

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

**In the matter of an Appeal
from the Civil Appellate High
Court of the Sabaragamuwa
Province holden in Kegalle.**

Ceylon Bank Employees Union,
No. 20, Temple Road, Maradana,
Colombo 10.
(on behalf of S.M.Ranbanda)

SC APPEAL 227/2014
SC Spl LA No. 172/2011
SP/HCCA/KAG/12/2010 LT Appeal
LT Kegalle No. 42/14/2004

Applicant

Vs

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

Respondent

AND

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

Respondent Appellant

Vs

Ceylon Bank Employees Union,
No. 20, Temple Road, Maradana,
Colombo 10.
(on behalf of S.M.Ranbanda)

Applicant Respondent

AND NOW BETWEEN

Ceylon Bank Employees Union,
No. 20, Temple Road, Maradana,
Colombo 10.
(on behalf of S.M.Ranbanda)

**Applicant Respondent
Appellant.**

Vs

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

**Respondent Appellant
Respondent**

**BEFORE : S. EVA WANASUNDERA PCJ.
H. N. J. PERERA J. &
VIJITH K. MALALGODA PCJ.**

**COUNSEL : G. Alagaratnam PC with Ms. Harindi Seneviratne
for the Applicant Respondent Appellant.
Ms. Manoli Jinadasa with Ms. Amanda Wijesin-
ghe for the Respondent Appellant Respondent.**

ARGUED ON : 29.09.2017.
DECIDED ON : 22.11.2017.

S. EVA WANASUNDERA PCJ.

The Applicant Respondent Appellant (hereinafter referred to as the Applicant), Ranbanda was an employee in the rank of a Branch Manager in the Peoples' Bank which is the Respondent Appellant Respondent (hereinafter referred to as the Bank). Ranbanda, the Applicant had filed an Application dated 07.07.2003 in the Labour Tribunal of Kegalle against the Bank for unlawful termination of his services seeking inter alia reinstatement, compensation and statutory benefits.

Upon inquiry, the Labour Tribunal made order dated 09.07.2010 holding that the Bank had failed to prove on a balance of probabilities that the Applicant's termination was just and equitable and awarded retirement benefits to the Applicant. Being aggrieved by the said order, the employer Bank had appealed to the Provincial Civil Appellate High Court. The learned High Court Judges delivered judgment dated 01.08.2011 dismissing the Application of the Applicant. The instant Appeal was then filed seeking to get the said judgment of the High Court set aside.

This Court has granted leave to appeal on the following questions of law :-

1. Did the High Court Judges err in determining that the learned President of the Labour Tribunal had concluded that the charges against the Appellant were proved?
2. Did the High Court Judges err on the evidence in concluding that the Petitioner had not obtained the requisite approvals for facilities granted by him and/or that he had not sought and/or obtained the required approval?
3. Did the High Court err by failing to consider that the Respondent Bank produced only 7 current account ledger sheets out of the 39 accounts listed in the charge sheet and especially in determining that the loss incurred to the Bank was Rs. 8,554,826.94?
4. Did the High Court fail to consider that the Respondent Bank had failed to produce crucial documents when summoned by the Labour Tribunal especially upon a motion dated 23.11.2004 filed by the Applicant?

5. Did the High Court misdirect itself by concluding that the Appellant's main contention was that when he assumed duties at the Medirigiriya Branch, it was running at a loss, but at the time he left the Branch, it was a profit making institution?
6. Did the High Court err in deciding that pension rights had been granted by the Labour Tribunal without jurisdiction?

The Applicant, S.M.Ranbanda was employed by the Respondent Bank on 02.05.1970 as a Grade vi **clerk**. He had been working in the Bank with **promotions given regularly** and he was posted to the Medirigiriya Branch with effect from **08.01.1997** and he had **later** on, accepted his appointment as **Manager** of the said Branch on **21.01.1997**. On **27.10.1997** he was **transferred** to the Polonnaruwa Branch. On 15.06. 1998 he was again transferred to the Kandy Branch. **On 08.12.1998 he was interdicted** subject to a disciplinary inquiry to be held. He was granted **half salary from 21.07. 1999**. By letter dated **31.10.2000 he was called back to work pending the inquiry as he had agreed to go on with the inquiry** while at work as the employee of the Bank.

The charge sheet dated 17.07.2000 was issued to him before he was called back to work. The said charge sheet was marked R 37 at the inquiry. The charges in the charge sheet were based on the allegedly having not complied with Circular No. 491/96 clause 3:2 (meaning that he had gone beyond the powers to grant temporary over drafts) , Circular No. 388/84 Chapter 2 paragraphs 2,3 and 4 (meaning that he had not taken into account the aggregate balance maintained in the bank account , while granting temporary over drafts to customers) , Circular No. 388/84 Clause 4:3 (meaning that over draft facilities were granted without getting an enhancement on the amount of deposit) and Circular 388/84 paragraph 9 (meaning that when granting overdraft facilities he had not filled form 593 and obtained the permission of the area Manager prior to granting overdrafts to customers). It was also alleged that **by not having complied with the said Circulars, the Applicant S.M. Ranbanda had caused a loss of Rs. 8554826.94 to the employer Peoples Bank**. At the end of the inquiry Ranbanda had been dismissed from service by the employer Bank.

The Applicant had come before the Labour Tribunal praying that he be reinstated with back wages or he be granted compensation in lieu of reinstatement. The Bank had filed answer admitting employment of the Applicant and that after an

inquiry the employee's services were terminated due to alleged serious misconduct committed by the Applicant. The Bank had led the evidence of a few witnesses and the Applicant had given evidence and led the evidence of a retired friend who had at one time worked with him at the Bank, in support of his application at the Labour Tribunal. The President of the Labour Tribunal made order at the end of the inquiry before the Labour Tribunal, that the **Applicant be made to retire with effect from the day he completed 55 years of age with pension rights and all other benefits** accrued to him at the retirement since reinstatement could not be granted as the Applicant had passed the age of 61 years at the time of the order being made.

The employer Peoples' Bank appealed to the Civil Appellate High Court from the order of the Labour Tribunal. The High Court set aside the Order of the Labour Tribunal and allowed the Appeal with costs. The Applicant has now appealed to this Court from the judgment of the Civil Appellate High Court.

At the very commencement of the proceedings in this case before this Court, the Respondent Bank had raised a preliminary question regarding jurisdiction of this Court not having been invoked properly by the Applicant Respondent Appellant. Thereafter parties had awaited a decision on the same issue in SC Spl. LA 229/11. Order in the said Application had been delivered by the date, 08.08.2014 and Counsel for the Respondent Bank had informed this Court on that day that she would **not be pursuing** with the **said preliminary objection**, in view of the order in SC Spl LA 229/11. The matter had thereafter been fixed for support. On 26.11.2014, Special Leave to Appeal was granted by this Court on the questions of law in paragraph 8 (c), (d), (e), (f) and (h) of the Petition dated 12.09.2011. The said questions are as set out at the commencement of this judgment by me numbering them as questions numbers 1 to 6.

However, the learned Counsel for the Respondent Bank had presented arguments regarding jurisdiction in the written submissions filed by her dated 26.03.2012 in paragraphs 1 to 7.1 of the same. I will not be considering the same in view of 'her undertaking given to court not to be pursuing the preliminary objection' on 8.8.2014. Thereafter written submissions were once again filed on 11.02.2015 by the Respondent Bank and on 07.01.2015 by the Applicant Appellant.

The Applicant was serving the Bank from 02.05.1970 up to 07.07.2003 when he was dismissed from service. He had joined the service as a clerk and his first appointment as Manager of the Medirigiriya Branch of the Bank was on 21.01.1997. He was transferred to the Polonnaruwa Branch on 27.10.1997. The allegations of misconduct with regard to him is only during this period of time of **9 months**. He was transferred to Kandy from Polonnaruwa and interdicted on 12.12.1998. He was placed on half pay on 18.06.1999. Pending inquiry he was recalled for service on 31.10.2000. He had received his full salary of around Rs. 29000/- from November, 2000. He was promoted to a higher grade in Management on 17.01.2001 and his increment for the year 2003 was also granted. At the end of the inquiry, the Applicant was dismissed from service on 07.07.2003.

Until he became the Manager of Medirigiriya Branch the Applicant had been working with the Bank without any serious complaint against him for 27 years. The evidence before the Labour Tribunal disclose the fact that the said Branch had been running at a loss at that time. The main charges were that the Applicant had granted Temporary Overdraft Facilities to the customers without getting the approval from the Regional Manager and going against several circulars of the Bank.

The Bank alleged that such action of the Applicant had caused a loss of Rs. 8554826.94 to the Bank. The Applicant's position was that by the time he was charge sheeted an amount of Rs.3740812.60 had been recovered by the Bank from the 40 customers to whom over draft facilities were granted. The Applicant **contested** that without taking into account how much has been paid back to the Bank, by the **forty customers** to whom the overdraft facilities had been given by the Applicant at that time as manager, each of the facilities being around Rs. 100,000/- to 200,000/- each to 40 customers , **in good faith of promoting the Respondent Bank in the area** of Medirigiriya which was an agricultural area , **the loss to the Bank** as alleged to be Rs.8554826.94 **cannot be taken as correct**. The Bank had produced only seven current account ledger sheets out of the 39 accounts listed in the charge sheet. I find that there is a serious lapse on the part of the Bank for not having produced the correct and actual loss to the Bank allegedly caused by the Applicant employee at the inquiry and before the Labour Tribunal in this regard. The actual alleged loss calculated to be as over 8.5 million to the Bank without producing each and every current account ledger sheet which

would show the amount of the overdraft facility granted and how much had been recovered, does not seem to be just and fair. All the overdrafts given by the Applicant were Temporary Over Drafts which were to be recovered within a short period and I cannot understand why the Bank failed to produce the ledger sheets of all the accounts since the number of accounts were only forty and nothing more.

The grave misconduct alleged against the Applicant was non compliance with the circulars. But however in the Charge Sheet R 37, it was never alleged that due to his conduct, the Bank, the employer had lost confidence in the Applicant. It was not argued that he had personally gained any benefit by granting such TODs. In fact I do not find that the Bank has discharged the burden of proving the loss incurred by the Bank due to the alleged misconduct of the Applicant at the Medirigiriya Branch.

In the case of **Indrajith Rodrigo Vs Central Engineering Consultancy Bureau 2009** , **1 SLR 248** , it was held that “ In Labour Tribunal proceedings where the termination of services of a workman is admitted by the Respondent, the onus is on the latter to justify termination by showing that there were just grounds for doing so and that the punishment imposed was not disproportionate to the misconduct of the workman. The burden of proof lies on him who affirms and not upon him who denies”.

I also find within the evidence placed before the Labour Tribunal by the witness of the Bank, Newton, that many of the TODs at the Medirigiriya Branch had been granted by the second Officer of the said Branch at that time. The said Second Officer namely K.B.Sirisena also had been dismissed from service for having overdrawn the accounts irregularly. The finger is pointed at only this Applicant regarding the grant of TODs for the whole amount with regard to 40 customers whereas the Second Officer also had done so but the loss to the Bank has not been proven as regards the amount which was granted by the Applicant. The Bank has failed to prove the amount of loss as alleged.

It was argued on behalf of the Bank that failure to produce 593 forms to the Regional Manager according to Circular No. 388/84 when the Manager grants a TOD exceeding his authority without either prior or post approval from the Regional Manager amounts to misconduct on the part of the Manager. In the

case in hand it was alleged that the Applicant had failed to submit the 593 forms. The witness Newton on behalf of the Bank stated that the Applicant had not submitted the said forms. In cross examination Newton admitted that he had seen on many occasions 593 forms sent by the Applicant from the Medirigiriya Branch , at the Regional Office.

It is Newton who had held the domestic Inquiry against the Applicant. Newton's evidence further shows that it was the duty of the Regional Managers to visit the Managers at their Branches every month and put down their observations as entries in the log book at the Branch. When questioned whether he had seen such entries of Regional Managers who had visited the Medirigiriya Branch in the log book, the answer had been in the negative. For several months, if 593 forms were not submitted, the Regional Office would have summoned the Manager and called for explanation. It had never happened so. **There were no warnings or reminders sent to the Applicant to submit 593 forms.** However the Bank alleges that 593 forms were not submitted but the Applicant submits that the 593 forms were submitted. The learned counsel for the Bank argued that the burden lies on the Applicant to prove that he submitted the said forms and that the Applicant had not discharged that burden before the Labour Tribunal.

The Applicant's counsel had filed a motion dated 23.11.2004 before the Labour Tribunal and moved for notice to be sent to the Bank to produce several documents such as TOD Approval Register for the period from 01.01.1997 to 31.12.1997, Log Book of the Medirigiriya Branch for the same period, Account Statements depicting the balance as at 31.10.2004 pertaining to the current accounts mentioned in Schedule 1 of the Charge Sheet and All cheques and credit slips pertaining to the current accounts mentioned in Schedule 4 of the Charge Sheet. Even though the Tribunal sent the notice to the Bank, the Bank failed and neglected to produce the said documents which if produced , would have thrown light on the facts in a more detailed manner. The Bank cannot at present submit that the Applicant had failed to prove that the 593 forms were submitted by him because the Bank had neglected to submit to the Tribunal what was asked for at the inquiry held by the Tribunal.

The learned President of the Labour Tribunal made order having summarized the evidence in a detailed manner and held that the Applicant be granted pension rights from the age of 55 years and be given all other benefits due to him as an employee of the Bank within two months from the date of the order.

The Civil Appellate High Court over turned the order of the Labour Tribunal and held that the dismissal of the services of the Applicant by the employer Bank was quite correct. The High Court Judge dismissed the Application made by the Applicant to the Labour Tribunal.

The High Court Judge had quoted the case of **People's Bank Vs Gilbert Weerasinghe 2008, BALJR Vol. XIV at page 333** and stated that the ratio decidendi of that case is that "in terms of Section 31(c) of the Industrial Disputes Act, the Labour Tribunal has jurisdiction to inquire into **only in respect of the matter stated in that application** and that the Labour Tribunal under the said Act has no jurisdiction to determine the matters that have not been pleaded or sought in the application". She held that "in view of the principle enunciated in the said judgment, granting pension rights to the applicant had been made **without jurisdiction** and therefore it cannot be allowed to stand". When the Applicant's services were terminated on 07.07.2003, he was eligible to work for only about one month until he reached the age of 55 years. At the time the Applicant filed his application before the LT, I believe that he would have had the hope of being reinstated and then he would have been eligible to apply for yearly extensions after the age of 55 years. It may well be that he had not specifically prayed for the pension rights in his application as he wanted to be reinstated.

Yet I find that at the end of the evidence of the Bank closing its case marking documents R1 to R 38 , when the learned LT President ordered that the evidence of the Applicant to be given to the Tribunal by way of an Affidavit within two weeks from 20.07.2007, **the Applicant had filed the said Affidavit of evidence dated 01.07.2007**. This Affidavit is at page 228 of the LT Brief and it runs up to page 236. At the end of that Affidavit written in Sinhalese language, the Applicant has prayed for pension rights in the last paragraph of the Affidavit submitting thus ;

"According to the facts I have set out above, I am entitled to be granted, as prayed for in my Application dated 17.07.2003, **the pension rights which are properly due to me with all other statutory benefits** since the termination of my services of over 33 years by letter dated 07.07.2003 is unjust and unreasonable."

It is my view that within the proceedings before the LT, the Applicant had begged fervently that he be granted his pension rights as it had long passed the time of six months within which the LT should, in law, have concluded the inquiry.

The Industrial Disputes Act as amended has made provision for employees to make an application before the Labour Tribunal for reinstatement and compensation and to conclude the inquiry within six months. Practically even though it is next to impossible to conclude the inquiry within this stipulated time period, the message given is that the applications be concluded as soon as possible. The Industrial Disputes Act is a special legislation enacted for a specific purpose of dealing with industrial disputes. Section 31 C provides that it is the duty of the Labour Tribunal to make all such inquiries into an application and hear all such evidence as it considers necessary and make an order that appears to the tribunal to be just and equitable.

Section 33(1)(e) provides that “without prejudice to the generality of the matters that may be specified and 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 a gratuity (except where a gratuity is payable under the payment of Gratuity Act, 1983) **or pension** or bonus to any workman, the amount of such gratuity or pension or bonus and the method of computing such amount, and the time within which such gratuity or pension or bonus shall be paid.”

Accordingly it is obvious that the LT is allowed to make any order about pension rights if it thinks it fit and proper to do so.

Moreover, in the case of **Associated Newspapers of Ceylon Ltd. Vs National Employees' Union 71 NLR 69**, it was held that “ The statements filed by the parties in applications before a Labour Tribunal are not pleadings in a civil action and it is the duty of the President to consider all the facts relative to the dispute placed in evidence before him at the inquiry even though those facts may not be expressly referred to in the statements.” I hold that due to the wide powers given to the Labour Tribunal by the provisions contained in the Act itself, the President of any Labour Tribunal has wide powers to grant any relief that the Tribunal thinks fit and proper according to the evidence before the Tribunal. The prayer need not contain all what the Applicant wants from the employer. The

President of the Labour Tribunal is empowered to grant what is just and equitable.

In the case in hand the learned High Court Judge has analyzed the evidence before the LT wrongly by considering short portions separately and not as a whole. The evidence heard and seen by the President of the Labour Tribunal should not be taken as separate portions but as a whole and decide the matters before the Tribunal with the big picture portrayed by the whole of evidence before it.

I answer the questions of law enumerated above in favour of the Applicant Respondent Appellant and against the Respondent Appellant Respondent, Peoples' Bank. I set aside the judgment of the Civil Appellate High Court dated 01.08.2011. I affirm the order of the learned President of the Labour Tribunal dated 09.07.2010.

This Appeal is allowed. However I order no costs.

Judge of the Supreme Court

H.N.J. Perera J.

I agree.

Judge of the Supreme Court

Vijith K. Malalgoda PCJ.

I agree.

Judge of the Supreme Court

