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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 1718/2 - MONDAY, AUGUST 08, 2011

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## PART I : SECTION (I) — GENERAL

### Government Notifications

My No. : T23/P/119/2004. Case No:  
A 3160

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. W. A. D. Ranaweera, No. 08, Colony 18, Mahiyanganaya of the one part and Sri Lanka Central Transport Board, No. 200, Kirula Road, Colombo 05, Uva Bus Company Limited, Head Office, Passara Road, Hindagoda, Badulla of the other part was referred by order dated 27.04.2006 made under section 4(1) of the Industrial Disputes Act, Chapter 131 (as amended) and published in the *Gazette of Democratic Socialist Republic of Sri Lanka Extraordinary*, No. 1445/4 dated 15.05.2006 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Mr. W. A. D. Ranaweera,  
No. 08, Colony 18,  
Mahiyanganaya

*Vs.*

1. Sri Lanka Central Transport Board,  
No. 200, Kirula Road,  
Colombo 05; and
2. Uva Bus Company Limited,  
Head Office,  
Passara Road, Hindagoda  
Badulla.

#### THE AWARD

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

Department of Labour,  
Labour Secretariat,  
Colombo 05.

06th July, 2011.

Minister of Labour Relations and Foreign Employment 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 appointed me Arbitrator and referred the aforesaid dispute to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties are:-

- (1) Whether Mr. W. A. D. Ranaweera who is presently employed at Uva Bus Company Limited is entitled to receive half salary that was withheld for the period of 21.07.1995 to 31.03.1998 and if not, to what relief he should be granted; and
- (2) Whether Mr. W. A. D. Ranaweera is entitled to receive the salary that was withheld for the period of 20.06.2001 to 19.09.2001 during which his services was temporarily suspended and if not, to what relief he should be granted.

This matter was taken up for inquiry. Both parties were present, Mr. S. M. Abeyratne AAL appeared for the Applicant Mrs. Madawala AAL appeared for the Respondent.

The applicant gave evidence. Witnesses Weerasinghe and Weerakone gave evidence for the Respondent.

I have examined the evidence both, oral and documentary, and the written submissions of the parties.

The evidence of the applicant shows that he is now working in Hasalaka Depot in Grade 3A of the Sri Lanka Transport Board. In the year 1995, June 17th he worked in the Mahiyangana Peopled Transport Board, While working in this board disciplinary action was taken against him by the board. There were seven directors on the board. The applicant was a director Operations. Mr. G. Ariyaratne was Managing Director on 17.06.1995. The Managing Director Ariyaratne had a dispute with him. Applicant was appointed Managing Director in place of Ariyaratne at a Board Meeting on 13.05.1995. Report of the said board meeting was produced in evidence as A1 subject to proof. The report was signed by all the Directors. Applicant's name was proposed by Director D. M. Chandrasena and seconded by Director R. M. Piyasena Director Ariyaratne objected to the appointment of applicant as Managing Director. All other Directors approved the appointment. Ariyaratne did not handover work to applicant. As such, applicant was unable to work as Managing Director. After that applicant worked as Manager Operations from 07.06.1995 in Mahiyangana Peopled Depot. On 07.06.1995, at the request of Chief Director Uva Provincial Council, applicant went on an official inspection of the new bus route from Colombo to Mahiyangana via Badulla. At that time, applicant worked as Chief Manager Operations. Applicant took a bus which was in operation.

His evidence shows that he took a bus from Mahiyangana to Colombo on route inspection. He took passengers in the bus. On the following day, he returned on the same route. On

the way, in Badulla, he went to meet Lawyer Sujeewa Jayasinghe regarding a case of a driver filed in the Magistrate Court.

His evidence shows that he earned Rs. 3300/- for the Board in transporting passengers on his route inspection. Regarding this incident disciplinary action was taken against him. His services was suspended and a disciplinary inquiry was held. A charge sheet A(2) was issued. His services were terminated with effect from 21.07.1995. His services were terminated on the instructions of the Managing Director Ariyaratne. According to charge sheet A(2), 15 charges were leveled against him. He denied the charges. He produced documents A(3) to A(5) in support of his position in evidence on the charges.

His evidence shows that he is now working as Manager Operations in the CTB, Kandy Region.

His evidence shows that the main charge levelled against him was on the basis that he traveled in the bus belonging to the board on a private matter. He vehemently denied this charge. He travelled in the bus on an official route inspection. He made an entry in the log book and he made entries in the log sheet used by him, on his official route inspection in the bus.

His evidence shows that this charge was the main charge. The other charges were incidental to this charge. He was asked to explain why he did not take a regular driver on the trip on the 16th and 17th June 1995. He took a foreman driver instead. He explained this stating that drivers on the stand by duty roster are required for duty when the necessity arises. There was no loss to the establishment.

His evidence shows that the respondent without evidence on the charges against him, found him guilty of the charges.

In evidence he claimed the three months salary due to him, which was withheld by the respondent.

His evidence shows that he was found guilty for meeting with an accident on the said trip. He produced the Accident Report A(4). According to the accident report, the accident occurred due to the fault of the driver of the bus belonging to the Bandarawela Depot.

Consequent to a disciplinary inquiry held against him, he was found guilty and demoted from Grade 3A to Grade 4 and he was suspended from service in Grade 3. He produced the order in the disciplinary inquiry as A12.

His evidence shows that he made a complaint to the Labour Department Badulla. Inquiry was held, and ACL Badulla made

order that the respondent should pay the applicant the salaries due to the applicant, which was withheld by the Respondent. Order of the ACL Badulla was produced in evidence marked A. 14. The respondent Uva Bus Company Limited did not comply with the order of ACL Badulla. Applicant pursued the matter with the Commissioner of Labour Colombo. The Commissioner held an inquiry and made order that, that the respondent should pay the applicant the salaries due to the applicant which was withheld by the respondent. The order by the Commissioner was produced in evidence marked A. 15. the Respondent did not comply with the order of the Commissioner.

In evidence, in relief, he claimed the salaries due to him which was withheld by the respondent, as set out in the 2 issues in this case. In cross-examination in evidence, applicant maintained that he was appointed by the Transport Board of Directors as Managing Director in place of Ariyaratne at a board meeting on 13.05.1995. After this, Ariyaratne was angry with him. The respondent was unable to contradict this. He mentioned that he went on an official route inspection in a bus on 17th and 18th June 1995 as Chief Manager Operations with a log entry in the log book. He denied in cross-examination, that he went on a private trip. He took a foreman as driver of the bus which was in order and did not affect the normal work in the establishment. There was no loss to the establishment. If he had caused a loss to the Board, a charge would have been preferred against him. No charge of loss was preferred against him.

In cross-examination, he maintained that on his official route inspection from Mahiyangana to Colombo and Colombo to Badulla on 17th and 18th June 1995, tickets were issued to passengers and the revenue Rs. 3030/- was credited to the board. The respondent was unable to contradict this. Applicant stated that document A(3) proves that he was found not guilty on this charge. He denied charges 6 and 7. He stated in evidence in cross examination that on his official route inspection on the 17th June 1995 he stayed the night in Battaramulla and this was not a private trip. He denied in evidence that he defrauded the establishment by stating that he went on an official trip. He denied that he breached his responsibility and it was a breach of discipline. He further stated that on his complaint to the Labour Department, the ACL Badulla and the Commissioner of Labour Colombo held an inquiry and decided that he was not guilty of the charges framed against him by the respondent.

In cross-examination, he was referred to the domestic inquiry held against him. He stated that he agreed in the manner of the inquiry held properly. At the domestic inquiry, he was found not guilty of charges 8 and 9 out of the 15 charges framed against him. He was found guilty of the rest

of the charges. He appealed against the order and, thereafter, the punishment meted out against him was reduced. In evidence, he stated that he complained to the ACL Badulla and the Commissioner of Labour Colombo. An inquiry was held. He was found not guilty of the charges. An order was made against the respondent to pay the dues withheld by the respondent. In evidence in cross-examination, he referred to the said order by the ACL Badulla and Commissioner of Labour marked in evidence A(14) and A(15).

Taking into consideration the evidence of the applicant along with the documents marked in evidence by the applicant, I am of the view that the evidence of the applicant shows that he is not guilty of the charges framed against him. I have now to consider the evidence of the respondent to decide the issues in this case.

The evidence of witness Weerasinghe for the respondent shows on 17.06.1995, he worked in Mahiyangana Depot. On this date, he took a bus to Colombo. He signed a log sheet. He acted on instructions from the applicant, who was the depot manager. The applicant went in the bus on a route inspection. Passengers were taken in the bus. The conductor issued tickets to the passengers. He does not know the revenue earned on the trip. The bus stopped at Battaramulla. He drove the bus during his duty hours.

His cross-examination in evidence shows that he was working as Foreman in the Mahiyangana Depot. On 17.06.1995 he worked as a driver on the trip from Mahiyangana to Colombo and back to Mahiyangana. His evidence shows that, on earlier occasions, he worked as driver of the bus on official inspections. This is done as the necessity arises. He confirmed in cross-examination that this was not a private trip. He stated in evidence that he spent the night with the conductor at Battaramulla. Nothing happened thereafter. His evidence shows that he drove the bus back to Mahiyangana the following day.

Taking into consideration the evidence of this witness, I am of the view that the route inspection by the applicant on 17.06.1995 was an official trip and not a private trip. Passengers were taken in the bus on this trip and revenue was collected for the respondent Board. On the evidence of this witness, I am further of the view that, as the necessity arises, witness Weerasinghe, as Foreman does official duty, as a driver on the instructions of his superior officer.

The evidence of witness Weerakone for the respondent shows that he, presently, works as Regional Operations Manager for the last nine months. Previously, he worked as administrative officer in the CTB Kandy. He is presently working in the Uva Region of the CTB Badulla. At the time

of the incident relating to the applicant, he was working in the Kandy Region. Presently, there are four members in the Board of Directors. When the Peoples Board was functioning, there were six members in the Board of Directors.

In answer to questions from Court, witness stated that he is unaware of inquiries held by the Labour Department relating to the incident involving the applicant. His position in evidence is that the Managing Director of the Board has more powers in the Board of Directors. His evidence shows that any decision taken by the Directors of Operations should be notified to the Managing Director. If the Director of Operations takes a decision without notifying the Managing Director, it is illegal.

His cross-examination in evidence shows that decision on appointments is taken by the Board of Directors at the meeting of the Board. He agreed that the directors take decisions in their respective subjects in the sections of the Board. His evidence is that the incident which arose relating to the applicant should have been notified to the Managing Director and done with the knowledge of the Managing Director. His further cross-examination in evidence shows that he does not know whether the applicant notified the management of the trip done by him relating to this incident involving the applicant. On the evidence of this witness, I am of the view that he is unaware of the circumstances relating to the incident of the applicant taking a bus and travelling from Mahiyangana to Colombo and back, without the authority of the management.

I have carefully examined the evidence, both oral and documentary, of both parties.

The evidence of the applicant shows that he worked in the year 1995 in the Mahiyangana Peoples Transport Board. While working in the board disciplinary action was taken against him by the Board. Ariyaratne was the Managing Director at the time disciplinary action was taken against him relating to an incident on 17.06.1995. Ariyaratne was against him. Applicant was appointed Managing Director at a Board meeting on 13.05.1995. Ariyaratne did not handover work to the applicant. Applicant worked as Manager Operations from 07.06.1995. Applicant was appointed as Managing Director according to document produced in evidence A.1. A. I was produced in evidence subject to proof. There is no evidence for the respondent to contradict documents A.1. I accept the document A.1 in evidence. The applicant in evidence stated that Ariyaratne was against him. There is no evidence for the respondent to contradict this.

The main charge against the applicant was that he travelled in the bus belonging to the Board on a private matter on 16.06.1995 from Mahiyangana to Colombo and back. This

was vehemently denied by the applicant in evidence and he maintained that this was an official route inspection. The evidence of the driver Weerasinghe, witness for the respondent, supports the position of the applicant that this was an official trip.

The evidence of witness Weerakone, for the respondent is that there were six directors in the Board of the Peoples Transport Board. The decision on appointments is taken by the Board of Directors. Any decision taken by the Director of Operations should be notified to the managing Director. His evidence is that the incident which arose relating to the applicant should have been notified to the Managing Director. His evidence is that he does not know whether the applicant notified the Managing Director, relating to the incident involving the applicant. On the evidence of witness Weerakone, I am of the view that he is unaware of the circumstances relating to this incident. As such, I am of the view that his evidence has no value to prove the said charge against the Applicant.

I have given my consideration to the documents A.14 and A.15. Documents A.14 shows that a full inquiry was held by the ACL Badulla and the decision taken by ACL was that the respondent is liable to pay the arrears of salaries due to the applicant for the periods set out in the issues in this case. By document A.14 ACL directed the Respondent to pay the said arrears, which direction was not complied by the Respondent. This matter was further referred to the Commissioner of Labour. The Commissioner of Labour held an independent inquiry and confirmed the decision of the ACL Badulla and directed the respondent by document A.15 to pay the said arrears due to the applicant which direction was not complied by the respondent. This matter was then referred to Arbitration by me.

Taking into consideration documents A.14 and A.15 in evidence, I accept the position in evidence that a full inquiry was held by the ACL Badulla and the Commissioner of Labour Colombo and that a just and equitable decision was made in this matter and that the applicant is entitled to the arrears of salaries due to him for the periods set out in the issues in this case.

On the totality of evidence in this case, and on the balance of evidence and the preponderance of probabilities, I accept the probable version in evidence of the applicant that he travelled in a bus on an official route inspection from Mahiyangana to Colombo and back *via* Badulla on 17th June 1995. On the evidence, I hold that the Respondent has failed to prove in evidence the main charge preferred against the applicant. I further hold that the respondent has failed to

prove in evidence the rest of the charges framed against the applicant.

As stated by me earlier, I accept the decision of the ACL Badulla and the Commissioner of Labour Colombo that the applicant is entitled to the arrears of salaries for the periods set out in the issues in this case.

As such, on the evidence both oral and documentary, I hold that the applicant should be paid the arrears of salaries for the periods as set out in the issues in this case.

Both parties submitted documents setting out the quantum of the arrears of salaries due to the applicant for the periods set out in the issues in this case.

Issue (1) - 21.07.1995 to 31.03.1998  
Issue (2) - 20.06.2001 to 19.09.2001

On 18.03.2011, both parties were present in Court. Both parties agreed that the total quantum of the arrears of salaries is the sum of Rs. 1,55,964.

For the reasons set out by me earlier in this Award, the applicant should be paid the total quantum of the arrears of salaries in the sum of Rs.1,55,964.

Accordingly, I order the respondent to deposit the sum of Rs. 1,55,964 with the Assistant Commissioner of Labour Badulla within two months of the publication of this Award in the *Government Gazette*, after which, the applicant is entitled to withdraw this sum.

I hold this Award to be just and equitable, and I make the said Award accordingly.

K. R. M. N. Lawrentz,  
Arbitrator.

Dated at Kandy,  
This 27th day of April 2011.

08-580