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EXTRAORDINARY

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No. 2253/24 - WEDNESDAY, NOVEMBER 10, 2021

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. IR/ 15/ 04/2013.

INDUSTRIAL DISPUTES ACT (CHAPTER 131)

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. W. G. B. M. Ranaweera, No. 4, Park Terrace, Colombo 05 of the one part and The National Lanka PLC, No. 28, Dickmans Road, Colombo 05 of the other part was referred by order dated 19.08.2014 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. 1878/ 8 dated 01.09.2014 for Settlement by Arbitration 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,
28th October, 2021.



In the Matter of Industrial Dispute

IR/15/04/2013

Between

Mr. W. G. B. M. Ranaweera,
No. 4, Park, Terrace,
Colombo - 05.

Case No. : A - 3578

Of the one part

And

The Nation Lanka PLC,
No. 28, Dickmans Road,
Colombo 05.

of the other part

AWARD

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 by his order dated 19 August, 2014 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 Mr. W. G. M. B. Ranaweera who had served Nation Lanka Finance PLC had been caused injustice at his retirement by not being paid the 50% Ex-Gratia payment in addition to the gratuity, and if so, to what reliefs he is entitled to.”
3. Applicant Represented By- Mrs. Prabash Semasinghe AAL and Mr. Randika Mudannayake AAL
Respondent Represented By - Mr. Diththa De Alwis AAL
4. Applicant Submitted documents marked , 1 to , 15
While respondent marked Documents marked R1 to R18 (a)
5. Applicant Mr. W. G. B. M. Ranaweera,
His evidence appear at pages 135 to 289
6. Respondents organisation -
1st witness - Mr. Janaka Gunasekara
Evidence Appear at pages 290 to 375
2nd witness - Yanka Yamithra Ranaweera
Evidence Appear at Pages 382 to 452
7. Findings and Observations
(a) Payment of Gratuity Act, No. 12 of 1983, came into operation with effect from 31st March 1983, the applicant, who held the post of Managing Director cum Chief Executive Officer, is responsible in issuing the staff circular, which provide for enhanced gratuity, by passing the statutory restrictions.
Section 10 (2) of Payment of Gratuity Act states thus -
“No workman shall be entitled to gratuity or terminal benefits in terms of any collective agreement, award of an industrial court or other agreement in addition to the gratuity under this Act or vice versa.”

The company memo providing enhanced gratuity had been issued on 28th February 2003 is in violation of the said statutory limitation.

(b) The applicant had failed to mark his letter of appointment, in order to determine his entitlements.

With the change of investor, The following clause in the agreement Specify that

10 (a) The employment of all employees, including contractual, probation and permanent cadre of the investee company and the subsidiaries referred to in schedule hereto, shall be continued subject to the terms and conditions of the letters of appointment issued by the investee company and it's subsidiaries."

11 (c) The investee director shall also give a written undertaking confirming that they have no claims against Nation Lanka Finance PLC in their capacity as a director. The executive directors shall additionally state that they have no claims against Nation Lanka Finance PLC either as a director or as an employee, except to the extent of their contract of employment as an employee of Nation Lanka Finance PLC.

(c) Central Bank is the bankers' bank. Monetary Law Act, as amended from time to time, exercise very wide and variety of powers. Briefly stated, some of the functions are -

- i. It's the lender of last resort
- ii. Exercise open market operations
- iii. Controller of money supply
- iv. Compulsory reserve custodian of commercial banks
- v. Advisor to the state on fiscal policies

Several Departments, are responsible, in carrying out the operations, such as Economic Research, Public Debt, Employees Provident Fund, Supervision of commercial banks, Supervision of Non-bank financial institutions.

(d) Finance Companies Act, No. 78 of 1988 states thus-

"Section 11(2) - If the Monetary Board, in consideration of a report under sub section (1) determines that a person or body of persons is carrying on finance business it shall required such person or body of persons to comply with the requirements of the Act within a special period of time, and where it fails to do so, shall have the power to give directions and take such steps it considers necessary to safeguard depositors, including the power to wind up person or a body of persons in which event the provisions of section 18 shall Mutatis Mutandi apply."

(e) With the rapid increase in establishing non-bank financial institutions, also due to many financial institutions had violated their responsibilities to the customers, Central bank had obtained sufficient strength through operation by this special wing of the Bank. Sec. 34 of Finance Leasing Act, No. 56 of 2000 refers. It states - "The Director shall have the power to issue such general directions, as he may consider necessary for the purpose of ensuring that registered establishments maintain efficient standards in carrying out their duties, including directions of the following matters :-

(a) to (i)." of section 34 of the Act

AWARD

I have analysed oral and documentary evidence comprehensively and I am convinced that the applicant has failed to established his case. As such applicant is not entitled to any relief. I certify that the award is just and equitable.

UPALI SAMARAWERA,
Arbitrator.

07th August 2021.

My No. : IR/COM/02/2017/222.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. E. Jegadeesan, Chief Engineer, National Water Supply and Drainage Board, Sivan Pannai Road, Jaffna of the one part and National Water Supply and Drainage Board, Head Office, Galle Road, Rathmalana of the other part was referred by order dated 29.06.2018 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. 2078/32 dated 04.07.2018 for Settlement by Arbitration 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.
08th October 2021.

Ref No. IR/COM/02/2017/222.

Matter of an Industrial Dispute

Between

Mr. E. Jegadeesan,
Chief Engineer,
National Water Supply and
Drainage Board, Sivan Pannai Road,
Jaffna.

Case No. A/42/2018

and

Of one Part

National Water Supply and
Drainage Board,
Head Office,
Galle Road, Rathmalana.

Of 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, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) and amended by Acts, Nos. 14 of 1957, 62 of 1957 and 4 of 1962 and 39 of 1968 (read with Industrial Deputes- Special Provisions) Act No. 37 of 1968 appointed me as Arbitrator by his order dated 29th June, 2018 and referred the following disputes to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are :-

“Whether Mr. E. Jegadeesan, employed as Chief Engineer of the National Water Supply and Drainage Board has been caused injustice by not being given the post of Chief Engineer before 01.04.2013 and if so to what reliefs he is entitled.

Appearance

Mr. Leon Joseph,
Representative appeared for the party of the First Part.

Mr. Nisal J. S. Fernando,
Attorney at Law,
For the Party of the
Second Part

Both parties have filed the statement under Regulations 21(1) and 21(2) of the Industrial Disputes Regulations of 1958 as amended.

Mr. E. Jegadeesan, the Applicant in his evidence stated as follows.

The Applicant joined the Respondent Board on 01.03.2001 as a Civil Engineer (Grade 7).

On 10th August 2009 the Applicant left to Thailand, AIT and UNESCO, Netherland on dual master degree.

Before he left Sri Lanka in August 2009, he has applied for the Post of Chief Engineer, He faced for the interview on 14th July 2009 (A4)

He say after he left, the results of the interview was not notified to him, He further said, he applied for the Post of AGM in 2010, he was in overseas on fully paid study leave.

In 2010, he was informed that no video call interview is possible.

He returned to Sri Lanka on 2nd May 2011 after completing his education.

Then he was assigned as Civil Engineer - Emergency Northern Recovery Project.

He applied for No. pay leave on August 2011 but was not approved.

Subsequently his no pay leave for 6 months was granted after he appealed to The President.

Before he left he applied for the Post of Chief Engineer.

When he was called for the interview he was not in Sri Lanka

In 2012 December, the Applicant applied for the Post of Chief Engineer and he left the Country on 16th December after obtaining No. Pay Leave.

Subsequently he was promoted as the Chief Engineer,

The Applicant further said he went overseas after facing the Chief Engineer interview in July 2009. He was not informed the result of the interview. He further said others who faced for the interview in 2010 was promoted as Chief Engineer.

The Applicant wanted post of Chief Engineer be back dated from 30.04.2011 to 2013 During the cross examination the Applicant stated as follows.

The Applicant stated that 32 carders was made permanent as Chief Engineers in 2009. Since he got 42nd Place from the interview he was not given the promotion.

The Applicant said he was in overseas for 22 months 10.08.2009 to 30.04.2021 He further aid that he returned to Sri Lanka on 30th April, 2011 again he took special Permission and left Sri Lanka.

The Applicant further said before he left overseas on scholarship he signed an Agreement. Marked A 20 and A21, According to the said document, after returning to Sri Lanka, the Applicant has to work 6 years continuously (A 20, Page 15) Since Applicant went No Pay for 10 months he had to sign a new Agreement for 6 yrs 10 months.

The Applicant said his could not get an interview in 2010, 2011 so he was given a special interview on 01.04.2013 and he got selected to Post of Chief Engineer.

The Applicant is requesting to back date the Chief Engineer post from 2009 or 2010.

He further said all the Applicant who were interviewed on 2010 were given post of Chief Engineer. Senior Human Resource Officer Ms. Kanthi Balage has stated as follows.

The witness said that the Applicant obtained 43rd place out of 55 who faced the interview for the Post of Chief Engineer only up to 32nd were selected as the Chief Engineer.

The witness said that the Applicant did not forward any application for the Post of Chief Engineer during the period 2009 to 2012.

She further said the Applicant came to Sri Lanka on October, 2012. Then he was interviewed and on 01.04.2013 he was appointed as a Chief Engineer She further said it was a special interview only for the Applicant.

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

- i. The Applicant joined National Water Supply and Drainage Board on 01.03.2001 as a Civil Engineer. He left to Thailand on 10.08.2009 in 2009 he was not successful in the Chief Engineer interview. He was in overseas from 10.08.2009 to 30.04.2011. The Applicant returned to Sri Lanka in 2012 and faced an interview on 01.04.2013 and got promoted to the Post of Chief Engineer.
- ii. The Applicant could not apply for the Post of Chief Engineer during the period 2009 to 2013 as he was overseas.
- iii. The Respondent has not acted unfairly towards the applicant as the Applicant could not face the Chief Engineer interview as he was in overseas from 10.08.2009 to 30.04.2011.

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 not made 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 contracts for the future in contrasts to a judge who enforces rights and liabilities arising out an existing contract. An industrial arbitrator settles disputes by dictating new conditions of employment to come into force in the future when he cannot get the parties to agree to them in contact to a judge who determines the existing right and liabilities of the parties.

For the reasons aforesaid it is my finding that the Respondent, National Water Supply and Drainage Board Road (party of the Second Part) has caused no injustice to the Applicant, Mr. E. Jegadeesan. (party of the First Part).

In the circumstances taking into consideration the totality of evidence led before me I make award that the party of the First part : Mr. E. Jegadeesan is not entitled to any relief by not given the post of Chief Engineer before 01.04.2013.

I Consider this award is just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

23rd June 2021.

11 - 562