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## The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1410/17 - 2005 සැප්තැම්බර් 14 වැනි බදාදා - 2005.09.14

No. 1410/17 - WEDNESDAY, SEPTEMBER 14, 2005

(Published by Authority)

### PART I : SECTION (I) — GENERAL

#### Government Notifications

My No. : T23/CO/318/2000.

AND

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between V. V. C. Kumarasinghe, No. 212, Aluthgama, Bogamuwa, Yakkala, of the one part and Housing Development finance Corporation Bank of Sri Lanka (formerly known as The Housing Development Finance Corporation) of the other part was referred by order dated 12.12.2004 made 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. 1372/22 - 24.12.2004 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,  
Labour Secretariat,  
Colombo 05.  
26th August, 2005.

Reference No.: T23/Co/318/2000.

In the matter of the Industrial Dispute between

Mrs. V. V. C. Kumarasinghe of  
No. 212, Aluthgama,  
Bogamuwa,  
Yakkala.

.....Petitioner.

Housing Development Finance Corporation  
Bank of Sri Lanka,  
(Formerly known as the Housing Development  
Finance Corporation),

.....Respondent.

CASE No : A 3083.

#### THE AWARD

The Hon. Minister of Labour 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, 63 of 1957, 4 of 1962 and 39 of 1968. (read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968) appointed me to be the Arbitrator and referred the aforesaid dispute to me for settlement by Arbitration.

The Petitioner in her Petition dated 17.01.2005 has sought the following reliefs :

- (a) That from the December 2000 up to the alleged termination of her services on 11.01.2001 she had lost Rs. 281,612 by way of a loss of service with the Respondent ;
- (b) That by the alleged termination of her services she had lost the opportunity of enjoying a reduced rate of interest on the housing loan she had obtained while in service and thereby was compelled to sell the house to pay the balance of the housing loan of Rs. 525,000 and thereby incur a loss ;

- (c) That due to the exparte decision of the Respondent to terminate her services, the Respondent has unreasonably appropriated to itself a sum of Rs. 5,00,000 by way of the interest payments on the housing loan paid by her ;
- (d) That due to the said exparte decision of the Respondent to terminate her services she had not only lost the opportunity to obtain a satisfactory service certificate and also the opportunity to obtain alternate employment ;
- (e) That due to the exparte decision of the Respondent aforesaid, the Petitioner has lost the opportunity of claiming seniority in her profession as an Attorney-at-Law ;
- (f) That by the Respondent preventing her from serving another institution during the past 8 years, that the Petitioner has incurred a financial loss of Rs. 2,700,000 ;
- (g) That by an award, the Respondent be ordered to restore her rights and financial losses.

The Petitioner states as follows:

1. That she was appointed on 14.01.1992 as Legal Officer on a contract basis by the Housing Development Finance Corporation (hereinafter referred to as the HDFC) and was confirmed in the appointment with effect from 14.03.1993 ;
2. That the HDFC by Act, No. 7 of 1997 was converted into a Statutory Corporation, and by *Gazette Extraordinary* No. 1141/19 of 20.07.2000 confirmed that the HDFC was converted to a Statutory Corporation and would henceforth be called the Housing Development Finance Corporation Bank of Sri Lanka (hereinafter referred to as the HDFCB ;
3. That though Section 42(1) of the No. 7 of 1997 had required the new Corporation to issue letters of appointment to all existing employees of the HDFC with effect from 01.07.2000, the Petitioner states that she was given the letter of appointment only on 21.09.2000.
4. That by Sections 42(2) and 42(3) of the said Act No. 7 1997, it was incumbent on the said HDFCB to arrive at an agreement with the employees in regard to the terms and conditions offered and where no employment is offered for the reasons that there has been no agreement as per Section 42(2), the said HDFCB should determine the payment of any retirement payments as well as payment of any compensation in consultation

with the Minister of Finance and the Minister in charge of the subject of the institution ;

5. That, though the Petitioner along with some other Officers and servants of the HDFCB has requested the management to inform them of the rules regulations and office orders referred to to in the said letters of appointment issued to them before they could accept the new letters of appointment, the management of the Bank had not done so, but had informed all employees that those employees who do not return the acceptance forms relating to the new appointment letters by 24.11.2000 would be deemed not to be interested in serving in the HDFCB and that the management would take appropriate action ;
6. That the Petitioner along with some other Officers and servants of the HDFCB had informed the Human Resources and Administration Divisional Head by their letter dated 21.11.2000 to sent details in respect of the following matters and that until these details are sent to them to kindly extent the date for the acceptance of the said letters of appointments :-
  - (a) What is the compensation plan the HDFCB proposes to give in respect of those who will not be absorbed into the service of the HDFCB ;
  - (b) What steps the HDFCB had taken to determine the compensation plan ;
  - (c) Who is responsible for not stating what these terms are in the management's letter dated 16.11.2000 ;
  - (d) What were the rules decided by the Board of Directors of the Corporation in terms of sections 27 of the said Act, No. 7 of 1997 and what rules have been made by the Minister in charge of the HDFCB in terms of section 38 of the said Act ;
  - (e) What are the rules, regulations and office orders mentioned in section 8 of the said letters of appointment ;
  - (f) That, as the new letters of appointment can be accepted only after a proper study of these facts, to kindly expedite your attention to the issue.
7. The Petitioner states that though the Additional Secretary to the Ministry had by his letter dated 22.06.2000 requested the Chairman, HDFCB to determine what the rules, regulations and officer orders would be that would be issued to the new employees and the compensation package envisaged to be issued to those who will not join the new HDFCB, so that these could be placed before the first meeting of the new Board of Directors of the HDFCB, the Chairman had ignored his request and merely extended the date

of handing over the letters of acceptance up to 01.12.2000.

8. The Petitioner states that since no satisfactory replies had been received for the aforesaid queries raised in respect of the letters of appointment and as the HDFCB was compelling her to sign the letter of appointment without receiving the required clarifications, she had brought this matter to the notice of the Commissioner of Labour (Industrial Relations) by her letter of 11.01.2000;
9. The Petitioner further states that the Chairman of the Corporation by his Memo dated 19.12.2000 had completely misinterpreted the sections 42(1), 42(2) and 42(3) of the said Act No. 7 of 1997, and had asked her to sign the acceptance of the letter of appointment by 10.11.2001, or in the alternative, the HDFCB would be compelled to treat her as a person who has voluntarily failed to accept the terms and conditions of the new appointment.
10. The Petitioner states that despite her several appeals to the Chairman and the management of the HDFCB, she did not receive any satisfactory response and finally, by their letter dated 11.01.2001, she was informed that she had vacated her post in the HDFCB ;
11. The Petitioner further states that though the Commissioner of Labour had ruled that in terms of the relevant sections 42(2) and 42(3) of the said Act No. 7 of 1997, that she should be paid suitable compensation, this was ignored by the Chairman and management of the HDFCB.
12. the Petitioner finally states that since she did not receive a satisfactory reply from the HDFCB to her queries, and since she had the burden of paying installments on the housing loan she had obtained from the Corporation, she was compelled to seek temporary employment in the Land Reform Commission from 15.01.2001.

The Respondent Bank -HDFCB - replying the Petition of the Petitioner, has traced the history of the conversion of the earlier body into that of a Statutory Corporation and the introduction of the provisions of the said Act No. 7 of 1997, has interpreted the relevant provisions in the following manner ;

- (a) The Respondent states that in terms of section 42(1) of the said Act, all employees who were officers and servants of the previous Sri Lanka Housing Development Finance Corporation were provided with employment under the new Corporation ;

- (b) That in terms of section 42(2) of the said Act, the terms and conditions given to all employees in their new letters of appointment were those agreed between the employer and the employees ;
- (c) That section 42(3) clarifies the method of computing compensation payable to those employees who did not accept employment under the new Corporation ;
- (d) The Respondent further states that at the time of the dissolution of the existing Housing Development Finance Corporation, all employees were provided with employment in terms of sections 42(1) and the 42(2) of the said Act ;
- (e) That in view of the HDFCB providing employment to all the employees, the question of deciding on the quantum of compensation for the employees did not arise.
- (f) The Respondent states that the dispute with the Petitioner arose in respect of clauses 8 and 10 of the new letters of appointment which the Petitioner had refused to accept despite lengthy discussion and correspondence, and consequently, the HDFCB decided that the non acceptance of the new letter of appointment by the Petitioner was tantamount to the Petitioner vacating her post and accordingly, the necessary steps were taken ;
- (g) The Respondent further states that at a meeting of the Board of Directors held on 06.07.2000, it was decided that where an employee does not voluntarily accept the new letter of appointment, the payment of compensation in terms of section 42(3) of the said Act will not apply, and that such persons could claim compensation under the normal laws of the country ;
- (h) The Respondent states further that the terms and conditions of employment embodied in the new letters of appointment were the same terms and conditions that had been embodied in their original letters of employment and that it was only the Petitioner who had refused to accept these terms and conditions which had been in the previous letter ;
- (i) The Respondent also states that there had been no break in the service of the employees, no change in their salaries and emoluments, the same EPF Nos. were continued under the HDFCB, and that there were no changes in the nature and responsibilities attached to the posts of the employees.

Written submissions were duly filed by both the Petitioner and the Respondent.

STATEMENT OF THE MATTER IN DISPUTE.

“Whether Mrs. V.V. C. Kumarasinghe who was employed by the Housing Development Finance Corporation of Sri Lanka is entitled to receive a compensation in terms of sub section 42(3) of the Housing Development Finance Corporation of Sri Lanka Act, No. 7 of 1997 on her being refused employment consequent to her disagreement with the conditions of employment in the new letter of appointment under sub section 42(2) of the Act issued by the Housing Development Finance Corporation of Sri Lanka which was instituted in terms of the previous Act, referred to above, and if so, what quantum of compensation she should be paid.”

In view of the above, it is my view that three questions arise for determination as follows ;

- (a) Whether the Petitioner is entitled to receive clarification on any or all of the terms and conditions of the new letter of appointment issued to her by the HDFCB ;
- (b) Whether there has been a correct interpretation of the relevant sections of the said Act, No. 7 of 1997 i.e. Sections 42(1), 42(2) and 42(3) by the Respondent HDFCB ;
- (c) Whether any injustice has occurred to the Petitioner by the acts of the Respondent HDFCB ;
- (d) And if so, is the Petitioner entitled to any compensation ?

*A. Whether the Petitioner is entitled to receive clarification on any or all of the terms and conditions on the new letter of appointment issued to her by the HDFCB.*

The Respondent Bank has argued that the terms and conditions embodied in the new letters of appointment issued to the employees did not constitute a change or deviation from the original terms and conditions to which all employees had subscribed in the first instance of their employment with the Housing Development Finance Corporation of Sri Lanka. While this arguments is tenable, it is a condition of natural justice that any employee who wants clarification of any conditions or terms of the new letter of appointment should be given such clarification. The protracted correspondence between the Petitioner and the Respondent show clearly that the Respondent has failed and neglected to give the Petitioner the clarification she had wanted. It appears from the correspondence that the management of the Corporation had,

without giving the necessary clarification, had ignored the Petitioner’s request deliberately and willfully. Therefore, it is clear that the Respondent had failed in its duty ;

*B. Whether there has been a correct interpretation of the relevant sections of the said Act i.e. Sections 42(1), 42(2) and 42(3).*

Sections 42(1) states that all employees who had been in the employment of the Corporation on the day prior to its dissolution should be awarded employment. The Respondent states that all the employees were accordingly given letters of appointment to the new HDFCB. In this case there does not appear to be any dispute.

Section 42(2) states that in carrying out the directive in Section 42(1), there should be agreement between the employee and the Respondent HDFCB on the terms and conditions of employment, and such employment must be awarded on such agreement arrived at between the Respondent and the employees. In my view, the correct interpretation of this section would be that the corporation must arrive at an agreement with the individual employees before the new letters of appointment are issued to them. From this view point therefore, I hold that the Petitioner was entitled to receive clarification on the Rules, Regulations and Staff Orders referred to in her letter of appointment, and the Respondent HDFCB had failed in this vital duty and thereby violated the condition laid down in Section 42(2) of the said Act.

Sections 42(3) states that where any employee of the Corporation is not employed by the HDFCB, then the HDFCB, in addition to whatever retirement benefits such employee is entitled to, should also pay suitable compensation based on the years of service of the employee and in concurrence with the Minister in Charge of the subject of Finance and that of the Minister in Charge of the Corporation. Here too though the Additional Secretary to the relevant Ministry had written to the Chairman requesting him to formulate a suitable scheme of compensation, the Chairman had failed and neglected to do so and has states that the Petitioner could only seek relief in respect of compensation under the normal laws of the country. It has to be understood that this is a requirement in terms of this section of the said Act No. 7 of 1997, and where the Corporation has failed to do so, it has failed in its duty by the employees.

*C. Whether any injustice has occurred to the Petitioner by the acts of the Respondent :*

The very fact that despite repeated requests of the Petitioner for clarification of the rules, conditions and staff orders embodied in the new letter of appointment, the failure

of the Respondent to give the necessary clarifications is clearly an injustice. In fact, the letter of termination dated 11.01.2001 issued to the Petitioner is a clear violation of the established law of the country. The said letter states that the Petitioner has **vacated her post** with the Corporation, which is unacceptable. It is established law that a vacation of post can occur only where two important elements co exist i.e. that there is a mental element of the intention to desert employment and the failure of the Petitioner to report to her workplace. - vide *Nelson de Silva Vs. Sri Lanka State Engineering Corporation - 1996 2 SLR 342*. In this case neither of the two elements existed, and in that case therefore, issuance of the letter of 11.01.2001 is a clear violation of the established law. In this case the HDFCB has not proved the existence of either of these elements, but merely gone on the basis that the petitioner had not accepted the new letter of appointment. The HDFCB has not taken into account that the management had refused and deliberately neglected to give the Petitioner the required clarification in terms of section 42(2) of the said Act. This section clearly states that there should be agreement between the workman and the employer before the workman accepts the new letter of appointment. *I hold that the Petitioner was denied the opportunity of arriving at an agreement with the Respondent and therefore the Respondent is to be faulted.*

C. And if so, is the Petitioner entitled to any compensation ?

From the circumstances of this case, it is clear that the Chairman and the Board of Directors of the Respondent Bank have failed in their responsibility to work out a proper compensation scheme for employees like the Petitioner and have it approved by the Minister of Finance and the Minister in charge of the subject of the HDFCB. In these circumstances the Petitioner cannot be faulted or held to be blamed since the Petitioner has repeatedly drawn the attention of the HDFCB to matters on which she wanted to arrive at an agreement with the HDFCB in relation to the continuation of work under the HDFCB.

It is noted that the HDFCB had ignored these requests and refused to give her a definite reply. In the absence of such a definite reply from the Respondent, one cannot conclude that the Petitioner has defaulted.

I do not believe that Sections 27 and 38 of the said Act No. 7 of 1997 contain matters relevant to this Petition.

It may be argued that the Petitioner had sought and obtained employment with the Land Reform Commission, but the Petitioner states that she was forced to take temporary employment with the Land Reform Commission to meet her urgent commitments such as the re-payment of the housing loan taken by her from the HDFCB. I agree with this argument of the Petitioner.

I agree that the Petitioner is entitled to be paid compensation in terms of Section 42(3) of the said Act No. 7 of 1997. I reject the contention of the Respondent that the Petitioner had vacated her post with the HDFCB for reasons given elsewhere, and I hold that the Respondent HDFCB has refused employment to the Petitioner consequent to her disagreement with the Respondent regarding the conditions of employment in violation of the terms of section 42(2) of the said Act No. 7 of 1997.

#### AWARD

Having considered the submissions tendered by both Parties and on a balance of probabilities I award the Petitioner as compensation a total of Six (06) months salary at the rate of her last drawn salary with the Respondent of Rs. 19,375= (vide the letter of appointment of 21.09.2000) totalling to Rs. 16,250 to be paid to her by the Respondent Housing Development Finance Corporation Bank.

Accordingly, I order that the said compensation of Rs. 116,250 be paid to the Petitioner by the Respondent within one calendar month of the publication of this award in the *Gazette* of the Democratic Socialist Republic of Sri Lanka. This amount should be deposited into the Colombo South Labour Office.

DR. V. IRWIN JAYASURIYA,  
Attorney-at-Law,  
Arbitrator.

29th July, 2005.

09-630