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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/47/(2000)(උප).

Case No. A 3196

Ref. No. : T23/P/47/2000(උප).

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

#### In the matter of an Industrial Dispute

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. T. Raveendran, No. 151/1, Collingwood Place, Colombo 06. of the one part and Sri Lankan Airlines Ltd. Administration and Training Building, Bandaranayake International Airport, Katunayake. of the other part was referred by order dated 09/11/2006 made under section 4(1) of the Industrial Disputed Act, Chapter 131, (as amended) for Settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

Between

T. Raveendran,  
No. 151/1, Colling Wood Place,  
Colombo 06.

And

Sri Lankan Air Lines Ltd.  
Administration and Training Building  
Bandaranayake International Airport  
Katunayake.

HERATH YAPA,  
Commissioner of Labour.

#### Award

Department of Labour,  
Labour Secretariat,  
Colombo 05,  
19th December, 2014.

1. This is a case where an award was made by me on 22.01.2007 reinstating the workman in employment by Sri Lankan Air Lines Ltd with effect from 26.03.2007 with four years back wages amounting to Rs. 1,287,600 (Rupees One



Million Two Hundred and Eighty Seven Thousand Six hundred only). Sri Lankan Air Lines Ltd filed a writ application in Court of Appeal (CA/273/2007 (writ) against my award. The court of Appeal on 28.03.2013 by way of a Writ of Certiorari quashed the award in relation to reinstatement of the workman and issued a writ of Mandamus in terms of prayer “e” to the original petition that compensation be computed in lieu of reinstatement with back wages. The workman thereafter made an application for special leave to the Supreme Court under Article 128(2) of the constitution - SC. SPL LA No. 121/2013. The Supreme Court has directed me to take expeditious steps to have the matter concluded in terms of the judgment of the court of appeal dated 28.03.2013 after conducting necessary inquiry at which both parties can be heard.

Accordingly both parties were noticed to be present. Efforts made by me to settle the disputed by conciliation had failed. Thereafter Inquiry commenced on 22.05.2014 and it was concluded on 10.10.2014. Thushari Perera Legal Affairs Manager of the respondent company gave evidence and marked documents R1, and R1 A, R1 B and R1 C. The workman gave evidence and marked documents X and X1. He has also annexed Supreme Court Judgment in Jayasuria Vs. Sri Lanka State Plantation Corporation marked as “Y”.

## 2. Appearances

Mr. A. M. Dharmapala Attorney-at-Law appeared for Mr. Raveendran who was also present. Mr. Kapila Dissanayake Attorney-at-Law from Employer’s Federation of Ceylon appeared for Sri Lankan Air Lines Ltd. Thushari Perera Legal Affairs Manager represented the company.

## 3. Evidence of the respondent

Mrs. Thushari Perera Legal Affairs Manager gave evidence and stated *inter alia* that –

- i. The total monthly salary of Mr. Raveendran in March 1999 when his services were terminated was Rs. 25 211 made up as follows –
  - a. Basic Salary Rs. 14, 486
  - b. Shift allowance Rs. 1000
  - c. Tool allowance Rs. 1500
  - d. Special premium Rs. 8000
  - e. Uniform allowance Rs. 225
- ii. The company’s financial position was very bad. In support of this she produced the Audited Annual Report for 2012/2013 prepared by Auditors Ernst and Young chartered Accountants 201, De Seram Place, Colombo - 10. This was marked as R1. Ten

year Review of the company was marked as R1A and R1B at pages 65 and 66. The loss for the year 2013 was Rs. 21, 749.75 Million. This was marked as R1 C - page 66. It was put to her that Mr. Raveendran has not contributed to the loss, her answer was “He was not in the company”. She stated further that the huge financial loss would be an important factor to be considered when awarding compensation.

## 4. Evidence of Mr. Raveendran

Raveendran’s evidence *inter alia* was that –

- i. His employment as Air craft Technician was terminated by letter dated 18.06.1999 effective from 26.03.1999.
- ii. He could not seek relief from Labour Tribunal as he was in remand prison for Nine months.
- iii. He was 38 years old at the time his services were terminated.
- iv. He tried for a job after his employment was terminated but he could not find a job for the following reasons –
  - a. There was a case pending against him.
  - b. He could not get a clearance certificate.
- v. He was not responsible for the financial loss of the company which occurred after his employment was terminated.
- vi. The losses suffered by him as a result of termination of employment by the company are –
  - a. He was not paid the salary revision done by the company. There has been salary revision three times and he did not know when and how much ?
  - b. He was unable to sit for the Engineering License Exam.
  - c. He received all increments of salary regularly (08 in all) and the last increment was Rs. 570 and increments varied from time to time. He cannot say what is next increment will be.
  - d. He could not have Air tickets and medical facilities.
- vii. He was praying for salary up to the age of 55 from 26.03.1999. He was 38 years old on 26.03.1999.
- viii. Under cross examination he admitted that his terminal salary on 26.03.1999 was Rs. 25211.

He produced as X1 the certified schedule furnished by the company in respect of salary increase from 1999 – when he was terminated, up to the year 2013.

#### 5. Determination of monthly salary for computation of compensation

Raveendran has admitted in his evidence that his monthly salary in March 1999 when his services were terminated was Rs. 25211. This is inclusive of fuel allowance special premium tool allowance etc. According to X1 furnished by the respondent in response to a motion filed by Raveendran, there had been fixed salary increase from 1999 to 2013. It is noted that there has been no salary increase in the year 2009 and in respect of year 2013 the salary increase has not been indicated but it has been stated – only a performance based increase. It is therefore not able to ascertain the increase for 2013. The increase if any for the year 2014 has also not been indicated by the company in X1. Be it as it may, I have prepared a schedule giving the total monthly salary with the salary increase and the total amount due for a year with salary increase from April 1999 to December 2013. The total amount Raveendran would have received if he had remained in employment for the period April 1999 to December 2013 according to my schedule is Rs. 78,77,137.76 (Rupees Seven million Eight Hundred and Seventy Seven Thousand One Hundred and Thirty Seven and cents Seventy Six only).

The schedule prepared by me is annexed hereto marked as “A”.

#### 6. Case Law in relation to computation of compensation

The Industrial Disputes Act, No. 43 of 1950 and its Amendments do not specify the quantum of compensation or method of computation of compensation. The Labour Tribunal is free to award what it considers just and equitable. The Arbitrator too is free to award what he considers just and equitable. The Superior Courts have not laid down any guide lines or recipe as to the quantum of compensation. There is no judicial unanimity in relation to computation of compensation. The decisions of Labour Tribunals and Superior Courts vary from case to case. Some of the judgments are cited below :

##### i. Cyril Anthony Vs. Ceylon Fisheries Corporation SC 57/85 SCM06.03.1986

In this case the Labour Tribunal dismissed the application after inquiry. The Court of Appeal set aside the order of the Labour Tribunal and held that the termination was not justified and awarded one year salary as compensation. In appeal the Supreme Court held that compensation awarded was “grossly inadequate” and ordered Seven Years salary as compensation.

##### ii. Parakrama Vs. Bank of Ceylon 1995 1 Sri LR 115.

In this case the applicant was a probationer. There were inquiries into alleged irregularities and his services were terminated. Even after the expiry of four years probationary period he remained a probationer. He had not passed the necessary Bankers examinations. He had been warned more than once. His replies to letters from the Bank were brusque if not rude and his letters were unhappily worded. There was no justification to confirm him. The Labour Tribunal reinstated him with Two and a half years back wages or in the alternative with three years salary as compensation. The Court of Appeal enhanced the compensation and awarded Seven years salary. The Supreme Court affirmed the decision of the Court of Appeal. This is a rare case of a probationer with four years service being awarded Seven years salary.

##### iii. Ceylon Transport Board Vs A H Wijayaratne 77 NLR 481.

Justice Vythiyalingam in his land mark judgment has stated as follows :

“The amount however should not mechanically be calculated on the basis of salary he would have earned till he reached the age of superannuation and should seldom if not never exceed a maximum of three years”.

He has in this judgment set out certain factors to be taken into consideration by a Tribunal in assessing compensation which are as follows :

- Employee's age
- Nature of his employment
- Opportunities of obtaining employment
- Efforts made by him to secure alternative employment to mitigate the financial loss incurred by him
- What he earned since his employment was terminated
- Employer's capacity to pay.

It is considered appropriate to point out that J. Vythiyalingam subsequently deviated from his ceiling of three years salary as compensation an awarded five years salary as compensation in the case of Henderson and Company Ltd Vs. Wijetunga – SC 33/73 minutes of 21.03.1975.

##### iv. In the case of Jayasuriya Vs. Sri Lanka State Plantations corporation (1995) 2 Sri LR page 379-416 - a land mark judgment by Dr. J Amarasinghe.

It is stated that the matters to be considered when assessing compensation are –

- a. Immediate loss ie loss of wages and benefits from the date of dismissal up to the date of final order or judgment.
  - b. Prospective loss.
  - c. Loss of retirement benefits.
- v. Silva Vs. Kuruppu SCM 182/99 14.10.1971 unreported - Samarawickrama J commented as follows –
- “The amount awarded by the president appears to me to be on the high side and I am unable to take the view that he has acted on wrong premises or that it is so excessive that interference by this court is called for. The assessment of compensation is eminently a matter within the province of President Labour Tribunal”.
- vi. In the case of Ladies College Vs. Pamuthevan Thurainayagam the Supreme Court endorsed the award of the Labour Tribunal of five years salary as compensation to a teacher. The Supreme Court commented as follows –
- “The quantum awarded by the Tribunal which amounts to five years salary does not shock the conscience of this court and we are unable to find any legal ground to reduce the compensation so ordered in the circumstances of this case SC/24/73/SCM06.03.1986.
- vii. In Hilman’s Case Justice Sharvananda in a land mark judgment awarded seven years salary having considered the judgment of justice Vythiyalingam in the case of Wijaratna Vs. Ceylon Transport Board where he had fixed a ceiling of three years salary.
- viii. In the case of Glaxo Allenburys (Ceylon Ltd) Vs. Fernando SC 250/71 decided on 01.12.1972 Rajaratnam J in rejecting the claim for compensation representing the workman’s loss of salary for the rest of his life span said as follows – “In our view the claim is fantastic. We find it difficult to hold that a just and equitable order can contain such a harsh order against an employer to pay the employee for the rest of his work span after he has forfeited the employer’s confidence”.

There are cases where compensation has been awarded even when termination of employment was held to be justified. Some of them are as follows –

- i. Saleem Vs. Hatton National Bank Ltd 1994 3 SLR 409
- ii. Brown and company Ltd. Vs. Ratnayake 1986 Bar Association Law Journal at 229.

## 7. Analysis of Evidence

Respondent’s position is that it has incurred a huge loss of Rs.21,749.75 million for the year 2012. This is supported by R1 C in the Audit Report R1. The report contains in pages 65 and 66 a Ten year review of the company’s profit and loss. There has been continuous loss from the year 2009 to 2013. Raveendran’s employment was terminated in March 1999. He cannot be held responsible for this financial loss. No evidence has been led as to the reasons for the financial loss. I find in the chairman’s over view for the year 2012/2013 it has been stated as follows :

- i. The year 2012/2013 is an year of growth in that there was 28.75 increase in revenue when compared to 2011/2012.
- ii. Net loss increased to Rs. 21,749.75 million in 2012/2013 compared to Rs. 19,774.23 million in the previous year for the reasons –
  - \* High fuel costs
  - \* Recession in Europe and competition from other Air Lines
  - \* Significant investments in acquiring additional capacity and enhancing of supporting services.

No evidence had been led in relation to any income earned by Raveendran after his employment was terminated.

In so far as Raveendran is concerned he has led any evidence in relation to the efforts made by him to secure employment after his services were terminated to mitigate the loss. To a question posed to him in evidence in chief on 15.09.2014 he has given answer “no”. The question put to him was - Can you produce any documentary proof to substantiate your claim that you made an attempt to find alternative employment ? He had given excuses for not taking action to secure alternate employment to mitigate the loss. He has stated that he was not given clearance certificate by the company. According to evidence he has not asked for clearance certificate. His evidence in relation to his failure to find alternative employment cannot be accepted. Raveendran in his evidence has asked for payment of salary revision, gratuity, back wages from March 1999 to date, annual increments and privileges such as free Air Tickets and free medical facilities. He has stated that he had received annual increments regularly and that he had received in all eight increments and the last increment was Rs. 570. He was unable to state what his next increment would be as it differs from time to time. In the absence of any evidence on this score I am unable to compute this. His claim for gratuity being a

payment due under the Payment of Gratuity Act, no. 12 of 1983 he is free to claim it from the company and thereafter pursue action with the Labour Department if it is not paid by the company. In relation to the claim for benefits like free Air Tickets and free medical facilities no evidence had been led as to the amount due in this regard. Hence the value of benefits cannot be computed. In this context it is relevant to quote from the judgment of J/Dr. Amarasinghe in Jayasuria Vs. State Plantations Corporation 1995 - 2 SLR 379 -

“The burden is on the employee to adduce sufficient evidence to enable the Tribunal to decide the loss.” He has also cited the observations made in Adda International Ltd Vs. Curio which reads as follows -

“The Tribunal must have something to bite and if an applicant produces nothing to bite on he will have only himself to blame if he gets no compensation”.

#### 8. Relief

Raveendran has gone on a long journey in litigation running to almost fifteen years (1999 to 2014). This is a unique case where compensation is computed after fifteen years from the date of termination of employment (26.03.1999). Taking into consideration the totality of the evidence and the circumstances surrounding this case with particular reference to -

- Failure on the part of the Raveendran to take action to secure employment to mitigate the loss suffered by him after his employment was terminated.
- The financial crisis of the company and the reasons for it as given in the Auditor's Report marked as R1.
- The lack of evidence in relation to the claims of increments, air tickets, medical facilities etc.
- Age of Raveendran (53 years now) and the lack of avenues of employment at this age in Air Lines where he has experience.
- The case laws given above in relation to computation of compensation ;

I have decided after careful thought to award compensation of 75% of the total amount due to him with the salary increases from March 1999 to 31.12.2013 as per schedule prepared by me and annexed hereto marked as “A” - ie Rs. 78,77,137.76 x 75/100=5907853.32 (Five million Nine Hundred and Seven Thousand Eight Hundred and Fifty Three cents Thirty Two).

It is ordered that the sum of Rs.5907853.32 (Rupees Five million Nine Hundred and Seven Thousand Eight Hundred and Fifty Three and cents Thirty Two) is deposited by Sri Lankan Air Lines Ltd, Administration and Training Building, Bandaranayake International Airport, Katunayake with the Assistant Commissioner of Labour, Labour Office, Negombo within 45 days (forty five) of the date of the publication of this award in the Government Gazette of Sri Lanka for payment to T. Raveendran.

T. Raveendran is free to withdraw the moneys once the deposit is made.

I declare that this Award is just and equitable.

V. VIMALARAJAH,  
Arbitrator.

12th November, 2014

“A”

#### Schedule with salary increase 1999 to 2013

Year	Fixed Increase	Total monthly Salary with Salary in Crease	Total Amount due for a year with Salary increase
1999	Rs.14,486.00+5175.00 +2547.00	22,208.00x09	199,872.00
2000	7% 1554.56	23,762.56X12	285,150.72
2001	7% 1663.37	25,425.93X12	305,111.16
2002	7% 1779.81	27,205.74X12	326,468.88
2003	10% 2720.57	29,926.31X12	359,115.72
2004	10% 2992.63	32,918.94X12	395,027.28
2005	10% 3291.89	36,210.83X12	434,529.96
2006	10% 3621.08	39,831.91X12	477,982.92
2007	10% 3983.19	43,815.10X12	525,781.20
2008	15% 6572.26	50,387.36X12	604,648.32
2009	No Salary Increase	50,387.36x12	604,648.32
2010	11,000/- to the basic salary	61,387.36x12	736,648.32
2011	6500/- to the basic salary	67,887.36x12	814,648.32
2012	6500/- to the basic salary	74,387.36x12	892,648.32
2013	A performance based increase	74,387.36x12	892,648.32
Total			78,77,137.76

(Rupees Seven million Eight Hundred and Seventy Seven Thousand One Hundred and Thirty Seven and Cents Seventy Six only)

It should be noted that there was no salary increase in 2009 and in respect of 2013 the salary increase has not been given and it has been stated that it was a performance based increase. The amount is not known.

Hence the Increase is not included in this Schedule.

My No. : IR/07/14/2012.

**Award**

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131**

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between The Ceylon Planter's Society, No. 40/1, Sri Dhammadara Mawatha, Ratmalana, (On behalf of Mr. Parakrama Weerasekara, Mr. P. A. Dissanayaka and Mr. Athula Karunathilake) of the one part and Chilaw Plantations Limited, "Kapruga Sevana", No. 165, Puttalam Road, Chilaw. of the other part was referred by order dated 20.06.2014 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. 1869/30 dated 02.07.2014 for Settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

HERATH YAPA,  
Commissioner of Labour,

Department of Labour,  
Labour Secretariat,  
Colombo 05,  
19th December, 2014.

Ref. No. : IR/07/14/2012.

**In the matter of an Industrial Dispute**

Between

The Ceylon Planter's Society,  
No. 40/1 Sri Dhammadara  
Mawatha, Ratmalana.

(On behalf of Mr. Parakrama  
Weerasekara,  
Mr. P. A. Dissanayaka and  
Mr. Athula Karunathilake)  
(Of the One Part)

Party of the First Part

Case No. A - 3565

And

Chilaw Plantations Limited,  
"Kapruga Sevana",  
No. 165, Puttalam Road,  
Chilaw.

(Of the Other Part)

Party of the Second Part

The Honourable Minister of Labour and Labour Relations Gamini Lokuge do 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 Acts, Nos. 14 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes - Special Provisions) Act, No. 37 of 1968 hereby appointed me on 20.06.2014 to be the Arbitrator and referred the above said dispute to me for settlement by Arbitration.

Statement of matter in dispute :

The matter in dispute between the aforesaid parties is :

"Whether Mr. Parakrama Weerasekara and Mr. P. A. Dissanayaka working as Estate Superintendents and Mr. Athula Karunathilake working as an Assistant Estate Superintendent at Chilaw Plantations Limited have been caused injustice by the discontinuation of the Cash Carrying Commission which was earlier enjoyed by them, and if so, to what reliefs they are entitled."

Appearances :

Party of the 1st Part :

Mr. Alan David - Attorney - at - Law, appears for the Ceylon Planter's Society and Mr. Anuruddha Dissanayake - Superintendent - (Bingiriya Area) and Mr. Gaardhi Mudiyanseelage Athula Karunathilake - Assistant Superintendent (Chilaw Area) are also present.

Party of the 2nd Part :

Mr. Tyronne Weerackody - Attorney-at-Law appears for Chilaw Plantations Limited and represented by Mr. S. K. D. Gunawardhene, Manager Administrations.

After, having duly filed of record the First and Second statements by both Parties, the Arbitrator urged both parties to explore a possibility of settlement on 15th October, 2014.

In response, both Parties have settled the matter in dispute between themselves on their own terms and conditions. I do not stand in their way.

And therefore, there is no dispute in existence now.

I make no award.

I consider this award as just and equitable in the circumstances.

T. Edmund Santharajan,  
Arbitrator.

At Colombo,  
Dated 28th November, 2014.

01 - 451