

Registered No. DA-1.

The
Bangladesh Gazette



Extraordinary
Published by Authority

WEDNESDAY, AUGUST 27, 1975

MINISTRY OF LABOUR, SOCIAL WELFARE, CULTURAL AFFAIRS AND
SPORTS.

(Labour and Social Welfare Division).

Section VI.

NOTIFICATION

Dacca, the 8th August, 1975.

No. S.R.O. 292-L/75-S-VI/1(25)/75 347—In pursuance of the provisions 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) Permission Case No. 1 of 1974.
- (2) I. D. Case No. 37 of 1974.
- (3) I. D. Case No. 38 of 1974.
- (4) I. D. Case Nos. 60—72 of 1974, 73—80 of 1974, 88—95 of 1975, 42—59 of 1974, 81—87 of 1974, 103—113 of 1974.
- (5) I. D. Case No. 99 of 1974.
- (6) I. D. Case No. 134 of 1974.
- (7) I. D. Case No. 136 of 1974.
- (8) I. D. Case No. 163 of 1974.
- (9) I. D. Case Nos. 165, 168, 169, 170, 171, 172 and 173 of 1974.
- (10) I. D. Case No. 187 of 1973.
- (11) I. D. Case No. 197 of 1974.

(2451)

Price Taka 2.88 Paisa.

- (12) I.D. Case No. 233 of 1974.
Complaint Case No. 28(1) of 1975.
- (13) Complaint Case No. 239 of 1974.
- (14) Complaint Case No. 379 of 1974.
- (15) Complaint Case No. 382 of 1974.
- (16) Complaint Case No. 383 of 1974.
- (17) Complaint Case No. 384 of 1974.
- (18) Complaint Case No. 387 of 1974.
- (19) Complaint Case No. 400 of 1974.
- (20) Complaint Case No. 401 of 1974.
- (21) Complaint Case No. 405 of 1974.
- (22) Complaint Case No. 411 of 1974.
- (23) Complaint Case No. 425 of 1974.
- (24) Complaint Case No. 426 of 1974.
- (25) Complaint Case No. 431 of 1974.
- (26) Complaint Case No. 453 of 1974.
- (27) I.D. Case No. 456 of 1974.
- (28) I.D. Case No. 656 of 1974.
- (29) I.D. Case No. 679 of 1974.
- (30) Complaint Case No. 17 of 1974.
- (31) Complaint Case No. 24 of 1974.
- (32) Complaint Case No. 38 of 1974.
- (33) Complaint Case No. 39 of 1974.
- (34) Complaint Case No. 45 of 1974.
- (35) Complaint Case No. 58 of 1974.
- (36) I.D. Case No. 26 of 1975.
- (37) I.D. Case No. 52 of 1975.
- (38) Miscellaneous Case No. 33 of 1974.
Original Case No. 393 of 1974.
- (39) T. U. Case No. 49 of 1974.

By order of the President
MUHAMMAD KHADEM ALI
Deputy Secretary.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH.

Permission Case Number 1 of 1974.

(Under section 47(2) of the I.R.O., 1969).

Project Manager, Messrs Gazi Wires Limited, 28, F.I.D.C. Road, Kalurghat, Chittagong—*First Party*,

versus

Mr Md. Ishaque Fitter, Maintenance Department, Messrs Gazi Wires Limited, 28, F.I.D.C. Road, Kalurghat Industrial Area, P.O. Chandgaon, Chittagong—*Second Party*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

} *Members.*

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

This is a case filed by Project Manager, M/s. Gazi Wire Limited, Chittagong, first party, under section 47(2) of the Industrial Relations Ordinance, 1969 against Md. Ishaque, a worker (second party), with a prayer for granting permission to dismiss the second party from services for misconduct under Standing Orders Act, 1965.

The case of the first party is that the second party is a worker of the first party and while in the employment the second party was found to be involved in serious misconduct like instigating workers to "Go slow" within the meaning of section 2 of the Standing Orders Act. In spite of verbal warnings, the second party continued in such unlawful activities and ultimately the second party was issued with a letter of charge, dated 23rd September, 1974 and the second party submitted his explanation on 25th September 1974 denying the charges. The second party deliberately did not attend the domestic enquiry on the date and time and thus the enquiry proceeding proceeded *ex-parte*. The charge against the second party was proved beyond all reasonable doubt. There are few I. D. cases pending in this Labour Court filed by some workers and thus a proceeding is pending in the Labour Court and so the first party is compelled to file this case for permission to dismiss the second party from service and that the second party is the Vice-President of the first party's workers' Union.

Second party contested the case by filing a written statement alleging *inter-alia* that he was not involved in any "Go slow" nor committed any misconduct. Second party could not attend in domestic enquiry due to illness which was duly communicated. The second party is the Vice-President of the Workers' Union and he has to take a decision to file cases praying workers' due pay scale. The first party's case as framed is not maintainable in law.

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

Decision

P. W. 1, Jainal Abedin, the Project Manager of the first party's establishment has examined himself in support of his case. Admittedly the second party is a worker under first party's factory and the first party is a Vice-President of the Workers' Union. It is also an admitted fact that 35 I.D. cases under section 34 were filed by 35 individual workers as well as union members and these cases are pending in this Labour Court. During the pendency of these 35 cases under section 34, the first party issued charge-sheet dated 23-9-1974 Ext. (Ka) against the second party who submitted explanation Ext. (Kha) and thereafter on 27-9-1974 notice of enquiry was served upon the second party and ultimately the enquiry was held *ex-parte* in the absence of the second party, who informed the first party that due to his illness he could not attend the enquiry. Second party is not directly involved in these 35 cases under section 34 of the I. R. O.

An application under section 47(2) of the I.R.O. for permission to dismiss an officer of a registered trade union will only lie when any proceeding in respect of an industrial dispute is pending. In the present application, the pending proceedings referred to is under section 34 of the I. R. O., which, it has been held by the Supreme Court and the Labour Appellate Tribunal as proceedings other than in respect of an industrial dispute. So permission to dismiss the second party is not necessary. Therefore, the instant application is *ex-facio* not maintainable under section 47 of the I.R.O.

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.
29-4-1975.

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. 37 of 1974.

Narayan Chandra Dey,
C/o. Nabarun Pharmacy,
10, Reazuddin Road,
Chittagong—First Party,

versus

The General Manager,
M/s. National Cotton Mills Ltd.,
Halishahar, 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 M/s. Monir Ahmed Chowdhury, and Mokhtarul Haque Chowdhury, Advocate, appeared for the Second Party.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Narayan Chandra Dey seeks a direction on the second party to allow him (first party) to resume duty with all back wages from February, 1971 with other service benefits on the allegations that the first party was an Accounts Clerk under second party with effect from 1964 and worked till 25th March, 1971 and thereafter did not attend duty in response to the call of liberation and after liberation, the first party reported for duty but he was not allowed to resume duty without assigning any reason. It is further alleged by the first party that it was communicated by the second party on 15-2-1973 that his (first party) employment stood terminated with effect from July 1970 and the first party replied the same denying the allegations of the termination of employment and prayed for resumption of duty with outstanding salary. The second party paid no heed to it. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that the first party is not entitled to get order for resumption of duty as prayed for. Second party paid full salary to the first party from September, 1970 to January 1971, the period during the first party illegally signed attendance in the office of the second party without performing any work and while he was employed full time by East Asiatic Trading Corporation. Such payment is an act of generosity on the part of the second party. The first party never worked in the second party's establishment after July 1970. The question of allowing the first party to resume duty did 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 the relief as prayed for.

FINDINGS

P.W. 1, the first party, has only examined himself in support of his case. On the other hand, none is examined on behalf of the second party. The evidence of P. W. 1 will show that he now wants either for resumption of duty or termination benefit under section 19(1) of the Standing Orders Act, 1965 on the basis of termination letter, dated 15-2-1973. It is also stated by P.W. 1 in his evidence that he has not yet received termination benefit from the second party. P. W. 1 admits in his evidence in cross that he received a communication from the second party in the year 1973 to the effect that his service was terminated from July 1970 and thereafter he replied the same *vide* his letter dated 3-3-1973, a copy of which is marked Ext. I. It was suggested to P. W. 1 that since after July 1970 the first party was serving under East Asiatic Trading Corporation. Of course the said suggestion is denied by the first party. It is not disputed that the second party paid full wages to the

first party for the period from September, 1970 to January 1971. The said payment can be said to be an act of generosity on the part of the second party. However, from the evidence of P. W. 1, I am fully satisfied that the first party will be satisfied, if he is granted termination benefit under section 19(1) of the Standing Orders Act, 1965. Termination of service of the first party with effect from July 1970 is a termination simpliciter. Admittedly the first party was not paid the said termination benefit. I think for the ends of justice the first party must be paid termination benefit as prayed for at the time of hearing.

Learned Members also agreed with me in the view *vide* their written opinion. Accordingly it is—

Ordered

That the case be allowed on contest without cost.

The first party do get termination benefits from the second party as follows :—

- (1) 90 days' notice pay at the rate of Tk. 270·00 per month ;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months, for the period from April, 1964 to July, 1970 ;
- (3) Salary for unavailed period of earned leave, if any.

The second party is directed to pay the amount to the first party within 30 days from today.

AMBENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
14-4-1975.

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

A. AHMED
Chairman.
14-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 38 of 1974.

Pravash Milan Das,
S/o. S. K. Ghose, Typist,
M/s. Eastern Motors Limited,
Sadarghat Road, Chittagong—*First Party,*

versus

The General Manager,
M/s. National Cotton Mills Limited,
Halishahar, 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. Munir Ahmed Chowdhury, Advocate with Mr. Moktarul Haque Chowdhury, Advocate appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, first party, Pravash Milan Das seeks a direction on the second party to allow him to resume duty with all back wages from 1971 on the allegation that the employer and employee's relationship between the first party is still continuing and the first party has guaranteed right to get salary under contract Act and resumption of duty.

Second party contested the case by filing a written statement alleging *inter alia* that the first party voluntarily deserted the service of the second party and as such he is not entitled to get any relief. The first party has been serving with East Asiatic Trading Corporation since after July 1970. So, the question of his resumption of duty under second party did not and does not arise. The first party is not entitled to any relief.

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

FINDINGS

P. W. 1, Pravash Milan Das, first party has only examined himself in support of his case. On the other hand, none is examined on behalf of the second party. P. W. 1 has stated in his evidence that he was serving under the second party since July 1962 and his last wages was at the rate of Tk. 230.00 per month. It is admitted by P. W. 1 in his evidence that he received a termination letter dated 15-2-1973 Ext. 1 from the second party but he received no termination benefit as yet. According to P. W. 1 *vide* his evidence, he prays for termination benefit under section 19(I) of the Standing Orders Act on the basis of termination letter Ext. 1. Thus from the evidence of P. W. 1 I am fully satisfied that the first party simply wants termination benefit under section 19(I) of the Standing Orders Act, 1965, after accepting the termination letter, Ext. 1. It appears from Ext. 1 that the first party's service was terminated with effect from July 1970 and the said termination is nothing but a termination simplicitor. Thus the first party, in view of my discussions above, is entitled to get termination benefit.

Learned Members also agreed with me in the above view. In the result it is—

Ordered

That the first party do get the following termination benefits from the second party under section 19(I) of the Standing Orders Act, 1965 :—

- (1) 90 days notice pay at the rate of Tk. 230.00 per month ;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months ; for the period from July 1962 to July 1970 ;

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

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

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong,
14-4-1975.

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

A. AHMED,
Chairman.
14-4-1971.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH
Industrial Dispute Case Nos. 60-72 of 1974, 73-80 of 1974, 88-95 of 1974,
42-59 of 1974, 81-87 of 1974 and 103-113 of 1974.

- (1) Ratan Kumar Barua, Wages Clerk (1st Party of Case No. 60 of 1974).
- (2) Abul Kashem, Clerk (1st Party of Case No. 61 of 1974).
- (3) Abul Kalam Chowdhury, Report Clerk (1st Party of Case No. 62 of 1974).
- (4) Mohd. Nurul Islam, Tally Clerk (1st Party of Case No. 63 of 1974).
- (5) Abinash Chandra Bhowmick, Clerk (1st Party of Case No. 64 of 1974).
- (6) Haroon-Ar-Rashid, Clerk (1st Party of Case No. 65 of 1974).
- (7) Afsaruddin Ahmed, Report Clerk (1st Party of Case No. 66 of 1974).
- (8) Md. Abu Yusuf, Time Keeper (1st Party of Case No. 67 of 1974).
- (9) Md. Rafiquddin Siddiqui, Tally Clerk (1st Party of Case No. 68 of 1974).
- (10) A. K. M. Abu Jafar, Asstt. Cashier (1st Party of Case No. 69 of 1974).
- (11) Farid Ahmed, Clerk (1st Party of Case No. 70 of 1974).
- (12) Monu Ranjan Dutta, Compounder (1st Party of Case No. 71 of 1974).
- (13) Md. Fazulul Chowdhury, Labour Office Clerk (1st Party of Case No. 72 of 1974).
- (14) Syed Abu Taher, Dresser (1st Party of Case No. 73 of 1974).
- (15) Dulal Krishna Das, Typist (1st Party of Case No. 74 of 1974).
- (16) Siddique Ahmed, Time Keeper (1st Party of Case No. 75 of 1974).
- (17) Nur Mohammed Chowdhury, Clerk (1st Party of Case No. 76 of 1974).
- (18) Abu Mohammed, Clerk (1st Party of Case No. 77 of 1974).
- (19) Gulam Mohammed, Time Keeper (1st Party of Case No. 78 of 1974).
- (20) Md. Habibur Rahman, Tally Clerk (1st Party of Case No. 79 of 1974).
- (21) Syedur Rahman, Time Keeper (1st Party of Case No. 80 of 1974).
- (22) Jahur Ahmed, Wages Clerk (1st Party of Case No. 88 of 1974).
- (23) Md. Khalilur Rahman, Clerk (1st Party of Case No. 89 of 1974).
- (24) Md. Serajul Haque, Clerk (1st Party of Case No. 90 of 1974).

- (25) Md. Amanul Haque, Clerk (1st Party of Case No. 91 of 1974).
- (26) Swapan Chand Chowdhury, Wages Clerk (1st Party of Case No. 92 of 1974).
- (27) Milan Bikash Barua, Wages Clerk (1st Party of Case No. 93 of 1974).
- (28) Kazi Nurul Alam, Tally Clerk (1st Party of Case No. 94 of 1974).
- (29) A. T. M. Hassan, Supervisor (1st Party of Case No. 95 of 1974).
- (30) Nurul-Hakim, Asstt. Supervisor (1st Party of Case No. 42 of 1974).
- (31) Nazir Ahmed, Wages Asstt. (1st Party of Case No. 43 of 1974).
- (32) Md. Ayub Khan, Wages Clerk (1st Party of Case No. 44 of 1974).
- (33) Ali Akbar, Supervisor (1st Party of Case No. 45 of 1974).
- (34) Ali Ahmed, Supervisor (1st Party of Case No. 46 of 1974).
- (35) M. A. Quddus, Supervisor (1st Party of Case No. 47 of 1974).
- (36) Sk. Humayun Kabir, Supervisor (1st Party of Case No. 48 of 1974).
- (37) Abul Kashem, A. T. P. O. (1st Party of Case No. 49 of 1974).
- (38) Md. Idris, Supervisor (1st Party of Case No. 50 of 1974).
- (39) Md. Shamsul Alam, Wages In-charge (1st Party of Case No. 51 of 1974).
- (40) Md. Yunus, Compounder (1st Party of Case No. 52 of 1974).
- (41) Shamsuddoha Mehdi, Asstt. Electrical Engr. (1st Party of Case No. 53 of 1974).
- (42) Mohammed Moosa, Wages Clerk (1st Party of Case No. 54 of 1974).
- (43) Nurul Islam, Tally Clerk (1st Party of Case No. 55 of 1974).
- (44) Shamsul Haque, Tally Clerk (1st Party of Case No. 56 of 1974).
- (45) Saidur Rahman, Asstt. Supervisor (1st Party Case No. 57 of 1974).
- (46) Md. Abu Yusuf Chowdhury, Time Keeper (1st Party of Case No. 58 of 1974).
- (47) Nurul Islam, Report Clerk (1st Party of Case No. 59 of 1974).
- (48) Abdus Salam, Packing Clerk (1st Party of Case No. 81 of 1974).
- (49) Mafizur Rahn an, Tally Clerk (1st Party of Case No. 82 of 1974).
- (50) Md. Abdus Sattar, Tally Clerk (1st Party of Case No. 83 of 1974).
- (51) Md. Abdus Sabur, Wages Clerk (1st Party of Case No. 84 of 1974).
- (52) Saleh Ahmed, Tally Clerk (1st Party of Case No. 85 of 1974).
- (53) Rakhil Krishan Biswas, Time Keeper (1st Party of Case No. 86 of 1974).
- (54) Md. Mafizur Rahman, Admn. Asstt. (1st Party of Case No. 87 of 1974).
- (55) Jabal Ahmed, Clerk (1st Party of Case No. 103 of 1974).
- (56) Obeydul Haque, Clerk (1st Party of Case No. 104 of 1974).
- (57) A. K. M. Mohshin, Time Keeper (1st Party of Case No. 105 of 1974).
- (58) S. M. A. Hassan, Job Clerk (1st Party of Case No. 106 of 1974).
- (59) Jalalddin Ahmed, Asstt. Supervisor (1st Party of Case No. 107 of 1974).
- (60) Abdus Sattar, Asstt. Supervisor (1st Party of Case No. 108 of 1974).
- (61) Mofizul Haque, Store-keeper (1st Party of Case No. 109 of 1974.).
- (62) Nurul Alam Chowdhury, Mech. Supervisor (1st Party of Case No. 110 of 1974).
- (63) Md. Abdus Sobhan, Supervisor (1st Party of Case No. 111 of 1974).
- (64) Syed Serajul Islam, Insurance Clerk (1st Party of Case No. 112 of 1974).
- (65) Md. Shamsul Anwar, Typist (1st Party of Case No. 113 of 1974).

All of Quashem Jute Mills Ltd., Chittagong—*First Parties*,

versus

The Manager, M/s. Quashem Jute Mills Ltd., Keshabpur, P. O. Shitalpur*
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 1st parties and Mr. A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate appeared for 2nd Party.

These above mentioned 65 cases have been filed by 65 persons praying for a direction on the second party to pay them arrears *ad hoc* relief with effect from the respective dates of their appointment which has been stated to have been merged with their pay in 1969.

These cases were tried analogously and the judgment passed in I. D. Case No. 60 of 1974 covers all other I. D. Cases, as substantial question of law and fact are common there and this judgement will dispose of all the said 65 cases.

The case of the first parties is that they were permanent employees under the second party with effect from their dates of appointment. The first parties were initially appointed on a consolidated salary and subsequently put in D-11 grade in the scale mentioned in their respective case petitions as per P. J. M. O. Schedule. That in 1969 an *ad hoc* relief of Tk. 36.80 was added with the scale and subsequently the *ad hoc* was merged with the scale. The second party has given the arrears of this merged scale to the employees with effect from the date of merger and some of the employees have received the said benefit accordingly. Thereafter in 1972 the second party stipulated with Karmachari Union of the second party mill that the arrears of merged *ad hoc* with the scale would be given if it was found merged. Thus the first parties are entitled to the arrears merged *ad hoc* at the rate of Tk. 9.80 per month from the date of their respective appointment but the second party is not paying the same in spite of repeated demands.

Second party appeared and contested the cases by filing separate written statements alleging *inter alia* that the first party having been appointed after introduction of the new wages schedule of the P. J. M. O., the question of merger and any *ad hoc* relief with the pay or the scale of the first parties can never arise at all. Moreover, the second party mill went into production on 12-9-1969 and became a member of the then P. J. M. O. about the middle of 1970 and as such the scale of wages schedule as existed prior to 1-7-1969 was neither applicable to, nor attracted in relation to the first parties. The first parties having been appointed after 1-7-1969, their wages were fixed as per new schedule of wages of P. J. M. O. after abolition of *ad hoc* relief altogether

and as such, the question of merger of *ad hoc* relief or that of payment of arrear can never arise. Since no *ad hoc* relief was admissible along with wages or pay as per said new schedule of wages of the then P. J. M. O. which was introduced with effect from 1-7-1969, the question of relief as prayed by the first parties did not arise. The first parties are not entitled to get any relief.

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

FINDINGS

Neither party adduced any oral evidence in support of their respective cases. Documents filed by the respective parties are exhibited and taken in evidence.

The admitted position of the cases are that (1) the *ad hoc* relief at a certain rate varying from 10 per cent. to 20 per cent. of wages was introduced with effect from 1-3-1969 by circular No. 10, dated 12-3-1969 which is marked Ext. A (2); (2) the said *ad hoc* relief ceased to exist with the expiry of 30th June 1969 *vide* circular No. 26, dated 7-8-1969 being Ext. A(1); (3) all the first parties have been appointed in the second party's establishment mill after 1-7-1969, *i. e.*, after abolition of the *ad hoc* relief; and (4) all the first parties were given respective appointment letters stipulating terms, conditions, pay and emoluments of their service. The appointment letters of the first parties are marked Ext. D series. The further admitted position is that new wages schedule in line with the Minimum Wages (Fixation) Ordinance came into force with effect from 1-7-1969 *vide* circular No. 26, dated 7-8-1969, Ext. A(1), which also provided that with the introduction of the said new wages schedule all *ad hoc* relief or other payment of similar nature would cease to exist. The new wages schedule is in fact applicable for the categories of employees as that of first parties and the said schedule are continued in Ext. B.

With this background the Quashem Patkal Karmachari Union raised certain demands and the said union and the management signed an agreement Ext. 3 on 12-12-1972 and from clause (3) of the said agreement it will appear that they raised the question for grant of *ad hoc* relief to the new entrants and it was stipulated in the said clause that the management and the union personnel would visit Jute Corporation and they would ascertain the position of "*Ad hoc* relief" and that if they (new entrants) were found entitled to the same, then they would be paid the arrears. Although there is no evidence on record that they thereafter approached the Jute Corporation to ascertain the position, the Ext. E will show that in fact there was an approach in the matter and the position was clarified by P. J. I. C. (now B. J. M. C.) *vide* their letter, dated 16-7-1974 Ext. E. It is stated in Ext. E that of 1969 was given for these employees who were in employment in March 1969 and the *ad hoc* relief absolutely ceased in June 1969 and therefore, the question of giving the benefit of the said *ad hoc* relief to the new entrants who entered into service on or after 1-7-1969 do not arise at all. As such, it is clear that the first parties who admittedly have been appointed or employed in the second party mill after 30-6-1969 *vide* Ext. D series cannot claim the benefit of *ad hoc* relief, which was introduced and thereafter abolished prior to their employment in second party mill.

Another line of approach to the problem is that the second party mill went into production on 12-9-1969 and became a member of the then P.J.M.O. by the middle of 1970. So, the circular No. 10 Ext. A(2) of P.J.M.O. with regard to the introduction of *ad hoc* relief by the member mills was not at all attracted or call for any consideration by the second party mill, which was then neither a member of P.J.M.O. nor went into production at the said time. Moreover, the said *ad hoc* relief ceased to exist with effect from 1-7-1969 *vide* Ext. A(1) and confirmed *vide* Ext. A, much before the second party mill became a member of the P. J. M. O. or even went into production.

The agreement Ext. 3, dated 12-12-1972 referred to in the para. 8 of the first parties petitions cannot also said to a "Settlement" within the meaning of section 2(xxiv) of I.R.O. in as much as it does not satisfy the condition of law so as to be regarded as "Settlement". Moreover clause (3) of the said agreement does not in any way stipulate any condition for payment of *ad hoc* relief to the first parties. It only stipulates that the parties were to make an approach to the B.J.I.C. to ascertain the position of the *ad hoc* relief, which was introduced in March and ceased to exist in June, 1969, as to its applicability to the workers or employees of the second party mill who were appointed after 30-6-1969. The result of such approach apparently is expressed in Ext. E which confirmed the position that the new recruits who were appointed after June 1969 are not entitled to any *ad hoc* relief which was abolished long before their employment. It can be said that first parties have either misconceived about the position of merger of the *ad hoc* relief of the employees, who were in employment before June, 1969, or purposely distorted and attempted to put a misleading argument with a view to make an attempt to secure the benefit of *ad hoc* relief, although they knew that they are not entitled to the same.

It is stated by the second party that new wages schedule which came into existence with effect from 1-7-1969 had a double role to pay in respect of the members of the P.J.M.O., which are (1) fixation of wages of old employees in the new schedule of wages at a certain stage taking into account their *ad hoc* relief which they were getting with effect from 1-3-1969; (2) recruit new employees or workers on the new schedule of wages from 1-7-1969. This will be clear from the circular Exts. A and A(1) wherein it has been clearly mentioned that the workers who were given *ad hoc* relief, such *ad hoc* relief would cease with effect from 1-7-1969 and that in order to give the protection was given to those workers who were already enjoying that *ad hoc* relief for the period from 1-3-1969 to 30-6-1969 by giving them monetary benefit equivalent to the amount of their *ad hoc* relief of Tk. 36-80 whichever is greater, so that they do not suffer any financial loss because of the abolition of *ad hoc* relief. So, such old workers wages were fixed at a stage of the new schedule after taking into account which they were getting as on 30-6-1969 including their *ad hoc* relief of Tk. 36-80, whichever is greater. Thereafter such old employees' *ad hoc* relief was also abolished with effect from 1-7-1969. But the question of such benefit cannot said to be applicable to the first parties who were admittedly appointed subsequent to 1-7-1969, as will be apparent from Exts. A, A(1) and E. As such, the first parties do not have any *prima facie* case in view of the fact that all of them were appointed in the second party mill after 1-7-1969 on specific terms, conditions and pay as mentioned in their respective appointment letters which were marked Ext. D series. This position has been clearly stated in the written statement of the second party.

It is further contended on behalf of the second party that all the parties have been appointed specifying the terms, conditions and pay and emoluments of each of the first parties as contained in their respective appointment letters. In this view of matter and on the face of the terms and conditions of their appointment letters, none of the first parties could claim any benefit other than those stipulated in such appointment letters after acceptance thereof.

First parties have stated in para. 7 of their case petitions that the second party has given arrears benefits of merger of *ad hoc* relief to some of the employees, but the first parties have not adduced any evidence in that regard at the time of hearing. The second party has denied the said allegations of para. 7 in its written statement. In view of the denial of the second party and there being no evidence in this behalf, such allegations of first parties deserve no consideration whatsoever. Moreover, the manner of calculation, or analysis of calculation as per Ext. 4 will not help the first parties case. The said Ext. 4 was taken in evidence after objection from the second party. I have already discussed above that the first parties having been appointed after abolition of *ad hoc* relief they cannot claim for payment of such benefit which never existed at the time of their appointments *vide* Ext. D series. Having regards to the above discussions I find that the first parties are not entitled to the relief as prayed for and their cases are liable to be dismissed.

Members are consulted over the matter and they also agreed with me in the above view.

Ordered

That the above mentioned 65 cases including this case be dismissed on contest without cost. This judgment covers all the 65 cases and the judgment be kept with the record of I. D. case No. 60 of 1974.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
31-5-1975.

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

A. AHMED
Chairman.
31-3-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 99 of 1974.

Abdul Rashid, V/Fitter, Hafiz Textile Mills Ltd., Village Katalia, P.S. Feni,
Dist. Noakhali—*First Party*,

versus

The Manager, M/s. Hafiz Textile Mills Ltd., Ghoramara, Kumira, 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 Mohammed Faiz, Advocate with M/s. A. K. M. Mohsanuddin Ahmed Chowdhury, Mohammed Sagir, and Mohammed Amin Chowdhury, Advocates, appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Abdul Rashid prayed for directing the second party to allow him to resume duty with back wages.

The case of the first party is that he was appointed as a Vice Fitter under second party in May 1969 and his weekly wages was Tk. 42.00. Suddenly first party was arrested by the Police under section 54, Cr.P.C. on 22-6-1973 at the instance of the second party and remanded to custody and about after two months the first party was released from Hajat on bail and reported for duty but he was not allowed to resume duty and ultimately on 10-11-1973 first party was discharged from the criminal case and thereafter he reported for duty but was not allowed to resume duty. The President and the Secretary of the Jatiya Sramik League also requested the second party to that effect. But the latter did not concede to the request. The first party is still continuing in service and he is entitled to resume duty under the provisions of Labour Laws.

Second party contested the case by filing written statement alleging *inter alia* that the first party was caught red-handed on 21-6-1973 at about 10-45 p.m. when he was going out of the mill through the main gate with 7 bolts and 4 nuts and further his quarter was also charged wherefrom some materials of the second party mill were recovered on the same date. The offence being serious nature, the second party enquired the matter on the spot on that date and in the said enquiry the first party admitted his guilt in writing. The first party was dismissed on the spot and was later on handed over to police with the *alamats*. The first party deserves no consideration and his case is liable to be dismissed.

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

FINDINGS

P.W. 1 Abdur Rashid first party has only examined himself in support of his case. On the other hand, D.W. 1 Golam Kibria, Labour Officer, has examined himself on behalf of the second party. The first party was a permanent worker being a Vice Fitter under the second party and his last weekly wages was at the rate of Tk. 42.00. Admittedly second party has not followed the procedure laid down in sections 17 and 18 of the Standing Orders Act in the matter of dismissal of the first party from service, *vide* dismissal order, dated 22-6-1973, Ext. C.

It is the definite case of the second party that first party was caught red-handed at about 10.45 p.m. of 21-6-1973 with some bolts and nuts when he (first party) was going out of the mill through the main gate and also some other materials/property of the mill were recovered from his (first party) quarter on the same date, and considering the said offence being a serious nature, the second party enquired the matter on the spot, examined witnesses, took statements of first party, who admitted the guilt and as such, the second party dismissed the first party on the spot. *vide* Ext. C and thereafter handed over him to police with *alamats*. P.W. 1 is not at all consistent in his statement as will appear from his evidence on record. He in his cross at first stated that he does not know anything about any occurrence in the mill gate on 21-6-1973. But P.W. 1 at the same time in his cross clearly stated that on 21-6-1973 when he was going out of the mill through the gate, Shafiullah, Darwan, and Mafizur Rahman, Shift Havildar, detained him (first party) in the main gate and searched him there. Of course, he does not deny in his evidence in cross about the recovery of bolts and nuts from his person as well as quarter on 21-6-1973. He simply said that he does not know, whether Moha. Yusuf, Waziullah, Mafizur Rahman and Abidullah recovered bolts and nuts from his quarter on 21-6-1973. According to P.W. 1 he had no enmity whatsoever with those persons including Shafiullah and Mafizur Rahman who detained him in the gate on 21-6-1973. It is admitted by P.W. 1 that he was handed over to police on the following day. According to the evidence of D.W. 1 the first party was caught red-handed on 21-6-1973 at about 10 p.m. with some bolts and nuts when the first party was going out of the mill and some other property of the mill were recovered from first party's quarter on the same date in presence of others. The second party produced Exts. A and B in support of the said evidence referred to above. Of course P.W. 1 denied Ext. A. P.W. 1 cannot be said to be a reliable and truthful witness as his evidence in cross shows that he is not at all consistent in his statement. It is found from the evidence of D.W. 1 that first party was sent to the police with *alamats* and to that effect a letter was given by the second party on 22-6-1973. A copy of the said letter has been marked Ext. D which shows that first party along with the stolen and recovered materials was handed over to the police for further necessary action. Ext. 1 shows that first party was discharged from Sitakunda P.S. G.D.E. No. 711, dated 22-6-1973 under section 54 of Cr.P.C. on the basis of the police report Ext. 2, dated 10-11-1973. From the police report Ext. 2, it will clearly show that first party was handed over to police with some *alamats* and as no identification mark was there and which are available at the market, no case was made out against first party on enquiry. Thus from the evidence both oral and documentary it can be said without any doubt that first party was caught red-handed by Shafiullah and Mafizur Rahman with some nuts and bolts on 21-6-1973 at about 10 p.m. while he was going out of the mill through the gate and also found some other materials property on search

in the quarter of the first party, and thereafter he was handed over to the police along with those *alamats*. The dismissal order Ext. C on spot enquiry cannot be accepted to be passed in compliance with the provisions of sections 17 and 18 of the Standing Orders Act.

It is, therefore, to be noticed that there were well reasons to suspend the first party in the matter of theft as referred to above and naturally the second party has lost their confidence and trust in the first party. Admittedly first party was caught red-handed on the gate on 21-6-1973 at night with some *alamats*. This was a good reason for the second party to lose its confidence and trust on the first party. I think for the interest of the mill such an employee (first party) should not remain in service under the second party. On the other hand, it will be fair and proper to allow termination benefits under section 19 of the Standing Orders Act, 1965, to the first party.

Members agreed with me in the above view.

Ordered

That the case be allowed on contest without cost.

The first party will get the following termination benefits under section 19 of the Standing Orders Act from the second party:

- (1) 45 days' notice pay at the rate of Tk. 42.00 per week;
- (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, due;
- (4) Wages for unavailed period of Earned Leave, if any; and
- (5) Bonus, if any, due.

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

The second party is directed to pay the amount to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
31-3-1975.

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
31-3-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 134 of 1974.

N. Islam, T/No. 254, S/o. Md. Mosadar Ali, Vill. Purushpul, P.O. Matherabazar, Dist. Sylhet—*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*.
}

Representation: Mr A. K. M. Mohasanuddin Ahmed Chowdhury, Advocate, appeared for the first party and Mr S. C. Lala, Advocate, appeared for the Second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, the first party, Nurul Islam seeks a direction on the second party to allow him (first party) to resume his duty with back wages and in addition to pay 9 months' wages for the period of liberation with the allegations that 25-7-1972 at the instance of second party, he (first party) was arrested by police from the office room of the Manager and thereafter detained him in the Jail *hajati* till 6-9-1973 when he was released from the Jail *hajati* and that the second party in a most *mal fide* way issued a show-cause notice on 8-8-1973 asking him (first party) to explain his unauthorised absence from 26-7-1972 and that the second party sending a reminder, dated 23-8-1972 in his home address and the same was replied by his (first party) mother and thereafter the second party remained silent. First party having been released from detention on 6-9-1973 went to the second party with his joining report but the second party refused to accept the joining report at the state but assured him that his case would be favourably considered in due time. Lastly on 13-3-1974 the first party went to resume his duty and requested the second party to that effect. But the second party refused. So, this case.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was charge-sheeted for unauthorised absence for more than 10 days on 8-8-1972. The second party also issued a reminder to the charge-sheet. Second party received a letter from the mother of the first party that he is in jail and as such the second party could not take any action on the charge-sheet and thereafter the second party does not know anything about the first party till this case. It is also alleged that due to the pendency of the present case the second party could not proceed with the disciplinary action. 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 Nurul Islam, first party, has only examined himself in support of his case. D.W. 1, Mohammed Ishaque, Labour Officer of the second party has examined on behalf of the second party. It is not disputed that first party had been serving under second party since 28-1-1967 as D'Tenter and his last wages was at the rate of Tk. 160-00 per month. It is contended on behalf of the second party that the case is premature and as such the same is liable to be dismissed. It is an admitted fact that the second party neither dismissed nor terminated the service of the first party who is a permanent worker under the second party. According to first party he had a right to resume his duty unless his service is dismissed or terminated by the second party. I find force in the said contention of the first party. Thus I must say that this case under section 34 is maintainable.

It is the case of the second party that they issued charge-sheet, dated 8-8-1972 (Ext. 1) against first party for his unauthorised absence for more than 10 days and thereafter sent a reminder in the home address of the first party and the same was replied by first party's mother *vide* Ext. A, dated 19-8-1972 with the information that first party was in *hajat* in connection with the criminal case and as such the second party could not take any action on the charge-sheet and also knew nothing about the first party till this case under section 34. D.W. 1, the Labour Officer admitted in his cross that he himself issued the charge-sheet Ext. 1 by signing the same and the letter, dated 29-8-1972 Ext. 2 to the President of the workers' union and the same Ext. 2 also issued and signed by him (D.W. 1). This letter Ext. 2 is admitted by the second party. Admittedly the first party was on leave without pay up to 31-8-1972 *vide* letter Ext. 2, dated 29-8-1972. In view of the said letter Ext. 2, the charge sheet Ext. 1 against the first party has become infructuous. Consequently first party was not legally required to submit any explanation in compliance with such charge-sheet Ext. 1. It is not disputed that first party was arrested under section 54, Cr.P.C. on 25-7-1972 and he was taken to the custody and he was released from jail *hajat* on 6-9-1973. According to P.W. 1 after his release from jail *hajat*, he on several occasions went to the second party mill with a view to resume his duty but he was not allowed to resume on one plea or other. According to D.W. 1 first party never approached them after his release from jail for the purpose or resumption of his duty and after filing of the present case the second party first knew that the first party has been released from the jail *hajat*. D.W. 1 also stated in his evidence that on 7-9-1973 the first party never went to him to resume with a joining report, or the second party ever refused first party from resuming duty. P.W. 1 in his cross has stated that he cannot say the dates when he went to resume duty and that he has nothing documentary to show that he tried to resume duty after he released from the Jail. It is thus found from the above discussions that since the first party was not dismissed or terminated from the service he was well entitled to report for duty. There is no convincing evidence on record to show that the first party after his release from Jail tried to resume his duty. There is also no evidence worth the name on record to show that the first party was arrested at the instance of the second party. The management was well within their right to dismiss or terminate the service of the first party, according to Labour Law but they (management) have not availed the same. There is no evidence at all on the side of the first party in support of his claim of 9 months' wages of the period of liberation. So, he is not entitled to get the said claim of 9 months' salary. It will, however, be unfair to disallow all

back wages to the first party for the period of his absence from duty. Considering the evidence and circumstances the first party should be allowed back wages at the rate of 10% (ten per cent.) of his monthly wages for the period from 25-7-1972 to the date of his resumption in duty.

Members on consultation agreed with me in the above view *vide* their written advices.

Ordered

That the case be allowed on contest without cost.

The second party is directed to allow the first party to resume his duty and pay 10% (ten per cent.) of back wages to him (first party) for the period from 25-7-1972 till the date of his resumption.

The first party is directed to report for duty within 15 days from today. The second party is also to implement this order in full within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
3-4-1975.

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

A. AHMED
Chairman,
3-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH
Industrial Dispute Case Number 136 of 1974.

Jebal Hoque, T/No. 193,
Son of Abdur Razzak Mia,
Village Udrajpur, P. O. Daganbhuiyan,
Dist. Noakhali—*First Party,*

versus

The Manager,
Pahartali Textile and Hosiery Mills Ltd.,
Pahartali, P. S. Doublemoorings,
Dist. Chittagong—*Second Party.*

PRESENT :

Mr Ameenuddin Ahmed—*Chairman.*

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Choudhury ..

} *Members.*

Representation : Mr A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate, appeared for the first party and Mr S. C. Lala, Advocate appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, Jebal Hoque, first party, a permanent worker being a Double Spinner under the second party seeks a direction on the second party to reinstate him to his former post with back wages including 9 months' wages for liberation period upon the allegations that while he was on duty on 25-7-1972, he fell ill and submitted an application for leave and thereafter he went home for treatment and nursing and that second party suddenly sent a show cause notice requiring the first party to show cause for the alleged absence without information since 26-7-1972 and the first party submitted his explanation by post but the second party illegally without considering the same issued a letter of dismissal dated 23-8-1972. First party after recovery from illness went to the second party for several occasions and lastly on 6-3-1974 first party requested the second party Manager to reinstate him but the second party refused. Hence, this case.

Second party contested the case by filing written statement alleging *inter-alia* that first party having remained unauthorisedly absent from duty without any leave or intimation and thereafter he was asked to show cause and the second party received a Medical Certificate concerning the first party and in reply to that the second party asked the first party to report for duty but the same was not complied with. Thereafter the second party had no other alternative than to dismiss the first party *vide* letter dated 23-8-1972.

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

Findings

P. W. 1, Jebal Hoque first party has examined himself in support of his case. On the other hand, Md. Ishaque, the Labour Officer of the second party has examined in support of the second party's case. According to cross of P. W. 1 he was granted leave for 15 days with effect from 25-7-1972 as he applied in writing for the said period of leave to the second party. D. W. 1 denied the said evidence of P. W. 1. Nowhere in the case petition the first party stated about his granting of 15 days' leave with effect from 25-7-1972. The aforesaid evidence of P. W. 1 regarding granting of leave for 15 days in no way can be relied on. Had the alleged granting of 15 days been true, there was no necessity on the part of the first party to send medical certificate dated 29-9-1972 to the second party, Ext. A. According to his own evidence it was his duty to apply for extension of leave after the expiry of alleged 15 days leave. No such petition for extension of leave was filed. According to second party they received no explanation from the first party in compliance of the charge-sheet, Ext. 1. It is stated by P. W. 1 in cross that he sent the explanation by registered post to the second party. No postal receipt is produced by the first party in order to substantiate his sending explanation by registered post to the second party. The evidence of P. W. 1 in cross coupled with circumstances, I have reason to believe that the alleged story of illness of the first party is not true. According to section 18(1) of the Standing Orders Act, the aggrieved workman cannot be discharged or dismissed unless he is given a personal hearing if such a prayer is made by the aggrieved worker. Here in

the instant case in spite of service of charge-sheet, the first party has not prayed for personal hearing or submitted explanation. First party could not also produce any kind of reliable evidence to prove that he never applied for leave or took any permission for remaining absent from duty. Thus it is proved that the first party was unauthorisedly absent from duty for more than 10 days. From the above discussions it has been proved that the first party was legally dismissed from service for his misconduct for unauthorised absent from duty, after taking the legal provisions by recording the charge and by giving chance to the first party to explain the same. So, the first party has no case to be reinstated in his service or to get any back wages. Consequently the first party is not entitled to get any relief.

Members are consulted and they agreed with me in the above view.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
31-3-1975.

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

A. AHMED
Chairman.
31-3-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH.

Industrial Dispute Case Number 163 of 1974.

Parbatya Chattagram Naujan Sramik League,
Registered No. 189, Rangamati,
Chittagong Hill Tracts, represented
by the General Secretary
of the Union, Mr. Ali Ahmed—*First Party*,

versus

- (1) Abul Kashem (Shukhani),
Son of Hajee Ayer Ali,
- (2) Munshi Mia (Oilman),
Son of Siddiq Ahmed,
- (3) Abdul Sobhan (Engine Driver),
Son of Torab Ali,
- (4) Nabid Ali (Serang),
Son of late Aman Ali.

All are employees of Hajee Abdul Gafur and Sons,
New Rangamati, P. S. Rangamati,
Chittagong Hill Tracts—*Second Parties*.

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 S. C. Lala, Advocate appeared for the second parties.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by first party, a registered trade union of Workers and Collective Bargaining Agent, namely, Parbatya Chattagram Naujan Sramik League, against the second parties with a prayer for restraining second parties individually and collectively from interfering into collection of monthly subscription from the members of the first party union and to direct the members of the union not to disturb or interfere with the work and function of Mr Ali Ahmed, as General Secretary of the Union.

The case of the first party is that the second parties and other employees of Haji Abdul Gafur and Sons, Rangamati became members of the first party union, but second parties have stopped payment of their monthly subscription for the last 8/12 months and they also asked other members of the union to stop payment of monthly union's subscription. Moreover, the second parties are intimidating the General Secretary of the first party union in order to refrain from continuing to be the officer of the union. Suddenly on 26-3-1974 at about 9 p.m. the second parties entered into the office of the union and threatened the General Secretary Ali Ahmed and other office-bearers of the union with dire consequences, if they did not give up the membership of the union and in this way they are trying to stop functioning of the union.

Second parties contested the case by filing a written statement alleging *inter alia* that first party did not disclose the right guaranteed under what law, award or settlement and that the case as framed and filed is not maintainable according to law. It is further alleged that the union is a democratic organisation of workers and it is the workers who will decide to join hands or not and nobody could force the second parties to be members of the union or to make payment of the alleged subscription. The alleged incident dated 26-3-1974 is totally denied by the second parties. The first party's case is liable to be dismissed.

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

Findings

P. W. 1 Ali Ahmed, the General Secretary of the first party union has examined himself along with two other witnesses. On the other hand, second parties 1, 3 and 4 have examined themselves.

At the outset it is contended on behalf of the second parties that the facts stated in the case petition do not attract section 34 of the I.R.O., 1969. On the very face of the case petition it is found that first party wants to refrain

the second parties from interfering into the collection of monthly subscription as well as interfering with the works and functions of Ali Ahmed as General Secretary of the Union. Ext. 1 is the constitution of the first party union. It is stated by P. W. 1 in cross that according to constitution Ext. 1 the membership of the first party union is voluntary. It is further stated by P. W. 1 in his cross that article 19 of Ext. 1 will show that action can be taken against a member, who does anything against the interest of the first party union. I have gone through the union's constitution Ext. 1 carefully. There is no clear assertion in the first party's case petition whether the first party had the right guaranteed under any law, award or settlement. It will appear from the constitution Ext. 1 that remedy for non-payment of subscription as well as disturbing the function of General Secretary by any member lies there in the constitution. The allegations made in the case petition, I think do not attract the provisions of section 34 of the I.R.O., 1969 and I have reason to say that the case as framed by the first party is not maintainable under section 34 of the Ordinance.

As regards merit, the first party has not been able to substantiate the case by any reliable evidence. P. W. 2 in his cross has stated that he does not know the reason for which the second parties came to union office on 26-3-1974. D.Ws. have in their evidence clearly denied the allegation by saying that on 26-3-1974 they never went to the union office and threatened P. W. 1 and others as alleged by the first party. D.Ws. also said that they never prevented any employee or union member from paying the monthly union subscription. Thus in any view of the case, the first party is not entitled to get any relief, both in law and on merit. So, the 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,
Labour Court, Chittagong.
21-4-1975.

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

A. AHMED
Chairman.
21-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case Nos. 165, 168, 169, 170, 171, 172, and 173
of 1974.

(i) Bangladesh Tobacco Co. Limited,
Fouzderhat, P.S. Sitakund,
Chittagong—(First Party of Case No. 165 of 1974),

versus

(1) Salamatullah, T/No. 3002,

(2) Ziaul Hossain, T/No. 3014,

(3) Abul Fazal, T/No. 3010,

(4) Abdul Gafur, T/No. 3021,

(5) Afzal Hossain, T/No. 3012,

(6) Abul Kalam, T/No. 3022,
Clerks—Wages Section,
Commercial (Accounting) Deptt.,
Bangladesh Tobacco Co. Ltd.,
Fouzderhat, P.S. Sitakund,
Chittagong.

(7) Bangladesh Tobacco Employees Association, Fouzderhat, P.S. Sitakund,
Chittagong—Second Party of 165 of 1974.

(ii) Md. Abul Kalam, T/No. 3022,
Clerk, Wages Section,
Commercial (Accounting) Deptt.,
Bangladesh Tobacco Co. Ltd.—(1st Party of I.D. 168 of 1974).

(iii) Abdul Gafur, T/No. 3021—(1st party of 169 of 1974),

(iv) Md. Ziaul Hussain, T/No. 3014—1st party of 170 of 1974),

(v) Abul Fazal, T/No. 3010—(1st party of 171 of 1974,

(vi) Salamatullah, T/No. 3002—(1st party of 172 of 1974),

(vii) Afzal Hussain, T/No. 3010—(1st party of 173 of 1974),

versus

Bangladesh Tobacco Company Limited,
Fouzderhat, P.S. Sitakund,
Chittagong—Second Party in case Nos. 168 to 173 of 1974),

PRESENT:

Mr Ameenuddin Ahmed—Chairman.

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Choudhury

} Members.

Representation—M/s. Chittaranjan Das, Advocate and S.C. Lala, Advocate appeared for the first party in I.D. Case No. 165 of 1974 and second party in the remaining cases and Mr Lutful Huq Mazumder, Advocate appeared for the second party in I.D. Case No. 165 of 1974 and first parties of the remaining cases.

All these cases having common facts and issues and as such they were all heard analogously with the consent of both the parties.

First party brought I.D. Case No. 165 of 1974 under section 34 of the I.R.O., 1969 against second parties 1 to 6 the Clerks of wages section, Commercial (Accounting) Deptt., Bangladesh Tobacco Co. Ltd., Fouzderhat, Chittagong and second party No. 7, Bangladesh Tobacco Employees Association for a direction on the second parties 1 to 6 and other commercial staffs as represented by second party No. 7, the registered trade union of the workers and as such Collective Bargaining Agent, to work overtime as and when required by the first party on payment of overtime allowance and subject to the limit laid down in proviso to section 8 of the Shops and Establishments Act, 1965 and also for other reliefs which are ancillary to the main relief.

Second parties 1 to 6 individually brought I.D. case Nos. 168 to 173 of 1974 against first party of I.D. case No. 165 of 1974 with a prayer for directing the second party to pay them (first parties) balance and unpaid overtime allowance for the period from 1971 to March 1974.

The case of the first party of I.D. case No. 165 of 1974 is that the first party has a factory at Fouzderhat, Chittagong and in the said factory there is a Wages section of Commercial (Accounting) Department and the said department is treated as a commercial department and that the second parties 1 to 6 are the employees of the said wages section and second party No. 7 is the Collective Bargaining Agent. Since the commissioning of the said factory in 1955, the Clerks of the Wages section worked overtime in the first and last week of each month to prepare the pay roll of the workers, that such overtime is mainly required by the fact that although the first party is entitled to require the employees to work for 48 hours in a week without payment as per agreement in force till it is amended by subsequent agreement and such rights are enforceable under section 34 of the I.R.O., 69, even if, the said has been terminated, that the workers of the commercial (Accounting) department have been representing that a devisor of 169 should be applied in calculating all payments and deductions to them, that on 26-2-1974, the second party No. 7 informed the first party that the clerical staff of the commercial department would refuse to work overtime, unless their verbal demand for changing devisor from 208 to 169 is accepted, that on 11-3-1974 the second parties 1 to 6 and other clerical staffs were asked to work overtime but they refused to do so stating that they have been ordered by second party No. 7 not to work overtime till their verbal demand was met and this was confirmed by letter dated 12-3-1974, that the second party No. 7 by letter dated 12-3-1974 against stipulated and confirmed the demands of clerical staff, that orders were issued to work overtime but they refused to accept the letter conveying the said order which created deadlock to complete work of the wages section and to disburse the wages for the month of March 1974 on due date, that the workers are still refusing to work overtime and that the second party No. 7 has instructed them not to work overtime unless the devisor was changed to 169 from 208, that the first party is entitled both under the terms of agreements

which are still in force as well as in accordance with the provisions of Shops and Establishments Act, 1965 and Rule 4 of Shops and Establishments Rules, to have the workers work overtime in accordance with the provisions of sections 8 and 9 of the Shops and Establishments Act and to pay them in accordance with the said agreement and the relative law and since the workers are refusing to do so and the second party No. 7 is also instructing them, the first party has completed to file the present application for enforcement of such right.

Second parties 1 to 6 jointly and second party No. 7 separately filed written statements denying the first party's alleged case. The case of the second parties is that the second parties are entitled to overtime allowance at double the rate of ordinary wages, whenever one is required to work beyond the schedule hour of work, that the devisor of 208 has been illegally and wrongly applied, that the demands of second parties for applying the devisor of 169 was illegally refused, that for payment of overtime allowance the principle should be the monthly wages devised by monthly hours of works which is at present 169 and that the second parties did never refused to work overtime.

The cases of first parties of I.D. caseNos. 168 to 173 of 1974 is that they have been discharging duties of 39 hours in a week and 169 hours in a month and that in the year 1971 to 1973 and upto March 1974 overtime has been calculated with the devisor at 208 instead of at 169, that accordingly they have received less payment than what is legally due to them and as such they have prayed for a direction on the second party to pay the balance of unpaid overtime allowance from 1971 to March 1974 by calculating the same with the help of devisor 169.

Second party contested by filing written objection separately in all the six cases stating that the case of first party is barred by limitation and that the case is barred by the principle of estoppel and acquiescence and waiver and that the case is barred under section 35(B) of the I.R.O., 69 and that in view of the subsisting agreement, the latest one, which is dated 18-4-1973, the first parties have no right to claim the benefits of devisor of 169 in place of 208 and that the claim for devisor 169 is not guaranteed either by law or any award or settlement.

It is to be seen whether the first party of I.D. Case No. 165 of 1974 and that the first parties of the remaining 6 cases are entitled to get the relief as prayed for.

Findings

Neither party adduced any oral evidence in these cases. The first party company has filed all the relevant correspondances and 3 admitted agreement referred to in their case petition and the said agreements have been taken in evidence without any objection.

It has been stated by first party company of I.D. Case No. 165 of 1974 in paras 4 and 5 of the petition that although the company had right to fix the weekly hours of works at 48 hours, the company *sue moto* fixed such hours at 39 hours and paid overtime in excess of 39 hours in a week and in the settlement or agreement dated 20-10-1967 Ext. 1 the basic salary and the wages were merged into a consolidated wages structure and it was further agreed

that when the consolidated wage structure came into force, the devisor 208 shall be applied for calculating all payment and deduction. The consolidated wage structure came into force on 1-3-1967 and since then all payments and deductions have been calculated by applying the devisor of 206. According to clause 1 (c)(i) of the agreement dated 20-10-1967 (Ext. 1) and rule 4 of the Shops and Establishments Rules 1970, hourly rate of wages is to be determined by deviding the monthly rate by 208 and this has also been the custom in the company. The first party also submits that there has been no protest whatsoever by the second parties to this agreement and also to the implementation of the agreement in the manner as aforesaid till March 1974. Moreover, this agreement Ext. 1 was succeeded by two agreements dated 9-1-1970 and 18-4-1973 the later agreement Ext. 1 (B) being in force wherein this provisions regarding the devisor of 208 was not implemented and on the contrary it was stipulated in the later agreement that all of existing facilities not embodied in these agreements will not be curtailed. The second parties also have not challenged this agreement in any manner whatsoever.

It has been stated by the first party company in para 8 of the case petition that in the Writ Petition No. 67 of 1970 between first party and the Collective Bargaining Agent, it has been held that rights and obligations following from agreement are not extinguished after the expiry of the agreement and such rights and obligation continue to remain in force till they are amended by subsequent agreement and such rights are enforceable under section 34 of the I.R.O. even if the agreement creating the same has been terminated. The second parties in their written objection have not seriously challenged this fact.

Moreover, it will be seen that section 8 of the Shops and Establishments Act provides that maximum hours of the work in a week shall be upto 48 hours and that the management may require the workers to work overtime in excess of 48 hours up to 60 hours in a week on payment of overtime allowance to be calculated at double the rate of ordinary wages and such ordinary rates of wages shall be calculated in the prescribed manner.

It will thus appear that the first party company has the legal right beside the right guaranteed by the aforesaid agreement to have the overtime work from the workers upto the limit provided by law on payment of overtime allowance in accordance with law. This is exactly the relief which has been claimed by the first party company in prayer 1. If the workers have any grievance regarding payment they may seek appropriate relief in proper forum but they cannot refuse to work overtime.

Second parties 1 to 6 and 7 in their contention also have conceded to the claim of the first party company that in fact, the workers are bound to work overtime, if required by the company on payment of overtime allowance in accordance with law and further submitted that such overtime allowance shall be calculated by the devisor of 169 and not 208. First party, therefore, submits that his claim has been admitted by the second parties and accordingly order should be made as prayed for by the first party company. The question whether the devisor should be 169 or 208 is absolutely besides the points and beyond the scope of this case filed by the first party company, namely, case No. 165 of 1974. If second parties have any grievance regarding the claim raised by them that may be decided in an appropriate forum.

It is further contended on behalf of the first party that rule 4 of the Shops and Establishments Rule 1970 prescribes that for the purpose and section 9 of Shops and Establishments Act, the rate of wages per hour payable to persons employed on monthly wages shall be calculated at the rate of 1/208th of the monthly wages. There cannot be any deviation from this provision of law, so long as the rules stand or both the parties mutually agreed to pay at a higher rate. It is relevant to mention here that although the first party company is entitled to have 48 hours a week, in fact the workers are working 39 hours a week and admittedly overtime is being paid for work in excess of 39 hours which means that the workers are already getting the greater benefit than guaranteed by law.

Considering my discussions above and in such circumstances, the first party company is entitled to relief claimed, i.e., has a right to get overtime work done by the second party upto statutory limit on payment of overtime allowance calculated by using devisor 208.

The first parties workers in the remaining I.D. cases Nos. 168 to 173 of 1974 said that since they are working 39 hours a week, hourly rate of wages for the purpose of section 9 of the Shops and Establishments Act for calculating overtime allowance should have been at 1/169th and not at 1/208th as is being done at present and the second party company should be directed to pay balance unpaid allowances from 1971 to March 1974.

Section 34 of I.R.O. provides that Court may pass order for enforcement of any right guaranteed by any law, settlement or award. The case petitions are absolutely silent as to what guaranteed rights, if there be any are being infringed and under what law, award, or settlement, the rights claimed have been guaranteed. Admittedly there is no award on the point at issue. On the contrary it is provided by law as discussed above that 1/208th, i.e., the devisor of 208 shall be applied for calculating the hourly rate of wages in respect of the monthly salaried workers. The applicants of these cases are of monthly salaried staffs. Moreover, by agreement, Ext. 1 series which have been discussed above, the devisor of 208 has been accepted by the collective bargaining agent and as such, the same is binding on the workers.

In such circumstances these cases are clearly not maintainable and liable to be rejected.

It is contended on behalf of the second party that the devisor of 208 is being applied from long before 1971 and the workers did not raise any protest till March 1974. Thus it appears that these cases are also barred by estoppel, acquiescence and waiver. Moreover, the workers must have to come before the Court within reasonable time. They have not shown any cause or explanation for this long delay of for more than 7 years. I have already found above that the devisor of 208 is covered by subsisting settlements. Consequently these six applicants of these six I.D. cases are not entitled to get overtime allowance on the basis of devisor 169. In the result, the first parties of these cases are not entitled to get any relief.

Members are consulted over the matter.

Ordered

That the I.D. Case No. 165 of 1974 be allowed on contest without cost. The first party company shall have the right to have overtime work done by the workers, subject to statutory limit and on payment of overtime allowance calculated by using the deviser 208.

The remaining cases being I.D. Cases Nos. 168 to 173 of 1974 be dismissed on contest without cost.

This order shall govern and dispose of all these 7 (seven) I.D. Cases mentioned above and the judgement be kept with the record of I.D. Case No. 165 of 1974.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.

26-5-1975.

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

A. AHMED
Chairman.
26-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case Number 187 of 1973.

Abdur Razzak Chowdhury,
Mechanical Supervisor,
B.F.I.D.C. Wood Treating Plant,
Kalurghat, Chittagong—*First Party,*

versus

Project Manager,
B.F.I.D.C. Wood Treating Plant,
Kalurghat, 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. M. Rashiduzzaman, Advocate appeared for the second party.

This is an application under section 34 of the I.R.O. by first party Abdur Razzak Chowdhury, with a prayer either to direct the second party to pay him his overtime allowance for 4 hours work for each of the 279 days from 15-9-1965 to 6-7-1970 at double the rate of ordinary wages or to give 279 days compensatory holidays with full pay to him.

The case of the first party is that he is a permanent employee under the second party with effect from 1964 and his monthly wages is at the rate of Tk.500-00. By an office order dated 15-9-1969 he (first party) was given additional work to be performed on Sundays and holidays from 6 a.m. to 8 a.m. and from 3 p.m. to 5 p.m. for operating the Water Pump to supply water to the staff quarter of the second party apart from his normal duties. The first party duly performed his assigned duty from 15-9-1965 to 6-7-1970, total 279 days and he was preferred this application under section 34 for the relief as prayed for, as the second party failed to pay his overtime allowance or compensatory holidays with full pay inspite of repeated demands.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that the application of the first party is not maintainable under section 34 and it should be summarily rejected and that the present application is hopelessly barred by limitation. First party's claim for overtime on the strength of office order dated 13-9-1965 is misconceived. It is further alleged that the office order need not required the first party to do any additional work on Sundays or other holidays. On the contrary the said office order required first party to make arrangement for Sundays and holidays. First party is not a worker under the Factories Act. 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.

P.W.1, Abdur Razzak Chowdhury, first party has only examined himself in support of his case. On the other hand, D. W. 1, Mokhesur Rahman Sarker, the Project Manager has examined himself along with two other employees on behalf of the second party.

It is relevant to mention here that first party previously filed complaint case No. 551/1/1970 against the second party under section 25(I)(b) of the Standing Orders Act, 1965 for reinstatement in his service with other attached benefits, and the said case was allowed on contest by a judgment dated 16-2-1971 directing the second party to reinstate the first party in his former post with all back wages and benefits attached to the same. Accordingly the first party was reinstated in his former post in compliance with the said judgment.

It is not disputed that the first party is a permanent employee under the second party since March, 1964. The relationship between first party and the second party as employee and employer, has been established previously by the judgment and order of complaint case No. 551/1/1970. The certified copy of the judgment of the said complaint case on record will clearly show that the Court had decided there that the first party is a skilled manual worker under the second party. Thus I find that the first party is a worker within the meaning of Labour law and he is discharging duty as Supervisor in the B.F.I.D.C

Wood Treating Plant. The B. F. I. D. C. Wood Treating Plant is a factory within the meaning of Factories Act and the first party being employed in the manufacturing process, is a "worker" within the meaning of Factories Act. The staff quarter being attached with the factory is within the factory premises and it is a part and parcel of second party's Plant. Section 34 of the I. R. O. provides for enforcement of any right guaranteed to a workman and the first party not being employer under I. R. O., is a workman under the I. R. O. and he has the right to pray for enforcement for any of his subsisting right against his employer. The first party asserts his right as per provisions of the Factories Act. First party's right is guaranteed by the Factories Act ((Law). Consequently section 34 comes into operation for its enforcement. I, therefore, find that this case is maintainable under section 34 of the Industrial Relations Ordinance, 1969.

It is contended on behalf of the second party that the claim of the first party is barred by Article 102 of the Limitation Act. Section 34 of the I.R.O. does not prescribe any period of limitation. The first party after his reinstatement in service, persistently claimed the rights and the second party *vide* his admitted letter dated 20-6-1972 Ext. 3 directed the first party to submit the date-wise details concerning overtime claim for the period from 15-9-1965 to 6-7-1970 and there after the first party submitted details to the Project Manager *vide* letter dated 20-7-1972. A copy of said letter describing details as asked for by the Project Manager has been marked Ext. 4. Of course there is no documentary evidence to show that prior to 1972 the first party claimed his alleged benefit from the second party. There is no provision in Factories Act to show any limitation for it. The first party's claim being statutory benefit under the provisions of Factories Act, has neither lapsed nor the claim has become barred under Article 102 of the Limitation Act. The first party in his evidence, however, has given reason of his delay in filing this case. Thus from the evidence and materials on record coupled with the circumstances I find no force in the aforesaid contention of the learned lawyer of the second party concerning limitation.

P. W. 1 the first party has stated in his evidence that by office order dated 15-9-1965 Ext. 1 he was directed to perform additional work besides the usual duty on Sundays and other holidays for 4 hours day from 6 a.m. to 8 a.m. and from 3 p.m. to 5 p.m. and he performed the same accordingly from the date of order till 5-7-1970. According to P. W. 1 total number of days for the period is 279 for which days the (P.W.1) performed work as per Ext. 1. Ext. 1 will show that on Sundays and holidays the first party was responsible to supply water for staff and operation of pump. The said letter Ext. 1 is addressed to all Boiler Attendants and they were instructed to run water pump by themselves on the working days and it can be inferred from the said letter that the works also was allotted to first party for Sundays and holidays. D.W. 2 Golam Rahman, An Assistant Field Superintendent of the second party Plant has clearly stated in his evidence that he had no responsibility to look after the operation of supply of water in the staff quarter as per Ext. 1 but the responsibility was with the first party. D.W. 2 further stated clearly in his cross that first party Razzak Chowdhury used to supervise water supply in compliance of Ext. 1 on Sundays and holidays. His said evidence fully corroborates the evidence of P.W. 1. From the oral evidence as well as documentary evidence, Ext. 1, it can be safely said that first party kept himself

engaged for Sundays and holidays as per Ext. 1 and he failed to enjoy Sundays and holidays during the period. D.W. 2 being resident of the staff quarter with a large family get regular supply of water on Sundays and holidays and there is no adverse evidence to show that the first party did not keep engage on Sundays and holidays as per office order Ext. 1. So, it is proved that the first party performed his duties as per Ext. 1. The evidence of D. W. 3, a Boiler Attendant goes to show that the work in the plant is done in 3 shifts and each shift is for 8 hours. It is in evidence that the Plant remains close on Sundays and holidays. So, the work of Sundays and holidays is additional work, besides normal schedule hours of duty in the Plant which is 48 hours in a week. The additional work which the first party has performed on Sundays and holidays being additional work besides schedule duty of the Plant can be either with the weekly working hours of the first party, as week has been defined in the Act as 7 days and entitling him to the benefits of overtime allowance under section 58 of the Factories Act or the work being on Sundays and holidays can be treated as work done under sections 51 and 79 of the Factories Act, entitling him, the benefits of section 52(1) and 79(2) of the Factories Act. So, according to the provisions of Factories Act, the first party is entitled to the benefits of his work on Sundays and holidays. From my discussions above, I find that the first party kept himself engaged as per office order Ext. 1 on Sundays and holidays for the period from the date of such order till 5-7-1970. Total number of days for the said period is 279. P.W. 1 in his evidence prayed either overtime allowance or to give him 279 days compensatory holidays with full wages.

In deciding the issue it has to be remembered that the Labour Court is not a Court of law but is a Court of Social justice. This Court being court of social justice, ordinarily decide dispute not by way of declaration of legal rights of parties in terms of agreement and strict law of master and servant but by way of adjustment of rival claims of parties on the basis of what is just fair and equitable. In the circumstances, I think the first party is entitled to get 279 days compensatory holidays with full wages as prayed for and that the first party is entitled to get relief to this extent.

Members are consulted over the matter and they agreed with me in the above view.

Ordered

That the case be allowed on contest without cost.

The second party is directed to give 279 days compensatory holidays with full pay to the first party.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
31-5-1975.

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

A. AHMED
Chairman.
31-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 197 of 1974.

Abdul Kader,
Son of Abdul Salam,
Helper, Gazi Wires Ltd., F/No.104,
28, F. I. D. C. Road, Kalurghat I/A,
Chittagong—*First Party*

versus

The Project Manager,
M/S. Gazi Wires Limited,
28, F. I. D. C. Road, Kalurghat Industrial Area,
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 second party.

This case under section 34 of the Industrial Relations Ordinance, 1969 filed by Abdul Kader, first party, with a prayer for directing the second party for fixing his (first party) wage at grade V in the scale of Tk. 200 to 345.00 per month apart from the fringe benefit and for further payment of outstanding *ad hoc* grant of Tk. 20.00 per month from 18-10-1972.

The case of the first party is that he is appointed under second party as a helper with effect from 18-10-1972 on a monthly wages of Tk. 125.00. The monthly wages of first party stood at Tk. 125.00 in 1972 and Tk. 135.00 including increment in 1973. The Government has determined the wages of various job of the workers of second party industry with effect from 1st July 1973 and according to said determination of wages the first party's wages should be fixed at grade V in the scale of Tk. 200—340 p.m. The second party by a notice dated 2-5-1974 as fixed the wages of first party in grade I in the scale of Tk. 155—235.00. First party objected to the said wrong fixation and demanded his wages as to be fixed as prayed for.

The second party contested the case by filing a written statement alleging *inter alia* that by a gazette notification dated 19th December, 1973 the wages scales in the second party establishment was put by fixing Tk. 155—5—205—6—255 for unskilled workers, grade-I and that the first party has been fixed up accordingly in the afor said scale at Tk. 155.00 *plus* fringe benefit as admissible with effect from 1-7-1973. First party is not entitled to get the relief as prayed for.

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

DECISION

First party Abdul Kader has not come to depose on oath in support of his claim. Lawyer appearing on behalf of the first party only argued the case in support of first party's claim. D. W. 1 Joynal Abedin, the Project Manager of the second party has examined himself.

Lawyer for the first party at the time of hearing gave up his claim for outstanding *ad hoc* grant of Tk. 20 per cent. per month from 18-10-1972. So, the said claim is liable to be rejected.

It is not disputed that first party was appointed as helper under second party on 25-10-1972 on a monthly salary of Tk. 125.00. It is stated by D. W. 1 that first party's wages per month never raised to Tk. 135.00 in 1973. It appears from the Government circular dated 3-5-1972 Ext. A that *ad hoc* relief was never accounted for wages. It is not disputed that the first party is an unskilled worker. Second party industry is under Bangladesh Engineering and Ship Building Corporation. First party's claim to be fixed at grade in the scale of Tk. 200—340 is entirely misconceived, in fact there is no such scale in grade-V in the Report of the Industrial Workers Wages Commission, Bangladesh, for Bangladesh Engineering and Ship Building Corporation as demanded by the first party. First party's basic wages was at the rate of Tk. 135.00 on the date of his appointment and *ad hoc* relief was at the rate of Tk. 25. First party's wages has been fixed on his existing basic wages and the second party implemented Wages Commission Award and the first party's pay was fixed at Tk. 155.00 per month by the Corporation concerned and placed him in grade I. From the evidence and materials on record I find that first party has been fixed up correctly in the scale of Tk. 155—235 *plus* fringe benefit as admissible in grade I, with effect from 1-7-1973. Consequently the first party is not entitled to get grade V in the scale claimed.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED

Chairman,

Labour Court, Chittagong.

27-5-1975.

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. 233 of 1974.

(Complaint case Number 28/1/1975.)

M. A. Q. Chowdhury,
C/o. Mr. Md. Hussain Chowdhury,
Agrani Bank, Bandarbazari, P. O. & P. S. Town,
Dist. Sylhet—First Party

versus

- (1) Manager,
Kurma Tea Estate,
P. O. Patrakhola, Sylhet.
- (2) General Manager,
Bangladesh Tea Industry Management Committee,
5, Mogh Bazar Circular Road,
Dacca-7—Second Party.

PRESENT :

Mr. Ameenuddin Ahmed—Chairman.

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

By this application under section 25(D)(b) of the Employment of Labour (Standing Orders) Act, 1965, first party M. A. Q. Chowdhury prays for his reinstatement in his former post with back wages.

The case of the first party is that he was appointed as Clerk in the Kurma Tea Estate on 1-3-1947 and subsequently he became permanent and was promoted as Head Factory Clerk with effect from 1956. He was discharging his duty to the satisfaction of his superiors, but suddenly he was issued with a charge-sheet dated 14-4-1972 under section 17(3)(d) of the Standing Orders Act falsely and the first party submitted his explanation dated 20-11-1972 denying the charges. Thereafter the second party violating the provisions of sections 17 and 18 of the Standing Orders Act, dismissed the first party from service *vide* dismissal order dated 30-4-1974. The said order of dismissal is quite illegal and contrary to the labour laws. Thereafter the first party sent a grievance petition to the second party but the second party gave no decision to the same. Hence, this case.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that first party has been legally dismissed from service *vide* order dated 30-4-1974 with effect from 1-5-1974 on the basis of charge-sheet for misconduct under section 17(3)(d) of the Standing Orders Act. The second party has complied all the provisions of sections 17 and 18 of the Standing Orders Act in the matter of dismissal of the first party for his misconduct. First party's grievance petition was considered but there was nothing for favourable consideration and there was nothing to alter the punishment awarded to the first party. The first party is not entitled to get the relief as prayed for.

It is to be seen whether the dismissal of the first party is valid and proper, and if not, what relief, if any, the first party is entitled to.

DECISION

P. W. 1, M. A. Q. Chowdhury, first party, only examined himself in support of his case. On the other hand, none is examined on behalf of the second party.

The first party in his case petition prayed for reinstatement in service with back wages. At the time of hearing of this case P. W. 1, has stated that second party has agreed to pay him termination benefit under section 19(I) of the Standing Orders, Act and as such he (P. W. 1) is now ready to accept the termination benefit. The learned Advocate for the first party also submits that the first party is agreeable to accept termination benefits. First party has rather gave up his claim for reinstatement. Order for reinstatement is also discretionary with the Court.

Both the Members have suggested to give the termination benefit to the first party.

In view of the evidence of P. W. 1 I find that the first party is entitled to full termination benefits under section 19(I) of the Standing Orders Act, 1965.

P. W. 1 stated in his cross that in October, 1971 he drew wages at the rate of Tk. 448.50 per month. P. W. 1 also stated that since January 1972 he was not paid his wages, though he stated that he received Tk. 600.00 from the second party in May 1974 towards his wages. According to P. W. 1 in cross he was not given increment after December, 1971 as second party started disciplinary proceeding against him (P. W. 1). Unless the increment is actually given to the first party, he cannot claim such increment amount as wages. Learned lawyer appearing on behalf of the second party also admits that first party has drawn wages at the rate of Tk. 448.50 per month.

In the result, it is—

Ordered

That the first party do get termination benefit from the second party as follows. The second party is directed to pay the amount to the first party within 60 days from today.

- (1) 90 days notice pay at the rate of Tk. 448.50 per month;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months, from 1-3-1947 to 30-4-1974 ;
- (3) Wages for unavailed period of Earned Leave if any.
- (4) Unpaid wages from January 1972 to 30-4-1974.

Any other benefit 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.
26-5-1975.

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

A. AHMED,
Chairman.
26-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 239 of 1974.

Nurul Islam (Driver), S/o. late Mvi. Mohammed Baksha of Hathazari Road,
Solakbahar, Chittagong—*First Party*

versus

Administrator, M/s. Hossain Ebrahim, Eastern Federal Building, Sk. Mujib
Road, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury ..

Mr. Juned A. Choudhury ..

} *Members.*

Representation: Mr. A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate
appeared for the first party and Mr. S. C. Lala, Advocate appeared for
the second party.

This is an application under section 34 of the Industrial Relations Ordinance,
1969 by first party Nurul Islam with a prayer for directing the second party
to pay termination benefit under section 19(I) of the Standing Orders Act to
him (first party).

The case of the first party is that he was appointed by the second party
on 1-2-1966 as Driver and his last salary was at the rate of Taka 235.00 per
month (consolidated). Suddenly the Administrator (second party) by his letter
dated 16-4-1974 terminated the service of the first party with effect from 1-5-1974.
In terminating the service of the first party the second party most illegally
deprived him of the benefit payable to first party under section 19(I) of the
Standing Orders, Act, 1965. By the said letter of termination first party was
directed to receive only one month's notice pay and salary for the month of
April, 1974. As per provisions of section 19(I) of the Standing Orders Act,
the first party is entitled to get 3 months' notice pay, compensation at the
rate of 14 days wages for every completed year of service and other benefits
admissible. In spite of demands the second party has not paid the same.
Hence this case.

Second party contested the case by filing a written statement alleging
inter alia that the case as framed is not maintainable and the first party's service
has been terminated by way of retrenchment under instruction of Magistrate
in-charge of Abandoned Property and that it was not the case of termination
simpliciter but retrenchment due to redundancy in fact. It is also stated that
the first party was in the service of second party company since October, 1968
at a monthly salary of Tk. 180.00 plus Tk. 15.00 as Medical Allowance and
Tk. 20.00 as *ad hoc* relief. 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, Nurul Islam, 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 was serving as Driver under the second party since 1-2-1966 and his last pay was Tk. 235.00 per month including medical allowance, house rent, etc. According to P.W. 1 he received his salary up to March, 1974. Admittedly the service of the first party was terminated by letter, dated 16-4-1974 Ext. 1. According to second party's case, it is not a case of termination simpliciter but retrenchment due to redundancy. At the time of hearing of this case, the lawyer appearing on behalf of the second party has frankly admitted that the retrenchment has not been made according to law, as no copy of retrenchment was sent to the Chief Inspector of Factories. I, therefore, find that it is not retrenchment as alleged by the second party.

It appears that the second party Administrator has terminated the service of the first party *vide* Ext. 1. It can be said from the evidence and materials on record that there was relationship of employer and employee between the parties till the service of the first party was terminated by the second party. According to P.W. 1 he prays for termination benefit under section 19(I) of the Standing Orders Act from the second party. First party became a permanent worker under the second party and as such he is entitled to get termination benefit under section 19(I) of the Standing Orders Act, 1965, as the said termination is a termination simpliciter.

P.W. 1 in his evidence has stated that there was no bonus after 1972 and no bonus was given by the second party. He also stated that his monthly salary includes medical allowance and House Rent. P.W. 1 also admits in his cross that his basic pay was Tk. 180.00 per month. According to evidence of P.W. 1 he did not want Provident Fund amount as claimed. Thus in view of the evidence of P.W. 1 he is not entitled to claim of his Provident Fund and Bonus for the year 1973 and 1974.

Members are consulted over the matter and they agreed with me in the above view.

Ordered

That the case be allowed on contest without cost.

The first party is entitled to get the following termination benefit under section 19(I) of the Standing Orders Act, 1965:

- (1) 90 days' notice pay at the rate of Tk. 180.00 per month;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;
- (3) One month's wages for unavailed period of Earned leave; and
- (4) Unpaid wages, if any.

The second party is directed to pay the amount to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong,
28-4-1975.

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

A. AHMED
Chairman.
28-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 379 of 1974.

Md. Serajul Islam, S/o. late Abdur Rashid of Salimpur P.O. Jafarabad, P.S. Sitakund, Chittagong—*First Party*

versus

- (1) Manager, A. K. Khan Jute Mills Ltd., North Kattali, P.S. Doublemooring, Chittagong.
- (2) General Manager (Chittagong Zone), Bangladesh Jute Industries Corporation, Sattar Chamber, 99, Agrabad, P.S. Doublemooring, Chittagong—*Second Party*.

PRESENT:

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Choudhury

} Members.

Representation: Mr Kabir Ahmed and Mr Lutful Haque Mazumder, Advocates appeared for the first party and Mr A. K. Humayun Kabir, Advocates appeared for second party No. 1 and Mr. A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate appeared for 2nd party No. 2.

This is an application under section 34 of the Industrial Relations Ordinance by Mohammed Serajul Islam, first party with a prayer for directing the second party to pay his arrear extra allowance amounting to Tk. 2,133.00 for the period from 1-3-1973 to 20-1-1974 and due increment amounting to Tk. 2,655.00.

The case of the first party is that he was appointed on 2nd September, 1968 as Office Assistant under second party No. 1 and since then he has been continuing in the service by rendering efficient service to the satisfaction of his

superiors. First party became a permanent employee of the second party. Mr M. Salek, the then Administrative Officer of the mill having left the mill the then Manager asked him (first party) to manage the works of Administrative Officer in addition to his own duty till another Administrative Officer taken as per order, dated 28-2-1973. The first party accordingly managed the works of the Administrative Officer in addition to his own duty from 1-3-1973 to 20-1-1974. It was and is the custom and standing practice that whenever any incumbent in addition to his own duties manages the duty of other officers, he is given an extra allowance for his additional work. Mr Tarique Hossain, Mr Salek and Mr T. B. Bhattacharjee, the employees of the second party used to be given an extra allowance of Tk. 200.00 per month in addition to their duties. But unfortunately the first party was not given the said extra allowance for the period from 1-3-1973 to 20-1-1974 in spite of repeated requests. The first party both in law and equity is entitled to payment of the extra allowance of Tk. 200.00 per month for the aforesaid period.

Both the second parties appeared and contested the case by filing separate written statement. The case of the second parties is that when there was no Administrative Officer in the second party mill, the first party took over charge of administration and discharged such duties for the period from 1-3-1973 to 20-1-1974 and that he was neither promised nor given any extra remuneration. The first party is not a worker as defined in I.R.O. and as such his case is not maintainable. Since first party has never been promoted any such remuneration for less claimed by him and that no right for such remuneration has been created, guaranteed or secured under any law, settlement or award in his favour. 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 the relief as prayed for.

FINDINGS

P.W. 1, Mohd. Serajul Islam, first party, has only examined himself in support of his case. On the other hand, Mohd. Rafique Mia, the Labour Officer of the second party has examined on behalf of the second party. At the time of hearing of this case, the lawyer on behalf of the first party states that he is not pressing his claim regarding due increments. It is not disputed that first party was appointed as Office Assistant (Clerk) under second party No. 1 with effect from September, 1968 and thereafter by office circular, dated 28-2-1973 Ext., 1 the second party No. 1 asked the first party to manage the works of the Administrative Officer in addition to his own duties with effect from 1-3-1973.

It is contended on behalf of the second party that the first party is not a worker for the relevant period as he discharged his duties as Administrative Officer. I find no force in the said contention because of the fact that first party's substantive post was an office Assistant and he happened to perform duties of the Administrative Officer in addition to his normal duties as per Ext. 1 circular. So, the first party can be safely said to be a worker within the meaning of Labour Laws.

P. W. 1 has stated in his evidence that the employee of second party No. 1, namely, Mr Tariqul Hossain, Mr. Salek, and T. B. Bhattacharjee used to be given extra allowance of Tk. 200.00 each for their discharging additional work

but unfortunately he was not paid remuneration for his additional work for the period from 1-3-1973 to 20-1-1974. It is contended on behalf of the first party that it is the custom and standing practice in the second party's establishment that whenever any employee in addition to his duties manages the duty of other officer, he is given extra allowance for his additional work. From the evidence in cross of D.W. 1 it is found that for any additional performance some extra payment is made to the employees. His cross-examination further shows that T. B. Bhattacharjee, an Accountant is In-charge of Insurance Deptt. in addition to his own duty and the Managing Director allowed Tk.200-00 per month for his said additional work and still the said Bhattacharjee is getting the same at that rate as additional allowance. It is in evidence that Head of the Project In-charge Mr Monsur Ahmed by a letter, had recommended to second party No. 2 to pay at the rate of Tk.100-00 per month as extra allowance to first party for his such additional work for the claimed period. But the second party No. 2 has not yet approved or paid the same. It is also an admitted fact that during the pendency of this case, the first party was again given charge of administration for the period from July, 1974 to December, 1974 and he was paid 10% of his basic pay in terms of the second party's circular for his additional work. It appears that ex-Managing Director allowed Tk.100-00 per month to the first party for his additional work for the period from 1-3-1973 to 20-1-1974 but could be paid to him as the establishment in the meantime was taken over by the Bangladesh Jute Industries Corporation. From the evidence and materials on record it can be said that it is the practice in the establishment of the second party that whenever any employee is asked to work in a higher post in addition to his normal duties, he is paid extra payment for his such additional performance. Such being the circumstances I think the first party in equity, is entitled to get an extra allowance at the rate of Tk.100-00 per month which was actually recommended to the second party No. 2 by the second party No. 2, i.e., by the authority concerned for approval. So, I am of opinion that the first party should be paid acting allowance for the claimed period in accordance with a decision of ex-Managing Director at the rate of Tk.100-00 per month for his extra work performed by him in the absence of Administrative Officer.

Members are consulted and they agreed with me in the above view.

Ordered

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

The first party is entitled to get acting allowance at the rate of Tk.100-00 per month for the period from 1-3-1973 to 20-1-1974 from the second party No. 1, who is directed to pay the same within 30 days' from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
4-4-1975.

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

A. AHMED
Chairman.
4-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 382 of 1974.

Babul Chandra Das (Ex-Pellerman), Post and Vill. Bailatali, P.S. Patiya,
Chittagong—*First Party*.*versus*General Manager, M/S. Ralli Bangladesh Limited, Strand Road, Chittagong—
Second Party.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Choudhury

... } *Members.*

Representation : Mr. Md. Nurul Islam, Advocate appeared for the first party, M/S. Badrul Ameen, Barrister-at-Law, Quazi Arifur Rahman, Md. Behtar Ali, Md. Salimullah Chowdhury, A.N.M. Manzarul Hassan, Advocates appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, the first party, namely, Babul Chandra Das seeks a direction on the second party to re-instate him in his former post and position with back wages and arrears dues along with other benefits upon the allegations that due to his trade union activities the second party victimised him by issuing an illegal order, dated 28-6-1974 terminating his service.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that the case is not maintainable under section 34 as framed. The first party was not victimised and the second party offered him all his legal dues and termination benefits but the first party has illegally brought this case only to harass the second party. The first party's case is liable to be dismissed.

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

FINDINGS.

P.W. 1 Babul Chandra Das 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 has disproved his case regarding victimisation by the second party for his alleged trade union activities. The termination letter, dated 28-6-1974 Ext. 1 will show that it is a termination simpliciter. It is also in evidence *vide* P.W. 1 that the Oil Section, where the first party used to work at the time of termination, has no existence now. From the evidence of P.W. 1 also shows that second party has not yet declared the bonus for 1973-74. The very evidence of P.W. 1 on record shows that he is not at all consistent in his statement. However, from his evidence as a whole it will clearly prove

That the first party wants termination benefit under section 19(1) of the Standing Orders Act from the second party. It is found that the second party had not yet paid the termination benefit to the first party. From the materials on record I have reason to say that first party is not entitled to 9 months pay for the liberation period and 2 months bonus for 1973-74. In view of my discussions above, I find that the first party is not entitled to get reinstatement but he is entitled to get termination benefit under section 19(1) of the Standing Orders Act, 1965.

Members are consulted and they agreed with me in the above views.

In the result, it is—

Ordered

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

The first party is entitled to get the following termination benefits from the second party—

- (1) 90 days' notice pay at the rate of Tk. 204.00 per month;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;
- (3) Leave salary, if any; due; and
- (4) Unpaid wages, if any; due.

The second party is directed to pay the amount to the first party within 30 days from today.

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong.
9-4-1975.

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

A. AHMED,
Chairman.
9-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 383 of 1974.

Shudhir Kumar Das, Asstt. Fitter, Grade-I, Staff Quarter, M/S. Ralli Bangladesh Limited, Strand Road, Chittagong—*First Party*,

versus

General Manager, M/S. Ralli Bangladesh Limited, Strand Road, Chittagong—*Second Party*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Choudhury

} *Members.*

Representations: Mr Md. Nurul Islam, Advocate appeared for the first party and Mr. Badrul Amin, Bar-at-Law and others appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969 first party Shudhir Kumar Das prays for his reinstatement in his former post and position with back wages, etc., on the ground that he has been victimised by the second party for his trade union activities and that the alleged termination is nothing but a *mala fide* and illegal.

Second party contested the case by filing a written statement alleging *inter alia* that all the employees of the oil mill of the second party including the first party were retrenched or terminated as the said oil mill has been closed. Accordingly, the question of reinstatement of the first party in service does not arise. First party is not entitled to get any relief.

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

FINDINGS

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

P.W. 1 has stated in his evidence that he was serving under second party's oil mill since 1967 and his service was suddenly terminated with effect from 1st July 1974 *vide* Ext. 1. According to P.W. 1 this oil mill was closed for good prior to 16-9-1974. P.W. 1 further stated that he received his wages from the second party up to June 1974 and he now claims termination benefit under section 19(1) of the Standing Orders Act. According to P.W. 1 he never claimed bonus for the year 1973-74 from the company. There is nothing to show on record that the termination of first party's service is *mala fide*, vindictive or against the rule of natural justice. Here in the instant case, it is not disputed that the second party terminated the service of the first party *vide* Ext. 1 with effect from 1st July 1974 due to impending closing of the oil mill

which is not re-opening. So, there is no scope of first party's reinstatement in service. I, therefore, find that the first party, in a case like this, is entitled to get termination benefit under section 19(I) of the Standing Orders Act.

Members are consulted and they agreed with me in the above view.

Ordered

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

The first party is entitled to get the following termination benefit from the second party:

- (1) 90 days' notice pay at the rate of Tk. 298-00 per month;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof;
- (3) Unpaid wages, if any; and
- (4) Wages for unavailed period of Earned Leave, 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.

The second party is directed to pay the amount to the first party within 45 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
19-5-1974.

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

A. AHMED
Chairman.
19-5-1974.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH
Industrial Dispute Case No. 384 of 1974.

Saleh Ahmed (Supervisor, Oil Mills), Jugi Chand Masjid Lane, West Madarbari,
Chittagong—*First Party,*

versus

General Manager, M/S. Ralli (Bangladesh) Limited, Strand Road, Chittagong—
Second Party.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman.*

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Choudhury

} *Members.*
}

Representation : Mr Md. Nurul Islam, Advocate appeared for the first party and Mr Badrul Amin, Bar-at-Law and others, appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Saleh Ahmed prays for his reinstatement in his original post and position with back wages mainly on the ground that the first party has been victimised by the second party for his trade union activities and that the alleged termination of first party's service is *mala fide*, illegal and void.

Second party contested the case by filing a written statement alleging *inter alia* that the termination of the service of the first party is not a measure of punishment but on the ground of redundancy, as the second party has been closed. As the section in which first party has been working having been closed, the question of continuation or reinstatement does not arise. 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, Saleh Ahmed, first party has only examined himself in support of his case, P.W. 1 has stated that he had been serving under second party oil mill since 1967 and he became permanent worker. The service of the first party was terminated by the second party with effect from 1st July 1974 *vide* Ext. 1. According to P.W. 1 he does not know when the Oil Mill of the second party was closed for good. It is not disputed that oil mill in which the first party was working has been closed after July 1974. At the time of argument lawyer of both parties admit that the oil mill in which the first party had been working, having been closed, the question of reinstatement of the first party does not arise.

P.W. 1 at the time of hearing prays for termination benefit under section 19(1) of the Standing Orders Act, 1965 as he was not paid the termination benefit as yet. The management has the right to terminate the service of an employee at any time on payment of termination benefit. There is nothing to show on record that the termination of first party's service is *mala fide*, vindictive or against the rules of natural justice. The Court cannot interfere unless *mala fide* or prompted by unfair labour practice. Here in the instant case, it is not disputed that the second party terminated the service of the first party *vide* Ext. A due to impending closing of oil mill which is not reopening. It is a case of closure of business of establishment, pure and simple. So, in this view of the case there is no scope of re-employment of the first party in future. I, therefore, find that the first party is entitled to get termination benefit.

P.W. 1 in his evidence has stated that his last wages was at the rate of Tk. 258.00 per month. According to the evidence of P.W. 1 he is not entitled to bonus.

Members are consulted and they have submitted their written advices.

Ordered

That the case be allowed on contest without cost.

The first party is entitled to get terminatin benefit under section 19(1) of the Standing Orders Act, 1965, as follows:

- (1) 90 days' notice pay at the rate of Tk. 258.00 per month;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months; *i.e.*, from 1967 to till the date of termination;
- (3) Unpaid wages, if any, due;
- (4) Wages for unavailed period of Earned Leave, if any.

The second party is directed to pay the amount to the first party within 50 (fifty) days' from today.

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong.
30-4-1975.

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

A. AHMED,
Chairman.
30-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 387 of 1974.

Manindra Nath, s/o. Late Kali Krishna Nath, village Urkhirchar, P.O. Guzra, P.S. Raozan, district Chittagong—*First Party*,

versus

- (1) The Chairman, Chittagong Port Trust, Chittagong.
- (2) Chief Mechanical Engineer, Chittagong Port Trust, Chittagong—*Second Parties*,

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 Haque Chowdhury, Advocate appeared for the second party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Manindra Nath, first party, for a direction on the second party to pay him (first party) leave salary of 6½ months with full pay and 13 months with half pay and washing allowance of Tk. 257.50.

The case of the first party is that he was serving under the second party and on 14-10-1969 he was given a notice of retirement to be effective from 4-9-1970 on the ground of his attaining 55 years of age on that date. Thereafter the first party applied for correction of his age and calculate the date of retirement but the second party did not consider his said application. First party preferred complaint case No. 606/70 in this Court against the order of retirement which was ultimately dismissed by this Court on 30-6-1972. The first party had thus got no opportunity to avail his Earned Leave, which remained due on the date of retirement. The first party was given his other retirement benefits except leave salary and washing allowance.

Second parties contested the case by filing a written statement alleging *inter alia* that the first party retired from service on 4-9-1970 without availing any leave preparatory to retirement as was due to him from the date of retirement. The first party cannot claim any balance in lieu of such leave and so he is not entitled to the same under any law. Moreover, first party is also not entitled to claim washing allowance. As washing allowance to Port Trust Staff was given effect to in 1971.

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

FINDINGS

Neither party adduced any oral evidence. The second party filed Chittagong Port Trust Employees Retirement Rules 1966 and the Service Book of the first party. Both parties argued their respective cases depending upon the said two documents. Second party *vide* their office letter dated, 14-10-1969 directed the first party to retire from service from the forenoon of 4-9-1970 as per new C.P.T. Employees Retirement Rules, 1966 because first party will attain 55 years of age on 4-9-1970. So, first party was advised to get himself in readiness for the same and may avail of whatever leave due at his credit. Thereafter, second party by letter of retirement from service, dated 14-5-1970 asked first party to retire from service from the forenoon of 4-9-1970 without any further notice and asked him to avail all the Leave Preparatory to Retirement before 4-9-1970.

It is an admitted fact that first party after receiving such retirement notice applied for correction of his age to the second party and having been failed to get relief, ultimately filed complaint case No. 606/70 in this Court against the order of such retirement which case was ultimately dismissed on contest on 30-6-1972.

It can be said that first party had failed to apply for L.P.R. only because he preferred the aforesaid complaint case against the order of retirement. According to Employees Retirement Rules, 1966 and the C.P.T. Chairman's circular No. 148, dated 24th November, 1966, leave at the credit of an

employee shall lapse on the date of retirement unless he has applied for an avail L.P.R. except that "Refused leave" may be granted after the date of retirement subject to a maximum of 6 months. It is found that as his (first party) retirement was subject to complaint case No. 606/70, he could not apply for an avail L.P.R. during the pendency of the case. In view of my discussions above, the first party should be granted salary in lieu of leave on average pay for 6 months and his prayer for remaining period cannot be considered and allowed.

I find nothing sufficient on record to allow his prayer for washing allowance which is liable to be rejected.

Members are consulted and they agreed with me in the above view.

Ordered

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

The second party is directed to pay the first party leave salary for 6 months on average pay, within 30 days from today.

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong.
7-4-1975.

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

A. AHMED,
Chairman.
7-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case Number 400 of 1974.

Md. Israil, son of Late Alhaj Md. Yasin, Village Daniuri, P.O. Monsurnagar, P.S. Rajanagar, District Sylhet—*First Party,*

versus

Manager, Serajnagar Tea Estate, P.O. Kajaldhara, P.S. Kulaura, District Sylhet—*Second Party.*

PRESENT:

Mr Ameenuddin Ahmed—*Chairman,*

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

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

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Md. Israil, first party, for directing the second party to pay termination benefit after declaring the alleged order of termination/dismissal, dated 11-5-1974 as illegal, void and inoperative and also prayed for directing the second party to pay his arrear dues as per schedule A annexed herewith.

The case of the first party is that he had been serving under the second party as Head Clerk since 1963 and his last salary was Taka 259.00 per month. On 20-9-1973 the second party transferred the first party to the head office but the first party could not report there due to some personal difficulties. Then he took up the matter of transfer through his Association with the second party but the second party failed to consider the same and thereafter on 8-3-1974 the second party issued a letter asking first party to show cause within 7 days why his service should not be terminated. First party submitted explanation on 15-3-1974 praying for exemption from the charges. Thereafter the second party *vide* letter, dated 20-4-1974 advised first party to hand over charge of the office and to join head office as per previous transfer order immediately but the first party could not comply with the said order due to his personal difficulties. Thereafter the second party *vide* order, dated 21-4-1974 issued a letter of termination of service of the first party. The alleged termination or dismissal of service of the first party by the second party can in no way be treated as dismissal on the point of law. The second party is bound to pay termination benefit to the first party as per law including outstanding legal and arrear dues as stated in the schedule of claim. In spite of demands the second party has not paid the termination benefit and other outstanding dues.

Second party contested the case by filing written statement alleging *inter alia* that the first party without any lawful and valid reason wilfully and deliberately did not carry out the lawful transfer order of the second party in spite of sufficient scope and chances to join in the head office. First party of course, started unnecessary correspondences with the management in the matter of transfer order with lame excuses and some protests in a belated stage and that he also remained absent from the station without permission for a considerable period and that the first party was found quite indifferent towards his service and the management was ultimately compelled to get rid of him on termination of service and being a termination simpliciter in all practical purposes, the first party is not entitled to file this case under section 34 of the I.R.O. and the case is not maintainable and is liable to be dismissed.

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

Findings.

P.W. 1, Md. Israil, first party, has only examined himself in support of his case. On the other hand, none is examined on behalf of the second party.

It is an admitted fact that the first party *vide* letter, dated 20-9-1973, Ext. 2, was transferred to head office as Head Clerk from the Serajnagar Tea Estate but he did not join there on the ground stated therein, Ext. 3. At the time of hearing P.W. 1 states in his evidence that he now wants termination benefit only under section 19 of the Standing Orders Act from the second party

It was suggested to P.W. 1 in cross that he (P.W. 1) in collusion with the then dismissed Manager Tofazzal Hossain Chowdhury, created Exts. 5 and 6 for illegal gain. The said suggestion of course denied by P.W. 1. The very evidence of P.W. 1 goes to prove that his claim concerning annual increments, charge allowance and bonus as per claim schedule A with the case petition is not *bonafide* and genuine. P.W. 1 is also not sure about his such claim and rate of charge allowance, etc. According to P.W. 1 none of the staff or employee of the second party get bonus from 1969-1972. P.W. 1 further stated in his evidence that he received his pay up to the date of termination from service, dated 11-5-1974 from the second party. The order, dated 11-5-1974 (Ext. 1) shows that the service of the first party was terminated on the ground stated therein. According to second party's written statement, it is a termination simpliciter under section 19 of the Standing Orders Act. Though the first party pleaded that by the order Ext. 1 he was victimised for his trade union activities but that could not be proved. It is, however, be noted that the legal termination benefits have not been paid to the first party, though he (first party) is entitled to the same from the second party. From the evidence and materials on record, I find that the first party is entitled to get the termination benefits under section 19(I) of the Standing Orders Act, 1965 from the second party. In view of my above discussions the first party is not entitled to get annual increments, charge allowance, bonus, etc. as claimed as per schedule 'A' of the case petition.

Members are consulted.

Ordered

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

The first party is entitled to get the following termination benefits:

- (1) 90 days' notice pay at the rate of Tk. 259.00 per month;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;
- (3) Leave salary, if any, due.

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.

25-4-1975.

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

A. AHMED
Chairman.
25-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case Number 401 of 1974.

Bijoy Kumar Bhattacharjee, son of Brojendra Kumar Bhattacharjee, Village Uchai, P.O. Kadirpur, district Sylhet—*First Party*,

versus

- (1) The Manager, Sirajnagar Tea Estate, P.O. Kajaldhara, district Sylhet.
 (2) Mutawalli, Serajnagar Tea Estate, P.O. Kajaldhara, district Sylhet—*Second Parties*.

PRESENT:

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury	} <i>Members</i> .
Mr Juned A. Choudhury	

Representations—Mr A.K.M. Mohsanuddin Ahmed Chowdhury, Advocate appeared for the first party and Mr Md. Yunus, Advocate appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, the first party, Bijoy Kumar Bhattacharjee who was a permanent worker being a Compounder under the second party prays for directing the second party to allow him (first party) to resume his duties in his former post and position and to pay all his outstanding dues as per statement of claim annexed with the case petition as Schedule 'A' and also prays for directing the second party to make payment of his arrear salaries from 26-1-1974.

It is the case of the first party that he has been serving in the establishment of the second party since 1968 as Compounder and his last salary was Taka 178.00 per month. The second party had always tried to victimise the first party for his (first party) trade union activities and suddenly by a letter, dated 20-9-1973 the second party transferred the first party from Serajnagar Tea Estate to Dilkusha Tea Estate which is absolutely a separate establishment in the eye of law. Against the said transfer the first party, submitted representation to the second party, but the second party without considering the same directed again the first party to join Dilkusha Tea Estate in compliance of the order of transfer without delay. Thereafter the first party appealed to the Deputy Director of Labour, Srimongal over the said transfer matter, and requested the second party not to give effect to the order of transfer but the second party refused to comply with his request. Thereafter the second party remained fully silent over the matter and, illegally restrained the first party from discharging his duties in the Serajnagar Tea Estate and withheld payment of the salary from 26th January 1974. Lastly, the first party on 26-7-1974 went to resume duty but the second party did not allow him and also refused to pay his salary along with other outstanding dues.

Second party contested the case by filing a written statement alleging *inter alia* that in order to save first party's life due to his (first party) involvement in a rape case, the management transferred him to Dilkusha Tea Estate and that there was no *malafide* in such transfer of the first party. Dilkusha Tea Estate is a part and parcel of the same establishment and managed by the same Head office. The first Party intentionally disobeyed and violated the order of transfer. Since the first party did not join to Dilkusha Tea Estate after expiry of leave so granted in compliance with the order of the management, he (first party) has been removed from the service on and from 24-1-1974. The first party has stated above, not no longer in service of the second party on and from 24-1-1974 and as such the question of with-holding his salary with effect from 24-1-1974 does not arise and the first party is not entitled to his claimed amount as per annexure 'A'. The 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.

P.W. 1, Bijoy Kumar Bhattacharjee, has 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 under the second party as Compounder since October, 1968 and the second party by its letter, dated 20th September 1973 Ext. A, transferred the first party from Serajnar Tea Estate to Dilkusha Tea Estate along with another employee but the first party with one plea or other, declined to comply the said transfer order. P.W. 1 in his cross has stated that he is not ready to join Dilkusha Tea Estate in compliance with the order Ext. A, as according to him he was not bound to obey the said order of transfer. It is admitted by P.W. 1 in his cross that Serajnar Tea Estate and Dilkusha Tea Estate belong to same owner and he also admits in evidence that Mohammed Israil, the head clerk of Rashidpur Tea Estate also transferred to Serajnar Tea Estate by the self same order, Ext. A. It is also admitted by P.W. 1 in cross that there is head office of these three Tea Estates, *viz.*, Serajnar, Dilkusha and Rashidabad, which belong to the same owner. It was the definite case of the second party that the first party wilfully and intentionally disobeyed the second party's lawful order of transfer, Ext. A. A transfer is not a punishment or a change in condition of service. Transfer of employee depends on the direction of the management. From the evidence of P.W. 1 referred to above it can be safely said that the second party has the right and jurisdiction to transfer the first party from his one garden to another. The said transfer *vide* Ext. A is a matter of internal arrangement. As the management gave no reason for the transfer (Ext. A), it cannot make the order of transfer *mala fide*.

At the time of hearing of this case, the learned lawyer appeared on behalf of the second party has stated that the second party is not removed first party from service, though in the written statement due to mistake it was stated that the first party was removed from service with effect from 24-1-1974. Second party could have easily taken disciplinary action against the first party for his (first party) wilful disobedience of a lawful order of transfer (misconduct) after enquiry and regular charge-sheet for smooth running of administration but the second party made no such attempt to that effect. At the time of argument, the lawyer for the second party, however, states that if the first party in

compliance of the transfer order, Ext. A, joins Dilkusha Tea Estate, his outstanding legal claim, if any, will be settled. P.W. 1 in his evidence has admitted that he is not doing duty or work under second party since 26-1-1974 and he (first party) received his wages up 25-1-1974 from the second party. According to P.W. 1 he did not approach head office for his alleged dues (referred to in Annexure A) though he (P.W. 1) received Ext. 5 from the second party. There is nothing on record to show that the second party in any way victimised the first party for his alleged trade union activities. The evidence in cross of P.W. 1 has falsified his alleged trade union activities. According to first parties evidence in cross, he is still in service but he is not working under the second party as Compounder at Serajnar Tea Estate. From my discussions above, coupled with various circumstances, I find nothing sufficient on record to direct the second party to allow first party to resume his duties at Serajnar Tea Estate, but on the other hand, I think for the sake of smooth running of administration, the first party without further delay should join Dilkusha Tea Estate in compliance with the valid order of transfer, Ext. A and on his joining there his outstanding dues, referred to in Annexure A, should be settled. In this view of the case, I have every reason to say that the first party is not entitled to get the order for resumption at Serajnar Tea Estate. He is directed to join at Dilkusha Tea Estate without any further delay.

Members are consulted.

Ordered

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-4-1975.

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

A. AHMED
Chairman.
30-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 405 of 1974.

Sisir Kanti Sirkar, son of late Jogesh Chandra Sarkar, P.O. and Vill. West Huzra, P.S. Raozan, Chittagong—*First Party*,

versus

The Chairman, Chittagong Port Trust, Bandar Bhavan, 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 Haque Chowdhury, Advocate for 2nd party.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Sisir Kanti Sirkar prays for directing the second party to allow him to resume duty with back wages and benefit of service on the allegation that the Port Authority being baffled in their attempt to remove first party from employment hatched up a plan to entangle him (first party) in fraud case and falsely put him in the hands of Military and other appropriate authority for victimisation and first party get scent of the same, kept himself away from attending office from 2-1-1967 with the knowledge and consent of the Chief Engineer Mr. S. Zaman of the second party and that the first party met the said Mr Zaman occasionally to enquire about the position and the said Chief Engineer informed first party that utmost attempt was going on to arrest the first party and as a result the first party did not dare to attend his duty at the risk of his life and after liberation of the country first party submitted his joining report on 13-5-1972 stating facts and circumstances and prayed condonation of his long absence and that the second party has neither removed first party from employment nor allowing him to resume duty and lastly the Secretary of the second party Port Trust by his letter dated 4-6-1974 refused to consider the first party's appeals which were made on 13-5-1972 and 12-7-1972.

Second party appeared and contested the case by filing a writtens statement alleging *inter alia* that first party was appointed in Chittagong Port Trust with effect from 1-7-1960. On the basis of report from the Accountant about the commission of forgery, the first party was placed under suspension with effect from 21-12-1966 and thereafter the first party was removed from his service with effect from 6-7-1967 for misconduct after observaing all necessary formalities and provisions of Standing Orders Act duly. After removal of the first party from service, he (first party) did not submit any appeal against the said order of dismissal, rather accepted the same without protest. All on a sudden the first party submitted an application dated 13-5-1972 and 12-7-1972 for permission to resume duty but the second party informed the first party by a letter that his applications bear no points for consideration. The first party was lawfully removed from service under the provisions of Chittagong Port Trust Employees (Efficiency and Desipline) Rules, 1964. No right has accrued to the first party under the I.R.O. 1970 for having been removed from service as on 13-7-1967. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get resumption of duty with back wages as prayed for.

Findings

P.W. 1, Sisir Kanti Sirkar, first party, has examined himself in support of his case. On the other hand, D.W. 1 Hirendra Lal Chowdhury, an Establishment Clerk of the second party has examined on behalf of the second party. It is not disputed that the first party was appointed as ABC G Grade Clerk with effect from 7-8-1956 by the defunct Port Railway and thereafter at the time of formation of Port Trust he was discharged by the Railway with effect from 30-6-1960 and by virtue of his option he was appointed in Chittagong Port Trust with effect from 1-7-1960. It is not disputed that first party was placed under suspension for misconduct previously with effect from 16-9-1965

and followed by charge-sheet, dated 23-9-1965 *vide* Ext. D, and minor punishment was inflicted upon him over the said charge. It is in evidence *vide* D.W. 1 that on the basis of the report of the Accountant of the second party regarding first party's forgery, he (first party) was charge-sheeted for misconduct and ultimately he was removed from service *vide* removal letter dated 13-7-1967 Ext. F after complying with the Chittagong Port Trust (E&D) Rules, 1964. According to P.W. 1 he received Ext. 1 from the second party in reply to his letter Ext. A and A(1). The first party in his representation Ext. A(1), dated 12-7-1972 has rather admitted that he heard about his alleged removal from service by the second party.

It is the case of the first party that first party was illegally suspended in 1965 by the second party from employment suspecting him to be an Indian spy. But subsequently had to reinstate first party in service but the second party was searching ways and means to throw the first party into some other difficulties and the first party got scent of it kept himself away from attending his duty from 2-1-1967 with the knowledge and consent of Chief Engineer Mr S. Zaman and that the first party did not dare to attend office at the risk of his life and after liberation of the country the first party submitted his joining report on 13-5-1972 praying condonation of such absence and ultimately the second party refused to allow first party to resume duty *vide* their letter, dated 4-6-1974. The said case of the first party referred to above in view of the facts and circumstances cannot be accepted as genuine and true. P.W. 1 in his evidence in cross has stated that from 2-1-1967 to the date of his submission of joining report dated 13-6-1972 he (P.W. 1) did not do his duty or work under the second party and during the said period he was in his village home. P.W. 1 further stated in his evidence in cross that prior to 12-5-1972 he went to resume his duty. Had it been so, his case referred to in para. 6 of the case petition in no way can be accepted as genuine. At the time of argument it is conceded by the lawyer of both parties that the Chief Engineer Mr S. Zaman of the second party was murdered by the Pak Army during liberation struggle of 1971. It is stated by D. W. 1 in his evidence that the record containing enquiry proceeding with charge sheet against the first party for misconduct has been found missing from the second party's office. By letter dated 31-8-1974 the Engineer-in-Chief, Port Trust, informed the Secretary, Chittagong Port Trust that the enquiry proceeding etc. against the first party was not available in office since long. The said letter has been marked Ext. G. It is also in evidence *vide* D.W. 1 that the said removal from service *vide* Ext. F was communicated to the first party and that the first party was removed from service after observing all legal requirements as per Chittagong Port Trust (E&D) Rules. In Ext. G it has been stated that unfortunately case file containing papers regarding first party's suspension, enquiry report, etc., is found missing in the office since long. P.W. 1 in his evidence also stated that he received his wages from the second party for the period up to January 1967 and thereafter he never demanded his wages from second party. This very evidence strongly supports the second party's case that in fact the first party had knowledge about his removal from service by the second party *vide* Ext. F. Admittedly the first party was absenting himself from 2-1-1967 and he was not rendering service. The evidence of P.W. 1 referred to above coupled with other circumstances, I have reason to say that the reasons or grounds stated by first party for his resumption of duty in the case petition are not genuine and true.

On the other hand, from the evidence both documentary and oral coupled with the circumstances I have reason to believe the second party's case regarding the removal of first party from service for misconduct *vide* letter Ext. F.

Moreover, the first party has not brought this case under section 34 within reasonable time. This case was filed on 31st July 1974. Section 34 of course does not prescribe any period of limitation, but this does not mean that an aggrieved party may seek his remedy after the lapse of any period of time. The remedy under the Ordinance 1969 should be brought promptly and without reasonable delay. In a case of abnormal delay it must be promptly and properly explained by the aggrieved party. In the present case such abnormal delay for filing the case has not been explained by the first party. So, in this view of the case the first party cannot get remedy, as he has not come for relief within due and reasonable time. I have already stated above that I have reason to believe that the first party had the knowledge about his removal from service *vide* Ext. F. So, the cause of action arose prior to the promulgation of the I.R.O., 1969. The said Ordinance has not been given any retrospective effect. In this view of the case this application under section 34 is also not maintainable.

Having regards to the above discussion I find that 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.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-5-1975.

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

A. AHMED
Chairman.
30-5-1975

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 411 of 1974.

M. A. Jabbar Farooqui, son of Fazlul Kabir Farooqui, Chattal Library, Anderkilla, Chittagong—*First Party*,*versus*

(1) Bangladesh Jute Industries Corporation, Chittagong Zone, represented by General Manager, Mr Shamsuddin Ahmed, Sattar Chamber, Agrabad C/A, Chittagong,

(2) S. K. M. Jute Mills Ltd., Barabkunda, P.S. Sitakunda, Chittagong, represented by Manager, Mr T. A. Khan—*Second Parties*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Choudhury

} *Members*.*Representation*—Mr Saifuddin Mahmud, Bar-at-Law, appeared for the first party and M/s. A. K. Humayun Kabir and A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate, appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, the first party, namely, M. A. Jabbar Farooqui, seeks a direction on the second party No. 2, to pay him (first party) full wages for the period of suspension and also to accept the joining report of the first party.

The case of the first party is that he has been working as an Assistant Store Officer under second party No. 2 since August, 1972. The first party has been rendering honest and efficient service since then. Thereafter suddenly the first party was served with a letter of charge, dated 4-6-1974 for misconduct and he was placed under suspension with immediate effect. First party submitted explanation in reply to the above. The second party No. 2 in violation of the provisions of law has kept the first party under suspension for more than 60 days and as such the first party is entitled to get his full wages for such violation of section 18(2) of the Standing Orders Act, 1965.

The second party contested the case by filing written statement alleging *inter alia* that first party was issued with a letter of charge dated 4-6-1974 for misconduct and also placed first party under suspension with immediate effect. The first party submitted explanation and thereafter the first party was asked to appear at the enquiry but the first party *vide* his letter, dated 24-8-1974 informed the second party that he had filed this case (I.D. Case No. 411 of 1974). The order of suspension is neither a punishment nor a grievance whatsoever and that the filing of this I.D. case is *mala fide* and motivated and that this case is premature. 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 relief as prayed for.

FINDINGS

Neither party adduced any oral evidence. At the time of hearing of this case first party did not press his prayer (b) of the case petition. It is an admitted fact that the first party was served with a letter of charge, dated 4-6-1974 Ext. B for misconduct and misappropriation in connection with second party No. 2's business and property, asking to show cause within a week and the first party was placed under suspension with immediate effect. It is contended on behalf of the second party that first party is not a worker within the meaning of I.R.O. I have gone through the pleadings of the parties on record along with the other documents exhibited in this case. I find nothing on record to say that first party is not a worker within the meaning of I.R.O. I, therefore, find no force in the said contention of the second party. Admittedly the second party No. 2 failed to hold domestic enquiry into the charges levelled against the first party within 60 days as provided under section 18(2) of the Standing Orders Act, 1965, although the first party was suspended with effect from 4-6-1974. It appears that after expiry of 60 days suspension period, the second party served a notice of enquiry dated 19-8-1974 which was received by the second party after filing this case No. 411/74. It is an admitted fact that the second party did not pay the subsistence allowance to the first party as per provisions of law. Ext. D written by the first party to second party No. 2 will show that the first party on receipt of the enquiry notice of the second party declined to appear before the domestic enquiry as the matter was sub-judice due to filing of this case. It can be said that if this I.D. case has not been filed, the disciplinary proceeding against the first party would have been completed much earlier. From the materials on record it appears that the second party No. 2 has not complied with the provisions of section 18(2) of the Standing Orders Act, 1965 and as such, the second party No. 2 is liable to pay full wages to the first party from the date of suspension (4-6-1974) till the notice of enquiry, dated 19-8-1974 issued to first party. First party cannot get any relief from 20-8-1974, as the domestic enquiry is intervened due to first party's filing of this I.D. case and the first party may seek relief to this Court for any grievance, if any, after completion of the disciplinary action under sections 17 and 18 of the Standing Orders Act, against him. Further, the second party must complete the domestic enquiry etc. expeditiously.

Having regards to the above discussion, the first party is entitled to get full wages for the period from 4-6-1974 to 19-8-1974 from the second party.

Learned Members are consulted over the matter.

Ordered

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

The second party No. 2 is directed to pay the first party full wages for the period from 4-6-1974 to 19-8-1974 within 30 days from to-day.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
 18-4-1975.

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

A. AHMED
Chairman.
 18-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 425 of 1974.

Md. Shadiur Rahman, Electrician, Takerghat Chuna Pathar Khani, P.O. Takerghat, district Sylhet—*First Party*,

versus

The Project In-charge, Takerghat Chuna Pathar Khani, P.O. Takerghat, district Sylhet—*Second Party*.

PRESENT:

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Choudhury

} *Members.*

Representation—Mr. Md. Nurul Islam, Advocate appeared for the first party and Mr A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate appeared for second party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Syedur Rahman, first party with a prayer for directing the second party to allow him, first party, the full benefits of the pay scale prescribed by the Head Office Order, dated 27-2-1967 with effect from the date of first party's appointment as regular Electrician on 1-7-1967 and to pay him the arrears benefits.

First party was appointed as Electrician under second party with effect from 1-7-1967 and at that time the pay scale in force was Tk. 250 to Tk. 450·00 consolidated. But most illegally the management deprived the first party of the benefits of the above scale and his pay was arbitrarily fixed at Tk. 165 to Tk. 325·00 consolidated. The first party has been demanding the benefit of the pay scale prescribed by the head office dated 27-2-1967 but the management is not giving the first party the prescribed pay scale. The first party submitted several representations to the second party to pay him the benefits of the said pay scale with effect from 1-7-1967 to 30-6-1969 to which he is entitled according to law. The second party denied the same and hence this case.

The second party contested the case by filing a written statement alleging *inter alia* that the case under section 34 of the Industrial Relations Ordinance is not maintainable and as such as his claim for alleged difference of pay for the period from 1-7-1967 to 30-6-1969 cannot be entertained under section 34 which itself came into existence on a much later date, *i.e.*, 3-11-1969.

The first party accepted the earlier scale of Tk. 165 to Tk. 325 at the time of his appointment and while working in that scale he gained experience in the line in order to qualify himself to get a higher scale of Electrician *i.e.*, Tk. 250 to Tk. 450. Interview was held on 1-7-1969 and the first party was found suitable for placement in the higher scale of Tk. 250 to 450 with effect from 1-7-1969. The first party is not entitled to the relief as prayed for.

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. On the other hand, none is examined on behalf of the second party. According to first party's case he prayed for back wages at the higher scale for the period from 1-7-1969 to 30-6-1969. P.W. 1 also deposed to that effect.

Before entering into the merit of the case I like to see if the first party's application under section 34 is maintainable.

First party's claim is for the period from 1-7-1969 to 30-6-1969. This case petition is one under section 34 of the Industrial Relations Ordinance, 1969. Section 1(4) of the Ordinance states that, "It shall come into force at once." Clearly this was to come into force from the date mentioned in foregoing, *i.e.*, from 13-11-1969. There being nothing in the Ordinance as regards its retrospective operation, it cannot be said that the intention of the promulgating authority of the Ordinance was to give it a retrospective operation. From 16-10-1970 individual right under section 34 of the I.R.O. was given. It is an admitted fact that first party was given higher scale of Tk. 250 to Tk. 450 with effect from 1-7-1969 and he is getting his pay on the said higher scale from that date. The claim of the first party in this case is for the period prior to 13-11-1969. So, first party's claim was found to be of before the Ordinance of 1969 was promulgated. The right claimed by the first party, in view of my above discussions cannot be said maintainable under section 34 of the I.R.O.

Moreover, the case of the first party on merit has not been substantiated. Admittedly the first party was appointed with effect from 1-7-1967 *vide* appointment letter Ext. A on the scale of Tk. 165 to Tk. 325 consolidated. On 21-4-1968 his probationary period was extended up to 1-6-1968 and he was confirmed with effect from 2-7-1968. It will appear from the evidence and materials on record that on 1-7-1969 the first party was interviewed (Ext. D) and on that date he was given the higher scale of Tk. 250 to Tk. 450 *vide* Ext. C. In terms of appointment letter Ext. A the first party was paid his wages up to 30-6-1969 on the scale mentioned in the appointment letter. Moreover, after accepting the appointment *vide* Ext. A the first party is rather estopped from raising such plea as pleaded in the case petition.

Thus in any view of the case the first party is not entitled to get any relief in this case.

Members are consulted and they agreed with me in the above view.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
9-4-1975.

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

A. AHMED
Chairman.
9-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 426 of 1974.

Md. Chowdhury Khan, Khalashi,
Takerghat Chunapather Khani,
P. O. Takerghat, Sylhet—*First Party*,

versus

The Project In-charge,
Takerghat Chunapathar Khani,
P. O. Takerghat, Sylhet—*Second Party*.

PRESENT:

Mr Ameenuddin Ahmed—*Chairman*.

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

Representation—Mr Md. Nurul Islam, Advocate, appeared for the first party and Mr A.K.M. Mohsanuddin Ahmed Chowdhury, Advocate appeared for the second party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Mohammed Chowdhury Khan, first party, with a prayer for directing the second party to pay back wages and other benefits to him (first party) for the period from 11-1-1971 to 22-2-1972.

The case of the first party is that he was serving under second party as Khalashi since 1969 but the second party suddenly terminated his service on 10-1-1971 out of grudge. Thereafter the workers union took up the matter and ultimately the first party was reinstated in his former post with effect from 1-11-1971 and the first party resumed his duty on reinstatement on 23-2-1972 and has been serving as such with usual pay but he has not been paid his back wages and other benefits for the period from 11-1-1971 to 23-2-1972 as yet inspite of demands. Hence, this case.

Second party contested the case by filing a written statement alleging *inter alia* that the first party's service was terminated on 10-1-1971 during his probationary period. After liberation of Bangladesh the first party wanted to report for duty on 17-1-1972 whereupon the second party *vide* letter, dated 3-2-1972 sought instruction from the then B. I. D. C. Head Office and thereafter B. I. D. C. advised the second party to allow the first party to join his duty. In the meantime the second party on receipt of a written representation from the Secretary-General of B. I. D. C. Sramik Federation already issued a letter, dated 22-2-1972 reinstating the first party but no back wages was allowed to him in the said letter, dated 22-2-1972. First party reported for duty accordingly on 23-2-1972 and he has been working as such since then. The question of back wages for the period of his unemployment from 11-1-1971 to 22-2-1972 does not arise at all.

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

FINDINGS

P. W. 1, Mohammed Chowdhury Khan, 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 appointed as Khalashi *vide* appointment letter, dated 4-11-1970 Ext. D with effect from 7-11-1970. It is also an admitted fact that the first party's service terminated *vide* office order, dated 10-1-1971, Ext. C. It is also an admitted fact that the first party was subsequently reinstated in his service on the basis of letter, dated 23-3-1972, Ext. A.

The first party *vide* his case petition prays for back wages for the period from 11-1-1971 to 22-2-1972. It will appear from the cross examination of P. W. 1 that he submitted a joining report Ext. B on 17-1-1972 and he was allowed to join on 23-2-1972 and on his resumption he was allowed to draw one month's pay *i. e.*, pay of December, 1971. P. W. 1 in his evidence has stated that he was at his home for the period and he was not under the service of second party. From the materials on record it has been found that the services of the first party was terminated in January 1971 and thereafter he was reinstated *vide* letter, dated 23-2-1972. The first party failed to fulfil the condition for getting 9 months' wages for the liberation period. However, from the evidence and materials on record coupled with the documentary evidence *vide* Ext. A I must say that the first party is entitled to back wages for the period from 11-1-1971 to 25-3-1971 and 17-1-1972 to 22-2-1972 from the second party.

It is in evidence that the first party's wages per month is at the rate of Tk.138.00.

Members are consulted over the matter and they agreed with me in the above view.

Ordered

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

The first party will get his back wages for the period from 11-1-1971 to 25-3-1971 and 17-1-1972 to 22-2-1972 at the rate of Tk. 138.00 per month and the second party is directed to pay the same to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
10-4-1975.

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

A. AHMED
Chairman.
10-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH
Industrial Dispute Case No. 431 of 1974.

Mir Hossain,
Ex. Electrician,
Electric A/S L. B. No. 950,
Moqbulur Rahman Jute Mills Ltd.,
Barabkunda, Chittagong—*First Party*,

versus

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

PRESENT:

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Chowdhury

} *Members*.

By this application under section 34 of the Industrial Relations Ordinance, 1969, the first party Mir Hossain seeks 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 Mill and he became Electric Mistry in the said mill. His last pay was Tk. 199.50. That suddenly on 9-8-1974 a charge-sheet containing false allegations was given to the first party, who gave reply to the same. Without holding any domestic enquiry according to the Labour Laws, the second party illegally dismissed the first party from service on 8-8-1974. Thereafter first party gave a grievance petition through his Advocate on 24-8-1974 but the same was not considered. Hence this case.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was issued with a charge of misconduct, dated 8-8-1974 and thereafter first party submitted his explanation admitting the charge. The second party dismissed first party from service *vide* letter, dated 21-8-1974 after complying the relevant provisions of 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

P. W. 1, Mir Hossain, 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 first party was charge-sheeted on 8-8-1974 for misconduct under section 17(3)(b) of the Standing Orders Act with a direction to submit his explanation within 4 days from the date of receipt of the same and accordingly first party submitted

his explanation the copy of which has been marked Ext. 1. It is admitted by P. W. 1 in his cross that he submitted a written statement after one day of the search of his quarter and he himself signed this written statement Ext. A. It is also admitted by P. W. 1 that second party has no grudge or enmity with him. I have gone through the Exhibits 1 and A on record. In Ext. A the first party has clearly admitted the commission of misconduct referred to in the charge. First party in his explanation Ext. 1 in a way has admitted the charge. In consideration of the gravity of misconduct and the consequent admission of the first party that he committed the offence referred to in the charge, I think the second party had no other alternative than to dismiss the first party from service. I, therefore, find nothing to interfere with the dismissal order of the second party Ext. 2.

Members are consulted over the matter and they agreed with me in the above view.

Ordered

That the case be dismissed on contest without 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. 453 of 1974.

Jamaluddin Ahmed, son of Mvi. Serajul Haque, village Kanchana, P.S. Satkania, Chittagong, at present Agrabad Chotapol, C/o. Abul Khair Sawdagar's Grocery Shop, Pathantooli, Chittagong—*First Party,*

versus

Proprietor, (Saleh Zahur and Hajee Badhsha Mia), M/s. Bangladesh Brick Manufacturers, Agrabad Chotapol, 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. Second party remained absent and unrepresented.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by first party Jamal uddin Ahmed either for reinstating him in his previous post and position or to pay termination benefit under section 19 of the Standing Orders Act, 1965, a schedule of which is attached with the case petition.

The case of the first party is that he was appointed by the second party as Office Clerk in November, 1964 and he discharged his duty till he was orally terminated from service on 1-10-1974. He last drew salary at the rate of Tk. 400.00 per month. During the month of January to May each year the first party discharged 16 hours of duty each day but he was not paid overtime allowances as per law. Moreover, first party worked on Sundays and other holidays but he was not given compensatory holiday nor any allowance. The first party was not paid termination benefit in spite of demands. Hence, the case.

The second party has not entered appearance although he was served with due notice. Thus the case was heard *ex parte*.

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

FINDINGS

P.W. 1, Jamaluddin Ahmed, first party, has examined himself in support of his case. According to his evidence he only prays for termination benefit under section 19 of the Standing Orders Act from the second party. His evidence shows that he was appointed as Clerk under second party in November, 1964 and his said service was terminated orally on 1-10-1974 without any reason. According to P. W. 1 he received his wages from the second party up to 1-10-1974 *i.e.*, the date of termination. His last wages was at the rate of Tk. 400.00 per month. P.W. 1 further stated in his evidence that inspite of his demands he was not paid termination benefits by the second party. His evidence referred to above goes unchallenged and *ex parte*. The first party failed to prove his overtime claim as well as claim for Sundays and Holiays dues. I, therefore, find that the first party is entitled to termination benefit under section 19(1) of the Standing Orders Act, 1965.

Members are consulted and they agreed with me in the above view.

Ordered

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

The first party will get the following termination benefits from the second party under section 19(1) of the Standing Orders Act, 1965:

- (1) 90 days' wages in lieu of notice at the rate of Tk. 400.00 per month;
- (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 in force.

The second party is directed to calculate and pay the amount to the first party within 30 days from to day.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
15-3-1975.

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

A. AHMED
Chairman.
15-3-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 465 of 1974.

Sadu Meah, son of Kobbad Ali, village Akilpur, P.O. Banshbaria, Chittagong—
First Party.

versus

The Manager, M/s. Gul Ahmed Jute Mills Ltd., Sattar Chamber, 1st floor,
99, Commercial Area, Agrabad, 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 and Mr M.A. Halim, Advocates of M/s. B. Ahmed and Co., appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, first party Sadu Meah seeks reinstatement in his former post with back wages.

The case of the first party is that he was appointed under second party as a Mistry with effect from 1-3-1969 and thereafter he became permanent in his employment and he discharged his duty satisfactorily and lastly he drew Tk. 58-00 towards his weekly wages. First party fell sick and he was granted leave up to 16-8-1974 and he reported for duty on 17-8-1974 but he was not allowed to resume duty without assigning any reason. On 17-8-1974 first

party submitted petition praying reason for allowing him to resume duty but the second party gave no reply to the same and thereafter first party also continued to report for duty but he was not allowed to resume duty. Suddenly on 30-9-1974 the first party received a notice of enquiry on some false charge. After receipt of the said notice on 30-9-1974 the first party prayed for time but the second party gave no heed to it. Thereafter by an order dated 30-9-1974 the first party was dismissed from service without complying with the provisions of sections 17 and 18 of the Standing Orders Act. Hence this case.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was found absenting from duty since 17-8-1974 without leave or authority. Thereafter the second party issued a letter of charge against the first party on 28-8-1974 asking him to show cause within 4 days and the said letter of charge was sent by registered post to his home address but the letter was returned back with postal remark "Left". A copy of the said letter of charge was also posted in the notice board and the second party received no reply or any explanation from the second party. Thereafter the second party issued a notice of enquiry dated 20-9-1974 and again sent the same in first party's home address and also posted a copy of the same in the notice board. An enquiry committee was duly constituted for the purpose but the first party did not appear at the enquiry. Thereafter the second party had no other alternative than to proceed with the enquiry in the absence of the first party and on the basis of the papers on record, etc., the enquiry committee found the first party guilty of misconduct and recommended for his dismissal from service. The second party, thereafter, dismissed, the first party from service for misconduct. 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, Sadu Meah, first party, has only examined himself in support of his case. On the other hand, D.W. 1, A. Sattar Khan, Labour Officer of the second party mill has examined himself in support of the second party's case. It is not disputed that first party was appointed under the second party as Mistry on 1-3-1969 and thereafter he became permanent in his post and his last weekly wages was at the rate of Tk. 58.00. According to P.W. 1 he was illegally dismissed from service without giving him proper opportunity to defend. D.W. 1 has stated that first party was charge-sheeted *vide* Ext. A and the said Ext. A was sent by registered post to the home address of the first party but the said registered cover came back with the Peon's endorsement therein "Left". It is also stated by D.W. 1 that one copy of the said charge-sheet was posted at the mill's notice board. According to D.W. 1, in spite of such, the first party submitted no explanation whatsoever. It is also stated by D.W. 1 that thereafter the second party sent notice of enquiry by registered post and another copy was posted in the notice board and an enquiry committee was formed and the committee submitted enquiry report dated 28-9-1974 Ext. B and after consideration of the enquiry report as well as other evidence and circumstances the second party dismissed the first party from service *vide* dismissal order, dated 30-9-1974, Ext. C for misconduct.

It is in evidence *vide* P.W. 1 in cross that his son and he himself used to serve under the second party mill and under the same officer. It is also admitted by P.W. 1 in his cross that his home stand just adjacent to the second party mill and he and his said son reside in the same house. The

evidence in cross of P.W. 1 shows that he was absent from duty since 17-8-1974 but he stated that such absence was not at his own accord. According to evidence of P.W. 1, 2/4 days after 17-8-1974 he submitted a petition to the second party praying to allow him to resume duty but no reply was given by the second party. According to P.W. 1 Ext. 1 is the copy of said petition. I have gone through the contents of Ext. 1, the paragraphs 3 and 4 of the case petition, rather contradict the said petition Ext. 1. The charge-sheet Ext. A was sent by regd. post to the home address of the first party but the same was returned back with the Peon's endorsement "Left", as will appear from the cover and at the same time a copy of the said charge-sheet was posted in the mill's notice board. I, therefore, find that as per law the charge-sheet issued and served. In spite of that the first party did not submit any explanation. Thereafter a notice of enquiry Ext. B was sent to the home address of the first party and a copy of the same was posted in the notice board. Thereafter also first party did not appear. The enquiry committee submitted their report Ext. D. P.W. 1 further stated in his cross that the management had no grudge or enmity against him. I find no reason as to why the second party would suppress the charge-sheet and the enquiry notice. On the other hand, it is stated by P.W. 1 that he was absent from duty since 17-8-1974 not at his own accord but due to the act of the second party.

It appears that the charge-sheet was issued on 28-8-1974, i.e., on 12th day of absence of the first party. Though the second party has followed legal procedure, but the gravity of offence/misconduct should have been taken into consideration before inflicting severe punishment.

While considering the case for reinstatement of the first party I have also taken into consideration the circumstances. I think that the interest of the first party would not be safe at the hands of second party, if he is reinstated. So, I am of the opinion that the ends of justice will be met if termination benefit is given to the first party under section 19(1) of the Standing Orders Act. Accordingly, the first party in this case 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 in part on contest without cost.

The first party will get the following termination benefit from the second party and the second party is directed to pay the same to the first party within 30 days from today:

- (1) 45 days' notice pay at the rate of Tk. 58.00 per week;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;
- (3) Leave salary, if any, due;
- (4) Unpaid wages if any, due.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
26-5-1975.

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

A. AHMED
Chairman.
26-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 656 of 1974.

Habibur Rahman, son of late Ali Ashraf, C/o. Chittagong Press Employees Union, 44, Bhudda Mandir Road, Chittagong—*First Party*,

versus

Proprietor, Sazek Art Press, 32, Batali Road (Enayet Bazar), P.S. Kotwali, Chittagong—*Second Party*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury

Mr Juoed A. Choudhury

} *Members.*

This application under section 34 of the Industrial Relations Ordinance, 1969 by first party Habibur Rahman with a prayer for directing the second party to pay his termination benefit under section 19(1) of the Standing Orders Act, 1965, wages for the month of September, 1974 and bonus for 1973 and 1974 and other reliefs, on the ground that his permanent service was terminated verbally on 27-9-1974 by the second party without any lawful reason or notice. In spite of demands the second party has not paid the termination benefit and other dues as prayed for.

Second party did not appear and contest this case though summons have been duly served upon him in due time.

I, therefore, took up the case for *ex parte* hearing.

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

FINDINGS

P.W. 1, Habibutr Rahman, first party has examined himself in support of his case. His evidence proves that he was serving under the second party as Machineman since 1960 and his last wages was at the rate of Tk. 245.00 per month. It is also in evidence *vide* P.W. 1 that suddenly his permanent service was verbally terminated by the second party on 27-9-1974 without any reason or notice and in spite of demands he was not paid termination benefit and wages for September, 1974. According to the evidence of P.W. 1 he cannot say if any bonus for the year under claim was declared by the second party. So, according to his evidence he is not entitled to get bonus as claimed. From the evidence of P.W. 1 I am satisfied that the first party is entitled to get termination benefit under section 19(1) of the Standing Orders Act and the back wages for the September, 1974 from the second party.

Members on consultation agreed with me in the above view.

Ordered

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

The first party is entitled to get termination benefit under section 19(D) of the Standing Orders Act, 1965 as follows—

- (1) 90 days notice pay at the rate of Tk. 245.00 per month;
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;
- (3) Unpaid salary for the month of September, 1974;
- (4) Wages for unavailed period of Earned Leave, if any.

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

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong.
19-5-1975.

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

A. AHMED,
Chairman.
19-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 679 of 1974.

Md. Sulayman, son of Sultan Ahmad, Worker, Hafiz Textile Mills Ltd., T/No. 365, Kumira, P S Sitakund, Chittagong—*First Party*,

versus

General Manager, M/s. Hafiz Textile Mills Ltd., Ghoramara, Kumira, P.S. Sitakund, 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 second party.

This application under csection 34 of the Industrial Relations Ordinance, 1969 by Mohammed Sulayman, first party with a prayer for directing the second party to pay his wages for the period from 11-4-1974 to 5-12-1974 at the rate of Tk. 90.00 each week *plus* usual ration supplied to the workers, on the ground that first party was reinstated in his post on 6-12-1974 on the basis of decision passed in previous I.D. Case No. 186/74 between the parties but the second party has illegally deprived him (first party) of his wages for the period under claim which is otherwise guaranteed by law.

Second party contested the case by filing a written statement alleging *inter alia* that first party was dismissed by the second party for misconduct on 11-4-1974 and thereafter first party filed I.D. Case No. 186/74 in this Court and the said case was allowed on contest directing the second party to reinstate first party in his post and position and accordingly the first party was reinstated in his post. It is further alleged that in the said case first party prayed for reinstatement with back wages but the Court disallowed his prayer for back wages. So, 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 back wages as prayed for.

DECISION

Neither party adduced any oral evidence. The certified copy of the judgment of I.D. Case No. 186/74, dated 2-11-1974 has been marked Ext. 1. It will appear from the said judgment Ext. 1 that first party brought that case under section 34 for reinstatement with back wages. Second party appeared and filed written statement and contested that case. It also appear from the said judgment Ext. 1 that second party was directed to reinstate him (first party) in his former post and position only. The Court *vide* its judgment Ext. 1 considered the facts and evidence on record and disallowed first party's claim for back wages. Thus I am fully satisfied from the previous decision of the I.D. Case No. 186/74 that the first party in the instant case is not entitled to get back wages as prayed for.

Members are consulted over the matter and they agreed with me in the above view.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.

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

A. AHMED,
Chairman.
20-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Criminal Case No. 17 of 1974.

Mr Delwar Hossain, General Secretary, Bangladesh Water Transport Workers' Union, 104/A, Majhirghat Road, with an office at Bangla Bazar, Strand Road, Chittagong—*Complainant*,

versus

- (1) Al-haj Khalilur Rahman, Director/Partner, *
- (2) Mr Gopal Bhattacharjee, Manager of M/s. Bangla Shipping Lines Limited, M/s. Associated Traders and Mariners Ltd., Messrs Md. Idris and Brothers (R.T.), all are of 100A, "Palm View", Agrabad, Commercial Area, Chittagong, P.S. Doublemooring—*Accused*.

PRESENT :

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury ..

Mr Juned A. Choudhury ..

} *Members.*

Representation: Mr Omar Hayat, Advocate appeared for the complainant and Mr A.M.M. Mir Hussain, Advocate appeared for the accused.

This is a complaint under section 55 of the Industrial Relations Ordinance, 1969 by complainant Delwar Hossain, General Secretary, Bangladesh Water Transport Workers Union, Majhirghat Road, with an office at Bangla Bazar, Strand Road, Chittagong for implicating punishment upon the accused persons for violating the terms of the agreement, dated 22-1-1972.

It is the prosecution case that the complainant is the General Secretary of the Bangladesh Water Transport Workers Union who represents workers of a group of companies and firms of the accused and others in the capacity of Collective Bargaining Agent under law. The agreement, dated 22-1-1972 was signed by the complainant and accused persons and it was agreed *vide* term No. 1 of the said agreement that the accused persons will implement the workers' Contributory Provident Fund with effect from July 1972. The accused persons in view of the said agreement are bound to introduce the workers' contributory Provident Fund Scheme but they did not introduce the Contributory Provident Fund Scheme of the workers in spite of repeated demands and as such, they have wilfully violated the said term of the agreement.

Both the accused persons are examined under section 342, Cr.P.C. and they pleaded not guilty to the charges.

Prosecution has examined as many as 3 witnesses including the complainant Delwar Hussain. It is stated by P.W. 1, the complainant that there was an agreement dated 28-11-1972 between the Union and the accused persons and that the accused persons wilfully failed to implement the term No. 1 of the said agreement Ext. 4. It is also stated by P.W. 1 that the workers of the accused company approach P.W. 1 for the alleged non-implementation of the term No. 1 of Ext. (Ka) and thereafter P.W. 1 wrote letters Ext. No. (Kha) and No. (Gha) to the accused persons but get no reply from the accused. It is

stated by P.W. 1 in cross that he knew the that employees contribution towards Provident Fund is being deducted from July 1972 in term No. 1 of the agreement. P.W. 2, an employee of accused No. 1 has clearly stated in his evidence that his provident fund deduction is being made since July, 1972 and he does not know, if employer's contribution is being paid or not. P.W. 3 another employee of the accused persons has clearly stated in his evidence that his Provident Fund deduction is being made since July 1972 at the rate of 6½% of his salary. He has also stated in his evidence that the employer's contribution towards Provident Fund is also being made. It is not disputed that by virtue of agreement, dated 22-11-1972 the accused persons are responsible to introduce Provident Fund Scheme with sanction from the appropriate authority of the Government as per law. It appears that the accused had applied to the Government for such recognition of the scheme and the appropriate authority has on 25th September, 1974 accorded recognition of such Provident Fund Scheme. The photostat copy of the said recognition dated 25th September 1974 has been filed in this case by the accused persons. From the evidence referred to above it is found that the accused persons have already, in presence of the terms of the agreement made deduction of the Provident Fund contribution. The delay in obtaining sanction *vide* letter dated 25th September 1974 cannot be said to be wilful and intentional on the part of the accused persons. From the evidence and circumstances, I find that there was no intentional violation of clause 1 of the Agreement Ext. No. (Ka) by the accused persons. Consequently the accused persons are not found guilty. Accordingly the accused persons be acquitted.

Members are consulted over the matter.

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong.
26-4-1975.

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

A. AHMED,
Chairman.
26-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complainant Case No. 24 of 1974.

Siddiquir Rahman, Ring Frame Jobber, Spinning Department, National Cotton Mills Ltd., Halishahar, Chittagong—*First Party*,

versus

General Manager, M/s. National Cotton Mills Ltd., Halishahar, 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 M/s. Munir Ahmed Cohowdhury and Mokhtarul Haque Chowdhury, Advocates appeared for the second party.

This is an application under section 25(I)(b) of the Employment of Labour (Standing Orders) Act, 1965 by first party Siddiquir ahman for his reinstatement in his former post with other benefits and back wages on the grounds that he was dismissed from service *vide* dismissal order dated 1-4-1974 without complying with the provisions of Sections 17 and 18 of the Standing Orders Act and as such, the said dismissal is liable to be set aside. It is further alleged that on 14-4-1974 he represented his grievance stating all facts and circumstances but the second party neither enquired into the grievances nor gave any decision. Hence, this case.

Second Party contested the case by filing a written statement alleging *inter alia* that the first party was dismissed from service with effect from 6-5-1973 for his wilful absence from duty for more than 10 days without permission and leave after duly complying the provisions of sections 17 and 18 of the Standing Orders Act, 1965. The order of dismissal is quite legal and valid. He is not entitled to be reinstated with back wages prayed for.

Points for determination are :

- (1) Whether the order of dismissal in question passed by the second party against the first party is legal and valid;
- (2) What relief, if any, if the first party entitled to ?

Decision.

P W 1 Siddiquir Rahman, first party has examined himself in support of his case. On the other hand, D W. 1 Aminul Haque Tarafdar, the Administrative Officer of the second party mill has examined on behalf of the second party.

Admittedly the first party was in employment of the second party and he became a permanent employee under the second party and as such his employment does not cease to be with the second party until and unless he has been legally dismissed for misconduct.

It is the definite case of the second party that first party voluntarily deserted the service of the second party since 6-5-1973 and for that the first party was charge-sheeted *vide* charge-sheet Ext. B, dated 3-6-1973. The said charge-sheet was sent to the home address of the first party by a registered post with A/D *vide* Ext. A and the same was returned back with the endorsement that the addressee was not found at home. D.W. 1 stated in his evidence that the first party did not file any explanation in compliance with the charge-sheet and as such subsequently the second party dismissed the first party from service *vide* Ext. 4 for misconduct under section 17(3)(d) of the Standing Orders Act.

It is contended on behalf of the first party that the said dismissal has not been done according to law as the provisions of sections 17 and 18 have not been followed. P.W. 1 has stated in his evidence that since 6-5-1973 he was not allowed to enter into the mill due to the intervention of the Darwans and as such, he could not attend his duty since then. According to the P.W.1 he

is not getting any reason as to why the Darwans of the mill is disallowing him to enter into the mill from 6-5-1973. P.W. 1 further admitted in his cross that he could not do any duty for the period from 6-5-1973 to 10-10-1973. It is further stated by P.W. 1 that after his dismissal he is serving in different places, First party produced a certificate Ext. 7, dated 15-8-1956 granted by the then Manager of the Mill. The said certificate shows that first party served in the mill in the Spinning Department since 1950 and he left the said service at his own accord for better prospect elsewhere. The evidence of P.W. 1 in cross also goes to show that he had the intention to give up the employment under second party if he gets chance for better job elsewhere. These will strongly suggest that first party had not the intention to serve under the second party mill, if he gets better chance elsewhere. From the evidence of P.W. 1, I find no reasons whatsoever as to why the Darwans of the mill were preventing him (first party) from performing his duty within the mill with effect from 6-5-1973. This very circumstances goes to suggest strongly that first party remained absent from duty with effect from 6-5-1973 without permission or leave from the second party for reason best known to him.

On the other hand, it is found that the charge-sheet Ext. B was not actually served upon the first party and as such he failed to reply the same. The charge-sheet Ext. B shows that first party has been asked to submit his explanation within 3 days from the receipt of the charge-sheet. Law provides that full 3 days' time should be given for explanation. There is thus a violation of the mandatory provisions of law. It is contended on behalf of the second party that no grievance petition dated 14-4-1974 was received by the second party. P.W. 1 has stated in his evidence that on 16-4-1974 he sent grievance petition by post with A/D to the second party. A copy of the said grievance petition has been marked Ext. 5. A postal receipt on record shows that something by registered post was sent to the General Manager of the second party mill on 16-4-1974. The Acknowledgement receipt, however, has not been produced by the first party in order to show that the grievance petition actually reached to the second party. Thus, we cannot be sure that the grievance petition was received by the second party. From the evidence and materials on record I have reason to say that the alleged dismissal of the first party from service cannot be accepted to be done after observing the legal formalities. I also find that the first party was absent from duty with effect from 6-5-1973 for more than 10 days unauthorisedly and as such he does not deserve to be reinstated. It is an admitted fact that on 10-10-1973 the first party was given his arrear salary for 7 months, though during the said period he performed no work under the second party. According to second party such payment of arrear salary is an act of generosity on his (second party) part. From the discussions above I have reason to say that first party actually entered into the service under second party in the year 1950 but subsequently he left the said service for better prospect elsewhere. From the materials on record I have every reason to say that the first party was again employed by the second party after 1956 and then he was serving till 6-5-1973. I have already found above that the first party is not deserve to be reinstated in his former post. Considering various aspects of the case I think it would be proper for the ends of justice to allow termination benefits under section 19 of the Standing Orders Act, 1965 to the first party in this case.

Members are consulted over the matter and they agreed with me in the above view.

Ordered

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

The first party will get the following termination benefits under section 19(1) of the Standing Orders Act from the second party:

- (1) 90 days' notice pay at the rate of Tk.210.00 per month;
- (2) Compensation at the rate of 14 days wages for each completed year of service or part thereof over six months from 1957 to 6-5-1973.

The second party is directed to pay the amount to the first party within 30 days from to day.

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong.
21-4-1975.

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

A. AHMED,
Chairman.
21-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint case No. 38 of 1974.

Azizul Huq, S/o. Abdul Huq, C/o. Afzal Talukdar's House, P. O. and Vill. Gumdandi, P. S. Boalkhali, Chittagong—*First Party,*

versus

The 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.*

Representation—Mr Butful Haque Mazumder, Advocate, appeared for the first party and Mr A. K. Humayun Kabir, Advocate, 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 Azizul Huq seeks a direction on the second party to reinstate him in his former post with back wages and other benefits upon the allegation that he was illegally dismissed from service by an order dated 7-5-1974 upon false charge without giving any chance of defence.

The first party represented his grievances on 22nd May 1974 to the second party, who did neither enquire into the matter nor gave any decision to it. Hence, this case.

Second party appeared and contested the case by filing written statement alleging *inter alia* that first party was issued with a charge sheet dated 14-3-1974 for misconduct and thereafter the first party submitted his explanation which was found unsatisfactory and thereafter an enquiry was held wherein the first party duly participated and had full opportunity to defend himself. The second party found first party guilty of charges of misconduct and accordingly he was dismissed from service legally by order dated 7-5-1974. 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 as prayed for.

Decision

P. W. 1 Azizul Huq, 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 first party was appointed as worker under the second party with effect from 1-7-1967 and subsequently he became permanent in his post as Store Peon and his last wages was at the rate of Tk. 15-00 per month.

A letter of charge Ext. 1, dated 14-3-1974 was issued against the first party for his alleged misconduct mentioned therein and the first party was asked to explain why he should not be dismissed from service, within 3 days from the receipt of the letter (Ext. 1). Law provides that full 3 days time should be given for explanation. There is thus a violation of provisions of law.

First party in compliance with the charge Ext. 1 submitted his explanation, a copy of which has been marked Ext. 2. According to P. W. 1 no domestic enquiry was held over the matter and he was not given opportunity to defend himself in the matter. According to second party they held due enquiry over the matter by notifying the same *vide* Ext. 3, the notice. Ext. 4 is the letter of dismissal, dated 7-5-1974. According to charge Ext. 1 "on 11-3-1974 the first party was on duty at second party's Store from 8 a.m. and he (P. W. 1.) opened store lock at 8 a.m. and did not report to the management about the missing of articles mentioned therein during the duty hours of that day and as such first party was not duly and properly discharging his duty" P. W. 1 admitted in his evidence that he opened the store on 11-3-1974 at about 8-30 a.m. and then he did not see table fan and Type-writer therein the store room. P. W. 1 at the end of his cross examination further stated that he did not look after opening the door, whether table fan was in its usual place or not. I have gone through the explanation Ext. 2 of the first party on record. According to evidence of P. W. 1 referred to above, he noticed the fan and other articles missing at about 8-30 a.m., when he entered into the store on that day, but he failed to report about this missing to the management till 8-30 p.m. on that date. According to his explanation Ext. 2 he forgot about reporting the matter to the management about the missing of articles. The reason of his delay in submitting report alleged in the evidence cannot be accepted to be sufficient. The alleged forgetfulness is an act of serious omission on his part and this amounts to his guilty mind or conscious. There is nothing on record to show that the management or his P. W. (1) his

superior authority had any grudge or enmity against him (P. W. 1). I, therefore, find no reason as to why the management would frame false charge against the first party.

According to P. W. 1 he received Ext. 3, dated 3-4-1974 and thereafter he met Security Officer, who ordered him to go to Panchalaish P. S. and accordingly he went there, where he was told nothing by the Police. Ext. 3 shows that first party was asked to see Security Officer positively on 5-4-1974 regarding the investigation of the theft in store on 11-3-1974. It cannot be believed that first party was asked to go to Panchalaish P. S. and met the O/C, there. However, from the evidence and materials on record it can be said that no proper enquiry was held in the matter. No enquiry report has been submitted regarding the charge. There is also no reason why the same has not been submitted. There is no sufficient materials on record to show that opportunity was given to the first party for being heard. In view of these, I am inclined to say that the first party's dismissal from service is not proper.

While considering the case for reinstatement of first party I have also taken into consideration all circumstances and the conduct of the first party referred to in my discussions above. I think, that the interest of the first party would not be safe at the hands of second party, if he is reinstated, as the second party would be in a position and may definitely in a mood to find fault with the first party, and the situation will go from bad to worse, if first party is reinstated. In the circumstances, the grant of termination benefits will meet the ends of justice.

Both the learned Members are discussed over the matter and they agreed with me in the above view *vide* their written advices.

Ordered

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

The first party will get the following termination benefit under section 19(I) of the Standing Orders Act, 1965:

- (1) 90 days- notice pay at the rate of Tk. 150.00 per month ;
- (2) Compensation at the rate of 14 days wages for each year of completed service or part thereof over six months ;
- (3) Wages for unavailed period of Earned Leave, if any ;
- (4) Unpaid wages, if any ;
- (5) 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.

The second party is directed to pay the amount to the first party within 30 days from today.

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong.
2-5-1975.

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

A. AHMED,
Chairman.
28-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 39 of 1974.

Farid Ahmad Khan, S/o. Saleh Ahmad Khan, C/o. Patanpara, P. O. and Vill. Charandwip, P. S. Boalkhali, Chittagong—*First Party*,

versus

Project Manager, M/S. Galfra Habib Limited, Commercial Court, 95, Agrabad C/A., P. O. Box No. 584, 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 S. C. Lala, Advocate, appeared for the second party.

By this application under section 25(I)(b) of the Employment of Labour (Standing Orders) Act, 1965, the first party Farid Ahmad Khan (Inspector) under second party seeks a direction on the latter to reinstate him in his former post and position with other benefits including back wages, upon the allegations that he was illegally dismissed from service *vide* order dated 9-5-1974 without giving him any opportunity to defend himself and as such, they violated the provisions of sections 17 and 18 of the Standing Orders Act, in the matter of such illegal dismissal. It is further alleged that second party management victimised the first party for his (first party) trade union activities. First party represented his grievance against the illegal order of dismissal but the second party neither enquired into the matter nor gave any decision. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that a charge-sheet was issued to first party who had stolen some medicine from the medical centre of the second party on 30-1-1974 and the same was sold by the first party to the local medical pharmacy, namely, Kiran Medical Hall and the same was recovered. The first party was also found to have been absent on getting scent of his enquiry into the theft. First party replied the charge-sheet on 14-2-1974 which was not satisfactory and thereafter the first party was intimated that the domestic enquiry will be held on 27-3-1974 but the first party did not appear at the time of enquiry and as such, the enquiry was held *ex parte* after examining witnesses. The management on the basis of enquiry report and other materials, found the first party guilty of misconduct and ultimately dismissed the first party from service for such misconduct. The party is not entitled to get any relief.

It is to be seen—whether the first party is entitled to be reinstated in his service with back wages as prayed for.

Decision

First party, Farid Ahmad Khan, as P. W. 1 has examined himself along with another witness. None is examined on behalf of the second party. It is not disputed that the first party was appointed as an apprentice on 16-1-1969 and thereafter he became permanent in the post of Inspector. It is admitted by

P. W. 1, first party, in his evidence that he received the charge-sheet, Ext. 1, dated 5-2-1974 from the second party and thereafter he submitted his explanation dated 14-2-1974, Ext. 2 denying the charges. P. W. 1 further stated that he received a notice of enquiry by which he was informed to attend domestic enquiry on 27-3-1974. It is stated by P. W. 1 in cross that he after getting enquiry notice Ext. 6, authorised P. W. 2, M. N. Huda, the President of the workers' union and Abul Kalam Bhuiyan *vide* letter Ext. A to represent him before enquiry. P. W. 1 also stated that Ext. 3 is a copy of original letter Ext. A. I have gone through the said Ext. A and 3, but I find that Ext. 3 cannot be accepted to be a true copy of Ext. A. The case given out in para 8 of the case petition by the first party is rather contradicted by his admitted document Ext. A. It is in evidence *vide* P. W. 2 that Ext. A was sent on 27-3-1974 at about 1 p.m. The enquiry was scheduled to be held at 10 a.m. on 27-3-1974. So, it can be safely said that Ext. A was received by the enquiry committee after the completion of domestic *ex parte* enquiry on 27-3-1974.

According to P. W. 2 in cross, there were three members in the enquiry committee and he had talk with Mr Alam, one of the members of the enquiry committee. Ext. B is the enquiry report dated 27-3-1974 submitted by the enquiry committee. The second party also filed statement of some witnesses, who were examined by the enquiry committee during enquiry but these written statements of witnesses were not proved at the time of hearing of this case. The enquiry report Ext. B does not specify the nature of misconduct as defined in section 17(3) of the Standing Orders Act. Moreover, there is no clear finding on this point. However, P. W. 1 has stated in his cross that he knew Abdul Majid and Nuruzzaman, compounders of the medical store of the second party and he had no enmity with them, wherefrom the alleged theft of medicine was occurred. P. W. 1 further stated that he has no ill feeling with the said compounders. The evidence of P. W. 1 in cross further states that during enquiry the abovenamed two compounders were examined. The evidence of P. W. 2 shows that the management was not willing to reinstate the first party in service for his (first party) alleged theft. The rule of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies and that the evidence of opponent should be taken in his presence and he should be given opportunity of examining the witnesses. In this case, it can be said that the principle of natural justice has not been fully observed. There is no evidence worth the name on record to show that the first party was victimised for his so-called trade union activities. The first party after getting the dismissal order sent a grievance petition to the second party, a copy of which has been marked Ext. I. According to P. W. 1 he did not get any reply of his grievance petition from the second party. On the other hand, second party produced Ext. B dated 3rd June, 1974 in order to show that he sent a reply to the first party over latter's grievance petition. Of course, first party denied to have received any such reply like Ext. B. It was the duty of the second party to prove that Ext. B was received or served to the first party. From the above discussions it can be said that the second party has not fully complied with the provision of Standing Ordres Act in the matter of dismissal of the first party from service.

Learned Lawyer appearing on behalf of the second party contends that the first party who has committed theft should not be reinstated in service, as the second party company has lost its faith on the first party.

While considering the case for reinstatement of the first party I am to take into consideration the evidence and circumstances. The evidence of P. W. 2 goes to show that the management was not willing to reinstate the first party for his alleged commissioning of theft. I think, that the interest of the first party would not be safe at the hand of second party, if he is reinstated. Regard being had to the circumstances as well as the complaint of theft against he first party by second party and unwillingness of the management, I do not like to thrust the first party on the management by ordering reinstatement. In the circumstances, the grant of termination benefit will meet the ends of justice.

Both the learned Members are consulted over the matter. In the result, it is—

Ordered

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

The second party is directed to pay the termination benefit under section 19(1) of the Standing Orders Act as follows :

- (1) 90 days' notice pay at the rate of Tk. 215.00 per month ;
- (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, due ;
- (4) Wages for unavailed period of Earned Leave, if any ;

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

The second party is directed to pay the amount to the first party within 30 days from today.

AMEENUDDIN AHMED

Chairman,

Labour Court, Chittagong.

30-4-1975.

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

A. AHMED

Chairman.

30-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case Number 45 of 1974.

Md. Abdul Mannan, Electrician,
C/o. Mr A.L. B. Duza,
Labour Law Consultant,
86, Chawkbazar,
Chittagong—*First Party*,

versus

Manager, Halima Textile Limited,
Comilla—*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 Abdul Mannan for his reinstatement in his former post and position with back wages and other benefits.

The case of the first party is that he was serving in the second party mill as Electrician for last one year and his last pay was Tk. 265.00 per month. All on a sudden the first party was issued with a charge-sheet along with others on 25-4-1974 showing the ground of alleged incitement caused on 15-4-1974. First party submitted his explanation denying the charges. Thereafter second party illegally dismissed the first party from service *vide* letter dated 9-5-1974 for alleged misconduct without following the provisions of Standing Orders Act. Thereafter the first party submitted a grievance petition under section 25 on 23-5-1974 but the second party did not reply the same. It is further alleged that there was no illegal strike and no incitement to resort to illegal strike on 15-4-1974 at the instance of first party. The first party was not given proper opportunity for defending himself in the domestic enquiry and that the dismissal order is liable to be set aside.

Second party contested the case by filling written statement alleging *inter alia* that the first party was charge-sheeted as he incited the labourers and threatened the labourers for serious consequences if strike was not observed in the second party mill and as a result, illegal strike was observed on 15-4-1974. First party submitted explanation thereafter which was found unsatisfactory and thereafter domestic enquiry was held against the first party for his such misconduct and ultimately the first party was dismissed from service for misconduct after complying the provisions of sections 17 and 18 of the Standing Orders Act. 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 as prayed for.

Decision.

P.W.1. Abdul Mannan, first party has only examined himself in support of his case. On the other hand, D.W.1 Nipendra Podder, the Labour Officer of the second party has examined himself on behalf of the second party with 3 other witnesses.

It is not disputed that first party was serving under second party mill as Electrician since 1973. It is also not disputed that the first party was issued with a charge-sheet Ext. 1 by Manager for his inciting workers to observe *Ist Baishakh* (15-4-1974) as *hartal* day, etc., and the said charge-sheet was replied by first party *vide* his explanation Ext. 2 dated 27-4-1974. It is admitted by P.W.1 in his evidence that after his filing explanation he was called by the management to appear before to enquiry committee and accordingly he attended enquiry. It is stated by P.W. 1 that he was illegally dismissed from service *vide* dismissal order dated 9-5-1974, Ext. 3 and he was given opportunity to examine his witnesses during enquiry. It is also not disputed that after the dismissal order the first party submitted a grievance petition dated 23-5-1974 which was received by the second party in time.

D.W.1, the Labour Officer of the second party has stated in his evidence that there was a strike in the mill on 15-4-1974 due to instigation of the first party and others. It also appears from the evidence of D. Ws. that D.W. 2, Makku Mia and D.W.3, Ali Ahmed, the security guards of the second party mill submitted a written report dated 15-4-1974, Ext. A against the first party and 4 others stating that they incited the workers for closing the mill on 1st Baishakh (15-4-1974) illegally, causing loss of production and that due to their such incitement and obstruction the *hartal* was observed in the mill on 15-4-1974 at the instance of first party and others. It is also in evidence that thereafter the second party issued charge-sheet, Ext. 1 against the first party along with others for latter's such misconduct and first party submitted explanation which was found unsatisfactory and thereafter an enquiry committee was constituted to hold demeratic enquiry against the first party. It is stated by D.W. 1 that they held enquiry, examined witnesses and took statement of first party and thereafter submitted report dated 8-5-1974, Ext. B. The statement of prosecution witnesses including D.W. 2 and 3 were recorded during enquiry and these statements are marked Ext. C series. According to D.W.1 during examination of prosecution the first party was asked to cross examine but he declined to cross examine. The statement of first party recorded during enquiry has been marked Ext. D. A petition dated 16-4-1974 to the Manager of the mill by the General Secretary, workers' union has been marked Ext. E. D.W. 1 and another Shamsul Hug, Vice-President of the workers' Union constituted the enquiry committee. D.W. 1 as Chairman of the enquiry committee has deposed in support of due and fair enquiry. D.W. 2 and D.W.3, Security Guards of the mill have clearly stated in their evidence that on 15-4-1974 at about 6 a.m. first party along with few others came near main gate of the mill and incited the labourers and threatened labourers that severe consequences will happen if strike was not observed and as a result a strike was held on 15-4-1974. The said evidence of D. Ws. find support of their report Ext. A to the Manager. D.W. 4 Auyub Ali, an employee of the second party mill also stated in his evidence that he saw first party and others inciting the labourers to go on strike on 15-4-1974. The first party neither stated in his case petition nor in his evidence that due to any enmity or ill feeling, the D. Ws. have deposed against him. I find no earthly reason as to why the D.Ws. will depose

falsely against the first party with whom they have no grudge or enmity. I have carefully scrutinised all the papers and procedures and the circumstances involved. I have every reason to say that first party was removed from service after holding proper enquiry step by step as provided under section 17 and 18 of the Standing Orders Act, 1965. Therefore, there can be no warrant for interference with the order complained of. From the evidence and materials on record I find that the first party was rightly found guilty for misconduct under section 17(3)(j) of the Standing Orders Act, 1965.

Members are consulted over the matter and they also agreed with me in the above view *vide* their written advices.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
29-5-1975.

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

A. AHMED,
Chairman,
29-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case Number 58 of 1974.

Abdur Rahman Chowdhury (Weaver), Card No. 111,
C/o. Ismail Sawdagar, Eastern Textile Mills Gate,
Chittagong—*First Party*,

versus

General Manager, Eastern Textile Mills, Limited,
Nasirabad Industrial Area, P. O. Polytechnic,
Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

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

Representation—Mr Md. Nurul Islam, Advocate appeared for the first party and Mr Abdul Wahab Chowdhury, Advocate and Mr A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate 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 Abdur Rahman Chowdhury seeks a direction on the second party to reinstate him in his original service with back wages upon the allegations that due to the trade union activities as Organising Secretary of the workers' Union, the second party victimised him by issuing an illegal, order dated 12-8-1974 terminating his service.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that the service of the first party was no longer required in the interest of the second party's establishment and as such first party's service was terminated *vide* letter dated 12-8-1974. The action of the second party being termination simpliciter, the first party has no right to challenge its validity, except for the recovery of his termination benefit as per law. The first party was not victimised for trade union activities as alleged.

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

Decision

P. W. 1, Abdur Rahman Chowdhury, first party, has examined himself along with two other witnesses in order to substantiate his case. On the other hand, D. W. 1, Saiful Huq, Personnel Officer of the Second party mill has examined on behalf of the second party. It is not disputed that the first party was appointed as weaver under the second party on 20-9-1972 and he worked as such till his service was terminated *vide* letter Ext. 1. It is contended on behalf of the first party that the said termination *vide* Ext. 1 is a victimisation under the garb of termination for first party's trade union activities as Organising Secretary of the Union. On the other hand, it is contended on behalf of the second party that the said termination is a termination simpliciter and the alleged victimisation is unfounded and baseless. P. W. 1 has stated that he was the Organising Secretary of the workers' union of the second party's establishment and P. W. 2 and P. W. 3 are Vice-President and the General Secretary of the said union. P. W. 1 in his cross has clearly stated that it is the duty and responsibility of General Secretary (P. W. 3) of the union to place all grievances, etc., of the workers to proper authority. P. W. 1 also stated that the union's General Secretary deputed two office bearers of the union to Dacca to place workers' grievances to the Corporation. P. W. 2, Refique Ahmed, the Vice-President of the union is not sure as to whether the service of the first party was terminated for his trade union activities. P. W. 3 cannot say the reason for which the service of P. W. 1 was terminated by the management. P. W. 3 also stated that there is nothing documentary to show that they went to Dacca and submitted their grievances to the Corporation. P. W. 1 has stated that the service of the first party has not been terminated by the management for his (P. W. 1) trade union activities and that the first party has not been victimised in any way. He further stated that the service of the first party was terminated on 12-8-1974 *vide* Ext. 1 and the said termination is nothing but a termination simpliciter. From the evidence and materials on records I find nothing to hold that the termination in question is a victimisation under the garb of termination for first party's trade union activities as Organising Secretary of the Union. The order, dated 12-8-1974 Ext. 1 shows that the service of the first party was terminated on the simple ground that his service was no longer required by the management. So, it was in fact a termination simpliciter under

section 19 of the Standing Orders Act, 1965. Though the first party pleaded that by the order he was victimised for his trade union activities but that could not be proved as referred to above.

It has been proved that after the first party received his termination letter, he submitted his grievance petition dated 22-8-1974 and the same was replied by the second party on 28-8-1974. A copy of grievance petition has been marked Ext. 3 and the said reply of second party has been marked Ext. 4. This case has been filed within time. From the evidence and materials on record I find that first party is not entitled to get reinstatement with back wages as prayed for. It is, however, be noted that the legal termination benefit has not been paid to the first party, who is entitled to get the same under section 19(1) of the Standing Orders Act.

Members are consulted over the matter.

Ordered

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

The order of termination of the first party's service shall hold good, but the second party shall pay termination benefit to the first party as follows :

- (1) 90 days' notice pay at the rate of pay last drawn by him (first party);
- (2) 28 days' wages as service compensation ;
- (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.

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

AMEENUDDIN AHMED
Chairman,
Labour Court Chittagong,
29-5-1975.

Typed by Mr. M. Mi Choudhury
at my dictation and corrected
by me.

A. AHMED
Chairman,
29-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 26 of 1975.

Ful Meah, son of Abdul Kader,
Village Mohammedpur, P. S. Hathazari,
Dist. Chittagong—*First Party*.

versus

- (1) Vice-Chancellor, Chittagong University,
- (2) Registrar, Chittagong University,
- (3) Officer Commanding, U. O. T. C., Chittagong University,
Fatehabad, 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 Saifuddin Mahmood, Bar-at-Law, appeared for the second party.

By this application under section 34 of the Industrial Relations Ordinance, 1969, the first party Ful Meah, who was an Armed Guard under the second party seeks a direction on the latter to reinstate him in his former post and position with back wages and other benefits after setting aside the order of termination dated 15-2-1975 upon the allegation that he (first party) was illegally terminated from service.

Second party appeared and contested the case mainly alleging that the case as framed against the second party is not maintainable, as the second parties are not the employers or establishment within the meaning of the definition of I.R.O., or any other labour laws and that the second party University is a non-trading concern and not employer and that the first party as such, he (first party) is not a "worker".

It is to be seen—whether the first party's case as framed is maintainable in this Court.

Decision.

Neither party adduced any oral evidence. It is contended on behalf of the second party that the University of Chittagong is neither an employer nor an establishment within the meaning of I.R.O., 1969, Standing Orders Act, or any labour laws and in this view of the application the first party's application under section 34 against the second parties is not maintainable. It is undisputed fact that the Chittagong University (second party) is under the Ministry of Education and is maintained on Government's grant. So, in my

opinion it does not fall within the category of industry and it has no kind of trade or business or any activities allied to trade or business. So, in my view the second parties cannot be accepted to be employers within the meaning and definition of I.R.O. So, the first party is not a "worker" within the meaning of I.R.O., or Employment of Labour (Standing Orders) Act and the present case is, therefore, legally not maintainable in this Court.

Members are discussed. In the result, it is

Ordered

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-4-1975.

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

A. AHMED
Chairman.
30-4-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 52 of 1975.

Nurul Islam, son of Nabidur Rahman,
C/o, M. V. Rostom Ali, Foreman, Holding No. 840, East Nasirabad,
Sholashahar, Chittagong—*First Party,*

versus

Nurul Islam, Proprietor, Nur Moulding Aluminium Works,
Muradpur, Hathazari 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, filed by Nurul Islam, first party, with prayer for directing the second party to pay him termination benefit on the ground that his permanent service was terminated orally by the second party on 4-2-1975 without assigning any reason and that in spite of repeated demands the second party did not pay the termination benefit. Hence, this case.

Second party in spite of service of notice did not appear and contest the claim of the first party. So, this case was heard *ex parte*.

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

DECISION

P. W. 1 Nurul Islam, first party, has examined himself in support of his claim. He has stated in his evidence that he was appointed as Helper under second party in August 1974 and he was suddenly verbally terminated from service on 4-2-1975 and thereafter he demanded termination benefit and lastly on 20-2-1975 the second party refused to pay termination benefit. P. W. 1 further stated that his last wages was at the rate of Tk. 208·00 per month. The evidence of P. W. 1 remains unchallenged. I find nothing to disbelieve the P. W. 1. P. W. 1 has become permanent in his service. I, therefore, find that the first party has proved his claim.

Members are consulted over the matter.

Ordered

That the case be allowed *ex parte* without cost. First party is entitled to the following benefits :

- (1) 90 days' notice pay at the rate of Tk. 208·00 per month ;
- (2) 14 days' wages as service compensation.

The second party is directed to pay the amount to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong
20-5-1975.

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

A. AHMED,
Chairman,
20-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Miscellaneous Case No. 33 of 1974.

(Arising out of original I. D. Case No. 393/74).

Md. Ibrahim Hussain, son of late Munshi Kala Meah,
Ali Manzil, 558, Love Lane, Chittagong—*Petitioner (First Party)*,

versus

- (1) M/S. Ali and Sons, 179, Jubilee Road, Chittagong;
(2) Mr Ali Hussain;
(3) Mr Kurban Ali, both sons of late Hasan Dattoo,
Ali Manzil, 558, Love Lane, Chittagong—*O. Ps. (Second Party)*.

PRESENT—

Mr Ameenuddin Ahmed—*Chairman*.

Mr Jamshed Ahmed Chowdhury

Mr Juned A. Choudhury

} *Members.*

This is an application under Order 9, rule 9, C.P.C. by first party petitioner namely, Md. Ibrahim Hussain for setting aside the order of dismissal, dated 19-12-1974 passed in original I. D. Case No. 393/74 on the ground that his absence on 19-12-1974 (date of hearing of original case) was not due to laches or negligence but out of confusion that arose from the fixation of 20-1-1975 as the date for order on the preliminary objection on petition under Order 7, rule 11, C.P.C. The petitioner will suffer irreparable loss if the order of dismissal is not set aside.

O. P. appeared and contested the case by filing a written objection alleging *inter alia* that the petitioner was fully aware about the date of hearing of the original case on 19-12-1974 but he did not intentionally attend Court. The petitioner was not prevented by any sufficient cause from appearing in Court on 19-12-1974 when the original I. D. case was taken up for hearing. The petitioner is not entitled to get any relief in this case.

It is to be seen—whether the petitioner was prevented by any sufficient cause from appearing in Court on 19-12-1974 when the original case was taken up for hearing.

FINDINGS

Onus heavily lies upon the petitioner to prove that he was prevented by sufficient cause from attending Court on 19-12-1974. P. W. 1 in his chief clearly stated that the original I. D. case was fixed for hearing on 19-12-1974 and on the said date he did not attend Court as he had the idea that the original case will not be heard on 19-12-1974 as hearing date of petition under Order 7, rule 11, C.P.C. was fixed on 20-1-1975. P. W. 1, petitioner contradict his said statement in cross by saying that he did not know that 19-12-1974 was fixed

for hearing of the original case. Had it been so, the question of confusion as referred to in para 12 of the Misc. petition does not arise. Moreover, from the evidence of P. W. 1 as a whole I have reason to say that the petitioner has not come with clean hand. It was the boundened duty on the part of the petitioner to take step on 19-12-1974, the date of hearing of the original case, as according to his Miscellaneous petition he had full knowledge about the hearing date on 19-12-1974. Moreover, P. W. 1, petitioner cannot be said to be a reliable one. In view of my discussions above, I find sufficient reason to hold that the petitioner was not prevented by any sufficient cause from appearing in Court on 19-12-1974, when the original I. D. case was called for hearing. Consequently the petitioner is not entitled to get relief in this Miscellaneous case and it is liable to be dismissed.

Members agreed with me in the above view *vide* their written advices.

Ordered

That the Miscellaneous case be dismissed on contest without cost.

AMEENUDDIN HAMED
Chairman,
Labour Court, Chittagong,
27-3-1975.

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

A. AHMED,
Chairman.
27-3-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

T. U. Case No. 49 of 1974.

Deputy Registrar of Trade Unions, Government of the People's Republic of Bangladesh, Chittagong Division, Jambooree Ground, Agrabad,
Chittagong—*First Party*,

versus

The General Secretary, Chisty Textile Mills Ltd. Workers' Union,
Regn. No. B-1156, Daulatpur, Comilla—*Second Party*.

PRESENT :

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

Representation—Mr Ataur Rahman, Assistant Registrar of Trade Unions, appeared for the first party and Mr. A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate, appeared for the second party.

Copy of Final Order.

7 of 4-4-1975:

প্রথম পক্ষ অদ্য এক দরখাস্ত দিয়া বলিতেছে যে ২য় পক্ষ এই মামলা দায়েরের পর ১৯৭২ সনের বার্ষিক রিটার্ন পেশ করিয়াছে ও তাহা আইন মোতাবেক হইয়াছে। প্রথম পক্ষের দরখাস্তের মর্মমত এই মামলা খারিজ করা যাইতে পারে।

Thus, in view of the 1st party's said petition, this case be dismissed.

আমিন উদ্দিন আহম্মদ

সভাপতি

শ্রী আদালত, চট্টগ্রাম।