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MINISTRY OF LABOUR, SOCIAL WELFARE, CULTURAL AFFAIRS AND SPORTS

(Labour and Social Welfare Division)

Section VI.

NOTIFICATION

Dacca, the 18th July 1975.

No. S. R. O. 251-L/75/S-VI/1(1)/75/317—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 First Labour Court, Dacca, in respect of the following cases, namely:—

(1) I. R. Case No. 60 of 1975.

(2) Complaint Case No. 76 of 1974.

(3) I. R. Case No. 54 of 1975.

(4) I. R. Case No. 57 of 1975.

(5) I. R. Case No. 353 of 1974.

(6) I. R. Case No. 352 of 1974.

(7) Complaint Case No. 32 of 1975.

(8) Criminal Case No. 24 of 1974.

By order of the President

MUHAMMAD KHADEM ALI

Deputy Secretary.

Price : ·84 Paisa.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case No. 60 of 1975.

S.M.N. Abi Obaidullah Choudhury—*First Party*,

versus

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

PRESENT:

Mr Amanullah Khan—*Chairman*.

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

This is an application under section 34 of the Industrial Relations Ordinance, 1969.

The First Party Mr S.M.N. Abi Obaidullah Chowdhury is a working Journalist designated as District News Editor in the Azad and Publications Ltd. His present salary is Taka 1,005 per month. It is alleged that he is aged 69 years and has put in 39 years of service. It is further alleged that of late the First Party became ill and went on leave for 85 days from 3rd Februarv, 1975 and in the meantime developed paralysis rendering his right-hand unfit for work. So the first party prayed by a petition dated 26th April, 1975 for being retired. The Second Party has not responded to this prayer of the First Party.

The Second Party Managing Director of the Azad and Publications Ltd. in his written statement submits that this case is not maintainable as the First Party has no right to be discharged or retired as prayed for. He can only resign on grounds of health. The First Party, it is alleged, is in the service of the Second Party from 5-4-1960 only.

The First Party in his deposition says that he is aged 69 years and has put in 39 years of service in the Azad and Publications. He adds that he was granted leave on medical grounds from 3-2-1975 to 28-4-1975 and during this period his right-hand has become paralysed rendering him unfit for any work. So he applied for retirement by his petition dated 26-4-1975, Ext. 1, but the Second Party gave no reply till now. The Second Party did not challenge these statements on oath except suggesting in cross-examination that the First Party is in service of the Azad and Publications from 1960. None deposed for the Second Party on oath to support the suggestion either. So the entire statement of the First Party remains unrebutted which means he is aged 69 years, has put in 39 years of service and has become incapable of discharging his duties as an employee of the Azad and publications Ltd. The only stand now taken by the Second Party is that this case is not maintainable under section 34 of the Industrial Relations Oridinance of 1969 as no right of the First Party has been so far infringed. Now I have not been shown any provision conceding retirement to the First Party. The learned Advocate for the First Party contends that his right to be discharged under section 16 of the Employment

of Labour (Standing Orders) Act, 1965 at least has been infringed. The leraned Advocate for the second party contends that the section concedes a right to the employer to discharge an employee on grounds of health and other reasons only and no further. It does not grant any right to the employee to be discharged. The section reads:—

16. Discharge from service—A worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health or such other reasons not amounting to misconduct:

Provided that a worker having completed not less than one year of continuous service, so discharged,. shall be paid by the employer compensation at the rate of fourteen days wages for every completed year of service, or for any part thereof in excess of six months, or gratuity, if any, whichever is higher.

Apparently the section gives the employer the right to discharge an employee. It does not say in so many words that the employee too has the similar right to be discharged for reasons given in the section. But such right to the employee must necessarily follow as corollary to the section because a right must give rise to a corresponding right. It is all the more so because no human right can be denied when put forward before a Court of Justice unless literally and in most unmistakable terms denied by the law of the country in which the Court functions. Where a relief has not been provided direct, it will be the Court's solemn duty to find a provision that indirectly and by inference grants the relief and such provision, if found must be held to provide the relief if necessary by stretching it hard and utmost. These are the reasons why Section 16 of the Employment of Labour (Standing Orders) Act, 1965 must be interpreted to guarantee a corresponding right to the employee to be discharged with all the benefits he would have been entitled to if he would have been discharged by the employer. Now, what is the other alternative for him where an employer fails to discharge an employee on genuine grounds under section 16 of the Act, 1965. The Second Party Advocate submits that the employee may resign. But why should one who has given 39 years of his life to the service of an employer and at the age of 69 with eyes blurred sinews failing and hands shaking shall resign and go back unrequited? Why one who had paid with life and blood shall not be repaid even in a few coins at his old age when he is living on borrowed time? To tell such person to resign may sound falsely logical but is devilishly diabolical. A Court shall not be a party to such moustrosity if it can help not being so—I mean, if there is some provision of law which can be infered to provide even by a remote chance the relief sought for and not positively denied by law. I am not forgetful of the fact that a similar right granting an employee the right to get discharged could have been made as in the case of termination under section 19 of the Employment of Labour (Standing Order) Act, 1965. Since it has not been so provided it may be contended that it was not intended to be granted. But such intention does not necessarily follow from absence of such provision. Absence of something does not mean something not intended. It can only mean an omission and no further. It is for the Court to find the implications of such omission. As for the provisions granting right to terminate employment to both the employer and the employee under section 19 of the Act, 1965. I may point out that in the case of termination of employment by an employer no compelling disability arises from the employee and as such he might not suffer if he had not the similar right to terminate his employment. So a positive provision had to be made granting him similar right to terminate as

the employer has been granted otherwise his right to terminate could not have been deduced at least on the ground of compulsion from the right of the employer to terminate his employment but here in the case of section 16 of the Employment of Labour (Standing Orders) Act, 1965 the employee is under a disability not of his own creation and as such a counter right must be inferred even if not provided for, otherwise he gets a raw deal which the legislature could not have intended. I, therefore, find that the first party has a right under section 16 of the Employment of Labour (Standing Orders) Act, 1965 to be discharged with all the benefits thereunder and this case maintainable. While concluding this point of maintainability I would like to answer the apprehension of the learned Advocate for the Second Party employer that this interpretation of the section is likely to be misused by the unscrupulous employees who may come up with such claim to be discharged on grounds of health and other reasons not genuine. But that is no reason why genuine reasons should go unheeded. It will be the duty of the employer to examine and grant discharge or refuse it. While examining the grounds he should see if the employee has become so incapacitated that his further employment is no longer desirable. If his employment is no longer desirable the employer may discharge him. If he fails to do it the Court may intervene. On the other hand, if grounds are found to be not enough he may refuse discharge and may even take disciplinary action if the prayer is found *malafide*. But he cannot just keep the employee on tenter hooks and create circumstances to force him to resign and not pay him his dues which he would have been entitled to under section 16 of the Employment of Labour (Standing Orders) Act, 1965 if the employer would have been honest and discharged him under the said section. None of the claims made in the petition has been denied and I find no reason to refuse any of them including the dues on increment which too is a right of an employee unless stopped for sufficient reasons. The claim for 14 days' wages for each completed year of service is guaranteed by the said section and the rest other than increment dues relates to unpaid salary. So, I allow the entire claim as made which comes to Taka 52,257·00.

The case is allowed on contest. The first party be discharged from the services of the Second Party who is directed to pay the first party a sum of Taka 52,257·00 to the first party within 30 days from date.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
26-6-1975.

Members consulted.

আমি একমত

স্বাঃ—ম, করিম।

আমি একমত

স্বাঃ—এম, এ, মন্নান।

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

AMANULLAH KHAN
Chairman,
26-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 76 of 1974.

Tofail—*First Party*,

versus

Proprietor, M/s. Ismail and Company—*Second Party*.

PRESENT :

Mr Amanullah Khan—*Chairman*.

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

First Party Tofail was a Tailor in M/s. Ismail and Company. He was promoted Cutter Master at a wages of Taka 350 per month. He was removed from service on 26-10-1974 without any hearing. It is alleged by the First Party that he has not be en paid his wages for the month of October, 1974 He now prays for reinstatement with back wages or in the alternative for termination benefits.

The Second Party Proprietor, M/s. Ismail and Company in his written statement submits that the Frst Party was a Karigar in his tailoring firm and later voluntarily accepted the position of Cutter Master on trial for one month. His work was found unsatisfactory and was reverted to his original position but he left the job on 26-10-1974 and never resumed his duties. It is further alleged that he drew an advance of Taka 1,752 and by setting of his claim of wages of Taka 839·92, the Second Party is still entitled to Taka 912·08 from the First Party. So he deserted his job in order to avoid this dues of the Second Party.

The First Party in his deposition says that he was promoted to the position of a Cutter and soon after he was dismissed from service on 26-10-1974 with out giving him an opportunity of hearing. The Second Party admits that he was a Karigor from 1967. The Second Party admits in his written statement that the First Party had been working at least from the middle of 1969 and was promoted a Cutter Master. The admitted agreement dated 14-9-1974, Ext.A, says that the First was being apponited a Cutter Master at a wages of Taka 350 per month on the date. So it is apparent that the First Party was a permanent employee of the Second Party. It has not been denied that the First Party had been dismissed without bearing. Admittedly the First Party was dismissed from service on 26-10-1974. The dismissal was, therefore, illegal being done without any hearing.

But it is contended, this case must fail being premature. It appears from the acknowledgment receipt Ext. 1 submitted by the First Party that the grievance petition was received by the Second Party on 11-11-1974 and this case

under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 was filed on 7-12-1974 under the said section. Clause (a) of sub-section (1) of section 25 of the Employment of Labour (Standing Orders) Act, 1965 provides—

> (a) the worker concerned shall bring his grievance to the notice of his employer, in writing, within fifteen days of the occurrence of the cause of such grievance and the employer shall, within thirty days of receipt of such grievance, inquire into the matter and give the worker concerned an opportunity of being heard and communicate his decision, in writing to the said worker;

So the employer has thirty days time from the date of receipt of the grievance petition to reconsider his decision in respect of which the grievance petition has been filed. In the present case the employer had time till 11-12-1974 to reconsider his decision. Now, clause (b) of the sub-section provides:—

> (b) if the employer fails to give a decision under clause (a) or if the worker is dissatisfied with such decision, he may make a complaint to the Labour Court having jurisdiction, within thirty days from the last date under clause (a) or within thirty days from the date of the decision, as the case may be, unless the grievance has already been raised or has otherwise been taken cognizance of as labour dispute under the provisions of the Industrial Dispute Ordinance, 1959.

So, clause (b) provides that the worker may make a complaint to the Labour Court within thirty days from the last date under clause (a) which means within thirty days of the expiry of the thirty days of the employer has to reconsider his impugned decision if the employer fails to give his decision or of such decision. So this case it is pointed out should have been properly filed after 11-12-1974 and before 10-1-1975 since no decision has been given so far. But it has been filed on 7-12-1974. Thus it is said to be premature. But the purpose of this limitation on the filing of such a case to my mind, is only to allow sufficient time which is considered to be thirty days from the date of receipt of the grievance petition, to the employer to reconsider his decision complained of, and further to prevent the employee from delaying long, filing of the case beoond thirty days considered enough for such filing, from the date of a decision is given by the employer or of receipt of the grievance peition by the employer where he fails to give a decision. The time limit of thirty days for filing a case is apparently intended to bar a case beyond thirty days of such decision or sixty days of the employer receiving the grievance petition when no such decision is given and not to bar it within thirty days of the receipt of such petition. Clause (b) of the section merely sets a time limit for filing of a case and no further. The idea that a case cannot be filed within thirty days of receipt of the grievance petition by the employer seems to have been inferred from a reading of the two sub-clauses (a) and (b) of the section together. The inference I may say is not altogether unimplied but a disability cannot be inferred unless clearly stated or at least unmistakably intended. Any contrary decision may bring worry not of his own seeking to the employee. He may not know when his grievance petition is being received by the employer and thereby when his time to file a case against the employer begins and ends. He cannot be sensibly punished for filing his case early for he runs the risk of bar to his case if he waits to long and fails to file it within sixty days of such receipt for reason beyond

his control. So a case filed by an employee beyond thirty days after thirty days an employer is reasonably expected to receive his grievance petition though within thirty days of actual receipt of such petition must not in fairness be held premature and incompetent. Of course, we must at the same time hold that even if an employee has filed a case against his employer within thirty days of receipt of the grievance petition by the employer the later may still consider the grievance petition within thirty days of receiving it and take action in spite of the pendency of the case but not beyond thirty days of his receiving it. If he takes action within the time limit there will be no reason to hold him for contempt of Court because law permits such action. Only the case already failed may remain in a state of suspended animation to proceed later on or not to proceed according to the decision of the employer on the grievance petition to be arrived at within thirty days from the receipt of such petition. In the present case no decision was taken by the Second Party within thirty days from the date of receipt of the grievance petition. So there is no reason why this case shall not proceed to a conclusion. I find it maintainable. The First Party shall have termination benefits as prayed for. Since he has not been made permanent as a Master Cutter he should draw termination benefits at the rate of his average earning as Karigor which he admittedly was. He claims Taka 125 as his average weekly earning at Karigor. The Second Party did not deny it in his written statement. But it looks strange that the First Party would accept a promotion at wages of Taka 350 per month while his monthly wages as Karigor had been Taka 500 on an average. So his average earnings must not have been more than Taka 350 per month. I allow him this sum as his monthly earning for calculating termination benefits.

The case be, therefore, allowed on contest. No costs. The First Party be allowed termination benefits at the rate of Taka 350 per month as his wages to be paid by the Second Party within 30 days from today.

AMANULLAH KHAN,
Chairman,
First Labour Court, Dacca.
13-6-1975.

Members consulted.

একমত।

স্বাঃ—এম, এ, মন্নান।

স্বাঃ—ম, করিম।

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

AMANULLAH KHAN,
Chairman.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I.R. Case No. 54 of 1975

Tofazzal Hossain, Fireman and 22 others all of Fire Department of Latif Bawany Jute Mills, Ltd., Demra, Dacca—*First Parties*,

versus

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

PRESENT:

Mr Amanullah Khan—*Chairman*.

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

This is a case under section 34 of the Industrial Relations Ordinance, 1969.

The First Parties are workers in the Fire Department of the Latif Bawany Jute Mills Ltd. of which the Second Party is the General Manager. The management has introduced from 1-9-1974 a work schedule in the department according to which the workers have to work on Sundays with a holiday on other days of the week by rotation. It is contended that this scheme schedule is against the provisions of the Factories Act, 1965. The First Parties pray that the Second Party be restrained from compelling the workers to work on Sundays and pay over-time when their services are utilized on Sundays.

The Second Party submits that in view of the safety of the mill and to protect it from fire hazards, the management arranged a duty roster of the First Parties which included duty on Sundays by rotation but not exceeding 6 working days in a week for each worker. It is contended that this is not against any provisions of law and as such the case is not maintainable.

So the point for consideration is whether a worker can at all be compelled to work on Sundays as a working day with a holiday on some other week days even by rotation.

Jute Mill is a factory. So the relevant provisions of law in this connection is Section 51 of the Factories Act, 1965 which is as under—

51. Weekly holidays—(1) No adult worker shall be required or allowed to work in a factory on a Sunday or a Friday, as the case may be, unless—

(a) he has had or will have a holiday for a whole day, on one of the three days immediately before or after that Sunday or Friday, as the case may be; and

(b) the manager of the factory has, before that Sunday or Friday, or the substituted day, whichever is earlier—

(i) given a notice to the Inspector of his intention to require the worker to work on the Sunday or Friday, as the case may be, and of the day which is to be substituted; and

(ii) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notice given under sub-section (1) may be cancelled by a notice given to the Inspector and a notice displayed in the factory not later than the day before the Sunday or Friday, or the substituted day to be cancelled, whichever is earlier.

(3) Where, in accordance with the provision of sub-section (1) and worker works, on a Sunday or Friday, and has a holiday on one of the three days immediately before it, that Sunday or Friday, as the case may be, shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

I have quoted the entire section to show that the whole intention has been to compulsorily provide holiday on Sunday or Friday, as the case may be, except under certain condition. This will be evident from the provisions that no adult worker shall be required or even allowed to work in a factory on a Sunday or Friday, as the case may be. The emphasis on the negation is so much that a worker may not even volunteer to work on Sundays or Fridays, as the case may be, and this provision shall apply except under certain conditions. Firstly, the worker must have a holiday for a whole day on one of the three working days immediately before or after that Sunday or Friday, as the case may be; secondly, the manager of the factory must have given notice before that Sunday or Friday or the substituted day whichever is earlier to the Inspector of Factories, his intention to require the worker to work on the Sunday or Friday, as the case may be, and of the day which is substituted; thirdly, the manager must have displayed a notice to that effect in the factory; and lastly, no substitution shall be made which will result in any worker working for more than ten days in a row. It will appear from sub-section (2) of section 51 of the Act that cancellation of notice to work on Sundays and Fridays have to be done before the Sunday and Friday or the substituted day to be cancelled and sub-section (3) of the section says that for the pupose of calculating his weekly hours of work, the working Sunday or Friday shall be included in the preceding week. These clearly show a scheme based on Sundays and Fridays as the normal weekly holidays. This will be further seen from section 52 of the Act which runs as follows:—

52. Compensatory weekly holiday (1) Where as a result of the passing of an order or the making of a rule under the provision of this Act exempting a factory or the workers therein from the provisions of section 51, a worker is deprived of any of the weekly holidays provided for in sub-section (1) of that section, he shall be allowed, as soon as circumstances permit, compensatory holidays of equal number to the holidays so deprived of.

(2) The Provincial Government may make rules prescribing the manner in which the compensatory holidays under sub-section (1), shall be allowed.

So a worker may be deprived of his normal holiday on Sundays or Fridays, as the case may be, as provided for in sub-section (1) of section 51 of the Act only by an order or rule made under the provisions of Factories Act, 1965. It shows the emphasis put on Sundays and Fridays as the normal holidays. The exemption envisaged here invites the provisions of section 5 of the Act in general and sections 63 and 64 in special cases. But these also show the limitations on such exemptions. Section 5 of the Act reads:—

5. Power to exempt—The provincial Government may, by notification in the official gazette, exempt any factory or any class or description of factories from all or any of the provisions of this Act for such period as it may think it in the public interest:

Provided that no such exemption shall be made for a period exceeding six months at a time.

Sections 63 and 64 are not invited in a case of this nature but then these too provides exemption from the operation of section 51 of the Factories Act providing in sub-section 5 of section 63 as follows:—

(5) Rules made under this section shall remain in force for such period, not exceeding three years, as may be specified therein.

and in sub-section (4) of Section 64 as follows:—

(4) An order under sub-section (2) shall remain in force for such periods, not exceeding two months from the date on which notice thereof is given to the manager of the factory:

Provided that if in the opinion of the provincial Government, the public interest so requires, it may from time to time, by notification in the official gazette, extend the operation of any such order for such further periods, not exceeding six months at any one time, as may be specified in the notification.

So these limitation on lease of life of the exempting orders leave no room for doubt that Sundays or Fridays are to be the normal holidays in every factory and any deprivation of such holidays must be of temporary nature to be avoided at the earliest opportunity.

Now from the written statement it appears that the order depriving workers of Sundays as holidays seems to be considered a permanent feature. This is against the whole scheme of holidays provided in the Factories Act, 1965. So the order cannot be sustained. This order also does not fulfil the conditions, I enumerated earlier under which such order can be effective. The duty roster dated 24-8-1974. Ext. A does not provide for a substituted holiday within three days immediately before or after that Sunday or Friday, as the case may be, as required under clause (a) of sub-section (*1*) of Section 51 of the Act. There is also no evidence that the Inspector of Factories has been given notice of the intention of the management to require the worker to work on Sundays and Fridays, as the case may be considering all these facts and circumstances, I am of opinion that the impugned order is bad in law and is inoperative. The management may find a suitable working arrangement keeping in view the provisions of the Factories Act, 1965 to safeguard the factory from fire hazards round the clock.

Duty Roster Ext. A Shows that the worker had compensatory holidays for working on Sunday. So the prayer for over-time for Sundays is refused.

The case is, therefore, allowed on contest and the impugned order dated 24-8-1974 requiring the workers of the Fire Department of the Latif Bawany Jute Mills Ltd. is declared illegal and inoperative. No costs.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
28-6-1975.

Members consulted.

একমত।

স্বাঃ ম. করিম।

স্বাঃ এম, এ, মন্নান।

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

AMANULLAH KHAN
Chairman.
28-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case No. 57 of 1975

Md. Ashara Ali, 117, Nutan Paltan Line, Dacca—9—*First Party,*

versus

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

PRESENT :

Mr Amanullah Khan—*Chairman.*

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

This is an application under section 34 of the Industrial Relations Ordinance, 1969.

The petitioner a Compositor on a salary of Taka 368·00 per month in the Azad and Publications Ltd. has been serving there from 1949. From the middle of 1973 he became bed ridden, suffering from diabetes and went on leave for 6 months. He resumed work in January 1974 but again had to go on leave on medical grounds from March, 1974. The petitioner prayed on 24-4-1975

for discharge under section 16 of the Employment of Labour (Standing Orders) Act, 1965 but the management did not pass any order so far. It is further alleged that the petitioner has not been paid his wages for the months of February and March, 1971, May and June, 1971 and October and November, 1971. He also prays for refund of 20 per cent deduction of his pay for the months of July, 1973 to June, 1974.

In the written statement admitted that First Party went on earned leave from March, 1974, resumed duty in November, 1973 and worked till February, 1974 and then went on 7 days' earned leave and never reported for duty thereafter. The Second Party submits that if he is unfit for work he may resign but cannot claim discharge.

Section 16 of the Employment of Labour (Standing Orders) Act, 1965 reads :—

16. Discharge from service—A worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health or such other reasons not amounting to misconduct :

Provided that a worker having completed not less than one year of continuous service, so discharged, shall be paid by the employer compensation at the rate of forteen days' wages for every completed year of service, or for any part thereof in excess of six months, or gratuity, if any, whichever is higher.

Apparently it is the employer who may discharge an employee under the section on grounds of health and other reasons. It has not been said that an employee also may get discharge on the same grounds. But rights and obligations must in fairness go together and also followed from each other unless specificially barred. If the employer has a right to discharge on certain grounds he has also an obligation towards his employee to discharge him on similar grounds otherwise it would be unfair and law never intends even remotely what is unfair. And when any right or obligation is openly and unequivocally accepted it must be presumed to have been done for reasons that is fair. So, when this has not been done a counter right or an obligation must be considered to have been implied and intended in the said section. Here the petitioner says that he has been working in the Azad and Publication from 1949 and had been drawing a salary of Taka 388 per month and that since March 1974 he is on leave on medical grounds and finally applied for retirement on 8-3-1975 by application Ext. 1 but got no reply. He adds that he is now aged 52 years and is unable to work any more. None of these statements have been denied. From the trend of cross-examination and the written statement it is apparent the management is unwilling either to grant the petitioner's leave asked for or ask him to supply medical evidence of his disability to work further gearing that it will have to find reasons for discharge and discharge him giving all benefits under section 16 of the Employment of Labour (S. O.) Act, 1965. It prefers to sit on the fence knowing full well that the petitioner has become incapable of work. I find that in the circumstances the petitioner has a righ to get a discharge. This case is maintainable under section 34 of the Industrial Relations Ordinance, 1969 as his right to get discharge has been violated.

The case be allowed and the petitioner be discharged from the service of the second party who is directed to pay the petitioner his dues under section 16 of the Employment of Labour (S. O.) Act, 1965 within 30 days from today on basis of the petitioner's monthly salary of Taka 368 per month.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca
26-6-1975.

Members consulted.

আমি একমত।

স্বাঃ—ম, করিম।

আমি একমত।

স্বাঃ—এম, এ, মন্নান।

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

AMANULLAH KHAN
Chairman,
26-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Rd., Dacca.

I.R. Case No. 353 of 1974.

Telegraph Stores and Workshop of Workmen's Union represented by its General Secretary—*First Party,*

versus

(1) The Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Posts, Telegraphs and Telephone.

(2) The Director-General, Telegraphs and Telephones—*Second Parties.*

PRESENT :

Mr Amanullah Khan—*Chairman.*

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

This is a case under section 34 of the Industrial Relations Ordinance, 1969 filed by the General Secretary, Telegraph Stores and Workshop of Workmen's Union against the Government of the People's Republic of Bangladesh and the Director-General, Telegraphs and Telephones.

It is submitted by the First Party General Secretary that Government of Bangladesh by a notification No. MF(IC)-V/1/73-139, dated 25-3-1974 declared that good conduct allowance and certain other allowances admissible to the operative staff of the Posts, Telegraphs and Telephones Department would continue to be admissible to them in addition to the pay and fringe benefits in the National Scales of pay. Unfortunately while enumerating the operative staff of different departments the operative staff of telegraph workshop and stores were left out from the list of the operative staff. The First Party union made a representation to the Second Party No. 2 through the Superintendent of Telegraph Workshop and Stores and the Second Party No. 2 being convinced of the omission was pleased to communicate by his memo No.P&A 15-5/73, dated 24-5-1974 that Assistant Foremen, Engineers, Chargeman, Assistant Chargeman, Yard Inspector, Compounder, Workmen and Watchmen/ Chowkiders of Telegraph Workshop would also be entitled to the good conduct allowance and the tele-communication allowance as declared by the Government in the memo dated 25-3-1974 referred to earlier. Unfortunately this similar categories of employees working in the Telegraph Stores Department were again left out from the category of persons entitled to good conduct and tele-communication allowance. The omission was pointed out to Second Party No. 2. But there was no response from him. It is, therefore, prayed that the Second Party be directed to include foremen, outdoor sarkers, carpentars, painters, markers and workmen of the Telegraph Stores in the category of operative staff and pay them good conduct and tele-communication allowance with effect from 1-7-1973.

It has been submitted in the written statement filed by the Second Party No. 2 that this case is not maintainable as framed and that good conduct allowance and tele-communication allowance were not made available to any category of offices other than those enumerated in the said notification dated 25-3-1974 mentioned by the First Party and the notification did not include Telegraph Stores. It is further submitted that the Telegraph Workshop comes within the term of Tele Communication Installations but the Telegraph Stores does not come within the said term and as such no staff of Telegraph Stores is entitled to get tele-communication and good conduct allowance.

The First Party witness General Secretary of the Union says in his deposition that tele-communication allowance and good conduct allowance were admissible to workmen of the Telegraph Stores prior to the introduction of the National Scales of Pay. It was withdrawn after the introduction of the National Scales of Pay and was again re-introduced but these were not made available to the workmen of the Telegraph Stores, inadvertent omission which he tried to rectify but failed. The Second Party No. 2 which contested the case by filing the written statement did not produce any witness but relied on the papers filed by the First Party. Office memo No. PA&P.35-I/71, dated Karachi, the 14th September, 1971 Ext. 1 says that all non-gazetted staff of the Telegraph and Telephone Department including the whole time staff paid from contingencies would henceforth be entitled to tele-comminication allowance, with effect from 1-2-1971. This memo did not speak of good conduct allowance Now, Notification No. MF(IC)-V/1/73-139, dated 25-3-1974 Ext. 2 of the Government of the People's Republic of Bangladesh, however, says in sub-para 2 of para 1:

> Tele-communication allowance to the employees of Telegraph and Telephone Department at taka 15 and at taka 20 per month for certain categories of staff as admissible immediately before the introduction of the national scales shall continue to be admissible.

So it would appear from this part of the said Ext. 2 that tele-communication allowance was admissible to certain categories of staff immediately before the introduction of National Scales of Pay and not to each and every category of staff of Telegraph and Telephone Departments. So we cannot be sure from the memo No. PA&P. 35-I/71, dated Karachi, the 14th September, 1971 Ext. 1 of the former Pakistan Telegraph and Telephone Department that this tele-commiunication allowance was admissible to the workmen of the Telegraph Stores prior to the introduction of National Scales of Pay. In the second half of the first para of the memo No. MF(IC)-V/73-139, dated 25-3-1974 of the Government of the People's Republic of Bangladesh Ext. 2 it is stated:

> In partial relaxation of the said order Government of Bangladesh have been pleased to decide that the good conduct pay and certain other allowances admissible to the operative staff of the Posts, Telegraph and Telephone Department will continue to be admissible in addition to the pay and fringe benefit in the national scales as stated below.

So good conduct allowance and tele-communication allowance were available only to the operative staff of the Posts, Telegraph and Telephone Departments. Further down the memo enumerates who are the operative staff as under:

> 3. Operative staff mentioned in para 1 above means Class IV and Class III employees and staff of the Post Office Department and the T & T Department working in the following operational offices (as were treated to be operative staff immediately before the introduction of the national scales):

Post Offices Department.	T & T Department.
(a)	(a) Telephone and Exchange Call Offices.
(b)	(b) Central Radio Office.
(c)	(c) Telegraph Offices.
(d)	(d) Divisional & Subdivisional.
(e)	(e) Engineering Offices.
(f)	(f) Wireless Stations.
(g)	(g) Carrier Station.
	(h) Telecom. installations.

This part of the memo thus shows that the employees of the Telegraph Stores were not considered to be operative staff and further that they were not considered to be operative staff even before the introduction of the National Scales of Pay. The case of the First Party is that while saying these were the operative staff the memo inadvertently omitted the staff of the Telegraph Stores and they brought this fact of omission in the memo Ext. 2 to the notice of Second Party No. 2 through the Superintendent, Telegraph Workshop, Dacca, requesting him to include the workmen of the Telegraph Stores in the group of operative staff. Memo No. P & A 15-5/73, dated 24-5-1974 of Bangladesh Telegraph and Telephone Department Ext. 3 in response to this protest writes:

> After careful consideration of the facts stated by the Superintendent, Telegraph Workshop, Dacca, it has been decided that the following

categories of staff of the Telegraph Workshop, which is a Telecommunication installation, shall be entitled to get the Tele-communication and Good Conduct allowances, sanctioned by the Government, *vide* their Memo. No. MF (IC)-V/1/73-139, dated 25-3-1974.

(1) Assistant Foreman/Examiners.
(2) Chargeman/Asstt. Chargeman.
(3) Yard Inspector.
(4) Compounder.
(5) Workmen.
(6) Watchmen/Chowkider.

So the claim for the allowances by the employees of the Telegraph Stores were considered and were not allowed. There are no materials before this Court now to find that the employees of the Telegraph Stores could be considered to be operative staff and even if they could be so considered there is nothing to show positively that these allowances would be still be available to them. Moreover, the prayer of the First Party here is that the allowances should be made available to the Foremen, Outdoor Sarkers, Carpenters, Painters, Markers and Workmen of the Telegraph Stores but these categories of workers cannot also be held in the absence of any positive evidence to be operative staff I, therefore, find that this case fails on merit.

This case has been filed under section 34 of the Industrial Relations Ordinance, 1969 by the First Party General Secretary of the Telegraph Stores and Workshop of Workmen's Union but such a case by the General Secretary of the union is not maintainable under section 34 of the Ordinance, 1969. Section 34 runs thus:

34. Application to Labour Court—Any collective bargaining agent or any employer or workman may apply to the Labour Court for the enforcement of any right guranteed or secured to it or him by or under any law or any award or settlement.

This is not a case for enforcement of any such right of the union and as such this case is found not to be maintainable. The case fails on this count also.

The case be dismissed on contest. No costs.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca,
10-6-1975.

Members consulted.

আমি একমত।

স্বাঃ—এম, এ, মান্নান।

সম্মত।

স্বাঃ—ম, করিম।

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

AMANULLAH KHAN
Chairman.
10-6-1975.

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

I. R. Case No. 352 of 1974.

Biman Bandar Unnavan Shangstha Karmachari Union (Regd. No. B-1602), 7, Green Road, Dacca—15—*First Party*,

versus

Airport Development Agency—*Second Party*.

PRESENT ;

Mr Amanullah Khan—*Chairman*.

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

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Biman Bandar Unnayan Shangstha Karmachari Union against the Airport Development Agency.

The First Party which calls itself the plaintiff submits that the employees of the Airport Development Agency used to get medical facilities in kind. Later on the employees were being paid medical allowance of Taka 22 per month in lieu of the medical facilities in kind. The employees drew this medical allowance of Taka 22 per month till August, 1974 whereafter National Scales of Pay was introduced. With the introduction of this Scales the medical allowance was no longer made available to the employees of the agency. It was considered to have been merged in the fringe benefits available in the National Scales of Pay. But the Implementation Cell of the Government of the People's Republic of Bangladesh, Ministry of Finance in a letter, dated 8-8-1974 clarified that medical facilities in kind if any should continue and this being so, it is contended, the medical allowance of Taka 22 per month which was only a substitute for the medical facilities in kind formerly available to the employees of the Agency ought to have been treated as medical facilities in kind and ought to have been made available to the employees. This is not being done. It is further contended that in case, medical allowance of Taka 22 is not considered admissible for the employees. The position must revert to what it was and the medical facilities in kind should be made available to the employees. The union, it is alleged, took up this matter with the agency and a carification was sought for from the Ministry of Finance but the Ministry did not pass a clear and express order. In the meantime, the agency by an order dated 31-10-1974 gave out that the medical allowance has ceased to be available to the employees with the introduction of the National Scales of Pay. This order was, it is submitted, wrong. It is, therefore, prayed that the agency be restrained from refusing to pay the medical allowance of Taka 22 per month to the employees.

The Second Party concedes in his written statement that formerly medical facilities were available to the employees of Airport Development Agency as stated by the First Party nion and later on by a circular of 1969 the

employees were given option to receive medical facilities as before or accept Taka 22 per month as medical allowance in lieu thereof. Later on, the medical facilities for the staff were withdrawn and all the employees of the agency were then receiving medical allowance of Taka 22 per month in lieu of such facilities. Thereafter, National Scales of Pay was introduced in the Airport Development Agency and from then on medical allowance in cash ceased to be available to the employees according to a notification of the Ministry of Finance of the Government of the People's Republic of Bangladesh. It is submitted that in place of medical and other allowance National Scales of Pay have made provision for consolidated amount as fringe benefits.

So admittedly the staff of the Airport Development Agency enjoyed the medical facilities at some point of time as conditions of service the relevant portion of the terms of service in respect of medical benefits for the employees of the Airport Development Agency (P.I.A.C.), is given (*vide* copy the terms and conditions of service Ext. I).

20. Medical Benefits :

1. The following medical facilities will be available to personnel serving with ADA (PIAC). All professional attention must be obtained from the Agency's Clinics/hospitals or approved doctors only.

2. On Deputation from Government Departments:

Facilities identical to those which they were eligible to in their parent departments for themselves and their families.

3. Directly Recruited A.D.A. Employees :

(A) Free out-door medical consultation for staff and families at PIAC Dispensaries/Hospital.

(B) Specialist attention on the same lines as arranged and approved by PIAC.

(C) Electrical and physiotherapy treatment will be provided as advised

(D) Laboratory and Pathological examination on the advice of the doctor.

Office order, dated 26-6-1969 conceding the option Ext. C shows that the 428 employees of the Airport Development Agency exercised their option for medical allowance of Taka 22 per month in lieu of medical facilities then being provided and this option became effective from 1-7-1969. The corresponding order, dated 29-4-1969 marked Annexure B of the Airport Development Agency recites:

1. As per terms of Agreement executed between ADA Employee's Union and ADA Management, all staff up to group V on the regular establishment shall have the option to continue with the existing arrangement with PIA against medical facilities or to accept Rs.22 per month medical allowance in lieu thereof.

3. Those of the regular staff who opt for continued medical facilities from the PIA Hospital shall subsequently be issued Medical Cards for self and family.

So 428 employees gave up their right to medical facilities for a regular monthly amount of Taka 22 as medical allowance. Since it was an option some employees may not have opted for the allowance as it would appear from a subsequent office order, dated 30-9-1971 marked Annexure C, a copy of which has also been filed by the Second Party. It, however, shows that medical facilities available to those who did not opt for the medical allowance were also finally withdrawn and every one was now being given the medical allowance of Taka 22 per month. The order as seen from Annexure C runs thus:

> Consequent upon discontinuation of medical facilities to ADA Staff by PIA Hospitals, it has been decided that regular ADA personnel, who were obtaining medical facilities from the PIA Hospitals, will now receive a medical allowance of Taka 22·00 per month, with effect from 1-10-1971.

Now, with the introduction of National Scales of Pay this medical allowance ceased to be available to the employees of the ADA as per memo. No. MF (IC)-9/74/239, dated 8-8-1974 Ext. D of the Government of the People's Republic of Bangladesh, Minsitry of Finance (Implementation Cell). This cessation is stated in para 8(ii) of the memo. Ext. D which I quote below:

> With the introduction of consolidated fringe benefit mentioned above all existing allowances shall cease to be admissible. Washing Allowance, Overtime Allowance for working extra hours beyound normal working hours of the concerned organisation as may be approved by the competent authority from time to time, medical facilities in kind, if any, provided by the concerned organisation may, however, continue.

This cessation has been further emphasised in the memo No. MF (IC)-VI/13/74/483, dated 28-9-1974 of the Government of the People's Republic of Bangladesh, Ministry of Finance (Implementation Cell). This memo has been marked Annexure E of the application of the First Party. It reads as follows:

> With reference his memo. referred to above the undersigned is directed to say that as per clause 3(a) of this Ministry's O.M. No. MF(IC)-9/74/239, dated 8-8-1974, House rent is not an element of pay as such this cannot be taken into consideration for the purpose of fixation of pay and Medical Allowance shall cease to be admissible with the introduction of consolidated fringe benefit with effect from 1-7-1973 while Medical facilities in kind, if any, may continue *vide* para 8(ii) of this Ministry's O.M., dated 8-8-1974.

So these 428 employees had the option to continue with the medical facilities or receive Taka 22 p.m. as medical allowance in lieu of those medical facilities. The employees were thus called upon to make a very vital decision. The medical facilities were still there available to the employees and they were to elect. It had to be either medical facilities or the allowance of Taka 22·00. As the case of the First Party is, they preferred to forego those facilities for a regular monthly fixed medical allowance. For these employees, therefore, it was no conversion of the facilities into medical allowance. It was voluntary swing over and an election of an alternative. The change over was from making oneself available to medical facilities when ill to a regular monthly allowance available in health or sickness. For all intents and purposes, it was a part of pay regularly drawn except that it was not so defined for the purpose of pay.

This is medical allowance and is certainly not the same thing as medical facilities with that word of difference. And an employee who had once opted for such medical allowance cannot now play the policy of head I win and fail you loose and go back to the facilities once again and then put forward the argument that in lieu of those facilities the cash allowance may be still made available in spite of the consolidated fringe benefits available in lieu of such medical allowance and other allowances. We have not been told by the First Party union that any union member did not opt at first for medical allowance and had to receive afterwards when the medical facilities were finally withdrawn. So we need not consider that aspect of the case. Now, even if there is any such case, such employees cannot now claim to go back to medical facilities and thereby to the medical allowance of Taka 22 p.m. once he had submitted to the medical allowance without protest and drew the medical allowance.

Now, according to the Government notification Ext. D the Government decided to introduce the National Scales of Pay in respect of ADA with effect from 1-7-1973 and rightly decided that medical allowance ceased to be admissible in view of what I have said so far.

From the trend of the cross examination of the witness it seems the First Party had some doubts about the correctness and legality of the introduction of the National Scales of Pay in the Airport Development Agency. Admittedly administration of the agency is now with the Government and National Scales of Pay has been introduced in all Government, Semi-Government, Autonomous and Nationalised and Government Controlled Establishments. I find nothing wrong in the application of the National Scales of Pay to any organisation in the management or administration of the Government or in any establishment. First Party, of course, seems to have no real objection to the introduction of the National Scales of Pay except that it wants the medical allowance to continue. But all allowances including medical allowance as may be seen from the Government Memo. Ext. D ceased to available obviously for the reason of fringe benefits now made available in the National Scales of Pay in lieu of the medical and other allowances available before the introduction of the National Scales of Pay with some exceptions and as such the employees of the Airport Development Agency cannot have the National Scales of Pay which includes fringe benefits and medical allowance or the medical facilities too at the same time. One cannot have the cake and eat it too. So the employees of the Agency can no longer claim the medical allowance or the facilities after the introduction of the National Scales of Pay in the Agency introduction of which is accepted.

I may point out here another part of the office order, dated 30-9-1971, marked Annexure C, that shows that though the medical allowance of Taka 22 was introduced for all employees in lieu of medical facilities yet some arrangements were made for limited medical facilities for the Officers and Staff apparently as a gesture of favour. The relevant portion of the order says:

> 3. Arrangements have now been made with the Central Government Hospitals and Dispensaries to provide medical treatment to ADA Officers and Staff. They will be given preference over the general public and will be exempt from payment of medical attendance fees. Cost of such medicines, etc., as are not supplied by the Hospitals free of charge will be borne by the employees themselves.

These facilities in a very limited way, is available and even now, may continue as a favour carried over and not as of right in lieu of the medical allowance which is no longer available simultaneously with the National Scales of Pay.

Lastly, I would like to point out that this case is not maintainable at all under section 34 of the Industrial Relations Ordinance, 1969. Section 34 of the Ordinance, 1969 says:

> 34. Application to Labour Court—Any collective bargaining agent or an employer or workman may apply to the Labour Court for the enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement.

So this case filed by the employees union is not maintainable as no right guaranteed or secured to the union itself under any law or award or settlement has been infringed by the Second Party. This case, therefore, fails as being not maintainable and also on merit.

The case be dismissed on contest. No cost is ordered.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
12-6-1975.

Members consulted.

আমি একমত

স্বাঃ—এম, এ, মন্নান

স্বাঃ—ম, করিম

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

AMANULLAH KHAN
Chairman.

IN THE FIRST LABOUR COURT OF BANGLADESH
170, Santinagar Road, Dacca.
Complaint Case No. 32 of 1975

Khabiruddin Ahmed—*First Party.*

versus

The Managing Editor,
Sangbad Ltd.—*Second Party.*

PRESENT:

Mr Amanullah Khan—*Chairman.*
Mr M. Karim } *Members.*
Mr M. A. Mannan }

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

The First Party Khabiruddin Ahmed was a Make-up Man in the Press Section of the Sangbad Ltd. He was also the General Secretary of the Sangbad Press Karmachari Union. He has served the Sangbad for 18 years and his last wages had been at Taka 375 per month. On 16-11-1974 he was asked to show cause alleging that he did the make up of a news item published in the Sangbad, dated 15-11-1974 in a disorderly manner. An enquiry was held on 30-11-1974 on the allegation and in that enquiry, it is alleged, the first party had disproved the allegations. Then again on 19-11-1974 he was asked to show cause for dropping the last part of a news item. On this allegation, of course, the first party admitted that it was a mistake committed through oversight. Then on 20-12-1974 the first party in the course of his trade union activities submitted a charter of demand to the second party Managing Editor of the Sangbad at about 4 p.m. and sat in a meeting with the Managing Editor for bargaining on issues raised in the charter of demand. As the first party pressed for acceptance of the demands the second party got annoyed with the first party and thereupon on the same date, *i.e.*, 20-12-1974 the second party with the motive of victimising the first party for his trade union activities issued a show cause notice to the first party alleging that he did the make up of an article, dated 20-12-1974 by dropping the name of the writer. In this case, of course, the first party admitted his guilt stating that this omission could not be detected by him due to heavy presure of work. Thereafter, by a letter, dated 30-1-1975 the second party dismissed the first party worker from the services of the Sangbad Limited with effect from 30-1-1975. Hence this case. Grievance petition was sent in time.

The second party in his written statement submits that the duty of the first party was to set and arrange news in an orderly manner as stated in the manuscript or as suggested by the News Section. That on 15-11-1974 the daily edition of the said Sangbad contained a news item with the caption 'রাজনৈতিক প্রশাসনিক ডাক' but the first party made up the news in a wrong and disorderly manner. So, the charge sheet, dated 16-11-1974 was issued alleging that the later part of the news item was put in the middle of the news item and the middle portion of the news item had been put in a middle of another news item with the caption 'খাদ্য সংগ্রহের সম্পর্কে' and the first party was charged for negligence. The First Party submitted his explanation and it was found unsatisfactory. Then again he committed negligence in respect of another news item with the caption 'আজ শীতকালীন অধিবেশন শুরু' in the issue of 19-11-1974. The first party pleaded guilty to this charge. Then lastly he committed another act of negligence in the issue of the Sangbad, dated 22-12-1974. This time also he admitted his negligence. He was, therefore, dismissed from service after enquiry into the allegations. The second party emphatically denies that this dismissal had been a case of victimisation for trade union activities of the first party.

The charge-sheet dated 16-11-1974 is not before me. According to the written statement on this date he was charged for making up a news item in a disorderly manner in the Sangbad of 15-11-1974. The details of the charge has been given in the written statement as I have stated earlier. Admittedly there had been an enquiry. The report, dated 17-1-1975 Ext. C along with the deposition of the first party and two others show there had been a thorough enquiry on the charge of 16-11-1974 and the first party was found guilty.

The charge-sheet, dated 19-11-1974 Ext. D shows that the first party was charged for omitting the last part of a news item while he did make up of the news. His explanation Ext. D (1) shows that he admitted to have done

the neglect through oversight. The charge-sheet, dated 20-12-1974, Ext. 1 shows that the first party was again charged for omitting the name of the writer of a news article in the cinema page of the Sangbad. The report, dated 28-1-1975 Ext. E of the Enquiry Officer along with the deposition of the first party shows that the first party admitted that the omission was an unintentional mistake. Exts. A and A (1) two formal charge-sheets, dated 13-11-1973 and 2-8-1973 admittedly served on the first party also show that the first party was charged on earlier occasion for similar negligence. So there is no doubt left that the first party had been continuously negligent in his duties. This is treated as misconduct under section 17 *(2)(h)* of the Employment of Labour (Standing Orders) Act, 1965 being habitual neglect of work. It is not denied that the first party submitted a charter of demand on 20-12-1974 but prior to that he was being charged for such negligence and similar negligence happened on 20-12-1974 before he actually met the Managing Editor for discussion on trade union matters. So I am not prepared to hold that the dismissal of the first party had been for his trade union activities. Admittedly and as the papers show the first party has been dismissed after proper enquiry. The learned Advocate for the first party submits that the act of negligence of the First Party were not of such a nature as to warrant dismissal. But for the make up man this could only be the nature of misconduct in the discharge of his duties. If he was not performing his duties properly and again in the manner he is expected to do he cannot be retained in the service of a daily newspaper. A news paper that goes on providing disorderly news from time to time is not expected to keep up its reputation. I, therefore, find that the first Party had been enough negligent to deserve dismissal. The order of dismissal calls for no interfernce.

The case be dismissed on contest. I order no costs.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
6-6-1975.

Members consulted.

আমি একমত।

স্বা:—এম, এ, মন্নান।

স্বা:—ম, করিম।

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

AMANULLAH KHAN
Chairman.
6-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Criminal Case No. 24 of 1974.

Mohammad Salim—*Complainant.*

versus

M. A. Wadud, Manager,
M/s. Eagle Box and Carton Manufacturing Co. Ltd.—*Accused.*

PRESENT :

Mr Amanullah Khan—*Chairman.*

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

This is a case under section 26 of the Employment of Labour (Standing Orders) Act, 1965 for violation of an order passed in Complaint Case No. 2/74 of this Court.

The complainant's case is that he filed the C. Case No. 2/74 against the accused M. A. Wadud, Manager, M/s. Eagle Box and Carton Manufacturing Co. Ltd. for reinstatement and arrear wages. It is alleged that the case was contested and order for reinstatement and for payment of arrear wages as prayed for was passed on 10-6-1974 to be complied within 30 days from the date of the order. The complainant further alleges that he reported for duty accordingly but the Security Officer did not allow him to enter into the factory on the ground that the accused Manager directed the Security Officer not to allow him to enter into the factory. He further alleges that he met the accused at his residence and brought the matter of refusal to his notice but it was of no avail.

The accused has been examined under section 242 of the Criminal Procedure Code. He pleaded not guilty to the accusation made by the complainant.

The point to be decided in this case is whether the accused refused or failed to comply with the order of this Court passed under section 25 of the Employment of Labour (Standing Orders) Act, 1965, in C. Case No. 2/74.

The complainant deposes that he got an order on 10-6-1974 for reinstatement and for payment of arrear wages to him passed in C. Case No. 2/74 under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 or contest against the accused and this order was to be complied with within 30 days of the order. He further says that he reported for duty within 15 days or about of the order with the letter Ext. 1 from the accused permitting him to resume his duty but he was not allowed to enter into the factory premises by the Darwan. He adds that he reported this matter to the accused and got the reply dated 20-7-1974, Ext. 2. He also says that thereafter he went to the Dhanmandi Residence of the accused and saw him in this connection and the accused said that he (the accused) had issued the letter, Ext. 2 and had nothing further to do and the complainant must have it out with the Security

Officer Manzoor Ahmed. The reply, Ext. 2 denied the allegation that the Security Officer did not allow the complainant to enter into the factory. He also adds that he last went to the factory to report for duty after he received the letter, Ext. 2 and that Abdul Kadir, Abul Hossain Sarkar and Arshad Ali Akand and others saw him go to the factory to report for duty. It is not denied that there had been an order passed in favour of the complainant directing his reinstatement and payment of arrear wages by the accused in C. Case No. 2/74 on 10-6-1974 to be complied with within 30 days from the date of the order. The letter, dated 2-7-1974, Ext. 1 signed by the accused and addressed to the complainant recites:

> With reference to your application, dated 18-6-1974 praying for permission to join your post, you are hereby directed to report for duty immediately and submit your joining report in writing.

So the letter shows that the complainant had already made an attempt to be reinstated within a week of the order passed by the Court but failed to be so reinstated and then wrote to the accused for permission to oin and got the reply. The letter, dated 20-7-1974. Ext. 2 signed by one Abdur Rashid, Establishment Officer (Law Administration and Purchase) and addressed to the complainant recites:

> With reference to his application, dated 17-7-1974 he is hereby informed that on enquiry it transpired that Security Officer did not prevent him from entering in the factory as alleged. It further transpired that there was no occasion for the Security Officer to meet him in the present post. It is also not at all correct that he ever brought anything in the notice of the Manager verbally or otherwise as alleged.

This letter suggests that the complainant again informed the management by letter, dated 17-7-1974 that the Security Officer prevented him from entering into the factory and that the matter was brought to the knowledge of the accused at least verbally while the denial was abstained from him by the Establishment Officer. P. W. 2 Abdul Kader, P. W. 3 Abul Hossain and P. W. 4 Arshad Ali Akand tell us that they saw the complainant at the gate of the factory on different occasions some two or four months before from today. All these witnesses are Security Guards of M/s. Eagle Box and Carton Manufacturing Co. Ltd. They are in service and they are very much competent witnesses to say that they saw the complainant at the factory gate some two or three months before now. The management, of course, said in its letter, Ext. 2, and that is the defence suggestion, that the complainant never went to report for duty, nor did the Security Officer prevent him from entering into the factory, nor such alleged prevention was brought to the notice of the accused. But I don't see how the witnesses would dare lie against the accused Manager of the M/s. Eagle Box and Carton Manufacturing Co. Ltd. being still in service of the company. And why the complainant would not like to report for duty and receive back handsome arrear salary at all? He was in service—he had been dismissed from service—he brought a case for reinstatement and arrear wages—the case was thoroughly contested and finally he got an order from the Court purporting to give his job back to him and also pay him a handsome money. After all these why a poor darwan would no longer care to be reinstated and also be paid a handsome money for any reason? It has been suggested that the complainant did some misappropriation of workers' fund and as such did not dare come to the factory for reinstatement for fear

of being assaulted by the workers. This is just a suggestion and there is no evidence to show that the complainant did any such misappropriation and was in mortal fear of his co-workers. Rather some of his co-workers have come to depose for him believing the defence suggestion that he could not go to the factory for fear of being assaulted by his co-workers. I have no doubt left in my mind that the complainant did go to the factory and wanted to be reinstated and paid back his dues but was prevented by the darwan and the Security Officer from entering into the premises of the factory. But why the darwan and the Security Officer would stand in the way of his reinstatement after he got an order from the Court for reinstatement and payment of his arrear wages. There appears no particular reason for these people to prevent the complainant from entering into the premises of the factory particularly after the order of Court about which they must have been informed. The complainant says that he showed the letter of the Manager, Ext. 1, to the darwan who showed it to the Security Officer asking him to report for duty. They would certainly not dare prevent him from entering into the factory premises and resume his duties and they could do so on pain of being punished for wilful disobedience of the wish of the accused Manager. They would not dare do so unless they had secret instructions from the accused Manager himself not to allow him to enter into the premises of the factory. The complainant in his deposition has already said that the Security Officer had told him that the Manager instructed him not to allow the complainant to enter into the factory premises. The C. Case No. 2/74 was contested by the accused and he knew that the Court had ordered reinstatement of the complainant with arrear wages. He also knew as we see from his letter, Ext. 1 and the letter of the Establishment Officer, Ext. 2 about which he must have knowledge being a Manager of the company that the complainant was making every attempt to be reinstated. So, was it not natural that he would care to know if the complainant had reported for duty and if not, why not even after these allegations made by him against the Security Officer. It was natural for him as Manager to see that he was being reinstated as ordered by the Court. I am not prepared to believe that he could successfully keep his eyes shut like an ostrich and forget all about the complaint case, the order of the Court and the lot of dust thrown out by the complainant shouting that he was being prevented by the Security Officer from reporting to duty. The circumstances led to only one and one conclusion and that is that the accused in writing asked the complainant to report for duty and secretly instructed the Security Officer not to allow him to enter into the factory premises so that he could not resume his duties although we don't see the accused openly refusing or failing to comply with the order of the Court, rather we see him complying with the order of the Court, yet the evidence and circumstances leave no room for doubt that it is the accused who prevented from behind the complainant from being reinstated and paid his back wages as ordered by the Court. This is a most unfortunate attitude of a person holding the position of a Manager of a company. He is very much aware that he cannot openly disobey the order of the Court. So he has taken recourse to this subterfuge whereby he thought he could successfully dodge the order of the Court and yet escape the punishment for refusing or failing to comply with such order. This is apparent from his subsequent conduct which may not be a proof of his guilty conduct but a manifestation of such conduct. This Criminal case was filed on 24-7-1974 and for these nine months he had been posted with the fact that the order of the Court had not been complied with and yet instead of telling the complainant that he would himself make arrangement for his reinstatement and see that nobody would dare disobey the order of the Court he has been quietly waiting ready to contest

this case feeling safely armoured with the letter, Ext. 1, little suspecting that the letter was only a false security and that the circumstances would let the cat out of the bag. I find that the accused not only purposely failed to comply with the order of the Court passed in C. Case No. 2/74 under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 but, in fact, intentionally refused to comply with that order. I, therefore, find him guilty under section 26 of the Employment of Labour (Standing Orders) Act, 1965. I may add here that the accused deserves no consideration. He appeared in the Complaint Case and hotly contested the allegations made.

The accused found guilty under section 26 of the Employment of Labour (Standing Orders) Act, 1965, be sentenced to a fine of Taka five hundred only.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
12-6-1975.

Dictated and typed by Stenographer
Waliul Islam.

AMANULLAH KHAN
Chairman.

স্পেশাল অফিসার, বাংলাদেশ সরকারী মুদ্রণালয়, ঢাকা, কর্তৃক মুদ্রিত।
এসিসটেন্ট কন্ট্রোলার-ইন-চার্জ, বাংলাদেশ ফরমস্ এন্ড পাবলিকেশনস্ অফিস, ঢাকা, কর্তৃক প্রকাশিত।