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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 1772/32 - 2012 අගෝස්තු මස 23 වැනි බ්‍රහස්පතින්දා - 2012.08.23
No. 1772/32 - THURSDAY AUGUST 23, 2012

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : CI/981/2002.

THE INDUSTRIAL DISPUTES ACT (CHAPTER 131)

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Industrial & General Workers Union, No. 513-2/1, Elvitigala Mawatha, Colombo 05 of the one part and State Engineering Corporation Sri Lanka, No. 130, W. A. D. Ramanayaka Mawatha, Colombo 03 of the other part was referred by order dated 30.08.2007 made under Section 4(1) of the Industrial Disputes Act, Chapter 131, (as amended) for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

V. B. P. K. WEERASINGHE,
Commissioner of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,

30th July, 2012.

In the matter of an Industrial Dispute

Between

I A - G 16497 — 350 (2012/08)

Industrial & General Workers Union,
No. 513-2/1, Elvitigala Mawatha,
Colombo 05.

of the One Part

Case No. A/3231

And

State Engineering Corporation of Sri
Lanka,
No. 130,
W. A. D. Ramanayaka Mawatha,
Colombo 03.

of the Other Part

The Award

The Honourable Minister of Labour Relations & Manpower 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 Arbitrator by his order dated 30th August 2010 and referred the following dispute to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are :

Whether the fifty three (53) employees whose names are referred to in the attached schedule and these who were employed by the State Engineering Corporation of Sri Lanka as its casual employees are entitled to get the permanency in service at the said Corporation on the grounds that they have fulfilled the requirements of the provisions in the Public Administration Circular Nos. 16/94 of 10.05.1994, 16/94 (1) of 30.05.1994 and 16/94 (ii) of 04.07.1994 respectively and if not what should be the other relief entitled to each of them.

The Party of the First Party informed the Industrial Courts that initially there had been 53 workmen listed in the dispute, but at present majority of them were either retired or their whereabouts are unknown. In the circumstances the Part of the First Part listed following 8 persons who seeks the relief from the Industrial Courts namely,

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|-------------------------------|-----------|
| 1. No. 08 - F. A. Weerasinghe | W: 481928 |
| 2. No. 27 - R. H. Abeyratne | M: 157621 |
| 3. No. 34 - P. D. Rathnayake | M: 157962 |
| 4. No. 35 - B. M. Gomes | M: 146599 |
| 5. No. 37 - V. O. Weerakoon | W: 501191 |
| 6. No. 40 - P. S. S. Perera | M: 146577 |
| 7. No. 42 - K. D. Hinton | M: 145482 |
| 8. No. 39 - G. Somasiri | C: 400700 |

R. H. Abeyratne, one of the applicant in his evidence stated as follows:

He said that he joined the Respondent Corporation on 13.11.1990. Since then he has been working in the various work sites of the Corporation as a mason. In his evidence he marked Public Administration Circular 16/94 as A1,

Following caption of the said circular is marked as A1 (a)

“දැනට රජයේ සේවයේ අතියම් සේවකයින් වශයෙන් දින 180ක අඛණ්ඩ සේවා කාලයක් 1994 මැයි 1 දිනට සම්පූර්ණ කරන වැඩ හා හැසිරීම සතුටුදායකව සම්පූර්ණ කර ඇති අතියම් සේවකයින් ඔවුන් සේවය කරන තනතුරුවල ස්ථිර කළ යුතු යැයි රජය තීරණය කර ඇත”

The witness further marked the following caption as A1(b).

“මෙම කටයුතු 1994.06.15 දිනට පෙර අවසන් කළ මැනවි”

The witness further marked Public Administration Circular 16/94/1 as A2 by which 16/94 circular was revised as follows :

“දැනට රජයේ සේවයේ අතියම් සේවකයින් වශයෙන් දින 180ක අඛණ්ඩ සේවා කාලයක් 1994 මැයි 1 දිනට සම්පූර්ණ කරන වැඩ

හා හැසිරීම සතුටුදායක හා බඳවා ගැනීමේ පටිපාටියට අනුකූලව අවශ්‍ය සුදුසුකම් ඇති අතියම් සේවකයින් ඔවුන් සේවය කරන තනතුරුවල ස්ථිර කළ යුතු යැයි රජය තීරණය කර ඇත”

The witness further marked letter sent by Mr. Mahinda Madihahewa, Secretary Ministry of Manpower and Labour Relations to the Ministry of Public Administration asking whether it is correct to grant permanency to the casual workers who has complied with the said Circular 16/94.

Witness further marked the reply sent by the Director General Public Administration as A4 recommending permanency to the employees who has completed 180 days of uninterrupted service.

Subsequently witness R. H. Abeyratne marked the letter of appointment dated 19.02.2007 received by him as an unskilled worker as A7.

The witness stated that he has worked in the Respondent Co-operation for the period 13.11.1990 to 01.01.2007 without a service break.

Witness further marked the Order made in Industrial Arbitration Case No. 2379 as A(6).

(a) The said case was filed by the workers who were not being made permanent according to Circular 41/88 dated 25.11.1998.

(b) The order was made directing the workers to be made permanent with salary allowances and increments.

In cross examination the witness stated as follows.

To be back dated his appointment to 1994 and to grant relevant promotions and salary increments entitled to him since the date of the appointment.

The witness stated that he was made permanent employee only as at 1st January 2007.

During the cross examination the witness refused to accept that the order made in case No. A/2379 is not applicable to this case.

B. M. Gomes Time Keeping Clerk stated in his evidences that though he has completed 180 days of uninterrupted service 31st May 1994 he was not made permanent may on 01.12.2001 (A7).

The witness pleaded that,

(i) To make him permanent as at 1st May 1994/

(ii) Grant salary increments, other allowances due up to 23.01.2001.

The witness during his cross examination stated that though there has been vacancies he was made permanent to his post only after the large number of employees left the Co-Operation after obtaining compensations.

During Cross Examination the witness admitted that no one was made permanent under 1694 circular.

During there examination the witness stated that he has been working as a casual time keeper clerk in 1991 when R2 (circular), A/08 and A/07 were issued. He further stated that he was not made permanent even there was a vacancy.

F. A. Weerasinghe in his evidence stated as follows.

The witness stated that he joined the Respondent Corporation as a supervisor after 12 years of service in 1985. The witness left the Corporation after receiving compensation on the ground of excessive staff.

He was re employed on 01.11.1990 on casual basis.

The witness said that his service were terminated during 23.11.1995 to 31.10.1997.

On 31.10.1997 he was re employed as a Forman (Civil).

Witness further stated that he was working in number of work sites. Thereafter he has been working uninterruptly at Ratmalana worksite since 05.12.2005.

Witness marked circular dated 22.01.2007 issued by D. Dissanayake., Secretary Public Administration as A/16.

The witness further stated according to circular marked A16 the employees who has worked 180 days continuously and satisfactory should be made permanent.

During cross examination witness Weerasinghe stated that if he was made permanent in 1994 he should be promoted to the Special Grade (viii).

Gomes Makaolage Administration Officer of the respondent Corporation in his evidence stated as follows.

The witness stated that the Circular No. 94/16, 94/16(i) and 94/16 (ii) were caused this Dispute before the industrial Court.

The witness stated the applicant R. H. Abeyratne was given 14 increments at time of he was confirmed to his post.

In evidence, the witness stated that the increments given to the applicants during their tenure of service is as follows :

| | | |
|----------------------|----|------------|
| K. D. H. Seneviratne | 08 | increments |
| P. S. S. Perera | 09 | increments |
| W. O. Weerakoon | 09 | increments |

The witness further stated that when F. A. Weerasinghe applied for the post of Forman Grade iii he did not have the stipulated qualification.

During the cross examination the witness stated.

1. That he has no knowledge when the Carder system, (which was introduced in 1991) came in to the operation in the Respondent Co-operation, he said that he is not aware that who has approved the Carder System (R 34).

Both parties have filed written submissions. The contention taken by the applicants was that they were penalized as way were not made permanent as per the circular No. 16 of 1994., 94(i) and 94(ii).

The contention taken by the Respondent co-operation was that not a single person was made permanent under circular 16/94, 19/94(i), and 19/94(ii).

All of the applicants were given salary increments and promotions.

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

- (i) The Respondent Co-operation has acted unjustly and unfairly without confirming the applicants as directed by Public Administration circular 16/94, 19/94(i), 19/94(ii).
- (ii) The Respondent Co-operation has acted malice towards applicants keeping them as casual employees for long period and thus depriving the benefits of the permanent employment and depriving the peace of mind of the applicants.
- (iii) By doing so (ii and iii), the Respondent being a Public co-operation has acted mala fide towards fellow workers.

In the circumstances, I wish to quote majority decision of the Supreme Court in state Bank of India Vs. Edirisinghe (1991) that the arbitrator has to make and award which is just and equitable, he is not tied down and fettered by the terms of the contract of employment. He can create new rights and introduce new obligations between the parties. The effect of the award is to introduce terms which become implied terms of the contract. It was pointed out that as industrial arbitrator creates a new contract for the future in contrast to a judge who enforces rights and liabilities arising out an existing contract.

An Industrial arbitrator settles disputes by dictating new conditions of employment to come into force in the future when he cannot get the parties to agree to them in contrast to a judge who determines the existing right and liabilities of the parties.

For the reasons aforesaid it is my finding that the Respondent Authority (party of the Second Part) has caused injustice to the 8 applicants. (party of the First Part)

In the circumstances taking into consideration the totality of evidence led before me I make award that the Party of the First Part (8 applicants who are listed below)

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| 1. No. 08 - F. A. Weerasinghe | W: 481928 |
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be paid arrears of salary inclusive of salary increments, and promotions which are rightfully due to them on the ground that they have fulfilled the requirements of the Public Administration Circular Nos. 16/94 of 10.05.1994, 16/94(1) of 30.05.1994 and 16/94 (11) of 04.07.1994 with effect from 1st May, 1994.

I further make order that this award should be implemented within 21 days of the publication in the Government Gazette of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and equitable.

Kapila M. Sarathchandra,
Arbitrator.

10th, July 2012.

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