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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1717/9 - 2011 අගෝස්තු 02 වැනි අඟහරුවාදා - 2011.08.02

No. 1717/9 - TUESDAY AUGUST 02, 2011

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T 23/CO/98/97.

Order on Preliminary Legal Objection

THE INDUSTRIAL DISPUTES ACT (CHAPTER 131)

Appearances:

THE interpretation of the award No. A 2740 dated 12.11.2004 made by the arbitrator under section 34 of the Industrial Disputes Act regarding the industrial dispute existing between D. H. Gamage and 20 others of the one part and National Savings Bank, No. 255, Galle Road, Colombo 03 of the other part which was published in the *Governmen Gazette-Extra-Ordinary* No. 1374/10 dated 05.01.2005 is hereby published in terms of section 18(1) of the said Act.

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

Department of Labour,
Labour Secretariat,
Colombo 05,
13th July, 2011.

D. H. Gamage and 20 others,

Case No.: A 2740

Vs.

National Savings Bank,
No. 255, Galle Road,
Colombo 03.

Mr. Ravi Molligoda Attorney-at-Law for the workmen and Mr. Amaranath Fernando Attorney-at-Law of the Respondent Bank with Mrs. K. Gunasekara, Legal Officer.

This is a case where the industrial dispute between the parties was referred to me by the Commissioner of Labour under section 3(1)(d) of the Industrial Disputes Act, chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as subsequently amended, for settlement by arbitration. After full inquiry an award was made by me on 12th November 2004, which was published in *Gazette Extraordinary* on 05th January 2005. A writ application against my award was filed in the Court of Appeal and the writ application was dismissed on 28.05.2008. Application for special leave to appeal was made to Supreme Court. Leave was refused on 09th October 2008.

02. Thereafter the Commissioner of Labour by his letter dated 12.05.2010 addressed to me, wanted my interpretation of my award in case No. A-2740 under section 34(1) of the Industrial Disputes Act, No. 43 of 1950. The Commissioner of Labour has not stated in specific terms the issues for interpretation. He has stated *inter alia* as follows:—

"As transpired in the investigations conducted by the Asst. Commissioner of Labour (Colombo East) there is no positive compliance from the Respondent Bank with regard to the settlement of arrears of salary of the employees concerned. Hence they have sought further intervention of this office."

03. As a follow up of the letter of 12.05.2010 from the Commissioner of Labour, parties were noticed by me.

The Bank has raised the following preliminary legal objections:

- (I) Arbitration Tribunal is functus and lacks the jurisdiction to hear this application,
- (ii) The application for interpretation of the award of this Tribunal is belated.

04. Written Submissions tendered by both parties were exchanged. At this stage, in order to give ruling I have the compulsion to examine closely the law as it stands today, in relation to interpretation of the award made by me as an Arbitrator.

Reference for interpretation has been made to me under section 34 of the Industrial Disputes Act, No. 43 of 1950. Section 34 provides for reference by the Commissioner of Labour for interpretation to the Arbitrator who made the award. Accordingly the Commissioner of Labour has referred to me for arbitration. Section 34 also provides for decision to be made by the Arbitrator after hearing the parties or without such hearing if the consent of the parties has been first obtained.

05. It is considered appropriate to quote section (15) of the Industrial Disputes (Hearing and Determination of Proceedings) (Special Provisions) Act, No. 13 of 2003 which reads as follows:-

"A reference under section 34 of the Industrial Disputes Act relating to the interpretation of any award or order made by an arbitrator, labour tribunal or an Industrial Court as the case may be, May be made within one Month of the date of the making of such award or order, and it shall be the duty of the arbitrator, labour tribunal or the Industrial Court as the case may be, to which such reference is being made, to hear and determine such reference within one month of the date of receipt of such reference."

This Act, No. 13 of 2003 was certified on 20th March 2003. Section 01 of this Act states that it shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*. The Minister by his order dated 14th May

2003 published in the *Gazette Extraordinary* No. 1288/14 dated 14th May 2003 has appointed December 31st 2003, as the date on which the Act shall come into operation.

It is also considered appropriate to quote below the preamble to this Act which reads as follows:-

"Whereas it has become necessary to ensure an expeditious disposal of applications and references made under the Industrial Disputes Act and the Termination of Employment of Workmen (Special Provisions) Act, in order that parties to such applications and references may be able to obtain decisions in respect of the same within a short period of time:

And whereas to facilitate such expeditious disposal it is considered desirable to stipulate time frames in respect of the procedure adopted in the determination of applications made to labour tribunals and the Commissioner and references made to an arbitrator, and in respect of the hearing and deciding of appeals lodged against orders made on such applications:"

The preamble explains the reasons for imposing time frame.

I have examined the Labour Code of Sri Lanka consolidated and updated up to 31st December 2009, which too does not make any reference to Act, No. 13 of 2003. This is obviously an error. The written submissions tendered to me do not make any reference to Act, No. 13 of 2003.

06. Viewed in the light of the foregoing in law, in accordance with the Industrial Disputes (Hearing and Determination of Proceedings) (Special Provisions) Act, No. 13 of 2003, quoted above, this reference for interpretation done on 12.05.2010 in relation to my award of 12th November 2004 (i.e. after a period of more than five years from the date of the award) is clearly prescribed in law.

07. In these circumstances the two preliminary legal objections raised by Bank must necessarily fail, as the only preliminary legal objection appropriate in this instance is time bar.

08. In view of my determination that the reference to interpretation to me is time-barred, I am precluded from proceeding further in this matter.

09. Accordingly the proceedings are terminated by me.

V. VIMALARAJAH,
Arbitrator.

25th May, 2011.

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