

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

*In the matter of an Appeal in terms of Section 9 of
the High Court of the Provinces (Special Provisions)
Act No. 19 of 1990 as amended by Act No. 54 of
2006 read with Article 128 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

SC/APPEAL/128/2017

SC/HC/LA/63/2016

HCALT/47/2014

LT Colombo/02/310/2012

M. Wasantha Priyamal Fernando
No. 28, Munidasa Kumarathunga Mawatha,
Gorakapola,
Panadura.

APPLICANT

Vs.

Favourite Hanwella (Pvt) (Ltd)
No. 385, Land Mark Building,
6th Floor, Galle Road,
Colombo 03.

RESPONDENT

AND BETWEEN

Favourite Hanwella (Pvt) (Ltd)
No. 385, Land Mark Building,
6th Floor, Galle Road,
Colombo 03.

RESPONDENT-APPELLANT

Vs.

M. Wasantha Priyamal Fernando
No. 28, Munidasa Kumarathunga Mawatha,
Gorakapola,
Panadura.

APPLICANT-RESPONDENT

AND NOW BETWEEN

Favourite Hanwella (Pvt) (Ltd)
No. 385, Land Mark Building,
6th Floor, Galle Road,
Colombo 03.

RESPONDENT-APPELLANT-APPELLANT

Vs.

M. Wasantha Priyamal Fernando
No. 28, Munidasa Kumarathunga Mawatha,
Gorakapola,
Panadura.

APPLICANT-RESPONDENT-RESPONDENT

Before: Arjuna Obeyesekere J.

K. Priyantha Fernando J.

Dr. Sobhitha Rajakaruna J.

Counsel: Manoli Jinadasa with Nilushi Dewapura for the Respondent-Appellant-Appellant.
Pubudu de Silva for the Applicant-Respondent-Respondent.

Written Submissions: Respondent-Appellant-Appellant – 21 March 2019

24 October 2025

Applicant-Respondent-Respondent – 12 September 2018

11 November 2025

Argued on: 01 October 2025

Decided on: 27 March 2026

Dr. Sobhitha Rajakaruna J.

The Applicant-Respondent-Respondent ('Applicant') filed an application dated 22 May 2012 in the Labour Tribunal of Colombo ('Labour Tribunal'). He sought reinstatement, compensation and back wages, alleging that his services were unjustly and unlawfully terminated by the Respondent-Appellant-Appellant ('Appellant'). In its answer, the Appellant explicitly denied the termination of the Applicant's services. Instead, the Appellant claimed that the Applicant had voluntarily tendered his resignation just as disciplinary proceedings were about to be initiated against him. In his replication, the Applicant stated that his employment was expressly terminated in writing by the Appellant with effect from 10 April 2012.

The Applicant contends that one month after the termination of his services, he was summoned to the Head Office of the Appellant Company on 9 May 2012 and he tendered his letter of resignation ('A14') under coercion. Further, he states that no disciplinary action was commenced by that time.

At the inception of the proceedings before the Labour Tribunal, the Applicant commenced the case as the Appellant denied the termination of the services. The Labour Tribunal, after concluding the inquiry, delivered its order dated 30 April 2014. It held that there was no proper acceptance of the resignation letter in question, and the letter had been tendered involuntarily. As a result, the Labour Tribunal held that treating this letter 'A14' as a valid basis for bringing the Applicant's employment to an end was unjust and inequitable.

Questions of Law

Upon an appeal lodged by the Appellant, the Provincial High Court of the Western Province holden in Colombo ('High Court') dismissed the said appeal on 2 September 2016, affirming the aforesaid order of the Labour Tribunal. Thereafter, the Appellant filed the instant Application before this Court against the said Judgement of the High Court. This Court granted Leave to Appeal in respect of the following Questions of Law set out in paragraphs 15(a), 15(b), and 15(c) of the Petition dated 11 October 2016:

- a) Whether the relief awarded to the Applicant by the Provincial High Court and the Labour Tribunal is just and equitable and/or consistent with the principles of law, considering the facts and circumstances of this case?
- b) Whether the Provincial High Court and the Labour Tribunal erred in law in the analysis of the evidence and reached findings that are unsupported by evidence and/or perverse?
- c) Whether the Provincial High Court and the Labour Tribunal erred in law in awarding relief where there is evidence of a comprehensive, full and final settlement between the parties and where the terms of settlement have been duly honoured and received?

Appellant's Submissions

The Appellant vigorously contests the Applicant's version of events and submits that the termination of the Applicant's services on 10 April 2012 was lawful and justified on the grounds of gross insubordination, as evidenced by the letter of termination marked 'R1'. The Appellant maintains that this termination was expressly acknowledged and admitted by the Applicant himself during his evidence before the Labour Tribunal. This admission was corroborated by Mr Kumar Marchandani, the owner of the Appellant Company, who was called by the Applicant but confirmed the fact of termination by the company. Following the termination, the Appellant submits that the Applicant persistently contacted various company officials in attempts to regain employment.

Consequently, around 9 May 2012, the company invited him to a meeting at the Head Office, where he attended carrying the termination letter. The Appellant contends that a negotiated settlement was reached at this meeting: in exchange for the Applicant tendering a letter of resignation ('A14'), the company agreed to pay him an ex-gratia sum of Rs. 400,000/-, his full salary for April 2012 (despite not having worked the entire month), gratuity of Rs. 150,000/-, and bonus for April amounting to Rs. 47,975/-. The Appellant further submits that the said resignation letter was handwritten by the Applicant. The contention of the Appellant is that it reflected a voluntary act pursuant to the agreement to convert the

termination into a resignation in return for these substantial benefits, to which he was not otherwise entitled (particularly the full April salary, bonus, and ex gratia payment). The Applicant also signed and accepted cheque payment vouchers (marked 'R4' and 'R5') for these amounts and admitted in evidence to having done so. He encashed the cheques and received the proceeds on 11 May 2012.

The Appellant highlights that, remarkably, the Applicant lodged a police complaint ('A15') at Panadura Police Station on 10 May 2012 (the day after the meeting), yet expressly stated in that complaint that no inquiry was necessary, an unusual step if the allegation of coercion were genuine. The Appellant argues this complaint was made merely for record purposes, likely on legal advice to support a subsequent false claim of unlawful termination or forced resignation.

The Appellant asserts that the Applicant's conduct, accepting and encashing substantial payments under a full and final settlement, signing the resignation and settlement documents, yet later pursuing relief before the Labour Tribunal without disclosing the settlement in his application, reveals a lack of candour and credibility. The claim of forced resignation only emerged during cross-examination, when the Applicant was compelled to admit receiving money in exchange for the resignation. The Appellant submits that this deliberate omission of material facts from his pleadings and initial evidence amounts to an attempt to mislead the Tribunal and constitutes unclean hands.

In this regard, the Appellant invokes the principle that a party cannot approbate and reprobate, that is, one cannot accept the benefits of an agreement or settlement while repudiating its binding effect or pursuing inconsistent claims. Had the settlement been disclosed, the Applicant would have been precluded from seeking further relief, as the doctrine squarely applies to bar such contradictory conduct. The Appellant contends that the balance of probabilities strongly supports its version of events. The Applicant had already been terminated and, acting on prior legal advice, voluntarily negotiated and accepted a beneficial settlement that converted the termination into a resignation. Consequently, the Appellant asserts that the Applicant's subsequent claim of coercion or unjust termination is unfounded and lacks merit.

Submissions of the Applicant

The Applicant contends that he was appointed as Sample Room Manager of the Appellant Company under a letter of appointment marked 'A1'. He was subsequently transferred to the Hanwella factory by letter marked 'A3' with effect from 1 November 2010, where he was provided with transport facilities since he resided in Panadura. The Applicant further contends that the subsequent transfer to Bibile by letter marked 'A4' was contrary to Clause 07 of his letter of appointment ('A1'). He refused to accept this transfer on several grounds, namely that the Bibile establishment was not a subsidiary of the Appellant Company and that the Appellant had failed to provide him with the basic facilities to which he was entitled. He also submitted that the Appellant acted capriciously and unlawfully by unilaterally changing his designation from Sample Room Manager to Manager-Final Audit, a post of an entirely different nature and category, and that he had communicated his objections to this change by letter marked 'A12'.

In this regard, he had made formal complaints to the Commissioner General of Labour by letter marked 'A8' concerning the unreasonable alteration of his conditions of employment. Consequent upon such complaint, the Assistant Commissioner of Labour had issued a notice marked 'A9' and an inquiry into the matter, as per 'A10', has been fixed for 2 May 2012.

The Applicant maintained that the documents marked 'A1' to 'A4' clearly established his case, while the Appellant had failed to justify the transfer contained in 'A4'. He states that clause 07 ('R9A') of the letter of appointment has been misconstrued by the Appellant and thereby acted in an arbitrary and capricious manner towards him. It was the Applicant's position that he was in financially difficult circumstances at the relevant time. He contended that the oral and documentary evidence showed that the Appellant had breached the terms of the said letter of appointment and had evinced a clear intention to terminate his services.

Labour Tribunal Order

The Labour Tribunal held that there had been no proper or valid acceptance of the resignation letter marked 'A14', and that such acceptance should have been effected by the Board of Directors of the Appellant Company. The Tribunal further observed that the cheque marked

'R4b' had been issued on the very same date on which the Applicant tendered the said letter of resignation.

The Labour Tribunal questioned how the resignation letter 'A14' could have been submitted in May 2012 when, only two months earlier in March 2012, the Applicant had, by letter marked 'A7', expressed his necessity for continued employment. The Tribunal placed considerable weight on the phrase "*Upon the request of the institution*" and concluded that the letter was not a voluntary act of the Applicant, but had been tendered at the request of the Appellant.

Ultimately, the Labour Tribunal awarded compensation to the Applicant. The Labour Tribunal observed that no documentary evidence was available to establish the exact amount of compensation paid to the Applicant. Consequently, the Tribunal proceeded to assess the additional amount that should be paid to the Applicant. In doing so, it took into account the inconsistencies in the evidence relating to the Applicant's salary. The Tribunal ultimately held that the Appellant had improperly undervalued the Applicant's entitlements to Gratuity, Employees' Provident Fund and Employees' Trust Fund.

The High Court, affirming the order of the Labour Tribunal, took the view that the Applicant had not resigned from his employment. The High Court also relied on the principle that a letter of resignation must be duly and properly accepted.

Analysis

The Appellant, by letter dated 20 March 2012 marked 'A11', directed the Applicant to assume the responsibilities of Manager-Final Audit and warned that any refusal to accept the position would be treated as gross misconduct, rendering him liable to severe disciplinary action, including termination of employment. In reply, the Applicant, by letter dated 26 March 2012 marked 'A12', expressed his displeasure at the treatment meted out to him by the Appellant, while observing that adequate legal remedies were available for the termination of his services in accordance with the law. Additionally, the Applicant lodged a complaint, as mentioned above, with the Commissioner General of Labour, against the Appellant for unilaterally altering his working conditions.

Thereupon, the Appellant, referring to the said letter 'A12', issued the letter of termination dated 10 April 2012 marked 'A13', in which it was stated that the Applicant had refused to perform the duties of Manager-Final Audit. The termination was effected with immediate effect. The Appellant further observed that the tone and content of the Applicant's letter 'A12' were unbecoming of a Manager of the Company and had resulted in the loss of confidence in him as an employee. However, upon a careful perusal of the Applicant's letter marked 'A12', I am unable to find any harsh or degrading words according to a reasonable mind. In the circumstances, the Appellant's contention that the tone and content of the said letter resulted in a loss of confidence warranting immediate termination does not appear to be justified

It is evident that the letter of termination marked 'A13' was issued in direct response to the Applicant's letter marked 'A12', without adherence to any established due process, although the Applicant had served the Appellant Company for more than six years. No prior suspension was imposed, nor was the Applicant afforded an opportunity to show cause as to why his services should not be terminated. Thereafter, on 9 May 2012, the Applicant was summoned to the Appellant's Head Office and required to sign a letter of resignation marked 'A14'. Upon signing the said letter, he was presented with certain cheques, which he accepted. The following day, 10 May 2012, he lodged a complaint at the Panadura Police Station, a copy of which is marked 'A15'. In that complaint, the Applicant set out the circumstances under which he had signed the letter of resignation marked 'A14'.

Although the Appellant maintains that the letter of resignation was voluntary, the contents of the police complaint demonstrate that the Applicant, having been abruptly terminated in the second week of April 2012 and thereby deprived of his monthly income, accepted the cheques out of financial necessity. He expressly recorded that he signed the resignation letter at the request of the Appellant and promptly reported the entire incident to the police. It is important to note that, according to the proceedings held on 4 September 2012 (at page 179 of the brief), the learned President of the Labour Tribunal directed the Applicant to commence the case, as the Appellant had denied the termination of service. Nevertheless, in paragraph 31 of its written submissions filed in this Court on 24 October 2025, the Appellant states that there was no constructive termination of the Applicant's service and that such termination was lawful, just and equitable arising directly from the Applicant's own conduct.

No principle of approbate and reprobate, nor any authority on that doctrine, can cure the fundamental defect in the abrupt termination of the Applicant's services, which was carried out without following a reasonable and lawful process or affording him at least a formal opportunity to show cause. There is no doubt that no employer can retain an employee who continuously behaves in an insubordinate manner. However, the termination of such an employee must be carried out in accordance with the due process laid down by law and judicial precedents.

Based on the overall circumstances of this case, I am compelled to accept the Applicant's version regarding coercion and, accordingly, take the view that the Applicant did not issue the letter of resignation voluntarily. Without formally withdrawing the letter of termination of service, which was in force, how could a law-abiding and reasonable employer accept a letter of resignation by paying some money to the employee? Consequently, the question whether the said letter was formally accepted by the Appellant does not arise. While the burden of proving coercion, duress or intimidation rests upon the Applicant, this Court is satisfied that the Applicant has discharged that burden with sufficiently cogent evidence.

Upon careful examination of the oral and documentary evidence, I am satisfied that the termination constituted a gross violation of the principles of natural justice, occasioned by the Appellant's displeasure at the contents of the Applicant's letter 'A12'. Having regard to the totality of the evidence before the Labour Tribunal, I am compelled to conclude that the purported letter of resignation was not issued voluntarily by the Applicant, but under coercion and the mental distress occasioned by the sudden termination of his long-standing employment, and solely as a means of securing some monetary relief pending the ventilation of his grievances before the appropriate forum.

Conclusion

The President of the Labour Tribunal has the valuable advantage of seeing and hearing witnesses give evidence, thereby having the opportunity to observe, inter alia, the demeanour of the witnesses in an atmosphere where only specific labour-related disputes are inquired into.

Having very carefully analysed all evidence placed before the Labour Tribunal, I am of the view that the purported letter of resignation marked 'A14' was signed by the Applicant involuntarily and under coercion or duress. The Appellant has failed to offer any explanation to this Court as to why a letter of resignation was accepted from the Applicant while the letter of termination dated 10 April 2012 remained intact and effective. No satisfactory or legally acceptable reason has been advanced to justify this contradictory and untenable position.

A resignation of an employee is valid only if it is voluntary and based on informed consent. Where an employee resigns under threats, coercion or intolerable pressure from the employer, the law may regard it as not constituting a genuine resignation. In such circumstances, it may instead be treated as a forced resignation, constructive dismissal, or a disguised termination by the employer. Nevertheless, any claim of involuntariness must be established by cogent evidence, and the court or tribunal must evaluate the matter with the utmost care, having regard to the totality of the circumstances of the case.

Based on the pay sheet marked 'A2', the Employees' Provident Fund and Employees' Trust Fund have been deducted on the basis of a basic salary of Rs. 50,000/-. The Labour Tribunal initially calculated correctly the compensation at Rs. 725,000/- by following an acceptable formula. However, I am unable to agree with the learned President of the Labour Tribunal, who enhanced the said amount without following the compensation formula and without giving appropriate reasons for such enhancement. There is insufficient material before this Court to understand the nature of the special allowance added to the basic salary as considered by the Labour Tribunal. In light of the above, I am of the view that the Applicant is entitled to a sum of Rs. 725,000/- after deducting the amount (Rs. 400,000/-) received by him on 9 May 2012 as an ex-gratia payment. This amount shall be without prejudice to the statutory relief to which the Applicant is otherwise entitled.

In light of the foregoing, I proceed to answer the aforesaid questions of law on which leave to appeal was granted in favour of the Applicant and affirm the order of the Labour Tribunal dated 30 April 2014, subject to the variation in compensation as set out above. Only the final conclusion of the judgment of the Provincial High Court dated 2 September 2016 is hereby

affirmed, subject to the aforesaid variation. The Appeal is dismissed to the extent indicated above.

Judge of the Supreme Court

Arjuna Obeyesekere J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando J.

I agree.

Judge of the Supreme Court