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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 2160/35 – 2020 ජනවාරි මස 30 වැනි බ්‍රහස්පතින්දා – 2020.01.30

No. 2160/35 – THURSDAY, JANUARY 30, 2020

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/COM/02/Z/2015/122.

THE INDUSTRIAL DISPUTES ACT CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between M.M.K.Marikkar, 36/4D, Kethsiri Gardens, Perera Place, Dehiwala of the one part and Sri Lanka Ports Authority, No. 19, Chaithya Road, Colombo 01 of the other part was referred by order dated 08.06.2016 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. 1970/47 dated 10.06.2016 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.
17th January, 2020.

In the matter of Industrial Dispute

Between,

Mr.M.M.K.Marikkar,
No. 36/4D, Kethsiri Gardens,
Perera Place,
Dehiwala.

Of the One Part

and



Sri Lanka Ports Authority,
No. 19, Chaithya Road,
Colombo 01.

Of the Other Part

Case No. A 3651

IR/COM/02/Z/2015/122

AWARD

The Honourable Minister of Labour and Trade Union Relations by virtue of the powers vested in him by Section 4 (1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactment of Ceylon (1956 Revised Edition), as amended by Act, Nos. 14 of 1957, 12 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 08th June, 2016 and referred the dispute between the aforesaid parties to me for settlement by Arbitration.

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

“Whether Mr. M.M.K. Marikkar, working in the Sri Lanka Ports Authority who had been acquitted and discharged from case No. 3564/6 filled at the Chief Magistrates Court Colombo in relation to the theft of some iron pieces using cab bearing No. 252 - 7816 owned by the Sri Lanka Ports Authority on 15.02.2012 has been caused injustice by the imposing of punishments following an internal disciplinary inquiry and if so, to what reliefs he is entitled”.

03. Applicant was represented by Mr. Gratian Silva Representative, while Mr. A.M.Kaleel, Attorney At Law appeared for respondent Organization. Applicant marked documents A 1 to A 6, and respondent marked documents R 1 to R 43.

04. Applicant submitted a sworn affidavit which explains comprehensively his case against the respondent Sri Lanka Ports Authority. The issue in question is the alleged theft of some iron bars and attempting to remove those from port premises. He was the driver of the particular vehicle, wherein another 11 also travelled. At the gate Security Personnel had checked the vehicle and detected the contraband. All of them, who travelled in the vehicle, were produced for police investigation, alongwith the items found therein and after the investigation by police, 7 were released and the rest were produced before Chief Magistrate Courts. After hearing and magistrate acquitted the accuse and discharged. As such, he claims, all monies due, since at the outset, the applicant had been interdicted without pay - vide pages 31 to 36. Cross examination per pages 50 to 110 and re-examination per pages 111 to 120.

05. On behalf of the respondent Organization, the following persons gave evidence, which are very elaborate, Briefly stated, the submissions made are.

- (a) Witness No. 1 Mrs. W. I. Vilasini Fernando, Senior Manager Grade I recorded evidence at pages 122 to 129 and cross examination evidence at pages 129 to 130.
- (b) Witness No. 2 Mrs. Thilini Kumari Ranathunga, Administration Officer. Recorded evidence at pages 133 to 144 and subsequently at pages 256 to 275 and cross examined as at pages 275 to 298 and re-examination as at pages 281 to 288.
- (c) Witness No. 3, Mr. D. Nirmala Amarawickrama, Asst. Security recorded evidence at pages 145 to 177 and later on pages 203 to 231, cross examinations as at pages 231 to 238 and re examined as per pages 239 to 242.
- (d) Witness No. 4, Mr. H. Upul Senaviratne, Labourer recorded evidence at pages 178 to 185, cross examination as at pages 182 to 191 and re examination as at pages 191 to 192.
- (e) Witness No. 5, Mr. A.M. Mohideen, Stores Employee recorded evidence as at pages 192 to 196, cross examination as per pages 196 to 200 and re examination as per page 201.
- (f) Witness No. 6, Mr.H. Faizar Stores Employee recorded evidence as at pages 242 to 247 cross examination as per pages 248 and re examination as per pages 248 to 249.

- (g) Witness No. 7 Mr. Mohamed Haniffa Jehan, Stores Employees recorded evidence as at pages 250 to 254, cross examination as per pages 254 to 255 and re examination as per pages 255 to 256.
- (h) Witness No. 8, Mr. M.D.Manjula Prasath, Asst. Human Resources Manager recorded evidence as at pages 291 to 308.

6. My findings and Observations.

- (a) Sri Lanka Ports Authority was established as a statutory entity per Act, No. 51 of 1979. All employees are covered under provisions of most of the labour legislations in operation, such as EPF Act, ETF Act, payment of Gratuity Act, and Industrial Disputes Act. Employees could seek remedies under the provisions of the Industrial Disputes Act. The applicant sought relief, urging that he be paid salaries due for the period of interdiction, 7 days pay cut imposed by the respondent organization based on a domestic inquiry findings, other statutory dues and related payments entitled to consequent to magisterial inquiry order acquitting and discharging him on all charges framed.
- (b) Learned Chief Magistrate in Colombo, in delivering the judgement in case No. 3564/6, specify the following comments, while acquitting the applicant.

“ පැමිණිල්ල වෙනුවෙන් කැඳවා ඇති සාක්ෂි අනුව අදාළ විත්තිකරුවන් අදාළ යකඩ සොරකම් කරනු දුටු බවට කිසිදු ඇසින් දුටු සාක්ෂියක් මගින් තහවුරු නොවන බව පෙනී යයි. එමෙන්ම ඒ සම්බන්ධයෙන් පරිවේශනීය සාක්ෂි මගින් හෝ කරුණු තහවුරු නොවන බවයි.

එමෙන්ම මෙම නඩුවේ විත්තිකරුවන් අත්අඩංගුවට ගන්නා ලද අවස්ථාවේදී ගමන් කරනු ලැබූ යැයි සඳහන් කැබ් රථයේ තිබී සොයාගන්නා ලද නඩු භාණ්ඩ පිළිබඳව පැ.සා. 01 විසින් මූලික සාක්ෂියේදී සහ හරස් ප්‍රශ්න වලදී එකිනෙකාට පරස්පර ආකාරයෙන් පැමිණිල්ලේ සාක්ෂිකරුවන් සාක්ෂි දී ඇති බව පෙනී යයි. එමෙන්ම විත්තිකරුවන් විසින් ගමන් කරනු ලැබූ බව සඳහන් කැබ් රථයේ දොරගුව කැඩී ඇති බවත්, ඕනෑම අයකුට විවෘත කිරීමට හැකියාව පැවති බවට සහ අදාළ සේවා ස්ථානයේ විවිධ සේවකයින් විසින් භාවිතා කරනු ලබන පොදු වාහනයක් වන බවත්, විත්තිකරුවන් භාරයේ පවති වාහනයක් බවට තහවුරු නොවන බවයි. එමෙන්ම අදාළ නඩු භාණ්ඩයද විත්තිකරුවන්ගේ අනන්‍ය සන්තකයේ තිබී සොයාගෙන ඇති බවටද තහවුරු නොවන බවත් විමර්ශනයේ ප්‍රතිඵලයක් ලෙස සාක්ෂිකරුවන්ගේ ප්‍රකාශ වන එකී නඩු භාණ්ඩ සොයා ගනු ලැබූ බවට ද තහවුරු නොවන බවයි.

ඒ අනුව මෙම නඩුව තවදුරටත් පවරා පවත්වා ගත යාමෙන් අදාළ වූදිනයන් වරදකරුවන් කිරීමට හැකියාවක් නොමැති බවයි. ඒ අනුව අපරාධ නඩු විධාන සංග්‍රහයේ 186 වගන්තිය යටතේ ක්‍රියා කිරීම යුක්ති සහගත බවට තීරණය කරමි. ඒ අනුව අදාළ වූදිනයන්ගේ විත්තිවාචනය කැඳවීමකින් තොරව දඬුවම් නඩු විධාන සංග්‍රහයේ 186 වගන්තිය යටතේ වූදිනයන් නිදෙස් කොට නිදහස් කරමි.”

- (c) the judgement made by the competent court of jurisdiction, i.e. the Chief Magistrate Court, state that the application is acquitted and discharged from all counts, as such it's the obligation of the respondent organization to comply with the judgement. If the respondent was agrieved or disagreed with the learned magistrates judgement the only re recourse would be to appeal for relief from a superior court which, they had not done so.

Instead respondent went on to penalize the applicant, by proceeding to impose a fine, based on a disciplinary inquiry conducted by a non judicial officer of the respondent organization, thus over riding the court order. The doctrine of ultra vires applies.

- (d) Applicant pleads that he be paid the following amounts legally due-
 - (i) Salaries withheld for the entire period of interdiction;
 - (ii) Unduly imposed 7 days pay cut by way of a fine;
 - (iii) Bonus, Unpaid for the two years;
 - (iv) Medical Benifits

At the time of interdiction his salary was Rs. 42,000/- per month

Award

I have analyzed the submissions made by both parties comprehensively, and I conclude that the applicant has been penalized unjustly. Hence I award time the following amounts worked out, Be paid to the applicant, within 45 days from the date of publication of this award.

(i)	Salary due for the period under interdiction (15.02.2012 to 21.07.2014) both days inclusive	-	Rs. 1,142,000.00
(ii)	7 days pay out imposed unduly	-	Rs. 9,800.00
(iii)	2 months bonus unpaid	-	Rs. 84,000.00
	Total	-	<u>Rs. 1,236,200.00</u>

respondent shall deposit Rupees One Million, Two Hundred Thirty Six Thousands and Two Hundred, (Rs. 1,236,200.00) with the Assistant Commissioner of Labour, Colombo West, Labour Secretariat, Colombo 05 within the time frame stipulated.

Also applicant is free to canvass other dues, such as leave pry, medical benefits, Employees Provident Fund dues, Employees Trust Fund dues and gratuity dues (if applicable), through an application made to the Commissioner General of Labour.

I consider this is a just and an equitable award.

P. NAVARATNE,
Arbitrator.

28th October, 2019.

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