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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 2352/06 – TUESDAY, OCTOBER 03, 2023

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/COM/01/N/2014/126.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award dated 01.08.2019 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. J. Jegatheeswaram, No. 3/1, 3rd Cross Street, Ramakrishnapuram, Kallady of the one part and Ceylon Petroleum Corporation, No. 609, Dr. Danister De Silva Mawatha, Colombo 09 of the other part was referred for settlement through arbitration by order No. A 85/2019 & dated 06th July 2023 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette Extraordinary* No. 2136/12 dated 13.08.2019 of the Democratic Socialist Republic of Sri Lanka, is hereby published in terms of Section 18(1) of the said Act.

B. K. PRABATH CHANDRAKEERTHI,
Commissioner General of Labour.

Department of Labour,
Colombo 05.
15th September, 2023.



In the matter of Industrial Dispute

Between,

Case No. A/85/2019.

My No.: IR/COM/01/N/2014/126.

Mr. J. Jegatheeswaran, No. 3/1, 3rd Cross Street, Ramakrishnapuram, Kalladi.

(Of the One Part)

And

Ceylon Petroleum Corporation, No. 609, Dr. Danister De Silva Mawatha, Colombo 09.

(Of the Other Part)

AWARD

1. The Honorable Minister of Labor 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, 62 of 1957, 4 of 1962 and 39 of 1968 read with Industrial Disputes (special provisions) Act, No. 37 of 1968 appointed me by his Order dated 01st August, 2019 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

The matter in dispute between the aforesaid parties is

"whether Mr. J. jegateeswaran who worked as the supervisor of the Eastern Office of the Ceylon Petroleum Corporation, interdicted from 19.10.2010 and released from all charges following the disciplinary inquiry against him had been caused injustice by not been paid the salary and allowances from 19.10.2010. to 02.04.2012 the period during which he had been interdicted and if such injustice had been caused, to what releaf he is entitled".

2. Respondent, Ceylon Petroleum Corporation (CPC) was represented by State Attorney Mrs. Gangani Liyanage, initially and lately by State Attorney Mrs. Thurya Roberts along With officials of the Corporation.

Whereas applicant failed to appear on all days of inquiry. Even failed to send in a representative, duly authorized Inquiries were made to ascertain as to whether he is living or dead, though Assistant Commissioner of Labor, District Labor office. Batticoloa, and it came to light that he is sick and bedridden, unable to travel.

3. Observations and Findings

- a) Applicant J. Jegateeswaran had joined the Ceylon Petroleum Corporation on 19.08.1979 as a (C 6) workman and at the time of employment in provincial office (east) Batticoloa, he was in Grade B 2.
- b) Based On certain allegations, an investigation headed by Manager (security/investigations) reported of its involvement in certain acts of corruption reported on 10.10.2010.
- c) He had been interdicted in 19.10.2019, without pay.
- d) Charge sheet, with 6 charges served on 02.03.2011
- e) A domestic inquiry was held (date/s not available), and the inquiry officer exonerated him from all changes

f) Applicant was reinstated on 02.04.2012

I Observe that CPC with an army of executives have taken almost 140 days to issue a charge sheet and thereafter inquiry held (dates unknown) and found not guilty of the commission of offence. There by reinstated on 02.04.2012, that means respondent had kept the workman on no-pay for 538 days (*i.e.* 82 in 2010, 365 in 2011 and 91 in 2012).

The Practices Followed of Public Service Private Sector And Statutory Bodies, is so reinstate workman if found not guilty of the charges. Surprisingly CPC Disciplining Rules formulated in 1982, provided for Management to deprive back wages even if a workman is not guilty, Chairman is empowered to decide whether to pay or not, as he wish.

In my view he is in breach of the concept of natural justice, Which say that one shall not be the judge of his own case. Chairman decision not to pay the due salary, is a serious unfair labor practice.

Best practices are followed in Private Sector firms. For example.

Collective Agreements No. 09 of 1984, No. 10 of 1984, No. 11 of 1984, No. 03 of 1985, No. 04 of 1985, No. 05 of 1985, No. 01 of 1986

These agreements provide for the following procedure after inquiry

- The Employee shall not be dismissed, and that the employee could resume work with full back wages and other entitlements, A punishment which falls short of dismissal may be imposed.
- The employee shall be dismissed effective from the date of suspension in which event that period will be without pay.
- The employee is to be suspended without pay in view of the serious and involved nature of the charges, where the employer finds a desirable to await the outcome of investigations and inquiries of the police or other authorities.
- If the management fails to make an order within 30 days from the date of suspension the employee is entitled to half pay, and beyond 30 days for full pay until the management make an order, whatever be the outcome of the inquiry.
- If the management fails to make an order within 30 working days after the conclusion of the inquiry, the employee is to be exonerated *ipso facto* and no adverse inference to be drawn from such charges against the employee.
- The employer is required to make an order within a period of 90 days of the date of suspension.

In Consequence of the delaying tactics of the management, the financial loss to the workman, applicant exceeds Rs. 800, 000.00 (Rs. Eight Hundred Thousand) worked out on the basis that he earned Rs. 44,000/- per month, and the total period of interdicion is approximately 18 months totaling (Rs. 44,000 x 18). Besides respondents is liable to deposit statutory entitlement of 15% on gross earnings. (*i.e.* employer contribution of 12% employee provident fund and 3% of employee trust fund).

Award

Unfortunately since applicant had been incapacitated, preventing him being present at Inquiries, no relief could be granted, although there is crystal clear situation of Unfair Labor Practice.

P. NAVARATNE,
Arbitrator.

06th July 2023.

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