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The Gazette of the Democratic Socialist Republic of Sri Lanka EXTRAORDINARY

අංක 1471/3 - 2006 නොවැම්බර් 13 වැනි සඳුදා - 2006.11.13
No. 1471/3 - MONDAY, NOVEMBER 13, 2006

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T 7/26/2003.

Ref. No.: T7/26/2003.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

In the matter of an Industrial Dispute

between

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Ceylon Plantation Workers Union, No. 22, Station Road, Badulla of the one part and Uva Development Bank Head Office, No. 45/5, Kumarasinghe Mawatha, Badulla of the other part was referred by order dated 22nd September, 2004 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 Extraordinary* No. 1361/3 of dated 04.10.2004 settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

Ceylon Plantation Workers Union,
No. 22, Station Road,
Badulla.

Vs

Uva Development Bank,
Head Office, No. 45/5,
Kumarasinghe Mawatha,
Badulla'

D. S. EDIRISINGHE,
Commissioner General of Labour.

Case No.
A 3065

Award

Department of Labour,
Labour Secretariat,
Colombo 05,
13th October, 2006.

The Honourable, Minister of Labour Relations and Foreign Employment 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, No. 14 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 and referred the aforesaid dispute to me for settlement by Arbitration.

2. The matters in dispute between the aforesaid parties is whether the termination of the services with effect from 29.06.2000 of the following employees, who were employed as typists by the Uva Development Bank, is justified and if not, to what relief each of them is entitled.

1. R. M. Priyangani Gunaratne,
2. K. W. Chanrakanthi,
3. W. A. Nirmala Anoja Kumari,
4. A. M. Priyanga Kumuduni Attanayake.

This matter was taken up for inquiry. Both parties were present. Mr. Shanmugam with Mr. Palanimuthu represented the Applicant Union while Mr. Jayantha Perera Attorney-at-law appeared for the Respondent Bank.

Applicant Attanayake gave evidence. The representative for the Applicant Union did not call the other Applicants in evidence as the circumstances of the alleged termination are the same.

I have examined the oral and documentary evidence in this case. The evidence of Attanayake shows that she learnt short-hand and typing at the Technical College Badulla. Certificate to this effect was produced in evidence A1. On an application made by her, she was chosen as a typist in the Respondent Bank. A2 letter of appointment was marked in evidence. She was paid Rs. 100 for the days she worked. The appointment was for six month. She worked in Mahiyangana Branch. She was transferred to Passara Branch by document A3 dated 23.03.98. She was trained for 6 months. Her period of training was extended for another 6 months by document A4. Her position in evidence was that she had no lapses during her period of training but she was not made permanent. Her period of training was extended again by Documents A5 to A7. By A8 her payment per day was increased to Rs. 150. By A9 she was transferred to Welimada Branch. A10 sets out her list of duties. Her service along with the other applicants was not extended after 29.06.2000. The services of the applicants were terminated on 29.06.2000. Applicant produced further documents A11 to A15 to show that other employees in the same position got the relief of permanency in the Respondent Bank.

The Cross Examination in evidence of the Applicant shows that by A2 she was appointed as trainee typist in the bank for a period of six months. At her request, the period of training was extended. She was shown document R5 and she admitted that she was informed that the Bank is not responsible to make her permanent and that her period of training could be terminated by giving her notice of 14 days. She admitted in evidence that she was aware that she was taken as a trainee. Her evidence shows that every six months, she requested for extension of her period of training for six months. Her evidence shows that she was not given a permanent or casual appointment by the bank.

Taking into consideration the evidence of the applicant, she was given a letter to the effect that she was taken by the Respondent Bank as a trainee. No letter of Appointment was given by the Bank to the Applicant on a permanent, temporary or causal basis. There is no documentary evidence to support the position that the applicant was appointed as a permanent, temporary or causal workman in the Respondent Bank.

Witness, Gunasinghe for the Respondent Bank giving evidence stated that he was Manager Administration and Training in the Respondent Bank. He was referred to Document A2 and stated that the Applicant was selected for training as a typist in the Bank. He referred to Documents R10 to R16 and stated that the Applicant was a trainee typist for a period of six months and the said period of training was extended every six months at the request of the Applicant. The Applicant was not appointed to a permanent post in the cadre of the Respondent Bank. His evidence shows that all four applicants were taken as trainees on five occasions.

His Cross-Examination in evidence shows that the applicants were trained in all types of work in the Bank. He maintained the position that the Applicants were trainees in the Respondent Bank. He was shown Labour Tribunal Orders A14 in respect of Applicants Harishchandra Bandara and Nandani. Witness stated that the cases were settled and the applicants were taken back to the Bank according to the permanent vacancies that existed. His position in evidence is that the Applicants were not paid salaries. They were paid allowances.

Taking such consideration the evidence of the witness for the Respondent Bank, the Applicants were taken to the bank as trainees and they were paid allowances and not salaries.

I have examined the oral and documentary evidence submitted by the parties and I am of the view that the Applicants were trainees in the Respondent Bank. They were not casual, temporary or permanent employees in the cadre of the Respondent Bank.

Applicant Attanayake, who gave evidence for the applicants admitted in evidence that she was appointed a trainee in the Respondent Bank and that she was not appointed a permanent employee in the Bank. The other Applicants too, were trainees in the Respondent Bank.

I have given my consideration to the Labour Tribunal order made in respect of the Applicants Harischandra Bandara and Nandani which was produced in evidence in this case. On the evidence, I hold that the Applicants settled their cases in the Labour Tribunal and both parties agreed that these Applicants will be offered work permanently according to the vacancies in the cadre of the Respondent Bank. The Principle laid down in the settlement orders cannot be applied to the particular facts and circumstances, in the case before me. I say this for the reason that the said cases referred to by me are settlement orders. On the evidence both, oral and documentary, in the case before me, I hold that the Applicants were trainees in the Respondent Bank and cannot be

re-instated as casual, temporary or permanent employees in the cadre of the Respondent Bank.

On the evidence, I hold that the Respondent Bank has the discretion to take these trainee applicants as permanent employees, as and when vacancies arise in the cadre of the Respondent Bank. I say this for the reason that the evidence clearly points to the fact that these Applicants were only trainees in the Respondent Bank.

On the evidence as a whole, and on the balance of evidence and the preponderance of probabilities. I hold that the Applicants can claim no relief.

As such, I hold it just and equitable to make my award accordingly.

K. R. M. N. LAWRENTZ,
Arbitrator.

22nd September, 2006.

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