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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1485/11 – 2007 පෙබරවාරි 20 වැනි අඟහරුවාදා – 2007.02.20

No. 1485/11 – TUESDAY, FEBRUARY 20, 2007

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/P/96/2005.

Case No. 3152

Order

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

The award transmitted to me by the Arbitrator to whom the Industrial Disputer which has arisen between Mr. L. M. W. B. Kolugala, No. 193/11, “Asiri”, Attidiya, Dehiwala and Airport and Aviation Service (Sri Lanka) Limited, Bandaranayaka International Airport Colombo, Katunayaka was referred by order dated 19th January, 2006 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.

D. S. EDIRISINGHA,
Commissioner General of Labour.

Department of Labour,
Colombo 05,
19th January, 2007.

Mr. L. M. W. B. Kolugala, No. 193/11,
“Asiri”, Attidiya, Dehiwala

and

Airport and Aviation Service (Sri Lanka)
Limited, Bandaranayaka International
Airport, Colombo, Katunayake.

The question for determination is whether the arbitrator has jurisdiction to hear and decide the matters in dispute in the reference.

After the parties submitted their statements and counter statements, the inquiry commenced on 24.06.2006 when the senior counsel for the Respondent Company raised a Preliminary Objection that the arbitrator has no jurisdiction to go into the matter in dispute.

The parties were given time to render written submission, which was tendered in due course.

When the Airport Authority was established under the Airport Authority Act, No. 46 of 1979, the Director of Civil Aviation gave notice to the employees of the then Department of Civil Aviation requiring them to make applications to consider offering employment in the newly established Airport Authority.

The employees of the said Department were given the option to retire if they so desired.

“The Director of Civil Aviation had not offered the workman, L. M. W. B. Kolugala, as he was serving the Department as a probationer at that time. His employment was terminated by the Director of Civil Aviation, and the letter of termination dated 27.02.1980 (X5) *inter alia* states as follows :

“පනතේ 32 (4) වගන්තිය යටතේ 1980.02.28 දින සිට ක්‍රියාත්මක වන පරිදි ඔබ රජයේ සේවයෙන් විශ්‍රාම ගැන්විය යුතුව ඇතත්, ඔබ තවමත් පරිවාස සේවයේ පසුවන බැවින් 1980.02.28 වැනි දින සිට ඔබගේ සේවය අවසන් කර ඇති බව මෙයින් දන්වමි”

The employee in his complaint made to the Commissioner of Labour dated 16th November, 2003 had admitted in paragraph 5 that his services were terminated by the **Director of Civil Aviation**, and not by the Aircraft and Aviation Services (Sri Lanka) Limited. It would therefore appear that the workman has no cause of action against the Airport and Aviation (Sri Lanka) Limited, as he was not an employee of the said company.

According to section 48 of the Industrial Dispute Act “Industrial Dispute means any dispute or difference between the employer and workman”.

I am therefore inclined to accept the position taken up by the Respondent Company that the reference No. 1 in the reference is bad in law and the arbitrator has no power or jurisdiction to hear and determine the purported dispute, in terms of Section 48 of the Industrial Dispute Act.

When the employment of the workman was terminated in February 1980 by the Director of Civil Aviation, he had not appealed against the said termination to any authority, at that time. However he had appealed to the committee appointed to provide redress to persons who were victimised after the 1977 General Election, but got no relief, but on an appeal to the Minister of Tourism and Civil Aviation, he was reinstated with effect from 15.10.1999 by the Airport and Aviation Services (Sri Lanka) Ltd., on a Cabinet decision with all increments **but without back-wages**. (Vide X3)

The Cabinet of Ministers having taken everything into consideration had decided not to pay back-wages to the workman. Therefore I am of the view that Respondent Company cannot make a decision to pay back-wages to the workman without doing violence to the Cabinet decision referred to above.

On my direction, a copy of the submission dated 14.09.2006 tendered to me on behalf of the Respondent Company was sent to the workman by the Registrar of the Industrial Court with his letter dated 09.10.2006.

The submission of the workman tendered through Mrs. Buddini Wicramasinghe, Attorney-at-Law has not touched on some vital points raised by the Respondent.

Emphasising that the arbitrator appointed by the Honourable Minister under Section 4 (1) of the Industrial Disputes Act, the learned counsel states as follows :

“The arbitrator is a creature of the reference and that the arbitrators’ appointment is by way of reference and if the reference is not valid then there is no arbitrator, and if there is no arbitrator, there is no one to decide the validity of the reference”. However, the learned counsel for the workman has failed to quote any decided case or authority to substantiate this point.

I am of the view that arbitrators may make mistakes or make wrong decisions which can be corrected way of a writ to Appeal or the Supreme Court.

In view of the above reasons, I hold that the two matters in the reference are bad in law and that as arbitrator I have no jurisdiction to hear and decide them and I dismiss the reference pro-forma.

T. PIYASOMA,
Arbitrator.

10th January, 2007.

03-259

My No. : T23/Co/146/2001.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. Wettasinghe, legal wife of Wettasinghe Jayasena (deceased) who was an Employee of Paddy Marketing Board No. 387, Aguruwathota Road, Wewalla, Horana of the one part and Paddy Marketing Board, Head Office 3A, Vihara Lane, Meethotamulla, Wellampitiya of the other part was referred by order dated 12.08.2004 made under Section 4(1) of the Industrial Disputes Act, Chapter 131, (As amended) and published in the *Gazette* Extraordinary No. 1354/07- 17.08.2004 the for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

D. S. EDIRISINGHE,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
24th January 2007.

Ref. No. T 23/Co/146/2001.

In the matter of Industrial Dispute between -

Mrs. W. K. Wettasinghe,
Legal wife of Wettasinghe Jayasena
(deceased)
who was an employee of Paddy Marketing
Board
No. 387, Aguruwathota Road,
Wewalla,
Horana.

of the one part and

Paddy Marketing Board
Head Office,
3A, Vihara Lane,
Meethotamulla,
Wellampitiya.

of the other part.

Case No. 3056

Award

1. The Honourable Minister of Labour Relations and Foreign Employment 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, No. 14 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968) has appointed me as the Arbitrator by his order dated 12th August 2004 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

2. The matter in dispute between the aforesaid parties is-

“Whether Mrs. W. K. Wettasinghe, the legal wife of Mr. Wettasinghe Jayasena (deceased) who was in the service of the Paddy Marketing Board from 20.05.1972 to 15.09.1999 is entitled to receive payment of compensation on behalf of her husband in terms of the Cabinet decision dated 08.09.1999 issued in respect of the employees of the said Board, and, if so, to what quantum of compensation she is entitled.”

3. Mr. W. P. Weerasinghe, Attorney-at-Law initially appeared for the applicant Mrs. W. K. Wettasinghe and was substituted by Mr. Dayantha Hewawitharana, Attorney-at-Law-Respondent, Paddy Marketing Board (PMB) was represented by Mr. Chandimal Mendis, Attorney-at-Law.

4. Applicant, Mrs. Wettasinghe gave evidence, while no witnesses were presented on behalf of the Respondent. Documents marked A1 to A16 were tendered by the applicant. Documents marked R1 to R2 were tendered by the respondent, but were not annexed when making the final written submissions.

5. Mrs. Wettasinghe, stated that her late husband joined the PMB on 9th May 1972 and completed 55 yrs. on 30th November 1997 but respondent failed to facilitate the retirement. He being a Store-Keeper was kept in employment, until PMB's Closure on 15th September 1999. However, respondent paid Salaries continuously and even paid contributions towards Employees Trust Fund and Employees Provident Fund. Amongst other things, she tendered several documents sent by the Respondent Board, to her late husband during latter period concerning official matters.

She also submitted that on 30th November, 1999 her husband passed away. With the closure of PMB, Cabinet had decided to pay compensation on account of loss of career. Although her late husband worked until its closure, compensation was denied. Even dues given as Security deposit, etc. remained unpaid. There were no witnesses for the respondent.

6. My observations and findings are as follows:

- (a) Paddy Marketing Board was a Public Corporation created by a special statute, providing its constitution, powers and functions. The constituent statute establishes the governing Board, which is responsible for the administration of statutory body. There was no statutory stipulation on the age of retirement of its employees.
- (b) The letter of appointment is silent as to the age of retirement.
- (c) Employee W. Jayasena, continued to serve the respondent, P.M.B. even after reaching 55 years, of age although PMB decided to retire him on reaching 55 years the decision was not implemented as a successor was not posted or no stock taking or verification conducted so that the employee could hand over stocks in hand.
- (d) Until P. M. B's closure, W. Jayasena worked in the capacity of a Storekeeper and had drawn salaries monthly (vide productions marked A9a, A9b and A9c). Respondent had duly deposited Provident Fund contributions and Trust Fund contributions under the same membership number, which is indicative of unbroken employment contract. Employees Provident Fund benefits and Employees Trust Fund benefits were refunded to Jayasena on 12th December 1999 and 14 December 1999 respectively.
- (e) Besides, in terms of Section 5 (1) of the payment of Gratuity Act, an employer is required to pay gratuity within 30 days of termination. An employer who fails or defrauds payment is liable to pay a surcharge in addition, to such workman in terms of Section 5 (4), dependent upon the period of delay ranging

from 10 per centum to 30 per centum. In this instance, gratuity in a sum of Rs. 91,440 and a further sum of Rs. 7,290 had been paid on 30th August, 1999 and 10th May, 2000 respectively.

- (f) The claim of compensation is based on the compensation package approved by the Cabinet in respect of staff of the PMB. A photo copy of the said Cabinet Memo along with the decision was annexed to the 01st Statement of the applicant filed in terms of Reg. 22 (1). Respondent in their replication filed in terms of Reg. 22 (2) confirms the existence of a Cabinet Decision. However, the dates differ. The substance of the issue is that the Cabinet has decided to pay compensation on the following basis :

- (i) Executive Grades - Rs. 450,000
(ii) Non-Executive Grades - Rs. 350,000

W. Jayasena, belonged to the non-executive grade. Besides, the Cabinet Memorandum of the Hon. Minister of Agriculture and Lands speaks of employees in the range of over 55 years up to 60 years. Therefore, it is evident that provision has been made in the compensation package to accommodate those employees over 55 years as well.

- (g) Mrs. W. K. Wettasinghe failed to establish that she is the legal heir of late Mr. W. Jayasena, Documents such as Marriage Certificate, Death Certificate, etc. need to be tendered to establish legalized matrimony.

07. Award :

In analysis of evidence presented to arbitration proceeding or dispute, and assuming that respondent lacked an iota of evidence to disprove, I am convinced that, Wettasinghe Jayasena, continuously worked at the PMB until its closure and as such the compensation payable to Non-Executive grades, being Rs. 350,000 (Rupees Three Hundred and Fifty Thousand only) shall be payable to the legal heirs of the deceased.

The amounts shall be deposited with the Assistant Commissioner of Labour, Colombo Central District Labour Office, Narahenpita, Colombo 05 within 45 days of publication of this Award in the Government *Gazette*. The Assistant Commissioner of Labour is required to determine the legal heirs and pay such person/s suitably.

This is a just and an equitable Award.

P. NAVARATNE,
Arbitrator.

18th December, 2006.

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