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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1444/5 - 2006 මැයි 08 වැනි සඳුදා - 2006.05.08
No. 1444/5 - MONDAY, MAY 08, 2006

(published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/co/99/1997.

and

THE INDUSTRIAL DISPUTE ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. E. D. J. Donald Premathilaka, Madilla, Gonawala, Ginigathhena of the one part and Ceylon Electricity Board, P. O. Box 540, Sir Chittampalam A Gardiner Mawatha, Colombo 2, of the other part was referred by order dated 10.03.2005 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.
10th April, 2006.

Your Ref. No. T23/CO/99/97.

Case No. A 3098

In the matter of an Industrial Dispute

between

Mr. E. D. J. Donald Prematillaka
Madilla,
Gonawala,
Ginigathhena.

Ceylon Electricity Board,
P. O. Box 540,
Sir Chittampalam A Gardiner Mawatha,
Colombo 02.

THE AWARD

The Honourable Minister of Labour by virtue of powers vested in him by Section 4 (1) of the Industrial Dispute Act, Chapter (3) of the Legislative Enactments of Ceylon (Revised Edition 1956) as amended by Acts, Nos. 14 and 62 of 1957, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 dated 2004 and referred following dispute to me for settlement by Arbitration by the order dated 10th March, 2005.

“Whether the non re-instatement in Service of Mr. B. D. J. Donald Prematillaka was dismissed from service with effect from 08.05.1985 by Ceylon Electricity Board is justified, if not what relief he is entitled”.

This matter in dispute was earlier referred to Mr. W. T. S. Fernando, by Former Hon. Ministry by his order dated 26th February, 1998 for Arbitration. The case was heard under reference A 2666 till his sudden demise. At the time of his death in latter part of 2004 inquiry was concluded and both parties filed Written submissions and Order was due.

Once inquiry recommenced under new reference both parties filed their Statements. The position of the party of the 1st part was since the inquiry had been concluded before previous Arbitrator and Written Submission was filed by the both parties, the order should be given of these findings. The party of the 1st Part further stated since the previous inquiry has taken almost 7 years, a grave injustice would be done to him in the event inquiry recommended.

The Respondent (the party of the second part) stated that since Minister by his Order T 23/CO/99/97 dated 10th March, 2005 has cancelled the previous Order for Arbitration, a fresh inquiry should be held.

It was decided that Minister appointing an another Arbitrator afresh does not amount to cancellation of case proceeding held before previous Arbitrator for a period of 7 years. It was further decided such an act is of administrative nature for the Minister to reconstitute the Industrial Court by appointing a new Arbitrator.

In the above circumstances it is decided to act upon the evidence and submissions made by the parties before the former Arbitrator and to make the order accordingly.

When inquiry commenced on 24.10.2000 Ms. A. K. L. Perera Personal Officer of the Ceylon Electricity Board in her evidence stated as follows :

The applicant commenced his employment as a Labourer - Grade V on 01.11.1973 in the Respondent Corporation subject to 3 years probation period. He was given a charge sheet dated 02.11.1974. Subsequently an amended charge sheet was served on the applicant on 17.11.1980 (marked **Wa/2**) along with two others namely K. P. Wilson, P. B. P. Piyadasa with regard to stealing copper pipes. The witness further stated that the reason to amend the charge sheet after 6 years that there was a case pending in the Magistrate Court, Hatton in this respect. She further stated in her evidence that the applicant Donald Prematilleka was only a witness in the above case and K. P. Wilson was after discharged. The said case was concluded on 25th June, 1980. A charge sheet was served on the applicant and domestic inquiry against him and 20 others commenced on 09th June, 1982.

The disciplinary inquiry report was marked **Wa (5)**. According to the said report the applicant was found guilty of charge 1 and 3 also the Charge (2) (Partly).

As per the letter marked **Wa (6)**, the applicant's service was terminated on 08.05.1985.

At the cross examination on 26.02.2002 Ms. Leela Perera, Human Resource Officer of the Respondent Board when questioned with regard to the case in the Magistrate Court Hatton and the Charge Sheet against the Applicant stated as follows :

පිටු අංක 5 26.02.2002 සාක්ෂි -

ප්‍ර - එම නඩු වාර්තාවේ වරද පිළිබඳව විස්තරයක් කිවෙන්නවා නේද ?

උ - ඔව්.

ප්‍ර - එහි කිවෙන්නේ 1973.03.12 වෙනි දින භාරදුන් පයිස්ප කියල නේද ?

උ - ඔව්.

ප්‍ර - ඒකෙම ප්‍රේමතිලක මහතාට දුන් චෝදනා පත්‍රයේ කිවෙන්නේ ව/047 1973.02.11 වෙනි දින කියල නේද ?

උ - ඔව්.

පිටු අංක 6 - 26.02.2002 -

ප්‍ර - මෙම ලිපිය අනුව 1973.03.12 වෙනි දින භාරදුන් තම පයිස්ප කපා කිවෙන්නේ 1973.02.11 දින නේද ?

උ - ඔව්.

This evidence shows that there has been a contradiction in evidence lead against the applicant in the disciplinary inquiry when compared with the evidence transpired in Hatton Magistrate Court inquiry with regard to the same incident.

It was stated in the evidence when Hatton Magistrate discharged the Defendants of the aforesaid case, the Respondent Electricity Board conducted a disciplinary inquiry against the Defendants as well as the witnesses of the said case. The applicant was a witnesses of the said case.

Page 8 of evidence dated 17.09.2002 -

ප්‍ර - මහේස්ත්‍රාත් අධිකරණයේ තීන්දුවෙන් වූදිනයිත් නිදහස් වූ පසු ඔහු හා සාක්ෂිකරුවන් වූදිනයිත් කොට ගෘහස්ථ පරීක්ෂණයක් පැවැත්වුවා ද ?

උ - ගෘහස්ථ පරීක්ෂණයක් පැවැත්වුවා.

Mrs. A. K. L. Perera, Human Resource Officer of the Respondent Board in her evidence dated 17.09.2002 (Page 10 and 11) stated as follows :

ප්‍ර - එම අභියාචනයට මේ ඉල්ලුම්කරුට විදුලිබල මණ්ඩලය විසින් දුන් පිළිතුර කුමක් ද ?

උ - ඔබ විසින් ලංවීම අභියාචනා මණ්ඩලය වෙත ඉදිරිපත් කර ඇති අභියාචනය සම්බන්ධයෙන් එකී කම්කරු විනිශ්චය සභා නඩුවේ නීත්‍රානුකූලව බලාපොරොත්තු විය යුතුය. අභියාචනයේ ප්‍රතිඵල තවම නොලැබීම 1997.07.07 දිනැති ලිපිය හා සැසඳේ ලංවීමට විරුද්ධව කේ. පී. විල්සන් මහතා විසින් අවිස්සාවේලේ කම්කරු විනිශ්චය සභාවේ පවරා තිබූ අංක 19 ඒච් 5181/86 දරණ නඩුව නීත්‍රානුකූලව විරුද්ධව අභියාචනාධිකරණය වෙත අභියාචනයක් ඉදිරිපත් කර ඇති බැවින් ඒ නීත්‍රානුකූලව බලාපොරොත්තු ඇති බව දන්වමි. යම් සේවකයෙක් විදුලි බල මණ්ඩලයේ අභියාචනා මණ්ඩලය වෙත අභියාචනයක් ඉදිරිපත් කළ විට ඔහු විසින් ඒ සම්බන්ධයෙන් කම්කරු විනිශ්චය සභාවට ඉල්ලුම්පත්‍රයක් ඉදිරිපත් කර ඇත්නම් එහි නීත්‍රානුකූලව ලැබෙන තෙක් අභියාචනා මණ්ඩලය විසින් සලකා බලනු ලැබේ.

When an employee of the Electricity Board has forwarded an appeal to the appeal Board of the CEB and at the same time if he has made an application to the Labour Tribunal in respect of the same matter, the appeal will not be considered till order delivered by the Labour Tribunal.

The applicant was informed since the Respondent Board was expecting the Order of the Appeal filed against the order made in favour of K. P. Wilson by the Labour Tribunal Avissawella that his appeal made to the appeal Board cannot be considered.

The Respondent's Appeal against the order made in favour of K. P. Wilson was rejected by the High Court of Avissawella. Thereafter the Appellate Board of the Respondent Board decided to pay a sum of Rs. 26,040 by a cheque to the applicant being two years salary. The said cheque was returned by the applicant to the Respondent Board since the sum was not adequate.

In her evidence dated 22.10.2002 Mrs. A. K. L. Perera stated as follows:

In page 11 witness answering to the Court.

ප්‍ර - වූදින විල්සන් සමග එකට හිටි අය නේද පියදාස හා ඩොනල්ඩ් ප්‍රේමතිලක යන අය

උ - එක කාන්තියේ සිටියා.

ප්‍ර - ඩොනල්ඩ් ප්‍රේමතිලකට විරුද්ධව අධිකරණයෙන් නඩුවක් පැවැරුවේ ඇයි ?

උ - පොලීසියෙන් නඩු පවරා තිබුනේ විල්සන්ට විරුද්ධවයි.

ප්‍ර - එකම චෝදනාව තුන් දෙනාම එකට එක්කා සූ වි කල නමුත් නඩුව මෙම තුන්දෙනාටම විරුද්ධව පවරනවා වෙනුවට මේ ඉල්ලුම්කරු සාක්ෂි කරුවෙක් කරල තේ ද ?

වූදිනයෙක් රජයේ සාක්ෂි කරුවෙක් කරන්නේ ඔහුට සමාව දීල තිසා නේ ද ?

උ - උත්තරයක් නැත.

This evidence shows that the Respondent Board has acted malafide against the applicant. Firstly the applicant was a witness in the Magistrate Court Case and after conclusion of the said case he was given a charge sheet for aiding and abetting K. P. Wilson who was acquitted and discharged by the Magistrate Court. The applicant was found guilty after a domestic inquiry.

The applicant in his evidence dated 01.03.2004 stated as follows:

The Applicant stated in his evidence, the Respondent Board by its letter dated 1st April 1992 (marked E8) informed him that his plea for reinstatement would be considered only after decision of the Appeal filed by the Respondent Board against the Order of the Labour Tribunal, Avissawella delivered in favour of K. P. Wilson. Once the High Court rejected the appeal and confirmed the order of the Labour Tribunal in favour of K. P. Wilson, the applicant stated the Respondent Board paid him a sum of Rs. 26,040 as compensation. He further stated after 13 years of his termination (on 08.05.1985) of service he was paid a sum of Rs. 26,040 which was not adequate and therefore he returned the said cheque to Respondent Board.

The applicant rejected aforesaid compensation as he was expecting re-instatement with back wages. He stated in his evidence the reason for his termination was the case against K. P. Wilson. He further stated in the Magistrate Court case he was a witness and he lead evidence on behalf of the Respondent Board. At the end of the inquiry K. P. Wilson was acquitted and discharged. Whereas the applicant was served with a charge sheet and his services was terminated. The applicant further said from the replies he received from the Respondent Board for his queries that he trusted that justice being done to him.

The Respondent submitted that the appeal Board of the Electricity Board has been very reasonable in granting 2 years salary to the applicant as compensation.

The Respondent further submitted that the Applicant cannot have legitimate expectations to have relief granted in a distinct and separate legal proceedings where he was not a party.

Further the Respondent made preliminary objection that the arbitrator lacks jurisdiction to hear and determine this purported dispute between the parties as the reference of the purported dispute by the Minister is ex facie bad in law.

It was transpired from the evidence the applicant was informed by the Respondent Board to wait for the judgment of the Appeal against K. P. Wilson for them to consider applicant's appeal for the reinstatement. It was clear for such an act of Respondent made applicant to have reasonable expectation for justice being done to him par with the judgment made in favour of K. P. Wilson.

Since the Minister under Section 4(1), irrespective of the consent of the parties has power to refer an industrial dispute to an arbitrator, therefore he has quite correctly exercised his powers referring this dispute for arbitration. In the circumstances I reject the preliminary objection raised by the Respondent.

The duty of the arbitrator is to make all inquiries the arbitrator considers necessary and has to make an order that is just and equitable. In doing so the arbitrator cannot be restricted by academic questions of law arriving at a just and equitable order. I quote from page 17 of law of Industrial Adjudication by W. E. M. Abeysekera. "In dealing with industrial disputes, tribunals cannot be unduly influenced by academic question of law and should make and attempt to deal with the merits of each case according to facts and circumstances (1958) 2 LLJ 160.

After careful consideration of the evidence and submissions made by the parties I am under opinion that the termination and non reinstatement of the applicant is not just and equitable.

Therefore, I make award as follows :-

1. The Respondent shall re-instate the applicant from 8th May 1985 and place him on a salary scale applicable on that time. The applicant also entitle to back wages for the period of non employment from 8th May 1985 on the regularized salary, arrears of wages if any for the period of his termination with any increments due to him.
2. If the Respondent is unable to re-instate the applicant the applicant shall be paid 15 years salary as compensation as computed on salary he drew at the time of his termination.
3. The Applicant shall be paid back wages for the period of non-employment on the regularized salary and his arrears for the period of his termination of service from 08th May 1985.

I declare that this Award is just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

On this 23rd February, 2006.

05-326