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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 1588/16 - 2009 පෙබරවාරි 11 වැනි බදාදා - 2009.02.11
No. 1588/16 - WEDNESDAY, FEBRUARY 11, 2009

(Published by Authority)

PART I : SECTION (I) — GENERAL
Government Notifications

My No. : CI/1676/2005.

In the matter of an Industrial Dispute

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

Between

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Inter Company Employees Union, No. 158/18, E. D. Dabare Mawatha, Colombo 05 of the one part and Sanken Lanka (Pvt) Ltd., No. 295, Madampitiya Road, Colombo 14 and K. S. J. Construction (Pvt) Ltd., No. 92/43-2, 1st Lane, Aluthgamawatte, Yakkala of the other part was referred by Order dated 12.07.2006 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. 1,454/36 dated 21.07.2006, for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

Inter Company Employees Union,
No. 158/18, E. D. Dabare Mawatha,
Colombo 05.

Of one Part

Case No. : A/3181

And

(1) Sanken Lanka (Pvt) Ltd.,
No. 295, Madampitiya Road,
Colombo 14.

And

(2) K. S. J. Construction (Pvt) Ltd.,
No. 92/43-2, 1st Lane,
Aluthgamawatte,
Yakkala.

Of other Part

W. J. L. U. WIJAYAWEERA,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
28th January, 2009.

THE AWARD

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 3 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Act, Nos. 14 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 12th of July, 2006 and referred the following dispute to me for settlement by arbitration.

The matters in dispute between the aforesaid parties are :

Whether the Sanken Lanka (Pvt) Ltd., or the K. S. J. Construction (Pvt) Ltd., which had entered into a Labour Supply Agreement with that company on 01.09.2002 should held the responsibility as the employer of each of the twenty eight (28) employees referred to in the attached schedule who are employed under the Sanken Lanka (Pvt) Ltd., by taking into account of the date of joining the service as indicated against each name therein and accordingly what should be the statutory entitlement and other relief granted to each of the said employees entitled.

Appearance :

Reginold Hendalage, Representative appeared
For Party of the First Part,

Uma Hewagamage, Diktha De Alwis,
Attorneys-at-Law appeared for the First Respondent
Sanken Lanka (Pvt) Ltd., of the Party of the
Second Part.

M. B. Jayasinghe, Attorney-at-Law,
appeared for the Second Respondent
K. S. J. Construction (Pvt) Ltd., of the Party of the
Second Part.

Both parties have filed the statements under Regulations 21(1) and 21(2) of the Industrial Disputes Regulations of 1958 as amended.

The First and Second Respondent raised preliminary objections in their statements 01.08.2006 and 01.11.2006 respectively stating interalia.

- (a) The reference is bad in law.
- (b) The arbitrator has no jurisdiction to inquire into the dispute.

The preliminary objections were rejected by my order dated 15.02.2007 and the matter was fixed for inquiry.

The First Respondent Sanken Lanka (Pvt) Ltd., filed case No. CA (Writ) 375/07 in the Court of Appeal against the said order.

On 09.09.2008 the First Respondent informed the Industrial Court that the First Respondent has withdrawing the aforesaid Court of Appeal case since they have arrived at a settlement with Party of the First Part.

The Respondent submitted to the Court a joint motion dated 03.09.2008 withdrawing confirmed the terms of settlement.

According to the terms of settlement, I make the award as follows :

- (a) The Second Respondent K. S. J. Construction (Pvt) Ltd., shall pay a sum of Rupees One Hundred and Fifty Thousand to each of the following 16 employees being a full and final settlement. (Inclusive of Gratuity)

1. E. M. Kamalasiri Ekanayake
2. M. H. M. Hussain
3. M. H. Lalith Priyantha
4. M. A. M. Faizer
5. A. A. Collum
6. S. D. S. De Rajapakse
7. K. W. Upul Shantha
8. B. C. Mendis
9. M. A. Naleen Indika
10. M. G. K. D. Sujith Prasanna
11. R. Saliya S. Sisira Kumara
12. P. Samara Roy De Silva
13. N. M. Nazer
14. K. V. Raveen Nishantha Vithanage
15. M. P. S. Fareed
16. E. P. Samarajeewa

The aforesaid 16 employees have filed letters to confirm that the money was paid to them by the Second Respondent.

- (b) The First Respondent Sanken Lanka (Pvt) Ltd., shall provide employment to the following 6 employees with effect from 16th September, 2008 subject to normal recruitment procedure of the said company.

1. A. A. U. S. Kumara
2. W. G. Siripala
3. N. Y. Sepala
4. G. G. Ratnayake
5. P. V. Thissera
6. R. H. Ananda

The copies of the letters of appointment dated 16th September, 2008 issued to the above employees by the Second Respondent were submitted to the courts.

(d) The Second Respondent K. S. J. Construction (Pvt) Ltd., has filed documents to state that following applicants have already left the employment.

1. H. A. Chaminda Sumith Vitharana
2. R. M. Chinthaka Prasanna Ratnayake
3. S. S. M. Asmeer
4. Rasika Ranganath Perera
5. S. A. M. Athas

I consider this award just and equitable.

(c) The First Respondent Sanken Lanka (Pvt) Ltd., already provided employment to the applicant K. A. S. Perera with effect from 21.05.2007, (The First Respondent has filed in the court a copy of the letter of appointment of K. A. S. Perera)

KAPILA M. SARATHCHANDRA,
Arbitrator.

10th December, 2008.

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