# IN THE SUPREME COURT OF THE

# DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal in terms of section 31 DD of the Industrial Disputes Act as amended read with section 9 of the High Court of the Provinces (Special Provisions) Act No 19 of 1990.

S C Appeal No. 79/2012

SC HC LA No. 05/2012

HC Badulla Case No. 90/2010 (Appeal)

LT Case No. 36/1982/2002

1. Superintendent,

   Udaweriya Estate,

   Ohiya.

2. Agarapatana Plantations Limited,

   53 1/1,

   Sir Baron Jayatilleke Mawatha,

   Colombo 01.

3. Lankem Tea and Rubber Plantation Limited,

   53 1/1,

Sir Baron Jayatilleke Mawatha,

Colombo 01.

**RESPONDENT - RESPONDENT - APPELLANT**

-Vs-

Lanka Wathu Seva Sangamaya,

No. 06,

Aloysee Mawatha,

Colombo 03.

(On behalf of K Jayaratne)

**APPLICANT - APPELLANT – RESPONDENT**

**Before: JAYANTHA JAYASURIYA PC CJ**

**P PADMAN SURASENA J**

**E A G R AMARASEKARA J**

Counsel: Ms. Manoli Jinadasa for the Respondent - Respondent - Appellant.

Mr. D P L A Kasyapa Perera with Aslam M Hanifa and S S Nafnees for the Applicant - Appellant - Respondent

Argued on: 27 - 08 - 2019

Decided on: 18 - 02 - 2020

**P Padman Surasena J**

The Applicant - Appellant - Respondent (a trade union) filed an application in the Labour Tribunal seeking a re-instatement of service of its member K Jayaratne (hereinafter sometimes referred to as the Workman). It also sought compensation and back wages for him from the Labour Tribunal. The applicant had alleged that the said termination of service of the workman was wrongful and unfair.

The Respondent - Respondent - Appellants - (hereinafter sometimes referred to as the Employer) filed its answer and;

1. admitted that the Workman was employed in the capacity as a Junior Assistant Factory Officer at its Udaweriya Estate,
2. stated that a domestic inquiry was held against the Workman in which he was found guilty of a charge of stealing tea from the said factory on 27-02-2002,
3. stated that it had decided to terminate the service of the Workman as it had lost the confidence in him as a Junior Factory Officer.

The Employer had prayed in its answer that the application of the Workman be dismissed on the basis that the termination of the service of the Workman is justified.

The Workman thereafter filed his replication denying the averments of the answer filed by the Employer.

At the conclusion of the inquiry, the learned President of the Labour Tribunal pronounced her decision dated 05th August 2010. She held that the termination of the service of the Workman by the Employer is justifiable in the face of the evidence adduced in the case. The learned President of the Labour Tribunal had therefore decided that the just and equitable order she should make, is to dismiss the application of the Workman. Accordingly, the said application was dismissed.

Being aggrieved by the said order of the learned President of the Labour Tribunal, the Workman appealed to the High Court of Uva Province holden in Badulla challenging the said order of the Labour Tribunal.

The High Court by its judgment dated 13th December 2011, set aside the decision of the learned President of the Labour Tribunal and directed that a compensation of Rs.247,681.08 (being the salary for 03 years) be paid to the Workman. This was because the learned High Court Judge had taken the view that she should not order reinstatement of the Workman as a period of approximately 10 years had elapsed since the termination of the service of the Workman.

The judgment of the learned High Court Judge shows that she has based her conclusions inter alia, on the followings;

I. that the Employer had failed to conduct a formal domestic inquiry upon a formally prepared charge,

II. that the charges against the Workman had not been read over and explained to him at the commencement of the inquiry,

III. that the said domestic inquiry had not been held following rules of natural justice,

IV. that the fact that the Workman had been acquitted in the trial in the Magistrate's Court on the basis that the charges against him had not been proved beyond reasonable doubt, is an important factor which should have been considered in favour of the Workman,

V. that she cannot accept the evidence of the witnesses called on behalf of the Employer to establish the charge levelled against the Workman,

This Court, when the leave to appeal application pertaining to this appeal was supported on 29-03-2012, having heard the submissions of the learned counsel, had decided to grant leave to appeal on the following questions of law.

1) Whether the Provincial High Court erred in law and acted in excess of jurisdiction, in disturbing the findings of fact by the Labour Tribunal, which findings were consistent with the evidence?

2) Whether the Provincial High Court erred in law in awarding the relief of compensation to the applicant when the facts and circumstances of the case do not warrant awarding of such relief?

3) Whether the Provincial High Court erred in law in awarding the relief of compensation by the failure to identify correctly and/or properly the petitioner against whom the order has been made?

In the course of the submissions, learned counsel for the Employer drew the attention of this Court to several items of evidence, which directly implicate the Workman in the charge framed against him. It was on that basis that she made submissions to convince this Court that the learned High Court Judge had clearly erred in holding that the Employer had failed to prove the charges. Therefore, I would now turn, albeit briefly, to the evidence adduced in this case.

Krishnakumari is one of the workers engaged in the work in the factory during the relevant night shift. She is amongst several witnesses called to give evidence on behalf of the Employer. She had seen the Workman (who was overseeing the production work of the factory in that night as the Junior Factory Officer), dragging a bag of made tea out of the room. The other workers too, upon noticing this incident, started shouting at the Workman. It is relevant to note that the said witness (Krishnakumari) had retired from service by the time she gave evidence before the Labour Tribunal. I do not find any legally valid ground to disregard the evidence of this witness.

Krishnakumari's evidence has been corroborated by witness Thyangamanie who had rushed to that place after hearing the voice of Krishnakumari. All of them thereafter had taken steps to inform the watcher of the factory Weeraiya Sivakumar. The said watcher in his evidence before the Labour Tribunal had confirmed the occurrence of the events narrated by

Krishnakumari and Thyangamanie. Moreover, the watcher had noticed a bag of tea left at the place shown by the above witnesses. As the finding of the bag at that place is something unusual, as that is not the place where made tea bags are stored, the watcher had informed the Factory Officer. The Factory Officer who came there after about half an hour later, having secured the bags found, had alerted his superior officer regarding this incident.

The Workman too has given evidence before the Tribunal. It is relevant to note that the Workman in the course of answering the questions posed to him in cross-examination, had admitted dragging the bags. It is apparent that he had unsuccessfully attempted to give the Tribunal an impression that he had done so to prevent substandard bags of tea getting mixed up with good bags of tea.

It is important to bear in mind that the position taken up by the Workman is not a total denial of the incident. He had admitted moving out the bags of tea in question but attempted to explain the reason for doing so. However, I observe that he has not been able to answer any of the important questions put to him by the learned counsel who appeared on behalf of the Employer. Considering in its totality, the evidence adduced in the case, it is clear that the Tribunal had acted correctly in refusing to accept the explanation the Workman has offered, for moving the bags of tea. The learned counsel appearing on behalf of the Workman had failed to put forward the position taken up by the Workman to the senior officers of the factory when they gave evidence on behalf of the Employer. Therefore, it is clear that the

position taken up by the Workman is something, which he had concocted after the closure of the Employer's case.

Considering the totality of the evidence led before the tribunal, I am of the view that the evidence against the Workman is cogent and hence must be accepted and acted upon. Therefore, I am of the view that the Employer has successfully discharged his burden by presenting cogent evidence against the Workman.

In view of the said cogent evidence adduced against the Workman before the Tribunal, I see no justification for the conclusion of the learned High Court Judge that the evidence of the witnesses called on behalf of the Employer cannot be acted upon to prove the charges against the Workman. Thus, I am of the view that the conclusions arrived at, by the learned High Court Judge, are based on the misconceived facts. The said conclusions cannot be supported by evidence adduced in the case and hence are perverse.

As has been mentioned above, the learned High Court Judge in her judgment had also held;

I. that the Employer had failed to conduct a formal domestic inquiry upon a formally prepared charge,

II. that the charges against the Workman had not been read over and explained to him at the commencement of the inquiry.

However, it must be borne in mind that there is no mandatory requirement in our law either to produce the charge sheet before the Labour Tribunal or

to necessarily hold a domestic inquiry before termination of service of a workman. Therefore, the above view taken by the learned High Court Judge is erroneous.

Moreover, although the learned High Court Judge has held that the said domestic inquiry had not been held following rules of natural justice, she has failed to point out any circumstance or instance at which the Employer has breached the said rules. Therefore, the said assertion by the learned High Court Judge is also without any merit.

Learned High Court Judge has also held that the Labour Tribunal should have attached more weight to the fact that the Workman had been acquitted in the trial in the Magistrate's Court. However, the learned High Court Judge has failed to distinguish the standard of proof applicable to criminal cases from that applicable to inquiries before Labour Tribunals. The above-mentioned Magistrate's Court case is a criminal case against the Workman. Therefore, the charges should have been proved beyond reasonable doubt. However, it is not the standard of proof applicable when the Employer is called upon to prove the charge against the Workman before the Labour Tribunal. The learned High Court Judge would not have come to the conclusion she arrived at, had she appreciated and applied the said difference in two standards of proof.

This Court in K B D Somawathie v. Baksons Textile Industries Ltd.[1] had an occasion to describe the task of the Labour Tribunal in the following way.

[1] 79 (1) NLR Part 1 - 2014 at page 206.

*".... The mere inquiry into an allegation of misconduct and inefficiency and the finding whether this allegation is true or not is not a complete finding as required by the Industrial Disputes Act. It is my considered view that Labour Tribunals were never intended to perform the functions of Courts of law, and make an order whether the applicant is guilty or not of the allegations made against him by the employer. It is not a verdict that the Law requires from the President but a just and equitable order - an order that is just and equitable in relation to the employer and employee and the employer-employee relationship, due consideration being given to discipline and the resources of the employer and even the interests of the public may have to be given thought to. It is for this reason that the Labour Tribunals are not confined by rules of evidence. They can adopt their own procedure, they can act on confessions and the testimony of accomplices so that they can have a free hand to make a fair order..."*

Section 31 D (3) of the Industrial Disputes Act states that a party dissatisfied with an order of Labour Tribunal may appeal from that order to the High Court only on a question of law. While this is mentioned in section 31 D (3) of the Act, section 31 D (2) states that subject to sub section 3 (above), an order of the Labour Tribunal shall be final and shall not be called in question in any Court.

In the Caledonian (Ceylon) Tea & Rubber Estates, Ltd. Vs. J S Hillman[2] the Supreme Court stated as follows: *"…. Under section 31 D (2) of the Industrial Disputes Act, an appeal to the Supreme Court lies from an order of a Labour*

[2] 79 (1) NLR Part 1, 421 at 425

*Tribunal only on a question of law. Parties are bound by the Tribunal's finding of facts, 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 courts 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. "if the case contains anything ex facie which is bad in law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances too, the court must intervene." – per Lord Radcliff in Edwards v. Baristow (1956) 3 AER at 57. Thus, in order to set aside a determination of facts by the Tribunal, limited as this court is only to setting aside a determination which is erroneous in law, the Appellant must satisfy this court that there was no legal evidence to support the conclusion of facts*

*reached by the Tribunal, or that the finding is not rationally possible and is perverse having regard to the evidence on record. Hence, a heavy burden rested on the Appellant when he invited this court to reverse the conclusion of facts arrived at by the Tribunal…."*

Thus, it is settled law that a party invoking the appellate jurisdiction of High Court under section 31 D (3) of the Industrial Disputes Act is necessarily required to satisfy the High Court that a question of law indeed exists for its determination. It is on that basis that the High Court could assume jurisdiction to consider an appeal under that section.

The argument of the Workman in the High Court was based on the evidence presented before the Labour Tribunal and hence is purely a question of fact. This is so in view of the fact that the conclusion reached by the learned President of the Labour Tribunal cannot be categorized (by any yardstick) as perverse. Thus, I am of the view that the learned High Court Judge has clearly failed to appreciate the legal framework within which she could have considered the evidence presented in the Labour Tribunal when she is exercising jurisdiction of an appellate Court as per the provision of law in section 31 D (3) of the Industrial Disputes Act.

As I have already mentioned above, the evidence adduced on behalf of the Employer in this case, has positively established that the Workman had been clearly involved in stealing made tea stored in the storeroom of the factory in the night of 27-02-2002. As the Employer has proved before the Labour Tribunal that the termination of the service of the Workman is a just and

equitable step taken towards maintaining discipline in its workforce, the judgment of the High Court cannot be permitted to stand.

For the foregoing reasons, I set aside the judgment of the High Court dated 13th December 2011 and proceed to allow the appeal. I further direct that the decision of the learned President of the Labour Tribunal dated 05th August 2010 be restored. Appeal is allowed with costs.

**JUDGE OF THE SUPREME COURT**

**JAYANTHA JAYASURIYA PC CJ**

I agree,

**CHIEF JUSTICE**

**E A G R AMARASEKARA J**

I agree,

**JUDGE OF THE SUPREME COURT**