

THE BOARD OF GOVERNORS FOR ZAHIRA COLLEGE
v.
NAINA MOHAMED ALIAS NAINA LEBBE

SUPREME COURT
G. P. S. DE SILVA, CJ.,
BANDARANAYAKE, J. AND
WEERASEKERA, J.
S.C. APPEAL NO. 62/98
L.T. NO. 13/673/92
WITH S.C. APPEAL NO. 66/98
APRIL 28, 1999

Industrial dispute – Termination of services for misconduct – Payment of compensation notwithstanding the fact that the termination of services was justified.

A large number of students forcibly entered the office of the Principal, Zahira College, during school hours. They behaved in an unruly and boisterous manner and coerced the Principal to issue a letter withdrawing a letter issued earlier by the Principal requiring certain teachers to vacate the hostel. While all this was happening the applicant-respondent, a teacher at Zahira College, was standing near the Principal. He did nothing to dissuade the students from behaving in the way they did. He was found guilty of misconduct and dismissed from service by the employer-appellant (the Board of Governors of the College). The Labour Tribunal dismissed the application against the termination of services.

Held:

1. The applicant-respondent's presence and his inaction at the incident between the Principal and students can be reasonably constrained as supportive of the unruly behaviour of the students. Hence, he was guilty of misconduct.
2. In the circumstances of the case before the Court, the applicant-respondent was not entitled to compensation notwithstanding the fact that the termination of his services was justified.

Case referred to:

1. *Saleem v. Hatton National Bank Ltd.* (1994) 3 Sri LR 409 distinguished.

APPEAL from the judgment of the High Court.

Shirly M. Fernando, PC with *J. K. Azoor* and *B. D. V. Dias* for employer-appellant.
(SC Appeal No. 66/98).

R. E. Thambiratnam with *N. Raviraj* for applicant-respondent.

Cur. adv. vult.

May 27, 1999.

G. P. S. DE SILVA, CJ.

Naina Mohamed (the applicant-respondent in SC Appeal No. 62/98) was a teacher at Zahira College, Colombo. His services were terminated by the employer-appellant (the Board of Governors of Zahira College) with effect from 27.9.91. He made an application to the Labour Tribunal stating, *inter alia*, that the termination of his services was wrongful, unlawful and unjustified and sought relief by way of reinstatement in service. The employer in its answer took up the position that the applicant was found guilty of several acts of indiscipline and/or misconduct as set out in the show cause letter P1, and that, therefore, the termination of services was "perfectly lawful, just and equitable". After inquiry, the Labour Tribunal dismissed the application. The applicant preferred an appeal to the High Court which refused relief by way of reinstatement, but ordered compensation in a sum of Rs. 250,000 in lieu of reinstatement. Both parties have preferred appeals to this Court, the employer seeking to quash the order for compensation (SC Appeal No. 62/98) and the applicant seeking an order for reinstatement with back wages (SC Appeal No. 66/98).

The applicant who was a teacher at Zahira College was dismissed from service consequent upon an incident that took place in the office of the Principal of the school on 19.9.91. The evidence led on behalf of the Board of Governors of Zahira College established that about 75 to 100 students forcibly entered the office of the Principal at about 10.00 am during school hours. The students were behaving in an unruly and boisterous manner shouting at the Principal asking him to issue a letter withdrawing the letter issued earlier by the Principal requiring certain teachers to vacate the hostel. Some of the students were seated on the chairs meant for visitors and some were having

magazines in their hands while shouting at the Principal. The applicant Naina Mohamed was standing near the Principal's table while the students kept on shouting at the Principal. Ultimately, the Principal was compelled to issue the letter demanded by the students. The students, thereafter, left the office of the Principal. These facts were spoken to by witnesses who were called on behalf of the Board of Governors of the Zahira College. The testimony of these witnesses was accepted by the Labour Tribunal.

The applicant Naina Mohamed gave evidence and took up the position that he was nowhere near the Principal's office at the time of this incident; that he was in fact conducting a class, for the "Ordinary level repeat students". The Labour Tribunal, however, rejected the testimony of Naina Mohamed. The reason given by the Labour Tribunal for rejecting the evidence of Naina Mohamed was that if his position was that he was in fact engaged in teaching at the time of the incident he should have so stated in his "letter of explanation" given in response to "the show cause notice". The failure to mention this all-important fact is a matter which undoubtedly affects his credibility and the Labour Tribunal cannot be faulted for rejecting his testimony. A belated affidavit given by the Vice-Principal in support of the applicant's position that he was far away from the Principal's office at the material time is of hardly any probative value. There is little doubt that the evidence led on behalf of the employer clearly established the presence of Naina Mohamed inside the office of the Principal (near the Principal's table) while 75 to 100 students who had forcibly entered the office of the Principal were behaving in a most unruly manner. Faced with this deplorable situation, Naina Mohamed should have acted promptly in a manner that becomes a responsible member of the teaching staff of the school. It was his clear duty to have attempted to dissuade the students from behaving in the way they did. He made no attempt to bring the situation under control by directing the students to get back to their class-rooms. His silence and his inaction in the proved circumstances of this case tell heavily against him. A teacher in a school has a special responsibility to maintain discipline. The High Court has taken the view that his mere presence cannot be construed as "a participating presence" and therefore he was not guilty of misconduct. The proceedings before the Labour Tribunal are not criminal proceedings and concepts relevant in the area of the criminal law have been misapplied in the circumstances of this case. In any event, his presence in the Principal's

office and his manifest inaction in a critical situation where a mob of 75 to 100 students have surrounded the Principal would suffice to make him totally unfit to remain as a teacher in the school. A teacher, after all, occupies a special position in maintaining order and discipline in a school. In my view, his presence and his inaction can be reasonably construed as supportive of the unruly behaviour of the students. I, accordingly, hold that the finding of the Labour Tribunal that the charge of misconduct has been proved is in accord with the evidence and is reasonable.

When the matter came up in appeal, the High Court proceeded to award a sum of Rs. 250,000 as compensation to the applicant in lieu of reinstatement. Although an award of Rs. 250,000 was made in favour of the applicant, it is very relevant to note that there was *no finding by the High Court that the termination of the applicant's services was unjustified*. In awarding compensation to the applicant, the High Court relied heavily on the judgment in *Saleem v. Hatton National Bank Ltd.*⁽¹⁾ In relying on Saleem's case for the award of compensation to the applicant, it seems to me that the High Court has completely misunderstood that judgment. That was a case where the Manager of the Badulla Branch of the Hatton National Bank was dismissed from service "on account of the loss of a sum of Rs. 100,000 of reserve money from the vault of the bank". The Court of Appeal dismissed the workman's appeal and this Court granted special leave to appeal on the following limited questions : "Notwithstanding the finding of the Court of Appeal that the termination of the appellant's services is justified, is the appellant in any event entitled to the payment of compensation?". In awarding compensation Kulatunga, J. took into account the special and exceptional circumstances of the case. The appellant's services 'were not terminated for any act of dishonesty; he made a prompt report of the loss to his superiors and made a complaint to the police; he had an unblemished record of service from 1970 to 1985. after a very careful consideration of the several decisions relating to the award of compensation Kulatunga, J. expressed himself in the following terms:

"On the question whether the appellant deserves compensation I am of the view that there are special circumstances which would

make it just and equitable to order such relief. Besides the considerations which have been urged by counsel for the appellant it is relevant to note that the employer has dismissed both the appellant and the second officer. This, then is a case of shared responsibility even though, as the Manager of the Bank, the appellant must accept primary responsibility for the loss. He was negligent but as rightly submitted by counsel, no dishonesty has been alleged against him and *it is just one of those mistakes a human being is liable to make in a life time*. I hold that the appellant is entitled to the payment of appropriate compensation in the circumstances of this case and having regard to his unblemished record of service." at page 419. (emphasis added).

It is manifest that the judgment in Saleem's case (*supra*) cannot possibly form the basis of an award of compensation to the applicant in the case before us. The evidence clearly shows that the applicant's conduct was totally unworthy of a member of the teaching staff in a school. His conduct was subversive of discipline in the school.

For these reasons the appeal (SC No. 62/98) is allowed, the judgment of the High Court dated 18.3.98 is set aside and the order of the Labour Tribunal dated 21st April, 1997, is restored. The cross appeal No. 66/98 is dismissed. I make no order as to costs.

At the hearing before us it was agreed by counsel for both parties that the judgment in this appeal would be binding on the parties to the connected appeals, SC Appeals No. 63/98, No. 64/98 and No. 65/98. I make order accordingly.

BANDARANAYAKE, J. – I agree.

WEERASEKERA, J. – I agree.

Employer-appellant's appeal allowed.

Respondent-workman's appeal dismissed.