

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

Nimali Manojika Herath,
No.20,
Samanpura,
Dambulla Road,
Kurunegala.
Petitioner

CASE NO: CA/WRIT/343/2014

Vs.

Pradeshiya Sanwardana Bank,
No. 933,
Kandy Road,
Wedamulla,
Kelaniya.
And several Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: H.G. Hussain for the Petitioner.
Nigel Hatch, P.C., with Ranjith Ranawake for
the Respondents.

Decided on: 28.03.2019

Samayawardhena, J.

The petitioner filed this application seeking to quash by way of certiorari the decision of the Chairman of the Pradeshiya Sanwardana Bank marked P14 and the affirmation thereof by the General Manager marked P15 whereby the petitioner employee was sent on compulsory leave pending investigation of alleged acts of grave misconduct. Now she has been reinstated and disciplinary inquiry has formally commenced by serving the charge sheet. To that extent, this application has now become academic. However, the acceptability or non-acceptability of the argument taken up by the petitioner has a direct bearing on the maintainability of the disciplinary inquiry. Hence the necessity to consider the application on merits.

P14 decision has been taken in terms of sections 15, 15.1, 16, 16.4 of the Disciplinary Code marked R2.

It is the contention of the petitioner that the said Disciplinary Code has no force or avail in law as it has not been published in the Gazette in terms of section 39 of the Pradeshiya Sanwardana Bank Act, No.41 of 2008. It is solely on that basis, the petitioner says that P14 and P15 are null and void.

Section 39 reads as follows:

39(1) The Board may make rules in respect of all or any matter for which rules are required or authorized to be made under this Act or any other matter necessary to enable the Bank to effectively carry out and perform its powers and duties under this Act.

(2) Every rule made by the Board shall be published in the Gazette and shall come into operation on the date of the publication or on such later date as may be specified in the rules.

The contention of the petitioner is that the Disciplinary Code contains “Rules” which are “*necessary to enable the Bank to effectively carry out and perform its powers and duties under this Act*” and therefore publication of the Disciplinary Code/Rules in the Gazette is necessary to make them enforceable.

I am unable to agree.

Section 1.5 of the Disciplinary Code is the introductory section. It says that it is issued by the General Manager of the Bank in terms of section 28 of the Act, and approved by the Board of Directors in terms of section 9, and all the employees of the Bank are bound by it.

Section 28 reads thus:

28(1) The General Manager shall issue guidelines in respect of age of retirement, disciplinary control and any other matter as may be necessary for the proper administration of the affairs of the Bank.

(2) The employees of the Bank shall comply with such directions.

That means, the discipline of the employees is a matter for the General Manager, who shall issue guidelines in that regard. When the subject of discipline is provided for by a separate

section as such, general provisions shall be understood subject to the special provisions. That is a basic canon of interpretation of statutes.

The equalization of the said Guidelines formulated by the General Manger to Rules which could be made by the Board of Directors under section 39(1) to enable the Bank to effectively carry out and perform its powers and duties under the Act is unacceptable.

Section 39 speaks of Rules made by the Board. P2 Disciplinary Code was not made by the Board but by the General Manager in terms of section 28 and approved by the Board of Directors in terms of section 9.

Under the heading “Usage”, especially in section 2.2, it says that the Disciplinary Code is only a set of Guidelines, which shall never undermine or supersede the authority of the Board, and the Board at any time can amend it.

If they are Rules as contemplated in section 39, there is no necessity to say that it shall never undermine the authority of the Board because Rules contemplated under section 39 are made by the Board and no other.

The petitioner’s whole argument depends on the Sinhala word “ඊති” used in several places in the Disciplinary Code “විනය නීති සංග්‍රහය” drafted in Sinhala. The use of the word “ඊති” cannot be decisive and cannot decide the whole matter.

The sole argument of the petitioner fails.

The application of the petitioner which is based on a highly technical ground is devoid of merits. At least, from the point she was reinstated, the application became futile. Nonetheless, the petitioner wanted to proceed with the application.

I dismiss the application of the petitioner with costs.

Judge of the Court of Appeal