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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1678/26 - 2010 නොවැම්බර් 03 වැනි බදාදා - 2010.11.03

No. 1678/26 - WEDNESDAY NOVEMBER 03, 2010

(Published by Authority)

## PART I : SECTION (I) — GENERAL

### Government Notifications

*My No. : IR/22/07/2007.*

**In the Matter of an Industrial Dispute Between :**

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. V. Sathasivam, Ward No. 06, Wattaram, Thuraineelawanai, Kallar (E.P.) of the one part; and

1. Sri Lanka Transport Board, No.200, Kirula Road, Colomobo 05

2. Sri Lanka Transport Board, Eastern Region, NHDA Bulding, Kalmunai of the other part was referred by order dated 13.01.2010 made 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. 1637/17 dated 21.01.2010 for settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

W. J. L. U. WIJAYAWEERA,  
Commissioner General of Labour.

Department of Labour,  
Labour Secretariat,  
Colombo 05,  
12th October 2010.

Mr. V. Sathasivam,  
Ward No. 06,  
Wattaram,  
Thuraineelawanai,  
Kallar (E.P.)

*of the other Part (First Part) .....*

Case No. : A/3315.

and

1. Sri Lanka Transport Board,  
No.200, Kirula Road,  
Colomobo 05.
2. Sri Lanka Transport Board,  
Eastern Region,  
NHDA Bulding,  
Kalmunai.

*of the Other Part .....*

### THE AWARD

The Honorable Minister of Labour Relations and Manpower 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 (1958 revised edition) as amended by Acts Nos. 14 of 1957, 4 of 1962 and 39 of 1968, (read with the Industrial Disputes Special Provision Act, No. 37 of 1968,) has appointed me as the Arbitrator by his order dated 13th January, 2010 and referred the said aforesaid disputes to me for settlement by arbitration

The matters in Dispute between the aforesaid parties is

“Whether Mr. V. Sathasivam who was earlier attached to the Kalmunai Depot of the Sri Lanka Transport Board as a Driver is entitled to receive salary for the period of interdiction of his service from 8th January, 2003 to 27th July, 2003 and if so entitled, what should be the quantum of payment so due to him?”

*Appearances* : Mr. A. S. Punithasekaran Attorney-at-Law appeared for the workman who was present.

Mr. Dushit Johnthasan Attorney-at-Law appeared for the Respondent. Mr. A.A. Gaffoor, Depot Manager, Kalmunai was present.

The issue referred to me for Arbitration is precisely salary for the period of interdiction to V.Sathasivam, Driver Kalmunai Depot. The period of interdiction was 8th January, 2003 to 27th July, 2003. There was a dispute as to the monthly salary. The Respondent was directed to produce the wages records for the relevant period where the workman had signed and accepted salary.

As directed by me the wages records were produced before me and it was agreed between both parties that the monthly salary was Rs.6,930 (Rupees Six Thousand Nine Hundred and Thirty only)

Discussions ensued for some time on 29.06.2010 during the course of which it was suggested by me to settle the dispute by making a payment of (07) seven months salary which works out to Rs.48,300 (Rupees Forty Eight Thousand Three Hundred only). The Respondent wanted time to place my proposal for settlement before the Board of Directors.

When the case was taken up on 19.07.2010 the Respondent confirmed that it was prepared to settle the case in full with a payment of Rs.48,300

Payment of Rs. 48,300 (Rupees Forty eight Thousand Three Hundred only) was paid in cash before me on 03.08.2010. The workman accepted the cash and signed the case record.

I consider this settlement just and equitable and I make award accordingly.

V. Vimalarajah,  
Arbitrator.

Date : 08th September 2010.

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*My No.* : IR/20/01/2006.

### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Inter Company Employees Union, No.158/18, E. D. Dabare Mawatha, Colombo 05 of the one part and Ceylon Petroleum Corporation, Rotunda Building, No. 109, Galle Road, Colombo 03 of the other part was referred by order dated 07.10.2008 made 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. 1571/21 dated 16.10.2008 for settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

W. J. L. U. WIJAYAWEERA,  
Commissioner General of Labour.

Department of Labour,  
Labour Secretariat,  
Colombo 05,  
12th October 2010.

### In the Matter of an Industrial Dispute Between :

Inter Company Employees Union,  
No.158/18,  
E. D. Dabare Mawatha,  
Colombo 05.

*Appellant*

Case No. : A/3261.

and

Ceylon Petroleum Corporation,  
Rotunda Building,  
No. 109, Galle Road,  
Colombo 03

*Respondent*

#### THE AWARD

The Honorable 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 Acts Nos. 14 of 1957, 4 of 1962 and 13 of 1968, read with Industrial Disputes (Special Provision) Act No. 37 of 1968, has appointed me to be Arbitrator and referred the following disputes to me for settlement by arbitration:—

1. Whether the deprivation of the relief in terms of the Cabinet paper No.32/2004/P/2 of 04/06/2004 by the Ceylon Petroleum Corporation to the Twenty six (26) employees whose names are given in the annexed schedule who have been attached to the service of the Lanka IOC (Private) Ltd while in the service at the China Bay Installation under the said Corporation, subsequent to the leasing the Installation to the new Company from 14.02.2003 where as other employees had been extended the relief referred to in the Cabinet Paper by the Corporation is justified and if not justified what other relief each of them is entitled to

And

2. Whether the Ceylon Petroleum Corporation is obliged to grant arrears of salary and other allowances to the twenty six (26) employees referred to in the attached schedule as so paid to its other employees by treating the twenty six employees as being in the permanent service of the Corporation from 01.09.2001 to 14.02.2003 as provided in the aforesaid Cabinet Paper and if so obliged, to what relief each of the employees is entitled.

#### *Proceedings*

1. In view of serious legal issues and substantive factual matters raised I was compelled to have 17 sittings of the Tribunal in order to give a fair hearing to the parties.

2. In addition to oral submissions oral evidence was led.

3. Written submissions have been filed by both parties belatedly but I had given consideration to the Respondent's submissions as it had given satisfactory explanation for the delay, and also to submissions of Claimants as they could reply only after Respondent had filed its submissions.

#### **Claimants Claim**

1. The main argument of the claimants was that 26 workmen referred to in their claim were contract employees of the Respondent and in view of the Public Administration Circular No. 27/2001 they were entitled to be made permanent in terms of the said circular.

2. It is their contention that the Respondent had made permanent 498 contract employees including 26 claimants by letter dated 10.11.2001 to be effective from 01.10.2001.

3. To prove the same the claimants produced A1 letter of permanency issued to A. H. Maharroof.

4. It was the contention of the claimants that in view of the structural arrangement of the Respondent Corporation certain employees were given option to join Lanka IOC (Private) Ltd as successor to the Respondent, and accordingly the 26 Claimants were attached to Lanka IOC Ltd.

5. Accordingly the Respondent Corporation and Lanka IOC (Pvt) Ltd had issued a joint statement to workers and subsequently incorporated the terms of the said statement into a Memorandum of Understanding which was signed by the Respondent, Lanka IOC (Pvt) Ltd and 2 trade Unions on behalf of workmen. (A2)

6. Therefore it was the claimants position that they are entitled to arrears of salary from the date the Respondent gave effect to payment of permanent salaries to other employees.

7. It is the contention of the claimants that the Public Administration Circular No. 27 of 2001 required all employees recruited on temporary, casual, substitute and contract basis who were in service on 01.10.2001 be made permanent and accordingly the relief granted to other employees whose services were made permanent in terms of aforesaid Circular, the Respondent should have paid to this 26 workmen presently serving at Lanka IOC (Pvt) Ltd in terms of Memorandum of Understanding A2.

### The Respondent's position :

1. The Respondent does not deny the contents of documents marked by the Claimants A1 - A3 but gives a different interpretation to letter dated 10.11.2001 (A1) and thereby denies its liability on the said document (A1)

- (a) For this purpose the Respondent argue the letter dated 10.11.2001 (A1) is not a letter of permanency but as stated in that letter that formal letter of appointments will be issued later.

“ඉහත සඳහන් 1-3 සඳහන් අවශ්‍යතාවයන්ට යටත්ව ස්ථිර පත්වීම් ලිපිය නිකුත් කිරීමට කටයුතු යොදනු ලැබේ.”

- (b) Also 26 claimants (workmen) had been absorbed into permanent cadre of the Lanka IOC (Pvt) Ltd (with effect from 08.05.2003)

(c) Thus, it was the Respondent's contention.

- (i) The names of these 26 employees were not included in the Cabinet Memorandum 32/2001/PE or the Cabinet Approval and as such they were not made permanent.
- (ii) Since the names of these 26 employees were not included in the Cabinet Memorandum or the Cabinet Approval, the Board of Directors lawfully did not approve such appointment of these 26 employees.
- (iii) As such, the non appointment of these 26 employees as permanent employees of the Respondent between the period 01.10.2001 and 14.02.2003 does not amount to deprivation of relief to these 26 employees under the Cabinet Paper No. 32/2004/PE of 04.06.2004. (R2)
- (iv) It was stated thus the Respondent is not bound in law to make any payments of arrears of salary and other allowances to these 26 employees under and in terms of the said Cabinet Paper No. 32/2004/PE and or under the relevant cabinet decision.
- (v) Therefore the Respondent Corporation had stated the matters in dispute as referred to in the “Statement of Matter” in Dispute by the

Commissioner of Labour cannot be maintained by the Claimants.

- (vi) Therefore the Respondent pleaded that the Tribunal should dismiss any claim that may be made by the Claimants based on the Cabinet Memorandum No. 32/2004/PE.

2. The Respondent also raised certain very important legal issues which will be dealt in due course.

### Interpretation of Documents :

I consider it my duty firstly to analyse the documents and interpret them in proper perspective if I were come to a proper legal finding.

1. It is not in dispute that there were 498 contract employees including 26 claimant workmen in the service of the Respondent Corporation at the time Public Administration Circular No. 27/2001 was issued (R3).

2. The said circular (R3) specifically conveys that it was Government decision to be implemented in compliance with three provisos stated therein and in fact should apply even to employees who have exceeded 60 years of age ie. retirement age, and also whose services have been terminated.

3. Thus it was a mandatory requirement for the Respondent to comply and make permanent contract workmen subject 3 provisos.

4. Consequently in compliance with the said circular letters of permanency had been issued (A1) to 498 employees, by the Respondent Corporation.

5. This has been confirmed by Cabinet Memorandum R2 Which states “they have been given letters indicating that they be made permanent as per Public Administration Circular, No. 27/2001.

6. In view of above circumstances it is not possible for the Respondent now to state that claimants were not issued with letters of permanency and ‘A1’ is only an internal communication regarding the contents of PA Circular No. 27/2001. A1 clearly states that steps will be taken issue permanent appointment letters subject to condition A1-3 in PA Circular No. 27/2001.

7. Thus the Respondent's position as there was no permanency given to these 26 employees, an issue "to give effect" to permanent appointments never arose is an incorrect proposition.

8. In fact the letter A1 caption itself is ස්ථිර තනතුරට පත්කිරීම (Appointment to permanent post)

9. (a) (i.) Although the Respondent had stated Cabinet Memorandum sought to make permanent 498 identified contract employees, the Cabinet paper (R2) does not identify them in such manner.

(ii.) In fact the Respondent was requested to submit to the Tribunal a list of names of the identified 498 employees, which it failed to do and instead filed a list of 217 employees who had been confirmed by the Respondent X which prevented the Tribunal from finding whether names of 26 Claimants were included in the list of 498 in the Cabinet paper (R2).

(b) The Cabinet paper (R2) was submitted to make permanent contract employees as well as certain other categories specified therein.

(c) The Cabinet paper had identified 498 employees in following manner. "To interview all those contract employees who were given letter of permanency as per PA Circular No. 27/2001 (Total 498)"

(d) (i.) Thus it is clear of Number, 498 is the number to whom letters were issued in 2001 in terms of the said Public Administration Circular.

(ii.) "To employees who were given letter of permanency" which means it includes 26 claimants who had received such letters, on the aforesaid date, ie. 10.11.2001.

(iii.) Thus it was incumbent on the Respondent to implement the decision of the Cabinet (R4) which the Respondent Corporation has failed to comply in respect of 26 claimant workmen.

10. Therefore Respondent's decision not to summon 26 Claimant workmen for the interview was an incorrect one.

Cabinet Memorandum (R2) and the Cabinet Decision (R4)

01. Recommendation and decision was to issue letters of appointment if found suitable to hold his/her substantive position from the date of the approval of the Cabinet paper namely 09.06.2004.

02. There were no payment of arrears of salary as it gave recognition only to number of years of service from date of Public Administration Circular 27/2001 along with prior years of contract service varying depending on each applicant.

03. This is very relevant to the 26 workmen as in clause 11 of the Memorandum of Understanding R1 / A2 the 26 workmen will benefit in terms of years of permanency.

04. This also has a relationship to clause 3 of said agreement R1/A2 as the period of permanency in service in 1st Respondent Corporation if suitable in terms of the said Public Administration Circular 27/2001 will be relevant for payment of gratuity and statutory payments.

05. Thus it is seen the Respondent Corporation's failure to interview and make permanent suitable employees who were in contract service in terms of PA Circular 27/2001. (R3) has prejudiced the 26 Claimant workmen to the aforesaid extent.

#### Legal Issues.

The Respondent initially raised a preliminary objection to the jurisdiction of Tribunal to hear and make an award of the matters in dispute referred by Hon. Minister of Labour Relations and Foreign Relations.

With respect to above preliminary objection this Tribunal on 31.08.2009 had overruled the same as it relates to "an Act of the Minister of referring the Dispute for settlement and the Tribunal lacks power and authority review the act of the Minister."

Other issues raised are dealt in following manner :-

(1) Locus Standi of the Claimants/Inter Company Employees Union.

(a) The above does not arise as the dispute referred to by the Minister is not arising from and or is not based on Memorandum of Understanding A2.

(b) Industrial Dispute referred to this Tribunal by the Minister is in respect of Dispute of 26 workmen named in the letter of reference represented by Inter Company Employees Union and the Respondent Ceylon Petroleum Corporation.

(c) Therefore terms of reference itself has given Locus Standii to the 26 workmen represented by Inter Company Employees Union.

(d) Anyhow it was held in Ceylon Printers Ltd and another V. Goonawardane and others 1990 (2) SLR 310 that the Arbitrator is empowered to continue arbitration by allowing a party to represent the interest of the workment.

(2) In view of definition of words “Industrial Dispute” in terms of section 48 of Act cannot be applicable to a situation where employer, employee relationship has ceased to exit.

(a) It is my view the said “definition clause” on words “Industrial Dispute” had to be read along with definition clause “the workmen” which state “any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour, and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time, and includes any person whose services have been terminated.”

Thus it is seen it should “include a person even not in employment at a particular time and includes any person whose services have been terminated.”

(b) (i) Of the cited judgment Ceylon Printers Ltd and another V. Goonawardane and another 1990 (2) SLR 310 does not hold that Industrial Dispute cannot arise after employer employee relationship ceased to exit but quotes where such dispute could arise. But as held above this section has to be read along with the definition of “workman” in the Act and any provisions should be interpreted as held in above case “so as to promote the general legislative purpose underlying the provisions of the Act.”

(ii) Eksath Kamkaru Samitiya Vs. Ceylon Printers Ltd and other 1996 (2) SLR 317 relates to a matter questioning the validity of the Reference of the Minister which is a matter this Tribunal lacks Jurisdiction to inquire.

3. Private parties cannot by contract set aside explicit Statutory provisions and judicial precedents

(a) It was argued citing certain considered judgements (but not in relation to Industrial Dispute Law) that it is not possible to set a side explicit statutory provisions which argument is correct and legally tenable.

(b) In this instance the argument was workmen ceased to be in employment of the Respondent from 08.05.2003 (A3).

(c) Therefore the Respondents argued clause 14 of the Memorandum of Understanding (A2/R1) cannot be applied to workmen who had ceased to be employees of the Respondent.

(d) Tribunal could have answered to this question directly had parties submitted a dated Document as marked A2 as well R1 but as above document does no give the date or the month and thus Tribunal was compelled to read through the document in order to come to conclusions.

(e) (i) A2/R1 refers to initial operational agreement between Respondent Corporaton and the Lanka I.O.C (Pvt) Ltd dated 07.02.2003 where by clause 5 of said agreement stipulates the responsibilities of respective parties in relation to workmen and consequently this agreement (A2/R1) had been signed.

(ii) In fact in aforesaid Memorandum A2/R1 clause 2 contemplates decision has to be conveyed by the workmen by 07.03.2003, by which it can be concluded that this Memorandum A2/R1 had been entered into prior to 26 workmen getting employment in Lanka I.O.C (Pv) Ltd on 08.05.2003 (A3).

(iii) Thus it is clear the Memorandum of Understanding (A2/R1) had been signed while the workmen were employees of the Respondent and thus Respondent cannot argue that its not bound by A2/R1 saying workmen are not its employees.

(f) Although above matter is not presently relevant as I have already dealt that in relation to Industrial Dispute even the workmen who are not presently in employment are entitled to relief under the Act, I have dealt with above matter for clarity proposes.

4. Cabinet paper R2 relates to confirmed contract employees of Ceylon Petroleum Corporation and thus the contents of said Cabinet paper is not applicable to 26 workmen as they are not employees of Ceylon Petroleum Corporation.

(a) Firstly a document has to be read and construed not by caption but reading of its contents.

- (b) Most important in this context is to analyse what the Hon. Minister sought approval from the Cabinet (R2) from its contents.

“To interview all those contract employees who were given letter of permanency as per PA Circular 27/2001 and to issue letter of appointments, if found suitable to hold his/her substantive position according to the recruitment procedure with effect from the date of approval of this cabinet paper (Total of 498)”

- (c) The Cabinet approval (R4) had granted for proposals 1-4 of the Cabinet Memorandum. (A2)

- (d) Therefore approval had been given to issue letters of appointment if suitable contract employees who were given letters of permanency as per PA Circular 27/2001 and thus includes this 26 employees as they also had been given letters of permanency by the Respondent. (A1)

2. The 26 employees are not entitled arrears of salary and other allowances for the period of 01.09.2001 to 14.02.2003 but are entitled to be treated as permanent employees by reckoning of permanency in service and there by entitled to be treated as permanent employees with effect from 16.06.2004 by reckoning the period of contract service with Respondent corporation prior and after issuance of Public Administration Circular No. 27/2001 of 26 employees and there by to be placed in such substantive post and to receive arrears of salary, allowances and statutory dues and gratuity in terms of Memorandum of Understanding A2, from aforesaid date ie. 16.06.2004.

On the 5th day of September 2010.

Mahinda Ralapanawe,  
Attorney-at-Law,  
Arbitrator.

#### SCHEDULE

#### 5. Delay in the part of 26 Claimants to seek relief.

- (a) The Respondent knowing that letters of permanency A1 letter was issued to 498 employees including the 26 Claimants, but not implemented during the relevant period by the Respondent had taken up this argument.
- (b) In fact R2 itself Hon. Minister explains why the management had not implemented the Public Administration Circular 27/2001 and he is seeking approval to ensure to give effect to, same.
- (c) Accordingly the contention of the Respondent in this regard, to delay is not tenable.

1. A. H. Maharoof
2. G. R. Jayatissa
3. K. Krishnamurthi
4. M.S.M Haris
5. R.M.B. Ratnayake
6. N.M. Premajayantha
7. R.G.P.U. Samarathunge
8. M. A. Sajeewa Chaminda
9. A. H. M. Marjan
10. W. A. Ranjith Nimal
11. D. M. Karunaratne
12. S. M. Alhudeen
13. M.S. Tahmatulla
14. M. H. M. Lafeer
15. H. M. Hamidu
16. A. K. Jebarulla
17. A. A. Aekub
18. A. W. Sadakatulla
19. M. A. Rafiulla
20. A. M. T. Shiromika
21. A. L. K. Jabarkeen
22. P. Sathyanadan
23. P. Sithravel
24. M. Silvarani
25. M. J. Albdeen
26. U. L. Javaheer

#### AWARD

In view of above and a balance of probabilities, I make the following awards in respect of 26 workmen about whom the matter had been referred to Arbitration.

1. I hold that non extension of relief referred in the Cabinet paper extended to other employees of the Corporation to 26 employees referred to in the schedule to the matters in dispute is not justified and that they are entitled to be interviewed and if suitable to receive letters of appointment to substantive posts to be effective from 16.06.2004 ie. the date of approval given by the Cabinet.