

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: 136/2015

HC Colombo No. HCALT No. 75/2010

LT Case No: LT/2/525/2004

L. J. Abeywickrema,
388/4, Araliya Gardens,
Nawala Road, Rajagiriya

APPLICANT

Vs.

Bartleet and Company Limited,
65, Braybrook Place, Colombo 2.

RESPONDENT

And between

L. J. Abeywickrema,
388/4, Araliya Gardens,
Nawala Road, Rajagiriya

APPLICANT – APPELLANT

Vs.

Bartleet and Company Limited,
65, Braybrook Place, Colombo 2.

RESPONDENT – RESPONDENT

And now between

L. J. Abeywickrema,
388/4, Araliya Gardens,
Nawala Road, Rajagiriya

APPLICANT – APPELLANT – APPELLANT

Vs.

Bartleet and Company Limited,
65, Braybrook Place, Colombo 2.

RESPONDENT – RESPONDENT – RESPONDENT

SC Appeal No: 136A/2015

HC Colombo No. HCALT No. 76/2010

LT Case No: LT/2/525/2004

L. J. Abeywickrema,
388/4, Araliya Gardens,
Nawala Road, Rajagiriya

APPLICANT

Vs.

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RESPONDENT – APPELLANT – APPELLANT

Vs.

L. J. Abeywickrema,
388/4, Araliya Gardens,
Nawala Road, Rajagiriya

APPLICANT – RESPONDENT – RESPONDENT

Before: S. Thurairaja, PC, J
Arjuna Obeyesekere, J
Dr. Sobhitha Rajakaruna, J

Counsel: Chandana Liyanapatabendi, PC with Vijaya Gamage, Heshan Thambimuttu, Ershan Ariyaratnam and Anjali Ratnasekera for the Applicant – Appellant – Appellant in SC Appeal No. 136/2015 and for the Applicant – Respondent – Respondent in SC Appeal No. 136A/2015

Shammil J. Perera, PC with Duthika Perera for the Respondent – Respondent – Respondent in SC Appeal No. 136/2015 and the Respondent – Appellant – Appellant in SC Appeal No. 136A/2015

Argued on: 11th July 2025

Written Submissions: Tendered by the Applicant – Appellant – Appellant on 6th December 2019 and 25th April 2024

Tendered by the Respondent – Respondent – Respondent on 21st March 2024 and 24th April 2024

Decided on: 6th March 2026

Obeyesekere, J

- (1) The Applicant – Appellant – Appellant [the Applicant] was an employee of the Respondent – Respondent – Respondent [the Employer]. Pursuant to the issuance of a charge sheet and the findings of a domestic inquiry, the services of the Applicant were terminated by letter dated 8th July 2004. The Applicant thereafter invoked the jurisdiction of the Labour Tribunal claiming that the termination of his services was arbitrary and unjustified.
- (2) While the Employer led the evidence of five witnesses, the Applicant gave evidence and led the evidence of two witnesses. In response to two questions posed to the Applicant by the Tribunal at the end of his re-examination, the Applicant had stated that he is not seeking reinstatement and that he is only seeking the payment of four years' salary as compensation. By its Order dated 4th June 2010, the Labour Tribunal held that the termination of the services of the Applicant was unjustified and ordered the Employer to pay as compensation a sum of Rs. 2,375,000 which is equivalent to the basic salary of 38 months.
- (3) Aggrieved by the said Order, two appeals were filed in the High Court. The first was by the Applicant who alleged that the quantum of compensation awarded is grossly inadequate and that the allowances that the Applicant was entitled to should have been included in the calculation of the compensation. The second appeal was by the Employer who complained that the finding that the termination of services is unjustified is wrong. The two appeals were consolidated by the High Court and by its judgment delivered on 19th September 2014, the High Court dismissed both appeals.

Appeal to the Supreme Court and Questions of Law

- (4) Dissatisfied, the Employer sought and obtained leave to appeal from this Court on 22nd July 2015 in SC Appeal No. 136A/2015 on the following questions of law:
 - “(a) Does the serious misconduct and disobedience of the Applicant employed in the capacity of a ‘Manager’ in the Employer Company amount to loss of confidence which would in turn justify his termination?”

- (b) Did the High Court err in law when it upheld the decision of the Labour Tribunal in spite of the finding of the Labour Tribunal that the Applicant was guilty of several wrongdoings and the Applicant not having an unblemished record of service with the Employer?
 - (c) Is there a legal requirement placed on the Employer to adduce the order of the domestic inquiry held against the Employer and would the failure to do so be fatal to the case of the Employer?"
- (5) The Applicant too sought and obtained leave to appeal in SC Appeal No. 136/2015 on the following question of law:
- “Did the High Court err in law and/or misdirect itself when it failed to consider the provisions of Sections 31C(1), 33 and specially Section 33(1)(d) of the Industrial Disputes Act which gives Court the power to consider the wages and other emoluments when considering the granting of compensation in lieu of or in addition to reinstatement.”
- (6) When this matter was taken up for hearing on 11th July 2025, an application was made by the learned President’s Counsel for both parties that these two appeals be consolidated. The said application was allowed and with the consent of the learned President’s Counsel, it was agreed that one judgment shall be delivered in respect of both appeals. The learned President’s Counsel for the Employer submitted further that he would not be pursuing the 3rd question of law raised by him.

Alleged irregularities of the Applicant – R1

- (7) The Applicant joined the Employer on 1st July 1985 as a Trainee Executive. In 1999, he was promoted as Manager of the Tea Department of the Employer. It is admitted that:
- (a) The Applicant’s father was a director and a shareholder of the Employer at one time;
 - (b) At all times relevant to this appeal, the Applicant’s family owned a tea estate situated in Deniyaya by the name of Seetha Eliya Estate; and

(c) The teas produced by the said estate were sold at the tea auctions held in Colombo with the Employer acting as the broker.

(8) On 12th March 2003, the Applicant was served with the following letter [R1]:

“We write further to the recent investigations conducted by us regarding the storage and sale of tea in our Bloemendhal Stores.

As you are aware, consequent to the cyclone on 9th December 2002, which caused severe damage to our Bloemendhal Stores, including the roof being blown away in certain sections, the necessity arose for the management to take a complete stock of the tea in our possession. In the process of our stock verification, certain serious irregularities have been detected in relation to the work performed by you as Manager – Tea Department, some of which we have already discussed with you. Listed hereunder are the irregularities, which were revealed in respect of the period 9th December 2002 to 21st January 2003.”

(9) The aforementioned irregularities have been referred to in R1 as Charge Nos. 1, 2 and 3, and are set out below.

Charge No. 1 - Teas supposedly belonging to the “Seetha Eliya” mark have been keyed-in and included for the payment of advances from the Employer on four consecutive occasions according to a table contained in R2, although no such teas had ever been received at the Stores. The table contained 8 invoices and the Employer claimed that it had paid Seetha Eliya Estate as an advance an aggregate sum of Rs. 1,037,981.84.

Charge No. 2 – Certain “Seetha Eliya” invoices, referred to in a table, had been amalgamated on the instructions of the Applicant with other invoices of the same mark and the tea referred to in such invoices had been sold under a single invoice. Thereafter, further advances have been made on some of those invoices that was initially amalgamated and later reintroduced to the system. The table contained 15 invoices with the Employer claiming that as a result of amalgamating invoices, it had made an overpayment in a sum of Rs. 1,494,610.14 to Seetha Eliya Estate.

Charge No. 3 – The Applicant had instructed the Cataloguing Department on 13th December 2002 to key-in “Seetha Eliya” invoices set out in a table in respect of teas

that were not physically in the Stores of the Employer and advised that these invoices be indicated as stored in Store Nos. 3B and 6A at Bloemendhal Road at a time the said stores were closed as a result of the cyclone, thus enabling to claim from the insurer for teas that were not at the Stores at the time of the cyclone. The table referred to in this charge contained 31 invoices of Seetha Eliya Estate.

Response of the Applicant – R2

- (10) The Applicant responded to R1 by his letter dated 24th March 2003 [R2]. With regard to Charge No.1, the Applicant admitted that he had instructed the relevant officer to enter the invoices referred to in the Table as the Manager of Seetha Eliya Estate, who was the brother of the Applicant, had on an earlier occasion informed him that certain quantities of tea dispatched by him remains unaccounted (unsold) as per the records of Seetha Eliya Estate. The Applicant admitted that he had given instructions in respect of the invoices referred to in Charge Nos. 2 and 3, as well. However, in respect of all three charges, the Applicant's position was that he had instructed that the invoices be entered in the "secondary bin" for further investigation since no payments are made in respect of invoices that are entered in the secondary bin and that without any involvement on the part of the Applicant, those invoices had been paid.
- (11) Thus, the Applicant did not deny the matters set out in R1 but instead took up the position that he had not acted with any dishonest intention. He submitted further that in any event, the Employer had not suffered any loss since any advances paid to Seetha Eliya Estate had been set off against payments due from the Employer.
- (12) The Employer had rejected the said explanation and held a domestic inquiry in respect of the above charges and one other charge in respect of which the Applicant had been exonerated. On the basis of the findings arrived at such inquiry, the services of the Applicant had been terminated with effect from 12th March 2003.

Evidence before the Tribunal

- (13) The Employer first led the evidence of its Joint Managing Director but he was not made available for cross examination. Thus, his evidence cannot be considered. He was followed by (a) Dahanayake, the Clerk in charge of cataloguing the tea that was

received at the stores, (b) Anton Silva who entered on the computer the details given to him by Dahanayake, (c) Chandrasekera, the Chief Accountant, and (d) Jayasundera, the Stores Executive.

(14) After the case of the Employer was closed, the parties had admitted a series of factual matters, including the following:

- (a) The Applicant was responsible for the cataloguing of tea, the entering of data relating to the tea that was received from suppliers including Seetha Eliya Estate, and issuing invoices;
- (b) There is a discrepancy with regard to the sums of money that the Employer alleged in Charge Nos. 1 and 2 as having been paid to Seetha Eliya Estate as an advance [තවද ඉල්ලුම්කරුට වරුද්ධව ඔප්පු වී ඇතැයි කියා සිටින 01 සහ 02 චෝදනාවල අත්තිකාරම් පිලිබඳ ප්‍රශ්නයක් ඇත.];
- (c) There was no proper scheme to pay advances as it was sought to be made out in the tables attached to R1 [කෙසේ නමුත් චෝදනා පත්‍රයේ ඇති වගුවේ ආකාරයෙන් අත්තිකාරම් නිදහස් කිරීමේ ක්‍රියාදාමයක් නොතිබූ බවද පිලිගනී.].

(15) In his evidence, the Applicant reiterated the matters that he had stated in R2. He stated further that any tea that is delivered to the Stores of the Employer is acknowledged by the issuance of a Goods Received Note and it is only thereafter that cataloguing and data entry takes place but that on certain occasions, even though goods had not been physically received at the Stores, he had instructed the relevant Clerks that details of such goods be entered in the secondary bin in the computer system. The Applicant admitted that after the cyclone, he had instructed that details of teas that his brother had informed him had been sent prior to the cyclone be entered without checking if such teas had actually been received. The Applicant also admitted that he had amalgamated invoices but not as alleged by the Employer and that he had not amalgamated any invoices of suppliers other than that of Seetha Eliya Estate. The essence of the evidence of the Applicant was that he has not acted dishonestly and that no loss had been caused to the Employer.

The Order of the Labour Tribunal and the judgment of the High Court

(16) The Labour Tribunal has carefully evaluated the evidence and concluded that even though:

- (a) the charges alleged that advances had been paid for teas that were never delivered, that was not correct;
- (b) the Applicant is correct when he claimed that entering invoices on the secondary bin does not result in payment, but once invoices are amalgamated, one invoice gets subsumed within another and hence, even if invoices had been entered in the secondary bin, it is difficult to ascertain if payments had been made on the invoices that were subsumed in the amalgamated invoice;
- (c) the charges proceeded on the basis that an accepted procedure was followed in making advance payments, the reality was that there existed no such accepted procedure.

(17) The Labour Tribunal had therefore concluded that the Employer had failed to substantiate by way of evidence the charges referred to in R1. The High Court has affirmed this finding. I have examined the evidence and I am in agreement with the finding of the Labour Tribunal that even though evidence had been led for several days, the Employer was unable to establish that the Appellant was guilty of the charges levelled against him.

(18) The Labour Tribunal had thereafter stated as follows:

“ඉහත සඳහන් චෝදනා තුන වගඋත්තරකාර පක්ෂය ඔප්පු කිරීමට අසමත් වන අවස්ථාවකදී ව්‍යවස්ථාපිතව සභාව කුමක් කළ යුතුද? මෙම ප්‍රශ්නයට පිළිතුරු සැපයීමේදී ව්‍යවස්ථාපිතව විශේෂ කොට කියා සිටින්නේ ඉල්ලුම්කරු පිළිබඳව වගඋත්තරකාර පක්ෂය සාක්ෂියෙන් පෙන්වා දෙන ආකාරයේ නොයෙක් වැරදි සිදුකර ඇති බවට පැහැදිලි සාක්ෂි ඇතත්, එම චෝදනා, චෝදනා පත්‍රය මගින් ඉදිරිපත් නොවේ. ඉල්ලුම්කර පක්ෂයට ඉදිරිපත් නොවූ චෝදනා පදනම් කරගෙන ඒ අනුව කටයුතු කිරීමට ව්‍යවස්ථාපිතව සභාවට හැකියාවක් නැත. ගොනුකර ඇති චෝදනා හිසි අයුරින් සකස් නොකිරීම නිසා වගඋත්තරකරු කියන ආකාරයේ චෝදනාවලට ඉල්ලුම්කරු වරදකරු කිරීමේ හැකියාව ව්‍යවස්ථාපිතව සභාව සතුව නැත.”

(19) The Labour Tribunal has not specified the alleged wrongdoings of the Applicant that it had in mind when it made the above statement. However, relying on the above finding of the Labour Tribunal, the learned President's Counsel for the Employer submitted that the termination of the services of the Applicant is in fact justified. I am unable to subscribe to that view as the termination was due to the Applicant being found guilty of certain specified charges and therefore termination cannot be justified on charges that could have been made but were not.

(20) Seetha Eliya Estate was owned by the family of the Applicant and, while avoiding any conflict of interest, the Applicant had to be above board in dealing with the invoices of Seetha Eliya Estate, leaving no room for any allegation of wrongdoing. However, when one considers the manner in which the Applicant had acted in respect of invoices of Seetha Eliya Estate, it is clear that the Applicant had not exercised the highest levels of probity that was required of him. That is not to say that the Applicant has acted dishonestly, but being a Manager with 19 years of experience, the Applicant ought to have exercised better judgment.

(21) The Tribunal has thereafter considered what relief can be granted to the Applicant and expressed the following view:

“මෙවැනි අවස්ථාවකදී මා විසින් සලකා බැලිය යුත්තේ ඉල්ලුම්කරුට කුමන සහනයක් ලබාදෙනවාද යන්න පිළිබඳවයි. ඉල්ලුම්කරු පළමුව නැවත සේවය පිහිටුවීමට ඉල්ලීම් කළද, මූලික සාක්ෂියේදී කියා සිටියේ නැවත සේවය වෙනුවට වන්දියක් ලබාදෙන ලෙසයි. සාමාන්‍ය රීතිය යටතේ ඉල්ලුම්කරු වැරදිකරු කිරීමට අපොහොසත් වන අවස්ථාවක නැවත තිබූ තත්ත්වයට පත්කිරීම නීතිමය අධිකරණයක ස්වාභාවයයි. නමුත්, යුක්තිමය අධිකරණයකට එසේ කිරීමේ අනිවාර්ය අවශ්‍යතාවයක් නැත. මෙම නඩුවේ ඉදිරිපත් වූ කරුණු අනුව ඒවාද නා සකස් කිරීමේ වරද මත ඉල්ලුම්කරු යම් නිදහස් කිරීමක් ලැබුවද, ඉල්ලුම්කරුගේ යම් දෝෂ සහගත බවක් සාක්ෂියෙන් පැහැදිලි වන බැවින්, විනිශ්චය සභාව කිසිසේත් නැවත සේවයේ පිහිටුවීමේ හැකියාවක් ද නොමැත. දිය හැක්කේ වන්දි පමණි. වෝදනාවලින් සඳහන් කරන ආකාරයේ අත්තිකාරම් ලබාගැනීමක් සිදුනොවුවද, ලබාගත් අත්තිකාරම් අදාළ ආයතනය විසින් ආපසු ගෙවා ඇති බව සාක්ෂියේදී කියැවේ. එබැවින්, මූල්‍යමය හානියක් සිදුවී නොමැත. එබැවින්, ඒ කරුණ ද සැලකිල්ලට ගෙන වන්දියක් ගෙවමට තීරණය කරමි.”

(22) The Tribunal has referred to the fact that even though the Applicant had sought 4 years salary as compensation, he is only awarding 38 months salary as compensation based on two months salary for each year of completed service. It is clear that the Tribunal was influenced by the conduct of the Applicant that I have referred to in

paragraph 20 when it decided to limit the compensation to the basic salary for a period of 38 months.

Questions of law

- (23) This brings me to the questions of law raised by the Employer. While the Applicant should have acted more responsibly when dealing with invoices related to his family estate and even though his conduct was wanting, the fact remains that the Employer did not allege loss of confidence and has failed to establish serious misconduct on the part of the employer. I would therefore answer the first question of law in the negative.
- (24) Although the Labour Tribunal has referred to several wrongdoings on the part of the Applicant without specifying what they are, it has also stated that it cannot go outside the charges on which the services of the Applicant were terminated. In the absence of any evidence relating to such wrongdoings which may have resulted in a blemish of the service record of the Applicant, I am of the view that the High Court could not have arrived at any other conclusion but to have affirmed the finding of the Labour Tribunal. I would therefore answer the second question of law in the negative.
- (25) The sole question of law raised by the Applicant is that the Labour Tribunal failed to take into consideration the provisions of Section 31C(1), Section 33 and in particular Section 33(1)(d). While Section 33 contains the types of decisions or relief that a Tribunal may grant, Section 33(1)(d) provides that the Tribunal may make a decision as to 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. I have examined the Order of the Labour Tribunal and I am satisfied that there has been sufficient compliance with the provisions of Section 33.
- (26) Section 31C(1) imposes on a Labour Tribunal the duty to make all such inquiries into that application and hear all such evidence as the Labour Tribunal may consider necessary, and thereafter make an order as may appear to the Labour Tribunal to be just and equitable. In awarding compensation, the Labour Tribunal has not taken into

consideration the fuel allowance, the value of the medical benefits and the bonus payable to other employees on the basis that those are allowances and benefits that are available to an employee who is in actual employment.

- (27) While the discretion in deciding the relief to be granted 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 [(1995) 2 Sri LR 379]:

“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.” [at page 407]

- (28) In calculating the loss, Amerasinghe, J stated as follows:

“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]

- (29) Considering the factual circumstances of this case and in particular the position taken up the Applicant both in R2 and in his evidence before the Tribunal and the explanation of the Labour Tribunal why the allowances are not included, I am satisfied that the Order for compensation being limited to the basic salary is just and equitable. I would therefore answer the question of law raised by the Applicant in the negative.
- (30) The Labour Tribunal has not addressed its mind to the contributions that the Employer was required to make on behalf of the Applicant towards the Employers Provident Fund and the Employers Trust Fund [the Funds] on the 38 months salary. The Employer is directed to remit to the relevant Funds the contributions that it was required to make in terms of the law on behalf of the Applicant within three months of this judgment. If however, the Applicant has already withdrawn the monies that were lying to his credit in the said Funds, the Employer shall make the payment directly to the Applicant within the said time period. The Applicant shall also be entitled to gratuity in terms of the Payment of Gratuity Act for his period of service between 1985 – 2003.

Conclusion

- (31) In the above circumstances, the judgment of the High Court is affirmed. Subject to any variation that may arise by giving effect to the matters set out in the preceding paragraph of this judgment, SC Appeal Nos. 136/2015 and 136A/2015 are dismissed, without costs.

JUDGE OF THE SUPREME COURT

S. Thurairaja, PC, J

I agree

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J

I agree.

JUDGE OF THE SUPREME COURT