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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 1440/25 - MONDAY, APRIL 10, 2006

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## PART I : SECTION (I) — GENERAL

### Government Notifications

My No. : T23/Co/66/2002.

THE AWARD

#### THE INDUSTRIAL DISPUTE ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. V. Sukumaran of 10A, Wijesiriwardena Road, Mount Lavinia, of the one part and Maharajah Organization Limited of No. 146, Dawson Street, Colombo 2 of the other part was referred by order dated 30.13.2004 made under Section 4(1) of the Industrial Disputes Act, Chapter 131 (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extra - Ordinary No. 1372/22 of 24.12.2004 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,  
Labour Secretariat,  
Colombo 05.  
10th March, 2006.

Ref. No. T23/10/66/2002

#### In the matter of an Industrial Dispute

between

Mr. V. Sukumaran,  
of 10A, Wijesiriwardena Road,  
Mount Lavinia,

and

The Maharaja Organization Limited,  
of No. 146, Dawson Street,  
Colombo 2

Case No.:  
A-3082

The Honourable Minister of Labour by virtue of the powers vested in him by Section 4 (1) of the Industrial Dispute Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Act, Nos. 14 of 1957, 63 of 1957, 4 of 1962 and 39 of 1968, (read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968) appointed me to be the Arbitrator by his order 30th November, 2004 and referred the aforesaid dispute to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties is :

“Whether the change of the designated post of Mr. V. Sukumaran as Premises Manager at the time of transferring him to Harrisons Chemicals (Pvt.), Ltd., with effect from 11.03.2002 in contrary to the conditions of his Original Letter of Appointment as “Manager Treasury” by the Maharaja organization Limited is justified and if not to what relief he is entitled.

At the inquiry Mr. N. D. R. Cassie Chetty Attorney-at-Law appeared for the applicant and Mr. C. L. Wickramanayaka, Attorney-at-Law appeared for the Respondent organization.

In order to find a solution to the dispute in the reference, I am under a duty to find answers to the following questions —

2(a)

- (I) Is the change of designated post of the applicant as Manager-Premises at the time of transferring him to Harrisons Chemicals (Pvt.) Ltd., with effect from 11.03.2002 contrary to the conditions of his Original Letter of Appointment (A1) ;

(II) Is the company Harrison Chemicals (Pvt.) Ltd., not a company within the Maharaja Group of Companies.

The inquiry commenced on 29th March, 2004 after the parties filed their statements.

The applicant Velutham Sukumaran gave evidence first, on his behalf.

#### THE BACKGROUND TO THE DISPUTE

The applicant was employed by the Maharaja Organization Limited (The Respondent) as “Manager Treasury” with effect from 05.04.1993 by Letter of Appointment, marked A1, Clause 5 of A1 provides that the company is entitled to transfer the applicant from one department to another or from one company to another within the Maharaja Group of Companies.

The workman was transferred to Harrisons Chemicals (Pvt.) Ltd., as Premises Manager of the Ja-ela Plant with effect from 11.03.2002.

The workman complained against this transfer to the Commissioner of Labour by his letter dated 23.04.2002 (A6) stating that his transfer as Premises Manager to Harrisons Chemicals (Pvt.) Ltd., was a breach of a fundamental term of his contract.

The Hon. Minister of Labour and Employment referred this dispute to Mr. Asoka Serasinghe, Arbitrator for Settlement by arbitration.

The said arbitrator by his award in Proceedings No. 2973/2003 dated 18.09.2003 dismissed the applicant’s claim, on a preliminary objection raised by the Respondent.

The applicant thereupon filed an application No.: CA/1684/2003 in the Court of Appeal by way of writs of certiorari and Mandamus. The said Court of Appeal quashed the order of the said Arbitrator (Mr. Asoka Serasinghe) after over-ruling a preliminary objection taken up by the employer at the hearing of the Writ-Application.

Thereafter the Hon. Minister of Labour by his order dated 30.11.2004 referred the aforesaid dispute to me for settlement by arbitration.

When the proceedings commenced before me on 29th March, 2004, no preliminary objection was raised by the counsel for the Respondent regarding my jurisdiction in hearing the dispute in the reference.

According to the evidence of the applicant and the letter of appointment A1, lost his applied for by the applicant for which he was qualified was “Manager Treasury”.

The Management Performance Review of the applicant produced marked A3/1 shows that the applicant had following qualifications :-

- (1) General Certificate of Education (Sri Lanka-O/L) ;
- (2) Diploma in Management Accounting (CMA-U.K.) ;
- (3) Diploma in Banking (AIB - Sri Lanka) ;
- (4) Diploma Course on Import/Export Trade Practices (Institute of Management Services Sri Lanka).

He also had undergone Several Training Courses in the Bank of Ceylon, Sri Lanka Institute of Credit Management, Merchant Banking Division of ANZ-Grindlay’s Bank, T.M.OL. Residential Workshop, and the British Counsel and Asia Capital Limited.

It is therefore clear that the work performed by the Applicant and Manager Treasury in the Maharaja Organization related to financial Management and Import and Export Trade.

Referring to his transfer as Premises Manager in Harrisons Chemicals (Pvt). Ltd., the applicant states as follows :-

“By transferring me as Premises Manager to Harrisons Chemicals (Pvt.), Ltd., fundamental terms of my contract have been breached I was appointed Manager Treasury on the qualifications detailed in my application and having gained further knowledge and experience in the specialized field of Finance/Treasury, Now I am transferred to the post of Manager (Premises), qualifications for which I do not possess and for which I have no aptitude or skills” (Page 10 of proceedings on 25.03.2005).

The Applicant by his letter dated 23.04.2002 (P6) protested against his transfer to the Commissioner of Labour wherein he states :-

“By transferring me as Premises Manager to Harrisons Chemicals (Pvt.) Ltd., a fundamental turn of my contract has been breached.....”.

Although the applicant had not suffered a salary loss as a result of his transfer from Colombo to Ja-ela, his monthly Petrol requirement was not increased despite several letters written by the applicant to the Director/General Manager (P7 to P10).

There is no evidence to show that the transfer of the Applicant to Harrisons Chemicals (Pvt.) Limited was in the interest of the Respondent Company.

8(a) Is Harrisons Chemicals (Pvt) Ltd., a Company within the Maharaja Groups of Companies

Clause 5 of the Letter of Appointment 29.03.1993 issued to the applicant (A1) states as follows:-

“The employer reserves the right to transfer the employee from one department to another or from one company to another within the Maharaja Group of Companies”.

Mr. M. W. Gunatilaka, Director Personnel and Administration of Maharaja Organization giving evidence for the Respondent Company (The Employer) produced 3 documents marked R1, R2 and R3 (*i.e.* From 48) relating to the Maharaja Organization, Ltd., concluding his evidence in chief, Mr. Gunatilaka states that Harrison. Chemicals (Pvt.) Ltd., and Vintage Vehicles (Pvt.) Ltd., are companies within the Maharaja Group of Companies.

In the written submissions submitted to me by the learned counsel for the Applicant, my attention was drawn to the Judgment the Court of Appeal Application No. 1684/2003 filed by the applicant to quash the decision of the arbitrator Mr. Asoka Serasinghe.

At Page 9 of the said order of the Court of Appeal (R17) Justice, Saleen Marsoop J. (P/CA) states as follows :-

“The Petitioner has also produced a copy of the letter dated 05th March, 2002 (P5) sent to him by the 1st Respondent purported to transfer him to Harrisons Chemicals (Pvt.) Ltd., as Premises Manager with effect from 11th March, 2002, as well as a copy of the statement dated 31st March, 2003 (P9) filed by the 1st Respondent before the Arbitrator in both of which documents any express statement that Harrisons Chemicals (Pvt.) Ltd., is a member of the Maharaja Group of Companies is conspicuous by its absence”. I am under a duty to take judicial notice of this observation in making this award.

The Respondent should have marked more important documents to convince me that Harrisons Chemicals (Pvt.) Ltd., is a company within the Maharaja Group of Companies.

Having considered the evidence, oral and documentary filed in these proceedings as well as the written submissions filed by the parties, I hold the view that-

(I) the change of designated post of the applicant as premises Manager of Harrisons Chemicals (Pvt.) Limited in transferring him to the said Harrisons Chemicals (Pvt.)Ltd., is contrary to the conditions of his Letter of Appointment A1 and ;

(II) the company Harrisons Chemicals (Pvt) Ltd., to which the applicant was transferred as Manager – Premises is not a company within the Maharaja Group of Companies.

#### COMPENSATION

According to the Letter of Appointment the applicant has to retire at the age of 55 years, and he reaches his Date of Retirement on 12.09.2009. His Date of Transfer to Harrisons Chemicals (Pvt.) Ltd., is 11.03.2002. I therefore hold that he is entitled to claim remuneration or compensation for a period of 7 years and 6 months (*i.e.* from 11.03.2002 to 12.09.2009).

The applicant’s learned Counsel has tendered a clarification on the computation of compensation attached to his written submission dated 08.02.2006.

Based on this computation, I award compensation to the applicant as follows :-

Total Remuneration for 7.5

Years from 11.09.2009 to

12.09.2009

Rs. 10,282,180.00

Add. Employer’s contribution

to E.P.F. and E.T.F. at 15%

Rs. 1,345,481.00

Rs. 11,627,661.00

Less : amount received from

Harrisons Chemicals (Pvt.) Ltd

Rs. 1,706,775.00

Rs. 9,920,886.00

I am not allowing Rs. 600,000 mentioned as sundries as its computation is not shown.

I therefore order the Respondent Company, “The Maharaja Organization Limited to pay Rs. 9,920,886 to the applicant Mr. V. Sukumaran within two months of the publication of this award in the *Gazette of the Democratic Socialist Republic of Sri Lanka*.

I consider this award just and reasonable.

T. PIYASOMA,  
Arbitrator.

14th February, 2006.

04-383

My No. : CI/11/2006.

The matter in dispute between the aforesaid parties is -

## **THE INDUSTRIAL DISPUTES ACT, CHAPTER 131**

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between The Ceylon Mercantile Industrial and General Workers Union No. 03, 22nd Lane, Colombo 03 and Aitken Spence Printing (Pvt.) Ltd., No. 36, W. Cyril C. Perera Mawatha, Colombo 13 was referred by order dated 12.01.2001 made under Section 3 (1) D 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.

SEETHA I. EDIRISINGHE,  
Acting Commissioner-  
General of Labour.

Department of Labour,  
Colombo 05,

28th March, 2006.

Ref. No.: CI/11/ 2000.

### **In the Matter of an Industrial Dispute Between**

The Ceylon Mercantile Industrial  
and General Workers' Union  
No. 03, 22nd Lane,  
Colombo 03  
Case No.: A - 2835

And

Aitken Spence Printing (Pvt) Ltd.,  
No. 36, W. Cyril C. Perera Mawatha,  
Colombo 13.

### **THE AWARD**

The Honourable Minister of Labour by virtue of the powers vested in him by Section 3 (1) (d) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Act, Nos. 14 of 1957, 63 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes (Special Provisions) Act., No. 37 of 1968) appointed me to be the arbitrator by his order dated 12th January, 2001 and referred the aforesaid dispute to me for settlement by arbitration.

An Industrial dispute has arisen between the above mentioned parties and the matter in dispute is whether the termination of the services of workmen S. Rajasuriya, B. C. Bonifus, L. Jayansiri and N. Weeratunge by Aitken Spence Printing (Pvt.) Ltd., is justified and if not, to what relief the said workmen are entitled in terms of the Collective Agreement No. 43 of 1998 subsisting between the parties. At the outset of this inquiry, Mr. Bala Tampoe, the General Secretary of the Union with Mr. E. V. N. Cabraal appeared for the Union whilst Mr. Deepal Wijeyaratne, Attorney-at Law of the Employers Federation appeared for the Company. After a very lengthy inquiry Mr. Wijeyaratne closed the case for his Company leading in evidence R1 to R3 and Mr. Cabraal closed the case for the Union leading in evidence A1 to A34. Both parties have filed written submissions, those on behalf of the company were submitted on 26.06.2005 and those on behalf of the Union on 29.07.2005.

Oral evidence in this case commenced on 30.07.2001 and was concluded on 15.03.2005. The Respondent has taken up the position that the offending four workmen in the Printing Division of the Company have been found guilty of misconduct on 25th May, 2000 and having been found guilty at a domestic inquiry were dismissed from their services with effect from 26th May, 2000. The cause for these alleged misconducts appears to have originated on 25.05.2000 when the Cooking Light Catering Service, which was to supply meals to the workers from 15.05.2000, failed to supply meals to the 2<sup>nd</sup> shift workers working from 3.30 p.m. to 12.00 midnight on 25.05.2000. As the caterer had informed the management that he was not supplying the night meal that day, workmen Bonifus, Jayanasiri and Weeratunge have been asked to bring the food from outside as it was done earlier when there was no caterer and these workmen had refused to obey the Manager. On the same night workman Rajasuriya is said to have instigated the machine minders Perera, Silva and Jinarajadasa and Daniel not to work. It is the position of the employer that those acts of misconduct of the accused 4 workmen resulted in a stoppage of work by the affected workmen, disrupting the production on 25.05.2001 causing loss to the Company.

On a scrutiny of the evidence in this case, it is evident to me that the unrest in the Company on the night of 25.05.2000 arose due to the non availability of food for the workmen in the night shift and for those working overtime in the night. Evidence led in the case by both the company and the union shows that it had been the practice of the company from its



origin to engage the D class unskilled workers to purchase food for the workmen and this practice had been followed as a customary procedure up to 15.05.2000. However with the agitation of the workers against this procedure, the company had agreed, with the consent of the union, to obtain the services of the Cooking, Light, Catering Services to supply cooked meals to the workmen of the company at their own expense. Accordingly the procedure of employing D Class workmen of the company to purchase food for the workmen was to be withdrawn with the appointment of the Catering Services as stated in R11 and such an appointment has been made by the management as in R12 dated 12.05.2000 as such it is, my view that this practice ended by A12 read with A11 and when workmen Bonifus, Jayansiri, Weeratunga refused to go out and purchase food for the workmen on the night of 25.05.2000. The practice of employing D Grade workmen to buy the meals of other workmen had been withdrawn by the management and as such was not in force. There is a dearth of authority for the position that a servant has to obey the expressed orders of the master and even where it is not expressed, one of the implied duties of a servant is to obey the lawful and reasonable orders of the master. It must be said that the caterer has refused and failed to supply the meals that night as he found it not profitable to supply few meals and as such the company should have punished the caterer for going back on the agreement to supply food, without punishing the workers for refusing to carry out unreasonable orders of the master. As I hold that these orders of the master are unfair and unreasonable on the basis of A11 and A12, I hold that the workmen Bonifus, Jayansiri and Weeratunga are not guilty for having refused the management to go out and buy meals for the workmen on the night of 25.05.2000. Workman Bonifus has been further charged and found guilty at a domestic inquiry for having on 3rd March, 2000, argued with his Supervisor Avanti Wijesinghe in a rude manner, questioning and undermining his authority. The evidence reveal that the workman has questioned the Manager in a loud voice why he was not given overtime work whilst another was given, but there is no evidence of any offensive words that were used. It is also in evidence that this workman had a right to question the Manager and that he had done so in a loud voice as he had to be heard over the noise of the working machines. Under these circumstances I hold that there is insufficient evidence to prove the guilt of this workman and I hold that he is not guilty of this offence too.

Sugath Jayasuriya, Class A, offset machine minder has been charged together with the three D Grade non skilled workmen, Bonifus, Jayansiri and Weeratunga for acting in

collusion to disrupt production in the 2nd and 03rd shifts on 25.05.2000. He is further accused of forcing machine minder L. A. Perera, P. C. J. Silva, A. D. Jinarajadasa and H. N. Daniel to stop work in the 3<sup>rd</sup> shift on this date. As regard the charges that he acted in collusion with Bonifus, Jayansiri, Weeratunga on this date in refusing to buy the meals for the workmen, I have to say he is not guilty as I have already determined the other three workmen not guilty. As regard the charge that Rajasuriya prevented the machine minder of the 3rd shift from working the prosecution appears to dwell on the evidence the Quality Control Executive Chandana Senanayake who has stated in evidence that he saw Rajasuriya walking across to the machine where the machine minder Ananda was working in the 3rd shift and telling something. Further one Algama is said to have told him that Rajasuriya will not allow Ananda to work the 3rd shift. However it is not known what Rajasuriya told Ananda or what Algama meant by stating that Rajasuriya will not allow Ananda to work. Also, We have the evidence of Rajasuriya stating that he had told the workmen that the caterer has not brought food and as such it is left to them to work or go home. Under these circumstances, I hold that Rajasuriya cannot be found guilty of any of the offences.

I have considered the large volume of evidence led in this case and the written submission submitted. As in a civil case and on a balance of probabilities it is my considered view that the prosecuting company has not proved the guilt of these four workmen as regard the offences they are charged with. Therefore I hold the workmen not guilty of these offences and discharge the workmen B. C. Bonifus, L. Jayansiri, N. weeratunga and sugath Jayasuriya of the charges against them. It is on record that the final salary at time of dismissal of workman B. C. Bonifus was Rs. 6,328 that of L. Jayansiri was Rs. 6,754/-, that of N. Weeratunga was Rs. 6,874/- and that of Sugath Jayasuriya was Rs. 8,284 and that all these workmen were dismissed from their services on 26.05.2000.

I make order that the above four workmen have been wrongly dismissed from their services by the Respondent Company and as such they be reinstated in their relevant posts at Aitken Spence Printing (Pvt.) Ltd. with all back wages from their Date of Dismissal up to their date of Reinstatement and these workmen should be reinstated on or before 01st of April, 2006.

M. B. JAYASEKARA,  
Arbitrator.

10th March, 2006.

04-384

My No. : T23/CO/490/94.

### THE INDUSTRIAL DISPUTE ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. J. D. R. Jayakody, "Ranseela", Madampella, Katana of the one part and People's Bank Head Office, 12th Floor, Sir Chittampalam A. Gardiner Mawatha, Colombo 2 of the other part was referred by order dated 15.03.2002 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,  
Labour Secretariat,  
Colombo 05.  
10th February, 2006.

Ref.No. T23/CO/490/94.

#### In the matter of an Industrial Dispute

between

J. D. R. Jayakody,  
"Ranseela",  
Madampella,  
Katana

Case No:  
A-2914

and

People's Bank,  
Head Office,  
12th Floor,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo2.

#### The Award

THE Commissioner 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 Revision) as amended by Act, 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 15th March, 2002 and referred the aforesaid dispute to me for settlement by Arbitration.

2. The matter in dispute between the aforesaid parties is "Whether the refusal by the People's Bank to grant the promotion to Grade I claimed by J. D. R. Jayakody with effect from 29.05.1987 and as a result, the delay in the subsequent promotions were justified and if not to what relief he is entitled"

#### Appearances :

Mr. Suresh Chandra, Attorney-at-law appeared for People's Bank. He was assisted by Mr. Vipula Gunasekara, legal Officer of the Bank.

Mr. Aloy Rathnayake, President's Counsel with Mr. R. A. D. Kumarakwickrema, Attorney-at-Law appeared for J. D. R. Jayakody.

3. J. D. R. Jayakody commenced the case and gave evidence. He also led the evidence of Mr. Karunasena, Manager Human Resources Department and Ivon Hettiarachchi, Senior Manager Salaries and Pensions. He marked documents A1 to A13. No evidence was led on behalf of the bank but documents R1 to R3 were marked.

#### 4. Preliminary legal Objection

The Bank has in its two statements under Regulation 21(1) and 21(2) of the Industrial disputes Regulations 1958 as amended has raised a preliminary legal objection stating that the matter referred for arbitration is not a LIVE DISPUTE as the workman is seeking relief in relation to a matter that had occurred in 1987 and that he was not in service at the time reference was made by the Hon. Minister. The workman has pointed out in his statement under Regulation 21(2) of the Industrial Dispute Regulations 1958 as amended that there has been a live dispute as evident from X4 and X5 annexed to his first statement. X4 is an appeal dated 26 July, 1993 addressed by him to Chairman of the Bank setting out the dispute in detail and praying for relief. This appeal is at pages 15, 16 and 17 of the Case Record. X5 is a letter dated 04.10.94 addressed to Deputy Commissioner of Labour Industrial Relations setting out in detail the dispute and seeking assistance. This letter is available at pages 19 and 20.

As the Bank has not pursued the preliminary issue at the initial stages, the inquiry was conducted and no ruling was given. However, the bank has raised the same objection in its

written submissions tendered by it after the case was concluded. I am therefore compelled to address my mind to this preliminary legal issue. The workman's complaint is that he was due promotion to Grade I to 29th May 1987 but it was given only on 15th June 1989. He retired on 01.07.1998 page 81 of the Record. The dispute was referred for arbitration on 15th March, 2002. Before he retired on 01.07.1998, he had sent an appeal to Chairman of Bank on 26.07.1993 asking for relief. This is marked as A6. He has received an acknowledgement from Bank on 03.08.1993. This is marked as A7. He has sent three reminders to Bank on 03.11.1993 - A8, 21.01.1994 - A9, 09.06.94, A10. There has been no response from the Bank. He has sent a letter to Deputy Commissioner of Labour on 04.10.94 - A11. He has taken action from time to time regarding his dispute long before he retired from Service and the Bank has been conspicuously silent in relation to his appeal and reminders. The contention of the Bank in these circumstances that this is not a LIVE dispute cannot be accepted.

I consider it appropriate to cite the Judgment of Supreme Court in S. B. Perera Vs. Standard Chartered Bank and others (1995) 1 Sri LR 73 - 95. This is a case where Perera who is credited with 32 years of service in the Bank applied for premature retirement with pension rights. On this being refused, he resigned. The Minister of Labour stating that an industrial dispute existed referred the matter to arbitration. The Arbitrator made order holding inter alia, that although Perera had ceased to be an employee of the Bank, there was a "live dispute to be settled", there was an industrial dispute within the meaning of the Act insofar as it was raised when the employee was in the service of the Bank and it remained unresolved at the time he ceased to be in the employ of the Bank and therefore continued to be an industrial dispute even after he ceased to be in service so long as he pressed his case thereafter which he has done by his appeal to the Minister of Labour. The objection of the Bank on grounds of jurisdiction was over-ruled by the Arbitrator. The Court of Appeal gave Judgment issuing writs of certiorari quashing the order of the Arbitrator and the order of reference for settlement by arbitration made by the Minister of Labour.

The Supreme Court set aside the judgment of the Court of Appeal citing the judgment of Lord Goddard in R Vs. National Arbitration Tribunal Exparte Horcho Crowther and Co. Ltd., (1947) 2 All Er 693. Lord Goddard made it very clear that a dispute that had arisen while the contract of employment existed could be referred for settlement even though the contract had later been terminated and whether such termination had been initiated or brought about by the employer or by the workman himself.

In view of the above Supreme Court judgment, I hold that there is a live dispute which could be referred for arbitration. The objection of the bank is therefore over ruled by me.

5. Now that I have held that there is a live dispute, I wish to address my mind to the matters in dispute contained in the statement of the Commissioner of Labour. On a plain reading of the reference, I find two important limbs which are as follows :—

- (i) The alleged refusal of the Bank to grant the promotion to Grade I claimed by J. D. R. Jayakody with effect from 29.05.1987.
- (ii) The delay in subsequent promotions as a result of not granting promotion to Grade I effective from 29.05.1987.

I wish to deal with limb No. (1) in the first instance. What emerges from the evidence led before me is precisely given below—

J. D. R. Jayakody commenced employment in the Bank as a Clerk in the year 1962 and retired on 01.07.1998 as an Asst. General Manager. He is credited with 36 years service in the Bank. He was mobilized from time to time whilst in the service of the Bank for Service in the volunteer services of Sri Lanka Army commencing from 29.10.1985. He applied for promotion to Grade I in the year 1987 but he was not promoted. According to him, his juniors were promoted. He said in evidence that Wijesekara who was junior to him was promoted to Grade I in the year 1987. His evidence that Wijesekara was junior to him was confirmed by Karunasena his witness from the Bank. Karunasena's evidence in page 04 of the proceedings of 28.01.2005 is given below : page 145.

**Q:** On 29.03.1987 when both Wijesekara and the applicant Jayakody appeared for Grade I Interview who was senior ?

**A :** Jayakody was Senior.

Karunasena admitted in evidence that Wijesekara who was junior to Jayakody was promoted to Grade I in the year 1987. Jayakody has stated in evidence that he did not protest but he applied for promotion to Grade I in the year 1989 and he was promoted to Grade I. He claims that refusal of the Bank to grant him promotion to Grade I in 1987 was unjustified. In support of his claim he has marked as A2 Cabinet decision of 22.03.1972 which clearly spells out that members of the volunteer services should not be penalized in any way directly or indirectly by juniors being promoted or being given other advantages for them during the period while a volunteer is away on service. He also marked as A3 a Report containing

the observations by the Asst. General Manager staff, to the Chairman, Board of Directors through the DGM (A & HR) and General Manager on 31.08.1972 in relation to the request made by security personnel attached to volunteer forces regarding promotions effected in March 1988. He has identified 3.3 of this Report which relates to him and marked it as A3 (a) which reads as follows :

“J. D. R. Jayakody present Personnel Manager who is also a volunteer officer applied for promotion to Grade I effected in 1987. He was in active service at that time. At this interview, a junior officer was promoted over Mr. Jayakody to Grade I, Since Jayakody is also covered by the Cabinet Decision, the Bank will have to rectify the position of Jaykody too.” He has marked as A5 the Internal letter dated 15.01.1993 signed by the General Manager of the Bank containing the decisions made by the Board of Directors taking into consideration the recommendations made by the subcommittee on the request of Security Personnel attached to volunteer Service regarding promotions effected in 1988. According to the decisions contained in A5, four Security Inspectors have been promoted as Asst. Security Superintendents back-dating their appointments to 1988 and placing them on a point in the salary scale. According to A6 on 26.07.1993, he has appeal to Chairman of the Bank and asked for promotions to-

- (i) Grade I from 29.05.1987
- (ii) A G M from 27.07.1989
- (iii) D G M from 23.05.1993
- (iv) Addl. G M from 23.02.1996.

His appeal has been acknowledged - A7. He has sent three reminders A8, A9 and A10 but the Bank has not taken any action. He has sent an appeal to Commissioner of Labour on 04.10.1994 A11. Addl. Commissioner General had a discussion with the bank and Jayakody and recommended back dating the promotions as requested by Jayakody. The Bank has not take any action even on the recommendation of the Addl. Commissioner General. Thereafter the dispute was referred to arbitration.

It will be seen from the foregoing that the Bank was wrong in refusing promotion to Jayakody. I therefore hold that the refusal or promotion to Grade I by the Bank to J. D. R. Jayakody is unjustified.

The next limb is in relation to the delay in subsequent promotions as a result of not granting the promotion to Grade 1 effective from 29.05.1987 but granting it later on 27.07.1989. It is quite clear that the delay in granting the

promotion to Grade 1 would have resulted in delay in subsequent promotions and financial loss to Jayakody. He was promoted to the post of Asst. General Manager effective from 28.12.1997. He is claiming promotion as Asst. General Manager from 27.07.1989. He has admitted under cross examination that he applied for promotion to the post of Asst. General Manager. As a result of the delay in promoting to the post of Asst. General Manager he would have suffered financial loss.

The next post is Deputy General Manager. he has admitted that he did not apply for the post of Deputy General Manager. Page 86 of the Record. He is claiming the position as Deputy General Manager from 23.05.1993. Under cross-examination to the following question posed to him.

*Q:* Could you say as to how many Deputy General Managers were there in 1993 ?

His answer was “I cannot definitely say”. To another question posed to him, he had said that he cannot say how many persons were there in the post to Additional General Manager in February 1996. Under cross-examination he has stated as follows: pages 88 and 89.

*Q:* To fill up a certain post by promoting an officer in the Bank there should be a vacant position. Is that correct ?

*A:* That is the normal procedure.

*Q:* Even if a person is eligible, if there are no vacancies for that particular post, that Promotions will not be effective.

*A:* Unless a vacancy is created.

To the question posed by me-

*Q:* Are promotions automatic? his answer was “If the Cabinet decision is applied I have a chance of getting. His witness from Bank has stated that he was not qualified to apply for the post of D.G.M. Page 124.

As he has not applied for the posts of Deputy General Manager and Additional General Manager which are senior positions for which he is required to apply, he will not qualify for any relief. He has not helped himself and hence I cannot help him. Even God too helps only those who help themselves.

### Relief

On an overall assessment of the evidence, my findings are that-



(i) Not granting of promotion to J. R. D. Jayakody to Grade I effective from 29.05.1987 is unjustified. 29.05.1987 to 27.07.1989 delay in promotion Grade I - 37,500.00

(ii) As a result of delay in granting promotion to Grade I his promotion to the post of Asst. General Manager which he should have got on 27.07.1989 was delayed and given on 28.12.1997. This delay in promotion to the post of Asst. General Manager is unjustified. 27.07.1989 to 28.12.1997 delay in promotion to Asst. General Manager - 287,850.00  
325,350.00

(iii) J. R. D. Jayakody is not entitled to any relief in respect of his claim for promotion to the posts of Deputy General Manager and Additional General Manager as he had not applied for the posts.

(ii) The Bank which has all data regarding salary and other information takes actions to quantify the monies due on commuted pension and pension from 29.05.1987 up to 31.01.2006.

(iii) The Bank takes action to adjust the point of salary at which pension be paid as at 31.01.2006 and pays pension to him at the appropriate point of scale from February 2006 onwards together with arrears from 29.05.1987 to 31.01.2006.

I now switch on to the computation of relief in respect of (i) and (ii) above.

In relation to (i) ie. financial loss from 29.05.1987 to 27.07.1989 according to evidence of Karunasena of the Bank is Rs. 37,500 Page 109. In relation to the financial loss as a result of delay in promotion to Asst. General Manager. ie. 27.07.1989 to 28.12.1997 the financial loss is Rs. 287,850.

Jayakody has claimed consequential financial loss as a result of delay in promotions in relation to commuted pension, pension, E.P.F. In regard to the financial loss to total shortfall suffered by Jaykody there is difference between the figures given by the two Bank Officers - Karunasena and Hetiarachchie. As I have decided not to grant relief in respect of granting promotions to Deputy General Manager and Addl. General Manager, I am not in a position to compute the financial loss on Commuted Pension and Pension as the data available to me covers the positions of Deputy General Manager and Addl. General Manager too.

I make Order that the People's Bank Colombo deposits the monies due in respect of (i), (ii) and (iii) above with the Asst. Commissioner of Labour, Colombo South, Labour Secretariat, 6th Floor, Colombo 05 within thirty days from the date of publication of this award in the Gazette of the Democratic Socialist Republic of Sri Lanka.

The question of EPF being a payment due in law which is enforceable by the commissioner of Labour.

I have no jurisdiction to go in to it. I therefore, make no Award in this regard and direct Jayakody to pursue action with the Commissioner of Labour.

I declare that this Award is just and equitable.

I make Award as follows:-

V. VIMALARAJAH,  
Arbitrator.

(i) J. D. R. Jayakody is entitled to a sum of Rs. 325,350.00 (Rupees Three Hundred and Twenty five Thousand Three Hundred and Fifty only) made up as follows:

31st January, 2006.  
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