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PART I : SECTION (I) – GENERAL

Government Notifications

My No.: T 23/P/254/2001.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

The Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between S. Satchithanandasarma, “Sri Rangam”, 2nd Mile Post, Thunnalai, Karaveddy and K. Karishnapillai Kudathanai West, Kudathanai of the one part and Northern Region Transport Board, Kondavil of the other part and referred by Order dated 2002.11.29 made under Section 4(1) of the Industrial Disputes Act Chapter 131, (As amended) and published in the *Gazette Extraordinary of Democratic Socialist Republic of Sri Lanka* No. 1266/9 of 09.12.2002 for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

Department of Labour,
Colombo 05.
30th April, 2004.

IN THE MATTER OF AN INDUSTRIAL DISPUTE

Between

S. Satchithanandasarma, “Sri Rangam”, 3rd Mile Post,, Thunnalai,
Karaveddy and K. Krishnapillai, Kudathanai West Kudathanai

of the one part

AND

Case No.: A/2963

Northern Region Transport Board Kondavil

of the other part

THE AWARD

THE Hon. Minister by virtue of the powers vested in him by Sec. 4(1) of the Industrial Disputes Act (Chapter 131) of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts, Nos. 14 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes) (Special Provisions) Act, No. 37 of 1968 appointed me as Arbitrator by his Order dated 01.11.2002 and referred the following dispute to me for settlement by arbitration.

The matters in dispute between the aforesaid parties are as follows :

(1) Whether the following demands made by Mr. S. Satchithanandasarma from the Northern Region Transport Board are justified and if not, to what relief he is entitled.

(i) He be granted the same salary scale that was paid as at 22.04.1985 (the day of which was considered as vacated the post) at the time of re-employment him in service with effect from 10.04.1989 by Northern Region Transport Board, and

(ii) The period of absence from work by Mr. S. Satchithanandasarma from the 22.04.1985 to 10.04.1989 be considered as a period of no pay leave, and

(2) Whether the following demands made by Mr. K. Krishnapillai from the Northern Region Transport Board are justified and if not to what relief he is entitled:

(i) He be granted the same salary scale that was paid as at 05.03.1983 (the day of which was considered as vacated the post) at the time of re-employment him in service with effect from 10.04.1989 by Northern Region Transport Board, and

(ii) The period of absence from work by Mr. K. Krishnapillai from 05.03.1983 to 10.04.1989 to considered as a period of no pay leave.

Appearance – Mr. M. Sivalingam, Attorney at Law for the respondent Board

Mr. K. V. Sivasubramaniam with Mr. V. Sriskhandarajah Representatives appeared for the two workmen.

Both workmen gave evidence and marked documents A1 to A5(a). They have failed to tender the marked documents and I have therefore no option but to make this Award without the documents. It is common ground that both workmen were treated as having vacated post – Satchithanandasarma from 22.04.1985 and Krishnapillai from 05.03.83. Both of them appealed for employment and they were re-employed on the initial salary of the post. On re-employment they were not placed on the last salary drawn by them when they were treated as having vacated post. Their claims are that–

(i) they be placed on the last drawn salary at the time they were treated as having vacated post.

(ii) the period of absence from work i.e. date of vacation of post to date of re-employment be treated as no pay leave.

They have in their statement filed with the Registrar and in their evidence stated that some other employees in similar circumstances had been placed on the last drawn salary with continuity of service and incremental credits and also granted to pay leave for the period of absence from date of vacation of post to date of re-employment. Some of the names given by them are Navaratnam Depot Inspector. V. Ponniah Dirver, K. Nadarajah Driver, A. Jeevamirthan Clerk. The Respondent did not lead any evidence in this regard.

The workmen in their evidences could not state as to what their salary was at the time they were treated as having vacated post. They were directed by me on 05.12.2003 to furnish the particulars of the salary drawn by them on re-employment and the difference in the payment together with the total amount claimed by them in respect of the period stated in the reference to arbitration. the case was postponed to 30.01.2004.

When the case was taken up on 30.01.2004, this amount due to each workman was worked out and a schedule dated 26.01.2004 titled “Arrears of payment” addressed to General Manager, N. R. T .B. marked as ‘X’ was tendered by Mr. Kanagarajah, Personnel Manager of the Respondent Board. Discussions ensued for sometime between both parties on the document marked as ‘X’ and the correct amount due to each workman was authenticated by the Personnel Manager he has endorsed “total arrears” in the document ‘X’ and signed same. the Personnel manager wanted to forward the document ‘X’ to General Manager for hit approval. the case was fixed for 17.02.2004 for the purpose of finalizing the matter.

When the case was taken up on 17.02.2004, Mr. Kanaagarajah. Personnel Manager confirmed and authenticated that the total amounts due for the period under reference to arbitration are as follows:

- | | |
|----------------------------|-------------|
| (i) S. Satchithanandasarma | – 41,635.00 |
| (ii) K. Krishnapillai | – 45,860.00 |

The workman too confirmed and accepted the amounts given above are correct. As both parties are agreed on the amount due in respect of the period under reference for arbitration my task is made easy. In the light of the foregoing make award as follows:

(i) S. Satchithanandasarma be paid a sum of Rs. 41,635.00 (Rupees Forty one thousand six hundred and thirty five only) being the amount due for the period 22.04.1985 to 10.04.1989.

(ii) K. Krishnapillai be paid a sum of Rs. 45,860.- (Rupees Forty five thousand eight hundred and sixty only) being the amount due for the period 05.03.1983 to 10.04.1989.

In relation to second issue referred to me, it is appropriate to state that no evidence was led by the Respondent, although.

- (i) the workmen in their evidence had stated that others in similar circumstances were granted no pay leave.
- (ii) the workmen had cited the names of those employees who were granted no pay leave.

In these circumstances, I make award as follows:

- (i) the period of absence from work by S. Satchithanandasarma from 22.04.1985 to 10.04.1989 be reckoned as approved no pay leave.
- (ii) the period of absence from work by K. Krishnapillai from 05.03.1983 to 10.04.1989 be reckoned as approved no pay leave.

I make order that the total sum of Rs. 87,495/- (Rupees Eighty seven thousand four hundred and ninety five only) due to S. Satchithanandasarma and K. Krishnapillai be deposited with the Asst. Commissioner of labour office Jaffna within (30) thirty days of the date of publication of this Award in the *Government Gazette of the Democratic Socialist Republic of Sri Lanka*. They are free to withdraw the monies due to them once the deposit is made.

I consider this Award just and equitable.

V. VIMALARAJAH,
Arbitrator.

06th April 2004.

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My. No.: T23/Co/174/99.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. N. D. O. Silva, No. 215A 2/5, Park Road, Colombo 05 of the one part and Sri Lanka Broadcasting Corporation, P. O. Box 504, Colombo 07 of the other part was referred by order dated 2nd November, 1999, made under Section 4(1) of the Industrial Disputes Act, Chapter 131, (As Amended) for settlement by arbitration, is hereby published in terms of Section 18(1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

Department of Labour,
Colombo 05.
26th April, 2004.

IN THE MATTER OF AN INDUSTRIAL DISPUTE

between

Mr. N. D. O. Silva, 215A/2/5, Park Road, Colombo 03.

Case No. A/2764.

AND

Sri Lanka Broadcasting Corporation, P. O. Box 574, Colombo 07.

THE AWARD

THE Honorable Minister of Labour by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts, Nos. 14 and 62 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes) (Special Provisions) Act, No. 37 of 1968, by his order dated 02nd November, 1999 appointed me as Arbitrator and referred this matter for settlement by arbitration.

The matter in dispute between the Applicant and the Respondent is whether it is justified to pay Rs. 48,945.75 as compensation in lieu of extension of service from 55 years to 60 years for the applicant who was retired from service on 31st January 1980 by the Sri Lanka Broadcasting Corporation and to what relief he is entitled.

The parties submitted their claims and counter claims on the due dates and the Respondent raised a preliminary objection as regards the powers of the Minister to refer the matter for arbitration and this objection was over-ruled by me on 17.07.2000, and the arbitration proceedings commenced.

The Respondent Corporation led the evidence of Malabe Chandrasena Perera, Assistant Director (Human Resources) where he stated that the applicant, a Building Supervisor was interdicted on 09.07.1975 when he was charged under the provision of the Penal Code for using a fraudulent document as a genuine document a bill for Rs. 45.00 when in fact it had been for Rs. 30.00 and charged in M.C. Colombo Case No. 39038/01 where he was found guilty and court sentenced to a fine of Rs. 50.00 and imprisonment for a period of three months suspended for five years. The applicant (the accused) had appealed against this judgement to the Court of Appeal *vide* the judgement in Ca. 191/79 dated 08.04.1980 – A/07.

The witness Malabe Chandrasena Perera admitted that he could not find evidence that a formal disciplinary inquiry against the applicant had been conducted. - *vide* proceedings dated 26.09.2001 – page 03.

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This is a fault on the part of the Disciplinary Authority (the Respondent) and this fault was never rectified.

In order to cut short the proceedings and conclude the inquiry as early as possible it was agreed among the parties that the applicant should lead his evidence in chief by filing an affidavit setting out facts with a copy to the Respondent. The applicant filed his affidavit dated 16.10.2002 annexing documents A 01 to A 31 (folios 183 – 186 in file).

As expected the proceedings could not be concluded early even after the applicants filing of an affidavit due lengthy cross examination which took several days and finally the case was concluded on 11.12.2003 after 01 year and 01 month of the filing of the Applicant's affidavit.

The parties were given time till 13.02.2004 to file written submissions, but only the applicant's lawyer tendered his written submissions on 23.02.2004.

The conviction and sentence imposed by the Magistrate's Court was quashed by the Court of Appeal dated 08.04.1980 when the applicant revived his claim for terminal benefits denied to him by the Respondent over the years.

The applicant reached the age of 55 years on 31.01.1980 and the Respondent retired him with effect from that date, without giving any extension of service.

The applicant made an appeal to the political Victimization Committee on 25.03.1996. The Political Victimization Committee on 15.07.1996 made the following decision :-

“Payment of a reasonable compensation is recommended having regard to the possibility for being employed from the age of 55 years to 60 years”.

The Secretary to the Ministry by letter dated 31.08.1996 conveyed the above decision to the Respondent the applicant was paid Rs. 48,945.75 as reasonable compensation which is equivalent to 50 percent of the amount as calculated by the Respondent. This payment has been calculated as if he retired at the age of 60 years on 31.01.1985. On the decision of the Political victimisation Committee, the amount due to the applicant was Rs. 97,891.50. The respondent thought that the reasonable compensation was one half of Rs. 97,891.50. The rationale for this decision is beyond my comprehension. The decision of the Respondent to pay the applicant 50% of the amount due to him seems to be unreasonable.

Mr. S. K. D. Michael who represented Respondent SLBC at the Human Rights Commission has said that full compensation cannot be paid due to bad financial situation of the Corporation (R13 (1)).

The evidence given by the representative of the Respondent, Mr. M. Chandrasiri Perera produced certain documents but could not testify why the applicant was paid only one half of Rs. 97,891.50 when two other officers, of the same Corporation, Messrs.. M. A. Samarasinghe and Tirugnaslingham were paid higher amounts although the Corporation was in a bad financial situation.

Taking all factors into consideration

- (i) I order that the Respondent should pay to the applicant the full amount of Rs. 97,891.50. As he has been paid half of this amount some time back the Respondent should pay the balance of Rs. 48,975.75 within one month of the publication of this Order in the *Government Gazette*.
- (ii) I also order the Respondent to pay the Applicant a further sum of Rs. 15,000 to compensate for the inconvenience, hardship, and pain of mind caused to him from 1980 onwards as a result of wrongful administrative action by the Sri Lanka Broadcasting corporation. This amount should also be paid within one month of the publication of this order in the *Government Gazette*.

I consider this award as reasonable.

T. PIYASOMA,
Arbitrator.

Dated at Colombo, this 24th day of March, 2004.

06 - 440

My. No.: T 23/Co/110/2002.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. T. H. Rupa Laximi, No. 251, Pattraakade, Gorakaduwa Junction, Maha Edanda, Karandeniya of the one part and Cooperative Wholesale Establishment, C. W. E. Secretariat Building, No. 27, Vauxhall Street, Colombo 02 of the other part was referred by order dated 31st March, 2003, made under Section 4(1) of the Industrial Disputes Act, Chapter 131, (as amended) and published in the *Gazette Extraordinary of Democratic Socialist Republic of Sri Lanka* 1283/12 of 09th April, 2003, for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

Department of Labour,
Colombo 05,
23rd March, 2004.

Ref. No. T 23/Co/110/2002.

IN THE MATTER OF INDUSTRIAL DISPUTE

between

Mrs. T. H. Rupa Laximi, No. 251, Pattraakade, Gorakaduwa Junction,
Maha Edanda, Karandeniya,

Case No. A - 2981

AND

Cooperative Wholesale Establishment, C. W. E. Secretariat Building,
No. 27, Vauxhall Street, Colombo 02

THE Honorable Minister of Employment and Labour, by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act, Chapter 131, of the Legislative Enactment of Ceylon (1956 Revised Edition) as amended by Acts, Nos. 14 of 1957, 62 of 1957, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968; appointed me as the arbitrator by his Order dated 31st March, 2003, and referred the dispute between the aforesaid parties to me for settlement by arbitration.

The matter in dispute between the aforesaid parties is -

“Whether the demand of Mrs. T. H. Rupa Laximi, who was in the service of Cooperative Wholesale Establishment as a manageress of its outlet that she should be paid the salary for period of interdiction from 07th February, 1995 to 14th February, 2002 and her earned wages for the period after reinstatement in service from 19th April, 2002 up to 20.06.04 less Rupees 2,014.29 of which was decided at the disciplinary inquiry as due to the Establishment in lieu of leakage of goods against of the total amount and if not, to what relief she is entitled.”

When the matter in dispute came up for inquiry, it came to light that an application had been filed before a Labour Tribunal, bearing No. 1/383/2002 is pending. Same issue cannot be heard at another forum which is inconsistent with provisions of the Industrial Dispute Act.

On the 28th January, 2004, applicant made a written application to this court withdrawing from proceedings. I therefore made no award.

P. NAVARATNE,
Arbitrator.

This 17th February, 2004.

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