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GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

MINISTRY OF HEALTH, POPULATION CONTROL, LABOUR AND SOCIAL WELFARE

(Labour and Social Welfare Division)

Section VI.

NOTIFICATION

Dacca, the 22nd May 1976.

No. S.R.O. 173-L/76/S-VI/1(25)/75/224.—In pursuance of sub-section (2) of section 37 of the Industrial Relations Ordinance, 1969 (XXIII of 1969), the Government is pleased to publish the awards and decisions of the Labour Court, Chittagong, in respect of the following cases, namely:—

(1) I.D. Case No. 5 of 1975.
(2) I.D. Case No. 8 of 1975.
(3) I.D. Case No. 20 of 1975.
(4) I. D. Case No. 22 of 1975.
(5) I.D. Case No. 23 of 1975
(6) I.D. Case No. 35 of 1975.
(7) I.D. Case No. 38 of 1975.
(8) I.D. Case No. 54 of 1975.
(9) I.D. Case No. 84 of 1975.
(10) I.D. Case No.101 of 1975.
(11) I.D. Case No.434 of 1974.
(12) I.D. Case No. 437 of 1974.
(13) I.D. Case No. 440 of 1974.
(14) I.D. Case No. 444 of 1974.
(15) I.D. Case No. 445 of 1974.

Price : 4·50 Paisa.

(16) I.D. Case No. 446 of 1974.
(17) I.D. Case No. 665 of 1974.
(18) Cr. Case No. 13 of 1975.
(19) Complaint Case No. 2 of 1975.
(20) Complaint Case No. 4 of 1975.
(21) Complaint Case No. 5 of 1975.
(22) Complaint Case No. 11 of 1975.
(23) Complaint Case No. 14 of 1975
(24) Complaint Case No. 44 of 1974.
(25) Complaint Case No. 49 of 1974
(26) Complaint Case No. 60 of 1975.
(27) C mplaint Case No. 60 of 1974.
(28) Complaint Case No. 63 of 1974
(29) Complaint Case No. 65 of 1974.
(30) Complaint Case No. 73 of 1975.
(31) Complaint Case No. 74 of 1975.
(32) Complaint Case No. 76 of 1975.
(33) Complaint Case No. 77 of 1975.
(34) Complaint Case No. 98 of 1975.
(35) Complaint Case No. 104 of 1975.

By order of the President
MUHAMMAD KHADEM ALI
Deputy Secretary.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 5 of 1975.

Issa Ahmed, S/o. Late Omar Mia, Wiper, Chittagong Port Trust of Village Kipayet Nagar, P.S. Fatickchari, Chittagong—*First Party*,

versus

Chief Mechanical Engineer, Chittagong Port Trust, Port Trust Office, Chittagong—*Second Party*.

PRESENT:

Mr Santiranjan Karmakar—*Chairman*
Mr Jamshed Ahmed Chowdhury } *Members*.
Mr Juned A. Choudhury

This is an application under section 34 of the Industrial Relations Ordinance, 1969 for payment of full salary for the period exceeding 60 days of suspension of the first party.

The first party is a Watchman under the second party. On 13-3-1974 a theft allegdly occurred in their engine room of the second party, which was reported to the police. On 3-4-1974 the first party was arrested and taken to custody. On 9-4-74 he was placed under suspension and on 8-10-1974 the criminal case ended in a final report, as a result of which the first party wa$_s$

discharged. The disciplinary action taken by the second party against the first party is still pending with no progress. He has, therefore, come up to Court for directing payment of his salary for the period exceeding 60 days under section 18(*2*) of the Employment of Labour (Standing Orders) Act, 1965.

The application was resisted by the second party on the ground that the first Party is not entitled to full salary as the proceeding against him is delayed and hampered by the two proceedings intervening.

Section 18(*2*) of the Standing Orders Act provides as follows:—

"A worker charged for misconduct may be suspended pending enquiry into the charges against him and unless the matter is pending before any Court, the period of such suspension shall not exceed 60 days:

Provided that during the period of such suspension a worker shall be paid by his employer subsistence allowance equivalent to half of his average wages, including dearness allowance, if any."

Now, the question is whether the period of suspension of the first party has exceeded 60 days. He was arrested in connection with a theft case on 3-4-1974 and he was suspended on 9-4-1974. Till termination of the criminal case he could not in law and in terms of section 18(*2*) claim full pay. The criminal case ended in a final report followed by his discharge on 8-10-1974. So, the period of 60 days as enjoined in section 18(*2*) would be deemed to expire on 8-10-1974 and not before entitling him to full pay with effect from 8-10-1974.

As regards the second proceeding initiated by the first party in the shape of this petition, we do not think that the second party could take the advantage of this case, for it is not a matter relating to his misconduct that is pending before the court, but is altogether a different matter, where the merits of the enquiry or charge-sheet have not been challenged, nor it is the subject matter of this case. So, we hold that the first party is entitled to subsistence allowance equivalent to half of his wages, including Dearness Allowance up to 7-10-1974 and entitled to full pay with effect from 8-10-1974 till termination of the enquiry initiated against him.

In the result, the application is allowed on contest without cost.

Since the first party is found to be entitled to full pay and other benefit with effect from 8-10-1974, the second party is directed to calculate the dues of the first party from 8-10-1974 up to date and pay to the first party within a month and to continue to make such payment till termination of the enquiry.

Both the members are consulted and they hold the same view with me.

SANTIRANJAN KARMAKAR
Chairman,
Labour Court, Chittagong,
27-1-1976.

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

SANTIRANJAN KARMAKAR
Chairman,
27-1-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 8 of 1975.

Ratan Ali, S/o., Late Muslim Kabiraj, C/o. Dokan Karmachari Samity, 184, Rajapur Lane, Chittagong—*First party*,

versus

The Proprietor, M/s. Waddadaron Co., 87, Bipani Bitan, Chittagong—*Second Party*.

PRESENT:

Mr Santiranjan Karmakar—*Chairman*.

Mr. Jamshed Ahmed Chowdhury—*Member*.

Ratan Ali, first party, was a 'Repuman' in the employ of the second party on a monthly salary of Tk. 225·00. He was dismissed by the second party on and from 8-11-1974.

Ratan Ali invoked the aid of section 34 of tne Industrial Relations Ordinance, 1969 for reinstatement with back wages and continuity of service benefits on the ground that his dismissal was wholly illegal.

Second party employer repelled the allegations by filling written statement and stating *inter alia* that the conduct of tne first party warranted his dismissal on charges which were duly gone into with full opportunity given to the first party to clarify his position. The main ground taken by the second party is that the case of the first party is not maintainable in law.

We have heard both the parties on the ground of maintainability under section 34 and at the present stage we are concerned with the only question whether present application under section 34 of the Industrial Relations Ordinance is maintainable or not on the facts stated above, that is to say, whether the application by a dismissed workman like the first party challenging his dismissal is maintainable under section 34.

I may mention in passing the judicial decisions on the point are not uniform. I searched for Indian decisions and there were found to be equally conflicting. But all controversy seems to have been set atrest by the Supreme Court of India in several decisions holding that the dispute between an employer and a single workman does not fall within the definition of "Industrial Dispute.".

In the unreported case of M/s. Railwaymens' Stores covered by petition No. 90/73 their Lordships of the High Court Division of our Supreme Court expressed the views in the language quoted below:—

> "We do not have any reason to hold that the dismissed worker is anywnere debarred under section 34 of the Industrial Relations Ordinance from taking his matter to tne Labour Court."

This view, it appears, was disapproved in the subsequent case of A. Robario reported in XXVII D.L.R. 98 where their Lordships after reviewing the decisions on the subject of our High Court as well as those decided by the Indian Courts came to the conclusion as follows:—

> "In any view of the matter, when an application is filed by the worker for relief in his individual capacity, the dispute cannot be entertained by the Labour Court as an "Industrial Dispute" and the decision of the Labour Court does not become an award."

The same question again came up for consideration in the case of General Manager, Hotel Intercontinental, Dacca (Petition No. 165/75) yet unreported and their Lordships took the view that a dismissed worker is not entitled to challenge the legality of his dismissal under section 34 and such individual dispute cannot be regarded as an industrial dispute, so as to enable them to maintain an application.

The preponderance of judicial opinion is, therefore, clearly in favour of the view that a dispute between an employer and a single workman does not fall within the definition of "Industrial Dispute" but single employee's case might develop into an industrial dispute when, often happens, it is taken up by the trade union of which he is a member and there is a concerted demand by the employees for redress. Suffice it to say for the present that the case of a dismissed employee was held incompetent, because, the dispute in question could not and was not an "Industrial Dispute".

In order to appreciate the preliminary objection it will be proper to reproduce section 34 of the Industrial Relations Ordinance, 1969 which reads as under:

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

This section presupposes the existence of an industrial dispute, which has been raised in the prescribed manner by a Collective Bargaining Agent as is laid down under section 43 of the Industrial Relations Ordinance, 1969. Further, it is only a party to an industrial dispute, which according to the Industrial Relations Ordinance, can only be the Collective Bargaining Agent who can make an application relating to a matter arising out of any right guaranteed or secured to an employee or workmen by or under any law for the time being in force or an award or settlement under section 34 for adjudication of the dispute. In other words an individual workman in the absence of an industrial dispute cannot apply to this Court under this section.

Then what is the remedy open to such an employee? The XXVII D.L.R. case at page 110 has given us the clue. It has stated that:

> "Section 25 of the Employment of Labour (Standing Orders) Act, 1965 is still available to a workman for his remedy before the Labour Court, which is competent to enter into such matter."

The upshort of the whole discussions is that the application shall be dismissed as not maintainable. In the result, the case be dismissed on contest without cost.

Member present Mr. Jamshed Ahmed Chowdhury is consulted and he shares the same view.

SANTIRANJAN KARMAKAR
Chairman,
Labour Court, Chittagong.
20-1-1976.

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

S. R. KARMAKAR
Chairman.
20-1-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 20 of 1975.

Abdul Majid Bhuiyan, S/o. Babar Ali Bhuiyan, (Ex-Tally Clerk, JTC), Vill. Fatehpur, P.O. Pattan-*via*-Akhaura, Dist. Comilla—*First Party*,

versus

(1) The In-charge ,Jute Trading Corporation, Ramganj Centre, Dist. Noakhali.

(2) The Additional Secretary, Jute Trading Corporation Ltd., Agrani Bank Bhavan (4th floor), Motijheel C/A, Dacca-2—*Second Parties.*

PRESENT:

Mr Ameenuddin Ahmed—*Chairman.*

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

By this application under section 34 of the Industrial Relations Ordinance, 1969, first party Abdul Majid Bhuiyan seeks direction upon the second party to reinstate him in his fermer post and position with back wages after setting aside the dismissal order, dated 7-2-1975.

The case of the first party is that he had been serving in the establishment of the second party since 14-1-1971 as Tally Clerk in the Ramganj Centre of Jute Trading Corporation and his last salary was Tk. 310·00 per month. The first party had not been feeling well with the In-charge of Ramganj Centre (second party No. 1). Second party No. 1 used to put pressure upon the first party for giving some scope for making some wrongful gain at the cost of J.T.C. but the first party being an honestman did not like all these things. So, second party No. 1 out of enmity reported baseless matters to the superior

authority for necessary action against the first party. On 2-11-1974 the first party also reported against the second party No. 1 to the Head Office in writting. Thereafter the second party No. 1 become very much annoyed with the first party and ultimately issued a charge-sheet, dated 3-12-1974 alleging false allegations. First party submitted explanation which was not considered by the second party. Thereafter an enquiry was ordered and the first party attended the enquiry. There in the enquiry first party was not given proper opportunity to defend his case. Second party dismissed the first party from service, *vide* letter, dated 7-2-1975 without following the provisions of sections 17 and 18 of the Standing Orders Act. The order of dismissal is illegal and as such it is liable to be set aside.

Second party appeared and contested the case by filling written statement alleging *inter alia* that the first party was charge-sheeted for misconduct and thereafter the first party submitted his explanation which was found unsatisfactory and thereafter an enquiry committee comprising two senior officers of this Corporation was constituted to enquire into the matter and to submit report. The committee during the course of enquiry, not only examined the first party but first party was allowed to defend his contention and examine witnesses. The enquiry committee after careful consideration of all material evidence of the case recommended for dismissal of the first party on two major charges and accordingly on the approval of the competent authority the first party was dismissed legally. The first party is not entitled to get any relief.

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

FINDINGS

P.W. 1, Abdul Majid Bhuiyan first party has only examined himself in support of his case. D.W. 1, Shamsuzzoha the then In-charge of J.T.C. (second party No. 1) has examined himself in support of his case D.W. 1 stated in his evidence that on 23-10-1974 he submitted a report against the first party in writing to the head office and thereafter on 3-11-1974 he also submitted another report against the first party to the second party No. 2. These reports are marked Ext. A and A(1). It is in evidence that an enquiry was made by M.I.O. on the basis of Ext. A and A(1) and the said M.I.O. submitted a report on 22-11-1974 which is marked Ext. B. It is also in evidence that Abdus Sukur Kayal and 3 others submitted a report against first party on 20-11-1974 which is marked Ext. A(2). On the basis of the aforesaid reports, charges were framed against first party for misconduct and the said charge-sheet, dated 3-12-1974 has been marked Ext. C. First party also submitted an explanation denying the charges which was found unsatisfactory by the second party and thereafter admittedly a domestic enquiry was held where the first party duly participated. P.W. 1 the first party has stated in his evidence that he attended in the enquiry and the enquiy committee examined him. In the case petition in para. 9 the first party stated that the witnesses who were cited by the second party were not allowed to be cross examined by the first party during enquiry. P.W. 1 in his evidence-in-chief has stated that though he attended the enquiry but no witness was examined during enquiry. According to his cross examination Kayal and Line Sardar were present during enquiry. The enquiry report, dated 4-2-1975 Ext. D will show that during the course of enquiry, the first party (P.W. 1) Abdus Sukur Kayal, Shabuddin, Line Sardar were examined

on 30-1-1975. D.W. 1 who was present during the enquiry and examined by the enquiry committee, has clearly stated in his evidence that the enquiry committee examined himself, first party, Abdus Sukur Kayal and Shahabuddin, Line Sardar and those were verbally examined by the committee. The said evidence of D.W. 1 finds support from the enquiry committee report Ext. D. The evidence of P.W. 1 goes to support that in his presence the said witnesses including the Kayal were examined by the enquiry committee. Ext. D. also shows that the enquiry committee found the charge No. 1, 2 and 4 of Ext. C have been established against the first party. Charge No. 1 of Ext. C constitute misconduct under section 17(*3*)(*b*). It is also in evidence that first party over stayed for two days on 21st and 22nd October 1974 without leave or permission and that while first party making weighment of the jute brought by the sellors he recorded excess jute in the Tally Book with motive to earn financial gain. There is nothing sufficient on record to show that the first party was not given proper and reasonable opportunity during enquiry for his defence.

D.W. 1 stated in his evidence that Mr Badruddin Ahmed was the Managing Director of the J.T.C. and the Managing Director himself wrote as follows "Mr Bhuiyan, Tally Clerk is dismissed", and sign the same on 5-2-1975 just below the enquiry report Ext. D. The said endorsement of the Managing Director, dated 5-2-1975 is marked Ext. E. It is not disputed that the said Managing Director of the J.T.C. is the Head of this Corporation. It appears from the record that the enquiry committee after careful consideration of the material evidence of the case recommended for dismissal of first party on three charges, *vide* Ext. D and accordingly on the approval of the competent authority (Managing Director), the first party was dismissed, *vide* Ext. 1 from service for misconduct. I have carefully scrutinised all the papers and procedures and the circumstances involved. I have every reason to say that the first party was removed from service after holding enquiry step by step as provided under the provisions of labour law. Therefore, there can be warrant for interference with the order complained of. I, therefore, find that the first party was rightly found guilty for misconduct and as such, his dismissal is legal.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-12-1975.

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

A. AHMED
Chairman.
30-12-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 22 of 1975.

Moazzem Ali, C-3, Mason, Construction Department, Chemical Industries of Bangladesh (BFCPC), Barabkunda, Chittagong—*Firrt Party*,

versus

General Manager, The Chemical Industries of Bangladesh (BFCPC), Barabkunda, Chittagong—*Second Party*.

PRESENT:

Mr Ameenuddin Ahmed—*Chairman.*

Mr Jamshed Ahmed Chowdhury. } *Members.*

Mr Juned A. Choudhury. }

By this applications under section 34 of the Industrial Relations Ordiannce, 1969 the first party Moazzem Ali seeks a direction on the second party to cancel his redesignation as semi-skilled operator and to place him in grade IV in scale of Tk. 260—450 with effect from 1-7-1973.

The case of the first party is that he is a confirmed worker of the second party's establishment as a Mason with effect from 1st January 1968 and he was given Tk. 150·00 as his monthly wages in the scale of Tk. 125 to 200. The Government of the People's Republic of Bangladesh by gazette notification published on 19th December 1973 has fixed the wages of Mason of B.F.C.P.C. at the scale of Tk. 200—450 but the second party illegally has fixed the wage of the first party at Tk. 225·00 in the scale of Tk. 190—315·00 by redesignating him wrongly and illegally as semi-skilled operator though the Mason is a skilled worker. First party prayed again and again to the second party for fixing his wages in the scale of Tk. 260—450 but to no effect. Hence, this case.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was appointed on 2-11-1965 at a consolidated salary of Tk. 150·00 and he was confirmed in the scale of Tk. 125—200 with effect from 15-5-1968. As per recommendation of Industrial Workers Wages Commission Award (IWWC Award) those who were in the above scale they have been fixed at Tk. 190—315 and accordingly the first party has been fixed in the above scale. The demand of the first party for fixation of his wages in the 4th grade in the scale of Tk. 260—450 is most unreasonable and untenable.

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

DECISION

Neither party adduced any oral evidence in this case. It is not disputed that the first party was appointed in November 1965 at a consolidated salary of Tk. 150·00 and he was confirmed in the scale of Tk. 125—7/50—200 with effect from 15-5-1968, *vide* Ext. 1. It is also not disputed that the first party has been working as a Mason and prior to the implementation of IWWC Award he was in the scale of Tk.125—200. First party's case is that his

wages should be fixed in grade IV in the scale of Tk. 260—450 on the basis of gazette notification, dated 19-12-1973, page 7994, where "Mason" has been place in that grade. First party also alleges that he has been wrongly re-designated from skilled worker to semi-skilled worker. It is contended on behalf of the second party that the first party has been accordingly placed in grade II in the scale of Tk.190—315 as the said gazette notification lays down that where the existing scale is Tk. 125—200 the corresponding new scale shall be Tk. 190—315 in grade II. It is also urged that the new scale of Tk. 260—450 in grade IV will be applicable where existing scale is Tk. 170+115+ *ad hoc*.

In the said gazette notification it will appear that the new wages scales of workers in various sector corporations have been determined. For certain corporations both designation and existing scales of the jobs have been shown against the corresponding new scales and grades; whereas for two corporations only the designation has been given against the corresponding new scales. In case of one corporation, designation have not been shown but only the existing scales have been given. The controversy arises whether the designation and existing wages scale of the same worker are mentioned against two different new scales. The question is whether designation of the worker or his existing scale is to be taken as the basis for determining which new scale he will be classified in.

According to First party he has been wrongly redesignated from skilled to semi-skilled worker and placed in the scale of Tk. 190—315, *vide* Ext. 2. As regards this claim of the first party, nothing has been produced to prove that he was wrong designated in Ext. 2. So, this claim has not been substantiated. Since it is admitted that the existing scale of Tk. 125—200 and not "Tk. 170+115+ *ad hoc*" and since first party has not been able to prove that he is a skilled worker, I am of the opinion that the first party has been rightly classified in grade II in the scale of Tk. 190—315 as per the said gazette notification. I find nothing on record to interfere with the fixation of wages of the first party, *vide* Ext. 2. In the absence of two factors namely, existing scale of Tk.170+115+*ad hoc* and evidence as to the skilled nature of work, mere designation of "Mason" cannot be a proper criterion for classification in grade IV. In view of my above discussions I find no justification to consider the claim of the first party and as such, I find that the first party is not entitled to the relief as prayed for.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-12-1975.

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

A. AHMED
Chairman,
30-12-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 23 of 1975.

Md. Shahjahan, W/T 9, Jr. Operator, Water Treatment Deptt., C.I.B., Barabkunda, Chittagong—*First Party*,

versus

General Manager, The Chemical Industries of Bangladesh (B.F.C.P.C.), Barabkunda, Chittagong—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

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

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by the first party Mohammed Shahjahan, with a prayer for directing the second party to give him due increment of January 1973 and thereafter fix his (first party) wages at Tk.315·00 per month apart from other Fringe Benefit attached with the scale in the scale of Tk.190—315 with effect from 1-7-1973 with all back payments.

The case of the first party is that he was employeed at the Chemical Industries, Barabkunda, Chittagong with effect from 1-4-1967 as a Junior Operator with consolidated salary of Tk.150·00 and subsequently he was confirmed in the post and position. Thereafter in 1968 and 1969 first party was given annual increment at the rate of Tk.7·50 and he was placed in the scale of Tk.125—200 with effect from January 1969. The first party continued to get his annual increment and he drew Tk.195·00 per month as his wages in 1972. First party's increment in January 1973 was due but it was not given by the second party without any lawful reason. Second party implemented the Industrial Workers' Wages Commission Report (I.W.W.C. Report) and the first party is placed in the scale of Tk. 190—315 but his wages has been fixed at Tk. 220·00 illegally without any lawful reason. The first party was at the end of limit of the scale of Tk.125—200 and so he is entitled to be placed at the end and limit of new and revised scale, which is Tk.315.00 per month.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was appointed on 1-4-1967 at the rate of Tk.150·00 per month and he was given due increment of Tk.7·50 up to 1-1-1973 bringing his total wages to Tk.195·00 per month. The maximum of the scale being Tk. 200·00 the first party was given a marginal increment of Tk.5·00 with effect from 1-1-1974 and his basic salary was raised to Tk. 200·00. While implementing the IWWC Award first party's basic salary was taken to be Tk.200·00 and *ad hoc* relief of Tk. 20 was merged with the basic, raising the basic to Tk.220 00. The first party was fixed at Tk.222·00 in the scale of Tk.190—315. The first party is not entitled to be placed at the maximum of the scale, *i.e.*, at Tk.315·00. First party is not entitled to the relief.

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

FINDINGS

Neither party adduced any oral evidence in this case. Admittedly first party was appointed as a Junior Operator under the second party with effect from 1-4-1967 at the rate of pay of Tk.150·00 per month and until the IWWC Award came into effect he was given due increments of Tk. 7·50 up to 1-1-1973 bringing his total wages to Tk. 195 per month. This is supported by Ext. C, dated 26-1-1973. As Junior Operator first party admittedly was placed in the scale of Tk. 125—7/50—200. The allegation made in para 3 of the case petition has not been substantiated by the first party. There is no evidence on record to show that first party's increment falling in January 1973 was due. The maximum of above referred scale being Tk.200·00. first party was allowed a marginal increment of Tk. 5·00 with effect from 1-1-1974 and his basic pay was raised to Tk. 222·00 as will appear from Ext. B. While implementing the IWWC Award his basic salary was taken to be Tk. 200·00 and the *ad hoc* relief of Tk.20·00 was merged to basic raising basic to Tk. 220·00. As there was no step of Tk. 220 in the scale of the grade (190—315), the first party was placed at a marginal adjustment benefit of Tk.2·00 fixing his basic at Tk.222·00 in the scale of Tk. 190—8—270—EB—9—315, *vide* Ext. A. According to first party's claim his wages should be fixed at the highest stage of new grade, because his wages were at the highest stage or limit in the existing grade. The said claim of the first party is untenable as there is no reason as to why the first party should be placed at the maximum of the scale, *i.e.*, at Tk. 315·00. This is not in accordance with the procedure laid down for implementation of the IWWC Report. In view of my above discussions I find that the first party is not entitled to get any relief.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
20-12-1975.

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

A. AHMED
Chairman,
20-12-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 35 of 1975.

Naderuzzaman, S/o. Late Haji Idris Mia, Village Shujaitpur, P.S. Begumganj, Dist. Noakhali—*First party*,

versus

Manager, M/s. Gladstone Wyllie and Co. Ltd., Ispahani Building, Bangabandhu Road, Chittagong—*Second Party*.

PRESENT:

Mr Santiranjan Karmakar—*Chairman*.

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

The First Party was a clerk under the second party ever since November, 1951. He was confirmed in 1952. All on a sudden his services were terminated on and from 27-11-1974. He has thereupon asked for reinstatement in his former post and position under section 34 of the Industrial Relations Ordinance, 1969.

The application was resisted by the second party mainly on the ground that his grievance mainly a grievance of an individual worker, which does not come under the purview of section 34 and as such, his petition under section 34 is not maintainable.

The point for consideration is whether or not the present application under section 34 is maintainable and since this question has been raised as a preliminary point, I should dispose of this point at the outset.

It was argued on behalf of the first party that as he was not served with the notice required and contemplated by section 19(*1*) of the Employment of Labour (Standing Orders) Act, 1965 the order of termination was illegal and as such he is still a worker under the second party in the eye of law in as much as he was denied the right of notice as guaranteed by section 19(*1*) and, therefore, the only remedy opened to him is to apply under section 34, because by the termination of the services of first party there has been a flagrant infringement of such right guaranteed to him.

It is true that section 34 gives a forum to apply to the Labour Court for adjudication of the dispute arising out of any right guaranteed to a workman but sub-section (*5*) of section 35 limits the power of Labour Court which can only adjudicate and determine an industrial dispute and some other matters enumerated in clauses (a), (b), (c) and (d) of section 35(*5*) and there is no room for doubt on a reading of XXVII—DLR and the Hotel Intercontinental case that the dispute of an individual worker can never be construed to be an industrial dispute. Moreover, a terminated worker is not a worker within the definition of worker under section 2(*xxviii*) of I. R. O. for he is no longer a person "Who is employed in the establishment for hire or reward and for the

purpose of any proceeding under this Ordinance in relation to an industrial dispute or is a person, who is removed from employment in connection with or as a consequence of that dispute." So, in any view of the matter the petition under section 34 is not maintainable.

In the result, the application fails and it is dismissed on contest without cost.

Members are consulted over the matter.

SANTIRANJAN KARMAKAR
Chairman,
Labour Court, Chittagong.
24-1-1976.

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

SANTIRANJAN KARMAKAR
Chairman,
24-1-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 38 of 1975.

Siddique Ahmed, *Ex*-Cloth Repairer, Gul Ahmed Jute Mills, Bansbaria, Chittagong—*First Party,*

versus

Manager, Gul Ahmed Jute Mills, Bansbaria, Chittagong—*Second Party.*

PRESENT:

Mr Santiranjan Karmakar—*Chairman.*

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

This is an application under section 34 of the Industrial Relations Ordinance, 1969 for directing payment of 9 months' salary as envisaged in the Government Circular of 1974.

The first party was a cloth repairer in the employ of the second party ever since 8-4-1970. During the liberation war he was away from the mill and participated in the liberation struggle. War over, he joined on 5-2-1972 and voluntarily resigned on 2-6-1972. The Government in the meantime decided to pay 9 months' salary to the employees who could not attend the duty because of war and activity participated in the liberation struggle and on that basis, he has come up with a prayer under section 34 for directing the second party to pay all his salary from April to December, 1971 as guaranteed and envisaged by the Government decision.

The second party gave a rejoinder to the prayer made by the first party mainly on the ground that since, consequent on his resignation, the first party is no longer a worker, the application is not maintainable.

So, the crux of the whole problem is whether or not a worker upon resignation has ceased to be a worker so as to disentitle him from the pay that stands due to him while he was admittedly in service.

The application was admittedly a permanent workman of the second party. He tendered his resignation on 2-6-1972 and thereafter demanded his pay that stands due to him for the period from April to December, 1971 while he was very much in service. It is obvious that the applicant was entitled to bring the application and the question whether he was a worker or not at the time when he brought the present application is quite irrelevant. The law entitles him to move the application and it cannot be said that since he ceased to be a workman, consequent on his resignation, he could not claim the pay for the period when he was serving the company. In my view, a worker after resignation does not cease to be a workman unless and until full settlement of his claim as regards pay and other dues for the period when he was in the employ of the company for payment of salary is a right guaranteed to a workman and he may recover even when he goes out of employment by resignation if it is due to him. Suppose, a worker owes a debt to be discharged in favour of the company. But all on a sudden he resigns his post. Can it be said by any stretch of imagination that the company cannot pursue the worker because he has ceased to be its employee by then? The intention of the Government is not to deprive a worker resigning, from the benefits of 9 months' pay, if other conditions are fulfilled. If the intention was to deprive him from benefits in case of resignation then, this should have been clearly laid down. In the absence of any such provisions the intention is clear that the workman who resigns is entitled to his pay till resignation.

It appears that the first party has been pressing hard for his 9 months wages in accordance with the Government decision. The company could not show anything that could disentitle the first party from getting his dues to which he has acquired an unassailable right, less of course, the dues, if any, that the worker owes to the company.

In arriving at the above decision I have consulted the opinions of the learned Members and they also share the same view with me.

In the result, the application is allowed on contest without cost.

The second party is directed to calculate the pay of the first party from April to December, 1971 in terms of the Government Circular, and pay up the same to him, within 30 days from today, after adjustment or necessary deduction, in respect of the dues of the first party, if any, to the company, that is to say, he will be given the pay, less already drawn after deduction of the dues, if any, to the company.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
31-1-1976.

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

S. R. KARMAKAR
Chairman,
31-1-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 54 of 1975.

(1) Hossain Ahmed,
(2) Nurul Absar,
(3) Karimullah,
(4) Habibur Rahman,
(5) Nurul Islam (1),
(6) Nurun Nabi,
(7) Sadeq r Rahman,
(8) Md. Sadek,
(9) Jalal Ahmed,
(10) Abdus Sattar,
(11) Abdul Barik,
(12) Kala Meah,
(13) Nurul Islam (2),
(14) Syed Ahmed,
(15) Abdul Gofran,
(16) Md. Hanif,
(17) Shafiq r Rahman,
(18) Abdur Razzak,
(19) Aminur Rahman,
(20) Md. Hossain,
(21) Kala Meah,
(22) Aminullah,
(23) Abdul H que,
(24) Abdul Mannan,
(25) Abdul Meah,
(26) Nowshah Meah,
(27) Siddique Meah,
(28) Siddiqur Rahman,
(29) Abul Kashem,
(30) Shah Jahan (1),
(31) Shah Jahan (2),
(32) Enamul H que,
(33) Abdur Rauf,
(34) Ruhul Amin,
(35) Nazir Anmed,
(36) Shamsul Haque (1),
(37) Shamsul Haque (2),
(38) Fazlul Haq e,
(39) Gofran Meah,
(40) Tajul Islam,
(41) Tafazzal Ahmed,
(42) Mafazzal Ahmed,
(43) Jafar Ahmed,
(44) Ahamedar Rahman,
(45) Nurul Amin,
(46) Abul Kashem,
(47) Abu Taher.

All care of New Era Steel Mills Ltd., Baizid Bostami Road, Jalalabad, P. O. Baizid Bostami, Chittagong—*First Parties*,

versus

The Administrator, New Era Steel Mills Limited, Baizid Bostami Road, Jalalabad, P. O. Baizid Bostami, Chittagong—*Second Party*.

PRESENT:

Mr. Santiranjan Karmakar—*Chairman*.

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

47 Workers of the second party have by this petition under section 34 of the Industrial Relations Ordinance, 1969 asked for direction upon the second party to provide them with service books.

The second party has controverted their demands stating *inter alia* that the services of the first parties have since been terminated on and from 16-10-1975 giving them full service benefits and that the section they were attached with has also been abolished.

Regard been had to this fact as disclosed by the second party, no direction is called for in terms of the prayer of the first parties.

The result, therefore, is that the application under section 34 of the I.R.O. be dismissed on contest without cost.

Members agree with me in the above view.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
23-2-1976.

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

S.R. KARMAKAR
Chariman.
23-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 84 of 1975.

H. Belayet Hossain, S/o. Al-haj Moazzam Hossain, Development Officer, Jiban Bima Corporation, C. D. A. Building, Chittagong—*First Party*,

versus

(1) General Manager (Dev.), Jiban Bima Corporation, Jiban Bima Bhaban, Dilkhusha C/A, Dacca,

(2) Dy. General Manager, Jiban Bima Corporation, Agrabad C/A, Chittagong,

(3) Branch Manager, Jiban Bima Corporation, C.D.A. Building, Chittagong—*Second Party*.

PRESENT:

Mr. Santiranjan Karmakar—*Chairman.*

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

I have heard the arguments of the respective representatives of the two contending parties and I have examined the relevant records minutely. As the application under consideration purports to have been filed in this Court under section 34 of the Industrial Relations Ordinance, 1969, it would be rewarding to reproduce here its exact provision, which is as under:

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

The main question for determination in this case is—whether or not the case of dismissal of the first party can be deemed to be an industrial dispute calling for adjudication by this Labour Court. The expression "Industrial Dispute" has been defined as follows in sections 2(xiii) of the Industrial Relations Ordinance, 1969:

"Industrial Dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of employment or the conditions of work of any person."

It is essential to bear in mind that the case of the dismissal of an individual workman on a charge of misconduct cannot reasonably or legally be treated as a dispute between the employers and the workman which is connected with the employment or non-employment or the conditions of work of any person. If such dismissal has been ordered by the employer in accordance with any departmental rules or regulations, then there is no legal warrant for regarding it as constituting an industrial dispute requiring adjudication by a Labour Court. The terms of "Employment" and "Non-employment" that occur in the above cited definition of an "Industrial Dispute" cannot by any stretch of imagination be believed to include the dismissal of an individual workman on a charge of misconduct. In the result, the application be rejected on contest without cost.

Both the members have opined on the same line with me.

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

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
6-2-1976.

S. R. KARMAKAR
Chairman.
6-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 101 of 1975.

Md. Lal Mia, S/o. Mujibur Rahman Mia, C/o. M/S. Omarsons (Bangladesh) Ltd., G.E.M. Plant, North Patenga, Chittagong—*First Party*,

versus

(1) Administrator, M/S. Omarsons (Bangladesh) Ltd., Baitul Aman, Mymensingh Road, Dacca;

(2) Wahidul Alam Chowdhury, Senior Engineer, G.E.M. Plant, North Patenga, Chittagong—*Second Parties.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

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

By this application under section 34 of the Industrial Relations Ordinance, 1969 the first party Lal Mia seeks direction on the second party to reinstate him in his former post with back wages after setting aside the illegal order of dismissal dated 23-4-1975 mainly on the ground that the second party dismissed him from service clearly violating the mandatory provisions of sections 17 and 18 of the Standing Orders Act, 1965.

Second party contested the case by filing written statement alleging *inter alia* that the first party was a casual worker in the second party's establisnment with effect from March 1971 and he was appointed a temporary Darwan for the duration of the company's work at G.E.M. Plant site, Chittagong. It is further alleged that on 16-6-1975 during the duty hours of first party an electric motor belonging to second party establishment was stolen from the work site and as such a show cause notice dated 18-4-1975 was issued to the first party and also to two other Darwans. First party submitted explanation dated 21-4-1975, which was found unsatisfactory and also an enquiry was held in presence of first party and others and there in the enquiry the first party admitted his guilt and thereafter first party was dismissed from service for misconduct after complying with the provisions of labour laws duly.

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

DECISION

P. W. 1, Lal Mia, first party, has only examined himself in support of his case. Second party No. 2 has examined as D.W. 1. According to P.W. 1 the first party he had been serving in the second party's establishment since 16-10-1966 as Darwan. On the other hand, it is the case of the second

party that the first party was appointed as temporary Darwan as well as casual worker in the second party's establishment since March 1971. D.W. 1 Wahidul Alam Chowdhury, second party No. 2, has deposed but nowhere in his evidence he has stated that first party was appointed in March 1971. It will appear from the cross examination of D. W. 1 that first party and other Darwans of the second party's establishment were given bonus previously. This clearly indicates that the first party as Darwan was a permanent worker. Moreover, had he been a casual and temporary worker, there was no reason on the part of the second party to frame charge-sheet calling for explanation for the alleged misconduct and thereafter dismissed him (first party) for the alleged misconduct *vide* Ext. 2. This also goes to suggest strongly that the first party was treated by the second party as permanent worker. I, therefore, find that the first party was serving as a permanent worker (Darwan) under second party No. 2. According to D. W. 1 the first party is a daily rated employee. On the other hand, P. W. 1 stated he is a monthly rated worker and he used to get his pay monthly. P. W. 1 in his cross has stated that he used to get quarter allowance at the rate of Tk. 42, Medical Allowance at the rate of Tk. 15·00 and *ad hoc* at the rate of Tk. 20 per month. P. W. 1 also admits in his cross that his wages is Tk. 210·00 per month. Second party has not produced any documentary evidence in order to show that the first party was a daily rated worker or a casual worker. On the other hand, from the materials on record and my discussions above I am convinced that the first party is a monthly rated worker and his last pay was Tk. 210·00 per month.

It is contended on behalf of the first party that he was illegally dismissed from service *vide* Ext. 2 without holding domestic enquiry as provided under the Standing Orders Act. P. W. 1 in his evidence stated that suddenly on 12-4-1975 the second party No. 2 issued charge-sheet Ext. 1 against him for alleged misconduct and thereafter he submitted explanation dated 21-4-1975 Ext. A denying the charges and thereafter on 23-4-1975 the second party No. 2 dismissed him (first party) from service without following the provisions of the Standing Orders Act *vide* Ext. 2. On the other hand, it is stated by D. W. 1 in his evidence that on 16-4-1975 a heavy Motor Engine of 40 H.P. was stolen from their work site at night while the first party along with two other Darwans were on duty in that night and the stolen engine was subsequently recovered from the Paddy field. Over the said matter of theft the first party was charge-sheeted *vide* Ext. 1 and he submitted his explanation and according to D. W. 1 he held enquiry in presence of first party and submitted enquiry report dated 21-4-1975 Ext. B and thereafter with the Administrator's approval the first party was dismissed from service, *vide* Ext. 2 following the procedures. On the other hand, P. W. 1 clearly stated in his evidence as well as in the case petition that no domestic enquiry was held after he submitted his explanation Ext. A. Admittedly the first party was suspended with the charge-sheet. Second party filed Ext. B, the enquiry report in order to show that an enquiry was held against the first party. Ext. 1 the charge-sheet will show that the first party was asked to submit show cause (explanation) within 21-4-1974 and there in Ext. 1 nothing is stated about the enquiry. In compliance of Ext. 1, first party submitted explanation Ext. A on 21-4-1975. Had there been any enquiry it would be surely mentioned in the dismissal order Ext. 2. According to D. W. 1 he orally called the first party to attend enquiry. P. W. 1 denied about any such enquiry in his presence by D. W. 1. The enquiry repoert Ext. B also does not show clearly as to whether the said alleged enquiry was made in

presence of the first party. P. W. 1 in his cross as admitted that he was on duty in the night following 16-4-1975 along with two other Darwans and those two Darwans have been dismissed from service. The materials on record shows that first party was not given full opportunity to defend his case. However, it appears that there was an enquiry and the enquiry officer submitted a report for the alleged theft of motor. The two other Darwans who were on duty along with first party on that night have been admittedly dismissed from service. From the discussions above I find that the first party's dismissal from service is not proper and valid.

P. W. 1 in his evidence in chief has stated that he alternately prays for termination benefit under section 19(1) of the Standing Orders Act, 1965. Regard being had to the conduct of the first party as complained and unwillingness of the second party, I do not like to thrust the first party on the second party by ordering reinstatement. In the circumstances the grant of termination benefit will meet the ends of justice.

Both the members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

The second party is directed to pay the termination benefit to the first party as follows within 30 days from the date of passing of this order:

(1) Nineteen days' notice pay at the rate of Tk.210·00 per month;

(2) Compensation at the rate of 14 days' wages for each completed year of service or part thereof over six months;

(3) Wages for unavailed period of Earned Leave, if any;

(4) Unpaid wages, if any;

(5) Provident Fund benefits in full.

Any other benefit or benefits to which the first party may be found to be entitled under any other law for the time being in force.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
31-12-1975.

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

AMEENUDDIN AHMED
Chairman.
31-12-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 434 of 1974.

Manindra Lal Nath, P. R., C/o. Chittagong Press Club, Chittagong—*First Party*,

versus

Managing Editor, The Azadi, Anderkilla, Chittagong—*Second Party*.

PRESENT :

Mr. Santiranjan Karmakar—*Chairman*.

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

Heard both parties. No oral evidence adduced in the case.

Consequent on a charge-sheet the first party who is a permanent employee under the second party was suspended on 19-7-1973. He has come up with prayer for payment of full wages for the period beyond 60 days.

The claim of the first party is resisted by the second party on the ground that since a proceeding was pending at the instance of the first party, he is not entitled to full wages during the period covered by that proceeding.

As per provisions of section 18(2) of the Standing Orders Acts, 1965 a person cannot be kept under suspension beyond 60 days pending enquiry, provided there is no case pending before any Court against him. It has been found that the first party filed I. D. Case No. 207 of 1973 which was dismissed on 27-4-1974. Hence, the first party is entitled to 50% of the wages up to 27-4-1974 and full wages for the period beyond 27-4-1974 till termination of the enquiry.

The case be, therefore, allowed on contest with the direction upon the second party to pay full wages to the petitioner first party for the period beyond 27-4-1974 till the disposal of the inquiry case against the first party.

The second party is directed to pay the amount to the first party within 30 days from today so far as his arrear wages are concerned and continue to pay the future wages till the termination of enquiry case.

Members are consulted over the matter.

SANTI RANJAN KARMAKAR
Chairman,
Labour Court, Chittagong.
17-2-1976.

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

SANTI RANJAN KARMAKAR
Chairman.
17-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 437 of 1974.

Shamsul Islam, S/o. Late Chunnu Meah Sawdagar, Khagaria, P. S. Satkania, Chittagong—*First Party*,

versus

(1) Bangladesh Jute Industries Corporation, Chittagong Zone, Represented by General Manager, Mr. Shamsuddin Ahmed, Sattar Chamber, Agrabad Commercial Area, Chittagong,

(2) S. K. M. Jute Mills Ltd., Barabkunda, P. S. Sitakunda, Chittagong, Represented by Manager, Mr. T. A. Khan—*Second Parties*.

PRESENT ;

Mr. Ameenuddin Ahmed—*Chairman*.

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

This is an application under section 34 of the Industrial Relations Ordinance, 1969 by first party, Shamsul Islam, with a prayer for directing the second party No. 2 to pay his full wages with effect from 8-5-1974 and also to direct the second party No. 2 to accept his joining report.

The case of the first party is that he was appointed as Superisor under the second party No. 2 on 26-10-1971 and thereafter he was promoted to the post of Assistant Purchase Officer on 1-12-1972. Suddenly the first party was served with a letter of charge dated 5-6-1974 for gross misconduct and misappropriation in connection with employer's business and property asking to show cause within a week of receipt of that letter of charge and the first party was placed under suspension with immediate effect. The first party submitted his explanation dated 12-6-1974 denying the charge. The first party was also served with a note on 5-5-1974 with B.J.I.C. Audit observation. First party also replied to the said note of the second party No. 2. Second party No. 2 in violation of the provisions of Law has kept the first party under suspension for more than 60 days. The period of suspension pending enquiry is not exceeded 60 days and in the absence of any enquiry till today the first party is legally entitled to get his full wages. In spite of demands second party No. 2 has not paying his full wages for the period of suspension and also not allowing him to resume duty.

Both the second parties contested the case by filing separate written statements mainly alleging that since the first party is not a "worker" within the meaning of I. R. O., 1969 or any law, his application under section 34 of the Ordinance is not maintainable and for that this case is liable to be dismissed. It is further alleged that the first party was charge-sheeted by second party No. 2 on 5-6-1974 for misappropriation in connection with employer's business and property, and was asked the show cause. The case was under investigation of the competent authority. When second party was about to fix the

date of final hearing and enquiry into the allegations the first party with some ulterior motive brought this case intentionally to cause delay in the matter. That being so, this case is premature. The first party is not entitled to get any relief.

Point for determination in this case is—whether the first party is a "worker" and if so, whether the first party is entitled to get the relief as prayed for.

FINDINGS

P. W. 1, Shamsul Islam, the first party has only examined himself in support of his case. None is examined on behalf of the second party. It is an admitted fact that the first party was appointed as Supervisor under second party No. 2 on 26-10-71 and thereafter he was promoted to the post of Assistant Purchase Officer in December 1972. In para 3 of the case petition it is alleged that the first party is a "worker" within the meaning of I.R.O., 1969. It goes without saying that this case under section 34 will be maintainable only if the first party is found to be a "worker" otherwise he is out of Court. In order to determine—whether an employee is worker or is one excluded from its category, we shall have to look into the nature of work he performs. P. W. 1 in his cross has stated that there were two Clerks in his (P. W. 1) department who worked under his (P.W. 1) control and supervision. According to P. W. 1 there was or is no Purchase Officer in the second party mill and he (P. W. 1) was the head of Purchase Department of the second party mill. P. W. 1 further stated that he himself as Purchase Officer signed and issued Purchase Orders Exts. A and A(1). P. W. 1 further admitted in his cross that he made correspondences, the true copies of which are marked Ext. B. to B(3). P. W. 1 has also stated in his evidence that prior to the charge-sheet his pay was Tk. 420·00 as basic and in total he used to get Tk. 650·00. According to P. W. I he was in C-II grade. From the oral evidence as well as documentary evidence referred to above it can be safely said that the first party had supervisory as well as administrative functions and control over his subordinates and he also had the administrative capacity in the matter of issuing Purchase orders and other relevant matters. I, therefore, find that the first party cannot be accepted to be a worker. Law does not anywhere says that the criterian of a person employed in the administrative or supervisory capacity must necessarily have the power to appoint or dismiss the employees and have the control over the financial matters of the concern. The first party also in his case petition has not described his nature of work he performed. From the above discussions I am of the view that the first party was not a "worker" and as such he is not entitled to the benefits prayed for.

Members are consulted over the matter.

Ordered

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-12-1975.

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

A. AHMED
Chairman.
30-12-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 440 of 1974.

(1) Monojit Kumar Achajjee, S/o. Late Chandra Kumar Achajjee, Stenographer, Branch Production Manager's Office, Bangladesh Tobacco Co. Limited, Engineering Department, Fouzderhat, Chittagong;

(2) A. K. Barua, S/o. Late N. C. Barua, Bangladesh Tobacco Limited, Engineering Department, Fouzderhat, Chittagong—*First Party;*

versus

Branch Manager, Bangladesh Tobacco Co. Limited, Fouzderhat, Chittagong—*Second Party.*

PRESENT :

Mr Santiranjan Karmakar—*Chairman.*

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

This is an application under section 34 of the Industrial Relations Ordinance, 1969 for enforcement of right stating to have been secured and guaranteed to the first party under law and settlement.

The two petitioners, first party, are members of the clerical staff of the establishment of the second party, namely, Bangladesh Tobacco Co. Limited, Fouzderhat, Chittagong.

Their case is that since the canteen provided for use of the workers remained closed during the holy month of Ramzan, they being non-Muslim were deprived of the right of using it, as it was not made available for their use during the aforesaid month and for that reason they claimed Lunch Disturbance Allowance as per agreement dated 17-4-1974.

The second party resisted the claim on the ground that the establishment is not in any way concerned with the management of the Canteen, which is managed by a Managing Committee and which by a resolution kept the Canteen closed during the holy month of Ramzan.

The question is—whether the second party is liable for the Lunch Disturbance Allowance as claimed by the first party.

DECISION

As per provisions of section 80 of the Factories Rules, the second party is to provide canteen facility to the workers of their establishments where more than 250 workers are employed. It is admitted that there is a canteen provided for the use of workers in the establishment of second party, but during the holy month of Ramzan, the canteen had been kept closed during day time and as such non-Muslim employees were deprived of the canteen facility during that period, *i.e.*, Ramzan month.

Besides this there is an agreement between the workers and the second party. Under clause 12 of the the agreement signed on 17-4-1973, all employees who may be required to do outdoor duties and who unable to avail of the canteen facility during lunch hour shall be entitled to Lunch Disturbance Allowance. In the present case, the employees have been unable to avail the canteen facility during Ramzan month by closure of the canteen during day time under a resolution adapted by the Canteen Management Committee. Hence, these non-Muslims are entitled to Lunch Disturbance Allowance for the said period.

The application of the first party be, therefore, allowed on contest and they be awarded Lunch Disturbance Allowance at the rate of Tk. 3·00 per day for the said period of Ramzan, execpt Sundays and Holidays.

The second party do pay up the dues of the first party within 30 days from the date of this judgement.

Members also opined on the same line with me.

SANTIRANJAN KARMAKAR,
Chairman,
Labour Court, Chittagong.
23-2-1976.

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

SANTI RANJAN KARMAKAR,
Chairman.
23-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute case No. 444 of 1974.

Siddique Ahmed, Peon, Civil Engineering Department, Dawood Jute Mills Ltd., Rangunia, Chittagong—*First Party*;

versus

(1) Administrative Officer, Dawood Jute Mills Limited, Rangunia, Chittagong ;

(2) The General Manager, Chittagong Zone, Bangladesh Jute Industries Corporation, Sattar Chamber, Agrabad, Chittagong—*Second Party*.

PRESENT :

Mr Santiranjan Karmakar—*Chairman*.

Mr Jamshed Ahmed Chowdhury—*Member*.

This is an application under section 34 of the Industrial Relations Ordinance, 1969 for directing payment of wages to the first party from April, 1971 to December, 1971.

The case of the first party is that he was appointed as a Peon in the employ of the second party on 21-10-1970 and was made parmanent in his post and position in usual course. He had been serving as such till 24-3-1971 but with the escalation of the liberation struggle he absented under very a strained situation from duty from 25-3-1971. After liberation he wanted to join his post on 23-2-1972 but was allowed to resume on and from 26-8-1972. Even though the second party have given salary to all workers for the period covered by the liberation war, though they also abstained from duty during the aforesaid period, the first party was denied the right to receive his salary for the said period without any reason whatsoever and this has obliged him to seek releief under section 34.

The second party resisted the application on the ground that he was appointed only on 26-8-1972 and as such he being not a worker under second party prior to that date, he is not entitled to the salary asked for.

On the pleadings the main question that has engaged our attention is to ascertain the date of the appointment of the first party in the establishment of the second party.

FINDINGS

Second party in whose establishment the first party is admittedly a worker has not produced any paper to show from which date the first party was appointed. It appears, however, from the joining report dated 23-2-1972 that the first party wanted to join in his former post in pursuance of the government notification but as he could not be readily accommodated for want of vacancy, he was allowed to join on 26-8-1972 . His application for 9 months' salary went through a process of examination as is evident from the internal memo dated 7-8-1974 addressed by the Administration to the Assistant Civil Engineer. A reply to this query was given by the Assistant-Civil Engineer on 8-8-1974 to the Administration and in this letter it has been clearly stated :

> "Please confirm that Mr Siddique Ahmed., Peon who worked with this department from 21-12-1970 to 24-3-1971 and he left the department from 25-3-1971 to 22-2-1972 due to war of liberation."

This letter has been disowned by the second party stating *inter alia* that it is not a genuine letter. It, however, appears that it is in the official letter form of the employer bearing an office number and signature of one Mosharraf Hossain, designated as Assistant Civil Engineer. It has been proved by the first party who know his signature. His signatures occurs in all the papers proved in the case, but the officer concerned has not been produced to deny the papers. This attitude of the employer cannot be viewed for any amount of grace. The letter dated 8-8-1974 which I take to be the genuine product of an officer of the second party given a complete answer to the facility of the employer's stand that the first party was not their employee during the liberation war.

Salary or wages of a worker is guaranteed by the terms and conditions of service as well as by the Employment of Labour (Standing Orders) Act and also the Shops and Establishments Act. The Government have decided to

make payment to all for the period covered by the liberation war. The company has also honoured the decision in the case of all other workers, no exception, therefore, can be taken to the case of the first party, who is found to have been appointed on 21-12-1970. There is, therefore, absolutely no substance in the plea taken by the employer.

Second party, therefore, be directed to make payment of the amount which stands due to the first party for the period from April to December, 1971, within one month from the date of this order.

Member present Mr. Jamshed Ahmed Chowdhury is consulted and he shares the same view with me.

SANTIRANJAN KARMAKAR,
Chairman,
Labour Court, Chittagong.
29-1-1976.

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

SANTIRANJAN KARMAKAR,
Chairman.
29-1-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 445 of 1974.

S. M. Nurul Azim, S/o. Mr. Mustaque Ahmed, Vill. North Lakherchar, P. O. Chiringa, P. S. Chakaria, Chittagong—*First Party,*

versus

(1) M/S. Hafiz Jute Mills Ltd., Dacca Trunk Road, Bara Aulia, Chittagong ;

(2) Bangladesh Jute Industries Corporation, Motihjeel Commercial Area, Dacca—*Second Party.*

PRESENT :

Mr. Santiranjan Karmakar—*Chairman.*

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

COPY OF FINAL ORDER

No. 12, dated the 21st January, 1976.

Members are present.

Both the parties are present.

Heard the parties on the question of maintainability of the application under section 34 of the Industrial Relations Ordinance, 1969. No oral evidence is adduced. Since in view of the decisions of our Supreme Court a dismissed worker is not entitled to challenge the legality of his dismissal under section 34 and such individual dispute cannot be regarded as an industrial dispute so as to enable him to maintain an application. I hold that the present application under section 34 of the I. R. O. is not maintainable. Hence—

Ordered

That the application be dismissed on contest without cost.

Members are also of the same view with me.

SANTIRANJAN KARMAKAR
Chairman,
Labour Court, Chittagong.
21-1-1976.

Typed at my dictation.

SANTIRANUJAN KARMAKAR
Chairman,
21-1-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 446 of 1974

Bijoy Kumar Barua, S/o. Late Mohendra Lal Barua, Village—Bhomarpara, P.S. Raujan, Dist. Chittagong—*First Party,*

versus

Project Manager, B.F.I.D.C., Wood Seasoning and Cabinet Manufacturing Plant, and Particles Board and Bannering, Kalurghat, Chittagong—*Second Party.*

PRESENT;

Mr. Ameenuddin Ahmed—*Chairman.*

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

By this application under section 34 of the Industrial Relations Ordinance, 1969, Bijoy Kumar Barua, first party, who was a permanent worker under the second party since 5-12-1966 seeks reinstatement in his former post with back wages upon the allegation that he was illegally suspended on 16-5-1974 and dismissed on 20-7-1974 without any show cause or charge-sheet and without any enquiry as provided in the Standing Orders Act, 1965.

Second party contested the case by filing a written statement alleging *inter alia* that the first party was placed under suspension *vide* order dated 16-5-1974 for taking illegal gratification of Tk.500·00 from one C.R.Barua who secured job through him. Thereafter a proceeding dated 2-5-1974 was drawn against the first party over the said gratification and directed first party to submit his explanation to the enquiry officer, who enquired the matter on 7-5-1974. The first party appeared before the enquiry officer on 7-5-1974 and submitted written statement admitting the guilt. Thereafter the first party was dismissed from his service *vide* office order dated 20-7-1974. The first party is not entitled to get any relief.

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

DECISION

P.W. 1, Bijoy Kumar Barua, first party has examined himself in support of his case. None is examined on behalf of the second party. According to P.W. 1. he was appointed on 31-12-1964 as Machine Operator by the second party and thereafter he became permanent worker. It is also stated by P.W. 1 that the second party *vide* letter dated 16-5-1974 Ext. 1, suspended him from service and thereafter by another letter dated 20-7-1974. Ext. 2, the second party illegally dismissed him (first party) from service without issuing charge-sheet or enquiry. P.W. 1 produced order dated 16-5-1974 where it was stated that the first party "is hereby placed under suspension with effect from 17-5-1974 for gross misconduct." The first party also produced next order dated 20-7-1974 Ext. 2 which shows that the first party was dismissed from the service of the Corporation under rule 17 (c) of the Standing Orders Act, 1965 with effect from 17-5-1974 for taking illegal gratification from C.R. Barua.

It is contended on behalf of the second party that in compliance with the show cause the first party submitted explanation dated 27-5-1974 where he admitted the charge. P.W. 1 the first party denied to have submitted any such written explanation admitting the guilt. The alleged signature of the first party dated 27-5-1974 is marked "X" for identification in the alleged explanation is flatly denied by the first party. Second party has not proved that the first party submitted any explanations on 27-5-1974 in compliance with the alleged show cause. Moreover, the said contention has been disproved by the statement of the second party made in para 5 of the written statement, where it was stated that on 2-5-1974 a proceeding was drawn against the first party for misconduct and that the first party appeared before the enquiry officer on 7-5-1974 and submitted his written explanation admitting charge. But during hearing it was the case of the second party that on 27-5-1974 the first party appeared before the enquiry conmmittee and submitted written explanation admitting his guilt. I cannot place any reliance upon the said case of the second party.

There was no enquiry held and no personal hearing was given to the first party. In fact the second party simply passed an order of suspension Ext. 1, and kept the first party under suspension until 20-7-1974 when the dismissal, order Ext. 2 was passed. Besides this two orders, no other action was taken by the second party to follow the mandatory procedure of section 18 of the Standing Orders Act, by recording in writing the allegations against the

first party, by giving him a copy thereof and by giving him time to explain or by holding any kind of enquiry. So, both the orders of suspension and, dismissal are found to be illegal. The first party is, therefore, entitled to be reinstated in his service with back wages.

Members are consulted over the matter.

Order

That the case be allowed on contest without cost.

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-12-1975.

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

A. Ahmed
Chairman.
30-12-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Industrial Dispute Case No. 665 of 1974.

Abdul Sharif, S/o. late Abdul Rashid, Darwan (Nightguard-*cum*-Daftory), Postarpar Boys' School, C/o. Chittagong Pourashava, Chittagong—*First Party,*

versus

The Chairman, Chittagong Pourashava, Chittagong—*Second Party.*

PRESENT:

Mr Santiranjan Karmakar—*Chairman.*

Mr Samshed Ahmed Chowdhury ... } *Members.*

Mr Juned A. Choudhury .. }

This is an application under section 34 of the Industrial Relations Ordinance, 1969 seeking overtime dues in terms of an award.

The first party was appointed by the second party, namely, Chittagong Pourashava on 30-6-1967 as a Darwan and posted at Postarpar Boys' School to discharge his duty of Nightguard-*cum*-Daftory. According to the first party he had been rendering 24 hours duty althrough since his posting at the School except for three months, during which he has been discharging his 12 hours duty, consequent on the appointment of second Darwan. His case is that he is entitled to over time allowance at double rate of ordinary wages for the duty rendered beyond the scheduled hours of work which is 8 hours a day and 48 hours a week, and this, he claims, as a right guaranteed and secured to him by the award given in I.D. Case No. 178/72 with effect from 1-6-1973 up to 30-11-1974.

The second party, to be hereinafter referred to as the Pourashavas, resisted the claim of the first party on the ground that since the first party was never required to work for more than 8 hours a day, his claim for overtime allowance is not tenable as per terms of award, which forms the foundation of the claim of the first party.

So, on the pleadings, the only point for consideration is whether the first party discharged his duty for more than 8 hours a day.

FINDINGS

According to the case made out in para 5 of the written objection filed by the second party, the petitioner as required to work from 10 p.m. to 6·00 a.m., that is to say, he works only for 8 hours a day. But curiously enough there is no duty chart or any set of paper to bear out such assertion on behalf of the second party. A Teacher of the School, where the first party is posted gave evidence on behalf of the second party as D.W. 1. He has stated:

"There is no duty chart or roster in the School."

So, there is absoluetly no paper to show that his duty was from 10·00 p.m. to 6·00 a.m. According to the evidence of D.W. 1, the first party resides in the school for 24 hours and that the responsibility of protecting the school property and premises, rests upon the Darwan. That being so, it cannot be said that he is accommodated in the school as a matter of grace, but on the evidence of D.W. 1, it must be his duty to stay there for guarding the school which remains closed for 6 months in a year. Thus from the evidence of D.W. 1, it is clear that the first party was obliged to discharge his 24 hours duty at least for the protection of the school premises and that being beyond the statutory hours of duty, falls within the mischief of overtime allowances.

In view of the conclusion arrived at by me on a careful appraisal of the evidence in the record, I am unable to agree with the views of the learned members recommending rejection of the petition.

The first party joined on 30-6-1973 and since then be has been on duty for 24 hours till September, 1974, wherefrom consequent on the appointment of another Darwan he has been discharging 12 hours duty daily which is boyond the statutory hours of duty warranting overtime allowance.

Accordingly, the application be allowed on contest without cost. The first party be given overtime allowances that falls due to him since the inception of his service till 30-11-1974 as claimed.

Second party do calculate the same and pay up the amount to the first party within 30 days from today.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
18-2-1976.

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

S. R. KARMAKAR
Chairman.
18-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Cr. Case No. 13 of 1975.

Hoechst Employees' Union, Regd. No. 1234, 65, Agrabad Commercial Area, Chittagong, Represented by Mr. S. C. Datta, President of the Union—*Complainant*,

versus

(1) W. M. Oldach, Managing Director,

(2) M. Frank, Director, Pharma, M/S. Hoechst Pharmaceuticals Co. Ltd., 65, Agrabad Commercial Area, P. S. Doublemooring, Chittagong—*Accuseds.*

PRESENT;

Mr Santiranjan Karmakar—*Chairman.*

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

COPY OF ORDER

No. 10, dated the 19th January 1976.

The short point involved at the present stage is, whether the Court should issue process under section 54 read with section 62 of the Industrial Relations Ordinance, 1969 against the two persons arranged as accused in the case for breach of an agreement.

These two persons are in-charge of management, supervision and control of the establishment of which the complainant is the collective bargaining agent.

The parties entered into solemn agreement on 16-3-1973 made effective from 1-1-1973. One of the terms and conditions of the agreement as incorporated in clause 7 is that the company shall discuss with the union and shall arrive at a mutual decision with the consent of the union in all matters relating to recruitment, retrenchment, dismissal, removal and termination of service of the workers. On 23-4-1973 in a meeting it was adopted further that in future all recruitments will be handled by Chittagong Office and in line with the agreement. The case of the complainant is that in derogation of the aforesaid term of the agreement, dated 16-3-1973 and 23-4-1973 certain Medical Representatives were recruited at Dacca on 24-3-1975 without discussing and coming to a mutual decision with the union and thereby the management stands liable for committing breach of agreement under section 54 read with section 62.

The first point of attack made by the accused is that no prosecution under section 54 or 62 is sustainable because of the fact that there was no such agreement in the eye of law and within the ambit of the I.R.O. The learned Advocate appearing for the accused has developed his argument in the manner indicated below.

He has urged that the agreement is not the same thing as Settlement within the meaning of the word "Settlement" as defined in clause XIV of section 2 of the I.R.O. He conceded that under the definition of "settlement", it of course includes an agreement if it is in writing and has been signed by the parties and copy thereof has been sent to the Provincial Government. There is no dispute that the agreement, dated 16-3-1973 in the present case is in writing and has been signed by the parties thereto. But it was sought to be thrown out only on the ground as submitted, that no copy of it was sent to the appropriate authority as designed and contemplated by the definition. There is nothing in the definition to indicate whose duty it was to send the copy. To us it appears that the duty is cast more on the employer than on the union and on a reference to the union's letter dated 10-4-1973 backed up by the 3 postal acknowledgement receipts there is no room for doubt that the copies were sent to the appropriate authorities including the Government by the union itself and that fulfils the requirement of the law, so as to honour it as a solemn agreement. Even assuming that no copy was sent, it does not seem to us that a solemn agreement which rather admitted would cease to be so merely because a copy thereof was not sent to the authority, which, in our view, is a mere formal compliance with the direction enjoins by the definition, non-compliance of which does not make the agreement less an agreement. So, that contention of the accused is overruled.

Next point that was urged by the accused is that Mr S. C. Datta, who filed the complaint in his capacity as President of the union is no longer in service, as, his services had since been terminated and as such, he was incompetent to file the complaint. It is true that there has been a termination of service of Mr S.C. Datta, but that matter is still *subjudice* and that being the position, no exception to the filing of the complaint by Mr Datta can be taken at this stage.

It was next contended that Mr Datta being an officer and not a worker, could not be the President of the union, as, under section 6 of the Industrial Relations (Regulations) Ordinance, 1975 published on December 4, 1975 non-workers cannot become members of trade union. This Ordinance is, however, no retrospective effect.

Coming now to the question of violation of clause 7 of the agreement, dated 16-3-1973 re-emphasised in clause 3 of the minutes dated 23-4-1973 it is found as a fact that in fact recruitment of 4 (four) Medical Representatives were made in an interview held at Dacca and not at Chittagong in derogation of clause 3 of the minutes of which the union was not represented, which of course, was a must in view of clause 7 of the agreement, dated 16-3-1973. So, *prima facie* there was no compliance with the terms of clause 7 of the agreement and as such, there had been a breach of agreement within the mischief of section 54.

Lastly, it was argued that just a termination is the prerogative of an employer recruitment is also a right of the employer which is not faltered by any restriction or condition imposed by the union. Nobody is denying that the employer has a right to do it, but when an employer is a party to an agreement it has equally a binding force on him to make it obligatory to honour not only its spirit but also the letter of the agreement which is not merely directory or suggestive but very much mandatory as is manifest from the

words, "Shall discuss" and "Shall arrive at a mutual decision". That disposes of all the points raised at the hearing and we are unable to agree that there was no *prima facie* case against the accused.

In our view, however, section 62 does not in terms apply to the present case which attracts only section 54.

We would, therefore, direct that the accused persons be summoned to face a trial under section 54 of the Industrial Relations Ordinance, 1969.

To 19-2-1976 for appearance.

S. R. KARMAKAR,
Chairman,
Labour Court, Chittagong.
19-1-1976.

Typed at my dictation.

S. R. KARMAKAR
Chairman,
19-1-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 2 of 1975.

Hassanazzaman, T/No. 1417, Weaving Department, S/o. Azhar Ali, village Moheswar, P.O. Moyoura, P.S. Chouddagram, Dist. Comilla—*First Party*,

versus

(1) M/s. S. K. M. Jute Mills Ltd., Barbakunda, Chittagong,

(2) Bangladesh Jute Industries Corporation, Motijheel C/A, Dacca—*Second Party*.

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman*.

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

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 the first party Hassanazzaman seeks direction upon the second party to reinstate him in his original post with back wages after setting aside the illegal dismissal order dated 1-11-1974 mainly on the ground that the second party in the matter of said dismissal has not followed the provisions of sections 17 and 18 of the Standing Orders Act.

Second party contested the case by filing written statement alleging *inter alia* that the first party was issued with a letter of charge dated 27-9-1974 by the second party No. 1 for commission of misconduct and he was also placed under

suspension with immediate effect. First party submitted his explanation dated 30-9-1974 which was found unsatisfactory and thereafter an enquiry was held on 31-10-1974 and the enquiry committee submitted his report dated 1-11-1974 finding the first party guilty for misconduct and thereafter second party No. 1 dismissed the first party from service *vide* letter dated 1-11-1974 after complying with necessary requirements of sections 17 and 18 of the Standing Orders Act. The second party did not get any grivance petition from the first before filing of this case. The first party is not entitled to get any relief.

It is to be seen whether the first party is entitled to be reinstated in his former post after setting aside the order of dismissal.

DECISION

P.W. I, Hassanazzaman (first party) has only examined himself in support of his case. On the other hand, D.W. 1, M. Nurul Huda, Labour Officer of the second party No. 1, has examined himself for the second party.

Admittedly first party was appointed by the second party No. 1 in 1972 on piece rate basis as Beam Tire and he became a permanent worker. Admittedly second party No. 1 issued charge-sheet dated 27-9-1974 Ext. 1, against the first party for misconduct and the first party submitted explanation Ext. 1 denying the charges. The copy of explanation dated 30-9-1974 is marked Ext. 2. It is also an admitted fact that second party No. 1 thereafter held on enquiry on 31-10-1974 by an enquiry committee constituted by second party No. 1, *vide* Ext. B and there in the enquiry first party admittedly participated. P.W. 1 has clearly stated in his evidence that he participated in the enquiry where he was examined and his statement during enquiry is marked Ext. A. P. W. 1 also admitted that Hassan Imam, Departmental In-charge, was also examined during enquiry. Fani Bhusan Nath, a Hazira Clerk of the second party, was also examined during enquiry. The statement of Hasan Imam and Fani Bhusan Nath are marked Exts. A and A(1). D.W. 1 was one of the members of the enquiry committee. He clearly stated that the enquiry committee held enquiry where first party was duly participated and he (D.W. 1) wrote the enquiry report dated 1-11-1974 Ext. C, which was signed by all the enquiry committee members including chairman. Accordingly to D.W. 1 first party was given all reasonable opportunity during enquiry for his defence. According to D.W. 1, first party adduced no evidence for his evidence during enquiry. P.W. 1, however, stated in his evidence that he wanted to examine 3 witnesses during enquiry and their statements were recorded but these statements are not found in the enquiry proceedings now. D.W. 1 stated that the evidence of P.W. 1 is not true, as he (first party) adduced no evidence during enquiry. There is nothing on record to show except the uncorroborated testimony of P.W. 1 that he examined his witnesses. It is risky to rely upon the said evidence of P.W. 1. The first party neither stated in his case petition, nor in his evidence that due to enmity or ill feeling the D.W. has deposed against him. I find no earthly reason as to why the D.W. would depose falsely against him (first party) with whom he has no grudge or enmity. I have carefully scrutinised all the relevant papers exhibited in this case and procedures and circumstances involved. I have every reason to say that the first party was removed from service for misconduct after holding proper enquiry step by step as provided under sections 17 and 18 of the Standing Orders Act. Therefore, there can be no warrant for interference with the order complained of.

Moreover, from the evidence of P.W. 1, it can be safely said that the first party has not complied with the provisions of section 25(1)(a) prior to the filing of this case. The first party in his case petition stated that on receipt of the dismissal order he submitted a written representation on 7-11-1974 which was received by the second party No. 1 on 8-11-1974. A copy of the said grievance petition has been marked Ext. 4. The first party in his cross has stated that he does not remember where and to whom he handed over the said grievance petition. He also cannot say the date or month when he handed over the said grievance petition. This very evidence goes to prove strongly that no grievance petition as required under section 25(1)(a) was ever served upon the second party. So, in this view of the case the first party's case is not maintainable.

From the discussions above I find that the first party is not entitled to get any relief in this case.

Members are consulted over the matter.

Ordered

That the case be dismissed on contest without cost.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
30-12-1975.

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

A. AHMED
Chairman.
30-12-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 4 of 1975.

Sadhan Chandra Dutta, S/o. late Jamini Ranjan Dutta, C/o. Hoechst Employees Union, 64, Agrabad Commercial Area, Chittagong—*First Party*,

versus

(1) Managing Director,

(2) Pharma Manager,
Both are of M/s. Hoechst Pharmaceuticals Co. Ltd., 65, Agrabad Commercial Area, Chittagong—*Second Party*.

PRESENT:

Mr. Santiranjan Karmakar—*Chairman.*

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

Mr. Sadhan Chandra Dutta, first party, has been in the employment of the second party, namely, M/s. Hoechst Pharmaceuticals Co. Limited, Chittagong, ever since 15-2-1965 till termination of his services made effective from December, 5, 1974. He was initially appointed as Accounts Clerk-*cum*-Typist on 15-2-1965. In February 1972 he was promoted to the post of Accounts Assistant, *vide* Ext. G, and by a letter dated July, 1972 Ext. H, he was again promoted to the rank and status of Junior Sales Officer with a direction as contained in the company's letter of September, 26, 1974 Ext. J. to work under the direct instruction of the Pharma Manager. All on a sudden the first party received an order dated 4-12-1974 Ext. B, terminating his services with effect from 5-12-1974 along with a certificate Ext. C, as enjoined by section 21 of the Standing Orders Act, 1965. The first party lodged a grievance petition under section 25 seeking redress but according to the first party, the second party confirmed the order of termination by its letter December, 18, 1974 Ext. D, without holding any enquiry and giving him an opportunity of being heard. Buffled in getting redress, he was, as a last resort obliged to file this case under section 25(1)(b) of the Standing Orders Act for reinstatement in his former post and position with all attendant benefits and continuity of service alleging that his termination was a direct out come by way of victimisation of his involvement in trade union activities.

The company entered appearance and filed written objection in which it took the stand that the first party is not a worker within the definition given in the Act.

Before we deal with the preliminary objection as to whether or not the first party was a worker, we are constrained to observe that the first party was not a "Black-Sheep". He earned two promotions in quick succession certainly not as a "Black-Sheep" but by virtue of his officiency and ability as recognised and appreciated even in the company's letter Ext. H, of July, 26, 1972 giving him promotion to Junior Sales Officer, with an observation in the following terms:

> "We are confident that you will continue to show the desired results in the the performance of your duties in future as well."

Such an officer thrown out of employment without any charge-sheet and without any enquiry? Even God Himself did not punish Adam without asking him to show cause. It is unfortunate that the company has not assigned any reason whatsoever, either good, bad or indifferent before firing out the first party. This is, however, beside the point, so to say for in order to give him relief as claimed, we are to see, if he is a worker within the definition under the Act.

In order to determine whether a person is a worker or not, only the essence of the matter has to be looked into without attaching undue importance to the employee's designation or the same assigned to the class to which he belongs. The essence of the matter is: what the primary duties of the employee were—did he do cleical or manual work? If the answer is in the affirmative, he is a worker—were his duties of supervisory nature? If the answer is in the affirmative, he is not a worker. In considering the latter aspect of the problem industrial adjudication generally took the view that the supervisor or officer should occupy a position of command or decision and should be authorised to act in certain matters within the limits of his authority

without the sanction of the Manager or their superiors. In this connection we may note further that the law does not anywhere say that the criterian of a person employed in administrative or managerial or supervisory capacity must necessarily have the power to appoint and dismiss or to be in a position to enter into contracts on behalf of the concern independently without side agencies, or to have any control over the financial commitments of the concern. The distinction between a worker as defined in the Act and a member of the administrative staff or managerial or supervisory staff is that, a worker is he, who does manual work either in any technical line or in office as a Clerk. But it is to be noted that one who supervise the work of a manual worker or that of the clerks cannot be said to be a worker and must necessarily be said to be either a superviser or a member of the managerial staff. To be so, he need not have powers of controlling finance of the concern or entering into contract without side agencies on behalf of the concern or to take independent decision with regard to the policy matter or even to appoint or dismiss an employee. It would be rewarding to note below the observation of their Lordships in the judgment reported in PLD-1970-Da. 712 at page 714. Their lordships have said:

> "Without these powers also one can be either a Manager, or an administrative officer or a supervisor".

With this back ground, let us now proceed to examine the position of the first party *visa-a-vis* the Standing Orders Act.

The word "worker" has been defined in clause (v) of section 2 of the Act as under:

> "(v) 'worker' means any person including an apprentice employed in any shop, commercial establishment or industrial establishment to do any skilled, unskilled, manual, technical, trade promotional or clerical work, for hire or reward, whether the terms of employment be expressed or implied but does not include any such person;
>
> (i) who is employed mainly in managerial or administrative capacity; or
>
> (ii) who being employed in a supervisory capacity exercises, either by nature of the duties attached to the office or by reason of power vested in him functions mainly of managerial or administrative nature."

The exceptions to the definition of "worker" clearly indicate that if a person who is mainly employed in a managerial or administrative capacity or being employed in supervisory capacity, exercises, either by nature of his duties attached to the office, or by reason of powers vested in him; functions mainly of managerial or administrative nature, then and then only, a worker shall be taken out of the purview of the definition of "worker" as defined in the Act.

Coming now to the case of the first party, it will be seen that he was initially appointed as an Accounts Clerk-*cum*-Typist in February, 1965 and was being althrough been treated as worker till termination of his services, while he was, on promotion, holding the post of a Junior Sales Officer as is evident from the termination order itself Ext. B, dated December 4, 1974 terminating his

service under section 19 of the Standing Orders Act. It appears that the management soon realised its f lly as soon as the first party represented his grievances under section 25(*1*)(*a*) and while giving reply by Ext. D, the management ractified the mistake stating *inter alia* that:

> "Please note that your grievance petition under section 25(1)(a) of the Bangladesh Employment of Labour (Standing Orders) Act, 1965 does not lie since you are not a worker within the meaning of section 2(v) of the Employment of Labour (Standing Orders) Act, 1965. We further add that you were promoted to the rank of Junior Sales Officer under our letter dated 26th July, 1972 with effect from 1st July, 1972 and accordingly you had been discharging your duties as Junior Sales Officer having administrative and supervisory capacity and managerial too and by virtue of such promotion you have enjoyed all facilities as applicable to Junior Officer."

We may observe that mere acceptance by the employer under a mistaken notion that a particular employee is a worker, would not make him a worker under the law, unless the functions discharged by him are proved to be those of a manual worker or work of clerical nature, There can be no estoppel against the statute. Whether a person is a worker or not has to be proved by the evidence regarding the exact nature of his work and not by admission or acceptance as such by the employer.

Exact functions of a Junior Sales Officer have not been defined anywhere but from the allotment of duty as shown by Ext. J, it appears that the first party was attached to the Pharma Manager and directed to work under his direct instructions. Now here do we find that since his promotion as Junior Sales Officer he was required to do any manual or clerical work. On the other hand adverting to his promotion letter Ext. H, dated 26th July 1972 we find the following directives which is not commensurate with the benefits given to a worker. The letter says—

> "Since you have now become an officer you are not entitled to any Dearness Allowance and Children Allowances".

He was thus given only his basic salary together with Conveyance Allowance and not the Dearness Allowance and Children Allowance which were given to him till he worked as an Accounts Assistant, on promotion. Ext. H further adds:—

> "Furthermore, henceforth as an officer of the company, you will not be entitled to any overtime payment in case you are required to work beyond working hours."

It is thus clear from Ext. H that since the time of his promotion as Junior Sales Officer he was changed or transformed to the category of an officer from his initial position as a worker and was given all facilities admissible to an officer but not to a worker.

Upon a scru'iny of Employees Muster Roll for 1972 Ext. Q, it appears that Mr. S. C. Dutta had been signing his Attendance Register specified for workers, but as soon as he joined as officer his name was transferred to the Attendance Register earmarked for officers. When manifestly the management has been maintaining two categories of Attendance Registers—one for the workers

and another for the officers, it is inconceivable that the management would allow Mr. Dutta to sign the Attendance Register exclusively meant for officers, were he actually a worker.

Regarding the duties performed by the first party he stated before us as follows;—

> "There are Salesmen in our office for sales promotion work from shop to shop. As an officer I used to work in the office. I used to scrutinise the orders brought by the Salesmen. There was no clerk under me. There are four clerks in the whole office, which was manned by 25 employees besides the officers."

On his evidence as quoted above I cannot rule out an element of control exercised by the first party.

Referring to Ext. K, dated 3rd October, 1972 we find that the procedure of work to be observed in the folloiwng manner;

> "All consignments from outside (mailnly from Chittagong and Khulna) should be opened inside the Store and in presence of Mr. Rahman Sharif and in his absence Mr. S. C. Dutta. Any doubtful consignment should be surveyed immediately. No complain of shortage or excess will be entertained, if the consignment is opened in absence of any above gentlemen."

This is explained by the first party as just playing the role of a witness and nothing more. We are not in a a position to accept the suggestion that Mr. Dutta was entrusted to be a mere spectator silently observing the opening of the consignments without any supervisory power. The word "Supervision" means "Inspection"; "Control", and this element of inspection and control is manifest from the following directives in Ext. K, which enjoins; "Any doubtful consignment should be surveyed immediately.".

Clause (*b*) of Ext. A reads thus—

> "All packing materials (requiring disposal) will be sold to the highest bidder in consultation with Mr. Rahman Sharif and in his absence Mr. S. C. Dutta and the sales proceeds will be deposited with the Cashier against proper receipts."

Still is there any scope for us to say that Mr. Dutta was lacking in any power of inspection and control ?

Ext. L, dated 7-12-1973 addressed to the Personnel Department communicated from Mr. Dutta himself and it relates to payment of monthly remuneration by Mr. Dutta to the Sweeper Chuni Lal. Mr. Dutta reported resumption of duties by Driver Syedur Rahman, Peon-*cum*-Packer Abdur Rahman by his letter dated 29-1-1973, Ext. M. What is far more curious is that it is Mr Dutta who approved all overtime work of workers as evidenced from Ext. N. What does it indicate ? The word "Approve" means, as I understand, to "Confirm" to "Snaction" or "ratify". Does it not indicate a sort of administrative control ?

The management have placed on record a large number of payment vouchers Ext. P series in proof of the fact that it is Mr. Dutta, who has approved all the payment mentioned within each of the vouchers. Exts. P/20 to P/24 are leave applications sanctioned by Dutta to different workers. Then what remains to show that Dutta was not inseparably connected with the administration and was discharging such capacity as is brought to light by the mass of papers filed by the management.

On behalf of Dutta, the exercise of such powers by him are not denied but he has offered an explanation that all these he was required to do while he was ordered by the management to deputise Mr. Rahman Sharif, Branch Manager during his absence on official visit to Bombay. By a letter dated 29-5-1973, Ext. 8 and on the authority of 21-DLR-285 it was argued that a worker when on a very solitary occasions doing the function of Manager or an Administrative Officer does not cease to be a worker. We do not see how Haribandu Sarkar's case reported in 21-DLR-285 can be pressed into service and said to be on all force to the present case.

In 21-DLR case Mr. Haribandhu Sarker's job was to maintain records in the head office and it is only by way of exception that he was made by the authority to sign cheques jointly with the Manager. In delivering the judgment in that case their Lordships observed as under:

> "We have gone through the letter of appointment of Haribandhu Sarkar as placed before us by the learned Advocate for Respondent No. 2. From this letter of appointment it is clear that Haribandhu Sarkar was not appointed to either administrative office or to a managerial office or to an office which can be said to be of the supervisory nature. As one shawallow does not make a summer. So, the mere signing of cheques by Respondent No. 2 under orders of the authority if and when necessary, will not give the Respondent No. 2 the status of either an Administrative Officer or a Manager of an office with supervisory powers, and would not, therefore, bring him within the purview of exceptions of clause (v) of section 2 of the Act."

That case is thus clearly distinguishable from the facts of this case, where althrough since the promotion of Dutta as Junior Sales Officer he is found to have been discharging functions falling with the exceptions of clause (v) of section 2, even before and after his deputation. Ext. 8 relates to his deputation and is dated 29-5-1973. How could he sign the cash vouchers Ext. P/26 on 28-5-1973 and in what capacity, if he was not already clothed with such power ? We are told that Mr. Rahman Sharif returned on the 12th June, 1973. If that being so as is not denied, how could Dutta sign the vouchers on the 15th and 18th June, 1973 and also on 15-10-1973 as is evident from Ext. P to P(4) ? How could he pass order like "Cashier, please pay" on the envelope P(110) ? Needless to multiply instances like this nature. On an analysis of all the materials furnished in the case we are of the opinion that Mr. Dutta, first party, was not a worker, as his work was wholly of different category from manual work or clerical work.

Moreover, I may mention in passing that as held in 26-DLR-33, definition of the term "worker" does not include a person whose services have been terminated under section 19 of the Standing Orders Act, as was done in the case of S.C. Dutta.

In the result, we hold that the first party, S. C. Dutta who was a Junior Sales Officer, is not a "worker" as defined under section 2(*v*) of the Standing Orders Act, 1965 and dismiss the petition on contest without cost.

I have considered the views of the learned Members who also share the same view with me.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
26-2-1976.

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

S. R. KARMAKAR
Chairman.
26-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 5 of 1975.

Md. Azizur Rahman, Tangail Boarding, 179, Reazuddin Bazar, Chittagong —*First Party*,

versus

Branch Manager, Bangladesh Oxygen Limited, Ramgarh Road, Jalalabad, Chittagong—*Second Party.*

PRESENT:
Mr. Santiranjan Karmakar *Chairman.*

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

This is an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 for reinstatement with all the attendant benefits and continuity of service.

The case of the first party Md. Azizur Rahman is that he was appointed a Foreman on 1-5-1964 under he second party, namely, Bangladesh Oxygen Limited, Chittagong. After a long lapse of more than 10 years of his service he was charge-sheeted on 20-9-1974 on the charge that on the 12th, 13th and 14th September, 1974, he in league with another, namely, one Shah Kamal Chowdhury, caused excess production of electrodes and withheld the same which he sold outside by tampering the company's official records relating

to production. He was thereupon placed under suspension. Upon an F.I.R. in respect of the alleged theft he was arrested and taken to custody. The criminal case is still pending. In the meantime the first party submitted his explanation to the charge levelled against him denying the charge and stated *inter alia* that the charge is an outcome of a deep rooted conspiracy by some interested union officials. It is alleged that he was dismissed from service on 19-11-1974 without giving him an opportunity to clarify his position. The first party then made a grievance petition to which the second party did not care to give any reply. He was, therefore, obliged to institute the case calling in question the legality of the order of his dismissal and praying for reinstatement with all the attendant benefits as prescribed under the law.

A preliminary objection was raised on behalf of the second party that since a Foreman is not covered by the definition of "worker" under the Standing Orders Act, the first party is not entitled to raise the question of his reinstatement as an industrial dispute and if it is raised, the Labour Court cannot adjudicate on the same, as it was not and is not an individual dispute.

Since the second party was not concentrating his attention to the merits of the case, as he thought that the Court will first determine the question of maintainability of the application, I propose to dispose of this objection first, for, if it is found that the first party is not a "worker", I need not proceed further to give the decision on merits of the case and this is also the desire of the parties. The question, therefore, for consideration is that, whether the Foreman is a "worker" under the Standing Orders Act.

The definition of "worker" in the Standing Orders Act is as under:

"Worker means any person including an apprentice employed in any shop, commercial or industrial establishment to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person—

(i) who is employed mainly in a managerial or adminstrative capacity; or

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

It will thus be seen that three essential requisites are necessary to make an employed person to be a "worker" for the purpose of the Act.

(1) He must be employed for hire or reward. Even apprentices, to come under this definition, must be paid for his apprenticeship. The employment may be temporary or permanent;

(2) He must be employed to do skilled or unskilled, manual or clerical work; and

(3) He must be employed in any shop, commercial or industrial establishment.

The case of a Foreman came up in C. W. Raymond *vs.* Ford Motor Co. of India Limited, reported in (1950) 2 FGR-100, the person concerned was employed as General Assembly Foreman and according to the instructions given to him by the employers, it was his duty to get the work of repairs done by his staff and to complete the repair or adjustment found necessary after the inspection. It was contended on his behalf, that he was a "workman" as defined in the Industrial Disputes Act, 1947, as he had to do skilled and manual work in checking breaks and traffic indicators and focusing of light of Motor Cars. He was described in the factory pass as "Superviser of Inspection and repair operations". It was held by the Appellate Tribunal that he was not a workman, as he was not required to do any manual or clerical work for hire or reward. In a similar case, namely, the case of workers *vs.* Bata Shoe Company Limited, reported in 1971-PLC Page 1, the Supreme Court of Pakistan held "The mere fact he had to do something by his own hands by way of checking or testing work done by other workmen do not make his work manual work within the meaning of this clause."

Coming now to the evidence of P. W. 1, it will be seen that according to him as a Foreman, posted in the factory he was required to operate the machine when it goes out of order and to operate the machines there are operators of the factory. In his cross examination he stated: "In the factory there are 3/4 machines with equal number of operators, who are to operate the same after these are set by me. It is not a fact that I set the machine, only when the operators cannot set it. Operator cannot set the machine."

As I understand, a Foreman is and necessarily must be a front man to supervise the work of his operators and to control their work. The mere fact that he is to do something with his own hands by way of setting a machine to be operated by the operators or by way of checking, repair or testing work done by other workman, will not make his work manual within the meaning of the abovequoted definition.

In the case of Crushing (Pak) Limited Workers' Union, Lahore *vs.* M/S. Crushing Pak Limited, Lahore, reported in 1962-PLC-1275, it was observed as under:

"Foreman with functions of supervisor in character not a workman".

Such a person is, therefore, not covered by expression, "Any person" in section 2(v) of the Standing Orders Act.

Now, the question is whether he was employed in a managerial or administrative capacity. On this question, the past party has deposed as follows:

"I was not entrusted with any managerial or administrative capacity. I have no authority, even to maintain a record of the factory or to grant leave, or power to inflict punishment to a worker."

This is belied by the papers filed by the second party and admitted by the first party. On a reference to the Gate Pass Ext. B, it is crystal clear that it was issued permitting removal of goods from factory by him and this is I am told the highest power of management.

Reverting to Ext. C series it will be seen that those are material requisitions showing that the first party authorised issuance of materials to the Electrode Factory and it is he, who received the materials on behalf of the factory.

If we refer to the memo book Ext D bearing memo. No. 4610, we find that he charged a worker for over stays and the rest of letters in the book will show that he took up correspondences on behalf of the Electrode Factory with the central authority of Pakistan Oxygen Limited even at Karachi. All these papers go to show so far as the Foreman, as the first party claims, to be is concerned and he is a person holding a supervision and management in a factory and is inseparably connected with an adminstrative capacity. He cannot, therefore, be held to be a "Workman".

Lastly, the first party claims as under:

"I was placed in S-II grade till dismissal of my service. After 5 years of service I was designated as Shift Engineer without any change in the nature of work, grade or pay. No due authority was vested in me. Although I remained a Foreman since appointment I was doing the same job till dismissal. My working hours was 48 hours. I got overtime for excess work. By this letter Ext. 1 no change in my designation was made."

I do not see how this assertion alters his position or improves his case. On a reference to the service regulation filed in the case, it appears that S-II grade relates to the grade of a foreman which as indicated on the heading is a supervisory post and the workmen are categorised in grades I, II, III and IV. So, in any view of the matter the first party cannot be held to be a worker so as to entitle him to ask for any relief under the provisions of Standing Orders Act.

Hence, it is—

Ordered

That the application be rejected on contest without cost as not maintainable.

The learned Members expressed their opinion in writing and it is in favour of rejection of the application.

S. R. KARMAKAR
Chairman.
Labour Court, Chittagong.
9-2-1976.

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

S. R. KARMAKAR
Chairman.
9-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 11 of 1975.

Badan Meah, S/o. Khalilur Rahman, P.O. and Vill. Azimpur, P.S. Fatickchari, Chittagong—*First Party*,

versus

The Proprietor, M/S. Raja Company, 79/80, Jubilee Road, Chittagong—*Second Party*.

PRESENT:

Mr. Santiranjan Karmakar—*Chairman*.

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

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965, the first party, Badan Mia asks for termination benefit as admissible to him under section 19(1) of the Act.

His case is that on November 1968 he was appointed as a Salesman by the second party, who is the proprietor of M/S. Raja Company, which is a shop, on a monthly salary of Tk.200·00. On 5-12-1974 his services were verbally terminated without any notice or payment in lieu of thereof. He represented his grievances which was received by the second party but no reply was given, nor any decision taken.

Second party resisted the application on the ground that the first party is not entitled to any notice inasmuch as his services were terminated upon a verbal notice given on 26-7-1974.

So, the point that arises for consideration is—when was the service of the first party terminated.

FINDINGS

There is no paper to show that the employer (second party) served any notice in writing on 26-7-1974 as is required under the law. There is again nothing to show that the termination was made on 5-12-1974 as is the case of the first party. On the other hand, on a reference to the Attendance Register, Ext. A and B, written in the hand of the first party himself, we find that he recorded his presence up to 16-10-1974 and not subsequent to that. In any view of the matter we can presume that his service was terminated with effect from 19-10-1974 We, therefore, allow the application on contest with the benefits noted below:

(1) 90 days' notice pay at Tk. 200·00 per month equal to Tk. 600 00;

(2) 14 days' wages as compensation for each completed year of service or part thereof over six months: *i.e.*, for 84 days:

(3) Unpaid wages, if any.

The second party do calculate the amount and pay up the same to the first party within 30 days from today.

Members agree.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
23-2-1976.

Typed at my dictation
and corrected by me.

S. R. KARMAKAR
Chairman.
23-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 14 of 1975.

Kazi Abdur Rashid, Chargeman, 10" Mill, General Iron Steel Co. (Chittagong) Ltd., Re-rolling Mills, 146/158/159, Industrial Area, Chittagong—*First Party/Complainant,*

versus

The Administrative Officer, General Iron and Steel Co. (Chittagong) Ltd., Re-rolling Mills, 148/158/159, Industrial Area, Nasirabad, Chittagong—*Second Party/O.P.*

PRESENT:

Mr. Ameenuddin Ahmed—*Chairman.*

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

Representation: Mr. A. M. Rashiduzzaman, Bar-at-Law appeared for the first party and Mr M.N. Afsar, Bar-at-Law appeared for the second party.

By this application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965, first party, Kazi Abdur Rashid, who was a Chargeman, a permanent worker under the second party mill seeks a direction on the latter to reinstate him in his service with all back wages and benefits upon the allegation that his (first party) service was terminated *vide* letter, dated 18-11-1974 with effect from 20-11-1974 by way of victimisation for his (first party) trade union activities as Office bearers of a registered trade union.

It is further alleged that the second party has all along been harassing and victimising the first party for his trade union activities and in the second half of 1974, 3 false charge-sheets were issued against him (first party) with a view to remove him from service but failed to make out any case against

the first party. Ultimately the second party finding no other alternative to remove first party from service, illegally terminated his service, *vide* order dated 18-11-1974 by way of victimisation. The aforesaid impunged order of termination contravene the provisions of section 19(1) of the Standing Orders Act. On 20-11-1974 when the first party was leaving the second party mill premises, he (first party) was served with the impunged order, dated 18-11-1974. Thereafter first party by his petition dated 21-11-1974 explined his grievances and prayed for cancellation of the order of termination and to allow him to resume duty by reinstating him. The petition was received by the second party on 23-11-1974 but gave no decision to it. Hence, this case.

Second party contested the case by filing a written statement alleging *inter alia* that the service of the first party has been terminated under section 19(1) of the Standing Orders Act in exercise of their inherent right with due adherence to the provisions of law and that the first party was not trade union executive on the date of termination of his service and as such the second party did not contravene any provisions of law. The first party was legally terminated from his service *vide* order dated 18-11-1974. The first party is not entitled to get any relief.

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

FINDINGS

P.W. 1, Kazi Abdur Rashid, first party, has only examined himself in support of his case. On the other hand, D.W. 1, Mohd. Iliyas, Administrative Officer of the second party mill has examined himself on behalf of the second party. It is not disputed that first party joined the service of the second party's mill since December, 1966 as a Tongsman and thereafter he was promoted as Chargeman. It is not disputed that the first party was a permanent worker under the second party mill. The second party contested the case of the first party on two grounds—(1) That there was no grievance petition within time by the first party against the order of termination dated 18-11-1974; (2) That it did not know at the time of termination that the first party was the Vice-President of the union and that the order of termination was passed in exercise of its right as an employer under section 19 of the Standing Orders Act.

P.W. 1 has stated in his evidence that he was Vice-President of the Sramik League of the second party's establishment at the time of termination of his service and before that he was General Secretary of the union. It is in evidence that the registered Number of the said Sramik League is 330. It is stated by P.W. 1 in his evidence that the management of the second party mill, in particular second party himself, (D.W. 1) has been harrassing and victimising him for his trade union activities and in the year 1974 he (P.W. 1) was issued with 3 false charge-sheets Exts. 1 to 1(b) with a view to remove him from service but failed to make out any case against him (P.W. 1) and thereafter the second party, *vide* letter dated 18-11-1974 Ext. 2 terminated his service by way of victimisation for his trade union activities. P.W. 1 also stated in his evidence that on 20-11-1974 while he was leaving the mill premises he was served with termination letter Ext. 2. Thereafter on 21-11-1974 he submitted a grievance petition to the second party praying for withdrawal

of the order of termination. The copy of the said grievance petition dated 21-11-1974 is marked Ext. 3. It is not disputed that the second party received the original of the said Ext. 3 which was sent by the first party by registered post. D.W. 1 in his evidence has stated that on 20-11-1974 the fisrst party was handed over the letter of termination Ext. 2.

In the case petition as well as in his evidence the first party has referred to his letter of 21-11-1974 Ext. 3 as his grievance petition. In that letter, the first party submitted his explanation to the charge-sheets Exts. 1 series and explained the circumstances in which the order of termination was served on him and prayed for withdrawal of the same. Section 25(1)(a) of the Standing Orders Act requires a worker to bring his grievance to the notice of the employer but it does not lay down any special form, nor requires any specific particulars to be included in a grievance petition. In Ext. 3, the first party prayed for withdrawal of termination order and allow him to resume duty, and unless he is aggrieved by it, why should he do so? Therefore, there is nothing in section 25(1)(a) of the Standing Orders Act which stands in the way of construing the letter of the first party dated 21-11-1974 as a grievance petition against the order of termination in question.

Regarding, whether the second party knew that the first party was the Vice-President of the registered trade union at the time of issuing the order of termination dated 18-11-1974 Ext. 2, the second party has produced Ext. B, with its enclosure. But the second party does not say that by virtue of his letter Ext. B he learnt for the first time that the first party is the Vice-President of the union. I have already referred to above the evidence of P.W. 1 where he stated stated that he was elected as Vice-President of the Samik League just before the date of termination of his service. The date of election of the office bearers of the registered trade union mentioned in the enclosure of Ext. B is significant. According to that, election was held on 17-11-1974 and the order of termination was issued on the following day. The second party does not explain why a senior and skilled worker like P.W. 1 (first party) should be get rid of by the second party, the day after his election as Vice-President. This raises a strong presumption that the termination order Ext. 2 was issued by way of victimisation of the first party for his trade union activities. If the second party fails to give any satisfactory explanation for the order of termination in these circumstances, the second party would be failing to revent the said presumption, and no explanation whatsoever is given by the second party. According to learned lawyer of the second party Ext. A is the grievance petition and not Ext. 3. P.W. 1 has stated in his evidencd that on receipt of the original of Ext. 3 from the second party by post, the second party gave no reply and thereafter on 4-1-1975 he (P.W. 1) submitted an appeal to the second party in second time *vide* Ext. A. I have discussed above about the matter, whether Ext. 3 can be accepted as grievance petition according to Standing Orders Act. I received the Ext. 3 as grievance petetion. Having regard to the above discussions I find nothing sufficient on record to accept Ext. A as grievance petition. Thus I find no force in the aforesaid contention of the learned lawyer for the second party.

Second party rests its case on its right an employer under section 19 of the Standing Orders Act. But the proviso to section 25(1)(b) which enables an officer of a registered trade union whose service is terminated allegedly for trade union activities, to challenge the order of termination clearly shows that

the legislature did not give any unqualified right to the employer under section 19 to terminate service of a worker, who is an officer of a registered trade union and that such termination would be illegal, if resorted to victimise an officer of a registered trade union. Therefore, where it is alleged that the service of an officer of a registered trade union has been terminated for trade union activities, onus lies on the employer to establish the *bonafide* of the order of termination and if he fails to do so, the Court will have no option but to conclude that the termination was *malafide* and not according to law.

Whether or not, the service of an officer has been terminated for trade union activities would always defend upon circumstances of each case. In this case, the second party in its written statement in para 7 admitted that the first party is an officer of the union. Ext. B produced by the second party shows that the day, after his election as Vice-President, the first party's service was terminated by the second party *vide* Ext. 2. The second party does not assert that Ext. B is the only source of its information as to the identity of officer of the union. It is highly unlikely that the second party was indifferent to, or ignorant of the election of the union concerned with its own establishment. Lastly, there was no explanation whatsoever from the second party, why a senior and skilled worker of its establishment like the first party, should be get rid of so suddenly by the second party.

Therefore, in the facts and circumstances of this case, it is clearly established that the service of the first party was terminated by the second party for his trade union activities and as such, the order of trmination in question is malafide and not according to law.

It is further submitted on behalf of the first party that the order of termination, is not in accordance with the provisions of section 19, as it neither gives the statutory notice to the first party, nor the second party has made any payment in lieu thereof. It is not disputed that the letter of termination Ext. 2 was handed over to the first party on 20-11-1974. It is also in evindence that termination benefit was not paid to the first party. In this view of the case also the impunged order of termination is of no legal effect. So, the order of termination being in violation of law, has also the basic principle of natural justice cannot be sustained and the first party should be reinstated in his service with all back wages.

Members are consulted over the matter.

Ordered

That the case be allowed on contest without cost.

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

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
10-1-1976.

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

A. AHMED
Chairman.
10-1-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 44 of 1974.

Ghosta Behari Saha, Ex. Sub-Asstt. Chemist of M/S. B.F.C.P.C.,D.D.T. Factory, Barabkunda, Chittagong, At present Barabkunda, P.S. Sitakunda, Chittagong—*Complainant/1st Party,*

versus

(1) The Manager, B.F.C.P.C., D.D.T. Factory, Barabkunda, Chittagong,

(2) Bangladesh Fertilizer, Chemical and Pharmaceutical Corporation, Shilpa Bhavan, Motijheel C/A, Dacca-2—*Second Parties.*

PRESENT:

Mr. Santiranjan Karmakar—*Chairman.*

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

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

The complainant, first party joined the service of the second party Factory as a Chemical Assistant on 28-9-1966. He was subsequently promoted to the post of Sub-Assistant Chemist and later on, upon a charge for misconduct, was dismissed after enquiry.

The petition was resisted by the second party and a preliminary objection was raised that the complainant is not a workman.

Before dealing with the petition on merits, we have decided to hear arguments as to whether the petitioner/complainant is a "worker" as defined in the Standing Orders Act.

According to the evidence of complainant (first party) he was appointed as Chemical Assistant in the Factory, where at the time there were some other Chemical Assistants. The first party was promoted to the post of Sub-Assistant Chemist and that prospective post higher than the Chemical Assistant and in that capacity he was serving as Laboratory In-charge, where he had under his control some attendants, who, as admitted, were required to work under his control and supervision. Such an employee, cannot, therefore, be termed as worker within the meaning of the Standing Orders Act. A Chemist whose work consists of carrying of chemical analysis and recording of result of such analysis is held to be not a worker. On the evidence of first party it cannot be denied that he was holding a supervisory position because he was responsible for maintaining the correct process and as such, his duty must be concluded to be the supervision of work of the attendants and other testing employees in the Laboratory.

In view of the above, we are constrained to hold that the petitioner complainant is not a "worker" under section 2(r) of the Standing Orders Act, 1965 and accordingly, the petition is liable to be dismissed on contest without cost as not maintainable.

Members also opined in the same line.

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

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong
4-2-1976.

S. R. KARMAKAR
Chairman.
4-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 49 of 1974.

Abul Khair (Mistry), S/o. Bacha Meah, C/o. Trade Union Centre, 37, Nazir Ahmed Chowdhury Road, Chittagong—*First Party,*

versus

General Manager, M/S. Jacks, 316, Sk. Mujib Road, Agrabad, Chittagong—*Second Party.*

PRESENT:

Mr Santiranjan Karmakar—*Chairman.*

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

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

Parties have filed certain documents which are admitted into evidence without objection. No oral evidence adduced in the case, as the second party concedes that there is in fact some lecuna in the enquiry. But he maintains that in view of the bad blood existing between the parties, the first party should not be reinstated and instead he may be given termination benefits, if Court think fit.

We have considered all aspects of the case and share the view that this is not a case which warrants reinstatement, but the first party should be given in the circumstances of the case termination benefit as contemplated by section 19 of the Act.

The application be, therefore, allowed on contest in part. While the prayer for reinstatement is refused, it is directed that the first party be given termination benefits as follows.

(1) 90 days' salary in lieu of notice at the rate of Tk.240·00 per month;

(2) 14 days' wages for each year of completed service, *i. e.*, 14 years, beginning from 1959 to 1974. Total days being (14×14)=196 days:

(3) Wages for unavailed period of earned leave, if any;

(4) Unpaid salary, if any;

(5) Bonus, if any, declared during the period but not paid to the first party.

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

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

S.R. KARMAKAR
Chairman,
Labour Court, Chittagong.
11-2-1976.

S. R. KARMAKAR
Chairman.
11-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 60 of 1975.

Md. Ali Ahmed, Fuel Pump Operator, Fish Harbour, Chittagong, S/o. late Md. Rahim Baksh, Village Kaigram, P.O. Fazilkharhat, P.S. Patiya, Dist. Chittagong—*First Party*,

versus

The Manager, Bangladesh Fisheries Development Corporation, Fish Harbour, Chittagong, Bangladesh—*Second Party*.

PRESENT :

Mr. Santiranjan Karmakar—*Chairman.*

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

This is a petition under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 for reinstating a worker Ali Ahmed of the second party Corporation.

Worker Ali Ahmed was, according to him, appointed on 23-9-1970 as a Fuel Pump Operator at the rate of Tk. 7·50 per day. All on a sudden he was removed from service on 21-6-1975 on certain allegations which are said to be false and fabricated. His grievence is that he was not given any charge-sheet or show cause notice, while removing him from the service by the second party. Against this order he filed grievance petition with the employer Corporation to which no reply was given and this has obliged him to file the present application.

The objection of the employer Cosporation is that Ali Ahmed was engaged as a Casual Daily rated worker on "No work no pay basis" initially at the rate Tk. 6·00 per day, which was subsequently raised to Tk. 7·50 per day.

On 22-5-1975 he was caught red handed while removing some lubricant oil saying that it was K. Oil and for that reason his services were terminated.

Point for consideration is whether the first party is entitled to reinstatement to his former post as prayed for.

DECISION

No oral evidence was adduced in the case. Different papers were admitted into evidence from both sides. Parties were heard at length.

Admitted position is that the worker is found to be in continuous employment from 23-9-1970 up to 21-6-1975, that is to say for more than four years. That only thing which is found regarding casual nature of a worker is that his wages was at the rate of Tk.7·50 per day, and that being the position, the second party contended that when a worker was paid a daily wages of Tk. 7·50 he should be taken to be a casual worker. Casual worker means "A worker whose employment is of casual nature" as defined is section 2(c) of the Act. To me, it, however, appears that the definition of Casual Worker cited above does not show that more payment of wages on daily basis makes a worker, a casual worker, unless there is any evidence to show either that his employment is of casual nature, or his work is in any way casual. In the absence of such evidence the worker may be treated as temporary worker. "A temporary worker" as defined in section 2(s) of the Act is as follows:

"(s) Temporary worker means—a worker who has been engaged for work which is absolutely of temporary nature and is likely to be finished within a limited period"

But on this point, the second party could not place any scrap of paper or evidence to prove that the work of the first party is of temporary nature and is likely to be finished within a limited period. So, the definition of "Temporary worker" does not apply to the present case, and as such, he should be treated as a permanent worker.

Admittedly the worker was removed from his service without any charge-sheet, or show cause notice, or enquiry and he was not given any opportunity to defend himself in any manner, and this is, in gross violation of section 18 of the Act.

Further it appears from the record that the first party brought his grievances to the notice of his employer (2nd party) in time, *vide* Ext. 3, dated 30-6-1975 but no reply was given to that by the 2nd party and he (first party) was not heard personally, as enjoined by section 25(1)(a) of the Act. This is also another violation of the mandatory provision of law. Hence, the removal of the first party *vide* Ext. 2, dated 21-6-1975 is absolutely illegal and malafide and the same is liable to be set aside.

In the result, under the circumstances and facts of the case I hold that this is a fit case for ordering reinstatement of the first party in his former post.

In view of all these, it is hereby—

Ordered

That the case be allowed on contest without cost.

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

In view of my above findings I am unable to accept the written advice of the learned Members, who have recommended for termination benefit.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
9-2-1976.

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

S.R. KARMAKAR
Chairman.
9-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 60 of 1974.

Md. Siddique, X-Ray Technician, Chittagong Steel Mills Medical Centre, Chittagong—*First Party,*

versus

Personnel Manager, Chittagong Steel Mill, Chittagong—*Second Party.*

PRESENT:

Mr. Santiranjan Karmakar—*Chairman.*

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

This is a petition under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 filed by Md. Siddique, X-Ray Technician of the Chittagong Steel Mill Medical Centre against the second party, namely, the Personnel Manager of the Mill challenging his dismissal and praying for reinstatement with all the benefits accoruing to him under the law. In the petition it is mentioned that no regular enquiry was held against him, and as such, he was not given any opportunity to explain the circumstances alleged against him.

The second party resisted the allegation by saying that all opportunities required under the law have been given to the first party.

The only point for consideration is—whether the first party was dismissed upon enquiry which can be said to have been held in accordance with the law.

FINDINGS

After hearing the parties and on appraisal of the facts disclosed in the evidence and the proceeding of the enquiry case, we have reached to the conclusion that it is a very fit case which warrants reinstatement. I may proceed to give the reasons.

On 11-9-1973 first party was charged with misappropriation of certain equipments of Medical Centre. The relevant charge-sheet is Ext. 1, from which it appears that he was required to show cause in writing in 72 hours of the receipt of the charge-sheet. The words "in 72 hours" as mentioned in the charge-sheet obviously means whithin 72 hours and not beyond that, while section 18(*1*) of the Standing Orders Act provides that in case of a charge for misconduct, the workers sought to be proceeded against shall have to be given "Not less than 3 days time" to explain and this is a mandatory provision giving full 3 days time to explain so as to oblige the worker to submit his explanation either within or after expiry of 3 days as he likes. He, cannot therefore, be required to submit his explanation before the expiry of 72 hours and if on a charge sheet a worker is dismissed suddenly he can say that he was prejudiced by the order of dismissal by reason of illegal compulsion imposed on him to submit his explanation within 72 hours.

Next it is observed that the statement of the first party was recorded first and subsequently quite a large number of witnesses ware examined not in presence of the first party, who was thus deprived of the right or opportunity to cross-examine these witnesses. This position is also admitted by D. W. 1 on examination on behalf of the second party, and this gentleman was the Chairman of the enquiry committee. So, on the admission of D. W. which is alse borne out by the record of the enquiry case, the first party was denied the right to cross-examination which is conferred by law. That being so, by no streich of imagination it can be said that whatever enquiry was held, was conducted in accordance with the law.

The first party sent a grievance petition to which of course, a reply Ext. 5 was given. But here also no enquiry was held giving first party an opportunity of being heard as required and contemplated by section 25(*1*)(*a*), non-compliance of which has vitiated the order of dismissal.

The order of dismissal was passed by the Personnel Manager. It does not appear from the record that it was approved of by the employer/Manager, Not a word was uttered to that effect by D. W. 1, nor does the records disclose that any such approval was given by the Manager, so as to bring it within the ambit of the definition of "Employer" given in the Act.

On a reference to the enquiry report, we find that most of the items lost were available in the stock of the instruments. Yet he had to incur ignoring of dismissal in an enquiry which was not at all according to law. The charge-sheet Ext. 1 was drawn on 11-9-1973. He was ultimately dismissed on 28-8-1974 *vide* Ext. 3. During this long one year he was allowed to continue in his former post without any blemish in the service. Although he appears to have rendered faithful service. In the circumstances, we find that the facts and circumstances clearly warrant his reinstatement.

The result, therefore, is that the application be allowed on contest without cost.

The second party be directed to reinstate the first party in his former post and position and pay up to him the back wages and other benefits within one month from today.

Learned Members also expressed their views agreeing with my aforesaid findings.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
7-2-1976.

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

S. R. KARMAKAR
Chairman.
7-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 63 of 1974.

Abdul Kader, S/o. Lal Mia, C/o. Hotel Restaurant Sramik Union, 37, Nazir Ahmed Chowdhury Road, Anderkilla, Chittagong—*First Party*,

versus

Proprietor, M/S. Farukia Hotel, 174, Anderkilla, Chittagong—*Second Party*.

PRESENT :

Mr. Santiranjan Karmakar—*Chairman.*

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

By this application under section 25(*l*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965, the first party, Abdul Kader, who was a Cook under the Proprietor of Farukia Hotel, Chittagong, the second party, asks for termination benefits as admissible to him under section 19(*l*) of the Act.

His case is that he was appointed as a Cook in July, 1964 and since then serving as such in the hotel on a monthly wages of Tk. 165·00. On 27-8-1974 it is alleged that the second party obtained forcible signatures from the first party on two blank sheets accusing a theft in respect of some spices and on 8-9-1974 verbally terminated his services without any notice or payment in lieu thereof. He then represented his grievances but without any success. He was, therefore, obliged to claim termination benefit.

The second party resisted the claim on the ground that the first party was a casual worker, who paid on daily basis and as such, he is not entitled to the benefits claimed. The second ground taken is that the griavence petition was never received by the second party.

We propose to take up the second point first. Ext. 1 is the grievance petition along with an envelop which was refused by the second party and so that discharged the obligation caste upon the first party.

The question—whether the first party is a casual worker or not is question of fact to be determined on the evidence. The first party persistently saying that he had been all along in the employment of the second party since July 1964 on monthly wages. No paper can be filed by the second party to dislodge the assertion made by the first party. The Attendance Register and Acquittance Roll of the hotel were called for but the second party did not file any such paper to show that the first party was casual and occasionally appointed on daily basis. In the absence of any such evidence, the statements of first party goes unchallenged and uncontroverted. So, we held that he had been in permanent employment of the second party, whose services were terminated not in accordance with the law and such being the position, he is entitled to get termination benefit as admissible by law.

It would be noted, however, that in the petition as well as in the representation the first party stated that his monthly wages was Tk. 165·00 ; whereas in his evidence he stated that his salary was Tk. 195·00 per month. Hence, we accept his salary to be Tk. 165·00 per month, in the absence of any proper evidence that his salary was Tk. 195·00.

In the result, the application be allowed on contest without cost and the first party is entitled to get termination benefit in the manner indicated below ;

(1) 90 days' wages in lieu of notice amounting to Tk. 495·00.

(2) 14 days' wages as compensation for each completed year of service or part thereof over six months *i.e.*, for 10 years, which, if worked out would be 140 days wages, equal to Tk. 770·00 ; In total Tk. 1,265·00.

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

Members agree with me in the above view.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
23-2-1976.

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

S. R. KARMAKAR
Chairman.
23-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 65 of 1974.

Moqsudur Rahman, s/o. Chand Mia, Vill. Hinguli, P.S. Chowddagram, Dt. Comilla. At present James Finlay Family Area, Chatteshwari Road, Chittagong—*First party,*

versus

(1) The Manager, M/S. James Finlay and Co. Ltd.,

(2) The Senior, M/S. James Finlay and Co. Ltd., Both of them are of Finlay House, P.O. Box No. 118, Chittagong—*Second Parties.*

PRESENT :

Mr. Santiranjan Karmakar—*Chairman.*

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

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

The case of the complainant first party Maqsudur Rahman is that he was a Truck Driver in the employ of the second party over since 1950. On 22-8-1974 he was charge-sheeted for misconduct under section 17(3)(a) and (g) and after an enquiry in which he put in a defence, he was dismissed from service with effect from 30-9-1974. Thereupon he moved the authority by a grievance petition dated 7-10-1974 to which a reply was given on 31-10-1974 without holding an enquiry and giving any opportunity of being heard in terms of section 25(1)(a) of the Standing Orders Act. Being dissatisfied the first party came with this application dated 11-11-1974 under section 25(1)(b) of the Act for reinstatement with back wages.

The application was resisted by the second party Messrs. James Finlay and Co. Limited. Their contention was that the Driver was dismissed on proof of gross misconduct after a fair enquiry in which he was given adequate opportunity to defend himself and as such, there can be no question of his reinstatement. They have not uttered a word as to why the provisions of section 25(1)(a) was not fully complied with.

Point for consideration is—whether in the circumstances stated the first party can seek any redress by way of reinstatement in service.

FINDINGS

On a scrutiny of records initiating the enquiry and terminating in his dismissal, we have no reason to hold that the enquiry was neither fair nor impartial or that he was not given full opportunity to defend himself. He was dismissed on 30-9-1974. He filed a grievance petition on 7-10-1974 and the authority communicated its decision on the basis of the record of the enquiry case on 31-10-1974. That in our view is not sufficient compliance with the mandatory requirement of law as envisaged in section 25(1)(a) which makes it obligatory on the part of the employer to enquire into the matter, giving the workman concerned an opportunity of being heard and then communicate his decision. The second party could not lay its finger on any paper or record to show that the grievance petition of the first party was enquired into, giving him any opportunity of being heard on the prayer made by him. A mere communication of a decision on the basis of the old record without enquiry after giving him an opportunity of being heard cannot be said to be in accordance with the law and as such, this has vitiated the dismissal of the worker.

On perusal of section 25(1) it is clear that an individual workman who has a grievance in respect of any mattter under this Act can file a petition under section 25. It is not confined to woarkman who is an officer of a registered trade union. The proviso to section 25(1)(a) and (b) simply mentions that even if an officer of a registered trade union is dismissed on account of trade union activities he can be reinstated. Section 25 of the Standing Orders Act makes the dismissal of the workman illegal, if no reasonable opportunity was given to inquire into the circumsatances set out by him in his grievance petition and as such he is entitled get the order of dismissal set aside. The proviso to Standing Order 25 cannot take away his right because a workman can seek redress if he has a grievance in respect of any matter under this Act.

In the present case, however, the first party is alleged to have been dismissed for misconduct and as such his right to seek redress cannot be taken away by the proviso to Standing Order 25.

The first party put in about 25 years of service under the second party and has to his credit a credential dated 15-12-1967 by the then Senior Mr. H.P. Carse. His grievance petition on the face of it ought not to have been summarily thrown out, but yet in the circumstances of the case, he should not be thrust upon an unwilling master by way of reinstatement, instead, he may be given termination benefit as contemplated by the section 19.

He is thus entitled to 90 days' notice pay and 14 days' wages for every completed year of service or part thereof in excess of six months as compensation, *plus* other benefits admissible under section 19 confirmed as he was under proviso to section 19(1) of the Act. Hence,

Ordered

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

The first party is entitled to termination benefit under section 19(1) of the Standing Orders Act, 1965 as discussed above.

Second party is directed to calculate and make payment of the same within one month from the date of this order.

Members were consulted and their opinions were taken.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
22-1-1976.

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

S. R. KARMAKAR
Chairman.
22-1-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 75 of 1975.

Shamsul Alam, S/o. Khair Ahmed, C/o. Arakan Sarak Paribahan Sramik Union, 328, Kapashgola Road, Chowkbazar, Chittagong—*First Party*,

versus

(1) Proprietor Kaisarul Alam Chowdhury, S/o. Abdur Razzak Chowdhury, Bus No. Chattagram G-526, C/o. Abdur Razzak & Sons, 71, Chaktai, Chittagong,

(2) Manager, Badrul Alam Chowdhury, Bus No. Chittagram G-526, C/o. M/S. Alam Bros, Custom Authorised Clearing, Forwarding, Shipping Corporation, Hajee Amir Ali Road, Amir Market, Chittagong—*Second Parties.*

PRESENT :

Mr. Santiranjan Karmakar—*Chairman.*

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

By this application under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 the first party Shamsul Alam claims termination benefit as admissible to him under section 19 of the Act.

His case is that he was appointed an Assistant by the second party No. 2, the Manager of the second party Proprietor of Bus, named as second party No. 1 for bus No. G-526 with effect from 8-1-1975 on a daily wages of Tk. 12·00. He continued as such and eventually became permanent. On 15-7-1975 the second party No. 2 suspended plying of bus on the plea of want of tyre and did not utilise the services of the first party. On 18-7-1975 the bus was found plying in Kaptai Road, through new hands, instead of scheduled Cox's Bazar Road. He reported for duty to the second party No. 2, who varbally terminated the services of the first party on 18-7-1975 without notice. He represented his grievances on 29-7-1975 claiming termination benefits, which was dishonored. He was, therefore, obliged to bring this case claiming termination benefits.

Despite proper service of notice, the second parties have not entered appearance and have not so far taken any step to contest. Even on the date of hearing they were found absent. The case was, therefore, taken up for *ex parte* disposal accordingly the first party was examined.

Since we find no material to negative the claim of the first party, we allow the application giving first party termination benefit as under :

(1) 45 days' notice pay at the rate of Tk. 12·00 per day ;

(2) 14 days' wages as compensation ;

(3) Unpaid wages for 4 days from 15-7-1975 to 18-7-1975.

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

Members agree.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
20-2-1976.

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

S. R. KARMAKAR,
Chairman.
20-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 74 of 1975.

Mohammed Younus, S/o. Zabal Hossain, C/o. Arakan Sarak Paribahan Sramik Union, 328, Kapashgola Road, Chawkbazar, Chittagong—*First Party*,

versus

(1) Proprietor Bus No. Chattagram G-526, (Kaisarul Alam Chowdhury, S/o. Abdur Razzak Chowdhury) C/o. Abdur Razzak & Sons, 71, Chaktai, Chittagong ;

(2) Manager, Bus No. Chattgram G-526, (Badrul Alam Chowdhury, S/o. Abdur Razzak Chowdhury), C/o. M/S. Alam Bros., Custom Authorised Clearring, Forwarding, Shipping Corporation, New Pak Building, Hajee Amir Ali Road, Amir Market, Chittagong—*Second Party*.

PRESENT :

Mr. Santiranjan Karmakar—*Chairman.*

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

By this application under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965, the first party Mohammed Younus claims termination benefit as admissible to him under section 19 of the Act.

His case is that he was appointed as Conductor for Bus No. Chattagram G-526 by the second party No. 2 with effect from 22-2-1974, on a daily wages of Taka 20·00. He continued as such and eventually became permanent. On 15-7-1975 the second party No. 2 suspended the plying of the bus on the plea of want of Tyre and did not utilise the services of the first party. On 18-7-1975 the first party saw the bus was plying in Kaptai Road, instead of scheduled Cox's Bazar Road. He reported for duty to the second party No. 2, who verbally terminated the services of the first party on 18-7-1975 without notice. He represented his grievances on 29-7-1975 claiming termination benefit, which was dis-honoured. He was, therefore, obliged to bring this case claiming termination benefit.

Despite proper service of notice the second party have not entered appearance and have not so far taken any step to contest. Even on the date of hearing they were found absent. The case, therefore, taken up for *ex parte* disposal and accordingly the first party was examined.

Since we find no material to negative the claim of the first party, we allow the application giving the first party termination benefit as under :

(1) 45 days' notice pay at the rate of Tk. 20·00 per day ;

(2) 14 days' wages as compensation ;

(3) Unpaid wages for 4 days from 15-7-1975 to 18-7-1975.

The second parties are directed to calculate and pay the amount to the first party within 30 days from today.

Members agree.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
20-2-1976.

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

S. R. KARMAKAR
Chairman,
20-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 76 of 1975.

Md Idris, S/o. Siddique Ahmed, C/o. Arakan Sarak Paribahan Sramik Union, 328, Kapashgola Road, Chawkbazar, Chittagong—*First Party*,

versus

(1) Proprietor, Bus No. Chattagram G-362, (a) Fatema Begum, w/o. Alam Sb.) C/o. M/S. Alam Bros., Custom Authorised Clearing, Forwarding, Shipping Corporation, New Pak Building, 1st floor, Amir Market, Hajee Amir Ali Road, Chittagong ;

(b) Bedowara Begum, W/o. Abdur Razzak Chowdhury, C/o. Abdur Razzak and Sons, 71, Chaktai, Chittagong ;

(2) Manager, Bus No. Chattagram G-362, (Badrul Alam Chowdhury, S/o. Abdur Razzak), C/o. M/S. Alam Shipping Corporation, New Pak Building, 1st Floor, Amir Market, Haji Amir Ali Road, Chittagong—*Second Party*.

PRESENT :

Mr. Santiranjan Karmakar—*Chairman*.

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

By this application under section 25(*1*)*b*)) of the Employment of Labour (Standing Orders) Act, 1965, the first party, Mohammed Idris claims termination benefits as admissible to him under section 19 of the Act.

His case is that he was appointed as Driver by the second party No. 2, the Manager of the Proprietors of the Bus, named as second party No. 1 for Bus No. G-362 with effect from 6-1-1975 on a daily wages of Tk. 30·00. He continued as such and eventually became permanent. That on 15-7-1975 the second party No. 2 suspended the plying of Bus on the plea of repair of the bus and did not utilise the services of the first party. On 18-7-1975 it was reported to him that the bus was plying in Kaptai Road instead of scheduled Cox's Bazar Road. He reported for duty to the second party No. 2, who verbally terminated his service on 18-7-1975 without notice. He represented his grievance on 30-7-1975 claiming termination benefit, which was dishonoured. He was, therefore, obliged to bring this case claiming termination benefits under section 19 of the Act.

Despite proper service of notice the second party have not entered appearance and taken any steps to contest the case. Even on the date of hearing they were found absent. The case was, therefore, taken up for *ex parte* disposal and accordingly, the first party was examined.

Since we find no material to negative the claim of the first party, we allow the application giving first party termination benefit as under :

(1) 45 days' notice pay at the rate of Tk. 30·00 per day ;

(2) 14 days' wages as compensation;

(3) Unpaid wages for 4 days' from 15-7-1975 to 18-7-1975.

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

Members are consulted over the matter and they share the same view with me.

S. R. KARMAKAR,
Chairman,
Labour Court, Chittagong.
20-2-1976.

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

S. R. KARMAKAR
Chairman,
20-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 77 of 1975.

Shamsul Alam, S/o. Amin Sharif, C/o. Arakan Sarak Paribahan Sramik Union, 328, Kapashgola, Chowkbazar, Chittagong—*First Party*,

versus

(1) Proprietor, Bus No. Chattagram G-362, (a) Fatema Begum, W/o. Alam Sb., C/o. M/S. Alam Brothers, Custom Authorised Clearing, Forwarding, Shipping, Corporation, New Pak Building, Haji Amir Ali Road, Amir Market, Chittagong,

(b) Bedwara Begum, W/o. Abdur Razzak Chowdhury, C/o. Abdur Razzak & Sons, 71, Chaktai, Chittagong,

(2) Manager, Bus No. Chattagram G-362, Badrul Alam Chowdhury, S/o. Abdur Razzak Chowdhury, Clearing, Forwarding, Shipping Corporation, New Pak Building, Hajee Amir Ali Road, Amir Market, Chittagong—*Second Party*.

PRESENT :

Mr. Ameenuddin Ahmed—*Chairman.*

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

By this application under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965, first party Shamsul Alam seeks direction upon the second parties to pay termination benefit to him under section 19(*1*) of the Act as per schedule referred to in the case petition on the ground that second party No. 2 terminated his service verbally on 18-7-1975 without prior notice or payment in lieu of ntotice or benefits. The first party thereafter represented his grievance on 29-7-1975 by registered post but the second parties in collusion with the postal authority did not accept his grievance petition, nor gave any decision. Hence, this case.

The second parties have not entered appearance although they were served with due notice. Thus this case was heard *ex parte.*

The only point calling for consideration is whether the first party is entitled to termination benefit as described in the schedule of the case petition.

P.W. 1, Shamsul Alam first party has examined himself in support of his case. According to his evidence he was appointed by second party No. 2 as a Conductor for Bus No. Chattagram G-362 with effect from 4-1-1975 and his daily wages was Tk. 20·00. P. W. 1 further stated that on 15-7-1975 the plying of bus was suspended on the plea that the bus would be repaired and asked him to go home and accordingly he went home and thereafter he came back on 18-7-1975 to resume duty but the second party No. 2 then verbally terminated his (P. W. 1) service without any rhyme or reason. It is also in evidence *vide* P. W. 1 that thereafter he represented his grievance on 29-7-1975 by registered post but the said registered cover returned back with an endorsement of the postal Peon therein. It will appear from the registered cover Exts. 1 to 1(b) that the postal Peon tried his best to serve the said grievance petitions to the employer but these were not accepted by the second parties on one plea or other. The evidence of first party referred to above goes unchallenged and *ex parte.* It is further stated by P. W. 1 in his evidence that he did not work or on duty from 15-7-1975 to 18-7-1975. So, I find that he is not entitled to get wages for the said period. P. W. 1 did not say that he did not enjoy the weekly holidays. So, it is not safe and proper to allow him the wages for the weekly holidays as claimed.

I, therefore, find that the first party is entitled to termination benefit as follows:

(1) 45 days' notice pay at the rate of Tk. 20·00 per day;

(2) 14 days' wages as compensation at the above rate.

Members are consulted over the matter.

Ordered

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

The second party is directed to pay the termination benefit to the first party, as mentioned above, within 30 days from today.

AMEENUDDIN AHMED
Chairman,
Labour Court, Chittagong.
5-1-1975.

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

A. AHMED
Chairman
5-1-1975.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 98 of 1975.

Abu Taher, S/o. L. Saleh Ahmed, Village Janerkhil, P. O. North Kattali P. S. Doublemooring, District Chittagong—*First Party,*

versus

The Manager, M/S. Karilin Silk Mills Ltd., 5-B, Fouzderhat Industrial Area, Jafarabad, Chittagong—*Second Party.*

PRESENT ;

Mr. Santiranjan Karmakar—*Chairman.*

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

By this application under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965, first party, Abu Taher, an operator of the Knitting department of the second party asks for reinstatement with back wages.

After an enquiry on a charge of negligence of duty he was dismissed on 26-8-1975. Thereafter he filed a grievance petition but without any success. He has, therefore, moved this Court for reinstatement stating that his dismissal is an outcome of victimisation for his trade union activities.

Second party controverted the allegations stating, *inter alia*, that on proof of the charge of misconduct, he was dismissed after fair and imparial enquiry.

The point for consideration is—whether the dismissal of the first party was n accordance with law.

FINDINGS

The first party came to the box and stated ;"I was served with a notice of enquiry . I attended the enquiry proceeding with three witnesses, who were examined. After eqnuiry I was dismissed on 26-8-1975, which I received on 28-8-1975."

While crossed he stated : "In 1973 I was warned for negligence of work. All witnesses were examined in my presence. I was given opportunity to cross examine."

That shows that before dismissing the first party the second party have followed the procedures as prescribed and the dismissal was not unjustifieds on the charge levelled against him. Regarding the alleged victimisation he has stated : "After liberation I became a member of the union. After liberation there was an election by show of hands. I have not filed any paper to show our demands after liberation. I am an ordinary member. President and Secretary represent our cases to the management."

So, on his own evidence the first party has failed to substantiate his allegagation of victimisation for his trade union activities. There is thus no merit in the petition, which is liable to be dismissed.

Before parting with the case we may mention that the second party raised a preliminary objection regarding the maintainability of the application on the ground that the employer was not served with a grievance petition within 15 days of dismissal as required by section 25(*1*)(*a*) of the Standing Orders Act. It appears that the first party was dismissed from service on 26-8-1975 but the order was received by him on 28-8-1975. He represented his grievance on 10-9-1975. It was on that score argued that the grievance not having been lodged within 15 days of dismissal, the petition should fail. We unable to agree with it, for, the grievance petition is well within time and it was made within 15 days from the date of receipt of the order. The crux of the matter is not the occurrence itself but the occurrence of the cause of action. It cannot be said by any strech of imagination that any cause of action arose before the date of receipt of the order. So, the objection is over ruled. Since, however, the case will fail on merits, there is no use dialating on the preliminary objection.

The result of the discussions is that the application be dismissed on contest without cost.

Members have given their opinions sharing the same view with me.

S. R. KARMAKAR
Chairman.
Labour Court, Chittagong.

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

S. R. KARMAKAR,
Chairman,
27-2-1976.

IN THE LABOUR COURT OF CHITTAGONG IN BANGLADESH

Complaint Case No. 104 of 1975.

Fazal Ahmed, S/o. Late Md. Nazir Ali, C/o. Arakan Sarak Paribahan Sramik Union, 328, Kapashgola, Chawkbazar, Chittagong—*First Party*,

versus

Proprietors Bus No. Chattagram G-606,

(1) Hasan Ali Sawdagar, S/o. Late Abdul Gani Sawdagar,

(2) Raoshan Ali Sawdagar, S/o. Late Abdul Gani Sawdagar, of Jhilong Samudarpara, Cox's Bazar, Chittaging—*Second Party*.

PRESENT :

Mr. Santiranjan Karmakar—*Chairman.*

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

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

First party was appointed as Driver under the second party on 22-1-1971 on a salary of Tk. 35·00 per day. On 6-9-1975 his services were terminated without any notice or payment. First party lodged a grievance petition which was refused by the second party and this occasioned the present application for termination benefits or in the alternative for reinstatement.

Despite notice, the second party did not enter into appearance or submitted written statement. Even on the last date of hearing on 11-2-1976 the second party has chosen not to contest the case. So, the case was taken up for *ex parte* hearing. The petitioner was examined as P. W. 1. He has placed his demand before the Court in terms of his prayer made in the petition which goes unchallenged. In the circumstances of the case we propose to give him termination benefits instead of reinstatement.

Accordingly, the application be allowed *ex parte* wihtout cost.

The first party be given termination benefit under section 19(*1*) of the Standing Orders Act, 1965 as under :—

(1) 45 days' Notice pay at the rate of Tk. 35·00 per day ;

(2) 14 days' wages as service compensation, at the above rate of pay.

The second party is directed to calculate the dues of the first party and pay up the same within one month from today.

Members agree with me in the above view.

S. R. KARMAKAR
Chairman,
Labour Court, Chittagong.
18-2-1976.

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

S. R. KARMAKAR
Chairman.
18-2-1976.

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