

BANK OF CEYLON
v.
MANIVASAGASIVAM

SUPREME COURT
G. P. S. DE SILVA, C.J.,
KULATUNGA, J.
RAMANATHAN, J.
S.C.APPEAL NO. 77/93
H.C. APPEAL 107/91
L.T. CASE NO. 1/34/86
JUNE 9 AND JULY 5, 1995

Industrial Disputes Act. – Termination – Labour Tribunal – Application dismissed – High Court Reversed Order – Failure to consider evidence as a whole – Confidence reposed in an Employee – Factors to be taken into consideration.

The Applicant Respondent made an application to the Labour Tribunal alleging that the termination of his services by the appellant was illegal and unjustified. The application was dismissed after inquiry.

The case for the Bank was that there was a loss of confidence in the applicant by reasons of the part he played in an attempt made by certain persons to fraudulently transfer a very large sum of money from Sri Lanka to accounts which had been opened in a Swiss Bank.

The High Court on appeal reversed the Order of the Labour Tribunal.

Held:

- i) The High Court had failed to consider the evidence as a whole and address its mind to a significant fact, namely the kind of institution in which the applicant was employed.
- ii) Utmost confidence is expected of any officer employed in a Bank. There is 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.
- iii) In the circumstances of this case, it is apparent that he has clearly forfeited the confidence reposed in him as an employee of the Bank .

Case referred to:

1. *Sithamparanathan v. Peoples Bank* 1986 – 1 SLR at p. 414-415.

AN APPEAL from the High Court of Colombo.

N. S. A. Goonetilleke, P.C., with *M. E. Wickremasinghe* for the Employer-Appellant.

R. E. Thambiratnam for the Applicant-Respondent.

Cur. adv. Vult.

July 21, 1995.

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

The applicant made an application to the Labour Tribunal alleging that the termination of his services by his employer, the Bank of Ceylon, was illegal and unjustified; he sought reinstatement and back-wages. After inquiry, the Labour Tribunal dismissed the application. Thereupon the applicant preferred an appeal to the High Court which allowed the appeal and directed that the applicant be reinstated with back-wages. The employer has now appealed to this court against the judgment of the High Court.

The applicant was a Clerk Grade II in the Personnel and Administration Division of the Bank of Ceylon at the time of the termination of his services. He had served in the Bank from 1.3.74 to 11.12.85. The case for the Bank was that there was a loss of confidence in the applicant by reason of the part he played in an

attempt made by certain persons to fraudulently transfer a very large sum of money from Sri Lanka to accounts which had been opened in a Swiss Bank.

It is in evidence that in or about August 1984 two persons named Ranjan and Pathmanathan along with one Imtiaz had met the applicant at his office. The applicant had previously known Ranjan and Pathmanathan but not Imtiaz. Ranjan had told the applicant that Imtiaz was a friend of his who had come from abroad and that Imtiaz had to clear some goods from the customs. For this purpose Ranjan had wanted him to certify the signature of Imtiaz. He had told Ranjan that he had no "signing powers." He had then introduced Ranjan and Pathmanathan to his superior officer Nadesalingam. Thereafter Nadesalingam has had a discussion with these 3 persons and had "certified" the signature of Imtiaz as evidenced by the document R2. It is to be noted that there is nothing in R2 to suggest that it was to be used to clear goods from the Customs. R2 is addressed "to whom it may concern" and it confirms the authenticity of the signature of Imtiaz. Nadesalingam has signed R2 as the District Manager, Bank of Ceylon, Colombo. It is not disputed that R2 was not used for the purpose of clearing goods from the Customs. In fact it was used for an entirely different purpose, namely to fraudulently open accounts in a Swiss Bank. The use to which R2 was put would seriously affect the reputation of the Bank. Mr. L. Jayasuriya, the Deputy General Manager of the Bank stated in the course of his evidence that " it would have demolished the image of the Bank internationally." The evidence led on behalf of the Bank clearly shows that the certification of the signature of the person intending to open an account in a foreign Bank by an "approved Bank" is an essential requirement; the Bank of Ceylon is one such "approved Bank."

Besides R2, there is another document R3 dated 29.8.84 wherein the signature of the aforementioned Pathmanathan was certified by Thiagarajapillai, a Manager of the Bank of Ceylon. R3 is a letter addressed to a Swiss Bank by Pathmanathan seeking to open an account in that bank. It is relevant to note that in this instance too, it was the applicant who had introduced Pathmanathan to Thiagarajapillai.

Subsequently Imtiaz and Pathmanathan together with two others were indicted for offenses relating to an attempt to fraudulently transfer large sums of money to a bank account in Switzerland. Imtiaz pleaded guilty to the charges while the other three were acquitted after trial.

Mr. Thambiratnam, counsel for the applicant strongly urged, (i) that there was no evidence at all that the applicant knew or had reason to believe that Imtiaz and Pathmanathan intended to use R2 and R3 for a fraudulent purpose; (ii) that in authenticating the signatures of Imtiaz and Pathmanathan, both Nadesalingam and Thiagarajapillai were exercising their independent judgment; (iii) that the applicant was only a clerk working under Nadesalingam; (iv) that the acts of the applicant relied on by the Bank for the termination of his services do not amount to acts of misconduct. On the other hand, Mr. Nehru Goonetilaka for the Bank contended (a) that the evidence revealed that the certification of signatures by authorised officers of the Bank had to be done according to specified procedure; (b) that R2 and R3 had in fact been used for fraudulent purposes, causing a serious loss of reputation in so far as the Bank is concerned; (c) that the applicant played a pivotal role in obtaining the certification of the signatures of Imtiaz and Pathmanathan; (d) that the applicant failed to testify before the Labour Tribunal.

On a consideration of the evidence, it is clear that it was by reason of the intervention of the applicant that Imtiaz and Pathmanathan were able to secure the certification of their signatures by an "approved Bank" in Sri Lanka. It is not disputed that such "certification" was essential in order to open an account in the Bank in Switzerland. The applicant himself, though a clerk, had been in the service of the Bank for **eleven years**. The evidence of E. T. Fernando, the Deputy General Manager of the Bank of Ceylon is that the applicant **should have known** the accepted procedure in regard to certification of signatures by officers of the Bank. Admittedly, Imtiaz was a person unknown to the applicant. Nevertheless, he thought it fit to introduce Imtiaz to Nadesalingam for a purpose which he should have known could have grave consequences to the Bank. Witness L. Jayasuriya, the Deputy General Manager (Credit) of the Bank of Ceylon in his evidence stated that the purpose for which R2 and R3

were used "would have demolished the image of the Bank internationally, because these documents were used for the purpose of fraudulent transfer of funds."

In reversing the order of the Labour Tribunal, the High Court was in error inasmuch as the High Court had failed to consider **the evidence as a whole**. The High Court has failed to address its mind to a significant fact, namely, the kind of institution in which the applicant was employed. As observed by Siva Selliah, J. in *Sithamparanathan v. Peoples Bank*⁽¹⁾, "It is needless to emphasize that the utmost confidence is expected of any officer employed in a Bank ... 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 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."

It seems to be that by reason of the part played by the applicant in two transactions which, to say the least, were questionable, he has clearly forfeited the confidence reposed in him as an employee of the Bank. In these circumstances, the Bank should not and cannot continue to employ him.

The appeal is accordingly allowed, the judgment of the High Court is set aside and the order of the Labour Tribunal is restored. In all the circumstances, there will be no order for costs of appeal.

KULATUNGA, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.