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## PART I : SECTION (I) – GENERAL

### Government Notifications

My No.: CI/183.

#### 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 and Packaging House (Pvt) Limited, 157 2/2, Dharmapala Mawatha, Colombo 07 was referred by order dated 17.08.1992 made under Section 4(1) of the Industrial Disputes Act Chapter 131, (As amended) 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,  
29th October, 2004.

IN THE MATTER OF AN INDUSTRIAL DISPUTE

between

The Ceylon Mercantile, Industrial and General Workers' Union (CMU),  
No. 03, 22nd Lane, Colombo 03.

AND

Case No.: A/2244

Pakaging House (Pvt) Limited, 157 2/2, Dharmapala Mawatha,  
Colombo 07.  
New Address: 92/1, Stafford Avenue, Colombo 06.

**THE AWARD**

The Hon. Minister of Labour and Vocational Training 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 17.08.1992 and referred the aforesaid dispute to me for settlement by arbitration.

The matter in dispute between the aforesaid parties is whether the non offer of work to 51 employees referred to in the attached schedule who are members of the Ceylon Mercantile, Industrial and General Workers' Union (CMU) from 25th September 1991 by the Management of Packaging House (Pvt) Limited at its factory at Batakattara, Piliyandala is justified and if not, to what relief each of them is entitled.

The position of the employer appears to be that the said employees staged an unlawful strike and kept away from work in the factory whether the Union has taken up the position that there was a lock out of the employees and they were refused work. To prove the position of the Company, the prosecution was conducted by Mr. Sachchitananda whilst Mr. Cabraal appeared for the Union. Witnesses A. K. Jayasena and G. Hettiarachchi gave evidence on behalf of the Company and workman Nandasena gave evidence on behalf of the workman.

It is clear from the evidence led that the aforesaid non offer of work to 37 employees has resulted from a dispute that has arisen in the Company Chairman's room in the morning of 21.09.1991 when the workman D. D. Wimalaweera, a member of this Union, refused to do overtime work although he was entitled to do such work according to his letter of appointment R1. Witness Jayasena who had been in the Chairman's room at the time of this incident has given evidence to this incident and has further stated that there was a loud talk on this matter between the Chairman and Wimalaweera and

**SCHEDULE**

1. P. R. Jayalath Arachchi
2. W. Gamini Shelton Jayawardene
3. H. Aruni Fernando
4. Muthumenike Wijeratne
5. P. K. Wasantha Perera
6. W. A. P. Dhammika
7. N. R. Premathilaka
8. M. K. Upali
9. L. Mary de Silva
10. H. Chandra Namali
11. K. D. Dayawathie
12. W. K. D. Ajith
13. Ajith Priyantha
14. M. Aruni L. Peiris
15. G. D. Somasiri Wijesekera
16. P. N. Nandasena
17. P. D. Priyantha
18. W. V. Gnawathie
19. C. Manel
20. K. D. Priyantha
21. K. G. P. Premalatha Silva
22. A. Nissanka Mohan Silva

23. H. Jayantha de Silva
24. H. T. Jayantha Gunasekera
25. L. D. Karunarathne
26. K. Ranaweera
27. D. D. Somasiri
28. P. A. Samarasinghe Alwis
29. B. B. Somasiri Fernando
30. H. Ariyadasa Perera
31. S. M. P. Shironi
32. R. B. Ranasinghe
33. K. Nihal C. Silva
34. B. L. Wijesinghe
35. W. M. J. Perera
36. M. Ramasamy
37. Dayawansa Atigala
38. S. G. I. Prasantha Kumara
39. A. P. Athula Dhammika
40. G. D. Sarath Chandarasiri
41. W. A. Priyanganie
42. M. Sepala
43. A. M. Priyantha
44. K. Chandrasiri
45. R. A. Ajith Ranatunga
46. A. Anura Shantha Silva
47. W. Sarath Chandrasinghe
48. K. Susantha S. Perera
49. G. Nimal Priyantha
50. W. M. Ajith Weerasuriya
51. G. D. Indika Ishantha

Chairman has ordered this workman to leave the place of work and the workman has retired to the rest room to change his working clothes.

Witness Jayasena has further stated that other workman too gathered in the rest room and although the time was about 10.30 a.m. all these workman had not gone back to their places of work but had left the factory premises at 1.00 p.m. as it was a Saturday. The following three days being non-working days, these 34 workmen, including Wimalaweera, have come up the gate of the Company but had refused to work until Wimalaweera was given work and Wimalaweera being refused work, these 33 workmen have struck work. On 25.09.1991, another batch of 28 workmen appear to have struck work as the workman had been refused work. Show cause letters similar to R2 and R3 have been sent to the striking workmen and requests made as in R41 but yet the strikers had not reported for work.

Annexure 12 dated 21st February 1992 filed with the statement of the Union under Regulation 21(1) of the Industrial Disputes Act shows that the Union had agreed to call off the strike which, according to the Union, originated from a lock out by the Company on 25th September 1991. However the Company appears to have disagreed to give work to the striking workmen under the prevailing conditions as stated in Annexure B dated 25th February 1992. Accordingly 37 workmen as named in the schedule attached to the statement of matter in dispute, have not been offered work by their employer, Packaging House (Pvt) Ltd.

From an analysis of all the evidence it is clear that 34 workmen including Wimalaweera had walked out refusing to work on 21.09.1991 and on an appeal made to the management 04 workmen have been reinstated whilst disciplinary inquiries are being proceeded against the others. Further on 25.09.1991 another batch of 29 employees have kept away from work of which 05 workers have reported for work and two have died and the remaining 22 workmen were deemed to have vacated their posts. Under these circumstances, the Company has taken up the position that these workmen cannot be given work.

It is relevant to consider whether the strike that resulted from the walk out of 33 employees on 21.09.1991 and the stoppage of work by 28 employees on 29.09.1991 was unreasonable and illegal. It must be noted that this strike resulted from a dispute that arose between the Company and workman Wimalaweera and the workman was asked by the Chairman to leave the factory and the strike continued as the company refused to give work to this employee. Learned counsel for the Company has submitted that the dispute between Wimalaweera and the Company had been referred to arbitration and the Learned Arbitrator has held the suspension of Wimalaweera was justified. This suspension which has been held to be justified triggered the stoppage of work and the walk out of 33 employees on 21.09.1991 without

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I කොටස: (I) ඡේදය - ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අති විශේෂ ගැසට් පත්‍රය - 2004.11.23

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making any demands and without any intimation or notice, crippling the work of the Company. The employees have taken the law into their hands and committed an act of serious misconduct. It is also in evidence that these employees have continued their refusal to work unless and until workman Wimalaweera was reinstated. Besides these 33 employees, another batch of 28 workmen has refused to work on 25.09.1991 demanding that Wimalaweera should be reinstated even though disciplinary action would be taken and inquiry held regarding the alleged misconduct of this workman.

It is my belief that neither the employer nor the employee should take the law into their hands in solving a labour dispute and infact any dispute which could be solved otherwise. On a consideration of the evidence in this case it is exactly this position, the workmen have taken and staged an adhoc strike without a justifiable cause and placed the Company in financial difficulties unnecessarily. Therefore it is my considered view that this strike staged by the employees of Packaging House (Pvt) Ltd. on 25th September 1991 is unjustifiable and as such the named 51 employees are not entitled to any relief.

M. B. JAYASEKERA,  
Arbitrator.

Dated at Colombo.this 30th day of August, 2004.  
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My No.: CI/750/99.

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

The Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Lanka General Services Union, 10/1 - 1/1, Kotugodella Veediya, Kandy and Central Cultural Fund, No. 212/1, Baudhaloka Mawatha, Colombo 07 was referred by order dated 16.04.1999 made under Section 4(1) of the Industrial Disputes Act, Chapter 131 (as amended) 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.

29th October, 2004.

Lanka General Services Union, 10/1 - 1/1, Kotugodella Veediya, Kandy.

AND

Central Cultural Fund, 212/1, Baudhaloka Mawathe, Colombo 07.

#### 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, 62 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 non-granting of the increased salaries in terms of the Public Administration Circular No. 2/97 (iii) to the 151 employees referred to in the attached schedule who are employed in the Central Cultural Fund on daily paid basis is justified, if not, to what relief they are entitled.

This matter was taken up for inquiry. Mr. J. Maliyagoda appeared for the Applicant Union while AAL. Mr. S. Karunaratne appeared for the Respondent.

I have examined the evidence as a whole, both oral and documentary, and the written submissions of the parties.

The issue to be decided by me is whether the non-granting of the increased salaries in terms of the Public Administration Circular No. 2/97 (III) to the 151 employees referred to in the attached schedule, who are employed in the Central Cultural Fund on daily paid basis is justified, if not to what relief they, are entitled.

Attorney-at-Law for the Respondent in his written submissions stated that the Respondent was never summoned to the Department of Labour before this reference was made. There was no inquiry or discussion whatsoever held before this reference. He submitted that the Appointment of the Arbitrator in this Case is not proper and has no validity.

I have given my consideration to this submission. This reference to me by the Minister of Labour is under Section 4 (1) of the Industrial Disputes Act on a statement made by the Commissioner of Labour to the Minister of Labour that an Industrial dispute exists between the parties in this case. Whether an investigation or inquiry is held by the Commissioner of Labour or not, I hold that the reference to me is a valid reference. I reject the submission made by the Attorney-at-Law for the Respondent.

The evidence is clear that these 151 workers to this dispute are paid under the Wages Board for the Building Trade. The issue to be decided is whether these employees, are entitled to relief or benefits in terms of the Public Administration Circular No. 2/97 (III).

The contention of the Respondent is that the workers to this dispute are governed by the provisions of the Wages Board for the Building Trade and, as such, they are not entitled to the benefits provided under the public Administration Circular No. 2/97 (III). The contention of the Respondent further is that the Central Cultural Fund is not a profit making concern and it is funded on the sale of Tourist tickets and donations and gifts.

The evidence shows that the monthly paid workers are granted the benefits in terms of the said circular and not the daily paid workers to this dispute. The said circular does not specify that the benefits under the said circular should be granted only to the profit making establishments. Taking this into consideration, I am of the view that all establishments, profit making or not are governed within the provisions of the said circular. I have examined Document A1 dated 30/8/88 from the Secretary, Ministry of Cultural Affairs to the Project Managers of the Projects under the Central Cultural Fund. The facts in this document A1, confirms the position that the Board of the Central Cultural Fund has computed the increase for the workers in the year 1988 and sought Cabinet Approval. I have examined Document A5 letter dated 1/4/98 from the Deputy Commissioner of Labour to the Director General, Central Cultural Fund recommending that all the workers in the Establishment should be treated alike and paid the benefits accruing in terms of the Public Administration Circular 2/97 (III) which is just and equitable.

I have examined the evidence of witness for the Respondent Mandawela, Former Director, Central Cultural Fund. In Cross - examination in evidence he stated that daily paid workers, casual and temporary workers, were included in the increase in salary in terms of the Public Administration Circular 2/97(III).

On the evidence, both oral and documentary, I am of the view that the said circular covers both monthly and daily paid workers.

I have now to consider the submission of the Respondent relating to their financial incapacity to pay the said daily paid workers to this dispute. The facts in this case reveal that the Respondent has for the 1st time taken up the position of financial incapacity to pay the workers to this dispute the increased salaries in terms of the Public Administration Circular 2/97 (III). The facts in this case further reveal that the monthly paid workers in the Central Cultural Fund were paid the increased salaries in terms of the Public Administration Circular 2/97(III). By document A5 in evidence dated 1/4/98, the commissioner of Labour notified the Respondent that it is just and equitable to pay the daily paid workers the increased salaries in terms of the said Circular far back as in the year 1998. At that stage, the Respondent did not inform the Commissioner of Labour nor the Applicant Union pleading their financial incapacity to make the said payment.

I have examined the evidence of the Accountant Jayathilake witness for the Respondent. His evidence shows that there has been deficit budget in some financial years in the Accounts of the Central Cultural Fund. The evidence of Former Director Mandawela shows that for the Financial years 1991 to 2001, the Central Cultural Fund received Additional money in relief in a Cabinet Decision. The payment of the increased salaries is for the years 1997 - 1998. The Respondent Cultural Fund had the Funds to make this payment in terms of the Public Administration Circular 2/97(III).

I have examined the 1st statement of the Respondent in respect of the matter in dispute. The Respondent has not pleaded financial incapacity in their 1st statement to the matter in dispute dated 17/5/99. The Respondent pleaded financial incapacity in paragraph 18 in their 2nd Statement to the matter in dispute dated 6/2/2000.

Taking the above facts into consideration, I cannot accept the plea of the Respondent that the Central Cultural Fund is unable to make the said payment to the said workers to this dispute in terms of the Public Administration Circular No : 2/97(III) due to financial incapacity.

I now consider the Judgement of Justice Ranaraja of the Court of Appeal in Case No : CA-506/96 relating to Arbitration Case No : A/2340. As stated by me in detail in my preliminary order in this Case A/2738 dated 13/12/2000, the matter in dispute in Arbitration case No: A/2340 is not Identical or similar to the matter in dispute in Arbitration Case No: A/2738 before me. As such, considering the evidence and facts and circumstances in this Case A/2738, I hold that I am not bound by the judgement of the Court of Appeal in Case No : CA-506/96.

On the facts in evidence both oral and documentary, and for the reasons on the evidence set out by me, I hold that the Respondent Central Cultural Fund is covered by the provisions of the public Administration Circular No : 2/97 (III). In terms of the said Circular the Respondant Central Cultural Fund is bound to pay the 151 workers, whose names are set out in the schedule attached to the reference, and who are employed on daily paid basis, the increased salaries.

On the evidence as a whole, both oral and documentary, and on the balance of evidence and the preponderance of probabilities, I hold it just and equitable to make order that the Respondent, Central Cultural Fund, to pay the said 151 workers, who are employed on daily paid basis, the benefits in the increased salaries in terms of the Public Administration Circular No: 2/97(III) on or before 31/12/2004. Having complied with the said Order, the Respondent Central cultural Fund, shall inform the Commissioner of Labour, Colombo of their compliance, giving the details of the Computation in the payment, with Copy to the Applicant Union.

I make Award accordingly.

K. R. M. N. LAWRENIZ  
Arbitrator.

Dated on this 17th day of September, 2004  
at Kandy.