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

In the matter of an appeal under Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC Appeal No: 13/2019
HC Appeal No: HCALT 40/2016
LT Application No: 13/52/2013

R.A. Dharmadasa,
No. 72/2/C 'Sandamali,'
Parakandeniya Road,
Pahala Imbulgoda, Imbulgoda.

APPLICANT

Vs.

Board of Investment of Sri Lanka,
World Trade Centre,
26th Floor, West Tower,
Bank of Ceylon Mawatha, Colombo 1.

RESPONDENT

And between

Board of Investment of Sri Lanka,
World Trade Centre,
26th Floor, West Tower,
Bank of Ceylon Mawatha, Colombo 1.

RESPONDENT – APPELLANT

Vs.

R.A. Dharmadasa,
No. 72/2/C 'Sandamali,'
Parakandeniya Road,
Pahala Imbulgoda, Imbulgoda.

APPLICANT – RESPONDENT

And Now Between

R.A. Dharmadasa,
No. 72/2/C 'Sandamali,'
Parakandeniya Road,
Pahala Imbulgoda, Imbulgoda.

APPLICANT – RESPONDENT – APPELLANT

Vs.

Board of Investment of Sri Lanka,
World Trade Centre,
26th Floor, West Tower,
Bank of Ceylon Mawatha, Colombo 1.

RESPONDENT – APPELLANT – RESPONDENT

Before: **E.A.G.R. Amarasekara, J**
A.L. Shiran Gooneratne, J
Arjuna Obeyesekere, J

Counsel: Dulindra Weerasuriya, PC, for the Applicant – Respondent – Appellant

Janaprith Fernando with D.D.P. Dissanayake and Namal Rajamuni for the Respondent – Appellant – Respondent

Argued on: 24th January 2022

Written Submissions: Tendered on behalf of the Applicant – Respondent – Appellant on 10th July 2019 and 7th March 2022

Tendered on behalf of the Respondent – Appellant – Respondent on 23rd October 2019 and 7th March 2022

Decided on: 16th June 2022

Arjuna Obeyesekere, J

The Applicant – Respondent – Appellant [*the Appellant*] joined the Board of Investment of Sri Lanka – i.e. the Respondent – Appellant – Respondent [*the Respondent*], on 2nd July 1985 as a Management Trainee. He was confirmed in service on 1st April 1986, and received several promotions thereafter, including to the post of Accountant (Grade M3) in October 1990, Accountant (Grade M2) in April 1994 and Senior Manager, Internal Audit (Grade 1) in March 2000. In February 2003, the Appellant had been assigned to the Regional Economic Development Commission [*REDC*]. By letter dated 7th October, 2003, he had been appointed as the Director (Corporate Services) of the Regional Office of the Respondent situated in the North Western Province with effect from 10th October 2003. The claim of the Appellant that he had an unblemished record of service until this appointment has not been disputed by the Respondent.

Interdiction, the issuance of a charge sheet and termination of services

By letter dated 28th July 2005, the Appellant was placed under interdiction due to irregularities that the Appellant is said to have committed with regard to his claim for the rent allowance, use of the official vehicle, the tender relating to the provision of transport services to employees of the North Western Provincial Office of the Respondent and encashment of cheques issued to the provider of the said transport services. The Appellant had thereafter been issued with a charge sheet on 19th September 2005. While the first seven charges were in relation to the above incidents, the last two charges were whether the Respondent has lost trust and confidence in the Appellant and whether the Appellant has brought disrepute to the Respondent, as a result of the irregularities which were the subject matter of the first seven charges.

Pursuant to the response of the Appellant to the said charge sheet, the Respondent had initiated a domestic inquiry in relation to the above charges and appointed as Inquiry Officer a person recommended by the Ministry of Public Administration. Having requested several postponements, the Appellant had informed the Inquiry Officer that he would not be participating in the inquiry as he believed that it was not being conducted in an impartial manner. The inquiry had thereafter proceeded *ex parte*. Upon the

Appellant being found guilty of all charges, his services had been terminated by letter dated 13th March 2008.

Application to the Labour Tribunal and appeal to the High Court

Aggrieved by the said decision, the Appellant had filed an application before the Labour Tribunal in terms of Section 31B(1)(a) of the Industrial Disputes Act [*the Act*]. While the Respondent had led the evidence of five witnesses, the Appellant had given evidence on his own behalf. By its order delivered on 6th July 2016, the Labour Tribunal had held that the charges against the Appellant have not been proved and therefore, the termination of the services of the Appellant was unjustified. The Labour Tribunal, while not ordering reinstatement due to an ambiguity with regard to the age of retirement, had directed the Respondent to pay the Appellant a sum of Rs. 3,627,900 as compensation.

On appeal, the Provincial High Court of the Western Province, holden at Colombo set aside the said order of the Labour Tribunal. This appeal arises from the said judgment of the High Court.

Questions of Law

On 9th January 2019, this Court granted the Appellant leave to appeal on the following questions of law:

(1) Can a learned High Court Judge in an appeal from the judgment/order of a Labour Tribunal made on a just and equitable basis taking all the circumstances relevant to the issue, reverse and set aside the same on a technical issue strictly interpreting one document without considering the circumstances on which the said document came into existence?

(2) Is the judgment of the High Court in an appeal against the judgment of a Labour Tribunal valid without giving reasons for the same?

While the first question of law relates to Charge No. 1 preferred against the Appellant, the second question of law would apply in respect of all charges.

During the course of the hearing, the learned President's Counsel for the Appellant submitted that a Labour Tribunal is required to take into consideration all the circumstances of the case and make an order which is just and equitable, and that in doing so, a Labour Tribunal has a wide discretion with the relief that it could grant an employee. He stated further that for this reason, (a) an appeal against an order of a Labour Tribunal lies only on a question of law – *vide* Section 31D(3) of the Act – (b) the High Court, in exercising its appellate jurisdiction must not interfere with the findings of fact reached by the Labour Tribunal. The learned President's Counsel for the Appellant however did concede that an order of the Labour Tribunal can be set aside where the findings of fact are perverse, but submitted that it was not the case in this appeal, and that the High Court erred when it set aside the order of the Labour Tribunal.

Just and equitable jurisdiction of a Labour Tribunal

In terms of Section 31C(1) of the Act, "*Where an application under section 31B is made to a Labour Tribunal, it shall be* ***the duty of the tribunal*** *to* ***make all such inquiries*** *into that application and* ***hear all such evidence*** *as the tribunal may consider necessary, and thereafter make not later than six months from the date of such application, such order as may appear to the tribunal to be* ***just and equitable***" [emphasis added].

While S.R. de Silva, in his book titled '**The Law of Dismissal**' (3rd ed., 2018) has noted at pages 279-80 that the phrase *just and equitable* does not lend itself to precise definition, in **Peiris v Podi Singho** [78 CLW 46 at 48] it was held that, *"the test of a just and equitable order is that those qualities would be apparent to any fair-minded person reading the order*". In **Ceylon Transport Board v Ceylon Transport Workers Union** [71 NLR 158 at 163], Tennekoon, J (as he then was) referring to Section 31C(1) stated as follows:

> "*This section must not be read as giving a labour tribunal a power to ignore the weight of evidence or the effects of cross-examination on the vague and insubstantial ground that it would be inequitable to one party so to do. There is no*

equity about a fact. The tribunal must decide all questions of fact "solely on the facts of the particular case, solely on the evidence before him and apart from any extraneous considerations" (see R. v. Manchester Legal Aid Committee Ex parte Brand & Co. Ltd. [(1952) 1 All ER 480]). In short, in his approach to the evidence he must act judicially."

In **The Caledonian (Ceylon) Tea and Rubber Estates Ltd. v J.S. Hillman** [79 (1) NLR 421 at 430] Sharvananda, J (as then was) observed as follows:

"*In the course of adjudication, a Tribunal must determine the 'rights' and 'wrongs' of the claim made, and in so doing it undoubtedly is free to apply principles of justice and equity, keeping in view the fundamental fact that its jurisdiction is invoked not for the enforcement of mere contractual rights, but for preventing the infliction of social injustice. The goals and values to be secured and promoted by Labour Tribunals are social security and social justice. The concept of social justice is an integral part of Industrial Law, and a Labour Tribunal cannot ignore its relevancy or norms in exercising its just and equitable jurisdiction. Its sweep is comprehensive as it motivates the activities of the modern welfare state. It is founded on the basic ideal of socio-economic equality. Its aim is to assist in the removal of socio-economic disparities and inequalities. It endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties, so that industrial disputes can be prevented*…"

Although Labour Tribunals have a wide discretion in the relief that they could grant, this Court has consistently cautioned that such discretion must be exercised within the four corners of the law. T.S. Fernando, J, in **Richard Pieris & Co. Ltd. v Wijesiriwardena** [62 NLR 233 at 235] observed that, "*In regard to the power of the Tribunal to make such order as may appear to it to be just and equitable there is point in Counsel's submission that justice and equity can themselves be measured not according to the urgings of a kind heart but only within the framework of the law*."

In **The Ceylon Estates Staffs' Union v The Superintendent, Meddecombra Estate, Watagoda and Another** [73 NLR 278 at 282] Weeramantry, J stated that, "*In the making of a just and equitable order one must consider not only the interest of the employees but also the interest 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*."

It is therefore clear that while Section 31C(1) has circumscribed the role of a Labour Tribunal, it has drawn a nexus that the Tribunal must maintain between the material that is placed before it and the just and equitable award that it would eventually make.

In **Ceylon Transport Board v Gunasinghe** [72 NLR 76 at 83], Weeramantry, J, while recognising that a Labour Tribunal must act judicially, went onto hold that Labour Tribunals do not have:

> "*… a free charter to act in disregard of the evidence placed before them. They are,* ***in arriving at their findings of fact, as closely bound to the evidence adduced before them and as completely dependent thereon as any Court of law. Findings of fact which do not harmonise with the evidence underlying them lack all claims to validity****, whatever be the Tribunal which makes them.*
>
> *Proper findings of fact are a necessary basis for the exercise by Labour Tribunals of that wide jurisdiction given to them by statute of making such orders as they consider to be just and equitable. Where there is no such proper finding of fact the order that ensues would not be one which is just and equitable upon the evidence placed before the Tribunal, for justice and equity cannot be administered in a particular case apart from its own particular facts. I am strengthened in the conclusion I have formed by a perusal of the judgment already referred to, of my brother Tennekoon [Ceylon Transport Board v. Ceylon Transport Workers' Unions (1968) 71 NLR 158; 75 CLW 33], who has observed that* ***it is only after the ascertainment of the facts upon a judicial approach to the evidence that a Labour Tribunal can pass on to the next stage of making an order that is fair and equitable having regard to the facts so found***" [emphasis added].

A similar requirement to make an award as may appear to him just and equitable has been imposed by Section 17(1) of the Act on an arbitrator appointed in terms of Section 4(1). In **Municipal Council Colombo v Munasinghe** [71 NLR 223 at 225] Chief Justice H.N.G. Fernando held that:

> "*… when the Industrial Disputes Act confers on an Arbitrator the discretion to make an award which is 'just and equitable,' the Legislature did not intend to confer on an Arbitrator the freedom of a wild horse. An award must be 'just and equitable' as between the parties to a dispute; and the fact that one party might have encountered 'hard times' because of personal circumstances for which the other party is in no way responsible is not a ground on which justice or equity requires the other party to make undue concessions. In addition, it is time that this Court should correct what seems to be a prevalent misconception. The mandate which the Arbitrator in an industrial dispute holds under the law requires him to make an award which is just and equitable, and not necessarily an award which favours an employee. An Arbitrator holds no licence from the Legislature to make any such award as he may please, for nothing is just and equitable which is decided by whim or caprice or by the toss of a double-headed coin*."

This position has been upheld by this Court in **Standard Chartered Grindlays Bank Limited v The Minister of Labour** [SC Appeal No. 22/2003; SC Minutes of 4th April 2008] and **Singer Industries (Ceylon) Limited v The Ceylon Mercantile Industrial and General Workers Union and Others** [2010 (1) Sri LR 66]. In the latter case, it was held at page 84 that:

> "*It is a cardinal principle of law that in making an award by an arbitrator there must be a judicial and objective approach and more importantly the perspectives both of employer as well as the employee should be considered in a balanced manner and undoubtedly just and equity must apply to both these parties*."

Thus, it is clear that in the guise of making a just and equitable order, the Labour Tribunal cannot discriminate between the parties. It must consider the cases put forward by both parties in a balanced manner, and its decision must be supported by evidence. It is only then that the order of a Labour Tribunal would be truly just and equitable.

The jurisdiction of the High Court in respect of appeals from the Labour Tribunal

While in terms of Section 31D(2) of the Act, "*an order of a labour tribunal shall be final and shall not be called in question in any court,*" this is subject to the provisions of Section 31D(3) of the Act which reads as follows:

> "*Where the workman who, or the trade union which, makes an application to a labour tribunal, or the employer to whom that application relates is dissatisfied with the order of the tribunal on that application, such workman, trade union or employer may, by written petition in which the other party is mentioned as the respondent, appeal from that order* ***on a question of law****, to the High Court established under Article 154P of the Constitution, for the Province within which such Labour Tribunal is situated*" [emphasis added].

It would therefore be important to understand what is *a question of law*, in the context of the provisions of the Act. In **The Caledonian (Ceylon) Tea and Rubber Estates Ltd. v J.S. Hillman** [supra; at 425], it was held as follows:

> "*Under Section 31D(2) of the Industrial Disputes Act, an appeal to the Supreme Court lies from an order of a Labour Tribunal only on a question of law.* ***Parties are bound by the Tribunal's findings of fact****,* ***unless*** *it could be said that* ***the said findings are perverse and not supported by any evidence****. With regard to cases where an appeal is provided on questions of law only, Lord Normand in Inland Revenue v. Fraser, [(1942) 24 Tax Cases p. 498], spelt the powers of Court as follows:*
>
> > *'In cases where it is competent for a Tribunal to make findings of fact which are excluded from review, the Appeal Court has always jurisdiction to intervene if it appears… that the Tribunal has made a finding for which there is no evidence, or which is inconsistent with the evidence and contradictory of it.'*
>
> *In this framework, the question of* ***assessment of evidence is within the province of the Tribunal****, and,* ***if there is evidence on record to support its findings****, this Court*

cannot review those findings even though on its own perception of the evidence this Court may be inclined to come to a different conclusion. 'If the case contains anything ex facie which is bad in law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances too, the Court must intervene' – per Lord Radcliffe in Edwards v. Bairstow (1956) 3 All ER 57. ***Thus, in order to set aside a determination of facts by the Tribunal, limited as this Court is only to setting aside a determination which is erroneous in law, the appellant must satisfy this Court that there was no legal evidence to support the conclusion of facts reached by the Tribunal, or that the finding is not rationally possible and is perverse having regard to the evidence on record****. Hence, a heavy burden rested on the appellant when he invited this Court to reverse the conclusion of facts arrived at by the Tribunal*" [emphasis added].

In **Ceylon Transport Board v Gunasinghe** [supra; at 80] it was held that, "*Where a statute makes an appeal available only in respect of questions of law, the Appellate Court is not without jurisdiction to interfere where the conclusion reached on the evidence is so clearly erroneous that no person properly instructed in the law and acting judicially could have reached that particular determination [Edwards, Inspector of Taxes v. Bairstow another (1955) 3 All ER 48]. It is true that Courts will be more ready to find errors of law in erroneous inferences from facts than in erroneous findings of primary fact, but it has been repeatedly held that a Tribunal which has made a finding of primary fact that is wholly unsupported by evidence has erred in point of law [De Smith, Judicial Review of Administrative Action, pp. 86-7]."*

In **Jayasuriya v Sri Lanka State Plantations Corporation** [(1995) 2 Sri LR 379; at 391] Amerasinghe, J. considered a long line of jurisprudence on this matter, and held as follows:

"*The Industrial Disputes Act No. 43 of 1950 states in section 31D that the order of a Labour Tribunal shall be final and shall not be called in question in any Court except*

on a question of law. While appellate courts will not intervene with pure findings of fact (e.g. Somawathie v. Baksons Textile Industries Ltd [(1973) 79(1) NLR 204], Caledonian (Ceylon) Tea and Rubber Estates Ltd v. Hillman [(1977) 79(1) NLR 421], Thevarayan v. Balakrishnan [(1984) 1 Sri LR 189], Nadarajah v. Thilagaratnam [(1986) 3 CALR 303]), yet if it appears that the Tribunal has made a finding:

- ***wholly unsupported by evidence*** *(Ceylon Transport Board v. Gunasinghe [(1973) 72 NLR 76], Colombo Apothecaries Co. Ltd v. Ceylon Press Workers' Union [(1972) 75 NLR 182], Ceylon Oil Workers' Union v. Ceylon Petroleum Corporation [(1978-9) 2 Sri LR 72]), or*

- ***which is inconsistent with the evidence and contradictory of it*** *(Reckitt & Colman of Ceylon Ltd v. Peiris [(1978-9) 2 Sri LR 229]), or*

- ***where the Tribunal has failed to consider material and relevant evidence*** *(United Industrial Local Government & General Workers' Union v. Independent Newspapers Ltd [(1973) 75 NLR 529]), or*

- ***where it has failed to decide a material question*** *(Hayleys Ltd v. De Silva [(1963) 64 NLR 130]), or*

- ***misconstrued the question at issue and has directed its attention to the wrong matters*** *(Colombo Apothecaries Co. Ltd v. Ceylon Press Workers' Union [supra]), or*

- ***where there was an erroneous misconception amounting to a misdirection*** *(Ceylon Transport Board v. Samastha Lanka Motor Sevaka Samithiya [(1964) 65 NLR 566]), or*

- ***where it failed to consider material documents or misconstrued them*** *(Virakesari Ltd v. Fernando [(1965) 66 NLR 145]), or*

- ***where the Tribunal has failed to consider the version of one party or his evidence*** *(Carolis Appuhamy v. Punchirala [(1963) 64 NLR 44], Ceylon Workers' Congress v. Superintendent, Kallebokke Estate [(1962) 63 NLR 536]), or*

- ***erroneously supposed there was no evidence*** *(Ceylon Steel Corporation v. National Employees' Union [(1969) 76 CLW 64]),*

the finding of the Tribunal is subject to review by the Court of Appeal" [emphasis added].

The judgment in **The Caledonian (Ceylon) Tea and Rubber Estates Ltd. V J.S. Hillman** [supra] has been consistently followed by this Court – see **Hatton National Bank v Perera** [(1996) 2 Sri LR 231], **Shanthi Sagara Gunawardena v Ranjith Kumudusena Gunawardena and Others** [SC Appeal No. 89/2016; SC Minutes of 2nd April 2019] and **Kotagala Plantations Ltd. and Lankem Tea and Rubber Plantations (Pvt) Ltd. v Ceylon Planters Society** [(2010) 2 Sri LR 299]. In the latter case, Chief Justice J.A.N de Silva held as follows at page 303:

"*An appeal lies from an order of a Labour Tribunal only on [a] question of law. A finding on facts by the Labour Tribunal is not disturbed in appeal by an Appellate Court unless the decision reached by the Tribunal can be considered to be perverse. It has been well established that* ***for an order to be perverse the finding must be inconsistent with the evidence led or that the finding could not be supported by the evidence led*** *(vide Caledonian Estates Ltd. v. Hillman 79 (1) NLR 421)*" [emphasis added].

Thus, even though a Labour Tribunal has been conferred with a wide discretion and is required to make an order which is just and equitable, that does not mean that it has the freedom of a wild horse and could make any order at its whim and fancy. The order of a Labour Tribunal must be based on the evidence placed before it and its conclusions must be supported by the said evidence. Although the jurisdiction of the appellate Court to interfere with an order of a Labour Tribunal has been limited by Section 31D(3) to questions of law, the long series of judicial decisions referred to by me have justified

intervention with an order of a Labour Tribunal where its findings *inter alia* have been reached without considering the evidence placed before it, or where its findings are not supported by such evidence.

I am therefore of the view that while the appellate Court can engage in a review of the evidence, it should exercise caution:

(a) when analysing the evidence and findings of a Labour Tribunal so as to ensure that it does not substitute its views with that of the Labour Tribunal;

(b) in determining whether its analysis should culminate in reversing the findings of fact reached by a Labour Tribunal.

This being the present legal position, I shall now consider the evidence placed before the Labour Tribunal in respect of each charge, whether the Labour Tribunal has correctly understood the gravamen of each charge, the findings of the Labour Tribunal in respect of such charge and whether its findings are supported by the material before it. I shall thereafter consider the findings of the High Court, in order to determine if the High Court acted within its jurisdiction when it set aside the order of the Labour Tribunal.

Charge No. 1

The Appellant was appointed as the Director (Corporate Services) of the Regional Office of the Respondent situated in the North Western Province by letter dated 7th October, 2003. The said letter of appointment provided *inter alia* that, "*you are required to reside within [a] 15 km radius to the Office of the North Western Regional Office in view of your appointment to the above post.*"

Charge No. 1 which is centered on the above condition, reads as follows:

"ඔබ වයඹ ප්‍රාදේශිය කාර්යාලයේ අධ්‍යක්ෂ (ආයතනික සේවා) වශයෙන් පත් කරමින් ශ්‍රී ලංකා ආයෝජන මණ්ඩලයේ සභාපති/අධ්‍යක්ෂ ජනරාල් විසින් ඔබ වෙත නිකුත් කර ඇති අංක ඊසී/පී/ආර්/517 සහ 2003.10.07 වන දින දරණ පත්වීමේ ලිපියේ 04 වන ඡේදය අනුව ඔබ වයඹ ප්‍රාදේශිය කාර්යාලයේ සිට කිලෝ මීටර් 15

ක් ඇතුළත පදිංචි වී සිටිය යුතු වුවත්, **එසේ පදිංචි වී නොසිට**, පත්කිරීමේ බලධරයාගේ විධිමත් පූර්ව අවසරයක් ලබා නොගෙන සේවා ස්ථානයට කිලෝ මීටර් 35 ක් හෝ ඊට ආසන්න දුර ප්‍රමාණයක් පිහිටි කුලී නිවසක පදිංචි සිටීමෙන් පත්වීමේ ලිපියේ 04 වන ඡේදයේ සඳහන් කොන්දේසිය කඩ කිරීම" [emphasis added].

The essence of Charge No. 1 is that the Appellant did not take up residence at a place situated within 15 km from the North Western Regional Office, as required by the letter of appointment, and that the Appellant had thereby breached the condition stipulated in his letter of appointment.

In his response to the charge sheet, the Appellant admitted that he did not take up residence as stipulated by the letter of appointment, but pleaded not guilty to Charge No. 1. In his evidence before the Labour Tribunal, he stated that although this condition was imposed on all those appointed to Regional Offices, the said condition was not practical as it was difficult to find a house within the said distance for the rent allowance that was paid, and for that reason, the said requirement was not enforced by the Respondent.

The Appellant has stated that representations were made to remove this condition and that at a meeting held on 27th June 2005 with the Director General of the Respondent, the following decision was taken:

> "*North East Region raised the question over the compulsory rule of BOI Staff residing within 15 km radius.*
>
> *Director General stated that it is practically not happening. As such that condition to be treated as withdrawn. Director General further stated that the Government Regulation of 40 km maximum distance will apply to the Regional Offices too in addition to the Head Office.*"

The minutes of the above meeting were marked by the Appellant and is the document that forms the basis for the first question of law raised in this appeal.

The Respondent, while admitting that the above decision was taken, submitted that:

(a) Disciplinary proceedings had commenced by the time the said decision was taken;

(b) The said decision was prospective and that the breach of the said condition on the part of the Appellant remained.

Having considered the above, the Labour Tribunal held as follows:

(a) The Respondent, by changing the requirement in June 2005, has acknowledged that the said requirement imposed in the letter of appointment is not practical;

(b) The said decision is silent with regard to the date from which it is to apply, and therefore, it applies with retrospective effect;

(c) The Appellant is therefore not guilty of the matters referred to in Charge No. 1.

The High Court has pointed out that a decision, once taken, applies with prospective effect, and that there is no necessity to state that it applies with retrospective effect, unless that is the intention of the decision maker. The High Court has gone on to hold that in view of the admission by the Appellant that the place of residence was outside the 15 km radius, it is clear that the Appellant has breached the condition stipulated in the letter of appointment, and is therefore guilty of Charge No. 1. It is perhaps significant that even though the Labour Tribunal had ignored the admission by the Appellant and misconstrued the issue before it, in the written submissions filed before this Court, the Appellant has stated that, "*If at all the High Court could have held that when the Appellant did not reside within 15 km of his office as per his letter of appointment, disciplinary action could have been taken for violating a condition of his letter of appointment*." This is exactly what the Respondent has done in Charge No. 1.

The Appellant has not left the High Court with any other option but to arrive at a finding that the Appellant is guilty of Charge No. 1, by virtue of his admission that he has not adhered to the terms of the letter of appointment. I therefore agree with the conclusion reached by the High Court that the Appellant has breached the aforementioned condition in his letter of appointment.

What remains to be considered is whether the mitigatory circumstances pleaded by the Appellant can be accepted.

Even if I accept the position of the Appellant that the requirement imposed by the letter of appointment is not practical, the fact remains that the Appellant, as a Senior Officer with almost 20 years of service with the Respondent and who had at one time functioned as the Senior Manager of Internal Audit, ought to have made representations in that regard and sought permission to reside outside the 15 km requirement. The position of the Appellant that this was an issue that affected all those serving in the Regional Offices of the Respondent means that this was common knowledge among the employees of the Respondent and would therefore have been known to the Appellant at the time of the appointment. The Appellant could therefore have refused to accept the said appointment or else, made representations prior to accepting the same, or sought a waiver of that condition while informing the Respondent that not being resident within the said distance would not affect the discharge of his duties. Not having done any of these, I am of the view that the Appellant cannot now shield himself by stating that the said condition is not practical and must therefore face the consequences of his actions.

The next question to be considered is whether the aforementioned decision should apply with retrospective effect. If it was the intention of the Director General of the Respondent that the said condition should apply with retrospective effect, then, there should have been a specific reference to that effect, which is not the case. The fact that it is "*practically not happening*" or is not being adhered to, does not mean that its withdrawal is retrospective. In my view, there was no evidence before the Labour Tribunal that would have enabled the Labour Tribunal to arrive at the conclusion that the decision was retrospective, and hence, it is clear that the Labour Tribunal misdirected itself when it held so.

There is one other matter that I must refer to. In a memorandum dated 20th December 2005, the Acting Secretary General of the Respondent had recommended to the Director General that no further inquiry is needed in this regard against the Appellant in view of

the above decision of 27th June 2005. The Director General, having considered the preliminary inquiry report and the said recommendation, had decided that the inquiry must proceed and that the Respondent must act on the findings of the Inquiry Officer. This, together with the fact that the Appellant was interdicted only after the above decision was taken on 27th June 2005 is to my mind, a confirmation that the said decision was to apply with prospective effect, and that the said decision did not affect the culpability of the Appellant, a fact which the Labour Tribunal has not considered. Taking into consideration all of the above circumstances, I agree with the findings of the High Court that the said decision was to apply with prospective effect.

This brings me to the question of whether the High Court acted in terms of Section 31D(3) of the Act when it overruled the decision of the Labour Tribunal on Charge No. 1. To start with, the Labour Tribunal has completely lost sight of the gravamen of the charge, and has failed to consider the admission of the Appellant that he did not reside within the 15 km requirement, thereby misdirecting itself and misconstruing the issue before it. In considering the explanation of the Appellant, the Labour Tribunal has forced itself to state that the decision was retrospective, when not only was there was no evidence to support such a finding, but such a finding was contrary to the evidence that was before it. The findings of the Labour Tribunal are therefore perverse. In these circumstances, I am satisfied that the High Court has not exceeded its jurisdiction when it set aside the findings of the Labour Tribunal on Charge No. 1.

Taking into consideration all the circumstances relating to Charge No. 1, I would answer the first question of law – i.e., "Can a learned High Court Judge in an appeal from the judgment/order of a Labour Tribunal made on a just and equitable basis taking all the circumstances relevant to the issue, reverse and set aside the same on a technical issue strictly interpreting one document without considering the circumstances on which the said document came into existence?" – as follows:

"The High Court can set aside a judgment of a Labour Tribunal on a question of law, as provided by Section 31D(3) of the Act and as interpreted by this Court on previous occasions. In this appeal, the High Court has proceeded on the basis of the admission to

the charge, and has rejected the explanation given in mitigation, for the reasons which I have already adverted to. The judgment of the High Court is based on the totality of the evidence led in respect of Charge No. 1. Its findings are not based solely on the minutes of the meeting held on 27th June 2005, nor can it be said that the High Court has set aside the findings of the Labour Tribunal on a technicality. I am therefore of the view that the decision of the High Court is correct and is in terms of the law."

Charge No. 2

I shall now consider Charge No. 2, which flows from Charge No. 1.

The Respondent states that in order to facilitate the aforementioned requirement that the Appellant should take up residence within a distance of 15 km, the Appellant was entitled to the payment of a rent allowance of 30% of his basic salary. Accordingly, by an internal memorandum dated 6th April 2004, the Appellant informed the Executive Director of the North Western REDC that he has taken on rent a house at Nelundeniya at a monthly rental of Rs. 8500, and sought reimbursement of a sum of Rs. 51,000 being the rental advance of six months that the Appellant claimed he had paid the landlord, who incidentally was an employee of the Respondent.

Charge No. 2 reads as follows:

"ඔබ ඉහත චෝදනා අංක 01 හි සඳහන් විෂමාචාර ක්‍රියාව සිදුකර, ඔබ පදිංචි ස්ථානය හා වයඹ ප්‍රාදේශිය කායර්ාලය අතර, ආසන්න දුර ප්‍රමාණය සඳහන් නොකොට ගෙවල් කුලි වශයෙන් 2004.04.02 සිට 2005.03.21 දින දක්වා රු. 102,000/- (එක් ලක්ෂ දෙදහස) ක මුදලක් ශ්‍රී ලංකා ආයෝජන මණ්ඩලයෙන් ලබා ගැනීම."

The basis of Charge No. 2 is that even though the Appellant had claimed the rent allowance, he had not disclosed the distance between the place of residence and the Office at the time he made his claim by the aforementioned memorandum. I must stress at this stage that the charge was not that the Appellant had claimed the said allowance fraudulently or that the said claim was not in terms of the Circular issued by the

Respondent relating to the payment of a rent allowance, a fact which the Labour Tribunal has lost sight of.

The aforementioned internal memorandum submitted by the Appellant, which was available to the Labour Tribunal, was accompanied by a printed form consisting of twelve questions. While the Appellant had declared his permanent residence and the distance therefrom to Kurunegala, he had refrained from specifying the distance from the rented house to the REDC office at Kurunegala. The Appellant has admitted in his evidence before the Labour Tribunal that he had not disclosed this information in his application. In the written submissions filed on his behalf, the Appellant, while conceding that he kept the space blank, has taken up the position that he did convey this information over the telephone to the Director (Administration). While this is reflected in the aforementioned memorandum of the Secretary General of the Respondent, no evidence was elicited before the Labour Tribunal in this regard. Even though the Appellant had not duly completed his formal request for reimbursement, the claim had been approved by the Director (Administration) and payment made, with an endorsement that "*the application and connected papers are in order.*"

The Labour Tribunal has conceded that the failure to disclose the distance is a lapse on the part of the Appellant. The Labour Tribunal has however concluded that the Respondent could not have had any issue with it, for two reasons. The first is that the claim has been approved by the Director (Administration). The second is that if the granting of approval was irregular, the Respondent should have issued a warning letter to the said Director (Administration) who approved the claim.

Having observed that the above findings of the Labour Tribunal are biased, the High Court has gone on to hold that, by not duly completing the form, the Appellant has suppressed the fact that the place taken on rent is situated outside the 15 km distance, a matter which the Labour Tribunal has chosen to ignore.

In my view, the non-declaration of the said distance cannot be passed off as a mere omission on the part of the Appellant. The failure to disclose the distance is significant, when one considers the requirement in the letter of appointment to live within a distance

of 15 km, and the position of the Respondent that the entitlement to the rent allowance is linked to the said requirement. It is clear that the Appellant refrained from specifying the distance in the claim form he submitted, knowing fully well that if he does so, he would not be paid the rent allowance. In these circumstances, I am in agreement with the finding of the High Court that the Labour Tribunal has misinterpreted the documents and has misunderstood the nature of the allegation contained in Charge No. 2.

The next issue that I must consider is whether the High Court acted in terms of Section 31D(3) of the Act when it overruled the decision of the Labour Tribunal on Charge No. 2. The moment the Appellant admitted that he had not declared the distance, Charge No. 2 was proved. The Labour Tribunal, while acknowledging that this is a lapse on the part of the Appellant, has taken into consideration matters which were irrelevant to the charge in deciding that the Appellant is not guilty of the charge. The Labour Tribunal has misdirected itself and misconstrued the issue before it, thereby compelling the High Court to intervene and set aside its findings. Taking into consideration all of the above circumstances, I am in agreement with the findings of the High Court and hold that the High Court has not exceeded its jurisdiction when it set aside the findings of the Labour Tribunal on Charge No. 2.

Charge No. 3

Charge No. 3 preferred against the Appellant reads as follows:

"ඔබගේ තනතුරට අදාළව මෙම මණ්ඩලය මගින් ඔබට සපයා දී තිබුණ අංක 325-0010 දරණ නිලරථය ඔබ කායර්ාලයට පැමිණීමට සහ නැවත කායර්ාලයෙන් පිටව යාමට බොහෝ දිනක පාවිච්චි නොකර ඒ සඳහා මණ්ඩලයෙන් ගෙවනු ලබන ඉන්ධන දිමනා හා රියදුරු දිමනාව ලබා ගැනිම."

While the Labour Tribunal has found that the Appellant is not guilty of the said charge, the High Court has not considered the said charge in its judgment, prompting the learned President's Counsel for the Appellant to submit that the High Court has failed to give reasons – *vide* the second question of law raised in this appeal. In this background, the findings of the Labour Tribunal on Charge No. 3 shall stand.

Charge Nos. 4, 5, 6 and 7

The next four charges relate to the tender for the provision of transport services to employees of the North Western Provincial Office of the Respondent and the depositing of six cheques issued to the provider of the said transport services in the personal bank account of the Appellant.

According to the evidence of Sarathchandra Munasinghe, Senior Deputy Director of the Respondent who was attached to the North Western Provincial Office, a tender board comprising of the Appellant, himself and another had been appointed to select suitable persons to provide transport services to those employed at the said Office of the Respondent. This included a passenger bus service from Colombo to Kurunegala. Accordingly, tenders had been called in June 2004. Bids were received from three persons, including from a lady by the name of Ariyawathie, who had offered to provide bus bearing registration no. 61 – 2725 or 60 – 9443, and from her husband Jayaratne, who had offered another vehicle.

All bids had been referred to a Technical Evaluation Committee [*TEC*]. The TEC had invited bidders to produce their vehicles for inspection, but only Ariyawathie had complied by producing the bus bearing registration no. 61 – 2725. Having examined the said bus, the TEC had rejected it as there were certain shortcomings with it. The report of the TEC had been considered by the Tender Board who had decided to request Ariyawathie to rectify the shortcomings and supply the required service. Ariyawathie had later substituted the said bus with another bus bearing registration no. 62 – 8260, for which the recommendations of the TEC had not been obtained.

Monthly payments for the said services had been made by six cheques drawn in favour of Ariyawathie, in sums ranging from Rs. 70684 to Rs. 88820, for the period of October 2004 to March 2005. All except one cheque contained the signature of the Appellant. While two of the cheques were payable to Ariyawathie or its bearer, the other four cheques had been crossed as *'account payee only'* which meant that the cheques had to be cleared through an account maintained at a bank. Ariyawathie's subsequent request to cancel the crossing had been acceded to by the Respondent, with the Appellant being a signatory to

the said amendment. These six cheques had thereafter been deposited in account no. 191986, which was maintained in the name of the Appellant at the Borella Branch of the Bank of Ceylon. The Respondent had led the evidence of an Officer of the said branch who had confirmed that all six cheques were deposited in the said account of the Appellant, a fact which the Appellant too had admitted.

The four charges that relate to the above transaction [i.e., Charge Nos. 4 – 7] are re-produced below:

"4. කොළඹ සිට කුරුණෑගල හා කුරුණෑගල සිට කොලඹ අතර වයඹ ප්‍රදේශිය කාර්‍යාලයේ කාර්ය මණ්ඩලය ප්‍රවාහනය කිරීම සඳහා වාහන සැපයීම පිණිස වූ ටෙන්ඩර් පත්‍ර කැඳවීමේ දැන්වීම අනුව ටෙන්ඩර් පත්‍රයක් ඉදිරිපත් නොකල අංක 62-8260 දරන බස්රථය කාර්යාල මණ්ඩල ප්‍රවාහනය සඳහා යෙදා ගැනීම මගින් ටෙන්ඩර් කොන්දේසි උල්ලංඝනය නොවන බවට ඔබ විසින් විධායක අධ්‍යක්ෂ (වයඹ ප්‍රදේශිය කායර්‍යාලය) වෙත වැරදි උපදෙස් ලබාදීම.

5. කොළඹ සිට කුරුණෑගල හා කුරුණෑගල සිට කොලඹ අතර වයඹ ප්‍රාදේශිය කා කායර්‍යාලයේ කාර්ය මණ්ඩලය ප්‍රවාහනය කිරීම සඳහා වූ ටෙන්ඩරයේ සැපයුම්කාරිය වූ ආර්.ඒ. ආරියවති මහත්මිය තමාට "ආදායකයාගේ ගිණුමට පමණයි" යනුවෙන් රේඛණය කර නිකුත් කරන ලද පහත දැක්වෙන චෙක්පත් වල සියලු රේඛණයන් අවලංගු කර ලංකා බැංකුවේ ඔබට අයත් පුද්ගලික ගිණුමක තැන්පත් කිරීම.

චෙක්පත් අංකය	නිකුත් කල දිනය	මුදල
723546	2004.10.14	රු. 81,937.00
732861	2004.11.05	රු. 71,250.00
732934	2004.12.14	රු. 87,081.75
806842	2005.01.04	රු. 88,820.25

6. කොළඹ සිට කුරුණෑගල හා කුරුණෑගල සිට කොලඹ අතර වයඹ ප්‍රාදේශිය කායර්‍යාලයේ කාර්ය මණ්ඩලය ප්‍රවාහනය කිරීම සඳහා ටෙන්ඩරයේ සැපයුම්කාරිය වූ ආර්.ඒ. ආරියවති මහත්මිය තමාට නිකුත් කරන ලද පහත දැක්වෙන චෙක්පත බොරුල්ලේ ලංකා බැංකුවේ ඔබගේ අංක 191986 දරණ පුද්ගලික ගිණුමේ තැන්පත් කිරීම.

චෙක්පත් අංකය	නිකුත් කල දිනය	මුදල
806909	2005.02.03	රු. 72,200.00
816274	2005.03.03	රු. 70,684.75

7. ඉහත අංක 05 හා 06 චෝදනාවල දක්වා ඇති පරිදි කටයුතු කිරීම තුලින් ඔබ ඔබගේ පුද්ගලික කටයුතු හා රාජකාරි කටයුතු අතර ගැටීම් ඇතිවන ආකාරයට ක්‍රියා කිරීම."

Charge No. 4 was in relation to the tender process itself, and alleged that the Appellant has provided wrong advice to the Executive Director with regard to obtaining the services of a bus in respect of which there was never a bid. The Labour Tribunal has correctly pointed out that the Executive Director was never called as a witness, and that the said charge has not been proved. I have examined the evidence led before the Labour Tribunal and concur with its findings. The High Court has not interfered with the findings of the Labour Tribunal that the Appellant is not guilty of this charge. In the absence of any finding in this regard by the High Court, I agree with the finding of the Labour Tribunal; it would suffice to state that the decision to permit Ariyawathie to substitute the bus was in violation of tender procedure except that such a decision had been taken due to the exigency that had arisen, i.e., the non-availability of a suitable bus to provide the said transport service.

Charge Nos. 5 and 6 related to the depositing of the cheques issued to Ariyawathie in the personal account of the Appellant. As acknowledged in the written submissions of the Appellant, the thrust of Charge Nos. 5 and 6 is Charge No. 7. Charge No. 8 alleged that the Appellant has breached the trust placed in him by the Respondent, by committing the irregularities set out in Charge Nos. 1 – 7, and is consequential to the said charges.

It must be noted that the Respondent did not allege in the above charges that the Appellant had benefitted from the said transactions, although in cross-examination, it was suggested that the Appellant had acted fraudulently. In his explanation to the charge sheet, which was also the position taken up before the Labour Tribunal, the Appellant had admitted that the said cheques were in fact deposited in his account, thereby conceding to the matters alleged in Charge Nos. 5 and 6. The Appellant's defence to Charge No. 7 [and also 8] was that as Ariyawathie and her family are from the same village as he is and are part of the congregation ["දායක සභා"] of the village temple, he had agreed to the said cheques being cleared through his account as Ariyawathie had informed him that she does not have a bank account. The function of the Labour Tribunal therefore was to consider whether the circumstances pleaded in mitigation were acceptable.

The learned Counsel for the Respondent has raised four issues with this explanation, which he submitted the Labour Tribunal has failed to consider. The first is, the Appellant should not have served on the Tender Board if Ariyawathie was known to him, or else, he should have declared that fact, in order to avoid a conflict of interest. It is admitted that the Appellant did neither. The second is, two of the cheques had not been crossed as *'account payee only'* and were payable to Ariyawathie or the bearer. Hence, these two cheques could have been encashed across the counter as opposed to being cleared through an account, and there was no necessity to deposit these two cheques in the account of the Appellant. The third is, once the endorsement of *'account payee only'* is cancelled, the necessity to clear a cheque through an account no longer arises. Thus, there was no need for Ariyawathie to seek the assistance of the Appellant to clear the cheques and nor was there a necessity for the Appellant to accede to such request, especially since, having been a signatory to the cancellation of the said endorsement, the Appellant would have known that the cheques could be encashed across the counter. The fourth is that according to the evidence of an Officer from Sampath Bank, Ariyawathie had opened account no. 1005 5048 5405 at the Kiribathgoda Branch of the said Bank on 12th August 2004. Thus, by the time the first cheque was issued to her in October 2004, Ariyawathie already had a bank account, thus demonstrating that the version of the Appellant that he had only helped her as she did not have a bank account is not true. It is only after the preliminary inquiry into the above transaction commenced in March 2005 that a cheque issued in favour of Ariyawathie was deposited in her account.

The learned Counsel for the Respondent also drew the attention of this Court to the position of the Appellant that he had handed over the money to Ariyawathie after encashing the said cheques, and that he has not unduly benefitted by assisting her. I have examined the bank statements of the Appellant produced before the Labour Tribunal and observe that upon realisation of each cheque, the full value thereof has not been withdrawn from his account. The argument of the learned Counsel for the Respondent was that if the Appellant was merely assisting Ariyawathie, then, as soon as the cheques realised, cash equivalent to the value of each cheque should have been withdrawn by the Appellant. The explanation of the Appellant, on being cross-examined on this issue, was

that his wife operated two vans to transport school children, and that he had paid Ariyawathie from the monies that were available to him.

It is in the above factual background that I shall consider the order of the Labour Tribunal.

The Labour Tribunal has not considered any of the above four matters that were urged before this Court by the learned Counsel for the Respondent. Instead, the Labour Tribunal, while noting that the Appellant has admitted that the said cheques were deposited in his account, has accepted the evidence of the Appellant that there was no complaint by Ariyawathie that he did not give her the money or that he solicited any money from her for assisting her. Ariyawathie has in fact made a statement to the Respondent during the preliminary investigation that she received the full sum of money from the Appellant but she has not given evidence at the domestic inquiry. In any event, that was not the charge against the Appellant, a fact which the Labour Tribunal has chosen to ignore.

The Labour Tribunal has also held that the Respondent failed to call Ariyawathie as a witness to rebut the evidence of the Appellant. The High Court has correctly concluded that there was no necessity on the part of the Respondent to call Ariyawathie as a witness, and that the burden was on the Appellant to show that his actions did not give rise to a conflict of interest, and that he acted in good faith when he assisted Ariyawathie. Thus, it was the Appellant who should have called Ariyawathie to give evidence.

This brings me to the question whether the High Court erred when it set aside the findings of the Labour Tribunal in respect of Charge Nos. 5 – 7.

The High Court has correctly observed that the allegations in Charge Nos. 5 and 6 have not only been admitted by the Appellant but has been proved by the Respondent by leading the evidence of officials of the Bank of Ceylon and Sampath Bank. The High Court has also held that the Labour Tribunal has misinterpreted the crux of Charge Nos. 5 and 6, a conclusion with which I agree. It is indeed a matter of regret that the Labour Tribunal has wholly ignored the essence of the allegation in Charge Nos. 5, 6 and 7, in that the

allegation was not that the Appellant benefitted financially but that he permitted cheques signed by him and issued to a service provider of his employer to be deposited in his private bank account, thereby giving rise to an obvious conflict of interest.

In the above circumstances, I am satisfied that the Labour Tribunal has failed to consider the totality of the evidence led before it, and that the findings of the Labour Tribunal are not supported by the evidence and material placed before it. The Labour Tribunal could not have exonerated the Appellant on the material that was available to it and its decision is irrational and perverse. The decision of the High Court on these charges is therefore in line with Section 31D(3) of the Act.

Charge Nos. 8 and 9

Charge Nos. 8 and 9 relate to the Respondent losing confidence in the Appellant and the Appellant bringing discredit to the Respondent, respectively. The said charges read as follows:

"8. ඉහත අංක 01 හා 08 දක්වා වූ චෝදනාවන්හි අඩංගු වැරදි එකක් හෝ ඉන් කිහිපයක් හෝ සියල්ලම හෝ සිදු කිරීමෙන් අධ්‍යක්ෂ වරයෙකු ලෙස මණ්ඩලය ඔබ කෙරෙහි තබන ලද විශ්වාසය කඩ කිරීම.

9. ඉහත අංක 01 සිට 08 දක්වා වූ චෝදනාවන්හි අඩංගු වැරදි එකක් හෝ ඉන් කිහිපයක් හෝ සියල්ලම හෝ සිදුකිරීමෙන් පොදුවේ ශ්‍රී ලංකා ආයෝජන මණ්ඩලයේ අධ්‍යක්ෂවරයෙක් වශයෙන් ඔබ මෙම මණ්ඩලයේ දරණ ලද තනතුර අපකීර්තියට පත් කිරීම."

Having exonerated the Appellant of the first seven charges, there was no necessity for the Labour Tribunal to consider these two charges. These two charges however come to the forefront in view of the findings of the High Court in respect of Charge Nos. 1, 2 and 5 to 7, with the High Court holding that these two charges have been established in view of its findings on Charge Nos. 5 and 6.

In **Peiris v Celltel Lanka Limited** [SC Appeal No. 30/2009; SC Minutes of 11th March 2011], Tilakawardane, J, has quoted with approval the following excerpt from **Democratic Workers' Congress v De Mel and Wanigasekera** [CGG 12432 of 19th May, 1961 at para 24], at pages 8 and 9:

"*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 any incident which adversely affects that confidence, the very foundation on which that contractual relationship is built should necessarily collapse … Once this link in the chain of the contractual relationship … snaps, it would be 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*."

Peiris v Celltel Lanka Limited [supra] is a case where the appellant was an Assistant Manager (Credit Collection), a position which this Court described as being "*of responsibility which demands integrity, competency, reliability and independence.*"

Given the nature of the appellant's services which was to independently handle the respondent's work in the outstation districts, it was held as follows at page 8:

"*There was without a doubt an expectation by the Respondent that the Appellant was to act with the utmost integrity and honesty, arguably even more so than that required of an employee without such autonomy.*

Once the Appellant fell short of this expectation it is perfectly reasonable, by any reasonable standard, that the Respondent would cease to continue to repose any confidence in the Appellant. Loss of confidence arises when the employer suspects the honesty and loyalty of the employee. It is often a subjective feeling or individual reaction to an objective set of facts and motivation. It should not be a disguise to cover up the employer's inability to establish charges in a disciplinary inquiry but must be actually based on a bona fide suspicion against the employee making it impossible or risky to the organization to continue to keep him in service. The employer-employee relationship is based on trust and confidence both in the integrity of the employee as well as his ability or capacity. Loss of confidence however, is not fully subjective and must be based on established grounds of misconduct which the law regards as sufficient."

At page 9, Tilakawardane, J summarised it in the following manner:

> *"In cases of employment which demand a high level of responsibility and autonomy, a lapse in integrity is the precise sort of moral turpitude that can result in a particularly devastating structural and managerial breakdown simply because of the reliance and expectation placed in the hands of such positions, and as such is the sort of transgressive behaviour for which termination of services can be justified."*

The Appellant was a senior employee of the Respondent, holding the post of Director and entrusted with a position of responsibility and trust. It is obvious that he was required to act with the highest level of integrity and in a manner that the Respondent would not lose the confidence that it had reposed in him. The Appellant could have acted with more responsibility with regard to the requirement in his letter of appointment that he resides within a distance of 15 km from the place of work. While the failure to do so would lead to an erosion of the confidence that the Respondent had in the Appellant, in my view, the said two charges do not, on its own, justify termination of the services of the Appellant.

The position, however, is different with regard to Charge Nos. 5 – 7. An employee cannot have any financial dealings with a service provider whose services were obtained by a tender board of which he was a member. The factual circumstances, to which I have referred earlier, can only lead to a complete loss of confidence that the Respondent had in the Appellant. Viewed objectively, these charges were of a serious nature and once established, would justify termination of the services of the Appellant. The High Court was therefore correct when it found the Appellant guilty of Charge Nos. 8 and 9, and held that the termination of the services of the Appellant was justified.

Taking into consideration all of the above circumstances. I would answer the second question of law on which leave to appeal was granted – i.e., "Is the judgment of the High Court in an appeal against the judgment of a Labour Tribunal valid without giving reasons for the same?", as follows:

"A High Court must give reasons for its judgment. In its judgment dated 25th July 2017, the High Court has given the reasons for setting aside the findings of the Labour Tribunal. I do not see any basis to interfere with the said judgment."

The appeal of the Appellant is accordingly dismissed, without costs.

JUDGE OF THE SUPREME COURT

E.A.G.R Amarasekara, J

I agree.

JUDGE OF THE SUPREME COURT

A.L. Shiran Gooneratne, J

I agree.

JUDGE OF THE SUPREME COURT