

SC.APPEAL NO. 221/2014

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application for Leave to Appeal from the Judgment of the High Court of the Western Province Holden in Colombo, under and in terms of, inter alia, Section 31DD of the Industrial Disputes Act as amended and Act No. 19 of 1990.

SC. APPEAL No.221/2014

SC.HC.LA No.21/2014

HC. Appeal No. HC ALT 139/2012

LT Colombo Case No.LT/2/ad/2790/2005

M. Anura Fernando
No.116, Bodhirajapura,
Werahera,
Boralessgamuwa.

Applicant-Respondent-Petitioner

Vs.

Little Lion Associates (Pvt) Limited
No.11, A.G. Hiiniappuhamy Mawatha,
Colombo 13.

Respondent-Appellant-Respondent

BEFORE : **SISIRA J. DE ABREW, J.**

UPALY ABEYRATHNE, J. &

NALIN PERERA, J.

COUNSEL : Shantha Jayawardhana for the Applicant-Respondent-Appellant.

Ranil Prematillake for the Respondent-Appellant-Respondent.

ARGUED &

DECIDED ON: 27.05.2016.

SISIRA J. DE ABREW, J.

Heard both counsel in support of their respective cases. This is an appeal to set aside the judgment of the Learned High Court Judge dated 05.03.2014, wherein he set aside the judgment of the Learned President of the Labour Tribunal. Learned President of the Labour Tribunal ordered re-reinstatement with back wages. Vide order marked P3. This Court, by its order dated 20.11.2014, granted Leave to Appeal on questions of law set out in paragraphs 8a, 8b, 8f & 8g of the Petition dated 11.11.2014. They are as follows:-

8(a) Did the High Court of the Western Province (Holden in Colombo) err in law by failing to appreciate that the Learned President of the Labour Tribunal was correct in holding that

the termination of the Petitioner's services was unfair and unjustified?

8(b) Did the High Court of the Western Province (Holden in Colombo) err in law by failing to appreciate that the Order of the Labour Tribunal was just and equitable?

8(f) Did the High Court of the Western Province (Holden in Colombo) err in law by setting aside the Order for re-instatement of the Petitioner?

8(g) Did the High Court of the Western Province (Holden in Colombo) err in law by setting aside the Order for back wages to the Petitioner?

The main allegation leveled against the Applicant-Respondent-Appellant (hereinafter referred to as the Applicant) in this case is that he, whilst in employment of the Respondent Company, took steps to remove one bag of milk powder from the stores.

Learned Counsel appearing for the Applicant tried to contend that the Applicant was not responsible for the loss of the one bag of Milk Powder (25 Kilos of milk powder). He contended that although document marked R4 states that 50 Kilograms of Milk powder had been issued, the gate pass only indicated that only 25 Kilograms of milk powder had been loaded to the lorry. The Applicant in this case is the driver who drove the relevant lorry. Although, the learned Counsel took up the said argument, this argument is nullified by the evidence of Muniandi and Ajantha Fernando. Muniandi at page 30 of the brief, states that he loaded two bags of milk powder each containing 25 Kilos to the lorry

SC.APPEAL NO. 221/2014

driven by the Applicant. This is confirmed by the evidence of Ajantha Fernando.

The Respondent has produced a transport chart relating to the relevant lorry driven by the Applicant. According to the said transport chart marked R8, the duration that takes for the lorry to go from Stores to the Factory is only 2 minutes. On the day of the incident, the duty of the Applicant driver was to transport the goods issued by the Stores to the Factory. According to the evidence, the stores is found on one side of the road and the factory is found on the other side of the road. According to the said transport chart normal time that takes for the lorry to go from the Stores to the Factory is only two minutes. But on the day in question when he was transporting the goods from the Stores to the Factory he had taken 12 minutes. The applicant, in his evidence, failed to offer any explanation to the said delay. The applicant, in his evidence, denied that he took 12 minutes. But his evidence is nullified by the said transport chart marked R8. Respondent Company before termination of the services of the Applicant took steps to hold an inquiry by an Inquiring Officer. We note that the Applicant failed to participate in the said domestic inquiry. At the conclusion of the domestic inquiry the Inquiry Officer found the Applicant guilty for the main allegation. When we consider the evidence led at the trial ,we are of the opinion that the allegation leveled against the Applicant has been proved. We therefore hold the view that it is not proper to order re-instatement and back wages. If an employee of an employer steals things of the employer, such an employee cannot be kept in employment because the act of stealing amounts to loss of confidence of the employer.

SC.APPEAL NO. 221/2014

In such a case ordering re-instatement with back wages cannot be considered as a just and equitable order. For the above reasons, we hold that the High Court Judge was correct in setting aside the order of the Learned Labour Tribunal President.

In view of the above findings we answer the questions of law raised by the Appellant in the negative. For the above reasons, we see no reasons to interfere with the judgment of the Learned High Court Judge dated 05.03.2014 and dismiss this Appeal. The Appeal is dismissed.

JUDGE OF THE SUPREME COURT

UPALY ABEYRATHNE, J.

I agree.

JUDGE OF THE SUPREME COURT

NALIN PERERA, J.

I agree.

JUDGE OF THE SUPREME COURT

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