PIYASENA SILVA

v.

CEYLON FISHERIES CORPORATION

COURT OF APPEAL.
SENANAYAKE, J.
C.A. NO. 323/88
LT 1/ADDL/5277/92, COLOMBO.
SEPTEMBER 08, 1992.

Industrial Law – Is it necessary to serve a charge sheet? – Domestic inquiry.

In our law it is not necessary to serve a charge sheet or hold a domestic inquiry before taking a decision not to reinstate an employee dismissed for unauthorised removal of cheques though he was discharged in the cases filed against him.

APPEAL from order of Labour Tribunal

Daya Guruge for appellant.
Chula de Silva P.C. with *R. Deviligoda* for respondent.

Cur. adv. vult.

October 08, 1992.

SENANAYAKE. J.

This is an appeal from an order made by the learned President of the Labour Tribunal dismissing the applicant's application for reinstatement with back wages, but, however he awarded gratuity calculated on the basis of half months' consolidated terminal salary as at 1.7.81 per year of service in respect of his 14 completed years of service.

The facts briefly are: the applicant was employed at the relevant time as a Clerk and he was interdicted on 24.4.75 and after he was discharged from the Magistrate Court proceedings he was reinstated with back wages effective from 20.9.75. Thereafter he was again interdicted on the same charges on 3.6.76; though he was charged in three cases in the Magistrate's Court he was finally discharged on 30.6.81. He averred that he had not been reinstated by the respondent and prayed that he be reinstated with back wages.

The respondent filed a general answer and averred that the applicant was involved in unauthorised removal of cheques sent to the respondent Corporation and averred that the respondent had lost confidence and was not prepared to reinstate him in employment and prayed that the application be dismissed.

The learned counsel for the appellant submitted that there was a denial of natural justice. He submitted that there was no charge sheet served or a domestic inquiry held before the respondent took a decision not to reinstate the applicant. I cannot agree with his submission. Our law does not require to hold a domestic inquiry. This is well settled law in this country. The learned President had considered and evaluated the evidence in this case. He had considered the statement made by the applicant to the Police, and he had concluded that this was a voluntary statement where the applicant had admitted the misconduct. Though the applicant attempted to give a different explanation in Court his explanation has not been accepted by the learned President. Credibility of the evidence of a witness is not a question of law but it is question of fact.

The result of the Magistrate Court proceedings has no bearing to this case. The burden of proof at the Tribunal is on a balance of

probability and not beyond reasonable doubt. The learned President had given due consideration to the point of law as specified in Section 31(1) D (2) of the Industrial Disputes Act. The determination was based on question of fact and I am of the view that his order was just and equitable. He has not only considered the employees' position but he has given due consideration to the post and responsibility imposed on the applicant and the applicant's failure to meet his obligations. I do not see any reason to interfere with his order. I affirm his order and dismiss the appeal with costs fixed at Rs. 125/-.

Appeal dismissed.