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PART I : SECTION (I) — GENERAL
Government Notifications

My No. IR/10/19/2006.

Ref No. : IR/10/19/2006.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

In the matter of an Industrial Dispute

Between

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. H. D. Thilakaratne, No. 41/20, "Prabha", Koshena Watta, Madulawa Road, Watareka, Meegoda of the one part and Ceylon Electricity Board, No. 50, Sir Chittampalam A Gardner Mawatha, Colombo 02 of the other part was referred by order dated 08.01.2013 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. 1793/8 dated 16.01.2013 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Mr. H. D. Thilakaratne,
No. 41/20, "Prabha",
Koshena Watta, Madulawa Road,
Watareka, Meegoda

Case No. A-3489

.....Party of the First Part.

and

Ceylon Electricity Board,
No. 50,
Sir Chittampalam A Gardiner Mawatha,
Colombo 02

.....Party of the Second Part.

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

AWARD

Department of Labour,
Labour Secretariat, Colombo 05.
30th March, 2016.

The Honourable Minister of Labour and Labour Relations
Gamini Lokuge, do by this 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 Dispute - Special Provisions) Act, No. 37 of 1968 hereby appointed me as the Arbitrator by his order dated 08th January, 2013 and referred the dispute between the aforesaid parties for settlement by arbitration.

Historical warm up in imperative before recording the award in that the above-said Honourable Minister had already revoked the reference made previously to Mr. N. C. V. Kulathunga by his order dated 28.05.2009 under the above-said Section 4(1) of the Industrial Disputes Act.

The statement of the matter in dispute between the aforesaid parties is as follows :

“ Whether any injustice was caused by the Ceylon Electricity Board to Mr. H. D. Thilakaratne who had been appointed to the post of its Human Resources Officer, Class II Grade II (Special) with effect from 02.03.1999 on consequence of the salary conversion letter dated 02.03.2004 of the said Board which was issued to him regarding the rectification of anomalies in the salary scales of the Non-Engineering Executive Officers and any such injustice was caused, to what relief Mr. H. D. Thilakaratne is entitled.”

Appearances :

Party of the First Part :

Mr. Sanath Weerasinghe - Attorney-at-Law appears on behalf of the Party of the First Part, who is also present.

Party of the Second Part :

Mr. Sujith Perera, Attorney-at-Law appears on behalf of the Party of the Second Part.

Mrs. Achini Wickramaratne, Acting Chief Legal Officer and Mrs. Yashoda Nuwani Ariyathunga, Human Resources Officer represent on behalf of the Ceylon Electricity Board.

Both Parties mentioned above have submitted their respective statements that have led to the disputes in terms of regulations 21(1) and (2) of the Industrial Disputes regulations 1958. Thereafter I made every endeavour to explore a possibility of an amicable settlement which proved to be futile.

Party of the First H. D. Thilakaratne (hereinafter referred to as Thilakaratne) commenced to lead his sole

evidence marking documents A1 to A25. Whereas the Party of the Second Part (hereinafter referred to as (Ceylon Electricity Board [C. E. B]) adduced the evidence of one Korralage Yashoda Nuwani Ariyathunga, Human Resources Officer and concluded with documents marked RX, R1 to R17 (inadvertently R4 to R12 had never been marked). Then they were given time to submit written submissions returnable on 25th January 2016.

Review of Written Submission of both Parties as well as the evaluation of evidence reveals the factual background to this reference and legal basis of the several reliefs sought by Thilakaratne to be relevant to this award is as follow :

Thilakaratne joined the Ceylon Electricity Board (C. E. B.) from the position of an Administrative Officer 1st March, 1985 to a Personal Officer in 01st June in 1992 and ultimately at the time of his retirements he was the Human Resources Manager Class II Grade I effective 21st October, 1999.

Leaving out unnecessary details I would incorporate necessary facts to be relevant to the whole scenario, necessary to understand and resolve the issue in question referred to above.

At the outset documents marked A11, A16, A17 and A18 according to proceedings dated 14.08.2015 has not been proved by Thilakaratne and is should be rejected without any consideration.

On 24th February 2014 an Interim Order was made regarding consolidated salary based on A5 as at 01st March 1985 should stand at Rs. 1750/-. And all other revisions and conversions should be based on this and this alone. All other considerations are irrelevant and rejected forthwith. Incidentally, this consolidated salary inclusive of two increments recommended by the Ombudsman *vide* C(A3) dated 02.02.1998).

Moreover, the order further declared reference to this dispute will confine to matter in dispute as stated in statement of matter in dispute.

Thilakaratne was allowed to make and amended computation of salary anomalies dated 10th March 2014, according to the Interim Order made 24.02.2014.

By A4 copy of salary revision dated 06.02.1998 is made without any blemish.

Upon the request of Thilakaratne R2 (a) dated 02.06.1999 details his Duties and Responsibilities as Personal Officer from 01.06.1992 until his retirement. It is appended below.

Duties and Responsibilities - Personal Officer 01.06.1992 to date

- * Recruitments, promotions and placements of Executive Grade Officers and maintenance of Personal Records of all Executive Grade Officers.
- * Defining and making recommendation in respect of various issues related to recruitments, promotions and salary administrations etc. of the Executive Grade Officers.
- * Preparation of Reports and submissions with appropriate recommendation to the Board, Ministry, Parliamentary Commissioner for Administration, Labour Department and to the Attorney General's Department (through Chief Legal Officer) in connection with cases filed by Executive Grade Officers against Ceylon Electricity Board.
- * By A10 dated 02.03.2004 titled Correction of an anomaly in the salary scale of non-engineering executives who have been promoted or recruited to the service between 01.08.1990 to 19.11.1998.
- * By A12 dated 10.03.2006 another correction of salary anomaly.
- * By A13 dated 31.03.2006 reply to A12.
- * By A16 dated 04.06.2006 complaint to the commissioner of Labour.

With the above documents read with evidence recorded the bone of contention of the Counsel for Thilakaratne is with the introduction of the Human Resources Service published by GM's circular No. 1999/GM/18/HRD dated 31st May 1999.

(A6- English version/SA6 Sinhala version)
Thilakaratne was re-designated as Human Resources Officer Class II Grade II with effect from 02nd March 1999 by A7 dated September 1999. On application of the said A6 clause 3.2.2 he should be elevated or promoted to Human Resources Officer Class II Grade II (Special) as per stipulated qualifications are satisfied by him as he has had served at Ceylon Electricity Board for 14 years. Moreover, by A6 clause A6(a) 2:1:2:(2) of the said scheme of recruitments and promotion he obtained full Professional qualifications and become eligible for promotions to Human Resources Manager Class II Grade I in terms of Clause 3:2:1 of the said scheme. He further reiterated in the course of his Evidence-in-Chief that subsequent to an interview held

in the first quarter of 2000, he was selected to be promoted to Class II Grade II (special) on 02.03.1999 and to the Class II Grade I from 21st October 1999. Accordingly, with the approval of the Board of the CEB, he was in fact appointed to Class II Grade II (Special) from 02nd March, 1999 and to Class II Grade I from 21st October 1999.

As against this argument Counsel for Ceylon Electricity Board and the Witness of K. Yashoda N. Amarathunga - Human Resources Officer asserted with convincing evidence in the following manner :-

Counsel, demonstrated the fact that Thilakaratne has been given two increments as against the one which, he is entitled (at the point of implementation of the new scheme) and stated that, the next officer who handled his file at a subsequent period corrected the error made earlier, It was vehemently asserted when the new scheme of Recruitment and Promotions was implemented the placement and or absorption and or re-designation of the employ (Non - Engineering Executives) took place under the supervision of Thilakaratne and any misinterpretation of words would be the fault on his part or his mistake as the Officer responsible (R2(a)) detailed above.

Furthermore, Thilakaratne has been given all the increments he is entitled and he did not make any claim till his retirement and after few years of retirement. Moreover, that there is no injustice caused to him, but in fact he was given more benefits. Yashoda's evidence is plain and clear language and adduced how the salary scale worked for Human Resources Officers, In fact by A8's reference in PB/PO(F)/A1/239 is him.

Accordingly, when questioned by the court referring to A8, the proceedings of 20.04.2015 to page 3 Thilakaratne respond thus :

- ප්‍ර : PO කියන්නේ මොකක්ද ?
- උ : Personnel Officer එසේ සේවය කරන ලිපිකරුවා හඳුන්වන සංකේතය තමයි වරහන් ඇතුළේ දන්නේ.
- ප්‍ර : සාක්ෂිකරු තමුන් කියන්නේ PO(P) කියන්නේ තමුන් කියලා ?
- උ : ඔව්

It clearly shows that A8 was issued to Thilakaratne under his supervisions.

There is no question about it. Even a general reading of A25 reiterates and supports and confirms Yashoda's evidence. I am satisfied with Yashoda's evidence as it is cogent, clear, convincing and correct in its totality. Thus

her evidence out-weighs the evidence of Thilakarathne which is inconsistent, illogical and at times evasive. Moreover, his demeanour throws his cloudy and dubious character. Hiding matters adverse to him and overlooks matters benefits him. In fact, he is the second in line of authority as regards Executive Services Officers R2(a).

The pivotal problem arose with the introduction of A6 - English version/(S)A6 - Sinhala version, English version is followed in this award. By the GM's circular 1999 (GM/18/HRD dated 31.05.1999. Certain para is reproduced verbatim hereunder as a ready reckoner. Scheme of Recruitment and Promotions of Ceylon Electricity Board Executive Services in K4 salary scale and above.

Accordingly, the Board decided to categories all Executive Officers in K4 salary scale and above, of CEB under 04 categories as a appended below :

Namely :

01. Engineering Service of the CEB.
02. Accountants and Audit Service of the CEB.
03. Human Resources Service of the CEB.
04. Ancillary Service of the CEB.

Above said scheme of recruitment and promotion had been approved by the Board and became operative from 02nd March, 1999.

According to Para 1.2 Cadre :

There will be a combined cadre for Class (II) Grade (II) and Class (II) Grade (I) of the Human Resources Service. The cadre will be decided by Board from time to time based on Personnel Plan.

Note : Existing designation of Personnel Officer/Administrative Officer will be re-designated as Human Resources Officer Class (II) Grade (II), Vide R1.

Para 2.1.2 Qualifications and Experience

Para 2.1.2.1 Human Resources Officer Class (II) Grade (II)

Applicants should possess :

01. Corporate membership of the Institute of the Personnel and Development (IPD) UK or equivalent

or

02. Degree awarded by a recognized University with corporate membership of the Institute of Personnel Management (IPM)

or

03. M. B. A. with 03 years experience in Human Resources Management.

Para 3.2

Promotion of Class (II) Grade (II) Human Resources Officers to Class (II) Grade (I)

(K2 salary scale - Rs. 21,725-5x390-9x475-Rs. 27,950/- p. m.) (Human Resources Manager)

Para 3.2.1

Human Resources Officer's who are in Class (II) Grade (II) and who possess professional Qualifications (1, 2 and 3) of Para 2.1.2 above) with 9 years in Class (II) Grade (II) are eligible to be promoted to Class (II) Grade (I) of the Human Resources Officers cadre, after an interview based on competence and performance vide A6(3)(b)

Para 3.2.2

Non-Professionally qualified officers with 12 years service in Class (II) Grade (II) will be promoted based on Seniority, competence and performance after an interview on case by case basis on Board approval (R3). They will be designated as Class (II) Grade (II) (Special). Vide A6 (3)(a). (emphasis is mine)

The whole issue in this reference hinges on this A06 document which categorized existing designation of Personnel Officer/Administrative Officer will be re-designated as Human Resources Officer Class (II) Grade (II) in K4 Executive Services category referred to above.

In fact, Deputy General Manager (Human Resources Management) by letter- My No. : PB/PO(E)/A1/242 indicates Thilakarathne the Personnel Officer has been re-designated as Human Resources Officer Class (II) Grade (II) with effect from 02nd March, 1999. (A07)

Thereafter, General Manager of Ceylon Electricity Board by letter dated 06.06.2000 referred as My No. PB/PO(E)/A1/239 promoted Thilakarathne to the Post of Human

Resources Manager Class (II) Grade (I) of Human Resources Service (A8). On the K2 salary scale with effect from 21st October 1999 and the salary scale attached to the post of Human Resources Manager is also K2 salary scale :

Namely : Rs 21,725-5x390-10x475-Rs. 27,950/- p. m.

On scrutiny the maximum salary scale deemed to be erroneous instead of Rs. 28,425/- it is stipulated as Rs. 27,950/- p. m. which is an inadvertent error. However, it depicts the irresponsibility of the Management.

Note :

By the same letter, A8 Thilakaratne, was also categorically classified as absorbed as Human Resources Officer Class (II) Grade (II) (Special) on K2 salary scale with effect from 02nd March, 1999, At the time of re-designation will be analysed below.

The said letter A8 has confused Thilakaratne who was the Personnel Officer who was handling all the duties pertaining to Executive Services category including himself, had been incorporated in R2 above, titled "Duties and Responsibilities".

In an institution when they re-structure the cadre at the outset give a generic name followed by a specific name herein Thilakaratne was re-designated as Human Resources Officer Class (II) Grade (II) operative from 02.03.1999 as per A7. In fact, Thilakaratne had been in service and second in the line of authority. Management thought it fit to accommodate him and absorbed in the category referred to as Class (II) Grade (II) (Special) category, referred to in Para 3.2.2 and the question of Board approval was never came in vogue as it was deemed to be a special case, overlooking the norm R3 and the Management exercised their discretion and considered Thilakaratne as a special case and that is why it is categorically stated in A8 as absorbed and placed him on K2 salary scale. There inadvertently maximum salary scale has been erroneously indicated as mentioned above. That is CEB's mistake of fact.

On the strength of evidence and documents related thereto and evidence convincingly adduced by Yashoda - Human Resources Officer explained this aspect quite lucidly that Thilakaratne having power over all these matters as he was the sole authority below the Deputy General Manager his immediate boss. Therefore, now he cannot be heard to say that he was unaware of it. Accordingly in terms of R2 he is accountable for all or any of the mistake transpired or occurred. Moreover his demeanour portrays dubious character and his evidence is incoherent in nature.

Therefore, I consider that the argument of Thilakaratne cannot hold water. And that the Management has the necessary discretion and authority to do what is in the best interest of the institution even beyond what is written - vide A6(3)(a). Must note that there is no Board Approval in his Personal File referred to in A6(3)(a), because it is considered to be a special case and his referring to A21, A22, A23 and asserting that they has been issued letters as promotion to Class II Grade II (Special) cannot be compared with the period and time envisaged therein. Any stretch of imagination could satisfy in his favour. As the Counsel for CEB asserted that if any discrimination took place Thilakaratne should have taken steps to file a Fundamental Rights case in the Supreme Court of Sri Lanka and this is not the forum for him to seek relief.

In the above scenario I consider that, what is referred to in A8 stands as firm and unassailable. Therefore no injustice has caused to Thilakaratne on that count.

Be that as it may, whether the Management did take due care and caution and in carrying out their work and conduct in drafting letters, conferring promotions and correction of anomalies, should stand to test. And the approach adopted is far too to be desired. The unhealthy state of affairs could be confronted with two documents marked A10 and A12 as example to highlight with regret the indifference and inertia confounded thereto.

The document A10 originated by the Deputy General Manager (Planning and Development (Region 03) Branch, Colombo 02, dated 02.03.2004.

Para 12 of A10, dated 02.03.2004 provides :

Adjusted salary payable with annual increments earned after the promotion or the movement in higher segment	Absorbed as Human Resources Officer Cls. II Gr. II w. e. f. 02.03.1999 Rs. 21,725-5x390-10x475-28,425/- 02.03.1999 - Rs. 23,675/- (K2) Promoted to Human Resources Manager Cls. (II) Gr. (I) W. E. F. 21.10.1999 21.10.1999 - Rs. 24,625/-
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Compare with A12 dated 10.03.2006

1999.03.02 දිනට වැටුප් පරිමාණය - 21,725-5x390-10x475-28,425/- (K2) 1999.03.02 දිනට වැටුප රු. 23,285/-

මානව සම්පත් නිලධාරී II පන්තිය I ශ්‍රේණියට උසස් වූ දිනය : 1999.10.21

අදාළ වැටුප් පරිමාණය - රු. 21,725-5x390-10x475-28,425
(K2) වේ.
ඒ අනුව 1999.10.21 දිනට වැටුප රු. 24,150/-

If the management had been a little arithmetically oriented or clearly minded and addressed the issue referred to them with care and caution on Correction of an anomaly in the salary scale of non-engineering executives who have been promoted or recruited to the service between 01.08.1990 to 19.11.1998 while Thilakaratne was in service everything could have been solved and sealed the issue then and there on 2nd March, 2004 well before the retirement of Thilakaratne on 13.03.2004. Because of this lapse culminated in another letter from same Deputy General Manager 10.03.2006. A12. That is response to Thilakaratne's letter dated 31.03.2006. A13, Thereafter letters A14, A15 and A19 followed could have been avoided.

In the premises, I totally in agreement with the evidence given by Yashoda and the Written Submission made by her Counsel, who has endeavoured to bring to light the issue of miscalculation and indifferent attitude of the Management. However, it must be noted the effort taken by the Counsel for the First Part who laboriously worked hard and his critical thinking is appreciated as against the attitude and dubious character of Thilakaratne.

Thilakaratne's evidence is inconsistent, illogical and at times evasive. And his demeanour was noted from the inception in 1985 until his retirement on 13.03.2004. He

was inclined to look out for anything to his benefit. But what had happened was when replaced by some intelligent and hard working officer everything turned to his detriment. Therefore, his evidence cannot be accepted. On the other hand Yashoda - Human Resources Officer, was cogent, collective, effective and made a clean breast of what he knows from the documents marked and the experience gained in the institution. Though mistake had been committed repeatedly by top management would have been avoided. However it is a matter of concern to be remedied sooner than later.

The facts and circumstances very clearly depict that there was no injustice caused to Thilakaratne either by A8 and A10 but, there are certain discrepancies resulted due to negligence or carelessness of the management. However it may be excused on grounds of public interest and utility of service.

Therefore, I make no Award for the reasons stated above.

Accordingly, I consider this award is just and equitable in the circumstance.

Arbitrator.

At Colombo.

04-828