

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

*In the matter of an appeal in terms of section
31 DD of the Industrial Disputes Act (as
amended) read with Section 9 of the High
Court of the Provinces (Special Provisions)
Act No. 19 of 1990.*

S C Appeal No. 75/2012

SC/HC/LA 04/2011

HC (Central Province) ALT 18/2009

LT-09/NE/11/2005

Ceylon Bank Employees' Union,
(on behalf of B. D. Niroshan),
No. 20, Temple Road,
Maradana,
Colombo 10.

APPLICANT

Vs.

Hatton National Bank PLC,
Head Office,
No. 479, T. B. Jayah Mawatha,
Colombo 10.

RESPONDENT

AND THEN BETWEEN

Hatton National Bank PLC,
Head Office,
No. 479, T. B. Jayah Mawatha,
Colombo 10.

RESPONDENT-APPELLANT

Vs.

Ceylon Bank Employees' Union,
(on behalf of B. D. Niroshan),
No. 20, Temple Road,
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APPLICANT-RESPONDENT

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Ceylon Bank Employees' Union,
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No. 20, Temple Road,
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APPLICANT-RESPONDENT-APPELLANT

-Vs-

Hatton National Bank PLC,
Head Office,
No. 479, T. B. Jayah Mawatha,
Colombo 10.

RESPONDENT- APPELLANT-RESPONDENT

Before: BUWANEKA ALUWIHARE PC J

P PADMAN SURASENA J

E. A. G. R. AMARASEKARA J

Counsel: Uditha Egalahewa PC with Amaranath Fernando and Miyuru Egalahewa
for the Applicant-Respondent-Appellant.

Shammil Perera PC with Duthika Perera for the Respondent-Appellant-
Respondent instructed by Thushari Ranaweera.

Argued on: 15 - 09 - 2020

Decided on: 14 - 10 - 2021

P Padman Surasena J

The Applicant-Respondent-Appellant (hereinafter sometimes referred to as the Applicant) filed an application for and on behalf of B. D. Niroshan (hereinafter sometimes referred to as the Employee) in the Labour Tribunal of Nuwara Eliya complaining that the Respondent-Appellant-Respondent (hereinafter sometimes referred to as the Employer) had unreasonably terminated the service of the Employee. The Applicant, through its application sought reinstatement of the service of the Employee and also sought for him, compensation for the complained termination of service, the consequential loss of promotions, increments and other benefits.

The Employee was serving as a Banking Assistant of the Nuwara Eliya Branch of the Employer. The Employer by the letter dated 07-09-2004 produced marked **R 11**, asked the Employee to show cause as to why he should not be disciplinarily dealt with, in relation to the charges set out therein. The said charges revolve around an incident in which the Employee was alleged to have removed from the counter, three cheques drawn from his own current account, to prevent them being presented for payment, as there were no sufficient funds in his current account to make the payment for the said cheques.

In the Labour Tribunal, the learned President, after considering the evidence presented before him, had concluded by his order dated 27-03-2009, that the counts 1, 2 and 3 set out in **R 11** have been proved by the Employer on a balance of probability. The said counts are as follows.

- 1. While assigned to Nuwara Eliya Branch of the Bank as a Banking Assistant on 10th August 2004, you did wrongfully and dishonestly remove the following cheques drawn on your Current Account No. 87011 and presented for payment by 03 constituents of the Bank thereby denying the said constituents of the*

Bank receiving credit they were entitled to receive to the debit of your account on that day.

Constituent	Cheque No.	Date drawn	Amount (Rs.)
<i>Mayura Trade Centre</i>	<i>809113</i>	<i>10.08.2004</i>	<i>4,000/-</i>
<i>Pushpa Hardware</i>	<i>816427</i>	<i>10.08.2004</i>	<i>3,830/-</i>
<i>Siraj Stores</i>	<i>816434</i>	<i>10.08.2004</i>	<i>500/-</i>

- 2. You did improperly remove the cheques described in Charge 01 above for your personal gain as you did not deposit adequate funds in your current account to honour the said cheques.*
- 3. You did issue the cheques described in Charge 01 above without depositing sufficient funds in your current account to meet such commitments thereby acting in contravention of the rules of discipline applicable to employees of the Bank.*

The learned President of the Labour Tribunal in his order, had formed the view that the proof of the above charges is serious enough to warrant the dismissal of the Employee. However, the learned President of the Labour Tribunal had thereafter concluded in the same order, that the decision by the Employer to terminate the service of the Employee is not a just and equitable order. The learned President seems to have based the said decision on the following reasons.

- i. There is no evidence to establish that the Employer had taken any disciplinary action against the Trainee Banking Assistant Sirisoma although said Sirisoma had abetted the Employee to commit one or more instances of misconduct referred to in the charge sheet marked **R 11**.*
- ii. The documents marked **A 9** and **A 10** produced by the Employee have revealed that even the manager of the bank had deposited money into his account when the funds were insufficient to make payments to the cheques drawn.*

- iii. *The documents produced by the Employee marked **A 10**, **A 11** and **A 12** have shown that W H Warakapola who had testified before the Labour Tribunal also had issued cheques from his account when the balance was not sufficient for the payment of those cheques.*
- iv. *The evidence adduced before the Labour Tribunal does not reveal any prejudice being caused to the customers of the bank by the action of the Employee.*
- v. *The money due to the customers has been duly credited to their account and no fraud has taken place.*
- vi. *The document produced marked **A 13** shows that the Employee had previously discharged his duties honestly.*
- vii. *As per the document produced marked **A 16** (dated 11-06-2004) the Personnel Manager of the Employer had even commended the Employee.*
- viii. *The Employee who had joined the Employer in the year 1993 had not been subjected to any disciplinary proceedings before this incident.*
- ix. *The dismissal from service is the maximum punishment that could be imposed on an employee.*
- x. *As the employer-employee relationship is a human relationship, the seriousness of the misconduct must be considered as a question of fact when deciding the reasonableness of the punishment.*

The learned President of the Labour Tribunal had ordered the reinstatement of the Employee in service but had decided not to award him the back wages. This is because the learned President of the Labour Tribunal has concluded that the Employer has established that the Employee had directly induced the Trainee Banking Assistant Sirisoma to act contrary to the rules of the Employer bank and that the Employee is directly responsible for the said inducement.

Being aggrieved by the order of the learned President of the Labour Tribunal, the Employer had appealed to the Provincial High Court. The learned Provincial High Court Judge after conclusion of the argument of the said appeal, by his judgment dated 09-12-2010, had set aside the part of the order of the Labour Tribunal containing the direction to reinstate the Employee in service and affirmed the rest of the order of the

Labour Tribunal including the conclusion that the Employee was not entitled to compensation.

Being aggrieved by the judgment of the learned Provincial High Court Judge, the Employee sought Leave to Appeal from this Court and accordingly, on the 28-03-2012, this Court granted Leave to Appeal on the questions of law set out in paragraph 10 (b) and (d) of the Petition dated 06-01-2011. The said questions of law are reproduced below.

- i. Was the judgment of the Honourable Judge of the High Court just and equitable?*
- ii. Did the Honourable Judge of the High Court err in law by not evaluating the provisions of Section 31B (6) (c) of the Industrial Disputes Act?*

Although the reinstatement of the Employee in service without back wages was ordered, the President of the Labour Tribunal in unequivocal terms has held; that the Employer has proved the acts of misconduct referred to in the first, second and third charges set out in **R 11**; and that the seriousness of the said charges is grave enough to warrant the termination of the service of the Employee. As has already been mentioned, the learned President of the Labour Tribunal has also concluded that the Employee had directly induced the Trainee Banking Assistant Sirisoma to act contrary to the rules of the Employer bank and that the Employee is directly responsible for the said inducement.

The Labour Tribunal has pronounced its order on 27-03-2009. The service of the employee was terminated with effect from 03-09-2004. The learned President of the Labour Tribunal has not directed in his order, to reinstate the Employee from the date of the termination of his service. Thus, the reinstatement of the Employee as per the order of the Labour Tribunal, would clearly result in a break in the Employee's service from 03-09-2004 to the date of reinstatement which could have been a date after 27-03-2009 which is approximately a loss of four and a half years of his service. Despite the above, the Employee has not challenged the order of the Labour Tribunal. This means that the Employee for all purposes has accepted the conclusions arrived at by the learned President of the Labour Tribunal.

The case of Peoples' Bank Vs Lanka Banku Sevaka Sangamaya¹ is directly on the above point. Further, the facts of that case also involve some incidents in which the workman in that case had issued several cheques to third parties from his account without sufficient funds in his account. In that case, the workman was a clerk attached to the Peoples' Bank who had served the bank for twenty-five years. On an application made by him to challenge the termination of his service, the Labour Tribunal had held that the termination of his service was justified, but ordered payment of compensation. He then appealed to the Provincial High Court but the Provincial High Court dismissed his appeal and affirmed the order of the Labour Tribunal. He thereafter did not appeal against the Provincial High Court judgment to any Superior Court. However, the Peoples' Bank appealed to the Supreme Court against the judgment of the Provincial High Court on the question whether the Provincial High Court had erred in affirming the order of the Labour Tribunal to pay compensation to the workman even when he was found guilty of misconduct and the termination of his service was held to be justified. This Court held that the workman had accepted the order of the Labour Tribunal which held that the termination of his employment was justified, since the workman had not appealed against the orders of the lower courts. The following two excerpts from the judgment of His Lordship Justice Sisira J. de Abrew would show how this Court looked at the relevant issues in that case.

"... The workman was a clerk attached to the Peoples' Bank (Appellant Bank) and served the bank for 25 years. He appealed to the High Court against the order of the Labour Tribunal and his appeal was dismissed by the High Court. He did not appeal against the said order to any Superior Court. Thus, the order of the Labour Tribunal which held his termination justified has been accepted by him."

"..... The Appellant Bank, after an inquiry, terminated his services for the said acts of misconduct. The Labour Tribunal however ordered compensation amounting to Rs.584,425/25 to be paid to him by the Appellant Bank. It is established that his services were terminated for the acts of misconduct committed by him. Then why should the Appellant Bank pay compensation to a person who was found guilty of

¹ SC Appeal 106/2012 decided on 09-06-2015

misconduct and violated disciplinary circulars of the bank. This was the question that was presented, at the hearing of this appeal, to this court by learned counsel for the Appellant Bank. The most important question that must be decided in this case is whether the workman whose termination of services was held to be justified by the Labour Tribunal is entitled to compensation especially when he was found guilty of acts of misconduct. When considering this question, I must consider the following matters.

- 1. The workman had not caused any monetary loss to the Appellant Bank and the acts of misconduct committed by him are private transactions.*
- 2. Whether the workman had an unblemished record.*

I now advert to these matters. It is correct to say that acts of misconduct committed by him are private transactions between him and third parties and that he had not caused any monetary loss to the Appellant Bank. As I pointed out earlier the cheques issued by him have been dishonored by the bank on the grounds that there were no sufficient funds in his account and that the cheques were issued after the account had been closed. These acts clearly demonstrate that he was dishonest when he issued the cheques. When an employee of the Appellant Bank committed the above-mentioned dishonest acts, they will affect the reputation of the bank and such acts would undoubtedly erode the confidence of the people that they have towards the bank. Needless to say, that the existence of a bank depends on public confidence. When employees of the Appellant Bank behave in this manner, it will affect the reputation of the Bank and therefore the Bank must take disciplinary actions against such employees. In my view such persons cannot function in Banks. When compensation is awarded to the employees who committed the above acts of misconduct, such a decision can be construed as an encouragement to commit further acts of misconduct.”

In the instant case, the Employer has issued specific instructions to the members of the staff by way of a circular as to how they should maintain current accounts in the Employer bank. This circular dated 08th March 1984 has been produced marked **R 7**.

Reproducing at least some of the rules contained therein would be relevant. They are as follows.

- i. All current accounts should be segregated and kept in one ledger or in one section of the ledger.*
- ii. Members of the staff should maintain their current accounts at the Branch to which they are attached.*
- iii. All credits to staff accounts should be referred to the Manager of the Branch and satisfactory explanation given for the source of such deposit and thereafter the credit slip must be authorized by him by placing his signature on the credit slip and only thereafter should the cheque or cash be deposited. The Manager should not delegate this authority to any other officer of the branch.*
- iv. Managers should not UNDER ANY CIRCUMSTANCES grant members of the staff any temporary overdraft. Any request for temporary overdrafts should be referred by the Manager to the Loans Committee at Head Office with his recommendation. The facility may be granted only after approval is received.*
- v. Cheques issued by members of the staff without adequate funds in their accounts should be returned 'UNPAID' just like any other customers in the normal course of business. Disciplinary action will be taken against those who flout these instructions regarding grant of temporary overdrafts including the Manager who approved the unauthorized temporary overdraft.*
- vi. Current accounts of staff members should be closed on the first cheque returned by the branch for lack of funds.*

The Employer bank had issued the above circular as far back as 08-03-1984. Thus, the Employee knew very well about the above rules and the seriousness of the actions he was engaged in. He therefore had taken upon himself, the risk of the Employer taking disciplinary action against him, when he issued the relevant cheques without sufficient funds in his current account. Moreover, as has been held by both the Labour Tribunal and the Provincial High Court, the Employee had induced Trainee Bank Assistant Sirisoma to achieve the results he had desired. The way he had chosen to achieve the expected results is exactly what his employer has sought to stop by issuing the circular **R 7**. Conclusion arrived at, by the learned President of the Labour Tribunal

in that regard is that the Employee had directly induced the Trainee Banking Assistant Sirisoma to act contrary to the rules of the Employer bank and that the Employee is directly responsible for the said inducement. This is in addition to the conclusion that the proof of the acts of misconduct in the first, second and third charges is sufficient to warrant the termination of the service of the Employee. It is opportune at this stage to see how this Court has approached the question of termination of an employee of a bank. The following instances would shed more light on the said question.

In M Sithamparanathan Vs. People's Bank,² the workman was a Grade IV officer of the People's Bank who functioned as a ledger officer. He was served with a charge sheet setting out seven charges relating to an incident of authorizing payment of a fraudulent withdrawal of Rs. 4500/= from a savings deposit account. Although he was only found negligent regarding the said withdrawal, His Lordship Justice Siva Sellaiah in the judgment pronounced in the Court of Appeal, underscored in the following excerpt, the importance of taking into consideration, the element of a bank losing confidence in its employees.

"..... It is needless to emphasize that the utmost confidence is expected of any officer employed in a Bank. Not only has he to transact business with the public but also he has to deal with money belonging to customers in the safe custody of the Bank. As such he owes a duty both to the Bank to preserve its fair name and integrity and to the customer whose money lies in deposit with the Bank. Integrity and confidence thus are indispensable and where an officer has forfeited such confidence and has been shown up as being involved in any fraudulent or questionable transaction, both public interest and the interest of the bank demand that he should be removed from such confidence."

The above excerpt in the judgment of His Lordship Justice Siva Sellaiah was cited with approval, by His Lordship the then Chief Justice G P S de Silva in his judgment in the case of Bank of Ceylon Vs. Manivasagasivam.³ The workman in that case was a Grade II Clerk in the Personnel and Administration Division of the Bank of Ceylon at the time of the termination of his service. The case for the bank of Ceylon was that there was

² 1986 (1) SLR 411.

³ 1995 (2) SLR 79.

a loss of confidence in the workman by reason of the part he had played in an attempt made by certain other persons to fraudulently transfer a sum of money from Sri Lanka to accounts which had been opened in a Swiss Bank. The evidence led on behalf of the bank had clearly shown that the certification of the signature of the person intending to open an account in a foreign bank by an "Approved Bank" is an essential requirement and that the Bank of Ceylon is one such "Approved Bank". The evidence had also clearly shown that it was by reason of the intervention of the workman in that case, that two other persons were able to secure the certification of their signatures by an "Approved Bank" in Sri Lanka. The said workman had been in the service of the bank of Ceylon for eleven years. His Lordship the then Chief Justice in his judgment holding that the High Court had failed to address its mind to a significant fact namely the kind of institution in which the workman was employed, cited the above excerpt from the judgment of His Lordship Justice Siva Sellaiah in M Sithamparanthan's case,⁴ and stated as follows.

"... It seems to be that by reason of the part played by the applicant in two transactions which, to say the least, were questionable, he has clearly forfeited the confidence reposed in him as an employee of the Bank. In these circumstances, the Bank should not and cannot continue to employ him. ..."

In National Savings Bank Vs. Ceylon Bank Employees' Union,⁵ the bank had dismissed a clerk in its service for an alleged misconduct at an examination conducted by the Banker's Training Institute as the said clerk (workman) was detected having in his possession, notes relevant to the question paper he was answering, by the supervisor at the examination hall. The Banker's Training Institute reported the matter to the bank. The National Savings Bank then called for explanation from the workman. The workman admitted having committed an offence by having in his possession, the notes relevant to the paper he was answering at the said examination but pleaded for mercy. The National Savings Bank however terminated his service. Upon an application filed by the workman, the Labour Tribunal after the inquiry, directed the reinstatement of the workman but did not award the back wages. The National Savings Bank appealed

⁴ Supra.

⁵ 1982 (2) SLR 629.

to the Court of Appeal against the said order of the Labour Tribunal. The Court of Appeal affirmed the order of the President of the Labour Tribunal. The National Savings Bank then appealed to the Supreme Court against the said order. His Lordship Justice Soza in his judgment had the following to say about the honesty of the employees of a bank.

"... The public have a right to expect a high standard of honesty in persons employed in a bank and bank authorities have a right to insist that their employees should observe a high standard of honesty. This is an implied condition of service in a bank. Conduct on the part of a bankman which tends to undermine public confidence amounts to misconduct. Whether the misconduct relates to the discharge of his duties in the bank or not, if it reflects on the bankman's honesty, it renders him unfit to serve in a bank and justifies the dismissal..."

".... The learned President found that Amarasuriya has innocently taken the examination notes into the hall but in the same breath he declared that an offence has been committed, and a serious offence at that. He went on to hold that Amarasuriya was guilty of misconduct at an examination but not of misconduct at his workplace and ordered reinstatement. The learned President has failed to appreciate the fact that he was considering the case of an employee of a bank which is under a special duty to ensure that the honesty of its servants is not open to question. The dismissal of Amarsuriya was therefore justified. The order of the learned President cannot be allowed to stand. ..."

In the case of D L K Peiris Vs Celltell Lanka Ltd.⁶ the workman held the post of Assistant Manager - Credit Collections for the respondent (Celltell Lanka Ltd.), until his service was terminated. The said workman had prayed for reinstatement with back wages or in the alternative a payment of a reasonable compensation for the loss of his employment. The workman in that case had been ordered to proceed to Matale on official duty on 07-08-2003 and was ordered to stay in Kandy overnight, as was required to properly fulfill his duties there and return to Colombo only on 08-08-2003. The said workman had presented a hotel bill to the respondent (Celltell Lanka Ltd.)

⁶ SC Appeal 30/2009, decided on 24-11-2010.

for reimbursement. However, upon investigation it was revealed that the said workman in fact had not stayed in Kandy that night. To substantiate this position, the respondent (Celltel Lanka Ltd.) had led the evidence of three witnesses and produced as documentary evidence, several computer prints out of call records showing particulars of all calls made from that workman's cellular phone on the night the said workman claimed to have spent in Kandy. Her Ladyship Justice S. Thilakawardane when holding that it was not erroneous in law for the learned President of the Labour Tribunal to arrive at a conclusion that the workman in that case had engaged in misconduct and, most importantly, that the respondent (Celltel Lanka Ltd.) was reasonable in ceasing to repose trust in the workman, which is a basic trust that was necessary for the performance of the duties required of him, stated in her judgment as follows.

"The Appellant was an Assistant Manager, Credit Collections (outstation), a position of responsibility which demands integrity, competency, reliability and independence. Given the nature of the Appellant's services which was to independently handle the Respondent's work in the outstation districts, there was without a doubt an expectation by the Respondent that the Appellant was to act with the utmost integrity and honesty, arguably even more so than that required of an employee without such autonomy.

Once the Appellant fell short of this expectation it is perfectly reasonable, by any reasonable standard, that the Respondent would cease to continue to repose any confidence in the Appellant. Loss of confidence arises when the employer suspects the honesty and loyalty of the employee. It is often a subjective feeling or individual reaction to an objective set of facts and motivation. It should not be a disguise to cover up the employer's inability to establish charges in a disciplinary inquiry but must be actually based on a bona fide suspicion against the employee making it impossible or risky to the organization to continue to keep him in service. The employer-employee relationship is based on trust and confidence both in the integrity of the employee as well as his ability or capacity. Loss of confidence however, is not fully subjective and must be based on established grounds of misconduct which the law regards as

sufficient. The concept of loss of confidence has been well expressed in the following terms:

"the contractual relationship as between employer and employee so far as it concerns a position of responsibility is founded essentially on the confidence one has in the other and in the event of any incident which adversely affects that confidence the very foundation on which that contractual relationship is built should necessarily collapse.... Once this link in the chain of the contractual relationship.... snaps it would be illogical or unreasonable to bind one party to fulfill his obligations towards the other. Otherwise, it would really mean an employer being compelled to employ a person in a position of responsibility even though he has no confidence in the latter." (vide Democratic Workers' Congress vs De Mel and Wanigasekera)"

In the instant case, although the learned President of the Labour Tribunal has stated in his order that W H Warakapola had testified before the Labour Tribunal it is not factually correct. Evidence of only three witnesses namely, Thalindu Niranja Sirisoma who was working as a Banking Assistant at the Bank at the time of the said incident, Wasanthi Hemamala who was working as a Junior Executive at the Bank and Neil Christopher Rasiah who was working as the Manager of the Branch has been led on behalf of the Employer, while evidence of only the Employee has been led on behalf of the applicant.

In any case, even if one is to consider that both the Manager of the Branch and said W H Warakapola have issued cheques without sufficient funds in their accounts, the misconduct that the Employee in the instant case has committed is not confined to a mere issuance of cheques without sufficient funds in his account. It is much more serious as the Employee in the instant case had directly induced the Trainee Banking Assistant Sirisoma to act contrary to the rules of the Employer bank. Therefore, even if the documents produced marked **A 9** to **A 10** have established that the Manager of the Branch and said W H Warakapola have issued cheques without sufficient funds in their accounts, that cannot form a basis for the learned President of the Labour Tribunal to order the reinstatement of the Employee in the instant case in the given circumstances.

Another basis for the reinstatement of the Employee as per the order of the learned President of the Labour Tribunal, is the fact that the Employer had not taken any disciplinary action against the Trainee Banking Assistant Sirisoma. However, it is the finding by the learned President of the Labour Tribunal himself that the Employee in the instant case had directly induced the Trainee Banking Assistant Sirisoma to act contrary to the rules of the Employer bank. Sirisoma gave evidence before the Labour Tribunal and explained in detail how he was induced by the Employee. In those circumstances, the Employer is justified in deciding that it is the Employee who had flouted the rules of the circular marked **RZ** and not Sirisoma who was just a Trainee Banking Assistant at that time. In any case, Sirisoma had never issued any cheque. Thus, the said basis used by the learned President of the Labour Tribunal to order the reinstatement of the Employee in the instant case, cannot be accepted as valid.

The facts and the circumstances of the instant case, clearly justifies the decision of the Employer to discontinue the service of the Employee. The said circumstances are sufficient for the Employer to have lost confidence in the Employee. As has been discussed in the cases cited above, the banks would not be able to function with Employees in its staff who are not prepared to strictly adhere to the rules put in place by the banks to safeguard the trust reposed in them by their customers. When customers lose confidence in the bank, the bank would no longer attract business. When the bank does not attract business, it would not survive any further. Thus, in the instant case, the Employer bank is justified in terminating the service of the Employee. In the given circumstances, as held by the Provincial High Court, the Employee cannot justifiably claim compensation while the Employer cannot justifiably be compelled to pay compensation. Thus, I hold that the Employee in the instant case, is not entitled to receive any compensation from the Employer.

Therefore, I answer the question of law No. (i) in respect of which this Court has granted Leave to Appeal, in the affirmative.

The question of law No. (ii) in respect of which this Court has granted Leave to Appeal, questions whether the learned Judge of the High Court was obliged in law, to consider the provisions of section 31B (6) (c) of the Industrial Disputes Act. The relevance (if any), of that section to the instant case, would be only to the issue whether an order

relating to payment of compensation to the workman, should have been made by the High Court.

For the reasons already set out above in this judgment, I have already held that the Employee in the instant case, is not entitled to receive any compensation from the Employer. Further, I have already answered in the affirmative, the question of law No. (1) (i.e., *Was the judgment of the Honourable Judge of the High Court just and equitable?*). This means that the said judgment of the High Court, which does not contain a direction to pay compensation to the Employee, is a just and equitable one. Thus, when the non-payment of compensation has been held to be a just and equitable order, the learned High Court Judge is not obliged to again consider section 31B (6) (c).

Moreover, in the instant case, I too would repeat the rhetoric question posed by His Lordship Justice Sisira J. de Abrew, in the case of Peoples' Bank Vs Lanka Banku Sevaka Sangamaya⁷: *'when it is established that the workman's service was terminated for the acts of misconduct committed by him, then why should the Bank pay compensation to a person who was found guilty of misconduct and violated disciplinary circulars of the bank.'*

Having posed the above question, I too would concur with the view taken by His Lordship Justice Abrew, that awarding of compensation to the employees who had committed the acts of misconduct, would operate as an encouragement to the commission of such acts of misconduct.

Therefore, I hold that the learned High Court Judge is correct when he did not make any order granting compensation and hence, I am unable to hold that he was obliged to again consider Section 31B (6) (c) of the Industrial Disputes Act which would only be an irrelevant exercise in the face of the just and equitable order (as afore-stated) already made by him.

For those reasons, I answer the question of law No. (ii) in respect of which this Court has granted Leave to Appeal, in the negative.

⁷ Supra.

I affirm the judgment of the Provincial High Court dated 09-12-2010 and proceed to dismiss this appeal with costs.

JUDGE OF THE SUPREME COURT

BUWANEKA ALUWIHARE PC J

I agree,

JUDGE OF THE SUPREME COURT

E A G R AMARASEKARA J

I agree,

JUDGE OF THE SUPREME COURT