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# The Gazette of the Democratic Socialist Republic of Sri Lanka

## EXTRAORDINARY

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No. 2158/9 - MONDAY, JANUARY 13, 2020

(Published by Authority)

### PART I : SECTION (I) — GENERAL

#### Government Notifications

My No. : IR/COM/05/2018/135.

In the matter of an Industrial Dispute

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Free Trade Zones and General Services Employees Union (on behalf of Mr. A. H. M. R. S. Abeysinghe), No. 141, Ananda Rajakaruna Mawatha, Colombo 10 of the one part and A. T. G. Ceylon (Pvt) Ltd, Phase 2, Industrial Promotion Zone, Katunayake of the other part was referred by order dated 07.02.2019 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette Extraordinary* of the Democratic Socialist Republic of Sri Lanka No. 2110/36 dated 14.02.2019 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.  
06th January, 2020.

*Between*

Free Trade Zones and General Services  
Employees Union,  
(on behalf of Mr. A. H. M. R. S.  
Abeysinghe),  
No. 141, Ananda Rajakaruna Mawatha,  
Colombo 10.

Case No. A/08/2019  
IR/COM/05/2018/135

*of the one Part.*

And

A. T. G. Ceylon (Pvt.) Ltd,  
Phase 2,  
Industrial Promotion Zone,  
Katunayaka

*of the other Part.*



## AWARD

My No. : IR/13/09/2012.

1. The Honourable Minister of Labour and Labour Relations 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, 62 of 1957, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me by his order dated 12th May 2014 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

2. The matter in dispute between the aforesaid parties is -

“Whether Mr. A. H. M. R. S. Abeysinghe who worked in A. T. G. Ceylon (Pvt.) Ltd. Has been caused injustice by being transferred without his consent to another legal entity and considering him to have vacated his post when he failed to report for work to the company and if so, to what reliefs he is entitled.”

03. Applicant was represented by Mr. T. Leelananda, Attorney at Law, while respondent company was represented by Mr. Wasantha Gunasekara, Attorney at law, assisted by Mrs. Gimhana Wickramasurendra, Attorney at law.

04. After a brief discussion, parties indicated their desire to resolve the dispute amicably. With consent, the compensation for the Applicant for the loss of career to be computed based on the formula stipulated in the Termination of Employment of Workman (Special Provisions) Act, Accordingly. The amounts to be paid are worked out as follows.

Applicant's NIC No.	- 852273496V
Date of joining employment	- 27.08.2008
Date of cessation of employment	- 21.03.2018
Total period of service	- 9 years & 6 months
Salary per month	- Rs. 31,480.00
Total compensation	- Rs. 645,340.00

Deputy Group General Manager of respondent firm, Mr. Mohamed Asroff Faris, presented, National Development Bank Cheque No. 168899 of 04th September, 2019 drawn in favour of Mr. A. H. M. R. Sampath Abeysinghe, in a sum of Rupees Six Hundred, Forty Five Thousand and Three Hundred Forty (Rs. 645,340.00), was given over to the applicant in open court before me.

This is just and a fair award.

P. NAVARTNE,  
Arbitrator.

01st October, 2019.

01- 670

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131**

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. T. H. Srilal Prema Fernando, Kurunda, Kalawila, Beruwala of the one part and Sri Lanka Transport Board, No. 200, Kirula Road, Colombo 05 of the other part was referred by order dated 04.08.2014 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette Extraordinary* of the Democratic Socialist Republic of Sri Lanka No. 1876/35 dated 21.08.2014 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.  
18th December, 2019.

**In the matter of an Industrial Dispute**

*Between*

Mr. T. H. Srilal Prema Fernando,  
Kurunda,  
Kalawila,  
Beruwala.

Case No. A/3575  
IR/13/09/2012

*of the one Part.*

And

Sri Lanka Transport Board,  
200, Kirula Road,  
Colombo 05.

*of the other Part.*

**AWARD**

1. The Honourable Minister of Labour and Labour Relations 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, 62 of 1957, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me by his order dated 4th

August 2014 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

2. The matter in dispute between the aforesaid parties is-

“Whether injustice had been caused to Mr. T. H. Srilal Prema Fernando who worked as the supply officer of the Central Training School, Kalutara of the Sri Lanka Transport Board by the non-payment of Rs. 750/- (Rupees Seven Hundred and Fifty), the cost of living allowance mentioned in finance division circular No. 2010/02 dated 18.01.2010 of the Sri Lanka Transport Board, monthly from January 2010 to June 2010, and if so, to what reliefs he is entitled.”

03. Mr. Gratien De Silva, Representative appeared for the applicant, while Mrs. Kavinga Rajasinghe, State Attorney appeared for the respondent organization at the outset. Thereafter, Miss Davitri Vitharana, State Attorney, Mrs. Dulanjale Kumarainghe, State Attorney and Mr. Asela Wijesiri, State Attorney appeared. Applicant submitted documents marked A1 to A6, while respondent submitted documents marked R1 to R21.

04. Applicant Mr. T. H. Srilala Prema Fernando, formerly of Sri Lanka Transport Board, Central Training School Kalutara, as the supply officer stated that -

(a) He joined the Sri Lanka Transport Board as a Store Labourer on 5th August 1976 and received promotions to Grade 10 in 1980, as Stores Manager in 1981, Grade 7 in 1994, Grade 6 in 1999, Grade 5 in 2000 and in 2004 Grade 3 as supply officer attached to Driver Training School.

(b) On reaching the retirement age of 55 years, *i.e.* 02 September, 2009, the management had informed him, to hand over the stores prior to retirement, but he had not been released, since there was no one to takeover. It was only in June, 2010 the Principal requested him to hand over the stores items to one Samaratunga (A-5 and A -6).

(c) He worked continuously and Finance Department circular, requiring payment of cost of living by further Rs. 750 per month applied to him, which he claims now. (A - 4)

(d) He said that he had unbroken service up 30th June, 2010 on which date he ceased working.

(e) Five days prior to retirement he requested for an extension of service. There was no mention by Chairman, Sri Lanka Transport Board, that he is employed on permanent or contract basis, but to extend the period of service pending approval by the Board of Directors. His endorsement in (A-1) is as follows :

“අධ්‍යක්ෂ මණ්ඩල අනුමැතිය ලැබෙනතෙක් සේවය දීර්ඝ කරන්න.”  
නීතිඥ ධම්මික හේවාපතිරණ,  
සභාපති, ශ්‍රී ලංකා ගමනාගමන මණ්ඩලය.

(f) In cross examination, he said that, he had been charge sheeted for various issues of misconduct, such as drunkenness whilst on duty (R -7) and also suspended for one month and several penalties concerning several offences. Once his employment was terminated, but restored employment by Labour Tribunal, with no break in service.

05. On behalf of respondent organization, Mr. Hewagamage Samantha Kumara, Deputy Human Resources Manager of Sri Lanka Transport Board stated that -

a) Applicant was retired on reaching 55 years as at 02nd September 2009 and on an application made by, his superior Chief Supply Officer obtained approval from Chairman to extend his service, pending Board of Director approval.

b) Applicant finally ceased employment on 30th June, 2010, but had been paid the salaries, which issue he complained to the Department of Labour, who finally instructed, the management to pay up to the date of cessation of employment. A memo was submitted to the Board of Directors, who authorized payment, which they complied with.

c) He said that his personal file did not show any documents, which is in proof to say that the applicant's service had been extended.

d) Under cross examination, witness said that executives have to be given 6 months prior notice, enabling them to utilize 3 months leave prior to retirement. Witness admitted that

applicant was given only 5 months, instead of 6 months, contrary to rules of the organization.

- e) Witness said that, Chief Supply Officer, had written in (A -01 (a) thus -

මෙම නිලධාරී මහතා පමණක් සේවයේ යෙදී සිටි බැවින් මොහුගේ ඉල්ලීම නිර්දේශ කරමි කියලා සටහනක් තබා තිබෙනවා - page 188.

The Deputy Supply Officer, has endorsed under (A-01(b) stating thus.

“දැනට කළුතර රියදුරු අභ්‍යාස විද්‍යාලයේ සම්පාදන නිලධාරී වශයෙන් සේවය කරන්නේ මෙම අය පමණක් බැවින් මීට ප්‍රථම කරන ලද ඉල්ලීම සැලකිල්ලට ගෙන සේවය දීර්ඝ කරමි”

The Chairman's endorsement at (A-01(C), made to Deputy General Manager, state thus

අධ්‍යක්ෂ මණ්ඩලයේ අනුමැතිය ලැබෙන තෙක් සේවය දීර්ඝ කරන්න.

- f) Witness was assertive in stating that Human Resources Manager is overall in charge of all employees and the Chairman cannot take decisions, unilaterally. Chairman having discussed with the Chiefs at Kalutara Training School, where there was no substitute to take over the Stores Officer's items in his custody, and made an order to enter service pending Board approval.

06. The second witness on behalf of the respondent organization, was Mr. Sarath Walgampaya, Assistant Human Resources Manager, who stated that -

- He was in total charge of disciplinary matters including the conduct of disciplinary inquiries.
- He submitted documents R8 to R17 concerning issues of misconduct committed by the applicant at various stations at different times and the penalties imposed on him. Some of the issues were minor while some were serious, and Management had terminated his employment.
- Labour Tribunal heard his case and the issue had been resolved amicably, without break in service.

- Issues of bad conduct refer only during every years of employment *i. e.* 1979, 1981 and 1983 only.

07. My observations and findings -

- Sri Lanka Transport Board is the first statutory corporation established by the Government of Sri Lanka. All Statutory Boards, Authorities and State Corporations are guided by the Directions of Secretary to the Treasury as well as the Secretary, Public Administration.

Based on the budget proposals of 2009, Secretary to the Treasury issued the circular, addressed to the statutory boards, requiring them to pay increased cost of living allowance with effect from 1st January 2010- *vide* management services circular No. 29(v) of 06th January, 2010.

In accordance with Secretary to the Treasury directive, Chief Finance Manager, per Finance Division Circular No. 02 of 2010, advised all departmental heads to comply with treasury instructions.

Present issue concerns the nonpayment of this payment to the applicant.

- Applicant joined the Sri Lanka Transport Board as a store labourer in 1976 (Grade 10) and risen to the position of Stores Officer (Grade 3) at the time of retirement. In the early days of his career, there had been issues of misconduct, in 1979, 1981 and 1983, but since then he had a quick rise to the supply officer, which proves merit in his performance.

- on reaching this age of retirement at 55, he had to cease employment w.e.f 02nd September 2009 and there were none to take over the Stores in both Chief Supply Officer and Principal of Kalutara Driver Training School, where the applicant was working approached the then Chairman of Sri Lanka Transport Board and immediately instructed his subordinates to, extent his period of service, pending approval by the Board of Directors.

Here I find that the division responsible for appointments, have failed to-

i) Appoint a substitute to supplies section of the Kalutara Driver Training School, when they were aware of applicant's retirement.

ii) Submit a memo in a last quarter of 2009, seeking covering approval concerning applicants' extension service period.

The memo had been submitted on 16th March, 2010, *i.e.* after 6 1/2 months.

iii) The claim is for Rs. 750 per months for the full period of 6 months. So the total due would work out to Rs. 4500 (The cost involved for the State is fabulous, including State Attorney appearances and costs for arbitration proceedings).

08. Award

I have gave through evidence comprehensively, and am satisfied that the applicant is entitled for the amounts claimed since his contract of employment subsists till he ceased employment with the employer - Rs. 4500 - (Rupees Four Thousand Five Hundred) shall be deposited with Assistant Commissioner of Labour (Colombo East) Labour secretariat. Colombo 05, within 45 days of publication of this award in the *Government Gazette*.

This is just and a fair award.

P. NAVARTNE,  
Arbitrator.

30th September, 2019.

01- 671

My No. : IR/10/18/2013.

### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. M. N. Gunasekera, No. 80/1-A, Layards Road, Colombo 05 of the one part and Shaw Wallace Ceylon Limited, No. 69, Sri Jinaratana Road, Colombo 02 of the other part was referred by order dated 12.05.2014 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette Extraordinary* of the Democratic Socialist Republic of Sri Lanka No. 1865/39 dated

06.06.2014 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.  
31st December, 2019.

### In the matter of an Industrial Dispute

*Between*

Mr. M. N. Gunasekera,  
No. 80/1-A, Layards Road,  
Colombo 05.

Case No. A/3559  
IR/10/18/2013

*of the one Part.*

And

Shaw Wallace Ceylon Limited,  
No. 69, Sri Jinaratana Road,  
Colombo 02.

*of the other Part.*

### AWARD

1. The Honourable Minister of Labour and Labour Relations 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, 62 of 1957, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me by his order dated 12th May 2014 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

02. The matters in dispute between the aforesaid parties are -

- (1) Whether Mr. M. N. Gunasekara, who worked as the Chief Executive Officer of Shaw Wallace Ceylon Limited had been caused injustice by the termination of service from 30.06.2012, and if so, to what reliefs he is entitled.
- (2) Whether Mr. M. N. Gunasekara is entitled for May 2012 annual bonus and payments for unavailed leave of year 2011/2012 and if so, to what reliefs he is entitled, and

- (3) Whether Mr. M. N. Gunasekara had been caused injustice by the non-reimbursement of expenses borne by him on behalf of the company in carrying out his duties, travelling expenses, refreshment expenses, residence, maintenance expenses and medical expenses, and if so, to what reliefs he is entitled.
03. Mr. Daya Senaratne, appeared on behalf of the applicant, and after his demise, Mr. Gratien Silva, represented.
- On behalf of the respondent organization, Mr. Vajira Ellepola, Senior Industrial Relations Advisor appeared followed by Mr. Silva, Industrial Relations Advisor and thereafter Mr. Chamil Perea, Industrial Relations Advisor, all of the Employers Federation of Ceylon appeared.
- Applicant marked documents A1 to A20, while respondent marked documents R1 to R17.
- Initially objections were raised by the respondent organization as to the validity of the reference, which was overruled by the arbitrator, after hearing both sides.
04. The applicants, Mr. M. N. Gunasekara, former Chief Executive Officer of the respondent organization submitted that -
- (a) He joined the Shaw Wallace and Hedges Limited, as an accountant, on 23rd October 1978 and continued to work thereafter ; (A -1)
  - (b) Was appointed as Director in 1997 and as Chief Executive Officer on 29th January 2000, as Chief Executive Officer was in charge of overall functions of several companies. (A- 2) and confirmed on 19th April (A-3)
  - (c) With the change of ownership of management, He was retained as Chief Executive Officer and continued to enjoy the same benefits, vide June 2012 salary sheet (A-5)
  - (d) The three directors of Rajiyah Family, who took over the reins of the company, suddenly entered his room and informed that management intended restructuring and appointed a new director in-charge of marketing and finance (A-6).
  - (e) The restructuring progress introduced had three divisions and in two, his name did not appear (A-7).
  - (f) Also signing powers for cheque transactions which he did for 30 years were withdrawn, and assigned to another (A- 8)
  - (g) Letter of resignation, which he alledce, was forced to sign without giving sufficient time to make a decision (A-9) and (A-9(a)).
  - (h) After forced registration, requested payment of bonus and leave pay due (A-10)
  - (i) Sent reminders to pay up the dues (A-11), A11(a) - A11(b))
  - (j) Sent further reminder to Chairman (A-12 and A -13).
  - (k) Thereafter, informed that the issue would be taken up with the Commissioner of Labour (A- 14) and complainant filed with the Commissioner on 22nd February 2013 (A -15).
  - (l) Management writes to the applicant explaining the situation, in consequences of resignation, per letter of 19th February 2013 (A- 16)
  - (m) (A-17) speaks of the package of compensation computed.
  - (n) He had purchased company shares from time to time, done with management knowledge.
  - (o) During tenure of employment, he looked after the following establishment -
    - (i) Shaw Wallace & hedges plc
    - (ii) Shaw Wallace Marketing Ltd.
    - (iii) Shaw Lanka Tours Ltd.
    - (iv) Healthcare Products (P) Ltd.
  - (p) He had then appointed as Director of the company on 20th September 2012 vide R 6(b)
  - (q) He resigned from the following companies on 30th June 2012

- i. Shaw Wallace Food Serviced Ltd - (R3a) as Director
  - ii. Shaw Wallace Ltd (R-3b) as Executive Director
  - iii. Shaw Wallace Services Ltd (R-3c) as Executive Director
  - iv. Shaw Wallace Properties Ltd (R-3d) as CEO and Executive Director
  - v. Mackso Automotives (R-3e) as Director
  - vi. Inter ocean Lubricants (R-3d) as Director
- (r) He had then appointed as non-Executive Director (R-4) but never paid
- (s) He admitted that he signed a resolution in writing, in terms of the Articles of Association, dated 20th September 2012 (R-6)
- (t) He stated that he did not write to the management regarding the issues raised as at present.
- (u) As indicated in (R-5) minutes 25/2012, there had been discussions on the restructuring of management, as it was observed that a variety of differences in sales and collections were detected, massive stock differences delays in supplies for several months *etc.* There were excessive payments to where agents, some sales 40 pc lesser than quoted prices, resulting in enterprise looking incomes.
- Company has maintained two accounts and those who controlled had no idea of what they are doing and shown a lack of total finance cortex. There had been no reconciliation of bank accounts, no assessment of debtors and as CEO ; he was expected to be able to know about such lapses, which CEO denied any knowledge.
- (v) He said that executives were entitled to 30 days leave per year, utilizes 21 days abroad and 8 days unutilized. Claims 21 1/2 days of 2011 and 30 days in respect of 2012.
- (w) The venue given to him by the management, which were under lease from Sampath Bank, he took ownership on payment of the quoted price.
05. Mr. Palitha Gunatillake, Chief Operations Officer, on behalf of the respondent organization submitted that -
- a) He joined the establishment on 4th January 2012 as Chief Operations Officers, performing administrative functions.
  - b) He examined work of finance, purchases, sales, stores and human resources *etc.* In Toto, in consultation with senior managers. The debt situation was alarming, who had been given 80 days or more for repayment, whereas it needs to be within 30 to 45 days. Bank reconciliation had not been done systematically and for various sales done money had not been collected. Total dues on sales worked out to Rs. 300 to Rs. 400 million.
  - c) Some of the firms had financial facilities, while some made good profits, who financed the one's losing. It is the duty of the Board of Directors to act jointly to move forward by avoiding shortcomings. And go forward with clear vision for the future, If the future plans are not properly executed, the company's image fails and may collapse. It has to face acute competition from the manufacturers and sister companies have to sell items keeping marginal profit, he said.
  - d) Board of Directors had a conference and seniors were informed that management intends restructuring the organization. This was decided in April/May, 2012.
  - e) He said that to avoid possible errors, two groups were established for Cheque transactions. First group members are to sign as the second signatory, the second signatories were independent persons the signature power of CEO was not removed and he was the first signatory.
  - f) He said that the applicant as at stage complained, stating that the letter of resignation was obtained under duress. Also he had attended the board meetings thereafter as a non-Executive Director (R - 7)
  - g) Bonus had not been paid to senior executive (page 343) board of directors decided no to pay bonus to them in view of the financial situation, continuing losses, massive debt problem *etc.*

- h) Concerning the reinstatement of expenses he says that the applicant should have submitted such claims, at least in August 2012 with relevant bills/documents (page 351). (MSL) handles preparation of salaries of about 300 organizations, based on the information fed by the client firms who have contracted for the service.
- i) The claim of unutilized leave pay, vehicle allowance, use of fuel *etc*, is discussed at (pages 347, 348 and 349).
- j) The first letter claiming payable of expenses, the applicant submitted on 28th November 2012 (A-11) which speaks of prior approval expenses, travelling expenses, entertainment expenses, bungalow/furniture and equipment repair and maintenance, medical expenses, but supporting documents were not produced.
- b) Once a client provides the basic salary information and particulars, based on such facts, salaries are computed and payments made through banks, in terms of the standing orders. (R -16 - 16a)
- c) In terms of (R -16) all employees were paid bonus, but per (R-17) six executives were not paid which documents, the applicant signed and forwarded.

#### 07. My findings and observations -

- k) That he did not attend meeting of Board of Directors, unless invited.
- l) He was required to work as the Chief Operations Officer of shared services, which was one of the wings in the Renuka Group (A-7a)
- m) Financial statement of Renuka Organization in respect of the year 2012 was submitted (A-18) which reacted to Shaw Vallence, there was profit during 2001, 2012, but in 2012/2013 the loss was Rs. 81 million.
- n) During first 3 months of 2012/2013, the applicant was the Chief Executive Officer, while Srinat Botheju was the Chief Operations Officer. He said the member of dishonored Cheques and bad debts was the cause for losses.
- o) Audit of accounts were earlier done by the KPMG firm and later by ERNEST and YOUNG.
- p) Six Senior Executives were not paid bonus and the applicant was one.
- q) The firm titles MSI prepared salary particulars and sent to the finance department. Applicant did not make his claims at the time of resignation, but when gratuity was paid.
- a) The establishment where the applicant was employed was taken over it's controlling authority by the major shareholders, Dr. S. A. Rajaiah, Mr. S. V. Rajaiah and Mrs. I. R. Rajaiah, who were carrying on business of Renuka Group. The new management, who took over on 11th March, 2011, examined it's functions of finance, sales, purchases, stocks and human resources, deploying the services of a chief operations officer, who highlighted several short comings in the finance controls. After one year of taking over, the chairman Dr. S. A. Rajaiah, addressed the senior executives, a meeting in April 2012, his intention of restructure for betterment of the organization.
- b) By this time the applicant who joined in 1978 as an accountant, and risen to the position of Chief Executive Officer, was in charge of total operations, was unhappy about the changes. To arrest short comings management introduced to groups in sign cheques, on group to be the 1st signatory, while the other 2nd signatory, the question files up debts to the company, basic reconciliation issues and related matters were under scrutiny.
- c) It is alleged that the management, on 30th June 2012 forced him to sign the letter of resignation, which is signed, in the core issue now. Applicant being a chartered account, and with a wide variety of experience and expertise, running service firms, had been negligent in his own case. Analysis of evidence highlights that-
06. Mrs. Surini Perera, salary records executive of management systems ltd. on behalf of the respondent organization submitted that -
- a) She is required to prepare salary particulars of employees in about 10 firms. The Company



- i) Not only he signed the said letter of resignation, but followed signing resignation letter of directorship of other firms subsequently ;
- ii) If the resignation was forced in him, promptly he should have made an entry at a police station or reported to the nearest labour office to enquire into this matter.
- iii) He had brought to the notice of some members, who expressed surprise, but failed to call any to give evidence on his behalf.
- iv) Even after leaving, he had attended several meetings of the company but did not raise this issue. Management appointed the applicant as a non-executive director, but no evidence of any payment disclosed.
- v) For the first time, after six months he complaints to the Labour Department, there is element of negligence on his part and to quote a maxim of equity in English law - delay defeats equity and no relief prayed for could be granted.
- d) Payment of bonus is not regulated by law. As such employees had adopted different systems in the sharing of excess income. Over the years through the process of collective bargaining, it has regulated, and become customary or traditional, so that even the question of profit may or may not arise at all. Bonus payment is now a vital instrument of industrial peace and progress. It is proper to construe the concept of bonus as sharing by the workers in the prosperity of the concern in which they are employed.

However bonus need not be paid for employees who have been dismissed from service for fraud rioters or violent behavior, theft, misappropriation or sabotage of any property of the establishment.

Bonus is usually paid to the workers at the same rate in terms of monthly basic wages, in some cases in terms of consolidated wages, the efficient as well as the inefficient workers gets bonus at the same rate.

Management's decision to exclude payment of bonus to applicant seems discriminatory as every single worker at any level had contributed for the organization's prosperity, As such I conclude that the applicant is entitle to receive the bonus pleaded for, hitherto unpaid.

- e) Applicant's letter of appointment issued in 1978, provide for the grant of 30 days leave per year and continue to enjoy the entitlement hitherto. Applicant claims unutilized leave of 21 1/2 days and it's monetary value. The provisions of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, No. 19 of 1954, Section 6, apply he is therefore entitle to 14 days earned in respect of previous year and 6 days up to 30 June 2012, the date of termination of employment, totaling 20 days. Value of which respondent shall pay.

- f) Applicants claims for reimbursement of expenses increase, not supported by actual documents. Management's approval or certification is a requirement in such circumstances. Without submission of authentic documents, approval for payment cannot be allowed.

#### 08. Award

In conclusion, having examined the submissions made by both parties, carefully and comprehensively, I award that the applicant be paid.

- a) Unpaid Bonus - Rs. 750,000/-  
b) Value of Unutilized Leave - Rs. 400,000/-

Totaling Rs. 1,150,000 (One Million, One Hundred and Fifty Thousand only)

This amount shall be deposited with the Assistant Commissioner of Labour (Colombo South), Labour Secretariat, Narahenpita, Colombo 05, within 45 days of publication of this award in the *Government Gazette*.

This is just and a fair award.

P. NAVARTNE,  
Arbitrator.

19th September, 2019.

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