# The



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WEDNESDAY, APRIL 23, 1975

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

(Labour and Social Welfare Division)

Section VI

# Dacca, the 16th April 1975.

- No. S. R. O. 136-L/75/S-VI/1-1/75/125.—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-I, Dacca, in respect of the following cases, namely:—
  - (1) Complaint Case No. 24 of 1974.
  - (2) Complaint Case No. 27 of 1974.
  - (3) Complaint Case No. 42 of 1974.
  - (4) Complaint Case No. 48 of 1974.
  - (5) Complaint Case No. 49 of 1974.
  - (6) Complaint Case No. 51 of 1974.
  - (7) Complaint Case No. 67 of 1974.
  - (8) Complaint Case No. 68 of 1974,
  - (9) Industrial Relations Case No. 157 of 1974.
  - (10) Industrial Relations Case Nos. 239, 240, 241, 242, 243, 244, 246, 247, and 248 of 1974.
  - (11) Industrial Relations Case No. 251 of 1974.
  - (12) Industrial Relations Case No. 303 of 1974.
  - (13) Industrial Relations Case No. 322 of 1974.

(923)

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170, Santinagar Road, Dacca.

Complaint Case No. 24 of 1974.

Majibur Rahman-First Party,

versus

A. K. M. Nurul Islam-Second Party,

PRESENT:

Mr Amanullah Khan-Chairman.

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

The First Party Majibur Rahman alleges that he had been a driver of Truck No. Dacca TA: 577 belonging to the Second Party Nurul Islam. He was appointed on 25-12-1972. He has been removed from service on 18-7-1974. From 3 months prior to his removal he had been driving another truck No. DACCA TA: 2115 also belonging to the Second Party. He further alleges that he was never paid his wages regularly and was paid only Taka 1,150-00 for the total period of his service and thus taka 5,882-00 fell due as arrear wages. He further claims that the Second Party also took a loan of Taka 1,000-00 from him and has not paid it as yet. He now claims his arrear wages along with termination benefits, overtime dues and the amount of loan advanced. According to him, his last wages had been Taka 375-00 per month.

The Second Party Nurul Islam submits in his written statement that for misconduct he dispensed with the service of the First Party on 23-11-1973 clearing all his dues. Thereafter, at the request of wellwishers of the First Party he re-employed him on 12-3-1974 at Taka 12.50 per day on 'no work no pay' basis and finally terminated the services of the First party on 18-7-1974 settling up all his dues. It is further contended that this Case is not maintainable as the First Party is not a worker under the Employment of Labour (S.O.) Act, 1965.

I shall take up the question of maintainability first as this will dispose of the case without going through the merits of the case on facts as any finding on facts may prejudice the parties in their future litigation over these facts at any other forum.

A worker has been defined in the Employment of Labour (S.O.) Act, 1965 in the following terms:-

'Worker' means any person including an apprentice employed in any shop, commercial establishment or industrial establishment to do any skilled, unskilled, manual, technical, trade promotional or clerical

work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person—

- (i) who is employed mainly in a managerial or administrative capacity;
   or
- (ii) who, being employed in a supervisory capacity exercise, either by nature of the duties attached to the office or by reason or power vested in him functions mainly of managerial or administrative nature.

Now let us see if a truck service is included in either the industrial establishment or commercial establishment.

Industrial establishment has been defined in the said Act as follows:-

- 'industrial establishment' means any workshop or other establishment in which articles are produced, adapted or manufactured or where the work of making, altering, repairing, ornamenting, finishing or packing or otherwise treating any article or substance, with a view to their use, transport, sale, delivery or disposal, is carried on or such other class of establishments including water transport vessels or any class thereof which the Provincial Government may, by notification in the official gazette, declare to be an industrial establishment for the purpose of this Act, and includes—
  - (i) any tramway or motor omnibus service;
  - (ii) any dock, wharf or jetty;
  - (iii) any mine, quarry, gas-field or oil-field;
  - (iv) any plantation; or
  - (v) a factory as defined in the Factories Act, 1934.

So a truck service is not included in any industrial establishment. Now let us see if a truck service fails under the category of commercial establishment has been defined in the following terms:—

'Commercial establishment' means an establishment in which the business of advertising, commission or forwarding is conducted, or which is a commercial agency, and includes a clerical department of a factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contest with the owner of any commercial establishment or industrial establishment employ workers, a unit of a joint stock company, an insurance company, a banking company or a bank, a brokers' office or stock exchange, a club, a hotel or a restaurant or an eating house, a cinema or theatre, or such other establishment or class thereof as the Provincial Government may, by notification in the official gazette, declare to be a commercial establishment for the purpose of this Act:

So, this definition too does not cover a truck service. The learned advocate for the First Party submits that 'commercial undertaking' in the definition of commercial establishment will include a truck service. But, the words 'commercial undertaking' has been used there with reference to clerical departments of such commercial undertaking and not each and every worker of a commercial undertaking. I, therefore, find that the First Party is not a worker under the Employment of Labour (S.O.) Act, 1965 and has no remedy under this Act. This case is not, therefore, maintainable in this Court. In fact, his remedy lies under Road Transport Workers Ordinance, 1961.

In this view this case be dismissed on contest but without cests.

Members consulted.

#### AMANULLAH KHAN

Chairman, First Labour Court, Dacca. 1-2-1975.

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

#### AMANULLAH KHAN

Chairman, First Labour Court, Dacca. 1-2-1975.

I agree,

Sd/- M. Karim. Sd/- M. A. Mannan.

# IN THE FIRST LABOUR COURT OF BANGLADESH

170, Shantinagar Road, Dacca.

Complaint Case No. 27 of 1974.

Serajul Islam-First Party,

versus

M/S. Milon Saw Mills-Second Party.

PRESENT:

Mr Amanullah Khan-Chairman.

Mr M. A. Mannan

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

It is alleged by the First Party that he was a permanent helper under the Second Party at wages of Taka 200.00 per month and that he has been dismissed verbally from 21-5-1974 without any proceeding. He adds that he was appointed sometime in April or May 1973.

The Second Party Manager in his written statement submits that the First Party was appointed on 1-3-1974 and he left his job after 17-5-1974 and was , not dismissed but hajira Khata Ext. B of Milon Saw Mills belonging to the Second Party shows that one Md. Serajul Islam was an employee of the mills in January, 1974 and that he was shown present in the beginning of the following month also but subsequently the Ps showing his presence were struck off and even the stamp against his name on the page for the month of January 1974 was torn off. This conduct seems to suggest that this Md. Serajul Islam was none else but present First Party-Serajul Islam. The addition of Mohammad does not mean this is some other Serajul Islam as Mohammad is often added to the name of a Muslim even though that does not form part of the name. The Proprietor also cannot say if this Md. Serajul Islam is some body other than this First Party Serajul Islam. So, I find that this Serajul had been serving in the Milon Saw Mills from January, 1974. The name of the First Party does not appear before January, 1974. It seems neither party came up with truth. The hajira Khata shows the First Party to have been present till 17th May, 1974. Thereafter he has been shown absent. If the First Party would have been present and working up to 20-5-1974 as alleged by him there was no reason to have shown him absent during the last 3 days before 21-5-1974. The management did not gain much by showing him absent from 18-5-1974. So his case of being dismissed verbally from 21-5-1974 is not true. I find that the First Party had been in the service of the Second Party from January, 1974 and had been voluntarily left the job after the 17th of May, 1974 for reasons best known to him. Having left the job voluntarily the First Party forfeits his right to resume his duties and cannot, therefore, be reinstated.

This case must also fail on another count. This is a case under section 25(1)(b) of the Employment of Labour (S.O.), 1965 but no grievance notice as required under the said Act prior to filing of a case had been served on the Proprietor. The First Party has filed 1 notice Ext. 1 alleged to be the grievance notice; but this was only a complaint against dismissal to the Dy. Chief Inspector of Factories with a copy sent to the Management of the saw mills. The notice does not fulfil the requirements of a grievance notice. So this case is not maintainable.

The Case be dismissed on contest. No costs.

Members consulted.

AMANULLAH KHAN Chairman, First Labour Court, Dacca. 1-2-1975.

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

> AMANULLAH KHAN Chairman. 1-2-1975.

I agree.

Sd/-M.A. MANNAN,

Sd/- M. KARIM.

170, Shantinagar Road, Dacca. Complaint Case No. 42 of 1974.

Santi Bhushan Kar-First Party,

versus

Mr Nurul Islam—Second Party.
PRESENT:

Mr Amanullah Khan-Chairman.

Mr M. Karim
Mr M. A. Mannan

Members.

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

The First Party alleges that he was a permanent Bill Clerk in the Bangladesh Decorators from September, 1972 at wages of Taka 225.00 per month till 12-8-1974, when the establishment was closed down by the Second Party-Proprietor. It is alleged that the First Party has not been paid his termination benefits.

The Second Party submits that the First Party was only a Private coach of his children and used to occasionally help him writing bills of his establishment and for this he used to be paid extra Taka 20.00 per month in addition to Taka 30.00 for coaching his sons.

The First Party admits that the coaching was in addition to his job as bill writer. P. W. 3 Radha Charan says that the First Party was a bill Clerk. Second Party and his witness say that the First Party was only a coach. It is for the Second Party to prove by account papers of his establishment that the First Party used to be paid Taka 20.00 only as remuneration for his writing bills occasionally. No such papers have been proved. Admittedly the Second Party was a bus Driver. So it was not possible for him to look after his decorators establishment. Naturally he needed a full time to look after his establishment and he must have used the service of this man working full day. The establishment could not run with none to look after. So I find that this case must succeed. That the First Party also coached the sons of the Second Party while on duty at the shop makes no differences.

The Case be allowed on contest without cost. The First Party be given termination benefits on the basis of wages of Taka 225 per month within 30 days from date.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
10-2-1975.

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

AMANULLAH KHAN,

Chairman, 10-2-1975.

1 agree. Sd/ M. A. Mannan. Sd/ M. Karim.

Complaint Case No. 48 of 1974.

Abdul Kader, son of Yunus Miah, 134, Nasiruddin Sarder Lane, Dacca-First Party.

#### versus

Khalilur Rahman Khan, 1, Kazi Abdul Rouf Road, Kalta Bazar, Dacca-Second Party.

#### PRESENT;

Mr Amanullah Khan-Chairman.

Mr M.A. Mannan

Members.

Mr M. Karim

This is an application under section 25 of the Employment of Labour (Standing Orders) Act, 1965 for termination benefits only.

The Firs. Party Abdul Kader claims to have been a bus driver in the K. R. Khan and Company belonging to the Second Party Khalilur Rahman Khan from 7-2-1973. It is alleged that the bus bearing registration number DACCA BA99, he was employed in, had been withdrawn on 20-8-1974 throwing him out of employment.

The Second Party's case is that the First Party was never in the employment of the Second Party and that the bus having met a serious accident on 30-5-1974 and being not immediately repairable, the Routes Permit, Blue Book, etc., were deposited with the Motor Vehicle Department on 1-7-1974.

That the First Party in his deposition says that he was employed in the bus Dacca BA 99 belonging to the Second Party till 20-8-1974. The Second Party deposes that he was never so employed. He further deposes that this bus met an accident on 30-5-1974 and he deposited the Blue Book and Token of his bus on 1-7-1974 and got the receipt Ext. A. The First Party could produce nothing to show that he was ever employed in the bus DACCA BA 99. The Second Party of course could prove by producing account papers that some-body else was employed and being paid for driving the bus till 30-5-1974, when the First Party claims to be in his service. However the receipt Ext. A granted by the Counter Clerk, Motor Vehicle Department of the Office of the Superintendent of Police, Dacca, states that an application from the Second Party was received by the Motor Vehicle Department of the Office of the Superintendent of Police, Dacca, on 1-7-1974 for surrendering the Blue Book, Tax Token, etc. of the Bus Dacca BA 99. The receipt is not due of surrender of these on the date he applied, i.e., 1-7-1974. Now this is the only piece of document in this case that the Second Party says on oath that the Blue Book, etc., were surrendered on 1-7-1974 considering his deposition along with the receipt Ext. A. I feel inclined to accept his version of the case and hold that the First Party was never employed by the Second Party as his bus driver.

This case, therefore, fails.

The case be dismissed on contest without costs.

AMANULLAH KHAN

Chairman, First Labour Court, Dacca. 15-3-1975.

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

AMANULLAH KHAN

Chairman. 15-3-1975.

#### IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 49 of 1974.

Abdul Hai-First Party,

versus

The Proprietor, Jalalabad Leather Mart-Second Party.

PRESENT:

Mr Aamnullah Khan-Chairman

Mr M. A. Mannane Members.

It is a case under section 25(I) (b) of the Employment of Labour (Standing Orders) Act. 1965.

The First Party, it is alleged, was a Salesman in the employ of the Second Party in the M/s. Jalalabad Leather Mart on a monthly salary of Taka 300 for about two years and was verbally dismissed on 16-8-1974. It is further alleged that he served grievance notice prior to filing of this Case.

The Second Party Proprietor in his written statement submits that the First Party was only a a casual worker as a Farash and used to be paid Taka 5 a day and that he deserted his employment towards the middle of August 1974. It is further contended that no grievance petition as alleged was received.

So, employment of the First Party under the Second party is admitted. The First Party in his deposition says that he was employed as a Salesman on a monthly salary of Taka 300 from the last part of September, 1972 and was all on a sudden dismissed on 16-8-1974 without observing legal formalities.

He has exhibited a duplicate Cash memo. Ext. 2 called by him alleging that it bears his signature as a Salesman. This part of his evidence is not challenged. He also says that he used to draw his pay signing Pay Register. The Second Party says that the First Party was only a part time Farash and used to be paid at Taka 5 per day. He admits that he is an income tax payee and maintains accounts. But he has not submitted any paper to show how the First Party used to be paid and from when he had been employed though now his case at the hearing is that the First Party worked under him only for three months. It is the Second Party who should have shown by papers what had been the actual state as it is he who is to maintain and produce the best evidence, the account paper to rebut the resumption of the evidence on oath of permanent employment as a Salesman of the Second Party and he has not done it and I say on purpose. The account papers if produced would show that the case of the First Party is true. I find that the First Party was a Salesman as alleged for about two years atthe rate of Taka 300 per month and was wrongly dismissed.

The grievance notice Ext. I has not been questioned. I find the Case is maintainable. Other point on maintainability on the ground of number of workers being employed was not raised.

The case be allowed on contest without costs. The order of dismissal is set aside. The First Party be reinstated at once and his arrear wages be paid within 30 days from date.

Members consulted.

AMANULLAH KHAN Chairman, First Labour Court, Dacca, 22-3-1975.

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

AMANULLAH KHAN Chairman, First Labour Court, Dacca. 20-3-1975.

I agree,

Sd/M.A. Mannan.

I agree,

Sd/M. Karim.

# IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 51 of 1974.

Ali Akbar, 76, Kazi Alauddin Road, Dacca-First Party,

versus

Mr E. G. Miller, Managing Director, Addis (Bangladesh) Ltd. - Second Party.

#### PRESENT:

Mr Amanullah Khan-Chairman.

Mr M. Karim

Mr M. A. Mannan

Members.

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

The First Party, a worker in the Addis Ltd., is alleged to have been dismissed without any enquiry.

The Second Party, Manager of Addis Ltd., says in his written statement that an enquiry was held and he was found guilty and dismissed.

The First Party admits in his deposition that he was asked to show cause and was asked to appear for enquiry but he was not examined though he appeared as directed. The Second Party witness Mr Abul Bashar, who was an Accountant of Addis Ltd., deposes that he enquired into the allegations, examined the First Party who signed his statement marked 'A' and cross-examined witnesses for the management. He adds that he submitted his report to the management after enquiry. The records Ext. B of the enquiry proceedings show that the First Party Ali Akbar was examined and he cross-examined witnesses and was found guilty by the Enquiry Officer. The First Party, of course, denied his alleged signatures Ext. A(I)-A(3), but his admitted signature on Ext. 5 reading Ali Akbar clearly show these are his signatures. I have gone through the enquiry proceedings and found that he was rightly dismissed.

The case be dismissed on contest. No costs.

Members agree.

AMANULLAH KHAN
Chairman.
First Labour Court, Dacca.
18-2-1975.

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

AMANULLAH KHAN

Chairman. 18-2-1975.

Sd./ M. A. Mannan.

I agree,

Sd./ M. Karim.

170, Santinagar Road, Dacca.

Complaint Case of No. 67 of 1974.

Golam Moula-First Party,

versus

Project Manager, M/s. B.F.I.D.C., W.S. and CMP-Second Party.

PRESENT:

Mr Amanullah Khan-Chairman.

Mr M. Karim

Members.

Mr M. A. Mannan

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

The First Party Gclam Moula was a Machine Operator in M/S. B.F.I.D.C., W.S. and CMP, Mirpur, Dacca. It is alleged that he was put under suspension on 27-9-1974 for beating his superior mechanic and was asked to show cause why action should not be taken against him for such act. It is alleged by the First Party that he submitted his reply to the show cause but no enquiry was held while he had been dismissed on 8-10-1974. So he filed a grievance notice on 11-10-1974 but he received no reply of this notice too. Hence this case.

The Second Party Project Manager submits that an enquiry was held in the absence of the First Party who avoided appearance at the enquiry and being found guilty was later dismissed on 8-10-1974.

The notice Ext. 2 shows that the First Party was asked to show cause within 3 days from the date of the receipt of this letter why disciplinary action should not be taken against him for beating up Mechanic Mr Amjad Hossain and for disobedience and misbehaviour, etc. This limitation of time was less than what is allowed according to law. Letter Ext. 3 shows that the First Party prayed for time to reply to the show cause but it was refused. But he actually submitted his reply on the fourth day of the order as it would appear from the reply Ext. 4. So the First Party has not been prejudiced though he was not allowed to require not less than three days time to answer the show cause. The First Party says he came to know of a surreptitious enquiry being made and at once submitted the letter Ext. 5 to the Project Manager begging to be heard in person. This letter, according to the Second Party's witness, Superintendent in charge, was received by him on 7-10-1974, a day before the order of dismissal was passed vide Ext. 6. The enquiry was held on 5-10-1974 as it appears from the enquiry report Ext. C. There is nothing to show that the First Party was ever informed about the pending enquiry on 5-10-1974 and the Second Party witness could not say if the First Party knew about the date of enquiry. In view of the First Party's allegation of surreptitious enquiry the disminisal order ought not to have been passed after receipt of such complaint particularly when there was no formal notice

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issued upon the First Party calling upon him to appear at the enquiry on a certain date. It was suggested to the First Party in cross-examination that he was verbally informed of the date of enquiry and that a notice of enquiry was pasted on the notice board. There is nothing to hold that this suggestion is even likely to be true. I rather find from an office order Ext. A putting him under suspension that he was also forbidden from entering into the factory or office premises as one placed under suspension. So, I am not in a position to infer that the First Party might have seen the notice of enquiry on the notice board of any notice fixing the date of enquiry was at all so pasted. Ordinarily, such notice should be hunged on the notice board inside the factory. I am, therefore, constrained to hold that the First Party had no notice of enquiry and it was held surreptitiously behind his back. Grievance notice Ext. 4 was filed within time and this case has been filed within time.

In the circumstances, the case is allowed on contest and the order of dismisal of the First Party is set aside. He shall be reinstated with back wages to be paid within 30 days from the date of this order.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
13-3-1975.

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

AMANULLAH KHAN Chairman, 13-3-1975.

I agree.

Sd/M. A. Mannan.

I agree, Sd/M, Karim,

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

Complaint Case No. 68 of 1974.

Md. Hanif-First Party,

versus

Project Manager, M/s. B.F.I.D.C., W. S. & CMP, Mirpur, Dacca—Second Party.

#### PRESENT :

Mr Amanullah Khan-Chairman.

Mr M. Karim
Mr M. A. Mannan

Members.

The First Party Md. Hanif was a Machine Operator in the Bangladesh Forest Industries Development Corporation. He was appointed on 6-8-1973 at a monthly wages of Taka 260. On the 8th of October, 1974 his appointment was cancelled without any formal proceeding.

The Second party Project Manager of the Corporation in his written statement submits that the First Party was a former dismissed employee and when this was found out, his appointment was cancelled,

Admittedly the First Party was appointed a machine operator on 6-8-1973. Now, that appointment has been cancelled without observing the formalities laid down in the Employment of Labour (S. O). Act, 1965. The defence seems to be that this First Party was dismissed for misconduct earlier from the Corporation and suppressing that fact he obtained his present appointment and as such his appointment was liable to be cancelled without any proceeding. Admittedly the First Party was dismissed earlier from the Corporation but there is no reason why his Second appointment should be cancelled without observing the formalities required by law once he has been appointed. There is no law which warrants cancellation of appointment on the ground of earlier dismissal from the same establishment. It is alleged that the First Party had suppressed the facts of earlier dismissal even that facts has to be proved before any disciplinary action is taken against him. I have been referred to a copy of an office order submitted along with written statement showing a certain Deputy Secretary stating that it has been decided that in future any employee dismissed on the ground of misconduct if re-employed will be removed from service. Such an office order is ineffective as it cannot overside the provisions of law for the purpose of terminating the service of an employee. It is interesting to note that even the office order was issued sometime after the appointment of this First party was cancelled. It is not denied that this case has been filed within time after serving the required grievance petition.

The case, therefore, be allowed on contest and the First Party be reinstated with back wages to be paid within 30 days from date.

Members consulted.

AMANULLAH KHAN Chairman, First Labour Court, Dacca. 11-2-1975.

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

> AMANULLAH KHAN Chairman. First Labour Court, Dacca. 11-2-1975.

I agree,

Sd/- M. Karim, Sd/- M. A. Mannan.

170, Shantinagar Road, Dacca.

I. R. Case No. 157 of 1974.

Abdul Jalil-First Party,

versus

Karim Jute Mills Ltd-Second Party.

PRESENT:

Mr Amanullah Khan-Chairman,

Mr M. Karim
Mr M. A. Mannan

Members.

The First Party Abdul Jalil was an Assistant in the Labour Office of the Karim Jute Mills Ltd. He was charged for misappropriation for drawing unpaid wages of one worker Abdur Rahim and was placed under suspension on 28-3-1974. The First Party replied to the charge but the reply was found unsatisfactory and a formal enquiry ending on 29-4-1974 was held. It is alleged that the First Party had been kept under suspension for more than 60 days. So this case was filed for withrawai of that order of suspension.

The Second Party manager of the mills submitted in his written statement that the First Party was found guilty on enquiry and was dismissed on 10-5-1974. In view of this written statement the First Party amended his prayer and claimed to be reinstated with back wages.

Admittedly an enquiy was held. The proceeding papers Ext. E shows a full-fledged enquiry into the allegation of misappropriation of unpaid wages of a worker in presence of the First Party who cross examined the witnesses adduced on behalf of the management was held. The First Party also adduced evidence. It appears from these papers that the First Party was charged for misappropriation of the unpaid wages of Taka 66.74 of a worker named Abdul Rahim absenting himself for sometime past. It further appears that the First Party admitted to have encashed the unpaid wages slip of the worker Abdur Rahim and his defence had been he purposely encashed the two slips to recover a sum of money which he paid to that worker as loan, as one of the slips was not enough for the purpose. He admittedly signed the slips to encash them. The report of the Enquiry Officer, however, shows that he did not accept the contention of the First Party that any sum was due to him from the said worker Abdur Rahim and he was of opinion that the First Party fabricated this defence to escape punishment once he was caught misappropriating. It has been argued on behalf of the First Party that there was no mala fide intention to encash the slip and if it was so, he would not have signed the slips so boluly. The counter argument for the Second Party had been that one may put his signature in order to cheat hoping that the fraud would lie burried for ever and in the present case the First Party may have put his signature with the hope that the absentee worker had left for good and would never show up and the matter of his claim would quitely be burried under the succession layers of parching dusty on the archives of the office of the mill. Unfortunately for him his moves were being watched. The proceeding papers further show that the First Party knew that the management had claims on the absentee worker Abdur Rahim. So his claim could not be put a head of the claim of the management and whatever he had done had been a gross act of indiscipline which can only be termed as misappropriation of money I have gone through the entire proceedings and found that there had be en a thorough enquiry and all requirements of law have been duly complied with. The decision of the management therefore calls for no interference.

This case also fails for the reason that the First Party had been a dismissed worker prior to the filing of this case and his dismissal had nothing to do with any industrial dispute. It has been submitted that the dismissal order vide letter dated 10-5-1974 Ext. A was a fabrication subsequent to the filing of this Case. The Process Server's returns shows that the notice of this case was served on the First party on 26-6-1974 while a copy Ext. K of the order of dismissal was addressed to the Labour Adviser of the First Party on 24-6-1974 by registered post. Moreover it sounds almost absurd that after all these hullabaioo of a proceeding in presence of the First Party the management would feel any necessity of supressing the order of dismissal alleged to have been passed on 10-5-1974. That the order was served on the First Party is amply proved by report Ext. G of the Peon who writes that the dismissal order was served on the First Party who read the contents and returned it to the Peon telling him that he would formally receive the letter next day. I have no reason to disbelieve this return. I, therefore, find that this case has been filed by a dismissed worker who was in the know of the order of dismissal and as such it is not maintainable either.

The Case be dismissed on contest. No costs.

Members consulted.

AMANULLAH KHAN

Chairman, First Labour Court, Dacca. 15-2-1975.

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

> AMANULLAH KHAN Chairman, 15-2-1975.

I agree,

Sd,/ M. Karim.

Sd./ M. A. Mannan.

#### IN THE FIRST LABOUR COURT OF BANGLADESH AT DACCA

I. R. Case Nos. 239, 240, 241, 242, 243, 244, 246, 247 and 248 of 1974. Abdul Aziz,

C/o. Ain Upodeshta Kendra, 33, Bangabandhu Avenue, Dacca, and eight others-First Parties,

versus

The Manager,
M/s. The National Tanneries, Hazaribagh, Dacca-9—Second Party.

PRESENT:

Mr Amanullah Khan-Chairman.

Mr M. Karim ... Members.

These cases being I.R. Cases No. 239 to 244 and 246 to 248 of 1974 have been filed by certain workers of National Tanneries under section 34 of the Industrial Relations Ordinance, 1969. These workers claim to be Goat Fheshers there. They allege that they had been drawing wages at the rate of Taka 175.00 a month with effect from 1-6-1972. They claim that they are entitled to this wages at the rate of Taka 175.00 from 1-3-1970, but the Second Party refused to pay accordingly a false on pretext. These cases have been filed for the alleged arrears of Taka 50.00 permonth from 1-3-1970 to 31-5-1972, the First Parties having been paid for this period at the rate of Taka 125.00 per month.

The Second Party Manager, National Tanneries, in his written statement submits that the First Parties are unskilled workers but they and others organised themselves and forced the Manager to pay them at the rate of Taka 175.00 per month, the wages admissible to a semi-skilled workers, although they were unskilled workers. It is further contended that the National Tanneries is a nationalised establishment now vested in the Government free of any trust, morgage, charge, lien, interest or other incumbrance, etc. with effect from 29-9-1972 and as such the First Parties are not entitled to any relief for the recovery of the alleged arrears, if any, prior to 29-9-1972.

The First Parties depose that they have been Goat Fleshers from before liberation at a wages of Taka 125.00 per month and later this amount was raised to Taka 175.00 per month. The Second Party witness Khandaker Nasirul Islam, formerly Manager, National Tanneries from October, 1972 to June, 1974 deposes that the First Parties were only Helpers and not Fleshers. But he admittedly submitted a report stating that these First Parties were Fleshers. This, it is added, he submitted under pressurre. But he also says in his cross-examination that he found all these First Parties drawing wages at the rate of Taka 175.00 per month as semi-skilled workers. The present Manager of the National Tanneries deposing as witness No. 2 admits in his cross-examination that these First Parties were working as Fleshers. Appointment letters Exts. 1 to 1 (H) also show that these First Parties were appointed in March, 1969 as Goat Skin Fleshers. Goat Skin Fleshers have been made semi-skilled workers to be paid at Taka 175.00 per month with effect from 1-1-1970 by an order passed under the Minimum Wages Ordinance, 1961 and published in the Official Gazette on 29-7-1970. Apparently these First Parties are entitled to draw wages at the rate of Taka 175.00 per month from 1st of January, 1970. It has, however, been submitted that even then they will

not be entitled to the arrear from before 26th of March, 1972 since by the Bangladesh Industrial Enterprises (Nationalisation) (Amendment) Order, 1972 (President's Order No. 27 of 1972) this Tannery vested in the Government of Bangladesh free of any trust, mortgage, charge, lien, interest or other incumbrance as provided in Article 4 of the Bangladesh Industrial Enterprises (Nationalisation) Order with effect from 26-3-1972. Article 4 of the Order runs as follows:—

4. On the commencement of this order all the shares in each of the scheduled industrial enterprises placed under a Corporation by an order under clause (I) of Article 10 which have not already vested in the Government by or under any other law for the time being in force, shall, by virtue of this Article and without further assurance, stand vested in, and allotted to, the Government free of any trust, mortgage, charge, lien, interest or other incumbrance whatsoever, and the Government shall, as from such commencement be the sole share-holder of such industrial enterprises.

So, on the commencement of this President's Order No. 27 of 1972 all shares in the industrial exterprises mentioned in the schedule or notified in the Official Gazette which had not already vested in the Govt. of Bangladesh shall stand vested in the Government free on any trust, mortgage, charge, lien, interest or other incumbrance whatsoever. It is submitted that all interest in the National Tanneries has been so vested. By President's Order No. 108 of 1972 being the fourth amendment of the President's Order No. 27 of 1972 a Tanneries Corporation was set up and the amendment was made effective from 26-3-1972, the day the President's Order No. 27 of 1972 came into force. I have been shown an order notified in the Official Gazette dated 4-10-1972 placing this National Tanneries under the National Tanneries Corporation as required under clause (I) of Article 10 of the P.O. No. 27 of 1972. I, therefore, find that all shares in the National Tanneries vested in the Government of Bangladesh with effect from 26-3-1972. That being so, the National Tanneries must be held liable, in view of my earlier findings, to pay the First Parties at the rate of Taka 175.00 per month from 26-3-1972 only and not from 1-7-1970. So, I find that the First Parties are entitled to Taka 50.00 as arrear wages paid less per month from 26-3-1972 to 31-5-1972,

The Case Nos. 239, 240, 241, 242, 243, 244, 246, 247 and 248 of 1974 be, therefore, allowed on contest. The First Parties do get arrear wages up to 31-5-1972 at the rate of Taka 50.00 each per month with effect from 26-3-1972. They be paid the ordered amount within 30 days from the date of this order.

Members consulted and agree.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
18-1-1975.

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

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
Sd./ M.A. Mannan.
I agree,
Sd./ M. Karim.

170, Shantinagar Road, Dacca.

I. R. Case No. 251 of 1974.

Md. Abu Taleb-First Party,

versus

The Manager, Tangail Cotton Mills Ltd.—Second Party,

PRESENT:

Mr Amanullah Khan-Chairman.

Mr M. Karim

Members.

Mr M.A. Mannan ...

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

The First Party had been a Shift-in-Charge in the Tangail Cotton Mills Ltd., since 1-9-1970. It is alleged that he joined his duties after liberation on 1-2-1972 and worked up to 9-2-1972 cleaning the machineries. On the next day he was asked not to work on the plea that the mill had surplus men and was asked to see the Second Party 2/3 days after. Form then on he was kept on tenterhooks and had not been allowed to report for duty.

The Manager of the mills submits in his written statement that the First Party never reported for duty after the liberation of Bangladesh.

The First Party deposes that he reported for duty on 1-2-1972 and worked up to 9-2-1972 and then was asked not to work but report later and accordingly he reported for duty time without number but he had been put off on pretexts. He further says that he also wrote to the Textile Corporation complaining that he was not being allowed to join and that on query by the Corporation by its letter dated 9-1-1973 the manager Mr. Shamsul Alam of the mills wrote in his letter dated 13-1-1973 that he was not being allowed to join on the allegation of collaboration with the Pak Army. The First Party further adds that he called for these letters the Second Party but these had not been submitted to the Court. Record shows that the First Party called for these letters and the file of the Tangail Cotton Mills from the Corporation but no such papers have been filed. Second Party witness, Office Superintendent Md. Jafarullah says that this First Party never reported for duty. But from his cross examination if appears that he is not expected to know who reports for duty and who does not. Time Keeper and the Spinning Master could say if the First Party reported for duty. So he is not a competent witness and records supposed to show the attempt of the First Party to resume his duties have been withheld suggesting that the case of the First Party must be true. I, therefore, hold that the First Party did attempt to report for duty after the liberation of Bangladesh and was not allowed to work. I find him entitled to the relief claimed.

#### ORDERS

The Case be allowed on contest. No costs. The First Party be rein-

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
18-1-1975.

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

#### AMANULLAH KHAN

Chairman, First Labour Court, Dacca. 18-1-1975.

Sd/- M. A. Mannan.

Sd/- M. Karim.

## IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case No. 303 of 1974.

Noor Mohammad-First Party,

versus

Proprietor,
Masum Confectionery—Second Party.

#### PRESENTI

Mr Amanullah Khan-Chairman.

Mr M. Karim

Members.

Mr M. A. Mannan

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

The First Party Noor Mohammad was a mechanic in the M/S. Masum Confectionery. He went on 7 days' leave from 28-3-1974 but could not come back for duty till 8-5-1974 having fallen ill. It is alleged that he had prayed for further leave by post stating that he was sick. He was not allowed to join his duties. He was asked to wait and lastly on 3-8-1974 he had been formally refused work.

The Second Party Proprietor in his written statement submits that the First Party did not report for duty on the expiry of the leave and returned only on 11-6-1974. He lost his lien in the service and was not therefore taken back.

Admittedly the First Party went on 7 days' leave and according to the First Party he reported for duty on 8-5-1974 and according to the Second Party on 11-6-1974. The First Party says in his deposition that he prayed for extension of time by post. He has filed receipt Ext. 1 to prove that he applied for extension of leave. From the receipt it is not clear if it was addressed to the Proprietor of Masum Confectionery. The Second Party denies to have received any such petition for extension of leave but the case of the Second Party that the First Party had lost his lien is also not tenable. Lien on service is not automatically lost for 10 days, unauthorised absence after the expiration of authorised leave. A lien to be lost has to be ordered in writing.

But this case fails on the ground of limitation. The First Party in his deposition says that the Second Party told him on the very first day he reported for duty long after the expiry of the leave that he had lost his job. That was on 8-5-1974, according to the First Party himself this case was filed on 19-9-1974. The grievance notice was also addressed on 12-8-1974, more than 15 days after the cause of action arose on 8-5-1974. The maximum time that the First Party could have to file this case was 2 and ½ months from the date of cause of action, i.e., 8-5-1974. According to the Second Party the cause of action could be 11-6-1974. But in either case this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 filed on 19-9-1974 is barred by limitation. This case must, therefore, fail.

The case be dismissed on contest. No costs.

Members consulted.

AMANULLAH KHAN Chairman, First Labour Court, Dacca.

15-3-1975.

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

AMANULLAH KHAN

Chairman, First Labour Court, Dacca. 15-3-1975.

I agree.

Sd/- M. A. Mannan.

I agree.

Sd/- M. Karim.

170, Shantinagar Road, Dacca.

I. R. Case No. 322 of 1974.

Sultan Ahmed Khan-First Party,

versus

The Administrator, Swadesh Printing Press, Dacca-Second Party.

PRESENT:

Mr Amanullah Khan-Chairman.

Mr M. Karim

Mr M. A. Mannan Members.

The First Party Sultan Ahmed Khan was appointed Bill Collector-cum-Bill Clerk in the Second Party's Press with effect from 1st June, 1973. It is alleged that he was falsely implicated in Sutrapur P.S. Case No. 86(8)73 and placed under suspension by the Second Party. After being released on bail, it is alleged, the First Party approached the Second Party to allow him to join his duties withdrawing the suspension order but he was told that he could not be allowed to join unless the Case was finally decided. It is further alleged that he was acquitted on 10-5-1974 and soon after he reported for duty but he was not allowed to join. So, he filed I.R. Case No. 144 of 1974 for a direction on the Second Party to allow the First Party to join his duties and to pay full wages for the period of suspension. The Second Party appeared in that case and submitted that the services of the First Party had been terminated on 10-1-1974. The Court allowed arrear wages up to the date of termination of his services in that case but did not permit reinstatement in view of the order of termination which could not be challenged in that case. In the present case the First Party questions the validity of that order of termination alleging that it was in fact an order of dismissal without any formal proceeding as required under the law.

The Second Party in its written statement submits that after the order of suspension the First Party was asked to hand over the charge of the office. This First Party in reply prayed for time up to 11-9-1973 to appear and report but he failed to appear and he was again asked to report by letters dated 18-9-1973, 20-10-1973 and 12-12-1973 but he never appeared. So the Second Party terminated the services of the First Party on 10-1-1974. The Second Party denies that the First Party ever reported for duty after being suspended from service.

The termination letter is in the following terms:

It is reported that on 26-8-1973 you were arrested by the Police under section 420 in a cheating case, thereafter you were released on bail and the management had asked you on 18-9-1973, 20-10-1973 and 12-12-1973 to report but you have been avoiding the same.

The management have therefore, no other alternative but to terminate your services under Section 19(3) of the Bangladesh Employment of Labour (S.O.) Act, 1965 and in accordance with the terms of your appointment letter dated 18-6-1973.

You are requested to collect all your dues from the cashier any day during working hours.

Apparently it is a letter of dismissal accusing the First Party of misconduct for failing to report to the management as ordered. So it is contended that it is not a case of termination simpliciter but a case of dismissal; although section 19(3) of the Employment of Labour (S.O.) Act, 1965 have been referred to and it has been submitted that there being no formal proceeding for taking such action the alleged order of dismissal had been illegally passed. Now the letters dated 18-9-1973, 20-10-1973 and 12-12-1973 Exts. B,B(1) and B(2) respectively show that the First Party was asked to appear and explain his conduct for his absence and in the matter of joining, failing which he would be dismissed from service. This was the trend of these 3 letters although the first one demanded that he would hand over the charge of his office. Handing over of charge does not necessarily implicate any idea that he would be removed from service. So these letters were virtually letters asking him to show cause why he should not be dismissed from service for failing to appear before the management as directed. The Peon book Ext. C shows that these were received on his behalf by somebody. The First Party does not say that he did not receive all these letters. The Second Party witness, a clerk of Swadesh Printing Press says that the First Party was not asked to show cause, for his absence. In view of the letters Ext. B series, I am not prepared to accept his statement although it goes against the Second Party. His statement apparently arises from the fact that there was no formal proceedings drawn as is done in such cases. But I find from the letters Exts. B series that for all intents and purposes the First Party was asked to show cause why he should not be dismissed from service for his failure to report to the management as ordered. The First Party never replied to the charges or desired to be heard in person, In the circumastances, the order of dismissal could rightly and legally follow without further enquiry. 1, therefore, find that the First Party was legally and rightly removed from service and the rather fabrourable order of termitation vide Ext. A which was as good as order of dismissal need not be interfered with.

The case be accordingly dismissed on contest but without costs.

Members consulted.

AMANULLAH KHAN Chairman, First Labour Court, Dacca. 13-3-1975.

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

AMANULLAH KHAN Chairman, First Labour Court, Dacca. 13-3-1975.

I agree, Sd/ M. A. Mannan, I agree, Sd/ M. Karim,

By order of the President
MUHAMMAD KHADEM ALI
Deputy Secretary,