

UP COUNTRY DISTRIBUTORS (PVT) LTD.,  
V.  
SUBASINGHE

SUPREME COURT.

G.P.S. DE SILVA, C.J.,

RAMANATHAN, J. AND

WIJETUNGA, J.

S.C. APPEAL NO. 111/95.

S.C. APPEAL L.A. NO. 296/95.

H.C. LT APPEAL KANDY NO. 75/94.

L.T. NO. 10/246/91.

20TH AUGUST, 1996.

*Termination of services of workman-Compensation in lieu of reinstatement-Industrial Disputes Act-Section 33(5) of the Act-Assessment of compensation-Discretion of the Labour Tribunal.*

The Respondent workman applied to the Labour Tribunal for relief in respect of the termination of his services by the Appellant company and prayed for reinstatement with back wages or compensation in lieu of reinstatement. The workman was 42 years of age and was in receipt of benefits amounting to Rs.5,000/-, at the time of termination. He had 15 years of service. The Tribunal decided that the termination was unjust and awarded Rs.300,000/- being 5 years' wages, as compensation having regard, in particular to the workman's period of unemployment, his age at termination and the period of his service.

**Held:**

The award made by the tribunal is just and equitable. The tribunal has a discretion in determining the quantum of compensation, on the basis of the facts and circumstances of each case. That discretion should not be unduly fettered.

*Per Wijetunga, J.*

"The legislature has in its wisdom left the matter in the hands of the tribunal, presumably with the confidence that the discretion would be duly exercised. To my mind some degree of flexibility in that regard is both desirable and necessary if a tribunal is to make a just and equitable order".

**Cases referred to:**

1. *Silva v. Kuruppu* S.C. 182/69 S.C. Minutes 14th October 1971.

2. *The Ceylon Transport Board v. Wijeratne* (1975) 77 NLR 481, 496.
3. *Nanayakkara v. Hettiarachchi*, (1971) 74 NLR 185.
4. *The Caledonian (Ceylon) Tea & Rubber Ltd., v. Hillman*, (1977) 79(1) NLR 421.
5. *The Associated Newspapers of Ceylon Ltd., v. Jayasinghe* (1982) 2 Sri L.R. 595.
6. *Jayasuriya v. Sri Lanka State Plantations Corporation*, (1995) 2 SLR 379

**APPEAL** from the judgment of the High Court.

*R.K.S. Sureschandra* for Appellant.

*Nimal Malalasekara* for Respondent.

*Cur.adv.vult.*

30th September, 1996.

**WIJETUNGA, J.**

This is an appeal from the judgment of the Provincial High Court of Kandy dismissing the appeal of the Respondent-Appellant-Appellant ('Appellant').

The Applicant-Respondent-Respondent ('Respondent') made an application to the Labour Tribunal, Hatton alleging that his services had been wrongfully terminated by the Appellant Company and prayed that he be reinstated with back wages or be paid a sum of Rs.500,000/- as compensation in lieu of reinstatement.

The Appellant filed answer stating that the Respondent was dismissed on disciplinary grounds after due inquiry, as he had been found guilty of the acts of misconduct alleged against him, which caused the Appellant to lose confidence in him. It was averred that the termination was *bona fide* and for good and valid reasons, and was justified. The Respondent filed a replication denying the position taken up by the Appellant in the answer.

The learned President of the Labour Tribunal held that the termination was unjust and awarded the workman compensation in a sum of Rs.300,000/-.

The Company appealed against the said order to the Provincial High Court of Kandy. That Court, by its judgment dated 22.8.95, dismissed the appeal. Being aggrieved by the said judgment of the High Court, the Appellant made an application to this Court for special leave to appeal. Special leave was granted only in respect of the matter set out in paragraph 9(f) of the petition which reads as follows:-

"The learned High Court Judge failed to consider the fact that the learned President of the Labour Tribunal had failed to give the basis of the award of compensation in favour of the Respondent".

It is relevant to state that the learned President in his order did take into account the period of unemployment of the Respondent resulting from the termination aforesaid and computed the compensation on the basis that the Respondent's monthly salary was Rs.5,000/- and granted him five years' salary as compensation.

The High Court subjected the basis of the learned President's computation of compensation to careful scrutiny. It made pointed reference to the delay of about 21 months between the conclusion of the hearing and the delivery of the order (which the learned President himself had mentioned regretfully in his order as being due to his ill-health) and observed that the order does not indicate whether the President took into account only the period of about one year between the commencement of proceedings and the conclusion of evidence, for the purpose of such computation, or whether the 21 months that had elapsed before the order was delivered was also taken into account. The High Court said that it had no doubt that the learned President had given due consideration to the authorities cited by counsel. It further adverted to the relevance, in considering the question of quantum of compensation, of the fact that the Respondent was only 42 years of age and that he had admittedly served the Appellant Company from 1975 for a period of about 15 years at the stage of termination. These were the factors that led the High Court to the view that the award of Rs.300,000/- was just and equitable and not excessive, in the circumstances.

In *Silva v. Kuruppu*<sup>(1)</sup> Samarawickrema, J. observed that the "assessment of compensation is eminently a matter within the province of the President of the Labour Tribunal."

As Vythialingam, J. stated in *The Ceylon Transport Board v. Wijeratne*<sup>(2)</sup> "although our Industrial Disputes Act provides for the payment of compensation in lieu of reinstatement, it does not lay down the basis on which it is to be computed. In this connection it is important to remember that where this is so much a matter for the exercise of the Tribunal's discretion and depends on the peculiar facts and circumstances of each individual case, it is undesirable to confine that discretion within too narrow and rigid limits."

However, a number of decisions of the Supreme Court have laid down what should be taken into consideration in determining the quantum of compensation payable under section 33(5) of the Industrial Disputes Act.

In *Nanayakkara v. Hettiarachchi*<sup>(3)</sup> Wijayatilake, J. considered the workman's age, the number of years of service, the benefits received from the employer and the capital of the business in determining the quantum of compensation.

In *Wijeratne's* case (*supra*) where the learned tribunal had awarded the workman the full salary for the balance workspan till he reached the age of superannuation as compensation, Vythialingam, J. having made a comprehensive analysis of the case law relevant to this question, disagreed with that mode of computation and stated at page 498 that "account should be taken of such circumstances as the nature of the employer's business and his capacity to pay, the employee's age, the nature of his employment, length of service, seniority, present salary, future prospects, opportunities for obtaining similar alternative employment, his past conduct, the circumstances and the manner of the dismissal including the nature of the charge levelled against the workman, the extent to which the employee's actions were blameworthy and the effect of the dismissal on future pension rights and any other relevant considerations. Account should also be taken of any sums paid or actually earned or which should also have been earned since the dismissal took place."

In *Caledonian (Ceylon) Tea & Rubber Estates Ltd. v. Hillman*<sup>(4)</sup> Sharvananda, J. (as he then was) agreed with Vythialingam, J. that "the amount however should not mechanically be calculated on the

basis of the salary he would have earned till he reached the age of superannuation."

In *The Associated Newspapers of Ceylon Ltd. v. Jayasinghe*<sup>(5)</sup> Soza, J. observed at page 600 that "the object of the exercise should be to ascertain as far as possible the money equivalent of the loss of employment from the date of unjust dismissal. The calculation must depend on the particular circumstances of each case. Wages can provide a useful unit for the calculation but it is neither possible nor desirable to lay down a formula for application in all cases."

More recently, in *Jayasuriya v. Sri Lanka State Plantations Corporation*<sup>(6)</sup> this Court dealt exhaustively with the matters relevant to the determination of the quantum of compensation.

Amerasinghe, J. stated that "there ought to be at least an approximate computation of immediate loss, i.e. loss of wages and benefits from the date of dismissal upto the date of the final Order or Judgment, and another with regard to prospective, future loss, and a third with regard to the loss of retirement benefits, based as far as possible on a foundation of solid facts given to the Tribunal by the parties."

While it is not possible to enumerate all the circumstances that may be relevant in every case, it may be stated that the essential question, in the determination of compensation for unfair dismissal is this: What is the actual financial loss caused by the unfair dismissal?

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."

It is thus evident that the appellate courts have, over the years, laid down guidelines in regard to assessment of compensation. Yet, in my view, the tribunal's discretion should not be unduly fettered in that process. The particular facts and circumstances of each case have an immeasurable bearing on the question of quantum of compensation payable. The legislature in its wisdom has left that matter in the hands of the tribunal, presumably with the confidence that the discretion would be duly exercised. To my mind, some degree of flexibility in that regard is both desirable and necessary if a tribunal is to make a just and equitable order.

In the instant case, the learned President has specifically referred to the Respondent's period of unemployment, the salary drawn by him at the stage of termination and awarded him five years salary by way of compensation. The proceedings had before the tribunal did focus attention on the fact that the Respondent had admittedly been in service for about 15 years. Witness Kandiah, the Executive Director of the Appellant Company has admitted in evidence that the total benefits that the Respondent received for a month were about Rs.5,000/-. The attention of the tribunal had also been drawn to the fact that the Respondent was 42 years of age at the time of termination. The relevant case law on the question of computation of compensation too had been placed before the tribunal.

Although the learned President has not itemized each and every one of these matters in his order, the High Court observes that it has no doubt that the President had given due consideration to the authorities cited, in arriving at his decision as regards the quantum of compensation.

It would, therefore, be idle to contend that the tribunal had failed to give the basis of the award of compensation; however, it must be emphasized that the tribunal should have dealt with the criteria relevant to the computation of compensation in more explicit terms, thus "taking the award beyond the realm of mere assurance of fairness"-per Amerasinghe, J. in *Jayasuriya's case (supra)*.

The learned High Court Judge has carefully considered the question of quantum of compensation in the light of the relevant authorities and

has rightly come to the conclusion that the award was a just and equitable one.

In these circumstances, I see no reason to interfere with the order. The appeal is accordingly dismissed with costs.

**G.P.S. DE SILVA, C.J.** – I agree.

**RAMANATHAN, J.** – I agree.

*Appeal dismissed.*