

# Ceylon Oil Workers' Union v. Ceylon Petroleum Corporation

## COURT OF APPEAL

RATWATTE, J. AND TAMBIAH, J.

C. A. (S.C.) 175/77.

NOVEMBER 7, 1978.

*Labour Tribunal—Appeal on question of law—Whether evidence available to support determination—Fraud committed by workman—Termination justified.*

### Held

(1) In an appeal from the order of a Labour Tribunal the plea that there was no evidence to support a determination can be raised as a question of law. In the present case there was such evidence to support the finding of the Tribunal that the termination was justified.

(2) Where the misconduct of the workman lay in the commission of a fraud on the employer, the misconduct is of so serious a nature that it strikes at the very foundation of the contract of service and warrants summary dismissal. The workman had been placed in a position of trust and confidence by the employer in the expectation that he would discharge his duties honestly and conscientiously, but had shown by his conduct that he can no longer command the confidence of his employer. The continuation in service of such an employee would prejudice the good name, reputation and interests of the employer.

### Cases referred to

(1) *Queen v. Kularatne*, (1968) 71 N.L.R. 529.

(2) *Jupiter General Insur. Co. v. Shroff*, 1937 (3) All E.R. 67 (P.C.)

APPEAL from a Labour Tribunal.

*Prins Gunasekera*, for the appellant.

*H. S. Yapa*, State Counsel, for the respondent.

*Cur. adv. vult.*

January 24, 1979.

### TAMBIAH, J.

The applicant-appellant, on behalf of its member one K. D. C. S. Perera, made an application to the Labour Tribunal stating that his employment was unjustifiably terminated by the respondent-corporation, and prayed for re-instatement and back wages for the period of non-employment. At the time of the termination of his employment, Perera was the Bulk Depot Superintendent, at Matara.

There is in operation in the Ceylon Petroleum Corporation a Medical Assistance Scheme, under which an employee of the Corporation was entitled to claim re-imbusement of medical expenses incurred by him. Under this scheme each employee was issued with a "Treatment Card". On this card, particulars

relating to routine medical expenses (e.g., treatment by a general practitioner), consultants' and specialists' fees, and expenses incurred for clinical tests are required to be entered. Medical expenses are to be supported by bills from medical practitioners. On presentation of the medical bills and the treatment card, an employee was repaid the expended money.

On behalf of the respondent-corporation, Perera, amongst his other duties, was entrusted with the administration of the medical assistance scheme at Matara; it was he who personally entered the necessary particulars in every treatment card issued to the employees. There can be no doubt that Perera was quite conversant with the operation of the scheme and the formalities that ought to be observed before an employee can make a claim for reimbursement of the medical expenses he has incurred.

It would appear from the evidence that one S. Thalpahewa was detailed by the respondent-corporation to investigate into the alleged abuse and misuse of and malpractices in connection with, the medical assistance scheme by the corporation employees at Matara. In the course of his investigation, he discovered that certain bills issued by one Dr. Abeysinghe, who was on the panel of doctors nominated by the corporation, to two employees, one Mendis and one Hemapala, purporting to be charges for channelling two medical specialists, were not genuine. The two workmen had obtained reimbursement on the basis of the medical bills issued by Dr. Abeysinghe. On the reports submitted by the investigating officer Thalpahewa, the two workmen were interdicted. In the course of the domestic inquiry against them, it transpired that K. D. C. S. Perera and others had also obtained similar bills from Dr. Abeysinghe and claimed reimbursement of medical expenses incurred for obtaining specialist treatment through the channel practice scheme. Thalpahewa after investigation had submitted a further report against K. D. C. S. Perera, who was interdicted and after a domestic inquiry, his services were terminated on 10.6.1975.

The respondent-corporation in their statement dated 17.11.1975 alleged several charges against the workman Perera to justify his dismissal. At the inquiry before the Labour Tribunal, the respondent-corporation confined its case to the charge of misconduct contained in paragraph 6 (1), (2) and (3) which reads as follows :—

- 6(1) that he did whilst being employed at the Matara Depot together with M. D. Mendis and others concerned in this matter fraudulently obtain from Dr. V. P. S. Abeysinghe of Poly Clinic, Matara, a false receipt for

a sum of Rs. 25 to show that he was examined by Dr. R. L. Fernando, Medical Specialist and forwarded same for reimbursement and that he did fraudulently obtain from the Corporation a sum of Rs. 25 and thereby committed an act of gross misconduct ;

- (2) that in the course of the same transaction he did mislead the Corporation into the belief that on 21.8.73 a paid consultation with Dr. R. L. Fernando, Medical Specialist was privately arranged to obtain medical advice and that on the said false pretence forwarded to the Corporation a receipt for a sum of Rs. 25 obtained from Dr. V. P. S. Abeysinghe and fraudulently obtained payment thereof with the knowledge that a loss will be caused to the Corporation ;
- (3) that he did, by his conduct as stated in paragraphs (1) and (2) above fail in his duty to protect the good name of the Corporation and thereby brought the Corporation into public disrepute.

The respondent's witness, S. Thalpahewa, testified to the events leading up to the domestic inquiry in consequence of which the services of Perera were terminated. Amongst other documents, he produced R5 dated 21.8.77, a signed receipt alleged to have been issued by Dr. Abeysinghe which reads, "Received from K. D. C. S. Perera a sum of Rs. 25 as channelling charges for Dr. R. L. Fernando, Physician"; R6 dated 21.8.77, another signed receipt alleged to have been issued by Dr. Abeysinghe which states, "Received from K. D. C. S. Perera a sum of Rs. 20 for medicines supplied to him"; R7, a specimen copy which sets out the medical assistance scheme; R7A, the treatment card issued to Perera, wherein under his own hand against the date 21.8.77, Perera has entered the name of Dr. Abeysinghe and claimed a sum of Rs. 20 on the basis of the receipt R6 and also entered the name of Dr. R. L. Fernando and claimed a sum of Rs. 25 as specialist's fee on the basis of the document R5; R11 a letter addressed by the respondent to the D.M.O., Matara, inquiring whether on 21.8.73 Dr. R. L. Fernando had been channelled by Dr. Abeysinghe to examine K. D. C. S. Perera and R12 the D.M.O.'s reply dated 18.4.74 stating that the specialist Dr. R. L. Fernando had not been channelled by Dr. Abeysinghe to examine Perera on 21.8.73; R8, the Attendance Register for 1973, Matara Bulk Depot, according to which Perera on 20.8.73 had been working from 7.05 a.m. till 6.50 p.m. and on 21.8.73 from 7.20 a.m. to 8.20 p.m.

The respondent's only other witness, Dr. K. Gunaratne, D.M.O., Matara, described the channel practice scheme and stated that the services of a specialist medical practitioner in government service could be availed of by an out-door patient on payment of a specified fee to the channel consultation office. An out-door patient could himself personally obtain the services of a medical specialist by making direct payment to the channel consultation office or obtain the services of a medical specialist through a private practitioner, in which event the private practitioner was responsible for the payment of the specified fee to the channel consultation office; a patient could also see the specialist at the hospital O.P.D. clinic without going through the formality of channelling and this did not involve any payment of fees. He further stated that according to the registers maintained at the channel consultation office, neither Perera directly nor Dr. Abeysinghe on his behalf had obtained the services of Dr. R. L. Fernando either on 21.8.73 or on any other day in August or in July 1973; nor was there an entry pertaining to the payment of Rs. 25 to Dr. Fernando. Dr. Gunaratne also identified document R12 as one signed by his predecessor in office.

For the applicant, the workman Perera was the sole witness. He stated that he fell down from a bowser on 16.8.73 and consulted Dr. Abeysinghe on 20.8.73, who issued to him a report and directed him to see Dr. Fernando at his clinic on the same day. He accordingly saw Dr. Fernando at the hospital clinic on 20.8.73. On the next day 21.8.73 he saw Dr. Abeysinghe who issued to him the document R5 being a receipt for Rs. 25 for "channelling charges for Dr. R. L. Fernando" and R6 for Rs. 20 being Dr. Abeysinghe's charges for medicines supplied to Perera. On the basis of R5 and R6 he perfected the treatment card R7 and entered the payment of Rs. 20 as out-door treatment charges paid to Dr. Abeysinghe and Rs. 25 as specialist fees to Dr. Fernando and the respondent-corporation reimbursed him with those two sums of money. Perera admitted that he was cognisant with the channel scheme; that Dr. R. L. Fernando was not channelled under the channelling scheme, and that no payment was due to Dr. R. L. Fernando and that in fact no payment was made to him either by him or through Dr. Abeysinghe.

At the conclusion of the inquiry the learned President dismissed the application and held that the workman Perera's termination of services was justified. In his order the learned President stated:—

"From the evidence and other data laid before me in this case I am of opinion that the workman had fraudulently obtained a fictitious receipt from a private practitioner

Dr. V. P. S. Abeysinghe of Poly-clinic, Matara. This bill was dated 21.3.75 for a sum of Rs. 25 indicating that he has been examined by Specialist Dr. R. L. Fernando when on the day in question the said specialist had not been summoned by the Channelled Consultation Office and no indication of this payment was reflected in the registers maintained at the Channelled Consultation Office as stated by Dr. K. Gunaratne, D.M.O., who gave evidence before this Tribunal. Hence I come to the conclusion that the workman K. D. C. S. Perera has fraudulently obtained reimbursement from the Corporation for a payment which he had not, in fact, made as medical expenses. Hence I am of opinion that the workman on obtaining reimbursement on R5 has committed a breach of discipline whilst holding a responsible position as Superintendent of the Depot."

Learned counsel for the applicant-appellant submitted that there is no evidence to support the finding that the document R5 is a "fictitious receipt". He submitted further that document R5 was produced in evidence by the respondent; it is not the respondent's position that R5 is a forgery; having produced R5, the burden was on the respondent to prove that it was not a genuine document; R5 states that Rs. 25 has been received from the workman Perera "as channelling charges for Dr. R. L. Fernando" and that the only two persons who could have substantiated the charge against Perera were Dr. Abeysinghe and Dr. Fernando, both of whom, have neither been questioned by the investigating officer Thalpahewa nor called to testify at the inquiry before the Tribunal.

He further submitted that the absence of an entry in the register regarding payment of Rs. 25 to Dr. Fernando is not conclusive evidence; it does not rule out the possibility of the money being received by Dr. Fernando. So too the Attendance Register, R18, is not conclusive evidence of the workman Perera not having seen both doctors.

An appeal from an order of a Labour Tribunal can only be preferred on a point of law. "In cases where an appeal is given on a matter of law, a plea that there was no evidence to support a determination is always permitted to be raised as a question of law. Whether there is sufficient evidence or whether the evidence is reasonable, trustworthy or conclusive, or, in other words, the weight of evidence is a question of fact"—per Samerawickreme, J. in *Queen v. Kularatne* (1) at 555.

It seems to me that the crux of the charge against the workman Perera is that by falsely representing to the respondent-corporation that the specialist Dr. Fernando had been channelled by Dr. Abeysinghe to examine him, he had incurred Rs. 25 as channelling charges and thereby induced the respondent-corporation to reimburse him in a sum of Rs. 25. The plain construction to be placed on document R5 is that the workman Perera had paid Rs. 25 to Dr. Abeysinghe as charges for channelling the specialist Dr. Fernando to examine him.

The D.M.O., Dr. Gunaratne's evidence is clear that Dr. Fernando had not been channelled by Dr. Abeysinghe to examine the workman Perera nor has any specialist's fees been paid to Dr. Fernando. It is Perera's own admission that he was not examined by Dr. Fernando under the channelling scheme and that no payment was due as channelling charges, and that he was examined at the hospital O.P.D. clinic for which no payment was due. One therefore fails to appreciate how, in terms of the document R5, Perera could have paid Dr. Abeysinghe Rs. 25 as channelling charges, when on his own admission, he has had a free clinical examination which involved the payment of no fees.

The attendance register R8 shows that on 20.8.73 Perera had been on duty from 7.05 a.m. to 6.50 p.m. and on 21.8.73 from 7.20 a.m. to 8.20 p.m., on the basis of which he was admitted to payment for overtime work. In the light of the document R8 his evidence that he consulted Dr. Abeysinghe and Dr. Fernando becomes suspect. In my view there is evidence to support the finding of the learned President that the termination of employment was justified.

Learned counsel for the applicant-appellant also submitted that the respondent-corporation had no right to terminate the services of the workman Perera in view of Rule 13 contained in the Medical Assistance Scheme (R7), which is reproduced below :—

“Where in the opinion of the Committee of Management an employee has directly or indirectly abused or misused or has attempted to abuse or misuse or has aided or abetted the abuse or misuse in any manner whatsoever of the facilities provided under the Ceylon Petroleum Corporation “Medical Assistance Scheme”, such employee shall be disentitled to receive further facilities under this scheme, provided that the decision of the Committee of Management shall be subject to appeal to the Board of Directors, whose decision shall be final and conclusive.”

Learned counsel submitted that the punishment for the abuse or misuse of the facilities provided under the Scheme is spelt out in Rule 13 itself, viz., deprivation of further facilities under the Scheme and therefore the respondent-corporation was not justified in terminating the workman Perera's employment. I am unable to agree with this submission. The misconduct of the workman Perera lay in the commission of a fraud on the respondent-corporation, by putting forward a false claim and false to his knowledge, on which he claimed reimbursement. The commission of a fraud is misconduct of so serious a nature, which strikes at the very foundation of the contract of service and warrants summary dismissal. However, the respondent-corporation had afforded him a domestic inquiry and thereafter terminated his services.

Learned Counsel for the applicant-appellant also submitted that the order of the learned President dismissing the application of the workman Perera and holding that the termination of his services was justified was not a just and equitable one, for the reason that it was in the course of investigation and inquiry into the cases of other workmen who had submitted false medical bills that the respondent-corporation stumbled on the case of the workman Perera ; that the respondent-corporation in its answer having alleged several other charges against Perera, finally confined its case to one charge only.

As was observed by Lord Maugham in the case of *Jupiter General Insur. Co. v. Shroff*, (2) at p. 74, in determining the question whether dismissal was justified or not, "the test to be applied must vary with the nature of the business and the position held by the employee". The employer in this case is the Ceylon Petroleum Corporation which is a national venture run with public funds. The employee Perera was holding the high office of Superintendent of the Bulk Depot, Matara, and in addition was entrusted with the administration of the medical assistance scheme at Matara, a scheme intended for the benefit of its employees. The respondent-corporation had placed Perera in a position of trust and confidence, with the expectation that he would discharge his duties honestly and conscientiously. He has belied the hopes of his employer. Perera has shown by his own conduct that he can no longer command the confidence of his employer. The continuation in service of such an employee would prejudice the good name reputation and interests of the employer.

Learned State Counsel brought to our notice that, despite the dismissal the workman Perera, in addition to payment of Rs. 10,918/26 as Employees Provident Fund, has also been paid a sum of Rs. 8,592/50 as gratuity. It is also so stated in the statement dated 17.11.75 of the respondent. In view of this, while affirming the order of the learned President we remit the application to the Labour Tribunal in order to ascertain whether this sum of Rs. 8,592/50 has been paid to the workman Perera, and in the event this amount has not been paid, to make such orders as are necessary, to ensure the payment of the said amount to him.

The appeal is dismissed without costs.

**RATWATTE J.**—I agree.

*Appeal dismissed.*

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