IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Novex Pharmaceuticals Limited.,
No. 7,
Seibel Avenue,
Colombo 5.
Petitioner

CA CASE NO: CA/WRIT/170/2015

Vs.

The Commissioner General of Labour,
Labour Secretariat,
Narahenpita,
Colombo 5.
And 3 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Anura Ranawaka with Oshada Mahaarachchi for the Petitioner.
Chaya Sri Nammuni, S.S.C., for the 1st-3rd Respondents.
Lakshan Dias for the 4th Respondent.

Decided on: 15.11.2019

Mahinda Samayawardhena, J.

The petitioner filed this application seeking to quash by way of writ of certiorari the decision of the Commissioner of Labour marked X21, made in terms of the provisions of the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971, as amended, whereby the petitioner employer was directed to pay the 4th respondent employee a sum of Rs. 1,230,000/= as compensation for the termination of services of the latter.

The learned counsel for the petitioner challenges the said decision on several grounds.

One such ground is that the Commissioner of Labour made that decision without giving a fair hearing to the petitioner. There is force in that argument.

By tendering the proceedings before the Commissioner of Labour dated 15.09.2014 marked X10, the learned counsel for the petitioner states that, the petitioner never agreed to dispose of the inquiry by way of written submissions only, and parties agreed to file written submissions only in the first instance, and not in lieu of oral evidence and/or oral submissions. When one reads the concluding remarks of the inquiring officer on that date, what the learned counsel says is acceptable. It reads as follows:

> දෙපාර්ශවය අතර සමථයක් නොමැති බැවින් ඉදිරි පරීක්ෂණ කටයුතු මුල් අවස්ථාවේ දී ලිඛිත දේශන මඟින් ඉදිරිපත් කිරීමට දෙපාර්ශවය එකඟ විය. ඒ අනුව මූලික ලිඛිත දේශන ගොනු කිරීමට 2014.10.07 වන දින පෙරවරු 10.00 ට පිටපත් දෙකකින් ලබා දෙන ලෙස දෙපාර්ශවයට දන්වා සිටී. ඒ සඳහා වන ප්‍රතිලිඛිත දේශන 2014.10.21 වන දින පෙරවරු 10.00 යොදන ලදී.

අත්. කලේ
2014.09.18

පරීක්ෂණ නිලධාරී:
එස්. එම්. පී. නන්දසේන
සහකාර කම්කරු කොමසාරිස්
සේවය අවසන් කිරීමේ අංශය
කම්කරු දෙපාර්තමේන්තුව
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The 1st-3rd respondents in paragraph 15 of the statement of objections admits X10, but state that the parties agreed to dispose of the inquiry by way of written submissions. In support of that contention, they tender a copy of the attendance register of the said date as 1R3. That paragraph reads as follows:

> *Answering the averments contained in paragraph 16 of the petition, the respondents admit the document marked X10 and state that as no settlement was possible when the matter was called on 15 September 2014 it was agreed that the matter would be disposed of by way of written submissions and the matter was fixed for the written submissions of the employee on 7 October 2014 and written submissions of the employer on 21 October 2014. A true copy of the attendance register of the said date is annexed herewith marked 1R3 pleaded as part and parcel hereof.*

It is not clear how the respondents state that the parties agreed to dispose of the inquiry only by way of written submissions when it appears from the above quoted proceedings of 15.09.2014 that the intention of the parties was to tender

written submissions only as the first step as contended by the learned counsel for the petitioner.

The attendance register marked 1R3 as "a copy of the attendance register of the said date", where there is an endorsement to say that the parties agreed to dispose of the inquiry by way of written submissions, is not relevant to 15.09.2015. It is relevant to 16.09.2015. 16.09.2015 cannot be a mistake, because the same date appears both on the top and at the end, below the signature of that document. That endorsement reads as follows:

> දෙපාර්ශවය අතර සමථයක් නොමැති බැවින් පරීක්ෂණය ලිඛිත සාක්ෂි මඟින් මෙහෙය වීමට දෙපාර්ශවය එකඟ වූ අතර ලිඛිත සාක්ෂි 2014.10.07 දින හා එයට ප්‍රති ලිඛිත දේශන 2014.10.22 දින ලබා දීමට දෙපාර්ශවයම එකඟ විය.

It is the position of the learned counsel for the petitioner that the said endorsement is an afterthought/subsequent addition.

I do not say that 1R3 is a forged document. But it is a suspicious document.

According to 1R2, the proceedings dated 27.08.2014, the inquiry has been postponed from 27.08.2014 to 15.09.2014.

The proceedings of 15.09.2014 have been marked as X10, which has been admitted by the respondents. According to X10, written submissions shall be tendered on 07.10.2014, and the reply submissions on 21.10.2014.

But according to 1R3 dated 16.09.2014, written submissions shall be tendered on 07.10.2014, and the reply submissions on 22.10.2014 (and not on 21.10.2014). It is not clear how,

according to 1R3, the inquiry was taken up on 16.09.2014, when, according to X10, the inquiry was held on 15.09.2014.

It appears that there had been at least a confusion regarding the inquiry dates and how the inquiry shall be disposed of.

For the aforesaid reasons, I accept the argument of the learned counsel for the petitioner that the impugned decision was taken without giving a fair hearing or in violation of the petitioner's legitimate expectation to have a fair inquiry into the matter.

Accordingly, I quash the impugned decision marked X21 by certiorari and direct the 1st respondent to refix the matter for further inquiry and then take a fresh decision according to law.

This does not mean that the respondent shall necessarily come to a different conclusion.

In view of the said conclusion, the necessity does not arise to consider the other arguments taken by the learned counsel for the petitioner.

Application of the petitioner is allowed. No costs.

Judge of the Court of Appeal