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

In the matter of an appeal in terms of Article 128(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Paragraph 3(b) of Article 154(P) of the Constitution and Section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990

**SC Appeal No: 37/2023**
HC Anuradhapura Appeal No. 14/2020
LT Case No: 27/Anu/2410/2017

N.W.D.T. Nanayakkara,
No. 390/2, Harischandra Mawatha,
New Town, Anuradhapura.

**APPLICANT**

Vs.

North Central Provincial Road Passenger Transport Authority,
Provincial Council of the North Central Province,
Secretariat Building, Anuradhapura.

**RESPONDENT**

And between

N.W.D.T. Nanayakkara,
No. 390/2, Harischandra Mawatha,
New Town, Anuradhapura.

**APPLICANT – APPELLANT**

Vs.

North Central Provincial Road Passenger Transport Authority,
Provincial Council of the North Central Province,

Secretariat Building, Anuradhapura.

**RESPONDENT – RESPONDENT**

**And now between**

N.W.D.T. Nanayakkara,
No. 390/2, Harischandra Mawatha,
New Town, Anuradhapura.

**APPLICANT – APPELLANT – APPELLANT**

Vs.

North Central Provincial Road Passenger Transport Authority,
Provincial Council of the North Central Province,
Secretariat Building, Anuradhapura.

**RESPONDENT – RESPONDENT – RESPONDENT**

**Before:** **Kumudini Wickremasinghe, J**
**Janak De Silva, J**
**Arjuna Obeyesekere, J**

**Counsel:** Chamara Nanayakkarawasam for the Applicant – Appellant – Appellant

Sabrina Ahamed, Senior State Counsel for the Respondent – Respondent – Respondent

**Argued on:** 15th July 2025

**Written Submissions:** Tendered by the Applicant – Appellant – Appellant on 11th July 2023 and 22nd August 2025

Tendered by the Respondent – Respondent – Respondent on 19th September 2023 and 14th August 2025

**Decided on:** 10th October 2025

**Obeyesekere, J**

1) This appeal arises from a judgment delivered by the High Court of the North Central Province holden in Anuradhapura [the High Court] on 26th July 2022. While the questions of law have been reproduced in paragraph 17 below, the primary issue that arises for determination in this appeal is whether the High Court erred in law when it failed to order the reinstatement in service of the Applicant – Appellant – Appellant [the Applicant] in spite of the finding of the Labour Tribunal, with which the High Court agreed, that the termination of the services of the Applicant was unfair.

Facts in brief

2) By letter dated 30th September 2004, the Respondent – Respondent – Respondent [the Respondent] had appointed the Applicant to the post of Accountant with effect from 1st October 2004 [V1]. Her services had been confirmed on 1st October 2007 by letter dated 25th September 2007 [V2]. Pursuant to approval being granted by the Department of Management Services for the cadre positions of the Respondent, the Applicant had been issued with a fresh letter of appointment to the same post of Accountant with effect from 1st January 2009 [V3].

3) Pursuant to an anonymous complaint followed by the findings of a preliminary investigation, the Applicant had been placed on compulsory leave on 12th December 2013 with half pay. It is admitted that the Applicant had an unblemished record of service until then. The Applicant had been interdicted on 29th May 2014 and had been issued with a charge sheet containing the following thirteen charges:

   (i) Conversion of salaries of employees of the Respondent contrary to Circular Nos. 30, 30(i) and 30(ii)/2006 issued by the Department of Management Services;

   (ii) As a result of the said irregular conversion of salaries, a sum of Rs. 5,286,235 had been overpaid as salaries to the employees of the Respondent, thereby causing a loss to the Respondent, for which loss the Applicant is responsible;

(iii) As a result of acting contrary to the said Circulars, the Applicant had received an additional sum of Rs. 378,470 as salary for the period of 1st January 2007 to 30th September 2009;

(iv) Drawing a sum of Rs. 54,948 as fuel allowance for which allowance the Applicant was not entitled;

(v) Drawing a sum of Rs. 90,000 as transport allowance for which allowance the Applicant was not entitled;

(vi) – (viii) Failure to recover a sum of Rs. 357,000 due as rental for premises given on lease;

(ix) Payment of salary increments to four employees over and above what has been approved by the Board of Directors of the Respondent;

(x) Failure to recover a sum of Rs. 982,962 due as rental for premises given on lease;

(xi) Misappropriating monies belonging to the Respondent;

(xii) Acting contrary to directions and orders given by the Board of Directors of the Respondent;

(xiii) As a result of the above, bringing the Respondent and the Public Service to disrepute.

4) The Respondent did not allege that it had lost confidence in the Applicant as a result of the above charges, but instead alleged that the Applicant had brought the Respondent and the Public Service into disrepute as a result of her alleged acts of misconduct .

5) At the disciplinary inquiry that followed her interdiction, the Applicant was found guilty of eleven of the above charges, but the Applicant was exonerated of charge Nos. (xi) and (xiii) which alleged that she had misappropriated monies belonging to

the Respondent, and bringing the Respondent and the Public Service to disrepute. The services of the Applicant were terminated by letter dated 24th October 2016 with effect from the date of her interdiction. She was 51 years of age at the time her services were terminated.

6) I must perhaps mention at this stage that the finding of not guilty in respect of the aforementioned two charges together with the absence of a charge relating to the Respondent having lost confidence in the Applicant are two factors that I shall consider when arriving at a decision in this matter.

Application to the Labour Tribunal and the appeal to the High Court

7) Aggrieved, the Applicant filed an application before the Labour Tribunal, Anuradhapura. The Respondent led the evidence of the Investigation Officer, the Inquiry Officer and two others, and the Applicant gave evidence on her behalf.

8) The finding of the Labour Tribunal that the termination of the services of the Applicant is unfair and unjustified has been affirmed by the High Court and is no longer in issue. However, in order to place in context my decision, I shall briefly refer to the principal accusation against the Applicant contained in the aforementioned first three charges, that being the failure on the part of the Applicant to act in terms of Circulars issued by the Department of Management Services in calculating the salaries of employees of the Respondent resulting in the overpayment of the salaries of the said employees and thereby causing a financial loss to the Respondent.

9) It transpired in evidence that the aforesaid employees had been in the employment of the Respondent at the time the Department of Management Services formally approved the cadre positions of those employees including the Applicant in 2008. The position taken up by the Respondent was that in accordance with the said Circulars, the employees in question should have been placed at the bottom step of the salary scale from the point approval was granted by the Department of Management Services. However, since these employees were already in service and had earned several salary increments, in calculating the salaries, it was alleged that the Applicant had taken into consideration their period of service prior to 2009,

which then meant that the said employees were placed at a higher salary step and payments made accordingly.

10) Thus, the crux of the first three charges alleged against the Applicant was twofold. The first was that the said employees and the Applicant herself should have been placed at the starting point of their respective salary scales from 2009, effectively ignoring the period of service of the said employees prior to the formal approval of their cadre positions by the Department of Management Services. The second was that as a result thereof, an overpayment had been made, causing loss to the Respondent.

11) While the Respondent did not produce before the Tribunal the relevant Circulars of the Department of Management Services that the Applicant is said to have violated, it transpired during the cross examination of the Investigation Officer that the said Circulars were silent with regard to the manner in which the starting salary must be determined in respect of employees who had been in employment prior to the formal approval of the cadre positions. As a result of the said failure to produce the said Circulars, the Labour Tribunal had opined that it was unable to determine if the basis of the first three charges was factually correct.

12) Be that as it may, there are two matters that were detrimental to the case of the Respondent.

13) The first is that the calculation of the salaries of the above employees pursuant to the decision of the Department of Management Services had been approved by the Board of Directors of the Respondent [E50] and therefore the blame for the alleged overpayment could not have been placed on the Applicant. In other words, the basis of the principal accusation against the Applicant was fundamentally flawed. What is regrettable, and this is another matter that I shall advert to later, is that the attention of the Inquiry Officer was drawn to E50 at the domestic inquiry but the Inquiry Officer had brushed aside the said decision of the Respondent. Had E50 been considered by the Inquiry Officer, the parties might not be where they are today, the Applicant would have continued in service and the Respondent may well have been spared the consequences of this judgment.

14) The second matter is that having terminated the services of the Applicant for the alleged overpayment of salaries, the Respondent continued to pay the salaries of the employees at the same levels without any adjustment, thus demonstrating to my mind that the termination of the services of the Applicant was actuated by malice.

15) Having carefully considered each charge, the Labour Tribunal arrived at the conclusion by its Order delivered on 15th June 2020 that the Respondent had failed to establish the charges against the Applicant and that the termination of the services of the Applicant was unfair. The Labour Tribunal did not order reinstatement or back wages but awarded the Applicant a sum of Rs. 1,352,000 as compensation calculated at the rate of two months salary for 13 years of service of the Applicant. It must be noted that the Applicant had only 12 years of service at the time her services were terminated.

16) The Respondent did not file an appeal against the said Order. However, the Applicant, dissatisfied with the adequacy of the relief granted, invoked the jurisdiction of the High Court seeking reinstatement in service and/or an enhancement of the compensation. The High Court concurred with the decision of the Labour Tribunal that the termination of the services of the Applicant is unfair. The High Court however did not order the reinstatement of the Applicant nor did it increase the quantum of compensation, but agreed with the decision of the Labour Tribunal with regard to the payment of compensation in lieu of reinstatement, and the quantum of compensation.

Questions of law

17) This appeal arises from the said judgment of the High Court. Special leave to appeal was granted on 16th January 2023 on the following three questions of law:

    (a) Did the High Court err in law by failing to appreciate that the Labour Tribunal should have ordered reinstatement of the Applicant with back wages and other emoluments?

(b) Did the High Court err in law by failing to appreciate that the Labour Tribunal has failed to adduce any legally valid reason not to order reinstatement of the Applicant?

(c) Did the High Court err in law by failing to appreciate that the Applicant is entitled to receive a higher amount of compensation considering the period of service she was deprived of by the unjustified and unlawful termination of services and denial of reinstatement?

18) Thus, the primary issue that needs to be determined is whether the High Court erred in law when it failed to order the reinstatement in service of the Applicant in spite of the finding of the Labour Tribunal that the termination of the services of the Applicant was unfair. The issue before us therefore is whether the Order of the Labour Tribunal is just and equitable.

Provisions of the Industrial Disputes Act

19) Section 31C(1) of the Industrial Disputes Act, as amended [the Act] provides that, "*Where an application under section 31B is made to a labour tribunal, it shall be the duty of the tribunal to make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary, and thereafter make, not later than six months from the date of such application, such order as may appear to the tribunal to be just and equitable*."

20) In terms of Section 33(1) of the Act, an order of a Labour Tribunal may contain decisions relating to the following:

(a) Wages and all other conditions of service;

(b) Reinstatement in service;

(c) The extent to which the period of absence from duty of any workman, whom the labour tribunal has decided should be reinstated, shall be taken into account or disregarded for the purposes of his rights to any pension, gratuity or retiring allowance or to any benefit under any provident scheme;

(d) The payment by any employer of compensation to any workman, the amount of such compensation or the method of computing such amount, and the time within which such compensation shall be paid;

(e) The payment by any employer of gratuity or pension or bonus to any workman, the amount of such gratuity or pension or bonus and the method of computing such amount, and the time within which such gratuity or pension or bonus shall be paid.

21) Thus, while Section 33(1) sets out in very broad terms the extensive powers of the Labour Tribunal and confers a Labour Tribunal, on the one hand, with a very wide discretion in determining the type of relief that can be afforded to an employee, Section 31C(1), on the other hand, circumscribes that power by requiring that the order must nonetheless be just and equitable.

22) What is *just and equitable* has been the subject of discussion in many judgments of this Court over the last several decades and does not need elaboration. Quite naturally, whether an order is just and equitable must be determined on the facts and circumstances of each case. Thus, a Labour Tribunal must at all times be guided by the evidence before it and must consider both sides carefully. It is only when the Labour Tribunal does so that an order can truly be called just and equitable.

23) As pointed out by Amerasinghe, J in **Jayasuriya v Sri Lanka State Plantations Corporation** [(1995) 2 Sri LR 379; at page 392], "*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*."

24) It would perhaps also be important to emphasise that a Labour Tribunal does not possess an unfettered power and that considerations of justice and equity must necessarily control and limit the powers of Labour Tribunals. H. N. G. Fernando, J. (as he then was) observed in **Walker Sons & Co. Ltd. v Fry** [68 NLR 73] that a Labour

Tribunal does not have the "*freedom of the wild ass*" in determining the relief that should be granted.

Reinstatement [with or without wages] or compensation in lieu thereof?

25) With the Labour Tribunal having held that the termination of the employment of the Applicant was unfair, the next step was for the Labour Tribunal to decide on the relief that should be granted to the Applicant.

26) That reinstatement is the first option that must be considered once a finding is reached that the termination of services is unfair has been clearly set out by this Court time and again. Sharvananda, J (as he then was) in **Caledonian Tea and Rubber Estates Limited v J.S. Hillman** [79(1) NLR 421; at page 435], stated that:

> "***Once it is found that a workman has been wrongfully or illegally discharged or dismissed, he is normally entitled to claim re-instatement***. ***But this remedy is not absolute or of universal application***. *There can be cases where it might not be expedient, because of the presence of unusual features, to direct re-instatement, and a Tribunal may think the grant of compensation instead may meet the ends of justice. A Tribunal may have reasons why it does not think it proper to re-instate a workman and may come to the conclusion that compensation in lieu of reinstatement would be adequate relief*. " [emphasis added]

27) In **Indrajith Rodrigo v Central Engineering Consultancy Bureau** [(2009) 1 Sri LR 248; at pages 271 & 272], Marsoof, J held that:

> *"It is a well-established principle that the primary (albeit discretionary) remedy for harsh, unjust or unreasonable termination of employment is* ***reinstatement to the same position*** *or re-engagement to a comparable position held prior to the said termination.* ***Compensation is a secondary cure*** *and* ***is only ordered where****, in the discretion of the court or Tribunal Court,* ***it is held the reinstatement or re-engagement is not appropriate***. ***Reinstatement has always been awarded at the discretion of the Labour Tribunal*** *or Court and such discretion has* ***to be exercised judicially*** *taking into consideration all the circumstances of the case….*

*In the absence of any evidence that would have any bearing in regard to the question of reinstatement, such as whether or not the Appellant has got himself gainfully employed elsewhere during the pendency of the appeals to the High Court and to this Court, I hold that it would be just and equitable to reinstate the Appellant in service as an Engineer (Grade III) in the Respondent Bureau with effect from 1st January 2010.*" [emphasis added]

28) A similar conclusion was reached in **The Associated Newspapers of Ceylon Ltd., v Jayasinghe** [(1982) 2 Sri LR 595; at pages 599 & 600], where Soza, J, held as follows:

"***The relief of reinstatement is granted where the contract of employment has been unjustifiably breached by the employer****. Back wages can then be awarded on the basis of an unbroken contract of employment. Of course the quantum of back wages and the period for which they will be awarded will depend on the circumstances of each particular case. For instance if the employee had obtained other employment after the date of termination that will be a relevant circumstance*." [emphasis added]

29) Soza, J stated further that in determining the quantum of back wages that must be paid the object of the exercise or the test that must be applied is to ascertain as far as possible the money equivalent of the loss of employment from the date of unjust dismissal.

30) The above test laid down by Soza, J was amply demonstrated in the case of **M.D. Gunasena & Co. Ltd v Somaratne Gamage** [(2013) 1 Sri LR 143]. That was a case where the services of the employee was terminated in September 2000. By its Order delivered in 2006, the Tribunal found that the Applicant was not guilty of misconduct. The Labour Tribunal directed that the applicant be reinstated without a break in service and that he be paid compensation amounting to one year's salary. At the time of the judgment of the High Court in 2009, it was revealed that the applicant had only one year to serve in the establishment before reaching the retiring age of 55. In view of this the High Court enhanced the compensation ordered to be paid by the employer to four years' salary or in the alternative directed that the applicant be employed by the employer for a period of four years.

31) On an appeal by the employer, Dep, J (as he then was) held that, "***The applicant was out of employment from 2000 due to unlawful termination of his services***. *If he was reinstated in 2006 as ordered by the Labour Tribunal the applicant could have served more than four years in the company before reaching the retirement age. In such circumstances one cannot state that the order of the High Court to pay four years' salary as compensation is not a just and equitable order*." [emphasis added; at pages 149 & 150]

32) In **Jayasuriya v Sri Lanka State Plantations Corporation** [supra; at pages 405 & 406], Amerasinghe, J referred with approval to the above statement of Sharvananda, J in Caledonian Tea and Rubber Estates Limited v J.S. Hillman, and stated that, "*Although the Petitioner's dismissal was wrongful and it may be ordered that he be reinstated, … considering the Petitioner's uneasy relationship with the Trade Unions and the likelihood of industrial strife if he is reinstated cf. Ceylon Ceramics Corporation v Weerasinghe [SC 24/76 - SC Minutes of 15th July 1978]; cf. also Ceylon Workers' Congress v. Poonagala Group [SC 120/71 - SC Minutes of 28th November 1972] and the fact that the employer had alleged a lack of confidence in the Petitioner cf. Glaxo Allenbury's (Ceylon) Ltd. v. Fernando [SC 250/71 - SC Minutes of 22nd October 1974], I am of the view that compensation, rather than reinstatement is the appropriate remedy in this case*."

33) Having considered the impact that an allegation of the loss of trust and confidence can have on the reinstatement of an employee, Kodagoda, J held as follows in **Ceylon Cold Stores PLC v Inter Company Employees' Union** [SC Appeal No. 17/2012; SC minutes of 8th May 2025]:

> "*Therefore, as per the above analysis, even though the termination of services is unjustified due to the failure of the Appellant company in proving the guilt of Nadarajah, since the alleged lack of confidence in Nadarajah has hampered the harmonious relations between the parties, reinstatement of Nadarajah in employment would not be the appropriate remedy. Furthermore, due to the lapse of time since the termination of employment in 2017, and considering the best interests and future employment prospects of the employee, with a view to*

*preventing unfavorable repercussions that may emanate from the alleged loss of trust and confidence on the employee if he be reinstated, this Court is of the view that it would not be appropriate to order reinstatement of Nadarajah in service."*

34) Kodagoda, J, cited with approval the finding in Sri Lanka State Plantation Corporation v. Lanka Podu Seva Sangamaya *[(1990) 1 Sri LR 84],* that, *"…an order for payment of compensation in lieu of reinstatement may be substituted in appeal if reinstatement has become demonstrably impracticable due to changes in the employer's establishment or the closure of the business or by reason of the workmen having reached the age of retirement",* and held that, *"Therefore, considering the unjustified termination of Nadarajah from employment and the impracticability of reinstatement due to the aforesaid reasons, this Court is of the view that the Appellant company should pay compensation to Nadarajah in lieu of reinstatement*."

35) If I may summarise, in deciding the relief that should be granted to the Applicant, the Labour Tribunal had two options available to it. The first was to order the reinstatement of the Applicant. Prior to exercising this option, there are two matters that must be considered. The first is whether reinstatement is expedient or appropriate in the circumstances of the case. If the answer is in the affirmative, the second consideration is whether the Applicant should be reinstated with back wages, and if so, whether the Applicant was entitled to back wages from the date her services were terminated until reinstatement or for a lesser period. If the Tribunal was of the view that reinstatement was not expedient or warranted, the second option available to it was to award compensation as an alternative to reinstatement. In-built in this option was to decide on the applicable criteria in determining the quantum of compensation. Whether it be back wages or compensation, the prime consideration is to redress the Applicant for the financial loss caused as a result of the unfair dismissal.

36) The decision whether the reinstatement of an employee is expedient or appropriate would depend on the facts and circumstances peculiar to that case and may include the following:

(i) The nature of the services performed by the employee;

(ii) The nature of the charges levelled against the employee;

(iii) Whether any of the charges established at the domestic inquiry include misappropriation of funds by the employee or fraud on the part of the employee;

(iv) Whether the acts of misconduct alleged involve moral turpitude and/or gross mismanagement?

(v) Whether the employer has alleged that it has lost confidence in the employee;

(vi) The extent to which the employees actions were blameworthy;

(vii) The circumstances and the manner of dismissal;

(viii) Whether the past conduct of the employee warrant reinstatement;

(ix) Whether the employee had an unblemished record of service;

(x) Whether the continuance in service of the employee is not in the best interest of industrial peace at the workplace or not in the interest of the employee himself?

(xi) Whether the employee had an uneasy relationship with trade unions;

(xii) The relationship between the employee and the rest of the staff and whether there was any animosity between the employee and the employer including its other staff members;

(xiii) Whether the employee was gainfully employed during the period he or she was under dismissal;

(xiv) Whether there existed opportunities for obtaining similar alternative employment;

(xv) Whether reinstatement is impracticable due to change in the employer's establishment or due to closure of business etc.,;

(xvi) Whether the employee has reached the age of retirement.

37) While the discretion in deciding which relief to grant is with the Labour Tribunal, in exercising its discretion and arriving at a just and equitable order, the Labour Tribunal must not only act reasonably but it must give reasons which must be rational and supported by the evidence that was available to the Tribunal. As pointed out by Amerasinghe, J in **Jayasuriya v Sri Lanka State Plantations Corporation** [supra; at page 407 & 408]:

> "*There must eventually be an even balance, of which the scales of justice are meant to remind us. The Tribunal must endeavour to give each man that which is his right: "Sum clique tribuere", as the Roman Law, to which our legal systems owe so much, felicitously phrased that concept*."
>
> "*It is not satisfactory in my view to simply say that a certain amount is just and equitable. There ought, I think, to be a stated basis for the computation, taking the award beyond the realm of mere assurance of fairness*."

38) That being the position, I shall now proceed to consider the Order of the Labour Tribunal, bearing in mind the submission of the learned Counsel for the Applicant that this was a case where the employee ought to have been reinstated since the grounds that would normally prevent reinstatement including the grounds set out above did not exist in this case.

Order of the Labour Tribunal

39) Having determined that the termination of the services of the Applicant is unfair, the Labour Tribunal stated as follows:

> "ඒ අනුව අසාධාරණ සේවා සමාජ්තිය වෙනුවෙන් ඉල්ලුම්කාරිය වෙත සහන ලබා ගැනීමට හිමිකමක් ඇති බවට තිරණය කරම්. ඒ අනුව මෙම ඉල්ලුම්කාරිය හිමිවිය යුතු සහන කවරේ දැයි තිරණය කිරීමේ දී වගඋත්තරකාර පාර්ශවය විසින් ඉල්ලුම්කාරිය වෙත අසාධාරණ චෝදනා ඉදිරිපත් කරමින් ක්‍රියා කල ආකාරය සහ මේ වන විට ඉල්ලුම්කාරියගේ වයස යන කරුණු කෙරෙහි අවධාරණය යොමු කරමින් සහ එමෙන් වගඋත්තරකාර ආයතනයේ විශ්‍රාම ගැන්වීමේ වයස් සීමාව සම්බන්ධව නිශ්චිත සාක්ෂි දෙපාර්ශවය තුළින්ම ඉදිරිපත් කර නොමැති බැවින් මෙම නඩුවේ සාක්ෂි ලබා දෙන අවස්ථාව වන විට මෙම ඉල්ලුම්කාරිය වයස අවුරුදු 54 ක් බවට ප්‍රකාශ කර ඇති බැවින් ඉල්ලුම්කාරිය නැවත සේවයේ පිහිටුවීම යෝග්‍ය නොවන බවට තිරණය කරම්.

ඒ අනුව අසාධාරණ සේවා සමාප්තිය වෙනුවෙන් මෙම ඉල්ලුම්කාරිය හට වන්දි මුදලක් ලබා දීම සාධාරණ සහ යුක්තිසහගත බවට මම තීරණය කරමි."

40) It is clear from the above that the Tribunal was of the view that the Applicant was entitled to be reinstated, but decided against it solely on the basis that no evidence had been placed by either party with regard to the age of retirement. It is correct that evidence with regard to the age of retirement of employees of the Respondent had not been led before the Tribunal. While this is a lapse on the part of the Applicant for which she must take responsibility, this was an extremely flimsy ground to refuse reinstatement, especially when one considers that the Applicant was 54 years of age at the time she gave evidence a mere nine months prior to the Order. In any event, this was a matter on which the Labour Tribunal could have sought a clarification from the parties as clearly mandated by Section 31C(1) of the Act.

41) Thus, I am of the view that the age of retirement of the Respondent was not a factor that was relevant to the issue of reinstatement since the Applicant was yet to reach the age of 55 at the time the order was delivered. Thus, the Labour Tribunal acted irrationally and clearly erred when it took into consideration an irrelevant fact.

42) The next question is, if not for the above error, did the facts of this case warrant an order for reinstatement. The answer to this question is twofold. The first is, present before the Tribunal was an employee who had ten years of unblemished service, but who stood unfairly accused of misinterpreting circulars and paying employees a salary over and above their entitlement whereas the payment thereof had been authorised by the Board of Directors of the Respondent and the Applicant had no role to play in that decision. This was aggravated by the fact that the Inquiry Officer chose to ignore the said approval evidenced by the document E50 even though his attention was drawn to it. The second factor is that the Respondent did not lead any evidence to establish that the reinstatement of the Applicant would not be expedient or appropriate in the circumstances of this case.

43) With the age of the Applicant not being a bar to the Applicant being reinstated, and with the Labour Tribunal not being concerned with any other ground that would make reinstatement inexpedient, there was no impediment to an order being made for the reinstatement of the Applicant. Thus, in my view, the Labour Tribunal erred

when it refused to order the reinstatement of the Applicant on the basis of the age of retirement of the Applicant.

Judgment of the High Court

44) It is in the above background that I shall now consider the judgment of the High Court.

45) Having reiterated the facts and agreeing with the conclusion of the Labour Tribunal that the termination of the services of the Applicant was unfair, the High Court held as follows:

> "මෙම නඩුවේ ඉල්ලුම්කාරිය තම ඉල්ලුම්පත්‍රය මගින් ප්‍රධාන ලෙසම ඉල්ලා ඇත්තේ හිඟ වැටුප් සමග නැවත සේවය ලබා දෙන ලෙසට ය. විශේෂයෙන්ම අසාධාරණ සහ අයුක්ති සහගත ලෙස සේවය අවසන් කිරීමක් කර තිබීමේ කාරණාවේ දී නැවත සේවයට පිහිටුවීම ප්‍රයෝගික තත්ත්වයක් මතු නොකරයි. ඊට හේතුව ඇයට චෝදනා පත්‍රයක් දී විනය පරීක්ෂණයක් පවා සිදු කර කටයුතු කර තිබෙන නිසාය.
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> **සේවය අවසන් කිරීම අයුක්ති සහගත බවට කම්කරු විනිශ්චය සභාව තීරණය කෙරුණා වුවත් සේවකයා සහ සේවා යොජකයා අතර හොඳ හිත පළුදු වූ පසුබිමක නැවත ඉල්ලුම්කාරියව සේවයේ පිහිටු වීම සුදුසු නොවන බවට පිළිගත යුතු වේ.**
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> විශ්‍රාම ගැන්වීමේ වයස් සීමාව සම්බන්ධයෙන් දෙපාර්ශවයම නිශ්චිත සාක්ෂි ඉදිරිපත් කර නොමැති බවට උගත් විනිසුරුතුමිය සඳහනක් කර ඇත. ඉල්ලුම්කාර අභියාචක තම අභියාචනා පෙත්සමේ 06 වන ඡේදයේ වගඋත්තරකාර ආයතනයේ අවුරුදු 55 න් සේවකයින් විශ්‍රාම ගැන්වීමේ ආයතනයක් නොවන බවට හා අභියාචනා පෙත්සම ගොණු කරන කාළ වකවානුව අනුව රාජ්‍ය සංස්ථා, සියලු රාජ්‍ය ආයතන, අර්ධ රාජ්‍ය ආයතන වසින් අවුරුදු 60 දක්වා සේවය කිරීමේ අයිතිවාසිකම් පැවතිම තිබියදී අවුරුදු 54 වන ඉල්ලුම්කාරියට වයස අවුරුදු 60 දක්වා සේවය කිරීමට ඉඩකඩක් සැළසෙන ආකාරයට තීරණයක් ලබා දිය යුතුව තිබියදී එසේ කර නොමැති බවට තර්කයක් ඉදිරිපත් වුවත් සාක්ෂි දෙන විට ඇය **වයස 54 ක් බවට වී ඇති පදනම සැළකිල්ලට ගෙන ඉල්ලුම්කාරියව නැවත සේවයේ පිහිටුවීම සුදුසු නැතැයි කම්කරු විනිශ්චය සභා සභාපතිතුමිය තීරණය කිරීමෙහි දෝෂයක් නැත.**
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> මෙම නඩුවේ වැදගත් කරුණ වන්නේ එසේ හිඟ වැටුප් සමග නැවත රැකියාව ලබා දෙන ලෙසට තීරණයක් නොදෙන්නේ නම් පූර්ණ වන්දියක් ලබා දීමට පියවර ගන්නා ලෙසින් ඉල්ලීමක් කර තිබීමය. එය ඉතා පැහැදිළි වන්නේ (අ) සහනය නොලැබේ නම් (ආ) සහනය තුලින් තෘප්තිමත් වීමට ද ඉල්ලුම්කාරිය කැමැත්ත දක්වමින් ඉල්ලුම් පත්‍රය ඉදිරිපත් කර තිබීමයි. එය "නොඑසේ නම්" යන යෙදුම තුළින් පැහැළිවේ.
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> **ඒ අනුව හිඟ වැටුප් සහිත නැවත සේවය ලබා දීමට උගත් විනිසුරු තුමිය නියෝග නොකිරීම දෝෂ සහිත බවට කිවත් එය දෝෂ සහගත නොවේ.** ඒ අනුව උගත් විනිසුරුතුමිය වන්දි මුදලක් ලබාදීමට එතුමියගේ නියෝගයේ 21 වන පිටුවේ තීරණය කර ඇත. ඉල්ලුම්කාරිය තම ඉල්ලුම්පත්‍රය

මගින් පුරණ වන්දියක් ලෙස ඉල්ලා තිබෙනවා මීසක එය සංඛ්‍යාත්මකව ගණනය කිරීමට ලක් කොට ඉල්ලීමක් කොට නැත."

46) In my view, the High Court erred on three grounds when it failed to hold that the decision of the Labour Tribunal not to reinstate the Applicant was wrong.

47) The first was when it held that the relationship between the parties was not conducive to the reinstatement of the Applicant. This was not a matter that had been adverted to by the Labour Tribunal for the simple reason that there was no evidence placed before the Tribunal in that regard.

48) The second ground on which the High Court erred is when it stated that since the Applicant is 54 years of age, there is nothing wrong in the Labour Tribunal not ordering reinstatement. Thus, the High Court failed to appreciate that (a) as long as the Applicant was within the age of retirement at the time of the Order, there was no legal impediment to the reinstatement of the Applicant, and (b) such remedy was the most just and equitable order that the Labour Tribunal could have made in the circumstances of this case.

49) The third ground is when it stated that the Applicant had sought compensation in lieu of reinstatement, thus demonstrating that she is content with an order for compensation as opposed to reinstatement. The High Court failed to appreciate that the said relief had been prayed for in the alternative, and that it is the responsibility of the Labour Tribunal to make a just and equitable order having considered the evidence.

<u>The entitlement of the Applicant for back wages</u>

50) Having concluded that the Labour Tribunal and the High Court erred when it failed to reinstate the Applicant, the next question that needs to be decided is whether the Applicant is entitled to the payment of back wages, and if so, the quantum of back wages. In ideal circumstances, this is a matter that must be decided by the Labour Tribunal and the course of action available to me is to remit this matter to the Labour Tribunal for a decision in that regard.

51) However, taking into consideration that (a) the Applicant was interdicted in 2014, (b) her services were terminated in 2016, (c) the Applicant has been without any form of remuneration for 11 ½ years, (d) the Applicant has reached the age of 60, and (e) the time that it would take for the Labour Tribunal to make an appropriate order and the possible appeals that may arise from such an order, I am of the view that referring this matter to the Labour Tribunal would not only cause further expenses to both parties but would also not be in the interests of justice. In these circumstances, I am of the view that the issue relating to back wages must be decided by this Court.

52) I have already stated that the test in determining the quantum of back wages is to ascertain the actual financial loss caused by the unfair dismissal, which is the same consideration that would apply in calculating compensation in lieu of reinstatement.

53) In **Jayasuriya v Sri Lanka State Plantations Corporation** [supra], it was held that:

> "*With regard to financial loss, there is, first, the loss of earnings from the date of dismissal to the determination of the matter before the Court, that is, the date of the Order of the Tribunal, or, if there is an appeal, to the date of the final determination of the appellate court. The phrase "loss of earnings" for this purpose would be the dismissed employee's pay (net of tax), allowances, bonuses, the value of the use of a car for private purposes, the value of a residence and domestic servants and all other perquisites and benefits having a monetary value to which he was entitled. The burden is on the employee to adduce sufficient evidence to enable the Tribunal to decide the loss he had incurred*." [page 410]
>
> "*Once the incurred, i.e., the ascertainable past losses have been computed, a Tribunal should deduct any wages or benefits paid by the employer after termination, as well as remuneration from fresh employment. If the employee had obtained equally beneficial or financially better alternative employment, he should receive no compensation at all, for he suffers no loss.* ***The principle is this: He is entitled to indemnity and not profit***." [emphasis added; page 411]
>
> **"***A dismissed employee must mitigate his loss by taking any offer of employment that is reasonably offered to him, acting ,as if he had no hope of seeking*

*compensation from his previous employer. I hold that the failure to mitigate the loss was not due to the Petitioner's fault. It is a fact recognized by this Court that persons like the Petitioner, who are engaged in the business of running plantations, find it difficult to obtain alternative employment*." [pages 411-412]

"*I am of the view that the manner of dismissal in this case, blackened the Petitioner's name in the plantation sector and rendered him unfit for immediate re-employment and that the loss caused by unemployment is entirely attributable to the Respondent*." [page 412]

54) An employer who terminates the services of an employee without reason cannot be allowed to get away on the payment of a fraction of the salary that it would have paid such employee if not for the unfair dismissal. The Applicant in this case was an Accountant. It is common ground that an Accountant must be of the highest integrity and any allegation of wrongdoing would affect the future employability of such person. It was the position of the Applicant that she could not find alternative employment after her services were terminated. The evidence of the Applicant that she was unable to find employment and that she remained unemployed since interdiction has not been challenged by the Respondent.

55) Thus, present before the Labour Tribunal was an Accountant of a Provincial authority who had been unfairly accused of causing financial loss to such authority, and who as a result of not being able to secure alternative employment had been without a salary or any other form of remuneration since her interdiction on 29th May 2014. She was 54 years of age at the time she gave evidence in November 2019 and as we have now been informed, was two months short of her 55th birthday at the time the Labour Tribunal delivered its Order.

56) There are two other factors that are important to my mind in determining the quantum of back wages. The first is the fact that the payment of salaries at a higher salary step had been approved by the Board of Directors. Thus, to point the finger at the Applicant was wrong and malicious. The second is that the document E50 was brought to the attention of the Inquiry Officer but he chose to ignore it. As I have

already stated, had it been considered, none of the parties would be where they are today.

57) Taking into consideration all these factors, I am of the view that the Applicant was entitled to be reinstated from the date her services were terminated [i.e. 29th May 2014, that being the date of interdiction] with back wages from that date until she reached the age of 55 years [24th August 2020]. The Applicant shall also be entitled to the contributions that the Respondent was required to make under the Employees Provident Fund Act and the Employees Trust Fund Act, as well as to any other super annuation entitlements including gratuity for that period.

58) I have limited the period of back wages to the date that the Applicant reached the age of 55 years since at its best, that was the evidence that was available to the Labour Tribunal with regard to the age of retirement. However, having taken into consideration the submission of both learned Counsel that the retirement age of the Respondent is 60 years, I of the view that the Applicant shall be entitled to the payment of compensation of one years' salary calculated at the same rate as the back wages payable to the Applicant for loss of future employment opportunities. I have limited the compensation to one year since there is no assurance that the Applicant would have continued in employment with the Respondent until she reached the age of sixty.

Conclusion

59) In the above circumstances, I am of the view that the High Court erred when it failed to order the reinstatement in service of the Applicant in spite of it agreeing with the Labour Tribunal that the termination of the services of the Applicant was unfair. I would therefore answer the first and second questions of law in the affirmative. The need to answer the third question of law therefore does not arise.

60) I accordingly set aside that part of (a) the Order of the Labour Tribunal that held that reinstatement cannot be ordered, and the payment of compensation calculated at the rate of two months' salary for 13 years, and (b) the judgment of the High Court affirming the above Order of the Labour Tribunal, and substitute it with the following:

(a) The Applicant is entitled to be reinstated in service with back wages from 29th May 2014. However, since she has now reached the age of retirement, the question of actual reinstatement in service does not arise.

(b) The Applicant shall be entitled to the payment of half months' salary from the date that she was sent on compulsory leave until her interdiction from service.

(c) The Applicant shall be entitled to the payment of the full monthly salary from the date of interdiction until 24th August 2020.

(d) The monthly salary shall include the basic salary, the allowances that the Applicant was entitled to and the contributions that the Respondent was required to make under the Employees Provident Fund Act and the Employees Trust Fund Act. Details of the basic salary and allowances payable to the Applicant have been set out in Annexure 'B' annexed to the written submissions of the Respondent filed on 14th August 2025.

(e) For the avoidance of doubt, while the monthly salary shall not be less than Rs. 52,344 per month, in calculating the basic salary, the Applicant shall not be entitled to any salary increments as salary increments must be earned on performance and satisfactory service.

(f) The Applicant shall be entitled to the payment of gratuity for the period of her service from 1st October 2004 to 24th August 2020, provided gratuity is payable to employees of the Respondent, on the salary payable to her for the month of August 2020.

(g) The Applicant shall be entitled to the payment of compensation of one years' salary, calculated in accordance with sub paragraphs (d) and (e) above, on the salary payable to the Applicant for the month of August 2020.

(h) The Respondent shall deduct from the above amounts the compensation that it may have paid the Applicant pursuant to the Order of the Labour Tribunal, and any sums outstanding on loans that the Applicant may have taken.

61) Subject to the above variation in paragraph 60 above, the Order of the Labour Tribunal and the judgment of the High Court are affirmed. The Applicant shall be entitled to a sum of Rs. Ten Thousand as nominal costs.

**JUDGE OF THE SUPREME COURT**

**Kumudini Wickremasinghe, J**

I agree

**JUDGE OF THE SUPREME COURT**

**Janak De Silva, J**

I agree.

**JUDGE OF THE SUPREME COURT**