

IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA.

B S Weeraman,  
No 41, Jayakantha Mawatha,  
Colombo 6.

**PLAINTIFF-APPELLANT**

*C. A NO. 917//96 (F)*

Vs

*D.C. Colombo : 11048MR*

Singer (Sri Lanka) Ltd,  
No 320, Union Place,  
Colombo 2

**DEFENDANT - RESPONDENT.**

Before : A.W.A. SALAM, J.

Counsel : Ranjith Abeysuriya PC with S Gunasekara for  
the Plaintiff appellant and Gomin Dayasiri for  
the defendant-respondent.

Written Submissions tendered on: 04.04. 2011.

Decided on: 02 May 2011

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A W A Salam, J

The plaintiff filed action against the defendant inter alia for recovery of damages arising from an alleged breach of contract of employment. It is common ground that the plaintiff was an employee of the defendant under the written contract marked as P 1. Under P1 the plaintiff

finally held the post of Managing Salesman at the depot shop situated at Ratnapura.

The plaintiff alleged that the depot shop in Ratnapura under his management was taken over by the defendant without notice to him on 26 October 1987 while he was in hospital and that his services were terminated without notice to him. The defendant took up the position that on 26 October 1987 the District Manager of the defendant, Elmo Basil Joseph accompanied by another manager had visited the depot shop as part of his inspection tour and found out several discrepancies in the stocks and accounts. The plaintiff was absent at the time of the inspection and continued to absent himself even thereafter and his services were terminated after a disciplinary inquiry held in respect of several charges of misappropriation and misconduct. The matter of the dispute proceeded to trial on 10 issues suggested by the plaintiff and 2 issues suggested by the defendant. The district judge took the view that the termination of the service of the plaintiff was not unjustifiable and dismissed the plaintiff's action.

The evidence of Elmo Basil Joseph was that he was aware that the plaintiff was sick and had

taken treatment. He further stated that the plaintiff had forwarded a medical certificate issued by Doctor Alwis. According to the plaintiff, he had developed a chest pain on 11 October 1987 and was admitted to Durden hospital and discharged on 16 October 1987. This was corroborated by the evidence of the accountant W A D P Weerasingha attached to Durdens hospital.

The main submission of the learned President's Counsel for the plaintiff is that the learned district judge has failed to evaluate the evidence in the judgment. On a perusal of the impugned judgment, I find that the learned district judge has in fact briefly referred to the important evidence touching on the issue as to whether the termination of the service of the plaintiff is in accordance with the contract of employment. As has been rightly pointed out by both parties the important question that arises for determination in this appeal is whether the termination of the service of the plaintiff can be justified under P1.

The inspection at the sales depot where the plaintiff functioned as the Managing Salesman was carried out by the defendant company when the plaintiff was on leave but in the

presence of the employee of the plaintiff named Sunil. Before the completion of the inspection Sunil had disappeared and failed to report for duty. The inspection had revealed several discrepancies both in the stocks and also the accounts maintained by the plaintiff. According to Elmo Basil Joseph the stocks and accounts did not tally with those of records forwarded to the defendant by the plaintiff. As a matter of fact the inspection had been carried out for nearly 3 weeks and the plaintiff had not taken the trouble to visit the depot shop at any time during this period.

The plaintiff attempted to claim that he was suffering from a heart problem and therefore had no opportunity of participating at the inspection. The defendant company contested this position of the plaintiff. It is significant to note that the plaintiff had failed to summon the Doctor who treated him for his illness. The accountant attached to Durden hospital was only able to testify as to the plaintiff undergoing an electro- cardiogram test and his having been warded from 11 October 1987 to 16 October 1987. As there has been no positive proof of the nature of the illness of the plaintiff particularly of any heart ailment, learned district judge had rightly concluded that there has been no proof

offered by the plaintiff as to his alleged heart problem.

Prior to the appeal being taken up for argument the learned President's Counsel submitted that the evidence of Dr Samarasingha was led in the lower court but no proceedings are available in the original record to that effect. Thereafter this court decided to verify the matter from the district court and sent back the record for such verification. The learned district judge having heard both parties on the matter has reported that the evidence of Dr Samarasingha has not been led at the trial. This clearly shows for reasons best known to the plaintiff, he has refrained from leading the evidence of the doctor who treated him for his heart problem. As a matter of law, resulting from the failure to lead the evidence of Dr Samarasingha, the district judge could have drawn an adverse inference under section 114 F of the Evidence Ordinance that evidence of Dr Samarasingha had not been led, as it would be, if led, be unfavourable to the plaintiff.

Clause 14 of the contract of employment permits the termination of service on the plaintiff being guilty of misconduct or dishonesty or other conduct tending to bring

the company or its business into disrepute. In terms of clause 13, the contract of employment can be terminated by either party after 30 days of notice given in writing. Since the termination of the service of the plaintiff had taken place on disciplinary grounds, the plaintiff is not entitled to any notice. In any event the plaintiff had been served with the show cause letter containing several charges followed by a domestic inquiry admitted by the plaintiff to have been conducted in a fair manner, I do not think that the decision of the learned district judge even in the absence of a proper analysis would call for any intervention of this court.

Unlike a labour tribunal which is expected to give a fair and just award, the district court was bound to give effect to the written contract as the district court is not empowered by any special law to ignore the contract as in the case of the labour tribunal.

As regards the disciplinary inquiry the Supervisor of the plaintiff and Manager Elmo Joseph has given evidence and relevant documents had been marked through him without any objections from the plaintiff. The plaintiff has in fact signed the disciplinary inquiry proceedings, signifying that it was

totally satisfied with the manner in which the said proceedings had been conducted.

The dismissal of the case relating to the money claim filed against the plaintiff in proceedings No 5521/M cannot be taken as being prejudicial to the defence since it had not been withdrawn for want of evidence.

In the circumstances when the material available against the plaintiff is considered, it cannot be said that the judgment of the learned district judge is either perverse or have ended up in a miscarriage of Justice.

In the circumstances, I am of the view that the plaintiff is not entitled to succeed in this appeal. Appeal dismissed subject to costs.

Judge of the Court of appeal

KLP/-