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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1494/25 - 2007 අප්‍රේල් 27 වැනි සිකුරාදා - 2007.04.27

No. 1494/25 - FRIDAY, APRIL 27, 2007

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T7/138/94.

M/s. Polytex Garments Limited,
Minuwangoda Road,
Ekala,
Ja-Ela.

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 & General Workers Union (CMU), No. 03, 22nd Lane, Colombo 03 of the one part and Polytex Garments Limited, Minuwangoda Road, Ekala, Ja-ela of the other part was referred by order dated 30.03.1995 made under Section 3 (i) (d) of the Industrial Dispute Act, Chapter 131 (as amended) for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

of The Other Part

THE AWARD

The Commissioner of Labour by virtue of the powers vested in him by Section 3 (i) (d) 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) by his Order dated 30th March, 1995 appointed me as Arbitrator and referred to me the dispute between the aforesaid parties for settlement by Arbitration.

D. SOMAWEERA EDIRISINGHE,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
22nd March, 2007.

The matter in dispute between the aforesaid parties is whether the dismissal of 23 employees whose names are given below is justified, and if not, what relief they are entitled to The aforesaid workers are :

In the matter of an Industrial Dispute

Case No.

A2506

(Connected to
A/2479)

between

The Ceylon Mercantile, Industrial &
General Workers' Union (CMU),
No. 3, 22nd Lane,
Colombo 02,
Of the One Part

and

1. Kankanam Ralalage Indrani Seneviratne Menike (K. R. I. S. Menike) ;
2. Dewarathna Banjanage Swarnalatha Devarathna (D. B. S. Devarathna) ;
3. Kachchakaduge Jenet Peiris (K. J. Peiries) ;
4. Mala Perera Samarasinghe Siriwardena (M. P. S. Siriwardena) ;
5. Hewayalage Rosalinnona (H. Rosalinnona) ;
6. Subasinghe Morawaka Arachchige Shanthilatha (S. M.A. Shanthilatha) ;
7. Kimbulobbe Herath Mudiyanse Lage Chandrawathie Menike (K. H. M. C. Menike) ;

8. Kulappu Tantrige Anil Kumar Tantrige (K. T. A. Kumara);
9. Garusinghe Arachchige Priyanthi Mala (G. A. P. Mala);
10. Weerakoon Mudiyansele Malani (W. M. Malani);
11. Gonapinuwana Witharanalage Nirmala Damayanthi (G. W. N. D. Nettasinghe);
12. Thennakoon Mudalige Ajith Rohana (T. M. A. Rohana);
13. Sethunga Mudalige Piyanka Lalani (S. M. P. Lalani);
14. Ranbandi Kaludurage Piyangani (R. K. Piyangani);
15. Uyangodage Sriyani (U. G. Sriyani);
16. Mudannagoda Kankanamge Sandya Fernando (M. K. S. Fernando);
17. Dorakumbure Subasinghe Mudiyansele Anura Wijesinghe Banda (D. S. M. A. Wijesinghe);
18. Ranavi Tanthrige Mangalika Kumari (R. T. M. Kumari);
19. Thennakoon Mudiyansele Mallika Kumarihamy (T. M. M. Kumarihamy);
20. Pahalage Dona Indrani (P. G. Indrani);
21. Karanpitiye Gedera Nandawathi (K. G. Nandawathi);
22. Kunankara Gedera Priyanka Deepani Gnanalatha (K. G. P. D. Gnanalatha);
23. Warnakulasuriya Agnes Princy Fernando (W. G. P. Fernando).

In the course of the evidence the witnesses referred to some of the workers by abbreviated names : the names by which they are called in the factory. Thus the full names of the workers are given along with the names given in the reference to arbitration.

At the inquiry under Section 17 of the Industrial Disputes Act, the Late Mr. Diyanesh Rajaratnam, Attorney-at- Law, appeared for the Employer Company until his death. Thereafter Mr. S. J. Gunasekera, Attorney-at-Law, appeared for sometime and finally Mr. J. V. N. De Rosairo Attorney- at- Law, appeared. Mr. A. V. N. Cabraal appeared on behalf of the Union representing the workers.

The inquiry commenced on 25.04.1995 Several attempts were made to settle the dispute. Since there was no settlement acceptable to both parties I proceeded to inquiry.

17. Witnesses testified on behalf of the Employer, and documents marked R 1 to R 29 were produced. 14 Witnesses testified on behalf of the Union and documents marked A 1 to A 48 were produced. Recording of evidence was concluded on 11.12.2002. Written submission of the Employer dated 30.04.2003 were tendered on or about the same date. However, due to the ill health of Mr. Cabraal the written submissions of the Union was tendered only on 27.10.2005.

The Company by its statement filed on 23.05.1995 pleaded as follows : -

- (i) The said 23 employees. together with a large number of other employees of the Company Participated in a strike which commenced on 05.12. 1994 There Were a large number of employees who did not participate in the strike ;
- (ii) While the strike was continuing on 21.12.1994 the aforesaid workers committed various acts of misconduct as set out in the show caues letters and were found guilty after inquiry ;
- (iii) The strike was settled after a memorandum of settlement was signed at the Labour Department between the Company and the Union on 17.03.1995;
- (iv) That although inquiries were held respect of the charges misconduct, and although due notification was given to the workers none of the workers attended the inquiries;
- (v) That the termination was fully justified and that the workers are not entitled to any relief.

The Union behalf of the workers alleged that a Branch of the Union was formed at the Company in May 1994, and that the charges have been trumped up and that the aforesaid workers are key members of the Branch, including the President, Secretary, Vice President and Committee members. The Union further stated that all the key members of the Branch were under strict instructions by the General Secretary of the Union to maintain law and order in the face of continuous provocation by agents of the Company, Which had consistently resisted the formation of the Branch.

At the commencement of the inquiry Counsel for the Company submitted that since the Union has alleged malice the burden of proof was on the Union to prove the same. Mr. Cabraal on behalf of the Union denied that the Union alleged malice in its statement, but that evidence of malice may surface in evidence. Parties tendered written submissions on the question as directed. I held that the duty was on the Company to commence leading of evidence.

The case of the Company is that all 23 workers were guilty of various acts of misconduct committed on 21.12.1994. The charge sheets served on 1 to 23 workers (R1- R23) disclose the following alleged acts of misconduct :-

- (i) That workers Nos. 1 to 18 did on 21.12.1994 at about 7.15. a.m. whilst several non strikers (named 13 persons) were traveling in bus No. 23 - 6401 hired for the purpose

of transporting factory workers did jointly severally and in combination with one another stopped the bus 800 meters from the factory main gate and prevented the bus from moving and abused and assaulted them causing them physical injury etc ;

- (ii) The charge sheets against T. M. A. Rohana-worker No. 12 and P. D. Indrani (worker No. 20) state that they had on 21.12.1993 at about 7.15 a.m. dragged W. A. Vijitha Nandanie out of the bus and taken her across the road and handed her over to fellow strikers who assaulted her. Indrani is also accused of snatching a gold chain and pendent off the neck of Vijitha Nandani ;
- (iii) The charge sheet against K. G.P. D. Gnanalatha (worker No. 22) states that she did on 21.12.1994 outside the factory gate assault and/ or aided and abetted P. D. Indrani and T. M. A. Rohana to assault W. A. Vijitha Nandanie ;
- (iv) T. M. M. Kumarihamy (worker No. 19) and K. G. Nandawathie (worker No. 21) are alleged to have around 6.30 a.m. on 21.12.1994, while N. M. A. G. Leelawathie was about 15-50 yards away from the factory main gate and trying to enter the factory premises abused, assaulted and threatened Leelawathie causing her physical injury with a view to preventing her from entering the factory premises ;
- (v) W. A. P. Fernando (worker No. 23) has, according to the charge sheet, on 21.12.1994 at about 7. a. m. while P. A. Hemalatha was trying to enter the factory taken her purse which consisted of Rs. 2000 the Company gate pass. 3 keys and pocket calendar and assaulted her with the view to preventing her from entering the factory and threatened to cause further physical injury if she reported for work that day.

In the light of the several and distinct charges/ allegations of misconduct made against each worker the evidence of each witness has to be considered and assessed separately. and the case against each employee ought to be considered separately.

In the written submissions of the Respondent it is conceded that there was no direct evidence by the alleged victims against four of the workmen, namely, Rosalin Nona (Employee No. 5).

Sriyani (Employee No. 15), Mallika Kumarihamy (Employee No. 19) and Nandawathie (Employee No. 21)

No evidence was led in respect of the charges against Indrani (Employee No. 20) and Gnanalatha (Employee No. 22). Vijitha Nandanie the alleged victim referred to in the charge against Indrani and Gnanalatha did not testify. The fact that the charge sheets R 19 and R 20 served on these two employees were later amended demonstrates that the respondent had doubts about the complicity of these two workers in the incident.

It is not in dispute that a Branch of the CMU was formed at the Respondent's Company in May 1994. The position of the Union is that the Respondent was not prepared to recognize the Branch and, more specifically that the Respondent failed to give check off facility in respect of the Union members. The Union induced the workers to suspend over time work from 18.11.1994 and called a strike on 12.12.1994.

In the written submissions of the Union it is admitted that there was an incident on 21st December. It is also conceded that there had been a clash between strikers and non strikers at a place near Alexandra Garments. It is the contention of the Union that there was a crowd as large as 300 and that in such a situations it is very unlikely that any one could be identified, and it is easy for non strikers to falsely implicate the leaders of the Union.

In a confrontation between strikers and non strikers it is not unlikely that Union leaders were in the forefront. The evidence is that the Union leaders were playing a prominent role in the incident. As contented by the Union identification is difficult when a large crowd is present. In such a situation it is possible that a number of strikers who in fact committed acts of misconduct would not be identified and get away unpunished. But, Union leaders, being well known, to the workers, would easily be spotted and identified in a crowd, and more so if they take a leading or prominent part. At the same time it is easy to falsely implicate them and this should be kept in mind when assessing evidence.

The involvement of each of the aforesaid employees and what, if any, act of misconduct has been committed by each of them will now be considered.

W. A. P. Fernando (Worker No. 23)

Prathapasinghe Aratchige Hemalatha the 1st witness for Respondent stated that when she was coming for work walking several strikers chased her and in an attempt to escape the crowd she boarded a bus, but that about 5 strikers boarded the bus. witness identified Princy (W. A. P. Fernando) as one of the strikers who chased her and boarded the bus. Witness identified Princy at the inquiry. Witness went on to say that

when she got down from the bus Princy grabbed the purse that was in her hand; that the purse contained Rs. 2015 and she complained to the Ja-ela Police of the same two days later ; that she could not do so on the same day since there was no one at the Police Station to take down the complaint ; that plaint was filed against Princy but she was acquitted.

In cross examination witness admitted that there were police officers every ten feet. A suggestion was made to her that she did not go to the Police on the same day but two days later on 23.12.1994 along with an employee of the Company. In the statement to the Police (A 2) witness has stated that she delayed in coming to the Police since she feared that she would be harassed by strikers when she came. Witness further stated that she did not know who else witnessed the incident, but in cross examination in the Magistrate's Court case (A3) witness stated that Hemawathie saw the incident.

J. A. Chandrasena, Chief Internal Security officer, stated that on the day of the incident he was an internal security officer, that witness Hemalatha complained to him regarding an incident. that he went to the Police Station on the same day and on the following day, but there was no one to record the statement. that finally the statement was recorded on 23.11.1994.

In cross examination witness stated that books were maintained at the security point. that the complaint of Hamawathie was not recorded; that Hemawathie did not mention the name of the person who took the purse nor the name of any other witness to the incident; that Hemalatha later gave the names upon questioning that complaint forms were available to record complaints but that complaint was not recorded since the incident did not take place within the Company premises; Chandrasena was not a witness at the domestic inquiry nor in the Magistrate's Court Case.

Hemawathie's evidence of the delay in making the complaint to the Police- that she was afraid of harassment by the strikers- is contradicted by her own evidence that there was no officer to record the statement. The evidence of this witness that there was no officer to record the statement on that day was also contradicted by the evidence of witness J. L. Jayasinghe who had made a complaint to the Ja-Ela Police Station at 9.52 (R1) on the same day which proves that there was an officer to record a statement. The statement to the Police that there were no witnesses to the incident was also contradicted by her own evidence that one Hemawathie is a witness to the incident. Witness Chandrasena also stated that Hemawathie did not the mention the name of any witness. Hemawathie (Hemamali ?) did not testify at the inquiry before me.

In the absence of any contemporaneous record or statement to the Police, and in the light of the belated complaint to the Police, and also in the absence of any corroboration, I cannot act on the evidence of Hemalatha to hold that worker W. A. P. Fernando is guilty of the acts alleged.

I hold that the charge made against W. A. P. Fernando has not been proved even on a balance of probabilities.

S. M. P. Lalani (Worker No. 13)

Witness J. L. Jayasinghe stated that on 24.12.1994 he traveled by special bus from Divulapitiya ; that 60 - 70 workers traveled in the bus ; that near Madama Junction he saw the bus coming from Gampaha transporting co-workers broken down ; that the workers in the broken bus wanted to get into the Divulapitiya bus but were prevented sicne Lalani, and Mala held hands and jumped in front of the bus and shouted for the bus to stop ; that the driver tried to go forward and Anura hit the front mirror and prevented the bus from moving forward ; that Nirmala was present. (Nirmala was identified at the inquiry before me) ; that Nirmala and the crowd stoned the bus that a stone struck the witness ; that he identified Sandya, Indrani, Anil and Ajith as those who stoned the bus ; that glass in the bus was broken and several were injured and that there were pieces of glass in the eyes of some ; that about 20 were hospitalized at Ragama ; that the Police did not take any action. The statement made by the witness to the Police was produced marked R1.

Witness stated that he was never a member of any Union ; that unions are useless and only disruptive. However, later witness admitted the he was the president of the Branch Union in 1982 and 1983.

Although several other witness testified are the incident no other witness mentioned the name of Lalani. Thus the evidence of Jayasinghe with regard to employee Lalani remains uncorroborated.

Lalani's evidence, that she came to work and got down near Radio Ceylon and did not see the incident at all and was not involved in the incident, was not seriously challenged in cross examination. I have no hesitation in holding that Lalani was not present at the scene of the alleged incident and is accordingly not guilty of any act of misconduct.

G. A. P. Mala (Employee No. 9)

As stated above, witness Jayasinghe stated that Mala, along with Lalani and Anura held hands and jumped in front of the bus and prevented the bus from proceeding However, R 1 does not mention Mala.

Witness Dhammika Pushpa Kumari mentioned the name Mala, but that was a reference to another employee Mala Siriwardena. Witness Samantha Kumari who was in the bus did not mentioned the name of this employee.

I hold that there is no evidence that this employee is guilty of any misconduct.

D. S.M. A. Wijesinghe - Anura (Employee No. 17)

Witness J. L. Jayasinghe stated that Anura hit the front mirror of the bus with his hands and prevented the bus from moving, that thereafter a number of strikers stoned the bus ; that all the glass panes of the bus of the bus were broken ; passengers in the bus were injured ; about 20 were hospitalized. Statement (R1) made a few hours after the incident mentions Anura.

Witness Sujatha Lakshmi also mentioned that Anura was one of the persons who attacked her.

Although the witness was cross examined at length no suggestion was made to him that Anura did not do what was alleged. It was not suggested that Anura was not present at the scene. This is very relevant in the light of the evidence of Anura that he was at the strike ground opposite the Factory at the time of the incident Anura's evidence was that he was the Treasurer of the Branch Union. ; that he came to the strike ground at about 8.30 a.m. and came to hear of the incident and that Anil the President and the Ajit Vice President of the Union had been taken into custody ; that Anura went and asked the strikers to disperse. In Answer to a question whether he went to inquire about Anil and Ajith Anura stated that he stayed in the strike ground and another group went to see them. In cross examination Anura stated that he did not come to know that non strikers were injured.

In my view it is inconceivable that Anura did not know that some strikers were injured and also that he did not go to see the President and Vice President who were taken into custody. It is also most unlikely that the Treasurer of the Branch Union would come to the strike ground only at 8.30 a.m. when work commences in the Factory at 7.00 a.m Anura's evidence does not have a ring of truth and I do not accept his evidence.

I find that Anura is guilty of the acts of misconduct as alleged by witness J. L. Jaysinghe.

G. W. N. D. Nethsinghe (Nirmala) - Employee No. 11

Witness Jayasinghe stated that Nirmala was in the crowd that surrounded that bus and attacked the non strikers ; that witness told Nirmala that this is not a CMU law, don't attack the bus. Nirmala was indentified by Jayasinghe at the inquiry. Nirmala's name is also mentioned in the statement R 1.

Nirmala was also indentified by Samanthika Kumari as one who threw stones ; she stated that a stone thrown by Niramala struck her. In cross examination witness stated that she knew Nirmala quite well. Witness also testified at the domestic inquiry R3 (at R3(a)) name Nirmala as having thrown stones.

Nirmala was also identify by Dhammika Pushpa Kumari ; She said that she saw Nirmala instigating the crowd shouting ”.

Witness Sujatha Weerasuriya stated that Nirmala used foul Language. This witness knew Niramala because her mother worked for the Company.

Witness Patricia Weerasooriya too identified Nirmala as one who obstructed her.

Nirmala in her evidence stated that there was a commotion on 21st, that a bus had broken down ; that she did not see anybody attacking buses and that there was no damage to the bus and that no glass windows were broken ; that she did not see any disturbances. In the light of the large volume of evidence to the contrary regarding the incident and the damage to the bus I reject the evidence of Nirmala.

I hold that there is sufficient evidence to find that this employee is guilty of the acts of misconduct alleged.

M. P. S. Siriwardena (Mala Siriwardena) - Employee No. 4

Witness J. L. Jayawardena stated that Mala was one of the workers who jumped in front of the bus. Witness Dhammika Pushpa Kumari indentified Mala. (This Witness had not made a statement to the Police). He stated that Mala threw stones, and that the stones broke the window panes ; that non strikers in the bus became agitated ; that some squatted inside the bus to escape the stones ; that witness got wedged between a seat and the side door the Mala struck witness with an umbrella uttering threats.

Mala did not evidence. I hold that Mala is not guilty of act of misconduct.

M. K. S. Fernando (Sandya) - Employee No. 16.

Witness Jayasinghe named Sandya as one of the persons who stoned the bus. R.1 also mentions Sandya, the others being Induni, Anil and Ajit. Witness Samantha Kumari and Dhammika Pushpa Kumari, who were also in the bus did not mention Sandya's name. Sandya testified and denied that she was present at the scene of the incident.

I hold that there is insufficient evidence to find that Sandya is guilty of any act of misconduct.

K. R. I. S. Menike - Employee No. 1

There is no evidence against this employee. She did not testify either. I cannot hold this employee guilty of any act of misconduct.

D. B. S. Devarathna (Swarna) - Employee No. 2

Witness Dhammika Pushpa Kumari identified Swarna as one of the persons present at the scene. Witness did not make a statement to the Police, nor did she state what Swarna did.

Witness B. D. Jayalath too stated that Swarna was one of the strikers who attacked the bus. Witness stated further that she knew Swarna as she worked in her line. This is the only evidence against this employee. The employee did not testify. There is no satisfactory evidence to hold Swarna guilty of any act of misconduct.

K. J. Peiris (Jenet) Employee No. 3

Dhammika Pushpa Kumari a Supervisor in the Company stated that she traveled in the bus from Minuwangoda ; that she was seated on the side of the driver, that due to the incident she got up ; that she saw a crowd jumping in front of the bus ; that she identified Jenet, among others, as one who jumped in front of the bus ; that Jenet threw stones ; that witness and others suffered injury from the stones. Witness identified Jenet at the inquiry.

Witness admitted that she did not make a statement to the Police. The suggestion was made in cross examination that witness mentioned the name of Olga and Mangalika falsely. However, no such suggestion was made in respect of Jenet. In answer to the suggestion that members of the Union tried to settle the incident witness quite categorically stated that everything happened due to the instigation of the Union officials.

Witness Sujatha Weerasuriya too identified Jenet as one of the person who obstructed the bus. This witness knew Jenet by name since she was one of the Union leaders.

Patricia Weerasinghe stated that Jenet was one of the strikers who obstructed the bus. This witness identified Jenet at the inquiry.

Witness Sujatha Lakshmi too identified Jenet as one who stopped the bus. Witness knew Jenet as an active member of the Union.

H. G. Sunil Priyantha was attached to the Ja-Ela Police. He made statement to the Police (R 28). According to R 28 Jenet was one of the persons attacked the bus.

Witness knew Jenet as a strike leader since witness was on duty from the day the strike commenced.

Jenet in her evidence stated that she canvassed for new members for the Union. Two charge sheets were served on Jenet - R 16 and R 16A. One refers to the incident at 7.15 a.m. in front of the Factory. The other refers to the incident about 800 yards away from the gate. Jenet stated that when she got down from the bus the strikers told her about the incident ; that she went towards the scene of the incident ; that two Police officers came and said "you are the one we are looking for" and hit her with batons ; that she came to the strike grounds to inform some one and then went home to take treatment.

Jenet went on to say that when she to work on the following day she heard that the Police had come looking for her, that she went to the Police Station ; that Anil, Ajit, Nirmala and Jenet were produced before the Magistrate and remanded for 14 days ; that she was enlarged on bail after 7 days ; that later she was discharged in the case. She stated further that she replied to the charge sheet., but did not attend the disciplinary inquiry.

In cross examination Jenet stated that she knew nothing about the attack on the bus.

There is a great deal of evidence that Jenet participated in the incident and took a lead in the attack on the bus and the non strikers. There is no good or valid reason to disbelieve the above witness who spoke of Jenet's participation in the incident and the role played by her. The evidence of the afore mentioned witness was not affected by cross examination. On the other hand, Jenet's evidence does not have a ring of truth. The story of two officers hitting Jenet with batons is a very artificial story. Jenet does not say why she was so hit. She has not complained to any one in authority about this alleged unprovoked and unjustified attack. Jenet, being a Union leader, could hardly be expected to have docilely gone home having suffered an unjustified attack by police officers. If she complained of same to the union action would certainly have been taken against the police officers. I am quite convinced that Jenet's evidence is false.

I have no hesitation in holding that Jenet is guilty of the acts of misconduct alleged.

S. M. A. Shanthilatha - (Employee No. 6).

Dhammika Pushpa Kumari stated that this employee was one of the persons who threw stones. Witness did not make a statement to the Police.

B. W. Jayalath too stated that this employee was one of the persons who attacked the bus. Witness knew Shanthilatha as she worked in the same line. However, this witness could not identify any worker at the inquiry. Witness has not make a statement to the police.

I hold that there is insufficient evidence to find that this workers is guilty of the act of misconduct alleged.

K.H.M.C. Menike - Employee No. 7

There is no evidence that this employee committed any act of misconduct.

K. T. A. Kumara - Anil - Employee No. 8

Witness Dhammika Pushpa Kumari identified this employee as one who jumped in front of the bus. However, this witness did not make a statement to the Police.

Witness Sujatha Weerasuriya identified Anil at the inquiry. Witness stated that he knew Anil by name. He knew Jenet and Anil too by name as they were Union leaders.

Patricia Weerasuriya stated that Anil was one who obstructed the bus. Sujatha Lakshmi too stated the same.

In cross examination witness stated that she knew Anil as he was the President of the Union. Witness stated that she was an employee of the Company at the time she testified.

H. G. Sunil Priyantha a police officer who was then attached to the Ja-Ela Police Station stated that he was on duty from the day the strike began; that when he came to the Factory in the morning he received information that some strikers were attacking a bus carrying non strikers; that he kept four officers near the gate and went to the Madama Junction with the other officers; that he saw some strikers attacking the bus; He knew they were strikers since he was at the Factory premises from the day the strike commenced; that he instructed his officer to stop the attack and he also told the strikers strongly to stop the attack ; that he took two strikers who were attacking the bus into custody ; but that he could not take them even 2 meters since a crowd surrounded him. Witness looked at his notes and stated that the persons whom he took into custody were Ajit and Anil. Witness went on to state that the crowd pulled him by the belt and someone cut his hand with some weapon. Witness identified the person who cut his hand as Ajit. Witness stated that he knew the Union leaders by name since he associated them for several months during the strike.

Anil in his evidence stated that he was Branch President of the Union; that he came to know of the incident he went to the strike grounds; that he saw a large crowd but did not assault anybody. In cross examination witness stated that he did not stay at the scene of the incident for long-may be 5 to 6 minutes; that the police officers did not do anything. He stated that Jenet and Nirmala were in the strike grounds. He denied the suggestion that Jenet and Nirmala stood in front of the bus to prevent it going forward. This evidence is false since Nirmala admitted in her own evidence that he was at the scene of the incident.

It is highly unlikely that the police officers did not do anything. It is also highly unlikely that this employee, who was the President of the Branch Union did not stay at the scene too long. Witness's evidence that he took 15 minutes to go to the scene, and that he walked at the usual speed and that there was need to hurry, and also cannot also be accepted. The evidence of the police officer Priyantha, Shereen Jayasinghe, and Sujatha Weerasuriya were put to the witness. Witness stated that he did not know anybody who gave evidence. I cannot accept the evidence that the Branch President was so disinterested in the proceedings as not to know who testified at the inquiry.

I hold that it has been sufficiently proved that this worker is guilty of misconduct.

W. M. Malini - Employee No. 10

No evidence was led by the Employer to implicate this employee. However, the Employee testified. She stated that she came to the strike grounds at about 9.15 a. m. after sending her 4 children to school and attending to household chores. She stated that she was involved in the incident at all and further that she replied to the charge sheet.

No suggestion was made to the employee in cross examination that she was involved in the incident.

T. M. Ajit Rohana - Employee No. 12

Witness J. L. Jayasinghe identified Ajit Rohana as one of the strikers who stoned the bus and broke the glass. Samantha Kumari also stated that Ajit was one of the persons who threw stones. Statement made by the witness (R3) names Ajit. Witness stated that he fainted in the bus during the incident and regained consciousness at the Factory. Witness was hospitalized for 3 days thereafter. Dhammika Pushpa Kumara and Sujatha Lakshmi too identified Ajith as one who was involved in the attack on the bus.

The evidence of Priyantha the police officer referred to above also clearly implicates Ajit.

Ajith testified. He stated as follows:- that he was member of the Union and was a striker, that he received charge sheet on 05.01.1995; and received another charge sheet on the same day; he replied both charge sheets (A 36); he pleaded not guilty to both charges; On 22.02.1995 he received a letter informing that both charge sheets were withdrawn and a 3rd charge sheet was served; he replied the 3rd charge sheet pleading not 'guilty' ; He did not attend the inquiry on the advice of the Union. He stated that he did not hit anybody.

In cross examination Ajith admitted that the only difference in the charge sheets A 35 and R 18 is that A 35 gives names of Vijitha Nandani and R 18 does not; that R 18 states that the bus stopped 800 meters from the gate and A 35 states that the bus stopped about 10 feet away.

The evidence of Priyantha was that Ajith was one of the persons arrested for instigating the strikers. Ajith was in fact arrested along with Anil and later produced in Court.

I find that Ajith is guilty of misconduct as alleged.

R. K. Priyangani - Employee No. 18 and R. T. M. Kumari - Employee No. 18

There is no evidence that these employees were guilty of any act of misconduct.

I have, as stated above, found that workers Nos. 17, 11, 3, 8 and 12 in the above list are guilty of acts of misconduct. They have attempted to prevent non strikers from entering the place of work, which is a serious act of misconduct warranting the termination of services. I accordingly hold that the termination of their services is justified.

I have held above that the other workers, namely workers Nos. 1, 2, 4, 5, 6, 7, 9, 10, 13, 14, 15, 16, 18, 19, 20, 21, 22, and 23 in the above list are not guilty of any act of misconduct and I hold that the termination of their services is not justified.

Where the termination of services is unjustified the workman is, as a rule, entitled to reinstatement. (S. L. S. P. C.. Vs Lanka Podu Seva Sangamaya 1990 (1) S. L. R. 84).

I hold that the aforesaid workers 1, 2, 4, 5, 6, 7, 9, 10, 13, 14, 15, 16, 18, 19, 20, 21, 22, and 23 are entitled to be reinstated with back wages including all increments in salary and allowances from the date of termination of services up to the date of reinstatement. If any worker, for whatever reason, does not desire reinstatement he/she is entitled to be paid book wages with all increments in salary and allowances from the date of termination of services up to the date of Gazetting of this Award.

I direct the M/s Polytex Garments Limited of Minuwangoda Road, Ekala, Ja-Ela to comply with this order within one month of the date of gazetting of this Award.

I make award accordingly. I consider the same as fair and equitable.

S. C. B. WALGAMPAYA,
Arbitrator.

Dated at Colombo,
This 28th day of February 2007.

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