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GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

MINISTRY OF LABOUR, SOCIAL WELFARE, CULTURAL AFFAIRS AND SPORTS

(Labour and Social Welfare Division)

Section VI

NOTIFICATION

Dacca, the 18th September 1975.

No. S.R.O. 330-L/75/S-VI/1(1)/75/421.—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 First Labour Court, Dacca, in respect of the following cases, namely:—

(1) Complaint Case No. 66 of 1974.
(2) I. R. Case Nos. 13, 14, 15 and 16 of 1975.
(3) Complaint Case Nos. 38, 42 and 43 of 1975.
(4) I. R. Case No. 48 of 1975.
(5) I. R. Case No. 47 of 1975.
(6) Complaint Case No. 52 of 1975.
(7) Complaint Case No. 22 of 1975.
(8) Complaint Case No. 61 of 1975.
(9) I. R. Case No. 414 of 1974.
(10) I. R. Case No. 9 of 1975.

Price: 1·35 Paisa.

(11) Misc. Case No. 7 of 1975.
(12) Criminal Case No. 22 of 1972.
(13) Complaint Case No. 27 of 1975.
(14) I. R. Case No. 343 of 1974.
(15) Complaint Case Nos. 63 and 64 of 1974.
(16) I. R. Case Nos. 37 and 38 of 1975.
(17) I. R. Case No. 35 of 1975.
(18) I. R. Case No. 67 of 1975.

By order of the President
MUHAMMAD KHADEM ALI
Deputy Secretary.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar, Dacca.

Complaint Case No. 66 of 1974.

Mohammad Faiz Hossain—*First Party,*

versus

The Administrator,
The Azad—*Second Party.*

PRESENT :

Mr. Amanullah Khan—*Chairman.*

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

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

It is alleged by the First Party that he was a permanent worker serving as an Electric Mistry. He went on two days' leave and came back to join his duties on 8-7-1974 after the expiry of his leave but he was not allowed to resume his duties. On the other hand, he was handed over a letter of charges on false allegation asking him to show cause and he was put under suspension. Before he could submit the reply to the charges he was served with a letter of dismissal on 10-8-1974. So he served a grievance petition but received no reply. Thereafter he personally approached the Second Party in September, 1974 and was assured that he would be reinstated but he was never reinstated and finally on 10-11-1974 he was refused reinstatement. Hence this case. It is contended that the order of dismissal was wrong as the First Party was given no opportunity to show cause.

The Second Party submits that the First Party was asked to show cause but he did not respond, so he was dismissed.

Admittedly the First Party was asked to show cause by a letter dated 5-7-1974, Ext. 1. This show cause notice, it is further admitted, was handed over to the First Party on 9-7-1974 and admittedly the First Party did not submit his explanation. He was dismissed by a letter, dated 3-8-1974, Ext. 2. In the circumstances I find nothing wrong with the order of dismissal. Apparently he was dismissed after being formally asked to show cause and his failure to show cause. Grievance petition Ext. A was filed according to the First Party himself on 24-8-1974 and this case has been filed on 14-11-1974 long after the expiry of time to file a case under section 25(*1*)(*b*) of the Employment of Labour (Standing Order) Act, 1965. So this case is barred by limitation. The case fails on both the counts—limitation and merit.

The case be dismissed on contest. No costs.

Members consulted.

আমি একমত।
স্বাঃ—এম, এ, মন্নান
স্বাঃ—ম, করিম

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
7-6-1975.

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

AMANULLAH KHAN
Chairman.
7-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Cases No. 13, 14, 15, and 16 of 1975.

Patol Chandra Shao and three others—*First Parties,*

versus

The Manager,
M/s. Prashanna Match Factory Ltd.—*Second Party.*

PRESENT :

Mr Amanullah Khan—*Chairman.*

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

These cases being I. R. Cases No. 13, 14, 15 and 16 of 1975 have been filed u/s 34 of the Industrial Relations Ordinance, 1969 for directing the Second Party, Manager of M/s. Prashanna Match Factory Ltd. to pay the First Parties—Patal Chandra Shao of Case No. 13 of 1975, Kalia Chandra Shao of Case No. 14 of 1975, Nasiruddin of Case No. 15 of 1975 and Hariprashad Shao of case No. 16 of 1975 lay off benefits for the internal gaps for the hours stated in the petitions from the months of August, 1974 to January, 1975. The First Parties are Box Filler in the Prashanna Match Factory Ltd. of which the Second Party is the Manager. It is alleged by the First Parties that the Second Party had stopped paying for these gaps from the month of August, 1974. Hence these cases.

The Second Party Manager in his written statements submits that the First Parties are permanent piece rated workers no doubt but the management never declared for any lay off benefits for the internal gaps nor ever they paid for such gaps. It is further alleged that the claim is vague and as such cannot be allowed.

The First Parties say that they were being paid for gap periods during working hours on their average earnings and now from August, 1974 this payment has been stopped. A register marked Ext. 1 admittedly prepared by an employee of the Prashanna Match Factory has been filed showing an account of the gap periods from 23rd August, 1974. The Manager, however, says that officially no such gaps accounts were maintained. He further says that the management never paid the workers for any gap period as alleged except for a few months under duress in 1973-74 and now that payment has been stopped after serving notice. He is borne out by Box Filler Hariprashad Lal Saha who says in his cross-examination that there were no gap period at all before liberation of Bangladesh. Now, after liberation of Bangladesh the Box Filler are not properly fed by the connected department and only for about six months they got wages for gaps periods and it has been stopped some nine months before. Here is a witness who does not suppress the truth but says it boldly. The register Ext. 1 may have been maintained but it appears from the evidence of this witness that the Box Fillers were never paid for gaps before or after liberation of Bangladesh except for a few months after liberation and such gaps were admittedly due to short service (I don't say slow service) elsewhere. And this payment for a few months must have been due to pressure. It is not for the Court to say how to find more work for the employees employed but the fact remains that the workers were not paid for the gaps before or after liberation of Bangladesh except for six months and that was for special reasons. So I don't find that the Box Filler used to be paid for gaps during working hours. Now let us see if law provides for such payment for gaps during working hours. The relevant section that may apply is section 6 of the Employment of Labour (S.O.) Act, 1965. The relevant portion of the section is given below :—

6. (1) The employer may, at any time, in the event of fire, catastrophe, breakdown of machinery, or stoppage of power supply, epidemics, civil commotion or other cause beyond his control stop any section or sections of the shop or the commercial or industrial establishment, wholly or partly, for any period.

The second sub-section of the section is concerned with the stoppage of work beyond working hours. The present case is of gap during working hours. So reference to sub-section 2 is not called for. The relevant sub-section is sub-section 3 as under—

(3) In the event of such stoppage occurring at any time during working hours, the workers affected shall be notified, as soon as practicable, by notices posted, in the case of a factory, on the notice board in the section or department concerned; and, in other cases, at a conspicuous place, indicating as to when the work will be resumed and whether such workers, are to leave or remain at their place of work.

So in such a case workers are to be told to stay at their post or leave; if they are not to leave what happens is indicated in the following sub-section (4)—

(4) In the case of detention of workers following such stoppage—

(a) the workers so detained may not be paid for the period of such detention if it does not exceed one hour;

(b) the workers so detained shall be paid wages for the whole period of such detention if it exceeds one hour.

So the workers must be detained to be paid. But this is not the case of the First Parties that they were so detained by any notice every time there was such stoppage of work. The register Ext. 1 merely shows the period of no work. It does not show that the period shown as gaps were really period between working hours nor do they show detention. It merely shows a certain period when there was no work. But there is no evidence of the workers being detained during the period shown as gap periods in the register. The Box Fillers are piece rated workers and are being paid for the work done, they cannot claim wages for eight hours even if there are no work for 8 hours for them unless taken on the permanent workers' roll. The cases, therefore, fail.

Ordered

The I. R. Cases No. 13, 14, 15 and 16 of 1975 be dismissed on contest. No costs.

Members agree.

আমি একমত।
স্বাঃ—ম, করিম।
আমি একমত।
স্বাঃ—এম, এ, মন্নান।

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
20-6-1975.

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

AMANULLAH KHAN
Chairman.
20-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Cases No. 38, 42 and 43 of 1975.

Korban Ali, Delwar Hossain
and Akram Hossain
all are 71, Arambagh, Dacca—*First Parties,*

versus

The Manager,
M/s. Luxury Electro Chemicals Ltd.,
218/B, Tejgaon Industrial Area, Dacca-8—*Second Party.*

PRESENT :

Mr Amanullah Khan—*Chairman.*

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

These cases have been filed u/s 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 and are being taken up for analogous decision as they involve the same question of facts and law.

The First Parties Korban Ali of C. Case No. 38 of 1975, Delwar Hossain of C. Case No. 42 of 1975 and Akram Hossain of C. Case No. 43 of 1975 were permanent workers in the M/s. Luxury Electro Chemicals Ltd. It is alleged that they were not paid wages for the month of December, 1974 and bonus for the year of 1974 and were dismissed all on a sudden on 22-1-1975 without any proceeding. It is further alleged that grievance notice was served on the management on 30-1-1975 but no reply was received from them.

The Second Party in his written statements submits that these and other workers of the Luxury Electro Chemicals Ltd. went on illegal strike on 13-12-1974 and kept some of the management people confined for a pretty long time. So the management declared a lock out the next day and these and some other workers were asked to show cause by a notice pasted on the notice board on 18-12-1974. The workers were also served with the show cause notice. They did not show cause and as such they were dismissed on 10-1-1975 and the order of dismissal was received by them on 23-1-1975. It is also contended that the grievance petition was not filed within 15 days from the order of dismissal.

Admittedly the order of dismissal was received on 23-1-1975 by the First Party and grievance was filed on 30-1-1975. So I find the grievance petition is in time from the date of the order of dismissal.

It appears from the notice Ext. B series that the show cause notices were addressed by post with acknowledgment due to the home address of the First Parties. The covers filed by the First Parties show that the notices reached the address on 1-1-1975 but these were returned with the remark 'Left' and that is as good as served. Notices dated 5-1-1975 Ext. C series of the certificate of posting Ext. D show that the First Parties were served with notices for personal

hearing to be held on 9-1-1975. The report Ext. E series show none of the First Parties appeared for hearing and then they were found guilty *ex parte* and the letters, dated 10-1-1975 Ext. F series show that they were dismissed from service. I find nothing wrong with the proceeding and further find no reason to interfere with the order of dismissal passed by the management.

The cases No. 38, 42 and 43 of 1975 be dismissed on contest. No costs.

Members consulted.

আমি একমত।
স্বাঃ—ম, করিম।
আমি একমত।
স্বাঃ—এম, এ, মন্নান।

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
3-7-1975.

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

AMANULLAH KHAN
Chairman.
3-7-1975.

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

I. R. Case No. 48 of 1975.

Md. Serajul Islam—*First Party,*

versus

The Manager, Dainik Banglar Mukh—*Second Party.*

PRESENT :

Mr Amanullah Khan—*Chairman.*
Mr M. Karim, Mr M. A. Mannan } *Members.*

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

The First Party was a correction hand in the Dainink Banlar Mukh. It is alleged that the Second Party proprietor illegally locked out the office on 22-2-1975 and did not reopen the establishment in spite of insistence of the workers and later on carried on his business with some new hands.

The Second Party in his written statement submits that there had been on lock out at all and that the First Party had not been joining his duties although he was requested to do so and as such he could not be paid arrear wages.

The appointment letter Ext. 1 shows that the First Party drew his wages at Taka 260 p.m. in all. Letter Ext. 2 from the First Party shows that he demanded arrear wages and permission to join his work. Ext. 3 shows that the First Party was asked to meet the management for discussion. Another letter Ext. 4 from the First Party shows that he once again demanded arrear wages and reinstatement. Thereafter another letter Ext. 5 from the management shows that it agreed to allow the First Party to join work and to pay arrear wages but the First Party says that he has not been paid arrear wages as yet. There is no evidence to counter the evidence of the First Party. First Party has claimed arrear wages for December, 1974 at Taka 210 and at Taka 260 for the months of January and February, 1975. I find him entitled to arrear wages for the month of December, 1974 up to February, 1975 and to reinstatement.

The case be allowed on contest and the First Party shall resume his duties and be paid arrear wages at the rate of Taka 210 for the month of December, 1974 and Taka 260 every month from January, 1975 up-to-date within 30 days from date.

Members consulted.

আমি একমত।
স্বাঃ—এম, এ, মন্নান।
স্বাঃ—ম, করিম।

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
21-6-1975.

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

AMANULLAH KHAN,
Chairman.
21-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case No. 47 of 1975.

Mohammad Mostafizur Rahman—*First Party,*

versus

The Manager, Dainik Banglar Mukh—*Second Party.*

PRESENT :

Mr Amanullah Khan—*Chairman.*
Mr M. Karim, Mr M. A. Mannan } *Members.*

This is a case under section 34 of the Industrial Relations Ordinance, 1969.

The First Party was a Proof Reader in the paper Dainik Banglar Mukh. It is alleged that he had been serving the paper from December, 1973. The last wages drawn by him is said to be Taka 200 p.m. by increment. It is alleged that as he served a notice for arrear money the proprietor became very annoyed and asked him on 28-2-1975 not to work any longer in the paper. So he filed this case.

The Second Party in his written statement submits that the management requested the First Party to resume his duties and the First Party intentionally avoided resumption and that he was not paid for the period as claimed as he did not satisfy requisite condition.

The First Party says that he was asked on 28-2-1975 not to work any more after he served the letter, dated 25-2-1975, Ext. 2 demanding arrear wages and the he received the notice, dated 20-3-1975, Ext. 3, asking him to report for duty alleging that he was not attending work from 28-2-1975. On receipt of this notice, the First Party says, he at once went to report for duty but again he was refused permission to work unless he would give up his arrear claim. So he served the notice dated nil, Ext. 4, again demanding reinstatement and arrear wages. He also adds that he was drawing Taka 260 p.m. having an increment of pay. The learned Advocate for the Second Party though present in the Court declined to cross-examine the First Party. So the case of the First Party remains uncorroborated. I, however, find from his appointment letter, dated 29-12-1973, that his wages was Taka 200 p.m. and he has claimed wages accordingly in his petition though he claims it to be Taka 260 now per month. I hold that he is entitled to draw as he claimed in his petition arrear wages from the month of August, 1974, at the rate of Taka 200 p.m. The case must succeed accordingly.

The case be allowed in presence of the Second Party without costs. The First Party be reinstated within 30 days from date and be paid arrear wages at the rate of Taka 200 p.m. from the month of August, 1974, within the date.

Members agree.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
21-6-1975.

আমি একমত।
স্বাঃ—ম, করিম।

আমি একমত।
স্বাঃ—এম, এ, মন্নান।

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

AMANULLAH KHAN,
Chairman.
21-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 52 of 1975.

Kazi Md. Abdul Khaleque—*First Party*,

versus

Manager,
Dainik Banglar Mukh—*Second Party*.

PRESENT :

Mr Amanullah Khan—*Chairman*.

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

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

The petitioner was in the permanent employment of the Dainik Banglar Mukh. He was a compositor. It is alleged that his wages fell into arrears and on his demand for arrears the Second Party manager—Dainik Banglar Mukh closed the office on 22nd February 1975 and told him that he is no longer in the service.

In the written statement the Manager says that the Second Party requested the First Party to resume his duties on different occasion but the First Party did not join his duties.

It is not denied that the First Party was a permanent worker in the organisation. The First Party in his deposition says that he asked for arrear wages by letter dated 15th February 1975, Ext. 2, but got no reply and 22nd February 1975 he reported for duty but found the office closed and further that the proprietor informed that he is no longer in service. So he filed a grievance petition Ext. 3 and got the reply Ext. 4 which desired him to report for duty and accordingly he reported for duty but he was not allowed to join. On the other hand, he was asked to give up his claim in writing. So he filed the letter Ext. 5. There is no denial to these statements of the First Party. In fact, the letter dated 10th March 1975 from the management shows that wages of the First Party was in arrear and that he was not being allowed to join so long, *i.e.*, 10th March 1975. The letter asked him to join within 7 days from the date the letter was written. So it is apparent that the First Party was not being allowed to join. The case must, therefore, succeed. The First Party cannot, however, be ordered to be reinstated by the Second Party in view of the fact that in pursuance of a recent legislation being Ordinance No. XXXIII of 1975 this daily paper Dainik Banglar Mukh is no longer functioning. The First Party may claim only termination benefits with arrear wages as he was illegally dismissed from service.

The case be allowed and the First Party be given termination benefits with arrear wages as claimed in the petition and up to the date the paper ceased to function within 30 days from to-day.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
10-7-1975.

আমি একমত।
স্বাঃ—ম, করিম।

আমি একমত।
স্বাঃ—এম, এ, মন্নান।

Dictated.

AMANULLAH KHAN
Chairman.
10-7-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 22 of 1975.

Jahura Khatoon—*First Party,*

versus

Sahera Khatoon,
Proprietor, Hiraman Cinema Hall,
Netrakona, Mymensingh—*Second Party.*

PRESENT :

Mr Amanullah Khan—Chairman.

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

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

The First Party Jahura Khatoon was a Gate Keeper in the Hiraman Cinema Hall, Netrakona, Mymensingh. She has been dismissed from service with effect from 6th January 1975. It is alleged by her that she has been dismissed unheard and without observing legal formalities. It is further alleged that she served grievance notice on the Second Party proprietor of the hall.

The Second Party in her written statement submits that the First Party was only a part time employee and was legally dismissed and further that no grievance petition has been served.

Admittedly the First Party was an employee and has been dismissed from service by an order conveyed in the latter dated 6th January 1975, Ext. 1, with immediate effect. The First Party says in her deposition that she was permanent worker and had drawn wages at taka 110 per month and drew bonus also. She says that she has been dismissed without any formal proceeding. The Second Party witness Shamsul Alam who managed the cinema hall before April, 1974 deposes that the First Party was a part time temporary worker and was asked to show cause by the letter dated 31st December 1974, Ext. B, but she did not reply to show cause and never served any grievence petition either.

The grievance petition dated 20th January 1975, Ext. 2, bears the signature of one Nalini Talukder and according to the Second Party witness Nalini Talukder is in service of the cinema hall. So it is false to say that no grievance petition was served. I find that it was properly served within 15 days of cause of action arose.

The Second Party has filed an appointment letter Ext. A indicating that the First Party was appointed on temporary basis. The First Party denies to have received any such appointment letter. The letter has nothing to show that it was received by the First Party. An agreement admittedly bears the sign of the Second Party witness shows that it was an agreement between the cinema hall management and workers union of the cinema hall and another that the wages of the Gate Keeper would be taka 100 per month. This First Party claims that she had drawn taka 110 per month and that has not been denied. The post of all the Gate Keepers could not be temporary in a cinema hall. It is permanent post. So the First Party was appointed in a permanent post must be held to be on permanent basis after completion of the period of probation, if any. Admittedly bonus sheet Ext. 4 shows that this First Party also got a bonus of taka 100 for the year 1974. Temporary or permanent workers are not expected to annual bonus. There is no doubt that the First Party was holding a permanent employment. The Second Party has also filed a notice dated 31st December 1974, Ext. B, showing cause upon the First Party within 3 days why she would not be removed from service. The First Party says that no such notice was served upon her. Apart from the fact that this was not a proper notice allowing not less than 3 days time to reply I find that this is down write fabrication. There is nothing to show that this notice was served upon the First Party. In the written statement there is no indication that the First Party was asked to show cause and she did not show cause. According to the written statement it was a straight dismissal, there being no need to take any formal action as the First Party was only part time employee. A reading of the letter of dismissal also

suggests that it was a dismissal straight away without any hearing. Towards the last part of the letter of dismissal it has been said:

আপনার পদ হইতে অদ্য ৬-১-৭৫ তারিখ হইতে সরাসরী বরখাস্ত করা হইল। আপনার কোন আপত্তি এবং কোন অজুহাত কোন মতেই গ্রহণ করা হইবেনা বিধায় অদ্য ৬-১-৭৫ তারিখ হইতে হিরামন সিনেমার কর্মচারী বলিয়া গণ্য হইবেন না।

So, there is no scope for doubt that there was no show cause notice or attempt to hear the First Party before she was dismissed. I would also like to mention here that there is no competent denial of the assertion of the First Party that she was a permanent worker and that she has been dismissed without observing any formalities of law and that she served the grievance petition Ext. 2. The Second Party witness who comes to deny the assertion say that he had left the management of the cinema hall in April, 1974 before the First Party came to be employed in the cinema hall. So the order of dismissal cannot be sustained.

The case be allowed on contest and the First Party be reinstated with full back wages within 30 days from date. No costs.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
20-6-1975.

Typed at my dictation by Stenographer,
Mr Waliul Islam and corrected by me.
AMANULLAH KHAN
Chairman,
20-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Rd., Dacca.

Complaint Case No. 61 of 1975.

M. A. Mannan Bhuiyan—*First Party,*

versus

M/S. Azad and Publication Ltd.,
Dhakeshwari Road, Dacca-5—*Second Party.*

PRESENT:

Mr. Amanullah Khan—*Chairman.*
Mr. M. Karim
Mr. M. A. Mannan } *Members.*

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

The petitioner claims to have been in the employment of Azad and Publication Ltd. from November, 1953 and lately Press-in-charge drawing wages at Taka 835 p.m. including dearness allowance. It is submitted that he has been retrenched from 19-3-1975 but is not being paid his dues which amounts to Taka 29,114·14. It is further alleged that the petitioner once agreed to accept Taka 10,000 in full satisfaction of his claim but this amount was not paid.

In the written statement the management submits that the petitioner was appointed in the service of the publication on 1-11-1964 and his services were terminated on 2-6-1965 and he was re-appointed on 6-1-1972 and retrenched on 19-3-1975. The management further submits that they are ready to pay Taka 10,000 as agreed upon.

At the time of hearing the petitioner alleges his monthly wages to be Taka 1,175·00 but in his petition he has said it to be Taka 825 and the Second Party while conceding Taka 10,000 to the First Party by the account Ext. G stated the monthly wages of the First Party—petitioner to be Taka 835 including dearness allowance. So the claim based on wages at Taka 1,175 p. m. as shown in the petition cannot be accepted. Admittedly the petitioner agreed to accept Taka 10,000 as per account Ext. G. This amount, it seems, had its justification because the petitioner did not have continuity of service. The charge sheet dated 27-5-1971 Ext. B shows that the petitioner was charged for misappropriation and a letter dated 10-6-1971 Ext. A and another letter dated 11-6-1971 Ext. C show that the petitioner resigned from service in the face of the charge and his resignation was accepted. The petitioner now says that this resignation was taken by force but there is no evidence to show that the petitioner ever challenged the resignation, he himself signed. Rather as per Ext. D he himself accepted the calculation of his dues after the said resignation. Of course, this is not forum to consider whether the resignation was by force or not. Apparently the petitioner submitted his resignation. So I find that the petitioner is entitled to Taka 10,000 only as agreed by him and shall get it.

The case be allowed on contest without cost. The petitioner shall get Taka 10,000 from the Second Party who is directed to pay the petitioner the said sum of Taka 10,000 within 30 days from date.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
3-7-1975.

একমত।

স্বাঃ—এম, এ, মন্নান।

স্বাঃ—ম, করিম।

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

AMANULLAH KHAN
Chairman.
3-7-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case No. 414 of 1974.

Hossain Mistry—*First Party,*

versus

The Proprietor,
Jamal Saw Mills—*Second Party.*

PRESENT :

Mr Amanullah Khan—*Chairman.*

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

This is an application u/s 34 of the Industrial Relations Ordinance, 1969.

The First Party Hossain Mistry, an employee of Jamal Saw Mills alleges that the mill was closed on 10-12-1974 without notice. It was an illegal lock out. So he prays for a declaration that the closure was illegal.

The Second Party proprietor of the Saw Mills submits in his written statement that the workers went on illegal strike on 10-12-1974.

Admittedly the mill had not been functioning from 10-12-1974. The First Party says in his deposition that it was a lock out. The Second Party proprietor says that the workers went on strike and further that he asked them to join their duties by a notice and also made a G. D. Entry with police and sent a letter to the Inspector of Shops and Establishments. He further says that he also asked the workers to show cause why they would not be dismissed from service for illegal strike but received no reply. So he served them a notice to hold enquiry and thereafter this case was filed. The Second Party witness No. 2, an A. S.-I. of Police says that the Second Party proprietor made a G. D. Entry on the strike apprehending breach of peace and that he made enquiry and found no workers present at the factory premises. S. P. W. 2, an Inspector of Standing Order says that he visited Jamal Saw Mills on 13-12-1974 and found the mill not functioning. He further alleges that some workers were not willing to work saying that they would not work unless their demands would be fulfilled. S. P. W. 4 Abdul Hamid a day labourer deposes that he used to carry logs to the saw mills from the godowns and that on 10-12-1974 the workers of Jamal Saw Mills went on strike. Show cause notice dated 19-12-1974 Ext. 1 with cover shows that the Proprietor of the Jamal Saw Mills asked the First Party to show cause for illegal strike. Letter dated 10-12-1974 Ext. A with cover Ext. A(1) show that the Second Party asked the First Party by post to report for duty within 3 days of the issuance of the letter. Notice

for personal hearing Exts. B and C and cover Exts. B(1) and C(1) show that the First Party was asked to appear for enquiry. These facts show that in fact the workers went on strike. So this case fails.

The case be dismissed on contest. No costs.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
4-6-1975.

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

AMANULLAH KHAN
Chairman.
4-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case No. 9 of 1975.

Mohammad Alauddin—*First Party*,

versus.

Bengal Motion Pictures Studios Ltd.,—*Second Party.*

PRESENT:

Mr. Amanullah Khan—*Chairman.*

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

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

The First Party Alauddin was a Driver in the Bengal Motion Pictures Studios Ltd. His appointment letter, dated 1-6-1973 Ext. 1 shows that he had been in the service of the Studios from 23-11-1970. He alleges that he had served in the Studios upto 30-10-1974 from 1-11-1974 his services were no longer employed. Hence this case for arrear wages from October, 1974 up-to-date and for reinstatement.

The Second Party Bengal Motion Pictures Studios Ltd., in its written statement submits that the First Party resigned from his job by a letter, dated 21-9-1974 in order to improve his fortune elsewhere and his resignation had been accepted with effect from 1-10-1974.

The First Party in his deposition says that he attended duty upto 30-10-1974 and put his signatures in the hajira khata upto 30-10-1974. He denies that he resigned from his service by a letter, dated 21-9-1974 as alleged; but the Administrative Director deposing for the management says that the First Party actually resigned by a letter, dated 21-9-1974 and his resignation had been accepted by a letter, dated 21-9-1974 Ext. B. The admitted signature Ext. A of the First Party in a letter, dated 21-9-1974 shows that he submitted his resignation on 21-9-1974 and prayed to be relieved. A letter Ext. B of the same date shows that his resignation has been accepted with effect from 1-10-1974. The Second Party's witness says that they took over this firm on 2-10-1974. So it does not appear very clear how they could accept the resignation letter, dated 21-9-1974. The case of the First Party is that he put his signature showing the presence in the hajira khata upto 30-10-1974. He could have called for this hajira khata to show his presence upto 30-10-1974 and thereby disprove the case of the second party that he resigned on 21-9-1974 and his resignation was accepted with effect from 1-10-1974; but he did not call for the hajira khata. It has been pointed out that signature Ext. C on the Peon Book which is supposed to prove the delivery of the acceptance of the letter of resignation to the First Party does not agree with the signature of the First Party. I have compared the signature with the signatures of the First Party in the record. The signature does not appear to be that of the First Party but everything said and done the fact remains that the First Party has no explanation for submitting the resignation letter and I find no reason to hold that the letter is a fake one. For reasons best known to him he signed this letter resigning his job and for reasons best known to him he might have decided to claim the job back with arrear wages. I am not prepared to hold that the resignation letter is not a genuine one. The case must, therefore, fail because he has himself resigned from the job and no case lies under section 34 of the Industrial Relations Ordinance, 1969 by a resigned worker.

The case be dismissed on contest without costs.

Members consulted.

একমত

স্বাক্ষর

নঃ আঃ করিম

AMANULLAH KHAN

Chairman,
First Labour Court, Dacca.
18-6-75

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

AMANULLAH KHAN,
Chairman.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Misc. Case No. 7 of 1975.

Manager, Rahman Metal Industries,
404, Tejgaon Industrial Area, Tejgaon, Dacca—*Petitioner* (*Second Party*),

versus

Mantu *alias* Abul Kashem, C/o. Mr Shawkat Ali, Advocate,
40/R, Satish Sarkar Road, Gandaria, Dacca—*Opposite Party* (*First Party*).

PRESENT :

Mr Amanullah Khan—*Chairman.*

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

Order No. 7, dated 31st May 1975:

This is an application under Order 9, Rule 13, C.P.C. for setting aside the *ex parte* order dated 2nd December 1974, passed in the I.R. Case No. 319 of 1974 of this Court.

The petitioner Second Party appeared in the original case and prayed for time on 2nd November 1974 for filing written statement. The prayer was allowed and 18th November 1974 was fixed for written statement. On 18th November 1974 no step was taken. So 2nd December 1974 was fixed for *ex parte* hearing and on 2nd December 1974 it was heard *ex parte*.

The petitioner says he was laid up with blood pressure from 27th November 1974 and thereafter could not know the date of hearing fixed on 2nd December 1974. But there was no reason why he should not know of the date. He applied for one month's time on 2nd November 1974 (*vide* his petition for time) and the case was heard *ex parte*. Just a month after, he, in fact, got the time he wanted. It is also not to be believed that he did not know the date 18th November 1974 fixed on 2nd November 1974 on his prayer for time. If he prayed for time he must have known the date fixed for next hearing or steps to be taken. But he did not appear on the next date 18th November 1974. So the case was fixed for *ex parte* hearing on 2nd December 1974. Even on that date he failed to appear. There is no reason why none would be present on the two dates 18th November 1974 and 2nd December 1974 at least to pray for time on the ground of illness of the petitioner. This case was against a business firm and there must have been persons who could appear before the Court to pray for time on behalf of the petitioner. Now, in his petition it is said that he was waiting for the Court to inform him of the date for hearing. The Court has a duty to see once only that the opposite party has information of the filing of a case against him. Thereafter, the parties must know the orders themselves. I am afraid the petitioner in his petition was only trying to shift the responsibility of his failure to appear on the Court. He was either callous or he purposely

avoided appearance as the circumstances show. I find that he was not prevented by sufficient reason to appear before the Court on the date the case was heard *ex parte*.

This case is, therefore, disallowed. The *ex parte* order dated 2nd November 1974 stands.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.

I agree
Sd/- M. A. Mannan.

Agreed.
Sd/- M. Karim.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Criminal Case No. 22 of 1972.

Abdul Hamid,
General Secretary,
K.D.H. Sramik Union,
117/1, Sultanganj, Rayerbazar,
P.S. Mohammadpur, Dacca-9—*Complainant*

versus

Mrs. Anwara Begum,
Managing Director,
M/S K.D.H. Laboratories Ltd.,
140, Satmasjid Road, P.S. Mohammadpur, Dacca-9—*Accused.*

PRESENT :

Mr Amanullah Khan—*Chairman.*

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

This is a case under section 55 of the Industrial Relations Ordinance, 1969.

The complainant was an employee in the M/s. K.D.H. Laboratories Ltd. of which the accused was the Managing Director. The complainant was also the General Secretary of the K.D.H. Sramik Union. The said union filed I.R.Case No. 13 of 1972 in this Court against the management of the firm and got an *ex parte* order on 8-6-1972 therein referred to as the *ex parte* order directing the management to reinstate him and four other workers Akhtar Hossain, Ataur Rahman, Makbul Hossain and Akbar Hossain at once and also to pay them arrear wages. It is alleged that next day of the order the First Party and the other workers went to the factory of the K.D.H. Laboratories Ltd., at about 8 a.m. with a certified copy of the order Ext. 1 and there written joining reports and after waiting for 3 hours could meet the accused. She was shown the

Court's order but she refused to allow the complainant and the four other workers to join their duties. They also, it is alleged, sent their joining reports by post with acknowledgment due and these reports were duly received. But they were not being allowed to join their work. Thus, it is contended, she violated the order of this Court and is liable to be punished under section 55 of the Ordinance, 1969.

The defence as it appeared at the trial is that the complainant workers did not approach her for reinstatement and that as soon as the accused came to know of the *ex parte* order passed in the I.R. Case No. 13 of 1792 she filed in this Court the Misc. Case No. 22 of 1972 for setting aside the order and then filed the appeal No. 9 of 1972 before the Labour Appellate Tribunal against the order and finally the Civil Rule No. 358 of 1972 in the Local High Court for setting aside the *ex parte* order, all in no time and then the High Court was pleased to stay the operation of the *ex parte* order as well as further proceedings of the criminal case which was filed next day after the Misc. Case was disposed of during the pendency of these court proceedings the complainant and the four other workers came to a settlement with the accused giving up their claim to the jobs and back wages on receipt of Taka 1,000·00 each as per signature writing Exts. A-A(1) on 16-9-1972 and as such the accused did not proceed with the civil rule which was discharged only as recently as on 11-2-1975. It is, therefore, contended that the accused never intended any violation of the *ex parte* order of the Court nor violated it and as such committed no offence under section 55 of the Industrial Relations Ordinance, 1969.

The Court, as it would appear from the record of the I.R. Case No. 13 of 1972, passed the following order No. 3, dated 8-6-1972, a copy of which order has also been marked Ext. 1: "3/8-6-1972—7th being declared a holiday, the case is taken up to-day for hearing. 1st party ready. 2nd party taken no step and is absent on call. They were absent on previous occasion also. So the case is taken up for *ex parte* hearing. Examined P. W. 1 Abdul Hamid. Heard also Akbar Hossain, Ataur Rahman, Makbul Hossain and Akbar Hossain".

From the evidence it has been proved that for trade union activities the workers had been victimised on false charges. This is a fit case for reinstatement.

Ordered.

That the application be allowed *ex parte*. Workers Abdul Hamid, Akbar Hossain, Ataur Rahman, Mokbul Hossain and Akbar Hossain are entitled to reinstatement in service with back wages. As Nurul Islam and Serajul Islam are absent, their cases cannot be considered. 2nd party is directed to reinstate the workers at once with back wages.

The complainant Abdul Hamid and witness Ataur Rahman depose that next day of the order *i.e.*, 9-6-1972 at about 8 a.m. they and other workers ordered to be reinstated went to the K.D.H. factory and after a long wait could meet the accused whom they showed a copy of the *ex parte* order passed the day before and submitted their joining report but the accused told them point blank that they would not be reinstated. So they sent their reports two copies marked (Exts. 2-2(a)) by post. P.W.2 further said that they were dismissed from service under the signature of this accused. The witness admit that they received Taka 1,000·00 each as seen from receipts Exts. A—A(1). It is not denied that the accused knew of the *ex parte* order almost immediately though it has been suggested to

the witness that they did not approach the accused as alleged or that she did not receive the joining reports two copies of which have been marked Exts. 2 and 2(a) as may be seen from the postal receipts Exts. 3 and 3(a) and acknowledgment receipts Exts. 4 and 4(a) on 12-6-1972 nor is it denied that she is the Managing Director of the K.D.H. Laboratories Ltd., or that the dismissal letters were issued under her signature nor that it was not her duty to implement the Court's order although the I.R. Case No. 13 of 1972 was not against her by name. So the accused was a party to the I.R. Case No. 13 of 1972 and had according to her own statement filed a Misc. Case and an appeal and then a Civil Rule in her frantic attempt to get the *ex parte* order set aside. The Misc. Case No. 22 of 1972 was filed on 9-6-1972 next day after the *ex parte* order was passed, the appeal No. 9 of 1972 was filed a day after on 10-6-1975 and the Civil Rule No. 358 of 1972 on 26-6-1972. From the circumstances it is apparent that the complainant workers approached the accused on 8-6-1972 for reinstatement and arrear wages and also submitted their joining reports on the date and that she had also received the joining reports on 12-6-1972 sent by post as may be seen from the postal receipts Exts. 3—3(a) and the acknowledgment receipts Exts. 4 and 4(a) and she refused to allow the workers to join or pay them the arrear wages. It is of no concern to us whether the complainant workers received Taka 1,000·00 on 16-9-1972 and agreed to give up their rights to the jobs and back wages and to withdraw this criminal case. The accused had knowledge of the *ex parte* order and the workers attempted to join on 9-6-1972 and after but did not allow them to join or pay them the arrear wages as ordered by the Court. If thereby she had committed an offence under section 55 of the Ordinance, 1969 by not executing the order of the Court before the alleged agreement to withdraw the criminal case from three months after as it appears from the receipts Exts. A and A(1) in spite of the Misc. Case, the appeal and the civil rule the offence has been committed already.

So the only point to be considered here is whether accused wilfully failed to implement the order No. 3 dated 8-6-1972 passed in I. R. Case No. 13 of 1972 of this Court directing reinstatement of the complainant and four other workers and payment of back wages to them at once.

The *ex parte* order of this Court quoted earlier says that it was to take effect 'at once'. Every order of a Court unless otherwise intended is to be immediately effective whether so said or not. But this immediacy in the Court's order must necessarily be subject to such provisions of law as permit the effected parties to question the order itself. Here the order was admittedly challenged the next day on 9-6-1972 by the Misc. Case No. 22 of 1972 as it appears from the record of the I. R. Case No. 13 of 1972 praying for setting aside the *ex parte* order. So even if the accused was approached and she refused to implement the order, she could not be held to have wilfully violated the order since she filed the Misc. Case the first day she was in a position to implement the order. She could not implement it earlier. It is submitted that the accused ought to have obtained a stay of the operation of the order from the Labour Court and mere filing of the Misc. Case was not enough. Yes, a simple filing of such a case must not be held to send the order into hibernation, but at the same time it cannot be held too that the party challenging the order is wilfully violating the Court's order. In htis case too this 'will' can no longer be safely inferred after the filing of the Misc. Case No. 22 of 1972. A Court which accepted such a case for hearing cannot find such person guilty of violation of the order

challenged without self contradiction. This Miso. Case was dismissed as it appears from the record of the I. R. Case No. 13 of 1972 on 15-6-1972. So no guilty intention could be found while the Misc. Case lay pending. The present criminal case was filed next day of the dismissal of the Misc. Case i.e on 16-6-1972. But here again the accused could not, even if she wanted to, comply with the *ex parte* order before 16-6-1972 without the co-operation of the complainant workers but they were not co-operating. They filed the case without giving the accused necessary time to implement the *ex parte* order. It was not the type of order the accused could implement unilaterally. It needed the co-operation of the workers who were to report to duty and receive payment. It may be contended that the accused could comply with the order even after the filing of the criminal case calling upon the complainant workers to report to duty and receive payment in view of their earlier demand on 9-6-1972 and their subsequent demand by post as it appears from the copies of joining reports Exts. 2—2(a), postal receipts Exts. 3—3(a)and the acknowledgment receipts Exts. 4—4(a) which show that the accused had received the joining reports on 12-6-1972. To this the accused has a two answers. It is submitted that she had already filed the appeal against the *ex parte* order and later the Civil Rule. A certified copy filed by the accused shows that she filed appeal No. 9 of 1972 before the Appellate Tribunal against the *ex parte* order dated 8-6-1972 on 10-6-1972 necessarily for setting aside the order and a Civil Rule No. 358 of 1972 on 26-6-1972 as may be seen from the record of I. R. Case No. 13 of 1972 for setting aside the order dated 15-6-1972 passed in the Misc. Case No. 22 of 1972 of this Court. The appeal was dismissed for default on 27-11-1972 and the civil rule was discharged on 11-2-1975.

It is contended on behalf of the accused that no guilty intention on the part of the accused can, therefore, be inferred from 10-6-1972 till 27-11-1972 for not implementing the *ex parte* order while the appeal lay pending. It appears from the copy filed by the accused that Tribunal was not functioning on the date the case was filed and the appeal was never admitted though the last order dated 27-11-1972 was of dismissal for default. It is submitted for the complainant that there was therefore no appeal pending at all firstly because till the second order dated 14-11-1972 as may be seen from in the order sheet no appellate tribunal existed and no appeal was in fact pending since the alleged appeal was never admitted. I however, find that an appeal was pending. The forum for appeal was there even it the tribunal had not been appointed and the requirement of law under sub-section (3) of section 37 of the Industrial Relations Ordinance, 1969 was only to prefer an appeal within thirty days of an impugned order and not to get it admitted the sub-section runs as follows:—

> (3) Any party aggrieved by an award given under sub-section (1) may prefer an appeal to the labour appellate tribunal within 30 days of the delivery thereof and the decision of the tribunal in such appeal shall be final.

This right to prefer appeal against an order within thirty days of such order cannot be made infructuous by the failure of the Government to appoint a Member of the Tribunal in time. It is submitted that the *ex parte* order was not an award and as such no appeal lay. But award or not an appeal was filed—rightly or wrongly and was waiting to be admitted and decided. In the background an inference of wilful disobedience of Court's order cannot be

inferred with cnrtainly for the purpose of criminal liability where *mensrea* must be present for a verdict of guilty. It is submitted that the accused ought to have gone to the High Court for relief in the absence of the Member of the Tribunal. I don't see how the forum of appeal given by an act of legislature could be denied when arrangement to receive such appeal is there because alternative forum could be available. I find that the accused preferred an appeal almost immediately of the *ex parte* order and this lay pending before the Tribunal till 27-11-1972. It is submitted that even granting that the appeal lay pending till 27-11-1972 yet the accused cannot get advantage of the pendency because mere pendency of an appeal is no ground for stay of the order appealed against. It is true. Such an order remains active and can be implemented but it cannot be positively inferred from its non-implementation during the pendency of the appeal that the order is wilfully disobeyed. Preferring an appeal means no defiance of the order appealed against but only a desire to postpone the implementation of the order pending consideration of the order by another Court of superior hierarchy in the scheme of opportunities provided by the law itself. So a person who has preferred an appeal against an order cannot be punished for wilful violation of that order during the pendency of that appeal admitted or not admitted or wrongly filed. The accused could not, therefore, be held liable for wilful violation of the *ex parte* order till 27-11-1972.

The Civil Rule No. 358 of 1972 was filed on 26-6-1972 ten days after the Misc. Case No. 22 of 1972 was dismissed and by this rule the operation of the *ex parte* order as well as further proceedings of this criminal case was stayed. It is submitted that this stay order could not save the accused for disobedience at least before 26-6-1972 the day the stay order was made. I have already said that the accused was protected from wilful disobedience of the *ex parte* order from the day it was passed till 15-6-1972 by the Misc. Case No. 22 of 1972 and from 10-6-1972 till 27-11-1972 by the appeal No. 9 of 1972. Now the Civil Rule No. 358 of 1972 certainly protects her from 26-6-1972 till 11-2-1975 when it was discharged and this case based on the cause of action prior to the filing of this case must therefore fail. The accused cannot also be punished in this case for her failure to implement the *ex parte* order after the Civil Rule was discharged on 11-2-1975 for the order as I have pointed out earlier is not one to be unilaterally implemented. The workers concerned must demand implementation of the order and provide a fresh cause of action for her criminal liability. Apart from the protection reached out by the Misc. Case, the appeal and the filing of the Civil Rule for setting aside the dismissal order passed in the Misc. Case No. 22 of 1972 filed for setting aside the *ex parte* order dated 8-6-1972 passed in the I. R. Case No. 13 of 1972 within eighteen days of *ex parte* order prima-facie show that the accused had taken steps within a reasonable time of the *ex parte* order to create opportunities to get it set aside.

I may mention here that there is no period of limitation for a Civil Rule in revisional jurisdiction but three months period is not considered unreasonable for a revision. In the present case the Civil Rule was obtained within eighteen days of the *ex parte* order dated 8-6-1972. So the accused had some breathing time to defer implementation of the *ex parte* order and she had within that time preferred the Civil Rule and obtained the order staying operation of that order. She cannot be, in the circumstances, held guilty of wilful violation of the *ex parte* order prior to the filing of this case.

The case be dismissed on contest and the accused be acquitted.

Members agree.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
17-7-1975.

আমি একমত।

স্বাঃ—এম, এ, মন্নান।

আমি একমত।

স্বাঃ—ম, করিম।

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

AMANULLAH KHAN
Chairman.
17-7-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case No. 27 of 1975.

Hayat Miah—*First Party,*

versus

The Proprietress,
M/s. Lion Cinema,
Islampur Road, Dacca—*Second Party.*

PRESENT :

Mr Amanullah Khan—*Chairman.*
Mr M. Karim
Mr M. A. Mannan } *Members.*

This is a case under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965.

The First Party petitioner Hayat Miah was a Gate Keeper in the Lion Cinema Hall, Islampur Road, Dacca. It is alleged by him that on 6-1-1975 he suddenly received a letter dated 28-12-1974 issued by the management of the cinema hall and sent through the Secretary of their union, wherein the First Party was shown to have been dismissed from service on the false charge of absenting himself from duty from 17-11-1974 to 28-11-1974. It is alleged that the attendance register kept in the custody of the manager used to be presented to the workers for their signatures occasionally at intervals and was never presented daily for such signatures. It is further alleged that the First Party petitioner had been serving the cinema hall from 1932 and his record has been unblemished.

The management in its written statement submits that the First Party was called upon to show cause by a charge sheet dated 13-12-1974 as to why he should not be dismissed from service for misconduct but the First Party refused to accept the charge sheet and tendered on 18-12-1974 and thereupon the First Party was dismissed from service. It is further submitted that the allegation of noting presence of the workers allowing them to put their signatures occasionally at intervals is false. It is submitted that the attendance register is kept in the office of the cinema hall for signature of the workers.

The First Party in his deposition says that no enquiry was held and was never asked to appear for enquiry either. The Manager of the cinema hall in his deposition says that the First Party was asked to show cause by the letter dated 13-12-1974 Ext. C sent by post under registered cover Ext. D to his home address but the letter came with the remark 'refused'. The cover Ext. D shows the remark 'refused'. Now, this is the case of the First Party that he was on duty while the alleged charge sheet was being issued and as such there could be no occasion for him to refuse the charge-sheet sent to his home address. It is also not the case of the Second Party management that the First Party was not on duty till 13-12-1974 when he was asked to show cause by the letter dated 13-12-1974 Ext. C. It is also not the case of the Second Party that this charge sheet was first handed over to the petitioner direct and as he refused to accept it was sent to his home address by post. So, there is no reason why the charge-sheet would be sent to the First Party at his home address. The First Party says that he came to know the order of the dismissal only on 6-1-1975. The Second Party could have produced the attendance registers to show that the First Party was not on duty at the time the charge sheet was being issued and certainly from 13-12-1974 from which date he was placed under suspension as conveyed by the charge-sheet dated 13-12-1974 Ext. C. In that case we could positively say that the First Party could not escape the knowledge of the charge sheet from 13-12-1974 when he was no longer being allowed to work being under order of suspension. No such papers have been produced. In the circumstances I find the presumption of service by post is rebutted. I, therefore, find that the First Party had no opportunity to defend himself. The attendance sheets signed, of course, show that the First Party being absent from 17-11-1974 to 28-11-1974. The admitted signatures Ext. A to A(2) from 29-11-1974 show that the First Party put his signature to show his presence from 29-11-1974. He has no explanation why he did not put his signature to show his presence from 17-11-1974 to 28-11-1974 on the day he was putting his signature to show his presence from 29-11-1974. Even granting that the case of the First Party that the attendance register is kept in the custody of the manager who only occasionally presents it to the workers to put their singatures to show their presence. There is no reason why he did not put his signatures to show his presence from 17-11-1974 to 28-11-1974 or why he did not protest if he had been already shown absent on these days, although he was on duty. This is a question which still remains to be considered; but since no charge-sheet has been proved to have been served on the First Party petitioner and there is no evidence of *ex parte* enquiry either, the impugned order of dismissal of the First Party cannot be sustained. But in view of the attendance sheets apparently showing the First Party absent from duty the management may charge him afresh and come to a finding. It appears from Ext. 4, a khata apparently maintained by the First Party for noting the different cinema shows that he has been serving the cinema hall from 1932. This fact must also taken into account while coming to a decision on the charge.

The case, therefore, be allowed on contest and the impunged order of dismissal dated 28-12-1974 as per Ext. B be set aside and the First Party be reinstated and be given arrear wages with the observation that the management may proceed against the First Party on the charge as per Ext. C. No costs.

Members consulted.

AMANULLAH KHAN
First Labour Court, Dacca.
Chairman,
28-7-1975.

আমি একমত।

স্বাঃ—ম, করিম

আমি একমত।

স্বাঃ—আ, মন্নান।

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

AMANULLAH KHAN
Chairman.
28-7-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Shantinagar Road, Dacca.

I.R. Case No. 343 of 1974.

Shamsuddin Miah (Darwan)—*First Party,*

versus

(1) The Manager,
Bux Rubber Co.,
Bux Nagar, P.S. Mirpur, Dacca;

(2) The Administrative Officer,
Bux Rubber Co., Bux Nagar, P.S. Mirpur,
Dacca—*Second Parties.*

PRESENT :

Mr Amanullah Khan—*Chairman.*
Mr M. Karim
Mr M. A. Mannan } *Members.*

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

The First Party petitioner was a Darwan in the Bux Rubber Company. He was put under suspension from 11th September 1974 being charged by police for theft and then later on his services were terminated. It is submitted that this termination was *mala fide* and as such the order of dismissal is illegal.

In the written statement it has been submitted that this case u/s 34 of the Industrial Relations Ordinance, 1969 by a worker whose services have been terminated is not maintainable and that the termination order has been *bona fide*. It is admitted that the First Party petitioner wts under suspension while his services were terminated on 4th November 1974.

The order of suspension dated 11th September 1974 Ext. 1 runs as follows:

Consequent upon his taking into the police custody in connection with an alleged theft case at our bank godown Mr Shamsuddin, Darwan-in-charge is hereby placed under suspension with effect from 11th September 1974.

During his suspension perioed he will draw subsistence allowance as per rules.

The order does not show any aspersion on the part of the management on the character of service record of the First Party petitioner. It is apparent that this is a simple office action taken in view of the First Party being taken to police custody in connection with an alleged theft. The order of termination dated 4th November 1974 Ext. 2 reads as follows:—

The services of Mr Shamsuddin Miah, Darwan-in-charge, Bux Rubber Co., Mirpur, Dacca, is hereby terminated with immediate effect under the provisions of Section 19(1) of the Employment of Labour (Standing Orders) Act, 1965.

Mr Shamsuddin Miah will be paid three months' notice pay in lieu of required notice of such termination as well as compensation @ 14 days wages for each completed year of service or part thereof in excess of 6 months, in addition to any other legal dues to which he may be entitled. He is hereby advised to collect all his legal dues as aforesaid from the Accounts Department of this office on any working day during office hours on production of clearance from all concerned.

Any outstanding that may be due from him will be recovered at the time of final settlement of his accounts.

This order is apparently an order of termination simplicitor without any stigma on the First Party petitioner. So it cannot be said that the termination had been proceeded by any *mala fide* intention on the part of the management. Now even if there had been any *mala fide* intention but that is not apparent in the order of termination. I am afraid the Court cannot interfere as the provisions of law is. It has been contended that the termination while the suspension order continued itself shows that the termination has been *mala fide* for the continuance of suspension remains a stigma on the worker and that the proper procedure should have been that the order of suspension be withdrawn first and then the order of termination be passed. But, in my opinion the order of suspension was virtually withdrawn as soon as the order of termination was passed. So the suspension is no longer effective and provides no stigma on the worker after the order of termination was passed. The only requirement of law for terminating the services of a worker is that the worker should be paid 90 days' notice in the case of a monthly rated workers, 45 days' notice in the case of the other workers or

wages for 90 days or 45 days as the case may be, may be paid in lieu of such notice and that the worker should be paid compensation at the rate of 14 days' wages for each completed year of service or for any part thereof in excess of six months, in addition to any other benefit to which he may be entitled under this Act or any other law for the time being in force. No where the law provides that such termination should be *bona fide*. The only other requirement that we can infer from the section is that the termination must not show any reason which may be a reason for removal of the worker under any other provisions of the Employment of Labour (S.O.) Act, 1965. In fact, the section for terminating the services does not require that any reason should be given for such termination which means that a termination is valid for whatever reasons the termination might have been done, if the termination order determines the employment of the worker apparently u/s 19 of the Employment of Labour (S.O.) Act, 1965. This must be the only interpretation of the section since similar right to the worker also has been given to terminate his employment which he too need not justify by any reason even though the employer might have been guilty of conduct which is considered punishable under any provisions of any law as against the worker. So I find no reason to interfere with the order of dismissal and the case is liable to be dismissed.

This is a case by a worker whose services have been terminated and such a worker cannot file a case u/s 34 of the Ordinance, 1969 since under that section a worker must file a case, and a terminated worker is not a worker unless his termination has been in connection with or as a consequence of any industrial dispute or if such termination has led to any industrial dispute. Here the removal is not connected with any industrial dispute. So the case fails too on the ground of maintainability as well.

The case be dismissed on contest. No costs.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
10-7-1975.

আমি একমত।

স্বাঃ—ম, করিম।

আমি একমত।

স্বাঃ—এম, এ, মন্নান।

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

AMANULLAH KHAN,
Chairman.
10-7-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

Complaint Case Nos. 63 and 64 of 1974.

Giasuddin Bhuiyan
and
Mosharraf Hossain Khan—*First Parties,*

versus

Modern Furnishers Ltd.—*Second Party.*

PRESENT :

Mr Amanullah Khan—Chairman.

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

These two cases being complaint case No. 63 of 1974 filed by Giasuddin Bhuiyan and complaint case No. 64 of 1974 filed by Mosharraf Hossain against Modern Furnishers Ltd. are taken up for analogous hearing as they involve the same question of facts and law.

Both Giasuddin Bhuiyan and Mosharraf Hossain claim to be permanent workers in the Modern Furnishers Ltd. It is alleged that all on a sudden they were dismissed from service on 7th October 1974 without any hearing. So they filed grievance petition on 9th October 1974 but received no reply.

The management in its written statement submits that the First Parties were not permanent workers and they were dismissed for physical assaulting Mr Nazmul Hossain, one of the Directors of the company. It is further alleged that they received no grievance petition.

Notice u/s 25(1)(a) of the Employment of Labour (Standing Orders) Act, 1965 Ext. 2 and 2(A) show that grievance petition was timely served upon the management. F.P.W. 1 Mosharraf Hossain of complaint case No. 64 of 1974 and F.P.W. 2 Giasuddin Bhuiyan of case No. 63 of 1974 depose that they were permanent workers and were dismissed on 7th October 1974 without any formal proceeding. The Manager, Modern Furnishers Ltd. Second Party witness No. 1 Kazi Shafiqur Rahman did not question the statements of the First Parties that they were permanent workers. He merely submits that the First Parties were asked in writing to show cause on 2nd October 1974 by the Managing Director Nur Hossain and he personally delivered the copy of the notice of show cause. He further submits that he personally enquired into the allegation, examined witnesses Muslem and Afzal and submitted his report. He adds that workmen did not appear for enquiry held on 5th October 1974 though informed. A notice dated 2nd October 1974 Ext. A seems to show that these First Party workers were asked to show cause within 3 days why they should not be dismissed from service for disobedience to company's rules, for attacking cimpany officer by inciting workers. Letter dated 5th October 1974 Ext. B suggests that S. P. W. 1 Shafiqur Rahman was appointed Enquiry Officer on 5th October 1974. Two papers signed by the Second Party witness, marked Ext. C and C(1) have been filed alleging these to be depositions of two witnesses. According to these depositions Mosharraf Hossain and Giasuddin Bhuiyan

assaulted Mr. Nazmul Hossain. But nowhere in the written statement the management said that there was any enquiry at all. There is nothing to show that notice of such enquiry was actually served on the First Parties. I am sure these papers have been fabricated for the purpose of these cases after filing the written statements. This will be evident from the very letter of dismissal Ext. 1A, the letter recites:—

> This is to inform you that the Board of Directors in its meeting held on 5th October 1974 to discuss over the incident that occurred at about 10-30 a.m. within the show-room of the Modern Furnishers Ltd. caused by you and your accomplices, and the act of high handedness to the extent of your physically assaulting one of the Directors of the company, Mr A. K. M. Nazmul Hossain.
>
> The Board had taken a serious view of the situation and to maintain an orderly situation and a peaceful atmosphere they have taken a decisive view to remove all unrully elements including you from the company.
>
> It is, therefore, unanimously resolved that the company will not any longer retain you in service in the company and as such you are hereby dismissed from your service with effect from 8th October 1974 for gross misconduct.

Nowhere in this order it is said that the workers in proceeding were found guilty and as such they had been dismissed. It was natural while so much of reasonings with facts were being given for dismissal, the fact of formal proceeding, an enquiry, if true would have been certainly mentioned in the order of dismissal. If there have been any enquiry, the enquiry was not according to the procedure laid down in the Employment of Labour (S.O.) Act, 1965. The notice Ext. A and A(1) show that these were written on 2nd October 1974 and the date fixed for reply was stated to be 5th October 1974 and on 5th October 1974, the enquiry is said to have been held. Not less than 3 days' time were not therefore allowed to the First Parties even granting that they were served with the notices of enquiry as alleged. Considering the facts and circumstances. I find that the orders of dismissal had been illegal and must be set aside.

The Cases No. 63 and 64 of 1974 be allowed on contest The orders of dismissal shall be set aside and the First Parties be reinstated with arreat wages within 30 days from date. No cost is ordered.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
5-6-1975.

সম্মত।

স্বাঃ ম, করিম

স্বাঃ এম, এ, মন্নান

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

AMANULLAH KHAN
Chairman.
5-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case Nos. 37 and 38 of 1975.

Mokbul and Ruhul Amin—*First Parties,*

versus

Tangail Cotton Mills—*Second Party.*

PRESENT:

Mr Amanullah Khan—*Chairman.*

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

Both these First Parties Mokbul of I. R. Case No. 37 of 1975 and Ruhul Amin of I. R. Case No. 38 of 1975 were employees of Tangail Cotton Mills. It is alleged by them that they reported for duty on 10-2-1972 after liberation of Bangladesh but were asked to report afterwards. Thereafter, they reported for duty several times but were not allowed to join. They were only assured that they would be allowed to join but never were allowed to do so. So they have filed these cases for directive the management to allow them to resume their duties and also pay them all arrear wages.

The case of the management is that these First Parties never reported for duty after liberation. They were deserters and cannot, therefore, be taken back in service.

Both the First Parties in their deposition say that they reported for duty and were told that they were no longer in service and further that, thereafter, they made several attempts to join but were not allowed to join. The Second Party witness, an office superintendent of the Tangail Cotton Mills deposes that the First Parties never reported for duty after liberation. But in his cross-examination he says that he has no reason to know who reported for duty or who did not what he said is based on record only. So he does not seem to be a competent witness to challenge the witness of the First Parties at the same time I find nothing to show that the First Parties ever reported for duty. I am not prepared to believe their oral statement that they reported for duty on 10-2-1972 particularly in view of their statement that on the very date they reported for duty they were told that they were no longer in service. If they were told so there was no reason why they would wait for almost three years and then come to file these cases. I am sure for reasons best known to them these First Parties did not join work so long purposely and now finding the time more opportune filed these cases in order to make a good bargain by way of arrear wages for these three years and reinstatement if possible. Granting that they reported for duty on 10-2-1972 these cases must fail. According to them they were told on 10-2-1972 that they had no work in the mill. That was verbal dismissal. So these cases under section 34 of the Industrial Relations Ordinance, 1969 do not lie by workers who are no longer in service. Now, even if there had been no formal dismissal the First Parties cannot be allowed to join even without back wages since by their own in action for these three years they have forfeited their right to the service they once held. Their cases must, therefore, be held barred by the principle of estoppel and waiver.

The I. R. Cases No. 37 and 38 of 1975 be dismissed on contest without costs.

Members consulted.

আমি একমত।

স্বাঃ এম, এ মান্নান।

স্বাঃ ম, করিম।

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
12-6-1975.

Dictated.
AMANULLAH KHAN
Chairman.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I.R. Case No. 35 of 1975.

Shamsuddin—*First Party,*

versus

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

PRESENT :

Mr Amanullah Khan—*Chairman.*

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

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

The First Party Shamsuddin was a worker in the Tangail Cotton Mills Ltd. It is alleged that he left duty on 25-3-1971 for fear of life and then reported for duty on 16-2-1972 after liberation of Bangladesh; but he was not given any work. Thereafter he approached the management for several times for work and he was assured of consideration and up till now he has not been taken in. So this case for reinstatement with back wages.

The Second Party Manager in his written statement submits that the First Party never reported for duty after he deserted the job. He is, therefore, not entitled to the wages prayed for.

The First Party deposes that he reported for duty in February, 1972 after liberation of Bangladesh; but he was told that he would not be given work. He further adds that he saw the management on three other occasions but even then he was not given any work. This is virtually oral dismissal. He does not say now that he was assured any consideration at any time. So a case by a dismissed worker does not lie under section 34 of the Industrial Relations Ordinance, 1969. Moreover, I find no reason for him to wait so long without filing this case if he actually reported for duty as he says now. I am afraid that he never reported for duty for the reasons best known to him and now finding the circumstances favourable trying to make some illegal gains. No prudent man would wait this long to file a case for his right. Even if there had been no formal dismissal the First Party by his inaction for such a long time has forfeited his right to his job. This case, therefore, fails.

The case be dismissed on contest. No costs.

Members consulted.

আমি একমত।

স্বাঃ ম, করিম।

স্বাঃ এম, এ, মান্নান।

AMANULLAH KHAN

Chairman,

First Labour Court, Dacca.

21-6-1975.

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

AMANULLAH KHAN

Chairman.

21-6-1975.

IN THE FIRST LABOUR COURT OF BANGLADESH

170, Santinagar Road, Dacca.

I. R. Case No. 67 of 1975.

Abul Hashem,
Mechanical Helper-*cum*-Cleaner,
Kohinoor Chemical Co. Ltd.
349/350. Tejgaon Industrial Area, Dacca—*First Party,*

versus

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

PRESENT:

Mr Amanullah Khan—*Chairman.*
Mr M. Karim
Mr M. A. Mannan } .. *Members,*

The petitioner First Party Abul Hashem was an employee in the Kohinoor Chemical Co. Ltd. There had been a theft in the factory of the company on 21-6-1974. The management lodged F. I. R. with the police and Abul Hashem was made as suspect in the F. I. R. It is now alleged by the petitioner that to avoid harassment and to unjust arrest, he was away from the factory till the completion of the investigation of the case by the police. In the meantime investigation was completed and the police submitted final report. The S. D. O., Sadar (South), Dacca accepted the final report and discharged the petitioner on 14-1-1975. He then submitted a joining report on 27-1-1975 but no correspondence was made by the authority in this regard. He, therefore, served a grievance notice on 23-3-1975 but received no reply from the management. The petitioner now prays for an order directing the management to allow him to resume his duties with back wages.

The General Manager in his short written statement submits that the case is not maintainable as no section of provision of law under which the petition has been made has been quoted and that this case being a case of termination under section 19(1) of the Employment of Labour (S. O.) Act, 1965 of payment of termination benefits it is not maintainable. It is further contended that a case by a worker whose services have been terminated under section 19(1) of the Employment of Labour (Standing Orders) Act, 1965, the worker being no longer a worker is not maintainable.

There is no evidence of termination of employment of the petitioner First Party but according to the case of the petitioner as made out in his petitioner he voluntarily left duty to avoid harassment and arrest soon after a F. I. R. was lodged with the police on 21-6-1974 and according to his own case he reported for duty by post as it would appear from the petition itself on 27-1-1975. It is not his case that he remained absent with information to the management. So by his long voluntary absence of 7 months he has not only forfeited his right but waived his right to such employment to resume his duties. He is deserter. Realising that he has no explanation for his long absence the First Party Petitioner now at the time of hearing came out with an explanation of his absense alleging that he was arrested on 21-6-1974 and was in *hajat* for all these time. No paper has been submitted to show that he was under arrest all these time and this was not his case either in his petition. His statement at the time of hearing that he went to join his work on 27-1-1975 also does not appear to be true because his case in the petition appears to be that he submitted his joining report by post but received no answer. It has been suggested to him that he did not report for duty at all. Considering the facts and circumstances I have stated carier I find that the First Party voluntarily left his duty and remained absent for over seven months and did not report for duty as alleged. His case must, therefore, fail.

The fact that no provision of law under which this case has been filed has been quoted is not of any importance. A Court may grant relief to a party under proper provision of law if such relief is available. The present case could have been filed under section 25(*1*)(*b*) of the Employment of Labour (Standing Orders) Act, 1965 but there is no evidence that the First Party filed any grievance petition as required for a case under that section. The First Party could be given relief under this section since in the absence of any evidence that he is no longer a worker it would be presumed that he is still a worker and could

ask for resumption of duty by him but I have already said that by his long voluntary and unauthorised absence he has not only forfeited his right to the employment but also waived his right to such employment.

The case be dismissed on contest. No costs.

Members consulted.

AMANULLAH KHAN
Chairman,
First Labour Court, Dacca.
21-7-1975.

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

AMANULLAH KHAN
Chairman.
21-7-1975.

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