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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1,555/22 - 2008 ජූනි 26 වැනි බ්‍රහස්පතින්දා - 2008.06.26

No. 1,555/22 - THURSDAY, JUNE 26, 2008

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/Co/58/2004.

Ref. No. T23/CO/58/2004.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between K. H. Premadasa, Oliyapala Road, Madakumbura, Karadeniya and Mr. Nevil Kandamudali 66A, Balasuriya Mawatha, Kandana and Mr. W. M. J. Wijesinghe, No. 977/19, Potuharawa Road, Talangama North, Malabe of the one part and Lanka Marine Services (Pvt.) Ltd., 69, Walls Lane, Colombo 15, of the other part was referred by Order dated 15.10.2004 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. 1363/13 - 19.10.2004, 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.
17th June, 2008.

1A - G 009896— 445 (2008/06)

In the Matter of an Industrial Dispute Between :

Mr. K. H. Premadasa,
Oliyapala Road, Madakumbura,
Karadeniya.

and

Mr. Nevil Kandamudali,
66A, Balasuriya Mawatha,
Kandana.

and

Mr. W. M. J. Wijesinghe,
No. 977/19, Potuharawa Road,
Talangama North, Malabe.
of the one part

and

Lanka Marine Services (Pvt.) Ltd.,
69, Walls Lane,
Colombo 15.
of the Other part

Case No. :
A/3071

THE AWARD

The Honourable Minister of Labour Relations and Foreign Employment 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 Act, Nos. 14 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 15th October, 2004 and referred the following dispute to me for settlement by arbitration.

The matters in dispute between the aforesaid parties are :-

“Whether the thirty six (36) employees referred to in the attached schedule who were attached to the Lanka Marine Services (Pvt.) Limited while they were serving in the Ceylon Petroleum Corporation and now retired from the services of the said Company are entitled to receive half month’s salary for each year of service as service benefits for the Thrift Society that was enjoyed by them in the corporation and if so entitled what quantum of payment should be granted to each to them as service benefits.

Appearance :- Mr. Bandula Herath, Mr. H. P. Dharmadasa
Attorneys-at-Law for the party of the First Part.

Mr. Milton Marasinghe, Mr. Janaka Samarakoon, Attorneys-at-Law for party of the Second Part.

Both parties have filed the statements under Regulations 21(1) and 21(2) of the Industrial Disputes Regulations of 1958 as amended.

On behalf of the party of the First Part Documents P1 to P5 and R11 marked.

On behalf of the party of the Second Part Document R1 to R19 and P1, P2 were marked.

Mr. Bandula Herath Attorney-at-Law for the party of the First Part informed the Court that out of 36 employees cited in the application 3 employees are dead namely (i) H. Navaratne Dias, (ii) V. Devadasan, (iii) M. A. Dhanapala.

Mr. Bandula Herath, Attorney-at-Law who appeared for the applicants informed that the death certificates of aforesaid would be submitted to the court in the due course and also he undertook to inform who would be the beneficiaries of the deceased, but failed to do so at the time of conclusion of the inquiry.

K. H. Premadasa, Pumping Assisting Grade C-4 of Ceylon Petroleum Corporation (CPC) in his evidence on behalf of the applicants has stated as follows:-

- (i) The witness stated that on 1st April, 1993 he and other applicants were absorbed to Ceylon Marine Services (Pvt.) Limited (LMS) under the same rules and conditions he was previously employed by the Ceylon Petroleum Corporation (CPC) Ref. Document Marked P1.
- (ii) The witness further marked Document P2 - a letter issued to him by Lanka Marine Services (Pvt.) Limited (LMS) stating that he will be employed by LMS under the same terms and conditions that he was employed by Ceylon Petroleum Corporation (CPC).
- (iii) The witness stated that he was employed by Lanka Marine Services (Pvt.) Limited up to his retirement on 31.08.1998. At the retirement he expected to receive same benefits and privileges as if he was employed by Ceylon Petroleum Corporation (CPC) for the same period.

The benefits he was to receive as follows :-

- (a) 1/2 month salary for the each year of service as gratuity ;
- (b) 1/2 month salary for each year of service from the Thrift Society of Ceylon Petroleum Corporation of which he had been a member.
- (iv) The witness said that he and other employees who retired between 01.04.1993 to 31.08.1998 did not receive their Thrift Society benefits.
- (v) The witness marked affidavits of two employees namely V. M. L. A. Perera and K. L. S. Fernando as P3 and P4 (subject to proof) who received Thrift Society Gratuity from Lanka Marine Services (Pvt.) Limited after 20th August, 2002.

When cross examined by the Respondent Attorney-at-Law the witness stated as follows :-

- (i) In his contract of employment (marked as R1 & R2) with the Ceylon Petroleum Corporation there was no mention of a Thrift Society.

(ii) Witness admitted that when he and other members ceased to be employees of Ceylon Petroleum Corporation and received their gratuity and dues from the Thrift Society for their period of service.

Evidence dated 16.01.2006 page 7 and 8—

ප්‍ර : 1993 වර්ෂයේ මාර්තු මස සංස්ථාවේ සේවය අවසන් වන විට පාරිතෝෂික පනත යටතේ ගෙවූ පාරිතෝෂිකයට අමතරව වෙනම මුදලක් ලැබුණා ද ?

උ : විවිධ දීමනා සංස්ථාවෙන් ගෙවනු ලබනවා.

ප්‍ර : තමන් සහ අනෙකුත් සේවකයන් 1993 වර්ෂයේ මාර්තු මාසයේ සංස්ථාවේ සේවය අවසන් වූවාට පසුව පාරිතෝෂික පනත යටතේ ගෙවූ පාරිතෝෂිකයට අමතරව සකසුරුවම් සමිතිය යටතේ එකී සේවා කාලය සඳහා පාරිතෝෂික මුදලක් ගෙවුවා ද ?

උ : ඔව්.

Witness K. H. Premadasa in his re-examination has stated as follows :-

(i) The Thrift Society was established for Employees' Security and to help them at the time of disaster. At the time of retirement the employees were paid 1/2 month salary for each year's service. The Thrift Society was established by the Ceylon Petroleum Corporation and office bearers were the officials of the CPC. The witness further stated that when they were absorbed to Lanka Marine Services, they were issued a letter stating that they are entitled to enjoy all the privileges they enjoyed as employees of CPC.

(ii) The witness stated that he did not receive the Thrift Society payment for the period 01.04.1993 to 19.08.2002 - the date of his retirement.

(iii) The witness further stated the Thrift Society payment was paid to persons who resigned after 20.08.2002. To support which he marked affidavits P3 and P4.

The Party of the First part called the witness V. M. L. A. Perera whose affidavit is already marked as P3.

(i) He has been a employee of Ceylon Petroleum Corporation for the period 1979 and 1993.

(ii) Thereafter he was absorbed to Lanka Marine Services and he retired on 6th November, 2002.

(iii) At his retirement he received among other things money due from Thrift Society.

The witness V. M. L. A. Perera when cross examined stated as follows :-

Evidence dated 03.05.2006 page 02 and 03.—

ප්‍ර : තමා ලංකා මෙරින් සර්විස් පුද්ගලික සමාගමෙන් 2002.11.06 දින විශ්‍රාම ගන්නා ?

උ : ඔව්.

ප්‍ර : ඔබට තවත් ගෙවීමක් කළා ?

උ : ඔව්.

ප්‍ර : එම ගෙවීම හැටියට ලැබුණේ රු. 124,951 පමණක් නේ ද ?

උ : ඔව්.

ප්‍ර : ඒ මුදල වූ කලී තමන් සංස්ථාවේ සේවය කළා නම් ලංකා මෙරින් සමාගමට අනුයුක්ත නොකර 2002.08.20 දින වන විට තමන්ට සකසුරුවම් සමිතියෙන් ලැබිය යුතු පාරිතෝෂිකය ද ?

උ : ඔව්.

The witness stated that he was paid a sum of Rs. 124,951.28 as a gratuity from the Thrift Society. The said amount was paid on the basis that as the witness continued his employment with Ceylon Petroleum Corporation for the same period.

The witness further stated when he was re-examined at the time of his retirement he receive two cheque payments one as gratuity from Lanka Marine Services (Pvt.) Limited and other as benefits from the Thrift Society.

The witness Mr. A. Disanayake, Assistant Labour Commissioner in his evidence stated as follows :

He said that he conducted an inquiry on a complaint made by some employees of Lanka Marine Services (Pvt.) Limited of non receipt of gratuity under Gratuity Act and non receipt of the gratuity from the Thrift Society at the time of their retirement.

The witness stated that according to the letters of appointment received by the employees who were absorbed

to Lanka Marine Services (Pvt.) Limited from Ceylon Petroleum Corporation that they are entitled to all the privileges of the employees of Ceylon Petroleum Corporation. In the circumstances, the witness stated that payment of gratuity as well as payment of Thrift Society gratuity has been embodied in their letters of appointment.

Cross examination dated 09.02.2007.—

ප්‍ර : මම යෝජනා කරනවා ලංකා මෙරින් ස්ථවිස් සමාගමට සකසුරුවම් සම්බන්ධ කිසිවක් නැහැ කියලා

උ : නැහැ.

ප්‍ර : හේතුව කුමක් ද ?

උ : සේවකයන් සේවයට අනියුක්ත කිරීමේ දී පූර්ව භුක්ති විඳින්න ඒ ආකාරයෙන්ම සකසුරුවම් විඳින්න අවස්ථාව දෙන නිසා.

The witness stated that the employees are entitled to enjoy the benefits that they enjoyed before they were absorbed to LMS including those of the Thrift Society.

Mr. A. Z. Hasheem, The Chief Executive Officer of Lanka Marine Services (Pvt.) Limited in his evidence stated as follows :

In April 1993, The Bunkering Division of Ceylon Petroleum Corporation was vested in Lanka Marine Services (Pvt.) Limited consequent to the said vesting employees of the Bunkering Division of Ceylon Petroleum Corporation became employees of Lanka Marine Services (Pvt.) Limited.

The witness stated by letter marked R9 Lanka Marine Services (Pvt.) Limited has informed Ceylon Petroleum Corporation that payment of Thrift Society gratuity is sole obligation of CPC and not to LMS.

The witness further stated that the Thrift Society benefits paid to the employees by Lanka Marine Services were paid on the basis that the total money would be reimbursed to Lanka Marine Services by Ceylon Petroleum Corporation.

The witness marked the letter received from the Ministry of Power and Energy as R18 to prove that the Thrift Society benefits paid by them was reimbursed by the Government of Sri Lanka.

When re-examined by the counsel for the party of the First Part the witness admitted as per R11 that the Thrift Society payment were made to certain employees who have retired since acquisition of Lanka Marine Services (Pvt.) Limited.

The witness further rejected the suggestion that the party of the first part were deprived of their Thrift Society benefits due to the failure by Lanka Marine Services (Pvt.) Limited to call entire list of employees who were transferred from Ceylon Petroleum Corporation to Lanka Marine Services (Pvt.) Limited.

On Overall analysis of evidence before me I have come to the following conclusions,

- (i) All 36 persons of the party of the first part were employees of the Ceylon Petroleum Corporation bunkering division who were transferred to Lanka Marine Services (Pvt.) Limited which was fully owned by Ceylon Petroleum Corporation.
- (ii) At the time of the transfer all employees were issued a letter by the Ceylon Petroleum Corporation that they would enjoy the same terms and conditions which they enjoyed under the Ceylon Petroleum Corporation.
- (iii) Among other benefits they enjoyed under the Ceylon Petroleum Corporation were the benefits under the Thrift Society which included a retirement gratuity of 1/2 months salary for each year of service.
- (iv) The employees of Lanka Marine Services (Pvt.) Limited who retired between 01.04.1993 to 31.08.1998 did not receive their dues from Thrift Society.
- (v) Around August 2002 Lanka Marine Services (Pvt.) Limited was privatized.
- (vi) The Lanka Marine Services (Pvt.) Limited made payment of Thrift Society benefits to all the employees who were with the Company at the time of acquisition and also to 3 employees who retired afterwards.
- (vii) The 36 employees of the party of the 1st part who retired between 01.04.1993 to 31.08.1998 were left out unfairly of their Thrift Society benefits.

In the circumstances I wish to quote majority decision of the Supreme Court in the State Bank of India Vs. Edirisinghe (1991) that the arbitrator has to make an award which is just and equitable, he is not tied down and fettered by the terms of the contract of employment. He can create new rights and introduce new obligations between the parties. The effect of the award is to introduce terms which become implied terms of the contract. It was pointed out that as industrial arbitrator creates a new contract for the future in contract to a judge

who enforces rights and liabilities arising out an existing contract. An industrial arbitrator settles disputes by dictating new conditions of employment to come into force in the future when he cannot get the parties to agree to them in contrast to a judge who determines the existing right and liabilities of the parties.

For the reasons aforesaid it is my finding that the depriving Thrift Society payments to 36 members of the party of the first part by the party second part has caused an injustice to the party of the first part.

In the circumstances taking into consideration the totality of evidence led before me I make award that the 36 members of the party of the first part.

- (i) be paid half month salary for each year of service as service benefits of the Thrift Society that was enjoyed by them while in the service of the Ceylon Petroleum Corporation.

- (ii) The quantum of payment of the Thrift Society benefits has to be calculated on the basis same as the payment already made to the other employees by the party of the Second Part.

I further make order that the amount payable to the 36 employees should be deposited with the Assistant Commissioner of Labour Colombo North within two months of the date of publication of this award in the *Government Gazette* of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

30th April, 2008.

07-295

My No. : CI/12/97.

Ref. No. : CI/12/97.

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) of No. 03, 22nd Lane, Colombo 03 of the one part and Brown & Co. Ltd, No. 481, T. B. Jayah Mawatha, Colombo 10 and Browns Engineering (Pvt.) Ltd, 33, Katukurunduwatta Road, Ratmalana of the other part was referred by order dated 30.06.2000 under Section 4 (1) of the Industrial Disputes Act Chapter 131, as amended and published in the *Gazette of Democratic Socialist Republic of Sri Lanka Extraordinary* No. 1,141/2 – 17.07.2000 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.
17th June, 2008.

In the matter of an Industrial Dispute

The Ceylon Mercantile Industrial and General Workers Union (CMU) of No. 03, 22nd Lane, Colombo 03.

Case No.:
A-2807

Applicant Union
Vs.

- (1) Brown & Co. Ltd,
No. 481, T. B. Jayah Mawatha,
Colombo 10
- (2) Browns Engineering (Pvt.) Ltd,
No. 33, Katukurunduwatta Road,
Ratmalana.

Respondent

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 No. 37 of 1968, appointed me as the Arbitrator by his Order dated 30.06.2000 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are :-

“Whether the termination of the services of the following Eight (8) employees who were transferred from Browns and Company Limited to Browns Engineering (Pvt.) Ltd. is justified and to what relief each of them is entitled. The employees are the following :

- (1) Mr. T. R. Lailadeen
- (2) Mr. J. A. Premadasa
- (3) Mrs. S. V. Belendran
- (4) Mr. K. B. Weerasinghe
- (5) Mr. N. Sivarajah
- (6) Mr. M. I. M. Sideek
- (7) Mr. E. M. Shaffie
- (8) Mr. U. K. Rodrigo

- (1) The 1st Reference was made in application No. A. 2766 was revoked by the Honourable Minister of Labour and the above reference was made in the above application No.A-2807.
- (2) Pending the inquiry Mr. E. M. Shaffie withdrew from the proceedings on the basis that he has received compensation from Browns Engineering (Pvt.) Ltd. hereinafter referred to as “BEL”.
- (3) The contention of the applicant is that the above named employees’ employer was the 1st Respondent Company and the appointment letters were granted by the 1st Respondent.
- (4) The said employees were transferred to “BEL” by the 2nd Respondent by letter marked A5 dated 16.03.1992 with effect from 01.03.1992.
- (5) A6 (a) to A6 (f) are letters by the employees informing the 1st Respondent that they cannot be transferred to “BEL” (2nd Respondent Company)
- (6) A7 is the letter terminating employment of the aforesaid employees by the 2nd Respondent “BEL” with effect from 23.11.1994.

- (7) A8 is the letter by the applicant Union to the 1st Respondent informing that the said employees are the employees of the 1st Respondent and to continue to pay their salaries from November onwards.
- (8) A9 is a letter by the applicant Union to the 2nd Respondent (BEL) that the above employees are the employees of the 1st Respondent and therefore terminating their services by the 2nd Respondent is not valid.
- (9) The position of the 1st Respondent is that the employer of the said employees was the 2nd Respondent “BEL” and the 2nd Respondent terminated their services and salaries were paid by “BEL” and therefore, the 1st Respondent is liable if at all for the relief sought by the applicant Union on behalf of the above employees.
- (10) The 1st Respondent further stated that the 2nd Respondent did not deny that it is not the employer of the said employees and in fact had paid compensation to the other employees whose services were terminated in similar circumstances.
- (11) In this arbitration I have to decide who the employer of the above employees. It is an admitted fact that all the above employees were given employment by the 1st Respondent.
- (12) All these employees were transferred to the 2nd Respondent’s Company which is a subsidiary Company or an Associate Company of the 1st Respondent by letter dated 16.03.1992 marked as A5.
- (13) All the employees have by letters marked A6 (a) to (f) informed the 1st Respondent that they cannot be transferred to the 2nd Respondent Company and they are the employees of the 1st Respondent – The applicant Union by letters A8 and A9 informed the 1st Respondent likewise.
- (14) The above employees who were given employment by the 1st Respondent – has been transferred to the 2nd Respondent’s Company by letter marked A5.
- (15) A5 specifically states that the said employees are transferred to the 2nd Respondent’s Company and that they will be the employees of the 2nd Respondent Company. Their transfer has been objected by the said employees as per A6(a) to (f).

- (16) The appointment letters by the 1st Respondent were accepted by the said employees. But their services were never terminated by the 1st Respondent. They were transferred to another Company which is a subsidiary Company or an associate Company cannot be considered as terminating their employment. If it is so, the 1st Respondent being a recognized Company should have terminated their services and new appointment letters should have been given by the 2nd Respondent Company.
- (17) Though the 2nd Respondent has paid the salaries, it is my view that they remain the employees of the 1st Respondent and that the salaries have been paid for and on behalf of the 1st Respondent.
- (18) Therefore, the 2nd Respondent cannot terminate their services by A7.
- (19) To terminate the services by A7, there should have been a valid letter of appointment by the 2nd Respondent and if there is a proper offer and acceptance only, the services could be terminated.
- (20) The 2nd Respondent has not given any letters of appointment to the aforesaid employees and therefore the termination of their employment is illegal and not valid.
- (21) Even by document A4 and A4(a), the 1st Respondent remains the employer and has the right to transfer its employees to its branches and subsidiary companies. Therefore, transferring to a branch or a subsidiary company is not terminating the services and given new employment under the 2nd Respondent.
- (22) A18 is a letter issued by the 1st Respondent to the workmen and the said letter states that the workmen with effect from 01.03.1992, be employees of the 2nd Respondent, but this letter (A18) cannot be regarded as a letter of appointment by the 2nd Respondent. If so, the letter of appointment should have been given by the 2nd Respondent and should have been accepted by the employees. Without such a document, it is not acceptable to state that these workmen are the employees of the 2nd Respondent.
- (23) As pointed out in the Written Submission of the Applicant Union, 2nd Respondent should have participated at this Inquiry and stated their position. They abstained themselves from participating at the Inquiry. For this reason also I state that they have failed to prove that they are the employer of these workmen.
- (24) The pay slips marked As A10 to A14 are the pay slips from January 1992 to June 1992 give by the 1st Respondent, even after these workmen have been transferred to 2nd Respondent's Company.
- (25) Therefore, I hold that the aforesaid 7 workmen's dismissal of employment by the 2nd Respondent is illegal and not valid and that they were the employees of the 1st Respondent at the time their employment was terminated.
- (26) I direct that the 1st Respondent should make payments to the aforesaid 7 employees as follows :-
- (1) For wrongful dismissal Rs. 100,000 for each employee.
 - (2) Pay full salaries from the date of termination till their retirement at the rate given in the annexure 9.
 - (3) Pay the gratuity calculated up to their retirement age.
- 17th May 2008.
- 07-296
- Arbitrator.