

**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. 23/KU/7850/2002.

**NWP/HCCA/KUR No. LT Appeal
37/2010.**

SC APPEAL NO. 36/2015.

Dassanayake Mudiyansele Ranbanda,
"Dharshana", Narammala Road,
Wadhakada.

APPLICANT

VS.

People's Bank,
P.O Box 728,
Colombo 02.

RESPONDENT

AND BETWEEN,

People's Bank,
P.O Box 728,
Colombo 02.

RESPONDENT -APPELLANT

VS.

Dassanayake Mudiyansele Ranbanda,
"Dharshana", Narammala Road,
Wadhakada.

APPLICANT -RESPONDENT

AND NOW BETWEEN,

Dassanayake Mudiyansele Ranbanda,
"Dharshana", Narammala Road,
Wadhakada.

**APPLICANT – RESPONDENT –
APPELLANT**

VS.

People's Bank,
P.O Box 728,
Colombo 02.

**RESPONDENT – APPELLANT –
RESPONDENT**

BEFORE : **PRIYANTHA JAYAWARDENA, PC, J.
S. THURAIRAJA, PC, J. AND
E.A.G.R. AMARASEKARA, J.**

COUNSEL : Mr. Geoffrey Alagaratnam PC with Ayesha Goonesekera for the
Applicant – Respondent – Appellant.

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

ARGUED ON : 22nd July 2019.

WRITTEN SUBMISSIONS : Respondent – Appellant – Respondent on 6th May 2015.
Applicant – Respondent – Appellant on 8th April 2015.

DECIDED ON : 10th December 2019.

S. THURAIRAJA, PC, J.

The Employee Applicant-Respondent-Appellant (hereinafter referred to as the "Employee Appellant") filed an application in the Labour Tribunal of Kurunegala (hereinafter referred to as the "Labour Tribunal") against the Employer Respondent-Appellant-Respondent (hereinafter referred to as the "Employer Respondent") for unlawful termination of his services. After an Inquiry, the Learned President of the Labour Tribunal held that, the termination of the services of the Appellant was unjust and inequitable and awarded the retirement benefits to the Appellant.

Being aggrieved by the order of the Labour Tribunal, the Employer Respondent appealed to the Provincial High Court of the North Western Province (hereinafter referred to as the 'High Court') seeking inter alia, to set aside the order of the Labour Tribunal. The Learned High Court Judge by his judgment had set aside the order of the Labour Tribunal.

Being aggrieved with the said order, the Appellant had preferred this appeal before us, special leave to appeal was granted on 25.02.2015, on the issues set out in paragraph '8 (g)' of the petition dated 23.12.2011 reads as follows:

"Did the High Court err in holding that in the light of the facts before the Labour Tribunal, it was not just and equitable to award pension rights to the petitioner? "

Both parties have filed their written submissions and have advanced their oral arguments. I find it pertinent to set out the material facts of the case prior to addressing the question of law before us.

The workman, Dassanayake Mudiyansele Ranbanda, the Employee Appellant was an employee of the People's Bank, the Employer Respondent from 16.10.1972 as a clerk. The Employee Appellant gradually rose in rank and was appointed as Manager of Grade 3(1) of Thambuththegama Branch of the Respondent Bank on 01/06/1996. In the material time relevant to this application,

Applicant worked as the Manager of the Thambuththegama Branch of the Respondent Bank and is charged for violating instructions of Circular No.388/84 with regard to granting of TODs (Temporary Over Drafts) and several other charges as demonstrated below (Charge sheet marked as R1 at Page 530 of the brief).

Charge 1: Risking of the Bank Funds by granting TODs in excess of his authorized limit of Rs. 100,000/- and failing to obtain covering approval for the said overdrafts in violation of Circular Instructions 491/96 and 388/84;

Charge 2: Granting TODs to G.B. Dissanayake and H.M. Samanthilaka in excess of the Applicant's authorized limit, failing to obtain covering approval and continued granting of overdrafts when there were defaults in repayments by the said customers in violation of Circular 388/44.

Charge 3: Granting of TODs to specified customers before completing one year from the opening of accounts in violation of Paragraph 2.1 Section 5 of the Circular No.388/44.

Charge 4: Failing to report to the regional head office details pertaining to granted TODs by sending "form 593s" within 30 days in violation of Circular Instructions contained in Circular No.388/84.

Charge 5: Risking Bank Funds by granting parallel TODs to specified customers in excess of powers and in violation of Paragraph 3.1 and 3.2 of C Circular No.388/84.

Charges 6-9: Charges 6-9 were ancillary charges related to the above five charges. The Appellant is charged with (a) risking finance of the bank; (b) causing loss to the bank; and (c) causing a loss of confidence in the Appellant.

The Employee Appellant was served with a charge sheet dated 20/09/2001 Marked as 'X 10'. Consequently, a domestic inquiry was conducted by the Respondent Bank against the Employee Appellant and was found guilty of misconduct for all the charges. Thereafter, Employee Appellant was dismissed from

his service on 20.06.2002. Employee Appellant filed an application on 30/11/2002 before the Labour Tribunal against the Employer Respondent for unlawful termination of his services seeking, *inter alia*, re-instatement in his service and/ or reasonable compensation and costs and for such other relief as the Labour Tribunal shall seem fit and proper. The Employee Appellant did not specifically seek the relief of Pension benefits in his application because, the Employee Appellant was 52 years and 09 months on the day he filed his application. The Employee Appellant was entitled to seek the pension relief only upon the completion of 55 years and thereafter at the age of 60 if annual extensions were allowed to the Employee Appellant. The Employer Respondent stated that, the Employee Appellant's service was terminated on lawful grounds.

In the Employee Appellant's evidence, the Employee Appellant admits that, he has powers only to grant TODs for Rs.100, 000/- for 30 days (page 231 and 235 of the brief). Further the Employee Appellant admitted that, he exceeded the authority and granted TODs 42 accounts with an aggregate value of Rs. 5.4 Million of which he brought down the outstanding to Rs. 4.25 Million when sufficient time granted to him.

Employee Appellant led the evidence of T.A. Ariyapala (Assistant Regional Manager) and Priyangika Hettiarachchi (Staff Assistant) on his behalf and submitted documents marked R1-R51. Employer Respondent led the evidence of D.M. Ranbanda (the Employee Appellant) and Amarawansa Wijesekara (Retired Assistant Manager) and submitted the documents marked A.01-A.09.

As per the Circular No.388/84 (marked as 'R3' at page 549 of the brief) clause 9.3 stated that, 593 forms have to be sent on the same day for covering approval to the Regional Office for TODs over and above the authorized limit. The Bank clerk; Priyangika Hettiarachchi, during her cross examination admitted that, she sends Form 593 only when the Manager instructs her to do so (page 179 and 219 of the brief).

The Employee Appellant in his defence took up the position that, circulars are merely guidelines issued to the managers. However, the Respondent Bank demonstrated that, the Circular instructions are not mere guidelines, but clear limits have been imposed on the grant of TODs by the Bank Circulars. Further, it was stated by the fact that, the Bank uniformly and consistently took severe disciplinary action against those who violated circular instructions of the Bank. The evidence reveals that, even other managers who have committed similar misconduct of acting contrary to circular instructions especially when granting TODs have been terminated (Pages 170-171 of the Brief).

This position was not disputed by the Employee Appellant. It is not revealed that, he was victimized whilst others were favoured. Therefore, it is evident that, the Respondent Bank has uniformly and consistently dismissed employees who have flouted the financial regulations of the Bank. Therefore, I found that, this is not a case where only the Employee Appellant has been treated discriminatively or unjustly was given the same punishment that was meted out to others who had committed similar misconduct.

Accordingly, the Employee Appellant was found guilty of the charges of misconduct complained against him by the Labour Tribunal. On 28/10/2010, Learned President of the Labour Tribunal decided that, the termination of the services of the Employee Appellant is an excessive punishment because; by acting in violation of the circular instruction he had not gained any personal benefits. Further, ordered that, the Employee Appellant to be considered as having served to the Respondent Bank without break his service until he reached 55 years and granted him all pension rights on the premise that, he is a retired employee.

Being aggrieved with the order of the Labour Tribunal, the Employer Respondent appealed to the High Court to set aside the order of the Learned President of the Labour Tribunal. The Learned Judge of the High Court held,

"The alleged acts of misconduct have sufficiently been established by the Respondent-Appellant and as I have already stated above the Applicant-Respondent did not seek to challenge the propriety of the said findings of the Learned President. If the Applicant-Appellant was allowed to continue to grant temporary overdrafts arbitrarily without having any disregard to circular instructions, it would no doubt result in a huge financial loss to the bank.

The Learned Counsel submitted that the Respondent- Appellant Bank being a financial institution the strict compliance of circular instructions is of absolute importance and failure to follow such instructions by an employee who is holding the position of manager of a Branch amounts to a gross act of misconduct which entails a severe punishment. I am in agreement with the submission of the Counsel.

This is a case where the public should be taken into consideration for the reason that, the respondent-appellant bank is an institution that deals with money deposited by the public with very high expectation of safety of their money and higher benefits.

In view of the aforesaid I hold that the Learned President of the Labour Tribunal erred in awarding the applicant-respondent pension benefits as if his service was not terminated. The appeal is accordingly allowed and the application of the applicant-respondent is dismissed."

(Page 3-6 of the High Court Order dated 15/11/2011 marked as 'X4')

Being aggrieved with the said order, the Employee-Appellant had preferred this appeal before us, in terms of Section 31DD of the Industrial Disputes Act, No. 43 of 1950, as amended and special leave to appeal was granted on 25.02.2015, on the issues set out in paragraph '8 (g)' of the petition dated 23.12.2011.

In "**The Legal Framework of Industrial Relations in Ceylon**" by S.R. De Silva at Page 546 the following is stated in this regard.

"As a general rule, refusal to obey reasonable orders justifies dismissal"

"A single act of disobedience may justify dismissal if sufficient grave."

I am of the view that, Employee Appellant, as the Branch Manager of a Bank is responsible for the discipline and management of the entire branch of the Respondent Bank. The Employee Appellant is the enforcer of discipline and the supervising authority of the activities within the branch to ensure the compliance with the rules and regulations. If he is blatantly disregarding strict circular instructions in favour of third parties and grant TODs at his will over and above the authorized limits is a breach of trust and confidence placed on him by the Bank. It is observed that, the irresponsible conduct of the Employee Appellant exposed the Bank to very heavy losses. The TODs facility given for a very limited period and the customer is required to settle TODs within that time, which is generally 30 days. If TODs are long outstanding without payment, it is a loss to the Respondent Bank.

In **Adami v. Maison de Luxe Limited (1924) Comm. LR 145**, stated that,

"where it is a condition that, the servant shall obey all lawful orders of the master, then a willful and deliberate and intentional disobedience of any of those orders is tantamount to a refusal to be bound by the terms of the Contract, entitling the other party to treat it as an end, and to dismiss the servant....and his failure to obey instructions was such as to go to the foundation and root of the whole contract between the parties."

In this case due to the conduct of the Employee Appellant, the bank has been exposed to a loss of Rs. 19,686,889.22 and an actual loss of Rs. 4, 373,687.21 has been caused to the Respondent Bank. Thus, as mentioned above, the strict adherence to circular instructions is mandatory to the Bank and on many occasions, branch managers who have granted TODs in a manner caused a loss to the Bank have been terminated as a deterrent against such practice and the Employee Appellant is one of such a manager.

As observed by Siva Selliah, J, in **Sithamparanathan v. People's Bank [1986]** 1 Sri LR 411 at page 414-415,

"It is needless to emphasize that the utmost confidence is expected of any officer employed in a Bank. He owes 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. Integrity and confidence thus are indispensable and where an officer has forfeited such confidence has been shown up as being shown up as being involved in any fraudulent or questionable transaction, both public interest and the interest of the Bank demands that he should be removed from such confidence."

In **Manager vs. Nakiadeniya Group vs. The Lanka Estate Workers Union [1969 77 CLW 52]** at page 54de Krester J. said,

"In the making of a just and equitable order one must consider not only the interests of the employees but also the interests of the employers and the wider interest of the country for the object of social legislation is to have not only contended employees but also contended employers."

The public interest was also recognized as a relevant factor for the courts, when they made just and equitable order. In **Ceylon Transport Board vs. Julian [SC 54/71 decided on 16/06/1972]** where this Court stated that,

"In the particular circumstances of this case where the public interest must be a factor to be considered the President should have also directed his mind as to what was just and equitable in the context of the public interest. A just and equitable order must be made after considering all the circumstances and not only the interests of the applicant."

This is the fact that, the Learned President of the Labour Tribunal has failed to do in the present case. I therefore find myself unable to agree with the view of the Learned President of the Labour Tribunal.

In cases involving an employer-employee relationship, 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 above circumstances, I am of the view that, the termination of the Employee Appellant's services was just and proper in law and the Learned President of the Labour Tribunal has erred in law in considering the termination to be unjust and inequitable on the premise of excessive punishment.

It is submitted that, the Pension Fund administered by a Trust and only those who fulfill the eligibility criteria is entitled to the Pension, in addition to their other terminal benefits. As I stated above, an employee who ceases to be in service prior to reaching 55 years as a result of his services been terminated by the Bank, is not entitled for pension.

In **Abysundera vs. Samuel SC 13-123/67 decided on 16/06/1968 and Martin Singho vs. Kularatna and others (CA Appeal No. 248/95)** Court held that,

"it appears to this Court that Labour Tribunal has granted the pension rights to the Applicant purely on sympathetic grounds. The Labour Tribunal should act in a just and equitable manner to both parties and not award any relief on the basis of sympathy. Just and equitable order must be fair to all parties. It never means the means the safeguarding of the interest of the workman alone. Legislature has not given a free license to a President of a Labour Tribunal to

make award as he may please. In the above circumstances we hold that, granting of a pension to respondent is totally wrong and contrary to law."

The Court also held:

"There are specific criteria to be fulfilled for an employee to qualify for a pension. According to the Peoples' Bank Pension Scheme, pension is granted only if an employee is in service and at the age of 55 years. Pension will not be granted to an employee who is under the age of 55 years except on the recommendation of a Medical Board and approved by the General Manager. Employees who leave the Bank before reaching 55 years and those who are dismissed from service are not entitled to pension under the pension rules that exist in the Bank."

The Employer Respondent has filed the requisite proof to establish that, the Employee Appellant had indeed been paid his terminal benefits of EPF, ETF and Gratuity. The said statement of account depicts the deposit of a sum of Rs. 464,257.37 and a sum of Rs. 336,253.73 which consists of the EPF and gratuity paid to the Employee Appellant.

As enumerated above, I am of the view that the Employee Appellant is not entitled for the pension benefits.

With the aforementioned circumstances, I answer the question of law raised by the Employee Appellant negatively.

On carefully analyzing the materials that was produced before the President of the Labour Tribunal of Kurunegala and the material submitted before the learned High Court Judge, I am of the view that the finding of the President of the Labour Tribunal is incorrect. Accordingly, I find that, the findings of the learned High Court Judge are correct in setting aside the order of the Learned President of the Labour Tribunal dated 28/10/2010, Therefore, I affirm the findings of the Learned Judge of

the High Court in order dated 15.11.2011, in case no. NWP/HCCA/KUR/37/2010(L.T).
Appeal Dismissed and I order no cost.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

E.A.G.R. AMARASEKARA, J.

I agree.

JUDGE OF THE SUPREME COURT