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

S.C. Appeal No. 01/2005
SC/Spl/LA/197/2004
HCA/LT 598/2002
LT/01/Addl/12/97

Victor Perera
Of 45/2, Jubilee Road,
Walana, Panadura.

APPLICANT

Ranliya Garment Industries Ltd.,
Of No. 116, Poorvarama Road,
Colombo 6.

RESPONDENT

Ranliya Garment Industries Ltd.,
Of No. 116, Poorvarama Road,
Colombo 6.

RESPONDENT-APPELLANT

Vs.

Victor Perera
Of 45/2, Jubilee Road,
Walana, Panadura.

APPLICANT-RESPONDENT

AND NOW

Ranliya Garment Industries Ltd.,
Of No. 116, Poorvarama Road,
Colombo 6.

RESPONDENT-APPELLANT-PETITIONER

Vs.

Victor Perera
Of 45/2, Jubilee Road,
Walana, Panadura.

APPLICANT-RESPONDENT-RESPONDENT

BEFORE: B.P. Aluwihare P.C., J.
Anil Gooneratne J. &
Prasanna S. Jayawardena P.C., J

COUNSEL: Athula Perera with Chathurani de Silva
For the Respondent-Appellant-Appellant

Applicant-Respondent-Respondent
is absent and unrepresented

WRITTEN SUBMISSIONS OF THE RESPONDENT-APPELLANT-APPELLANT FILED ON:
09.09.2005

WRITTEN SUBMISSIONS OF THE APPLICANT-RESPONDENT-RESPONDENT FILED ON:
04.05.2005

ARGUED ON: 28.10.2016

DECIDED ON: 08.12.2016

GOONERATNE J.

This is an appeal from the Judgment of the High Court dated 28.04.2004 wherein the learned High Court Judge held that the Order of the Labour Tribunal delivered on 19.09.2002, in favour of the Applicant-Respondent-Respondent employee, that his services were unjustly terminated, is affirmed. The High Court dismissed the Employer's appeal from the said Order of the Labour Tribunal with costs fixed at Rs. 10,000/-. This court on 10.01.2005 granted Special Leave to Appeal on questions of law raised in paragraph 8 of the petition dated 04.08.2004. The said questions reads thus:

8. (a) The said order is wrong and contrary to law,

(b) The learned High Court Judge erred in law when she failed to consider the fact that the Respondent was involved in an action which was neither a trade Union action or a strike and/or Labour dispute,

(c) The learned High Court Judge erred in law when she followed the decision in the Judgment of Ceylon Mercantile Union Vs. Cold Stores Ltd & Others 1995 1 SLR 261 when in fact the learned High Court Judge should have distinguished the above case and the facts in the present case,

(d) The learned High Court Judge failed to take into consideration that a probationer employee can canvass his termination only if the probationer employee establishes that the termination of his services were mala fide,

(e) The learned High Court Judge failed to take into consideration that the respondent had failed to establish malice on the part of the petitioner in terminating his services,

(f) The learned High Court Judge failed to take into consideration the law laid down in the case of Brown & Company Ltd Vs. MDK Samarasekara 1996 1 SLR 334 regarding an employer's right to terminate a probationer and the duty cast on the Labour Tribunal when inquiring into such application.

I would briefly set down the facts of this case that led to the termination of the employee concerned. Employee was employed as a driver at Ranliya Garment Industries Limited (Respondent-Appellant-Petitioner). He was a Probationer in the above organisation at the time his services were terminated. Employee was appointed as a driver of the Respondent-Appellant-Petitioner on 01.06.1996 and services terminated on October 1997. Material placed before this court suggest that there was a death reported of another employee of the Respondent-Appellant-Petitioner Company. The death took place as a result of an incident with the security section of the above company. The security unit

was a hired service. The position of the employer is that this employee had created unrest among the other employees, by directly making accusations against the employer for the death of another employee. The position of the employer was that, employee was involved in instigating unrest within the company premises by climbing on top of a lorry and addressing and instigating the other employees to strike. The evidence of Manager, Security and Transport, before the Labour Tribunal was, that the employer had to call the police to curb the unrest situation within the premises and even the police could not control, and a Special Unit of police had to be called to control the situation. Employer's position was that the employee was not involved in any strike action but was the leader of an illegal and unlawful assembly which had to be controlled by the Police Special Unit.

At the recent hearing before the Supreme Court on 28.10.2016 the Applicant-Respondent-Respondent was absent and unrepresented. In fact he was represented on the day Special Leave to Appeal was granted on 10.01.2005 and on 29.07.2005 (the original date of hearing). Thereafter the Applicant-Respondent-Respondent was absent and unrepresented and it was so even on the date of re-hearing though notices were duly despatched.

The learned High Court Judge accepts that the employee was on probation and state further that an employee of that status has the right to

participate in a demonstration with other employees, which is a Trade Union action. The Judgment of the High Court does not consider whether the acts of the employee concerned was a legitimate Trade Union action. To go on strike is a Trade Union action, but to cause disruption in the workplace and instigate others to commit unlawful acts, may be different? High Court Judge's Order does not indicate any 'mala fides' on the part of the employer, regarding termination of services of the employee.

My attention has been drawn to certain items of evidence led before the Labour Tribunal. At Pgs. 42/43 of the brief, the Employee Applicant's evidence in chief, he testifies that he was dismissed as he spoke of the incident of murder. He says he was in possession of evidence and that the Security Division of the Company killed his co-worker. Evidence suggest of police inaction due to bribery. පොලිසියෙන් කටයුතු කරේ නෑ පොලිසියට මුදල් දීලා. ඒ වෙලාවේ මම කථා කලා. At Pg. 45 the Applicant was questioned by the Tribunal as regards the cause of death. His reply is as follows:

ඒ මැරුණු පුද්ගලයාට කිව් තිබුණා. මේ අය ඒක විහිළුවට කළා. මම නැති දවසක ආරක්ෂක අංශයේ කට්ටිය බීලා වැඩ කරන අය සහ වැඩ නොකරන අය කිව් කවා තිබුණා. බීමත් පුද්ගලයෙක් උගුරු දණ්ඩෙන් අල්ලාගෙන ඉන්න විට කිව් කැවිම වැඩි වෙලා උගුර දණ්ඩ කැඩුණා. අපි මේ ගැන කතා කලා.

Employee Applicant in evidence accept the fact the Security Unit of the Company was hired by the company, and suggest that the employer was taking the side of the Security Unit.

One Ranjith Silva, Manager, Security and Transport, gave evidence for the employer. It was his evidence that the deceased employee 'Sugath' and the Security Division had a clash and it resulted in the death of employee 'Sugath'. The company had no hand in it as security of the company was hired from another organization by the company. He further testifies that when he arrived in the company at 7.30 a.m. the Applicant Employee was instigating other employees to bring about unrest within the company and had been spreading a rumour that one Mrs. Wanigasekera, Personal Manager had a hand in it and on her directions the murder was committed by the security officers.

The witness along with other Director of the company explained to the workers that no such act had been done by the Personal Manager and many of them accepted his explanation except the Employee Applicant who continued with his campaign and even addressed the gathering from top of a parked lorry. He further testified that when Mrs. Wanigasekera arrived in the company at 8.00 a.m she had been put into a dangerous situation, by the workers surrounding her and keeping her inside a room without allowing her to move. Police had to

be called but the police could not control the situation and a Special Task Force Unit of the Police was brought to control the situation.

The facts placed before this court no doubt indicate that there had been unrest within the premises of the Employer's Company due to an unfortunate incident which resulted in death of an employee. It is an offence against the society and a matter to be investigated with a view of a criminal prosecution which is in the hands of law enforcement agency and not private individuals or any other involved in private company business, whether it was police inaction or allegations of implicating others for murder or obtaining direct or circumstantial evidence. It is a matter to be ultimately decided by a Competent Court of Criminal Jurisdiction. In the process labour unrest or misconduct of employees or insubordination had taken place. An attempt is made by the Employee Applicant to project victimisation by the employer. If properly established it would be a ground for the Labour Tribunal to interfere with an Order of dismissal. I am unable to support such a decision in the absence of sound proof, against an employer. Mere assertions or accusations against an employer would not suffice as regards a serious offence of murder.

Evidence placed before the Tribunal suggest that an uncontrollable situation arose where the employer was subject to abuses and false accusation of murder by the Applicant Employee which fact need to be proved before a

court of law, by the prosecution. As such mere fact of incrimination is not acceptable in the absence of cogent reasons. This is a case of misconduct, disobedience and insubordination by the Employee Applicant. A threat even if it cannot be carried out, can amount to insolence. A threat to assault a superior officer is gross insubordination warranting dismissal. As a general rule refusal to obey reasonable orders justifies dismissal – The Electoral Equipment and Construction Co. Vs. Cooray (1962) 63 NLR 164; Subramaniam Chetty Vs. Periya C. Chetty (1921) 8 CWR 240. As far as the case in hand is concerned there is evidence that the employee refused to obey orders or refused to accept explanations of the employer whereas other workers obeyed or accepted the explanation of witness Ranjith Silva, Manager Security. It is nothing but grave disobedience which amounts to a breakdown in continuation of good relationship of employer and employee. In these circumstances, it warrants a dismissal.

Abuse of a Superior would justify termination, even if the employee has legitimate grounds of protest (discussed by S.R. De. Silva in his Text Legal Frame Work of Industrial Relations Pg. 546 & 547 on Disobedience and Abuse). Death of a co-worker in the way evidence was recorded was not a wilful act of the employer. Incident occurred as an act of the security section of the company

which was hired by the company for purposes of security. Employee Applicant seems to have taken mere advantage of the situation to project a false image of the employer. He no doubt played a major role to fault the employer and as well as disrupt work in the company. He was also responsible in setting up other workers to harass or harm the Personal Manager Mrs. Wanigasekera. Evidence reveal she was under a severe threat by the workers.

I have considered the case law cited by the Respondent-Appellant-Appellant. I note and observe the following decided cases which are relevant to the case in hand. *Bank of Bikaner Ltd Vs. Indrajith Mehta 1954(1) Labour Law Journal 189 at 191*.

> It was held that where an employee threatens or intimidates with violence a Superior grievance connect with his work, whether it is during office hours or out of office hours or whether it is in the Bank Premises or outside of it, it is misconduct".

The employer also takes up the position that in terms of the letter of appointment the employee was on probation and the company has the right to terminate the services of the applicant without any notice of payment of compensation. In *Brown & Co. Ltd. Vs. Samarasekera*. 1996(1) SLR 334

The principles relating to the service of a probationer are –

1. (i) unless the letter of appointment otherwise provides, a probationer is not entitled to automatic confirmation on completion of the period of probation. If then he is allowed to continue his service, he continues as a probationer.
   (ii) Even in the absence of any additional terms and conditions, a simple probation clause confers on the employer the right to extend the probation.

   (iii) The employer is not bound to show good cause for terminating a probationer's service. The Labour Tribunal may examine the grounds of the decision only for the purpose of finding out whether the termination was mala fide or amounted to victimisation or an unfair labour practice.

   (iv) The question whether the probationer's services were satisfactory is a matter for the employer. If cannot be objectively tested. If the employer decided that the probationer's services were not satisfactory, it would be inequitable and unfair, in the absence of mala fides, to foist the view of the tribunal on the management.

   (v) A suggestion of mala fides is not sufficient. The Tribunal must make a finding that the termination of a probationer's service was actuated by mala fides or ulterior motive.

2. At the time of the impugned termination of services, the Respondent was a probationer. His services were terminated after giving him two extensions of his period of probation. The fact that such an opportunity was given would negative the existence of mala fides. In the circumstances the impugned termination of services was justified and the Respondent is not entitled to compensation.

The above decided case lays down the guidelines to decide whether a probationer could be dismissed from service. If mala fides or ulterior motives could be shown on the part of the employer or that the employee was

victimised, then termination in those circumstances would be unjustifiable, and the employee would be entitled to relief. In the case in hand material available suggests that the issue which led to all the problems in the company was homicide for which the employer company was not responsible. Learned High Court Judge was also misled by her misapplication of the Judgment in CMU Vs. Ceylon Cold Stores Ltd, and Others (1995) (1) SLR 261. It is a case which discuss the aspect of a right to strike, by a probationer. It has no application to the case in hand, in the absence of mala fides, being proved.

The questions of law are answered as follows in favour of the employer as in (a) to (f) in the affirmative. Yes.

In the case in hand the Applicant Employee has not placed any acceptable material to establish that termination of employment was done mala fide or for ulterior motives. Employee's employment was terminated as he was responsible for breach of peace in the Petitioner Company. Employee was responsible for a boisterous/unlawful assembly to create an unrest situation against the management of the Employer Company and certainly his acts are not strike action, acceptable to law. It is nothing but a serious breach of

discipline which was a threat to the lives of the members of the company. The Labour Tribunal as well as the High Court has erred both in fact and in law. I set aside the Judgment of the High Court and the Order of the Labour Tribunal. Appeal allowed without costs.

JUDGE OF THE SUPREME COURT

B.P. Aluwihare P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Prasanna S. Jayawardena P.C., J.

I agree.

JUDGE OF THE SUPREME COURT