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The Gazette of the Democratic Socialist Republic of Sri Lanka  
EXTRAORDINARY

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No. 1542/26 - THURSDAY, MARCH 27, 2008

(Published by Authority)

**PART I : SECTION (I) — GENERAL**  
**Government Notifications**

My No. : T23/Co/196/2003.

AND

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131**

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. S. P. Serasinghe, No. 17, Kirula Road, Colombo 05 and State Mortgage and Investment Bank, No. 269, Galle Road, Colombo 03, was referred by Order dated 31.08.2005 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 *Extraordinary* No. 1409/23 - 09.09.2005, 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.  
13th March, 2008.

Ref. No. T23/CO/196/2003.

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

Mrs. S. P. Serasinghe,  
No. 17, Kirula Road,  
Colombo 05.

State Mortgage and Investment Bank,  
No. 269, Galle Road,  
Colombo 03.

Case No.: A 3126

**AWARD**

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 Industrial Disputes (Special Provisions) Act, 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 31.08.2005 and referred the dispute between the aforesaid parties for settlement by arbitration.

The matter in dispute between the aforesaid parties is :-

“Whether it is justified to treat Mrs. S. P. Serasinghe who was in the service of the State Mortgage and Investment Bank as having vacated her employment in the Bank with effect from 01.09.2003 and if not justified to what relief she is entitled.”

**2. Appearances :**

Mr. Dananjaya, Jayakody, Attorney-at-Law, Employer's Federation of Ceylon appeared for the Bank.

Mr. S. Thalayasingham, Attorney-at-Law, appeared for Mrs. S. P. Serasinghe.

3. Efforts made to settle the case had been of no avail. The case was therefore taken for inquiry.

Mrs. Serasinghe gave evidence and marked documents A1 to A25 but she has tendered to the Registrar Industrial Court documents A1 to A18 along with the Written Submissions.

The Bank led the evidence of Mr. L. G. Samarawickrema, Asst. General Manager Personnel and Administration and Mr. S. S. Satharasinghe Manager Personnel Administration and marked documents R1 to R48. Some of the documents were marked along with the affidavit-Evidence-in-chief of Mr. Samarawickrama. Mrs. Serasinghe and Mr. Samarawickrema gave their Evidence-in-chief by way of an Affidavit. Mr. Samarawickrema commenced employment in the Bank on 01.12.1999 as Personnel Manager (Adm.) and he was promoted on 07.03.2003 as Asst. General Manager Personnel (Adm.) Mrs. Serasinghe was re-employed by the Bank on 01.06.1979. Mr. Satharasinghe commenced employment in August - 2006 - three years after the vacation of post notice was issued to Mrs. Serasinghe. He had commenced employment at the Bank after his 55th Birthday. His evidence was in relation to documents in his custody.

#### 4. Background Facts

Mrs. Serasinghe commenced employment on 01.07.1970 with Agricultural and Industrial Credit Corporation. She got married in October 1974 and her husband was in Sri Lanka Foreign Service. She left her employment and accompanied her husband in January 1975 when he was posted to India. She was re-employed by the Respondent Bank on 01.06.1979 according to a Cabinet decision dated 23 December 1975 R18 No. 530/75. It is common ground that Mrs. Serasinghe was granted no pay leave from time to time to accompany her husband in Foreign Missions. By letter dated 01.01.2003 marked as R30 she was informed that her request for no pay leave was rejected and if she did not report for work on or before 31.01.2003 she would be treated as having vacated her employment. By letter dated 06.02.2003, R35 A 12 (b) she was informed that as she had not reported for duty on 31.01.2003 her name was removed from the roll of employees. By letter dated 12.05.2003, she was granted no pay leave up to 31.08.2003 and asked to report for work on 01.09.2003 R5(a) she sent a letter on 14.08.2003 R 37 asking for an extension of no pay leave for ANOTHER TWO MONTHS from 31.08.2003 as her husband was still working in Egypt. Extension of no

pay leave by two months was refused and she was treated as having vacated her employment with effect from 01.09.2003 by letter dated 17.09.2003 R 43.

#### 5. Concept of Vacation of Post - What is means ?

Oxford English Dictionary meaning of the word “vacate” is - to give up an office or position - to leave or withdraw from or to “quit such office”.

The concept of vacation of post comprises two elements - Mental and physical elements.

Mental element is the intention to desert or abandon employment.

Physical element is intentionally keeping away from work. In other words conducting in such a way that the employee does not want to return to work.

The concept of vacation of post is explained in the following judgment of the Superior Courts.

Nelson de Silva Vs. Sri Lanka State Engineering Corporation (1996) 2 SLR 342.

Held that the concept of vacation of post comprises the two elements (i) the mental element - the intention to desert post or abandon employment and (ii) the physical element - failure to report for work.

The judgment of the Supreme Court in Wijenayake Vs. Air Lanka Ltd., (1990) ISLR 293 also deals with the principle of mental and physical elements in relation to vacation of post.

In Sri Lanka Ports Authority Vs. Jayaratnam C.A. No. 103/87

Held. There must be clear and cogent evidence deducible from the conduct of the employee that he has abandoned employment.

In Building Materials Corporation Vs. Jathika Sewaka Sangamaya

(1993) 2 SLR 316 at 322

Perera J said —

“Where an employee endeavours to keep away from work or refuses or fails to report for work or duty without an acceptable excuse for a reasonably long period of time such conduct would necessarily be a ground which justifies the employer to consider the employee as having vacated service”.

6. *Has Mrs. Serasinghe vacated her employment from 01.09.2003 ?*

This case in its entirety revolves round the answer to this question. She has been right along applying for no pay leave and extensions of no pay leave. R24 Board paper for decision by Board of Directors sets out the many and varied occasions she had been granted no pay leave from 08.04.1981 to 14.11.2002. Total period of no pay to No. 2002 according to R24 is 15 years and 09 months. Although the Board decided not to grant extension of 06 months asked for by her, she was later granted the no pay leave up to 31.08.2003. Admittedly her no pay leave from the year 1981 onward had been continuous and uninterrupted although it was sometimes initially refused. The mere fact that she has been regularly and consistently asking for no pay leave demonstrates her intention to remain in employment. In her evidence, she has said that he was interested in her employment and that she did not have any intention to leave her employment. By letter dated 14.08.2003 A 13(a) R37 she had asked only two months leave from 31.08.2003. This letter was according to evidence received by Bank on 28.08.2003 but she was not sent a reply. The Bank was leading evidence in circless to say that R37 was replied to. The evidence on this score would appear to be not satisfactory. Her husband was due to retire on 17.10.2003 on reaching the age of 60. Extension of service to her was recommended by the Director Overseas Administration by letter dated 11.09.2003 R40 up to October 2003 as her husband Ambassador was expected to continue his services in Cairo until 31.10.2003. The Bank has refused the extension by letter dated 17.09.2003 without giving reasons and treated her as having vacated employment R43. This letter R43 does not make any reference to her letter of 14.08.2003 R37 for extension by two months. The Bank which has granted all extensions was wrong in not replying R37 - her letter of 14.08.2003 for two months extension. The period of extension asked for being too short, the Bank could have given the extension as it had done in the past for long periods of extension in accordance with the Cabinet decision. The laconic letter of 17.09.2003 R43 from the Bank does not specify any reasons and it is a blunt one. The reason for granting her long periods of no pay leave on several occasions based on Cabinet decision was that her husband was employed in Foreign Mission. She has stated in her letter of 14.08.2003 for extension of two months no pay leave that her husband is still employed in Egypt. It is not understood as to why her extension by two months was refused.

Viewed in the light of the above judgments on the concept of vacation of post and the untiring efforts made by her right

along to remain in employment, the decision made by the Bank to refuse her request for two months no pay leave and also to treat her as having vacated post is unfair and unreasonable. For the reasons stated above I hold that she has not vacated her employment from 01.09.2003.

7. *Relief*

I now switch on to the question of relief. She had reached the optional age of retirement - 55 years on 24.01.2004. she has stated in her letter of 18.10.2003 - A17 that she wanted extension of no pay leave only up to her optional age of retirement which falls on 24.01.2004 as her husband is unlikely to return on transfer before the date. She was treated as having vacated post on 01.09.2003. Her monthly salary according to A21 was Rs. 16,954.94 in November 1999. Under cross-examination she has said "I was hoping to work until 60" page 135 of the Brief page 01 of the proceedings of 12.07.2006. According to R15 (A24) letter of appointment, retirement is compulsory at 60 but between the ages of 55 and 60 option may be exercised by either party. Extension according to R19 (A24) is discretionary. She has not applied for extension.

Taking into consideration, the totality of the circumstances surrounding this case, I make award that Rs. 508,648/20 (Rupees Five Hundred and Eight Thousand and Six Hundred and Forty Eight and Cents Twenty only) be paid as compensation in lieu of re-instatement to Mrs. Serasinghe calculated at the rate of Rs. 16,954.94 for thirty months (16,954/94 x 30 months).

She is free to pursue statutory dues including gratuity with the Asst. Commissioner of Labour East, Labour Secretariat, Colombo 05. I make order that the sum of Rs. 508,648.20 is deposited with the Assit. Commissioner of Labour, Colombo East Labour Secretariat, 5th Floor, Colombo 05 within (30) thirty days from the date of publication of this award in the *Government Gazette* of the Democratic Socialist Republic of Sri Lanka. Mrs. Serasinghe is free to withdraw the monies once the deposit is made.

I declare that this Award is just and equitable.

V. Vimalarajah,  
Arbitrator.

25th February, 2008.

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