

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

In the matter of an Appeal against the Judgment of the High Court of the Western Province Holden at Colombo Case No. HCA (LT) 99/2018, under and in terms of Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka, read together with Section 31DD of the Industrial Disputes (Amendment) Act, No. 32 of 1990 as amended.

S.A.D.J. Chandrakumara,
No. 22, Suhada Mawatha,
Nagoda,
Kalutara.

Applicant

**SC Appeal No: 110/2021
SC/SPL/LA/196/2020
HCA (LT) 99/2018
LT Case No: LT 2 Add./3668/2013**

Vs.

Vocational Training Authority of Sri Lanka,
No. 354/2, 4th Floor,
Nipunatha Piyasa, Elvitigala Mawatha,
Narahenpita,
Colombo 05.

Respondent

AND BETWEEN

Vocational Training Authority of Sri Lanka,
No. 354/2, 4th Floor,
Nipunatha Piyasa, Elvitigala Mawatha,
Narahenpita,
Colombo 05.

Respondent-Appellant

Vs.

S.A.D.J. Chandrakumara,
No. 22, Suhada Mawatha,
Nagoda,
Kalutara.

Applicant-Respondent

AND NOW BETWEEN

Vocational Training Authority of Sri Lanka,
No. 354/2, 4th Floor,
Nipunatha Piyasa, Elvitigala Mawatha,
Narahenpita,
Colombo 05.

Respondent-Appellant-Petitioner

Vs.

S.A.D.J. Chandrakumara,
No. 22, Suhada Mawatha,
Nagoda,
Kalutara.

Applicant-Respondent-
Respondent

Before: **Justice P. Padman Surasena**
Justice E.A.G.R. Amarasekara
Justice A.L. Shiran Gooneratne

Counsel: Kushan D' Alwis, PC with Ruwan Dias, Ayendra Wickremasekera and
Sashendra Mudannayake for the **Respondent-Appellant-Appellant.**

R.A.D. Kumarawickrama for the **Applicant-Respondent-Respondent.**

Argued on: 26/02/2024

Decided on: 18/06/2024

A.L. Shiran Gooneratne J.

The Applicant-Respondent-Respondent, (hereinafter sometimes referred to as the Applicant) filed an Application No. LT 2 Add./3668/2013 before the Colombo Labour Tribunal stating *inter alia*, that his employment as Director Finance with the Respondent-Appellant-Appellant, Vocational Training Authority of Sri Lanka (hereinafter sometimes referred to as the Appellant-Authority) was unjustly terminated with effect from 20/06/2012.

By answer dated 11/12/2013, the Appellant-Authority took up the position that the termination of service was justified due to several financial irregularities and or acts of financial misconduct on the part of the Respondent as revealed in the Auditor General's Department report dated 07/04/2010. It was further contended that based on an interim report on this matter, the Ministry of Youth Affairs and Skill Development, by letter dated 02/06/2011, terminated the services of the Respondent.

At the conclusion of the Inquiry, the learned President of the Labour Tribunal by Order dated 23/08/2018 *inter alia*, held with the Respondent, that the termination of employment was unjustified and directed that the Appellant-Authority pay compensation to the equivalent of 47 months' salary to the Respondent, in lieu of reinstatement.

Being aggrieved by the said Order, the Appellant-Authority, by Petition of Appeal dated 28/09/2018, appealed to the High Court of the Western Province holden in Colombo ("the High Court"). The High Court, by Judgment dated 21/08/2020 affirmed the said Order of the learned President of the Labour Tribunal dated 23/08/2018 and dismissed the appeal with costs.

The Appellant-Authority, by Petition dated 02/10/2020 is before this Court, to set aside the said Judgment dated 21/08/2020, delivered by the High Court.

By Order dated 15/11/2021, this Court granted leave to appeal on the following questions of law;

1. Is the said judgement of the learned High Court Judge marked P10, wherein His Honor, *inter alia*, proceed to affirm the Order of the Labour Tribunal marked 'P5', is *ex-facie* contrary to law against the weight of evidence led by the parties at the said inquiry before the Labour Tribunal?
2. Have the learned High Court Judge and the President of the Labour Tribunal erred in failing to take account of the material acts of suppression committed by the Respondent?
3. Has the learned High Court Judge misdirected himself in fact and in law by upholding the finding of the Labour Tribunal, which grants the said employee compensation, when the Respondent failed to establish any loss suffered as a result of the cessation of the Respondent's services with the Appellant?

The following chronology of events, which forms the background to this case, are not in dispute.

The Respondent was selected to the post of Director-Finance of the Appellant- Authority with effect from 08/05/2008 and he assumed duties in that post on 10/06/2008. In that capacity the Respondent was entitled to an official car for his official duties. Having assumed duties in the post of Director-Finance, the Respondent was allocated a petrol vehicle. On 11/06/2008 the Respondent made a written request to the Vice Chairman of the Appellant-Authority stating that the petrol allowance allocated to him was inadequate to cover his official travel requirements and has sought permission to obtain a diesel vehicle as the official vehicle. The Appellant Authority then proceeded to obtain a diesel vehicle on rent basis as the authority did not have any diesel vehicles to be allocated at the time.

Accordingly, the Appellant-Authority published a general tender advertisement in daily newspapers calling for suppliers to register to provide vehicles on a rent basis.

The Respondent who was the registered owner of a diesel vehicle bearing Registration No. 65-6998 had transferred the said vehicle to one Thotage Prasanna, his brother-in-law, with effect from 04/06/2008. The said Thotage Prasanna was one of the suppliers who submitted sealed tenders in response to the said tender notice.

By letter dated 09/09/2008, the Appellant-Authority informed the said Thotage Prasanna, that the diesel vehicle bearing Registration No. 65-6998 was approved for hire and to hand over the said vehicle to the Respondent on 12/09/2008 [document marked A11(e)]. Subsequently, in a letter dated October 10.2008, Thotage Prasanna informed the Respondent (in his capacity as Director Finance) that he did not have a bank account and therefore, he requested that the rent for the vehicle either be paid in cash directly to him or that the payment be made by cheque deposited into the Respondent's bank account, with the Respondent then providing him the cash equivalent.

The said Thotage Prasanna had also requested the Deputy Director (Administration) of the Appellant-Authority, by his letter dated 13/10/2008 to remove the "Account Payee Only" endorsement from all monthly cheque payments, which had been complied with.

The Respondent disassociates himself from the administrative process which involves the tender procedure or in the technical evaluation committee which approved to hire the said vehicle bearing No. 65-6998 or in arriving at the decision to remove the "Account Payee Only" endorsement from all monthly cheque payments issued to the said Thotage Prassanna.

Evaluation of evidence placed before the Labour Tribunal

- a) The learned President of the Labour Tribunal in her Order dated 23/08/2018 finds

that the said vehicle was transferred by the Respondent to Thotage Prasanna 7 days prior to assuming the post of Director-Finance.

By letter dated 02/05/2008, (marked A1) the Respondent was informed that he had been selected to the post of Director-Finance with effect from 05/05/2008 and will take effect from the date on which he assumes duties. After one month notice to the former employer, the Respondent assumed duties with the Appellant-Authority as Director-Finance on 11/06/2008.

In the written submission's field of record, the Respondent admits that he was aware that his position as Director-Finance entitled him to an official vehicle. Therefore, At the time he transferred the vehicle bearing registration number 65-6998 to his bother-in-law on 04/04/2008, he was fully aware that his position granted him the right to use an official vehicle.

- b) The Labour Tribunal also arrived at the finding that in the absence of a bank account in the name of Thotage Prasanna, the encashment of the monthly hire payment through the Respondent's account, does not make the said vehicle transfer between the Respondent and Thotage Prasanna, fraudulent or unlawful.

However, in this instance, the Labour Tribunal did not evaluate the said evidence based on the probability of a violation of financial regulations, which would lead to misconduct on the part of the Respondent.

- c) On 04/11/2009, a technical officer had inspected the said vehicle and recommended that it was fit to be hired for a further period of one year [document marked A22(e)]. The said recommendation was submitted to the Minor Tender Board, in which the Respondent was a member. By letter dated 05/11/2009, addressed to the Chairman of the said tender board [document marked A22(f)], the Respondent for the first time, disclosed that he was the previous owner of the said vehicle and that the present owner is a person well known to him. By document dated 09/11/2009 (document marked A22(f), it is revealed that the said tender board had decided to extend the

hire period of the said vehicle from 09/11/2009 to 08/11/2010.

Considering the evidence presented, the Labour Tribunal concluded that although the Respondent has disclosed his previous ownership of the vehicle, the tender board had decided to extend the period of hire regardless, and in any event, this disclosure was not a relevant factor in their decision-making process

In the given circumstances it is clear that the Labour Tribunal failed to consider that;

- the Respondent was a member of the said tender board entrusted with equal responsibility in the decision-making process;
- the monthly cheque payments due to Thotage Prasanna were credited to the account of the Respondent for 1 year, prior to the disclosure of a close relationship between the Respondent and the said Thotage Prasanna,
- the said disclosure was made only after the technical officer recommended the extension of the rent period of the said vehicle to the Minor Technical Committee.

d) The Labour Tribunal was of the view that there is no prohibition in law for a cheque to be deposited in a current account for the purpose of encashment. However, what the Labour Tribunal failed to take into consideration was that the cheques deposited in the Respondent's account was in fact work related payments.

When this matter was argued before the High Court, the Counsel for the Appellant contended *“that the evidence led before the Tribunal was more than sufficient to prove the acts of misconduct committed by the Applicant on a balance of probability and therefore it justified the termination of the applicant's services.”* In the above context, the High Court in its Judgement specifically mentioned that the cheques issued to Thotage Prasanna, was deposited in the account of the Respondent and by such act, whether the Respondent had breached the trust and confidence expected by the Appellant- Authority.

The High Court also made reference to *“whether any reasonable inference could be drawn from the evidence led at the inquiry that the said transfer of vehicle bearing No. 65-8998 was in fact a dummy transfer effected by the applicant to enrich himself by renting his own car to the appellant authority.”*

On the core issues of the request from the Appellant-Authority to cancel the endorsement “account payee only” on cheques issued to Thotage Prasanna, the High Court was of the view that the Respondent was not involved in the said process. Where the government financial regulations stipulated that payments over Rupees 500 should be drawn as “account payee only,” the Court was of the view that none of the cheques in question were signed by the Respondent and were issued on the behest of the Respondent.

The High Court also observed that in 2009, when the Respondent was a member of the Minor Tender Board, he had informed the said tender board that Thotage Prasanna was a close relative of the Respondent. Therefore, the Court came to the conclusion that the Respondent had not acted in a manner which amounts to a misconduct warranting the termination of employment.

In the above circumstances, it is pertinent to consider, whether the High Court gave adequate consideration to cheques issued to Thotage Prassana being deposited in the Respondent’s account, breached the trust and confidence expected by the Appellant-Authority, as identified at the outset of the said Judgment.

In Judgment dated 21/08/2020, the learned High Court Judge sets out clearly that the cheques without the endorsement “account payee only” issued by the Appellant-Authority were deposited in the Respondent’s account due to the said Thotage Prasanna not having a bank account. The learned High Court Judge did not see any legal impediment for the Respondent to permit the deposit of cheques issued to a third party, in such manner.

As discussed earlier, the said Thotage Prassana, having been informed that vehicle

bearing No. 65-8998 be handed over to the Respondent, by letter dated 10/10/2008 [marked A15], sought the approval of the Respondent to obtain the rent payment by cash and not by cheque. It is to be noted that the Respondent has acknowledged the said letter in his capacity as Director Finance. All such payments once approved, are sent to the finance branch for certification.

Drawing a cheque over Rupees 500 without the endorsement “account payee only” is a clear violation of the government financial regulation 384(2). The said violation continued from the year 2008 to 2011 [document marked V28]. By letter dated 19/08/2010 [document marked A2], in addition to the responsibilities as Director Finance, the Respondent was also appointed to direct official duties in all matters coming within the purview of establishment, administration and human resource development sectors in the said appellant authority, which included *inter alia*, audit queries, audit inquiries/discipline. The said appointment delegated the Respondent with wide ranging power required for the effective financial management of the Appellant-Authority.

As discussed earlier, the Respondent admitted that, at the time the said vehicle was transferred to his brother-in-law, he knew that he was entitled to an official vehicle on been appointed as Director-Finance. When the said vehicle was considered for hire for a further period of one year commencing November 2008 to November 2009, the Respondent was a member of the Minor Tender Committee which evaluated the competency of the said vehicle and approved the request for extension for a further period of one year. The said tender procedure had continued to take on the said vehicle on hire until 08/11/2012.

Undoubtedly, all the above facts lead to the conclusion of mistrust of the Respondent, relating to the orderly and efficient working of the Appellant-Authority. *“An act should be regarded as an act of misconduct if it is inconsistent with the fulfilment of express or implied conditions of service or if it has a material bearing on the smooth and efficient*

working of the concern.” [Shalimar Rope Works Mazdoor Union vs. Shalimar Rope Works Limited¹]

In *Gamage vs. M.D. Gunasena*² the court held that “*The implied conditions of service include conduct such as obedience, honesty, diligence, good behavior, punctuality, and due care...*”

However, there are no fixed rules of law defining the degree of misconduct which would justify dismissal. The test whether a dismissal is justified “*must vary with the nature of the business and the position held by the employee.*” [*Jupiter General Insurance Company Limited vs. Shroff*³ , quoted with approval in *H.G. Jayasekara vs. The Ceylon Transport Board (CGG 14,359 of 26.3.65)*]⁴.

The Appellant-Authority complains that the conduct of the Respondent has breached the trust and confidence expected of a person of such authority and seeks to justify the termination of employment.

As discussed before this position is supported by evidence before the Labour Tribunal. Even though the High Court addressed the issue of financial mismanagement on the part of the Respondent, it did not consider whether such misconduct would amount to loss of confidence and whether the said termination was a measure of ‘self-protection.’

*The Associated Newspapers of Ceylon Limited vs. M.S.P. Nanayakkara*⁵ The Supreme Court addressed an appeal by the Associated Newspapers of Ceylon Limited regarding the termination of an employee, for misconduct related to procurement activities and

¹ (1953) 2 LLJ 876

² (2013) 1 SLR 143

³ (1973) 3 All ER 67.

⁴ S.R De Silva, Law of Dismissal (3rd edn, The Employer's Federation of Ceylon 2018) 50

⁵ [SC Appeal No: 223/2016] (6 December 2022)

failing to disclose his wife's involvement in a supplier company.

The Labour Tribunal had initially dismissed most charges except for the non-disclosure issue, and ordered his reinstatement with partial back wages. This decision was upheld by the High Court.

However, the Supreme Court reversed these decisions, emphasizing the critical role of trust and integrity in procurement roles.

Similar to the current case, although the respondent admitted being aware of his wife's involvement in the business in question, he rationalized his non-disclosure by stating that he was not responsible for the decision to purchase spare parts from the company where his wife was involved.

The Court ruled that the conduct of the employee was contrary to that of a prudent man and that non-disclosure constituted a significant breach of trust. The Court emphasized that the Respondent owed a duty at the very least to inform the Appellant about the wife's involvement with the supplier before any business transaction took place between the two companies. The Court further held that neglecting to disclose this information could lead to potential conflict of interest and thereby denied any compensation stating that the misconduct's nature directly impacting the employer's trust.

The Respondent applied to the post of Director Finance of the Appellant-Authority with decades of experience in the corporate financial sector. Before joining the Appellant-Authority he had served as the financial controller of a leading State corporation. Considering the qualifications and experience the Respondent possessed, he was placed at a higher salary with 11 increments in the salary scale. It is Needless to emphasize that, with the recruitment of a person with high qualifications and experience, the Appellant-Authority placed high expectations with utmost confidence and trust in the person holding such position of responsibility. It has been held that a cashier occupies a

“position of trust and responsibility and a high degree of honesty and integrity is expected of an employee occupying such a position.” [Ceylon Mercantile Union vs. Richard Pieris and Company Limited (Gazette of Sri Lanka, 31 August 1979)⁶]

In *Bank of America vs. Abeygunawardena*⁷, the Court recognized *“the necessity for the employer to lead evidence of facts and circumstances from which loss of confidence can be proved directly or inferentially”* and that reasonable suspicion may justify loss of confidence.

In the case of *Peiris vs. Celltel Lanka*⁸, the court held that the employer rightfully expected the employee to act with utmost integrity and honesty, especially given the employee's level of autonomy. When the employee failed to meet these expectations, it was reasonable for the employer to lose confidence in the employee. Emphasizing the importance of the role of the employee, Justice Thilekawardena held as follows

“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 behavior for which termination of services can be justified”

When specific allegations of acts which were directly in conflict with the government financial regulations, as cheques without an endorsement “account payee only” issued by the Appellant-Authority to Thotage Prassana, deposited in the Respondent’s account, the position taken by the Respondent was that he never participated in the decision- making process of removal of the said endorsement. However, in his capacity as Director

⁶ De Silva (n 4) 113

⁷ (1991) 1 SLR 317

⁸ [SC Appeal No. 30/2009; SC Minutes of 11 March 2011]

Finance, what is undeniable is that the Respondent was responsible for a material breach in financial management of the Appellant-Authority.

The said irregularity continued for 4 years. When rent payments due to the brother-in-law of the Respondent is channeled to the Respondent's personal account, the said transaction, in the least, is tainted and blurred, due to the lack of due process. The breach of integrity manifested in such actions undoubtedly makes the Respondent unworthy of the trust and confidence demanded of his position.

The Respondent, as the Director Finance of a very important government authority, entrusted with the financial management of that institution, was duty bound to the Authority as well as to the citizenry, to preserve the good name of the Appellant-Authority at all times. *“Integrity and confidence thus are indispensable and where an officer has forfeited such confidence has been shown up as being involved in fraudulent or questionable transactions, both public interest and the interest of the bank demand that he should be removed from such confidence.” [Sithamparanathan vs. Peoples’ Bank⁹]*

In the case of *Democratic Workers’ Congress vs. de Mel and Wanigasekara (CGG 12, 432 19th May 1961)*¹⁰ the concept of loss of confidence was well expressed, in the following manner;

“...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

⁹ (1986) 1 SLR 433

¹⁰ De Silva (n 4) 117

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.”

It is also important to consider the fiduciary duty owed by the Respondent to the Appellant. This duty is illustrated in the case of ***Regal (Hastings) Ltd vs. Gulliver***¹¹. In this case, the directors of a company invested in an opportunity that benefited the company but did so in their personal capacity, profiting from it. The House of Lords held that they had breached their fiduciary duties by failing to prioritize the interests of the company over their own. The House of Lords outlined the fiduciary obligations and the consequences of breaches as follows:

"The rule of equity which insists on those who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of bona fides; or upon questions or considerations as whether the property would or should otherwise have gone to the plaintiff, or whether he took a risk or acted as he did for the benefit of the plaintiff, or whether the plaintiff has in fact been damaged or benefited by his action. The liability arises from the mere fact of a profit having, in the stated circumstances, been made."

In ***Kosgolle Gedara Greeta Shirani Wanigasinghe vs. Hector Kobbekaduwa Agrarian Research and Training Institute***¹², the Appellant argued that she did not hold a fiduciary position within the Respondent Institution, and therefore, the charge of "loss of confidence" should not apply to her. However, the Court dismissed this argument, emphasizing that all employees, regardless of their role, have a duty to their employer. The employer relies on each employee to perform their job correctly. While the level of trust may vary among different positions, trust is fundamental to the employment

¹¹ (1942) UKHL 1

¹² [SC Appeal No. 73/2014; SC Minutes of 2 September 2015]

relationship. Breaches of this trust can justify termination if the employer loses confidence in the employee's ability to perform their role faithfully. The principle of "loss of confidence" was highlighted as a valid reason for termination, given the fiduciary nature of the employee's responsibilities.

This position was upheld in the case of *The Associated Newspapers of Ceylon Limited vs. M.S.P. Nanayakkara*¹³, and in the recent judgment of *Development Services (Guarantee) Ltd (SEEDS) vs. W.P.R.P. Devanagala*¹⁴. Where the Deputy District Manager was terminated due to alleged negligence and financial misconduct involving loan approvals, which led to significant financial losses for SEEDS. The Supreme Court discussed the "loss of confidence" principle with reference to the principle of trust. This court held that the position of a Deputy District Manager is one of high responsibility, requiring the person holding such a designation to work with diligence and consistency.

It is observed that the Labour Tribunal and the High Court erred in law as it failed to evaluate the evidence when deciding on financial misconduct, on the part of the Respondent. There was no appreciation of evidence by both courts in considering the significance of trust and confidence placed in the position the respondent held and the ever-present fiduciary duty and prudence to uphold the good name of the institution, together which constitute the essence of such position of responsibility.

In these circumstances I am of the view that on a balance of probability, the evidence before us clearly establishes financial misconduct on the part of the Respondent resulting in the loss of trust and confidence, justifying the termination of employment.

Accordingly, I answer the questions of law Nos. 1 and 2 on which leave to appeal has been granted in the affirmative. Since this Court is of the view that the termination of employment is justified, the question of law No. 3 need not be answered.

¹³ Ibid at 12

¹⁴ [SC Appeal: 201/2017] (5 December 2023)

For these reasons, this Appeal of the Appellant-Authority is allowed, the Judgements of the High Court and that of the Labour Tribunal Colombo are set aside. No Order is made for costs.

Judge of the Supreme Court

P. Padman Surasena, J

I agree

Judge of the Supreme Court

E.A.G.R. Amarasekara, J

I agree

Judge of the Supreme Court