COLOMBAGE
v.
CEYLON PETROLEUM CORPORATION

SUPREME COURT.
G. P. S. DE SILVA, CJ.,
KULATUNGA, J.,
RAMANATHAN, J.
S.C. NO. 6/93.
LT NO. 8/2928/89.
JANUARY 28, 1993.
MAY 14, 1993.

Industrial Disputes Act – Section 36 (4) – Termination – Assaulting a fellow workman – Finding on inadmissible hearsay – Evidence Ordinance.

Held:

1. A Labour Tribunal is not bound by the provisions of the Evidence Ordinance.

2. However, s. 36 (4) of the Industrial Disputes Act does not permit a Labour Tribunal to act in total disregard of one of the fundamental principles underlying the provisions of the Evidence Ordinance.

3. Inadmissible hearsay is excluded on the plainest considerations of fairness and justice, for it is material upon which no reliance could be placed. A Labour Tribunal is clearly under a duty to judicially evaluate the evidentiary material placed before it.

APPEAL from the High Court of Colombo.

Case referred to:

Ceylon Transport Board v. Ceylon Transport Workers' Union – 71 NLR 158 at 163.

R. B. Seneviratne for applicant-appellant.

Bimal Rajapakse with *Yasalal Kodithuwakku* for respondent-respondent.

Cur. adv. vult.

June 25, 1993.

DE SILVA, CJ.

The services of one Colombage, a labourer employed at the Ceylon Petroleum Corporation (respondent) were terminated on the ground that he had assaulted a fellow workman named Gunaratne while on duty and caused serious injury. Colombage made an application to the Labour Tribunal for reinstatement and backwages. The application was dismissed; the Labour Tribunal held that the charge was proved. He appealed unsuccessfully to the High Court. He has now preferred an appeal to this Court.

The injured Gunaratne called to testify before the Labour Tribunal. There was no evidence whatever, direct or circumstantial, to show that Colombage assaulted Gunaratne. However, the Labour Tribunal dismissed the application solely on the basis of a report marked R1 made by an Assistant Security Officer of the respondent, named Basnayake. R1 contained a *summary* of statements alleged to have been made by Colombage, Gunaratne and two other persons to Basnayake. Though Gunaratne did not give evidence before the Labour Tribunal, in his statement in R1 he claimed that Colombage assaulted him. Moreover, R1 contained a statement of one Abeywardena who claimed that he saw Colombage assaulting Gunaratne. Abeywardena too was not called as a witness before the Labour Tribunal.

Thus, on a scrutiny of the report R1, it is clear that the Labour Tribunal has reached the finding that the charge against Colombage has been established *purely* on inadmissible hearsay. No doubt a Labour Tribunal is not bound by the provisions of the Evidence Ordinance (s. 36 (4) of the Industrial Disputes Act). Tennekoon, J. (as he then was) in *Ceylon Transport Board v. Ceylon Transport Workers' Union*[1] at 163, referred to section 36 (4) and stated: "This is only intended to permit a Labour Tribunal in its discretion – which of course must be exercised reasonably – to admit as evidence all matters which he considers material even though a court of law would not regard it as judicial evidence". In my view this section does not permit a Labour Tribunal to act in total disregard of one of the fundamental principles underlying the provisions of the Evidence Ordinance. A Labour Tribunal is clearly under a duty to judicially

evalute the evidentiary material placed before it. This the Labour Tribunal has failed to do, for it has acted solely on inadmissible hearsay contained in R1. Inadmissible hearsay is excluded on the plainest considerations of fairness and justice, for it is material upon which no reliance could be placed. The evidentiary value of R1 is nil.

The resulting position is that the Labour Tribunal has reached a finding against the workman for which there is no evidence. This, clearly, is an error of law; the High Court erred in refusing to disturb the finding of the Labour Tribunal on the ground that there was no error of law.

The order of the Labour Tribunal and the judgment of the High Court are accordingly set aside and the appeal is allowed with costs fixed at Rs. 500. I direct that the workman be reinstated with backwages.

Counsel for the respondent has stated in his written submissions that the terminal salary was Rs. 952/50 per month according to the personal file of the workman. The date of interdiction was 18.03.1987. The backwages payable woould be for a period of 76 months, and would amount to Rs. 952/50 x 7 Rs. 72,390. The workman may be reinstated on or before 18th July, 1993.

As an alternative to reinstatement, it is open to the respondent to pay in addition to the backwages amounting to the aforesaid sum of Rs. 72,390, a sum of Rs. 952/50 x 12 = Rs. 11,430 as compensation. The quantum of compensation is limited to a period of one year, owing to the special facts and circumstances of this case; the proceedings reveal that Gunaratne had sustained a serious injury while at work and his failure to testify before the Labour Tribunal was due to threats directed at him. The respondent is directed to deposit the money payable to the workman with the Assistant Commissioner of Labour, Colombo South Labour Secretariat, on or before 31.08.1993.

KULATUNGA, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.