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

In the matter of an Application under and in terms of Article 154P of the Republic of Sri Lanka read with section 09 of the High Court of the Special Provision Act No.19 of 1990 as amended.

SC APPEAL NO.69/2011
SC/HCCA/LA No.96/2011

NWP/HCCA/KUR/04/2010 LT.
LT Chilaw Case No. LT/28/430/03.

Lanka Banku Sewaka Sangamaya.
(on behalf of E.A. Sugathapala)
No.20, Temple Raod,
Maradana,
Colombo 10.

APPLICANT

-VS-

People's Bank.
Head Office,
Sir Chittampalam A Gardiner Mawatha,
Colombo 02.

RESPONDENT

AND,

People's Bank.

Head Office,

Sir Chittampalam A Gardiner Mawatha,

Colombo 02.

RESPONDENT-APPELLANT

-VS-

Lanka Banku Sewaka Sangamaya.

(on behalf of E.A. Sugathapala)

No.20, Temple Raod,

Maradana,

Colombo 10.

APPLICANT-RESPONDENT

AND NOW BETWEEN

Lanka Banku Sewaka Sangamaya.

(on behalf of E.A. Sugathapala)

No.20, Temple Raod,

Maradana,

Colombo 10.

APPLICANT-RESPONDENT-PETITIONER

-VS-

People's Bank.

Head Office,

Sir Chittampalam A Gardiner Mawatha,
Colombo 02.

RESPONDENT-APPELLANT-RESPONDENT

BEFORE : **PRASANNA JAYAWARDENA, PC, J.**
L.T.B. DEHIDENIYA, J.
S. THURAIRAJA, PC, J.

COUNSEL : Dilip Obeysekera with Lal Perera and Sanjeewa Dissanayaka Attorneys-at-Law for the Applicant-Respondent-Petitioner.
Manoli Jinadasa with Shehara Karunaratne Attorneys-at- Law for the Respondent- Appellant- Respondent.

ARGUED ON : 07th March 2019.

WRITTEN SUBMISSIONS : Applicant-Respondent-Appellant on 5th April 2019 and 16th of July 2011.
Respondent- Appellant-Respondent on 10th of August 2011.

DECIDED ON : 7th June 2019.

S. THURAIRAJA, PC, J.

The Applicant-Respondent-Petitioner, Lanka Banku Sewaka Sangamaya filed this application in the Labour Tribunal on behalf of E.A. Sugathapala (hereinafter sometimes referred to as Applicant- Appellant) who was attached to the Peoples' Bank, Respondent-Appellant-Respondent (hereinafter sometimes referred to as Respondent -

Respondent). He joined as an office assistant in 1970 and gradually rose up to the position of Assistant Manager, Class II. During this period of 1st June 1996 to 9th May 1997, he was attached to Kalpitiya branch as an acting branch manager. During the brief period of 11 months, he was found to have granted Temporary Overdrafts (TODs) much higher than his limit of approval. He was immediately transferred to the Regional Office and an independent inquiry was held, at which it was found that, he had acted in violation of Bank Circulars and brought risk to the financial situation of the Bank, hence, was found guilty and his services were terminated (the said investigation report was marked as R1 and produced at the Labour Tribunal).

The Applicant-Appellant had complained to the President of Labour Tribunal against his termination, after the inquiry, the President of Labour Tribunal held, the termination of employment to be unjust and inequitable and awarded salary for the period that, he was not in service, which amounts to Rs. 1,581,178/-. Being aggrieved by the said order of the Labour Tribunal, the Respondent-Respondent appealed to the Provincial High Court of the North Western Province, holden at Kurunegala. The Provincial High Court set aside the order of the Labour Tribunal and determined the order of the Labour Tribunal is wrong and allowed the appeal.

Being aggrieved by the said order of the Provincial High Court, the Applicant- Appellant has preferred this appeal.

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

1. Has the High Court (civil appeal) misdirected itself in regard to the burden of proof in the circumstances of this case?
2. Did the High Court err in its conclusion that the Labour Tribunal had failed to properly evaluate the evidence placed before it?

Both Counsel made their submissions orally and filed written submissions and the proceedings before the Labour Tribunal and the Provincial High Court (Civil Appeal), are available before this Court, it is revealed that, the Applicant-Appellant was an Officer in the rank of Class II. According to the bank circulars every officer had approval limits. As per the bank rules and regulations, TODs could be granted only for customers who fulfil specified criteria (marked as R6 to R13). The circular marked R6; states instructions given to all branch managers to strictly adhere to the circular, when granting TODs. Accordingly, said Applicant-Appellant had a limit of **Rs. 100,000/-** for TODs and it is for **30 days**. Beyond this limit, he should get approval from his higher officials, who were in the higher spectrum of the loan line. They were permitted in very exceptional circumstances to grant TODs, when some of the qualifying requisites had not been satisfied.

It is evidenced that, the said Applicant- Appellant had granted TODs much higher than his approval limits and the said amounts were not recovered within the said limited period of 30 days. According to the accounts submitted, he had granted more than Rs. 30 million on TODs which were not recovered for a period more than 10 months. It is also revealed that, said Applicant-Appellant had over-valued some properties for the purpose of granting the said TODs.

Evidence reveals that, granting of TOD is different to a loan, permanent overdraft and other facilities. There are several safety measures to be taken before granting each of these facilities. It is further revealed during the trial before the Labour Tribunal that, most of these facilities were granted to the fishermen in that area. Due to the Civil War, these fishermen could not carry on with their fishing business. Because of this situation, the banks were careful of the granting of loan facilities. The Applicant-Appellant not only granted TODs beyond his approval capacity but also did not recover the money lent within the stipulated period. Further it was found that, he had not obtained

adequate sureties and some of the surety assets were over-valued by the said Applicant- Appellant.

The Applicant-Appellant's defence was that, he had obtained approval from the higher officials and that, those documents were available at the Bank. But, none of these documents were produced at the inquiry or at the Labour Tribunal. Applicant-Respondent-Petitioner further submitted that, the money can be recovered from the borrowers. However, according to the Respondent-Respondent in most of the cases, money was not recovered and it was referred to the mediation board and some were referred for filing of cases for money recovery (R5).

Considering the 1st question of law on which the leave was granted namely, Has the High Court (civil appeal) misdirected itself in regard to the burden of proof in the circumstances of this case.

It will be appropriate to consider the judgment of the said President of the Labour Tribunal. He had analysed the facts of the case and placed a burden on the Respondent-Respondent, Bank to prove its case at a standard of proof beyond reasonable doubt.

In the case of **Indrajith Rodrigo v. Central Engineering Consultancy Bureau (2009) 1 SLLR 248 at 267**, Marsoof J pronounced that,

> *"it is trite law that the burden of proof lies upon him who affirms, not upon him who denies as expressed in the maxim ei incdimbit probation, qui dicit, non qui negat..."*

The Learned President has a duty to consider all of the evidence placed before him and to properly evaluate them. In the case of **Ceylon Transport Board v. Gunasinghe (72 NLR 76)** the Court held that,

"The duty of hearing evidence must necessarily carry with it the duty of considering such evidence, for the duty to hear such evidence is meaningless without the duty to consider. The present case reveals quite clearly a total omission by the tribunal to consider the evidence which has been placed before it and it cannot be said that the Tribunal has been acting in accordance with the duties laid down for it by Statute."

In **Jayasuriya v. Sri Lanka State Plantation Corporation (1995) 2SLLR 379** the Court held that,

"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."

Further, he had completely relied on the provisions of the Evidence Ordinance. But, as per the Section 36 (4) of the Industrial Disputes Act No. 43 of 1950 as amended by Section 17 of Act No.62 of 1957, provides that in the conduct of proceedings under this Act, any Industrial Court, Labour Tribunal shall not be bound by any of the provisions of the Evidence Ordinance.

It is well accepted fact that, the Labour Tribunal acts on just and equitable standard. Tribunal should not set the standard of proof of any fact at a standard of beyond reasonable doubt as expected in criminal cases. It is reasonable for the President of the Labour Tribunal to inquire into the matter to find the truth to come to a just and equitable decision. He is not expected to apply two different standards of proof between the parties before him. The Learned Judge of the Provincial High Court had analysed the judgment of the Labour Tribunal and had come to a conclusion that, the President of the Labour Tribunal erred by requiring the Respondent to establish its case beyond reasonable doubt.

In this regard Justice Sharvananda (as he then was) in the case of **Caledonian (Ceylon) Tea and Rubber Estate Ltd. Vs. Hillman 79 (1) NLR 421 at page 436** held 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 cast rules which will fetter the exercise of the discretion, especially when the legislature has not chosen to prescribe or delimit the area of its operations. Flexibility is essential. Circumstances may vary in each case and the weight to be attached to any factor depends on the context of each case".*

In **C.T.B. vs. Gunasinghe (72 NLR 76 at page 83)** as per Justice Weeramanthry, it was held that,

> *"Proper findings of fact are a necessary basis for the exercise by Labour Tribunal of what wide jurisdiction given to them by Statute of making such orders as they consider to be just and equitable. Where there is no such proper findings of fact the order that ensues would not be one which is just and equitable upon the evidence placed before the Tribunal, for Justice and equity cannot be administered in a particular case apart from its own particular facts."*

Considering all available materials we find that, the Learned Judge of the Provincial High Court has not misdirected himself in regard to the burden of proof in this case.

Considering the 2nd question of law, for the reasons stated above we find that, the Provincial High Court had not erred in its conclusion that, the Learned President of the

Labour Tribunal has failed to evaluate the evidence placed before it and Provincial High Court had properly evaluated the evidence placed before it.

Considering all, we are of the view that, the decision of the Provincial High Court is correct. Accordingly, we dismiss the appeal and affirm the decision of the Provincial High Court (Civil Appeal) dated 11th February 2011. We make no order for cost.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

PRASANNA JAYAWARDENA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

L.T.B. DEHIDENIYA, J.

I agree.

JUDGE OF THE SUPREME COURT