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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 2159/6 - MONDAY, JANUARY 20, 2020

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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/10/39/2013.

Ref No. : IR/10/39/2013.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

In the matter of an Industrial Dispute

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. S. A. D. Siripala, No. 282/1, Makala North, Makala of the one part and Sri Lanka Transport Board, No. 200, Kirula Road, Colombo 05 of the other part was referred by order dated 06.03.2017 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette Extraordinary* of the Democratic Socialist Republic of Sri Lanka No. 2012/7 dated 27.03.2017 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Between

Mr. S. A. D. Siripala,
No. 282/1,
Makola North,
Makola

Case No. A/15/2017

of the one Part.

And

A. WIMALAWEERA,
Commissioner General of Labour.

2. Sri Lanka Transport Board,
No. 200, Kirula Road,
Colombo 05.

Department of Labour,
Labour Secretariat, Colombo 05.
06th January, 2020.

of the other Part.



AWARD

The Honourable 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 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 06th March 2017 and referred the following disputes to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are -

Whether the claim made by Mr. S. A. D. Siripala who worked as the Building Administrator of the Sri Lanka Transport Board to be paid the unpaid salary for 8 months and 09 days (the arrears salary for 8 months and 02 days plus 07 days fine) from 23.08.2011 to 25.04.2012, the period during which he had been interdicted, setting aside the appeal order dated 22.11.2012 following the disciplinary inquiry held on 03.11.2011 and the disciplinary order dated 24.04.2012 is just and equitable and if so, what relief he is entitled.

Appearance

Mr. Sarath Robers,
Representative appeared for the party of the
First Party

Ms. Dilini Nisansala, State Counsel Ms. Dimuthu
Panangala,
Assistant Legal Officer,
for the Party of the
Second Part

Both parties have filled the statements under Regulations 21(1) and 21(2) of the Industrial Disputes Regulations of 1958 as amended.

Mr. S. A. D. Siripala, the Applicant in his evidence stated as follows :

The Applicant joined as a Fitter on contract basis to the Sri Lanka Transport Board (SLTB) in 1987 marked letter of appointment as A1

On 01.10.1988 he was appointed as a Casual Fitter, marked letter of appointment as A2

He was confirmed as a Fitter on 28.06.1991, marked Letter of Appointment as A3.

Later he was promoted as a Work in Charge (Weda Moolika), the said Letter of Appointment was destroyed during the heavy rain in 2010. He worked 7 years in that position.

Thereafter in the year 2010 he was promoted as a Building Administrator. His list of duties was marked as A 05. A 05 was issued to the Applicant by the Civil Engineer. His duties included to check the quality and standards of goods received. If goods are not up to proper standard the Applicant take steps to the return the goods to the supplier after informing the Sectional Head.

The Applicant marked document A 06, which was given authority to the Applicant to sign a gate pass. The Respondent objected to marking stating that there was no such document in the Applicants Personnel File.

The Applicant marked the letter of authority given to him by the Civil Engineer Somadasa Ranasinghe as A 06(1).

The Applicant stated according to the said letter he was given authority for following tasks. (marked as A 06 (2).

- To check and record details of the materials brought in for the development work.
- To check and sign gate pass/gate passes and delivery notes.
- To supervise the items take out from the stores

The Applicant stated in 2009 December he was assigned to build an Operation Room and a stair case.

The Applicant further stated the planks brought for the stairway found unsuitable upon inspection and after informing the Civil Engineer the Applicant took steps to return those planks. He wrote and sign a gate pass as per the authority given to him by documents A6. The Applicant further stated that security officer made a log entry in respect of the returning the goods.

The Applicant further stated after 2 days planks were returned after making them to proper standard. This incident took place in 2009 and after 2 years, in 2011 the Applicant was given a charge sheet in this respect he was interdicted by letter dated 23.08.2011. The charge sheet was dated 16.09.2016 marked as A (8) 1.

The Charge sheet contained 4 charges and accompanied with 25 documents. Out of 25 documents, the Applicant was given only 4 documents.

After the disciplinary inquiry he was interdicted for 1 month and 8 months salary was cut.

The applicant further said as a result of his Appeal to the Chairman of Sri Lanka Transport Board his punishment was reduced to 7 days salary as a fine and he lost salary for 8 months for the period of interdiction.

The Applicant further said he further appealed to the Ombudsman, The Secretary of the President, Mr. Basil Rajapaksa, MP, and Mr. Dulip Wijesekara, MP.

The Applicant further said he was re-instated on 24.04.2012.

During the cross examination the Applicant stated as follows:

- a. According to A5, he was assigned to do maintenance work in at the Head Office.
- b. He was appointed as Building Administrator assigned to do Civil Engineering work at the Divisional Office (R1).
- c. The Applicant said he has a knowledge of the quality of materials and he has completed a course in this respect.
- d. He returned the planks after informing the Civil Engineer that they are not in proper standard. He further said that the Civil Engineer instructed him to write the gate pass when returning the goods.
- e. According to R3 the Applicant was not authorized to sign a gate pass. The Applicant said he wrote and sign the gate pass as instructed by the Civil Engineer.
- f. The Applicant said according to R4 he was requested to be careful about his duties. He denied that he was punished earlier by his Employer.
- g. The Applicant admitted he was given a Show Cause letter marked A 8/R6

During Re-examination the Applicant stated as follows :

- a. The Applicant said, standard of the goods ordered for the staircase did not comply with the order and therefore he returned the planks.
- b. The Applicant further said he has done a Construction Supervision Course marked as A 13.

- c. He further said when planks was returned due to defects, as the time of returning Sri Lanka Transport Board was not paid for them.
- d. The Applicant marked A 6(2) in which he was given the authority to sign a gate pass. The Applicant was shown R2 - the gate pass issued by him to the driver R. S. Kumar in order to return wrong full brought 20 planks of Kempus (4 feet long, 8 inches width and 1.5 inches thickness).

Mr. Sumanadasa Ranasinghe, retired Civil Engineer in his evidence stated as follows :

- a. The witness said the Applicant worked under him for several years as a Foreman as well as a Building Administrator.
- b. The witness said the letter A6 is a document in that he authorised the Applicant Siripala to do some tasks and he submitted a copy of the said letter to then Chairman, Sri Lanka Transport Board (SLTB). In this letter under item 2, the Applicant Siripala was authorized to write a gate passes when necessary. The witness further said he approved the return of planks as they were not up to the standard to make a stair case.
- c. The witness further said he was not given a show case letter in respect of this incident. And witness further said that he was given a show case letter for a different matter. The said letter dated 16th September 2011 is marked as A 15.
- d. He was also given a charge sheet and was interdicted.
- e. Marked document as R8 an appeal to reinstate his services.
- f. The witness said his charges were not relevant to this inquiry.

Depot Manater, Thilakasena Kankanam Pathiranage, in his evidence stated as follows .

He has been working as the Depot Manager for a period of 1 year. Further he held before post of Disciplinary Officer and the Chairman of the Appeal Board of SLTB. he said he conducted the inquiry against the applicant S. K. Sirisena and Sumanadasa Ranasinghe with regard to an irregularity took place in respect of Kempus planks which were brought in and later returned in order to change them.

The witness further said the applicant Sirisena was found guilty for all charges at the inquiry held.

The witness further said section head has to sign the gate pass which was written by an another employee.

If some person was given the authority to issue a gate pass, that has to be brought to the notice of the Human Resources Department.

He further said the gate pass marked as R2 was issued in the name of an outsider and that was wrong.

The Witness stated A 06 which was the letter issued in order assign duties to the Applicant and it was signed by the Civil Engineer, Sumanadasa Ranasinghe.

The witness said at the inquiry he rejected A06, as it was not properly certified, and a copy of which was not found in the personal file.

During the cross examination witness stated as follows ;

The Chairman of the Sri Lanka Transport Board is the Authority for the enforcement of discipline.

The witness further said at the inquiry no evidence was lead in respect of the fact that an Employee who wrote a gate pass can not be the signatory for the same.

The witness further said when some good brought into the premises of SLTB and duly recorded it will become a property of SLTB. The witness further said it was recorded in the books of SLTB on 15.12.2009, that the load of planks in question was taken out from the premises of the SLTB.

The witness further said according to R11, Disciplinary Inquiry Report in page 27, evidence of the Store Keeper, Fernando has stated that nothing was recorded to say that a load of timber planks were brought in on 15.12.2019 (A 18).

The witness further said since the timber was brought on credit basis and money was not paid therefor no monetary loss was incurred.

During the cross examination witness stated as follows :

According to rules and regulation of SLTB, it was not mentioned that a person can not write and sign a Gate Pass and nor evidence was brought in that respect during the Disciplinary Inquiry.

In A 20 witness has stated It is a grave misconduct to take out property owned by SLTB without permission.

In A19 witness has stated that there was no monetary loss to the SLTB by returning the timber as no payment was made for them.

Those statements are contradictory.

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

- i. The Applicant has acted *bona fide* in issuing and signing a gate pass upon authority vested him in returning the load of planks which were not up to the required standard.
- ii. The Applicant was permitted to write a gate pass when permitted by the Department Head as per A6. Vide Evidence of T. K. Pathirana, Disciplinary Inquiry Officer (Depot Manager) dated 11.10.2011.
- iii. The Respondent failed to show that there was a provision in Sri Lanka Transport Board rules and regulations that a person who writes a gate pass cant not be the signatory to it at the same time as instructed by his superior.
- iv. There was no monetary loss incurred by the Respondent by returning the timber as they were not property of the Sri Lanka Transport Board.
- v. The witness T. K. Pathirana's evidence found to be contradictory.
- vi. The Respondent has acted unfairly and maliciously towards the applicant by denying the Applicant of his salary for the period of 8 months and 9 days.

In the circumstances, I wish to quote majority decision of the Supreme Court in State Bank in India vs. Edirisinghe (1991) that the arbitrator has to make an 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 contrasts 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 contract to a judge who determines the existing right and liabilities of the parties.

For the reasons aforesaid it is my finding that the Respondent Sri Lanka Transport Board (party of the second part) has caused injustice to the applicant, S. A. D. Sirisena (part 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 :

- i. be paid sum of Rupees Two Hundred and Six Thousand and Six Hundred and Cents Sixty Two only (Rs. 206,600.62) being unpaid salary for 08 months and 09 days.

And the aforesaid money should be deposited by the Party of the Second Part at the office of the Assistant Commissioner of Labour, Colombo East.

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 is just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

15th November, 2019.

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