



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය

අති විශේෂ

අංක 1780/28 - 2012 ඔක්තෝබර් මස 19 වැනි සිකුරාදා - 2012.10.19

(රජයේ බලයපිට ප්‍රසිද්ධ කරන ලදී.)

I වැනි කොටස: (I) වැනි ඡේදය - සාමාන්‍ය

රජයේ නිවේදන

මගේ අංකය : IR/15/15/2011. නඩු අංකය : ඒ - 3436 හා

කාර්මික ආරවුල් පනත 131 වැනි අධිකාරිය

අනෙක් පාර්ශ්වය වශයෙන්

131 වැනි අධිකාරිය වන සංශෝධිත කාර්මික ආරවුල් පනතේ 4(1) වගන්තිය යටතේ 2012.03.14 දිනැති හා අංක 1749/18 දරන ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අති විශේෂ ගැසට් පත්‍රයේ ප්‍රසිද්ධ කරන ලද 2012.02.28 වැනි දින දරන නියෝගයෙන් එක් පාර්ශ්වයක් වශයෙන් මැණික්හින්න, නාපාන, "සැනසුම", අංක 103/C හි පදිංචි කේ. සී. එම්. ආර්. ඒ. බී. යටවර මහතා හා අනෙක් පාර්ශ්වය වශයෙන් කොළොන්නාව, නිමාව හි පිහිටි සිලෝන් පෙට්‍රෝලියම් ස්ටෝරේජ් ටර්මිනල්ස් ලිමිටඩ් අතර පවත්නා කාර්මික ආරවුල බේරුම් කිරීමෙන් සමථයකට පත්කිරීම සඳහා යොමු කරන ලදුව, බේරුම්කරු විසින් මා වෙත එවා ඇති 2012.08.17 වැනි දිනැති ප්‍රදානය එම පනතේ 18(1) වගන්තිය යටතේ මෙයින් ප්‍රකාශයට පත් කරනු ලැබේ.

වී. බී. පී. කේ. විරසිංහ,
කම්කරු කොමසාරිස්.

2012 ඔක්තෝබර් මස 12 වැනි දින,
කොළඹ 05,
කම්කරු දෙපාර්තමේන්තුවේ දී ය.

එක් පාර්ශ්වයක් වශයෙන්,

කේ. සී. එම්. ආර්. ඒ. බී. යටවර මයා,
අංක 103 සී,
"සැනසුම",
නාපාන,
මැණික්හින්න.

සිලෝන් පෙට්‍රෝලියම් ස්ටෝරේජ්
ටර්මිනල්ස් ලිමිටඩ්,
නිමාව,
කොළොන්නාව.

අතර පවත්නා කාර්මික ආරවුල පිළිබඳ

ප්‍රදානය

කම්කරු හා කම්කරු සබඳතා ඇමතිතුමා වන ගාමිණී ලොකුගේ විසින් 1957 අංක 14 හා 1957 අංක 62 හා 1962 අංක 04 හා 1968 අංක 39 (1968 අංක 37 දරන කාර්මික ආරවුල් (විශේෂ ප්‍රතිපාදන) පනත සමග කියවා) දරන පනත් වලින් සංශෝධිත වූ, ලංකාවේ ව්‍යවස්ථාපිත අණපනත්වල 131 වැනි පරිච්ඡේදය (1956 ප්‍රතිශෝධිත මුද්‍රණය) වන කාර්මික ආරවුල් පනතේ 4(1) වැනි වගන්තියෙන් මා වෙත පැවරී ඇති බලතල අනුව, එකී ආරවුල බේරුම් කිරීමෙන් සමථයකට පත් කිරීම සඳහා බේරුම්කරුවකු වශයෙන් 2012.02.26 වැනි දිනැති නියෝගයෙන් මා පත් කොට මා වෙත යොමු කොට ඇත.

දෙපාර්ශ්වය අතර ඇති කාර්මික ආරවුලට හේතු වී පවත්නා කරුණ වනුයේ,

"කේ. සී. එම්. ආර්. ඒ. බී. යටවර නැමති පැමිණිලිකරු 1998.07.15 දින සිලෝන් පෙට්‍රෝලියම් ස්ටෝරේජ් ටර්මිනල්ස් ලිමිටඩ් හි B 4 ශ්‍රේණියේ ආරක්ෂක සහකාරවරයෙකු ලෙස පත්වීම් ලබා 2008.07.15 දින වන විට එහි වසර 10 ක සේවා කාලයක් සම්පූර්ණ කර තිබිය

දී, එලෙස වසර 10 ක අඛණ්ඩ සේවා කාලයක් සම්පූර්ණ කර ඇති සේවකයින්ට පිරිස් කළමනාකරුගේ අංක P.F. 024-229 හා 2008.06.30 දිනැති චක්‍රලේඛයේ පරිදි B 3 ශ්‍රේණියේ උසස්වීම් ලබාදීමට ඇති ප්‍රවේශය හරහා 2008.07.15 දින සිට B 3 ශ්‍රේණියේ උසස්වීම් ලබා නොදීම යුක්ති සහගත ද යන්න හා එසේ නම් ඔහුට ලැබිය යුතු සහන මොනවාද යන්න පිළිබඳව වේ”.

පෙනී සිටීම :

පළමු පාර්ශ්වය වන කේ. සී. එම්. ආර්. ඒ. එම්. යටවර වෙනුවෙන් නියෝජිත ශ්‍රේෂ්ඨ ද සිල්වා මහතා පෙනී සිටි අතර දෙවන පාර්ශ්වය වන සිලෝන් පෙට්ට්‍රෝලියම් ස්ටෝරේජ් ටර්මිනල්ස් ලිමිටඩ් වෙනුවෙන් නීති නිලධාරීන් අනුරාධා ජයවර්ධන මිය පෙනී සිටින ලදී.

මෙම නඩුව 2012.05.03 වැනි දින කැඳවූ දිනය වන විට දෙපාර්ශ්වයම තම පළමු ප්‍රකාශ ගොනු කර තිබුණි. ඉහත දිනය වන විට සේවක පාර්ශ්වය පිළිතුරු ප්‍රකාශය බේරුම්කරණයට ගොනු කර තිබිණි.

2012.05.22 වැනි දින මෙම නඩුව විභාගයට ගත් අතර එදින පළමු පාර්ශ්වය මූලික සාක්ෂි අවසන් කරන ලදී. ඉන් අනතුරුව 2012.06.15 වැනි දින වගඋත්තරකාර පාර්ශ්වය හරස් ප්‍රශ්න නිම කිරීමෙන් අනතුරුව ඉල්ලුම්කාර පාර්ශ්වය නැවත ප්‍රශ්න ඇසීමෙන් පසුව නඩුව අවසන් කරන ලදී.

මෙම නඩුව කැඳවූ මුල් අවස්ථාවේ දී සමථයක් පිළිබඳව කටයුතු කරන ලෙස පාර්ශ්වයන්ට දැනුම් දෙන ලදී. ඒ අනුව 2012.07.17

වැනි දින මෙම නඩුව විභාගයට ගත් අවස්ථාවේ දී පාර්ශ්වයන් ඉහත ආරවුල සමථයකට පත් කර ගන්නා බව බේරුම්කරණයට දැනුම් දෙන ලදී.

ඒ අනුව පහත සමථ කොන්දේසි අනුව මෙම නඩුව සමථයකට පත් කරන ලදී. එම සමථ කොන්දේසි නම්,

(i) ඉල්ලුම්කරු බී 3 ශ්‍රේණියට අදාළව පත් කර ආරක්ෂක සහකාර තනතුර 2009.07.01 වැනි දින සිට බලපැවැත්වෙන පරිදි ලබාදීම.

(ii) එම තනතුරට අදාළ වැටුප් තලය ද ඉල්ලුම්කරුට ලබාදීම.

(iii) ඉල්ලුම්කරුගේ වේතනාධික දිනය ජූලි 01 දින සිට බලපැවැත්වේ.

ඉහත සමථ කොන්දේසි මත මෙම නඩුව සමථයකට පත්වීමට දෙපාර්ශ්වය එකඟ විය.

මෙම ප්‍රදානය සාධාරණ හා යුක්ති සහගත බව මාගේ නිගමනය වේ.

පාලිත විරසේකර,
බේරුම්කරු.

වර්ෂ 2012 ක් වූ ජූලි මස 17 වැනි දින දීය.

11-209

My No. : IR/21/04/2011.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Telecommunication Officer's Union, Ground Floor, Sri Lanka Telecom HQ Building, Colombo 01 of the one part and Sri Lanka Telecom PLC., Head Office, Lotus Road, Colombo 01 of the other part was referred by order dated 18.10.2011 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. 1729/13 dated 25.10.2011 for settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

V. B. P. K. WEERASINGHE,
Commissioner of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,

12th October, 2012.

In the Matter of an Industrial Dispute Between :

Telecommunication Officer's Union
Ground Floor,
Sri Lanka Telecom HQ Building,
Colombo 1

..... of the one part

Case No.: A - 3411 and

Sri Lanka Telecom PLC.,
Head Office,
Lotus Road,
Colombo 01.

..... on the other part

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 131 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 the Arbitrator by his order dated 18th October. 2011 and referred the following dispute to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are :-

Whether the transfer of Mr. D. P. U. Dissanayake, the President of the Telecommunication Officer's Union without just and equitable cause and to what relief he is entitled in him of the mental agony by this transfer.

Appearance

Mr. Rohan Nissanka appeared for the Party of the First Part

Mr. Lal Bopage appeared for the Party of the Second Part.

Both parties filed their statements to the matter in dispute.

The Party of the First Part raised the Preliminary Objections, the objections were forthwith rejected.

In the process of hearing both parties agreed for a settlement. The terms of settlement is as follows :

1. The Management agrees to provide Job details along with transfer letter in the event of Mr. D. P. U. Dissanayake is transferred on service reason.
2. The Management agrees not to transfer Mr. D. P. U. Dissanayake from his current work station unless under disciplinary ground or exigency of the Company.
3. The Management agrees not to transfer Mr. D. P. U. Dissanayake only on the ground of engaging legitimate trade union activities.
4. This is full and final settlement of the matter referred to arbitration in arbitration proceedings bearing No. A-3411.

In the light of the above settlement I make no award.

KAPILA M. SARATHCHANDRA,
Arbitrator.

20th September, 2012.

11-210

My No. : IR/15/29/2008.

Case No.: A / 3293

and

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. S. H. C. Fernando, No. 9B/172, Jayawadanagama, Battaramulla of the one part and Concord Shipping (Pvt) Ltd., No. 73, Elvitigala Mawatha, Colombo 08 of the other part was referred by order dated 07.08.2009 made under Section 4(1) of the Industrial Disputes Act, Chapter 131, (as amended) for settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

V. B. P. K. WEERASINGHA,
Commissioner of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,

12th October, 2012.

In the Matter of an Industrial Dispute Between :

Mr. S. H. C. Fernando,
No. 9B/172, Jayawadanagama,
Battaramulla.

..... on the one part

Concord Shipping (Pvt) Ltd.,
No. 73, Elvitigala Mawatha,
Colombo 08.

..... on the other part

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 131 of the Legislative Enactments of Ceylon (1956 revised edition) as amended by Acts, 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 the Arbitrator by his order dated 07th August 2009 and referred the following dispute to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are :-

Whether it is justified by the Concord Shipping (Pvt) Ltd., to consider Mr. S. H. C. Fernando who was in the service of the said Company as having vacated its service on his own with effect from 30.06.2006 and if not justified, to what relief he is entitled from the Company.

Appearance

Mr. Wilbert Perera appeared for the Party of the First Part

Mr. Anil Wijenayake Attorney at Law appeared for the Party of the Second Part.

The applicant S. H. C. Fernando in his evidence stated as follows :

He said he was employed as the General Manager of the Respondent Concord Shipping (Pvt) Ltd.

The witness said before that he was employed at Concord Express (Lanka) Limited.

The witness further said that he left Concord Express (Lanka) Limited to join as the Executive Director of Concord Shipping (Pvt) Ltd.

The witness said that he took that decision as he was offered better salary and other perks such as a official car, fuel allowance, medical allowance and along with 10% Commission from the earnings.

The witness said that he brought to the Respondent Company Ansell Lanka freight contract which exported millions and gloves to North America.

The witness said that he received a sum of Rs. 1,150,000 being in the 10% commission from the respected company for the year 2002/2003.

The witness further said that the following year the branch office he was in charge made a profit of Rs. 14 million, out of which he was entitled Rs. One million four hundred thousand.

The witness stated out of the said commission he was paid about Rs. 4,96,000 by travellers cheques and he was given gift vouchers worth of Rs. 3,50,000. The witness said that he was left to get a balance sum amounting to Rs. 6 to 7 lakhs.

The witness submitted an e-mail marked A3 in this respect.

The witness further said out of the commission he received a portion was given by him to other two employees in the office on his own accord even though there was no such order to do so by the respondent company.

The witness further said he went to USA with Mr. Jayaratnam in the year 2003 with to sign a Contract with Ansell and Concord Shipping.

The witness in his evidence stated that he totally reject the respondent averments that he failed to introduce a single customer. The witness further stated that he introduced a number of customers and among them Ansell Lanka being the top company which was a multi Million Dollar business based in USA.

Witness further stated that he complained to the Commissioner of Labour (Colombo Central) and also filed a inquiry document certified by the D. S. M. Dissanayaka Commissioner of Labour as A6.

The witness further filed certified inquiry documents as A7 and A8.

In document marked A8 the Responded Company agreed to reinstate the Applicant.

The Applicant stated that at the inquiry the Respondent further agreed to pay salary arrears to the Applicant for the period he did not work in the event the Applicant made profits for the respondent company. (A 10).

The applicant further states that the Respondent Company admitted that he was employed by the respondent Company till June 2006 and salary was paid up to May 2006.

The Applicant stated that he made large profit for the Respondent Company.

The applicant stated that the Responded did not inform him that his services were terminated and no disciplinary inquiry was conducted against him.

During cross Examination the Applicant stated as follows :

The Applicant said that there were 3 employees at Concord Shipping and the office was situated at R. A. De Mel Mawatha, Colombo 03.

The applicant worked as the General Manager.

In addition to monthly salary he was given transport, vehicle maintenance, fuel and Medical allowances.

The Applicant further stated that the Respondent Company agreed to pay 10% out of the Profits made by the Applicant.

The Applicant further stated that he brought number of customers to Concord Shipping namely (i) Ansell Lanka (ii) Tex Linen (iii) Barney Raymonds (iv) AF Raymonds and 2 Pet Fish Export Companies.

The Applicant further stated that he ask for the Compensation for following reasons.

- (I) 99% of the business handled by the branch he worked was brought by him.
- (II) James Jayaratnam, the Director acted in a manner that resulted destruction of all business brought by him.
- (III) The loss of business that the Applicant brought in when he joined the Respondent Company was a great personal loss to him.

During Cross Examination the Applicant stated as follows :

The Applicant stated that he received Commission on profits as agreed for the period 2002/2003.

On 31st March 2004 (Rs. 500,000 in cash and 3 1/2 lakhs in vouchers)

The Applicant stated that his last salary was Rs. 75,000 (Rs. 60,500 + Rs. 15,000 allowance)

He further stated that there were Rs. 165,000 was in arrears since August 2005 to June 2006 as confirmed his evidence in chief.

The Applicant further stated that the Director Winsely Rodrigo requested him to stay at home and promised to send his salary and other allowance to his home.

The applicant stated that he was compelled to ask Compensation as 99% business handled by the Respondent Company (branch) was brought by him. The loss of employment was an irreparable damage to his life proceedings dated 21/09/10 page 09/10.

ප්‍ර : ඔබ වන්දි ඉල්ලන්නේ කුමක් සඳහා ද ?

උ : වන්දි කියා මම අදහස් කළේ, මගේ ශාඛාව විසින් කළ ව්‍යාපාර 99% ක් ම මම පුද්ගලිකව ගෙන ආ ඒවා, කොන්කෝඩ් ෂිපින් සමාගමේ සිට එනවිට එම ව්‍යාපාර නැතිවෙන තත්ත්වයට පේම්ප් ජයරත්නම් යන අධ්‍යක්ෂවරයා කටයුතු කළ බවට මම ළඟ සාක්ෂි තිබෙනවා. මම එනවිට ගෙන ආවා ලෝකයේ වෙනත් රටවල් අතර නියෝජිත සම්බන්ධතා ජාලයක්. ඒවාත් විනාශ කිරීමට තැත් කළා. එක්තරා වර්ෂයක මට යන්න තිබුණා ඇමරිකාවට එම ව්‍යාපාර වැඩි දියුණු කර ගන්න. මම කෙටියෙන් කියනවා නම් ජයරත්නම් මහතා ඇමෙරිකාවට නොයැවීමට ගත් තීරණය හේතු කොටගෙන තමයි එම ව්‍යාපාර කඩා වැටුණේ. මම ළඟ ලිඛිත සාක්ෂි තිබෙනවා එයට. ඒවා මම පුද්ගලිකව මගේ භාරයේ තබාගෙන තිබුණා.

ඉහත ආයතනයේ සිට එනවිට මම ගෙන ආ ඒවා. ඒවා නැති කිරීම මගේ ජීවිතය නැතිකළා වගේ වැඩක්. මට අධිකරණයෙන් වන්දියක් දෙන්න කියා කිව්වේ ඒ නිසායි. මගේ පුද්ගලික ජීවිතය, මගේ ව්‍යාපාර සියල්ල විනාශ කර මාවත් විනාශ කළා. ඒවාට අලාභ වශයෙන් මම සුළු ගණනක් ඉල්ලා තිබෙනවා. මට යන්න එන්න වාහනයක් නැහැ. එයට වන්දි වශයෙන් මම සුළු මුදලක් ඉල්ලා තිබෙනවා.

During re-examination the Applicant stated that he did not leave his job but as requested by the Respondent Company, he stayed at home, proceedings dated 07.01.2001 page 138.

ප්‍ර : තමා සේවය අතහැර ගියා ද ?

උ : නැහැ.

ප්‍ර : තමාට පාලන අධිකාරියෙන් කීවේ මොකක් ද ?

උ : මට ගෙදර ඉන්න කීවා පිළිවලක් කරන තුරු.

K. B. A. S. Wickramanayake / Assistant Commissioner of Labour in his evidence stated at follows :

According to inquiry proceedings marked as A 10 the Respondent Employer consented to reinstate the applicant.

The Applicant stated that since he has lost the confidence of the Respondent and refused the re-employment.

The Respondent stated that since the Applicant was not willing to report for work salary arrears can not be paid for the period that the applicant was absent from the work.

H. W. J. Rodrigo the Director, Concorde shipping in his evidence stated that he promised to pay to the Applicant at the time he joined the service 10% profit earned in addition to the monthly pay including fuel and medical allowances.

The witness further stated after terminating business with Ansell Lanka in the middle of 2004, the Applicant failed to bring profit in order to pay 10% commission for him.

The witness states that the Applicant did not make a request that salary should be paid during his absence.

During cross examination Respondent witness stated that—

- (I) The Applicant Fernando was paid July 2006 salary even though he worked 4 to 5 days during the month.
- (II) The Applicant was given an official vehicle and the Respondent Company did not take back the vehicle when the Applicant was asked to stay at home. Proceeding dated 28.10.2011 page 10.

ප්‍ර : ප්‍රනාන්දු මහතා පඩි සහිත නිවාඩු යවා නැත්නම් ඔහුට දුන් නිල රථය කවදාද සමාගමට ආපසු භාර ගත්තේ ?

උ : අපි එම නිල රථය භාර ගත්තේ නැහැ. එම නිල රථය ලිසිං පහසුකම් මත අරගෙන තිබුණ නිසා එතුමාට ජයරත්නම් මහතා කිව්වා දන්වා තිබුණා කියා වාහනය භාර දෙන්න කියා. අපේ සමාගම එයට මුදල් ගෙවීම නතර කළ නිසා එය අරගෙන ගියා.

(III) The vehicle was taken over by the leasing Company after about 2 year (2008 Oct)

(IV) He further stated that he himself (Winsely Rodrigo) and James Jayaratnam were directors of the Concord Shipping Company.

During re-examination the witness Winsely Rodrigo stated :

(I) The Applicant was paid the salary for the month of June after he stopped coming to work as the applicant had worked about a week in June and there were his unutilized leave.

(II) The applicant was not requested in writing to report for work.

Both parties filed written submissions.

The applicant filed the written submission along with the marked documents A1 to A 14.

In his submission the Applicant stated that since he was sent on leave by the Respondent company since 30.06.2006, even thought the applicant done no wrong that the applicant he granted salary arrears since 30.06.2006 at a rate of Rs. 75,500 per month.

The Respondent filed the written submission along with the marked document V 1 to V 4 and requested to reject the Applicant's plea for relief as the applicant's evidence lacks credibility.

On overall analysis of evidence I have come to following conclusions :

(I) The Respondent Company acted unjustly and unfairly by sending the Applicant on compulsory leave depriving his salary and other benefits and doing so causing mental agony and financial downfall to the Applicant without a valid reason.

(II) The Respondent Company has acted malice towards the Applicant sending him compulsory leave without pay whereas the Applicant has brought profitable business to the Respondent Company.

(III) The Respondent Company failed to prove that the Applicant has vacated the post on his own.

(IV) By doing so (I, II and III) the Respondent has acted mala fide towards the Applicant.

In the circumstances, I wish to quote majority decision of the Supreme Court in state Bank of India Vs. Edirisinghe (1991) that the arbitrator has to make an award which is just and equitable, he is not tied down and fettered by the terms of the contract to employment. He can create new rights and introduce new obligations between the parties. The effect of the award is to introduce terms which become implied terms of the contract. It was pointed out that as industrial arbitrator creates a new contract for the future in contrast to a judge who enforces rights and liabilities arising out an existing contract. An industrial arbitrator settles disputes by dictating new conditions of employment to come into force in the future when he cannot get the parties to agree to them in contrast to a judge who determines the existing right and liabilities of the parties.

For the reasons aforesaid it is my finding that the Respondent Company (party of the Second Part) has caused injustice to the Applicant. (party of the First Part).

In the circumstances taking into consideration the totality of evidence led before me I make award that the Applicant (the Party of the First Part) be paid by the Respondent (the Party of the Second Part) a sum of Rupees One Million Three Hundred and Fifty Nine Thousand (Rs. 75,500 x 18 - being 18 months salary) as a full and final settlement.

I further make order that this award should be implemented within 21 days of the publication in the *Government Gazette* of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

20th September, 2012.

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