



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය

අති විශේෂ

අංක 1691/20 - 2011 පෙබරවාරි 01 වැනි අඟහරුවාදා - 2011.02.01

(රජයේ බලයපිට ප්‍රසිද්ධ කරන ලදී.)

I වැනි කොටස: (I) වැනි ඡේදය - සාමාන්‍ය

රජයේ නිවේදන

මගේ අංකය : IR/22/11/2008.

අනෙක් පර්ශ්වය වශයෙන්,

කාර්මික ආරවුල් පනත 131 වැනි අධිකාරය

ශ්‍රී ලංකා ගමනාගමන මණ්ඩලය,
අංක 200, කිරුළ පාර,
කොළඹ 05.

131 වැනි අධිකාරය වන සංශෝධිත කාර්මික ආරවුල් පනතේ 4(1) වගන්තිය යටතේ 2009.11.27 දිනැති හා අංක 1629/32 දරන ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අතිවිශේෂ ගැසට් පත්‍රයේ ප්‍රසිද්ධ කරන ලද 2009.11.19 දින දරන නියෝගයෙන් එක් පාර්ශ්වයක් වශයෙන් අනුරාධපුර, ධර්මපාල මාවත, අංක 87/18 හි තුෂාරි සාගරිකා රාජපක්ෂ මිය හා අනෙක් පාර්ශ්වය වශයෙන් කොළඹ 05, කිරුළ පාර, අංක 200 හි පිහිටි ශ්‍රී ලංකා ගමනා ගමන මණ්ඩලය අතර පවත්නා කාර්මික ආරවුල බේරුම් කිරීමෙන් සමථයකට පත්කිරීම සඳහා යොමුකරන ලදුව, බේරුම්කරු විසින් මා වෙත එවා ඇති 2010.12.30 වැනි දිනැති ප්‍රදානය එම පනතේ 18(1) වගන්තිය යටතේ මෙයින් ප්‍රකාශයට පත් කරනු ලැබේ.

වී. බී. පී. කේ. විරසිංහ,
කම්කරු කොමසාරිස් ජනරාල්.

2011 ජනවාරි මස 24 වැනි දින,
කොළඹ 05,
කම්කරු දෙපාර්තමේන්තුවේ දී ය.

අතර කාර්මික ආරවුලක් පවතින හෙයින් ද,

කම්කරු සබඳතා හා මිනිස්බල අමාත්‍ය, ආතතිය සෘජුව පවත්නා මැතිතුමා විසින් 1957 අංක 14 හා 1957 අංක 62 හා 1962 අංක 04 හා 1968 අංක 39 (1968 අංක 37 දරන කාර්මික ආරවුල් (විශේෂ ප්‍රතිපාදන) පනත සමග කියවා) දරන පනත්වලින් සංශෝධිත වූ, ලංකාවේ ව්‍යවස්ථාවේ අණපනත්වල 131 වන පරිච්ඡේදය (1956 ප්‍රතිශෝධිත මුද්‍රණය) වන කාර්මික ආරවුල් පනතේ 4(1) වගන්තිය අනුව එතුමා වෙත පැවරී ඇති බලතල අනුව එකී ආරවුල බේරුම් කිරීමෙන් සමථයකට පත් කිරීම සඳහා බේරුම්කරු වශයෙන්, මහරගම, පමුණුව පාර, අංක 216/8 හි, කේ. ඒ. ඩී. බී. කරුණාරත්න වන මා 2009.11.19 වන දින දී ලිපිය මගින් පත් කරනු ලැබ ඇති අතර, එය මා වෙත එතුමාගෙන් 2009.11.19 වැනි ලිපිය මගින් යොමු කර ඇත.

ප්‍රදානය

එක් පාර්ශ්වයක් වශයෙන්,

තුෂාරි සාගරිකා රාජපක්ෂ මිය,
අංක 87/18,
ධර්මපාල මාවත,
අනුරාධපුරය.

එකී පාර්ශ්වයන් අතර ආරවුලට හේතු වී පවත්නා කාරනය වනුයේ,

“ශ්‍රී ලංකා ගමනාගමන මණ්ඩලය විසින් එහි අනුරාධපුර ඩිපෝවේ VI ශ්‍රේණියේ ලිපිකාරිණි තුෂාරි සාගරිකා රාජපක්ෂ මහත්මියට එරෙහිව පවත්වනු ලැබූ විනය පරීක්ෂණය සාධාරණ ලෙස හා යුක්තිසහගත ලෙස පවත්වනු ලැබුවේ ද හා,

නඩු අංකය : ඒ/3306 සහ

(අ) එම විනය පරීක්ෂණය සාධාරණ හා යුක්තිසහගත ලෙස පවත්වනු නොලැබුවේ නම්, ඇයට එම මණ්ඩලය, වෙතින් කුමන සහනයක් හිමිවිය යුතු ද යන්න පිළිබඳව ද වේ, යනුවෙන් 2009.10.16 වැනි දිනැති ලිපිය මගින් කම්කරු කොමසාරිස්තුමා දක්වා ඇත.

මේ කරුණ 2010.06.10 වැනි දින විභාගයට ගත් විට, සේවා යෝජක ශ්‍රී ලංකා ගමනාගමන මණ්ඩලය වෙනුවෙන් සහකාර ආරක්ෂක නිලධාරී කේ. ධර්මරත්නගේ සාක්ෂිය මෙහෙයවීමට ආරම්භ කරන ලදී. මදක් දුරට සාක්ෂි දුන්නායින් පසුව වැඩිදුර විභාගය 2010 ජූලි 08 වැනි දිනට නියම කරන ලදී. ඒ අතරතුර 2010.10.04 වැනිදා විභාගයේදී මේ කරුණ ශ්‍රී ලංකා ගමනාගමන මණ්ඩලයේ නීති කොට්ඨාශයේ නීති නිලධාරීන්ගේ ඉදිරිපත් කරන ලද සමථ යෝජනාවක සභාපතිතුමා විසින් අනුමත කර ඇති බව ඔවුන්ගේ නීතිඥ කේ. ජී. ලයනල් මහතා අධිකරණයට දැනුම් දුන්නේය. සේවා යෝජක මණ්ඩලය විසින් ඉදිරිපත් කරන ලද සමථය පිළිබඳ කොන්දේසි ඇතුළත් ලිපියක් අධිකරණයට එදින ඉදිරිපත් කරන ලදී. එහි අත්සන යොදා ඇත්තේ ශ්‍රී ලංකා ගමනාගමන මණ්ඩලයේ නීති නිලධාරීන්ගේ බව තීරණය කරමි.

එහි අත්තිරිසර සමථ කොන්දේසි මෙසේය :

1. මෙම ඉල්ලුම්කාරිය විසින් මෙම නඩුව ඉවත් කර ගැනීම සඳහා හිඟ වේතන වශයෙන් රු. 200,000 (රුපියල් දෙලක්ෂය) ක මුදලක් වාරික 07 කින් සෑම මසකම 20 වන දින ගෙවීමක්ද මුල් වාරිකය නොවැම්බර් මාසයෙන් ආරම්භ කිරීමට ද එකඟ වේ.

2. සේවාව තහනම්ව සිටි අවධියේ නොගෙවූ වේතන වර්ධක මුදල වර්තමාන වේතනයට එකතු කිරීමට ද,

3. සේවා කාලය අඛණ්ඩ සේවා කාලයක් සේ සලකා කටයුතු කිරීමටත් වගදන්තරකාර ආයතනය එකඟ වේ.

2010.10.25 වැනි දින වගදන්තරකාර පාර්ශවයේ උගත් නීතිඥ මහතා විසින් ඉහත කී සමථ කොන්දේසි අධිකරණය ඉදිරියේ ඉදිරිපත් කරන ලදී.

එකී කොන්දේසි සහිත සමථ යෝජනාව පිළිගන්නා බවටත් එයට එකඟ වන බවටත්, ඉල්ලුම්කාරියන්, ඇයගේ නියෝජිතයාත් නඩු වාර්තාවට අත්සන් තබන ලදී.

එකී කොන්දේසි සහිත සමථය සාධාරණ සහ යුක්තිසහගත යැයි මම නිගමනය කරමි. ඒ අනුව එකී කොන්දේසි සහිත සමථය, අනුමත කරමින් ඒ අනුව මාගේ ප්‍රදානය මෙයින් දෙනු ලැබේ.

මෙලෙස මේ සමථය ඇති කිරීම සඳහා වෙනසුණු වගදන්තරකාර මණ්ඩලය වෙනුවෙන් පෙනී සිටි උගත් නීතිඥවරයාටත්, ඉල්ලුම්කාරිය වෙනුවෙන් පෙනී සිටි නියෝජිත මහතාටත් මේ විභාගයේ සාක්ෂි සටහන් කර දුන් ලඝු ලේඛිකාවන්ටත්, මාගේ ස්තූතිය හිමිවේ.

කේ. ඒ. ඩී. බී. කරුණාරත්න,
බේරුම්කරු.

2010 දෙසැම්බර් 30 වැනිදා,
කොළඹ දී අත්සන් කරන ලදී.

02-404

My No. : IR/21/02/2005.

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), No. 03, 22nd Lane, Colombo 03 of the one part and The Accessory Corporation (Pvt). Ltd., Sri Sumanathissa Mawatha, Nawagamuwa, Ranala of the other part was 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. 1361/33 dated 07.10.2004 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

V. B. P. K. WEERASINGHE,
Commissioner General
of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,

24th January, 2011.

In the Matter of an Industrial Dispute Between :

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

Case No. A - 3186

and

The Accessory Corporation (Pvt) Ltd.
Sri Sumanathissa Mawatha,
Nawagamuwa,
Ranala.
The Part of the Second Part (Defendent).

On this 06th day of December 2010.

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 (1958 Revised Edition), as amended by Acts, Nos. 14 of 1957, 4 of 1962 and 39 of 1968

(read with the Industrial Disputes Special Provisions Act, No. 37 of 1968) has appointed me as the Arbitrator to the settle the following dispute by Arbitration.

The matters in dispute between the aforesaid parties is :

“Whether the non offer of employment from April 2005 by the Accessory Corp (Pvt) Limited to the hundred and one (101) employees whose names are referred to in the attached schedule and non payment of wages to them as a result of deviating from the existing terms of employment of the Company is reasonable and lawful and if not, to what relief each of them is entitled.”

Preliminary

The Party of the First Part (hereinafter called and referred to as the Plaintiff) filed the preliminary statement on 24.11.2006 and the inquiry was conducted for 33 days and written submissions were to be tendered on 04.08.2010.

The party of the Second Part did not file a preliminary statement.

Proceedings

The Ceylon Mercantile Industrial and General Workers' Union (CMU) (hereinafter called and referred to as the CMU) filed their statement of the dispute between the CMU and the Accessory Corp (Pvt) Limited under Regulation 21 of the Industrial Disputes Act on 24.11.2006. In this statement they stated that this dispute arose consequent to the non offer of employment and the non payment of wages to the 101 workers employed by the Company from April 2005.

They state that the Company sought to impose new conditions of work on the workers by unilaterally reducing the number of workers in anyone shut in the Moulding Section.

The workers had protested at this new arrangement which had been an idea of an American Advisor. The workers stated that this arrangement was a physical impossibility to achieve and would also lead to the workers being found redundant in the future. As a consequence, the Company put out another notice to the workers that the work in the Moulding Section would cease after 5 p.m. on 05.04.2005 and the employees in the Moulding Section were instructed not to report for work from 06.04.2005.

The Company on 21.04.05 put up another notice on the Notice Board that if there were any workers of the Moulding Section who did not wish to work according to the new arrangements, they could leave the service of the Company

voluntarily and that they would be paid all benefits legally due to them. The workers submitted individual letters to the Company stating that they were not willing to work according to the new arrangements but that they were prepared to work under the previous arrangement.

On 12.05.05 the Company issued letters of vacation of post to the workers.

The CMU Union had brought this matter to the notice of the Commissioner of Labour and a formula was suggested to resolve this problem on the basis that three workers be engaged for 6 CV Moulding machines and 4 CV Moulding machines instead of 4, and 2 workers for the T Hook Moulding machines. The workers agreed to this formula but the Company did not agree.

The CMU Union has suggested that the workers had been locked out and that the unilateral arrangement of work was illegal.

Summons in this case was originally issued to the Accessory Corp (Pvt) Limited at the Ranala address but there was no response. Subsequently the CMU had found that letters to the Company had to be written to a American address but several letters written to this American address was of no avail.

When this case was called on 30.05.2007 the representative appearing for the Union stated that the Accessory Corp (Pvt) Limited had been purchased by Korean “ Spa Industrial Company (Pvt) Ltd by a Moderawila Industrial Zone Panadura. On an order of Court the Registrar of the Industrial Court wrote to this Company on 06.09.07 and that company replied by letter dated 13.09.07 stating that Korean Spa Industrial Co. (Pvt) Limited is not the successor to the Accessory Corp (Pvt) Ltd. of Nawagamuwa, Ranala and that they have no connection at all with the said company.

When this case was called on 27.09.07 the Union submitted that there had been a notice in the Silumina Sinhala newspaper of 23.09.07 calling for vacancies for workers to make Plastic Hangars and the name of that Company was Korean Spa Accessories Co. (Pvt) Ltd. of Sri Sumanatissa Mawatha, Nawagamuwa, Ranala. The Union submitted that this must be the successor to the Accessories Corp (Pvt) Ltd. also of Sri Sumanatissa Mawatha, Nawagamuwa, Ranala. On the plea of the Union, Court ordered the Registrar to issue summons on this new company.

When the case was called on 14.11.07 the Korean Spa Accessories (Pvt) Ltd was represented by Attorney-at-Law Pradeep Fernando who said that there had been a problem with the workers of Accessory Corp. (Pvt) Ltd and that the

buildings had been mortgaged to the Commercial Bank PLC. He said that the Korean Spa Accessories (Pvt) Ltd had begun the management of the Accessory Corp (Pvt) Ltd according to the details submitted to him.

When this case was called again on 12.12.07 the Attorney-at-Law Pradeep Fernando stated that his company did not have any details of the dispute between the workers and that Company and therefore he requested for more time to given further details to Court.

When the case was called on 04.06.08, the Attorney-at-Law for the Korean Spa Accessories (Pvt) Ltd presented to Court a copy of a Transfer Deed No, 1472 dated 29.05.2007 attested by L.H. Ganiath Notary Public of Colombo showing the transfer of the property of Accessory Corp (Pvt) Ltd, to the Korean Spa Accessory Corp (Pvt) Ltd and a special Power of Attorney executed by the then directors of the Company in favour of Mr. Paul Issac Franco to sign the transfer deed and to attend to matters concerning the transfer of the Company.

When Court examined these documents it was seen that the special Power of Attorney did not contain any attestation by an Attorney-at-Law in Sri Lanka on page 2 of this documents. It appeared that this document had been prepared in the USA but it had not been stamped and duly attested by an Attorney in the USA Court also told the Counsel for Korean Spa Accessory (Pvt) Ltd that the transfer deed submitted to Court cannot be accepted since it appears incomplete and does not reflect the liabilities that are incurred in this respect.

Court therefore requested the representative legal officer of the Commercial bank PLC to produce to Court the original of the Mortgage Bond entered into with the Accessory Corp (Pvt) Ltd and to show Court the share or items transferred or mortgaged.

When the case was called on 31.07.08 the Mortgage Bond No. 1599 dated 28.06.02 was examined and it showed that all the buildings of Accessory Corp (Pvt) Ltd had been mortgaged for the sum of US\$3,60,000 and later redeemed by the Korean Spa Accessory (Pvt) Ltd. Court therefore directed the Korean Spa Accessory Corp (Pvt) Ltd to submit an agreement, if any, that was arrived at between the Accessory Corp (Pvt) Ltd and the Korean Spa Accessory Corp (Pvt) Ltd showing the transfer of assets and liabilities.

The Korean Spa Accessory (Pvt) Ltd also submitted to Court the deed No.506 dated 12.07.07 of the Board of Investment of Sri Lanka approving the purchase of the land and buildings of Accessory Network (Pvt) Ltd and the grant

of approval to begin the enterprise for the manufacture of plastic hangars for export on an investment of US\$ 2,000,000.

AWARD

It is clear that the 101 employees of the Accessory Corp (Pvt) Ltd had perused to work under the new arrangements proposed by the American advisor to the company on the basis that it would lead to the gutting down of the number of employees.

It is also clear that when this dispute arose the Company closed down and the employees were told that they had vacated their posts. This position is not tenable since vacation of post of an employee rests on two factors the mental aspect and the physical aspect. These employees were not mentally tuned towards not going back to work. They were employees who said that they were prepared to work under the old arrangement. In fact, when the Commissioner of Labour suggested a settlement they agreed to resume work but the Company refused to agree to that settlement. Therefore, there had been no vacation of posts of these employees.

The primary question was whether the Korean Spa Accessory (Pvt) Ltd had an agreement regarding these employees of Accessory Corp (Pvt) Ltd. The Legal Officer representing Korean Spa Accessory Corp (Pvt) Ltd, presented the Mortgage bond of the Commercial Bank which showed that this bond had been discharged by Korean Spa Accessory Corp (Pvt) Ltd. Court was not shown any agreement the two companies would have had regarding the discharge of the liabilities of the Accessory Corp (Pvt) Ltd.

This position is not tenable since any agreement of the nature arrived at between these two companies should have contained provisions for the settlement of disputes that had risen when the transfer of assets was effected in favour of Korean Spa Accessory Corp (Pvt) Ltd.

Also the Korean Spa Accessory Corp (Pvt) Ltd had begun the business of the previous company and it can be reasonably assumed that the transfer of assets of Accessory Corp meant not only the transfer of the buildings but also the machinery and equipment for which they wanted workmen hence their advertisement in the Sinhala newspaper calling for workmen for the manufacture of plastic hangars. It is a maxim of law that a management cannot by merely transferring their asset get rid of the claims and rights of their workmen.

It is clear therefore that the new company Korean Spa Accessory Corp (Pvt) Ltd had taken over the business and the assets and liabilities of the previous Company Accessory Corp (Pvt) Ltd and therefore becomes liable in law to meet the

liabilities of these employees. I do not accept the position that these employees had vacated their posts. They were merely demanding that they be allowed to work in the existing positions.

AWARD

According I hold that the non employment of these employees from April 2003 and the non payment of salaries to them is an unreasonable and unlawful deviation from their existing terms of employment.

I therefore state that each of the 101 employees should receive the salaries that they received while in employment in April 2005 for the period from April 2005 up to the date of this award and the responsibility for payment rests completely with Korean Spa Accessory Corp (Pvt) Ltd of Sri Sumantissa Mawatha, Nawagamuwa, Ranala.

I also award to each of these 101 employees a compensation package of the equivalent of 3 months gross salary that they received while in employment per year for the period from April 2005 up to the date of this award.

These payments should be made through the Commissioner of Labour, Colombo North to the 101 employees within one month of the publication of this award in the Government Gazette of the Democratic Socialist Government of Sri Lanka.

DR. V. I. JAYASOORIYA,
Attorney-at-Law,
Arbitrator.

06th day of December 2010.

02-405