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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 1373/14 - THURSDAY, DECEMBER 30, 2004

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/P/199/2002.

THE INDUSTRIAL DISPUTE ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. Yasmin Ajward, No. 451, Peradeniya Road, Kandy of the one part and Minipe Garments (Private) Limited, Export Processing Zone, B.O.I., Pallekelle, Kandy of the other part was referred by order dated 31.05.2003 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. 1291/29—06.06.2003 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

Department of Labour,
Colombo 05,
17th December, 2004.

Mrs. Yasmin Ajward,
No. 451, Peradeniya Road,
Kandy.

Case No. : A/2988.

AND

Minipe Garments (Private) Limited,
Export Processing Zone,
B.O.I., Pallekelle,
Kandy.

Award

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, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 referred the aforesaid dispute to me for settlement by arbitration.

The matter in dispute between the aforesaid parties is :

whether the transfer of Mrs. Yasmin Ajward by Minipe Garments (Private) Limited, from its Pallekelle Factory to Minipe Factory in terms of its transfer order dated 21.05.2002 is justified and if not, to what relief she is entitled.

This matter was taken up for inquiry on 15.06.2004. Both parties were present, Mr. J. Maliyagoda appeared for the Applicant while Mr. Cassim AAL appeared for the respondent.

Parties arrived at a settlement.

Respondent agreed to pay the Applicant a sum of Rs. 200,000 in full and final settlement of all claims in respect of this application, except E.P.F. and E.T.F.

Applicant reserved her right to pursue E.P.F. and E.T.F. matters if any before the Labour Department.

Both parties agreed.

This sum of Rs. 200,000 to be paid by Respondent in Court on 05.07.2004.

Both parties signed the memorandum of settlement which was submitted to Court.

Mr. Maliyagoda stated that Applicant's salary for the month of May, 2002 is due to the applicant.

Respondent was advised to compute the amount due to the Applicant in detail in writing and bring to Court on 05.07.2004.

Both parties signed the record accordingly.

On 05.07.2004, both parties were present.

According to the settlement the Respondent had to pay the Applicant a sum of Rs. 2 Lakhs in full and final settlement of the dispute with the applicant in terms of the memorandum of settlement except E.P.F. and E.T.F. which the applicant is entitled to pursue before the Department of Labour.

Both parties agreed that there was a balance salary due to the applicant for the month of May, 2002. The Respondent was advised to compute the amount with all details and bring it to Court but the Respondent had not complied with the order made by Court.

I requested the Respondent to compute the salary of the Applicant for May 2002 and pay that to the Applicant on 16.08.2004.

The Respondent paid a sum of Rs. 200,000 to the Applicant in terms of this settlement.

Respondent paid Rs. 200,000 to the applicant in her name by cheque drawn on Pan Asia Bank Limited bearing No. 002388 dated 05.07.2004 in favour of the Applicant.

Applicant having accepted the said cheque, both parties signed the record accordingly.

Representative of the Respondent was advised to bring the documents relating to E.P.F. and E.T.F. to be handed over to the Applicant.

On 16.08.2004, Applicant was present and Mr. J. Maliyagoda appeared for the Applicant. The Respondent was absent and unrepresented.

No valid reasons have been submitted by the Respondent for their absence on this date.

On 05.07.2004, Mr. Uvais—The Chairman of the Respondent Company was present in Court and he agreed to be present and submit the particulars of the earned wages of the Applicant for the month of May, 2002.

On the previous date in terms of the settlement the Respondent paid the applicant Rs. 200,000 in settlement of the case. However there appeared to be an arrears of salary for the month of May, 2002. The Respondent agreed to be present on 16.08.2004 with the details of the May salary and to make the payment due to the applicant for the month of May 2002.

Respondent has kept away from Court without valid reasons and has not informed Court of the reasons for his absence.

I considered the inconvenience caused to the Applicant and ordered punitive costs of Rs. 1,500 to be paid to the Applicant by the Respondent.

Mr. Maliyagoda stated that inconvenience has been caused to the Applicant and 10% surcharge of the earned wages to be ordered by Court.

I have considered the submissions made by Mr. Maliyagoda and I feel it reasonable that 10% be paid by the Respondent on the wages due to the Applicant as there had been a delay in the payment of the salary for the month of May, 2002.

I ordered the Respondent to pay the full salary due to the Applicant for the month of May, 2002 and a 10% surcharge along with the costs in a sum of Rs. 1,500, ordered against the Respondent to be paid to the Applicant on 31.08.2004.

On 31.08.2004, Applicant was present. Mr. Uvais, Chairman of the Company was present.

This case was settled and the worker was paid the full sum in terms of the settlement being Two Lakhs.

There was a balance sum of earned wages to the Applicant for the month of May, 2002.

The Chairman of the Company paid the Applicant the arrears of earned wages due to the Applicant after deducting all the legal entitlements to be deducted—E.P.F., E.T.F., etc.

Worker agreed and accepted a sum of Rs. 15,690.

On the last date Respondent Chairman was absent.

No indication was made to Court of any valid reasons for his absence.

I ordered a sum of Rs. 1,500 as costs to be paid by the company to the Applicant plus a 10% surcharge on the sum of Rs. 15,690.

Chairman present pleaded and stated that he came to Court late and found that the sittings were over.

I gave by consideration to this.

However it was the duty of the Chairman to have informed the Registrar/Industrial Court of the position in writing, but he has not done so.

Considering the situation, I waived a sum of Rs. 569 out of the 10% surcharge of Rs. 1,569 on the sum of Rs. 15,690.

Respondent should pay the applicant a sum of Rs. 1,000 as surcharge and a further sum of Rs. 1,500 as costs amounting to Rs. 2,500.

Respondent should be present or his representative with a letter of authority and he should bring the sum of Rs. 2,500 to be paid to the Applicant on 17.09.2004.

On 17.09.2004 Applicant was absent. She was represented by her husband Mr. Sherifdeen. Respondent was absent and unrepresented.

No valid reasons have been submitted by the Respondent for their absence.

On the last date, both parties were present and this matter has been already settled and a sum of Rs. 200,000 has been paid to the Applicant by the Respondent and balance wages for the month of May, 2000 has been already paid in a sum of Rs. 15,690.

There is a sum of Rs. 1,000 to be paid as surcharge for default of payment of the Applicant's wages and there is another further sum of Rs. 1,500 as costs amounting to Rs. 2,500.

Representative for the Respondent agreed on the last date to pay this amount to the Applicant on 17.09.2004.

However Respondent was absent on 17.09.2004.

I gave a final date to the respondent to pay this sum of Rs. 2,500 to the Applicant.

Representative for the applicant was requested to inform the Applicant to be present on the next date.

Registrar/Industrial Court was directed to inform the Respondent under registered cover to show cause for their non-appearance on 17.09.2004, and to appear on 14.10.2004 and also to bring the sum of Rs. 2,500 to be paid to the Applicant in Court.

Further to inform the Respondent that if he defaults in appearance, Court will proceed to make order in this case.

Representative for the Applicant took notice to appear on 14.10.2004.

On 14.10.2004, Applicant was present. Mr. J. Maliyagoda represented the Applicant. Respondent was absent and unrepresented.

Mr. Maliyagoda appearing for the Applicant moved for further costs for default of appearance of the Respondent on 14.10.2004.

I considered the application made by Mr. Maliyagoda and I find that the Respondent has defaulted in appearance. No valid reasons have been submitted by the Respondent and they have failed and defaulted to pay this sum of Rs. 2,500 to the Applicant.

I order the Respondent to pay a further sum of Rs. 1,000 as costs in respect of 14.10.2004.

The total sum payable to the Applicant is Rs. 3,500.

I consider the settlement just and equitable. I make award in terms of the settlement. I further make award and order the Respondent to deposit the total sum of Rs. 3,500 due to the Applicant in terms of the Award with the Assistant Commissioner of Labour (Kandy South) on or before 31st March, 2005.

K. R. M. N. LAWRENTZ,
Arbitrator,
Attorney-at-Law,
Judge of the Industrial Court,
Commissioner of Oaths,
Kandy.

25th November, 2004.

01-257

My No. : T23/P/68/2003.

THE INDUSTRIAL DISPUTE ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. M. D. A. Timothy Appuhamy, "Kudamala", No. 202, Meda Dummala Deniya, Vennappuwa of the one part and Wayamba Bus Company Ltd., Dambulla Road, Badagamuwa, Thorayaya, Kurunegala of the other part was referred by order dated 12th July, 2004 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. 1,349/21 - 16th July, 2004 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

Department of Labour,
Colombo 05,
17th December, 2004.

In the matter of an Industrial Dispute

BETWEEN

M. D. A. Timothy Appuhamy
"Kudamala",
No. 202, Meda Dummala,
Deniya,
Vennappuwa.

Case No. : A/3046.

AND

Wayamba Bus Company Limited
Dambulla Road,
Badagamuwa,
Thorayaya,
Kurunegala.

The Award

The Hon. Minister of Labour by virtue of the powers vested in him by Section 4 (1) of the Industrial Dispute Act (Chapter 131) of the Legislative Enactments of Ceylon (1956 Revised Section) as amended by Acts Nos. 14 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 12th July, 2004 and referred the following dispute to me for settlement by arbitration.

The matters in dispute between the aforesaid parties as follows : -

Whether the denial of wages for the period from 02.12.2002 to 08.04.2003 as a result of giving frequent transfers to Mr. M. D. A. Timothy Appuhamy during the said period by Wayamba Bus Company Limited is justified and if not, to what relief he is entitled.

Appearance : Mr. H. T. Thomas Legal and Compensation,
Secretary for the Respondent Bus Company.

Mr. J. S. Cooray, the Representative for the applicant.

The Applicant has filed his 01st statements.

The Legal Secretary of the Respondent - Wayamba Bus Company Limited, had informed by his letter dated 30th July, 2004, that the matter in dispute has been referred to the new Board of Directors of the Respondent Company and awaiting the approval for the payment of wages due to the applicant. When the case was taken up on 21st October, 2004, the Legal Secretary of the Respondent Company submitted the letter dated 27th September, 2004 stating that Board of Directors have agreed to settle wages in arrears due to the applicant to be settled in 4 installements.

	Rs.
Wages in arrears	39,285.30
Less : EPF contribution of the applicant	3,928.50
Amount due	35,356.80

The applicant too confirmed and accepted the amounts given above are correct. At this instance both parties agreed to a settlement as per the settlement I make award as follow : -

(i) M. D. A. Timothy Appuhamy be paid a sum of Rs. 35,356.80 as wages in arrears in two installments as follows : -

- (a) A sum of Rs. 17,678.40 be paid on 09.11.2004.
- (b) A sum of Rs. 17,678.40 be paid on 29.11.2004.

(ii) A sum of Rs. 2,928.50 being applicant's E.P.F. Contribution to be submitted to the Central Bank on account M. D. A. Timothy Appuhamy along with the Employees's (Respondent's) contribution and surcharge.

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

29th November, 2004.

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