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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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No. 2115/21 - TUESDAY, MARCH 19, 2019

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. IR/22/50/2010.

In the matter of Industrial Dispute

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. M. G. J. G. G. Nanayakkara, No. C/E/5/12, Ranpokunagama, Nittambuwa of the one part and Mahaweli Authority of Sri Lanka, No. 500, T. B. Jayah Mawatha, Colombo 10 of the other part was referred by order dated 12.10.2016 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. 1989/5 dated 17.10.2016 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Between

Mrs. M. G. J. G. G. Nanayakkara,
No. C/E/5/12, Ranpokunagama,
Nittambuwa.

Case No. A 3672
IR/22/50/2010

of the one part

and

Mahaweli Authority of Sri Lanka,
500, T. B. Jayah Mawatha,
Colombo 10.

of the other part

A. WIMALAWEERA,
Commissioner General of Labour.

AWARD

1. 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

Department of Labour,
Labour Secretariat, Colombo 05,
12th March, 2019.

1A—G 29685 - 24 (03/2019)

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the Legislative Enactments of Ceylon (Revised edition 1956) 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 by his order dated 12th October, 2016 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. M. G. J. G. Nanayakkara to the Mahaweli Authority of Sri Lanka that her appointment to the post of administrative assistant should be backdated to 01.03.1990, her appointment to the post of administrative officer should be backdated to 01.03.1994 and that she should receive the arrears in salary and the increments accordingly can be justified and if so, to what relief she is entitled.”

The above mentioned industrial dispute, had been referred to Mr. W. G. Deen, the Arbitrator, who heard and completed hearing per industrial court case No. A 3404, on 12th October 2016. The said reference had been revoked by the Hon. Minister of Labour and Trade Union Relations and referred the case to me for settlement by arbitration as per his order No. IR/22/50/2010 of 12th October, 2016.

I, took up the case for hearing and on the very first day, *i. e.* 25th August, 2017 both parties were present and stated that, my predecessor completed the hearing and written submission too have been made. Parties requested that the award should be to made on the evidence placed before Mr. W. G. Deen - Vide file No. A 3404 with due consent of parties, I make my findings and the award.

Applicant was represented by Mr. Wilbert Perera, and after his demise Mr. W. A. L. C. Perera appeared respondent was represented by Legal Officer of Mahaweli Authority of Sri Lanka, Mrs. Asha Hettiarachchi, Applicant marked A1 to A25 documents, while Respondent marked R1 to R7 documents.

3. Applicant, Mrs. M. G. J. G. Nanayakkara states

A.(a) She joined Sri Lanka Tobacco Industries Corporation, as a vet. Assistant, with effect from 01 Feb 1976, The Corporation was closed, and she was absorbed to Mahaweli Authority of Sri Lanka, effective 01 Dec. 1978.

(b) With effect from 15 May 1979 she was placed in Clerk GR. III at Mahaweli Authority of Sri Lanka.

At the time of appointment she possessed GCE (Advanced Level) qualification.

(c) Again, placed as a Clerk, Grade II, effective from 01 Jan. 1984.

(d) On 01 Jan. 1990 she had been appointed to Clerk, GR. 1 post

(e) As at 12 May 1996, she was appointed to the post of Administrative Assistant.

(f) With effect from 15 May, 2008 she had been appointed to the post of Administrative Officer, where she functioned until retirement on 07 February, 2011.

B. Her grievance is that, the period she served at Sri Lanka Tobacco Industries Corporation, had not considered, whenever promotions were made, in advancing her carrier appointments. Whereas she cited several cases of promotions being given to persons with identical service, experience and qualifications.

C. In the process, many times written complaints had been made to the concerned authorities of Mahaweli Authority of Sri Lanka, political victimization committees, Minister in Charge of MASL at the time, and members of Parliament, but had no response from such representatives.

She pleads that her period of service, at Sri Lanka Tobacco Industries Corporation to be considered, in addition, the qualifications she acquired over the tenure in employment at Mahaweli Authority of Sri Lanka to be recognized, and duly placed in promotional grades, which have been deprived until retirement.

4. Applicant's next witness, Mrs. P. R. Wimalawathie Manike, Administrative Assistant states

A. That she joined Mahaweli Authority of Sri Lanka on 01 Dec. 1978 having previously worked at Sri Lanka Tobacco Industries Corporation, from 01 Feb. 1976. Both applicant and she worked together.

B. That Govt. decided to windup the Sri Lanka Tobacco Industries Corporation and around 30 employees, were absorbed to Mahaweli Authority of Sri Lanka. Vide A 25(A). In that applicant's name is listed No. 1 and this witness as No. 4

C. That just like the applicant, she too was appointed to GR. III, then to GR. II, GR. I and as Administrative Officer, until she retired on 25 January 2011.

5. Respondent Sri Lanka Mahaweli Authority's witness, Mr. S. G. Ranjith, Administrative Assistant States

- A. That she joined the Mahaweli Authority of Sri Lanka on 06 Feb. 1985, as a clerk and now is as Administrative Assistant.
- B. Speaking about the applicant, he said that Mahaweli Authority of Sri Lanka did not have a job category titled Veterinary Assistant, but since she was to be absorbed into the cadre due to closure of Sri Lanka Tobacco Industries Corporations, she was appointed to Grade III of clerical service, but did not count past service.
- C. That the applicant had not brought the grievances to the management, according to the applicants personnel file. He further said that letters dated on 03 July 2007. As well as 18 April 2001. Had not seen Document A 24 was shown to the witness, who said that Administrative Officer Mr. Nandasena had accepted items 1 to 6, in that document.
- D. On showing document A10, A17 and A18 which were addressed to Minister and then only, her promotions were affected.

6. My Findings and Observations

- A. It is common in the private sector to change ownership on account of closure, or sale. In such instances, the new owner take over employees ensuring wages, terms and conditions of employment including past services. Past services needs to be counted specially to recognize for purpose of payment of Gratuity and any terminal benefits that may arise.
- B. It is unclear as to the manner of granting promotions, applications are called from the eligible persons to apply. But it is a mystery as the absence of a marking formula. Since the number of vacancies existing may be limited and number seeking may be many Selection becomes complicated and involving specially most of them do possess identical qualifications. The marking formula forms the guidelines such as applicants age, educational attainment, experience, command of the language, decision making ability etc. are some of them.

C. Also it's the prerogative of the management to eliminate undesirables, such as chronic absentees, those under disciplinary charges, black marks concerning commission of offences. Charged on abuse, corruption and insubordination, who are generally unfit to hold positions of responsibility.

- D. In this instance, interviews with no guidelines means, selection criteria lacks transparency.
- E. Applicant charge that certain persons have been elevated to positions disregarding the experience and qualifications, which fact respondent failed to challenge. The persons cited are Mr. Moose Perera, Mrs. M. E. Kumarihamy, Mrs. R. A. D. Indrani, Mr. M. A. Nandasena and Mrs. Sriya Gamage.
- F. At the time of recruitment applicant had passed G. C. E. (Advanced Level) and by 2002, She had obtained two diplomas, one in Personnel Management from National Institute of Business Management and the other Diploma in Labour Education from University of Colombo. In 2009 she had secured the Degree on Labour Education from the University of Colombo.
- G. Mid stream, Applicant submitted to regulate her appointment from the outset, but the Arbitrator is not mandated to act beyond what is mentioned in the reference. The principle of ultra vires applies.

7. Award

I have examined the evidence placed carefully and I am satisfied that management had erred in the process of promotional aspects. As such I award that the applicant's following gradings -

1. Administrative Assistant to be from 01.01.1994,
2. Administrative Officer to be from 01.01.1999.

Backdated increments and arrears of salary be deposited with Assistant Commissioner of Labour (Colombo Central) Labour Secretariat, Colombo 05, to be paid to her, within 45 days of publication of the award in the Govt. Gazette.

This is just and a fair award.

P. NAVRATHNE,
Arbitrator.

03rd July, 2018.

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