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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 1461/6 – TUESDAY, SEPTEMBER 05, 2006

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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : CI/1571/99.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between United Tea Rubber and Local Produce Workers' Union, No. 513- 2/1, Elvitigala Mawatha, Colombo 05 of the one part and Finlay properties (Pvt.) Ltd., Finlay House, P. O. Box. 211, Colombo 02 and James Finlay and Co., (Colombo) Ltd., 186, Vauxhall Street, Colombo 02 of the other part was referred by order dated 10.10.2001 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette* of Democratic Socialist Republic of Sri Lanka Extraordinary No. 1207/05 of dated 22.10.2001 settlement by arbitration 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.
2006.

In the matter of an Industrial Dispute

between

United Tea Rubber and Local Produce
Workers' Union,

No. 513- 2/1,
Elvitigala Mawatha,
Colombo,
of the one part

and

1. Finlay properties (Pvt.) Ltd.,
Finlay House,
P. O. Box. 211,
Colombo 02.

and

2. James Finlay and Co., (Colombo) Ltd.,
186, Vauxhall Street,
Colombo 02
of the other part

Case No. A 2887

AWARD

The Honourable, Minister of Employment and Labour, by virtue of the powers vested in him by Section 14 (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 by his Order dated 10.10.2001 and referred the dispute between the aforesaid parties to me for settlement by Arbitration.

(2) The matter in dispute between the aforesaid parties are :

“Whether the demand of the United Tea Rubber and Local Produce Workers’ Union that their members at Finlay Properties (Private) Limited be paid the Non-recurring Cost of Living Gratuity in view of the fact that they work at the Welisara Complex in the same premises and under the same roof as workers of James Finlay and Co. (Colombo) Limited who enjoy the non-Recurring Cost of Living Gratuity, is justified and to what relief the employees of Finaly Properties (Private) Limited are entitled.

Appearances : Mr. W. D. D. de Alwis Attorney-at-Law from Employers’ Federation of Ceylon appeared for the Respondent Companies.

Mr. D. W. Subasinghe General Secretary of the Union appeared for the Union.

3. Mrs. Gayanthika Harshinie Pathirannehe Group Human Resource Development Manager Finlay Properties (Private) Ltd., gave here evidence-in-chief by way of an affidavit on behalf of the Respondents. She was cross-examined by the Union. Written submissions have been tendered on behalf of Finlay Properties (Private) Ltd, along with marked documents R1 to R6. The Union led the evidence of Vipul Senevrtne of Finlay Properties (Private) Ltd. amd D. M. Dekshana President of the Branch Union of James Finlay and Co., (Colombo) Ltd., Written Submissions were tendered by the Union along with documents A1 to A10.

4. Facts in Brief.

It is common ground that—

- (i) Finlay Properties (Private) Ltd, is a subsidiary of James Finlay and Co., (Colombo) Ltd.,
- (ii) Finlay Properties (Private) Ltd is a very old Company engaged in Tea Trade and Finlay Properties (Private) Ltd, was incorporated in 1993 situated as Welisara.
- (iii) Employees of both Companies operating at Welisara are working in the same premises and under the same roof and doing same work.
- (iv) Employees of James Finlay and Co., (Colombo) Ltd are paid the non-recurring Cost of Living Gratuity in accordance with the Collective Agreement.
- (v) Employees of Finlay Properties (Private) Ltd.

are not paid Non-recurring Cost of Living gratuity as they are not covered by the Collective Agreement.

5. The position of the Union.

In the statement under Regulation 21(I) of the Industrial Disputes Regulations 1958 the Union has stated inter alia that -

- (i) Its members at James Finlay and Co., (Colombo) Ltd. have been covered by Collective Agreement and are entitled to payment of Non-recurring Cost of Living gratuity (NRCLG) under the Agreement.
- (ii) Its members working under the same roof along with its members of James Finlay and Co., (Colombo) Ltd are engaged in the work of the same nature are denied the NRCLG payment.
- (iii) This is an unfair labour practice of discrimination.
- (iv) The Commissioner of Labour after inquiry has written to Finlay Properties (Private) Ltd. to make the payment of NRCLG to its employees but the company has failed to make the payment.
- (v) The Union states that its members at Finlay Properties (Private) Ltd. should also be paid the NRCLG.

6. The position of Finlay Properties (Private) Ltd.

- (i) This company is a subsidiary of James Finlay Group engaged in Tea Trade,
- (ii) It has other subsidiary Companies which have distinct terms and conditions of employment for their employees.
- (iii) This company being engaged in Tea Trade several difficulties and uncertainties in the highly competitive environment. The Company’s competitors have a distinct advantage especially in the area of employees costs
- (iv) Employees of this company enjoy the same benefits as James Finaly Employees such as - Bonus, Leave Facilities, free Tea, Company grant for annual excursion, dinner money, batta hardship allowance, free soap, money to buy spectacles, death donation, payment of unutilized sick and causal leave, shifts allowance and medical benefits.
- (v) Payment of NRCLG tp employees of Finlay Properties (Private) Ltd does not arise for the following reasons-
 - (i) they get a higher increment than employees of James Finlay as the NRCLG consolidation factor is taken into account as a factor for increments.

(ii) the employees of Finlay Properties enjoy a higher rate of overtime than James Finlay employees.

(vi) There is therefore no justification for payment of the NRCLG to Finlay Properties employees.

7. Evidence of the Union.

Vipul Seneviratne, employee of Finlay Properties (Private) Ltd. in his evidence confirmed that the rate of calculation of overtime for them was higher than that of employees of James Finlay Co. Page 81 of the Case Record. The document marked as R4 by the Company confirms that higher rate of overtime is paid to employees of Finlay Properties (Private) Ltd. I have examined R4 and my comments on R4 are given in para 09.

D. M. Deeksaha President of Branchy Union at James Finlay and Co., (Colombo) Ltd. in his evidence confirmed what is contained in R4 regarding higher overtime rate to Employees of Finlay Properties (Private) Ltd. page 109 of the Case Record.

He also admitted that increments to employees of Finlay Properties (Private) Ltd. are more than that of the employees of James Finlay and Co., (Colombo) Ltd. Page 110 of the Case Record. He stated further that -

(i) In totality the terms and conditions of employment of James Finlay workers are superior to employees of Finlay Properties (Private) Ltd. page 121 of the Case Record.

(ii) the salary they enjoy is better and in the case of overtime it is not possible to say whether it is a permanent thing or not. Page 121 last two lines at the bottom.

8. Evidence of the witness of Finlay Properties (Private) Ltd.

The evidence of Mrs. Gayanthika Harshinie Pathiranneke was that -

(i) Employees in Finlay Properties (Private) Ltd. are paid higher overtime rates and higher increments than James Finlay employees.

(ii) Some employees of Finlay Properties (Private) Ltd. are paid productivity allowance.

(iii) It is not possible to pay NRCLG because of financial problem. Page 167 of the Case Record.

(iv) James Finlay employees get Rs. 21,000/- a year as NRCLG payment. Page 167 of the Case Record.

9. Comments on R4

I have examined R4. I find that the computation of overtime in respect of Finlay Properties (Private) Ltd. is correct according to the decisions of the Wages Board for Tea Export Trade. It cannot be taken as higher rate as claimed by the company. The computation in respect of James Finlay Co. would appear to be wrong and not in conformity with the decisions of the Wages Board for Tea Export Trade. James Finlay Co. should comply with the law in relation to computation of overtime.

10. Analysis of evidence led in arbitration proceedings

I have examined the evidence led by both parties and also read the Written Submission of both parties. What emerged is given below—

(i) A comparison of the salary of two employees for the year 2005 in Finlay Properties (Private) Ltd. who were in receipt of the productivity allowance of Rs. 200/- with the two employees of James Finlay and Co., (Colombo) Ltd. for the same period of service revealed that the salary of the Finlay Properties was Rs. 8,395/- and the salary of James Finlay and Co. was Rs. 9,913/- page 181 of the Case Record.

(ii) James Finlay employees received Rs. 21,000/- in the year 2004 as NRCLG which was not paid to employees of Finlay Properties (Private) Ltd.

(iii) Employees of Finlay Properties (Private) Ltd. are paid increments according to their letter of appointment at the discretion of the Management. Increments are not fixed for them. Page 132 of the Case Record.

(iv) The employees of James Finlay Co. are paid increments on the basis of what is given in Collective Agreement.

(v) The salary increase of employees of Finlay Properties (Private) Ltd. is given in January and hence December bonus is computed on a lesser salary. The NRCLG consolidation to employees of James Finlay Co. is added to their salary in November and hence their December bonus is computed on a higher salary.

11. On an overall assessment of the evidence in its entirety it is my finding that the payment made to Finlay Co. employees as Non-recurring Cost of Living Gratuity is very much high when compared to the total of payments made to employees of Finlay Properties (Private) Ltd. in respect of higher overtime, higher salary increment and productivity allowance to some employees. The main reason adduced by Finlay Properties

(Private) Ltd. that it is unable to consider payment of NRCLG to its employees on account of higher rates of overtime, higher increments etc., cannot be accepted. The other reason adduced by Finlay Properties (Private) Ltd. for not being able to consider payment of NRCLG to its employee is financial incapacity. In the absence of any evidence led in the arbitration proceedings on this score, this argument must necessarily fail.

12. Conclusion.

Taking into consideration the totality of the evidence with particular reference to the following admissions —

(i) employees of both companies are doing the same work in the same premises under one roof.

(ii) Employees of Finlay Properties (Private) Ltd. are given all the benefits enjoyed by the employees of James Finlay and Co., (Colombo) Ltd. The list of benefits is given in (iv) of Para 06.

It is not considered fair and reasonable to deny only benefit ie. Non-Recurring Cost of Living Gratuity to employees of Finlay Properties (Private) Ltd.

I, therefore hold that the demand of the Union for payment of Non Recurring Cost of Living Gratuity to employees of Finlay Properties (Private) Ltd. working at the Welisara Complex in the same premises and under the same roof along with the employees of James Finlay and Co., (Colombo) Ltd. is justified.

13. Relief

I, now switch on to the question of relief. The matter in dispute referred to me has two limbs, which are as follows—

(i) Whether the demand for payment of Non Recurring Cost of Living Gratuity to employees of Finlay Properties (Private) Ltd. is justified.

(ii) What relief the employees of Finlay Properties (Private) Ltd. are entitled to.

The two limbs of the reference are not consequential and also not interconnected. The reference, as it is does not suggest that the payment of Non Recurring Cost of Living gratuity be awarded by me as relief. The reference gives me the discretion

to grant the relief, which I consider, appropriate, fair and reasonable. The Union is asking for the payment of Non Recurring Cost of Living gratuity with retrospective effect from 01.11.2001 — the date employees of James Finlay and Co., (Colombo) Ltd. enjoyed the payment of N R C L G. The Respondent Company has in its Written Submissions stated the reasons as to why this payment should not made to the employees of Finlay Properties (Private) Ltd. In my view it is not fair and reasonable to accede to the request of the Union for payment retrospectively as the employees of Finlay Properties (Private) Ltd. had admitted that they had enjoyed certain additional benefits in lieu of the N R C L G which were not given to employees of James Finlay and Co., (Colombo) Ltd.

The employees of James Finlay and Co., (Colombo) Ltd. are not entitled to the Budgetary Relief Allowance of Rs. 1,000/- a month due under the Budgetary Relief Allowance of Workers' Act, No. 36 of 2005 from 01.08.2005. The employees of Finlay Properties (Private) Ltd. are entitled to this payment of Rs. 1,000/- a month.

Taking into consideration the totality of the evidence and the circumstances surrounding this industrial dispute referred to me, I make award as follows :-

(i) Finlay Properties (Private) Ltd. shall pay the Non Recurring Cost of Living gratuity (NRCLG) to its employees less Rs. 1,000/- (Thousand Only) a month from January 2006 onwards.

(ii) Finlay Properties (Private) Ltd. shall continue to make the payment of Rs. 1,000/- to its employees (One Thousand Only) as Budgetary Relief Allowance as required under the law.

I am discharging James Finlay and Co., (Colombo) Ltd. from this case and directing Finlay Properties (Private) Ltd. to comply with (i) and (ii) above within (30) thirty days from the date of publication of this Award in the Government Gazette of the Democratic Socialist Republic of Sri Lanka.

I consider this Award just and equitable.

V. VIMALARAJAH,
Arbitrator.

07th August, 2006.

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