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**PART I : SECTION (I) — GENERAL**

**Government Notifications**

My No. IR/10/41/2008.

In the matter of Industrial Dispute

**THE INDUSTRIAL DISPUTES ACT CHAPTER 131**

*Between*

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. G. L. L. Peiris, “Piya Niwasa”, Heenatigala, Talpe, Galle of the one part and Co-operative Wholesale Establishment, No. 27, Vauxhall Street, Colombo 02 of the other part was referred by order dated 12.07.2016 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. 1641/36 dated 17.02.2010 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

G. L. L. Peiris,  
“Piya Niwasa”,  
Heenatigala,  
Talpe,  
Galle.

.....on the one part.

Case No. 3323

and

Co-operative  
Wholesale Establishment,  
No. 27, Vauxhall Street,  
Colombo 02.

.....on the other part.

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

Department of Labour,  
Labour Secretariat, Colombo 05.  
17th October, 2016.



### AWARD

1. The Honourable Minister of Labour Relations and Manpower, 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 the Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed at me as the Arbitrator by his order dated 10.02.2010 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 dismissal of Mr. G. L. L. Peiris who was in the service of the Kusumpokuna Paddy Purchasing Centre, Polonnaruwa which was managed under the Co-operative Wholesale Establishment over a shortage in the paddy stock said to have taken place there during the periods from 01.01.2002 to 31.10.2002 and from 31.10.2002 to 31.12.2002 respectively is justified and if not justified, to what relief is Mr. G. L. L. Peiris is entitled.”

3. Mr. Wilbert Perera, appeared for the applicant at the outset, while Mr. Chandra Gunatilleke and Mr. Nilisha Gunatilleke Attorneys at law appeared for the Respondent.

Midway Mr. Wilbert Perera passed away and Mr. K. G. Navaratne succeeded, who insisted that the case be heard de-novo stating that it's the Respondent who should start the case. However late Mr. Wilbert Perera, on his own decided to start the case and it was after more than 2 years later that the request emerged.

Based on Court of Appeal Judgment 1418/78 heard by Justice Ratwaththe and Justice Rodrigo, the Arbitrator can start the inquiry by calling upon any party in the first instance to place his case before him and thereafter hear the other party if necessary.

With my ruling, the inquiry continued, without any change.

4. The applicant Mr. G. L. L. Peiris stated that he was appointed as Junior Clerk with effect from 01st April 1979 and on application appointed to work in paddy stores. He was assigned work at the following paddy purchasing sites at different times.

- Aralaganwila
- Medirigiriya - Vijayapura
- Dimbulagala
- Medirigiriya
- Kusumpokuna

While working at Kusumpokuna 937, the paddy purchasing stores, had been subject to a verification to determine surpluses and shortages. Consequent to the

verification, a shortage of paddy detected and five charges were framed on 16.12.2004. The total value of the shortage worked out to Rs. 904,092.92.

The detection was made on May 2003, but the charge sheet was given after about 17 months, having interdicted on 06th May, 2003, and kept on no pay.

Domestic Inquiry, on the 5 charges were convened for 13.05.2005 and 27.06.2005, but the applicant refrained from participating. Thereafter management held the domestic inquiry ex-parte and terminated his services on 09th November 2005, with effective date of termination as 07th May, 2003.

Since there was a delay in issuance of a charge sheet and holding of the Domestic Inquiry, the applicant filed a plaint in the Labour Tribunal seeking relief, on “Constructive termination”, but the application got dismissed.

During the course of the proceedings, document R5 was shown to the applicant, who deny that it is his signature and respondents lawyer requested that the document in question be sent to the Examiner of Questioned Documents, to ascertain the authenticity, as to whether it carries the signature of applicant or not. Examiner of Questioned documents requested that at least 5 letters, wherein applicants signature appears during the years 2000 and 2003 be sent to them for comparison.

5. On behalf of the respondent organization the witness, Mr. Mahendra Upendra, Courts Officer stated that,

He joined on 1st July, 2000 and worked as a court of officer from 2004.

The paddy purchasing centers have been established in Polonnaruwa, Anuradhapura, Vavuniya and Ampara Mr. G. L. L. Peiris applied for the post of paddy purchasing officer, voluntarily. He served at several paddy purchasing centers and was interdicted with effect from 06th May, 2003 consequent to a stock verification which surfaced a paddy shortage amounting to Rs. 688,629.73, subsequently, this amount revised thus reducing to Rs. 532,992.92.

It was revealing that management failed to issue a show cause letter, as a result of restructuring of CWE, thus introducing a Voluntary Retirement Scheme, whereby 6000 employees were reduced to 4000, in 2004.

A charge sheet had been issued after almost 17 months and no salaries were paid after interdiction. The applicant, after sometimes sought relief from the Labour Tribunal on the ground of constructive termination.

Witness also said that he had experience in handling disciplinary as well as court cases, concerning various types of offences committed by employees in the organization. He said that verification of paddy stocks at paddy purchasing

centres were done by competent and experienced officers, and revision of shortages were reviewed, taking into consideration the weather conditions and wetness in the paddy purchased. It is analyzed on certain accepted scientific basis.

6. The next witness for the respondent was Mr. Geenani Chandana Janaka Gunaratne Clerk who stated that he worked at Cooperative Wholesale Establishment from 1999 as a clerk. From 2002 to 2010 was attached to the administration and legal divisions performing courts work. Now he works at the sales centre, Piliyandala.

He stated that the organization adopts the Disciplinary Code approved by the Board of Directors and it was in operation for several years. He accepted the fact that the charge sheet had been issued after 17 months, from the date of commission of offence.

7. My observations and findings are as follows :-

(A) Under Article 170 of the Constitution of Democratic Socialist Republic of Sri Lanka, A Public Corporation has been defined to mean.

“Any corporation, board or other body which was or is established by or under any written law, other than the Companies Ordinance, with capital wholly or partly provided by the government by way of grant, loan or otherwise.”

The State Establishing a public corporation makes it a legal entity with perpetual succession and a common seal and with capacity to sue and be sued in its corporate name.

The Co-operative Wholesale Establishment came into existence per Act, No. 47 of 1949 (amended from time to time) on similar lines.

(B) Respondent Organization Co-operative Wholesale Establishment (CWE)'s Board of Directors approved on 08th January, 1980, a Disciplinary Code, and implemented the procedure laid down therein in all disciplinary matters.

Paragraph 8, amongst other things state as follows in relation to interdication and inquiry issues -

(අ) යම් නිලධාරියෙකුගේ වැඩ තහනම් කළ විට (ඉදින් අන්‍යවූ නියෝගයක් කර නොමැති නම්) ඔහුගේ පඩිනඩ්වලින් අඩක්, ඔහු එසේ වැඩ තහනමට භාජන වී සිටිනතාක් නොගෙවා අත්හිටුවනු ලැබේ.

(ඔ) යම් සේවකයකුගේ වැඩ තහනම් කරනු ලැබූ කල්හි, ඔහුට විරුද්ධව පැවැත්විය යුතු නඩු විභාගය හැකිතාක් අප්‍රමාදව නිමකළ යුතු මය.

(C) The core issue in this dispute is the disciplinary procedure adopted by the CWE in relation to the shortage of paddy detected by the stock verification team.

Briefly stated, the applicant had worked as a paddy purchasing officer at Aralaganwila, Medirigiriya - Vijayapura, Dimbulagala and Kusumpokuna at different times. As far back as May 2003, the stock verification team headed by Mr. W. A. S. Weerasuriya and Mrs. Inoka Dilani, detected a paddy shortage amounting to Rs. 904,090.92. On detection of the shortage, the applicant had been interdicted, without pay. The charge sheet lists 5 charges, was issued after 17 months.

(D) Applicant in the meantime filed action in the Labour Tribunal, bearing Case No. 2/630/2004 on the ground, “constructive termination”, which was dismissed, LT President stated in his order thus-

ඒ අනුව ඉල්ලුම්කරු නඩුව පවරන අවස්ථාව වන විට මෙම අධිකරණයේ අධිකරණ බලය විවෘත කිරීමට අවශ්‍ය වන තමාගේ සේවය අවසන්කර තිබුණා යන කරුණ සනාථ කිරීමට අපොහොසත් වීම හේතුවෙන් මෙම විනිශ්චය සභාවේ අධිකරණ බලය විවෘත කිරීම අපොහොසත් වීම මත ඉල්ලුම් පත්‍රය නිශ්චුභා කරමි.

(E) Respondent appointed an inquiry officer and he summoned the applicant, for inquiry on 13.05.2005 and 27.06.2005 but the applicant refrained from participating. Thereupon, inquiry officer, held the inquiry ex-parte and terminated applicants services on 09.11.2005, with effective date of termination being 07.05.2003. It is observed that managment held the domestic inquiry only after 24 months from the date of interdiction.

(F) Applicants letter of appointment, issued by CWE, in Para 12, require complinace with rules and regulations issued from time to time, and is duty bound to present at inquiry and exonerate himself of the charges if innocent. While interdiction, the contract of employment subsists, and the applicant had misconducted in this instance.

Applicant stated that all records pertaining to the paddy purchase and disposals were handed over to Mr. H. M. W. Bandara, Divisional Manager (Security), Polonnaruwa on 25.03.2003, and produced a receipt in proof thereof. This person had not given evidence, as such that document cannot be relied upon.

Besides, in paddy purchasing stores. A store keeper responsible is required to retain a copy of the issue receipt, to prove the exact amount sent out whenever a shortfall is detected, such documents are in proof

of deliveries of goods sent out. No such document was produced.

- (G) Security personnel, after verification, obtained a statement signed by the workman applicant, which the applicant deny signing any. This document, marked R5 was referred to Examiner of Questioned Documents, who in the first instance requested more documents which carry signature of the applicant. Thereafter another set was sent. In the second occasion EQD testified that signature on R5 resembles the signature of applicant. EQD's ref. H.376/14 of 12.12.2014 letter was received by/ Registrar Industrial Court on 17.12.2014 which reached the Industrial Court long after receipt of written submissions as such EQD's reply has no evidential value.

However, respondent should have fielded the, 2 persons who carried out stock verification on 2nd May, 2003, and given evidence to substantiate the charges, but CWE failed to do so.

- (F) In the final analysis it is clear that management had failed to comply with its own Disciplinary Code, in not placing the workman on half pay during period of interdication ; failed to issue a charge sheet until

17 months, and domestic inquiry after 24 months whereas CWE employs and army of executives to handle such cases. Management had been negligent of its duties, and delay had defeated equity. This seems to be an extreme instance of harassment.

8. Therefore, I award an ex-gratia payment of Rs. 231,498.24 payable to the applicant, in relation to 24 years he served at CWE. His last drawn salary had been Rs. 9,645.76, My calculation is guided on the formula stipulated, under the Termination of Employment of Workman (Special Provisions) Act, No. 45 of 1971, as amended. The sum of Rupees Two Hundred and Thirty One, Four Hundred Ninety Eight and Cents Twenty Four shall be deposited with Asst. Commissioner of Labour, Colombo South District Labour Office, Sixth Floor, Labour Secretariat, Colombo 05, within 45 days, or publication of this award in the *Government Gazette*.

This is just and a equitable award.

P. NAVARATNE,  
Arbitrator.

12th July 2016.

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