

The
Bangladesh Gazette



Extraordinary
Published by Authority

WEDNESDAY, DECEMBER 10, 1975

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
MINISTRY OF LABOUR AND SOCIAL WELFARE
(Labour Welfare Division)

Section VII.

NOTIFICATION

Dacca, the 24th November, 1975.

No. S.R.O. 389-L/75/S-VII/1(46)/75.—In exercise of the powers conferred by sub-section (1) of section 3 of the Shops and Establishments Act, 1965 (E. P. Act VII of 1965), the Government is pleased to suspend the operation of the provisions of sections 4, 8, 10 and 11 of the said Act in respect of the employees of the Panchagar Sugar Mill, Dinajpur during the period beginning on the 1st day of November, 1975, to the 31st day of March, 1976, subject to the following conditions, namely :—

- (1) The employees required to work overtime shall be paid wages at double the rate of ordinary wages for working beyond the normal working hours; and
- (2) the employees deprived of weekly holidays admissible under the Act shall be allowed Compensatory weekly holidays within a month after 31st day of March, 1976.

By order of the President
A. F. M. NOORUL ISLAM
Deputy Secretary.

(3123)

Price : Taka 2.70 Paise.

MINISTRY OF LABOUR, SOCIAL WELFARE, CULTURAL AFFAIRS
AND SPORTS

(Labour and Social Welfare Division)

Section VI

NOTIFICATION

Dacca, the 20th November, 1975.

No. S.R.O. 390-L/75/S-VI/1(25)/75/484.—In pursuance of sub-section (2) of section 37 of the Industrial Relations Ordinance, 1969 (XXIII of 1969), the Government is pleased to publish the awards and decisions of the Labour Court, Chittagong, in respect of the following cases, namely :—

1. Permission Case No. 2 of 1974.
2. Misc. Case No. 1 of 1975.
I.D. Case No. 441 of 1974.
3. I.D. Case No. 18 of 1975.
4. I.D. Case No. 37 of 1975.
5. I.D. Case No. 41 of 1974.
6. I.D. Case No. 115 of 1974.
7. I.D. Case No. 135 of 1974.
8. I.D. Case No. 187 of 1974.
9. I.D. Case Nos. 233, 226, 228-230, 234-236, 238, 241, 243-247, 251-260, 253, 266, 267, 261, 262, 265, 268, 225, 224, 227, 248, 250 and 264 of 1973.
10. I.D. Case No. 417 of 1974.
11. I.D. Case No. 439 of 1974.
12. I.D. Case No. 458 of 1974.
13. I.D. Case No. 664 of 1974.
14. I.D. Case No. 667 of 1974.
15. I.D. Case No. 668 of 1974.
16. Complaint Case No. 7 of 1975.
17. Complaint Case No. 8 of 1975.
18. Complaint Case No. 10 of 1975.

19. Complaint Case No. 19 of 1975.
20. Complaint Case No. 25 of 1973.
21. Complaint Case No. 36 of 1974.
22. Complaint Case No. 56 of 1974.
23. Complaint Case No. 61 of 1974.
24. Complaint Case No. 57 of 1974.
25. Complaint Case No. 64 of 1974.
26. Complaint Case No. 67 of 1974.
27. Complaint Case No. 71 of 1974.
28. I. D. Case No. 13 of 1975.

By order of the President
MUHAMMAD KHADEEM ALI
Deputy Secretary.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Permission Case No. 2 of 1974.

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

versus

Md. Rafique, Wire Drawing Department, Gazi Wires Limited, 28, F.I.D.C.
Road, Kalurghat I/A., P.O. Chandgoan, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

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

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

This is an application under section 47(2) of the Industrial Relations Ordinance, 1969 by the first party for permission to him (first party) to dismiss the second party from service for commission of misconduct within the meaning of Standing Orders Act, 1965.

The case of the first party is that the second party is a worker under the first party, was found to be involved in serious misconduct like instigating the workers to "Go slow" and indeed committed organised, deliberate and purposeful slowing down of normal output of the workers with a body of workers in a concerted manner during the period from 1st August to 31st August, 1974 causing huge loss to the establishment of the first party. In spite of repeated verbal warnings, the second party continued in such unlawful activities. Ultimately the second party issued with a letter of charge on 23-9-1974 for misconduct against the second party, who submitted explanation on 25-9-1974 denying the charge, which was found to be most unsatisfactory and thereafter an enquiry into the charges was ordered and the second party deliberately did not attend the enquiry on the date and time and thus the enquiry proceeded *ex parte*. This charge against the second party was proved and the second party deserves extreme penalty like dismissal from service. Second party is a General Secretary of the Gazi Wires Sramik Union in the establishment of the first party and taking advantage of his position as such, he used to resort to such unfair practice and misconduct. The second party has filed I. D. Case No. 211 of 1974 in this Court and the said case is now pending. Thus the first party filed this case for permission to dismiss the second party from service.

Second party contested the case by filing a written statement alleging *inter-alia* that the second party could not attend the alleged domestic enquiry due to his illness and that the second party is the General Secretary of the Workers Union. The first party persuaded the second party to withdraw the case filed before this Court but the second party did not agree. First party's case as framed is not maintainable and that the first party is not entitled to get the relief prayed for.

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

FINDINGS

Neither party adduced any oral evidence in support of their respective cases. First party filed some papers in order to prove that the first party issued charge-sheet for misconduct against the second party who submitted explanation and the same was found unsatisfactory and thereafter the second party was asked to participate in the domestic enquiry but due to his absence domestic enquiry was held *ex parte*. It is not disputed that second party has filed I. D. Case No. 211 of 1974 under section 34 against the first party in this Court. This application under section 47(2) of the I. R. O. is filed to obtain permission to dismiss second party, an office-bearer of the registered trade union, as the above referred I. D. Case No. 211 of 1974 between the parties is pending in this Court.

An application under section 47(2) of the I. R. O. for permission to dismiss an officer of a registered trade union will lie when any proceeding concerning an industrial dispute is pending before a Labour Court. Admittedly second party's I. D. Case No. 211 of 1974 under section 34 is against the first party is pending in this Court. Admittedly the second party is an officer of a registered trade union. It is not disputed that charge-sheet for misconduct against the second party and the second party submitted his explanation denying

the charges. It also appears that an *ex-parte* domestic enquiry was held and thereafter when the first party going to implicit major punishment, the above referred I. D. case was found pending in this Court. In the present application, the pending proceeding I. D. Case No. 211 of 1974 referred to is under section 34 of I. R. O., which it has been held by the Supreme Court, is proceeding other than "industrial dispute". So, in this view of the case prayed for permission to dismiss the second party, is not necessary. Hence, this application under section 47 of the Ordinance appear, to be not maintainable.

Members are consulted over the matter.

Ordered

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
 7-6-1975.

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

A. AHMED
Chairman.
 7-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Misc. Case No. 1 of 1975.

(*Arising out of original I. D. Case No. 441 of 1974.*)

Badi Alam, Proprietor, M/S. Badi Alam & Co., Dewanhat Gate No. 2, Chittagong—*Petitioner/2nd Party,*

versus

Sk. Amir Ahmed, s/o. late Asad Ali Chowdhury, Village Dhalai, P.O. Enayetpur, P. S. Hathazari, Chittagong—*O. P./First Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

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

Representation : Mr. M. A. Saleh Chowdhury, Advocate, appeared for the petitioner and Mr. A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate appeared for the O. P.

This is an application by the petitioner Badi Alam (Second party) under Order 9, rule 13, C.P.C. for setting aside the *ex parte* order, dated 7-1-1975 passed in I. D. Case No. 441 of 1974 on the ground that no notice or summon of the said I. D. case was duly served on him (petitioner). It is further alleged that the second party petitioner was in the darkness about the institution of the said I. D. case till 1-1-1975 and hurriedly petitioner came to Court with a written objection on the same date at 11 a.m. but in the meantime the I. D. Case was heard *ex parte* and that the petitioner was prevented by sufficient cause from appearing in Court when the case was called on for hearing on 1-1-1975. The petitioner prays for restoration of the original I. D. case.

The O. P. (First party) contested the case by filing a written objection alleging *inter alia* that the second party petitioner was served with notice of the I. D. case but he intentionally avoided the Court and as a result the I. D. case was heard *ex parte* on 1-1-1975 and the *ex parte* judgement was delivered on 7-1-1975. It is further alleged that the petitioner was not prevented by any sufficient cause from appearing in Court when the original I. D. case was called on for hearing. The petitioner is not entitled to get any relief in this case.

It is to be seen whether the petitioner was prevented by any sufficient cause from appearing in Court when the original I. D. case was called on for hearing on 1-1-1975.

DECISION

P. W. 1, Badi Alam (petitioner) has examined himself along with his Manager P. W. 2 in support of his case. None is examined on behalf of the O. P.

The original I. D. case No. 441 of 1974 was filed by the O. P. against the petitioner on 30-9-1974 claiming termination benefit under section 19(I) of the Standing Orders Act. Notice of the said case was issued and the Process Server went to the locality and served the notice *vide* his service report, dated 20-10-1974 on record. P. W. 1 simply says in his evidence that he does not know about the service of any notice or summon upon him in I. D. case No. 441 of 1974. P. W. 1 has not stated on oath during hearing that no notice or summon was actually served in the I. D. Case upon him. According to para. 2 of the Misc. case petition, the second party petitioner on 1-1-1975 came to this Court with a written objection with a view to file the same in the said I. D. case. P. W. 1 in his cross has stated that on 1-1-1975 his Manager P. W. 2 Nur Hossain got the written statement drafted in his absence (P. W. 1) and he (P. W. 1) sent the written statement to this Court in order to file the same in I. D. case No. 441 of 1974. P. W. 2, Nur Hossain, the Manager of the petitioner has stated that he along with P. W. 1 prepared the written statement of I. D. case No. 441 of 1974 on 31-12-1974 and that prior to 1-1-1975 they collected necessary papers and prepared written statement. P. W. 1 in his evidence in-chief has stated that he does not remember the date or month on which came to know first, about the original I. D. case or the *ex parte* decision of the I. D. case No. 441 of 1974. It was suggested by O. P. to P. W. 1 in cross that the notice along with a copy of the plaint of I. D. case No. 441 of 1974 was duly received by the petitioner second party

on 22-10-1974 and on perusing the said copy of plaint the second party petitioner got the written statement prepared and tried to file the same in Court on 1-1-1975. Of course the said suggestion is denied by P.W. 1. The said suggestion finds support from the evidence of P. Ws. referred to above.

Nothing has been asserted or stated by the second party petitioner either in his Misc. petition or in evidence that there was any motive for wilful or fraudulent suppression of the notice or summon of the original I. D. case in order to obtain *ex parte* decision passed with a false claim by the O. P. first party. Rather P. W. 1 stated in his evidence that O. P. has not practised any fraud in the matter of non-service of summon. From my discussions above coupled with circumstances I have reason to say that the petitioner second party had full knowledge about the institution of the original I. D. case on 22-10-1974, the date of service of notice of the said case upon him (P. W. 1). Consequently I find that notice or summon of original I. D. case was duly served upon the second party petitioner and that the petitioner was not prevented by any sufficient cause from appearing in Court when the original I. D. case No. 441 of 1974 was called on for *ex parte* hearing. In the result the petitioner is not entitled to get any relief in this case.

Members are consulted over the matter.

Ordered.

That the Misc. case be dismissed on contest without cost.

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

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

A. AHMED
Chairman.
 26-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH
 Industrial Dispute Case No. 18 of 1975.

Didarul Alam, s/o. Oli Ahmed, Post and Village Gohira, P. S. Raozan, Chittagong—*First Party,*

versus

The Manager, M/s. Karnaphuli Paper Products, Al-Islam Chamber, 91, Agrabad Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

By this application under section 34 of the Industrial Relations Ordinance, 1969 first party Didarul Alam seeks a direction on the second party to reinstate him in his original post with back wages, mainly on the ground that the second party dismissed the first party *vide* letter, dated 3-2-1975 without following the provisions of sections 17 and 18 of the Standing Orders Act, 1965 and such dismissal of a permanent employee is illegal and void.

Second party entered into appearance in this case and took time for filing written statement but ultimately the second party did not file any written statement and this case was thereafter heard *ex parte*.

It is to be seen what relief, if any, is the first party entitled to ?

FINDINGS

P. W. 1, Didarul Alam, first party has only examined himself in order to substantiate his case. P. W. 1 stated that he was appointed as Machine Operator in the second party's establishment in January 1968 and since then he was working till he was illegally dismissed from service *vide* letter Ext. 1, dated 3-2-1975 without at all complying the provisions of sections 17 and 18 of the Standing Orders Act. First party further stated that no charge-sheet, was made, nor any enquiry was held against the first party. He also stated that he received his full wages up to the month of January 1975 from the second party. P. W. 1 prays for reinstatement in service. It appears that second party did not comply with the provisions of sections 17 and 18 of the Standing Orders Act. No explanation was taken from the first party. There was no formal enquiry or framing of charge. I, therefore, find that the first party was arbitrarily dismissed *vide* Ext. 1. So, it appears that there has been a gross violation of the provisions of law.

Members are consulted.

Ordered

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

The second party is directed to reinstate the first party in his former post within 30 days from today.

AMEENUDDIN AHMED

Chairman,
Labour Court, Chittagong.
19-6-1975.

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

A AHMED

Chairman.
19-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 37 of 1975,

Abdul Quader, S/o. M. Yasin, Village Chandipur, P. O. Chandipur Monosha,
P. S. Ramganj, District Noakhali—*First Party*,

versus

(1) Divisional Manager, B.R.T.C. (Truck Division), Jamal Khan Road, Chittagong,

(2) Chairman, B.R.T.C., Paribahan Bhavan, D.I.T. Avenue, Dacca—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

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

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

This application under section 34 of the Industrial Relations Ordinance, 1969 by first party Abdul Quader for directing the second party to allow him to resume his duties and to pay all arrear wages.

It is the case of the first party that he has been serving under second party since 1973 as a Truck Operator at a salary of Tk. 255-00 per month. Since then he has been discharging his duty to the satisfaction of his superiors. On 7-10-1974 first party fell ill and sought leave for 7 days and it was granted and he went home for nursing and treatment. On 14-10-1974 first party sent his son to the second party for some money along with a leave petition for extension till recovery. Thereafter on 3-12-1974 first party came to resume his duties but the second party No. 1 advised him to continue treatment and accordingly he was admitted in the American Hospital at Cox's Bazar. First party was discharged from the said Hospital on 23-12-1974. Thereafter first party went to resume his duties on 24-12-1974 and submitted a joining report but it was not accepted by the second party. Second party neither dismissed first party from service nor allowed him to resume duties. Lastly the second party on 12-3-1975 expressed his inability to allow him to resume his duty. Hence, this case.

Second party No. 1 contested the case by filing a written statement alleging *inter alia* that the first party was appointed as Probationer Truck Operator on 10-3-1973 and his service conditions are governed by the B.R.T.C. Ordinance, Rules and Regulations. Consequently his period of probation was raised to two years. First party was always found negligent and irregular and as such he was warned for such conduct on several occasions. The first party in his usual way started absenting from duties with effect from 8-10-1974

and did not apply for leave and even did not care to inform the authority about his absence from duty and it continued for indefinite period. Thereafter his supervising officer, informed the second party on 5-12-1974 about first party's unauthorised absence and thereafter first party legally discharged from his service, as first party was found to be deserter, no longer interested in service. First party is not entitled to get relief as prayed for.

It is to be seen whether the first party is entitled to resume his duty with arrear wages as prayed for.

FINDINGS

P. W. 1, Abdul Quader, first party has only examined himself in support of his case. None is examined on behalf of the second party. It is not disputed that first party was appointed as a Truck Operator under second party on 10-3-1973. It is the definite case of the first party that on 7-10-1974 he fell ill and applied for 7 days' leave which was granted and during the said period he left for home for nursing and treatment and thereafter on 14-10-1974 he through his son sent a leave application along with medical certificate for extension of leave till recovery and thereafter he was admitted in the American Hospital at Cox's Bazar, wherefrom he was discharged on 23-12-1974 and thereafter he, on 24-12-1974 went to resume duty by submitting a joining report but the second party did not accept or allow him to resume duty. The said case of the first party is flatly denied by the second party *vide* their written statement. On the other hand, it is the definite case of the second party that first party in his usual way started absenting from duty with effect from 8-10-1974 and did not apply for any leave and even did not care to inform the second party about his absence from duty and continued for indefinite period and thereafter the second party discharged first party from service *vide* letter dated 18-11-1974. It is an admitted fact *vide* evidence in cross of P. W. 1 that since 8-10-1974 he (P. W. 1) did not attend his duty. According to P. W. 1 he has nothing documentary to show that he ever granted leave or applied for leave or on 24-12-1974 he submitted any joining report to the second party. It was suggested to P. W. 1 in cross that he voluntarily deserted his service. The son of the first party who was sent with a leave application accompanied with medical certificate to the second party, is not examined in this case. It has not been proved by the first party that he was granted leave or he informed the second party about his alleged illness and reasons of his absence from duty. Thus it can be safely said that the first party was unauthorisedly absent from duty with effect from 8-10-1974.

Of course the second party in their written statement alleged that first party was discharged from his service *vide* letter dated 18-11-1974 for his such unauthorised absence for long period. No such letter is produced in support of the same. None is coming on behalf of the second party to prove the said discharge. I, therefore, find that the alleged story of discharge is not true.

There two courses were open to the employer (second party) in such a case of unauthorised absence of the employee (first party). The second party could either take disciplinary action under section 18 of the Standing Orders Act and could dismiss him from service without giving him benefit or could take steps under provisions of section 5. From the evidence and circumstances I find that the second party did neither terminate, nor dismiss first party from service for his such absence from duty for long time. So, in the absence

of such termination or dismissal the first party should be treated to be in service under the second party. I have already referred to above that first party was unauthorisedly absent for long time with effect from 8-10-1974. It cannot be said that the first party remained absent voluntarily. It also cannot be said that the management wrongly kept away the first party from his employment. The management could have easily dismissed the first party from service for his such absence after observing the legal formalities, but the management did not do so. It appears from the evidence and circumstances that first party now earnestly wants to resume his duty.

Having regards to the above facts and circumstances I think it is a fit case to allow first party to resume his duty. On the other hand, considering his (first party) unauthorised absence for long time, he should not be allowed back or arrear wages.

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

Ordered

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

The second party is directed to allow the first party to resume his duty in his post within 30 days from today. First party's prayer for back or arrear wages is disallowed.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
21-7-1975.

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

A. AHMED,
Chairman.
21-7-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute case No. 41 of 1974.

Shukhendu Bikash Ghose, North Nalapara, Chittagong—*First Party*,

versus

General Manager, M/S. The National Cotton Mills Ltd., Halishahar, Chittagong
—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

} *Members.*

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party S. B. Ghose prayed for either directing the second party to allow him to resume duty with all back wages or to direct the second party to pay termination benefit under section 19(1) of the Standing Orders Act.

The case of the first party is that he was appointed as Outdoor Asstt. in the office of the second party in 1945 and he drew Tk. 345-00 per month as his salary. The production of the mill was stopped in July 1970 but the functioning of the mill continued till 25th March, 1971 and first party regularly attended the office but the salary was not paid. After liberation of the country the first party continued to attend office. The first party in response to the press notification in the month of April, 1972 submitted his joining report on 17-4-1972 but he was not allowed to resume duty. Ultimately he expressed his desire to retire from service due to old age on 12-9-1973. Thereafter the second party paid him only his salary for the months from August, 1970 to January 1971 but he was not allowed to resume duty and his service was not terminated in spite of his desire to retire.

Second party contested the case by filing written statement contending *inter alia* that first party left service of the second party mill at his own accord since January 1971 and as such the question of his removal from service does not arise and that the first party is not entitled to get wages from February 1971. The first party is not entitled to get any relief.

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

DECISION

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

Admittedly P.W. 1 is now aged about 65 years. According to P.W. 1 he continued his duty up to 25-3-1971 and thereafter he did not perform his duty. P.W. 1 also stated that after liberation of the country he reported for duty on 17-4-1972 by filling a joining report Ext. 1, but he was not allowed to resume duty. P.W. 1 further stated that he sent written representation to the second party praying for 9 months' salary, etc. and the said representation was replied by the second party *vide* Ext. 2, dated 11-2-1974. P.W. 1 also stated in his evidence that he received his wages from the second party up to the month of January 1971. P.W. 1 prays either for resumption of duty with back wages or termination benefit. According to P.W. 1 in-cross he joined the service of the second party for the first time when he was aged about 30/35 years. Ext. 4 is the identity card of the first party. Ext. 5 is the first party's Provident Fund Slip. According to first party's case payment of his Provident Fund money has accrued under account No. 9, Ledger Folio No. 85, dated 2-5-1966 is outstanding. From the evidence of P.W. 1 coupled with Ext. 4 to 5, it will prove that first party joined service under second party for the first time not earlier than 1-4-1952. Consequently I find that first party was appointed under second party on 1-4-1952 and not in the year 1945. It is not disputed that first party drew wages lastly at the rate of Tk. 345-00 per month. It is clear from the evidence of P.W. 1 that he discontinued the service with effect from March 1971. Para 8 of the case petition shows that first party expressed his desire to retire due to old age. Admittedly first party is too old.

It was suggested to P.W. 1 in-cross that he (First party) left the second party's service in February 1971 and since then he never went to resume duty. P.W. 1 in his cross also stated that in September, 1973 he asked the second party to retire him from service due to old age and then prayed for Provident Fund money. From the evidence and circumstances I have reason to say that due to old age first party was unable to continue the service from February 1971 and he tried to retire from service, as such for the ends of justice this old first party should be given the following benefits:

- (1) 14 days' wages as compensation for each completed year of service or part thereof over six months, from 1-4-1952 to 31-1-1971;
- (2) Provident Fund dues in full.

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

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

AMBENUDDIN AHMED

Chairman.
Labour Court, Chittagong,
3-6-1975.

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

A. AHMED
Chairman.
3-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 115 of 1974.

Bidhan Chandra Barua, P. O. and Village Shillock, P. S. Rangunia, Chittagong—
First Party,

versus

The Chief Executive, M/S. K. Rahman & Co. Ltd., Baljid Bostami Road,
P. O. Box No. 63, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

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

Representation : Mr. Lutful Haque Mazumder, Advocate, appeared for the first party and Mr. S. C. Lala, Advocate, appeared for the second party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Bidhan Chandra Barua first party with a prayer for directing the second party to pay him benefits as per schedule attached with the case petition as his final settlement.

The first party's case is that he was appointed by the second party with effect from 9-11-1970 as Trainee and thereafter he was confirmed as Accounts Clerk with effect from 9-2-1971 on a monthly remuneration of Tk. 217.50. During liberation movement the first party abstained from attending duty in response to the call of liberation and the second party removed him from employment. In the month of November, 1971 the first party received his salary for the month of March, 1971 in which month he worked up to 25th and he was given 19 days' salary for the said month. Suddenly on 1st December, 1971 Nurul Alam, present senior Accountant of the second party establishment met first party at Reazuddin Bazar at about 10 a.m. and picked him up in the Micro Bus and took him to office and asked him to work under threat of arrest. First party being helpless had to work for 1st and 2nd December, 1971. After liberation the first party resumed his duty with effect from 27th December, 1971 and continued to discharge his duty satisfactorily. On 21st July 1973 the first party resigned from his service and he was released with effect from 24-7-1973. After resignation the second party offered to pay only 23 days' salary for July 1973, 34 days' salary for Earned Leave due and one day's casual leave salary as final settlement, but did not offer bonus for 1973 and salary for the period of liberation which has been paid to other employees by the second party. Thereafter the first party demanded bonus and salary for the period of liberation by lawyer's notice but the second party did not respond. Hence, this case.

Second party appeared and contested the case by filing written statement alleging *inter alia* that the first party was dismissed from service in the month of April, 1971 and the first party was subsequently appointed on 1-12-1971 in temporary vacancy for a period of 3 months on his application dated 30-11-1971 and as such the first party reported for duty and he remained absent thereafter. He joined after liberation and continued up to 23-7-1973 and then left the job by way of resignation. First party is not entitled to get any bonus for 1973 and he is also not entitled to get 9 months' salary for the liberation period. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get claimed amount described in items 1 to 6 in the schedule of the case petition.

FINDINGS

P. W. 1, Bidhan Chandra Barua, first party, has examined himself in support of his case with another witness. None is examined on behalf of the second party.

It is not disputed that first party was an employees under the second party and he (first party) resigned from service on 23-7-1973. It is also not disputed that before filing this case, the first party sent a Pleader's notice Ext. A, dated 12-2-1974 to the second party claiming a total amount of Tk. 2,826.54 from the second party, who replied the said notice *vide* Ext. B, dated 5-3-1974. It is admitted by P. W. 1 in his cross that second party offered to pay Tk. 342.64 as per Ext. 1, but he refused to accept the offer, only because, the second party declined to pay bonus for the year 1973 and arrear salary

for the liberation period (9 months). Ext. 1 is the full and final settlement of the first party as per his resignation from service. Thus from the evidence of P. W. 1 referred to above it is proved that first party was ready to accept Tk. 284.17 as 23 days' salary for July 1973, Tk. 434.04 as 34 days' Earned Leave, including Prime Minister's *ad hoc* and 1½ days' Casual Leave salary amounting to Tk. 6.38. As the second party had not offer bonus for 1973 and arrear salary for the liberation period, the first party refused to accept the aforesaid amount from the second party.

Now, the main point for determination is whether the first party is entitled to get his claim of bonus for 1973 and arrear salary for liberation period from 1-4-1971 to 30-11-1971 as described in item Nos. 4 and 5 of the case schedule. It is contended on behalf of the second party that first party is not entitled to get bonus and 9 months' arrear pay for the liberation period as claimed, in view of the evidence and materials on record. Learned lawyer appearing on behalf of the first party at the time of argument submits that his client did not claim arrear wages for 9 months from April to November 1971 under the provisions of Government Circular but his client claimed the same salary for the said period of liberation as the same has been paid by the second party to other employees, save and except P. W. 1. According to said contention of the learned lawyer, 9 months' salary for the liberation period is guaranteed to him by law, award, or settlement. The said evidence of P. Ws. goes to prove that first party is not legally entitled to 9 months' salary for the liberation period. According to P. W. 2, 9 months' salary was paid to employees of the second party on the basis of circular dated 8-11-1973 Ext. D. P. W. 2 further stated that those who participated actively in the liberation war were paid those 9 months' wages and those employees occasionally did their duties during the liberation struggle were not paid those 9 months' wages. The evidence of P. W. 1 in cross goes to prove that the (first party) during liberation movement occasionally did his duty. P. W. 1 have clearly admitted in his evidence that it may be true that on 20-5-1971 he took his wages for 17 days of March, 1971 from the second party. In Ext. B it is clearly stated by the second party that first party had performed his duties up to 17th March 1971 and he collected the wages for those 17 days of March 1971 from the second party on 20-5-1971. From the aforesaid discussions I am fully convinced that first party performed his duty under second party up to 17-3-1971 and he left the service on the next date for fear of his life. P. W. 1 further admitted in his cross that he on his own accord attended office and performed his duty on 2-12-1971. P. W. 1 further stated that on 2-12-1971 he attended second party's office from 8 a.m. to 5 p.m. and that on 2-11-1971 he collected a certificate of service from the office of the second party by signing on the copy of dismissal letter dated 26-4-1971. In view of the Government circular as well as the notification Ext. D the first party is not entitled to salary for 9 months with effect from April to November, 1971 as claimed. Moreover, it has not been proved from the evidence of P. Ws. that the first party left his service after 25-3-1971 and joined after liberation on 16-12-1971. It is also found from the evidence of P. W. 1 that he neither participated in the liberation war nor absented from work in support of the liberation struggle after 25th March 1971 and joined after 16th December, 1971. The alleged case or principle as stated in para 4 of the case petition cannot be accepted to be genuine and *bona fide*. Had this principle been true, it would be surely mentioned in the first party's notice dated 12-2-1974 Ext. A. From the discussions above coupled with the circumstances I find sufficient reasons to hold

that the first party is not entitled to arrear salary for the liberation period from 1st April to November, 1971 as claimed *vide* item No. 5 of the case schedule.

P. W. 1 in his cross has stated that July-June each year is the financial year of the establishment. It is an admitted fact that first party resigned from service on 23-7-1973. According to P. W. 1 no bonus for 1973 was declared till July 1973. It is in evidence that festival bonus declared in October 1971 when first party was not in service. Thus from the evidence and materials on record I also find that the first party is not entitled to get his claimed bonus for 1973.

From my discussions above the first party is entitled to get Tk. 342.64, from the second party as per Ext. 1.

Member Mr. Juned A. Choudhury is present and the other Member is absent on leave.

Ordered

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

The second party is directed to pay Tk. 342.64 as per Ext. 1 to the first party within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
1-7-1975.

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

A. AHMED
Chairman.
1-7-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 135 of 1974.

Abdul Quddus, S/o. Lal Mia, Village Nasirpur, P. O. Muslimabad, P. S. Laksh-
mipur, District Noakhali—*First Party*,

versus

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

PRESENT :

Mr. Amcenuddin Ahmed—*Chairman*.

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

Representation—Mr. A. K. M. Mohsanuddin Ahmed Chowdhury, Advocate,
appeared for the first party and Mr. S. C. Lala, Advocate, appeared for
2nd party.

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Abdul Quddus prayed for directing the second party to allow him (first party) to resume his duty.

The case of the first party is that he was serving under the second party's establishment as Line Jobber since 1967 in the scale of Tk. 260-00 per month. On 24-7-1972 while returning from the second parties mill after performing duty he was suddenly fell ill and the mill was closed from 11 a.m. of 24-7-1972 upto 26-7-1972 and as such first party could not submit leave petition. Thereafter the first party sent an application from home on 27-7-1972 for 15 days' leave. Thereafter first party sent another application on 2-8-1972 by registered post for extension of leave which was also received by the second party who did not reject the leave application but on the contrary issued a show cause notice upon the first party asking him to enquire in writing as to why he should not be dismissed for unauthorised absence. First party submitted his explanation on 11-9-1972 but the second party most illegally did not consider the case and kept the matter in abeyance. The first party after his recovery from illness went to the second party and wanted to resume duty but he was not allowed to resume duty. Thereafter first party also tried to resume duty but he was not allowed to resume duty. Hence this case.

Second party contested the case by filing written statement alleging that first party has been unauthorisedly absenting from duty for which the second party asked the first party to show cause as to why disciplinary action should not be taken for his such unauthorised absence. The second party did not receive any explanation till the date of passing the order of dismissal. Second party complied with the legal requirements at the time of passing order of dismissal from service. First party is not entitled to get any relief.

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

FINDINGS

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

It is not disputed that first party was serving under the second party as Line Jobber since 1967 and his last salary was at the rate of Tk. 260-00 per month. According to the evidence of P. W. 1 he was attacked with dysentery on 24-7-1972 and on that day he left for home without submitting any leave application. He further stated that from home on 27-7-1972 he sent a leave petition by post. The alleged postal registration slip has been marked Ext. 1. P. W. 1 further stated that on 2-8-1972 he sent another leave application by post for extension of leave and the alleged postal receipt is marked Ext. 1(A). P. W. 1 admits in his evidence that he received show cause notice dated 2-9-1972 Ext. 3 from the second party. P. W. 1 in cross admits that he submitted no reply to the letter of charge Ext. 3 to the second party. There is nothing on record to show that first party actually sent any application praying for leave or extension of leave to the second party. He sent simply a medical certificate Ext. A, dated 6-9-1972 and sent an application Ext. B, dated 13-9-1972 with reference to second party's letter Ext. 3. From the evidence of P. W. 1 it is clear that first party before filing this case, was quite aware about hi

dismissal from service by the second party for misconduct. P. W. 1 has clearly stated in his evidence that before filing the case, he knew about his dismissal from service by the second party. Moreover, P. W. 1 in his evidence has prayed for his reinstatement in service with back wages, as according to him he knew about his dismissal before. On the very face of the said evidence referred to above I must say that the first party's case as framed *vide* his case petition is not maintainable. Moreover, it can be said that the first party was absenting himself from duty for more than 10 days without permission or leave. In any view of the case I find that first party is not entitled to get any relief in this case and the case is liable to be dismissed.

Members are consulted over the matter.

Odered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.

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

A. AHMED
Chairman,

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 187 of 1974.

Abdul Hanif,
son of Anu Mia, Vill. Talibpur,
P. S. Begumganj, Dist. Noakhali—*First Party,*

versus

The Manager,
M/s. S. K. N. Jute Mills Ltd.,
Barabkunda, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

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

Representation—Mr Lutful Haque Mazumder, Advocate appeared for the first party and Mr. A. K. Humayun Kabir, Advocate, appeared for the second party.

By this application under section 34 of the I. R. O. the first party Abdul Hanif seeks a direction on the second party to reinstate him in his former post and position with all back wages on the ground that he (first party) was suddenly retrenched from employment *vide* illegal order dated 15-4-1974 without any valid reason or notice or payment in lieu of notice, although his juniors, named in the case petition are retained in their posts and position. Such order of *mala fide* retrenchment cannot be sustained under facts and law.

Second party contested the case by filing a written statement alleging *inter alia* that there was necessity to retrench a good number of workers in different categories on the ground of redundancy and accordingly, out of 9 Electric Mistries including the first party, one was considered surplus to the requirement of the second party. Out of 9 Electric Mistries only three Electric Mistries are juniors to the first party, but since the first party has been maintaining a very bad record of service, second party decided to retrench first party from service keeping the said three junior workers in service. It is further stated that towards payment of benefits to first party in furtherance of the order of retrenchment dated 15-4-1974 two bills were prepared, one for Tk. 562.50 towards notice pay for one month, compensation for 28 days and unpaid wages for the period from 5th to 14th May 1974 and arrear House Rent and another bill for Taka 65.79 towards Provident Fund benefits. Both the said two bills were paid to first party on 17-5-1974 but one bill for Taka 562.50 has been missing from the second party's office and the second party is in firm conviction that the first party managed to remove the said bill and taking advantage of such position, he has brought this case for illegal gain. The first party's case is barred by estoppel, acquiescence and waiver. The order of retrenchment was in accordance with the provisions of sections 12 and 13 of the Standing Orders Act.

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

FINDINGS

P. W. 1, Abdul Hanif, first party has only examined himself in support of his case. On the other hand, D. W. 1 Nurul Huda, Labour Officer of the second party has examined himself on behalf of the second party.

Admittedly first party was appointed by the second party in 1971 as Electric Mistry and subsequently his service was confirmed with effect from 1-1-1972 and he was paid Taka 47.70 as his weekly wages. It is not disputed that the first party was retrenched from his employment *vide* retrenchment order dated 15-4-1974 Ext. 1. It is the case of the second party that there was necessity to retrench a good number of workers in different categories on the ground of redundancy and accordingly out of 9 Electric Mistries including the first party one was considered surplus to the requirement of the second party and that out of the said 9 Electric Mistries including first party, only 3 Electric Mistries are junior to the first party but since the first party has been maintaining a very bad service record, the second party decided to retrench the first party from service keeping the said 3 juniors in service. D. W. 1, Labour Officer of the second party deposed in support of the said case. According to D. W. 1 as many as 164 workers including the first party of different categories were retrenched at a time by

the second party by orders dated 15-4-1974. D. W. 1 further stated that only Rahul Amin and Abdullah, the employees junior to first party were retained as the first party has been maintaining a very bad service record, the second party decided to retrench the first party from service keeping these juniors in service. Retrenchment order Ext. 1 shows that first party was considered surplus to the requirement of the mill and as such he was retrenched. From the aforesaid discussions I find that there was valid reasons on the part of the second party to retrench his employees including first party. P. W. 1 nowhere stated in his evidence that the copy of the said retrenchment notice Ext. 1 was not issued and served upon the Dy. Chief Inspector of Factories, Chittagong, or the Deputy Director of Labour, Chittagong. D. W. 1 has stated in his evidence that copy of the retrenchment order Ext. 1 was issued and served upon the Dy. Chief Inspector of Factories, Chittagong. The order of retrenchment Ext. 1 itself will show that copy of this order was sent to the appropriate authority. I, therefore, find that the second party retrenched a large number of workers including first party on the same date for valid and genuine reasons and the second party has followed the legal requirements in this respect.

First party prayed for reinstatement in service with back wages. It will appear from the cross examination of P. W. 1 first party, that he received Taka 65.72 towards full and final settlement of his Provident Fund dues after the retrenchment order Ext. 1. P. W. 1 further stated that about 200 employees were retrenched along with him by the second party and all other retrenched employees got their retrenchment benefit from the second party in full and he also went to receive retrenchment benefit and then saw other retrenched workers taking payment of their entire retrenchment benefit by signing the sheets. From his aforesaid evidence it goes to prove that first Party also was willing to receive retrenchment benefit from the second party. D. W. 1 has stated in his evidence that all the retrenched workers including first party took retrenchment benefit as well as Provident Fund money by signing in the Pay Sheets. He further stated that two bills were prepared for the claim of first party, one for Taka 562.50 towards notice pay, compensation, unpaid wages, etc., and another bill for Taka 65.72 towards provident fund benefit and these bill amount was paid to the first party. D. W. 1 further stated that the Payment sheet showing retrenchment benefit of the first party and others are kept in Accounts Department and it is subsequently detected that payment sheet showing payment of Taka 562.50 to first party is found missing and the second party had reason to believe that first party managed to remove the concerned pay sheet for illegal gain. The said evidence corroborates the second party's case referred to in the written statement in this respect. P. W. 1 in his cross has stated that after payment of retrenchment benefit, certificates are issued to Provident Fund in-charge for payment of Provident Fund dues and these certificates are handed over to the individual retrenched workers. P. W. 1 further stated in his cross that he was given a certificate for handing over the same to the Provident Fund In-charge and he took Provident Fund money of Taka 65.72 by showing the said certificate to Provident Fund in-charge on 14-5-1974. According to P. W. 1 a certificate is granted after payment of either of the two bills. The said evidence of P. W. 1 fully supports the evidence of D. W. 1, who stated in his evidence that on such certificate the retrenched workers got payment of Provident Fund benefits and that the first party after payment of retrenchment benefit, a certificate

was given to first party and by showing the same he took Provident Fund benefits from the P. P. Incharge. It was suggested to P. W. 1 in cross that after accepting Taka 562.50 as retrenchment benefit he was handed over a certificate for taking payment of Provident Fund amount from the Provident Fund Incharge and with that certificate he received the payment of Provident Fund money on the same date and the first party, however, managed to remove the payment sheet of Taka 562.50 from the office of the second party and thereafter brought this case for illegal gain. The said suggestion is, however, denied by the first party. Admittedly first party accepted payment of Taka 65.72 towards final settlement of Provident Fund amount after retrenchment on 14-5-1974. The said payment of P. F. amount has not been found place in the case petition. P. W. 1 stated that he did not state it in his case petition, that he received the final settlement of Provident Fund money after retrenchment. From the aforesaid evidence of P. W. 1 and D. W. 1 coupled with circumstances I find reason to believe that first party received the retrenchment benefit in full from the second party. According to his own evidence in cross, he went to receive payment of the retrenchment benefit along with others. The question of his reinstatement in service does not arise, when it is found that the first party after valid retrenchment accepted the benefit from the second party. I, therefore, find that the first party is not entitled to get the relief as prayed for.

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

Ordered.

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
23-6-1975.

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

A. AHMED
Chairman.
23-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case Nos.—233, 226, 228, 229, 220, 234, 235, 236, 238, 241, 243, 244, 245, 246, 247, 249, 251, 253, 254, 255, 256, 257, 258, 259, 260, 263, 266, 267, 261, 262, 265, 268, 225, 224, 227, 242, 248, 250 and 264 of 1973.

- (1) Md. Jamāluddin, Proprietor, M/s. Barnali Bipani Bitan, Chittagong, (1st party of I. D. Case No. 233 of 1973);
- (2) Haji Ahmedur Rahman Chowdhury, Prop. East Bengal Stores—(1st party of I. D. Case No. 226 of 1973);

- (3) M/S. Bichitra, Prop-Haji Kala Mia Sawdagar—(1st party of I. D. Case No. 228 of 1973);
- (4) M/S. Republic Stores, Prop. Jamal Ahmed—1st party of I. D. Case No. 229 of 1973);
- (5) Ahmed Meah Chowdhury, Proprietor-Ahmed & Co.—1st party of I. D. Case No. 230 of 1973);
- (6) Ml. Yusuf, Prop Shajghar—(1st party of I. D. Case No. 234 of 1973).
- (7) M/S. Chittagong Stores, Prop., Fazal Kabir—(1st party of I. D. Case No. 235 of 1973);
- (8) Hashmat Ali, Prop., A. Rahman & Sons—(1st party of I. D. Case No. 236 of 1973);
- (9) Anwar Mia, Prop., Jubilee Cloth Store—(1st party of I. D. Case No. 238 of 1973);
- (10) Syed Rafiqul Haque, Shibly Brothers—(1st party of I. D. Case No. 241 of 1973);
- (11) Md. Eunus, Prop., Bangladesh Optics—(1st party of I. D. Case No. 243 of 1973);
- (12) Azizul Haque, Prop., Haque Emporium—(1st party of I. D. Case No. 244 of 1973);
- (13) Abul Rahman Chowdhury, Prop., Abul Kashem and Sons.—(1st party of I. D. Case No. 245 of 1973);
- (14) M. Mizaffar Ahmed, Managing Partner, "NABARUN"—(1st party of I. D. Case No. 246 of 1973);
- (15) Ml. Emladul Haque, Partner, Lucky Corner—(1st party of I. D. Case No. 247 of 1973);
- (16) Abu Taher Sawdagar, Prop., College Shoe—(1st party of I. D. Case No. 249 of 1973);
- (17) A. Wahid Sarkar, M/s. Mona Garments—(1st party of I. D. Case No. 251 of 1973);
- (18) Yusuf Ahmed, Managing Partner, Universal Radio Service—(1st party of I. D. Case No. 252 of 1973);
- (19) Zahurul Hussain, Managing Partner, Hossain and Co., 69, Bipani Bitan, Chittagong—(1st party of I. D. Case No. 253 of 1973);
- (20) Abdul Mabud, Managing Partner, A. Wadud Brothers—(1st party of I. D. Case No. 254 of 1973);
- (21) A. B. M. Ariful Haque, Prop., Mowla Crookery—(1st party of I. D. Case No. 255 of 1973);
- (22) Mubhabul Haque, Prop.-Al-Siraj—(1st party of I. D. Case No. 256 of 1973);
- (23) Syed Shamsul Alam, Prop., Ajmeer Store—(1st party of I. D. Case No. 257 of 1973);

- (24) Md. Salim, Prop., Islamia Leather Works—(1st party of I. D. Case No. 258 of 1973);
- (25) Md. Anowarul Azim, Prop., Tata—(1st party of I. D. Case No. 256 of 1973);
- (26) Mizanul Haque, Prop., Service Footwear—(1st party of I. D. Case No. 260 of 1973);
- (27) Nurul Anowar Chowdhury, Prop., Beauty Stores—(1st party of I. D. Case No. 263 of 1973);
- (28) Shamsuddin Ahmed, Prop., Rashom—(1st party of I. D. of Case No. 266 of 1973);
- (29) Enan ul Haque, Prop., Enaco—(1st party of I. D. Case No. 267 of 1973);
- (30) Azhar Meah, Prop., Lucky Footwear—(1st party of I. D. Case No. 261 of 1973);
- (31) Ahmad Meah, Prop., Popular Leather Works—(1st party of I. D. Case No. 262 of 1973);
- (32) Ahmad Hossain, Prop. Faiz Boot House—(1st party of I. D. Case No. 265 of 1973);
- (33) Majnu Meah, Prop. Delux Leather Works—(1st party of I. D. Case No. 268 of 1973);
- (34) Md. Muslim Meayn Prop., General Radio Electronic—(1st party of I. D. Case No. 225 of 1973);
- (35) Amiruzzaman, Partner, Islamad Paper and Book House—(1st party of I. D. Case No. 224 of 1973);
- (36) M/S. Chattala, Prop. Chowdhury Md. Hashem—(1st party of I. D. Case No. 227 of 1973);
- (37) M/S. Metro Stores, Partner., Md. Yusuf—(1st party of I. D. Case No. 242 of 1973);
- (38) Ahmed Sofa Sawdagar, Prop., Lucky Shoe Supply—(1st party of I. D. Case No. 248 of 1973);
- (39) Fazlul Haque Chowdhury, Managing Partner, M/S. Jubilee Green Stores, 6/7, Bipani Bitan, Chittagong—(1st party of I. D. Case No. 250 of 1973);
- (40) Ali Haider, Prof., Fashion Shoe, Bipani Bitan Chittagong—(1st party of I. D. Case No. 264 of 1973);

versus

- (1) Chittagong Dokan Karmachari Samity, Bipani Bitan Branch;
- (2) Kazi Jamaiuddin, President, Chittagong Dokan Karmachari Samity;
- (3) M. A. Sabur, Vice-Preseident, Chittagong Dokan Karmachari, Samity;
- (4) Abu Mohammed Nazimuddin, General Secretary, Chittagong Dokan Karmachari Samity;

(5) Babu Priya Pal, Joint Secretary, Chittagong Dokan Karmachari Samity;

All care of Chittagong Dokan Karmachari Samity, Bipani Bitan (3rd Floor), Chittagong;

(6) A. S. Khan, Chairman, Bipani Bitan Banik Samity;

(7) Shafique Ahmed, Secretary, Bipani Bitan Banik Samity, C/O. Bipani Bitan Merchant Welfare Committee, 210/211/Bipani Bitan, Chittagong *Second Parties*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

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

Representation—Mr. Azizul Haque Chowdhury, Advocate appeared for the first party and M/S. Lutful Haque Mazumder and Md. Nurul Islam, Advocates for the 2nd Party.

All these 40 cases are taken up together for order and judgment for the sake of convenience, as both in facts and laws involves in the cases are the same. The judgment passed in I.D. case No. 233 of 1973 will govern all the above mentioned cases.

The above mentioned I. D. cases are under section 34 of the I. R. O., 1969 filed by the applicants individually with prayer for declaration that the first parties are entitled to realisation of service from their employees in terms and conditions of employment, guaranteed and secured to them under the law alone, and further prayed for declaration that the first parties are not bound to implement the impugned agreement dated 6-9-1973 concluded between second parties 2 to 5 and 6 and 7.

The case of the first parties is that they are the Proprietors and Partners of the commercial establishments situated at Bipani Bitan, Chittagong. Second party No. 1 is a registered trade union and second party No. 2 to 5 are the office bearer of the said second party No. 1. Second parties No. 6 and 7 are Chairman and Secretary, respectively of the Bipani Bitan Merchant Welfare Committee registered under the Societies Registration Act. The relationship of employers and employees are guided under the provisions of I. R. O., Standing Order Act and Shops and Establishments Act and thus a right has been guaranteed and secured between first party and their employees in the matters connected with their employment and non-employment, and conditions of service under the said laws. Second parties 6 and 7 illegally and without any authority from the first parties styled themselves as Chairman and Secretary of the Bipani Bitan Bonik Samity entered into a so called agreement on 6th September, 1973 at Dacca under the colour of section 30(4) of the I. R. O. with second parties 2 to 5 as representative of second party No. 1 without any knowledge or consent of the first parties and the said agreement is not/cannot be binding upon the first parties ~~for~~ less the first parties are not bound to implement the said agreement.

Second party No. 7 by a circular dated 29-7-1973 informed all general members of the welfare committee including the first parties about the contents of the so called agreement for information and record and the first parties came to learn about the impugned agreement for the first time on receipt of the said circular. There is in fact no organisation like Bipani Bitan Banik Samity in existence, nor such imaginary organisation has any right to act as the representative of the first parties as employers Association to conclude any agreement on behalf of first parties and thus the second party persons have violated the rights of the first parties secured and guaranteed under the provisions of law. The second parties 2 to 5 are also threatening the first parties to resort to strike to secure implementation of the said agreement under coercion and threat. The first parties are entitled to declaration as prayed for.

Second parties 1 to 5 of all the above mentioned cases except I. D. case Nos. 264, 250, 248, 242, 227, 224, 225, 268, 265, 261 and 262 of 1973 appeared and contested the cases by filing written statements contending *inter alia* that the first parties have no right to be enforced under section 34 of the I. R. O. in these cases and that these cases as framed are not maintainable in law and they are liable to be dismissed. It is the case of the second parties that second parties 2 to 5 representing second party No. 1 is a registered trade union and the collective bargaining agent in respect of the workers of the first parties establishments, submitted their 11 point charter of demands on 14-7-1973 to the first parties and other shop owners of Bipani Bitan officially under section 26(1) of the I. R. O., 1969. Ultimately second parties were compelled to approach the Joint Director of Labour, Chittagong Division for conciliation in the dispute by their letter dated 26-7-1973, the said Joint Director of Labour thereafter took up the dispute for conciliation and arranged for tripartite meeting in his office in which the first parties were represented by the second parties No. 6 and 7 as President and Secretary of Bipani Bitan Banik Samity with proper authority of the first parties. But the said tripartite talk had failed due to uncompromising attitude of the first parties representative. The second parties finding no other alternative, served a strike notice upon the first parties on 12-8-1973 informing the first parties and the conciliator on their decision to go on strike with effect from 11-9-1973. The Joint Director of Labour, Chittagong continued his conciliation even after the service of the strike notice. In the meantime these second parties approached the Hon'ble Labour Minister, while the said Minister was at Chittagong. The Hon'ble Labour Minister instructed the Director of Labour to take up the matter who arranged a meeting of the parties in dispute on 5-9-1973. The first parties and other employers were represented in the said meeting by the second parties 6 and 7 as their nominated and authorised representative. After discussions the Director of Labour took up the conciliation and the dispute was set after protected discussions with the representatives of both parties on 6-9-1973 at the chamber of the Director of Labour on the terms and conditions embodied in the agreement, which was signed by the representatives of both parties of the Director of Labour. Thus the validity of the impugned agreement cannot be challenged by the first parties. The agreement in question dated 6-9-1973 is legal and valid and binding upon the first parties. It is further alleged that the term Nos. 2, 5, 6, 7, 8, and 11 of the said agreement have already been implemented as per decision of a meeting dated 9-10-1973. A good number of Shop owners of Bipani Bitan implemented the agreement as a whole. So, the agreement had been acted upon by the first parties and the other shop owners. The first parties are not entitled to get any relief in this case.

It is to be seen whether the first parties cases under section 34 of the I. R. O., 1969 as framed are maintainable and whether the first parties are entitled to get the declaration as prayed for.

DECISION

P. W. 1. Jamaluddin, first party, of case No. 233 of 1973, P. W. 2 Md. Yusuf, first party of I. D. Case No. 234 of 1973, P. W. 3-Mohammed Nabi, the first party of case No. 235 of 1973, P. W. 4- Hashmat Ali first party of case No. 236 of 1973, P. W. 5. Anowar Miah first party of case No. 238 of 1973, P. W. 6-Yunus, first party of case No. 243 of 1973, P. W. 7 Azizul Huq of case No. 288 of 1973, P. W. 8 Abdur Rahman Chowdhury of case No. 245 of 1973, P. W. 9 Muzaffer Ahmed of case No. 246 of 1973, P. W. 10 Emdadul Haque of case No. 247 of 1973, P. W. 11-Abdul Wahid, first party of case No. 251 of 1973, P. W.-12 Yusuf of case No. 253 of 1973, P. W. 1 Mujibul Huq of case No. 254 of 1973, P. W. 14-Mahbubul Huq of case No. 256 of 1973, P. W. 15-Salim of case No. 253 of 1973, P. W. 16-Nurul Anowar Chowdhury of case No. 263 of 1973, P. W. 17- Enamul Huq Chowdhury of case No. 267 of 1973, P. W. 18 Jamal Ahmed of case No. 229 of 1973, P. W.-19 Zahirul Hussain of case No. 253 of 1973, P. W. 20 Syed Shamsul Huq of case No. 252 of 1973, P. W. 21 Anowarul Azim of case No. 259 of 1973, P. W.-22, Haji Kala Mia of case No. 228 of 1973, P. W. 23 Saiful Alam of case No. 249 of 1973, P. W. 24 Ahmed Hussain Chowdhury of case No. 226 of 1973, P. W. 25 Ahmed Mia Chowdhury of case No. 230 of 1973, P. W. 26, Syed Rafiqul Huq of case No. 241 of 1973, P. W. 27 M. A. Huq of case No. 255 of 1973, P. W. 28 Mozammel Huq of case No. 260 of 1973, and P. W. 29 Shamsuddin Ahmed, first party of case No. 266 of 1973 have deposited in support of their respective cases. The first parties of I. D. Case Nos. 264, 250, 248, 242, 227, 224, 225, 265, and 261 of 1973 took no steps and found absent on repeated calls. So, their above-mentioned cases are liable to be dismissed for their default.

The contesting second parties have challenged the present applications of the first parties as not maintainable under section 34 of the I. R. O. on mainly on the following grounds—

- (1) That this Court is not competent to entertain the said applications of the first parties, seeking declaration that the impugned agreement is not binding on them;
- (2) That the statements made by the first parties in their respective applications do not disclose any cause of action of the first parties for and application under section 34 of the I. R. O., against second parties; and
- (3) That no right in the nature of relief prayed for in the instant applications guaranteed to the first parties under the labour laws.

It should be borne in mind that an application under section 34 of the I. R. O. must fulfil two preconditions, firstly, the first party should have a right of the nature specified in that section and, secondly, such right is yet to be enforced.

The learned lawyer appearing on behalf of the second parties draw my attention to the reliefs prayed for in the case petitions. The first parties have prayed for declaration that the first parties entitled to the reliefs in

the shape of realisation of services from their employees in terms and conditions of employment, guaranteed and secured to them under the law alone. First parties further prayed for declaration that they are not bound to implement the impugned agreement dated 6-9-1973 concluded between the second parties 2 to 5 and 6 and 7. At the time of hearing the P. Ws. gave up their first prayer for declaration referred to above. The P. Ws. at the time of hearing *vide* their evidence simply prayed for declaration that the impugned agreement is not binding on them and the same can not be enforced on them. There is no doubt that in a proceeding under section 34 there is no scope for this Court to declare any right. On the contrary this court's function is merely to enforce a right which is guaranteed and secured under any law, award, or settlement, *i.e.*, section 34 of the I. R. O. enables this Court to enforce a right of the applicant guaranteed to him under any law, award or settlement. Wherein in these instant cases the first parties are seeking a mere declaration that they are not bound to implement the impugned agreement dated 6-9-1973, Ext. 1. Thus the prayer of the first parties is hit by the provisions of section 34 of the I. R. O. on two counts: (a) that it seeks no enforcement of any right, but only a declaration; (b) that it seeks no declaration even as to any right but as to an obligation.

Thus it is clear that no right of the applicants under any law, award or settlement is asserted here and hence the question of any enforcement does not arise. The prayer merely states a declaration that the applicant is not obligated to implement the impugned settlement and such a declaration is beyond the scope and ambit of section 34 of I. R. O.

As many as 29 P. Ws. referred to above are examined in these cases. None is examined on behalf of the second parties. The Bye Laws of Bipani Bitan Merchant Welfare Committee, registration No. 2080 is marked Ext. 2. The said Ext. 2 shows that the said committee was established in 1966. It is relevant to mention the evidence of some P. Ws. P. W. 1 cannot say what right is to be enforced in his case under section 34 of the I. R. O. P. W. 19 cannot say under what law his right is guaranteed. P. W. 26 cannot say whether the second parties have violated his right guaranteed under any law. P. W. 22, does not know whether he has any right to be enforced under section 34. P. W. 8 does not know how the second parties have violated his (P. W. 8) right. P. W. 11 cannot say what is his right and how such right has been violated by the second party and what of his right is to be enforced in the case. P. W. 15 says that there is nothing stated in his case petition as to his alleged right or how his such right guaranteed to him. P. W. 29 says that his relief as prayed for is not guaranteed by any law. From the discussions above I find no right in the nature of the relief prayed for in these applications is guaranteed to the first parties under any law, agreement, or award. This Court, therefore, has no jurisdiction to entertain the present applications of the first parties under section 34 of the I. R. O.

The agreement, dated 6-9-1973 Ext. 1 was signed by the second party Nos. 6 and 7 describing them to be Chairman and the Secretary of Bipani Bitan Banik Samity, Chittagong. It is stated by almost all the P. Ws. in their evidence that the second parties 6 and 7 have or had no authority or right to enter into any agreement on behalf of the applicants P. Ws. concerning their employees and that there is no existence of any Samity or Association, namely, Bipani Bitan Banik Samity. According to P. Ws they on receipt of

the circular Ext. 1 on 29-9-1973 came to know for the first time about the impugned agreement dated 6-9-1973. None is coming on the side of the second parties to challenge the aforesaid evidence of P. Ws. Ext. 2 shows that Bipani Bitan Merchant Welfare Committee, registration No. 2080 is in existence from 1966. The alleged Bipani Bitan Banik Samity is not a registered Association. Second parties 6 and 7 are not coming to say on oath that they entered into the agreement as representatives or with proper authority from the first party. Thus it can be said that the said settlement *vide* impugned agreement is not a "settlement" within the meaning of I. R. O.

I have already found above that the applications of the first parties as framed are not maintainable under section 34 of the Industrial Relations Ordinance, 1969 and that this Court has no jurisdiction to entertain the said applications of the first parties under section 34 of the Ordinance. So, the cases are liable to be dismissed as not maintainable.

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

Ordered.

All the I. D. cases referred to above except I. D. case Nos. 264, 250, 248, 242, 227, 224, 225, 268, 265, 261 and 262 of 1973 be dismissed on contest without cost as not maintainable. The said 11 cases described in this order be dismissed for default.

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

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

A. AHMED
Chairman,
31-5-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH
Industrial Dispute Case No. 417 of 1974.

Faiz Ahmed (Security Guard), S/o. Late Nur Ahmed, Village Nasirabad, P.S. Panchalaish, Dist. Chittagong—*First Party,*

versus

Project Manager, M/s. IVAN MILUTINOVIC-PIM, Dry Dock, Patenga Road, P.S. Doublemooring, Dist. Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

.. }
- } *Members.*

Representation: Mr. Md. Nurul Islam, Advocate, appeared for the first party and Mr. S. C. Lala, Advocate, appeared for the second party.

There is an application under section 34 of the Industrial Relations Ordinance, 1969 by the first party Fariz Ahmed, for his reinstatement in his former permanent post with back wages and other benefits all going *inter alia* that second party most illegally and arbitrarily discharged him from his permanent service with effect from 24-7-1974 without following the provisions of sections 17 and 18 of the Standing Orders Act, 1965 which is in force.

Second party appeared and contested the case by filing a written statement alleging *inter alia* that the first party was charge-sheeted for wilful insubordination and disobedience of the superior officer, habitual absence without leave and habitual neglect of work and thereafter the first Party submitted explanation which was unsatisfactory and thereafter the second party dismissed the service of the first party for misconduct complying with the provisions of labour laws. The first party is not entitled to get relief. We have got to consider whether the first party is entitled to be reinstated in his former post with back wages. If not what benefit, if any, the first party is entitled to?

FINDINGS

Neither party adduced any oral evidence. Documents numbering 5 produced by the first party are taken in evidence, viz., Exts. 1 to 5 without any objection. It is admitted fact that the first party was serving under the second party as Security Guard since 1-5-1969 and while he was in service, the second party charge-sheeted the first party for alleged misconduct *vide* Ext. 1, charge-sheet dated 22-7-1974 and the first party submitted explanation dated 23-7-1974 Ext. 2 and thereafter the second party discharged the first party from service *vide* discharge order dated 24-7-1974 Ext. 5.

It is contended on behalf of the first party that the said discharge order (Ext. 5) is not made according to labour laws as the second party has not complied at all with the provisions of sections 17 and 18 of the Standing Orders Act. It will appear from the charge-sheet Ext. 1 that on the night of 21st July 1974 the first party was posted on duty from 24 hours to 8 hours of 22-7-1974 and during his said duty the first party either neglected his duty or pilfered the Company's $\frac{1}{2}$ ton preformed rods from the fitting cut quarry and as such the first party was directed to show cause as to why he should not be dismissed from service for misconduct under clause 13(b) and (i) and the first party was asked to submit such show cause or explanation at 8 hours on 23-7-1974. The said charges under Ext. 1 were replied by the first party *vide* his explanation Ext. 2 and thereafter the first party was discharged from service for misconduct under clause 3(i) negligence of work of the Ordinance 1960. Learned lawyer appearing for the second party frankly concedes that there is fatal defect in the disciplinary proceeding drawn up against the first party but in fact the second party lost confidence in the first party for latter's misconduct as alleged in the charge Ext. 1. In the charge Ext. 1 the first party has been asked to submit explanation within less than 24 hours' time. Law provides that full 3 days' time should be given for explanation. There is thus a violation of mandatory provisions of law. Practically no domestic enquiry was held in this case. So I must say that the second party has not complied with the provisions of section 17 and 18 of the Standing Orders Act, 1965 which is

in force at the relevant time, in the matter of dismissal or discharge of the service of the first party for his alleged misconduct. In this view of the case I find that the first party's discharge or dismissal from service is not proper and valid. Regard being had to the conduct of the first party as complained by the second party in the charge and unwillingness of the administration, I do not like to thrust first party on the second party by ordering reinstatement. Considering the circumstances, I think ends of justice, will be duly met if the said discharge or dismissal order in question is substituted with an order of termination of first party's service with direction to pay termination benefit under section 19(1) of the Standing Orders Act, 1965.

According to para. 1 of the first party's case petition, the last pay drawn by the first party was at the rate of Taka 255.00 per month. But Ext. 3 dated 6-8-1974 by the first party to the second party will show that his pay was at the rate of Taka 225.00 per month and not Taka 255.00. I have reason to hold that last pay drawn by first party was at the rate of Taka 225.00 per month.

Members are consulted over the matter.

Ordered.

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

The first party is entitled to the following termination benefits under section 19(1) of the Standing Orders Act, 1965:—

- (1) 90 days' wages in lieu of notice at the rate of Tk. 225.00 per month.
- (2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;
- (3) Unpaid wages, if any, due;
- (4) Wages for unavailed period of Earned Leave, if any, due;
- (5) Bonus, if any, due;
- (6) Provident Fund dues, if any.

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

AMEENUDDIN AHMED

Chairman,

Labour Court, Chittagong.

20-6-1975.

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

A. AHMED

Chairman.

20-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 439 of 1974.

Fakir Mahmood, Boiler Attendant, Village West Ichakhali, P.O. Matbarhat,
P.S. Mirsarai, Dist. Chittagong—*First Party*,

versus

The Manager, Sultana Jute Mills, Masjudda, Kumira, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury.

} *Members.*

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Fakir Mahmood first party for his reinstatement in former post with back wages on the ground that the second party illegally discharged him from service with effect from 19-5-1974 without at all complying with the provisions of section 18 of the Standing Orders Act, 1965.

Second party contested the case by filing written statement alleging *inter alia* that he (second party) discharged the first party from service legally for his (first party) continued ill health and not for any other reasons amounting to misconduct. Second party need not draw any proceeding under section 18 of the Standing Orders Act since the severance of relationship is not a punishment due to misconduct and as such, no proceeding under sections 17 and 18 of the Standing Orders Act need be drawn. The first party is not entitled to get any relief.

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

FINDINGS

P.W. 1, Fakir Mahmood, first party has only examined himself in support of his case. None is examined on behalf of the second party. It is in evidence *vide* P.W. 1 that he was appointed as Boiler Attendant with effect from 15-3-1971 under second party at a monthly salary of Tk. 185.00. According to P.W. 1 he suddenly received order of discharge dated 8-8-1974 Ext. 1 at his village home from the second party, though according to him (P.W. 1) he was quite fit for service at that time. According to second party's case, the first party was discharged from service for his continued ill health. It appears from the discharge order Ext. 1 that the first party was discharged from service on the ground that he was found unfit for his continued ill health. The evidence of P.W. 1 goes to show that the first party was suffering due to ill health continuously. First party went on leave due to illness. Ext. 'A' will show that he suffered due to illness for 38 days and thereafter he also continuously suffered for the period from 22-5-1974 to 8-7-1974. According to P.W. 1, after recovery from illness he went to second party for resumption of duty but company's doctor directed P.W. 1, to go to the Principal, Chittagong Medical

College and accordingly he went to Chittagong Medical College Hospital, where the Doctor of the Medical College advised him to take medicine and granted a prescription. Ext. B. P.W. 1. further stated in his cross that after he returned from Medical College with Ext. B, second party's Doctor examined him (P.W. 1) and granted a certificate on the back of the sick report Ext. C. The said report of the company's doctor dated 10-7-1974 will show that he is not fit for the job and he was continuously suffering due to illness. From the evidence and materials on record I find that the first party was not fit for service due to his continued ill health. So, it was not necessary on the part of the second party to comply with the provisions of sections 17 and 18 of the Standing Orders Act, in view of the fact that second party discharged the first party from service for continued ill health and not for misconduct. I, therefore, find that the first party is not entitled to reinstatement with back wages.

However, if the first party is not paid his benefit under section 16 of the Standing Orders Act he is entitled to the benefit under section 16 of the Standing Orders Act from the second party.

Members are consulted over the matter.

Ordered

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
16-6-1975.

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

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 458 of 1974.

Nepal Kanti Chowdhury, son of Monindra Lal Chowdhury, 100, Reazuddin Road, Chittagong—*First Party*,

versus

Managing Partner, M/s. Standard Laboratories Ltd., 189, Jubilee Road Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

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

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

By this application under section 34 of the Industrial Relations Ordinance, 1969 first party Nepal Chandra Kanti Chowdhury prayed for directing the second party to pay his termination benefit as per law mainly on the ground that the service of the first party was terminated *vide* letter dated 13-7-1974. But in spite of demands the second party failed to pay the termination benefit as per law. Hence, this case.

Second party contested the case by filing written statement alleging *inter alia* that the second party offered first party legal dues as per law but the first party did not receive the same on the plea for payment of bonus for the years 1969-70, 1973-74 and 1974-75. The second party did not declare any bonus for these periods and as such the first party is not entitled to any payment of these bonus. It is further stated that the payment of Provident Fund is also subject to Provident Fund Rules under control and management of the Board of Trustees. The first party is not entitled to get any relief.

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

FINDINGS

P.W.1, Nepal Kanti Chowdhury has only examined himself in support of his case. On the other hand, D.W.1, Birendra Kumar Singh, the Manager of the second party has examined himself on behalf of the second party.

It is not disputed that the first party was serving under second party with effect from 1-9-1974 and his last salary was at the rate of Tk.163-00 per month. It is also not disputed that first party's permanent service was terminated by the second party *vide* letter dated 13-7-1974 Ext. 1. It appears from Ext. 1 that the said Ext. 1, issued in the name of the first party terminating his (P.W. 1) service on the expiry of 3 months from the date of issue (13-7-1974) of the same and accordingly the service of the first party came to an end on 12-10-1974. It is also in evidence *vide* P.W.1, that after 12-10-1974 he met the second party Manager and demanded his termination benefit and thereafter also on several occasions he demanded the same but the second party did not pay the same. First party demanded his claimed bonus to the second party, who replied the same by letter Ext. 2. According to the evidence of D.W.1 the first party was offered termination benefit as per law but he did not accept the same on the plea of claimed bonus. It is stated by D.W.1 in his evidence that first party is entitled to get arrear wages for only 12 days, *i.e.*, for the period from 1-10-1974 to 12-10-1974 and that the second party has not declared bonus for 1974-75 as yet. D.W.1 also stated in his evidence that bonus for the year 1969-70 and 1973-74 was declared. Thus from the evidence and materials on record, I find that the first party is entitled to get arrear wages for the period from 1-10-1974 to 12-10-1974 and bonus for the year 1969-70, 1973-74 and Provident Fund as per Provident Fund Rules.

Members are consulted over the matter.

Ordered

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

The first party is entitled to get the following benefits from the second party who is directed to pay the same to the first party within 30 days from today.

- (1) Compensation at the rate of 14 days wages for each completed year of service or part thereof over six months;
- (2) Arrear wages for the period from 1-10-1974 to 12-10-1974;
- (3) Leave salary, if any, due;
- (4) Bonus for the years 1969-70 and 1973-74;
- (5) Provident Fund dues in full as per rules.

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

A. AHMED
Chairman.
18-6-1975.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
18-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 664 of 1974.

Obaidullah, son of Abdul Aziz, Vill. Kunitpur, P.S. Lakshmipur, Dist. Noakhali—*First Party*,

versus

- (1) Chairman, Bangladesh Jute Industries Corporation, Motijheel, Amin Court, Dacca.
- (2) General Manager, M/s. Maqbulur Rahman Jute Mills Ltd., Barabkunda, Chittagong;
- (3) Government of the People's Republic of Bangladesh, represented by the D.C., Chittagong Court Building, Chittagong.—*Second Parties*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

} *Members*.

Representation: Mr. Lutful Haque Mazumder, Advocate appeared for the first party and Mr. A.K. Humayun Kabir, Advocate appeared for the second parties.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Oabidullah, first party, with a prayer for directing the second parties to reinstate first party in his former post with back wages.

The case of the first party is that he was appointed in the establishment of the second party mill as Winder with effect from 7-10-1966 and subsequently he was permanent in his employment. The establishment of M/S. Maqbulur Rahman Jute Mills Limited is a nationalised industry and the second party No. 3 is the owner of the establishment. Second party No. 2, is not the employer of the first party and so he has no power and authority to terminate the service of the first party. Second party No. 2 without having any lawful authority illegally terminated the service of the first party with effect from 2-12-1974. The said termination is illegal and *ultravires*.

Second parties 1 and 2 contested the case by filing a joint written statement alleging *inter alia* that the first party was appointed as Winder on piece rate with effect from 3-11-1966 and by a letter of second party No. 2 dated 21-11-1974 the first party's service was terminated with effect from 2-12-1974 under section 19(1) of the Standing Orders Act, 1965 and first party was paid his benefit in full and final settlement on 5-12-1974. First party's case is vexatious and frivolous. First party is not entitled to get the relief as prayed for.

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

DECISION

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

It is contended mainly on behalf of the first party that second party No. 2 is not the employer of the first party and as such second party No. 2 has no power to terminate the service of the first party with effect from 2-12-1974. It is stated by P.W. 1 in his cross that the Manager of M/s. Maqbulur Rahman Jute Mills Ltd., is the person who appointed and terminated his service. This very evidence of P.W. 1 goes to prove that second party No. 2 is the employer of the first party and he (second party No. 2) had the power and authority to terminate the service of the first party. I also find that second party No. 2 is the "Employer" under the Standing Orders Act, 1965 and the second party No. 2 being employer of the first party and Chief Executive of the concern mill, has full power and authority to terminate the service of the first party. Thus I must say that termination of first party's service with effect from 2-12-1974 under section 19(1) of the Standing Orders Act is quite legal and valid.

P.W. 1 in his evidence in-chief has clearly stated that his service was terminated by the second party No. 2 with effect from 2-12-1974 and he (P.W. 1) received termination benefit amounting to Taka 1,892.70 on 5-12-1974, *i.e.*, on the 3rd day of his termination. P.W. 1 further stated in his evidence that he received all his termination benefit from the second party. I, therefore, find that the first party received all his benefits in full and final settlement on 5-12-1974 from the second party. It is not far to seek as to why the first party

in his case petition failed to stated that he received all his termination benefits in full and final settlement within 3 days from the date of his termination, although at the time of hearing the first party admitted that he received all his benefits in full. I, therefore, have the reason to say that first party's case is not a *bona fide* one. In view of my discussions the first party is not entitled to get the relief prayed for.

Members are consulted over the matter.

Ordered.

That the case be dismissed on contest without cost.

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

A. AHMED
Chairman.
12-7-1975.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
12-7-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 667 of 1974.

Nepal Chandra Bhowmick, D/s Deffer, T/No. 1066, Ring "C" Shift, Mill No. 1,
C/o Parsha Mohajan Bari, Latifur, P.S. Sitakund, Chittagong—*First Party,*

versus

A.D.M.-cum-Labour Officer, M/s Chittagong Textile Mills Ltd., Battali Hill,
P.O. Box No. 333, Chittagong, Bangladesh—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

} *Members.*

By this application under section 34 of the Industrial Relations Ordinance 1969, the first party, namely, Nepal Chandra Bhowmick prays for directing the second party to reinstate him in his original post with back wages after setting aside the dismissal order dated 25-5-1973 which was passed without following the provisions of sections 17 and 18 of the Standing Orders Act, 1965.

The second party though appeared in this case and was allowed to file written statement but ultimately the second party did not take any step and thereafter this case was fixed for *ex parte* hearing and it was heard *ex parte*.

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

FINDINGS

P.W. 1, Nepal Chandra Bhowmick, first party has examined himself in support of his case. The charge-sheet dated 31-3-1973 served upon the first party has been marked Ext. 1 and the dismissal order in question dated

25-5-1973 has been marked Ext. 2. I have gone through the evidence of P.W. 1 as well as documentary evidence on record. The second party has not contested the case though proper opportunities were afforded in this case. Examining himself as P.W. 1 the first party has restated his case which goes unchallenged and *ex parte*. The fact that the second party has not taken any step for contesting the case is a pioneer to the fact that it has no say. From the evidence and circumstances I have every reason to say that this is a fit case for reinstatement. Since the first party's matter has been dragged away for long time, it would be a heavy burden financially on the second party to reinstate the first party with all back wages. Thus I think the first party should be reinstated in his former post with 30% of the wages for the period he was absent from duty till his reinstatement.

Members are consulted over the matter and I have considered their opinion.

Ordered

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

The second party is directed to reinstate the first party in his former post and position with 30% (thirty per cent) of the back wages for the period from 31-3-1973 till the date of his actual reinstatement.

The second party is directed to implement this order within 30 days from today.

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
28-6-1975.

A. AHMED
Chairman.
28-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 668 of 1974.

Abdul Karim, S/o. Abdul Latif, C/o. Bangladesh Jatiya Sramik Federation,
44, Budha Mandir Sarak, Chittagong—*First Party,*

versus

Manager, M/s. Gul Ahmed Jute Mills Ltd., Kumira, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury—*Member.*

Representation—Mr. Lutful Haque Mazumder, Advocate appeared for the first party and Mr. A.K. M. Mohsan Uddin Ahmed Chowdhury, Advocate, appeared for 2nd Party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by Abdul Karim, first party, with a prayer for directing the second party to pay the benefits described in the item i to ix of the schedule of the case petition.

The case of the first party is that he was appointed as Line Sardar under second party with effect from 3-4-1970 and thereafter he became a confirmed and permanent employee of the establishment. First party worked upto 25-3-1971 and thereafter he abstained from attending duty in support of the liberation struggle. After liberation he resumed his duty on 4-2-1972 and he was paid wages of December, 1971 according to the declaration of the Government of Bangladesh. But he was not paid for the rest of the liberation period, although it has been paid to other employees. First party was promoted as Head Sardar from the aforesaid date of resumption of duty. On 9-12-1974 the service of the first party was terminated under section 19(I) of the Standing Orders Act with termination benefit of 45 days wages in lieu of notice and 70 days wages as service compensation. On 10-12-1974 first party obtained clearance certificate and went to collect his benefits but it was not paid. Weekly average wages of the first party was Tk. 210.00.

Second party contested the case by filing a written statement alleging *inter alia* that has alleged to have sustained injury on 22-10-1974. Thereafter first party was examined by the Principal, Chittagong Medical College Hospital, who gave him a certificate of 4% loss of his earning capacity. First party personally obtained certificate from the Principal's office and with some ill intention he made 14% as 14% in order to make wrongful gain. When this fact was reported to the Manager, he ordered the clerk concerned to issue a letter of charge on this allegation against the first party. The Clerk concerned either intentionally or by mistake prepared a letter of termination and gave the same to the Manager for signature along with some other papers and the Manager signed over it without looking into its contents believing in good faith the said letter was to be charge-sheet. It was subsequently detected on 11-12-1974 that the clerk concerned instead of writing a letter of charge wrote a letter of termination. The Manager forthwith issued another letter on the date withdrawing the termination of the first party. The termination of first party having been withdrawn, the first party is still in service under the second party. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to get the benefits as claimed in the schedule of the case petition.

FINDINGS

P. W. 1, Abdul Karim, first party has only examined himself in support of his case. On the other hand, D. W. 1 Abdus Sattar Khan, Labour Officer has examined on behalf of the second party.

It is not disputed that the first party was appointed in the establishment of the second party as Line Sardar with effect from 3-4-1970 and thereafter he became permanent and promoted to Head Sardar and that his last average weekly wages was Tk. 210.00.

It is the case of the second party that the termination of first party's service having been withdrawn the first party is treated to be in the service of the second party and is continuing as such. Ext. 1 dated 9-12-1974 is the

letter of termination of the employment of the first party. Ext. A a copy of the office order dated 11-12-1974 by which the second party withdrew the termination letter Ext. 1. It is contended on behalf of the first party that the alleged letter of withdrawal of the termination letter is subsequently created for the purpose of defence of this case. It is in evidence that on the following date of termination, the first party obtained clearance certificate. P. W. 1 stated in his evidence that his service was terminated *vide* Ext. 1 on 9-12-1974 and on the next date (10-12-1974), he (P. W. 1) obtained clearance certificate and thereafter on the same date he went to take termination benefit but it was not paid to him by the second party. It is admitted by the D. W. 1 in cross that clearance certificate was given to the first party after the termination. According to P. W. 1 after filing of written statement by the second party in this case, he (P. W. 1) for the first time came to learn about the withdrawal of the termination letter by the second party. It is the case of the second party in para 13 of the written statement that the Manager of the second party issued a letter on 11-12-1974 withdrawing the termination of the first party and the same was sent to the first party's home address by registered post. There is nothing on record to show that the alleged letter of withdrawal of the termination of first party's service was sent to the first party by registered post or the first party received the same at any time. The copy of the alleged original letter of withdrawal has been marked Ext. A in this case. No postal receipt is produced by the second party in order to show that original of Ext. A was sent to the first party by registered post. It is clearly stated in para 13 of the written statement that the clerk concerned either have intentionally or by mistake prepared a letter of termination instead of writing a letter of charge against the first party and obtained the signature of the Manager of the second party along with some other paper at the late hours of the day and the Manager signed over it without looking into its contents believing the same at the letter of charge. Onus lies upon the second party to substantiate his case referred to above. The Manager who signed the termination letter Ext. 1 as well as withdrawal letter Ext. A is the most competent person to come and say before this Court in support of his aforesaid case referred to above. No reason is assigned as to why the said Manager is not coming to depose in support of his alleged case. Admittedly clearance certificate was given to the first party on 10-12-1974 after the date of termination of first party's service. This goes to prove that the termination was acted upon, as in pursuance of the same, clearance certificate was given to the first party. according to D. W. 1 the first party was wrongfully terminated on 9-12-1974 and thereafter *vide* Ext. A it was withdrawn by the Manager. From the evidence and circumstances I have every reason to say that the alleged story of withdrawal of the termination of the first party's service is created in order to defeat the first party's claim for termination benefit.

Ext. 1 the letter of termination dated 9-12-1974 shows that the service of the first party was terminated on the simple ground that his services were no longer required by the second party with effect from 10-12-1974. So, it was in fact a termination simpliciter. It is found that the legal termination benefit had not been paid to the first party, though *vide* letter Ext. 1 the first party was entitled to get '45 days' wages in lieu of notice and 70 days wages as compensation.

P. W. 1 at the time of hearing stated in his evidence that he wants termination benefit, *viz.*, 45 days' wages in lieu of notice, 70 days' wages as compensation, 9 months wages for the liberation period, bonus for 1974 etc

According to P. W. 1, after his resumption in duty on 4-2-1972 he received his wages for December, 1971 from the second party. P. W. 1 in cross stated that he never applied to the second party for payment of 9 months' salary for the liberation period. First party nowhere in his case petition or in evidence asserted that he participated in the liberation struggle or movement. First party was not victimised or terminated by the second party from service for participating in the liberation struggle of 1971. The Government Press Note dated 3-1-1972 and 6-3-1972 was intended for those workers who were victimised for participating in the liberation struggle. Thus from the above discussions I find that the first party is not entitled to get his claimed salary for 9 months for the liberation period.

It is in evidence that bonus for 1974 has not been declared as yet. So, the first party is not entitled to get bonus for 1974.

First party has not proved his claim referred to in the item No. III to IX of the schedule of the case petition. There is no evidence on record to show that the first party has arrears wages lying with the second party.

From the above discussions, I find that the first party is entitled to get termination benefit under section 19(I) of the Standing Orders Act, 1965.

Members are consulted over the matter.

Ordered

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

First party is entitled to get the following benefits from the second party, and the second party is directed to calculate and pay the same to the first party within 30 days from today :—

- (1) 45 days' wages in lieu of notice at the rate of Tk. 210.00 per week ;
- (2) Compensation for 70 days' wages for about 5 years of service ;
- (3) Outstanding arrears wages, if any.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
 30-6-1975.

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

A. AHMED
Chairman.
 30-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 7 of 1975.

Mahbubul Alam, s/o late Mohammed Mia, of Kazi Abdul Majid Sawdagar Bari, Hajipara, Panchalaish, Wajedia Madrasha, Chittagong—*First Party*,

versus

The Manager, M/s. Moonstar Packages, 15, Rajapur Lane, Anderkilla, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamsheer Ahmed Chowdhury

Mr. Juned A. Choudhury

} *Members.*

Representation : Mr. Lutful Haque Mazumder, Advocate, appeared for the first party and Mr. Md. Nurul Islam, Advocate, appeared for the second party.

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 the first party Mahbubul Alam prays for either termination benefit under section 19(1) of the Standing Orders Act, or reinstatement in his former post with back wages alleging that suddenly on 25-11-1974 after an hour work his (first party) service was terminated verbally by the second party without any notice or lawful reason and thereafter on 24-11-1974 he represented his grievances to the second party and that thereafter he received letters from the second party asking first party to resume duty forthwith and to explain why he should not be dealt with for his illegal activities and absence and that the first party replied these letters denying the allegations and prayed for allowing him to resume duty.

Second party contested the case by filing a written statement alleging *inter alia* that it is absolutely false that the second party verbally terminated the service of the first party on 25-11-1974. It is the case of the second party that first party had been working under the second party as a Box Making Mistry and he lastly drew pay at Tk. 120-00 per month. As a matter of fact first party had been working part time in Lion Industry, in refusal of order of the second party to work overtime in their own factory and thus misconducted himself and caused business loss to the second party. Thereafter on 25-11-1974 the second party asked the first party to let him know the reason for his such conduct but the first party without saying anything and without taking any permission from the second party, left duty place and since then he (first party) has not turned up and thus the first party due to his wilful and unauthorised absence from duty lost his service, *i.e.*, the first party never attended factory of the second party since his desertion on 25-11-1974. In spite of repeated letters by the second party asking first party to resume duty but he never came to resume duty. First party is not entitled to get any relief.

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

DECISION

P.W. 1 Mahbul Alam, first party has only examined himself in support of his case. On the other hand, D.W. 1 Md. Hashem, the owner of the second party establishment has examined himself along with another witness. It is not disputed that first party was appointed as Box Making Mistry by second party in the year 1972, first party was a skilled worker. It is the definite case of the first party that suddenly on 25-11-1974 after an hour work his service was verbally terminated by the second party without any notice or reason. The said case of termination has been flatly denied by the second party in their written statement. Rather it is asserted in the written statement that first party wilfully deserted the service on 25-11-1974. Onus heavily lies upon the first party to prove his alleged story of verbal termination. According to P.W. 1 his service was terminated verbally by the second party without any reason in presence of some other employees. It is not disputed that D.W. 2 Abdul Haq also worked in the shop of second party at the relevant time. Ext. 1 is the reply of grievance petition given to first party by the second party. In the said Ext. 1 the second party flatly denied the alleged termination of first party's service and therein the second party also asked the first party to resume duty. It is admitted by P.W. 1 in his evidence that the second party by 3 letters, one after another asked the first party to resume duty. According to P.W. 1 he went to resume duty but he was not allowed to join. On the other hand, D.W. 1 has stated that he never terminated the service of first party on 25-11-1974 as alleged. D.W. 1 further stated that on 28-11-1974, 11-12-1974 and 21-12-1974 he sent letters to the first party asking him to resume duty but the first party never came to resume duty. D.W. 1 has stated in his evidence that he has not taken any one as yet in the vacancy of the first party and he (D.W. 1) is ready to take first party in his former post if the first party comes to resume duty. D.W. 2 admittedly worked under second party at the relevant time. So, D.W. 1 is the most competent person to say as to whether the second party terminated the first party's service or the first party wilfully deserted the service for further gain. It is stated by D.W. 1 in his evidence that in October 1974 he told the first party to do overtime work but the latter declined and then he came to learn that first party was doing part-time work in Lion Industry and thereafter on 25-11-1974 he (D.W. 1) again asked first party to do overtime work but he refused to work and on that day after such talk when D.W. 1 went out and on his return back he (D.W. 1) found first party left and since then first party is not coming to resume duty in spite of repeated letters. D.W. 2 has stated that he knows first party who used to work as Mistry in the establishment of the second party. D.W. 2 fully corroborates the evidence of D.W. 1 by saying that on 25-11-1974 D.W. 1 asked first party and another worker to work overtime and then first party refused to do overtime by saying that they are doing part time work in Lion Industry and since D.W. 1 went out and then the first party left the job and never returned back. According to D.W. 2, D.W. 1 never terminated the service of the first party on 25-11-1974. I find no reason to disbelieve the evidence of D.W. 2, whose presence in the establishment of second party on 25-11-1974 can be easily believed. P.W. 1 in his evidence has stated that he prays for reinstatement in his former post or termination benefit. From the evidence of P.W. 1 it is clear that he went to resume duty in the establishment of the second party. On the other hand, D.W. 1 also repeatedly asking first party to come and resume duty in his establishment. It is most likely that the second party requires the service of the first party as the latter is a

skilled worker. There is no reason for the second party not to allow the first party to resume duty, while he himself (D.W. 1) asked first party several times to resume duty and has been sustaining loss due to absence of skilled worker like first party. Thus it can be safely said from the evidence discussed above coupled with the circumstances that first party's case about verbal termination is quite incredible but the second party's case about desertion of the first party is rather probable and believable. I, therefore, find that the first party is hopelessly failed to prove his case of verbal termination. In view of my above discussions I think it would be proper to reinstate the first party in his former post. The first party is not entitled to get any back wages on reinstatement, as he failed to prove his case of verbal termination from service.

Members are consulted over the matter.

Ordered

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

Second party is directed to reinstate the first party in his former post without any back wages, within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
3-7-1975.

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

A. AHMED
Chairman.
3-7-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 8 of 1975.

Abdul Sukkur, S/o. Abdul Motleb, C/o. Chittagong Press Employees Union,
44, Budhamandir Sarak, Chittagong—*First Party,*

Versus

The Manager, M/S. Moonstar Pakes, 15, Rajapur Lane, Chittagong—*Second Party.*

PRESENT ;

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury } *Members.*

Mr. Juned A. Choudhury }

Representation—Mr. Lutful Haque Mazumder, Advocate appeared for the first party and Mr. Md. Nurul Islam, Advocate appeared for 2nd party.

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 by first party Abdul Sukkur either for termination benefits or his reinstatement in service with back wages mainly on the ground that his permanent employment was verbally terminated by the second party suddenly on 25-11-1974 without any notice or lawful reason and thereafter from 26-11-1974 the first party represented his grievance praying for termination benefits but the second party gave no reply or decision on the same.

Second party contested the case by filing written statement alleging *inter alia* that first party had been working part time in Lion Industry, 124, Chandan-pura, Chittagong in refusal of second party's order to work overtime in their (second party) own factory and thus misconducted himself and caused business loss to the second party. Second party asked the first party at about 10 a.m. of 25-11-1974 to let him know the reason for his such conduct but the first party without saying anything left the service and duty and thus lost lien to his service according to law. Thereafter the second party *vide* letters dated 28-11-1974, 11-12-1974, and 21-12-1974 repeatedly asked the first party to resume duty but first party refused to resume duty. First party's such illegal desertion from the employment of the second party has caused financial loss to the second party. First party is not entitled to get any relief in this case.

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

DECISION

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

Before entering into merit I like to see if the case is maintainable under section 25(1)(b) of the Standing Orders Act, 1965. The very evidence of P. W. 1 clearly shows that after his alleged termination of service, he (P. W. 1) submitted no grievance petition to the second party under section 25(1)(a) of the Standing Orders Act, 1960, from this evidence of P. W. 1 his case under section 25(1)(b) of the Standing Orders Act does not lie.

Moreover, from the evidence of P. W. 1 I have every reason to say that his case is not bonafide and genuine. P. W. 1 has stated in his evidence that in June 1974 his service was terminated by the second party. But according to his case petition his service was verbally terminated on 25-11-1974. P. W. 1 further admits in his cross that in October 1974 he was asked to do overtime duty but he refused to do so and thereafter the second party also by letters asked him to resume duty but he did not go to resume duty. From such evidence of P. W. 1, I have reason to prefer the case of second party stated in the written statement. So, in any view of the case the first party is not entitled to get any relief in this case and the case is liable to be dismissed.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED,
Chairman,
Labour Court, Chittagong.
17-6-1975.

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

A. AHMED
Chairman.
17-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 10 of 1975.

Tajendra Kumar Mallick, S/o. Pran Hari Kumar Mallick, C/o. Arakan Sarak Paribahan Sramik Union, 328, Kapashgola Road, Chawkbazar, Chittagong—*First Party*,

versus

- (1) Proprietor, Bus No. Chattagram G 446 (Mrs. Mazmunissa Begum);
 (2) Manager (Abdul Karim), Bus No. Chattagram G 446, both are of 66, Darogahat Road, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

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

Representation—Mr. Lutful Haque Mazumder, Advocate appeared for the first party and Mr. A. K. Humayun Kabir, Advocate appeared for the second party.

By this application under section 25(J)(b) of the Employment of Labour (Standing Orders) Act, 1965 the first party seeks a direction on the second party to pay him termination benefits under section 19(I) of the Standing Orders Act on the ground that he (first party) was permanent worker under the second party and discharged his duty faithfully but suddenly the second party terminated his service on 2-11-1974 without any notice or payment in lieu of notice and thereafter the first party represented his grievance on 13-11-1974 praying termination benefit or reinstatement but the second party gave no decision to it.

Second party appeared in this case on 10-2-1975 and prayed for time for filing written statement which was allowed. Thereafter on several occasions the second party was also allowed time for filing written statement but the second party submitted no written statement and ultimately this case was taken up for *ex parte* hearing, in the absence of second party.

Only point for consideration is whether the first party is entitled to termination benefit as prayed for.

DECISION

P. W. 1, Tejendra Kumar Mallick, first party, has stated in his evidence that he was appointed as Driver by the second party in Bus No. Chattagram G446 on 3-2-1974 at the rate of Tk. 33-00 per day and he became permanent employee. The second party No. 2 suddenly on 2-11-1974 terminated his service without notice or payment in lieu of notice and thereafter he represented his grievances on 13-11-1974 to the second party praying for termination benefit but the second party neither gave any reply nor paid the benefits. P. W. 1 further stated that he received his wages from the second party upto the date of his termination of service. P.W. 1 has restated his case which goes

unchallenged and *ex parte*. The evidence of P. W. 1 referred to above cannot be disbelieved. I, therefore, find that the claim of the first party is proved *ex parte*.

Members are consulted over the matter.

Ordered

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

The first party is entitled to get termination benefit as follows :—

- (1) 45 days' wages in lieu of notice at the rate of Tk. 33.00 per day.
- (2) 14 days' wages as service compensation.

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

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

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

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 19 of 1975.

Moinuddin,
S/o. Mvi. Abul Khair,
Vill. and P.O. Garduara,
Chittagong—*First Party*,

versus

The Manager,
M/s. Karnafuli Paper Products,
Al-Islam Chamber, 91, Agrabad,
Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

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

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 by first party Moinuddin for his reinstatement in his former post with back wages, mainly on the ground that he was dismissed from service on 11-12-1974 for alleged misconduct without complying with the provisions of sections 17 and 18 of the Standing Orders Act.

The case of the first party is that he was appointed by the second party in the month of June 1964 as a Operator on a monthly salary of Tk. 90.00. Subsequently second party increased his salary from Tk. 90.00 to Tk. 200.00 per month which he last drew. Suddenly first party was issued with a charge-sheet on 9-11-1974 with some baseless charges and the first party submitted a written reply denying the charges. Thereafter the first party was serving with the second party and no enquiry was held by the second party with regard to the allegations levelled against him. Suddenly the second party illegally dismissed first party from service on 11-12-1974. Thereafter the first party submitted written representation to the second party but the second party did not give any reply to the same. Hence, this case.

Second party though in this case appeared and prayed for time for filing written statement which was allowed, but ultimately failed to appear to contest the case though opportunities were afforded. Ultimately this case was heard *ex parte*.

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

DECISION

P. W. 1 Moinuddin has only examined himself in support of his case. P. W. 1 has stated that he was appointed as Operator under second party in June 1964 and his last wages was at the rate of Tk. 200.00 per month. He further stated that suddenly on 9-11-1974 he was issued with a charge-sheet on some allegations and he replied the said charge-sheet denying the charges. But the second party dismissed him illegally on 11-12-1974 without holding any enquiry and thereafter he sent a grievance petition dated 24-12-1974 to the second party who gave no decision or reply. The first party has re-stated his case on oath, which goes unchallenged and *ex parte*. The fact that the second party has not taken any step for contesting the claim is a pioneer to the fact that it has no say. I find nothing to disregard the evidence of P. W. 1. I find that the claim of the first party is proved *ex parte*.

Members are consulted over the matter.

Ordered

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

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
7-6-1975.

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

A. AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 25 of 1973.

Faiz Ahmed, s/o. Abdul Hakim, Meah Khan Nagar, Bakulia, Chittagong—
*First party/Complainant,**versus.*The Manager, Bangladesh Paper Products Ltd., 7-D, Solashahar Industrial Area,
Nasirabad, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

} *Members.**Representation*—Mr. Md. Yunus, Advocate appeared for the first party and
Mr. Azizul Huq Chowdhury, Advocate appeared for the second party.

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965, Faiz Ahmed, first party, seeks a direction upon the second party to reinstate him (first party) with arrears wages and other benefits in his former post and position after setting aside the dismissal order dated 8-9-1973.

The case of the first party is that he was a permanent and confirmed Artist and worker under the second party and worked to the later's satisfaction. Suddenly he was asked to submit an explanation on bogus and false allegation that he prepared a design of one Aftab Production Brassier unauthorisedly and without obtaining the order through proper channel and got the work done for personal benefit at the cost of the company. The first party again by another letter of same date (21-6-1973) further asked to explain and show cause with the allegation that he in collusion with Mir S. Sobhan, Estimate and Planning Officer initiated unauthorised order for Tibet Snow from one Studio Pasha, Kapashgola, Munshirpukur, Chittagong, though one Mr. Pasha and he (first party) maintained preparation and delivery challan and gate pass for excess delivery in connivance with said Shahjahan by a cheatful means. These so called charges were brought on vague allegation in confusional manner simultaneously by the Manager Mr. G. Rabbani. The first party was deprived of the facility to cross examine the witnesses, if any, was examined. The so called charges and enquiry held at the same time on the same date by the self same officer are illegal, arbitrary and collusive. The first party submitted explanation, specifically denying the charges. Ultimately the second party illegally dismissed first party from service *vide* letter, dated 8-9-1973. Thereafter first party represented his grievances to second party *vide* registered notice, dated 21-9-1973 but the second party left it without any action. Hence, this case.

Second party appeared and contested the case by filing written statement alleging *inter alia* that the first party was charge-sheeted *vide* memo. No. 2576/439, dated 21-6-1973 and another confidential memo. No. 2578/C-439, dated 21-6-1973 on the charge of serious misconduct for preparation of a design unauthorisedly and without obtaining order through proper channel in as much as doing work for his personal benefits at the cost of company. The first

party was further charged for manipulation of delivery challan and gate pass for excess delivery of Tibet Snow cartoon in collusion with the Estimate and Planning Officer Mir A. Shahjahan. First party submitted his explanation on 23-6-1973 which could not be accepted as satisfactory and he was informed by a letter, dated 1-8-1973 that in order to facilitate further opportunity an enquiry will be held on 7-8-1973 and he was required to be present at the enquiry. In the meantime the matter was reported to the Corporation. An enquiry committee was constituted and said committee held enquiry where the first party duly participated. The enquiry committee submitted a report finding the first party and Mir A. Shahjahan guilty of misconduct and recommended removal from service. On the basis of the report of the enquiry committee the second party dismissed the first party from service *vide* letter, dated 8-9-1973. Thereafter the complainant submitted grievance petition on 19-3-1973 which was duly replied to by a letter, dated 3-10-1973 allowing first party further hearing. The first party did not appear on the date and time fixed thereby by a letter, dated 20-10-1973. The complainant was informed that the matter was closed and the previous decision of his dismissal stands. The first party is not entitled to get any relief.

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

FINDINGS

P.W. 1, Faiz Ahmed, first party has only examined himself in support of his case. D.W. 1, Shafiqur Rahman, Assistant Administrative Officer of the second party has examined on behalf of the second party. It is not disputed that first party was serving as a permanent Artist under the second party company. It appears that first party was charged for misconduct by the second party *vide* letter of charge No. 2575/C-439, dated 21-6-1973 and another letter of charge No. 2576/439, dated 21-6-1973 Exts. 1 and 1(A), respectively. First party submitted his explanation Ext. 2 and 2(A) dated 23-6-1973 denying the charges respectively. Thereafter domestic enquiry was held by an enquiry committee who submitted their findings *vide* report, dated 17-8-1973 Ext. C. Ultimately the second party *vide* their letter, dated 8-9-1973 Ext. 3 dismissed the first party from service for misconduct.

It is contended on behalf of the first party that the said dismissal was not legal and valid as the second party has not complied the provisions of sections 17 and 18 of the Standing Orders Act. On the other hand, it is contended on behalf of the second party that first party was removed from his service for misconduct after holding proper enquiry step by step as provided under sections 17 and 18 of the Standing Orders Act, 1965.

P.W. 1 admits in his evidence that he was charged-sheeted *vide* letter, dated 21-6-1973 Ext. 1 with direction to submit explanation for his (P.W. 1) unauthorised supply of one lakh Tibet Snow cartoon to one Studi Pasha in collusion with Mir A. Shahjahan, Planning Officer and had manipulated and prepared challan and gate pass for excess delivery in connivance with the said Planning Officer by the cheatful means detrimental to the interest of the company and thus caused financial loss to the company. P.W. 1 further stated that on the same date he was again asked to explain *vide* Ext. 1(A) for his preparation of a design of Aftab products Brassier unauthorisedly and without obtaining the order through proper channel and in compliance of the said charges

he submitted two written explanations denying the charges. The copies of the said explanations are marked Exts. 2 and 2(A). It is stated by D.W. 1 in his evidence that on the basis of report, dated 15-6-1973 submitted by Mir A. Shahjahan, Planning Officer, against the first party, the management, charged the first party under section 17(3)(t) of the Standing Orders Act *vide* Ext. 1(A). The said report, dated 15-6-1973 against the first party has been marked Ext. H. It will appear from the explanation Exts. 2 and 2(A) of the first party that the first party used to perform his duty as per verbal or written order of his superiors and so far as he remembers, he was verbally ordered by Planning Officer Mir A. Shahjahan to do the art work of Tibet Snow cartoon and to prepare design of Aftab Products Brassier and accordingly in compliance with his superior's order, he did the same. But at the time of hearing P.W. 1 in his cross has stated that there is a rule in the company that on the basis of written order of the superior, he (P.W. 1) is to do his duty only, such as, preparation of design, etc. In view of his said evidence first party had no right or authority to do the art work of Tibet Snow cartoon and preparation of design of Aftab products without the written order or instruction from his Planning and Estimate Officer. According to P.W. 1's explanation, he performed those works at the oral order of Shahjahan, Planning Officer. From the oral evidence of P.W. 1 coupled with other circumstances I find no reason to believe the case of the first party to the effect that he performed the art work of Tibet Snow cartoon as well as Aftab Products Brassier's design at the verbal order of Planning and Estimate Officer. D.W. 1 has proved Exts. H, I and J. It is admitted by P.W. 1 in his evidence that he had helper and Assistant under him and he (P.W. 1) used to look and supervise the works of his helper and Assistant. P.W. 1 further stated that Pear Mohammed was his Assistant at the relevant time. It is also in evidence that Denish Gomeh was the compositor of the second party at the relevant time. The said Ext. I and J, *i.e.*, the statements of said Pear Mohammed and Denish Gomeh respectively will prove that the design of Aftab Products Brassier and composing proof of Aftab Products are prepared by them at the instruction and direction of the first party. It was suggested to P.W. 1 in cross that he got the Aftab Products Brassier design in the second party's factory unauthorisedly in order to make personal gain. Of course P.W. 1 denied the said suggestion. Ext. C is the design of Aftab Products Brassier. It is curious to find that the first party in para 3 of his grievance petition Ext. A, dated 19-9-1973 has stated that he was not served or given any copy of charge or allegations on the basis of which the so called dismissal order was passed against him, and according to his statement therein he is still in service. First party is not at all consistent in his statement. His inconsistent statement on different occasions go to suggest strongly that the first party has not come for his alleged relief with clean hand. From the evidence of P.W. 1, his case petition and explanation, it will show that he want to place the blame concerning the charges solely on Mir A. Shahjahan. It is not disputed that the management also started disciplinary action against the said Mir A. Shahjahan, Planning Officer, for misconduct, which will appear, from the enquiry report Ext. G. P.W. 1 also admits that he knows that an enquiry was held against Mir A. Shahjahan, Planning Officer. Original enquiry proceeding against Mir A. Shahjahan was filed in this case and has been marked Ext. L. The said Ext. L shows that an enquiry was held against Mir A. Shahjahan, in respect of self same Tibet Snow cartoon matter. P.W. 1 admits in his cross that he stood guarantor for the balance amount and he made endorsement to that effect on 26-5-1973 in Bengali over the contract for sale, Ext. D. Of course, P.W. 1 stated that he stood guarantor for the

outstanding balance at the request of Mir A. Shahjahan. I find no reason to place any reliance upon P.W. 1 concerning his said evidence that at the instance of Mir A. Shahjahan he stood guarantor for the balance amount. On the other hand, I have reason to believe, from the facts and circumstances, that first party at his own accord stood guarantor for the outstanding balance amount and to that effect he himself made an endorsement *vide* Ext. D. From the materials on record, it can be said that first party was also involved in the Tibbet Snow cartoon case and he being an artist trespassed into the company's business for his wrongful gain and that the first party also had proceeded so far by standing a guarantor for the balance amount arising out of transaction being made between the company and the party. Having regard to the evidence and circumstances I have reason to say, that first party was duly charged for misconduct under standing orders Act.

P.W. 1 in his evidence in cross has stated that A. Kalam, Islam, Purchase Officer, the Administrative Officer and Production Superintendent were members of the enquiry committee and he attended the enquiry held by the committee and that he made statement which was recorded. P.W. 1 further stated that he did not want to examine any witness for his defence and so the enquiry committee did not examine any witness. D.W. 1 has stated in his evidence that a domestic enquiry was held where the first party participated and that the enquiry proceeding was written by Sk. Mohammed Ibrahim, Administrative Officer as well as a member of the enquiry committee. It is also in evidence that Bengali portion in page 4 of the enquiry proceeding, Ext. F was written and signed by the first party himself. D.W. 1 also proved the report of the enquiry committee Ext. G. There is also nothing on record to show that the members of the enquiry committee had any enmity or ill feeling with the first party. I have also gone through the relevant records including the enquiry report Ext. G. I, thus find that the first party committed misconduct under section 17(3)(b).

I have carefully scrutinised all the papers and procedures and circumstances involved, I find that the first party was removed from his service *vide* Ext. 3 after holding proper enquiry step by step as provided under sections 17 and 18 of the Standing Orders Act, 1965. Therefore, there can be no warrant for interference with the order complained of.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED

Chairman.

Labour Court, Chittagong.

2-7-1975.

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

A. AHMED

Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 36 of 1974.

Mozammel Haque, s/o. Aftabuddin Patwary, Vill. Haman Kardi, P. O. Sahatali,
P.S. Chandpur, Dist. Comilla—*First Party*,

versus

The Manager, M/S. Star Alkaid Jute Mills Ltd., Puranbazar, Chandpur,
Comilla—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

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

Representation—Mr. Lutful Haque Mazujder, Advocate appeared for the first party and Mr. A.K.M. Mohsanuddin Ahmed Chowdhury, Advocate appeared for second party.

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 filed by Mozammel Haque, first party, for his reinstatement in his former post and position with back wages.

The case of the first party is that he was appointed by the second party as Line Sardar on 20-12-1965 and subsequently he became head sardar. On 12-4-1974 an illegal charge-sheet was issued against him by the Mill Manager alleging misconduct and the same was replied denying the allegations on 16-4-1974. Thereafter the first party was illegally dismissed from the employment on 20-4-1974 without following the provisions of the Standing Orders Act, 1965. First party thereafter represented his grievances but the second party neither enquired into the matter nor gave any decision to the representation.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was charge-sheeted on 12-4-1974 for acts of serious misconduct and he was required to submit his explanation and the first party submitted his explanation on 16-4-1974 but the same having been found unsatisfactory was discarded and an enquiry into his case was ordered. The committee after thorough enquiry into the matter and after careful perusal of the evidence found the first party guilty of misconduct and thereafter the first party was dismissed from service on 20-4-1974 complying all the provisions of law and first party was asked to collect his legal dues, if any. The application of the first party is barred by limitation also.

It is to be seen whether the 1st party is entitled to get the relief as prayed for.

FINDINGS

P.W. 1, Mozammel Haque, first party, has examined himself in support of his case. D.W. 1, Kafiluddin Khan, an Office Assistant of Administration of the second party has only examined himself on behalf of the second party.

Before entering into the merit of the case I like to see, if the application of the first party is in time. According to section 25(1)(a), the employee concerned shall bring his grievance to the notice of his employer, in writing within 15 days of the occurrence of the cause of such grievance. On the face of the evidence of P.W. 1 in chief as well as in cross it is clear that first party sent his grievance petition in writing and handed over the same to the hand of Assistant Manager, namely, Dabiruddin about one or one and half months after he received the dismissal order in question, dated 20-4-1974 (Ext. 3).

So, according to his own evidence the first party had not made his grievance petition to the second party within time prescribed under section 25(1)(a). In this view of the case, the first party's application is barred by limitation.

It appears that first party was dismissed from service with effect from 13-4-1974 for misconduct under section 17(3)(b) of the Standing Orders Act. Ext. 1 is the charge-sheet dated 12-4-1974 and the same was replied by the second party denying the charges *vide* Ext. 2, dated 16-4-1974. A domestic enquiry was held by the enquiry committee and thereafter submitted their report *vide* Ext. D, dated 19-4-1974. It is admitted by P.W. 1 in his evidence in cross that Assistant Manager of the Mill was in-charge of the mill during the relevant period, as there was not Manager in the Mill during that period. Thus the Assistant Manager had the right and authority to pass dismissal order Ext. 3. The evidence of P.W. 1 in cross shows that the worker, namely, Mokhlesur Rahman went for 2 weeks leave and he (Mokhlesur Rahman) came to resume his duty on 31-3-1974 after expiry of the said leave and then the first party told the said Mokhlesur Rahman to bring fitness certificate for the period from 1-4-1974 to 9-4-1974 and to that effect he (P.W. 1) gave a slip Ext. A. Ext. D is the report of the enquiry committee. Said Ext. D shows that they during enquiry examined Mokhlesur Rahman and other witnesses. From the evidence and materials on record it has been proved that first party mislead both Mokhlesur Rahman and Time Keeper for false attendance of Mokhlesur Rahman with a view to grasp the wages of the said Mokhlesur Rahman. Thus it can be safely said that the charge under section 17(3)(b) against the first party has been well proved. I, therefore, find nothing to interfere with the dismissal order in question passed by the management against the first party.

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

Ordered

That the case be dismissed on contest without cost.

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

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

A. AHMED
Chairman.
15-3-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 56 of 1974.

S.K. Bhaumik,
S/o. Late N.L. Bhaumik,
Sisalbari Tea Estate, P.O. Kujurichara,
Dist. Sylhet—*First Party*,

versus

The Divisional Manager,
Deansten Division,
The Consolidated Tea & Land Co. (Bangladesh) Ltd.,
P.O. Kujurichara, Dist. Sylhet—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

} *Members.*

Representation—Mr. S. C. Lala, Advocate, appeared for the first party and Mr. A. Mohith Chowdhury, Govt. Pleader, Maulvi bazar, Sylhet, appeared for the second party.

This is an application under section 25 of the Standing Orders Act, 1965 by first party S. K. Bhaumik for his reinstatement to his former post with all back wages.

The case of the first party is that he was appointed as Hajiri Clerk with effect from 15-11-1968 and he was performing his duties with full satisfaction of his superiors. Suddenly the second party issued a notice purported to be change of duties with certain allegations which first party protested and ultimately an agreement has been signed between the Bangladesh Tea Estate Staff Association with the second party company. In pursuance of the said agreement dated 25-9-1973 the first party has come back to his office from the field and has been performing his usual duties as Hajiri Clerk. Thereafter the Manager of the second party suddenly issued a letter dated 20-5-1974 with some false allegations. The first party replied to the said letter on 22-5-1974 denying the charges. Thereafter the second party illegally issued a charge-sheet, which the first party replied on 14-6-1974. The second party hold a mock show of domestic enquiry to comply with the legal requirements only, the first party attended the said enquiry. The enquiry committee did not consider the explanation submitted by the first party, nor applied their judicial mind in arriving at a decision. The first party has been victimised by the second party for his trade union activities. The second party ultimately dismissed the first party from service illegally without complying with the provisions of labour laws. The first party thereafter sent a grievance petition to the second party.

Second party contested the case by filing a written statement alleging *inter alia* that the first party having wilfully refused to obey the lawful and reasonable order of the management, he has been rightly found guilty of misconduct under

section 17(3)(a) of the Standing Orders Act, 1965. The first party was rightly dismissed from service after complying with the provisions of sections 17 and 18 of the Standing Orders Act. The first party is not entitled to get any relief.

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

DECISION

P.W. 1, S.K. Bhoumik, first party has only examined himself in support of his case. None is examined on behalf of the second party. It is not disputed that the management issued a letter dated 22-8-1973 under the heading change of duties. The said letter is marked Ext. 1. first party thereafter submitted a representation against Ext.1 and ultimately the matter was ended by an agreement dated 25-9-1973 Ext. 2. In Ext. 1, the change of duties were mentioned and 3 (three) names came serially, i.e., No. 1 was Head Garden Clerk, No. 2 Second Garden Clerk and No. 3 S.K. Bhoumik (first party). Admittedly after the said order Ext. 1 and the agreement ext. 2, the first party was distributing the ration to the labourers until he was put under suspension under the charge-sheet Ext. 3. P.W. 1 in his evidence has clearly admitted that he was given the work of distribution of ration and he did the said work. It is also stated by P.W. 1 in his cross that these labourers who are allotted more than one *Kader of Khat* Land, their proportionate deduction is made from their weekly ration goods. It is in evidence that by a letter dated 1-6-1974 the second party directed the first party to write *khat* assessment Register and against the said letter the first party sent a representation to the second party that it is not his duty to write *Khat* Assessment Register. It is stated by P.W. 1 in his evidence in cross that he does not know if *khat* Assessment Register is within once or twice in a year. P.W. 1 also stated that *Khat* assessment book is the basis of proper and correct distribution of ration to the labourers. He also stated that according to his opinion, the second clerk A. U. Ahmed's duty was to write the *Khat* assessment register. According to P.W. 1, if the management now direct both A. U. Ahmed and him (P.W. 1) to write *Khat* assessment register, then he (P.W. 1) would not have any objection to write *Khat* assessment register. From the aforesaid evidence of P.W. 1 it can be safely said that the *Khat* assessment register is relevant to the distribution of ration since deduction to the labourers can have exact and correct basis with relation to the ascertainment of *Khat* lands given to particular labourers. Ext. 3 dated 8-6-1974 is the charge-sheet under section 17(3)(a) of the Standing Orders Act against the first party. First party submitted an explanation dated 14-6-1974 in compliance with the said charge denying the allegation. A copy of the said explanation is marked Ext. 4. It is admitted by P.W. 1 in his evidence that he duly participated in the domestic enquiry which was held by Mr. Y. Salahuddin, Manager of another Garden and who submitted his report. Thereafter the management dismissed the first party from service for misconduct under section 17(3)(a) of the Standing Orders Act. It is proved from the evidence both oral and documentary that first party was asked by the Asstt. Manager of the Tea Estate in writing on 10-5-1974 to write and complete the *khat* assessment register and to submit the same after writing by 13-5-1974 and since he (P.W.1) failed to write the said Assessment Book, he was further asked by Divisional Manager by his letter dated 20-5-1974 to do the same by 23-5-1974

but the first party had not carried out the said order. Since the khat assessment book was very much relevant to and necessary for distribution of ration to labourers and dependant on the same, when the first party was also asked to write out the said book more than once but the the first party refused to obey the said order of the management. From the evidence and materials on record it is sufficiently clear that it was a part of first party's job or duty to write out the khat assessment register. P.W. 1 in his evidence also stated that inspite of management's repeated orders to write khat assessment register, he did not write the same i.e., he refused to comply with the said direction or order of the management. It appears that first party was given ample opportunity to carry out the order but the first party refused to comply the same. From the evidence and circumstances I am fully convinced and satisfied that the order directing the first party to write out the khat assessment book was lawful and reasonable and in spite of repeated opportunity to first party to carry out the said order, he (P.W. 1) intentionally and wilfully disobeyed the same. The evidence of P.W. 1 in cross clearly shows that he duly participated the domestic enquiry and the enquiry report Ext. 6 was submitted to the management by the enquiry officer. It is also admitted by P.W. 1 in his evidence that previously he was warned by the then manager Mr. Heir for same misconduct. There is no evidence to show that first party was victimised for his any trade union activities. There is also nothing on record to show that the Enquiry Officer had any enmity or ill feeling with the first party. I have also gone through the findings of the enquiry report Ext. 6, where first party was found guilty of the charge for misconduct under section 17(3)(1(a) of the Standing Orders Act, 1965.

I have carefully scrutinised the both oral and documentary evidence and circumstances involved and I find that first party was rightly dismissed from service for misconduct after holding proper enquiry step by step as provided in sections 17 and 18 of the Standing Orders Act. Therefore, there can be no warrant for interference with the order of dismissal.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
12-6-1975.

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

AMEENUDDIN AHMED
Chairman.
12-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 61 of 1974.

Dr. Md. Shamsur Rahman Mia,
Village Mangalpara,
P. O. Mangalpara (via Madnagar),
Dist. Rajshahi—*First Party*,

versus

Assistant In-charge,
Shamshernagar Tea Estate.
P. O. Shamshernagar,
Dist Sylhet—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury.

} *Members*.

Representation—M/s. Abu Sufian Chowdhury and Mahbulul Haque. Advocates, appeared for the first party and Mr. A. Mohith Chowdhury, Government Pleader appeared for Second Party.

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 by first party Dr. Md. Shamsur Rahman Mia for his reinstatement in his former post with all back wages after declaring the order of dismissal illegal.

The case of the first party is that he joined in the Shamshernagar Tea Estate as Assistant Medical Officer in the year 1970. Though the first party was appointed for the Shamshernagar Tea Estate only, he had to work for other Tea Gardens under the practice. The first party was entitled to extra remuneration for the extra work but he was not paid such extra remuneration. First party submitted representation to the second party for extra remuneration but to no effect. On the other hand, the second party became annoyed and began to harass the first party in various ways. The second party ultimately with a view to feed his grudge drew up a preceeding falsely against the first party who showed cause denying the charges. But the second party without holding enquiry illegally dismissed the first party from service. Thereafter first party served a grievance notice upon the second party who replied the same without considering his prayer. Hence, this case.

Second party contested the case by filing a written statement alleging *inter alia* that the first party not being a "worker" the case petition is liable to be dismissed. First party was an Assistant Medical Officer posted at Kanihati Tea Garden under the Shamshernagar Tea Division. The weekly payments of wages relating to Patients were made over to first party for payment by the Disbursing Clerk of Kanihati Tea Estate. Fraud and dishonesty in connection with the said payment by the first party was detected and the matter was brought to the notice of the management and thereafter the first party was charged and

asked him to show cause by 30-7-1974 with further direction to the effect that enquiry will be held on 2-8-1974 in respect of the charge. Mr. Golam Moinuddin held enquiry in due time and submitted his report about the enquiry against first party. The management ultimately found the first party guilty of fraud and dishonesty and thereafter second party sent a communication of finding by letter dated 24-8-1974 and the same was received by the first party on the same date. By the said letter the first party was asked to submit any extenuating circumstances in his favour by 26-8-1974, but since the first party did not submit any explanation, the second party on due consideration of all facts and circumstances passed the order of dismissal from service on 27-8-1974. The said order of dismissal is legal and valid and operative. The first party is not entitled to get any relief.

The points for determination are—

- (1) whether the first party is a "worker" under the Standing Orders Act, 1965; (2) If so, whether the first party is entitled to get the reinstatement with back wages.

DECISION

Point No. 1 ; P. W. 1, Dr. Md. S. Rahman, first party, has examined himself in support of his case. On the other hand, none is examined on behalf of the second party. Some documents filed by the parties are taken in evidence without any objection from either side. I go without saying that a petition under section 25 will be maintainable only, if the first party is found to be a "worker", otherwise he is out of Court. In order to determine whether he is an worker or is one excluded from its category. I shall have to look into the nature of the work he performs. It is stated in para 1 of the case petition that the first party joined in the Shamsher Nagar Tea Estate as an Assistant Medical Officer in the year 1970. P. W. 1 in his evidence has stated that he was appointed as Assistant Medical Officer at Kanihati Tea Garden by letter Ext. 1. It appears from the evidence of P. W. 1 that he was Medical Officer of the Tea Garden was a member of the Medical Association and the service of Medical Officer is under an agreement and at the time of his (P. W. 1) appointment there was no agreement form was available and as such his (P. W. 1) appointment was given in a plain paper. P. W. 1 further stated in his cross that service of Medical Officer is contractual one for every three years. He further states that for every three years an agreement is made and the medical officer gets increment. It is also stated by P. W. 1 in his cross that the staffs of the Tea Estates and Garden have got their separate Association and that neither Assistant Medical Officer nor Medical Officer of the Tea Estates are members of the Staff Association, nor staff Associations members are members of the Medical Association. The evidence of P. W. 1 further shows that compounder, Dresser and Midwife are under the control of Assistant Medical Officer and Medical Officer of the garden. P. W. 1 also stated in his cross that A. M. O. and M. O. of the Tea Estates are to work according to the direction of Chief Medical Officer. P. W. 1 also further stated that he had the authority to make complaint against his staff, i.e., Compounders, Dressers and Midwife etc. Annual Report for 1965 of the then P. T. A. in its appendix described the duties of the Directors of the Tea Estates. I have gone through the duties of the Doctors referred therein. Moreover, the first party (P. W. 1) in his case petition and grievance petition Ext. 1 did not assert himself to be a "worker" rather he asserts him to be an

Assistant Medical Officer. From the aforesaid evidence of P.W. 1 referred to above, it can be safely said that the first party had supervisory as well as administrative functions and control over his staffs, viz., Compounder, Dresser, etc. Accordingly the first party cannot be accepted to be a worker. Law does not anywhere states that criterion of a person employed in administrative or supervisory capacity must necessarily had the power to appoint and dismiss any employee of the establishment or to have any control over the financial matter of the concern. From the evidence and my discussions above, I am of the view that the first party was not a worker within the definition of section 2(v) of the Standing Order Act, and as such the case is not maintainable.

It appears from Ext. C dated 19-7-1974 that due to mistake the second party issued charge-sheet on 28-6-1974 stating the charge under Employment of Labour (Standing Orders) Act, but the said mistake was rectified by issuing charge-sheet dated 19-7-1974 Ext. D to the first party for his (first party) fraud and dishonesty. The first party submitted his explanation Ext. 2(A) in compliance with the charge dated 19-7-1974. According to P.W. 1, first day of enquiry was held in his presence and during the enquiry he made statement which was recorded by Mr. Moinuddin, Manager Chatlapore Tea Garden. According to P.W. 1 the first day enquiry was held at the chamber of Mr. Kutubuddin. Ext. E is the findings of the Chairman, of the enquiry committee. Ext. 4 dated 27-8-1974 is the order dismissing the first party from service. From the evidence both oral and documentary it can be said that even if the first party to be treated as "worker" he has totally failed to prove that the dismissal order was made contrary to the provisions of Labour Laws.

I have found above that the first party is not a "worker" according to Standing Orders Act and as such his case is not maintainable under section 25(1)(b) of the Standing Orders Act, 1965. In any view of the case, the first party is not entitled to get any relief.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
10-6-1975.

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

AMEENUDDIN AHMED
Chairman,
10-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 57 of 1974.

Md. Waziullah, S/o. Md. Jamanullah, C/o. Saber Ahmed, Vice-Chairman, U.C.
No. 5, Barabkunda, Chittagong—*First Party*,

versus

Manager, (Admn.), M/s. Moqbulur Rahman Jute Mills Ltd., Barabkunda,
Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

... }
... } *Members.*

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 filed by first party Waziullah praying for directing the second party to pay him termination benefit as a confirmed employee on D-1 grade in the scale of Tk. 200—425.00.

The case of the first party is that he was appointed as an apprentice supervisor by the second party on 25-3-1972 on a consolidated allowance of Tk.125.00 per month and after 6 months the first party became a confirmed employee as per terms of appointment as well as provisions of the Standing Orders Act, 1965. The first party has been confirmed as Supervisor D-1 grade and hence he became a confirmed employee of D-1 grade in the scale of Tk. 200—425.00. Suddenly the employment of the first party was terminated by the second party *vide* letter dated 29-7-1974. First party demanded his termination benefit but the second party did not comply. Thereafter the first party represented his grievances on 9-8-1974 which was received by the second party but the second party did not give any decision. Hence, this case.

Second party contested the case by filing a written statement alleging *inter alia* that since the first party was an apprentice and that he continued his apprenticeship till his service was terminated and that he was not a permanent worker, his claim for payment of termination benefit as a confirmed employee of D-1 grade in the scale of Tk. 200—424.00 does not arise. The first party is not entitled to get the benefits under section 19(1) of the Standing Orders Act, 1965.

It is to be seen whether the first party is entitled to termination benefit as claimed in D-1 grade.

DECISION

P.W. 1 Waziullah first party has only examined himself in support of his case. It is not disputed that the service of the first party was terminated by the second party *vide* letter dated 29-7-1974 Ext. 2. It is also not disputed that first party was not paid termination benefit as yet, and the first party sent a grievance petition (Ext. 3) on 9-8-1974 claiming termination benefit under section 19(1) of the Standing Orders Act, 1965. The second party's letter of termination dated 29-7-1974 issued to the first party goes to prove that the second party is offering the termination benefit under section 19(1) of the Standing Orders Act to the first party, accepting him (first party) as a permanent worker. There is no evidence sufficient on record to show that first party was placed in D-1 grade in the scale of Tk. 200—425.00. On the other hand, it is proved from the evidence of P.W. 1 that his last pay was Tk. 175.00 per month. I, therefore, find that first party is entitled to get termination benefit under section 19(1) of the Standing Orders Act.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

The first party is entitled to get the following termination benefit from the second party under section 19(1) of the Standing Orders Act, 1965;

- (1) 90 days' notice pay at the rate of Tk. 175.00 per month;
- (2) Compensation at the rate of 14 days wages for completed year of service or part thereof over six months from 25-3-1972 to 31-7-1974.;
- (3) Wages for unavailed period of earned leave, if any;
- (4) Unpaid wages, if any, due.

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
 7-6-1975.

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

A. AHMED
Chairman.
 7-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 64 of 1974.

Mohammed Mustafa, S/o. Poban Ali, Railway Station Colony, Chittagong—
First Party,

versus

- (1) M/s. Chittagong Bricks and Clay Works Ltd., Fouzderhat Industrial Area, Chittagong;
- (2) The Manager, M/s. Chittagong Bricks and Clay Works Ltd., Fouzderhat Industrial Area, Chittagong—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury—*Member.*

Representation—Mr. Umar Hayat, Advocate appeared for the first party and Mr. S. C. Laia, Advocate appeared for the second party.

This is an application under section 25 (1)(b) of the Employment of Labour (Standing Orders) Act, 1965 filed by Mohammed Mustafa, first party, praying for his reinstatement in his former post with all back wages and benefits.

The case of the first party is that while he was serving under the second party as a worker, he was suddenly served with a letter of suspension dated 23-7-1974 for some alleged acts of misconduct stated therein and thereafter he (first party) replied the same *vide* his written reply dated 28-4-1974 denying the alleged charges. Second party without considering the reply letter of the first party, illegally dismissed first party from permanent service *vide* letter dated 18-9-1974 on the basis of alleged letter of suspension without charge-sheet and enquiry. The first party thereafter made a written representation dated 27-9-1974 to the second party against the said order of dismissal but without any response from the second party. Hence, this case.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was charge-sheeted by the second party under letter dated 23-7-1974 followed with an order of suspension. The first party having received the said letter of charge, submitted his explanation dated 23-8-1974. Since the reply was not satisfactory the second party held an enquiry where the first party was given full opportunity. The second party found the first party guilty for misconduct and as such the first party was dismissed from service after complying the provisions of Labour Laws. The first party is not entitled to get any relief.

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

DECISION

P.W. 1, Mohammed Mustafa, first party has only examined himself in support of his case. On the other hand, D.W. 1 Manager of the second party establishment has examined on behalf of the second party. It is not disputed that the first party was appointed as worker under the second party in the year 1970 and thereafter he became permanent. It is also an admitted fact that last pay drawn by the first party was at the rate of Taka 215.00 per month.

It is contended on behalf of the first party that no charge-sheet actually was drawn up for the alleged misconduct by the second party against the first party. On the other hand, it is urged on behalf of the second party that in fact the first party was charge-sheeted under the letter dated 23-4-1974 Ext. 1 followed with an order of suspension and the said letter Ext. 1 was sent to the first party, who understood the contents of the same as charge for misconduct and thereafter submitted his explanation dated 23-8-1974 Ext. A. P.W. 1 in his cast has stated that second party sent charge-sheet Ext. 1 against him and he (P.W. 1) submitted his explanation dated 28-8-1974 Ext. A. P.W. 1 further stated in his cross that another employee of the second party namely, Ibrahim was also charge-sheeted along with him in similar offence or charge and he (Ibrahim) was also dismissed from service by the second party thereafter. I have gone through Ext. 1, where it was alleged that first party wilfully disobeyed the order of his superior officer and without obtaining permission from Waziullah, the Production In-charge, left the department and along with him some other workers left the duty and as such the first party was charged under section 17(3)(a) & (b) of the Standing Orders Act. It is an admitted fact that first party on receipt of this Ext. 1, sent his explanation dated 23-8-1974 Ext. A denying the charges. Unless Ext. 1 is a letter of charge, the first party would not have submitted his explanation Ext. A denying the alleged allegations. Had it (Ext. A) been not a charge for the alleged misconduct, there was no reason on the part of the second party to wait so long many days for the explanation from the first party and that there was no reason for the second party to hold domestic enquiry against the first party. Ext. 3 as well as Ext. C dated 27-9-1974 the grievance petition submitted by the first party after his dismissal will show that the first party fully understood the contents of Ext. 1 as charge for alleged misconduct and thereafter he submitted explanation Ext. A and also attended the domestic enquiry where he deposed before the enquiry. P.W. 1 also admitted in his cross that he received the notice of enquiry dated 28-8-1974 from the second party. A copy of the said notice of enquiry has been marked Ext. B. It is also admitted by P.W. 1 in cross that he himself signed the enquiry proceeding held against him. D.W. 1 has stated that he held the enquiry against the first party and during enquiry he recorded the statement of the first party in three sheets which were signed by the first party in presence of the executive member of the Sramik Union. These three sheets bearing the signature of the first party are marked Ext. D. D. W. 1 further stated that he submitted enquiry report dated 30-8-1974 Ext. E. According to D.W. 1 he is the only officer (Manager) in the second party establishment. D.W. 1 stated that first party was dismissed after complying with all the requirements of labour laws. It is also in evidence *vide* D.W. 1 that Waziullah, Production In-charge made a written statement dated 30-8-1974 Ext. F. This Ext. F also goes a great way against the first party's case. From the above

discussions I am fully convinced that Ext. 1 is nothing but a charge for misconduct against the first party. Ext. 2 is the letter of dismissal. Having regard to the above discussions and circumstances I find that the first party was dismissed from his service after holding proper enquiry step by step as provided under sections 17 and 18 of the Standing Orders Act, 1965 and that the first party was removed for his wilful disobedience of the reasonable order of his superiors, which amounts to misconduct. Therefore, there can be no warrant for interference with the order of dismissal.

Member Mr. Jamshed Ahmed Chowdhury is consulted and other member is absent on leave.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-6-1975.

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

AMEENUDDIN AHMED
Chairman.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 67 of 1974.

Fazlul Huq, S/o. Md. Isnaque,
Vill. Ekhlaspur, P.O. Ekhlaspur,
Dist. Noakhali—*First Party,*

versus

- (1) Manager,
M/s. Delta Jute Mills Ltd.,
Choumahani, Dist. Noakhali.
- (2) Chairman,
Bangladesh Jute Industries Corporation,
Amin Court, Motijheel, Laccá—*Second Party.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

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

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 by first party Fazlul Huq for his reinstatement in service with back wages.

The case of the first party is that he was appointed as a Mistry under second party mill with effect from 1965 and his last weekly wages was Tk.45.57. First party was permanent in his service and he was discharging his duty faithfully. But all on a sudden on 5-7-1974 first party was charge-sheeted for alleged misconduct and thereafter first party submitted his explanation denying the charges. Ultimately the first party was dismissed illegally from service for alleged misconduct without properly following the provisions of sections 17 and 18 of the Standing Orders Act, 1965. Thereafter first party represented his grievances on 27-9-1974 praying reinstatement but the second party gave no reply to the same. Hence, this case.

Second party contested the case by filing a written statement alleging *inter alia* that first party was dismissed from service for misconduct after complying with the provisions of sections 17 and 18 of the Standing Orders Act, and as such, he is not entitled to get any relief in this case.

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

DECISION

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

It is not disputed that first party was a permanent employee under the second party with effect from 1965 and he was dismissed from service by order dated 25-9-1974 for alleged misconduct. The evidence of P.W. 1 shows that on the basis of report of Shamsul Alam, Maintenance Superintendent alleging his (P.W. 1) misbehaviour he (P.W. 1) was charge-sheeted *vide* Ext. 1 dated 25-7-1974 and thereafter P.W. 1 submitted his explanation denying the charges Ext. 2 and after that the second party constituted an enquiry committee with 4 persons including Anowar Pasha as Chairman of the committee. P.W. 1 further stated that he participated in the domestic enquiry where his statement was recorded and the same was signed by him. P.W. 1 also stated that statements of his witnesses were recorded during enquiry. It is also stated by P.W. 1 in his evidence that he was dismissed from service *vide* letter dated 25-9-1974 Ext. 4 and thereafter he sent grievance petition dated 27-9-1974 to the second party. It is also in evidence *vide* P.W. 1 in cross that after his dismissal from service, he was called by the Manager of the Mills and he (P.W. 1) went and met the Manager who then told him that when he (Manager) found the dismissal order was duly and properly passed, he (Manager) cannot again consider the case of dismissal in question. It is also stated by P.W. 1 in his evidence in cross that prior to dismissal order he did not submit any written application to the second party against the enquiry proceeding. From the evidence of P.W. 1 referred to above it can be safely said that the dismissal of second party from service *vide* Ext. 4 was made with the consent and approval of the Manager of the second party mill. Thus the dismissal order passed by the Labour Officer cannot be said to be illegal and void.

It will appear from the charge-sheet Ext. 1 that the first party was charge-sheeted for his alleged riotous and disorderly behaviour. The enquiry committee also found the first party guilty of the said charge after examining the first party and other witnesses. From the evidence of P.W. 1 as well as enquiry proceeding and other materials on record it appears that the charge

against the first party was not untrue. The first party also admits in his evidence in cross that previously he was also asked by the second party to show cause for his misbehaviour with his superiors and he (P.W. 1) apologised for his such behaviour with his superiors and he was ultimately excused with warning. There is no evidence on record to show that first party was victimised for his any trade union activities. I have carefully scrutinised the documents, papers filed and the evidence of P.W. 1 referred to above coupled with circumstances involved and I find that first party was dismissed from service for misconduct after holding proper enquiry step by step as provided by sections 17 and 18 of the Standing Orders Act, 1965. Therefore, there can be no warrant for interference with the order of dismissal complained of.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
6-6-1975.

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

A. AHMED
Chairman.
6-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 71 of 1974.

Abdul Halim, son of Abdul Gani,
C/o. Hotel Restuarant Sramik Union,
37, Nazir Ahmed Chowdhury Road,
Chittagong—*First Party,*

versus

The Proprietor,
M/S. Nahar Hotel,
5, Sadarghat Road, Chittagong—*Second Party.*

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

} *Members.*

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 by first party Abdul Halim either for his reinstatement in service with back wages or termination benefit under section 19(1) of the Standing Orders Act.

The case of the first party is that he was appointed by the second party with effect from 3-1-1973 as a Table Boy on a monthly salary of Taka 60·00-*plus* food supplied by the second party. The first party became permanent in his employment and discharged his duty satisfactorily. During last Ramzan the establishment of the second party was kept closed and re-opened on 21-10-1974. The first party reported for duty on 21-10-1974 but instead of allowing him to resume duty his service was verbally terminated without any notice or payment in lieu of notice. On 2-11-1974 the first party represented his grievances praying for termination benefit under section 19(I) of the Standing Orders Act but the second party gave no decision in compliance with the provisions of the Standing Order Act. Hence this case.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was a casual worker and his service was never terminated and he was never permanent. First party worked on daily basis. The first party himself on 18-9-1974 said to the second party that he is not willing to work casually and he managed a better job elsewhere and thus he expressed his unwillingness to work any more in the shop of the second party from 19-9-1974. The first party then insisted for settlement of accounts and after accounting it was found that Taka 248·00 was payable by the second party to the first party and the second party then paid this amount on 19-9-1974. The first party is not entitled to get any relief.

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

DECISION

P. W. 1, Abdul Halim first party has only examined himself in support of his case. D. W. 1 Ahmed Khan, the Proprietor of the shop of the second party hotel has examined only in support of his case.

It is an admitted fact that first party was appointed on 3-1-1973 as a Table Boy in the second party's hotel. According to P. W. 1 he used to get wages at the rate of Taka 60·00 per month *plus* free food and he became permanent worker under second party. On the other hand D. W. 1 says in his evidence that he (first party) was a casual worker and he (P. W. 1) was paid his wages on daily basis. D. W. 1 further stated that first party expressed his unwillingness to serve any more under the second party and accordingly he was paid Taka 248·00 as his dues *vide* slip Ext. A dated 19-9-1974. According to D. W. 1 first party at his own accord left the service of the hotel with his dues of Taka 248·00 including due wages. P. W. 1 stated in his evidence in cross that as the second party paid Taka 60·00 as his wages for the month of September 1974 he signed the slip Ext. A and then Taka 60·00 was written in the said slip Ext. A. On the very face of Ext. A it will appear that something was erased from the second line of the said Ext. A and the amount of Taka 248·00 by figure as well as in words were written thereon. According to D. W. 1 first party worked on daily basis and he was also paid daily. Had it been the fact what was the earthly reasons on the part of the second party to pay Taka 248·00 as his wages on 19-9-1974 *vide* Ext. A. From the evidence and circumstances I have every reason to believe that *vide* Ext. A the first party was paid Taka 60·00 as his wages for September, 1974. And subsequently the amount was changed from 60 to 248 for the purpose of this case. Consequently I must hold that first party

was not a casual worker but he was a permanent worker under the second party at a monthly wages of Taka 60.00 per month. I find nothing on record to show that the first party with his own accord left the service on 19-9-1974. The evidence and circumstances rather strongly suggests that first party's service was terminated verbally by the second party on 21-10-1974 without notice or payment in lieu thereof. So, the first party is entitled to get termination benefit under section 19(1) of the Standing Orders Act, 1965.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

The first party is entitled to get the following benefits—

- (1) 90 days' notice pay at the rate of Taka 60.00 per month.
- (2) 28 days' wages as service compensation.
- (3) Leave salary, if any, due.

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong,
9-6-1975.

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

A. AHMED
Chairman,
9-6-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH.

Industrial Dispute Case No. 13 of 1975.

Haripada Biswas, S/o. Kamini Kumar Biswas, Village Halishdwip, P.O. Boal-khali, Chittagong—*First Party*,

versus

- (1) Eastern Fisheries Ltd., P.O. Airport, Patenga, Chittagong;
- (2) Bangladesh Food and Allied Industries Corporation, Amin Court (3rd floor), 62/63, Motijheel C/A., Dacca—*Second Party*.

PRESENT;

Mr. Ameenuddin Ahmed—*Chairman*.

Mr. Jamshed Ahmed Chowdhury

Mr. Juned A. Choudhury

— } *Members.*
— }

Representation :—Mr. S.C. Lala, Advocate, appeared for the first party and Mr A K. Humayun Kabir, Advocate, appeared for the second party.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by first party Haripada Biswas with a prayer for directing the second parties to pay termination benefit as per schedule of the claim, mainly on the ground that h's (first party) service was terminated under section 19(I) of the Standing Orders Act by second party No. 1 *vide* letter, dated 1st March 1974 and assured to make full payment of the termination benefit but in spite of several request to make payment, the second party did not pay the legal termination benefits although the second parties are legally bound to make payment of such dues.

Second party Nos. 1 and 2 appeared and filed joint written statement alleging that the first party's claim of 9 months' arrear wages for the period from April, 1971 to December, 1971 is absolutely incorrect and motivated and as such, he is not entitled to 9 months' wages as claimed. Similarly his claim for bonus for the year 1973-74 is absolutely motivated and as such he is not entitled to get the same.

It is to be seen whether the first party is entitled to get his claimed amount mentioned in the schedule of the case petition by way of termination benefit under section 19(I) of the Standing Orders Act, 1965.

FINDINGS

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

Admittedly first party was a permanent employee under the second party since April, 1970 and his service was terminated under section 19(I) of the Standing Orders Act by second party No. 1 under letter dated 1-3-1974, Ext. 1. It is in evidence *vide* P.W. 1 that in spite of written demands on several occasions, the second parties did not pay the termination benefit as claimed and ultimately he sent a Pleader's notice claiming termination benefit. It is also not disputed that second party sent letter Ext. 2 where it was clearly stated that the first party is entitled to the benefits referred to therein (Ext. 2) in 5 items. It is an admitted fact also that the first party's last basic pay was at the rate of Tk. 195.00 per month. P.W. 1 also stated in his evidence that he already received 2 months' wages out of his 9 months arrear wages, described in item No. 4 of the claim schedule. P.W. 1 also stated in his evidence that bonus for 1973-74 was declared by the second party long after his termination of first party's service. So, in this view of his evidence the first party is not entitled to get bonus for 1973-74 as claimed.

It appears from the termination notice Ext. 2 that it was a case of termination simplicitor. From the admitted letter Ext. 2, dated 15-8-1974 it will clearly appear that second party admitted that first party is entitled to item Nos. 2 to 4 of the claim schedule. I have already referred to above that first party has already been paid two months' salary out of the above referred 9 months arrear salary. So, first party is entitled to get 7 months arrear salary from his

claim in item No. 4. As the first party's service was terminated under section 19(1) of the Standing Orders Act, he (first party), as a permanent worker is entitled to get 3 months notice pay at the rate of 195.00 basic pay, plus 610% on first hundred and 305% on second hundred as last drawn as D.A. Thus I find that first party is entitled to get termination benefit from the second party as follows—

- (1) 3 months' notice pay at the rate of Tk. 195.00 per month, plus Dearness allowance at the rate of 610% on the 1st hundred and 305% on the second hundred:
- (2) Compensation for 4 years service at the rate of 14 days per year, i.e., for 56 days' wages:
- (3) 33 days' Earned Leave pay as per rule:
- (4) 7 months' arrear salary on basic salary at the rate of Tk. 165.00 per month plus D.A., at the rate of 240% on 1st hundred and 120% on second hundred, for 6 months, and 250% on 1st hundred and 125% on second hundred for remaining period:

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

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

AMEENUDDIN AHMED

Chairman,

Labour Court, Chittagong

14-7-1975.

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

A. AHMED

Chairman.