

**THE PUBLIC TRUSTEE**

**V**

**RATNAYAKE BANDA**

SUPREME COURT  
DHEERARATNE, J.  
WADUGODAPITIYA, J. AND  
ISMAIL, J.  
SC APPEAL 57/98  
31<sup>st</sup> AUGUST, 1999

*Industrial dispute - Termination of services of a workman - Decision of the Labour Tribunal - Decision of the High Court in appeal - Misdirection by the Labour Tribunal in accepting the workman's defence - Wrong assessment of evidence by the High Court -*

Irahandayaya Estate consisting of 80 acres of coconut was managed by the appellant (employer). The respondent (workman) was its Superintendent. It was the respondent's duty to count and report the number of coconuts, both plucked and fallen, at each pick. The selling of the nuts would thereafter be done by appellant. The appellant dismissed the respondent as he was found guilty, at a domestic inquiry of certain charges including charges of submitting false crop figures. The respondent was found to have understated the crop by about 15, 181 nuts. The Labour Tribunal accepted the respondent's version and ordered that he be re-instated subject to his transfer to another estate, and ordered one year's back wages. On an appeal by the respondent, the High Court ordered that he be re-instated with full back wages and other emoluments and promotions due.

**Held :**

The President of the Labour Tribunal misdirected himself and wrongly accepted the explanation of the respondent and made his order for reinstatement with full back wages and other emoluments and promotions due.

*Per* Wadugodapitiya, J.

"It is my considered opinion that the order of the learned Judge of the High Court is erroneous and cannot be allowed to stand. Upon a proper

assessment of the evidence, it is patent that the explanation given by the respondent is false and must be rejected.”

**APPEAL** from the judgment of the High Court.

*Gomin Dayasiri with Kavinda Dias Abeysinghe* for the appellant.

*Manohara de Silva* for respondent.

*Cur. adv. vult.*

December 12, 1999

**WADUGODAPITTIYA, J.**

The Respondent (employee) made an application to the Labour Tribunal under Section 31B of the Industrial Disputes Act alleging that the Appellant (employer) had terminated his services unjustly. He sought re-instatement with back wages.

The Appellant countered this allegation saying that the Respondent, who was employed as the Officer-in-Charge (Superintendent) of the 80 Acre Irahandayawa (coconut) Estate, Henagama in the Gampaha District, was dismissed as he was found guilty at a domestic inquiry of certain charges including the charges of submitting false crop figures, failing to account for a number of coconuts and wilfully disobeying lawful orders given to him by the Appellant.

Before the Labour Tribunal, the Respondent did not call any witness, but was content with his own evidence only. The Appellant however, called three witnesses, S. Rajapakse, W.K.D.S. Premakumara and M. G. Perera, who were officers of the Public Trustee's Department.

At the conclusion of the inquiry the learned President of the Labour Tribunal re-instated the Respondent subject to his transfer to another estate, and ordered one year's back wages.

The Appellant thereupon appealed to the High Court, Western Province. The Respondent also lodged an appeal seeking, inter alia, full backwages. Both appeals were heard together; at the conclusion of which, the Appellant's appeal was dismissed, whereas the Respondent was ordered to be reinstated with full back wages and other emoluments and promotions due.

The Appellant now appeals against the order of the Learned Judge of the High Court.

Irahandaya Estate consists of 80 Acres of coconut and is managed by the Appellant. The income of the estate is meant for charity. The Respondent who was employed as Superintendent in charge of the estate has, according to the Appellant, cheated by giving false figures understating the pluck. Coconuts are plucked every two months and, the December 1989 pluck was the 6th and last one for the year 1989. It is the Respondent's function and duty to count and report the number of coconuts, both plucked and fallen, at each pick. The selling of the nuts would thereafter be done by the Appellant.

After the 6th and last pick for the year 1989, the Respondent gave a crop figure of 30,189 coconuts (R4). Thereafter as petitions were sent against the Respondent, the Appellant had the coconuts re-counted by his officers in the presence of the Respondent, and found a total count of 45,370 nuts (R1). Thereafter the Respondent himself re-counted the nuts on his own and sent a letter to the Appellant setting out his new figure of 35,211 nuts (R7). The original counting by the Respondent was on 26.12.89 and the re-count by the Respondent was on 10.1.90. Thus, in the intervening space of about 14 days an additional 5,022 coconuts suddenly appeared on the Respondent's own showing. The difference between his count and the Appellant's count of 45,370 nuts is, of course, enormous.

**The detailed crop figures are as follows :**

	<b>Plucked coconuts</b>	<b>Fallen coconuts</b>	<b>Total</b>
(i) On the Respondent's first report dated 26.12.89 (marked R4) -	25,550	4639	30,189
(ii) On the counting done by the Appellant's Officers on 9.1.90 and their report (Marked R1)	37,124	8246	45,370
(It must be noted that this count was done in the presence of the Respondent and that the Respondent has signed the Report R1 against his own endorsement "counted in my presence.")			
(iii) On the Respondent's second report dated 10.1.90 (marked R7) which he had done on his own, without notice to the Appellant and without the Appellant's consent)	-	-	35,211

The Respondent's explanation (A 11) is that the extra 5,022 nuts shown on his second count, were fallen coconuts belonging to the next pick, viz the 1st pick for 1990; i. e. that they fell during the 14 days between 26.12.89 and 10.1.90, immediately after the earlier 6th pick for 1989 was completed.

The Learned President of the Labour Tribunal accepted without question, the Respondent's version that the sudden and extraordinary increase of 5,022 coconuts in the very short period of about 14 days, as revealed in the Respondent's own report R4 and R7, was due to fallen coconuts.

On appeal, the Learned High Court Judge in turn, having miscalculated the period of time as being from 9.12.89 (not 26.12.89) to 10.1.90 (viz : one whole month), took the view that, inasmuch as this was a very large estate, it was possible for a large number of coconuts to have fallen during that whole month. However, according to the Respondent's own report R4 (dated 26.12.89), the total number of fallen coconuts for that pick; which fallen coconuts were included in his grand total of 30,189 coconuts for his self-same pick, was only 4,639. It is indeed quite impossible that at the counting which was done at the end of the 6th pick, the fallen nuts for the 2 - month period amounted to 4639, whereas according to the Respondent, 5022 nuts fell by themselves during a period of about 14 days immediately after the 6th pick.

As Learned Counsel for the Appellant rightly pointed out, this simply could not have happened.

On the contrary, it must be remembered that the counting done by the Appellant's officers in the presence of the Respondent revealed a figure of 45,370 coconuts which represents an enormous difference of 15,181 coconuts!

Learned Counsel for the Respondent in reply submitted that the Respondent had served about four or five years on this estate and that he had had a good record, and that petitions were sent against him by persons with ulterior motives because he looked after the estate well and did not allow thefts to take place. He also urged that the count done by the Appellant as reflected in R1 was upon a surprise check and was done after sun-down with the aid of the headlights of the Public Trustee's jeeps. He said that the Appellant's figure of 45,370 coconuts (R1) cannot be taken as correct.

For the purposes of argument, I am prepared to ignore the Appellant's figure of 45,370 coconuts. But, there still remains

the Respondent's own figure of 35,211 nuts on the second count that he himself did. Even assuming (without accepting) that the Respondent's own figure of 35,211 nuts is the correct one, there still remains the difference of 5022 coconuts for which, the Respondent in my considered view, has given no satisfactory or acceptable explanation.

As set out above, the Learned President of the Labour Tribunal, having misdirected himself and wrongly accepted the "fallen coconuts" explanation of the Respondent, re-instated the Respondent with one year's back wages, and going further, the Learned Judge of the High Court having himself fallen into error in the calculation of the time factor and himself wrongly accepting the Respondent's "fallen coconuts" explanation without critical analysis of the facts, re-instated the Respondent with full back wages, plus other emoluments and promotions due.

It is my considered opinion that the order of the Learned Judge of the High Court is erroneous and cannot be allowed to stand. Upon a proper assessment of the evidence, it is patent that the explanation given by the Respondent is false and must be rejected. In fact, on the contrary, I see no reason for disbelieving the accuracy of the count done by the officers of the Public Trustee's Department, which yielded 45,370 coconuts. When one compares this figure with the original figure given by the Respondent in his first Report R4, (viz : 30,189 nuts) one cannot fail but see the enormity of the thievery that has taken place, for, the Respondent has boldly understated the crop by no less than 15,181 coconuts! At to-day's price of coconuts, this is a tidy sum indeed!

For the reasons set out above, I set aside the order of the Learned Judge of the High Court marked A3. I also set aside the order of the Learned President of the Labour Tribunal dated 14.12.95

I allow the appeal of the Appellant with costs fixed at Rs.10,000/.

**DHEERARATNE, J.** - I agree.

**ISMAL, J.** - I agree.

*Appeal allowed; orders of the High Court and the Labour Tribunal set aside.*