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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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No. 1692/24 - THURSDAY, FEBRUARY 10, 2011

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/14/24/2006.

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. A. S. B. Dissanayake, No. 115/24, Hewaheta Road, Talwatta, Kandy of the one part and Co-operative wholesale Establishment, CWE Secretariat Building, No. 27, Vauxhall Street, Colombo 02 of the other part was referred by order dated 08.07.2008 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. 1557/25 dated 11.07.2008 for settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

A.S.B Dissanayake,
115/24, Hewaheta Road,
Talwatta,
Kandy.

..... *on the one part*

Case No. A - 3250 and

Co-operative Wholesale Establishment,
CWE Secretariat Building,
27, Vauxhall Street,
Colombo 02.

..... *on the other part*

AWARD

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

Department of Labour,
Labour Secretariat,
Colombo 05,
31st January, 2011.

1. The Honourable 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 (1956 revised edition) as amended by Act, Nos. 14 of 1957, 62 of 1957, 4 of 1962 and 39 of 1968 read with the Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me as the Arbitrator by his order dated 08.07.2008 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

2. The matter in dispute between the aforesaid parties is:—

- (1) "whether any unjust was caused to Mr. A.S.B. Dissanayake who was employed on temporary basis at the Hettipola Paddy Purchasing Center of the Co-operative wholesale Establishment from 04.03.1999 upto 23.02.2000 due to imposition of surcharge without holding an inquiry against him regarding a shortage in the stock occurred in the said center and if any unjust was caused, to what relief he is entitled,
- (2) whether the amount of compensation had been computed in a reasonable and justifiable manner for payment to Mr. A.S.B. Dissanayake who served in the Co-operative Wholesale Establishment from 02.04.1984 upto 31.03.2004 and left the service of the establishment under the Voluntary Compensation Scheme and if any unjust was caused, what should be the accurate amount of compensation payable to him? and
- (3) whether any unjust was caused to him A.S.B. Dissanayake owing to non payment of the amount of compensation as yet by the Co-operative Wholesale Establishment and if any unjust was caused to him, to what relief he is entitled?"

3. The applicant workman was represented by Mr. K.A. Shelton, while the Respondent Employer was represented by Mr. Chandra Gunatilleke and Ms. Nilusha Gunatilleke, Attorneys-at-Law.

Applicant marked 7 documents (පැ 1 to පැ 7) Respondent's witnesses, namely Mr. W.J.C. Fernando and Mr. Merryll Fernando marked documents (R1 to R7)

Applicant stated that he joined the Co-operative Wholesale Establishment on 02nd April 1984 and worked continuously. In terms of the circular bearing No. 2004/2 of 12.02.2004 issued by the Co-operative Wholesale Establishment, a Voluntary Retirement Scheme was proposed to the employees, with the concurrence of the Secretary to the Treasury Inter alia circular stipulated a payment of 2 months for every year of past service and 2 1/2 months for every year of future service by way of compensation and it is effective from 31.03.2004.

Applicant's salary at the time was Rs. 10,765/= and only two more years to serve and when computed he was to receive a total sum of Rs.457,000 by way of compensation. Combining receipt of Employees Provident Fund benefits, Pension Fund dues and Gratuity, he envisaged receipt of a substantial sum of money so that he would invest on a profitable venture. There upon he decided to apply for the Voluntary Retirement

Scheme, and the Management accepted the application promptly. When he called over to collect the cheque, on request, Management handed over a letter, which stated that, he had to pay a sum of Rs.168,428 being the value of shortages detected at a verification, consequent to services at a Paddy Purchasing Centre at Hettipola, during the period of 1999/2000.

He promptly rejected the accusation, on the ground that he relinquished the duties of Store Keeper, as far back as February, 2000 and had a clean record throughout the career and it was a surprise to hear of a surcharge made on account of any shortage. He also recalled that in July, 2003 an Investigation office had indicated of a shortage and he replied on 27.07.2003, requesting to peruse the records, and thereafter nobody questioned.

He was not interdicted, nor summoned for any inquiry but having accepted the application lodged for compensation, management arbitrarily refused payment of the compensation rightly claimed. He further stated the management comprehensively failed and neglected to follow the Disciplinary Code, applicable to employees in the Co-operative Wholesale Establishment, in situations where issues of misconduct surfaced on account of shortages detected.

W.T.C. Fernando, the Respondent's witness stated that he served the Co-operative Wholesale Establishment and retired in terms of the Voluntary Retirement Scheme with effect from 31.03.2004. At the time of leaving, he served as the Chief Accounts Clerk of Stock Verification Unit. He gave a detailed account of the processes in dealing with the verification of Stores, Excesses and Shortage situations, imposition of surcharges. appeal procedure *etc.* However, with regard to the applicant's matter in issue, no documents were produced or marked, which indicated the details of investigations done, quantities, volume and other relevant facts, to ascertain the veracity of the charge. He stated that he is not in a position to produce the relevant documents, since he is not in employment at present.

Mr. M. M. Fernando, was the Respondent's next witness, who stated that he served the Organization as the Head of the Finance Division and during the years 2003/4 he served at the Stock Verification Division as an Investigating officer attached to the Investigating Unit, and at the same time as the Secretary of Appeal Board. The witness gave an elaborate account of the process involved and which were carried out by the Co-operative Wholesale Establishment, when the shortages occurred. He also explained how ad-hoc for Paddy purchasing Centres were established, staff recruitment procedure, their supervision, verification and follow up on shortage detection including the recovery procedure. The

witness however failed to produce before Court any of the relevant documents concerning shortage detection, particularly at this instance and even the annexure to the application made by the applicant to his employer. The replies made regarding the questions raised were evasive and not on firm ground.

In conclusion of oral evidence, both parties made written submissions enclosing the marked documents.

4. My findings are as follows:-

(A) Under Article 170 of the Constitution of Democratic Socialist Republic of Sri Lanka" a public corporation has been defined to mean,

"any corporation board or other body which was or is established by or under any written law, other than the Companies Ordinance, with capital wholly, or partly provided by the Government by way of grant, loan or otherwise. "

The State establishing a public corporation makes it a legal entity with perpetual succession and a common seal and with capacity to sue and be sued in its corporate name.

The Co-operative Wholesale Establishment came into existence per Act, No.47 of 1949, (amended from time to time) on the similar lines.

(B) Chairman, Co-operative Establishment, by his circular letter No. AB/2004/02 dated 12th February, 2004 addressed to all employees proposed a Voluntary Retirement Scheme (2004) in agreement with the Secretary to the Treasury, on the basis of his communique bearing Nos. PED 10 of 28.05.2003 and PED 10 of 21.07.2003 emanating from the Department of Public Enterprises titled "Compensation Package for Employees of Public Enterprises who opt for Voluntary Retirement Scheme (VRS)".

Chairman instructed that applications should be furnished on or before 27th February, 2004.

In terms of this Circular Letter, the applicant A.S.B Dissnayake applied opting retirement. His date of birth being 9th January, 1951 as at 31st March, 2004 he reaches the age of 53+ years. He could serve nearly 2 years more if retirement age was fixed at 55.

His application opting the retirement, under VRS (2004) Scheme was accepted by the Management, released the Employees Provident Fund and Employees Trust Fund benefits, as well as gratuity payable under the Payment of Gratuity Act.

However, when he called over to collect the cheque due to him under the VR Scheme, it was withheld.

Instead, Management handed over a copy of a letter (පැ 3) to the applicant. The letter signed by a Senior Manager in-charge of disciplinary matters which had been addressed to the Senior Accountant (Salaries) stated briefly that the following amount be recovered :-

Stores	- Hettipola
Period	- 04.03.1999 to 23.02.2000
Shortage	- Rs. 811,559.05
Surcharge	- Rs. 409,350.42
Amended Surcharge	- Rs. 168,428.00

The amended surcharge dated 11.03.2004, comes after 48 months, barely 3 weeks prior to the date of retirement. He rejected the allegation.

(C) With regard to the core issue it was observed that -

- (i) the applicant/workman relinquished duties as the Storekeeper, Hettipola on 23.02.2000, but was informed of a shortage after 39 months, i.e. on 26.05.2003 to which he replied on 15.06.2003. A follow up letter from the Respondent dated 30.06.2003 received by the applicant was replied on 27.07.2003, vide (පැ 4). Applicant in both his replies rejected the allegation and sought careful scrutiny.
- (ii) It is unclear why the respondent was silent for 39 months.
- (iii) Respondent rely heavily on (පැ 4), but there is no evidence whatsoever, as to whether a formal or informal inquiry involving the applicant, to ascertain the veracity of the allegation, was infact held. Respondent is in breach of the principles of the natural justice.
- (iv) There is no evidence oral or documentary to establish that a stock verification was carried out. During the period the applicant was in charge, no such stock verification had been done.
- (v) Respondent failed to establish that a Stock Verification concerning the Hettipola Paddy Purchasing Centre was done at all -
 - * at any time, no dates were furnished,
 - * verification was caused by whom, names of investigators were not furnished and none of them gave oral evidence.
 - * If a verification had been done, the varieties, quantities, and value of items, which are subject to verification has not been furnished.

- * Had a verification done, and a shortage surfaced, there from promptly the applicant should have been summoned, and a show cause letter issued and evaluated its worth.

The Court is entitled to examine, such evidence, oral as well as documentary. With so many senior executives monitoring the activities of marketing, finance, administration, etc., it is unclear why the respondent organization failed to act promptly in these matters, where losses are involved. There is not an iota of evidence, to establish that the applicant was responsible. This seems to be an extreme form of unfair labour practice.

(D) To highlight statements embodied in the said circular letter offering the Voluntary Retirement Scheme to all CWE employees, the Chairman states —

(E) Under the subheading - Application Procedure (last sentence)

"However, the management has the right to reject any application or postpone the date of release of any applicant on the exigencies of the service".

Based on the above, if the applicant was in fact suspected of any connection concerning an offence, the management having accepted the offer of Voluntary Retirement Scheme, could have still kept him in employment or interdicted as per (e) above pending conclusion of the matter of shortages.

The applicant had served the organization for 20 years and had an unblemished record of service.

Besides, Voluntary Retirement Scheme came into operation with the concurrence of the Treasury since the respondent Organization faced financial problems. The Scheme intends to consider the employable period and past service, and award a terminal benefit, which the applicant rightly accepted on offer.

5. In conclusion, I find that the decision of the management in relation to the allegation against the applicant will not prevail, —

- as there is want of *bona fides*,
- it is a case of victimization or unfair labour practice in violation of the principles of natural justice,
- there is a basic error on facts, and
- there has been a perverse finding on the materials.

Having examined the evidence comprehensively, I award that the applicant workman be paid the following amounts:-

- (a) In terms of the Voluntary Retirement Scheme, on account of the past services, 2 months wages for each year of service - (19 years, 11 months and 29 days, *i.e.* one day short for one complete year) Approx; 20 years.
- (b) Considering the Management's callous irresponsibility coupled with the failure to recall or retain the workman in service, the wages denied works out to - (1 year and 9 months, *i.e.* 21 months). However, only 50% of the total wage due is computed for purpose of wages denied, which works out to 10 1/2 months. This is in lieu of VRS proposed for employable period.

Workman's last drawn salary being Rs.10,765.00 per month, in respect of 50 1/2 months (40 months wages for 20 years past service and 10 1/2 months wages for employable period) wages works out to Rs.543,612.50 (Rs. Five Hundred, Forty Three Thousand, Six Hundred and Twelve and Cents Fifty only).

The amount shall be deposited with the Asst. Commissioner of Labour, Colombo South District Labour Office, Labour Secretariat, Colombo 05. within 45 days of the publication of this Award in the *Govt. Gazette*.

This is a just and a fair award.

P. NAVARATNE,
Arbitrator.

25th January, 2011.

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