

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

In the matter of an appeal

Hettimudiyanselage Nani Wijesiri Somalatha Menike

Applicant

SC Appeal No. 14/2013
SPLA 62/2012
HC Colombo HCALT 117/2008
LT Colombo 8/940/2000

Vs

Dalugama Multi Purpose Cooperative Society Ltd.

Respondent

And

Hettimudiyanselage Nani Wijesiri Somalatha Menike
Applicant-Appellant

Vs

Dalugama Multi Purpose Cooperative Society Ltd.
Respondent-Respondent

And

Hettimudiyanselage Nani Wijesiri Somalatha Menike
Applicant-Appellant-Petitioner

Vs

Dalugama Multi Purpose Cooperative Society Ltd.
Respondent-Respondent-Respondent

Now Between

Hettimudiyanselage Nani Wijesiri Somalatha Menike
Applicant-Appellant-Petitioner-Appellant

Vs

Dalugama Multi Purpose Cooperative Society Ltd.
Respondent-Respondent-Respondent-Respondent

Before : Eva Wanasundera PC, J
B Aluwihare PC, J
Sisira J de Abrew J

Counsel : Samantha Vithana with Ananda Abeywickrama for the
Applicant-Appellant-Petitioner-Appellant
Neville Abeyrathne with Rakitha Abeysinghe for the
Respondent-Respondent-Respondent-Respondent

Argued on : 26.5.2014
Decided on : 30.7.2014

Sisira J de Abrew J.

This is an appeal against the judgment of the learned High Court Judge dated 16.2.2012.

The Applicant-Appellant-Petitioner-Appellant (hereinafter referred to as the Applicant-Appellant) who was an employee of the Respondent-Respondent-Respondent-Respondent (hereinafter referred to as the Respondent society) filed an application in the Labour Tribunal of Colombo seeking, inter alia, reinstatement and back wages on the ground that her services were unjustly and unreasonably terminated by the respondent society. After inquiry, learned Labour Tribunal President, by his order dated 4.11.2008, ordered the payment of salary of seven years as compensation but did not order reinstatement. Being aggrieved by the said

order of the learned Labour Tribunal President, the Applicant-Appellant appealed to the High Court. The learned High Court Judge, by his judgment dated 16.2.2012, ordered reinstatement of the Applicant-Appellant but without back wages. Being aggrieved by the said order of the learned High Court Judge, the Applicant-Appellant has appealed to this court. This court granted leave to appeal on the following questions of law.

1. Is the said judgment of the learned Provincial High Court Judge contrary to law and against the weight of evidence adduced at the inquiry before the Labour Tribunal?
2. Has the learned Provincial High Court Judge erred in law as he merely denied the back wages, without a break in service and without giving any reason as to why the Applicant-Appellant is not entitled to reinstatement with full back wages and without break in service?
3. Has the learned Provincial High Court Judge erred in law as he has failed to take into account that the Petitioner was without any salary or income from the date of suspension of services of the Applicant-Appellant which was from 17.7.1997?
4. Has the learned Provincial High Court Judge erred in law when he decided that the Petitioner was not entitled to back wages from 17.8.1997 up to the date of reinstatement?

The Main Contention of learned counsel for the Applicant Appellant was that the learned High Court Judge was wrong when he did not order back wages. When I consider the facts of the case and submission of Counsel, the above questions of law can be summarized into one question which can be set out as follows: Whether the learned High Court Judge was in error when he, having granted reinstatement, did not order back wages of the Applicant-Appellant

Facts of this case may be briefly summarized as follows.

The Applicant-Appellant who was the accountant of the Respondent society prepared a profit and loss account in respect of a New Year Fair conducted by the Respondent society in April 1997. However, the General Manger of the Respondent society, thereafter, requested her to prepare a fresh account reducing certain expenses. As she received written instructions from the General Manager regarding preparation of a fresh account, she submitted a fresh profit and loss account to the respondent society. The Applicant-Appellant too was requested to participate in a meeting of the Board of Directors of the respondent society which was held on 30.7.1997. At the said meeting a dispute arose between the Applicant-Appellant and the Chairman of the respondent society. As a result of the said dispute, the Chairman of the Respondent society pulled the Applicant-Appellant by her hair and chased her away after threatening her with death. She made a complaint to the police regarding the said behaviour of the Chairman of the Respondent society. When the Applicant-Appellant reported for duty on the following day (31.7.1997), the chairman of the Respondent society assaulted her, threatened her with death again and forcibly removed her from the premises of the Respondent society. She again made a complaint to the police regarding the above incident. OIC Peliyagoda Police Station, on the said complaint, filed a case in the Magistrate Court of Colombo against the said Chairman alleging that he committed offences under Sections 314 and 486 of the Penal Code. Later the said Chairman settled the case after paying Rs.10,000/- to the Applicant-Appellant.

At the inquiry before the Labour Tribunal, the Chairman of the Respondent society did not give evidence. The learned Labour Tribunal President, by his order dated 4.11.2008, held that the respondent society unjustly and unreasonably terminated the services of the Applicant-Appellant. The learned High Court Judge,

by his order dated 16.2.2012, too held that the termination of services of the Applicant-Appellant was unjust and unreasonable. The Respondent society did not appeal against the order of the learned Labour Tribunal President nor did it appeal against the judgment of the learned High Court Judge. There is a clear determination by both the President of the Labour Tribunal and the learned High Court Judge to the effect that the termination of services of the Applicant-Appellant by the Respondent society is unjust and unreasonable. When I consider the evidence led at the trial before the Labour Tribunal, I hold the view that there is no ground to interfere with the said determination. Why did the learned President of the Labour Tribunal not order reinstatement of the Applicant-Appellant? Why did the learned High Court Judge fail to order back wages having ordered reinstatement? He has not given reasons for not ordering back wages. The Applicant-Appellant was denied of her salary from 17.10.1997. Due to whose fault did she loose her salary? Certainly it was not due to her fault. It was the Chairman of the Respondent society who assaulted her and forcibly removed her from office. Under these circumstances is it reasonable to deny her back wages? I feel it is not reasonable at all. Learned Counsel for the Respondent society submitted that the society will not be in a position to pay her back wages due to economic conditions. But there is no evidence to support this contention. It has to be noted here that the Applicant-Appellant was only drawing a salary of Rs.3881/- at the time of her termination. Is there any evidence to say that her behaviour in the Respondent society was bad and that it created displeasure among the other employees? The answer is no. There is no evidence to suggest that the Applicant-Appellant had breached the discipline of the Respondent society. In fact it is the Chairman of the Respondent society who violated the discipline of the Respondent society by assaulting her. The Chairman of the Respondent society in fact settled the case

filed against him by the police after paying Rs.10,000/- to the Applicant-Appellant. He did not give evidence before the Labour Tribunal.

In the case of Millers Limited Vs Ceylon Mercantile Industrial and General Workers Union [1993] 1 SLR 179 His Lordship Justice Bandaranayake held thus: “The order must be fair by all parties in the interest of discipline.”

When I consider all the above matters, there is no justification to deprive her of her back wages, allowances and increments. In my view, the learned High Court Judge was in error when he, having granted reinstatement, did not grant back wages.

For the above reasons, I order reinstatement of the Applicant-Appellant without a break in service with back wages from the date of termination (17.10.1997). I do not order costs. I allow the appeal.

Appeal allowed.

Judge of the Supreme Court

Eva Wanasundara PC,J

I agree.

Judge of the Supreme Court.

B Aluwihare PC,J

I agree.

Judge of the Supreme Court.

