

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

CA Writ 388/2016

A. M. Chaminda Sudath Siriwardana,
Kahagolla,
Diyathalawa.

R.M.C. Jayalal Rathnayaka,
"Padma Hotel",
Atampitiya.

R.M. Sumith Sudarshana,
No. 09, Jaya Mawatha,
Mawalagoda, Haliela.

PETITIONERS

Vs.

1. Pradeshiya Sanwardhana Bank
No. 933, Kandy Road,
Wedamulla, Kelaniya.

2. Prassanna Premaratna
Chairman

3. T.A. Ariyapala
General Manager/Chief Executive Officer

4. Sarath Hewage, Director

5. Shamara Herath, Director

6. Mukthar Marikkar, Director

7. S.R. Attygalle, Director

And others

RESPONDENTS

CA 388/2016

Writ Application

Before : **Vijith K. Malalgoda, P.C.J. (P/CA) &
S.Thurairaja, P.C.J.**

Counsel : Shavindra Fernando, PC for Petitioners
Nigel Hatch, PC for Respondents

Decided on : 01.12.2016

Vjith K. Malalgoda, P.C.J. (P/CA)

Heard learned President's Counsel in support of this application and learned President's Counsel representing the Respondents.

The three petitioners who were employees of the 1st Respondent bank had come before this Court challenging a decision by the 1st Respondent bank to suspend their services pending disciplinary inquiry under the disciplinary code of the 1st Respondent bank.

As revealed before this court, the three petitioners were attached to the Bandarawela Branch of the 1st Petitioner bank working in the pawning section. In the year 2014, the services of the said three petitioners were suspended pending disciplinary inquiry. Subsequent to the said disciplinary

inquiry they were reinstated without back wages and transferred out from the said branch. As revealed before this Court, at the said inquiry, other than several other allegations against them, there were specific allegations with regard to 652 items of Gold Jewelleries which were pawned to the bank. When the three petitioners were reinstated the bank had reinstated them subject to certain punishments and with a warning that they should not be found guilty for any other matter of misconduct in future.

As observed by this court, the present investigation which is evident from P2 refers to pawning of Gold Jewellery to which the three petitioners were responsible for the years 2011, 2012 and 2013 which were not subject matter to the previous investigation. However, learned president's Counsel for the petitioner takes up the position that the Gold items which were in the custody of the petitioners were properly handed over to the Respondent bank in presence of three auditors and several other officials from the Respondent Bank.

However, by going through the documentations before this Court, we observe that a physical verification was done with regard to the said Gold Jewelry, but we cannot agree with the petitioners that the said inspection was final and conclusive since the carotage of the Gold jewelry cannot be ascertained by a physical verification,. The position of the petitioners before

this Court is that the 1st Respondent bank acting in Mala Fide are now trying to fix them to certain charges illegally with the intention of punishing them for the 2nd time since they were previously punished by the document P8C-P8E.

However, we observe that the investigation presently carried out by the 1st Respondent have nothing to do with the investigation they have previously conducted. Therefore, we cannot agree with the said submissions of the learned President's Counsel for the petitioner. The learned President's Counsel further brings to the notice of Court that the Respondent bank have failed to honour the undertaking given in the document P8F where they wanted the petitioners to be present when the pawned items were auctioned. But, we observe that the said undertaking is only valid to the Gold jewellery which were referred to in documents P8C-P8F but not to the other jewellery which are the subject matter to the present investigation.

Considering the matter placed before us, it is our considered view that the 1st Respondent, the employer of the three petitioners are entitled to investigate into offences or acts of misconduct committed by their employers at any time when the said acts of misconduct or offences were revealed to the Management. In these circumstances, we see no merit in this application before us.

Therefore, we are not inclined to issue notices on the Respondents at this juncture.

Application is accordingly dismissed.

PRESIDENT OF THE COURT OF APPEAL

S. THURAIRAJA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

LA/-