

**GENERAL MANAGER, CEYLON ELECTRICITY BOARD  
AND ANOTHER  
V.  
GUNAPALA**

COURT OF APPEAL,  
GUNASEKERA J.,  
C.A. 357/88,  
L.T. GALLE 4/G/16376/85,  
10 AND 11, DECEMBER 1990,

*Industrial Dispute - Consuming liquor while on duty - Contravention of circular - Termination of Employment- Appeal captioned in the name of juristic persons - Failure to specify identified questions of law in petition of appeal*

**Held:**

Though the General Manager of the Ceylon Electricity Board and Electrical Engineer named in the caption are non juristic persons the petition of appeal has in fact been signed by the Ceylon Electricity Board which is set up by Ceylon Electricity Act No. 17 of 1969 and invested with the right to sue and be sued in the corporate name. Therefore the error in the caption does not affect the validity of the petition.

It is sufficient if the question of law is apparent from the body of the petition. The failure to set out specifically the question of law to be determined does not affect the validity of the petition of appeal.

The circular issued by the General Manager of the Ceylon Electricity Board prohibited consumption of liquor by its employees. The appellant was proved to have consumed liquor in contravention of the circular while on duty. When this was found by the President he erred in law in ordering reinstatement instead of upholding the dismissal. The fact that other employees who were found to have consumed liquor were not similarly dismissed from service is not relevant.

**Cases referred to:**

1. *Lanka Wall Tiles Ltd. V. Cyril* (1986) 2 CALR 344
2. *Karunaratne v. Uva Regional Transport Board* (1986) 1 CALR 93

APPEAL from order of the President of the Labour Tribunal

*S.M. Fernando* for appellant

*Haritha Senanayake* for respondent.

*Cur. adv. vult.*

18 January, 1991

**GUNASEKERA J.**

Learned counsel for the Respondent takes up the two preliminary objections to the hearing of this appeal. Firstly he submits that the petition of appeal has been filed by the General Manager Ceylon Electricity Board and the Electrical Engineer Ceylon Electricity Board who are non juristic persons and there is no valid petition of appeal filed in this case.

Secondly learned counsel submits that there is no question of law set out in the petition of appeal and since an appeal to this court from an order of a Labour Tribunal lies only on a question of law that the petition should be rejected. Mr. S. Fernando who appears for the Respondent Appellant submits that although the caption to the petition of appeal reproduces the caption given in the order of the learned President it would appear from the body of the petition of appeal that the petition of appeal has in fact been filed by the Ceylon Electricity Board. In support of this submission the learned counsel for the Appellants draws the attention of court to the petition which states "the petition of appeal of the Respondent Appellant (C.E.B) above named appealing by its Attorney at Law. Mrs. L.R.I. de Silva states as follows:-

Para 1 of the petition of appeal states that the Respondent Appellant is a Statutory Board established under the Ceylon Electricity Board Act No. 17 of 1969. This averment in the petition of appeal makes it abundantly clear that although the caption in the petition of appeal refers to two non juristic persons that the petition of appeal in fact has been filed by the Ceylon Electricity Board which is a juristic person which has the right to sue and be sued. Hence the first preliminary objection raised by the learned counsel for the Respondent in my view fails.

In regard to the second objection it is my view that there is no legal requirement to state the question of law in the petition as long as on a reading of the petition it is clear that there are points of law to be determined. This view is confirmed by the decision in the case of *Lanka Wall Tiles Ltd vs Cyril* (1) where it was held that "the question of law to be determined does not have to be specifically set out in the petition of appeal". Paragraph 7 of the petition states "that the learned President has expressly accepted the fact that the Applicant Respondent had taken liquor whilst on duty on 18.3.83 but had given his order to reinstate the Applicant Respondent from 28.10.88 since the Board had failed to take action against the other employees who had consumed liquor".

Learned counsel for the Appellant submitted that the issue before the learned President whether the Applicant Respondent had consumed liquor whilst on duty and once that issue was determined in favour of the Respondent Appellant and once the learned President came to a finding on the evidence that the workman concerned had consumed liquor whilst on duty that he had no jurisdiction to order reinstatement. I am inclined to agree with this submission of learned counsel that the learned President has failed to judicially exercise the discretion vested in his determining the question as to whether relief should be granted to the Applicant Respondent in view of his express finding that the Applicant had consumed liquor whilst on duty. Therefore in my view the second preliminary objection of learned counsel for the Respondent too fails and for those reasons I reject the preliminary objections raised by learned counsel for the Applicant Respondent and permit the counsel for the Appellant to proceed with his arguments in regard to the matters raised in the petition of appeal.

The Applicant Respondent who had been employed under the Appellant Board as grade 4 labourer at the time material to this application complained to the Labour Tribunal that his services were terminated by the employer Board on 6.9.1984 and prayed for reinstatement and for compensation.

The Respondent Appellant Board sought to justify the termination of the services of the Applicant Respondent on the ground that he was found to have consumed liquor whilst on duty on 18.3.1983.

At the inquiry S. Colambage a consumer to whose residence an electricity supply was to be connected on 18.3.1983 and S.D. Tilakaratne an administrative officer of the Respondent Board gave evidence on behalf of the Appellant Board whilst the Applicant Respondent did not give evidence nor did he call witnesses on his behalf. The learned President after consideration of the evidence expressly accepted the evidence of the Respondent Appellant's witnesses and came to a finding that the Applicant Respondent had consumed liquor whilst on duty but nevertheless ordered the reinstatement of the Applicant Respondent without back wages by his order dated 29.9.1983. It is against this order that the Respondent Appellant has filed the present appeal.

Learned counsel for the Respondent Appellant Board submitted that the issues in this case before the Labour Tribunal were firstly whether the Applicant had consumed liquor whilst being on duty on 18.3.83 and secondly if so was the termination justified. Learned counsel for the Appellant contended that the learned President was duty bound in law to answer both issues. His contention was that the learned President having answered the first issue and come to a express finding that the Applicant Respondent was found to have consumed liquor whilst on duty, was in law obliged to hold that the termination of the services were justified and erred in law in holding otherwise and ordering reinstatement.

In this connection it was contended by learned counsel for the Respondent Appellant that the learned President had totally failed to consider the evidence of witness Tilakaratne who produced R6 the circular issued by the General Manager of the Appellant Board dated 23.6.82 relating to drunkenness or employees who were smelling of liquor. Learned counsel submitted that on authority of *Karunaratne Vs. Uva Regional Transport Board (2)* that it was obligatory of the

President to have given effect to the rules laid down by circulars such as R6 providing for a code of conduct for employees in the Public and Corporation sector and also providing specific punishments for violation of such provisions. The Learned President having found that the Applicant Respondent was found to have consumed liquor whilst on duty in my view has completely ignored the principles laid down in the above decision and has in my view failed to give effect to state policy governing employment in the government and state sector and consequently erred in law in ordering reinstatement. The learned President appears to have ordered the reinstatement of the Applicant Respondent on the basis that the Board had not placed any evidence to the effect that the other employees who were found to have consumed liquor were not similarly dismissed from service. In my view this was not relevant to the issue that was before the learned President and he appears to have been influenced by extraneous matters in holding that the services of the Applicant Respondent have been terminated wrongfully.

Thus I set aside the order of the learned President ordering the reinstatement of the Applicant Respondent and dismiss his application made to the Labour Tribunal. There will be no costs.

*Appeal allowed.*