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No. 2082/36 - WEDNESDAY, AUGUST 01, 2018

(Published by Authority)

PART 1: SECTION (1) - GENERAL

Government Notifications

My No: 1R/10/13/2013.

THE INDUSTRIAL DISPUTES ACT CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. S. A. Suneetha Bandara, No. 199/3, Sirimavo Bandaranaike Mawatha, Mahara, Kadawatha of the one part and The Finance and Gurantee Company Limited, No. 46/46, Second Floor, Green Lanka Towers, Nawam Mawatha, Colombo 02 of the other part was referred by order dated 18.02.2014 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. 1854/4 dated 17.03.2014 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

A. WIMALAWEERA,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
25th July 2018



Ref. No.: IR/10/13/2013.

In the matter of an Industrial Dispute

Between

1. Mrs. S. A. Suneetha Bandara

No. 199/3, Sirimavo Bandaranaike Mawatha,
Mahara, Kadawatha.

of one part

And

Case No. A/3540.

2. The Finance and Gurantee Company Limited

No. 46/46, Second Floor,

Green Lanka Towers,

Nawam Mawatha,

Colombo 02.

of other part

The Award

The Honourable Minister of Labour and Labour 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 18th February 2018 and referred the following disputes to me for settlement by arbitration:

The matter is dispute between the aforesaid parties are :-

Whether injustice has been caused to Mrs. S. A. Suneetha Bandara who served "The Finance and Gurantee Company Limited" as the Accountant in the payment of gratuity by "The Finance and Gurantee Company Limited and if so, to what reliefs she is entitled.

Appearance

Mr. S. T. Jayawickrama

Attorney at Law for the party of the

First Party

Mr. Indra Ladduwahetty, Attorney-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 employer raised the preliminary objections stating that the Employee dose 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 A1 to A 12.

On behalf of the Party of the Second Part documents marked

Ms. A. A. Suneetha Bandara, the Applicant in her evidence stated as follows:

The applicant stated in her evidence that she joined The Finance Company Ltd. on 1st October 1979 resigned on 1st July 1998 and joined The Finance and Guarantee Company Limited on the same day. She stated that both companies are in the same group.

The applicant further stated when she left the The Finance Ltd, the gratuity payment was not given to her but issued in favour of the Finance and Guarantee Company Ltd.

The witness further stated she resigned from The Finance and Guarantee Ltd. on 31st May 2010. In 2011 the Name of The Finance and Guarantee Ltd., has been changed to U. B. Finance Company Ltd.

The Witness further stated a sum of Rupees Two Hundred Twenty Three Thousand One and Twenty Five (Rs. 223025/=) which was the gratuity due to her from the Finance Ltd., has been paid to The Finance & Guarantee Company Ltd.

Two Witness further stated when she resigned she has completed 30 years of service in both companies The Finance Company Ltd and The Finance and Guarantee Ltd.

When the Applicant left The Finance and Guarantee Ltd her monthly salary was Rs. 94,320/=.

In the circumstances she further stated she has to get a gratuity for 30 years amounting to 30x94,320/= Rs. 28,29,600/=

The witness marked documents A7, A8, A8a which was submitted to Inland Revenue Department in order to get tax waiver on her total gratuity of Rs. 28,29,600/=

The witness further stated that she received a payment of Rs. 1,604,879.82 being the gratuity due to her from The Finance and Guarantee Company Ltd.

The witness further stated that she set off the said sum of Rs. 16,0879.82 against the loan she obtained from the Respondent Company.

The Witness further stated when she complained to the Commissioner of Labour, after an inquiry Commissioner ordered to pay a sum of Rs. 33,95,520.00 including the surcharge.

She further submitted case No. LB 73/984/12 filed in this respect by the Commissioner of Labour was withdrawn stating that the case cannot be maintained (A 09)

The applicant further submitted the gratuity due to her as at 30.06.2010 being a sum of Rs. 1224720.18 and the surcharge up to date should be received.

During the cross examination applicant stated as follows.

The applicant accepted that the case filed by the Commissioner of Labour under the Gratuity Act has been withdrawn on 11.01.2013 stating that the case cannot be maintained under the Act (R 3 and R 3 a).

The applicant further admitted though she did not appeared for the aforesaid case a Lawyer appeared on her behalf on the day that the case was withdrawn.

The applicant admitted that the cheque marked as R4 amounting to Rs. 160478.82 which was drawn in her name and also signed by herself as a authorized signatory (after signed by the Director of the Respondent Company) being a part of her Gratuity. (R 4)

The applicant stated that she resigned from the respondent company on 31st May 2010.

She further stated at the request made by the Board of Directors she worked till the end of June. (A 14)

The Applicant further stated that the full amount due to her as Gratuity was Rs. 2,829,600.00. Out of which a sum of Rs. 1,604,879.82 set off against the loan obtained by herself and her husband from the Respondant Company, the balance due to her as Gratuity will be Rs. 1,224,720.18.

The applicant further stated Commercial Bank, Cheque amounting to Rs. 1,604,879.82 was drawn on her name was deposited in the Account of the Finance and Gurantee Company Limited - the Respondent Company as the settlement of the loan obtained by the Applicant.

She further stated the Respondent Company has issued a receipt to her on her loan settlement.

The applicant marked a document as A 13 being the reply sent by the Commissioner of Labour explaining the reasons why the gratuity case was withdrawn. She further stated no reasons were given in A13 for withdrawing the gratuity case.

During the Re-examination, the witness stated as follows.

When the applicant left The Fiance Co., and joined The Finance and Gurantee Company Ltd. her gratuity also was transferred to The Finance and Gurantee Company Ltd., along with 4 others who joined similarly.

The applicant further stated that she did not give consent the withdraw the case filed by the Commissioner of Labour against the Respondent Company, Thereafter the dispute was referred to the Arbitration by the Commissioner of Labour.

Mrs. D. M. T. P. Dassanayake, Assistant Commissioner of Labour in her evidence stated as follows.

She produced to the court document file AS/CO/E/7/176/10

She further stated in the file there is a copy of the written submission filed on behalf of the Finance of Gurantee Company Presently LB Finance dated 16.07.2012.

The respondant marked it as R 11.

The witness marked letter dated 02.11.2011 as A 18 1 by the Deputy Commissioner of Labour addressed to the The Finance and Gurantee Company Ltd., requesting them to pay Gratuity to the Applicant within 14 days.

Since the Respondent failed to pay the Gratuity, Commissioner of Labour filed a case on 27.04.2017. According to the document marked R 10 said case bearing No 73/984 of Magistrate Court Fort was withdrawn by the Commissioner of Labour stating that there was no legal basis to continue with the case.

During the cross examination by the applicant's lawyer, the witness stated as follows.

The witness stated according to A 18, Respondent was ordered to pay to the Applicant a sum of Rs. 28,29,600/= as the gratuity and a sum of Rs. 5,65,920/= as the Surcharge amounting total sum of Rs. 33,95,520.00

The letter marked as R 10 has given the reason for the withdrawal of the case.

The witness further stated that the previous employer was The Finance Company but in R10 it was erroneously stated as The Finance and Gurantee Company.

The witness further admitted that the respondent company has not challenged the order given by the Commissioner of Labour in the Court of Appeal.

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

- I. It is evident that the Applicant has worked for the Respondent Company for a period of 11 years 01.07.1998 to 31.05.2010. According to the Gratuity act No 12 of 1983 she was paid a sum of Rs. 1,604,879.82 far in excess what she was entitled under Gratuity Act.
- II. It is evident that the Applicant as a senior accountant obtaining an excessive sum of Rs. 1,604,879.82 as the Gratuity was improper.
- III. It is clear that the Commissioner of Labour has no power to order to calculate the gratuity in excess half month salary for a year in service as stipulated in the Gratuity Act.
- IV. It is evident that gratuity become liable in terms of payment of Gratuity Act only when there is a termination of employment, since there has been no termination of service of the applicant it is not justifiable to calculate a sum of Rs. 223,125/= as her gratuity from her previous employer - The Finance Company PLC.
- V. It is evident that the Applicant's employment with the Respondent Company was a new one.
- VI. The Applicant has acted unfairly and fraudulently by obtaining the gratuity far in excess what she was entitled under the Payment of Gratuity Act.

For the reasons aforesaid it is my finding that the Respondent Company (party of the second part) has caused no injustice to the applicant. (party of the First part).

In the circumstances taking into consideration the totality of evidence led before me I dismiss the complaint made by the Applicant.

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.

30th June, 2018

KAPILA M. SARATHCHANDRA,
Arbitrator.

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