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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 1,466/27 - 2006 ඔක්තෝබර් 13 වැනි සිකුරාදා - 2006.10.13
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PART I : SECTION (I) — GENERAL

Government Notifications

T 23/CO/219/2001.

Ref. No.: T 23/Co/219/2001.

In the matter of an Industrial Dispute

THE INDUSTRIAL DISPUTES ACT

BETWEEN

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Miss. A. A. S. Livera, Mrs. P. C. K. Pathiratne and Mrs. R. A. D. L. Ranaginshe who are employed at Sri Jayawardhanapura General Hospital as Electro Cardiograph Recordists on contact basis of the one part and Sri Jayawardhanapura General Hospital Board, Sri Jayawardhanapura General Hospital, Talapathitiya, Nugegoda, of the other part was referred by order dated 18.03.2002 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. 1230/11 of 02.04.2002 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

Miss. A. A. S. Livera, Mrs. P. C. K. Pathiratne and Mrs. R. A. D. L. Ranaginshe who are employed at Sri Jayawardhanapura General Hospital as Electro Cardiograph Recordists on contact basis of the one part.

Case No.Applicants.
A 2916

AND

Sri Jayawardhanapura General Hospital Board, Sri Jayawardhanapura General Hospital, Talapathitiya, Nugegoda.

D. SOMAWEERA EDIRISINGHE,
Commissioner General of Labour.

.....Respondent.

AWARD

Department of Labour,
Labour Secretariat,
Colombo 05,
30th September, 2006.

The Hon. Mahinda Samarasinghe, 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, 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 above mentioned dispute to me for settlement by arbitration.

- (2) The matter in dispute between the aforesaid parties is whether they not granting of permanency in service by Sri Jayawardhanapura General Hospital Board to Miss. A. A. S. Livera, Mrs. P. C. K. Pathiratne, and Mrs. R. A. D. L. Ranasinghe who are employed as Electro Cardiograph Recordists at the Sri Jayawardhanapura General Hospital is justified and to what relief each of them is entitled.
- (3) At the inquiry which commenced on 30.08.2002 Mr. Suren Peiris, Attorney-at-Law with Mrs. Puspika Rajapaksa appeared for the applicants, and Mr. Ranjan Mendis, Attorney-at-Law with Mr. Buddika Ketawalakumbura Attorney-at-Law appeared for the Respondent Hospital.
- (4) The settlement of the employees made under Regulations 21(1) enumerates events relating to this dispute as follows :-
 - (i) Miss. A. A. S. Livera, a B.Sc. Graduate from the Kelaniya University joined the Respondent Hospital (hereafter referred to as the Hospital) on 13.01.1997 and continued to work in the post of Electro Cardiograph Recordist.
 - (ii) Mrs. P. C. K. Pathiratne, with GCE (A/L) and other qualification has been in continuous service since 24.07.1999.
 - (iii) Mrs. R. A. D. L. Ranasinghe, with GCE (A/L) and other qualification has been in continuous service since 08.09.1999.
 - (iv) The duties allocated to the said employees are the same and correspond to the duties allocated to the permanent employees and at times they had to do night duties when the entire responsibility of the Electro Cardiograph Department fell on them.
 - (v) The Respondent Hospital failed to make them permanent despite the provision of the Circular No. 27/2001 dated 29.01.2001 issued by the Ministry of Public Administration.
 - (vi) The Hospital had cadre vacancies for the post of ECG Recordist although they continued to be employed on a contractual basis, on the fixed monthly salary of Rs. 6,000 per month.

- (5) The Respondent Hospital on being asked to lead evidence first, called three witnesses, namely Sarath Robertson (Administraive Assistant), Upali Gunasekara (Administraive Officer) and Dr. Neomalee Amarasena (Consultant Cardiologist).
- (6) Sarath Robertson in his evidence accepted the fact that these three employees although employed on contract basis had continuity of service although they did not have the certificate of competence issued by the Health Department.
- (7) Sarath Robertson accepted the fact that the three employees - namely Ms. Chandrika Damayanthi (1987) Ms. Samadara (1997) and Ms. Samanmalee (1997) did not posses the certificate of competence from the Health Co Department were granted permanency.
- (8) Miss. D. K. S. Perera - *vide* letter of appintment (A 79) recruited with lesser qualifications as a ECG Recordist was made permanent by letter marked A 80 on a salary scale Rs. 43914-17x1482—Rs. 69708 p.a. without a certificate of competence issued by the Health Department. After recruitment and after working as ECG Recordists for several years, the applicants Ms. Livera, Pathiratna and Ranasinghe have been treated in a different manner than several other ECG Recordists. It was evident that even some clerks recruited as ECG Recordists were, sent on training while the three applicants were deprived of any form of training by the Hospital Authorities. This is unjust and unreasonable.
- (9) Miss Livera having completed over 5 years in 2002, remained unmarried expecting permanency in her appointment Mrs. Pathiratna and Mrs. Ranasinghe are married and having children. At that middle age it is no easy for women with children to find permanent employment else where.
- (10) The employees wrote to the Commissioner of Labour explaining their plight when the Actg. Commissioner of Labour (Industrial Relations) having heard the employees wrote a letter marked A13 dated 21.12.2001 to the respondent Hospital. Commissioner of Labour after submissions tendered by both parties at the inquiry held by him gave a ruling that the failure on the part of the Respondent Hospital not granting permanency to the three employees was illegal and untenable.

(11) During the tendency of the arbitration proceedings the Respondent Hospital tries to terminate the services of three employees, but at the last moment on an order issued by me as arbitrator they were restored to their post on the same contractual basis.

Evidence of Dr. Neomalee Amarasena - Consultant Cardiologist.

Dr. Mrs. Neomalee Amarasena was shown letter marked A97 which she had written to the Director Sri Jayawardhanapura Hospital dated 24.01.2002. In A97 the witness accepted that she was present when trade tests were conducted regarding the 3 employees - Under cross examination she stated as follows :

ප්‍ර : තමාගේ 97 ලිපියේ 02 ඡේදයේ සඳහන් ආකාරයට ශ්‍රී ජයවර්ධනපුර රෝහලේ ඊ.සී.ඒ. ශිල්පීන් අඩුවක් තිබුණ කාල පරිච්ඡේදයකදී නිසි පුහුණුවීම් සහතිකයක් නැති අය ඊ.සී.ඒ. ශිල්පීන් වශයෙන් තාවකාලිකව බඳවා ගෙන තිබෙනවා නේද ?

උ : එම සහතිකය නොතිබුණාට වෙනත් සහතික තිබුණා.

ප්‍ර : ඒ අවස්ථාවේදී තිබුණ යම්කිසි සහතිකයක් ගැන සැහිමකට පත්වෙලා නේද ඒ අය බඳවා ගත්තේ ?

උ : ඒ අවස්ථාවේ හැටියට සැහිමකට පත් වුණා.

ප්‍ර : මෙම 3න් දෙනා ඊ. සී. ඒ. ශිල්පීන් වශයෙන් බඳවා ගන්නා අවස්ථාවේදී එම සහතිකය පිළිබඳව සැහිමට පත් වී, ඊ.සී.ඒ. යන්ත්‍රය ක්‍රියාත්මක කිරීම සම්බන්ධයෙන් නිපුණත්වයක් තියෙනවද බලන්න පරීක්ෂණයක් පැවැත්වුවා නේද ?

උ : ඔව්.

ප්‍ර : A97 ලිපිය අනුව ඊ.සී.ඒ. යන්ත්‍රය ක්‍රියාත්මක කිරීම සම්බන්ධයෙන් නිපුණත්වයක් තියෙනවද බලන්න පරීක්ෂණයක් පැවැත්වුවා නේද ?

උ : ඔව්.

ප්‍ර : 97 ලිපිය අනුව ඊ.සී.ඒ. යන්ත්‍රය ක්‍රියාත්මක කිරීමේ නිපුණත්වය බැලීමේ පරීක්ෂණ මණ්ඩලයේ තමන් සිටියා නේද ?

උ : ඔව්.

ප්‍ර : ඒ අනුව මම තමාට යෝජනා කරනවා මෙම නඩුවේ එක් ඉල්ලුම්කාරිණියක් වන ලිවේරා තාවකාලික පදනම මත රෝහලේ සේවයට ඊ.සී.ඒ. ශිල්පීණියක් වශයෙන් බඳවා ගත් බව ?

උ : වෙනත් පුළුවන්.

ප්‍ර : මම තමාට යෝජනා කරනවා තමන් කියන හැටියට යම්කිසි සහතිකයක් මගින් බඳවා ගත් මේ 03න් දෙනාගේ සේවය නතර නොකර දිගටම සේවයේ යොදවා ඇති බව ?

උ : ඔව්.

(12) The three applicants in this arbitration who were working in the hospital for a considerable time were never afforded opportunities for training when such facilities were provided for others. There was no complaint regarding their performance over the years.

(13) Dr. Mrs. Amarasena further stated in her evidence that the applicants Miss. Livera, Mrs. Pathiratna and Mr. Ranasinghe had obtained higher marks than others who faced the test.

(14) The salary slips which were given to the applicants monthly shown their continuity of service. They have contributed to the E.P.F. under the same number throughout.

(15) Mr. Uapli Gunasekara, Administrative Officer of the Respondent Hospital, giving evidence before me stated that Miss. A. A. S. Livera by her letter 26.10.2004 his informed the Respondent Hospital that she will not be reporting for work at the hospital. This letter has been received by the Hospital on 01.11.2004. The Director of the Hospital by X5 had accepted her resignation with effect from 26th October, 2004.

(16) On 03.03.2005 Miss Livera who was present in Court stated that she will continue to be a party in these proceedings as her name appears as one of the applicants in this case she has a right to be a party, until it conclusion.

(17) From the oral and documentary evidence led and the written submissions tendered by the following points emerged :-

(i) Miss A. A. S. Livera has performed the duties of the E.C.G. Recordist from 13.01.1997 to 26.10.2004, the date of her resignation.

Mrs. P. C. K. Pathiratna is still in service as an E.C.G Recordist having started to work on 24.07.1999.

Mrs. R. A. D. L. Ranasinghe is still in service as an E.C.G. Recordist from 08.09.1999 onwards.

(ii) Although they were employed on a contractual basis their continuity of service is factually correct and uncontested.

(iii) The three employees obtained higher marks at the E.C.G. Machine test as well as at the interview.

(iv) There were no complaints on their performance over the years.

(v) The Respondent Hospital made no attempt to re-lease them for training to obtain certificate of competence issued by the Health Department.

(vi) E.C.G. Recordist D. K. Kanthi Samanmalee Perera was made permanent 20.08.1998 (*vide* A 85) when she had no certificate issued by the Health Department. The Respondent had not contested this position.

(vii) Respondent paid no attention to the letter dated 21.12.2001 sent by the Commissioner General of Labour (*vide* A13).

(18) Commencing on the silence of the employees the written submission of the Respondent Hospital states "How would this service be evaluated by any court of law ? To begin with, it shows that they have admitted the impeachment that they do not have the necessary minimum qualification to be recruited for this functions". This statement does not hold good for our labour practices which take into consideration justice equity and reasonableness in dealing with labour disputes.

(19) I therefore, hold that the not granting of permanency by Sri Jayawardhanapura General Hospital Board to Miss. A. A. S. Livera, Mrs. P. C. K. Pathiratne, and Mrs. R. A. D. L. Ranasinghe who are employed as Electro Cardiograph Recordsists at the Sri Jayawardenapura General Hospital is not justified and order relief as follows :

Mrs. Pathirana and Mrs. R. A. D. L. Ranainghe should be made permanent from their respective dates of recruitment, and they should be paid arrears of salaries and allowances together with annual increments which they would have earned if they were made permanent. The Hospital should make a correct calculation from records and information in its custody.

Miss. A. A. S. Livera

Miss Livera left employment with effect from 26.10.2004 and informed in open court on 03.03.2005 that she would remain as an applicant in this case.

It is uncontroverted fact that if the matter in dispute occurred while the workman was on duty, then the workman is entitled to relief even if she had left his service.

I therefore, order that Miss. A. A. S. Livera be paid her salaries and allowances from the date of her recruitment to the hospital as an E.C.G. Recordist that is from 13.01.1997 until 26.10.2004, the date of her voluntary retirement. She also should be paid her annual increments on the permanent basis from 13.01.1997 up to 26.10.2004. The Hospital should make a correct calculation with the records and information in its custody.

The Respondent Sri Jayawardhanapura General Hospital Board is directed to make these payments to the three employees within one months of the publication of this award in the *Gazette* of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and equitable.

T. PIYASOMA,
Arbitrator.

Date at Colombo,
on this 14th day of September, 2006.

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