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# The Gazette of the Democratic Socialist Republic of Sri Lanka

## EXTRAORDINARY

අංක 1,574/4 - 2008 නොවැම්බර් 04 වැනි අඟහරුවාදා - 2008.11.04

No. 1,574/4 - TUESDAY, NOVEMBER 04, 2008

(Published by Authority)

## PART I : SECTION (I) — GENERAL

### Government Notifications

My No. : T23/CO/248/2000.

Ref. No. : T23/CO/248/2000.

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. C. S. B. Arambepola, No. 15/10 K Manchester Grove, *off* Obawatte Road, Madiwela, Pita Kotte and C.P.C. (Lanka) Limited, 17, R. A. de Mel Mawatha, Colombo 04, was referred by Order dated 15.11.2001 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. 1,215/09 dated 20.12.2001, for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

Mr. C. S. B. Arambepola,  
15/10/K, Manchester Grove,  
*Off* Obawatte Road,  
Madiwela,  
Pita Kotte.

Case No. : A 2897.

Vs.

C. P. C. (Lanka) Limited,  
17, R. A. de Mel Mawatha,  
Colombo 04.

#### The Award

D. S. EDIRISINGHE,  
Commissioner General of Labour.

Department of Labour,  
Labour Secretariat,  
Colombo 05,  
23rd October, 2008.

Minister of Labour do 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, 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 15.11.2001 and referred the aforesaid dispute to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties is :

My No. : T23/CO/57/2003.

“Whether the demotion of Mr. C. S. B. Arambepola from the Post of Product Group Manager of which was offered to him as per the letter of appointment by CPC (Lanka) Ltd. is justified and if not, to which relief he is entitled.”

This matter was taken up for inquiry on 14.06.2002, Mr. Janaprieth Fernando, Attorney-at-Law appeared for the applicant, Mr. Harshana Perera, Attorney-at-Law appeared for the respondent.

The parties stated that the dispute is before the Termination Unit in the Labour Department and the inquiry is still pending and moved that this matter be laid by.

I laid by this case until the case before the Termination Unit is concluded.

Both parties agreed to move that this matter be fixed for inquiry, after the Termination Unit inquiry is concluded.

As the parties have not informed the position regarding this matter, I decided to call this case on 20.06.2008.

Parties were noticed to appear in Court on 20.06.2008 by registered post. They failed to appear in Court on 20.06.2008.

This matter was further re-fixed for 12.09.2008. Parties were informed by registered post to appear in Court on 12.09.2008. Parties failed to appear in Court on 12.09.2008. The notice sent to the respondent was returned undelivered. The notice to the applicant was not returned undelivered. I presume the notice was served on the applicant.

I have taken into consideration the fact that the applicant was absent on 20.06.2008 and 12.09.2008 without valid reasons.

Taking into consideration the facts and circumstances in this case, I hold that the applicant is no more interested in pursuing this case.

As such, I make Award dismissing the application of the applicant.

Arbitrator.

13th October, 2008.

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## THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. G. D. Abayaratne, No. 130, Sri Devananda Road, Piliyandala and Mr. H. D. Thilakaratne, “Praba”, Koshenawatta, Madulawa Road, Watareka, Meegoda of one Part and Ceylon Electricity Board, No. 50, Sir Chithampalam A. Gardiner Mawatha, P.O. Box 540, Colombo 02, of the other Part was referred by Order dated 12.07.2004 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. 1,349/21 dated 16.07.2004, 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,  
23rd October, 2008.

Ref. No. : T23/CO/57/2003.

## In the Matter of an Industrial Dispute

Between

Mr. G. D. Abayaratne,  
No. 130, Sri Devananda Road,  
Piliyandala.

And

Mr. H. D. Thilakaratne,  
“Prabha”, Koshenawatta,  
Madulawa Road, Watareka,  
Meegoda.

Of One Part

And

Ceylon Electricity Board,  
No. 50, Sir Chithampalam A.  
Gardiner Mawatha,  
P.O. Box 540,  
Colombo 02.

Of Other Part

Case No. : A/3043

## THE 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 3 of the Legislative Enactments of Ceylon (1956 Revised Edition) 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 the Arbitrator by his Order dated 12th of July, 2004 and referred the following disputes to me for settlement by arbitration.

The matters in dispute between the aforesaid parties are :

Whether the non granting of pension rights by the Ceylon Electricity Board of the following two employees who were in the services of the said Ceylon Electricity Board on the grounds that they had not completed uninterrupted period of 240 months service under the C.E.B. pension scheme is justified and if not to what relief each of them is entitled.

### Appearance :

Mr. Sanath Weerasinghe,  
Attorneys-at-Law for the Party of the First Part,

Mr. S. Egalahewa,  
Attorneys-at-Law for the Party of the Second Part.

Both parties have filed the statements under Regulations 21(1) and 21(2) of the Industrial Disputes Regulations of 1958 as amended.

On behalf of the Party of the First Part documents marked A1 to A34 during the proceeding.

On behalf of the Party of the Second Part documents marked V1 to V5 during the proceeding.

H. D. Thilakaratne No. 02 Applicant of the Party of the First Part in his evidence has stated as follows :

- (i) The witness stated that he joined the respondent Ceylon Electricity Board on 01.03.1985 as an Administrative Officer. He said when he joined the Respondent Board there was no other allowance paid in lieu of pension. He further said EPF, ETF and gratuity also was being paid.
- (ii) The witness further stated the Respondent Board started a Pension Fund as at 01.01.1994. He marked the Regulations of the said Pension Scheme as A2.

He further stated that it was decided in said 1995 said Pension Scheme to be effective on 01.11.1989 and also the pension should be payable from 01st January, 1994.

The witness stated according to Regulation pensionable age is 55 and compulsory retirement age would be 60.

According to Regulation 22(7), marked as A2A the witness stated if employed after sixty years such period wouldn't be counted for pension.

The witness further said he retired on 14.03.2004 after reaching age of 60.

According to the Regulation in order to qualify for pension an employee has to complete 240 months of uninterrupted service and also should have contributed to the provident fund at the time of retirement.

The witness said he realised that he couldn't be qualified for the pension scheme even if he completed full period of service.

Evidence dated 29.10.2004 :

ප්‍ර : මෙම විශ්‍රාම වැටුප් අරමුදල හඳුන්වා දෙන විට මෙම විශ්‍රාම වැටුප් අරමුදල යටතේ ඔබට ප්‍රතිලාභවලට සුදුසුකම් තිබෙනවාද කියා ඔබ කල්පනා කර බැලුවා ද ?

උ : ඔව්.

ප්‍ර : ඔබ කල්පනා කරන විට ඔබට පෙනී ගියේ මොකක් ද ?

උ : මගේ නියමිත සේවා කාලය සේවය කළත් මට මේ විශ්‍රාම වැටුපට සුදුසුකම් ලබා ගැනීමට නොහැකි බව පැහැදිලි වුනා.

The witness further said when he realised that he couldn't get qualify for the pension he discussed the matter with some members of the Pension Committee.

He said he was informed that they (members of the pension committee) couldn't consider all relevant matters as the Pension Scheme was passed just before dissolving the government which was in power at that time.

He further said in 1996 he made representation through Personnel and Administrative Officers Union to the committee set up to inquiry into pension irregularities.

The witness H. D. Thilakaratne further stated that he and 10 others wrote to the Deputy Chairman of the Respondent Board requesting them be considered as pension beneficiaries. The witness marked a copy of a letter dated 05.08.2002 as A3.

After his retirement witness has made a request to the Chairman of Ceylon Electricity Board for granting him pension benefit is marked as A4.

He was informed by the Chairman of the Respondent Board that since he has not completed 240 days of service he is not entitled to pension (A5).

The witness marked letter dated 21.03.2004 sent to the Chairman of the Respondent Board highlighting irregularities occurred in granting pension benefits as A6.

In that letter witness highlighted the instances where pension benefits were granted to following employees who have not completed 240 months of service at the time of retirement.

<i>Names</i>	<i>Position held at the retirement</i>	<i>Duration of Service at the time of retirement</i>
1. C. N. D. Perera	Director/Deputy Chairman	19 years 9 months 12 days
2. P. Weerasingham	Administrative and Personnel Officer	19 years 7 months 12 days
3. J. Jesudasan	Clerk	19 years 10 months 30 days
4. T. V. Parameshwaram	Electrical Engineer	19 years 04 days
5. C. J. Hapugoda	Deputy General Manager	19 years 3 months 12 days
6. N. J. L. Fernando	Confidential Secretary	19 years 11 months 25 days

The witness further said that C. J. Hapugoda was paid his pension benefits after recommendation made by the Ombudsman (A7).

A. Kugamoorthy (18 years 10 months and 13 days of service) was paid his pension benefits after adding up a period of one year, 1 month and 16 days to his service for which he didn't have contributed to the Provident Fund.

He further marked document A9 a copy of the Arbitration Award A 2777 dated 28.12.2000 granting relief to Y. Darmasena who had not completed 240 months of service at the time of his retirement.

The witness said according to Regulation 3.1 of the Pension Fund all employees have to contribute 7% of their salary to the pension fund as at 01.01.1994.

Evidence dated 21.12.2004 page 8 :

ප්‍ර : 3 : 1 වගන්තිය අනුව කියවෙන්නේ කුමක් ද ?

උ : 1994.01.01 දින සිට ලංකා විදුලි බල මණ්ඩලයේ මාසික වැටුප් තුළින් 7% සමාන ප්‍රමාණයක් විදුලි බල මණ්ඩලය විසින් මාස්පතා විශ්‍රාම වැටුප් අරමුදලට බැරකිරීම.

ප්‍ර : 3:1 වගන්තිය අනුව තමා වෙනුවෙන් 3:1 වගන්තිය යටතේ අදාළ මුදල් විශ්‍රාම වැටුප් අරමුදල වෙත බැර කර තියෙනවා ?

උ : සියළුම සේවකයන් වෙනුවෙන් 7% බැර කරලා තියෙනවා. ඒ අනුව මාගේ වැටුපෙන් 7% සමාන මුදලක් මණ්ඩලය විසින් විශ්‍රාම වැටුප් අරමුදල වෙත බැර කර තියෙනවා.

The witness stated he himself has contributed to the pension fund as per Regulation 3:1.

The witness further said when Respondent Board granted pension benefits to Kugamoorthy the Board has not considered Regulation 22-1 of the pension fund.

Evidence dated 18.02.2005 page 12 and 13 :

The witness H. D. Thilakaratne when cross examined by Attorney-at-Law for the Respondent Board stated as follows :

The witness stated when he applied for the Respondent Board ; nothing was mentioned in the advertisement about Pension Fund.

The witness further stated that he complained to the Commissioner of Labour against the Respondent Board of one week delay of gratuity payment and obtained a surcharge for the delay.

The witness stated that it was against the Regulation granting pension benefits to C. N. D. Perera, G. Weerasingham, A. Jesudasan, T. V. Parameshwaram and N. J. L. Fernando on the basis that they have completed 240 months of service counting the period of their service after 60 years.

Evidence dated 24.06.2005 page 10 :

ප්‍ර : සී. එන්. ඩී. පෙරේරා, ජී. විරසිංහම්, ඒ. ජේසුදාසන්, ටී. ඩී. පරමේෂ්වරම් සහ එන්. ජේ. එල්. ප්‍රනාන්දු කියන සේවකයන්ට මණ්ඩලයේ අවුරුදු 60 ක් පසු කරන ලද සේවය ගණන් ගෙන මාස 240 සම්පූර්ණ වුවා සේ සලකා විශ්‍රාම වැටුප් ගෙවා තියෙනවා නේ ද ?

උ : ඔව්. ව්‍යවස්ථාවට පටහැනිව එසේ ගෙවා තියෙනවා.

It was suggested to the witness by the respondent that other than Mr. Hapugoda all others were allowed to work after 60 years due to their special aptitude and experience.

Evidence dated 24.06.2005 page 14 :

ප්‍ර : මේ හපුගොඩ මහතා හැර අනෙක් 5 දෙනෙම අවුරුදු 60 න් පසු සේවය කරන්න ඉඩ දුන්නේ මේක ද කියන්න තමා දන්නවා ද ?

ප්‍ර : මම තමාට යෝජනා කරනවා ඔවුන්ගේ විශේෂ නිපුණතා හා පළපුරුද්ද අනුව සේවා අවශ්‍යතාවය නිසා ඔවුන්ට සේවා දීර්ඝ කිරීම දුන් බව.

උ : මම එය ප්‍රතික්ෂේප කරනවා.

G. D. Abeyratne, applicant No. 2 of the party of the First Part in his evidence stated as follows:

The witness stated that basically his grievances are as of Thilakaratne's.

He said he joined the Respondent Board on 16.01.1984 and at his retirement he has completed a period of 15 years, 5 months and 7 days.

A. Rajakulendran, Finance Manager of the Respondent Board in his evidence has stated as follows :

He said in his evidence the Board has granted pension benefits through "Board Paper" initially to 6 persons and later to some others who has not completed 240 months of service at the time of their retirement.

He further said according to restructuring proposals (A 33) relevant period to qualify for pension was to be reduced from 240 months to 120 months.

The respondent did not call witnesses and marked documents V1 to V5.

The position taken by respondent is that there is no injustice done to the applicants and this is not a case where arbitral powers could be used.

On overall analysis of evidence before me I have come to the following conclusions :

- (i) According to Pension Fund Regulations which has come into the effect from 01st January, 1994, the Respondent Board has remitted 7% of the total of salaries of all the employees computed on the aggregate salary on which contributions are made to the Provident Fund.
- (ii) According to Rule 22.1 an employee to be eligible for pension he has to be complete as at the date of his retirement 240 months of service in the Ceylon Electricity Board. The full period of service has to be continuous and contributions should have made to the Provident Fund.
- (iii) The Respondent Board has granted pension benefits to (a) C. N. D. Perera, (b) P. Weerasinghem, (c) J. Jesudasan, (d) T. V. Parameshwaram, (e) C. J. Hapugoda and (f) A. Kugamoorthy who had not completed 240 months of service at the time of their retirement. According to evidence given by A. Rajakulendran, Finance Manager of the Respondent Board they were granted, pension benefits after presenting "Board Paper". It is clear that pension benefits were granted to them under special circumstances even though they have not completed mandatory 240 months of service at the time of their retirement.
- (iv) At the time of retirement the applicant H. D. Thilakaratne has completed 19 years and 13 days of service and the applicant G. D. Abeyratne has completed 15 years 4 months and 7 days of service, Whereas H. D. Thilakaratne is short of 12 months and G. D. Abeyratne is short of 45 months in order to complete mandatory 240 months of service required to qualify for pension scheme.
- (v) During their period of employment the Respondent Board has remitted to the pension fund out of their salaries as per (i) above.
- (vi) I do not see any fairness that the respondent has made adjustments to pension rules in order to grant retirement benefits only to selected few who has not qualified according to the said rules.
- (vii) I am in a view that it is not just and equitable to deprive pension benefits to employees who have worked many years merely because they are short of mandatory 240 months.

I am under the opinion that the applicants H. D. Thilakeratne and G. D. Abeyratne shall be granted pension benefits. Computation of pension has to be done on pro rata basis taking retirement benefit entitlement for 20 years service as the base.

In the circumstances, I wish to quote majority decision of the Supreme Court in State Bank of India Vs. Edirisinghe (1991) that the arbitrator has to make an award which is just and equitable, he is not tied down and fettered by the terms of the contract or employment. He can create new rights and introduce new obligations between the parties. The effect of the award is to introduce terms which become implied terms of the contract. It was pointed out that as industrial arbitrator creates a new contract for the future in contrast to a Judge who enforces rights and liabilities arising out an existing contract. An industrial arbitrator settles disputes by dictating new conditions of employment to come into force in the future when he cannot get the parties to agree to them in contrast to a Judge who determines the existing right and liabilities of the parties.

For the reasons aforesaid it is my finding that the depriving pension rights of the applicants by the respondent Electricity Board has caused an injustice to them.

In the circumstances taking into consideration the totality of evidence led before me I make award that the applicants G. D. Abeyratne and H. D. Thilakarantne.

- (i) Be granted pension rights.
- (ii) Computation of pension be done on pro rata basis taking pension benefits entitlement for 20 years service as the base.

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,  
Arbitrator.

02nd October, 2008.

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