

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LL.B DEGREE PROGRAMME – LEVEL VI
FINAL EXAMINATION -2020/2021
LWU4323/LLU6715 – LABOUR LAW
DURATION – 03 HOURS



Date: 14th September 2021

Time: 9.30 a.m. – 12.30 p.m.

Number of Questions -05

Answer Four (04) questions only.

Students will be penalized for illegible handwriting.

1. Eazy Tech Pvt. Ltd is a well-known software Company. Maheesha joined in the Company as a Software Developer in January 2021. According to the agreement between Maheesha and the Company, the Company receives the orders from its clients, and passes the orders to Maheesha. The Company pays a commission every month based on the orders she undertakes and completes during the month. Furthermore, the agreement has a clause that prohibits Maheesha from entering into any software development agreement with any other Company. Maheesha was required to attend the office three days a week, but she was not required to sign the attendance register. However, due to the Covid-19 pandemic in the country, the Company requested all employees to work from home. The Company pays a special allowance called ‘data allowance’ for personal data usage by the employees. The Company does not pay the ‘data allowance’ to Maheesha. The Management of the Company has decided to call the employees to work in the office on certain days based on a roster. However, the Management has informed Maheesha that she could continue to work from home.

Maheesha requested the management to pay the ‘data allowance’ to her. But the Management had refused to pay the allowance stating that she is not an employee of the Company.

Maheesha seeks your advice as to whether she is an employee of the Company or not. Advise Maheesha citing relevant legal authorities.

(25 Marks)

2. “The Legislature has wisely given untrammelled discretion, to the Tribunal to decide what is just and equitable in the circumstances of each case. Of course, this discretion has to be exercised judicially. It will not conduce to the proper exercise of that discretion if this court were to lay down hard and fast rules which will fetter the exercise of the discretion, especially when the legislature has not chosen to prescribe or delimit the area of its operations”

- Sharvananda J, in *Caledonian (Ceylon) Tea and Rubber Estate Ltd Vs. Hillman* (79 1 NLR 142)

Comment on the above statement in the light of the statutory provisions and decided cases relating to powers and functions of a Labour Tribunal.

(25 Marks)

3. (a) ASI Shoe (Pvt) Ltd commenced its business in 2018, and employs sixty workmen since the commencement of its business. The Management of the Company has decided to close its regional branch in Negombo as a result of financial crisis in the Company. The company has informed Suranga, Ranjan, Nuwan and Ruvini that their employment will be terminated with effect from 01-11-2021 due to the closure of the Branch.

Suranga is the Manager of the Negombo Branch. Suranga is a permanent employee of the company, and he was appointed to the post in January 2019. Ranjan and Nuwan are Sales Assistants in the Branch, and they were recruited on 01-05-2020 under a one-year contract. The company had renewed their contract for another six months with effect from 01-05-2021. Ruvini works as a cleaning staff in the Branch since 2019, and she attends for work irregularly. Ruvini is called for work when work is available in the Branch. Payments are made to Ruvini on daily basis.

Suranga, Ranjan, Nuwan and Ruvini seek your advice with regard to relief against termination of their employment. Advise them citing the relevant statutory provisions and decided cases.

(15 Marks)

(b) Assess whether the Termination of Employment of Workmen (Special Provisions) Act balances the interests of employers and workmen in the light of the emerging labour issues due to the COVID-19 pandemic.

(10Marks)

4. (a) Assess the legal regime relating to employment of women in Sri Lanka in the light of international labour standards.

(13 Marks)

(b) Assess whether the labour standards relating to child labour in Sri Lanka are in compliance with the international labour standards?

(12 Marks)

5. New Lanka Apparels Ltd exports garments to many countries. 75 percent of the employees in New Lanka Apparels Ltd are members of a trade union called *Samagi Kamkaru Samithiya*. Somarathna is a member of the trade union, and he intends to contest in a local government election. Recently, the members of *Samagi Kamkaru Samithiya* have passed a resolution to provide financial support to the election campaign of Somarathna. Meanwhile, New Lanka Apparels has recruited 25 new employees to the Company, and they were instructed not to join in any trade union activities organized by *Samagi Kamkaru Samithiya*. The Management of the Company has issued a letter to the President of the *Samagi Kamkaru Samithiya* to refrain from funding and supporting Somarathna in his election campaign. Also, the Management has decided not to have any negotiation with the trade union until the union withdraws its decision to support the election campaign of Somarathna. However, *Samagi Kamkaru Samithiya* has decided to go ahead with the decision to support Somarathna in the election. The trade union

members have decided to conduct a token strike to show their displeasure regarding the interference of the Management in their trade union activities. *Samagi Kamkaru Samithiya* had a picketing in the Company's premises during the strike. Picketers blocked the Company's doors and gates, and prevented the Company from transporting goods for export orders. Some trade union members damaged the CCTV cameras at the main gate during the picketing. Some picketers participated in the picketing without wearing a face mask.

Identify the legal issues involved in the above scenario and discuss the legal implications relating to the issues in the light of relevant statutory provisions and decided cases.

(25 Marks)

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