

**NATIONAL SAVINGS BANK**  
...  
v.  
...  
**CEYLON BANK EMPLOYEES' UNION**

**SUPREME COURT**  
WANASUNDERA, J., WIMALARATNE, J., AND SOZA, J.  
S.C. 5/82.  
S.C. SP.L. A. 104/81.  
C.A. 542/80.  
L.T. 1/17594/79.  
JULY 14, 1982.

*Termination of employment – Cheating at examination – Misconduct sufficient for dismissal – Banks' special duty to ensure honesty of its employees.*

The appellant dismissed one Sarath Amarasuriya for cheating at an examination conducted by the Bankers Training Institute.

Sarath Amarasuriya admitted the offence of having in his possession notes relevant to the paper he was answering in the examination hall but prayed for leniency. The Labour Tribunal directed re-instatement but did not award back wages. On appeal by the appellant the Court of Appeal affirmed the decision of the Labour Tribunal. The appellant appealed to the Supreme Court.

**Held—**

That the Bank is under a special duty to ensure the honesty of its servants is not open to question and that therefore the misconduct of the employee at the examination justified the Bank's dismissing the employee.

**Cases referred to:**

- (1) *Clouston & Co. Ltd. v. Corry* (1906) A.C. 122, 129.
- (2) *Bakshi R Agnesh v. Bharat Bank Ltd.* Gazette of India, January 20, 1951, 72.

APPEAL from judgment of the Court of Appeal.

*Isidore Fernando* for appellant.

*S. Sinnetamby* for respondent.

*Cur. adv. vult.*

September 22, 1982

**SOZA, J.**

In this case the appellant Bank had dismissed a clerk in its service one Sarath Amarasuriya for alleged misconduct at an examination conducted by the Bankers' Training Institute in February 1979. Amarasuriya was detected having in his possession notes relevant to the question paper he was answering by the Supervisor at the examination hall. He was thereafter debarred for life by the Institute from sitting any examination conducted by it. On 4.6.1979 the Institute reported the matter to the appellant Bank by its letter R1. The appellant Bank then on 12.6.1979 wrote letter R1A to Amarasuriya asking him for his explanation. Amarasuriya replied by letter R2 of 20.6.1979 admitting having committed an offence by having in his possession notes relevant to the paper he was answering at the examination and requesting that the punishment be fair and merciful. The Bank however terminated Amarasuriya's employment on 20.7.1979. Thereupon on 26.7.1979 the Ceylon Bank Employees' Union who is the respondent to this appeal filed an application in the Labour Tribunal on behalf of Amarasuriya claiming inter alia back wages and reinstatement for him from the appellant Bank. The learned President of the Labour Tribunal inquired into this matter and by his order of 28.7.1980 directed reinstatement but did not award back wages. The appellant Bank appealed to the Court of Appeal from this order. At the hearing of the appeal the appellant was not represented and the order of the learned President of the Labour Tribunal was affirmed. The appellant Bank now seeks the intervention of this Court having obtained special leave to appeal.

So far as the facts go, although the Institute of Bankers appears to have acted on the footing that Amarasuriya was detected referring

to notes in his possession during the examination, the appellant Bank appears to have been content with treating the matter as a "case" of possession of notes at the examination hall.

The question before us is whether possession of notes relevant to the examination at the hall is misconduct grave enough to justify dismissal. On the general question of misconduct by an employee the Privy Council had the following observations to make in the case of *Clouston & Co. Limited v Corry* (1):

"There is no fixed rule of law defining the degree of misconduct which will justify dismissal. Of course there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the other. On the other hand, misconduct inconsistent with the fulfilment of the express or implied conditions of service will justify a dismissal. Certainly when the alleged misconduct consists of drunkenness there must be considerable difficulty in determining the extent or condition of intoxication which will establish a justification of dismissal. The intoxication may be habitual and gross, and directly interfere with the business of the employer or with the ability of the servant to render due service. But it may be an isolated act committed under circumstances of festivity and in no way connected with or affecting the employer's business. In such a case the question whether the misconduct proved establishes the right to dismiss the servant must depend upon facts—and is a question of fact."

The Board was here considering whether drunkenness amounts to misconduct. From the passage quoted what emerges is that the question of misconduct is a question of fact and the test applicable is, 'Is the misconduct inconsistent with the fulfilment of the express or implied conditions of service?'

We were referred to a passage in Alfred Avins' book on *Employees' Misconduct* (1968) pp. 482, 483 where the learned author relies on the case of *Bakshi R. Agnesh v Bharat Bank Ltd.* (2) for the proposition that a bank clerk who cheats at an examination held by the Indian Institute of Bankers commits misconduct in his employment, since there is at least a false implied representation that the examination rules have been complied with, and the results of the examination will be used by the bank in considering the employee for promotion. I have consulted the report of this case and find it was decided on

an application of Rule 4(a) of the Indian Banks bye-laws (Revised Edition) 1947. I am not aware whether the appellant Bank has any similar bye-law. In any event it would not be appropriate to rely on the decision in question in the case before us which has not been presented on an alleged infringement of any bye-law of the Bank. However the principles which should guide the Court in deciding a case like the one before it are clear.

The public have a right to expect a high standard of honesty in persons employed in a bank and bank authorities have a right to insist that their employees should observe a high standard of honesty. This is an implied condition of service in a bank. Conduct on the part of a bankman which tends to undermine public confidence amounts to misconduct. Whether the misconduct relates to the discharge of his duties in the bank or not, if it reflects on the bankman's honesty, it renders him unfit to serve in a bank and justifies dismissal.

It was argued before us that Amarasuriya had taken his notes into the hall inadvertently. He had been referring to the notes when travelling to the place of examination and had at the last minute put the notes into his pocket and oblivious of this fact entered the examination hall. This story, even if true, shows such careless disregard for the requirements of honesty at an examination as to amount to misconduct.

The learned President found that Amarasuriya has innocently taken the examination notes into the hall but in the same breath he declared that an offence had been committed, and a serious offence at that. He went on to hold that Amarasuriya was guilty of misconduct at an examination but not of misconduct at his work place and ordered reinstatement. The learned President has failed to appreciate the fact that he was considering the case of an employee of a bank which is under a special duty to ensure that the honesty of its servants is not open to question. The dismissal of Amarasuriya was therefore justified. The order of the learned President cannot be allowed to stand.

The Court of Appeal had dismissed the appeal of the Bank. But the Bank had not been represented at the hearing of the appeal and the Court did not have the advantage of a full argument. Here too the fact that this was a case of a bankman whose integrity was under a cloud did not receive adequate weight.

I therefore allow this appeal and set aside the orders of the Learned President and of the Court of Appeal. The order of dismissal of

Sarath Amarasuriya from the service of the appellant Bank will stand but there will be no costs.

**WANASUNDERA, J.** – I agree.

**WIMALARATNE, J.** – I agree.

*Appeal allowed.*