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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1395/7 - 2005 මැයි 31 වැනි අඟහරුවාදා - 2005.05.31

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(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/P/205/2001. CASE No : A 2962

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. D. D. M. Dayananda, No. 38, "Chamini" Peries Weda Mawatha, Kaluwadumulla, Ambalangoda of the one part and the Mahawali Authority of Sri Lanka No. 500, T. B. Jaya Mawatha, Colombo 10 of the other part was referred by order dated 29.11.2002 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. 1266/9-09.12.2002 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,
11th April, 2005.

Reference No.: T23/P/205/2001.

In the matter of an Industrial Dispute between

Mr. D. D. M. Dayananda,
No. 38, "Chamini",
Peries Weda Mawatha,
Kaluwadumulla,
Ambalangoda.

AND

Mahawali Authority of Sri Lanka,
No. 500, T. B. Jaya Mawatha,
Colombo 10.

The Award

The Hon. Minister of Employment and Labour by virtue of the powers vested in him by Section 14 (1) of the Industrial Disputes Act, No. 43 of 1950 as amended from time to time appointed me as the Arbitrator and referred to me the following dispute for settlement by Arbitration between the aforesaid parties.

The matter in dispute between the aforesaid parties is :

"Whether Mr. D. D. M. Dayananda who was appointed by the Mahawali Authority of Sri Lanka to act in the post of Technical Engineer Grade II with effect from" 15.07.1999 is entitled to be made permanent from the date of so appointed and to received salary and other allowances from 15.07.1999 in the relevant grade accordingly. If not, to what relief he is entitled.

The evidence of the workman could be summarized as follows :

- (1) that he was employed by Employer the Mahawali Authority on 01.02.1979 as an Engineering Asst. (Civil) in Grade II of such service.
- (2) that he was promoted to Grade I on 01.03.1990.
- (3) that the Employer called for applications for promotions to the position of Technical Engineer Grade II and after a Test and Interview 39 were selected for consideration for such appointment out of the 53 people who so applied.

(4) that he was 17th of the said list.

I consider this a just and equitable order.

(5) that there were about 20 vacancies.

A. SRI NAMUNI,
Arbitrator.

(6) that two employees by the name of the Ananda Munasinghe who came 19th in the list and another KGUS Jayasekara who come 28th in the list were so promoted ignoring the workman.

Dated at Colombo,
This 21st day of March, 2005.

(7) that further more two persons by the name Sujeewa Gunasekara and MAMP Ratnayake were recruited on a contract basis by the Employer.

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(8) that his letters of grievance went unanswered and ultimately he was appointed to Act in the position of Technical Engineer Grade II with effect from 15.07.1999.

My No. : T23/P/137/2002.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

The above not been disputed by the Employer seriously and I accept document A, to A17.

The Employer had failed to give adequate reasons for the appointment of Messers Ananda Munasinghe and KGUS Jayasekara who come 19th and 28th in the list A4 and the appointment of two from outside the service on a contract basis.

the evidence shows that there was a need for the appointment of an officer to the position of Technical Officer Grade II.

the explanation that the workman did not appear for test held on 09.09.2000 is not relevant to this instant matter. In any event he had good reasons for his inability to attend and the question is why he was ignored for promotions on the results of the test and interview held earlier.

The Employer had failed to act as a good employee but had in fact acted with malice towards workman.

He is entitled to relief.

I make award as follows :

- that he be appointed to the post Engineer Grade II with effect from 15.07.1999.
- that he paid arrears of salary from 15.07.1999 less the acting allowance he had been paid.
- that for purposes of in the said position and grade he is deemed to have been appointed with effect from 15.07.1999.
- that the date of increment be 15.07.1999 and the all increments up from that date be paid.
- that arrears of EPF and ETF calculated on the new salary scale he paid.

I order Mahaweli Authority of Sri Lanka, to comply with the above award within three months from the publication of the award in the *Government Gazette*.

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between (1) Mr. S. G. Gamage, No. 7, Baduwatte, Polgolla. (2) Mr. K. Sathiyashwaran, No. 171/4, Rattota Road, Matale. of the one part and Road Construction and Development Company (Pvt.) Ltd., Angulana Station Road, Moratuwa. (Presently Liquidator, Road Construction and Development Company (Pvt.) Ltd., No. 32, Park Road, Colombo 05.) of the other part was referred by order dated 31.05.2003 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. 1291/29-06.06.2003 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,
29th April, 2005.

Reference No.: T23/P/137/2002.

The Industrial Disputes Act Chapter 131 of the Legislative Enactment of Ceylon 1956 Revised Edition

In the matter of an Industrial Dispute between

1. S. G. Gamage,
No. 7, Baduwatte, Polgolla.

2. K. Sathiyashwaran,
No. 171/4, Rattota Road,
Matale.

On behalf of the workers Employed at the Nuwara Eliya District Office of the Road Construction and Development Company Pvt. Ltd.,

AND

Case No. 2986 The Road Construction and Development Company (Pvt.) Ltd.,
Angulana Station Road, Moratuwa.

Respondent

The Award

The Honourable Minister of Employment and 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 Acts, Nos. 14 of 1957, 62 of 1957, 4 of 1962 and 39 of 1968, read with Industrial Disputes (Special Provisions) Act., 37 of 1968; appointed me as Arbitrator by his Order dated 31st May, 2003 and referred the dispute between the aforesaid parties to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties is whether the employees who are working with in the Nuwara Eliya District under the Construction and Development (Pvt.) Ltd., are entitled to receive a "Station Allowance" in terms of section 12 of Chapter VIII of the establishment code and the public administration circular No. 305 from the month of June 1987 if not to what relief the said employees are entitled.

The parties to the dispute filed their respective statements and the matter proceeded to inquiry on 11/3/2003.

Mr. Wilbert Perera appeared on behalf of the applicant workers and Mr. Chandima Nanayakkara Attorney at Law instructed by Miss Anoma Kulatunge Attorney at Law appeared for the Respondent.

On 11.03.2003 witness Sobana Geethanath Gamage gave evidence and his evidence was continued on 12.12.2003.

On 26.01.2004 the evidence in chief of witness S. G. Gamage had been concluded but he was not present in court.

Mr. Wilbert Perera appearing for the applicant workers stated that S. G. Gamage was ill and not able to attend the inquiry. As Mr. Chandima Nanayakkara Attorney at Law appearing for the company was also not present the inquiry was postponed to 13.02.2004.

On 13.02.2004 Mr. Wilbert Perera appearing for the worker was present and there was no one appearing for the Respondent Company.

Mr. Wilbert Perera stated that the Road Construction and Development Company (Pvt.) Ltd., which had its office at Station Road Angulana Moratuwa had been closed and a New Office opened at 154 Stanley Thilakarathna Mawatha, Nugegoda. He requested that notice to be issued to the parties at the new address to attend court on the next date of inquiry which was fixed for 10.03.2004.

Notice was accordingly ordered to be issued on the respondent company on 10.03.2004.

On 07.04.2004 when further inquiry was taken up Mr. Wilbert Perera appearing for this applicant stated that the applicant was not present in court.

There was no representative for the respondent company either and inquiry was postponed for 17.05.2004 and notice was ordered to be issued on both parties.

On 06.05.2004 Miss Anoma Kulatunga Attorney at Law sent a communication to the Registrar of Industrial Court to the effect that the Cabinet has decided to the total closure of the Road Construction and Development Company (Pvt.) Ltd., and this company was to be liquidated.

The respondent company has not indicated to this forum what steps have been taken to proceed with the liquidation of the company nor has any one represented the company at the further inquiry.

The respondent Company has not sought to lead evidence to establish their position that the applicant workers are not entitled to any relief claimed.

The applicants through their witness S. G. Gamage have lead evidence and stated that they are entitled to the relief claimed. This witness has not been cross examined nor other evidence placed to support the respondents' position.

On 16.09.2004 when this inquiry was taken up it was decided that should the respondents be absent on the next date of inquiry the inquiry will be concluded.

I accept the evidence of witness S. G. Gamage. This witness has not been cross examined nor has the respondent company placed any evidence to contradict the applicant's evidence.

I hold that the workman named in document dated 09.01.2002. The District workers of the Road Construction and Development Company (Pvt.) Ltd., are entitled to relief as claimed and they be paid the "Station Allowance" of 10% of the total salary as claimed in letter dated 09.01.2002 produced as A3 from 01.06.1987 to date that is 30.03.2005.

I consider that this order is just and equitable.

I order that the amount due to this worker be deposited with the Assistant Commissioner of Labour (Colombo South) within 3 months of the publication of this award in the *Gazette of the Democratic Socialist Republic of Sri Lanka*.

A. N. D. BALASURIYA,
Arbitrator.

Date at Colombo,
This day 15th of April, 2005.

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