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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 2356/34 – 2023 නොවැම්බර් මස 03 වැනි සිකුරාදා – 2023.11.03
No. 2356/34 – FRIDAY, NOVEMBER 03, 2023

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No. IR/15/44/2009

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award dated 20.09.2023 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. S.A. Ariyasena, No.105, Pelengastuduwa Road, Borella, Colombo 08 of the one part and Janashakthi Insurance PLC, (Formerly Janashakthi Insurance Limited) Head office, No. 46, Muththaiya Road, Colombo 02 of the other part was referred for settlement through arbitration by order No. A 3623 & dated 27.01.2016 made under section 4(1) of the Industrial Dispute Act, Chapter 131, (as amended) and published in *Gazette Extraordinary* No. 1952/37 dated 03.02.2016 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.
20th October, 2023



Arbitration Unit and Industrial Court

Ref No. :- IR/15/44/2009
 In the matter of an Industrial Dispute

Between

1. Mr. S.A. Ariyasena
 No. 105, Pelengastuduwa Road,
 Borella,
 Colombo 08.

Of One Part

Case No. A/3623

And

2. Janashakthi Insurance PLC
 (formerly Janashakthi Insurance Limited),
 Head Office,
 46, Muththaiya Road,
 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 21st January 2016 and referred the following disputes to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are :-

Whether any injustice was caused Mr. S.A. Ariyasena who had been appointed to service of the Janashakthi Insurance PLC with effect from 01.02.2002 while he was serving under National Insurance Corporation Limited due to non granting of employment up to the age sixty (60) years and if any injustice was caused ,to what relief he is entitled.

Appearance

Mr. H.A. Seneviratne/Ms. Chamani Hatharasinghe
 Attorneys at Law for the party of the First Part
 Mr. Lahiru Abeysekara Attorneys -at-Law 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.

The Attorney at Law for the Applicant stated that this case was filed in respect of that applicant's service was not extended till 60 years with effect from 1.2.2012.He further stated since this case was a very old to expedite the same taking evidence of the Applicant by way of an affidavit.

The respondent Attorney at Law stated that he has no objection that the evidence lead in the case No. A3371 be taken for this Arbitration. (A3623)

He further stated at the commencement of A3623, when respondent suggested that aforesaid procedure to be followed the Applicant vehemently objected to that.

In the circumstances after considering submissions by both parties it was decided the order dated 27.01.2016 given under section 4(1) of Industrial Dispute Act, Minister of Labour and Trade Union Relations has been cancelled and therefor to inquire this case as a new reference.

The Applicant in his evidence stated as follows.

He said this case was initially heard by the Arbitrator W.G. Deen under the reference A 3371. Since Mr. Deen was fallen sick case could not be concluded. And a new reference was issued under A 3623. The Applicant stated that he joined National Insurance Corporation 7.05.1981 as a Messenger/Driver. In 1993 National Insurance Corporation was converted to National Insurance Company Ltd.

The Applicant was appointed to as a Clerk and National Insurance Corporation and subsequently confirmed on 1998.4.12.

The Applicant says according to Public Administration Circular dated 23.7.1971 “ The employees who has completed 55 years of age in a joint Company manage by the Government will be allowed to work till 60 years of age subject to the regulations of said Companies”

The Applicant said after he was absorbed to Janashakthi Insurance Company he was given a letter of Appointment in which age of retirement is 55 years.(A5).

The Applicant was retired on 5.8.2009.

The applicant wrote several letters asking for an extension of service. (A8) The Applicant submitted a copy of the Annual Report of Janashakthi Insurance PLC 2015.(A 22) In that report No of employees above 60 years mentioned as 9.

He was informed on 17.3.2009 that extension cannot be granted.

He further said some employees were given extension of service.

Eg. F.H. Laxman, worked till 59.

D.E. Saravanadan (A37) worked till 60

Gamini Peiris worked till 58

J.M Rathnayake retired after 55 years of service.(A38,A38A to A38 D)

During the cross examination the Applicant admitted that he was given facilities by the Company to study English at Colombo university.

The Applicant filed the Judgment of the case No.32/RM/1 04/2700, that case was filed by KJ.S Gunaratne against Janashakthi Insurance Company as A 44 in order to show how company harassed the employees.

The responded made an application that Janashakthi Insurance Plc be substituted as Janashakthi General Insurance PLC

They further stated Janashakthi General Insurance PLC has merged with Allianz Insurance Lanka Ltd.

It was decided that the Arbitrator has no power to amend the reference by the Minister.

Respondent stated in their evidence that the Applicant has to comply with the letter of appointment he signed with Janashakthi Insurance Plc in which Clause 5 state that “You will be required to retire at the age of 55.”

Both parties have filed written submission.

The Applicant has further stated as follows.

He said he joined the National Insurance Corporation in 1981, citing Public Administration Circular dated 23.7.1971 states that the employees of Corporation after completion of 55 years of service allowed to work till 60 years of age.

He further state in the report submitted by the government to the parliament with regard to transfer of 51% shares of National Insurance Corporation to Janashakthi Insurance Company in paragraph 8 and 9 states as follows:

“ As per the paragraph 3.3 (A) of the Agreement, Employees of National Insurance Corporation when transferred to Janashakthi Insurance Company, the employees should be provided with same facilities they enjoyed at the time share transfer took place.”

”The Applicant stated in his evidence, that employees were denied the facilities they enjoyed under National Insurance Corporation after transfer of shares. (Applicants evidence dated 23.7 2018- page 5 and 6).

The Applicant further states, whereas some other employees were given chance to work after 55 years the Applicant were denied such opportunity even though he made several requests for extension of service.

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

- I. The Respondent Company has acted unfairly and maliciously towards the applicant by denying him the extension of service.
- II. Whereas when the Applicant joined National Insurance Corporation he has reasonable expectations to work till 60 years of age.
- III. The Respondent Company has acted unfairly and maliciously towards the applicant by not granting him the extension of service whereas others were given the opportunity to work after 55

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 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 a sum of Rupees One Million Four Hundred and Forty Nine Thousand One Hundred and Fifty Two and cents eight (Rs. 1,449,152.08) being salary for the years 2009,2010,2011,2012,2013 and 2014 along with the EPF, ETF and Gratuity for the said period.

And the aforesaid money should be deposited by the Party of The Second Part at the office of the Labour Commissioner of 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 just and equitable.

20.9.2023

Kapila M. Sarathchandra,
Arbitrator.

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