রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

বুধবার, জুন ৯, ১৯৯৯

শ্রম ও জনশক্তি মন্ত্রণালয়

শাখা-৯।

প্রজ্ঞাপন

তারিখ : ২৮/৯৮ইং/১৮-৪-১৪০৫বাং

এস,আর,ও,নং ১৬৪-আইনশ্রজম/শা-৯।৩(৪)/৯৭-।

Industrial Relations Ordinance, 1969(Ord. No. XXIII of 1969) এর section 37(2) এর বিধান মোতাবেক সরকার ১ম শ্রম আদালত, চট্টগ্রাম এর নিম্নবর্ণিত মামলাসমূহের রায় ও সিদ্ধান্ত এতদসংগে প্রকাশ করিল, যথা :—

ক্রমিক নং	মামলার নাম	নম্বর
৩	(৪ক)	(৪খ) ৫
১।	পারমিশন মামলা	১/৮৬
২।	পি,ডব্লিউ মামলা	৮/৮৭
৩।	পি, ডব্লিউ মামলা	৩/৯৪
৪।	পি, ডব্লিউ মামলা	৩৪/৯৪
৫।	পি, ডব্লিউ মামলা	৪০/৯৪
৬।	পি, ডব্লিউ মামলা	৯৪/৯৫

মূল্য : টাকা ১৫.০০

৩	৪(ক)	৪(খ)	৫
৭	পি, ডব্লিউ মামলা	৩০/৯৭	
৮	আই, আর, ও মামলা	২৮/৯৩	
৯	আই, আর ও মামলা এবং অভিযোগ মামলা	৫১/৯৩ ৬২/৯৩	
১০	আই, আর ও মামলা	৪৬/৯৬	
১১	আই, আর ও মামলা	১/৯৭	
১২	অভিযোগ মামলা	২৪৯/৮৭	
১৩	অভিযোগ মামলা	৮১/৯২	
১৪	অভিযোগ মামলা	৩/৯৩	
১৫	অভিযোগ মামলা	৫৮/৯৩	
১৬	অভিযোগ মামলা	১১/৯৪	
১৭	অভিযোগ মামলা	১৫/৯৪	
১৮	অভিযোগ মামলা	৩১/৯৪	
১৯	অভিযোগ মামলা	২২/৯৫	
২০	অভিযোগ মামলা	২৪/৯৫	
২১	অভিযোগ মামলা	১৬/৯৬	
২২	অভিযোগ মামলা	৩৭/৯৬	
২৩	অভিযোগ মামলা	৩৮/৯৬	
২৪	অভিযোগ মামলা	৫০/৯৬	
২৫	অভিযোগ মামলা	৭৬/৯৬	
২৬	অভিযোগ মামলা	১০০/৯৬	

রাষ্ট্রপতির আদেশক্রমে,

নীর মো: সাখাওয়াত হোসেন
উপ-সচিব (শ্রম)

IN THE 1ST LABOUR COURT CHITTAGONG

Permission Case N . 1/86

Chittagong Dyeing Finishing & Printing Mills Ltd.,
Fauzderhat BSCIC Industrial Estate, Sagarika Road,
Pahartali, Chittagong.—*Petitioner.*

Versus

Abdul Awal, S/o. Shamsuddin Sarker,
Senior Operator, C/No. 125,
Vill. Khaurchar, P'O. jadurchar, Bhoumari,
Rangpur and others—*Opposite parties.*

Order No. 81 dt. 22-4-98

The court is duly constituted as under :—

Mr. Md. Abdur Rahman Patwari, Chairman.
Mr. Alhaj Nasiruddin Bahadur, (Members.)
Mr. Faiz Ahmed,

The petitioner files hazira. The Ld. Advocate on behalf of the petitioner submits that in the present context he does not press u/s 18 of the Employment of Labour (Standing Orders) Act, 1965 for permission.

Consulted the Ld. Members. Hence it is,

Ordered

that the Permission Case No. 1/86 be dismissed as not pressed.

Sd/Md. Abdur Rahman Patwari,
Chairman 1st Labour court,
Chittagong.

P.W. Case No. 8/87.

Shamsul Hoque Mollah, Security Guard,
Bangladesh Forest Industries Development Corporation,
Kaptai Project, Rangmati Hill Tracts.—*Petitioner.*

Versus

The Project Director,
Bangladesh Forest Industries Development Corporation,
Kaptal Project, Rangmati Hill Tracts.—*Opposite Party.*

Present : Mr. Md. Abdur Rahman Patwari,
Chairman, 1st Labour Court,
Chittagong.

Mr. A.K.M. Mohsenuddin Ahmed Chowdhury, Advocate for petitioner.

Mr. Nurul Huda, Advocate for opposite party.

Judgement-Dated, 23-04-98.

1. This is a case under Section 15 of the Payment of Wages Act, 1936 filed on 10-08-87 by the petitioner, Shamsul Hoque Mollah. The case of the petitioner is that he is a Security Guard of the opposite party, Bangladesh Forest Industries Development Corporation, Kaptai Project, Rangamti Hill Tracts. That he has been discharging his duties maintaining an unblemish record of service although and he was never charge sheeted nor warned at any time.

2. That unfortunately for him a letter of charge was issued upon him on 7-2-83 for theft of timber between the period from 4-2-83 to 5-2-83. The petitioner was asked to submit his explanation within three days. That although the time was insufficient and not in according to law, yet the petitioner submitted his explanation on 10-2-83.

3. That the petitioner in his explanation categorically denied the allegations. The petitioner also submitted that no security guard was posted in the duty point in the 1st and 2nd shift, whereas the petitioner was posted in the night shift only. As such, the post was left unguarded in the 1st and 2nd shift. The petitioner asserted that no theft occured during his shift at night time.

4. That the opposite party was not satisfied with the explanation. They issued another letter of charge on 12-9-83 adding two more allegations along with the first one wherein the petitioner was blamed for helping the thieves in the course of staeling of the timber for his personal gain.

5. That the petitioner again submitted his explanation on 21-9-83. In his explanation, the petitioner submitted that he had the record of injuring thieves in his credit and thereby protecting the property of the opposite party. In respect of the first allegation, he submitted his explanation as before. With regard to the second allegation he categorically stated that as soon as he observed that a wooden plank was missing, he at once reported the matter to the Manager, and with regard to the third allegation, he submitted that the security inspector verbally and mysteriously changed his place of duty to the knowlegde and information of all concerned. He also submitted that no theft occured in his place of duty.

6. That the opposite party on 7-2-84 informed the petitioner that the allegations brought against him vide their letter of charge dated 12-9-83 were proved in the enquiry and that a decision was taken to dismiss him from service and that the petitioner was asked to submit his explanation within seven days form the date of receipt of this notice. The petitioner on receipt of the same, submitted his explanation again on 12-4-84, stating amongst others that the

so-called comment of the enquiry officer with regard to his confessional statement was false and that the enquiry officer could not conclusively determine by any proved fact or evidence as to when and how theft occured or that the theft of timber occured during the duty hours of the petitioner. The enquiry officer also did not make any comment about the unguarded security point during the 1st shift and 2nd shift. With regard to 2nd and 3rd allegations the enquiry officer failed to prove the same against the petitioner. The whole of the enquiry was imaginary and guess work. Thus, the conclusion of the enquiry officer is without any basis and evidence.

7. That the enquiry was conducted illegally and irregularly, depriving the petitioner of the opportunity of defence. Neither any formed notice of enquiry was issued nor the common rules of enquiry was followed nor any withness was examined in his presence nor he was alloed to cross examine any witness. He was simply asked some questions. A few days after, the enquiry officer called him at his office and told him that he was under order of transfer to elsewhere and that he was required to submit his report about the enquiry. Thus, the enquiry officer asked him to put his signatures on some unwritten papers. Believing him in good faith, the petitioner put his signatures on a few sheets of papers.

8. That surprisingly, the officer alleged to have submitted his report against the petitioner, but he did not make any comment as to why the letter of charge was issued after 5/6 months of the alleged theft. No reasn was shown for causing unresonable delay in submitting belated delay. The opposite party on receipt of the so-called enquiry report, vide their letter dated 12-3-87 issued on 30-6-87, intimating the petitioner that he was found guilty of theft of timber from the project and thus required the petitioner to refund an amount of Tk. 38,836 from his monthly salary by instalment. It will not be out of place to mention here that this letter of punishment was issued after the lapse of about five years from the date of issuing latter of charge. The opposite party did not show any reason for this unusual delay in the completion of the departmential proceedings.

9. That the order dated 12-3-87 for recovery of Tk. 38,836 is illegal, void and inoperative in as much as the enquiry committee could not conclusively determine the responsibility of the petitioner with regard to the missing of timber as alleged. esides this, the opposite party having not found any direct ovidence against the petitioner prolonged the enqiry investigation for about 4/5 years. This inordinate delay speaks of the malafide intention of the enquiry committee who sacted as per direction of the opposite party. Since, the opposite party could not conclusively determine the liability of the petitioner in the matter of theft/reoval of the timber in question, the order for refund of the ammount of Tk. 38,836 is illegal, void and inopertive in the eye of law and the order in question is liable to be set aside. That the pettoner is a poor security guard. He has no capacity to refund such amount which was illegaly thrushed upon his shoulder.

10. That the petitioner being highly aggrieved submitted a representation stating the facts and reason in detail on 9-7-87. But the opposite party illegally and intentionlaly did not like to consider the said representation of the petitioner.

So the petitioner instituted this case for setting aside the order of recovery pated 12-3-87 issued by the opposite party.

The opposite party filed a written statement to submit as follows :—

1. That the case illegal, malafide and vexatious and as such is liable to be dismissed. ;

2. That the case is not maintainable in law.

3. That with reference to the statement made in para 1 of the petition, it has been submitted by the opposite party that the petitioner was appointed as a Guard on 6-7-75 by the opposite party in the scale of Tk. 130—240 per month and subsequently he was promoted to the post of Secutiry Guard with effect from 1-1-80 in the scale of Tk. 240-7-282-EB-345 per month. That it is not true that the petitioner has been dis charging his duties maintaining an unblemish record of service since the date of his appointment.

4. That with reference to the statement made in para 2 of the petition, it has been submitted by the opposite party that the petitioner is a regular security guard under the opposite party and he always remains engaged in the shifting duty. While the petitioner was engaged in the 3rd shift duty from 10.00 P. M. to 6.00 A.M. on 4-2-83 five logs of timber measuring 284.4 cft. was stolen. Again two logs of garjan timber measuring 164.5 cft. was stolen when the petitioner was engaged in 2nd shift duty from 2.00 P.M. to 10.00 P.M. on 20-3-83. Similarly when the petitioner was engaged in 3rd shift duty from 10.00 P.M. to 6.00 A.M. one log of bohora tree measuring 40.8 cft. was stolen. In view of above, a letter of charge was issued upon the petitioner on 12-9-83 for theft of timber between the period from 4-2-83 to 20-4-83 asking him to submit his explanation in writing within 7 days from the date of receipt of letter of charge as to why the petitioner shall not be dismissed from the service of the oppoiste party. That it is not true that the opposite party issued a letter of charge upon the petitioner on 7-2-83 for theft of timber between the period from 4-2-83 to 5-2-83 The opposite party did not issue any letter of charge on 7-2-83 except the letter of charge dated 12-9-83 The petitioner submitted his explanation to the opposite party on 22-9-83 in reply to letter of charge date d 12-9-83 denying the allegation in the letter of charge.

5. That with reference to the statement made in para 3 of the petitino it has been submitted by the opposite party that it is not true that no security guard was posted in the 1st and 2nd shift and that the post was left unguarded in the 1st and 2nd shift. It is also not true that no theft occured during his shift at night time. That theft occured during his shifting duty from the date 4-2-83 to 20-4-83.

6. That with reference to the statements made in para 4 and 5 of the petition, it has been submitted by the opposite party that the petitioner submitted his explanation on 22-9-83 in reply to the letter of charge dated 12-9-83 denying the allegation in the letter of charge issued by the opposite party. The explanation submitted by the petitioner was not found satisfactory.

7. That with reference to the statement made in para 6 of the petition, it has been submitted by the opposite party that the opposite party informed the petitioner on 7-2-84 that the allegation broght against him as per letter of charge dated 12-4-84 were proved in the enquiry committee and that a decision was taken by the opposite party to dismiss him from the service and the petitioner was asked by letter dated 7-2-84 to submit his explanation within seven days from the date of receipt of this letter as to why the dismissal order dated 7-2-84 shall not be made absolute. The petitioner on receipt of the same submitted his explanation again on 12-4-84 stating that the decision taken by the enquiry committee is false and that the enquiry officer could not conclusively determine by any proved facts or evidence The enquiry committee was duly constituted and all the allegations were proved before the enquiry committee. That it is not true that the enquiry committee failed to prove the allegation against the petitioner and that the whole of the enquiry was imaginary. That it is not true that the conclusion of the enquiry officer is without any basis and evidence. That the petitioner along with other withnesses was examined and cross examined before the enquiry committee giving him opportunity for his defence and as such the conclusion of the enquiry officer is not without any basis and evidence.

8. That with reference to para 7 of the petition, it has been submitted by the opposite party that an enquiry committee was duly constituted. The petitioner and his witnesses were examined and cross examined before the enquiry committee and the statements made by the petitioner and his witnesses were read over to the petitioner. It is not true that the enquiry was conducted illegally and irregularly depriving the petitioner of the opportunity of defence. It is not true that niether any formal notice of enquiry was issued nor the common rules of enquiry were followed nor any witness was examined in his presence nor he was allowed to cross examine any withnesses. That the statement that he was simply asked some questions and that a few days after the enquiry officer caled him at his office and told him that he was under order of transfer to elsewhere and that he was required to submit his report about the enqnqiry are not true. That it is also not true that the enquiry officer asked him to put his signature on some unwritten papers and beleiving him in good faith, the petitioner put his signature on a few sheets of papers. That as stated before the opposite party issued a letter dated 7-2-84 to the petitioner giving him second chance for his defence asking him to submit his explanation from the date of receipt of this letter as to why the dismissal order shall not be made absolute. The petitioner on receipt of letter dated 7-2-84 prayed for extension of time by a letter dated 18-2-84 asking the opposite party to supply a copy of enquiry report. The opposite party in response to his letter dated 18-2-84 issued a letter dated 4-4-84 to the petitioner stating that a copy of enquiry report was supplied to the petitioner on 13-3-84 and that the enquiry was held in presence of the petitioner and the witness were examined and cross examined before the enquiry committee. The petitioner put his signature on the statement sheets of the witnesses. The petitioner was given last chance for his defence asking him to submit his explanation for his defence within ten days form date of receipt of the letter dated 4-4-84.

9. That with reference to the statement made in para 10 of the petition, it has been submitted by the opposite party that the enquiry committee after observing all formalities found the petitioner guilty of theft of timber from the project and submitted enquiry report on 8-11-83 recommending to take necessary action for Punishment against the petitioner. The opposite party supplied the petitioner a copy ofenquiry report by letter dated 13-3-84 giving him second chance for his defence and asking him to sumbit his explanation in writing before the opposite party within four days. But the petitioner did not avail himself of the opportunity. The opposite party issued another letter dated 4-4-87 giving him last chance for his devfence and asked him to submit explanation in writing within 10 days. But the petitioner failed to submit his explanation in writing within 10 days. The opposite party on the basis of enquiry report passed an order on 12-3-87 that the petitioner was found guilty of theft of timber from the project and the value of the timber was found at Tk. 38,836 which is realisable from the salary of the petitionner by instaturents The said order was communicated to the petitioner by letter dated 30-6-87 asking him to refund the said amount of Tk. 38,836 from his monthly salaries by instalments.

10. That with reference to the statement made in para 9 of the petition, it has been submitted by the opposite party that it is not true that the order dated 12-3-87 for recovery of Tk. 36,836 is illgeal, void and inoperative.

11. That with reference to the statement made in para 10 of the petition, it has been submitted by the opposite party that the petitioner sub mitted a representation stating facts and reasons in detail on 9-7-87 and his repre sentation is now under consideration of the opposite party.

Therefore, the opposite party prayed for dismissal of the case with cost.

Points for determination are :-

1. Is the case maintainable ?
2. Is the impugned order no. 977 dated 12-6-87 as conveyed under memo no. Establishment 20/5165 dated 30-6-87 sustainable ?

Findings and decsision :

Point no. 1 and 2 :

Both the points are taken up simultaneously for convenience and brevity of discussions.

It is an admitted fact that the petitioner was a worker under the opposite party. The Security Officer made complaint on 7-2-83 Exhibit-1 against the petitioner for alleged commission of theft of trees from their Kaptai Project.

The petitioner on receipt of the complaint filed an explanation on 10-2-83 Exhibit-2 in furtherance of the said complaint. But as the explanation of the petitioner according to the oppsite party was not satisfactory, charge sheet on three counts was submitted against the petitioner vide memo no. Establishment district-13'115 dated 12-9-83 Exhibit-3 under the Employment of Labour (Standing Orders) Act, 1965. The opposite party constituted a committee to enquird into the allegation. The petitioner submitted another explanation to the enquiree into the allegation. The petitioner submitted another explanation to the enquiry officer and also to the opposite party on 21-9-83 Exhibit-4. The enquiry officer after enquiry submitted a report on 8-11-83 Exhibit-8. The relevant portion of the enquiry report is as under :-

তদন্তে সংগ্রহ ও বিক্রয় বিভাগের সংশ্লিষ্ট ডিপো কর্মকর্তার নথীপত্র পর্যালোচনা পূর্বক দেখা যায় সূত্রে উলেখিত চুরির ব্যাপারে যথা সময় উর্ধতন কর্মকর্তাকে রিপোর্ট করা হইয়াছে। তদন্তে তদন্ত সংক্রান্ত সংশ্লিষ্ট নথিপত্র পর্যালোচনাক্রমে, স্বাক্ষ্য প্রমাণে ও জবান বন্দীতে জনাব শামছুল হক মোল্যা নিরাপত্তা প্রহরী উক্ত চুরীগুলির জন্য দায়ী ও দোষী।

জনাব শামছুল হক মোল্যা ব্যক্তিগতভাবে অসদ উপায়ে আর্থিক সুবিধা লাভের উদ্দেশ্যে ও মোহে গাছগুলি পাচারে সাহায্য করেন।

অতএব, জনাব শামছুল হক মোল্যা নিরাপত্তা প্রহরীর বিরুদ্ধে আইনগত কঠোর গুরুদণ্ড শাস্তিমূলক ব্যবস্থা গ্রহণ করা যাইতে পারে।

মো: সহিদুল ইসলাম
তদন্তকারী কর্মকর্তা।
৮-১১-৮৩

The opposite party on receipt of the enquiry report dated 8-11-83 returned the same to the enquiry officer as the enquiry report according to him was not as per procedure, Exhibit-9 and directed him to resubmit a fresh enquiry report after observing the necessary formalities. As such, the enquiry officer again submitted a fresh enquiry report on 7-1-84 Exhibit-10 which was as follows :-

জনাব শামছুল হক মোল্যা নিরাপত্তা প্রহরীর বিরুদ্ধে আনিত অভিযোগের পরিপ্রেক্ষিতে নিম্নে পুনঃ তদন্ত প্রতিবেদন পেশ করা হইল।

জনাব শামছুল হক মোল্যা নিরাপত্তা প্রহরীর বিরুদ্ধে সংগ্রহ ও বিক্রয় বিভাগ কাপ্তাই ডিপো হইতে গোল গাছ চুরি হওয়া ব্যাপারে যে তিনটি অভিযোগ আনা হয় তাহার পরিপ্রেক্ষিতে নিম্নস্বাক্ষরকারীর ৮-১১-৮৩ ইং তারিখ তদন্ত প্রতিবেদনে (মতামতসহ) বিস্তারিত ভাবে বিশ্লেষণ করা হয়, যাহা আপনার দৃষ্টি আকর্ষণ করিতেছি।

১—

আপনার উল্লেখিত সূত্রের পরিপ্রেক্ষিতে তদন্তে তদন্ত সংক্রান্ত সংশ্লিষ্ট নথিপত্র পর্যালোচনাক্রমে ও স্বাক্ষীগণের জবানবন্দীতে তিনি দোষী এবং তাহার অপরাধের প্রকৃতি সাধারণ অপরাধ হইতে ঘোরতর যাহা ক্ষমার যোগ্য নহে।

জনাব শমছুল হক মোল্লা ব্যক্তিগতভাবে অসৎ উদ্দেশ্যে আর্থিক সুবিধা লাভের উদ্দেশ্যে ও মোহে গাছগুলি পাচারে সাহায্য করেন।

অতএব, জনাব শামছুল হক মোল্যা নিরাপত্তা প্রহরীর বিরুদ্ধে আইনতঃ কঠোর গুরুদণ্ড শাস্তিমূলক ব্যবস্থা নেওয়া যাইতে পারে।

মোঃ সহিদুল ইসলাম
সহ মাঠ তত্ত্বাবধায়ক
৭-১-৮৪

Subsequently the opposite party by a letter under Memo No. GEN-13/4274 dated 4-4-84 directed the petitioner to let him know whether he was desirous to make defence for the second time, Exhibit-G, Thereafter the opposite party passed the impugned office order No. 977 dated 12-3-87 and communicated the me vide Memo No. Establishment-20'5165 dated 30-6-87 which was as under

বিগত ৪-২-৮৩ ও ৫-২-৮৩ ইং তারিখের মধ্যবর্তী সময়ে ওয়ার্কশপ ডিপো হইতে পাঁচ লগ গোল গাছ (চিকরাশি ৩ লগ, পিতরাজ এক লগ, গরান এক লগ) = ২৮৪ ঘনফুট, ২০-৩-৮৩ ইং তারিখে করাতকল ডিপো হইতে দুই লগ গর্জন গাছ = ১৬৪'০ ঘনফুট এবং ২০-৪-৮৩ইং তারিখে ফিংকং ডিপো হইতে এক লগ বহেরা গাছ = ৪৩'৮ঘনফুট সর্বমোট ৮ লগ = ৪৮১'৭ ঘনফুট চুরির অপরাধে জনাব শমছুল হক মোল্যা নিরাপত্তা প্রহরী, বশিউক কাপ্তাই এর বিরুদ্ধে অত্র দপ্তরের পত্র নং জেনারেল ১৩/১১১৫ তারিখ ১২-১-৮৩ মূলে অভিযোগ আয়ন করা হয়। সংগঠিত তদন্তে তিনি দোষী সাব্যস্থ হন। যাহাই হউক তাহার ২০-১০-৮৬ ইং তারিখের ব্যক্তিগত শুনানী বিগত সার্ভিস রেকর্ড এবং চাকুরীর জ্যেষ্ঠতা ইত্যাদি বিবেচনাক্রমে চোরাইকৃত সর্বমোট ৪৮১'৭ ঘনফুট গাছের মূল্য বাবদ মোট ৩৮ ৮৩৬ টাকা তাহার মাসিক বিল হইতে সুবিধাজনক সম কিস্তিতে কর্তনের আদেশ জারী করা হইল এবং ভবিষ্যতে কঠোর সতর্কতাসহ আনিত অভিযোগ হইতে অব্যাহতি প্রদান করা হইল।

প্রকল্প পরিচালক,
বশিউক কাপ্তাই।
৩০-৬-৮৭ ইং

As per Section 16 of Employment of Labour (Standing Orders) Act, 1965 a worker may be discharged from service while as per Section 17 a worker may be dismissed from service. But there is no provision for deduction from the wages of a worker under the Employment of Labour (Standing Orders) Act, 1965.

It is a fact that in the present case the opposite party took the decision to make deduction of Tk. 38,836 from the wages of the petitioner which is not covered under the Employment of Labour (Standing Orders) Act, 1965 as observed above. In fact deduction may be made from the wages of a worker under the Fayment of Wages Act, 1936. Section 7 Sub-section (1) of the said Act emphasis that the wages of an employed person shall be paid to him without deduction of any kind ex cept those authorised by or under this Act.

Seb-section (2) of Section 7 of the said Act lays down that deduction from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds, namely :

(a) fines ;

(b) deductions for absence from duty ;

(c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody ; or for loss of money for which be is required to account, where such damage or loss is directly attributable to his neglence or default ;

(d) deduction for house accomodation supplied by the employer ;

(e) deductions for such amenitis and services supplied by the employer as the Government may, by general or special order, authorise ;

(f) deductions for recovery of advances or adjustment of over payment of wages ;

(g) deductions of income tax payable by the employed parson ;

(h) deductions required to be made by order of a Court or other authority competent to make such order ;

(i) deductions for subscriptions to, and or repayment of advances any provident fund to which the Provident funds Act, 1925 (XIX of 1925 applies, etc.

(j) deductions for payments to co-operative societies approved by the Government or to a scheme of insurance maintained by the Bangladesh Post Office ; and

(k) deductions made with the written authorisation of the emplyed person, in furthereance of any War Savings Scheme etc.

On analysing the provision fo sub-section (2) of Section 7 of the said Act, we find that deduction from the wages of a worker may be made on the ground as aforementioned. But in the present case the opposite party decided to make deduction from the wages of the petitioner on the allegation of the offence of stealing trees from particular project. We have already found that charge was brought against the petitioner under the Employment of Labour (Standing Orders) Act, 1965 and that the opposit party decided to make deduction from his wages under the said Act of Employment of Labour (Standing Orders) Act, 1965 although there is provision under this for such recovery. we have further found that if the authority) wants to make deduction from

he wages of a Worker that must be done under the said the Payment of Wages Act, 1936. In such cases the person from whose wages deductoin is required to be made must be notified and a proceeding needs to be started in this regard. But no notice was issued upon him under the Payment of Wages Act, 1936 and no prodceding was drawn up against him under the said Act.

Therefore, the impugned office order No. 977 dated 12-3-87 Exhibit-F appears to be not binding upon the petitioner and the same is illegal and inoperative So the impugned order is not maintainable.

In the coruse of hearing, the Ld. Advocate on behalf of the opposite party submitted that the case is not maintainable as the petitioner meanwhile retired from service. On scrutiny of the record it reveals that the impugned order, Exhibit-F was issued on 12-3-87 and the case was instituted on 10-8-87 while the petitioner was in service. He retired from service later on Therefore it is clear that the petitioner was in service at the time of institution of the case and the case is quite maintainable.

In the result, our views is that the case succeeds. Hence it is,

Ordered

That the P.W. Case No. 8/87 be allowed on contest against the opposite party without any order as to cost. The impugned order no. 977 dated 12-3-87 conveyed under Memo No. Establishment 20'5165 dated 30-6-87 be set aside.

Md. Abdur Rahman Patwari,
Chairman, 1st Labour Court,
Chittagong.
Date 23-4-98

P. W. case No. 3/94

Sathindra Lal Chakravorty,
S/O. Late Nutan Chandra Chakravorty,
Vill. Dhopaghatta, P.O. Kodala Tea Estate,
P.S. Rangunia, Dist. Chittagong--Potitioner.

VS.

1. Director,
   Kodala Tea Estate Ltd.,
   P.O. Kodala Tea Estate,
   P.S. Rangunia, Dist. Chittagong.

2. Bangladesh Tea Board,
   171/172, Baizid Bostani Road,
   Nasirabad, Chittagong--Opposite Parties.

Presen ts : Mr. Taslimuddin Ahmed,
Authority & Chairman,
1st Labour Court. Chittagong.

J udgement-Dated, 30-12-95

This is a case u/s 15(2) of the Payment of Wages Act, 1936.

Petitioner's case, in short, is that he was a permanent worker of the Kodala Tea Estate Ltd. i.e. the O.P. no.1 whereing he was appointed as a Clerk with effect from 11-11-47. After the emergence of Bangladesh the said tea garden was taken over by the Govt. and it was placed under the Bangladesh Tea Board for management and control. Lates, the said tea estate owned and represented by Bangladesh Tea Board was sold to its present management i.e. the O.P. no.1 under a deed of sale dt. 12-8-77 with the stipulation that the buyer would retain all the workers of the te garden including. continuity of their services and all legal liabilites. Petaitioner's further case is that as per said terms and conditions of the deed of sale the petitioner had been working under the O.P. no.1 with the continutity of his service. Thereafter the petitioner on attainment of 60 years of age and becoming physically incapable of discharging his duties pro-Perly he sought retirement form service by an application to the O.P. no.1 on 19-2-90, and the O.P. no.1 accepted the voluntary retirement of the petitone by a letter dt. 16-4-90 and also advised him to collect his dues from the office on any working day. Thereafter, the O.P.no.1 by a letter dt. 8-5-90 informed the petitioner that he is entitled to gratuity for 11 years of his service with effect from 1978 from the O.P. no.1 and that he is ettitled to get the gratuity for the period from 1947to 1977 frum the Govt. i.e. from the Bangladesh Tea Board-the O.P. no.2. But the O.P no.2 by a letter dt 7-1-92 informed the petitioner that the payment of gratuity for the entire period from 11-11-47 to 16-4-90 is the responsiboility of the O.P. no.1 who had purhcased the Kodala Tea Estate Ltd. from the Govt. on the basis of an agreement dt. 12 8 77 accepting all liabilities. of the existign wirkers of the said tea graden and according to the terms and conditions of the said agreement the O.P. no.1 is bound to pay the gratuity of the petitiiner for the entire period of his service in the said tea estate Further case of the petitioner is that on receiot of the said letter of the O.P. no.2t he contacted and approached the O.P. no.1 time and again for the paymen. of his gratuity for the entire period of his service. But the O.P. no.1 made payment of TK. 123,328 only to the petitioner by a cheque dt. 31-1-91 to wards his gratuity for 12 years of his last wage drawn at Tk. 1944 per month and the O.P. no.1 refused to make any payment of gratuity for the years 1947 to 1977. The petitioner alleges and contends that the O.P. no.1 most illegally refused to pay the gratuity of the petiti ner for the remaining period i.e. forom 1947 to 1977. The petitioner claimed payment of gratuity to the tune of Tk. 83,592 for 43 years of service from 11-11-47 to 16-4-90, and out of the said total amount the O.P. no.1 had made a part payment of Tk. 23,328 only and as such, after adjusting the said amount a balance amount of Tk. 60,264 is now payable to the petitioner by the O.Ps.

Since the O.Ps. denided the above payment the petitioner has been compelled to file the instant case against them.

The O.P. no.1 has contested the case by filing a written statement and alleging, inter alia, that the claim of the petitioner for payment of remaining amount of gratuity is not maintainable against him. In his written statement the O.P. no.1 has admitted almost all the facts of the cases as stated by the petitioner and further contends that the O.P. no.1 purchased the concerned tea estate from the O.P no.2-Bangladesh Tea Board by a sale deed of agreement dt. 12-8-77.

Specific case of the O.P. no.1 is that the petitioner is served under him from 1977 to 1989 and for that period the O.P. no.1 paid the claim of the petitioner by a cheque dt. 30-1-91 and as such, no further money is payable by him. As per terms and conditions of the deed of agreement dt.12-8-77 all the liabilities prior to 1977 devolved upon the Govt. of Bangladesh i.e. the O.P. no.2 and as such the remaining claim of the petitioner for gratuity is payable by the O.P. no.2. The O.P.no.1 is not bound to pay any other claim of the petitioner as per terms and conditions of the concerned agereement deed.

Under the above facts and circumstances the claim of the petitioner is not tenable against the O.P. no.1. and as such, the case is liable to be dismissed with cost.

Point For Determination

Whether the petitioner is entitled to the relierf as prayed for.

Findings and Decision

Heard argument of both sides at length. Perused the papers/documents filed by the parties in support of their respective cases. No oral evidence was adduced by either of the parties.

Admittedly the petitioner was a permanent worker of the Kodala Tea Estate Ltd. which was subsequently purchased by the O.P. No.1 from the O.P. no.2 on the basis of a deed of agreement dt. 12-8-77 Ext.A. It may be mentioned here that the O.P. no.1 has simply filed the deed of agreement for sale Ext.A, but the subsequent deed of sale between the O.P. no.1 and O.P. no.2 is not coming up before me however, it is admitted by both sides that the O.P. no.1 i.e. the present management purchased the concerned tea garden from the O.P. no.2 With regard to the date of joining in the service of the tea garden, length of service, voluntary retirement and amount of the tea garden, length of service, voluntary retirement and amount of moner claimed by the petitioner by way of gratuity there is no dispute, there. these facts and points are admitted by the petitioner as well as the O.P.no.1 The only point to be determined decided is wherher the remaining amount of gratuity claimed by the petitioner is payable by the O.P. no.1. or the O.P. no.2, the former owner of the tea garden The Ld.advocate appearing for the O.P. no.1 submitted that since the O.P. no.1 purchased the concered tea garden from the O.P. no.2 on the basis of the agreement deed Ext.A in the year 1977, so, inpursuance of clause 3 of the deed agreement Ext. A thr present management i.e. the O.P. no.1 is not liable to pay any outstanding Govt. dues prior to 1977.BThe Ld. advocate further maintained that after accepting the voluntary retirment of the petitioner the O.P. no.1 rightly paid

he dues/gratuity for 11 years of service rendered by the petitioner under the O.P. no.1 who duly received the gratuity money through a cheque on 30-1-91. In support of his argument and submission the Ld. advocater for the O.P. no.1 refer to clause 3 of the deed agreement Ext. A and asserted that the petitioner is entitled to recover the outstanditg dues as gratuity from the O.P. no. 2 under whom the petitioner served from 11-11-47 to 11-8-77.,and that the O.P. no.1 is not liable or bound to make payment of gratuity for the entire period'length of service of the petitiner. In reply to the above argument the Ld. advocate ofor the petitioner submitted that since the O.P. no 1 became the subsequent owner of the concerned tea garden by way of purchase from the O.P. no.2-Bangladesh Tea Board with all responsibilities and liabitities, so the O.P. no.1 is bound to make the payment of gratuity for the entire period of service rendered by the petitioner to the concerned tea garden. The Ld. adcocate further contended that there might be some irregular or illegal and unreeasonable terms and conditions in the deed of agreement Ext. A between the O.P. no.1 and O.P. no.2, but according to the law of sale the purchaser i.e. the O.P. no.1 after purchaser of the property stepped into the shoas of the former owner with all rights, liabilities and responsibilities and as such, the O.P. no.1 is liable and bound to make payment of gratuity for the entire period 'length of service of the petitioner. It appears from the careful scrutiny' examinatinon of the deed of agreement Ext. A that as per clause 12 of the said deed the purchaser i.e. the O.P. no.1 shall retain the 'services of all the existing workers and staff including officers of the tea estate and their existing terms and conditions of service shall not be varied to their disadvantage by the purchaser. So, under such circumstance the petitioner who rendered his entire length of service as a worker of the concerned tea garden is entitle to recover all his legal dues, whether termination or rgratuity, or and other dues, from the present management of the concerned grarden/tea estate. Moreover the O.P. no.2 Bangladesh Tea Board by their letter dt. 7 1-92 Ext. 3 intimated the petitioner that as per terms and conditio. s of the deed of agreement dt. 12-8-77 the purchaser i.e. the O.P. no.1 is liable and responsible for the payment of all legal dues payable to the workers, officers and other staff of the tea garden. Clause 3 of the agreement deed Ext.A relates to the payment of any outstanding Govt. duse and other liabitlities except the current liabilities, that is, the liabilities incurred by the tea estate during the year commending from the 1st January, 1977, more particularly described in the schedule appended hereto. With regard to this clause 3 of the deed I like to say that the claim of the petitioner for gratuity is not Govt. dues or other liabilities as contemplated therein. In other words, I like to say that the claim of the petitioner is not atteracted by clause 3 of the agreement deed Ext.A. Since the O.P. no.1 retained the service of the petitioner even after purchase and also accepted his voluntary retirement so, he is liable to make payment of all legal dues to the petitioner including the gratuity on termination of the employment of the petititioner. Continuity of service of the petitioner was retained by the O.P no.1 who being the employer is bound to make payment of the gratuity as claimed by the petitioner.

In view of the above facts, circumstances and discussions I am of the opinion that the claim of the petitioner for outstanding dues to the tune of Tk. 60,264 as gratuity is recoverable from the O.P. no.1 and as such, the petitoner is entitled to the relief as prayed for. Hence it is

ORDERED

that the P.W. Case no.3/94 be allowed on contest against the O.P. no.1 without any cost. That the O.P. no.1 is hereby directed to pay Tk.60,264/ (sixty thousand two hundred sixty four) to the petitioner within 60 (sixty) days from the date of passing of this order.

(Taslimuddin Ahmed),
Chairman, 1st Labour court,
Chittagong.
Date 30-12-95

P. W. CASE NO. 34/94

Abdul Khaleque, S/o'. Late Rahimuddin,
C/o. Redwan-D-Stores, 6/3, New Zakir Hossain Road,
Khulshi R/A, P. S. Doublemooring, Chittagong.—1st Party.

Vs.

Mr. P. Turpin,
Project Manager,
Technip Company Limited,
House No. 6, Road No. 2, Khulshi R'/A.
East, Nasirabad, P. S. Panchlaish, Chittagong. 2nd party.

Present : Mr. Taslimuddin Ahmed,
Authority and Chairman,
1st Labour Court, Chittagong.

Judgement-Dated, 12-2-95.

This is a case u/s 15(2) of the Payment of Wages Act, 1936.

Case of the 1st party, in short, is that he served under the 2nd party the Projcet Manager of Technip Co. Ltd. for a period of one year ten months with effect from 1-9-92 to 29-6-94 as Night Guard. During the aforesaid period of service i. e. the peaiod of tenure the 1st party worked overtime without any extra allowance for such overtime work and he was not allowed to enjoy any leave during the tenure of his service under the 2nd party.

On 28-6-94 the 1st party attenced his duty despite his virus fever, but at about 2 A. M. of that night he felt weak and took rest for some time; and the 2nd party verbally terminated the employment of the 1st party on 29-6--94 at 7 P. M. when the 1st party went to attend his duty asusual.

Futher case of the 1st party is that he submitted an application on 2-7-94 to the 2nd party to re-consider the decision of termination on humanitarian g ounds and to reinstate him in service or in the altermative to pay the 1st party the termination benefit as admissible under the rules. But in reply

to the above application of the 1st party the 2nd party most illegally dismissed the 1st party from his service by a letter dated. 4-7-94 without payment of any legal dues and without following the provisions of S.18 of the Employment of Labour (Standing Orders) Act, 1965.

Thereafter the 1st party served legal notice upon the 2nd party on 11-7-94 but the claim/prayer of the 1st party was not properly delt with by the 2nd party and thereby intentionally delayed the payment of legal dues to the 1st party with malafide intention.

The 1st party further contends that the 2nd party the Project Manager of the Technip Co. Ltd being the employer of the 1st party is responsible to make the payment of wages and other deus as mentioned in the schedule to the complaint petition. But the 2nd party did not make any payment and thus violate the provisions of 8.5(2) of the Paw. Act, 1936. The 2nd party is a foreign Co. which has completed the project for which they were employed. The 1st party is entitled to the termination/dismissal benefit to the tune of Tk. 94, 187.04 as mentioned in the schedule to the complaint petition. As the 2nd party has not yet paid the dues hence the 1st party has filed the instant case.

The 2nd party has contested the case by filling a written statement and alleging, inter alis, that the case is not maintainable u/s 15(2) of the P.W. Act, 1936, that the 1st party is not a worker within the meaning of any labour aw in force and that the statements and averments made by the 1st party in the complaint petition are all false, fictitious and concocted.

Specific case of the 2nd party is that the 1st party served under the 2nd party Mr. P. Turpin as Night Guard in his House No. 6, Road No. 2 Khulshi R/A, as domestic servant and that the 1st party was never employed by Technip Co. Ltd. as any skilled, unskilled or manual worker. Since thei 1st party was a domestic servant under the 2nd party, he (1st party) was dism ssed from his service by the 2nd party for negligence of duties and accordingly dismissal letter dt. 4-7-94 was issued to the 2st party.

Since the 1st party was mere a domestic servant rendering the job of Night Guard at the residence of the 2nd party, the question of payment of wage, salary as claimed by the 1st party does not arise at all and that the 1st party is not entitled to any relief whatsoever. Claim of the 1st party is totally false, baseless and ficctitious and as such, the case is liable to be dismissed with cost.

POINTS FOR DETERMINATION

1. Whether the 1st party is a worker within the provisions of the Employment of Labour (Standing Orders) Act, 1965;

2. Whetherthe case is maintainable u/s 15(2) of the Payment of Wages Act, 1936;

3. Whether the 1st party is entitled to any relief as prayed fro.

FINDINGS AND DECISION

All the three points are taken up together for discussion and decision for the sake of convenience.

Heard the argument of both sides at length and perused the papers documents filed by the parties in support of their respective cases. The 1st party Abdul Khaleque was examined and cross examined as the P.W.1. No other witness was examined by either of the parties.

Let us at the first instance see whether the 1st pary was a worker under the 2nd party within the provisions of the S. O. Act, 1965 Although the Ld. advocate appearing for the 2nd party contended that the 1st party was never employed by the 2nd party as worker under the Technip Co. Ltd. and that he was mere a domestic servant discharging his duties as night gjuard at the residence of the 2nd party and as such ,the instant case is not at all maintainable either within the meaning of provisions of S. O. Act, 1965 or P. W. Act, 1936, but the wage sheet and the eid-bonus sheet of the 2nd party Technip office staff marked Extra. 5 and 6 respectively led us to draw the conclusion that the 1st party was appointed/employed as a worker along with others under the 2nd party Co.. Besides, the dismissal order dt. 4-7-94 Ext. 2 further reveals the fact that the 1st party was employed as worker under the 2nd at party co. as Night Guard. So, from the above Exhibited papers we may arrive at the decision without any hesitation that the 1st party was not mere a domestic servant under the 2nd party, rather he was appointed as a worker in the 2nd party Technip Co. Ltd., although he served as Night Guard at the residence of Mr. P. Turpin who was the Project Manager of the Co. So, the 1st party is found to be a worker within the provisions of the S. O. Act, 1965.

Secondly, the Ld. advocate for the 2nd party raised objection that the alleged termination/dismissal benefits as claimed by the 1st party is not "wage" within the provisions of the P.W. Act, 1963 and as such, the instant case is not maintainable u/s 15(2) of the P. W. Act, 1936. The Ld. advocate also maintained that the 1st party should have sought relief u/s 25(1)(b) of the S.O. Act, 1965 and that the 1st party has also failed to make out his case u/s 15(2) of the P.W Act, 1963. But it appears from the careful perusal of S. 2(vi) of the P.W. Act, 1936 that "wage" as defined in the said section also includes termination benefits. In other words, I like to say that termanation benefits is also "wage' as defined in the said section of the P.W. Act, 1936; and as such, the instant case is quite maintainable u's 15(2) of the P. W. Act, 1936.

Thirdly, let us now discuss whether the 1st party is entitled to the reliefs as prayed for in the complaint petition. It transpires from the perusal of the complaint petition u/s 15(2) of the P.W. Act, 1936 that the 1st party avered asserted that the 2nd party illegally terminated his (1st party) service and his not yet paid up the illegal termination benefits. But at the same time, the 1st party has stated in the complaint petition that the 2nd party is bound to pay the dismissal/termination benefits along With other pecuniary benefits to the 1st party as admissible under the relevantt rules. It further appears from the letter dt. 4-7-94 Ext. 2 issued by the 2nd party that the 2nd party dismissed the 1st party from his employment, although the requirements/procedure u/s 18 of the S. O. Act, 1965 were not complied with by the 2nd party. So, the alleged dismissal of the 1st party by the 2nd party employer was not proper and consistent with the relevant provisions of law.

During the hearing of the case the Ld. counsel for the 1st party maintained and asserted that the 2nd party verbally terminated the employment of the 1st party without paying any termination benefits and consequently the 1st party has claimed termination benefits along weith gratuity, wage for due earned leave overtime allowance, compensation etc. So, we find that the 1st party has claimed/demanded a total sum of Tk. 94,187.04 from the 2nd party on several and different counts other than the termination benefitas. Although the 1st party has claimed overtime allowance, arrear pay for weekly holidays and due earned leave, bonus etc., but there is no scrape of paper or any other evidence before me in support of such claim of the 1st party. So, the above claim of the 1st party seems to be fictitious, false and baseless. Admitted the 1st party has been removed from his employment by the 2nd party whether by way of termination or dismissal, and is now out of empolyment It has already been held that the so called dismissal order dt. 4-7-94 Ext. 2 was not proper and legal as per provision of S. 18 of the S. O. Act, 1965.

In the instant case the 1st party has not challenged the legality or validity of the alleged dismissal order dt. 4-7-94; rather, he (1st party) has admitted his removal from service whether by way of termination of dismissal, and he has simply sought for termination venefits along with other benefits as mentioney in the schedule of claim in the complaint petition. Although the ist party has claimed termination benefits and his Ld. counsel asserted for the same, but the claim of the 1st party is not pinpointed/spcific and categorical. Rather, the schedule of the claim of the 1st party is highly twisted, intermingled and an admixture of various/different claims. The 1st party himselfdisclosed in his cross examination that no termination letter was issued andthat he received a letter of dismissal and that by a letter to the 2nd party he claimed the same termination benefits as stated in the complaint petition. So, from the very testimony of the 1st party himself we find that no termination letter was issued to him by the 2nd party.

In view of the above facts, circumstances and evidence on record I am of the opinion that the 1st party has failed to substantiate his claim as stated in the schedule to the complaint petition and as such, he is not entitled to any relief whatsoever. It appears from the surrounding facts and circumstances that the 2nd party virtually intended to dismiss the 1st party from his employment, although the 2nd party failed to comply with the requirements of law for dismissal of a worker.

It may be mentioned here that by filing the case against the 2nd party by name the 1st party himself has shown'tends to show that he was a domestic/personal servant of the 2nd party Mr. P. Turpin, the Project Manager of the Technip Co.. It may also be mentioned here that Mr. P. Turpin on completion of the contract of his service in the Technip Co. Ltd. as projecte'site manager was succeeded by site Manager Mr. Tronche. The above fact has been stated by the Technip Co. Ltd. in their letter dated. 13-9-94. The 1st party ought to have filed case against the project manager'site manager or the Technip Co. Ltd., but not by name inasmuchas the person concerned whoever he might be is not personally liable to make any payment to the 1st party if at all due. So, from this point of view and on all counts the case of the 1st party fails and his claim is not sustainable in law,. Hence it is.

ORDERED

that the P. W. Case No. 34/94 be dismissed on contest without any cost.

Taslimuddin Ahmed,
Chairman, 1st Labour Court,
Chittagong. 12/2/95.

P.W. Case No. 40/94

Bazlu Meah,
Vill., Jagatshar,
P. S. Sultanpur ,
Dist . Brahmanbaria. Petitioner.

Versus.

Managing Director,
Chittagong Urea Fertilizer Ltd.,
Rangadia, Chittagong. Opposite party.

Presents : Mr. taslimuddin Ahmed,
Authority and Chairman,
1st Labour Court, Chittagong.

Judgement-Dated, 19-11-95

This is a case u/s 15(12) of the Payment of Wages Act, 1936.

Petitioner's case, in a nut shell, is that he was dismissed from service by an order dt. 7-11-88 passed by the O.P. and that against the said order of dismissals the petitioner filed the Complaint Case No. 73/88 in this labour court and the said complaint case was allowed on contest by a judgement dt. 22-8-90. Being aggrive by the said judgement and decision of the labour court the employer-O. P. filed the writ petition No. 2008/90 in the High Court Divisoin of the Hon'ble Supreme Court and the said writ petition was also dismissed by a judgement dt. 6-12-92 ; and against the judgement and decision of the Hon'dle High Court Division the employer preferred the Civil Appeal No. 42/93 in the Appellate Division of the Hon'ble Supreme Court and the civil appeal was allowed by a judgemednt dt. 5-4-94. Now the petitioner -worker has filed the instat case claiming termination benefits inpursuance of the judgement dt. 5-4-94 passed in the Civil Appeal No. 42/93. It may be mentioned here that their Lordships in the Civil Appeal No. 42/93 did not order the restoration of the impugned dismissal order rather they found the instant case as a fit case for termination instead u/s 19 of the S. O. Act, 1965 with all termination benefits. Their Lordships further held and orderd that in addition, the wages of the worker during the period he actually worked inpursuance of the labour court's order should not be affected. In other words, it is evident and crystal clear from the observations and order passed by their Lordships in the Civil Appeal Case No. 42/93 that they desired/intended and ordered conversion of the impugned dismissal into termination with all termination benefits as admissible under the relevant provisions of law.

Petitioner's further case is that after the judgement of the Appellate Division dt. 5.4.94 the P.O.-employer transfer the petitioner from one place to another directing him to resume his duty and lastly on the prayer and represen tation of the petitioner the O.P. terminated the permanent employment of the petitioner by an order dt. 30-6-94 offering termination benefits as mentioned in paragraph 16 of the case application; and subsequently the O.P. by another order dt. 17-8-94 amended the earlier order dt. 30-6-94 terminating the employment of the petitioner with retrospective effect i.e. with effect from 7-11-88 as per judgement and order of the Appellate Division of the Hon'ble Supreme Court of Bangladesh and offered termination benefits as enumerated in paragraph 18 of the original case application. But the petitioner contends that since he was first terminated by an order dt. 30-6-94 after the judgement of the Appellate Division dt. 5-4-94 he (petitioner) is entitled to tne termination benefits in the pay scale of 1991 as mentioned in paragraph 20 of the case application. As the O.P. delayed the payment of the aforesaid benefits hence the petitioner has been compelled to file the instant case u/s 15(2) of the said Act.

The O.P. has contested the case alleging, inter alia, that the case is not maintainable in the present form, that the case is barred by limitation and that the claim of the petitioner is fictitious, false, misonceived and baseless.

Further case of the O.P. employer is that although the petitioner has illegally claimed the termination benefits with effect from 30-6-94, but the O.P. rightly and lawfully offered the termination benefits to the petitioner with retrospective effect as mentioned in paragraph 18 of the case application as per judgement of the Hon'ble Appellate Division dt. 5-4-94.

POINT FOR DETERMINATION

Whether the petitioner is entitled to the relief as prayed for.

FINDINGS AND DECISION

Heard the argument of both sides at length. Perused the application u/s 15(2) of the said Act, the written statement and the connected papers filed the parties in support of their respective cases. No oral evidence was adduced by either of the parties.

The main point issue to be decided in the instant case is whether the termination in question shall be deem to be effective from 30-6-94 or from the original order of dismissal dt. 8-11-88. The petitioner has claimed termination benefits treating the termination with effect form 30-6-94 while the O.P. contends tha as per judgement of the Applellate Division dt. 5-4-94 of the Honble Supremt Court the impugned termination shall be deem to be effective from7-11-88 i.e. the date of dismissal passed by the O.P. The merit and decision of this case depend upon the proper and correct interpretation of the judgement of the Hon'ble Appellate Division.

The order/judgement passed by the Hon'ble Appellate Division on 5-4-94 quite clear, self-contained and self-explanatory and there is no ambiguity in observations and orders passed by their Lordships in the said judgement. The direction orderd passed in the said judgement dt. 5-4-94 virtually do not create any ambiguity. In fact their Lordships by their judgement order converted the

mpugned dismissal to termination with effect from 7-11-94 i.e. from the date of original order of dismissal, and no further order by the O.P. in this regard was not at all necessary. The letters dt. 30-6-94 and 17-8-94 issued by the O.P employer terminating the services of the petitioner are redundant and unnecessary, rather these letters orders had given rise to confusion relating to the date of termination. It is quite clear from the orders and observations of their Lordships passed in the Civil Appdeal No. 42/90 that the impugned order of dismissal dt. 7-11-88 was converted to an order of termination with effect from the same date i.e. 7-11-88 Conversion of an order to another order if so facto means effective from the same date of earlier order, and this is the general, lowful and established principle and meaning of the word "conversion". Moreover, the original impugned dismissalorder was not set aside reversed by their Lordships' who simply desired intended and orderred conversion of the impugned dismissal to the termination : in addition to this conversion their Lordships also ordered that the wages of the peti-tioner of the work during the period he actually worked inpursuance of the labour court's order, should not be affected. It may be mentioned here that there is no dispute or controversy as to the period time from 22-2-93 to 30-6-94i.e. the period during which the petitioner worked inpursuance of the labour court's order; rather this point is admitted by both sides.

In view of the above facts, circumstances and discussions in the light of observations and orders made by their Lordships in the judgement dt. 5-4-94 we may safely and without any hesitation arrive at the conclusion and decision that the petitioner shall be deem to have been terminated on 7-11-88 and not on 30-6-94 as contended by the petitioner. we have no scope to missinterprete or misconceive the orders and observations passed in the judgement dt. 5-4-94 we are to simply obey and carry out the orders of their Lordships and not to misinterprete the order. The O.P. employer might have erred by issueing letters orders dt. 30-6-94 or 17-8-94 to the petitioner's; but these redundant and unnecessary orders will not and canot affect supersede the orders of their Lordships passed in the judgement dt. 5-4-94.

The Ld. Advocate appearing for the petitioner with some hesitation also shared the above views and discussions.

So, the claim of the petitioner for termination benefits as ennumerated in paragraph 20 of the case application treating the termination effective from 30-6-94 has no legal footing to stand on or not sustainable in law, and as such, the case of the petitioner fails. The petitioner as per judgement dt. 5-4-94 is tentitled to the termination benefits treating the termination with effect from 7-11-88 is tenable and payable u/s 19(1) of the S.O. Act, 1965; in addition he (petitioner) is also entitled to get the wages for the period during which he actually worked inpursuance of the labour court's order i.e. from 22-2-93 to 30-6-94 after fixation of his pay under new pay scale of 1991.It may be also be mentioned here that the O.P. employer offered termination benefits to the petitioner as mentioned in paragraph 18 of the case application treating the termination as on 7-11-88 by a letter dt. 17-8-94 amending the earlier termination order dt. 30-6-94.

In the result, the petitioner is not entitled to any relief whatsoever. Hence it is

ORDEBED

That the P.W. Case no 40/94 be dismissed on contest without any cost.

Sd. (**Taslimuddin Ahmed**),
Chairman, 1st Labour Court,
Chittagong.

T. W. Case No. 94/95

Kalyan Nandy,
S/o, Arabinda Nandy,
231, Sirajudoula Road,
Chawkbazar,---Chittagong. Petitioner.

Vs.

United Chemicals & Pharmaceuticals Ltd.,
C. D. A. Avenue, East Nasirabad, P. O. Box No. 485,
Chittagong. Opposite Party.

Present: Mr. Taslimuddin Ahmed,
Authority & Chairman,
1st Labour Cort, Chittagong.

Judgement -Dated, 30-11-95

This is a case v/s 15(2) of the Payment of Wages Act, 1936.

Petitioner's case, in a nut shell, is that he was appointed under the O.P. by thair letter dt. 26-7-76 as a Field Officer and his duties were physical, clarical and manual. The petitonenar had no managerial or administrative function or duty.

Petitioner's further case is that on 1.8.94 due to some family problem and personal inconvenniences the petitioner resigned from/ terminated his employment u/s 19(2) of the s. O. Act, 65 giving one month's time to the O.P.-employer and also requested the O. P. to pay up his all final settlement dues within 31-8-94. The O. P. by thair letter dt. 23-8-94 accepted the resignation termination of the petitoner with effect from 1-9-94. But after acceptance of the termination the O. P. did not pay the termination benefits and ffnal settlement dues despite repeated requested by the petitioner. Hence the petitioner has been compelled to file the instant case claiming the termination benefits as ennumerated in the schedule of claim of paragraph 6 of the complaint petition.

Earliar, the petitioner filed the Complaint Case No. 41/94 in this court u/s 25(1)(b) of the S. O. Act, 65, but the said case was dismissed on contest by a judgement dt. 19-8-95 on the ground of maintaininability.

The O. P. has contested the case by filing written objection and alleging itner alia, that the case is barred by limitation, that the case is hit by the principle of resjudicata and that the statements and averments made by the petitioner in the complaint petition are false, fictitious and baseless. The O. P. admits the fact of resignation by the petitioner with effect from 1-9-94, bu does not admit all the termination benefits and final clain as demanded by the petitioner.

Further case of the O. P. is that the petitioner is not entitled to the incentive bonus which has not been declaredor paid to any officer and worker under the O. P. . The O. P. also alleges that the petitioner has the following liabilities with the O. P.- Co:

(a) Advance taken by the 1st party. Tk. 785/-

(b) 1st party's credit sale to M/s. Khashi Paharmacy, Chorasal, Dhaka could not be recovered. Tk.4,500

Under the above facts and circusmstances the case of the petitioner is liable to be dismissed with cost.

POINT FOR DETERMINATION

Whether the petitoner is entitled to the relief as prayer for.

FINDINGS AND DECISON

Heard argument of both sides at length. Perused the connected papers filed by the parties in support of their respective cases and the case record as a whole. No oral evidence was adduced by either of the parties.

Admittedly the petiotioner, who was a Field Representative (Medical) Field Worker under the O. P., terminated his own employment u/s 19(2) of the S. O. Act, 65 for some family problem and personal inconvenience and the said resignation/termination was accepted by the O. P. employer with effect from 1-9-94.

Although the O. P. raised objection in his written objection that the case is, hit by the principle of resjudicata and also barred by limitation, but during the hearing of the case the Ld. Advocate appearing for the O. P. did not pre these points/ issues. However, the petitioner earlier filed the Complaintnt Cases No. 41/94 u/s 25(1)(b) of the S. Act, 65 in this court on the same issue ie. claiming termination benefits, but the said case was dismissed on contest by a judgement dt. 19-8-95 Ext. 14 with the fiindings and observations that the case was not tenable u/s 25(1)(b) of the S/o. o. Act, 65 and that the petitioner should have sought relif, if any, under the relevant provisions of the P. W. Act, 36 and the said case was not decided/adjudicated on merit. So, under the above facts and circumstances the question of resjudicata or limitation does not arise at all.

Admittedly the petitioner terminated his own employment u/s 19(2) of the S. O. Act, 65 and the termination/ resignation was accepted by the O. P. employer vide letter dt. 23-8-91 .Ext. 6.

The main and only point assailed/ asitated by the Ld. advoicate for the O. P. is that the petitioner is not entitled to get the incentive bonus and he (petitioner) is also liable for the allleged non-payment of Tk. 785 as advance and Tk. 4,500 as credit sale by the petitioner to the concerned pharmacy. In other words, the O. P. is reluctant to pay the incentive bonus claimed by the petitioner and he also wants to deduct/ recover Tk. 785/ and T.k 4,500 from the claimed amount of the petitioner. Save and except these objections and claim of the O. P., the other termination benefits claimed by the petitioner are not objected to by the O. P.

With regard to the incentive bonus I like to say that the confirmation Letter dated. 8-11-76 Ext. 2 and the agreement dated. 14-6-77 Ext. 10 between the CBA and the O. P. management clearly show that the petitioner and other employees under the O. P. were entilled to the festibal bonus as well as the incentive bonus as per terms and conditions of the concerned letter and agreement. So, the submission of the Ld. advocate for the O. P. that payment of incentive bonus to the employees of the O. P. management was stopped after 1990 does not hold good at all and not tenable. In support of his is above contention no paper has been fiiled by the O. P.. -management. Next let as see whether the petitioner took any advance money from the O. P. On this point although the Ld. advocate for the petitioner conceded to the claim of the O. P., but I do not find any paper/document or any oral evidence that the petitioner took any advance money from the O. P., and under such circumstance how can we held and arrive at the conclusion in the absence of any evidence that the petitioner took any advance from the O.P. So, the objection of the O. P. with regard to alleged advance of Tk. 785 has no footing to stand on. Thirdly, with regard to the recovery of Tk.4,500 from the petitioner on the allegation that the petitioner is responsible/liable for the credit sale of this amount to M/s Khushi Pharmacy, Ghorasal, Dhaka I like to say that since the petitioner being a Field Officer was engaged employed to collect orders from different customers, pharmacy, dispensary etc. he cannot be held responsisble liable for non-payment/recovery of any money or price of the medicine from the concerned customer. The Ld. advocate appearing for the petitioner emphatically submitted and argued that his elient i, e,. the petitioner cannot be held responsible for liable for any non-recovery or non-payment of money from the customer inasunachas it was not the duty or responsibility of the petitioner to realise any money as price of the medicine from the concerned customer of the O. P. I am covinceel by the above submission and argument of the Ld. advocate and opined that the claim objection of the O. P. on any credit sale is not at all tenable as per terms and conditions of the employment of the petitioner and as such, he cannot be held responsible for any such credit sale and as such, the alleged credit to the tune of Tk. 4,500 is not recoversable from the petitioner. During the hearing of the case both the Ld. advocates for the petitioner and the O. P. admitted that as field worker the job responsibility duty of the petitioner was to promote the sale of the medicine production of the O. P.-employer, and he was not responsible for supply of medicine or realisation of any money on the customer of the O. P.

In view of the above facts, circumstances and discussions I am constrained to hold the opinion that the objection of the O. P. with regard to the incentive bonus, alleged advance money and credit sale and recovery of the same from the petitioner does not stand proved and as such, not sustainable law. On the other hand, the claim of the petitioner for termination benefits as detailed in paragraph 6 of the complaint petition amounting to Tk. 64,348.35 is found to have been substantiated and proved and as such, the petitioner is entitled to realise the said amount of money from the O. P.

In the result, the petitioner's case stands proved and he is entitled to the relief as prayed for,. Hence it is

ORDERED

That the P. W. Case No. 94-95 be allowed on contest without any cost. that the petitioner is entitled to get Tk. 64,348.35 (Sixtyfour thousand three hundred fourtyeight taka thirtyfive paisa) as termination benefits and final settlement dues from the O. P. The O. P. is directed to pay the said money to the petitioner within 60 (sixty) days from the date of passing of this oerder.

Sd Taslimuddin Ahmed
Chairman, Ist Labour Court,
Chittagong.

মজুরী পরিশোধ কেস নং-৩০/৯৭

শফিউল আমিন, পিতা-মৃত নূরুল হক,
গ্রাম-হাসিমপুর, ডাকঘর-হাসিমপুর,
থানা-চন্দনাইশ, জেলা-চট্টগ্রাম। প্রার্থী।

বনাম

মালিক-মীর নওশের আলী (টিপু)
মেসার্স বনা ডিপার্টমেন্টাল ষ্টোর,
এ্যাপোলো শপিং সেন্টার (নীচ তলা),
কাজীর দেওরী, চট্টগ্রাম। প্রতিপক্ষ।

আদেশ, নং-১৪ তাং-১৯-৪-৯৮

আদালত নিম্ন বর্ণিত প্রকারে গঠিত হইল :
জনাব মোঃ আবদুর রহমান পাটোয়ারী, চেয়ারম্যান।
জনাব আলহাজ নাসির উদ্দিন বাহাদুর,
জনাব ফয়েজ আহমদ, () সদস্য।

অদ্য মামলাটি এক তরফা শুনানীর জন্য ধার্য আছে। প্রার্থী হাজিরা দাখিল করিয়াছেন। প্রার্থী শফিউল আমিনের হলফান জবানবন্দী গৃহীত হইল। প্রার্থী পক্ষে দাখিলকৃত কাগজপত্র প্রদর্শনী-১, ২, ৩, ও ৪ হিসাবে চিহ্নিত করা হইয়াছে।

প্রার্থী সফিউল আমিন জবানবন্দীতে বলেন যে তিনি বিগত ১-৩-৯৩ইং তারিখে প্রতিপক্ষের অধীনে মাসিক মোট ২২০০ টাকা বেতনে সেলসম্যান হিসাবে নিয়োগ প্রাপ্ত হন। তাহার চাকুরী ১৯৬৫ সালের শ্রমিক নিয়োগ (স্থায়ী) আদেশ আইন এবং ১৯৬৫ সালের দোকান ও প্রতিষ্ঠান আইন দারা নিয়ন্ত্রিত ছিল।

প্রতিপক্ষের প্রতিষ্ঠানে সার্ভিস রুলস ছিল না। প্রতিপক্ষ তাহার প্রতিষ্ঠানে কর্মচারী লিখিতভাবে নিয়োগ এবং বরখাস্ত করিতেন না। প্রতিপক্ষ তাহাকে এক মাস বিনা বেতনে ছুটিতে যাইতে বলেন। তিনি অস্বীকৃতি জ্ঞাপন করিয়া এ্যাপোলো সপিং সেন্টার মালিক সমিতির সভাপতিকে উহা অবহিত করেন। ইহার ফলে প্রতিপক্ষ ক্ষুব্ধ হন এবং তাহাকে মৌখিকভাবে চাকুরী হইতে টার্মিনেট করেন। তাহাদের ইউনিয়নের সেক্রেটারী, বনিক সমিতি এবং উপ-প্রধান পরিদর্শক, কল কারখানা ও প্রতিষ্ঠান বরাবরে তিনি ইহা জানান। কিন্তু কোন ফল হয় নাই। তাই তিনি মামলাটি আনয়ন করিয়াছেন।

তিনি পাওনাদির হিসাব মূল দরখাস্তের তপসীলে সন্নিবেশিত করিয়াছেন এবং ২৬-৩-৯৭ইং তারিখ সরকারী ছুটি থাকায় পরবর্তী দিন অর্থাৎ ২৭-৩-৯৭ইং তারিখে মামলাটি দায়ের করেন।

প্রদর্শনী চিহ্নিত কাগজপত্র পর্য্যালোচনায় প্রার্থীর কেস সমর্থিত হইতেছে। বিজ্ঞ সদস্যগণের সহিত আলোচনা করা হইল। অতএব,

আদেশ এই যে,

অত্র ডব্লিউ কেস নং -৩০/৯৭ প্রতিপক্ষের বিরুদ্ধে এক তরফা সূত্রে খরচসহ মঞ্জুর করা হইল। প্রার্থীর পাওনাদি ৩০ (ত্রিশ) দিবসের মধ্যে পরিশোধ করার জন্য প্রতিপক্ষকে নির্দেশ দেওয়া গেল।

মোঃ আবদুর রহমান পাটোয়ারী,
চেয়ারম্যান, ১ম শ্রম আদালত, চট্টগ্রাম।

I.R.O. Case No. 28/93

Kabirul Islam, Dia-Maker, Card No. 5
Bangladesh Can Co. Ltd., Nasirabad I/A,
P.O. Polytechnic, Chittagong.—1st party.

Vs.

General Manager,
Bangladesh, Can Co. Ltd.,
Nasirabad I/A, P.O. Polytechnic,
Chittagong.—2nd party.

Presents : Mr, Taslimuddin Ahmed, Chairman.
Mr. Nur Mohammed Chaudhury,
Mr. Mohd. Faruk, Members.

Judgement-Dated, 30-8-95

BThis is a case u/s 34 of the Industrial Reallations Ordinance, 1969.

Case of the 1st party, in short, is that he is a permenent worker of the Bangladesh Can Co. Ltd. under the 2nd party and that he has been working as a Dia-Maker. The 2nd party Co. is one of the units of Bangladesh Steel and Engineering Corporation and the 1st party being a worker of the said Co/establishment, the terms and conditions of this service in respect of wages and allowances are guided as per provisions of the State-owned Manfucturing Indusa tries Workers (Terms and conditions of Service) Ordinance, 1973 as well as the State-owned Manufaturing Industries Workers (Terms and Conditions of Service) Ordeinance, 1985.

Further case of the 1st party is that the 2nd party by a letter dt. 10-4-83 appointed the 1st party as Probationer Dia-Maker and he was placed in IWWC grade-III in the wage scale of Tk. 350-570. The 1st party also contends that he has been appointed as Dia-Maker in consideration of the fact that he passed the S.S.C. Examination and obtained trade course certificate from the Technical Training Centre and as such, he was entitled to be placed in the Grade-IV in the wage scale of Tk. 355-555 as per relevant provision of the Ordinance of 1973 with offect from 1-7-73. But the said entitlement of the 1st party was ignored by the 2nd party and the 1st party was illegallty placed in the Grade -III instead of Grade-IV of the IWWC. After satisfactory completion of the probationery period the 1st party was confirmed in his employment as Dia-Maker by a letter dt. 21-7-83 issued by the 2nd party. Having been confirmed in his employment the 1st party had been requesting the 2nd party to allow him the wage scale under Grade-IV from the date of the appointmnet as per provision of IWWC and also to allow him the corresponding new wage scale under Grade-IV which is Tk. 730-1180 with offect from 1-6-85. But the 2nd party after long silence allowed the 1st party only the new corresponding wage scale of Tk. 730-1180 with effect from 1-1-88.

The 1st party further alleges that the 2nd party by denying the claim of the 1st party infringe the legal and stateutory right of the 1st party. Hence this case.

The 2nd party has contested the case by filling a written statement and alleging, inter alia, that the case is not maintainablem that the 1st party has no cause of action to file the instant case and that the pleadings and averments of the 1st party made in the complaint petition are false, fictitious, malafide and baseless.

Specific case of the 2nd party is that the 2nd party made an advertisemient in the daily Azadi dt. 7-3-83. inviting application for the post of Appretice Dia-Maker and the 1st party submitted an application on 13-3-83 for the said post. The 2nd party invited the 1st party for interview vide letter dt. 22-3-83 for the post of Apprentice Dia-Maker and thereafter the 2nd party vide leter dt. 10-4-83 appointed the 1st party as Apprentice Dia-Maker under the terms and conditions ennumerated in the appointment letter. As Apprentice

Dia-Maker the 1st party was given the Grade-III in the wage scale of Tk. 310-470 with some terms and conditions laid down therein. It was mentioned in clause 10 in the letter of appointment that if the 1st party become successfu after completion of 3 years apprentice ship period in that case he would be given IV the Grade and his employment would be confirmed. Although the apprenticeship period of the 1st party was not satisfactory, even after completion of apprenticeship period the 1st party was confirmed and promoted to the IV the Grade.

Further case of the 2nd party is that the 1st party misconceived the total aspect of the matter intentionally ignoring his letter of appointment as Apprentice Dia-Maker and that after the completion of the apprenticeship period the 1st party was rightly given the corresponding IV the Grade in the wage scale of Tk. 750-1180 with offect from 1-8-88.

Under the above facts and circumstances the claim of the 1st party is not sustainable in law and as such, the case of the 1st party is liable to be dismissed with cost.

POINT FOR DETERMINATION

Whether the 1st party is entitled to the relief as prayed for.

FINDINGS AND DECISION

Heard arguments of both sides at length. Perused the series of pepers filed by the parties in support of their respective cases. In consideration of the nature and circumstance of the case the oral avidence was dispensed with.

The 1st party claims employment in the IV the Grade as Dia-Maker from the date of his appointment and consequent pay scale in the IV the Grade and thereafter he was entitled to get wages as per corrosponding new scale with effect from 1-6-85 as per provisions of the relevant Ordinances of 1973 and 1985. On the other hand, the 2nd party employer denies the above claim of the 1st party and contends that the 1st party was initial ointed as Apprentice Dia-Maker and after successful completion of the apprenticship period he was orightly and lawfullt confirmed and promoted to the IVthe Grade with effect from 1-1-88. No illegality or irregularity was perpetrate by the 2nd party-employer in respect of the grade and scale of pay.

It appears from the careful perusal of the connected papers that the 2nd party employer issued the appointment letter on 10-4-83 Ext. 1 and the 1st party joined the new assinment on 14-4-83 as an Apprentice Dia-Maker accepting the terms and conditions laid down in the appointment letter which categerically and clearly reveals the fact the appointment was given for the post of Apprentice Dia-Maker not for Dia-Maker as alleged by the 1st party. Furthermore, it transpires from the joining letter dt. 14-4-83 Ext. D that the 1st party joined his new assignment as an Apprentice Dia-Maker not as Dia-Maker. Had he (1st party) any objection or any legal claim/say he could have or ought to have raised such objection at the tims of the his joining in the employment or such earlier. Mereover, it appears from the application dt. 13-3-83 Ext. A that the 1st party applied for the post of Apprentice Dia-Maker, not for Dia-Maker.

Under such circumstances after a lapse of long time i.e. about 10 years this contention/claim on the part of the 1st party is not tenable and he is now estopped in principle from raising any such objection or claim. It is also revealed from the confirmation letter dt. 21-7-83 Ext. 2 that the 1st party was confirmed as Apprentice Dia-Maker with effect from 17-7-83 and subsequently promoted to the post of Dia-Maker vide letter dt. 13-3-88 Ext. C with effect from 1-1-88 in IVth Grade in the wage scale of Tk. 730-1180. So, it is crystal clear from ths above facts and connected papers that the 1st party was initially appointed as Apprentice Dia-Maker and subsequently promoted to the Post of Dia-Maker in the IV the Grade with effect from 1-1-88. The A labbur adviser appering for the 1st party submited that as per relevant provisions of the Ordinances of 1973 and cast 1985 the 1st party ought to have been appointed and placed as Dia-Maker in the IVth Grade inasmuchas there is no post of Apprentice Dia-Maker in the concerned Ordinances of 1973 and 1985. In reply to the above contention the Ld. abvocate appearing for the 2nd party argued that there might not be any post of Apprentice Dia-Maker in the concerned Ordinances or the 1st party might have obtained S.S.C certificate and trade training course certificate, yet the 2nd party-employer reserves the right of placing any worker under training for posting in the proper place/assignment as per terms and conditions of the appointment letter. I am convince by the above argument of the Ld. advocate for the 2nd party and hold that the claim of the 1st party is not sustainable in law.

In view of the above facts, circumstances and documentary evidences only record. I am constrained to hold the opinion that the 1st party has hopelessly failed to make out his case which has no legal footing at all and as such, he is not entitled to any relief whatsoever.

The Ld. members have been duly consulted. Hence it is

ORDERED

that the I.R.O. Case No. 28/93 be dismissed on contest without any cost.

Jn the 1st labour cour at Chittagong Taslimuddin Ahmed chairman 1st labou, caurt Chittagong.

I.R.O. Case No. 51/93 and Complaint Case No. 62/93

Nizamuddin, Electrician,
BFIDC, Raozan Rubber Bagan,
Roazan, Chittagong (I.R.O. Case No. 51/93).-1st-Party.

Nizamuddin, S/o. Adalath Khan,
Vill. East Roazan (Godarpar),
P.O. Raozan, P.S. Raozan,
Dist. Chittagong. (Complaint Case No. 62/93)—1st Party.

Vs.

Manager,
BFIDC,
Raozan Rubber Bagan,
Raozan, Chittagong.—2nd party.

Presents : Mr. Taslimuddin Ahmed, Chairman.
Mr. Ali Imam,
Mr. A.M. Nazimuddin, Members.

Judgement-Dated, 31-12-95

Fristly, the 1st party filed I. R.O. Case No. 51/93 against the 2nd party BFIDC u/s 34 of the Industrial Relations Ordinance, 1969 and subsequently he filed the Complaint Case No. 62/93 against the same 2nd party u/s 25(1) (b) of the Employment of Labour (Standing Orders) Act, 1965.

Since both the parties are common, facts of the cases, cause of action and the law points involved therein are also interrelated and almost identical, hence the cases are heard and adjuducated analogously.

Facts of the cases of the 1st party, in short, is that he was a permanent worker of BFIDC, Raozan Rubber Bagran under the 2nd party and that the Raozan Rubber Bagan is one of the unites of BFIDC The 1st party was originally appointed by the 2nd party as a Tapper with effect from 8.4.78 and subsequently he was confirmed in the said post with effect from 26.4.79.

Further case of the 1st party is that he was employed by the 2nd party in the vacant post of electrician by/an office order and that by operation of law he attained the status of a permanent worker as Electeician, but the 2nd party did not issue any letter of confirmation to him confirming him in the new post of Electrician inspite of his repeated requests. The 2nd party did note allow the 1st party to enjoy the rank, status, grade and scale of pay of th post of Electrician and this act of the 2nd party is illigal, motivated, ultravires, malafide and without jurisdiction ; and having been, aggrived by the illegal act of the 2nd party the 1st party instituted the I. R.O. Case No. 51/93 u/s 34 of the I. R. O. 69 for enforcement of his alleged right guaranteed and secured by law.

The 1st party alleges that he was most illegally and whimsically reverted from the post of Electrician to the post of Tapper. The 1st party submitted several representation to the 2nd party in this regard and protested the illegal acts and orders of the 2nd party. But to 2nd party being aggrived and dissatisfied with the 1st party for filing the I.R.O. Case No. 51/93 , brought charges against the 1st party for misconduct u/s 17(3) of the said act for misappropriation, damage, theft of Govt. properties and also for unauthorised absence from duty. The 1st party denied the above charges in writing and contended that the charges against him were baseless, false, fictitious and illegal. However, the allegations/charges were enquired into by an enquiry committee which sumitted its report holding the 1st party guilty of misco nduct. According to the 1st party the enquiry proceedings were motivated, unfair, illegal and not impartial. The 2nd party also placed the 1st party under suspension. However, on the basis of the enquiry report the 2nd party

dismissed the 1st party from his permannent employment by an office order dt. 28-9-93. The 1st party alleges that the impugned dismissal order is illegal, void, motivated and not sustainable in law.

Having been aggrived by the impugned dismissal order the 1st party filed the Complaint Case No. 62/93.

The 2nd party has contested the cases by filing two seperate written statements and alleging, inter alia, that there is no cause of action for fil in the cases and that the statements and averments made by the 1st party are all false, fictitious and baseless.

According to the 2nd party the 1st party was appointed as Tapper of the Raozan Rubber Bagan under BFIDC and that he was employed temporaryly as Electrician without any promotion and as such, the I.R.O. Case no. 51/93 is totally false, baseless and without any substance. Specific case of the 2nd party is that the impugned dismissal order dt. 28-9-93 was rightly and lawfully passed on the basis of the fair, proper and valid enquiry report and that the acts and orders passed by the 2nd party are quite justified and sustainable in law,. The 1st party committed the offence of miscondct within the meaning of S. 17(3) of the S. O. Act, 69 and the charges were properly and lawfully enquired intio by an impartial committee. The past service record of the 1st party is also blemish.

The 2nd party further states that the enquiry committee found the 1st party guilty of the charges brought against him.

Under thr above facts and circumstances the cases of the 1st party are liable to be dismissed with cost.

POINT FOR DETERMINATION

Whether the 1st party is entitled to the relief as prayed for.

FINDINGS AND DECISION

Heard argument of the Ld. advocates for both sides at length. Per used the series of papers filed by the parties in support of their respective cases No. oral evidencs was adduced by either of the parties.

The ld. advocate for the 2nd party submitted that since the 1st party had already been dismissed from service, the I.R.O. Case No.51/93 is not maintainable and as such, the same is also liable to be dismissed. Lam convinced by the above argument of the Ld. advocate and also hold the opinion that as the 1st party is no longer in service, so, the said I.R.O. Case is not maintainable and has no legal effect or force and as such, it has become infructous. So, theI.R.O. Case No. 51/93 is found not maintainable.

Admittedly the 1st party was appointed as a Tapper of the Raozan Rubber Bagan, Chittagong which is one of the units of the BFIDC. Although the 1st party claims that by operation of law he attained the rank, status, pay and

grade of a permanent Electrician, but according to the cotention of the 2nd party the 1st party was admittedly employed as Electrician for sometime and that he was never promoted or appointed as permanent Electrician, inasmuchas there is no scope of such promotion. In support of this submission the 2nd party has filed some papers and official letters/orders which jusstify the submission and acts of tfe 2nd party. Under such circumstances the claim of the 1st party to have been promoted and attained the status and grade of a permanent Electrician has no footing to stand on.

Furthermore, with regard to the allegation and charge of misconduct against the 1st party I like to say that the enquiry committee duly enquired into the charges on four counts such as misappropriation, damage, theft of Govt. properties and also unauthorised absence from duty and submitted fair, impartial and valid report holding the 1st party guilty of misconduct. It is revealed from the enquiry proceedings that the 1st party himself particiapted in the enquiry proceedings and a good number of witnessess was examined by the enquiry committee. On careful perusal and scrutiny of the enquiry proceedings I do not find any glaring, illegality, discripancy or any unfairness it the enquiry proceedings or report. So, the domestic enquiry conducted by the 2nd party and the report thereof are found to be quite proper, fair and impartial, and on the basis of the said enquiry report the 2nd party rightly and lawfully passed the impugned dismissal order. In passing the impugned dismissal order dt. 28-9-93 the 2nd party also took into consideratio n the gravity of the misconduct, the past service record of the 1st party and other surrounding circumstances and there is no extenuating circumstances in favour of the 1st party.

In view of the above facts, circumstances and documentary evidence on record I am constrained to hold the opinion that the 1st party has hopelesly failed to make out his case and as such, he is not entitled to any relief whatsoever.

In the result, both the cases stand dismissed.

The Ld. members have been duly consulted. Hence it is

ORDERED

That the I.R.O. Case No. 51/93 and Complaint Case No. 62/93 be dismissed on contest without any cost.

Sd- Taslimuddin Ahmed,
Chairman, 1st Labour Court,
Chittagong.

I.R.O. Case No. 46/96

Md. Mafizullah, S/o. Late Ayub Ali,
Vill. Opotomra, P. S. & Dist. Lakhmipur– 1st party.

Vs

Vice Chairman,
Dock Sramik Management Board,
P. S. Bondar, Chittagong & Ors.– 2nd parties.

Order no. 13, dt. 2-4-98.

The court is duly constituted with the following :

Mr. Md. Abdur Rahman Patwari, .. Chairman.
Mr. Alhaj Nasiruddin Bahadur, .. Members.
Mr. Safar Ali,

The 2nd party files hazira and ready for hearing. The 1st party takes on step and is found absent on repeated calls.

The case record reflects that the 1st party is not taking step for long. He did not even make tabdir on six previous dates. Therefore, presumedly it is of no use to contiune with this case.

The views of the Ld. members duly considered. Hene It is

Ordered

that the I.R.O. Case No. 44/96 be dismissed for default.

Md. Abdur Rahman Patwari.
Chairman, 1st Labour Court,
Chittagong.

আই, আর, ও মামলা নং-১/৯৭

রেজিষ্ট্রার অব ট্রেড ইউনিয়নস,
গণপ্রজাতন্ত্রী বাংলাদেশ সরকার,
চট্টগ্রাম বিভাগ, চট্টগ্রাম—১ম পক্ষ।

বনাম

সভাপতি/সাধারণ সম্পাদক,
ডানকান প্রডাক্টস লিঃ শ্রমিক কর্মচারী ইউনিয়ন,
রেজিঃ নং-১০৯৫, নাসিরাবাদ শিল্প এলাকা, চট্টগ্রাম। ২য় পক্ষ।

আদেশ নং-৮ তাং-১৯-৪-৯৮।

নিম্নবর্ণিত প্রকারে আদালত গঠিত হইল:

জনাব মোঃ আব্দুর রহমান পাটোয়ারী, চেয়ারম্যান।
জনাব আলহাজ্ব নাসিরউদ্দিন বাহাদুর, সদস্য।
জনাব ফয়েজ আহমদ, সদস্য।

নথী শুনানীর জন্য লওয়া হইল। প্রথম পক্ষে দাখিলকৃত কাগজপত্র প্রদর্শনী-১, ২, ৩, ৪, ৫, ৬, ও ৭ হিসাবে চিহ্নিত করা হইল।

প্রথম পক্ষ রেজিষ্ট্রার অব ট্রেড ইউনিয়ন, চট্টগ্রাম বিভাগ ২য় পক্ষের রেজিষ্ট্রেশন নং-১০৯৫ বাতিল করার জন্য অনুমতি প্রার্থনা করিয়া মামলাটি আনয়ন করিয়াছেন। ১ম পক্ষের কেস হইল যে ২য় পক্ষ ইউনিয়নটি গত ৭-১১-৯৬ ইং তারিখে ডানকান প্রডাক্টস লিমিটেড কতৃপক্ষের সাথে কারখানা বন্দের ব্যাপারে একমত হন এবং তাহাদের পাওনাদি বুঝে পাওয়ার ব্যাপারে চুক্তি সম্পাদন করে। চুক্তি অনুযায়ী প্রতিষ্ঠানটির ব্যবস্থাপনা কতৃপক্ষ কারখানা বন্ধ ঘোষণা করেন এবং কারখানার ৮৯ জন শ্রমিককে তাহাদের আইনানুগ সকল পাওনাদি প্রদান করেন। ইহার পর ২য় পক্ষ গত ১২-১১-৯৬ ইং তারিখের সাধারণ সভায় সর্বসম্মত-ভাবে ইউনিয়নটি বিলুপ্ত ঘোষণার পর ক্ষমতা প্রাপ্ত সভাপতি ও সাধারণ সম্পাদক গত ২৫-১১-৯৬ ইং তারিখে মূল সনদপত্র ও সংবিধান সহ ইউনিয়নটি বাতিল করিবার জন্য প্রয়োজনীয় ব্যবস্থা গ্রহণ করিতে ২য় পক্ষকে অনুরোধ জানাইয়াছে।

১ম পক্ষের আরও কেস হইল যে সরেজমিনে তদন্তকালে কারখানাটি বন্ধ পাওয়া যায়। কারখানার সকল শ্রমিক পাওনা বুঝিয়া পাইয়া নিজ নিজ বাড়ীতে চলিয়া গিয়াছে বিধায় ইউনিয়নটির অফিস খুঁজিয়া পাওয়া যায় নাই।

২য় পক্ষকে নোটিশ প্রদান করা হইয়াছে। ২য় পক্ষ আদালতে হাজির হন নাই। প্রথম পক্ষ বক্তব্যের সপক্ষে কাগজপত্র দাখিল করিয়াছেন। কাজেই প্রথম পক্ষের কেস প্রাথমিক-ভাবে প্রমাণিত হয়।

বিজ্ঞ সদস্যগণের সাথে আলোচনা করা হইল। অতএব,

আদেশ এই যে

অত্র আই, আর ও মামলা নং-৯/৯৭ প্রতিপক্ষগণের বিরুদ্ধে এক তরফা সূত্রে বিনা খরচায় গ্রাহ্য করা গেল। ২য় পক্ষ ডানকান প্রডাক্টস লিমিটেড শ্রমিক কর্মচারী ইউনিয়নের রেজিষ্ট্রেশন রেজিঃ নং-১০৯৫) বাতিল করার জন্য ১ম পক্ষকে অনুমতি দেওয়া গেল।

মোঃ আব্দুর রহমান পাটোয়ারী,
চেয়ারম্যান,
১ম শ্রম আদালত, চট্টগ্রাম।

Complaint Case No. 249/87

Md. Shamsul Hoque Chowdhury,
C/o. Karnafully Photostate,
Star Building (Near Barek Building),
Strand Road, Agrabad, Chittagong.—1st party.

Vs.

General Manager,
Multiple Juice Concentrate Plant,
20, Mohara, I/A, Kalurghat, Chittagong.—2nd party.

Presents : Mr. Taslimuddin Ahmed, Chairman.
Mr. A.K.M. Firoz Alam, Members.
Mr. Tapan Dutta, ..

Judgement-Dated, 7.95

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

Case of the 1st party, in short, is that he was a permanent worker under the 2nd party-establishment- Multiple Juice Concentrat Plant and that he was appointed as Truck Scale Operator with effect from 27.6.83. The 1st party was also the Organising Secretary of the Multiple Juice Concentrat Plant Sramik Karmachari Sadin Trade Union bearing registration no. 986 which is the CBA in the 2nd party- stablishment. The 1st party alleges that he incured dissatisfaction and annoyance of the management of the 2nd party-establishment for his trade undion activities as Organising Secretary of the said union.

While the 1st party had been discharging his duties honestly, efficiently and regularly the 2nd party-management by a letter dt. 6-11-85 charge sheeted the 1st party on the false allegation of misconduct u/s 17(z)(b)(g) & (k) of the said Act and the 1st party was also placed under suspension pending enquiry and final order. The 1st party by a letter dt. 21-11-85 denied the allegation of misconduct brought against him by the 2nd party. In connection with the alleged misconduct of the 1st party and others for assaulting the Cashier Mr. Sheikh Lokman Hakim, a Gr. Case No. 1426/85 arising out of the Chandgaon P S. Case No. 6(11)/85 was registered and filed against the last party and others in the Court of the Chief Metropolitan Magistrate, Chittagong. Further case of the 1st party is that during the pendency of the criminal case which ultimately resulted in the acquital of the 1st party, the 2nd party conducted an unilateral, arbitrary, malafide and illegal enquiry against the 1st party and on the basis of the enquiry report the 2nd party by a letter dt. 26-9-87 reinstated the 1st party in his service holding that the charges of misconduct were proved during enquiry and that his case was considered by giving last warning for his misconduct. On receipt of the said letter dt. 26-9-87 the 1st party denied the contends of the letter of the 2nd party with the assertion that the impugned order dt. 26-9-87 is quite illegal, fictitious and baseless

The 2nd party after receiving the representation of the 1st pary dt. 11-10-87, terminated the employment of the 1st party vide letter dt. 13-10-87. The 1st party alleges that the impugned termination order as well as the office order of the 2nd party-management dt. 26-9-87 are malafide, concocted, fictitious and illegal and that the 2nd party-management virtually victimised the 1st party under colourable exercise of power in the garb of termination for the trade union activities of the 1st party.

Being aggrived by the impugned orders dt. 26-9-87 and 13-10-87 the 1st party has filed the instant case.

The 2nd party has contested the case by filing a written statement and alleging, inter alia, that the case is not maintainable according to law, and that the case is bad for non-joinder of parties, that the case is barred by limitation and that the pleadings and averments made by the 1st party are all false, fictitious, malafide and baseless.

Specific case of the 2nd party is that the 1st party was appointed on adhoc temporary basis as Truck Scale Operator and that the services of the 1st party being redundent was terminated simpliciter having no connection or bearing whatsoever with the alleged trade union activities of the 1st party. According to the contention of the 2nd party the allegation of misconduct against the 1st party was substantiated and proved during the enquiry into the matter. The 2nd party further contends that both the impugned orders dt. 26-9-87 and 13-10-87 are quite justified, valid and sustainable in law. The 2nd party denies the allegation of victimisation for trade union activities contended by the 1st party.

Under the above facts and circumstances the case of the 1st party having no merit or substance therein is liable to be dismisseed with cost.

POINT FOR DETERMINATION

Whether the 1st party is entitled to the relief as prayed for

FINDINGS AND DECISION

Heard the argument of both sides at length. Perused the series of papers filed by the 1st party in support of his case. The 2nd party has filed only the letter of termination dt. 13-10-87 and the reply of grievance petiton dt. 14-11-87 which have been marked as Exhibits A and respectively. The papers/documents filed by the 1st party have also been marked Exts. 118. No oral evidence has been adduced by either of the parties. It may be mentioned here that although the 2nd party contands that the allegation of misconduct was enquired into by an enquiry committee, but no such enquiry proceedings have been submitted by the 2nd party. So, in the absence of the enquiry proceedings or report how can I arrive at a conclusion that the alleged misconduct of, the 1st party was at all enquired into by any committee. The letter of charge dt. 6-11-85 containing allegation of misconduct against the 1st party u/s 17(3)(g)(b)(z) & (k) of the said Act has been marked Ext. 1; but in fact there is no provision as S. 17(z) in the said Act and at best the

provision of S. 17(3)(g) might be applicable in case of the misconduct alleged to have been committed by the 1st party by way of assaulting the Cashier. So, the charge sheet Ext. 1 seems to be defective from law point. Since there is no enquiry proceedings or report before me passed on the charges dt. 6-11-85. I do not find any satisfactory, sufficient and cogent evidence that the charge of misconduct against the 1st party was proved/substantiated and that the 1st party was found guilty of misconduct. Under such circumstance I do not understand how the office order dt. 26-9-87 Ext. 7 was issued by the 2nd party holding the 1st party guilty of misconduct on the basis of the so called enquiry report with a note of warning for the last time. Moreoiver the 1st party submits that he was not aware of any enquiry proceedings and he did not get any opportunity to defend himself in the enquiry proceedngs, if any, carried out by the 2nd party. However, the 1st party by a letter dt. 11-10-87 protested the contends of the office order of the 2nd party dt. 26-9-87 with regard to the note of warning and commission of any offence by him.

Admittedly the criminal case bearing Gr. Case No. 1426/85 ended in compromise with the order of acquital of the accused persons including the 1st party. The Ld. Metropolitan Magistrate passed the order of acquital on 13-12-86 accepting the joint compromise petition signed by both sides. The said order has been marked Ext. 5. The Md. cousel appearing for the 2nd party submitted that the impugned order of termination dt. 13-10-87 has no connection or bearing with the said criminal case or any Trade union activities of the 1st party. But it appears from the list of office bearers of the concerned Trade union Ext. 13 that the 1st party was the Organising Secretary of the said union. It is also revealed from the official papers Exts. 14-17 that the 1st party had active role and participation in the trade union activities and some 18 point demands were raised by the concerned union in the interest of the general workers under the 2nd paryt-establishment. Perhaps it will not be impertinent to mentioned here that the 2nd party passed the impugned order of termination on 13p10p87 just after two days of the application of the 1st party dt. 11-10-87 inasmchasthe 1st party raised some objection and protest against the order If the 2nd party dt. 26-9-87. From all these facts it may be inferred that the 2nd party terminated the employment of the 1st party out of grudge and annoyance against the 1st party for bonafide protest and trade union activities to uphold the interest of the workers. Under such circumstance the impugned termination cannot be said/termed as termination simpliciter; rather, the surrounding circumstance and facts led us to draw the conclusion/inference that the 2nd party virtually victimised the 1st party for his trade union activities in the garb of termination.

With regard to the objection raised by the 2nd party that the case is bad for non-joinder of parties I like to say that although the 2nd party is an enterprise or industrial uinit nuder the Bangladesh Freedom Fighters' Welafre Trust, but the impugned termination order was passed not the Welfare Trust but the 2nd party enterprise i. e. Multiple Juice Concentrate Pllant. So, under such circumstance the Freedom Fighters' Welfare Trust is not a necessary party in this case, and as such, the case will not be bad for non-joinder of partiesas contended by the 2nd party.

Although the 1st party has brought a counter allegation of misconduct involving the deduction of Tk. 600/ as loan from the wage of the 1st party, but I do find any necessity to discuss this point of counetr allegation of misconduct or any incident between the 1st party and 2nd party inasmuchas the enquiry proceedings are not coming before us. The absence of the enquiry proceedings, if any, has weakened the case of the 2nd party on all counts. On the other hand, the relevant papers and documents submitted by the 1st party prove and substantiate his case.

In view of the above facts, circumstances and documentary evidence on record I am constrained to hold the opinion that the 1st party has been successful to make out and substantiate his case and as such, he is entitled to the relief as prayed for.

Since the case of the 2nd party has no footing to stand on, so, the impug ned orders dt. 26-9-87 and 13-10-87 are found to be malafide, unjustified i noperative and not sustainable in law.

The Ld. members have been duly consulted. Hence it is

ORDERED

that the Complaint Case No. 249/87 be allowed on contest without any ost. Let the impugned office order dt. 26-9-87 as well as the order of ermination dt. 13-10-87 be hereby set aside and the 2nd party be also- irected to reinstate the 1st party in his former post and position with all back wages and attending benefits within 60 (sixty) days from the date of passing of this order.

Taslimuddin Ahmed,
Chairman, 1st Labour Court,
Chittagong.
6/7/95.

IN THE 1ST LABOUR COURT AT CHITTAGONG

Complaint Case No. 81/92

Md. Zakir Hossain,
Semi-skilled-operator,
Prodution Department,
Gazi wires Ltd. Kalurghat I/A,
Chittagong.—1st party.

Versuse

Managing Director,
Gazi wires Ltd.
Kalurghat I/A,
Chittagong. 2nd party.

Presents : Mr. Taslimuddin Ahmed, Chairman.
Mr. A.K.M. Firoz Alam,
Mr. Tapan Dutta, (1) Members.

Judgement-Dated, 29-6-95

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

Case of the 1st party, in short, is that he was a permanent semi-skilled-worker under the 2nd party and that he was discharging his duties honestly and sincerely. The 2nd party Gazi Wires Ltd. is an industrial unit/ enterparise under the Bangladesh Steel and Engineering Corporation.

Further case of the 1st party is that the 2nd party charge sheeted him vide an order dt. 15-7-92 on the allegation that the 1st party in colaboration with others suddenly attacked and seriously assaulted Mr. Nur Ahmed, Asstt. Security Officer of the 2nd party-establishment on 14-7-92 at about 4-30 P.M. and thereby committee an offence of missconduct within the meaning of S.17(3)(g) of the said Act. The 1st party denied the allegations in wirting on 18-7-92. The 1st party also alleges that the allegation of misconduct broughn against him was not duly enqired into and he did not get proper opportunity of self defence. However, he also denied the allegations before the enquiry committee constituted by the 2nd party. According to the 1st party there was no proper and fair enquiry into the matter. However, the 2nd party on the basis of the enquiry report dismissed the 1st party from his permanent employment vide letter dt. 9-9-92.

Being aggrived by the impugned dismissal order dt. 9-9-92 the 1st party has broutht the instant case with the contention that the impugned dismissal is illegal, malafide and liable to be set a side.

The 2nd party hass contested the case blleging, inter ali a, that the case is not maintainable and that the statements and averments made by the 1st party are false, fictitious, baseless and concocted.

Specific case of the 2nd party is that the 1st party was rightly and lawfullly charge sheeted for misclonduct and the matter was duly enquired into by an impartial enquiry committee which submitted fair and justified-report after carrying out enquiry into the matter. Since the allegation ofmlis conduct against the 1st party was substantiated for riotous and disordery behaviure of the 1st party within the premises of the 2ndparty-establishment by way of assaulting the Asstt. Seeurtiy officer Mr. Nur Ahmed, the 2nd party rightly and lawfully dismissed the 1st party by the impugned dismissal order dt. 9-9-1992, and that the impugned dismissal order in consideration of the gravity of the offence committed by the 1st party is quite sustainable in law.

Under the above facts and/circumstances the case of the 1st party having no merit or substance thering is libale to be dismissed with cost.

POINT FOR DETERMINATION

Whether the 1st party is entitled to any relief as prayed for.

FINDINGS AND DECISION

Heard the argument of both sides at length. Perused the series of papers filed by the parties in support of their respective cases. The papers /documents have been duly marked Exhibits. No oral evidence was adduced by either of the parties.

Admittedly the Asstt. Secuirty Officer Mr. Nur Ahmed was attacked and severely assaulted on 14-7-92 by some workers at the main gate area of the project and in consequence of such assault Mr. Nur Ahmed sustained bleeding injuries on his person. The 1st party contends that durign the occurence of the said assault/incident he was not present at the place of occurrence and that at that time he was engaged in his duty/works. The Ld. adcocate appearing for the 1st party submitted that there might have occurred some incident resulting from the attack and assault of Mr. Nur Ahmed, but the 1st party was not at all persent there at the time of occurrence and as such, the 1st party is quite innocent and the charge of misconduct against him is fales and in fictitious. The Ld. avdvocate further maintained that the 1st party has been falsely implicated in the case of misconduct and assault. In order to rebut the above submission and contention the Ld. advocate appearing for the 2nd party argued that the allegatoin of misconduct against the 1st party was duly enquired into by an enquiry commmittee which after carrying out enquiry into the matter submitted fair and impartial enquiry report finding the 1st party guilty of misconduct as alleged against him. It is also admitted by the 1st party that he denied the allegation befor the enquiry committee. So, it is obvious that the 1st party himself was present during enquiry. Further more, it appears from the enquiry proceedings Exrt.E that a good number of witnesses, including the visctim Nur Ahmed, was examined and cross examined and that the last party himself was also examined by the enquiry committee It is revealed from the enquiry proceedings and report of the committee tha the 1st party and others conjointly attacked and seriously assaulted the victim Mr. Nur Ahmed casing bleeding injuries of his person and thereby committed the foffence of misconduct within the meaning of S. 17(3)(g) of the said Act. I do not find any major or glaring illegality to irregularity or any unfairness in the exhaustive enquiry proceedings and the report of the committee. The minor incousistency or discrepancy, if any, in the enquiry proceedings will not more prejudice or damage the enquiry proceedings and enquiry report as a whole. In other words, I like to say that the impact and effect of the enquiry proceedings will not be affected or under valued by any minor diseripancy or contradiction of any witnesses. The enquiry proceedings and the reoprt are to be assessed and evaluated as a whole. Considering all these points revealed in the enquiry proceedings together with the surrounding circumstances I am of the opinion that the 1st party was involved along with others in assaulting Mr. Nur Ahmed and thereby the 1st party committed an offence of misconduct within the meaning of S.17(3)(g) of the said Act and as such, he is liable to punishment. In consideration of the nature and gravity of the offence comitted by the 1st party I further opined that the offence of misconduct warrants deterrent and severe punishment by way of dismissing the 1st party from his

employment. The Ld. advocate appearing for the 2nd party most emphatically submitted that since the 1st party committed offence of misconduct of serious nature and there is no extenuating circumstances to inflict any lesser punishment other than dismissal, sol th 2nd party was quite justified in passing the impugned dismissal order dt. 9-9-92 by removing the 1st party from his service for ever. I share similar views with the Ld. advocate and find that the impuned dismissal is quite sustainable in law.

With regard to the G.R. Case No. 1095/92 I like to say that the concerned order of discharge of the 1st party along with others in the said G.R. Case will not affect or create any advrse reaction to the departmental proceedings and action taken by the 2nd party, The F.I.R. of the criminal case, ejahar submitted by the victim Nur Ahmed and the discharge order passed by the Chief Metropolitan Magistrate, Chittagong on 31-10-92 have been marked Exts. 7,7(a) and 7(b). It appears from the discharge order dt. 31-10-92 passed by the Chief Metropolotan Magistrate, Chittagong that the 1st party and other accused of the G.R. Case No. 1095/82 were discharged on the basis of the final report and recommendation of the investigation officer and Asstt. Police Commissioner. The Ld. advocate appearing for the 2nd party submitted that the discharge of the 1st party in the concerned criminal case will not be a bar to the departmental proceedings or to any punishment which may be awarded by the department concerned. In support of his above submission the Ld. advocate referred to a ruling reported in 34 D.L.R. at page 304 where their Lordships observed that discharge of an accused by court is not a bar to his being punished by the concerned department under service rules. I am convinced by the submission of the Ld. advocate and the ruling cited by him. In view of the above facts, circumstances and documentary evidences on record I am constrained to hold the opinion that the 2nd party was quite justified in passing the impugned dismissal order and that the dismissal order is sustainable in law. The 1st party has hopelessly failed to make out his case and as such, he is not entitle to any relief whatsoever.

The Ld. members have been duly consulted. Hence it is

ORDERED

that the Complaint Case No. 81/92 be dismissed on contest without any cost.

Sd-
Taslimuddin Ahmed
Chairman, 1st Labour Court,
Chittaging.
39-6-95

Complaint Case No. 3/93

Zamir Mir Hossain, C/o, Guardianpara,
Banu Talukder Bari, Vill. East Dalai,
P. O. Katerhat, Hathazari, Chittagong.—1st party.

Vs.

M/s. Shah Abdur Rahim,
Auto & Major Rice Mills,
Rajakhali, New Chaktai,
Chittagong.

Order No. 43, dt.2-4-98

The court is duly constittuted with the following:

Mr. Md. Abdur Rahman Patwari,—Chairman.
Mr. Alhaj Nasiruddin Bahadur,—Member.
Mr. Safar Ali,—Member.

The 2nd party files hazira. The 1st party files an application praying for dismissing the case for non-prosecution on the ground stated therein.

Heard both sides. Perused the petition dated 2-4-98 filed by the 1st party and his deposition.

The 1st party has stated in this petition that he was dismissed from his service by the 2nd party by a letter dated 1-12-92 and he challenging the said order of dismissal filed this case against the 2nd party for reinstatement to his former post and position.

The 1st party has further stated that in order to maintain good relationship with the 2nd party, he resolved his dispute out of court by accepting the fact of his dismissal from service and he received all his dues and benefits of service in full and final settlement.

The 1st party has also stated that there remains no need for him to proceed with the above case any more and for that the case is needed to be dismissed for non-prosecutuion.

The views of the Ld. Members duly considered.

The prayer is allowed. Hence it is,

Ordered

that the Complaint Csse No. 3/93 be dismissed for non-prosecution.

Sd/Md. Abdur Rahman Patwari,
Chairman, 1st Labour Court,
Chittagong.

Complaint Case No. 58/93

Md. Amanatullah,
C/o. Ayub Ali Sowdagar Pan Dokan,
Amin Jute Mills South Gate,
P. O. Amin Jute Mills, Sholashahar,
Chittagong.—1st party.

Versus

General Manager,
Amin Jute Mills Ltd.,
P. O. Amin Jute Mills,
Chittagong—2nd party.

Present: Mr. Md. Abdur Rahman Patwari,—Chairman.
Mr. Alhaj Nasiruddin Bahadur,—Member.
Mr. Fais Ahmed.—Member.

Mr. Armanul Haque Chowdhury, Advocate for 1st party.
Mr. A, K. M. Mohsenuddin Ahmed Chowdhury, Advocate for 2nd party.

Judgment Dated 28-04-98.

This is an application under Section 25(1)(B) of the Employment of Labour (Standing Orders) Act, 1965. The case of 1st party Md. Amanatullah is that he was a permanent worker of Amin Jute Miills Ltd., Chittagong under the 2nd party bearing Token No. 10404. He was appointed there as Cope-Winder of Winding Section in Mill No. 2 on 22-2-77.

That on 31-7-93 a letter of charge was issued to him by the Deputy Manager (Labour and Welfare) of Amin Jute Mills Ltd., Alleging that soon after starting of the 'B' Shift on 29-7-93 at 10 A. M. the 1st party standing on the machine called the Departmental Head and rebuked him with filthy language in connection with the engagement of badly workers and at one stage he became furious to assult him and at this many workers assembled there as a result of which the production was hamparred. That in the said letter of charge, he was directed to submit his explanation within serven days as to why disciplineery action shall not be taken against him for committing misconduct within the meaning of Section 17(3) of the Employment of Labour (Standing Orders) Act, 1965.

That, by another letter of the Deputy Manager (Labour and Werlfare), the 1st party was placed under suspension pending enquiry in connection with letter of charge dated 31-7-93.

That the 1st party on receipt of the said letter of charge and order of suspension submitted his explanation to the Management stating that he is sorry for bringing this sort of charges against him and he reaquested the manage ment to exhonerate him from the said charges.

That, there after, the management issued a noticee of enquiry to the 1st party on 9-9-93 directing him to eppear before an enquiry committee on 14-8-93 at 3 P. M. in the Labour Office of the Mills.

That, on receipt of the said notice of enquiry the 1st party attented the enquiry on the said date and time. The enquiry committee closed down the enquiry without examining any independent witness from the Winding Department and in that no guilt of the 1st party was proved by any indefendant witness and that the said enquiry was also perversed one.

That, afterwards, the Deputy Manager (Labour and Welfare) illegally alleging wrongly that the charge brought against him has been proved in the enquiry issued the impugned order of dismissal dated 1-9-93 which was delivered to him on 19-9-93.

That, the 1st party on receipt of the said impugned order of dismissal and having been arrgived with the same, submitted his grievance petition to the 2nd party by registared post on 22-9-93 as required under Section 25(1) (A) of the said Act, stating inter alia that the impugned order of dismissal is illagal, areitialrary, malafide, motivated and vilolative of the provision of Section 18(6) of the said Act,. Further the same is against the principle of naturial justice and as such it has no legal effect. He also requested the 2nd party to withdraw the impugned order of dismissal and to reinstate him in service with back wages.

That, the 2nd party received the said grievance petition of the 1st party But the 2nd party did not deal with the said grievance petition.

Hence, the 1st party has been compleled to file this case.

The 2nd party filed a written statement to contest the case. The 2nd party denied all material allegations and has stated that the case is barred by limitation.

In real facts, he case of the 1st party is that on the basis of specific allegation, a letter of charge, was issued upon the 1st party on 31-7-93 and that he was asked to submit explanation. That the allegation being grave, he was put under suspension by another letter dated 1-8-93. That the 1st party submitted explanation which was not satisfactory. As such, it was decided to holed an enquiry and the 1st party was intimated by a letter dated 9-8-93. The enquiry was conducted according to law and with full opportunity of defenct to the 1st party. That after the enquiry, the committee submitted their report finding the 1st party guillty of the allegation brought against him. There after the 2nd party in consideration of the enquiry report as well as past record of service of the 1st party dismissed him from service vide letter dated 1-9-93. That being so, no illegality was pepetrated upon the 1st party and no illegality was committed in this befhalf. Therefore, the 2nd party prayes for dismissal of the case with cost.

Points for determination s-

1. Is the case barred by limitation ?
2. was the impugned order dated 01-09-93 proper ?

Findings and decisions-

Point No. 1 .-

At the time of hearing, the Ld. Advocate on behalf of the 2nd party submitted that the case is barred by limitation and as such is not maintainable His submission is that the 1st party did not send the grievance petition Exhibit-6 within 15 days as per provision of Section 25(1)(A) of the said Act. So the case is barred by limitation.

In reply the Ld. Advocate representing the 1st party contends that the 1st party on receipt of the dismissal letter dated 01-09-93 Exhibit-5, on 19-09-93 sent the grievance petition dated 22-09-93 Exhibit-6 by registered post with A/D, within 15 days as contempleted under Section 25(1)(A) of the said Act. The Postal Receipt marked as Exhibit-7 and the 2nd party duly received the same by putting signature on the A/D Exhibit-8. Therefore, the contention of the 1st party is that the case is not barred by limitation.

On consideration of the submissions of both the parties as to the maintainability of the case we intend to scrutinise the papers filed by them carefully. It is noticed that the 2nd party did not mention the mode of despatch of the dismissal letter dated 01-09-93 Exhibit5 to the 1st party in the written statement. The dismissal letter Exhibit-5 filed by the 1st party does not contain any bearing about mode of despatch and the upper portion just above the portion of heading of the same seems to be blank which in other words is Plain. The 1st party was put under suspension as per letter dated 01-08-93 Exhibit-2. He was dismissed from service on 01-09-93 Exhibit-5 while the said suspension order dated 01-08-93 was effective, Exhibit-2.Therefore, it is likely that the 1st party would not normally remain present in the mill premises during the tenure of his suspension. In this situation, it woiued have been proper for the 2nd party to send the dismissal letter dated 01-09-93 Exibit-5 to the address of the 1st party under registered post.

The 2nd party did not file office copy of the dismissal letter dated 01-09-93 Exihibit-5 before the court. It is not unlikely that the 2nd party did not produce this important document purposely.

The 1st party sent the grievance petition dated 22-09-93 Exhibit-6 by registered post Exhibit-7 with A!D Exhibit-8 on receipt of dismissal letter dated 01-09-93 Exhibit-5 on 19-09-93 and the 2nd party duly received the same. The 2nd party admits that same vide Exhibit-6. But the 2nd party in accordance with the provision of Section 25(1)(B) of the Act did not send reply of the grivanc petition to the 1st party and thus the 2nd party failed to comply with the provision of Law. Thereafter, the 1st party instituted this case in complisance with Section 25(1)(B) of the Employment of Labour (Standing Orders) Act, 1965, on 31-10-93.

It is a settled principle that the question of limitation needs be proved by the person who raises this aspect. The 2nd party agitated that the case is barred by limitation. But the 2nd party did not adduce any oral or documentary evidence to convince that the 1st party got the dismissal letter dated 01-9-93 Exhibit-6 prior to 19-09-93 as alleged and thereby the case is barred by limitation.

Considering the circumstances as discussed, we are constrained the hold that the case is not barred by limitation and that the case is maintainable. The point No. 1 is replied in the negative.

Point No. 2:

We propose to revart to the merits of the case. The allegation against the 1st party is that soon after starting of the 'B' Shift on 29-7-93 at 10 A,M. the 1st party by standing nearly his machine called the Departmental Head and rebuked him with filthy language in connection with the engagement of badly workers. That at one stage he became furious to asssult him. At this, man workers assembled there and disrupted production. But the Departmental Head (Deputy Managers, Production, Mill No. 2) did not mention in his Departmental notice dated 29-7-93 Exhibit-A that production of the Mill was disrupted due to the misbehaviour of the 1st party. Witness Md. Harun and Tazul Islam also did not say in course of their deposition before the enquiry committee that production of the Mill was disrupted at the time of alleged incident. So the allegation brought against the 1st party in the letter of charge, Exhibit-1 that disruption in the production was caused in addition to some other allegation not established beyond doubt.

The Departmental Head made complaint that the 1st party rebuked him with rustic words, Exhibit-A. On receipt of this Departmental Note, the Deputy Manager (Labour and Welfare) issued letter of charge, Exhibit-B upon the 1st party. It is strange that the at the same time was appointed Chairman of the enquiry committee, vide Exhibit-E. So we come across that officer issuing the letter of charge and the officer heading the enquiry committee was the same person. The person who brings the charge if afterwards submits an enquiry report, the same is not likely to be fair and is supposed to be against thel principle of justice.

The 1st party has stated in his explanation dated 02-08-93 Exhibit-D, in reply to Departmental Notice Exhibit-A, that on 29-7-93 at 10 A, M. at the start of 'B' Shift he found his machine not workable and called his Departmental Head to bring the fact to his notice. At this, the Departmental Head became enraged with him and he (1st party) resumed his duty. Letter on, the machine was not right. He emphatically denied the allegation brought against him. During enquriy, he said that finding his machine disrary, he rebuked his Luck and he did not use uncourteous words with his Departmental Head. It is not understand that why the 1st party would blame his luck at the top of his voice in the Mills premises which he confortably could do silantly if he so disered elsewhere. Virtually form his indirect admisssion that he rebuked his luck, it become clear that he used the alleged language indicating his Depart mental Head and not upon himself . Clause- 'G' of sub-section-3, under section -17 of the Employment of Labour (Standing Orders) Act, 1965 denotes that riotous or disorderly behavior in the shop or commercial or industrial establishment or any act subversive of discipline is a misconduct. In the instant case, from the indirect admission of the 1st party it reveals that the 1st party was engaged in disorderly behaviour with his Departmental Head at the time of alleged occurence and thereby he committed misconduct.

The paper, shows that on the basis of Departmental Note dated 29-7-93 Exhibit-, A, the 1st party submitted his explanation, on 02-8-93 Exhibit-'D' and that pending receipt of his reply he was put under suspension on 01-8-93 ,Exhibit-B, on the following date after issuance of letter of charge, Exibit-C. It is not clear that when the management did not feel necessity to put him under suspension at the time of issurance of letter of charge, why he was put under suspension on the following day pending reicept of his explanation which seems to be unusual.

The Departmental Head stated in his Departmental Note dated 29-7-93, Exhibit-A.. that in the past, the 1st party was warned for his rough behavur, but he did not mend his conduct. In para 11 of the written statement the 2nd party has stated that in consideration of enquiry report as well as the part record of service of the 1st party, it was decided to dismiss him from service. But the and party produced no scrap of paper in token of prvious misconduct of the 1st party althoügh the case was heard on two ocasions on 24-2-98 and 21-4-98 and the 2nd party had the scope to furnish the same, if any, in the meanwhile.

In sub-section 2 of the Employment of Labour (Standing Orders) Act, 1965 there is provision to the effect that any worker found guilty of misconduct but not dismissed under the provisions of sub-section(f) in consideration of any extenuating circumstances may be discharged, or suspended, as a measure of punishment, without wages as well as subsistance allowence, for a period not exceeding seven days and such period may be within or in addition to the period of suspension of the worker for enquiry under sub-section (2) of section 18, if any, or he may be otherwise punishedless severely.

In the instant case the allegation of disorderly behaviour agaisnst the 1st party was established and his previous misconduct was not proved by sdducing oral or documentary evidence as stated earlier. In such circumstances, inflication of severe punushment in the form of dismissal order upon the 1st party was severe and there was alternative way to award him less severe punishement as quoted in the forgoing lines. In other words the dismissal order was harsh.

The views of the the Ld. Members duly considered. They expressed their views unanimously in writing that it was a case of reinstatement in service.

The point is answered in the affirmative. Therefore, the case succeeds Hence it is,

Ordered

that the Complaint Case No. 58/93 be allowed on contest without any orde as to cost. The impugned order of dismissal dated 01-09-93 be set aside. The 2nd party is directed to reinstate the 1st party in service within 30 (thirty) days from the date of passing this order without back wage.

Sd/-
(Md. Abdur Rahman Patwari,)
Chairman,
1st Labour Court, Chittagong.
28-4-98

Complaint Case No. 11/94

Md. Abul Kalam, C/o. Md. Shahjahan,
Lab Assistant, Pylon Industries Limited,
Fouzderhat Industrial Estate, P.O. Jafrabad
Chittagong.—1st party

Veruss

Managing Director,
Golden Bengal Tobacco Co. Ltd.,
Kalirhat, P.O. North Kattali,
Chittagong.—2nd party.

Order no. 14-dated 21-4-98

The court is duly constituted with the following

Mr. Md. Abdur Rahman Patwari,—Chairman.;
Mr. Alhaj Nasiruddin Bahadur,—Member.
Mr. Faiz Ahmed.—Member

The 1st party files hazira and ready for hearing. The 2nd party takes no step and is found absent on repeated calls. The 2nd party was also absent on three consequtive dates. The case is taken up for exparte hearing. The 1st party Md. Abul Kalam is examined on S. A.. The documents filed by the 1st party marked as Exhibits-1, 2, 3 and 4. Heard the Ld.Advocate for the 1st party Perused the complaint petition u/s 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965, the Exhibited documents filed by the 1st party and the case record. The case of the 1st party is proved. Hence it is,

Ordered

That the Complaint Case No. 11/94 be allowed exparte without any cost. That the impugned termination order dated 09-01-94 be hereby set aside and the 2nd party is directed to reinstate the 1st party in his former post and position with back wages and attending benefits within 30 (thrity) days from the date of passing of this order.

Md. Abdur Rahman Patwari,
Chairman, 1st Labour Court,
Chittagong.

Complaint Case No. 15/94

Milan Kanti Barua, S.S. O. (PA-2 Plant),
Production department, T. S. P. Complex Ltd.,
North Patenga, Chittagong.—1st party.

Versus

Managing Director,
T.S.P. Complex Ltd.,
North Patenga, Chittagong—2nd party.

Order no. 30 dated. 1-4-98

The court is duly constituted with the following ;--

Mr. Md. Abdur Rahman Patwari—Chairman.
Mr. K. Gyasuddin,—Member.
Mr. Safar Ali.—Member.

Both the parties are absent and takes no step on repeated calls.

Consulted the Ld. Members. Hence it is,

Ordered

That the Complaint Case No. 15/94 be dismissed for default.

Md. Abdur Rahman Patwari,
Chairman,
1st Labour Court, Chittagong.

Complaint Case No. 31/94

Mogibul Hoq, S/o. Late Aslam,
Vill. Lakhipur, P. o.. Dulkhabazar,
P. s. Nangalcot, Dist. Comilla.—1st party.

Versus

Proprietor,
Kader Sowdagarer Hotel,
Sk. Mujib Road (near Kaideazam Workshop),
Chittagong.—2nd party.

Order no. 30 dated. 28-4-98.

The court is duly constituted as under—

Mr. Md. Abdur Rahman Patwari,—Chairman.
Mr. Alaj Nasiruddun Bahadur,—Member.
Mr. Faiz Ahmed,—Member.

The 1st party files hazira and is ready for hearing,.

Summons upon the 2nd party was duly served. The 2nd party did not turn up to contest the case. No need to wait for the response of the 2nd party. The 1st party Mojibul Haque is examined on S.A. The documents

filed by the 1st party marked as Exhibits. Perused the complaint petition and the exhibited documents along with the case record. The case is proved Hecne it is.,

Ordered

That the Complaint Case No. 31/94 be allowed exparte without cost. That the impugned dismissal order dated 28-5-94 be set aside. The 2nd party is directed to reinstate the 1st party in his service with back wages and attending benefits within 30 (thirty) days from the date of passing of this order

Md. Abdur Rahaman Patwari,
Chairman,
1st Labour Court, Chittagong.

প্রথম শ্রম আদালত, চট্টগ্রাম

অভিযোগ কেস নং ২২/৯৫

আব্দুল কাদের, পিতা আব্দুর রউফ,
গ্রাম-খুশারপাড়, ডাকঘর-অলিপুর,
থানা-লাংগলকোর্ট, জেলা-কুমিল্লা—প্রথম পক্ষ।

বনাম

মালিক,
এ, বি, পি হোটেল এণ্ড বিরানী হাউস,
৩৩, জুবিলী রোড, মেশিনারী মার্কেট,
চট্টগ্রাম—দ্বিতীয় পক্ষ।

উপস্থিত: জনাব মোঃ আব্দুর রহমান পাটোয়ারী,—চেয়ারম্যান।
জনাব আলহাজ নাসির উদ্দিন বাহাদুর,—সদস্য।
জনাব ফয়েজ আহমদ,—সদস্য।

জনাব এ, বি, পোদ্দার, এডভোকেট প্রথম পক্ষে।
জনাব সুখময় চক্রবর্তী, এডভোকেট দ্বিতীয় পক্ষে।

রায় ঘোষণার তারিখ: ২০-৪-১৯৯৮ ইং।

১ম পক্ষের কেস হইল যে তিনি মাসিক মোট ৭০০ টাকা বেতনে গত ২-২-৯২ ইং তারিখে দ্বিতীয় পক্ষের প্রতিষ্ঠানে একজন স্থায়ী শ্রমিক গণ্যে টেবিল বয় হিসাবে চাকুরীতে নিয়োগ প্রাপ্ত হন। ২য় পক্ষের প্রতিষ্ঠানে কোন শ্রমিককে লিখিত নিয়োগ পত্র এবং চাকুরী হইতে ডিসমিস বা টারমিনিট করা হয় না। ১ম পক্ষ সততা, নিষ্ঠা ও আন্তরিকতার সহিত চাকুরী করিতেছিলেন। তাহার বিরুদ্ধে কোন সময়ই অসদাচরনের কোন অভিযোগ আনয়ন করা হয় নাই এবং তাহার চাকুরীর রেকর্ড পরিচ্ছন্ন।

১ম-পক্ষের আরও কেস হইল যে বিগত ১২-৭-৯৫ ইং তারিখ রাত্রে কর্তব্যরত অবস্থায় তিনি অসুস্থ হইয়া পড়েন এবং জ্বরে আক্রান্ত হন। ২য় পক্ষকে মৌখিকভাবে উহা জানাইলে তিনি বিশ্রাম নেওয়ার জন্য তাহাকে বলেন। পরদিন ১৩-৭-৯৫ ইং তারিখে ১ম পক্ষ সুস্থ না হওয়ায় তিনি ১৪-৭-৯৫ ইং তারিখে ডাক্তারের নিকট গেলে ডাক্তার তাহাকে ব্যবস্থাপত্র দেন এবং বিশ্রাম নিতে নির্দেশ দেন। অতঃপর ১ম পক্ষ ডাক্তারী সনদপত্রসহ ১৩-৭-৯৫ ইং তারিখ হইতে ২য় পক্ষের নিকট ছুটির আবেদন করেন। কিন্তু ২য় পক্ষ ছুটির দরখাস্ত গ্রহণ করিতে অস্বীকার করিলে, তিনি উহা রেজিষ্টারীকৃত ডাকযোগে ২য় পক্ষের বরাবরে প্রেরণ করেন। তারপর সুস্থ হইয়া ২৭-৭-৯৫ ইং তারিখে কর্মস্থলে ফিরিয়া আসেন এবং ২৮-৭-৯৫ ইং তারিখে ফিটনেস সার্টিফিকেটসহ ২য় পক্ষের কাছে যোগদান করিতে গেলে ২য় পক্ষ তাহাকে কাজে বহাল রাখিতে অস্বীকার করতঃ ষ্টাফ হাউস হইতে বিছানাপত্রসহ চলিয়া যাইতে বলেন। ১ম পক্ষ এই ধরনের শ্রম আইন বহির্ভূত বেআইনী কার্যকলাপের প্রতিবাদ করিলে ২য় পক্ষ তাহাকে বিভিন্ন প্রকারে হুমকি প্রদান করেন। ১ম পক্ষের চাকুরীতে যোগদান পত্র গ্রহণ করেও বার বার অনুরোধ করা সত্ত্বেও ২য় পক্ষ তাহা গ্রহণ করিতে রাজি না হওয়ায় ১ম পক্ষ উহা রেজিষ্টারী ডাকযোগে প্রেরণ করেন। কিন্তু ২য় পক্ষ গ্রহণ করিতে অস্বীকার করিলে ইহা ফেরত আসে।

ইহাও ১ম পক্ষের কেস হইল যে বিগত ২৮-৭-৯৫ ইং তারিখের কথিত মৌখিক বরখাস্তের আদেশ বেআইনী, অবৈধ এবং ১৯৬৫ সালের শ্রমিক নিয়োগ (স্থায়ী আদেশ) আইনের পরিপন্থী বিধায় রদ ও রহিতযোগ্য। ১ম পক্ষ রেজিষ্টারী ডাকযোগে ৩-৮-৯৫ ইং তারিখে গ্রীভেন্স দরখাস্ত প্রেরণ করেন। ২য় পক্ষ তাহা গ্রহণ না করায় ঐ রেজিষ্টারী পত্র ফেরত আসে। তাই ১ম পক্ষ বাধ্য হইয়া আদালতের আশ্রয় গ্রহণ করিলেন।

২য় একখানা লিখিত জবাব দাখিল করিয়া ১ম পক্ষের মূল দরখাস্তে বর্ণিত অভিযোগ অস্বীকার করেন। প্রকৃত বৃত্তান্তে তাহার কেস হইল যে ১ম পক্ষ ২য় পক্ষের প্রতিষ্ঠানে একজন অস্থায়ী ও অনিয়মিত শ্রমিক ছিলেন। তিনি হোটেলে আগত অতিথি/কাষ্টমারদের সহিত প্রতিনিয়ত খারাপ আচরণ ও দুর্ব্যবহার করিতেন। আবার অনেক সময়ে ১ম পক্ষের বিরুদ্ধে ২য় পক্ষের নিকট মৌখিক অভিযোগ করিতেন। এই ব্যাপারে ২য় পক্ষ ১ম পক্ষকে ৭/৮ বার মৌখিকভাবে সতর্ক করিয়া দেয়। ১ম পক্ষ কাষ্টমারের সহিত আর দুর্ব্যবহার করিবেন না মর্মে পুনঃ পুনঃ মৌখিক ওয়াদা করেন এবং ২য় পক্ষের কাছে মাফ চাহেন। কিন্তু ১ম পক্ষ ওয়াদা ভংগ করিয়া কাষ্টমারদের সহিত এবং এমনকি প্রতিষ্ঠানের ম্যানেজার ও মালিকের সাথে দুর্ব্যবহার করিতে থাকেন। ইহাতে ১ম পক্ষের প্রতিষ্ঠানের যথেষ্ট সুনাম ক্ষুন্ন হয় এবং ২য় পক্ষসমূহ আর্থিক ক্ষতির সম্মুখীন হন। এক পর্যায়ে ১ম পক্ষ ২য় পক্ষের লিখিত/মৌখিক অনুমতি ব্যতিরেকে গত ১২-৭-৯৫ ইং তারিখে চলিয়া যান এবং ২৮-৭-৯৫ ইং তারিখে ফিরিয়া আসিয়া মৌখিকভাবে কাজে যোগদানের অনুমতি চান। ১ম পক্ষ "এতদিন কোথায় ছিলেন" ২য় পক্ষ জিজ্ঞাসা করিলে, ১ম পক্ষ অত্যন্ত ক্ষেপিয়া যান এবং তাহাকে বিনা শর্তে যোগদানের অনুমতি চান। ১ম পক্ষের দুর্ব্যবহারের কারণে ২য় পক্ষ নিরুপায় হইয়া তাহাকে কাজে যোগদানের অনুমতি না দিয়া ১৯৬৫ সালের শ্রমিক নিয়োগ (স্থায়ী আদেশ) আইনের ১৯ ধারা মতে চাকুরী হইতে টারমিনেশন করেন।

২য় পক্ষ লিখিত জবাবে বলিয়াছেন যে ১ম পক্ষ অধিক বেতনে অন্যত্র চাকুরীর আশায় ১২-৭-৯৫ ইং তারিখে বিনানুমতিতে ও বেআইনীভাবে চলিয়া যায় এবং অন্যত্র চাকুরী না পাইয়া ২৮-৭-৯৫ ইং তারিখে পুনরায় ফিরিয়া আসিয়া চাকুরীতে যোগদানের উদ্দেশ্যে ২য় পক্ষের ম্যানেজারের সহিত দুর্ব্যবহার করেন। একই রকম অপরাধের কারণে অনুরূপভাবে আউয়াল নামের অন্য একজন শ্রমিককে টারমিনেশন করা হইলে সে পাওনা নিয়া বিদায় হইয়া যায়। অপরদিকে ১ম পক্ষ এই মামলা দায়ের করে।

২য় পক্ষ ন্যায় বিচারের স্বার্থে ১ম পক্ষের মামলা সদয় ডিসমিস করার জন্য প্রার্থনা প্রার্থনা জানান।

বিবেচনার বিষয়

১ম পক্ষ প্রার্থীত মতে চাকুরীতে পুনঃ বহাল আদেশ পাইতে পারেন কি না ?

আলোচনা ও সিদ্ধান্ত

ইহা স্বীকৃত যে ১ম পক্ষ আব্দুল কাদের, মালিক, এ, বি, পি হোটেল এণ্ড রিরানী হাউস, ৩০, জুবিলী রোড, মেশিনারী মার্কেট, চট্টগ্রাম এর অধীনে একজন টেবিল বয় হিসাবে চাকুরীরত ছিলেন। ১ম পক্ষ দাবী করেন যে তিনি স্থায়ী শ্রমিক ছিলেন। ২য় পক্ষ সুনির্দিষ্টভাবে লিখিত জবাবে উহা অস্বীকার করেন নাই। ১ম পক্ষ আরও দাবী করেন যে ২য় পক্ষের প্রতিষ্ঠানে কোন শ্রমিককে লিখিত নিয়োগপত্র এবং চাকুরী হইতে ডিসমিস বা টারমিনেশন পত্র প্রদান করা হয় না। ২য় পক্ষ ইহাও লিখিত জবাবে সুস্পষ্টভাবে অস্বীকার করেন নাই।

১ম পক্ষের বক্তব্য এই যে তিনি ২য় পক্ষের জ্ঞাতসারে অসুস্থতার কারণে ১৩-৭-৯৫ ইং তারিখ হইতে ২৭-৭-৯৫ ইং তারিখ পর্যন্ত ছুটিতে ছিলেন এবং ২৮-৭-৯৫ ইং তারিখে কর্মস্থলে নিজ পদে যোগদান করিতে গেলে ২য় পক্ষ তাহাকে কাজে বহাল করিতে অস্বীকার করে এবং বেআইনীভাবে মৌখিকভাবে চাকুরী হইতে বরখাস্ত আদেশ দেয়। তিনি রেজিষ্টারী ডাকযোগে গ্রীভান্স দরখাস্ত প্রেরণ করেন। কিন্তু ২য় পক্ষ গ্রীভান্স দরখাস্ত গ্রহণ করেন নাই। ১ম পক্ষ তাহার দাবীর সপক্ষে সংশ্লিষ্ট কাগজপত্র দাখিল করিয়াছেন।

পাল্টাভাবে ২য় পক্ষ অভিযোগ করেন যে ১ম পক্ষ কাষ্টমারদের সহিত দুর্ব্যবহার করিত। ইহার ফলে কাষ্টমারগণ হোটেল হইতে চলিয়া যাইত এবং কোন কোন সময়ে তাহার নিকট অভিযোগ করিত। তিনি ১ম পক্ষকে সতর্ক করিয়াছিলেন। কিন্তু তাহার স্বভাব পরিবর্তন হয় নাই। তিনি অন্যত্র বেশী টাকা বেতনে চাকুরী খোঁজার জন্য চলিয়া যান এবং কোথায়ও চাকুরী না পাইয়া ফিরিয়া আসেন।

শুনানীকালে ২য় পক্ষে নিযুক্তীয় বিজ্ঞ কৌশলী নিবেদন করেন যে, একই অপরাধের জন্য আউয়াল নামের অন্য একজন শ্রমিককে অনুরূপভাবে চাকুরী হইতে টারমিনেশন করা হইয়াছিল সে পাওনা নিয়া বিদায় হইয়া যায়। তিনি আরও নিবেদন করেন যে ১ম পক্ষ টারমিনেশন বেনিফিট চাহিলে ২য় পক্ষ উহা পরিশোধ করিয়া দিতে প্রস্তুত আছেন। ১ম পক্ষে নিযুক্তীয় কৌশলী জবাবে বলেন যে, যদি ২য় পক্ষ টারমিনেশন বেনিফিট প্রদান করেন তাহা হইলে ১ম পক্ষ উহা বুঝিয়া নিতে রাজি আছে।

এই ব্যাপারে কোন দ্বিমত নাই যে ২য় পক্ষ ব্যক্তি মালিকানাধীন একটি হোটেল। ২য় পক্ষের বক্তব্য হইল যে ১ম পক্ষের কাষ্টমার সার্ভিস সন্তোষজনক নহে। তাহার কারণে ২য় পক্ষের প্রতিষ্ঠানের সুনাম ক্ষুন্ন হয়। তাই তিনি ১ম পক্ষকে চাকুরী হইতে টারমিনেশন আদেশ প্রদান করিয়াছেন। যেহেতু ১ম পক্ষের প্রতি ২য় পক্ষ সন্তুষ্ট নহে, এইক্ষেত্রে ১ম পক্ষকে চাকুরীতে পুনঃবহাল করার আদেশ দেওয়া যুক্তি সংগত হইবে বলিয়া মনে হয় না। তবে ১ম পক্ষ একজন স্থায়ী শ্রমিক ছিলেন বিধায় ২য় পক্ষের দায়িত্ব হইল বিধি মোতাবেক ১ম পক্ষকে টারমিনেশন বেনিফিট প্রদান করা হয়। ২য় পক্ষে নিযুক্তীয় বিজ্ঞ কৌশলী এই বিষয়ে একমত পোষন করিয়াছেন।

বিজ্ঞ সদস্যগণের সহিত আলোচনা করা হইল। অতএব,

আদেশ এই যে

অত্র অভিযোগ কেস নং-২২/৯৫ দো তরফা সূত্রে খরচসহ আংশিক মঞ্জুর করা হইল। ১ম পক্ষকে চাকুরীতে পুনঃবহাল করার প্রার্থনা নাকচ করা গেল। তাহাকে বিধি মোতাবেক টারমিনেশন বেনিফিট এই আদেশের ৩০ (ত্রিশ) দিবসের মধ্যে পরিশোধ করার নিমিত্ত ২য় পক্ষকে নির্দেশ দেওয়া গেল।

মোঃ আব্দুর রহমান পাটোয়ারী
চেয়ারম্যান,
১ম শ্রম আদালত, চট্টগ্রাম।

Complaint Case No. 24/95

Md. Shah Alam,
S/o. Late Abdul Latif,
Vill. Khandakia, P. O. Younusnagar,
P.S. Hathajari, Dist. Chittagong.—1st party.

Versus

General Manager,
Amin Jute Mills Ltd.,
Sholashahar, Chittagong —2nd party.

Present : Mr. Md. Abdur Rahman Patwari, — Chairman.
Mr. Alhaj Nasir Uddin Bahadur } Members,
Mr. Faiz Ahmed, }

Mr. A. B. Poddar, Advocate for 1st party.
Mr. A. K. M. Mohsinuddin Ahmed Chowdhury, Advocate for 2nd party

Judgement-Dated, 21-04-98.

The case of 1st party Md. Shah Alam is that he was a permanent worker having Token No. 3397 and Pass No. 17021 of Amin Jute Mills Ltd., and was appointed on 9-2-76 in the Weaving Section of Mill No. 1. That he was a skilled weaver and his service of records was clean. That Amin Patkal Sramik Union bearing registration no. 980 is a unit of Jatiya Sramik Federation which was CBA from 1985 to 1992 of the second Amin Jute Mills Ltd. That the 1st party was the Assistant General Secretary of Amin Patkal Sramik Union and the said union is not the CBA at present. That although Amin Patkal Sramik Union is not the CBA, yet they are engaged in ventilating the claims and grievance of the workers of the Mill and the 1st party was an active member of the union. That the second party put pressure upon the 1st party so that he severes his connection with the union activities. But the 1st party refused to yield to the pressure of the management and for the said reason the second party was annoyed with the 1st party.

The further case of the 1st party is that the second party terminated him from his permanent job by a letter on 13-8-95 which was illegal and against the provision of Employment of Labour (Standing Orders) Act, 1965.

The second party filed a written statement to contest the case denying the allegations of the 1st party. The specific case of the second party is that the service of the 1st party was terminated by a letter dated 13-8-95 which was a termination simplicitor.

The further case of the second party is that the allegation of the 1st party that he was victimised for trade union activities is not true. That as the 1st party is not associated with the CBA, so the question of ventilating any right or grievance of the workers of the Mill do not arise. That although the 1st party was terminated under Section 19(1) of the Employment of Labour (Standing Orders) Act, 1965 and his termination is not related with his past record of service according to the second party, yet it was added by the second party that the service record of the 1st party was blomised. It is also the case of the 2nd party that the service of the 1st party was terminated as per provision of law and he was not victimised for trade union activities.

Under the facts and circumstances the 1st party prayed for dismissal of the case with costs.

Points for determination are :

1. Whether the case is maintainable ?
2. Whether the alleged termination of the services of the 1st party was a victimisation for trade union activities ?

Findings and decision :

We intend to pick up both the points together for the sake of convenience and brevity of discussions. Heard the Ld. Advocate for both the parties and perused the case record.

The 1st party on receipt of the letter of termination dated 13-8-95 Exhibit-1 submitted a grievance petition under Section 25(1)(A) of the Employment of Labour (Standing Orders) Act, 1965 by registered post with A/D Exhibit-2. The second party received the said grievance petition on 27-4-95 vide Aoknowledgement Due, Exhibit-4. But the second party issued no reply thereto. So it is apparent that the second party has failed to comply with the provision of Section 25(1)(B) of the Employment of Labour (Standing Orders) Act, 1965. The 1st party brought the case on the allegation that his service was terminated for trade union activities which is a matter of scrutiny. Hence the case case appears to be maintainable.

The Ld. Members representing the worker side and the Ld. Members on behalf of the employers side submitted their opinion in writing and recommended reinstatement of the 1st party in service on the gruond that the termination was a victimisation for trade union activities.

The 1st party claims that he was the Assistant General Secretary of Amin Patkal Sramik Union which was a CBA from 1985 to 1992 and the said union for the present although is not the CBA, yet they are engaged in ventilating the grievances of the workers of the jute Mills as active members of the union and as such the second party put pressure upon him to severe connection with the union activities. But as he did not yield to their pressure, the second party was annoyed with him and terminated his service for trade union activities for victimisation.

It is not denied by the second party as to the membership of the 1st party with Amin Patkal Sramik Union. The 1st party filed election results dated 12-8-94 Exhibit-5 issued by the Chairman, Election Sub-committee which reveals that the name of the 1st party stands under serial No.-8 as successful candidates and he was elected as Assistant General Secretary in the election to represent as CBA of Amin Jute Mills, Ltd. Beside as he was an active member of Amin Patkal Sramik Union, it is not unlikely that he played the role as unionist to ventilate the grievances of the general workers of the Mills.

The Ld. Advocate on behalf of the 1st party referred to the decision arrieved at, in Writ Petition No. 480/78 in the case M/s. Sattar Match Works versus the Chairman, Labour Court, Chittagong wherein it was held by their Lordship that the management was obliged to explain as to what cause led to terminate the service of a trade union officer after two months of his election to the office of the union. Their Lordship further held that ordinarily the management is not required to give any reason for termination of the service of any employee but when it is alleged that for trade union activities the services have been terminated, the employer is then obliged to explain the situation leading to the termination of the service of an office bearer.

In the present case, the 1st party asserts that he was an Assistant General Secretary of Amin Patkal Sramik Union which was a CBA and he is also an activist in the matter of ventilating the grievances of the workers as member of a trade union. But as the management was annoyed with him, his service were terminated for victimisation. To substantiate his assertion, the 1st partys furnished an attested copy of a judgement dated 30-6-97 Exhibit-6, delivered in other suit No. 90/96 by the Ld. Sub-ordinate Judge, 3rd Court, Chittagong which was instituted by one Nur Mohammad @ Nurul Amin on the allegation that he was retired by the management of Amin Jute Mills Ltd., Chittagong from service on the contention that he reached at the age of 60 years for retirement although he was in fact 50 years old. In his judgement the Ld. Sub-ordinate Judge observed that the plaintiff Nur Mohammad @ Nurul Amin as per evidences on record was 50 years old at the time of purported retirement but his age was shown as 60 years by Amin Jute Mills Authority to make him seapegoat for trade union activities. The Ld. Advocate on behalf of the 1st party while concluding his submission has stated that similar is the position of the 1st party of this case. In reply the Ld. Advocate representing the second party contended that the 1st party did not mention a single word about the institution of other suit No. 90/96 by Nur Mohammad @ Nurul Amin in the Court of 3rd Sub ordinate Judge, Chittagong and anything about the result of that suit in the original petition and as such he can not refer the same in this case.

We observed that the 1st party filed the instant case in the year 1995 and, therefore, insertion of avarement about other suit No. 90/97 and about the judgement dated 30-6-97 delivered thereon does not arise. The Ld. Advocate on behalf of the 1st party submits that the judgement passed in other suit No. 90/97 was relevant in this case and there is no bar to refer the same as a piece of documentary evidence. We find no reasonable ground to differ with him.

The second party has stated in the written statement that the 1st party was terminated under Section 19(1) of the Employment of Labour (Standing Orders) Act, 1965 and although his termination is not related with his part record of service, yet the second party had to mention that the service record of the 1st party was blemished. The papers produced by the second party have been marked as Exhibit-A, B, ,C, D, E, F and G. As the second party admits that the past record of service of the 1st party is not related with his termination under Section 19(1) of the Employment of Labour (Standing Orders) Act, 1965, those papers need not be discussed in the context of the instant case.

Under the facts and circumastances and in the light of foregoing discussions, we are constrained to agree with the views of the Ld. Members that the termination of service of the 1st party was not a termination simpliciter, rather a victimisation for the trade union activities and as such the impugned termination of service is liable to be set aside and the 1st party reinstated in his service.

The points are disposed of, in the affirmative. Hence it is,

Ordered

that the complaint Case No. 24/95 be allowed on contest without any order as to cost against the second party. The order of terminatinon be set aside and the 1st party be reinstated in service with 15% (fifteen percent) back wages and other attending benefits. The percentage of his back wages should be calculated at the rate of wages the 1st party received on the month preceeding to the month of his termination. The second party is directed to implement this order within 45 (forty five) days from this date.

Md. Abdur Rahman Patwari.
Chairman, 1st Labour Court
Chittagong.

Complaint Case No. 16/96

Joynal Abedin, Polish Mistry (Terminated),
Bengal Alluminium Works, 282/A, Sholakbahar,
P.O Chowkbazar, Chittagong.—1st party.

Versus

Proprietor,
Bengal Alluminium Works,
282/A, Shoakbahar, P.O.
Chawkbazar, Dist. Chittagong. 2nd—party.

Order No. 34 dated 29-4-98

The court is duly constituted as under :—

Mr. Md. Abdur Rahman Patwari, Chairman;
Mr. Alhaj Nasiruddin Bahadur } Membes.
Mr. Faiz Ahmed }

To-day is fixed for exparte hearing of the case. The Ld. engaged Lawyer db filing a petition in formed the court that the 1st party Joynal Abedin is dead. So the case can not continue.

Consulted the Ld. Members. Hence it is,

Ordered

That the Complaint Case No. 16/95 be dismissed as the 1st party is no longer alive.

Md. Abdur Rahman Patwari,
Chairman, 1st Labour Court,
Chittagong.

Complaint Case No. 37/96

Bejya Das, W/o. Shankar Das, Operator,
Arrow Fashion Pvt. Ltd. and Member,
Arrow Fashion Graments Sramik Karmachari Union,
Regd. No. Chatta-1110,, 82/83, Sadarghat Road, P.S.
Kotwali, Dist. Chittagong. 1st party.

Versus

Sk. Abdul Momin Mintu, S/o, Late Abdul Khaleque,
Managing Director, Arrow Fashion Pvt. Ltd.,
Factory-82/83, Sadarghat Road, P.s.-Kotwali,
Dist. Chittag,ong, Head Office-Ziban Bima Bhavan,
Jublee Road P.S. Kotwali, Dist. Chittagong—2nd party.

Order No. 18 dated. 23-4-98

The court is duly constituted as under :-

Mr. Md. Abdur Rahman Patwari — Chairman.;
Mr. Alhaj Nasiruddin Bahadur, } Members.
Mr. Faiz Ahmed, }

The case is put up to-day. The petition dated 18-12-97 filed by the 1st party is taken up for hearing. In this petition, the 1st party has stated that both the parties resolved their dispute out of the court and as such the 1st party does not like to proceed with the case.

Consulted the Ld. Members.

The prayer is allowed. Hence it is,

Ordered

That the 1st party be permitted to withdraw the case as sought for.

Md. Abdur Rahman Patwari,
Chairman, 1st Labor Cort,
Chittagong. ;

IN THE 1ST LABOUR COURT AT CHITTAGONG

Complaint cast Noe 38/96
Babi Das, W/o. Dulal Das, Operator,
Arrow Fashion Pvt. Ltd. and Member,
Arrow Fashion Garments Sramik Karmachari Union,
Regd. No. Chatta-1110, 82/83, Sadarghat Road,
P.S. Kotwali, Dist. Chittagong.—1st party.

Versus

Sk. Abdul Momin Mintu, S/o. Late Abdul Khaleque,
Managing Director, Arrow Fashion Pvt. Ltd.,
Factory-82/83, Sadarghat Road, P.S. Kotwali,
Dist. Chittagong, Head Office;Ziban Bima Bhavan,
Jublee Road, P.S. Kotwali, Dist. Chittagong.—2nd party.

Order No. 19 dated. 1-4-98

The court is duly constituted with the following :

Mr. Md. Abdur Rahman Patwari,; — Chairman.;
Mr. K. Gyasuddin,; } Members.
Mr. Safar Ali, }

The petition dated 18-1-98 filed by the 1st party for withdrawal the case is taken up for hearing and order.

Heard. Seen the withdrwal petition dated 18-01-98 and perused se the ca tition.

Consulted the views of the Ld. Members.

The prayer is allowed Hence it is,

Ordered

That the 1st party be permitted to withdraw the case as souhgt for.

Md. Abdur Rahman Pawtari,
Chairman, 1st Labour Court,
Chittaagong..

IN THe 1ST LABOUR COURT AT CHITTAGONG
Complaint Case No. 50/96.

Suma Das, S/o. Upendra Das, Helper,
Arrow Fashion Pvt. Ltd. and Member,
Arrow Fashion Garments Sramik Karmachari Union,
Regd. No. Chatta-1110, 82/83, Sadarghat Road,
P.S. Kotwali, Dist. Chittagong—1st party.

Versus

Sk. Abdul Momin Mintu, S/o. Late Abdul Khaleque,
Managing Director, Arrow Fashion Pvt. Ltd.,
Factory-82/83, Sadarghat Road, P.S. Kotwali,
Dist. Chittagong, Head Office;Ziban Bima Bhavan,
Jublee Road, P.S. Kotwali, Dist. Chittagong—2nd Party.

Order No. 17 dated. 27-4-98

The court is duly constituted as under :-

Mr. Md. Abdur Rahman Patwari,— Chairman.
Mr. Alhaj Nasiruddin Bahadur, } Members.
Mr. Faiz Ahmed, }

The record is taken up for hearing the petition dated 14-12-97 filed by the 1st party. In this petition the 1st party has stated that the parties amicably settled the dispute out of the court. As such she is no more interested with the case. So she wants to withdraw the case.

Consulted the Ld. Members.

The prayer is allowed. Hence it is,

Ordered

That the case be withdrawn as sought for.

Md. Abdur Rahman Patwari,
Chairman, 1st Labour Court,
Chittagong.;

IN THE IST LABOUR COURT AT CHITTAGONG
Complaint Case No. 76/96

Lakhmi Barua, S/o. Ragunath Barua, Operator,
Arrow Fashion Pvt. Ltd. and Member,
Arrow Fashion Garments Sramik Karmachari Union,
Regd. No. Chatta-1110, 82/83, Sadarghat Road, P.S.
Kotwali, Dist. Chittagong.—1st party.

Versus

Sk. Abdul Momin Mintu, S/o. Late Abdul Khaleque,
Managing Director, Arrow Fashion Pvt. Ltd.,
Factory-82/83, Sadarghtat Road, P.s. Kotwali,
Dist. Chittagong, Head Office;Ziban Bima Bhavan,
Jubloo Road, P.S. Kotwali, Dist. Chittagong.—2nd party.

Order no. 22 dated. 27-4-98

The court is duly constituted as under :

Mr. Md. Abdur Rahman Patwari, — Chairman.;
Mr. Alhaj Nasiruddin Bahadur, } Members.
Mr. Faiz Ahmed, }

The petition dated 18-12-97 filed by the 1st party is taken up for hearing. In this petition, the 1st party has stated that the dispute so long existing between the parties was resolved out of the court amicably. So she does not want to continue with the case any more.

Consulted the Ld. Members.

The prayer is allowed. Hence it is,

Ordered

That the case be withdrawn as sought for.

Md. Abdur Rahman Patwari,
Chairman, 1st Labour Court,
Chittagong.

প্রথম শ্রম আদালত, চট্টগ্রাম।
অভিযোগ মামলা নং-১০০/৯৬

মিনু দাশ,
প্রযত্নে-গৌরী ভট্টাচার্য্য,
৪৯ নং হেম সেন লেইন,
আশকার দীঘির পশ্চিম পাড়, চট্টগ্রাম—প্রথম পক্ষ।

বনাম

এভারেষ্ট কেমিক্যাল ইণ্ডাষ্ট্রীজ লিঃ,
২০৬, সৈয়দ আহমদ চৌধুরী রোড,
জুবিলী রোড, চট্টগ্রাম—দ্বিতীয় পক্ষ।

সম্মুখে: জনাব মোঃ আব্দুর রহমান পাটোয়ারী—চেয়ারম্যান।
জনাব আলহাজ্ব নাসির উদ্দিন বাহাদুর-
জনাব সফর আলী, } সদস্য

জনাব আশিষ কুমার দত্ত, এডভোকেট, প্রথম পক্ষে।

জনাব সুধময় চক্রবর্তী, এডভোকেট, দ্বিতীয় পক্ষে।

রায়-তারিখ, ৫-৪-৯৮ ইং।

সংক্ষেপে প্রথম পক্ষ মিনু দাস এর কেস হইল যে তিনি দ্বিতীয় পক্ষের অধীনে একজন স্থায়ী শ্রমিক এবং দ্বিতীয় পক্ষ প্রতিষ্ঠান এভারেষ্ট ক্যামিকেল ইণ্ডাষ্ট্রীজ লিঃ শ্রমিক কর্মচারী ইউনিয়ন রেজিষ্ট্রেশন নং-চট্-১৪৭২ (সিবিএ) এর একজন সক্রিয় সদস্য। তিনি দ্বিতীয় পক্ষ প্রতিষ্ঠানে বিগত ৯-৬-৯০ ইং তারিখ ফিলিং বিভাগে অপারেটর হিসাবে যোগদান করেন এবং তাহার সর্বশেষ মাসিক বেতন মোট ১,৭২২.৭৫ টাকা ছিল।

প্রথম পক্ষ সিবিএ-এর সক্রিয় সদস্য হিসাবে তাহার বৈধ কর্তব্য সম্পাদন কালে বিগত ২৭-৬-৯৫ ইং তারিখে ৭ দফা দাবী নামা পেশ করে। কিন্তু দ্বিতীয় পক্ষের অনমনীয়তার কারণে দ্বিপাক্ষিক ও ত্রি পাক্ষিক শালিশী কার্যক্রম ব্যর্থ হইলে আইন ও বিধি মোতাবেক গণভোটের মাধ্যমে দাবী আদায়ের জন্য ধর্মঘটে যাওয়ার সিদ্ধান্ত গ্রহণ করার ব্যাপারে সক্রিয় ভূমিকা গ্রহণ করাতে দ্বিতীয় পক্ষ ক্ষুব্ধ হইয়া প্রথম পক্ষকে তাহার স্থায়ী চাকুরী হইতে অপসারণের ষড়যন্ত্রে লিপ্ত থাকে।

প্রথম পক্ষের আরও কেস হইল যে উত্থাপিত ৭ দফা দাবী নামার প্রেক্ষিতে দ্বিপাক্ষিক ও ত্রিপাক্ষিক শালিশী বৈঠক ব্যর্থ হওয়ার পর প্রথম পক্ষ ও অন্যান্য সকল শ্রমিক/কর্মচারীগণ আইন মোতাবেক গোপন ব্যালটের মাধ্যমে ধর্মঘটের সিদ্ধান্ত গ্রহণ করিয়াছে জানিতে পারিয়া শ্রমিক কর্মচারীদের বৈধ ট্রেড ইউনিয়ন কার্যক্রম বন্ধ করার কুমানসে লে-অফ এর ছদ্মাবরনে বিগত ২২-৭-৯৬ ইং তারিখ হইতে বেআইনীভাবে লক-আউট ঘোষণা করেন। উক্ত লে-অফের বিরুদ্ধে প্রথম পক্ষ এবং অন্যান্য সিবিএ নেতৃবৃন্দ সহ সকল শ্রমিক/কর্মচারীগণ প্রথম শ্রম আদালত, চট্টগ্রামে আই, আর, ও মামলা নং-৩৪/৯৬ রুজু করে এবং তৎপর দ্বিতীয় পক্ষ বেআইনীভাবে প্রথম পক্ষকে স্থায়ী চাকুরী হইতে বরখাস্ত করার জন্য সুযোগ খুঁজিতে থাকে।

প্রথম পক্ষের ইহাও কেস হইল যে প্রথম পক্ষ এবং অন্যান্য শ্রমিক কর্মচারীগণ ও দ্বিতীয় পক্ষ এবং চট্টগ্রাম সিটি কর্পোরেশন এর মেয়র মহোদয় এবং ডেপুটি ইনস্পেক্টর অব ফ্যাক্টরীজ এণ্ড এষ্টাব্লিশমেন্ট, চট্টগ্রাম এর উপস্থিতিতে বিগত ৩০-৯-৯৬ ইং তারিখে যে সভা অনুষ্ঠিত হয় উক্ত সভায় লক আউটের ছদ্মাবরনে যে লে-অফ ঘোষণা করা হইয়াছিল, উহা পর্যায়ক্রমে প্রত্যাহার করিয়া নেওয়ার ঘোষণা দেওয়া হয়। কিন্তু ইত্যবসরে দ্বিতীয় পক্ষ কারসাজীমূলক-ভাবে বিগত ২১-৯-৯৬ ইং তারিখে প্রথম পক্ষকে চাকরী হইতে বরখাস্ত করে।

প্রথম পক্ষের কেস হইল যে তিনি বিগত ৮-১০-৯৬ ইং তারিখে উল্লেখিত বরখাস্ত আদেশ প্রাপ্ত হইয়া বিগত ২১-১০-৯৬ ইং তারিখে বাংলাদেশ শ্রমিক নিয়োগ (স্থায়ী আদেশ) আইন, ১৯৬৫ এর ২৫(১)(ক) ধারা মোতাবেক একখানা প্রীভেন্স দরখাস্ত রেজিষ্টারীকৃত ডাকযোগে দ্বিতীয় পক্ষের বরাবরে প্রেরণ করিয়াছেন। দ্বিতীয় পক্ষ উক্ত প্রীভেন্স দরখাস্ত বিগত ২১-১০-৯৬ ইং তারিখে পাওয়ার পর বিগত ২৬-১০-৯৬ ইং তারিখে প্রথম পক্ষকে রেজিষ্টারী ডাকযোগে জানান যে বর্ণিত প্রীভেন্স দরখাস্তখানা গ্রহণযোগ্য নহে। এমতাবস্থায় প্রথম পক্ষ অনন্যোপায় হইয়া দ্বিতীয় পক্ষ কর্তৃক ইস্যুকৃত গত ২৮-৯-৯৬ ইং তারিখের বরখাস্তপত্র প্রত্যাহারপূর্ব পূর্ণ বকেয়া বেতন ভাতাসহ চাকুরীতে পুনর্বহাল করার জন্য বাংলাদেশ শ্রমিক নিয়োগ (স্থায়ী আদেশ) আইন, ১৯৬৫ এর ২৫(১)(খ) ধারা মোতাবেক অত্র মামলা দায়ের করিলেন।

দ্বিতীয় পক্ষ একখানা লিখিত জবাব দাখিল পূর্বক উল্লেখ করেন যে দ্বিতীয় পক্ষ স্পষ্টতঃ যাহা স্বীকার করিলেন, তাহা ব্যতীত প্রথম পক্ষের আরজির যাবতীয় উক্তি মিথ্যা, উদ্দেশ্যে প্রনোদিত ও হয়রানীমূলক হয়।

প্রকৃত বৃত্তান্তে দ্বিতীয় পক্ষের কেস হইল যে প্রথম পক্ষ দ্বিতীয় পক্ষ প্রতিষ্ঠানটি ধ্বংস করার লক্ষ্যে নানান ষড়যন্ত্র ও অপকর্ম শুরু করে। অতঃপর প্রয়োজনের অতিরিক্ত হওয়ায় দ্বিতীয় পক্ষ আইন সম্মত ভাবে প্রথম পক্ষকে গত ২৮-৯-৯৬ ইং তারিখে চাকুরী হইতে ছাঁটাই করেন। প্রথম পক্ষসহ তাহার অপরাপর সহযোগীরা দ্বিতীয় পক্ষ প্রতিষ্ঠানটির বিরুদ্ধে মেয়র মহোদয়, চট্টগ্রাম বরাবরে অভিযোগ জানায়। তৎপ্রেক্ষিতে মেয়র মহোদয় দ্বিতীয় পক্ষ প্রতিষ্ঠানের বিরুদ্ধে বিবিধ অভিযোগ আনিয়া বিভিন্ন কর্তৃপক্ষের নিকট তাহা প্রেরণ করেন। এইরূপ অভিযোগ পাইয়া চট্টগ্রামস্থ পরিবেশ অধিদপ্তর স্মারক নং-পঅ/চবি/কাঃ বোঃ (অভিযোগ)-৪৩৮/৯৬/৬৩৮৮ তারিখ ২-১১-৯৬ ইং মাধ্যমে কোনরূপ কারণ ছাড়াই দ্বিতীয় পক্ষ প্রতিষ্ঠানটি বন্ধ করিয়া দেন। তাই প্রথম পক্ষ কর্তৃক আনিত মামলাটি অত্র আকারে ও প্রকারে চলিতে পারে না।

দ্বিতীয় পক্ষের লিখিত জবাবের আরও কেস হইল যে প্রথম পক্ষ ও তাহার সহযোগীরা দ্বিতীয় পক্ষ প্রতিষ্ঠানটি বন্ধ ও ধ্বংস করিয়াছে এবং প্রথম পক্ষ প্রার্থীত প্রকারে কোন প্রতিকার পাইতে পারে না।

কাজেই দ্বিতীয় পক্ষ অত্র মামলা খারিজ করার নিমিত্ত প্রার্থনা করেন।

বিবেচ্য বিষয়

১। প্রথম পক্ষ দ্বিতীয় পক্ষ প্রতিষ্ঠানে একজন শ্রমিক ছিলেন কি?
২। প্রথম পক্ষ প্রার্থীত মতে প্রতিকার পাইতে পারেন কি?

আলোচনা ও সিদ্ধান্ত

প্রথম পক্ষ দাবী করেন যে তিনি বিগত ৯-৬-৯০ ইং তারিখ হইতে দ্বিতীয় পক্ষ প্রতিষ্ঠানে একজন স্থায়ী শ্রমিক হিসাবে কাজ করিয়া আসিতেছিলেন। প্রথম পক্ষ দ্বিতীয় পক্ষ প্রতিষ্ঠানে একজন স্থায়ী শ্রমিক ছিল না ইহা দ্বিতীয় পক্ষ লিখিত জবাবের কোথায়ও সুনির্দিষ্টভাবে অস্বীকার করেন নাই। বরং প্রদর্শনী চিহ্ন-১ পরিদৃষ্টে লক্ষ্য করা যায় যে দ্বিতীয় পক্ষ

প্রথম পক্ষকে ছাটাই করার সময়ে নিজ প্রতিষ্ঠানের একজন শ্রমিক স্বীকার করিয়া চাকুরী হইতে ছাটাই করিয়াছেন। সুতরাং ইহা ধরিয়া লওয়া যায় যে প্রথম পক্ষ দ্বিতীয় পক্ষ প্রতিষ্ঠানে একজন স্থায়ী শ্রমিক ছিলেন।

প্রথম পক্ষের অভিযোগ হইল যে তিনি দ্বিতীয় পক্ষ প্রতিষ্ঠানে শ্রমিক কর্মচারী ইউনিয়নের (সিবিএ) একজন সক্রিয় সদস্য ছিলেন। তিনি এবং ইউনিয়নের অন্যান্য নেতৃবৃন্দ দ্বিতীয় পক্ষ প্রতিষ্ঠানের বরাবরে সাত দফা দাবী নামা উপস্থাপন করেন। দ্বিতীয় পক্ষ উক্ত দাবী-নামা গ্রহণ করেন নাই। পাল্টাভাবে তিনি কারখানাটি লে-অফ ছাপ্পরণে লক আউট ঘোষণা করেন এবং তাহাকে উহ্য শ্রমিক গণ্যে চাকুরী হইতে ছাটাই নাম উল্লেখে বরখাস্ত করেন যাহা বেআইনী ছিল।

ইহা প্রতীয়মান হইতেছে প্রথম পক্ষ ছাটাই আদেশ (বরখাস্ত পত্র) প্রদর্শনী চিহ্ন-১ প্রাপ্তির পর প্রীভেন্স দরখাস্ত-২ রেজিষ্টারী ডাকযোগে দ্বিতীয় পক্ষ বরাবরে প্রেরণ করেন। উক্ত প্রীভেন্স দরখাস্ত প্রথম পক্ষ উল্লেখ করিয়াছেন যে তাহাকে কথিত ছাটাই করার পূর্বে ফরম-জি পূরণ করা হয় নাই। দ্বিতীয় পক্ষ প্রদর্শনী-৩, তে উত্তর প্রদান করিয়া বলিয়াছেন প্রথম পক্ষ জি ফরম সম্পর্কিত যে আপত্তি উত্থাপন করিয়াছেন উক্ত যুক্তি সংগত নহে।

বস্তুত: শ্রমিক নিয়োগ (স্থায়ী আদেশ) অধ্যাদেশ, ১৯৬৮ এর ৯ ধারায় বলা হইয়াছে যে শ্রমিক নিয়োগ (স্থায়ী আদেশ) আইন, ১৯৬৫ এর ১২ ধারা মতে চাকুরী হইতে ছাটাই করার সময়ে সংশ্লিষ্ট 'জি ফরম মোতাবেক নোটিশ প্রদান করিতে হইবে। পক্ষান্তরে আলোচ্য কেসে এইরূপ কোন বিধান অনুসরন করা হয় নাই।

তদানীকালে দ্বিতীয় পক্ষে নিযুক্তীয় বিজ্ঞ কৌশলী বক্তব্যে বলেন যে প্রথম পক্ষ এবং তাহার সহকর্মীগণ চট্টগ্রামে পৌর কর্পোরেশনের মেয়র মহোদয় বরাবরে অভিযোগ উত্থাপন করিলে তাহার সুপারিশ মোতাবেক পরিবেশ অধিদপ্তর, চট্টগ্রাম দ্বিতীয় পক্ষ প্রতিষ্ঠানটি বন্ধ করিয়া দেন। ইহার ফলে প্রথম পক্ষ এবং অন্যান্য শ্রমিক কর্মচারীদেরকে ছাটাই করা হইয়াছে।

প্রকৃতপক্ষে ইহা প্রতিভাত হইতেছে দ্বিতীয় পক্ষ বিগত ২৮-৯-৯৬ তারিখে প্রথম পক্ষকে চাকুরী হইতে কথিত ছাঁটাই (বরখাস্ত) করেন। অন্যদিকে পরিবেশ অধিদপ্তর, চট্টগ্রাম ২-১১-৯৬ ইং তারিখে দ্বিতীয় পক্ষ কারখানা পরিচালনা বন্ধ করিয়া দেওয়ার জন্য নির্দেশ দিয়াছিলেন যাহা পরবর্তী ঘটনা। এমতাবস্থায় দ্বিতীয় পক্ষ কারখানাটির পরিচালনা বন্ধ ঘোষণা করার পরিপ্রেক্ষিতে প্রথম পক্ষকে চাকুরী হইতে ছাটাই (বরখাস্ত) করা হইয়াছিল এমন কিছু বলা যায় না।

প্রথম পক্ষ বর্তমান মামলায় বরখাস্ত আদেশ প্রত্যাহারপূর্বক চাকুরীতে বকেয়া বেতন ভাতাসহ পুন:বহাল করার জন্য আবেদন করিয়াছেন প্রথম পক্ষ তাহার হলফনামা জবানবন্দীতে স্বীকার করিয়াছেন যে দ্বিতীয় পক্ষ প্রতিষ্ঠানটি বন্ধ। সুতরাং সহজেই অনুমেয় যে কোন প্রতিষ্ঠান বন্ধ থাকিলে কাহাকেই উহার চাকুরীতে পুন:বহাল করা সম্ভব নহে। প্রথম পক্ষ ইহা উপলব্ধি করিয়া আদালতে তাহার হলফনামা জবানবন্দী প্রদানকালে কেবলমাত্র টার্মিনাল বেনিফিট কামনা করিয়াছেন। আগেই উল্লেখ করা হইয়াছে যে প্রথম পক্ষ, দ্বিতীয় প্রতিষ্ঠানে একজন স্থায়ী শ্রমিক ছিলেন। কারখানাটি বন্ধ হইয়া যাওয়ায় চাকুরীতে তাহাকে পুনঃবহাল করার প্রশ্ন আসে না। এইক্ষেত্রে তাহাকে চাকুরীতে পুনঃবহাল করার

আবেদন অগ্রাহ্য করত: তাহার প্রার্থিত প্রতিকার আংশিক সংশোধন ক্রমে তাহাকে শ্রমিক নিয়োগ (স্থায়ী আদেশ) আইন, ১৯৬৫ এর ১৯, ধারা মতে টার্মিনেশান বেনিফিট দেওয়া যায় । সুতরাং বিচার্য বিষয় নং-২ আংশিক অগ্রাহ্য এবং আংশিক গ্রাহ্য করা হইল।

বিজ্ঞ সদস্যগণের অভিমত বিবেচনা করা হইল।

অতএব,

আদেশ এই যে

অত্র অভিযোগ কেস নং-১০০/৯৬ দোতরফা সূত্রে বিনা খরচায় আংশিক গ্রাহ্য করা হইল। প্রথম পক্ষকে চাকুরীতে পুনঃবহাল করার আবেদন নাকচ করা হইল। প্রথম পক্ষ শ্রমিক নিয়োগ (স্থায়ী আদেশ) আইন, ১৯৬৫ এর ১৯(১) ধারা মোতাবেক, টার্মিনিসন বেনিফিট পাইবেন। সেইমতে বিচার্য বিষয় নং-২ আংশিক গ্রাহ্য করা হইল। অত্র রায় ও আদেশের ত্রিশ দিবসের মধ্যে প্রথম পক্ষকে উল্লেখিত মতে টার্মিনেশন বেনিফিট প্রদানে করার জন্য দ্বিতীয় পক্ষকে নির্দেশ দেওয়া গেল।

মো: আবদুর রহমান পাটোয়ারি,
চেয়ারম্যান, প্রথম শ্রম আদালত,
চট্টগ্রাম।

মোঃ আবদুল করিম সরকার (উপ-সচিব), উপ-নিয়ন্ত্রক, বাংলাদেশ সরকারী মুদ্রণালয়, ঢাকা কর্তৃক মুদ্রিত।
মোঃ আমিন জুবেরী আলম, উপ-নিয়ন্ত্রক, বাংলাদেশ ফরমস্ ও প্রকাশনী অফিস, তেজগাঁও, ঢাকা কর্তৃক প্রকাশিত।