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EXTRAORDINARY

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PART I : SECTION (I) — GENERAL
Government Notifications

My No. IR/COM/02/Q/2014/97.

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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. R. S. Weeratunga, No. 212/42, Green Fantasy Estate, Kimbulapitiya Road, Negombo of the one part and Sri Lankan Airlines Limited, Katunayake of the other part was referred by order dated 24.06.2015 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. 1921/55 dated 02.07.2015 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Between

1. Mr. R. S. Weeratunga,
No. 212/42,
Green Fantasy Estate,
Kimbulapitiya Road,
Negombo.

of one Part.

Case No. A/3602

and

2. Sri Lankan Airlines Limited,
Katunayake.

of other Part.

A. WIMALAWEERA,
Commissioner General of Labour.

THE AWARD

Department of Labour,
Labour Secretariat, Colombo 05.
16th January, 2018.

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 24th June 2015 an referred the following disputes to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are :-

Whether the claim made by R. S. Weeratunga who had worked as Duty Manager Security (Grade 8-2) at Sri Lankan Airlines Limited to be paid the annual salary increment which is paid on the decision of the Company, based on the performance appraisal for 2012/2013 is just, and if so to what reliefs he is entitled.

Appearance

Mr. K. J. L. Perera,
Representative appeared for the party of the First Party

Mr. Prasad de Silva and Ms. Thushari (Legal Manager),
Attorneys-at-Law for the Party of the Second Part

Both parties have filed that statement under Regulation 21(1) and 21(2) of the Industrial Disputes Regulations of 1958 as amended.

The employer raised the preliminary objections stating that the Employee does not have "locus standi" to maintain this reference, it was rejected on the grounds that the Arbitrator has no authority to go against the reference made by the Minister who is the appointing authority.

On behalf of the Party of the First Part documents marked P1, P2.

On behalf of the Party of the Second Part documents marked R1, R2, R3 and R4, Mr. K. J. L. Perera, the Applicant in his evidence stated as follows :

- (1) Applicant stated in his evidence that he joined the Respondent Company on 1st April 1986 and retired on 24th September 2013. At the retirement he held the post as Duty Manager Security. He stated that he received annual salary increments up to the year 2012 and the increments were paid in the month of July in each and every year. The witness further stated that he did not received the annual salary increment for the year 2012/2013. When the witness inquired from the Personnel Manager of the Respondent Company

he was told that when salary increments were paid to the others he will be getting his increments as well. The witness stated that he came to know that annual salary increments were paid to the other members of the staff in December 2013. When inquired upon from the Personnel Manager of the Respondent Company he was asked to send a written request. The witness further stated that his written request was not answered up to now by the Respondent Company.

When inquired upon the witness was told that the Personnel Manager has instructed that no such increments should be paid to the applicant as he was already retired.

Thereafter the Applicant made a complained to the Commissioner of Labour. The witness further stated at the inquiry when requested by the Commissioner of Labour to produce the letter contained the instruction that no salary increments which was due for the retired employees should not be paid, the respondent failed to produce such a letter.

The Witness further stated that the period his annual increments were not paid was 01.04.2012 to 31.03.2013.

The Witness further stated that he got 96% marks for the assessment of his service during that period.

In the circumstances witness stated that it was compulsory for him to get his increment for the said period.

During the Cross Examination the Applicant stated as follows.

At the time of his retirement annual salary increment for the year 2012/2013 has not being paid.

The Applicant stated that he was not aware of a board decision that annual salary increment should be paid to the employees who was in service in December 2013.

Annual salary increments should be paid on 1st of June.

The Respondent Company always had financial problems.

There were about 10 persons who retired before December 2013.

The applicant stated that he was not aware whether the increments were paid any of those 10 persons.

The Applicant stated that The Respondent Company failed to produce a copy of the bond decision to the Labour Office. Negombo up to date that annual salary increment should be paid to the employee who were in service in December 2013.

The Applicant stated that he has received annual salary increment for all 27 1/2 years of his service.

All that employees were paid salary increments.

During Re - Examination the Applicant stated as follows

The annual salary increments for the year 2012/2013 was paid with the salary of 2013.

The salary increments were paid to the staff with the arrears with effect from 1st of June 2013.

The applicant further stated of he was in service by December 2013, he could have got the salary increment from 1st June 2013.

The witness Lasantha Liyanage, Human Resource Manager of the Respondent Company in his evidence has stated as follows :

According to the board decision annual salary increment was paid to the employees who were in service in December 2013.

The witness marked documents R1, which says though it has been in practice in the past to pay those retired staff their increments, if declared in the year of retirement, with effect from 1st December 2013, it was proposed to discontinue with the said practice.

The witness further filed a board paper to justify the above marked R2 and R3. The witness further stated that the Respondent Company incurred a loss for the years 2009 to 2013.

During cross examination the witness has stated as follows :

The respondent Company has paid salary increments to the employees except for the year 2009.

Witness further stated that the decision to grant salary increments is solely on the discretion of the board of directors.

The Witness further stated that if the salary increments for the year 2012/2013 was paid on the 1st of July 2013, the Applicant would have got the increment.

Witness further stated during the period concerned the respondent Company underwent financial difficulties.

Both parties have filed written submission.

The Applicant stated in his written submission, the Respondent, Sri Lanka Airline Limited has admitted that the salary increment due on 1st June 2013 was paid to the staff on 1st of December 2013 along with the arrears with effective 1st June 2013.

The applicant retired on 23rd September 2013. The salary increment was due on 1st June 2013 according to the rules. By 1st June 2013 the Applicant had a valid contract with the Respondent, Sri Lankan Air Lines Limited. In the circumstances the Applicant is entitled to salary increments with effective from 1st June 2013.

The Respondent in his written submission stated that the Applicant has no "locus standi" to maintain the reference.

The respondent further stated, the Applicant who was in the managerial grade was not covered by a Collective Agreement and had no right or entitlement to demand a salary increment which is given at the sole discretion of the management.

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

1. The Respondent Company has acted unfairly and maliciously towards the applicant by denying him the salary increment which was due to him as at 1st June 2013 and the arrears up to 23rd September 2013 on which date he retired from the Respondent Company.
2. The Respondent Company has acted malice towards the Applicant denying him the salary increments was due to him as at 1st June 2013 and the arrears up to 23rd September 2013 whereas paying the other staff salary increments due on 1st of June 2013, on 1st of December 2013 along with the arrears with effective from 1st of June 2013.

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 create a new contract for the future in contrast 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 a sum of Rupees One Hundred and Eighty Four Thousand Six Hundred and Sixty Four (Rs. 184,664.00) salary increment due on 1st of June 2013 along with the arrears up to his retirement, on 23rd September 2013.

And the aforesaid money should be deposited by the Party of the Second Part at the office of the Labour Commissioner of Negombo.

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

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

20th November, 2017.

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