

The
Bangladesh Gazette



Extraordinary
Published by Authority

THURSDAY, MAY 29, 1975

MINISTRY OF LABOUR, SOCIAL WELFARE, CULTURAL AFFAIRS
AND SPORTS

(Labour and Social Welfare Division)

Section VI.

NOTIFICATION

Dacca, the 22nd May 1975.

No. S.R.O. 175-L/75-S-VI/1(16)/75/172.—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, Rajshahi, in respect of the following cases, namely:—

- (1) I.R.O. Case No. 57 of 1974.
- (2) I.R.O. Case No. 64 of 1974.
- (3) I.R.O. Case Nos. 69 of 1974 and 93 of 1974.
- (4) I.R.O. Case No. 86 of 1974.
- (5) I.R.O. Case No. 90 of 1974.
- (6) I.R.O. Case No. 91 of 1974.
- (7) I.R.O. Case No. 94 of 1974.
- (8) I.R.O. Case No. 1 of 1975.
- (9) I.R.O. Case No. 2 of 1975.
- (10) I.R.O. Case No. 4 of 1975.
- (11) Complaint Case No. 1 of 1975.
- (12) Misc. Case No. 3 of 1974.
- (13) Misc. Case No. 5 of 1974.

(1109)

Price: 1.68 Paise

- (14) Misc. Case No. 6 of 1974.
 (15) Misc. Case No. 7 of 1974.
 (16) Misc. Case No. 8 of 1974.

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

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH
 I.R.O. Case No. 57 of 1974.

Md. A. Jalil,
 Assistant Secretary,
 Uttar Bango Chinikal Farm Sramik Union,
 P. O. Gopalpur,
 District Rajshahi—*Complainant,*
versus

- (1) Mr. Showkat Ali,
 Manager,
 North Bengal Sugar Mills Co. Ltd.,
 P.O. Gopalpur,
 District Rajshahi;
- (2) Mr Hedayet Hossain,
 Secretary,
 Bangladesh Sugar Mills Corporation,
 Shilpa Bhaban, Motijheel Commercial Area,
 P. S. Ramna, District Dacca—2;
- (3) Mr Sayad Manjoor Hussain,
 Employees Relations Manager,
 Bangladesh Sugar Mills Corporation,
 Shilpa Bhaban, P. S. Ramna,
 Motijheel Commercial Area, Dacca;
- (4) Mr. M. S. Doha,
 Labour Welfare Officer,
 North Bengal Sugar Mills Co. Ltd.,
 P. O. Gopalpur, P. S. Lalpur,
 District Rajshahi;
- (5) Mr. A. K. M. Alauddin,
 Cane Development Officer (Farm)
 North Bengal Sugar Mills Co. Ltd.
 P. O. Gopalpur, Dist. Rajshahi—*Opposite Parties.*

PRESENT :

Mr. S. M. Serajul Mawla—*Chairman.*
 Mr S. K. Paul
 Mr Md. Amjad Ali } *Members.*

Dated the 31st March 1975 :

This is an application under section 55 of the Industrial Relations Ordinance 1969 arising out of the following facts :

By an agreement dated 23-1-1973 it was settled between the parties that "Both the parties will sit together and finalise requirement of personnel below supervisory staff level and place each farm under a proper set-up on or before 30-4-1973 within the per acre cultivation cost limit of Tk. 1,700". It is alleged that first party labour union represented several time to the opposite parties to finalise the issue but the second party did nothing and thus wilfully violated the provisions of the agreement dated 23-1-1973.

The contention of the second parties is that they had informal talks with the first party to settle the issue but as there was not indication of an agreed solution, the second party has already declared a set up for the farms for sugarcane cultivation within the cost limit of Tk. 1,731.65 per acre. This set up prepared by the second party has been produced before the Court.

The agreement dated 23-1-1973 was in fact a joint initiative for a future agreement. In that agreement it was not settled that the responsibility to make arrangement for joint sitting would lie with the second party. It is contended by the second party that the mill authority discuss the matter with the union personnel several times to finalise the preparation of a set up for the respective farms within the cultivation cost limit of Tk. 1,700 but it could not be finalised as the union representatives wanted to have a set up which would involve a cost above the limit of Tk. 1,700. There is nothing on record to show that the first party took any initiative to sit together and finalise the issue. Hence the responsibility for the failure of the clause 5 of the agreement which made provisions for the joint sitting of the parties was not alone on the second party. The first party in its own interest should have taken initiative in this regard. Labour Court is no substitute for active trade unionism. In any way this appears to be an undesirable case. I wish and I have been assured, that the parties will settle up the dispute amicably if the set up given by the second party fails to satisfy the first party. With this observations the case be disposed of.

Learned members consulted.

Sd/— S. K. Paul.
31-3-1975.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
31-3-1975.

Sd/—Md. Amjad Ali.
31-3-1975.

Note taken and transcribed by
Mr Md. Nural Hoque,
on my dictation and corrected
by me.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
31-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

I. R. O. Case No. 64 of 1974.

Sree Sailendra Nath Dass, Purjee Clerk, Cane Department, C/o. Bangladesh Chinikal Sramik Union, P. O. Gopalpur, District Rajshahi—*First Party*,

versus

(1) The Manager, North Bengal Sugar Mills Co. Ltd., P.O. Gopalpur, District Rajshahi.

AND

(2) The Secretary, Bangladesh Sugar Mills Corporation, Shilpa Bhaban, Motijheel Commercial Area, Dacca-2—*Second Parties*.

PRESENT :

Mr S. M. Serajul Mawla—*Chairman*,

Mr Md. Amjad Ali

Mr S. K. Paul

} *Members.*

Dated the 31st March 1975 :

Petitioner Sree Sailendra Nath Dass is a seasonal Purjee Clerk under O. P. No. 1, the Manager, North Bengal Sugar Mills Co. Ltd. During the turmoil of 1971 he left his job on 30-3-1971 and reported for duties on 7-1-1972 and it is alleged that O. P. No. 1 allowed him to join on 18-1-1972 and paid him one month's salary in pursuance of Government Press Note dated 3-1-1972 marked exbt. (A). According to the petitioner the Purjee section functioned up to 23-5-1971 and again from 1-9-1971 to 17-1-1972 in the next season. He claims salary for the period for 30-3-1971 to 23-5-1971 and for the period 1-9-1971 to 17-1-1972 on the strength of Government Circular No. GA-IV/6/72/3(50), dated the 11th January, 1972 marked exbt. A(1) and Memo. No. ADM/Sugar/4/73/3198, dated 10-10-1973 of the Bangladesh Sugar Mills Corporation and Press Note, dated 6th March, 1972 marked exbt. A(3).

By Press Note dated 3rd January, 1972 all employees who left their job were allowed one month's salary/wages but by Press Note dated 6th March, 1972 it was clarified that only permanent workers would get one month's salary/wages for December, 1971. Petitioner though not a permanent employee got one month's salary. By Memorandum dated 11-1-1972 workers were classified in three groups. Those who defected from their jobs and those who absented from work were put in groups 1 and 2 respectively and their absence from duties was to be treated as on duty with entitlement of full pay. The Memorandum of the Bangladesh Sugar Mills Corporation dated 10-10-1973 stated that different Memorandum on this subjects of payment of arrear pay will be applicable both to the officers and staff/workers of the Enterprises, who (1) participated in the freedom struggle and (2) who refrained from work in support of the struggle. Petitioner's claim is based on this Memorandum,

The contention of the second party is that the claim of the first party is neither guaranteed nor secured to him by any law or award or settlement and as such this case under section 34 of the I.R.O. is not maintainable. According to the second party the season 1970-71 was closed on 5-5-1971 not on 23-5-1971 as stated by the petitioner and therefore, he can at best claim the pay for the period 30-3-1971 to 5-5-1971. The next season started from 31-1-1972 and the first party reported for duty on 18-1-1972 but "some of seasonal Purjee Clerks started working from 15-9-1971" for the season 1971-72. As regards this period the contention of the second party is that the petitioner being a seasonal employee the abovementioned Memorandums are not applicable to him and he is not entitled to any benefit under the said Memorandum dated 10-10-1973 and none of the seasonal employees has received any benefit thereunder.

From the above pleadings it appears that the first party is entitled to his pay for the period 30-3-1971 to 5-5-1971 and this part of the claim is rather admitted by the second party. As regards petitioner's claim of salary for the period 1-1-1971 to 17-1-1972 the second party stated that the season started from 31-1-1972 but at the same time admitted that "some of the Purjee Clerks started work from 15-9-1971". Now the question that arises for our decision is if all the Purjee Clerks were called at a time or by phases. It appears from the pleading and trend of argument of the second party that Purjee Clerks are called by phases and all of them do not start work at a time. If so then nothing can be said with certainty about the date when the petitioner would have been called for duty if he was available. But in any case he would have been called on or before 31-1-1972 when the season started in full swing and petitioner would be entitled to the pay for the period commencing from this date (the date on which he would have been called) till the date of his joining. As in the absence of requisite evidence I am not in a position to say anything on this point I leave it to the parties for amicable settlement failing which petitioner will be at liberty to sue afresh for this part of his claim if not otherwise barred. Learned Members consulted.

Hence Ordered

That the case be allowed in part on contest without cost subject to the observations made above. Petitioner do get his arrear salary for the period 30-3-1971 to 5-5-1971.

Sd/—Md. Amjad Ali.

S. M. SERAJUL MAWLA

Sd/—S. K. Paul.
31-3-1975.

*Chairman,
Labour Court, Rajshahi.
31-3-1975.*

Note taken and transcribed by
Mr. Md. Nural Hoque, at my
dictation and corrected by me.

S. M. SERAJUL MAWLA,
*Chairman,
Labour Court, Rajshahi.
31-3-1975.*

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

I.R.O. Case Nos. 69 and 93 of 1974.

Md. Erad Ali, Fieldman, C/o. Bangladesh Chinikal Sramik Union, P.O. Gopalpur,
District Rajshahi (Case No. 69),

AND

Md. Anowar Hossain, C/o. Bangladesh Chinikal Sramik Union, P.O. Gopalpur,
District Rajshahi (Case No. 93)—*Petitioners*,

versus

- (1) The Manager, North Bengal Sugar Mills Co., Ltd., P.O. Gopalpur, District Rajshahi,
(2) The Secretary, Bangladesh Sugar Mills Corporation,, Shilpa Bhaban, Motijheel Commercial Area, Dacca—2—*Second Parties*.

PRESENT :

Mr S.M. Serajul Mawla—*Chairman*,

Mr Md. Amjad Ali	..	} <i>Members.</i>
Mr S. K. Paul	..	

Dated the 29th March 1975 :

These two cases by different petitioners against the same opposite parties, namely, the Manager, North Bengal Sugar Mills Ltd., and the Secretary, Bangladesh Sugar Mills Corporation for similar relief and involving same questions of law and facts are taken up for analogous disposal. Petitioner Mr Erad Ali in case No. 69 works as a Seasonal Centre-In-Charge in the Cane Department and petitioner Mr Anwar Hossain in case No. 93 has been working as Centrifugal Operator under the Chemical Department of the second parties since long. Both of them have been paid one month's salary/wages in pursuance of Government Press Note, dated 13-1-1972. They have instituted the present case for the salary/wages for the period of war of liberation covering 9 months. Claims of both the petitioners are based on Memorandum No. ADM/Sugar/4/73/3198, dated 10-10-1973 of the Bangladesh Sugar Mills Corporation, Shilpa Bhaban, Motijheel, Dacca. This Memorandum has been marked Exbt. (A). By this Memorandum earlier Memorandum on the subject of payment of arrear salary to the officers, staffs and workers were made applicable both to the officers and staffs/workers of the Sugar Mills who participated in the freedom struggle or refrained from work in support of the struggle, subject to certain conditions and adjustments with which we are not concerned. The contention of the second party is that the petitioners being seasonal workers the abovementioned Memorandum, dated 10-10-1973 is in no way applicable to them and they are not entitled to any benefit under the said Memorandum, dated 10-10-1973. Hence

the only question for our decision is if the petitioners are entitled to their salary or wages for the period of absence during the war of liberation. It is not denied that Mr Erad Ali of case No. 69 is a seasonal worker and Mr Anwar Hossain of Case No. 93 is also a seasonal worker in the sense that he works only during the crushing season and are getting retention allowance since 1973 only. Crushing season for the year 1970-71 was closed on 4-4-1971 and again re-opened on 17-4-1971 and continued till 5-5-1971. Crushing season for the next year, i.e., 1971-72 start on 31-1-1972 and Md. Anwar Hossain joined the mill on 3-2-1972. He was absent for 19 days only from 17-4-1971 to 5-5-1971. Thus according to the second party he can claim at best an amount equivalent to wages for 19 days only. He admitted in his deposition that he works so long cane crushing continues and is disbanded after crushing period is over. He further admitted that seasonal worker join the work when crushing is started and work during the crushing season. Thus both the petitioners are seasonal workers. Mr Erad Ali left after 13-3-1971 and in the next season reported for duty on 7-2-1972. Now the question for our decision is if the words "Staff/Worker" used in the said Memorandum include all workers as defined and classified in the Employment of Labour (Standing Orders) Act and in the Industrial Relations Ordinance, 1969. This Memorandum dated 10-10-1973 or other Memorandum mentioned therein are Government Circulars, They were not issued on the strength of any enabling section of any Ordinance or Statute. So this Memorandum is neither law nor has force of law. These are administrative orders. It is the duty of the Court to interpret laws, rules and circular having force of law but problem arises when there is difference of opinion between the parties as to the meaning, limitation and scope of a particular word used in any Memorandum or Circular not having the force of law. In such cases, in my opinion, parties aggrieved or parties seeking relief under such Memorandum should seek clarification from the Government through proper channel because the author of a particular Memorandum knows best what he meant or intended to mean by the particular word occurring in the Circular or Memorandum which is being interpreted in different ways by different parties. In this view of the matter I think parties should approach the Government for clarification and then settle the dispute if possible amicably. With these observations the case be disposed of. This judgement shall govern Case Nos. 69 and 93 of 1974.

Learned members consulted.

Sd/- Md. Amjad Ali.
29-3-1975.

S. M. SERAJUL MAWLA,
Chairman,
Labour Court, Rajshahi.
29-3-1975.

Sd/- S.K. Paul,
29-3-1975.

Note taken and transcribed by Mr Md.
Nural Hoque, on my dictation and
corrected by me.

S. M. SERAJUL MAWLA,
Chairman,
Labour Court, Rajshahi.
29-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

I.R.O. Case No. 86 of 1974.

Mostafa Aziz, C/o. Jaipurhat Sugar Mills Workers' Union, P.O. Jaipurhat, district, Bogra—*First Party*,

versus

(1) The Manager, Jaipurhat Sugar Mills Co., Ltd., P.O. Jaipurhat, district Bogra

AND

(2) The Secretary, Bangladesh Sugar Mills Corporation, Shilpa Bhaban, Motijheel Commercial Area, Dacca-2—*Second Parties*.

PRESENT :

Mr S.M. Serajul Mawla—*Chairman*.

Mr Md. Amjad Ali

Mr S. K. Paul

} *Members*.

Dated 31st March, 1975 :

This is an application under section 34 of Industrial Relations Ordinance for recovery of 110 days' wages as bonus for the year 1973-74 on the strength of an agreement dated 3-10-1970 marked exbt. B(4). Petitioner is an employee of Joypurhat Sugar Mills Co., Ltd. On 3-10-1970 there was an agreement between the management of eight Sugar Mills including Joypurhat Sugar Mills then under the administrative control of the East Pakistan Industrial Development Corporation and now under the control of Bangladesh Sugar Mills Corporation and the representatives of the Sugar Workers Federation being the collective bargaining agent of the workers employed in the different sugar mills. By this agreement pay scales of some workers were revised, pay scale of all employees covered under East Pakistan Shops and Establishments Act, 1965, were adjusted and a scheme for payment of bonus to the workers was drawn up. Two formulas were worked out for payment of bonus to the workers and it was to be paid on the basis of any one of the two formulas, whichever is more favourable to the workers. According to this scheme if the first party earns a profit of 60 lacs and above the workers would get 110 days wages as bonus. There is no dispute that the first party earned more than 60 lacs in the relevant year. Hence the case for recovery of bonus in pursuance of the agreement mentioned above.

The contention of the second party is that the agreement dated 3-10-1970⁰ stood null and void with effect from 19-12-1973 in view of the provisions of Article 4 of the State Owned Manufacturing Industries Workers (Term and Conditions of Service) Ordinance, 1973 (Ordinance XXIII of 1973) which later was enacted as Act X of 1974 and the notification No. NID-37/73/958, dated 19-12-1973 issued by the Government of Bangladesh under section 3(1) and (2) of the said Ordinance.

It is admitted that Article 4 of the Ordinance which was fully incorporated in section 4 of the Act X of 1974 made all agreements, settlements and awards, whether made before or after the commencement of this Ordinance, in respect of any matter determined by the Government under section 3(1) shall be void and shall not be enforceable in any manner. Thus the agreement dated 3-10-1970 is no longer enforceable. But it was contended on behalf of the first party that the abovementioned Ordinance and Act related to workers as defined in clause (C) of section (2) of Act No. X of 1974 which runs as follows:

“‘Worker’ means any person, skilled or unskilled, who works for hire or reward but does not include a person who is employed in any managerial, administrative, supervisory or solely clerical capacity or who is an agricultural workers engaged in an agricultural farm, whether ancillary to any industrial unit or not.”

Further contention of the first party is that workers as defined above comes within the scope of the Report of Industrial Workers Wages Commission whereas the petitioner and others not included in the abovementioned definition of word “worker” are governed by the Report of National Pay Commission. Even this contention is accepted as correct then also the petitioner has got no case. The Report of the Industrial Workers Wages Commission or the Report of the National Pay Commission are not laws. While admittedly the agreement dated 3-10-1970 became void under section 4 of Act X of 1974 it cannot be argued that the agreement became void in respect of workers alone and not in respect of other employees. It is not reasonable to say that the agreement became void in part or still enforceable in part. It is void *in toto*. Even if it is accepted for the sake of argument that the agreement became void only in respect of workers and not in respect of other employees then also the petitioner has got no case. The signatories or parties to the agreement deliberately with definite intention divided labourers in two groups namely the workers and employees. It was admitted by Mr Paul, one of the signatories to the agreement representing the workers and learned Advocate for the petitioner that words workers and employees was intended to mean different groups of labourers and they were not used as synonyms of one another. A casual perusal of the agreement will make it crystal clear that the words workers and employees used in the agreement were intended to classify the labourers in two groups. Possibly this classification is similar to the differentiation made between labourers by the definition of word “workers” as given in clause (C) of Act X of 1974. It has been clearly stated in the agreement that workers alone will be entitled to bonus on the fulfilment of certain conditions whereas employees were to get certain benefit as enumerated in clause (2) of the Agreement. Petitioner is an employee not a worker. He stated in paragraph 1 of his petition that he is an employee of Joypurhat Sugar Mills Co. Ltd. So the petitioner not being a worker is not entitled to any bonus under the said agreement. Lastly it was contended on behalf of the petitioner that the second party paid bonus to workers and employees for the year 1970-71. And in support of this contention they produce Circular dated 14-9-1972 marked exbt. A(1). Second party admitted that out of generosity they gave bonus equivalent to 110 days’ wages to workers and employees of the mills for the year 1970-71 as per terms of agreement dated 3-10-1970 but contended that they are not bound under any law or agreement to show the same generosity every year. In this Circular exbt. A(1) the labourers have been grouped as workers and employees. Hence

considering all these facts and circumstances of this case I am of the opinion that the petitioner is not entitled to any bonus in terms of the agreement dated 3-10-1970. For the purpose of bonus the agreement included workers only and excluded the employees. The agreement became void by operation of law in whole. The case therefore fails.

Learned members consulted.

Hence Ordered

That the case be dismissed on contest without cost.

Sd/- Md. Amjad Ali,
31-3-1975.

S.M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
31-3-1975.

Sd/- S. K. Paul.
31-3-1975.

Note taken and transcribed by Mr Md.
Nural Hoque, at my dictation and
corrected by me.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
31-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

I.R.O. Case No. 90 of 1974.

Md. Amjad Hossain, General Secretary, Alhaz Steel Re-rolling Mills Sramik
Union, P.O. Ishurdi, district Pabna—*Complainant,*

versus

(1) Al-haj Musharaf Hossain, Managing Director,

AND

(2) Al-haz Moazzam Hossain, Director, both of Al-haj Ahmed Steel Re-rolling
Mills Ltd., P.O. Ishurdi, district Pabna—*Opposite Parties.*

PRESENT:

Mr' S. M. Serajul Mawla—*Chairman,*

Mr S. K. Paul—*Member.*

Order No. 9, dated 20th March 1975:

Parties present. On the prayer of the 1st party, the case be withdrawn without cost.

Sd/—S. K. Paul.
20-3-1975.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
20-3-1975.

Typed by Mr Md. Nural Hoque,
Stenographer, Labour Court, Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
20-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

I. R. O. Case No. 91 of 1974.

The General Secretary, Ahaj Steel Re-rolling Mills Sramik Union, P.O. Ishurdi,
district Pabna—*First Party,*

versus

The Managing Director, Ahaj Ahmed Ali Steel Re-rolling Mills Ltd., P.O.
Ishurdi, district Pabna—*Second Party.*

PRESENT:

Mr S. M. Serajul Mawla—*Chairman.*

Mr S. K. Paul—*Member.*

Order No. 9, dated 20th March 1975:

Parties present. On the prayer of the 1st party the case be withdrawn.

Sd/—S.K. Paul.
20-3-1975.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
20-3-1975.

Typed by Mr Md. Nural Hoque Steno-
grapher, Labour Court, Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
20-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

I. R. O. Case No. 94 of 1974.

Md. Anwar Hossain, C/o. Bangladesh Chinikal Sramik Union, P. O. Gopalpur,
district Rajshahi—*First Party*,*versus*(1) The Manager, North Bengal Sugar Mills Co., P.O. Gopalpur, district
Rajshahi;

AND

(2) The Secretary, Bangladesh Sugar Mills Corporation, Shilpa Bhaban, Moti-
jheel Commercial Area, Dacca—2—*Second Parties*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Mr Md. Amjad Ali	} <i>Members</i> .
Mr S. K. Paul	

Dated 31st March 1975:

This is an application under section 34, I.R.O. arising out of the following facts:

Petitioner Md. Anwar Hossain is a seasonal worker of the North Bengal Sugar Mills Co. He works as a Centrifugal Operator in the Chemical Department of the Mills during crushing seasons only. By Gazette notification dated 19th December 1973 Ministry of Industries, Nationalised Industries Division declared that "all workers shall be entitled for one month's basic wages as Bonus at the time of festival". Petitioner has been paid 12½ days wages as festival Bonus for the year 1973 but he has been denied the Bonus of remaining 17½ days on the ground that he is a seasonal worker. Hence this case for recovery of 17½ days Bonus of the year 1973.

It was contended by the second party that no bonus was prescribed for the seasonal staff or workers in the said notification, dated 19-12-1973. However the Board of Directors of the second party No. 2, Corporation considered the matter and was pleased to accord approval for payment of Bonus to the seasonal workers on proportionate basis on their actual number of working days. Accordingly seasonal worker including the petitioner got 12½ days wages as Bonus in the year 1973-74. In the year 1974-75 the Board declared similar Bonus for the seasonal worker but subsequently revised their decision and ordered for payment of full, one month's pay as bonus to all workers including the seasonals.

The dispute between the parties therefore centres round the interpretation of the word workers appearing in clause 2 of the said notification, dated 19-12-1973. According to the petitioner the word workers included seasonal workers also but according to the opposite party the word workers means

only the permanent workers. The contention of the second party is based on telegram, dated 20-10-1973 marked exbt. B(1) letter No. IR/MISC/24/562, dated 30-10-1973 marked exbt. B(2) and Memorandum No. SC/Labour/4,805, dated 13-3-1974 marked exbt. B(4). This telegram, letter and Memorandum came from O.P. No. 2, the Secretary, Bangladesh Sugar Mills Corporation. The telegram exbt. B(1) and letter exbt. B(2) clearly stated that all permanent workers and employees covered under Factory and Shops and Establishment Act, 1965 shall get one month's pay as Bonus. It should be noted here that exbt. B(1) and B(2) were issued before the gazette notification, dated 19-12-1973 and this gazette notification covered all the nationalised Industries including the Sugar Mills. Hence it can be safely said that the telegram exbt. B(1) or the letter exbt. B(2) was superseded by the gazette notification dated 19-12-1973. Exbt. B(1) or B(2) are not clarification of the gazette notification. It can at best be said that the principle enunciated in exbt. B(2) was incorporated in the gazette notification. The matter however become complicated after the issue of Memorandum dated 13-3-1974 by the O.P. No. 2. It has been marked exbt. B(4). It reads as follows:

"Festival Bonus was allowed proportionately to the seasonal workers and employees for the number of days they have actually worked as per Industrial Workers' Wage Commission Award. Representations were however, received from workers and employees organisations to the effect that the seasonals be paid the said bonus equal to that of permanent.

On reference to Government in this respect, we have been informed that Government approval was to allow Festival Bonus proportionately to the seasonal workers and employees for the number of days in a year they actually work. Though the Gazette Notification dated 19-12-1973 states that all workers will be entitled to Festival Bonus yet the word "worker" for the purpose of payment of bonus would mean the permanent worker as defined in the Standing Order Act, 1965".

Now the question that arises for our decision is if the interpretation of the word "workers" given in this Memorandum should be accepted as correct if not whether the gazette notification or the Memorandum issued by the Secretary, Bangladesh Sugar Mills Corporation, shall prevail we have nothing before us to hold that by tradition, convention or custom prevailing in the Industrial Circle or in general parlance the word workers means and includes permanent workers; It is known best to the Author of the gazette notification what they actually intended to mean and include by the word "workers" appearing in clause 2 of the notification. Since the Notification was issued in exercise of the power conferred by sub-section (1) and (2) of Section 3 of the State-owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1973 (Ordinance No. LXIII of 1973) this notification is as good as law or at least has the force of law and as such it is the duty of the Court to interpret it, where occasion arises, for adjudication of any dispute and the Court will be failing in its duty if the matter is referred to Govt. for interpretation. Circulars and Memorandum not having the force of law stand on different footing. In case of difference of opinion in respect of such Circulars or Memorandum the matter should be referred to Govt. for interpretation on the principle that the Author of a particular Circular or Memorandum knows best what he meant or intended to mean by a particular

word used in the Circular or Memorandum. Now coming back to the question of interpretation of the word workers appearing in clause 2 of the said notification dated 19-12-1973 marked exbt. A(1), I am of the opinion that a gazette notification can be clarified, corrected or amended only by another notification not by any letter issued by any authority subordinate to the authority who issued the notification through official gazette. Hence the letter exbt. B(4) cannot be accepted as a clarification of the gazette notification exbt. A, nor it can supersede or prevail over the gazette notification. It has been stated in exbt. B(4) that the interpretation given therein is the outcome of a reference made to the Govt. in that respect. Even then I cannot accept this to be the correct interpretation because in the next year full one month's wages were paid as bonus to all workers including the seasonals without any notification of the gazette notification. In different Acts workers have been classified in different groups and nowhere the word 'worker' was defined to mean and include a permanent workers only. I am therefore of the opinion that in the absence of any qualifying clause the word workers should be taken in its ordinary literal meaning and in view of the fact that in the year 1974-75 the Seasonal were included in the word workers it should be taken to have meant the same thing in year 1973-74. Thus I am of the opinion that the word 'workers' include seasonal workers as well and as such the petitioner is entitled to the relief prayed for.

Learned members consulted,

Hence Ordered

That the case be allowed on contest without cost. The 2nd party is hereby directed to pay the petitioner 17½ days' wages as bonus for the year 1973-74 in addition to what has already been paid to him as festival bonus for the year 1973-74. The payment should be made by 15th of May, 1975.

Sd/—Md. Amjad Ali.
31-3-1975.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
31-3-1975.

Sd/—S. K. Paul.
31-3-1975.

Typed by Mr Md. Nural Hoque, Steno-
grapher, Labour Court, Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
31-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

I. R. O. Case No. 1 of 1975.

1. Abul Kashem, son of Moniruddin Ahmed, Vill. Katnerpara, Bogra Town.
2. Abdul Hoque, son of late Nazir Ahmed, Vill. Katnerpara, Bogra Town.
3. Nazrul Islam, son of Munshi Ishaque Ali, Vill. Katnerpara, Bogra Town.
4. Abdul Aziz, son of late Osman Ali, Vill. Katnerpara, Bogra Town.

5. Azhar Ali, son of late Md. Ali Sarker, Vill, Bashbaria, Bogra.
 6. Golam Mia, son of late Toyez uddin Master, Vill, Dakurchar, Bogra.
 7. Abdul Ali, son of late Habibullah, Shibat, Bogra.
 8. Abul Kashem, son of late Jalaluddin Ahmed, Katnerpara, Bogra.
 9. Abdus Satter, son of late A. Hamid, Katnerpara, Bogra.
 10. Montaz Uddin, son of Kalu Fakir, Sekerkala, Bogra.
 11. Toiyab Ali, son of late Sirajuddin, Katnerpara, Bogra.
 12. Sukut Mia, son of Rahim Uddin, Sultanganjpara, Bogra.
 13. Nurun Nabi, son of Tofazzal Hossain, Chelupara, Bogra.
 14. Shahjahan Ali, son of Azizar Rahman, Baropur, Bogra.
 15. Nurul, son of Nur Islam, Kutshar, Bogra.
- C/o. General Secretary, Bhandari Glass Workers' Union, Kalitalahat, College Road, Bogra—*First Parties*

versus

Mr Golam Kibria, Managing Partner, Bhandari Glass Works, College Road, Bogra—*Second Party*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Order No. 4, dated 2nd April 1975:

Parties have settled the dispute by an agreement. 1st party prays for withdrawal of the case.

Prayer allowed and the case be withdrawn.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi,
2-4-1975.

Typed by Mr. Md. Nurul Hoque,
Stenographer, Labour Court,
Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi,
2-4-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

I.R.O. Case No. 2 of 1975.

Abdus Sattar (Tara Mia), General Secretary, Bhandari Glass Factory Workers' Union, Kalitalahat, College Road, P.O. and district Bogra—*First Party*,

versus

- (1) Mr Golam Kibria, Managing Partner, Bhandari Glass Works.
- (2) Khondokar Abu Naser, Manager, Bhandari Glass Works, both of Kalitalahat, P.O. and District Bogra—*Second Party*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Order No. 4, dated 2nd April 1975.

On the prayer of the 1st party the case be withdrawn.

S. M. SERAJUL MAWLA

Chairman,
Labour Court, Rajshahi;
2-4-1975.

Typed by Mr Md. Nural Haque,
Stenographer, Labour Court,
Rajshahi.

S. M. SERAJUL MAWLA

Chairman,
Labour Court, Rajshahi,
2-4-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

I. R. O. Case No. 4 of 1975.

Abdus Sattar (Tara Mia), General Secretary, Bhandari Glass Factory Workers' Union, Kalitalahat, College Road, P.O. and District Bogra—*First Party*,

versus

- (1) Mr. Golam Kibria, Managing Partner, Bhandari Glass Works.
- (2) Khondaker Abu Naser, Manager, Bhandari Glass Works, both of Kalitalahat, P.O. and District Bogra—*Opposite Parties*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Order No. 4, dated 2nd April, 1975.

On the prayer of the 1st party the case be withdrawn.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi,
2-4-1975.

Typed by Mr Md. Nural Hoque,
Stenographer, Labour Court,
Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi,
2-4-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH
Complaint Case No. 1 of 1975.

Md. Abdul Gani, son of late Md. Miazan, Vill. Sepaipara, P.O. and district Rajshahi,
M/s. Padma Boarding, Shaheb Bazar, Writer of Accounts, Income Tax Books etc.—*Petitioner*,

versus

- (1) Md. Shamsul Islam, Contractor, Vill. Sagarpara, P.O. Ghoramara, District Rajshahi,
 - (2) Mosammat Anowara Begum, wife of Md. Nurul Islam, Vill. Hossainiganj, P.O. and District Rajshahi,
 - (3) Mosammat Sufia Khatun, wife of Md. Abu Sayeed, Vill. and P.O. Ghoramara, District Rajshahi,
- All are partners of M/s. Padma Boarding, Shaheb Bazar, P.O. Ghoramara, Rajshahi,
- (4) M/s. Padma Boarding, Shaheb Bazar, P.O. Ghoramara, Rajshahi—*Opposite Parties*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Mr S. K. Paul	} <i>Members</i> .
Mr Md. Amjad Ali	

Dated 28-3-1975:

This is an application under section 25 of the Employment of Labour (Standing Orders) Act arising out of the following facts. He is a professional account Khata Writer in shops. He writes account Khata in five or six business establishments. He started this job under the opposite parties towards the end of 1968 at a monthly salary of Tk. 15, subsequently his salary has been increased from time to time. In 1974 his salary was raised to Tk. 50. But on 17-11-1974 he informed the O.P. that he will not go to Income-Tax Office on 19-11-1974 and subsequent dates to explain the accounts for the assessment year 1380 B.S. unless his salary was raised to Tk. 80. This demand at a critical moment put the O.P. in a very embarrassing position. However to override the difficulties in preparing the Income-Tax statement they paid him at Tk. 80 in the month of November and December, 1974. After the submission

of the Income Tax statement petitioner discontinued his work and the parties could not come to any settlement. By letter dated 6-1-1975 2nd party asked the petitioner to let them know whether he was willing to work at Tk. 30 per month and if he was prepared to work daily from 4½ p.m. to evening. Petitioner gave no reply but instead submitted grievance petition and instituted this case.

Contention of the O.P. is that the petitioner is an old semi-invalid person and works as part-time account writer in large number of shops. He cannot perform his duties satisfactorily. He worked on contract basis as part-time account writer. He was not dismissed. He discontinued his job because possibly he could not accept the terms offered.

Petitioner could not produce any oral or documentary evidence to show that he was dismissed. He worked on contract basis and his pay was fixed according to the terms agreed upon by the parties from time to time. Admittedly he works in six shops according to his convenience. He is not a worker in the ordinary sense of the term or as defined and classified in the Employment of Labour (Standing Orders) Act because he works in many shops at a time. He is not required to attend to his duties daily. Condition of his services is regulated by convention, tradition and terms of agreement arrived at between him and his employer from time to time. A small businessman cannot afford to maintain a permanent or full time accountant. These businessmen get their account works done by this type of Khata writer who are specialised in this job. Their relation with their employer and their conditions of services is regulated by customs and tradition or systems prevailing in different parts of country which are again defendant on different circumstances. Considering the facts and circumstances of the case I am of the opinion that the petitioner has got no real grievances against the O.P. and he has got no cause of action for this case. The O.P. cannot be forced under any legal or equitable principles to accept the petitioner as their Khata Writer unless it can be shown that the O.P. has violated an existing contract before its date of expiry. Petitioner is therefore entitled to no relief.

Learned members consulted.

Ordered

That the case be dismissed on contest without cost.

Sd/- S. K. Paul,
28-3-1975.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
28-3-1975.

Sd/-Md. Amjad Ali,
28-3-1975.

Typed by Mr Md. Nural Hoque,
Stenographer, Labour Court,
Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
28-3-1975. -

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Miscellaneous Case No. 3 of 1974.

Deputy Registrar of Trade Unions, Rajshahi Division, Bogra—*First Party*,

versus

Bangladesh Glass Factory Workers' Kallyan Union (Reg. No. RAJ-12), Railway Market, Station Road, Bogra—*Second Party*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Order No. 6, dated 10th March 1975:

Petitioner present. O.P. absent and untraceable.

Ordered

That the case be allowed *ex parte* and the registration of the O.P. is hereby cancelled.

S. M. SERAJUL MAWLA

Typed by Mr Md. Nural Hoque, Stenographer, Labour Court, Rajshahi.

Chairman,
Labour Court, Rajshahi.
10-3-1975.

S. M. SERAJUL MAWLA

Chairman,
Labour Court, Rajshahi.
10-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Miscellaneous Case No. 5 of 1974.

Deputy Registrar of Trade Unions, Rajshahi Division, Bogra—*First Party*,

versus

Rangpur Printing Press Workers' Union (Regn. No. B-1441), Chaml Aman Road, Rangpur—*Second Party*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Order No. 6, dated 10th March 1975:

Petitioner present. O.P. absent on repeated calls and took no step.

Ordered

That the case be allowed *ex parte*. Registration of O.P. is hereby cancelled.

Typed by Mr Md. Nural Hoque,
Stenographer, Labour Court, Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
10-3-1975.

S.M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
10-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Miscellaneous Case No. 6 of 1974.

Deputy Registrar of Trade Unions, Rajshahi Division, Bogra—*First Party*,

versus

Bogra Zilla Biddut Workers' Union (Regn. No. Raj-3, dated 6th April 1970),
Railway Market, Bogra—*Second Party*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Order No. 5, dated 10th March 1975;

Petitioner present. O.P. absent on repeated calls and took no step.

Ordered

That the case be allowed *ex parte*. The registration of O.P. is hereby cancelled.

Typed by Mr Md. Nural Hoque,
Stenographer, Labour Court,
Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
10-3-1975.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
10-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Miscellaneous Case No. 7 of 1974.

Deputy Registrar of Trade Unions, Rajshahi Division, Bogra—*First Party*,

versus

Monakka Biri Factory Sramik Union, Nashratpur (Regn. No. RAJ-11), Railway Market, Station Road, Bogra—*Second Party*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Order No. 5, dated 10th March 1975:

Petitioner present. O.P. absent on repeated calls and not traceable.

Ordered

That the case be allowed *ex parte* and the registration of O.P. is hereby cancelled.

Typed by Mr Md. Nural Hoque,
Stenographer, Labour Court,
Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
10-3-1975.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
10-3-1975.

IN THE LABOUR COURT AT RAJSHAHI IN BANGLADESH

Miscellaneous Case No. 8 of 1974.

Deputy Registrar of Trade Unions, Rajshahi Division, Bogra—*First Party*,

versus

Bogra Noorani Bread and Biscuit 'O' Logenges Factory Sramik League (Regn. No. Raj-33), Thana Road, Bogra—*Second Party*.

PRESENT:

Mr S. M. Serajul Mawla—*Chairman*.

Order No. 6, dated 10th March 1975:

Petitioner present. O.P. absent on repeated calls and took no step.

Ordered

That the case be allowed *ex parte* and the registration of O.P. is hereby cancelled.

Typed by Mr Md. Nural Hoque,
Stenographer, Labour Court,
Rajshahi.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
10-3-1975.

S. M. SERAJUL MAWLA
Chairman,
Labour Court, Rajshahi.
10-3-1975.

MINISTRY OF LABOUR, SOCIAL WELFARE, CULTURAL AFFAIRS
AND SPORTS

(Labour and Social Welfare Division)

Section VI

NOTIFICATION

Dacca, the 22nd May 1975.

No. S.R.O. 176-L/75/S-VI/1(9)/75/173.—In pursuance of the provisions of sub-section (2) of section 37 of the Industrial Relations Ordinance, 1969 (XXIII of 1969), the Government is pleased to publish the awards or decisions of the Labour Court, Khulna, in respect of the following cases, namely:—

- (1) I. R. O. Case No. 44 of 1974.
- (2) I. R. O. Case No. 29 of 1975.
- (3) I. R. O. Case No. 653 of 1973.
- (4) I. R. O. Case No. 292 of 1974.
- (5) I. R. O. Case No. 82 of 1974.
- (6) I. R. O. Case No. 2 of 1975.
- (7) Complaint Case No. 6 of 1974.
- (8) I. R. O. Case No. 514 of 1972.
- (9) I. R. O. Case No. 78 of 1974.
- (10) I. R. O. Case No. 24 of 1974.
- (11) I. R. O. Case No. 464 of 1972.
- (12) I. R. O. Case No. 59 of 1974.

- (13) Complaint Case No. 19 of 1974.
- (14) I. R. O. Case No. 683 of 1973.
- (15) Complaint Case No. 10 of 1973.
- (16) I. R. O. Case No. 689 of 1972.
- (17) I. R. O. Case No. 127 of 1974.
- (18) I. R. O. Case No. 82 of 1974.

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

IN THE LABOUR COURT AT KHULNA IN BANGLADESH

I. R. O. Case No. 44 of 1974.

PRESENT:

Mr D. N. Chowdhury—*Chairman.*

Mr D. Hussain .. }
 B. M. Sufian ... } *Members.*

Md. Auyb Ali, s/o. late Abdul Aziz, Village Deara, P.S. Daulatpur,
 Khulna—*1st Party,*

versus

Afiluddin Brothers Ltd., Daulatpur, Khulna—*Second Party.*

This is an application under section 34 of the Industrial Relations Ordinance, 1969. Briefly stated case of the petitioner is that he was serving under the second party from July, 1969 as Scale Assorter. That on 8-12-1973 the 1st party was charge-sheeted by the 2nd party on some false and frivolous allegations. That the 1st party replied to the charges on 12-12-1973 denying the allegations brought against him. That on 19-12-1973 the 2nd party issued a letter to the 1st party to appear personally before the 2nd party. That the 2nd party did not ask the petitioner to come with any witnesses, however no enquiry was at all held in pursuance of the notice of the enquiry issued by the 2nd party and that 2nd party thereafter issued letter of discharge against the 1st party on 22-12-1973. That on 2-1-1974 the 1st party filed a grievance petition for reconsidering the decision but that no reply was at all given and accordingly the present case is filed for declaration that the order of dismissal is void and illegal and to reinstate the 1st party in his service with all back wages.

2nd party by filing written objection contends that the case is barred by limitation and that the petition under section 34 of I.R.O., 1969, is not maintainable. 2nd party alleges that all the formalities were duly complied with as envisaged in the Standing Orders Act and that the petitioner is legally dismissed from service and as such 2nd party contends that the case be dismissed.

1st party has examined one witness and 2nd party has not examined any witness but has cross-examined the P.W. 1.

Following are the points for determination:—

- (1) Is the petition under section 34 of I.R.O., 1969 maintainable?
- (2) Is the petition barred by limitation?
- (3) To what relief, if any, is the petitioner entitled?

FINDINGS

Point Nos. 1 to 3.—For the sake of convenience all these points are taken up together. It will be seen that the petitioner was discharged from service by letter dated 22-12-1973, *vide* Ext. B and according to the petitioner he filed grievance petition, *vide* Ext. A on 2-1-1974. The contention of the 2nd party is that this grievance petition which is undated was actually posted on 22-1-1974 and the corresponding envelop is also produced by the 2nd party. Apart from this petition has also produced the receipt of the registration where also it is clear that the date of posting was 22-1-1974. It is the contention of the Ld. Advocate for the 2nd party that the petition under section 34 of I.R.O., 1969 is barred by limitation. No doubt section 34 of I.R.O., 1969 provides no period of limitation but section 34 of I.R.O., 1969 provides a substantive right guaranteed to the worker for enforcing his right in the Labour Court but has to undergo rigidly the formalities prescribed in the Standing Orders Act. Section 25(1) of the Standing Orders Act provides that the grievance petition shall have to be made in writig within 15 days from the date the ground of grievance arose and in the present case when the order of discharge issued on 22-12-1973 the sending of grievance petition on 22-1-1974 is obviously barred by limitation and accordingly though agreeing with the contention of the Ld. Advocate for the petitioner that the petition under section 34 of I.R.O., 1969 is maintainable when any right is guaranteed to the worker still in the present case is seen that the case is hopelessly barred by limitation.

Now coming to the merit of the case it will be seen that the petitioner was charge-sheeted for his alleged habitual absence without intimation from duty and a show cause notice was issued upon the petitioner who also submitted his explanation Ext. D. After that admittedly petitioner was given a personal hearing and was ultimately by an order, dated 22-12-1973 was discharged from service. Section 16 of the Standing Orders provides which runs as follows:—

“A worker may be discharged for reasons of physical or mental incapacity or continued ill health or such other reasons not amounting to misconduct”.

Curiously enough it is seen from the copy of order of discharge that the petitioner is discharged from service due to misconduct and as such I have no hesitation to hold that the formalities of section 16 is not at all complied with. Law provides that a worker may be discharged under sections 16 of the

Standing Orders Act for grounds of continued ill health or for other reasons not amounting to misconduct and sections 17 and 18 of the Standing Orders Act shall have meticulously observed if any finding of misconduct to be arrived at against a worker. Accordingly I find that though admittedly a personal hearing as envisaged in section 18 of the S.O. Act was given to the petitioner still in my opinion, there was no sufficient compliance with the other formalities as envisaged in the Standing Orders Act and consequently the order of discharge cannot termed as legal. In normal circumstances some benefits in the shape of termination benefits but since the petition is barred by limitation as found before I find that the petitioner is not entitled to any relief. Last but not the least it transpires from the admission of the petitioner that from 24-9-1974 he is working currently in the Star Jute Mills and as such I think petitioner is not in so much difficulties as alleged by him.

Accordingly from the above I find that petitioner is not entitled to any relief in peculiar circumstances of the case.

Considered the written opinion of the Learned Members.

Accordingly it is—

Ordered

That the case be dismissed on contest but without any costs,

DWIJENDRA NATH CHOWDHURY

*Chairman,
Labour Court, Khulna.
9-4-1975.*

Note taken and transcribed by
Mr A.B.M. Joynal Abedin,
Stenographer, Labour Court,
Khulna, at my dictation and
corrected by me.

DWJIENDRA NATH CHOWDHURY

*Chairman,
Labour Court, Khulna.
9-4-1975.*

• IN THE LABOUR COURT AT KHULNA IN BANGLADESH.

I. R. O. Case No. 29 of 1975.

PRESENT :

Mr D. N. Chowdhury—*Chairman.*

B. M. Sufian

Mr. D. Hussain

} *Members.*

Deputy Registrar of Trade Unions, Khulna Division, Khulna—*1st Party,*

versus

Quimi Jute Mills Export Sec. Workers' Union, Regn. No. 263, Charherhat Road'
Town Khalishpur, Khulna—*2nd Party.*

Copy of Order.

3. 5-4-1975.—Both the members are present. The 2nd party is absent and takes no step. The 1st party is present by filing hazira. The case is taken up for *ex parte* hearing. P.W. 1 Talukder Lutfuzzaman is examined on S.A. The case heard on *ex parte*. The learned Members submitted their written opinions. Let the opinions be kept with the record.

P.W. 1 examined. Considered the written opinion of the learned Members. *Prima facie* case made out. Hence it is—

Ordered

That the case be allowed *ex parte* and the registration of the Union be cancelled.

D. N. CHOWDHURY

Chairman.

Labour Court, Khulna.

IN THE LABOUR COURT, KHULNA IN BANGLADESH

I.R.O. Case No. 653 of 1973.

Deputy Registrar of Trade Unions, Khulna Division, Khulna—1st Party,

versus

Khulna Tobacco Industries Sramik Union, Regn. No. B-1450, Phultala Bazar, Khulna—2nd Party.

PRESENT ;

Mr D. N. Chowdhury—Chairman.

Mr D. Hussain	} Members.
B. M. Sufian	

Copy of Order.

22. 3-4-1975.—P.W. 1 examined. Considered the written opinions of the learned Members. *Prima facie* case made out. Hence it is—

Ordered

That the case be allowed *ex parte* and the registration of the union be cancelled.

D. N. CHOWDHURY

Chairman.

Labour Court, Khulna.

IN THE LABOUR COURT, KHULNA, BANGLADESH

I.R.O Case No 292 of 1974

PRESENT :

Mr D. N. Chowdhury—*Chairman*.

Mr. D. Hussain }
B. M. Sufian } *Members.*

Deputy Registrar of Trade Unions, Khulna Division, Khulna—*1st Party*,

versus

Jessore Zela Press Sramik Union, Regn. No. KLN-241, Jessore—*2nd Party*.

Copy of Order

10. 1-4-1975.—P.W. 1 examined. Considered the written opinion of the learned Members. *Prima facie* case made out. Hence it is—

Ordered

That the case be allowed *ex parte* and the registration of the Union be cancelled.

D. N. CHOWDHURY
Chairman
Labour Court, Khulna.
1-4-1975.

IN THE LABOUR COURT AT KHULNA IN BANGLADESH

I. R. O. Case No, 82 of 1974.

PRESENT :

Mr D. N. Chowdhury—*Chairman*.

Mr D. Hussain }
B. M. Sufian } *Members.*

Deputy Registrar of Trade Unions, Khulna Division, Khulna—*1st Party*,

versus

Khyddo Panio Sramik Sangha, Regn. No. KLN-26, Sramik Bhavan, Town Khalishpur, Khulna—*2nd Party*.

Copy of Order.

19. 1-4-1975.—P.W. 1 examined. Considered the written opinions of the learned Members. *Prima facie* case made out.

Hence it is—

Ordered

That the case be allowed *ex parte* and the registration of the Union be cancelled.

D. N. CHOWDHURY
Chairman
Labour Court, Khulna.
1-4-1975.

IN THE LABOUR COURT AT KHULNA IN BANGLADESH

I.R.O. Case No. 2 of 1975.

PRESENT :

Mr D. N. Chowdhury—*Chairman*.

Mr D. Hussain	} <i>Members.</i>
B. M. Sufian	

Deputy Registrar of Trade Unions, Khulna Division, Khulna—*1st Party*,

versus

Bank Line Navigation Employees' Union, Reg. No. B-1372, Chalna Port (Mongla),
Khulna—*2nd Party*.

Copy of Order.

4. 1-4-1975.—P.W. 1 examined. Considered the written opinion of the learned Members. *Prima facie* case made out. Hence it is—

Ordered

That the case be allowed *ex parte* and the registration of the Union be cancelled.

D. N. CHOWDHURY
Chairman
Labour Court, Khulna.

IN THE LABOUR COURT AT KHULNA

Complaint Case No. 6 of 1974.

PRESENT :

Mr D. N. Chowdhury—*Chairman.*

Mr D. Hussain }
 Begum Monnujan Sufian } *Members.*

Anowar Ali Khan, son of Golam Sarwar Khan, vill. Baraihat, P.O. Rajpat, P.S. Kasiani, District Faridpur—*1st Party,*

versus

- (1) Platinum Jubilee Jute Mills Ltd., being represented by the Production Manager, Town Khalishpur, Khulna.
- (2) Bangladesh Jute Mills Corporation, being represented by the Chairman, Amin Court, McTiheel C/A, Dacca-2—*2nd Parties.*

This is an application under section 25(1)(b) of the Bangladesh Employment of Labour (S.O.) Act, 1965. Briefly stated case of the petitioner is that he was appointed by C.P. No. 1 as M. T. Apprentice on 7-2-1967 and that he completed his apprenticeship period on 8-2-1970 and according to the terms of the appointment letter the petitioner is entitled to be kept in service for a further period of 3 years. That O.P. No. 1 terminated the service of the petitioner illegally on 29-9-1970 for which petitioner filed complaint case No.167/70, under section 25(1)(b) of the Employment of Labour (S.O.) Act, 1965 which was allowed *ex parte* on 8-2-1973 and that the Learned Court was pleased to direct the O.P. No. 1 to reinstate the petitioner with all back wages. That thereafter O.P. No. 1 filed Miscellaneous case No. 132/73 under Order 9 rule 13, C.P.C., which was dismissed on contest on 25-8-1973. That thereafter O.P. No. 1 filed review petition being Miscellaneous Case No. 132A/73 under Order 47, rule 1, C.P.C. which case was dismissed on contest on 24-10-1973. That thereafter in pursuance of the judgement petitioner was allowed to join in his service from 1-12-1973. That O.P. No. 1 informed the petitioner that his pay would be fixed along with dearness allowance of Tk. 324-30 and O.P. No.1 further directed the petitioner to receive the payment of arrear dues. That petitioner found that O.P. No. 1 prepared a bill of Tk. 3,859-30 in place of Tk. 23,058-86 on account of arrear wages. That petitioner received the payment under protest due to his financial difficulties and that on 5-3-1974 he submitted a grievance petition. That since no action was taken petitioner has filed this case for recovery of arrear wages amounting to Tk. 17,575-26 as shown in the schedule of the petition after giving credit in certain payment received by the petitioner and he also further prays that O.P. No. 1 be directed to pay monthly wages at the rate of Tk. 399-30 per month with effect from 1-1-1974.

2nd party by filing written statement contends *inter alia* that the case as filed by the petitioner is not maintainable as it does not fall within the scope of section 25(1)(b) of the Standing Orders Act and their further contention is that no question of fixation of the monthly pay of the petitioner at Tk. 399.30 arises as will be apparent from the terms of the contract with the petitioner. 2nd party denies all the material allegations made in the petition and they contend that the petition be dismissed.

Petitioner has examined one witness and O.P. has not examined any witness but has cross-examined the witness of the petitioner.

Following are the points for determination:—

- (1) Is the case maintainable under section 25(1)(b) of the Standing Orders Act, 1965 ?
- (2) Has the court jurisdiction to deal with the matter raised in the case ?
- (3) To what relief, if any, is the petitioner entitled :

Findings.

Point Nos. 1 to 3.—For the sake of convenience all these points are taken up together. Petitioner in this case has prayed for recovery of arrear of wages as well as for a direction upon O.P. No. 1 to make the payment to the petitioner at Tk. 399.30 with effect from 1-1-1974. So far as the 2nd relief is concerned it may be mentioned here that Ext. 9 which would go to show that the petitioner has been given Grade D-I and as such the question of fixation of pay of the petitioner as some what different rate in this grade is definitely beyond the scope of this court to consider and the prayer for re-fixation at the rate of Tk. 399.30 as claimed by the petitioner is liable to be rejected and should be rejected. As regards the clam of arrear wages the contention of the Learned Advocate for the 2nd party was that since it is a matter covered by Section 15 of the Payment of Wages Act this Labour Court as per provisions of section 35(6) of I.R.O., 1969 has no jurisdiction to deal with the matter in as much as this Labour Court is no empowered to deal with the matter arising out of Payment of Wages Act, 1936. Learned Advocate for the petitioner in repelling the contention has referred to me the decision reported in 1969 P.L.C. 353 where their Lordship of Dacca High Court found that section 22 of the Payment of Wages Act, 1936 relates to a bar of suits and according to them the case as filed in the Labour Court for arrear of wages is not a Suti. It may be mentioned here that at the time of decision of the aforesaid case the Labour Courts were constituted under the provisions of East Pakistan Labour Disputes Act, 1965 where section 11 of the aforesaid Act contained the identical provision in section 11(2) of the Act and as such I find that the plea of the Learned Advocate for the 2nd party that this court has no jurisdiction to deal with the matter of arrear wages cannot be accepted and as such I have no hesitation to hold following the decision reported in 1969 P.L.C. 3532 that this court has jurisdiction to deal with the matter regarding the recovery of arrear wages.

Now coming to the merit of the case I shall refer to Ext. 1 which is the terms of apprenticeship agreement where the relevant portion of article 2 is very material and which reads as follows:

“The apprentice will have to serve this company for a further period of three years on completion of the apprenticeship, provided the company so desires, on a salary to be determined by the management.”

It will be seen that after the petitioner was allowed to join he received Ext. 9 dated 24-2-1974 where his basic pay and dearness allowance were fixed up and as such I find that the claim of the petitioner as made by him to be fixed at Tk. 399.30 per month cannot be accepted as sound. Admittedly petitioner received after deduction of certain amount a total amount of Tk. 3,859.30 on 8-3-1974 and there is no dispute that this would be the correct amount at the rate at which the petitioner was allowed to join in Grade D-1 on the conclusion of the case filed by the petitioner against the 2nd party and as such I find that the petitioner cannot get the benefit as claimed by him.

Learned Advocate for the 2nd party has finally argued that petitioner's claim as made under section 25(I)(b) is not tenable in as much as he has drawn my attention to the provision of section 25(I) of the Employment of Labour (S.O.) Act, 1965 which begins with the observation which reads as follows:

"Any individual worker who has a grievance in respect of any matter covered under this Act who intends to seek redress thereof under this section shall observe the following procedure."

My attention has been drawn to the expression "in respect of any matter covered under this Act" which would go to show that the claim as made by the petitioner towards the recovery of arrear wages does not necessarily fall within the scope of any matter covered under this act and as such on that account also in my mind, the petition under section 25(I)(b) of the Standing Orders Act, 1965 is not maintainable.

Accordingly from the above I find that the petition is liable to be rejected. Considered the written opinions of the Learned Members.

Hence it is—

Ordered

That the case be dismissed on contest but without any costs.

DWIJENDRA NATH CHOWDHURY

*Chairman,
Labour Court, Khulna.
31-3-1975.*

Typed by Mr A.B.M. Joynal Abedin,
Stenographer, Labour Court, Khulna
at my dictation and corrected by me.

D.N. CHOWDHURY

*Chairman,
Labour Court, Khulna,
31-3-1975.*

IN THE LABOUR COURT AT KHULNA

I.R.O. Case No. 514 of 1972.

PRESENT:

Mr. D.N. Chowdhury—*Chairman.*

B. M. Sufian	} <i>Members.</i>
Mr. D. Hussain	

Fazlu Mia, S/o Serjon Ali Mia, C/o. Abul Kashem, B.C. No. 434, Cable Factory, P.O. Seromoni, Khulna—*1st party,**versus*The Manager, M/s, Ajax Jute Mills, Daulatpur, Khulna and one other—*2nd parties.*

This is an application under section 34 of I.R.O. 1969. Briefly stated case of the petitioner is that he was serving under the 2nd party as a darwan from 1-10-1965. That on 18-8-1967 he tendered resignation which was accepted by the 2nd party. That during the tenure of service petitioner had to work on all Sundays and all gazetted holidays and apart from that he had to work 12 hours per day, *i.e.* he had to work 4 hours overtime. That on 2-9-1972 the 2nd party entered into an agreement with the members of the security staff for payment of some additional benefits in respect of un-availed Sundays and gazetted holidays but that unfortunately the name of the 1st party has not there. That petitioner sent a petition to the 2nd party on 13-10-1972 for making to the petitioner of arrear wages but that the petition remained unanswered and accordingly petitioner has filed this case for recovery of Tk. 3,132-00 towards overtime allowance and towards bonus,

2nd party by filing written statement denies all the material allegations made in the petition and their contention is that petitioner as a matter of fact did not work overtime or on holidays as alleged by him and accordingly 2nd party contends that the petition be dismissed.

Petitioner has examined one witness and 2nd party has examined one witness,

Following are the points for determination:—

- (1) Is the petition maintainable ?
- (2) Is the petitioner entitled to any relief ?

Findings.

Points 1 and 2.—For the sake of convenience both the points are taken up together. Admittedly petitioner tendered his resignation in the year 1967, and while accordingly to petitioner he tendered his resignation with effect from 18-8-1967. The contention of the 2nd party is that his resignation was accepted with effect from 29-1-1967. 2nd party has not produced any paper in support of their contention but that will not make any difference in as much as admittedly the petitioner was not in employment of the 2nd party at the time of filing of the case and he was also under the employment of the 2nd party

at the time while the agreement entered into between the 2nd party and certain employees of the Security staff, Obviously there is no basis of the claim of the petitioner in this case and section 34 of I.R.O. 1969 does not give him any authority to enforce any right guaranteed to him and as such the petition is liable to be dismissed.

Petitioner has claimed that he worked 3,120 hours as overtime and that he has also worked 624 hours overtime on weekly rests days. The 2nd party while challenging the proposition did not produce the relevant papers to demolish the contention of the petitioner but that will not help the petitioner at all. Accordingly it will be seen that the agreement in question was entered into between 30 employees of the 2nd party and the 2nd party which has no application in this case in as much as he was no longer in service under the 2nd party and consequently the petition is liable to be dismissed.

Considered the written opinion of the learned Members.

Accordingly it is—

Ordered

That the case be dismissed on contest but without costs.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
19-3-1975.

Typed by Mr Abedin, at my
dictation and corrected
by me.

D. N. CHOWDHURY
Chairman.
19-3-1975.

IN THE LABOUR COURT AT KHULNA

I.R.O. Case No. 78 of 1974.

PRESENT :

Mr D. N. Chowdhury—*Chairman.*

Mr D. Hussain }
B.M. Sufian } *Members*

Barkat Ullah, s/o. Sk. Shafi, C/o Mir Mohd. Nuruzzaman, P.O. and VIII
Moheswarpasha, District Khulna—*1st party,*

versus

(1) Manager, Sonali Jute Mills Ltd., Mirerdanga, Khulna.

(2) *Chairman,* B. J. I. C. Motijheel Commercial Area, Dacca—*2nd parties.*

Copy of Order.

16. 11-3-1975. Members submitted their written opinions. Let it be kept with the record. P.W. 1 examined. This is a case under section 34, I.R.O., 1969 on the allegation that petitioner on a charge brought against him was dismissed from service on 11-3-1974. In the original petition there is no allegation of any grievance petition under section 25(D) of the Standing Orders Act. Further the petition is made under section 34 of I.R.O., 1969 while it was incumbent upon him to file a petition under section 25 of the S.O. Act after rigidly complying with the formalities as envisaged in the S.O. Act. Section 34 provides a substantive right but the procedure is to be adopted as adumbrated in the Standing Orders Act, 1968. Consequently I find that the petition is not maintainable and must be rejected.

Considered the written opinion of the Learned Members.

Accordingly it is—

Ordered

That the case be dismissed *ex parte* without costs.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
11-3-1975.

IN THE LABOUR COURT AT KHULNA

I.R.O. Case No. 24 of 1974.

PRESENT:

Mr D.N. Chowdhury—*Chairman*.

B. M. Sufian

Mr D. Hussain

} *Members.*

Anwar Hossain Sk., son of Md. Motleb Sk., Vill. Selemat, P.O. Maizpara
P.S. Sreenagore, district Dacca—*1st Party*,

versus

Steel Re-Rolling Mills Ltd., represented by the Mill-in-charge, B.I.D.C. Road,
Khulna—*2nd Party*.

This is an application under section 34 of I.R.O., 1969. Briefly stated case of the petitioner is that he was appointed as Darwan under the 2nd party on 3-1-1970. That in violation of the service contract the 2nd party by an order dated 1-11-1973 asked the 1st party to report for his duty at Chittagong office. That in spite of representation made to 2nd party, the 2nd party released the petitioner from Khulna office on 6-11-1973. Accordingly petitioner has filed this case for directing the 2nd party to allow the 1st party to attend his duties at

Khulna office under the 2nd party and also prays for recovery of wages from 6-11-1973. After the filing of the case the 1st party has filed a petition for amendment. The gist of which is that the petitioner was without any hearing dismissed from service on 13-2-1974. That the order of dismissal being made without any domestic enquiry is illegal and that a grievance petition was submitted which was also not considered by the 2nd party. Accordingly petitioner prays for reinstatement in service with all back wages.

2nd party by filing written statement contends *inter alia* that the case under section 34 of I.R.O. 1969 on the allegation as made is not maintainable. 2nd party contends that the service of the 1st party was definitely transferable and that the matter of transfer cannot be a matter of judicial decision in this Court. As regards the proposed amendment the 2nd party has totally denied the same.

Petitioner has examined one witness whereas 2nd party has not examined any witness but has cross-examined the P.W. and put in 2 documents for consideration by the Court.

Following are the points for determination:—

- (1) Is the petition under section 34 of I.R.O., 1969 maintainable?
- (2) To what relief, if any, is the petitioner entitled?

Findings.

Point No. 1 to 2.—For the sake of convenience both the points are taken up together. Admittedly the petitioner was appointed as Darwan under the 2nd party in 1970. It is also not disputed that the head office of the 2nd party is at Chittagong which will be evident from the amendment petition filed by the petitioner on 12-4-1974. At the time of hearing the case was very badly managed by the agent of the 1st party but I have seen the appointment letter of the petitioner which is on the record and there it will be seen that the head office of the 2nd party is shown to be at Chittagong and it does not automatically mean that the petitioner cannot be transferred. The job of the petitioner being transferable he cannot take any exception when he was transferred from Khulna to Chittagong and that cannot be a ground of agitation in the Labour Court. It will be seen from Ext. B that the petitioner was released from his duty on 7-11-1973 and as such the question of directing the 2nd party to allow the 1st party to continue in Khulna Office does not at all arise. The petition has been made as one under section 34 of I.R.O., 1969 which is not maintainable at all.

It is seen after the filing of the case that the petitioner came with an amendment to show that when the petitioner did not join to his duty at Chittagong office he has been arbitrarily dismissed by the 2nd party. The relevant paper which are in the record but curiously enough no amendment was made to convert the case as one of section 25 of the Bangladesh Employment of Labour (S.O.) Act, 1965. I find from the record that the order of dismissal was made against the petitioner dated 13-2-1974 but the grievance petition does not show the date when the same was filed because the reply of the 2nd party which is dated 18-3-1974 also does not contain any reference as to the date of which the alleged grievance petition was filed by the petitioner. The question of violation of section 47 of I.R.O., 1969 was also raised at the time of hearing but

no such pleading was made at all. Further it will be seen from the record that the case was filed on 17-1-1974 and the petitioner was dismissed from service on 13-2-1974 and from the record it is seen that the 2nd party made its appearance on 5-6-1974. There is nothing to show that the alleged order of dismissal against the petitioner was made after receipt of the notice of the case and as such it is not possible for this court whether the provisions of section 47 of I.R.O., 1969 has been violated.

As mentioned before the case was hopelessly conducted by the agent of the 1st party and in the circumstances I find that the petition is not maintainable and petitioner is not entitled to any relief.

Considered the written opinions of the learned Members.

Accordingly it is—

Ordered

That the case be dismissed on contest but without any costs.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
4-3-1975.

Typed by Mr A. B. M. Joynal Abedin,
Stenographer, Labour Court, Khulna
at my dictation and corrected by me.

Mr D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
4-3-1975.

IN THE LABOUR COURT AT KHULNA

Miscellaneous Case No. 73 of 1974/I.R.O. Case No. 464 of 1972.

PRESENT:

Mr D. N. Chowdhury—*Chairman.*

Mr D. Hussain

B. M. Sufian

} *Members.*

Zainul Bepari, C/o. Md. Mohiuddin, The New Bengal Hotel, K. D. Ghosh
Road, Khulna—*1st Party,*

versus

Proprietor, Jessore Comb Works, 23, Basupara Road, Khulna—*2nd Party.*

Copy of Order.

31. 28-2-1975.—This is an application under section 9, of rule 9, C. P. C (wrongly described as a petition under order 9, rule 4, C.P.C.) for setting aside the order of dismissal for default on 19-9-1974 in I.R.O. case No. 464 of 1972. Briefly stated case of the petitioner is that before the date of hearing petitioner was laid up with illness from 16-9-1974 and was confined to bed till 25-9-1974. That the petitioner's only adult son stayed at Khulna and that he has no other persons to send information to Khulna for praying an adjournment on the date of hearing. That on coming to Khulna after recovery of his illness he got the information that the case being dismissed for default and hence the petition for setting aside the order of dismissal.

2nd party O.P. by filing written statement contends *inter alia* and denying all the allegations made in the petition and contends that the petition be dismissed.

Petitioner has examined one witness whereas O.P. has not examined any witness but has cross-examined the petitioner.

Following are the points for] determination:

- (1) Was the petitioner prevented by sufficient cause from appearing on the date of hearing ?
- (2) To what relief, if any, is the petitioner entitled ?

Findings.

Points Nos. 1 to 2.—For the sake of convenience both the points are taken up together. Admittedly the date of hearing that was fixed on 19-9-1974 was known to the petitioner. The case of the petitioner from 16-9-1974 he fell ill and was under the treatment of a doctor but curiously enough the Doctor in question was not cited as a witness and naturally the medical certificate purported to be issued by that doctor could not be taken into evidence. Apart from this we find from the statement of P.W. 1 that he has 3 sons of which the eldest one aged about 30 years stays at Khulna and it was quite natural for that son to take some step when his father was allegedly ill on the date of hearing. When the age of the eldest son was 30 and when according to the petitioner has 2 other sons who also must be adult staying with their father and they were quite competent to inform the illness of the 1st party and to press the petition for adjournment. It is admitted that on the date of hearing, i.e., on 19-9-1974 no petition for adjournment was at all filed from the side of the petitioner. Accordingly from the above there is no proof that petitioner was really ill on the date of hearing and I am constrained to observe that petitioner has failed to make out that he was prevented by sufficient cause from appearing in court on the date of hearing. It was contended from the side of the petitioner that unless there was some compelling circumstances there was no reason of the petitioner who was the 1st party in the original case would make a deliberate default on the date of hearing but that process of reason would not help us in coming to the conclusion that really the petitioner was sick on the date of hearing. Accordingly from the above I find that petitioner having failed to make out a *prima facie* case and the same is liable to be dismissed.

Considered the written opinion of the learned Members.

Accordingly it is—

Ordered

That the Miscellaneous case be dismissed on contest but without any costs.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
28-2-1975.

Typed by Mr A. B. M. Joynal Abedin,
Stenographer, Labour Court, Khulna
at my dictation and corrected by me.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
28-2-1975.

IN THE LABOUR COURT AT KHULNA

I.R.O. Case No. 59 of 1974.

PRESENT:

Mr D. N. Chowdhury—*Chairman*

Mr D. Hussain ...

Begum Monnujan Sufian

} *Members.*

Glaxo Employees (Khulna) Union, P.O. Khulna, District Khulna—*First Party,*

versus

Glaxo Laboratories Ltd., Khan Jehan Ali Road, Khulna—*Second Party.*

This is an application under section 34 of I.R.O., 1969 read with section 4 of the Companies Profits (Workers Participation) Act, 1968. Briefly stated case of the 1st party is that it is the registered trade union and that the 2nd party is a company constituted under the Companies Act, 1913 carrying its business throughout Bangladesh and having its office at Khan Jehan Ali Road, Khulna amongst other places. That the financial position of the 2nd party is sound and as such it was incumbent upon the 2nd party to form Workers Participation Fund as envisaged under the provisions of Company Profit (Workers Participation) Act, 1968. That the 1st party submitted its charter of demands on 1-3-1974 raised the question of Workers Participation and demanded the allocation of benefit from the 2nd party but in the memorandum of settlement signed on 8th June, 1973 wherein it was decided that "both the parties agreed that the Government directive should be awaited before

taking any action". Petitioner contends that this stipulation in the memorandum of settlement was entered on a wrong explanation of law by the 2nd party's representatives with ulterior motive. Petitioner alleges since company did not form the Workers Participation Fund they finding no other alternative but to file this suit seeking the following relief amongst others:

- (1) The 2nd party be directed to submit an account of the Workers Participation Fund.
- (2) The 2nd party be directed to form the Board of Trustees immediately.
- (3) The 2nd party be directed to distribute the benefit of the fund to workers within a reasonable time.

2nd party by filing written statement contends *inter alia* that the case is not maintainable at all. That the 2nd party further contends that on the basis of memorandum of agreement dated 8-6-1973 the directive was still awaited and the case filed earlier is rather premature. Amongst other points the contention of the 2nd party is that the case is bad for defective of party and this court has no jurisdiction to deal with the matter and as such they contend that the case be dismissed.

Petitioner has examined one witness but 2nd party has not examined any witness but has cross-examined the P. W. 1. and they have filed some papers.

Following are the points for determination:—

- (1) Is the case maintainable under section 34 of I.R.O., 1969?
- (2) Is the case premature?

Findings.

Point Nos. 1 to 2.—For the sake of convenience both the points are taken up together. This case is filed by the 1st party union for directing the 2nd party to submit an account of the Workers Participation Fund as well as to direct the 2nd party to form the Board of Trustees and also prayed to distribute the benefit of the Fund to the workers within reasonable time. To appreciate the point raised in this case it may be stated here that a memorandum of settlement Ext. A was entered on 8-6-1973 between the 1st party and the 2nd party where item No. 24 is relevant for our purpose and it reads as follows:—

“Item No. 24: Workers Participation Fund:

Both the parties agreed that the Government directive in the matter should be awaited before taking any action.”

Obviously this case was filed on 8-3-1974 when the government directive still not available with the 2nd party and this aspect of the matter the case as filed is premature. I shall next refer to Ext. B which is the letter dated 25-7-1974 issued by the 1st party addressed to the Deputy Director of Labour, Dacca in respect of workers participation fund and Ext. 6 is the minutes of the 1st meeting of the board of trustees held on 27-11-1974. This development apparently took place after the filing of the case. Now a question arises whether the relief prayed for can be granted by the Labour Court? The

scheme according to Companies Profit (Workers Participation) Act, 1968 would go to show if the company is otherwise liable to open the fund the same is to be managed by the board of trustees to be appointed in terms of Section 4 of the Act and one person is to be nominated by the Government who shall be the Chairman of the Board. Section 4 of the abovementioned Act provides that the board shall manage and administer the fund in accordance with the provisions of this Act, the scheme and any rules made in this behalf. It further provides that the board, shall in the exercise of its powers and performance of its functions under this Act, be subject to such direction as the Central Government may from time to time give. Now the petitioner has come to this Court for enforcing the constitution of the Board as well as for direction to the company for placing some fund but the same is also the responsibility of the board and the 2nd party has nothing to do with it. Now the main question is resting on the interpretation of section 5(I) of the Act, which reads as follows:

“Where any company fails to comply with the provisions of section 3, the Central Government may, by order in writing require it to comply with those provisions within such time as may be specified in the Order.”

The above provision would not show that failure of the 2nd party to comply section 3 of the Act this Labour Court has got any jurisdiction to ask the 2nd party to open the fund and in the absence of that I think the question of giving direction for constitution of the fund, form the board of trustees and placing the amount in the workers participation fund does not at all arise. Accordingly it will be seen that the case is utterly misconceived and is liable to be dismissed as not maintainable.

Considered the written opinion of the Learned Member representing the workmen. The opinion of Learned Member is not available as he is absent but this omission is not fatal in view of section 35(7) of I. R. O., 1969 read with Supreme Court decision reported in 26 D.L.R. (SC) 33.

Accordingly it is—

Ordered

That the case be dismissed on contest but without any costs.

Typed by Mr A.B.M. Joynal Abedin,
Stenographer, Labour Court,
Khulna at my dictation and
corrected by me.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
18-2-1975.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
18-2-1975.

IN THE LABOUR COURT AT KHULNA

Complaint Case No. 19 of 1974.

PRESENT:

Mr D. N. Chowdhury—*Chairman*.

Mr D. Hussain	} <i>Members</i> .
B.M. Sufian	

M. A. Jalil, *ex-Senior Wages Assistant*, Accounts Department, Sonali Jute Mills Ltd., C/o. Mr Shaikh Abdullah, M.A., L.L.B., Regional Director, Srama Upadeshta Kendra, Abdulla Mansion, 5, Beni Babu Road, Khulna
—*1st Party*,

versus

- (1) The Secretary, Bangladesh Jute Industries Corporation, Adamjee Court, Motijheel Commercial Area, Dacca.
- (2) The Zonal Manager, Bangladesh Jute Mill Industries Corporation, Khulna Zone, B.I.D.C. Road, Town Khalishpur, Khulna.
- (3) Manager, Sonali Jute Mills Ltd. (Nationalised), Mirerdanga, Daulatpur, Khulna—*2nd Parties*.

This is an application under section 25(1)(b) of the Bangladesh Employment of Labour (Standing Orders) Act, 1965. Briefly stated case of the petitioner is that he was working as Senior Wages Assistant under O.P. No. 3 and that on 1-4-1974 he received a charge-sheet to which he replied and that on a sham enquiry petitioner was dismissed from service on 30-5-1974. That he submitted a grievance petition under section 25(1)(a) on 6-6-1974 but no reply was given by O.P. No. 3 and hence the case for reinstatement of the petitioner with all back wages. Petitioner denies the charges brought against him in the charge-sheet.

•O.P. No. 3 by filing written statement contends *inter alia* that the formalities required for filing a case under section 25(1)(b) of the Standing Orders Act, 1965 are not complied with by the petitioner and as such the case is liable to be dismissed. 2nd party alleges that on the charge of defalcation and embezzlement there was an enquiry against the petitioner and he has been rightly dismissed on the proof of the charges brought against him and as such O.P. No. 3 contends that the petition be dismissed.

Petitioner has examined one witness and O.P. No. 3 has examined 3 witnesses.

Following are the points for determination:—

- (1) Is the petition under section 25(1)(b) of the B.E.L. (S.O.) Act, 1965 maintainable?
- (2) Is there any ground of interference on the order of dismissal passed by O.P. No. 3?

Findings.

Point Nos. 1 to 2.—For the sake of convenience both the points are taken up together. Ext. 5 is the order of dismissal passed against the petitioner dated 30-5-1974 wherein it has been shown the date of dismissal of the petitioner with effect from 1-4-1974 and Ext. 3 is the subsequent letter dated 8-6-1974 showing that there was a clerical mistake and that the order of dismissal would take effect from 30-5-1974. Ext. 4 is the copy of the grievance petition dated 6-6-1974 purported to be submitted by the petitioner addressed to O.P. No. 3. The acknowledge receipt Ext. 4 (2) shows that the letter was received by E. Haque on 11-6-1974. The contention of the O.P. is that the grievance petition did not reach to the appropriate addressee and as such petitioner has failed to explain as to what was the designation of Mr E. Karim who received the grievance petition on behalf of the O.P. No. 3. Section 25 of the Standing Ordes Act, 1965 provides before coming to the Labour Court a grievance petition is to be submitted within 15 days from the date of occurrence of the cause of action and the same is also to be submitted under section 25(1)(a) of the said Act. This is a mandatory provisions of law and not directory and as such in the absence of any proof of the statement of the grievance petition according to law the petition under section 25(1)(b) of the Bangladesh Employment of Labour (Standing Orders) Act, 1965 is not maintainable.

Now coming to the merit of the case it will be seen from Ext. 1 that several charges of defalcation and embezzlement of fund by the petitioner was brought against the petitioner and we are concerned here with the alleged misappropriation of Tk. 713-00 for preparing a fictitious bill in respect of 7 workers in sheet No. 5 and cash voucher No. 3109, dated 16-11-1973. Ext. 2 is the reply submitted by the petitioner. After that admittedly an enquiry committee was formed to inquire into the charges brought against him and D.W. 2 Md. Nurul Hussain, Administrative Officer, Sonali Jute Mills Limited acted as Chairman of the committee and the enquiry proceeding containing the depositions of the petitioner that is duly countersigned by the members of the committee is marked Ex. A. Now in so far the inclusion of 7 fictitious workers in indent No. 5 petitioner stated that he did not check the bill alongwith the register and it was his mistake and that due to his mistake the checking could not be made. In this case the original indent No. 5 which is also the cash voucher No. 3109, dated 16-11-1973 has not produced before me on the plea that the same is lying in Dacca and a photostat copy is placed before me. Under section 65 of the Evidence Act the secondary evidence cannot be taken into the evidence when the original is available and within the reach of the 2nd party. This omission of the 2nd party however would not be of any advantage of the petitioner in as much as it is seen that in the enquiry petitioner admitted the alleged omission committed by the petitioner. Section 18 of the Standing Orders Act, 1965 provides the formalities required to be observed in making domestic enquiry on charges brought against a worker and what is most essential is the personal hearing which was admittedly done in this case. P.W. 1 alleges that he was not allowed to examine any witness on his side but he admits on cross-examination that he did not make any application for examination of any witness. This plea of the petitioner has no basis would be evident from the last answer made by him during the enquiry and the same would go to show that he has nothing to say except the explanation submitted by him in the enquiry. Apart from this the learned Advocate for the 2nd party has drawn my attention to the decision

reported in 1961 P.L.C. 1169 which was a decision of Supreme Court of Pakistan where their Lordships were pleased to hold that tribunal of not sitting in appeal over the proceedings in the enquiry. What is required is to examine whether the rules of enquiry as envisaged in the Standing Orders Act, were followed? In my opinion, the formalities were faithfully followed by the management and no exception can be taken to the procedure adopted by the 2nd party in inquiring into the charges brought against the petitioner and I do not find any flaw in the order of dismissal passed against the petitioner. Consequently petitioner is not entitled to any relief.

Considered the written opinion of the learned Member representing the workmen. The opinion of learned member representing the employers is not available as he is absent but his absence would not be fatal in view of the provisions of section 35(7) of I.R.O., 1969 read with the decision reported in 26 D.L.R. (SC) 33.

Accordingly it is—

Ordered

That the case be dismissed on contest but without any costs.

Typed by Mr A.B.M. Joynal Abedin,
Stenographer, Labour Court,
Khulna at my dictation and
corrected by me.

D.N. CHOWDHURY
Chairman,
Labour Court, Khulna,
18-2-1975.

D. N. CHOWDHURY
Chairman,
18-2-1975.

IN THE LABOUR COURT AT KHULNA

I.R.O. Case No. 683 of 1973.

PRESENT :

Mr D.N. Chowdhury—*Chairman.*

Mr. D. Hussain	} <i>Members.</i>
B. M. Sufian	

Md. Ashraf Ali, son of late Sadek Bhuiya, Vill. and P.O. Chandanimahal,
P.S. Daulatpur, Khulna—*1st Party,*

versus

Star Julte Mills Ltd., being represented by the Manager, Vill. and P.O. Chandani-
mahal, Khulna and one other—*2nd Parties.*

This is an application under section 34 of I.R.O., 1969. Briefly stated case of the 1st party petitioner is that he was serving as a Wages Assistant under the 2nd party mill and that on 8-8-1973 he received a charge-sheet from the company alleging that he made an overpayment of Tk. 168.00. Petitioner submitted explanation which according to the 2nd party was not satisfactory and on a sham enquiry petitioner was dismissed by an order dated 24-11-1973 and hence the present application for an order upon the 2nd party to reinstate the petitioner in service with all back wages.

2nd party by filing written statement contends *inter alia* that the petition under section 34 of I.R.O., 1969 is not maintainable as the petitioner did not file any grievance petition under section 25 of the Bangladesh Employment of Labour (S.O.) Act, 1965. On the merit of the case the contention of the 2nd party is that on 8-8-1973 a charge-sheet was given to the petitioner when it was detected in the bill of week ending 7-7-1973 he made an overpayment of Tk. 168.00 towards the dearness allowance of 14 persons who were not actually present in the work in the week ending in question. That a domestic enquiry was held according to law on 2-10-1973 and 3-10-1973 and that petitioner was found guilty of misconduct under section 17(3) of the Standing Orders Act, 1965 and accordingly he was dismissed from service on 24-11-1973. Accordingly 2nd party contends that the petition be dismissed.

Petitioner has examined one witness and 2nd party has also examined 2 witnesses.

Following are the points for determination :

- (1) Is the petition maintainable under section 34 of I.R.O., 1969 ?
- (2) To what relief, if any, is the petitioner entitled ?

Findings.

Point Nos. 1 and 2.—For the sake of convenience both the points are taken up together. Admittedly petitioner was dismissed by an order dated 24-11-1973 *vide* Ext. 4 on a charge of gross misconduct under section 17 of the Standing Orders Act, 1965. Admittedly petitioner did not file any grievance petition as contemplated under the mandatory provisions of section 25 of the Standing Orders Act, 1965 but has come straight away to this Court for filing a case against the order of dismissal praying for reinstatement in service with all back wages. Naturally 2nd party has raised objection that the case under section 34 of I.R.O., 1969 is not maintainable. The contention of the Learned Advocate for the 1st party is that section 34 of I.R.O., 1969 gives him an independent right for enforcing any right guaranteed by the law and as such he need not comply with the provisions of Standing Orders Act, 1965 before coming to the Labour Court. This contention of the Learned Advocate of the 1st party is not acceptable. The Labour Court constituted under section 35 of the Ordinance is also a forum for filing a case under the Standing Orders Act when an application is filed under section 25 of the Standing Orders Act by a worker against the order of dismissal the matter is to be adjudicated according to the provisions of Standing Orders Act because there is not appropriate provision under the I.R.O., 1969 for giving the necessary relief. In this connection I shall refer to Maxwell's on the interpretation of Statutes and I

shall refer to page 96 wherein the observation of the Learned Author is very material. The discussion is made under the head *Generalia Specialibus non derogant*—

“Now if anything be certain it is this,” said the Erl of Selborne L.C. in *The Vera Cruz*, “that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so”. In a later case, Viscount Haldane said “We are bound... to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in a earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to.”

The above observation of the Learned Author would clearly go to show that the petition under section 34 of I.R.O., 1969 without under-going the formalities of the Standing Orders Act, 1965 in the shape of a grievance petition is utterly misconceived and the petition is liable to be dismissed *in limine*.

Now coming to the merit of the case. The charge against the petitioner as evidenced from Ext. 1 is that as wages assistant being responsible for preparing and checking the wages bill for the week ending 7-7-1973 in respect of the bill of Weaving Department 'A' Shift of Mill No. 2 he did not check the bill and that as a matter of fact an overpayment of Tk. 168.00 was made and accordingly he was charge-sheeted under section 17 of the Standing Orders Act apparently for neglect of work and shall subsequently find that there was a falsifying and tempering with the official record as envisaged under section 17(k) of the Standing Orders Act. Petitioner submitted his explanation Ext. 2 where he admitted that he had negligence in not checking the wages bill and not only that he changed the wages sheet according to him as per direction of Abdul Mannan, * Wages Incharge. At the time of hearing P.W. 1 admitted in cross examination he changed the duplicate copy at the instance of M/s Abdul Mannan and Tarikul Islam, Wages Incharge and Time-Keeper respectively. After that petitioner received a notice of domestic enquiry to be held on 2-10-1973 *vide* Ext. 3 and there the names of the members of the enquiry committee also would appear there. After the enquiry the petitioner was dismissed by an order Ext. 4 dated 24-11-1973. Petitioner has no regard for truth as it will be seen that in cross-examination he went to so far to show that his signature was obtained in a blank paper which is apparently a false statement that the evidence of the petitioner was recorded would be seen in the deposition of D.W. 1 Kalimuddin Ahmed, Senior Accountant of the 2nd party mill. It is contended that no witness from the side of the 2nd party was examined but that was not necessary in as much as second party relief on the official

record read with the admission made by the petitioner in his explanation submitted in reply to the charge-sheet. Section 18 of the Standing Orders Act provides the procedures for conducting an enquiry before discharge or dismissal of a worker and in the instant case the provisions were meticulously observed by the 2nd party company and no exception can be taken on this ground as contended by the Learned Advocate for the 1st party. No doubt in the order of dismissal Ext. 4 reference was made to the alleged recovery of Tk. 4,000.00 from the petitioner but that is not material for our present purpose and that is beyond the charge of the petitioner. Consequently I find that the 2nd party company observed all the formalities for bringing home the charge of misconduct against the petitioner. The series of Ext. E which was the minor warnings and punishment awarded to the petitioner would go to show that the service record of the petitioner is far from clean as contended by the petitioner at the time of hearing. Be that as it may I find that the petitioner is not entitled to any relief even on the merit of the case.

Considered the written opinion of the Learned Members.

Accordingly it is—

Ordered

That the case be dismissed on contest but without costs.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
27-2-1975.

Typed by Mr. A. B. M. Joynal Abedin,
Stenographer, Labour Court, Khulna
at my dictation and corrected by me.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
27-2-1975.

IN THE LABOUR COURT, KHULNA

Complaint Case No. 10 of 73.

PRESENT:

Mr. D. N. Chowdhury—Chairman.

B. M. Sufian

Mr. D. Hussain

} Members.

Abdul Quddus, L. B. No. 4730, H/Weaver, Weaving Department, Mill No. 1,
Star Jute Mills Ltd., Chandanimohal, Khulna—1st party,

versus

Star Jute Mills Ltd. being represented by the Manager, Chandanimohal, Town
Khalishpur, Khulna and one other—2nd party.

This is an application under section 25 (I)(b) of the Bangladesh Employment of Labour (Standing Orders) Act, 1965. Briefly stated case of the petitioner is that he is a worker under the O. P. firm since 1967. That on 20-7-1973 petitioner was asked to submit written explanation on a charge that he damaged 15 yards of Warp thread for his negligence and he was suspended from service pending the enquiry of the charge. That petitioner submitted written explanation denying the allegation on 24-7-1973 and that on a sham enquiry petitioner was awarded a punishment suspending him for a period of 7 days without wages on 10-8-1973 and that on 18-8-1973 the petitioner filed a grievance petition under section 25 (I)(a) of the Standing Orders Act, 1965 to the O. P. and the O. P. having not passed any decision by 18-9-1973, petitioner is constrained to file this case for directing the 2nd party to withdraw the order of punishment as awarded to the petitioner.

2nd party by filing written statement contends *inter alia* that the provisions as envisaged under the Standing Orders Act, 1965 has not complied with by the petitioner and as such the case under section 25 of the Standing Orders Act, 1965 is not maintainable. On the merit of the case the contention of the 2nd party is that petitioner was found to damage a good warp thread and on the basis of the report submitted by the line supervisor the proceeding was drawn up against the petitioner. That the petitioner produced two witnesses including himself and were examined by the enquiry board and that while witness of the petitioner put his signature at the end of the deposition but the petitioner declined to put his signature. That the enquiry board has awarded a lenient measure recommended suspension for 7 days which the manager of the mill agreed. 2nd party contends that there are grounds for warding the order of punishment as granted by the mill and they contend that the petition be dismissed.

Petitioner has examined 2 witnesses and 2nd party has also examined 2 witnesses.

Following are the points for determination—

- (1) Is the petition under section 25 (I)(b) of the Standing Orders Act, 1965 maintainable ?
- (2) Was any flaw in awarding the punishment of the petitioner ?
- (3) To what relief, if any, is the petitioner entitled ?

Findings.

Points 1 to 3—For the sake of convenience both the points are taken up together. It is seen from the Ext. 4 that petitioner was awarded a punishment by the mill by its order dated 10-8-1973. Section 25(I) of the Standing Orders Act, 1965 provides that any individual worker who has any grievance covered under this Act and intends to seek redress thereof shall bring his grievance to the notice of his employer within 15 days from the date of cause of action. If

that written grievance petition is not considered within one month by the employer then the petitioner is to wait for another one month and thereafter he can file a case under section 25 (1)(b) of the Standing Orders Act, 1965. So it is mandatory for filing a case under section 25(1)(b) of the Standing Orders Act is the filing a written grievance petition within 15 days. Petitioner has produced Ext. 5 the copy of a grievance petition dated 17-8-1973 and according to him received by one Moazzam Hussain, a clerk of the Labour Office on 18-8-1973. Second party denies the receipt of this grievance petition and petitioner has not taken sufficient efforts to compel the appearance of Moazzam Hussain to support the contention of the petitioner. Accordingly it will be seen that the petitioner has failed to prove that he submitted a grievance petition within 15 days as required under section 25 (1)(a) of the Standing Orders Act, 1965. Accordingly the case under section 25 (1)(b) of the S. O. Act, 1965 is not at all maintainable.

Now coming to the merit of the case it will be seen that the allegation against the petitioner was that he damaged 15 yards of good warp thread which resulted the loss of the company out of sheer negligence of the petitioner. The defence of the petitioner was that he thought that 40 yards would be one still he could use the same in the next piece and when the petitioner faced trouble then he contacted with Line Supervisor Mr Osman who reported the matter to the authority on which the charge-sheet was framed against the petitioner. 2nd party has produced the papers of the proceeding wherein it is seen that petitioner admitted that before cutting the cloth he did not show it to the Line Sardar or the Supervisor which itself a negligence and the evidence of his witnesses is also to the same effect. Accordingly it will be seen that there was sufficient negligence of work as envisaged in section 17 (3)(h) of the Standing Orders Act, 1965. Apart from this it is seen that at the time of enquiry he refused to put his signature at the end of the deposition sheet which was so stated on the top of the paper and as deposed by D. W. 2 Jehangir Ahmed who was a Labour Officer of the Mill and Chairman of the Enquiry Board. No doubt it is true that none from the side of the company was examined at the time of enquiry but section 18 of the S. O. Act, 1965 does not specifically stated that the prosecution witnesses must be examined and what is required is the personal hearing of the accused if he is so desired and accordingly I find that the procedures as envisaged under sections 17 and 18 of the S. O. Act, 1965 were substantially complied with by the 2nd party. It is seen that petitioner awarded as a punishment only suspension for 7 days without wages which is apparently the most lenient punishment which the petitioner really did not deserve and in the circumstances leaving aside the maintainability of the case I find that this court has no business to interfere with the order of punishment as granted by the mill. Accordingly it will be seen that the case deserves no consideration on merit as found earlier that the case is not maintainable for absence of the mandatory provisions of law and consequently the petitioner is not entitled to any relief.

Considered the written opinion of B. M. Sufian, the Learned Members representing the workmen. The opinion of other member is not available as he is on leave. However, in view of the provisions of section 35(7) of I. R. O., 1969 read with the decision of the Hon'ble Supreme Court reported in D. L. R., 26(SC) 33 that the absence of one member would not be fatal.

Accordingly I find that the petitioner is not entitled to any relief.

Hence it is—

Ordered

That the case be dismissed on contest but without any costs.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna,
15-2-1975.

Typed by Mr A. B. M. Joynal Abedin,
Stenographer, Labour Court, Khulna at my
dictation and corrected by me.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.
15-2-1975.

IN THE LABOUR COURT, KHULNA

I. R. O. Case No. 689 of 1973.

PRESENT

Mr. D.N. Chowdhury—*Chairman.*

B.M Sufian
Mr D. Hussain } *Members.*

Md. Habibur Rahman, s/o, Md. Hatan Moilah, C/o Khulna Printing Press
and Binding Employees' Union, Sonadanga, Khulna—*1st Party.*

versus

Proprietor, Weekly, 'Ganibani' No. 2, Roypara Cross Road, Khulna—*2nd Party.*

This is an application under section 34 of I. R. O., 1969. Briefly stated case of the petitioner is that he was acting as compositor under the 2nd party at a monthly salary of Tk. 115 with effect from April, 1971 as a permanent worker. That according to the Minimum Wages Ordinance the 1st party was entitled to Tk. 150 per month and that accordingly he is deprived at the rate of Tk. 35 per month. That the 2nd party did not allow the 1st party to enjoy his lawful and legitimate right has been guaranteed under S. O. Act, 1965 and other laws. That on 13-10-1972 the 2nd party verbally dismissed the 1st party from service without showing any reason. Accordingly the 1st party has filed this case for getting termination benefits from the 2nd party as well as for payment of arrear wages due to the 2nd party at the rate of Tk. 35 per month from the date of joining i.e. April, 1971 to the date of judgement and he has also prayed for all unavailed dues.

2nd party by filing written statement contends *inter alia* that as a matter of fact this petitioner was not an employee from April, 1971 and that he joined under the 2nd party from January, 1972 as a casual worker on the basis of no pay no work. That being an unskilled compositor at Khulna industrial zone he was not entitled to get Tk. 150 per month and accordingly he was paid Tk. 115 per month. That on 13-10-1972 the 1st party without any intimation and as such question of dismissal from service does not arise. Subsequently 2nd party by filing additional statement contends *inter alia* that petition under section 34 of I. R. O., 1969 is not maintainable and his proper remedy if any was to come under the Standing Orders Act, 1965 after submitting grievance petition under section 25(1)(a), of the Standing Orders Act, 1965 and since that was not done the case is liable to be dismissed *in limine*.

Petitioner has examined one witness and 2nd party has also examined one witness.

Following are the points for determination;—

- (1) Is the petition under section 34 of I. R. O. 1969 maintainable?
- (2) To what relief, if any, is the petitioner entitled?

Findings.

Point Nos. 1 to 2.—For the sake of convenience both the points are taken up together. That the petition is styled one under section 34 of I. R. O., 1969 it is seen that long after the filing of the W/S by the 2nd party the petitioner submitted a petition for treating the case as one under section 25(1)(b) of the Bangladesh Employment of Labour (S.O.) Act, 1965 and he alleges that a grievance petition was filed under section 25(1)(a) of the said Act but curiously enough no date is given in the petition for amendment which was filed on 5-12-1974 and as such on this aspect of the case is liable to be dismissed. At the time of evidence P.W. 1 says that he submitted a grievance petition but again no date at all given and he alleges that while he was dismissed on 13-10-1972 he filed this case on 26-10-1972 which is also not correct as will be seen from the record. According to the petitioner he was orally dismissed by the 2nd party whereas the allegation of the 2nd party is that the petitioner without any intimation left the job. It is a case of oath *versus* oath and in the present circumstances I do not find any material that actually the 2nd party dismissed the petitioner. That being the position the petitioner cannot be given the termination and question of granting the same does not arise even on merit. Since it is conceded by the petitioner that it is a case under Standing Orders Act, 1965 it was incumbent upon the petitioner to submit a grievance petition before the 2nd party and since that was not done the case is not maintainable and accordingly petitioner is not entitled to any relief.

Considered the written opinion of the Learned Members representing the workmen. The opinion of the learned Member representing the employers is not available as he is absent but that is not fatal in view of the provisions of section 35(7) of I. R. O., 1969 read with the recent decision reported in 26 D. L. R. (SC)33 by the Honourable Supreme Court.

Accordingly it is—

Ordered

That the case be dismissed on contest but without any costs.

DWIJENDRA NATH CHOWDHURY

*Chairman,
Labour Court, Khulna.
15-2-1975.*

Typed by Mr A. B. M. Joynal
Abedin, Stenographer, Labour
Court, Khulna at my dicta-
tion and corrected by me.

D. N. CHOWDHURY

*Chairman,
Labour Court, Khulna.
15-2-1975.*

IN THE LABOUR COURT AT KHULNA

I. R. O. Case No. 127 of 1974.

PRESENT :

Mr D. N. Chowdhury—*Chairman.*

B. M. Sufian	} <i>Members.</i>
Mr D. Hussain	

A. B. M. Ali Hossain, Senior Turner *cum*-Machinist, C/o. Mobarakganj Chinikal
Sramik Sangastha, P. O. Naldanga, District Jessore—*First Party.*

versus

The Manager, Mobarakganj Sugar Mills Ltd., P. O. Naldanga, District Jessore
and one other—*2nd Parties.*

This is an application under section 34 of I. R. O., 1969. Briefly stated case of the petitioner is that he has been working as a senior turner-*cum*-machinist under the 2nd party from 1-2-1957. That there was an agreement between the then E.P.I.D.C. and M/s. Mobarakganj Sugar Mills Limited on 3-10-1970 and as per terms of the agreement the workers were allowed service benefit by way of paying one additional increment for each four years of service. That as per terms of the settlement the 1st party is entitled to 3 increments but the 2nd party granted only 2 increments to the 1st party and accordingly the 1st party has filed this case for directing the 2nd party for paying the difference of increments amounting to Tk. 1,062-00 due up to 31-5-1974.

2nd party by filing written objection denies all the material allegation made in the petition. Their further contention is that since the procedures as envisaged under section 25 of the Standing Orders Act, 1965 are not followed the case under section 34 of I. R. O., 1969 is not maintainable. The contention of 2nd party is also that the claim of the 1st party being one of arrears of wages in the shape of increment is governed by the Payment of Wages Act, 1936 and this court has no jurisdiction to deal with the matter and the case is liable to be dismissed. The further contention of the 2nd party is that the petitioner being a Turner-*cum*-machinist is not a worker and consequently he has no *locus-standi* for vindication of his imaginary rights. The final contention of the 2nd party is that through mistake the petitioner was granted 2 increments which also would be deducted in due course from the pay of the petitioner and the petitioner has been given the benefits of wages schedule as envisaged by the Government gazette notification dated 19-12-1973. Accordingly 2nd party contends that the case be dismissed.

Petitioner has examined one witness and 2nd party has also examined one witness.

Following are the points for determination :—

- (1) Is the petition under section 34 of I. R. O., 1969 maintainable ?
- (2) Is the petitioner entitled to the increment as claimed by him ?

Findings.

Point Nos. 1 and 2.—For the sake of convenience both the points are taken up together. Petitioner is admittedly a Senior Turner-*cum*-Machinist and according to the contention of the 2nd party the 1st party is not a worker as defined in both Standing Orders Act, 1965 and in the I. R. O., 1969. In this connection the best course for the 2nd party was to produce the job description showing that the 1st party has any administrative control or managerial power which alone disentitled to the privileges as a worker. It is only suggested to the petitioner that there are some hands subordinate to the petitioner but that is not sufficient to take the petitioner out of the category of worker as defined in the Standing Orders Act, 1965 or in the I. R. O., 1969. Accordingly I find that the petitioner is undoubtedly a worker.

Now coming to the claim of the petitioner for recovery of one increment. The contention of the 1st party that an agreement Ext. A entered into between the then E.P.I.D.C. and Mobarakganj Sugar Mills Ltd. but curiously enough the date of the agreement was 3-10-1970 and the terms of the agreement was to come into operation from 1-7-1969 and would continue to remain in force for a period of 2 years, *i.e.*, up to 30-6-1972. Accordingly it will be seen that when the case was filed by the petitioner on 24-6-1974 at that time the agreement was not in existence and as such petitioner cannot come to the Labour Court to enforce the terms of the agreement which is already dead in the eye of law. 2nd party has also produced Ext. B which is the scale of wages made effective by the Government regarding the revised wages payable to the workers of Bangladesh Sugar Mills Corporation. Accordingly it will be seen that petitioner's claim for an additional increment is not entitled in the eye of law and on the basis of the papers filed by the 2nd party.

Last but not the least the claim of the petitioner is also not maintainable in as much as this is a claim for wages governed by section 15 of the Payment of Wages Act, 1936 and I. R. O., 1969 provides in section 35(6) that the power to deal with the matter arising out of Payment of Wages Act, 1936 (Act IV of 1936) would be delegated to the Labour Court which admittedly is not done so far and as such from that aspect of the matter as well the petition is not maintainable.

Accordingly from the above I find that the petitioner is not entitled to get any relief.

Considered the written opinion of the Ld. Members representing the workmen. The opinion of the Ld. Members representing the employers is not available as he is absent. However in view of the provision of section 35(7) of I. R. O., 1969 read with the recent decision of Honourable Supreme Court reported in D. L. R. 26(SC)33 that the absence of one member would not be fatal.

Accordingly I find that the petitioner is not entitled to any relief.

Hence it is—

Ordered

That the case be dismissed on contest but without any costs.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.

Typed by Mr. A. B. M. Joyal
Abedin, Stenographer at my
dictation and corrected by
me.

J. D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.

IN THE LABOUR COURT AT KHULNA

I. R. O. Case No. 82 of 1974.

PRESENT :

Mr D. N. Chowdhury—*Chairman.*

Mr Delwar Hossain }
B. Monnujan Sufian } *Members.*

Deputy Registrar of Trade Unions, Khulna Division, Khulna—*1st Party*.

versus

Khyddo Panio Sramik Sangha, Regn. No. KLN-26, Sramik Bhavan, Town
Khalishpur, Khulna—*2nd Party*.

Copy of Order No. 10, dated 19-11-1974.

Both the members are present. The 1st party is present by filing hazira. The 2nd party is absent on repeated calls. The case is taken up for *ex parte* hearing. P. W. 1 Talukdar Lutfuzzaman is examined on S. A. The case heard on *ex parte*. The Learned members submitted their written opinions. Let it be kept with the record. P. W. 1 examined. Considered the written opinion of the Learned members. *Prima facie* case made out.

Hence it is—

Ordered

That the case be allowed *ex parte* and the registration of the union be cancelled.

D. N. CHOWDHURY
Chairman,
Labour Court, Khulna.