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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

Article 12C1)

මගේ අංකය
எனது இல.
My No.

ඔබේ අංකය
உமது இல.
Your No.

දිනය
திகதி
Date } 2018-2-21

A.M.A Athapattu,
Nandanithra road,
Kola Elya
Pallawa

Complainant

Complaint Number: HRC/3118/13

vs.

1. Director General,
Department of Agriculture,
Peradeniya
2. Director General,
Mahaweli Authority of Sri Lanka,
500, T. 3. Jaya Mawatha,
Colombo 10
3. Director General,
Department of Pensions,
Colombo 10

Respondents

A. THE COMPLAINT

1. The Complainant was a permanent employee of the Department of Agriculture from 15.03.1980. He was seconded to the Mahaweli Authority from 04.09.1981 to 01.09.1993.
2. The Department of Pension has denied paying his pension stating that he allegedly did not fulfil 10 years of public service and he was not a permanent employee when he was seconded.

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தொலைபேசி
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14, ஆர். ஏ. த. மெல் மாவத்தை, கொழும்பு - 04.
14, R. A. De Mel Mawatha, Colombo - 04.

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தலைவர்
Chairperson
ලේකම්
செயலாளர்
Secretary

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B. RELEVANT FACTS

3. The personal files of the Complainant were missing from the records of the 1st and 2nd Respondents. Therefore, the service period of the Complainant was disputed by the 3rd Respondent.
4. As the personal files of the Complainant were missing, the 1st Respondent conducted an inquiry as per Government Administrative Circular 121. The 1st Respondent submitted the findings of the inquiry report to the 3rd Respondent on 16.10.2012.
5. The 2nd Respondent issued a service certificate which confirmed that he was seconded for a period of 13 years from 16.09.1980-01.09.1993.
6. The 2nd Respondent stated that the accounts of the Complainant were missing and the Complainant's 25% pension contribution was only recorded for the years 1989 and 1990.
7. Subsequently, the chief-accountant of the 2nd Respondent issued a letter on 03.04.2012 to the 1st Respondent stating that 25% of the Complainant's salary was deducted and accordingly sent to the 3rd Respondent. The chief accountant admits that there isn't enough documentation in the 2nd Respondent's possession to show that the Complainant contributed from November 1990 to August 1993. The 2nd Respondent further confirms by letter dated 11.11.2013 that the documents in the "B-Zone office" were destroyed. Furthermore, the Senior Accountant of the 2nd Respondent issued a letter on 07.05.2014 stating that the Complainant who was seconded, was deducted 25% for Widows, Orphans pension for the period of 01.09.1981-01.09.1993.
8. The 3rd Respondent issued a letter on 05.02.2015 stating that the Complainant had not completed 10 years of service and at the time he was seconded to another Department he was not made permanent.
9. The 1st Respondent had issued a letter to the 3rd Respondent on 18.01.2016 stating that the Complainant received a permanent appointment and was thereafter released to work for the 2nd Respondent concurrently. Furthermore, when the Complainant joined the 1st Respondent he issued a letter confirming that his position was confirmed on a permanent basis from 15.08.1980.

C. OBSERVATIONS

10. Even though the 1st and 2nd Respondents did not have the personal files of the Complainant, it is observed that all necessary measures were taken by the 1st and 2nd Respondents to prove that the Complainant did fulfil over 10 years of service. The 1st Respondent conducted an inquiry in terms of Circular 121 while the 2nd Respondent

issued letters confirming that the 25% pension contribution was deducted for this period.

11. The 3rd Respondent only states that the 10 year period of service is not fulfilled and the Complainant was not employed on a permanent basis. While the 3rd Respondent reserves the authority to refuse granting of pension benefits, the 3rd Respondent cannot do this in an arbitrary manner. While the 1st and 2nd Respondent have vouched that the Complainant fulfils the period of service they have taken responsibility for the fact that the Complainant's personal files have been missing. There is further documentation, which confirms that the Complainant served on a permanent basis. In the event that there is supporting documents to prove that the Complainant did serve 10 years while serving the 1st Respondent on a permanent basis, the 3rd Respondent should effectively give reasons as to why the Complainant's pension is denied.
12. The Complainant states that the 3rd Respondent has disregarded the documents issued by the 1st and 2nd Respondents alleging that the documents produced are fraudulent. The 3rd Respondent cannot deny admission of documents on face value without verifying this fact directly from the relevant Department that issued the said documents.
13. The Complainant further states his colleague who was working on secondment, Ananda Premasiri (Pension No.735955), is receiving his pension since 2011. In the event that two people who are similarly situated are treated differently the 3rd Respondent needs to give reasons for denying pension benefits to the Complainant.
14. For the aforementioned reasons it can be concluded that the 3rd Respondent has acted arbitrarily in an unfair manner in denying pension benefits to the Complainant.
15. Therefore, it is concluded that the 3rd Respondent has violated **Article 12(1)** of the Constitution of Sri Lanka.

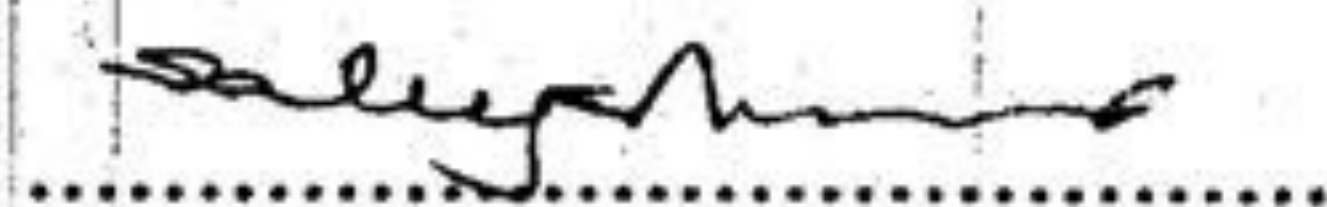
D. RECOMMENDATIONS

On the finding of a violation of Article 12 (1) of the Constitution, the Commission makes the following recommendations:

- A) In terms of the provisions in section 15 (4) of the HRC Act, the Commission hereby recommends the 3rd Respondent to provide the Complainant the pension benefits he is entitled to, while giving effect to the documentations submitted by the 1st and 2nd Respondent affirming the fact that the Complainant was employed in a permanent basis during the secondment.

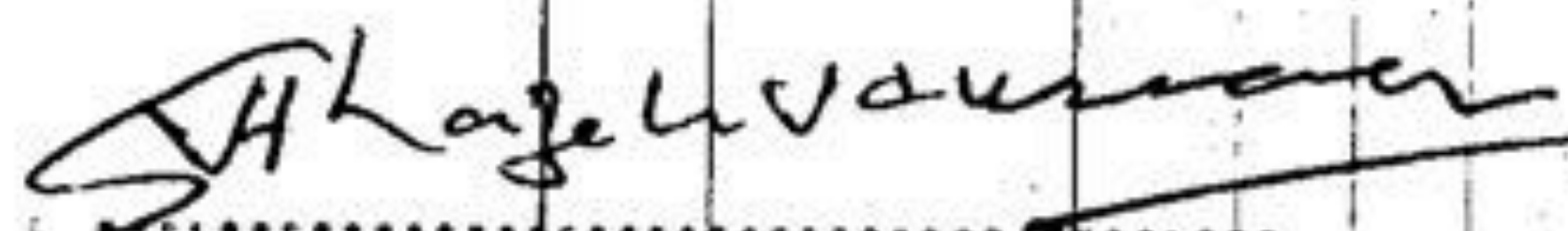
B) In terms of the provisions in Section 11(g) of the HRC Act, the Commission recommends the 3rd Respondent to pay the Complainant a sum of Rs. 5000/- as costs incurred by him/ her for the complaint made.

Further, the Commission hereby directs the 3rd Respondent to report to the Commission on the action taken within three months of this date.



Saliya Pieris PC
Commissioner
Human Rights Commission of Sri Lanka

Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.



Ghazali Hussain
Commissioner
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