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PART I : SECTION (I) — GENERAL
Government Notifications

My No. IR/10/05/2008

Ref No. : IR/10/05/2008.

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 D. M. J. Kumarasiri, No. 74/2A, Taladuwa Road, Negombo, Y. W. Piyadasa, 93/7, Gona Hena, Webada, S. Waniganetti, No. 176/1, Welagedara, Attanagalla of the one part and Ceylon Electricity Board, No. 50, Sir Chittampalam A, Gardiner Mawatha, P. O. Box 540, Colombo 02 of the other part was referred by order dated 30.09.2008 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. 1570/11 dated 07.10.2008 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

1. Mr. D. M. J. Kumarasiri,
No. 74/2A, Taladuwa Road,
Negombo.
2. Mr. Y. W. Piyadasa,
No. 93/7, Gonahena,
Webada.
3. Mr. S. Waniganetti,
No. 176/1, Welagedara,
Attanagalla.

..... of *The one part.*

Case No. A/3258

and

Ceylon Electricity Board,
No. 50, Sir Chittampalam A.
Gardiner Mawatha,
P. O. Box 540,
Colombo 02

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

Department of Labour,
Labour Secretariat, Colombo 05.
18th November 2015.

..... of *the other part*



THE AWARD

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 3 of the Legislative Enactments of Ceylon (1956 revised edition) as amended by Acts No. 14 of 1957, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me as Arbitrator by his order dated 30th September 2008 and referred the following disputes to me for settlement by arbitration.

The matters in dispute between the aforesaid parties are :-

Whether the non granting of pension rights by the Ceylon Electricity Board to Mr. D. M. J. Kumarasiri, Y. W. Piyadasa and S. Waniganetti who were in the services of the said Board on the grounds that they have not completed uninterrupted period of (240) months service under the CEB. Pension Scheme is justified and if not, to what relief each of them is entitled.

Appearance

Mr. Sanath Weerasinghe,
Attorneys-at-Law for the Party of the First Part

Mr. Sujith Rohana Perera,
Attorneys-at-Law for the Party of the Second Part

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

On behalf of the Party of the First Part documents marked A1 to A5 and XI to X2.

On behalf of the Party of the Second Part documents marked R8 and R12 during the proceeding.

Mr. D. M. J. Kumarasiri, Applicant No. 1 of the Party of the First Part in his evidence has stated as follows :

(i) The witness stated that he joined the respondent Ceylon Electricity Board on 05.10.1987 as a Training Officer, He said he retired from the service on 01.04.2007, when he became 60 years. The witness marked a document A1 - Electricity Board Pension Fund rules further states when he joins in 1987 there was no Pension Fund and it was

established on 01.01.1994. The Witness stated that when he joins to Ceylon Electricity Board his age was 40 years 6 months and 3 days. The age limit was 45 years. According to Rule 22.1 of the Pension Fund to be eligible an Employee has to complete uninterrupted 240 months of service. The witness further said when he retired he was not eligible to receive pension as he has not completed 240 days, himself and other similar employees who were recruited for special posts appealed to the management requesting to reduce the said 240 months period but did not get any favourable results. The witness said that there has been about 50 employees who were deprived of pension benefit as they were recruited for special posts subject to the maximum age limit of 45 years. The witness filed a document marked A2 where a committee appointed to review the rules of the Pension Fund recommended relief to the employees who have not completed 20 years at the time of retirement. The dated 19th January witness marked document A3 addressed to the Chairman of the Respondent Electricity Board by himself and other training officer requesting to reduce 20 years service limit to 10 years in order to be eligible for Pension benefit. The witness further said that there was no response from the Respondent.

The Witness further said according to the clause 18.1 Pension Fund Rules, it is lawful for the Board to amend and alter the same at any time.

The Witness in his 1st statement highlighted the instances where pension benefits were granted to following employees who have not completed 240 months of service at the time of retirement.

<i>Names</i>	<i>Duration of Service at the time of retirement</i>
1. C. N. D. Perera	19 years 9 months 12 days
2. P. Weerasingham	19 years 7 months 12 days
3. J. Jesudasan	19 years 10 months 30 days
4. T. V. Parameshwaram	19 years 04 days
5. C. J. Hapugoda	19 years 3 months 12 days
6. N. J. L. Fernando	19 years 11 months 25 days

The Respondent has stated in his averments that the Pension benefits were granted to some employees after considering their appeals.

The Witness stated that those employees were granted pension benefits with the discretion of the Respondent Board and without amending Pension Scheme rules even

though they have not completed period of 240 months of active service at the time of their retirement.

The witness further marked the *Gazette Notification* in respect of Arbitration Case No. A/2777 as A4 against the Ceylon Electricity Board the employee Y. Dharmasena was awarded Pension benefit eventhough he has not completed 240 months of active service at the time of retirement.

The witness further marked the *Gazette Notification* in respect of Arbitration Case No. A/3043 as A5 against the Ceylon Electricity Board the employees G. D. Abayaratne and H. D. Thilakaratne was awarded Pension benefit even though they have not completed 240 months of active service at the time of retirement. The Award by the Arbitrator was confirmed the Court of Appeal in C. A. (Writ) Application No. 79/2009.

The witness said according to regulation 3.1 of the Pension Fund, the Respondent Board shall remit monthly to the Pension Fund a sum of money equivalent to 7% of the total salaries of all the employees computed on the aggregate salary on which contributions are made to the Provident Fund.

The witness D. M. J. Kumarasiri when cross examined by Attorney-at-law for the Respondent Board stated as follows ;

The witness stated that the Respondent Board paid Pension Benefits at it's own discretion. The witness further said he served as a teacher in 1970 to 1979 in Sri Lanka and 1979 to 1986 in Nigeria. He stated since he served in Sri Lanka as a teacher for a period of 9 years since he could not complete 10 years he was not qualified to receive the government pension. The witness further stated that Central Bank of Sri Lanka and Bank of Ceylon are the other state institutions which have their own pension schemes.

The witness further stated that he has completed 19 years and 6 months (234 months) service in the respondent Board, whereas 240 months should be completed for to qualify for the Pension. The witness further stated that the Respondent Board has used it's own discretion to pay pension to the number of employees who has not completed mandatory 240 months and therefore the witness states that he should be paid the pension accordingly as he has served the Respondent Board diligently and without any complaints against him.

The witness further said he was given 5 extension of service after 55. He said that he was aware that compulsory retirement age is 60.

The witness further stated since the Respondent Board has used its own discretion to pay Pension benefits to others who were not completed 240 months of service, and the same discretion should be used to pay pension benefits to him.

During the re-examination the witness stated as follows.

When he joined the Respondent Board in 1987 the maximum age limit was 45. The pension scheme was introduced in 1994 after 7 years he joined the service. He further stated that eventhough the Pension rules has clearly stated the methodology how 240 months of service should be completed, but the Respondent Board as used its own discretion when the Pension benefit was paid to some employees who has not completed 240 months of service according to Pension Rules.

Mr. Waniganetti, the 3rd Applicant in his evidence in chief took the same position as the 1st witness. According to A2 the Committee which was appointed to look into the Pension anomalies recommended among other things that when the Electricity Department was converted as Electricity Board the Employees who has completed 10 years of service are eligible for the Pension benefits. During the Cross Examination. The witness stated that he has worked 19 years 08 months and 23 days - about 236 months, 4 months short to mandatory 240 months. Witness further stated that the Pension benefits were granted to C. N. D. Perera, P. Weerasingham, A. Jesudasan, T. V. Parameswaram and N. D. J. Fernando after taking into account the extension of their period of services on contract basis.

During the re-examination witness stated that he joined the Respondent Electricity Board at the age of 42 as there was a need of experienced staff. When he reached the age of retirement he had completed 214 months of service. The witness further reiterated C. N. D. Perera and others who has not completed the mandatory 240 months of service at the time of retirement required as per the Pension Rules were granted the Pension Benefits by the Respondent Board. The witness further stated the aforesaid 6 persons mentioned in paragraph 6 of their Application were not completed 240 months of service at the time of retirement were granted Pension Benefits by the Respondent Cooperation.

Y. W. Piyadasa in his evidence reiterated the position taken by 1st and 3rd Applicants who gave evidence before. He further stated the Respondent Board used its discretion to extend service of some employees after the retirement on contract basis to pay pension benefits and also on various other reasons used in discretion to pay pension benefits to some other employees.

Y. N. Ariyatunga, Human Resources Officer of the Respondent Board in her evidence has stated as follows.

Other than EPF and ETF the Respondent Board contribute 7% of the Salary of the Employees to the Pension Fund. She said according to R1 there were instances that Pension benefits were paid on the discretion of the Board. The witness further said that Period of Contract Employment was also taken into consideration when paying Pension benefits to C. N. D. Perera and 4 others (R1).

The both parties filed Written Submission.

The position taken by respondent is that there is no injustice done to the applicants and this is not a case where arbitral powers could be used.

On overall analysis of evidence before me I have come to the following conclusions.

- (i) According to pension fund regulations which has come into the effect from 1st January 1994, the Respondent Board has remitted 7% of the total of salaries of all the employees computed on the aggregate salary on which contributions are made to the Provident Fund.
- (ii) According to Rule 22.1 An employee to be eligible for pension he has to be complete as at the date of his retirement 240 months of service in the Ceylon Electricity Board. The full period of service has to be continuous and contributions should have made to the Provident Fund.
- (iii) The Respondent Board has granted pension benefits to (a) C. N. D. Perera, (b) P. Weerasingham, (c) J. Jesudasan, (d) T. V. Parameshwaram, and (e) N. J. L. Fernando who had not completed 240 months of service at the time of their retirement. According to evidence given by Y. N. Ariyatunga, Human Resource Officer they were granted pension benefits after adding the period that they were employed on contract basis after their retirement. It is evident that

pension benefits were granted to them under special circumstances even though they have not completed mandatory 240 months of service at the time of their retirement.

At the time of retirement the applicants D. M. J. Kumarasiri, Y. W. Piyadasa and S. Waniganetti have completed 233,236 and 214 months of service short of 7, 4 and 26 months respectively for the mandatory 240 months of service required to qualify for the pension scheme at the time of retirement.

(iv) During their period of employment the Respondent Board has remitted to the pension fund 7% of their total salaries.

(v) I do not see any fairness that the respondent has made adjustments to pension rules in order to grant retirement benefits only to selected few who has not qualified according the said rules.

(vi) I am in a view that it is not just and equitable to deprive pension benefits to employees who have worked many years merely because they are short of merely few months to complete mandatory 240 months of service at the time retirement.

I am under the opinion that the applicants D. M. J. Kumarasiri, Y. W. Piyadasa and S. Waniganetti shall be granted pension benefits. Computation of pension has to be done on pro rate basis taking retirement benefits entitlement for 20 years service as the base.

In the circumstances, I wish to quote majority decision of the Supreme Court in state Bank of India Vs. Edirisinghe (1991) that the arbitrator has to make 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 contract for the future in contrast 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 contrast to a judge who determines the existing right and liabilities of the parties.

For the reasons aforesaid it is my finding that the depriving pension rights of the applicants by the respondent Electricity Board has caused an injustice to them.

In the circumstances taking into consideration the totality of evidence led before me I make award that the applicants D. M. J. Kumarasiri, Y. W. Piyadasa and S. Waniganetti,

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(i) Be granted pension rights.

I consider this award just and equitable.

(ii) Computation of pension be done on *pro rata* basis taking pension benefits entitlement for 20 years of service as the base.

KAPILA M. SARATHCHANDRA,
Arbitrator.

15th August 2015.

I further made order that this award should be implemented within 21 days of the publication of this award in the

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