



มูลนิธิเพื่อสิทธิมนุษยชนและการพัฒนา (มสพ.)

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*For Immediate Release: 27<sup>th</sup> November 2008*

## **Shan Migrant Workers' Attempt to Challenge SSO Discrimination Defeated By Supreme Administrative Court Ruling**

**The Supreme Administrative Court of Thailand today upheld a decision of Chiangmai Administrative Court ruling the Court has no power to consider whether a circular, issued by the Social Security Office (SSO) and denying migrant worker access to the Workmen's Compensation Fund (WCF), is unlawful and discriminatory. Following this decision, the struggle of Burmese migrant workers to gain meaningful access to work accident and disease compensation will now move to an international arena.**

The struggle of the migrant workers began with Nang Noom Mae Seng, a disabled Shan work accident victim who was left paralysed from the waist down in December 2006 following an accident at the Chiangmai Shangri-la Hotel. Nang Noom claimed disability compensation from Chiangmai SSO, but in July 2007, officials refused her this compensation from the WCF and instead ordered her employer to pay her for 15 years at Thai Baht 2, 418 per month. Nang Noom appealed against this decision to the WCF Committee. In January 2008, the WCF Committee rejected her appeal on the grounds that Chiangmai SSO had acted lawfully according to procedures for compensating migrant accident victims contained in SSO circular RS 0711/W751 (issued in 2001).

As a result of advocacy efforts by the Human Rights and Development Foundation (HRDF) and intervention from the National Human Rights Commission, as well as the nature of the companies involved in the case, Nang Noom's employers eventually paid her lump sum compensation that far exceeded amounts stipulated by the SSO order. But despite this, circular RS0711/W751 was exposed as preventing most migrant work accident victims from accessing compensation in all but rare cases where great effort and assistance is expended by lawyers and labour groups on their behalf.

Circular RS0711/W751 stipulates that to access work accident compensation from the WCF, migrant workers must: (a) Produce registration documents and a work permit together with a passport or alien identification documents; and (b) Their employers must have paid a dividend into the WCF and the worker themselves must be registered as a tax payer.

Most of the estimated 2 million migrants in Thailand from Burma, Cambodia and Laos originally entered illegally without documents and thus cannot produce the documents required by this circular. This fault lies however not with the migrant workers but with the existing system which regulates the import of Burmese migrants to work in Thailand, which is currently dysfunctional. However, over 500, 000 Burmese workers are currently registered with the Ministries of Interior and Labour to work 'legally.' Also, the SSO does not allow employers of most migrants to pay dividends into the WCF, as also required by the circular. WCF Regulations stipulate however that all employers of one or more 'workers' must pay these dividends and SSO has a duty to ensure these payments are made.

Circular RS0711/W751 further states that in all cases where conditions in the circular are not met, employers themselves must pay compensation directly to migrant accident victims. Data collected by HRDF shows however that migrant accident victims rarely access this compensation from employers and attempts to claim compensation through the SSO is plagued with difficulties. Migrant accident victims are therefore pushed to the peripheries of Thai society and forced to fend for themselves.

Thus the three migrant workers had submitted the petition to the Administrative Court in Chiangmai, requesting the Court to review the legality of the SSO circular, with hope the decision of the Court would help bring systemic change in policies governing migrants in Thailand.

**In upholding the April 2008 decision of the Chiangmai Administrative Court, the Supreme Administrative Court ruled conclusively that considering the legality of SSO circulars and all other disputes regarding labour laws and/or labour rights, including workers accident compensation, falls only within the jurisdiction of the Labour Courts. The Administrative Courts of Thailand cannot review these cases even if it could be considered that such challenges relate to acts of administrative officials which may well be unlawful.**

**Somchai Homla-or, Secretary General of HRDF, today expressed disappointment at the court's ruling: 'The decision of the Supreme Administrative Court not only closes the door on judicial review of circulars issued by the SSO, and possibly other wide ranging administrative acts of the Ministry of Labour, but also ends what was an important test case for migrant rights in Thailand. Nang Noom has appealed against the decision of the WCF Committee with respect to her individual case and is awaiting a judgment from the Supreme Court. However SSO circular RS0711/W751 affects not just Nang Noom, but all migrant workers who may not have resources to fight and access justice like she did.'**

**He concludes: 'The WCF's existing policy will continue to informalise and therefore deny accident compensation claims of migrant workers, even though Thailand should be making real attempts to protect vulnerable migrants given the benefit they provide to our economy. Migrant workers are human being with flesh and blood and a life and a mind the same as Thai people, so they deserve some level of security in their lives. HRDF will therefore now take this campaign for revocation of circular RS0711/W751 forward in an international arena. There is a clear need to make changes in existing SSO policies so they are in consonance with rights guaranteed under the Thai Constitution and obligations binding on the Government under international human and labour rights law.'**

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