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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 2412/41 – 2024 නොවැම්බර් මස 30 වැනි සෙනසුරාදා – 2024.11.30

No. 2412/41 – SATURDAY, NOVEMBER 30, 2024

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No. IR/COM/02/2019/238

THE INDUSTRIAL DISPUTES ACT - CHAPTER 131

THE award A 30/2022 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. D. Thissa Yapa, 292, Gamunu Mawatha, Kotuwegoda, Rajagiriya of the one part and Open University of Sri Lanka, P.O. Box 21, Nawala, Nugegoda of the other part was referred by order dated 29.06.2022 made under section 4(1) of the Industrial Dispute Act, Chapter 131, (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 2290/22 dated 27.07.2022 for Settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

H. K. K. A. Jayasundara,
Commissioner General of Labour.

Department of Labour,
Colombo.
20th November, 2024.

IN THE MATTER OF AN INDUSTRIAL DISPUTE

(referred to an Arbitrator by the Minister of Labour under 4(1) of the Industrial Disputers Act No. 43 of 1950)

Between

CASE No. A/30/2022
Ref. No. 1R/COM/02/2019/238

Mr. D.Tissa Yapa
No. 292
Gemunu Mawatha,
Kotuwegoda,
Rajagiriya.

of the one part

and

Open University of Sri Lanka
P.O. Box. 21,
Nawala,
Nugegoda.

of the other part

Representation:

for the party of the first part : Mr. M.K. Hemapala

for the party of the Second part : 1). M/s. R. L. W. Rajapakse, AAL
2). Miss. Dilhani Ratnayake, AAL

THE AWARD

THE Honourable 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 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 29th June 2022 and referred the dispute to me for settlement

The matter in Dispute referred to me by the Honourable Minister of Labour between the aforesaid parties is,

" Whether Mr. D. Thissa Yapa who had worked at the Open University of Sri Lanka had been caused injustice by the judgment given at the disciplinary inquiry to defer the Salary Increments of Year 01.01.2011, 01.01.2012, 01.01.2013 and 01.01.2014 and if so, to what relief he is entitled."

At the very outset of the hearing of this case the Party of the second part made a preliminary objection to the effect that since the University Services Appeal Board has made a determination to the Appeal made by the party of the First part against the punishments imposed by the Governing Council of the University, that the party of the First Part Seeking relief again from the Arbitrator in regard to the same matter which has been already decided amounts to Res- Judicata and that this case before the Arbitrator be dismissed.

Open University of Sri Lanka in regard to an alleged incident of unauthorized attempt to remove some unserviceable items from the open University by Tissa Yapa the Vice Chancellor had appointed an officer to conduct a preliminary investigation and the Investigating Officer had recommended that a formal inquiry be held against to said Tissa yapa.

Accordingly a Charge Sheet was issued on 22.02.2011 to the said Tissa Yapa and a formal inquiry was held, where Tissa yapa (the party of the first part) was found guilty on all charges.

Thereafter the Governing Council of the University appointed a Committee comprising three members of the Council to study the report and recommend suitable punishment.
Based on the report of the Committee the Council imposed the following punishments.

(i) The Cancellation of four salary increments.
(ii) The demotion of one grade from the position held at present.
(iii) The Non - extension of service beyond 57 years of age.

Tissa Yapa appealed against the punishment to the University Services Appeal Board, comprising of Chairman Justice G.W. Edirisuriya, Vice-Chairman Anton Alfred and Member Dr. R.M.K. Ratnayake.

The University Services Appeal Board having heard the case presented by Tissa Yapa decided on 17.08,2013 the following:

> ‘‘Considering the facts and the un-proportional punishments, we allow the removal of punishments (ii) and (iii) and the Appeal is allowed”

Having received the above order given by the U.S.A.B. on 27.08.2013 in response to the appeal made by Tissa Yapa, he continued to work as usual until he retired on 21.02.2017 having completed sixty (60) years of age.

The party of the first part Tissa Yapa having known that the U.S.A.B. Order although removed the punishments ii and iii imposed by the University Council, did not remove the punishment (i), that is the cancellation of four salary increments from the year 01.01.2011 to the year 01.01.2014, has had not initiated any action to get this particular punishment reversed, (except going to another forum of the “University Authorities”) from any other forum (other than the university authorities) by recourse to such available forum, but continued to work from the day of the Order given by the U.S.A.B., that is from 27.08.2013 to 21.02.2017 until he reached retirement age of sixty (60) years.

However, having received the Order of the U.S.A.B., Tissa Yapa made an appeal to the University Management Sabha (විශ්ව විද්‍යාලයීය පාලක සභාව) on 2015.04.06 asking for the removal of the punishment (i), that is the cancellation imposed for the four salary increments. The University Management Sabha (විශ්ව විද්‍යාලයීය පාලක සභාව) replied to Mr. Yapa on 2015.07.15 that the punishment in regard to (i) would continue to remain and that the Appeal is dismissed.

Having known the final position taken by the University Authorities as regards punishment (i) by 15.07.2015, Mr. Tissa Yapa since the above mentioned date upto his retirement on 21.02.2017, after having exhausted all appeals afforded to an employee within the University structure to get redress, had not sought any relief regarding the same from any other forum by seeking recourse to such available Fora.

Since receiving the letter dated 15.07.2015 from the Vishwavidyalaleeya Palaka Sabha (University Management Sabha) rejecting the final appeal regarding the cancellation of four salary increments the party of the first part (Tissa Yapa) by not making recourse to any other Fora, during the period from the above mentioned date that is 15.07.2015 to 21.05.2017 (the date of retirement) the first party by conduct has complied with the Order given by the U.S.A.B.

Further since the incident where it was alleged that Tissa Yapa attempted to remove some unserviceable items from the Open University, the University authorities has initiated the due process where such alleged incidents are dealt with.

However the Party of the first part has availed him self of all the remedial actions he could take within the scope of his employment within the University structure in respect to punishment (i). His appeal to the University Services Appeal Board had resulted in the removal of punishments (ii) and (iii) where if upheld would have resulted in the demotion of one grade from the position he held and the non-extention of service beyond 57 years of age.

The Order given by the U.S.A.B. on 2013.08.27 by the final paragraph decided to remove punishments (ii) and (iii) and the immediately preceding paragraph states as follows:

> "The decision of the Council to impose three types of punishments to Mr. Tissa Yapa considering his long years of unblemished service to the University and age factor are not 'proportional' to the proved charges. The Investigating Officer on the other hand has failed to quantify the extent of 'pecuniary embarrassment' which warrant 'Major' punishments."

U.S.A.B. however, did not remove punishment (i) by their decision on 27.08.2013.

The principles of Natural Justice entitled to the Party of the First Part has been afforded to him as the due process of investigation and inquiry had been adhered to by the University when the Chief Security Officer ol the Open University has alleged that the Party of the First Part (Tissa Yapa) attempted in remove some unserviceable items from the University. And also the Party of the First Part has used up all the avenues of redress available to him within University structure by 15.07.2015.

As the Arbitrator of this Case. I See no reason why I should hear a matter which had already been determined and in the light of the conduct by the party of the first part having acquiesced with the order of the university services Appeal Board and that I make any Award.

1 uphold the preliminary objection taken by the party of the second part.

Considering the preliminary objection made by the Party of the second part to the effect that since the University Services Appeal Board has already made a determination to the Appeal made by the first part against the punishments imposed by the Governing Council of the University, that the party of the first part seeking relief again from the Arbitrator in regard to the Same matter which has already been decided amounts to Res-Judicata and hence this case before the Arbitrator be dismissed.

For the reasons given aforesaid it is my finding that I as the Arbitrator of this case uphold the preliminary Objection taken by the party of the second part.

Therefore regarding the dispute referred for Arbitration, I do not make an. Award.

Further I wish to reiterate that the decision regarding the Award which I make has been made after fully examining the dispute between the parties in a just and equitable manner.

K. AMARANATH. P. RAJAKARUNA,
Arbitrator.

21st October 2024

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