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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/13/04/2009.

Ref No. : IR/13/04/2009.

THE INDUSTRIAL DISPUTES ACT, (CHAPTER 131)

IN THE MATTER OF INDUSTRIAL DISPUTE

THE award transmitted to me by the arbitrator to whom the industrial Dispute which has arisen between Mr. A. S. de Zoysa, “Thakshilawa”, DMS Estate, Rathgama of the one part and Sri Lanka Transport Board, No. 200, Kirula Road, Colombo 05, of the other part was referred by order dated 13.01.2010 made under Section 4(1) of the Industrial Disputed Act, Chapter 131 (as amended) and published in the Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 1637/17 dated 21.01.2010 for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act,

Between

Mr. A. S. de Zoysa,
“Thakshilawa”
DMS Estate,
Rathgama.

Case No : A-3319

(Party of the first part)
first party

and

Sri Lanka Transport Board,
No. 200, Kirula Road,
Colombo 05.

(Party of the Second party)
Second party

V. B. P. K. WEERASINGHE,
Commissioner of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
15th February, 2014.



AWARD

The Honourable Minister of Labour Relations and Manpower Athauda Seneviratne, 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 hereby appointed me to be the arbitrator and referred the above said dispute to me for settlement by arbitration.

Statement of matters in dispute between the aforesaid parties is as follows :

1. Whether injustice is caused to Mr. A. S. de Zoysa who retired from services of Kaluthara Bus Company Limited from 06.11.2004 due to reduction of his monthly salary up to rupees Eight Thousand Six Hundred and Ninety (Rs. 8,690) since the month of July 2004 whereas he was drawing a salary of rupees Twelve Thousand (Rs. 12,000) earlier and if any justice is caused, to what relief he is entitled ?

2. Whether Mr. A. S. de Zoysa is entitled to receive five special salary increases in terms of the Personal Division Circular of the Sri Lanka Central Transport Board dated 30.06.2003 treating him as a retired employee as specified therein and if is so entitled, what should be the total monthly salary payable to him at the time of his retirement.

and

3. What should be the amount of gratuity payable the A. S. de Zoysa in terms of the Circular Letter No. 01 of 2002 issued by the Kaluthara Bus Company Limited and if any arrears of gratuity is due to him what should be the amount payable to him ?

Appearances :

Mr. Udeny Dayarathna - Attorney-at-Law appeared for the First Party.

Mrs. Nimasha Ayanthi - Attorney-at-Law (Assistant Legal Officer) appeared for the Second Party.

At the outset it must be noted that the issues between the parties are wholly and solely regarding statutory dues. Therefore it is pertinent to address one's mind to the statutory aspects and as such the Assistant Commissioner of Labour - Panadura Mrs. Lakshmi Mangalika Hewavitharana

was called to produce and mark files of documents relating to the inquiry of G. G. Norbert - Executive Director as "X", K. P. Somathilake, Executive Director - "Y" and A. S. De Zoysa - Executive Director Marked "Z" and "W" respectively, all of whom were employed by Kalutara Bus Company Ltd during the relevant period. Aforesaid persons had complained to the Assistant Commissioner of Labour (ACL), Panadura against the Second Party as to the computation of the gratuity payment due to them.

Norbet's complaint has been made X₍₁₎ in that he has served under the Sri Lanka Transport Board (SLTB) from 1975 to 1991 (16 years) and had received Rs. 29,880 as gratuity at that time for that period and then has served under the peopled bus service from 1991 to 2002 (11 years) until his retirement on as Director 06.08.2002. A3 (28.10.2011) and his last drawn salary plus allowances had been Rs. 14,400. Document marked X₍₁₎/A/9 dated 09.07.2010 depicts that this services under its predecessor and the Second Party totalled 27 years and gratuity computed on the basis of one month salary for each completed year of service worked out thus.

Rs. 14,400x27 = Rs. 388,800 and deducted gratuity already paid and added surcharges of 30% for delay. Further more this order of ACL has been complied with by both parties, Incidentally the Court of Appeal Writ Application No. 143/2003 in Colombo Metropolitan Bus Company Limited V. S. A. Nimal Saranattissa - the Commissioner of Labour, marked A-23 which had been applied and acted upon.

Turning to the complaint made by Somathilaka, a hand written complaint dated 20.07.2004 marked Y₍₁₀₎. In the ensuing inquiry he had invited the attention of ACL to Article 116 of the Articles of Association of Kalutara Bus Company Limited.

Article 116 reads thus :

"The Secretary to the Treasury may remove an Executive Director appointed by him and appoint another in his place, without prejudice to the right of such Executive Director to claim damages for breach of any contract of employment or services with the company marked A(6)a₍₁₎ and sinhala translation A(6)a₍₁₎(S) "

Where it was revealed that an Executive Officer Grade has the right to enjoy the same benefits even after removal from such post, Moreover the one who represented and involved in the proceedings on behalf of the Second Party Nimal Jayasekara accepted the above position and reiterated that SLTB has no objection to computing Somathilaka's gratuity on the basis namely Director's salary and stipulated

allowances according to Y(10)₍₂₎ and order of ACL was carried out complied with without and challenge and Somathilaka benefited all arrears of salary paid by the Second Party. This stance had been reinforced by supporting documents marked. A (25)_{(1)(a)} and A(26)_{(1)(a)}

A(25)(1)(a) reads as follows :

"2004/03 දරන අධ්‍යක්ෂ මණ්ඩලීය ප්‍රතිකාවට අනුව උතුරු සහකාර කම්කරු කොමසාරිස් තැනගේ අංක කලු/කාස3/2004 සහ 2004.10.18 තීන්දුවට ප්‍රකාර කිසිදු අධ්‍යක්ෂවරයෙකු වෙත ගෙවන ලද දීමනාවන් හෝ හිමිකමක් ඔහු අධ්‍යක්ෂ ධුරයෙන් ඉවත් කළ ද කුමන පොකුරු බස් සමාගමක සේවය කළ ද, අහිමි නොකළ යුතු බවට අධ්‍යක්ෂ මණ්ඩලය විසින් අනුමත කරන ලදී."

Thus "the Directors of the Kalutara Bus Company Limited had decided on 08.11.2004 that a Director's wages or benefits cannot be reduced, even if removed from the post."

Be that as it may, after the conclusion of evidence of both parties on 15.11.2013 time was given to them to file their written submissions. The Second Party submitted its written submissions along with documents marked R(1) to R(31) on 30.12.2013 as ordered by Court whereas after obtaining extended time written submissions were filed by the First Party along with documents A(1) to A(28) on 02.01.2014.

A review of written submissions of both parties as well as the evaluation of the evidence recorded reveals the facts to be relevant to this Court's Award to be as follows :

The First Party (Zoysa) was employed under the Second Party as a Trianee on 01.01.1961 vide R(a) and R(2) read with A(2) and rose to the managerial level and later appointed as an Executive Director on 06.08.2002 vide R(18). While a Director he was paid a Director's allowances R(15) and was removed from the post of Director (without a break in service) on 29.06.2004 by the Secretary to the Treasury by virtue of powers vested in him under Article 116 of the Articles of the Association of Kalutara Bus Company Ltd R(19). At the time of retirement Zoysa is credited with 43 completed years of service both his predecessors (The Ceylon Transport Board which was converted into Sri Lanka Central Transport Board and 9 other Regional Transport Board. Regional Transport Boards were established as a separate legal entity). The employees whose services were terminated by the Regional Transport Board were paid compensation. EPF, ETF and the Gratuity when they joined the peopled companies as new employees. Zoysa was paid Rs. 48,525 as Gratuity.

Be that as it may, after removal Zoysa was reverted to Grade II salary scale Rs. 8,690 plus the allowances totalling

Rs. 13,600 vide R(15), A(22), A(24) and A(24)₍₂₎. And by letter dated 04.11.2004 Zoysa was compulsorily retired after reaching 60 years on 06.11.2004. (R(20)). His gratuity was calculated on the basis of last drawn salary vide A(24)₍₂₎ worked out thus, Rs. 13,600x13 years amounting to Rs. 176,800 and his full gratuity was Rs. 176,800 plus Rs. 48,525 (predecessor's) = Rs. 225,325. The said payment was made in two parts and also delayed which attracted surcharge for the delay.

While Second Party maintains that all dues had been paid, the First Party states that the dues were not fully paid. This disputes resulted in the First Party seeking relief from the Assistant Commissioner of Labour, Panadura. The matter in dispute is as to how payment of gratuity and arrears of salary if any due to the First Party from the Second Party to be calculated. As the matter could not be settled amicably it was referred in terms of 4₍₁₎ of the Industrial Disputes Act Chapter 131 of the Legislative Enactments of Ceylon (1956 revised edition) as amended, to this Court.

Next issue is whether the First Party is entitled to five salary increments in terms of documents R(25) read with R(26)⁽¹⁾ and R(29). It goes without saying the First Party worked more than forty three (43) years and therefore entitled to salary increment of Rs. 200x5 totalling Rs. 1,000 which has to be included in gratuity calculation is not disputed by the Second Party. The Second Party's contention was that R(25) is relevant only to Board Employees and not to the First Party. On analysis of R(25) refers to a circular No. 02(1) of 2003. Where R(29) first para refers to Circular 2003/2 and 2003/2(1) and the bottom two lines of third para.

reads thus :

"ශ්‍රී ලංකා ගමනාගමන මණ්ඩලය නැවත ස්ථාපිත කළ 2005.10.19 වැනි දින සිට පොකුරු බස් සමාගම් වල සේවක මහත්ම/මහත්මීන්ට ද මේ සඳහා හිමිකම් ඇත."

"R(29) clearly states that employees of cluster bus companies are also entitled to increment from 19.10.2005."

Moreover, R(26)₍₁₎ reiterates the fact that

"2005 මාර්තු මස 01 දින සිට විශ්‍රාම ගැන්වෙන මණ්ඩලීය සේවක සේවිකාවන් සඳහා පමණක් මෙම සහනය ප්‍රධානය කෙරේ"

It is abundantly clear to me that the disputes is still alive and therefore attracts this benefit afforded to those retired after 01.03.2005 to be applicable to the First Party on the basis just and equitable principles there can be no room for technicalities or trivialities.

From the facts and the circumstances, it appears to me that the First Party is discriminated. While Nobert and especially Somathilaka were treated in one way the First Party was handled in different manner. Evidence adduced by the witnesses of the Second Party is partial and are not telling the truth. The question as to why the First Party suffers in such a manner is unparadonable and therefore he should be given the relief he prayed for. The above said judgment is very relevant in calculating the computation of the First Party because it is the law that stands at this juncture. Thus, in calculating the computation of gratuity's a person's whole service should be taken into account if his services were not broken. In this instant case, the First Party had been in service without a break for 43 years. The contention of the Second Party was that when he was absorbed in Peoplist Bus Company he was treated as a new recruit. That is incorrect in terms of the said judgement. So much so, his whole service of 43 years has to be accounted for in calculating his gratuity.

The question is what should be the base on which his gratuity should be calculated. Is it on Grade II scale or the Director's scale. The Second Party asserted that he is only entitled to the last drawn salary. But, the wealth of evidence supported by documents indicates that what is applied to Somathilaka and Norbert should also be applied to First Party. Article 116 reiterates that position. That is to say A(25)(1)(a) and A(26)(1)(a) referred to above, vouchers for the fact that, the Directors of Kalutara Bus Company Ltd decided on 08.11.2004 that a Director's wages or benefits cannot be reduced, even if removed from the post, Undoubtedly his gratuity should be computed on the basis of Director's salary plus allowances R(15).

On a parity of reasoning the First Party is entitled to the following relief :

Computation of gratuity : Director's salary plus the stipulated allowances thereto.

Salary (Director's)		=	Rs. 12,000
Allowances	Rs. 1,250		
	Rs. 400		
	Rs. 2,400	=	Rs 6,050
Net Total		=	Rs. 16,050

In addition add five increments of Rs. 200 = Rs. 1,000
 Added total would be = Rs. 17,050
 Number of years he had served = 43 years

Total gratuity (Rs. 17,050x43) = Rs. 733,150
 Deduct gratuity paid
 (Rs. 48,525+Rs. 1,76,800) = Rs. 225,325

Gratuity payable = Rs. 507,825

Surcharge 30% = Rs. 176,800x30%
 = Rs. 53,040
 Balance payable = Rs. 733,150-Rs.225,325
 = Rs. 507,825 + Rs. 53,040

Net Gratuity payable = Rs. 560,865

As regards arrears of salary for, July, August, September and October 2004, considering the contention of the Second Party though he may be entitled under A(25)^{(1)(a)} and A(26)^(a). However, Zoysa cannot be given any such relief requested for on a reasoning that it is not equitable to grant such an Award. Reason being after removal another Director had been enjoying that salary and it will be financial restraint on the Second Party.

In the circumstances, I make award that the party of the First Part is entitled to a sum specified above, Rupees Five Hundred Sixty Thousand Eight Hundred and Sixty five only and Cents Fifty (Rs. 560,865) and this should be deposited with the Assistant Commissioner of Labour - Panadura within one month from the date of publication of the Award in the Gazette of the Democratic Socialist Republic of Sri Lanka.

The Party of the First part is at a liberty to withdraw the said amount thereafter.

I consider this Award to be just and equitable, in the circumstances.

T. EDMUND SANTHARAJAN,
 Arbitrator.

At Colombo,
 24th January 2014.

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