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PART I : SECTION (I) — GENERAL

Government Notifications

My No. IR/22/42/2009

Ref No. : IR/22/42/2009.

In the Industrial Dispute Court

THE INDUSTRIAL DISPUTES ACT CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. W. M. Chandraratne, No. 67/2, Maussagolla, Rattota of the one part and Sri Lanka Transport Board, No. 200, Kirula Road, Colombo 05 of the other part was referred by order dated 19.11.2015 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. 1682/38 dated 02.12.2010 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Mr. W. M. Chandraratne,
No. 67/2, Maussagolla,
Rattota.

Case No. A/3365

..... Applicant.

and

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

..... Respondent

THE AWARD

The Honourable Minister of Labour Relations and Productivity Promotions 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

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

Department of Labour,
Labour Secretariat, Colombo 05.
29th January 2016.



and 13 of 1968, read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968, has appointed me to be the Arbitrator and referred the following dispute to me for settlement by arbitration : -

Whether Mr. W. M. Chandrarathne who was retired from the service on medical grounds with effect from 06.11.2006 while he was serving as a Depot Inspector attached to the Matale Depot is entitled to receive a payment of compensation respect of the period of his service in terms of the Section (අ)(II) of the Circular No. 1974/04 of the Personnel Division of the Sri Lanka Transport Board, and if he is so entitled ; what should be the quantum of compensation.

Proceedings

Although the original letter of reference bears the date of 19.11.2010, actual communication was received by me on or around 15.06.2013 and the Inquiry commenced on 03.07.2013.

1. There were fourteen (14) hearings in order to give a fair hearing to both parties.
2. As the applicant had not submitted a statement and since the applicant is paralyzed and was not able give oral evidence, by way of evidence he has submitted an affidavit dated 25.11.2013 with annexures marked 'X01' to 'X10' which has been accepted by me.
3. (i) The Respondent's 1st statement dated 05th January 2010 was considered as a statement for the purpose of inquiry.
(ii) In addition the respondent called the Deputy Human Resource Manager to give evidence, on its behalf.
4. (i) No oral submissions were made by either party, at the conclusion of the Inquiry.
(ii) Written Submission have been filed on behalf of the Applicant and the Respondent.

Following admission were recorded initially.

1. The Applicant was attached to Sri Lanka Transport Board and has served it up to 06.11.2006.
2. He was retired with effective from 06.11.2006.

3. At the time of his retirement Sri Lanka Transport Board Personnel Division Circular No. 1974/4 was in operation.
4. In addition Personnel Division Circular No. 10 of 1975 was also in operation.
5. It is admitted that the Applicant started his career as a casual bus conductor on 29.01.1987 attached to the Matale Depot.
6. Applicant got his promotion to Grade VIIIA on or around 2002.
7. In view of unfitness of the applicant due to medical reasons to serve as a Depot Inspector the applicant was retired.
8. Documents 'X1' to 'X10' submitted along with the affidavit of the applicant was admitted by the Respondent.
(i) After submission of the Affidavit evidence by the applicant and on the due date since the Respondent failed to summon its witness and no medical certificate was submitted for the absence of the witness matter was fixed for award and date was given for written submissions.
(ii) However in view of the explanation given by the Respondent and with the consent of the Applicant said order was vacated and further inquiry was continued.

Applicant's Position

01. The applicant commenced employment as a Casual Bus Conductor on 29.01.1987 and was later confirmed in service.
02. He had earned promotions during his career and ultimately retired on 06.11.2006 for medical reasons while serving as a Depot - Inspector grade VIIIA.
03. At the time the applicant was retired he was a drawing a monthly salary of Rs. 12,705.00/-
04. When the applicant was retired he was aged 54 years 05 months 13 days after serving the Respondent for 19 years 09 months.

05. It was the position of the applicant that on his retirement only Personnel Division Circular No. 4 of 1974 and 10 of 1975 were applicable. (R1 and R2).

06. Therefore the applicant's position was that he is entitled to compensation in terms Section (අ) (ii) of the Circular of No. 4 of 1974 (R1).

applicant was retired at the age of 54 years 09 months.

04. (i) However when oral evidence was led it was stated although in view of the changes of government policy retirement age being reduced to 55 years circular R1 and R2 was applied in relation retirement age of 55.

Provisions of the Circulars

Before I proceed to examine the Respondent's position it is pertinent to examine the provisions of the two circulars (R1 and R2).

1. Circular No. 04 of 1974 (R1) provide for compensation payable to persons who are retired on medical grounds. It can be classified into two broad categories.

(i) Persons who are retired prior to reaching age of 55 years.

(ii) Persons who are retired reaching age above 55 years.

Since the above Circular (R1) did not provide for persons who had reached the age over 59 years of age the Circular No. 10 of 1975 (R2) provided the scheme for compensation for such persons.

(ii) Further in oral evidence as well as in written submissions of the Respondent it was submitted in view of the retirement age being reduced to 55 years by the Government Circular 95 (R4) the Respondent has issued Personnel Division Circular No. 5 of 1976 (R3)

05. (i) The Respondent stated although retirement age was reduced to 55 years by R4 and R3 no amendment to R1 and R2 was effected by a Circular.

(ii) But, however Respondent stated in oral evidence for this purpose had applied letter dated 17.11.1998 (R5), issued to O. I. C. Uva Bus Company Ltd. in relation to one particular employee.

06. (i) As pointed by the applicant it is a letter (R5) written to O. I. C. Uva Bus Company Ltd by the Personnel Manager on 17.11.1998 verifying position of one K. M. Senanayake (peon) and thus on the face of it, was not a Circular applicable to all employees.

Thus the above Circulars R1 and R2 had to be read together.

Respondent's Position

01. The Respondent has admitted above data in relation to the applicant.

02. Respondent also admit that the above Circulars R1 and R2 are applicable to the applicant (Paragraph 4)

03. (i) In the statement of the Respondent (Paragraph 5) it was stated in terms of Section 2 of Circular No. 10 of 1975 (R2) a person retired is not entitled to compensation in lieu of notice and thus application of the Respondent should be dismissed.

(ii) But, what have to be noted is the said Circular refers only to persons retiring whose ages are above 59 years and thus not relevant as the

(ii) In fact it is a reply to a letter and it does not indicate it is a management decision of the Respondent.

(iii) Further it says it is desirable to follow (ක්‍රියා කිරීම මැනවි) and thus is not directive.

07. Thus the variation stipulated by the letter (R5) to give adjustment to variation in maximum age of retirement had been purely done by an official on his whims with no proper management decision and or direction as admitted by the evidence of the Respondent and thus not binding on the applicant.

Decision

Based on above facts firstly I will answer the issues raised.

Applicants' issues

1. Q - When persons are retired on medical reasons in terms of the provisions of Personnel Division Circular No. 1974/4 in case of employees who are below the age of 55 if they had served for more than 5 years are they entitled to receive 5 months' salary and in addition One Month's salary subject to a maximum of 12 months, for every year of service.

A - Yes

2. Q - If the above issue is answered in favour of the Applicant, is the Applicant entitled to receive the relief claimed ?

A - Yes

3. Q - If the above issue is answered in favour of the Applicant, what is the relief the Applicant is entitled to ?

A - I am awarding that the applicant is entitled to receive as compensation at a salary of 5 months and further salary of 12 months as he has served more than 19 years namely Rs. 215,958 (12,705x5+12,705x12).

02. Although the maximum age of retirement has been varied by R3 and R4 the no circular had been issued giving notice to employees with regard to the compensation payable for persons who are retired for medical reasons prior to reaching age of 55.

03. In view of the failure of the Respondent to satisfy that a circular had been issued and or valid management, decision had been made to vary the provisions of circular No. 4 of 1974 and with No. 5 of 1975 (R1 and R2) and in view of the admission by the Respondent, that the applicable circulars are above R1 and R2 my conclusion is that the Respondent has to compensate the applicant in terms of Section (අ)(II) of the circular No. 4 of 1975 (R1)

04. Accordingly I award that the applicant is entitled to receive as compensation a salary of 5 months and further a salary of 12 months as he has served more than 19 years is Rs. 215,985 (12,705x5+12,705x12).

05. Having considered gap from the date of retirement to date (06.11.2006 to 30.04.2015) and also the circumstance of the applicant being paralyzed it is considered reasonable that the Respondent should pay legal interest on the sum awarded from the date of retirement until the compensation is paid in full.

Respondent's Issues

4. Q - Is the Personnel Division Circular No. 1975/10 is the one applicable to the Applicant ?

A - On admission both Circulars bearing No. 4 of 1974 (R1) and No. 5 of 1975 (R2) are applicable.

5. Q - If it is applicable, is the Applicant entitled to compensation as claimed by the Applicant ?

A - In view of the answer to issue No. (4) above in favour of the applicant the applicant is entitled to compensation claimed.

AWARD

In view of above and balance of probabilities. I made following award in respect of the matter which has been referred to arbitration.

Therefore I award in a sum of Rs. 215,985/- (Rs.12,705x17) as compensation and payment of legal interest for the sum awarded from the date of retirement 06.11.2006 to the date of awarded compensation is paid in full.

I hold that this is a fair and equitable award.

Conclusion

01. Thus it is clear on admission of the Respondent what is applicable and effective to the applicant is Personnel Division Circulars No. 4 of 1974 read with 5 of 1975 (R1 and R2)

DR. M. S. B. RALAPANAWA,
Attorney at Law,
Arbitrator.

05th August 2015.

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