 07.03.2017

DECIDED ON: 31.03.2017

GOONERATNE J.

The Respondent-Respondent-Appellants challenge the Judgment dated 10.02.2014 of the Southern Provincial High Court Holden in Matara, by which Order the Labour Tribunal, Matara was reversed. The Labour Tribunal held with the Respondent-Respondent-Appellant (employer) that the termination of employment of Applicant-Appellant was justified. However the High Court reversed the Order and awarded compensation equivalent to five year's salary, but did not order reinstatement of the Applicant Employee.

The Supreme Court granted Leave to Appeal on the following questions of law, referred to in paragraph 14 of the petition.

- (a) Did the learned Judge of the Provincial High Court fail to assess the evidence in deciding that the termination of the employment of the Applicant was not just, equitable and/or reasonable?
- (b) Did the learned Judge of the Provincial High Court err in law in analysing and applying the applicable principle of the law of evidence and especially the burden of proof?
- (e) Did the learned Judge of the Provincial High Court err in law in failing to properly analyse and apply the principles of law pertaining to loss of confidence?
- (g) In any event did the learned High Court Judge err in law in failing to analyse and apply the applicable legal principles and/or evidence pertaining to mitigation of loss and calculation of compensation?
- (h) In any event did the learned High Court Judge err in law in failing to recognise that the Applicant had not led satisfactory evidence to demonstrate that he had attempted to mitigate his losses and/or that he had suffered actual loss?

The Applicant employee was a Factory Tea Officer of the Belmont Tea Factory. He was interdicted by the Estate Superintendent on 20.07.2009 and thereafter his services were terminated on 10.11.2009 after a disciplinary inquiry. The reason for the employee's dismissal from service as stated by the learned High Court Judge was because there was a shortage of 791 kilograms of tea at a particular time and that the Applicant had not contested the said shortage nor gave any explanation for the shortage.

The learned High Court Judge concurred with the views expressed by the learned President of the Labour Tribunal on the following. The quantity of tea relevant to the shortage had been in the custody of the employee concerned and he had been negligent in his duties and had not acted in the manner as required by an experience officer. As such a substantial loss had been caused to the employer.

Perusal of the Judgment I also find that the High Court had been critical of the domestic inquiry, held by the employer. Further the learned High Court Judge observes that, the opportunity to provide an explanation had been deprived to the Employee –Applicant.

Whatever it may be the available material suggest that the Applicant had been negligent in the performance of his duties, which resulted in a loss to the employer. Therefore the principles relating to loss of confidence would apply. In any employment there is a certain amount of trust that is expected by an employee. When a loss of this nature takes place employer cannot continue employment of the employee. The only way out would be termination of services. In the case in hand it is unfortunate that the employee has lost opportunities to explain his bona fides. Nevertheless I am of the view that his termination of services in the circumstances is justified. The learned High Court Judges has awarded compensation. In these circumstances the

question is whether it is just and equitable to award compensation to an employee who worked for about 10 years.

I note the following case law on loss of confidence.

1. It has been judicially recognized that:

“It seems to be that by reason of the part played by the applicant in two transactions which, to say the least, were questionable, he has clearly forfeited the confidence reposed in him as an employee of the Bank. In these circumstances, the Bank should not and cannot continue to employ him”

Bank of Ceylon V. Manivasagasivam (1995) 2 Sri L.R. 79, 83

2. It has been unequivocally recognized that:

“Whether the misconduct relates to the discharge of his duties in the bank or not, if it reflects on the bankman’s honesty, it renders him unfit to serve in a bank and justifies dismissal”.

National Savings Bank v. Ceylon Bank Employees’ Union (1982) 2 Sri L.R. 629, 632

In Rumblan Vs. Ceylon Press Workers Union 75 NLR 575

Where the dismissal of a workman who has caused continuing loss to his employer is justified, no compensation can be awarded to him by a Labour Tribunal.

Wataraka Multi-Purpose Co-operative Society Ltd. V. Wickremachandra 70 N.L.R.

Pg. 239.

When a workman’s services are terminated by the employer on the ground of inefficiency, there is no burden on the employer to prove that he acted without malice in dismissing the workman. In such a case, if there was neither illegality nor any finding that the

dismissal for inefficiency was an unfair labour practice it is an error of law to award any compensation to the workman under section 33 (1) (d) of the Industrial Disputes Act.

70 N.L.R. 239..

In *Peiris Vs. Celtel Lanka Ltd. 2012(1) SLR at 179*

The concept of loss of confidence has been well expressed in the following terms:

“The contractual relationship as between employer and employee so far as it concerns a position of responsibility is founded essentially on the confidence one has in the other and in the event of incident which adversely effects that confidence the very foundation on which the contractual relationship is built should necessarily collapse Once this link in the chain of the contractual relationship snaps it would illogical or unreasonable to bind one party to fulfil his obligations towards the other. Otherwise it would really mean an employer being compelled to employ a person in a position of responsibility even though he has no confidence in the latter”. (Vide *Democratic Workers’ Congress vs. De Mel and Wanigasekara.*

The material furnished to this court no doubt suggests that the shortage of goods went missing whilst in the possession of the Applicant Employee. The learned High Court Judge as well as the President of the Labour Tribunal took the view that the Applicant Employee was responsible for the loss. The High Court Judge of course observes that there was insufficient material to pursue a criminal charge against the employee. However the standard of proof in the Labour Tribunal is not proof based on beyond reasonable doubt. Therefore this court takes the view that loss of confidence and misconduct are both matters that relate to loss of goods from the tea factory. As such as stated

in the above authorities the Employer cannot be bound to fulfil his obligations, in a case of this nature.

I have noted the submissions of the Applicant-Appellant-Respondent. The submissions no doubt support the order of the learned High Court Judge and merely express the views of the learned High Court Judge, and more particularly refer to the written submissions filed in the Matara High Court. Emphasis is on the question of there being no proof of any fraud or moral turpitude and there is no grave misconduct that warrants the termination of services.

The termination of services of an employee is a very grave punishment. In the case in hand I have already observed that there is loss of confidence of the employer. In these circumstances employer cannot continue to employ the Applicant-Employee. As stated by the learned High Court Judge loss could have been recovered from the employee at that point of time. These are matters that could have been considered but the Factory Tea Officer holds a key position in the industry and is responsible for running the Tea Estate efficiently and the employer is dependent on such an officer. As such the employer cannot continue to incur losses of this nature. If not the resulting position may give rise to a collapse of the industry.

In all the above circumstances this court takes the view that the termination of employment is justified in the circumstances of the case in hand, but having considered the position of either party, I do agree with the award of compensation by the High Court Judge, but the amount need to be varied, to a period of one (1) year based on the last salary (20,638x12).The questions of law are answered as follows:

(a) Yes

(b) Yes

(e) Yes

(g) No

(h) Yes

Subject to the above this appeal is partly allowed without costs.

JUDGE OF THE SUPREME COURT

Sisira J. de Abrew J.

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera J.

I agree.

JUDGE OF THE SUPREME COURT

