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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 1940/5 - MONDAY, NOVEMBER 09, 2015

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. IR/20/26/2010.

In the matter of an Industrial Dispute

THE INDUSTRIAL DISPUTES ACT CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between The Ceylon Mercantile Industrial and General Workers' Union (CMU) on behalf of Mr. W. K. S. Wijeyaratne, No. 3, 22nd Lane, Colombo 03 of the one part and Piramal Glass Ceylon PLC, No. 148, Maligawa Road, Borupana, Ratmalana of the other part was referred by order dated 23.12.2011 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. 1739/15 dated 04.01.2012 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

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

Department of Labour,
Labour Secretariat, Colombo 05.
29th October 2015.

Ref No. : IR/20/26/2010.

Between

The Ceylon Mercantile Industrial and
General Workers' Union (CMU),
on behalf of Mr. W. K. S. Wijeyaratne,
No. 3, 22nd Lane,
Colombo 03

Case No. A 3431

..... of the one part.

and

Piramal Glass Ceylon PLC,
No. 148, Maligawa Road,
Borupana,
Ratmalana.

..... of the other part

AWARD

1. The Hon. Minister of Labour and Labour Relations by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act, No. 43 of 1950, as amended, appointed me as arbitrator by his order dated 23.12.2011 and referred the dispute between the aforesaid parties to me for settlement by arbitration.



The matters in dispute between the aforesaid parties are as follows :-

“Whether injustice has been caused to Mr. W. K. S. Wijeratne serving in the Piramal Glass Ceylon PLC by being transferred to the Supplies Division of the company with effect from 26.10.2009 without employing him in his earlier post of Cashier and if so to what relief he is entitled”

2. Appearances :

Mr. H. A. Seneviratne Attorney-at-Law appeared for the Union on behalf of the Workman.

Mr. Chameel N. Perera Attorney-at-Law from Employers' Federation of Ceylon appeared for Respondent Company.

Mr. A. K. M. Fowzin Head of Human Resources represented the Company.

3. Background facts :

This dispute revolves round the transfer of Mr. W. K. S. Wijeratne to Supplies Department with effect from 26.10.2009. The Respondent Company in its statement dated 03.02.2012 under regulation 21(1) of the Industrial Dispute Regulations 1958 has stated that Mr. Wijeratne was employed as a Cashier in the Finance Division and on 26.10.2009 he was transferred to the Supplies Department in the same position.

The Union in its statement, dated 02.02.2012 under Regulation 21(1) of the Industrial Dispute Regulations 1958 has stated that, Mr. Wijeratne was not given the Work of a Cashier when he was transferred to Supplies Division on 26.10.2009, As, negotiations for a settlement had ended deadlock the dispute was taken up for inquiry. The workman filed his evidence in chief by way of an affidavit which is available in pages 58-65 of the case record. Documents A-1 to A-36 have been annexed to the affidavit. These documents have been marked in the Arbitration Proceedings but an additional documents A-37 has been marked in the Arbitration Proceedings. A-37 is the Collective Agreement entered into between the Respondent Company and the Intercompany Employees' Union.

According to the proceedings of 27.06.2014 - Page 286, the Learned Counsel for the Union was unable to identify the documents marked subjects to proof at that moment. The documents marked subject to proof were not identified by him even when the case was closed. The Respondent Company led the evidence of Niloni Botheju Financial Controller and marked documents R-01 to R-18. It should

be noted that, R-05 was not marked. Both parties tendered written submission with marked documents after the case was closed.

4. Issues to be determined :

- (i) Whether injustice has been caused to Mr. W. K. S. Wijeratne who was serving in the Respondent Company as a result of his transfer to Supplied Division of the Company effective from 26.10.2009.
- (ii) Whether, he was employed as a Cashier after he was transferred to Supplies Division effective from 26.10.2009.
- (iii) To what relief he is entitled.

5. Analysis of evidence, with particular reference to the issues to be determined.

The evidence in chief of the Workman by way of affidavit contains 46 paragraphs, Paragraphs 1-27 in pages 1-5 of the affidavit deal with matters prior to 26.10.2009 the date on which, he was transferred to Supplies Division. I have therefore, decided to examine the evidence in the affidavit from paragraph 28 onwards.

The evidence of the respondent company in relation to the transfer of Mr. W. K. S. Wijeratne to the Supplies Division effective from 26.10.2009 commences at page 307 of the proceedings of 11.09.2015 last question and answer.

6. Evidence of Mr. W. K. S. Wijeratne :

The behavior pattern of Mr. W. K. S. Wijeratne I find has been to raise objections as a matter of routine for almost everything. R-09 is the letter of Transfer to Supplies Division and in that letter, too he has raised objections in his own hand writing which is marked as R - 09(a)

The Union has sent a letter to the Commissioner of Labour Industrial Relations marked as A-24, on 05.08.2010 whereat it has been stated that, with the transfer on 26.10.2009 he was performing the work previously done by a Peon. In his affidavit evidence in chief he has stated that he was not given a seat in the Supply Division and not given any work - para 31 of the Affidavit.

In para 38 on the affidavit he has stated that, he has protested against changing his designation. - A-30 dated 27.06.2011.

To the questions posed by me he has given the following answers : Page 250 the proceedings of 07.02.2014.

Q : What were the duties you performed when you were in Supply Division ?

A : I was not given any work and I did not do any work.

Q : Were you paid your salary ?

A : Yes.

To the next question, under Cross Examination he has given answer as given below.

Q : Was your Cashier Allowance paid ?

A : Yes, After that stopped

It should be noted that, he had been paid the salary and also, Cashier Allowance although, has admitted that, he did not do any work and that he was not given any work.

He has stated that, the Commissioner of Labour instructed the Company on two occasions to issue a List of Duties to him. Accordingly, a List of Duties was given to him - page 265 of the proceedings of 24.02.2014. This is marked as R-18 dated 04.11.2010. He was transferred on 26.10.2009 to Supplies Department and a List of Duties marked as R-18 was issued to him on his own admission. Having admitted R-18 as the List of Duties given to him he has made twists and turns subsequently in his evidence in relation to R-18.

Under Re-Examination on 27.06.2014 in page 284, he has admitted that, he was given R-18. His evidence in relation to R-18, which specified his duties, would appear to be contradictory. I am inclined to think that, he is not speaking the truth. He has stated in his letter dated 27.06.2011 marked as A-30 that, his Designation has been given in his Pay Slip of May, 2011 and June, 2011 as Senior Clerk Special Grade. In relation to this matter the Witness of the Respondent has explained as to the circumstances under which, the change had taken place. He has not stated in Evidence in Chief or under Cross Examination or Re-Examination as to, what his terminal salary was and also what loss he has suffered as a result of his transfer on 26.10.2009 to Supplies Department which are pivotal issues to determine relief. He has not complained that, his salary was reduced as a result of the change of his Designation.

7. Evidence of Niloni Botheju - Financial Controller of the Company

Her evidence, was *inter-alia* as follows :

(i) Mr. W. K. M. Wijeratne was transferred by R-09 to Supplies Department effective from 26.10.2009.

(ii) By R-11 dated 17.11.2009 he had declined to perform duties at the Supplies Department.

(iii) R-13 dated 16.07.2010 was sent to him by the Senior Manager Supply Chain. Para 01 of R-13 stipulates the work he has to perform as Cashier. Page 310 of 11.09.2014. (I find that he has protested in his own hand writing in R-13 also)

(iv) At the time R-13 was written he had not performed any duties from 26.10.2009 to 16.07.2010.

(v) The duties he had to perform in the Supplies Division are in accordance with the responsibilities given to him as Cashier as per R-12 (a) - page 318 of the proceedings of 01.10.2014.

(vi) Because, he wanted specific list of duties R-18 was given to him - page 320 of proceedings of 01.10.2014.

Under Cross Examination she has said that, specific duties were given to him and it has been marked as R-18 page 326 of the proceedings of 04.11.2014.

She has also said that, R-18 was given to him as per agreement made at the Labour Department. it was put to her that, R-18 was not a list of duties and her answer was "I do not agree. It is list of duties" - page 330 of the proceedings of 04.11.2014. Her evidence in relation to change of Designation in R-28(a) and R-28(b) was that, It was a mistake due to a computer system problem in the Pay Roll. She also stated that, this mistake was not brought up by the employee too as he was suspended and there was an inquiry - Page 332 of the proceedings of 14.11.2014.

Her evidence under Cross Examination on 22.01.2015 at page 344 is as follows :

Q : Why didn't you offer Cashier's duty to the Workman ?

A : We did offer him Cashier's duties, at the Supplies Department.

Q : I put it to you, that you relieved the applicant from duty of a Cashier ? (ii) He was employed as a Cashier after he was transferred to Supply Department on 26.10.2009.

A : I deny because we continued to pay the risk allowance that is due to a Cashier and also we continued to retain the Security Deposits that we had taken from him for the position of Cashier. (iii) He is not entitled to any relief in view of my determination to issues (i) and (ii) above.

9. Conclusion :

To questions posed by me she has answered as follows :

Q : You say you have not changed the designation do you say that you have assigned work which is not that of a Cashier to this workman ?

A : No, we have not assigned work which is not that of a Cashier.

Right along he has performed the work of a Cashier - page 354 of the proceedings of 29.01.2015.

In page 355 of the proceedings of 29.01.2015 she has answered as follows to the question posed by me.

Q : With the transfer of the workman to the Supply Department from 26.10.2009 was he employed in any work other than that of a the Cashier.

A : He was only doing the Cashier's work at the Supply Department.

Her evidence has cleared the cloud surrounding my mind, in relation to the allegations made by Mr. Wijeratne against the Company, I am inclined to accept her evidence.

8. My determination on the issues is as follows :

- (i) No injustice has been caused to Mr. W. K. M. Wijeratne as a result of his transfer to Supply Department on 26.10.2009. 27th April, 2015.
11-653

It is considered appropriate to point out that the workman has not given evidence in relation to the loss, if any, suffered by him as a result of the transfer to Supplies Department from 26.10.2009. This evidence is absolutely necessary to consider relief. In this context I wish to quote from the landmark judgment of Justice Amarasinghe in Jayasooriya Vs State Plantations' Corporation 1995 - 2SLR 379.

“The burden is on the employee to adduce sufficient evidence to enable the Tribunal to decide the loss”

He has in his judgment cited the observations made in Adda International Ltd Vs Curio which reads as follows :

The Tribunal must have something to bite and if an applicant produces nothing to bite he will have only himself to blame if he gets no compensation.”. Justice Amarasinghe has also stated that “ the assessment of compensation should be done based on solid facts submitted by parties.”

Taking into consideration the totality of the evidence led in arbitration proceedings I decide that the workman merits no relief. Accordingly I make no award.

V. VIMALARAJAH,
Arbitrator.