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PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/COM/04/2018/144.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award dated 04.07.2022 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Samastha Lanka Motor Sewaka Samithiya, (on behalf of Mr. T. A. Ayurudeen) No. 10/21A, Jayasundara Place, Elhena Road, Maharagama of the one part and Sri Lanka Transport Board, No. 200, Kirula Road, Colombo 05 of the other part was referred for settlement through arbitration by order dated 24.07.2019 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette Extraordinary* No. 2135/17 dated 05.08.2019 of the Democratic Socialist Republic of Sri Lanka, is hereby published in terms of Section 18(1) of the said Act.

B. K. PRABATH CHANDRAKEERTHI,
Commissioner General of Labour.

Department of Labour,
Colombo 05.
10th August, 2022.



In the matter of an Industrial Dispute

Between,

Samastha Lanka Motor Sevaka Samithiya,
(On behalf of Mr. T. A. Ayurudeen),
No. 10/21 A, Jayasundara Place,
Elhena Road,
Maharagama.

of the one Part

Case No. A/78/2019

And

Sri Lanka Transport Board,
No. 200,
Kirula Road,
Colombo 05

of the other Part

THE AWARD

The Honourable Minister of Labour and Trade Union Relations 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 appointed me as Arbitrator by his order dated 24th July 2019 and referred the following disputes to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties are:-

Whether the Mr. T. A. Ayurudeen working in the Central Office - Pettah of the Sri Lanka Transport Board has been caused injustice by the acting appointment given to him, not being confirmed and if so, to what relief he is entitled.

Appearance:

Mr. K. B. Prasad Fernando,
Representative appeared for the party of the First Party

Ms. Piyumi Jayawickrema,
State Counsel 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.

Mr. T. A. Ayurudeen in his evidence stated as follows:

Presently the Party of the First Part employed as Depot Route Supervisor in the Respondent Organisation.

He was appointed by covering appointment as a Senior Depot Route Supervisor (Grade 6) with The effect from 20.02.2013.

He was not made permanent for 7 years. Others namely C. B. Kandamby and Senanayake was given Covering appointment were made permanent and has paid salaries accordingly.

He further said his trade union made an Appeal in this respect. (A2).

During Cross Examination the Applicant stated as follows.

He joined as a Security Guard on 1/08/2000 on contract basis.

He was made permanent on 01.10.2001 as a Security Guard attached to Central Bus Stand. (R1) subject to 3 years probation.

On 06.04.2007 appointed as Security Guard (Mobile) Grade 7A - (R2)

He was transferred to Central Bus Office on 05.05.2008 (R3)

He was released to work in Minister Fowzi's staff on 19.06.2012.

He was released to 25.06.2012 to work in Mr. Fowzi's office. Salary was paid by SLTB.

He said though he was given covering appointment to oversee duties of Grade 6 that he was not promoted to Grade 6 and he was not paid salary as of Grade 6 Covering Appointment.

Again he was released on 2013.07.24 to work under Minister Fowzi's staff.

On 02.02.2016 he was released to work full time with Sri Lanka Nidahas Trade Union.

On 23.11.2018 he joined full time to work for Lanka Motor Ratha Trade Union.

The Respondent refused the request made by the Applicant to produce the files of C. P. Kandamby and Nirusha Senanayake whom the Applicant said were made permanent while working under Covering Appointment. (A2), (A3).

During cross examination the Applicant stated he has served about 3 years for Sri Langama under the covering appointment and rest of the period as assigned by the minister.

G. S. Thudugala, Deputy H. R. Manager in his evidence stated in his evidence when a covering appointment is given there is no provision to make permanent.

Both parties have filed written submissions.

In overall analysis of evidence I have come to following conclusions.

- I. The Applicant has kept 15.02.2013 to up to now on Covering Appointment (Grade 6) oversee the Grade 6 duties while denying Grade 6 salary.
- II. Whereas the Applicant admitted though he was given Grade 6 covering appointment.

III. Sri Lanka Transport Board, has acted unfairly and maliciously towards the applicant by denying him the salary due for Grade 6 to up to now.

IV. The Applicant stated total Salary Loss for him up to 20.06.2020 is Rs. 44,030/- In the circumstances, I wish to quote majority decision of the Supreme Court in State Bank in 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 of 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 contrasts 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 Respondent Company (party of the second part) has caused injustice to the applicant. (party of the First part).

In the circumstances taking into consideration the totality of evidence led before me I make award that the party of the First part be paid loss of Salary Rs. 22,015/- (half of total salary loss claimed Rs. 44,040/-) due to the Party of the First Part for the said period.

The said sum of Rs. 22,015/- be deposited at the office of Commissioner of Labour, Colombo East within 14 days of this award.

I further make order that this award should be implemented within 21 days of the publicaion in the Government *Gazette* of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

4th July, 2022.

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