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

In the matter of an Application for Special Leave to Appeal from an Order of the Provincial High Court

SC Appeal No. 148/2012

R. Chandrasena
392, Siri Parakumba Mawatha,
Makola South, Makola.
Applicant

SC/HCLA No. 111/2011

HC Colombo No. HCALT 68/2008

LT Application No. LT 1/320/2002

Vs

The Monetary Board,
Central Bank of Sri Lanka,
30, Janadhipathi Mawatha,
Colombo 01.
Respondent

And

R. Chandrasena
392, Siri Parakumba Mawatha,
Makola South, Makola.
Applicant-Appellant

Vs

The Monetary Board,
Central Bank of Sri Lanka,
30, Janadhipathi Mawatha,
Colombo 01.
Respondent-Respondent

And

The Monetary Board,
Central Bank of Sri Lanka,

30, Janadhipathi Mawatha,
Colombo 01.

Respondent-Respondent-Appellant

Vs

R. Chandrasena
392, Siri Parakumba Mawatha,
Makola South, Makola.

Applicant-Appellant-Respondent

And Now Between

Bethmage Premawathie Chandrasena
(nee Perera),
392, Siri Parakumba Mawatha,
Makola South, Makola.

Petitioner

Vs

The Monetary Board,
Central Bank of Sri Lanka,
30, Janadhipathi Mawatha,
Colombo 01.

Respondent-Respondent-
Petitioner-Appellant

Before: Buwaneka Aluwihare PC, J.
Vijith K. Malalgoda PC, J. &
Murdu N. B. Fernando PC, J.

Counsel: Geoffrey Alagaratnam PC with Suren Fernando instructed by Ishara Gunawardena for the Respondent-Respondent-Appellant.

Murshid Maharoof with Ruchira Gunasekera and Shamir Zavahir for the Applicant-Appellant-Respondent.

Appellant's Written Submissions
tendered on: 20.10.2014 & 16.07.2018

Respondent's Written Submissions
tendered on: 04.12.2014

Argued on: 30.11.2018

Decided on: 21.09.2020

JUDGEMENT

Aluwihare PC. J.,

1. The Applicant-Appellant-Respondent (hereinafter referred to as the 'Applicant') invoked the jurisdiction of the Labour Tribunal alleging that his services were unjustly terminated by the Monetary Board, the Respondent-Respondent-Petitioner-Appellant (hereinafter referred to as the 'Respondent').

2. After inquiry the Learned Labour Tribunal President by the order dated 16th October 2009 held that the termination of the services of the Applicant was justified.

3. Aggrieved by the order of the Labour Tribunal, the Applicant canvassed the said order by way of an appeal before the High Court, and the Learned High Court Judge upon considering the appeal, set aside the order of the Learned Labour Tribunal President, holding that the Applicant's services were wrongfully terminated, and granted the following relief;
    a) The Applicant was held entitled to the salary up to the age of retirement (60 years)
    b) Compensation in the sum of Rs. 1,000,000/= (one million) and his pension rights

4. Aggrieved by the judgement of the Learned High Court Judge, the Appellant-Respondent sought Special Leave to Appeal against the said judgement. Consequently, this court granted Special Leave to Appeal on the following questions of law (*vide* SC Minutes 08.08.2012);
    i. Did the Learned High Court Judge err in placing reliance on the evidence of two domestic inquiries or matters related thereto without considering the nature of and conduct of the proceedings before the Labour Tribunal?
    ii. Did the Learned High Court Judge err in failing to consider his appellate role when reviewing the order of the Labour Tribunal, which can only be on a question of law?
    iii. Did the Learned High Court Judge err in making an order that the Respondent is entitled to the relief of compensation in lieu of reinstatement in addition to payment of back-wages and pension?

The Factual Matrix

5. The Applicant who had joined the Central Bank as a non-staff officer in the year 1969, and having gained several promotions, had been serving in the

capacity of Senior Analyst Programmer (Grade 2-Staff Class) when his services were terminated on 25th July 2002.

6. It is in evidence that at the point of terminating his services, the Applicant was entrusted with the task of preparing staff salaries and this exercise included the preparation of the Applicant's salary as well. It is also in evidence that this process (of preparing salaries) was carried out with the aid of a computer software called "Payroll Module of Integrated Human Resource Management-AS 400".

7. It is alleged that the Applicant, who was not entitled to a "Floor Allowance", had prepared his own salaries for the months of February and March 2000, in such a way that an additional sum of Rs. 5000/= was added to his salary for the said months. It is also in evidence that in crediting salaries to the respective employees of the Central Bank, based on the data entered by the Applicant, he caused to have an additional sum of Rs. 10,000/= credited to his bank account.

8. Towards the end of March, what the Applicant had done had been detected and consequently, with effect from 23rd March 2000 he had been suspended from service followed by being charge sheeted. Subsequent to a domestic inquiry, the services of the Applicant had been terminated in 2002.

9. As referred to earlier, the Learned President of the Labour Tribunal, having considered the evidence led at the inquiry on behalf of the Monetary Board, had come to a finding that the Applicant had committed a fraudulent act by causing to have two additional sums of Rs. 5000/= each credited to his account and had acted in a manner not befitting to an officer of the Central Bank. The Learned President of the Labour Tribunal held that the termination of the services of the Applicant was reasonable and justified under the circumstances.

Consequently, the application of the Applicant was dismissed by the Learned President of the Labour Tribunal.

10. The Learned High Court Judge, however, by his judgement dated 30th September 2011, set aside the order of the Labour Tribunal and held that the termination of the services of the Applicant was wrongful. The Learned High Court Judge also held that the Applicant is entitled to receive his salary up to the point of the Applicant reaching the age of 60 (up to 31st July 2005), Rs. 1,000,000/= (one million) as compensation and granted his pension rights.

The High Court Judgement

11. The Learned High Court Judge has set aside the order of the Learned President of the Labour Tribunal on the basis that the Labour Tribunal President has failed to evaluate the evidence led at the inquiry (page 11 of the judgement).

12. As reasons for the conclusion referred to in the preceding paragraph, the Learned High Court Judge has stated the following;

    a) The Learned High Court Judge had considered extensively the two domestic inquiries held against the Applicant wherein at the first inquiry the Applicant had been exonerated and in the subsequent domestic inquiry the applicant had been found guilty.

    b) The inquirer who held the domestic inquiry had carefully analysed the evidence led in the inquiry and had very correctly exonerated the Applicant and that there was no necessity to have a second domestic inquiry on fresh charges. The Learned High Court Judge had held that the Learned President of the Labour Tribunal had failed to consider the

evidence led and order made at the domestic inquiries. Again, at page 15 of the judgement the Learned High Court Judge had reiterated the fact that there was no justification to have the Applicant subjected to a second domestic inquiry after he was exonerated at the first.

c) The Learned High Court Judge has also referred to the numerous hardships the Applicant had undergone as a result of losing his job, and had reproduced in his judgement (at page 15) the contents of a letter addressed to the Director-Establishments, Central Bank by the Applicant in that regard.

d) Further the Learned High Court Judge had referred to the evidence given by a witness at the domestic inquiry (at page 17) and had reproduced the questions put and answers given by the witness verbatim. The Learned High Court Judge had concluded that this witness who testified before the domestic inquiry had given contrary evidence, before the Labour Tribunal (at page 18).

e) The Learned High Court Judge also referred to the fact that the same Inquirer who held the initial domestic inquiry against the Applicant and exonerated him had, at the subsequent domestic inquiry, held that the Applicant was guilty of the three charges and by changing the conclusion, had caused a serious prejudice to the Applicant.

f) The Learned High Court Judge had found fault with the Learned President of the Labour Tribunal for not paying due attention to the fact that the domestic inquiry had not been held in a just manner.

13. It appears from the above, that the sole reason for the Learned High Court Judge to set aside the order of the Labour Tribunal had been the "unjust manner", as

the Learned High Court Judge says, in which the domestic inquiry against the Applicant was held.

14. Nowhere in his judgement had the Learned High Court Judge referred to or considered any evidence given either on behalf of the Respondent (Monetary Board) or the Applicant, before the Labour Tribunal. All what the Learned High Court Judge had considered is the material placed before the domestic inquiry (pages 11-24). On pages 1-10, the Learned High Court Judge had stated the positions taken up at the argument before him, by the respective parties.

The Two Domestic Inquiries

15. As one of the questions this court is called upon to answer is whether the Learned High Court Judge erred in placing undue weightage/reliance on the evidence led at the domestic inquiry to arrive at the conclusion, I feel- although it might not be directly relevant- that for the sake of completeness, it would be pertinent to refer to the "two" domestic inquiries referred to by the Learned High Court Judge.

16. In the first charge sheet served on the Applicant, it is alleged that the Applicant facilitated the crediting of Rs. 5000/= for the month of February and March 2000 in favour of his bank account in the People's Bank. The Inquirer had come to a finding that this charge against the Applicant had not been established (document marked as 'R32 (a)' before the Labour Tribunal).

17. The Central Bank, acting in terms of Rule 33 of the Central Bank Classification, Control and Appeal Rules requested a further inquiry into certain specific aspects. Two of them were; "whether it can be established in which module the

change in data which facilitated the alleged fund transfer to take place i.e. the payroll module or the SLIPS module" and "In the event the change affected was in the payroll module, whether any person other than the accused officer had access to that module" ('R33').

18. In response to the request for a further inquiry the Inquirer had re-opened the inquiry and had recalled two of the witnesses who had given evidence earlier, in order to clarify the queries raised; and the Applicant had taken part in the inquiry represented by his Defending Officer. At the conclusion of the further inquiry the Inquirer had concluded that the change of data has occurred in the "payroll module" (paragraph 19 of 'R34') and only the Applicant had the opportunity to work on the "payroll module".

19. Before proceeding to consider the questions of law that this court is called upon to answer, I wish to state the factual position with regard to the preparation of staff salaries at the Central Bank as evidenced before the Labour Tribunal.

    a) The process consists of two stages according to witness Jayawardena; "payroll module" handled by the Applicant, and the "SLIPS module" handled by the witness. According to Jayawardena's testimony salary particulars are entered by the Applicant, and once that step is completed, based on the data entered, the witness ensures that the salaries are credited to the respective bank accounts of the staff members.

    b) In response to questions directed by the Labour Tribunal, the witness has said that it was the Applicant who entered the data and further, in relation to the amount that should be credited in favour of the Applicant for the month of March 2000, data was entered by the

Applicant, and that this witness is incapable of changing them once the data is entered.

c) According to the document marked as 'R17', a report compiled by witness Mala Dayaratne, she had carried out a periodic system test run on "salary" and "other payments" categories on 22nd March 2000, when the witness had compared the total figures generated on the 21st March and 22nd March, had detected a discrepancy of Rs. 5000/= in the "payroll" live run. As an initial step, the witness had checked for any "bugs" in the system and found no defects.

d) Eventually she had traced the discrepancy, in the net salary figure of employee bearing ID No. 2083 which was of the Applicant. The net salary figure of the Applicant on 21st March 2000 was recorded as Rs. 9371/= and on the following day it had been changed and the salary figure reflected as Rs.4371/= (a deficit of Rs.5000/=). According to witness Mala Dayaratne, once the "payroll" and the "SLIPS" processes are completed, the person who is in charge of the "payroll module" can change the data without the permission of anyone and during the relevant period, the "payroll module" had been under the control of the Applicant

e) It had been established that the Applicant was entitled to a salary of Rs. 4371/= and not for a salary of 9371/= for the month of March 2000. A further inquiry had led to the detection of a similar occurrence in the previous month (February) as well in favour of the Applicant.

f) The Applicant in his evidence had admitted that he was in charge of the "payroll module" in the month of March. On the other hand, the Applicant had not disputed the fact that although his salary entitlement

for the month of February and March were Rs.5, 542.52 and Rs.4, 371.41 respectively, that sums of Rs.10, 542.52 and Rs.9341.41 had been credited to his account.

g) In fact, the Applicant's due salary was Rs.28, 554.98 and Rs.28, 644.52 for the months of February and March 2000, due to the deductions of Rs.23, 012.46, and Rs.24, 273.11 for those two months, his residual salary had been low as referred to in paragraph (f).

h) If the crediting of the extra amount (Rs.5000) in the favour of the Applicant was a mistake or due to the intervention of a third party, the Applicant ought to have noticed it when more than double the amount due to him as salary, got credited to his account in the month of February. The Applicant, on the contrary, admitted that he withdrew Rs.8000/= in February.

Questions of Law

20. The issue before the Learned President of the Labour Tribunal was, whether the termination of the services of the Applicant by the Central Bank was unjust or not, taking into account all the facts and circumstances under which the services were terminated.

21. On the other hand, the mandate of an Inquirer, holding a domestic inquiry relating to a worker is to determine whether the specific charges levelled against the worker had been established or not.

22. It is needless to state that these two exercises cannot be equated, although one might argue that the same set of evidence more or less might be relevant in both processes.

23. The Labour Tribunal is required to hold an inquiry before determining this factor and is further required to consider the oral testimonies and other material placed before it, in this exercise.

24. Section 31(C)(1) of the Industrial Disputes Act dealing with duties and powers of the Labour Tribunal stipulates 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.*" [Emphasis added]

25. The Learned President of the Labour Tribunal had considered the oral evidence led on behalf of the Central Bank (pages 2-5 of the order) and the documents produced at the inquiry and had arrived at the conclusion that the termination of the services of the Applicant was just and equitable.

26. The judgement of the Learned Judge of the High Court must be viewed in the context of the provision referred to above. I wish to observe that the Learned President of the Labour Tribunal had adhered to the requirements of the said statutory provision. However, the same could not be said of the High Court judgement.

27. It is in this backdrop that this court needs to consider whether the Learned High Court Judge erred in placing reliance on the evidence of the "two" domestic inquiries in overturning the order of the Labour Tribunal.

28. At the outset, it must be said that there is no statutory requirement to conduct a domestic inquiry prior to the imposition of disciplinary action, however,

courts have emphasized on its desirability, especially to establish the bona fides of the employer [see **St. Andrews Hotels Ltd. v. Ceylon Mercantile Union** CA 138 /85 Court of Appeal minutes 01.04.1993].

29. In the case of **The Batticaloa Multi-Purpose Co-operative Societies Union Ltd., v. Velupillai** 76 NLR 60, Justice Alles considered the relevance of the use of evidence given at a domestic inquiry and commented;

"*I see no objection to Presidents of Labour Tribunals examining or even acting on the evidence led at the domestic inquiry, after satisfying themselves that the evidence has been properly recorded, ensuring that the workman had a fair opportunity of meeting the allegations made against him and seeking support for his findings from the evidence so led. No doubt, in certain matters the President has naturally to be cautious in accepting the deposition of a witness who has not been called at the inquiry before.*"

30. Whilst holding that the President is expected to act judicially, Justice Alles commenting on the duty cast on the President of a Labour Tribunal in terms of Section 31(c) of the Industrial Disputes Act went on to hold "*Needless to say that does not mean that Presidents must not conform to the elementary principles of natural justice and evaluate the evidence in a judicial manner before making proper orders.*"(at page 66 of the judgement).

31. Thus, it appears that the *ratio* in the case of **Velupillai** (*supra*) is that the Labour Tribunal President holding an inquiry in terms of Section 31(c) of the Industrial Disputes Act is vested with the **discretion** as to the extent of the evidence led at the domestic inquiry that may be used, in deciding the issues before the Labour Tribunal.

32. It is my view that the evidence led at the domestic inquiry might have a corroborative value or may be used to evaluate the credibility of the testimonies of

the witnesses who had testified at the inquiry, but should not be considered as substantive evidence to decide the issue of "justification" for the termination.

33. In that context the learned High Court Judge had clearly misdirected himself in holding that, the failure on the part of the learned Labour Tribunal President to consider the unfairness in holding a "second domestic inquiry" is a serious lapse on the part of the President.

34. In fact, there had not been a second domestic inquiry, but rather a reopening of the domestic inquiry in terms of the Central Bank rules and the Applicant do not appear to have objected to or challenged the direction to have the domestic inquiry reopened.

35. Furthermore, the learned High Court Judge had made a sweeping statement that the Respondent had failed to prove the case against the Applicant on a balance of probability. The learned Judge, however, had not substantiated that statement by reference to any shortcomings of the Respondent's case or the credibility of the witness on whom the learned President had relied on.

36. Upon the consideration of the facts referred to above and the legal position stated, I hold that the learned High Court Judge erred in placing reliance on the manner in which the domestic inquiry was conducted, in order to overturn the order of the learned President of the Labour Tribunal, and accordingly answer the question of law referred to (i) above, in the affirmative.

Right of Appeal is Limited to Questions of Law

37. In terms of Section 31D (2) of the Industrial Disputes Act, a party dissatisfied with the order of the Labour Tribunal has a right of appeal on a **'question of law'.**

38. It was contended on behalf of the Respondent-Appellant [The Monetary Board] that the learned High Court judge erred in reviewing the impugned order of the Labour Tribunal which is opened to be reviewed only on a question of law.

39. In the case of **Ceylon Transport Board v. W. A. D. Gunasinghe** 72 NLR 76 Justice Weeramantry held; "*Where a Labour Tribunal makes a finding of fact for which there is no evidence-a finding which is both inconsistent with the evidence and contradictory of it-the restriction of the right of the Supreme Court to review questions of law does not prevent it from examining and interfering with the order based on such a finding if the Labour Tribunal is under a duty to act judicially.*"

40. Justice A.R.B. Amerasinghe in **Jayasuriya v. Sri Lanka State Plantations Corporation** (1995) 2 SLR 379, based on the evaluation of the findings of a number of cases, identified instances in which the appellate courts could review the findings of a Labour Tribunal treating it as a question of law; *"The Industrial Disputes Act No. 43 of 1950 S. 31D states that the order of a Labour Tribunal shall be final and shall not be called in question in any court except on a question of law.* ***While appellate courts will not intervene with pure findings of fact, they will review the findings treating them as a question of law****: if it appears that the Tribunal has made a finding wholly unsupported by evidence, or which is inconsistent with the evidence and contradictory of it; or where the Tribunal has failed to consider material and relevant evidence; or where it has failed to decide a material question or misconstrued the question at issue and had directed its attention to the wrong matters; or where there was an erroneous misconception amounting to a misdirection; or where it failed to consider material documents or misconstrued them or where the Tribunal has failed to consider the version of one party or his evidence; or erroneously supposed there was no evidence."* [emphasis added]

41. From the above cited judgments it is clear that- in the context that the decision of a Labour Tribunal can be reviewed by an appellate court only on a question of

law- the Supreme Court has identified certain permissible instances where the findings of fact made by a Labour Tribunal can be considered as a question of law and reviewed by an appellate court. In the instant case the learned President of the Labour Tribunal has given due consideration to the evidence led before him and the documents produced at the inquiry. Even the learned High Court Judge had not found fault with the Learned President of the Labour tribunal in that regard. I have considered the order made by the Labour Tribunal and hold that the findings of the Labour Tribunal in the present case does not fall within any of the permissible instances referred to in the case of ***Jayasuriya*** (*supra*) and thus I conclude that the Learned High Court Judge erred in reviewing the impugned order of the Labour Tribunal.

42. Accordingly, I answer the question of law referred to (ii) above also in the affirmative.

The Correctness of the Relief ordered by the Learned High Court Judge

43. As I have concluded that the first two questions of law on which Special Leave to Appeal was granted should be answered in the affirmative, the correctness of the relief ordered by the Learned High Court Judge cease to be of any consequence. The Learned High Court Judge has on an erroneous assumption reviewed the decision of the Labour Tribunal and granted relief on the finding that the Applicant was wrongfully terminated. Thus, I do not wish to proceed in answering the question of law referred to (iii) above.

44. Accordingly, I set aside the judgement of the learned High Court Judge dated 30-09-2011 and affirm the order of the learned president of the Labour Tribunal dated 16-10-2009.

In the circumstances of this case I do not wish to order any costs and further this judgement will not affect any statutory dues the Applicant might be entitled to.

Appeal Allowed

JUDGE OF THE SUPREME COURT

JUSTICE VIJITH. K. MALALGODA PC

I agree

JUDGE OF THE SUPREME COURT

JUSTICE MURDU FERNANDO PC

I agree

JUDGE OF THE SUPREME COURT