

LANKA SYNTHETIC FIBRE COMPANY LTD.
v.
PERERA

SUPREME COURT
DHEERARATNE, J.,
WADUGODAPITIYA, J. AND
BANDARANAYAKE, J.
S.C. APPEAL NO. 92/97
H.C.A. (LT) CASE NO. 1243/96
LT CASE NO. 8/194/93
AND LT CASE NO. 8/195/93
MAY 18, 1998

Industrial Disputes – Termination of Services – Use of abusive language towards superiors – Labour Tribunal decision – Appeal to the High Court.

The respondent workman was an assistant security officer employed by the appellant company. The workman's services were terminated as he had been found guilty of misconduct. The charges against the workman were (a) (1) he permitted a labourer to remove 7 cardboard boxes belongings to the company (b) he abused and arrested a security officer who was a superior officer for questioning the labourer at the gate regarding the cardboard boxes. After inquiry, the Labour Tribunal dismissed the workman's application for relief. In appeal the High Court was of the view that although there had been a "dialogue" between the workman and his superior, it was an incident which should not have been taken seriously and ordered reinstatement with back wages.

Held:

The use of abusive languages towards a superior officer was a serious misconduct. Hence the finding of the High Court is unacceptable.

APPEAL from the judgment of the Provincial High Court.

S. M. Fernando P.C, with **K. Perera** for appellant.

A. S. M. Perera P.C, with **Athula Perera** for respondent.

Cur. adv. vult.

July 27, 1998.

SHIRANI A. BANDARANAYAKE, J.

The applicant-appellant-respondent C. S. L. P. Perera (workman Perera) filed an application (No. 8/194/93) in the Labour Tribunal in Colombo complaining that his services were unjustly terminated by the appellant by letter dated 22.02.1993. At the time of the termination of his services, he was employed as a Security Assistant in the appellant company. Another workman J. A. Ranasinghe (workman Ranasinghe) employed by the same company also filed an application (No. 8/195/93) in the Labour Tribunal, Colombo, at the same time, complaining that his services too were terminated by the appellant by another letter dated 22.02.1993. At the time of his termination of his services the said workman Ranasinghe was employed as a general labourer. According to the answers filed on behalf of the respondent-respondent-petitioner (the appellant company), services of the workman Perera were terminated as he was found guilty of the charges contained in the show cause letter dated 28.01.1993 (R5). The charges were as follows:

1. On 12.12.1992, when Perera was on duty, he had permitted a labourer by the name of J. A. Ranasinghe (the applicant in 8/195/93) to remove 7 cardboard boxes from the premises of the petitioner company after he had been informed by M. D. K. Goonatillaka, another Security Officer, that he should not do so;
2. In connection with the above incident, for having abused and assaulted a Security Officer by the name of T. Tissera;
3. For neglecting his duties and for having brought into disrepute the petitioner company.

Four persons gave evidence before the Labour Tribunal on behalf of the petitioner company. M. D. K. Goonatillaka, a Security Assistant who was in a lower grade than workman Perera, and workman Perera were on duty at the second barrier near the gate on 12.12.1992 around

4.30 pm. Witness Goonatillaka was required to collect the keys of the various stores and cupboards which were brought to him when the supervisors were leaving the workplace. Workman Perera was required to check the workers and prevent them from taking any property belonging to the petitioner company. Employees had first to pass the second barrier which was about 100 yards away from the first, in order to leave the premises of the petitioner company. When witness Goonatillaka and workman Perera were on duty at the second barrier on 12.12.1992, workman Ranasinghe had come there carrying 7 new cardboard boxes which were pressed flat. This was property belonging to the petitioner company. According to Goonatillaka, he had asked workman Ranasinghe whether he had a gate pass to remove the cardboard boxes. Workman Perera had then intervened and had permitted to workman Ranasinghe to take the said boxes away stating that he had already given him permission to do so. Workman Ranasinghe then had carried them to the first barrier. Witness M. A. H. Cooray of the Fire Protection Division of the appellant company gave evidence next and produced the statement of T. Tissera (recorded by him) who was employed as a Security Officer at the time of this incident. Tissera had left the services of the petitioner company at the time of the inquiry before the Labour Tribunal. In his statement (R3), Tissera stated that when workman Ranasinghe brought seven new cardboard boxes to the main gate he questioned him; then workman Perera came to the main gate from the 2nd barrier, abused him using filthy language (R3B) and assaulted him on the face (R3A). Tissera in his evidence before the Labour Tribunal confirmed that R3 is a truthful record of what occurred on 12.12.1992.

Workman Perera giving evidence on his own behalf denied that he assaulted Tissera, who was his Superior Officer. He claimed that there was an altercation between him and Atukorale, another Security Officer, over the removal of 7 cardboard boxes by workman Ranasinghe. In the course of that altercation he pushed Atukorale and Atukorale's hand struck Tissera's face.

The learned President of the Labour Tribunal agreeing with the Appellant held considering the responsible position held by workman Perera as a Security Assistant and the gravity of the offences, the

termination of workman Perera's services was justified and accordingly made order dismissing the application. In the separate application filed by workman Ranasinghe, the learned President of the Labour Tribunal held that the termination of said Ranasinghe's services was also justified but ordered his reinstatement without back wages, on compassionate grounds as he was a mere labourer. Workman Perera, took up the position that the punishment of dismissal was too harsh a punishment in respect of the charges against him and he appealed to the provincial High Court, Colombo. The provincial High Court set aside the order of the Labour Tribunal and directed that workman Perera beinstated with back wages and other benefits which were denied to his during the period of his non employment. The provincial High Court was of the view that the finding of the Lbour Tribunal that workman Perera was guilty of the charges levelled against him was contrary to the evidence led at the inquiry. Further, the High Court was of the view that there was no mutual corroboration of the testimony of witnesses who gave evidence against workman Perera. The learned High Court Judge was of the view that the learned President of the Labour Tribunal has blown out of proportion a small incident.

This appeal is from the judgment of the provincial High Court, Colombo and special leave to appeal was granted by the Supreme Court on the following questions:

- a. whether the High Court erred in law in setting aside the findings of fact of the Labour Tribunal;
- b. in any event, whether the High Court erred in law in ordering reinstatement with full back wages.

It was submitted on behalf of the appellant company that the learned President of the Labour Tribunal had given careful consideration to the evidence led at the inquiry and reached a finding of fact that workman Perera was guilty of all the charges. Learned President of the Labour Tribunal had taken into consideration the nature of duties workman Perera had to carry out and on that basis, he had come to the conclusion that workman Perera was holding a

responsible position in his place of work. Moreover learned President of the Labour Tribunal had given careful consideration to the altercation workman Perera had with Gunatillaka, when Gunatillaka tried to prevent workman Perera, from taking away the cardboard boxes without a permit. Considering the foul language alleged to have been used by workman Perera and the circumstances which led to the altercation, it is clear that learned President of the Labour Tribunal quite rightly took a serious view of the episode.

Learned counsel for workman Perera submitted that the boxes in question were not new boxes but old ones and that they were not marked at the Labour Tribunal. He conceded that there was an altercation but his position was that Atukorale was responsible for that. Further he submitted that workman Perera, did neither assault nor quarrel with anyone. Therefore he submitted that there was no question of workman Perera being abusive towards his superior officer. Learned counsel further submitted that as there was no positive finding by the President of the Labour Tribunal that workman Perera had either assaulted or was abusive; there was no need therefore to interfere with the decision of the provincial High Court of Colombo.

Learned Judge of the provincial High Court, Colombo, in his judgment stated that learned President of the Labour Tribunal has failed to evaluate the evidence placed before him. If not, he stated that learned President has erred in evaluating the evidence. Accordingly he was of the view that '*although it seems that there was a dialogue between the workman and his superior officer over some cardboard boxes which were not that valuable, it was not an incident which should have been taken seriously*' (emphasis added). Furthermore he was of the view that as this incident occurred inside the premises of the company there was no possibility of taking these items outside and therefore a small incident had been grossly exaggerated by the respondent company.

B. R. Ghaiye in Misconduct in Employment discusses the use of abusive language towards the superior and states that it is a serious misconduct. In his words:

"The use of abusive language towards the superiors is a misconduct because it creates such a situation in which it becomes impossible to maintain proper discipline in an establishment . . . Whatever may be the reason of the use of abusive words, it is a recognised misconduct and unlike use of defamatory words it has no exceptions. It means that the use of abusive language will be misconduct irrespective of the circumstances in which it has been uttered" (p 560).

Learned High Court Judge has considered the fact that there has been an exchange of words but he was of the view that it was just a 'dialogue' between the workman and his superior. The evidence placed before the Labour Tribunal on the other hand shows the vituperative nature of that 'dialogue' as most of the words used are clearly abusive. Therefore the finding of the High Court that the order of the Labour Tribunal was erroneous is unacceptable.

For the above reasons the appeal is allowed, the judgment of the High Court, Colombo, is set aside and the order of the Labour Tribunal is affirmed. There will be no costs.

DHEERARATNE, J. – I agree.

WADUGODAPITIYA, J. – I agree.

Appeal allowed.