

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

TAD Hemasiri Gomis
No.71, Vihara Mawatha.
Singharamulla, Kelaniya

Applicant

SC Appeal No.47/2014
SC SPL LA No. 105/2012
HCCA Gampaha
Case No. 17/2010 LT
LT Wattala Case No. 31/060/2006

Vs

Kelaniya Co-operative Society Ltd.,
Biyagama Road,
Kelaniya.

Respondent

AND

TAD Hemasiri Gomis
No.71, Vihara Mawatha.
Singharamulla, Kelaniya

Applicant-Appellant

Vs

Kelaniya Co-operative Society Ltd.,
Biyagama Road,
Kelaniya.

Respondent-Respondent**AND NOW BETWEEN**

TAD Hemasiri Gomis
No.71, Vihara Mawatha.
Singharamulla, Kelaniya

Applicant-Appellant-Petitioner-Appellant

Vs

Kelaniya Co-operative Society Ltd.,
Biyagama Road,
Kelaniya.

Respondent-Respondent-Respondent-Respondent

Before : Sisira J De Abrew J
Upaly Abeyratne J
Anil Gooneratne J

Counsel : Chatura Galhena for the Applicant-Appellant-Petitioner-Appellant
Vidura Gunaratne for the Respondent-Respondent-Respondent

Argued on : 10.1.2017

Decided on : 1.3.2017

Sisira J De Abrew J.

This is an appeal against the judgment of the learned High Court Judge dated 9.5.2012 wherein she affirmed the judgment of the learned President of the Labour

Tribunal. This Court by its order dated 20.3.2014, granted leave to appeal on the questions of law set out in paragraphs 16(2) and 16(3) of the Petition of Appeal dated 19.2.2013. They are as follows.

1. Did the Civil Appellate High Court misdirect itself by failing to give due consideration to the contents of the documents marked by the Respondent in relation to the duties of the Appellant?
2. Did the Civil Appellate High Court misdirect itself by failing to give due consideration to the hypothetical assumptions made by the learned President of the Labour Tribunal in relation to the procedure to be followed by the Applicant in performing his duties?

The Applicant-Appellant-Petitioner-Appellant (hereinafter referred to as the Applicant-Appellant) filed an application in the Labour Tribunal challenging his termination of services by the Respondent-Respondent-Respondent-Respondent (hereinafter referred to as the Respondent-Respondent). The learned President of the Labour Tribunal dismissed his application and held that the termination was justified. Being aggrieved by the said judgment of the learned President of the Labour Tribunal, he appealed to the High Court and the learned High Court Judge affirmed the judgment of the learned President of the Labour Tribunal. Being aggrieved by the said judgment, he has appealed to this court. Facts of this case may be briefly summarized as follows. The Applicant-Appellant was the Internal Auditor of the Respondent-Respondent. There are two safes in the Wedamulla Rural Bank and it was the practice of the Rural Bank to keep one key of the main safe with the Manager of the said bank and the other key with the Peoples Bank branch in the area. Certain jewellery pawned to the Wedamulla Rural Bank disappeared from the main safe and it is alleged that the Manager of the

Wedamulla Rural Bank has committed theft on the said jewellery. The allegation levelled against the Applicant-Appellant was that he being the Internal Auditor of the Wedamulla Rural Bank did not conduct proper audit in the said bank and as a result of the said failure the Manager was able to commit theft on the said jewellery. The Applicant-Appellant in his evidence (page 216-217) has admitted that he did not have sufficient time to check the items in both safes. The main contention of learned counsel for the Applicant-Appellant was that there was no duty on the part of the Applicant-Appellant to check both safes and that therefore he could not be held responsible for failure to conduct proper audit. I now advert to this contention. It is to be noted here that the General Manager of the Respondent-Respondent by letter dated 15.1.2001 marked R20, has given instructions to the Applicant-Appellant to carry out sudden examinations of both safes and report whether the jewellery kept in the safes tally with the ledger in which pawned jewellery is entered (pawned jewellery ledger). In the 2nd paragraph of the same letter marked P20, the Applicant-Appellant had been further instructed to carry out sudden examinations of both safes before the end of the month. Learned counsel for the Applicant-Appellant referring to the said paragraph of the letter marked P20, contended that the said instructions were applicable only to the month of January 2001. But when I consider the entire contents of the said letter, I am unable to agree with the said contention. The Applicant-Appellant, in his evidence at page 217, admitted that he did not inspect the jewellery in the main safe.

When I consider all the above matters, I hold that the Applicant-Appellant had failed to discharge his duties as per instructions given to him and that as a result of the said failure certain jewellery pawned to the Wedamulla Rural Bank had disappeared from the safe. For the above reasons, I hold that the termination of services of the Applicant-Appellant by the Respondent- Respondent was justified.

For the aforementioned reasons, I affirm the judgment of the learned President of the Labour Tribunal and the learned High Court Judge and dismiss this appeal with costs.

Appeal dismissed.

Judge of the Supreme Court.

Upaly Abeyratne J

I agree.

Judge of the Supreme Court.

Anil Gooneratne J

I agree].

Judge of the Supreme Court.