

**SC. Appeal No. 39/2016**

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

In the matter of an application for Special Leave to Appeal in terms of Article 154(P) of the Constitution read with Section 31DD of the Industrial Disputes Act ( as amended) and section 9 of the High Court of the Provinces ( Special Provisions) Act No. 19 of 1990.

**SC. Appeal No. 39/2016**

Badulla High Court Appeal No.  
16/2014.

L.T. Case No. LT5/ 19711/2007

Uwa Development Bank,  
No.26, Bank Road,  
Badulla.

**Respondent-Appellant-Petitioner.**

-Vs-

Ceylon Bank Employees Union,  
on behalf of W.K.Vusudigam,  
No. 20, Temple Road,  
Maradana.

**Applicant-Respondent-Respondent**

**Before:** **Sisira J. de Abrew, J**  
**Murdu N.B. Fernando, PC, J &**  
**S. Thurairaja, PC, J**

Counsel: Uditha Egalahewa PC with Hemantha Gardhihewa for the Respondent-Appellant-Appellant.

Nalin Amarajeewa instructed by Indula Hewage for the Applicant-Respondent-Respondent.

Argued &  
Decided on: 02.07.2019

**Sisira J. de Abrew, J**

Heard both counsel in support of their respective cases. This is an appeal filed against the judgment of the learned High Court Judge dated 24.04.2015 wherein he affirmed the judgment of the learned President of the Labour Tribunal. The learned President of the Labour Tribunal in his Judgment dated 27.03.2014 decided that the termination of services of the Applicant-Respondent-Respondent ( hereinafter referred to as the Applicant-Respondent) is unjustified and ordered reinstatement and ½ back wages amounting to Rs. 990,600/-. Being aggrieved by the said judgment of the High Court, the Employer-Appellant-Appellant ( hereinafter referred to as the Employer-Appellant) has appealed to this Court. This Court by its order dated 09.02.2016 granted leave to appeal on the questions of law set out in paragraph 13 ( a),(b) and (e) of the affidavit dated 03.06.2015 which are set out below.

- 1) Was the said order of the Honourable Judge of the High Court of the UWA Province against the weight of the evidence led at the inquiry before the Labour Tribunal ?
- 2) Did the Honourable Judge of the High Court fail to consider the findings of fact by

the Labour Tribunal that the workman had not served with the Petitioner Bank by keeping 100% trustworthiness and honesty as required to carry out by a Bank officer ?

3) Did the Honourable Judge of the High Court err in law with regard to burden of proof of the Employer ?

Learned President's counsel for the Employer-Appellant at the conclusion of submissions by both parties submitted to Court that he would confine himself to question of law set out in paragraph 13(b) of the affidavit dated 03.06.2015. He further submitted that he would not support the other two questions of law. He relied on the following questions of law.

“ Did the Honourable Judge of the High Court fail to consider the findings of fact by the Labour Tribunal that the workman had not served with the Petitioner Bank by keeping 100% trustworthiness and honesty as required to carry out by a Bank officer ”?

The Applicant- Respondent in this case was the Manager attached to Thanamalwila Branch of Uva Development Bank. His services were terminated by the Bank. There were several charges levelled against him at the domestic inquiry and he was exonerated from charges 1 and 6 but was convicted on charges Nos. 2 to 5 and 7 to 9 . The learned President of the Labour Tribunal in his judgment has decided that the Applicant-Respondent who was the Manager of the said Bank had not acted with 100% honesty in dealing with affairs of the bank.

The above conclusion reached by the learned President of the Labour Tribunal is correct when we consider the evidence led at the trial.

Thus the most important question that must be decided is whether the Applicant- Respondent can be reinstated in the bank especially when the learned President of the Labour Tribunal decided that he had not acted with 100% honesty. When finding an answer to this question, I am guided by the judgment of this Court in the case of *National Savings Bank Vs Ceylon Bank Employees Union 1982 (2) SLR page 629 at page 632*. His Lordship Justice Soza in the said judgment held as follows;

“ 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.”

I'm also guided by the judgment of His Lordship Justice G.P.S. De Silva, CJ in the case of *Bank of Ceylon Vs Manivasagasivam 1995(2) SLR page 79*. His Lordship Justice G.P.S de Silva, CJ, in the said judgment held as follows;

“ Utmost confidence is expected of any officer employed in a Bank. There is a duty both to the Bank to preserve its fair name an integrity and to the customer, whose money lies in deposit with the Bank ”.

At page 83 His Lordship further held as follows;

“ 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 the circumstances, the Bank should not and cannot continue to employ him.”

In the present case, the learned President has decided that the Applicant- Respondent has not acted with 100% honesty when he was dealing with his duties relating to the bank affairs.

When the learned President of the Labour Tribunal came to such conclusion, he cannot make an order to reinstate the bank employee in the same bank with back wages. This view is supported by the above 02 judicial decisions. The learned High Court Judge affirmed the judgment of the learned President of the Labour Tribunal without

giving due consideration to above judicial decisions.

Considering all the above matters, we hold that the decision of the learned President of the Labour Tribunal is wrong. The learned High Court Judge has also affirmed the said Judgment of the learned President of the Labour Tribunal. In these circumstances, we hold that both the learned President of the Labour Tribunal and the learned High Court Judge were wrong when they came to the above conclusion.

We therefore set aside both judgments of the learned President of the Labour Tribunal and the learned High Court Judge.

In these circumstances we hold that the termination of the Applicant-Respondent is justified. In the circumstances we answer the above questions of law in the affirmative.

*Appeal allowed.*

**JUDGE OF THE SUPREME COURT**

**Murdu N.B. Fernando, PC, J**

I agree.

**JUDGE OF THE SUPREME COURT**

**S. Thuraija, PC, J**

I agree.

**JUDGE OF THE SUPREME COURT**

kpm/-