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EXTRAORDINARY

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No. 1426/20 - THURSDAY, JANUARY 05, 2006

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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/P/01/2003.

THE AWARD

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. E. M. Muthubanda, No. 154, Ihala Kalatuwawatta, Karalliyadda, Teldeniya of the one part and Mahanuwara Bus Company Limited, No. 333, Katugastota Road, Kandy of the other part was referred by order dated 27.10.2003 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,
Labour Secretariat,
Colombo 05.
09th December, 2005.

Mr. E. M. Muthubanda of
No. 154, Ihala Kalatuwawatta,
Karalliyadda,
Teldeniya.

AND

CASE NO : Mahanuwara Bus Company Limited,
A/3010 No. 333, Katugastota Road,
Kandy.

Minister of Employment and Labour do 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, 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 payment of arrears of salary to Mr. E. M. Muthubanda for the period of 09.09.1998 to 06.04.2001 by the Mahanuwara Bus Company Limited is justified and if not, to what relief he is entitled.

I find on record that when this matter was taken up for inquiry on 26.10.2004, both parties were present and the evidence in chief of the applicant was led by Mr. J. B. Dissanayake who represented the applicant.

Thereafter this matter was refixed for further inquiry on 25.11.2004. On this date the applicant was absent. Respondent was present and Mr. S. M. Abeyratne AAL. appeared for the Respondent.

On this date this matter was called to fix a date for inquiry. This case was fixed for inquiry on 12.01.2005. Applicant was absent on 25.11.2004. Mr. Dissanayake took notice to inform the applicant of the next date. Further I decided on this date to instruct the Registrar Industrial Court to inform the applicant that this matter

is fixed for inquiry on 12.01.2005 under registered cover. On 12.01.2005, applicant was present. Mr. S. M. Abeyratne AAL. appeared for the Respondent. Applicant was not ready to proceed to inquiry as his representative was not present and he moved for a date. Mr. Abeyratne AAL. had no objection. I refixed this matter for inquiry on 10.02.2005. On 10.02.2005, both parties were present. The applicant stated that he has to get a Representative to proceed with the case. He requested for a date. Mr. S. M. Abeyratne AAL. for the Respondent had no objection. This matter was refixed for inquiry on 07.03.2005.

On 07.03.2005 the applicant was absent and unrepresented. The Respondent was present and Mr. S. M. Abeyratne AAL. appeared for the Respondent.

On this date I decided to give a final date for inquiry. Registrar, Industrial Court was instructed by me to inform the applicant to show cause for his absence on 07.03.2005, and also to inform the Applicant that if he fails to appear on the next date, I will have to proceed to dismiss this application.

This matter was refixed for further inquiry on 26.05.2005. On 26.05.2005, the applicant was absent. Mr. J. B. Dissanayake represented the applicant. Respondent was present.

Mr. S. M. Abeyratne AAL. appeared for the Respondent On this date I find on record that the notice to the applicant to his address had been returned undelivered with the endorsement that he has left his residence.

I instructed the Representative Mr. Dissanayake for the applicant to contact the applicant in his place of work and inform him of the next date and also requested him to ask the applicant to furnish his new address to the Registrar/Industrial Court. Mr. S. M. Abeyratne AAL. for the Respondent had no objection to a final date being granted. This matter was refixed for inquiry on 19.07.2005.

On 19.07.2005, the Applicant was absent and unrepresented. Representative for the Respondent was present. Mr. S. M. Abeyratne AAL. appeared for the Respondent.

I find on record that the notice sent to the applicant's past address has been returned undelivered with the endorsement that he has left his residence.

I find on record that the applicant was absent and unrepresented on 07.03.2005, 26.05.2005 and 19.07.2005.

I decided to lay by this case for one month and if no representations are made by the Applicant to the Registrar/Industrial Court, I decided to call this matter thereafter to make my order. I refixed this matter to be called on 26.08.2005.

On 26.08.2005, applicant was absent. Representative for the Respondent was present and Mr. S. M. Abeyratne AAL. for the Respondent was absent. Representative for the Respondent moved for a date. On this date the Registrar/Industrial Court informed me that there is no representation made by the applicant to date. I decided on this date to make my order in this case.

As Mr. Abeyratne AAL. for the Respondent was absent on 26.08.2005, I decided to call this matter on 12.09.2005.

On 12.09.2005, applicant was absent. Representative for the Respondent was present. Mr. S. M. Abeyratne AAL. for the Respondent moved for a date on personal grounds. I finally fixed this matter for 31.10.2005.

On 31.10.2005, the applicant was absent and unrepresented. Representative for the Respondent was present. Mr. S. M. Abeyratne AAL. appeared for the Respondent.

I find on record that the applicant was absent without valid reasons to court for his absence.

Taking into consideration the fact that the applicant has been absent without valid reasons and no representation has been made by the applicant to court with sufficient reasons for his absence, I am of the view that the applicant is no more interested in pursuing this application.

For these reasons, I dismiss the application and make Award accordingly.

Arbitrator.

Date: 28th November, 2005.

My No. : T23/CO/210/2002.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. P. K. S. P. R. Wijetunge, 103/2, Shadi, Kotadeniyawa and Mr. D. M. Abeyratna, Kitulgodahena, Hewelwela, Bibile and Mahaweli Authority of Sri Lanka, 500, T. B. Jayah Mawatha, Colombo 10 was referred by order dated 31.07.2003 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.
13th December, 2005.

Reference No.: T23/Co/210/2002(A3000).

In the matter of the Industrial Dispute
between

01. Mr. P. S. K. P. Wijetunga of
103/2, Shadi, Kotadeniyawa,

AND

02. Mr. D. M. Abeyratna,
Kitulgodahena, Hewelwela,
Bibile.

AND

Mahaweli Authority of Sri Lanka,
No. 500, Jayah Mawatha,
Colombo 10.

THE AWARD

The Hon. 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 Acts, Nos. 14 of 1957, 63 of 1957, 04 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 31.07.2003 and referred the dispute to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties is :

whether the non payment of salary applicable to the Post of Engineering Assistant Grade I to Mrs. P. K. S. P. R. Wijetunga and Mr. D. M. Abeyratna who were the employees of Mahaweli Authority of Sri Lanka on the promotion to the said post with effect from 01.07.1992 is justified and if not, to what relief they are entitled to.

At the Inquiry Mr. W. P. Weerasinghe, Attorney-at-Law appeared for the Applicants and Mr. G. A. Samarasekera, Attorney-at-Law appeared for Mahaweli Authority of Sri Lanka.

Parties filed their respective statements and the Inquiry commenced on 18.12.2003 and concluded on 20.05.2005. Written submissions on behalf of the Parties have been filed along with marked documents.

At the Inquiry the applicants gave evidence and produced documents marked A1 to A34. Mr. Nandasena, Administrative Officer of Mahaweli Authority gave evidence and produced documents marked RI to RVI.

Both Parties agreed at the Inquiry held on 01.03.2004 that both Applicants' cases could be decided on the Evidence given by P. K. S. P. Wijetunge.

The Applicants' position is that they joined Sri Lanka Mahaweli Authority (hereinafter referred to SLMA) as Grade 3 Engineering Assistants and were later promoted to Grade 2 Engineering Assistants. According to the procedure adopted by SLMA, those who serve for 5 years in Grade 2 were entitled to be promoted to Grade 1. In the year 1992, both Applicants were eligible to be promoted to Grade 1 since they had served for 5 years in grade 2. No interview was held in the year 1992 for the promotion to Grade 1. The applicants state that an interview was held in 1993 for the promotion to Grade 1 and both applicants and several others were present for the interview, but promotion was not granted to the applicants thought it was given to others who obtained marks lower than the Applicants.

The Applicant further stated that she met the Director General on several occasions and thereafter made a complaint to the Minister. A committee headed by Mr. M. K. Moonegamage was appointed by the Minister to look into the grievances of the Employees of SLMA. The said committee in their report recommended promotions to the Applicants with back wages.

On perusal of the Report of the Committee marked as RVI page 14 and P1, it is clear that the committee has recommended promotions to the Applicants with back wages. It is also to be noted that the same committee has not recommended back wages. In the instances of complaints made by other employees. Vide P 34 (), P 34 (), but the Committee has specifically recommended back wages and other entitlements to the Applicants with promotions from the relevant date.

The Applicants have requested the Respondent authority to give promotions with back wages by A2 and A3.

Later promotions to the Applicants by Document marks A4, A21 has been given backdated to 01.07.1992, without back wages.

The Applicants have thereafter made representations to the Commissioner of Labour regarding the payment of back wages but there was no favourable response from SLMA. Vide A6-A17, A23-A34.

The Respondent's witness in his evidence took up the position that the Applicants were promoted on the results of the interview held in 1997 and produced the document marked RIV. He also produced the document marked RV. When one reads the document marked RV, the position taken up by the Respondent cannot be accepted. In RV only an interview held on 18.03.1993 is mentioned.

Further, By RV five persons including the Applicants have been promoted with effect from 01.07.1992. It is the same 5 persons who were recommended by the Committee report to be promoted with back wages. Further, If promotions were granted in terms of the results obtained in the interview held in 1997, there is no reason as to why the appointments were back dated to 01.07.1992.

Therefore, I hold that the promotions to the Applicants were granted in terms of the committee recommendations and not by the results obtained at the interview held in 1997.

The applicants have by A3 and A4 requested the Respondent to grant back wages as per the committee recommendations.

The Respondent has not fulfilled the Recommendations given by the committee in full. Further, in 1998, by A5, Respondent has given back dated appointments to 10 book keepers with back wages from 1990.

The Respondents' conduct in refusing to grant back wages to the Applicants cannot be justified.

Taking into account the Oral Evidence and the documents produced before me, I am of the view that the Applicants are entitled to back wages claimed by them.

Therefore, the non payment of salary applicable to the Post of Engineering Assistant Grade I to Mrs. P. K. S. P. R. Wijetunga and Mr. D. M. Abeyratna on the promotion to the said post with effect from 01.07.1992 is not justified.

I hold that the Applicants Mrs. P. K S. P. R. Wijetunga and Mr. D. M. Abeyratna who were the employees of Mahweli Authority of Sri Lanka should be given the back wages from 01.07.1992. The Applicants claim a sum of Rs. 60,000 being arrears of salary. The Respondent has not contested this amount. I order the Respondent to pay a sum of Rs. 60,000 to each of the Applicants and also to make the relevant payment for the E. P. F. and E. T. F. contributions, within 45 days after the publication of this award in the *Government Gazette*.

I make the award accordingly and I consider the same as fair and equitable.

U. A. ABDUL MAWJOOTH,
Arbitrator.