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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/20/54/20007.

THE INDUSTRIAL DISPUTES ACT (CHAPTER 131)

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Sri Lanka Nidahas Sewaka Sangamaya, No. 301, T. B. Jaya Mawatha, Colombo 10 of the one part and Sevanagala Sugar Industries Ltd. No. 362, Colombo Road, Papiliyana, Boralessgamuwa. of the other part was referred by order dated 05.12.2008 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. 1581/8 dated 22.12.2008 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,
15th May, 2013.

In the matter of an Industrial Dispute

BETWEEN

Sri Lanka Nidahas Sewaka Sangamaya,
No. 301, T. B. Jaya Mawatha,
Colombo 10.

of the One part

Case No. A - 3269 and

Sevanagala Sugar Industries Ltd.,
No. 362, Colombo Road,
Papiliyana,
Boralessgamuwa.

On the other part,

Award

01. The Honorable Minister of Labour Relations and Man power by virtue of the powers vested in him under 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 05th December 2008 and referred the dispute between the aforesaid parties for settlement by arbitrtion.

02. The matter in dispute between the aforesaid parties is :

“Whether the termination of services of the following twelve (12) employees of the Sevanagala Sugar Factory by the Sevanagala Sugar Industries Ltd., is justified and if not justified to what relief each of them is entitled.

1. P. T. Lionel
2. S. T. W. U. Rangajeeva
3. S. P. Sumathipala
4. P. A. Amarasiri
5. M. C. Ruwan Kumara
6. K. P. A. Perera
7. U. C. Wickramasinghe
8. D. G. Kularatne
9. W. L. Laksiri Prasad
10. M. U. Medegamgoda
11. H. P. Prasad Chaminda ; and
12. A. Sirikelum

03. Mr. A. S. Seneviratne Attorney at Law appeared for the applicant Union, while Mr. Vajira Ellepola, Asst. Director General, Employers Federation of Ceylon appeared for the respondent employer.

04. At the outset, both the Union and the Employers were briefed on the time that might take for the resolution of the dispute and as such suggested both parties to arrive at a settlement. But the suggestion did not materialize. However one workman W. M. Laksiri Prasad withdrew from the case - wide page 107 in file.

Briefly stated, following persons tendered oral evidence on behalf of the union. They were-

- (a) Siriwardena Pathiranage Sumathipala ;
- (b) Hewapathiranage Prasad Chaminda Pathirana ;
- (c) Nissanka Udeni Rangajeeva, and ;
- (d) Nissanka Arachchilage Wimalaratne.

Wimalaratne had only completed the examination in chief and was waiting for the cross examination on 09th December 2011.

The respondent employer's representative on this day informed the court, thus -

“වග උත්තරකාර පාර්ශ්වය වෙනුවෙන් පෙනී සිටින නීතිඥ මහතා කියා සිටින්නේ සීමාසහිත සෙවනගල සුගර් ඉන්ඩස්ට්‍රීස් සමාගම 2011.11.11 වන දින සිදුකරන ලද 2011 අංක 43 දරන නීති ක්‍රියායෝගීත්වයට පවරාගෙන ඇති බව බේරුම්කර අධිකරණය වෙත ගොරවයෙන් සැලකර සිටිමි. ඒ අනුව මෙම බේරුම්කරණයේ ඉදිරිකටයුතු වලදී සීමාසහිත සෙවනගල සුගර් ඉන්ඩස්ට්‍රීස් සමාගම වගඋත්තරකාර පාර්ශ්වය වෙනුවෙන් කටයුතු කිරීමට නොහැකි තත්වයක් නීතිමය පදනමක් මත ඇති වී ඇති බව සැලකර සිටිමි.”

Applicant union requested hearing of the case and on 05.11.2012 both parties were summoned, but the Attorney at Law for the union was not present. Following explains the result of the meeting -

මෙම නීති ක්‍රියායෝගීත්වය නැවත කැඳවන ලද්දේ ඉල්ලුම්කාර පාර්ශ්වයේ ඉල්ලීම මතය එහෙත් ඉල්ලුම්කාර පාර්ශ්වයේ නීතිඥ මහතා අද දින පැමිණ නැත. එබැවින් වෘත්තීය සමිතිය මේ ගැන උනන්දුවක් දක්වනොත් අවශ්‍ය කටයුතු කිරීමට හැකිවනසේ නීතිමය පදනම මෙම අධිකරණයට පැහැදිලිව දන්වා සිටින මෙන් නියම කරමි. වෙනත් දිනයක් දැනට නියම නොකරමි.

The hearing of the case halted abruptly .

05. Findings -

- (1) Since the respondent's evidence is yet to be heard, no interim or final decision could be made. The principle of natural justice - *Audi Altaram Partem* applies.
- (2) The vesting of the Sevanagala Sugar Industries Ltd., with the State, in terms of Revival of Underperforming Enterprises or Underutilized Assets, Act No. 43 of 2011, the matter in dispute cannot be taken up in terms of Sec. 49 of the Industrial Dispute Act.

Operation of Law, prevents the arbitrator from proceeding with the case and as such no relief could be granted to the aggrieved parties. I make the award accordingly.

P. Navaratne,
Arbitrator.

29th April, 2013.