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/ 95/2020
SC/SPL/LA/52/2017
HC/121/2014
LT Matara No. LT/26/01/2012

Millawa Gamage Siriyawathi,
"Madushika",
Meegahawela Road,
Kudaheella, Beliaththa.

APPLICANT

Vs.

Samaja Niyamaka Sanvardhana
Padanama Guarantee Limited
in front of Rajapaksha Padanama,
Sisilasagama, Hambantota.

RESPONDENT

AND

Samaja Niyamaka Sanvardhana
Padanama Guarantee Limited
in front of Rajapaksha Padanama,
Sisilasagama, Hambantota.

RESPONDENT -APPELLANT

Vs.

Millawa Gamage Siriyawathi,
"Madushika",
Meegahawela Road,
Kudaheella, Beliaththa.

APPLICANT – RESPONDENT

AND NOW BETWEEN

Samaja Niyamaka Sanvardhana
Padanama Guarantee Limited
in front of Rajapaksha Padanama,
Sisilasagama, Hambantota.

RESPONDENT - APPELLANT - APPELLANT

Vs.

Millawa Gamage Siriyawathi,
"Madushika",
Meegahawela Road,
Kudaheella, Beliaththa.

APPLICANT -RESPONDENT - RESPONDENT

Samaja Niyamaka Sanvardhana Padanama Guarantee Limited v Millawa Gamage Siriyawathi

Case No. SC/Appeal/95/2020

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J
Dr Sobhitha Rajakaruna, J.

Counsel: Uditha Egalahewa, PC, with N.K. Ashokbharan for the Respondent-Appellant-Appellant
Rohan Sahabandu, PC, with Chathurika Elvitigala, Sachini Senanayake and Pubudu Weerasuriya for the Applicant-Respondent-Respondent

Written Submissions:
Respondent – Appellant – Appellant: 02 March 2021 & 25 February 2026
Applicant -Respondent – Respondent: 18 May 2021 & 16 March 2026

Argued on: 26 January 2026

Decided on: 10 September 2026

Judgement

Dr Sobhitha Rajakaruna, J.

The Respondent- Appellant- Appellant (hereinafter referred to as 'Appellant') is a Social Mobilisation Foundation established under the Voluntary Social Service Organisation (Registration and Supervision) Act No. 31 of 1980 and was subsequently incorporated in 2014 as a company limited by guarantee under the laws of Sri Lanka. Its activities include microfinance, the provision of financial advice and services to low-income groups, and welfare programmes for children and young persons. The Applicant- Respondent-Respondent (hereinafter referred to as 'Respondent') was employed by the Appellant and, at the material time, served as a District Manager.

The Respondent instituted proceedings before the Labour Tribunal, *Matara*, on 02 January 2012, alleging that her services had been unlawfully terminated by the Appellant by letter dated 12 December 2011, with effect from 02 April 2011. She sought, inter alia, reinstatement with back wages. The Appellant admitted the termination but maintained that it followed a domestic inquiry at which the Respondent had been found guilty of several charges relating principally to financial irregularities, alleged suppression of material information and misconduct towards senior officers of the Appellant Company.

The first set of charges arose out of financial irregularities amounting to Rs. 301,961/- at the 'Ulahitiyawa Society' within the *Middeniya* Division, which was under the Respondent's supervision. The Appellant alleged that, although the Respondent had initially reported the irregularity, she subsequently sought to reduce the amount recoverable by Rs. 37,500/- and, thereafter, failed to make available certain books, vouchers and other documents required for an internal investigation. The Appellant contended that these acts amounted to an attempt to suppress or obstruct the investigation into the financial irregularity.

A further set of charges related to an alleged financial loss at the *Beliatta* Branch, where the Respondent had previously served as Manager, as well as allegations that she had abused or threatened the Chairman, General Manager and Internal Auditor of the Appellant Company. Following a domestic inquiry, at which the Respondent raised objections to the procedure adopted but ultimately submitted written representations, she was found guilty of the charges. Her services were consequently terminated.

The learned President of the Labour Tribunal, by order dated 30 September 2014, found the termination unjustified and directed the Appellant to reinstate the Respondent without a break in service and to pay back wages amounting to Rs. 457,800/-. The Appellant appealed to the Provincial High Court of the Southern Province holden in *Matara*. By judgement dated 14 February 2017, the High Court affirmed the order of the Labour Tribunal and dismissed the appeal. The Appellant thereafter invoked the appellate jurisdiction of this Court.

Position of the Appellant

The Appellant contends that the evidence before the Labour Tribunal established that the Respondent had been responsible for supervising the branch in which the financial irregularity had occurred and had subsequently acted so as to impede a proper investigation into that irregularity. In particular, it relies upon the Respondent's reports concerning the sum of Rs. 301,961/-, her subsequent recommendation concerning the deduction of Rs. 37,500/-, and her alleged failure to produce all books, vouchers and other relevant documents required for the internal investigation. The Appellant submits that these matters, taken together, demonstrated financial misconduct and justified the loss of confidence in the Respondent, particularly having regard to the nature of the Appellant's activities as a financial institution dealing with funds belonging to the public.

The Appellant further relies upon the evidence relating to the *Beliatta* Branch and the allegations of abusive and threatening conduct towards senior officers. It submits that the Labour Tribunal failed to properly evaluate the totality of the evidence and that the findings of the Tribunal and the High Court were contrary to the evidence placed before them. It is therefore contended that reinstatement was neither just nor equitable in the circumstances.

The Appellant also submits that, once the termination of services had been established as having followed a disciplinary inquiry, the Labour Tribunal ought to have considered whether the misconduct proved against the Respondent justified termination and whether reinstatement was appropriate in the exercise of its just and equitable jurisdiction. It accordingly seeks the setting aside of the orders of both the High Court and the Labour Tribunal and the dismissal of the Respondent's application before the Labour Tribunal.

Position of the Respondent

The Respondent, on the other hand, maintains that the alleged financial misconduct was not established by the evidence. With regard to the *Middeniya* incident, she contends that it was she who initially brought the financial irregularity to the attention of the General Manager and recommended that the amount be recovered from the Manager responsible. She submits that the General Manager accepted that recommendation and directed recovery of the full amount of Rs. 301,961/-. According to the Respondent, her subsequent reference to the possible deduction of Rs. 37,500/- was no more than a recommendation based upon her further examination of the books and vouchers and could not reasonably be characterised as a fraudulent attempt to conceal the loss.

The Respondent further denies that she deliberately withheld or suppressed the books and vouchers relating to the *Middeniya* incident. She relies upon her correspondence with the Appellant in which she maintained that the documents taken by her had been returned to the branch and contends that the failure to produce the relevant log book and the failure to call the officers who allegedly received the documents materially weakened the Appellant's case. She submits that the Labour Tribunal, having considered the documentary and oral evidence, was entitled to accept her version on this question.

As regards the *Beliatta* incident, the Respondent submits that the original complaint concerning the alleged shortage had itself been made by her when she assumed duties at that branch. She contends that the relevant witnesses were not called, the necessary documentary evidence was not properly established, and the investigating officer could not identify the Respondent as the person responsible for the relevant entries. She therefore submits that the charge of financial misconduct was not proved. She similarly challenges the allegations of threatening or abusive conduct on the basis that the persons allegedly subjected to such conduct were not called to give evidence or that the evidence was otherwise uncorroborated.

The Respondent further relies upon the findings of the Labour Tribunal, which examined the individual charges and concluded that the allegations had not been established on the evidence. She submits that those findings were affirmed by the High Court and constitute concurrent findings of fact which ought not to be disturbed in an appeal confined to questions of law, unless such findings are shown to be perverse or unsupported by evidence.

Finally, the Respondent relies upon the wide and just and equitable jurisdiction vested in the Labour Tribunal under the Industrial Disputes Act. She submits that, once the employer admitted the termination, the burden lay upon the employer to justify the termination and the punishment imposed. In the circumstances, she contends that the Labour Tribunal was entitled to order reinstatement with back wages and that there is no basis for interfering with that order, which was subsequently affirmed by the High Court.

Evaluation

I have carefully considered the evidence placed before the Labour Tribunal, the findings contained in its order, the judgement of the High Court, and the respective submissions of learned Counsel before this Court. I have also considered the legal principles relied upon by the Appellant concerning the consequences of loss of confidence in an employer-employee relationship, particularly in the context of an employee occupying a position of responsibility in a financial institution. The Appellant relies, inter alia, on the decisions in ***Bank of Ceylon v Manivasagasivam*** [1995] 2 Sri LR 79, ***Sithamparanathan v People's Bank*** [1986] 1 Sri LR 411, ***D.L.K. Peiris v Celltel Lanka Limited*** (SC Appeal No. 30/2009, SC Minutes of 11 March 2011), and ***John Keells Ltd. v Ceylon Mercantile, Industrial and General Workers Union and Others*** [2006] 1 Sri LR 48.

The first question which arises for determination is whether the findings of the learned President of the Labour Tribunal, upon the evidence placed before her, warrant interference by this Court. Having carefully considered the material before the Tribunal, I am unable to accept the contention of the Appellant that the findings of the learned President were perverse, unsupported by evidence, or contrary to the weight of the evidence. In particular, the learned President carefully considered the two reports relating to the Ulahitiyawa incident, the circumstances in which the sum of Rs. 37,500/- was referred to in the subsequent report, and the competing versions concerning the handing over of the books and vouchers. The Tribunal was also entitled to take into account the fact that the Respondent herself had initially brought the financial irregularity to the attention of the General Manager.

I am equally of the view that the Labour Tribunal was entitled to take into consideration the deficiencies in the evidence relating to the alleged misconduct at the *Beliatta* Branch and the allegations of abusive conduct towards senior officers. The material before the Tribunal disclosed that several persons who could have provided direct evidence concerning the relevant incidents were not called, while certain documentary material relied upon by the Appellant was not sufficiently established. The Tribunal accordingly gave reasons for concluding that the charges had not been established. I see no basis upon which those findings of fact, subsequently affirmed by the High Court, can properly be characterised as perverse or unsupported by the evidence.

In that regard, it is important to bear in mind the limited scope of the appellate jurisdiction conferred upon this Court in respect of an order of a Labour Tribunal. The fact that this Court might, upon a consideration of the evidence, have reached a different conclusion is not by itself sufficient justification for interfering with a finding of fact made by the Tribunal, particularly where that finding has subsequently been affirmed by the High Court. I therefore affirm the findings of the Labour Tribunal that the charges levelled against the Respondent had not been established to the degree necessary to justify the conclusion that the termination was justified on the basis of the alleged misconduct.

The conclusion, however, that the termination was unjustified does not necessarily determine the question of the appropriate relief. The jurisdiction of a Labour Tribunal under the Industrial Disputes Act is expressly directed towards making an order which is just and equitable. The question whether reinstatement should follow from a finding that the termination was unjustified must therefore be considered separately, having regard to all the circumstances of the case, including the nature of the employment, the relationship between the parties and the effect which reinstatement may have upon the employer and the workplace.

In the present Case, the Respondent held a position of considerable responsibility in an institution engaged in microfinance and related financial activities. The relationship between the parties was consequently one in which a substantial degree of trust and confidence was necessarily reposed by the employer in the Respondent. The Appellant's submission that such a relationship cannot realistically continue where the employer has genuinely and reasonably lost confidence in the employee is not without merit. The authorities cited on behalf of the Appellant suggest to a certain extent that loss of confidence may, in appropriate circumstances, constitute a relevant and material consideration in determining whether reinstatement is an appropriate remedy, even where the employee has not been found guilty of the allegations forming the basis of the termination.

I am particularly mindful of the distinction between two questions which ought not to be conflated. The first is whether the misconduct alleged against the workman has been proved so as to justify the termination. The second is whether, notwithstanding a finding that the termination was unjustified, reinstatement is, in all the circumstances, an appropriate and just and equitable remedy. The answer to the first question in the present case is in favour of the Respondent. The answer to the second, however, does not necessarily follow from it.

In my view, the circumstances of the present Case demonstrate why reinstatement cannot appropriately be ordered. Although I have upheld the findings of the Labour Tribunal that the charges were not established, the evidence and the circumstances surrounding the disciplinary proceedings have resulted in a fundamental erosion of the confidence which the Appellant had reposed in the Respondent. This is particularly significant having regard to the nature of the Respondent's duties and the character of the institution in which she was employed. An employer ought not, in circumstances where the relationship of trust and confidence necessary for the continued employment of a person occupying a position of responsibility has irretrievably broken down, be compelled to reinstate that person merely because the employer has failed to prove the disciplinary charges to the requisite standard.

The allegations concerning the Respondent's conduct towards senior officers assume particular significance in this regard. I emphasise that I do not treat those allegations as proved misconduct for the purpose of justifying the termination. The Labour Tribunal has found otherwise, and I have no basis to disturb that finding. Nevertheless, the nature of those allegations, viewed together with the circumstances of the employment relationship and the consequent loss of confidence, is a relevant consideration in determining whether reinstatement would be conducive to a harmonious and workable relationship between the parties. In my view, requiring the Appellant to reinstate the Respondent in these circumstances would not be a just and equitable consequence of the Tribunal's finding.

There can be circumstances in which alternative relief in lieu of reinstatement may properly be granted even where the workman has not been found guilty of the charges alleged against him or her. In the aforesaid case of ***John Keells Ltd. v Ceylon Mercantile, Industrial and General Workers Union and Others***, the Court of Appeal recognised that such circumstances may arise where the nature of the allegations has resulted in the employer losing confidence in the workman or where reinstatement would not promote harmonious relations between the parties.

I consider the present Case to fall within that principle. The absence of proof of the charges does not, in the circumstances of this case, compel the conclusion that reinstatement is the only appropriate remedy. The interests of the workman must undoubtedly be protected, but the interests of the employer and the wider interests of maintaining a proper and harmonious working environment must also be taken into account in determining what is just and equitable. The statutory discretion of the Labour Tribunal must be exercised upon a consideration of the interests of both parties and the particular circumstances of the case.

Conclusion

Accordingly, while I affirm the finding of the learned President that the termination of the Respondent's services was not justified on the charges levelled against her, I am unable to affirm the order directing her reinstatement. In my view, the appropriate relief in the circumstances is an award of compensation in lieu of reinstatement.

Although such an assessment is appropriately undertaken by the learned President of the Labour Tribunal in the exercise of the jurisdiction vested in that Tribunal, I consider that this Court should undertake the computation of the compensation payable to the Respondent in order to avoid further delay in the litigation. It is noted that both parties conceded before the Labour Tribunal that the Respondent's monthly salary was Rs. 10,900/-. Accordingly, having regard to the evidence already led before the Tribunal, the number of years of service completed by the Respondent as at the date of termination, the period for which she ought to have remained in employment, and the other relevant factors to be taken into consideration in computing compensation, I am of the view that the Respondent is entitled to a sum of Rs. 327,000/- as compensation, in addition to the back wages already awarded by the Labour Tribunal.

In light of the above, I proceed to answer the following Question of Law upon which this Court granted Leave to Appeal, in the affirmative, subject to the overall findings in this Judgment:

> ''Did the Honourable Judge of the High Court fail to consider the fact that the learned President had erred in law by reinstating the Respondent based on the material that was available to the Honourable President of the Labour Tribunal at the time of making that Order?''

For the foregoing reasons, I affirm the order dated 30 September 2014 of the learned President of the Labour Tribunal and the judgment dated 14 February 2017 of the learned High Court Judge, subject to the variation that the order for reinstatement is set aside. Furthermore, the Appellant shall pay the Respondent a sum of Rs. 327,000/- as compensation in lieu of reinstatement, together with the sum awarded by the Labour Tribunal as back wages.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court