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PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/COM/02/2021/42.

THE INDUSTRIAL DISPUTES ACT - CHAPTER 131

THE award No. A 89/2023 dated 19.03.2024 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between 1. Mr. J.P. Bandula, No. 44/5, Manimmulla, Ambalangoda. 2. Mr. H.M. Gunadasa, No. 6, Vijaya Garden, Manana, Angalawatta. 3. Mr. S.W.R. Weerakoon, No. 119/8/1A, Weragolla, Puwakpitiya. 4. Mr. Y.G. Chandana Kumara, No. 202/A, Berugoda Watta, Uluvitike, Galle of the one part and Open University of Sri Lanka, P.O. Box 21, Nawala Road, Nugegoda of the other part was referred for settlement through arbitration by order dated 15.12.2023 made under section 4(1) of the Industrial Dispute Act, Chapter 131, (as amended) and published in *Gazette Extraordinary* No. 2363/70 dated 22.12.2023 of the Democratic Socialist Republic of Sri Lanka, 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 05.
20th June, 2024.



In the matter of an Industrial Dispute

Case No. A/89/2023
IR/COM/02/2021/42

Between,

1. Mr. J.P. Bandula,
No. 44/5, Manimmulla,
Ambalangoda.
2. Mr. H.M. Gunadasa,
No. 6, Vijaya Garden,
Manana, Angalawatta.
3. Mr. S.W.R. Weerakoon,
No. 119/8/1/A, Weragolla,
Puwakpitiya.
4. Mr. Y.G. Chandana Kumara,
No. 202/A, Berugoda Watta,
Uluvitika, Galle.

Of the One Part

And

Open University of Sri Lanka (OUSL)
P.O. Box. 21, Nawala Road,
Nugegoda.

Of the Other Part

THE AWARD

1. The Honourable Minister of Labour and Foreign Employment by virtue of the powers vested in him by section 4(1) of the Industrial dispute Act, Chapter 131 of the Legislative Enactment of Ceylon (1956 Revised Edition), as amended by Act Nos. 14 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes-Special Provisions) Act, No. 37 of 1968, appointed me by his order dated 15th December, 2023 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

The matter in dispute between the aforesaid parties is:-

“Whether the four employees inclusive of Mr, J.P. Bandula working in the Security Service lower grade of the Open University of Sri Lanka had been caused injustice by the removal and recovery of the Salary increment privileges enjoyed by them, as one salary increment every two year from 2013 to 2018 in being promoted to the higher grade considering their service period in the lower grade and if such injustice had been caused, to what relief they are entitled.”

2. Respondent, Open University of Sri Lanka (OUSL) was represented by Mrs. Amantha Wattagama, State Attorney along with Mrs. Sumuthu Karunathilake, legal officer OUSL and other officials. For the last inquiry Mrs. S.L.D.B. Jayawardene, Senior Assistant Registrar and officers represented from OUSL held on 13.0.2024,

3. These Arbitration inquires were held on the following days respectively, 18.01.2024, 01.02.2024 and 13.02.2024. For the first meeting out of three other than Mr. H.M. Gunadasa, with trade union representative Mr. S.Premarathne from first party participated. In the second meeting Mr. S. Premarathne, trade union representative and Mr. J.P. Bandula and Mr. S.P. Chandana Kumara participated. In the third meeting Mr. Premarathne. Mr. J.P. Bandula, Mr. S.P. Chandana Kumara participated from the first party. The Irregular attendance objected by second parties' during inquire and proceedings.

4. Observations and findings

- (a) Out of four petitioner Mr. J.P. Bandula and Mr. H.M. Gunadasa are pensioners. There is no service agreement for the above two pensioners with the OUSL but when this case was started the above two employees were in the active service. Due to the long period taken for this case, the two employees had gone to their compulsory pension. Other two employees are in active service.
- (b) The second party acted according to the circulars issued by the University Grants Commission time to time and acted according to the circular 9/2013. They have given proper promotion and salary steps after 2018. R13, R18 marked by first party, one increment per two years paid during the years from 2013 to 2018, was deducted from their salary and repaid for the same.
- (c) It was submitted and explained that the salary particulars of four employees by Mrs. S.L.D.B. Jayawardene, Senior Assistant Registrar, finally the above employees salary were recorrected by a letter of 10.06.2020 in one day to all four employees, according to the circular 9/2013 and given with adding an increment. As Rs. 18, 550.00 for Mr. J.P. Bandula and Mr. S.P. Chandana Kumara, Mr. H.M. Gunadasa Rs. 18,395.00 and Mr. S.W.R. Weerakoon Rs. 19,170.00. It was done with the approval of the controlling council including the above two pensioners.
- (d) Therefore, the first party agreed that the second party (OUSL) has given promotion and salary steps according to the circulars issued by the UGC and not responsible for the differences.

AWARD

After the three inquires, it is highlighted that there is no dispute between the said two parties and both parties agreed that these salary reduction and adjustment done according to the circulars issued by the UGC. Still there are small differences shown in the requested salary scale and that which was paid. The OUSL may write to the UGC for further clarification and obtain a clear direction regarding the above differentiation.

This is just and a fair award.

A.L.M.SALEEM,
Arbitrator.

19th March, 2024.

My No.: IR/COM/03/2017/228.

THE INDUSTRIAL DISPUTES ACT - CHAPTER 131

The award A 28/2019 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. G. A. P. Jayasinghe, No. 150/4, Saddarmarama Mawatha, Maligawatta, Colombo 10 of the one part and National Housing Development Authority, P.O. Box 1826, Sir Chiththampalam A. Gardiner Mawatha, Colombo 02 of the other part was referred by order dated 14.03.2019 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. 2116/55 dated 28.03.2019 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 05.
25th June, 2024.

Ref. No.: IR/COM/03/2017/228.

Matter of an Industrial Dispute

Between,

Ms. G. A. P. Jayasinghe,
No. 150/4, Saddarmarama Mawatha,
Maligawatta,
Colombo 10.

of one part,

Case No. A/28/2019

and

National Housing Development Authority,
P.O. Box 1826,
Sir Chiththampalam A. Gardiner Mawatha,
Colombo 2.

of other part.

THE AWARD

The Honourable Minister of Labour and Trade Union Relations 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 14th March, 2019 and referred the following disputes to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties is:-

Whether Mrs. G. A. P. Jayasinghe who worked at the National Housing Development Authority has been caused injustice by not being given promotions and annual salary increments and if so, to what reliefs she is entitled.

Appearance :

Mr. Gratian Silva

Representative appeared for the party of the First Part.

State Counsel Thivanka Chandrasena with Legal Officer, Danushka Jayalath
appeared 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.

Ms. G. A. P. Jayasinghe, Computer Analyst in her evidence stated as follows:

The Applicant joined the Respondent Authority as a Computer Operator Grade 8 in 9th December, 1996. She was assigned to Kurunegala District Office (A1). She has worked there for 4 years.

The Applicant made a request for promotion as a Program Analyst Grade 7 and Grade 6. (A3). She did not get the Post. She made an Appeal dated 17.06.2002 a marked as A4. She also made an Appeal to the Chairman National Housing Development Authority marked A5. Her appeal was not considered.

The Applicant further said she applied for the internal promotion and her application also was rejected. She also appealed to the Political Victimization Committee. In their report Committee decided that the Applicant was victimized. (A6)

In the report it was recommended that she was to be placed on Grade 7 A with effect from 01.06.2006.

But the Applicant says that she should get Grade 7 A from the year 2000.

Thereafter her appeal Grade 7 A was granted to the Applicant with effect from 01.09.2005 (A 8).

Again she wrote to the Chairman, National Housing Development (A 9) and no reply was received.

After she complained to the Commissioner of Labour, and the Commissioner wrote to the General Manager of Respondent Authority as A 10. As a result she was placed as a Program Analyst, Grade 7 A with effect from 08.04.2002. (A 11)

She says she has to get promotion since year 2000.

She wrote again to the Chairman of her problem. (marked as A 12)

The Applicant says that she was allowed to work till 57 whereas she has a right to work till 60.

She has written to the Secretary, Housing and Construction Ministry marked A 13.

The Applicant was retired on 2016.

The Applicant says she did not get a salary increment since 2000.

The Applicant said that she should have got Program Analyst 2000 Grade 7 by year 2000. Thereafter 4 years 6th Grade and 5th and 4th Grades respectively.

During Cross Examination-

The Applicant said that no officer has supervised her and no officer has assigned any duty to me.

The witness further said she got salary increment for the period 2004 to 2011 after removing her from official duties.

She further said according to Public Administration Law she suffered on irreparable loss due to stoppage of her salary increment.

She said she should get salary increments for the period 2011 to 2016.

The Applicant refused to accept the documents marked as R3, R4, R5 as assessment of her performance.

She was assigned to UDA once and again absorbed by the Respondent on 18.04.2002

She further said during her tenure at the Respondent she was assigned to Urban Development Board in 18.04.2002. (R7) and R8.

By R9 (A11) her promotion to A 7 was back dated to 18.04.2002.

Since she did not get the Salary arrears she made a complaint to the Labour Department.

The Applicant further said she withdrew the said complaint as the Chairman of Employees Appeal Board took an undertaking that if she withdrew the complaint justice being done to her. (R11)

By order dated 10th December 2020 Labour Tribunal granted her Compensation as the Applicant services were not extended after 57, 1 year salary was granted to her in lieu of not extending her services.

The Applicant further said though she has no degree or diploma that she has relevant qualification.

She further said during 2001 to 2004 she was attached to Urban Development Authority.

During that period she had no other benefits at all.

She said she was promoted to Program Analyst 7A from 18.04.2002. She wanted it to be back dated for the year 2000.

The Applicant said she was paid salary increment for the period 2007 to 2010 in the year 2016.

Deputy General Manager, Personnel, P. M. L. P. Edirisinghe in his evidence stated as follows:

The Witness said when an employee absorbed to the UDA, NHDA has no obligation of that Employee.

After the order of the Commissioner of Labour on 08.01.2004 her promotion was back dated on 18.04.2002.

He further said that Salary Increment was granted on the report of the Supervising Officer.

The witness further said the Applicant was compulsory retired in 2016 due to inefficiency.

2005, 2006 and 2007 salary increment was stopped due to Unsatisfactory performance as reported by the Supervising Officers.

The witness further said the Applicant failed to get salary increments continuously as she used to get no pay leave.

Witness further said 2011 to 2016 the Applicant's salary increments was stopped due to unsatisfactory performance of her duties.

Witness further said that the Applicant could have worked till 57 to 60 years.

The witness further said in the years 2000, 2001, 2002, 2003, 2004 and 2008 the Applicant was paid salary increments and rest of the period till 2016 salary increment was not paid.

2012 to 2016 salary increment was not paid as the Applicant has taken no pay leave.

Both parties have filed written submission.

In overall analysis of evidence,

As the Applicant was denied her promotion she appealed to the Political Victimisation Committee. Committee decided she was victimized and recommended her to be placed on Grade 7A with effect from 01.06.2006.

She was granted Grade 7A from the year 01.09.2005

Whereas according to the Applicant that she should get Grade 7A from 01.06.2006

As per the direction of the Commissioner of Labour she was placed as a Program Analyst, Grade 7A with effect from 08.04.2002.

The Applicant was forced to retire at the age of 57, whereas she could have worked till 60.

Her salary increments was not being given.

On 10th December, 2020, Labour Tribunal granted her 1 year salary in lieu of not extending her services till 60.

The Applicant was absorbed to UDA during 2001 to 2004 during that period she was not given any benefits.

Labour Tribunal granted her 1 year salary as compensation.

The Applicant says her salary increments for the year 2007 to 2010 was paid only in 2016.

The Respondent says, the Applicant has taken no pay leave.

After taking into totality of evidence, I have come to following conclusion:

- (a) The Respondent has acted unfairly and maliciously towards the Applicant denying her promotion as decided by political victimisation committee.
- (b) The Respondent has acted maliciously towards the Applicant depriving her due promotion and salary increments on time.
- (c) The Respondent has acted unfairly and maliciously towards the Applicant not allowing the Applicant to work till 60.

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 contrast to a judge who enforces rights and liabilities arising out of 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 National Housing Development Authority. (party of the Second part)

In the circumstances taking into consideration the totality of evidence led before me I make award that the party of the First part: Applicant Ms. G. A. P. Jayasinghe be paid a sum of Rupees Eight Hundred Ninety Eight Thousand Nine Hundred and Forty Four. (Rs. 8,98,944/-) (Rs. 37,456/- x 2 x 12) as Compensation equivalent to 2 years salary by the Respondent National Housing Development Authority (party of the Second part)

And the aforesaid money should be deposited by the Party of the Second part at the office of the Assistant Commissioner of Labour, Colombo South.

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 is just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

10th June 2024.

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