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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1469/19 - 2006 ඔක්තෝබර් 31 වැනි අඟහරුවාදා - 2006.10.31
No. 1469/19 - TUESDAY, OCTOBER 31, 2006

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : C1/1572/2000.

Award

THE INDUSTRIAL DISPUTE ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Inter Company Employees Union, 158/18, E. D. Dabare Mawatha, Narahenpita, Colombo 05 of the one part and Art Decoration International (Pvt) Ltd., 176, Pelwatte, Madapatha, Piliyandala of the other part was referred by order dated 19.04.2001 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. 1181/13, of 24.04.2001 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

D. S. EDIRISINGHE,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
21st September, 2006.

*In the matter of an Industrial Dispute
between*

Inter Company Employees Union
158/18, E. D. Dabare Mawatha,
Narahenpita, Colombo 05.

and

Art Decoration International (Pvt) Ltd.,
176, Pelwatte, Madapatha,
Piliyandala.

Case No.: 2848.

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, No. 37 of 1968, appointed me as the Arbitrator by his order dated 19.04.2001 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

2. The matters in dispute between the aforesaid parties are :-

“Without the termination of the services of the 69 employees whose names are referred to in the attached schedule with effect from 13.05.1999 by Art Decoration International (Pvt) Ltd., is justified and to what relief each of the said employee is entitled”.

Appearances : Mr. M. B. Jayasinghe Attorney-at-Law with Mr. Bernard Dissanayake, Attorney-at-Law appeared for the Company Mr. Parakrama Agalawatte, Attorney-at-Law appeared for the Union initially and thereafter Mr. Jayantha Hewavitharana, Attorney-at-Law and Mr. Janaka Adikari, Attorney-at-Law appeared for the Union.

3. Mr. Hemantha Jayalal Pieris, Vice President of the Branch Union gave evidence on behalf of the Union and marked documents A1 to A6. Mr. J. H. B. Karunaratne, Managing Director of the Respondent Company gave evidence and marked documents R1 to R12 and a schedule containing the names of the 69 employees with their dates of commencement of employment and last basic salary drawn by them as 'X'. Both parties have tendered written submissions together with the marked documents.

4. The Respondent Company has in its second statement dated 15.11.2001 raised a preliminary legal objection that as the Commissioner of Labour has made order refusing an application made by the Union to him in terms of the Termination of Employment (Special Provisions) Act, No. 45 of 1971 in respect of the matter in dispute, the Minister of Labour cannot refer the same matter for settlement by arbitration under Section 4(1) of the Industrial Disputes Act.

This preliminary legal objection was not pursued by the Respondent Company before the inquiry commenced. It has therefore to be taken as waived by the company. The Respondent Company has also raised another preliminary legal objection in the written submission tendered by it after the case was concluded. The objection is that —

- (i) The matter in dispute presupposes a termination of service by the company and the Learned Arbitrator is called upon to adjudicate if the termination is justified.
- (ii) As the subject matter of the dispute has not been correctly stated the reference is ineffectual and invalid and stands vitiated.
- (iii) Ipso facto any proceedings taken thereon too shall stand vitiated and the Learned Arbitrator has no jurisdiction to make a valid Award.

This preliminary legal objection has been taken belatedly after participating in the proceedings which stands already concluded. I do not consider it a fruitful exercise to go into a belated preliminary legal objection which was never raised before the proceedings commenced or at any stage of the proceedings.

5. This is a case where the Union alleges termination of services of the 69 employees and the company's position is that the employees failed to report for work and that they had by their conduct abandoned their employment. The Company, in short, denies termination of employment. In these circumstances, I am obliged to make a determination as to how the employment of the 69 employees came to an end.

It is common ground that —

- (i) The Factory of the Respondent Company was closed temporarily on 13.05.1999.
- (ii) A notice was displayed at the Notice Board of the company regarding temporary closure. This is marked as R 9.
- (iii) The factory re-started production on 10th June, 1999 at a place in Bandaragama with the permission of the Board of Management.
- (iv) The Union wrote to the Company on 02.04.1999 regarding the formation of the Branch Union and sought an appointment for a discussion. This letter is marked as A1.
- (v) The Company received this letter but no reply was sent and no appointment was given for a discussion.

The position of the Union is that when the Factory recommended production on 10.06.1999, the 69 employees were not offered work. The Company states that the employees did not report for work on 10.06.1999. The Managing Director in his evidence has said that he did not send letters to the workers when the Factory recommenced business on 10.06.1999. Page 14 of the proceedings of 28.10.2005. He has said in evidence that he had the address of all the employees and that he did not inform the employees individually. To the question posed to him under cross examination —

- Q - You could have sent notices individually to the workers informing the reopening of your factory.
- A - We had only one girl working in the office. The time is too short for us to write. page 9 of the proceedings of 20.01.2006.

The contention of the Union is that the Managing Director was against the formation of the Union and that he did not want to employ the workers who are in the Union.

To the following question posed to the Managing Director by me.

- Q - Were you in favour of a Union being formed ?
- A - JVP has closed down factories. My factory was 72 of this nature. I am reluctant to have a JVP Trade Union. Page 7 of the proceedings of 07.06.2005.

6. Hemantha Jayalal Peiris in his evidence stated that —

SCHEDULE

- (i) Managing Director wanted them to withdraw from Union otherwise will be dismissed.
- (ii) Managing Director said that Factory will be closed and they will be informed when it is re-opened. They asked for salary and he told them to get from the Union. Pages 12 and 13 of the proceedings of 12.08.2002.
- (iii) Action was taken to form a Welfare Society by Managing Director. No one from the Union was elected but favouritis of the Managing Director were elected Page 9 of the proceedings of 12.08.2002.

7. Viewed in the light of the foregoing evidence, my finding is that the company has terminated the employment of the 69 employees for the reasons that —

- (i) The company which told the employees when it closed down temporarily on 13.05.1999 that it will inform them when it re-opens has not called them back to work when the Factory was re-opened on 10.06.1999 although it had all the addresses of the employees.
- (ii) Its behaviour pattern would appear to be to demonstrate hostility to the Union.
- (iii) The letter A3 dated 23.08.1999 from BOI to the Union cannot be taken as an invitation to 69 employees to return to work.

8. Now that I have made a finding that the services of the 69 employees have been terminated by the company, I wish to switch on the question of relief. The company has annexed to the written submissions a schedule marked as 'X' as directed by me containing the names of the 69 employees, the dates of commencement of employment and the last salary drawn by them. I make award that the 69 employees in the schedule be paid compensation totalling Rs. 331,125 (Rs. Three Hundred and Thirty One Thousand One Hundred and Twenty Five only) computed at the rate of 1 1/2 month's salary for each completed year of service. I make order that the sum of Rs. 331,125 (Rs. Three Hundred and Thirty One Thousand One Hundred and Twenty Five only) is deposited by Art Decorators International (Pvt) Ltd., with the Asst. Commissioner of Labour, Colombo South Labour Secretariat, Colombo 05 within (30) thirty days of the date of publication of this Award in the *Government Gazette of the Democratic Socialist Republic of Sri Lanka*.

I declare that this Award is just and equitable.

V. VIMALARAJAH,
Arbitrator.

15th September, 2006.

01. H. Ajith Premathilake
02. S. P. Peiris
03. M. Sisira Priyankara Cooray
04. W. M. Wimala
05. W. D. Jayantha Rajapaksa
06. P. Nishatha
07. A. Premasiri
08. R. A. Nalinda Ranwala
09. T. D. Renuka Damayanthi
10. H. Kapila Priyankara Fernando
11. G. M. Chandana Susila Kumara
12. G. M. Chaminda Kumara
13. R. V. P. Rohan Dias
14. H. K. Gamini Rupasinghe
15. K. H. Premalal
16. H. N. Ranjith Perera
17. H. Kumudu Priyankara
18. M. S. R. Kumuduni Kumari
19. K. Wasanthi Chandralatha Perera
20. Nadeeka Wijesekara Subasinghe
21. S. M. Sumanasiri Silva
22. Kamal Dayaratne
23. M. D. Prasad Sanjeeewa
24. G. Asanka Prasad Fonseka
25. K. D. N. Kumara
26. T. G. Udaya Kumara
27. D. M. Mangalika Dissanayake
28. K. G. Kularathne
29. Hiran Pradeep Kumara
30. J. M. Sunil Jayarathne
31. M. G. Lalitha Kumari
32. W. M. Nilusha Kumuduni
33. Indrani Wanigathunga
34. M. L. Padmakumari Gunarathne
35. M. Helanthi Chandraika
36. G. M. Keerthi Indika Kumara
37. W. Ajantha Ranasinghe
38. W. Rohan Silva
39. B. H. H. Jayalal Peiris
40. H. D. Rukman Keerthi
41. T. Udesha Nishantha Peiris
42. A. A. D. Nishantha Pradeep
43. S. P. Nishantha Niroshana
44. H. A. Pathmasiri Peiris
45. K. M. Wijesinghe
46. S. Pushpakumara
47. P. K. M. Sriyani Wijelatha
48. K. M. C. Bandara
49. A. M. U. K. S. Adikari
50. J. W. R. Dilrukshi Wickramarathne

- | | |
|----------------------------------|--------------------------------|
| 51. J. K. Kumaradasa | 61. M. Mallika |
| 52. A. A. D. Asanka Rukmal | 62. B. L. Anil Priyantha |
| 53. T. D. B. Chandana | 63. H. A. P. Peiris |
| 54. M. A. R. Cooray | 64. Roshan Fernando |
| 55. W. N. M. B. P. J. Nawarathne | 65. N. P. Kasturiarachchige |
| 56. W. M. A. Wijekoon | 66. H. M. Danuska Sanjeewa |
| 57. M. H. M. U. P. Herath | 67. T. Rohan Samantha |
| 58. G. A. Nalake Jayantha | 68. K. Ranjith Lasantha Perera |
| 59. U. J. Wickramasinghe | 69. R. K. A. Premakumara |
| 60. K. H. P. Peiris | |

SCHEDULE

No.	Name	Date of Appoint.	Basic Salary Rs.	Compensation Rs.
01.	H. Ajith Premathilaka	06.05.1998	2,500.00	3,750.00
02.	S. P. Peiris	12.07.1997	1,750.00	2,625.00
03.	M. Sisira Priyankara Cooray	25.07.1998	2,500.00	3,750.00
04.	W. M. Wimala	11.07.1998	2,500.00	3,750.00
05.	W. D. Jayantha Rajapaksa	25.08.1998	2,500.00	3,750.00
06.	P. Nishantha	22.04.1998	2,500.00	3,750.00
07.	A. Premasiri	04.08.1998	2,500.00	3,750.00
08.	R. A. Nalinda Ranwela	24.11.1998	2,500.00	3,750.00
09.	T. D. Renuka Damayanthi	06.06.1998	2,500.00	3,750.00
10.	H. Kapila Priyankara Fernando	15.08.1998	2,500.00	3,750.00
11.	G. M. Chandana Susila Kumara	12.01.1999	2,500.00	3,750.00
12.	G. M. Chamind Kumara	12.01.1999	2,500.00	3,750.00
13.	R. V. P. Rohan Dias	25.07.1998	2,500.00	3,750.00
14.	H. K. Gamini Rupasingha	15.09.1998	2,500.00	3,750.00
15.	K. H. Premelal	05.08.1998	2,500.00	3,750.00
16.	H. N. Ranjith Perera	12.01.1999	2,500.00	3,750.00
17.	H. Kumudu Priyankara	20.05.1998	2,500.00	3,750.00
18.	M. S. R. Kumudini Kumari	-	-	2,625.00
19.	K. Wasanthi Chandralatha Perera	10.03.1998	2,500.00	3,750.00
20.	Nadeeka Wijesekara Subasinghe	17.02.1997	2,500.00	7,500.00
21.	S. M. Suamanasiri Silva	-	-	2,625.00
22.	Kamal Dayaratne	16.01.1997	2,500.00	7,500.00
23.	M. D. Prasad Sanjeeva	29.01.1997	3,000.00	9,000.00
24.	G. Asanka Prasad Fonseka	12.01.1996	2,500.00	11,250.00
25.	K. D. N. Kumara	19.05.1998	2,500.00	3,750.00
26.	T. G. Udayakumara	-	-	2,625.00
27.	D. M. Mangalika Dissanayake	05.06.1998	2,500.00	3,750.00
28.	K. G. Kularatne	10.07.1998	1,750.00	2,625.00
29.	Hiran Pradeep Kumara	15.12.1998	1,750.00	2,625.00
30.	J. M. Sunil Jayaratne	03.07.1998	2,500.00	3,750.00
31.	M. G. Lalitha Kumari	08.05.1997	1,750.00	5,250.00
32.	W. M. Nilusha Kumudini	14.10.1998	1,750.00	2,625.00

<i>No.</i>	<i>Name</i>	<i>Date of Appoint.</i>	<i>Basic Salary Rs.</i>	<i>Compen- sation Rs.</i>
33.	Indrani Wanigatunge	14.12.1996	1,750.00	5,250.00
34.	M. L. Padmakumari Gunaratne	09.05.1998	1,750.00	2,625.00
35.	M. Helanthi Chandrika	09.02.1997	1,750.00	5,250.00
36.	G. M. Keerthi Indika Kumara	25.08.1998	2,500.00	3,750.00
37.	W. Ajantha Ranasinghe	12.10.1998	2,500.00	3,750.00
38.	W. Rohan Silva	06.01.1997	2,500.00	7,500.00
39.	B. H. H. Jayalal Pieris	24.12.1994	2,500.00	15,000.00
40.	H. D. Rukman Keerthi	20.04.1996	2,500.00	11,250.00
41.	T. Udesa Neshantha Pieris	07.07.1998	2,500.00	3,750.00
42.	A. A. D. Nishantha Pradeep	01.10.1998	2,500.00	3,750.00
43.	S. P. Nishantha Niroshana	21.05.1998	2,500.00	3,750.00
44.	H. A. Padmasiri Pieris	20.04.1997	2,500.00	7,500.00
45.	K. M. Wijesinghe	03.07.1998	2,500.00	3,750.00
46.	S. Pushpakumara	02.06.1998	2,500.00	3,750.00
47.	P. K. M. Sriyani Wijelatha	05.06.1998	2,500.00	3,750.00
48.	K. M. C. Bandara	29.06.1997	2,500.00	3,750.00
49.	A. M. U. K. S. Adikari	29.06.1997	2,500.00	3,750.00
50.	J. W. R. Dilrukshi Wickremaratne	20.04.1997	2,500.00	3,750.00
51.	J. K. Kumaradasa	17.12.1998	1,750.00	2,625.00
52.	A. A. D. Asanka Rukmal	28.04.1998	2,500.00	3,750.00
53.	T. D. B. Chandana	27.10.1996	2,750.00	8,250.00
54.	M. A. R. Cooray	08.07.1998	2,500.00	3,750.00
55.	W. N. M. P. B. J. Navarathna	07.07.1998	2,500.00	3,750.00
56.	W. M. A. Wijekoon	03.07.1998	2,500.00	3,750.00
57.	M. H. M. U. P. Herath	22.04.1998	2,500.00	3,750.00
58.	G. A. Nalaka Jayantha	27.10.1996	2,500.00	7,500.00
59.	U. J. Wickremasinghe	29.06.1997	2,500.00	3,750.00
60.	K. H. P. Peiris	12.06.1997	1,750.00	2,625.00
61.	M. Malika	09.06.1997	1,750.00	2,625.00
62.	B. L. Anil Priyantha	27.10.1996	2,500.00	7,500.00
63.	H. A. P. Peiris	24.12.1994	3,250.00	19,500.00
64.	Roshan Fernando	12.10.1998	2,500.00	3,750.00
65.	N. P. Kasthuriarachige	—	—	2,625.00
66.	H. M. Danushka Sanjeewa	05.02.1997	2,500.00	7,500.00
67.	T. Rohan Samantha	28.02.1997	2,750.00	8,250.00
68.	K. Ranjith Lasantha Perera	11.09.1998	2,500.00	3,750.00
69.	R. K. A. Premakumara	12.01.1999	1,750.00	2,625.00
				331,125.00

Date of cessation of employment of the 69 employees 13.05.1999.