

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

In the matter of an Appeal under and terms of Article 138 of
the Constitution read with Section 11 of the High Court of
the Provinces (Special Provisions) Act No.19 of 1990.

S.M. Dhammika Samarakopn

Wariyapola Road, Bamunakotuwa.

Petitioner-Appellant

Vs.

Court of Appeal Case No.

CA/PHC/221/2015

Provincial High Court of the North

Western Province Holden at Kurunegala

Writ Application Case No. H.C.W./10/2012

1. Commissioner of Co-operative Development, (North Western Province) The Department of Co-operative Development, 1st Floor, Office of the North Western Provincial Council, Kurunegala.
2. Bamunakotuwa Sakasuruwam Ha Naya, Ganudenu Pilibada Samupakara Samithiya, Wariyapola Road, Bamunakotuwa.
3. Herath Mudiyanseelage Piyasena Herath Chairman, Bamunakotuwa Sakasuruwam Ha Naya Ganudenu

Pilibanda, Samupakara Samithiya, Wariyapola Road,
Bamunakotuwa.

4. Edirisinghe Mudiyansele Nandasena Vice Chairman,
Bamunakotuwa Sakasuruwam Ha NayaGanudenu
Pilibanda Samupakara Samithiya, Wariyapola Road,
Bamunakotuwa.
5. Herath Mudiyansele Thilakaratne Banda, Secretary,
Bamunakotuwa Sakasuruwam Ha Naya, Ganudenu
Pilibanda Samupakara Samithiya, Wariyapola Road,
Bamunakotuwa.
6. A. Geeman Appuhamy, Pattiyagam, Madampe.

Respondent-Respondents

BEFORE: **PRASHANTHA DE SILVA, J.**
K.K.A.V. SWARNADHIPATHI, J.

COUNSEL: Migara Kodithuwakku
For the Petitioner-Appellant

S. Ahammed S.C.
For the 1st to 6th Respondent-Respondents.

Date of argument: 20.01.2022

Date of Judgment: 19.10.2022

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

The Petitioner-Appellant was employed at the 2nd Respondent Society, and her services were terminated in December 2000. Later, in November 2005, a letter of demand was received by the Appellant asking to pay a sum of Rs.1,691,472.00 to the 2nd Respondent Society as a shortage of funds for the period of 01.02.2000 up to 18.12.2000.

The matter was then referred to an Arbitrator, the 6th Respondent. After an inquiry, the award was made in favour of the 2nd Respondent society. The Appellant was ordered to pay a sum of Rs.1,019,178.66.

Aggrieved by this decision, the Appellant appealed to the 1st Respondent. Here the Appellant took up the position that the document (accounts) taken into consideration was not an audited account; it was not marked or allowed to cross-examine at the inquiry before the arbitrator.

The 1st Respondent held an inquiry and ordered the Appellant to pay a sum of Rs.875,570.18 to the 2nd Respondent society.

Aggrieved by the decision, the Appellant instituted the action seeking writ jurisdiction of the Provincial High Court of North-Western Province Holden at Kurunagala to quash the decisions. At the argument before the High Court, the Respondents agreed to hold a fresh inquiry.

Accordingly, a fresh inquiry was held in relation to the Appeal of the Appellant, and the order was delivered on 25.07.2011. According to the said order, the Appellant was ordered to pay a sum of Rs.740,221.66 to the 2nd Respondent.

Aggrieved by this order, the Appellant moved the Provincial High Court of the North-Western Province Holden at Kurunagala to exercise its writ jurisdiction.

After the Respondents' objections, the Appellant filed counter affidavits, and on those documents, the learned High Court Judge delivered his order on 12.10.2015 and dismissed the application of the Appellant.

Aggrieved by the said order of the High Court, the Appellant sought the intervention of the court of Appeal. After filing written submissions by both, the parties' matter was argued. Parties were allowed to file their written submissions after the argument. This judgment is based on the parties' written submissions, arguments, and documents filed.

The Appellant had argued before this court that marking the "P8" document should not have been allowed. According to Petitioner, "P8" is a document marked during cross-examination, thereby not leaving the opportunity to the Petitioner to cross-examine or explain the document. This gross violation of natural justice is *ultra vires* and irrationally unreasonable.

Mere saying a breach of natural justice is not enough to set aside an order made by the learned High Court Judge. He must prove how the violation had taken place.

In this instance, he argued that he had no opportunity to clarify by evidence document marked "P8" The learned High Court Judge had observed that the witness (Appellant) had not indicated such necessity. She had the opportunity to request the court to recall the person who produced "P8" and cross-examined it. She had not denied the document in evidence.

If the document marked "P8" is fraudulent or prepared against the regular practice witness (Appellant) had the opportunity to bring that to the notice of the Judge. Her silence proves that she knows the document; therefore, she is now estopped from raising any objections.

She had not proved any form of violation of natural justice. Her main argument raised for the Appeal fails, as discussed above.

The Appellant argued that had he called the witness regarding the document marked "P8", he would not have had the opportunity for the cross-examination. According to the law, when a

document is marked in cross-examination, the witness can object and request the court to call the witness for cross-examination as the document contains fresh and vital material. If he does not exercise his right at the proper moment, he will have to suffer consequences.

The document marked "P8" was the cash Account for 01.01.2000 to December 2000, during which the Appellant was employed. The document marked "P8" was marked in evidence by the witness. H.M. Piyasena Herath had given evidence regarding "P8" at length. The Appellant's representative cross-examined this witness.

In perusing evidence of the tribunal, it is clear that questions had been asked regarding "P8" on page 160 of the brief the answers to the question speak of document "P8". He used the words "P8", consisting of money received by the Society and paid by the Society separately. This proves that the witness was open to cross-examination by the Appellant.

As the main ground of Appeal was "P8", this order discussed the validity of evidence regarding "P8". There is no violation of natural justice as to how the learned High Court Judge had evaluated the evidence.

Therefore, I am of the view that there is no merit in this Appeal.

The Appeal is dismissed.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal