

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

In the matter of an appeal to the Supreme  
Court of the Democratic Socialist Republic  
of Sri Lanka.

**SC. Appeal 03/2011**

L.T. No. 18/KT/3235/04  
HCALT No. 02/2009

W. Suvinipala, No. 83, Bandaranayake  
Mawatha, Matugama.

**Applicant**

**Vs.**

The Peoples' Bank, Head Office, Sir  
Chittampalam A. Gardiner Mawatha,  
Colombo 2.

**Respondent**

**And Between**

W. Suvinipala, No. 83, Bandaranayake  
Mawatha, Matugama.

**Applicant-Appellant**

**Vs.**

The Peoples' Bank, Head Office, Sir  
Chittampalam A. Gardiner Mawatha,  
Colombo 2.

**Respondent -Respondent**

**And Now Between**

The Peoples' Bank, Head Office, Sir  
Chittampalam A. Gardiner Mawatha,  
Colombo 2.

**Respondent-Respondent-Petitioner**

**SC. Appeal 03/2011**

**Vs.**

W. Suvnipala, No. 83, Bandaranayake  
Mawatha, Matugama.

**Applicant-Appellant-Respondent**

\* \* \* \* \*

**Before** : Saleem Marsoof, PC. J.  
K. Sripavan, J. &  
Eva Wanasundera, PC.J.

**Counsel** : Manoli Jinadasa with Tharanga Ambepitiya for the Respondent-  
Respondent-Appellant.  
Indra Ladduwahetty for the Applicant-Appellant- Respondent.

**Argued On** : 18-02-2014

**Decided On** : 13-05-2014

\* \* \* \* \*

**Eva Wanasundera, PC.J.**

This Court has granted Leave to Appeal on the questions set out in paragraphs 16 (a) & (b) of the petition dated 20<sup>th</sup> July 2011. They are;

16(a )-Whether the order of Provincial High Court for compensation is excessive and/or erroneous in law .

(b) Whether the Provincial High Court erred in law in the evaluation of evidence and has made order without a consideration of the totality of the evidence.

The facts of this case are as follows:-

The Respondent-Respondent- Petitioner (hereinafter referred to as the 'Petitioner') is the People's Bank who employed the Applicant-Appellant-Respondent (hereinafter referred to as the 'Respondent') as the Manager. The Respondent filed an application in the Labour Tribunal seeking relief that he was denied of the full term of his second extension amounting to a constructive term of his services. He asked for reinstatement of his services and/or compensation from the Labour Tribunal. The Learned President of the Labour Tribunal made order dated 24-04-2009 dismissing the application of the Respondent holding that the Respondent had been retired from the services of the Petitioner, People's Bank and collected his retirement benefits and as such is prevented from claiming that his services had been terminated. The Respondent appealed to the Provincial High Court and the learned High Court Judge by order dated 10-06-2010 awarded compensation to the Respondent consisting of aggregating of his monthly salary from the date of his interdiction to 19-12-2003 less the salary already paid to him. The Petitioner People's Bank has appealed to this Court from the order of the said Provincial High Court.

The retiring age of the Respondent was 55 years. The Bank Circular No. 323/2001, which provides for retirement at the age of 55 years, is admitted by the Respondent, who reached the age of 55 years on 16-12-2000. He was granted his first extension of services for a period of one year. When he asked for the second extension under the circular No. 323/2001, he was granted an extension up to 15-06-2002 for a period of 6 months. The Respondent was informed by the Petitioner that his date of retirement was 15-06-2002. A few days before his retirement, the Petitioner Bank discovered some irregularities allegedly committed by the Respondent when granting overdrafts during the tenure of his service as the Manager of the People's Bank, Matugama branch. The Petitioner Bank intended to take disciplinary action against the Respondent and as such the Bank wanted to keep the Respondent without retiring, so that the irregularities could be properly investigated. In these circumstances, the Petitioner Bank interdicted the Respondent on 03-06-2002 and made arrangements to

pay the Respondent half month's salary on a request made by the Respondent and in accordance with the disciplinary procedures of the Bank. The Petitioner Bank by letter dated 19-12-2003 retired the Applicant with effect from 03-06-2002. Anyway the Respondent received his pension with effect from 03-06-2002. I observe that the original due date of retirement of the Respondent was 15-06-2002 and as a punishment the Respondent was made to retire 12 days before the original date, ie. on 03-06-2002. But this punishment was intimated to him, 1½ years later on 19-12-2003.

The Petitioner Bank did not appeal from the order of the Labour Tribunal. But the Respondent appealed to the Provincial High Court and the Respondent got compensation on the premise that his services had been terminated by the Petitioner Bank unlawfully.

Even though the Labour Tribunal did not grant relief to the Respondent, in the body of its order dated 24-04-2009, the Labour Tribunal President held that the Respondent's services were terminated by the Petitioner Bank unlawfully and unjustifiably. The Labour Tribunal has specifically held that the letter of termination was a decision taken by a Committee appointed by the General Manager and communicated to the Respondent by the Chief Manager (Human Resources). The disciplinary authority of the Petitioner Bank was the Chairman and the Board of Directors and there had been no indication to the effect that the Chairman or the Board of Directors had considered the contents of the letter of termination. Therefore, the letter of termination dated 03-06-2002 was held unlawful and unjustifiable and null and void by the President of the Labour Tribunal. The Provincial High Court of the Western Province has also arrived at the finding that the Respondent's services was unjustifiably and unjustifiably terminated by the Appellant and granted relief to the Respondent by way of compensation.

I am of the view that both the Provincial High Court and the Labour Tribunal has evaluated the evidence before arriving at the decisions on the material placed before them even though the final decisions are different from each other. I have gone through the evidence led before the Labour Tribunal from the record which is filed in this Court. The question that has to be answered at the end of evaluation of the evidence, is

(a) whether the Respondent was in employment of the Appellant Bank from the day that he was interdicted up to 19-12-2003 or not? and (b) If he was in employment, was he unlawfully and unjustifiably terminated? and (c) if the termination is unjustifiable and unlawful, how much of compensation should have been granted?

The Respondent was due to retire on 15-06-2002. He was made to retire with effect from 03-06-2002, which means that he was punished by giving an order to retire earlier than the due date. When the date of retirement is an earlier date than the due date and the date of the order which determined the date of retirement as 03-06-2002, happens to be a later date which is 19-12-2003, on which date he was punished, the inference that can be drawn according to these facts is none other than the fact that the Respondent was employed and working at the Petitioner Bank up until 19-12-2003. It is the Appellant Bank who decided to pay him half salary from the date of interdiction, till the date of the order of the disciplinary committee on 19-12-2003. It is undisputed that the Respondent was not given an opportunity to defend himself at the inquiry held by the Appellant Bank. It was only a charge sheet served on the Respondent and a letter of explanation that was considered by the disciplinary committee. In addition, the order was not sent by the lawful disciplinary authority which is the Chairman of the Petitioner Bank and the Board of Directors. I am in agreement with the finding of the Labour Tribunal and the Provincial High Court that the Respondent's services were terminated unlawfully and unjustifiably. The Provincial High Court in evaluating the evidence has given due consideration to the totality of the evidence just as much as the Labour Tribunal President did.

When the services were terminated wrongfully, the only matter to be decided is the amount of compensation which should be granted in lieu of reinstatement when reinstatement is not an option. The Provincial High Court has thought it fit only to grant the salary in full for the period that the Appellant Bank decided to keep the Respondent in the service of the Bank even though interdicted, by paying him half the salary per month. I do not believe that it is excessive or erroneous at all. If it was thought by the Bank to pay him half salary, then at the end of the inquiry if he was not dismissed from service but giving him a warning and an early date to retire as a punishment, it is not

proper for the Bank to have deprived him of his full salary. The Appellant Bank has taken into consideration that a pension is being paid to him and therefore he need not be given the salary in full. I am of the view that the Bank cannot take two different stands at one and the same time. He was an employee who drew only a half salary till 19-12-2003. The order for the full salary to be granted for the whole 1½ years (during which time he was interdicted by the Bank) is not excessive.

In the case of *Ceylon Planters Society vs. Bogawanthalawa Plantation Ltd.* 2004, 1 SLR 88, it was held that had the employer refrained from dismissing the employee and allowed him to retire on a particular date, he could well have applied, even before his due date of retirement, for other employment and could have commenced such employment soon after retirement and the wrongful termination had denied him that opportunity and for that, he must be compensated.

I have given consideration to the case of *Piyasena Silva Vs. Ceylon Fisheries Corporation* 1994 2 SLR 292 , *Saleem Vs. Hatton National Bank* 1994 3 SLR 409 and *Jayasooriya Vs. Sri Lanka State Plantation Corporation* 1995 2 SLR 379, which were quoted by Counsel arguing this matter before deciding this matter.

I dismiss this appeal and affirm the judgment of the Provincial High Court dated 29<sup>th</sup> of April 2009. However, considering all the circumstances of this case, I order no costs.

Saleem Marsoof, PC. J.

I agree.

**Judge of the Supreme Court**

K. Sripavan, J

I agree.

**Judge of the Supreme Court**

**Judge of the Supreme Court**

