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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 2123/62 – 2019 මැයි මස 16 වැනි බ්‍රහස්පතින්දා – 2019.05.16

No. 2123/62 – THURSDAY, MAY 16, 2019

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/22/11/2012.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

The award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Eight workers including Mrs. S. C. George, “Jeewan Heshi”, 2nd lane, Elwatta Place, Wanduragala, Kurunegala of the one part and Chilaw Plantations Limited, Kapruka Sevana, No.165, Puttalam Road, Chilaw of the other part was referred by order dated 08.02.2014 made under section 4(1) of the Industrial Dispute Act, Chapter 131, (as amended) and published in the Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 1849/13 dated 11.02.2014 for Settlement by Arbitration is hereby published in terms of section 18(1) of *the* said Act.

A. WIMALAWEERA,

Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
10th May, 2018.



Ref No : IR/22/11/2012.

IN THE MATTER OF AN INDUSTRIAL DISPUTE

Between

Eight workers including Mrs. S. C. George,
 “Jeewan Heshi”,
 2nd Lane, Elwatta Place,
 Wanduragala,
 Kurunegala.

Of One Part

Case No. A/3536

and

Chilaw Plantations Limited,
 Kapruka Sevana,
 No.165, Puttalam Road
 Chilaw.

Of Other Part

THE AWARD

The Honourable Minister of Labour and Labour Relation by virtue of the powers vested in him by Section 4(1) of the Industrial Dispute 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 Dispute - Special Provisions) Act No. 37 of 1968 appointed me as Arbitrator by his order dated 08th February 2014 and referred the following disputes to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are :-

Whether the below mentioned 08 workers including Mrs. S. C. George who have been working at the Chilaw Plantations Limited and now on retirement are entitled to receive arrears in salary for the period from 01.05.2004 up to their retirement date and if so, to what reliefs they are entitled.

- | | |
|---------------------------------|--------------------------|
| 01. S. C. George | 05. W. Thilak Gunasekara |
| 02. K. Wijeratne | 06. G. M. Dissanayake |
| 03. G. N. Bevin Edward Fernando | 07. P. Rajawel |
| 04. W. M. Gunawathie | 08. S. Ayyadas |

Appearance

Mr. R.M.P. Somaratne Representative appeared for the party of the First Party

Mr. Prasad de Silva, Attorney at Law for 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.

Mrs. S.C. George in her written evidence stated as follows;

- (a) The General Manager, Mr. S. Baskaran of Chilaw Plantations Ltd. having accepted liability, agreed to and undertook to make payment to the workers at the inquiry held at the Labour Office, Chilaw on 2nd February 2011.
- (b) The said employees were in the active employees of Chilaw Plantations Ltd. when Public Administration Circular bearing No. 2/97 was issued on 15.01.1997, hence the workers are entitled to the benefits from the implementation of the said salary revision, as per the said circular.
- (c) The said employees initially were the employees of the Janatha Estates Development Board by Gazette Extraordinary dated 11.06.1992 they were absorbed to Chilaw Plantations Ltd to take over the functions and carry on the business of the Janatha Estates Development Board. (Annexure A1A).
- (d) Retiring Gratuity was paid to the above employees by Chilaw Plantations Ltd., who is the Employer and not by Wayamba Plantations (Pvt) Ltd., who is the managing Agent.
- (e) The said workders who retired from the Employer Company specifically mentioned in the acknowledgement of the payment of gratuity that they are entitled do dues arising from the salary revision vide Circular No. 2/97 aforesaid which as at the respective dates of retirement were not paid to them. (Annexure A2)
- (f) A photo Copy of the letter dated 5.12.2007 addressed to Mrs. S. C. George one of the workers to this addressed to her by the Director Plantations, Chilaw Plantations Ltd., wherein she has accepted the resignation of the worker as her Employer and not the Wayamba Plantations (Pvt) Ltd.

During the cross examination, witness H. P. George stated as follows;

- 1. She joined the Janatha Estate Development Board, Kurunegala Head Office on 22nd November 1977 as English Stenographer.
- 2. In 1992 ownership was changed as Chilaw Plantations Ltd. by Gazette Extra Ordinary of The Decmocratic Republic of Sir Lanka dated 11.06.1992 and no new letter of appointment was issued. Later management was handed over to Wayamba Plantations Ltd.
- 3. In May 2008 Wayamba Plantations Ltd., terminated management of estates owned by Chilaw Plantations (Pvt) Ltd.
- 4. Witness retired on 03.01.2008 at the age of 54 due to travelling difficulties.
- 5. Gratuity was paid by Chilaw Plantations Ltd.
- 6. When salary increment was granted in 01.05.2004 she was in service. But non of Employees were paid the increments. Increments were paid only in 2010.
- 7. The witness Mrs. H. C. George resigned on 03.01.2008, K. Wijeratne retired on 01.06.2005, Neville Fernando, 09.11.2005, Mrs. Ghanawathi on ..., Thilak on 04.01.2004, G. H. Dissanayake on 07.10.2004, P. Rajawelu on 07.10.2005, and S. Iyyadore on 22.06.2004 had retired respectively.
- 8. She further said when increments were granted on 01.05.2004 non of them were received the increment.
- 9. She further said she had to get over Rs. 300,000/- as the salary increments.

Ajith De Silva, Deputy General Manager of Chilaw Plantations Ltd., in his evidence state as follows;

- (a) The witness state, the retired employees are entitled to salary arrears as per Circular 2/97 (R 1).
- (b) The witness said Chilaw Plantations Ltd., established in 1992, but administered by Wayamba Plantations Ltd., as an agency.
- (c) The witness further said when Chilaw Plantations Ltd., was taken over by the government, salary arrears were paid to the employees, with effect from 31.05.2008 who were in service in 2011. No payment were paid to employees who was retired.
- (d) The witness further said non of the 8 employees were not in the service when payment were paid as per (c).

During Cross Examination witness stated as follows;

- (a) The witness stated that according to Gazette Notification marked A1, Chilaw Plantations Ltd., was incorporated.
- (b) The said Chilaw Plantations was managed according to the circulars issued by the Treasury.
- (c) According to Circular No. Pe 117 dated 17.02.1997, salary revision will not effect to the employees who joined after 01.01.1994. (A02)
- (d) Witness further said no salary increments granted under circular 2/97 granted to the employees of Chilaw Plantations Ltd.,
- (e) The Party of the First Part marked settlement entered Commissioner of Labour on 25th November 2009 between Ceylon Estate Union and Chilaw Plantations Ltd., as A-03.
- (f) The witness stated salary (increments) were paid in 2011 under 12 (1) agreement for some officers were paid after 31st May 2008.
- (g) After complaining to Mr. K. D. Manoj Priyantha, Commissioner of Labour Relations ordered to the General Manager of Chilaw Plantations Ltd., to pay salary increments to 8 applicants.
- (h) The witness said since the administration of Chilaw Plantations Ltd., refused to pay salary increments, matter was put for the arbitration.
- (i) The witness said when paid gratuity to Wickramasinghe Mudiyanse Ghanawathi, it was approved by him as Director Plantation, of Chilaw Plantations Ltd., and therefor the employees of Wayamba Plantations Ltd., will be the employees of Chilaw Plantations Ltd. (A 06).
- (j) Witness further stated aforesaid employees belong to Chilaw Plantations Ltd., but managed by Wayamba Plantations Ltd.,

During Cross Examination:

G. M. G. A. P. de Silva, Deputy General Manager, Chilaw Plantation Ltd in his evidence dated 14.05. 2015 stated as follows;

- (a) The witness stated that as per the Gazette Notification No. 718/16 dated 11.06.1962 all the employees along with 8 applicats aforesaid were absorbed to Chilaw Plantation Ltd.,
- (b) The witness further said there has been a collective agreement signed by Mr. W. M. Bogtstra, as the Managing Director of Chilaw Plantation Ltd as well as Wayamba Plantation Ltd.

- (c) The witness further stated, after privatizing Chilaw Plantation Ltd., management has been handed over to Wayamba Plantation Ltd.,
- (d) The Applicant marked Agreement dated 11.06.1992 in respect of the above as A-11.
- (e) According to the section 2(2) 1 of the said Agreement, validity period was 11.06.1992 to 31.11.1996., there for Wayamba Plantation Ltd., has acted on contractual capacity.
- (f) Witness further stated initial appointment of Chilaw Plantation Ltd., has not been changed even after the management was handed over to the Agents. Shown A09, letter of appointment dated 15.02.2006 of R. D. D. Thushara Rajasinghe, a Driver was issued by Chilaw Plantation Ltd when managing agent was the Wayamba Plantation Ltd.
- (g) A 12 (Chilaw Plantation Gratuity application / payment voucher), A 13 (Chilaw Plantation Payment voucher for 3 days salary of Mrs. A. C. George) the witness said though the said vouchers were under Chilaw Plantation Ltd. Payment were made by Wayamba Plantation Ltd., as the agent of Chilaw Plantation Ltd.
- (h) When ETF was deducted from the employee W. I. Gunasekara the letter was addressed in Chilaw Plantation letter head marked as A 14. His EPF No. was P. 2563 issued under Chilaw Plantation Ltd., marked as A 15.
- (i) Witness further stated when Chilaw Plantation Ltd., was privatized, Wayamba Plantation Ltd., became the Agent the said Agreement was marked as A 16.

During Cross Examination:

G. M. G. A. P. de Silva, Deputy General Manager, Chilaw Plantation Ltd in his evidence dated 20.04. 2015, 18.05.2018 stated as follows;

- (a) The witness failed to produce the payment voucher in respect of the application for Gratuity.
- (b) Witness said the management of Chilaw Plantation Ltd., was taken over by Wayamba Plantation Ltd., on 31st May 2008.
- (c) Witness produced vouchers in respect of the Gratuity payment of 7 applicants marked A 20 to A 26. In this vouchers it is stated Wayamba Plantation Ltd., are the Managing Agents of Chilaw Plantation Ltd.
- (d) Marked as A 18, a letter dated 7th August 2002 addressed to Chilaw Plantation Ltd., by Employers Federation of Ceylon signed by J. A. N. D. Rosairo. It was acknowledged by Chilaw Plantation Ltd., 12.08.2002.

During Re- Examination of the witness on 20.10.2016:

- (a) Witness stated after Privatising of estates in 1992, Chilaw Plantation Ltd., was established.
- (b) In 1996 Wayamba Plantation Ltd., Wayamba Plantation Ltd. was appointed as an Agent and all employees were absorbed to Wayamba Plantation Ltd.,
- (c) Administration of Chilaw Plantation Ltd. was handed over to Wayamba Plantation Ltd., on 31st May 2008.
- (d) Witness further said government salary increment of 1997 was not applicable to the Applicants.

Rohan Rathnayake, Senior Accountant in his evidence, on behalf of the Respondent stated as follows;

- (a) The employees of Chilaw Plantations Ltd., after privatization was managed by Wayamba Plantations Ltd., as an Agent under their rules and regulations.
- (b) Witness marked Public Administration Circular as 2.97 as R 1.
- (f) Witness further said Wayamba Plantations Ltd., managed the affairs of Chilaw Plantations Ltd., from year 1992 to 2008.
- (d) marked document A 18, letter of appointment dated 23.04.2006, S. Nagarajan, sanitary worker issued by Chilaw Plantations Ltd.
- (e) Before 31st May 2008 services of these applicants has come to an end. He further stated in order to terminate the management contract in 2008 Chilaw Plantations Ltd., paid a sum of Rs. 124 million to Wayamba Plantations Ltd.

Both parties have filed written submissions.

In overall analysis of evidence I have come to following conclusions.

- (i) The 8 Applicants initially were the employees of Janatha Estates Development Board.
- (ii) By *Gazette* Extra Ordinary of the Democratic Republic of Sri Lanka dated 11.06.1992 Chilaw Plantations Ltd was incorporated to take over the functions including Contracts of Employment entered into by the Janatha Estates Development Board b with the employees.
- (iii) Mr. K. D. Manoj Priyantha, Commissioner of Labour Relations has ordered to the General Manager of Chilaw Plantations Ltd., to pay salary increments due to 8 Applicants.
- (iv) Whereas the retiring Gratuity of the all the Applicants were paid by the Chilaw Plantations Ltd., who is the Employer Company and not by the Wayamba Plantations (Pvt) - the Managing Agents.
- (v) Whereas the *Gazette* Extra Ordinary of the Democratic Republic of Sri Lanka dated 11.06.1992 will prevail in respect of the Contract of Employment of the Applicants.
- (vi) The Chilaw Plantations Ltd. has acted unfairly and maliciously towards the applicant by denying them the salary revision granted to them by Public Administration Circular dated 15.01.1997.

In the circumstances, I wish to quote majority decision of the Supreme Court in *State Bank in 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 of 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 party of the First part be paid Salary Arrears due to the Party of the Second Part as per the Public Administration Circular dated 15.01.1997 on their respective retirement date as follows.

	<i>Name</i>	<i>Retirement Date</i>
a.	S. C. George	02.06.2005
b.	K. Wijeratne	09.11.2005
c.	G. N. Bevin Edward Fernando	24.05.2006
d.	W. M. Ghanawathie	31.12.2007
e.	W. Thilak Gunasekara	04.01.2007
f.	G. M. Dissanayake	07.06.2004
g.	P. Rajawel	07.10.2005
h.	S. Ayyadas	22.06.2004

And the aforesaid money should be deposited by the Party of The Second Part at the office of the Commissioner of Labour, Chilaw.

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.

31st March 2019.

KAPILA M. SARATHEHANDRA,
Arbitrator.

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