

1970

Present : Alles, J.

PILYANDALA POLGASOWITA MULTI-PURPOSE  
CO-OPERATIVE SOCIETIES UNION LTD., Appellant  
and D. C. LIYANAGE, Respondent

S. C. 43/69—L. T. 7/50/68

*Labour tribunal—Termination of an employee's services for past misconduct—Circumstances when it would be justified—Whether compensation can be awarded—"Misdirection in law"—Industrial Disputes Act (Cap. 131), s. 31 C (1).*

The applicant-respondent was appointed on 15th February, 1968, to a post on condition that if, during a probationary period of one year, the employer was not satisfied with him, his services were liable to be discontinued. About five months afterwards his services were terminated because the employer-appellant discovered that the respondent had been charged in 1946 in a Magistrate's Court for offences involving dishonesty and dealt with under section 325 of the Criminal Procedure Code.

*Held*, that the termination of the respondent's services was justified. In such a case the employee is not entitled to an alternative order of compensation.

*Held further*, that the omission of a labour tribunal to consider all such evidence as it may consider necessary to make a just and equitable order is a breach of section 31 C (1) of the Industrial Disputes Act and amounts to a misdirection in law.

**A**PPEAL from an order of a Labour Tribunal.

*F. N. D. Jayasuriya*, for the employer-appellant.

*P. Vimalachandiran*, for the applicant-respondent.

*Cur. adv. vult.*

April 7, 1970. ALLES, J.—

The respondent was appointed Manager of the Appellant Union on 15th February 1968 on a monthly salary of Rs. 350 and continued to function as such until 16th July 1968, on which date he was questioned about a criminal case in which he was charged for criminal misappropriation of cash and cheques in 1946. He admitted that he was charged but that he was not convicted but dealt with under Section 325 of the Criminal Procedure Code and warned and discharged. The Union official suggested that he should resign from his post and on his refusal to do so his services were terminated on 15th July 1968

with immediate effect. The respondent forwarded an appeal against the termination of his services on 18th July 1968 but by the Union's letter of 20th July 1968 his appeal was rejected and his services discontinued. The respondent then made his application to the Labour Tribunal and after enquiry the learned President held that the respondent had been questioned on a Police report which was not produced at the inquiry on "suspicion". The President also held that the Union has not adduced any grounds for this "suspicion" and he made order thereafter that the respondent should be reinstated in his original post on or before 1st June 1969 or in the alternative, that he should be paid Rs. 3,500 as compensation in lieu of reinstatement. The present appeal is from this order.

It has been urged by Counsel for the appellant Union that the President has erred in law in coming to the conclusion that the Union acted on "suspicion" without a report in discontinuing the respondent's services and that the discontinuance was unlawful. According to the terms of the letter of appointment issued to the respondent on 8th April 1968, he was to be on probation for a period of one year from the date of appointment and if the management *was not satisfied* with him while he was on probation he was liable to be discontinued by giving him one month's notice or payment of salary to cover that period. This the management did on the termination of the respondent's services. When the respondent was appointed he did not bring to the notice of the Union that he had been charged with criminal misappropriation of cash and cheques; this lapse on the part of the respondent was only brought to the notice of the Union by the Assistant Commissioner of Co-operative Development by his letter of 13th July 1968, a copy of which was filed with the Union's answer. This letter contained extracts from letters received by the Inspector-General of Police and the D. R. O. Raigam Korale and referred the Union to prosecutions for theft and misappropriation of cheques committed in 1946-1947. The case records have been destroyed, but according to A1 Case No. S467 was instituted on 14th September 1946 in the Magistrate's Court of Colombo South in which the respondent was charged under Section 369 of the Penal Code and discharged for offences involving dishonesty and misappropriation of public funds. Under Section 31 C (1) of the Industrial Disputes Act it was the duty of the President "to make all such inquiries into the application and hear all such evidence as the tribunal may consider necessary to make a just and equitable order". The President has failed to consider the documentary evidence filed with the answer of the Union, the contents of which have been corroborated by the admissions of the respondent in evidence. Such an omission amounts to a misdirection in law which entitles the Union to obtain relief from this Court (71 N. L. R. 69, at p. 72).

Although the respondent was correct when he said that he was not "convicted" of a criminal offence and the Union was incorrect when they referred to a "conviction" in their letter of dismissal, it is

abundantly clear that the respondent had been charged for offences involving dishonesty and dealt with by a Court of law under Section 325 of the Criminal Procedure Code. It was therefore a misdirection on the facts on the part of the President to maintain that the Union only acted on "suspicion" and that in the absence of a Police report no action could be taken against the respondent. In view of these disclosures the Union was justified in *not being satisfied* with the continuance of the respondent's employment under them during the probationary period and the termination was justified. In the light of the trend of recent judicial decisions which have been referred to by me in S. C. 20/69 L. T. Case No. 2741<sup>1</sup>, the misdirections amount to a question of law and this Court is justified in interfering with the order of the learned President.

To allow the order of the President in this case to stand without interference by this Court would amount to the grant of an open licence to bodies in charge of public funds to employ dishonest persons in positions of trust. The alternative order of compensation would only encourage such dishonest persons to seek employment in public bodies on the safe assurance of being paid a large sum of money from public funds as compensation when their antecedents are discovered.

The appeal is allowed with costs.

*Appeal allowed.*

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