



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය
අති විශේෂ

The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 2213/45 - 2021 පෙබරවාරි මස 05 වැනි සිකුරාදා - 2021.02.05

No.. 2213/45 – FRIDAY, FEBRUARY 05, 2021

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. IR/COM/04/2017/199.

THE INDUSTRIAL DISPUTES ACT CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. G. B. Nimalsiri, No. 426/7, Ranabima Mawatha, Mulleriyawa North, Angoda of the one part and Jaya Containers Terminals Limited, No. 19, Church Street, Colombo 1 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* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 2110/37 dated 14.02.2019 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

B. K. PRABHATH CHANDRAKEERTHI,
Commissioner General of Labour.

Department of Labour,
Colombo 05,
17th December 2020.



Ref No. IR/COM/04/2017/199
 Matter of an Industrial Dispute
 Between
 Mr. G. B. Nimalsiri,
 No. 426/7, Ranabima Mawatha,
 Mulleriyawa North,
 Angoda

Of the one Part

Case No. A/02/2019

And

Jaya Containers Terminals Limited,
 No. 19, Church Street,
 Colombo 01.

Of the one Part

The Award

The Honourable Minister of Labour and Trade Union Relations do 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 and 4 of 1962 and 39 of 1968 (read with Industrial Disputes-Special Provisions) Act No. 37 of 1968 appointed me as Arbitrator by his order dated 7th February 2019 and referred the following disputes to me for settlement by arbitration.

The matter in dispute between the aforesaid parties is

"Whether Mr. G. B. Nimalsiri who worked at Jaya Containers Terminals Limited has been caused injustice by being retired with effect from 14.02.2015 at the completion of 57 years of age and if so, to what relief he is entitled.

Appearance

Mr. Sanjeewa Subasinge
 Representative appeared for the party of the first Part.

Ms. Thaweesha Jayasinghe
 Ms. Loraine de Silva
 Attornys 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.

Mr. G. B. Nimalsiri, the Applicant in his evidence stated as follows.

The Applicant marked his letter of appointment dated 15/09/2008 for the Post of plumber issued by Jaya Container Terminals Ltd., as A1

He further said prior to joining Jaya Containers Ltd., he was employed by Lanka Marine Services Ltd., a subsidiary of John Keels Ltd., Later Lanka Marine Services Ltd., has been absorbed to Jaya Containers Terminals Limited fully owned subsidiary of port Authority.

The Applicant said on 14.08.2014, he received the Letter from the Respondent Company as the Applicant has reached the retirement age and will be retired as at 14.02.2014 marked as A 2

The Applicant marked A3 Stating that he has a right to continue to work till 60 yes as per 2013 Circular.

The Applicant further marked the reply he received from the Respondent stating that he was sent on retirement as per No. 10 condition of his Letter of Appointment.

The Applicant marked letter sent by him marked as A5 stating the he has right to work till 60 years citing Finance Ministry Circular No. 1/2013 and Port Authority Circular No. 2/2013.

The Applicant further marked Finance Ministry Circular as A6.

The Applicant further marked the order of Case No 13/36/2014 of Court No. 13, Labour Tribunalas A 7

At this instance the responded made a request to lay by this case there is a case pending at Court Appeal, CA(Writ)/124/13 in respect of retirement age.

The applicant further maked A8, A9, A10, A11, A12, A13, A14, A15, A16 and A17 documents pertaining to this case.

The Applicant further said at the time of his retirement his basic salary was Rs. 36,853/=, A copy of salary slip was marked as A 18.

The Applicant stated that retiring him at the age of 57 is unjust and illegal, whereas he could work till at the age of 60 years.

During cross examination the Applicant stated as follwos.

The Applicant was shown his letter of Appointment, marked R1,. The Applicant stated he agreed to comply all rules and regulation of the Company-Condition No. 5 of said letter. (R1 a)

Upon completing age of 57, the Applicant retirement age is stated as 57 years. (R 1 b).

The Applicant accepted that he received a compensation of Rs. 2,592,092.16 in lieu of having worked till at the age of 60 by Lanka Marine Services (private) limited. The Respondent marked documents, R2, R3, R4 and R4a.

The Applicant further accepted after having retirement benefit as above he joined Jaya Container Terminal Limited as a new employee.

Head of Human Resources, Jaya Container Ltd., in her evidence has stated as follows.

The witness filed R5 to show, the Respondent Jaya Containers Terminal Limited is a Company registered under Company's Act No. 17 of 1972.

The witness marked Document R6 on applicability of Circular/2013 dated 15/01/2013.

The witness marked document R7 giving instruction how to apply the said Circular/2013. The witness further said, circular was affected on 08.08.2016 with approval of Board of Directors (R8), whereas Mr. Nimalasiri was retired in 2015 and it was not applicable to the past.

The Witness further filed document marked R8 dated 10.10.2019 by Director, Department of Public Enterprise stating said Circular of 2013 could not be effected retrospectively.

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

When Applicant was retired from Lanka Marine Services Ltd., and absorbed and absorbed to jaya Containers Terminal Ltd., the Applicant was paid a compensation a sum Rs. 2,502,092.16 assuming he worked till 60 years of age.

Further Jaya Container Terminal Ltd., offered him Voluntary Retired Scheme amounting to Rs. 850,084/=

The Applicant joined Jaya Containers Terminal Ltd., as a new employee and accepted his retirement age was 57.

In the light of evidence lead before me, by retiring Mr. G. B. Nimalasiri on completion of 57 years on 14.02.2015, there was no injustice occurred to him and the Respondent Jaya Containers Terminal Ltd., has acted lawfully.

Therefore I dismiss this application.

I consider this award is just and equitable.

KAPILA MANAWASINGHE SARATHCHANDRA,
Arbitrator.

20th October, 2020.

02-421

My No. IR/COM/04/B/2014/99.

THE INDUSTRIAL DISPUTES ACT CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between 26 Employees, including Mr. Chamila Dinesh Balasooriya, No. 71/F/4, Bandipitiya Road, Piliyandala of the one part and Ceylon Hotel Corporation PLC, No. 327, Union Place, Colombo 02 of the other part was referred by order dated 10.08.2016 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. 1979/42 dated 12.08.2016 for Settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

B. K. PRABHATH CHANDRAKEERTHI,
Commissioner General of Labour.

Department of Labour,
Colombo 05.
23rd December 2020.

In the matter of Industrial Dispute

Between

- | | |
|---|---|
| (1) Mr. K.A.A.S. Dhammika Premarathne | (14) Mr. M.N.M. Nadzmil |
| (2) Mr. D.W.S.Kumara | (15) Mr. J.Sugathapala |
| (3) Mrs. D.T.N.Damayanthi | (16) Mr. S.K.Munasinghe |
| (4) Mr. R. Nayana Chandana Bandara | (17) Mr. J.A. Indrasiri Abeygunawardene |
| (5) Mr. B.P.Jayarathne Pathirana | (18) Mr. M.A.Chandima |
| (6) Mr. Amith Pushpa Kumara | (19) Mr. Jagath Weerakoon |
| (7) Mr. D.M. Ekanayake | (20) Mr. Chamila Dinesh Balasooriya |
| (8) Mr. W.Nimal Jayarathne | (21) Mr. B. Indrasiri Fernando |
| (9) Mr. M.A.D.P. Ariyadasa | (22) Mr. Nimal Wedage |
| (10) Mr. A.P.Paranawithana | (23) Mr. R.M.K.Sampath Bandara |
| (11) Mr. J.A.Y. Sampath Suranga | (24) Mr. K.A.Dinesh Sagara Fernando |
| (12) Mr. N.R.S. Pradeep Jayaweera | (25) Mr. Amal Surendra Gamage and |
| (13) Mr. W. Samantha Sri Lal Senevirathne | (26) Mr. W.A.D. Sanath |

Of the one part

And

A -3655

Ceylon Hotel Corporation PLC,
327, Union Place,
Colombo 02

Of the other Part

Award

1. 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 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 10th August, 2016 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 the 26 employees mentioned below who have been recruited under the Lanka Hotel Corporation have been caused injustice by the said establishment through violating Section 4(1) of the Lanka Hotel Corporation (Repeal) Act No. 25 of 2007 and in the payment of cost of living allowance, annual salary increase and service charges, providing welfare facilities and in making payments for the unavailed leave, overtime and Budgetary Relief Allowance and if so, to what reliefs they are entitled”.
3. Mr. Adhil Khasim Senior Industrial Relations Advisor of the Employers Federation of Ceylon appeared on behalf of the respondent Organization, Ceylon Hotels Corporation, while Mrs. P.T.C.Thambiah, Attorney at Law appeared on behalf of the 26 workmen.
4. To reduce the time involved in gathering evidence tendered by each and every worker . named in the reference, it was decided to obtain sworn affidavits in respect of 4 workmen, so that respondent could commence cross examination straight away. The following 4 workmen submitted sworn affidavits accordingly -
 - (a) Amith Pushpakumara Paranavithana,
 - (b) Tennegedara Amal Surendra Gamage,
 - (c) Weerapperuma Arachchi Athukoralage Don Sanath, and
 - (d) Chamila Dinesh Balasooriya.

(a) 1st witness for applicants - Amith Pushpakumara Paranavithana.

- His sworn affidavit appear at pages 36 to 40. He had joined the institution as a storekeeper, with effect from 02nd December, 2005. He stated that he was promised the grant of the following facilities -
 - (1) Payment of wages and service charges on the due date,
 - (2) Food Allowance,
 - (3) Annual Bonus,
 - (4) Benefit due on breakages receive,
 - (5) Payment in respect of unutilized leave, paid annually
 - (6) Distress and other special loan facilities,
 - (7) Cost of living,
 - (8) Budgetary Relief Allowance,
 - (9) Annual get together and excursions
 - (10) Free facilities for outings, made between sister organizations,
 - (11) Funeral donations of Rs. 50,000/-,
 - (12) Special job training (Local and foreign),
 - (13) Upward promotions and wage increases,
 - (14) Mutual transfers,
 - (15) Unutilized balances from welfare fund,
 - (16) Assistance for schooling of children,
 - (17) Supply of uniforms annually, and
 - (18) Salary advances.
- In or about 2007, the Ceylon Hotel Corporation was taken over by Galle Face Hotel Management(Pvt)Ltd. and the Trade Unions took up the issue with the new management. After series of discussions, a Voluntary Retirement Scheme had been offered to the workmen. Of the total 400 workmen, 300 accepted the offer of Rs. 600,000/- (Rs. Six Hundred Thousand), while balance 100 opted to stay back: who were promised, better working conditions, Since the new management had to incur substantial amount to pay up outgoing workmen under the VRS which were to be paid up within 2 years, *i.e.* 2009, Management paid bonus only in 2009. Although those who stayed back expected

enhanced facilities, told verbally, there were no improvement and the matters were taken up with the Labour Dept., but the negotiations failed, resulting in issues being referred for compulsory arbitration for resolution of the dispute.

- Bonus of Rs. 10,000 - was paid to all workmen at year's end every year, but witness failed to establish with submission of any document. Further he said that he could not avail the payment under voluntary retirement supreme, since he had served less than 5 years. At that time most workmen did not like the privatization contemplated, thus obtained the voluntary retirement scheme payment offered.
- Said that Lanka Hotels Corporation (Repeal) Act No. 25 of 2007 had not seen by all employees other than the Trade Unions. When questioned whether the new law speaks of facilities*** enjoyed, he replied in the affirmative. Witness read out the para 4 (a) of the Act and said that he marks his letter of appointment as C10. But C10 annexed refers to a letter signed by president and secretary of Ceylon Hotels Corporation Branch of Sri Lanka Nidahas Sewaka Sangamaya. Furthermore C10 although annexed, had not presented at inquiry proceedings in Arbitration, for certification by the Arbitrator - Vide page 173.

5- Witness for respondents - Miss. Anushi Udalamatta. Asst. Manager (Human Resources)

- She joined the Ceylon Hotels Corporation on 26th April, 2018 and counts 6 months service. Previously she was employed at Horizon International School for 1 year. Before that, she worked at Allianz Insurance for 5 years.
 - She was asked to read out the preamble of the Act No. 25 of 2007, which speaks of the intention of the law and the repeal of Act no. 14 of 1996. She admitted that the law provide the takeover of business of Ceylon Hotel Corporation by public quoted entitles, in terms of document marked R.1, which states that the staff and all employees would be entitle to the terms and conditions, not less favorable than what enjoyed by employees prior to privatization - Vide para 4(a) - R1 (b)
 - She said that she came to know that employees required a voluntary retirement scheme in 2007.
 - With regard to the sworn affidavit submitted by Dinesh Balasooriya, asked whether any documentary evidence would be available, concerning the facilities given to the employees, she said no documents were available. The documents marked C1, C2, and C4 had been issued prior to privatization, *i.e.* 31.08.2006, 24.01.2007 and 06.02.2005 respectively.
 - After privatization, *i.e.* on 12.07.2007 the new establishment run by a company and not required to follow Government stipulation on salaries. However cost of living of Rs. 2125.00 was given on 01.07.2007, which included Rs. 375.00
 - Under cross examination witness admitted that no documents were annexed to the affidavit. Lanka Hotel Corporation (Repeal) Act No. 25 of 2007 was shown, and he accepted that there had been no violation of the terms and conditions of employment, as per the letter of appointment. He however was of the opinion that those were privileges and benefits enjoyed over the years.
 - He said that Ceylon Hotels Corporation was running at a profit, but when asked which year it was, he said he had forgotten, Later on said it was 2007, but failed to establish it. He admitted receiving salaries on due dates. He further said that various welfare items have not shown in pay sheets, such as food allowance, annual get together, Training of employees, payment in lieu of unutilized leave, cost of living allowance, funeral allowance, Budgetary Relief Allowance, distress loans *etc.*
- (b) 2nd witness for applicants - Weeraperuma Athukoralage Don Sanath.
- His sworn affidavit is identical with that of 1st witness, and is filed at pages 25 to 30, who joined the Ceylon Hotel Corporation as a Technical Assistant on 10th February 1995. He signed the sworn affidavit on 23rd May 2017. He was not cross examined by respondent.

(c) 3rd witness for applicants - T.G.Amal Surendra Gamage.

- His sworn affidavit is identical with that of 1st witness, and it filed at pages 31 to 35, He had joined the Ceylon Hotel Corporation as a Rest House Office Assistant on 1st February 2004. He admitted having signed the sworn affidavit on 23rd May 2017, which states sincere and true facts. He said that at present there is no Trade Union, but in 2013 there was one. He was not certain whether there was a Trade Union in 2008.

(d) 4th witness for applicants - Chamila Dinesh Balasooriya.

- His sworn affidavit is filed at pages 82 to 87, He joined the Ceylon Hotel Corporation as a Liquor Shop Supervisor, with effect from 1st February 2004. He had signed the sworn affidavit on 28th February 2018. Annexing document marked CITDC 9. He explained in detail various fringe benefits that were offered by the Ceylon Hotels Corporation at the time he joined the organization. Those benefits and facilities were listed in the affidavit submitted by the previous witness as well. In addition his evidence was supported by the Treasury Circular issued prior to privatization in relation to cost of living allowances.
- His services had been terminated on 2nd September, 2015, but did not seek relief from labour tribunal.
- He spelled out his experience at various rest houses operated by the Ceylon Hotels Corporation, such as Tissamaharamaya, Kithulgala, Weligama, Zoological Gardens *etc.* In relation to document C3, which is dated 8th August, 2007, he was informed that the document comes after privatization and had no effect consequent to introduction of Ceylon Hotel Corporation (Repeal) Act, which came into operation effective 12th July, 2007.

6. Observations and Findings

- (a) Lanka Hotel Corporation (Repeal) Act, No.25 of 2007, came into effect on 12th July, 2007 and affairs were taken over by Galle face Hotel Management (Pvt)Ltd. After series of discussion with Trade Unions a Voluntary Retirement Scheme was devised, which offered to workmen, Rupees Six hundred thousand (Rs.600,000.00), per pax of the total workforce of 400, Three hundred accepted the offer, The Voluntary Retirement formula required payment to be completed within two year period. Inter Companies Employees Union, Sri Lanka Nidahas Sewaka Sangamaya and Jathika Sewaka Sangamaya are the unions who had agreed the settlement formula.
- (b) On behalf of 26 employees, Four applicants submitted sworn affidavits. They failed to annex relevant documents to establish their position. Besides, most essential following items were ignored in evidence. They are -
 - (i) Letters of appointment of any of the workmen not produced in evidence;
 - (ii) Photo copies of certain documents, have not been certified by the management as true copies (An error in the face of record);
 - (iii) None from the new management, i.e. Galle Face Hotel Management (Pvt)Ltd. have not been requested to testify at the proceedings concerning the verbal assurances.
- (c) Commissioner General of Labour, is the enforcement authority to deal with in relation to the Budgetary Relief Allowance Act, No. 4 of 2016 violations.
- (d) Section 4 of Lanka Hotel Corporation (Repeal) Act, stipulate that the employees be assured of terms and conditions, which were not less favourable to be granted. The terms and conditions, are embodied in a letter of appointment, issuance of which is laid down under section 17 read with regulation 15 made under Shop and Office Employees (Regulation of Employment and Remuneration) Act. It is unclear as to why the applicants failed to submit the most essential document for verification by the court in this instance.

7. Award

I have analyzed comprehensively evidence and submissions placed before me, and I am convinced that applicants have failed to establish their case. As such applicants are not entitle to any relief. I certify that this award is just and equitable.

P. NAVARATNE,
Arbitrator.

17th December 2020.

02-422