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GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

MINISTRY OF HEALTH, POPULATION CONTROL AND LABOUR

(Labour and Social Welfare Division)

Section VI.

NOTIFICATION

Dacca, the 16th February, 1976.

No. S.R.O. 66-L/76/S-VI/1(1)/75/59.—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 1, Dacca, in respect of the following cases, namely:—

(1) Criminal Case No. 17 of 1974.

(2) I.R.O. Case No. 79/Complaint Case No. 174 of 1975.

(3) Complaint Case No. 151 of 1975.

(4) Complaint Case No. 189 of 1975.

(5) Complaint Case No. 150 of 1975.

(6) Complaint Case No. 190 of 1975.

(7) Complaint Case No. 187 of 1975.

(8) Complaint Case No. 128 of 1975.

Price : Taka 2·00

(9) Complaint Case No. 54 of 1975.

(10) Complaint Case No. 103 of 1975 .

(11) Complaint Case No. 142 of 1975.

(12) Complaint Case No. 100 of 1975.

(13) Complaint Case No. 114 of 1975.

(14) Complaint Case No. 59 of 1974.

(15) Complaint Case No. 49 of 1975.

(16) I. R. O. Case No. 85 of 1975.

By order of the President
MUHAMMAD KHADEEM ALI
Deputy Secretary.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

Criminal Case No. 17 of 1974.

Md. Yakub Ali, Driver—*Complainant,*

versus

M. A. Ghani, Owner of Bus No. Dacca 'Ba' 555, 132, Malibagh, Dacca—*Accused.*

PRESENT:

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim .. .. } *Members.*
Mr. M. A. Mannan .. }

The complainant obtained an *ex parte* order on 17-1-1974 in I.R. Case No.137/73 in the First Labour Court, Dacca. By that order the accused, M. A. Ghani, was directed to pay the complainant a sum of Taka 1,068·00 within 30 days of the order. It is now alleged that the accused had intentionally failed to implement the said order of the Court.

The accused is now being charged u/s. 55 of the Industrial Relations Ordinance, 1969 for intentionally failing to implement the said order of the Court.

The grounds taken by the defence is that the Court had no territorial jurisdiction to pass the order dated 17-1-1974 and that the I.R. Case No. 137/73 was filed against a wrong person and that no notice was at all served on the accused in that case.

The accused was examined under section 242, Cr.P.C. He pleaded not guilty to the charge.

The complainant in his deposition says that he even addressed a letter with a copy of the order dated 17-1-1974 by registered post for payment as order by the Court but he has not been paid so far. A copy of the letter Ext. 1 with postal receipt Ext. 2 have been filed. These suggest that the complainant demanded the money by his letter dated 1-2-1974 Ext. 1. It is not denied that the accused did not know of the order. His defence as it appears from his cross examination is that the notice in the I.R.O. Case was suppressed and the case ought to have been filed against one Mahiuddin and not this accused and this Court had no territorial jurisdiction to pass the order. Non-service of notice or the matter of parties are, however, not the points to be considered in this collateral criminal proceeding, an offshoot of the said I.R.O. Case.

The only point to be considered here is whether the order is *void ab initio* for want of territorial jurisdiction. It is submitted that the cause of action of the I.R.O. Case arose in the Ramna P.S. of Dacca City and this Court did not have territorial jurisdiction on Ramna P.S. and as such the order dated 17-1-1974 was *void ab initio* and that being so there could be no offence under section 55 of the I.R.O., 1969 for violation of such order. That the cause of action arose beyond the territorial jurisdiction of the Court is not denied. But the matter of territorial jurisdiction had never been considered as one effecting an order of a Court already passed particularly in a collateral proceeding such as this one arising out of the original I.R. Case No. 137/73 unless prejudice has been caused. In this connection I would refer to P.L.D. 1959 (W.P.) Karachi 669—1960 K.L.R. (1) 297—P.L.R. 1959 (2) W.P. 1653 (F.B.) There is no case that the accused has been prejudiced for the lack of territorial jurisdiction. In fact, the question of territorial jurisdiction is not a matter of inherent jurisdiction and since the accused did not appear and contest the I.R. Case despite service of notice (service is presumed, for a Court does not pass a final order against any one unless it is *prima facie* satisfied of the necessary service of notice such one) he must be held to have submitted to the jurisdiction of the Court and as such his present objection in this regard, in the absence of prejudice on merit (matter of parties are not matter of merit of a case), cannot be upheld. The judgment or decree of a Court having only no territorial jurisdiction over the subject matter of a suit is a judgment or decree of a competent Court and is not a nullity. This has been so held in AIR 1946 Lah 57 (F.B.). This is all, however, in general.

Now, I would like to quote here sub-section (2) of section 36 of the Industrial Relations Ordinance, 1969 providing the procedure and characterizing the nature of the Labour Courts in matters of Industrial Disputes. The sub--section runs as under—

> (2) A Labour Court shall, for the purpose of adjudicating and determining any industrial dispute, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure 1908 (Act V of 1908), including the powers of—
>
> (a) enforcing the attendance of any person and examining him on oath;
>
> (b) compelling the production of ducuments and material objects and;
>
> (c) issuing commissions for the examination of witnesses or documents.

So Labour Court has to seek guidance from the Code of Civil Procedure in matters of industrial dispute. Of course, it was not technically an 'industrial dispute' that was involved in the I.R.O. Case No. 137/73, but this being the

only section telling how to deal with civil matters before a Labour Court we can safely presume that the term 'industrial dispute' in the sub-section has been loosely used to mean all disputes of civil nature before a Labour Court, for, a complete code must provide guidance in every matter that may come up in connection with that code and Industrial Relations Ordinance, 1969 being necessarily a complete code must be presumed to have done so and this is the only provision in the code in this regard. Now let us turn to section 21 of the Code of Civil Procedure, 1908 (Act V of 1908) to find its provisions regarding territorial jurisdiction. The section provides—

> 21. No objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issuance are settled at or before such settlement, and unless there has been a consequent failure of justice.

So, no objection as to the territorial jurisdiction of the Court may be raised after submission to its jurisdiction and I have already said that this accused must be presumed to have submitted to the jurisdiction of the First Labour Court in the I.R.O. Case No. 137/73 and it has not been the case of the accused that there had been any consequent failure of justice on account of the wrong assumption of jurisdiction in the I.R.O. case No. 137/73 by the First Labour Court. In this connection, I would refer to P.L.D. 1961 Dacca 616 and A.I.R. 1965 Mysore 110 (D.B.) where it has been held that any objection as to the absence of territorial jurisdiction need be of no concern unless there has been a consequent failure of justice. In the above view I hold that the impugned order dated 17-1-1974 passed in the I.R.O. Case No. 137/73 of the First Labour Court was legally and validly passed. It is not denied that the said order was within the knowledge of the accused. It had not been admittedly implemented. The accused has shown no reason preventing him from implementing the order within 30 days of the order as directed. I, therefore, find that he had intentionally failed to implement the order dated 17-1-1974 passed in the I.R.O. Case No. 137/73 of the First Labour Court, Dacca and as such is guilty under section 55 of the Industrial Relations Ordinance, 1969.

The accused found guilty under section 55 of the Industrial Relations Ordinance, 1969 be convicted and sentenced to a fine of Taka one hundred, in default to rigorous imprisonment for seven days.

Learned members consulted.

I agree.
Sd/—M. A. MANNAN.
I agree.
Sd/—M. KARIM.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
8-1-1976.

Typed at my dictation by Stenographer Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN
Chairman.
8-1-1976.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

I. R. Case No. 79/Complaint Case No. 174 of 1975.

Abdul Malek—*First Party*,

versus

The General Manager, M/s. Haque Brothers (Industries) Ltd.—*Second Party*.

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim .. } *Members*.
Mr. M. A. Mannan.. }

In a very short petition the First Party Abdul Malek alleges hat he had been a worker in the Haque Brothers (Industries) Ltd. for 15t years. Now he has been dismissed from service without any fair enquiry after being suspended from service on 5-6-1975.

The Second Party General Manager, M/s. Haque Brothers (Industries) Ltd. in his written statement submits that the First Party was charged for misconduct and he submitted his explanation. It was found not satisfactory and an enquiry was ordered to be held on 8-5-1975. The First Party appeared before the enquiry committee without any witness, denied the charges and stated in writing that as the charges against him were false it was not necessary to produce witnesses on his part. He also threatened other witnesses and did not allow them to appear before the enquiry committee. The enquiry could not, therefore, be held. So another date was fixed on the 9th May, 1975 but the Enquiry Officer being involved in an accident, the enquiry could not be held. So a third date was fixed on 26-5-1975 for enquiry with due notice on the first Party. The enquiry was held on the said date and the charges being proved he was dismissed from service.

This case was originally considered under the Industrial Relations Ordinance, 1969 as no grievance petition appears to have been filed according to the petition. But at the time of hearing the petitioner submitted an application praying that the case be treated as one under section 25(1)(*b*) of the Employment of Labour (S. O.) Act, 1965. The prayer was allowed and now the case is being treated accordingly. Grievance petition was admittedly addressed to the management and was duly received. According to the management the grievance petition was replied to on 9-7-1975. This case has been filed on 15-7-1975, so this is very much in time.

The first party in his deposition now admits that he was asked to show cause by notice Ext. 1 and he replied denying the charge and he appeared for enquiry on two occassions but no enquiry was held. On the first occassion it could not be held for the absence of the witnesses of the management and on the second occassion for the absence of the manager involved in an accident

and thereafter he was never asked to appear for enquiry although his dismissal was conveyed by a letter dated 15-6-1975 Ext. 2 for wilful insubordination, habitual breach of rules, ritious behavior and habitual neglect of work. Mujibur Rahman, General-in-charge of the M/s. Haque Brothers says that he was appointed Enquiry Officer and he served notices Ext. C and D fixing dates of enquiry and finally held the enquiry on 28-5-1975 in the absence of the first party. He further says that he examined witnesses and submitted his report together with the statement of the witnesses. The letter Ext. B, the statements Ext. F in eleven sheets, the letters and covers Ext. C and C(1) and D and D(1) respectively and the report Ext. G bear out the statement of the witness. The second witness, a Time-Keeper of the Haque Brothers says that he took the covers Ext. C(1) and D(1) bearing letters to the first party who refused to accept the letters and as such he wrote the note Ext. H and H(1) on the covers. The notes on the covers suggest that the first party refused to accept the notices of enquiry to be held on the 2nd and 3rd dates. The first party admits service of earlier notices but says that he was not served with the notice of enquiry supposed to have been held on 26th May. Since he was informed of the dates of enquiry on the two earlier occassions there was no particular reason why the third notice would be suppressed. That he purposely avoided appearance before the enquiry would be proved from his admitted signature Ext. A on a statement which says that he refused to adduce witnesses as he considered it unnecessary to adduce witnesses since he was innocent. I am convinced that the first party refused to appear before the enquiry and was rightly found guilty in a proper enquiry held by the management. The case of the first party, therefore, fails.

The case be dismissed on contest. No costs.

Learned members consulted.

Sd/- AMANULLAH KHAN

Chairman,

First Labour Court, Dacca.

20-12-1975.

I agree.

Sd/- M. KARIM

Sd/- M. A. MANNAN.

Typed at my dictation by Stenographer,
Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN

Chairman.

20-12-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170. Santinagar, Dacca.

Complaint Case No. 151 of 1975

Fulu Miah—*First Party*,

versus

The General Manager, Latif Bawany Jute Mills Ltd.—*Second Party*.

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim
Mr. M. A. Mannan } *Members*.

The First Party applicant Fulu Miah was a Beamer in the Beaming Department of the Latif Bawany Jute Mills Ltd. He was retrenched from service with effect from 16-6-1975 but was offered only taka 542·13 on 26-6-1975 instead of Taka 1,318·35 which was calculated and said to be due. He adds that there was no reason for such deduction to his knowledge. So he submitted a grievance petition demanding his dues and now files this case under section 25(1)(*b*) of the Employment of Labour (Standing Orders) Act, 1965.

The Second Party General Manager of the Latif Bawany Jute Mills Ltd. in his written statement does not dispute the amount of taka 1,318·35 as retrenchment benefits for the First Party but alleges that the First Party received payment of taka 425 as fringe benefits, taka 50 advance on account of the recommendation of the Wages Commission and taka 542·13 as arrear payment on account of such recommendation and it was alleged that the First Party was thus paid taka 1,017·13 before his retrenchment on the expectation that the First Party would be entitled to the aforesaid amount if the recommendation of the Wages Commission would be given effect. But the new wages schedule was given effect to in the Latif Bawany Jute Mills from the week beginning with 18-1-1975 and hence all those payments made on account of arrear benefits and payments in terms of recommendation of the Wages Commission or the new wages schedule for the period between 1-7-1973 to 11-1-1975 was wrongly paid and the Second Party had the right to deduct and there by realise the advance and payments made to the First Party before his retrenchment.

So, admittedly the retrenchment benefits of the First Party amounted to taka 1,318·35. He denies to have taken any advance of money as arrear though admits to have taken taka 425 as house rent and medical allowance and taka 50 against arrear wages on account of the Wages Commission Report but adds that this sum of taka 50 was not included in the retrenchment benefits. He also denies that he never received taka 542·13 more than what was due to him. The Second Party witness, an Assistant Wages-in-Charge of the Latif Bawany Jute Mills Ltd. says that the First Party was paid taka 425 as fringe

benefits, taka 50 as advance in expectation of the implementation of the Wages Commission Report and taka 542·13 according to the old schedule. There is no documentary evidence to show that taka 542·13 was at all paid or that the sum of taka 425·00 or taka 50 were received as fringe benefits or advance respectively to be deducted now out of his retrenchment benefits. The First Party, however, admits that in the meantime he has received taka 301·22 out of his retrenchment benefits of taka 1,318·35which was admittedly due to him as retrenchment benefits. I, therefore, find that the First Party is entitled to taka 1,318·35 less taka 301·22.

The case is, therefore, allowed on contest without costs. The second party is directed to pay the First Party taka 1,017·13 as his retrenchment benefits within 30 days from today.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
27-12-1975.

I agree
Sd/M. Karim
Sd/- Abdul Mannan.

Typed at my dictation by Stenographer,
Mr Waliul Islam and corrected by me.

AMANULLAH KHAN
Chairman
27-12-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

Complaint Case No. 189 of 1975.

Ashraful Hoque—*First Party,*

versus

The Managing Director,
The Azad and Publications Ltd.—*Second Party.*

PRESENT :

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim
Mr. M. A. Mannan } *Members.*

Order No. 6, dated the 16th January, 1976.

This is an application for termination benefits:

The applicant was a Junior Sub-Editor in the newspaper, the Azad. The declaration of the Azad had been annulled by Ordinance No. XXXIII of 1975. So the relationship of the employer and employee between the applicant first party and the Managing Director of the Azad ceased by reasons of the Ordinance and not by any act of the employer. The employee cannot, therefore, infairness asked to pay compensation claimed by the applicant as this is to be paid only when the employer terminates the employment. The applicant may claim the remaining benefits only allowed under section 25 of the Employment of Labour (Standing Orders) Act, 1965.

The case is allowed *ex parte* in part. The second party is directed to pay the remaining benefits amounting to taka 3,753 to the first party within 30 days from date.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.

Sd/-M. KARIM
Sd/-M.A.MANNAN

IN THE FIRST LABOUR COURT OF BANGLADESH
170, Santinagar, Dacca.

Complaint Case No. 150 of 1975.

Ali Akkas—*First Party,*

versus

The General Manager,
Latif Bawany Jute Mills Ltd., Mill No. 1.
Demra, Dacca—*Second Party.*

PRESENT :

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim
Mr. M. A. Mannan } *Members.*

The First Party Ali Akkas was a Beamer in the Beaming Department of the Latif Bawany Jute Mills Ltd. He has been retrenched with effect from 16-6-1975. He was offered a sum of taka 1,438·39 as his retrenchment benefits but he was not paid the amount on the allegations that a sum of taka 1,587·63 was due to the company. The First Party submits that he never took any advance or loan from the second party at any time so that he could be liable for any deduction. He, therefore, submitted a grievance petition but received no reply. Hence this case under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965.

The General Manager of the Latif Bawany Jute Mills in his written statement submits that a sum of taka 1,438·19 was payable to the First Party for his retrenchment benefits but he had already received an advance of taka 425 as fringe benefits, taka 50 as simple advance and taka 1,587·63 as arrear wages in expectation of the implementation of the Wages Commissions Report and a sum of taka 123 as excess bounus. Thus taka 2,185·63 became due the other way round from the First Party to the Mills. So he had actually overdrawn taka 747·44 and could now claim nothing for himself. It is further alleged that the new wage schedule according to the recommendation of the Wages Commission was given effect in the mills from 18-1-1975 but the payments were

made to the first party on account of the benefits or arrear benefits in accordance with the recommendation of the Wages Commission under the new wages schedule for the period between 1-7-1973 to 11-1-1975 in the expectation of the Wages Commission being implemented with effect from 1-7-1973 and thus the First Party was wrongly paid the siad amount of taka 747·44 he was not entitled to from the effective date of 18-1-1975.

So the retrenchment benefits admittedly come to taka 1,438·39. The Second Party witness Md. Ruhul Amin, an Assistant Wages-in-Charge of the mills says that the First Party drew taka 425 as fringe benefits, taka 123 as excess bonus for the year 1973-74, taka 50 as simple advance wages and taka 1,587·63 as arrear wages for the period between 1-7-1973 to 11-1-1975 in expectation of the implementation of the Wages Commission Report from 1-7-1973 but the recommendation was given effect in this mills from 12-1-1975. There is no documentary evidence of these payments before me. The First Party denies taking on such advance in expectation of the implementation of the Wages Commission Report. He also denies drawing of any excess bonus. As for taka 425 he says that it was drawn as house rent. He only admits taking of advance of taka 50. Any way, the moot point is whether the Wages Commission could be effective from 18-1-1975 as alleged by the mill management. But a copy of the notification dated 17-4-1975 of the Bangladesh Jute Industries Corporation Ext. A filed by the mill management says that the Wages Commission Report became effective from 1-7-1973. So it is not understood how it could be effective from 18-1-1975 as alleged by the mill management. The mill management could not show any paper conveying such order making the Report effective from 18-1-1975. At the time of taking evidence the Assistant Wages in charge of the Latif Bawany Jute Mills attempted to say that the rate remuneration of these workers became less from 1-7-1973 than the rate prevalent for them before the said date and the payment of arrear wages of taka 1,587·63 was made on the basis of old rate. This is, of course, not the case of the management in the written statement. And even if it was the case it would not have made any difference. If a worker had been drawing more than the schedule wages fixed by the Wages Commission he could not draw less after the implementation of the Wages Commission Report. He could be entitled to the full amount he had been drawing earlier, only the excess amount he would be drawing would not be a part of his wages but would be considered as his personal pay. So I find that the First Party is entitled to a sum of taka 1,438·39 as his retrenchment benefits and must be paid accordingly.

The case be allowed on contest and the First Party be paid a sum of taka 1,438·39 as retranchment benefits by the Second Party management within 30 days from date.

Members consulted.

I agree:

Sd/-M. KARIM

Sd/-M. A. MANNAN

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
27-12-1975

Typed at my dictation by Stenographer, Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca,
27-12-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

Complaint Case No. 190 of 1975.

Md. Habib Ullah, Junior Accountant-*cum*-Clerk, Bangladesh Auto Rickshaw Chalak Samabaya Samity Limited—*First Party*

versus

(1) The Chairman, Bangladesh Auto Rickshaw Chalak Samabaya Samity Limited, 22/5, Dhakeswari Road, Dacca ;

(2) The Executive Officer, Bangladesh Auto Rickshaw Chalak Samabaya Samity Limited—*Second Party*.

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim ... } *Members*.
Mr. M. A. Mannan }

The First Party petitioner Md. Habib Ullah, was a Junior Accountant-*cum*-Clerk in the Bangladesh Auto Rickshaw Chalak Samabaya Samity Limited. It is alleged that on 7-8-1975 the First Party went to his office as usual but was not allowed to work and was asked to leave the office by the Second Party No. 2, the Executive Officer of the samity. The First Party submitted an appeal to the Chairman of the samity but received no reply. This is, according to the First Party, virtual dismissal from service. So he filed this case u/s 25(1)(*b*) of the Employment of Labour (S. O) Act, 1965.

The Second Party in its written statement submits that this case is not maintainable, the samity being under the direct control of the government and the employees of the samity being governed by Government Servants' Conduct Rules. It is also contended in the written statement that the Second Parties are immune from any suit, prosecution or legal proceeding whatsoever u/s 132 of the Bengal Co-operative Societies Act, 1940 and that the officers of the samity are not liable to be sued in their individual or personal capacity. The Second Party also denies that the First party was ever asked not to work or leave the office as alleged.

Bangladesh Auto Rickshaw Chalak Samabaya Samity Limited is certainly an organisation that is concerned with trade and as such being an establishment and Section 25 of the Employment of Labour (S. O.) Act, 1965 is invited. There is nothing to show that the Samabaya Samity is under the direct control and management of the government and the services of its employees are regulated by the Government Servants' Conduct Rules. The samity is definitely an establishment concerned with profit making and the Second Parties have not been sued in their individual or personal capacity as the Chairman and Executive Officer of the Samabaya Samity. I, therefore, find that section 25 of the Standing Orders Act, 1965 shall be attracted in this case.

The First Party was admittedly an employee of the Samabaya Samity and it has not been denied that he is not being allowed to attend his duties as alleged by him. This is virtually a dismissal from service. The procedure for such dismissal has not been admittedly followed. It is apparent that the First Party is being prevented from attending his duties with effect from 7-8-1975 without any formal order. Preventing him from such attendance without drawing a proceeding against him for any offence that he might have committed and thus virtually dismissing him without formal enquiry was definitely illegal. It is not known for what offence the First Party has been so dealt with. There must be some reasons for such action on the part of the management. But even if that reason is good enough, the legal procedure for dismissal should have been followed. There is no justification for this sort of high handedness—for whatever reasons that be. One must not only be fair, but must also show to be fair. So this case must succeed. The management may drawn up formal proceeding against that First Party, receive his explanation, hear him and after proper enquiry if found guilty may be dismissed from service but before that he must be allowed to resume his duties.

The case be allowed on contest and the First Party be reinstated and be paid his full arrear wages upto this date by the Second party. This order shall be complied with by the Second Party within 30 days from today.

Members consulted.

AMANULLAH KHAN
Chiarman,
First Labour Court, Dacca.
10-1-1976.

I agree
Sd/- M. KARIM.
Sd/- A. MANNAN.

Typed at my dictation by
Stenographer, Mr. Waliul Islam
and corrected by me.

AMANULLAH KHAN
Chairman.
10-1-1976.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

Complaint Case No. 187 of 1975.

Jalil Ahmed—*First Party,*

versus

The General Manager, M/s. Rahim Group of Industries—*Second Party.*

PRESENT :

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim
Mr. M. A. Mannan } *Members.*

The First Party Jalil Ahmed was a permanent Polish Helper under the second party since 11-4-1969 on a monthly wages of taka 285·00. He went on medical leave on 7-7-1975 and resumed his duties on 5-8-1975 with a fit certificate. On 27-8-1975, at 11 a.m. it is alleged, he was verbally dismissed from service. It is further alleged that he has not been paid wages for July and August, 1975 including bonus. He served a grievance petition on 4-9-1975 but without reply. Hence this case u/s 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965.

The Second Party General Manager, Rahim Group of Industries in his written statement submits that the First Party used to remain absent from duty of and on during the short tenure of his service from 11-9-1968. He remained absent for 51 days without permission, 417 days' leave without pay, 56 days on casual leave, 75 days on earned leave and 68 days on medical leave and when he would be verbally asked about the reasons of his frequent absence he used to say he was ill. Lately he was under the treatment of the doctor of the company who on the last occassion referred him for treatment to Dr. Prodhan, Additional Chief Medical Officer, Bangladesh Engineering and Shipbuilding Corporation and the doctor had advised release of the First Party as he has been suffering from veneral disease. On the advise of the Doctor he has been discharged from service with all benefits as per rule.

So, the First Party has been discharged on medical grounds. The Assistant Administrative Officer, M/s. Rahim Group of Industries says that the First Party has been discharged from service as he as been snffering from syphlis and he has also been absenting himself from duty as the records with his signatures exhibit A series show. The First Party also candidly admits in his deposition that he often went on leave on medical grounds for 2 days, 3 days and so on. But he adds that he did so because the leave lapses if not availed of. Admittedly, however, his signatures Ext. A to A(5) show that he was absent on 64 days on medical grounds, sixty -four days leave on medical ground in 7 years service does not appear to be a bad record though to warrant discharge u/s. 16 of the Employment of Labour (Standing Orders) Act, 1965. It has, of course, been not denied though such a denial was very much called for in view of his discharge u/s 16 of the said Act, 1965 that he had been frequently absenting on other grounds as alleged by the First Party, but those are no reasons for discharge u/s 16 of the Employment of Labour (S. O.) Act, 1965. There is also no evidence before me that the First Party had been thoroughly examined by a competet doctor to show that he is suffering from syphlis. When a medical evidence has to be adduced, a doctor has to be examined. Again I have not been shown any rule which provides that a person suffering from syphlis should not be retained in service. Any, way, even if he was suffering from syphlis section 16 of the said Act, 1965 is not attracted. A person to be discharged u/s 16 of the said Act, 1965 must suffer from physical or mental incapacity or continued ill health or such other reasons that may be reasons of the kind of physical or mental incapacity of ill health. Syphlis certainly is not disease that makes a person mentally or physically incapable of work, nor is it a case of continued ill health incapacitating a person for continued work. I may add here that syphlis may occassionally put one out of duty but does not make him incapable of work for long and it is also curable. I, therefore, find that the discharge u/s 16 of the Standing Orders Act, 1965 of the First Party has been illegal. He should be reinstated. But as he has been of and on absent from duty he does not deserve to be reinstated with arrear wages. He will draw arrear wages for the period he had actually worked.

The case be allowed on contest without costs. The First Party be reinstated forth with but without arrear wages etc. He shall, however, be paid for the period he had actually worked.

Members consulted.

I agree.

Sd/ M. KARIM.
Sd/- M. A. MANNAN.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
15-1-1976.

Typed at my dictation by Stenographer Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN,
Chairman.
15-1-1976.

IN THE FIRST LABOUR COURT OF BANGLADESH

170. Santinagar. Dacca.

Complaint Case No. 128 of 1975

Kazi Akhteruddin—*First Party,*

versus

The Azad and Publications Ltd., 27/A, Dhakeswari Road, Dacca-5—*Second Party.*

PRESENT:

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim
Mr., M.A. Mannan } *Members.*

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965.

The First Party Kazi Akhteruddin had been a Sub-Editor in the Daily Azad and Publications Ltd. On 17-6-1975, the Second Party Managing Director, Azad & Publications Ltd. wherefrom the Daily Azad is printed verbally asked him not to join his duties while no reason was assigned for such refusal of the work of the First Party. The First Party, therefore, served grievance notice on the Managing Director on 30-6-1975 claiming arrear dues and termination benefits to the extent of taka 34,013 as shown in the schedule of the petition. The First Party has been favoured with no reply.

The Second Party Managing Director in his written statement contends that he had never terminated the services of the First Party and as such he is not entitled to any termination benefits. It is submitted that the Government by proclamation of an Ordinance being Ordinance No. XXXIII of 1975 annulled the declaration of the Daily Azad many other newspapers and as such the Daily Azad ceased to function. It is further submitted that by a subsequent government notification all the staff and workers including the First Party of the Azad & Publications (an annulled newspaper) have been taken over by the government and they are being paid their salary regularly by the government. It is, therefore, contended that the First Party is not entitled to any gratuity, leave salary or other termination benefits from the Second Party, nor he is entitled to get the amount of taka 34,013 as claimed. It is, however admitted that the First Party would be paid his arrears after the accounts have been settled between the Second Party and the Government.

The Newspapers (Annulment of Declaration) Ordinance, 1975 being Ordinance No. XXXIII of 1975 came into force on the 17th June, 1975. It annulled the declaration of all newspapers including the Daily Azad except some noted in the schedule of the Ordinance. Since then the Azad in which the First Party served ceased to exist.

So the Second Party contends he is not at fault for the consequence of the government action which brought about a compelling circumstances disabling him from providing further work for the first party. So he cannot be asked to pay the termination benefits and particularly when the government has taken over the services of the newspaper employees and is paying them salary they used to draw from the newspaper establishment. It is true that the services of the First Party and many others came to an end on account of the promulgation of Ordinance No. XXXIII of 1975 and it is also admitted that these employees whose services failed are being paid their basic salary they used to draw by the government and attempts are being made to provide them with work. But that is by way of concern of a welfare state for its citizens. The said Ordinance does not make any provision for continuance of services of the newspaper men nor does it ensure them any job although the government admittedly by subsequent notification directed the newspaper men to report to the government and have been paying them their basic salary pending their absorption in some form of job that may be available. So there is definitely no continuity of services of the newspaper men or acceptance of any obligations of the annulled newspapers by the government. Now, an employment is certainly a contract between the employer and the employee and this contract may be determined by either party, either by dismissal, discharge or termination as provided by the Employment of Labour (Standing Orders) Act, 1965. The present cessation of this contract between the First Party and the Second Party is certainly not by way of dismissal or discharge. The remaining mode of cessation of services left to us is by way of termination under section 19 of the Standing Orders Act, 1965 and no other. The learned advocate of the Second Party contends that a termination under the said section must, however, be an act of volition either on the part of the employer or the employee and here it is not an act either of the employer or the employee. So it is submitted that in the compelling circumstance of this case Section 19 of the Standing Orders Act, 1965 is not invited. But a good appreciation of the provisions of section 19 of the said Act will show that the section is invited even in cases where the contract is determined by no voluntary act of either party. According to the provisions of this section

if the employer terminates the services of his employee he has to give notice ahead or pay wages in lieu of such notice and compensation at the rate of 14 days' wages for each completed year of service in addition to any other benefits to which the employee is entitled to under this Act or any other law for the time being in force, and where the employee voluntarily leaves his job he has to give notice ahead and forego the compensation. Obviously there will be no scope for notice or wages in lieu of notice or payment of compensation in cases where the employment ceases for no act of the employer or the employee. In such a circumstance, the employee shall be entitled to claim only any other benefit to which he may be entitled to under the Employment of Labour (S.O.) Act, 1965 or any other law for the time being in force as stated in the proviso to sub-section (2) of the said Section 19 of the Act, 1965. So the claim of the First darty for 90 days' wages in lieu of notice mentioned in item No. 1 and compensation for 15 years' service mentioned in item No. 2 of the schedule of the petition will not be available to the First party. The remaining amount claimed by the First party has not been seriously challenged by the Second Party. These include Provident Fund, Cut Salary, arrear unpaid salary and unavailed leave salary etc. It has been submitted that the provident fund will be paid from the Provident Fund Trust of the employees. But the First Party in his deposition says that there is no such Trust in existence now; and that has not been denied by the Second Party. So the responsibility of the Provident Fund money must be with the Second Party and must be paid by him. I, therefore, find that the First Party is entitled to the remaining amount of items No. 3 to 8 given in the schedule.

The case be allowed on contest without costs. The Second Party is directed to pay the First Party Taka 23,663 within 30 days from to-day.

Members consulted.

I agree.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
20-12-1975.

Sd/M. KARIM
Sd/A. MANNAN.

Typed at my dictation by Stenographer, Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN
Chairman.
20-12-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH
170. Santinagar, Dacca.

Complaint Case No. 54 of 1975.

Md. Nurunnabi Bhuiyan—*First Party,*

versus

Managing Director, M/s. Rahman Ice Cold Storage Ltd., 137, Abul Hasnat Road, Dacca—*Second Party.*

PRESENT;

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim
Mr. M. A. Mannan } *Members.*

The First party Md. Nurunnabi Bhuiyan alleges that he had been a Mechanic Operator on a monthly salary of Taka 400 working in the M/s. Rahman Ice Cold Storage Ltd. It is further alleged that he went on leave in the month of February with the permission of the Second Party and after enoying the leave he came back and reported for duty in the month of March, 1975 but he was not allowed to resume his duties. He was asked to report later. Thereafter, he made several attempts to resume his duties but he was not allowed to do so and finally on 4-3-1975 he was verbally dismissed from service. So he served a grievance notice but received no reply. He has now filed this case under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 for reinstatement with arrear wages including wages for the month of February, 1975 and 24 days of March, 1975 and overtime allowance for 1,736 hours at double rate.

In the written statement the Managing Director of M/s. Rahman Ice Cold Storage Ltd. submits that on account of Labour unrest M/s. Rahman, Ice Cold Storage Ltd. gave up running the cold storage and had been leasing it out to independent person or firm for 9 month season each year. Such person or firm engage their own employees for the season and run it. With the end of the term of such lease the employees also cease to be employees of such person or firm. Accordingly in 1974 the cold storage was leased out to M/s. Continental Agency which engaged the First Party on a temporary basis. After the expiry of the lease M/s. Continental Agency handed over possession and control of the cold storage to the Second Party with a request to pay the salary of all the employees through his care-taker who remains in the premises of the cold storage. The care-taker accordingly disbursed the claim of the First Party but through inadvertance he used the pad of the cold storage. The First Party executed a receipt after receiving his dues but thereafter, it appears he surreptitiously removed the receipt. So a complaint was also lodged with the Siddirganj P.S. on 13-2-1975 for theft of this receipt against the First Party.

So the point for determination boils down to this—If the First Party was an employee of M/s. Rahman Ice Cold Storage Ltd. for about a year till 24th of March, 1975 on a monthly salary of Taka 400 when the Second Party is said to have verbally dismissed him.

There is no paper to prove lease of the ice cold storage to M/s. Continental Agency. The Second Party witness Taleb Hossain, Care-Taker and Manager of the Ice Cold Storage says that the First Party was an employee of the M/s. Continental Agency but his admitted signatures on chits dated 18-9-1974, 23-10-1974, 17-11-1974, and 8-8-1974 marked Exts. 4 series show that he issued instructions to the First Party and another to deliver potatoes and ice to different companies. The receipt Ext. A Shows that the First Party

received Taka 300 from Rahman Ice Cold Storage Ltd. as his leave salary. His signature Ext. B(1) appears on a receipt of a salary sheet. The caption of the sheet writes:—

Salary Dec. 1974
Continental Agencies
C/o Rahman Cold Storage Ltd.

But it will appear very clear that 'Continental Agency C/o Rahman Cold Storage' in the caption has been written in a much darker ink. It is also very strange that an independent concern should address itself at the care of a different concern. It is apparent that this sheet was prepared for Rahman Ice Cold Storage Ltd. and later on this part of the caption Continental Agency C/o Rahman Cold Storage Ltd. has been interpolated after these papers were called for by the Court in an attempt to mislead and to suppress the truth. Another sheet Ext. C bearing signature of the First Party with date 15-1-1975 shows exactly similar interpolation at the head of the receipt. The heading writes:—

ম্যানেজার কনটিনেনটাল এজেন্সি C/o. রহমান কোল্ড ষ্টোরেজ লিঃ ডেমরা, ঢাকা।

The words "Continental Agency" and "C/o" are in a different ink showing similar interpolation. An examination of this receipt Ext. C shows that it was originally addressed to the Manager, Rahman Cold Storage Ltd. Some registers Ext. 5 to 5(D) called for and produced by the Second Party Rahman Ice Cold Storage Ltd. also show signatures of the First Party as an employee working for the cold storage. So, there is little doubt left that the First Party was an employee of the Rahman Ice Cold Storage Ltd. as alleged. In the written statement it has been said that through mistake the Manager used the pad of Rahman Ice Cold Storage Ltd. in connection with the First Party but we have now enough evidence to hold that this was no mistake. In the written statement, of course, it has been said that the First Party received all his dues from the Continental Agency and the receipt for such dues has been stolen. But the receipt Ext. C seems to have stated কম্পানি থেকে হিসাব সমস্ত বুঝিয়া পাইয়া আমার যাহা কিছু ছিল তাহা ম্যানেজার সাহেবের সম্মুখে নিয়া গেলাম।

This could have been the receipt alleged to have been stolen but that is not the case of the Second Party. According to the Second Party the First Party executed the receipt which had been stolen and for which an F.I.R. was lodged with the police. Apart from that this receipt does not disclose what the First Party actually received by this receipt. The words "যাহা কিছু ছিল" do not seem to refer to any money received by the First Party. Such language is used only in connection with goods. Any way, this is not the case of the Second Party that by this receipt Ext. C the First Party had received all his dues with the termination of his employment with M/s. Rahman Ice Cold Storage to mutual satisfaction. The case of the Second Party has been that the First Party was never its employee. So this receipt Ext. C does not favour the Second Party. Considering all these, I find that the First Party was an employee of the M/s. Rahman Ice Cold Storage Ltd. as alleged by him and the cold storage is being actually run by M/s. Rahman Ice Cold Storage Ltd., may be sometimes in the benami of M/s. Continental Agency and such other agencies and that he has been dismissed from service verbally without going through the legal process for such dismissal.

I also find from the salary sheet bearing signature Ext. B(1) that the wages of the First Party was Taka 400 p.m. The sheet shows that originally his salary was shown as taka 400 and later it was overwritten Taka 275. So the First Party shall be paid arrear wages from February, 1975 at the rate of Taka 400 p.m.

The First Party has also claimed over time for 1,736 hours. Registers Ext. 5,5(a), 5(b), 5(c) and 5(d) show that the First Party was working overtime for 4 hours everyday beginning from 17-4-1974 to 2-1-1975 except on days beginning with 1-8-1974 to 6-8-1974, 15-9-1974 to 18-9-1974 and 7-12-1974 to 9-12-1974 as far as the registers show. So he did overtime for 992 hours and shall be paid for it. Bill Ext. B shows that he got overtime wages of taka 275 for December, 1974. So this amount shall be deducted from his overtime dues.

The case be allowed on contest and the First Party be reinstated and be paid arrear wages from February, 1975 and overtime for 992 hours at double rate on the basis of his salary at Taka 400 p.m. within 30 days from today less Taka 275.

Members consulted.

আমি একমত।

স্বা:—ন, করিব

স্বা:—আ: মন্নান।

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
9-1-1976.

Typed at my dictation by Stenographer,
Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
9-1-1976.

IN THE FIRST LABOUR COURT OF BANGLADESH
170, Santinagar, Dacca.
Complaint Case No, 103 of 1976.

Fazlur Rahman—*First Party,*

versus

The General Manager, Karim Jute Mills Ltd., Demra, Dacca—*Second Party.*

PRESENT:

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim
Mr. M.A. Mannan } *Members.*

Order No, 9, dated 22-12-1975:

This is an application for compensation under section 16 of the Employment of Labour (Standing Orders) Act, 1965.

The applicant was discharged under section 16 of the Act and was paid less than what was due. The admitted amount drawn as wages by the First Party the previous year of discharge according to statement Ext. A was Taka 3,926·41. So the average weekly earning came to about Taka 75·51. So the average earning for 6 days a week came to round about Taka 12·58. Admittedly the First Party served for 17 years and is thus entitled to compensation for 238 days. So the compensation amount comes to Taka 29,94·64. He is admittedly entitled to wages for 8 days of annual leave *i.e.*, Taka 100·64. So his total dues comes to Taka 3,094·68 paisa. Out of these he has already received taka 2,475·20 paisa according to his application. So his claim now comes down to Taka 619·48 paisa. This is what he is entitled to.

The case is, therefore, allowed on contest in part, The First Party is found entitled to Taka 619·48 which the Second Party is directed to pay the First within 30 days from date.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.

IN THE FIRST LABOUR COURT OF BANGLADESH

170. Santinagar. Dacca.

Complaint Case No. 142 of 1975.

Shahjahan Ali—*First Party,*

versus

The Azad & Publications Ltd., 27/A, Dhakeswari Road, Dacca-5—*Second Party.*

PRESENT:

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim
Mr. M. A. Mannan } *Members.*

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965.

The First Party Shahjahan Ali had been a senior Proof Reader in the Daily Azad & Publications Ltd. On 17-6-1975, the Second Party Managing Director, Azad & Publications Ltd. wherefrom the daily Azad is printed verbally asked him not to join his duties while no reason was assigned for

such refusal of the work of the First Party. The First Party, therefore, served grievance notice on the Managing Director on 30-6-1975 claiming arrear dues and termination benefits to the extent of taka 25,445 as shown in the schedule of the petition. The First Party has been favoured with no reply.

The Second Party Managing Director in his written statement contends that he had never terminated the services of the First Party and as such he is not entitled to any termination benefits. It is submitted that the Government by proclamation of an Ordinance being Ordinance No. XXXIII of 1975 annulled the declaration of the Daily Azad and many other newspapers and as such the Daily Azad ceased to function. It is further submitted that by a subsequent Government notification all the staff and workers including the First Party of the Azad & Publications (an annulled newspapers) have been taken over by the Government and they are being paid their salary regularly by the government. It is, therefore, contended that the First Party is not entitled to any gratuity, leave salary or other termination benefits from the Second Party, nor he is entitled to get the amount of Taka 25,445 as claimed. It is, however, admitted that the First Party would be paid his arrears after the accounts have been settled between the Second Party and the Government.

The Newspapers (Annulment of Declaration) Ordinance, 1975 being Ordinance No. XXXIII of 1975 came into force on the 17th June, 1975. It annulled the declaration of all newspapers including the Daily Azad except some noted in the schedule of the Ordinance. Since then the Azad in which the First Party served ceased to exist.

So the Second Party contends he is not at fault for the consequence of the government action which brought about a compelling circumstances disabling him from providing further work for the first party. So he cannot be asked to pay the termination benefits and particularly when the government has taken over the services of the newspaper employees and is paying them salary they used to draw from the newspaper establishment. It is true that the services of the First Party and many others came to an end on account of the promulgation of Ordinance No. XXXIII of 1975 and it is also admitted that these employees whose services failed are being paid their basic salary they used to draw by the government and attempts are being made to provide them with work. But that is by way of concern of a welfare state for its citizen. The said Ordinance does not make any provision for continuance of the services of the newspaper men nor does it ensure them any job although the government admittedly by subsequent notification directed the newspaper men to report to the government and have beenpaying them their basic salary pending their absorption in some form of job that may be available. So, there is definitely no continuity of services of the newspaper men or acceptance of any obligations of the annulled newspapers by the government. Now, an employment is certainly a contract between the employer and the employee and this contract may be determined by either party, either by dismissal, discharge or termination as provided by the Employment of Labour (Standing Orders) Act, 1965. The present cessation of this contract between the First Party and the Second Party is certainly not by way of dismissal or discharge. The remaining mode of cessation of services left to us is by way of termination under section 19 of the Act, 1965 and no other. The learned advocate of the Second Party contends that a termination under the said section must, however, be an act of violation either on the part of the employer or the employee and here it is not an act either of the employer or the employee. So it is

submitted that in the compelling circumstances of this case section 19 of the Standing Orders Act, 1965 is not invited. But a good appreciation of the provisions of section 19 of the said Act will show that the section is invited even in cases where the contract is determined by no voluntary act of either party. According to the provisions of this section if the employer terminates the services of his employee he has to give notice ahead or pay wages in lieu of such notice and compensation at the rate of 14 days' wages for each completed year of service in addition to any other benefits to which the employee is entitled to under this Act or any other law for the time being in force, and where the employee voluntarily leaves his job he has to give notice ahead and forego the compensation. Obviously there will be no scope for notice or wages in lieu of notice or payment of compensation in cases where the employment ceases for no act of the employer or the employee. In such a circumstance, the employee shall be entitled to claim only any other benefit to which he may be entitled under the Employment of Labour (S.O.) Act, 1965 or any other law for the time being in force as stated in the proviso to sub-section (2) of the said section 19 of the Act, 1965. So the claim of the First Party, for 90 days' wages in lieu of notice mentioned in item No. 1 and compensation for 15 years service mentioned in item No. 2 of the schedule of the petition will not be available to the First Party. But the remaining amount claimed by the First Party which has not been seriously challenged by the Second Party should be available to him in all fairness. These include Provident Fund, Cut Salary, arrear unpaid salary and unavailed leave salary etc. It has been submitted that the provident fund will be paid from the Provident Fund Trust of the employees. But the First Party in his deposition says that there is no such Trust in existence now; and that has not been denied by the Second Party. So the responsibility of the Provident Fund money must be with the Second Party and must be paid by him. I, therefore, find that the First Party is entitled to the remaining amount of items No. 3 to 8 given in the schedule of the petition.

The case be allowed on contest without costs. The Second Party is directed to pay the First Party Taka 18,395 within 30 days from today.

Members consulted.

আমি একমত।

স্বাঃ—ম, করিম।

স্বাঃ—আঃ মান্নান।

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
20-12-1975.

Typed at my dictation by Stenographer, Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN,
Chairman.
20-12-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

70, Santinagar, Dacca.

Complaint Case No. 100 of 1975.

Md. Bazlul Haque Bhuiyan, Driver—*First Party*,

versus

The General Manager, Bangladesh T.V. Station, Rampura, Dacca—*Second Party*.

PRESENT:

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim
Mr. M. A. Mannan } *Members*.

This is an application under section 25(1)(b) of the Employment of Labour (S. O.) Act, 1965.

The First Party Md. Bazlul Haque Bhuiyan was a Driver in the Bangladesh Television Station, Rampura, Dacca. He has been admittedly dismissed from service without assigning any reason and without giving him any opportunity to show cause.

The Second Party General Manager, Bangladesh Television Station, has filed written statement stating that the First Party was a regular Government employee working in the television Station and as such this case before this Court is not maintainable and that alternatively his removal has been a termination simplicitor and not by way of punishment and as such no case lies against the order of termination.

The learned advocate for the First Party contended that the First party is not a government servant. If that be so he has no relief because the admitted annexure clearly shows that the removal of the First Party from service has been a termination simplicitor and if we accept the contention of the Second Party that he is a government servant, in that case too the First Party is not entitled to any relief from this Court as the cases of government servants are out of bound of this Court. In any way, the case of the First Party fails. The case be dismissed on contest but without costs. Members consulted.

আঃ—ম, করিব।
আঃ আঃ মান্নান।

AMANUALLAH KHAN
Chairman,
First Labour Court, Dacca.
4-11-1975.

Typed at my dictation by Stenographer,
W. Islam and corrected by me.

AMANULLAH KHAN
Chairman,
4-11-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

Complaint Case No. 114 of 1975.

Md. Abdur Rouf—*First Party*,

versus

The Managing Director,
The Azad and Publications—*Second Party*.

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim
Mr. M. A. Mannan } *Members*.

The First Party petitioner Md. Abdur Rouf was a Sub-Editor of the Daily Azad, a newspaper now defunct. He alleges that he is not being paid his wages from July, 1975 on account of certain difficulties faced by the management. So, he claims his wages and other dues as given in the schedule of the petition and these include arrear pay, conveyance allowance and service benefits under section 12(C) of the Employment of Labour (S. O.) Act, 1965.

In the written statement the Managing Director, Azad and Publications Ltd. submits that the daily Azad of which the First Party was the Sub-Editor ceased to function with effect from 17th June, 1975 as the declaration of the papers was cancelled by the Ordinance No. XXXIII of 1975. It is, therefore, alleged by the Second Party Managing Director that since the First Party could not be given work on account of the action of the government and for no reason of the management the First Party is not entitled to any relief in this case and particularly because the services of the First Party have been taken over the government.

Admittedly the declaration of the daily Azad has been cancelled by the Ordinance No. XXXIII of 1975 and with the cancellation of the declaration of the paper the employment of the First Party as Sub-Editor of the paper came to an end. Now, this is not a case of discharge or dismissal, both of which are voluntary acts of the employer. In the present case the Second Party management did not take any action. The only other way of determining an employment is by termination as has been provided in Section 19 of the Employment of Labour (S. O.) Act, 1965. According to this section an employment may be terminated by either the employer or the employee and whoever takes the initiative in terminating the employment has to suffer certain disadvantages. If the employer desires the termination he has to pay compensation at the rate of 14 days' wages for each completed year of service of the employee and serve notice of such termination 90 days ahead or pay wages of 90 days instead. Similarly if the employee desires the termination he has to serve 30 days notice and forego the compensation. But where the employment ceases for no reason of the employer or the employee none of them

should suffer the penal provisions, to be fair. So, only the other benefits as mentioned in the section will be allowed to the First Party. The First Party in this case has claimed arrear wages, conveyance allowance and service benefits. The First Party is not entitled to any service benefits under section 12(c) of the Employment of Labour (S. O.) Act, 1965 as this is not a case of retrenchment. He is, however, entitled to arrear wages and conveyance charges which have not been seriously challenged by the Second Party. I, therefore, find that the First Party is entitled to arrear wages and conveyance charges amounting to taka 2,721·50 and no other.

The case be allowed in part on contest without costs. The Second Party is directed to pay the First Party Takea 2,721·50 within 30 days from date.

Members consulted.

একমত।
আঃ—ম, করিম।
আঃ—আঃ মান্নান।

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
20-12-1975-

Typed at my dictation by Stenographer, Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN
Chairman,
20-12-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

Complaint Case No. 59 of 1974.

Sultan Ahmed—*First Party*,

versus

[illegible]al Deputy General Manager,
[illegible]tif Bawany Jute Mills—*Second Party*.

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim
Mr. M. A. Mannan } *Members*.

The complainant Sultan Ahmed was a Machineman in Latif Bawany Jute Mills. His weekly wages had been taka 99. It is alleged that between 6-5-1974 and 16-7-1974 while he was acting as Time-Keeper he was being paid taka 34·62 per week. He protested and did not draw his wages for two months.

Thus he was given taka 665·26 less than what he was drawing earlier as Machineman during that period. He was then promoted Time-Keeper and he joined as such on 17-7-1974 but thereafter too he was being paid taka 257·68 less per month. On account of the lesser rate of payment from 6-5-1974 to 16-7-1974 he was given taka 246·81 less for 92 hours of over time work as well and he accordingly is being paid less for his overtime work from 17-7-1974. It is further alleged that he has drawn taka 75·11 less on account of availing of 7 days' casual leave. The First Party now prays for fixation of his pay so that he may not draw less than what he was drawing as Machineman and for an order directing payment of his arreat wages accordingly.

The Second Party management in its written statement submits that the first party had been promoted a Time-Keeper at his own initiative in the scale of DJMO D-II grade beginning with the initial salary with effect from 15-7-1974 and he had accepted the appointment. So, it is contended, he has no case. It is further contended that this case is not maintainable as framed.

The case was originally filed under section 25(1)(b) of the Employment of Labour (S. O.) Act, 1965 and finding difficulty of limitation the first party prayed for treating the case as one under section 34 of the I. R. O., 1969 and the prayer was granted. Now, the case is being treated as one under section 34 of the Industrial Relations Ordinance, 1969.

It has been contended by the management that this case is not maintainable as it is a case for arrear wages. Had it been a case of arrear wages alone this case would not have been maintainable as the Payment of Wages Act of 1936 provides in sub-section (6) of section 1 that the said Act shall not apply to the wages payable in respect of a wage period which over such wage period, average taka 200 a month or more. In the present case as the claim stands the average is much more than taka 200 for the wage period in question. But this is not a case for wages alone. It is for fixation of pay as well and a right to claom pay at a certain rate has been given to the worker now by the Wages Commission Report accepted by the government and according to that Report nobody shall draw less than what he had been drawing earlier, even if he is put under certain grade and the grade pay is less than what he had been drawing earlier. The difference between the grade pay and his earlier pay drawn shall be paid to him according to the said Report as his personal pay. In the present case it is not denied that the First Party had been drawing taka 99 per week. Accordingly his wages must come to taka 429 per month. He cannot be paid less than this amount whatever be his grade pay. The difference must be paid to him as his personal pay. The First Party has been admittedly promoted as Time-Keeper from 15-7-1974. So, from that date at least he must be paid in all taka 429 p.m. The First Party did not make any other claim for arrear wages prior to 15-7-1974 at the time of trial. So no further claim is considered.

Considering all these, I find that this case is maintainable under section 34 of the Industrial Relations Ordinance, 1969 and that the first party shall draw the grade pay of a Time-Keeper as allowed by the Wages Commission Reports and the difference between the grade pay and his original wages of taka 429 as his personal pay.

The case be allowed on contest without costs. The First Party shall be paid the grade pay of a Time-Keeper as his personal Pay and the difference of amount between the grade pay and taka 429 he useed to originally draw per month and shall be paid arrear wages accordingly with effect from 15-7-1974.

Members consulted.

আমি একমত।
স্বাঃ—ম করিম।
আমি একমত স্বাঃ আঃ মান্নান।

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca,
29-11-1976.

Typed at my dictation by Stenographer, Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN,
Chairman.

IN THE FIRST LABOUR COURT OF BANGLADESH
170, Santinagar Road, Dacca.

Complaint Case No. 49 of 1975.

Nazir Ahmed Mistry—*First Party,*

versus

Manager, Box Rubber Company,
Box Nagar, Mirpur, Dacca—*Second Party*

PRESENT :

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim
Mr. M. A. Mannan } *Members.*

This is an application u/s 25(1)(d) of the Employment of Labour (Standing Orders) Act, 1965.

The First Party petitioner—Nazir Ahmed Mistry was, it is alleged, appointed as worker on 5-3-1952 in the Bux Rubber Company of which the Second Party is the Manager, He last drew wages at taka 297 p.m. as Fitter in the company. On 22-8-1973, the First party was retired from service but was allowed to continue in service. On 4-3-1975 the Second party by a letter asked the First Party petitioner to receive service benefits for 140 days at the rate of 14 days, for each completed year of service. Since according to the First Party he had served the company for 22 years, he had complained by a letter dated 18-3-1975 for benefits for 22 years of service and now prays for that much benefits.

The Second Party Manager does not dispute the rate of wages but submits in his written statement that although he was employed as record shows from 27-12-1955 in the company he was once discharged from service on 28-6-1963

and was later re-employed on 1-10-1963 and then retired on 28-3-1973. It is therefore, submitted that he was entitled to wages benefits for 140 days only with arrear wages of taka 40·90. It is further added that he also took advance of taka 1,021 which is outstanding and as such after deduction he is entitled to taka 247·23 only.

The First Party in his deposition says that he had been serving the company from 1952 and was never discharged as alleged nor retired and his last wages had been taka 297 per month. It was suggested to him that there was a strike in August, 1963 and at that time many workers were discharged on payment of notice pay of 15 days and some of them were re-employed and this First Party was one of such strikers. The First Party admits that there was such strike but the did not join the strike although the factory remained closed for about a month. His witness P. W. 2 Ismail who says that the First Party did not join the strike and rather he was kept inside the factory and was not allowed to go out as he could be assaulted by the striking workers. The witness says that the First Party was oilman operating the Generator to keep the lights burning. He also says that the First Party had been serving the company for 23 years. This witness is admittedly a Darwan in the company. Another witness P. W. 3 a Foreman of the company serving from 1951 also supports the First Party's case saying that he used to operate the generator and did not join the strike and was on duty. Another witness P. W. 4, a worker of the Bux Rubber and Company also says that this First Party did not join the strike and was on duty operating the electric generator. The Second Party witness Administrative Officer of the company says that the First Party was retired from the service but he does not have any personal knowledge of it. He has filed two registers—one Attendance Register, Ext. A and the other Cash Register, Ext. B. The Attendance Register shows that the employees of the Bux Rubber and Company including this First Party Nazir Ahmed, oilman were absent from 26th of August, 1963 and he and others were shown discharged from service and were again shown re-employed from the 1st of October, 1963. The register shows several others re-employed and resuming duties on different dates in the month of October, 1963. The other register Ext. B shows an entry on the 4th of September 1963 of payment of taka 5,340·90 as 15 days notice pay. I have been told that many of these workers who went on strike were discharged with benefits of 15 days notice pay as was the provision at that time. These two registers appear to be undoubtedly genuine and kept in the course of business. The First Party could not suggest any reason why the register would not show the true state of affairs as was obtained at that time particularly against this First Party. So I am not prepared to accept the version of the First Party and this witness that he did not actually join the strike and that he did operate the generator during the strike. I find no reasons to go against the documentary evidence. His service card Ext. A shown that he was appointed on 4-3-1952 but I have some doubt about the date written in the card. There appears to be some eraser and that the date written below the erased portion appears rather absurd. The Attendance Register shows his original appointment date to be 27-12-1955. I see no reason for wrong date to be writte there. But in view of my earlier findings that the Attendance Register Ext. A and the Cash Register Ext. B kept in the course of business. I hold that the First Party was discharged as shown in the Attendance Register and must have received 15 days notice pay as is suggested in the Cash Register Ext. B and must have been reappointed on 1-10-1963 as shown in the Attendance Register Ext. A. So his length of service was rightly calculated from 1-10-1963.

It is, however, admitted that he continued his service even after his retirement. In the written statement Ext. 4 filed in I. R. Case No. 384/74 the Second Party admitted that the First Party was allowed to continue in service even after the order of retirement but adding that was on casual basis. There is nothing to show that he was in the employment as a casual worker after the alleged order of retirement. So I find that the First Party is still in service and shall have compensation at the rate of 14 days' wages for each completed year of service from 1-10-1963 till today. The case of advance payment of arrear wages has not been put forward by the Second Party. So that case fails.

The case be allowed in part on contest. The First Party be allowed compensation at the rate of 14 days' wages for each completed year of service from 1-10-1963 on the basis of taka 297 as his monthly wages till this day. The Second Party is directed to pay the amount within 30 days from today.

No costs.

আমি একমত।

স্বাঃ—আঃ মন্নান।

স্বাঃ—ম, করিম।

AMANULLAH KHAN,
Chairman,
First Labour Court, Dacca.
17-10-1975

Typed at my dictation by Stenographer, Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN,
Chairman.
17-10-1975

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

I. R. Case No. 85 of 1975.

Abdul Gafur—*First Party,*

versus

The Managing Director,
The Azad and Publications Ltd.—*Second Party.*

PRESENT :

Mr. Amanullah Khan—*Chairman.*

Mr. M. Khan
Mr. M. A. Mannan } *Members.*

The First Party Abdul Gafur was a Compositor in the Azad & Publications Ltd., Dacca. It is alleged that he went on leave on 8-5-1975 for 3 days. As he continued to be ill till 7-7-1975 he applied for extension of leave on more than one occasion during that period. After being fit to resume duty he sought permission on 7-7-1975 to resume his duties but was not allowed to join his work. From 8-7-1975 he has been kept out of his work; although he has not been removed from service. He, therefore, prays that the Second Party be directed to allow him to resume his duties.

The Second Party Managing Director, the Azad and Publications submits in his written statement that the First Party lost lien over his service with effect from 28-5-1975 and as such he is no longer entitled to his former job. It is further alleged that the First Party did not apply for any leave after 17-5-1975 till which date he was granted leave on medical ground.

At the time of hearing the first party submitted that he applied for leave on 13-5-1975, 21-5-1975 and again on 18-6-1975 by post and obtained receipts Ext. 1 and 1(a) and acknowledgment rereipt Ext. 2. Nobody on behalf of the second party denies that this First Party did not apply for leave as alleged by him. There is also no evidence to show that the management ordered that the First Party lost lien on his service on account of his absence for more than 10 days after the expiry of his leave on 17-5-1975. I, therefore find that the First Party is in the service and must be allowed to resume his duties.

The case be allowed on contest and the Second Party be directed to allow the First Party to resume his duties within 30 days from date. In the circumstances of this case the First Party shall be given back wages upto 7-7-1975 so far available to him and full wages from 8-7-1975 till this day.

No costs.

Members consulted.

আমি একমত।

স্বাঃ—আঃ মন্নান।
স্বাঃ—ম, করিম।

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
3-12-1975.

Typed at my dictation by Stenographer, Mr. Waliul Islam and corrected by me.

AMANULLAH KHAN
Chairman.
3-12-1975.

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