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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1709/50 - 2011 ජුනි 10 වැනි සිකුරාදා - 2011.06.10

No. 1709/50 - FRIDAY, JUNE 10, 2011

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : CI/1711/2003.

In the Matter of the 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 Sri Lanka Nidahas Sevaka Sangamaya, No. 301, 1st floor, T. B. Jaya Mawatha, Colombo 10 of the one part and Ran Malu Fashions (Pvt) Ltd (Formerly Nelum Fashions (Pvt) Ltd.), Export Promotion Zone, Biyagama, Malwana of the other part was referred by order dated 24.08.2004 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. 1,356/17 dated 02.09.2004 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Sri Lanka Nidahas Sevaka Sangamaya
of No. 301, First Floor,
T. B. Jaya Mawatha,
Colombo 10.

Applicant

Case No.:
A 3062

and

Ran Malu Fashions (Pvt) Ltd.
(Formerly Nelum Fashions (Pvt) Ltd.,)
Export Promotion Zone,
Biyagama,
Malwana.

Respondent

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

THE AWARD

Hon. Athauda Senevirathne, the 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

Department of Labour,
Labour Secretariat,
Colombo 05.

27th May, 2011.

1962 and 39 of 1968, (read with Industrial disputes (Special Provision) Act, No. 37 of 1968) has appointed me to be the Arbitrator by his order dated 24th August, 2004 and referred the aforesaid dispute to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties is:-

"Whether the dismissal of the following eight (8) employees of the factory situated at No. 81/41, Negombo Road, Peliyagoda by the then Nelum Fashions (Pvt) Limited which is presently known as Ran Malu Fashions (Pvt) Limited is justified, and if not, to what relief each of them is entitled".

1. Miss. Rani Subasinghe
2. Miss. S. A. Priyanthi
3. Miss. L. G. Kumuduni
4. Miss. M. Inoka Peiris
5. Miss. Niroscha Rajapaksha
6. Miss. Balika Damayanthi
7. Miss. Chandani Dissanayake and
8. Miss. M. A. Madushani Jayawardene

02. After the parties filed their statements under the regulations, it was agreed between them to file affidavits along with the relevant documents instead of leading oral evidence as a step to avoid delay. (This step did not yield the desired result as lawyers for both sides unreasonably prolonged the inquiry by taking a lot of time for cross-examination and re-examination) The copies of the affidavits and the relevant documents were handed over to the Attorney-at-Law of the applicant Union.

03. As there was no possibility of an amicable statement the inquiry was fixed for 16.05.2006 with the consent of the parties after postponing the inquiry for several dates even at the beginning and ultimately the inquiry commenced on 24.10.2005, when the counsel for the applicant started cross examination of the first witness Weerakeerthi Gmini Kumara Ariyaratna, the Group Human Resources Manager on the affidavits and the documents tendered by the employer - Respondent.

04. The dispute in this case is the illegal dismissal of eight (8) female employees of the factory situated at Peliyagoda by the then Nelum Fashions (Pvt) Limited presently known as Ranmalu Fashions (Pvt) Limited. Before the termination of their services they were served with show cause notices and the formal inquiries were held thereafter. The show cause notice were produced at the Arbitration inquiry marked R12 to R 12 (g).

05. The main basic charge as stated in his show cause notice states:-

'At the meeting with the Director on 14.08.2002 in respect of matters submitted for discussion by you, thereafter acting without reason or cause not only causing to abandon employment but caused a section of the employees, not to work"

06. However the respondent employer had sent the letters marked R7 to the District Commissioner of Labour stating that there was a strike organized by the Branch Union of Sri Lanka Nidahas Sevaka Sangamaya after a meeting with the factory Management on 14. 08. 2002 at about 10 a.m. and the union and its members on the dispute on deduction of Union membership subscriptions from their monthly salary.

07. According to the evidence of Miss Rani Subasinghe, President of the Branch Union and the evidence of Mr. Leslie Devendra, General Secretary of Sri Lanka Nidahas Sevaka Sangamaya, their had been a good cordial relationship between the Union and the Management but unfortunately everything charged for this worse on the resumption of duties as Manager Human Resources and Administration by Mr. W. A. K. Ariyaratna in March 2002.

08. Before Mr. W. A. K. Ariyaratna assumed duties Rani Subasinghe as the President of the Branch Union President was released on full time basis for trade union work and monthly subscriptions from members were deducted from the pay sheets.

09. These facilities enjoyed by the Union for over seven (7) years were withdrawn by the newly appointment, Group Human Resources Manager Mr. W. A. K. Ariyaratna, a retired Brigadier of the Army. According to the evidence of Rani Subasinghe over 1000 members and physical collection of this subscription monthly was a difficult task for the Union. Mr. Leslie Devendra as General Secretary of the parent Union had addressed the company on these matters. vide A2. The company on a later date withheld certain minute books of the Branch Union - vide letters A(6), A(7) and A (8).

10. Mr. Leslie Devendra, General Secretary of the Union in his evidence stated as follows:-

“ලංකාවේ නීතියක් තිබෙනවා 40% කට වඩා සාමාජිකත්වයක් සිටිනවා නම් ඒ සමිතිය පිළිගෙන ඒ සාමාජිකයින් සමඟ ගනුදෙනු කළ යුතුයි කියලා. ඒ පිළිගැනීමත් සමඟම බොහෝ අවස්ථාවල තිබෙන වරප්‍රසාදයක් තමයි පඩි පතකින් සාමාජික මුදල් කපා ගැනීම. එය භාවිතයත් සමඟ අයිතියක් බවට පත්වෙනවා. අප සංගමය 1995 වර්ෂයේ පමණ සිට 2002 වර්ෂය වනතුරු මේ අයිතිය භුක්ති වින්දා. අපට ප්‍රශ්නයක් ඇති වුණේ කිසිම සාධාරණ හේතුවක් නොදක්වා මේ අයිතිය හිටිහැටියේම ආයතනය උදුරා ගැනීම නිසායි.” (Vide page 4 inquiry proceedings on 2011.01.14).

11. The Learned Counsel for the Employer - Respondent has brought to my notice an extract from 'Digest of cases on Industrial Law computed by A. A. Champika Jayasinghe and in this extract under the term 'CHECK OFF' it is stated as follows:-

1. Ceylon Plantation Workers Union and other petitioners Vs. R. Jayantha and others. Held that check-off is not an automatic right which an employer is legally obliged to grant all unions.

12. The Learned Counsel for the employer has not produced a full copy of the Judgement in the quoted case.

In any event the more important point here is the withdrawal of this benefit by the employer without giving any reason. I am therefore not included to follow the part of the Judgement quoted above without a discussion on the full judgement which was not produced at the inquiry by the Learned Counsel for the employer.

13. The employer respondent in its statement under regulation 21(1) stated - vide para 6(c) that the eight employees who were office bearers of the Branch Union had abandoned their place of work and thereafter instigated acts of abuse and threats to the employees of the Company, but no such employee gave evidence at the arbitration proceedings to prove this allegation.

14. Letters marked R7 addressed by the Manager Human Resources and Administration to the District Commissioner of Labour, District Office - Colombo states as follows:-

“There was a strike organized by the Branch Union on 14th August, 2002 at about 10. a.m. on the dispute on deductions of Union membership subscription from their monthly salary”

Therefore the position taken by the employer that there was no indications whatsoever of the impending stoppage of work in beyond my comprehension.

15. There is clear evidence to show that the Branch Union has given notice of Trade Union action by letter marked A9 dated 09.08.2002 addressed to the General Manager, a copy which letter was sent to the General Secretary of Sri Lanka Nidahas Sevaka Sangamaya.

16. When Mr. Gamini Kumara Ariyaratna, Group Human Resources Manager failed to meet the main charge that alleged abandonment of the place of work by the workers, Mr. Ariyaratna tried to bring other allegations against Rani Subasinghe, Balika Damayanthi on malpractice in their social activities such as Death Donation Society but no witness

was called to prove such allegation and no document was produced in this regard. The other witnesses for the employer did not say anything to justify the story of Mr. Ariyaratna.

17. The evidence of Rani Subasinghe explained to my satisfaction as to why some female workers had to remain inside the factory premises in the night of 15.08.2002. The main reason was that Balika Damayanthi, Secretary of the Branch Union was taken into Police custody on a complaint made by Mr. Dayaratna, Internal Security Officer. They were inside the premises with the knowledge and consent of the security officer until the release of Balika Damayanthi from the Police custody on 15th night.

18. Rani Subasinghe had been ill-treated and harassed at the hands of the company officers as well as the Police. Under cross examination by the Attorney-at-Law for the Respondent employer Rani Subasinghe stated as follows:-

“ඒ අවස්ථාවේ දී ආයතනය ඇතුළේ සිටි පිරිමි ළමයෙක් මට ගැහුවා. මම ඒ වේලාවේ සිහි නැතිව වැටී සිටියා. රාගම ඉස්පිරිතාලයට අරන් ගියාට පසුව දින 6ක් නතර කර ගත්තා. රෝහලින් පැමිණ මම පොලීසියට ගිහින් ඇන්ට්‍රි එකක් දාන්න. එහිදී ආයතනයේ පාලක පක්ෂයත් සමඟ සිටි සේවිකාවක් වන වාන්දනී කොතලාවල කියන මහත්මියගේ බ්‍රේස්ලට් එකක් මා කඩාගන්නා කියලා ඒ පොලීසියේ ඇන්ට්‍රියක් දා තිබුණා. ඒ නිසා පැමිණිල්ල දාන්න ගියාට ඒක කරගන්න බැරි වුණා.” (2010.08.06 දින සටහන් වල 14 වැනි පිටුවේ සටහන බලන්න)

After getting treatment from the Ragama Hospital she went to make a complaint to the Police when she was taken into custody by the Police on a false complaint made by one Chandani Kotalawala thus preventing Rani Subasinghe from making a complaint against the person who struck her with a club. Rani Subasinghe was harassed, threatened and abused by some person at the instance of the Company.

19. Mr. Leslie Devendra, General Secretary of the Sri Lanka Nidahas Sevaka Sangamaya giving evidence explained in detail steps taken by him to resolve this dispute but unfortunately, Managing Director of the Company behaved in a manner detrimental to any responsible settlement. Letters written by Mr. Devendra, produced marked A(2), A(3), A(4), A(5) and A(6) are self explanatory.

20. Mr. Leslie Devendra in one of the most experienced and respected Trade Union Leaders in Sri Lanka today, I quote below the reply given by him to a question asked by the learned counsel for the employer - (Vide page 6 of the inquiry proceedings dated 2010.12.16).

“ප්‍ර: යම් වැඩ නැවැත්වීමක් කරන අවස්ථාවේ දී අපි බොහෝ විට සැක ඇති නොකර හොඳ හාමිපුතුන් පසු බස්වා ඔවුන් සමඟ වැඩ කටයුතු කළ යුතුයි නේද?

උ: ඒ නිසා තමයි මගේ සියළුම වැඩ කටයුතු කියලා මේ කමිහලට ආවේ. මුලදී ඇතුල්වීමට ඉඩ දුන්නේ නැහැ. පසුව ඇතුලට ගියා. ජංගම දුරකථනයෙන් සමාගමේ සභාපති සමඟ කථා කිරීමට අවස්ථාවක් ඉල්ලා සිටියා ක්ෂණිකව මේ ප්‍රශ්නය විසඳා ගැනීමට. මේ වැඩ නැවැත්වීම දිගින් දිගටම ගෙන යෑමට අපි කිසිසේත්ම කැමති වුණේ නැහැ. නමුත් සභාපතිතුමා දුරකථනයටවත් ආවේ නැහැ.”

(Vide page 6 last para proceedings on 2010.12.16).

21. Taking into consideration the evidence led at the inquiry and the written submissions tendered by the parties I am of the view that the dismissal of the following eight (8) employees of the factory situated at No. 81/41 Negambo Road, Peliyagoda by the then Nelum Fashions (Pvt) Limited in unjustified.

- (1) Miss. Rani Subasinghe
- (2) Miss. S. A. Priyanthi

- (3) Miss. L. G. Kumuduni
- (4) Miss. M. Inoka Peiris
- (5) Miss. Nirosha Rajapaksha
- (6) Miss. Balika Damayanthi
- (7) Miss. Chandani Dissanayake and
- (8) Miss. M. A. Madushani Jayawardene

22. Accordingly I direct that the employees mentioned in the reference should be re-instated with all back wages within One (01) month of the publication of this award in the *gazette* of the Democratic Socialist Republic of Sri Lanka. This award is binding on the Ran Malu Fashion (Pvt) Limited, Biyagama, Malwana and its lawful successor in title.

T. PIYASOMA,
Arbitrator.

11th May, 2011.