



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය

අති විශේෂ

The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1576/2 - 2008 නොවැම්බර් 17 වැනි සඳුදා - 2008.11.17

No. 1576/2 - MONDAY, NOVEMBER 17, 2008

(Published by Authority)

## PART I : SECTION (I) — GENERAL

### Government Notifications

My No. : T23/CO/79/2004.

Ref. No. : T23/CO/79/2004.

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

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. M. F. M. Ikram, No. 285, Akbar Town, Wattala and 17, Sri Lanka Telecom Ltd., Lotus Road, Colombo 01 was referred by order dated 23.12.2005 under Section 4(1) of the Industrial Disputes Act, Chapter 131, as amended and published in the *Gazette* of Democratic Socialist Republic of Sri Lanka *Extraordinary* No. 1427/05 dated 10.01.2006, for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

Case No.:  
3149

Mr. M. F. M. Ikram,  
No. 285, Akbar Town,  
Wattala.

and

Sri Lanka Telecom Ltd.,  
Lotus Road,  
Colombo 01

#### THE AWARD

D. S. EDIRISINGHE,  
Commissioner General  
of Labour.

Department of Labour,  
Labour Secretariat,  
Colombo 05.

03rd November, 2008.

1A - G 010450— 445 (2008/11)

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 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 23rd December 2005 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

The matter in dispute between the aforesaid parties is :-

R 14 Details of payments to the workman from 1999 to 2004 which is not signed by anyone.

Whether Mr. M. F. M. Ikram who was in the service of Sri Lanka Telecom Limited is entitled to receive 2/3 of the salary of the post for which he attended duties in addition to the salary in his substantive post during the period from January 1999 to February 2003 in terms of the Rules and Regulations for Personnel Administration of the Company and if not, to what relief he is entitled.

R 15 A 5 minimum salary.

*Appearances* :- Mr. Murshid Maharoof, Attorneys-at-Law appeared for the workman Mr. M. F. M. Ikram.

Mr. Chandima Weerakody, Attorneys-at-Law appeared for Sri Lanka Telecom Limited, with Mr. Nandum Weerakody Attorney-at-Law assisted by Mr. K. N. Stembo, Attorney-at-Law legal officer of the Company.

### 1. Introduction

The case Record has been numbered from page (1) to page 229. The first statement of the Respondent Company and the copy of the Power of Attorney given to Mohamed Hisne Nazim by the workman have not been included in the case Record but kept separately. I have included them in the Case Record and numbered as follows:

- (i) The first statement of the Respondent Company as 12(a), 12(a)(1), 12(a)(2), 12(a)(3) and 12(a)(4).
- (ii) Power of Attorney as 28 (A) and 28(B)

2. The Respondent Company has marked the following documents subject to proof but action was not taken to prove them

- R 9 Circular No. 13/98 dated 02.04.1998 calling for views and suggestions for new Scheme of promotions.
- R 10 Circular No. 14/98 dated 27.01.1998 titled Delegation of Financial Authority.
- R 11 (a) & (b) Performance Evaluation form
- R 12 Circular No. 25/2000 dated 28.02.2000-Targets/objectives for Performance Evaluation 2000.

3. I find two documents have been marked as R 6. Circular No. 5/98 dated 13.02.1998 has been marked as R6. Circular No. 66/99 dated 01.10.1999 is also marked as R 6 Circular No. 66/99 dated 01.10.1999 is corrected to read as R8. In relation to A 16 the workman has submitted a note stating that the marked document A16 was given to the Respondent to get photocopies with other documents but he has not been returned A16. I find that A 16 is in the Record and also Mr. Stembo to whom A 16 was addressed by the workman has confirmed that he had received A16. Page 57 of the Case Record.

Negotiation for a settlement failed. The case was therefore taken up for inquiry. The workman commenced the case and gave evidence and marked documents A1 to A17. The Respondent Company led the evidence of Mrs. A. N. de Soysa Head of Section (Human Resources II) and marked documents R 1 to R 15. According to page 114 of the proceedings of 20.11.2007 the Respondent Company has marked as R 7 the scheme of Recruitment and promotion of non-executives grade followed by Sri Lanka Telecom Ltd., It has also marked as R7 and R7 (a) the Index. To the question under what items are Teleshop Managers the answer is - 70, 71, 72, 73 and 74. The document tendered to Court by the Respondent is a blank sheet marked as R7 and Index R 7a goes up to item No. 37. The index with items 70, 71, 72, 73 and 74 relating to Teleshop Managers has not been tendered to Court.

### 4. Facts in Brief

The position of the workman was that—

- (i) He was recruited as a Computer Programmer Class I — (B 2 grade) in 1993 by the Respondent.
- (ii) The Respondent advertised for vacancies in Teleshop on 13.02.1998 — this document was marked by him as A4.
- (iii) He applied for the post of Teleshop Manager and out of the 200 applicants (19) nineteen candidates were selected and he was one of them.
- (iv) He was issued a letter of appointment which he had marked as A5.
- (v) A5 grade was graded as Manager Category and it was an Executive position.

- (vi) He functioned as Manager Teleshop but he was not paid the salary according to the A5 grading and he was paid the salary according to his former grade B2 category.
- (vii) He wrote letters asking for payment of salary according to A5 category but he did not receive any response.
- (viii) He is claiming difference of arrears of salary and other payments between A5 category and B category or in the alternative payment according to Manual or Rules and regulations for Personnel Administration of Sri Lanka Telecom Ltd.

5. The position of the Respondent Company was *inter alia*, as follows :

- (i) The workman was recruited to the post of Programmer (Class I) from 19.07.1993.
- (ii) he was assigned to the post of Manager on trial basis with a letter of transfer dated 26.01.1999. This is not a proper letter of appointment to the post of Manager.
- (iii) He lacked necessary qualifications for the post of Manager. He was aware that he was only provided with an opportunity to excel at a position for which he lacked necessary qualifications purely on a trial basis.
- (iv) He being aware that he lacked necessary qualifications never request for an increase of salary or payment of difference of salary related to assigned post and the post of Programmer. He was well aware of such assignment and its consequences.
- (v) He served only in the post of Manager - Teleshop on trial basis with due consent.
- (vi) he is not entitled to receive the 2/3 of salary of the post for which he attended to duties during the period January 1999 to February 2003.

6. Issues to be determined —

- (i) Was the workman given an appointment as Teleshop Manager or was he given an assignment on trial basis ?
- (ii) Was the workman in Executive grade ?
- (iii) Was he entitled to receive 2/3 of the salary of the post for which he attended duties from January 1999 to February 2003 in terms of the Rules and Regulations for Administration of the Company ?

- (iv) In case he is not entitled to 2/3 of the salary as referred to in the proceeding clause, to what relief he was entitled.

7. Re. (1) — appointment as Teleshop Manager — the letter of appointment dated 26.01.1999 was marked as A5 by the workman. This letter has the title “Appointment for Teleshop”, it says further that he is transferred to Teleshop as MANAGER. On a mere reading of this letter it is evident that he has been given an appointment as Teleshop Manager. The following documents marked by the workman confirm that he was appointed as Teleshop Manager.

- (i) A 7 Visiting Card of the workman with his name and designation “Manager” issued by the Respondent Company.
- (ii) A 8 Identity Card issued by the Company with his photograph name designation “Manager” Employee No. and Sri Lanka National Identity Card No.
- (iii) A 9 Extract of Telephone Director 2000.  
A 9 (a) Teleshop World Trade Centre Manager M. F. M. Ikram, Tel, No. 346314/346319 .
- (iv) A 10 Company Newsletter called “Amathuma”  
A 10 (a) Last page Photograph of the workman. Below the photograph it is stated Teleshop Manager Mr. M. F. M. Ikram.  
A7 to A 10(a) are available in pages 45 and 46 of the Case Record.

The position of the company in paragraph (5) that this is not a proper letter of appointment and he was assigned to the post of Manager on trial basis and that he served in this post with due consent cannot be accepted as the company has not adduced any evidence in support of its position. The Company witness had admitted A7, A8, A9 and A10 under cross examination and also that in these documents nowhere it is stated that he was on temporary basis or trial basis. The company’s position was that he was employed as Teleshop Manager on trial and experimental basis. No evidence was led in support of this. It cannot be believed that he was on trial or experiment for (3) years. The company’s position that the workman being aware that he had lacked the necessary qualification never requested for an increase of salary or payment of difference of salary related to assigned post and the post of Programmer cannot be accepted in view of his letter of 21.12.2001 running to five pages marked as A 13 and the registered letter receipt is marked as A 13(a) he has in his letter dealt with the following sub-headings—

- (i) Deprivation of Promotional prospects
- (ii) Non-payment of salary in keeping with work performance and post held
- (iii) Discrimination. It is noted that there was no response to this letter of the workman from the Company.

The Company's witness had said in evidence under cross examination that she was in Chilaw as Regional Manager from 1995 and she came to Head Office in 2002. The case of this workman is confined to the period January 1999 to February 2003. Her evidence is only her comments on documents. She had marked but it would appear that she was neither the author of the documents nor she had any involvement in the preparation of the documents. On the basis of evidence, I hold that he was given an appointment as Teleshop Manager and he worked as Teleshop Manager from January 1999 to February 2003.

8. Re. ii - ie. Whether he was in Executive grade ?

The Circular No. 11/2001 marked as A6 by the workman gives the designations and salary groups. This Circular indicates category A 5 is "Manager". Circular No. 5/98 marked as A4 titled "Vacancies in teleshops" refers to vacancies of Manager Teleshop. The evidence of the workman was that he applied for the post of Teleshop Manager in response to the advertisement A4 and 19 were selected out of 200 candidates and he was one of them. This evidence is not contested. The Respondent marked R 7 to support its position that the workman was not in Executive grade. This document R 7 tendered to court by the Respondent is not helpful at all to make any determination. My comments in relation to R 7 in para 03 of this Award are self-explanatory. For the reasons stated above it is my finding that the workman was in Executive grade.

9. Issues III and IV regarding relief - are taken together as they are inter-connected. The workman has marked as A17 the entirety of the Manual of Rules and Regulations for Personnel Administration of Sri Lanka Telecom Ltd. The Respondent has marked as R13(a), R13(b) and R 13 (d) pages 1 and 2, page 9 and 10 and pages 55 and 56 of the Manual. However, it has marked in A17(a) paragraph 7 titled Actg. Appointments in executive positions as R13(b)(1) and Paragraph 7(b)(ii) as 13(b)(2). In terms of Clause (b)(ii) of the Rules marked as A17 and also as R 13(b)(1) and R 13(b)(2) a person overlooking and or working in a superior post such person is entitled to his salary plus 2/3 salary of the position that he is acting.

The Respondent Company has kept on saying that the workman lacked necessary qualifications for the post of Manager. On the basis of this position emphatically put by the Respondent it would not be wrong to conclude that the workman was appointed to act in a superior post. I have already held that the post of Teleshop Manager is an Executive Post. He is therefore entitled to receive two thirds of the salary to the post of Teleshop Manager.

10. I now switch on to the question of relief. According to page 26 of the proceedings the workman on being questioned by the Arbitrator as to what his total claim was, has given the answer — "It would work out to Rs. 850,000/-. According to the proceedings in page 28 the Learned Counsel for the Respondent has asked for the break down of the sum of Rs, 850,000/- together with basis of calculation giving reference to circulars and other documents. The workman has sent to Mr. Stembo, Legal officer with copy to Industrial Court the break down. This documents has been marked as A16. I have already stated in this Award that Mr. Stembo has confirmed that he had received it. According to A 16, the arrears of difference of salary would work out to a total of Rs. 481,255/-. He has added vehicle loan privileges and telephone privileges and made a total 650,000/-. In A 16, he had worked out the covering up allowances on the basis of 2/3 salary of the higher post and given a total of Rs. 850,000/-. The document A16 was not contested by the Respondent and no evidence was led by Respondent to state that the calculation is wrong. The Respondent has marked as R 14 a schedule titled "Details of Payments to Mr. M. F. M. Ikram from 1999 to 2004" which reveals payments of overtime and Teleshop incentive. This document is only a type-written sheet of paper which has not been signed by anyone. It was marked subject to proof and it remains not proved. This documents was not shown to the workman when he was giving evidence. The document R 15 titled A 5 minimum salary was marked subject to proof. This too was not shown to the workman when he was giving evidence. He has not signed these two documents R14 and R 15. I am therefore unable to accept these two documents and act on them. The workman has in his written submissions asked for Rs. 650,000/- which is the difference between A 5 salary and B 2 salary for the period January 1999 to February 2003 or Rs. 850,000/- which he would receive in terms of the Rules.

11. According to A 16, prepared by the workman, the difference in salary between A5 category and B2 category is Rs. 481,255/- but he made it to Rs. 650,000/- by

adding telephone and loan privileges. He has stated that he was willing to accept Rs. 500,000/- for settlement in full. When it was suggested by court that the case be settled in full for a sum of Rs. 350,000 he had said that he was willing to accept it as settlement in full. Taking into consideration the totality of the evidence and the circumstances surrounding this case, I consider it just and equitable to award a sum of Rs. 481,255/- (Rupees Four Hundred and Eighty One Thousand Two Hundred and Fifty Five only) being arrears of difference in salary between the post of Teleshop Manager A5 category and Computer Programmers B 2 category.

12. I make order that the sum of Rs. 481,255/- (Rupees Four Hundred and Eighty One Thousand Two Hundred and Fifty

Five only) is deposited by the Respondent Company with the Asst. Commissioner of Labour, Colombo South, 4th Floor, Labour Secretariat, Colombo 05 within (30) thirty days of the publication of this Award in the *Gazette* of the Democratic Socialist Republic of Sri Lanka.

13. I declare that this award is just and equitable.

V. Vimalarajah,  
Arbitrator.

15th October, 2008.

12-29