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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 1519/13 - TUESDAY, OCTOBER 16, 2007

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No.: CI/1557/99(2).

AND

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

University Grants Commission,
20, Ward Place,
Colombo 7.

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Inter University Sub-Warden Union, Mars Hall, Peradeniya University, Peradeniya and University Grants Commission, 20, Ward Place, Colombo 7, was referred by order dated 20.03.2001 made 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. 1177/28 of 29th March, 2001 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

Case No.
A-2846

The Award

The Honourable Minister of 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 Arbitrator by his order dated 20.03.2001.

D. S. EDIRISINGHE,
Commissioner General of Labour.

The matter in dispute between the aforesaid parties is :

Department of Labour,
Colombo 05,
04th September, 2007.

1. Whether the reduction of the 20% allowance which was paid in terms of the circular No. 667 dated 13.02.1996 issued by the University Grants Commission, up to 10% is justified. If not, to what relief sub-wardens of the Universities are entitled.

R - CI/1557/99(2).

The U.G.C. gave evidence first at his inquiry which took nearly 6 1/2 years from 2001 - 2007. The file of papers at this inquiry went up to nearly 600 pages.

In the matter of an industrial dispute between :

Inter University Sub-Warden Union,
Mars Hall,
Peradeniya University,
Peradeniya.

2. At the conclusion of this inquiry both parties have tendered their submissions, wherein they have analysed the evidence led at the inquiry and made representations as tending to justify their different positions in this case. I have

gone through these submissions along with the evidence they have relied on to establish their particular arguments in support of their claims. I shall now quote from these submissions, in summary and indicate finally as to which position is more convincing. Citing the case for the U.G.C. the salient points brought out in their submissions are as follows :-

2.1 The reason for the reduction of the allowance

Originally the sub-wardens occupied the salary Grade of A 6(a). The sub-warden unions from or about 1988 agitated that they be given some relief in respect of the various difficulties that they claimed to have, such as working conditions and residential facilities. Chief among the complaints was the condition in the letter of appointment that they should be prepared to work at night or during the day when required. The sub-wardens perceived this condition as "Working 24 hours" although the aforesaid condition in the letter of appointment required them only to be available for work day or night, as and when necessary. The sub-wardens claimed that they have to work for 24 hours and agitated for relief.

2.2 As a result of this agitation the salary grades of sub-wardens, which was the A 6(a) salary grade was revised and they were granted 3 salary grades instead of one, all of which were much higher salary than what they had previously enjoyed. These new salary grades of the sub-wardens were designated as A 5(a), A4(a) and A4(b).

3. The grounds for revision of original salary scale

3.1 The evidence clearly shows that the granting of 3 salary scales to the sub-wardens was due to the consideration of service conditions, which included the purported (24 hours working condition). The main grievance of the sub-wardens concerning the so called inhumane working conditions at the time was their assertion that they have to work 24 hours as per the conditions in the letter of appointment. Therefore, this purported (24 hours working condition) and their leave problems were an important and integral part of their agitation for relief in 1989. Relief was sought on the basis that "They play an important and responsible role with regard to the student affairs in the university", which important and responsible role also included this purported 24 hours working condition.

3.2 The Union in 1989 also entered into a memorandum with the U.G.C., in which the U.G.C. agreed to consider the amendment of the 24 hours working condition specified in the letters of appointment of the sub-wardens. However, as explained by the witness for the union-Delanka, at a discussion with the Minister, they were informed that the position of a sub-warden of a hostel, should be such that it covers 24 hours, Instead, to appease the demand of the Union in this respect, the U.G.C. granted them a higher salary scale consisting of 3 salary grades.

3.3 The sub-wardens upon securing this revision of the salary grade in 1990 did not make any further demands until 1996. Not a single letter was written or demand made about their working conditions until 1996, as admitted by the union witness Delanka. (Proceedings of 27.01.2006 - Page 4) This demonstrates that they were satisfied with the relief that they got from the U.G.C. for their demands in 1990.

4. 20% increase

4.1 In 1996 the Union once again started agitating for relief on the same basis as before, namely relief on the premise that they have to work for 24 hours. Thereupon a subcommittee was appointed to look into the grievances of the sub-wardens. This subcommittee considered the representations made by the Union only, as depicted in document A1 (a) 1st paragraph. Where it is stated - "Having considered the representations made by the Trade Unions on this matter. . . ." The said subcommittee did not seek representations from any other forum (as reflected in the document A1(a)), but considered only the Trade Union's representation and in consideration of their demand and working conditions, granted 20% salary allowances to the sub-wardens (Please refer document R2).

5. Unjustifiable decision

As asserted by the witness for the respondent, the sub committee, in their recommendations marked as A1 has not considered at all the fact the substantial relief had already been given to sub-wardens on the basis of their working conditions and their salary scales had been drastically increased in view of their working conditions. Therefore the granting of 20% salary allowance specially on account of the 24 hour working conditions, which had already been taken into account in granting relief earlier in 1990, was completely unjust and inequitable.

6. Impact on the other posts

6.1 Furthermore, the decision to grant a 20% salary allowance to sub-wardens had a very significant an enormous adverse impact on the rest of the University salary scales and caused a completely unjustified and improper imbalance in the salary scales, in particular relating to their immediate superiors. Upon the revision of the salary grades of the sub-wardens and granting them the salary grades A5(a), A4(a) and A4(b) some of the salary scales of the sub-warden grades were on par with those of their immediate superiors, who occupied the salary scale A4. However, with the 20% salary allowances their salaries far exceeded that of their superiors.

6.2 The above anomalies in the salary grades that was created by the granting of the 20% salary allowance to the sub-wardens created severe unrest and dissatisfaction in the Executive Grades. There were several strikes and Trade Union action organized by the non academic Trade Unions and the Executive Trade Unions in protest of this situation along with the other grievances of employees.

6.3 Thereupon discussions were held with the Minister of Education and Higher Education, the Secretary to the President, Director Treasury and it was decided to rectify these salary anomalies after a comprehensive study of the problem and recommendations by the Department of Management Services (DMS).

Even then Commissioner of Labour was consulted and it was decided that DMS should investigate into this problem and give recommendations.

6.4 Upon a consideration of all these representations the DMS then recommended that :-

- (a) The salary grades of the sub-wardens had been made taking into consideration the 24 hours working conditions,
- (b) Originally sub-wardens had to provide the meals of the students, which duty was subsequently scrapped and therefore there is a reduction of their duties,
- (c) Therefore, to rectify the salary anomaly caused, the 20% allowance granted to the sub-wardens should be reduced to 10% for the present sub-wardens and be

discontinued with the said allowance for the new recruits (DMS report is marked as R4).

6.5 It is submitted that this recommendation was extremely just and fair. The U.G.C. is bound by the salary policies of the Government and in keeping with the recommendations of the DMS report, the said recommendations were implemented. In all these circumstances, it is respectfully submitted that the decision to reduce the salary allowance of the sub-wardens from 20% to 10% is extremely just and proper and no reduction in the take home pay had been suffered by the sub-wardens by the said revision.

7. The above submission of the Respondent Party, the U.G.C. are borne out through the evidence and the documents marked at the inquiry. It would now be appropriate to consider the arguments urged by the union in their submissions made at the close of the inquiry.

7.1 The Union's main points of contention would appear to be as follows :-

- I. The DMS recommendations had not been adopted by the U.G.C.,
- II. The sub-wardens have to stagnate a number of years of for promotion to the next salary step as when compared with the promotional prospect of the executive grade. They also claim that they have no other position to rise above the rank of sub-warden.
- III. They also contest that they are entitled to the disputed 20% salary increase as they have to work 24 hours a day. This would appear to be their main ground for dissatisfaction.

7.2 They have made submissions in details in respect of the above matters. The submissions for the U.G.C. touch on all these representations by the Union and try to justify the stand taken by the U.G.C.

8. In considering the representations by both sides to the dispute it is observed that the case for the Union is weakened by the fact of deficiencies in the documentary evidence produced by the union.

8.1 The U.G.C. at 1.4 of their submissions state -

"In the present case, there were several documents marked 'subject to proof' the documents marked as A9, A10, A13,

A14, A16, A17, A22, A23(a), A24, A25, A26, A27(a), A27(b), A28(a), A30, A33, A34, A39 in particular were all uncertified photocopies of documents which were marked subject to proof. No originals of these documents, nor certified copies were produced at the inquiry at any time. And no witnesses were summoned to establish these documents. The witnesses who produced these documents were neither the authors thereof nor the party to whom it was addressed and who received the same”.

There is merit in the above argument of the Respondent party.

9. On a perusal of all these representations led by both sides, there emerges a common factor on which there is agreement by both parties. That would be the question of housing facilities for these sub-wardens. Their position in this matter is reflected at pages 46 and 47 of their submissions. They seem to justify their argument that they are entitled to the 20% salary increase taking into consideration, among other matters the question of inadequate housing facilities for the sub-wardens.

9.1 On the other hand, U.G.C. expresses agreement on this account at 7.7 and 7.8 of their submissions at page 20, as follows :-

“Furthermore, if indeed their residential facilities are inadequate, the solution is to provide them the suitable residential facilities and not to grant salary increases which jeopardize the entire salary scales of the U.G.C. To this end, the DMS has in fact, recommended that they be provided with a house each in the University premises (please refer R10). And this is being presently implemented”.

9.2 And in fact, R10, marked by the Respondent supports this argument. At para 4 of the report of the DMS it endorses this statement of the U.G.C. It

is noted that this report has been addressed by the Director General of DMS in reply to a letter dated 14.02.2001 of the Secretary, U.G.C.

10. On a consideration of all the facts mentioned above, I consider that the reduction of the 20% allowances which was paid in terms of the Circular, No. 667 dated 13.02.1996 issued by the U.G.C up to 10%, is not fully justified. Therefore I award the following relief to these sub-wardens of the Universities :-

- (a) A 15% allowance to be paid, instead of the 10% that is now being paid,
- (b) This 5% increase shall be in lieu of housing facilities to them. On the provision of such housing facilities the 5% increase would cease to operate,
- (c) This entire allowance of 15% (the 10% allowance that is now being paid and the 5% allowances approved by this award) shall be considered as in the nature of an allowance, such as travelling allowance, subsistence allowance, etc., and not as an increase on the salary of sub-wardens and,
- (d) This award shall take effect as from the date of the Reference for Arbitration of this dispute by the Hon. Minister of Labour dated 20.03.2001.

Which award I consider to be just and equitable.

D. A. WIJewardana,
Arbitrator,

16th August, 2007.

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