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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 1,490/10 - MONDAY, MARCH 26, 2007

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T 23/CO/62/2003.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. P. G. V. Anushka, No. 19/1, Pitawala, Panwila of the one part and Ceylon Petroleum Corporation, No. 109, Rotunda Building, Galle Road, Colombo 03 of the other part was referred by Order dated 13th March, 2006 made under Section 4 (1) of the Industrial Disputes Act, Chapter 131 (As amended) and published in the *Gazette Extraordinary* No. 1437/6 of 20th March, 2006 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

D. S. EDIRISINGHE,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
15th March, 2007.

Ref. No. : T23/Co/62/2003.

Case No. A/3157. In the matter of an Industrial Dispute between

Mr. P. G. V. Anushka, No. 19/1, Pitawala,
Panwila ;

And

Ceylon Petroleum Corporation, No. 109,
Retunda Building, Galle Road, Colombo 03.

The Award

The Hon. Minister of Labour Relations and Foreign Employment by virtue of the powers vested in by Section 4 (1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts Nos. 14 of 1957, 62 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968) appointed me as Arbitrator by his order dated 13th March, 2006 and referred the aforesaid dispute for settlement by arbitration.

The matter in dispute between the aforesaid parties as laid down by the Commissioner of labour in his letter dated 24th February, 2006 is as follows : -

“Whether any unjust was caused to Mr. P. G. V. Anushka who is in the service of Ceylon Petroleum Corporation since 26th October, 1999 as a security officer on contract basis due to terminating his service from time to time and granting his reinstatement subsequently by the said corporaton and if such unjust was caused what relief he is entitled to”.

When this matter was taken up for hearing on 02nd June, 2006 the employee that is the first party was not present Mr. Chandima Weerakody Attorney-at-Law was present who

appeared for the employee. Even till 3.00 p.m. the respondent corporation did not turn up. However both parties had been informed by notice of the trial date. Since the respondent party corporation was not present the case was postponed.

Consequently, parties were noticed once again for 23rd June, 2006. On that date too the case could not be taken up.

Consequently, the case was re-fixed for 11th July, 2006 and notices were duly posted to the parties. On the 11th July, 2006 while the employee was present his counsel was present, the respondent corporation was not present.

Consequently, the matter was re-fixed for 02nd August, 2006 and the parties were duly informed of the date.

On the 02nd August, 2006 the workman was present but his counsel was not present as late as 3.00 p.m. As th counsel for the workman was not present the case was postponed for the 31st August, 2006. On 31st August, 2006 the workman was not present and his counsel informed court that the workman was ill and that he would submit a medical certificate covering his absence.

Consequently, the case was re-fixed for 11th October, 2006. On 11th October, 2006 the workman was called to give evidence and with that the case was commenced. At the end of the proceedings on that date the counsel for the applicant having led evidence in examination in chief up to a point requested for a further date to finish his evidence.

Accordingly, the 10th November, 2006 was fixed for the purpose and on the 10th November, 2006 neither the employee nor his counsel nor anyone else for him was present in court even late as 3.15 p.m. In the circumstances the case was re-fixed for 12th December, 2006. Then on the 12th December, 2006 once again the employee was not present no one else appeared for him ; no information whatever of his inability to be present has been received. Accordingly, the hearing was re-fixed for the 02nd February, 2007. Notices have gone out to both parties.

Despite that both parties have been duly informed of the date, the employee was not present in court and counsel too was not present.

On the earlier date I have indicated that in the event the workman was not present the case would be dismissed. In keeping with my such indication and due to repeated absence of the workman and his counsel as shown above, I decided not to make an award giving relief to the employee. He has been as the record shows not interested in pursuing the matter.

For the reasons given above, I make no award giving any relief to the workman, that is the 1st party. I consider making no award in this matter, under the circumstances is just and equitable.

K. A. D. B. KARUNARATNE,
Arbitrator.

Dated at Colombo on this,
19th February, 2007.

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My No. : T 23/CO/134/2004

THE INDUSTRIAL DISPUTES ACT, No. CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. L. D. C. Perera, No. 1/13, Gnanawimala Mawatha, Athurugiriya of the one part and Ceylon Heavy Industries and Construction Company Limited, Oruwala, Athurugiriya of the other part was referred by Order dated 26th May, 2006 made under Section 4 (1) of the Industrial Disputes Act, Chapter 131 (As amended) and published in the *Gazette Extraordinary* No. 1448/3 of 05th June, 2006 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

D. S. EDIRISINGHA,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
15th March, 2007.

Ref. No. : T23/CO/134/2004.

Case No. A/3168. In the matter of the Industrial Dispute between

Mr. L. D. C. Perera, No. 1/13, Gnanawimala Mawatha, Athurugiriya ;

.....Applicant.

Vs.

Ceylon Heavy Industries and Construcion Company Limited, Oruwala, Athurugiriya.

.....Respondent.

On this 28th day of February, 2007.

The Hon. 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 Nos. 14 of 1957, 4 of 1962 and 33 of 1968 (read with the Industrial Disputes (Special Provisions) Act, No. 37 of 1968) has appointed me as the Arbitrator and referred the following dispute for settlement by arbitration.

“Whether the non granting of the payment of Rupees One Hundred and Fifty Thousand (Rs. 150,000) to Mr. L. D. C. Perera who served in the Ceylon Heavy Industries and Construction Company Limited as a special bonus which was paid to the employees who had been in the service of the said Company as at 13th March, 1997 is justified and if not, to what relief he is entitled”.

Award

The applicant (Party of the First Part) in his averments has stated that he had joined the Ceylon Steel Corporation on 06.06.1971, and in December, 1986, the Corporation had terminated his services for an alleged act of misconduct. Thereafter he had filed an application before the Labour Tribunal asking for equitable relief. He states that while the case before the Labour Tribunal was pending the Ceylon Steel Corporation was converted to a fully owned Company under the government in 1992. By this act, the new Company, the Ceylon Steel Corporation Company Limited had succeeded to the rights and liabilities of the former Ceylon Steel Corporation, and the new Company, the Ceylon Steel Corporation Company Limited, was substituted as the Respondent in the pending Labour Tribunal case filed by the applicant. In 1996, the government sold all the shares held in the Ceylon Steel Corporation Company Limited to the Ceylon Heavy Industries and Construction Company Limited. In accordance with the law governing the sale of shares of a company under the Companies Act, No. 17 of 1982, the new company therefore inherited all the assets and liabilities of the former Ceylon Steel Corporation Company Limited and as a consequence, this new company was substituted as the Respondent in the pending Labour Tribunal case filed by the said Applicant.

The Labour Tribunal, at the conclusion of its hearings in the said case filed by the Applicant delivered its order on 17.11.1997 re-instating the Applicant in the service of the Respondent Company without a break in service or seniority. The Applicant pleads that the Respondent Company had not carried out the order of the Labour Tribunal to reinstate him in service at the correct time. However, the Applicant had appealed to the High Court of the Provinces requesting for an upward revision of the compensation of Rs. 166,762 but the

High Court had granted him only a compensation of Rs. 45,108 instead. However, neither party had canvassed the question of reinstatement of the applicant in service, and therefore that order of the Labour Tribunal stood unaffected.

The Respondent Company (The party of the second Part) does not dispute the submissions of the Applicant that he had been appointed to the service of the said Ceylon Steel Corporation in 1971 and that his services had been terminated in 1986 and that the said Ceylon Steel Corporation and its successors, the Ceylon Steel Corporation Company Limited and the Ceylon Heavy Industries and Construction Company Limited were successively made the Respondents in the Labour Tribunal case filed by the application. Neither does the Respondent dispute the fact that the Applicant had filed an appeal in the High Court of the Provinces and that the compensation granted to the applicant by the Labour Tribunal had been reduced but that the order for reinstatement of the Applicant was neither canvassed nor changed by the High Court.

Award

It was agreed by the two Parties to the dispute that they would submit written submissions to the Arbitrator with all the relevant documents, and this was agreed to and submissions made accordingly.

The matter in issue was whether the Applicant was entitled to the payment of Rs. 150,000 which had been given as a special bonus to some of the employees who were in the respondent Company as at 03.03.1997. The Labour Tribunal, at the conclusion of its hearing into the case filed by the Applicant had decided that the Applicant should be reinstated in the service of the Respondent without a break in service and in the correct grade and seniority. This order was delivered by the Labour Tribunal on 17.11.1997. By this order, it is technically correct to assume that the Applicant had been in the service of the Respondent from the date of his original date of appointment 09.06.1971 and therefore it is equally correct to assume that he had been a part and parcel of all the changes that the Respondent had undergone from that date. Thus it is correct to argue that in view of the decision of the Labour Tribunal Case, he is entitled to the benefits of the special bonus given by the company to all the employees on or about 13.03.1997. Unfortunately, records show that the Respondent had failed and neglected to reinstate the Applicant at the correct time and thus has deprived the Applicant of the benefits he would have been entitled to in normal circumstances. If the Respondent had done its duty correctly, then the decision taken at the meeting of the Chairman with the respective Trade Unions would have applied to him.

Equally, I am in agreement with the decision of the Assistant Commissioner of Labour Colombo North dated 10.03.2004 wherein he had ordered the Respondent to pay the special bonus of Rs. 150,000 to the Applicant within 14 days of that order.

Accordingly, I hold that the non granting of the bonus payment of Rs. 150,000 to the Applicant Mr. L. D. C. Perera is unjustified in view of the decision of the Labour Tribunal order to reinstate the Applicant without a break in service and in the correct grade and seniority.

Taking the above facts into consideration, and on a balance of probabilities, I made the Award that the special bonus paid by the Respondent to the other employees of Rs. 150,000 be paid to the Applicant Mr. L. D. C. Perera and that this payment be deposited with the Assistant Commissioner of Labour Colombo North within fourteen (14) days of the publication of this Award in the *Gazette Extraordinary* of the Democratic Socialist Republic of Sri Lanka.

Dr. V. IRWIN JAYASURIYA,
Attorney-at-Law,
Arbitrator.

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