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GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
MINISTRY OF LABOUR, SOCIAL WELFARE, CULTURAL AFFAIRS
AND SPORTS.

(Labour and Social Welfare Division)

Section VI.

NOTIFICATION

Dacca, the 4th December 1975.

No. S.R.O. 399-L/75/S-VI/1(16)/75/503.—In pursuance of sub-section (2) of section 37 of the Industrial Relations Ordinance, 1969 (XXIII of 1969), the Government is pleased to publish the awards and decisions of the Labour Court Rajshahi, in respect of the following cases, namely:—

- (1) Complaint Case No. 15 of 1975.
- (2) Complaint Case No. 16 of 1975.
- (3) Complaint Case No. 21 of 1975.
- (4) I.R.O. Case Nos. 49 and 50 of 1975.
- (5) I.R.O. Case Nos. 67 and 68 of 1975.
- (6) I.R.O. Case No. 70 of 1975.
- (7) I.R.O. Case Nos. 19, 20, 21, 22 and 23 of 1975.
- (8) I.R.O. Case Nos. 11 and 12 of 1975.
- (9) I.R.O. Case No. 73 of 1974.
- (10) I.R.O. Case Nos. 56 and 57 of 1975.

By order of the President
MUHAMMAD KHADEEM ALI
Deputy Secretary.

(3227)

Price: 90 Paisa.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Kazi Nazrul Islam Road, Rajshahi.

Complaint Case No. 15 of 1975.

Md. Afzal Hossain, S/o. Md. Dewan Ali Biswas, Ex-Cashier, Accounts Deptt.,
Rajshahi Jute Mills, Shyampur, Rajshahi.C/o. Mr. Taimur Rahman of Sepoypara, P.S. Boalia, P.O. and Dist. Rajshahi—
*Petitioner,**versus*

(1) M/s. Rajshahi Jute Mills, Shyampur, Rajshahi,

(2) The General Manager, Khulna Zone, BJIC, Sir Iqbal Road, Khulna,

(3) Bangladesh Jute Industrial Corporation, Adamjee Court, Motijheel, Dacca—
Opposite Parties.

PRESENT;

Mr. S.M. Serajul Mawla—*Chairman.*

Mr. Md. Amjad Ali	} <i>Members.</i>
Mr. S. K. Paul	

Dated the 30th October, 1975:

This is an application under section 25 of the Employment of Labour (Standing Orders) Act, 1965, for setting aside an order of termination dated 15-4-1975. Para six of the petition is as follows:

“That the petitioner all on a sudden received Office Order No. ADM/PF-2'07/5668, dated 15-4-1975 from the O.P. No. 2 terminating therein the petitioner's service in the mills under Section 19 of the Bangladesh Employment of Labour (Standing Orders) Act, with immediate effect but no reason has been shown in the said order of termination of the service of the petitioner”.

Hence his services was terminated without assigning any reason as his services were no longer required in the interest of the opposite party. This is termination simplicitor. Hence no case lied in this Court against an order of termination under section 19.

Learned Members consulted.

Hence Ordered

That the case be dismissed as not maintainable.

S.M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi
30-10-1975.

Sd/- Md. Amjad Ali

Sd/- S.K. Paul
30-10-1975.

Note taken and transcribed by
Mr. Md. Nural Hoque, at my
dictation and corrected by me.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
30-10-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Kazi Nazrul Islam Road, Rajshahi.

Complaint Case No. 16 of 1975.

Md. Abdul Jabbar (S/o. Abdul Karim), Ex-Electric Foreman, Rajshahi Jute Mills Ltd.

At present C/o. Akbar Ali of Harian, P.O. Shyampur, P.S. Paba, District Rajshahi—*Petitioner*,

versus

- (1) The Manager, Rajshahi Jute Mills Ltd., P.O. Shyampur, P.S. Paba, Dist. Rajshahi;
- (2) Bangladesh Jute Mills Industries Corporation, Adamjee Court, Motijheel, Dacca;
- (3) The General Manager, Khulna Zone, B.J.I.C., Shams House, Sir Iqbal Road, Khulna—*Opposite Parties*.

PRESENT:

Mr. S.M. Serajul Mawla—*Chairman*.

Mr. Md. Amjad Ali }
Mr. S.K. Paul } *Members.*

Dated the 31st October, 1975:

This is an application under section 25 of the Employment of Labour (Standing Orders) Act, 1965, for setting aside an order of dismissal dated 13-5-1975 and for reinstatement in service with all arrear dues, arising out of the following facts:

Petitioner was appointed as Erection Chargeman (Electrical) under the O.P. The Rajshahi Jute Mills Ltd. with effect from 1-2-1971. He was promoted as Electric Chargeman with effect from 1-1-1972 with a new scale of pay. He was redesignated as Electrical Foreman with effect from 13-10-1972 with a better scale of pay of Tk.224—15—299—15—374—15—449 plus 25% D.A. He was also placed to hold the charge of Asstt. Electrical Engineer on several occasions. On 10-2-1975 he started the Diesel Generator set to test the battery on the order and in presence of Asstt. Electrical Engineer, Mr. Syed Moslem-uddin Ahmed. When he was about to stop the Generator set on the order of the Engineer, it stopped automatically with the sound of hooter blow. Then the batteries were removed and were taken to M/S. Musa Battery Works for necessary testing or repair by the Assistant Engineer on the same day. On 11-2-1975 Asstt. Engineer left for Dacca and came back on 16th or 17th of February, 1975. Petitioner did not start the engine in the absence of the Engineer. On his return the Engineer himself tried to start the set but failed. He took the help of Mr. Musa and a Diesel Expert of Katakhal

Power House but failed to start the engine and submitted a report to the Manager on the same day blaming the petitioner for damage of the main bearing of the engine. The management then requisitioned the service of Mr. Rousan Ali, Overseer, Crescent Jute Mills Ltd. for repair of the engine. He took up necessary repair and made over it in serviceable condition to Mr. Syed Moslemuddin, Asstt. Electrical Engineer on 24-3-1975. Then on 8-4-1975 petitioner was charged as follows:

"It has been reported that on 10-2-1975 while you started the Generator set of this mills, the main bearing of the same Generator was damaged by you due to your wilful neglect of duty and carelessness and for which the company has sustained a heavy monetary loss as well as faced great inconveniences.

The above mentioned act alleged to has been committed by you amounts to misconduct under section 17(3)(b)(h) of the Bangladesh Employment of Labour (Standing Orders) Act, 1965 warranting disciplinary action against you."

An Enquiry Committee was appointed consisting of Mr. Delwar Hossain, Asstt. Manager as Chairman, Mr. M.A. Wahed, Asstt. Labour Officer and Mr. Saifuddin, Asstt. Accountant as Members. The Enquiry Committee examined Mr. Syed Moslemuddin Ahmed, Electrical Engineer, Mr. Md. Moksed Ali SBA and the petitioner and on perusal of relevant papers and evidence found the petitioner guilty of the charge brought against him and recommended punishment under section 17(3)(j) of the Employment of Labour (Standing Orders) Act. On the basis of this report the petitioner was dismissed from service with effect from 13-5-1975. He preferred an appeal to the opposite party on 17-5-1975 and instituted this case on 17-6-1975 as he was not favoured with a reply within 30 days of submission of grievance notice under section 25 of the Employment of Labour (Standing Orders) Act.

The contention of the petitioner is that he was an Electric Foreman and had no training of or knowledge in Diesel Engines though occasionally on the order of Asstt. Engineer he had to work in the Diesel Generator set and he was never in charge of the Machine. He started the machine on the order of the Manager and while he was going to stop it on the order of the Manager it automatically stopped. Asstt. Engineer himself tried to start the engine with the help of Mr. Musa after the batteries were recharged and again the Asstt. Engineer with the help of Mr. Hashem, Maintenance Engineer and Mr. Kabir, Diesel Supervisor, WAPDA, Katakali Power Station, Rajshahi, tried to start the engine and remove parts to find the defect. It is further contended by the petitioner that the Enquiry Committee did not examine any witness and that he has been made an scape goat to save the Engineer.

The contention of the second party is that the enquiry was held in presence of the petitioner in course of which witnesses were examined and petitioner was given due opportunity to cross-examine the witnesses. The committee also recorded the statement of the petitioner who did not produce any witness nor he wanted to produce any in his defence. He was given full opportunity to defend himself and enquiry was conducted impartially observing all legal formalities and no injustice has been done to the petitioner.

The only point for determination is if the charge was well-established on proper enquiry and if the order of dismissal is legally maintainable.

Admittedly the diesel engine was started on 10-2-1975 by the petitioner on the order of Mr. Syed Moslemuddin Ahmed, Electrical Engineer and on his order the batteries were removed for taking them to Rajshahi. In his report dated 17-2-1975 the Engineer did not deny his presence when the engine was started but denied his presence when the engine stopped. In his deposition he categorically denied his presence both at the time the engine was started and at the time it stopped. He simply said that he ordered the petitioner to start the engine to check its performance but according to the petitioner the Engineer was present all the time and he left the engine after asking the petitioner to remove the batteries. Admittedly the batteries were taken back before he returned from Dacca on 16-2-1975. On the evening of the 16th February, 1975, Manager complained to him that the batteries were not properly charged and the Engineer directed SBA Moksed Ali to get the batteries re-charged. We do not know how the Manager could ascertain that the batteries were not properly charged. On the next day the Engineer, Mr. Moslemuddin felt that the fly wheel of the engine was jammed. On the next day Mr. Kabir of WAPDA examined the engine and opined that either the piston or bearing has seized and advised the Engineer to remove the batteries and main bearing but he failed to remove the bearing. Then again Mr. Kabir was called in and after removal of timing gear and fly wheel it was found that the starter and main bearing was seized. Thereafter Mr. Moslemuddin enquired of SBA Moksed Ali as to how the engine stopped on 10-2-1975. Relying on the statement of Mr. Moksed Ali, Asstt. Engineer Mr. Moslemuddin submitted his report on the same day, i.e., 17-2-1975 but during his examination before the Enquiry Committee Mr Moksed Ali denied to have made any such statement to Engineer, Mr. Moslemuddin Ahmed and the Enquiry Committee held that Mr. Moksed Ali did not speak the truth on account of the pressure of the petitioner, Abdul Jabbar. In his report Mr. Moslemuddin Ahmed stated :

"The cause of such failure was the lubrication oil pressure was either very low or may be even a blockage of lubrication oil flow.

I think the lubrication system of the engine failed, then the corresponding light flickered, then hooter blown automatically and then the engine seized.

When, the light flickered, it was the duty of the operator, i.e., Foreman A. Jabbar to run to the Lub pressure meter and he could find the meter reading below the danger level and he could cut the fuel instantaneously and the engine would have stopped by force and the main bearing seizure could have been avoided".

Though myself not an expert it appears to me that Mr. Moslemuddin Ahmed also could not categorically give the reason of the failure of the engine. The Enquiry Committee in its report spoke very highly about the report of Mr. Rousan, Overseer, Crescent Jute Mills Ltd. His report is dated 24-3-1975. He stated :

"Cause of the defect as it seems from the technical point of view, that the lubrication system of the engine has been failed and the operator, i.e., Foreman, Abdul Jabbar did not observe the failure minutely. If he would be little careful and thereof he could stop the engine instantaneously then the defect would not have been so pronounced".

Instead of implicating petitioner Abdul Jabbar by name he should have implicated the operator who started the engine if at all. He is an outsider. It seems he did not take an impartial view. Though the findings of the Enquiry Committee based mostly on the report of Mr. Rousan Ali, he was not examined. His report should not have been taken into consideration without offering the petitioner an opportunity to cross-examine him. This has resulted in serious miscarriage of justice. Lastly it is admitted that Engineers of WAPDA Electrical Supply handled the engine before Mr. Rousan Ali. They should have been examined because they were most competent person to say how and why the engine failed. It also appears that the diesel section of the Rajshahi Jute Mills is insufficiently staffed and the petitioner was not the proper person to handle diesel engine. Thirdly the Enquiry Committee should have consisted of at least one expert in diesel engine.

Considering these aspect of this case I am of the opinion that the enquiry was not proper and was vitated for reasons stated above, and as such the order of dismissal of the petitioner on the basis of the report of the Enquiry Committee cannot be justified.

Learned Members consulted.

Hence Ordered.

That the case be allowed on contest without cost, and the petitioner be reinstated in his original post forthwith with all back dues.

Sd/-Md. Amjad Ali
Sd/-S. K. Paul
31-10-1975.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
31-10-1975.

Note taken and transcribed by
Mr. Md. Nural Hoque, at my
dictation and corrected by me.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
31-10-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH.

Kazi Nazrul Islam Road, Rajshahi.

Complaint Case No. 21 of 1975.

Md. Moslem Hossain,
Mechanic 'A',
Uttar Bangla Paper Mills,
Paksey, Pabna,
Vill. Charrupur.
P. O. Paksey, Dist. Pabna—*Petitioner*,

versus

General Manager,
Uttar Bangla Paper Mills,
Paksey,
Dist. Pabna—*Opposite Party*.

PRESENT :

Mr. S. M. Serajul Mawla—*Chairman*.

Mr. Md. Amjad Ali }
Mr. S. K. Paul } *Members*.

Order No. 5, dated the 20th October, 1975 :

On prayer of the petitioner the case be withdrawn.

Sd/-Md. Amjad Ali
Sd/-S. K. Paul

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi,
20-10-1975.

Typed by Mr. Md. Nural Hoque,
Stenographer, Labour Court, Raj-
shahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
20-10-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Kazi Nazrul Islam Road, Rajshahi

I. R. O. Case Nos. 49 and 50 of 1975.

Md. Asgar Ali,
S/o. Late Kabir Uddin,
Switch Board Attendant,
Thakurgaon Sugar Mills,
P. O. Thakurgaon Road,
Dist. Dinajpur—*Petitioner*,

versus

(1) Manager,
Thakurgaon Sugar Mills,
P. O. Thakurgaon Road,
Dist. Dinajpur,

and

(2) The Chairman,
Bangladesh Sugar Mills (Nationalised) Corporation,
Shilpa Bhaban, Motijheel,
Dacca-2—*Second Parties*.

PRESENT;

Mr. S. M. Serajul Mawla—*Chairman*.

Mr. Md. Amjad Ali	} <i>Members.</i>
Mr. S. K. Paul	

Dated the 29th October, 1975.

In both these cases against the Thakurgaon Sugar Mills, Mr. Asgar Ali is the petitioner. Both the petitions are unusually lengthy. Case No. 49 contains 9 prayers or grievances to be redressed by this Court and Case No. 50 contains 13 prayers. It appears that the petitioner is not happy with his pay scale, annual increment etc. since 1960. He has addressed 70 applications to the authority to redress his grievances but without any result. The Workers Union is also not sympathetic towards him. Hence he is undergoing monetary loss, physical and mental unhappiness which resulted in break of health and caused some diseases. Second party has produced papers marked Exbt. Kha to Kha (6) to show that since his appointment petitioner was given different scale of pay from time to time as per agreement and set up of the Mill. He also got his usual annual increment and no injustice was done to him.

It appears that petitioner got his first appointment as Switch Board Attendant in the Dewanganj Sugar Mills, Mymensingh where he was not permitted to join, however, he got his appointment at the same post in the Thakurgaon Sugar Mills on 12-11-1959. He was given a scale of pay other than the pay scale mentioned in the advertisement. This is the starting point of

his grievance. But thereafter the pay scale has been changed several times and he got better pay scale as per Bipartite Agreement. His contention is if the employer would adhere to the pay scale advertised, he would have been more benefited at every change of pay scale. His petition contains lengthy accounts showing the amount of loss he sustained on account of the employer failure to give him the advertised pay scale. These are matters of past. The ownership and management also have undergone several changes since 1958. Hence his grievances are barred by limitation, waiver and acquiescence. These multifarious claim are also not maintainable due to misjoinder of cause of action. However, I feel that the Management should take adequate step for his proper treatment so far it is permissible under the law and within the means of second party and he should be given facilities to leave with families within the mill area. With these observations both the cases are disposed of and dismissed as not maintainable.

Learned Members consulted.

Sd/-Md. Amjad Ali

Sd/-S. K. Paul

S. M. SERAJUL MAWLA
Chairman,

Labour Court, Rajshahi,
29-10-1975.

Note taken and transcribed by
Mr. Md. Nural Hoque, at my
dictation and corrected by me.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi,
29-10-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Kazi Nazrul Islam Road, Rajshahi.

I. R. O. Case Nos. 67 and 68 of 1975.

Md. Azahar Ali,
C/o. Jatiya Sramik League,
Anchal Karjalaya Natore,
P. O. and P. S. Natore,
Dist. Rajshahi—(Case No. 67),

and

Md. Bulbul Hossain,
C/o. Jatiya Sramik League,
Anchal Karjalaya Natore,
P. O. and P. S. Natore,
Dist. Rajshahi (Case No. 68)—*Petitioners,*

versus

Janata Oil and Flour Mills,
Prop. Sukur Mohammad Sk.,
Vill. Baragacha Natore,
P. O. and P. S. Natore,
Dist. Rajshahi—*Opposite Party.*

PRESENT :

Mr. S. M. Serajul Mawla— *Chairman.*

Mr. Md. Amjad Ali }
Mr. S. K. Paul } *Members.*

Dated the 30th October, 1975.

Petitioner Md. Azahar Ali of Case No. 67 and petitioner Md. Bulbul Hossain of the Case No. 68 instituted these cases against the second party the Proprietor, Janata Oil and Flour Mills on the allegations that while they were working under the opposite party as permanent labourers at the monthly wages of Taka 300 they were dismissed on 27-5-1975. They are entitled to Taka 7,576-38 on account of working during holidays, festival holidays and overtime. The contention of the second party is that his mill was started in January 7, 1975 and the petitioner used to work under him as day labourer on or when required without any obligation from the either side for continuous appointment on each day. They used to get their daily wages after completion of days work. Both the petitioners were held guilty for theft of mustard seed by a local 'shalish' on 27th of May and thereafter they did not turn up to work under the second party. The questions of dismissal does not arise as they were never employee under the second party.

Petitioners could not show a scrap of paper to prove that they were employee of the second party getting pay at Taka 300 per month. The second party produced a Tape Recorder in the Court to prove the statement made by the petitioners confessing their guilt and admitting that nothing was due to them from the opposite party and that they were not permanent employees under the opposite party. From the facts and circumstances of the cases we are convinced that the petitioners worked as day labourer under the second party and they were ill advised to ring these cases by somebody.

Learned Members consulted.

Hence Ordered

That the case be dismissed on contest with cost. Hearing fee for each case is fixed at Taka 50 (Taka fifty).

Sd/-Md. Amjad Ali

Sd/-S. K. Paul

S. M. SERAJUL MAWLA
Chairman,

Labour Court, Rajshahi,
30-10-1975.

Note taken and transcribed by
Mr. Md. Nural Hoque, at my
dictation and corrected by me.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
30-10-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Kazi Nazrul Islam Road, Rajshahi.

I.R.O. Case No. 70 of 1975.

Md. Abdul Matin, C/o. Shamsuddin, Guest House Cook, Rajshahi Chinikal,
P.O. Shyampur, Rajshahi—*Petitioner*,

versus

- (1) Manager, Rajshahi Jute Mill (BJIC), P.O. Shyampur, Rajshahi,
(2) Administrative Officer, Rajshahi Jute Mills (BJIC), P.O. Shyampur, Rajshahi—
Opposite Parties.

PRESENT:

Mr. S. M. Serjul Mawla—*Chairman.*

Mr. Md. Amjad Ali .. }
Mr. S. K. Paul .. } *Members.*

Order No. 6, dated the 29th October 1975.

On the prayer of the petitioner the case be withdrawn.

Sd/-Md. Amjad Ali.
Sd/-S.K. Paul.

S.M. SERAJUL MAWLA
Chairman.
Labour Court, Rajshahi.
29-10-1975.

Typed by Mr. Md. Nural Hoque, Stenographer,
Labour Court, Rajshahi.

S.M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
29-10-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Kazi Nazrul Islam Road, Rajshahi.

I.R.O. Case Nos. 19, 20, 21, 22 and 23 of 1975.

- (1) Mr. Kailash Giri, C/o. Bangladesh Chinikal Sramik Union, P.O. Gopalpur,
P.S. Lalpur, District Rajshahi (Case No. 19);
(2) Md. Saiful Hoque, C/o. Bangladesh Chinikal Sramik Union, P.O. Goalpur,
P.S. Lalpur, District Rajshahi (Case No. 20);
(3) Md. Ambar Ali, C/o. Bangladesh Chinikal Sramik Union, P.O. Gopalpur,
P.S. Lalpur, District Rajshahi (Case No. 21);

- (4) Mr. Sukdev Ram Shaw, C/o. Bangladesh Chinikal Sramik Union, P.O. Gopalpur, P.S. Lalpur, Dist. Rajshahi (Case No. 22);
- (5) Md. Golam Rasul, C/o. Bangladesh Chinikal Sramik Union, P.O. Gopalpur, P.S. Lalpur, District Rajshahi (Case No. 23)—*Petitioners*,

versus

- (1) North Bengal Sugar Mills Co. Ltd., P.O. Gopalpur, P.S. Lalpur, District Rajshahi,

AND

- (2) Bangladesh Sugar Mills Corporation, Shilpa Bhaban (5th Floor), Motijheel Commercial Area, P.S. Ramna, Dacca—2—*Second Parties*.

PRESENT:

S.M. Serajul Mawla— <i>Chairman</i>	
Mr. Md. Amjad Ali	} <i>Members.</i>
Mr. S. K. Paul	

Dated the 29th October 1975.

These five cases by separate petitioners, all Security Guards under the second party, The North Bengal Sugar Mills Co. Ltd. arising out of the same facts and involving same questions of law have been taken up for analogous hearing. Petitioners are non-manufacturing workers and their services are governed by the provisions of Bangladesh Shops and Establishment Act, 1965. Up to 7-12-1970 they worked for 44 hours per week and enjoyed $1\frac{1}{2}$ days consecutive holidays with full pay in each week. Thereafter the second party fixed the working hours at 48 hours per week and reduced the rest period from $1\frac{1}{2}$ days to 1 day only. Under section 4 of the Shops and Establishment Act, every worker is entitled to one and half days consecutive holidays in each week. This right of the petitioners were also guaranteed by an agreement dated 17-1-1968. Clause 7 of this agreement is as follows:

“It is further agreed by the Management that the existing facilities enjoyed by the workers, not covered by this Agreement shall not be curtailed or modified to their disadvantages without the consent of the Union”.

This clause of this agreement is almost similar to Section 31 of the Shops and Establishment Act and Section 77 of the Factories Act. It is claimed that by this aforesaid agreement and laws the petitioners right to work only for 44 hours a week and to enjoy $1\frac{1}{2}$ days rest per week is guaranteed and secured by law and agreement. Petitioners now pray for restoration of this right with direction to the second party to pay overtime wages as per section 9 of the said Act for all half weekly holidays in which the petitioners were compelled to work and were not allowed rest.

The contention of the second party is that the petitioners enjoy $1\frac{1}{2}$ days weekly holidays regularly according to law and therefore the present case has been filed without any cause of action and the claim is also hopelessly barred by limitation.

Points for Determination

- (1) If the petitioners are enjoying $1\frac{1}{2}$ days consecutive holidays in each week
- (2) If they are working for 48 hours ? If so, are they doing 4 hours extra duty in contravention to the agreement and laws.
- (3) If the claim is barred by waiver, acquiescence and limitation.

FINDINGS AND DECISIONS

Point Nos. 1 and 2: According to the second party the petitioners are enjoying $1\frac{1}{2}$ days consecutive holidays but according to the petitioners they are only enjoying one day's holiday per week. Parties came with different interpretation of the term half day which has been defined in clause (J) of section 2 of Shops and Establishment Act as "a period of 5 consecutive hours between the beginning and closing hours of an Establishment. It was argued by the Learned Advocate for the second party that a Security Guard on being relieved of his duty at 2 a.m. of the night following Wednesday and getting complete rest up to 10 a.m. of Friday, enjoys $1\frac{1}{2}$ days consecutive holidays. But according to Mr. Paul, Learned Member of this Court and President, Sugar Mills Workers Union the day begins at midnight section 2(c) and after working for 8 hours or 9 hours a day they earn the remaining period of the day as his own period of rest with which the employer had nothing to do and cannot deduct any period from this 15 or 16 hours earned by a worker for the purpose of statutory rest or holiday and if the employer does so he comes within the mischief of getting over work. According to the proviso to section 2, Clause (c) in the case of a worker whose hours of work extend beyond midnight, a day means the period of 24 hours beginning from the time of commencement of his work, respective of midnight. Thus if we accept Mr. Paul's interpretation it will mean that a worker who worked from 10 a.m. to 2 p.m. and again from 10 p.m. to 2 p.m. his day begins at 10 a.m. and ends at 10 a.m. on the next day and he cannot be given rest for a full day though he was relieved at 2 a.m. and will be required to turn up at 10 a.m. on the day following after remaining at rest for 32 hours (beginning from 2 a.m. of the night following Wednesday and ending at 10 a.m. of Friday). According to the second party this 32 hours as per definition of a day and half day make more than $1\frac{1}{2}$ days holidays. Mr Paul's argument would have been acceptable if a Security guard were required to work for 8 hours in two shifts of 4 hours each within a period of 24 hours beginning at midnight but from attendance register it is found that a Security Guard works for 8 hours a day. His one shift begins before midnight and ends after midnight, i.e., one shift of 4 hours consists of 2 hours of two consecutive days.

The following example taken from the duty Roster of a Security Guard will make it clear;

		Duty Hours				
Day.	Date.	From. To.	From. To.	Total.		
Monday	... 1-9-1975	10 a.m.—2 p.m.	10 p.m.—2 a.m.	8 hour		
Tuesday	... 2-9-1975	Ditto	... Ditto	8	..	
Wednesday	... 3-9-1975	Ditto	... Ditto	8	..	
Thursday	... 4-9-1975	REST DAY				
Friday	... 5-9-1975	10 a.m.—2 p.m.	10 p.m.—2 a.m.	8	..	
Saturday	... 6-9-1975	Ditto	... Ditto	8	..	
Sunday	... 7-9-1975	Ditto	... Ditto	8	..	
Total				48	..	

Here the Guard was at rest from 2 a.m. of Thursday to 10 a.m. of Friday, total hours being 32 hours and put in 48 hours of duty. But according to the definition of Day as given in the Act he worked on each day of the week including Thursday which was shown as rest day. If we accept Mr. Paul's theory then he had no rest at all because he earned 22 hours of Thursday as his own hours of rest by putting in two hours of duty from midnight to 2 a.m. It will be possible to apply his theory into practice if the duty hours of Security Guard is confined between midnight to midnight and does not exceed beyond midnight. If the above duty Roster is permissible then the Management has got no way of granting one and a half consecutive days rest other than in the manner it is in practice now.

I am, therefore of the opinion that Mr. Paul's theory is not acceptable. It appears from the attendance register that previously Security Guards used to work for 44 hours per week and the attendance register shows three consecutive 'Rs' meaning rest each 'R' for one evening or morning. This was the practise up to 7-12-1970. Thereafter the Security Guards are working for 48 hours and the attendance register shows two 'Rs' per week. The 'R' numbering 2 or 3 if taken into consideration with the duty Roster and the definition of 'Day' and 'Half Day' does not mean that 3 'Rs' mean $1\frac{1}{2}$ consecutive days rest and 2 'Rs' mean less than that, in view of the analysis and explanation of the actual facts and interpretation offered above. I am, therefore of the opinion that Security Guards have not been denied the right to one and half consecutive days rest, though they worked 48 hours per week. According to law, "a worker shall be required to work not more than 48 hours in any week (section 50 Factories Act). Factories Act and Shops and Establishment Act came into existence in the year 1965. Section 31 of Shops and Establishment Act and section 77 of the Factories Act provided that nothing in this Act shall adversely affect any right or privilege enjoyed by the workers on the date this Acts came into force under any existing law, award or agreement. Thus though the Act gave the employer the right to have 48 hours service in a week, at the same time secured workers right to work only for 44 hours if such right was in existence before coming into force of this Act. The agreement dated 17-1-1968 came into existence after this Acts. On the date of this agreement the Security Guards were working for 44 hours per week. Thus the right to work for 44 hours was secured by law and agreement. This right cannot be taken away by the second party unless there is a change in the law or agreement.

Point No. 3: I have held above that the contention of the first party that they are not allowed $1\frac{1}{2}$ consecutive days rest is not correct but they had to work for 48 hours in contravention to the existing laws and agreement. This right to work for 44 hours a week was infringed in 1970 and these cases were instituted in May, 1975. They slept over their right for years together which is indicative of waiver and acquiescence and such claim after lapse of such a long period is likely to take the adversary by surprise. There is no evidence to show that there was any demand by the petitioners to mitigate their grievance.

Considering these aspects of the cases I am of the opinion that petitioners should get their dues as per law and agreement for putting in extra duty of 4 hours a week with effect from the date the second party received notices of these cases but their claim for over time wages for all half weekly holidays in view of the above findings is misconceived and not maintainable.

Learned Members consulted.

Hence Ordered

That the petitioners first prayer as to one and half days consecutive holidays in each week be disposed of as per observations made above and it is hereby declared that it is their secured right to enjoy one and a half days consecutive rest in each week. Their prayer for overtime wages for all half weekly holidays is hereby rejected and instead they are allowed over time wages as per law and agreement for putting in 4 hours extra duty in each week with effect from 25-5-1975 on which the second party received notices of these cases. This judgement shall govern I.R.O. Case No. 19 to 23 of 1975.

Sd/- Md. Amjad Ali
29-10-1975.

S. M. SERAJUL MAWLA

Sd/- S.K. Paul.
29-10-1975.

Chairman,
Labour Court, Rajshahi.
29-10-1975.

Note taken and transcribed by Mr. Md. Nural Hoque, at my dictation and corrected by me.

S.M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
29-10-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Kazi Nazrul Islam Road, Rajshahi

I.R.O. Case Nos. 11 and 12 of 1975.

Md. Fazar Ali Mollah, Vill. Kathalbaria, P.O. and P.S. Natore, District Rajshahi—(Case No. 11);

AND

Md. Sekendar Ali, Vill. Bangajal, P.O. and P.S. Natore, District Rajshahi—(Case No. 12)—*Petitioners*;

versus

The Natore Thana Kendrio Samabay Samity Ltd., Vill. Bangajal, P. O. and P.S. Natore, District Rajshahi—*Opposite Party*.

PRESENT:

Mr. S. M. Serajul Mawla—*Chairman*.

Mr. Md. Amjad Ali ..

Mr. S. K. Paul ..

} *Members.*

Dated the 25th October, 1975.

Petitioner Md. Fazar Ali Mollah of Case No. 11 and petitioner Md. Sekendar Ali of Case No. 12 were Night Guards under the second party the Natore Thana Kendrio Samabay Samity Ltd. They were dismissed from

service on charge of theft. They instituted I.R.O. Case Nos. 27 and 28 of 1974 against the order of dismissal. It was found that the O.P. did not correctly follow the procedure laid down in section 18 of Employment of Labour (Standing Orders) Act and dismissed the petitioners by resolution of the Managing Committee. Petitioners instituted case before expiry of 30 days from date of submission of the grievance petition as required under section 25. Considering these peculiar circumstances of these cases, myself and Learned Members in consultation with the parties found out a compromise formula and both cases were allowed and the following order was passed by the Court.

“That the order of dismissal of the petitioner by the opposite party are hereby upheld and opposite party is hereby directed to pay the petitioners their wages and compensation as provided by section 19 of the Employment of Labour (Standing Orders) Act in respect of monthly rated workers”. That is, the order of dismissal was commuted to an order of termination under section 19 of the said Act. Thereafter the petitioners brought Case Nos. 11 and 12 of 1975 claiming Taka 26,764 and Tk. 25,080 on account of weekly rest, festival holidays, overtime, etc. Sometimes after the original petition was amended by addition of further claim of Tk. 1,220 by Sekerdar Ali of Case No. 12 and Tk. 1,276 by Fazer Ali Mollah of Case No. 11 as per judgement of the earlier cases that is case Nos. 27 and 28 of 1974.

The contention of the second party is that the petitions are not maintainable on account of multifariousness and also because the services of the petitioners were governed by Bengal Co-operative Rules as amended from time to time and not by the I.R.O. or Employment of Labour (Standing Orders) Act. Petitioners duty as per convention and tradition of the Society was to come at night, sleep in the room provided for them and leave in the morning to follow any other avocation of life. They were not bound to attend any duties during day time. They used to come only at night only to sleep and had to do no other work.

While disposing case Nos. 27 and 28 of 1974 we took a lenient view considering the facts that the petitioners were poor night guards though the cases were not maintainable and both of them were charged of a heinous offence like theft. We did not decide the question whether the petitioner were workers within the meaning of Shops and Establishment Act 1965 or Employment of Labour (Standing Orders) Act 1965. We simply evolved a formula for payment of some money to the petitioners out of sheer kindness. But some wire puller behind them took undue advantage of the judgement passed in Case Nos. 27 and 28 of 1974 and instituted these cases for a fantastic claim beyond the paying capacity of the Society which besides carrying on business, undertakes manifold activities for the betterment of the economic life of its members. The Co-operative Societies have got its own rules and regulation and it is also regulated by Act. As such I am very much in doubt if the Labour Laws like Shops and Establishment Act and Employment of Labour (Standing Orders) Act will be applicable in cases like these. Be that as it may, in our judgement we never intended to include claims like festival holidays, overtime, etc. We also did not decide the question of the right of the petitioners under the Labour Laws. These claims coupled with the claim of the earlier cases Nos. 27 and 28 make the cases not maintainable on account of multifariousness. The second party Samabaya Samity never paid overtime wages, festival holidays or wages on account of overtime etc. The employees of the

second party never enjoyed such right under the Rules of Co-operative Societies or by tradition or convention. Hence the claims of the petitioner Fazer Ali Mollah of Case No. 11 for Tk. 20,764 and that of Sekendar Ali for Tk.25,080 are not maintainable and is hereby dismissed. As regards the claim arising out of the judgement of case Nos. 27 and 28 of 1974 we have got nothing to say afresh. With these observations both these cases are disposed off.

Learned Members consulted.

Sd/- Md. Amjad Ali.

Sd/- S. K. Paul.

S. M. SERAJUL MAWLA

Chairman.

Labour Court, Rajshahi.
25-10-1975.

Note taken and transcribed by Mr. Md. Nural Hoque, at my dictation and corrected by me.

S.M. SERAJUL MAWLA

Chairman.

Labour Court, Rajshahi.
25-10-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Kazi Nazrul Islam Road, Rajshahi.

I.R.O. Case No. 73 of 1974.

Mr. S.M. Abdur Rahman, s/o. late S.M. Meher Ali, Vill. Upper Bazar, Bangazal, P.O. and P.S. Natore, Dist. Rajshahi—*First Party*,

versus

M/S. Natore Thana Kendriya Samabaya Samity Ltd., P.O. and P.S. Natore, Dist. Rajshahi—*Second Party*.

PRESENT:

Mr. S.M. Serajul Mawla—*Chairman*.

Mr. Md. Amjad Ali ..

Mr. S. K. Paul ..

} *Members.*

Dated the 27th October 1975:

Petitioner S.M. Abdur Rahman was appointed as Water Inspector with effect from 3-10-1963 under the second party, The Natore Thana Kendriya Samabaya Samity Ltd. (N.T.C.A. Ltd.). His service was terminated with effect from 13-4-1966 on account of Adverse Police Verification Report (*vide* Service Book exbt. Kha 9). After liberation he managed to get an appointment as a Workshop Inspector on a purely temporary basis with effect from 16-3-1972 *vide* exbt. Kha 6. According to the second party he secured this appointment at the point of arms (para 6 of the written statement). Petitioner though not an employee under the second party after his service was terminated in 1966 he submitted a joining report on 26-1-1972. This joining report will speak a lot as to how he procured his new appointment as Workshop Inspector. However, while in the service of the second party as Workshop Inspector the petitioner

with two others were retrenched from service by order dated 2-10-1974 marked exbt. Kha 5. Petitioner instituted this case on 13-11-1974 challenging the validity of the order of retrenchment. His contention as it appears from para 13 of his petition is that he has been retrenched by the second party on the plea that they will let out the mill but the mill is still running. They retrenched the petitioner only to get rid of him because of his Trade Union Activities.

Contention of the second party is that the petitioner was not an employee under the second party after 13-4-1966 but he forced the second party to allow him temporary service with effect from 16-3-1972. He was placed in Workshop but due to loss it was closed. Then he was placed in the Husking Mill but it became a losing concern and was ultimately closed due to want of parts. Thus the service of the petitioner with two others was not necessary and he was retrenched with effect from 3-10-1974 and was allowed one month's pay in lieu of notice which he did not accept.

It appears from his letter of appointment that the appointment of the petitioner as Workshop Inspector was purely temporary and liable to be terminated at any time without assigning any reason. On 29-3-1972 petitioner submitted an Ekrarnama marked exbt. Kha 1 wherein he stated that he does not claim pay of his previous service but claims continuity of service. No action was taken on this petition or Ekrarnama and from the papers produced by the petitioner it appears that he was not pulling on well with the Management and the parties were never in peace. There are many allegations and counter allegations with which we have got nothing to do, for the purpose of this case only question for our consideration is if the petitioner was retrenched on account of the closer of the mill or if the petitioner has been retrenched while the mill was functioning. While the second party came forward to swear an affidavit to the effect that the mill and the Workshop are still closed and not functioning at all, the petitioner submitted in the open Court that though the mill and the Workshop was closed at the time he was retrenched, these are now functioning. If so, the retrenchment was justified and if the mill and Workshop is now functioning, it is for the petitioner to approach the second party for employment under section 14 of the Employment of Labour (Standing Orders) Act.

Learned Members consulted.

Hence Ordered

That the case be dismissed on contest without cost.

Sd/- Md. Amjad Ali,
27-10-1975.

Sd/- S.K. Paul,
27-10-1975.

S.M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi:
27-10-1975.

Note taken and transcribed by Mr. Md.
Nural Hoque, at my dictation and
corrected by me.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
27-10-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Kazi Nazrul Islam Road, Rajshahi

I.R.O. Case Nos. 56 and 57 of 1975

Md. Shamsul Alam, C/o, Md. Abdul Jalil, Jaipurhat Cement Factory, P.O. Jaipurhat, Dist. Bogra (Case No. 56),
and
Md. Jabbar Ali, Vill. Jagadishpur Coal Field, P.O. Jamalganj, Dist. Bogra (Case No. 57)—*Petitioners*,

versus

M/S. Jaipurhat Lime Stone and Cement Project, P.O. Jaipurhat, Dist. Bogra—
Second Party.

PRESENT :

Mr. S.M. Serajul Mawla—*Chairman*.

Mr. Md. Amjad Ali

Mr. S. K. Paul

} *Members*.

Dated the 30th October 1975:

Petitioners were Security Guards under the second party, M/S. Jaipurhat Lime Stone and Cement Project, Bogra. Both of them were charge sheeted on 18-2-1975. Both the charges are as follows:

“While you were detailed for duty from 10-00 p.m. of 13-2-1975 to 6-00 a. m. on 14-2-1975 on account of your negligence and carelessness of your duty a theft occurred in the M.S. Rod Yard resulting loss of 428 lbs. of M.S. Rod amounting to Tk. 1,560-00.

“The above acts alleged to have been committed by you amount to misconduct as per section 17 of Employment of Labour (Standing Orders) Act, 1965 and would warrant disciplinary action by Management against you.”

Not satisfied with the explanation submitted by the petitioners the second party instituted an Enquiry Committee. The Enquiry Committee held an enquiry and submitted its report and thereafter the second party discharged petitioner Md. Shamsul Alam of Case No. 56 and dismissed petitioner Md. Jabbar Ali of Case No. 57 from service on 12-5-1975. Their appeal dated 16-5-1975 for reconsideration was rejected by the second party on 18-6-1975. Thereafter Md. Shamsul Alam instituted Case No. 56 on 9-7-1975 and Md. Jabbar Ali instituted Case No. 57 on 10-7-1975. Their contention is that there was no theft at all though the seal of the gate of the M.S. Rod Yard was broken which might be due to many other reasons and that the Enquiry Committee did not examine any witness and punished the petitioners on mere suspicion. Criminal case brought against them for the alleged theft of M. S. Rod also ended in their acquittal.

The contention of the second party is that while the petitioners were on duty as Security Guards on the night following 13th February, 1975 a theft causing loss of 428 lbs. M.S. Rod occurred. On enquiry the petitioners were found unfaithful, dishonest, negligent and careless in their duties for which the theft of M.S. Rod occurred.

Only point for our consideration is if the order of discharge of petitioner Shamsul Alam and the order of dismissal of petitioner Jabbar Ali were justified according to law.

FINDINGS AND DECISIONS

The Enquiry Committee held that Jabbar Ali were either directly involved with the occurrence of theft or it took place on account of his conspiracy or he connived at it or it took place on account of his negligence and carelessness. The Rods were measured on 15-2-1975 and the stock was found short by 428 lbs., of course, Jabbar Ali was not present when this weighment took place. As regards Shamsul Alam the Enquiry Committee held that there is no direct evidence to implicate him with the occurrence of theft but his conduct being very suspicious his complicity in the matter cannot be ruled out. The Enquiry Committee examined the petitioners and some other witnesses. Both the petitioners admitted that the seal was found broken though they denied the occurrence of theft and offered various inconsistent explanation. Hence it is not correct to say that the Enquiry Committee did not examine any witnesses and refused the petitioners their right to defend themselves.

Petitioner Shamsul Alam was discharged not under section 16 but under section 18 of Employment of Labour (Standing Orders) Act on mere suspicion. He was charged with misconduct which has been defined in section 17(3). It contains a list of acts and omissions that shall be treated as misconduct. Petitioner was charged with negligence and carelessness. The word carelessness does not find place in the list of misconduct. Possibly it is synonymous with the word negligence. But a negligence to amount to misconduct must be habitual. There is no charge of habitual negligence or habitual carelessness. Considering this legal aspects of these case I am of the opinion that the proper order should have been an order of discharge of petitioner Jabbar Ali and petitioner Shamsul Alam should have been given the benefit of doubt. In this view of the matter Shamsul Alam should be reinstated in service and the order of dismissal of Jabbar Ali should be commuted to an order of discharge.

Learned Members consulted.

Hence Ordered

That Case No. 56 be allowed on contest without cost and petitioner Shamsul Alam be reinstated in his original post with effect from 1-11-1975 and the period from the date of his dismissal till 31-10-1975 be treated as leave without

pay. Case No. 57 of 1975 succeeds in part. The orders of dismissal of Jabbar Ali is hereby commuted to an order of discharge with effect from the date of his dismissal.

This judgement shall govern both the case Nos. 56 and 57 of 1975.

Sd/- Md. Anjad Ali.

S.M. SERAJUL MAWLA

Chairman,

Labour Court, Rajshahi.

Sd/- S.K. Paul.
30-10-1975.

30-10-1975.

Note taken and transcribed by Mr. Md. Nural Hoque, at my dictation and corrected by me.

S.M. SERAJUL MAWLA

Chairman,

Labour Court, Rajshahi.

30-10-1975.

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
আইন, সংসদ বিষয়াবলী ও বিচার মন্ত্রণালয়

(বিচার বিভাগ)

(শাখা ৪)

বিজ্ঞপ্তি

ঢাকা, ২০শে ডিসেম্বর, ১৯৭৫।

নং ১৪৬৯-জে-৪/১এইচ-৩/৭৩—গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ৯৮ অনুচ্ছেদে প্রদত্ত ক্ষমতাবলে প্রেসিডেন্ট বাংলাদেশ সুপ্রীম কোর্টের হাই কোর্ট বিভাগে অতিরিক্ত বিচারক পদে বাংলাদেশ সরকারের আইন, সংসদ বিষয়াবলী ও বিচার মন্ত্রণালয়ের সচিব জনাব মোহাম্মদ হাবীবুর রহমানকে তাঁহার শপথ গ্রহণ করিবার তারিখ হইতে দুই বৎসরের জন্য নিযুক্ত করিলেন।

রাষ্ট্রপতির আদেশক্রমে

খন্দকার মাহবুব হুসাইন

উপ-সচিব।