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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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No. 1538/26 - THURSDAY, FEBRUARY 28, 2008

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/21/17/2006.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Sri Lanka Nidahas Sevaka Sangamaya, No. 301, T, B, Jaya Mawatha, Colombo 10 of the one part and Ceylon Heavy Industries and Construction Co. Ltd., Oruwela, Athurugiriya of the other Part was referred by order dated 24.05.2007 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. 1500/06 dated 04.06.2007 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,
07th February, 2008.

Ref. No. IR/21/17/2006.

In the Matter of an Industrial Dispute Between

Sri Lanka Nidahas Sevaka Sangamaya,
No. 301, T. B. Jaya Mawatha,
Colombo 10.
of the one part and

Ceylon Heavy Industries and Construction Co. Ltd.,
Oruwela, Athurugiriya
of the other part

Case No.: A – 3212

AWARD

The Hon. Minister of Labour Relations and Manpower by virtue of 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, No. 14 of 1957, 4 of 1962 and 39 of 1968, read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968, has appointed me as the Arbitrator by his Order dated 24th May, 2007 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

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

“Whether it is Justified by Ceylon Heavy Industries and Construction Co., Ltd, to retire from its service with effect from 08.04.2006 on the ground of reaching the age of 55 years of Mr. W. T. Amarasinghe who

was absorbed to the service of the said Company while he was serving in the Ceylon Steel Corporation since 01.01.1975 and if not justified, to what relief he is entitled ?

3. Mr. Gamini Perera, Attorney-at- Law appeared on behalf of the Complainant Union along with Mr. Manjula Nimesh Kumara, Attorney-at- Law, while Mr. Maitri Pitawela, Attorney-at- Law appeared on behalf of the Respondent Company.

There were in all 8 sittings. At the commencement of the inquiry, it was agreed, instead of lengthy proceedings, to confine to written submissions and affidavits. It was on that basis, keeping in mind the concept of natural justice, the parties exchanged their respective positions along with documentary evidence.

4. On behalf of Mr. Amarasinghe, the Union submitted that he joined the Ceylon Steel Corporation on 01st of January, 1975 and continued to work until his premature retirement imposed by the Respondent Company. In the year 1996 Ceylon Steel Corporation, a statutory body was privatized and carried the name - Ceylon Heavy Industries and Construction Co. Ltd. At the time of transfer of ownership, the new employer assured the employees that he would continue to grant various terms and conditions of employment, rights and privileges which they enjoyed under the previous Employer. As such the Union contends that the imposition of a premature retirement means breach of the assurances.

Respondent Employer on the other hand says that the company policy was to retire all employees at the age of 55 years, other than those who joined the CSC prior to April, 1975. Amarasinghe commenced his employment as a casual hand from January 1975 to June 1975 and in the circumstances, he does not fall within the exempted category.

5. My findings are as follows :

- (a) With the transfer of ownership, with effect from 31st October, 1996, the parties had negotiated on terms and conditions concerning the employees. Clause 4, 3 (b) of the Agreement is self-explanatory, which states thus –

“Purchaser shall continue to employ all existing staff of the Company from the closing date on terms and conditions no less favourable than those enjoyed by each of the employees of the Company at the date hereof, including all

welfare facilities currently being enjoyed such as the playground and housing facilities. This Clause shall not restrict the right of the Company to terminate the services of employees for cause nor prevent the Company accepting truly voluntary resignations and mutually agreed resignations.”

In view of this undertaking, the new Management accepts the rulings made by the ‘Ministry of Industries’, pertaining to the age of retirement – Vide Circular No. 60/2/A/11/of 15th December, 1975.

In the circumstances, I find no disagreement between the parties concerning the compliance with Ministry Circular.

- (b) The matter in issue narrows down, as to the casual employment performed by Amarasinghe, and determination rests there. The letter of appointment issued to Amarasinghe dated 12th March, 1975 states thus –

1975 ජනවාරි 31 වෙනි දින පවත්වන ලද පරීක්ෂණයට අනතුරුව ඔබ 1975 ජනවාරි 01 වෙනි දින සිට, 1975 ජුනි මස 30 වෙනි දින දක්වා ලංකා වානේ සංස්ථාවේ අතියම් කාර්මික ශිල්පී ලෙස තෝරා පත්කර ගෙන ඇත.

The next paragraph in the same letter states that –

අතියම් කාර්මික ශිල්පී ලෙස සේවය කරන කාලය තුළ දී ඔබගේ හැකියාව පරීක්ෂණයට භාජනය කරනු ඇත. මෙම කාලය තුළ ඔබ රාජකාරි ඉටු කරන අන්දමත්, පැවැත්ම හා පැමිණීමත් යනාදී කරුණු උඩ ඔබේ සේවය ස්ථිර කිරීම රඳා පවතිනු ඇත.

It is crystal clear from the wordings in this paragraph, that his –

(1) performance of duties, (2) conduct and punctuality during the period of casual employment, would be considered for permanency in employment, which means that a permanent employment position existed in the Organization. Factually it was so, in that immediately on completion of the casual periods of employments, he was enlisted into the permanent cadre, wherein he continued until the forced retirement at 55. Continuity in employment existed.

The work of casual nature generally means the work performed by the day or by the job or by the journey, as cited in the Service Contracts Ordinance No. 11 of 1865, as amended.

Also in interpreting Regulation 3 framed under the Employees Provident Fund Act which excluded a person employed on any work which is usually performed by the day or by the job or by the journey, it has been held that what was intended to be excluded was not a casual workman but employments of casual nature, Sinnathamby Vs. Ratnaweere (1966) 67 NLR 518).

Briefly stated the incidence of casual labour is determined by the nature of the task to be performed, generally it is intended to fill vacancies caused by absenteeism and temporary pressure of work.

- (c) Any subsequent modification or alteration of the terms of agreement which takes away the rights or entitlements of employees, is considered null and void, in terms of Section 62 of the Wages Boards Ordinance which states thus : –

“CONTRACTING OUT OF RIGHTS OR LIABILITIES ARE PROHIBITED

Any contract or agreement, whether made before or after the date on which this Ordinance comes into operation, whereby any right of any worker by or under this Ordinance is in any way affected or modified to his detriment or whereby

any liability of any employee is in any way removed or reduced, shall be null and void in so far as it purports to affect or modify any such right or to remove or reduce any such liability.”

Award :

I have considered the matter in issue comprehensively based on the submissions made and am convinced that the Respondent Employer had breached the accord, in retiring the applicant Amarasinghe at the age of 55. therefore, I order the reinstatement of the applicant within one month from the date of publication of his Award in the Government Gazette. In reinstating, the applicant shall be paid full back wages (from the date of forced retirement upto the date of reinstatement) including any other dues as if he was in employment. There shall be no break in service. This is a just and a fair award.

P. NAVARATNE,
Arbitrator.

29th January, 2008.

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