

**CEYLON BANK EMPLOYEES UNION**  
**v.**  
**BANK OF CEYLON**

SUPREME COURT  
AMERASINGHE, J.,  
DHEERARATNE, J. AND  
SHIRANI BANDARANAYAKE, J.  
S.C. APPEAL NO. 73/97  
H.C. (A) L.T. NO. 5/95  
L.T. NO. 23/KU/336  
NOVEMBER 28TH, 1997.

*Industrial Dispute – Labour Tribunal decision – Dismissal of a workman – Variation between the charge and the ground of dismissal upheld by the Labour Tribunal.*

The applicant (workman) was employed in the Bank of Ceylon, Kuliyaipitiya. His services were terminated after a domestic inquiry on the basis that he was guilty of several charges involving cheating, misappropriation and fraud. The President of the Labour Tribunal exonerated the applicant on every charge of dishonesty and fraud but found him guilty of negligence and held that his dismissal was, therefore, justified.

**Held:**

There was a lack of judicial evaluation of the material relevant to negligence. In any event, negligence was not a matter which was within the ambit of the charge levelled against the applicant. Without giving an opportunity to meet that charge it would be unsafe to conclude that the applicant was negligent.

**Case referred to:**

1. *Bank of Ceylon v. Manivasagasivam* 1995 – 2 SLR 79.

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

*Gomin Dayasiri* with *Ms. Manoli Jinadasa* for the appellant.

*Asanga Gunawansa* S.C. for the respondents.

*Cur. adv. vult.*

December 17, 1997.

**DHEERARATNE, J.**

The applicant on whose behalf this appeal is made (the applicant) was employed by the 2nd respondent Bank (the Bank) at the time his services were terminated and was attached to the 1st respondent Kuliyaipitiya Branch as a Grade III Class III officer. He had an unblemished record of service counting 19 years with the Bank, until he was interdicted on 12.6.1985. It was two and a half years thereafter that a charge sheet was served on him; and it was over five years after the interdiction that a domestic inquiry against him commenced. On being found guilty at that inquiry of several charges, by letter dated 15.7.91 the Bank terminated his services with effect from the date of interdiction.

The Bank justified the termination of the applicant's services on the basis that he was guilty of several charges concerning cheating, misappropriation and fraud alleged to have been committed between 12.7.1984 to 31.5.1985. I shall examine these charges presently.

The first of those charges was that on 17.12.84, a sum of Rs. 9,500 was withdrawn from the savings account belonging to one Abeyratne, on a withdrawal form wherein the account holder's signature was forged. The applicant had approved the withdrawal. Abeyratne gave evidence at the domestic inquiry but he was not available to give evidence at the Labour Tribunal. His positive evidence at the domestic inquiry was that he signed the withdrawal form. There was no loss occasioned to either him or the Bank.

The second charge related to the withdrawal of a sum of Rs. 9,500 on 22.4.85 from the savings account of one Ratnawathie. It was alleged that the signature of Ratnawathie on the withdrawal voucher was forged and that the applicant had approved the withdrawal. Ratnawathie was not called to testify and there was not an iota of evidence to substantiate that the voucher was forged.

The third charge related to the deposit of Rs. 1,000 in the deposit account of one Indrani Neetha on 20.2.85. It was alleged that the account holder gave Rs. 2,000 to be deposited and that the applicant

misappropriated Rs. 1,000. The evidence of the account holder was that she gave only Rs. 1,000 to be deposited to one Wimalasena a security guard who had correctly deposited that amount to her credit. No misappropriation on the part of anyone was proved.

The fourth charge related to withdrawal of a sum of money by one Jordhi on 12.4.85. It was alleged that the withdrawal voucher was altered from Rs. 1,000 to read Rs. 7,000 and a sum of Rs. 6,000 was misappropriated. The voucher clearly read seven thousand in words and the ledger reflected corresponding entry for the withdrawal of a sum of Rs. 7,000. Again no misappropriation on the part of anyone was proved.

The fifth charge related to the withdrawal of a sum of Rs. 17,000 on 17.4.85 and 26.4.85 (Rs. 8,500 each day) from the savings account of one Emalin on forged withdrawal forms approved by the applicant. Emalin never complained that she was defrauded. The evidence relating to this transaction came from a co-employee of the applicant, one Sumanawathie, who was charged along with the applicant in MC Kuliyapitiya case No. 85784. That evidence was insufficient to bring home that charge. I may add, purely to put the record straight, that the applicant was acquitted in that case.

The sixth charge related to the savings account of one Simon Singho. It was alleged that a sum of Rs. 6,750 was withdrawn on 23.1.85 on a forged withdrawal form. A bank employee called Somadasa has admitted that he misappropriated that money. There was nothing to link the applicant with that charge.

It is quite significant that evidence led at the Labour Tribunal disclosed the fact that the applicant never maintained the ledger and that he had to approve about 200 to 300 vouchers a day. Having exonerated the applicant on every charge of dishonesty and fraud, the learned President found the applicant guilty of negligence and held that his dismissal was therefore justified. Neither in the charge sheet served on the applicant nor in the answer filed before the Tribunal did the employer Bank rely on the applicant's negligence to justify his dismissal. That allegation seems to have suddenly sprung up in the submissions of counsel who appeared for the Bank at the Labour Tribunal, as a last-ditch manoeuvre to justify applicant's dismissal.

Let me refer to all the instances where the learned President refers to applicant's negligence. In dealing with the transaction relating to Abeyratne (charge 1), the learned President states that the applicant was negligent because the transaction was not entered in Abeyratne's pass-book. The learned President has not even considered at what stage should the pass-book have been up-dated. In any event that was not a matter which was within the ambit of the charge levelled against the applicant. Without giving an opportunity to meet that charge it would be unsafe to conclude that the applicant was negligent.

The next point at which the learned President adverts to negligence, is in his consideration of the charge relating to Emalin (charge 5). The learned President merely states the applicant was negligent without specifying the act or acts of negligence on the part of the applicant. Thereafter the learned President winds up by making the following sweeping statement: "When all the evidence is taken into consideration it is observed that the applicant has acted **at times** (emphasis added) in a negligent manner. When considering the post occupied by the applicant and the responsibilities that go with it, the respondent Bank cannot have any confidence in him. I therefore hold that the termination of his employment is justified".

There appears to have been a lack of judicial evaluation of not only the "times" at which the applicant was negligent but also of the particulars and the manner in which he was negligent, which warranted his dismissal. The learned High Court Judge overlooked this glaring infirmity in the reasoning of the learned President.

Learned counsel for the respondents drew our attention to the case of *Bank of Ceylon v. Manivasagasivam*<sup>(1)</sup> where the question of forfeiture of the confidence reposed in a bank employee was considered. I can see no parallel with that case because there the very justification for dismissal was the suspicious course of conduct of the employee in relation to the Bank, in the attempt by some other persons to fraudulently transfer a large sum of money from the Island to an account abroad.

For the foregoing reasons, I allow the appeal and set aside both the judgments of the Labour Tribunal and the High Court. I direct the 2nd respondent Bank to reinstate the applicant with effect from

1st January 1998, with back wages from 12.6.1985. The 2nd respondent Bank will pay the applicant a sum of Rs. 25,000 as costs.

**AMERASINGHE, J.** – I agree.

**BANDARANAYAKA, J.** – I agree.

*Appeal allowed.*

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