

PARAKRAMA  
v.  
BANK OF CEYLON

SUPREME COURT.

G. P. S. DE SILVA, C.J.,

KULATUNGA, J. AND

RAMANATHAN, J.

S.C. APPEAL NO. 90/94

C.A. NO. 180/87

L.T. NO. 4/4/M/5256

NOVEMBER 03 AND DECEMBER 15, 1994.

*Industrial Dispute – Termination of services during probation – Compensation.*

The appellant was appointed as the sub-manager of the Bank of Ceylon Agrarian Service Centre Branch, Hakmana on 3 years probation extendable to 4 years and confirmation was to be –

(a) if his work was satisfactory

(b) if he passed the proficiency examination in language and

(c) if he passed the prescribed Bankers' examination.

There were inquiries into alleged irregularities and his services were terminated.

**Held:**

The justification for not reinstating the appellant was the fact that even after the expiry of 4 years, he remained a probationer. He has not passed the requisite Bankers' Examination. He had subjected himself to a medical examination as required by his letter of appointment. He had been warned more than once. His replies were brusque, if not rude. His letters were unhappily worded. There was no justification to confirm him. Compensation could be awarded.

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

*Faisz Musthapha, P.C.* with *S. Jayawardena* for petitioner on 3.11.94 and petitioner in person on 15.12.94.

*N. S. A. Gunatilake* with *M. E. Wickramasinghe* for respondent.

*Cur. adv. vult.*

February 10, 1995.

**KULATUNGA, J.**

The appellant was the Sub-Manager of the Bank of Ceylon, Agrarian Service Centre Branch, Hakmana. He was interdicted on

26.11.79 on half pay. On 04.06.80 a charge sheet was served on him alleging certain lapses by him in the discharge of his functions as Sub-Manager. Subsequently, a domestic inquiry was held and his services were terminated, by a letter dated 06.06.81.

Although the appellant's services were so terminated on the basis of specific charges, the respondent (The Bank of Ceylon) in its answer as well as during the inquiry before the Labour Tribunal, stated its defence in more general terms namely, that the appellant's services were terminated while he was still under probation; that such termination was in the interest of the respondent and justified; and that the appellant had a poor record of service.

The Labour Tribunal by its order dated 13.03.87 decided that in terminating the appellant's services, the management had not acted in good faith in that such termination was probably motivated by extraneous reasons; that the evidence did not reveal any misappropriation or any dishonesty on the part of the appellant; that the appellant who had completed 4 years of service on 23.04.79 should have been confirmed; and that the impugned termination was unjustified, even if the appellant was a probationer. Accordingly, the tribunal ordered that the appellant be reinstated in employment with effect from 15.04.87, with 2 1/2 years back wages or in the alternative the appellant be paid compensation in a sum of Rs. 32,580/- being 3 years salary computed on the basis of the last salary received by him viz., Rs. 905/-. The appellant, not being satisfied with the quantum of compensation, appealed to the Court of Appeal.

The Court of Appeal held that as the appellant was holding a position of trust and confidence, reinstatement is not in the public interest or in the interest of the respondent, which handles public funds. However, the Court enhanced the compensation awarded by the Labour Tribunal. The Court directed that the appellant be paid a sum of Rs. 76,020/- being 7 years salary. The appellant appealed to this Court. He was granted special leave to appeal only on the question of quantum of compensation, as an alternative to reinstatement. Special leave to appeal was refused on the question of reinstatement.

On the second day of the hearing before this Court, the appellant appeared in person having revoked the proxy granted to his registered Attorney. In the circumstances, learned President's Counsel who represented the appellant on the first day excused himself from further appearance. From the submissions made by the appellant, it appeared that he was particularly aggrieved by the observation made by the Court of Appeal that in view of the fact that the appellant held a position of trust and confidence reinstatement was not in the interest of the respondent, which handled public funds. Presumably in view of this grievance, the appellant requested that he be permitted to make submissions including the question of reinstatement. The Court permitted him to make submissions on that matter. The Court also heard learned Counsel for the respondent in reply.

The Court was of the view that whilst the appellant's grievance merits consideration in deciding this appeal, it was not fair to call upon the respondent at that stage, to reply on the question of reinstatement. Accordingly, the Court heard Counsel for the respondent only on the quantum of compensation. I shall now set out the relevant facts.

The appellant commenced employment under the respondent on 19.04.75 as a Staff Assistant Grade I, subject to a period of 3 years probation which was liable to extension up to 4 years. The letter of appointment P1 provided that he would be confirmed in service at the end of such probation –

- (a) if his work is satisfactory;
- (b) if he has passed the proficiency examination in language;  
and
- (c) if he has passed the prescribed Bankers' Examination.

If the appellant failed to so qualify for confirmation, he became liable to have his services terminated; alternatively his probationary period was deemed to have been automatically extended. P1 also required him to submit himself forthwith to a medical examination by a medical officer nominated by the respondent. If at such examination, he was found unfit for service in the Bank, then also he became liable to have his services terminated immediately.

By circular No. 74/77 (R27) the requirement of passing the Bankers' Examination for confirmation was relaxed to the extent that it provided that after 4 years service, the bank may consider confirmation of an officer who holds the position of Sub-Manager on the basis of his service record, notwithstanding the failure to pass such examination. If a Sub-Manager is so confirmed, his promotion to the next higher grade will be dependent on his passing such examination.

As at the date of his interdiction on 26.11.79, the appellant had not been confirmed in his post and he was a probationer. He had not passed the requisite Bankers' Examination. On 18.10.77 the Regional Manager, Sabaragamuwa Region had warned him regarding the return of a postdated cheque (R33). On 30.01.79 the same Regional Manager, acting on the decision of a disciplinary committee, severely warned the appellant for closing the Hakmana Branch at 11.30 a.m. on 23.02.78 (R31). The appellant replied on 06.02.79 stating that he was not prepared to accept the warning. He said that he had to close the bank on that day as he had to attend his brother's wedding for which purpose he had not been granted leave, even though his application for leave had been submitted a month before. He threatened to resign from his post and to make representations to the Chairman. (R32).

On 22.02.79, the Regional Manager, Southern Region severely warned the appellant for delaying to submit certain documents and further warned that disciplinary action may have to be taken in the event of a recurrence of such neglect. (R35).

It would appear, that notwithstanding the above short-comings, the management had been considering the appellant's confirmation. According to the Regional Manager's letter dated 08.05.79 addressed to the appellant (the 3rd reminder on the subject) the appellant's confirmation was held up as he had failed to forward the medical report required by the letter of appointment (R28). On 19.06.79, the District Manager sent a 4th reminder to the appellant on that subject (R30). The appellant replied by his undated letter (R9) that due to pressure of work, he had not been able to obtain a medical report. He added that he was working with a view to

improving his branch. If he could thereby increase its profits, he would not mind the delay in his confirmation. He however, promised to attend to the matter as soon as possible.

We next have a letter dated 06.06.79 by which the Regional Director, Galle, acting on the recommendation of the Deputy General Manager, Administration, severely reprimanded the appellant for engaging in lengthy correspondence with the Manager, Matara Branch, using discourteous language (R34).

It would appear that by November 1979 an investigation had commenced into alleged irregularities in the Hakmana Branch. This investigation was conducted by Ramachandra, Asst. Manager Bank of Ceylon, attached to the Inspection Department, pursuant to a memo dated 07.11.79 addressed by the Deputy General Manager, Finance to the Chief Inspector of Branches. In the course of this investigation, the appellant made a statement to the District Manager, Matara on 14.11.79 wherein he admitted that he had delayed collecting some cheques for one or two days. He explained that this was done to help good customers. He added that he had thereby contravened circulars. This he explained was done in the interest of the Hakmana Branch, which was a new bank and that he did not obtain any benefit from the said customers (R37).

On 13.11.79 the appellant addressed a letter to the Chief Inspector of Branches accepting responsibility for the conduct of affairs at the Hakmana Branch during the relevant period. He requested the Chief Inspector to relieve his staff from blame in that regard and to call for his explanation. (R38). Thereafter by letter dated 26.11.79 the appellant was interdicted, on the direction of the General Manager (A7).

A7 states that the decision to interdict the appellant had been taken after considering the report of investigations into alleged irregularities at the Hakmana Branch and that he was being interdicted, pending the framing of charges. There is no evidence as to what that report was. The only report produced in this case is the report of Ramachandra, the inquiring officer, dated 21.01.80 (R1). Ramachandra, under cross-examination, was unable to say on what

material the bank interdicted the appellant. He, however, said that he had completed the inquiry by the end of November although his report could have been delayed. The learned President of the Labour Tribunal was of the opinion that, in the circumstances, there would have been other factors for the appellant's interdiction which have not been placed before the tribunal. Hence, the tribunal was inclined to think that the respondent had acted unreasonably. The tribunal was greatly influenced by this opinion in deciding that the dismissal of the appellant was completely unjustified and in ordering his reinstatement.

In forming the opinion that there was something sinister in the appellant's interdiction, the tribunal probably failed to consider the relevance of documents R37 and R38, which constitute evidence of the back ground to the appellant's interdiction. Even if there was no written report of the investigations, an inquiry into alleged irregularities had commenced on or about 07.11.79 and the appellant had been questioned in that regard, pending finalisation of such inquiry and prior to his interdiction. As such, there is no justification for the very strong opinion which the tribunal formed namely, that the appellant's interdiction was motivated by extraneous considerations. This opinion, in turn, contributed to the findings of the tribunal that the bank had not acted in good faith in terminating the appellant's services.

I agree that in the absence of other considerations such as probation and past conduct, the derelictions committed by the appellant did not *per se* warrant the termination of his services. He had withheld cheques on a few occasions until the customer had provided sufficient funds to satisfy such cheques. He had also accepted deposits after closing hours. The appellant explained that this was done to help rural customers and in appropriate situations. He thought that in a growing bank, there has to be some relaxation of the rules. It was also alleged that there were irregular alterations in the books of accounts. However, as observed by the tribunal there was no misappropriation of funds or any dishonesty on the part of the appellant.

The evidence shows that notwithstanding his lack of experience, the appellant was a hard working man. But he was sensitive. He also

had problems with Raj, the Manager of the Matara Branch who appears to have been over strict. The appellant complained with some justification that Raj was particularly strict and did not grant him leave, even in situations where leave was clearly justified.

In the light of the available evidence, there is no justification for the observation of the Court of Appeal that the appellant could not be reinstated in view of the fact that he held a position of trust and confidence involving the handling of public funds. This statement carries the implication that the appellant was guilty of conduct involving moral turpitude. But the evidence does not warrant that view.

The justification for not reinstating the appellant is the fact that even after the expiry of 4 years, he remained a probationer. He had not passed the requisite Bankers' Examination. He had not subjected himself to a medical examination as required by his letter of appointment. He had been warned more than once. His replies were brusque, if not rude. His letters were unhappily worded. I do not mean to say that he has an evil mind. In fact, when he argued his case on the 2nd day of hearing, I had the impression that he is an intelligent man possessed of sincerity. He would probably do well in any vocation which suits his genius.

The above statement would suffice to relieve any grievance the appellant may have arising out of the observations made by the Court of Appeal. The only question left now is the adequacy of compensation ordered by the Court of Appeal. On this question, the relevant facts are that the appellant had only 4 years probationary service, at the time he was dismissed. On the available evidence there was no certainty of confirmation. There is no justification for the opinion of the Labour Tribunal that appellant should have been confirmed. Yet, the Court of Appeal has awarded him seven years salary as compensation amounting to Rs. 76,020/- together with costs in a sum of Rs. 3,000/-. This is an award of compensation which is normally made in favour of a permanent employee. I am, therefore, unable to increase the sum awarded by the Court of Appeal. The respondent has not challenged the amount so awarded. I direct the respondent to deposit the said sum of Rs. 76,020/- with the Asst.

Commissioner of Labour, Galle on or before 31.03.95. Subject to this direction, the appeal is dismissed, but without costs.

**G. P. S. DE SILVA, C.J.** – I agree.

**RAMANATHAN, J.** – I agree.

*Appeal dismissed.*

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