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

*In the matter of an Appeal in terms of Articles 154P of The Constitution read with Section 31DD of the Industrial Disputes Act (as amended), and Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.*

**SC/Appeal No:**
10/2022

**SC/HC/LA 029/2019**

**High Court Case No:**
HC(ALT) No. 36/2016

**LT Colombo Case No:**
LT/Col/01/05/2009

Ranil Chinthana Wagiswara,
825/10, Ethul Kotte,
Kotte.
**APPLICANT**

**Vs.**

Sri Lankan Airlines Limited,
Level 22, East Tower,
World Trade Centre,
Echelon Square,
Colombo 01
**RESPONDENT**

**AND BETWEEN**

Ranil Chinthana Wagiswara,
825/10, Ethul Kotte,
Kotte.
**APPLICANT-APPELLANT**

**Vs.**

Sri Lankan Airlines Limited,
Level 22, East Tower,
World Trade Centre,
Echelon Square,
Colombo 01
**RESPONDENT-RESPONDENT**

**AND NOW BETWEEN**

Sri Lankan Airlines Limited,
Level 22, East Tower,
World Trade Centre,
Echelon Square,
Colombo 01
**RESPONDENT-RESPONDENT-APPELLANT**
**Vs.**

Ranil Chinthana Wagiswara,
825/10, Ethul Kotte,
Kotte.

Presently residing at;
No. 25, School Road,
Hounslow, Middlesex TW3 1QU,
United Kingdom.

By his Attorney Wahaltantrige Srijanaka Roshan Wagiswara of No. 825/10, Ethul Kotte, Kotte.
**APPLICANT-APPELLANT-RESPONDENT**

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**SC/Appeal No:**
11/2022

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**APPLICANT-APPELLANT-APPELLANT**

**Vs.**

Sri Lankan Airlines Limited,
Level 22, East Tower,
World Trade Centre,
Echelon Square,
Colombo 01

**RESPONDENT-RESPONDENT-RESPONDENT**

**Before** : Janak De Silva, J.

: Menaka Wijesundera, J.

: Sampath B. Abayakoon, J.

**Counsel** : Manoli Jinadasa with Dilini Reeves instructed by Rasika Wellappili for the Respondent-Respondent-Appellant in SC Appeal No. 10/2022, and for the Respondent-Respondent-Respondent in SC Appeal

No. 11/2022.

: Uditha Egalahewa, P.C. with Thilini Payagala Bandara instructed by H. Chandrakumar de Silva For the Applicant-Appellant-Respondent in SC Appeal No. 10/2022, and for the Applicant-Appellant-Appellant in SC Appeal No. 11/2022.

**Argued on** : 19-05-2025

**Written Submissions** : 25-08-2022 (By the Applicant-Appellant-Respondent in Case No. SC/Appeal 10/2022)

: 25-08-2022 (By the Applicant-Appellant-Appellant in Case No. SC/Appeal 11/2022)

: 04-03-2022 (By the Respondent-Respondent-Respondent in Case No. SC/Appeal 11/2022)

: 04-03-2022 (By the Respondent-Respondent-Appellant in Case No. SC/Appeal 10/2022)

**Decided on** : 01-09-2025

**Sampath B. Abayakoon, J.**

When this Court considered the Special Leave to Appeal applications in relation to the above two appeals on 26-01-2022, the parties agreed for the consideration of both the applications together. Accordingly, after having considered the submissions in relation to the respective cases, this Court granted Leave to Appeal on the following common questions of law applicable to both appeals.

I. Whether the Provincial High Court had erred in law in the analysis of the evidence and reached findings, which are perverse.

II. Whether the Provincial High Court has erred in law in the granting of relief.

III. Whether the learned High Court Judges of the High Court erred in law by failing to consider the burden of proof.

At the hearing of the appeal before this Court, parties agreed that both the appeals can be considered together and one judgment can be pronounced by the Court.

The Court heard the submissions of the learned Counsel appearing for the respondent-respondent-appellant in case No. SC/Appeal 10/2022 and the respondent-respondent-respondent in SC/Appeal No. 11/2022 (hereinafter referred to as the respondent).

This Court also heard the submissions of the learned President's Counsel who represented the applicant-appellant-respondent in SC/Appeal No.10/2022 and the applicant-appellant-appellant in the SC/Appeal No. 11/2022 (hereinafter referred to as the applicant).

This Court also had the benefit of considering the written submissions tendered by the parties in respect of their respective appeals.

The applicant was employed as the Manager (Marketing Services) at the time his services were terminated by the respondent Sri Lankan Airlines Ltd, after finding him guilty of all the charges preferred against him by the show cause letter dated 03-10-2008 issued in that regard.

As a result of the said termination, the applicant has preferred the application relevant to this appeal before the relevant Labour Tribunal, challenging his dismissal.

At the inquiry held in that regard, the respondent has admitted the termination, and had led evidence to justify its action.

The position taken up had been that the respondent company lost the trust and confidence it placed on the applicant due to the misconduct of sending an abusive email containing derogatory and abusive language to a superior female officer, using the company-provided computer and resources.

The respondent had led evidence of several witnesses to establish that the said email was sent by the applicant using his official computer, and has marked documents from R-1 to R-38(a) in support of the said contention.

When it was the turn of the applicant to present his evidence, he has given evidence on his own behalf and has marked documents from A-1 to A-25.

At the conclusion of the inquiry, after having considered the evidence placed before the Labour Tribunal, and also the respective submissions, the learned President of the Labour Tribunal of the order dated 30-06-2016, has proceeded to dismiss the application of the applicant on the basis that the dismissal was justified.

Being aggrieved of the said order the applicant has preferred an appeal before the Provincial High Court of the Western Province holden in Colombo.

The learned High Court Judge of Colombo in his brief order dated 26-04-2019 in relation to the appeal, has ordered that the Labour Tribunal should hold a *de novo* inquiry, although there is nothing in the said order to suggest that the order of the learned President of the Labour Tribunal has been set aside. However, I am of the view that since a *de novo* inquiry has been ordered, a presumption can be reached that the order has been set aside.

The respondent, being the appellant in case No. SC/Appeal/10/2022 has preferred the appeal on the basis of being aggrieved by the decision of the learned High Court Judge to order a *de novo* inquiry. It has been the position of the respondent that there was no basis for the learned High Court Judge to make such an order, as the learned President of the Labour Tribunal has pronounced her order after having well considered the evidence placed before the Labour Tribunal and in accordance with the law.

In SC/Appeal/11/2022, the applicant who was the appellant before the High Court has preferred the appeal challenging the decision by the learned High Court Judge to order a *de novo* inquiry, on the basis that the appeal should have been decided in favour of him rather than ordering a *de novo* inquiry.

Interestingly, when scrutinizing the order of the learned High Court Judge, it appears that the only reason given for the ordering of a *de novo* inquiry has been that the learned President of the Labour Tribunal has failed to draw her attention to the document that has been marked as R-10 at the inquiry by the respondent. It has been determined that the said document marked R-10 suggests that, apart from the time where the recipient the senior official of the respondent company is said to have received the email, the same has been sent on several occasions previously to that given time, and a question arises as to who has sent those earlier emails.

With the above factual matrix in mind, and also the questions of law upon which the two leave to appeal applications were allowed, I will now proceed to consider the two appeals preferred.

The applicant having joined the respondent company on 20-04-1992 had been functioning as its Manager (Marketing Services) during the time relevant to the incident which led to disciplinary proceedings against him.

On 01-09-2008, the Acting Head of the Commercial Division of the respondent Sri Lankan Airlines Limited has received an email which contains the following,

> **"..... is the Dumb, Stupid Bitch of the Commercial Division who thinks she is God's gift to the Aviation Industry. The so-called Harvard graduate (who has only followed a 6-week course at Harvard) is responsible for all the losses at Sri Lankan Airlines Commercial division with her dumb decisions.**
>
> **Do something you can do, you dumb, barren bitch without ruining so many young lives by closing this airline with your folly. You are now trying to ruin another entire department by trying to head that division.**
>
> **Shame on you, you bloody Arrogant, Ambitious, Barren Bitch."**

*(the identity of the receiver was withheld by me to protect her privacy).*

The evidence led before the Labour Tribunal establishes the fact that as a result of the investigations conducted by the respondent company with the assistance of two information technology experts, it has been revealed that the said email originated from the company-provided computer belonging to the applicant. It is clear that based on the said findings, the respondent has been issued with the relevant show cause letter to the applicant.

The evidence also reveals that the applicant having left the country without obtaining prior approval of the respondent, has found overseas employment and has resigned from the company soon thereafter. The relevant inquiry has been held allowing him to appear via electronic means from overseas in order to give a fair hearing as to the allegation of misconduct. The evidence also establishes that when the computer of the applicant was checked by the investigators, it has been found that all the sent messages have been deleted, which was highly unusual for a computer given to an employee to use for official purposes.

However, having examined the user history of the computer, the investigators have been able to ascertain that in fact, the said derogatory email has originated from the computer assigned to the applicant, and it has been mailed at 9.05 a.m. to the recipient with copies to several other officials of the office. I find that the respondent company has well established the timeline of receiving the said email to the Sri Lankan Airline portal through which the mail entered the Sri Lankan server, and the Yahoo website through which the mail was sent.

The explanation given by the applicant during the domestic inquiry as well as before the Labour Tribunal, that he had no opportunity to access his computer during the relevant time period because he was at a meeting, has been well explained before the Labour Tribunal by the respondent to show that it was possible for the applicant to access his computer and send the message within a short span of time since it has been previously prepared and stored.

I do not find any basis for the applicant's claim that somebody else may have accessed his computer and sent this message, due to the fact that this was a computer with a password maintained only by the holder of the computer, and it was the duty of the applicant as the holder of the computer to prevent unauthorized access to the computer.

It is clear from the order, that the learned President of the Labour Tribunal has well considered all these aspects in order to find out whether it was the applicant who has sent this email after having analysed the evidence placed before the Tribunal in its correct perspective. The learned President has well considered the evidence of the applicant before the Tribunal to come to a firm finding that such evidence cannot be accepted in view of the overwhelming evidence, both factual and scientific, produced on behalf of the respondent.

There cannot be any doubt that a derogatory, abusive, and malicious email of this nature sent to a higher female official of an institution with copies to others is a clear misconduct on the part of the sender, while he himself being a senior official of the same institution. Such behaviour would invariably result in the institution losing the trust and the confidence placed on such a person. I am of the view that the termination of services of such a person is justifiable under any circumstances.

In the case of **Baur & Co. Ltd Vs. Ceylon Manure Industries Workers' Union, SC/43/62 decided on 24-05-1962**, the Supreme Court observed,

> *"The applicant had abused the Overseer and the place of work in the presence of other employees in indecent language. This is a serious breach of discipline on her part… in these circumstances the company was justified in dismissing her."*

In the **Indian case of Cooper vs. Central Bank of India (1949) Bombay Industrial Court Reports, 115 at 21.3** the Court stated:

> *"…the reason for discharge, viz that he had imputed to the Board of Directors a senile mentality in the circular which he had published… Such an imputation by a subordinate of the Bank, besides undermining the reputation of the Bank, was bound to breed a sense of disrespect,*

*indiscipline and insubordination among the employees of the Bank… but the moment he indulged in a malignant and to some extend a libelous invective of the kind appearing in his circular, he laid himself open to the charge of misconduct and entailed upon himself the penalty of either a dismissal or discharge."*

It was the submissions of the learned Counsel for the respondent that the learned High Court Judge has failed to consider the evidence placed before the Tribunal, and the order of the learned President of the Labour Tribunal in its correct perspective. It was submitted that it was a finding based on a single document (R-10), rather than considering the evidence in its totality in deciding to refer the matter for a *de novo* inquiry, which she termed as a perverse decision. It was her contention that the appeal should have been dismissed in view of the overwhelming evidence the respondent produced before the Labour Tribunal, which established the conduct of the applicant, rather than ordering a *de novo* inquiry. It was contended further, the document marked R-10 was never a disputed document and the document has been well explained by the expert witnesses called on behalf of the respondent.

The learned President's Counsel who represented the applicant agreed that any sender of the derogatory email sent to a higher official of the respondent, deserves punishment. However, it was his position that although the email address which has sent the email to the receiver was the applicant's, there was no proof that it was he who logged into the email during the timeline provided. It was his submission that it was not the applicant who logged into the computer at 9.05 am, and that aspect has not been properly investigated. It was his position that if properly investigated, it would have been revealed that the applicant had no opportunity to send such an email.

It was submitted further that the evidence of Rohini Srimali Ethel De Silva who was in charge of the legal division of the respondent company, establishes the real reason why the applicant's services were terminated (Page 368 of the appeal brief). It was pointed out that the said witness has stated that she made a recommendation to terminate the services of the applicant because of

the misuse of the company computer, which is a matter considered as a grave misconduct, where she has referred to several previous cases of terminating the services of employees on such misconduct.

The learned President's Counsel argued that his appeal was on the basis that the learned High Court Judge should have considered these matters, and if considered in its correct perspective, there were ample grounds for the learned High Court Judge to set aside the order of the Labour Tribunal and to grant relief to the applicant.

Under the circumstances, he urged the Court to set aside both orders pronounced by the learned High Court Judge, as well as the learned President of the Labour Tribunal, and grant relief to the applicant as sought in his application.

Since the primary argument in both the appeals preferred before the Court was that the learned High Court Judge was wrong when he decided to order a *de novo* inquiry, I will now consider under what circumstances an Appellate Court can interfere with a decision of a Labour Tribunal.

This aspect was well considered in the judgement pronounced in **Jayasuriya Vs, Sri Lanka State Plantation Corporation (1995) 2 SLR 379,** which held,

> 2. In the context of the principle that the Court of Appeal will not interfere with a decision of a Labour Tribunal unless it is "perverse" it means no more that the court may intervene if it is of the view that, having regard to the weight of evidence in relation to the matters in issue, the Tribunal has turned away arbitrarily or capriciously from what is true and right and fair in dealing even-handedly with the rights and interests of the workman, employer and, in certain circumstances, the public. The Tribunal must make an order in equity and good conscience, acting judicially, based on legal evidence rather than on beliefs that are fanciful or irrationally imagined notions or whims. Due account must be taken of the evidence in relation to the issues in the matter before the Tribunal.

Otherwise, the order of the Tribunal must be set aside as being perverse.

3. The Industrial Disputes Act No. 43 of 1950 Section 31D states that the order of a Labour Tribunal shall be final and shall not be called in question in any court except on a question of law. While appellate courts will not intervene with pure findings of fact, they will review the findings treating them as a question of law: if it appears that the Tribunal has made a finding wholly unsupported by evidence, or which is inconsistent with the evidence and contradictory of it; or where the Tribunal has failed to consider material and relevant evidence; or where it has failed to decide a material question or misconstrued the question at issue and had directed its attention to the wrong matters; or where there was an erroneous misconception amounting to a misdirection; or where it failed to consider material documents or misconstrued them or where the Tribunal has failed to consider the version of one party or his evidence; or erroneously supposed there was no evidence.

In **Ceylon Cinema and Film Studios Employees Union Vs. Liberty Cinema Ltd (1994) 3 SLR 121** the Court held,

> *"The question of assessment of the evidence is within the province of the Labour Tribunal and if there is evidence on record to support its findings the appellate court cannot review those findings even though on its own perception to the evidence it may be inclined to come to a different conclusion. If the case contains anything ex facie which is bad in law and which bears upon the determination it is obviously on a point of law; but without any misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In these circumstances, the appellate court must intervene. Thus, in order to set aside a determination of facts by the Tribunal limited as this court is, only to setting aside a determination which is erroneous in law, the appellant must satisfy this court that there is no legal evidence*

*to support the conclusion of facts reached by the Tribunal or that the finding is not rationally possible and is perverse having regard to the evidence on record."*

As I have considered previously, the learned President of the Labour Tribunal has considered the evidence in its totality and has come to her findings with clear reasoning. The document marked R-10 has never been taken up by the applicant to substantiate his position that he did not send the derogatory email.

I find that the learned High Court Judge has failed to consider the manner in which the evidence placed before a Tribunal must be considered and the standard of proof that should be applied. In his brief order, it appears that the learned High Court Judge has taken the document marked R-10 at its isolation and on the face value. It appears that the learned High Court Judge has raised a question by himself to the effect that, "based on R-10 a question arises as to who sent the email".

However, it is my considered view that if the learned High Court Judge took care to consider the evidence placed before the Tribunal in its totality, and the order of the learned President of the Labour Tribunal as he should have, no such question or doubt would have arisen to justify ordering a *de novo* inquiry.

The two witnesses called by the respondent as expert witnesses on information technology in order to establish the investigations done to identify the sender of the email are clearly experts on the subject with wide experience and qualifications.

Witness Hewalunuwilage Chandika had obtained a 2nd Class Upper Division Degree on Electronic and Telecommunications Engineering from the University of Moratuwa, and has begun his career as a Research Engineer at Arthur C. Clarke Centre before joining Sri Lankan Airlines as a Network Engineer attached to its computer division. He was functioning as the Senior Messaging Engineer when he gave evidence before the Tribunal.

The other expert witness, namely, Thusitha Sampath was also a graduate of the University of Moratuwa in Electronic and Telecommunications Engineering. After graduation, he has joined the private sector as a Computer Engineer and has joined the Sri Lankan Airlines as a Messaging Engineer and he had been functioning as a Computer Network Engineer during the time relevant to this incident.

Their evidence has clearly established the fact that the same email being sent previously cannot be considered as a factor to doubt the sender of the email during the time relevant to this incident.

The evidence has revealed that the email has been received by the receiver at 9.06 am. It has been established that it entered the Sri Lankan Airlines server at 9.05 am and was received by the receiver at 9.06 am. It has also been revealed that the email has been processed via Yahoo website and entered the Sri Lankan Airlines server through Sri Lankan portal using the sender's computer, which was the computer assigned to the applicant. It has been proved that the said computer, which had a specific username and a password known only to the applicant has been used to log into the Yahoo website at 9.03 am. There cannot be any other person other than the applicant who could have accessed his own computer in such a manner.

I find that the evidence before the Tribunal has well explained the contents of R-10 as well. Since it becomes necessary to consider a series of events to come to a finding as to the author of the email, which has been established before the Labour Tribunal and well considered by the President of the Labour Tribunal, I am unable to find any justification in considering the document marked R-10 in its isolation, which in my view is a decision that can be considered perverse.

On behalf of the applicant, who is the appellant in case No. SC/Appeal/11/2022, the question of law number III has been raised when this matter was supported for Special Leave, on the basis that the learned High Court Judge erred in law by failing to consider the burden of proof.

It is well settled law that a Labour Tribunal must take into consideration the interests of all parties in a matter before it and pronounce a just and equitable order.

The case of **Associated Battery Manufacturers (Ceylon Ltd) Vs. United Engineering Worker Union 77 NLR 451** was a case, where in an inquiry before a Labour Tribunal, it was alleged that the reason for the termination of employment was that the workman was guilty of a criminal act involving in moral turpitude.

It was held that such an allegation need not be established by proof beyond reasonable doubt as in a criminal case, such an allegation has to be decided on a balance of probabilities, the very elements of the gravity of the charge becoming a part of the whole range of circumstances which are weighed in a balance, as in every other civil proceeding.

**Per Vythialingam, J.,**

> "*The whole object of labour adjudication is that of balancing the several interests involved, that of the worker in job security, since loss of his job may mean loss of his and his family's livelihood; that of the employer in retaining authority over matters affecting the efficient operations of the undertaking; that of the community in maintaining peaceful labour relations and avoiding unnecessary dislocations due either to unemployment or unproductive economic units. Each is equally important. None of these objectives can be achieved by the adoption of the standard of proof required in criminal cases in the determination of the facts which have to be established before a Labour Tribunal before it can exercise its jurisdiction to make an order which in all the circumstances of the case is just and equitable. This difficulty was realised in the University of Ceylon case for the learned Judge while ordering the reinstatement of the nurse nevertheless; gave the University the option to terminate her services and to pay back wages and compensation in lieu of reinstatement.*

*I am therefore unable to agree, with great respect, that where the reason for the termination of the employment is an allegation that the employee was guilty of a criminal act involving moral turpitude, that allegation should be established by proof beyond reasonable doubt as in a criminal case in order to establish the validity of the reason for the termination of the employment. It has to be decided on a balance of probability, the very elements of gravity of the charge becoming a part of the whole range of circumstances which are weighed in the balance, as in every other civil proceeding.*"

(**The Ceylon University Clerical and Technical Association, Peradeniya Vs. University of Ceylon Peradeniya 72 NLR 84 not followed.)**

Having considered the judgment of the learned High Court Judge, it is my view that there had been no consideration of the evidence placed before the Labour Tribunal with a view of finding out whether the order of the learned President of the Labour Tribunal has been reached after considering the available evidence in its correct perspective. It doesn't appear to me that the learned High Court Judge had drawn his attention to the necessity of considering the evidence in its totality, and to consider whether the respondent has established that the termination of services of the applicant was justified by applying the necessary standard of proof, which is on balance of probabilities.

For the reasons as considered above, I find no reason to agree with the decision of the learned High Court Judge to send the matter for a *de novo* inquiry. I find that if the evidence placed before the Tribunal was correctly considered, as it should have been, there were ample evidence to justify the order of the learned President of the Labour Tribunal.

Accordingly, the three questions of law formulated at the hearing of the appeal are answered in the affirmative.

Thus, I set aside the order dated 26-04-2019 pronounced by the learned High Court Judge of Colombo while exercising appellate jurisdiction, as it cannot

be allowed to stand, and allow the appeal preferred by the respondent in SC/Appeal/10/2022.

I affirm the order dated 30-06-2016 pronounced by the learned President of the Labour Tribunal, where the applicant's application was dismissed.

Hence, the appeal preferred by the applicant in SC/Appeal/11/2022 is dismissed for the reasons considered, as I find no merit in the appeal.

There will be no costs.

**Judge of the Supreme Court**

**Janak De Silva, J.**

I agree.

**Judge of the Supreme Court**

**Menaka Wijesundera, J.**

I agree.

**Judge of the Supreme Court**