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## The Gazette of the Democratic Socialist Republic of Sri Lanka EXTRAORDINARY

අංක 2276/56 – 2022 අප්‍රේල් 22 වැනි සිකුරාදා – 2022.04.22  
No. 2276/56 – FRIDAY, APRIL 22, 2022

(Published by Authority)

### PART I: SECTION (I) – GENERAL

#### Government Notifications

My No.: IR/COM/05/2017/50.

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award dated 23.02.2022 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Inter Company Union (on behalf of 26 employees), No. 259/9, Sethsiri Mawatha, Koswaththa, Thalangama (Current Address: No. 10, Council Lane, Dehiwala of the one part and Alchemy Heavy Metals (Pvt) Ltd, No. 153A, Kandalama Road, Dambulla of the other part was referred for settlement through arbitration by order dated 25.06.2018 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette Extraordinary* No. 2077/41 dated 29.06.2018 of the Democratic Socialist Republic of Sri Lanka, is hereby published in terms of Section 18(1) of the said Act.

**B. K. PRABATH CHANDRAKEERTHI,**  
Commissioner General of Labour.

Department of Labour,  
Colombo 05.  
07th April, 2022.



**In the matter of an Industrial Dispute Between,**

Inter Company Employees Union, (On behalf of 26 employees), No. 259/9, Sethsiri Mawatha, Koswatte, Thalangama.  
*Of the One Part*

And

Alchemy Heavy Metals (Pvt ) Ltd., No. 153 A, Kandalama Road, Dambulla. *Of the Other Part*

Case No. A/35/2018.

**THE AWARD**

1. The Honorable 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 Act, 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 25th June, 2018 and referred the dispute between the aforesaid parties to me for settlement by Arbitration.

2. *The matter in dispute between the aforesaid parties are:-*

Whether the employees mentioned below who have been served vacation of post letters due to the trade Union actions taken following the failure of discussions on increase of salaries employees for years 2016 and 2017 , have been caused injustices by being terminated from employment and if so, to what relief each employee is entitled.

1. A. G. Mahesh Gunathilake.
2. W. K. Amila Sampath.
3. B. G. Nishantha Fernando.
4. M. G. Saminda Jayaratne.
5. U. G. Ranjith Perera.
6. R. M. A. Bandaranayake.
7. A. M. Wasantha Gunawardene.
8. A. H. M. S. Thilakarathne Bandara.
9. K. G. U. Sampath Bandara.
10. A. M. A. Chaminda Adikari.
11. A.W. U. N. Bandara
12. R. M. S. Y. B. Rajakaruna.
13. U. G. Kulathunga.
14. T. M. G. S. Dhammika Bandara.
15. S. A. Wasantha Kumara.
16. U. G. Chamara Ariyasinghe.
17. M. M. R. Kumara Wijesinghe.
18. G. G. N. Jeevantha Wijesooriya.
19. H. P. D. M. Kumara Pathirana.
20. M. G. Kasturi Priyanandana.
21. J. K. G. H. P. K. Rathnapala.
22. V. G. D. Lakmal Herath.
23. A. G. R. Sampath Adikari.
24. F. Liyanage.
25. R. A. N. Ranathunga.
26. J.R. S. Kumara Jayalath.

3. On behalf of the Trade Union, Mr. Janaka Adikari, Attorney at Law appeared, while on behalf of the Respondent, Mr. Maithri Pitawala, Attorney At Law appeared.

Evidence (Oral and Documentary)

- (a) Applicant - Warnakulasuriya Christhuthuge Amila Sampath's evidence is at pages 76 to 207. Documents  $x_1$  to  $x_{20}$ .
- (b) Respondents - (i) Tusara Sanjeeva Adassuriya, Accountant's evidence is at pages 209 to 244.
- (ii) Mohamed Fahim Mohomad Naufer, Director's evidence at pages 245 to 303.
- (iii) Mohamed Razik Jasin, Manager Human Resources evidence at pages 303 to 339. Documents  $R_1$  to  $R_{20}$ .

4. Findings and Observations -

- A. Alcom Heavy Metals (Pvt) Ltd; a Board of Investment approved establishment having its Head office in Colombo and Factory at Dambulla where mineral sands are processed for export. Mineral sands are obtained from Lanka Mineral Sands Corporation on tender. Processed Mineral Sand in the form of rutile, zircon and / laminate are exported to China, India Japan, Italy, Etc. The Finished products are directly dispatched, whereas sand in crude form brought to the factory for polishing value addition and export.
- B. The establishment Commenced operations in 2003 and continued processing and exporting the finished products. They were in a monopoly situation and lately several others tendered, and in consequence faced difficulties in obtaining the tender for production and supply. The management decided to modernize replacing with new machines Chinese firm brought in Chinese Technicians for installation, which lasted several months. With the installation of new machinery the production had increased substantially.
- C. There were nearly 70 employees, performing different functions who were classified under labour grade. Health and Welfare facilities were deplorable, as explained herein -
- (a) Inside the factory it was very hot and all employees removed their shirts while working near machines;
- (b) There were plenty of dust emanating and circulating inside the factory;
- (c) There were no exhaust fans for excessive hot air to escape;
- (d) The sound from machines were so noisy and were unbearable, as such the closest employee cannot hear the other;
- (e) There were no gloves, boots head gear and no hearing aids to be free from unbearable noise.

Employer had failed to comply with specific provisions required to observe under Factories Ordinance, namely-

Health - Cleanliness, Overcrowding, Temperature, Ventilation, Lightning and Sanitary conveniences.

Safety - Use of machinery

Welfare - Supply of drinking water, washing facilities, accommodation for clothing, First aid and canteen facilities.

Special provisions - Removal of dust and fumes, protection from vibration, and prevention from noise.

Regulations have been made under the factories Ordinance, which explains the application of legal provisions on detail, which the employer shall observe in good,

- D. It was in 2016, The inter Company Employees Union was formed and took up with the management, among other matters, the question of recognition of the union and salary increase of Rs. 10,000 per month. Some of the issues had been resolved at discussions held at Labour office, Naula. Salary increase by Rs. 10,000.00 was refused by the management, stating that the enterprises was facing losses due to competition in business and failure to obtain a tender for supplies.

Although enterprise commenced operations in 2003, there was no evidence of evidence of any salary increase until 2013, From 2013 onwards increases were made in the following manner.

2013	Rs. 2,000 - To Rs. 4,000.00 - P.M.
2014	Rs. 1,400 - To Rs. 2,100.00 - P.M.
2015	Rs. 2,000 - To Rs. 3,200.00 - P.M.
2016	Rs. 2,500 - P.M.

With the rejection of salary demand by management workers commenced a strike w. e. t. 16 Feb. 2018, which lasted till 09th April, 2018. On 22nd Feb 2018. Management required all workers to report back to work, followed with a letter of vacation of post in the event of failure. Accordingly some workers reported for work, while some kept away.

Several rounds of discussions were held under the Chairmanship of Commissioner General of Labour, to reach out a settlement, but consistently management was not flexible in their stand. At the latter stage the trade union offered to come back, under certain condition, but management maintained intransigent attitude and as an escape ground, requested reference to voluntary arbitration, under sec. 3(D) of Industrial Dispute Act, Where the other party also should agree, but Trade Union did not accept their request.

- E. The Trade Union embarked on a legal strike, meaning a registered Trade Union entitled to commence a strike to win their just demands. Sri Lanka ratified ILO Convention No. 87, concerning the Freedom of Association and the Protection of the Right to Organize and Convention No. 98 concerning the Right to Organize and Collective Bargaining.

Also, in terms of article 14 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, a citizens is entitled to, inter alia, The freedom to form and join a Trade union.

In this instance, when the workers of this Trade Union commencing a strike on 16 th Feb, 2018 Just there after those who failed to report as requested by management, were considered to have vacated their posts. This is a serious violation and a commission of unfair labour practice.

F. Most important in this litigation rests on the demand concerning the salary increase by Rs. 10,000.00 per month. Management consistently declared that the establishment suffered severe losses during the particular year. It is possible since, the Chinese firm was engaged in fixing new machinery and in consequence normal work got disrupted. To prove it's position, Management through the witness marked documents R 13 and R 14, which do not project the total financial position of the establishment. There needs absolute transparency.

Cash Flow profit and loss account and the balance sheet, should have been, submitted in complete form. The balance sheet will display the financial standing, with the amount lying at various banks. value of machinery and fittings, value of various assets as well as liabilities. This indicates financial indiscipline, That is the result of number of reasons, primarily the lack of accountability and oversight by it's management.

## 5. Award.

Having examined the evidence comprehensively. I find that the management had firstly neglected to provide the basic health and welfare facilities to the workmen, for 15 years past thus making it a slave camp,

Secondly, immediately after the strike, when discussions were proceeding, terminating the employment contract, violated the obligation enunciated in ILO Conventions No. 87 and 98, including the breach of provisions in Article 14 of Constitution of Sri Lanka.

Thirdly, surreptitiously suppressing the financial position of the establishment, which forms the core issue in determining the matter in dispute.

I therefore require the respondent to pay compensation the amounts notes against the following persons :

	Name of Ex-employer		Compensation
1	A.G.Mahesh Gunathilaka	Rs.	1,033,200.00
2	W.K. Amila Sampath	Rs.	1,033,200.00
3	B.G.Nishantha Fernando	Rs.	1,052,800.00
4	M.G.Saminda Jayarathna	Rs.	1,003,800.00
5	U.G. Ranjith Perera	Rs.	896,000.00
6	R.M.A.Bandaranayaka	Rs.	931,000.00
7	A.M.Wasantha Gunawardhana	Rs.	896,000.00
8	A.H.M.S.Thilakarathna Bandara	Rs.	896,000.00
9	K.G.U.Sampath Bandara	Rs.	896,000.00
10	A.M.A.Chaminda Adikari	Rs.	1,041,600.00
11	A.W.U.N.Bandara	Rs.	834,000.00
12	R.M.S.Y.B. Rajakaruna	Rs.	757,200.00
13	U .G .Kulathunga	Rs.	757,200.00
14	T.M.G.S.Dhammika Bandara	Rs.	741,600.00
15	S.A.Wasantha Kumara	Rs.	741,600.00
16	U.G.Chamara Ariyasinghe	Rs.	1,120,900.00
17	M.M.R.Kumara Wijesinghe	Rs.	679,800.00
18	G.G.N.Jewantha Wijesooriya	Rs.	738,100.00
19	H.P.D.M.Kumara Pathirana	Rs.	671,000.00
20	M.G.Kasthuri Priyanandana	Rs.	361,900.00
21	J.K.G.H.P .K.Rathnapala	Rs.	361,900.00
22	V.G.D.Lakmal Herath	Rs.	361,900.00
23	A.G.R.Sampath Adikari	Rs.	361,900.00
24	F.Liyanage	Rs.	795,300.00
	<b>Total</b>	<b>Rs.</b>	<b>18,963,900.00</b>

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**I කොටස: (I) ඡේදය – ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අති විශේෂ ගැසට් පත්‍රය – 2022.04.22**  
PART I: SEC. (I) – GAZETTE EXTRAORDINARY OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA – 22.04.2022

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with regard to Ex-employees, R. A. N. Ranatunga (No. 25) and J. R. S. Kumara Jayalath (No.26), both union as well as respondent failed to furnish the period of employment. They shall be paid based on the following:

1 to 5 completed years	- 2.5 months per year.
6 to 14 completed years	- 2 months per year.

Computation shall be based on the last drawn monthly salary.

The total amount, shall be deposited with the Assistant Commissioner of Labour, District Labour Office, Matale within 45 days of publication of this award in the Government *Gazette*.

This is just and an equitable award.

P. NAVARATNE,  
Arbitrator.

23<sup>rd</sup> February 2022.

EOG 04 - 0124