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

In the matter of an application for leave to appeal to the Supreme Court from an Order of the Provincial High Court under and in terms of section 31DD of the Industrial Disputes Act (as amended).

Case No: SC/Appeal/94/2022

High Court Case No: HC ALT 10/ 2018

LT Case No: LT 09/NE/31/2010

Shelton Anthoney Kahawe,
No: 115, Nawajanapadaya,
Ruwaneliya,
Blackpool.

APPLICANT

Vs.

1. The Manager,
   Peoples' Bank,
   Rangala.

2. Peoples' Bank,
   Head Office,
   No. 75, Chiththampalam A Gardiner Mawatha,
   Colombo 02.

RESPONDENTS

AND BETWEEN

Shelton Anthoney Kahawe,
No: 115, Nawajanapadaya,
Ruwaneliya,
Blackpool.

APPLICANT-APPELLANT

Vs.

1. The Manager,
   Peoples' Bank,
   Rangala.

2. Peoples' Bank,
   Head Office,
   No. 75, Chiththampalam A Gardiner
   Mawatha,
   Colombo 02.

RESPONDENT-RESPONDENTS

AND NOW BETWEEN

1. Peoples' Bank,
   Head Office,
   No. 75, Chiththampalam A Gardiner
   Mawatha,
   Colombo 02.

2ND RESPONDENT-RESPONDENT-APPELLANT

Vs.

1. Shelton Anthoney Kahawe,
   No: 115, Nawajanapadaya,
   Ruwaneliya,
   Blackpool.

APPLICANT-APPELLANT-RESPONDENT

2. The Manager,
   Peoples' Bank,
   Ragala.

RESPONDENT-RESPONDENT-RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**
A.L. SHIRAN GOONERATNE, J. AND
ACHALA WENGAPPULI, J

COUNSEL: Manoli Jinadasa with Dilini Reeves, Ms. Amanda Wijesinghe & Nilushi Dewapura for the 2nd for the Respondent-Respondent-Appellant

Charith Galhena with Madhushika Jayasinghe instructed by Mayomi Ranawaka for the Applicant-Appellant-Respondent

WRITTEN SUBMISSIONS: Respondent-Respondent-Petitioner on 23rd September 2022

ARGUED ON: 4th September 2024

DECIDED ON: 06th June 2025

THURAIRAJA, PC, J.

1. This is an appeal arising from an Order of the Provincial High Court of the Central Province holden in Nuwara Eliya (hereinafter sometimes referred to as "High Court"), which overturned an order of the learned President of the Labour Tribunal of Nuwara Eliya (hereinafter sometimes referred to as the "Labour Tribunal").

2. In order to avoid any confusion arising out of the identification of the parties hereinbelow, I wish to note at the very outset that this Court took the liberty of correcting the caption to properly identify the Appellant party, in spite of the Registered Attorney's failure to amend the caption after obtaining leave to appeal.

FACTS OF THE MATTER

3. Shelton Anthoney Kahawe, Applicant-Appellant-Respondent (hereinafter referred to as the "Applicant-Respondent") had been employed as a Sanitary and Stores Labourer by the People's Bank, the 2nd Respondent-Respondent-Appellant (hereinafter referred to as "the Appellant Bank") in Nuwara Eliya since 1993 when the Appellant Bank terminated his services for misconduct having found him guilty in a disciplinary inquiry.

4. The alleged misconduct had taken place on 8th August 2007, when the Applicant-Respondent visited the Nuwara Eliya Regional Office under the influence of alcohol after he was dispatched on an errand to the Sri Lanka Telecom PLC office in Nuwara Eliya by the Manager of the Ragala Branch on the said date. Having visited the Nuwara Eliya Regional Office thereafter, in an inebriated state, he had behaved in an unruly manner within the Bank premises. The Applicant-Respondent had also disrupted and prevented the employees from carrying out their duties, and the police had subsequently been called to control the situation.

5. Following the Applicant-Respondent's arrest, the police had produced him before the District Medico-Legal Officer of Nuwara Eliya and the Medico-Legal Examination Form (MLEF). The record also indicates that he had been charged before the Magistrate's Court of Nuwara Eliya for causing annoyance under the influence of liquor in terms of the *Offences Committed under the Influence of Liquor (Special Provisions) Act, No. 41 of 1979*, and that he had pleaded guilty on 01st September 2008. As a result, the learned Magistrate had imposed a fine of Rs. 2,500/- against the Applicant-Respondent. However, pursuant to a revision application filed by the Applicant-Respondent, the High Court of Nuwara Eliya had set aside the fine so imposed by the Magistrate's Court, ordering the Applicant to pay Rs. 1,000/- to a charity organisation along with Rs. 1,500/- state costs instead.

6. By letter dated 10th April 2008, Appellant Bank had charged the Applicant-Respondent for six counts of misconduct relating to the aforementioned incident, informing that a disciplinary inquiry would be held regarding the same. Having found the Applicant-Respondent guilty of all but one charge, the Bank had terminated his services by letter dated 24th December 2008.[1]

7. Being aggrieved by the said termination, the Applicant-Respondent had preferred an application to the Labour Tribunal of Nuwara Eliya alleging his termination to be unjust. By Order dated 25th May 2018, the learned President of the Labour Tribunal had dismissed the application, finding the termination of his services by the Appellant Bank to be just and equitable. Aggrieved by this Order of the Labour Tribunal, he had appealed to the Provincial High Court to set aside the Order of the Labour Tribunal.

8. The High Court, by Order dated 02nd June 2020, in spite of its finding that the Applicant-Respondent is in fact guilty of the misconduct, had nevertheless set aside the order of the

[1] Marked "R26".

Labour Tribunal and ordered the reinstatement of the Applicant with three years' basic salary as back wages. It is clear from the Order of the High Court that the learned Judge had considered termination of employment to be a disproportionate punishment for the Applicant's misconduct.

9. The Respondent Bank filed the instant appeal before this Court in terms of Section 31DD of the *Industrial Disputes Act, No. 43 of 1950,* challenging the aforementioned Order of the High Court.

QUESTIONS OF LAW

10. This Court granted leave to appeal on the following questions of law;

    I. Has the Provincial High Court erred in law in disturbing the findings of the Labour Tribunal when the Labour Tribunal order is consistent with the evidence?

    II. Whether the Provincial High Court has erred in law in the granting of relief?

    III. Whether the Provincial High Court had erred in law in the analysis of the evidence and reached findings which are perverse?

    IV. Has the Provincial High Court rightly held that the President of the Labour Tribunal has failed to appreciate that the punishment meted out to the Applicant was excessive and disproportionate to the alleged misconducts?

ANALYSIS

11. Where an application is made before a Labour Tribunal alleging unjust termination and a respondent-employer admits termination, the burden is on such employer to begin the

case and establish on a balance of probabilities[2] that the termination was justified. This is based on the principle that 'he who alters the status quo and not he who demands its restoration, must explain the reasons for such alteration'.[3]

12. In a case of this nature, where termination is based on a finding of misconduct, it is generally incumbent upon the employer to establish two things: firstly, that there is a misconduct on the part of the employee, and secondly, that the misconduct is sufficiently grave to warrant termination of services.

13. No precise statutory definition of *misconduct* is available in our law. While that may be so, this Court has previously considered how questions of misconduct may be approached. As to what may amount to misconduct, Priyasath Depp, PC, J (as His Lordship was then) observed as follows in ***M.D. Gunasena & Co. Ltd v. Somaratne Gamage:***[4]

> *"Misconduct is not defined in the Industrial Dispute Act. In the absence of a definition it is necessary to refer to case law in Sri Lanka and in other jurisdictions. Sri Lankan and Indian Courts have followed the english case law. As far back as 1886 Pearce Vs. Foster, laid down the law thus "The test is that the misconduct must be inconsistent with the fulfillment of the express or implied conditions of service in order to justify*

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[2] See *Trico Maritime (Pvt) Ltd. v. Inter Company Trade Union*, SC Appeal 66/2018, SC Minutes of 30th March 2022, at 9; *Lanka Banku Sevaka Sangamaya (On behalf of L.D. Dayananda) v. People's Bank,* SC Appeal No. 209/2012, SC Minutes of 16th November 2015, at 14; *Piyasena Silva v. Ceylon Fisheries Corporation* [1994] 2 Sri LR 292; *Associated Battery Manufacturers Ceylon Ltd v. United Engineering Workers Union* (1975) 77 NLR 541; *Sithamparanathan v. People's Bank (1986)* 1 Sri LR 411.

[3] S.R. De Silva, *The Legal Framework of Industrial Relations in Ceylon* (HW Cave & Co. 1973) at 570-571. The principle is cited with approval in many judgments of this Court. See *Union Apparel (Pvt) Ltd. v. Dehiwattage Rukman Dinesh Fernando*, SC Appeal 19/2015, SC Minutes of 28th October 2021, at 15; *John Keells Holdings PLC and 2 Others v. M Ganeshmoorthy,* SC Appeal No. 187/2017, SC Minutes of 20th January 2020, at 11; *Thevarayan v Balakrishnan* (1984) 1 Sri LR 189, at 194

[4] [2013] 1 SRI L.R. 143, at 151-152

dismissal". This was followed in Shalimar Rope Works Mazdoor Union vs. Shalimar Rope Works Ltd., a case very often cited in our courts.

A slightly different test was laid down in Laws v. London Chronical Ltd. In that case it was held that "the misconduct must be inconsistent with the fulfillment of the express or implied conditions of service or such as to show that the servant had disregarded the essential conditions of service of the contract of service."

The implied conditions of service includes conduct such as obedience, honesty, diligence, good behavior, punctuality, due care. Therefore following acts such as disobedience, insubordination, dishonesty, negligence, absenteeism and late attendance, assault are treated as acts of misconduct which are inconsistent with the implied conditions of service."[5]

14. Being disorderly under the influence of alcohol or drugs during working hours, especially whilst being deployed for a specific purpose, is most certainly sufficient to justify the termination of an employee's services. Needless to say, the actions such as intoxication, disruption and insubordination clearly violate the implied conditions of any form of employment. In the sectors such as banking, the aforementioned implied conditions of service carry even greater weight.

15. As this Court emphasised in ***Bank of Ceylon v. Manivasagasivam***,[6] financial institutions operate on public trust, and employees must maintain standards of behaviour that preserve institutional integrity. The Applicant-Respondent's alleged actions—public

[5] Emphasis and citations omitted

[6] [1995] 2 Sri L.R. 79.

intoxication combined with violent and disruptive behaviour in the workplace—stand in stark contrast to these standards.

16. In ***General Manager, Ceylon Electricity Board v. Gunapala,***[7] an employee who was found to have consumed liquor whilst on duty was dismissed by the employer, although other employees who were found to have also consumed liquor were not similarly dismissed. The Court of Appeal found the termination of the employment to be justified in spite of the fact that others were treated differently.

17. The impropriety of consuming alcohol and drugs in the workplace, especially during work hours, needs not be explained to a reasonable mind. The resultant impairment of judgement, focus, productivity and capacity poses operational difficulties or even serious safety risks in the worst of cases. It wastes both company time as well as the time of colleagues, clients or customers. Whatever the role of employment may be, drunkenness undermines professionalism, harms both personal and organisational reputations and indicates a serious lack of respect towards authority and workplace regulations. It can affect the team dynamic and the workplace atmosphere by creating discomfort or resentment among peers, as it clearly has in the instant case, thereby eroding workplace standards. As such, drunkenness at the workplace is a serious misconduct.

18. This Court found in the case of ***Lanka Synthetic Fibre Co. Ltd. v. Perera***,[8] insubordination and abusive behaviour towards superiors strike at the very foundation of the employment relationship.

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[7] [1991] 1 Sri LR 304.

[8] [1998] 3 Sri LR 198.

19. Clearly, the misconduct alleged to have been committed by the Applicant-Respondent is of such severity that, if properly established, termination of services on that basis would most certainly be justified.

20. The question is, then, whether the allegation against the Applicant-Respondent is established on a balance of probabilities by the evidence led before the Labour Tribunal. Both the learned High Court Judge as well as the President of the Labour Tribunal have taken into account the Applicant-Respondent's guilty plea before the Magistrate's Court of Nuwara Eliya.

21. In my view, this in itself is sufficient to establish the allegations against the Applicant-Respondent. However, in addition to this, the Appellant Bank has led evidence from over a dozen witnesses, and all such witnesses corroborate the finding against the Applicant-Respondent. Moreover, it is clear that the Appellant Bank conducted a due disciplinary inquiry before terminating his employment. This indicates the *bona fides* on the part of the Respondent Bank.[9]

22. Accordingly, it is amply clear on the face of the record that alleged misconduct has been established against the Applicant-Respondent on a balance of probability. Additionally, as I discussed earlier, the said misconduct is of such a nature and severity that termination on that basis is most certainly warranted.

23. Although I have already discussed all that needs to be established to dispense with an application of this nature, I wish to consider some aspects of the High Court Order in better detail before I proceed to answer the questions of law before us, considering the wide discretion afforded to courts and tribunals in the adjudication of labour disputes

[9] See *Thavarayan v. Balakrishnan* (1984) 1 Sri LR 189, at 193-194

under the *Industrial Disputes Act*. However, it should be borne in mind that while such discretion is available in granting relief, appellate courts must exercise self-restraint with respect to factual findings of a labour tribunal and only interfere with such findings in the most exceptional of circumstances where it can be said that the tribunal has arrived at perverse conclusions that are not warranted by evidence before it.

24. As Senanayake, J. for the Court of Appeal observed in the case of ***Ceylon Cinema and Film Studio Employees Union v. Liberty Cinema Ltd.***:[10]

> *"…Upon an appeal from a judgement where both facts and law are open to appeal, the Appeal Court is bound to pronounce such judgements as its view ought to have been pronounced by the Court from which the appeal proceeds. In the exercise of its jurisdiction, the Appellate Court may not be disposed to come to a different conclusion on questions of fact unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witness could not be sufficient to explain or justify the trial judge's conclusion. On the other hand the scope of the powers of an Appellate Court where a right of appeal to the court lies only a questions of law, is more restricted. It is bound by the findings of fact unless the conclusion of fact drawn by the Tribunal is not supported by any legal evidence or is not rationally possible…"*

25. Sharvananda, J. (as His Lordship was then) observed in ***Caledonian Estates Ltd. v. Hillman,***[11]

> *"Under section 31.D(2) of the Industrial Disputes Act, an appeal to the Supreme Court*

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[10] [1994] 3 Sri LR 121 at 124, citing Wimalaratne, J. in *Weerawardene v. The Associated Newspapers of Ceylon Ltd.* S.C. Appeal No. 16/83, SC Minutes of 12th June 1984

[11] 79 (1) NLR 421, at 425

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 the 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…"

26. Although the provisions in the *Industrial Disputes Act* relating the appeals have been subsequently amended, decisions mentioned above remain relevant to date.

27. Section 31D(3) of the *Industrial Disputes Act (as Amended)* provides 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."*

28. As the aforementioned provision makes it amply clear, an appeal to the High Court from an order of a Labour Tribunal can only be made on a question of law. In line with the authorities cited above, an appellate court must not lightly disturb the factual finding of a Labour Tribunal.[12] The Labour Tribunal not only has the opportunity to hear the testimonies and observe the mannerisms of witnesses, but it also has the opportunity to perform certain inquisitorial functions, and is therefore uniquely positioned to find and consider the factual circumstances surrounding a dispute.

29. However, much of the analysis in the High Court Order relates to the factual circumstances of the matter at hand. The learned High Court Judge has adverted to shortcomings on the part of the police officers who arrested the Applicant-Respondent on several instances in the Order. The learned Judge comments more than once that the police officers had allowed the Applicant-Respondent to commit an offence under the *Influence of Liquor Act,* without attempting to de-escalate the situation.[13]

30. On page 6 of the Order, the learned Judge categorically states that "*…the arrest of the Appellant by the police in front of the Regional Office Nuwaraeliya of People's Bank for indecent behaviour under influence of liquor seems to be a planned act after allowing the*

[12] See also *Shanthi Sagara Gunawardena v. Ranjith Kumudusena Gunawardena and Others,* SC Appeal 89/2016, SC Minutes of 02nd April 2019, at 4; *Kotagala Plantations Ltd., and Another v. Ceylon Planters Society* [2010] 2 Sri LR 299, at 304; *Jayasuriya v. Sri Lanka State Plantations Corporation* [1995] 2 Sri LR 379

[13] See *Shanthi Sagara Gunawardena v. Ranjith Kumudusena Gunawardena and Others,* SC Appeal 89/2016, SC Minutes of 02nd April 2019, at 7-8, citing *Air Port and Aviation (SL) Ltd v. K.D.H. Sunil* SC Appeal 147/94, SC Minutes of 23rd March 1995

Appellant to commit an offence punishable under Act No. 04 of 1979 [sic], with some devious scheming in mind."[14]

31. Moreover, the Order of the High Court further alludes to some form of collusion between the police and the Appellant Bank as well as *mala fides* on the part of the Bank with respect to the disciplinary inquiry. Although such indications are repeatedly made throughout the High Court Order, I am unable to find any reference whatsoever to evidence justifying such conclusions. In this context, the conclusions of the learned Judge can only be described as conjectural.

32. In addition to this, the Order of the High Court also finds fault with the Labour Tribunal for its failure to consider the reasons for the Applicant-Respondent's behaviour. On page 8 of the Order, the learned Judge states as follows: "*…the Learned President of the Labour Tribunal failed to appreciate the fact that there should be some reason for the Appellant to behave in that way. According to the Appellant, he got annoyed over the refusal to issue stationery, but the Learned President of the Labour Tribunal had totally disregarded it.*" Having so reasoned, the learned Judge has come to the conclusion that the Applicant had been victimised owing to the disproportionate treatment.

33. In my view, the aforementioned findings of the learned Judge are not only highly conjectural but also generally irrelevant to the crux of the dispute.

34. Having considered the evidence before the Labour Tribunal, the learned President had found the Applicant guilty of misconduct. It is clear on the face of the record that this finding is supported by the testimonies of several witnesses. The misconduct so

[14] The reference to the statute must be corrected as *Offences Committed under the Influence of Liquor (Special Provisions) Act, No. 41 of 1979*

established, as I have already considered, is serious enough to justify termination of his employment. Considering this, I am of the view that the learned High Court Judge has erred in setting aside the Order of the Labour Tribunal and in ordering reinstatement of the Applicant-Respondent.

35. I am reminded of the shrewd cautious remarks of former Chief Justice H.N.G. Fernando, albeit in a somewhat different context: the *Industrial Disputes Act* does not confer on an arbitrator the freedom of a wild horse, and an arbitrator holds no license to make any award as he may please, for nothing is just and equitable which is decided by whim or caprice.[15] Although His Lordship said so specifically of the 'just and equitable' discretion of arbitrators under the *Industrial Disputes Act*, it might just as well have said arbiter in place of arbitrator, for the Act affords unbridled discretion to no judicial body.

36. Any and all findings of a court or tribunal must be derived from careful and logical deduction of the evidence placed before it—things may be inferred, but never assumed. Orders and directions that follow must necessarily be just and fair for all parties involved, not only the employee, as is often presumed erroneously in industrial adjudication. This Court has emphasised this time and time again.[16]

37. Accordingly, I answer the first, second and third questions of law in the affirmative and the final question of law in the negative.

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[15] See *Municipal Council of Colombo v. Munasinghe* 71 NLR 223, at 225

[16] See *Noratel International (Pvt.) Ltd (formerly known as Toroid International (Pvt) Ltd.) v. Prasanna Peiris,* SC Appeal 138/2017, at 7; *Hatton National Bank v. Perera* [1996] 2 Sri LR 231, at 236; *Jayasuriya v. Sri Lanka State Plantations Corporation* [1995] 2 Sri LR 379, at 415; *Manager Nakiadeniya Group v. The Lanka Estate Workers Union* 77 CLW 52, at 54; *Ceylon Tea Plantations Company Limited v. Ceylon Estate Staff Union* SC Appeal 211/72; SC Minutes of 15th May 1974

38. I set aside the Order of the Provincial High Court of the Central Province holden in Nuwara Eliya dated 2nd June 2020. The Order of the President of the Labour Tribunal of Nuwara Eliya, dated 25th May 2018, is affirmed.

39. The appeal is accordingly allowed. No order as to costs.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT