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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/P/249/96 (Sub).

THE INDUSTRIAL DISPUTE ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. D. Piyadasa, Alagala Road, Ginigathena of the one part and the Board of Governors, st. Thomas College, Mount Lavenia and HeadMaster, st. Thomas College, Guruthalawa of the other part was referred by order dated 24.02.2003 made 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. 1278/5—04.03.2003 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,
Colombo 05,
20th January, 2005.

Case No. : A/2976.

Mr. D. Piyadasa,
Alagala Road,
Ginigathena. of the one part .

AND

(1) The Board of Governors,
St. Thomas College,
Mt. Lavinia,

and

(2) Headmaster,
St. Thomas College,
Guruthalawa, of the other part.

AWARD

Minister of Emploment and Labour by virtue of the powers vested in him by Section 14 (1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts, Nos.: 14 of 1957, 62 of 1957 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No.: 37 of 1968 referred the aforesaid dispute to me for settlement by arbitration.

The matters in dispute between the aforesaid parties are :

Whether the non payment of salary on the Principal Grade III scale to Mr. D. Piyadasa, who was in the service of St. Thomas College, Guruthalawa from 05.02.1987 to 12.05.1990

is justified, and if not, what should be the salary payable to him for the said period ; and

2. Whether the non granting of an extension of service to Mr. D. Piyadasa upto 11.12.1992, on which date he reached the age of sixty years, by the management of St. Thomas' College, Gurutalawa is justified and if not to what relief he is entitled.

This mater was taken up for inquiry. Both parties were present. Mr. J. Maliyagoda appeared for the Applicant. Mr. S. Abeysinghe AAL. appeared for the Respondent.

I have examined the service, both oral and documentary and the written submissions of the parties.

The evidence of the applicant shows that he was appointed under the grade of a Grade 3 Principal in St. Thomas' College in February, 1987. He was a retired Teacher and his age was 54 years. He was paid a basic salary of Rs. 1,130/- plus Allowances. He should have got Rs. 1,270/- plus Allowances according to the Principals' Grade. Document A1 sent by the Education Office, Bandarawela to the Principal sets out the salary scale marked as A1a. According to the Public Administration Circular No. 387, the salary scale should be of a Grade 3 Principal. the said circular was marked as A2, dated 16.05.1988. His evidence shows that he made a request to the respondent to pay his salary is terms of the Circular and as there was no response he complained to the Labour Department. he produced document A3, which was accepted subject to proof. His evidence shows that he is entitled to arrears of salary in the sum of Rs. 52,657 at the time of his termination of service. In support of this he produced Document A4 and A4a. His letter of termination dated 10.04.1990 terminating his services on 12.05.1990 was marked A5. His letter of appointment effective from 5.2.1987 was marked as A6. his salary scale was in terms of Public Administration Circular No.: 327 Group 35.2.3 as set out in document A6 and A6a.

He marked is evidence document A7 dated 30.03.1990 received from the respondent relating to a complaint against him by the students of the school. He requested for an opportunity to examine the complaint by Document A8 but it was not given. No inquiry was held into the complaint. Thereafter his services were terminated by Document A5 dated 10.04.1990. He marked in evidence salary scale applicable to Grade 3 No.: 35.2.3 as A2, A2a, and A2b. His position in evidence is that he was entitled to work till 11.12.1992. His claim for relief is for his arrears of salary and compensation for the non granting of his extension of service.

It is the position in evidence of the, respondent that St. Thomas' College is a Private School managed by the Board of

Governers. There is a Principal in overall authority. There is a legible cadre of teachers, who are pensionable. Teachers, who have joined the college, after retirement are non-pensionable. Non-pensionable teachers are appointed on contract and they are on probation for one year. The contract is renewed on the recommendation of the Headmaster if their services are satisfactory. The evidence of the respondent shows that the Applicant has retired from Government Service and joined the Respondent College. The evidence of the Respondent shows that Government Circular regarding salaries and increments applied to the pensionable cadre. These circular do not apply to teachers taken on contract basis. Teachers on contract basis contribute to the EPF. and ETF. The evidence shows that the Applicant was appointed on probation after retirement from Government service.

The Applicant in cross-examination was shown his letter of Appointment A6. He admitted that A6 does not show that he will be made a permanent teacher. A6 shows that he was appointed on probation for one year.

On examination of Document A6, I am of the view that the applicant was appointed on probation for one year with effect from is date of Appointment, 05.02.1987. The applicant continued on extension of service till 12.05.1990. The evidence of the Applicant in cross examination shows that he made a further application for extension of Service in September 1989. By document R6, the Headmaster issued notice to the Staff to make application for extension before 11.08.1989. This notice was issued to staff members who are 55 years and above. The Applicant in cross examination admitted this. He was shown his Application for extension R7. he admitted that he made his Application one month after the specified date. Taking into consideration the evidence of the Applicant along with document R6 and R7, I am of the view that the Respondent was entitled to refuse the extension of service of the Applicant from 12.05.1990.

I have examined letter of Appointment of the Applicant, Document A6, A6a clearly shows that the salary scale of the Applicant is governed by Public Administration Circular No: 327 group 35.2.3. In Cross examination, the respondent witness Manamperi-Administrative Officer admitted that the salary scale applicable to the Applicant according to the letter of Appointment A6 and A6a is in terms of the Public Administration Circular no: 327 Group 35.2.3. He further agreed that the salary scale had been raised at various stages by the Salaries Commission. After 1987, there has been increase of salaries and review of salaries. Witness Manamperi further stated in evidence that the claim by the Applicant is Grade 3 Principals' scale which was not paid to him. Witness further admitted in evidence that in the letter of appointment A6, there is reference to Public Administration Circular No; 327.

The salary scale R/11/2 is applicable to all teachers presently based on salary group 35.2.3. in the Public Administration Circular No: 327. he further admitted in evidence that the old salary scale mentioned is Rs. 15,240/- and the new scale is Rs. 25,200/-.

Taking into consideration the admission of the witness Manamperi for the Respondent, as stated above, I hold that the Applicant is entitled to the new scale of salary Rs. 25,200/- determined for Grade 3 Principal in terms of the Public Administration Circular.

The Respondent took up the position that the application for Arbitration is belated. I reject this position for the reason that the dispute existed and the Minister of Labour is empowered to refer this dispute, which existed for settlement by Arbitration in terms of Section 14(1) of the Industrial Disputes Act.

Taking into consideration the evidence, in this case, I am of the view that the Applicant has not applied for extension of service in time in terms of the instructions of the respondent by R6. The Applicant has applied for his extension of service a month after the specified date 11.08.1989. by R7. Applicant in evidence in cross examination admitted this.

On the evidence as a whole, and on the balance of evidence and the preponderance of probabilities, and for the reasons set out by me in this Award, I hold that the Applicant is entitled to the payment of salary on the Principal Grade III scale for the

period 05.02.1987 to 12.05.1990 in terms of the Public Administration Circulars 327 and 387 (IV) in the sum of Rs. 34,927/- plus Rs. 3,120/- Cost of Living Allowance for the year 1988 totalling the sum of Rs. 38,047/=. Document A4 in evidence sets out this computation. Applicant is entitled to pursue EPF. and ETF. if any before the Labour department. I further hold that the Respondent was justified in not granting the Applicant an extension for service up to 11.12.1992, on which date, he reached the age of sixty years.

I make Award accordingly.

I further make Award that the Respondent shall deposit the sum of Rs. 38,047/- as determined in my Award with the Asst. Commissioner of Labour Kandy South on or before 30th April, 2005, after which, the Applicant will be entitled to withdraw this sum.

K. R. M. N. LAWRENTZ,
Arbitrator,
Attorney-at-Law,
Judge of the Industrial Court,
Commissioner of Oaths,
Kandy.

Kandy.
7th January, 2005.

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