

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

***In the matter of an application under Section
31 DD(1) of the Industrial Disputes Act as
amended, read with Section 9(a) of the High
Court of Provinces (Special Provisions) Act
No. 19 of 1990 amended by Act No. 54 of
2006.***

Case No. SC APPEAL 198/18

HC Case No. HCALT 08/2013

LT Case No. 23/Ku/7234/2001

Ceylon Bank Employees Union

20, Temple Road,

Colombo 10.

(On behalf of W.M. Wijeratne Banda)

APPLICANT

Vs.

People's Bank

75, Sir Chittampalam A. Gardiner Mawatha,

Colombo 02.

RESPONDENT

AND BETWEEN

People's Bank

75, Sir Chittampalam A. Gardiner Mawatha,

Colombo 02.

RESPONDENT-APPELLANT

Vs.

Ceylon Bank Employees Union

20, Temple Road,

Colombo 10.

(On behalf of W.M. Wijeratne Banda)

APPLICANT-RESPONDENT

AND NOW BETWEEN

Ceylon Bank Employees Union

20, Temple Road,

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(On behalf of W.M. Wijeratne Banda)

APPLICANT-RESPONDENT-

APPELLANT

Vs.

People's Bank

75, Sir Chittampalam A. Gardiner Mawatha,

Colombo 02.

RESPONDENT-APPELLANT-

RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**
JANAK DE SILVA, J. AND
ARJUNA OBEYESEKERE, J.

COUNSEL: A.S.M. Perera, PC with Uvindu Jayasiri for the Applicant-Respondent-Appellant

Manoli Jinadasa with Dilini Reeves for the Respondent-Appellant-Respondent, instructed by Amanda Wijesinghe

WRITTEN Applicant-Respondent-Appellant on 9th January 2024

SUBMISSIONS: Respondent-Appellant-Respondent on 30th August 2018

ARGUED ON: 03rd July 2024

DECIDED ON: 21st May 2025

THURAIRAJA, PC, J.

1. This appeal arises out of an action filed by the Ceylon Bank Employees' Union (Applicant-Respondent-Appellant), against the People's Bank (Respondent-Appellant-Respondent, hereinafter referred to as the "Respondent Bank"), on behalf of W.M. Wijeratne Banda (to whom I shall hereinafter refer to as the "Appellant" for convenience), who was employed by the Respondent Bank for a period of 35 years.
2. The Appellant joined the Bank on 02nd December 1965 and, at the time of his termination on 12th January 2001, held the position of Grade II Senior Manager while serving as the Manager of the Mahiyangana Branch. His employment was terminated on grounds of misconduct, following a Domestic Inquiry conducted by the Bank.

3. The termination was preceded by a Branch Inspection carried out by the Chief Internal Auditor of the Bank, covering the period from 24th March 1992 to 27th September 1995, during which the Appellant was in charge of the Mahiyangana Branch. The said audit revealed several financial irregularities, including the granting of loans without obtaining necessary security, failure to comply with internal circular instructions, and the mismanagement of overdraft facilities. Additionally, a Branch Handing Over Certificate, compiled by the subsequent branch Manager, listed various instances of irregularities that had taken place under the Appellant's tenure, which the Employee had signed and accepted.
4. Based on these findings, the Bank issued the charge sheet dated 13th December 1999, containing six counts of misconduct, including the Appellant's failure to obtain security for loans, violation of circular instructions, and actions that resulted in financial losses to the Bank. Following the Domestic Inquiry, the Appellant was found guilty on five out of the six charges and was consequently dismissed from service on 12th January 2001.
5. Challenging his termination, the Appellant, through a Registered Trade Union, filed an application in the Labour Tribunal, claiming that his dismissal was unfair and excessive. He contended that he had maintained an unblemished service record for 35 years and had even received commendations from the Bank prior to his termination. He further argued that the alleged lapses were minor, and the punishment of dismissal was disproportionate to the nature of the charges.
6. During the proceedings before the Labour Tribunal, the Respondent Bank called four witnesses, namely, M.M. Samarasekera, the then Manager of the Mahiyangana Branch; T. Newton, a retired Bank Manager; K.H. Premadasa, Acting Regional Manager of the Bank; and M. Nihal Ratnayake, Manager Training of Sri Lanka Insurance Corporation. A witness named S.B. Dodanwela, a former Manager, gave evidence on behalf of the Appellant;

however, he passed away before he could be cross-examined. As his testimony remained incomplete, the Labour Tribunal was unable to take it into consideration.

7. At the conclusion of the inquiry, the Labour Tribunal, by its order dated 29th April 2013, found the Appellant guilty only on count one of the charge sheet. The Tribunal held that the Respondent Bank had failed to establish the other five charges conclusively. Consequently, the Tribunal ordered the Appellant be entitled to his pension and ordered half the pension from the date of termination to the date of the order, namely, which amounts for 12 years and 3 months, amounting to Rs. 2,064,431.98. Further, the tribunal ordered from the date of this order the Appellant will be entitled to his full pension.
8. Aggrieved by the order of the Labour Tribunal, the Respondent Bank appealed to the Provincial High Court of North Western Province holden in Kurunegala (hereinafter referred to as the "High Court"), seeking to set aside the Tribunal's decision. The Respondent Bank contended that the Tribunal had erred in its findings, particularly in holding that the termination was excessive despite clear evidence of financial mismanagement and misconduct. The Respondent Bank further argued that the Tribunal had acted beyond its jurisdiction by awarding pension benefits, which the Appellant had not specifically requested in his application.
9. Upon hearing the submissions of both parties, the High Court, by its judgment dated 16th December 2015, set aside the order of the Labour Tribunal. The High Court held that the termination of the Appellant was just and equitable, given the seriousness of the financial misconduct committed by him. The High Court further ruled that the Labour Tribunal had erred in granting pension benefits, as an employee dismissed for misconduct is not entitled to such relief. However, the High Court awarded the Appellant a sum of Rs. 561,744 as compensation, being half his salary for a period of three years from the date of termination.

10. Aggrieved by the judgment of the High Court, the Appellant filed the instant appeal to the Supreme Court, challenging the decision. Leave was granted by this Court on the following Questions of Law raised by the Appellant:

" I. Whether the learned High Court Judge delivered a judgment that is inconsistent with the legal and factual issues that arose for consideration in this case.

II. Whether the learned High Court Judge erred in concluding that the learned President of the Labour Tribunal had erred in determining that the Employee was entitled to his pension, given the circumstances of the case.

III. Whether the learned High Court Judge's decision to award a compensation to the Employee, half the salary that was payable to the Employee for a period of three years is arbitrary and not supported on any rational basis."

11. I shall begin with the first question of law. In considering this question as to whether the learned High Court Judge delivered a judgment that is inconsistent with the legal and factual issues that arose for consideration in this case, I will consider the charges brought against the Appellant by the Respondent Bank. The charges are as follows:

I. Granting of loans without obtaining the necessary security documents and/or obtaining securities with defects, releasing money without approving the securities, and acting negligently in awarding loans to five clients, resulting in an unsecured loan amount of Rs. 1,360,560/- and exposing the Bank to financial risk.

II. Granting of Pledge of Paddy Loans without following loan approval instructions and circular instructions, thereby relinquishing double control, stock control, and failing to conduct proper investigations before releasing loan installments.

III. Granting and/or recommending temporary overdrafts in disregard of the responsibility to safeguard Bank funds, resulting in non-payment of Rs. 7,046,356.33 as at 30/11/1999.

IV. Aiding and abetting the misappropriation of Bank funds by issuing a letter to an insurance company expressing no objection to the payment of Rs. 1,859,195/- to an individual named Gunawardena, in relation to the loss of paddy stock due to fire, without following proper procedure.

V. Acting in a manner that caused the Bank to lose trust and confidence in the Employee.

VI. Causing harm to the goodwill and reputation of the Bank.

12. With regard to the first charge, it is undisputed that the Appellant, in his capacity as the Branch Manager of the Mahiyangana branch, granted a total sum of Rs. 1,360,560/- as loans to five clients without obtaining the required security or by securing defective guarantees. This conduct was in clear violation of Manager's Circular No. 390/84, which explicitly states that obtaining the necessary securities is the *"sole and personal responsibility of the Branch Manager."* The circular further warns that failure to comply with this directive would result in severe disciplinary action.

13. The subsequent Branch Manager, in his testimony, confirmed that the Appellant had released loan funds to several clients without the required securities, as evidenced in the Branch Handing Over Certificate. One such instance involved a loan of Rs. 250,000/- granted to H.A. Siriwardena for the purchase of a tractor.

14. The documentary evidence establishes that although this sum was released from the Mahiyangana Branch, there was no security retained in favour of the Respondent Bank. Moreover, the Form of Certificate of Registration of the tractor does not indicate that it

was registered under the Respondent Bank's name. The Appellant has failed to produce any evidence to demonstrate that the necessary securities were obtained.

15. This pattern of misconduct was not limited to a single instance. The evidence reveals that the Appellant also granted loans to Pathahulla, Samarathunga, and Wijekoon in violation of Circular No. 390/84. The Loan Approval Forms signed by the Regional Manager specifically listed the securities that were to be obtained before the release of funds. However, the Appellant, in flagrant disregard of his responsibilities, proceeded to release the loan funds without ensuring compliance with the stipulated conditions.
16. Tilakawardane J., in ***D L K Peiris v. Celltel Lanka Limited***¹ providing a definitive explanation of what amounts to misconduct observed,

"Dismissal on the basis of misconduct is, after all, the foremost punishment in labour law. In All Ceylon Oil Companies Workers' Union v. Standard Vacuum Oil Co. Ltd. 237 CGG 12034 8.1.60 the Court defined misconduct as "...an act which is inconsistent with the fulfillment of express or implied conditions of service or which has a material bearing on the smooth and efficient working of the concern.."

17. This definition does not limit misconduct to intentional wrongdoing but extends to negligence and omissions that disrupt the employer's operations. The Court of Appeal, in ***Engineering Employees' Union v. State Engineering Corporation***,² further clarified that for an act or omission to constitute misconduct warranting disciplinary action, it must:

I. Be inconsistent with the fulfilment of an express or implied condition of service;

¹ SC Appeal No. 30/2009, SC Minutes of 11th March 2011, at p. 7

² CA 862/85, CA Minutes of 02nd August 1991

- II. Be directly linked with the general relationship of employer and employee;
- III. Have a direct connection with the contentment and comfort of employees and their work; and
- IV. Have a material bearing on the smooth and efficient working of the concern.

18. The facts of the present case squarely fall within this definition. The Appellant's failure to obtain proper security for loans was a clear breach of an express condition of service, as stated in Circular No. 390/84. This directly impacted the financial stability of the institution, exposing it to significant risks and affecting its smooth functioning. Therefore, the Respondent Bank was well within its rights to initiate disciplinary action.
19. Furthermore, the financial loss resulting from the Appellant's misconduct is not merely speculative. The succeeding Branch Manager testified that due to the lack of proper documentation, the Bank suffered a loss of Rs. 1,737,000/-, with recovery proceedings being hindered by the Appellant's failure to obtain adequate securities. I find this to be reinforcing the seriousness of the negligence in question.
20. In **S.R. De Silva's Monograph on the Law of Dismissal**,³ it is stated that "incompetence, though not amounting to misconduct, is a good ground for dismissal."
21. Furthermore, this position is supported by several authorities, including ***The Electricity Equipment & Construction Company v. Cooray***⁴ and ***Reckitt & Colman Ltd. v. Peiris***,⁵ where it was held that, as a general rule, refusal to comply with reasonable orders justifies dismissal from service.

³ S.R. De Silva, *Law of Dismissal* (3rd edn, The Employers Federation of Ceylon: Monograph No. 8, 2018) at p. 32

⁴ (1962) 63 NLR 164

⁵ (1978) 79 (2) NLR 229

22. Applying this principle to the present case, the Appellant's failure to comply with the Bank's circulars and directives, particularly in granting loans without proper security, constitutes a serious violation of Banking procedures. This was not a minor lapse but a direct breach of duty that exposed the Bank to significant financial risk, justifying his dismissal.

23. In **Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar**,⁶ the Supreme Court of India held that where an employee's dereliction of duty was found to be unsatisfactory, the employer was within its rights to terminate the employee's services. Similarly, in **Clouston & Co. v. Corry**,⁷ the Court held that:

"Misconduct inconsistent with the fulfillment of the express or implied conditions of service will justify termination."

24. The Appellant has sought to argue that his failure to comply with circular instructions was not an act of misconduct but rather a necessary practice encouraged by the Bank to facilitate efficient loan disbursement.

25. However, upon a careful examination of the Domestic Inquiry proceedings, the Labour Tribunal order, and the High Court Judgment, it is evident that this justification is entirely without merit. While it is undisputed that Bank Managers are expected to ensure efficiency in loan approvals, such efficiency must always be exercised within the framework of legal and procedural safeguards. There is no evidence before this Court to support the assertion that the Bank had officially directed or permitted its Branch Managers to disregard circular instructions when granting loans. The mere necessity to

⁶ 1961 (1) LLJ 511

⁷ 1906 AC 122, at p. 129

act efficiently does not absolve a Manager from the duty to ensure compliance with the Bank's regulations.

26. In view of the overwhelming evidence before this Court, it is evident that the decision of the High Court to set aside the order of the Labour Tribunal is correct in law. The Employee's actions amount to serious misconduct, warranting dismissal. Given the clear directives outlined in Manager's Circular No. 390/84, the significant financial loss incurred by the Employer Bank, and the established legal principles governing employment discipline, this Court finds no reason to interfere with the decision of the High Court.
27. The charges against the Appellant, particularly charges 2 and 3, have been examined in light of the evidence presented. Charge 2 involves the Appellant's action in granting Pledge of Paddy Loans without following the necessary loan approval instructions and circular guidelines. This includes failing to properly secure the paddy stocks and not conducting necessary investigations when releasing loan instalments.
28. The Appellant was expected to ensure that the paddy loans were adequately protected, but it was found that some stores, which were meant to contain grain as security for loans, were empty, and the branch did not have control over the keys to the stocks. The Appellant contended that the Branch Manager was not responsible for these loans, but the evidence showed otherwise, indicating that the Appellant had a responsibility to follow the required guidelines. The failure to adhere to these procedures potentially posed a risk to the Bank's financial resources.
29. Charge 3 is with regard to the granting of temporary overdrafts (TODs) by the Appellant without safeguarding the Bank's funds, which resulted in an outstanding balance of Rs. 7,046,356.33. The Appellant granted overdrafts without assessing the customers' ability to repay, contrary to instructions specified in the Respondent Bank's circular. Evidence revealed that a significant proportion of these overdrafts remained unrecovered, raising

concerns about the lack of security and proper documentation for these loans. The Appellant was expected to ensure that only eligible customers received overdrafts, and that necessary precautions were taken to safeguard the Respondent Bank's funds. The fact that a portion of these overdrafts were granted after the Employee handed over the branch to a new Manager was also noted, but it does not address the overdrafts granted during the Employee's management.

30. Charges 5 and 6 are related to the Appellant's conduct and the resulting harm to the Bank's trust, reputation, and credibility. These charges stem from the actions in charges 1 to 3, which suggest a breach of the Appellant's duties as a Bank Manager. As an employee of the Bank, the individual was expected to uphold the standards of integrity and trustworthiness. The misconduct associated with failing to follow established guidelines and granting loans without adequate safeguards led to significant risks for the Bank's financial standing.
31. However, after reviewing the evidence and the findings of the learned President of the Labour Tribunal and the learned High Court Judge, this Court does not find it necessary to consider the Appellant's guilt on each individual charge. The Employee's actions in charge 1 alone are sufficient ground for the termination of his employment.
32. Accordingly, in light of the above discussion, I answer the first Question of Law in the affirmative.
33. I will now deal with the second Question of Law as to whether the learned High Court Judge erred in concluding that the learned President of the Labour Tribunal had erred in determining that the Appellant was entitled to his pension.
34. The Appellant, in his arguments before this Court, primarily contended that the Provincial High Court erred in setting aside the Labour Tribunal's order, which had granted him

pension rights. The Appellant stated that he was 56 years old at the time of his termination and, therefore, eligible for a pension. However, upon a thorough examination of the case record, particularly pages 262, 391, and 409 of the Brief, it is evident beyond doubt that the Appellant was, in fact, 54 years old at the time of his termination.

35. This finding is crucial given that, under the applicable Pension Fund Rules, pension entitlement is strictly contingent upon the Appellant reaching the age of 55 while still in service. The Labour Tribunal, in granting pension benefits to the Appellant, overlooked this fundamental requirement and erroneously awarded pension benefits from the date of termination rather than from the date he would have reached the retirement age, which is wholly inconsistent with the governing rules.
36. When this factual inconsistency was raised during proceedings, the Appellant sought to argue that the age recorded in the case documents was incorrectly reflected and was mentioned only in the section containing the affirmation. However, I am not inclined to entertain such an application at this stage.
37. If a case record contains an error regarding material particulars such as name, age, or any other fundamental fact, such an error must be rectified at the earliest opportunity during trial. The Appellant, having failed to challenge the accuracy of his recorded age at the appropriate stage, cannot now discredit the information consistently reflected in multiple entries across the case record.
38. Notably, when the Appellant commenced giving evidence before the Tribunal in or about January 2008, he was recorded as being 61 years old. By 2010, he was 64 years old, and in 2011, he was 65 years old. A simple mathematical calculation confirms that at the time of his termination in 2001, he could not have been 56 years old, as he claimed, but was in fact only 54 years old. This Court finds that there is no material to find that he had met

the minimum eligibility requirements under the Pension Fund Rules and was thus not entitled to a pension.

39. Priyasath Dep, PC, J (as His Lordship was then) in **Peoples' Bank v. Ariyapala**⁸ recognized that a Labour Tribunal has the discretion to consider all relevant facts brought before it during the inquiry, even if those facts were not expressly pleaded in the original application. It was specifically stated that;

"It is appropriate at this stage to draw a distinction between a plaint in a civil case and an application in the Labour Tribunal. Civil cases are regulated by the Civil Procedure Code and has provisions regarding contents/requisites of plaint, answer and replication and provisions to amend pleadings. It is settled law that in civil cases the Court could not grant relief not prayed for. In case of Labour Tribunals there is no procedure prescribed and the Tribunal has the power to adopt a suitable procedure. Therefore Labour Tribunal is not fettered by stringent and a rigid procedure as in a civil cases."

40. This principle underscores the Tribunal's broad discretion in ensuring that justice is served in employment disputes, without being constrained by the formalities applicable to civil litigation. Consequently, a party may seek relief during the inquiry stage, even if such relief was not explicitly sought in the initial application, provided that it falls within the just and equitable jurisdiction of the Tribunal.
41. However, while the flexibility of Labour Tribunal proceedings allows for the consideration of unpleaded relief, this discretion is not absolute. In the present case, the issue is not merely one of procedural latitude but of substantive legal ineligibility. The Appellant, having been terminated at the age of 54, did not meet the age requirement of 55 years as stipulated under the applicable Pension Fund Rules. The pension scheme in question

⁸ SC Appeal No. 33/2012, SC Minutes of 10th December 2014, at p. 8

does not provide for pension entitlement to employees who leave service before reaching the qualifying age, except in limited circumstances upon medical recommendation and approval by the General Manager.

42. In these circumstances, I find that the order of the Labour Tribunal granting pension rights to the Appellant was legally unsustainable and was correctly set aside on appeal. This Court finds the Appellant not entitled to pension rights.
43. I find that the Appellant's claim for pension entitlement is untenable as he did not meet the required age criteria under the Pension Fund Rules. Accordingly, the second Question of Law, too, is answered in the affirmative.
44. I shall now advert to the third and final Question of Law, as to whether the learned High Court Judge's decision to award compensation to the Appellant half the salary that was payable to him for a period of three years, is arbitrary and not supported on any rational basis.
45. At the outset, this Court deems it necessary to emphasise that the issue under consideration is not merely whether the quantum of compensation was arbitrary, but rather if the Appellant was entitled to any compensation at all.
46. Compensation in cases of termination is awarded under Section 31B(1) of the *Industrial Disputes Act*, which provides relief to an employee where the termination of service is found to be unjust, or where there exists a basis for awarding benefits due upon termination. However, it is imperative to consider whether such relief extends to an employee whose own conduct has contributed to his dismissal.
47. The jurisprudence governing termination of employment recognises that an employer retains the right to dismiss an employee for just cause, particularly where the employee's conduct is blameworthy, unreasonable, or in direct violation of his contractual

obligations. This principle was reaffirmed in **Kotagala Plantations v. Ranasinghe**,⁹ where it was held that the employer had established genuine reasons for termination and the employee's misconduct was intentional and deliberate, leaving him with no one to blame but himself.

48. In the present case, the evidence placed before this Court overwhelmingly establishes that the Appellant was dismissed due to mismanagement of Bank funds and failure to adhere to mandatory Banking procedures. The charges against him disclose a pattern of irresponsible conduct that exposed the employer to substantial financial risk.
49. Moreover, this Court takes note that the Appellant held a position of trust as a Branch Manager, where he was entrusted with the duty of ensuring financial prudence in loan disbursement and fund management. Instead, the Appellant granted unsecured loans, facilitated the misappropriation of funds, and failed to comply with clear Banking regulations, thereby compromising the financial integrity of the Respondent Bank.
50. The principle that an employee 'who is responsible for his own dismissal' should not be entitled to compensation is not only well-founded in Sri Lankan jurisprudence but also supported by legal principles in comparative jurisdictions.
51. In **Morrison v. Amalgamated TGWU**,¹⁰ the Northern Ireland Court of Appeal held that:

"Where an employee's conduct has contributed to his dismissal and is culpable, blameworthy, or unreasonable, compensation may be reduced or entirely denied."

⁹ SC Appeal No. 54/2010, SC Minutes of 03rd February 2012, at p. 7

¹⁰ [1989] IRLR 361

52. This Court has taken a similar stance in ***The Caledonian (Ceylon) Tea and Rubber Estates Limited v. Hillman***,¹¹ where Sharvananda J. observed:

"...If the employee's conduct had induced the termination, he cannot, in justice and equity, have a just claim to compensation for loss of career as he has only himself to blame for the predicament in which he finds himself..."

53. This Court is of the firm view that these principles are directly applicable to the present case. The Appellant, by his own reckless and irresponsible conduct, has not only breached the trust placed in him but also caused substantial financial losses to the Bank. It is neither just nor equitable to require the employer to compensate an employee whose own actions have directly led to his dismissal.

54. It is therefore the view of this Court that the learned High Court Judge erred in law by awarding compensation to the Appellant without any proper legal justification. The principle of equity must operate bilaterally, ensuring that employers are not unfairly burdened by compensating employees whose own wrongful acts have led to their dismissal.

55. In light of the above, the third Question of Law is also answered in the negative.

CONCLUSION

56. Upon a careful consideration of all the material before this Court, I find the Labour Tribunal's finding of guilt against the Appellant on the first charge to be justified. The conclusion reached by the High Court that the Appellant was guilty not only of the first charge but also of the third, fifth and sixth charges is equally justifiable. Accordingly, I affirm the findings of the High Court on the issue of misconduct.

¹¹ 79 (1) NLR 421, at pp. 429-430

57. The order made by the President of the Labour Tribunal awarding pension benefits to the Appellant is untenable, as the learned High Court Judge has rightfully concluded. Therefore, I affirm the conclusion of the High Court in setting aside the order of the Labour Tribunal with respect to the Appellant's entitlement to pension benefits.
58. At the same time, the High Court's decision to award compensation presumably on sympathetic grounds is likewise without merit. Accordingly, the order of the High Court with respect to the payment of compensation is set aside.
59. For the sake of completeness, I reiterate that the Appellant is guilty of misconduct and that his termination is justified. The Appellant shall not be entitled to any compensation.
60. Subject to the above variations, the appeal is dismissed. Parties shall bear their own costs.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT