

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

In the matter of an application for special
leave to appeal in terms of Article 154(P) of
the constitution read with Section 31DD of
the Industrial Disputes Act as amended

01. Kotagala Plantations Ltd.
No 53 1/1, Baron Jayathilake Mawatha
Colombo 1

02. Lankem Tea & Rubber Plantations (Pvt) Ltd,
No 53 1/1 sir Baron Jayathilake Mawatha
Colombo 1

**SC APPEAL 144/2009
WP/HCCA/KAL/ 18/2008
LT/35/MG/102/2005**

Respondent – Respondent – APPELLANTS

Vs.

Ceylon planters Society (for and on behalf
of L.P. D. Seneviratne)
No 40/1, Sri Dhammadara Mawatha,
Ratmalana

Applicant – Appellant - RESPONDENT

Before: J.A.N. De Silva, CJ
Sripavan, J
Ekanayake, J

Counsel: Uditha Egalahewa with Gihan Galabadage for the Respondent-
Respondent-Appellant s
Gamini Perera for the Applicant- Appellant- Respondent

Argued On: 05/07/2010

Decided On: 15/12/2010

J.A.N. De Silva, CJ

The Applicant-Appellant-Respondent made an application on behalf of L.P.D.Seneviratne being a Planter, to the Labour Tribunal of Matugama alleging that the services of the said Seneviratne had been terminated wrongfully and unjustifiably and prayed that he be reinstated with back wages or in the alternative be granted compensation in lieu of reinstatement.

The 1st Respondent-Respondent-Appellant filed answer stating that the services of the said Seneviratne were terminated after he was found guilty at a domestic inquiry held against him for misconduct and prayed that the application be dismissed.

The 2nd Respondent-Respondent-Appellant filed answer stating that it was the Managing Agent of the 1st Respondent-Respondent-Appellant and that there was no contract of employment between the said Seneviratne and the 2nd Respondent-Respondent-Appellant.

After trial the Labour Tribunal held that the termination of the services of the said Seneviratne was justified and dismissed the application. The Applicant-Appellant-Respondent appealed against the said order of dismissal to the provincial High court of Kalutara and the said High Court allowed the appeal and granted compensation to the said Seneviratne in a sum of Rs.840,000/-.

The Respondent-Respondent-Appellants made an application for special Leave to Appeal to the Supreme Court and leave was granted on the following questions of law:

- (a) Was the Judgment of the Honorable Judge of the High Court just and equitable?
- (b) Was the judgment of the Honorable Judge of the High Court contrary to law?
- (c) Did the Honorable Judge of the High Court err in law by not evaluating the evidence and the award of the Labour Tribunal?
- (d) Whether the Hon. Judge of the High Court erred in law in computing the compensation payable to the said employee?

At the inquiry before the Labour Tribunal, since the termination of the services of the workman was admitted by the Employer, evidence was led by the Employer regarding the act of misconduct of the workman and also his service record. The President of the Labour Tribunal having considered the evidence led regarding the act of misconduct through witnesses Chaminda Priya Nandasiri and Nuwan Thusahra Jayatunga, who were Assistant Field Officers accepted their evidence as regards the act of misconduct which was one of the charges against the workman for assaulting the Field Officer, Jayakody in the presence of the two witnesses who testified before the Labour Tribunal. The President of the Labour Tribunal had given careful consideration to the evidence of the said two witnesses and held that the Employer had proved the fact of assault on Jayakody by the workman. The President had also considered the evidence of the workman regarding the said incident where the workman had admitted his presence and the exchange of words between him and Jayakody. In those circumstances the President of the Labour Tribunal was in the best position to assess the credibility of the said witnesses in relation to the said incident especially in the light of the fact that the workman had not expressly denied the act of assaulting Jayakody.

On behalf of the workman it had been submitted that the victim of the assault, Jayakody was not brought in as a witness to establish the assault. It transpired in the course of the evidence before the Tribunal that Jayakody and three others had also been dismissed for having assaulted the workman in this case soon after the assault by the workman on Jayakody had taken place. The President of the Labour Tribunal considered this position too in arriving at his conclusion.

The President of the Labour Tribunal had considered the documents and evidence relating to the past record of service of the workman in arriving at the conclusion that the workman was not entitled to any relief. Further the President also adverted to the fact that the workman while being employed under the Employer had engaged himself in doing some work outside his realm of duties by managing another property for his relations which was established by the production of the documents relating to the lease of a land which was signed by him, which fact was not seriously challenged on behalf of the workman.

The President of the Labour Tribunal thus arrived at a finding that the acts of misconduct of the workman were established by the Employer before the Tribunal and held that the workman was not entitled to any relief on a consideration of the totality of the evidence placed before the Tribunal which included the facts relating to his past conduct and the doing of work outside the scope of his duties for others.

An appeal lies from an order of a Labour Tribunal only on 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 NLR 421 .)

Thus, the question before the High Court was to see whether the order of the President of the Labour Tribunal was perverse. A perusal of the judgment shows that the High Court had acted on a misconception that the Labour Tribunal had based its decision on the past record of the workman which the high court considers to be irrelevant and extraneous.

The learned Judge of the High Court has failed to consider the fact that the question of arriving at a decision on the primary facts of a case rests with the original Tribunal. It is not for an Appellate Court to view the evidence and come to a different conclusion regarding the facts of the case unless the finding on the facts by the Tribunal was against the weight of the evidence. In fact on a reading of the entirety of the judgment of the High Court, it would appear that the High Court Judge has misdirected himself.

The learned Judge of the High Court formed the misconception that the Tribunal had based the justifiability of terminating the services of the workman on his past record which the learned judge considered as matters relating to inefficiency. However he failed to consider the manner in which the Tribunal had evaluated the evidence that was placed before the Tribunal. The High Court having stepped out of the path went onto hold that the Tribunal was wrong in holding that the termination was justifiable and held that the termination of the services of the workman was unjustified.

It is noted that the High Court did not consider the fact that the workman was an Assistant Manager and should set an example to his subordinates. The workman having had an altercation with the Field Officer Jayakody on the field had gone to the extent of assaulting him in the presence of other workers of the Estate. This is a high handed action on the part of an Executive Officer which cannot be condoned by the fact of the said workman being himself subjected to an attack by the said Field officer Jayakody and three others subsequently. The Employer had also taken steps to terminate the services of the said employees who had attacked the workman.

The Employer could not turn a blind eye on the act of misconduct of the workman when he had complained of an attack on him by other employees of

the Estate. All those who had acted in that manner which was subversive and detrimental to the maintaining of discipline on the estate had been dealt with by the employer in the same way.

In dealing with the evidence of the two Assistant Field Officers who gave evidence regarding the assault on Jayakody by the workman Seneviratne, the learned High Court Judge has considered their evidence but has not stated as to whether such evidence was acceptable or not . In effect he has stated that both witnesses speak to the same facts which would thus be a corroboration of the fact that the workman Seneviratne had assaulted Jayakody and therefore the conclusion reached by the President of the Labour Tribunal that the act of misconduct committed by the workman Seneviratne had been established cannot be faulted.

The learned High Court Judge in his judgment states that the Employer has acted in breach of the conditions of its 'sales agreement' apparently meaning the terms and conditions of the 'contract of employment' by stating that there is a duty cast on the employer to provide a safe place of work for the employee and that in the instant case the employer had not done so. He in fact goes to the extent of stating that the employer by failing to safeguard the employees had discriminated by allowing subordinates to proceed to the superior's (the workman in the present case) office and attack him while on duty and that the management had not taken any steps against the violations committed by Jayakody and other workers. There was material before the Tribunal to show that the employer had terminated the services of Jayakody and three others regarding the assaulting of the workman Seneviratne. Thus this court does not see any substance in the observations made by the learned judge of the High Court.

Further, the Learned High Court Judge in his judgment stated that inefficiency is not relevant as the termination of the workman had been based on assault and nothing else and that the Labour Tribunal relied on inefficiency which is not the issue that resulted in the termination of the services of the workman. He has stated that the employer had not taken any steps regarding the inefficiency of the workman and therefore the documents R8 to R38 which contain matters regarding the efficiency and shortcoming of the workman are not acceptable documents as they were not challenged by way of an inquiry. This would be another clear misdirection on the part of the learned Judge when considering matters relating to the relationship between the employer and the workman. Evidence regarding past conduct of a workman is relevant to show how a workman has performed during his period of employment, his attitude towards, work, efficiency, conduct, discipline etc, as these contributing factors influence an employer when dealing with promotions, increments, granting of benefits to a workman. Matters relating to misconduct and inefficiency are not

condoned just because no immediate action is taken against an employee when such matters occurred.

An allegation involving misconduct or moral turpitude is a determining factor in proceedings before a Labour Tribunal in order to decide whether the workman is a fit and proper person to be continued in employment in an establishment. 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. The jurisdiction of the Labour Tribunal is intended to produce in a reasonable measure a sense of security in a workman so long as he performs his duties efficiently, faithfully and for the betterment of his establishment and not otherwise. 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.

In the instant case, it is noted that acts of misconduct previously committed by the workman include, unsatisfactory attendance, purchase of diesel in an unauthorized manner for personal use, leaving the estate without obtaining leave, failure to report for duty once the period of leave expires, acting in breach of the terms and conditions of employment and managing a tea plantation that does not belong to the Applicant-Appellant-Respondent etc.

This Court is at a loss to understand the legal basis upon which the High Court granted compensation to the workman. Judicial discretion plays an indispensable part in our legal system. However, such discretion must be exercised fairly and reasonably within the four corners of the Industrial Disputes Act. Though a just and equitable order must be fair by the parties to an application, it never means the interests of the workman alone be safeguarded. The desirability of giving reasons for decisions so widely recognized by appellate Courts, that a failure to do so amounts to a failure to do justice especially where the concepts of social security and social justice form an integral part of Industrial Law. It is of fundamental importance that reasons should be given for decisions and decisions should be based on evidence of probative value

Accordingly, I set aside the Order of the learned High Court Judge dated 6th August 2009 and affirm the Order made by the President of the Labour Tribunal dated 4th December, 2008. The appeal is thus allowed, without costs.

Chief Justice

Sripavan, J
I Agree,

Judge of the Supreme Court

Ekanayake, J
I Agree,

Judge of the Supreme Court