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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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No. 1395/24 – FRIDAY, JUNE 03, 2005

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : CI/139/97.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between The Ceylon Mercantile Industrial and General Workers Union (CMU), No. 03, 22nd Lane, Colombo 03. of the one part and M/S Singer Industries (Ceylon) Ltd., No. 435, Galle Road, Ratmalana. of the other part was referred by order dated 02.07.2001 made under Section 4 (1) of the Industrial Disputes Act, Chapter 131, (as amended) and published in the *Gazette* of the Democratic socialist Republic of Sri Lanka Extraordinary No. 1,192/18 - 11.07.2001 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

Department of Labour,
Colombo 05.

20th May, 2005.

IN THE MATTER OF AN INDUSTRIAL DISPUTE BETWEEN

The Ceylon Mercantile Industrial and General Workers Union (CMU),
No. 03, 22nd Lane,
Colombo 03..

AND

CASE NO : A 2859

M/S Singer Industries (Ceylon) Ltd.,
No. 435, Galle Road,
Ratmalana.

The Award

(1) The Honorable Minister of Labour 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 Act. Nos. 14 of 1957, 63 of 1957, 4 of 1962 and 39 of 1968. (read with industrial Disputes (Special Provisions) Act. No. 37 of 1968) appointed me to be the Arbitrator and referred aforesaid dispute to me for settlement by Arbitration.

(2) The matter in dispute between the aforesaid parties is whether the demand of the Ceylon Mercantile Industrial General Workers Union (CMU) for a gratuity on the basis of 3/4 months salary for each year of service to the employees who have more than 20 years service at M/S Singer Industries (Ceylon) Ltd., is justified and if not, to what relief the said employees are entitled.

(3) At the inquiry Mr. E. V. N. Cabraal of the C.M.U. appeared for the applicant union and Mr. Gomin Dayasiri Attorney-at-Law appeared for the respondent company.

(4) The events relating to this dispute according to the applicant are as stated below :-

(i) The union submitted demands for the revision of the collective agreement of 1994 by letter dated 09.07.1996 (A 17) ;

(ii) A demand relating to enhanced gratuity together with proposals for a revision of the Internal Agreement signed on 21.07.1994 was addressed to the company dated 08.10.1996 (A 4) ;

(iii) negotiations between the company and the union commenced on 08.10.1996 but no settlement was reached on the gratuity demand ;

(iv) the respondent company by letter dated 25.10.1996 (A 5) stated that *it was unable to accede to the union's request for enhanced gratuity on financial grounds (A 5) ;*

(v) The union thereupon sent a revised proposed dated 30.12.1996. (A 6) which reads as follows :-

"Those with less than 20 years — 3/4th of the salary for each year of service. Those with more than 20 years service one month's salary for each year of service".

(vi) The respondent company replied stating its inability to consider a variation of the formula stipulated by Law (A 7) ;

(vii) The union by letter dated 13.02.1997 informed the respondent company that its position was not acceptable (A 8) ;

(viii) The union informed the company that the members had been authorized to suspend overtime work from 24.03.1997. This letter also referred to the fact that the company was willing to introduce a revised basis of payment of gratuity for senior hands during the negotiations in 1991 for revision of the 1988 agreement (A 10 (a)) ;

(ix) As the negotiations regarding the gratuity failed, the members of the union went on strike on 20.05.1997 in pursuance of that demand (A 11 and 12) ;

(x) In the circumstances the gratuity demand was *referred for settlement by arbitration.*

(5) The position of the respondent company is stated as follows :-

(i) The respondent company is paying all their employees gratuity as payable in law without discrimination ;

(ii) The employees with higher numbers of years in service will automatically get a higher gratuity on the formula laid down in the Act ;

(iii) The demand of the union requiring the payment of a higher gratuity to a selected group of employees is unjust and inequitable and discriminatory.

(iv) Although there were discussions and negotiations on the gratuity question, no settlement was reached. There was no agreement between the parties for the payment of enhanced gratuity ;

(v) The collective agreement A13, A14, A15, A16, signed by the applicant union and three other companies are not applicable to the present problem. It is the parties to a collective agreement who are covered by the provisions of these agreements.

(6) *The effect of A10(a) A18 and A19 and A20.*

The Applicant took up the position that *willingness on the part of the company to grant enhanced gratuity is reflected in the documents A18 and A20.*

(7) The document A18 a letter dated 21.10.1991 addressed by the Assistant General Secretary Employer's Federation of Ceylon to the General Secretary of the CMU states as follows under Gratuity :-

The Company cannot better the offer it has already made on this point, *that is to pay a maximum of 3/4 the month's salary for each year of service for those who serve more than 20 years i.e. from the 21st year* his offer as mentioned at the discussion is tied down to agreement being reached on the following matters :-

(a) Guarantors for hire purchase contracts ;

(b) Housing loans ;

(c) Designations in electronic department ;

(d) Presence of foreman during overtime.

(8) The applicant's witness Senadhira Pathirage Leelaratna giving evidence *regarding (a)* above marked document A25 and A 25(a) which are an application form to be filed by the hirer and a form to be filled by the guarantor respectively. Leelaratna further testified that *subsequent to A18 the branch union and the company discussed matters relating to the four conditions* mentioned in paragraph 4 of A18. In the 1988 Internal Agreement all employees less than 10 years service had to furnish one guarantor but in the 1992 agreement all employees less than 5 years service have to furnish 2 guarantors. This is clear when we compare S13(c) at p 22 of A26 (Internal Agreement of 1992.) Thus it appears that the respondent company had got the union to agree after 21.10.1991 to 2 guarantors in the case of hire purchase by the employees who had less than 5 years of service.

Condition (b) housing loans

Documents A26, an Internal Agreement signed between the branch union and the respondent on 10.01.1992, was

marked through the evidence of Leelaratna. Counsel for the respondent marked R9 to show that conditions applicable for the grant of housing loans were the same in 1988 as in 1992. If that is so, one has to conclude that the management introduced condition (b) in A18 without any reason. This position is untenable. W. S. Wijimanne the Director of factories under cross examination stated (page 9 and 10 of proceeding date 23.04.2004).

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Referring to condition (b) above Wijemanne stated that there was a scheme of granting housing loans when he assumed duties at the respondent company and the condition (b) appears to be for granting maximum amount by way of loans. However he was not sure about it (vide page 12 in proceedings dated 23.04.2004).

Condition (c) deals with the designations in the electronic department. This condition has been fulfilled. The collective agreement of 1991 signed on 31.12.1991 that is after A18, in its schedule gives in detail the designations of workers in the electronic department.

Condition (d)

This condition deals with the presence of foreman during overtime. Page 13 of the Internal Agreement produced marked A28 shows that agreement has been reached on this condition.

(9) The cumulative effect of the documents A10, A18, A19, A20 and the evidence of Leelaratna and Wijemane is.

(i) The company had made an offer or a suggestion to pay maximum of 3/4 month's salary for each year of service for those who serve were more than 20 years (para 4 of A18) ;

(ii) At least 3 of the 4 conditions stipulated in A18 have been satisfied by the year 1992 ;

(iii) The proposal or suggestion by the Respondent contained in A18 is still alive, mainly due to the efforts of the Union vide A4, A5, A5 (a) and A6 ;

(iv) The company seems to have laid - by the request regarding enhanced gratuity pleadings financial commitments of the Company Vide A5(a) ;

(v) The Union has had continuous discussions with the Respondent company on this question.

(10) The respondent in its statement dated 25.10.1996) A5) states—

"The financial commitment to the company on the basis of your demand will be substantial". In this regard no evidence was led by the respondent on its financial position nor was any evidence elicited from the witness for the union under cross examination. No evidence whatsoever in regard to the financial position of the company was led before me.

(11) In the field of industrial relations the principles of offer and acceptance should not be strictly adhered to. In the law of contracts a counter offer can destroy an offer but in labour relations I hold the view that a counter offer or counter proposal can keep the original offer alive. I therefore reject the contention of the respondent company, that there was no understanding between the parties to pay an enhanced gratuity although an enhanced gratuity was not embodied in the collective agreements A2, and A3.

It appears that the respondent had indicated its willingness to consider the gratuity question favorably which gave the employees of the company an expectation in that regard but when the respondent repeatedly delayed the matter the membership of the union had become restless and finally gone on strike.

(12) Agreements entered into by the C.M.U. with the other companies.

The union marked 4 collective agreements entered into between the union and other companies which show that those companies have agreed to pay higher gratuities than the legal minimum.

A14 collective agreement with Coca Cola Beverages Ltd.

A15 collective agreement with Ceylon Tobacoo A16 collective agreement with Unilever A21 collective agreement with Energiser Ltd.

It was contended by the respondent that the respondent company was not a party to any of the agreements and that there was no obligation on the respondent company under these collective agreements. While I agree with this contention, I have to add that the respondent company could have got some guidance from these agreements to give a reasonable solution to this question which vexed the company from 1991 onwards.

(13) The position taken by Learned Counsel for the Respondent was that an arbitrator cannot grant a higher gratuity than what is laid down by law. His view is supported by an interpretation of section 17(2) of the Gratuity Act. But in De Costa vs. A.N.Z. Grindlays Bank (1996) I Sri LR 307) the Supreme Court took the view that the amendment to Section

33(1)(e) of the Industrial Dispute Act, effected by Section 17(2) does not constitute a jurisdictional bar to the determination by the Arbitrator of the question whether the non-payment of gratuity at a higher rate than the legal minimum was justified, when the dispute had been referred to compulsory arbitration by the Minister. The representative of the Union in his written submissions has drawn my attention to this judgment.

(14) The Gratuity Act :

The Union's claim is in respect of employees with over 20 years service in Singer Industries (Ceylon) Ltd. The Gratuity Act does not provide a different formula for computation of gratuity. The existing formula does not provide a higher gratuity for those with longer periods of Service. The Legislature in enacting this Act would necessarily has taken into account the capacity of poor employers to meet the commitment. I do not consider granting a higher gratuity to employees with longer service as discriminatory become employees with lesser service and employees with longer service are not similarly circumstanced. There is a rational basis for the distinction.

The law does not preclude an arbitrator appointed by the Minister under the Industrial Dispute Act from granting a higher gratuity to some employees so long as it is just and equitable in the circumstances of the case. I have taken into account the fact that it is the company which offered a higher gratuity to those employees who served more than 20 years. I have also taken into account the fact that the Union which has put forward the demand represents those employees of Singer Industries (Ceylon) Ltd., who have less than 20 years service as well. I have also taken into account the implication of Section 10 of the Gratuity Act.

The Gratuity Act Section 10 states as follows :-

Where the gratuity payable to a workman is governed by a Collective Agreement, Award of an Industrial Court or Arbitrator……..the computation of such gratuity in respect of his service must be made in terms of such collective Agreement or Award provided that the gratuity set out therein is more favourable to the workman than the gratuity payable under the Act. For instance in A 17 Unilever Ceylon Ltd., and the Ceylon Mercantile Union have entered into a Collective Agreement whereby employees who have served over 10 years are entitled to higher gratuity and that agreement is kept alive in view of Section 10 of the Gratuity Act. In the National Union of Workers Vs : Scottish Ceylon Tea Co. Ltd., 78 NLR 133 there was agreement among the judges that the factors taken into account by a Labour Court in granting a gratuity should be inter *alia* length of service and the financial capacity of the employer to pay.

(15) Going through the proceedings the statements and the documents marked by those parties, I hold the view that the respondent had shown its willingness as far back as 1991 to give a maximum of 3/4th salary as gratuity for those who serve for more than 20 years in the company. For the last 14 years it seems that the members of the C.M.U. had been living with that expectation.

(16) I therefore make order that the respondent company pay 3/4th months salary as gratuity for each year of service to the employees who have more than 20 years at Singer Industries (Ceylon) Ltd. This award shall come into effect on 10.06.1997, which is the date on which the industrial dispute was referred to arbitration by the Minister. Employees who have left the company after 10.06.1997 having served over 20 years should be paid in terms of this award within a period of two months from the publication of this award in the Gazette of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and equitable.

T. PIYASOMA,
Arbitrator.

Dated at Colombo,
This 29th of April, 2005.

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