

## SITHAMPARANATHAN

v.

## PEOPLE'S BANK

COURT OF APPEAL.

SIVA SELLIAH, J. AND JAMEEL, J.,

C.A. No. 34/80.

L.T. No. 1/11038/74.

JANUARY 27 AND 29, 1986.

*Industrial Dispute—Bank employee—Standard of proof of misconduct or moral turpitude—Finding of dishonest participation and negligence but no finding of direct guilt of fraud or fraudulent transaction—Conduct not above board—Can dismissal be said to be for good cause?*

Allegations involving misconduct or moral turpitude in proceedings before a Labour Tribunal must be proved by a balance of probabilities. It is not necessary to call for proof beyond reasonable doubt.

Where an officer employed in a Bank though not directly guilty of fraud or fraudulent transaction has been found to have been negligent and to have dishonestly participated in withdrawals of money from the Bank, his conduct not being absolutely above board, he is not a fit and proper person to be employed by a Bank.

Per Siva Selliah, J.:

"It is needless to emphasise that the utmost confidence is expected of any officer employed in a bank. Not only has he to transact business with the public but also he has to deal with money belonging to customers in the safe custody of the Bank. As such he owes a duty both to the Bank to preserve its fair name and integrity and to the customer whose money lies in deposit with the Bank. Integrity and confidence thus are indispensable and where an officer has forfeited such confidence and has been shown up as being involved in any fraudulent or questionable transaction, both public interest and the interest of the Bank demand that he should be removed from such confidence."

*The Ceylon University Clerical and Technical Association, Peradeniya v. The University of Ceylon, Peradeniya (1968) 72 NLR 84 not followed.*

**Cases referred to:**

- (1) *Caledonia (Ceylon) Tea & Rubber Estate Ltd. v. Hillman* (1977) 79 N.L.R. (1)421.
- (2) *The Ceylon University Clerical and Technical Association, Peradeniya v. The University of Ceylon, Peradeniya* (1968) 72 N.L.R. 84.
- (3) *Associated Battery Manufacturers (Ceylon) Ltd. v. United Engineering Workers' Union* (1975) 77 N.L.R. 541.

APPEAL from order of Labour Tribunal.

*M. S. M. Nazeem, P.C.* with *S. Sivanathan* for appellant.

*H. L. de Silva, P.C.* with *Shirley Fernando* for respondent.

*Cur. adv. vult.*

March 7, 1986.

**SIVA SELIAH, J.**

The applicant was a grade IV officer of the People's Bank. He was a ledger officer. He made application to the Labour Tribunal on 23.7.74 complaining of wrongful dismissal and termination of his services on 5.6.74 with effect from 5.6.71. After inquiry which was concluded on 22.2.79 the Labour Tribunal made order on 7.1.80 that the termination of applicant's services was for good cause. The applicant thereupon filed this petition of appeal from that order and the appeal complains of the long delay between the conclusion of evidence and the order and that in consequence the conclusions cannot have any weight. Although this ground was not urged at the hearing before this court, I find it regrettable that a period of 10 months has elapsed before the order was pronounced. It is desirable that there should be no room for complaints of this kind. Whatever the congestion of work may be before the Labour Tribunals, orders must be delivered with reasonable expedition after the reception of evidence. The present case where the applicant filed this application for relief on 23.7.74, obtained order thereon 7.1.80, appealed from that order soon after and has the appeal determined only in 1986 demonstrates to what exasperation a litigant seeking relief can be subject.

The applicant was on 24.5.72 served a charge sheet A4 setting out the 7 charges—these charges related to authorised payment of the fraudulent withdrawal of Rs. 4,500 from Savings Deposit A/c No. 9702 on 27.5.71, jointly or severally committing fraud in the said sum, having unauthorized possession of savings account pass book

belonging to Sydney Amerasinghe, having authorized payment of Rs. 995 on savings account No. 10037 on 4.5.71 in the absence of necessary entries in the relevant pass book, having used an unused pass book bearing number 10237 subsequently altered to 10043 to withdraw Rs. 4,000 inducing one Gilbert to keep away from work on the day Rs. 4,500 was fraudulently withdrawn on Account No. 10043 and acting jointly or severally in committing the fraudulent withdrawal of Rs. 4,500 on 25.5.71 on Savings Account No. 10043; he was in consequence charged with having committed or attempted to commit fraud, acted negligently or dishonestly and also with having conducted himself in a manner not in keeping with his responsibility as an officer of the bank.

It is in evidence that these matters were referred to the CID but they were unable to trace the culprit and that at the domestic inquiry held, the applicant was exonerated of the charges. On 5.6.74 his services were terminated. At the inquiry before the Labour Tribunal much evidence has been led which the learned President has proceeded to analyse. He has referred to the various charges, discussed the evidence and the procedures involved and come to certain findings of fact; he has stated that as far as negligence is concerned in the absence of the voucher he was unable to come to a finding of negligence against the accused regarding the withdrawal of Rs. 4,500 on 27.5.71 from Savings Deposit A/c No. 9702; however after examination of the evidence he concludes that there has been dishonest participation by the applicant in respect of the withdrawal of this sum of money; he comes to a similar finding on the evidence pertaining to withdrawal of Rs. 4,000 on 6.6.71 on Pass Book 10043 which had the original number 10237. He has also found him negligent regarding the withdrawal of a sum of Rs. 995 on 4.5.71 without the accompanying pass book. The learned counsel for applicant has contested these findings of fact. In *Caledonia (Ceylon) Tea and Rubber Estate Ltd. v. Hillman* (1) Sharvananda, J. (as he then was) held that—

“Inasmuch as an appeal lies from an order of a Labour Tribunal only on a question of law an appellant who seeks to have a determination of fact by the Tribunal set aside, must satisfy the Appellate Court that there was no legal evidence to support the conclusion of facts reached by the Tribunal, or that the finding is not rationally possible and is perverse even with regard to the evidence on record.”

am of the view that the evidence on record substantiates the finding and conclusions of the Labour Tribunal and that this court will accordingly not interfere with his findings on the facts.

The learned counsel for applicant has also contended on the authority of Wijetillake, J's judgment in *The Ceylon University Clerical and Technical Association, Peradeniya v. The University of Ceylon, Peradeniya* (2) that moral turpitude must be proved as in a criminal case beyond reasonable doubt. This view has been expressly dissented from both by Vaitilingam, J. in *The Associated Battery Manufacturers (Ceylon) Ltd. v. United Engineering Workers' Union* (3) and by Sharvananda, J. in *Hillman's case* quoted above, both of whom held that in an allegation involving misconduct or moral turpitude in proceedings before a Labour Tribunal, it is not necessary to call for proof beyond reasonable doubt as in a criminal case but that such allegation has to be decided on a balance of probabilities Vaitilingam, J. added that—

“the very elements of the gravity of the charges becoming a part of the whole range of circumstances which are weighed in the balance, as in every other civil proceeding.” (p. 553).

Thus in this case the learned President has acted on correct principles. He has concluded by saying—

“Summing up therefore the evidence led before the Tribunal, I find that the conduct of the applicant was such that though he has not been directly guilty of fraud or fraudulent transaction his conduct has certainly not been absolutely above board. It is my view that the conduct of the applicant has been such that he is not a fit and proper person to be employed in an establishment of the nature of a Bank where large sums of public money are transacted in its day to day activities. In the circumstances I hold that the termination of the applicant's services were for good cause.”

Much exception was taken to this finding by learned counsel for the applicant on the ground that although there was no finding of guilt against the applicant, still he had been found unfit for continued employment at the Bank.

It is needless to emphasize that the utmost confidence is expected of any officer employed in a bank. Not only has he to transact business with the public but also he has to deal with money belonging to customers in the safe custody of the Bank. As such he owes a duty both to the Bank to preserve its fair name and integrity and to the customer whose money lies in deposit with the Bank. Integrity and

confidence thus are indispensable and where an officer has forfeited such confidence as has been shown up as being involved in any fraudulent or questionable transaction, both public interest and the interest of the Bank demand that he should be removed from such confidence. Thus in the instant case once the learned President has found on the evidence that "His conduct has certainly been not absolutely above board" in respect of the fraudulent transaction referred to, the continued employment of the applicant is inimical to the interest of the customers of the Bank and to any confidence that can be reposed in him; nor can the Bank with any sense of responsibility continue to employ him and jeopardize its own reputation and the interest of its customers to whom it is responsible. The learned President was therefore right in holding that he was "not a fit and proper person to be employed in an establishment of the nature of a Bank" and in holding that "the termination of the applicant's services was for a good cause."

This appeal is accordingly dismissed. No costs.

JAMEEL, J. — I agree.

*Appeal dismissed.*

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