

**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 an in terms of Section 31DD of the Industrial Disputes Act (as amended)

Lanka Banku Sevaka Sangamaya  
(On behalf of EAA Dayananda)

**Applicant**

SC Appeal 106/2012  
HCA LT No.NCP/HCCA/LTA/07/2010  
LT Case No. 27/Anu/1509/05

Vs

Peoples' Bank  
**Respondent**

**AND BETWEEN**

Peoples' Bank  
**Respondent-Appellant**

Vs

Lanka Banku Sevaka Sangamaya  
(On behalf of EAA Dayananda)  
**Applicant-Respondent**

**AND NOW BETWEEN**

Peoples' Bank  
**Respondent-Appellant-Appellant**

Vs

Lanka Banku Sevaka Sangamaya  
(On behalf of EAA Dayananda)  
**Applicant-Respondent-Respondent**

Before : Eva Wanasundera PC, J  
Sisira J De Abrew J  
Priyantha Jayawardene PC, J

Counsel : Manoli Jinadasa for the Respondent-Appellant-Appellant  
Niroshana Egalahewa for the Applicant-Respondent-Respondent

Argued on : 26.2.2015  
Decided on : 9.6.2015

**Sisira J De Abrew J.**

The Labour Tribunal, on an application made by the workman who was attached to the Peoples' Bank as a clerk challenging his termination, held that the termination of services of the workman was justified but ordered compensation amounting to Rs.584,425/25. The High Court, by its judgment dated 23.3.2011, affirmed the order of the Labour Tribunal. Being aggrieved by the order of the High Court, the Peoples' Bank has appealed to this court. This Court by its order dated 13.6.2012, granted leave to appeal on the questions of law set out in paragraph 16 of the petition of appeal dated 29.4.2011 which are reproduced below.

1. Whether the order of the Provincial High Court and the Labour Tribunal awarding compensation to the workman, in the circumstances where the workman had been found guilty of misconduct and termination of his services was held to be justified, is erroneous in law?
2. Whether the Provincial High Court erred in law in the evaluation of evidence and has made the order without a consideration of the totality of the evidence?

The workman was a clerk attached to the Peoples' Bank (Appellant Bank) and served the bank for 25 years. He appealed to the High Court against the order of the Labour Tribunal and his appeal was dismissed by the High Court. He did not appeal against the said order to any Superior Court. Thus the order of the Labour Tribunal which held his termination justified has been accepted by him.

According to the circular of the Appellant Bank marked R1, the employees of the bank should not issue cheques from their personal accounts to thirds parties without sufficient funds in their accounts. The Appellant Bank, by R1, has clearly informed its employees that punishments including even termination of services would be imposed in the event of cheques being issued without sufficient funds in their accounts. Therefore the workman (the applicant to the Labour Tribunal) who worked in the Appellant's Bank for 25 years should be aware of this circular.

Why did the Appellant Bank terminate the services of the workman? He on, several occasions, had issued cheques from his personal account without sufficient funds in the account. He had committed these acts in May/June 2001. The Appellant Bank warned him and directed him to refrain from this behaviour. The workman, despite the said warning, again in 2002 issued several cheques for very large sums to third parties from his account when the account had been closed. The above acts of the workman demonstrate his dishonest intention. The Appellant Bank, after an inquiry, terminated his services for the said acts of misconduct. The Labour Tribunal however ordered compensation amounting to Rs.584,425/25 to be paid to him by the Appellant Bank. It is established that his services were terminated for the acts of misconduct committed by him. Then why should the Appellant Bank pay compensation to a person who was found guilty of misconduct and violated disciplinary circulars of the bank. This was the question that was presented, at the hearing of this appeal, to this court by learned counsel for

the Appellant Bank. The most important question that must be decided in this case is whether the workman whose termination of services was held to be justified by the Labour Tribunal is entitled to compensation especially when he was found guilty of acts of misconduct. When considering this question I must consider the following matters.

1. The workman had not caused any monetary loss to the Appellant Bank and the acts of misconduct committed by him are private transactions.
2. Whether the workman had an unblemished record.

I now advert to these matters. It is correct to say that acts of misconduct committed by him are private transactions between him and third parties and that he had not caused any monetary loss to the Appellant Bank. As I pointed out earlier the cheques issued by him have been dishonoured by the bank on the grounds that there were no sufficient funds in his account and that the cheques were issued after the account had been closed. These acts clearly demonstrate that he was dishonest when he issued the cheques. When an employee of the Appellant Bank committed the above mentioned dishonest acts, they will affect the reputation of the bank and such acts would undoubtedly erode the confidence of the people that they have towards the bank. Needless to say that the existence of a bank depends on public confidence. When employees of the Appellant Bank behave in this manner, it will affect the reputation of the Bank and therefore the Bank must take disciplinary actions against such employees. In my view such persons cannot function in Banks. When compensation is awarded to the employees who committed the above acts of misconduct, such a decision can be construed as an encouragement to commit further acts of misconduct.

Learned counsel who appeared for the Respondent tried to contend that the workman had an unblemished record for the last 25 years and that this was the first

occasion he committed acts of misconduct. I am unable to agree with the above submission for the following reasons.

In May and June 2001, he had issued several cheques without sufficient funds in his account and the Bank, by letter dated 15.2.2002, imposed following punishments on him.

1. He was warned.
2. He was instructed to close his current account and was not permitted to open up current account during his service period in the bank.
3. He was transferred to a remote station.

It appears that even after he committed the above acts of misconduct, he was permitted to be in the bank service. Document marked R3 (a letter sent by the workman) indicates that his account was closed on 27.6.2001. But he issued a cheque for Rs.425,000/- on 25.11.2001. Thus the contention that he had an unblemished record and that this (the act of misconduct on which his services were terminated) was his first act of misconduct cannot be accepted.

When considering the question whether the Respondent (the workman) is entitled to compensation from the Appellant Bank, I would like to consider certain judicial decisions.

In Saleem Vs Hatton National Bank [1994] 3 SLR 409 the workman who was the Manager of Badulla branch of the Hatton National Bank was dismissed from service on the account of loss of Rs. 100,000/- from the vault of the Bank. The only act of misconduct established at the inquiry was his negligence on the ground that he physically failed to verify the cash in the safe from time to time. The workman who detected the loss promptly reported the matter to the Bank and the Police. His termination of services was held to be justified but Supreme Court ordered compensation at the rate of ½ month's salary for each year of service. It is

seen from the facts of the case of Saleem Vs Hatton National Bank that there was no dishonesty on the part of the workman. But in the instant case, as I pointed out earlier, the workman was dishonest when he committed the acts of misconduct. Therefore the decision of the Saleem's case (supra) has no application to the present case.

In Somawathie Vs Baksons 79 (1) NLR 204, the services of the applicant who was admittedly a good worker were terminated by her employer mainly because she indulged in false gossip about a man under whose supervision she worked. Her termination on the ground of indiscipline and misconduct was held to be justified but the Supreme Court granted her compensation as the cause of her termination of services was not a serious act of misconduct. In Somawathie's case there was no dishonesty on the part of the workman. In my view the decision of Somawathie has no application to this case.

In National Savings Bank Vs Ceylon Bank Employee's Union [1982] 2 SLR 629 the applicant, an employee of the Bank was dismissed from service for cheating at an examination conducted by the Bankers Training Institute. Labour Tribunal directed re-instatement but did not award back wages. On appeal the Court of Appeal affirmed the decision of the Labour Tribunal. The Supreme Court holding that the Bank is under a special duty to ensure honesty of the servants, set aside both orders of the Labour Tribunal and the Court of Appeal and affirmed the decision of the dismissal of the workman. In the above case the question of compensation did not even arise for consideration.

In the case of the Board of Governors for Zahira College Vs Naina Mohamad [1999] 2SLR 309 *"A large number of students forcibly entered the office of the Principal, Zahira College, during school hours. They behaved in an unruly and*

*boisterous manner and coerced the Principal to issue a letter withdrawing a letter issued earlier by the Principal requiring certain teachers to vacate the hostel. While all this was happening the applicant-respondent, a teacher at Zahira College, was standing near the Principal. He did nothing to dissuade the students from behaving in the way they did. He was found guilty of misconduct and dismissed from service by the employer-appellant (the Board of Governors of the College). The Labour Tribunal dismissed the application against the termination of services.”* The Labour Tribunal held the termination justified. The High Court on appeal did not find the termination unjustified but following the decision of the Supreme Court in Saleem Vs Hatton National Bank (supra) awarded Rs.250,000/- as compensation. The Supreme Court on appeal distinguished the case of Saleem Vs Hatton National Bank (supra) and did not award compensation as the workman’s (teacher’s) conduct was totally unworthy of a member of the teaching staff in a school.

In Alexander Vs Gnanam [2002] 1 SLR 274 the Labour Tribunal held that the termination of services of the appellant-workman (the workman) was justified in view of a series of lapses during a period of 7 years and that his conduct was contemptuous of the management and fell far short of the expected standard but granted compensation in a sum of Rs. 57,000/-. But the Supreme Court held that that the workman who was at fault is not entitled to compensation.

In the present case as I pointed out earlier the workman was dishonest when he committed the acts of misconduct. Banks expect high standard of honesty from its employees. If the employees of banks do not maintain the above standard of honesty, confidence that the members of public have kept in bank system will erode. When I consider the facts of this case and the above judicial decisions, I

hold the view that the workman (the respondent) is not entitled to compensation. I therefore set aside both judgments of the labour Tribunal and the High Court and allow the appeal. In view of the conclusion reached above, I answer the two questions of law in the affirmative. I allow the appeal but do not order costs in view of all the circumstances of the case.

*Appeal allowed*

Judge of the Supreme court

Eva Wanasundera PC, J

I agree.

Judge of the Supreme Court.

Priyantha Jayawardene PC, J

I agree.

Judge of the Supreme Court



