



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය

අති විශේෂ

The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1434/9 - 2006 පෙබරවාරි 28 වැනි අඟහරුවාදා - 2006.02.28
No. 1434/9 - TUESDAY, FEBRUARY 28, 2006

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/P/125/89.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between M/s. (01) A. P. M. D. S. Karunaratne (02) V. Kamalanadan (03) B. G. Dharmadeva who are employees of Lanka Mineral Sands Limited, Pulmoddai of the one part and 01. Lanka Mineral Sands Limited, No. 167, Sri Vipulasena Mawatha, Colombo 10 and 02. Plant Manager, Lanka Mineral Sands Ltd, Kanijapura, Pulmodai of the other part was referred by order dated 11.09.2003 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 Extra - Ordinary No. 1308/4 of 30.09.2003 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,
Labour Secretariat,
Colombo 05.
10th February, 2006.

In the matter of Industrial Dispute
between

M/s. (1). APMDS Karunaratne,
(2) V. Kamalanathan and (3) B. G. Dharmadeva
who are employees of Lanka Mineral Sands
Limited, Pulmoddai, M/s. Lanka Mineral Sands
Ltd, Kanijapure , Pulmoddai of the one part
and

01. Lanka Mineral Sands Limited, No. 167, Sri
Vipulasena Mawatha, Colombo 10
and

02. Plant Manager, Lanka Mineral Sands Ltd,
Kanijapure, Pulmoddai of the other part

CASE No : The said dispute between the aforesaid Parties
A/3005

The Award

The Honourable Minister of Employment and 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 Act, 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 the Arbitrator by this order dated 11th September, 2003 and referred to me for settlement by Arbitration.

The matter in dispute between aforesaid parties :

“Whether the non granting of the terms and conditions of employment earlier enjoyed by Messers’s APMDS Karunarathne, V. Kamalanathan, and B. G. Dharmadeva who are presently employed at the Pulmoddai Plant of M/s. Lanka Mineral Sands Limited, (who were employees of Ceylon Minerals Sands Corporation) after promoting them from the posts of Technical Assistant to the posts of Assistant Superintendent with effect from 01.02.1979 is justified and to what relief each of them is entitled”.

2. This dispute was earlier heard an order made by Arbitrator Mr. G. P. Haththotuwa. The Court of Appeal, who heard the appeal for No. 1368/2001, require reference of the case to another arbitrator. Its’ in these circumstances that the dispute has come for hearing before me, and I decided to hear it de-novo.
3. Mr. Karunarathne Munaweera Attorney-at-Law appeared for the 3 applicants at the outset and later withdrew. Mr. T. N. Yoosuf substituted him, Mr. S. T. Gunawardene Attorney-at-Law appeared on behalf of the two respondents. Parties met 19 times, and both parties fielded only one witness each. Applicants filed 22 productions numbered x 1 to 22; while Respondents filed 11 productions numbered y 1 to y 11.

Ceylon Mineral Sands Corporation, was established under the State Industrial Corporation Act, No. 49 of 1957 and now converted to a Company Registered under Companies Act, No. 17 of 1982, and it’s a fully Government owned Company.

4. Applicant / workman, APMDS Karunarathne submitted that he was appointed a trainee apprentice on 03.05.1970 and on completion of training, was appointed as a Shift Assistant, later designated Technical Assistant. He was promoted to the post of Assistant Superintendent on 01.02.1979.

At the time of appointment as Shift Assistant, the terms and conditions of employment were covered under the Factories Ordinance, with corporation leave entitlement of 42 days - (Vide x 3). Six years later, para 4 of (x3) has been changed to cover, this class of employees, under decisions of Engineering Trade

Wages Board. With the introduction of the new condition of employment, the hours of work gets altered from 48 to 45 hours per week with consequential modification of other terms per the decisions of Engineering Trade Wages Board.

There was absolute transparency in the presentation of evidence, specially being a statutory body, there were no questionable documents.

The present issue relates mainly to the non grant of over time, from 01.02.1979, *i. e.* from the date of promotion to the post of Assistant Superintendent. Management maintains that those in executive positions are not entitle for over time payments. Within its limitations management has endeavored to narrow down the matter in dispute over the years in that, the working arrangements were re scheduled and even obtained a special allowance through the Ministry of Industries by way of extra remuneration for extra hours performed.

5. My findings are as follows:-

A. Applicability of the definition of ‘trade’

Applicants contention that they were covered by the decisions of the Engineering Trade Wages Board made under the Waged Boards Ordinance, need analysis to ascertain its applicability. In terms of Section 64 of Wages Boards Ordinance, ‘trade’ is defined to mean,-

“any industry, business, undertaking, occupation, profession or calling carried out, performed or exercised by an employer or worker, and any branch of, or any function or process in any trade, but does not include any industry, business or undertaking which is carried on mainly for the purpose of giving an industrial training to juvenile offenders or orphans or to persons, who are destitute, dumb, deaf or blind.”

The respondent/employer company is an organization involved in the extraction, processing, manufacture, sale and export of mineral sands. Its’ activities should fall under the broad trade classification of the Engineering Trade Wages Board, namely-

- (a) Civil engineering;
- (b) Mechanical engineering;
- (c) Electrical engineering, and
- (d) Radio Electronic engineering.

The respondents company's activities do not fall under any of the above classifications, and as such the institution is not covered by the Engineering Trade Wages Board as an employer.

The applicant/employees, designated shift assistants/technical assistants were working at Pulmoddai factory. The Engineering Trade Wages Board classification lists 81 categories of employees. These 81 categories are further, graded into Unskilled, Semi-Skilled, and Skilled dependent upon the type of activity, function and skill. Shift assistants and technical assistants, are not listed in the said 81 worker categories. classified.

Neither the employer company nor the applicant workmen gets covered under the decisions made by the Engineering Trade Wages Board, within the definition of trade.

B. Minimum wages concept vis-a-vis recovery of overtime.

In respect of any workman covered by the decisions of any wages board, made under part II of the Wages Board Ordinance, when it comes to recovery of overtime due, two important elements surface. *i. e.* Section 20 (1) read with Section 31, which speaks of minimum rate of wages, overtime rate and recovery procedure. Section 20(1) of Wages Boards Ordinance states-

"In respect of the trade for which it is established, every wages board shall, subject to the provisions of sub-section (3) determine a minimum rate of wages for time work (herein after referred to as "a general minimum time rate") and may also determine all or any one or more of the following rates of wages -

- (a) A minimum rate of wages for piece work (hereinafter referred to as "a general minimum piece rate")
- (b) A Minimum time - rate to apply in the case of workers employed in piece work for the purpose of securing to such workers a minimum rate of remuneration on a time rate bases (herein after referred to as "a guaranteed time rate")
- (c) A minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which could otherwise be applicable, in respect of overtime work done by worker (herein after referred to as "a over time rate".)

Once a minimum rate has been determined by a wages board and duly published, overtime has to be computed based on such determination. Present wage rates determined by the Engineering Trade Wages Board and published in the *Gazette* Extraordinary No. 1297/26 of 17.07.2003 are as follows:-

Unskilled - Rs. 3450.00- 18 steps of Rs. 17.50 - Rs. 3747.50
Semiskilled-Rs.3467.75-18 steps of Rs. 20.00 - Rs. 3807.25
Skilled - Rs. 3547.75- 18 steps of Rs. 25.00 Rs. 3972.75

To facilitate recovery Section 31 of Wages Board Ordinance provide that -

"an extract from the *gazette* containing a decision of a wages board and the notification of approval of such decision by the Minister and purporting to have been printed by the Government Printer, of a copy of such decision and notification purporting to have been certified to be a true copy by the Commissioner of Labour or any of his Deputies or Assistants, may be produced in any court in proof of such decision and approval."

In the circumstances, recovery of overtime is possible only if workmen draw wages determined by the wages board. The applicants salaries as at 01.01.2004 stands at Rs. 14,455.00 - per month and as such I am of the view that, by operation of law, based on the current wages, overtime recovery is unenforceable, even if the workers are covered under decisions of Engineering Trade Wages Board. (In fact they are not covered)

C. Policy of Labour Department re overtime of executives.

The policy of the Labour Department, concerning payment of overtime to persons holding executive positions is outlined in the departmental circular No. 420, reproduced hereunder,

File No. T 42/1(4) (Sub).

Department Circular No. 420
To all D.C. LL/A. C. L L/L.OO

APPLICATION OF PROVISIONS OF THE SHOP AND OFFICE EMPLOYEES' ACT TO OFFICERS OF STAFF RANK.

This circular is to clarify the policy of the Labour Department in regard to the enforcement of the provisions of the Shop and Office Employees' Act in respect of employees in Staff Grades.

2. The present position in regard to this matter is dealt with in para 74 of the Departmental Circular No. 128, However, it has now been decided to adopt the following procedure in respect of complaints made to the Department by employees of Staff Rank regarding non-compliance with the provisions of the Shop and Office Employees Act:-
 - (i) Complaints made by employees of Staff Rank in respect of any infringement of the S & O. E. Act will be acted upon by the Department, excepting in the case of non-payment of overtime.
 - (ii) In the case of complaints regarding non-payment of overtime by officers of Staff Rank, the Department will not intervene.
 - (iii) If any question arises as to whether any employee is, or is not, of Staff Rank, it will be decided by the Department having regard to an employee's salary, designation and duties performed.
3. You should, therefore, in future act accordingly in respect of complaints received from employees of Staff Rank.

Sgd. N. L. Abeywira,
Commissioner of Labour."

A.C.I. (Administration)
Department of Labour,
Baladaksha Mawatha,
Colombo 03.
16.03.1967.

The position stands the same, when it comes to other executives

D. Statutory barriers.

Besides, statutory provision has been made by amending Section 3(5) of the Shop and Office Employees Act, per law No. 7 of 1975, to exclude persons holding executive or managerial positions from application of provisions concerning payment of overtime, employed in state corporations. Amendment states that -

"The provisions of sub Section (1) shall not apply to any person who holds an executive or managerial position in a

public institution and who is in receipt of a consolidated salary the initial of the scale of which is not less than Rs. 6,720 per annum. Where any question arises as to whether any person holds an executive or management position, such question shall be decided by the Commissioner and his decision shall be final and conclusive.

In this sub-section "Public Institution" shall have the same meaning as in Section 24 of the Finance Act No. 38 of 1971."

When the applicants were appointed to the post of Assistant Superintendents, they were placed on the salary scale of Rs. 600-45x7-Rs. 915. (*i. e.* Rs. 7,200 - 45 x 7 - Rs. 10,980 p.a) Which is basically a scale applicable to executives in Government as well as corporation sector.

This provision prevents the management from paying overtime to executives.

However on the overall analysis it is evident that applicants at no stage refused of rejected the promotions, which carried higher pay and recognition. Their motive had been to gain more benefits from both ends - privileges of a blue coler worker as well as that of an executive.

A component of over time is in built in the wages structures formulated with regard to executives in the private sector normally. This component is unseen. The reasoning is that executives are called upon to supervise or organise matters at the spur of the moment which may arise at times, generally they are on - call.

In the circumstances based on my findings, I am of the opinion that the applicants are not entitle to any relief. This is a just and a fair award.

P. NAVARATNE,
Arbitrator.

23rd January, 2006.

03-375