

ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය

The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY අති විශේෂ

අංක 1358/13 – 2004 සැප්තැම්බර් 15 වැනි බදාදා – 2004.09.15

No. 1358 /13 – WEDNESDAY, SEPTEMBER 15, 2004

(Published by Authority)

PART I : SECTION (I) – GENERAL

Government Notifications

My No.: Pa/125/2001

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

The award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. M. Padma Peiris, No. 62, Madawelikada Road, Rajagiriya of the one part and Mercantile Credit Ltd. No. 141/7, 3rd Floor, Vauxhall Street, Colombo 02 of the other part was referred by order dated 04.03.2002 made under section 4 (1) of the Industrial Disputes Act, Chapter 131 as amended in terms of Section 18(1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner-General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 5,
25th August, 2004.

Ref. No. PA/125/2001

IN THE MATTER OF AN INDUSTRIAL DISPUTE BETWEEN

Mrs. M. Padma Peiris, No. 62, Mada Welikada Road, Rajagiriya

Case No. A 2913

AND

Mercantile Credit Ltd., No. 141/7, 3rd Floor, Vauxhall Street,
Colombo 02

THE AWARD

The Hon. Minister of Labour by virtue of the powers vested in him under Section 4 (1) of the Industrial Disputes Act Chapter 131 of the Legislative Enactments of Ceylon (1958 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 04.03.2002 and referred the said aforesaid dispute to me for settlement by arbitration.

The matter in dispute between the aforesaid parties is - “ Whether Mrs. M. Padma Peiris is in terms of the prevalent practice of Mercantile Credit Ltd. is entitled to a gratuity based on a month’s salary for each year of service for her uninterrupted period of service in Mercantile Housing Ltd. from 02.11.1971 and thereafter in Mercantile Credit Ltd., from 09.03.1973 to 15.01.1997, both companies that belonged to Mercantile Group of Companies and if not to what relief she is entitled.

- Appearance – Mr. Nadvi Bahaudeen, Attorney at-Law
appeared for the Respondent Company
- Mr. S. Egalahewa, Attorney at-Law
appeared for Mrs. M. Padma Peiris

Facts in Brief

According to the statement filed by the Respondent Company, Mrs. M. Padma Peiris was employed by –

- (i) Mercantile Housing Ltd. from 03.11.1971 to 08.03.1973
- (ii) Mercantile Credit Ltd. from 09.03.1973 to 15.01.1997

It has been the practice of Mercantile Credit Ltd. to pay one month’s salary for each year of service as gratuity to employees who have completed (25) twenty five years of service. The contention of the company is that as she has not served (25) twenty five years service in Mercantile Credit Ltd., she would not qualify for gratuity computed at one month’s salary for each year of service in keeping with the prevalent practice of the company and that she would be entitled for gratuity at 1/2 month’s salary for each year of service. The company’s position is that she is entitled to a sum of Rs. 63,307.50 as gratuity for 23 years of service at Mercantile Credit Ltd. (half month’s salary for each year of service). Mrs. Peiris claims that she is entitled to gratuity for (25) twenty five years service amounting to Rs. 137,625/- as she had worked at Mercantile Housing Ltd. a subsidiary of Mercantile Credit Ltd. for a period of one year and 04 months prior to her employment at Mercantile Credit Ltd. for a period of 23 years and 10 months. She states that she has to her credit more than 25 years service when the period of service in both companies are reckoned.

Mrs. Padma Peiris gave evidence and marked documents A 1 to A 9. Mr. H. M. Ekanayake Senior Asst. Director, Central Bank gave evidence for the company and marked documents R1 to 7. R 1 was a marking done on the Workman’s document A1. R 2 and R3 were markings done on A2 and A3 respectively. Both parties have tendered Written Submissions.

I have examined the evidence led with particular reference to the documents marked and also the Written Submissions of both sides.

This case pivots round the only issue-Whether the period of service of Mrs. Padma Peiris in Mercantile Housing Ltd. is to be reckoned as continuous and uninterrupted service with Mercantile Credit Ltd. for computation of gratuity of one month’s salary for each year in keeping with the prevalent practice in Mercantile Credit Ltd.

It is common ground that both Companies are separate legal entities. The wording of the reference is that both companies belonged to Mercantile Group of Companies. This aspect of the reference is not contested by the Respondent Company. The Company witness has admitted that Mercantile Housing Ltd. is a subsidiary of Mercantile Credit Ltd. Page 14 of the proceedings of 24.03.2004.

A9(a) confirms that Mercantile Housing Ltd. is a subsidiary company of Mercantile Credit Ltd. The company witness has also admitted in evidence that two employees Chandrapala Perera and Soyza who did not have twenty five years service directly under Mercantile Credit Ltd. were paid gratuity computed at the rate of one month’s salary for each year of service taking into consideration their service with an Associate Company of Mercantile Credit Ltd. It is appropriate to point out that Mrs. Padma Peiris worked in a subsidiary company of Mercantile Credit Ltd. He said that the payment was made to them on the basis of a letter issued by the previous management. Pages 17 and 18 of the proceedings of 24.03.2004. He did not produce the letters referred to by him. No evidence was led by the Respondent

Company to support its position that the two employees were paid on the basis of a document. In these circumstances, there is no reason to deny this payment to Mrs. Padma Peiris. A (2)(a) marked in A2 (Clause 01) issued to Mrs. Padma Peiris reads as follows-

“ You will be employed as a Clerk but we reserve the right to require you to serve on the terms hereunder specified in any other capacity in this company or in any of our subsidiaries or associates if called upon to do so “. This letter was issued by Mercantile Housing Ltd.

According to A 2(b) she will join and through her employment continue to be a member of the Company's Provident Fund. It is admitted in evidence that there is one common Provident Fund for Mercantile Housing Ltd. and Mercantile Credit Ltd.

In the light of the foregoing, my finding is that the period of service of Mrs. Padma Peiris with Mercantile Housing Ltd. will have to be reckoned as continuous with Mercantile Credit Ltd. I therefore, hold that Mrs. Padma Peiris entitled to a gratuity of Rs. 137,625/ (Rupees One hundred and thirty seven thousand six hundred and twenty five only) computed at the rate of one month's salary for each year of service in keeping with the prevalent practice of computation of gratuity by Mercantile Credit Ltd. A 7 signed by the Commissioner General of Labour and sent to company confirms the amount due to Mrs. Padma Peiris as Rs. 137,625.

I make award that Mrs. Padma Peiris be paid a sum of Rs. 137,625 (Rupees One hundred and thirty seven thousand six hundred and twenty five only) as gratuity by Mercantile Credit Ltd. I make order that the sum of Rs. 137,625 (Rupees One hundred and thirty seven thousand six hundred and twenty five only) be deposited by Mercantile Credit Ltd. with the Asst. Commissioner of Labour, Colombo Central, 6th Floor, Labour Secretariat, Colombo 05, within (30) thirty days of the publication of this Award in the Government Gazette of the Democratic Socialist Republic of Sri Lanka. I consider this Award just and equitable. Mrs. Padma Peiris is free to withdraw the sum of Rs. 137,625 once the deposit is made by Mercantile Credit Ltd.

09th August, 2004.

V. VIMALARAJAH,
Arbitrator.