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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1450/16 – 2006 ජූනි 21 වැනි බදාදා – 2006.06.21

No. 1450/16 – WEDNESDAY, JUNE 21, 2006

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/CO/66/2002.

The Maharaja Organization, Ltd., of
146, Dawson Street,
Colombo 02

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award No. A. 3082 dated 14.02.2006 was transmitted to me by the Arbitrator to whom the Industrial Dispute arisen between Mr. V. Sukumaran of No. 10 A, Wijesiriwardena Road, Mt. Lavinia of the one part and The Maharaja Organization Ltd. No. 146, Dawson Street, Colombo 02 of the other part referred by order dated 30th November, 2004 under Section 4 (1) of the Industrial Disputes Act Chapter 131 (as amended) for settlement by arbitration.

The Interpretation of the said Award dated 06.06.2006 made by the Arbitrator under Section 34 of the Industrial Disputes Act is hereby published in terms of Section 18(1) of the said Act.

D. SOMAWEERA EDIRISINGHE,
Commissioner-General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
June, 2006.

Ref. No. : T23/CO/66/2002.

IN THE MATTER OF AN INDUSTRIAL DISPUTE BETWEEN

Mr. V. Sukumaran of
No. 10A, Wijesiriwardena Road,
Mount Lavinia
AND

CASE No : A/3082

An application under S. 34 of the Industrial Dispute Act, for interpretation of the Award

The Honourable 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 Edition) as amended by Act, Nos. 14 of 1957, 63 of 1957, 4 of 1962 and 39 of 1968. (read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968) appointed me to be the Arbitrator by his order 30th November, 2004 and referred the aforesaid dispute to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties is :

Whether the charge of the designated post of Mr. V. Sukumaran as Premises Manager at the time of transferring him to Harrisons Chemicals (Pvt), Ltd. with effect “Manager Treasury” by the Maharaja Organization Limited is justified and if not to what relief he is entitled.

At the inquiry Mr. N.D.R. Cassie Chetty Attorney-at-Law appeared for the applicant and Mr. C. L. Wickramanayaka, Attorney-at-Law appeared for Respondent Organisation.

In order to find a solution to the dispute in the reference, I am under a duty to find answers to the following questions.

2(a)

- (I) Is the change of designated post of the applicant as Manager-Premises at the time of transferring him to Harrison Chemicals (Pvt) Ltd. with effect from 11.03.2002 contrary to the conditions of his original letter of appointment (A1).
- (II) Is the company Harrison Chemicals (Pvt) Ltd. not a company within the Maharaja Group of Companies.

The inquiry commenced on 29th March, 2004 after the parties filed their statements.

The applicant Velutham Sukumaran gave evidence first, on his behalf.

The Background to the Dispute

The applicant was employed by the Maharaja Organisation Limited (The Respondent) as “Manager Treasury” with effect from 05.04.1993 by letter of appointment, marked A1. Clause 5 of A1 provides that the company is entitled to transfer the applicant from one department to another or from one company to another within the Maharaja Group of Companies.

The workman was transferred to Harrisons Chemicals (Pvt) Ltd. as premises Manager of the Ja-ela Plant with effect from 11.03.2002.

The workman complained against this transfer to the Commissioner of Labour by his letter dated 23.04.2002 (A6) stating that his transfer as premises Manager to Harrisons Chemicals (Pvt) Ltd., was a breach of a fundamental term of his contract.

The Hon. Minister of Labour and Employment referred this dispute to Mr. Asoka Serasinghe, Arbitrator for settlement by arbitration.

The said Arbitrator by his award in proceedings No. 2973/2003 dated 18.09.2003 dismissed the applicant’s claim, on a preliminary objection raised by the Respondent.

The applicant thereupon filed an application No. CA/1684/2003 in the Court of Appeal by way of writs of certiorari and Mandamus. The said Court of Appeal quashed the order of the said Arbitrator (Mr. Asoka Serasinghe) after over-ruling a Preliminary objections taken up by the employer at the hearing of the writ-application.

Thereafter the Hon. Minister of Labour by his order dated 30.11.2004 referred the aforesaid dispute to me for settlement by arbitration.

When the proceedings commenced before me on 29th March 2004, no preliminary objection was raised by the Counsel for the respondent regarding my jurisdiction in hearing the dispute in the reference.

According to the evidence of the applicant and the letter of appointment A1, loost his applied for by the applicant for which he was qualified was “Manager Treasury”.

The Management Performance Review of the applicant produced marked A3/1 shows that the applicant had following qualifications:-

- (1) General Certificate of Education (Sri Lanka-O/L)
- (2) Diploma in Management Accounting (CMA-U.K.)
- (3) Diploma in Banking (AIB-Sri Lanka)
- (4) Diploma Course on Import/Export Trade Practices (Institute of Management Services Sri Lanka)

He also had undergone Several Training Courses in the Bank of Ceylon, Sri Lanka Institute of Credit Management, Merchant Banking Division of ANZ-Grindlay’s Bank, T.M.O.L. Residential Work Shop, and The British Counsel and Asia Capital Limited.

It is therefore clear that the work performed by the Applicant and Manager Treasury in the Maharaja Organization related to financial Management and Import and Export Trade.

Referring to his transfer as premises Manager in Harrison Chemicals (Pvt) Ltd., the applicant states as follows:-

“By transferring me as Premises Manager to Harrisons Chemicals (Pvt), Ltd. fundamental terms of my contract have been breached I was appointed Manager Treasury on the qualifications detailed in my application and having gained further knowledge and experience in the specialized field of Finance/Treasury. Now I am transferred to the post of Manager (Premises) qualifications for which I do not possess and for which I have no aptitude or skills (Page 10 of proceedings on 25.03.2005).

The applicant by his letter dated 23.04.2002 (P6) protested against his transfer to the Commissioner of Labour wherein he states:-

“By transferring me as Premises Manager to Harrison Chemicals (Pvt) Ltd., a fundamental term of my contract has been breached.....”

Although, the applicant had not suffered a salary loss as a result of his transfer from Colombo to Ja-ela, his monthly Petrol requirement was not increased despite several letters written by the applicant to the Director/ General Manager (P7 to P10)

There is no evidence to show that the transfer of the Applicant to Harrison Chemicals (Pvt) Limited was in the interest of the Respondent Company.

8(a) *Is Harrison Chemicals (Pvt) Ltd. a Company within the Maharaja Group of Companies*

Clause 5 of the letter of Appointment 29.03.1993 issued to the applicant (A1) states as follows:-

“The Employer reserves the right to transfer the employee from one department to another or from one company to another within the Maharaja Group of Companies”

Mr. M. W. Gunatilaka, Director Personnel and Administration of Maharaja Organization giving evidence for the Respondent Company (The Employer) produced 3 documents marked R1, R2 and R3 (*i.e.* From 48) relating to the Maharaja Organisation, Ltd. Concluding his evidence in chief, Mr. Gunathilaka state that Harrison Chemicals (Pvt) Ltd. and Vintage Vehicles (Pvt) Ltd; are companies within the Maharaja Group of Companies.

In the written submissions submitted to me by the learned counsel for the Applicant, my attention was drawn to the Judgment the Court of Appeal Application No. 1684/2003 filed by the applicant to quash the decision of the Arbitrator Mr. Asoka Serasinghe.

At page 9 of the said order of the Court of Appeal (R17) Justice Saleen Marsoop J. (P/CA) states as follows:-

“The Petitioner has also produced a copy of the letter dated 5th March, 2002 (P5) sent to him by the 1st Respondent purported to transfer him to Harrisons Chemicals (Pvt) Ltd., as Premises Manager with effect from 11th March 2002, as well as a copy of the statement dated 31st March, 2003 (P9) filed by the 1st Respondent before the arbitrator in both of which documents may express statement that Harrisons Chemicals (Pvt) Ltd. *is a member of the Maharaja Group of Companies is conspicuous by its absence*”. I am under a duty to take judicial notice of this observation in making this award.

The Respondent should have marked more important documents to convince me that Harrison Chemicals (Pvt) Ltd., is a company within the Maharaja Group of Companies.

Having considered the evidence, oral and documentary filed in these proceedings as well as the written submissions filed by the parties, I hold view that-

- I. The change of designated post of the applicant as premises Manager of Harrison Chemicals (Pvt) Ltd., in transferring him to the said Harrison Chemicals (Pvt) Ltd., is contrary to the conditions of his letter of appointment A1 and;
- II. The company Harrison Chemicals (Pvt) Ltd., to which the applicant was transferred as Manager Premises is not a company within the Maharaja Group of Companies.

Compensation

According to the letter of appointment the applicant has to retire at the age of 55 years, and he reaches his date of retirement on 12.09.2009. His date of transfer to Harrison Chemicals (Pvt), Ltd. is 11.03.2002. I therefore hold that he is entitled to claim remuneration or compensation for a period of 7 years and 6 months (*i.e.* from 11.03.2002 to 12.09.2009)

The applicant's learned counsel has tendered a clarification on the computation of compensation attached to his written submission dated 08.02.2006.

Based on this computation, I award compensation to the applicant as follows:-

Total Remuneration for 7.5 Years from 11.03.2002 to 12.09.2009	Rs.	10,282,180.00
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Add: Employer's contribution To E. P. F. and E.T.F. at 15%	Rs.	<u>1,345,481.00</u>
		11,627,661.00

Less: Amount received from Harrisons Chemicals (Pvt) Ltd.	<u>1,706,775.00</u>
	9,920,886.00

I am not allowing Rs. 600,000 mentioned as sundries as its computation is not shown.

I therefore order the Respondent Company, “The Maharaja Organisation Limited to pay Rs. 9,920,886.00 to the applicant Mr. V. Sukumaran within two months of the publication of this award in the *Gazette* of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and reasonable.

T. PIYASOMA,
Arbitrator.

06th June, 2006.
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