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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 2363/14 – 2023 දෙසැම්බර් 19 වැනි අඟහරුවාදා – 2023.12.19
No. 2363/14 – TUESDAY, DECEMBER 19, 2023

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/COM/01/2018/281.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award No. A 98/2019 dated 23.11.2023 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between 07 employees including Mr. D.W.K. Dippita, Mahapola Ports and Maritime Academy, Sri Lanka Ports Authority, Colombo 15 of the one part and Sri Lanka Ports Authority, No. 19, Chaithya Road, Colombo 01 of the other part was referred for settlement through arbitration by order dated 19.09.2019 made under section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in *Gazette* Extraordinary No. 2143/56 dated 04.10.2019 of the 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.
07th December, 2023.



In the matter of an Industrial Disputes

Between,

07 Employees including Mr. D.W.K.Dippita,
Mahapola Ports and Maritime Academy,
Sri Lanka Ports Authority
Colombo 15.

Of One Part

Ref. No.: IR/COM/01/2018/281
Case No. A/98/2019

And

Sri Lanka Ports Authority,
No. 19, Chaithya Road,
Colombo 01.

Of the 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, 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 19th September 2019 and referred the following dispute to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties are:-

“Whether the 7 employees mentioned below including Mr. D.W.K.Dippita who had been recruited to non - executive grade - SG 3 salary category training officers by the Mahapola Ports Maritime Academy of the Sri Lanka Ports Authority have been caused injustice by being attached to the executive IV (JLM) post being from 20.03.2018 and again being attached to SG 3 salary category non - executive grade from 20.07.2018 and if so, to what relief each of them is entitled.

01. D. W. K. Dippita
02. N.P.R.S. Ranasinghe
03. T.P.A.J.Fernando
04. B.R.D.Perera
05. K.V. de Mel
06. G.D.R. Shiranthi
07. L.P.Kumarasiri

Appearance:

Mr. Nalin Perera, Attorney-at-Law appeared for the party of the first part

Ms. Pamudi Weerasooriya, Legal Officer, 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. All

All 7 Applicant filed Affidavits

D.W.K.Dippita, during his cross examination stated as follows.

Dippita said having seen a newspaper advertisement (IP 4) he applied for the post of Training Officer/ Engineer. He was

selected as a Training Officer in Sri Lanka Port Authority.

He said, all of them were verbally told by Mr. K. A. Ansar, who was the Head of their Section that time that their position was and executive Post.(R2)

He said later he realized it was not an Executive Post anyway he accepted the appointment dated 09.12.2013 with others. (R4). It was a Post coming under SG segment.

He filed his certificates as IP 6, IP 7 (City and guides)

He further said IP 7 and IP 8 and IP 9 qualifications were obtained after joining Sri Lanka Port Authority.

He further said IP 10 was awarded by Director General of commercial Shipping and IP 10 was and essential criteria for my post.

He further said in (2015) IP 16, he appealed to the Respondent to be placed on Executive Grade, which he was entitled for, Ultimately after several appeals in 2018 he was placed on executive Grade (iv) with effect from 26.03.2018 (R5) with effect from the date of the appointment. Later by letter marked (R6, the Applicant was demoted to the Previous Post held by him with effect from 27.07.2018.(SG salary segment).

According to IP 13, the applicant said he has conducted more lectures compare to others.

He said 6 persons were recruited after the joining, 5 training officers and 1 assistant manager.

The applicant said he is praying a relief for cancelling his appointment to the executive grade 4 without giving any reasons.

Further the Applicant submitted statements of unpaid salary and actual salary as IP 17, IP 17(1), IP 17(17), and IP17(3).

The Applicant said he has being covering executive grade duties.

The Applicant further said that there was no recruitment process mentioned in the newspaper advertisement

The applicant K.V.de Mel in his evidence stated as follows.

He filed the document IP 17 starting the monetary loss incurred to them by not appointing them to the required post. He also said when he applied for the post of training Officer that he had no idea whether it was an executive post. But they assumed it as an executive post.

When they realized it was not an executive Post they made an Appeal and as a result a new letter of appointment was given on 26.03.2018 (R10, 4P 7).Subsequently it was cancelled by R11-4p 8 on 2018.07.24.

D.R.D. Perera, 5th Applicant in his evidence started as follows.

He said he joined Port Authority in 2013

At the time of joining he did not know that his position was an Executive position or not.

He further said he was given an Executive Appointment on 26.08.2018 and it was subsequently cancelled on 24.07.2018.

A.B. Kumarasiri, one of the Applicant in his evidence stated that he underwent same problem similar to others.

The Applicant G.R.D. Shiranthi in her evidence stated that she is asking similar relief as others.

W.H.J. Sudarshan Premarathne, Labour Officer in his evidence started as follows.

He said he made an inquiry about the complaint made and Submitted a report to the commissioner.

D.S.A. Karunaratne, Human Resource Manager in his evidence started as follows.

He said when the Applicants were recruited under non Executive Recruitment procedure (2009/2010) was applied

It was approved by the board of directors.

The Applicants made a request from the Human Resources Committee them to be placed from SG 2 to SG1.

The Applicants were given the promotion and after few month Human Resource Committee cancelled the said promotion citing a technical problem.(R. 12 and R 13).

In 2020 the Applicants who completed 5 years of service were promoted to executive Category . (J.L.M. Appointment).

The witness further said according to the circular No. 3/2018, the Finance Division informed that they have no funds to pay salaries to the persons who were appointed legally in 2020.

According to R 20A Applicants as training Officers were not included in Executive Section.

The Applicant further said in Mahapola Training Institute there are II executive posts but under that no training officers were included.

The witness was shown news paper advertisements 05/p/17 and 04/p/04 of 2022.

She admitted that in 05/p/17 it was clearly started Post of training officer/ Executive Grade iii.

The witness further admitted have completed NDT/HNDE/TTI qualification in technology fulfilling required qualifications for Executive Grade iii.

The witness further said in the advertisement 04/P/04 there was no mention of Executive or Non Executive.

The witness further said other than 7 Applicants there are 4 Training officers who falls into Executive Category.

The witness further admitted that main issue to be solve that cancellation of appointment dated 26.03.2018 on 24.07.2018. Cancellation was done without giving any reasons. In the letter the Applicants were placed on JLM post, the Applicants have decided not to take increased salary for the period 2013 to 2018.

The witness further said management and service Department has not Approved new appointments of the Applicants. The Witness further said that there around 10 officers in JLM Category who does not fall into Executive grade are serving in the Mahapola Training Institute . They have now absorbed to the executive category subject to their experience

It has been 9 years since the Applicants joining period of 5 years to move from SG category to JLM category. It has been 9 years since the Applicants joining in 2013. The Witness further said the Applicants are still in the same position that held when they joined in.

The witness further said after cancelling the Appointment on 24.07.2018, again on 28.02.2020 they were placed on JLM. But they were not paid the salaries for the post as per the Circular 3/2018. The payment of salaries were prohibited for the employees who were not in the approved carder.

Dilrukshi Narmada Pannipitiya, Senior Manager Finance in her evidence started as follows.

The witness said all 7 Applicants remain in the Post of SG3 for a period 10 years without promotion.

After Analyzing the evidence of the Applicants, arrived at following conclusion.

The Applicants who are attached to the Mahapola Ports Maritime Academy were placed on Executive Grade (iv) JLM with effect from 20.03.2018.

The Applicants humbled themselves not to take salary increments for the period 2013 to 2018 once promotion was granted.

The Applicants were reversed again to non executive grade from 27.07.2018 due to Management Service Department not approving their Appointment.

The Applicants were kept in a same Position for a period of 9 years after joining in 2013.

The Applicants are doing a yeoman service as Training Officers in the Mahapola Institute teaching students who will eventually become officers.

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

- (a) The Respondent has acted unfairly and maliciously towards the Applicants denying them promotion to Executive Grade.
- (b) The Respondent has acted maliciously and shamelessly and irresponsible manner twice promoting the Applicants and again reversing them to previous position due to bureaucratic bungling.

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 an existing contracts. An industrial arbitrator settles disputes by dictating new conditions of employment to come in to 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, Sri Lanka Ports Authority (party of the second part) has caused injustice to the 7 Applicants, (party of the First part) Namely;

01. D.W.K. Dippita
02. N.P.R.S.Ranasinghe
03. T.P.A.J.Fernando
04. B.R.D. Perera
05. K.V.de Mel
06. G.D.R. Shiranthi
07. L.P. Kumarasiri

In the circumstances taking into consideration the totality of evidence led before me I make award that the party of the First part (All 7 Applicants)

- 1). D.W.K. Dippita be paid:

a. Salary arrears for the period 20.03.2018 to 30.10.2023	Rs. 985214.15
b. Professional Allowance for the period 20.03.2018 to 30.10.2023	Rs. 246640.00
	<u>Rs. 1231854.15</u>

Along with EPF 15% and 3% ETF as calculated by Commissioner of Labour.

2). N.P.R.S. Ranasinghe be paid:

a. Salary arrears for the period 20.03.2018 to 30.10.2023	Rs. 985214.15
b. Professional Allowance for the period 20.03.2018 to 30.10.2023	Rs. 246640.00
	<u>Rs. 1231854.15</u>

Along with EPF 15% and 3% ETF as calculated by Commissioner of Labour.

3). T.P.A.J Fernando be paid:

a. Salary arrears for the period 20.03.2018 to 30.10.2023	Rs. 985214.15
b. Professional Allowance for the period 20.03.2018 to 30.10.2023	Rs. 246640.00
	<u>Rs. 1231854.15</u>

Along with EPF 15% and 3% ETF as calculated by Commissioner of Labour.

4). B.R.D.Perera be paid:

a. Salary arrears for the period 20.03.2018 to 30.10.2023	Rs. 985214.15
b. Professional Allowance for the period 20.03.2018 to 30.10.2023	Rs. 246640.00
	<u>Rs. 1231854.15</u>

Along with EPF 15% and 3% ETF as calculated by Commissioner of Labour.

5). K.V. de Mel be paid:

a. Salary arrears for the period 20.03.2018 to 30.10.2023	Rs. 985214.15
b. Professional Allowance for the period 20.03.2018 to 30.10.2023	Rs. 246640.00
	<u>Rs. 1231854.15</u>

Along with EPF 15% and 3% ETF as calculated by Commissioner of Labour.

6). G.D.R. Shiranthi be paid:

a. Salary arrears for the period 20.03.2018 to 30.10.2023	Rs. 985214.15
b. Professional Allowance for the period 20.03.2018 to 30.10.2023	Rs. 246640.00
	<u>Rs. 1231854.15</u>

Along with EPF 15% and 3% ETF as calculated by Commissioner of Labour.

7). L.P. Kumarasiri be paid:

a. Salary arrears for the period 20.03.2018 to 30.10.2023	Rs. 985214.15
b. Professional Allowance for the period 20.03.2018 to 30.10.2023	Rs. 246640.00
	<u>Rs. 1231854.15</u>

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 MANAWASINGHE SARATHCHANDRA,
Arbitrator.

23rd November, 2023

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