CEYLON CINEMA AND FILM STUDIO EMPLOYEES UNION
v.
LIBERTY CINEMA LTD.

COURT OF APPEAL.
SENANAYAKE, J.
C.A. NO. 22/86
L.T. NO. 1/676/85 &
L.T. NO. 1/6/77/85
SEPTEMBER 8, 1992.

Industrial Law – Unjustifiable termination of employment – Appeal on questions of law – When can appellate court interfere with a Labour Tribunal findings on facts?

Held:

The question of assessment of the evidence is within the province of the Labour Tribunal and if there is evidence on record to support its findings the appellate court cannot review those findings even though on its own perception to the evidence it may be inclined to come to a different conclusion. If the case contains anything *ex facie* which is bad in law and which bears upon the determination it is obviously on a point of law; but without any misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In these circumstances the appellate court must intervene. Thus in order to set aside a determination of facts by the Tribunal limited as this court is, only to setting aside a determination which is erroneous in law, the appellant must satisfy this court that there is no legal evidence to support the conclusion of facts reached by the Tribunal or that the finding is not rationally possible and is perverse having regard to the evidence on record.

Where the employer's version to justify the termination of the services of the applicants on the ground of misconduct is preferred by the Tribunal to the version of the applicants, the appellate court will not interfere.

Cases referred to:

1. *Weerawardene v. The Associated Newspapers of Ceylon Ltd.* S.C. Appeal No. 16/83 – S.C. Minutes of 12.6.1984.
2. *Naidu & Co. v. Commissioner of Income Tax* (1959) A.I.S. C. 359.
3. *Mahavithane v. Commissioner of Inland Revenue.* 64 N.L.R. 217,222.
4. *Subasinghe v. Jayalath* 69 N.L.R. 121,126.
5. *Kalawana Election Petition Appeals* Nos. 1 and 2 of 1983 – S.C. Minutes of 6.5.1984.
6. *Neal v. Hareford and Worchester County Council* (1986) I.R.L.R. 168,173.

7. *Caledonia Estates Limited v. Hillman* 79 (1) N.L.R. 421,425.
8. *Inland Revenue v. Fraser* (1942) 24 Tax Cases 498.
9. *Edwards v. Bairstow* (1965) 3 All ER 48, 57.

APPEALS from judgements of the Labour Tribunal

Motilal Nehru P.C. with *M. Sivapathan* for 1st applicant-appellant.
P. Rajasuriya for 2nd applicant-appellant.
A. W. Athukorale for employer-respondent.

Cur adv vult.

March 11, 1993.
SENANAYAKE, J.

This is an appeal against the order of the learned President of the Labour Tribunal dated 16.1.85 where he dismissed the application of the Union filed on behalf of the two members.

The Appellant Union made two applications on behalf of the two members. In the application made on behalf of A. C. M. Ziard it was stated that he was employed as a Booking Clerk with the Respondent from 31.3.55 and at the time of his termination he was in receipt of Rs. 1078/- per month. That his services were terminated without justifiable reasons on 15.12.84 and prayed that he be reinstated with back wages.

The application on behalf of K. Sandanam was that he was employed by the Respondent as a waiter from 3.10.77 and at the time of the termination he was in receipt of a monthly salary of Rs. 640/62. The Union alleged that his services were terminated on 15.12.84 without any justifiable reasons and prayed that he be reinstated with back wages.

The Respondent admitted that Ziard was employed and on 4.10.84 was issued with a show cause letter requesting him to explain as to why disciplinary action should not be taken against him for –

(a) accepting a patron's counterfoil ticket from Sandanam without informing the Manager;

(b) returning the said counterfoil along with the corresponding checker's foil which were the last two tickets sold in that class, to the Manager as being not sold when in fact the tickets had been sold; and
(c) informing the Manager that he had refunded the money to the said patron where in fact the money was not refunded.

The explanation was not satisfactory and a domestic inquiry was held and he was found guilty of misconduct and contravention of the standing instructions of the Respondent Company and as his past record was not satisfactory and thereafter the Respondent terminated his services. They averred that the termination was *bona fide* and justified and prayed that the application be dismissed.

The charges against the workman K. Sandanam were :

(a) accepting a patron's counterfoil without informing the Manager; and
(b) returning the patron's counterfoil along with the corresponding checker's counterfoil of the last two tickets in that class to the booking clerk for a refund.

As his explanation was not acceptable a domestic Inquiry was held and he was found guilty of misconduct and as his past record of employment was unsatisfactory his services were terminated by letter dated 15.12.84 and prayed that the application be dismissed.

The learned Counsel for the 1st Applicant-Appellant submitted that on a consideration of the evidence of the Respondent's witness Sivakumar the order of the learned President cannot stand. His second submission was that as there was no loss to the Company the order of termination was not justified.

The learned Counsel for the 2nd Applicant-Appellant submitted that the second Applicant was present and there was a breach of regulation which did not warrant dismissal.

The entire case was based on two different versions that had occurred on 3.09.80. There was a version of events given by the

Manager of the Respondent's Company and a different version given by the two Applicant-Appellants. The learned President had preferred to accept the version given by witness Sivakumar in preference to the evidence of the Appellants. He has the priceless advantage of seeing and hearing the witnesses. He had given cogent reasons for not accepting the evidence of the Appellants. I am of the view that the learned President had adequately considered and evaluated the evidence before he arrived at his determination. I do not think that the order of the learned President was perverse or that he had arrived at a conclusion which no reasonable person would have arrived, on the evidence placed before the Tribunal. It may be possible that the Appellate Court may come to a different finding on the facts but the evaluation of the facts is a matter for the Tribunal.

In the case of *Weerawardene v. The Associated Newspapers of Ceylon Ltd.*[1] the Supreme Court outlined the powers of the Court of Appeal with reference to appeals filed against the orders of Labour Tribunals. Wimalaratne, J. observed, Section 31D (2) of the Industrial Disputes Act provides for an appeal to the Court of Appeal only on a question of law. Upon an appeal from a judgement where both facts and law are open to appeal, the Appeal Court is bound to pronounce such judgements as its view ought to have been pronounced by the Court from which the appeal proceeds. In the exercise of its jurisdiction, the Appellate Court may not be disposed to come to a different conclusion on questions of fact unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion. On the other hand the scope of the powers of an Appellate Court where a right of appeal to the court lies only a question of law, is more restricted. It is bound by the findings of fact unless the conclusion of fact drawn by the Tribunal is not supported by any legal evidence or is not rationally possible. If such plea is establised the court may consider whether the conclusion in question is not perverse and could be set aside. Vide the judgement of Gajendragadkar, J. in *Naidu & Co. v. Commissioner of Income Tax* [2] cited with approval by our Supreme Court in *Mahavithane v. Commissioner of Inland Revenue* [3] and *Subasinghe v. Jayalath* [4]. This principle has been reiterated and applied by us in the judgement recently delivered in

the *Kalawana Election Petition Appeals*[5]. When the legislature has restricted the power of the Court of Appeal to review the decisions of the Labour Tribunal to questions of law, it obviously intended to shut out questions of fact from the purview of the appellate jurisdiction and to clothe them with finality. The Court of Appeal is bound by and therefore cannot question the correctness of findings of fact unless it is unreasonable or it is not supported by evidence or perverse. Where there is evidence to support the findings of fact the decision of the Labour Tribunal is final even though the Court of Appeal might not on the material, have come to the same conclusion had an appeal on the facts been competent and the court had the power to substitute its own judgement. That Court may on an appeal under Section 31 D of the Industrial Disputes Act interfere with the conclusion of facts which it finds and show that the Tribunal had erred in law or reached a conclusion on the facts which it finds that no reasonable person applying the law could have reached."

In *Neal vs. Hareford and Worchester County Council* [6] "Deciding these cases is the job of the Industrial Tribunals and when they have not erred in law neither the Appeal Tribunal nor the Court of Appeal should disturb the decision unless one can say " My goodness that must be wrong."

Sharvananda, J. in *Caledonia Estates Limited v. Hillman*[7] set out the circumstances in which a finding of fact by a Labour Tribunal could be interfered in appeal. "Under Section 31D 2 of the Industrial Disputes Act an appeal to the Supreme Court lies from an order of a Labour Tribunal only on a question of law. Parties are bound by the Tribunal's findings of fact, unless it could be said the findings are perverse and not supported by any evidence. With regard to cases where an appeal is provided on questions of law only, Lord Norman in *Inland Revenue v. Fraser* [8] spelt the powers of Court as follows: "In cases where it is competent for a Tribunal to make findings of fact which are excluded from review the Appeal Court has always jurisdiction to intervene if it appears that the Tribunal has made a finding for which there is no evidence or which is inconsistent with the evidence and contradictory of it". In this framework the question of assessment of the evidence is within the province of the Tribunal and if there is evidence on record to support its findings this court

cannot review those findings even though on its own perception of the evidence this court may be inclined to come to a different conclusion. If the case contains anything *ex facie* which is bad in law and which bears upon the determination it is obviously erroneous in point of law but without any misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In these circumstances the court must intervene. *Per* Lord Radcliffe in *Edwards v. Bairstow* [8]. Thus in order to set aside a determination of facts by the Tribunal limited as this Court is only to setting aside a determination which is erroneous in law, the Appellant must satisfy this 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 having regard to the evidence on record. Hence a heavy burden rested on the Appellant when he invited this Court to intervene and reverse the conclusion of facts arrived at by the Tribunal."

In my view an appeal on a point of law is rigidly circumscribed and it has been repeatedly held by the Appellate Courts that the Courts of Appeal must exercise self-restraint. In cases where it disagrees profoundly with the decision of the Tribunal on the facts but where there is a definable error of law the Court should intervene.

I am unable to agree with the submission of learned Counsel. The learned President preferred to accept the evidence and the version given by Sivakumar. The evidence discloses the past record of the Applicant Ziard was not free from blemish. The 2nd Applicant committed a breach of a regulation. The learned President in exercising his discretion held the termination was justified. I am of the view that this court should not intervene.

I do not see any definable point of law as specified in Section 31 (1) D (2) of the Industrial Disputes Act. I do not see any reason to interfere with the determination of the Tribunal. I affirm the order and dismiss the appeals with costs fixed at Rs. 350/-.

Appeals dismissed.