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

(Labour and Social Welfare Division)

Section VI.

NOTIFICATION

Dacca, the 13th November, 1975.

No. S.R.O. 380-L/75/S-V/1(50)/75/472.—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 II, Dacca in respect of the following cases, namely:—

- (1) Industrial Relations Ordinance Case No. 80 of 1975.
- (2) Industrial Relations Ordinance Case No. 91 of 1975.
- (3) Industrial Relations Ordinance Case No. 398 of 1975.
- (4) Complaint Case No. 4 of 1975.
- (5) Complaint Case No. 18 of 1975.
- (6) Complaint Case No. 53 of 1975.
- (7) Complaint Case No. 88 of 1975.
- (8) Complaint Case No. 90 of 1975.
- (9) Complaint Case No. 117 of 1975.
- (10) Complaint Case No. 123 of 1975.

By order of the President
MUHAMMAD KHADEM ALI
Deputy Secretary.

(2015)

Price; Taka 1.80 paise.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH

338, Segun Bagicha, Dacca—2.

Industrial Relations Ordinance Case No. 80 of 1975.

Md. Momin,
108, B.C.C. Road, 2nd Floor,
Room No. 16, Dacca-2—*First Party*,

versus

District Manager,
Bangladesh Road Transport Corporation,
Kallyanpur Depot, Dacca-7—*Second Party*.

PRESENT:

Mr Amin-ur-Rahman Khan—*Chairman*.

Mr. Md Mahbubul Alam }
Mr. S.M. Alfazuddin } *Members.*

Dated the 15th October, 1975:

By this application under section 34 of I R O the first party who was a Driver under the second party seeks a direction on the latter to reinstate him in his former service with full back wages upon the allegations that he was illegally dismissed from service on 14-4-1975 without any show cause.

The second party pleaded the case to be unmaintainable upon the assertion that being a dismissed worker he cannot maintain this application under section 34, I R O and also that he was legally dismissed from service as he obtained his service by giving false home address thereby deceiving the second party.

Point for Decision

Whether the case is maintainable.

DECISION

Admittedly the first party was a dismissed worker and as such he is not a worker within the meaning of I R O and cannot maintain this application under section 34 of I R O as there was no industrial dispute in connection with his alleged dismissal. Hence—

Ordered

That the case be dismissed on contest.

Members consulted.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.
15-10-1975.

Typed on my dictation and corrected by me.

AMIN-UR-RAHMAN KHAN
Chairman.
15-10-1975.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH

338, Segun Bagicha, Dacca—2.

Industrial Relations Ordinance Case No. 91 of 1975.

Md. Mozammel Haque Khan,
108, B.C.C. Road, Room No. 16, Dacca—*First Party*,

versus

General Manager,
National Jute Mills Ltd.,
Ijabnagar, Ghorasal, Dacca—*Second Party*.

PRESENT:

Mr. Amin-ur-Rahman Khan—*Chairman*.

Mr. Md Mahbubul Alam }
Mr. S.M. Alfazuddin } *Members*.

Dated the 24th September 1975:

By this application under section 34 of I R O the first party who was a permanent worker under the second party seeks a direction on the latter to reinstate him in his service upon the ground that he was illegally retrenched on 15-5-1975.

The second party pleaded the case to be unmaintainable upon the ground that he having been already retrenched from service cannot maintain this application under section 34 of I R O.

Admittedly the first party had been retrenched from service and evidently there was no industrial dispute in connection with the said retrenchment. So the application is not maintainable under section 34 I R O.

Ordered

That the case be dismissed on contest.

Members consulted.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.

Typed on my dictation and corrected by me.

AMIN-UR-RAHMAN KHAN
Chairman.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH

338, Segun Bagicha, Dacca-2.

Industrial Relations Ordinance Case No. 398 of 1974.

A.Q. Ali Ahammad,
Draftsman, Grade-4,
Cartography Section,
Directorate of Planning (Contract),
Bangladesh Water Development Board, Dacca—*First Party*,

versus

- (1) Mr. Manzoor Ahmed,
Director (Planning) (Contract),
Bangladesh Water Development Board, Dacca;
- (2) Mr. Zahiruddin Meah,
Asstt. Director-1,
Directorate of Personnel,
Bangladesh WAPDA, Dacca—*Second Parties*.

PRESENT:

Mr. Amin-ur-Rahman Khan—*Chairman*.

Mr. Md Mahbubul Alam }
Mr. S.M. Alfazuddin } *Members*.

Dated the 24th September, 1975:

By this application under section 34 of IRO the first party seeks a direction on the second party to declare him as an employee of Grade-3 equivalent to Grade-B with effect from 20-7-1970 and pay him the salaries of that grade upon the allegations that while he was previously a Draftsman of Grade-4 the second party deputed him to work in Cartography section in place of Mr Sadeque Ali Draftsman, Grade-3 equivalent to Grade-B and he worked as such since 20-7-1970 but still he has been paid his salaries of his former post of Grade-4 Draftsman and has not been paid the salaries in the scale of Grade-3 Draftsman in which post he has been working.

The Second party pleaded the case to be false and legally unamaintainable upon the assertion that the first party has all along been serving as Draftsman Grade-4 and he was never promoted as Draftsman Grade-3 but that when the post of Mr Sadeque Ali, Draftsman, Grade-3 was abolished the first party was simply asked to take over charge of stationery and other materials from Mr Sadeque Ali which never meant that the first party was promoted as Draftsman, Grade-3 nor he was ever entitled to the scale of Draftsman, Grade-3.

Point for Decision

Whether the claim is maintainable.

DECISION

Admittedly the first party has been a Draftsman, Grade-4 under the Second party. By an order dated 16-12-1970, *vide* Ex-1 the first party was deputed to work in Cartography section until further order and was directed to take over charges from Mr Sadeque Ali, Draftsman, Grade-3. This order did not at all show that the first party was promoted to the rank of Draftsman, Grade-3. Only he was deputed to work in Cartography section. The first party himself admitted that even before he worked in Cartography section while he was a Draftsman, Grade-4. So it is quite evident from his own admission that a Draftsman, Grade-4 also works in Cartography section. So merely because the first party was deputed to work in Cartography section *vide* Ex-1 it does not mean that he was promoted as Draftsman, Grade-3. Similarly when the post of Mr Sadeque Ali, Draftsman, Grade-3 was abolished while he was working in Cartography section the mere direction on the first party to take charge from Mr. Sadeque Ali does not mean that he was promoted in the rank of Mr. Sadeque Ali while his post was abolished and more so when admittedly both Draftsman of Grade-3 and 4 can work in Cartography section. So the claim of the first party is quite untenable. Hence—

Ordered

That the case be dismissed on contest.

Members consulted.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.
24-9-1975.

Typed on my dictation and corrected by me.

AMIN-UR-RAHMAN KHAN
Chairman.
24-9-1975.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH
338, Segun Bagicha, Dacca—2.

Complaint Case No. 4 of 1975.

Abdul Majid, Jamader,
C/o. Mr. S.A. Ansari,
Labour Adviser,
91, B.C.C. Road, Dacca-3—*First Party*,

versus

The Managing Director,
Bangladesh Shilpa Bank, Agrani Bank Building,
Motijheel Commercial Area, Dacca-2—*Second Party*.

PRESENT:

Mr. Amin-ur-Rahman Khan—*Chairman*.

Mr. Md Mahbubul Alam }
Mr. S.M. Alfazuddin } *Members*.

Dated the 24th September, 1975:

By this application under section 25 (J) (b) of the Employment of Labour Standing Orders) Act the first party who was a permanent worker under the second party since 26-9-1961 seeks a direction on the latter to reinstate him in his former service with full back wages upon the allegations that he was illegally dismissed from service upon false charge which were not proved and in respect of which there was no proper enquiry and his grievance petition was also rejected.

The second party pleaded the case to be false upon the assertion that the first party was legally dismissed from service upon the charge of misconduct which was duly proved in a properly held enquiry.

Point for Decision

Whether the first party is entitled to be reinstated in his service with back wages.

DECISION

Ex-2 is the charge sheet issued against the first party and Ex-3 is the reply of the first party denying the charges. Ex-4 is a notice issued on the first party on 6-9-1974 directing him to appear for personal hearing on the next day that is 7-9-1974. Ex-A is the enquiry report dated 17-9-1974 along with statements of witnesses before the enquiry officer on different days that is 6-9-1974, 11-9-1974 and 12-9-1974. The enquiry report itself shows that the charges against the first party were not at all proved and the statements of most of the witnesses also shows that the first party was not guilty of the charges. Thus the charges not being proved in the enquiry as per report of the enquiry officer and as per statement of most of the witnesses before the enquiry officer the dismissal order was quite illegal and without basis and cannot be sustained. The dismissal order is Ex-5 which is dated 15-11-1974. The first party asserted that he received the dismissal order on 22-11-1974 and submitted his grievance petition on 3-12-1974 *vide* Ex-6 series. The Second party produced the peon book to show that the dismissal letter was issued on 15-11-1974 but the peon book also shows that it was not delivered to the first party on that day. The second party could not show that the letter was served on the first party earlier than 22-11-1974. So the grievance petition was submitted in due time which having been rejected. The first party is entitled to reinstatement in service. Hence—

Ordered

That the case be allowed on contest. The second party is directed to reinstate the first party in his former service with full back wages within one month.

Members consulted.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.
24-9-1975.

Typed on my dictation and corrected by me.

AMIN-UR-RAHMAN KHAN
Chairman,
24-9-1975.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH

338, Segun Bagicha, Dacca—2.

Complaint Case No. 18 of 1975.

Md. Alauddin Miah, S/O. Md. Muslem Fakir, Vill. Satvita, P.O. Narisa Bazar, P. S. Dohar, District Dacca, Mechanical Mistry, 'B' Shift, Patching Department, Fauzi Chatkal, Urea Fertiliser Factory, Polash, Ghorasal, Dacca—*First Party*,

versus

- (1) The Manager, Fouzi Chatkal, Urea Fertiliser Factory, Polash, Ghorasal, Dacca,
(2) The Labour Officer, Fouzi Chatkal, Urea Fertiliser Factory, Ghorasal, Dacca—*Second Parties*.

PRESENT:

Mr. Amin-ur-Rahman Khan—*Chairman*.

Mr. Md. Mahbubul Alam

Mr. S. M. Alfazuddin

} *Members*.

Dated the 24th September, 1975:

By this application under section 25(1)(b) of the Employment of Labour (Standing) Orders) Act the first party who was a permanent worker as Mechanical Mistry under the second party since 13-8-1968 seeks a direction on the latter to reinstate him in his former service with all back wages upon the allegations that he was illegally dismissed from service from 6-12-1974 upon false charges which were not proved and in respect of which there was no proper enquiry and that his grievance petition dated 17-12-1974 was not also considered.

The second party pleaded the case to be false and unmaintainable upon the assertion that the first party was legally dismissed from service for misconduct which were proved in a duly held enquiry and after following all the legal procedures.

Point for Decision

Whether the first party is entitled to be reinstated in his former service with full back wages.

DECISION

The first party deposed in the case stating on oath that he was issued with a show cause notice bearing some allegations of misconduct which he duly replied and he appeared in the enquiry held on 26-9-1974 and in that enquiry the allegations of misconduct were not proved and he was found innocent and thereafter he was again called to attend a review enquiry on 1-10-1974 when he appeared and his statements were recorded but no witness

was examined and no further evidence was recorded which means that the charges were not still proved but even then he was illegally dismissed from service. The second party did not examine any witness in this case but only produced some documents. Ex-B is the only show cause notice produced by the 2nd party which is dated 14-9-1974. This show-cause notice bears the allegations that on 12-9-1974 at about 8 p.m. the first party was found absent from duties and that the first party explained his absence by saying that he had gone to say his prayer and that the first party at that time abused his co-workers Mustafa and Fazlur Rahman. Those were the only allegations against the first party in the said show cause notice dated 14-9-1974. Ex-C is the reply of the first party denying the allegation. Ex-A is the enquiry proceeding that is the statement of witness recorded by the enquiry officer on 26-9-1974. Ex-A series show that the enquiry was held in respect of different allegations, viz., that some parts of another department was found in the almirah which was in charge of the first party thereby indicating that those parts were stolen from the other department. But the second party did not produce any copy of the chargesheet that was issued in respect of recovery of some parts of other department from the almirah in charge of the first party. The statement of witnesses Hafiz ullah, Arshad Ali, Abdul Hakeem, Golam Mustafa and Abul Kalam were recorded on 26-9-1974 as per Ex-A series. The statement of Hafizullah simply said that he heard about the recovery of some parts from the almirah and he further stated that all the workers open and use the tools kept in the almirah and that there were two keys of which one is kept by the first party while the other key is kept by all other workers so the statement of Habib Ullah did not prove any guilt of the first party. The statement of Arshad Ali says that he opened the almirah and began to search for the parts without the permission of the first party and he also said that all the workers open the almirah and use the tools contained therein. So his statement also did not prove any guilt of the first party. The statement of Abdul Hakeem says that the Foreman went to assault the first party alleging that he had abused him. Thus he did not depose anything in the point of recovery of part from the almirah in charge of the first party. The statement of Golam Mustafa simply said that as he reported to the Foreman that some of the workers including the first party had gone out so the first party charged him as to why he had made such report. The statement of Abul Kalam simply dittoed the statement of Golam Mustafa and their statements did not prove any guilt of the first party far less the allegations that some parts of another department were recovered from the almirah in charge of the first party. Thus the enquiry held on 26-9-1974 did not prove any charge of misconduct against the first party. Ex-2 shows that after the said enquiry of 26-9-1974 a fresh review enquiry was directed to be held on 1-10-1974. Ex-E is the said enquiry held on 1-4-1974 in which only the statement of first party was recorded and no witness nor any other evidence was recorded. The statement of first party stated about his innocence. So the enquiry held on 1-10-1974 did not also prove any guilt of the first party or any charge of misconduct against him. The second party did not also produce any enquiry report to say that the first party was found guilty of any charge of misconduct. Ex-4 is the dismissal letter which says that as the evidence recorded in course of enquiry established the first party's guilt of the charge levelled against him so he was dismissed from service but as it has been already observed neither any charge of misconduct nor any guilt of the first party was ever proved by the enquiry held on 26-9-1974 and 1-10-1974 and thus the dismissal order was illegal being arbitrary and without basis. So the first party is entitled to be reinstated in service with full

back wages. The dismissal order is dated 6-12-1974. The grievance petition was submitted on 17-12-1974 *vide* Ex-5 and received with by the second party on 18-12-1974. The present application has been filed on 16-1-1975 which is within time. Hence,

Ordered

That the case be allowed on contest. The second party is directed to reinstate the first party on his former service with full back wages within one month.

Members consulted.

AMIN-UR-RAHMANKHAN
Chairman.
Second Labour Court, Dacca.

Typed on my dictation
and corrected by me.

AMIN-UR-RAHMAN KHAN,
Chairman.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH
338, Segun Bagicha, Dacca—2.

Complaint Case No. 53 of 1975.

Jamsher Ali, son of late Neazuddin,
Vill. Palash, P. S. Kaliganj, Dist. Dacca—*First Party*,

versus

Janata Jute Mills Ltd.,
Represented by Labour and Welfare Officer, having his office at Palash,
Kaliganj, P. S. Dacca—*Second Party*.

PRESENT :

Mr Amin-ur-Rahman Khan—*Chairman*.

Ms Md. Mahbubul Alam }
Mr S. M. Alfazuddin } *Members.*

Dated the 19th September, 1975 :

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act the first party who was a Head Mistry under the second party seeks a direction on the latter to reinstate him in his service with back wages upon the allegations that he was illegally dismissed from service without any proper enquiry.

The second party pleaded the case to be false and unmaintainable upon the assertion that he was legally dismissed from service after finding him guilty of misconduct upon proper enquiry after following the legal procedures.

The second party however did not appear on the date of hearing. The first party was examined *ex parte*. It is found from his application and evidence that he was issued with chargesheet bearing allegations of his misconduct of riotous and disorderly behaviour *vide* Ex-1 and he gave his reply and then got the dismissal order Ex-3 and that no enquiry was held. But his oral evidence was falsified by his own complaint petition in which he clearly stated that he was given notice to explain his conduct before the enquiry officer and that the enquiry officer took a hasty decision. The second party asserted that the first party admitted his misconduct in his own reply and the first party did not deliberately produce the copy of the reply. In his oral evidence he pleads that he does not know what was written in his reply. This indicated that he had confessed his guilt in his reply. Thus the dismissal order was found to have been properly passed and even in his grievance petition Ex-4 the first party did not give any ground to indicate that the dismissal order was illegal. Thus the first party failed to prove his case even *ex parte*, Hence

Ordered

That the case be dismissed on contest.

Members consulted.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.

Typed on my dictation
and corrected by me.

AMIN-UR-RAHMAN KHAN
Chairman.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH
338, Segun Bagicha, Dacca-2.

Complaint Case No. 88 of 1975.

Makhan Lal Mandal,
son of Haridas Mandal,
Peelkuni, Kutubpur, Pagla,
Fatulla, Dacca—First Party,

versus

The Manager,
C. R. Cotton Mills,
Siddhirganj, Dacca—Second Party.

PRESENT :

Mr. Amin-ur-Rahman Khan—*Chairman.*

Mr. Md. Mahbubul Alam }
 Mr. S. M. Alfazuddin } *Members.*

Dated the 24th September, 1975:

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act the first party who was a Turbine Head Operator under the second party since July, 1969 seeks a direction on the latter to allow him to resume his duties and to return his identity card and attendance card upon the allegations that the second party has not been allowing him to perform his duties since 18-2-1975 quite illegally and out of grudge and has also taken away his identity card and attendance card and that his grievance petition submitted on 22-2-1975 has also not been considered.

The second party pleaded the case to be unmaintainable for want of cause of action upon the assertion that the first party has all along been retained in his service and is being regularly paid his salaries.

Point for Decision.

Whether the case is maintainable.

DECISION

The facts of the case are undisputed. The first party submitted a complaint to the Officer-in-Charge of Ganobhaban alleging that the Engineers of the second party were running a Turbine machine in defective condition whereby there was serious apprehension of destruction of the machine and endangering the life of the workers and thereupon the President's Inspection Team held an enquiry. Now the second party asserts that the first party made the complaint falsely though the machine was being run in good condition without any risk and that it was apprehended that the first party had some evil design of throwing false blame on the Engineers so he is not being allowed to perform his duties as Head Operator of the machine but nevertheless he has been retained in service and is being regularly paid his salaries. Thus it is an admitted fact that the second party has not been allowing the first party to perform his duties since 18-2-1975 though he is being retained in his service and is being paid his salary regularly. This is quite an inconceivable position and it is also illegal that a worker is being retained in service and is being paid his salaries and still he is not being allowed to perform his duties. If the second party thinks that the first party is guilty of misconduct or is otherwise unreliable the second party can take the legal procedure either to dismiss him from service or to terminate his

service by paying him termination benefits but he cannot be retained in his service and paid his salaries without allowing him to perform his duties. The first party while being retained in service he is legally entitled to perform his duties. Hence—

Ordered

That the case be allowed on contest. The Second Party is directed to allow the first party to perform his duties and also to return his Identity Card and attendance register within one month.

Members consulted.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.

Typed on my dictation
and corrected by me.

-AMIN-UR-RAHMAN KHAN
Chairman.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH

338, Segun Bagicha, Dacca—2.

Complaint Case No. 90 of 1975.

Faridul Haque, Messenger, C/o. Mr. Ishaque Miah, 40, South Mukdapara,
Dacca—14—*First Party,*

versus

The Managing Director, Pubali Bank, Head Office, 24-25, Dilkhusha Commercial
area, Ramna, Dacca—2—*Second Party.*

PRESENT:

Mr. Amin-ur-Rahman Khan—*Chairman.*

Mr. Md. Mahbubul Alam ... }
Mr. S. M. Alfazuddin ... } *Members.*

Dated the 24th September, 1975.

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act the first party who was a permanent Messenger in the Second party's Bank seeks a direction on the latter to reinstate him in service upon the allegations that he was illegally dismissed from service without holding any proper enquiry and that his grievance petition was also not considered.

The second party pleaded the case to be unmaintainable upon the ascertain that the first party as legally dismissed from service after finding him guilty of misconduct after proper enquiry.

Point for Decision:

Whether the case is maintainable.

DECISION

Admittedly the first party was issued with a charge-sheet *vide* Ex-4 alleging that the first party was entrusted with a Calculating machine along with some other article for taking them to Rajshahi Branch of the Bank and for delivering the same there and that he lost the same from his custody due to his negligence. Admittedly the first party submitted his reply *vide* Ex-5 and he was issued with enquiry notice *vide* Ex-6 and he attended the enquiry on 7-8-1975. His allegation is that neither he was examined nor any witness was examined and so the enquiry was not proper. The enquiry report Ex-A shows that the matter was properly enquired into by the enquiry officer who found the first party guilty of gross negligence by causing loss of the calculating machine from the custody of the first party. The plea of the first party was that as he could not proceed to Rajshahi immediately due to rush of passenger he kept the calculating machine in the custody of two Darwans of the record room and that he got a receipt from one of them, *viz*, Md. Motaleb. The fact is that admittedly the first party was entrusted with the calculating machine and it was stolen away while in his custody. If at all he had kept it with any Darwan the responsibility lay with him as he did not obtain any permission from authority for keeping the machine with any Darwan. On the other hand Md. Motaleb asserted that no calculating machine was kept with him and that the receipt was forged. Besides that the first party's plea in the matter was self-contradictory as once he pleaded that he kept the machine with two Darwans and again he pleaded that he kept it with one Darwan. He did not also produce any receipt before the enquiry officer at the time of enquiry. So upon his own admission and upon the materials on record the enquiry officer rightly found him guilty of the charge of misconduct for the loss of a valuable calculating machine. The legal procedures for dismissal were duly followed and there is no reason to interfere with the dismissal order. Hence—

Ordered

That the case be dismissed on contest.

Members consulted.

AMIN-UR-RAHMAN KHAN

*Chairman,
Second Labour Court, Dacca.*

Typed on my dictation and corrected
by me.

AMIN-UR-RAHMAN KHAN

Chairman.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH

338, Segun Bagicha, Dacca—2.

Complaint Case No. 117 of 1975.

Gouranga Chandra Das, C/o. Chittaranjan Cotton Mills, Darwan Lane, P.O. Lakshmi Narayan Mills, Narayanganj, Dacca—*First Party*,

versus

The Manager, Chittaranjan Cotton Mills Ltd., P.O. Lakshmi Narayan Mills, Narayanganj, Dacca—*Second Party*.

PRESENT:

Mr. Amin-ur-Rahman Khan—*Chairman*.

Mr. Md. Mahbubul Alam .. }
Mr. S. M. Alfazuddin .. } *Members.*

Dated the 24th September, 1975.

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act the first party who was a permanent worker under the second party for about 9 or 10 years seeks a direction on the latter to reinstate him in his former service with all back wages upon the allegations that he was illegally dismissed from service upon false charges which did not constitute misconduct and in respect of which there was even no proper enquiry and his grievance petition was also not considered.

The second party pleaded the case to be false and legally unmiantainable upon the assertion that the first party was legally dismissed from service for misconduct which was proved in a duly held enquiry.

Point for Decision:

Whether the first party is entitled to be reinstated in his service with back wages.

DECISION

Ex-1 is the charge-sheet issued on the first party on 29-1-1975 which alleges that the first party having verbally contracted to sell his land to the second party after taking earnest money amounting to Tk. 100 as again sold away the same land to other person thereby cheating the second party. The first party submitted his reply on 1-2-1975 *vide* Ex-2 by which he denied having contracted to sell his land to the second party or having taken any earnest money from the second party. Be that as it may it is quite evident that the charges consisted of mere civil dispute over the truth or genuiness of the alleged contract of sell between the first party and second party and the said charged do not in any way constitutes misconduct within the meaning of the Employment of Labour (Standing Orders) Act. Even assuming that the first party actually

contracted to sell his land to the second party and ultimately resiled from the contract and sold his land to other person that is purely a matter of civil dispute which cannot be settled out by a civil court and that cannot be constitute misconduct. So the dismissal of the first party upon the said charges is quite illegal as no dismissal can be ordered by an employer in respect of his worker except for misconduct as defined in section 17 of the Employment of Labour (Standing Orders) Act. The second party referred to section 17(3)(b) which is "Theft, fraud or dishonesty in connection with the employers' business or property". In this case the charge drawn up by the second party do not show that there was theft, fraud or dishonesty in connection with the employer's business or property. According to the second party the first party only verbally contracted to sell his land to the second party and ultimately did not sell the land to the second party but sold it to different person. So there was no fraud or dishonesty in connection with the business or property of the second party as the second party did not actually purchase the land or owned the land at all. In the result the dismissal being illegal the first party is entitled to be reinstated in his former service with all back wages. Hence—

Ordered

That the case be allowed on contest. The second party is directed to reinstate the first party in his former service with full back wages within one month.

Members consulted.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.
 24-9-1975.

Typed on my dictation and corrected
 by me.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.
 24-9-1975.

IN THE SECOND LABOUR COURT AT DACCA IN BANGLADESH
 338, Segun Bagicha, Dacca—2.

Complaint Case No. 123 of 1975.

Mr. Mohammad Ali,
 Ex-Booking Clerk,
 Hajiganj, Narayanganj, Dacca—*First Party,*

versus

Managing Partner,
 New Metro Cinema,
 102, Serajudoula Road, Narayanganj, Dacca—*Second Party.*

PRESENT:

Mr. Amin-ur-Rahman Khan—*Chairman.*

Mr. Md Mahbubul Alam	} <i>Members.</i>
Mr. S.M Alfazuddin	

Dated the 24th September, 1975.

By this application under section 25 (1) (b) of the Employment of Labour (Standing Orders) Act the first party who was a Booking Clerk under the second party since 1960 seeks a direction on the latter to reinstate him in his service with full back wages upon the allegation that he was illegally dismissed from service on 1-5-1975, upon false allegations without issuing any charge-sheet and without giving him any chance to defend his case and that his grievance petition dated 30-5-1975 was also rejected. The second party pleaded the case to be false and unmaintainable upon the assertion that the first party was not dismissed from service but his services were simply terminated by offering him termination benefits.

Point for Decision:

Whether the case is maintainable.

DECISION

Admittedly and evidently the first party was not issued with any charge-sheet and no kind of explanation was called from the first party nor any enquiry was held. But Ex-A, dated 1-5-1975 shows that as the first party was guilty of misconduct so his services were terminated by offering him termination benefits. This order clearly shows that it was not a termination simpliciter but it was virtually a dismissal for misconduct in the garb of termination. So when the second party did not issue any charge-sheet by recording the allegations of misconduct and did not give the first party any opportunity to explain so the said order even if it was an order terminating the service of the first party by offering him termination benefits was illegal because his services could not be terminated on the ground of misconduct without giving him any charge-sheet and opportunity to explain the charge. Hence—

Ordered

That the case be allowed on contest. The second party is directed to reinstate the first party in service with full back wages within one month.

Members consulted.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.

Typed on my dictation and corrected by me.

AMIN-UR-RAHMAN KHAN
Chairman,
Second Labour Court, Dacca.

MINISTRY OF LABOUR, SOCIAL WELFARE, CULTURAL
AFFAIRS AND SPORTS

(Labour and Social Welfare Division)

Section VI

NOTIFICATION

Dacca, the 13th November 1975.

No. S.R.O. 381-L/75/S-VI/1(1)/75/473—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 Nos. 72 and 73 of 1974.
- (2) Complaint Case No. 69 of 1975.
- (3) Complaint Case No. 105 of 1975.
- (4) Complaint Case No. 95 of 1975.
- (5) Complaint Case No. 51 of 1975.
- (6) Miscellaneous Case No. 16 of 1974.
- (7) Miscellaneous Case No. 17 of 1975.
- (8) Complaint Case No. 19 of 1975.
- (9) Complaint Case No. 50 of 1975.
- (10) Industrial Relations Ordinance Case No. 313 of 1974.
- (11) Complaint Case No. 83 of 1975.
- (12) Complaint Case No. 102 of 1975.
- (13) Industrial Relations Ordinance Case Nos. 71 and 72 of 1975.

By order of the President
MUHAMMAD KHADEM ALI
Deputy Secretary.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Cases Nos. 72 and 73 of 1974.

Abul Bashar and Abdul Matin—*First Parties*,*versus*General Manager, Ahmed Bawany Textile Mills Ltd., Demra, Dacca—*Second Party*.

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim	---	---	---	} <i>Members.</i>
Mr. M. A. Mannan	---	---		

Case No. 72/74 has been filed by Abul Bashar, a Checker of Ahmed Bawany Textile Mills Ltd., and case No. 73/74 has been filed by Abdul Matin, a Shift-in-charge of the same mills. These cases are taken up together for analogous hearing as they involve the same question of facts and law.

It is alleged by the First Parties Abul Bashar and Abdul Matin that they were workers in the Reeling Department of the Ahmed Bawany Textile Mills. Both were served with charge sheets on certain false allegations. They submitted their replies to the charge but these were not considered satisfactory and they were asked to appear for enquiry on 19-8-1974 before an enquiry committee. They appeared with witnesses but their witnesses were not examined, nor any witness for the management was examined in their presence. Then on 1-10-1974 Abul Bashar received an order of suspension putting him under suspension for 7 days and Abdul Matin received an order dismissing him from service. Both submitted their grievance petition on 10-10-1974 but these were not replied to by the management. They now pray for setting aside the orders and for reinstatement of Abdul Matin and also for payment of arrear wages due.

The Second Party General Manager, Ahmed Bawany Textile Mills, in his written statements submits that on certain allegations received by the management against these two persons that were engaged in activities subversive of discipline and they were collecting subscription in the name of communist party and advising workers to slow down the production in a secret meeting. They were charged on 2-8-1974 for forcibly realising subscription from the workers in the name of communist party and for holding a secret meeting on 1-7-1974 advising workers to slow down production. The first parties replied to the charge but the replies were found unsatisfactory. An enquiry committee was therefore appointed and the said committee held an enquiry against the First Parties on the allegations made in the charge. The First Parties appeared in that enquiry, made statements but did not adduce any witness, nor did they cross examine the witnesses for the management. The Committee found them guilty on the charge and on their recommendations the management punished Abul Bashar with suspension and the other with dismissal.

Charge sheets I and I(a) show that both the First Parties were charged for realising subscription from the workers in the name of Communist Party causing indiscipline amongst the workers and impeding production and for holding a secret meeting on 1-7-1974 urging the workers to slow down production. They were further informed by the charge that they were previously warned for neglect of work and carelessness but with no change. Admittedly the First Parties replied to the charge and they were personally heard. The First Parties now say that they appeared on 16-8-1974 to be heard as directed verbally but they were not examined on the date and were actually heard on 19-8-1974 but their witnesses were not examined although they were present and no witness on behalf of the management were at all examined in their presence. The First Party witnesses Jafar and Amanullah say that they went along with First Parties to the venue of enquiry as witnesses for the First Parties but they were not examined. The admitted signatures Exts. A and A(1) of Abul Bashir and Abdul Matin, however, show that the statements of the First Parties were recorded on 16-8-1974 and not 19-8-1974. So the case of the First Parties that they appeared for enquiry on 19-8-1974 with witnesses must be false. There is also no written papers to show that the First Parties at all protested against the refusal of the enquiry committee to examine their witnesses. Second Party witness No. 1, one of the members of the enquiry committee, a Labour Officer says that the enquiry was first held on 16-8-1974 and later on 23-8-1974 and that on the first day they could examine some witnesses only as it became very late. Second Party witness No. 5 Mahbub Elahi, Chariman of the enquiry committee deposes that the enquiry was held on 16-8-1974 and 23-8-1974 in presence of the First Parties. The proceeding papers show that the enquiry date was fixed on 16-8-1974 and in all 21 witnesses were examined. So I find nothing wrong with the procedure followed by the management. There is no reason why the First Parties would not be informed of the date 23-8-1974 for enquiry nor is there any reason for the management not to allow the First Parties to cross examine the witnesses. I find that a proper enquiry was held but I also find from the statement of the witnesses taken at the enquiry that, as a matter of fact, no *prima-facie* case had been proved against the First Parties. Out of 21 witnesses only two spoke of Abdul Matin advising workers to slow down production in a meeting and that they realised subscription from the workers. They do not say how and where the subscription were realised. Only one witness made a statement alleging that subscription was realised from him by force but not a single receipt showing realising of any subscription from workers has been filed. Moreover, realising subscription within the mill premises, although that had not been the charge is no offence under the law. These cases must, therefore, be allowed and the impugned orders be set aside.

The case Nos. 72 and 73 of 1974 be allowed on contest. The impunged orders of suspension of Abul Bashar and dismissal of Abdul Matin be set aside and they be paid back wages and Abdul Matin be reinstated. This order is to be complied with by the Second Party management within 30 days from date. No costs.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
29-8-1975.

যাচি একমত।

স্বা: যা: নমান।

একই মত পোষণ করছি।

স্বা: ন, করিম।

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

AMANULLAH KHAN

Chairman,
29-8-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 69 of 1975.

Md. Nurul Hoque—*First Party*,

versus

Director, Bandab Bakery and Confectionery, 7, Dhanmandi Hawkers Market,
Dacca—*Second Party*.

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim

Mr. M.A. Mannan

} *Members*.

This is an application u/s. 25(I)(b) of the Employment of Labour (Standing Orders) Act, 1965.

The First Party Md. Nurul Hoque claims to have been a worker in the Bandhab Bakery and Confectionery under the Second Party Administrator of the bakery. His wages is said to have been taka 265 per month. It is alleged that after 7 months of service he was dismissed on 13-4-1975 without any notice. He prays for termination benefits now. It is further alleged that he served the grievance petition on 19-4-1975 on the Second Party. The notice has been refused.

The Second Party in his written statement submits that the First Party was not a worker under him at all. He was a hawker and would occasionally take bread, biscuits etc., from the bakery on credit and sell them in the market keeping some profits for him. In this way he had some business with the Second Party for 2/3 months and Taka 300 became due from him in the course of transaction. The First Party was not paying the amount and while the Second Party contemplated filing a suit for money the First Party has filed this case to forestall the case of the Second Party.

There is no dispute about sending the grievance petition and this case being filed in time. The grievance petition has been made Ext. 1.

The First Party deposes that he was a worker in the bakery and his wages had been Taka 265 per month and that he served the bakery for about 7 months. He further alleges that he had been dismissed from service on 14-4-75. P.W. 2, one Abdul Jalil, a worker serving a nearby bakery known as Jewel Bakery deposes that he knows the First Party who served in the Bandhab Bakery. The Second Party proprietor deposes that the First Party was not a worker of his bakery. He only took bread occasionally from his bakery on credit and sell them outside. The First Party could not produce any paper to show that he was in service of the Second Party. But a worker is not expected to have or maintain such papers. Such papers showing service of a worker must necessarily be with the proprietor. The Second Party has filed a pay register Ext. A which does not bear the name of this First Party as one of the workers of Bandhab Bakery. On behalf of the First Party it has been submitted that this register has been manufactured for the purpose of this case. I agree with the suggestion. The Second Party admits in his cross examination that he maintains daily accounts. A bakery must necessarily maintain daily accounts. These accounts would have surely shown the First Party taking bread and biscuits on credit and also paying him the price. We have noted that according to the written statement the Second Party is entitled to Taka 300 on account of bread taken on credit by the First Party. So there must be papers showing this dues on the account of the First Party if the case of the second party is true. But no such papers have been filed to show it. I am convinced that the First Party was a worker in the Bandhab Bakery and the pay register Ext. A is a fake one. The First Party says that he drew wages at Taka 265 per month. I further find that this is so. The case, therefore, must succeed.

The First Party claimed over time in the petition but did not press for it at the time of hearing. He shall not have any over time, there being no evidence such claim. He shall get only notice pay for three months which comes to Taka 795 (Taka seven hundred ninety-five) only.

The case be allowed on contest without costs. The Second Party shall pay Taka 795 to the First Party within 30 days from to-day.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
18-9-1975.

আমি একমত।
স্বাঃ—ম, করিম।
আমি একমত।
স্বাঃ—আঃ মন্নান।

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

AMANULLAH KHAN,
Chairman.
18-9-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 105 of 1975

Mrs. Sajeda Begum—*First Party,*

versus

The Director, U.C.E.P., Bangladesh—*Second Party.*

PRESENT:

Mr. Amanullah Khan—*Chairman.*

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

The First Party petitioner Sajeda Begum was a teacher in the Working Boys Community School run by U.C.E.P. (under privileged Children Educational Programmes). Her last pay had been taka 500 per month. She had been dismissed from service by an order dated 6-6-1975. It is contended that the order is illegal as no formal proceeding was drawn up according to the local labour law provisions. It is prayed that the order of dismissal be set aside and the First Party be reinstated along with back wages.

The Second Party Director, U.C.E.P., submits that the U.C.E.P. is not a commercial organisation and as such does not come under the Employment of Labour (Standing Orders) Act, 1965 and, therefore, this case is not maintainable and that it has dismissed the petitioner First Party lawfully according to the terms of contract.

This is a case under section 25 of the Employment of Labour (Standing Orders) Act, 1965. The Act, according to section 1(4), applies to shop or commercial or industrial establishment with certain limitation. The relevant portion of the section runs as follows:

I (4) It shall apply to—

- (a) every shop or commercial establishment to which the East Bengal Shops and Establishments Act, 1951 (Act No. 1 of 1952), applies;
- (b) every industrial establishment in the areas in which the East Bengal Shops and Establishments Act, 1951 (Act No. 1 of 1952), applies; and
- (c) every industrial establishment in all other areas of the Province in which five or more workers are employed, or were employed on any day of the preceding twelve months:

Commercial establishment is defined in section 2(d) as under:—

- (d) 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 or a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment employes workers, a unit of a joint stock company, an insurance company, a banking [company or a bank, a broker's 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;

apparently a Commercial establishment must be profit earning. Industrial establishment has been defined in section 2(j) as under:—

- (j) 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 (Act No. XXV of 1934);

This an industrial establishment must be concerned with some articles of use. Now let us see if U.C.E.P. falls under any of these categories. In the conditions of service Ext. A signed by the parties it is stated in the first paragraph as follows:—

UCEP's aim in Dacca is to provide elementary and trade training education of street boys. All staff should regard the welfare and the future of our pupils as being the most important reason for working in our program.

The objective as it appears from the papers Ext. D and F also shows that it is only to help the boys with no parental help or care. There is no hint of any profit earning by the U.C.E.P. Programme. A certificate by the Secretary, Labour and Social Welfare Department in collaboration with which the U.C.E.P. work says that it is a non-profit earning organisation. So it is not commercial establishment and by no means an industrial establishment. I, therefore, find that the case is not maintainable as framed.

Of course, the U.C.E.P. appears to have considered the case of the petitioner before ordering dismissal and have conceded her right according to the terms of service Ext. A. So, in no case the impugned order calls for any interference.

The case be dismissed on contest. No costs.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
20-9-1975.

আমি একমত।

স্বাঃ—ব, করিম।

আমি একমত।

স্বাঃ—এম, এ, মাম্মান।

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

AMANULLAH KHAN
Chairman.
20-9-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 95 of 1975.

Moallim Uddin Ahmed—*First Party*,

versus

Ata Hossain Khan, Managing Director, M/s. Ata Hossain Khan Ltd.—*Second Party*.

PRESENT:

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim

Mr. M. A. Mannan

} *Members.*

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

The First Party petitioner submits that he was an Accountant in the M/s. Ata Hossain Khan Ltd. of which the Second Party is the Managing Director. On 12-2-1975, general holiday for Akheri Chahar Somba the First Party approached the second party and enquired from him if the office would remain closed on the day. This made the Second Party angry and he hit the First Party on his head with a telephone receiver. From that day on 12-3-1975 the First Party was not being given work although he had been attending the Office. In the meantime, it is alleged, he served a notice dated 18-4-1975 asking for work and pay. Thereafter, the First Party complained to the Chief Inspector of Factories who called him and the Second Party on 13-5-1975 for discussion. There he learnt from the office of the Deputy Chief Inspector of Factories that he had been dismissed from service from 27-3-1975. The petitioner alleges that he had been dismissed without hearing and without any service of notice of such dismissal on him. He, thereafter, served a grievance petition on 26-5-1975 and now prays for reinstatement with arrear wages from 1-3-1975.

The second party does not say that any formal proceeding was undertaken for dismissing the petitioner First Party but adds that he was discharged on 27-3-1975 and that the letter of dismissal was handed over to him on 25-3-1975.

But one cannot be discharged on 27-3-1975 and informed of the discharge on 25-3-1975 two days earlier. What is tried to be conveyed seems to be that the dismissal order was passed on 25-3-1975 and it was to be effective from 27-3-1975. It is alleged that the First Party was handed over this letter of dismissal and a copy thereof signed by him on 25-3-1975; But the First

Party tore the papers, kept them in his pocket and left. The Second Party is not here to say all these on oath. His son says that he heard that the First Party was handed over the letter of dismissal and its copy which the First Party tore to pieces, put them in his pocket and left the office of the Second Party. This is only hearsay evidence. The First Party alleges that he learnt of the dismissal on 13-5-1975 from an Inspector of a Labour Office. Exhibit I shows that the First and Second Parties were asked to appear by the official of the Chief Inspector of Factories and Establishments. So the case of the First Party that he learnt the dismissal on 13-5-1975 appears plausible. A note Ext. A shows that on 15-3-1975 the First Party received Taka 200 only from the Second Party. The note does not prove anything in favour of the Second Party. It is not one written after 27-3-1975 so that we could have some doubts as to the case of the First Party that he did not know of the order of the dismissal till 13-5-1975. It, of course, sounds rather strange that the First Party would go on attending office from 12-3-1975 till 26-5-1975 without being given any work. But even granting that he was not given any work nor did he attend office after 12-3-1975 that would not prove that he was dismissed from service on 25-3-1975 and had knowledge of such dismissal. So I find that the grievance petition filed after the alleged date of knowledge which has given as 13-5-1975 was legally served and this case filed on 27-6-1975 is within the time. It is not the case of the Second Party that the First Party was dismissed from service after following legal proceedings. So the case must succeed. There is no dispute as to the wage of the First Party which he claims to be Taka 600.

The case be allowed on contest and the First Party be reinstated with full arrear wages from 1-3-1975. Other claims made are disallowed. No cost is ordered.

Members consulted.

AMANULLAH KHAN

Chairman,

First Labour Court, Dacca.

25-9-1975.

আমি একমত।

স্বাঃ—ন, করিম।

আমি একমত।

স্বাঃ—আঃ মামান।

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

AMANULLAH KHAN

Chairman,

25-9-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170 Santinagar, Road, Dacca.

Complaint Case No. 51 of 1975.

Serajuddin Ahmed,
43, Central Road (Maya Kanan), Kamlapur, Dacca—*First Party*,

versus

Mr. Shabbir Hossain,
Partner,
Eastern Mill Store,
88, Nawabpur Road, Dacca—*Second Party*.

PRESENT:

Mr. Amanullah Khan—*Chairman*.

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

This is a case u/s 25(I)(b) of the Employment of Labour (Standing Orders) Act, 1965.

The first party Serajuddin Ahmed, it is alleged, was appointed as Salesman-cum-Account Assistant on 11-11-1961 in the firm of the Second Party Mr Shabbir Hossain. He had been dismissed from service by a letter dated 20-2-1975. It is alleged that his last pay drawn was Taka 450 per month. The first party now prays for termination benefits according to the term of his service which includes gratuity for 13 years at the rate of one month for each completed year of service, a lump grant for six months and salary for unavailed leave for 10 months apart from arrear wages including arrear of increment due.

In the written statement the Second Party submits that this case is not maintainable as there are only three workers in the firm and further that no grievance petition has been served. It is alleged that the first party was appointed only on 16-2-1972 and that there was no leave due. It is further submitted that the first party collected two bills of Taka 475 and 1,500 from the customers of the firm but did not deposit the amount and that Taka 650 is still due to the firm from the First Party on account of advance money paid to him.

At the time of hearing the Second Party did not question the service of grievance petition in time. Grievance Petition Ext. 3 with postal receipt Ext. 4 and acknowledgment receipt Ext. 5 shows that it had been properly served.

The firm is located at 88, Nawabpur Road, in the city of Dacca. Admittedly East Bengal Shops and Establishment Act, 1951 was in force in the city of Dacca immediately before commencement of the Shops and Establishments Act, 1965. So this Act of 1965 in view of the provisions of section-1 of the Act applies to this establishment of the Second Party and the limitation of 5 or more workers under sub-section 4 of the same section is not warranted in this case.

So the only point to be considered is what termination benefits the first party is entitled to. In a case for such benefits there is, of course, no scope for consideration of the question of misappropriation or of advance payment. For taking action against misappropriation or for realisation of misappropriated amount or amount advanced the forum is not the Labour Court. Moreover, the letter of termination Ext. 1 appears to have directed the First Party to collect his termination benefits after adjustment of only loan taken by him. It does not speak of the alleged misappropriation of money said to have been collected by the First Party on two deals of Taka 475 and 1,500. The allegation of misappropriation does not, therefore, appear to be true. It is, however, admitted by the First Party that Taka 650 is still due from him on account of loan advanced and he is agreeable to deduct this amount from his claim. The amount of Taka 650 may, therefore, be deducted from the claim of the First Party on admission.

The appointment letter dated 9-10-1968 Ext. 2 apparently was under the signature of the Second Party Shabbir Hossain. The letter said that the First Party had been in the service of the firm since November, 1961. Shabbir Hossain in his deposition denies that the letter was issued under his signature. But I find from the admitted signature Ext. 1 that the signature reading "Hossain" in Ext. 2 is his signature. The similarity between the signatures can be marked with bare eyes. Moreover, the Second Party has failed to show by any paper that the First Party was not in his service from before 1972. From his cross examination it appears that this firm belonged to the father of the Second Party and he has been managing the firm from 1965 and yet he could not say what happened to the account papers from before 1972. From his cross examination it appears that this firm belong to the father of the second party and he has been managing the firm from 1965 and yet he could not say what happened to the account paper from before 1972. It was suggested to him that he had purposely failed to bring the registers of earlier date because this would go against him. I very much agree with this suggestion. Papers are to be maintained by the management and if the management fails to submit its papers in its defence the presumption would be that it had withheld the papers which if produced would have gone against it. Admittedly the First Party last drew his pay at the rate of Taka 450 per month. It was suggested in the written statement that the Second Party was forced to pay this amount. There is no evidence to hold that this amount was being realised under duress. I, therefore, find that the First Party had been serving in the firm of the Second Party from November, 1961 and the last pay drawn by the First Party was Taka 450 p.m.

The First Party claims termination benefits according to the service conditions shown in the appointment letter Ext. 2, I am quoting below the appointment letter dated 9-10-1968:—

In appreciation of your services rendered to the company since November, 1961, the management is pleased to confirm your services as a salesman-cum-Account Asstt. reviewing the terms and conditions as under with effect from 1st July, 1968 :

1. Your monthly consolidated salary will be Rs. 200 with a provision of yearly increment depending upon your services.
2. You will be paid bonus equivalent to one month salary after completion of each complete year of service.
3. You will be entitled to gratuity equivalent to one month pay for each year service at the time of your discharge, termination or retrenchment due to redundancy.

4. In case of Termination or retrenchment due to redundancy or Discharge from the Company's service, not with standing in the labour laws of the country, a lump grant equivalent to six months pay will be paid by the company at a time for such termination, retrenchment or discharge.
5. If you desire to leave from the company, you will have to serve six months notice to the company or will have to pay the company, salary for six months in lieu of notice.
6. You will be entitled to 30 days annual leave, 10 days casual leave 15 days sick leave in a year and the annual leave if remains unavailed shall be accounted and the Company will pay salary for such unavailed leave at the time of leaving the company.

These conditions are more favourable to the First Party than the benefits he would be entitled to u/s 19 of the Employment of Labour (Standing Orders) Act, 1965. But Section 22 of the said Act says reads:—

22. Protection of existing conditions of employment—Nothing in this Act shall affect any law, custom, usage or any award, agreement or settlement, in force immediately before the commencement of this Act, if such law, custom, usage, award, agreement or settlement ensures conditions of employment more favourable to the workers than those provided in this Act.

So conditions of service entered in to in 1968 need not prevail as against the conditions laid down in the said Act after 1965. I, therefore, find that the First Party is entitled to benefits allowed as 19 of the Employment of Labour (Standing Orders) Act, 1965 which is compensation at the rate of 14 days' wages for every completed year of service in addition to any other benefits to which the First Party is entitled to under this Act or any other law for the time being in force and here it means notice pay for ninety days, arrear wages and arrears on account of increment due and no other. The rest of the claim for arrear wages made in the petition is not available to him. The burden of proof that the First Party has no arrear wages including increment due is on the Second Party, but the Second Party has failed to discharge the burden. So I find that the First Party is entitled to the claim for arrear wages including increment due and nothing else. Out of his total claim Taka 650 shall be deducted as agreed upon, on account of the advance payment made to the First Party.

The case, therefore, be allowed on contest in part and the First Party be entitled to Taka 3,970/00 (taka three thousand nine hundred and seventy) only which the Second Party must pay to the First party within 30 days from to-day.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
2-9-1975.

আমি একমত।
স্বাঃ আঃ নান্নান।
আমি একমত।
স্বাঃ ন, করিম।

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

AMANULLA KHAN
Chairman,
First Labour Court, Dacca.
2-9-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

Misc. Case No. 16 of 1974.

K. D. H. Sramik Union—*First Party*,*versus*K. D. H. Laboratories Ltd.—*Second Party*.

PRESENT;

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim	} <i>Members</i> .
Mr. M. A. Mannan	

This case has been filed under Rule 34(3) of the E.P. Industrial Disputes Rules, 1960.

I. R. Case No. 13/72 was allowed *ex parte* on 8-6-1972, the next day, *i.e.*, on 9-6-1972. Misc. Case No. 22/72, u/o 9, Rule 13, C.P.C. was filed praying for setting aside the *ex parte* order, dated 8-6-1972. This Misc. case was heard on contest and was dismissed on 15-6-1972. This present petition has again been filed for setting aside the same *ex parte* order, dated 8-6-1972 under a different rule and for a re-hearing of the I. R. Case concerned.

Apparently the same matter was once heard u/o 9, R. 13, C.P.C. now sought to be re-adjudicated under rule 34(3) of the Industrial Disputes Rules, 1960. The matter, in my opinion, is barred by the principle of *resjudicata*.

The rule 34(3) of the E.P. Industrial Disputes Rules, 1960 was obtained under the E.P. Industrial Disputes Ordinance, 1959 and this Ordinance of 1959 was repealed by the East Pakistan Labour Disputes Act, 1965 along with some of the rules framed under the Ordinance of 1959. The sub-sections (i) and (ii) of the repealing section 44 of the Act reads as follows:—

44(I) The Industrial Disputes, Ordinance, 1959, is hereby repealed.

(2) Notwithstanding the repeal, anything done, action taken, rules framed or notification or order issued under the said Ordinance, shall so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made or issued under the corresponding provision of this Act.

So Sub-section (2) repeals the Rules not in its entirety but only so far as it is not consistent with the provisions of this Act of 1965. Now, Rule 34(3) of the East Pakistan Industrial Disputes Rules, 1960 reads as follows:—

(3) In the case of an award of dismissal for default in absence of the first party or an *ex parte* award granted in absence of the second party, the Court may give a notice to the parties by registered post intimating them that such an award will be sent to the appropriate Government for publication unless either party moved the Court within 10 days from the date of issue of the notice for a re-hearing of the dispute. If no such prayer for rehearing is made, the Chairman shall sign the award and sent it to the appropriate Government for publication.

So according to this rule in a case of an award of dismissal for default in the absence of the First Party or an *ex parte* award granted in the absence of the Second Party, the Court might give notice to the parties that the award would be sent to the Government for publication unless the Court is moved within 10 days from the date of the issue of the notice for a re-hearing of the dispute and when no such prayer is made, the Chairman would sign the award and send it to the appropriate Government for publication. This rule was in accordance with sub-section (1) of Section 12 of the East Pakistan Industrial Disputes Ordinance, 1959 which reads as follows:—

(1) The decisions and awards of the Court shall be given in writing signed by the Chairman and shall immediately be forwarded to the appropriate Government.

So the section did not require that the decisions and awards should be signed and delivered in the open Court. So the rule 34(3) of the East Pakistan Industrial Disputes Rules, 1960 was consistent with the Ordinance, 1959 but under clause (a) of sub-section (1) of section 13 of the East Pakistan Labour Disputes Act, 1965 awards or decisions of the Court were to be delivered in Court. The clause runs as follows:—

13(1) The awards or decisions of the Court—(a) relating to any labour dispute or any other matter in which the Provincial or Central Government is not a party, shall be given in writing under the signature of the Chairman and delivered in Court.

So the scope for notice to appear for a re-hearing is no longer there before the award or decision is signed. Obviously, the rule 34(3) of the East Pakistan Industrial Disputes Rules, 1960 is inconsistent with the Act of 1965 and as such was no longer available before the Labour Court. Similar Provisions were made in the Industrial Relations Ordinance, 1969 in section 67 which again repealed the East Pakistan Labour Disputes Act, 1965 and the rules not inconsistent with the provisions of the Ordinance. The relevant portion of the section of the Ordinance, 1969 runs as follows:—

67. Repeals and savings—(1) The following laws are hereby repealed, namely:

- (a)
- (b) The East Pakistan Labour Disputes Act, 1965 (East Pakistan Act VI of 1965);
- (c)
- (d)

(2) Notwithstanding the repeal of any law by sub-section (1), and without prejudice to the provisions of section 24 of the General Clauses Act, 1897 (X of 1897):—

- (a)
- (b) anything done, rules made, notification or order issued, officer appointed, court constituted, notice given, proceedings commenced or other actions taken under any law shall be deemed to have been done, made, issued, appointed, constituted, given, commenced or taken, as the case may be, under the corresponding provisions of this Ordinance, to the extent of consistency therewith.

Now let us see whether the rule 34(3) of the East Pakistan Industrial Disputes Rules, 1960 was consistent with the provisions of the Industrial Relations Ordinance, 1969. The relevant provisions of section 37 of the above Ordinance reads as follows:—

37. **Award and decisions of Labour Court**—(1) An award or decision of a Labour Court shall be given in writing and delivered in open Court and two copies thereof shall be forwarded forthwith to the Provincial Government, provided that if the Central Government be a party, two copies of the award or decision shall be forwarded to that Government as well.

So under the provisions of this Ordinance of 1969 awards and decisions were to be delivered in the open Court and copies of the awards and decisions were to be forwarded forthwith to the Government to be published in the official gazette. The section provides for no scope, as it did not provide earlier in the Act of 1965 for any notice on the parties to a dispute and for re-hearing within 10 days of such notice signing the awards or decisions thereafter. I therefore, find that his case under rule 34(3) of the East Pakistan Industrial Disputes Rules, 1960 is not maintainable. The relevant provisions available, i.e., the provisions of Order 9, Rule 13, C.P.C. has already been availed of and this case for the petitioner fails as I have already noted.

In the above view the case be dismissed as not maintainable. No cost as to either party is ordered.

Members consulted.

AMANULLAH KHAN

Chairman,

First Labour Court, Dacca.

15-9-1975.

আমি একমত।

স্বাঃ ন, করিম।

আমি একমত।

স্বাঃ আঃ নাস্তান।

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

AMANULLAH KHAN

Chairman.

15-9-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

Misc. Case No. 17 of 1975.

K. D. H. Sramik Union—*First Party*.

versus

K. D. H. Laboratories Ltd.—*Second Party*,

PRESENT:

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim	} <i>Members.</i>
Mr. M. A. Mannan	

This is an application under section 47 of the Civil Procedure Code.

The petitioner, by an *ex parte* order, dated 8-6-1972 passed in I.R. Case No. 13/72, was directed to reinstate certain workmen with arrear wages to be paid. It is now alleged that the petitioner and the workmen entered into a compromise and accordingly the workmen received Taka 1,000 each in satisfaction of their claim for reinstatement and arrear wages. It is now prayed that an order be passed to the effect that the *ex parte* order, dated 8-6-1972 passed in the I.R. Case No. 13/72 has been settled and satisfied.

But under section 47(1), C.P.C. only an Executing Court can note satisfaction of a decree of a Court. Here the Labour Court is neither an Executing Court nor the award concerned a decree. So this case is not maintainable u/s 47, C.P.C.

The case be dismissed on contest. No costs.

Members consulted.

AMANULLAH KHAN

Chairman,

First Labour Court, Dacca.

15-9-1975.

আনি একমত।

স্বা: ম, করিম।

আনি একমত।

স্বা: আ: মান্নান।

Dictated and corrected by me.

AMANULLAH KHAN

Chairman.

15-9-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH
170, Santinagar Road, Dacca.
Complaint Case No. 19 of 1975.

Nur Mohammad—*First Party*,
versus
The Chief Administrator,
Dacca Cotton Mills Ltd.
and
Senior Administrative Officer,
Dacca Cotton Mills Ltd.—*Second Parties*.

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim	}	<i>Members</i> .
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 Noor Mohammad was a Dropper in the Dacca Cotton Mills Ltd. It is alleged that the Labour Welfare Officer issued a charge sheet upon the First Party for theft of inner tube of a machine. The First Party replied to the charge sheet stating that he removed the inner tube for using it in his machine and had no intention of stealing it. Yet an enquiry was held on 3-1-1975 and on the next day the First Party was made to put his thumb impression on certain papers and later on he was dismissed from service with effect from 15-1-1975.

In the written statement it has been alleged that the First Party was caught red handed while he removed the inner tube. He was charged on 17-12-1974 and his explanation being unsatisfactory an enquiry was held against him and the First Party being found guilty on the charge was dismissed from service on 15-1-1975.

So admittedly the First Party was charged for theft of an inner tube and an enquiry was held in this matter. The First Party claims that his witnesses were not examined and that no witness was examined in his presence. But proceeding papers Ext. C shows certain finger impression alleged to be of the First Party on the statement of witnesses examined at the enquiry. The First Party attempted to say that he was forced to sign certain papers on 4-1-1975. The suggestion appears to be that these finger impressions on the statement of the witnesses were forcibly taken from him. But I find no reason why force at all would be applied in this case and why the First Party would submit to such force and there was no earthly reason for the First Party to go to the Labour Welfare Officer who is alleged to have taken these finger impressions the next day of enquiry. I am convinced that the suggestion of application of force is absolutely false. The record of the proceedings further shows that Belayet and Mustafa who are said to be witnesses for the First Party and who have come here to depose for the First Party were also examined. They had said nothing before the enquiry committee to exonerate the First Party from the charge. I find that there had been a proper enquiry into the charge levelled against the First Party.

On merit also the First Party seems to have no case. Admittedly he removed the inner tube from another machine. The First Party's explanation is that he wanted to replace the inner tube of his machine the spindle of which had become very hot but the statement recorded by the enquiry Committee shows that the First Party could not show any hot spindle at the time he was caught and it is further admitted by the First Party that he had no authority to replace his machines or remove any part of a machine. Apparently his removal of the inner tube was for the purpose of stealing. I, therefore, find no reason to disturb the finding of the enquiry committee. The case must, therefore, fail.

The case be dismissed on contest. No costs.

Learned members consulted.

AMANULLAH KHAN

Chairman,

First Labour Court, Dacca.

1-9-1975.

আমি একমত।

স্বাঃ ন, করিম।

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স্বাঃ আঃ মান্নান।

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

AMANULLAH KHAN

Chairman.

1-9-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH.

170, Santinagar Road, Dacca.

Complaint Case No. 50 of 1975.

Md. Hanif—*First Party,*

versus

The Project Manager,
BFIDC, W. S. and 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, W. S. & CMP, Mirpur, Dacca. He was served with a charge sheet by the management. He replied to the charge denying the allegations made. Thereafter, he was removed from service on 5-4-1975 without proper enquiry. He served a grievance petition on 9-4-1975 and a reply had been received on 11-5-1975.

This case has been filed under section 25(I)(b) of the Employment of Labour (Standing Orders) Act, 1965.

The Project Manager, BFIDC, W. S. & CMP, in his written statement submits that the First Party was once dismissed on 21-4-1970. Such person could not be retained in the service according to the rules of the Corporation. So after the fact of dismissal was detected he was again dismissed from service on 4-4-1975 in a proper procedure.

The First Party Md. Hanif admits that he was asked to show cause by a notice dated 13-6-1975 Ext. 6 and he replied to the charge, the reply being marked Ext. 7. It appears that he was asked to show cause why he should not be removed from the employment of the Corporation which he obtained by hiding the facts of his earlier dismissal on the ground of misappropriation and he admitted that he was dismissed from service for doing private work in the factory without permission of the authority concerned but denied the ground of misappropriation. A letter dated 21-4-1970 Ext. A writes that Hanif was dismissed from this Corporation on charge of misappropriation. Admittedly Hanif got another letter dated 21-3-1973 Ext. 8 informing him that he could not be retained in the service of the Corporation and he could now state in writing within 7 days if he had anything to say. He replied to this letter Ext. 8 by a letter dated 27-3-1975 Ext. 9 stating that he had nothing more to add than what he had stated in the letter dated 18-3-1975 Ext. 7. Thereafter, it is alleged, he got the letter of dismissal dated 5-4-1975 Ext. 10. The Project Director Second Party in his cross examination admits that the First Party was neither heard in person nor asked to appear and be heard. After that clean denial of the charge as per letter dated 18-3-1975 Ext. 7 the First Party ought to have been asked to appear in person and be heard in an enquiry. Unfortunately, there is no evidence to show that even an *ex parte* enquiry was made. The only reason for dismissing Md. Hanif seems to be that he was a dismissed worker and according to the instructions of the Corporation a dismissed worker could not be retained in service. Admittedly Md. Hanif was dismissed once before on 8-10-1974 from service as it would appear from the judgment of Complaint Case No. 68/74 on this very ground and on this very consideration of the Corporation Rules and this Court considered that order of dismissal and the reasons for dismissal thoroughly in that case and found the order to be untenable. The Court ordered reinstatement of Md. Hanif. The Court's decision remained unchallenged. Now for the self same reason and on the same allegation he has been once more dismissed with this difference that this time Md. Hanif was asked to show cause and his reply was found un-satisfactory but the same mistake continued, the mistake of removing a person without giving him an opportunity of being heard. It has been suggested by the First Party Md. Hanif that he has been dismissed from service this time because he was reinstated by the Court and he filed a criminal case against the Second Party for failing to implement the Court's order. Circumstances suggest that the allegation of the First Party may be true. Considering all these, I find that the order of dismissal cannot be sustained. I further feel that the First Party desires to be amply compensated for being repeatedly driven to a law Court in a most care free manner.

The case be allowed on contest with cost of Taka three hundred. The impugned order of dismissal be set aside. The first Party Md. Hanif be reinstated and be paid arrear wages and the cost within 30 days from date.

Learned two members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
29-8-1975.

আনি একমত।

স্বাঃ আঃ নান্নান।

আনি একমত।

স্বাঃ ন, করিম।

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

AMANULLAH KHAN
Chairman.
29-8-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case No. 313 of 1974.

Md. D. N. Haque,
Mechanical Fitter—*First Party*,

versus

The Manager,
Zeal Bangla Sugar Mills Ltd.,
Dewanganj, Mymensingh—*Second Party*.

PRESENT:

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim

Mr. M.A. Mannan

} *Members*.

The First Party Dewan Naimul Huq was a Mechanical Fitter in the Zeal Bangla Sugar Mills, Dewanganj, Mymensingh. He was the General Secretary of the Zeal Bangla Sugar Mills Sramik Union. It is alleged that on receipt of an express telegram from the General Secretary, Bangladesh Trade Union Centre, Dacca, he applied for leave for going to Dacca and while boarding the train at Dewanganj Station for Dacca he got a letter from the management that he could not be spared officially but he could ask for leave. He, however, came to Dacca and learnt that he had been selected to attend a seminar at Prague in Czechoslovakia. On clearance from all authorities concerned he

attended the seminar and returned for home to report for duty on 19-8-1974. On 12-9-1974 he was served with a charge sheet asking him to show cause for leaving the station without permission and leave. He showed cause stating that he had verbal permission of his boss and also the Chairman, Sugar Mills Corporation. Nevertheless, he was warned and had not yet been given his salary for the months of July and August, 1974. He has filed this case under the Industrial Relations Ordinance, 1969 praying that the management be asked to withdraw the order being illegal and also be directed to pay the arrear wages. First Party has since been dismissed from service and as in the written statement the management submits that such this case is not maintainable and further that he was found absent without leave and was administered only a warning treating his absence partly as leave with pay and partly as leave without pay. It is alleged that the First Party merely asked the administration to spare him from 5-7-1974 for union work and did not pray for leave even though he was informed that he could be so spared and that he could pray for formal leave.

Admittedly the First Party did not take leave while leaving duty even though he was asked to take leave. He has filed certain office orders marked Exhibit 1 series which show that previously he was allowed to leave the station on union work and his absence used to be treated as an official duty. But this is no excuse. If the management decided not to spare him in the way he was previously spared it within its right to do so. The only course open to the First Party was to ask for leave and to leave the station when such leave had been granted. But instead of asking for leave he, it appears from Ext. 6, asked the Manager, Z al Bangla Sugar Mills and several other persons including the Deputy Commissioner, Mymensingh and the Secretary Bangladesh Sugar Mills Corporation to look after his family during the period of his stay abroad. This was not only uncalled for but was an act of indiscretion and indiscipline. That he has been administered a mild warning and his long absence of 49 days treated partly as leave available to him and partly as leave without pay as no further leave was available to him was an act of grace on the part of the management. I find that the warning was not only justified but was rather a lenient punishment. For such warning no enquiry, of course, was required as it would appear from sub-section (2) of section 17 of the Employment of Labour (S.O.) Act, 1965.

As for maintainability of the case I find that even if he has been dismissed from service the case is maintainable as it was filed before the order of dismissal was passed. The point of time relevant in this connection is the time of applying before the Court. If he was a worker at that time the case be held maintainable. This will be evident from Section 34 of the Industrial Relations Ordinance, 1969 as amended up-to-date. Any other interpretation would put the First Party in a position where he could be deprived of his right to file a case under section 25 (1) (b) of the Employment of Labour (S.O.) Act, 1965. A case under this section 25 (1) (b) of the Standing Orders Act, 1965,

may be barred by limitation while a case under section 34 of the I. R. O., 1969 remain pending till such removal. I, therefore, find that the case is maintainable. But in view of my earlier findings the case is liable to be dismissed.

The case be dismissed on contest. No costs.

Learned members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
 9-8-1975.

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স্বাঃ ন, করিম।

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Note taken and transcribed by
 Mr. Waliul Islam, Steno-
 grapher, First Labour Court,
 at my dictation and corrected
 by me.

AMANULLAH KHAN
Chairman.
 9-8-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 83 of 1975.

Moynul Hossain Mazumdar—*First Party,*

versus

The General Manager, Kohinoor Group of Industries, 349/350, Tejgaon Industrial Area, Dacca-8—*Second Party.*

PRESENT :

Mr. Amanullah Khan—*Chairman.*

Mr. M. Karim	} <i>Members.</i>
Mr. M. A. Mannan	

The First Party Moynul Hossain Mazumdar was a Store Keeper serving in the Kohinoor Group of Industries. It is alleged that the management served him a charge sheet containing some false and fabricated allegations. The explanation of the First Party was not considered satisfactory and he had to appear

at an enquiry on 10-3-1975. The enquiry continued till 12-3-1975 and after further enquiry on 20-3-1975 the proceedings concluded but the statement of the witnesses of the First Party were not recorded. The First Party complained to the General Manager that his witnesses were not examined and thereafter by a letter dated 21-4-1975 the Second Party informed the First Party that he had been dismissed from the service. The First Party then served a grievance petition u/s 25(I)(a) of the Standing Orders Act, 1965 on 5-5-1975 with no redress of his grievance. He now claims reinstatement with arrear wages.

The General Manager in his written statement submits that the management placed an order with a firm named Bhai Bhai Cloth Stores and Tailors through the machination of this First Party for 66 sets of uniform for the Security Guards of Kohinoor Group of Industries of Taka 600 for each uniform. The First Party in collusion with the others arranged for payment of Taka 460 for each uniform instead of giving the guards uniform while showing payment at the rate of Taka 600 for each uniform and showed these uniforms to have been received and distributed without actually receiving them. The First Party and some others were, therefore, charged for fraudulently showing receipt and distribution of the uniforms in order to make some illegal gains. The First Party and others were asked to show cause and cause was shown. Thereafter, a proper enquiry was held by a committee of enquiry. The First Party cross-examined the witnesses examined by the management and the enquiry committee considering the evidence before it found the First Party guilty of the charge and on its recommendation he was dismissed from service. No other points came for decision at the time of hearing.

So there was a formal charge against the First Party and he was heard by a committee of enquiry. It is also not denied that he had all opportunities to defend himself. The proceeding papers Ext. C in 79 sheets show that witnesses were examined in details on the charges against the First Party and some others. I have gone through the statement of the witnesses and found that the charges were amply proved. There appears no reason why the witnesses would speak falsely against the First Party. By his letter dated 27-3-1975 Ext. 4 he claimed that his witnesses were not examined. Hajira Khata Ext. 3 shows that he appeared with two witnesses but it does not show that they were actually offered by him for examination before the proceedings were concluded against him on 20-3-1975. So I am not convinced that he was serious about examining these two witnesses and I have not been given any reason to suppose that the two witnesses had anything to support him. On the other hand, the witnesses examined by the management show that the First Party was deeply in the deal with the firm Bhai Bhai Cloth Stores and Tailors and the guard witnesses according to his own letter Ext. 4 were selected for examination by lottery. The bonafides of enquiry is apparent. The First Party admits that he signed the delivery challan Ext. A and A(1). It has been suggested on behalf of the management that by this signature the First Party attempted to show that he received the 66 sets of uniform in his store. According to the First Party the signatures were put only to show that the goods received at the gate by the delivery challan were the goods ordered and no further. According to him a register known as G.R. Register is maintained in the store and this register shows goods received in the register. It is true his signature on the delivery challan does not say that he received the goods in the store but according to him his signature at least meant that the goods were received at the gate and were ready to be delivered to the store. Yet

according to him as well as the management the goods were never received in the store. Thereafter, sixty-one requisition slips marked Ext. B series were admittedly received by the First Party and of these 42 slips marked Ext. B to B(41) were admittedly in his hand and according to him receipt of such requisition slips mean goods mentioned in the requisition slips had been delivered. So he was perfectly aware that the sets of uniform were being shown to have been delivered to the management by the firm Bhai Bhai Cloth Stores and Tailors although these were never received by him in the store. If he was not conniving with others as he claims he would have surely informed the management in writing that he never received the uniforms though these had been shown distributed. He did not submit any such report admittedly. Now, he has an explanation for this. It is alleged by him that occasionally goods purchased by the management are directly received by the department concerned and these are not received by the store. But this must be an unusual matter to be adopted because each and every goods purchased by the management must be received first in the store so that a systematic accounts of incoming goods is maintained. Now, even if the unusual method of direct distribution occasionally takes place that must be by special order but there being no such special order the First Party had no reason to write out requisition slips for the Security Guards and keep quiet without actually receiving the uniforms in his store. The First Party also says in his cross examination that in any case he has to show receipt of each and every goods received by the management in the G.R. Register maintained by him by way of adjustment and this he did not do in respect of these sets of uniform in spite of the requisition slips received by him. This speaks of no bonafides on his part. If he sincerely believed that the uniforms had been directly distributed he would have at once shown receipt of the uniform in the G.R. Register by adjustment soon after the requisition slips were received by him. In his examination-in-chief he says that he never signed the G.R. Register showing adjustment. Considering all these I find that there had been a proper enquiry and the charges were proved and the First Party had not been prejudiced in any way even though his witnesses were not examined. The order, therefore, calls for no interference.

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

Learned members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
17-9-1975.

আমি একমত।

স্বাঃ আঃ মন্নান।

আমি একমত।

স্বাঃ ম, করিম।

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

AMANULLAH KHAN
Chairman.
17-9-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 102 of 1975.

Md. Mozammel Huq, Ex Senior Proof Reader, Azad and Publications Ltd.—
First Party,

versus

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

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim

Mr. M. A. Mannan

} *Members.*

This is a case u/s. 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965.

The First Party Mozammel Huq was a Senior Proof Reader in the Azad and Publications Ltd. His services were allegedly terminated on 15-9-1975 with a request to take payment of arrears a year after, as the management was not in a position to pay immediately. But no payment was made a year after despite demand. By another letter dated 10-3-1975 the First Party was asked to receive payment of Taka 11,293.48. But no payment was made in spite of demand. Finally on 26-4-1975 he was told by the management that it was not in a position to make any payment now. So the First Party served a grievance petition on the management but received no reply. The First Party, therefore, prays that the management be directed to pay him a sum of Taka 11,293.48.

In the written statement the management submits that the First Party on his own accord made a prayer for retirement and his prayer for retirement from service was allowed and this case u/s. 25(1)(b) of the Employment of Labour (S.O.) Act, 1965 is not maintainable and further that the grievance petition was not served in time.

The First Party in his deposition says that he was retired on 15-9-1973 by a letter Ext. 1. In this letter he was asked to receive his monetary benefits after a year from the date. The First Party says that he approached the management a year after and he was handed over this letter Ext. 2. Letter dated 10-3-1975 Ext. 2 shows that the First Partys' dues were found to be Taka 11,293.48. The First Party further says in his deposition that he asked for this sum finally on 26-4-1975 when he was refused payment on the ground that the management was not sure when it would be in a position to make the payment. So he served a grievance petition Ext. 3 but no reply was received. The management did not challenge any of these statements made by the First Party. He has not been cross examined. The only argument on behalf of the management seems to be that this case is not maintainable. How this is not maintainable has not been elaborated. In the written statement it has been said that this case is not maintainable and that the grievance petition was not served in time. Now, it has not been denied that the admitted dues has been refused to be paid on 26-4-1975. Grievance petition Ext. 3 is dated

8-5-1975 so this is within 15 days from the date of cause of action, i.e., 22-4-1975. It is also not denied that the management did not send any reply to the grievance petition. So this case could be filed by the First Party by 8-7-1975. This has been filed on 5-7-1975. I find that the case has been within the time from the date of cause of action and I find nothing wrong with the maintainability of the case. By letter Ext. 2 the First Party was shown to have been retired but I find no scope of retirement from the service of Azad and Publications Ltd. So it must be held to be a termination simpliciter. Here I may point out that in the letter of retirement it is stated that the First Party was charged for certain offences and his reply was not found satisfactory but instead of dismissal he was retired on his own accord. This letter does not, however, show that the management actually came to any decision and was retiring the First Party on the positive ground of indiscipline or for any other offences. So this letter must be treated as a letter of simple termination. The First Party is, therefore, entitled to termination and other benefits under section 25(I)(b) of the Employment of Labour (S.O.) Act, 1965 but he has agreed to receive benefits according to the letter dated 10-3-1975 Ext. 2. I find no reason to deny this admitted and agreed sum of Taka 11,293.48 whatever be the termination benefits.

I may add here that the management had shown an absolute lack of good faith in respect of this poor employee. In the first place he was not given his dues soon after the order of retirement. He was asked to wait for one year and he waited for more than one year and even then no payment was made and thereafter on 10-3-1975 he was handed over this letter Ext. 2 in which his dues had been calculated. Even then this sum was not being paid in spite of repeated demands and finally he was told that the management was not in a position to pay him even now. So the First Party was obliged to file this case. After the filing of this case the management instead of admitting the claim of the First Party, came out with some *malafide* averments. I find that the First Party has been most unnecessarily harassed. So this case deserves to be allowed with costs.

The case be allowed on contest with cost of Taka three hundred. The Second Party management is directed to pay Taka 11,293.48 to the First Party within 30 days from today with costs.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
18-8-1975.

আনি একমত।

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আনি একমত।

স্বাঃ ন, করিম।

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

AMANULLAH KHAN
Chairman.
18-8-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case Nos. 71 and 72 of 1975.

Abdul Mannaf and Abdur Rob—*First Parties*,*versus*

- (1) M/s. Habib Industries Ltd. (Match Factory), Postogola, P.O. Faridabad, Dacca represented by its Manager.
- (2) Bangladesh Fertilizer, Chemical and Pharmaceutical Corporation, Shilpa Bhavan, Motijheel, Dacca represented by its Chairman—*Second Parties*.

PRESENT :

Mr. Amanullah Khan—*Chairman*.

Mr. M. Karim	} <i>Members</i> .
Mr. M.A. Mannan	

These two cases are taken up together for analogous decision as they involve the same question of facts and law. These are cases u/s 34 of the Industrial Relations Ordinance, 1969.

The First Party Abdul Mannaf of case No. 71/75 and First Party Abdur Rob of case No. 72/75 are Fitters in the Match Factories of Habib Industries Ltd. These industries has been taken over by the Government of Bangladesh and has been placed under Bangladesh Fertilizer, Chemical and Pharmaceutical Corporation. Of late, industrial Workers Wages Commission Award for Match factories workers has been implemented by the management of the Habib Industries Ltd., with effect from 1-7-1973 as per gazette notification No. NID-37/73/958, dated 19-12-1973 of Government of Bangladesh but it transpires that the workers working in the match factories have been allowed in pursuant to that Award only 4 grades of wages, the highest grade being grade 4 in the scale of Taka 225—11—375—E.B.—12—395 and this grade has been allowed only to the Frame Fitting Machineman but both Abdul Mannaf and Abdur Rob were drawing more than the maximum of this grade before 1-7-1973. It is, therefore, submitted that they could not be saddled with this grade 4. So the Corporation by its memo No. Ac/1.223/1W, dated 19-8-1974 asked the management of the match factories to refer to them cases of workers who in the opinion of the management are considered fit for placing in grade V for examination and decision of the Corporation. Grade V of the Corporation bears the scale of Taka 310—16—470—E.B.—18—560. It is further submitted that the First Parties being highly skilled workers should not be placed in grade IV. The management, however, did not refer the cases of Abdul Mannaf and Abdur Rob as desired by the Corporation. It is further alleged that while revising the wages of the applicants the management treated the difference between the wages previously drawn and the maximum of grade 4 now given to the applicants as their personal allowance instead of personal wages and this difference of wages drawn by the applicants is being partly treated as personal allowance and partly as fringe benefits.

The management in their written statements submits that workers of match factories have been granted grades I to IV only by the said notification No. NID-37/73/958, dated 19-12-1973, so that the First Parties could only be placed in grade IV and there being no higher grade in the match factories could not be allowed grade V, a higher grade, as prayed for. It has been further submitted that the workers may be allowed the difference of existing wages with allowances and the maximum wages of the grade together with fringe benefits admissible in the scale as the personal allowance as per notification dated 19-12-1974. It is further stated that the workers did not receive any fringe benefits before 1-7-1973.

So the real points we are called upon to consider for the desired decision are what were the wages drawn by the applicants immediately before 1-7-1973, what grade they are entitled to and what should be their wages.

In para 176 at page 83 of the Report of the Industrial Workers' Wages Commission issued in September, 1973 it has been stated—

Present wage drawn by a worker should include dearness allowance, *ad hoc* reliefs but should exclude other allowances.

According to the written statements Abdul Mannaf drew Taka 445 and Abdur Rob Taka 475 on 1-7-1973 and this included basic pay and *ad hoc* relief as shown in the annexure of the written statements. These statements have not been questioned by the applicants. Apparently, they drew wages much more than the maximum of grade IV. That being so, if they are to be retained in grade IV their wages should be fixed at the maximum of that scale. The wages they drew last should be protected by treating the balance amount as personal wages. This is according to the principles of wages fixation enunciated in the Report of the Industrial Workers' Wages Commission in paragraph 177 at page 83. The para reads as follows—

If the existing wages is more than the maximum of the scale recommended, his wage will be fixed at the maximum of the scale and the balance between his present wage and the maximum of the scale will be allowed to him as personal wage.

This virtually means that the applicants shall get what they had been drawing last. The management does not dispute the total amount the applicants should draw. But it wants to treat the balance amount as personal allowance and not personal wages. This interpretation of the management seems to emanate from the letter dated 19-8-1974 of the Bangladesh Fertilizer, Chemical and Pharmaceutical Corporation. In para 7 of that letter it has been stated—

If the wages of a worker of a particular grade crosses the limit of the scale, his wages should be fixed at the maximum of the scale and his wages should be protected by treating the balance amount as personal allowance.

Apparently the word 'allowance' of the said para has been mistakenly used. The report considered the difference of wages and that report has been accepted by the Government. No letter of instructions of any Corporation can convert what is to be considered as wages according to the recommendation of the Wage Commission as accepted by the Government. I find that the difference between what a worker drew as wages which includes *ad hoc* reliefs and the maximum of the grade he is placed in, shall be treated as wages only. This treatment of the amount over the maximum of the grade is not, however, very much important for the present case. In either case the applicants are indisputably drawing what they had been drawing earlier. So these applicants have been drawing much higher wages than the maximum of the scale of pay of grade IV allowed to the match factory workers. They, therefore, claim that they should be placed in grade V which has been given to some of the highly skilled workers of the Corporation. It appears that the Corporation asked that cases of the nature of Abdul Mannaf and Abdur Rob should be referred to the Corporation. I am quoting below the relevant portion of the letter in para 1:—

Any worker who in the opinion of the management of a match factory is considered fit for placement in grade V, such cases should be referred to the Corporation for examination and decision.

This desire of the Corporation was prompted by para (b) of page 804 of the gazette notification I have referred to earlier. The notification runs as follows—

(b) If any job has been left out in the grading made for the Corporation it should be placed in the appropriate grade.

This is a residue clause which is added to save any omission and the job of fitter has been left out while enumerating the different classes of workers of match factories. So Fitters ought to have been placed in an appropriate grade in the grading made for the Corporation and there is the grade V carrying the scale of Taka 310—16—470—EB—18—560 in the grading of the Bangladesh Fertilizer, Chemical and Pharmaceutical Corporation as it appears from the said gazette notification. So these applicants ought to have been placed in this grade V which is the appropriate grade for them. This grading of the applicants did not depend on either the desire of the Corporation to do so or the opinion of the management as to the fitness of the workers for such grade. It is a discretion to be exercised by the management and the Corporation according to certain facts and not whims to be indulged in at pleasure. The gazette notification is very clear. Proper grading of a job has to be done if such a job has been left out in the grading made for Corporation. Any job of a worker under the Corporation left out may be placed in any grade allowed to the Corporation irrespective of whether such grade has been allowed to the particular management under which the worker is being employed. I, therefore, find that the applicants are entitled to grade V, allowed to the Corporation. I have not gone to the other alternative relief which seems to be that the First Parties may be allowed to draw excess wages over the maximum of grade IV as their personal wages. This relief, I think, would be unfair to the applicants who shall be deprived of any further increment in their wages than what they have been drawing now if they are placed in grade IV unless they are promoted to a higher grade in some future date. So I consider Grade V to be the appropriate grade for them. There will not be any such impediment for them in this grade V.

Therefore, the case Nos. 71 and 72 of 1975 be allowed on contest and the First Party applicants be placed in grade V of the Fertilizer, Chemical and Pharmaceutical Corporations. The Second Party management of Habib Industries Ltd. is directed to place the First Parties Abdul Mannaf and Abdur Rob in Grade V in the grading made for the Bangladesh Fertilizer, Chemical and Pharmaceutical Corporations. No costs.

Learned members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
20-8-1975.

আমি একমত।
স্বা: ন, করিম।
আমি একমত।
স্বা: আ: ননুন।

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

AMANULLAH KHAN
Chairman.
20-8-1975.