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GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

MINISTRY OF LABOUR, SOCIAL WELFARE, CULTURAL AFFAIRS AND SPORTS

(Labour and Social Welfare Division.)

Section VI.

NOTIFICATION

Dacca, the 10th January, 1976.

No. S.R.O. 20-L-76/S-VI/1(25)/75/18.—In pursuance of sub-section (2) of section 37 of the Industrial Relations Ordinance, 1969 (XXIII of 1969), the Government is pleased to publish the awards and decisions of the Labour Court, Chittagong, in respect of the following cases, namely:—

(1) Miscellaneous Case No. 3 of 1975.

(2) Miscellaneous Case No. 5 of 1975.

(3) I. D. Case No. 1 of 1975.

(4) I. D. Case No. 6 of 1975.

(5) I. D. Case No. 7 of 1975.

(6) I. D. Case No. 10 of 1975.

(7) I. D. Case No. 11 of 1975.

(8) I. D. Case No. 12 of 1975.

Price: Taka 9·75 Paisa.

(9) I. D. Case No. 19 of 1975.

(10) I. D. Case No. 24 of 1975.

(11) I. D. Case No. 33 of 1975.

(12) I. D. Case No. 36 of 1975.

(13) I. D. Case No. 56 of 1975.

(14) I. D. Case No. 57 of 1975.

(15) I. D. Case No. 64 of 1975.

(16) I. D. Case No. 72 of 1975.

(17) I. D. Case No. 77 of 1975.

(18) I. D. Case No. 86 of 1975.

(19) I. D. Case No. 89 of 1975.

(20) I. D. Case No. 103 of 1975.

(21) I. D. Case No. 116 of 1974.

(22) I. D. Case No. 127 of 1974.

(23) I. D. Case No. 178 of 1974.

(24) I. D. Case No. 182 of 1974.

(25) I. D. Case No. 183 of 1974.

(26) I. D. Case No. 191 of 1974.

(27) I. D. Case No. 199 of 1974.

(28) I. D. Case No. 380 of 1974.

(29) I. D. Case No. 389 of 1974.

(30) I. D. Case No. 390 of 1974.

(31) I. D. Case No. 391 of 1974.

(32) I. D. Case No. 414 of 1974.

(33) I. D. Case No. 415 of 1974.

(34) I. D. Case No. 430 of 1974.

(35) I. D. Case No. 435 of 1974.

(36) I. D. Case No. 449 of 1974.

(37) I. D. Case No. 450 of 1974.
(38) I. D. Case No. 459 of 1974.
(39) I. D. Case No. 678 of 1974.
(40) I. D. Case No. 680 of 1974.
(41) I. D. Case Nos. 681, 684, 685, 687, 690, 692 and 694 of 1974.
(42) I D. Case No. 682 of 1974.
(43) I. D. Case No. 683 of 1974.
(44) I. D. Case No. 686 of 1974.
(45) I. D. Case No. 688 of 1974.
(46) I. D. Case No. 691 of 1974.
(47) I. D. Case No. 719 of 1974.
(48) I. D. Case No. 721 of 1974.
(49) I. D. Case No. 794 of 1974.
(50) Complaint Case No. 3 of 1975.
(51) Complaint Case No. 9 of 1975.
(52) Complaint Case No. 12 of 1975.
(53) Complaint Case No. 13 of 1975.
(54) Complaint Case No. 16 of 1975.
(55) Complaint Case No. 17 of 1975.
(56) Complaint Case No. 18 of 1975.
(57) Complaint Case No. 21 of 1974.
(58) Complaint Case No. 22 of 1974.
(59) Complaint Case No. 29 of 1974.
(60) Complaint Case No. 38 of 1975.
(61) Complaint Case No. 45 of 1975.
(62) Complaint Case No. 50 of 1974.
(63) Complaint Case No. 70 of 1974.
(64) Complaint Case No. 71 of 1975.
(65) Complaint Case No. 72 of 1974.
(66) Complaint Case No. 73 of 1974.
(67) Complaint Case No. 87 of 1975.

By order of the President
MUHAMMAD KHADEEM ALI
Deputy Secretary.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Miscellaneous Case No. 3 of 1975.

(Arising out of original I. D. Case No. 392 of 1974).

A.Z.M. Abdul Mannan, Overseer, Natural Gas Fertilizer Factory, Fenchuganj, Sylhet—*First Party/Petitioner*,

versus

(1) The Chairman, Bangladesh Fertilizer, Chemical and Pharmaceutical Corporation, Shilpa Bhavan, Motijheel, Dacca—2,

(2) The General Manager, Natural Gas Fertilizer Factory, Fenchuganj, Sylhet—*Second Party/Opposite Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury .. } *Members*.

Mr. Juned A. Choudhury .. .. }

This is an application under Order 9, rule 9, C.P.C. by first party petitioner for restoration of original I. D. Case No. 392 of 1974 after setting aside the dismissal order dated 22-3-1975 mainly on the ground that he (petitioner) was in Dacca during the hearing of the original case at Sylhet and therefrom he sent a telegram for shifting the date of hearing of the original case on the ground of his illness. The petitioner has sustaind substantial loss and injury for the dismissal of the original case and he prays for restoration of the original case.

O.P. contested the case by filing a written statement alleging *inter alia* that this Misc. case as framed and filed is not maintainable. It is further alleged that the first party (petitioner) was well aware of the date of hearing of the original case as well as the venue of the circuit Court. Knowing fully well that the hearing of this case would be held on the date fixed, he (petitioner) intentionally avoided to attend Court and to take any tadbir, as he was fully aware that his case was false and frivolous, which was filed only to harass the second party O.P. There is no sufficient ground for restoration of original case and the petitioner's case is liable to be dismissed.

It is to be seen—whether the petitioner is entitled to get relief in this Misc. case as prayed for.

FINDINGS

P.W. 1, Abdul Mannan (first party-petitioner) has only examined himself in support of his case. None is examined on behalf of the O.P.

It is contended on behalf of the O.P. that the provisions of I.R.O. do not provide for an application under order 9, rule 9, or rule 13 of C.P.C. and that this Court has no jurisdiction to entertain such application. The lawyer for the O.P. further submitted that the proceedings before this Court in respect

of original I.D. case have concluded with the passing of the dismissal order dated 22-3-1975 under expressed provisions of section 41(4) of the I.R.O. and the proceedings so concluded can only be reopened by similar express provisions of law and there is none in the I.R.O. The lawyer for the O.P. also referred to section 36(1) of the I.R.O. and argued that in the matters of procedure this Court is governed by the provisions of I.R.O. including the I.D. Rules and the procedure laid down in Cr.P.C. and so this Court cannot follow the procedure of C.P.C. and this application under Order 9, rule 9, C.P.C. does not lie. It appears that section 36(1) of the I.R.O. is only available to Labour Court, while it is adjudicating and determining an industrial dispute, and as the present application under Order 9, rule 9, C.P.C. is not an "Industrial Dispute", in fact, it is not a proceeding under the I.R.O. So, section 36(2) of I.R.O. is not applicable to the present case. Having regards to the above discussions I must say that there is no scope for the Labour Court to follow the procedure laid down in C.P.C. and this Court cannot entertain an application under Order, 9, rule 9, C.P.C. So, it is barred by section 36(1) and section 41(4) of the I.R.O. and this Court has no jurisdiction to entertain it. In view of my aforesaid discussions I find that this case is not maintainable.

When P.W. 1 has deposed in support of his case, it is necessary to give my decision on merit too.

It appears from the record that the original I.D. case was fixed for hearing on 6-3-1975. On the said date of hearing second party was ready but at the instance of first party the hearing date was adjourned and 21-3-1975 was fixed for hearing at Sylhet, where some other cases of different parties were fixed for hearing there at Sylhet. On 21-3-1975 first party took no steps and he was found absent on repeated calls. However, this case was ultimately dismissed on 22-3-1975 for default, as the first party was also found absent on the same date. It is clear from the evidence of P.W. 1 that he was fully aware of the date of hearing (21-3-1975) of the original I.D. case as well as the venue of the circuit Court. P.W. 1 in his evidence has clearly stated that he knew that hearing date of his original case was fixed on 21-3-1975 at Moulvibazar and thereafter on 22-3-1975 he sent a telegram from Dacca addressing the S.D.O., Moulvibazar for adjournment of the case. It will appear from the record that a telegram dated 22-3-1975 was received by the S.D.O's office, Moulvibazar on 25-3-1975. In cross P.W. 1 stated that he took leave from the second party management for the period from 10-3-1975 to 15-3-1975 in order to go to his home at Comilla for some private affairs. P.W. 1 also admits in his cross that he did not appoint any lawyer at Chittagong to conduct his case and he also filed no petition with a prayer to shift the hearing date 21-3-1975 in due time. It is apparent from the case record that in fact no lawyer was engaged by the first party at Chittagong to conduct his original case and that he, in spite of his full knowledge about the date of hearing of original case (21-3-1975) did not send any telegram or petition on or before 21-3-1975 for shifting the date of hearing on any ground. According to para 2 of his Misc. petition "the date was fixed for hearing many times both at Chittagong and at Sylhet and the first party was always present on the date fixed for hearing". The said statement of the first party referred to above has been falsified by his evidence as well as orders passed in case record. According to P.W. 1's evidence, he engaged no lawyer in connection with his original case, at Chittagong. But in para 4 of his case petition he stated that his conducting lawyer is at Chittagong and on that basis he prayed for making arrangement for hearing of original case at Chittagong. I cannot place any reliance upon the first party petitioner,

in view of his such contradictory statements. From the evidence and materials on record I find that the petitioner has hopelessly failed to prove that he was prevented by any sufficient cause from appearing in Court on 21-3-1975 or 22-3-1975 when the original case was taken up for hearing. I, therefore, find that the first party petitioner is not entitled to get any relief in this case.

Members are consulted over the matter.

Ordered

That the Miscellaneous Case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong
30-7-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
30-7-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Miscellaneous Case No. 5 of 1975.

(*Arising out of original I.D. Case No. 4 of 1975.*)

Shamsul Alam, s/o. Abdul Hakim, Village Babunagar, P.S. Fatickchari, Chittagong—*First Party/Petitioners,*

versus

Chief Mechanical Engineer, Chittagong Port Trust, Port Trust Building, Chittagong—*Second Party/Opposite Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury ... } *Members.*
Mr. Juned A. Choudhury ... ..

This is an application under Order 9, rule 9, read with section 151, C.P.C. for setting aside the dismissal order, dated 9-6-1975 on the ground that the petitioner due to his illness could not attend Court on the said date of hearing of the original case and he submitted a petition for time with a medical

certificate on that date but unfortunately the same was rejected and the original I.D. case No. 4 of 1975 was dismissed for default. The petitioner sustained substantial injury by the said dismissal. The petitioner prayed for restoration of the original I.D. case.

O.P. contested the case by filing a written objection alleging that the application under Order 9, rule 9, read with section 151, C.P.C. is not maintainable and is liable to be rejected and that the petitioner has no case on merit and the petitioner was not prevented by any sufficient cause from appearing in the original case on the date of hearing.

It is to be seen—whether the petitioner is entitled to get the relief in this Miscellaneous. case as prayed for.

DECISION

In the course of argument the learned counsel of the O.P. vehemently and at length argued that the provisions of I.R.O. do not provide for an application under Order 9, rule 9 read with section 151, C.P.C. and that this Court has no jurisdiction to entertain such application. He submitted that the proceedings before the Court in respect of original I.D. case No. 4 of 1975 have concluded with the passing of the order of dismissal dated 9-6-1975 under expressed provisions of section 41(4) of I.R.O. and proceedings so concluded can only be reopened by similar expressed provision of law and there is none in I.R.O. The lawyer for the O.P. also referred to rules 32(3) and 34(3) and (4), I.D. Rules, 1960 and argued that it is only to soften harshness of section 41(4) of I.R.O. that these rules invests the Court with special and extraordinary powers at the time of passing order for dismissal for default.

The learned lawyer for the O.P. finally argued that section 36(2) of I.R.O. is only available to Labour Court while it is adjudicating and determining the industrial dispute and as the present application under Order 9, rule 9, C.P.C is not an industrial dispute, in fact, it is not a proceeding under I.R.O. and therefore, section 36(2) of I.R.O. is not applicable to the present case.

Labour Court cannot invoke its powers under section 36(2) in an application under Order 9, rule 9, C.P.C. because such an application does not constitute an industrial dispute. Furthermore, section 41(3) and (4) of I.R.O. specially lays when proceeding in respect of an industrial dispute should be deemed to have commenced. I, therefore, find that the petitioner's application under Order 9, rule 9, C.P.C. is not maintainable under provisions of I.R.O., in fact it is barred by section 36(1) and section 41(4) of I.R.O. and this Court has no jurisdiction to entertain it.

P.W. 1 Shamsul Alam (petitioner) has examined himself along with two other witnesses including a doctor, in order to substantiate his case on merit. None is examined on behalf of O.P. According to P.W. 1 as he was suffering from fever for the period from 6-6-1975 to 11-6-1975, he failed to attend Court on the date of hearing of the original I.D. case and that he sent his relation Mohammed Ali in Court on that date for filing a petition for time with a medical certificate but the prayer for time was rejected and the case was dismissed for default. P.W. 1 in his cross has clearly stated that he was attacked with fever and suffering due to said fever from 6-6-1975 to 11-6-1975. He further stated that he had no other disease for the said period except

fever. On the other had, medical certificate Ext. 1 dated 9-6-1975 granted by P.W. 2, the Doctor shows that the petitioner was under the treatment of the said Doctor and the petitioner was suffering from Bacillary Dysentery. P.W 3 Mohammed Ali who was sent to file time petition along with medical certificate in Court on the date of hearing of the original case has stated in his evidence that on 8-6-1975 the petitioner handed over the medical certificate Ext. 1 to him in the evening and on the next date he came to Chittagong with medical certificate and filed time petition. The material contradictions appearing in the evidence of P.Ws. referred to, cannot be reconciled in any way. From the discussions of P.Ws. referred to above it is not safe to place any reliance upon the evidence of P.W. 1 with respect to the alleged illness of the petitioner as well as genuineness of the medical certificate. I, therefore, have reason to say that the alleged story of illness is not genuine one. Consequently I find that the petitioner was not prevented by any sufficient casue from appearing in Court on the date of hearing of the original I.D. case. Accordingly the petitioner is not entitled to get any relief.

Members are consulted over the matter.

Ordered

That the Miscellaneous case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
29-8-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
29-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 1 of 1975.

Md. Abdul Mannan, village Chakmarkul, P.O. Ramu, Chittagong—*First Party*,

versus

Chittagong Chamber of Commerce and Industry, 233, Bangabandhu Road Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury .. .. } *Members.*

Mr. Juned A. Choudhury .. .. .. }

Representation: Mr. A. M. Rashiduzzaman, Advocate, appeared for the first party and Mr. Azizul Huq Chowdhury, Advocate, appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Abdul Mannan seeks a direction on the second party to confirm him as Junior Measuring Officer in its Licensed Measure Department in the pay scale of that post and allow him all benefits and facilities of the said post with effect from 1-5-1973, after setting aside the order of reversion dated 1-11-1974.

The case of the first party is that he joined the service under second party as Junior Assistant on 1-12-1969 and on completion of the probationary period he was confirmed in his post as Junior Assistant from June 1970 and thereafter he was transferred to Licenced Measures Department on *ad hoc* basis as Junior Measuring Officer from 1-11-1972 in the scale and grade of that post. Further case of the first party is that the vacancy of Junior Measuring Officer filled by him was a permanent post and as such he was appointed as Probationer in that post. The first party also asserts that there is no provision for *ad hoc* appointment under the Standing Orders Act and under the provisions of Standing Orders Act he has been confirmed in the post of Junior Measuring Officer with effect from 1-5-1973. Suddenly by a letter dated 1st November, 1974 the second party reverted him to his original post of Junior Assistant with immediate effect. It is further alleged that the aforesaid reversion is in violation of rights guaranteed and secured to him under the provisions of Standing Orders Act.

Second party contested the case by filing a written statement alleging, *inter alia*, that this case under section 34 as framed is not maintainable. It is stated by the second party that first party was temporarily transferred to the post of Junior Measuring Officer by letter dated 25th October, 1972 with a clear understanding that such transfer shall not creat any right to the post and he may be reverted to his original post at any time when required. First party's reversion to his original post cannot confer any right guaranteed or secured to the first party. The first party is not entitled to get any releif in the case.

It is to be seen—whether such transfer of the first party created any right in him to be treated as confirmed in the post of Junior Measuring Officer under any law in force or that the same be enforced under section 34 of the I.R.O.

FINDINGS

Neither party adduced any oral evidence.

Ext. 1, dated 25-10-1972 clearly states that the services of the first party were transferred to the Licenced Measure Department on *ad hoc* basis with clear understanding that such transfer shall not create any right to the post and that he can be reverted to the original post, *i.e.*, Junior Asstt. at any time and the first party will draw the salary as per grade of his substantive post. Again from the language of Ext. 1 it cannot be presumed by any strech of imagination that the first party was transferred or absorbed againtst permanent vacancy so as to attract the provisions of Standing Orders Act: such temporary transfer in the interest of the administration of the second party, does not vest any right to the post by the first party and therefore, it cannot be considered to be an employment within the meaning of section 4(*l*) of the Standing Orders Act. It can be safely said that first party retains his original or substantive post. Onus lies upon the first party to prove that he was posted *vide*

Ext. 1 against a permanent vacancy. But he has failed to prove it. First party accepted the transfer (Ext. 1) under certain conditions mentioned therein without any protest. Moreover, the first party has not been able to adduce any evidence to prove his claim that he was promoted to permanent post on probation. From the discussions above I find that the application of the first party under section 34 is not maintainable and that the first party is not entitled to the relief as prayed for.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
12-9-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
12-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 6 of 1975.

Nurul Islam, s/o. Syed Ahmed, C/o. Arakan Road Transport Workers' Union, 328, Kapashgola, Chawkbazar, Chittagong—*First Party,*

versus

(3) Pijus Chandra Dhar, s/o. Dr. Haran Dulal Dhar, C/o. Dhar & Sons, 112, Sadarghat Road, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*
Mr. Jamshed Ahmed Chowdhury .. .. } *Members.*
Mr. Juned A. Choudhury .. .. .. }

This application under section 34 of the Industrial Relations Ordinance by Nurul Islam (first party) with a prayer either for directing the second party to reinstate him in his former post with back wages or payment of termiatien benefit under section 19(*I*) of the Standing Orders Act.

The case of the first party is that he was appointed by second partyNo. 2 as Bus Conductor in Bus No. G-492 with effect from 1-2-1972 on a daily wages of Tk. 15·00. yFirst part became parmant in this employement and discharged his duty satisfactorily. On 30-9-1974 second party No. 3 stopped

plying the bus on the plea of repairing it and directed first party to go home. Second party No. 3 then laid off the first party and assured to pay him at the rate of Tk. 15·00 per day as lay off benefit. Thereafter on 8-11-1974 his service was terminated without any notice or payment in lieu of notice in spite of demands of the first party. The second party has not paid the benefit as yet.

Names of second parties 1 and 2 have been struck off from the case petition *vide* order No. 7 dated 9-5-1975. In spite of due notice, second party No. 3 did not appear and contest the case. So, this case was heard *ex parte*.

The only point calling for consideration is—whether the first party is entitled to the relief as prayed for.

DECISION

P.W. 1, Nurul Islam, first party, has only examined himself in support of his case. According to his evidence he was appointed as Bus Conductor for Bus No. G-492 with effect from 1-2-1974 on a daily wages of Tk. 15·00. P.W. 1 further stated that he discharged his duty to the satisfaction of his superiors. But suddenly on 8-11-1974 his service was terminated at the instance of second party No. 3 without notice. P.W. 1 *vide* his evidence prays for termination benefit under Standing Orders Act as the second party No. 3 did not pay the same in spite of demands. The evidence of P.W. 1 referred to above goes unchallenged and *ex parte*. From the evidence discussed above I find that the first party is entitled to get benefits, *i.e.*, 45 days wages in lieu of notice at the rate of Tk. 15·00 per day.

Members are consulted over the matter.

Ordered

That the case be allowed *ex parte* without cost.

The second party No. 3 is directed to pay 45 days wages at the rate of Tk. 15·00 per day to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
12-8-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
12-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 7 of 1975.

Altaf Hossain, Driver, S/o. Syed Uddin, C/o. Arakan Road Transport Workers' Union, 328, Kapashgola, Chawkbazar, Chittagong—*First Party*,

versus

(1) Proprietor, Bus No. G 492, named Zafar Hossain, Panorama, Zakir Hossain Road, Chittagong ;

(2) Dulal Chandra Dhar, S/o. Dr. Harendra Lal Dhar, C/o. Superintendent, Chittagong Jail, Chittagong ;

(3) Pijush Chandra Dhar, S/o. Dr. Harendra Lal Dhar, C/o. Dhar & Sons, 112, Sadarghat Road, Chittagong—*Second Parties*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members*.

This application by first party Altaf Hossain under section 34 of the Industrial Relations Ordinance, 1969 is filed for termination benefit as per schedule under section 19(*1*) of the Standing Orders Act, 1965.

The case of the first party is that he was appointed by the second party No. 2 as a Bus Driver for Bus No. G 492 which was under his management and control with effect from 17-3-1974 on daily wages of Tk. 30·00. First party was permanent in his employment and discharged his duty satisfactorily. Suddenly on 8-11-1974 the second party terminated his service without any notice or payment in lieu thereof. In spite of demands the first party was not paid the termination benefit. Hence, this case.

Second parties inspite of service of notices have not entered appearance and contested the case. So, the case was heard *ex parte*.

It is to be seen—whether the first party is entitled to get termination benefit as prayed for.

FINDINGS

Examining himself as P. W. 1 the first party Altaf Hossain has re-stated his case which goes unchallenged and *ex parte*.

The evidence of P. W. 1 on record will prove that his permanent service as worker was terminated by the second party on 8-11-1974 without any notice or payment in lieu thereof. In view of the evidence and materials on record the first party is entitled to get termination benefits under section 19(*1*)(*c*) of the Standing Orders Act, *i.e.*, 45 days' wages as notice pay at the rate of Tk. 30·00 per day.

Members are consulted over the matter.

Ordered

That the case be allowed *exparte* without cost.

The second parties are directed to pay 45 days' wages as notice pay at the rate of Tk. 30·00 per day to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
12-8-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected
by me.

A. AHMED
Chairman.
12-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 10 of 1975.

Md. Hossain, S/o. Basarat Ali, C/o. Arakan Road Transport Workers' Union, 328, Kapashgola, Chawkbazar, Chittagong—*First Party*,

versus

Pijush Kanti Dhar, S/o. Dr. Haran Kanti Dhar, C/o. Dhar and Sons, 112, Sadarghat Road, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury .. } *Members.*
Mr. Juned A. Choudhury .. .. }

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Mohammed Hossain first party, with a prayer either for his reinstatement in his former post and position or for payment of termination benefits under section 19(1) of the Standing Orders Act as per schedule.

The case of the first party is that he was appointed by the second party No. 3 for Bus No. G-492 as an Assistant with effect from 20-6-1974 on daily wages of Tk. 12·00. First party discharged his duty satisfactorily. Suddenly on 8-11-1973 second party No. 3 terminated the service of the first party without any notice or payment in lieu thereof and as such, the said termination of service is in contravention of the provisions of the Standing Orders Act.

The names of second parties Nos. 1 and 2 have been struck off *vide* order No. 7, dated 9-5-1975. Second party No. 3 has not entered appearance and contested the case, though notice was duly served upon him. So, this case was heard *ex-parte*.

It is to be seen—whether the first party is entitled to reinstatement or termination benefits as prayed for.

DECISION

P.W. 1, Mohammed Hossain (first party) has examined himself in support of his case. According to evidence of P.W. 1 he was permanent worker under the second party since 20-6-1974 on a daily wages of Tk. 12·00. P.W. 1 has stated in his evidence that on 8-11-1974 second party No. 3 suddenly terminated his service without notice and in spite of his demands, termination benefit has not been paid yet by the second party. P.W. 1 *vide* his evidence prays for termination benefit under section 19(1) of the Standing Orders Act. Examining himself as P.W. 1, the first party has re-stated his case which goes unchallenged and *ex parte*. From the evidence of P.W. 1 coupled with other materials I find that the first party is entitled to get termination benefit under section 19(1) of the Standing Orders Act, *i.e.*, only 45 days' wages as notice pay at the rate of Tk. 12·00 per day.

Members are consulted over the matter.

Ordered

That the case be allowed *ex-parte* without cost.

The second party is directed to pay 45 days' wages at the rate of Tk. 12·00 per day to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
20-9-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
20-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 11 of 1975.

Shafiqul Haque, S/o. Ali Ahmed, Village Pomara, P.S. Rangunia, Dist. Chittagong—*First Party*,

versus

(1) Manager, M/S. Dawood Jute Mills Ltd., Rangunia, Chittagong;

(2) Chairman, Bangladesh Jute Industries Corporation, Adamjee Court, Motijheel, Dacca;

(3) Government of the People's Republic of Bangladesh, Represented by the Deputy Commissioner, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*
Mr. Jamshed Ahmed Chowdhury ... } *Members.*
Mr. Juned A. Choudhury .. ... }

Representation : Mr. Lutful Haque Mazumder, Advocate, appeared for the first party and Mr. Azizul Huq Chowdhury, Advocate, appeared for second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party seeks a direction on the second party to reinstate the first party in his former post and position with back wages after setting aside the order of termination dated 20-12-1974 given by the second party No. 1.

The case of the first party is that he was appointed in the establishment of the second party M/S. Dawood Jute Mills Limited with effect from March 1972 as a Helper and subsequently promoted to the post of Line Sardar. First party was permanent in his employment. Ownership of the establishment was vested with the second party No. 3 and second party No. 3 manages the said establishment, through second party No. 2. Suddenly by an order dated 20-12-1974 the service of the first party was terminated by the second party No. 1 without any lawful reason or notice. The said second party No. 1 is not the employer within the meaning of Standing Orders Act and he cannot terminate the service of the first party. So, the termination is illegal and *ultra vires.*

Second party contested the case by filing written statement alleging *inter alia* that the service of the first party was terminated under section 19(1) of the Standing Orders Act, 1965 and the second party No. 1 being the employer has the lawful authority to terminate the service of the first party and hence no right guaranteed or secured to the first party. First party is not entitled to get any relief in this case.

It is to be seen—whether the first party is entitled to get the relief as prayed for.

FINDINGS

Neither party adduced any oral evidence in this case.

Ext. 1 dated 20-12-1974 is the letter by which the second party No. 1, the Manager terminated the service of the first party with effect from 21-12-1974. It is clearly contended on behalf of the first party that second party No. 1 the Manager of Dawood Jute Mills Limited is not the employer within the meaning of Standing Orders Act and as such he cannot terminate the service of the first party. On the other hand, it is submitted on behalf of the second party that according to the provisions of the Standing Orders Act, second party No. 1 being an employer has lawful authority to terminate the service of the first party.

It is not disputed that the ownership of the establishment (Dawood Jute Mills Ltd.) was vested with the Government and the Government through Corporation (second party No. 2) control all such establishments. It can be safely said that the second party No. 1, the Manager was employed by second party No. 2 for managing, controlling the said establishment and the said Manager is equally responsible to second parties No. 2 and 3. According to provisions of section 2(h) of the Standing Orders Act, I have no hesitation to hold that second party No. 1 is the employer of the first party and as such, second party No. 1 had the legal authority to terminate the service of the first party. Consequently I find no force in the aforesaid contention of the learned lawyer for the first party.

Members are consulted and they are of the same view with me.

In the result I find that the first party is not entitled to get any relief in this case. Hence, it is dismissed without any order as to cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 12 of 1975.

Md. Aminullah, *Ex*-Darwan-*cum*-Pump Driver, Ispahani Mansion, Vill. Patika, P.O. Hathazari, Dist. Chittagong—*First Party*,

versus

(1) The Director, M. A. Ispahani, Ispahani Building, Agrabad, Chittagong;

(2) General Manager, Free School Street Property Ltd., Ispahani Group of Industries, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury } *Members.*
Mr. Juned A. Choudhury ... }

Representation: Mr. A.K.M. Mohsanuddin Ahmed Chowdhury, Advocate, appeared for the first party and Mr. A.K.M. Shamsul Huda, Advocate, appeared for the 2nd party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by first party Aminullah with a prayer for directing the second party to pay service benefits, gratuity, notice pay and other legal dues payable to him *minus* the amount paid earlier.

The case of the first party is that he was appointed in the establishment of the second party in the year 1949 as Darwan and since then he was continuing his post till the date of retirement. First party served more than 25 years and has thus become an old and infirm man of 71 years age. He applied for retirement from service, but the second party kept the matter in abeyance. Thereafter first party due to his old age and ill health retired from service with effect from 1-1-1974. The first party's service was terminated with effect from 1-1-1974 on the ground of superannuation, yet he was not paid benefit therefor. At the time of retirement the second party No. 2 paid Tk. 843·00 only to the first party and assured to pay rest after final accounting. Ultimately the second party refused to pay all the rest of the benefits and other dues. The first party is entitled to service benefit accrued to him as per law.

Second party No. 2 appeared and contested the case by filing a written statement alleging *inter alia* denying first party's alleged case of retirement from service. It is the case of the second party that nobody has terminated the service of the first party at any time. The first party resigned from his service by an application dated 6-12-1973 and accordingly his resignation was accepted with effect from 11-12-1973 and the first party has received all his dues from the second party on full and final settlement of his claim. Since the first party has already received his dues, he cannot ask for any other benefits in the present case. His case is liable to be dismissed.

It is to be seen—whether the first party is entitled to get relief as prayed for.

DECISION

P.W. 1, Aminullah, first party has only examined himself in support of his case. On the other hand, D.W. 1, M.M. Aurangzeb, and Assistant of the Establishment Department of the second party company has examined for the second party No. 2. It is not disputed that first party was appointed in the establishment of second party No. 2 in the year 1949 as Darwan and his last pay was at the rate of Tk. 291·35 per month. According to P.W. 1 due to his physical incapacity and old age and ill health, he applied for retirement by filing a petition on 6-12-1973. The said petition has been marked Ext. 1. It is also admitted by P.W. 1 in his evidence that he received Tk. 843·00 as per receipt dated 11-12-1973, Ext. A, from the second party No. 2. This receipt will show that he received salary up to 11th December, 1973 amounting to Tk. 103·38 and Earned Leave Salary for 80 days up to 11-12-1973 amounting to Tk. 739·90. It is not disputed that previously first party brought I.D. case No. 196/74 under section 34 against the second party No. 1 claiming retirement benefits but the said case was withdrawn with the permission to sue afresh. Ext. B is the plaint of that case. There in Ext. B the first party also clearly stated that he retired from service with effect from 1-1-1974 on account of superannuation due to settlement of old age. There is no legal bar to file the present case, as the former case was withdrawn with permission to sue afresh.

Since the first party rendered service for over 25 years and since he approached the second party No. 2 for retirement, *vide* Ext. 1, due to his old age and physical incapacity and since the second party accepted his prayer on the same ground it would be just and fair that the first party should be given proper benefits according to the provisions of law. It is not disputed that in June 1974 the second party's establishment was released by the Government as the Free School Street Property Limited was an abandoned property. The evidence of P.W. 1 also goes to show that the Free School Street Property Limited was then an abandoned property. Moreover, the second party No. 2 has clearly stated in para 10 of his written statement that the first party has retired from his service with effect from 1-1-1974. At the time of his retirement the second party's establishment was an abandoned property. Termthe first party is to retire as per President Order No. 121 of 1972. In age off the evidence and circumstances I find that the first party's service was terminated with effect from 1-1-1974 by way of retirement, as he attained the age of superannuation. As it is a case of cessation of employment by way of superannuation, I think the first party is entitled to following benefits, which are normally granted to the retired employee:

(1) One month's notice pay at the rate of Tk. 291·35 p.m.

(2) 14 days' wages for each completed year of service or part there of over six months.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

The second party is directed to calculate the aforesaid benefits and to pay the same to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
15-11-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
15-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 19 of 1975.

Abdul Salam Joardar, S/o. late Abdul Gafur Joardar, C/o. Shaw Wallace Bangladesh Ltd., Strand Road, Chittagong—*First Party*,

versus

Managing Director, M/s. Shaw Wallace Bangladesh Ltd., Strand Road, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury } *Members.*

Mr. Juned A. Choudhury }

Representation: Mr. Lutful Haque Mazumder, Advocate, appeared for the first party and Mr. A. M. Rashiduzzaman, Bar-at-Law, appeared for the second party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 filed by Abdul Salam Joardar, first party, with a prayer that second party be directed not to retire him (first party) till he attains the age of 60 years on the ground that in the past some employees were retired at the age of 60 years and hence the age of retirement as per custom is 60 years. It is further alleged that the second party suddenly by a notice dated 6th February 1975 informed him that he would retire from service on 28-2-1975, as he would attain 57 years of age on that date. The said notice of retirement is against the provisions of Standing Orders Act as well as the customery rules of the company. Such removal of first party from employment on 28-2-1975 shall prejudice him in his guaranteed right of continuing in his permanent employment.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that the first party's case as framed is not maintainable as the same is based on self-contradictory assertions and does not disclose any cause of action under section 34 of the I.R.O. The second party also challenges the case of the first party on merit stating that the age of retirement in its establishment was always 55 years and that in the past some employees was given extension of varying periods at the descrition of the company. The first party has no legal right to continue in his employment till he attained the age of 50 years. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to the relief as prayed for.

DECISION

P.W. 1, Abdul Salam Joardar, first party has only examined himself in support of his case. None is examined on behalf of the second party. The first party's documents are marked Exts. 1 to 4. The document produced by the second party are marked Exts. A to A(2) on admission.

In the course of argument the Learned Advocate for the first party relied on Ext. 2 and submitted that it proves that the second party has not fixed retirement age. Consequently he argued, as some employees in the past were allowed to continue in service till 60 years, the age of retirement in the second party's establishment as per custom is 60 years. The Learned Advocate, therefore, contends that the first party has a right to continue in service till the age of 60 years.

In reply, the Learned Counsel for the second party argued that as the first party is admittedly no longer in employment since 1-3-1975, the present application of the first party has been rendered infractuous. It is true that in cross-examination of P. W. 1 has admitted that he is not in service of the second party with effect from 1-3-1975, which means that the first party has already retired from service in terms of Ext. 4. So, I find that the relief prayed for by the first party in his application under section 34 has been rendered infractuous and the said application is, therefore, liable to be disallowed.

In these circumstances, it is not necessary for me to decide any other point in this case, but for the sake of giving fullness to my judgment I am now proceeding to record my findings on the only other point for consideration in this case, *i.e.*, whether the first party has any customery right to continue in service till 60 years.

First party (P.W. 1) has stated in his evidence that he lost his appointment letter but so far as he could remember no retirement age was mentioned in his appointment letter. P.W. 1 has, however, admitted the documents marked Ext. A to A(2). Ext. A is the retirement letter of H.S. Mukharjee, Ext. A(1) is the retirement letter of Nagendra Lal Paul and Ext. A(2) is the retirement letter of Abdul Samad. These exhibits show that Mukharjee retired at 60 years, Paul at 57 years and Samad at 55 years. In all these letters it is specifially mentioned 55 years as retirement age in the second party's company and in the letters addressed to Mukharjee and Nagendra Paul also mentioned that no further extension would be granted to them. P.W. 1 also admitted that two other employees Nurul Alam and Safiur Rahman has also retired this year on attaining the age of 57 years. He also admitted that till his own retirement, neither the union, nor the retired employees challenged any case of retirement. P.W. 1 also stated in his evidence that the second party had the right to grant extension of his employees up to 60 years.

The evidence of P.W. 1 as well as the Exts. A to A(2) which were admitted by him conclusively prove that the age of retirement in the second party's establishment has all along been 55 years and that the second party had the right to allow and in fact allowed extensions of varying periods to some of its employees. It will appear from Ext. 4 that the first party himself was allowed extension of two years and served till he attained the age of 57 years. First party has relied on Ext. 2 to show that it is an admission on the party of second party that there is no age of retirement in its establishment. Bearing in mind that the retirement age is the age up to which the worker has a right to serve unless his service is otherwise terminated in the meantime in accordance with law, the pre-conditions laid down in Ext. 2 which an employee should fulfil on reaching the age of 55 years in order that he may serve up to 58 years, clearly supports the contention of second party that in its establishment retirement age was all along 55 years. Otherwise the union would have strongly protested against the impediments proposed in Ext. 2 to be placed in the way of the employees reaching 55 years. On the contrary, the union merely forwarded to the second party a resolution of the executive committee, Ext. 3, requesting management to fix retirement age at 60 years. The offer of the second party contained in Ext. 2 allowing automatic extension up to 58 years on the employee passing a fitness bar at

55 years was thus not accepted by the union. So, the position remained that the retirement age continued to be 55 years for the employees of the second party with the latter having discretion to allow extension to such of its employees and for such period as it deem fit.

Even if, it were prove that there was no fixed age of retirement in the second party's establishment, the first party would still not have succeeded in this case. The case of the first party as appearing in its application under section 34 of the Industrial Relations Ordinance is that he has a customery right to serve till he attains the age of 60 years, because some employees in the past were allowed to serve till 60 years. This is a self-contradictory assertion, because no customery right to retire at 60 years is established, if "some" employees retired at that age in the past. In evidence I have found only one employee retired at 60 years and with the exception of A. Samad who retired at 55 years, the rest retired at 57 years, the age at which the first party himself had retired. I, therefore, find no substance in the case of the first party on merit.

As stated above the application of the first party under section 34 of the I.R.O. is liable to be dismissed as infractuous in view of the relief prayed for therein and the demands of the first party that he is not in service since 1-3-1975. Consequently I find that the first party is not entitled to get any relief in this case.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
17-11-1975.

Typed at my dictation and corrected by me.

A. AHMED
Chairman.
17-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 24 of 1975.

Birds (Bangladesh) Agencies Limited, Agrabad, Chittagong—*First Party,*

versus

Chittagong Port Agents, Stevedores and Contractors Employees' Union, Double-mooring, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury ... } *Members.*

Mr. Juned A. Choudhury ... ...

Representation: Mr. Azizul Huq Choudhury, Advocate, appeared for the first party and M/s. S.C. Lala and Lutful Huq Mazumder, Advocates, for 2nd party union.

This is a case under section 32(*1*)(*a*) of the Industrial Relations (Amendment) Ordinance, 1970, a joint reference by the parties, *i.e.*, Birds (Bangladesh) Agencies Ltd., Agrabad, Chittagong as first party and Chittagong Port Agents, Stevedores and Contractors Employees' Union, the second party in this case by a memorandum of agreement between the parties, the union demanded that pursuant to Birds Agencies Ltd. decision that engagement of watchmen directly by them for their ships and cargo in shed will be discontinued, such watchmen should be paid termination benefit under the law considering that they were in the permanent employment of Birds (Bangladesh) Agencies Ltd. The management of the first party, *i.e.*, Birds Agencies Limited did not accept such demand of the union contending that such watchmen are casual workers on "No work no pay" basis and as such not entitled to any benefit under the law. The union referred the dispute to conciliation but conciliation also failed to arrive at any settlement. The first party (management) offered to the Union that the controversy as to the nature of employment of the watchmen be referred to Labour Court, Chittagong under section 32(*1*)(*a*) of the I.R.O. for adjudication of the dispute. The union accepted the offer and hence the reference in terms of agreement between the parties in the following language:

> "It is agreed by both the parties that the demand raised by the union that the watchmen engaged by M/S. Birds (Bangladesh) Agencies Limited, Chittagong be given termination benefit as permanent workers and that the refusal to accept the demand by the management contending that their nature of employment is casual and hence not entitled to any benefit under the law be jointly referred by them to the Labour Court, Chittagong under section 32(*1*)(*a*) of the Industrial Relations (Amendment) Ordinance, 1970 for adjudication without prejudice to the respective contentions of the parties."

Pursuant to the above term of agreement, a joint petition by both parties has been filed for adjudication of the dispute containing in the memorandum of settlement.

Both the parties have submitted their written statements separately. The second party (union) enclosed a list of 106 such watchmen along with their written statement dated 3-5-1975 for whom the union claim termination benefits as per section 19(*1*) of the Standing Orders Act praying for payment of 45 days' wages in lieu of notice, service compensation at the rate of 14 days' wages for each year of service and wages for one month's earned leave due and other attending benefits and bonus as per law and other reliefs which such watchmen are found to be entitled. In the alternative to allow such watchmen to continue in the employment of first party.

The case of the second party union in their written statement is that such watchmen are daily rated workers and their rate of wages are fixed on the basis of agreement between the parties and they are allotted duty at Port according to roster prepared by the first party. Further case of the second party union is that such workmen have been given permanent Gate Passes renewed in each year and the service period of these watchmen are about 15/20 years and that it is further asserted that the watchmen are required to be performed duty at call according to the duty roster prepared by the first party shitfwise basis and so the watchmen remained ready for duty at call and for any time. They are whole time permanent employees of the first party. It is further asserted that such watchmen are liable to disciplinary action like other permanent employees of the establishment and that nature of business for which these watchmen are employed is permanent and the first party also has been carrying their business for long time.

The first party since discontinued employment of these watchmen in the month of February 1975 without notice the relationship of employer and employees between the first party and these 106 watchmen have been severed unconstitutionally by the first party without any notice or payment in lieu of notice and without paying compensation and other benefits as per law. Hence, the demand for payment of termination benefit to these watchmen under section 19(*1*) of the Standing Orders Act.

The management contested the demand of the second party union by filing written statement, dated 10-5-1975 alleging *inter alia* that the first party (management) is a commercial establishment carrying on business as Steamer Agent and that the first party used to employ watchmen on daily wages for watch keeping the ship at Port and the Cargo at Jetty sheds as and when the ships of their principal call at Chittagong Port and load and unload cargo. The job of such watchmen were casual in the nature and as they were not required when the ships leave the Post and the cargo in the jetty are delivered to the consignees. Such watchmen are paid off fully when their engagement are over with the departure of the vessel and delivery of cargo. Those watchmen are always paid in full and final settlement of all their wages. Further case of the first party is that these watchmen used to solicit engagement when the ships used to arrive at Chittagong Port and on such reporting these men are engaged for the time being. In case any watchmen do not report, no action is taken like regular employees. These watchmen are given gate passes only for the purpose of entry into the protected area of Chittagong Port by the Chittagong Port Trust at the instance of the first party. The watchmen are performing casual nature of job as and when they are required to be employed on daily wages basis. These watchmen are not liable for any disciplinary action when they are not engaged by the first party. They are liable for disciplinary action during their casual employment only. These watchmen are casual in nature on "No work no pay" basis and gate passes were obtained from the Port Authority on such understanding between the parties. It is also alleged by the first party employer that the number of such watchmen vary from time to time and that such casual watchmen never demanded or paid any benefit as now claimed by the second party union. These watchmen are, therefore, not entitled to any benefit under section 19(*1*) of the Standing Orders Act.

The second party union examined 57 witnesses including the General Secretary of the union. The second party filed 4 gate passes of M/s. Jane Alam, Abdul Aziz, Serajul Huq and Mohammed Rafique No. 2, by an application dated 6-8-1975 praying that the aforesaid persons having failed to appear in Court, their gate passes may be admitted as evidence of employment. Those gate passes are marked Ext. B (53) to B(56). The first party has examined one witness and exhibited various documents being Exts. 1 to 8 series in support of their case.

Points for determination are as follows:—

(1) Whether the nature of job of the watchmen engaged by the first party employer is permanent or casual in nature;

(2) Whether these watchmen are entitled to benefit under section 19(*1*) of the Standing Orders Act, or benefits under any other law for the time being in force.

DECISION

Points 1 and 2—Both the points are taken up togther for the sake of convenience.

Although the second party union in their written statement dated 3-5-1975 gave a list of 106 watchmen but they have examined only 56 of such watchmen, *i.e.*, D.W. 2 to D.W. 57 and therefore, in the instant case I am concerned with 56 persons only and the case of the rest 50 watchmen who hare not appeared and examined in Court goes by default.

The evidence of D.W. 1, Mosharraf Hussain, the General Secretary is that while he asserts in his examination-in-chief that the watchmen are permanent workmen, and Ext. 1, is an agreement between the second party and other employers including first party. It is evident *vide* Ext. 1 that the union negotiated and entered into an agreement for increase of wages of the casual workers. D.W. 1 also states that there is no agreement with the first party or similar employer concerning Annual Leave, Sick Leave or Casual Leave of the watchmen like regular employees/workers. D.W. 1 further states that the union have never raised any dispute with first party to declare these watchmen as the permanent workers.

The following common statements have been made by almost all the second party witnesses that the nature of their work is on "no work no pay" basis. That they do not get work regularly every day and month in the year, that the first party does not take any disciplinary action when they are not engaged that they are not required to submit any application for leave for absence, and that they came to office at their own cost to see, if they will be posted in a vessel of the first party and that those watchmen are finally paid off after their duties is over and that they consider themselves as permanent workers because of holding an yearly gate pass which they consider to be permanent gate pass.

D.W. 2 Abul Kalam states in cross examination that he worked for 7 days in January, 8 days in February, 6 days in March and 18 days in April, 1974 only. D.W. 3 Abdus Salam says that in January 1974 he worked for 4 days only. D.W. 6 Nur Alam says that on average his duty per month is

5 to 10 days. D.W. 7 Abul Kashem says that on average he worked for 10 to 15 days in a month. So also the D.Ws. 17 Fazal Mia says that he did not work at all under first party during February, March, July, August, September, October and November 1974. D.W. 20 Saleh Zahur says that when he does not go to first party's office he works elsewhere and receives daily wages therefrom. D.W. 21 Md. Nasim says that in 1974 he worked for 2 months only. He further says that they are not required to work when the vessels leave the Port. D.W. 21 further says that after 15-2-1972 he is working under other Stevedores. D.W. 23 Ekhlasur Rahman says that there is no compulsion to attend office and report for duty. He further says that there is no prohibition for a watchmen to work elsewhere when the vessel leave Chittagong Port...D.W. 25 says that there is no compulsion in attending office. D.W. 26 says that few watchmen left job after 1962 and they were not paid any benefit by the first party...D.W.27 Raja Mia says that watch men are not liable for disciplinary action when they remain absent. He further says that they are fully paid off when their engagements were over with the departure of the vessel. D.Ws. 30, 32, 33, 37, 39, 41, 47, 51, 54 and 56 also say in their evidence that they are fully paid off when their engagements were ever with the departure of the first party's vessel.D.W. 28 says that in 1974 he did not work at all from May to December, 1974. D.W. 30 says that he did not work for the month of January, June, July, September and October, 1974. D.W. 34 says that he used to work elsewhere when he was not engaged by the first party in the vessel. D.W. 35 says that those who left or discontinued service of the first party they were not paid termination benefit. Similarly D.W. 36 states that watchmen discharged or left service during the period from 1964 to 1974 were not paid any benefit. D.W. 38 says that when permanent watchmen in office remain temporarily absent he was their engaged as Badli worker. D.W. 43 has stated in his evidence that he did not work at all during 1974. D.W. 44 had stated that he did not work for a single day during 1974 and he performed duty elsewhere. D.Ws 40 42 and 45 have stated in their evidence that because they have got permanent gate passes, they are permanent workers. D.W. 49, has stated in his evidence that he is a contractor under Shipping Agent for the last 7 months and he used to supply labourers to the company. D.W. 57 has stated that since one year he has been comployed in C.D.A., Chittagong and drawing salary of Tk. 150·00 per month. It is in evidence that the first party employer employed some watchmen on different days and their names have been kept in the list maintained by the first party and those watchmen are required to work at calls according to roster prepared by the first party and the payment made to them on the basis of "No work no pay." Second party union demanded that although these watchmen happened to work on "No work no pay" basis but they are permanent employes of the establishment because they are to report to the office regularly for information of their duties of posting.

Keeping in view the above evidence of the D.Ws. and of Ext. 6, a letter from the first paty to the Secretary of the second party union specifically stating that the engagement of these watchmen are strictly of casual nature and acceptance of the same by the Organising Secretary of the union coupled with the provisions of Ext. 1, I do not support the aforesaid claim of the second party. Second party, has relied on the permanent gate passes Ext. B series issued to watchmen. These gat passes are issued by the Chittagong Port Trust entitling the holder to enter the restricted Port area to carry out

any work connected with the Port. These passes Ext. B series by themselves did not establish any particular relationship between the employer and the workmen. These are merely passes issued by a 3rd party, *i.e.*, Chittagong Port Trust at the request of the first party. Ext. 3 series filed by the first party containing list of wachmen engaged by them (first party) during the year 1972, 1973 and 1974 will show that in 1972 there were as many as 108 watchmen which gradually came down to 69 in 1974, for whom gate passes were obtained by the first party from the Chittagong Port Trust. Thus is it evedent that 39 of such watchmen have left the first party and they were not paid any benefit as now claimed by the second party. From Ext. 5 it will show that arrival of ships of the first party are notified before their birthing report issued by the Chittagong Port and hence there is no necessity of watchmen to attend office every day. It is in evidence from almost all the second party's D.Ws. that they are finally paid off their wages on completion of their duty which is also supported by Ext. 8 series. Ext. 9 is a statement showing monthwise engagedment of watchmenwhere from it will be seen that such watchmen are not given regular engagement like permanent employees. Ext. 2 is a letter from the Government, Ministry of Commerce showing that the first party has been declared to be an abandoned property taken over by the Government and managed through an Administrator. Section 14 of the President's Order 16 of 1972 provides "Any property vested in Government under this Order shall be exempt from all legal process."

Ext. A series shows that the order and posting of watchmen is subject to the confirmation by the Master of the vessel. Lawyer appearing on behalf of the second party lay much stress on Ext. D, a letter dated 24-2-1971 written to second party, but on scrutiny of the same, it is found that sucht claim of the second party has been referred to the head office of the first party for consideration and making 12 watchmen permanent. So, this cannot be linked in support of the case of second party.

Lawyer for the second party submits that the nature of the business of the first party being permanent, therefore, the engagement of such watchmen admittedly on 'No work no pay" basis amounts to permanent employment on piece rate basis.

"Casual Worker" has been defined in section 2(*e*) of the Standing Orders Act as follows:—

"Casual worker means a worker whose employment is of casual nature."

It is, therefore, evident that it is not the "nature of business" of the employer but the "nature of employment" by the employer which determines the status of a worker under the law. Having regard to the above facts I do not find any substance in the contention of the learned Advocate of the second party on this score.

It is further argued on behalf of the second party that these watchmen can be compared with the piece rated worker of any industry like Jute and Textile Mills and therefore, they should be considered as permenent piece rated workers. I find no force in the said contention. Piece rated workers are assured of minimum wages per month and are entitled to facilities like permanent workers in respect of leave and disciplinary action but it is found

from the evidence of D.Ws. that these watchmen are neither assured of minimum wages even when not in employment, nor they get any leave facilities, far less they are liable to any disciplinary action when not engaged by the first party. It is also in evidence of almost all the D.Ws. that they come to office only to take information whether they will be given any posting when the ships of the first party arrive at Port. There are, therefore, marked difference in the nature of employment between the piece rated workers in Jute and Textile Mills, than these watchmen concerned.

From the discussions above I find that these watchmen are casual workers on the basis of "No work no pay", and they worked as casual workers on daily rated basis. Having regards to the above facts and circumstances I find that the D. Ws. 2 to 57 are not entitled to termination benefits or other benefit as prayed for.

In arriving at the above decision I have considered the opinion of the learned Members.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
11-10-1975.

Typed by Mr. M.H. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
11-10-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Distpute Case No. 33 of 1975.

Saroj Kanti Sen, Ananta Mohan Sen, of Dewanji Pukur Lane, Dewanbazar, Chittagong—*First Party*,

versus

The Chief Executive, M/s. Barnak Advertisers, Almas Cinema Building (1st floor), Chatteswari Road, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members.*

This application under section 34 of the Industrial Relations Ordinance, 1969 by first party for directing the second party to pay to the first party termination benefit under section 19(*i*) of the Standing Orders Act, 1965, outstanding salary of January 1975 and 3 days of February 1975.

The case of the first party is that he was appointed by the second party as Business Representative with effect from 19-12-1974 on a monthly salary of Taka 250·00. On 3rd February 1975 the first party received a communication dated 28th January 1975 wherein it has been stated that the first party's service is no longer required with effect from 10-1-1975. The second party thus terminated the employment of the first party without notice or payment in lieu thereof. The second party did not pay the salary of January 1975 and for 3 days of February 1975. The first party is entitled to the relief as prayed for.

The second party appeared and contested the case by filing written statement stating that the first party is not a worker and as such this case is not maintainable. It is the case of the second party that the first perty, was appointed as Manager of the second party on 19-12-1974 as probationer. After his appointment as such, he worked up to 14-1-1975 and on this date he was terminated from service. First party having been terminated within the probationery period he has no legal right to get or claim termination benefit.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P. W. 1 first party has only examined himself in support of his case. None is examined on behalf of the second party.

Ext 1 dated 18-12-1974 is the appointment letter of first party, Ext. 2, dated 10-1-1975 is the letter by which the service of the first party was terminated with effect from 10-1-1975. It is an admitted fact that the first party was appointed as Business Representative *vide* Ext. 1 with effect from 19-12-1974 on a monthly salary of Tk. 250·00. It is also not disputed that first party's service was terminated *vide* Ext. 2 within the probationery period. Thus the first party is not entitled to get termination benefit under any provision of law.

P.W. 1 in his evidence in cross stated that he attended the second party's office up to 12-1-1975 and thereafter he was allowed to sign the Attendance Register. The evidence of P. W. 1 further shows that on 12-1-1975 he was informed by the management that his service has been terminated. Thus it is clear that first party knew well on 12-1-1975 that his service has been terminated by second party *vide* Ext. 2. The second party is not coming to say on oath that they paid the salary of the first party for January 1 to 12, 1975, the period the first party worked. I, therefore, find that the first party is entitled to get his arrear wages for the period from 1-1-1975 to 12-1-1975 from the second party.

Members are consulted over the matter.

Ordered

That the case be allowed on contest in part without cost.

The second party is directed to pay the arrear wages of the first party for the period from 1-1-1975 to 12-1-1975 witin 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
5-11-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected by me.

A. AHMED
Chairman.
5-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 36 of 1975.

Anisul Haque (Scudding Hand Flesher), C/o. Chattagram Tannery Workers' Union, Baktiar Manzil, Jalalabad, Chittagong—*First Party*,

versus

(1) The Manager, M/S. Raushan Tannery, Co., Hathazari Road, Chittagong ;

(2) Bangladesh Tanneries Corporation, representaed by Dy. General Manager, Regional Office, Panchlaish, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members*.

By this application under section 34 of the Industrial Relations Ordinance 1969 the first party Md. Anisul Huq who was a permanent worker under second party for last 10 year seeks direction on the second party to allow him (first party) to resume his duty with full arrear salary after setting aside the verbal order of suspension dated 28-9-1974 and also to declare the charge-sheet dated 25-2-1975 as false, *mala fide* and illegal.

The case of the first party is that he has been serving under the second party and last pay drawn by him as Scudding Hand Flesher was Tk. 289·00 per month. The second party suspended him (first party) verbally with effect from 28-9-1974 without framing any charge for any cause whatsoever against him. First party went to resume duty as usual but he was not allowed to resume duty after such illegal suspension but making payment of 50 per cent of his salary as suspension allowance. Thereafter the second party No. 1 issued a false charge-sheet dated 25-2-1975 against him and thereafter the first party submitted the explanation under registered post with A/D on 4-3-1975. Second party received the explanation but did not consider the same as yet, rather verablly refused either to take any action on the same or to pay him full salary. In spite of repeated requests the second party is not allowing first party to resume duty.

Second party No. 1 consted the case by filing a written statement alleging *inter alia* that that some chemicals were being stolen away from the second party Tannery by some unscrupulous workers and the management tried to find out the culprits but in vain. Second party, however, started a preliminary enquiry into the occurence and it has been disclosed that the chemicals were stolen by the first party and thereafter the second party suspended the first party with effect from 28-9-1974 and carried further investigation into the case and as a result there was a delay in framing charge against the first party. The charge sheet was issued upon the first party on 25-2-1975 and the first party submitted his explanation on 4-3-1975. Thereafter the second party asked the first party to appear before the enquiry committee on 9-5-1975.

The first party instead of appearing before the committee informed the second party his inability to appear, as he filed the present case in the Labour Court. Getting the information from the first party about filing of the present case, the second party postponed the domestic proceeding. The first party is not entitled to get any relief.

It is to be seen—whether the first party is entitled to get the relief prayed for.

FINDINGS

Neither party adduced any oral evidence. Admittedly the management suspended the first party verbally with effect from 28-9-1974 without having any cause whatsoever against him, *i.e.*, suspension is quite improper and not according to law.

It is not disputed that a charge-sheet was issued by the second party on 25-2-1975 on the allegation that on the night of 28-9-1974 the first party have taken out chemicals from the Tannery premises and as such he was asked to explain why action should not be taken against him for his such conduct and that thereafter first party submitted his explanation on 4-3-1975. It is also not disputed that second party asked first party to appear before enquiry committee on 9-4-1975 and in reply to the same the first party submitted a petition dated 9-4-1975, Ext. A, alleging that as he filed the present I. D. Case, it was not possible on his part to attend such illegal enquiry. It is the case of the second party that on receipt of the said information Ext. A, the second party postponed the departmental proceeding. It is contended on behalf of the second party that the departmental proceeding could have been completed by this time but due to the non-appearance of the first party in the enquiry as well as the filing of the present case, the second party cannot proceed any further.

From my above discussions the second party simply passed an order of suspension with effect from 28-9-1974 and kept the first party under suspension for long over 2 months, *i.e.*, until 25-2-1975 when the charge for misconduct was issued against the first party. It can be held without any hesitation that such suspension from 28-9-1974 to 25-2-1975 is quite improper and illegal.

Admittedly the second party No. 1 issued charge-sheet dated 25-2-1975 against first party for alleged misconduct and thereafter first party submitted his explanation dated 4-3-1975 and after that the second party No. 1 asked the first party to appear before the domestic enquiry, where the first party failed to appear alleging that he has already filed the present case (I.D. Case No. 36/1975). Second party cannot proceed any further against first party with the departmental enquiry during pendency of the present case. The departmental proceeding against first party was postponed not for the fault of the second party but due to filing of the present case by the first party. In view of my discussions above the verbal suspension order with effect from 28-9-74 without showing any casue or charge-sheet is not according to law and the first party is entitled to get full salary for the said period with effect from 28-9-1974 up to the date of charge-sheet dated 25-2-1975. The charge-sheet dated 25-2-1975 on record does not show that first party was suspended

with the charge-sheet. The prayer of the first party for resumption of duty does arise when a departmental proceeding is pending against him. The second party No. 1 can proceed with the departmental proceeding after the disposal of this case.

Members are consulted over the matter.

Ordered

That the case be allowed on contest in part without cost.

Verval suspension order dated 28-9-74 be set aside as not legal. The prayer for resumption of duty be disallowed.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-9-1975.

Typed at my dictation.

A. AHMED
Chairman.
30-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 56 of 1975.

Md. Eunus Meah Chowdhury, S/o. Late Yakub Ali Chowdhury, village Allah, P.O. Saraotali, P.S. Boalkhali, Chittagong—*First Party*,

versus

(1) M/s. A. K. Docking and Engineering Co. Ltd.;

(2) M/s. A. K. Khan and Co. Ltd., Managing Agent of M/s. A. K. Docking and Engineering Co. Limited, both are of Batali Hills, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury — — } *Members.*
Mr. Juned A. Choudhury — — — }

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Md. Yunus Meah Chowdhury seeks a direction on the second party to reinstate him in his former post with back wages after setting aside the dismissal order dated 17-1-1975 which was passed against him illegally without holding any domestic enquiry by affording him (first party) opportunity to defend.

Second party contested the case by filing written statement alleging *inter alia* that the first party was issued with a letter of charge dated 4-12-1974 for commission of misconduct detailed therein asking him to submit explanation and the first party submitted his explanation dated 6-12-1974 which was not found at all satisfactory. Thereafter in furthreance of the same the first party was dismissed from service by dismissal order dated 17-1-1975. The said dismissal of the first party from service was made in accordance with the provisions of law The first party is not entitled to get any relief.

Point for determination is whether the first party is entitled to be reinstated in his service with back wages as prayed for.

DECISION

Neither party adduced any oral evidence. The first party was charge-sheeted *vide* Ext. A dated 4-12-1974 for insubordination and the first party in compliance with the said charge-sheet submitted his explanation dated 6-12-1974 Ext. B. In his explanation Ext. B though the first party does not implicitly admit the alleged charge, he does not clearly deny the incident which took place on 2-12-1974 when in reply to the Director's query about some work matters he (first party) stated "please terminate my service".

It is contended on behalf of the first party that the allegation in Ext. A do not constitute misconduct under section 17(3) of the Standing Orders Act. I have carefully gone through the contents of charge-sheet Ext. A as well as the detailed explanation Ext. B submitted by the first party in compliance with the alleged charge. The first party in his explanation elaborately described the reason for which he asked for termination before his Hon'ble Director. It cannot be said from the documentary evidence on record coupled with circumstances that his (first party) such behaviour does not amount to wilful insubordination or disobedience to justify the extreme punishment, *i.e.*, dismissal. It is an admitted fact that the second party dismissed the first party from service *vide* Ext. C dated 17-1-1975 without holding any enquiry. In this case the first party has allegedly misbehaved in presence of the Director of the company and in his explanation he does not deny to have said what was allegation in the charge-sheet. The only thing that the domestic enquiry could have established, was, the manner in which he (first party) has asked for termination of service. From the explanation of the first party it will clearly appear that he is not interested in working under the second party for the reasons stated therein and as such he prays for his service to be terminated. Considering the facts and circumstances it is found that the ends of justice will be duly met, if the dismissal order is substituted with the order of termination of his service with direction to pay him (first party) termination benefits. I, therefore, hold that the first party is not entitled to get reinstatement with back wages, but he will get termination benefits under section 19(1) of the Standing Orders Act.

Members are consulted over the matter.

Ordered

That the case be allowed on contest in part without cost.

The first party is entitled to get the following termination benefits from the second party and the second party is directed to pay the same to the first party within 30 days from to day:

(I) 90 days' notice pay at the rate of Tk. 271·11 p.m;

(2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;

(3) Wages for unavailed period of Earned Leave, if any;

(4) Unpaid wages, if any, due;

Any other benefit or benefits to which the first party may be found to be entitled under any other law for the time being in force.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
17-12-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 57 of 1975.

Md. Ismail, S/o. Abdus Sattar, P.O. and Vill. Pirkhain, P.S. Anwara, Dist. Chittagong—*First Party*,

versus

Abdullah Al-Mamun Chowdhury, The Dainik Sadinata, 49, Nawab Serajuddowla Road, P. S. Kotwali, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury ... ... } *Members*.
Mr. Juned A. Choudhury ... ...

This is an application under Section 34 of the Industrial Relations Ordinance 1969 filed by first party Mohammed Ismail against the second party with a prayer for directing the second party for giving him (first party) subsistence allowance for the entire period of suspension and the pay of December, 1974 together with compensation.

The case of the first party is that he is a permanent worker under the second party and has been serving as a Make-up man of the Daily News Paper Dainik Sadinata of the second party and has been drawing Tk 220·00. as his monthly salary from second party. Unfortunately the first party was served with an order of suspension, dated 31-12-1974 issued by the second party

on the allegation that publication of news item was uncalled for, unwarranted and detrimental of the paper and acted against the discipline of the second party estalsishment. First party denied the same by filing explanation. The first party is kept under suspension on and from 31-12-1974 without giving him any subsistence allowance and he is also deprived of getting the pay of December, 1974 in utter disregard of the relevant provisions of law.

Second party though appeared and took time for filing written statement but unfortunately second party took no steps for filing written statement and the case was fixed for *ex parte* hearing and accordingly this case was heard *ex parte*.

The only point calling for consideration is—whether the first party is entitled to subsistence allowance for the suspension period along with wages for December, 1974 as prayed for.

DECISION

P.W. 1, Mohammed Ismail, first party has only examined himself in support of his case.

According to P.W. 1 he is a Makeup man of the second party establishment since 1972 and he has been drawing Tk. 220·00 per month. His evidence further shows that he was charge-sheeted for false allegation and suspened *vide* letter, dated 31-12-1974 Ext. 1 and thereafter the first party submitted explanation on 1-1-1975 Ext. 2 denying the charges. P.W. 1 further stated that he is-kept under suspension on and from 31-12-1974 without giving him any subsistence allowance and the wages for the month of December, 1974 has not been paid as yet, though he (P.W. 1) demanded the same from the second party.

Examining himself as P.W. 1 first party has re-stated his case which goes unchallenged and *ex parte*. It is proved that the first party was a permanent worker under the second party with effect from 1972. From the evidence I find that the first party is entitled to get subsistence allowance and his wages for the month of December, 1974.

Members are consulted over the matter.

Ordered

That the case be allowed *ex parte* without cost.

Second party is directed to pay subsistence allowance for the entire period of suspension and pay of December, 1974 to the first party and the second party is to implement this order within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-8-1975.

Typed by Mr, M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
30-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 64 of 1975.

Md. Ishaque, S/o. Nur Ahmed, Ex-Turner, Begum Dockyard, and Engineering Works, Jalilganj, Chittagong—*First Party*,

versus

(1) Badrunnahar Begum, Managing Director, Begum Dockyard and Engineering Works, Jalilganj, Chittagong;

(2) Mrs. Kamrun Nahar Begum, W/o. Mr. Yusuf Chowdhury, Director of Begum Dockyard and Engineering Works;

(3) Mrs. Nurun Nahar Begum, W/o. Mr. Sultan Ahmed, Director, Begum Dockyard and Engineering Works, Jalilganj, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury ... } *Members*.

By this application under Section 34 of the Industrial Relations Ordinance, 1969 the first party Md. Ishaque who was a permanent worker under second party since July 1967 seeks reinstatement in his former post with back wages upon the allegation that he was illegally dismissed from permanent service without following the provisions of sections 17 and 18 of the Standing Orders Act.

Second party appeared in this case and filed written objection but on the date of hearing the second party found absent on repeated calls and took no steps and as such, this case was heard *ex parte*.

It is to be seen—whether the first party is entitled to get reinstatement with back wages as prayed for.

FINDINGS

P.W. 1 Mohammed Ishaque, first party, has only examined himself in support of his case. According to P.W. 1 he was dismissed from service without any cause or framing any charge. Examining himself as P. W 1. the first party has restated his case which goes unchallenged. In spite of sufficient opportunity given to the second party, they are not coming to deny the first party's case. I, therefore, find that the first party case has been proved *ex parte* and the first party is entitled to get relief.

Members are consulted over the matter.

Ordered

That the case be allowed *ex parte* without cost.

The second party is directed to reinstate the first party in his former post and position with back wages within 30 days from today.

AMEENUDDIN AHMED
Chairman
Labour Court, Chittagong.
29-9-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
29-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 72 of 1975.

Mamtazuddin, S/o. late Hossain Ali Pandit, Vill. Majdipur, P.O. Aliarpur, P.S. Senbagh, Dist. Noakhali—*First Party*,

versus

M/s. Amin Jute Mills Ltd., Sholashahar, Hathazari Road, Dist. Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members*.

This is an application under section 34 of the Industrial Relations Ordinance 1969 by first party Mamtazuddin with a prayer for directing the second party to pay termination benefit under section 19(*1*) of the Standing Orders Act, 1965 or to grant any other relief or reliefs.

The case of the first party is that he had been serving in the establishment of the second party since 1st April, 1954 as Assistant In-charge, Store Accounts and his last salary was Tk. 812·00 including all. The first party was a permanent employee of the second party and his work is physical and clerical. The second party suddenly on 6-1-1973 issued a letter, terminating his service alleging that he (first party) had attained or exceeded 57 years of service and as such he should retire from service with effect from 31-3-1975 as per Bangladesh Public Servant (Retirement) Rules, 1973. There is no provision for retirement in the labour laws. That being so, the action of the second party is nothing but termination simpliciter under the guise of retirement and as such, the first party is entitled to get termination benefit under section 19(1) of the Standing Orders Act, 1965. Second party in spite of demands has not paid the termination benefit. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that the first party is not a "worker" under the provisions of labour laws and so this application is not maintainable under section 34 of the I.R.O. It is further alleged that the first party was appointed as Clerk on 1-4-1954 and was subsequently promoted to the post of Asstt. In-charge, Stores Accounts with effect from 8-8-1966. As Assistant In-charge the first party was performing the function of the In-charge of the department and was placed in C-II grade of the B.J.I.C., a grade fixed for the officers. As Assistant In-charge, the first party used to render supervisory work over the subordinates under him. There is no provisions in the service rules of the officers for payment of termination benefit due to superannuation. The first party is not entitled to get the relief prayed for.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1, Mamtazuddin, first party has examined himself in support of his case. None is examined on behalf of the second party.

It goes without saying that the petition under section 34 of I.R.O. will be maintainable only if the first party is found to be a "worker"; otherwise he is out of Court. In order to determine—whether an employee is a worker or is one excluded from its category, we shall have to look into the nature of the work he performed. P.W. 1 has stated clearly in his evidence in-chief that he was promoted as Asstt. In-charge, Stores Accounts on 8-8-1966 and he was placed in C-II grade of B.J.I.C. P.W. 1 also stated in his evidence that he, as Head of Department recommended the leave applications of the staff under him by signing as such in leave applications Ext. A, A(1) and A(2). P.W. 1 also admits that he put his initials in col. 12 of increment list for 1971, 1972 of the staff of the Stores Department. The said list has been marked Ext. B. P.W. 1 also stated in his cross that he was Head of the Department of his store department at the time of his retirement. Ext. 1 is the order dated 6-1-1975 by which the second party asked the first party to retire from the service, as he (P.W. 1) had exceeded 57 years of age. In view of the evidence of P.W. 1 referred to above he (P.W. 1) was performing the function of the In-charge of the department and was placed in C-II grade of the B.J.I.C., a grade fixed for the officers. The evidence on record further shows that 1st party used to render supervisory work over his 8/9 subordinates under him in the said store department. It is a case of cessation of employment by way of superannuation.

A worker has been defined in the Standing Orders Act 1965 in section 2(v) as well as in I.R.O., 1969 in section 2. I have gone through the said referred sections and the definition of section 2 (viii) clause (c) of I.R.O. It can be safely said from the above referred evidence that the first party had supervisory as well as administrative function and control over his subordinates and he also had the administrative capacity over 8/9 subordinate clerks. First party cannot be accepted to be a worker as law does not anywhere says that the criterion of a person in administrative or supervisory must necessarily had the power to appoint and dismiss any employee of the establishment. Mere absence of power in discharging duties of Manager or Administrator, of appointment and dismissal, does not exclude him (first party) from the category of the excluded persons, as mentioned in the above section of the labour laws. From the evidence and my discussions above, I am of the view that the first party was not a worker under the labour laws and as such, he is not entitled to the benefit or reliefs as prayed for. I, therefore, find that this case is not maintainable under section 34 of the I.R.O.

Learned lawyer appearing on behalf of the second party has submittedt during argument that the second party management is ready to give the firs party retirement benefit according to law. The first party may approach the second party for such benefit.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost as not maintainable.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
8-12-1975.

Typed by Mr. M.M. Chowdhury
at my dictation and corrected by me.

A. AHMED
Chairman.
8-12-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESESH

Industrial Dispute Case No. 77 of 1975

Shah Imran, C/o. Staff Quarter, Elahi Baksha & Co., 126, Strand Road, Sadarghat, Chittagong—*First Party*,

versus

Administrator, Messrs Elahi Baksh & Co., 126, Strand Road, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudury ... } *Members.*

By this application under section 34 of the Industrial Relations Ordinance 1969, the first party Shah Emran seeks direction on the second party to pay his arrear salary from the month of March 1975 till the date of decision of this case mainly on the ground that the second party in spite of repeated demands did not pay his (first party) salary for the months of March and April, 1975 though the second party paid salary to all other staff.

Second party contested the case by filing a written statement mainly alleging that this case under section 34 with claim for arrear wages is not maintainable. Second party further alleged that the second party received an application from the first party on 6-3-1975 praying leave for 15 days with effect from 5-3-1975 for repair of his village house at Raipur, Noakhali. Second party granted him leave of 15 days and the first party was due to resume his duty on 20-3-1975. First party did not resume his duty. Thereafter second party issued a letter to the first party on 29-3-1975 asking him to resume duty. But the first party neither reported for duty nor care to give any reply. First party was continuing in unauthorised absence. Ultimately the second party issued charge-sheet against the first party for his unauthorised absence for more than 10 days and the first party submitted his explanation and thereafter enquiry was held and ultimately second party dismissed the first party from his service for misconduct *vide* letter dated 11-7-1975. First party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get the relief as. prayed for.

DECISION

P.W. 1, first party, has only examined himself in support of his case D.W. 1, Rezaul Bari, the Administrator of the second party has examined himself along with another witness. It is contended on behalf of the second party that this case as framed is not maintainable. Section 36 (5) of the Industrial Relations Ordinance clearly shows that it is not the intention of the legislature that this Court should entertain any application for payment of wages, till a gazette notification is made by the Government. Furthermore, section 22 of the Payment of Wages Act bars the jurisdiction of any other Court to entertain any claim for payment of wages. Even assuring that such

bar relates to cases falling within the monetary limits specified in section 1(6) of the Payment of Wages Act, I find that the case petition is silent as to whether the right to payment of wages sought to be enforced by the first party is guaranteed by or under any law, award or settlement. It will, therefore, appear that the statement made in the case petition does not disclose any cause of action of the first party for an application under section 34 of the I.R.O. So, in this view of the case, this case as framed is not maintainable.

It is not disputed that the second party received a leave application from the first party on 6-3-1975, Ext. A, praying leave for 15 days with effect from 8-3-1975 on the ground stated therein. According to second party's evidence on record that the leave for 15 days was granted and first party was due to resume his duty on 20-3-1975 but the first party failed to resume duty on the same date or thereafter. It is stated by D.Ws. that on 29-3-1975 the second party issued a letter Ext. B to the first party asking him to resume duty and the said original letter of Ext. B was sent through D.W. 2, who admittedly residing in the same premises. D.W. 2 stated that he handed over the original of Ext. B to the first party and made an endorsement on the margin of Ext. B to that effect. Of course, first party denied to have received such letter. According to P.W. 1 he sent a letter Ext. 3 demanding payment of salary for the months of March and April, 1975. D.W. 1 in his cross has stated that they received the original of Ext. 3 dated 12-5-1975 from the first party. It is an admitted fact that the second party by a letter dated 19-6-1975 Ext. C directed the first party to report for duty which the first party admittedly received on 23-6-1975. It is an admitted fact that the first party thereafter brought a case in this Court against his order of dismissal dated 11-7-1975, against the second party and prayed for reinstatement with back wages. I think it is not at all proper and safe to give any decision in this case as to whether the first party was unauthorisedly absented himself from duty with effect from 20-3-1975, as alleged by the second party. The first party will highly prejudice if any decision is made over the alleged unauthorised absence, as admittedly a case is pending between the parties over the dismissal in question. However, according to second party's case, first party was granted leave for 15 days with pay with effect from 5-3-1975. So, the first party is legally entitled to get his wages for 19 days of March 1975. I have already found above that this case is not maintainable as framed. So, the first party is not entitled to get the relief as prayed for.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost as not maintainable.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
18-12-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
18-12-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 86 of 1975

Oli Ahmed, S/o. Late Abdul Haq, Vill. Khondakia, P.S. Hathazari, Chittagong —*First Party;*

versus

Mill Manager, M/S. Ibrahim Cotton Mills Ltd., Hathazari Road, Chittagong—*Second Party.*

PRESENT;

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury ... } *Members.*
Mr. Juned A. Choudhury ... ... }

By this application under section 34 of the Industrial Relations Ordinance, 1969, first party, Oli Ahmed prayes for reinstatement in his former post and position with back wages.

First party's case is that he was appointed as an Electric Helper on 4-2-1966 in the establishment of the second party and subsequently promoted to the position of Electrician. First party was suddenly arrested by the Security guard of the mill on 26-1-1975 and handed over to Police falsely alleging that theft of some materials was committed by him and accordingly first party was implicated in G.R Case No. 250(A)/75. Second party issued a charge-sheet on 1-2-1975 against the first party for misconduct under section 17(3)(b) of the Standing Orders Act, 1965. First party submitted his explanation denying the said charge. Thereafter an enquiry was notified and the first party duly appeared in the enquiry on 14-3-1975. No witness against the first party was examined in his presence nor the first party was given opportunity of his defence. The second party ultimately dismissed the first party from service *vide* order dated 18-3-1975 without making proper enquiry without giving reasonable opportunity to the first party for his defence. The first party was discharged from the criminal case on 10-5-1975.

Second party contested the case by filinng a written statement alleging *inter alia* that first party on 25-1-1975 at about 7-30 p.m. while taking away one piece magnet from the mill, was caught red-handed by the Security staff at the factory main gate. Thereafter the first party was charge-sheeted on 27-1-75 and the first party submitted his explanation on 10-2-1975 which was not found satisfactory and thereafter an enquiry was held, where the statement of first party was recorded and he was given all opportunities for his defence. After recording the statement the same was read over to the first party and he was asked to sign the same but he rafused to sign the same. The enquiry committee recorded the statements of witnesses of second party in presence of first party. The enquiry committee sbumitted its report finding the first party guilty and thereafter the management dismissed the first party for his misconduct after following all provisions of law. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1 Oli Ahmed, first party, has only examined himself in support of his case. On the other hand, D.W. 1 Amjad Ali, Asstt. Labour Officer of the second party mill has examined on behalf of the second party.

It is not disputed that the first party was an Electrician under the second party establishment with effect from 1969. It appears that the first party was issued with a charge-sheet for misconduct under section 17((3)(b) of the Standing Orders Act on 1-2-1975 Ext. 1 and thereafter the first party submitted his explanation dated 7-2-1975 Ext. 2 denying the charges. P.W. 1 has stated in his evidence that on receipt of enquiry notice, he attended the enquiry on 14-3-1975 and the enquiry committee recorded his statement but the same was not read over to him and he was not allowed to sign the statement, though he (P.W. 1) insisted for the same and thereafter he left. P.W. 1 further stated that no witness was examined during enquiry in his presence. Of course P.W. 1 in his cross stated that Abdul Gani, a Security Guard caught him on 25-1-1975 at factory gate at about 7-30 p.m. P.W. (1) stated in cross that his basic wages is Tk. 240·00 p.m. D.W. 1 admittedly one of the member of the enquiry committee has stated that on 14-3-1975 they held domestic enquiry in presence of the first party. D.W. 1 has stated that the statements of witnesses including first party were recorded which are marked Ext. A, A(1) and A(2) and after completing the domestic enquiry they submitted enquiry report dated 14-3-1975 Ext. B. It was suggested to D.W. 1 that no witness was examined by the enquiry committee in presence of the first party. Of course, D.W. 1 denied the same. P.W. 1 also admits in his evidence that Amjad Ali (D—W. 1) was one of the member of the enq iry committee. From the oral evidence of P.W. 1 and D.W. 1 it is found that the D.W. 1 or the witnesses examined during enquiry are not enemical with the first party. It is stated by P.W. 1 tnat in his recorded statement Ext. A he was not allowed to sign the same, though inisted so. On course it is referred in Exts. A and B that the first party declined to sign his statement. It is an admitted fact that the first party was implicated in G.R. Case No. 250(A)/1975 for the alleged theft but he was discharged off 10-5-1975 *vide* Ext. 4. It appears from the evidence of first party he was not given reasonable opportunity to cross examine the witnesses examined, as he was not present durig the examination of those witnesses of the second party. Considering all the evidence and circumstances it is found that the ends of justice will be duly met, if the dismissal order is substituted with an order of termination of his service with direction to pay termination benefit to the first party. Accordingly, it is.

Ordered

That the case be allowed on contest in part without cost. The order of dismissal in question against the first party be set aside and it be substituted with order of termination of his service with effect from the date of dismissal The second party shall pay termination benefit to the first party under section 19(1) of the Standing orders Act, 1965 as follows within 30 days from to-day.

(1) Notice pay for 90 days' wages at the rate of Tk.240·00 per months;

(2) Compensation at the rate of 14 days' wages for each completed year of service or part therefof over six months;

(3) Unpaid wages, if any, due;

(4) Wages for unavailed period of Earned Leave, if any;

(5) Provident fund dues, if any, including company's contribution.

Any other benefit or benefits to which the first party may be found to be entitled under any other law for the time being in force.

In passing the above order I have considered the opinions of the learned Members.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
7-11-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
7-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 89 of 1975.

Md. Mohsin Sarkar, S/o. Syed Ali Sarkar, B.R.T.C. Truck Division, Chittagong —*First Party;*

versus

(1) Divisional Manager, B.R.T.C. Truck Division, Bayazid Bostami Road, Chittagong.

(2) Manager (Admn and Personnel), B.R.T.C. Truck Division, 5/8, Lalmatia, Block-D, Dacca—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury .. } *Members.*

Mr. Juned A. Choudhury .. .. }

Representation: Mr. A.K.M. Mohsanuddin Ahmed Chowdhury, Advocate appeared for the first party and second party remained unrepresented.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Mohsin Sarkar seeks direction upon the second party to pay full salary to him from the date of illegal suspension and to allow him to resume his duties forthwith with back wages.

It is the case of the first party that he has been serving in the establishment of the second party since 21-4-1973 as Assistant Foreman and last salary was Tk. 350·00 per month in all. Suddenly on 2-1-1974 the second party suspended him from service with effect from 3-1-1974 and he is kept under suspension till date without any enquiry. Assistant Store Keeper of the second party on 3-1-1974 ledged a false complaint to the Officer-in-charge, Panchalaish P.S., Chittagong for alleged theft. Ultimately the Investigating Officer submitted final report in the case and the first party was discharged. First party went to second party for several times and prayed for allowing him

to resume duty. But the second party is not allowing him to resume his duty. First party also submitted representation on 24-2-1975 but nothing was done as yet. Lastly on 1-7-1975 the first party went to second party and requested him to allow him to resume his duty but second party refused to give any opinion in this regard. The second party is paying only 50 per cent. of his salary as subsistence allowance. Since there is no charge against first party and since suspension beyond 60 days is illegal in the eye of law the first party seeks to enforce his right under the provisions of Labour Law.

Second party *vide* his memo dated 19-7-1975 prayed for time for filing written statement but ultimately the second party took no steps whatsoever and this case was heard *ex parte*.

The only point calling for consideration is whether the petitioner is entitled to get the relief as prayed for.

FINDINGS

P.W. 1 Mohsin Sarkar first party has examined himself in support of his case. First party is a permanent worker under the second party since 21-4-1973. According to P.W. 1 on 3-1-1974 Assistant Store Keeper of the second party lodged a false F.I.R. to O/C Panchalaish P.S. and thereafter the first party was taken into custody and that the second party kept first party under suspension with effect from 3-1-1974. It is also in evidence that Panchalaish police submitted final report and the S.D.O., Chittagong, discharged the first party from police case on 20-5-1974. P.W. 1 further stated that he submitted representation on 24-2-1975 requesting second party to allow him to resume duty but the second party took no steps over the matter and lastly on 1-7-1975 he (P. W. 1 went to the second party and requested him to allow first party to resume his duty but the second party refused to allow him to join. It appears that the second party is paying only 50 per cent" of his salary as subsistence allowance. The second party neither discharged, dismissed or terminated the service of first party. The first party is kept under suspension till now. Suspension beyond 60 days is not legal according to the provisions of Standing Orders Act and he is entitled to full pay for the entire period of his suspension after first 60 days and first party can be legally treated to be in service under the second party. P. W. 1 has restarted his case which goes unchallenged and *ex parte*. The fact that the second party has not taken any steps for contesting the claim is a pioneer to the fact that it has no say. Therefore, the claim of the first party is proved *ex parte*.

Members are consulted over the matter.

Ordered

That the case be allowed *ex parte* without cost.

The secnnd party is directed to allow the first party to resume his duty and to pay him full salary for the period of suspension beyond 60 days. The second party is further directed to implement this order within 50 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
24-9-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
24-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 103 of 1975.

Rahmatullah, S/o. Abdul Kader, Village Maishkhaliapara, P.S. Teknaf, Dist. Chittagong—*First Party*,

versus

Proprietor (Khairul Bashar), Messrs. Hotel Shalimar, 80/81 Hossain Shahid Shurwardy Road, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury .. } *Members*.

Mr. Juned A. Choudhury .. ..

By this application under section 34 of the Industrial Relations Ordinance, 1969 first party Rahmatullah seeks a direction upon the second party either to reinstate him with back wages or to pay termination benefit under section 19(*1*) of the Standing Orders Act mainly on the grounds that suddenly on 18-5-1975 the second party verbally terminated his service without any notice or lawful reason.

Second party contested the case by filing written statement alleging *inter alia* that the first party was appointed as Karigar (Helper) with effect from 1-11-1974 on daily wages of Tk. 3·00 excluding Food suplied by the second party free of cost. The first party expressed his unwillingness to serve under the second party any more on 19-5-1975 and as such he tendered his resignation on receipt of his wages for 90 days in the month of May 1975 in full and final settlement of his claim and left the job on execution of a receipt. So, the first party is not entitled to get reinstatement or termination benefit.

The first party also submitted no grievance petition under section 25(*1*)(*a*) of the Standing Orders Act and as such this case is not maintainable.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1, Rahmatullah, ,first party ,has only examined himself in support of his case. On the other hand, four witnesses are examined on behalf of the second party including D.W. 4, M. K. Basher, the Proprietor of the second party Hotel. It is the definite case of the first party that his service was suddenly verbally terminated on 18-5-1975 by the second party (D.W. 4) and thereafter on 22-5-1975 he (P.W. 1) represented his grievance under section 25(*1*)(*a*) of the Standing Orders Act but the envelop containing the grievance came back undelivered. On the other hand, it is the case of the second party that no grievance petition was never received by the second party. The said case of the first party has been contradicted by his grievance petition Ext. 1, which was

within the registered envelop and it was opened during hearing in this Court from the cover. There in Ext. 1 it is stated that the service of the first party has been terminated verbally on 14-5-1975 and his (first party) last monthly remuneration was Tk. 90·00 in cash plus food and lodge supplied by the second party amounting to Tk. 150·00. In the case petition it is stated by the first party that his last monthly salary was Tk. 150·00 apart from food and lodge supplied by the second party. P.W. 1 in his evidence also stated that he used to get 150·00 as salary per month, *i.e.*, at the rate of Tk. 5·00 per day and not at the rate of Tk. 3·00 per day. This material contradiction concerning the date of verbal termination and rate of daily wages as referred to above disapproves the first party's alleged case of verbal termination. Moreover, the contradictory statement of P.W. 1 in his evidence as well as in his grievance petition Ext. 1 proves him (P.W. 1) as a unreliable witness. So, I cannot place any reliance upon the evidence of P.W. 1.

Moreover, all the D.Ws. have stated that first party was appointed as Helper on 1-11-1974 at the rate of Tk. 3·00 per day and first party resigned from service at his own accord and he was paid fully by receipt Ext. A. P.W. 1 has stated that he knows Abdul Gani, D.W. 3, a Helper and Muzaffar Ahmed, Bill Clerk (D.W. 2) of the second party Hotel. It is also stated by P.W. 1 that he along with other Helpers and workers were working in the hotel of the second party and those workers including D.Ws. have no enmity or grudge with him. I find no reason as to why these D.Ws. would depose falsely against the first party. P.W. 1 admits his thumb impression in Ext. A. D.W. 2 and 3 are mentioned as witnesses in Ext. 2 and they fully support the contents of Ext. A. P.W. 1 also gives no reason as to why D.W. 4 would suddenly terminated his service on the date mentioned in the case petition. Having regards to the discussions coupled with circumstances I have every reason to believe the case of the second party and that I cannot but hold that the first party has hopelessly failed to prove his alleged case of verbal termination dated 18-5-1975. Consequently first party is not entitled to get any relief in this case.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
29-11-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
29-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 116 of 1974.

Syedul Huq, S/o. late Mvi. Samiruddin, At present Vill. Dewan Nagar, P.S Hathazari, Chittagong—*First Party*,

versus

The Director, M/S. A.K. Khan Plywood Co. Ltd., Batali Hill, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury ... ... } *Members*.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the 1st party Syedul Huq who was a permanent worker under the second party since July 1968 seeks reinstatement in his former post and position with back wages upon the allegation that he was illegally dismissed by order, dated 12-2-1974 from his employment without following the provisions of sections 17 and 18 of the Standing Orders Act, 1965.

Second party appeared in this case and submitted his written statement but on the date of hearing second party took no steps whatsoever and found absent on repeated calls and this case was heard *ex parte*.

The only point for consideration is—whether the first party is entitled to get back wages with an order for reinstatement.

FINDINGS

P.W. 1, first party has deposed in support of his case. P.W. 1 has stated in his evidence that second party falsely charge-sheeted him thrice and he submitted explanations denying these charges and lastly the second party called his explanation on 15-1-1974 alleging a false allegation and thereafter he submitted explanation, dated 26-1-1974 denying all charges. The copy of explanation has been marked Ext. 1. P.W. 1 further stated that he was called at an enquiry where he went but his witnesses were not examined by the enquiry officer though insisted for the same. P.W. 1 further stated that he was given no reasonable opportunity to defend his case. The dismissal order is marked Ext. 2. Examining himself the first party has restated his case which goes unchallenged and *ex parte*. The fact that the second party has not taken any step on the date of hearing for contesting the claim, is a pioneer to the fact that it has no say. Therefore, the case of the first party is proved *ex parte*.

Members are consulted over the matter.

Ordered.

That the case be allowed *ex parte* without cost.

The second party is directed to reinstate the first party in his former post and position with back wages within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
29-9-1974.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 127 of 1974.

(1) Md. Safiullah, Watch and Ward.
(2) Moqbul Ahmed, Watch and Ward.
(3) Sultan Ahmed, Watch and Ward.
(4) Kala Meah, Watch and Ward.
(5) Shariatullah, Watch and Ward.
(6) Raju Meah, Watch and Ward.
(7) Ramu Das, Watch and Ward.
(8) Afiar Rahman, Watch and Ward.
(9) Aswini Kr. Barua, Watch and Ward.
(10) Md. Meah, Watch and Ward.
(11) Abul Hossain, Watch and Ward.
(12) Mafizur Rahman, Watch and Ward.
(13) Noor Ahmed, Watch and Ward.
(14) Khagen Das, Watch and Ward.
(15) Budurus Meah, Watch and Ward.
(16) Abul Basher, Watch and Ward.
(17) Moni Das, Watch and Ward.
(18) Suresh Das, Watch and Ward.
(19) Moti Lal, Watch and Ward.
(20) Dulal Das, Watch and Ward.

All of Bangladesh Tobacco Co. Ltd., North Hill Estate, Sarson Road, P.S. Kotwali, Chittagong—*First Parties ;*

versus

M/S. Bangladesh Tobacco Co. Ltd., Represented by the Branch Manager, Fouzderhat Factory, P.O. Box No. 158, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury .. } *Members.*

Mr. Juned A. Choudhury .. .. }

First party numbering 20 have brought this case under section 34 of the Industrial Relations Ordinance, 1969 praying for directing the second party to treat the first parties as permanent employees on completion of statutory period of probation of service with other benefits entitled to at par with other employees of the second party restrospectively thereby making available the rights guaranteed by law.

The case of the first parties is that the second party has a cigarette factory and branch office amongst other places at Fouzderhat, Chittagong and carries on business of cigarette manufacturing; that in connection with the affairs and functioning of second party's Fouzderhat factory, there are 3 other connected establishments at Chittagong, namely Traffic Office, F.A.C. Godown at Agrabad and North Hill Estate at Sarson Road; that the establishment at at Sarsan Road, Chittagong consists of residential Estate known as "Bangladesh Tobacco Company Limited, North Hill Estate" and provides free furnished accommodation, Sports and other recreational facilities to the officers of the management, that the first parties are the workers employed therein with effect from the dates of their respective employment; that the workers of the factory at Fouzderhat, Traffic office at Agrabad, F.A.C. Godown and North Hill Estate have a registered union and first parties have been members of the said union; that the second party regulates the terms and conditions of employment, grant of leave, payment of salary, bonus, increment, overtime, loan and advance as well as uniform in respect of first parties through one of the officers of the second party, Fouzderhat managemtment known as "In-charge, North Hill Estate"; that the second party has entertained different demands of the first parties as industrial dispute sometimes directly and sometimes through representation of the union; that the North Hill Estate has family accommodation for 18 officers who have their individual domestic and private servants, cooks, Mali, etc; that the first parties work relate to the security and protection of the properties and transport in the guarages, attendence of telephones, maintenance of sports ground and supply water, electricity and night watches, etc. connected with the North Hill Estate belonging to the second party. That in the aforesaid circumstances, the first parties are entitled is of right to the benefits and privileges as permanent employees like other permanent workers of the second party within the scope of Standing Orders Act, 1965 and the Industrial Relations Ordinance, 1969; that other workers of the second party enjoyed various benefits like Provident Fund, Leave, Bonus, free cigarettes, etc; where the same advantages and benefits have been denied to the first parties by taking recourse to fradulent tactics in violation of the mandatory provisions of law. It is further alleged that the second party has not recognised the first parties, firstly as their employees and secondly as permanent employees and whenever demands were raised for recognition of their lawful status, the second party always termed the first parties as private employees of the residents of North Hill Estate and hence the present petition for setting a right, the wrong of the second party with the prayer as referred to above.

Second party appeared and contested the case by filing a written statement denying the first parties allegation on material particulars. The case of the second party is that the case as framed and filed by the first parties is not maintainable according to law; that the facts and circumstances as disclosed in the case petition and prayer made therein, did not attract the provisions of section 34 of the Industrial Relations Ordinance, 1969; and that this case is not maintainable under section 34 of the I.R.O., 1969 and other labour laws. That the case is barred by resjudicata. It is further alleged that the North Hill Estate is not an establishment and that the residential quarter of some of the officers employed by the second party are located at the premises known as North Hill Estate at Sarson Road where there is no office and where no business is transacted whatsoever and that the persons appearing as first parties in the case petition are not workers under the second party nor they are employed by the second party; that the second party does not regulate the terms and conditions of the first parties nor do they make payment of the salary, overtime, etc., of the first parties; that the incharge of North Hill Estate is not appointed by the second party; that the first parties are not entitled as of right to the benefits and privileges as a permanent employees of the second party like other permanent workers; that the first parties work in the North Hill Estate and one of the officers residing in the Estate recruits those persons for the common benefit of the residents and be also dismisses them and makes payment of their wages and all such persons are under his control and the said in-charge is nominated time to time by the residents themselves and that previously an application was filed by the first party and others in this regard has also been rejected on contest and as such this case petition is barred by resjudicata. It is further contended by the second party that the union under threat, duress, coercion and pressure, forced the management to sign agreement, dated 26-5-1972 which also included the present relief claimed by the first party; that the union was being pursued to give effect to the illegal agreement whereupon the second party filed other suit No. 56 of 1972 in the Munsif Court, Chittagong, for declaration that the agreement, dated 26-5-1972 is illegal, void and not binding on the second party and also for permanent injunction restraining the said union from enforcing the same. The learned Munsif passed an order of *ad-interim* injunction whereupon the union filed a petition under Order 7, rule 11, C.P.C. for rejecting the plaint and learned Munsif by the order, dated 29-6-1972 rejected the plaint under section 151, C.P.C. Thereafter the second party filed a revision application before the then High Court of Bangladesh being Civil Rule No. 415 of 1972 and by order, dated 6-9-1972 the rule was made absolute setting aside the order of learned Munsif and restored the plaint to its original file with a further direction that the interim injunction granted by the learned Munsif and subsequently by the Hon'ble High Court, in the Rule shall continue. The union in the meantime filed an application under section 34 of I.R.O. for enforcing the said impunged agreement, dated 26-5-1972 being I.D. case No. 56 of 1972; that after disposal of the civil rule, the union came to its senses and after further discussions a Memorandum of Settlement was signed on 15-9-1972 in presence of Assistant Director of Labour, Chittagong Division and the agreement provides *inter alia* (a) Agreement of 26-5-1972 is hereby cancelled; (b) Union agrees to withdraw I.D. case No. 56 ut 1972; (c) The company agrees to withdraw Civil Suit No. 56 of 1972 and accordingly the impunged agreement stood cancelled and the union withdrew their appliation of I.D. case No. 56 of 1972; that the first parties had also in the meantime filed two cases being Criminal case No. 1 of 1974 praying for taking action against second party for alleged non-implementation of the impunged agreement, dated 26-5-1972 which *inter alia* provided that the first

parties, who had been private employees of the residents of the North Hill Estate should be treated as employees under the second party and also I.D. case No. 4 of 1974 under section 34 of I.R.O., 1969 for enforcement of impunged agreement and that criminal case No. 1 of 1974 was dismissed after hearing on contest and I.D. case No. 4 of 1972 was withdrawn by the first party without notice to the second party and that in the facts and circumstances of the case, the present application under section 34 of the I.R.O. is *mala fide*, vexatious and is liable to be rejected.

Points for determination are—

(1) Whether this case is maintainable under section 34 of the Industrial Relations Ordinance, 1969 as framed;

(2) Whether the first parties are entitled to get relief as prayed for.

FINDINGS

Points 1 and 2: Both the points are taken up together for the sake of convenience.

All the first parties numbering 20 are examined themselves in support of their cases. On the other hand, D.W. 1, In-charge of the North Hill Estate has only examined himself on behalf of the second party.

Section 34 of the Industrial Relations Ordinance, 1969 provides for an application by any collective bargaining agent employer or workmen for enforcement of any right guaranteed or secured by or under any law, award, or settlement. In order, therefore, to be entitled to file an application under section 34 of I.R.O., 1969, the petitioners must have to be a collective bargaining agent, employer or a workman and the application must have to be for enforcement of any settled and guaranteed right by and under any law, award or settlement. The first parties, therefore, in order to succeed in this case must have to prove that they are workers within the meaning of I.R.O. 1969 and that the application is for enforcement of any guaranteed or secured right and not for creation of any right.

In the aforesaid premises, it is necessary to examine whether the first parties are workers within the meaning of I.R.O., 1969. A worker or workman has been defined in section 2 (xxviii) of I.R.O., 1969 to mean any person not falling within the definition of employer, who is employed in an establishment or industry for hire or reward either directly or through a contractor, etc. The definition says that a person in order to become a worker must have to be employe. in an establishment or industry. "Establishment" has been defined in section 2(ix) of the said Ordinance to mean any office, firm, industrial unit, shop, or premises in which workmen are employed for the purpose of carrying on any industry and an industry has been defined in section 2(xiv) of the said Ordinance to mean by business, trade, manufacture, calling services, employment or occupation.

In the aforesaid context the first parties must have to prove that the North Hill Estate is an establishment or an industry within the meaning of aforesaid definition in order to bring the first parties within the definition of word "worker". In para 1 of the case petition it has been stated that the second

party has a factory at Fouzderhat wherefrom business of cigarette manufacturing is carried on and it is further stated in para 2 of the case petition that in connection with the affairs and functioning of the Fouzderhat factory there are three other connected establishments at Chittagong, namely, the Traffic Office and F.A.C. Godown at Agrabad and North Hill Estate at Sarson Road, whereas in the petition in criminal case No. 1 of 1974 and Ext. G(2) and I.D. Case No. 4 of 1974 Ext. G filed by the first parties, North Hill Estate has not been stated to be an establishment. P.W. 1, Mohd. Safiullah (petitioner No. 1) has stated in his evidence that he filed criminal case No. 1 of 1974 and that they (first parties) filed I. D. case No. 4 of 1974 under section 34 of I.R.O., P.W. 10 and P.W. 21 stated in their evidence that North Hill Estate is used as the residents of the company's officers. P.W. 1 further stated in his evidence that second party's business is to manufacture and sale cigarettes at their Fouzderhat factory and their office at Agrabad. P.W. 2 also stated in his evidence that the North Hill Estate is used by the officers of the second party as their residence and that cigarettes are manufactured and sold at Fouzderhat Factory we all as from Agrabad office. P.W. 8 said in this evidence that cigarettes are manufactured from Fouzderhat factory and sold from Agrabad office and godown and such employees therein are appointed by appointment letters. Almost all the witnesses of the first parties including first parties themselves and the Assistant Secretary of the union have categorically stated in their evidence that North Hill Estate only provides free furnised accommodation and ancilliary facilities to the officers of the company and that the business of the second party company is carried on from Fouzderhat factory, Agrabad office and F.A.C Godown. No manufacturing process or any part thereof or any business, trade, etc., is carried on from the North Hill Estate, Under the circumstances, North Hill Estate which is used only for residential purpose cannot be termed as an establishment. From the definition of establishment in section 2(ix) of the said Ordinance it is clear that it must be a place where the employer carries on its business or industrial activiities. It is also not disputed that all the first parties individually filed some cases under section 25 of the Standing Orders Act, 1965 in this Court, the judgment of the case has been filed by the first parties themselves and the copy of judgment has been marked Ext. H(2). P.W. 19 says that they filed complaint case Nos. 501 to 506, 526 to 537 of 1969 in this Court against the second party and after dismissal of these cases, they made no further demand to the second party. Ext. H(2) is the judgment of the said complaint cases. It has been found by this Court, *vide* judgment Ext. H(2) that North Hill Estate is not an establishment. Moreover, in the letter of second party, dated 25-2-1972 Ext. 1, the second party Manager has clearly stated that the case of the first parties for absorption as company's employees may be considered when appropriate circumstances may arise. It is, therefore, clear that North Hill Estate is not an establishment and the first parties are not workers within the meaning of I.R.O., 1969 and as such the present applicption at their instance is not maintainable.

It is to be seen—whether the petition as framed with the present prayer as it appears in the case petition is maintainable.

The case petition is absolutely inndefinite and vague as to what are the rights sought to be enforced and by what law, settlement or award of such rights are guaranteed or secured. In the evidence of P.Ws. also, this has not been made clear. P.W. 1 says that the union make an agreement, dated 2 26-5-1972 on their behalf with the company with respect to their demands but the said agreement has been cancelled subsequently. P.Ws. 2, 3, 4 also stated

in their evidence that they pray for directing second party to recognise them as employees of the second party. Other P.Ws. first parties also stated in their evidence that the Court should direct the second party to treat them (first parties) as their premanent employees. P.W. 1 further stated in his evidence that the company is not giving them their demands for Provident Fund, Free cigarettes and if these two demands are fulfilled they will be fully satisfied. Some of the P.Ws. have stated in their evidence that after cancellation of the agreement, dated 26-5-1972 Ext. D, they have filed the present case for making them permanent in the employment of the second party company, while some of the P.Ws. have stated that since they are not getting the same benefits as are being enjoyed by the workers of the company, they have brought the present case for allowing them the same benefits. None of them has, however, stated under what law, settlement, or award such claim are being made. In such circumstances, the question of enforcing any right does not arise, more so, because the whole petition and the prayer made therein does not disclose any right guaranteed or secured by or under any law, settlement or award.

It has been stated in Para 5 and 8 of the case petition that the second party has at different times entertained different demands of the first parties as industrial dispute, sometimes directly and sometimes through the representation of the union and that the first parties have not yet been recognised by the second party, firstly as their employees, secondly, as permanent employees and that the second party has always maintain that the first parties are the private employees of the residents of the North Hill Estate. P.W. 4 says in his evidence that he wants such facilities as are being enjoyed by factory workers. P.Ws. 2, 3 and 4 stated also that they pray for recognising them by the second party as their permanent employees. P.W. 5 says that as the factory workers are getting more wages than them, they filed this case for getting more wages. P.W. 6 says that as no payment was made according to agreement (Ext. D) the first parties have brought this case. P.W. 7 also says that he brought this case on the basis of agreement. P.W. 9 says that as the second party refused to provide them with benefits, they brought this case under section 34 of the I.R.O. P.Ws. 12, 13, 14, 15 and 17 have stated in their evidences that the union made demands on their behalf for taking them as permanent employees but the company refused to fulfil the demands and so they brought this present case. Taking into view the above discussions and the allegations in the case petition and the prayer made in the petition for directing the second party to treat the first parties as permanent employees of the second party, it is clear that the present application is not for enforcement of any guaranteed or secured right but for declaration only and such a prayer in an application under section 34 of the I.R.O. is not legaly sustainable because by such order, new condition of service will be created, which can only be done by an award in a properly raised industrial dispute case.

In these contexts it is necessary to examine the previous stand of the respective parties. P.W. 21 says that on 15-4-1972 their Association submited a charter of demands and thereafter on 26-5-1972 an agreement (Ext. D) was made and after cancelling that agreement, another agreement was made on 15-9-1972 Ext. D(1). He further says that there were litigations between the company and the union in Civil Court and this Court regarding Ext. D agreement. It is rather an admitted case that an agreement was signed on 26-5-1972 Ext. D between the union and the second party which the second party termed as having been obtained by coercion, threat, intimidation, etc. and various

litigations followed and ultimately the said agreement was cancelled and a new agreement was signed on 15-9-1972 by which previous agreement Ext. D was cancelled. One of the points alleged to have been settled by the Ext. D was point No. 3 reading as under:

> "3. With regard to the demand for permanent employment of the private employees of North Hill Estate the company agrees that these employees will be taken on company's employment with effect from 1st May, 1972."

This was, however, subsequently cancelled by the agreement, dated 15-9-1972 Ext. D (1). Further it is admitted in Ext. 4 signed by the then In-charge, North Hill Estate that it is the residents who employed the first parties and who gives them their wages, etc. and in the evidence of P.Ws. it is admitted that they did not at any time protest against the statement made in the letter Ext. 4, that they are employed by the residents and the only protest made was that the benefits granted were not sufficient. P.W. 1 says that this circular, dated 20-10-1967 Ext. 4 was sent to him by M.A. Salam the then resident in-charge North Hill Estate. All P.Ws. also admit in their evidence that they received similar circular like Ext. 4. P.W. 1 further says that he made no protest against Ext. 4, although he gone through its contents. Rather they got benefits for 3/4 years in terms of Ext. 4. P.W. 1 also says that out of 35 receipts Ext. 5 series, only 9 are signed. The aforesaid discussions goes to suggest strongly that the first parties are private employees employed by the residents of North Hill Estate. It is now too late for them to say that they are employed by the company. The nature and method of payment of their salary is absolutely beside the point at issue. It has been clearly stated by D.W. 1, the In-charge of North Hill Estate, that the in-charge is selected by the residents themselves and that the salary and the other benefits granted to the first parties are the facilities enjoyed by the residents, in terms of their employment in the company and the In-charge draws the same from the company on behalf of the residents and makes payment to the first parties. P.W. 3 says that he received his salary from the In-charge of North Hill Estate and he recovered his salary of July 1975 from D.W. 1 Mr. Kamal, the present In-charge. P.W. 4 says that D.W. 1 draws their salary by preparing bill and thereafter they are paid their salary by D.W. 1. P.W. 5 also says that he received his salary from D.W. 1 and other first parties also received their salary from D.W. 1 similarly. This method of payment no way shows that the company employed the first parties or that the company makes payment to them. On the contrary, the company has produced Ext. A series to show how payment is made to the workers employed by the company.

The fact that emerges from the above discussions is that whereas the first parties through their union have been trying to get them absorbed as workers under the company, the company had been resisting the claim throughout and when such contention was forced on the company by the agreement, dated 26-5-1972 Ext. D, various litigations followed and ultimately that agreement was cancelled, the result being that the question of first parties being absorbed as workers under the company was not accepted. It, therefore, remained as dispute between the company and the first parties represented by their union. It is, therefore, in this context purely an industrial dispute and under no circumstances, a settled or secured right to the first parties and such matter cannot be decided in a petition under section 34 of the I.R.O., 69. In this view of the matter also the present application under section 34 I.R.O.

is not legally maintainable. The question of treating the first party as permanent workers having been raised by the union an industrial dispute cannot now be termed as right guaranteed by law. It is admittedly an industrial dispute. It has already been found that the first parties are not workers within the meaning of I.R.O. and that North Hill Estate is not an establishment as defined in I.R.O. and that the prayer for direction for treating the first parties as permanent workers is not covered by section 34 of I.R.O., since such a direction does not come within the purview of enforcement of any rights guaranteed or secured right by any law, settlement or award. It further appears that the prayer made is an industrial dispute which can be adjudicated through process as laid down in the provisions of section 26 of I.R.O., 1969. In view of the facts and circumstances, the present application under section 34 is also not maintainable.

The first parties have argued that since a person is employed, after statutory period of probation he becomes permanent under the employer and as such he becomes entitled by operation of law to the benefits of services and has submitted in this context that it is to be seen who actually employs the first parties. This is again begging the whole question, because, in order to be entitled to the benefits and rights guaranteed to be enforced under section 34 of the Ordinance, a person must have to be employed in an establishment and when North Hill Estate is not an establishment, the question of first parties being workers does not arise. It is contended on behalf of the second party that the question is not one of who employs, and on the contrary the only question to be considered is whether the first parties are employed in the establishment and since the first parties have not been able to show that the North Hill Estate is an establishment, they are not entitled to get any relief in this case.

The first parties have referred to certain correspondences Ext. 1 to 2 series to show that the company engages the first parties and also that the company appoints the In-charge. These letters would rather show that the company was directing the In-charge that he could work only within the limit of facilities, that is enjoyed by the residents of the North Hill Estate and not beyond that. The loan and advance chart Ext. 6 of the first parties and the payment sanctioned thereof does not in any way show that the company employs or had employed any of the first parties at any time.

In view of my above discussions I find that the first parties are not entitled to get any relief in this case.

Members are consulted over the matter.

Ordered.

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
10-11-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
10-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No, 178 of 1974.

Md. Musa. T/No. 31, Electrical Mistry, M/S. Roushan Tannery Co., Hathazari Road. Chittagong—*First Party*,

versus

The Manager, M/S. Roushan Tannery Co., Hathazari Road, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddn Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury } *Members*.
Mr. Juned A. Choudhury }

By this application under section 34 of the Industrial Relations Ordinance, 1969, first party Mohammed Musa seeks direction upon the second party to pay him (first party) the salary of a scale of worker which is Tk. 225·00 and Tk. 20 Medical Allowance and Tk. 45·00 as House Rent Allowance per month with effect from the date of appointment.

The case of the first party is that he is appointed by the second party as an Electric Mistry with effect from 1-1-1972 at a monthly salary of Tk. 150·00. First party apart from his duty, is to perform all works in connection with power including high volt and low volt and the first party is a skilled worker within the provisions of the Factories Act. He is discharging his duty of a skilled worker continuously from the date of appointment. The first party as confirmed Mistry is entitled to the salary of a skilled worker which is fixed by the second party at Tk. 225·00, Tk. 20·00 as medical allowance and Tk. 45·00 as House Rent allowance per month. But the second party is paying only 150·00 per month. First party represented again and again for the salary of a skilled worker but the second party did not concede to the same. Hence this case.

Second party appeared and filed the written statement in this case which was accepted and the case was fixed for hearing. On the date of hearing the second party took no steps and is found absent on repeated calls. The lawyer appearing on behalf of the second party states that he has no instruction from his client. Then this case was taken up for *ex parte* hearing.

The only point calling for consideration is whether the first party is entitled to get relief as prayed for.

FINDINGS

P.W. 1, Mohammed Musa, the first party has examined himself in support of his case. According to him he is serving under second party as Electric Mistry from 1-1-1972 at a monthly salary of Tk. 150·00. It is stated by P. W. 1 that he is performing in addition to his own duty all work in connection with power including high volt and low volt and he is a confirmed skilled

worker. P. W. 1 further stated that he represented again and again for the salary of a skilled worker but the second party is not conceding as yet and thereafter he represented the matter to the Factory Inspector who wrote a letter to the Manager of the second party and a copy of the said letter is marked Ext. 1. According to P. W. 1 as a skilled worker he is entitled to salary at Tk. 225 *plus* Tk. 20 medical allowance and Tk. 45 House Rent Allowance per month. The second party is one of the establishments of nationalised industry. So, the recommendations of the Industrial Workers Wages Commission is applicable in respect of the first party. Further, Dy. Chief Inspector of Factory has also accepted the contention of the first party and requested the second party to pay the same.

Examining himself as P. W. 1 (first party) has restated his case which goes unchalleged and *ex-parte*. The fact that the second party has not taken any step for contesting the claim of the first party is a pioneer to the fact that it has no say. Therefore, I find that the first party has proved his case *ex parte* and he is entitled to the relief as prayed for.

Members are consulted over the matter.

Ordered

That the case be allowed *ex parte* without cost.

The second party is directed to pay the first party the salary as skilled worker which is Tk. 225. *plus* Tk. 20 medical allowance and Tk. 45 House Rent allowance per month with effect from July 1973. Second party is further directed to implement this order within 45 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
25-9-1975.]

Typed by Mr. M. M. Chowdhury
at my dictation and corrected
by me.

A. AHMED
Chairman.
25-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 182 of 1974.

Ahmed Mia, Head Guard, S/o. Daraf Ali Sawdagar, Middle Halishahar, Abdul Mabud Sawdagar's Hat, Chittagong—*First Party*,

versus

The National Cotton Mills Limited, Halishahar, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury } *Members.*
Mr. Juned A. Choudhury }

Representation : Mr. S.C. Lala, Advocate appeared for the first party and Mr. Munir Ahmed Chowdhury, Advocate with Mr. Moktarul Huq Chowdhury, Advocate, appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance the first party Ahmed Meah seeks a direction on the second party to pay him termination benefit as per schedule given in the case petition.

The case of the first party is that he was appointed as Guard by the second party on 23rd January, 1947, and thereafter he became a permanent employee. The first party continuously worked up to 25-3-1971 and he fled away from the duty place on that day for fear of his life. After liberation of the country the second party mill started production in the middle of 1972. The first party went to the second party mill and met the Manager and General Manager on several occasions and wanted to join his duty but he (first party) was not allowed to resume. The first party ultimately was verbally refused by the General Manager to allow him to resume duty on 28-3-1974 which amounts to termination of service. Thereafter the first party demanded termination benefit but the second party did not make payment. Hence this case.

Second party contested the case by filing written statement alleging *inter alia* that the first party voluntarily deserted the service of the second party and as such the question of allowing or giving termination benefit does not arise. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get termination benefit as prayed for.

FINDINGS

P.W. 1, Ahmed Mia, first party has examined himself along with another witness. None is examined on behalf of the second party.

It appears from the evidence of P. W. 1 that he served under second party mill up to 25-3-1971 and on the same date he fled away due to fear of Pak. Army. He further stated that after liberation of the country he went to join and met Mr. Farid Ahmed, the then Manager in the middle of 1972 and requested him to allow him to resume duty but he was not allowed to resume duty. He further stated that on 28-3-1974 he met P. W. 2, Mr. Sekander Hossain, General Manager who then refused to allow him to resume duty. P. W. 1 further stated that verbal refusal by P. W. 2 to join duty on 28-3-1974 tantamounts to termination of his service. In cross P. W. 1 stated that in January 1972 he met Mr. Farid Ahmed, the then Manager who then refused to allow him to join his duty. P. W. 2 Mr. Sekander Hossain, the General Manager of the second party mill has stated that after liberation Mr. Farid Ahmed was not the Manager of the second party mill. According to P. W. 2,

the first party for the first time in April 1972 met him for resuming his duty and then he asked him (P. W. 1) to wait. It has been proved from the evidence of P. Ws. that on 28-3-1974 P. W. 2 refused to allow first party to resume duty. It is clearly stated by P. Ws. 1 and 2 in their evidence that first party was neither dismissed nor terminated from service by the second party. P. W. 1 in his evidence has clearly stated that he only prays for termination benefit. So, it is clear from their evidence that the employer (second party) never terminated the service of the first party. Unless it is proved by the first party that his service was terminated at the instance of second party, he will not legally entitled to get termination benefit from the second party.

I, therefore, find that the first party has hopelessly failed to prove his alleged case of termination of service by the second party.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost and the first party is not entitled to get any relief.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-8-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman,
30-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH
Industrial Dispute Case No. 183 of 1974.

Sadhan Chandra Chakraborty, s/o. late Hariprashanna Adhikary, C/o. Mr. P. C. Chakraborty, American Express Banking International INC., Agrabad, Chittagong—*First Party,*

versus

The National Cotton Mills Ltd., Halishahar, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury
} *Members.*

Representation : Mr. S. C. Lala, Advocate, appeared for the first party and M/s Munir Ahmed Chowdhury and Moktarul Huq Chowdhury, Advocates, for 2nd party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, the first party Sadhan Chandra Chakraverty prayed for termination benefit as per schedule of the case petition from the second party. It is the case of the first party that he was appointed as Clerk by the second party on 3rd September, 1951 and he continued the said work up to 25-3-1971 and thereafter he fled away for safety of his life since Military crack down took place in the night of 25-3-1971. After liberation he wanted to resume his duty

several times but he was not allowed to resume and second party finally refused to allow the first party to resume duty on 29-3-1974 which tantamounts to termination of service. In spite of demands the second party did not pay termination benefit. The first party is entitled to get termination benefit under section 19 of the Standing Orders, Act, 1965.

Second party contested the case by filing written statement alleging *inter alia* that the first party voluntarily deserted the service of the second party. It is further stated that the first party left the service of the second party at his own accord since January 1971 and his service was never terminated as alleged. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1 first party has examined himself along with another witness P. W. 2, the then General Manager in support of his case,. On the other hand, D. W. 1 the Labour Officer of the second party mill has examined on behalf of the second party.

P.W. 1 has stated in his evidence that since 3rd September, 1951 he continuously served under the second party up to 25-3-1971 as Clerk and during liberation struggle he fled away and after liberation, in April 1972 he submitted joining report to the General Manager, P. W. 2, who did not allow him to join and several time he went to join but he was not allowed. P. W. 1 further stated that on 29-3-1974 he met P. W. 2 Mr. Sekander Hussain, the General Manager and wanted to join his duty but he (P. W. 2) refused to allow him to join and thereafter he sent legal notice for resumption in his duty but no reply and ultimately he filed this case for termination benefit. The evidence of P. W. 2 shows that he never refused to allow first party to resume duty on 29-3-1974. The evidence of P. W. 1 in cross shows that on and from May or June 1972 he is serving in other companies. It is clearly stated by P. W. 1 in his evidence in cross that second party neither terminated his service nor dismissed him. P. W. 2 also stated that second party or he never terminated or dismissed first party from service. According to P. W. 1 *vide* his cross he only prays for termination benefit from the second party. When it is clearly proved that the service of the first party has not been terminated by the second party, he is not entitled to get termination benefit under section 19 of the Standing Orders Act from the second party. First party has hopelessly failed to prove his entitlement of termination benefit from the second party. I, therefore, find that the first party is not entitled to get any releif.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENDUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-8-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
30-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 191 of 1974.

Ahmed Safa, S/o. Khulu Meah, Village Amilaish, P.S Satkania, Chittagong—*First party/Petitioner,*

versus

Manager and Deputy Controller of Branches, Agrani Bank, Laldighi East, Chittagong—*Second Party/O.P.*

PRESENT:

Mr Ameenuddin Ahmed—*Chairman.*

Mr Jamshed Ahmed Chowdhury
Mr Juned A. Choudhury .. } *Members.*

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Ahmed Safa, first party, with a prayer for directing the second party to allow him to resume his duties and pay all the arrear wages.

The case of the first party is that he has been serving under second party for about last 11 years as a Peon. The first party submitted his letter of resignation on 10-3-1973 to second party who did not accept the same, rather by his letter dated 14-12-1973 informed the first party that they could not accept resignation unless the alleged outstanding are paid. Thereafter first party has submitted a representation on 10-1-1974 seeking resumption of duties on withdrawal of the letter of resignation but the same was not replied by the second party. Thereafter first party, by another letter dated 25-1-1974, prayed for permission to resume duty and thereafter the second party verbally allowed the first party to resume his duty on and from 1-2-1974 and accordingly first party attended his duties for 7 days from 1-2-1974 and signed the attendance register. Ultimately the second party verbally refused first party to continue the work with a *mala fide* motive. Thereafter the first party on several occasions requested second party to allow him to resume duty but the second party did not allow him and hence this case.

Second party contested the case by filing written statement alleging *inter alia* that the first party submitted his resignation by letter dated 10-11-1973. Thereafter the second party by a letter communicated to the first party about the fate of his resignation letter. It is further alleged that the first party tendered his resignation from his service at his own accord and under the law although he was bound to give one month's notice or surrender pay in lieu thereof, his resignation was accepted and he was asked to pay all his outstanding liabilities to the Bank which the first party did not comply with. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get relief as prayed for.

FINDINGS

P.W. 1, Ahmed Safa, first party has only examined himself in support of his case. On the other hand, D.W. 1 S. M.A. Awal, an officer of the second party has examined on behalf of the second party. Admittedly first party was serving as Peon under second party since 17-8-1963 and thereafter the first party at his own accord tendered resignation on 10-11-1973 to the second party by submitting resignation letter, Ext. A. It is stated by P.W. 1 in his cross that he was liable to pay Tk. 1,300·00 and odd to the second party and since the outstanding liabilities has not been paid by him (P.W. 1), his resignation was not accepted. According to P.W. 1 he was asked verbally to join duty from 1-2-1974 and accordingly he worked for 7 days with effect from 1-2-1974 and during the said period be himself signed the Attendance Register. D.W. 1 has stated that first party did not work in the second party's office for 7 days from 1-2-1974 and the first party did not put his initial in the Attendance Register during the said period.

Section 19(*2*) of the Standing Orders Act provides for one month's notice to be given by the workers. Admittedly first party submitted his letter of resignation, Ext. A making it effective from 10-11-1973. So, we may consider that first party's services were terminated on 10-12-1973, though in fact he (P.W. 1) terminated it on 10-11-1973. Once having terminated his service, the first party no longer has the right to continue in service as requested by him in his application to the second party dated 10-1-1974, Ext. 2, *i.e.*, 2 months after resigning. In resigning from service the first party exercises his right of terminating his employment on his own accord as per section 19(*2*) of the Standing Orders Act, 1965.

As regards the acceptance of the letter of resignation by the second party section 19(*2*) does not provide any scope for acceptance or otherwise. It rather gives a legal right to the worker while he could exercise unilaterally. Second party by letter, dated 14-12-1973, Ext. 1 advised first party of their willingness to accept the resignation but mentioned that it will be effective after first party had cleared his outstanding liabilities to the second party. It is relevant to mention here that on 14-12-1974 the notice period had already expired and the termination became effective as per provisions of law.

First party rather admitted in his application, dated 10-1-1974, Ext. 2 and in his case petition to the Court that he had resigned from service on 10-11-1973 in order to seek election to the Union Parisad and at that time he was an accused in a Criminal case involving the business of the second party. His, is not a case when resignation was given on the spur of the moment due to some disagreement with the employer or some other reason and withdrawal sought soon afterwards. His (P.W. 1) application to withdraw his resignation was made on 10-1-1974 which the second party admittedly received. Having come so late, this application was rejected by the second party.

I have already referred above the evidence of P.W. 1 and D.W. 1. On inspection of the Attendance Register produced by the second party in Court, his (P.W. 1) initials were not found therein. It appears from that Attendance Register that the first party never worked for 7 days with effect from 1-1-1974. In Ext. 2 the first party stated that he contested the election to the Union Parisad, whereas in cross-examination as P.W. 1 he stated that did not contest

the election. In this view of his evidence it is risky to place reliance upon the evidence of P.W. 1. Having regard to above discussion and in the circumstances, the first party is not entitled to the relief prayed for.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
15-10-1975.

Typed by Mr. M.M. Chowdhury
at my dictation and corrected
by me.

A. AHMED
Chairman.
15-10-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Indurtrial Dispute Case No. 199 of 1974.

Abu Tayab, S/o. Badiul Alam, Helper, M/S. Gazi Wires Limited, File No. 48. 28, F.I.D.C. Road, Kalurghat Heavy Industrial Area, Chittagong—*First Party,*

versus

The Project Manager, M/S. Gazi Wires Limited, 28, F.I.D.C. Road, Kalurghat Heavy Industrial Area, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury } *Members.*
Mr. Juned A. Choudhury }

Representation: Mr. Lutful Haque Mazumder, Advocate appeared for the first Party and Mr. Azizul Huq Chowdhury, Advocate appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, the first party, namely Abu Tayab seeks direction on the second party to fix his (first party) wages at grade V in the scale of Tk. 225—395 per month apart from other fringe benefits and further to pay his outstanding *ad hoc* grant of Tk. 20·00 per month from 1st June 1969.

The case of the first party is that he is appointed under second party's establishment as Helper with effect from 1-4-1969 on monthly wages of Tk. 84·00. The first party got periodical increments as per rule. That in spite of non-payment of *ad hoc* grant, the monthly wages of the first party stood at

Tk. 133·50 in 1972 and Tk. 137·00 in 1973. The government had determined the wages of the various jobs of the workers of the second party establishment with effect from July 1973 which has been published by gazette notification dated 19th December, 1973. According to the said determination of wages, the first party's wages must be fixed at grade V in the aforesaid scale. But the second party by notice dated 2-5-1974 has fixed the wages of the first party in grade-I in the scale of Tk. 155—235. The first party is legally entitled to have his wages fixed at grade V in the scale of Tk.225—395 per month apart from other fringe benefits.

Second party contested the case by filing written statement alleging *inter alia* that the wages of the first party as on 30-6-1973 was Tk. 133·50 (basic and D.A.) excluding House Rent, conveyance and *ad hoc* relief amounting to Tk.55·70 and thus the total of his gross monthly earning comes to Tk. 190·20 the basic wages being Tk. 107·50. The first party therefore, fixed at Tk. 155·00 as basic and Tk. 40·00 as fringe benefit and Tk. 20·00 as Medical Allowance on 1-7-1973. By a gazette notification dated 19th December, 1973 the wages scale of the second party company's workers published at page 7999, Part I of the gazette extraordinary fixing Tk.155—235 for unskilled workers in grade-I. The first party has been fixed up accordingly in the aforesaid scale at Tk. 155·00 plus fringe benefit as admissible in the new grade with effect from 1-7-1973. The first party is not entitled to get the scale in grade-V as demanded.

At the time of hearing of this case the first party has given up his claim for payment of outsatnding *ad hoc* grant of Tk. 20·00 per month from 1st June 1969 as claimed in the case petition.

It is to be seen whether the first party is entitled to be fixed in grade-V in the new wages scale, which is Tk·225—395 as notified in the gazette dated 19th December 1973.

FINDINGS

P.W.1, Abu Taiyab, first party, has only examined himself in support of his case. On the other hand, D.W. 1 Mohd. Jainal Abedin, the Project Manager has examined on behalf of the second party. Admittedly, first party was appointed as Helper under second party's establishment on 1-4-1969. Admittedly *vide* evidence of P.W. 1 and D.W.-1 the first party is an unskilled worker and that his (first party) basic wages was Tk.104·00 in June 1973.

According to P.W. 1 in 1973 at the time of implementation of the new scale his monthly wages was at Tk. 137·00. The claim of first party is based on gazette notification dated 19-12-1973 where in the wages scale and allowances of workers, under amongst others, the Bangladesh Engineering and Ship Building Corporation have been determined by Government on the basis of Industrial Workers Wages Commission Report. The second party being an unit of the Bangladesh Engineering and Ship Building Corporation, the wages of its workers will be determined by the said notification with effect from 1st July 1973. In page No. 8001 of the gazette notification it has been shown that where the existing wages scale of a job was between Tk.128·40 to 197·20, the job should be fixed in grade-V of the new wages scale, which is Tk.225—395, as given in page No. 7999. Undisputedly, P.W. 1 the first party is a Helper as well as unskilled worker. First party claims that he has been wrongly classified in grade-I of the new scale.

It is contended on behalf of the second party that on 1-7-1973 gross wages of the first party consisted Tk.107·50 as basic wages, Tk.26·00 as D.A., Tk. 20·00 as *ad hoc* relief, as per Ext. B and Tk.36·00 as House Rent and

Conveyance allowance making a total of Tk.190·20. Admittedly in June 1973 the basic wages of the first party was Tk.104·00. The second party has fixed the new wages of the first party in grade-I in accordance with memo dated 2-2-1974 Ext. C of Bangladesh Engineering and Ship Building Corporation by adding basic wages, D.A., and *adhoc* relief as at 1-7-1973. Tk. 107·50+ Tk. 26·00+ Tk. 20·00=Tk. 153·50) as appears in column-8 of Ext. B in Sl. No. 15 and placed him (first party) at the beginning of the scale, *viz.*, at Tk. 155 and given him additional fringe benefit of Tk. 40 per month. Since the gazette notification in page 8001 shows that where the existing wages (basic) of a job was Tk. 104 it should be fixed in grade-I of the new scale. Moreover, the first party being an unskilled worker has been rightly classified in grade-I, grade-V being meant for skilled worker.

It appears that the controversy has arisen over the question whether "existing wages" given in page No. 8001 of the gazette means "basic wages" or "Basic *plus* D.A.". The first party's contention is that it means the latter and since he (first party) was receiving Tk.137·00 as basic *plus* D.A. in 1973, he should be classified in grade-V. On the other hand, second party submits that existing wages in page 8001 means basic wages. Since the first party was receiving Tk. 104·00 as basic wages, it should be classified in grade-I. D.W. 1 has stated in his evidence that existing wages scales of the workers were taken by the Industrial Workers Wages Commission from the Wages Register of the 2nd party in June 1973. The Wages Register has been produced in this Court. I have carefully gone through the Wages Register also. In page 75 of the Register, the first party's name appears in Sl. No. 34 giving his wages for June 1973 (Ext. 1) and in page 90 against Sl. No. 34 (Ext. A), the wages for July 1973 are given. It is also admitted by the first party in his evidence by comparing the entries in the Wages Register for the month of June, 1973 under the column "Basic wages" I find that the figures given in this column tally with those in page 8008 of the gazette notification dated 19-12-1973 under "existing scale of various jobs". This goes to prove that the figures of "Existing wages scale" given to the Industrial Workers Wages Commission by the second party and appearing at page 8001 of the gazette notification are "Basic Wages" scale and not "Basic *plus* Dearness Allowance".

From the discussions above I have reason to hold that the first party has been rightly classified in grade-I in accordance with the gazette notification. It is also an admitted fact *vide* evidence on record that first party is an unskilled worker and his basic wages in June 1973 was Tk. 104·00. This view is also supported by para 159 in page 78 and para 176 in page 83 of the Report of the Industrial Workers Wages Commission. Having regards to the discussions above I find that the first party is not entitled to the relief prayed for.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
20-11-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
20-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 380 of 1974.

(1) Nurul Hoq, T/No. W/T. 5,

(2) Delwar Hussain, Token No. W/T. 4,

(3) Nurul Islam, Token No. W/T. 7,

All are Boiler Attendants of Chemical Industries of Bangladesh, Barabkunda, Chittagong—*First Party*,

versus

General Manager, M/s. Chemical Industries of Bangladesh, Barabkunda, Chittagong—*Second Party*.

PRESENT;

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury ... } *Members*.

Mr. Juned A. Choudhury ... ..

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by first parties numbering 3 (three) with a prayer for directing the second party to promote them in the scale of Tk. 200—300 which is refixed at Tk. 260—450·00 with effect from 1-7-1973.

The case of the first parties is that they are all Boiler Attendants of the second party industry. First parties 1 and 2 are appointed with effect from November, 1966 and first party No. 3 appointed from 1-4-1967. The scale of pay in which they were appointed was Tk. 125—200, which is now refixed at Tk. 190—315. The first parties are discharging their duties satisfactorily. The first parties are members of Chemical Industries of Bangladesh Sramik Union, a registered trade union of workers and one employee, namely, Ahmed Sobhan is a member of Jatiya Sramik League, another registered trade union of workers in the same establishment. The second party by order dated 14-6-1974 has promoted said Ahmed Sobhan in the scale of Tk. 200—300, which is refixed at Tk. 260—450 with effect from 1-7-1973 which is a scale of junior operator; whereas the first parties have not been given promotion. The first parties have guaranteed rights of non-discrimination in the matter of promotion, under section 15 of I.R.O. First parties as workers are entitled to the relief as prayed for.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that first party Nos. 1 and 2 were appointed on 1-11-1966 and first party No. 3 was appointed on 1-3-1967. Ahmed Sobhan an employee was appointed on 1-1-1966. First parties and said Ahmed Sobhan were appointed as Boiler Attendants. There arose a vacancy of a skilled operator and interview and test were held in the month of November, 1973 and Ahmed Sobhan was found suitable for promotion and accordingly Ahmed Sobhan was promoted to the post on the basis of seniority-*cum*-efficiency. In the matter of promotion of Ahmed Sobhan the second party made no discrimination to anybody. This application under section 34 of the first party is misconceived and ill advised. The first parties are not entitled to get the relief as prayed for.

It is to be seen whether the first parties are entitled to get the relief as prayed for.

FINDINGS

P.W. 1 Nurul Hoq is the first party No. 1. P.W. 2 Delwar Hussain is the first party No. 2. P.W. 3 Nurul Islam is the first party No. 3. These three P.Ws. have examined themselves in order to substantiate their case. None is examined on behalf of the second party. The evidence of P.W. 1 rather disproves his case stated in the case petition. P.W. 1 has clearly stated in his chief that he is not a member of any workers union under the second party's establishment. He further stated in cross that there is no union named Sramik League under the second party's establishment. The evidence of P.W. 1 referred to above mainly contradicts the first party's case referred to para. 6 and 8 of the case petition. P.W. 2 also contradicts his case referred to in the case petition. P.W. 2 clearly stated in his evidence that he does not pray for promotion from Boiler Attendant to Operator. P.W. 3 was appointed on 1-4-1967 as Boiler Attendant and Ahmed Sobhan referred to in the case petition was appointed a few months prior to P.W. 3. According to P.W. 3 all first parties along with above referred A. Sobhan (Boilder Attendant) were interviewed in order to fill up the higher post, namely, Operator on promotion and the management found Ahmed Sobhan fit for the post and accordingly promoted him to Operator and his pay was refixed in the scale of Tk. 260·00 to 450·00 with effect from 1-7-1973 according to the Industrial Workers Wages Commission Report. Admittedly Ahmed Sobhan was senior to P.W. 3. It is also an admitted fact that there arose only one vacancy of skilled operator, *i.e.*, a higher post than Boiler Attendant. It is also not disputed that interview and test was held in the month of December, 1973, where first parties and Ahmed Sobhan were interviewed for the said post of Operator and the management after interview and test found Ahmed Sobhan suitable for promotion and accordingly he was promoted to the post of Operator on the basis of seniority-*cum*-efficiency. So, I must say that in doing so, the management made no discrimination to anybody. Management could not have called for interview, if the management had any mind to discriminate or victimise anybody. There is no evidence on record to show that the first parties were victimised for their trade union activities. The claim of promotion by the first parties does not constitute an industrial dispute and as such, this Court has no jurisdiction to promote the first parties. The function of determining of work force and of promoting employees fall within the prerogative of management. So, the first parties' claim or prayer for promoting them to the post of operator in no way can be legally allowed by this Court. Moreover, promotion cannot be claimed by workers as a guaranteed right. In view of my above discussions I find that first parties have hopelessly failed to substantiate their case on merit also. In any view of the case, first parties are not entitled to get relief.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
10-9-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
10-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 389 of 1974.

Modasser Hossain, S/o. Mohd. Hussain Bhuiyan, *Ex*-H.E.M.C. Man, Beeming B/S. L.B. No. 1322, Moqbulur Rahman Jute Mills, Barabkunda, Chittagong—*First Party*,

versus.

The Manager, Moqbulur Rahman Jute Mills Ltd., Barabkunda, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members*.

Representation: Mr. Abdul Momen Bhuyian, Advocate, appeared for the first party and Mr. A. K. Humayun Kabir, Advocate, appeared for the second party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 praying for reinstatement of the first party in his former post and position with back wages after setting aside the order of dismissal dated 1-6-1974 mainly on the ground that the second party dismissed him without making any enquiry.

Second party contested the case by filing written statement alleging *inter alia* that the first party was issued with a letter of charge dated 30-6-1974 for commission of misconduct and the first party thereafter submitted his explanation admitting his misconduct and for that first party was dismissed from service in accordance with law, *vide* second party's letter dated 1-6-1974. First party is not entitled to get any relief whatsoever.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1, Modasser Hussain, first party has only examined himself in suppot of his case. None is examined on behalf of the second party. It is in evidence that first party was appointed by the second party on 3-11-1966 as worker and he discharged his duty as such. It is stated by P.W. 1 in his evidence that he was charge-sheeted, *vide* charge-sheet dated 30-5-1974, on the allegation that he (first party) cut off clothes Beam of No. 11, in place of No. 7 and as a result some portion of cloth were rejected. P.W. 1 further stated that he replied the said charge, Ext. A, *vide* his explanation dated 31-5-1974, Ext. B. P.W.1 admits in his evidence that previous to the said charge Ext. A he committed such kind of offence but the management excused him with warning for furture. P.W. 1 admits that his explanation to the charge Ext. B was written by one Shafiqur Rahman and thereafter it was read over to him and he signed the same. I have gone through the contents of the explanation Ext. B and there I find that the first party has in his explanation clearly admitted the charge levelled against him, *vide* Ext. A. His evidence also shows that previous to the said

charge Ext. A he was also committed similar offence and for that he was warned for future. I, therefore, find from the above discussions that first party was rightly found guilty for misconduct under section 17(3) of the Standing Orders Act. After admission of guilt, *vide* explanation Ext. B, there is no necessity on the part of the management to hold domestic enquiry against the first party. In view of my discussions above I find nothing to interfere with the dismissal order passed by the second party. The first party is, therefore, not entitled to get any relief.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
16-8-1975.

Typed by Mr M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
16-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 390 of 1974

Abdul Hadi Sheikh, son of late Moulvi Abdul Bari Sheikh, P.O. Sompara, Vill. Nokularbugh, P.S. Ramganj, Dist Noakhali, At present C/o. Md. Aminullah, U.D.C., Commercial Service, Radio Bangladesh, Sheikh Mujib Road, Chittagong—*First Party*,

versus

Manager, Gladstone Wyllie and Co. Ltd., Ispahani Building, Bangabandhu Road, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Chowdhury .. } *Members.*

Representation—Mr. Azizul Haque Chowdhury and Mr. Mir Hussain Khan, Advocates, appeared for the first party and Mr. Abdul Mannan, Advocate, appeared for the second party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Abdul Hadi Sheikh for payment of termination benefits as provided under section 19(1) of the Standing Orders Act, 1965.

The case of the first party is that he was appointed as Peon in the establishment of the second party with effect from March 1951 on monthly wages of Tk. 75·00 and subsequently he was promoted to the post of Custom and Jetty Sarker and became a permanent worker under second party. His last monthly wages as drawn by him was Tk. 958·25 including Dearness Allowance. Second Party most unfortunately and illegally *vide* letter dated 16-4-1974 terminated his service with effect from 30-4-1974. The said letter of termination speaks of 90 days' wages in lieu of notice but the second party is not paying the other attending benefits as provided under section 19(1) of the Standing Orders Act, 1965. Second party company has or had no rules of their own regulating the terms and conditions of service of first party, so far as the benefits are concerned for the matter of termination of their employees. The calculation of benefits alleged to have made and offered as per rules of the company are in complete contradiction with the termination benefit as provided under section 19(1) of the Standing Orders Act and the benefits offered by the second party is less favourable than that of the first party entitled to under section 19(1) of the Standing Orders Act. The alleged agreement as referred to by the second party in his letter dated 27-5-1974 has ever excluded regarding the terms and conditions of first party. Had there been any such agreement the said is collusive and not binding upon the party. The first party is entitled to the benefits referred to items 1 to 5 in page 5 of the case petition. In spite of demands the second party is not paying the same. Hence, this case.

Second party contested the case by filing written statement mainly alleging that the present case petition under section 34 of the I.R.O. is misconceived and not maintainable according to law. The case of the second party is that the service of the first party having been terminated he ceased to be "worker" under second party and thus he has got no *locus stanai* to maintain the present case in its present form in this Court. The case of the first party is, therefore, liable to be dismissed. The wages, D.A., and other benefits either during the service or death or dismissal or discharge or termination of service of employee of this company is guided and regulated by agreements entered into between the company and the Workers' Union, *i.e.*, Bargaining Agent. The first party being a member of the union and further the said union being the Bargaining Agent, of all such agreements are binding on both the employees and the company. First party is not entitled to claim any benefit other than what is provided in the said agreement. According to provisions of said agreement the second party offered compensation and other benefits but the first party illegally refused to accept the same and on the other hand, the first party and another brought other suit No. 53 of 1974 in the Second Court of Munsif, Chittagong. The second party offered the benefits to the first party according to the said agreement and still the second party is willing to pay the same. The first party is not entitled to get the benefits as prayed for.

It is to be seen—whether this case of the first party as framed is maintainable and if so, whether the first party is entitled to get termination benefit as claimed.

FINDINGS

P.W. 1, Abdul Hadi Sheikh, first party has only examined himself in support of his case. None is examined on behalf of the second party. It is not disputed that the first party was a permanent worker under the second party and his service was terminated *vide* second party's letter dated 16-4-1974,

Ext. 1. The admitted agreements between the management and the union are marked Exts. A to A(5). It is an admitted fact *vide* evidence of P.W. 1 that second party offered termination benefit according to terms of the aforesaid agreement. It is also an admitted fact that during pendency of this case, first party received payment of his claim of items Nos. 1, 3 and 6 referred to in pages of case petition from the second party.

It is submitted on behalf of the second party that because the first party was no longer in service under the second party, he having been already terminated from service so he cannot be treated as "worker" and as such the present case under section 34 of the I.R.O. is, therefore, not maintainable. In support of his contention the second party has referred to ruling of our Honourable Supreme Court (Appellate Division) reported in XXVI-DLR (SC) 1974, page 33 and a case reported in XXVII-DLR (1975)—page 99. Admittedly it is a case of termination simpliciter *vide* Ext. 1. XXVI-DLR refers to a worker who has been terminated under section 19 of the Standing Orders Act and hence remedy under section 25 of the Standing Orders Act has been barred for him (first party). Remedy may be barred under section 25 of the Standing Orders Act but his right to termination benefit is not barred. Now, the question arises as to his forum through which he may enforce his legal claim.

The first party has choosen to file this case under section 34 of the I.R.O., 1969. Now it is to be examined whether the first party is a worker within the meaning of section 2 (xxviii) of the I.R.O., 1969.

Section 2 (xxviii) defines a "worker". From the said definition I find that it includes all existing workers. But *ex*-workers may come with its definition in very qualified and restricted sense. An *ex*-worker if his removal, has led to an industrial dispute or his removal by way of termination has been the consequence of industrial dispute in that event an *ex*-worker comes within its definition. In this regard provisions of section 43 has to be kept in mind, where it is stated that no one other than Collective Bargaining Agent or employer can raise industrial dispute in the prescribed manner. This case, as framed, however, fails for the reasons that the first party is a terminated worker and his removal is un-connected with any industrial dispute. So, this case by such a worker does not lie under the Industrial Relations Ordinance, 1969, *i.e.*, not maintainable as framed.

When this case is found to be not maintainable I think it is not proper on my part to give further decision on merit.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost as not maintainable.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
19-9-1975.

Typed by Mr. M. M. Chowdhury at
my dictation and corrected by me.

A. AHMED
Chairman.
19-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 391 of 1974.

Abdul Jalil, son of late Maulvi Yakub Ali, P.O. and Village East Gomdandi, P.S. Boalkhali, Chittagong—*First Party*,

versus

The Manager, Gladstone Wyllie and Co. Ltd., Ispahani Building, Bangabandhu Road, Chittagong—*Second Party*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury
Mr Juned A. Choudhury } *Members*.

Representation : M/s. Azizul Haque Chowdhury and A.H.M. Mir Hussain Khan, Advocates, appeared for the first party and Mr. Abdul Mannan, Advocate, appeared for the second party.

By this application under section 34 of I.R.O. the first party Abdul Jalil seeks direction on the second party to pay his (first party) termination benefit as provided under sedtion 19(*l*) of the Standing Orders Act including Provident Fund benefits, bonus, payment of wages deducted in the shape of savings certificate.

The case of the first party is that he was a permanent worker under the second party with effect from 1949 and suddenly the second party illegally terminated the service of the first party *vide* letter dated 6-4-1974. The service of the first party has been brought to an end by the said termination letter and as such the first party is entitled to termination benefit under section 19(*l*) of the Standing Orders Act. Since the right has been created and guaranteed in favour of the first party under the provisions of law for termination benefit and that such of his right has been infringed by the second party, the same needs be enforced and adjudicated by this Court. In spite of demands second party has not paid the termination benefits as referred to in items 1 to 3 in page No. 5 of the case petition.

Second party contested the case by filing written statement mainly alleging that the first party's case petition under section 34 of the I. R. O. as framed is not maintainable and that the service of the first party having been terminated he ceased to be a wroker under the second party and thus has got no *locus standi* to maintain this case and as such this case is liable to be dismissed. It is further alleged that according to the provisions of the admitted agreements between the management and the union, the second party offered compensation and other benefits to the first party but the first party illegally refused to accept the same. The first party is not entitled to get any relief in this case.

It is to be seen whether this case as framed under section 34 is maintainable and if so, whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1, Abdul Jalil has examined himself in support of his case. None is examined on behalf of the second party. The letter of termination dated 16-4-1974 is marked Ext. 1. According to P.W. 1 he now prays for termination

benefit as referred to in items mentioned in page 5 of the case petition, except item Nos. 1, 3, and 6.

It is contended on behalf of the second party that the first party's case a made out in the case petition under section 34 of the I.R.O. cannot be maintai able and in support of his said contention he referred to the ruling of the Honourable Supreme Court (Appellate Division) reported in XXVI-DLR-1974, page 33 and another ruling reported in XXVII-DLR-page-96 of our Hon'ble Supreme Court. Admittedly it was a case of termination simpliciter *vide* Ext. 1. This is not a case under section 25 of the Standing Orders Act. XXVI-DLR case refers to a worker who has been terminated under section 19 of the Standing Orders Act and as such remedy under section 25 of the Standing Orders Act has been barred for him.

Here the first party has brough this case for termination benefit under section 34 of the Industrial Relations Orinance. In para 9 of the case petition the first party has stated that since the right have been created and guaranteed and secured in fovour of him under the provisions of law for termination benefit as detailed above and that such of his right have been infringed by the second party the same needs be enforced and adjudicated by the order of this Court.

Now the question arises to his forum through which he (first party) may enforce his legal claim. It is necessary to examine whether the first party is a "worker" within the meaning of section 2 (xxviii) of I. R. O. 1969. Section 2 (xxviii) defined the term "worker" and "workman". The said definition clearly shows that it includes all existing workers and not the dismissed, removed or terminated worker. A dismissed or removed or *ex*-worker, if his such removal has led to an industrial dispute or his removal has been the consequence of an ndustrial dispute in that event the said terminated or ex-worker comes within its definition. The provision of section 43 of the I.R.O. has to be kept in imind in this regard, where it is mentioned that no one other than employer or collective bargaining agent can raise an industrial dispute in the prescribed manner. In view of my above discussions, I must say that admittedly the service of the first party having been terminated, he ceased to be a worker under the second party and thus he has got no *locus standi* to maintain this case under section 34 as framed. Consequently this case as framed under section 34 is not maintainable.

In view of my aforesaid findings with respect to the maintainability of the case, it is not proper on my part to make any decision on merit.

In arriving at the above decision I have considered the opinion of the learned Members.

Ordered

That the case be dismissed on contest without cost as not maintainable.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
19-9-1975.

Typed by Mr. M. M. Chowdhury at
my dictation and corrected by me.

A. AHMED
Chairman.
19-9 1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 414 of 1974.

Md. Hashem, Weaver, T/No. 7810, s/o. late Iman Ali Chowdhury, Weaving Mills No. 3, Gul Ahmed Jute Mills Ltd., Village Guman Mardan, P.S. Hathazari, Chittagong—*First Party*,

versus

The Manager, Gul Ahmed Jute Mills Limited, Kumira, Chittagong—*Second Party*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury
Mr Juned A. Choudhury } *Members*.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Mohammed Hashem, first party, with a prayer for reinstating him in his former post and position with all back wages.

The case of the first party is that he was serving under second party as Weaver with effect from 27-3-1970 and subsequently he became a permanent worker under second party. Unfortunately he was suddenly attacked with various diseases and as such he could not attend duty regularly in recent months. As per advice of the Doctor, the first party had to take leave on various occasions. First party enjoyed sick leave without wages with the full knowledge and consent of second party. Second party issued a charge-sheet dated 27-7-1974 on false allegation which he received on 31-7-1974 and thereafter he submitted explanation on 1-8-1974 denying the charges. Enquiry into the charges was to be held on 5-8-1974 and the first party was duly present at that time to defend himself, but in fact no enquiry was held, rather the Labour Officer asked the first party to surrender to the charges and to sign in blank paper. The first party refused to obey the illegal order and then the Labour Officer forced the first party to leave the office. Thereafter the first party was surprised to see a letter of dismissal with effect from 1-8-1974 for the alleged misconduct. Such dismissal is contrary to the provisions of sections 17 and 18 of the Standing Orders Act.

Second party contested the case by filing a written statement alleging *inter alia* that the second party issued a letter of charge for misconduct on 27-7-1974 against the first party who submitted explanation on 1-8-1974 but the said explanation having been found unsatisfactory an enquiry was ordered to be held into this case fixing 5-8-1974 for the purpose. But the first party intentionally did not appear before the enquiry committee. The enquiry committee thereafter has no other alternative than to proceed with the enquiry in the absence of the first party. Second party thereafter found the first party guilty of misconduct and dismissed him from service by letter dated 9-8-1974. The first party was given all reasonable opportunity for his defence. The first party is not entitled to get any relief in this case.

It is to be seen—whether the first party is entitled to get the reinstatement with back wages.

FINDINGS

P.W. 1, Mohammed Hashem, first party, has examined himself along with another witness in support of his case. On the other hand, D. W. 1, S. A. Rahman, the Administrative Officer of the second party mill, has examined on behalf of second party. Admittedly second party issued charge-sheet dated 27-7-1974, Ext. I, against the first party for misconduct under section 17(3)(*d*) *i.e.* habitual absence without leave and thereafter the first party submitted his explanation Ext. A dated 1-8-1974. Second party found the explanation not satisfactory and held enquiry. The enquiry report dated 6-8-1974 is marked Ext. B. The dismissal order in question passed against first party is marked Ext 3.

It is the case of the first party that no enquiry was held though on 5-8-1974 he appeared at the enquiry but instead of holding enquiry the Labour Officer asked him (first party) to surrender to the charges and to sign in blank paper and the same was refused by the first party. On the other hand, it is the case of the second party that an enquiry was ordered to be held on 5-8-1974 but the first party intentionally did not attend the enquiry and the enquiry committee thereafter had no other alternative than to proceed with the enquiry in the absence of the first party. P. W. 1 has stated in his evidence that he attended enquiry on 5-8-1974 at 3-30 p.m. along with P. W. 2 Noor Ahmed, but the Labour Officer Mr. Sattar wanted to take his (P. W. 1) signature in blank paper but the first party refused to sign and then the said Mr. Sattar asked him (P. W. 1) to go out and accordingly he left the place. The evidence in cross of P. W. 2 does not show that in the month of August 1974 he along with P. W. 1 attended any place for enquiry. Rather P. W. 2 in his cross has stated that in May 1974 he along with P. W. 1 went before the enquiry. None of the members of the enquiry committee is examined on behalf of the second party. The evidence of P. W. 1 and P. W. 2 contradicts each other about the month or date of enquiry . So, it cannot be safely believed that the first party actually went before the enquiry committee on 5-8-1974. The enquiry report Ext. B. does not specify the nature of misconduct as defined in section 17(*3*)(*d*)*of* the Standing Orders Act. Moreover, there is no clear finding on this point. The dismissal order is also not clear. The nature of misconduct has not been stated therein. From the evidence and materials on record it can be said that the first party's dismissal from service is not proper and valid.

It is clearly admitted by the first party that after dismissal he submitted no grievance petition to the second party. P. W. 1 in his cross has also clearly stated that previously he was charge-sheeted for habitual absence from duty. Thereafter he submitted explanation dated 18-9-1973 and before that on 18-5-1970 he (P. W. 1) was also warned by the second party for his such absence from duty.

Regard being had to the past-conduct of the first party as complained by the second party and unwillingness of the management, I am not inclined to thrust the first party by ordering reinstatement. Considering the above discussions and circumstances, it is found that ends of justice will be met if the dismissal order is substituted by an order of termination of his service with direction to pay full termination benefit to the first party. I therefore, find that the first party is not entitled to reinstatement but he will get full termination benefit under section 19(*1*) of the Standing Orders Act, 1965.

In arriving at the above decision I have duly considered the written advice of the learned Members.

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Ordered

That the case be allowed on contest in part without cost.

The second party is directed to pay the following termination benefits to the first party wtihin 30 days from today :

(1) 90 days' wages in lieu of notice ;

(2) 14 days' wages as compensation for each completed year of service or part thereof over six months ;

(3) Wages for unavailed period of Earned Leave, if any ;

(4) Unpaid wages, if any, due.

Any other benefit or benefits to which the first party may be found to be entitled under any other law for the time being in force.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
27-11-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected
by me.

A. AHMED
Chairman.
27-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 415 of 1974.

Makbul Ali, Night-guard,
S/o. Hatemullah,
Post and Vill. Ramsri,
P. S. Chunarughat,
Dist. Sylhet—*First Party,*

versus

Project Manager,
B.F.I.D.C. Wood Treating Plant,
Kalurghat, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Inmshed Ahmed Chowdhury } *Members.*
Mr. Juned A. Choudhury }

By this application under section 34 of the Industrial Relations Ordinance 1969 the first party Mokbul Ali seeks a direction upon the second party to reinstate him in his permanent service with all back wages. The case of the first party is that he had been serving under the second party as Night-guard for the last 5 years and his last pay was at the rate of Tk. 200·00 per month. First party was discharging his duty honestly, sincerely and diligently. Suddenly the second party issued an illegal and false charge-sheet against him allegedly under section 17(3)(b) and (h) of the Standing Orders Act, 1965. Thereafter the first party submitted his explanation dated 6-11-1973 denying the charges. It is further alleged that the action of the second party in suspending the first party with effect from 21-9-1973 issuing false and belated charge-sheet, dated 30-10-1973 keeping first party under suspension beyond 60 days and dismissing him (first party) from his permanent service with effect from 22-9-1974 for the alleged misconduct without any enquiry and without giving him any opportunity of personal hearing in contravention of the mandatory provisions of law is illegal, *mala fide* and without jurisdiction. So, the first party is entitled to get the relief prayed for.

Second party contested the case by filing a written statement categorically denying the first party's case referred to in the case petition. It is stated by the second party that the dismissal order for misconduct with effect from 22-7-1974 was passed on following the procedure laid down in section 18 of the Standing Orders Act, 1965 and that no right guaranteed under any law or agreement exist in favour of the first party. The application under section 34 of the I.R.O. does not call for enforcement of any right of the first party. It is not a fact that the first party was not given reasonable opportunity in defending his case of misconduct. First party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P. W. 1, Mokbul Ali, first party has only examined himself in support of his case. D. W. 1, Azizur Rahman, Asstt. Director of B.F.I.D.C. as well as the enquiry officer has only examined on behalf of the second party. It is not disputed that the first party had been under employment of the second party as Night-guard for last 5 years and his last pay was at the rate of Tk.200·00 per month. It is mainly contended on behalf of the first party that service of the first party was dismissed with effect from 22-7-1974 *vide* Ext. 2 without holding any domestic enquiry as required by the provisions of Standing Orders Act. To the same effect P. W. 1 has deposed during hearing of the case. It is also the definite case of the first party in his case petition that the second party dismissed him from service with effect from 22-7-1974 without any enquiry and without giving him any opportunity of defence. P.W. 1 in his evidence has stated that he got charge-sheet Ext. 1 on 31-10-73 from the

second party and thereafter submitted explanation denying the charges on 6-11-1973 and thereafter he was not asked to attend any enquiry but suddenly the second party dismissed him from service illegally *vide* order, dated 22-7-1974, Ext. 2. The aforesaid explanation of the first party has been marked Ext. A. According to D. W. 1 he was appointed enquiry officer in connection with the enquiry against first party's case of misconduct and after the submission of Ext. A he called the first party by sending a man on 1-12-1973 and accordingly first party came and his statement was recorded by one Hashem in his (D.W. 1) presence. The said statement of first party has been marked Ext. B. D. W. 1 also stated that the statement of witnesses during enquiry were recorded by the said Hashem in his presence and those are marked Ext. B(1) to B(5). D. W. 1 further stated that he submitted enquiry report Ext. C after holding enquiry. P. W. 1 has clearly stated in his evidence that he was never asked by the said enquiry officer or second party to attend any enquiry which said to have been held on 1-12-1973, 3-12-1973 and 4-12-1973. D. W. 1 has stated that he has no paper to show that he notified the date of enquiry or date 1-12-1973 etc., as the date of enquiry to the first party. It was suggested to D. W. 1 that no date of enquiry was fixed and that actually no enquiry was held or first party participated the said enquiry. It was also suggested to D. W. 1 in cross that enquiry proceeding Ext. B series and Ext. C were manufactured by the management after institution of the present case by the first party. Ext. B the alleged statement of first party has not been signed by the writer, the enquiry officer, or the first party. Exts. B(1) to B(5) are also not signed by the enquiry officer or the person who wrote the statements. It is curious to find that in the written statement the second party of course denied the first party's allegation made in the case petition but nowhere it is stated that when and how the domestic enquiry was held. Nothing is stated in the written statement about the holding of domistic enquiry though by D.W. 1 in his evidence during hearing disclosed about enquiry. Had there been any such detailed enquiry as stated by the D. W. 1 in his evidence, it would be surely referred in the written statement. There is no evidence on record that any notice of enquiry was given or opportunity was given to the first party for his defence. The enquiry report Ext. C does not specify the nature of misconduct under section 17(3) of the Standing Orders Act. There is no clear finding on the point. There is no reliable evidence on record to show that proper opportunity was given to the first party for being heard. In view of all these, I find that the first party's dismissal from service is not proper and valid. In such position, dismissal of the first party from service will be too severe punishment and it will debar him from employment anywhere else. I have also found above that there was defect in the enquiry in asmuch as the first party was not given proper opportunity to defend himself during enquiry.

While considering the case for reinstatement of the first party I have taken into consideration of the circumstances, I think that the interest of the first party would not be safe at the hand of second party if he is reinstated, as the second party would be in a position more definitely is in a mood to find fault with the first party. The situation will go from bad to worse, if first party is forced on the second party. Considering the evidence and circumstances it is found that the ends of justice will be duly met if the dismissal order is substituted with an order of termination of service with direction to

pay termination benefit to the first party. I, therefore, inclined to hold that the first party is entitled to get termination benefit under section 19(*1*) of the Standing Orders Act, and not reinstatement.

In arriving at the above decision I have considered the opinion of the learned Members.

Ordered

That the case be allowed in part on contest without cost.

Second party is directed to pay the following termination benefits to the first party under section 19(*1*) of the Standing Orders Act, 1965 within 30 days from today:

(1) 90 days notice pay at the rate of Tk. 200·00 per month;

(2) 14 days' wages as compensation for each coOpleted year of service or part thereof over six months;

(3) Wages for unavailed period of earned leave, if any;

(4) Unpaid wages, if any, due;

(5) Provident Fund benefits in full, if any.

Any other benefit or benefits to which the first party may be found to be entitled under any other law for the time being in force.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected by me.

A. AHMED
Chairman.
18-11-1975.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
18-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 430 of 1974.

Abul Basher (Welder), S/o. Emdad Khan, Vill. West Nasirabad, P.O. Pahartali, Chittagong—*First Party,*

versus

Manager, M/S. Rabia Primary Engineering Works and Institute, Majhirghat Road, East Madarbari, Chittagong—*Second Party.*

PRESENT:

Mr Ameenuddin Ahmed—*Chairman.*

Mr Jamshed Ahmed Chowdhury .. } *Members.*

Mr Juned A. Choudhury .. .. }

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Abul Basher, first party, with a prayer either for his reinstatement in his former post with back wages or for retrenchment benefit as per schedue attached with the case petition.

The case of the first party is that he was appointed by the second party as Welder with effect from March 1963 and his last monthly salary was Tk. 210·00. Sudenly on 9-9-1974 the first party is illegally retrenched from his service without any notice or reason. The first party was offered only Tk. 300·00 towards full and final settlement of his retrenchment benefit although he is entitled to retrenchment benefit under section 12 of the Standing Orders Act.

Second party contested the case by filing a written statement alleging *inter alia* that the first party have suffered a break in continuity of service for resorting to illegal strike on 3-10-1973 and thereafter resumed service with effect from 9-9-1974. Thus the first party has not completed one year service from the date of his retrenchment on 15-8-1974 and as such, the provisions of sections 12 and 13 of the Standing Orders Act are not applicable to him. The second party was compelled to declare a lockout under section 46(2) of the I.R.O. So, the first party resumed duty under second party on 9-7-1973. First party is not entitled to get any relief as prayed for.

It is to be seen whether the first party is entitled to get relief as prayed for.

DECISION

P.W. 1 Abul Bisher, first party, has only examined himself in support of his case. On the other hand, D.W. 1 Farid Ahmed, the Manager of the second party has examined on belalf of the second party. According to P.W. 1 in cross he joined in the service of the second party with effect from 1-1-1964 and his last pay was Tk. 210·00 per month. Admittedly by order of the second party Ext. 1, first party was retrenched from service with immediate effect on the ground of redundancy under section 12 of the Standing Orders Act. It is the case of the first party that he was not paid retrenchment benefit according to provisions of law and as such he prays for retrench ment benefit from the second party. It is not disputed that first party was offered only Tk. 300·00 towards full and final settlement of retrenchment benefit but the first party declined to accept the same.

It is the main case of the second party that initially first party joined the service with effect from 1-1-1964 and thereafter on 3-10-1973 the first party resorted to illegal strike with other workers of the second party, who was compelled to declare a lock-out under section 46(2) of the I.R.O. and thereafter first party resumed employment on 9-7-1974. It is argued on behalf of the second party that there has been a break in the continuity of service of the first party from 3-10-1973 and that at the time of his retrenchment he did not complete one year continuous service and as such first party did not earn any annual leave, and tha the second party at the time of first party's retrenchment graciously offered Tk. 300·00 to the first party but the first party turn down the said offer. D.W. 1 has stated in evidence that first party having suffered a break in continuity in service for resoring to illegal strike with effect from 3-10-1973 and thereafter resumed duty on 9-7-1974 and that since 3-10-1973 the second party locked out the factory legally under section 46(2) of I.R.O., the first party is not entitled to retrenchment benefit as prayed for. The evidence of P.W. 1 in cross shows that Mr. Mobarak Ali, President of their union previously brought a case for wages of lock out period against

the second party. P.W. 1 further stated in his cross that the strike was followed by a legal lock out and he got no wages in the lock out period from the second party. According to D.W. 1, I.D. Case No. 281 of 1973 was filed previously by the President of the union claiming wages for lock out period but it was withdrawn subsequently.

It appears from the materials on record that there was an illegal strike took place which was followed by a legal lock out as per section 46(2) of the I.R.O. Consequently I find that the first party did not have the benefit of continuous service during this period as per section 78(3) of the Factories Act and as the first party has not commpleted 12 months continuous service, he is not legally entitled to retrenchment benefit under section 12 of the Standing Orders Act. So, the first party is not entitled to get retrenchment benefit.

It is noted that admittedly the first party was offered Tk. 300·00 after retrenchment in full and final settlement but the first party declined to acceept the said offer. The second party may pay the said amount of Tk. 300·00 to the first party, if the first party agrees to take the same.

In view of my discussions the first party is not entitled to get the relief prayed for.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
17-11-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
17-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 435 of 1974.

Abdul Majid, S/o. Abdul Gani Mondal, Village Kakmari, P.O. Mooladuli, P.S. Atgoria, District Pabna, presently at Barabkunda, P.S. Sitakund, Chittagong—*First Party*,

versus

(1) T.A. Khan, Manager, M/s. S.K.M. Jute Mills Ltd., Mahmudabad, Barabkunda, P.S. Sitakunda, Chittagong;

(2) M/s. S.K.M. Jute Mills Ltd., Mahmudabad, Barabkunda, P.S. Sitakunda Chittagong—*Second Party*.

PRESENT:

Mr Ameenuddin Ahmed—*Chairman.*

Mr Jamshed Ahmed Chowdhury
Mr Juned A. Choudhury } *Members.*

By this application under section 34 of the Industrial Relations Ordinance, 1969, the first party Abdul Majid seeks direction upon the second party to allow him (first party) to resume his duty in the post with further direction to pay all arrear wages from 1-9-1973 till the date of his resumption in his duty.

The case of the first party is that he is an employee of the second party serving as Wage In-charge in the mill at a monthly salary of Tk. 464·00 but due to misfortune the first party was implicated in a criminal case and arrested by Police on 7-9-1973. The first party was released on bail from the criminal case on 16-9-1973 and thereafter reported to the second party for resuming duty by filing a joining petition but the first party was not allowed to resume duty and asked to wait for sometime. Thereafter the first party on several occasions approached the second party to allow him to join duty but the second party was delaying his joining duty on one plea or other. The first party was neither suspended nor discharged from the service and the first party has been prevented from joining his duty by the acts of second party without assigning any reason. The second party also stopped payment of his salary from the month of September 1973 inspite of demands. According to provisions of labour laws the first party is legally entitled to resume his duty and has been legally continuing in service.

Second party contested the case by filing a written statement alleging *inter alia* that a sum of Tk. 2,385·00 was missing from the cash along with a voucher being money of the company which was in the custody of the first party on 3-9-1973. Second party reported the matter to Sitakunda Police and the first party was arrested in connection with the said case. Thereafter knew nothing about the first party. On 12-9-1974 the management knew about first party's release on bail, when the second party sent a letter along with a copy of charge-sheet asking first party to submit his explanation within 4 days but he did not submit his explanation as required. The management thereafter was taking preparation to enquire into the case of misconduct but the first party without caring and waiting for the said departmental enquiry brought the present case in Court. The first party is not entitled to get any relief in this case.

It is to be seen whether the first paty is entitled to get the relief prayed for.

DECISION

P.W. 1 Abdul Majid, first party, has examined himself in support of his case. None is examined on behalf of the second party. P.W. 1 has stated that he was serving as Wage In-charge under the second party mill since 7-4-1972 and his last pay was at the rate of Tk. 320·00 as basic wages. He further said that he was implicated in a criminal case and he was arrested

by police on 7-9-1973 and he was released on bail on 16-9-1973 and thereafter he reported for duty on several occasions but the second party gave assurance but ultimately refused to allow first party to join in his duty. According to P.W. 1 he was not paid his wages from 7-9-1973. P.W. 1 in his cross further stated that a criminal case is pending against him for alleged misappropriation of mill money. P. W. 1 further stated in his cross that he resided in his mill quarter up to 16-9-1973 and he was not evicted by the mill authority from the quarter. It is not disputed that the first party has not been charge-sheeted or arrested by the police for the alleged misappropriation of the mill money. The second party has failed to make out any defence during the time of hearing. It is proved that the first party has been kept out of employment at the instance of second party without any reasonable or legal process. The evidence of P. W. 1 that he on several occasions went to resume duty but he was not allowed to join. The said evidence has not been challenged by the second party. At the time of hearing of this case a registered cover with A/D is filed by the second party in order to show that the second party sent a letter to the first party along with a copy of charge-sheet which was framed earlier but the first party did not submit his explanation. It will appear from the registered cover returned back to the second party that the said letter was sent by registred post on 21-11-1974, *i.e.*, after the appearance of the second party in the present case. So, it is clear that second party took no steps whatsoever against the first party for the latter's misconduct till the present case is filed. In view of my discussions above, the first party can be safely treated to be in service under the second party and first paty should be allowed to resume his duty and he is also entitled to get his wages from 7-9-1973 to the date of filing of the present case (20-9-1974). I, therefore, find that the first party is entitled to the relief as found above.

In arriving at the above decision I have considered the written opinion of the learned Members.

Ordered

That the case be allowed on contest without cost.

The second parties are directed to allow the first party to resume his duty and to pay his wages for the period from 7-9-1973 to 20-9-1974 within 30 days from to-day.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
24-11-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
24-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 449 of 1974.

Fazlul Kabir Chowdhury, S/o. Qazi Bazlus Sobhan, C/o. Huq Building, Banshabaria, P.O. and Vill. Banshabaria, Chittagong—*First Party*,

versus

(1) Bangladesh Jute Industries Corporation, Amin Court, Adamjee Court, Motijheel Commercial Area, Dacca.

(2) Manager, Gul, Ahmed Jute Mills Limited, Kumira, Chittagong—*Second Party*.

PRESENT:

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury .. } *Members*.
Mr Juned A. Choudhury .. .. }

This is an application under section 34 of the Industrial Relations Ordinance, 1969 filed by the first party Fazlul Kabir Chowdhury for his reinstatement in his former post and position with all back wages.

The case of the first party is that he had been serving under the establishment of second party No. 2 since February 1972 as Assistant Store Keeper and his last salary was Tk. 366·25 per month. Second party No. 1 on 4-10-1973 issued a letter of charge against him under some baseless and imaginary allegations. First party submitted his explanation dated 27-10-1973 denying the charges. Subsequently on 26-11-1973 the second party issued a notice of enquiry and accordingly first party appeared before enquiry committee. The first party was not given any opportunity during enquiry for his defence. Thereafter the second party on 22-1-1974 issued a letter and again asked the first party to show cause in writing within 7 days as to why he should not be dismissed from service. First party submitted his explanation denying the charges but the second party No. 1 instead of exonerating him from the charges, issued a letter of removal which is contrary to the fact and circumstances.

It is further alleged that the first party is a worker and the second party No. 2 is the employer under the Standing Orders Act, 1965 and the second party No. 2 being the employer of the first party, alone, has the right to take disciplinary action against the first party. Second party No. 1 has been created to co-ordinate and supervise the affairs of the second party No. 2. Second party No. 1 is not the employer of the first party and as such the disciplinary proceeding and the order of removal in question of the first party from service have been made contrary to law, *i.e.*, illegal and void. The first party is entitled to get reinstatement with back wages.

Second party No. 2 appeared and contested the case by filing written statement alleging *inter alia* that on the basis of internal audit report, the first party was charge-sheeted on 4-10-1973 for misconduct and thereafter first party submitted his explanation which was found to be unsatisfactory. Second party in order to give full opporunity to disprove the allegation brought against him decided to hold enquiry into the cases and accordingly an enquiry was held and thereafter first party was removed from service as per law.

Second party No. 1 is also an employer of the first party and as such second party No. 1 had the right to take disciplinary action against the first party. First party is not entitled to get any relief in this case.

It is to be seen whether the first party is entitled to get any relief in this case.

FINDINGS

P.W. 1, Fazlul Kabir Chowdhury, first party has examined himself in support of his case. None is examined on behalf of the second party. It is mainly contended on behalf of the first party that second party No. 1 is not the employer of the first party and as such first party's removal from service by second party No. 1 is illegal and void. On the other hand, it is contended on behalf of the second party that second party No. 1 was created not only to co-ordinate and supervise the affairs of second party No. 2 but also for controlling, co-ordination and supervision and for matters connected therewith or incidental thereto and that the second party No. 1 had the right to take disciplinary action against the first party.

P.W. 1 in his evidence has stated that since February 1972 he was serving as Assistant Store Keeper under second party No. 2. He further stated that second party No. 1 was not his employer and his (P.W. 1) removal from service *vide* letter dated 7-3-1974 Ext. 5 is illegal as second party No. 1 who passed the order of removal is not his employer.

It is contended on behalf of the second party that the Bangladesh Jute Industries Corporation has been made an employer and the workers and staffs of the scheduled industrial enterprises and it is a body corporate, it can sue and be sued. He also submits that the said second party No. 1 can take action in respect of employment or non-employment in the scheduled industrial enterprises. It appears from the evidence and materials on record that second party No. 1 on 4-10-1973 issued a letter of charge Ext. 1 against the first party on the grounds or allegations mentioned therein and thereafter the first party submitted his explanation dated 27-10-1973 Ext. 2 denying the charges. It is also in evidence that thereafter the second party No. 1 on 22-1-1974 issued another letter asking the first party to show cause as to why disciplinary action should not be taken against him. This letter is marked Ext. 3. First party submitted explanation Ext. 4 on 2-2-1974 denying the charges and thereafter second party No. 1 *vide* his letter dated 7-3-1974 Ext. 5 removed the first party from service with effect from 4-10-1973. It appears from the aforesaid charge-sheet and removal order that the Secretary of the second party No. 1 passed all these orders.

The main point for consideration in this case is whether a corporation created under President's Order No. 27 of 1972 is an employer under the Standing Orders Act, *vis-a-vis* an establishment of a nationalised industrial enterprises placed under it. There is no doubt that so far as the office or establishment of the corporation itself is concerned the corporation is the employer thereof under the Standing Orders Act. But the question I am concerned with is whether the corporation also the employer of an establishment of a nationalised industrial enterprises. To decide this question one has to look into the definition of "employer" in the Standing Orders Act.

The main part of the definition of the "employer" in the Standing Orders Act described an "employer" as a person, a body of persons or body corporate, company or industry owning or managing a shop or establishment. In short, a person owning or managing a shop or establishment is always an employer in the eye of Standing Orders Act. Under the President's Order No. 27 of 1972 the ownership of nationalised industrial enterprises is vested in the Government and not in the corporation. Again Article 17(1) of the said Order, even after its amendment by P.O. No. 131 of 1972, enables a corporation to control, supervise and co-dordinate, subject to any regulation made in this behalf, for the activities, business and affairs of the scheduled industrial enterprises placed under it. Significantly a corporation is not entrusted with the management of a nationalised industrial enterprises. On the contrary, Article 8 of P.O. No. 27 of 1972 requires the Board of Direcors of such enterprise to continue to function as a Board appointed by the Government and further requires the Chief Executive of such enterprise to continue to exercise such powers and of managment on behalf of the Government as were vested in him immediately before the commencement of the order. It is therefore, clear that P.O. No. 27 of 1972 does not contemplate that a corporation should manage a nationalised industrial enterprise, let alone the establishment owned by the later. Moreover, when the definition speaks of the person "managing" a shop or esablishment, it naturally means a person physically carrying on the day to day management of such shop or establishment and it is physically impossible to carry on day to day management of the numerous establishments of the numerous industrial establishments placed under it. Therefore, a corporation does not qualify as an employer of the establishment of nationalised industrial establishment as it neither owns, nor manages such establishment.

Now I come to the illustrative part of the definition "employer" in the Standing Orders Act, whereby the scope of definition has been widened to include the following:

(*a*) a Manager of a factory;

(*b*) Every Director, Manager, Secretary, Agent, or other officer or person concerned with the management and responsible to the owner for the supervision and control of the shop or establishment.

There is no dispute that the corporation is not a Director, Manager, Secretary, Agent or officer of any Nationalised Industrial Enterprise and it is not a peson concered with the management of any of such enterprises of the establishment. Here it should also be noted that a corporation is entrusted with controlling, supervision and co-ordination of all scheduled enterprises under it, but it is not responsible for supervision and control of any shop or establishment belonging to such enterprises, nor such control and supervision is of the nature exercised by the Manager of an establishment.

It should also be borne in mind that whereas a corporation is concerned with all the industrial enterprises placed under it, the Standing Orders Act, on the other hand, is concerned with a shop or establishment belonging to any of these industrial enterprises. Articles 5 and 8 of P.O. No. 27 of 1972 make it clear that regardless of the creation of corporation, Government retains for itself the power to appoint or remove the management of a nationalised industrial enterprise. Therefore, an officer or for that matter the management of an establishment belonging to a nationalised industrial enterprise be, he, a Manager, Director or Secretary, is always directly responsible to the Government, the new share-holder of such enterprise, regardless of the creation of a corporation. In short, the illustrative part of the definition of "employer" clearly referred to the Director, Manager, and other officers of the nationalised industrial enterprise and includes the local management of the establishment owned by such enterprises. The Ext. 6 a circular dated 24-10-1973 of second party No. 1 will also show that the second party No. 1 is not the ejployer of the first party.

From the aforesaid discussions it is clear that a corporation created by P.O. No. 27 of 1972 does not qualify as an employer under the definition of "employer" in respect of an establishment belonging to a nationalised industrial enterprise. I, therefore, find that second party No. 1 who took disciplinary action, including removal of the first party from service *vide* his order Ext. 5, is not the employer according to the definition. Hence, the entire disciplinary proceedings against the first party right from the issuance of alleged letter of charge down to his removal from service were made by persons who are not employers of the first party. Accordingly, the order of removal of the first party issued by the second party No. 1 is bad in law and without jurisdiction. In the result, the first party is etitled to reinstatement.

The first party prayed for his reinstatement in service with all back wages. In view of my nature of findings I am not inclined to allow first party his entire claim for back wages. However, he is allowed to get 20 per cent. of his back wages from second party No. 2.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

Second party No. 2 is directed to reinstate the first party in his former post and position with 20 per cent (twenty per cent) of his back wages. The second party is further directed to implement this order within 30 days from today.

AMEENUDDIN AHMED

Chairman,
Labour Court, Chittagong.
10-10-1975.

Typed at my dictation by
Mr. M.M. Choudhury.

A. AHMED

Chairman.
10-10-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 450 of 1974.

Shiraj Mia, son of Md. Sultan Mia, Village Moheshpur, P.O. Radhapur, Dist. Noakhali—*First Party*,

versus

The Manager, Pahartali Textile and Hosiery Mills Ltd., Pahartali, Chittagong—*Second Party*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury
Mr Juned A. Choudhury } *Members*.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Seraj Mia prays for directing the second party to allow him (first pay) to resume duty and to pay his back wages and also to direct the second party to pay his 9 months' salary.

The case of the first party is that he had been serving in the establishment of the second party since 1968 as Bail Operner and his last salary was Tk. 150·00 per month. The first pariy being seriously ill could not attend his duty since 26-7-1972 and went home for treatment and on 29-7-1972 he sent an application for one month's leave by registered post but the seond party neither informed him anything, nor replied the said leave application. Thereafter the first party after recovery from illness went to resume his duty but the rival union members did not allow the first party to enter into the premises for resumption of his duty. Ultimately the first party met the Manager of the second party and requested him to allow to resume his duty. But the Manager assured him with resumption witnin a month. Thereafter he was not allowed to resume duty. Ultimately the first party sent a lawyer's notice on 19-3-1974 but the second party did not reply to the same. The first party also claimed 9 months' salary for the liberation period and the same was not paid to him though other workers were paid. First party is entitled to resume his duty according to law.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was charge-sheeted for unauthorised absence and was asked to submit his explanation. The first party did not submit any explanation whatsoever in reply to the letter of charge. Thereafter the second party on consideration of the first party's past service records dismissed him from service on 3-10-1972 and the said letter of charge and dismissal were sent to the first party's home address by registered post and the said dismissal order was also posted on the Notice Board. This case of the first party as framed is not maintainable and that the first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get the relief as prayed for.

FINDINGS

P. W. 1, Seraj Mia first party has only examined himself in support of his case. D. W. 1 Md. Ishaque, the Labour Officer of the second party is examined on behalf of the second party. It is mainly contended on behalf of the second party that this case as framed is not maintainable. Admittedly, first party sent a Pleader's notice on 19-3-1974 to the second party by registered post which the second party received. The said Pleader's notice is marked Ext. C with its envelope. There in para 2 of Ext. C it has been clearly stated by the first party that he has illegally dismissed by the second party in violation of the right guaranteed to him under a law and there it was also stated that the first party is entitled to be reinstated in his former post with back wages from the date of dismissal. So, it is clear that first party before the filing of this case knew well that he has been dismissed from service by the second party illegally without following the provisions of labour laws. In spite of his such knowledge about dismissal the first party brought this case with a prayer for resumption in his duty with direction to pay back wages. So, in this view of the case, first party's case as framed coupled with the prayer portion referred to above is not maintainable.

Moreover, it is admitted by P. W. 1 in his evidence that he submitted medical certificate Ext. A and A(1) to the second party. In the evidence first party has stated that he was suffering from blood dysentery with effect from 26-7-1972. The said evidence is disproved by medical certificate Ext. A and A(1). Thus from the aforesaid discussions the reason assigned in the case petition about his absence cannot be relied on. When the case is found not maintainable as framed, it is not proper to give any clear decision on merit. The claim for 9 months' salary has been given up by the first party by his amendment petition dated 12-5-1975.

Written advice of the learned Members are considered by me at the time of coming to my above decision.

Ordered

That the case be dismissed on contest without cost as not maintainable.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagnog,
28-11-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman,
28-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 459 of 1974.

Belayet Hossain, T/No. 270, son of Maulvi Abdul Ali, R. R. Jute Mills Ltd., Banshbaria, Chittagong—*First Party*,

versus.

Manager, M/s. R. R. Jute Mills Ltd., Banshbaria, Sitakunda, Chittagong—*Second party*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury
Mr Juned A. Choudhury } *Members*.

This is an application under section 34 of the Industrial Relations Ordinance 1969 by Belayet Hossain, first party, with a prayer for directing the second party not to make any deduction and also to make repayment of the amount which has been deducted in the meantime and to make payment of the amount of wages for the rest months.

The case of the first party is that he has been serving under the second party since 26-3-1970 and he was promoted to the post of Vim Junior and his monthly average pay was Tk. 400·00 in the year 1971. First party left the mill on 26-3-1971 due to fear of Pak Army and stayed at his village home and participated in the struggle for liberation. Thereafter the first party left for India in the month of April, 1971 ad took shelter in the Siddinagar camp on 29-4-1971, where he remained till 27-12-1971. After liberation of Bangladesh the first party joined the mill and was paid one month's salary. The Government passed the order for the payment of 9 months' salary to the workers of the Jute Mills. The second party ordered payment of 8 months' salary to the first party and thereafter Accounts Department paid the first party 4 months' arrear salary only and assured to pay the rest gradually. Suddenly the second party on 24-8-1974 issued a letter in the name of first party alleging that he was paid arrear wages by mistake as the first party did not deserve it and thus started deduction from his salary. The payment of arrear wages for 9 months was made on the basis of office record and that being so the order dated 24-8-1974 is illegal. The first party is entitled to get arrears 9 months' wages and accordingly he was paid part of the same. The first party is entitled to get reliefs as prayed for.

Second party contested the case by filing written statement alleging *inter alia* that the first party worked in the second party's mill for the week ending 28-8-1971 and 16-11-1971 and received his wages and for that the first party is not entitled to 9 months' arrears wages. The first party does not disclose in which law and manner his alleged right to get his 9 months' arrear wages has been created. Since the first party worked for the week ending 28-8-1971 and 16-11-1971 and received his wages, he is not attracted by the directive of the proper authority with regard to the payment of 9 months' wages. Over and above, the first party without furnishing declaration in proper form and also by suppression of facts succeeded to get certain amount towards 9 months' wages and such payment after proper scrutiny is found to have been

made in advertently and for that the second party subsequently passed order rightly for deduction of amount already paid to him. The first party is not entitled to get any relief as prayed for.

It is to be seen whether the first party is entitled to get relief as prayed for.

FINDINGS

P.W.1 Belayet Hoosain, the first party has only examined himself in support of his case. 3 witnesses are examined on behalf of the second party.

It is stated by P.W. 1 in his evidence that he was serving under second party since 1970 and his monthly average wages was a bit more than Tk. 200·00. P.W. 1 further stated in his evidence that on 26th March 1971 he left the Mill and went to his village home where he stayed for some days and on 27-4-1971 he left for India and took shelter in the Siddinager camp where he remained till 27-12-1971 and on 28-12-1971 he returned home after liberation. His evidence in cross shows that the border of India is about 2¼ miles off from his village home. According to P.W. 1 he along with his family members stayed in the Refugee camp at Tippera State in India. It was suggested to P.W. 1 that he worked for week ending 28-8-1971 and 16-11-1971 in the second party's mill and as such he is not legally entitled to 9 months' salary as claimed. Second party challenged the genuinness of certificate Ext.1 which was produced by the first party. By Ext. 2 the second party cancelled the entitlement of the first party's 9 months' wages and directed deduction from the salary, the amount which was already paid to the first party inadvertently. The evidence of D.W. 3 Wahidur Rahman, a co-worker of the first party has stated in his evidence that those workers who actually worked along with him, their names are recorded in Workers Wages Payment Sheet Ext. A(I). Ext. A(1) is the Wages Payment Sheet for the week ending 16-11-1971. Ext. A(I) proves that first party worked in the week ending 16-11-1971 in the mill of the second party. P.W. 1 in his cross has stated that even those who worked for single day in the mill for during the war of liberation was not paid 9 months' wages by the management. From the documentary evidence, *viz.*, Ext. A(I) coupled with the evidence of D.W. 3 it can be said that the first party worked in the week ending 16-11-1971 in the mill. So in view of the above discussions the first party is not entitled to get 9 months' wages as claimed. Moreover, the evidence of P.W. 1 does not show that he actually participated in the liberation struggle. I, therefore, find nothing sufficient on record to show that first party is legally entitled to get 9 months' wages from the second party as claimed.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.

Typed by Mr M.M. Chowdhury
at my direction and corrected by me,

AMEENUDDIN AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH.

Industrial Dispute Case No. 678 of 1974.

Abdul Halim, S/o. Amin Sharif, East Gomdandi, P.O. Gomdandi, P.S. Boalkhali, Chittagong—*First Party*,

versus

Chief Executive, Amin Agencies (1947) Ltd., Cold Storage Division, Guptakhal, P.O. Patenga, P.S. Doublemooring, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members*.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Abdul Halim (fierst party) praying for directing the second party to reinstate him in his former post and position with back wages.

The case of the first party is that he was appointed as worker in the establishment of the second party in the middle of 1968 and his duty was extended over taking of measurement of fishes, packing them for shipment, preparation of accounts and report thereof and all other works connected therewith and that since the appointment the first party discharged his duty very successfully and efficiently. On 31-5-1974 at 5-30 p.m. the second party all on a sudden delivered their letter dated 31-5-1974 to the first party intimating him that he had been dismissed from service for some alleged offences Prior to the said illegal dismissal, the second party did not give any opportunity to the first party for showing or submitting any cause or explanation for the alleged offence. The second party by their letter dated 20-2-1974 informed the first party that an enquiry would be held on 28-2-1974 in respect of alleged charges framed against him by a letter dated 9-2-1974. No such letter of charge dated 9-2-1974 was ever delivered to the first party, but a copy of the same was subsequently supplied to him along with letter dated 20-2-1974 but this time also the first party was not given any opportunity to submit his defence to the alleged vague charges. The first party, however, attended the enquiry on 28-2-1974 where the enquiry officer put some stray questions and thus made a show of enquiry. In fact the first party was not given any opportunity to defend. On receipt of the dismissal letter the first party *vide* his letter dated 14-6-1974 requested the second party to reinstate him in his former post and the same was replied by the second party by their letter dated 20-7-1974. The first party is entitled to get reinstatement with back wages.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that the nature of duty of the first party is supervisory and he had been designated as Production Supervisor, *i.e.*, the first party is not a "worker". It is further alleged that the first party was appointed as Production Supervisor. The first party was found to be habitually neglect to his duty and

habitually remained absent from duty without prior information or leave, causing serious dislocation in the process of work of perishable commodities resulting into serious loss to the establishment. The first party was issued with a letter of charge in 1973 and ultimately he was excused with warning for the future. On 9-2-1974 the letter of charge was issued to the first party under registered A/D cover at the home address of the first party, charging him having remained absent from duty without prior permission or sanctioned leave. The said letter of charge could not be delivered due to postal strike at the relevant time. However, on personal appearance of the first party he was given a copy thereof along with a covering letter dated 20-2-1974 allowing him sufficient time to appear at the enquiry on 28-2-1974. The first party appeared at the enquiry on 28-2-1974 and got full opportunity to defend himself. The enquiry officer submitted his report on 20-5-1974. The second party dismissed the first party from service after observing all legal formalities in this regard. The first party is not entitled to get any relief.

Point for determination is whether the first party is a worker and whether the first party is entitled to get reinstatement with back wages.

FINDINGS

Neither party adduced any oral evidence in support of their respective cases.

In para 1 of the case petition the first party, asserted him as worker under the second party and there the first party also clearly described his nature of duty. The second party in paragraph 3 and 9 of the written statement has stated that the nature of duty of the first party is supervisory and he (first party) was appointed as Production supervisor, *i.e.*, the question raised by the second party is that the first party is not a worker and that he was employed in a supervisory capacity.

Only because the first party was termed as Production Supervisor, it cannot be said that the first party was not a worker as defined in the I.R.O. and the Standing Orders Act. The nature of duties of first party described in para. 1 of the case petition have not been specifically denied by the second party in the written statement. The first party's supervision is not of managerial nature but was of supervision of the production. This was one of the division of labour in the production of the company. Mere designation as supervisor cannot term the first party as not "worker" under the labour laws. I, therefore, find not force in the aforesaid contention of the lawyer for the second party. On the other hand, I find that the first party is a worker.

It is contended on behalf of the first party that he was not given any opportunity to submit explanation in compliance with the alleged charge referred to in Ext. A. Admittedly the second party by letter of charge dated 9-2-1974 Ext. A directed the first party to explain on or before 18-2-1974, but the said letter of charge was not admittedly served upon the first party prior to 18-2-1974, the same was served upon the first party on 20-2-1974. This letter of charge dated 9-2-1974 was supplied to the first party along with letter dated 20-2-1974 Ext. A. So, it appears that the first party was not given any opportunity to submit his explanation to the alleged charges.

It is contended on behalf of the first party that the allegations against the first party referred to in the letter of charge dated 9-2-1974 Ext. A do not constitute misconduct. The charge-sheet dated 9-2-1974 Ext. A contains 3 charges against the first party. The charge No. 1 alleges "absence from duty without prior approval or notice *vide* second party's letter dated 9-11-1973". This letter of 9-11-1973 was not produced in Court by either party. This has rendered the charge incomprehensible. Again, the charge does not specify the period or frequency of absence from duty of the first party. Section 17 (3)(d) of the Standing Orders Act reads as follows "Habitual absence without leave or absence without leave for more than 10 days". Thus absence from duty, "without approval or notice" is not a misconduct. Again, it is not possible to ascertain, whether the charge is for the absence without leave for more than 10 days or for habitual absence without leave. So, the charge No. 1 is bad in law due to absence of material particulars of a misconduct and as it stands, does not disclose any misconduct under section 17(3)(d) of the Standing Orders Act.

Regarding charge No. 2 of Ext. A., here again the second party refers to its letter dated 4-12-1973 which it has failed to produce before this Court. This charge also does not allege any misconduct enumerated in section 17(3)(d) of the Standing Orders Act. Though it is not necessary to mention the relevant clause of section 17(3) of the Standing Orders Act in the charge-sheet, it is essential that a charge of misconduct must allege one of the acts or omission enumerated in section 17(3) of the Standing Orders Act. In other words, the charge ought to have specified whether by failing to maintain register or report, the first party committed the misconduct of wilful insubordination or neglect of work or habitual negligence of duty. Unless the first party knows the nature of allegation against him he cannot defend himself against the charge. As the charge No. 2 stands, it does not disclose any misconduct, because mere failure to maintain the Master Curtoon Stock Register or to submit Daily production report, does not constitute any misconduct under section 17(3) of the Standing Orders Act.

Regarding charge No. 3, here again, the letter of second party dated 4-12-1973 cited in the charge has not been produced before the Court. It alleges gross negligence on the part of the first party. But in order to constitute a misconduct, negligence must be habitual. Therefore, this charge does not constitute any misconduct under the Standing Orders Act.

From the foregoing discussions it will appear that the charges against the first party are bad in law due to vagueness and absence of material particulars and none of them constitutes misconduct under the Standing Orders Act. Hence, no order of dismissal can be passed on the basis of any of these charges.

There are also illegalities committed by the second party in the course of disciplinary action against the first party. Though it is not mandatory for the employer to hold formal enquiry into the charges against the worker, yet where the employer *sue moto* elects to hold such enquiry, he must comply with the principles of natural justice. Here, the second party did not examine any witness in support of the charges at the enquiry. In fact, at the enquiry only the statement of first party Ext. B was recorded. Therefore, it will appear that the enquiry officer had no evidence before him on the basis of which he could reject the contention of the first party. In other words, the statement

made by the first party at the enquiry go unchallenged by the second party and the enquiry officer had no evidence before him, enabling him to find the first party guilty of any of the charges against him. So, the finding of the enquiry officer that the charges brought against the first party are true, is perverse on the face of the record.

Again, the enquiry officer does not give his finding on each charge, nor does he give any reason for rejecting the defence pleas of the party. Ext.C does not state anywhere that first party is found guilty of charges or does not specify the nature of misconduct as defined in section17(3) of the Standing Orders Act. There is at all no finding in the enquiry report Ext. C.

Finaly the dismissal letter dated 31-5-1974 Ext. D finds the first party guilty of four charges whereas the charge-sheet dated 9-2-1974 Ext. A contained only three charges. A dismissal order on the basis of a charge which did not appear in the charge-sheet, is plainly illegal. Furthermore, as already stated above no order of dismissal can be passed on the basis of charges contained in the charge-sheet Ext. A which are bad in law and do not constitute misconduct under the Standing Orders Act. I, therefore, find that the order of dismissal dated 31-5-1974 Ext. D passed by the second party against the first party is bad in law and in contravention of the provisions of the Standing Orders Act.

Having regard to the above discussions I find that tne first party is entitled to get reinstatement. It will appear from Ext. E that first party's previout service record was not good. Considering his past conduct I think the firs party should not be given full back wages as claimed.

In arriving at the decision I have consulted the learned Members.

Ordered

That the case be allowed on contest without cost.

The second party is dircted to reinstate the first party in his former post and position with 30 per cent. (Thirty per cent.) of his back wages within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
29-11-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A.AHMED
Chairman.
29-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Indusrial Dispute Case No. 680 of 1974.

Mohd. Nurul Islam, S/o. late Kala Meah, T/Asstt., M/s. Jamiluddin Ltd., 31, Ghatforhadbegh Road, Chittagong—*First Party*,

versus

The Administrator, M/s. Azizuddin & Allied Concerns, 31 Ghatforhadbegh Road, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members*.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by first party Mohd. Nurul Islam with a prayer for directing second party for payment of wages for the month of November, 1974 and onwards in the scale of Tk. 170—240.

It is the case of the first party that he was appointed in the establishment of M/s. Jamiluddin Ltd. on 1-11-1973 as a Truck Assistant in the grade and scale of Tk. 125·00. First party is permanent in his employment. The pay scale of first party has been revised from time to time as per agreements between the management and the Azizuddin and allied concerns employees Union and lastly on 31-10-1974 giving its effect from 1-10-1974. Accordingly pay scale of the first party has been fixed at Tk. 170—240 a pay scale equivalent to National Pay grade X. The second party is now trying to alter the pay scale against the interest of the first party and that with that end in view withheld payment of wages according to pay scale fixed by the settlement of 31-10-1974. Second party's denial of payment of wages for the month of November 1974 according to the said pay scale is against the guaranteed right of the first party. Hence this case.

Second party contested the case by filing written statement alleging *inter alia* that the Sole Administrator fixed the wages of the first party under the Industrial Workers Wages Commission Award being a worker in grade I, *i.e.*, Tk. 155—235. The basic salary of first party being fixed at Tk. 150·00 and Tk. 5·00 as additional marginal benefit for fixation. *i.e.* Tk. 155·00 as basic wages. The second party refixed the pay of the individual employee including first party in the appropriate National Pay Scale showing the basic pay and *ad hoc* reliefs of the employees as existing on 30-9-1974. First party is not entitled to get any relief.

It is to be seen—whether the first party is entitled to get relief as prayed for.

FINDINGS

P. W. 1 Nurul Islam, first party, has only examined himself in support of his case. On the other hand, D. W. 1 M. A. Siddique, Export Officer of M/s. Azizuddin Industries Ltd., has examined on behalf of the second party.

It is the definite case of the first party as per case petition and facts that on the basis of agreement dated 31-10-1974 his wages was fixed at Tk. 170 per month with effect from 1-10-1974 in the scale of Tk. 170---240. But the second party stopped to pay wages at the said rate of scale since November, 1974 in spite of first party's demand. Acording to D.W. 1 the alleged agreement referred to by the first party was not an agreement according to law and same was a mere discussion for implementation of National Pay Scale. D. W. 1 further stated that according to the Industrial Workers Wages Commission recommendation the first party was given grade No. X and the same was given by the Sole Administrator. P. W. 1 in his cross has stated that his pay scale has been fixed in accordance with the Industrial Workers Wages Commission recommendation and he was given Tk. 155·00 as basic wages *plus* Tk. 40·00 as Fringe Benefit, *i.e.*, in total Tk· 195·00 per month. According to P. W. 1 he did not accept the said scale as referred to above. The alleged agreement referred to in the first party's case has not been produced during the hearing of this case. No reason is assigned as to why the said important agreement has not been filed by the first party in support of his case. The first party in his cross has stated that the copy of the said agreement has not been given to Government. It is obligatory as per provisions of law that a copy of such agreement or settlement shall be forwarded to the Government of Bangladesh, the Conciliator and such other person as prescribed. In the present case in view of the evidence of the first party the copy of the agreement was not sent to the Government. In such circumstances it is not an agreement within the meaning of provision of I. R.O., as amended in 1970 and as such the question of its enforcement does not arise. Such an agreement cannot be enforced under section 34 of I. R. O. and no right can be said to have accrued to the first party from such agreement. Thus in this view of the case the first party's case must fail and that the first party is not entitled to get any relief in this case.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
11-10-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected
by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case Nos. 681, 684, 685, 687, 690, 692 and 694 of 1974.

(1) Md. Nurul Alam, S/o. Mvi. Tofail Ahmed, Sales Supervisor (1st party of case No. 681 of 1974) ;

(2) Saleh Ahmed, S/o. Late Ahmed Ali, Accounts Clerk (1st party of case No. 684 of 1974);

(3) Md. Jamaluddin, S/o. Mvi. Badsha Mia Sowdagar, Sales Inspector (1st party case No. 685 of 1974);

(4) Maniruddin, S/o. Md. Bashiruddin, Driver (1st party of case No. 687 of 1974 ;

(5) Abdus Sobhan, S/o. Late Abdul Jalil, Peon (1st party of case No. 690 of 1974);

(6) Md. Aslam Meah, S/o. Late Tuku Mia, Peon (1st party of case No. 692 of 1972);

(7) Muzaffar Ahsan, S/o. Late Md. Barkatullah, Supervisor (1st party of case No. 694);

All of M/s. Jamiluddin Ltd., 31, Ghatforhadbag Road, Chittagong—*First Parties*,

versus

The Administrator, M/s. Azizuddin and Allied Concerns, 31, Ghatforhadbag Road, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury } *Members*.
Mr. Juned A. Choudhury }

These I. D. cases Nos. 681, 684, 685, 687, 690, 692 and 694 of 1974 are taken up for hearing analogously as these involve the same question of facts and law.

The first parties of the above mentioned cases are appointed in the establishment of M/s. Jamiluddin Limited in their respective posts in the grade and scale as mentioned in their respective case petitions. They are permanent in their employments . The pay scales of the first parties have been revised from time to time as per agreements between the management and Azizuddin and allied concerns Employees' Union and lastly on 31-10-1974 giving its effect from 1-10-1974. Accordingly the pay scale of the first parties have been fixed

at the rate mentioned in the case petitions, a pay scale equivalent to National Pay grade mentioned in their respective case petitions. The pay scale of the first parties fixed by the agreement dated 31-10-1974 is now a guaranteed right of the first parties protected by the provisions of Shops and Establishments Act, Payment of Wages Act and the Standing Orders Act and the I.R.O. The second party is now trying to alter the pay scale of the first parties against the interest of the first parties and with that end in view withheld payment of wages according to pay scale fixed by the settlement of 31-10-1974. The second party has no right to change the pay scale of the first parties which have been determined by agreements. The denial of payment of wages by the second party for the month of November, 1974 according to the aforesaid pay scale against the guaranteed right of the first parties. The first parties prayed for enforcement of their right and pay sacle fixed on 31-10-1974. The first parties prayed for directing the second party to pay the wages for the month of November, 1974 and onwards in the scale mentioned in their respective prayer portion of the case petitions which are fixed on 31-10-1974 by agreement.

Second party appeared in all these cases and filed written statement separately. The case of the second party is that a meeting between the second party and the representative of the first parties union were held in the chamber of second party on 31-10-1974 to discuss about the introduction of National Pay Scale in respect of the employees engaged in clerical department of the organisation and it was agreed with the National Pay Scale will be introduced in the establishment as per Sole Administrator's letter dated 13-9-1974. As per Sole Administrators directives the slalaries of the first parties were fixed and they were placed in grade and scale correctly. It is further alleged that all the first parties are not workers according to labour laws. The first parties case petitions are misconceived and ill-advised. The first parties brought these cases with motive to make wrongful gain. The second party under order of the Sole Administrator's re-fixed the pay of the individual employees including first parties in the appropriate National Pay scale showing the basic and *ad hoc* relief of the employees as existing on 31-10-1974. The employees having refused to accept their wages in terms of the above decision of the Sole Administrator, have filed these cases for wrongful gain. First parties are not entitled to get any relief in these cases.

It is to be seen—whether the first parties are entitled to get relief as prayed for.

DECISION

P.W. 1, Nurul Alam, first party of case No. 681 of 1974. P. W. 2 Saleh Ahmed is the first party of I. D. case No. 684 of 1974, P. W. 3 Jamaluddin is the first party of I. D. Case No. 685 of 1974, P. W. 4 Moniruddin is the first party of I. D. case No. 687 of 1974, P. W. 5 Abdul Sobhan is the first party of I. D. case No. 698 of 1974. P. W. 6 Aslam Mia is the first party of I. D. case No. 692 of 1974. P. W. 7 Muzaffar Ahmed is the first party of I. D. case No. 694 of 1974. These P. Ws have deposed in support of their respective cases. On the other hand, D. W. 1 M. S. Siddiqui has deposed on behalf of the second party.

According to P. W. 1 he was appointed on 41-1-1969 as a Clerk under M/s. Jamiluddin Limited in the grade and scale of pay of Tk: 80·00 and thereafter in 1973 he was promoted as Sales Supervisor. P. W. 1 further stated

in his cross that as Sales Supervisor his duty is to supervise and inspect all the shops of the company in market. P. W. 2 stated that he was appointed as Clerk on 28-1-1967 under M/s. Jamiluddin Limited. P. W. 3 has stated that he was appointed on 1-4-1969 as a Clerk in the establishment of M/s. Jamiluddin Limited. P. W. 4 stated that he was appointed on 28-5-1965 as Driver in the pay scale of Tk. 100·00 under M/s. Jamiluddin Ltd. P. W. 5 stated that he is appointed on 1-12-1959 as Peon under M/s. Jamiluddin Ltd. P. W. 6 has stated that he was appointed as Peon on 21-9-1967. P. W. 7 has stated that he was appointed as Supervisor on 1-7-1961 under M/s. Jamiluddin Ltd. According to P. W. 7 he goes to market and supervise the sales and also submit report to the company. He further stated that his duty only to supervise the sales in the market. It is the definite case of the first parties that their pay scales have been revised from time to time as per agreement between the management and the Azizudding and Allied Concerns Employees Union and lastly on 31-10-1974 giving its effect from 1-10-1974 that the first parties accepted this change pay scale as a condition of employment and second party has implemented it with effect from 1-10-1974 and that subsequently the second party denied to pay first parties wages as per agreement dated 31-10-1974. Thus it is clear from the cases as well as evidence of first parties that they have come to enforce their right of pay scale on the basis of agreement dated 31-10-1974 Ext. 2.

It is mainly contended on behalf of the second party that the alleged agreement Ext. 2 cannot be termed as agreement or settlement in the eye of law and as such it cannot be enforced under section 34 of the I. R. O. It is not disputed that M/s. Jamiludding Ltd. is a taken over industry by Government and it is managed by the Sole Administrator appointed by the Government. The second party in their written statement has stated that the alleged agreement dated 31-10-1974 is not an agreement within the meaning of I. R.O. 1969 and as such it is not enforceable under section 34 of the I. R. O. It is obligatory as per provisions of law that a copy of agreement or settlement shall be forwarded to government, the Conciliator and such other persons as may be prescribed. The alleged agreement Ext. 2 will not show that any copy of the agreement was sent to any such persons as provided by law indicated above. P. W. 5 in his cross has stated that agreement Ext. 2 does not show if any copy of the same was sent to the proper authority. P. W. 6 cannot say whether any copy of the alleged agreement was sent to the Government or conciliator. There is no evidence on record to show that any copy of the said agreement was sent to the Government of Bangladesh or the Conciliator or such other person as prescribed. In such circumstances it is not a "Settlement" within the meaning of the provisions of I. R. O., 1969 as amended in 1970 and as such question of its enforcement does not and cannot arise. I have reason to say that Ext. 2 cannot be accepted as Settlement in the eye of law and as such it cannot be enforced under section 34 of the I.R.O. and no right can be said to have been accrued to any body or first parties from such in-affective settlement (Ext. 2).

Learned lawyer on behalf of the second party produced a true copy of *Bangladesh Gazette, Extraordinary* published by the authority in November 6, 1973 in order to show that the cases of first parties of I. D. Case No. 687, 690 and 692 come under Industrial Workers Wages Commission Report and the said agreement Ext. 2 shall not be enforceable in any manner for the benefit of the first parties and the said 3 cases fall within the definition of workers mentioned in para 3, clause (c) of the Ordinance No. XXIII of 1973. I find

sufficient force in the said contention, even if agreement Ext. 2 is found to be "Settlement" according to I. R. O. These first parties of I. D. case Nos. 687, 690 and 692 of 1974 are not entitled to get benefit of the said agreement, as they are entitled to get pay under the Industrial Workers Wages Commission Report.

I have already found above that the document Ext. 2 cannot be regarded as agreement under the I. R. O. giving any right to the parties which can be enforced under section 34 of the I.R.O. Thus the first parties who mainly wanted to enforce their right on the basis of such agreement are not entitled to get the relief as prayed for.

Members are consulted over the matter.

Ordered

That the abovementioned seven cases *viz.*, I. D. case Nos. 681, 684, 685, 687, 690, 692 and 694 of 1974 be dismissed on contest without cost. The judgement passed in I. D. case No. 681 of 1974 covers all the remaining 6 (six) cases.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
27-9-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected
by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 682 of 1974.

H. A. Rahman, S/o. late Shah A. Majid, Sales Inspector, M/s. Jamaluddin Ltd., 31, Ghatforhadbeg Road, Chittagong—*First Party,*

versus

The Administrator, M/s. Azizuddin & Allied Concerns, 31, Ghatforhadbeg Road, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Chowdhury
} *Members.*

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by H. A. Rahman, first party with a prayer for directing payment of of wages for the month of November and onwards in the scale of Tk. 244—420 which is fixed on 31-10-1974.

The case of the first party is that he was appointed in the establishment of M/s. Azizuddin Limited on 15-9-1962 as an Inspector in the grade and scale of pay of Tk. 100 and subsequently promoted in the scale of Tk. 200·00. The first party is permanent in his employment. The pay scale of the first party has been revised from time to time as per agreement between the management and the employees union and lastly on 31-10-1974 giving its effect from 1-10-1974. Accordingly the pay scale of the first party has been fixed at Tk. 244—420 as pay scale, equivalent to National Grade No. VIII. First party accepted this changed pay scale and the second party has implemented it. The second party is now trying to alter the pay scale of the first party and with that end in view withheld payment of wages according to pay scale fixed by the settlement dated 31-10-1974. The second party has no right to change the pay scale of the first party which was dertermined by settlement. The denial of payment of wages by second party for the month of November, 1974 is against the guaranteed right of the first party. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that as regards the statement made in para. 4 of the case petition, while it is correct that the first party was placed in the equivalent scale of national grade VIII and that fixing of first party at Tk.244 in the scale referred to above was correctly done. The first party has, therefore, no grievance against the second party, as he has no cause of action in this case.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

Neither party adduced any oral evidence.

At the time of hearing of this case the learned lawyer of the second party states that the case of the first party referred to in para. 4 of the case petition has not been disputed or denied by the second party in ther written statement and as such the first party has no grievance against the second party. In para. 8 of the written statement it has been admitted by the second party that the first party in the equivalent to National Pay Scale grade VIII was placed and his pay was fixed at Tk. 244·00 in addition to fringe benefit of Tk. 90·00. According to para. 13 of the written statement the first party's total salary along with fringe benefit comes to Tk. 344·00. Since the second party has agreed to place the first party in the equivalent grade of National Pay Scale, *i. e.*, in the scale of Tk. 220—420, the first party has got no grievance. So, this case be disposed of accordingly.

Members are consulted over the matter.

Ordered

That the case be disposed of on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-8-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 683 of 1974.

Subash Chandra Dhar, S/o. Babu Jitendra Kumar Dhar, Sales Inspector, M/S. Jamiluddin Ltd., 31, Ghatforhadbeg Road, Chittagong—*First Party*,

versus

The Administrator, M/S. Azizuddin and Allied Concerns, 31, Ghatforhadbeg Road, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members*.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Subash Chandra Dhar, first party with a prayer for directing payment of his wages for the month of November, 1974 and onwards in the scale of Tk. 220—420 which was fixed on 31-10-1974.

The case of the first party is that he was appointed in the second party's establishment on 1-11-1973 as Inspector in the grade and scale of pay of Tk.130. First party is permanent in his employment. The pay scale of the first party has been received time to time as per agreements between the management and the employees' union. Accordingly the pay scale of the first party has been fixed at Tk. 220—420, a pay scale equivelent to National Pay Scale of grade VIII. first party has accepted this changed pay scale and second party has implemented it with effect from 1-10-1974. The second party is now trying to alter the pay scale of the first party against the interest of the first party and with that end in view withheld payment of wages.

Second party appeared and contested the case by filing written statement alleging *inter alia* that as per Sole Administrator's directives the first party's basic salary being Tk. 180·00 he should be given addl. minimum benefit of Tk. 24·00 and thus his basic salary comes to Tk. 204·00. First party was allowed further additional marginal adjustment of Tk. 16·00 for fixation in grade VIII in the scale of Tk. 220—420 and so his basic salary is fixed at Tk. 220 correctly in additional to the fringe benefit of Tk. 90·00. Thus his total salary including fringe benefit comes to Tk. 310·00. The first pariy is, therefore, no grievance according to his own case.

It is to be seen whether first party is entitled to get the relief prayed for.

DECISION

Neither party adduced any oral evidence.

At the time of hearing, the learned lawyer appearing on behalf of the second party by referring his paras. 8 and 13 of the written statement has stated that the first party in this case has no cause of action against the

second party since the second party has agreed to place the first party in grade VIII of the National Pay Scale, *i.e.*, in the scale of Tk. 220—420, the first party has got no grievance. I have gone through the said paragaraphs of the written statement of the second party where it is clearly stated that the first party has been placed by the second party in the equivalent grade VIII of the National Pay Scale and fixed his salary at Tk. 220 in the scale of Tk. 220—420. After this, I think the first party has no grievance at all against the second party.

Members are consulted over the matter.

Ordered

That the case he disposed of in view of my discussions above, without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
10-9-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No, 686 of 1974.

A. Mannan, Clerk, S/o. late Mr. A. Jabber, C/o. Jamiluddin Limited, 31, Ghatforhadbeg Road, Chittagong—*First Party*,

versus

The Administrator, M/S. Azizuddin and Allied Concerns, 31, Ghatforhadbeg Road, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury .. } *Members.*
Mr. Juned A. Choudhury .. ..

By this application under section 34 of the Industrial Relations Ordinance, 1969 A. Mannan, first party seeks a direction on the second party to make payment of his wages for the month of November, and onwards in the scale of Tk. 328—420 which is fixed on 31-10-1974.

The case of the first party is that he is a permanent worker and his pay scale has been revised from time to time as per agreements dated 31-10-1974 and accordingly the pay scale of the first party has been fixed at Tk. 328—420, a pay scale equivalent to National Pay Scale grade VIII. But the second party's denial of payment of wages for the month of November 1974 according to aforesaid pay scale is against the guaranteed right of the first party. Hence, this case.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that first party was placed in the equivalent grade VIII of National Pay Scale and his pay has been fixed at Tk. 328·00, in addition to fringe benefit of Tk. 90·00. Thus the first party has no grievance according to his own case.

It is to be seen—whether the first party is entitled to the relief prayed for.

FINDINGS

Neither party adduced any evidence in this case. It appears from the written statement of the second party that the second party agreed to put the first party in the pay scale and national grade VIII as sought for by the first party in his case petition. So I find that the party has no grievance or cause of action in this case, and accordingly this case should be disposed of.

Members are consulted over the matter.

Ordered,

That the case be disposed of on contest without cost with the above observation.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
11-9-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 688 of 1974.

S.M. Mahfuzul Haque, S/o. Mvi. Nazir Ahmed, Sales Inspector, M/S. Jamiluddin Ltd., 31, Ghatforhadbegh, Chittagong—*First Party*"

versus

The Administrator, M/S. Azizuddin and Allied Concerns, 31, Ghatforhadbegh Road, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury ... ... } *Members.*

By this application under section 34 of the Industrial Relations Ordinance 1969 the first party S.M. Mahfuzul Huq seeks a direction on second party to pay his wages for the month of November, 1974 and onwards in the scale of Tk. 220·00 to 420·00 which is fixed on 31-10-1974.

As per agreement between the management and the Azizuddin and Allied concerns employees' union, the pay scale of the first party has been fixed at Tk. 220—420·00, a pay scale equivalent to National Pay Scale of grade VIII. Second party accepted the same and implemented it but is now denying payment of wages for the month of November 1974 according to the said pay scale, which is against the guaranteed right of the first party. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that they have already offered the first party the National Pay Scale of grade VII and accordingly total basic salary of the first party comes to Tk. 220·00 per month and so no wrong was done to the first party. The first party has no cause of action in this case.

It is to be seen—whether the first party is entitled to get the benefit prayed for.

DECISION

Neither party adduced any oral evidence. It is not disputed that the first party is a permanent employee under the second party with effect from 27-7-1972 and his pay scale has been fixed at Tk. 220·00 in a scale equivalent to National Pay Grade No. VIII. Second party in para. 12 of his written statement admitted that they have already offered the first party the National Pay Scale of grade VIII, *i.e.*, the first party has been put to the scale of Tk. 220—420 *plus* fringe benefit of Tk. 90·00 bringing first party's total salary to Tk. 310·00 per month. Thus I find that the first party has got no grievance nor any cause of action. In view of my above discussions this case may be disposed of as per offer made by the second party to the first party.

Members are consulted.

Ordered

That the case be disposed of in view of my observation above, on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
15-9-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 691 of 1974.

Serajuddin, Darwan, S/o. Late Abdul Latif, M/S. Jamiluddin Limited, 31, Ghatforhadbeg Road, Chittagong—*First Party*,

versus

The Administrator, M/S. Azizuddin and Allied Concern, 31, Ghatforhadbeg Road, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury .. }
Mr. Juned A. Chouhdury .. .. } *Members*.

This is an application under section 34 of the Industrial Relations Ordinance 1969 by first party Serajuddin with a prayer for directing the second party to pay the wages for the month of November 1974 and onwards in the scale of Tk. 170—240. His case is that first party is a permanent worker. As per agreement the pay scale of the first party has been fixed at Tk. 170—240, a pay scale equivalent to National Pay Scale of Grade No. X, but second party is trying to alter the pay scale and ultimately refused to pay wages for the month of November 1974, according to the aforesaid pay scale. Hence, this case.

Second party contested the case by filing a written statement alleging that the first party was fixed in the equivalent scale of National Pay Scale of grade No X and his wages has been fixed at Tk. 170 and as such first party has no grievance against second party according to his own case.

It is to be seen—whether the first party is entitled to get the relief prayed for.

DECISION.

P. W. 1 Serajuddin has only examined himself in support of his case. P.W. 1 in his evidence has stated that second party in his written statement clearly stated that the second party giving him (P.W. 1) Tk. 170 in National grade No. X and as such he has no dispute or grievance against the second party when the second party agreed to pay first party according to his claim. The second party in their written statement has clearly stated that they placed the first party in the equivalent National Pay Scale of grade X and fixed his pay at Tk. 170·00, in addition to fringe benefit of Tk. 70·00, bringing his total salary at Tk. 240·00. From the aforesaid discussions I find that the first party has no grievance against the second party according to his own case.

Members are consulted over the matter.

Ordered.

That the case be disposed of on contest without cost with the above observation.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
10-9-1975.

Typed at my dictation by
Mr. M. M. Chowdhury.

A. AHMED,
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 719 of 1974.

Mohammed Solaiman, Darwan, M/s. Azizuddin Limited, 31, Ghatforhadbeg Road, Chittagong—*First Party*,

versus

The Administrator, M/s. Azizuddin and Allied Concerns, 31, Ghatforhadbeg, Road, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury .. .. ..
Mr. Juned A Choudhury .. .. .. } *Members*.

Representation: Mr. Lutful Haque Mazumder, Advocate, appeared for the first party and Mr. Azizul Huq Chowdhury, Advocate appeared for the 2nd party.

This case under section 34 of the Industrial Relations Ordinance, 1969 by the first party Mohammed Solaiman has been filed with a prayer for directing the second party to pay wages for the month of November, 1974 and onwards in the scale of Tk. 210—240, which was fixed on 30-9-1974 *vide* agreement.

First party's case is that he was appointed in the establishment of the second party on 15-7-1957 as Darwan in the grade and scale of Tk. 83·00. He became permanent in his employment subsequently. The pay scale of the first party in view of agreement dated 31-10-1974 has been fixed at Tk. 210—240 a pay scale equivalent to National Pay Grade No. X. The second party is now trying to alter the pay scale of the first party and second party withheld payment of wages for the month of November, 1974, though second party paid wages at the rate fixed for the month of October, 1974.

Second party contested the case by filing written statement alleging *inter alia* that the case under section 34 as framed is not maintainable and that as per Scale Administrator directions his (first party) basic salary should be fixed in the scale of Tk· 130—240 in grade X. The basic salary of first party being Tk. 180·00, he becomes within the scale and grade mentioned above. First party's total salary comes to Tk. 268·00 including all allowances. Thus the fixation of grade of the first party on the basic salary was incorrectly done earlier which was subsequently corrected in the manner referred to above. First party has no cause of action in this case against the second party.

It is to be seen whether the first party is entitled to get the relief as prayed for.

FINDINGS

P.W. 1, first party has only examined himself in support of his case. None is examined on behalf of the second party.

P.W. 1 has stated that he is now aged 70 years and has been serving under the second party as Darwan with effect from 15-7-1957. The evidence in cross of P.W. 1 shows that he knows nothing about his case but he left everything regarding this case with the Employees Union. P.W. 1 has stated in cross that he has nothing to show that his Union knows whether they (Union) will accept the second party's case referred to in the written statement. P.W. 1 further stated in cross that he wants Tk. 240·00 per month including all benefits and not more. He further stated in his cross that he is not ready to accept Tk. 268·00 per month including allowances as offered to him by the second party. Admittedly first party's salary has been fixed in the scale of Tk· 130—240 in National Grade X, and the second party has elaborately described in para. 12 of the written statement as to how the total salary of the first party comes to Tk. 268·00 including all benefits. In view of evidence of P.W. 1 referred to above, he prays for directing the second party to pay Tk. 240·00 per month including all alowances and benefits, although the second party offerred to pay Tk. 268·00 per month including all benefits to the first party. Thus from the evidence of P.W. 1 on record goes to show that he failed to prove his case referred to in the case petition. So, the first party is not entitled to get the relief in this case.

Members are consulted over the matter.

Ordered,

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
31-7-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 721 of 1974

Monir Ahmed, S/o. Late Serajul Huda Ahmed, Store Assistant, M/s. Azizuddin Ltd., 31, Ghatforhadbeg Road, Chittagong—*First Party*,

versus

The Administrator, M/s. Azizuddin and Allied Concernes, 31, Ghatforhadbeg Road, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury — } *Members.*

Representations: Mr. Lutful Haque Mazumder, Advocate appeared for the first party and Mr. Azizul Huq Chowdhury, Advocate appeared for the 2nd party.

By this application under section 34 of the Industrial Relations Ordinance, 1969 first party Monir Ahmed seeks a direction upon the second party for payment of wages for the months of November and onwards in the scale of Tk. 240—420, which is fixed on 31-10-1974.

The case of the first party is that he was appointed in the establishment of Messrs. Azizuddin Ltd., on 10-11-1972 as a Store Assistant in the grade and scale of pay of Tk. 150·00. First party was permanent in his employment. The pay scale of the first party has been revised from time to time as per agreements and lastly on 31-10-1974 an agreement was made. Accordingly pay scale of the first party has been fixed at Tk. 220—420, a pay scale of equivalent to National Pay Scale of Grade No. VIII. The pay scale of the first party by agreement, is a guranteed right of the first party protected by the provisions of Shops and Establishment Act, Standing Orders, Act, and the Industrial Relations Ordinance. The second party is now trying to alter the pay scale of the first party and with that end in view withheld payment of wages according to pay scale fixed by settlement dated 31-10-1974. The second party denied to pay wages for the month of November, 1974 according to the said pay scale. Hence, this case.

Second party appeared and contested the case by filing written statement alleging *inter alia* that the application under section 34 of the I.R.O., is bad for non-joinder of the parties and that the said case as framed is not maintainable.

The case of the second party is that the first party has been fixed at Tk. 288—420; a pay scale equivalent to National Pay Grade VIII. As per Sole Administrator's direction dated 17-9-1974 the first party also has been fixed in the same grade and scale and so, the first party has in fact no grievance at all. The second party under Order of Sole Administrator fixed the pay of the individual employee including the first party in the appropriate pay scale showing the basic pay and adhoc relief of the employees as existing on 30-9-1974. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get any relief as prayed for.

FINDINGS

P.W. 1, Monir Ahmed, first party has only examined himself in suport of his case. None is examined on behalf of the second party.

At the time of argument learned lawyer appearing on behalf of the second party has stated that there is no cause of action in the case and that the first party (P.W. 1) has not proved any cause of action and as such, this case is liable to be dismissed. So, I am to decide the case in view of the evidence of P.W. 1 on record. P.W. 1 has stated that he was appointed under M/s. Azizuddin Limited on 16-11-1972 as Store Asstt. P.W. 1 in his cross has stated that he never made any complain to the second party that the second party wanted to pay him less basic wages from November, 1974. He (P. W. 1)

further stated that he is now in the National Grade VIII and getting the said scale with benefits attached with the same. P.W. 1 further stated that he never submitted any grievance or representation to the second party after his pay was fixed by the second party. P.W. 1 cannot say who refused to pay his wages for November, 1974. P.W. 1 also does not remember what basic pay has been offered to him in November, 1974. First party's case referred to in para. 4 of his case petition is not disputed by the second party as will appear from second party's para. 7 of the written statement. From the evidence of P.W. 1 referred to above and my discussions above I find that first party has no cause of action in this case against the second party and as such, first party is not entitled to get any whatsoever. Consequently this case is liable to be dismissed.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Ladour Court, Chittagong.

Typed by Mr. M. M. Chowdhury at
my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH.

Industrial Dispute Case No. 794 of 1974.

Ali Ahmed, son of late Mansur Ahmed, Village Dampara, 2 Paltan Road, P. S. Kotwali, Chittagong—*First Party*,

versus

The Manager, M/S. Rahimani Industries Limited, F. I. D. C. Road, Kalurghat Heavy Industrial Area, P. S. Panchalaish, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury — } *Members.*

Representation : Mr. A. K. M. Mohasanuddin Ahmed Chowdhury, Advocate appeared for the first party and Mr. A. K. M. Shamsul Huda, Advocate appeared for the Second party.

By this application under section 34 of I. R. O., 1969 the first party who was a Truck Driver since 1962 under second party seeks a direction on the later either to reinstate him in service or to pay the termination benefit as per section 19(1) of the Standing Orders Act, 1965 upon the allegation that he was illegally terminated from service by the second party verbally on 30-3-1969 without giving him any termination benefit.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was the Driver as alleged under the second party and that the second party never terminated him from service on the date as alleged. The first party is not entitled to get any relief whatsoever.

It is to be seen whether the first party is entitled to be reinstated in his former post or terminated benefit as claimed.

FINDINGS

P.W.1 Ali Ahmed has only examined himself in support of his case. None is examined on behalf of the second party. The very evidence of P. W. 1 on record disproves his case of oral termination referred to in the case petition. According to P. W. 1, in 1972 when he met Mr. Osman, the owner of the second party establishment who then orally terminated his service. In cross P.W.1 also stated that about 14/15 years back his service so far he remembered was terminated but according to para 3 of his case petition, second party on 30-3-1969 most illegally terminated his service verbally. I, therefore, find that first party is hopelessly failed to prove his case of oral termination on 30-3-1969.

Of course, I. R.O. does not provide any time limit for an application under section 34. This does not mean that the first party can make his application at any time according to his sweet will, pleasure and convenience, regardless of the adverse consequences that the other party may be put to. So, in such case the Court has to exercise its inherent jurisdiction and decide time limit for such application. Section 25 of the Standing Orders Act provides that a worker having grievance for violation of any right guaranteed by that act may make a complaint within 75 days of the cause of grievance. Here in this particular case, the first party in his evidence gave no reason about his filing of this I D. case so lately. I, therefore, find that this case is also barred by time. In any view of the case the first party is not entitled to get either reinstatement or termination benefit.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
12-8-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected by me.

A. AHMED
Chairman,
12-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 3 of 1975.

Mrs. Sabiha Hossain, C/o. Mr. M. K. Khaleque, Qr. No. EA-1/23, East Ferozshah Colony, P. O. Ferozshah, Chittagong—*First Party*,

versus

(1) Messrs. Glaxo Bangladesh Limited, Fouzderhat Industrial Area, P. O. North Kattali, Chittagong;

(2) The Personnel Manager, M/S. Glaxo Bangladesh Limited, Fouzderhat Industrial Area, P. O. North Kattali, Chittagong—*Second Parties*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury
Mr Juned A. Choudhury. } *Members*.

Representation—Mr. Md. Omar Hayat, Advocate appeared for the first party and Mr. A. M. Rashiduzzaman, Bar-at-Law, appeared for the second party.

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965, the first party Mrs. Sabiha Hossain seeks a direction on the second party to reinstate her in her former post with back wages.

The case of the first party is that she was serving under the second party company having been appointed in a post of Nurse since 1-6-1968 at the total satisfaction of her superiors, having a spotless service record, at a monthly salary of Taka 630·00. First party was issued with a charge-sheet dated 7-9-1974 with some false and baseless allegations. First party replied the said charge *vide* her written explanation dated 13-9-1974 but the second party without taking into consideration her written reply, arranged a fake show of enquiry on 4-10-1974 into these baseless charges wherein the first party was neither given adequate opportunity to adduce her evidence, nor allowed her to cross-examine the witnesses of the second party. The second party thereafter by their letter dated 1-11-1974 dismissed her from service illegally on false and manufactured charges. The first party thereafter made a written representation dated 12-11-1974 against the order of dismissal but the second party gave no reply of the same. It is further alleged that the second party prior to dismissal was harassing first party in various ways, because of her support to trade union activities of workers of the factory. The second party by way of planned harrasment withdrew the transport facility, which the first party entitled and withdrew the special transport subsidy although other female workers of the second party are enjoying the same. No free and impartial enquiry was held. The order of dismissal is illegal and *mala fide* and is liable to set aside. The second party has victimised the innocent employee like the first party. First party is entitled to get the relief as prayed for.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that the first party was issued with a charge-sheet, she submitted her explanation and enquiry was held to investigate the charges against her in which the first party duly participated and she was dismissed from service for misconduct only after she was found guilty in corse of domestic enquiry At the time of her dismissal, her (first party) monthty salary was Taka 530·00. The first party was given all reasonable opportunity in defending her during. enquiry. The first party was legally dismissed from service for misconduct and therefore, there was no cause for her reinstatement in service with back wages.

It is to be seen whether the first party is entitled to be reinstated in her service with back wages.

FINDINGS

P.W.1, Mrs. Sabiha Hossain, first party, has examined herself along another witness in support of her case. On the other hand, D.W.1, A.R.M.F. Hadi, the Personnel Manager of the second party No. 1 has examined on behalf of the second party.

In the complaint petition of this case, the first party has challenged her dismissal on the following grounds :

(1) That the charge-sheet issued to her Ext. 1 disclosed no misconduct ;

(2) That her dismissal contravened the provisions of Standing Orders Act ;

(3) That at the enquiry, she was not given adequate opportunity to adduce evidence, she was not allowed any witness in her defence and she was not allowed to cross examine the Management's witnesses ;

(4) That she was dismissed for her trade union activities.

Regarding (1) above, the charge-sheet dated 7-9-1974 Ext. 1 issued to the first party clearly states that she issued a prescription on 6-9-1974 Ext. D in favour of Miss Momota Halder, for the medicines stated therein and collected these medicines herself. On the same date she was found in possession of these medicines during routine checking after office hours by Mrs. Islam and that she informed Mrs. Islam that she was holding them for Miss Halder. Subsequently on checking the Medical Centre Card of Miss Halder, it appeared that she did not attend Medical Centre on 6-9-1974 and Miss Halder also confirmed that she did not call at Medical centre on 6-9-1974. Thus the narration of the facts in the charge-sheet Ext. 1 clearly disclose the allegation of theft of company's medicines by the first party and of issuance of false prescription by the first party and these constitute misconduct as enumerated in section 17(3)(b) and (k) of the Standing Orders Act and are specifically mentioned in the charge-sheet. Therefore, there is no substance in the contention of the first party that the charge-sheet does not disclose any misconduct.

Next contention in the complaint petition is that her dismissal contravened the provisions of the Standing Orders Act. No particular of this objection is given in the petition of complaint and in her evidence at the hearing. The first party did not throw any light on it. On the contrarty, P. W. 1 admits that she was charge-sheeted *vide* Ext. 1 and thereafter submitted explanation

Ext. A dated 13-9-1974 and thereafter an enquiry was held where she attended. It may be mentioned here that the enquiry was held apparently at the initiative of the management, though there was no prayer for personal hearing by the first party and despite the fact that her explanation was not found satisfactory by the management. Again, both the second parties are covered by the definition of "Employer" under Standing Orders Act and in para 2 of the case petition the first party stated that she was dismissed by the second parties by letter dated 1-11-1974. Thus it is admitted by the first party that her dismissal was an act of both the second parties. Therefore, on the basis of fact admitted by the first party there has been compliance of section 18(1) of the Standing Orders Act and this is the section which embodies the procedure for dismissal. Thus evidence and pleadings on this point do not support the above contention of the first party.

Next, I come to the allegations of the first party in the complaint petition regarding enquiry. She complains that she was not given adequate opportunity to adduce her evidence at the enquiry. So, the first party admits that second party did hold an enquiry. Now whilst in her complaint petition, the first party complains that she was not given "adequate opportunity" to adduce her evidence in her written representation dated 12-11-1974 Ext. 3, on the other hand, she complained that her evidence was not "Fully recorded". These are vague and contradictory allegations and at the hearing she neither explains what she meant by adequate opportunity, nor she states what part of her evidence was not recorded at the enquiry. In the absence of any specific particulars of the evidence in support of this allegations, how can this Court give any finding on them. On the other hand, I have the records of enquiry proceedings, which the first party has admitted to have singned in each page. P.W. 1 stated that she put her signatures in the recorded statments of witnesses, who were examined during the enquiry including hereself. This shows that first party asked by the enquiry officer, if she had anything to add to what she stated in her examination and in reply the first party handed to the enquiry officer a copy of her letter to the Personnel Manager containing the list of witnesses she wished to examine in her defence. At no stage of the hearing, it was asserted or suggested by the first party that her signatures on the records of enquiry proceedings including her statement was obtained on blank papers or by coercion, threat or force or that enquiry proceeding produced by the second party, on each page whereof she has signed, are not the records of the enquiry proceeding. Thus it is clear that she was asked to make statement at the enquiry but she did not. First party's signature on the records of enquiry proceedings including Ext. H must be construed as her certification that it is correctly recorded. Therefore, it is clear from the admission of the first party that shw was given opportunity to depose at the enquiry but she declined to do so. More specifically, at the enquiry she had nothing further to add to what was stated in her explanation dated 13-9-1974 Ext. A. The enquiry report has been produced in Court by the second party and marked Ext. G. It appears that elaborate enquiry was conducted by a senior official of the second party, namely, the Factory Manager and depositions of the witnesses including P.W. 1 have been recorded in 27 hand-written pages including Ext. H and the first party has signed on each sheet which indicates that she did not question the propriety of the enquiry proceedings.

Now, I can come to the allegation of the first party that she was not allowed to cross examine the witnesses of the second party management. But in her written representation dated 12-11-1974 Ext. 3 she complains that she was

frequently prevented by the enquiry officer from cross examining the witnesses on vital and material points. Now, these again are self contradictory statements. The evidence of P. W. 1 at the enquiry surely multiplies these contradictions, instead of resolving them. Here again, there is no specific allegation that she wanted to put so and so question to so and so witness and that such question was disallowed by the enquiry officer. Turning to the records of enquiry proceedings, every page thereof is signed by the first party (Ext. H). I find that the first party not only cross examined all the management's witnesses but also one or two of her own witnesses. Therefore, the allegations of the first party that she was not allowed to cross-examine the management's witnesses or that she was frequently prevented by the enquiry officer from cross examining the witnesses on material points controverted by the records of enquiry proceeding, which are signed by none other than the first party.

It is alleged by the first party in her case petition that her witnesses were not allowed by the management to appear at the enquiry. The case petition goes on to say that such was the terror created among the workers that none of her witnesses dared to depose at the enquiry. But the first party's own representation Ext. 3 does not contain any reference to this. The first party produced as many as 4 witnesses in her defence and I find nothing on record to show that she wanted to produce more witnesses and was not allowed to do so. This allegation is also not mentioned in her grievance petition Ext. 3 rather I find that she gave a written list of her 4 witnesses Ext. C and all o' them appeared at the enquiry. In the report of enquiry Ext. G, the enquiry officer has discussed the evidence of these 4 witnesses and has given his reasons for rejecting them. P. W. 1 also admitted that 4 witnesses as per petition Ext. C submitted by her to the management were examined in the enquiry. So, by her own deposition P. W. 1 has proved that what she had stated in her complaint petition is totally untrue. It is, therefore, clear from the aforesaid discussions that the allegations of the first party against the enquiry held by the second party management is self-contradictory, baseless and without any substance.

Lastly, in her omcplaint petition, the first party has challenged her dismissal on the ground that she has been victimised for her trade union activities. Here again, the first party contradicts her own assertion in her representation Ext. 3. In Ext. 3 her case was that she was dismissed because she protested to the management and the union against the curtailment of her service condition and existing facilities, etc. Again, nothing was mentioned about her trade union activities in her explanation Ext. A. In cross examination the first party admitted that in her numerous correspondence with the management regarding her curtailment of transport facility and duty hours, but she never stated that such curtailment was atributable to her trade union activities. It has been also argued on behalf of the first party that the letter of dismissal was signed by the Personnel Manager who as D. W. 1 admitted in cross examination that "I have no power to dismiss any employee without written order of authority". The first party has not challenged the authority of the Personnel Manager to dismiss, either, in her grievance petition Ext. 3 or in the case petition. On the contrary, by addressing the grievance petition Ext. 3 and all other petitions Exts. 2, 4 and 5, A and C to the Personnel Manager, she has recognised him (D. W. 1) as employer. Moreover, the appointment letter of the first party Ext. F was also signed by the Personnel Manager. D. W.1 also stated in his evidence

that the Acting General Manager approved the dismissal. Moreover, it is clear that the allegation of victimisation for trade union activities in the first party's complaint petition is an afterthought.

Moreover, the definition of "Employer" in the Standing Orders Act embraces every Manager, and as such, the said law confers the status and powers of an employer on every Manager, regardlesss of private and internal arrangement among the Managers of an establishment. It is an admitted fact that D. W. 1 is the Personnel Manager. So, he can be treated to be an employer under the Standing Orders Act. D. W. 1 in his evidence has stated that the then Acting General Manager Mr. A. H. Siddiqui ordered him to dismiss first party and that Mr. Rowe, the General Manager was on leave then. This very evidence of D. W. 1 goes to show that the General Manager approved the dismissal, which also meets the requirement of law.

It is contended on behalf of the first party that the stolen goods was not recovered from the first party and that if she had stolen the goods, she would be apprehended at the gate by the guards. Both these questions relate to the merit of the case and I think this Court cannot legally go into this question. Even, let me look into this question. It is true that the goods stolen was not recovered from the first party. The reason is given in the charge-sheet Ext. 1. It is stated that when Mrs. Islam found medicines in possession of the first party, the latter said that she was holding them for Miss Halder. This is a plausible explanation and Mrs. Islam apparently believed her, because it is not a crime to be custodian of a colleague's property and the first party was not charge-sheeted for being in possession of these medicines at that particular time. Since Mrs. Islam did not disbelieve her (first party), her explanation for her temporary possession of the medicines for some one else behalf, the question of recovery of the medicines of the first party at that point of time did not arise. At that time, no body in the company knew that they were stolen medicines. The charge-sheet explains that subsequently on checking Medical Centre Card of Miss. Halder Ext. E and on checking her personally, the company learnt that Miss Halder did not call at the Medical Centre on 6-9-1974 and so the allegation of theft against the first party. Now in her explanation Ext. A, the defence of the first party is that she gave the medicine in question to Miss. Halder. This then is an admission on her part that she was in possession of the stolen goods, otherwise how could she gave it to Miss. Halder. Therefore, the charge as framed against the first party in Ext. 1 read with her own explanation goes to show that it is totally irrelevant and immaterial in their contest that the stolen goods were not recovered from her person. The Court will never look into any defence to the charge against a worker, unless it has been raised before the employer, because, it is for the employer to decide if an worker is guilty of misconduct and in doing so the employer should only consider the defence taken by the worker in his explanation and at the enquiry. The Court will only see, if on the basis of evidence before it, the employer or the enquiry officer could come to the finding that the worker is guilty of the charge against him/her.

In the complaint petition under section 25(1)(b) of the Standing Orders Act the scope of enquiry of Labour Court is further limited to the specific grievance of a worker in respect of any matter covered under that Act. In any event it is not the function of the Court to decide if a worker is guilty of misconduct. That is for the employer or enquiry officer to decide. The Court

will only decide if the employer committed any illegality in finding the worker guilty of misconduct. If the Court does not find any illegality, it has no right to interfere with the order of the employer.

The record of enquiry proceeding show that the first party was asked by the enquiry officer if she had anything further to add to what she had stated in her explanation, and she in reply submitted a copy of her letter to the Personnel Manager giving a list of persons she wished to examine at the enquiry. In fact, it is also her case that an enquiry was held and in her deposition she stated that Mr Habibur Rahman was the enquiry officer. It also apperas from the record that the first party cross examined all the 3 witnesses for the management and 4 witnesses as per her aforesaid list were examined in her defence. Some of whom she also cross examined. It is, therefore, clear that first party was given every reasonable opportunity to defend herself at the enquiry. In the enquiry report Ext. G the enquiry Officer has fairly and logically evaluated the evidence before him and come to the finding that the charges againt the first party have been proved.

I have carefully scrutinised all the papers and procedures and circumstances involved. I find that the first party was dismissed from the service after holding proper enquiry. So, there can be no warrant for interference with the order complained of.

In arriving at the above decision I have considered the opinion of the learned Members.

As the first party is a professional worker, the order of dismissal will impair her future prospect. I, therefore, suggest that she could prefer a fresh appeal to the Management to review her dismissal, which the second party management should sympathetically consider on humanitarian ground.

In the result, it is—

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
22-11-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected by me.

A. AHMED
Chairman,

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complajnt Case No. 9 of 1975.

Nurul Islam, S/o. Md. Montaz Mia, C/o. Haji Chand Meah Bari, P/O. and Village Hajipur, P.S. Begumganj, Noakhali—*First Party*,

versus

The Manager, Messrs Delta Jute Mills Ltd. Chowmuhani, Noakhali—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members*.

By this application under section 25(i)(b) of the Employment of Labour (Standing Orders) Act, 1965 the first party Nurul Islam seeks direction upon the second party to reinstate him in his former post with back wages from the date of dismissal after setting aside the dismissal in question.

The case of the first party is that he was appointed as *Badli* worker under second party mill with effect from 19-1-1971. He became a permanent worker under the establishment of the second party by operation of law, after completion of continuous work for more than 3 months. First party's last weekly pay was Tk. 41·54 apart from Medical Allowance and House Rent allowance. On 4-9-1974 the fitst party was illegally suspended and an illegal charge-sheet was given to him with vague allegation of misconduct. The same was replied by the first party denying the allegations. No proper and legal domestic enquiry was held. The first party was not given proper opportunity during domestic enquiry for his defence. First party was illegally dismissed, *vide* order, dated 1-11-1974 from service which was received by the first party on 12-11-1974 and thereafter first party represented his grievances on 15-11-1974 but the second party neither enquired into the matter nor gave any decision. Hence, this case.

Second party cantested the case by filing written statement alleging *inter alia* that from the very beginning of his service the first party was found to be negligent and inattentive in his job. But serveral occasions first party was also found to be absenting from duty and for that he was issued with number of show cause notices in previous times but the management, however, considering his age exonerated him from liablity of these charges. On 4-9-1974 the first party was found to be sitting idle keeping the machine on running condition and was killing time without production only in order to have his hours of work recorded for the purpose of wages. On that day (4-9-1974) the departmental head finding him (first party) in hampering production of the mill, ordered him to stop the machine forthwith. Instead of complying with the order of his superior, the first party again started running another machine and thereby behaved in riotous and disorderly way with the said man, in doing so, the first party committed an act of insubordination, disobedience to the

order of his superior as well as dishonesty in connection with employer's business. The second party for his said misconduct charge-sheeted the first party who submitted explanation which was found to be quite unsatisfactory and thereafter domestic enquiry was held according to law. In the enquiry the first party was found guilty of the offence brought against him and ultimately the second party dismissed the first party from the service *vide* letter, dated 1-11-1974 for misconduct after complying the provisions of labour laws. The first party is not entitled to get any relief.

We have got to consider whether the dismissal of the first party from service is valid and proper. If not what benefits, if any, the first party is entitled to ?

DECISION

P.W. 1, Md. Nurul Islam first party has only examined himself in support of his case. On the other hand, A.S.M. Lakiatullah, Administrative Officer of the second party is examined on behalf of the second party. Admittedly the first party was a permanent worker under the second party mill till he was dismissed from service for the alleged misconduct. The last weekly pay of the first party was Tk. 41·54. It is also not disputed that the first party was charge-sheeted on 6-9-1974 for the alleged misconduct *vide* charge-sheet Ext. 1 and he was suspended with effect from 4-9-1974. First party replied the charge-sheet by submitting his explanation dated 9-9-1974, the copy of which has been marked Ext. 2. According to P.W. 1 he received a notice of enquiry and accordingly he attended enquiry, where some witnesses including himself were examined but is is stated by P.W. 1 that he was not given opportunity to cross-examine all the witnesses. It is further stated by P.W. 1 that after his dismissal from service *vide* Ext. 3, dated 1-11-1974 he submitted a grievance petition, dated 15-11-1974 by registered post to the second party. But the same was neither replied nor any decision was given by the second party. P.W. 1 stated that he received the dismissal order from the second party on 12-11-1974. The copy of grievance petition has been marked Ext. 4.

It appears from the evidence of D.W. 1 that an enquiry committee was constituted for holding domestic enquiry against the charge Ext. 1 framed aganist the first party and P.W. 1 duly participated in the enquiry, where his statement and statements of other witnesses were duly recorded and the first party was given all reasonable opportunity for his defence during enquiry. The report of the enquiry committee has been marked Ext. A. The statements of witnesses including the first party recorded by D.W. 1 during enquiry are marked Ext. B series. D.W. 1 stated that superior officer of the first party reported the matter *vide* his report Ext. 6 and on the basis of the said report he (D.W. 1) charge-sheeted first party *vide* Ext. 1. So, the complainant of Ext. 6 (superior officer) is the most material witness in support of the charges framed against the first party. According to D.W. 1, the said superior officer who reported *vide* Ext. 6 was not examined by the enquiry committee. No reason is assigned as to why the said superior officer was not examined during enquiry. Had he been examined during enquiry, the first party would have got opportunity to cross-examine the said witness. I have also gone through the statements of Ext. B series. Moreover, the dismissal order Ext. 3 does not specify the nature of misconduct as defined in section 17(3) of the Standing Orders Act. Enquiry Report Ext. A appears to be not based on cogent reason.

Non-examination of complainant of Ext. 6 without any reason goes a great way against Ext. A. Moreover, second party failed to give any reply or decision over the grievance petition submitted by the first party after the receipt of dismissal order in question. There was also no enquiry after the grievance petition. In view of all these, I find that the first party's dismissal from service is not proper and vaild.

P.W. 1 has admitted in his evidence that previously he was in several occasions charge-sheeted and submitted explanations and ultimately he was warned previously by the second party for future guidance. Regard being had to the past conduct of the first party as referred to above and unwillingness of the management, I am not inclined to thrust the first party on the second party by ordering reinstatement. Alternately I think it would be proper to give full termination benefit to the first party.

In arriving at the above decision I have fully considered the written opinion of the learned Members. In the result, it is—

Ordered

That the case be allowed in part on contest without cost. The first party will get termination benefits under section 19(*1*) of the Standing Orders Act, 1965 instead of reinstatement:

(1) 45 days' wages in lieu of notice, at the rate of pay last drawn by the First Party;

(2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;

(3) Wages for unavailed period of Earned Leave, if any;

(4) Unpaid wages, if any, due.

Any other benefit or benefits to which the first party may be found entitled under any other law for the time being in force.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 12 of 1975.

Fazal Karim, S/o. Omar Ali, Vill. Mohra, P.S. Panchalaish, Chittagong—*First Party*,

versus

Director, M/s. A. K. Khan Plywood Co. Ltd., Battali Hills, Chittagong—*Second Party*.

PRESENT:

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury
Mr Juned A. Choudhury } *Members*.

By this application under section 25(i)(b) of the Employment of Labour (Standing Orders) Act, 1965 the first party Fazal Karim seeks direction upon the second party to reinstate him in his former post and position with back wages mainly on the ground that the second party's order of dismissal, dated 26-11-1974 for the alleged misconduct is illegal, and as no enquiry into the matter was made, as well as the provisions of section 18 of the Standing Orders Act have not been at all complied with.

Second party contended the case by filing written statement contending *inter alia* that the first party was issued with a letter of charge, dated 12-11-1974 for commission of misconduct detailed therein in the charge and asking him to submit explanation and accordingly the first party submitted his explanation, dated 16-11-1974 which was found not at all satisfactory and that past record of service of the first party was also not satisfactory. Second party thereafter dismissed first party from service for misconduct according to law *vide* second party's letter, dated 26-11-1974. The application of the first party under section 25(1)(b) of the Standing Orders Act is not maintainable as he did not send his so called grievance petition to the second party. The first party is not entitled to get any relief in this case.

It is to be seen—whether the first party is entitled to get reinstatement with back wages as prayed for.

DECISION

P.W. 1, Fazal Karim first party has only examined himself in support of his case. On the other hand, D.W. 1 H. R. Kanango, the Administrative Manager of the company has examined on behalf of the second party. P.W. 1 was a permanent worker under the Second party and he was dismissed by the second party *vide* dismissal order, dated 20-11-1974, Ext. 3.

It is centended on behalf of the second party that they received no grievance petition from the first party as alleged in the case petition and as such this case under section 25 of the Standing Orders Act is liable to be dismissed. In paras 5 and 6 of the case petition it has been stated that first party was dimissed illegally by an order dated 16-11-1974 which was received by the first party on 3-12-1974 and thereafter he (first party) represented his grievance petition on 12-12-1974 but the second party neither enquired into the matter nor gave any decision to it. P.W. 1 has deposed to this effect during hearing in this case. P.W. 1 says that he submitted grievance petition dated 11-12-1974 to the second party's office, where it was received on 12-12-1974 by second

party's Clerk by affixing the second party's seal. The copy of grievance petition has been marked Ext. 5. The Ext. 5 shows that there is a seal of the second party company with date and initial affixed thereon. It is also stated by P.W.1 in his evidence that he submitted explanation denying the charges to the second party and the said explanation was received by the second party's clerk by signing over the seal. A copy of the said explanation dated 16-11-1974 has been marked Ext. 2 in this case. There in Ext. 2, a seal of the second party was affixed, wherein the Clerk concerned made an endorsement to the effect "Received" with date and initial. D.W. 1 singly stated in his evidence that the second party received no grievance petition from first party. The Administrative Manager (D.W. 1) is not the proper person to say as to whether the Clerk concerned of the second party company received the original of Ext. 5 by putting seal of the company with date and initial therein Ext. 5. From the evidence and circumstances I have reason to believe the evidence of P.W. 1 to the effect that he submitted his grievance petition, dated 11-12-1974 which was received by the second party's office on 12-12-1974. I, therefore, find that the first party brought this case under section 25(1)(b) of the Standing Orders Act, 1965 in due time.

Second party did not even comply with the provisions of section 25 of the Standing Orders Act, as they failed to reply to the grievance petition. Admittedly the first party was charge-sheeted *vide* Ext. 1, dated 12-11-1974 and the first party was placed under suspension by the said order (Ext. 1). First party submitted his explanation denying the charges the copy of which has been marked Ext. 2. It is clearly stated in the case petition as well as in the evidence of P.W. 1 that without holding any domestic enquiry into the allegations, the second party illegelly dismissed the first party from service by order Ext. 3. Nowhere in the written statement, the second party has stated that there was any domestic enquiry into the matter after the submission of explanation by the first party in compliance with the charge Ext. 1. Admittedly there was no enquiry into the matter. When the first party was placed under suspension *vide* charge-sheet Ext. 1 it was the boundend duty on the part of the second party to hold domestic enquiry under the provisions of the Standing Orders Act. I, therefore, find that there was no enquiry under section 18 of the Standing Orders Act, and as such, the dismissal order in question *vide* Ext. 3 was quite contrary to the labour laws and the same (Ext. 5) is bad in law In view of my discussions above I find that the first party is entitled to get reinstatement with back wages as prayed for.

Members are consulted over the matter.

Ordered

That the case be allowed on centest without cost.

The second party is directed to reinstate the first party in his former post and position with all back wages within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
29-11-1975.

Typed by Mr. M. M. Chouwdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 13 of 1975

Nabi Hossain, S/o. Abdul Gani, village Sreepur, P. S. Boalkhali, Chittagong—*First Party*,

versus

Director, M/s. A. K. Khan Plywood Company Limited, Battali Hills, Chittagong —*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury, Mr. Juned A. Choudhury } *Members*.

By this application under section 25(*i*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 the first party Nabi Hossain seeks direction on the second party to reinstate him in service with back wages mainly on the ground that he was illegally dismissed from service by the second party for misconduct without holding any enquiry under the provisions of Standing Orders Act and as such he is entitled to be reinstated. It is further alleged that he represented his grievances on 12-12-1974 but the second party neither make any decision nor replied the same. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that the first party's service was dismissed for misconduct after complying all provisions of sections 17 and 18 of the Standing Orders Act and that the second party further stated that since the first party did not at all bring his so called grievance to the notice of the second party, the application of the first party under Standing Orders Act is not maintainable.

It is to be seen—whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1 the first party has only examined himself in support of his case. None is examined on behalf of the second party. The charge-sheet dated 12-11-1974 framed against the first party is marked Ext. 1. The explanation submitted by the first party in compliance with the charge issued has been marked Ext. 2. The dismissal order in question dated 28-11-1975 is marked Ext. 3.

The evidence in cross of P.W. 1 clearly shows that after the receipt of the dismissal order Ext. 3 he, P.W. I never sent any written representation to the second party under the provisions of section 25(*i*)(*a*). P.W. 1 in his cross has clearly stated that he submitted no letter or representation to the second party after his dismissal and prior to the filing of this case. P.W. 1 stated nothing in his evidence in chief that he represented his grievance on 12-12-1974 though to that effect he stated in para 6 of his case petition. Law provide for sending a written grievance to the employer (second party) within time limit

as provided under section 25(*i*)(*a*) of the Standing Orders Act. I have already found above that the first party did not send any grievance petition. There is thus a violation of mandatory provisions of law. I therefore, find that this case is not maintainable and so first party is not entitled to get any relief.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong.
30-8-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected
by me.

A. AHMED,
Chiarman.
30-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 16 of 1975.

Narayan Chandra Paul, S/o. Prafulla Kumar Paul, Villa. West Mayani, P. S. Mirsarai, Dist. Chittagong—*First Party,*

versus

(1) Administrative Officer, M/s. Chittagong Textile Mills Ltd., Battali Hills, —Chittagang;

(2) Chairman, Bangladesh Textile Mills Corporation, Motijheel Commercial Area, Dacca—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairmen.*

Mr. Jamshed Ahmed Chowdhury } *Members.*
Mr. Juned A. Choudhury }

This is an application under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 by Narayan Chandra Paul, first party, for his reinstatement in his former post and position with arrears wages.

The case of the first party is that he was a permanent worker under the Chittagong Textile Mills Limited with effect from December, 1966. On 7-8-1974 he was called by the Spinning Master of the Mill and tutored to say that

one Ratan Dutta was arrested red handed while stealing an Inner Tube of the Ring Frame. The first party refused to say like that and so he was handed over to police entangling him in theft case. Thereafter the first party received a charge-sheet which he replied denying the allegations. Subsequently an enquiry was illegally notified to be held but the first party could not attend due to pendency of Criminal case. Ultimately by order dated 21st November, 1974 received by the first party on 29-11-1974 the first party was illegally dismissed from his employment. Thereafter first party represented his grievance on 12-12-1974 but no decision was given. Hence this case.

Second party No. 1 contested the case by filing written statement alleging *inter alia* that on 7-8-1974 one Ratan Kumar Dutta, a worker in the mills confessed that he along with first party and others committed theft of Inner Tube of Ring Frame Machine from inside the mills. Thereafter a letter of charge was issued to the first party on 8-8-1974 which the first party replied by his explanation dated 26-8-1974. The first party wilfully did not appear at the enquiry, as he has no defence against the charge. The enquiry proceeded *ex parte* and having been found guilty the first party was dismissed from service *vide* letter dated 21-11-1974. All the legal requirements were duly complied with and the first party was given all reasonable opportunity to defend himself. The first party is not entitled to get any relief.

It is to be seen—whether the first party is entitled to get reinstatement with back wages.

FINDINGS

P. W. 1, Narayan Chandra Paul, first party has only examined himself in support of his case. On the other hand, D. W. 1, A. R. Khan, Administrative Officer of the second party mill has examined himself on behalf of the second party.

Admittedly the first party was a Daily rated worker under the second party mill. A charge-sheet dated 8-8-1974 Ext. A was issued against the first party who submitted his explanation denying the charges. On the basis of the statement of one Ratan Kanti Dutta, an employee of the second party mill, the first party was charge-sheeted *vide* Ext. A. The said statement of Ratan Kanti Dutta has been marked Ext. B. The order by which the first party was dismissed is marked Ext. C. It is in evidence that after dismissal the first party represented his grievances on 12-12-1974 and second party received the same. It is an admitted fact *vide* evidence of P. W. 1 and D. W. 1 that inspite of notice the first party did not attend or participate the domestic enquiry. P. W. 1 in his cross stated that he could have attended in the enquiry easily inspite of the pendency of criminal case against him. P. W. 1 further stated in his cross that second party has not created any obstruction in defending his case during domestic enquiry. D. W. 1 has stated in his evidence that the first party was given all reasonable opportunity for his defence during enquiry but he wilfully did not attend. The said evidence of D. W. 1 finds support from the evidence and materials on record. I have reason to say that the first party wilfully did not attend the enquiry obviously for the reason that he had no defence against the charge. So, enquiry proceeded *ex parte*. Second party No. 1 *vide* his letter Ext. C ultimately dismissed first party from service.

It appears from the evidence in-chief of P. W. 1 that he was appointed as a Double Side Doffer under the second party Mill with effect from December, 1966 by the Manager of the Mill. D. W. 1 in his cross also stated that there is a Manager in the second party Mill who is the employer of the first party. According to the aforesaid evidence, the Manager of M./s. Chittagong Textile Mills Limited had the right and authority to remove or dismiss the first party from service for the alleged misconduct. It appears that the second party No. 1, the Administrative officer (.D.W. 1) drew up the proceeding against the first party and ultimately dismissed him *vide* Ext. C. It is curious to find that the first party has not made the Manager of the mill, *i.e.*, the employer of the first party as second party. So, this case is bad for defect of party. In the absence of the Manager (employer) as party in this case, no legal decision or award can be passed or implemented. So, in this view of the case, the first party's case must fail. I, therefore, find that the first party is not entitled to get relief.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
17-11-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected
by me.

A. AHMED
Chairman.
17-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 17 of 1975.

Arun Kumar Dey, S/o. Ramani Mohan Dey, P. S. and Vill. Kalishahar, P. S. Patiya, Chittagong—*First Party*

versus

(1) Administrative Officer, M/s. Chittagong Textile Mills Ltd., Battali Hills Chittagong ;

(2) Chairman, Bangladesh Textile Industry Corporation, Motijheel Commercial Area, Dacca—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members.*

By this application under section 25(*i*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 the first party Arun Kumar Dey who was a permanent worker under second party No. 1 since February 1969 seeks reinstatement in his former post with all back wages and other benefits upon the allegation that he was illegally dismissed from the employment on 21-11-1974 without following the provisions of sections 17 and 18 of the Standing Orders Act. The first party represented his grievances on 12-12-1974 after receiving the dismissal order on 27th November, 1974 but the second party gave no decision over grievance petition. Hence, this case.

Second party No. 1 contested the case by filing a written statement alleging *inter alia* that a letter of charge was issued against the first party on 8-8-1974 and he was asked to explain his conduct and thereafter the first party submitted his explanation denying the charge. In the meantime the occurrence of theft was reported to the local Police and the first party and one Ratan Kanti Dutta and others were arrested and later released on bail. A notice of enquiry was issued against first party asking him to appear on 11-9-1974 before the enquiry committee. However, was the date of enquiry was shifted to 27-9-1974 First party willfully did not appear at the enquiry. Ultimately first party was found guilty of misconduct and he was dismissed from service *vide* letter dated 1st November 1974. The first party is not entitled to get any relief.

It is to be seen—whether the first party is entitled to be reinstated in service with back wages as prayed for.

DECISION

P.W. 1, Arun Kumar Dutta, first party, has only examined himself in support of his case. None is examined on behalf of the second party.

Admittedly first party was a permanent worker under second party No 1. A charge-sheet Ext. 1 dated 8-8-1974 was issued against the first party alleging misconduct and he was placed under suspension. P. W. 1 said he submitted explanation in compliance to the charge-sheet denying the charge. P. W. 1. stated in his evidence that due to illness he could not attend the enquiry and he was served with a notice of enquiry and thereafter he was dismissed from service *vide* letter Ext. 2. The first party in para 7 of his case petition stated that he could not attend the enquiry due to pendency of a criminal case. I cannot place any reliance upon the evidence of P. W. 1 who contradicts his allegation in para 7 by his evidence referred to above. I, therefore, find that the first party willfully did not appear at the enquiry obviously for the reason that he has no defence against the charge. Moreover, P. W. 1 in his evidence has clearly admitted that on 7-8-1974 he submitted a petition Ext. B by signing the same himself. It will appear from Ext. B that he admitted his guilt, *i.e.*, the charge. Now here in the case petition or Ext. A the first party has stated that the petition Ext. B was taken from him by coercion or force.

I, therefore, find that he wilfully made statment admitting his guilt by Ext. B. I, therefore, find that legal requirements were duly complied with and the first party was given reasonable opportunity to defend himself and I find nothing to interfere with the order of dismissal Ext. 2. Consequently the first party is not entitled to get any relief.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-9-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected
by me.

A. AHMED,
Chairman.
30-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 18 of 1975.

Obaidul Haque, Reeling Reeler, F/No. 429, F/A Shift, R.R. Textile Mills Ltd., Village Tapadi Launchi, Post Chaprashirhat, P.S. Sadar, Noakhali—*First Party*,

versus

The Manager, M/S. R.R. Textile Mills Ltd., Banshbaria, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury } *Members.*
Mr. Juned A. Choudhury }

Representation: Mr. A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate appeared for the first party and Mr. Azizul Haque Chowdhury, Advocate appeared for the second party.

This is an application under section 25(1) (b) of the Employment of Labour (Standing Orders) Act, 1965 by Obaidul Haque, first party, for his reinstatement in his original post and position with back wages.

First Party's case is that he was appointed on 8-11-1967 as Reeler in the establishment of the second party and thereafter he became a permanent worker. Suddenly the second party issued a charge-sheet on him on false and fabricated charges on 21-11-1974 to the first party out of grudge for his trade union activities. First party thereafter submitted his explanation denying the charges. Second party did not accept the said explanation and thereafter second party served a notice of enquiry to the first party and accordingly first party appeared before the so called enquiry commission in time but no enquiry was held and he, however, waited at the chamber of Technical Manager but no enquiry was held. Afterwards suddenly the second party sent a letter of dismissal which was received by the first party on 18-11-1974. Being aggrieved by the said letter of dismissal, first party sent a grievance petition to the second party who did not consider the same. The first party was not given opportunity to defend himself before the so called enquiry commission. The dismissal order is illegal, malafide and contrary to the provisions of law.

Second party contested the case by filling a written statement alleging *inter alia* that on 21-11-1974 the first party was found to have wilfully slowed down the production below the target and also instigated other workers who similarly go slow and thereby causing serious loss to the company by his such wilful misconduct. Thereafter the first party was issued with a charge-sheet, which was replied by the first party and it was not found satisfactory and thereafter an enquiry was held where the first party duly participated. The enquiry committee submitted their report finding first party guilty and accordingly the first party was dismissed from service *vide* letter dated 14-12-1974 after observing all legal formalities. First party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get the relief as prayed for.

FINDINGS

P.W. 1, Obaidul Haque, first party has only examined himself in support of his case. D.W. 1, Assistant Spinning Master of the second party mill is examined on behalf of the second party.

At the time of hearing of this case P.W. 1 has admitted in his cross that in November, 1969 he was dismissed from service by the second party and thereafter he was re-appointed by the second party *vide* letter of appointment, dated 29-12-1969 Ext. 'A'. I, therefore, find that first party was appointed by the second party *vide* Ext. 'A' with effect from 30-12-1969.

It is not disputed that first party was issued with a letter of charge, dated 21-11-1974 Ext. 2 for misconduct under section 17(3) (h) and (j) of the Standing Orders Act and thereafter the first party submitted his explanation dated 23-11-1974 Ext. 'B' denying the alleged charges. According to second party the said explanation Ext. 'B' was found unsatisfactory and thereafter an enquiry was held where first party's statement was recorded but the first party refused to sign the statement and left the enquiry. It is stated by D.W. 1 that enquiry committee submitted their report Ext. 'D' finding the first party guilty of the charge and thereafter the second party dismissed first party *vide* letter of dismissal dated 14-12-1974.

It is clearly contended on behalf of the first party that in fact no enquiry was held and the first party was not examined during the so called enquiry and that the dismissal order Ext. 'C' is illegal as it was not passed by the proper authority, as will appear from the evidence and materials on record. First party was dismissed *vide* Ext. 'C' dated 14-12-1974 for the alleged misconduct and the said dismissal letter was received by the first party on 15-12-1974 and thereafter first party submitted his grievance petition Ext. 1 which was received on 30-12-1974 by the second party who replied the same on 17-10-1975. This case was filed by the first party on 15-2-1975 *i.e.*, within due time.

D.W. 1 stated that he was one of the members of the enquiry committee. There is nothing documentary on record to show about the constitution of the enquiry committee or how many members were there in the enquiry committee. The notice of enquiry, dated 4-12-1974 on record also does not show the number or names of the members of the enquiry committee. It was simply stated therein that first party was asked to appear before the enquiry commission on 6-12-1974 at 10 a.m. in the chamber of the Manager (Technical). D.W. 1 in his cross stated that he did not file any paper to show that he was appointed a member of the enquiry committee or there is no letter to show that management had formed any enquiry committee. D.W. 1 further stated that Manager (Technical) verbally appointed them as members of the enquiry committee. P.W. 1 in his evidence has stated that in compliance with a notice of enquiry he went to the chamber of the Manager (Technical) where he waited for sometime but no enquiry was held there on that date. It is also stated by P.W. 1 that the alleged enquiry commission never examined him or recorded his statement. It was suggested to P.W. 1 in cross that the enquiry committee recorded the statement of P.W. 1, who (P.W. 1) refused to sign the said recorded statement. According to D.W. 1 during enquiry, first party made oral statement which was recorded by Sk. Nawab Ali, Labour Officer but the first party refused to sign the said statement Ext. 'E' It is further stated by D.W. 1 in his evidence that all the members of the enquiry signed themselves in the recorded statement of first party Ext. 'E'. The report of the alleged enquiry committee Ext. 'D' will show that as many as 7 persons were the members of the enquiry committee. Ext. E the alleged statement of first party bears the signature of only 3 persons. So, I find that the said Ext. 'E' has not been signed by all the 7 (seven) members of the enquiry committee though D.W. 1 stated that it was signed by all members. D.W. 1 further stated in his cross that during enquiry no question was asked to the first party. This very fact goes to suggest strongly that the statement Ext. 'E' is not the actual statement of first party. According to first party Ext. 'E' was manufactured by the second party afterwards for the purpose of this case. The enquiry report Ext. 'D' does not specify the nature of misconduct as defined in section 17(3) of the Standing Orders Act. There is no clear finding on this point. The said enquiry report Ext. 'D' is not passed on cogent reasons. I find nothing sufficient on record to show that any opportunity was given to the first party for his defence or being heard during the course of alleged enquiry. Following the aforesaid discussions I have reason to say that in this case the enquiry was imporper having offended the natural justice.

Ext. 'C' dated 14-12-1974 is the letter of dismissal in question. The said Ext. 'C' was issued and passed by the Manager (Technical). It is stated by P.W. 1 that the Manager (Technical) had no authority to dismiss him (first party) from service. D.W. 1 has stated in his evidence that there was no

General Manager in the Mill when the first party's service was dismissed but at that time there were two Managers one Manager (Administration) and another Manager (Technical). D.W. 1 in his cross has clearly admitted that this Manager (Technical) had no authority to dismiss an employee, but the Manager (Administration) is the appointing and dismissing authority of the employees of the mill. It can be safely said that the dismissal order Ext. 'C' communicated to the first party was not signed by the appropriate or proper authority, nor it was approved by the appropriate authority. Having regards to the above discussions I also find that the dismissal order Ext. 'C' was not legally and valid order according to the provisions of labour laws. Accordingly the dismissal order in question is liable to be set aside.

Both the members advised me for reinstating the first party in his original post without back wages. Having regards to my discussions above, coupled with the circumstances I agree with the opinion of the learned Members. Accordingly it is—

Ordered

That the case be allowed in part on contest without cost.

The second party is directed to reinstate the first party in his original post and position within 30 days from the date of this order. The prayer for allowing back wages is disallowed.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
19-9-1975.

Typed by Mr. M.M. Chowdhury at my dictation and corrected by me.

A. AHMED,
Chairman.
19-9-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 21 of 1974.

Abul Kalam, Ex. Line Sardar, C/o. Staff Quarter of Hafiz Textile Mills Ltd., P.O. Kumira, Vill. Ghoramara, Chittagong—*Complainant/1st Party,*

versus

The General Manager, Hafiz Textile Mills Ltd., Kumira, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury ... } *Members.*
Mr. Juned A. Choudhury ... ... }

By this application under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 first party Abul Kalam, seeks a direction on the second party to reinstate him in his permanent post with all back wages and other benefits.

The case of the first party is that he had been the Assistant Secretary No.1 of the second party Hafiz Textile Mills Broadlooms Industries Sramik League since 15-5-1973 and earlier to that he had been in the same position and in his capacity as such, he has been discharging his rightful and legitimate trade union activities within the fixture of law and for that he incurred grudge of the second party and consequently he was made a target of victimisation. On various occasions, the first party, along with other executives of the union placed workers' various demands to the management and for that the second party threatened the first party with dire consequences. The second party did not remaint content by lodging complaint in Sitakunda P.S. and involving the complainant and others in criminal case and in furtherance of such design of victimisation the complainant for his rightful trade union activities suddenly terminated him from his permanent service with effect from 25-3-1974. That on being aggrieved by the said illegal and *malafide* termination, the first party complainant sent a representation to the second party dated 9-4-1974 under registered post with A/D but the second party gave no reply to the same. Hence this case.

Second party contested the case by filing a written statement alleging *inter alia* that the first party having been terminated from service as per provisions of section 19(1) of the Standing Orders Act, 1965, the only right that can be said to have been guaranteed or secured to the first party is that of getting the monetary benefit as admissible under the said provisions of law. The service of the first party was no longer required by the second party and thus he was terminated by the management by a letter dated 23-3-1974. The first party is not entitled to get the relief as prayed for.

It is to be seen whether the first party is entitled to be reinstated in his former post with back wages.

DECISION

P.W. 1, Abul Kalam (first party) has only examined himself in support of his case. None is examined on behalf of the second party. It is not disputed that the first party was serving as Line Sardar in the second party's mill since 1970. The second party *vide* letter dated 23-3-1974 Ext. 1, has terminated the service of the first party. It appears from Ext. 1 that the service of the first party was terminated with effect from 25-3-1974 under section 19(*1*) of the Standing Orders Act, as the first party's serivice was no longer required and accordingly the first party was terminated and was directed to take the termination benefits.

Learned Advocate of the second party raised an objection that in view of the judgment given by their Lordships of Supreme Court of Bangladesh in Civil Appeal No. 1 and 2, between Aminul Islam and others, and, James Finlay and Co. Ltd., reported in XXVI-DLR (1974) at page 34 that termination simpliciter of an employee's service under section 19(1) of the Standing Orders Act is effective in view of section 25, he being no longer in service within the meaning of section 2(s), cannot move the Court under section 25, as such, the present application is not maintainable.

On the other hand, the lawyer appearing on behalf of the first party vehemently contended that the above ruling does not fit in the present case in view of the fact that in the said case, the workers concerned was not an officer of a registered trade union and against termination of his service, he filed present case for his reinstatement. In the present case, the first party Abul Kalam undisputedly an officer of a registered trade union and the said union is the collective bargaining agent.

In order to arrive at a clear view of distinction between the two cases, reliance is needed to be given to the relevant provisions of section 25 of the Standing Orders Act. According to section 25, no complaint against an order of termination under section 19 shall lie, unless, the worker concerned is a officer of a registered trade union and his employment is alleged to have been terminated for his trade union activities or the workers concerned whether or not is an officer of a registered trade union has been deprived of the benefit of termination of his service specified in that section 19.

The above ruling of the Hon'ble Supreme Court is distinguishable from the present case. It appears that the Act itself gives right to a terminated worker to maintain his application under section 25(1)(b) on the above two grounds. Thus I find sufficient force in the aforesaid contention of the learned lawyer for the first party.

P.W. 1 in his evidence has stated that he is the Asstt. Secretary No. 1 of the second party's workers' union, namely, Hafiz Textile Mills Limited Broadloom Sramik League since 15-5-1975 and in this capacity he along with others submitted a charater of demands dated 10-6-1973 to the second party who gave them verbal assurance of accepting the demands. P.W. 1 further stated that on 21-3-1973 he along with Kabirul Islam, Mohammed Yusuf and Gofran, office bearers, met the General Manager within the mill at 4 p.m. and requested him to make arrangement for bring some of the workers under the rationing facilities and at this the management became very much angry and threatened him and others with termination from service and the said General Manager also asked the first party and others to give up union. P.W. 1 further stated that they could not surrender to such threat of the Manager and thereafter the second party ledged F.I.R. at Police Station against him (P. W. 1) and Kabirul Islam on 21-3-1974 at Sitkunda P. S. P. W. 1 further stated that thereafter the second party victimised him for his trade union activities and out of grudge his service was terminated by way of victimisation *vide* Ext. 1 and thereafter he sent grievance petition dated 9-4-1974 Ext. 2 by registered post with A/D to the second party. The postal receipt is Ext. 3 and the A/D dated 9-4-1974 is Ext. 4. The second party gave no reply to the grievance petition Ext. 2. It appears from the evidence of P.W. 1 that General Secretary of their union also filed a case No. 20 of 1974 in this Court for his reinstatement with back wages on the self same ground.

The aforesaid evidence of P.W. 1 has not been reverted by second party by any evidence. From the evidence and material on record I find that the first party along with other office bearers submitted a charter of demands on 10-6-1973 to the second party and their demands were not fully satisfied and that the first party's union is the collective bargaining agent. None is coming to depose on behalf of the second party to say that the first party's service

was not terminated by way of victimisation for first party's trade union activities. The evidence of P.W. 1 coupled with the other circumstances go to prove that the managment bore grudge against him (.P.W. 1) for his (P.W. 1) trade union activities and for that his service was terminated by way of victimisation.

Of course the order of termination dated 23-3-1974 shows that the service of the first party was terminated on the simple ground of that his service was no longer required. I have carefully gone through the oral evidence of P.W. 1 referred to above as well as the documentary evidence on reco.d. I am fully convinced that the second party victimised the first party for his trade union activities as Asstt. Secretary and that the termination in question is not termination simpliciter as alleged by the second party.

I, therefore, find that the first party is entitled to be reinstated in his former post and position with back wages.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

The second party is directed to reinstate the first party in his former post and position with back wages, within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
13-11-1975

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
13-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 22 of 1974.

Abdul Baten, Ex-Head Sardar, C/o. Hafiz Textile Mills Workers' Colony, P.O. Kumira, Vill. Ghoramara—*1st Party*,

versus

The General Manager, Hafiz Textile Mills Ltd., Kumira, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Choudhury .. } *Members*.
Mr. Juned A. Choudhury .. }

By this application under section 25(1)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 the first party Abdul Baten prays for directing the second party to reinstate him in his former post with all back wages mainly alleging that due to his trade union activities as Vice President No. 1 of Hafiz Textile Mills Limited Broadloom Industries Sramik League, the second party victimised him (first party) by issuing an illegal and *malafide* order dated 23-3-1974 terminating his service. It is further alleged that thereafter the first party sent a grievance petition to the second party by registered post with A/D requesting the second party to reinstate him with back wages but the second party though received the same gave no reply. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that the services of the first party were no longer required and thus the second party legally terminated the service of the first party *vide* letter dated 23-3-1974. It is further alleged that this being the case of termination simpliciter under section 19(1) of the Standing Orders Act, 1965, the case of the first party is not maintainable in law and liable to be dismissed. The alleged victimisation for trade union activities is wholly denied by the second party *vide* their written statement.

It is to be seen—whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1, Abdul Baten (first party) has only examined himself in support of his case. None is examined on behalf of the second party. Admittedly the first party was appointed as Beam Tire from the time of erection of second party's mill and thereafter he was promoted to the post of Line Sardar and subsequently he was promoted as Head Sardar in the year 1970. It is also an admitted fact that the first party is the Vice President No. 1 of Hafiz Textile Mills Limited Broadloom Industries Sramik League since 15-5-1973. It is stated by P. W. 1 that he as Vice-President has been discharging his rightful and legitimate activities within the fixtures of law and for that he incurred grudge of second party. P.W. 1 further stated that he submitted charter of demands dated 10-3-1973 to the second party who gave verbal assurance for accepting the same. Thereafter he along with other union officials requested the second party to include workers on the rationing scheme but the second party did not concede with the said request. Later on the Manager of the mill became angry with him (P.W. 1) and threatened him by saying that they must give up union activities. P.W. 1 also says that second party thus had grudge against him and thereafter second party terminated his service *vide* letter dated 23-3-1974 Ext. 1 by way of victimisation for his trade union activities. The said evidence of P.W. 1 has not been challenged or denied by any one on oath on behalf of the second party during hearing of this case. I find no material sufficient on record to disbelieve the evidence of P.W. 1 referred to above.

The order of termination Ext. 1 shows that the service of the first party was terminated on simple ground that his service was no longer required. It is contended on behalf of the second party that in view of the ruling reported in XXVI-DLR (1974) at page 34 this case under section 25(1)(*b*) of the Standing Orders Act is not maintainable. On the other hand, it is contended on behalf of the 1st party that the aforesaid ruling does not fit in the

present case and the present case in distinguishable from the above ruling. It has been proved from the evidence on record that the first party is an office bearer of a registered trade union which is the collective bargaining agent. It is clear from the evidence and materials on record that the first party's service was terminated by the second party by way of victimisation due to his trade union activities. It has already been found that the first party is an office bearer of the registered trade union. It appears that the ruling of the Hon'ble Supreme Court is distinguishable from the present case. The Act itself gives a right to a terminated worker to maintain his application under section 25(1)(*b*) since, in the present case, the terminated worker admittedly is an officer of a registered trade union and his service has been terminated for his trade union activities, his present application as such is maintainable. Consequently I find that the first party is entitled to be reinstated in his former post and position with back wages.

Both the Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

The second party is directed to reinstate the first party in his former post and position with all back wages within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
15-11-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
15-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 29 of 1974.

Sekander Ali, S/o. Dudu Mia Bepari, C/o. Trade Union Centre, 37, Nazir Ahmed Chowdhury Road, Chittagong—*First Party,*

versus

Proprietor, M/S. Arambagh Hotel and Restuarant, 50, Bitaliganj, Chittagong—*Second Party.*

PRESENT ;

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury — } *Members.*

This is an application under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 by first party Sekander Ali with a prayer either for directing second party to reinstate him with his back wages or to payr termination benefit under section 15(1) of the Standing Orders Act.

The case of the first party is that he was appointed by second party with effect from 2-2-1970 as a Karigor and his last monthly salary was Tk. 135·00. First party was a permanent worker under the second party and he discharged his duty faithfully. Second party suddenly by an order dated 15-3-1974 removed the first party from service without any notice or lawful reason under a false pretext of closure of establishment. In the matter of such removal the second party has not complied with the provisions of sections 12 and 13 of the Standding Orders Act. Such removal of first party by way of retrenchment is *mala fide* and illegal. The first party represented his grievances by postal registration on 29-3-1974 but the second party refused to accept the same, nor gave any decision. Hence, this case.

Second party contested the case by filing a written statement alleging *inter alia* that by its notice dated 15-3-1974 he retrenched all the workers including first party from service with immediate effect on the ground of redundancy and the copy of notice of retrenchment was sent to the Chief Inspector (Joint Director of Labour), Chittagong. After the said retrenchment order the second party sent retrenchment benefit by money order dated 23-3-1974 to the first party but the first party refused to receive. It is further alleged that first party was engaged on daily wages with effect from 3-5-1973 at a rate of Tk. 4·50 per day. The first party is not entitled to reinstatement or termination benefit as prayed for.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P. W. 1, Sekander Ali, first party has only examined himself in support of his case. On the other hand, D. W. 1, Nazir Ahmed Sawdagar, the Proprietor of the second party hotel has examined himself in support of his case. According to the first party's case he was appointed as a Karigor with effect from 2-2-1970 and his last monthly wages was Tk. 135·00. On the other hand, it is the definite case of the second party that first party was appointed on daily wages with effect from 3-5-1973 at a rate of Tk. 4·50 per day. Onus heavily lies upon the first party to prove his aforesaid case. P. W. 1 in his evidence has stated that he was appointed on 1-1-1971 by the second party as Karigor, *i.e.*, he contradict his case in case petition referred to above. D. W. 1 in his evidence has stated that first party was appointed as Karigor on 3-5-1973. In support of second party's case D. W. 1 also produced a staff Khata Ext. A in order to show that first party was appointed as Karigor on 3-5-1973. From the evidence on record it can be said that the said staff khata including Ext. A was maintained in course of business. I have reason to prefer documentary evidence, *viz.*, Ext. A than that of oral evidence. P. W. 1 in his cross has admitted that his daily wages was at the rate of Tk. 4·50. This very evidence corroborates the second party's case that the first party was appointed on daily wages at the rate of Tk 4·50. I, therefore, find that the first party was appointed with effect from 3-5.-1973 at a daily wages of Tk. 4·50.

P.W. 1 in his evidence has stated that second party removed him from service by retrenchment order dated 15-3-1974 Ext. 1 and thereafter he sent a grievance petition dated 28-3-1974 to the second party by registered post but the said registered letter returned back with postal endorsement dated 4-4-1974 on the back is marked Ext. 2. It is also stated by P. W. 1 that second party did not pay his salary from December, 1973 up to the date of retrenchment and he claimed the said arrear salary in this case. On the other hand, it is the case of the second party that there is no arrear salary, as the second party paid his daily wages up to the date of retrenchment and to that effect entries are made in the Account Khata's Exts. B and B(I). The second party has produced khatas Exts. B and B(1) in order to show that the first party was paid his daily wages at the rate of Tk. 4·50 although and accordingly he (P.W. 1) received daily wages up to the date of retrenchment. I have carefully gone through the said Accounts Khata Exts. B and B(1) which were maintained in the course of business and there it is found that the first party was paid his daily wages and to that effect entries are made therein. I find nothing to disbelieve the evidence of D. W. 1 coupled with the documentary evidence Exts. B and B(1) concerning the payment of daily wages to the first party upto the date of retrenchment. I, therefore, find that the first party was paid his daily wages up to the date of retrenchment.

Ext. 1 is the order of retrenchment and it will show that a copy of notice was sent to the Joint Director of Labour, Chittagong Division. It is stated by P. W. 1 that the retrenchment order Ext. 1 is not a legal one. D. W. 1 has stated in his cross that he does not know whether a copy of Ext. 1 was sent to the proper authority. Rather his evidence shows that the copy of Ext. 1 was not sent to the Chief Inspector of Factories. There is no evidence on record to show that the second party sent the notice of retrenchment to the Chief Inspector of Factories. It is undisputed fact that in retrenching the petitioner from service, the mandatory formalities as enjoined in the Act have not been complied with . Second party did not sent notice of retrenchment to the Chief Inpsector of Factories and Establishments. So, the said retrenchment cannot be said to be made according to the provisions of the Standing Orders Act. At the time of hearing the first party prays for termination benefit. Having regards to the above facts and circumstances, I think for the ends of justice the first party should be allowed full termination benefit as provided under section 19 of the Standing Orders Act, in a case like this.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

Second party is directed to pay the first party following termination benefit—

(1) 45 days' notice pay at the rate of Tk. 4·50 per day.

(2) 14 days' wages as service compensation.

The second party is directed to pay the above amount to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman
Labour Court, Chittagong.
30-7-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman
30-7-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 38 of 1975.

Mukhlesur Rahman, S/o. Late Idris Meah, Accounts Assistant, Eastern Refinery Limited, North Patenga, Chittagong—*First Party*,

versus

General Manager, Eastern Refinery Limited, North Patenga, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury } *Members*.

This is an application under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 filed by Mukhlesur Rahman, first party, who was a Cashier under the second party was transferred to Accounts Department and was redesignated as an Accounts Assistant, seeks a direction upon the second party to reinstate him in his former post and position with back wages and other benefits and continuity of service.

The case of the first party is that he was a permanent employee working as a Cashier of second party for the last 9 years. Thereafter he was transferred to Accounts Department in November, 1974. He is the Treasurer of the Eastern Refinery Limited Employees' Union (Regd. No. EP-1337) which is the only trade union and collective bargaining agent of the establishment. From sometime past the second party was displeased with the union and was thus trying to do harm to the union executives bringing imaginary charges against them. The first party has become victim of the circumstances by turn. The first party was charge-sheeted on 8-1-1975 for preparation and making payment of Medical bills *vide* vouchers. The first party submitted his explanation on 17-1-1975 denying all allegations as false and further stated that the vouchers were duly passed for payment by the Accountants and he (first party) being a cashier discharged his duty accordingly and there was no *mala fide* in his intention. As regards the 4th allegation in the charge-sheet the first party stated that the payment of this voucher was withheld. The second party issued a notice of enquiry asking the first party to attend the enquiry on 7-2-1975 and accordingly the first party reported for enquiry but to his surprise first party found that one Mr. Mahtab Hossain, was sitting as a member of the enquiry committee, even though one of the vouchers was passed by him for payment. At this, the first party verbally protested against the inclusion of said Mahtab Hossain, in the enquiry committee. Later on Mahtab Hossain was replaced and substituted by Mr. Ali Hossain, Administrative Officer. First party wanted to examine some material witnessses including Mr. Imam Hossain, Senior Accountant and Mahtab Hossain, Accountant, who passed the bills for payment as well as the Compounder by sending a letter but the first party was not allowed to do so. However, the second party held a show of enquiry and in the said enquiry no witness was examined in front of first

party. The first party got no opportunity to place his grievances before the enquiry committee. Ultimately by an unfair and illegal enquiry, the first party was dismissed from service by the second party *vide* their letter dated 4-4-1975. Thereafter first party sent grievance notice on 11-4-1975 which was of course replied by the second party. Hence, this case.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that first party was issued with a letter of charge for fraud and dishonesty in connection with employer's money. The first party thereafter submitted his explanation dated 17-1-1975 which was found to be satisfacotry and thereafter a domestic enquiry was held where all reasonable opportunity was given to the first party including examination of witnesses in his defence and cross examination of the witnesses deposed against him. The enquiry conducted against the first party was most impartial. The enquiry was held in accordance with law. First party was found guilty of misconduct and thereafter he was dismissed from service *vide* letter dated 4-4-1975. The first party is not entitled to get any relief in this case.

Points for determination in this case are—

(1) Whether the first party was illegally dismissed from his post by the second party without complying with the procedures and provisions of labour laws.

(2) What relief, if any, is the first party entitled to.

DECISION

Points land 2 : Both the points are taken up together for the sake of convenience.

P.W. 1 Mukhlesur Rahman, first party, has only examined himself in support of his case. On the other hand, 4 witnesses are examined on behalf of the second party. The first party was dismissed from service for the alleged misconduct *vide* letter dated 4-4-1975 Ext. 6 and thereafter the first party submitted his grievance petition dated 11-4-1975 Ext. 7 to the second party and the same replied by the management *vide* their letter dated 24-4-1975 Ext. 8. Thereafter the first party brought this case, against the second party on 20-5-1975. Thus it is proved that the provisions of section 25(*1*)(*b*) of the Standing Orders Act have been fully followed.

It is contended on behalf of the first party that there were four charges against the first party as will appear from the charge-sheet Ext. 1, but out of these four, there remains only three charges because payment of voucher as stated in item No. 4 of the charge-sheet Ext. 1, has not been pressed at the time of hearing. So, there remain 3 charges stated in item Nos 1, 2 and 3 of the charge-sheet Ext. 1. The allegation against the first party is for both preparation of the vouchers and payment of the same. It is argued on behalf of the first party that payment was made only after the vouchers Ext. E, E(1) and E(2) were passed by the Accountants. As regards Ext. 3, it is stated that payment was not made for that which 2nd party also admits. According to first party, the payment of the vouchers Exts. E to E(2) were made to the genuine persons whose signatures appear thereon. Second party, however, denied that contention stating that the payment was made to fictitious persons.

D. W. 2. H. F. Rahim. Administrative Manager of the second party, stated in his evidence that Abul Kashem, Ahmed, Abdul Karim and Abul Kashem made their statements in writing under their own signatures in his presence within his (D. W. 2) chamber. Their statements have been marked Ext. F, F(1) and F(2) respectively. The second party challenged the genuineness of the said exhibits F and F (1) dated 12-12-1974 and Ext. F(2) dated 8-1-1975. It is contended on behalf of the first party that all these statements Ext. F series were taken under persuasion and duress in the chamber of D. W. 2. It can be safely said from the evidence and materials on record that the recipients of the vouchers were not examined during the enquiry by the enquiry officer. There is no paper on record with regard to the payment of voucher's amount to the fictitious persons except Ext. F series which cannot be taken into consideration, because the same were neither recroded during enquiry nor taken by the enquiry officer D. W. 4, nor before the first party. D. W. 4 Shamsul Huq Chowdhury, the Enquiry Officer has stated in his evidence that the enquiry against the first party began in March 1975 and it continued for about a month. He (D. W. 4) further says that prior to the constitution of the enquiry committee, 3/4 witnesses made their written statements to D. W. 2 and those witnesses did not make statement before the enquiry committee or in presence of the first party. P. W. 1 also clearly stated in his evidence that no witness during enquiry was examined in his presence. D. W. 4 in his evidence further stated that afterwards first party cross examined them who made written statement in the absence of the first party in the chamber of the D. W. 2, Furthermore, from the contents of the statements Ext. F series, I find no link between the bills and the contents of Ext. F series. It is further argued on behalf of the first party that the first party wanted to examine some witnesses *vide* Ext. 4 dated 7-2-1975 who are officers and staff of the second party including two Accountants who signed the bills and compounder who entered the bills in the register, but his prayer was disallowed on technical ground *vide* their letter Ext. A. P. W. 1 the first party also stated in his evidence that by Ext. 4 he wanted to examine these material witnesses but he was not allowed to do so by sending a reply *vide* Ext. A. The Accountants who passed the bills and the compounder who entered the bills into the medical register are no doubt the material witnesses for the enquiry. The second party also did not take any step to examine those material witnesses. D. W. 4 admitted in his cross that prior to the constitution of the enquiry committee, the statement Ext. F series was taken in the chamber of D. W. 2 and those witnesses who made statements Ext. F series were not examined during the enquiry before him (D. W. 4) or in presence of first party. D. W. 3 Ali Hossain stated that after withdrawal of Mahtab Hossain from the enquiry committee he was inducted one of the members of the enquiry committee from 17-2-1975 and enquiry continued for 3 weeks from 17-2-1975 D. W. 3 clearly says in his evidence that only first party was examined in his presence after 17-2-1975 and no other witness except P. W. 1 . This evidence of D. W. 3 finds support from the evidence of P. W. 1 who also says that no witness during enquiry was examined in his presence. It is submitted on behalf of the second party that the statements of witnesses, *viz*., Ext. F, F(1) and F(2) and another is of Medical Officer, are taken into consideration by the enquiry committee in deciding the charges against the first party. No statement of M. O. or copy of Medical Officer is filed in this case. Of course D. W. 1 M. A. Chowdhury the Medical Officer of the second party has examined in this case on behalf of the second party. D. W. 1 disowned his signature on voucher Ext. E series but D. W. 3 has stated in his evidence that the signatures of medical officer (D. W. 1) and Accountants are on the vouchers Ext. E.

series. According to D. W. 1, his compounder enters vouchers, etc., in the Medical Register. D. W. 1 also sated that Medical Register of September, 1974 is not brought, in connection with this case. He further satated that the bill is made by the claimant and the same is taken to medical department where the Medical Officer refers it, get the same entered in his book and then bill goes to Accounts Department and it is checked by Accountant who also verified and sign and after completion of the requirement and having been satisfied signs the same for payment. P. W. 1 the first party has stated in his evidence that payment with regard to three vouchers Ext. E and E(2) was made when these vouchers were duly verified, checked and passed for payment by the Accountants Imam Hossain and Mahtab Hossain. The procedure for payment of the bill stated by first party in para 10 of the case petition is not disputed. Duty of the Chasier (P. W. 1) is to see, if a bill has been passed for payment by the Accounts Officer and since he satisfied that the bill has been passed for payment, the Cashier has no authority to disreagrd the same. In order to prove the charge against the first party, it was the duty of the enquiry committee to examine the recipients of the bill money (the persons who made statements *vide* Ext. F series), during enquiry in presence of the first party and also to give opportunity to the first party to cross examine the said material witnesses. From the evidence of P. W. 1 and D. Ws. referred to above it can be safely said that the employer has not given due and proper opportunity to the first party during domestic enquiry as per provisions of labour laws.

As regards the alleged preparation of the bill by the first party, there is no evidence to that effect. The second party did not submit enquiry proceedings in Court. The lawyer on behalf of the second party contends that the enquiry proceeding was missing. The evidence of D. W. 4 has falsified the alleged case of missing. D. W. 4 in his evidence has stated that he himself wrote the statements of witnesses and he took no signature of witnesses in their recorded statements. He further stated that the recorded statements of the witnesses were typed afterwards and the persons whose statements were recorded, had put their signatures in the typed statements. In cross D. W. 4 stated that after having typed the original enquiry proceeding which was written by him was torne out by him (D.W.4). It was suggested to D. W. 4 by the first party that all the three recipients of the voucher amount admitted to have received the amount paid by the first party. The lawyer of the 1st party contends that the proceedings of the enquiry has been purposely suppressed or withheld for fear of disclosure of the true fact. Ext. G is the enquiry report. Ext. G shows that the committee was not sure of whether the first party actually prepared any such bills. The said Ext. G further shows that the enquiry committee recommended for further enquiry for finding out the actual depth of the whole forgery case. The conclusion of the enquiry officer strongly suggests that he could not reach to the depth of the case and by using the word "whole" he did not exclude the case of the 1st party. From the discussions above I have reason to say that the 2nd party could not give any satisfactory explanation as to the alleged missing of the enquiry proceeding including the statements of witnesses. In the absence of the enquiry proceeding including the alleged statements of the witnesses, it is not proper and safe to place reliance upon Ext. G, as the basis of Ext. G is found wanting in this case.

It has been guided by legal authority *vide* A. I. R. 1957, S. C. 1832, page 835 and A. I. R. 1948—"The rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies,

that the evidence of opponent should be taken in his presence and he should be given opportunity of cross examining the witnesses and that no material should be relied on against him without he is being given an opportunity of examining them. These principles of natural justice must be observed in all cases, if these or any of these are violated, the Court can declare such dismissal to be wrongful."

It is contended on behalf of the first party that first party's dismissal in question is a case of victimisation for his (1st party) lawful trade union activities. P.W. 1 in his evidence has stated that he is the Treasurer of the second party's Employees Union Since March 1974 and the said union is also the Bargaining Agent. He also stated in his evidence that he was not given opportunity for his defence during enquiry and that the second party has victimised him for his trade union activities. The aforesaid evidence of P. W. 1 has not been challenged in cross. D. Ws. nowhere in their statements stated that the first party was not dismissed by way of victimisation for his (first party) trade union activities. Thus, from the evidence and circumstances and my discussions above, I find sufficient force in the case of the first party to the effect that he was dismissed from service by way of victimisation for his trade union activities.

I have discussed the evidence of P. W. 1 and D. Ws. and other circumstances, in details above in connection with the domestic enquiry. Following the aforesaid guidance and my discussions above I must held that in this case, the enquiry was having seriously offended natural justice due to failure and ommissions already pointed out above and as a result the dismissal order passed on such enquiry report, cannot be sustained in law. Consequently I find that the first party was illegally dismissed from service without complying with the procedure and provisions of labour law. So, the first party is entitled to get reinstatement in his former post with back wages.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

The second party is directed to reinstate the first party in his former post and position with back wages and other benefits, within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
14-11-1975.

Typed by Mr. M. M. Chowdhury
at my dictation and corrected
by me.

A. AHMED
Chairman.
14-11-9175.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 45 of 1975.

Abdul Monaf, s/o. Abdul Bari, C/o. Arakan Sarak Paribahan Sramik Union, 328, Kapashgola, Chittagong—*First Party*,

versus

(1) Proprietor of Bus No. Chittagong BA9599, Sreemoti Sunity Prova Dewanjee, W/o. Late Lal Mohan Dewanjee,

(2) Sreemoti Nitya Bala Chowdhury, W/o. Priyada Ranjan Chowdhury,

(3) Manager, Bus No. Ctg. BA-9599, Sree Dipak Kr. Dewanjee, S/o. Late Lalmohan Dewanjee:
All are of—Vill. Mohara, P.O. Mohara, P.S. Panchalaish, Dist. Chittagong—*Second Party*.

PRESENT ;

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury ... } *Members*.
Mr. Juned A. Choudhury ... ... }

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965, the first party, Abdul Monaf seeks a direction upon the second party either to reinstate him in his former post with back wages or to pay termination benefit to him.

The case of the first party is that he was appointed by the second party as Bus Conductor on 4-5-1967 and subsequently he was promoted as Driver with effect from 1-3-1973. His daily wages was Tk. 20·00. On 12-5-1975 the plying of the Bus was suspended on the plea of repair but after two days it was found plying with the help of another Driver. On 15-5-1975 the first party enquired about the matter from the second party No. 2 who became annoyed and verbally terminated the service of the first party without any lawful reason or notice or payment in lieu of notice. Thereafter on 29-5-1975 first party represented his grievances to the second party, but the second party neither enquired into the matter nor gave any decision. Hence, this case.

In spite of service of process/notice on the second parties, the second parties neither appeared, nor contested the first party's case. So, this case was fixed for *ex parte* hearing and accordingly it is heard *ex parte*.

It is to be seen—whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1, Abdul Monaf, first party has only examined himself in support of his case. According to P.W. 1 second party No. 2, Depok Dewanjee terminated his service orally on 15-5-1975 without any reason or notice and thereafter he represented his grievance on 29-5-1975 by registered post which second party received *vide* acknowledgement receipt Ext. 1 and gave no reply. P.W. 1

further stated that thereafter he brought this case for termination benefit under section 19(1) of the Standing Orders Act. First party neither produced the postal receipt in order to show that he actually posted the grievance petition to the second party, nor any copy of the said grievance petition is produced in this Court during *ex parte* hearing. First party ought to have produced the postal receipt as well as the copy of grievance petition for the satisfaction of the Court. Moreover, the alleged verbal termination of first party's service cannot be believed in view of the fact that in the case petition it is clearly stated that second party No. 2 on 15-5-1975 verbally terminated his service, but at the time of hearing P.W. 1 stated that suddenly the second party No. 3 Debok Dewanjee terminated his service verbally. Having regards to the above discussions I have reason to say that the first party has not been able to prove his alleged case of verbal termination to the satisfaction of the Court. Consequently the first party is not entitled to get termination benefit as prayed for from the second party.

Members are consulted over the matter.

Ordered

That the case be dismissed *ex parte* without cost, as not proved.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
19-11-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AMHED
Chairman.
19-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 50 of 1974.

Samar Kanti Mazumder, S/o. Nikunja Behari Mazumder, Village North Kattali P.O. Kattali, P.S. Doublemooring, Chittagong—*Petitioner/1st Party*;

versus

(1) Victory Jute Products Limited,

(2) Manager, Victory Jute Products Limited, both of North Kattali, Post. Kattali, P.S. Doublemooring, Chittagong,

(3) Bangladesh Jute Mills Corporation, 'Silpa Bhaban', Motijheel C/A., Dacca—*Opposite Party/2nd Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury .. } *Members.*

Mr. Juned A. Choudhury .. .. }

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 the first party Samar Kanti Mazumder seeks direction upon the second party to reinstate him in his former post with back wages, after declaring the dismissal order in question illegal, void and without jurisdiction mainly on the ground that the second party has not complied with the provisions of sections 17 and 18 of the Stading Orders Act.

Second party contested the case by filing written statement alleging *inter alia* that the first party was duly charge-sheeted for misconduct and thereafter first party submitted explanation which was found unsatisfactory and ultimately the first party was found guilty for misconduct after holding enquiry according to labour laws. The first party is not entitled to get any relief.

It is to be seen—whether the first party is entitled to get the relief as prayed for.

DECISION

Neither party adduced any oral evidence. Ext. A dated 8-5-1974 is the charge-sheet against the first party for misconduct under section 17(3) of the Standing Orders Act. Thereafter, first party submitted explanation Ext. 1. Second party enquired thereafter and submitted enquiry report and ultimately dismissed the first party from service for misconduct. Ext. B is the statement of first party recorded during enquiry. Ext. C is the enquiry report. Ext. 4 is the letter of dismissal.

Learned Lawyers appearing on behalf of the parties at the end of their argument submitted that the parties have no objection, if the Court instead of reinstatement grant termination benefit to the first party in a case like this. I find nothing to disagree with the said contention of the Lawyers. Moreover, the first party is agreeable to accept the termination benefit. Order for reinstatement is discretionery with the Court.

Both the Members have suggested for allowing first party full termination benefit *vide* their written advices. In the result, it is—

Ordered

That the second party is directed to pay the first party the following termination benefits under section 19(1) of the Standing Orders Act, 1965, within 30 days from today:

(1) 90 days' notice pay, at the rate of wages last drawn by the first party;

(2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;

(3) Unpaid wages, if any;

(4) Wages for unavailed period of Earned Leave, if any.

Any other benefit or benefits to which the first party may be found to be entitled under any other law for the time being in force.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
28-11-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
28-11-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 70 of 1974.

Nurul Islam, *Ex*-Mechanical Mistry (Main.), Token No. 114, S/o. Naderuzzaman Bhuiyan. P.O. Kamar Ali, Vill. Muradpur, Fakir Bari, P.S. Nirasari, Chittagong,—*First Party.*

versus

(1) The Manager, M/S. S.K.M. Jute Mills Ltd., Barabkunda, Chittagong;

(2) The Chairman, Jute Industries Corporation, Dacca—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury .. } *Members.*

Representation : Mr. S. C. Lala, Advocate, appeared for the first party and Mr. A. K. Humayun Kabir, Advocate, appeared for the second party.

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 by Nurul Islam, first party, for his reinstatement in his former post and position with back wages.

The case of the first party is that he was a permanent worker under the second party No. 1 and he had been discharging his duty most satisfactorily. Suddenly the second party No. 1 issued a false letter of charge on 27-9-1974 and place the first party under suspension. Thereafter first party submitted explanation denying the charges. The first party did not get any opportunity to defend himself during the proceeding of domestic enquiry. The second party most illegally dismissed the first party from service under their letter dated 12-10-1974 without following and complying with the provisions of sections 17 and 18 of the Standing Orders Act. The first party having received the letter of dismissal, made a representation as per provisions of section 25 of the Standing Orders Act requesting the second party to reconsider their dismissal order. But the second party did not reply the said representation. Hence, this case.

Second parties 1 and 2 jointly appeared and contested the case by filing a joint written statement alleging *inter alia* that the first party was appointed as Mistry with effect from 1-1-1972 on daily rate basis under the second party mill. The first party was issued with a letter of charge dated 27-9-1974 by the second party No. 1 for commission of misconduct fully detailed therein asking first party to submit explanation. The first party submitted his explanation dated 30-9-1974 which was found unsatisfactory. Thereafter an enquiry was held on 11-10-1974 by an enquiry committee into the charge aforesaid and the first party fully participated in the enquiry and all reasonable opportunities were given to him. The enquiry committee submitted its report dated 12-10-1974 finding first party guilty of misconduct and ultimately the first party was dismissed from his service for the said misconduct with effect from 12-10-1974 after fully complying with the provisions of sections 17 and 18 of the Standing Orders Act. It is further alleged that the application of the first party for want of any cause of action or grievance and non-compliance with the provisions of Standing Orders Act is not maintainable in law and for that the case is liable to be dismissed.

It is to be seen—whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1, Nurul Islam, first party has only examined himself in support of his case. On the other hand, D.W. 1 Hasan Imam, the Factory Shift In-charge of the second party mill has examined himself along with D.W. 2 Nurul Huda, the Labour Officer of the second party mill in support of the second party's case.

It is not disputed that the first party was appointed as Mistry with effect from 1-1-1972 under second party No. 1 and the first party became permanent worker. It is also an admitted fact that the second party No. 1 issued a letter of charge dated 27-9-1974 alleging that the first party has assaulted Hasan Imam, Shift in-charge and Forkanuddin, Supervisor of the second party mill with his (first party) 'sendal' on 27-9-1974 at about 8·10 a.m. near the main gate of the mill and according to second party No. 1 this constituted misconduct under section 17(3)(g) of the Standing Orders Act. It is an admitted fact that first party on receipt of the said charge submitted his explanation dated 30-9-1974, Ext. A. denying the allegations. The evidence in cross of P.W. 1, first party, will clearly show that he duly participated in the domestic enquiry which was held on 11-10-1974. It is also stated by P.W. 1 in his cross that Abul Khair, Shamsul Alam and Abul Kashem Mollah were examined during the course of domestic enquiry on 11-10-1974 where the statements of these witnesses were recorded by the enquiry committee in his presence. P.W. 1 further stated that his statement was recorded by the enquiry committee on 11-10-1974 and he himself signed the same. The said statement of P.W. 1 before enquiry committee is marked Ext. B. P.W. 1 in his evidence further stated that he cross examined the witness Shamsul Alam during domestic enquiry. The said statement of Shamsul Alam in the enquiry has been marked Ext. D. D.W. 2 the Labour Officer of the second party mill is one of the member of the enquiry committee. D.W. 2 stated that he is member of the enquiry committee wrote the statement of Forkanuddin, Supervisor, which was signed by said Forkanuddin in his presence and this statement of Forkanuddin has been marked Ext. F. The statements of witnesses Shamsul Huq, Abul Khair, Salamatullah Abul Kashem before the enquiry committee are marked Exts. D. H, I and J

respectively. D.W. 2 proved these Exts. *vide* evidence on record. D.W. has stated that he made a complaint Ext. E dated 27-4-1974 to the Labour Officer (D.W. 2) with a copy to Manager stating that the first party assaulted him and Forkanuddin in the mill gate with sendal. D.W. 1 further stated that he was examined by the enquiry committee where he stated as to how and when the first party assaulted and Forkanuddin and him by 'sendal'. Of course P.W. 1 in his evidence has stated that he never assaulted Forkanuddin and D.W. 1 by his 'sendal'. The evidence on record coupled with the documentary evidence, *viz.*, Exts. D, E, G, H, I will show that first party assaulted his superiors including D.W. 1 in the mill gate on 29-7-1974 with 'sendal'. P.W. 1 is not consistent in his statement as will appear from his evidence and the grievance petition Ext. 1. According to P.W. 1 none is of his relation was ailing on the date when he submitted his explanation Ext. A. But according to his expalnation Ext. A on 27-9-1974 immediately after duty hours he went out of the mill premises along with others to rush home to see his ailing relation and as such the allegation of assault by him is not true. The aforesaid evidence of P.W. 1 contradicts the said referred evidence of P W. 1 in Ext. A. So, it is risky and difficult to place reliance upon P.W. 1 the first party. D.W. 2 has stated that after domestic enquiry the enquiry committee submitted the report dated 12-10 1974 which was written by him and the same was signed by all the members of the committee including him. The enquiry report is marked Ext. K. The first party in his explanation Ext. A or grievance petition Fxt. 1 has not stated to the effect that he was victimised by the management for his trade union activities. Although during hearing the first party has stated that he was an executive member of the S.K.M. Jute Mills Workers' Union and he used to place the grievances of the workers to the second party No. 1, who for that, had grudge against him. From the evidence discussed above I find nothing sufficient on record to disbelieve the evidence of D.Ws. There is no evidence worth the name on record to show that the first party was victimised for his trade union activities. The act for which the first party was charged *vide* charge-sheet constitute misconduct under section 17(3)(g).

I have carefully scrutinised all the papers and procedures and circumstances involved. I have also gone through the enquiry proceeding including statements of witnesses examined during enquiry and the evidence of D.W. 1. I have reason to say that the first party was given all reasonable opportunity during enquiry to defend his case. I also find that the first party was dismissed from service *vide* dismissal order dated 12-10-1974 after holding proper enquiries step by step as provided under sections 17 and 18 of the Standing Orders Act. Therefore, there can be no warrant for interference with the order of dismissal dated 12-10-1974.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
28-8-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
28-8-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 71 of 1975.

Ali Ahmed, S/o. Md. Ismail, Vill. Hathupara, P.O. Nangalkot, P.S. Choudda-gram, Chittagong—*First Party*,

versus

The Manager, M/s. ARCO Industries Ltd., 25-26, Nasirabad Industrial Area, Chittagong— *Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury .. } *Members*.

By this application under section 25(1)(*b*) of the Employment of Labour (Standing Orders) Act, 1965, the first party Ali Ahmed seeks a direction upon the second party to reinstate him in his original post with all back wages, mainly on the ground that he was dismissed from his employment by the second party without holding any enquiry whatsoever as well as complying the provisions of sections 17 and 18 of the Standing Orders Act.

Second party did not appear and contest the first party's case though summons of the case was duly served upon him on 24-9-1975. This case was thus heared *ex parte*.

It is to be seen—whether the first party is entitled to get relief as prayed for.

DECISION

P.W. 1, Ali Ahmed has only examined himself in support of his case P.W. 1 has stated that he was appointed as worker under the second party since 1969 and thereafter suddenly he was issued with a show cause notice dated 11-7-1975 Ext. 1 and thereafter he submitted his explanation denying the allegations of Ext. 1. P.W. 1 further stated that he was illegally dismissed by the second party without any enquiry whatsoever *vide* dismissal letter Ext. 2. He also stated that thereafter he (first party) submitted grievance petition on 14-7-1975 *vide* registered post to the second party but the second party did not reply the same. The copy of the grievance petition is marked Ext. 3. P.W. 1 *vide* his evidence prays for his reinstatement with back wages. P.W. 1 re-stated his case on oath which goes unchallenged and *ex parte*. The fact that the second party has not taken any steps for contesting the claim is a pionear to the fact that it has no say. Moreover, it appears from the evidence and materials on record that the second party did not hold any enquiry to prove the guilt of the first party and to give opportunity to him for defence as required under sections 17 and 18 of the Standing Orders Act, 1965. I, therefore, find that the dismissal order in question passed without following the provisions of the labour laws, is illegal, and contrary to the provisions of law. Therefore, the case of the first party is proved *ex parte*.

Both the Members are consulted over the matter.

Ordered

That the case be allowed *ex parte* without cost.

The first party is held entitled to reinstatement to his former post with back wages and the second party is directed to reinstate the first party in his former post and position with all back wages, within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
20-11-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 72 of 1974.

Ahmed Hossain, S/o. Alimuddin, C/o. Hotel Restuarant Sramik Union, 37, Nazir Ahmed Chowdhury Road, Chittagong—*First Party*,

versus

The Proprietor, M/S. Nahar Hotel, 5, Sadarghat Road, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury .. } *Members.*

Representation: Mr. Lutful Haque Mazumder, Advocate, appeared for the first party and Mr. A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate, appeared for the 2nd party.

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 the first party Ahmed Hossain seeks a direction upon the second party either to reinstate him in his service or to pay him termination benefit.

The case of the first party is that he was appointed on 3-1-1973 as a Table Boy on a monthly salary of Tk. 60·00. He was permanent in his employment. During last Ramzan the establishment was kept closed and re-opened on 21-10-1974 on which date first party reported for duty but instead of allowing him to resume duty, his service was terminated verbally by the

second party without any notice or payment. Thereafter first party on 2-11-1974 represented his grievance praying for termination benefit but the second party gave no reply, Hence, this case.

Second party contested the case by filing a written objection denying the alleged case of the first party. His case was that the first party was never permanent. First party worked on daily basis and was also paid on daily basis. First party wilfully left the second party's establishment for better job elsewhere and since 18-9-1974 the first party was not coming to the establishment of the second party. The first party is not entitled to get any relief.

It is to be seen—whether the first party is entitled to get relief as prayed for.

FINDINGS

P.W. 1, Ahmed Hossain has examined himself in support of his case. None is examined on behalf of the second party.

P.W. 1 stated that he was appointed by the second party on 3-1-1973 as Table Boy on a monthly salary of Tk. 60·00. According to P.W. 1 during the month of Ramzan the hotel was closed and on 21-10-1974 when the hotel was reopened he went there to resume his duty but the second party told him that his (P.W. 1) service will be no longer required, *i.e.*, his service was terminated orally and thereafter he on 2-11-1974 sent a grievance petition to the second party by registered post for payment of termination benefit but the same was not replied. It will appear from the evidence in cross of P.W. 1 that first party worked in the second party's hotel up to 17-9-1974 for last, and he received his salary up to the month of Ramzan, 1974. The very evidence in cross of P.W. 1 shows that he worked under the second party on daily basis and second party used to pay at the rate of Tk. 2·00 per day. From the above discussions I have reason to believe that the first party worked on daily basis under the second party and that his service was terminated on 21-10-1974 So, the first party is entitled to get the termination benefit under section 19(1) of the Standing Orders Act, 1965, *i.e.*, he is entitled to get 45 days' notice pay at the rate of Tk. 2·00 per day and nothing more.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

The second party is directed to pay 45 days' wages to the first party at the rate of Tk. 2·00 per day, within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-7-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
30-7-1975

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 73 of 1974.

Imam Hossain, S/o. Niazuddin, C/o. Hotel Restaurant Sramik Union, 37, Nazir Ahmed Chowdhury Road, Chittagong—*First Party*,

versus

The Proprietor, M/s. Nahar Hotel, 5, Sadarghat Road, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury .. } *Members*.

Representation: Mr. Lutful Haque Mazumder, Advocate, appeared for the first party and Mr. A. K. M. Mohsenuddin Ahmed Chowdhury, Advocate, appeared for the second party.

This is a case under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 by first party Imam Hossain with a prayer either for his reinstatement in service or termination benefit. His case is that he was appointed by the second party with effect from 3-1-1973 as a Mistry on a monthly salary of Tk. 180·00. He was permanent in his employment. First party's service was verbally terminated by second party on 21-10-1974 without any notice or payment. Thereafter on 2-11-1974 first party represented his grievances praying for termination benefit but it was not replied. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that the first party was a casual worker. He worked on daily basis and paid on daily basis. First party's service was never permanent. First party on 18-9-1974 verbally tendered his resignation stating that he got a good job in another establishment. First party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1, Imam Hossain has examined himself in support of his case. None is examined on behalf of the second party.

According to P.W. 1 on 3-1-1973 he was appointed as Mistry on monthly salary of Tk. 180·00 and he became permanent worker. He further stated that that on 21-10-1974 the second party terminated his service by saying that his (P.W. 1) service would no longer be required by him and thereafter he sent a grievance petition on 2-11-1974 by registered post but the same was not replied. The evidence of P.W. 1 shows that he worked up to 17-9-1974 under second party for last. His evidence in cross also shows that the first party was a permanent worker under the second party on daily basis and he used to get

Tk. 6·00 per day from the second party. Second party is not coming to say on oath that he never terminated first party's service on 21-10-1974. From the discussion above I have reason to hold that first party was a permenent worker under the second party on daily wages and his service was terminated on 21-10-1974. I, therefore, find that the first party is entitled to get termination benefit under section 19(1) of the Standing Orders Act, 1965.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

The second party is directed to pay the following termination benefit to the first party within 30 days from today:

(1) 45 days' notice pay at the rate of Tk. 6·00 per day; and

(2) 28 days' wages as service compensation.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-7-1975.

Typed by Mr. M. M. Chowdhury at my dictation and corrected by me.

A. AHMED
Chairman.
30-7-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 87 of 1975.

Delwar Hossain, S/o. Ali Ahmed Sowdagar, Village Daulatpur, P.O. Alambazar, P.S. Chhagalnaiya, Dist. Chittagong—*Complainant/First Party,*

versus

The Manager, Hasni Vanaspati Mfg. Co. Ltd., Hathazari Road, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury
Mr. Juned A. Choudhury .. } *Members.*

By this application under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965, first party Delwar Hossain seeks direction upon the second party either to reinstate him in his former post and position with

back wages or to pay termination benefits as described in the schedule of the case petition mainly on the ground that the second party dismissed him *vide* dismissal letter dated 30-8-1975 without any charge-sheet or making any enquiry as provided under the provisions of the Standing Orders Act. The first party sent grievance petition on 4-9-1975 to the second party who gave no decision or reply. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that the first party was caught red-handed on 30-8-1975 by Ansar Khorshed Alam on duty while he (first party) was removing timber. Thereafter the first party was again caught red-handed while stealing water bucket and he was charge-sheeted and ultimately he was punished by way of reduction of pay for one day for his said misconduct. Thereafter the first party was again warned for his acts. The first party was again detected stealing timber on 30-8-1975 and so the second party dismissed the first party from service. First party is not entitled to get the benefit of service.

It is to be seen whether the first party is entitled to get the relief as prayed for.

DECISION

P.W. 1, Delwar Hossain, first party has only examined himself in support of his case. None is examined on behalf of the second party. P.W. 1 stated that he was appointed as Helper under the second party on 17-7-1973 and subsequently he was dismissed from service by the second party *vide* order, dated 30-8-1975, Ext. 1 without charge-sheet or making any enquiry as provided under Standing Orders Act. P.W. 1 also stated that after the said dismissal he sent grievance petition to the second party on 4-9-1975 by registered post but the second party gave no reply to the same. The copy of grievance petition is marked Ext. 3. The postal receipt is Ext. 2 by which the grievance petition was sent by registered post. It is proved that this case is filed within time from the date of dismissal after complying the provisions of law. Ext. 1 is the letter of dismissal. This Ext. 1 does not also show that whether any domestic enquiry was held or a charge-sheet was framed against the first party for the alleged misconduct prior to the passing of the same. None is examined on behalf of the second party in order to challenge the case of the first party. I, therefore, find that the dismissal of the first party in these circumstances is invalid and improper.

The first party either prayed for reinstatement or termination benefit and to that effect the first party was also deposed. The learned Advocate for the second party, however, submits that the second party is agreeable to pay termination benefit to the first party. P.W. 1 in cross says that his basic wage is at Tk. 225·00. It is found from the evidence in cross of P.W. 1 that previously he (first party) was warned on several occasions for his conduct with direction for future guidance. Ext. A series will show that first party submitted cause showing against his previous conduct. In view of his past record and conduct I think it will not be proper and just to reinstate the first party in his former post and position.

Both the Members have suggested me for giving the first party termination benefit. I am, therefore, inclined to grant the prayer for termination benefit and not reinstatement.

In the result, it is—

Ordered

That the case be allowed on contest without cost.

The second party is directed to pay termination benefit under section 19(1) of the Standing Orders Act, 1965 to the first party in the following manner within 30 days from today:

(1) 90 days' notice pay at the rate of Tk. 225·00 per month (as stated in cross);
(2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;
(3) Unpaid wages, if any;
(4) Wages for unavailed period of Earned Leave, if any;
(5) Bonus, if any, declared by the 2nd party, during the service period of 1st party;
(6) Provident Fund, dues, if any, including company's contribution.

Any other benefit or benefits to which the first party may be found to be entitled under any other law for the time being in force.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
22-11-1975.

Typed by Mr M M. Chowdhury, at my dictation and corrected by me.

A. AHMED
Chairman.
22-11-1975.

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