

## SITHAMPARANATHAN

V.

## PEOPLE'S BANK

SUPREME COURT

RANASINGHE, C.J., TAMBIAH, J. AND AMERASINGHE, J.

S.C. APPEAL NO. 47/86

C.A. NO. 34/80

LT NO. 1/11038/74

OCTOBER 31 AND NOVEMBER 1, 1988.

*Industrial Dispute — Evaluation of evidence — Question of law — Review of evidence by Appellate Court — Wrongful termination from a Bank's Service — Loss of confidence — Selective punishment — Nature of awardable relief.*

At the relevant time the appellant was the Officer-in-Charge of the Corporate Department of the respondent People's Bank while one P.M.P. Peiris was the Officer-in-Charge and Ledger Officer of the Savings Department. During the lunch hour (12 noon to 1.00 p.m.) the appellant covered Peiris' duties as Ledger Officer. After interdiction on 11.7.1971 the appellant was on 24.5.1972 served with a charge sheet accusing him on seven counts mostly of fraud and fraudulent withdrawals from the Savings Bank when functioning as the Ledger Officer at Duke Street. A domestic inquiry was held and the appellant was exonerated. An inquiry by the Criminal Investigation Department failed to pinpoint any criminal involvement on the part of the appellant. Yet on 5.6.1974

the appellant's services were terminated with effect from 11.7.1971. The appellant sought relief from the Labour Tribunal — Reinstatement with back wages or compensation for loss of career and pension. At the Labour Tribunal the Bank made seven allegations against the appellant but this time accused him mainly of dishonest participation. In its written submissions the Bank confined itself to four allegations— Three of dishonest participation in fraudulent withdrawals and one of unauthorised possession of a Savings Bank Pass Book. The L.T. President was satisfied with the proof on two of these charges of dishonest participation and in addition he held as proved a charge of negligently authorising a payment which even the Bank had jettisoned at the stage of written submissions. In addition he made no definite finding on the charge of unauthorised possession of a Savings Bank Pass Book.

After a delay of nearly one year he held that the appellant was not directly guilty of fraud or fraudulent transactions but his conduct was not absolutely above board and he was not a fit and proper person to be employed in a Bank and therefore termination of his services was for a good cause. The ultimate ground of termination was loss of confidence.

In appeal the Court of Appeal accepted the findings of the Labour Tribunal and dismissed the appeal. The appellant appealed to the Supreme Court.

**Held:**

- (1) Failure to properly evaluate evidence or to take into account relevant considerations, in such evaluation is a question of law and is reviewable by an Appellate Court.
- (2) The President of the Labour Tribunal had failed to take into account relevant items of evidence favourable to the appellant and his finding of guilty is erroneous and untenable. The finding that though the appellant was not directly guilty of fraud or fraudulent transactions, his conduct had not been above board is inconsistent with and contradictory to his earlier findings of dishonest participation.
- (3) Loss of confidence has two aspects in Labour Law:
  - (a) Loss of confidence may justify termination by the employer.
  - (b) Loss of confidence may be a circumstance from which a Court may conclude that reinstatement is not the appropriate relief, despite a finding that the termination is not justified.

Though theoretically there is no restriction as to the class of employee in respect of whom termination of employment may be effected on the loss of confidence, it usually applies in respect of employees, who hold positions of trust and confidence such as accountants, cashiers and watchers or who perform a certain degree of responsible work.

On the first aspect, though a regular charge sheet cannot be prepared and an opportunity to meet it given yet it is perfectly open to the employer to terminate the services of an employee whose every loyalty to the employer was suspect and there were more than reasonable grounds to entertain the suspicion.

On the second aspect though in a case of wrongful dismissal the normal remedy is reinstatement there are circumstances in which a Tribunal will be entitled in its discretion to order compensation in lieu of reinstatement like loss of confidence in the employee who occupied a position of confidence or reasonable suspicion falling short of being a sufficient ground for termination but a relevant circumstance on the question of reinstatement.

(4) It was not the Bank's case that the termination was for reasonable suspicion and loss of confidence. The President of the Labour Tribunal has clearly misdirected himself in law when he finally concluded that the termination was for good cause as the appellant's conduct was not above board and he (the appellant) was not a fit person to be continued in employment as he holds a position of confidence.

(5) Peiris too was interdicted along with the appellant. Although Peiris admitted fraud in respect of Pass Books and two fraudulent cheque transactions he was reinstated and demoted. On the other hand the appellant though exonerated in the domestic inquiry was dismissed. The action of the Bank was clearly discriminatory. Per Tambiah J: "A Public Institution like the People's Bank cannot afford to be selective in its punishment of two officers holding the same rank in the same Institution".

(6) The appellant was dismissed on 5. 6. 74. He applied for relief to the Labour Tribunal on 23. 7. 74 and the President delivered his order on 7. 1. 80. — 5½ years later taking nearly one year for his order after conclusion of the evidence.

Per Tambiah J: "The tragic feature in this case is the inordinate delay in the hearing of this case in the Labour Tribunal and in the delivery of its order."

(7) The just and equitable order should be immediate reinstatement with all arrears of salary from 1.7.71 (less receipts) and other benefits including retiral benefits as if there was no break in service.

(8) The strange features in regard to this charge are that the relevant voucher for a payment of Rs. 4500/- is missing, the Bank did not call Peiris, the Savings Ledger Clerk and the Cashier.

Per Tambiah J: "Was the Respondent Bank staging Hamlet not only without the Prince of Denmark, but, without the other members of the Royal Household as well?"

**Cases referred to:**

1. *Collettes v. Bank of Ceylon* — S.C. Reference No. 6/82 — S.C. Minutes of 5.11.82
2. *Ceylon Transport Board v. Gunasinghe* — 72 NLR 76, 80.
3. *Ceylon Transport Board v. Thungadasa* — 73 NLR 211, 215.
4. *Gratiaen Perera v. The Queen* — 61 NLR 522
5. *Jubilee Mills Ltd. v. Baburae Chintamen* — 1954 (1) LL. J. 807.
6. *Estrella Batteries v. Workmen* — 96 (1950) 1CR 206
7. *Assam Oil Co. Ltd. v. Its Workmen (1960)* 2LL. J. 745 (Mad. Prad.)
8. *Madhukar v. Bhilai Steel Project* — (1966) 2LLJ. 745 (Mad. Prad.)

**APPEAL** from judgment of the Court of Appeal.

*M. A. Mansoor* with *A. P. Niles* and *K. S. Ratnavel* for the Applicant-Appellant.  
*H. L. de Silva P.C.* with *S.G. Crosssette-Thambiah* for the Employer-Respondent.

*Cur. adv. vult.*

December 05, 1988

**TAMBIAH, J.**

The applicant-appellant joined the Bank of Ceylon, in the year 1954, as a Grade IV officer. He joined the People's Bank, i.e., the employer-respondent, on 1st January, 1963, as a Grade IV officer, and at the time of his dismissal from service, he was ledger officer in charge of Government Corporations and Co-operatives Accounts, where in 1971, a turnover of Rs. 13,000,000/- was averaged a day at the Duke Street Branch of the People's Bank. During the entire period as officer-in-charge of the Corporate Department, there was not even a suggestion made that his work was found to be remiss on a single occasion. At the relevant time, the officer-in-charge and ledger officer

Of the Savings Department was one P. M. P. Peiris. The then Manager of the Duke Street Branch, one D.G. Perera, testified to the procedure for withdrawals of funds from Savings Accounts as follows: The customer filled a form called the 'Withdrawal Voucher', and handed same with his Pass Book to one of the two cashiers at the counter. One of the cashiers was one Nanayakkara and the other, one Appuhamy. After verifying the entries on the withdrawal voucher against the entries on the Pass Book, the cashier endorsed a token number on the withdrawal voucher and handed the token to the account holder and got his signature on the reverse of the voucher, and entered the date and time of receipt of the withdrawal voucher, the amount, the account number and the name of the account holder in his Scroll Book. He then placed the withdrawal voucher and the Pass Book in a tray and one of the peons was expected to hand over these documents to the Savings Department Clerk. At this time there were two clerks, one Cyril Fernando and one Muzamil. If found to be in order, the clerk made the necessary entries in the Pass Book and in the Customer's Ledger Sheet and put them up to the Ledger Officer of the Savings Department. The Ledger Officer checked to see whether the customer's signature tallied with his specimen signature. The specimen signature card was kept in a cabinet and the key to this cabinet was retained by Peiris, the Ledger Officer. If the signatures tallied, the Ledger Officer placed the 'pay cash' stamp on the withdrawal voucher and signed on the voucher and for the balance in the Pass Book and also initialled the Ledger Sheet. The peon, then, took the voucher and Pass book back to the Cashier who checked to see whether it has been authorised for payment and if so, called out the token number and after he got the customer to sign on the reverse of the voucher and having checked whether the signature tallies with the signature at the time of presenting the voucher, handed over the cash to the customer along with the Pass Book.

It was the Manager's evidence that withdrawals over Rs. 5,000/— had to be approved and signed by the Branch Manager and the Ledger Officer; below Rs. 5,000/—, the payment had to be authorised by the Ledger Officer and whilst

the cashier is not required to check the identity of the account holder for payment of sums under Rs. 1,000/— he was bound to do so where the voucher is for a sum of Rs. 1,000/— and above.

At the end of the day, the cashier was required to enter all the day's withdrawals into his adding machine and balance the payments with the withdrawal vouchers; and duplicate of the adding machine print out, called a tape, and all the vouchers were forwarded to the Proof Department, which in turn checked the tape and the vouchers and again balanced the day's transactions and made a tape of its own, and forwarded all the vouchers and the duplicate of the tape to the Ledger Officer. He in turn again checked each voucher against the respective ledger sheets and again balanced the payments with the vouchers, entered all the day's transactions in a Summary Sheet and took all the vouchers and Summary Sheet to the Manager. The Manager examined the Vouchers to see whether correct authorisation had been made and thereafter the bundle of vouchers was kept in the vault which was operated by a dual control system.

It was the Manager's evidence that if there was a voucher or vouchers missing from the bundle, it would have been detected by the Proof Department and also by the Ledger Officer at the stage he balanced the accounts of the day and prepared the Summary Sheet.

It is in evidence that when the Ledger Officer Peiris of the Savings Department went out for lunch between 12 noon and 1.00 p.m. the applicant-appellant covered his work and attended to the withdrawal vouchers that were presented during that time in addition to his own work.

On 11th July, 1971, the applicant-appellant was interdicted and later served with a Charge Sheet dated 24.5.1972, containing the following charges:—

"While working as a Ledger Officer at Duke Street Branch of the Bank you did:—

1. Authorise payment of the fraudulent withdrawal voucher of Rs. 4,500/- on 27.5.71 from Savings Deposit A/c. No. 9702.
2. Acting jointly or severally commit fraud in a sum of Rs. 4,500/- on 27.5.71 on savings deposit account No. 9702.
3. Have unauthorised possession on or about 1.6.71 of savings account pass book No. 10237 belonging to Sydney Amarasinghe of 343A, Salawa Road, Embuldeniya, Nugegoda.
4. Authorise payment of Rs. 995/- on savings account No. 10237 on 4.5.71 in the absence of necessary entries in the relevant pass book.
5. Acting jointly or severally, attempt to commit the fraudulent withdrawal of Rs. 4,000/- on 6.6.71 from savings account No. 10043 by using an unissued pass book originally bearing the machine stamped number 10237 earlier reported lost from the bank, and altered to read as 10043.
6. Induce Mr. M. H. L. Gilbert, a Grade VI employee of the Bank to keep away from work on the pretext of being sick on 25.5.71, which was the day of the fraudulent withdrawal of Rs. 4,500/- on Mrs. Wong's savings deposit account No. 10043.
7. Acting jointly or severally commit fraud in a sum of Rs. 4,500/- on 25.5.71 on savings account No. 10043.

Except for charges 3 and 4, the gravamen of the complaint against the applicant-appellant would appear to be that he alone or jointly with others committed certain frauds and attempted frauds in the Savings Department. The applicant-appellant was exonerated at the domestic inquiry. It is also in evidence that the CID which investigated into the alleged frauds were unable to find the culprit. But he was not reinstated. He was interdicted on

11.7.71 and was on no-pay and was placed on half-pay from 1.1.73 after he was exonerated and later his services were terminated by the Respondent Bank on 5th June 1974 with effect from 11th July, 1971.

It would appear from the evidence of the Manager Perera, that Peiris, the Ledger Officer in charge of the Savings Department, about the time that the acts of misconduct alleged in the Charge Sheet were taking place, had himself issued two cheques, Nos. A63025 for Rs. 500/— and A63026 for Rs. 280/— from a cheque book belonging to some other account holder, affixed the 'Staff Account' frank, and signed the two cheques. This was at a time when his own account was closed and he had no cheque book. Both cheques were returned by the Bank, one bearing the endorsement "drawer's signature differs", and the other "cheque not issued to drawer". In the opinion of the Manager this "is a very grave offence". The Manager stated further that Peiris was interdicted and served with a charge sheet and that whilst under interdiction he admitted to a fraud concerning a Savings Pass Book; that after inquiry he was reinstated and later demoted from his grade to one grade below, for 3 years denied his promotion and later retired.

The applicant-appellant complained to the Labour Tribunal that his services were unreasonably, unjustly and illegally terminated and sought the reliefs, inter alia, reinstatement with back wages or compensation for loss of career and pension.

The Respondent Bank, in its answer, sought to justify the termination of services in the following terms:—

**Para 2:**

"The applicant was dismissed from service upon being found guilty of the following acts:—

- (a) dishonest participation in the fraudulent withdrawal of Rs. 4,500/- on 27th May, 1971, in respect of Savings Deposit Account No. 9702.
- (b) in the alternative with gross negligence in authorising payment of the said sum of Rs. 4,500/- from the said account.



- (c) dishonest participation in the fraudulent withdrawal of Rs. 4,500/- on the 25th May 1971 in respect of Savings Accounts No. 10043.
- (d) dishonestly inducing N. H. L. Gilbert, a Grade VI employee of the Bank to keep away the day of the fraudulent withdrawal of Rs. 4,500/- from Savings Account No. 10043.
- (e) dishonest participation on the attempted fraudulent withdrawal of Rs. 4,500/- on 6.6.71 in respect of Savings Account No. 10043 by using an unissued Pass Book originally bearing the machine stamped number 10237, earlier reported lost from the Bank, and altered to read as 10043.
- (f) unauthorised possession on or about 1.6.71 of Savings Account Pass Book No. 10237.
- (g) negligently authorising payment of Rs. 995/- on Savings Account No. 10237 on 4.5.71 in the absence of the necessary entries in the relevant pass book.

The statement in the Answer that the applicant-appellant was dismissed from service is factually incorrect.

Whilst the original position of the Respondent Bank at the domestic inquiry was that the applicant-appellant, singly and or jointly was the perpetrator of the alleged frauds and attempted frauds, there was change in its position before the Labour Tribunal — that the applicant-appellant was only a dishonest participant in the alleged frauds and attempted frauds.

The third position of the Respondent Bank was set out in the written submission on his behalf where it sought to justify the termination of the applicant-appellant's employment on four grounds:—

1. dishonest participation in the fraudulent withdrawal of Rs. 4,500/- from the Savings Deposit Account No. 9702, belonging to one Gunaratne, on the 27th May, 1971.

2. dishonest participation in the fraudulent withdrawal of Rs. 4,500/- in respect of Savings Deposit Account No. 10043, belonging to one Mrs. Wong on the 25th of May, 1971.
3. dishonest participation in the attempted fraudulent withdrawal of Rs. 4,500/- on 6th June, 1971, in respect of Savings Account No. 10043 by using an unissued pass book originally bearing the machine stamped number 10237 which had been altered to read as 10043.
4. unauthorised possession on or about 1.6.71 of Savings Account Pass Book No. 10237 without the written permission of the account holder (Edirisinghe).

Thus the Respondent Bank jettisoned 3 charges, para (2), (b), (d) and (g), laid out in its answer and amended charge (f) by the addition of the words "without the written permission of the account holder (Edirisinghe)" and this was done after the conclusion of the evidence. Though the charges in para 2(b), (d) and (g) were abandoned, the President of the Labour Tribunal with regard to 2 (b) states that "it is not possible to state that the applicant was negligent in authorising this payment in the absence of the voucher" and in respect of charges 2 (c) and (d) he states that the Respondent Bank has not led sufficient evidence to establish the guilt of the applicant-appellant.

In regard to ground (1) above, the Respondent Bank relied on two items of evidence. The Pass Book bearing No. 9702 (R1) is the Pass Book of Account Holder, Edirisinghe Arachchige Gunaratne. According to R1, there is no withdrawal by the customer Gunaratne on 27.5.71. The relevant Scroll Book (R5) maintained by the Cashier on 27.5.71 and a bundle of vouchers containing the relevant vouchers signed by the applicant-appellant on the same date (R4 (a) to R4 (c)) were produced in evidence. The applicant-appellant admitted in his evidence that Peiris when he initialled the Ledger Sheets used the letter "P" and that he used the figure "7". The Scroll Book shows that from

12.15 p.m. to 12.45 p.m. on 27.5.71, the withdrawals on savings vouchers R4 (a), R4(b), R4(c), R4(d), and R4(e) in respect of other accounts which have been presented to the Cashier at the times 12.15 p.m., 12.25 p.m., 12.39 p.m., 12.40 p.m. and 12.45 p.m., have been initialled with the figure "7". The applicant-appellant admitted that he authorised these payments. The Scroll Book shows that at 12.40 p.m. Savings Voucher in respect of Account No. 9702 had been presented for the withdrawal of Rs. 4,500/-, but the relevant voucher is missing. The applicant-appellant denied that he authorised the withdrawal of Rs. 4,500/-. The Respondent Bank wanted the Labour Tribunal to draw the inference that the missing voucher tendered at 12.40 p.m. too was authorised by the applicant-appellant.

The applicant-appellant's evidence is that on this day there were four other officers who worked including one Wickremsekera Banda, and it is his evidence that savings voucher R4(f) had been received at 12.49 p.m., i.e., between 12 noon and 1.00 p.m. and was authorised by Wickremasekera Banda.

It was his further evidence that at 12.40 p.m. that day he was performing his duties on the Co-operative Ledger seated in his seat and the Savings Ledger Accounts were brought to him; that savings withdrawals are not authorised according to the time they are presented at the counter and that vouchers presented at a particular time may be authorised for payment much later due to incomplete filling up, alterations, requirement of further specimen signatures etc.

The Bank Manager, Perera, in evidence also stated that a voucher presented at a particular time may be paid even later than a voucher presented after it, and that it depends on what time the ledger clerk pulls out the relevant ledger and checks.

The applicant-appellant also stated that as the withdrawal of Rs. 4,500/- was not a withdrawal for Rs. 1,000/- or below, he would never have authorised payment on this voucher without reference to the specimen signature card that was in the locked cabinet. It is the Manager's evidence too that the specimen

signature card is in the cabinet, the key of which was in Peiris' charge. The payments on vouchers R4(a), R4(b), R4(c), R4(d) and R4 (e), which admittedly have been authorised by the applicant-appellant, were all for payments of Rs. 120/-, Rs. 50/-, Rs. 750/-, Rs. 150/- and Rs. 15/-.

The second item of evidence relied on by the Respondent Bank is this:

On the Ledger Sheet (R22) which related to the Co-operative Society, the applicant-appellant conceded that his initial "7" appears 10 times. The Ledger Sheet (R2) in respect of Savings Deposit Account No. 9702 on the face of it shows that on 27.5.71, Rs. 4,500/- had been debited and the balance Rs. 4600/25 has been initialled with the letter "P". It was the case of the Respondent Bank that the applicant-appellant had converted what was originally the figure "7" into a "P" in R2. To establish this, the Respondent Bank relied on the evidence and report of the Assistant Examiner of Questioned Documents of the Government Analyst's Department who stated in evidence that he was asked to examine the Ledger Sheets (R2) and (R22) and to report whether there was any evidence of alterations in the initial against the entry, Rs. 4600/25. His examination revealed that an original initial consistent with "7" has been written over and altered to read "P"; that the original initial "7" in the Ledger Sheet (R2) is consistent with the initials of the person who initialled against the entries in the Ledger Sheet (R22).

In the Ledger Sheet (R2) there is an earlier entry where the balance of Rs. 7,350/- has been initialled with the initial "P". Under cross-examination he was asked whether this "P" looked similar to the "P" against the balance Rs. 4,600/25. His answer was that he would require more specimens similar to "P" in order to come to a conclusion. He further stated that he is unable to say as to who is the person who altered "7" into "P".

A. L. M. Muzamil, a clerk in the Savings Department, who gave evidence for the Respondent Bank, under cross-examination, stated that there was a voucher in respect of the entry in the Ledger Sheet (R2) with regard to the withdrawal of Rs. 4,500/- on 25.5.71; that normally the voucher is placed in the Ledger Sheet and sent to Peiris; that Peiris gave him a voucher and

asked him to keep it with him to be put in the bundle of vouchers: that the initial against the entry in regard to the balance of Rs. 4,600/25 after withdrawal of Rs. 4,500/- is Peiris'; that there appeared to be an alteration in respect of that initial: that before the voucher was given to him, Peiris initialled the Ledger Sheet and gave it to him.

The applicant-appellant's Counsel, then, referred the witness to his evidence at the domestic inquiry and asked:

"Did you say this:

Q. Is the initial on the ledger sheet that of Mr. Peiris'?

A. It has been altered. It was not originally there."

Muzmil was re-examined by the Respondent Bank's Counsel in regard to what he said at the domestic inquiry:

Q. The initials in the Ledger Sheet is Mr. Peiris'?

A. It has been altered. It was not there earlier.

Q. Generally, withdrawal vouchers are signed when payments are made?

A. Yes.

Q. At the stage that payments are made, the balance is initialled?

A. Yes.

Q. Is he the person who made this entry?

A. Yes."

It was Manager Perera's evidence that about two weeks after the withdrawal of Rs. 4,500/-, Gunaratne, the holder of the relevant Pass Book turned up at the Bank on a letter written by Peiris to call over with his Pass Book. Gunaratne had complained that Rs. 4,500/- had not been withdrawn by him and it was at this stage it transpired that the relevant Voucher was missing. The writing of this letter is a contravention of the Rules of the Bank as only the Manager or the second officer of the Bank, one Anton Fernando, could write such a letter; and this was one matter, among others, on which Peiris was charge sheeted. In response to this letter, Gunaratne had turned up and his Pass Book contained no entry in regard to the withdrawal of Rs. 4,500/-.

The Manager Perera further stated that when the bundle of vouchers (R4) comes back to the Savings Department from the Proof Department, Peiris has to check and take over the vouchers. If a voucher was missing, Peiris would have discovered it at that stage; Peiris had signed on the cover of R4 and at the time he signed, all the vouchers were there; the last person who would have handled the vouchers after they were bundled and before preparation of the summary was Peiris; that at the time of the preparation of the summary, if the voucher was not there, Peiris would have queried and when the summary was prepared the vouchers were there and he would not have prepared the summary without the vouchers being there; that at no time did Peiris complain to him that any voucher was missing; that he came to know that the voucher was missing after the customer Gunaratne called at the Bank; that the fact that the summary was prepared by Peiris and the bundle of vouchers was sent to him indicate that at that time, the voucher was there.

It was also Muzamil's evidence that Peiris checks the summary with the vouchers and that in the summary prepared on 27/5, the entry with regard to Rs. 4,5000/- was there and Peiris signed the summary sheet, that the voucher would have been there when he checked, and it was thereafter that the voucher was missing; that Cyril Fernando the other clerk told him that the voucher was in the drawer of Peiris; that Peiris took the voucher and gave it to him and that he kept it on his table and on 28/5 the following day, he found the voucher in the Ledger Book; that once it was entered in the summary, the voucher had to go into the bundle and ought not to be in the Ledger Book; that the voucher bundle of 27/5 was found on 28/5 on the table of Peiris and thereafter it was missing; that the voucher was with him as Peiris had asked him to keep it safely.

As regards this charge, the President of the Labour Tribunal only considered the two items of evidence relied upon by the Respondent Bank, viz, the time of receipt of this voucher by the cashier and the evidence of the Assistant Examiner of Questioned Documents and said:

"This voucher had been presented at 12.40 p.m. when the applicant was acting for the permanent officer. The several

vouchers which had been authorised before and after lead to the inference that this voucher too would have been presented to him during this period . . . . . Since the evidence of the EQD is quite clear that the applicant made the original initial on R2, I have no hesitation in accepting the version of the Respondent that there has been dishonest participation by the applicant in respect of this withdrawal."

As regards the second ground of termination, viz. dishonest participation in the fraudulent withdrawal of Rs. 4,500/- in respect of Savings Deposit Account No. 10043 belonging to one Mrs. Wong on 25.5.71, the President of the Labour Tribunal stated that "not enough evidence has been brought before the Tribunal for me to state that the applicant had participated in any way in respect of this charge."

The Ledger Sheet in respect of Account No. 10043 (R9) shows that on 25/5/71, there had been a withdrawal of Rs. 4,500/-, leaving a balance of Rs. 4,350/-. It is the clear evidence of the Respondent Bank's witnesses, the Manager Perera, and Muzamil, that the initial "P" appearing against this entry is that of Peiris.

The third charge relates to the attempted withdrawal of Rs. 4,000/- from the account of Mrs. Wong on 6.6.71.

The witness Muzamil stated that on 6.6.71, it was the applicant-appellant who brought the withdrawal voucher (R13) dated 6.6.71 bearing Account No. 10043 and the Pass Book bearing No. 10043 to him; it was not part of applicant-appellant's duty to bring these documents to him; he found the Bank officer's signature in the right column just scrawled and he could not identify the signature; he asked Peiris to check the signature and Peiris told him "you just post it and give it to me"; he was not satisfied and he reported the matter to the Assistant Manager and along with the Manager checked the signature. They found that Rs. 4,500/- had been withdrawn on 25/5 and found the relevant voucher missing. The token number was called out and no one came up. The Pass Book (R8) had the machine No. 10237 which was scored off and the No. 10043 was handwritten in red.

Under cross-examination, he stated that according to the Scroll Book (R5), the Pass Book (R8) was presented at the counter at 10.12 a.m. and Peiris was present; that most Pass Books are machine numbered and Pass Books that have no machine number are written by them and given; the signature against the withdrawal of Rs. 4,500/- is not the applicant-appellant's; in the relevant Ledger sheet (R9), the withdrawal of Rs. 4,500/- has been initialled by Peiris; when Pass Books are handed over by customers at the counter, the cashier at the counter puts them into a tray and thereafter the peon takes them and hands them to the ledger section; he cannot remember whether at the time the applicant-appellant removed the Pass Book from the tray, a peon was there or not; unless the applicant-appellant had particular interest in that Pass Book, he need not have brought it; normally when a friend of an officer of the Bank comes to remove a Pass Book, they will go up to the officer in order to get their job quickly done.

The genuine Pass Book (R7) issued to Mrs. Wong was produced by the Manager, Perera. He stated that Pass Book (R8) is a fake document and the signatures appearing as "Signatures of Bank officials" are all forged signatures. According to the Pass Book (R7), there does not appear to be any withdrawals made by the customer; on 21.5.71, the customer had deposited Rs. 7,000/- and on 13.3.71 a sum of Rs. 500/- and the applicant-appellant has signed against both deposits; on 21.5.71, the credit balance was Rs. 8,850/-. He also produced the relevant Ledger Sheet (R9) according to which, on 21.5.71, the credit balance is Rs. 8,850/- and the applicant-appellant has initialled the entry, and the Pass Book bearing No. 10237 (R10) was issued to one Sydney Amarasinghe and this number in (R10) is the same as the machine number appearing in the fake Pass Book (R8). After investigations began into the fraudulent withdrawals in respect of the Savings Accounts of Gunaratne and Mrs. Wong, the applicant-appellant's desk drawers were searched and the Pass Book (R10) was found in one of his drawers.

The Manager, Perera, under cross-examination, stated that when a peon is not available at the counter to take the Pass



Books and Cheques, the officer or clerk in charge of that subject will take them; there were two counters and both counters accepted cheques and pass books; the applicant-appellant was dealing with current accounts and cheques and pass books; and if a peon was not available, he would go upto the counter and collect the cheques and if there was a pass book, he would take the pass book and hand same to the officer concerned and there was nothing unusual about it.

The Assistant Manager, H. A. Fernando, also gave evidence for the Respondent Bank. He stated that Muzamil brought the Pass Book (R8) to him and he too could not identify the signatures on (R8), and with the Manager's permission he examined the voucher bundle of 25/5/71 and found the relevant voucher missing. He asked Muzamil to call out the token number and no one turned up.

When questioned by the applicant-appellant's Counsel, he stated that on that morning Nanayakkara came and told him "I know Mrs. Wong. Pay." He said that he knew the party.

The applicant-appellant was questioned as regards this charge. He conceded that in the pass book (R7), he had initialled the balance against the dates 13.3.71 and 21.5.71. He had not seen pass book (R8) before and came to know that it was a forged document in the course of the inquiry; his signatures are not in R8, nor that of 'Peiris'. He was working on 25.5.71, when Rs. 4,500/- was withdrawn. In the Ledger Sheet (R9); his initial appears against the dates 21.5.71, and 13.3.71; Peiris' initial appears against the withdrawal of Rs. 4,500/- on 25.5.71.

As to how the Pass Book (R10) came to be found in his drawer, the applicant-appellant stated that Sydney Amarasinghe resided next to his house and he wanted to obtain a loan of Rs. 1,000/-. He introduced his friend to the Bank as a customer. One could get a loan on their income. The relevant ledger sheet shows that Amarasinghe opened his account on 29.3.71 with a cash deposit of Rs. 5/-. His initial appears against the deposit of Rs. 5/-. He signed for the Pass Book and handed it to Amarasinghe.

His account was credited with a loan of Rs. 1,000/-. On 4.5.71, Amarasinghe withdrew a sum of Rs. 995/-. He approved the payment of it on R12, the withdrawal voucher, and initialled it and retained the Pass Book for the entries to be brought up to date. When he came to obtain the loan, Amarasinghe left the Pass Book with him to enable the entries to be made. As he was residing close to his house, he could have brought the entries up to date and taken it to his house. Before he could bring the Pass Book up to date "something happened, and he handed the book to the Inspector." To the question "Why did you not bring the entries up to date?" his answer was "It may be that he was in a hurry or that I was very busy". In his evidence he stated that "there were thousands of current accounts and savings I worked on". Although he retained the book, the particulars are in the ledger (R11); in every case any withdrawal from the savings account is done with reference to the outstanding balance in the ledger. He had come across Pass Books with handwritten numbers. He had no control and it was Peiris who dealt with Pass Books.

It was Muzamil's evidence that the account of Amarasinghe was introduced by the applicant-appellant; that he wrote the particulars on Pass Book (R10) and made the necessary entries in the Pass Book Issue Register (R20); the applicant-appellant signed the Register and was given the Pass Book; that Pass Book (R10) is a genuine Pass Book; that the customer Amarasinghe was not in the Bank on that day, and this practice of handing over a Pass Book to a Bank Officer on behalf of the customer is done and there is no Bank Circular prohibiting it; there was no complaint from Amarasinghe or anybody else that the applicant-appellant was in unlawful possession or unauthorised possession of this Pass Book.

The Bank Manager, Perera, stated that the withdrawal voucher for Rs. 995/- is not missing and it is a genuine withdrawal; that Pass Book (R10) is a genuine book and all entries in it are genuine; and that there is nothing unusual for a customer to send the Pass Book through an officer to bring the Book up to date; that the Ledger Clerk has to check the Ledger Sheet to see whether there is money in the account and that the Ledger is the

real account; that the Ledger entries may differ from the entries in the Pass Book; that Amarasinghe has made no complaint in regard to his Pass Book; and that the Pass Book was found in the applicant-appellant's drawer on 29.10.71, and he cannot keep the Pass Book with him unless he has the customer's permission.

The President, Labour Tribunal, found the applicant-appellant guilty of this charge. In his order, he states that "this was a fraudulent transaction and the applicant-appellant's participation in it is easy to see". The factors that weighed with him were: (1) the Pass Book (R8) with a machine No. 10237 struck off and the No. 10043 handwritten is not a genuine one, (2) Pass Book (R10) obtained by the applicant-appellant for his friend Amarasinghe has no machine number but a handwritten number 10237, (3) the bogus book (R8) and the voucher (R13) were brought to Muzamil by the applicant-appellant. Muzamil stated that "unless he had a particular interest in the Pass Book, he need not have brought it." The applicant-appellant has given no explanation as to the reason why he handed this document to the Ledger Clerk, (4) when the token number was called, no customer turned up.

The charges set out in para 2 (f) and (g) of the Respondent Bank's answer related to the Savings account Pass Book No. 10237 of Sydney Amarasinghe. Though in its written submissions, the Bank abandoned the charge set out in para 2 (g), the President of the Labour Tribunal, except for a bare statement that the Pass Book (R10) was found in the drawer of the applicant-appellant, has not arrived at a finding on the charge relating to unauthorised possession of R10, which the Bank asserted as the 4th charge in its written submissions. In any event, the applicant-appellant has given a sufficient explanation as to why it was in his drawer — that Sydney Amarasinghe left the book with him to post the entries and bring the pass book up to date. There is the further evidence of the Bank Manager Perera and the Savings Ledger Clerk Muzamil that there was nothing unusual for a bank officer collecting a Pass Book on behalf of a customer or for a customer to send a pass book through a bank officer in order to bring the Pass Book up to date. On the evidence, the applicant-appellant has to be exonerated on the charge of unauthorised possession of Pass Book (R10).

As regards the charge of negligently authorising payment of Rs.995/- on 4.5.71., in the absence of necessary entries in the Pass Book (R10), admittedly the applicant-appellant authorised the payment of Rs.995/- by initialling the withdrawal voucher (R12). It is common ground that this withdrawal was not reflected in the Pass Book. The President, Labour Tribunal, in his order states "the applicant has tendered no explanation as to why he failed to bring the Pass Book up to date. According to the evidence of the Manager, it was not in order to approve a withdrawal without the accompanying Pass Book. The applicant's conduct is contrary to the practice prevailing in the Bank and therefore he is guilty of the charge of negligence in this respect."

The charge as framed in the answer of the Respondent Bank was jettisoned by it in its written submissions, but notwithstanding this, the President, Labour Tribunal, proceeded to consider the jetsam thrown out by the Respondent Bank and found the applicant-appellant guilty of this charge. In any event, the charge was that the applicant-appellant negligently authorised the withdrawal of Rs. 995/-, in the absence of entries in the Pass Book. It is the evidence of both the Bank Manager and Muzamil that Pass Book (R10) is a genuine Pass Book; that the relevant withdrawal voucher for Rs. 995/- is not missing and the withdrawal is reflected in the Ledger Sheet (R11) and all entries therein are genuine. The President of the Labour Tribunal, however, has found the applicant-appellant guilty of not following a banking practice, viz. approving a withdrawal without the accompanying Pass Book, a charge not alleged either in the Charge Sheet, the answer or in the written submissions of the Bank. There is the definite evidence of the Manager Peiris that the Ledger Sheet is the real account with reference to which withdrawals are made and that the entries in the Ledger may differ from the entries in a Pass Book. The withdrawals are authorised for payment by reference to Ledger entries and not to entries in the Pass Book. It seems to me that the Respondent Bank dropped this charge in view of this evidence. The finding of the Labour Tribunal cannot stand having regard to this evidence of the Bank Manager.

The President, Labour Tribunal, concluded his order in these words:

"Summing up therefore the evidence led before the Tribunal, I find that the conduct of the applicant was such that though he has not been directly guilty of fraud or fraudulent transaction his conduct has certainly been not absolutely above board. It is my view that the conduct of the applicant has been such that he is not a fit and proper person to be employed in an establishment of the nature of a Bank where large sums of public money are transacted in its day to day activities. In the circumstances I hold that the termination of the applicant's services was for good cause."

The applicant-appellant preferred an appeal to the Court of Appeal and the Court of Appeal by its judgment dated 7.3.86, without evaluating and analysing the evidence in the case, accepted the findings arrived at by the Labour Tribunal. The judgment merely states:

"I am of the view that the evidence on record substantiates the findings and conclusions of the Labour Tribunal and this Court will accordingly not interfere with his findings on the facts . . . . Thus in the instant case once the learned President has found on the evidence that his conduct has certainly been not absolutely above board in respect of the fraudulent transaction referred to, the continued employment of the applicant is inimical to the interest of the customers of the Bank and to any confidence that can be reposed in him; nor can the Bank with any sense of responsibility, continue to employ him and jeopardise its own reputation and the interest of its customers to whom it is responsible. The learned President was therefore right in holding that he was not a fit and proper person to be employed in an establishment of the nature of a Bank and in holding that the termination of the applicant's services was for good cause. This appeal is accordingly dismissed.

The ultimate finding of both the Labour Tribunal and the Court of Appeal is that the Respondent Bank had lost confidence in the

applicant-appellant and he is unfit for continued employment at the Bank. Therefore, the termination was for good cause.

As regards the remaining two charges, there are several relevant items of evidence in the applicant-appellant's favour which the President, Labour Tribunal, has failed to consider. There has been a lapse of about twelve months between the conclusion of evidence on 22.2.79 and the delivery of the Order by him on 7.1.1980. This may account for the non-consideration of the totality of evidence.

In *Collettes v. Bank of Ceylon* (1) five Judges of this Court ruled thus — "The question whether the Tribunal has failed to take into account relevant considerations is a question of law."

Weeramantry, J. said in *Ceylon Transport Board v. Gunasinghe*, (2)

"Where a statute makes an appeal available only in respect of questions of law, the Appellate Court is not without jurisdiction to interfere where the conclusion reached on the evidence is so clearly erroneous that no person properly instructed in the law and acting judicially could have reached that particular determination."

In *Ceylon Transport Board v. Thungadasa* (3), Alles, J. observed:

"Some of the findings are inconsistent with the evidence and contradictory and there has been a failure to consider relevant and admissible evidence. This Court is therefore entitled, as a question of law, to examine and interfere with such an order. . . . Recently, this Court has had occasion to draw the attention of Presidents of Labour Tribunals to the duty of acting judicially in evaluating evidence before making just and equitable orders."

The strange features in regard to this charge are that the relevant voucher for the payment of Rs. 4,500/- is missing, and the failure of the Respondent Bank to call Peiris, the Ledger Officer, the savings ledger clerk who handled the missing voucher, and the relevant ledger sheet, and the cashier who

received the voucher and ultimately paid out the money. I cannot resist asking the question — Was the Respondent Bank staging Hamlet not only without the Prince of Denmark, but, without the other members of the Royal Household as well? This last observation also goes for the charge relating to the attempted fraudulent withdrawal of Rs. 4000/- on 6/6/71.

The withdrawal voucher for Rs. 4,500/- has been presented at the counter at 12.40 p.m. on 27.5.71 according to the Scroll Book. From the mere fact that the two preceding and succeeding vouchers have been authorised for payment by the applicant-appellant, the President of the Labour Tribunal has inferred that the withdrawal voucher for Rs. 4,500/- would have necessarily come to the applicant-appellant and that he would have authorised the payment.

The applicant-appellant's evidence was that on this day there were four officers working including one Wickremasekera Banda and this has not been contradicted. The Voucher (R4 (f)) was received at the counter at 12.49 p.m. and was authorised for payment by one Wickremasekera Banda. This evidence was not considered by the President of the Labour Tribunal.

The applicant-appellant stated that Vouchers were not authorised for payment according to the time they were presented at the counter, receives support from the evidence of Manager Peiris. This evidence was not considered by the President of the Labour Tribunal.

The applicant-appellant's evidence that he would never have sanctioned the payment of Rs. 4,500/- without reference to the specimen signature card which was locked up in Peiris' cabinet, receives support from the fact that the five vouchers he admittedly authorised for payment are all for sums under Rs. 1,000/- and below Rs. 200/-. This too was not considered by the President of the Labour Tribunal.

Most importantly, Muzamil stated in evidence that the initial against the withdrawal of Rs. 4,500/- is that of Peiris, and that before Peiris gave the missing voucher to him, he initialled the

Ledger Sheet and that the alteration was not there earlier. This important evidence too was not considered by the President of the Labour Tribunal.

Equally important is the evidence of the Manager Perera that at the time Peiris prepared the summary sheet, the relevant voucher would have been with him and that at no time did Peiris complain that the voucher was missing. There is the further evidence of Muzamil that the summary sheet was prepared by Peiris on 27.5.71 and that the summary sheet was checked with the vouchers and the voucher was there; that Peiris gave the voucher to him which he kept on his table and that on 28.5.71, he found the voucher in the ledger, that the bundle of vouchers was on Peiris' table and the voucher was missing thereafter. All this evidence has not been considered by the President of the Labour Tribunal.

In addition, there is the admission by the Manager Perera that during this period Peiris was involved in fraudulent cheque transactions at a time when his Bank account was closed and that Peiris admitted to a fraud concerning a Savings Pass Book when he was under interdiction.

It is also relevant to note that though the Respondent Bank abandoned the 2nd alternative charge in its Answer that the applicant-appellant negligently authorised the payment of Rs. 4,500/-, the President of the Labour Tribunal considered this charge and concluded "that it is not possible to state that the applicant was negligent in authorising this payment in the absence of the voucher. It is only from the voucher that one could conclude as to who has authorised this payment." Surely, the same reasoning must equally apply in the consideration of the first charge as well?

In the light of all these items of evidence favourable to the applicant-appellant, which have not been considered at all by the President of the Labour Tribunal, could it be said that from the mere fact that the missing voucher was received at the counter at 12.40 p.m. and as the applicant-appellant had authorised the payments of the vouchers received just before and after, at



12.39 p.m. and 12.45 p.m. the missing voucher too would have necessarily come to the applicant-appellant and it is he who authorised the payment of this withdrawal. It is an erroneous inference.

The other item of evidence relied upon by the President of the Labour Tribunal is the evidence of the Handwriting Expert who stated that in his opinion the original initial "7" which has been altered to "P" is consistent with the initials "7" found in the Ledger Sheet (R22), which admittedly are the initials of the applicant-appellant. In the Ledger Sheet (R2), the admitted initial "P" of Peiris is also there, and the witness stated that in the absence of more specimens similar to "P", he cannot express an opinion.

In dealing with the evidence of the Handwriting Expert, the President of the Labour Tribunal stated that from his evidence it "is quite clear that the applicant made the original initial '7' on R2". This is an erroneous misconception of his evidence, as it is his clear evidence that he was unable to say as to who is the person who altered the original '7' into 'P'.

As to the value of expert testimony on the question of handwriting, *Monir* in his *"Principles and Digest of the Law of Evidence (4th Edn., Vol. 1, at p. 355)"* states:

"Conclusions based on mere comparison of handwriting must, at best, be indecisive, and yield to the positive evidence in the case. The opinion of an expert cannot be more reliable than the statement of a witness of fact such as a petition-writer who had seen the party signing the document."

There is no direct evidence of any kind against the applicant-appellant. No one has seen the applicant-appellant initial the Ledger Sheet (R2). But on the other hand, we have the direct evidence of the Savings Clerk Muzamil that Peiris initialled the Ledger Sheet before he gave the voucher to him. This is direct evidence of an eye-witness and the opinion of the Assistant Examiner of Questioned Documents must yield to the positive evidence of Muzamil that Peiris initialled the Ledger Sheet.

The Judges of our Courts have made it clear that a Court should not merely adopt the opinion of an Expert, but, with the Expert's assistance, it should independently form its own opinion, and that the Expert's opinion should be accepted if there is other evidence which tends to show that the conclusion reached by the Expert is correct. (See *Gratien Perera v. The Queen*) (4).

The finding of guilt by the President of the Labour Tribunal is erroneous and untenable.

I now come to the charge relating to the dishonest participation of the applicant-appellant in the attempted withdrawal of Rs. 4,000/- from the Savings Account of Mrs. Wong on 6.6.71. The President of the Labour Tribunal appears to have been influenced by the following factors:—(1) that it was the applicant-appellant who brought the withdrawal voucher and the fake Pass Book (R8) from the cashier's tray to the Savings Clerk Muzamil, (2) that the Pass Book had its machine No. 10237 scored off and had a handwritten No. 10043 which corresponded with the handwritten No. 10237 on the Pass Book (R10), which the applicant-appellant had obtained for his friend Sydney Amarasinghe, (3) it was an attempted fraud because when the token number was called, no customer came forward.

Here again, there are items of evidence in the applicant-appellant's favour which were never considered. The Bank Manager Perera saw nothing unusual in the applicant-appellant walking up to the cashier's counter in order to collect cheques which have to be dealt by him, and in the process collect savings pass books and hand same to the savings clerks which have to be dealt with by them. Muzamil admitted that the Pass Book (R10) was a genuine Pass Book and he wrote the particulars on the Pass Book and all entries therein are genuine. He further stated that as his suspicions were aroused, he took the fake Pass Book (R8) and the Voucher (R13) to Peiris who said "just post it and give it to me". There is the further evidence of the Assistant Manager Fernando that the cashier Nanayakkara working at the counter came up to him and said "I know Mrs. Wong. Pay." And it is this same Nanayakkara, according to the Manager Perera, who was dismissed from service after a domestic inquiry and he had

applied for relief to the Labour Tribunal. The statement in the applicant-appellant's written submissions to this Court that Nanayakkara has since been reinstated in service has not been denied in the Respondent Bank's written submissions. Everyone of the factors that prompted the President of the Labour Tribunal to find him guilty of this charge could be explained by the Respondent Bank's own witnesses. This finding too is erroneous and cannot stand.

Having found the applicant-appellant guilty of dishonest participation in the fraudulent withdrawal of Rs. 4,500/ and in the attempted fraudulent withdrawal of Rs. 4,000/, the President of the Labour Tribunal finally concluded: "though he has not been directly guilty of fraud or fraudulent transaction, his conduct has not been above board", a finding to my mind which is inconsistent with and contradictory to his earlier findings of dishonest participation.

Before this Court, learned President's Counsel for the Respondent Bank sought to justify the conclusion of the Labour Tribunal that the applicant-appellant's conduct being not above board, he is not a fit and proper person to be continued in employment and, therefore, the termination was for good cause. He submitted that the material placed before the Labour Tribunal raised a reasonable suspicion of the guilt of the applicant-appellant; the employer may place his case high, but it is open to the Labour Tribunal to say: "the evidence may not add up to establish the charges, but, in its view, the workman is not a fit and proper person to be continued in service." This is the final position of the Respondent Bank to which it has been reduced to.

I cannot agree with this submission.

It seems to me that loss of confidence has two aspects in Labour Law: (1) where the termination of employment is effected by the employer on the ground of loss of confidence, (2) loss of confidence may be a circumstance from which a Court may conclude that reinstatement is not the appropriate relief, despite a finding that the termination is not justified.

S. R. de Silva in his "*Legal Framework of Industrial Relations in Ceylon*" (p. 552, 554, 555) states, "Loss of confidence may justify a termination or, in a case where termination is held to be unjustified, may be an argument against the award of reinstatement. Though theoretically there is no restriction as to the class of employee in respect of whom termination of employment may be effected on the ground of loss of confidence, it usually applies in respect of employees who hold positions of trust and confidence such as accountants, cashiers and watchers or who perform a certain degree of responsible work." In *Jubilee Mills Ltd. v. Babura Chintaman*<sup>(5)</sup> the Management held an inquiry into shortages in the stores. Certain employees in the stores, though not proved guilty were reasonably suspected of being responsible for the shortages, and permission was granted to dismiss them. The Court said: "These two coolies were entrusted with the responsible duty of handling stores. Employees in this department must naturally continue to enjoy the confidence of the management and it would not be in the interests of the industry if persons not enjoying the confidence of the management are thrust upon it in such a department". In *Estrella Batteries v. Workmen* <sup>(6)</sup> the Court held: "It is vital to remember that this is a case of suspected loyalty to the Company and in the state of affairs as they shaped it was not possible to get any definite evidence to prove that it was an act of deliberate spoiling of the batteries. It was therefore, not possible to prepare and give a regular charge sheet and an opportunity to meet it . . . . that was not necessary because it was perfectly open to the employer to terminate the services of an employee whose every loyalty to the employer was suspect; and there was more than reasonable grounds to entertain the suspicion."

In regard to the second aspect, S. R. de Silva (ibid at. pp. 376-380) states that though in a case of wrongful dismissal, the normal remedy is reinstatement, there are circumstances in which a Tribunal will be entitled in its discretion to order compensation in lieu of reinstatement, inter alia (1) in view of the employer's plea of loss of confidence in the employee who occupied a position of confidence. *Assam Oil Co. Ltd. v. Its Workmen*, <sup>(7)</sup> *Madhukar v. Bhilai Steel Project*, <sup>(8)</sup> (Reports not available).

where though reasonable suspicion may not of itself be a sufficient ground for termination, yet it would be a circumstance to be taken into account on the question of reinstatement. He cites several Indian decisions for his proposition (Reports not available).

It is not the Respondent Bank's case that it reasonably suspected the applicant-appellant of dishonest participation in the fraudulent withdrawals or attempted withdrawals of monies in respect of Savings Deposit Accounts, and the applicant-appellant no longer enjoys the confidence of the employer. Nor is it the Labour Tribunal's position that there is reasonable suspicion of the applicant-appellant's involvement, and though it would not be a ground for termination, but, as the applicant-appellant occupies a position of confidence, an award of compensation in lieu of reinstatement is the just and equitable order. The President of the Labour Tribunal has clearly misdirected himself in law when he finally concluded that the termination was for good cause because in his view, the applicant-appellant's conduct not being above board, he was not a fit person to be continued in employment, as he holds a position of confidence.

In my view the termination of employment of the applicant-appellant by the Respondent Bank was unjustified, wrongful and unreasonable.

The appeal is allowed and I set aside the judgment of the Court of Appeal dated 7.3.1986 and the Order of the Labour Tribunal dated 7.1.1980.

The question arises, what is the relief that should be granted to the applicant-appellant?

In the application for grant of Special Leave to Appeal to this Court, the applicant-appellant has stated that he, an officer-in-charge of the Corporate Department, was interdicted along with the officer-in-charge of the Savings Department, P. M. P. Peiris; that both were served with Charge Sheets and Peiris was charged with regard to two fraudulent cheque transactions and Savings

Pass Book frauds; that he was exonerated after a domestic inquiry but not reinstated; placed on half-pay from 1.1.73 and later his services were terminated on 5.6.74 with effect from 1.1.71. But, on the other hand, Peiris who admitted fraud in respect of Pass Books and the two fraudulent cheque transactions, after domestic inquiry, was reinstated on 18.3.74; demoted from his Grade to one Grade below, and retired on 1.5.75. This position was reiterated in the applicant-appellant's written submissions and has not been contradicted by the Respondent Bank in its own written submissions. Perera, the Manager of the Respondent Bank, also confirms what the applicant-appellant says.

This punishment meted out to the applicant-appellant by the Respondent Bank is clearly discriminatory. The two courses of action vis-a-vis Peiris on the one hand and vis-a-vis the applicant-appellant on the other hand adopted by the Respondent Bank appear to me to be illogical and incongruous. A Public Institution like the People's Bank cannot afford to be selective in its punishment of two officers holding the same rank in the same Institution. It dismissed the applicant-appellant who was exonerated at the domestic inquiry and whom the Criminal Investigation Department had cleared, but, showed leniency and reinstated Peiris, who on his own admission, accepted his involvement in fraudulent transactions.

The tragic feature in this case is the inordinate delay in the hearing of this case in the Labour Tribunal and in the delivery of its order. The applicant-appellant, when he commenced his evidence on 22. 1. 79, gave his age as 47 years. On the date of his dismissal from service, i.e. 5. 6. 74, he would have been about 42 years and 4 months old. His application to the Labour Tribunal was on 23. 7. 74 and the President delivered his order on 7. 1. 80, about 5½ years later. It took him about a year to deliver his order. The Court of Appeal delivered its judgment on 7. 3. 86 and in November this year, the applicant-appellant would reach the age of 56 years and 10 months. There is no evidence as to the age of retirement of an officer holding the rank of the applicant-appellant in the Respondent Bank. There is also no evidence as regards the terminal salary he was earning and the retiral benefits such an officer would be entitled to.

In my view, the just and equitable order that I should make in this case is that the applicant-appellant be reinstated with immediate effect with all arrears of salary from 1. 7. 71 (less the half-pay he received for a certain period of time) and other benefits, as if there had been no break in service. The applicant-appellant was a member of the Bank's Pension and Provident Fund Schemes. In Case the applicant—appellant has by now reached the age of retirement, I make order that in addition to all arrears of salary and such other benefits as aforesaid, the applicant-appellant be placed on retirement with all retiring benefits as provident fund payments and pension, on the basis that there was no interruption in service.

I also make order that the Respondent Bank pay the applicant-appellant costs of all proceedings fixed at Rs. 7,500/.

**RANASINGHE, C.J.** — I agree.

**AMERASINGHE, J.** — I agree.