

**In the Supreme Court of the Democratic Socialist
Republic of Sri Lanka**

**In the matter of an Appeal
against the Judgment of the
Provincial High Court of the
Western Province (helden in
Colombo) dated 17.01.2019 in
terms of the Section 31DD of the
Industrial Dispute Act No 43 of
1950 as amended by Act No 32 of
1990.**

**SC APPEAL 101/2019
SC/HC/LA Case No 15/2019
HC Colombo Appeal No
No HCALT 14/2018
LT Application No LT/01/57/2013**

Menaka Jayasanka
49/6, Makola South
Makola

Applicant

Seylan Bank PLC
Seylan Towers
90, Galle Road
Colombo 03.

**Respondent
And Between**

Seylan Bank PLC
Seylan Towers
90, Galle Road
Colombo 03.

**Respondent-Appellant
Vs.
Menaka Jayasanka**

49/6, Makola South
Makola

Applicant -Respondent

And Now Between

Seylan Bank PLC
Seylan Towers
90, Galle Road
Colombo 03

**Respondent- Appellant-
Appellant**

Menaka Jayasanka
49/6, Makola South
Makola

**Applicant- Respondent-
Respondent**

BEFORE : P.PADMAN SURASENA, CJ.

K.KUMUDINI WICKREMASINGHE, J.

MAHINDA SAMAYAWARDHENA, J.

COUNSEL : Aruna Samarajeewa instructed by Shyama Gamage for the Respondent-Appellant-Appellant.

Thilak Wijesinghe with Piyumi Sulochana instructed by Shan Rathnayaka for the Applicant-Respondent-Respondent.

WRITTEN SUBMISSIONS ON : By The Applicant-Respondent-Respondent on 25.07.2019.

By the Respondent-Appellant-Appellant. on 13.03.2020.

ARGUED ON : 24.06.2024

DECIDED ON : 13.02.2026

K. KUMUDINI WICKREMASINGHE, J

The application for special leave to appeal was preferred by the Respondent-Appellant-Appellant (hereinafter referred to as the Appellant) against the Order of the Provincial High Court dated 17.01.2019. Aggrieved by which the Respondent-Appellant-Appellant appealed to the Supreme Court.

Accordingly, this court by order dated 12.06.2019 granted special leave to appeal on the following question of law set out in **paragraph 12(ii)**.

“12 (ii). Has the learned High Court Judge erred in coming to the conclusion that the termination of the Respondent's services by the Petitioner Bank was arbitrary, unreasonable and unfair?”

Factual Matrix

The Applicant-Respondent-Respondent (hereinafter referred to as **the Respondent**) filed an application against the Respondent- Appellant- Appellant (hereinafter referred to as **the Appellant**) before the Labour Tribunal of Colombo in terms of **Section 31B of the Industrial Disputes Act, No. 43 of 1950 (as amended)**. The Appellant stated that the Respondent was employed by the Appellant Bank as a Business Development Officer on or about 10.01.2008 (Appointment Letter marked as **R1**). The Appellant stated that the Respondent failed to report to work from 16.06.2008 and, as a result, the Respondent was informed that he was deemed to have vacated his post by letter dated 25.08.2008. The Appellant further stated that after considering the Respondent's appeal to the Senior Manager, Human Resources, he was reappointed to the

same post as a Business Development Officer on or about 03.05.2010 under a new letter of appointment.

The Appellant stated that during the course of the Respondent's employment, his performance was unsatisfactory and below the standard expected by the Bank. Consequently, his probationary period was extended by a further six months from 03.05.2011 to 02.11.2011 (letters marked as **R4**), and he was also issued a warning letter during the said period (marked as **R5**). However, he was absorbed to the permanent cadre as a Banking Assistant by letter dated 16.11.2011 (marked as **A5**).

The Appellant further stated that while the Respondent was in service, the Appellant Bank received a complaint from a customer in relation to the Respondent's personal financial dealings. It was alleged that such conduct was improper and inconsistent with the standards expected of an employee of a bank and involved breaches of the Bank's rules and disciplinary procedures. In view of these allegations, the Bank commenced an internal investigation into the Respondent's conduct. Thereafter, the Bank issued a letter setting out the alleged acts of misconduct (marked as **R9**), and called upon the Respondent to show cause. Pending the conclusion of the disciplinary process, the Respondent was suspended from service by letter dated 23.04.2012 in terms of the applicable disciplinary framework of the Bank.

Thereafter, by letter dated 14.10.2012 (marked as **R14**), the Respondent denied all the charges and provided his explanation in respect of the same. The Appellant Bank proceeded to consider the same and found the explanation to be unsatisfactory. In the circumstances, the Appellant decided to pursue the matter further in accordance with its disciplinary procedures.

In the course of the disciplinary process, and prior to the conduct of the formal inquiry, the Appellant carried out preliminary investigations into matters relating to the Respondent's service record. During such inquiries, the Appellant received

information suggesting that the GCE Advanced Level certificate submitted by the Respondent at the time of obtaining employment with the Bank was not genuine.

Consequently, the Appellant sought verification of the said GCE Advanced Level certificate from the Principal of Isipathana College and the Certificate Branch of the Department of Examinations. The Appellant was informed by the said authorities that the particulars contained in the certificate tendered by the Respondent did not correspond with the official records relating to him and that the certificate was not authentic.

In view of the foregoing, the Appellant proceeded to conduct a disciplinary inquiry into the charges set out in the Show Cause Notice, including the allegation that the Respondent had secured employment with the Bank by tendering a false certificate. Having considered the material placed before it and the gravity of the misconduct alleged, the Appellant determined that the Respondent had committed serious misconduct.

Accordingly, taking into account the seriousness of the acts complained of, the Appellant summarily terminated the services of the Respondent by letter dated 12.04.2013 (marked as **R33**).

The Appellant stated that the termination of the Respondent's services was lawful, justifiable, and equitable, and that the Respondent was not entitled to any relief from the Labour Tribunal. Further stated that the Respondent nevertheless filed an application before the Labour Tribunal of Colombo seeking reinstatement with back wages, or in the alternative, compensation.

After the inquiry, the learned President of the Labour Tribunal, by Order dated 25.01.2018, found in favour of the Respondent and directed reinstatement of his services without a break in service, with remuneration to be paid in accordance with the current salary scale applicable to his post. The Appellant, being dissatisfied with the said Order, preferred an appeal to the Provincial High Court of the Western Province holden in Colombo, bearing Case No. HC ALT 14/2018.

The Appellant stated that the learned High Court Judge, by Judgment dated 17.01.2019, dismissed the Appellant's appeal. The Appellant further stated that the High Court affirmed the Order of the Labour Tribunal, directing the reinstatement of the Respondent with back wages. The Appellant, aggrieved by the said Judgment, preferred the present Application for Leave to Appeal to this Court, on the basis that the Judgment of the learned High Court Judge is contrary to law, against the weight of evidence, and that both the Labour Tribunal and the High Court have erred in their appreciation of the facts and law.

The Respondent stated that he filed an application before the Labour Tribunal of Colombo on 08.10.2013, claiming that his services were unjustly terminated by the Appellant Bank. He sought reinstatement, back wages, statutory dues, and any other relief deemed appropriate by the Tribunal. The Appellant, while admitting the termination of employment, opposed the application and prayed for its dismissal.

The Respondent contended that the Appellant had summarily terminated his employment by letter dated 12.04.2013 without conducting a proper disciplinary inquiry. The Respondent denied submitting any false documents or misrepresenting his qualifications. The Respondent also stated that the Bank had not provided any proof of misconduct on his part concerning the alleged Advanced Level certificate and other documents.

During the course of the proceedings of the Labour Tribunal, the Respondent presented his testimony and marked documents to substantiate his position, while the Appellant Bank produced witnesses and documents in support of its claims. The Respondent emphasized that the evidence presented by the Appellant was insufficient to establish that he had engaged in forgery or dishonesty. Consequently, the Respondent argued that his termination was arbitrary, unreasonable, and unfair, and that he was entitled to reinstatement with back wages and associated statutory benefits.

Legal Analysis

Question of Law

The question of law on which special leave to appeal has been granted is whether the learned High Court Judge erred in concluding that the termination of the Respondent's services by the Appellant Bank was arbitrary, unreasonable, and unfair. In addressing this question, it is necessary to consider whether the Labour Tribunal and the High Court properly applied the statutory framework governing termination disputes, and whether the evidence before the Tribunal justified the relief that was granted.

Sections under the Industrial Disputes Act No. 43 of 1950 (as amended).

Section 31C(1) of the Industrial Disputes Act, as amended [the Act] provides that, *“Where an application under section 31B is made to a labour tribunal, it shall be the duty of the tribunal to make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary, and thereafter make, not later than six months from the date of such application, such order as may appear to the tribunal to be just and equitable.”*

Section 31C of the **Industrial Disputes Act No. 43 of 1950** (as amended), sets out the duties and powers of the Labour Tribunal. It applies to cases involving termination of employment under **Section 31B**. **Section 31B** establishes a substantive obligation upon the Tribunal to *“make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary, and thereafter make, not later than six months from the date of such application, such order as may appear to the tribunal to be just and equitable.”*

The case of ***John Keells Holdings PLC and Others v M. Ganeshmoorthy*** [(S.C. Appeal 187/2017), decided on 20.01.2020] reaffirmed the Tribunal's statutory duty under **Section 31C(1)**, read with **Section 33**. The Supreme Court observed

that the Labour Tribunal is required to inquire into all relevant matters, hear all necessary evidence, and ultimately make an order that is “*just and equitable*.”

As noted by ***Amerasinghe, J. in Jayasuriya v Sri Lanka State Plantations Corporation* [(1995) 2 Sri LR 379; at page 392]**,

“The Tribunal must make an order in equity and good conscience, acting judicially, based on legal evidence rather than on beliefs that are fanciful or irrationally imagined notions or whims. Due account must be taken of the evidence in relation to the issues in the matter before the Tribunal. Otherwise, the order of the Tribunal must be set aside as being perverse.”

In the case of ***N.W.D.T.Nanayakkara v North Central Provincial Road Passenger Transport Authority* [(SC Appeal 37/2023), decided on 10.10.2025] at page 9-10**, Justice Arjuna Obeyesekere stated,

*“It would perhaps also be important to emphasise that a Labour Tribunal does not possess an unfettered power and that considerations of justice and equity must necessarily control and limit the powers of Labour Tribunals. H. N. G. Fernando, J. (as he then was) observed in ***Walker Sons & Co. Ltd. v Fry* [68 NLR 73]** that a Labour Tribunal does not have the “freedom of the wild ass” in determining the relief that should be granted.”*

Legal Principles Governing Termination

It is a fundamental principle of employment law that an employer may terminate an employee for misconduct that strikes at the core of the employment relationship. Misconduct involving dishonesty or submission of false documents constitutes gross misconduct. In such cases, termination may be justified even without an elaborate disciplinary process, provided the employer acts reasonably.

Even in cases of gross misconduct, the employer must observe basic principles of natural justice by affording the employee an opportunity to respond, generally

through a show-cause notice or disciplinary inquiry. Courts examine whether the employee had a fair opportunity to explain or defend themselves prior to termination.

Termination must also be a proportionate response to the misconduct. Positions of trust, particularly in sensitive sectors such as banking, require the highest standards of honesty and integrity. **Soza J. in National Savings Bank v. Ceylon Bank Employees' Union [1982] 2 Sri L.R 629** stated:

"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."

Dishonesty in such roles undermines the employer's confidence and directly affects the employment relationship. Labour Tribunals, under **Section 31C** of the **Industrial Disputes Act**, must inquire into all relevant matters and make an order that is just and equitable. Appellate courts must evaluate procedural compliance, evidence, and the reasonableness of the employer's actions but should not substitute their own judgment unless the termination is arbitrary or legally unsound.

Procedural fairness must be observed, but it cannot override substantive justice. Where a misconduct is clearly established, a technically imperfect procedure does not invalidate a justified termination. Courts have consistently held that, particularly in cases involving dishonesty, substantive proof of misconduct outweighs minor procedural lapses.

Soza J. in National Savings Bank v. Ceylon Bank Employees' Union [1982] 2 Sri L.R 629 stated,

“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 dismissal.”

In ***Kalik v Truwirths (Gateway) and Others [2008], 1 BLLR (LC)*** the Labour Court held that an employment relationship,

“....broken down as a result of an act of dishonesty can never be restored by whatever amount of mitigation. The underlying reason for this approach is that an employer cannot be expected to keep dishonest workers in his/her employ. The other reason for this is to send an unequivocal message to other employees that dishonesty will not be tolerated.”

Loss of confidence is a distinct and recognised legal principle in employment law. Where a conduct of the employee undermines the trust essential to the employment relationship, the employer may lawfully terminate the employee. In ***The Associated Newspapers of Ceylon Ltd – Lake House v. M.S.P. Nanayakkara SC Appeal No. 223/2016 (SC Minutes of 28.01.2022)***, His Lordship Justice Arjuna Obeyesekere, endorsing the approach in ***Kosgolle Gedara Greeta Shirani Wanigasinghe v Hector Kobbekaduwa Agrarian Research and Training Institute SC Appeal No. 73/2014 (SC Minutes 02.09.2015)***, reaffirmed that trust is a core element of the employer-employee relationship. His Lordship emphasised that an employee must always serve the employer with honesty and integrity, without breaching the trust placed in him or her, and in a manner that sustains the employer’s confidence. The following extract from the same judgment is directly applicable to the present dispute:

*“I must, however, add a word of caution. An employer cannot, merely to justify the termination of the services of an employee, claim that he has lost confidence in an employee. As pointed out by this Court in ***Bank of America v Abeygunasekara (1991) 1 Sri LR 317 at page 328***, ‘the mere assertion by an employer is not sufficient to justify the termination of a workman on the*

ground of loss of confidence. When such an assertion is made it is incumbent on the Labour Tribunal to consider whether the allegation is well founded. Therefore it would become necessary for the employer to lead evidence of facts from which such an assertion could be proved directly or inferentially.”

Amerasinghe J., in Premadasa Rodrigo v Ceylon Petroleum Corporation (1991) 2 Sri LR 382 at pages 392-393, observed that:

“an employer cannot claim to have a right to dismiss an employee merely because he says he has lost confidence in an employee.”

The Supreme Court in **The Associated Newspapers of Ceylon Ltd – Lake House v. M.S.P. Nanayakkara SC Appeal No. 223/2016**, also referring to **Premadasa Rodrigo case**, held:

“Whether an employer has lost confidence in an employee is a matter that must be determined on the facts and circumstances of each case, with factors such as the incident or breach of discipline that gave rise to the loss of confidence, and the position held by the employee being relevant factors in arriving at such determination.”

Comparative jurisdiction also supports a strict approach to dishonesty involving qualifications. The Labour Appeal Court in South Africa has consistently followed an approach laid out early in the jurisprudence of the Labour Court in **Standard Bank SA Limited v CCMA and Others [1998] 6 BLLR 622 (LC)** at **paragraphs 38-41** where Tip AJ said:

“It was one of the fundamentals of the employment relationship that the employer should be able to place trust in the employee... A breach of this trust in the form of conduct involving dishonesty is one that goes to the heart of the employment relationship and is destructive of it.”

Courts have consistently taken a strict approach where employees misrepresent qualifications or any material fact crucial to the employer's business. In **Department of Home Affairs & another v Ndlovu & others(2014) 35 ILJ 3340 (LAC)**, the employee misrepresented in his CV that he had a degree in technology marketing. While the Labour Court initially found the dismissal unfair on review, the Labour Appeal Court reversed the decision and upheld the dismissal. The LAC held:

"The fact that the misrepresentation in the CV might very well not have induced the first respondent's appointment to the post most certainly does not detract from the fact of the first respondent's initial dishonesty. The dishonesty as contained in the CV is ultimately what underpins the substantive fairness of the first respondent's dismissal. Why did the first respondent put in his CV that which is untrue? He knew how to describe MBA degree which was then unfinished. He could have described the Bachelor of Technology Marketing Degree similarly if he found it necessary to mention it at all in his CV. John Grogan in his work Dismissal, (Juta & Co. Ltd First published 2010, republished 2012) says the following about dishonesty at page 188):

"Dishonesty" is a generic term embracing all forms of conduct involving deception on the part of employees. In criminal law, a person cannot be convicted of dishonest conduct unless that conduct amounts to a recognized offence. However, in the employment law, a premium is placed on honesty because conduct involving moral turpitude by employees damages the trust relationship on which the contract is founded. The dishonest conduct of employees need not therefore constitute a criminal offence. "Dishonesty" can consist of any act or omission which entails deceit. This may include withholding information from the employer, or making a false statement or misrepresentation with the intention of deceiving the employer..."

The Respondent was terminated on the ground that he submitted a false A/L certificate. The Appellant Bank obtained independent confirmations from the Principal of Isipathana College, where the Respondent studied, and from the Certificate Branch of the Department of Examinations. Both authorities confirmed that the certificate submitted was not genuine. The Respondent denied submitting a false certificate. However, mere denial is insufficient to rebut official confirmations provided by competent authorities. The evidence clearly demonstrates that the Bank had reasonable grounds to conclude that the Respondent engaged in gross misconduct.

It is noted that the Bank had previously issued a show-cause letter and suspended the Respondent in relation to other allegations. While the High Court and Labour Tribunal emphasised that the certificate marked **R22** was not the exact document submitted by the Respondent, the substance of the evidence establishes that the certificate representing his qualifications was false. The Respondent has failed to produce the original certificate or any evidence proving its genuineness. Therefore, the Bank's reliance on official confirmations and documentary evidence was reasonable and justified.

Procedural fairness was observed to the extent required by law. The Respondent had previously been given the opportunity to respond to allegations relating to other misconduct, and the Bank conducted an internal verification before taking action. The High Court criticised the Bank for not holding a separate disciplinary inquiry specifically regarding the certificate. The Respondent's misconduct, which was the submission of false qualifications, was clearly established through independent verification. The Bank relied on credible and substantial evidence in taking its decision.

The Appellant Bank produced letters and documents evidencing misconduct, including **R15** and **R17**. These show prior suspensions, show-cause notices, and disciplinary inquiry procedures initiated against the Respondent. **R17**, the show-cause letter dated 23rd April 2012, specifically details serious misconduct

relating to borrowing money from a customer, providing false information regarding a bank account, and refusing to hand over original documents during the investigation. The letter warned the Respondent that disciplinary action, including termination, could be taken:

“By conducting yourself in this manner, you have behaved in a manner unbecoming of an employee of this Bank, with resultant loss of trust and confidence reposed in you.”

The inquiry aimed to examine documents, statements and explanations submitted by the Respondent, including his submissions regarding alleged repayments to Mr.Buddhika Lakmal Wijesekera and cheque discrepancies.

Crucially, Yuraj Indrajith Vithanage (witness) testified regarding the central issue of the alleged false A/L certificate. He confirmed that the Bank first sought verification from the Principal of Isipathana College and then from the Certificate Branch of the Department of Examinations. As he stated:

“ප්‍ර.: - එහෙම නම මහත්මයා ඒක සම්පූර්ණයෙන් නීති විරෝධීය කියලා යෝජනා කරනවා?

ස්ව.: - පිළිගන්නේ නැහැ.

ප්‍ර.: - තවදුරටත් කියා සිටිනවා ගෞරවයෙන් බැංකුව විසින් ප්‍රථමයෙන් මෙම ඉල්ලුම්කරු ඉගැනුම ලැබූ කොළඹ ඉසිපතන විද්‍යාලයේ විද්‍යාලයිපතින්මායෙන් මෙම උසස් පෙළ ප්‍රතිඵල පිළිබඳ විමසීමක් කිරීමෙන් අනුතුරුව තමයි විභාග දෙපාර්තමේන්තුව වෙත ලිපියක් යවතින් මෙම ප්‍රතිඵල සනාත කරන ලද ඉල්ලා සිටියේ. ඉසිපතන විද්‍යාලයේ විද්‍යාලයිපතින්මා මෙම ප්‍රතිඵල බැංකුවට ඉදිරිපත් කරන ලද ප්‍රතිඵල පාසලේ තිබෙන ප්‍රතිඵල සමඟ සැසදෙන්නේ නැති බව සනාත කිරීමෙන් අනුතුරුව සහ විභාග කොමිෂන් තුමා විසින් එවන ලද ආර - 31 වියයෙන් ලක්ෂු කරන ලද ලිපියේ එම විභාග ප්‍රතිඵලම නොගැලීපෙන බව විභාග කොමිෂන් තුමා සාක්ෂාත් කිරීමෙන් අනුතුරුව බැංකුව විසින් තීරණයක් ගෙන තිබෙනවා මෙම ප්‍රතිඵල සාවදා බවත් එම නිසා එම සාක්ෂි දෙක පදනම් කර ගෙන බැංකුවේ මෙම ඉල්ලුම්කරුගේ සේවය අවසන් කොට තිබෙනවා.”

Vithanage(witness) further clarified that the principal reason for termination under letter **R33a** was:

“ආර.33.ඒ. ලේඛනයෙන් ඔහුගේ සේවය ලේඛ ලෙස අවසන් කිරීමට ප්‍රධාන කරුණ මූල්‍ය... අයදුම්කරුගේ අ.පො.ස. උසස් පෙළ විභාගයේ ප්‍රතිඵල ඔහුගේ ඒව දත්ත සටහන් සටහන් වන ප්‍රතිඵල හා ඔහු විසින් බැංකුව වෙත ඉදිරිපත් කර ඇති උසස් පෙළ සහතිකයේ ප්‍රතිඵල සමඟ විභාග දෙපාර්තමේන්තුවෙන් බැංකුව විසින් ඉල්ලීම කළ අවස්ථාවේදී එම ප්‍රතිඵල නොගැලපෙන බව සඳහන් කිරීමෙන් සමඟ ඔහු පාසල් ගිය ඉසිලපන විද්‍යාලයේ විද්‍යාල්පතිතමා එම ප්‍රතිඵල නොගැලපෙන බව සඳහන් කිරීමෙන් පසුව ඒ මත තමයි බැංකුව විසින් ඔහුගේ සේවය අවසන් කළේ.”

These statements show that the Bank relied on independent and authoritative sources to verify the Respondent's A/L certificate before taking the decision to terminate his services. The Respondent denied submitting a false certificate, but he did not produce the original certificate or any other evidence to prove that the document he submitted was genuine.

Evaluation of High Court Reasoning

The High Court upheld the Labour Tribunal's decision on three primary bases:

1. R22 was not conclusively proved to be the exact certificate submitted,
2. No officer involved in the investigation testified, and
3. The Respondent was not afforded an opportunity to respond specifically to the false certificate allegation.

These points do not diminish the substantive evidence. The independent confirmations from Isipathana College and the Department of Examinations constitute direct proof that the certificate was false. The absence of testimony from the investigating officer does not undermine the documentary evidence relied upon. Minor procedural shortcomings cannot outweigh clear and serious misconduct that destroys trust. The High Court erred in giving precedence to procedural technicalities over substantive proof. Substantive justice requires recognition that the Respondent engaged in gross misconduct.

Conclusion

In light of the evidence and applicable law, it is clear that the Respondent submitted a false A/L certificate. The Bank, as an employer in a position of public trust, was justified in losing confidence in the Respondent. Termination of his services was lawful, reasonable, and proportionate.

Accordingly, the judgment of the High Court dated 17.01.2019 and the Order of the Labour Tribunal dated 25.01.2018 are set aside and the decision of the Appellant Bank to terminate the Respondent's services is upheld as lawful, reasonable, and justified.

I answer all the questions of law on which leave has been granted in the affirmative.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

P.PADMAN SURASENA, CJ

I agree.

CHIEF JUSTICE

MAHINDA SAMAYAWARDHENA, J..

I agree.

JUDGE OF THE SUPREME COURT