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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 1962/6 - 2016 අප්‍රේල් මස 12 වැනි අඟහරුවාදා - 2016.04.12
No. 1962/6 - TUESDAY, APRIL 12, 2016

(Published by Authority)

PART I : SECTION (I) — GENERAL
Government Notifications

My No. CIE/28/2002.

Ref. No. : CIE/28/2002.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

In the matter of Industrial Dispute

Between

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. P. N. Wilson, No. 29, Izadeen Janapadaya, Weligampola, Nawalapitiya of the one part and Kahawatte Plantations Ltd., No. 52, Maligawatta Road, Colombo 10/Barcaple Estate, Ketaboolla, Nawalapitiya of the other part was referred by order dated 25.08.2011 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. 1721/20 dated 30.08.2011 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Mr. P. N. Wilson,
No. 29, Izadeen Janapadaya,
Weligampola,
Nawalapitiya

..... of the one part.

and

- 1) Kahawatta Plantations Ltd,
No. 52, Maligawatta Road,
Colombo 10.
- 2) Barcaple Estate,
Ketaboolla,
Nawalapitiya.

..... of the other part.

M.D.C. AMARATHUNGA,
Commissioner of Labour.

Case No. A-3399

AWARD

Department of Labour,
Labour Secretariat, Colombo 05.
06th April, 2016.

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, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me as the Arbitrator by his order dated 25th August, 2011 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

The matter is dispute between the aforesaid parties is :-

“Whether unjust has been caused to Mr. P. N. Wilson, who served as an assistant field officer at Barcaple Estate, Ketaboola, Nawalapitiya from 01.10.1990 by the termination of his services on 02.04.1998, and if so, to what relief he is entitled”

2. Mr. Bandula Gamage, appeared as the Representative of the applicant, while Mrs. Manoli Jinadasa, Attorney at Law appeared for the respondent organization.

Applicant marked documents A1 to A32 while respondents marked R1 to R23

3. P. N. Wilson, the applicant in his evidence stated that he joined the estate sector on 01st January, 1978 as a works supervisor, at Gurakoya Group, Halgolla Division in Kotmale, which belonged to the Janatha Estate Development Board, where he continued to work until 1985, Thereafter, he was transferred to Tispane Estate where he worked for 5 years, until, 1st October 1990, on which date he assumed duties at Barcaple Estate.

Workers were aggressively protesting, expressing their dissatisfaction, as there were weeds and creepers overgrown, and owing to the fear of existence of poisonous reptiles and failure of management to understand the situation and remedy the issue, to convince the management, the applicant had on 23.08.1997 taken photographs. Workers were agitated and stopped work for 1/2 a day.

On 25th August 1997, he was interdicted for photographing without permission. The superintendent held the disciplinary inquiry. He protested the superintendent holding the inquiry, as he himself made the accusations, However the inquiry was held, and after the inquiry, he was suspended for 2 months.

When he reported for work after 2 months suspension, management transferred him to lower division, where the quarters allocated was unsuitable for occupation.

Instead of reporting, he filed action in labour tribunal for “Constructive Termination” and labour tribunal president, ordered that applicant be :-

- i. Reinstated on 23rd February, 1998 and
- ii. Pay an ex-gratia sum of Rs. 8,000/-

Management duly paid the sum of Rs. 8,000/- but the quarters offered was unsuitable for occupation, which he promptly brought to the notice of management.

From then onwards, there has been a series of communication between the applicant and the company, and involving the Labour Office, Nawalapitiya, the Company, and the Deputy Commissioner of Labour (Industrial Relations). Head Office Colombo.

Applicant had been interdicted on 02nd April, 1998, for not returning the quarters which he occupied earlier.

Thereafter, Ceylon Estate Staffs Union, took up the issue with Labour Office, Nawalapitiya on 25th July 1999 at the inquiry, management consented to resolve but failed to comply. then the matter was taken up by Com. of Labour (Industrial Relations) Head Office.

Discussion proceeded, but management, cautiously avoided any settlement, though several discussions were held.

4. Ms. D. H. Theja Priyadarshani Dasanayake, Labour Officer (Industrial Relations) witness for applicant stated that

In file No. CIE/28/2002, office copy of a letter signed by Mr. S. H. N. De Silva addressed to Managing Director, *vide* (A.16) and the reply filed at (A-17) were shown. The notice of conference held on 27.04.2007 had been sent to parties on 11.05.2007 and applicant had replied on 22.05.2007. On 20.05.2007, applicant informs the Deputy Commissioner, if the company was not prepared, to resolve, the matter in dispute, the matter be referred to arbitration. Management questioned the witness with regard to certain correspondence relating to the petitioner, as well as the respondent company.

- 5) Mr Dudley Stephen Rodrigo, Retired Superintendent, Barcaple Estate for respondent organization stated that :

Was at JEDB and in 1993, left to join Kahawaththa Plantation Company and worked till retirement.

1st August, 1996 joined Barcaple Estate as the Superintendent visor and retired in 1998, shown documents marked R18, R18A, R18B, R18C, R18D and R18E dated 2.7.97, 20.7.97, 20.8.97, 25.8.97, 60.08.97 and 25.8.97 respectively.

Again produced documents marked R19, R19A, R19B, R19C, R19D, R19E which dates back to 8.6.94, 20.6.94, 12.7.94, 30.7.94 and 1.8.94 but the workman had not receipted further these R19A to R19E and R19 I refer to his predecessors era, as such this witness had no right to produce before court, which the Representative, of applicant pointed out.

Documents R19F, R19G, R19H and 19J dated 20.9.94, 20.10.94, 24.01.95 and 08.01.96 had been receipted by the workman. He explained as to why he had taken disciplinary action. He was aware of provisions of the Collective Agreement.

- 6) Finding and Observations

- A. The applicant, P. N. Wilson assumed duties at Barcaple Estate in Nawalapitiya on 1st October 1990. He performed the duties of a Works Supervisor. Barcaple estate comes under the Kahawatte Plantation Ltd.

The Employers Federation of Ceylon represented the 21 plantation companies, and Kahawatte Plantation Ltd was one amongst them. The parties to the collective agreement were

- 1) Ceylon Estate Staffs Union and National Estate Staffs Union on the one part, and
- 2) the Employers Federation of Ceylon on the other part

This Collective Agreement bearing No. 01 of 1998, was published in the *Gazette* Extraordinary No. 1021/13 of 31, March 1998. Which contain the following matters, most of them are non-statutory :

Probation - Attendance - Promotion - Salaries - Cost of Living allowance - Arrears - Hours of Work and over time - Leave - Holidays - Gratuity - Age of Retirement - Suspension as a measure of punishment - Suspension - Pending disciplinary inquires - Administrative transfers - Annual increments - Disciplinary inquires - Variation of terms and conditions of employment and disputes - Duty Leave.

Section 5 read with Section 8 of the Industrial Disputes Act states :

Section 5(1). In this Act “Collective Agreement” means an agreement-

- a) Which is between :-

- I. Any employer or employers, and
- II. Any workman or any Trade Union or Trade Unions consisting of workman, and

- b) Which relates to the terms and conditions of employment of any workman, or to the privileges, rights or duties of any employer or employers or any workman or any Trade Union or any Trade Unions consisting of workmen, or to the manner of settlement of any Industrial Dispute.

2. Reference shall be made in the collective agreement to the parties and Trade Unions to which and the employers and workmen to whom the agreement relates.

Section 8

- (01) Every collective agreement which is for the time being in force shall, for the purposes of this Act, be binding on the parties trade unions, employers and workmen referred to in that agreement in accordance with the provisions of Section 5(2) and the terms of the agreement shall be implied terms in the contract of employment between the employers and workmen bound by the agreement.

- (02) Where there are any workmen in any industry who are bound by a collective agreement, the employers in that industry shall, unless there is a provision to the contrary in that agreement,

observe in respect of all other workmen in that industry terms and conditions of employment which are not less favourable than the terms and conditions set out in that agreement.

By operation of law the Kahawatte Plantations Ltd. is required to comply with the provisions of the Collective Agreement to other employees performing identical functions. In consequence, the terms and conditions of the employee automatically gets altered, thus such terms become implied terms of the employment contract.

- B. Workers in the Barcaple estate protested to express their dissatisfaction, on account of management's failure to clear the weeds and overgrown creepers, for fear of existence of poisonous reptiles. Management had not heeded and workers resorted to strike action. Applicant had taken photographs to convince the management. Management was dissatisfied as he had not taken prior permission.

Thereafter a series disciplinary processes were initiated but were not in conformity with the basic requirements of law and natural justice, and were in breach of provisions of the Collective Agreement, *vide* Clause 16 and 17.

Collective Agreement, in clauses 16 and 17 stipulate the following conditions :

Clause 16: Suspension as a measure of punishment

“Punishment for offences in the case of an employee may include suspension, provided however the such suspension shall not exceed 14 days without pay. Punishment in excess of 3 days suspension without pay shall only be after a domestic inquiry.

Clause 17 : Suspension pending disciplinary and follow up inquires :

- 1) An employee may be suspended from work without pay for a period of not exceeding one month pending a disciplinary inquiry when there is a *prima face* evidence, in the opinion of the employer, of a charge or charges of misconduct against him.

- 2) Suspension of an employee on the ground referred to in sub-clause (1) above for any period in excess of one month shall be on half pay.

- 3) The provisions contained in sub-clause (1) and (2) above shall not apply to the suspension of an employee pending inquiries by the police, by other public authorities or audit verifications.

The disciplinary process adopted by the management, is as follows :-

- a) 02.07.1997 alleged that petitioner erroneously noted the clocking time.
Petitioner had been suspended for 7 days
Management breached the clause 16 of the Collective Agreement, which state that punishment in excess of 3 days suspension without pay shall only be after a domestic inquiry. No domestic inquiry was held.
- b) 20.08.1997 Charged for drop in plucking average imposed a warning.
- c) 20.08.1997 Charged for smelling of liquor
Applicant had been suspended pending inquiry
Superintendent prepared a document, type it and get the signatures of his subordinates in office.
No proper domestic inquiry had been held.
- d) 23.08.1997 and 25.08.1997 charged for photographing without permission
Petitioner had been suspended for 2 months without pay.
Management breached the provisions in clause 16 of the Collective Agreement, which state that suspension shall be limited to 14 days, where as in this instance, it had exceeded the limit. Besides, Superintendent himself conducted the disciplinary inquiry and imposed the punishment, whereby breached the very fundamental concept of natural justice.

Also, It is noteworthy to highlight the essential of a proper domestic inquiry.

- the employee proceeded against has been informed clearly of the charges leveled against him.
- the witnesses are examined - ordinarily in the presence of the employee - in respect of the charges ;

- the employee in given a fair opportunity such person shall :-
to cross examine witnesses.

- he is given a fair opportunity to examine witnesses including himself in his defence if he so wished on any relevant matter and.

- the enquiry officer records his findings with reasons for the same in his report.

e) 27.10.1997 Immediately after 2 months suspension, management effected a transfer to another division.

Applicant instead of reporting for work filed action in Labour Tribunal, alleging constructive termination of employment.

f) Feb. 1998 after brief inquiry learned Labour Tribunal President, orders -

- * Reinstatement effective 23.02.1998 and
- * payment of Rs. 8,000/- by way of ex-gratia

Managment pays up Rs. 8,000/- ordered by the Labour Tribunal, but fails to turn up to take charge of the quarters occupying.

g) 02.04.1998 Applicant interdicted
Applicant had been accused of failure to handover the quarters he occupied and not occupying the quarters offered at another division. Applicant found that the new quarters offered had no water and toilet facilities (The basic facilities)

C. It is seen that the transfer effected itself from another mode of punishment. There are certain guarantees, provided in law relating to occupation of estate quarters :-

The Estates Quarters (Special Provisions) Act, No. 2 of 1971 states in Sec. 2, as follows-

“Period during which the right to occupy quarters subsists after the termination of employee's service

Section 2. Where the services of any person who is an employee on the estate and who is provided with quarters on the estate are terminated by the employer, whether with or without notice, then notwithstanding the termination of such services.

a) have the right to occupy such quarters together with his dependents until he is ejected there from on a decree of a court of competent jurisdiction ; and

b) During the period he exercises the rights conferred on him by paragraph (a), be entitled to have all the facilities which are necessary for the exercise of that right and which he had prior to the termination of his services.”

D. On the direction of the Deputy Commissioner of Labour (Industrial Relations) the Labour Officer, Nawalapitiya inspected the condition of quarters offered to the applicant ; He reported that the quarters were of sub-standard. Managment's argument that labour officer failed to inform the managment, prior to his visit is misleading, in that, if employers were to be informed of their visits no detections could be done.

After several discussions at the Labour Department, the management failed to provide a suitable quarters and pay the salary.

During the period of interdiction, applicant had given the quarters to a trusted person to look after, who was working in the estate, and once in a way he visited the house. In consequence managment stopped the work of that workman and his wife as well. Since the applicant was under interdiction he had no earning to subsist.

E. Management allegation that Labour Officer who inspected the suitability of quarters was done without intimation to managment is unacceptable. The law provides that an authorized officer is empowered to visit any premises, at any reasonable hours by day or night. Regulation 39(1) of the Industrial Disputes Act is reproduced hereunder :-

Regulation 39(1) made under the Industrial Disputes Act states

[1] The Commissioner or any authorized officer or a labour officer or any other officer appointed under the Act, may for the purpose of investigating any matter connected with or having a bearing on any industrial dispute which

exists or apprehended, at reasonable hours by day or night :-

- a) Enter any premises or place in which employer's or workmen who are parties to such dispute work :
- b) Inspect the said premises or place and any machinery, appliances or articles therein ; and
- c) Examine any person whom he finds in such premises or place.

[2] It shall be the duty of the person in charge of any premises or place of the description specified in the preceding paragraph and every agent or servant of such person to furnish such facilities as may be required by any officer for the purposes of any entry, inspection or examination which that officer is empowered to carry out under the said paragraph.

F. Besides, all these issues emanated with the workers striking for 1/2 a day, which erupted due to the management's failure to get the weeding done during proper time. The system in the plantations is that a certain time schedule need to be adopted in relation to uprooting, replanting application of fertilizer, weeding and plucking. If plucking is delayed, the overgrown leaves need to be removed, and process is costlier.

G. Maintenance of discipline is the prerogative of the management. If and when issues of misconduct or indiscipline arise ; such issues need to be tackled cautiously within the legal frame without harming the industrial peace established by the stakeholders.

In conclusion, I find that the decision of the management in relation to the allegations against the applicant will not prevail.

- as there is want of *bona fides*.
- it is a clear case of victimization or extreme form of unfair labour practice in violation of the principles of natural justice.
- there is basic error on facts ; and
- there has been a perverse finding on the materials.

Having examined the evidence comprehensively, I award that the applicant workman be paid according to the following basis -

- a) In terms of the Collective Agreement No. 1 of 1998, and the subsequent collective agreements the applicant workman shall be placed on the proper salary in the scale, and compute monthly salaries due until he reached the retirement age of 58 yrs, as per the said agreement, (Short payment due from 02.04.1998 until he reached 58 years)
- b) The applicant workman be paid the cost of living allowance computed in terms of the Collective Agreement No. 1 of 1998, and the subsequent Collective Agreement arising there from, until the workman's retirement on reaching 58 yrs.
- c) The statutory matters for the recovery of Employees Provident Fund dues, Employees Trust Fund dues and Gratuity dues to be looked into by the Dept. of Labour.
- d) Any other dues, emanating from the implementation of the collective agreement provisions, such as benefits under the medical scheme *etc.* to be canvassed at the Department of Labour.

The amounts computed by way of salaries and cost of living allowances due, shall be deposited with the Labour Officer, Labour Office, Nawalapitiya within 45 days of publication of this award in the Government *Gazette*.

This is just and an equitable award.

P. NAVARATNE,
Arbitrator.

14th March 2016.

04-1009