

**SAMARAKOON BANDA**  
**V.**  
**BOARD OF DIRECTORS, CO-OPERATIVE WHOLESALE**  
**ESTABLISHMENT**

SUPREME COURT,  
BANDARANAYAKE, J.,  
AMERASINGHE, J. &  
DHEERARATNE, J.,  
S.C. APPEAL NO. 18/88,  
S.C. SPL. L.A. NO. 141/87,  
C.A. APPEAL NO. 404/82,  
L.T. NO. 1/ADDL. 2523/79,  
APRIL 05, 1991.

*Industrial Dispute - Political activity of employee contrary to Rules - Condonation - Compensation.*

The appellant had taken part in political activities in favour of the Sri Lanka Freedom Party (SLFP) contrary to the Rules of a circular operative at the Co-operative Wholesale Establishment where he worked but no action was taken against him so long as the SLFP was in power. After the 1977 elections when the Government changed, charges were framed against him and he was dismissed.

**Held:**

The employer was aware of the political activities of the appellant, yet, kept him in service with knowledge of his misconduct during several years and condoned his wrongful activities so long as the SLFP were in power. It was not open to the Board, on a change of Government, retrospectively to enter upon a reconsideration of the matter and arrive at a totally different conclusion. The hatchet once buried should not be unearthed again and again. The appellant should be compensated for the financial loss.

*Per Amerasinghe J - "The characterization of the appellants conduct by the new Board as behaviour that brought discredit to the employer and being in breach of trust was no more than a subterfuge to justify the dismissal of the appellant and to avoid condemnation and censure. One does need to be astute or remarkably sagacious to see really why the appellant's services were terminated. Victimization may be a simple yet accurate way of explaining the reason for his dismissal."*

**Case referred to:**

1. *State V. Mansingh Rao* AIR 1958 Madhya Hast 413, 415

APPEAL from judgment of the Court of Appeal

*L.V.P. Wettasinghe* for the petitioner

*H.M.P. Herath* for the respondent.

05 April 1991

**AMERASINGHE , J.**

The appellant was employed by the respondents in 1971 as a Personal Assistant to the General Manager (Administration). He served as a Management Trainee from 1 February 1975 and was confirmed as a Manager with effect from 1 February 1976.

In terms of the rules set out in a Circular issued by the General Manager of the Co-operative Wholesale Establishment, (CWE), in 1967, staff grade officers were prohibited from participating in certain types of political activity.

The appellant had engaged in political activities before he became a staff grade officer in 1976 and continued to do so after he became a staff grade officer. Among other things, he had as a Branch Secretary of the Sri Lanka Freedom Party signed notices informing members of the public that the Minister responsible for the CWE would preside at certain meetings of the party. Although, as the President of the Labour Tribunal observed in his Order, the employer "could not have but known that the workman was employed in politics during the period 1975 to 1977", no action was taken against him for acting in contravention of the rules.

Following the defeat of the Sri Lanka Freedom Party at the General Elections in July 1977, there was according to the President of the Labour Tribunal, "a change in the administration of the employer establishment."

On 1 August 1977 the appellant was sent on compulsory leave and on 12 September 1977 he was interdicted. In October 1977 he was issued with a Charge Sheet alleging that by participating in politics, the appellant had "breached the administrative regulations of the Establishment", and that by convening political meetings and by his activities in the Kolonnawe Electorate (the electorate of the Minister responsible for the CWE), the appellant had brought the CWE "into the public discredit" (sic.) and that he had not only brought the CWE into discredit, but also "betrayed the trust" placed in him by his employer and thereby "forfeited the right to continue as an employee of the Establishment."

An inquiring officer appointed by the employer found the appellant guilty of these charges. When these matters were communicated to the Board together with the recommendation of the Assistant General Manager Administration that the appellant should be dismissed (Board Paper 300/79 marked as R 13 in the Court of Appeal Brief), the Board of the CWE decided to dismiss the appellant (R 14).

After hearing the appellant's complaint and the explanation of the CWE, the President of the Labour Tribunal on 31 May 1982 held "since no action was taken against him, the employer must be deemed to have condoned the acts of the workman. Even if the employer was unaware of this fact, termination of services was too drastic a punishment. The termination of the workman's services was, according to the President of the Labour Tribunal, "therefore unjustified." Stating that the appellant was entitled to relief, the President of the Labour Tribunal ordered that it was in his opinion "just and equitable" that the workman should be re-instated without break in service with three years back wages or in the alternative that he be compensated for wrongful termination by payment of a sum equivalent to five years salary.

On 18 September 1987 the Court of Appeal set aside the decision of the President of the Labour Tribunal. Having spent much time in deciding a matter that was not in issue, namely whether the respondent in that Court was a "workman" within the meaning of the Industrial Disputes Act, the Court of Appeal, without explaining why, arrived at the conclusion that there was no evidence of condonation and quashed the Order of the President of the Labour Tribunal. With great respect, being laconic may sometimes be admirable but never when it makes brevity as in this case, the cause of injustice.

The employer was, in my view, aware of the political activities of the appellant, yet kept him in service with knowledge of his misconduct during several years and condoned his wrongful activities. The fact that the SLFP, for whose benefit the appellant acted in breach of the rules, held the reins of Government at the time did not make his activity less wrongful from the employer's point of view. But it was conduct that was at less pardoned, if pardon were necessary for conduct which might at that time have not only been acceptable but also welcomed and perhaps even praised and encouraged. Those who by succession, later came to have a different view, because they were

more conscious of their duties or simply because they belonged to a different political party, could not, in my view, retrospectively enter upon a reconsideration of the matter and arrive at a totally different conclusion. As observed in *State v. Mansingh Rao* (1) "the hatchet once buried, should not be unearthed again and again."

Mr. Wettasinghe urged that the order of dismissal was harsh and excessive and that although the President of the Labour Tribunal had described the response of the employer as being "too drastic a punishment", this aspect of the matter had been ignored by the Court of Appeal.

Wilful, deliberate and intentional disobedience of orders (whether they be specific and personal orders addressed to and applicable to particular individuals, or general orders applicable to an ascertainable class of persons which, for reasons of convenience, are set out in rules, regulations, standing orders, circulars, printed notices and so on) could, in certain circumstances, justify the dismissal of a workman. Each case must depend upon circumstances of equity and its substantial merits. Although the Charge Sheet in this case characterized the appellant's conduct as having brought the CWE into "public discredit" and amounting to a "betrayal of trust" reposed in him, I do not think he did anything of the kind. The Board Paper on the basis of which he was dismissed (300/79) R13, clearly suggests that the conduct of the appellant became blameworthy only because and after he became a staff grade officer. Anything that would have belonged to the undoubtedly objectionable class of bringing discredit to the institution or being in breach of trust must surely have been independent of the temporary status of the appellant? Wanting in prescience, the appellant supported the Sri Lanka Freedom Party and the Minister in charge of his establishment who belonged to that party. At that time neither he nor his Board of Directors required him to unscramble the conflicting duties he owed in terms of the Circular and to his Minister. The general election brought a rival political party into the seat of Government and a new Board into the CWE. The appellant had then to face the consequences of his misjudgment. That is what happened. The characterization of the appellant's conduct by the new Board as behaviour that brought discredit to the employer and being in breach of trust was no more than a subterfuge to justify the dismissal of the appellant and to avoid condemnation and censure. One does not need to be astute or remarkably sagacious to see really

why the appellant's services were terminated. Victimization may be a simple yet accurate way of explaining the reason for his dismissal.

For the reasons stated, I am of the view that the appellant was unfairly dismissed and the judgment of the Court of Appeal is set aside. The appellant should be compensated for the financial loss caused by the employer's wrongful decision to dismiss him. I order that five years salary (Rs. 720 x 12 x 5) with legal interest from 31 May 1982 (which is the date of the Order of the President of the Labour Tribunal), up to and including the date of this Order, namely, 5 April 1991, (changes of legal rates of interest if any during the period referred to being taken into account), be paid by the Co-operative Wholesale Establishment to the appellant. The amount so determined shall be deposited with the Commissioner of Labour, on or before 31 May 1991. The amount so deposited with the Commissioner of Labour may at the appellant's request be with drawn by the appellant.

The appeal is allowed with costs fixed at Rs. 5500.

**BANDARANAYAKE, J.** - I agree.

**DHEERARATNE, J.** - I agree

*Appeal allowed.*