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EXTRAORDINARY

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No. 1984/9 - TUESDAY, SEPTEMBER 13, 2016

(Published by Authority)

PART I : SECTION (I) — GENERAL
Government Notifications

My No. IR/10/104/2009.

In the matter of Industrial Dispute

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

Between

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. S. M. D. Jayasundara, No. 417, Shiromani Mawatha, Godigamuwa, Maharagama of the one part and National Housing Development Authority, 5th Floor, Housing Secretariat Building, Sir Chittampalam A. Gardiner Mawatha, Colombo 02 of the other part was referred by order dated 09.09.2011 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. 1723/35 dated 16.09.2011 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Mrs. S. M. D. Jayasundara,
No. 417, Shiromani Mawatha,
Godigamuwa,
Maharagama.

of the one Part.

Case No. A-3405

and

National Housing Development
Authority,
5th Floor, Housing Secretariat Building,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02

of the other Part.

M.D.C. AMARATHUNGA,
Commissioner of Labour.

AWARD

Department of Labour,
Labour Secretariat, Colombo 05.
3rd September, 2016.

1. The Honourable Minister of Labour and Labour 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, 62 of 1957, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me as the arbitrator by his Order dated 09th September 2011 and referred the dispute between the aforesaid parties to me for settlement by Arbitration.

2. The matter in dispute between the aforesaid parties is-

“Whether the demand made by Mrs. S. M. D. Jayasundara who held the post of Senior Manager (Finance) of the National Housing Development Authority who retired on 21.12.2009, services were terminated on 29.07.1995 after a disciplinary inquiry and reinstated in service without a break of service on 15.06.2004 with two years salary of Rs. 173,520/- by an order of the Labour Tribunal, that she has been deprived of receiving the salary and allowances and the opportunity to face interviews for promotion during the unemployed period can be justified and if so, to what relief she is entitled.”

3. Mr. K. G. Navaratne, appeared on behalf of the applicant, while Ms. R. Fernando and Ms. Diana Kodituwakku, State Attorneys appeared on behalf of the Respondent, National Housing Development Authority.

4. Both Parties tendered submissions in terms of Regulation 21(1) and 21(2). It came to light, arising from the submissions that Labour Tribunal, per its order in case No. 1/44/96 of 21st April, 2004 required the Respondent National Housing Development Authority to offer work on 15th June, 2004 and pay compensation in a sum of Rs. 173,520/- being 2 years salary, worked out on the basis of (Rs. 7,230x12x2).

At the outset, respondent National Housing Development Authority stated that the judicial principle “Res judicata” applied in this case, and arbitrator cannot proceed therefore, whereas the applicant took up the position that, arising from the order, salary for the period of non-employment, *i. e.* from 29.07.1995 to 15.06.2004, becomes due, as the learned Labour Tribunal President used the words “සේවයේ පිහිටුවන ලෙස” signifying reinstatement. Applicant cites several decided cases to substantiate her argument.

5. However, following facts reveal that-

(a) Applicant assumed duties, per Labour Tribunal order on 15th June, 2004, but took up the issue of back wages, with the Commissioner of Labour, after 42 months, a belated application.

(b) Labour Tribunal Order, in its 17 page judgement, comprehensively has examined the pros and cons of the matter and the applicant had not been completely exonerated from the charges levelled. In the analysis of evidence, the lapses on the part of applicant, as well as that of management, had taken into consideration, and ordered payment of compensation, instead of full back wages.

(c) If the applicant observed that Labour Tribunal had not calculated the entire salary for the denied period of employment, she should have appealed to the High Court seeking relief, which she failed to do so.

(d) Section 31(B)(5) of the Industrial Disputes Act state that-

“Where an application under sub section (1) is entertained by a Labour Tribunal and proceedings thereon are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under sub section (1)”

Relief lies only from High Court, as the Arbitrator is not vested with revisionary jurisdiction.

In view of the reasons enumerated arbitrator cannot grant any relief to the Applicant.

This is just and an equitable Award.

P. NAVARATNE,
Arbitrator.

21st July, 2016.

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