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

In the matter of an Appeal under and in terms of Section 31DD of the Industrial Disputes Act (as amended).

R.A.S Janaka,
100 D, Pragathi Mawatha,
National Housing Complex,
Kiribathgoda, Kelaniya.

SC APPEAL 126/2022
SC/HC/LA 55/2022
HCA (LT) NO 72/2020
LT NO: 08/124/2017

APPLICANT

Vs.

The Associated Newspapers of Ceylon Ltd, Lake House,
D.R.Wijewardena Mawatha,
Colombo 02.

RESPONDENT

AND BETWEEN

The Associated Newspapers of Ceylon Ltd, Lake House,
D.R. Wijewardena Mawatha,
Colombo 02.

RESPONDENT-APPELLANT

Vs.

R.A.S Janaka,
100 D, Pragathi Mawatha,
National Housing Complex,
Kiribathgoda, Kelaniya.

Presently at-
No.375
Ehalayagoda,
Imbulgoda.

APPLICANT- RESPONDENT

AND NOW BETWEEN

The Associated Newspapers of Ceylon Ltd, Lake House,
D.R.Wijewardena Mawatha,
Colombo 02.

RESPONDENT-APPELLANT-APPELLANT

Vs.

R.A.S Janaka,
100 D, Pragathi Mawatha,
National Housing Complex,
Kiribathgoda, Kelaniya.

Presently at-
No.375
Ehalayagoda,
Imbulgoda.

APPLICANT-RESPONDENT-RESPONDANT

BEFORE : E.A.G.R. AMARASEKARA, J.
K.KUMUDINI WICKREMASINGHE, J.
ARJUNA OBEYESEKERE, J.

COUNSEL : Ms. Manoli Jinadasa with Ms. Shehara Karunaratne instructed by Iromi Jayawardena for the Respondent-Appellant-Appellant.
Mr.Dilip Obeyesekera instructed by Ms.Sanjeewani Dissanayake For the Applicant-Respondent-Respondent.

WRITTEN SUBMISSIONS ON : By The Respondent-Appellant-Appellant on 28th November 2022.
By the Applicant- Respondent- Respondent on 27th January 2023.

ARGUED ON : 06.02.2023

DECIDED ON : 04.06.2025

K. KUMUDINI WICKREMASINGHE, J

The application for special leave to appeal was preferred by the Respondent- Appellant- Appellant against the judgement of the Provincial High Court dated 31.03.2022 affirming the order of the Labour Tribunal on the same grounds cited by the Labour Tribunal for granting relief and ignored the relevant evidence. Aggrieved by the order of the Provincial High Court dated 31.03.2022, the Respondent- Appellant- Appellant appealed to the Supreme Court.

Accordingly this Court Order dated 10.05.2023 granted special leave to appeal on the following questions of law.

(a) Whether the Provincial High Court and the Labour Tribunal erred in law in the analysis of the evidence and reached findings that are perverse and/ or unsupported by evidence?

(b) Whether the relief awarded to the applicant by the Provincial High Court and/ or the Labour Tribunal is just and equitable and/or consistent with the principles of law?

In addition to the above questions of law, the Court granted permission for the Counsel of the Applicant-Respondent-Respondent to frame another question of law which is as follows:

(c) Has the Respondent- Appellant- Petitioner resorted to unfair labour practice prejudicing the rights of applicant- Respondent-Respondent?

The Respondent- Appellant- Appellant (hereinafter referred to as "the Petitioner") stated that the Petitioner is a duly incorporated company under and in terms of the laws relating to incorporation of companies in Sri Lanka. The Applicant- Respondent- Respondent (hereinafter referred to as "the Respondent") filed the Application dated 09.01.2017 in the Labour Tribunal of Colombo, alleging *inter alia* that his services were unjustly terminated by the Petitioner by letter dated 30.11.2016. It was further averred that he has tendered his resignation dated 08.07.2015 which the Petitioner had not accepted. Subsequent to an internal audit inquiry the Respondent had been suspended, charge sheet and a domestic inquiry held at which inquiry he was found guilty of the charges preferred against him. The Respondent's service was terminated by letter dated 30.11.2016. The Petitioner stated that the Petitioner filed Answer

dated 30.01.2017 and averred *inter alia* that the termination of the Respondent's services was for just cause. As per the charge sheet served, the Applicant had not submitted to the Petitioner company a sum of Rs. 456,900.00 collected during the period of March to June 2015 from the customers who published advertisements in ADZ magazine and acted in a manner that has caused the Petitioner to lose trust and confidence in him.

The Petitioner stated that the Respondent filed his replication on 15.02.2017 in response to the Petitioner's Answer and *inter alia,* claimed that he had utilized the money collected from customers to settle the outstanding payments of other customers and he had difficulty in identifying the customers he had so settled. The Petitioner stated that at the Labour Tribunal inquiry Douglas Jayasinghe- Assistant Personnel Manager, M.D.G. Shrimathi- Retired Assistant Internal Auditor and M.L. Chamara Prasanna de Silva- Manager- Observer ADZ Magazine gave evidence on behalf of the Petitioner and marked documents **R1** to **R20.**

At the inquiry, when considering the facts, revealed the following findings:

a. The Respondent was recruited to the Petitioner company with effect from 01.11.2005 by letter of appointment marked as **R1** as a mate.
b. At the time of his termination of services, the Respondent functioned as an Advertising Assistant attached to Observer ADZ Magazine of the Petitioner.
c. The Respondent was interdicted by letter dated 21.10.2015 marked **R10** for his failure to tender funds collected from customers to the Petitioner company to the sum of Rs. 456,972.57.
d. The Respondent's duties entailed canvassing for advertisements, securing payments for advertisements and ensuring the said payments were duly handed over to the

Petitioner company within the stipulated period. The Petitioner company had issued guidelines on the *modus operandi* of these duties. The Respondent receives a 3% commission on collection of payments from customers.

e. The Respondent was issued a charge sheet dated 09.11.2015 marked as **R11** which consists of 4 charges relating to non-submission of funds collected from customers.
f. The Petitioner stated that since the reply sent by the Respondent was unsatisfactory (**R12**) a domestic inquiry was held by an independent inquiring officer. As he was found guilty of the charges levelled against him, his services were terminated by letter dated 30.11.2016 marked as **R13** with effect from 21.10.2015.
g. In the oral testimony of the Respondent before the Labour Tribunal, the Respondent admitted that he had collected a sum of Rs. 456,972.57 from customers in respect of advertisements published by the said customers in the Petitioner's Observer ADZ Magazine during the period March to June 2015 but had not remitted the said amount to settle the said invoices raised in respect of the relevant customers.
h. Even though the Respondent took up the position that he utilized the said money to settle the arrears which were defaulted by some other customers previously, he did not tender an iota of evidence to substantiate this claim.
i. The Respondent in his oral testimony further admitted that he did not inform the Petitioner company that he had utilized the said money to settle the arrears of some other customers. He admitted no one was informed that he had settled old debts from this money. He admitted he had no proof of such settlement of customer accounts, as well.
j. The Respondent admitted that he has failed to keep proper documents and maintain records including the cash book which resulted in a huge loss to the Petitioner company.

k. The Respondent admitted that he was responsible for collection of money and depositing the money towards the costs of advertising.
l. The Respondent admitted that it is he who would be aware of the names of the customers who paid for the advertisements and the outstanding amounts.

Furthermore the Petitioner stated that the learned President of the Labour Tribunal delivered his order on 30.09.2020 directing the Petitioner to pay a sum of Rs. 1,487,430.00 being the equivalent of 42 months salary at the rate of Rs. 35,415.00 per month to the Respondent on the incorrect basis *inter alia* that the termination of the service of the Respondent was unjustified.

The Petitioner stated that the Labour Tribunal had been wrongly critical of the methods followed by the Petitioner for collecting outstanding payments from customers and held that placing the burden of payment on the Respondent for outstanding debts is unfair and had completely ignored the fact that the Petitioner had faulted him not for his failure to collect outstanding debts, but for his failure to submit the money collected from customers listed in the document **R15**. The Labour Tribunal incorrectly held that the Petitioner had failed to establish the charges leveled against the Respondent, when the Respondent had repeatedly admitted that he collected money from the customers and failed to settle their accounts.

The Petitioner thereupon preferred an appeal against the order of the Labour Tribunal and sought to set aside the said order *inter alia*, on the premise that the said order was perverse and contrary to the evidence. The Petitioner stated that the learned High Court Judge by order dated 31.03.2022 affirmed the order of the Labour Tribunal on the same grounds cited by the Labour Tribunal for granting relief and ignored vital and relevant evidence, especially the fact that the

Applicant collected money from the customers and had not tendered the same to settle the said customer accounts. The Petitioner stated that the Provincial High Court has completely failed and/or neglected to independently assess whether or not the findings of the Labour Tribunal are unsupported by evidence and or contradictory to the same. The Provincial High Court had failed to consider whether the Tribunal had shut its eyes to vital evidence which proves the stance of the Petitioner that the termination of services is justified, although the Provincial High Court was invited to do so. A Certified copy of the High Court order dated 31.03.2022 is annexed hereto marked as "**X4**".

The Petitioner stated that being aggrieved by the order of the Provincial High Court dated 31.03.2022, the Petitioner begs Leave to Appeal.

I will now proceed to address the first question of law, namely that

> "Whether the Provincial High Court and the Labour Tribunal erred in law in the analysis of the evidence and reached findings that are perverse and/ or unsupported by evidence?"

This question of law examines whether the Provincial High Court and the Labour Tribunal committed legal errors in their assessment of the evidence. It specifically challenges whether their conclusions were unreasonable, incorrect, or lacking sufficient evidentiary support.

In order to address and answer the first question of law, it is important to examine the factual context, the findings of both the Labour Tribunal and the Provincial High Court and the standard of review applicable to their decisions. The Petitioner argues that both the Labour Tribunal and the Provincial High Court failed to correctly

analyze and assess the evidence presented in the case and that their findings are either perverse or unsupported by the evidence.
Under the Order of the Labour Tribunal, it stated that the following issues were considered.

> ***"චෝදනා පත්‍රයෙන් චෝදනා කර ඇති පරිදි, ඉල්ලුම්කරු අදාළ දැන්වීම් සඳහා පාරිභෝගිකයන්ගෙන් මුදල් අය කරගෙන තිබේද සහ එසේ පාරිභෝගිකයන්ගෙන් මුදල් ලබාගෙන තිබේ නම් රු. 456,900/= ක මුදලක් වංචනික ලෙස ඉල්ලුම්කරු සන්තකයේ තබා ගැනීම තුළින් බරපතළ විෂමාචාරයක් සිදු කර තිබේ ද?***
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> ***එවැනි බරපතළ විෂ්මාචාරයක් සිදුකර තිබේනම්, ඉල්ලුම්කරුගේ සේවය අවසන් කිරීමට වග උත්තරකරු ගෙන ඇති තීරණය සාධාරණ සහ යුක්ති සහගත වන්නේ ද?***
>
> ***මෙම චෝදනාවේ සඳහන් වන මුදල් ඉල්ලුම්කරු විසින් වංචනික ලෙස සන්තකයේ තබාගැනීමක් සිදු කර නැති බවට තහවුරු වන්නේ නම්, ඉල්ලුම්කරුගේ සේවය අවසන් කිරීම අසාධාරණ සහ අයුක්ති සහගත වන්නේ ද?***
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> ***ඉල්ලුම්කරුගේ සේවය එසේ අසාධාරණ සහ අයුක්ති සහගත ලෙස අවසන් කර තිබේ නම්, ඉල්ලුම්කරු සිය ඉල්ලුම් පත්‍රයෙන් අයැද ඇති සහනයන් සඳහා හිමිකම් ලබන්නේ ද?"***

In order to address the above issues, in the Order of Labour Tribunal, the President of the Labour Tribunal stated that,

> ***"මෙම මුදල් පියවීමේ දී, දැන්වීම් සහායකට ඔහුගේ නමින් ඇති RCL ගිණුමේ අදාළ දිනයට ඔහුගෙන් අයවිය යුතුව ඇති හිඟ මුදල පෙන්නුම් කරනු ලබයි. එම හිඟ මුදල කිනම් දැන්වීම්කරුවන්ගෙන් අයවිය යුතු මුදලක් ද යන්න පිළිබඳ විස්තරයක් වග උත්තරකරු විසින් නඩත්තු කරන්නේ නැත. වග උත්තරකරුගේ ස්ථාවරය වන්නේ, එය ඉල්ලුම්කරු විසින් නඩත්තු කළයුතු බවයි. ඒ අනුව ඒ ඒ දැන්වීම්කරුවන් විසින් ADZ Magazine අතිරේකයේ දැන්වීම් පළකර, මුදල් ගෙවීම පැහැරහැර ඇති දැන්වීම්කරුවන් කවුදැ යි යන්න සහ එම මුදල වෙන් වෙන් වශයෙන් පෙන්වා දීමේ හැකියාව වග උත්තරකරු පැහැර හැර ඇත. මේ නිසා දැන්වීම් සහායකයින් අදාළ දිනයට ඇති හිඟ මුදල පියවීම සඳහා, පසුව පළකරන ලද දැන්වීම් සඳහා ලැබෙන මුදලින් එම ගිණුම පියවීමට කටයුතු කර ඇත. ඒ අනුව පෙර ලබාගත් දැන්වීම් වල හිඟ මුදල්, පසුව ලැබෙන දැන්වීම්වල මුදලින් හිලව් කිරීමේ***

*වැඩපිළිවෙලක් ක්‍රියාත්මක වී ඇත. එහෙත් වග උත්තරකරු කියා තිබෙන්නේ, එවැනි අනුමත ක්‍රමවේදයක් ආයතනය තුළ නොමැති බවයි. එහෙත් ඉල්ලුම්කරුගේ චෝදනා පත්‍රයේ **1** වන චෝදනාවෙන් ඉල්ලුම්කරුගෙන් අයවිය යුතු හිඟ මුදල රු.**456,900/-** ක් වශයෙන් සඳහන් කර ඇතත්, කිනම් දැන්වීම් සඳහා එම මුදල් අයවිය යුතු දැයි පෙන්වාදීමට වගඋත්තරකරුට හැකියාවක් ලැබී නැත. ඒ අනුව ඒ ඒ දැන්වීම්වලට අදාළ මුදල් ගෙවා තිබේදැ යි සොයා ගැනීමේ ක්‍රමවේදයක් වග උත්තරකරු සකස් කළ යුතු වේ. මෙහිදී වග උත්තරකරු සළකාබලා තිබෙන්නේ, අදාළ දිනය වන විට ඉල්ලුම්කරුගෙන් අයවිය යුතු හිඟ මුදලේ ප්‍රමානය මිස, ඒ ඒ දැන්වීම්කරුවන් අතරින් මුදල් ලැබුනේ කාගෙන් ද, මුදල් ගෙවීම් පැහැරහැර තිබෙන්නේ කවුරුන් විසින් දැයි යන්න පරීක්ෂා කළ හැකි ක්‍රමවේදයක් ගැන අවධානය යොමු කර නැත. එනිසා දැන්වීම් සහයක සිදුකර තිබෙන්නේ, දැන්වීම් පළ කළ පසු මුදල් නොපිය වූ දැන්වීම් සඳහා, පසුව ලැබෙන දැන්වීම් වලින් ලැබෙන මුදලින් ඒවා පියවීමට කටයුතු කිරීමයි. මෙම ක්‍රමය යටතේ දැන්වීම් සහායකට කළහැකි වන්නේ, ලැබෙන දැන්වීම් වලින් පෙර නොගෙවූ දැන්වීම් සඳහා ගෙවීම් කිරීම බැවින්, එම **RCL** ගිණුමේ හිඟ ශේෂයෙන් විකුණුම් සහයකගේ නමින් අඛණ්ඩව පැවතීමයි.”*

The statement asserts that the petitioner is responsible for maintaining details of outstanding payments from advertisers; however, this position is legally untenable as the duty to maintain financial records, including invoices and payment details, properly rests with the Respondent. As an Advertising Assistant, the Respondent has a fiduciary duty to ensure proper record-keeping and accountability. The respondent’s failure to maintain a clear record of advertisers who have defaulted on payments and the subsequent attempt to shift this burden onto the petitioner amounts to a breach of duty and misallocation of responsibility. Additionally, the fact that advertisement assistants were compelled to settle outstanding amounts from later advertisements indicates serious financial mismanagement and a lack of internal controls for which the respondent is directly accountable. The respondent’s failure to implement a structured system to track outstanding payments constitutes gross negligence and undermines the transparency required in financial operations. Therefore, it is evident that the primary duty to maintain invoices and records lies with the respondent and the attempt to shift this obligation onto the petitioner is legally unsustainable. Although the aforementioned

statement emphasises that the Petitioner's procedure was improper, the Respondent, in his statement to the auditors (**R9**, found on page 338 of the brief), admitted to having collected money from customers but failing to deposit the same against their respective debts. The Respondent stated that,

> ***"ආයතනය විසින් හඳුන්වාදුන් බිල්පොත් හා ඉන්වොයිස් ආදිය ක්‍රමවත්ව පවත්වා ගැනීමටත් ඇතැම් අවස්ථාවල මා හට නොහැකි වුණා. දුරකථන මාර්ගයෙන්, email මාර්ගයෙන් ලද දැන්වීම් සඳහා ලිඛිතව ලියවිලි පවත්වා ගෙන යාමට මා හට නොහැකි විය."***
>
> ***"විගණන අංශය මඟින් මා වෙත පෙන්වන ලද ලේඛණයේ සඳහන් ගනුදෙණුකරුවන්ගෙන් ලැබිය යුතු සියලුම මුදල් මා විසින් අය කරගෙන ඇති අතර එම මුදල් මීට ඉහතදී ගනුදෙණුකරුවන්ගෙන් අයවිය යුතුව තිබූ මුදල් වෙනුවෙන් හිලව් කිරීම සඳහා ගෙවන ලදී. එසේ කලේ නියමිත ණය කාලසීමාව ඉක්මවා නොයාම සඳහායි."***

In relation to the above statement, the 'due date of settlement of bills' **(නියමිත ණය කාලසීමාව)** includes a period of 60 days, during which the Respondent is entitled to a 3% commission for the timely settlement of bills, as evidenced by document **A3**. As outlined in the written submissions on behalf of the Petitioner, if the Respondent had indeed deposited money collected from one customer to settle the outstanding debts of another customer, he would still be eligible for the commission. Hence, upon critically evaluating the above evidence, I am of the view that unless the Respondent properly maintained the account ledgers, invoices, and bills, it can be reasonably concluded that he used funds from one customer to clear the previous debts of another, aiming to secure his commission.

The Respondent has admitted to collecting the money, as evidenced in **pages 225-227** of the brief. His justification for failing to deposit the said amount towards the relevant customer's debt is that he chose to settle old debts of other customers instead. However, he further acknowledged that he is the sole person who can confirm

whether those previous payments were actually settled for past advertisements.

"ප්‍ර: මෙහි සඳහන් වෙන්නේ තමන් පියවන කොට පියවලා නැති දැන්වීම් වලට ලැබුණු මුදල් නේ ද?

උ: එහෙමයි.

ප්‍ර:තමන් කියන්නේ ආර් 15 තිබෙන සියලුම දැන්වීම් වෙනුවෙන් මුදල් තමන් එකතු කර ගත්තය පරන දැන්වීම් ගණනාවක් වෙනුවෙන් ඒවා ගෙව්වා කියලා?

උ: එහෙමයි

ප්‍ර: ආයතනයේ වාර්තා අනුව හිඟ තිබෙන්නේ මේ ආර් 15 ලේඛනයේ තිබෙන දැන්වීම් වලට නේ ද?

උ: එහෙමයි.

ප්‍ර: පරණ දැන්වීම්කරුවන් තමන්ට මුදල් ගෙවා නැත්නම් ඒක දන්නේ තමන් විතරයි?

උ: එහෙමයි.

ප්‍ර: තමන් කියන විදියට ආයතනයට ආර් 15 ලේඛනයේ තිබෙන දැන්වීම්කරුවන්ගෙන් මුදල් අය කරගන්න ක්‍රියා කරන්න විදියක් නෑ නේ ද? මොකද ඒ දැන්වීම්කරුවන් තමන්ට මුදල් ගෙවා තිබෙන්නේ?

උ: එහෙමයි.

ප්‍ර: පරණ දැන්වීම්කරුවෙක් තමන්ට හිඟ තිබෙනවා නම් මේ අලුත් දැන්වීම්කරුවන්ගේ මුදලින් හිඟ මුදල් පියවලා තිබෙනවා නම් ආයතනය කොහොමද දන්නේ තමන්ට සැබවින්ම හිඟ තිබූ දැන්වීම්කරුවෝ කවුද කියලා?

උ: මේක අපේ නමට තිබුණේ. ආයතනය දන්නෙ නැහැ. නමුත් මම ඒ ක්‍රමවේදය අනුව ගෙවාගෙන ආවා." ***(as evidenced on page 225-226 of the brief)***

According to the above statement, the Respondent admitted that the Petitioner was not aware of the method used by the Respondent to pay the money. Furthermore, during the cross-examination of the Respondent (as evidenced on **page 226 of the brief**), the Respondent acknowledged that the Petitioner could not send letters of demand to advertisers under **R15**, as the Respondent had already collected the money from them. Additionally, based on the statements of the Respondent regarding the settlement of payments for old advertisements, the Petitioner lacks documentation to establish that the outstanding dues have not been settled.

*"ප්‍ර: සාක්ෂිකරු මේ ආර් **15** කියන දැන්වීම්කරුවන්ට ලිපි යවන්නේ කොහොමද ආයතනය තමන් කියන විදියට ඒ මුදල් එකතු කරගෙන් අවසන්?*

උ: එහෙමයි. එකතු කරගෙන මේ ගෙවාගෙන එන පිළිවෙලට ගෙවාගෙන ආවා. මේ මුදල් ගෙවීම පැහැර හැර නැහැ. නමුත් මේ මුදල් ප්‍රමාද වීමයි තිබුනේ. ක්‍රමවේදය අනුව මේ මුදල් ගෙවාගන්න මට කාලය තිබෙද්දී මගේ වැඩ තහනම් කලා.

*ප්‍ර: ආර් **15** ලේඛනයේ හිඟ කියලා දැන් තිබෙන දැන්වීම්කරුවන්ට ලිපි යවන්න ආයතනයට හැකියාවක් නැහැ තමන් ඒ මුදල් එකතු කරගෙන අවසන්?*

උ: එහෙමයි

ප්‍ර: නමුත් තමන් ආයතනයට ලබා දීලා තිබෙන තොරතුරු අනුව තමන් පරණ දැන්වීම් වෙනුවෙන් ගෙවලා තිබෙන නිසා තමන් කියන විදියට ඒ ආයතනයක කොහෙවත් ලේඛනයක අර පරණ දැන්වීම්කරුවන් තමන්ට මුදල් ගෙවලා නැති බව සටහන් වෙන්නෙ නැහැ?

උ: එහෙමයි

ප්‍ර: සැබවින්ම මුදල් හිඟ තියපු දැන්වීම්කරුවන්ට තමන් කියනවා මේ විධියට විරුද්ධව කිසිම පියවරක් ගන්න ඉඩක් නැහැ තමන් ඒ ගැන ආයතනය ලිඛිතව දැනුවත් කළේ නැත්නම්?

උ: මම කියන්නේ මට ගෙවීමට කාලය තිබුණා. සම්පූර්ණ මුදල පියවන්න මට කාලය තිබෙද්දී මාව රැකියාවෙන් ඉවත් කළා.

*ප්‍ර: තමන් කිසිම උත්සහයක් ගත්තේ නැහැ ආයතනය දැනුවත් කරන්න තමන් දැන් මේ උසාවියේ කියන කාරණය ගැන එනම් යම් දැන්වීම්කරුවෝ මට හිඟ තියලයි තිබෙන්නේ මම මේ අලුත් දන්වීම් වලින් ඒවාට ගෙව්වා කියලා කිව්වට ඇත්තටම හිඟ තිබුණ දැන්වීම්කරුවන්ගේ නම් සහ ඒ දැන්වීම් පළ වූ දිනය තමන් ආයතනයට කියා සිටියේ නැහැ. එය තමන්ගේ හිතේ තිබුණ කාරණයක් විතරයි. තමන් කියන විධියට? **(as evidenced on Page 227 of the brief).***

*උ: මම ඊටපසුව දැන්වීම්වලින් මුදල් එකතු කරලා හාර ලක්ෂ ගානක් තිබුණා. **5** ලක්ෂ ගාණක් තිබුණා හාර ලක්ෂ ගණනට අඩු කරලා තිබෙන්නේ.*

*ප්‍ර: තමන් ඇත්තටම හිලව් කළා කියනවා තමාගේ සාක්ෂියේදිවත් ගරු අධිකරණයට ලේඛණයක් ඉදිරිපත් කළේ නැහැ මේ රු. **450,000/=** අය වෙන්න තිබෙන්නේ මෙන්න මේ දැන්වීම්කරුවන්ගෙන් කියලා මොකද තමා හිලව් කලා කියනවා යම් දැන්වීම් වෙනුවෙන් ඒ ලැයිස්තුවක් තමන් දැන්වත් ගරු අධිකරණයට ඉදිරිපත් කරලා නැහැ තමන් එහෙම දෙයක් ඉදිරිපත් කරලා නැහැ තමන් බොරු සාක්ෂියක් තමයි ඔය කියන්නේ කියලා මම තමාට යෝජනා කරනවා?*

*උ: හෘද සාක්ෂියට එකඟව සිදු වූ දේ පමණයි මා කියන්නේ. **(as evidenced on Page 228 of the brief)***

විනිශ්චයාධිකරණයෙන්:

ප්‍ර: තමන්ගෙන් අහන්නේ නොගෙවපු අයගේ ලැයිස්තුවක් ඉදිරිපත් කළාද කියලා?

*උ: නොගෙවපු අයගේ ලැයිස්තුවක් ඉදිරිපත් කරල නැහැ.” **(as evidenced on Page 231 of the brief)***

Having considered the evidence presented, it is clear that the Respondent failed to maintain proper records of customers who defaulted on payments. Furthermore, the Respondent admits that the funds in question were not deposited under the correct name. This failure to adhere to basic record-keeping and deposit procedures demonstrates a clear degree of negligence on the part of the Respondent in discharging their duties.

According to the Order of the Labour Tribunal, it stated that,

*“මෙම මුදල් පියවීමේදී, දැන්වීම් සහයකට ඔහුගේ නමින් ඇති **RCL** ගිණුමේ අදාළ දිනයට ඔහුගෙන් අයවිය යුතුව ඇති හිඟ මුදල පෙන්නුම් කරනු ලබයි. එම හිඟ මුදල කිනම් දැන්වීම්කරුවන්ගෙන් අයවිය යුතු මුදලක් ද යන්න පිළිබඳව විස්තරයක් වග උත්තරකරු විසින් නඩත්තු කර නැත. වග උත්තරකරුගේ ස්ථාවරය වන්නේ, එය ඉල්ලුම්කරු විසින් නඩත්තු කළ යුතු බවයි. ඒ අනුව ඒ ඒ දැන්වීම්කරුවන් විසින් **ADZ Magazine** අතිරේකයේ දැන්වීම් පළකර මුදල් ගෙවීම පැහැර හැර ඇති දැන්විම්කරුවන් කවුදැ යි යන්න සහ එම මුදල වෙන් වෙන් වශයෙන් පෙන්වා දීමේ හැකියාව වග උත්තරකරු පැහැර හැර ඇත. **(as evidenced on page 401 of the Brief)***

If the Respondent claims that the responsibility of maintaining the list of defaulting customers lies with the Petitioners, the burden of proof rests upon him to establish this assertion. However, the evidence confirms that the Respondent unequivocally admitted to not providing a single document to substantiate the list of defaulting customers, thereby shifting the burden onto the Petitioners.

The Respondent stated before the Labour Tribunal, the said money to settle the arrears which were defaulted by some other customers. The Retired Assistant Internal Auditor, Mrs. Shrimathi testified in evidence that there was no document produced by the Applicant to substantiate this position. According to the page No 44 of the brief , it stated that

"විනිශ්චයාධිකරණයෙන්:
***ප්‍ර: 2** වන කාරණය අභ්‍යන්තර විනය පරීක්ෂණයේ දී සත්‍ය බවට හෙළි වුණා ද?*
උ: එහෙම පරික්ෂාවක් කරන්න කිසිම සාක්ෂියක් අප වෙත ඉදිරිපත් වුණේ නෑ ස්වාමීනි, එක දැන්වීමක් වෙනුවෙන් නොගෙවූ මුදල පසුව ලබා ගත් දැන්වීමක මුදලකින් පියවුවා නම්, ඒ ලිඛිත කරුණු ඉදිරිපත් කරන්න ඔහුට හැකියාවක් තියෙන්න ඕන, නමුත් ඉදිරිපත් වුණේ නෑ.
සභාපති/අතිරේක මහේස්ත්‍රාත්."

The Labour Tribunal completely disregarded vital evidence, such as the Respondent's admission that he had failed to maintain proper records and documentation regarding the payments collected from customers. The Tribunal also ignored the Respondent's failure to inform the company about how the collected money was allegedly used to settle other debts. These omissions point to a fundamental error in the Tribunal's analysis of the case.

Affirming the Order of the Labor Tribunal, the High Court stated that,

“RCL ලෙජරයේ සඳහන් හිඟ මුදලින් කොටසක් ගෙවා අවසන් කළ බවට පමණක් ගිණුම් සටහන් ඇතුලත් කිරීමක් සිදු වී ඇත**.** එවිට **R 15** දරණ ලෙජරයේ සඳහන් කුමන පාරිභෝගිකයෙකුගෙන් ඉල්ලුම්කාර වග උත්තරකරු විසින් මුදල් අයකරගෙන් ඇත් ද**?** එසේ අයකර ගත් මුදල ලෙජරයේ විස්තර ඇතුළත් කුමන පාරිභෝගිකයෙකුගෙන් අයවිය යුතු මුදලක් තුලනය කර ගැනීමට යොදා ගත්තේ ද**?** යන කාරණාවක් සම්බන්ධයෙන් තොරතුරු ඇතුළත් ගිණුම් සටහනක් වග උත්තරකාර අභියාචක සතුව නොමැති බවට පැහැදිලි ය**.”(as evidenced on page 509)**

Although the High Court noted that there was no evidence identifying the defaulting customers or those who had made payments to the Respondent, it placed the responsibility on the Petitioner. However, it is important to note that it was the Respondent who unilaterally adopted and followed his own procedure in discharging the debts.

As outlined in **Section 31D(2)** of the **Industrial Disputes Act No. 43 of 1950**, as amended (hereinafter referred to as the "Industrial Disputes Act"), it is expressly stated that

> *“An order of a labour tribunal shall be final and shall not be called in question in any court.”*

However, **Section 31D(2)** does not completely bar an aggrieved party from appealing to another court, as this provision is qualified by **Section 31D(3)** of the Industrial Disputes Act, which states the following.

> *“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”*

In **Kotagala Plantations Ltd. and Lankem Tea and Rubber Plantations (Pvt) Ltd. v Ceylon Planters Society [(2010) 2 Sri LR 299]** by Chief Justice J.A.N de Silva as to what would constitute a question of law for the purposes of s.31D of the Industrial Disputes Act, whereby His Lordship held at page 303 as follow:

> *"An appeal lies from an order of a Labour Tribunal only on [a] question of law. A finding on facts by the Labour Tribunal is not disturbed in appeal by an Appellate Court unless the decision reached by the Tribunal can be considered to be perverse. It has been well established that for an order to be perverse the finding must be inconsistent with the evidence led or that the finding could not be supported by the evidence led (vide* **Caledonian Estates Ltd. v. Hillman 79 (1) NLR 421**)"

Further, in **Jayasuriya vs Sri Lanka State Plantations Corporation, (1995) 2 SLR 379** Justice Amarasinghe held that being "perverse" in this context can have a broader meaning than its natural meaning. His lordship held;

> *" 'Perverse' is an unfortunate term, for one may suppose obstinacy in what is wrong, and one thinks of Milton and how Satan in the Serpent had corrupted Eve, and of diversions to improper use, and even of subversion and ruinously turning things upside down, and, generally, of wickedness. Yet, in my view, in the context of the principle that the Court of Appeal will not interfere with a decision of a Labour Tribunal unless it is "perverse", it means no more than that the court may intervene if it is of the view that, having regard to the weight of evidence in relation to the matters in issue, the tribunal has turned away arbitrarily or capriciously from what is true and right and fair in dealing even handedly with the rights and interests of the workman, employer and, in certain circumstances, the public. The Tribunal must make an order in equity and good conscience, acting judicially, based on legal*

evidence rather than on beliefs that are fanciful or irrationally imagined notions or whims. Due account must be taken of the evidence in relation to the issues in the matter before the Tribunal. Otherwise, the order of the Tribunal must be set aside as being perverse."

In **R.A. Dharmadasa v Board of Investment of Sri Lanka, (SC Appeal No 13/2019 decided on 16th June 2022)** Justice Arjuna Obeyesekere refers to Weeramantry, J in **Ceylon Transport Board v Gunasinghe [72 NLR 76 at 83],**

"... a free charter to act in disregard of the evidence placed before them. They are, in arriving at their findings of fact, as closely bound to the evidence adduced before them and as completely dependent thereon as any Court of law. Findings of fact which do not harmonise with the evidence underlying them lack all claims to validity, whatever be the Tribunal which makes them."

Considering the above evidence, it is evident that both the Labour Tribunal and the Provincial High Court misdirected themselves in the analysis of the evidence due to the burden of proof passed to the Petitioner about maintaining records. The primary charge against the applicant was not the failure to collect outstanding dues from customers but the deliberate retention of collected funds amounting to Rs. 456,972.57/-, which he failed to remit to the appellant. The applicant himself admitted to auditors that he had collected the money but had not deposited it, attempting to justify his actions by claiming that he used the funds to settle other outstanding debts of customers. However, he failed to provide any documentary evidence to substantiate this claim, nor did he produce any records showing which accounts were settled.

I do not agree with the decision of the Labour Tribunal to hold that the termination of the Applicant's employment was wrongful. The evidence clearly establishes that the Applicant was grossly negligent

in handling the funds collected on behalf of the Respondent. The Applicant admitted to auditors that he collected Rs. 456,972.57/- from customers but failed to deposit the same into the Respondent's account. Furthermore, he did not maintain proper records or issue receipts as required, making it impossible to verify his claim that the funds were used to settle other outstanding debts. The Labour Tribunal failed to consider that the Applicant's actions constituted a serious breach of financial trust and responsibility, which directly impacted the Respondent's business operations. Had the Tribunal properly evaluated the evidence, it would have found that the Applicant's negligence and financial misconduct warranted termination. I also find that the Provincial High Court erred in affirming the Tribunal's decision without fully appreciating the gravity of the Applicant's misconduct. Therefore, the findings of both the Labour Tribunal and the High Court are perverse and unsupported by the evidence, as they have misconstrued the fundamental issue at hand.

The Provincial High Court, instead of critically assessing the Tribunal's findings, merely affirmed them without properly addressing this misinterpretation of the facts. As such, both findings are perverse, unsupported by evidence, and legally unsound.

The second question of law pertains to the appropriateness and fairness of the relief granted to the Respondent by both the Labour Tribunal and the Provincial High Court. In particular, the Petitioner challenges whether the relief awarded is just and equitable in light of the facts of the case and whether it aligns with established legal principles regarding the termination of employment and compensation.

To analyse this question, I will first consider the basis of the relief awarded and examine whether it reflects the principles of fairness, justice, and legal consistency in employment law. The Labour Tribunal awarded the applicant Rs. 1,487,430/-, equivalent to 42

months' salary, at Rs. 35,415/- per month. According to the Order of the Labour Tribunal, it stated that

> *"ඉල්ලුම්කරු සිය ඉල්ලුම්පත්‍රයේ ඔහුගේ සේවය අවසන් වන විට මාසික වැටුප රු.**35,415/=** ක් බවට දක්වා ඇත. වග උත්තරකරු පිළිතුරු ප්‍රකාශයේ ඉල්ලුම්කරුගේ මාසික වැටුප රු. **13,915/=** ක් බවට දක්වා ඇත. ඉල්ලුම්කරු ඔහුගේ සේවය අවසන් කළ **2015** ඔක්තෝබර් මස වැටුප් ලේඛනය ඒ **19** වශයෙන් ලකුණු කර ඉදිරිපත් කර ඇති අතර, වග උත්තරකරු **2015** සැප්තැම්බර් වැටුප් ලේඛනය ආර් **14** බී වශයෙන් ලකුණු කර ඇත. එම ලේඛන **02**හිම ඉල්ලුම්කරුගේ මාසික වැටුප රු. **13, 915/=** ක් ලෙසද අනෙකුත් දීමනාවන් ද සඳහන්ව ඇති අතර, ඉල්ලුම්කරුගේ සාක්ෂි අනුව එම දීමනා ස්ථාවර දීමනා වන බව පෙන්වා දී ඇති අතර, වග උත්තරකරු ඒ සම්බන්ධව විවාද කර නොමැත. .....*
>
> *ඒ අනුව සියලු කරුණු සැලකිල්ලට ගෙන, ඉල්ලුම්කරුට අවුරුදු **03 1/2** ක වැටුපක් වන්දියක් ලෙස ලබා දීම සාධාරණ සහ යුක්ති සහගත බවට තීරණය කරමි. ඒ අනුව රු. **35,415/=** මාස **42**= රු. **1487,430/= (**රුපියල් දාහතර ලක්ෂ අසූ හත් දහස් හාරසිය තිහ**)** ක මුදලක් වන්දි වශයෙන් ගෙවීමට වග උත්තරකරුට නියම කරන අතර, මෙම මුදල සහකාර කම්කරු කොමසාරිස් දකුණු කොළඹ වෙත **2020** නොවැම්බර් මස **04** වන දින හෝ එදිනට ප්‍රථම තැන්පත් කරන ලෙස වග උත්තරකරුට නියෝග කරමි."*

This award was made on the basis that the Petitioner unfairly terminated the Applicant. Therefore, it is necessary to determine whether the termination was in fact fair and justified. Upon examining the charge sheet and the evidence presented, it is apparent that the Respondent failed to remit a sum of Rs. 456,972.57/= collected from customers. The evidence proves that the Respondent failed to deposit the collected funds into the Petitioner's account, did not maintain proper records, and failed to issue receipts in accordance with the employer's financial protocols. This conduct constitutes deliberate misappropriation of company funds and a serious breach of trust. Given the proven nature of this misconduct, the Petitioner's decision to terminate the Respondent's employment is entirely justified.

This assessment was fundamentally flawed as it erroneously included a temporary allowance of Rs. 4,000/- that was linked to a loan obtained by the applicant for the purchase of a motorcycle **(as evidenced on R14(b) at page 351 of the brief).** Additionally, the LT arbitrarily determined that the applicant, at the age of 48 years, would face difficulties in finding alternative employment, despite the absence of any evidence to support such a finding. There was no claim by the applicant that he was unable to secure alternative employment, nor did he provide any proof of efforts to mitigate his losses. Compensation in labor disputes is not an automatic right but must be justified based on relevant facts and legal principles. The misconduct committed by the applicant involved a serious breach of trust and financial discipline, which warranted termination. In such circumstances, awarding compensation is entirely unjustified and amounts to a perverse application of the law. The PHC, instead of correcting this legal error, affirmed the LT's order without proper judicial scrutiny, further compounding the injustice caused to the appellant.

The awarding of compensation is governed under **Section 33** of the ***Industrial Disputes Act No. 43 of 1950 (as amended)***, which stipulates under **Section 33 (1)(d)** as follows.

> **"***Without prejudice to the generality of the matters that may be specified in any award under this Act or in any order of a labour tribunal, such award or such order may contain decisions- as to the payment by any employer of compensation to any workman, the amount of such compensation or the method of computing such amount, and the time within which such compensation shall be paid."*

However, none of the provisions in the ***Industrial Disputes Act No. 43 of 1950 (as amended)*** specifically define the manner in which the quantum of compensation should be determined. The only guiding parameter provided for in the Act concerning the granting of

compensation is the "just and equitable" principle, which is outlined in **Section 31C(1)**. It states:

> *"Where an application under section 31B is made to a labour tribunal, it shall be the duty of the tribunal to make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary and thereafter make, not later than six months from the date of such application, such order as may appear to the tribunal to be just and equitable."*

This provision mandates that the tribunal's decision on compensation must be fair and reasonable, based on the evidence presented and the particular circumstances of the case. However, the Act does not specify a clear formula or method for calculating the quantum of compensation, leaving it to the discretion of the tribunal to determine what is just and equitable in each case.

In the case of **Richard Peiris and Co. Ltd. v D.J. Wijesiriwardena (62 NLR 233)**, T.S. Fernando J. stated:

> *"In regard to the power of the Tribunal to make such order as may appear to it to be just and equitable, there is point in Counsel's submission that justice and equity can themselves be measured not according to the urgings of a kind heart, but only within the framework of the law."*

Furthermore, S.R. De Silva, a renowned writer on industrial law, in his work ***The Legal Framework of Industrial Relations in Ceylon* (H.W. Cave 1973) at page 390**, wrote that the quantum of compensation is generally within the discretion of the court] and no definite rules can be laid down for the assessment of compensation. He emphasized that various factors such as the reason for the termination, the nature of the workman's employment, his length of service, and the employer's capacity to pay would all be relevant in determining the quantum of compensation.

This highlights that the discretion to award compensation lies within the legal framework, where fairness and equity must be weighed against the legal criteria, and while the decision is discretionary, it should not be based on sentiments but on the law and the facts of the case.

In **Gilbert Weerasinghe Vs. People's Bank - S.C Appeal No. 81/2006 , Decided On:- 31st July 2008** J.A.N. De Silva held that

> *"The Labour Tribunal should act in a just and equitable manner to both parties and not award any relief on the basis of sympathy. Just and equitable order must be fair to all parties. It never means the safeguarding of the interest of the workman alone. Legislature has not given a free licence to a President of a Labour Tribunal to make award as he may please."*

In the context of the **Industrial Disputes Act** it was clarified by His Lordship Justice Sharvananda in **Caledonian Estates Ltd. vs. Hillman (1977) 79(i) NLR 421** stating that:

> *"The Legislature has wisely given untrammelled discretion to the Tribunal to decide what is just and equitable in the circumstances of each case. Of course, this discretion has to be exercised judicially. It will not conduce to the proper exercise of that discretion if this Court were to lay down hard and fast rules which will fetter the exercise of the discretion, especially when the Legislature has not chosen to prescribe or delimit the area of its operation. Flexibility is essential. Circumstances may vary in each case and the weight to be attached to any particular factor depends on the context of each case"*

The Labour Tribunal's decision to award substantial compensation to the Respondent, despite proven misconduct and breach of financial protocol, represents a clear departure from the principles of fairness and legal consistency emphasized in the above case. As underscored by Justice J.A.N. De Silva, the role of the Labour

Tribunal is not to dispense relief based on sympathy but to act justly and equitably toward both parties.

In conclusion, the Applicant's actions constitute not merely a serious breach of trust and negligence, but proven misappropriation of the Respondent's funds. The evidence establishes that the Applicant retained a sum of Rs. 456,972.57/= collected from customers and failed to deposit it into the company's account. His unsubstantiated claim that the funds were used to settle other debts does not absolve him of liability, particularly in the absence of any documentation or approval to support such use. This conduct reflects a deliberate act of misappropriation and a grave breach of financial responsibility and fiduciary duty, fully justifying the termination of his employment.

The Labour Tribunal's decision to award substantial compensation was not based on a proper appreciation of these facts or the relevant legal principles. Its failure to recognize the severity of the misconduct, coupled with the proven dishonest handling of company funds, led to an outcome that was both unjustified and inequitable.

In The Associated Newspapers of Ceylon Limited v M.S.P. Nanayakkara [SC Appeal No. 223/2016; SC Minutes of 6th December 2022], the Supreme Court held:

> "Thus, while it is clear that the awarding of compensation even where termination of services is justified is the exception, I am of the view that an employee who is guilty of misconduct that brings into question his integrity, loyalty, trust and honesty is not entitled to the payment of any compensation. Taking into consideration the facts and circumstances of this case and the conduct of the Respondent, I am of the view that there is no justification at all to make an order for the payment of compensation to

the Respondent. To make such an order would be to reward dishonest conduct."

Applying the above principle to the present case, the Applicant's conduct marked by proven misappropriation clearly falls within the category of misconduct that undermines trust, integrity, and honesty. Accordingly, the Labour Tribunal and the Provincial High Court erred in granting compensation. To uphold such an award would be to reward dishonest conduct, which is antithetical to the principles of justice and fair industrial relations.

This third question of law concerns whether the Petitioner has engaged in any unfair labor practices that have prejudiced the rights of the Respondent. The issue of unfair labor practices is central to ensuring that employers treat employees in a just, equitable, and lawful manner, particularly when it comes to termination of employment, disciplinary actions, and the exercise of managerial prerogatives.

Analysing this question of law, I examine the relevant legal framework surrounding unfair labor practices, the actions of the Petitioner in this case and whether those actions have indeed violated the rights of the Respondent in a manner that constitutes an unfair labor practice.

Unfair labour practices refer to actions by an employer that violate the rights of employees and undermine principles of fairness, equality, and justice in the workplace. These practices may include discrimination, victimization, arbitrary dismissal, denial of the right to unionize, or the misuse of disciplinary procedures to target employees without just cause. The concept exists to ensure that employers do not abuse their managerial authority or act in bad faith when dealing with employees. While not always explicitly defined in a single statute, unfair labour practices are generally understood through labour law principles and judicial interpretation as conduct

that prejudices an employee's legal or constitutional rights in the context of employment.

Under Sri Lankan employment law, termination of employment is governed primarily by the ***Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971 (TEWA)*** and the ***Industrial Disputes Act, No. 43 of 1950(as amended).*** Termination may occur either through resignation by the employee or dismissal by the employer. However, when an employer initiates termination, the law requires strict adherence to procedural safeguards and valid justification. Arbitrary or unjustified dismissal without following legal procedures can amount to unlawful termination.

Under **Section 32A** of the ***Industrial Disputes (Amendment) Act, No. 56 of 1999.*** This provision outlines specific acts that constitute unfair labour practices by employers, primarily focusing on interference with trade union rights, victimization for union involvement, unjust disciplinary action, and refusal to bargain collectively. In the present case, there is no evidence to suggest that the Petitioner engaged in any of the prohibited acts set out in **Section 32A**. The Respondent was not dismissed on the basis of union activity, nor was there any indication that his rights to association or representation were interfered with.

The termination of employment in Sri Lanka is regulated to protect the rights of workmen and ensure that dismissals are not carried out arbitrarily or unfairly. The primary legislation governing this area is the ***Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971***. Under **Section 2** It states that,

"**2.(1)** *No employer shall terminate the scheduled employment of any workman without -*

> ***(a)*** *the prior consent in writing of the workman; or*
> ***(b)*** *the prior written approval of the Commissioner.*

(2) *The following provisions shall apply in the case of the exercise of the powers conferred on the Commissioner to grant or refuse his approval to an employer to terminate the scheduled employment of any workman:-*

> ***(a)*** *such approval may be granted or refused on application in that behalf made by such employer;*
> ***(b)*** *the Commissioner may, in his absolute discretion, decide to grant or refuse such approval;*
> ***(c)*** *the Commissioner shall grant or refuse such approval within three months from the date of receipt of an application in that behalf made by such employer;*
> ***(d)*** *the Commissioner shall give notice in writing of his decision on the application to both the employer and the workman;*
> ***(e)*** *the Commissioner may, in his absolute discretion, decide the terms and conditions subject to which his approval should be granted, including any particular terms and conditions relating to the payment by such employer to the workman of a gratuity or compensation for the termination of such employment; and*
> ***(f)*** *any decision made by the Commissioner under the preceding provisions of this subsection shall be final and conclusive, and shall not be called in question whether by way of writ or otherwise -*
>
> > ***(i)*** *in any court, or*
> > ***(ii)*** *in any court, tribunal or other institution established under the Industrial Disputes Act.*

(3) *Any person who fails to comply with any decision made by the Commissioner under subsection (2) shall be guilty of an offence and shall, on conviction after trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to*

imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(4) *For the purposes of this Act, the scheduled employment of any workman shall be deemed to be terminated by his employer if for any reason whatsoever, otherwise than by reason of a punishment imposed by way of disciplinary action, the services of such workman in such employment are terminated by his employer, and such termination shall be deemed to include -*

(a) *non-employment of the workman in such employment by his employer, whether temporarily or permanently, or* ***(b)*** *non-employment of the workman in such employment in consequence of the closure by his employer of any trade, industry or business.*

(5) *Where any employer terminates the scheduled employment of any workman by reason of punishment imposed by way of disciplinary action the employer shall notify such workman in writing the reasons for the termination of employment before the expiry of the second working day after the date of such termination.*"

In this case, the Respondent was dismissed following internal findings that he had collected a substantial sum of Rs. 456,972.57/- from customers and willfully failed to remit those funds to the employer. The charge sheet (Pages 341–342 of the brief) alleged that the Respondent deliberately withheld the funds, and the evidence presented confirmed that he failed to deposit the monies into the company's account or comply with prescribed financial procedures. Although he claimed the funds were used to settle other customer debts, no documentary evidence or authorization was produced to support this claim.

The proven failure to deposit company funds, coupled with the complete lack of documentation, constitutes misappropriation and

a serious breach of trust. While the audit reports may not have specifically indicated personal enrichment, the Respondent's conduct demonstrates dishonest intent and cannot be treated as mere negligence. It amounts to a willful violation of his duties as a custodian of company funds.

In this context, the employer's decision to frame the charge based on serious financial misconduct was appropriate. The Respondent was given an opportunity to respond but failed to offer a credible explanation. Therefore, the disciplinary inquiry, although contested, did not violate principles of fairness or due process.

Accordingly, there is no basis to conclude that the Petitioner engaged in any unfair labour practices. The dismissal was grounded in established misconduct, and not in any act that prejudiced the Respondent's rights under labour law. Both the Labour Tribunal and the Provincial High Court failed to properly assess the seriousness of the misconduct and erred in awarding compensation. The findings are unsupported by the evidence and inconsistent with principles of fairness and justice.

In the case of **David Micheal Joachim v. Aitken Spence Travels Ltd [SC Appeal No 09/2010, SC Minutes of 11 th February 2021],** Yasantha Kodagoda, PC, J refers to Chief Justice J.A.N. De Silva in **Kotagala Plantations Ltd. and Another v. Ceylon Planters Society [(2010) 2 Sri L.R. 299]** held that,

> *"if the conduct of the workman had induced the termination, he cannot in justice and equity claim compensation for loss of career. On the other hand, if the termination was not within the control of a workman but solely by the act and will of an employer, a Tribunal exercising just and equitable jurisdiction is well entitled to grant relief in the nature of compensation to a discharged workman. Former Chief Justice has further held that, no workman should be permitted to suffer for no fault of*

his, but an unwanted, dishonest, troublesome workman may be discharged without compensation for loss of his employment. The workman in those circumstances has to blame himself for the unpleasant and embarrassing situation in which he finds himself."

Furthermore in the same case, Yasantha Kodagoda, PC, J refers to **The Superintendent, Belmont Tea Factory and Namunukula Plantations PLC v. Ceylon Estate Staffs Union [SC Appeal 59/2016, SC Minutes of 31.03.2017)** decided by Anil Gooneratne, J

".....is a case where the services of a Factory Tea Officer had been terminated on grounds of having been responsible for a shortage of 791 kg of tea which was in his custody. The position of the employer was that the employee had been negligent, he had not acted in a manner as required by an experienced officer and the incident had resulted in a substantial loss to the employer. This had resulted in loss of confidence. The Labour Tribunal, the High Court and the Supreme Court held that in the circumstances, the termination of services was justified. However, Justice Goonaratne affirmed the view that, nevertheless, compensation should be awarded. However, he directed a reduction of the amount of compensation ordered by the High Court."

In the case of **David Micheal Joachim v. Aitken Spence Travels Ltd [SC Appeal No 09/2010, SC Minutes of 11 th February 2021],** Yasantha Kodagoda, PC, J emphasised that,

"In this regard, I wish to observe that Justice Sisira de Abrew has held in ***Peoples' Bank v. Lanka Banku Sevaka Sangamaya [SC Appeal 106/2012, SC Minutes of 9th June 2015]*** *that, when compensation is awarded in favour of a person whose services have been terminated by the employer on*

the ground of misconduct stemming from dishonesty, and the Labour Tribunal has correctly held that the termination of services had been just and equitable, the award of compensation may be construed as an encouragement to commit misconduct. Thus, Justice Sisira de Abrew has expressed the view that compensation should not be awarded. Further, I respectfully note that, Chief Justice Sarath N. Silva in ***Alexander v. Gnanam and Others [(2002) 1 Sri L.R. 274]*** *has held that, when the conduct of an employee is contemptuous and falls short of expected standards, an order for the payment of compensation is not warranted."*

Despite the procedural defects in the disciplinary process, the Respondent's actions clearly amounted to misappropriation, justifying the termination of his employment. The serious nature of the misconduct outweighs the procedural irregularities, and as such, the termination was fully justified.

In conclusion, the judgments of both the Labour Tribunal and the High Court are set aside. Accordingly, the appeal is allowed, without costs.

Appeal allowed.

Judge of the Supreme Court

E.A.G.R. AMARASEKARA, J.

I agree.

Judge of the Supreme Court

ARJUNA OBEYESEKERE, J

I agree.

Judge of the Supreme Court