

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

In the matter of an application for Leave to Appeal against the Judgement of the Learned High Court Judge of Colombo dated 17<sup>th</sup> June 2016 under and in terms of the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 read together with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**SC Appeal No.175/2017**

LA No. SC/HC/LA/44/2016  
HC (col) No./HC/ALT/86/2014  
LT (Colombo) No.01/141/2004

Paul Manuwelage,  
23, L 1/6, National Housing complex,  
E.D. Dabare Mawatha,  
Narahenpita, Colombo 05.

**Applicant**

**Vs.**

Colombo Young Mens Christian  
Association,  
39, Bristol Street,  
Colombo 01.

**Respondent**

**AND BETWEEN**

Paul Manuwelage,  
23, L 1/6, National Housing Complex,  
E.D. Dabare Mawatha, Narahenpita  
Colombo 05.

**Applicant – Appellant**

**Vs.**

Colombo Young Mens Christian  
Association,  
39, Bristol Street,  
Colombo 1.

**Respondent-Respondent**

**AND NOW BETWEEN**

Paul Manuwelage,  
23, L 1/6, National Housing Complex,  
E.D. Dabare Mawatha, Narahenpita  
Colombo 05.

**Applicant – Appellant-  
Appellant**

**Vs.**

Colombo Young Mens Christian  
Association,  
39, Bristol Street,  
Colombo 01.

**Respondent-Respondent-  
Respondent**

Before : Mahinda Samayawardhena, J.  
Menaka Wijesundera, J.  
Sampath K. B. Wijeratne, J.

Counsel : Thishya Weragoda instructed by Niluka Dissanayake for  
Applicant-Appellant-Appellant.

Written  
Submissions : Written submissions on behalf of the Respondent-

Respondent- Respondent tendered on 20<sup>th</sup> April 2026.

Argued on : 17.02.2026

Decided on : 02.06.2026

**MENAKA WIJESUNDERA J.**

The instant appeal has been filed to set aside the judgment dated 17.06.2016 of the High Court of Colombo.

The Applicant-Appellant-Appellant (hereinafter referred to as the “Appellant”) had been employed as a Program Assistant on or about 01.08.1987 by the Respondent-Respondent-Respondent organisation (hereinafter referred to as the “Respondent”), and thereafter, he had been promoted to the post of Secretary in 1990 and Senior Secretary Programmes in 2001.

At the time his employment was terminated, he was earning a salary of Rs. 12,875 along with an allowance of Rs. 3,000. He had initially been suspended on the 29<sup>th</sup> of March, 2003, but that suspension was subsequently rescinded by letter dated the 6<sup>th</sup> of June, 2003. However, on the 28<sup>th</sup> of August, 2003, he was suspended again pending a domestic inquiry, following which his employment was ultimately terminated.

During this period, he states that criminal proceedings were instituted against him before the Magistrate’s Court on allegations of fraud, in which he was found guilty. However, upon appeal to the High Court, the said conviction was set aside and he was acquitted.

Thereafter, the Petitioner had lodged an application in the Labour Tribunal. The Labour Tribunal had delivered judgment on 15.09.2014, granting compensation for the Petitioner in place of reinstatement. Being aggrieved by the said judgment, the Appellant had lodged an appeal to the High Court, which had pronounced judgment on 17.06.2016, reducing the compensation ordered by the Labour Tribunal. The instant appeal has been filed against the said order.

The instant appeal has been filed against the judgment of the learned High Court Judge, who has varied the compensation order by the President of the Labour Tribunal.

The President of the Labour Tribunal had concluded that the termination of the Appellant had been done unfairly and unjustly by the Respondent. Therefore, instead of ordering reinstatement with back wages, the learned President of the Labour Tribunal awarded compensation. The Tribunal determined that reinstatement of the Appellant would serve no useful purpose, as the relationship of trust and confidence between the parties had irretrievably broken down and the Respondent had lost confidence in the Appellant.

**As such, the labour tribunal had taken into consideration,**

- I) The service period of the Appellant,**
- II) At the time of termination, the age of the Appellant which had been 43 years,**
- III) The possibility and the likelihood of securing future employment,**
- IV) And at the time of delivering the Labour Tribunal order, the age of the Appellant.**

Hence, compensation equivalent to two months' salary for each year of the Respondent's 17 years of service had been awarded by the Labour Tribunal. However, the learned High Court Judge reduced the said award.

**Therefore, the main question which has to be addressed by this court is the computation of compensation with regard to the Appellant.**

When this matter had been supported for leave before this court, leave had been granted on the following questions of law,

- 1) Has the learned High Court Judge erred in law in failing to compute compensation as provided in *Jayasuriya vs Sri Lanka State Plantations Corporation* 1991 2 Sri-L. R. 379,
- 2) Has the learned High Court Judge erred in law in failing to consider the relevant circumstances prior to deciding on the compensation in lieu of reinstatement and back wages,
- 3) Has the learned High Court Judge erred in law in failing to assess the financial losses of earnings from the date of the dismissal from the date of the employment was not due to the fault of the Appellant.

**But at the time of the argument, it was decided and both parties agreed that the only question of law which should be answered is the second one (2).**

In the Industrial Disputes Act, No. 43 of 1950, which is the relevant statute for the instant case, the Tribunal has been given the discretion to decide on how compensation should be awarded, but that discretion has to be exercised judicially and according to the facts and circumstances of each case. For this matter, the parties have brought to the attention of this court the case of **SC Appeal 94/2020** decided on 22/07/2022 by Justice S. Thurairaja, where he had delved extensively into this matter.

In the said judgment, Justice Thurairajah has started with a quotation by Lord Denning in **Ward v James (1965) 1 AER 654**, where it has been held that,

*“When a statute gives a discretion, the Courts must not fetter it by rigid rules from which a judge is never at liberty to depart. Nevertheless, the courts can lay down the considerations which should be borne in mind in exercising the discretion and point out those that should be ignored.”*

To buttress the above position, **former Chief Justice Sharvananda J. in Caledonian Estates Ltd. v Hillam (1977) 79 (i) NLR 421** held that,

*“The Legislature has wisely given untrammelled discretion to the Tribunal to decide what is just and equitable in the circumstances of each case. Of course, this discretion has to be exercised judicially. It will not conduce to the proper exercise of that discretion if this Court were to lay down hard and fast rules which will fetter the exercise of the discretion, especially when the Legislature has not chosen to prescribe or delimit the area of its operation. Flexibility is essential. Circumstances may vary in each case and the weight to be attached to any particular factor depends on the context of each case.”*

The essence of the two citations is that the tribunal’s discretion must be exercised prudently and in a manner that is just and fair. It has to be decided as per the facts and circumstances of each case; and in doing so, the factors which should be considered, in my opinion, are as follows;

- i) Years of service of the workman
- ii) The reason for his termination
- iii) His likelihood of finding future employment
- iv) The cost of litigation

In the case at hand, I find that the President of the Labour Tribunal had fairly and comprehensively analyzed the evidence which had been placed before her. She had specifically referred to the obvious disputes in the management of the institution which she says resulted in the ad-hoc decisions of the board of

management. The Learned President has further said that the respondents had not been able to prove the charges against the Appellant on a balance of probability. Justice Aluwihare in **SC Appeal 76-2010**, decided on 05.09.2018, has referred to our legal precedence, where it has been held that it is a well-established principle that the findings of a trial judge should not be disturbed easily other than for good reason, which I also agree with. Further, I wish to state that the judges of the original courts are the best adjudicators of facts as they have the priceless opportunity of observing the demeanor and deportment of the witnesses.

The learned President of the Labour Tribunal had concluded that the termination of the Appellant had been unjust and unfair and that it should be compensated. However, having regard to the nature of the relationship between the parties subsequent to the termination, the learned President judiciously determined that an order for reinstatement with back wages would be inappropriate, and instead directed the payment of compensation.

In the case of **SC Appeal 25/2017**, decided on 31.07.2017, **Justice Priyantha Jayawadena, PC**, had concluded that

*“...considering the implications of having pending criminal proceedings before the Magistrate’s court in securing alternative employment, the age of the workman at the time of termination of employment, and the impact it has on securing alternative employment, the type of employment that the workman engaged in, the number of years that the workman had provided to the employer, and the age of the workman at the time the inquiry before the Labour Tribunal concluded, should be considered when computing compensation in lieu of re-instatement.”*

In the instant case, too, the Appellant had been subjected to a criminal trial before the Magistrate, from which he had been convicted and later acquitted by the High Court on appeal. This, in my opinion, would have hampered his chances of securing further employment. The Appellant had served the employer for 17 years, and the labour tribunal had considered that his termination had been unjust and unfair. At the time, the Labour Tribunal concluded and delivered judgment, he had been 53 years of age.

Therefore, in my opinion, the basis upon which the learned High Court Judge reduced the compensation is devoid of merit. At the time of his termination, the plaintiff was 43 years of age and if his employment had continued, he would have been able to serve for a further period of 17 years. There is no evidence

presented before this Court to establish that he secured alternative employment subsequent to his termination.

Hence, for the reasons set out above, I answer the single question of law identified by both parties in the affirmative.

As such, I am of the opinion, that the order made by the learned President of the Labour Tribunal dated 15.09.2014 should be affirmed without any variation and the judgment dated 17.06.2016, delivered by the learned High Court judge, is varied with regard to the reduction of compensation. Subject to the aforesaid variation, the instant appeal is dismissed.

**JUDGE OF THE SUPREME COURT**

**Mahinda Samayawardhena, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Sampath K.B. Wijeratne, J.**

I agree.

**JUDGE OF THE SUPREME COURT**