1975 *Present :* **Perera, J. and Vythialingam, J.**

ASSOCIATED BATTERY MANUFACTURERS (Ceylon) LTD., Appellant, *and* UNITED ENGINEERING WORKERS UNION, Respondent

S. C. 253/73—Labour Tribunal No. 16/868/71

Labour Tribunal—Inquiry into a criminal act involving moral turpitude —Standard of proof required—Industrial Disputes Act sections 31 (B) (1), 31 (B) (3), 31 (c) (1), 36 (4), 39 (1) (ff).

Where in an inquiry before a Labour Tribunal it was alleged that the reason for the termination of employment was that the workman was guilty of a criminal act involving moral turpitude, the allegation need not be established by proof beyond reasonable doubt as in a criminal case. Such an allegation has to be decided on a balance of probability, the very elements of the gravity of the charge becoming a part of the whole range of circumstances which are weighed in the balance, as in every other civil proceeding.

The Ceylon University Clerical and Technical Association, Peradeniya v. University of Ceylon, Peradeniya, 72 N.L.R. 84 not followed.

APPEAL from an Order of a Labour Tribunal.

N. Satyendra, for the Respondent-Appellant.

R. I. Obeysekera, with *A. W. Yusuf* for the Applicant-Respondent.

Cur. adv. vult.

February 27, 1975. VYTHIALINGAM, J.—

This is an appeal by the employer from an order of the President of the Labour Tribunal directing the reinstatement of the workman together with the payment of one year's full back wages, and if for any reason the employer was not disposed to reinstate the workman, for the payment of three years' salary with a further additional six month's wages as compensation for loss of employment. The employment of the workman was terminated because, after a domestic inquiry he was found guilty of having committed theft of one pair of ankle boots which was the property of the company.

After inquiry the President of the Tribunal said that it was not possible to hold on the "meagre evidence that has been led" either that the workman concerned was guilty of the charge

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preferred against him or that his dismissal was justified. He arrived at this finding on the basis that " the charge against the workman in this case is a serious one involving moral turpitude. The standard of proof should therefore be as in a criminal case." Although he did not say so in his order the President obviously followed the decision in the case of *The Ceylon University Clerical and Technical Association* vs. *The University of Ceylon* (72 N.L.R. 84) which was cited before him by the Counsel appearing for the workman. In this appeal Mr. Satyendra for the appellant employer complains that the President has erred in law in requiring the wrong standard of proof in respect of the allegation of misconduct.

In the University case the services of a dental nurse were terminated on the ground that she had made false entries and mis-appropriated Rs. 80 odd belonging to the University. The President had dismissed her application for relief stating that although the evidence might not have been sufficient enough to obtain a conviction in a criminal court yet he had to be satisfied only on a balance of evidence that the University was justified in acting on the basis that there had been dishonest conduct.

In setting aside the order of the President, Wijayatilake, J. said at page 89 " On a careful consideration of these submissions I am inclined to agree with learned Counsel for the appellant that in a case such as the instant one where there is an allegation of falsification of accounts with intent to defraud, the standard of proof should be as in a criminal case and if there is a reasonable doubt the benefit of such doubt should be given to the person accused. " The learned Judge was considerably influenced by the fact that " this rule has been extended to our civil Courts when the issue pertains to an allegation of moral turpitude, for instance an allegation of adultery in a matrimonial action or allegation of fraud in a civil dispute. This rule has also been adopted in the Election Court. "

In regard to proof of adultery it is true that in the case of *Jayasinghe* vs. *Jayasinghe* (55 N.L.R. 410) it was held following the decision of the *House of Lords in Preston Jones vs. Preston Jones,* 1951, 1 All E.R. 124 that the matrimonial offence of adultery must be proved beyond reasonable doubt and quite recently H. N. G. Fernando, C.J. said in the case of *A. Dharmasena vs. B. K. Navaratne* (76 N.L.R. 419) "Had the trial Judge reminded himself of the principle that the ..... general standard of proof beyond reasonable doubt applies for proof of adultery. (*Jayasinghe vs. Jayasinghe*) I do not see how he could have found the charge proved against the 2nd defendant on such tenuous material. " (421).

ERRATA

(1) Delete the 4th line from the bottom at page 507 of Volume LXXVII and in its place substitute :

statement of claim and since that order was made on 13.2.70 the

(2) In the first line of the headnote at page 522 of Volume LXXVII the word '*impose*' should read '*imposes*'

But this is no longer the law in England since the decision of the House of Lords in the case of *Blyth vs. Blyth* 1966 (All E. R. 524) where it was held that the standard of proof required by the words " is satisfied " in section 1 of the Matrimonial Causes Act 1963 is not in all cases proof beyond reasonable doubt but might vary according to the gravity of the subject matter. This question was referred to but not decided in the Court of Appeal in the case of *Alaramalammal vs. Nadarajah* (76 N.L.R. 56) because the plaintiff who sued for a declaration that the marriage was null and void on the grounds of insanity at the time of marriage was not seeking to establish a matrimonial offence.

But the Court of Appeal did say in that case " We are free to point out however that, even if that had been the case it is questionable having regard to the decision of the House of Lords in *Blyth vs. Blyth* whether the local case of *Jayasinghe vs. Jayasinghe* upon which the learned Counsel for the applicant heavily relied is any longer good law. " No support therefore can be derived from a consideration of these decisions for the proposition contended for in the instant case.

The principles involved in election petition cases are also entirely different and are inapplicable to cases involving the termination of the employment of a workman. The reason why the standard of proof beyond reasonable doubt is required in election cases was set out thus by Baron Martin in the *Warrington* case, 1 O'Mally and Hardcastle, 42 at 44 " I adhere to what Mr. Justice Willes said at Lichfield that a Judge, to upset an election, ought to be satisfied beyond all doubt that the election was void, and that the return of a member is a serious matter and not to be lightly set aside ". In the *Londonderry case* 1 O'Mally and Hard Castle, 274 at 278, Mr. Justice O'brien said " The charge of bribery whether by a candidate or his agent, is one which should be established by clear and satisfactory evidence. The consequences resulting from such a charge being established are very serious. In the first place it avoids the election .... In the next place the 43rd and 45th sections of the Parliamentary Elections Act, 1868 impose further and severe penalties for the offence, whether committed by the candidate or his agent. "

In the case *P. K. Premasinghe vs. Bandara* (69 N.L.R. 155) G. P. A. Silva, J. after reviewing the earlier authorities stated the reasons thus at page 161 " It would thus appear that a person can be visited with the severe penalties of certain civic disabilities in respect of the same act namely a corrupt or illegal practice in one of two ways, one by a prosecution in a court of law and the other by a finding of an Election Judge ..... If the law should be that the standard of proof for establishing charges in an election petition is lower than that required in a criminal

trial and that such charges can be proved by a balance of probability, the resulting position will be that the same grave consequences of losing certain civic rights can befall the same person by being found guilty of the same charges by a preponderance of probability in one court and by proof beyond reasonable doubt in another ..... The only course which commends itself to a court of law therefore is to require the same standard of proof, whether the result is reached via a prosecution or via an election petition."

In regard to the standard of proof required there can therefore be no analogy between Labour Tribunal cases in which the simple issue is whether the termination of the workman's services by the employer is justified or not and election petition cases which involve the setting aside of the election of a member of Parliament elected by the free votes of the majority of voters in the electorate and the decision in which involves the severe penalties being imposed on the persons found guilty of election offences.

Wijayatilake, J. also referred to a number of cases in which it was held that an allegation of fraud in a civil dispute has to be proved beyond reasonable doubt. Recently in the case of *Yusoof vs. Rajaratnam,* 74 N.L.R. 9 G. P. A. Silva, A. C. J. said at page 13 "Both principle and precedent would support the view that when a transfer is effected for valuable consideration the burden of proving that it was fraudulent rests on the plaintiff in these circumstances. It is an accepted rule that such a burden even in a civil proceeding must be discharged to the satisfaction of a court. For that degree of satisfaction to be reached the standard of proof that is required is the equivalent of proof beyond reasonable doubt." This is because the consequences of fraud are serious as Denning, L. J. pointed out in *Lazarus Estates Ltd. vs. Bearly* 1956 1 All E. R. 341 at 345 "No judgement of a court or order of a minister can be allowed to stand if it had been obtained by fraud. Fraud unravels everything. The court is careful not to find unless it is specially pleaded and proved. But once it is proved it vitiates judgments, contracts and all transactions whatsoever."

But even here the more modern and better view is that the more serious the imputation the stricter is the proof which is required. Wijayatilake, J. referred to the decision of the Privy Council in *Narayanan Chetty* Vs. *Official Assignee* (1941 *A.I.R.P.C. 93*). Referring to this case in *Hocking Vs. Bell 1945, 71 C.L.R. 430,* Dixon, J. said at page 464 "The solid body of authority against introducing the criminal standard of persuasion into civil causes cannot be shaken by the unconsidered statement of Lord Atkin in the case from Allahabad *Narayanan Chettiar vs. Official Assignee.*"

The view of Dixon, J. was approved and followed in the House of Lords by Lord Denning in *Blyth vs. Blyth* where he said "So far as the standard of proof is concerned, I would follow the words of Dixon, J. which I have quoted and which I elaborated in *Bater Vs. Bater* (1950, 2 All E.R. 458) with the approval of the Court of Appeal in *Hornal Vs. Neuberger Products Ltd.* 1957, 1 Q.B. 247, In short it comes to this: so far as the grounds of divorce are concerned, the case like any civil case may be proved by a preponderance of probability, but the degree of probability depends on the subject matter. In proportion as the offence is grave, so ought the proof to be clear."

In the case of *Hornal Vs. Neuberger* (1957) 1 Q.B. 247, Morris, L. J. observed at 266 "there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court when considering a charge of fraud will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established..... Though no court and no jury would give less careful attention to issues lacking gravity than to those marked by it, the very elements of gravity become a part of the whole range or circumstances which have to be weighed in the scale when deciding as to the balance of probabilities."

Even in a civil case where the issue as to whether a capital offence has been committed arises, the standard of proof is the same. In the case of *Dellows Will Trustee* 1964, 1 All E.R. 771 a husband and the wife who was the general legatee under the will of her deceased husband, died on the same occasion, but it was deemed that the wife was the survivor under 184 of the Law of Property Act, 1925. The question arose whether the wife had feloniously killed her husband so as to disentitle her from succeeding to his estate. Dealing with the standard of proof Ungoed Thomas, J. said at page 773 "It is conceded that, in a case of this kind before me in the Chancery Division dealing with the devolution of property, the standard of proof required is not so severe a standard as that required by the criminal law." After quoting the passage from Morris, L. J. already quoted by me he went on to say, "It seems to me that in civil cases it is not so much that a different standard of proof is required in different circumstances varying according to the gravity of the issue but as Morris L. J. says that the gravity of the issues becomes part of the circumstances which the Court has to take into consideration in deciding whether or not the burden of proof has been discharged." Having considered the facts the learned Judge said "I do not think that it is reasonably possible to come to any other conclusion on this evidence than that the wife feloniously killed the husband."

Reference was also made to the decision of the Privy Council in the case of *M.K.B. Vs. Advocates Committee* 1956, I W.L.R. 1442 wrongly referred to as a case from India. It was held in that case that on a charge of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is required and that there should not be condemnation on a mere balance of probabilities. It is hardly proper to adopt the standards applied, by a profesional body of men which always insists on a high standard of conduct and behaviour by its members, for the determination of the question whether any particular member of such a body is guilty of professional misconduct with a view to taking disciplinary measures against him, to conduct in regard to employer—employee relations.

So that a consideration of the law and a careful examination of the cases relied on by Wijayatilake, J. shows that " the standard of proof beyond reasonable doubt required in criminal cases has not been extended to our civil courts when the issue pertains to an allegation of moral turpitude. "

Even in criminal cases while the standard of proof never changes and remains the same namely proof beyond reasonable doubt, nevertheless there may be degrees of proof within that standard. Lord Denning points out in *Bater Vs. Bater* (supra) " It is true that by our law there is a higher standard of proof in criminal cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. "

" What is a real and substantial doubt ? " he continued. " It is only another way of saying a reasonable doubt and a ' reasonable doubt ' is simply that degree of doubt which would prevent a reasonable and just man from coming to a conclusion. So the phrase reasonable doubt gets one no further. It does not say that the degree of probability must be as high as ninety-nine per cent or as low as fifty-one percent. The degree required must depend on the mind of the reasonable and just man who is considering the particular subject matter. In some cases fifty-one percent would be enough, but not in others. "

Every trial Judge in the original criminal courts knows this and applies it daily, consciously or unconsciously in the cases that come up for trial which may range from trivial offences like criminal insult, criminal intimidation and simple hurt to grievous hurt and even murder and culpable homicide not amounting to murder. These principles were applied by Samarawickreme, J. in the case of *M. C. Hamza Lebbe Vs. Food*

and Price Control Inspector, Puttalam (73 N. L. R. 475). In a charge under the Price Control Ordinance the question was whether the article sold was the article referred to in the Price Order, and the quantum of evidence required to prove it.

Samarawickreme, J. said " The evidence might not have been sufficient if the offence related to opium, ganja, or unlawfully manufactured spirits for the reason that such things are per se either injurious and harmful or prohibited by law. Condensed Milk on the other hand, is not only not harmful but is an useful article of food and its sale is an offence only when it is sold at a price in excess of the controlled price. It is true that in cases of offences in respect of opium, ganja or unlawfully manufactured spirits as well as offences in respect of condensed milk the standard of proof is that of proof beyond reasonable doubt but in the case of the latter proof need not be as strict as in the case of the former. "

The whole object of an inquiry before a Labour Tribunal and its scope and nature are entirely different from a trial on a criminal charge in an ordinary court of law and standards of proof applied in the latter are wholly inappropriate to the former. The Industrial Disputes Act (Cap. 131) as amended by Act No. 62 of 1957 provided inter alia a simple way of remedying a grievance which an individual workman might have against his employer. Section 31. B (1) sets out that " A workman or a trade Union on behalf of a workman who is a member of that Union may make an application in writing to a labour Tribunal for relief or redress in respect of any of the following matters :—

> " (*a*) the termination of his services by his employer ..... "

When such an application is made " It shall be the duty of the tribunal to make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary, and thereafter make such order as may appear to the tribunal to be just and equitable. " (Section 31. (*c*) (1)). In conducting the inquiry, subject to such regulations as may be made by the Minister under section 39 (i) (*ff*), the tribunal may lay down the procedure to be observed by it. It is also not bound by any of the provisions of the Evidence Ordinance (Section 36 (4) The discretion vested in the tribunal is very wide.

In the instant case the Union to which the workman belongs made the application for the reinstatement of the workman with back wages on the ground that the termination of his employment was without any justifiable cause of reason. In section 31 B (1) (*a*) the word " termination " is not qualified by the words " wrongful " or " unjustified ". But as Lord Devlin pointed

out in Devanayagam's case (69 N.L.R. 289 at 303) in his dissenting judgment "It is commonplace that with respect to industrial relations the common law of master and servant has fallen into disuse," and it is now universally recognised that "termination of employment should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the workman or based on the operational requirements of the undertaking establishment or service." (Section 2 (1) of the Termination of Employment Recommendation No. 119 (1963) adopted at the International Labour Conference 1963).

The employers' position in this case was that the termination of the services of the workman was justified for the reason that at a domestic inquiry he had been found guilty of theft of property belonging to the Company. In other words, the reason for the termination was connected with the conduct of the workman. The issue before the Tribunal in this case was whether having regard to all the facts and circumstances of the case the termination of the employment of the workman was justified or not, and not simply whether the workman was guilty of theft of the boots or not.

It was undoubtedly the duty of the Tribunal to ascertain the facts. As Weeramantry, J. said in *Ceylon Transport Board Vs. Gunasinghe* (72 N. L. R. 76 at 83) "Proper findings of fact are a necessary basis for the exercise by Labour Tribunals of that wide jurisdiction given to them by statute of making such orders as they consider to be just and equitable. Where there is no such proper finding of fact the order that ensues would not be one which is just and equitable upon the evidence placed before the Tribunal, for justice and equity cannot be administered in a particular case apart from its own particular facts."

In the instant case the Tribunal had to find as a fact whether the workman did commit theft of the boots or not, but this was only incidental to the decision as to whether the termination of the employment was justified or not and not for the purpose of punishing him for a criminal offence. It has been emphasised in a number of cases that the proceedings before a Labour Tribunal are not criminal in nature and therefore the standards of proof required to establish a criminal charge are wholly inappropriate where the Tribunal has merely to ascertain the facts and make an order which in all the circumstances of the case is just and equitable. In doing so the Tribunal is not bound by the rules of evidence contained in the Evidence Ordinance and may base its decisions on evidence which would be shut out from the ordinary courts of law.

In the case of the *Ceylon Transport Board Vs. Ceylon Transport Workers' Union* (71 N. L. R. 158) the workman's services were terminated on the ground that he had collaborated with another

or others in the dishonest removal of a timing chain from the stores. In a statement R1 made by the workman to the security officer he had admitted complicity in the theft. The President said that his statement would probably not have been admissible in a criminal case and that although the Tribunal was not bound by the rules of evidence such a statement must be received with caution. He accordingly held that the charge was not proved with such degree of probability as would justify the conclusion that the workman was guilty of the charges preferred and ordered that the workman should be reinstated.

In setting aside the order, Tennekoon, J., as he then was, said, "Section 36 (4) must not be regarded as a provision which enables a Tribunal to apply exclusionary rules more rigorous than those contained in the Evidence Ordinance. A proceeding before a Labour Tribunal is not a criminal case and even if the President was inclined to guide himself by the rules of relevancy contained in the Evidence Ordinance section 24 thereof (which is obviously the only section he could have had in view) could not have been availed of, since that applies only to criminal cases." There was no reference in the case to any requirement of a standard of proof beyond reasonable doubt although the charge was one of theft.

In the *Ceylon Transport Board vs. W. A. D. Gunasinghe* (72 N. L. R. 76) Weeramantry, J. in a similar case said, "It was not open to the President to disregard that admission, for an admission by a party, no less than evidence offered against him by his adversary is evidence before the Tribunal, which the Tribunal is under a duty to consider. It was wrong, therefore, for the President to take the view that there was no evidence before him in support of the charges, nor was it correct for him to rest his order on the technicality that there had been no admission of the charges before him. Such an attitude, which may perhaps have been appropriate in a criminal trial, was, as Tennekoon, J. has observed, wholly inappropriate to an inquiry before a Tribunal." (Page 80).

Mackwoods Ltd. vs. Tea, Rubber, Coconut and General Produce Workers' Union (74 N.L.R. 183) was a case in which the relevant evidence was a confession made to a Police officer. In making his order the President had either overlooked the statement or else thought that statement to be inadmissible as being a confession made to a Police officer. In setting aside the order, H. N. G. Fernando, C.J. said "such a confession is not inadmissible in a civil proceeding." The charge in that case was one of theft or aiding and abetting the theft. In all the three cases it would have been impossible to obtain a conviction in a Court of law based on these admissions alone and yet the termination of the employment was

held to be justified. In all three cases it was emphasised that proceedings before a Labour Tribunal was not a criminal trial and there was no reference to the fact that the charges should have been proved beyond reasonable doubt although in each case the offence was one involving moral turpitude.

Akbar vs. Air Ceylon Ltd. (76 N.L.R. 398) was a case in which the workman's services were terminated on the ground that he had solicited a bribe from a passenger. The President of the Tribunal held that the charge had been proved beyond reasonable doubt and that the termination of the employment was justified. In appeal Rajaratnam, J. said that in his view it had not been so proved. In regard to the standard of proof after considering the judgment in the University case with which he did not expressly disagree and other cases, Rajaratnam, J. said at page 406 and 407 " I have considered the question of standard of proof necessary to prove an allegation against an employer (employee ?) and with the assistance of all the decisions and observations made by very learned Judges I am of the view that there is a standard of fairness that has to be applied—whether it is a case of misconduct involving moral turpitude or not. Because it is only if a yardstick of fairness is used that the Tribunal can ultimately arrive at a conclusion that leads to a just and equitable order. "

It would appear therefore that although he did not expressly disagree with the decision in the University case yet Rajaratnam, J. was of the view that the same standard of proof namely, " a standard of fairness " has to be applied whether it is a case of misconduct involving moral turpitude or not. I take it that what is meant by " the standard of fairness " or " the yardstick of fairness " is nothing more than the degree of proof required in the " mind of the reasonable and just man who is considering the particular subject matter. "

Lest a new terror be added to the determination of standards of proof it is necessary to add that there is no " fairness " about a fact. As Tennekoon, J. as he then was pointed out in *Ceylon Transport Board vs. Ceylon Transport Workers' Union* (71 N.L.R. 158 at 163 and 164.) " There is no equity about a fact. The tribunal must decide all questions of fact solely on the facts of the particular case, solely on the evidence before him and apart from any extraneous considerations. In short in his approach to the evidence he must act judicially. It is only after he has so ascertained the facts that he enters upon the next stage of his functions which is to make an order that is fair and equitable, having regard to the facts so found. To say of one party's case that it would not be equitable to reach a conclusion against the other

on the evidence produced by the former is to apply an undisclosed and unreasonable standard of proof to that party's case and indeed to act arbitrarily and not judicially."

In the case of *Vijaya Textiles Ltd. vs. The General Secretary National Employees' Union 73 N.L. R. 405* the workman's services were terminated on the ground of his misconduct in assaulting a superior officer. Wijayatilake J. who also decided that case held that a charge tantamount to a criminal offence not involving moral turpitude need not be proved beyond reasonable doubt. In the field of employer-employee relations, maintenance of discipline and industrial peace, contumacious abuse and assault of a superior officer can be more serious than theft of a paltry sum.

As Sirimane, J. pointed out at page 384 in the case *Heath & Co. (Ceylon) Ltd. vs. Kariyawasam* (71 N.L.R. 382) "Though the point of view of a workman in a labour dispute must always be given the highest consideration and his conduct judged with tolerance and understanding, yet, the use of obscene language when addressing the employer's representative, a contemptuous disregard for any form of discipline, coupled with threats of violence should not be condoned in the name of industrial peace. Such a course can only lead to industrial chaos". A dismissal for this reason can also have the serious consequence of rendering it impossible for a workman found guilty of such conduct to secure other employment. Yet if the views set out in the University case and in the Vijaya Textiles case are to prevail the one has to be proved beyond reasonable doubt while in the case of the other a mere balance of probabilities is enough. There is no warrant for such a dual standard either in the Act or on principle and precedent.

In the case of *Hemas (Estates) Ltd. et al vs. The Ceylon Workers' Congress* (76 N.L.R. 59) the question was whether the workman a labourer on an estate had handed over the line room allotted to him to another labourer and had gone to reside elsewhere. Sirimane, J. said "I agree with the submission of the learned Counsel for the employees appellants that in a case like this, there is no burden placed on the employer to prove his allegations 'beyond all reasonable doubt' as in a criminal case". Although it was not a case of an offence involving moral turpitude nevertheless there was no distinction drawn between the types of cases.

Wijayatilake J. was of the view that Rule 54 of the Public Service Commission Rules which provides that even when a Public Servant is acquitted in any criminal proceeding he cannot by reason of such acquittal claim to be reinstated or re-employed "a serious affront on the Courts'". If I may say so with great

respect to the learned Judge this is to overlook completely the object, scope and consequences of a trial on a criminal charge in a court of law and an inquiry before a Labour Tribunal charged with a duty of ascertaining all the facts and making orders which are just and equitable.

Indeed the Industrial Disputes Act provides in Section 31 (B) (3) that " where an application under subsection (1) relates—

(*b*) To any matter the facts affecting which are in the opinion of the tribunal, facts affecting any proceedings under any other law, the tribunal shall make order suspending its proceedings upon that application until the conclusion of the said inquiry or the said proceedings under any other law and upon such conclusion the tribunal shall resume the proceedings upon that application and shall in making an order upon that application have regard to the award or decision in the said inquiry or the proceedings under any other law. "

For this purpose an investigation under Chapter XII of the Criminal Procedure Code is not a proceeding contemplated in the Section (*Vide The Ceylon Insurance Co. Ltd. vs. E. V. Perera* (74 N.L.R. 553). In that case H. N. G. Fernando, C.J. with Samerawickrema J. agreeing said at page 560 " For these reasons I reach the conclusion that Section 31B (3) of the Industrial Disputes Act, contemplates that proceedings before a Labour Tribunal must be suspended only if there are pending some other proceedings in which an award or decision having legal effect will or can be made, and that an investigation under Chapter XII of the Criminal Procedure Code is not a proceeding contemplated in the section. "

Such an award or decision having legal effect is not made binding on the tribunal but the tribunal must have regard to the award or decision in making its order. Quite naturally a conviction in a court of law for the identical offence for which the employment has been terminated would be accepted as proof of the commission of the offence by a tribunal. But an acquittal would not have the same effect. For an acquittal could have been based on the fact that the charge had not been proved with that high degree of proof which is required to establish a charge in a criminal case ; or it may have been based on the exclusion of evidence which would be admissible before a Tribunal but inadmissible in a criminal court ; or on some technical ground.

The stigma attaching to a conviction and punishment in a criminal court is not the same as that which attaches to a finding by a Tribunal that the termination of the employment was justified on the ground of the involvement of the workman in a criminal offence. The object of the Criminal law and its

enforcement through Criminal proceedings is completely different from that of proceedings before a Labour Tribunal. A criminal proceeding is mainly intended to punish persons who have broken the law and thus to show the indignation of the community. It is the expression of the community's hatred and contempt for the convict. Such a stigma does not attach to a finding by a Labour Tribunal that the conduct of the workman was such as to justify the termination of his employment except that the imputation of dishonesty may correspondingly reduce his ability to get another job.

The adoption of a dual standard of proof, one for offences involving moral turpitude and another and lower one for other acts whether they be criminal in nature or not, would lead to industrial chaos. The more serious the offence the more difficult would it be to terminate a workman's services unless the employer could find proof sufficient to establish the charge beyond reasonable doubt. Thus an employer has to continue in his employment a workman whom he reasonably suspects of embezzling his money and continue to suffer losses merely because he cannot prove the charge beyond reasonable doubt.

The whole object of labour adjudication is that of balancing the several interests involved, that of the worker in job security, since loss of his job may mean loss of his and his family's livelihood ; that of the employer in retaining authority over matters affecting the efficient operations of the undertaking ; that of the community in maintaining peaceful labour relations and avoiding unnecessary dislocations due either to unemployment or unproductive economic units. Each is equally important. None of these objectives can be achieved by the adoption of the standard of proof required in criminal cases in the determination of the facts which have to be established before a Labour Tribunal before it can exercise its jurisdiction to make an order which in all the circumstances of the case is just and equitable. This difficulty was realised in the University of Ceylon case for the learned Judge while ordering the reinstatement of the nurse nevertheless gave the University the option to terminate her services and to pay back wages and compensation in lieu of reinstatement.

I am therefore unable to agree, with great respect, that where the reason for the termination of the employment is an allegation that the employee was guilty of a criminal act involving moral turpitude, that allegation should be established by proof beyond reasonable doubt as in a criminal case in order to establish the validity of the reason for the termination of the employment. It has to be decided on a balance of probability, the very elements of gravity of the charge becoming a part of the whole range of circumstances which are weighed in the

balance, as in every other civil proceeding. In the instant case the President has applied the wrong standard of proof and this being an error of law his decision has to be set aside. I accordingly set aside the order made by the President and remit the case for an inquiry de novo before another President. The costs of appeal will abide the results of the new inquiry.

MALCOLM PERERA, J.

I agree.

Order set aside.