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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : CI/1671/2002.

The Award

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 S. G. S. Lanka (Pvt) Ltd., 140, Vauxhall Street, Colombo 02 of the other part was referred by order dated 20.12.2002, made under Section 3(1)D of the Industrial Disputes Act 131, (as amended) for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

D. SOMAWEERA EDIRISINGHE,
Commissioner General of Labour.

Department of Labour,
Colombo 05,
15th March, 2007.

In the Industrial Court of Colombo

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

Case No. 2966

..... Applicant

S. G. S. Lanka (Pvt) Ltd,
140, Vauxhall Street,
Colombo 02.

..... Respondent

The Commissioner of Labour by virtue of the powers vested in him by Section 3(1)(d) of the Industrial Disputes Act, (Chapter 131) of the Legislative Enactments of Ceylon (1956 Revised Section) 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 an Arbitrator by his order dated 20th December, 2002 and referred the following dispute to me for settlement by Arbitration.

This is an Industrial Dispute between The Ceylon Mercantile, Industrial and General Workers Union (C.M.U.) and S. G. S. Lanka (Pvt) Ltd., the matter in dispute between the aforesaid parties is whether the termination of employment of the workman, M. G. S. Pushpakumara by S. G. S. Lanka (Pvt) Ltd., is justified and if not to what relief is the said workman entitled to. This inquiry commenced before me in this court on 12.03.2003 and Mr. E. V. N. Cabraal appeared for the applicant union whilst Mrs. Ranjani Thimbiripola, Attorney-at-Law, appeared on behalf of the Respondent Company and proceedings were concluded by 30.10.2006, both parties submitting their written submission together with the marked documents.

The Respondent Company led the evidence of Mr. Godamune, the Finance Manager of the Company, Mr. Manatunga, retired examiner of questioned documents and 4 workmen, Edirisinghe, Perera, De Alwis and Samarajeeva whilst the union led the evidence of the accused workman Pushpakumara, Evidence led in the case revealed that the applicant workman was employed at S. G. S. Lanka (Pvt.) Ltd., as a field officer and has also functioned as the

President of the C.M.U. branch in the Company from 1990. During this period the Collective Agreement had been revised bringing an increase of salary to the workmen. In recognition of the service of Pushpakumara in this matter, it had been unanimously decided at a union, meeting of the C.M.U. that all members should contribute Rs. 1000 each from their salaries and same to be presented to Pushpakumara. As such the President and the Secretary of the C.M.U. branch union had submitted a list of members so contributing with their signatures in R1A and R1B with the covering letter R1C.

It is the evidence of Mr. Godamune that before he could make the deduction as in R1A and R1B, he had received R3 and R4 raising doubts in his mind as to the genuineness of R1A and R1B and as such he had brought this to the notice of the General Manager of the company, resulting in an investigation and obtaining declarations R6 to R24 challenging their signatures in R1A and R1B. The management appears to have obtained the services of one Mr. Manatunga, the retired examiner of questioned documents By R1 to compare the signatures of the 19 workmen in R1A and R1B with the writings of Pushpakumara in R1D to R10, admittedly produced and signed by the accused workman in the course of his duties. Mr. Manatunga, giving evidence has produced his report marked R2 and according to paragraphs R2B, R2C, and R2D, he had found this accused workman guilty of forging the signatures of 13 of the named workmen inclusive that of witnesses De Alwis, Perera and Edirisinghe, whilst he could not be definite of the signatures of witness Samarajeeva and other 5 workmen. These witnesses for the Respondent have been cross-examined at length and it is my view that their evidence was convincing and acceptable.

In the face of this evidence, the union has called the accused workman to give evidence and he has denied the allegation that he has forged the signatures of any of the named workmen and it is his position that any workman intending to put him into difficulties could have forged the

said signatures. It is also his position that the forging of the signatures would have become evidence when money was deducted from the salaries of the workmen and as such he could not have done the forging. But it must be noted that the workmen giving evidence only challenged the genuineness of the signatures but not the payment of Rs. 1000 from their salaries. Mr. Cabraal has also alleged the presence of a conspiracy against the workman Pushpakumara and has referred to the act of workman M. E. Perera, who presided at the particular union meeting and consented to pay Rs. 1000 but refused to do so by R4. He refers to the evidence of Mr. Manatunga and states that this witness has alleged that only 13 signatures have been forged by Pushpakumara whilst 9 signatures have not been forged by him showing the presence of same other forgery. However according to my view those allegations cannot be accepted without any supporting evidence, and there being none, the accused workman cannot be absolved from liability, Finally the Respondent Company has held a domestic inquiry and dismissed the accused workman Pushpakumara by R28.

I have thus considered carefully all the evidence led in this case and especially that of Mr. Manatunga, whom I view as an expert witness. Mr. Cabraal has cross examined this witness as length and has failed to produce any contrary evidence or disprove the validity of his evidence. Considering the totality of evidence led in his case and considering the balance of probability, I hold that the accused workman Pushpakumara has been proved to have forged the signatures of 13 workmen as stated in R2D and has been justifiably dismissed from his services by R28. As such I hold that he is also not entitled to any relief.

M. B. JAYASEKARE,
Arbitrator.

15th February, 2007.

04-263