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

In the matter of an Appeal in terms of Section 31DD of the Industrial Dispute Act, read together with Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

SC/Appeal / 136/ 2024
SC/HC/LA/126/2022
HC/ALT/02/2020
LT Colombo No.16/2017

Nirmalendran Udhaya Gnanasunderam,
No. 12, 5/3, Charles Place,
Dehiwala.

APPLICANT

Vs.

Uga Escapes Management (Private) Limited,
49/16 Iceland Building,
Galle Road, Colombo 03.

RESPONDENT

AND BETWEEN

Uga Escapes Management (Private) Limited,
49/16 Iceland Building,
Galle Road, Colombo 03.

RESPONDENT -APPELLANT

Vs.

Nirmalendran Udhaya Gnanasunderam,
No. 12, 5/3, Charles Place,
Dehiwala.

APPLICANT - RESPONDENT

AND NOW BETWEEN

Nirmalendran Udhaya Gnanasunderam,
No. 12, 5/3, Charles Place,
Dehiwala.

APPLICANT - RESPONDENT – APPELLANT

Vs.

Uga Escapes Management (Private) Limited,
49/16 Iceland Building,
Galle Road, Colombo 03.

RESPONDENT -APPELLANT - RESPONDENT

Nirmalendran Udhaya Gnanasunderam v Uga Escapes Management (Private) Limited.
Case No. SC/Appeal/136/ 2024

Before: Mahinda Samayawardhena J.
Dr Sobhitha Rajakaruna J.
K.M.G.H Kulatunga J.

Counsel: Nishantha Sirimanne with Ms. Deshara Goonetilleke for the Applicant - Respondent- Appellant.
Mohamed Adamaly, PC, with Ms. Anoukshi Vidanagamage for the Respondent- Appellant -Respondent

Written Submissions: Applicant-Respondent- Appellant - 1 July 2025, 21 April 2026
Respondent -Appellant -Respondent - 14 July 2025, 20 April 2026

Argued on: 18 February 2026

Decided on: 09 September 2026

Judgement

Dr Sobhitha Rajakaruna, J.

The Applicant- Respondent- Appellant ('Applicant') was employed by the Respondent- Appellant- Respondent ('Respondent') Company as its General Manager – Human Resources with effect from 1 April 2016, pursuant to a Letter of Appointment dated 15 February 2016. His employment came to an end on 1 February 2017. The Applicant's position is that, although the termination was presented by the Respondent as a termination of his employment, he was in fact compelled to resign and was thereby constructively terminated on mala fide, unlawful and unjust grounds. At the time of such termination, the Applicant was 41 years of age and received a monthly remuneration of Rs. 480,000, comprising a basic salary of Rs. 380,000 and a vehicle allowance of Rs. 100,000.

Aggrieved by the termination, the Applicant instituted proceedings before the Labour Tribunal of Colombo ('Labour Tribunal') under section 31B(1) of the Industrial Disputes

Act, seeking, inter alia, back wages from the date of his alleged constructive termination and compensation equivalent to ten years' salary on the basis that his employment had been arbitrarily, unfairly and unjustly terminated. The Respondent, in its answer, denied that the termination was unlawful or unjust and sought the dismissal of the application. The Applicant thereafter filed his Replication denying the allegations made by the Respondent.

The circumstances relied upon by the Respondent for terminating the Applicant's employment principally concerned his alleged failure to submit a satisfactory Human Resources Work Plan within the stipulated time. The Applicant, however, maintains that the allegations relied upon to terminate his employment were unfounded and that the Respondent neither afforded him an opportunity to show cause nor conducted a disciplinary inquiry or otherwise provided him with a hearing before bringing his employment to an end. He accordingly contends that the termination was effected without due process and was unlawful, unjust, unreasonable and mala fide.

By Order dated 17 December 2019, the Labour Tribunal held that the Applicant's employment had been constructively terminated by the Respondent and awarded him compensation in a sum of Rs. 11,968,000 for the loss suffered from the date of termination until the conclusion of the evidence of both parties. The Respondent appealed to the Provincial High Court of the Western Province holden in Colombo ('High Court'). By Judgment dated 27 October 2022, the High Court upheld the material findings of the Labour Tribunal that the termination was unlawful, unjust and unreasonable, but substantially reduced the compensation awarded from Rs. 11,968,000 to Rs. 1,440,000. The appeal was accordingly dismissed subject to that variation.

The principal grievance of the Applicant before this Court is therefore confined to the adequacy and lawful computation of the compensation awarded by the High Court. He contends that the learned High Court Judge failed to take into account the substantial financial loss occasioned by the termination, including the reduction in his earnings when he obtained alternative employment approximately five months after his termination, his subsequent unemployment, and his alleged loss of future earnings and employment benefits. The Applicant further relies upon the increase of the statutory minimum retirement age under the Minimum Retirement Age of Workers Act, No. 28 of 2021, and contends that the High Court ought to have considered the period for which he could lawfully have remained in employment in assessing compensation in lieu of reinstatement.

The Applicant accordingly seeks to challenge the determination of the High Court principally on the basis that the sum of Rs. 1,440,000 is wholly inadequate in the circumstances and that the learned High Court Judge failed to apply the principles governing the assessment of compensation in lieu of reinstatement, including the principles relied upon in ***Jayasuriya v Sri Lanka State Plantations Corporation*** [1995] 2 Sri LR 379. He contends that the compensation should have reflected not merely the period during which he remained unemployed immediately following his termination, but also the reduction in his subsequent earnings and the financial loss allegedly sustained by him as a consequence of the unlawful termination.

This Court granted Leave to Appeal on the following Question of Law:

> "Did the learned High Court Judge err and/or misdirect himself by failing to correctly apply the law pertaining to the computation of compensation in lieu of reinstatement, especially in a situation where the termination of the Petitioner's employment was found to be unlawful and/or unjust and/or unfair and/or mala fide, including the well established legal principles and heads of computing/assessing financial loss in terms of, inter alia, the judgment of the Supreme Court in *Jayasuriya v. Sri Lanka State Plantations Corporation* [1995] 2 Sri L.R. 379?"

Analysis

I have carefully considered the material placed before this Court, the submissions of learned Counsel for the Applicant and the Respondent, and the findings of the learned President of the Labour Tribunal as affirmed, in material respects, by the learned High Court Judge. It is important at the outset to observe that the finding that the Applicant's employment was unlawfully, unjustly and unreasonably terminated is no longer in issue before this Court. The Applicant himself does not challenge that aspect of the judgment of the High Court. The question that therefore arises for determination in this Appeal is a narrower one, namely, whether the learned High Court erred in reducing the compensation awarded by the Labour Tribunal from Rs. 11,968,000 to Rs. 1,440,000 and whether the Applicant has established a legal basis for interference with that determination.

In determining that question, I consider it necessary to begin with the nature of compensation payable in lieu of reinstatement. Compensation is not intended to operate as a punishment upon the employer, nor does it confer upon the employee a windfall consequent upon the termination of his employment. The fundamental consideration is the actual financial loss established to have been caused by the unlawful termination. The employee is entitled to an indemnity for the loss proved, and not to profit arising from the termination.

The principles enunciated by this Court in the said ***Jayasuriya v Sri Lanka State Plantations Corporation*** remain particularly relevant. As explained in that case, the assessment should ordinarily have regard to the immediate loss of wages and benefits, prospective future loss and, where supported by evidence, loss of retirement benefits. Equally important, however, is the requirement that the employee establish the loss by sufficient evidence. Once the ascertainable loss is determined, remuneration received from subsequent employment and other payments made following termination must be taken into account. The underlying principle is that the employee is entitled to indemnity and not profit.

The same principles have subsequently been reiterated by this Court. In ***Paradigm Clothing (Pvt) Ltd v Mahagamage Chandramadu and Others***, SC Appeal No. 106/2014, SC Minutes of 19 December 2019, this Court emphasised the necessity of taking into account remuneration received from subsequent employment when assessing financial loss. The Applicant himself relies upon this line of authority. Likewise, the Applicant relies upon the subsequent decision in ***Nanayakkara v North Central Province Road Passenger Transport Authority***, SC Appeal No. 37/2023, SC Minutes of 10 October 2025, where the actual financial loss caused by an unfair dismissal was reiterated as the relevant consideration in assessing compensation in lieu of reinstatement.

The significance of the judgment of ***Jayasuriya*** in the present Case, however, lies not merely in the three broad heads of loss relied upon by the Applicant. The judgment also makes clear that the assessment of prospective loss involves an element of uncertainty and cannot be undertaken mechanically by multiplying the salary by the entire period remaining until the employee's normal retirement age. The expected retirement age may provide a starting point, but it ought not to be adopted mechanically, since the continuity of employment may be affected by various contingencies. The assessment must therefore be based upon the evidence and circumstances of the particular case, with appropriate reasons for the period selected.

This principle assumes particular importance in the present Case. The Applicant seeks to calculate his prospective loss on the assumption that, but for the termination, he would necessarily have remained in the employment of the Respondent until the age of 55, or alternatively until the age of 60 following the enactment of the Minimum Retirement Age of Workers Act, No. 28 of 2021. That approach, in my view, gives insufficient consideration to the factual circumstances in which the compensation falls to be assessed.

The Applicant had been employed by the Respondent for only approximately ten months. He was appointed to the position of General Manager – Human Resources with effect from 1 April 2016, and his employment came to an end in early 2017. Thus, this was not a case involving a long-serving employee whose career with the employer had extended over many years and whose established employment relationship provided a substantial evidentiary foundation for projecting future earnings. The length of service, inter alia, is a material factor in assessing compensation. Indeed, the Respondent specifically relied upon the Applicant's very short period of service, together with the nature of his position and the circumstances surrounding his employment, as relevant considerations in determining the appropriate quantum.

There is another significant feature which cannot be overlooked. The Applicant obtained alternative employment with Janashakthi Insurance PLC within a relatively short period following the termination. The Applicant's own evidence therefore demonstrates that he was not subjected to prolonged unemployment immediately following the termination. The Respondent submits that the Applicant was unemployed for only approximately two months before obtaining employment in a substantially similar capacity as Head of Human Resource Management.

It is true that the Applicant initially received remuneration from his subsequent employer which was lower than that which he had received from the Respondent. That fact, by itself, does not disentitle him to compensation for the established difference in earnings. On the contrary, the principle in the ***Jayasuriya*** case requires such demonstrable loss to be considered. However, the evidence did not stop there. The Applicant admitted in cross-examination that he subsequently received an increment from his new employer.

Significantly, he did not disclose either the date upon which that increment was granted or the amount thereof. The Respondent therefore submits that the Applicant failed to establish the extent of any continuing loss after the increment.

This omission is of considerable importance because the burden of establishing financial loss rests upon the employee. The Applicant cannot, on the one hand, seek compensation for prospective loss extending over many years and, on the other, leave unproved a material fact directly bearing upon the remuneration he was actually receiving from alternative employment. The Court cannot determine prospective loss upon conjecture where the necessary evidentiary foundation has not been established. As the ***Jayasuriya*** case makes clear, the burden is upon the employee to place sufficient evidence before the Tribunal to enable the actual loss to be determined.

The Applicant's proposed computation of prospective loss until the age of 55, and particularly his alternative computation until the age of 60, also appears to me to be too speculative. The Applicant has effectively assumed that, but for the termination, his employment with the Respondent would necessarily have continued for another 13 years or, alternatively, 18 years. Such an assumption cannot be made merely because the contract stipulated a retirement age of 55, or because the statutory minimum retirement age was subsequently increased. The relevant question is not what period of employment could theoretically have remained available, but what loss has been established, on the evidence, as having been caused by the termination.

In this regard, the Applicant's reliance upon the Minimum Retirement Age of Workers Act, No. 28 of 2021, does not, in my view, alter the fundamental basis upon which compensation must be assessed. The statutory extension of the minimum retirement age cannot, without more, establish that this particular Applicant would in fact have remained employed by this particular Respondent until the age of 60. Nor can the enactment of that legislation retrospectively convert an uncertain prospective employment relationship into a proven entitlement to earnings for the entire balance of the Applicant's working life. Such an approach would be inconsistent with the requirement in the ***Jayasuriya*** case that prospective loss be assessed upon a foundation of evidence rather than speculation.

I also take into account the fact that the Applicant occupied the highest-ranking Human Resources position within the Respondent company and that the circumstances relating to the performance of his duties formed part of the evidence before the Labour Tribunal. The Respondent specifically relied upon the Applicant's failure to produce the required Human Resources Work Plan despite extensions of time and deadlines which, according to the Respondent, were not complied with. Although the ultimate finding of unlawful and unjust termination is not before me for reconsideration, the circumstances surrounding the employment and its termination are not wholly irrelevant when determining the appropriate quantum of compensation.

The authorities relied upon by the Applicant do not, in my view, support the proposition that once an unlawful termination is established, compensation must automatically be calculated by reference to the entire remaining period of employment. On the contrary, the ***Jayasuriya*** case itself cautions against such a mechanical approach. In ***Pussellawa Plantations Ltd and Others v Ceylon Estate Staffs Union***, SC Appeal No. 30/2008, SC Minutes of 17 February 2012, this Court reiterated the necessity for the employee to establish the monetary loss caused by the termination. Similarly, in ***Asian Hotels and Properties PLC v H.D.N.S. Karunaratne***, SC/HCLA/36/10, SC Minutes of 24 July 2018, the burden upon the employee to establish financial loss was emphasised. The Respondent has also drawn attention to the ***Paradigm Clothing* and *W.K. Silva v Esquel Sri Lanka Ltd.*,** SC Appeal No. 94/2020, SC Minutes of 22 July 2022, in support of the proposition that actual financial loss, subsequent remuneration and mitigation are material considerations.

I therefore find considerable force in the Respondent's submission that the Applicant's calculation of Rs. 16 million or Rs. 23 million, depending upon whether the age of 55 or 60 is adopted, cannot be sustained merely by applying a mathematical formula to the difference between the two salaries. Such a calculation does not adequately account for the Applicant's very short period of service, his relatively prompt acquisition of alternative employment, his admitted subsequent increment, the absence of evidence as to the amount and date of that increment, and the uncertainty inherent in assuming continued employment with the Respondent for the entire balance of his working life.

Indeed, the Respondent's submissions demonstrate that, on the Applicant's own evidence, his immediate period of unemployment was limited and that he thereafter obtained alternative employment. The Respondent further points out that the Applicant had already received three months' salary following the termination, while the High Court awarded a further six months' salary as compensation, thereby resulting in an aggregate payment equivalent to nine months' salary. The Respondent submits that this exceeded the financial loss which the Applicant had actually established before the Tribunal.

The question before this Court is not whether a different figure could conceivably have been awarded. The question is whether the learned High Court Judge committed an error of law or principle warranting appellate intervention. An appellate court ought not to substitute its own assessment merely because another figure may appear possible. Particularly in a case involving the assessment of compensation, where the primary Tribunal and the High Court have considered the evidence and attendant circumstances, intervention is justified only where the assessment is unsupported by the evidence, proceeds upon an erroneous legal principle, or is otherwise manifestly unjust.

In the circumstances of this Case, I am unable to conclude that the learned High Court Judge fell into such error. On the contrary, the approach adopted by the High Court is consistent with the central principle in the ***Jayasuriya*** case, namely, that compensation must correspond to the actual financial loss established by the employee and must not become an award of profit. The Respondent's submission that the Applicant failed to establish continuing financial loss after obtaining alternative employment, particularly in view of his admitted increment which he failed to quantify, is a factor which the Court is entitled to take into account.

Conclusion

Having considered the evidence and the submissions of both parties, I am of the view that the Applicant has failed to establish a sufficient evidentiary or legal basis for disturbing the quantum of compensation determined by the learned High Court Judge. While the termination of the Applicant's employment has been found to be unlawful, unjust and unreasonable, that finding does not, by itself, entitle the Applicant to compensation calculated upon the assumption that he would necessarily have remained in the Respondent's employment until the age of 55 or 60.

In particular, I regard the Applicant's short period of service of approximately ten months as a significant circumstance in determining the appropriate compensation. The relationship between the parties had existed for only a relatively brief period, and there was therefore no substantial history of service upon which a lengthy period of prospective employment and corresponding future earnings could safely be projected. This is a relevant consideration within the principles laid down in the ***Jayasuriya*** case, which require the Court to assess the probable continuation of loss having regard to the particular facts and circumstances of the case, rather than mechanically adopting the balance period up to the retirement age.

I further find that the Applicant's acquisition of alternative employment within a short period following the termination materially reduced the loss attributable to the Respondent. Although his initial remuneration from the new employer was lower, the Applicant admittedly received an increment thereafter, but failed to disclose the amount or the date from which such increment became operative. In the absence of such evidence, the Applicant has failed to discharge the burden of proving any continuing loss beyond the period for which such loss can reasonably be established.

The principles in the ***Jayasuriya*** case are therefore capable of operating in favour of the Respondent as much as they may operate in favour of an employee. The judgment does not establish an automatic entitlement to future earnings up to the retirement age. It requires a reasoned assessment based upon proven loss, mitigation, remuneration from alternative employment, the probable duration of the loss and the other circumstances relevant to the particular employment relationship. The Applicant's claim, by contrast, proceeds substantially upon an assumption of uninterrupted future employment with the Respondent extending for many years, without sufficient evidence to establish that such employment would probably have continued for that entire period.

I am accordingly satisfied that the learned High Court Judge was entitled to take into account the Applicant's short period of service, his prompt acquisition of alternative employment, the remuneration received from that employment, the admitted subsequent increment, the payments already made to him following termination, and the absence of satisfactory evidence establishing continuing prospective loss. The award of Rs. 1,440,000 cannot, in the circumstances, be characterised as one arrived at upon an erroneous legal principle or as a wholly unsupported assessment.

For these reasons, I conclude that the Applicant has failed to establish that the learned High Court Judge erred in law in limiting the compensation to Rs. 1,440,000. The

Applicant is therefore not entitled to the further or enhanced compensation claimed in this Appeal.

In light of the above, I proceed to answer the Question of Law upon which this Court granted Leave to Appeal, in the negative. The decision of the learned High Court Judge, dated 27 October 2022, is accordingly affirmed and this Appeal is dismissed. I order no costs.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

K.M.G.H Kulatunga, J.

I agree.

Judge of the Supreme Court