

# Summary of the Constitutional Court Ruling No. 33/2548

**Dated 10<sup>th</sup> March B.E. 2548 (2005)\***

**Re: The Central Labor Court referred the objections of the defendant (Rombus Industry (Thailand) Company Limited) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where section 120 of the Labor Protection Act, B.E. 2541 (1998) was contrary to or inconsistent with section 29 and section 30 of the Constitution.**

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## **1. Background and summarized facts**

The Central Labor Court referred the objections of the defendant (in a case of its jurisdiction) in the Case No. 1944-1955/2546 between Miss Punyawee Nopakun and others, 12 persons in total, as plaintiffs, and Rombus Industry (Thailand) Company Limited, as defendant. In this case, the plaintiffs filed a petition to the Labor Welfare Committee for the adjudication on whether or not it was the case where employees were entitled to terminate employment contracts with the right to receive special severance pay. The Labor Welfare Committee gave the adjudication No. 1/2546 stating the followings. The defendant moved his plant and office from Bangkok to Nakhon Phanom Province. It was the case where an employer relocated its place of business, and this affected the ordinary course of living of employees and their families. Thus, the employees had the right to terminate the employment and were entitled to the special severance pay. However, the defendant failed to pay such special severance pay. The plaintiffs accordingly filed the claim to the Central Labor Court for enforcing him to pay it pursuant to section 120 of the Labor Protection Act, B.E. 2541 (1998). In the Central Labor Court proceedings, the defendant argued that such section 120 imposed the restriction of the right of a person being an employer by providing only an employee with the right to file the petition to the Labor Welfare Committee. The said provision also gave right to the Labor Welfare Committee to discriminate on the ground of the difference in status of the employer and employees without regarding the fairness to the former. The adjudication of the Committee constituted the discrimination for only employees. The employer was provided no right and no equality before the law as same as the employees did. Therefore, section 120 of the Labor Protection Act, B.E. 2541 (1998) was contrary to or inconsistent with section 29 and section 30 of the Constitution.

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\* Published in the Government Gazette, Vol. 122, Part 118a, dated 14<sup>th</sup> December B.E. 2548 (2005)

## **2. Preliminary issue**

Could the Constitutional Court accept the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held that this case fell under section 264 of the Constitution. The application therefore could be accepted for consideration.

## **3. The issue considered by the Constitutional Court**

Is section 120 of the Labor Protection Act, B.E. 2541 (1998) contrary to or inconsistent with section 29 and section 30 of the Constitution?

The Constitutional Court held that section 120 of the Labor Protection Act, B.E. 2541 (1998) had intention to protect an employee having lower economic status and to set minimum standard for such employee to be treated by an employer. Moreover, section 120 of the Labor Protection Act, B.E. 2541 (1998) was the provision of law relating to public order. Its objectives were to resolve the conflict between the employer and employee and to protect the latter. According to the application, it was the case where the employer moved his place of business to the other place that essentially affected the ordinary course of living of the employees and their families. The employer must notify their employees not less than thirty days prior to the date of relocation. If the employees did not wish to work at the new place of business, they had the right to terminate the employment and were entitled to special severance pay. The provision of section 120 therefore was the law specifically enacted for the purpose determined by the Constitution, only to the extent of necessity, and not affecting the essential substances of any rights and liberties. Moreover, it was not contrary to the principle of equality, but to promote the employees to exercise their rights and liberties as same as the employer did. The said provision of law could not be deemed as unjust discrimination and therefore was neither contrary to nor inconsistent with section 29 and section 30 of the Constitution.

## **4. Ruling of the Constitutional Court**

The Constitutional Court held by the majority votes of 14 judges that section 120 of the Labor Protection Act, B.E. 2541 (1998) was neither contrary to nor inconsistent with section 29 and section 30 of the Constitution.

The minority vote of 1 judge, however, held that the application be dismissed due to not being essential for decision pursuant to section 264 paragraph two of the Constitution.

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