PART-D

"THE SHOPS AND ESTABLISHMENTS ACT, 1965"

THE SHOPS AND ESTABLISHMENTS ACT, 1965

Object of the Act

The objects of the Shops and Establishments Act, 1965 have been laid down in the preamble of the Act. The preamble states that the Act has been enacted with a view to regulating holidays, payment of wages, leaves, hours of work and certain other allied matters concerning the works employed in shops, commercial establishments and industrial establishments not being factories.

Scope and Application

Area of Application:

(i) The Act extends to the whole of Bangladesh;

(ii) The Act shall apply to every establishment in the areas in which the East Bengal Shops and Establishments Act, 1951 (Act 1 of 1952) was in force immediately before the commencement of this Act;

(iii) The Act shall apply to every establishment in all other areas of Bangladesh in which five or more workers are employed, or were employed on any day of the preceding twelve months;

(iv) The Act shall apply to every other establishment in such other area or areas and on such date as the Government may, by notification in the official Gazette, specify;

Application Restricted:

Sub-section 6 of section 1 provides that the provisions of this Act shall not apply in the following matters:

(i) Offices of or under the Government;

(ii) Officers of or under the Bangladesh Railway Board, including railway stations;

(iii) Offices of or under any local authority, a trust, a corporation or any other public statutory body, which is not run for profit or gain or in the course of its business does not make any profit or gain;

(iv) Shops or stalls in any public exhibition or show in so far as such shops or stalls deal in retail trade which is solely subsidiary or ancillary to the main purpose of such exhibition or show;

(v) Shops or stalls in any public fair or bazar held for religious or charitable purpose;
(vi) Hostels and messes not maintained for profit or gain; or
(vii) Establishment for the treatment or care of the sick, infirm, destitute or mentally unfit.

Exemption and Extension: Section 3 of the Act provides that the Government may, by notification in the official Gazette, suspend or extend the operation of all or any of the provisions of this Act in respect of any establishment or class of establishments or person of class of persons and in area for such period and subject to such condition as may be imposed:

Working Hours

The Shops and Establishments Act, 1965 provides the following rules as to working hours:

A. Weekly Hours: (sec. 8)
(i) No adult worker shall be liable to work in any establishment for more than 48 hours in any week.
(ii) No young person shall be liable to work in any establishment for more than 42 hours in any week;
(iii) However, with the over time, the total hours of work of an adult worker shall not exceed 60 hours in any week and 52 in case of a young person.

B. Daily Hours: (sec. 8)
(i) No adult worker shall be required to work for more than 9 hours in a day.
(ii) No young person shall be liable to work in any establishment for more than 7 hours a day.

C. Overtime allowance for overtime work: (sec. 9)
A worker shall be paid in respect of overtime work an allowance calculated at double the ordinary rate of his wages and such ordinary rates of wages shall be calculated in the prescribed manner.

Provided that the ordinary rates of wages, for calculating allowance for overtime work under this section, shall not include any bonus or any other additional payment made in lieu of bonus.

D. Interval for rest or meal: (sec.10)

No worker employed in any establishment shall be liable to work either-

(a) for more than six hours in any one day unless he has been allowed an interval of at least one hour during that day for rest or meal; or

(b) for more than five hours in any one day unless he has been allowed an interval for rest or meal of at least half an hour during that day.

E. Spread-over: (sec. 11)

The period of work of a worker shall be so arranged that inclusive of his interval for rest or meal it shall not spread over more than twelve hours on any day.

Holidays

A. Weekly Holiday: (sec. 4)

(i) Every worker employed in any establishment shall be allowed one and a half day's consecutive holidays in each week.

(ii) No deduction on account of such holidays shall be made from the wages of any worker of an establishment.

B. Festival Holiday: (sec. 14)

Every worker shall be allowed at least ten days' festival holidays with full wages in a year. The days and dates for such festivals may be fixed in such manner as may be prescribed.

Leaves

A. Casual Leave: (sec. 15)

Every worker shall be entitled to casual leave with full wages for ten days in a calendar year. However, the casual leave admissible under this section shall not be carried forward beyond that calendar year.

B. Sick Leave: (sec. 16)

Every worker shall be entitled to sick leave with full wages for a total period of fourteen days in a year; such leave not availed of by any worker during a calendar year may be carried forward, but the total accumulation of such leave shall not exceed twenty-eight days at any one time.

C. Annual Leave with Wages: (sec. 13)

(1) Every worker who has completed a period of twelve months' continuous service in the establishment, shall be allowed, during the

subsequent period of twelve months, leave with full wages for a number of days, calculated at the rate of-

(a) in the case of an adult, one day for every eighteen days of work actually preformed by him during the previous period of twelve months; and

(b) in the case of a young person, one day for every fourteen days of work actually performed by him during the previous period of twelve months:

(2) If a worker does not, in any period of twelve months, take his annual leave to which he is entitled, either in whole or in part, any such leave not taken by him shall be added to the leave to be allowed to him in the succeeding period of twelve months;

(3) A worker shall cease to earn any annual leave when the earned leave due to him, in case of an adult, amounts to thirty days, and in case of a young person, amounts to forty days;

(4) Any leave applied for by a worker but refused by his employer shall be added to the credit of such worker beyond the aforesaid limit.

D. Wages during Leave or Holiday period: (sec. 17)

(1) For the leave of holidays allowed to a worker under the provisions of this Act, he shall be paid at the rate equal to the daily average of his full-time earnings including dearness allowances, if any, for the days on which he worked during the month immediately preceding his leave but excluding any overtime allowance and bonus.

(2) A worker who has been allowed annual leave for a period of not less than four days in the case of an adult and five days in the case of a young person, at any time, shall, in so far as it is practicable, be paid his wages for the period of the leave so allowed, before his leave beings.

Closure

A. Closure: (sec. 5)

(1) Every shop or commercial or industrial establishment shall remain entirely closed, for at least one and a half consecutive days in each week.

(2) The days on which shops or commercial or industrial establishments shall remain entirely closed, shall be fixed for each town or area by the Chief Inspector.

(3) No shop shall on any day remain open after 8 p.m. However, any customer who was being or was waiting in the shop to be served at such hour, may be served during the period of thirty minutes immediately following such hour.

B. Exemption from Closure: (sec. 6)

(1) The provisions of section 5 with regard to closure shall not apply to the following establishments:

(i) docks, wharves or stations and terminal offices of transport services including airports;
(ii) shops dealing mainly in any vegetable, meat, fish, dairy products, bread, pastries, sweetmeats, and flowers;
(iii) shops dealing mainly in medicines, surgical appliances, bandages or other medical requisties;
(iv) shops dealing in articles required for funerals, burials or cremation;
(v) shops dealing mainly in tobacco, cigars, cigarettes, birds, pan, liquid refreshments sold retail for consumption in the premises, ice, newspapers or periodicals;
(vi) petrol pumps for the retail sale of the petrol and automobile service stations not being repair workshops;
(vii) barbars' and hair dressers' shops;
(viii) any system of public conservancy or sanitation, any industry, business or undertaking which supplies power, light or water to the public;
(ix) clubs , hotels, restaurants, eating houses, cinemas or theatres:

D. Restriction: (sec.7)

After the hour fixed for closure of shop under sub-section (3) of section 5, no goods of the kind sold in any shop, shall be sold in any hotel, restaurant, eating house, cinema, theatre or any other place of public entertainment or amusements, except for consumption in the premises.

Health and Hygiene

A. Cleanliness: (sec.18)
Every establishment shall be kept clean and free form effluvia arising from any drain, privy or other nuisance and shall be cleaned at such time and by such method as may be prescribed;

B. Ventilation: (sec. 19)
Every establishment shall be ventilated in accordance with such standards and by such methods as may be prescribed.

C. Lighting: (sec. 20)
Every establishment shall be sufficiently lighted during all working hours.

D. Sanitary conveniences, washing facilities and facilities for taking meals: (sec.21)
Every establishment shall provide for the sanitary conveniences, washing facilities and, where so required, facilities for taking meal by the workers in the prescribed manner.

PART-E

THE WORKMEN'S COMPENSATION ACT, 1923

Chapter I

OBJECT AND SCOPE OF THE WORKMEN'S COMPENSATION ACT, 1923

Nature of the Act

The Workmen's Compensation Act, 1923 falls in that category of legislation which has its roots in the theory that a State cannot be mute spectator to the sufferings of the working class engaged in factories or establishments who are exposed to the various risks to their limbs and lives. Due to technological innovations and automation introduced in industries the working class operating these sophisticated mechanical devices are invariably exposed to the risk of being involved in accidents for no fault of theirs.

A. A Compromise between the Employer and Employees:

The Act is a piece of social security legislation which ensures security and justice to the workmen. At the same time, it does not punish an employer as the employer is liable to pay compensation only when personal injury is caused to the workmen by accident which has arisen out of and in the course his employment. Moreover, the worker is very often adequately insured by the employer to protect himself against the liability. In a sense, the Compensation Act is a compromise between the employer and employees. The employer is given only a limited liability and the worker is sure of getting something without litigation.

B. Statutory Strict Liability:

The most important feature of the Act is that it places the entire responsibility for compensation on employers alone. The liability of the employer arises only when a personal injury is caused to the workman in the course of employment and the injury caused is the result of an accident. The liability for payment of compensation is not dependent upon the neglect or a wrongful act of the employer but a statutory compulsory obligation to compensate the workman for the loss of wage earning capacity before and after the injury is suffered by him. Therefore, the Act creates a new type of liability quite distinct from the liability of the employer under the law of tort but a liability flowing out of the relationship of master and servant. It is also

different from the concept of vicarious *liability* based on the general principles of law of torts or doctrine of *added peril* based on the principles of tortious liability under the law of tort. The principle of added peril means that if a workman while engaged in employer's work, track or business engages himself in some other work which ordinarily he is not required to do and such work involves extra danger, he cannot hold the master liable for the risks arising therefrom. This is also not a *contractual liability*, even if there is contract to that effect not to claim compensation from the employer for an injury caused to workmen. An employer under the provisions of the Act is liable to compensation at the rates fixed in the Act itself to any workman incapacitated by an accident *arising out of and in the course of his employment.*

The Act provides for compulsory payment by the employer of some compensation, calculated by reference to the wages, for death or disablement of a worker by accident while at work independently of any negligence or breach of duty on the part of the employer.

The doctrine of contributory negligence has no application under the Act. The liability is absolute when the statutory requirements are fulfilled.

C. Social Insurance:

It is said that the Workmen's Compensation Act is the first measure of social insurance introduced throughout India. The underlying principle is that compensation is not a remedy for negligence on the part of the employer, but it is rather in the nature of insurance of the workman against certain risks of accident. However, attack has been made in the form that the Act is not a social insurance measure. The application of the principle of social insurance to workmen's compensation would mean the distribution of the cost over three parties, namely, employers, workers and State. This feature is totally absent in the Workmen's Compensation Act, 1923. Let alone social insurance, even commercial insurance has not been applied in the scheme of the Act for there is no liability on employers to ensure their risk with private insurance companies or any other agency. It is standing misconception that social insurance was first introduced in this country in the Act which is an entirely wrong notion. It would be correct to say that this was an attempt to give protection to workers against industrial accidents, which usually fall within the scope of social insurance, by placing the responsibility for compensation solely on employers; but the principle of social insurance was

not applied to this measure, which evidently is the cause of most of its existing defects. As a matter of fact, if workmen's compensation is made a part of social insurance, the State will have to adopt special measures to ensure industrial safety.

D. The Act is a Humanitarian Measure:

Because this law provides social security to workmen it is a humanitarian measure. The theory of workmen's compensation is that "the cost of product should bear the blood of the workmen." The Workmen's Compensation Act considers compensation payable by an employer to his workmen in case of an accident as a measure of relief and social security. It has also laid down the various amounts payable in case of an accident depending upon the type and extent of injury. The employers now know the amount of compensation he has to pay and is saved of many uncertainties to which he was subject before the Act of 1923 came into force.

E. Contracting Out: Another important feature of this Act is the provision of contracting out in section 17 which provides that any contract whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of and in the course of employment shall be void.

Professor Arthur Larson indicates certain basic features of Workmen's Compensation Act, 1923 which are as follows::

(I) The basic operating principle is that an employee is automatically entitled to certain benefits whenever he suffers a "personal injury by accident arising out of and in the course of employment";

(2) Negligence and fault are largely immaterial, both in the sense that the employee's contributory negligence does not lessen his right and in the sense that the employer's complete freedom from fault does not lessen his liability;

(3) Coverage is limited to persons having the status of employee, as distinguished from independent contractor;

(4) Benefits to the employee includes cash wage benefits, usually around one-half to-two-thirds of his average weekly wage, and hospital and

medical expenses; in death case benefits for dependents are provided; arbitrary maximum and minimum limits are ordinarily imposed;

(5) The employee and his dependents, in exchange for these modest but assured benefits give up their common law right to sue the employer for damages for any injury covered by the Act;

(6) The right to sue third persons whose negligence caused the injury remains, however, with the proceeds usually being applied first to reimbursement of the employer for the compensation out-lay, the balance (or most of it) going to the employee;

(7) Administration is typically in the hands of administrative commissions; and so far as possible, rules of procedure, evidence, and conflict of laws are relaxed to facilitate the achievement of the beneficent purposes of the legislation; and

(8) The employer is required to secure his liability through private insurance or "self-insurance": thus the burden of compensation liability does not remain upon the employer but passes to the consumer, since compensation premiums, as part of the cost of production, will be reflected in the price of the product.

Objects of the Workmen's Compensation Act, 1923

The principle on which the Act works is that injuries to employees "are no longer the result of fault or negligence, but they are the product of the industry itself." Therefore there should be indemnity in every case where casualty is incidental to the employment, unless indeed the casualty is brought about by the injured person's own wilful negligence. The employer is to bear the pecuniary burden, even where the casualty is the result of the negligence of the workman or his fellow-workers, as accidents are an essential feature of industrial undertakings, and the effective force in creating and managing the employment is the employer. Moreover, the work is undertaken primarily in the interest of the employer and ultimately for the public, and the compensation he has to pay can easily be transferred by him to the consumer, thus placing the burden of the workmen's disablement or death upon the society. Therefore, the employer and the State must pay for an accident

arising out of and in course of employment. The objects of the Act may be summarised as follows:

(i) Workmen should be protected, as far as possible, from hardship arising from accidents. The object of the Workmen's Compensation Act is to provide social security, ensure social justice and not to punish an employer.

(ii) The object of the Act is laid down in the preamble of the Act, which reads: "to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident."

(iii) The main purpose of the Act is to provide special machinery to deal with the cases of compensation in case of accident and to make arrangement for some prompt compensation to the injured workman who cannot afford to go to the court of law. The Act has proved of immense utility to both the workmen and employers and has resulted in bringing about better relations among them. It provides a simple, cheap and prompt procedure for the recovery of compensation and relieves the parties from unnecessary litigation.

(iv) A legislation of this kind helps to reduce the number of accidents in a manner that cannot be achieved by official inspection.

(v) It helps to mitigate the effect of accidents by provisions for suitable medical treatment thereby making industry more attractive to labour and increasing its efficiency.

(vi) The Act provides for cheaper and quicker disposal of disputes relating to compensation through special tribunals than is possible under civil law.

Defences available to Employers before passing of the Act

Prior to the passing of the Workmen's Compensation Act, 1923 the employer was liable to pay compensation to his workmen for injury only if the employer was proved to be guilty of negligence. Even when the negligence of the employer was proved, he could avoid his liability by putting forward any of the following defences:

1. **The doctrine of assumed risks (*Volenti non fit injuria*):** This doctrine derived from the rule *volenti non fit injuria* which means where there is consent there is no injury, i.e., when person has voluntarily agreed or consented to take the risk of injury, he has no remedy in law. No man can enforce a right that he has voluntarily waived or abandoned. Consent to suffer the injury may be expressed or implied. Thus a workman could not sue the employer in respect of a risk of injury not unlawful *per se* and which was visible, apparent and lawfully encountered, and if he knew the type of risks which he was running while working in a factory, the employer was not liable to pay compensation for injuries.

The economic theory upon which this principle was based may be stated thus: The wages of the workman represent a compensation for the labour he expends and the danger of the employment. These two things- the price of the labour and the price of the risk that he voluntarily assumed in doing the work- pass into the price of the product sold by the employer, thereby transferring the burden to the consumer. Since the workman does not bear the burden of risk, but is paid for it, he has no right to claim any compensation for any injury arising out of his employment. This principle was rigidly applied that even where some person to whom the employer had delegated the duty of supplying reasonably safe appliances and such person neglected his duty and thus caused the casualty, the employer could escape liability by pleading that the employee had assumed the unnecessary risk voluntarily.

The Workmen's Compensation Act, 1923 provides a new answer to this economic principle. The answer is based on the belief that the old economic theory is at variance with facts that even in dangerous employments workmen do not receive extraordinary compensation and that the amount of risk does not pass into the price of the articles produced. There have emerged views to the effect that the pecuniary burden should be borne not even primarily by the workman; that casualties are an essential feature of industrial undertakings, necessarily recognised as such by both workmen and employers; that this is true even of the negligence of fellow servants and of the

workman himself; that the work is undertaken primarily in the interest of employer and ultimately in the interest of the public; that the employer can easily transfer to his customers the necessary pecuniary risk[1].

2. **The doctrine of common employment ("Fellow-Servants" rule):** This means that there is always an implied term in a contract of service that the servant agreed to accept the risk of injury from negligence of a fellow servant and, consequently, when such negligence was the cause of injury, he could not claim damages from the master. Thus the doctrine provides that employer is not liable for the payment of compensation to a workman for injury provided (i) he is working with several persons for a common purpose, and (ii) he is injured by some acts or omission of some of the persons of his group. Employers used to take advantage of this doctrine on the ground that such negligence could not be attributed to them.

3. **The doctrine of contributory negligence**: According to the Common Law rule of contributory negligence workman is not entitled to damages for injury which has been caused to him by his own negligence. The employers used to plead that they were not responsible for the negligence on the part of employees. In other words, if the worker had been careful the accident would not have taken place.

The Common Law rule of contributory negligence has now been modified in England by the Law Reform (Contributory Negligence) Act, 1945. Section 1(1) of this Act provides that

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[1] One of the important characteristics of the Workmen's Compensation Act is that the common law doctrines of negligence are abrogated, and in place of the common law procedure is substituted a scheme, for achieving cheap and speedy justice. The laws have differed widely, however, in respect of source of compensation. Generally considered, compensation enactments may be divided into two classes- direct payment enactments and insurance enactments. The direct payment statutes, following the English Act, provide for the payment of the compensation by the employer directly to the employee. On the other hand, insurance statutes require the employer to take out insurance either with an insurance bureau operated by the State or with a private company, and if an employee is injured, the compensation is paid by the insurer (insurance company).

"where any person suffers damages as a result partly of his own fault and partly of the fault of other person or persons, a claim in respect of the damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

In India, although there is no legislation corresponding to the Law Reform (Contributory Negligence) Act, 1945 of England, the Courts here have been following the rule as laid down in See. I (I) of the English Act *[Vidya Davi v. M.P. State Road Transport Corp.*, (1974) MPLJ 573].

4. **End of personal action with death:** An employer could also evade his liability to pay compensation in case of death of a workman on the ground that the personal action died with the death of the workman concerned and hence the dependants of the deceased workman were not entitled to claim any compensation.

All the above defences by the employer proved to be very harsh for workman and it was almost impossible for a workman to obtain relief in cases of accidents. Under the common law an employer was liable for industrial accidents only in cases of his negligence. Employer's Liability Acts abolished or limited only certain defences. Proof of the employer's negligence remained the basis of liability. Thus most of the industrial accidents were not touched and workmen could hardly get damages.

For overcoming the first and the second objections the Employer's Liability Act was passed in 1938. This Act declares that the defences of "common employment" and "assumed risk" cannot be raised by employers in suits for damage. Contracting out of employer's liability is also void. Section 3 bars the defence of common employment. The new Section 3A makes void any agreement concluding or limiting employer's liability; and Section 4 bars the defence of assumed risk. The Fatal Accidents Act, 1855 overcome the last objection.

The Workmen's Compensation Act, 1923 was enacted to meet the other objections of employers. Prior to this Act, worker's heirs could claim compensation under Fatal Accidents Act, 1865. This Act was limited in its application as compensation under this Act was payable only if the accident was due to wrongful act, neglect or default of the employer or person who caused the death or on the basis of proof of negligence under Civil law.

Ways Open to Workmen for Claiming Compensation

An injured workman can resort to either of the following two courses for claiming compensation:

a. He may file a civil suit for damages against the employer;
b. He may make a claim for compensation under the Workmen's Compensation Act.

Section 3(5) provides that no claim for compensation can be made under the Act if the workman has filed a civil suit. It further provides that a workman cannot file a suit for damages in any Court of Law if –

(i) he has filed a claim under the Workmen's Compensation Act, 1923; or

(ii) there is an agreement between the workmen and his employer providing for the payment of compensation according to the provisions of the Workmen's Compensation Act, 1923.

Thus a workman has to make a choice between the two reliefs.

In a civil suit for damages, the employer can put forward all the defences available to him under the law of torts. Moreover, a civil suit is a risky and costly affair. A claim under the Workmen's Compensation Act is safe and less costly. Again, the Workmen's Compensation Act deals with 'compensation' as distinguished from 'damages' payable under the law of tort, a remedy available in civil courts.

In *Suppiah Chettiar v Chinnathurai*, AIR (1957) Mad 216 it was observed:

> "A workman may, as an alternative to accepting compensation under the Workmen's Compensation Act, 1923 elect to avail himself of any other remedy against the employer in tort for damages for negligence or wilful act of the employer or some person for whose act or default the employer is responsible, or under the Employers' Liability Act, 1938 or against any other person. But he cannot put his

employer in double jeopardy. The option given to workman either to claim compensation under this Act or take other proceedings cannot be confined to an option binding only in the case of success."

"The Workmen's Compensation Act will often overlap the remedy of compensation or damages for negligence under the Fatal Accident Act, 1855 in the civil court. The obligation under the Workmen's Compensation Act which is more akin to that of an insurer is independent of any negligence or breach of duty on the part of the master and is outside the law of torts."

Thus the Compensation Act does not take away the employee's Common Law right to claim damages which may be quite substantial, if he can prove negligence or breach of duty on the part of the employer. The workman or his dependants are at liberty to either file a suit for damages against the employer, and run the risk of the employer's escape from liability on any of the three defences, or be content with the compensation awarded under the Workmen's Compensation Act. Both remedies are in no case open to the workman or descendants. They must make their choice one way or the other.

The Act thus protects the employer not only from double payment for the same injury but also from double proceedings. The workman has the option to elect his remedy.

Chapter II

COMPENSATION: LIABILITY OF THE EMPLOYER AND RIGHT OF THE WORKMEN

The Employer's Liability to pay Compensation

Under the Workmen's Compensation Act the liability to pay compensation lies with the employer for any personal injury caused to worker in an accident. This liability to pay compensation is limited and subject to the provisions of the Act. Under section 3 of the Act an employer will be liable to pay compensation on the fulfillment of the following conditions;

(i) There must be a personal injury caused to a workman;

(ii) Such a personal injury is caused in an accident;

(iii) The accident has arisen out of and in the course of employment.

(iv) The injury has resulted either in the death of the workman or in his total or partial disablement for a period exceeding four days.

Personal Injury:

The liability of the employer arises only when a personal injury is caused to a workman. The term has not been defined in the Act. However, the term 'personal injury' is not necessarily confined to physical or bodily injury but includes within its ambit a nervous shock, a mental injury or strain which affects the health of the workman. In *Indian News Chronicle v Lazarus* AIR 1951(Punjab) 102 a workman had in the course of his duties, frequently to go into a heating room and then to cooking plant where the temperature was kept very low. One night the workman went into a cooling room and thereafter fell ill and subsequently died of pneumonia. It was held that even though there was no bodily injury, the injury here was due to his working and going from heating room to cooling plant as part of his duty and so it was a personal injury for which compensation must be paid. Injury includes nervous shock caused by excitement or alarm resulting from fatal accident to a fellow workman. In *Lakshmibai v Chairman, Port Trustees, Bombay* (55 Bom LR 924), the workman died on duty due to heart disease. The medical evidence proved that he was suffering from heart disease and he died as a result of strain caused upon his heart by the particular type of work he was doing. It

was held that it amounted to personal injury entitling to compensation under the Act. Section 3(2) of the Act also states the contracting of an occupational disease by a workman shall be deemed to be an injury.

Accident:

Proof of mere personal injury is not sufficient to attract conditions of compensation. The workman must prove that he sustained personal injury by accident. In other words, the injury caused to a workman must be as a result of an accident. The word 'accident' has not been defined in the Act but it is of wide import. As a general rule an accident means an occurrence which is unexpected and without any design on the part of the worker. Under section 3(1) 'accident' includes not only such occurrence as collisions, tripping over floor obstacles, falls of roof but also less obvious ones causing injury like strain, causing rapture, exposure to drought, causing chill, or due to attack of others (*Mathew Thomas v Johny Sunny*, 1995 KLJ 407 (Ker)). If a person becomes insane as a result of an accident, and then commits suicide, the death is the result of the accident, and compensation is awarded (*Grime v Fletcher*, (1915) 1 K.B. 734)). Thus accident means unintended and unexpected occurrence which produces hurt or loss. If the mishap is designed, intended or anticipated it is a self-inflicted injury and not an injury caused by accident and there will be no compensation for this. The word 'accident' has been used in contradistinction to the expression 'wilful misconduct'. The statute contemplates injuries not expected or designed by the workman himself. It should be noted that the language of the Act is not "personal injury by **an** accident" but "personal injury by accident". This means "personal injury not by design, but by accident, by some mishap unforeseen and unexpected: accidental injury". In *Varkey Achan v Thomman Thomas* (1979) Lab IC 986 (Ker) the Kerala High Court held that the term accident under the Workmen's Compensation Act includes any intentional injury committed against the workman, the intention not being designed by the worker himself. In this case a worker died of stab injuries at the gate of his employer's factory where he was employed to do some odd jobs. He was stabbed by some third persons intentionally. It was contended in this case that the injury sustained by the worker being an intentional injury it cannot be said to be caused by an accident. However, the Court held that the term accident includes any injury which is not designed by the workman himself.

Occupational Diseases are included in Accident: Contracting of any of the diseases specified in Schedule III of the Act is deemed to be "personal injury caused by accident" out of and in the course of employment.

Arising out of and in the course of Employment: The accident must arise out of and in the course of employment so as to attract the liability under section 3 of the Act. These twin conditions must co-exist before it can be said that the employer has incurred the liability. These two conditions will be involved if the following questions are answerable affirmatively:

(i) whether at the moment of the accident the employee was obliged to present on that site by the express or implied term of contract of his service;

(ii) whether he was there in his capacity as an employee or merely as a member of the public;

(iii) whether he was at that time under the control or direction of the employer or was acting as a completely free man;

(iv) whether his presence at the spot was incidental to his employment; and

(v) whether there was a proximate connection between the employment and the accident (*Weaver v Tredegar Iron and Co.* (1940) 3 All ER 157), (*General Manager, B.E.S.T. Undertaking, Bombay v Mrs. Agnes*, AIR 1964 SC 193).

The words 'out of' and 'in the course of employment' are used conjunctively and not distinctively. So both the conditions must be present simultaneously. The section significantly uses 'employment' and not 'work'. The word 'employment' has a wider meaning than the word 'work'. The workman may be in the course of his employment not only when he is actually engaged in doing something in the discharge of his duty to his employer but also when he is engaged in an act belonging to and arising out of it (more discussion on this point has been given below).

Disablement: The injury must have resulted either in the death of the workman or to his total or partial disablement for a period not exceeding four days. Disablement may be temporary or permanent. The test of disablement is the reduction in earning capacity in relation to the employment in which the workman was engaged at the time the accident took place and it resulted in the disablement.

The Liability of the Contractor under the Employer for payment of compensation to a worker under this law:

(i) **Principal's Liability:** Section 12 of the Act provides that principal employer is liable to the employees of his contractor to pay compensation to employment injuries while executing work under the contractor for the trade or business of the principal.

(ii) **Indemnity to the Principal:** Under section 12(1) the principal employer is primarily liable to pay compensation. However, section 12(2) gives a right to the principal to seek indemnity against the contractor. This does not mean that the contractor is to indemnify the principal in all situations. For instance, where the principal employer himself had been responsible for the situation leading to the accident, the indemnity as required by section 12(2) will not operate.

(iii) **Indemnity to the Contractor against a sub-contractor:** Similarly, where any contractor who is liable to pay compensation or to indemnify a principal is also entitled to be indemnified by any person standing him in the relation of a contractor from whom the workman could have recovered compensation. Thus, this provision gives the contractor a right to be indemnified by a sub-contractor, if he has to pay compensation or to indemnify a principal.

(iv) **Indemnity against Strangers:** Where a third party was responsible for the accident the employer has been given a right to recover from that third party any compensation he has paid to his workman, in addition to any damages he may be able to claim.

When Employer is not liable to pay Compensation

The employer will not be liable to pay compensation under the situations mentioned in the proviso to section 3(1). These matters mentioned in the proviso operate as defences available to the employer against claim for compensation. Employer is not liable to pay compensation to the workmen in the following cases:

(i) If the injury did not result in total or partial disablement for a period exceeding four days; or

(ii) If the workman at the time of accident was under the influence of drink or drugs; or

(iii) If the worker willfully disobeys an order expressly given, or to a rule expressly framed, of the purpose of securing the safety of workmen; or

(iv) If the worker willfully removes or disregards any safety guard or other devices which he knew to have been provided for the purpose of securing the safety of workmen.

To be noted that the above last three conditions apply only where the injury does not result in death. In these three cases no liability can be imposed upon the employer to pay compensation to a workman if he succeeds in establishing that the injury caused was attributable to any of the above factors. The above exceptions do not apply in the case of accident resulting in death unless the employer proves that the fatal accident was one not arising out of and in the course of employment.

Wilful Disobedience: In order to escape liability under section 3 of the Act, the employer has to show that there was wilful disobedience of rules and disregard to use safety devices on the part of workman. A man does a thing wilfully when he does it intentionally because he expects some benefits to himself, either some convenience or an easy way of doing a piece of work and so forth. The word 'wilful' imports that the misconduct was deliberate, not merely thoughtless act on the spur of the moment. (*Tiku Kahar v Equitable Coal Co. Ltd.*, AIR 1930 Cal. 58, R.B. *Moondra and Co. v Mst. Bhanwari,* AIR 1970 Raj. 11). In *Aryamuni v Union of India* ((1963) 1 LLJ 24) the workman sustained injury to his eye due to spark. The company's notice written in English required the use of goggles for such work. Goggles were not provided to the workmen nor were asked so by the supervisor. The workman injured did not know English also. In these circumstances it was held that the workman was not wilfully disobedient as he did not know English and so could not know the contents of the notice nor was it explained to him.

Mere negligence of Workman is no defence to the Employer: Contributory negligence on the part of the worker will not exonerate the employer of his liability to pay compensation. Mere negligence is not regarded as wilful disobedience. In *Padam Debi v Regunath* (AIR 1950 Ori 207) the workman, a motor driver drove the vehicle in high speed and dashed with a tree which killed him. It was held that the employer cannot escape liability on the ground of rash and negligent driving of the workman. It may be due to excessive speed. But dashing with the tree cannot be with any previous design. Accident means happening without design even though there will be negligence on the part of the workman who suffers from it. Hence, it was proved to be a case of accident in the course of employment and the question of negligence whether great or small is immaterial.

Arising out of and in the course of Employment

Probably, no other expression has received so much judicial consideration as the phrase *"arising out of and in the course of the employment"*. As mentioned above, the accident must arise out of and in the course of employment to attract the liability under section 3 of the Act. This phrase has been taken from the English Act originally appearing in the Act of 1897. It has been adopted in the American and Dominion Act. It also occurs in New Zealand Act, and has the same meaning as that of the English Act. Further to what have been discussed above with regard to this phrase, we need to have detailed discussion on both the concepts of "arising out of" and "in the course of". Before discussing the meaning of the expression it may be emphasised that the injury must not only arise 'in the course of' but also 'out of' the employment'. Proof of one without the other will not make the employer liable for compensation. While an accident arising out of an employment almost necessarily occurs in the course of it, the converse does not follow.

The question as to whether the accident arose out of and in the course of employment cannot be determined on any general view of facts. These are the questions of facts and they are to be determined in accordance with the facts of each particular case.

Arising out of and in the course of:

Several Judges have, with more or less success, offered explanations. A few of the explanations by eminent Judges are stated here to give an idea of the meaning of the phrase.

An injury which occurs in the course of the employment will ordinarily arise out of the employment, but not necessarily so. To bring the case within the Compensation Act the employee must show that he was at the time of the injury engaged in the employer's business, or in furthering that business, and was not doing something for his own benefit or accommodation. As to whether an accident arose out of his employment or not would depend on the following test laid down by Lord Summer in *Lancashire and Yorkshire Rly. Co. v. Highley* (1971) A.C. 352. The test is: Was it part of the injured person's employment to hazard, to suffer or to do that which caused his injury? If yes, the accident arose out of his employment. If no, it did not, because what was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. "The decision," says Lord Atkinson, "must turn on whether the workman was, when the accident which injured him occurred in the course of performing some duty arising out of his contract of service which he owed to his employer."

Ramaswami, J. in *Mackinnon Mackenzie & Co Pvt. Ltd. v. Ibrahim Mohd Issak,* (1970) I S.C.R. 869, observed: "To come within the Act the injury by accident must arise both out of and in the course of employment. The words 'in the course of employment' mean in the course of work which the workman is employed to do and which is incidental to it. The words 'arising out of the employment' are understood to mean that during the course of the employment injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered. In other words, there must be a causal relationship between the accident and the employment. The expression is not confined to the mere nature of the employment but applies to the employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of these factors the workman is brought within the scene of special danger, the injury would be one which arises out of employment. To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless, of course, the workman has exposed himself to an added peril by his own imprudent act.

Where a watchman in the course of his duty lifts G.I. Pipe in order to keep it in a safe place, the injuries must be taken to have been received in the course of his employment, if he is injured (*R.M. Pandey v. A.P. I.Ltd.*, 1956 Bom. 115). A boy returning to the factory canteen after having served tea in

his usual round to certain persons in the factory premises was struck by a bullet and he died the following day. It was held that the death of the boy was due to an accident arising out and in the course of his employment (*National Iron & Steel Co. v. Manorama*, 1953 Cal. 143).

In an English case of unusual character the same point was emphasised. S, an employee of the Coal Board, who was killed in a collision with T, another employee of the Board. T had finished his day's work and was bicycling across the Board's premises to collect his wages at the Board's pay office. He made a detour across a bus park on those premises and when riding between two buses knocked down the deceased (S), who died from the injuries he then received. It was held that the Coal Board was liable, because when the employee was actually on his employer's premises going to the place which the employer has said was the place to which he was required to come in order to draw his wages, it would be a very unreal and strange state of affairs if he was no longer in course of his employment [*Mrs. Staton v. National Coal Board* (1957) 2 All. E.R. 667].

A railway employee was ordered to travel to a certain station and repair a water main. After finishing his work he was hurrying across the platform to catch his train, when he slipped and died as a result of fall. It was held that the injuries arose out of an in the course of the employment. Also, if a man is engaged in doing work, and as part of that work and in the course of it does something which he might do outside, but which, nonetheless, happens in the course of and arising out of his work, and injures him or causes his death, the accident has arisen out of an in the course of employment. A workman was engaged in the dock in loading and discharging cargo from ships. He left his home for work at 5 a.m. in a perfect state of health to all appearances. At 6 a. m. he began work of loading china clay. At 9 a.m. after taking his breakfast he was lifting his hand above his head to fasten a hook to a bag for dragging it when he fell down and died. He had heart disease, but there was nothing to show that without the work this man was engaged on he would have died of this heart disease. The case fell within the Act *(Falmouth Dock and Engineering Co. Ltd. v. Treloar* [1933]. A.C.481). Again, if a workman does, in a negligent way, an act which is within the scope of his employment and sustains injuries, he is entitled to compensation. But if he does an act which, from its nature, is outside the scope of his employment altogether, he takes upon himself an added risk and is not entitled to compensation for injuries

sustained. The deceased was a workman in the employment of the defendant railway company. He was sent on an errand from Bombay to Kalyan, and from Kalyan back to Bombay. On his way back he was traveling by the defendant company's electric train, and stood in the open doorway. The train, going on a bridge received a jerk, and as a result of that he fell down on the lines and was killed. The company pleaded, among other things, negligence and disobedience on the part of the deceased, as, according to them he had ignored the warning notice which stated "Don't stand near the door". The Court held otherwise and awarded compensation, on the grounds (a) that the notice was for securing safety of passengers in general, and not for that of workmen, (b) that the accident was in the course of and arose out of the employment of the deceased and he did not take greater risk than an ordinary traveler would do while traveling on one of these electric trains *(G.I.P) Rly. v. Kashinath Chimnaji,* 1928 Bom. I).

On the other hand, where a boy employed in a boot-making business took home contrary to the orders of authorities a pair of boots for repairing them and thus to improve his own skill and while doing the repairs at home, he injured an eye with an awl, and it had to be removed, it was held that injury did not arise out of and in the course of employment (*Borley v. Ockenden* [1925] 2 K.B. 325). The applicant who was a piecer in a cotton mill, went out of his work and interfered with tin rollers while in motion and his dhoti having been caught he put out his hand to pull it and got his hand crushed. It was held that he was not entitled to compensation (*Gouri Kinkar Bhakat v. Radha Kishan Cotton Mills*, Cal. 220). To conclude, it may be stated that an accident arises out of and in the course of employment when a causal connection exists between the employment and the accident.

Notional Extension of Time and Space/Employer's Premises

An evaluation of various decided cases on this point reveals that from time to time courts have evolved the notional extension of time and place in relation to employment. This means that the employment does not necessarily end when the down tool signal is given or when the workman leaves the actual workshop where he is working. There is notional extension at both the entry and exist by time and space. The employment may begin or may end not only when the employee begins to work or leaves his tools but also when he used the means of access to and from the place of employment.

English Jurisdiction:

The theory of notional extension is intended to extend the area of employer's premises so as to cover accidents while a workman is on the way to his place of work and also while he is on the way to his home from the place of employment. The question as to how far an employer is liable for compensation for accidents taking place in the journey of the workman from home to the place of work and from place of work to home has been the subject of controversy. This controversial problem is said to have been finally settled by the House of Lords in *St. Helens Colliery Company Ltd. Vs. Hewitson*, 1924 AC 59.

Facts: A workman employed at a colliery was injured in a railway accident while travelling in a special collier's train. Under an agreement St. Hellens Collier's Company provided for special train for the conveyance of its employees. The workmen intended to use the train were required to sign an indemnity form. All the workmen did not travel by these trains; some walked and some went by omnibus. While in the course of his journey by one of these special trains, the train was derailed with the result that the carriage in which the respondent was travelling was overturned and he was injured. The House of Lords held that there being no obligation on the workmen to use the train, the injury did not arise in the course of employment within the meaning of Workmen's Compensation Act, 1906.

Thus a contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport. In other words, the doctrine of notional extension applies (i) where means of conveyance is provided by the employer and the employee is under the contract of service to use that facility or (ii) where use of that facility is proved necessity giving rise to an implied obligation on the part of the employee.

In *Alderman v. Great Western Railway Company*, 1937 AC 454 a travelling ticket collector of the railway company had in the course of his duty to travel from Oxford where his home was, to Swamsea where he had to stay overnight to return to Oxford the following day. While proceeding from his lodging to Swamsea station to perform his usual duties he fell in the street and sustained injury for which he claimed compensaiton. It was held by the House of Lords that while in the street proceeding from his lodging to station, the applicant was not performing any duty under the control of

service, and therefore the accident did not arise in the course of employment and that he was not entitled to compensation.

Indian jurisdiction:

In Indian jurisdiction the Indian Supreme Court laid down the theory of notional extension in *Sauraslura Salt Mfg. Co. v. Bai Valu Raja*, AIR 1958 S.C. 881. The rule of law laid down by the Supreme Court was as follows:

> "as a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. However, it is now well-settled that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work, so that there may be some reasonable extension in both time and place of work and a workman be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out and in the course of the employment of a workman, keeping in view at all times this theory of notional extension. "

Facts: In this case, R was employed as a workman in the salt works. While returning home after finishing his work he, along with other workers, had to go by a public path, then through a sandy area open to the public and finally across a creek through ferry boat. R, while crossing the creek in a public ferry boat, which capsized due to bad weather, was drowned. On a claim for compensation it was held on the facts of the case, that the accident could not be said to have arisen out of and in the course of employment while crossing the creek inasmuch as the theory of notional extension could not extend to the point where the boat capsized. It was said that "when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an

area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him".

In *General Manager, BEST v. Mrs. Agnes* AIR 1964 SC 193 the workman, driver of the BEST after his day's work left the bus depot and boarded another bus to go to his residence. The bus collided with a lorry and he was injured and died after five days. It was held that the accident occurred during the course of his employment and his widow was entitled to compensation. The main points in the judgment was that the rules and conditions of service of the workmen in this case made it obligatory on the workmen to travel by the transport provided by the BEST undertaking and therefore the workmen while so travel, the notional extension of the field of his employment applies to the course of such transport.

In *General Manager, Eastern Railway v. R.R. Verma* 1979 Lab IC 1099 the claimant was posted as an assistant station master at Bhanpur Railway station. On 29.3.1970 while he was boarding a train at Rura Railway station for coming back to Bhanpur for re-joining his duties, he slipped off and came under the wheels of a train causing serious injuries and disabling him to perform his duties. He claimed compensation. The High Court disallowed the claim rejecting the application of notional extension of time and space on the ground that the claimant had to come to Rura in connection with his private work and it was open to him to reach Bhanpur by any mode that suited to him. So the accident did not occur in the course of employment. The court distinguished the Supreme Court decision in BEST on the basis that the rules and conditions of service of the workmen in that case made it obligatory on the workmen to travel by the transport provided by the BEST undertaking and therefore the workmen while so travel, the notional extension of the field of his employment applies to the course of such transport.

Recently in *Regional Director, ESI Coprn v. Francis De Costa* 1996 SCC (L&S) 1361 where Francis met with an accident while he was on his way to his place of employment. The accident occurred at a place which was about one km. away to the north of the factory, at 4.15 p.m. Francis's duty-shift was to commence at 4.30 p.m. He was going to factory by his bicycle. He was hit by a lorry and sustained fracture in the coller bone. His claim for compensation went up to the Supreme Court. The Supreme Court held that

casual connection between the accident and the employment had not been established and Francis was not entitled to get any compensation. If the employment begins from the moment the employees set out from his house for the factory, then even if the employee stumbles and falls down at the door step of his house, the accident will have to be treated as to have taken place in course of his employment. This interpretation leads to absurdity and has to be avoided.

On the basis of the above discussion it may be concluded that the notional extension principle cannot have a pervading application. Its scope is limited according to the facts and circumstances of the case. The theory does not extend to the whole journey between a workman's residence and his place of work. In order to apply this doctrine the workman is to prove that he was at place of accident because of terms of contract of service either expressly contained therein or by implication. For example, if the workman is under duty to use the means of conveyance provided by the employer in order to reach his place of work and reach his home after finishing his work expressly under a term contained in the contract of service, he will be entitled to compensation if personal injury is sustained by him while he is using that means of conveyance. He can also claim the benefit of the theory if he can successfully prove that there was no other route or means of conveyance except that which he used for the purpose in which accident has taken place. Thus what required for the application of this theory is that the workman must show that he was at the place of accident because of his employment either due to terms of service contract or proved necessity.

Liability for Occupational Diseases

As mentioned above section 3(2) specifies that the contracting of an occupational disease by a workman shall be deemed to be an injury by accident within the meaning of section 3 and unless the contrary is proved, the accident shall be deemed to have arisen out of and in the course of employment.

An occupational disease is a disease peculiar to a particular employment. The nature of the employment or occupation is such that workers engaged in them are exposed to certain diseases. Schedule III Parts A and B of the Act gives a comprehensive list of occupational diseases peculiar to the nature of certain occupations.

The employer is liable to pay compensation if-

(i) a workman employed in any employment specified in Part A of Schedule III, contracts any disease specified therein as an occupational disease;

(ii) a workman whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment.

However, the employer will not be liable if he can prove that the accident has not arisen out of and in the course of the employment.

Addition of more Occupational Diseases: Under section 3(3) the Government may add any description of employment to the employments specified in Schedule III and may also specify occupational diseases peculiar to those added employments. However, in that case the Government must give three month's notice by Gazette notification.

Exception to the Employer's liability for Compensation for Occupational Diseases: Section 3(4) specifies that an employer shall not be liable to pay compensation to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

Prohibition of double Compensation and Double Action: Sub-section 5 of section 3 of the Act provides that a workman has option either to claim compensation under the Workmen's Compensation Act or file any other civil suit in tort or otherwise. There is a bar for recovering compensation by a workman twice for the same injury under section 3(5) of the Act. The Workman cannot have the benefits of the both and put the employer in double jeopardy. The section is very clear and specific about this bar. It further lays down to this effect that no suit for damages shall be maintainable by a workman in any court of law in respect of any injury:

(a) if he has instituted a claim to compensation in respect of the injury before a Commission; or

(b) if an agreement has been entered into between the workman and his employment providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

Chapter III

DISABLEMENT AND THE AMOUNT OF COMPENSATION

Section 4 of the Act deals with the amount of compensation that a workman would be entitled to get under the Act in case of his disablement. The amount of compensation depends upon the gravity of the injury and the nature of disablement. For the purpose of determination of compensation, the injuries have been divided into four categories, namely:

(i) death;
(ii) permanent total disablement;
(iii) permanent partial disablement; and
(iv) temporary disablement whether total or partial.

1. Death Compensation:

If the injury from the accident results in the death of the workman the compensation is payable by the employer to the dependents of the workman. In such cases the amount of compensation is determined by making a reference to schedule IV. In that schedule 6 different levels of monthly wages are given in the first column and the amount of compensation payable in respect of that wage level is given in the second column. The minimum compensation payable to the dependent of a worker in case of death is Tk. 8,000 and the maximum is Tk. 21,000 which is very inadequate compared to other available figures in any other countries. In India the minimum amount is Rs. 50,000 and the maximum is fixed at Rs. 2.74 lac. The amount is payable in lump sum in such cases.

2. Permanent total Disablement: In case of injuries not resulting in death, the amount of compensation depends upon the nature of disablement. When there is 100% loss in the earning capacity of the injured workman, it is a case of permanent total disablement. To determine whether the injury is permanent or temporary, the total effect of the injury on the employment

opportunities of the workman concerned is the deciding criterion. Permanent disablement is caused when as a result of injury the workman is incapacitated for all work. Where permanent total disablement results from an injury, the injured workman in receipt of monthly wages falling within the limit shown in the first column of Schedule IV, shall be paid amount of compensation shown against such limit in the second column. The minimum compensation payable for permanent total disablement is Tk.10,000 and the maximum is Tk. 30,000. In case of a minor the amount is fixed at Tk. 2000.

3. Permanent Partial Disablement: When the loss of earning capacity is below 100%, it partakes the nature of permanent partial disablement. Schedule 1 of the Act enumerates certain injuries as cases of permanent partial disablement showing in their corresponding column of the percentage of loss of earning capacity. When permanent partial disablement results from the injury specified in Schedule 1 the amount of compensation will be the percentage of the compensation payable in case of partial total disablement.

Compensation on unscheduled injuries: Where permanent partial disablement results from the injury not specified in Schedule I, the amount of compensation shall be such percentage of the compensation payable in case of total disablement as in proportionate to the loss of earning capacity permanently caused by the injury.

4. Temporary Disablement: For temporary disablement whether total or partial, compensation shall be paid for the period of disablement or for one year whichever period is shorter. Such compensation shall be paid at the rate of full monthly wages for last 2 months, two-thirds of the monthly wages for next 2 months and half of the monthly wages for the subsequent months (last column of Schedule IV).

Disablement

The Workmen's Compensation Act was passed with a view to providing for provisions of compensation by the employer to their workmen due to

their injury caused by an accident. Partial and total disablements are two of conditions for claiming such compensation.

Ordinarily disablement means incapacity or deprivation of physical health or loss of capacity to work. However, for the purpose of the Workmen's Compensation Act, 1923 disablement is not limited to physical disablement but extends to loss of earning capacity. Loss of earning capacity is not necessarily co-extensive with the loss of physical capacity. In true sense disablement under this Act means loss or reduction of earning capacity.

As per section 3 no compensation can be granted under this Act for any physical loss unless there is loss of earning capacity. Disablement can be of two types: partial disablement and total disablement.

Partial Disablement: Where the earning capacity of workman is reduced partially by reason of disablement it is called partial disablement. Partial disablement is of two types:

(i) partial disablement of temporary nature; and

(ii) partial disablement of permanent nature.

Partial Temporary Disablement: Section 2(g) defines partial disablement of temporary nature as one which reduces the earning capacity of a workman in any employment in which he was engaged at the time of accident resulting the disablement. It means therefore, that in case of partial temporary disablement reduction of earning capacity is confined exclusively to the kind of employment in which he was engaged immediately before the accident.

Partial Permanent Disablement: Permanent partial disablement is one which reduces the earning capacity of a workman in every employment which he was capable of undertaking at the time of accident.

Such type of disablement reduces the earning capacity of a workman not only in employment he was engaged immediately before the accident but also in every employment which he was capable of performing, had he not been

injured by the accident. Every injury specified in Schedule I shall be deemed to result in permanent partial disablement.

Total disablement: Total disablement refers to that condition where a workman becomes unfit for every type of work and is not able to get job anywhere due to that disablement. Total disablement strictly means the loss of 100% earning capacity. It is also of two types:

(i) Total temporary disablement; and

(ii) Total permanent disablement.

When the injury amounts to 100% loss of earning capacity but it is temporary in nature such disablement is called temporary total disablement. In such a case there is possibility of the disablement to be cured. Temporary total disablement is not a scheduled injury.

Permanent Total Disablement: When disablement which permanent in nature amounts to 100% loss of earning capacity or totally incapacitates the workmen, it shall be deemed as permanent total disablement.

(i) Injuries specified in Schedule I which amounts to 100% loss of earning capacity and being permanent in nature shall be deemed as permanent total disablement. For example, loss of a hand and a foot.

(ii) Permanent total loss of sight of both eyes shall be deemed as permanent total disablement.

(iii) Permanent total disablement may result from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity amounts to 100% or more.

The compensation is payable to injured person because of incapacity to work and consequently reduction in the earning capacity. In the case of *Agent, E.I. Railway v. Maurice Cecil Ryan*, it was observed that in such cases, "what has to be estimated is the loss of earning capacity by the injury. That is a different thing from the loss of physical capacity by the injury". *In Upper Doab Sugar Mills Ltd. v. Daulat Ram*, also the Court stressed the point that what in these

cases of disablement has to be considered is the question of the earning capacity of the workman concerned. It was held in *General Manager, G.I.P. Railway v. Shanker,* that the "disablement must be of such a character, that the person concerned is unable to do any work" and not merely "unable to perform the work he was performing at the date of the accident". In *Rukiya Bai v. George D. Cruz,* the facts were that a labourer engaged in physicall handling of cargo was incapacitated by a spinal injury and could not do any work, which required locomotion, it was held, to be total disablement as defined in section 2 (1) (e) and the court pointed out the distinction between 'incapacity for work' and 'incapacity to work' in this case. There would be incapacity to work when a man has physical defect which makes his labour unsaleable in any market reasonably accessible to him.

In *Ball v. William Hunt,* a workman was blind in his one eye but the defect was not visible. After sometime he suffered an employment injury necessitating the removal of the eye ball of the injured eye, consequently as a result of this visible defect he could not get employment although he was physically capable of doing any job which he could do before accident. It was held in this case that 'incapacity for work' includes 'liability to work'.

Therefore, in permanent total disablement it is the incapacity to get employment which is relevant and not the physical incapacity to undertake work. If because of his apparent physical defect no one will employ him, however efficient he may be, in fact he has lost the power to earn wages as completely as if he was paralysed in limbs.

In Divisional Manager, K.S.R.T.C. v. Bhinmaiah, a driver of a bus belonging to the appellant was involved in an accident. It resulted in an impairment of free movement of his left hand disabling him from driving vehicles. The Commissioner held it to be total disablement. On appeal it was held by the High Court that Commissioner was wrong as this injury is not mentioned in Schedule I, which deemed to result in total disablement. In the instant case the High Court said disablement did not amount to permanent total disablement as the workman was capable of performing duties and executing work other than driving vehicles.

Chapter IV

PROCEDURE, MACHINERY AND REALISATION OF COMPENSATION

Realisation of Compensation under the Act

Notice of Accident by or on behalf of the Workman:

Serving notice of accident to the employer and preferring a claim for compensation under the Act are two different things though they both are contemplated under section 10. The first thing that a workman who is injured as a result of accident must do is to give a notice in writing. This has to be done as soon as practicable after the occurrence of accident. Such a notice must contain:

(i) the name and address of the worker injured;
(ii) date of the accident; and
(iii) the cause of the injury.

To whom Notice may be served:

The notice is to be served on the employer or upon any one of several employers or any person who is to the employer for the management of the branch of trade or business where the injured workman was employed. The notice may be delivered to the person concerned by hand or by registered post.

Time limit for Serving Notice and of preferring a Claim:

The notice must be served as soon as practicable after happening of accident. Whether the notice is served or not the claim for compensation shall be submitted to the Commissioner within one year of the accident or, in case of death, within one year from the date of death. There is a proviso which states that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim.

Claim without Notice:

The third proviso to section 10(1) provides that even if a notice under section 10(1) has not been given by or on behalf of an injured worker or the claim has not been preferred in due time, the Commissioner is entitled to

entertain and decide any claim to compensation in any case if he is satisfied that the failure so to give notice or prefer claim was due to sufficient cause.

It has been observed in *Makhanlal Marwari v Audh Beharilal*, AIR 1959 All 586 that the scheme of section 10 is that a notice of the accident to the employer is necessary before a claim for compensation can be entertained by the Commissioner. But there are exceptions to this general rule. These exceptions are where the employer had knowledge of the accident from any other source at or about the time when it occurred, want of notice will not obstruct the entertainment of a claim. Another exception is where the Commissioner is satisfied that the failure to give notice was due to sufficient cause.

Notice by the Commissioner:

Section 10A provides for sending notice by the Commissioner for Workman's compensation to the respective employer in certain circumstances:

(i) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may sent by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement.

(ii) The statement shall contain information relating to the circumstances leading to the death of the workman.

(iii) The employer shall also state whether, in his opinion, he as employer is or is not liable to deposit compensation on account of the death.

(iv) If the employer is of opinion that he is liable of deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(v) If the employer is of opinion that he is not liable to deposit compensation, he shall, in his statement, indicate the grounds on which he disclaimed liability.

(vi) Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any dependents of the deceased workman that it is open to the dependents to prefer a claim for compensation, and may give them such other further information as he may thinks fit.

Reference by Authorised Officer:

Section 10C provides that the Chief Inspector and all other Inspectors under the Factories Act, 1965 shall have the power to refer to the Commissioner cases of workmen who have not been paid due compensation by employers under the provisions of the Act.

Medical Examination:

A workman who is injured and has given notice of accident to the employer is to submit himself for medical examination if offered by employer. Any such offer made by the employer must be free of charge and is to be made within 3 days from the date of receipt of notice of accident. The purpose of medical examination is to prevent a dishonest worker from having an opportunity to conceal the nature injury from any impartial observer (section 11).

Reference to the Commissioner:

The Commissioner for workmen's compensation appointed under section 20 of the Act is considered to be the tribunal to carry out the provisions of the Act. Section 19 of the Act provides for reference to the Commissioner. According to section 19 the following questions, in default of agreement, are to be settled by the Commissioner:

(i) The question as to the liability of any person to pay compensation;

(ii) The question as to whether a person injured is or is not a workman within the meaning of this Act;

(iii) The question as to the amount or duration of compensation;

(iv) The question as to the nature or extent of disablement.

In the above cases the Commissioner is vested with the powers to decide the matter. His function is to judge and decide. While deciding the issue he is required to proceed judicially and not arbitraly.

Procedure for Assessment of Compensation:

The Act has prescribed two methods for the assessment of compensation: one is by way of agreement and the other is by way of award by the Commissioner.

(A) Agreement: After the service of notice by the injured workman to the employer as required to be given under the Act if the employer admits liability and gets the workman medically examined in order to ascertain the extent of disablement and on that basis enter into an agreement with the workman concerned, the employer has to send a memorandum of such agreement to the Commissioner. If the Commissioner considers the amount of the compensation inadequate or that the agreement has been obtained by fraud or undue influence or other improper means, the Commissioner may refuse to register the agreement. When he does so, he has to briefly record the reasons for such refusal. In other cases, after hearing the parties, and on his satisfaction he shall register an agreement for payment of compensation and this agreement once registered is binding on the parties and the agreement is enforceable under the provisions of the Act in the same manner as an award by the Commissioner (section 28).

(B) Award by the Commissioner: The above procedure is not applicable in the case of fatal accidents in which case the obligation has been imposed upon the employer to deposit compulsorily the amount of compensation payable under the Act with the Commissioner. The Commissioner may also call for additional amount as deposit in case of fatal accidents. After compensation has been deposited the Commissioner is required to issue a notice calling upon the dependents to appear before him for determining who the dependents of the deceased are and how the amount is to be distributed amongst them. If on enquiry the Commissioner is satisfied that no dependant exists he shall refund the balance of money to the employer by whom it was paid.

Appeal from the Decisions of the Commissioner

Section 30 provides for appeal from the decisions of the Commissioner which are as follows: An appeal shall lie to the Labour Appellate Tribunal from the following orders of a Commissioner:

(i) an order awarding as compensation a lump sum whether by way of redemption of a monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(ii) an order refusing to allow redemption of a monthly payment;

(iii) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent;

(iv) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(v) an order refusing to register a memorandum of agreement or registering the same of providing for the registration of the same subject to conditions.

Conditions of Appeal:

The provisions of section 30 also incorporate certain conditions and restrictions to avail of the appellate jurisdiction of the Labour Appellate Tribunal. They are as follows:

(i) No appeal shall lie against an order unless a substantial question of law is involved in the appeal;

(ii) no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties;

(iii) No appeal by an employer shall lie against any order awarding as compensation a lump sum unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against;

(iv) No appeal shall lie against an order under sub-section (7) of section 8;

(v) No appeal shall lie against any order unless the amount in dispute in the appeal is not less than one thousand Taka;

(vi) An appeal must have to be filed within sixty days from the date of the order.

Chapter V

DECISIONS ON COMPENSATION ACT, 1923

A.K.M. Shamsuzzaman Khan Vs. Chairman, EPRTC
24 DLR(1972) 94
S. 2 (1) (b)-Permanent total disablement

Facts: A bus conductor was knocked down by another bus and as a result of the accident his left leg became permanently disabled and he could not bend his knee joint nor could he run or stand for a long time. His physician certified that he was unfit for active physical work. The Commissioner, Workman's Compensation, Dacca held that since the conductor did not completely and permanently lose the use of his left leg and as he still could stand a while and walk a short distance, the percentage of loss of his earning capacity should be assessed at 25%

Held: In a case under the Workman's Compensation Act the primary duty of the Court is to find out whether the disablement is total or partial. In other words, the result of the injury should be clearly and fully considered and it should be found out whether the same produced a result of permanent partial disablement or permanent total disablement.

The type of work which the workman was acquainted with and capable of performing, prior to his sustaining the injury, could no longer be undertaken by him due to the injury sustained by him. In view of the above, it is evident that the reduction of the earning capacity in respect of the works the workman was capable of performing was total and as such the disability sustained by the workman was one of permanent total disablement. The expression, "as incapacitates a workman for all work which he was capable of performing at the time of the accident" as occurring in section 2 (1)(b) of the W.C. Act clearly relates only to those kinds of work which the workman was capable of performing in relation to his earning of livelihood and does not mean a category broader than

that. A.K.M. *Shamsuzzaman khan Vs. Chairman, EPRTC (1972) 24 DLR 94.*

Muslim Cotton Mills Vs. Din Islam
(1959) 11 DLR 165

Facts: Mr. Din Islam who was a carpenter in the Muslim Cotton Mills met with an accident. While working in the workshop of the mill, his fingers of right hand came in touch with a piece of wood in an electric motor driven wood-cutting saw machine. As a result, all the fingers of his right hand except the thumb were cut off in the saw machine.

Decision:

S. 2(1)(g) read with the proviso 'Partial disablement'-when the earning capacity of the workman in every employment which he was capable of undertaking at the time of the accident is reduced, it will be partial disablement, and if such disablement is of a permanent nature it will be permanent partial disablement. The proviso to section 2(I)(g) of the Act only says that the injuries specified in Schedule I to the Act shall be deemed to result in permanent partial disablement irrespective of the fact whether the earning capacity has been reduced or not.

S. 2(1)(I) read with the proviso 'Total disablement'-When the disablement is such as incapacitates the workman for all work which he was capable of performing at the time of the accident it is a case of total disablement, and if such disablement is of a permanent nature it will be permanent total disablement. The proviso only lays down that in cases of injuries enumerated in the proviso to section 2 (1)(I) they will be deemed to be cases of permanent total disablement irrespective of the fact whether the workman has or has not been incapacitated for all work which he was capable of performing at the time of the accident. *Muslim Cotton Mills Vs. Din Islam (1959) 11 DLR 165.*

Mrs. Allied International Corporation Vs. Mst Rashida Bibi
(1969) 21 DLR (WP) 306
"Arising out of and in the course of employment"

Facts: Md. Bashir (deceased) an employee of the Allied International died as a result of accidental death by taking sodium nitrite, a poisonous chemical resembling sugar. This chemical was lying open within about 30-36 feet of the place of the duty of Bashir in an open unfenced place without being under any system of lock and key, in an open hall accessible to every body working near that place. The workers were never told or made to understand the poisonous nature of the chemical used or lying in the factory. When the chemical was taken by the deceased, he was utterly oblivious of the poisonous nature of the substance and he took it believing the same to be something sweet like sugar.

Judgment:

The accident arose out of and in the course of employment. The word "employment" is not to be read as synonymous with "duty or work". The expression "arising out of and in the course of employment" to be interpreted in the light of facts of each case.

The word "employment" carries a wider connotation than the word "duty or work". The duty or work which the workman is performing at the time of the accident, if falls within the employment and even if it is not directly connected with the object of the accident which though falls within the place, scope and connotation of employment; then the accident would be said to have arisen out of and in the course of employment.

S. 3(1)(b)-Dependants entitled to compensation consequent upon death of a workman during the course of employment-Instances of violation of any order or rule relating to safety by the deceased worker--No ground to deprive him from such compensation.

The worker while in employment might be tempted to do certain things which otherwise may not be permissible and if by doing so the worker dies, law intended that his dependants should not, due to any such default of the workman, be deprived of the compensation.

The underlying principle is that after the death of the workman, it is the dependants who are entitled to the compensation and that they should not be deprived of it due to anything which was not their (dependants') fault.

Divisional Superintendent of Pakistan Western Railway Vs. Ali Zaman (1967) 19 DLR (WP) 72.

"Arising out of and in the course of employment"

Facts: Mr. Ali Zaman was employed as a Gangman with the Pakistan Western Railway at Karachi. He joined his duty at 7.00 am of 27th June 1964. At 9.30 am he was asked to obtain a medical fitness certificate from the Railways Medical Examiner. While going to the hospital for this purpose, Ali Zaman was hit by an engine and received injuries in his leg which had to be ultimately amputed. On his recovery, he filed an application under section 10 of the Workmen's Compensation Act, 1923. The issue before the Court was- whether injury arose out of and in the course of employment.

Judgment:

The question is whether the presence of Ali Zaman at the place of where the accident happened could be attributed to any cause other than his employment with the Railway. It cannot be denied that the accident took place within the premises belonging to the Railway, and that but for Ali's employment as Gangman, he would not have been present at this place in the morning of 27th June 1964. The accident, therefore, arose from a peril of the place where Ali happened to be at the time of the accident. The court relied on *Marsh v Pope & Pearson Ltd* (1917) 86 LJKB 1349 where it was held: "if the workmen's employment compels him to be at a particular place where an accident happens the accident must be taken to arise out of the employment, although it is not being contributed to any way by the nature of the employment".

What has to be determined is only this whether the peril of collusion with moving engine is or is not attached to the Railway yard where the respondent was required to be present due to his employment as a Gangman. In this connection the court relied on *Fearnley (Annie) v Bates & Northcliffe Ltd*, (1917) 86 LJKB 100 where a woman employee, while returning to her work from a women's

convenience, slipped on a small piece of wool lying in the yard which was common to her employer's premises and the adjoining premises. It was held that the accident arose out of and in the course of employment because the peril was a peril attached to a particular location in which by her obligation of service the employee was placed. It will be noted that the act of returning from the women's convenience could not be connected with the woman's employment, but nevertheless, she was held entitled to compensation because the accident of slipping over a piece of wood was held to be a peril attached to the place of employment. Likewise, collision with a moving engine is a peril peculiar to Railway Yards and is, therefore, a peril attached to such places. Injuries to railway employees caused by such collisions should, therefore, be treated as injuries arising out of and in the course of employment.

Adam Ltd. Vs. Unisa Khatoon
(1960) 12 DLR 858.

Facts: The deceased Mia Jan was an employee as cooli under Adam Ltd. Whilst on duty on 3rd October, 1955 he was carrying heavy load of sugar bags. While doing this he was severely injured due to a fall. He was admitted in the hospital and was discharged therefrom on the 25th October 1955. The medical evidence disclosed that he had suffered some internal injuries in the spinal cord. He could not resume his normal avocation after discharge from hospital and died on 3rd November, 1955. It was contended in these circumstances on behalf of the employer that the case of death of the workman had not been established upon the evidence and, therefore, no compensation can be claimed on the evidence led in this case.

Held: The case of death in the case of workman under the provisions of Workman's Compensation Act has not to be established with such particularity as in a criminal case. There must be some kind of casual relationship between the injury and the death and not that the death must be directly and specially attributable to the particular injury caused. All that section 4 requires is that death should result from the injury. In the present case death was caused due to the injury caused to the workman by the accident alleged by the petitioner.

PART-F

THE PAYMENT OF WAGES ACT, 1936

Chapter I

OBJECT AND SCOPE OF THE ACT

Object of the Act

In a country where even living wages are not paid to worker, the need to protect the wages earned by them can hardly be over-emphasised. Before the Payment of Wages Act, 1936 was passed the employees were subject to hardship on account of inordinate delays in receiving their wages and the imposition of fines and unauthorised deductions from their meager wages. The Royal Commission on Labour in India appointed in 1929 (Whitley Commission) examined the problem in depth and recommended valuable suggestions to mitigate the vices. The Commission was convinced that unfair deductions seemed to be the rule then and that special measures to check the same were felt need. On the basis of the Commission's recommendation the Payment of Wages Act was passed in 1936. The direct object of the Act is, therefore, to provide that employed persons shall be paid wages in a particular form, at regular intervals, and without any unauthorised deduction. More specifically the aims of the Act are:

(i) to safeguard the interests of employees with regard to their wages and salaries;

(ii) to provide safeguard against irregularities in payment of wages by the employers;

(iii) to provide safeguard against unauthorised deduction from wages and salaries by the employers;

(iv) to ensure payment of wages and salaries in a particular form and at regular intervals without unauthorised deductions.

Scope and Application

Area of Application:

(i) The Act extends to the whole of Bangladesh;

(ii) The Act is applicable only to certain classes of persons, i.e. it applies to the payment of wages to:

- persons employed in any factory;
- persons employed upon any Railway by the Railway Administration, or by a person fulfiling a contract with Railway Administration;

- any person including an apprentice employed in any shop, commercial establishment or industrial establishment to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be express or implied (amendment by Act XXVII of 1980);

- The Government may, after giving three months notice of its intention of so doing, by notification in the official Gazette, extend the provisions of the Act, or any of them to the payment of wages to any class of persons employed in any industrial establishment or any in class or group of industrial establishments.

- By a subsequent Gazette Notification the Government has extended the provisions of the Act to dock, whraf or jetty, oil field etc. (50 DLR (HCD) 22 at para 13) .

Non-Applicability: The provisions of this Act shall not apply to payment of wages of the following persons:

(i) Who is employed in a managerial or administrative capacity; or

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

RULES RELATING TO PAYMENT OF WAGES

Definition of Wages:

The term 'wages' has been given a very comprehensive definition in section 2(vi) of the Act. It means all remuneration, capable of being expressed in terms of money. It also includes and covers any bonus or other additional remuneration. However the following will not be included in the definition of wages:

(a) the value of any house accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by general or special order of the Government;

(b) any contribution paid by the employment to any pension fund or provident fund;
(c) any travelling allowance or the value of any travelling concession;
(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment:
(e) any gratuity payable on discharge.

Responsibility for Payment of Wages:

Section 3 of the Act provides that the responsibility for payment of wages is primarily that of the employer. However, sub-sections (a), (b) and (c) provides the following as to the responsibility:

(i) In the case of person employed in factories, the manager of the factory will be responsible for payment of wages;

(ii) In the case of persons employed in industrial establishments, it is the person responsible to the employer for the supervision and control of the establishment;

(iii) In the case of persons employed in railways, if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned, the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment.

Fixation of Wage-periods:

Section 4 provides that the person responsible for payment of wages under section 3 of the Act is to fix the wage periods in respect of which such wages shall be payable. However, statutory condition with regard to wage period is that no wage-period shall exceed one month. In other words, wage cannot be fixed as payable quarterly, half-yearly or yearly but they may be payable daily, weekly, fortnightly or monthly.

Time of payment of wages:

Section 5 of the Act provides rules relating to payment of wages which are as follows:

(i) The wages of every person employed upon or in any factory or industrial establishment upon or in which less than one

thousand person are employed, shall be paid before the expiry of the seventh day after the last day of the wage-period in respect of which the wages are payable;

(ii) The wages of every person employed in any railway, or any other factory or industrial establishment, shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable;

(iii) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated;

(iv) The Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon the railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such person or class of such persons;

(v) All payments of wages shall be made on a working day.

Rules relating to Deduction from Wages

Deduction from Wages:

(i) Explanation 1 to section 7 provides that every payment made by the employed person to the employer or his agent shall be deemed to be deduction from wages.

(ii) Sub-section 1 of section 7 provides that the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Authorised Deduction

Sub-section 2 of section 7 provides that deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:-

(1) fines;

(2) deductions for absence form duty;

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

(4) deductions for house-accommodation supplied by the employer;

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

(6) deductions for recovery of advances or for adjustment of overpayments of wages;

(7) deductions of income-tax payable by the employed person;

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

(9) deduction for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (XIX) of 1925) applies or any recoginsed provident fund as defined in section 58A of the Income-Tax Act, 1922 or any provident fund approved in this behalf by the Government, during the continuance of such approval;

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

(11) deductions made with the written authorisation of the employed person, in furtherance of any War Savings Scheme, approved by the Government, for the purchase of securities of the Government of Bangladesh or the Government of the United Kingdom.

The various deductions that are authorised under the Act are now discussed in detail.

1. Fines: (sec. 8)

(i) No fine can be imposed except for such acts and omissions approved by the Government and notified at the factory or establishment;

(ii) A notice specifying such acts and omissions shall be exhibited in the premises of the factory or establishment;

(iii) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine;

(iv) The total amount of fine which may be imposed in any one wage-period shall not exceed an amount equal to ten Poisa in a Taka of the wages payable to him in respect of the wage-period;

(v) No fine shall be imposed on any employed person who is under the age of fifteen years;

(vi) No fine imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed;

(vii) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed;

(viii) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under the Act in prescribed form; and all such realisations shall be applied only to such purposes beneficial to the person employed in the factory or establishment as are approved by the prescribed authority.

2. Deductions for absence from duty: (sec. 9)

(i) Deductions may be made only on account of the absence of an employed person from the place or places, where by the terms of his employment he is required to work;

(ii) Absence from duty for a part of the day could legitimately and rightly be held as absence for the whole day and the employer will be entitled to deduct the wages for the whole day;

(iii) The amount of such deduction must bear to his wages the same proportion as his absence bears to the total period within the wage period during which he is ordinarily required to work;

(iv) If the employee refuses to work in pursuance of stay-in-strike or any other cause which is not reasonable or a tool down strike without any just cause it will be deemed to amount absence from duty;

(v) If ten or more employed persons acting concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction

from any such person may include such amount not exceeding his wages for eight days.

3. Deduction for damage or loss: (sec. 10)

(i) Section 7(2)(c) authorises the employer to make deductions for damage to or loss of goods expressly entrusted to the employee for the custody or for the loss of property for which the employee is bound to account;

(ii) Such deduction shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the concerned employee;

(iii) Such deduction shall not be made until the concerned employed person has been given an opportunity of showing cause against the deduction;

(iv) All such deductions and all realisations thereof shall be recorded in a Register to be kept by the person responsible for the payment of wages.

4. Deductions for services rendered: (sec. 11)

(i) Section 7(2)(d) and (e) authorise the employer to make deductions for house accommodation, amenity or service supplied by him and accepted by the employee as a term of employment;

(ii) Such deduction shall not exceed an amount equivalent to the value of the house-accommodation, amenity or service supplied.

5. Deductions for recovery of advances: (sec. 12)

The employer is authorised to make deductions for recovery of advances subject to the following conditions:

(i) Recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for traveling expenses;

(ii) Recovery of advances of wages not already earned shall be subject to any rules made by the Government regulating the extent to which such advances may be given and the installments by which they may be recovered.

6. Deductions for payments to co-operative societies and insurance schemes: (sec. 13)

Deductions under clause (j) and clause (k) of sub-section (2) of section 7 shall be subject to such conditions as the Government may impose.

Unauthorised and Illegal Deduction

It is clear from the language of section 7 as mentioned above that any deduction by the employer from the wages of the employed person other than those mentioned in sub-section 2 of section 7 would be unauthorised and illegal under the provisions of the Payment of Wages Act, 1936. "Section 7 mentions certain items which can be deducted from the wages. Anything outside that list would be illegal deduction" (*Hindustan Journals Ltd v Govind Ram*, (1962) 2 LLJ 242).

Any agreement or contract by which an employee agrees to any deduction other than those authorised under the Act would be null and void (*Armughan v Jawahar Mills*, AIR (1956) Mad.79). In the same case it was also observed in this connection that the Payment of Wages Act, 1936 calls for a benevolent or beneficial construction, a construction which should advance the remedy and suppress the mischief. In case of doubt, the construction should be placed in favour of the employee.

In *Armughan v Jawahar Mills* it was stated that the list of deductions in section 7 is exhaustive. Further, if an employer claims any deduction, the burden specifically and clearly lies upon him to prove that the deduction is of a nature which is capable of falling within the several clauses of section 7.

AUTHORITIES UNDER THE ACT

The Payment of Wages Act, 1936 envisages three types of authorities:

(i) Inspectors;
(ii) Payment of Wages Authority (Labour Court); and
(iii) Labour Appellate Tribunal

Inspectors

The Payment of Wages Act, 1936 makes provisions for the appointment of inspectors by the Government for the purpose of enforcing the compliance with the provisions of the Act. Inspectors of Factories appointed

under the Factories Act are also assigned the functions envisaged under this Act (section 14).

Powers of the Inspectors:

(i) An Inspector appointed under this Act may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(ii) Every Inspector shall be deemed to be a public servant within the meaning of the Penal Code (XLV of 1860).

Payment of Wages Authority

The Government is empowered under section 15 to appoint the Payment of Wages Authority. This authority is entrusted with power to hear and decide all claims arising out deductions from wages, or delay in the payment of wages to employees in the area including all matters incidental to such claims.

Who can be appointed as Authority:

Section 15(1) states that the Government may, by official Gazette, appoint the Chairman of a Labour Court or any District Judge to be authority under the Act. The Government has, however, appointed the Chairman of the Labour Court as the Authority under the Act.

Functions and Powers of the Authority:

(i) Section 15(1) stipulates that the function of the Authority would be to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in the payment of wages, of persons employed or paid on that area.

(ii) The authority shall try any person for an offence punishable under the Act (sec. 20).

(iii) Every authority appointed under section 15 shall have the powers of a Civil Court under the Code of Civil Procedure, 1908

(V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898) (sec. 18).

Labour Appellate Tribunal

This is the appellate judicial authority envisaged under section 17 of the Act. Section 17 lays down the following rules as to appeal to Labour Appellate Tribunal:

(1) An Appeal against a direction made the authority under section 15 may be preferred, within thirty days of the date on which the direction was made, before the Labour Appellate Tribunal-

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred Taka, or

(b) by an employed person, if the total amount of wages claimed to have been withheld from his or from the unpaid group to which he belonged exceeds fifty Taka, or

(c) by any person directed to pay a penalty under 5 (sub-section (4) of section 15.

(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of section 15 shall be final.

Law relating to claims out of deduction from wages or delay in the payment of wages

Application before the authority: Section 15 provides that the Authority can be approached with applications in respect of the following claims:

(i) Where any deduction has been made from the wages of an employee contrary to the provisions of the Act; or

(ii) Where the payment of wages has been delayed contrary to the provisions of the Act.

Such application can be presented by any of the following persons:

(i) the employed person himself; or
(ii) any legal practitioner authorised in writing in this behalf; or
(iii) any official of a registered trade union authorised in writing in this behalf; or
(iv) any Inspector under this Act; or
(v) any other person with the permission of the Authority appointed to hear such claims under the Act.
(vi) If there are several employees in the same establishment whose wages for the same period remain unpaid after the due date, a single claim application can be filed on behalf of all such employees (sec. 16).

Limitation:

(i) The proviso to section 15(2) lays down that every such application shall be presented within 6 months from the date on which the payment of wages became due or from the date which deductions from the wages were made.

(ii) The second proviso to section 15(2) invests power with the Authority to admit an application even after the period of limitation if the applicant satisfies the Authority that there was sufficient causes for not making the application within the period of limitation.

Jurisdiction and Procedure of the Authority:

When an application is presented as per section 15 of the Act, the authority shall proceed with it in accordance with the following manner:

(i) The Authority is required to give notice to the employer and the person responsible for payment of wages;

(ii) The employer and the person responsible must be given opportunity to being heard;

(iii) The Authority will make further enquiry if any as may be necessary;

(iv) After such hearing and enquiry the Authority may direct the refund to the employee of the amount deducted or the payment of the delayed wages, together with the payment of 25% of the wages of the employee as compensation.

(v) If the Authority hearing any application is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding 50 Taka be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

Appeal against the direction of the Authority:

Section 17 lays down the following rules as to appeal to Labour Appellate Tribunal:

(1) An Appeal against a direction made by the authority under section 15 may be preferred, within thirty days of the date on which the direction was made, before the Labour Appellate Tribunal-

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred Taka; or

(b) by an employed person, if the total amount of wages claimed to have been withheld from his or from the unpaid group to which he belonged exceeds fifty Taka; or

(c) by any person directed to pay a penalty sunder 5 (sub-section (4) of section 15.

(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of section 15 shall be final.

Chapter II

DECISIONS ON PAYMENT OF WAGES ACT, 1936

50 DLR (HCD) 22

Shaw Wallace Bangladesh Limited vs Tofazzal Hossain son of late Abdul Kader and others

Facts: One Mr. Tofazzel Hossain was an employee under the Shaw Wallace Bangladesh Ltd. He was engaged in the business of shipping agents, charterers etc. Mr. Tofazzel's service was terminated under section 19 of the Employment of Labour (Standing Orders) Act, 1965 vide a letter dated 31.12.92 in which was a complete statement showing the amount of termination benefits and provident fund totaling Tk. 1,76,349.90. Mr. Tofazzel received the amount in full and final settlement of his account with the Company on 11.01.93. However, Mr. Tofazzel sent another grievance petition dated 17.01.93 under section 25(1)(a) of the Employment of Labour (Standing Orders) Act, 1965 claiming gratuity which was denied by the Company. Subsequently Mr. Tofazzel filed an application under section 15(2) of the Payment of Wages Act, 1936 in the Third Labour Court, Dhaka claiming an amount of Tk. 1,00,300.00 as gratuity for 20 years at the rate of 2 month's wages for each completed year of service and Tk. 11,340.00 as bonus for the year 1992. The Labour Court allowed the case in part and directed the Company to pay Tk. 50,400.00 within 30 days. The Company filed an appeal before the Labour Appellate Tribunal who dismissed the appeal and directed the Company to pay an amount of gratuity of Tk. 50,400.00 and the cost of Tk. 2000.00 to Mr. Tofazzel within 30 days. Being aggrieved by the order of the Appellate Tribunal the Company moved a Writ Petition. The High Court Division turned down the decision of the Appellate Tribunal.

Issue before the Court:

(i) Whether the claim made under section 15(2) of the Payment of Wages Act, 1936 instead of making it under section 25 of the Standing Orders Act, 1965 is tenable in law or not.

(ii) Whether non-payment of gratuity comes under section 7 of the Payment of Wages Act.

(iii) Whether non-payment of gratuity by the employer can be considered as delay in payment of wages to the employee.

Judgment:

(a) Section 15 of the Payment of Wages Act makes provision to decide all claims arising out of (i) deduction from wages or (ii) delay in payment of wages of persons employed or paid. Deduction from wages has been dealt with section 7. There is no provision for gratuity to be deducted from wages under the Act. Therefore, non-payment of gratuity does not come within the scope of deduction of wages.

(b) The definition of 'wages' in section 2 does not include 'gratuity'. Section 2(vi)(e) specifically excludes gratuity from the definition of wages. Thus no claim can be made under section 15(2) as delay in payment of wages.

(c) The object and purpose of the Payment of Wages Act, 1936 and the objects and purposes of the Employment of Labour (Standing Orders) Act, 1965 and the Industrial Relations Ordinance are not in *pari materia* (in like matter). Their fundamentals are completely different in nature. Considering the objects of the Standing Orders and Industrial Relations Ordinance Mr. Tofazzel cannot seek relief under the Payment of Wages Act, his cause of action having been arisen under section 19 of the Standing Orders Act.

50 DLR (HCD) 606

Editor, Bangladesh Observer, & another vs Member, Labour Appellate Tribunal and other.

Facts: One Mr. Kabir (not real name) was appointed as an Editorial Assistant dated 1.3.73 with the Observer (employer). Since then he served the Observer in different capacities till his resignation with effect from 11.11.91. However, Mr. Kabir was given his gratuity, leave, salary and arrears amounting to Tk. 2,94,480.00 in total in spite of his written request. Hence he filed a case under section 15 of the Payment of Wages Act, 1936 in the

Third Labour Court, Dhaka who allowed the claim. The Employer moved an appeal to the Labour Appellate Tribunal which disallowed the appeal and maintained the judgment of the Labour Court with modification. The Observer filed a writ petition to the High Court Division. The High Court Division upheld the decision of the Appellate Tribunal.

Please note that almost same issues were before Their Lordship as were in the *Shaw Wallace* case mentioned above. However, on many points two decisions contrast each other fundamentally.

4 BLC (1999) 402
PM August, Director Operations of International Rail Consultants vs Chairman, First Labour Court
-and-
10 BLT (HCD) (2002) 202
Hayder Meah Vs. Authority appointed under section 15(1) of the Payment of Wages Act, 1936 Labour Court & Ors
Section-15 of the Payment of Wages Act, 1936

Facts: One Mr. Md Haider Meah was an employee of the Director Operations of International Rail Consultant, PM August. His service was terminated with effect from 26.4.1991. He was not given his dues, wages and other benefits and as a result he filed a Payment of Wages Case No. 67 of 1991 before the Third Labour Court, Dhaka claiming a sum of Tk. 1,72,509 and got an award. Since the Director Operations of International Rail Consultant turned down his claim and the Labour Court gave an award in his favour, PM August and the Director Operations of International Rail Consultant were in violation of section 5 of the Payment of Wages Act, 1936 and hence they have committed an offence under section 20 of the Payment of Wages Act, 1936. Pursuant thereto, Mr. Haider Meah instituted Criminal Case No. 38 of 1995 before the Authority appointed under section 15. Accordingly the Authority issued summoned upon the Director Operations of International Rail Consultant. In the meantime another case (*PM August, Director Operations Vs. Cahirman, First Labour Court and others*, 4 BLC (HCD) 402)[1] regarding the same matter by a different employee was reported with

[1] Please read the decision in *PM August, Director Operations Vs. Cahirman, First Labour Court and others*, 4 BLC (HCD) 402 and then compare it with *Hayder Meah Vs.*

the decision that the Authority under section 15 of the Payment of Wages Act has no power to take cognizance of offences mentioned in section 20 of the same Act. PM August relied on this decision and the Authority on the basis of this decision discharged PM August and also disposed of the Criminal Case No. 38 of 1995 as a whole. Being aggrieved by this discharge and disposal Hayder Meah filed the instant writ petition in the High Court Division. A Division Bench comprising two Justices heard the matter and differed with the views and decisions on *PM August, Director Operations Vs. Cahirman, First Labour Court and others*, 4 BLC (HCD) 402. Because one Division Bench has differed from the decision of another Division Bench, it is obligatory under Chapter VII, Rule 1 of the Appellate Side Rules of High Court of Judicature that the matter be referred to a Full Bench.[2] Accordingly, the Chief Justice referred the matter to a Full Bench consisting of three Justices. And this instant decision is the decision of the Full Bench. His Lordship Mr. Justice S.K. Sinha delivered the valuable judgment which we are concerned here. To be noted that the decision in PM August is no longer any law and the decision by the Full Bench is a binding law for all Benches of the High Court Division.

Issues before the Court:

(i) Whether the Authority under section 15 of the Payment of Wages Act, 1936 has been given exclusive power to take cognizance of offences mentioned in section 20 of the same Act.

(ii) Which procedure will govern the field in the absence of any provision in the Payment of Wages Act, 1936?

Authority appointed under section 15(1) of the Payment of Wages Act, 1936Labour Court & Ors, 10 BLT (HCD) (2002) 202.

[2] A Bench in the High Court Division may of as many as four types: Single Bench consisting of only one Justice, Division Bench consisting of two Justices, Full Bench consisting of three Justices and Larger Bench consisting of as many Justices as decided by the Chief Justice. All these are contemplated in the Rules of the High Court of Judicature. To avoid confusion, Rules of the High Court of Judicature for East Pakistan printed in 1960 is still the rules for our High Court Division as there has not been any fresh Rules enacted for this purpose.

(iii) Whether the Authority under section 15 of the Payment of Wages Act, 1936 is a court or authority? In other words, whether a writ petition lies against the decision of the authority under section 15?

Judgment:

The power of issuance of summons or a warrant is neither an ordinary nor an additional power of a Magistrate. No vesting of power is necessary upon any Tribunal or a Court for issuance of any process as per provisions either under section 68 of 75 of the CrPC (para 11 and 12). The CrPC provides the procedure to be followed in every investigation, inquiry, trial for every offence whether under the Penal Code or under any other law. The expression 'specific provision to the contrary' used in Sub-section (2) of Section 1 means when a special procedure has been laid down on a particular law, then the general provision of the Code cannot be applied. However, mere existence of special law does not exclude the operation of the Code unless the special law expressly or impliedly provides in that behalf.

The Payment of Wages Act is a special law which does not provide any procedure and manner of trial of the offences (para 12). Absence of any provision as to procedure on a particular matter does not mean that the court has no power in regard thereto (para 12).

Section 29 of the CrPC provides that if a Court is specified in any particular enactment by which the offence is created as having jurisdiction to try such offence, it is only such court that can try the offence and the trial by another court becomes without jurisdiction (Para 13).

The combined effect of sections 5(2) and 29(2) of the CrPC is that the inquiry should be held according to the provisions of the Code where the enactment which creates the offence indicates no special forum or procedure (Para 13).

Section 21 clearly empowers the authority appointed under section 15 of the Payment of Wages Act, 1936 to take cognizance of

offence against any person of contravention of sections 4-13 and 25 on a complaint on facts constituting such offence (Para 14).

Section 21(3) of the Payment of Wages Act, 1936 provides that the authority appointed under section 15 shall have exclusive power to take cognizance and try an offence under the said Act. Authority appointed under section 15 is either the Chairman of the Labour Court or a District Judge. The Government has appointed the Chairman of the Labour Court as the authority instead of the Labour Court consisting of the Chairman and two members (para 15). Power to try an offence includes power to take cognizance and to issue process as well. Section 21 of the Payment of Wages Act read with the provisions of the CrPC negates all reasonable doubt to conclude that that it is only the authority and the authority alone shall have the exclusive jurisdiction to take cognizance and to issue process against an accused person for commission of an offence punishable under the Payment of Wages Act, 1936 without being vested with the power of Magistracy.

We have no doubt in our mind that the authority appointed under section 15 of the Act is not a Civil Court subordinate to the High Court though it may have some of the trappings of such a court. Although it is difficult to give an exact definition of a Court in law, the various authorities show that, in order to be a Court in law in the true sense, it has to fulfill several tests and although the authority may have some of these trappings, it falls short of all the requisites of such a court. The person appointed as the authority under section 15 of the Payment of Wages Act is a *persona designata* and, therefore, not subordinate to the revisional jurisdiction of the High Court Division (Para 18) (*Golam Ahmed v Ata Karim*, 9 DLR 382, *Spring Mills V G.D. Ambedkar*, AIR 1949 Bom 188). The authority under section 15 being a *persona designata* writ petition challenging the order of the authority is maintainable.

10 BLT(2002) (AD) 107, 55 DLR (AD) (2003) 5

Bangladesh Water Development Board v The Chairman, Divisional Labour Court, Khulna,

Section-15 of the Payment of Wages Act and section 25 (I)(b) of the Standing Orders Act, 1965

Facts: One Mr. Momtaz Ali filed a complaint case No. 82 of 1994 on 2.7.1993 under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 for payment of all benefits like pension, gratuity and all other service benefits since the date of his appointment up to his retirement from service on 15.5.1993 rendering satisfactory services for 31 years. The Labour Court allowed the case directing the BWDB to pay all benefits from the date of his appointment. Meanwhile Mr. Momtaz Ali died and his heirs were substituted. The employer BWDB moved to the High Court Division by way of Writ Petition but the petition was summarily rejected. BWDB moved to the Appellate Division by way of leave to appeal.

Issue before the Court: To file and maintain an application under section 25(1)(b) of the Employment of Labour (Standing Orders) Act, 1965 the applicant must be a 'worker' as understood in the same Act. Once the applicant Mr. Momtaz Ali died, his heirs as substituted applicant could not be 'worker' within the meaning of the Act and the question is whether substituted heirs can continue the application or not?

Judgment: The Appellate Division decided two important points: one on point of bar under section 25 of the Standing Orders Act and other on point of jurisdiction for unpaid benefits under section 15 of the Payment of Wages Act, 1936.

(i) Under section 25(1)(b) any individual worker who has been dismissed, discharged, retrenched or laid-off or otherwise removed from employment and has a grievance could seek redress thereof under this section. However, a deceased worker is no longer a 'worker' and his heirs though substituted as applicant cannot be 'workers' within the meaning of the Act

and they cannot continue proceeding under section 25 of the Act.

(ii) However, the worker is entitled to all benefits consequent upon his retirement as permissible under the law including compensation at the rate of 30 days wages for each completed year of service in addition to other benefits and the worker upon his retirement not being paid off the said amount, is entitled to realise the same under the Payment of Wages Act, 1936.

(iii) The Labour Court being also the authority under section 15 of the Payment of Wages Act, 1936 can convert an application under section 25 into an application under section 15 of the Payment of Wages Act for the purpose of realisation of unpaid benefits. It would operate as hardship and futile exercise of application of legal provision, if the heirs of the deceased worker are put to a protracted litigation afresh for realisation of the benefits of their father who after the petitioner retired from the service. This Court can, as well for doing complete justice, in any cause treat the said application under Section 25(1)(b) as an application under the Payment of Wages Act, 1936 for realisation of the benefits consequent upon retirement of the deceased worker [Para-5].

APPENDIX

The EPZ Workers Association and Industrial Relations Act, 2004 (Act No. 23.of 2004)

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The Government of the People's Republic of Bangladesh

Ministry of Law, Justice and Parliamentary Affairs

Dated the 4th September, 2004

S.R.O. No.- 268/Law/2004- The Government, in exercise of the powers conferred by section 96 of the EPZ Workers Association and Industrial Relations Act 2004(Act No. 23 of 2004), is pleased to publish the authentic text translated into English from the original text in Bangla to be called the authentic English Text of the Act, and it shall be deemed to be effective from the date on which the original Bangla Text was made effective, namely, Sunday, July 18, 2004.

ACT NO. 23 OF 2004
AN ACT TO MAKE PROVISIONS RELATING TO THE EPZ WORKERS ASSOCIATION AND INDUSTRIAL RELATIONS

WHEREAS it is expedient and necessary to enact law in order to make provisions for recognizing the right of the workers to form association, regulation of relations and settlement of differences or dispute arising between employers and workers in the Export Processing Zones and for matters connected therewith and ancillary thereto;

it is hereby enacted as follows:-

CHAPTER - I
PRELIMINARY

1. **Short title, extend and commencement**.- (1) This Act may be called the EPZ Workers Association and Industrial Relations Act, 2004.
(2) It extends to the whole of Bangladesh.
(3) It shall apply to the workers and employers in the Export Processing Zones established under the Bangladesh Export

Processing Zones Authority Act, 1980 (Act No. XXXVI of 1980).

(4) It shall come into force at once.

2. **Definitions.**- In this Act, unless there is anything repugnant in the subject or context-

(1) **"arbitrator"** means a person appointed as such under section 53;

(2) **"Appellate Tribunal"** means a EPZ Labour Appellate Tribunal established under section 59;

(3) **"association"** means a workers association formed under this Act;

(4) **"Authority"** means the Bangladesh Export Processing Zones Authority established under the Bangladesh Export Processing Zones Authority Act, 1980 (Act No. XXXVI of 1980).

(5) **"award"** means the determination by Tribunal, Arbitrator or Appellate Tribunal of any industrial dispute or any matter relating thereto and it includes an interim award:

(6) **"Collective Bargaining Agent"** in relation to an industrial unit or units, means the workers association which under section 45, is the agent of the workers in the industrial unit or units in the matter of collective bargaining;

(7) **"company"** means a company registered under the Companies Act, 1994, having one or more industrial units in a Zone;

(8) **"conciliation proceedings"** means any proceeding pending before a Conciliator under this Act;

(9) **"Conciliator"** means a person appointed as such under section 48;

(10) **"employer"** in relation to an industrial unit, means any person or body of persons, whether incorporated or not, who or which employs workers in an industrial unit under a contract of employment; and a registered company employing workers in any industrial unit or units in a Zone shall be deemed to be an employer;

(11) **"Executive Chairman"** means the Executive Chairman of the Bangladesh Export Processing Zones Authority;

(12) **"Executive Council"** means the Council to which the management of the affairs of an association is entrusted by its constitution;

(13) **"EPZ"** means an export processing zone established under the Bangladesh Export Processing Zones Authority Act, 1980;

(14) **"illegal lock-out"** means a lock-out declared, commenced or continued otherwise than in accordance with the provisions of this Act;

(15) **"illegal strike"** means a strike declared, commenced or continued otherwise than in accordance with the provisions of this Act;

(16) **"industrial dispute"** means any dispute or difference between employers and workers, which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person;

(17) **"industrial unit"** means any industrial unit established in a Zone for manufacturing or producing any goods or commodity, and for the purposes of CHAPTERS II and III more than one industrial units under the same employer or company in a Zone shall be deemed to be one industrial unit;

(18) **"lock-out"** means the closing of a place of employment or part of such place or the suspension, wholly or partly, of work by an employer, or refusal, absolute or conditional, by an employer to continue to employ any number of workers employed by him where such closing, suspension or refusal occurs in connection with an industrial dispute, or closure of an industrial unit, suspension of work or refusal by the employer to allow the workers to work for the purpose of compelling workers to accept certain terms and conditions affecting employment;

(19) **"organization"** means the organization of the workers association of the eligible workers of an industrial unit for furthering and defending the interests of workers;

(20) **"officer"** in relation to an association means any member of the Executive Council thereof;

(21) **"prescribed"** means prescribed by rules or regulations

(22) **"regulation"** means regulations made under this Act;

(23) **"rules"** means rules made under this Act;

(24) **"settlement"** means a settlement arrived at in the course of conciliation proceeding, and includes an agreement between an employer and his workers arrived at otherwise than in the

course of any conciliation proceeding, where such agreement is in writing and has been signed by the parties thereto;

(25) **"strike"** means cessation of work by a group of workers employed in any industrial unit acting in combination under a common understanding;

(26) **"signature"** shall include thumb impression, if the expression is used in relation to a worker;

(27) **"Tribunal"** means an EPZ Labour Tribunal established under section 56;

(28) **"Workers Association"** means an association formed by workers for the purpose of regulating the relations between workers and employers under this Act;

(29) **"worker"** means any person (including an apprentice) not falling within the definition of employer, who is employed in an industry in a Zone for wages or reward either directly or through a contractor to do any skilled, unskilled, manual, technical or clerical work, whether the terms of employment be expressed or implied and for the purpose of any proceeding under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute, or whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute, but does not include a person-

(i) employed as a member of the watch and ward or security staff or confidential assistant, cipher assistant or as casual workers or workers employed by kitchen or food preparation contractors;

(ii) employed in a managerial or administrative capacity;

(iii) who, being employed in a supervisory capacity performs, by virtue of the duties attached to his office or by reason of the powers given to him, functions of managerial or administrative nature; and

(30) **"Zone"** means a Zone established by the government under section 10 of the Bangladesh Export Processing Zone Authority Act, 1980.

3. **Overriding effect of the Act**.- Notwithstanding anything contained to the contrary in any other law for the time being in force, the provisions of this Act shall prevail.

4. **Inability to exempt from any provision of the Act**. - The Government shall not, by notification in the official Gazette or otherwise, exempt any industry or any class or description of industries in a Zone or Zones from any of the provisions of this Act.

CHAPTER- II
WORKERS REPRESENTATION AND WELFARE COMMITTEE

5. **Workers Representation and Welfare Committee**. (1) After commencement of this Act, the Executive Chairman or any officer authorized by him in that behalf, shall require the employer and the workers in an industrial unit in a Zone to constituter, in prescribed manner, a Worker Representation and Welfare Committee, hereinafter referred to as the Committee.

(2) Every employer registered as a company with a separate certificate of incorporation and operating as such in a Zone shall have one Committee under it in that Zone:

Provided that two or more industrial units in a Zone under an employer registered as a company shall be deemed to be one industrial unit for the purpose of this section.

(3) The Committee shall, subject to the provision of sub-section (4), consist of not more than 15 (fifteen) and not less than 5 (five) members with one of them as the convener.

(4) If number of workers eligible to vote is above 500 (five hundred), the number of members in the Committee shall be increased over 05

(five) at the ratio of 1 (one) per 100 (one hundred) workers, but shall not exceed the aforesaid 15 (fifteen).

(5) The Committee shall be formed only with the eligible workers employed in the industrial unit in a Zone for which the Committee is formed.

(6) The members of a Committee shall be elected through secret ballots from among the eligible workers, and the Convener from among the elected members of the said Committee, in a manner to be determined by the Executive Chairman.

(7) The procedure of election under this Chapter shall be determined by the Authority.

(8) The employer shall provide necessary space within the Zone for establishing the office of the Committee.

6. **Special definition of eligible worker.**- For the purpose of this Chapter "eligible worker".-

(a) in relation to capacity to elect members in the Committee, in respect of an industrial unit which has commenced commercial production prior to the commencement of this Act, shall mean a worker from the first day of his service;

(b) in relation to capacity to be elected as a member in the Committee, in respect of an industrial unit which has commenced commercial production prior to the commencement of this Act, shall mean a confirmed worker for not less than 9 (nine) months.

(c) in relation to capacity to elect members in the Committee in respect of an industrial unit, commencing commercial production after commencement of this Act, shall mean a confirmed worker for not less than 3 (three) months; and

(d) in relation to capacity to be elected as a member in the Committee, in respect of an industrial unit commencing commercial production after commencement of this Act, shall mean a confirmed worker for not less than 3 (three) months employed in the concerned industrial unit in a Zone for which the Committee is formed.

7. **Registration and status of Workers Representation and Welfare Committee.-** (1) The Workers Representation and Welfare Committee for any industrial unit in a Zone shall be registered with a name with the Executive Chairman of the Authority.

(2) The Committee registered under sub-section (1) shall be deemed to be a body corporate and as such shall have capacity, in its registered name, to enter into contract, perform limited functions within the ambit of this Act, to sue and be sued and to do and perform all other incidental acts and functions; and it shall have a common seal and perpetual succession.

8. **Rights and Functions of the Committee.-** (1) A Committee shall have the right to negotiate with the employer on working conditions, remuneration or payment for productivity enhancements and worker education programs. No reasonable requests for information from the Committee to the employer for negotiation purposes relating to working conditions, remuneration or payment for productivity enhancements and worker education programs shall be denied.

(2) During the existence of a Committee in any industrial unit in a Zone, the wages and financial benefits determined by the Authority shall be in effect; and any benefit as per sub-section (1) shall be in addition thereto.

(3) Any agreement between the employer and the Committee shall be in writing, and such agreement effected by negotiations under sub-section (1) shall be legally binding and judicially enforceable.

(4) The functions of the Committee shall be to engage in industrial relations, conflict prevention and resolution, and also to promote measures for securing and preserving good relations between an employer and his workers and, in particular-

(a) to endeavour to maintain understanding between the employer and workers ;

(b) to promote security of employment for the workers and conditions of safety, health and job satisfaction in the work;

(c) to encourage vocational training within the industrial unit;

(d) to take measures for facilitating good and harmonious working conditions in the industrial unit; and

(e) to discuss other matter of mutual interest with a view to promoting better labour-management.

(5) The Authority may further provide, by regulations, for details regarding the role and other functions of such a Committee.

9. **Meeting of the Committee** - (1) The Workers Representation and Welfare Committee shall meet at least once in every two months, to discuss and exchange views for recommending measures for performance of the functions under section 8.

(2) The proceedings of every meeting of the Committee shall be submitted to the Executive Chairman and the Conciliator within fifteen days of the date of the meeting.

10. **Freedom of Committee** -(1) Subject to provisions of sub-section (2), a Committee formed under this section shall be independent to draw up its own internal policies, rules and procedures.

(2) The internal policies, rules and procedures to be drawn up by the Committee under sub-section (1) shall not be inconsistent with any provision of this Act and rules or regulations made under the Act.

11. **Duration and cessation of Committee.** - (1) A Committee constituted in a Zone shall be in existence till October 31, 2006.

(2) Subject to the provision of sub-section (3), a Committee may continue to function even after October 31, 2006 at the option of the employer.

(3) A Committee shall cease to exist as soon as a Workers Association is formed in that industrial unit.

12. **Protection and discipline of elected officers of Committee.**- (1) The Convener or any member of a Committee shall not be transferred from one Zone to another or one industrial unit to another within the Zone without the prior approval of the Executive Chairman.

(2) The Convener or any member of a Committee shall not be suspended, dismissed, terminated or otherwise removed from the employment without the prior approval of the Executive Chairman.

(3) Notwithstanding the provision of sub-section (2), the employer shall not be deemed to be barred from suspending any elected officer of a Committee or drawing up disciplinary proceedings against him on the allegation of unfair labour practice prohibited under this Act, or rules or regulations made thereunder.

(4) The Executive Chairman shall have the authority to rule on the legitimacy of any action of the employer under sub-section (3) so as to uphold or set aside the action and also to direct to reinstate the officer to his position and reimburse him with unpaid wages.

CHAPTER-III
WORKERS ASSOCIATION

13. **Formation of Workers Association-** (1) With expiry of October 31, 2006 and beginning of November 1, 2006, the workers in an industrial unit situated within the territorial limits of a Zone shall have the right to form association to engage in industrial relations subject to the provisions made by or under this Act.

(2) Every employer registered as a company with a separate certificate of incorporating and operating as such in a Zone shall have one Workers Association under it in that Zone:

Provided that two or more industrial units in a Zone under an employer registered as a company shall be deemed to be one industrial unit for the purpose of this section.

(3) The duration of a Workers Association shall be through October 31, 2008 from November 1, 2006.

14. **Requisition for formation of association.** - (I) If the workers in an industrial unit situated within the territorial limits of a Zone intend to form an association, not less than 30% (thirty percent) of the eligible workers of the industrial unit shall apply in a prescribed form to the Executive Chairman demanding formation of a workers association.

(2) Upon receipt of an application under sub-section (1), the Executive Chairman shall verify and ascertain that not less than 30%

(thirty percent) of the eligible workers have subscribed to the application by signature or thumb impression.

(3) No employer shall in any manner discriminate against a worker for subscribing to an application under sub-section (1), should ultimately the workers association be not formed on the basis of the result of the referendum held under section 15; and any such discrimination shall be deemed to be an unfair labour practice by the employer under section 41.

(4) A form signed by a worker under this section shall remain valid up to six months from the date of its signature; and such form shall not be filled in or signed before November 1, 2006.

15. **Referendum to ascertain support for association.-** (1) If the Executive Chairman is satisfied under sub-section (2) of section 14 that not less than 30% of the eligible workers have applied in prescribed forms demanding formation of association, he shall arrange to hold a referendum of the eligible workers of the industrial unit within the Zone, within a period not later than five days from the date of receipt of the application under sub-section (1) of section 14 to ascertain the support of the eligible workers in favour of formation of workers association.

(2) If more than 50% (fifth percent) of the eligible workers do not cast votes, the referendum under this section shall be ineffective.

(3) If more than 50% (fifty percent) of the workers cast votes, and more than 50% (fifty percent) of the votes cast are in favour of formation of workers association, the workers in the said industrial unit shall, thereby, acquire the legitimate right to form an association under this Act; and the Executive Chairman shall be required to accord registration to that association within 25 (twenty five) working days of the date of the referendum.

(4) The referendum shall be held through secret ballots and the Executive Chairman shall determine the necessary procedure in respect of holding of the referendum, if not, in the meantime, prescribed by regulations.

16. **No further referendum in one year.-** If in a referendum held under section 15, mandate can not be obtained for formation of workers association, no further referendum shall be held for the same industrial unit until the expiry of one year since thereafter.

17. **Constitution of the workers association.-** (1) If workers exercise their option under section 15 in favour of formation of workers association, the Executive Chairman shall, within a period not later than five days thereafter, ask the workers to form a Constitution Drafting Committee (hereinafter referred to as the "the Constitution Committee" as and when deemed to be appropriate), consisting of not more than nine representatives with one of them as the Convener.

(2) The Executive Chairman shall, on being satisfied, approve the Constitution Committee within 5 days of receipt of the proposal, and shall ask the Constitution Committee to frame and submit a constitution of the workers association within a period of 15 days.

(3) No provision of the constitution shall be contrary to any provision of this Act, and it shall conform to the provisions of this Act.

(4) The constitution of an association under this Act shall propose,

(a) a General Council to consist of the eligible workers who shall be registered as members of the workers association; and

(b) an Executive Council to consist of, among other positions, a President, a General Secretary, a Treasure and such number of other positions not exceeding fifteen in total. All the members in the Executive Council shall be elected by the members of the General Council.

18. **Further requirements of the constitution.-** (1) A constitution for the formation of an association shall not be approved under this Act, unless the constitution thereof further provides for the following matters, namely:-

(a) the name and address of the workers association;

(b) the objects for which the workers association has been formed;

(c) the manner in which a worker may become a member of the workers association specifying therein that no worker shall be enrolled as its member unless he applies in the form set out in the constitution;

(d) the sources of the fund of the workers association and the purposes for which such fund shall be applicable;

(e) the conditions under which a member shall be entitled to any benefit assured by the constitution of the workers association and under which any fine or forfeiture may be imposed on him;

(f) the maintenance of a list of the members of the workers association and of adequate facilities for the inspection thereof by the officers and members of the workers association;

(g) the manner in which the constitution shall be amended, varied or repealed;

(h) the safe custody of the funds of workers association, its annual audit, the manner of audit and adequate facilities for inspection of the account books by the officers and members of workers association;

(i) the manner in which the workers association may be deregistered;

(j) the manner of election of officers by the General Council of the workers association and the term for which an officer may hold office upon his election or re-election;

(k) the procedure about resignation from the General Council of the workers association and cancellation of membership;

(l) the procedure for expressing want of confidence in any officer of the workers association; and

(m) the meetings of the Executive Council and General Council of the workers association, where there shall be obligation for the Executive Council to meet at least once in every four months and for the General Council to meet at least once in every year.

(2) No workers association shall obtain or receive any fund from any outside source without the prior approval of the Executive Chairman.

19. **Approval of Constitution -** The Executive Chairman, on being satisfied that the constitution has been framed with due compliance with the provisions of the Act and does not contravene any provisions of the

Act and rules or regulations, shall approve the constitution and shall issue a letter of approval to that effect within 5 days.

20. **Application for registration of association.-** The Convener of the Constitution Drafting Committee shall apply to the Executive Chairman for registration of the workers association formed under the constitution approved under section 19.

21. **Requirements for application.-** Every application for registration of workers association shall be made to the Executive Chairman and shall be accompanied by-

a) three copies of the approved constitution; and

b) a statement showing-

(i) the name of the workers association and its address;

(ii) date of formation of the association;

(iii) the titles, names, ages, addresses of the members of the workers association; and

(iv) a statement of total paid membership.

22. **Registration of association.-** (1) The Executive Chairman, on being satisfied that the workers association has complied with all the requirements of this Act and has been formed within the framework of the approved constitution, shall register the workers association in a prescribed register within a period of 10 days from the date of receipt of the application under section 20.

(2) If the application is found by the Executive Chairman to be deficient in a material respect or respects, he shall communicate in writing his objection to the workers association within a period of 10 days from the receipt of the application and the workers association shall reply thereto within a period of 10 days from the date of receipt of the objections.

(3) When the objections raised by the Executive Chairman have been satisfactorily met, the Executive Chairman shall register the workers association as provided in sub-section (1), and if the objections are not satisfactorily met, the Executive Chairman may reject the application.

(4) If the application is rejected or the Executive Chairman has, after settlement of the objections, delayed disposal of the application beyond the period of 10 days provided in sub-section (1), the workers association may apply to the Tribunal which, for reasons to be stated in its judgment, may pass an order directing the Executive Chairman to register the workers association and to issue a certificate of registration, or may reject the application.

23. **Certificate of registration.-** The Executive Chairman, on registering an association under section 22, shall issue a certificate of registration in the prescribed form which shall be deemed to be the conclusive evidence that the workers association has been duly registered under this Act.

24. **No association in a new industrial unit for three months.** No workers association shall be allowed to be formed under this Act, in any industrial unit established in a Zone after the commencement of this Act, unless a period of three months has expired after the commencement of commercial production in that industrial unit.

25. **Restriction in respect of number of association.-** (1) There shall not be more than one workers association in an industrial unit in a Zone.

(2) If there are more than one industrial unit under the same employer or company in a Zone and any of the said units comes within the restriction under section 24, that shall not bar formation of workers association for rest of the units.

26. **Authority of the Executive Chairman to determine ownership of an industrial unit.-** If any doubt or dispute arises as to whether any two or more industrial units are under the same employer within the same Zone, the decision of the Executive Chairman on that issue shall be final.

27. **Activities and membership of association.-** (1) The activities of the workers association shall be confined only within the territorial limits of the Zone.

(2) A worker shall be eligible to be a member only of the workers association in respect of the industrial unit in which he is employed.

(3) Subject to the right to form Federation of Workers Associations under section 32, an association formed within the territorial limits of one Zone shall not associate or affiliate in any manner with another workers association in the same Zone or another Zone or with any other workers association beyond any Zone.

28. **Election of Executive Council.-** (1) The member of the Executive Council of a workers association formed under this Act shall be elected by the registered general members of the said workers association through secret ballot in an election organized and conducted by the Authority.

(2) Only eligible workers shall be entitled to vote and to be elected to an office in the Executive Council under this Chapter.

(3) For the purposes of this Chapter "eligible worker"-

(a) in relation to capacity to elect membels in the Executive Council in respect of an industrial unit which has commenced commercial production prior to the commencement of this Act, shall mean a worker from the first day of service ;

(b) in relation to capacity to be elected as a member in the Executive Council, in respect of an industrial unit which has commenced commercial production prior to the commencement of this Act, shall mean a confirmed worker in the concerned industrial unit for not less than 9 (nine) months;

(c) in relation to capacity to elect members in the Executive Council in respect of an industrial unit, commencing commercial production after commencement of this Act, shall mean a confirmed worker in the concerned industrial unit for not less than 3 (three) months; and

(d) in relation to capacity to be elected as a member in the Executive Council, in respect of an industrial unit commencing commercial production after commencement of this Act, shall mean a confirmed

worker for not less than 3 (three) months in the concerned industrial unit.

29. **Approval of the Executive Council.-** The Executive Council, if duly elected within the framework of the constitution, shall be approved by the Executive Chairman within 5 (five) days of the declaration of results of the election.

30. **Tenure of the Executive Council-** The Executive Council of an association shall hold office for a period of four years from the date of its being approved by the Authority, unless earlier de-registered or otherwise ceases to exist on or October 31, 2008.

31. **Holding of next election.-** (1) The next election of the Executive Council of an association shall be held within the period of 90 days prior to the date of expiration of the fixed term.

(2) If the Executive Council of an association is dissolved prior to expiration of the fixed term, the next election shall be held within 90 days after such dissolution.

32. **Federation of Associations.-** (1) If more than 50% (fifty percent) of the workers associations in a Zone agree, they shall be entitled to form one Federation of Workers Associations in that Zone.

(2) Unless earlier de-registered or cease to exist, a federation formed under this section shall hold office for a period of four years from the date of its being approved by the Executive Chairman.

(3) A federation formed within the territorial limits of one Zone shall not affiliate or associate in any manner with another federation in another Zone or with any other federation beyond any Zone.

(4) The Authority shall determine, by regulations, the procedure of election and other details in respect of the Federation of Workers Association.

33. **Disqualifications for being an officer of an association.-** Notwithstanding anything contained in the constitution or the rules of the workers association, a person shall not be entitled to be, or to be elected as, an officer of the workers association if he has been convicted of an offence involving moral turpitude or an offence punishable under this Act

or rules or regulations, and sentenced to imprisonment for any term, unless a period of two years has elapsed since his release.

34. **Maintenance of register, etc. by registered workers association**- Every registered workers association shall maintain in such form as may be prescribed-

(a) a register of members showing particulars of subscriptions paid by each member;

(b) an accounts book showing receipts and expenditure; and

(c) a minute book for recording the proceedings of meetings.

35. **De-registration of workers association.**- (1) At any time during the existence of a workers association, not less than 30% of the eligible workers may apply in prescribed form to the Executive Chairman demanding de-registration of the Association.

(2) Upon receipt of an application under sub-section (1), the Executive Chairman shall verify and ascertain that not less than 30% of the eligible workers have subscribed to the application by signature or thumb impression.

(3) If the Executive Chairman is satisfied under sub-section (2), he shall hold a referendum in 5 days by secret ballots of the eligible workers to ascertain demand in favour of such de-registration.

(4) If more than 50 percent of the eligible workers cast votes in the referendum and if more than 50 percent of the votes cast are in favour of de-registration of the Association, the Executive Chairman shall, within 25 days thereafter, issue an order notifying de-registration.

(5) No employer shall in any manner discriminate against a worker for subscribing to an application under sub-section (1), should ultimately the workers association be not be de-registered under sub-section (4) on the basis of the result of the referendum held under sub-section (3); and any such discrimination shall be deemed to be an unfair practice on the part of the employer under section 41.

(6) The Authority shall, by regulations, determine and prescribe procedure and further details in respect of referendum under this section.

(7) Once an association is de-registered under this section, no further association shall be allowed in that industrial until the expiry of one year from the date of notification of de-registration.

(8) A form signed by a worker under sub-section (1) shall remain valid up to six months from the date of signature.

36. Cancellation of registration of Workers Association.-(1) In addition to the procedure regarding de-registration under section 35, the Executive Chairman may also, subject to the provision of sub-section (2), cancel the registration of a workers association on any of the grounds stated below, that the workers association has-

(a) ceased to exist on any ground;
(b) obtained registration by fraud or by misrepresentation of facts;
(c) contravened any of the provisions of its constitution;
(d) committed any unfair practice;
(e) inserted in its constitution any provision which is inconsistent with this Act or rules or regulations made thereunder;
(f) failed to submit its annual report to the Executive Chairman as required under this Act;
(g) elected as its officer a person who is disqualified under this Act to be elected as such officer; or
(h) contravened any of the provisions of this Act or rules or regulations made thereunder.

(2) Where the Executive Chairman is of opinion that the registration of a workers association should be cancelled, he shall submit an application to the Tribunal praying for permission to cancel such registration.

(3) The Executive Chairman shall cancel the registration of a workers association within five days of the date of receipt of permission from the Tribunal.

(4) The registration of an association shall not be cancelled on the ground mentioned in clause (d) of sub-section (1) if the unfair practice is not committed within three months prior to the date of submission of the application to the Tribunal.

37. **Appeal against cancellation of registration-** An association aggrieved by an order of the Tribunal under sub-section (3) of section 36, may, within 30 days from the date of the order, appeal to the Appellate Tribunal, and the Appellate Tribunal may uphold, reject or amend the order.

38. **No workers association to function without registration.-** (1) No workers association, which is not registered, or has been de-registered, or registration of which has been cancelled, shall function as workers association or collective bargaining agent.

(2) No person shall collect any subscription for the fund of any workers association mentioned in sub-section (1).

39. **Powers and functions of the Executive Chairman. -** The following shall be the powers and functions of the Executive Chairman-

(a) to register workers associations under this Act and maintain a register for that purpose;

(b) to lodge complaints with the Tribunal for action against workers associations or employers for any alleged offence or any unfair practice or violation of any provision of this Act, rules or regulations;

(c) to determine the question as to the legitimacy of any workers association formed for any industrial unit or units in a Zone and its capacity to act as the Collective Bargaining Agent; and

(d) to exercise or perform such other powers or functions as may be conferred by rules or regulations.

40. **Incorporation of workers association -** (1) Every registered workers association shall be a body corporate and shall have perpetual

succession with a common seal and power to contract and to acquire, hold and dispose of property, and it may, by its name, sue and be used.

(2) The employers shall provide space within the Zone for establishment of the office of the Workers Association.

CHAPTER-IV
UNFAIR PRACTICES, AGREEMENTS, ETC.

41. **Unfair practices on the part of employers.** - (1) It will be an act of unfair practice for an employer, or person acting as employer, to-

(a) impose any condition in a contract of employment to restrain the right of a person who is a party to such contract to join an association or continue his membership of an association;

(b) refuse to employ or refuse to continue to employ any person on the ground that such person is or is not, a member or officer of an association;

(c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is or is not, a member or officer of an association;

(d) dismiss, discharge, remove from employment or threaten to dismiss, discharge or remove from employment a worker or injure or threaten to injure him in respect of his employment by reason that the worker-

(i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of an association; or

(ii) participates in the promotion, formation or activities of an association; or

(iii) exercise any right under this Act;

(e) induce any person to refrain from becoming, or to cease to be, a member or officer of an association, by conferring or offering to confer any advantage on, or by

procuring or offering to procure any advantage for such person or any other person;

(f) compel any officer of the workers association to sign a memorandum by intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of water, power or telephone facilities or resorting to and other similar technique;

(g) interfere with or influence, in any manner, the balloting provided for holding of any election under this Act; or

(h) recruit any new worker during the period of strike under section 54, or during the continuation of a strike which is not illegal, except where the Executive Chairman has, being satisfied that complete cessation of work is likely to have the risks of causing serious damage to the machinery or installation or future operation of the industry, permitted temporary employment of such limited number of workers as may be deemed necessary to avoid the aforesaid likely risks.

(2) Nothing in sub-section (1) shall be deemed to preclude an employer from requiring that a person upon his appointment or promotion to managerial position shall cease to be or be disqualified from being, a member or officer of an association.

42. **Unfair practices on the part of workers or association.** - (1) It will be an act of unfair practice for a worker, workers association or any person acting on behalf of such a workers association to -

(a) persuade a worker to join or refrain from joining an association during working hours;

(b) intimidate any person to become, or refrain from becoming or to continue to be or to cease to be a member or officer of an association;

(c) induce any person to refrain from becoming, or cease to be a member or officer of an association, by conferring or offering to confer any advantage on or by procuring or offering to procure any advantage for, such person or any other person;

(d) compel or attempt to compel the employer to sign a memorandum of settlement by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of telephone, water and power facilities or resorting to any other similar technique; or

(e) compel or attempt to compel any worker to pay, or refrain from paying, any subscription towards the fund of any workers association by using intimidation, coercion, pressure, threat, confinement to a place, physical injury disconnection of telephone, water and power facilities or resorting to any other similar technique.

(2) It shall be an unfair practice for a worker or an association to interfere with a ballot for holding any referendum or election under this Act, by the exercise of undue influence, intimidation, impersonation or by bribery through its Executive Council or through any person acting on its behalf.

43. **Enforceability of agreement.** - (1) An agreement reached between an association and the employer shall be legally binding upon the parties and it shall be judicially enforceable.

(2) Nothing in this section shall enable any civil court to entertain any legal proceedings instituted for the express purpose of enforcing, or recovering damages for the breach of any agreement.

44. **Submission of returns and information.** - (1) There shall be submitted annually to the Executive Chairman on or before such date as may be prescribed, a general statement audited in the prescribed manner of all receipts and expenditure and of the assets and liabilities of every workers association of the previous year ending on the 31st day of December.

(2) Together with the general statement, there shall be sent to the Executive Chairman, a statement showing the up to the date position of all members of the Executive Council and the General Council of the year to which the general statement refers, together with a copy of the constitution of the workers association corrected up to the date.

(3) A copy of every alteration made in the constitution of the workers association and of a resolution of the General Council having the effect of a provision of the constitution shall be sent to the Executive Chairman within 15 (fifteen) days of the making of the alteration or adoption of the resolution.

45. **Collective Bargaining Agent** - (1) The workers association registered under this Act in an industrial unit shall be the Collective Bargaining Agent (CBA) for that industrial unit.

(2) It shall have the right to negotiate with the employer on wages, hours and other terms and conditions of employment. No reasonable request for information from the association to the employer for negotiation purposes shall be denied.

(3) The Collective Bargaining Agent in relation to an industrial unit shall be further entitled to-

(a) undertake collective bargaining with the employer on matters connected with employment, non-employment, and the conditions of work;

(b) represent all or any of the workers in any proceedings; and

(c) give notice of, and declare, a strike in accordance with the provisions of this Act.

(4) In any Zone where under any employer or company there is a registered workers association, only the minimum starting wages, as are determined by law or other applicable legal orders for the workers there at the entry level, shall apply. Other wage issues such as increments, promotions, or other enhanced benefits would be subject to negotiation between the association and the employer.

46. **Check- off.-** (1) If a Collective Bargaining Agent so requests, the employer of the member-workers of an association shall deduct from the wages of those workers such amounts, not exceeding one percent of the basic wage towards their subscription to the funds of the workers associational as may be specified with the approval of each such individual

worker named in the demand statement furnished by the workers association.

(2) An employer, making any deduction from the wages under subsection (1) shall, within 15 (fifteen) days thereafter, deposit the entire amount so deducted by him in the account of the workers association on whose behalf such deductions have been made.

(3) The employer shall provide facilities to the Collective Bargaining Agent for ascertaining whether deductions from the wages of its members are being made under sub-section (1).

CHAPTER-V
CONCILIATION AND ARBITRATION

47. **Negotiation relating to industrial disputes.-** (1) If, at any time, an employer or a Collective Bargaining Agent finds that an industrial dispute is likely to arise between the employer and any of the workers, the employer or, as the case may be, the Collective Bargaining Agent shall communicate his or its views in writing to the other party.

(2) Within fifteen days of the receipt of a communication under sub-section (1), the party receiving it shall, in consultation with the representatives of the other party, arrange a meeting with the representatives of the other party for collective bargaining on the issues raised in the communication with a view to reaching an agreement thereon through the procedure of a dialogue.

(3) If the parties reach a settlement on the issues discussed, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded to the Executive Chairman and the Conciliator.

48. **Conciliator.-** The Government shall, upon recommendation of the Executive Chairman, by notification in the official Gazette, appoint as many conciliators as it considers necessary for the purposes of this Act and shall specify in the notification the Zone or Zones within which, or the class of industrial units or industries in relation to which, or the class

of industrial units or industries in relation to which in a Zone or Zones, each one of them shall perform his functions.

49. **Conciliation before notice of strike, etc.-** Where the parties to an industrial dispute fail to reach a settlement by negotiation under section 47, any of them may report to the Executive Chairman and the Conciliator that the negotiations have failed and request the Conciliator in writing to conciliate in the dispute and the Conciliator shall, on receipt of such request, proceed to conciliate in the dispute.

50. **Notice of strike or lock out-** (1) If the Conciliator fails to settle the dispute within 10 days from the date of receipt of a request made under section 49, the Collective Bargaining Agent or the employer may, subject to the provision of sub-section (2), and in accordance with the provisions of this Act, serve on the other party to the dispute 21 days' notice of strike or, lock-out, as the case may be.

(2) No Collective Bargaining Agent shall serve any notice of strike unless three-fourths of the members of the Executive Council of the workers association have given their consent to it through secret ballots specifically held for the purpose, in a manner approved by the Executive Chairman, if not, in the meantime, prescribed by regulations.

51. **Conciliation after notice of strike or lock-out.-** (1) Where a party to an industrial dispute serves a notice of strike or lock-out under section 50, it shall, simultaneously with the service of such notice, deliver a copy thereof to the Conciliator who shall proceed to conciliate or, as the case may be, continue to conciliate in the dispute notwithstanding the notice of strike or lock-out.

(2) Before proceeding to conciliate in the dispute, the Conciliator shall satisfy himself as to the validity of the notice of strike, and if the notice does not conform to the provisions of this Act or the rules of the constitution of the concerned workers association, the notice of strike shall not be deemed to have been given under the provisions of this Act, and in such case the Conciliator may, at his discretion, decide not to proceed with the conciliation.

52. **Proceedings before Conciliator.-** (1) The Conciliator shall, as soon as possible, call a meeting of the parties to the dispute for the purpose of settlement of the dispute through conciliation.

(2) The parties to the dispute shall appear before the Conciliator in person or through their nominated representatives, and they may authorise such representatives to negotiate on their behalf and to enter into agreement to be binding on them.

(3) The Conciliator shall perform such functions in relation to a dispute before him as may be prescribed, and may, in particular, suggest to either party to the dispute such concessions or modifications in its demand as are, in the opinion of the Conciliator, likely to promote an amicable settlement of the dispute.

(4) If a settlement of the dispute or of any matter in dispute is arrived at in the course of the proceedings before him, the Conciliator shall send a report thereof to the Executive Chairman together with the memorandum of settlement signed by the parties to the dispute.

(5) If no settlement is arrived at within the period of the notice of strike or lock -out, the conciliation proceedings may be continued for such further period as may be agreed upon by the parties.

53. **Arbitration.-** (1) If the conciliation fails, the Conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator, and if the parties agree, they shall make a joint request in writing for reference of the dispute to an Arbitrator agreed upon by them.

(2) The Arbitrator, to whom a dispute is referred under sub-section (1), shall be a person borne on a panel to be maintained by the Executive Chairman; and such a panel of Arbitrators shall be reviewed by the parties every 18 months.

(3) The Arbitrator shall give his award within 30 days from the date on which the dispute is referred to him under sub-section (1) or such other extended time as may be agreed upon by the parties to the dispute.

(4) After he has made an award, the Arbitrator shall forward a copy thereof to the parties and to the Executive Chairman for its due implementation.

(5) The award of the Arbitrator shall be final and binding upon the parties, and no appeal shall lie against it. It shall be valid for a period not exceeding two years or as may be fixed by the Arbitrator.

54. **Strike and Lock-out.-** (1) If no settlement is arrived at during the course of conciliation proceedings and the parties to the dispute do not agree to refer it to an Arbitrator under section 53, the workers may go on strike or, as the case may be, the employer may declare a lock-out, on the expiry of the period of the notice under section 50, or upon the issuance of a certificate by the Conciliator to the parties to the dispute to the effect that the conciliation proceedings have failed, whichever is the later.

(2) The parties to the dispute may, at any time, either before or after the commencement of a strike or lock-out, make a joint application to the EPZ Labour Tribunal for adjudication of the dispute:

(3) If a strike or lock-out continues for more than 15 days, the Executive Chairman may, by order in writing, prohibit the strike or lock out.

(4) Notwithstanding the provision of sub-section (3), the Executive Chairman may , by order in writing, prohibit a strike or lock-out at any time before the expiry of 15 days, if he is satisfied that the continuance of such strike or lock-out is causing serious harm to productivity in the Zone or is prejudicial to public interest or national economy.

(5) In any case in which the Executive Chairman prohibits a strike or lock-out, he shall, forthwith, refer the dispute to the EPZ Labour Tribunal.

(6) The Tribunal shall, after giving both the parties to the dispute an opportunity of being heard, make such award as it deems fit as expeditiously as possible, but not exceeding 40 days from the date on which the dispute was referred to it.

(7) The Tribunal may also make an interim award on any matter of dispute, and any delay by the Tribunal in making an award shall not affect the validity of any award made by it.

(8) An award of the Tribunal shall be valid for such period, as may be specified in the award, but shall not be valid for more than two years.

CHAPTER-VI
EPZ LABOUR TRIBUNAL, APPELLATE TRIBUNAL, ETC.

55. **Application to EPZ Labour Tribunal.-** Any Collective Bargaining Agent or worker may apply to the EPZ Labour Tribunal for the enforcement of any right under any law or any award or settlement.

56. **EPZ Labour Tribunal.-** (1) The Government shall, by notification in the official Gazette, establish for the Export Processing Zones as many EPZ Labour Tribunals as it considers necessary to dispose of industrial disputes and try offences under this Act, and where it establishes more than one EPZ Labour Tribunal, it shall specify in the notification the Zone or Zones in which each of those shall exercise jurisdiction under this Act.

(2) A Tribunal shall consist of a Chairman appointed by the Government and two Members to be appointed in the prescribed manner to advise the Chairman, one to represent the employer and the other to represent the worker.

(3) A person shall not be qualified for appointment as Chairman unless he has been or is a District Judge or an Additional District Judge.

(4) A EPZ Labour Tribunal shall-

(a) adjudicate and determine an industrial dispute which has bee referred to or brought before it under this Act;

(b) enquire into and adjudicate any matter relating to the implementation or violation of a settlement which is referred to it by the Executive Chairman;

(c) try offences under this Act and rules or regulations made thereunder, and such other offences under any other law

as the Government may, by notification in the official Gazette, specify in this behalf; and

(d) exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under this Act or any other law.

(5) Notwithstanding anything contained in the Workmen's Compensation Act, 1923, or the Payment of Wages Act, 1936, the Government may, by notification in the official Gazette, appoint a Tribunal to be, or confer upon it any power or function of any, Authority under any of the said Act, and upon such notification, the Tribunal shall be deemed to be such Authority and shall exercise the powers and perform the functions of such Authority under the relevant Act.

(6) If any one Member of the Tribunal is absent from, or is otherwise unable to attend any sitting of the Tribunal, the proceedings of the Tribunal may continue, and the decision or award may be given in the absence of such one Member; and no act, proceedings, decision or award of the Tribunal shall be invalid or be called in question merely on the ground of such absences of that Member.

57. **Procedure and powers of Tribunal.-** (1) Subject to the provisions of this Act, the Tribunal shall, in matters of criminal proceedings, follow as nearly as possible summary procedure as prescribe under the Code of Criminal Procedure, 1898.

(2) A Tribunal shall, for the purpose of trying an offence under the Act, have the same powers as are vested in the Court of a Magistrate of the first class under the Code of Criminal Procedure, 1898, and shall, for the purpose of appeal from a sentence passed by it, be deemed to be a Court of Sessions under that Code.

(3) A Tribunal shall, for the purpose of adjudicating and determining any industrial dispute, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908, including the powers of-

(a) enforcing the attendance of any person before the Tribunal and examining him on oath;

(b) compelling the production of documents and material objects to the tribunal;

(c) issuing commissions for the examination of witnesses or documents; and

(d) delivering *ex parte* decision in the event of failure of any party to appear before the Tribunal.

(4) No Court fee shall be payable for filing, exhibiting or recording any document, or obtaining any document from the Tribunal.

58. **Awards and decisions of Tribunal.-** (1) An award or decision of the Tribunal shall be given in writing and delivered in open Tribunal and a copy thereof shall be forwarded forthwith to the Executive Chairman.

(2) An award or decision of a Tribunal shall, in every case, be delivered within 25 days following the date of filing of the case, unless the parties to the dispute give their consent in writing to extend the time limit.

(3) No award or decision of a Tribunal shall be invalid merely on the ground of delay in its delivery.

(4) Any party aggrieved by an award given under sub-section (1), may prefer an appeal to the Appellate Tribunal within 30 days of the delivery thereof and the decision of the Appellate Tribunal in such appeal shall be final.

(5) All decisions of the Tribunal, other than awards referred to in sub-section (2) of this section, and sentences referred to in sub-section (2) of section 57, shall be final and shall not be called in question in any manner before any Court or authority.

59. **EPZ Labour Appellate Tribunal.-** (1) The Government shall, by notification in the official Gazette, establish an EPZ Labour Appellate Tribunal for the purposes of this Act, and such Appellate Tribunal shall consist of one member to be appointed by the Government by notification in the official Gazette.

(2) The member of the Appellate Tribunal shall be a person who is or has been a Judge of the High Court Division of the Supreme Court, and he shall be appointed on such terms and conditions as the Government may determine.

(3) The Appellate Tribunal may, on appeal, confirm, set aside, vary or modify any decision, order, sentence or award of the Tribunal, and shall exercise all the powers conferred by this Act on the Tribunal. The Appellate Tribunal shall dispose of an appeal within a period of 40 (forty) days of filing of the appeal.

(4) A decision of the Appellate Tribunal shall not be rendered invalid by reason of any delay in its delivery.

(5) The Appellate Tribunal shall follow such procedure as may be prescribed.

(6) The Appellate Tribunal shall have authority to punish for contempt of its authority, or that of any Tribunal, subject to its appellate jurisdiction, as if it were the High Court Division.

(7) Any person, convicted and sentenced by the Appellate Tribunal under sub-section (6) to imprisonment for any period, or to pay a fine exceeding 5000 (five thousand) taka, may prefer an appeal to the Appellate Division, subject to leave granted by that Division.

60. **Settlements and awards on whom binding.-** (1) A settlement arrived at in the course of a conciliation proceedings, or an award of an Arbitrator, or an award or decision of the Tribunal delivered under section 58 or the decision of the Appellate Tribunal under section 59 shall-

(a) be binding on all parties to the industrial dispute;

(b) be binding on all other parties summoned to appear in any proceedings before a Tribunal as parties to the industrial dispute, unless the Tribunal specifically otherwise directs in respect of any such party;

(c) be binding on the heirs, successors or assignees of the employer as one of the parties to the dispute; and

(d) where a Collective Bargaining Agent is one of the parties to the dispute, be binding on all workers who were employed in the industrial unit to which the industrial dispute relates on the date on which the dispute first arose or who are employed therein after that date.

(2) A settlement arrived at by agreement between the employer and an association, otherwise than in the course of conciliation proceeding, shall be binding on the parties to the agreement.

61. **Effective date of settlement, award, etc.-** (1) A settlement shall become effective-

(a) if a date is agreed upon by the parties to the dispute to which it relates, on such date; and

(b) if a date is not so agreed upon, on the date on which the memorandum of the settlement is signed by the parities.

(2) A settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of one year from the date on which the memorandum of settlement is signed by the parties to the dispute.

(3) An award given under sub-section (1) of section 58 shall, unless an appeal against it is preferred to the Appellate Tribunal, become effective on such date and remain effective for such period, not exceeding two years, as may be specified therein.

(4) The Arbitrator, the Tribunal, or the Appellate Tribunal, shall specify dates from which the award on various demands shall be effective and the limits by which it shall be implemented in each case.

(5) A decision of the Appellate Tribunal in appeal under section 59 shall be effective from the date of the award.

(6) Notwithstanding the expiry of the period for which an award is to be effective under sub-section (3), the award shall continue to be binding on the parties until the expiry of two months from the date on which

either party informs the other party in writing of its intention to be no longer bound by the award.

62. **Commencement and conclusion of proceedings.-** (1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out is received by the Conciliator under section 50.

(2) A conciliation proceedings shall be deemed to have concluded

(a) where settlement is arrived at, on the date on which a memorandum of settlement is signed by the parties to the dispute; and

(b) where no settlement is arrived at-

(i) if the dispute is referred to an Arbitrator under section 53, on the date on which the Arbitrator has given his award; or otherwise;

(ii) on the date on which the period of the notice of strike or lock-out expires.

(3) Proceedings before a Tribunal shall be deemed to have commenced-

(a) in relation to an industrial dispute on the date on which an application has been made under section 54 or section 55; and

(b) in relation to any other matter, on the date on which it is referred to the Tribunal.

(4) Proceedings before a Tribunal shall be deemed to have concluded on the date on which the award or decision is delivered under sub-section (1) of section 58.

63. **Certain matters to be kept confidential.-** (1) There shall not be included in any report, award or decision under this Act, any information obtained by the Executive Chairman, Conciliator, Tribunal, Arbitrator or Appellate Tribunal in the course of any investigation or enquiry as to any business carried on by any association or person, unit or company or employer, which is not available otherwise than through the evidence given before such authority, if the relevant association, person, unit or company in question has made a request, in writing, to the authority that

such information be treated as confidential; nor shall such proceedings of the case disclose any such information without the consent, in writing, of the President of the association or the relevant person, unit or company in question, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this section shall apply to disclosure of any such information for the purposes of prosecution under section 193 of the Penal Code of 1860.

64. **Raising of industrial disputes-** No industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a Collective Bargaining Agent.

65. **Prohibition on serving notice of strike or lock-out while proceedings pending.-** No notice of strike or lock-out shall be served by any party to an industrial dispute while any conciliation proceeding or proceedings before any Conciliator, Arbitrator or Tribunal or an appeal to the Appellate Tribunal are or is pending in respect of any matter constituting such industrial dispute.

66. **Powers of Tribunal and Appellate Tribunal to prohibit strike etc-.** (1) When a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time when, in respect of such industrial dispute, there is made to, or is pending before, a Tribunal, an application under section 55, the Tribunal may, by an order, in writing, prohibit continuance of the strike or lock-out.

(2) When an appeal in respect of any matter arising out of an industrial dispute is referred to the Appellate Tribunal under section 59, the Appellate Tribunal may, by an order, in writing, prohibit continuance of any strike or lock-out in pursuance of such industrial dispute which had already commenced and was in existence on the date on which the appeal was preferred.

67. **Illegal strikes and lock-out.-** (1) A strike or lock-out shall be illegal if-

(a) it is declared, commenced or continued without giving to the other party to the dispute, in the prescribed manner, a notice of strike or lock-out on or before the date of strike or lock-out specified in such notice, or in contravention of section 65; or

(b) it is declared, commenced or continued in consequence of an industrial dispute raised in a manner other than that provided in section 64; or

(c) it is continued in contravention of an order made under section 66; or

(d) it is declared, commenced or continued during the period in which a settlement or award is in operation in respect of any of the matters covered by a settlement or award.

(2) A lock-out declared in consequence of an illegal strike and a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

68. **Conditions of service to remain unchanged while proceedings are pending.-** (1) No employer shall, while any conciliation proceeding or proceeding before any Conciliator, Arbitrator, Tribunal or Appellate Tribunal in respect of an industrial dispute is pending, alter to the disadvantage of any worker concerned in such dispute, the conditions of service applicable to him before the commencement of the conciliation proceeding or of the proceeding before the Arbitrator, Tribunal or Appellate Tribunal, nor shall he,-

(a) save with the permission of the Conciliator, while any conciliation proceeding is pending, or

(b) save with the permission of the Arbitrator, the Tribunal or Appellate Tribunal, while any proceeding before the Arbitrator, Tribunal or Appellate Tribunal is pending, discharge, dismiss or otherwise punish any worker or terminate his service except for misconduct not connected with such dispute.

(2) Notwithstanding anything contained in sub-section (1), an officer of a workers association shall not, during the pendency of any proceeding referred to in sub-section (1) be discharged, dismissed or otherwise

punished for misconduct, except with the previous permission of the Tribunal.

69. **Protection and discipline of elected officers of association.-** (1) The President, General Secretary or any other officer of the Executive Council of any workers association shall not be transferred from one Zone to another or one industrial unit to another within the Zone without the prior approval of the Executive Chairman.

(2) The President, General Secretary or any other officer of the Executive Council of any workers association shall not be dismissed, suspended, terminated or otherwise removed from the employment without the prior approval of the Executive Chairman.

(3) The employer shall not be deemed to be barred from suspending any elected officer of Workers Association or drawing up disciplinary proceedings against him on the allegation of unfair labour practice prohibited under this Act, rules or regulations.

(4) The Executive Chairman shall have the authority to rule on the legitimacy of any action of the employer under sub-section (3) so as to uphold or set aside the action and also to direct to reinstate the officer to his position and reimburse him with unpaid wages and benefits.

70. **Protection of certain persons.-** No person refusing to take part or to continue to take part in any illegal strike or illegal lock-out shall, by reason of such refusal, be subject to expulsion from any workers association or to any fine or penalty or to the deprivation of any right or benefit which he or his legal representative would otherwise have been entitled, or be liable to be placed in any respect, either directly or indirectly under any disability or disadvantage as compared with other members of the workers association.

71. **Representation of parties.-** (1) A worker, who is a party to an industrial dispute, shall be entitled to be represented in any proceeding under this Act by an officer of the workers association and, subject to the provisions of sub-sections (2) and (3), any employer, who is a party to an

industrial dispute, shall be entitled to be represented in any such proceeding by a person duly authorised by him.

(2) No party to an industrial dispute shall be entitled to be represented by a legal practitioner in any conciliation proceeding under this Act.

(3) A party to an industrial dispute may be represented by a legal practitioner in any proceedings before the EPZ Labour Tribunal, Appellate Tribunal or Arbitrator with the permission of that Tribunal, Appellate Tribunal or Arbitrator:

72. **Interpretation of settlement and awards.-** (1) If any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it shall be referred to the Appellate Tribunal established under this Act.

(2) The Appellate Tribunal to which a matter is referred under sub section (1) shall, after giving the parties an opportunity of being heard, decide the matter and its decision shall be final and binding on the parties.

73. **Recovery of money due from an employer under a settlement or award.-** (1) Any money due from an employer under a settlement, or under an award or decision of the Arbitrator, EPZ Labour Tribunal or Appellate Tribunal may be recovered as arrears of land revenue or as a public demand upon application by the Executive Chairman if it is moved in that behalf by the person entitled to the money under that settlement, award or decision.

(2) Where any workers is entitled to receive from the employer any benefit, under settlement or under an award or decision of the Arbitrator, Tribunal or Appellate Tribunal, which is capable of being computed in terms of money, the amount at which such benefit shall be computed may, subject to the rules or regulations made under this Act, be determined and recovered as provided for in sub-section (1) and paid to the worker concerned within a specified date.

CHAPTER-VII
PENALTIES AND PROCEDURE

74. **Penalty for unfair labour practices.-** (1) Whoever contravenes any provision of section 41, shall be punished with fine which may extend to twenty thousand Taka and, in default, to suffer simple imprisonment which may extend to six months.

(2) Any worker who contravenes any provision of section 42, shall be punished with fine which may extend to two thousand Taka and, in default, to suffer simple imprisonment which may extend to six months.

(3) Whoever, being a workers association or any person other than a workers association, contravenes any provision of section 42, shall be punished with fine which may extend to twenty thousand Taka and, in default, to suffer simple imprisonment which may extend to six months.

75. **Penalty of committing breach of settlement.-** Whoever commits any breach of any term of any settlement, award or decision which is binding on him under this Act, shall be punished-

(a) for the first offence, with fine which may extend to five thousand Taka and, in default, to suffer simple imprisonment which may extend to six month; and

(b) for each subsequent offence with fine which may extend to ten thousand Taka and, in default, to suffer simple imprisonment which may extend to six months.

76. **Penalty for failing to implement settlement, etc.-** Whoever willfully fails to implement any term of any settlement, award or decision which it is his duty under this Act to implement, shall be punished with fine which may extend to twenty thousand Taka and, in default, to suffer simple imprisonment which may extend to six months.

77. **Penalty for false statements, etc.-** Whoever willfully makes or cause to be made in any application or other document submitted under this Act or the rules or regulations made thereunder, any statement which he knows or has reason to believe to be false, or willfully neglects or fails to maintain or furnish under this Act or any rule or regulation, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand Taka, or with both.

78. **Penalty for illegal strike or lock-out.-** (1) Any worker who commences, continues or otherwise acts in furtherance of an illegal strike, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand Taka, or with both.

(2) Any employer who commences, continues or otherwise acts in furtherance of an illegal lock-out, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand Taka, or with both, and in the case of a continuing offence, with a further fine which may extend to two thousand Taka for every day after the first during which the offence continues.

79. **Penalty for instigating illegal strike or lock-out.-** Whoever instigates or incites others to take part in or expends or supplies money or otherwise acts in furtherance or support of an illegal strike or an illegal lock-out, shall be punished with imprisonment which may extend to six months, or with fine, which may extend to ten thousand Taka, or with both.

80. **Penalty for contravening provision of section 68.-** Any employer who contravenes the provisions of section 68, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand Taka, or with both.

81. **Penalty for embezzlement or misappropriation of funds.**-(1) Any officer or any other employee of a registered workers association, guilty of embezzlement or misappropriation of workers association funds shall be punished with imprisonment for a term which may extend to one year and shall also be liable to fine, which shall not exceed the amount found by the Court to have been embezzled or misappropriated.

(2) Upon realisation under sub-section (1), the amount of the fine may be reimbursed by the Court to the concerned workers association.

82. **Penalty for other offences.-** Whoever contravenes, or fails to comply with any of the provisions of this Act, shall, if no other penalty is provided by this Act for such contravention or failure, be punished with fine which may extend to five thousand Taka.

83. **Penalty for contravening provision of section 52.** - A person who willfully fails, except for satisfactory reasons, to appear before the Conciliator or to send representative to him in compliance with the provisions of sub-section (2) of section 52, shall be punished with fine which may extend to five thousand Taka and, in default, to suffer simple imprisonment which may extend to six months.

84. **Offences by company.**- Where the person guilty of any offence under this Act is a company or a body corporate, every Director, Manager, Secretary or other officer or agent thereof shall, unless he proves that the offence was committed without his knowledge or consent or that he exercised all due diligence to prevent the commission of the offence, be deemed to be guilty of such offence.

85. **Trial of offences.**- (1) No Tribunal or Court other than the Labour Tribunal established under this Act shall try any offence punishable under this Act and no prosecution for an offence punishable under this Chapter shall be instituted and taken cognizance of by the Tribunal except by or under the authority, or with the previous permission of the Executive Chairman or an officer authorised by him in that behalf.

(2) All offences punishable under this Act shall be non-cognizable and bailable.

CHAPTER-VIII
MISCELLANEOUS

86. **Indemnity.**- No suit, prosecution or other legal proceedings shall lie against any person for anything which is, done or intended to be done in good faith in pursuance of this Act or any rule or regulation made thereunder.

87. **Bar to linkage with political parties.**- (1) No workers association or federation of workers associations in a Zone shall maintain any linkage, overt or covert, with any political party or organization affiliated with any political party.

(2) Upon a complaint by any employer that any workers association or federation of workers associations in a Zone has committed an act in

contravention off sub-section (1), if the Executive Chairman finds the complaint to be true upon enquiry, he shall forthwith cancel the registration of that workers association or federation of workers associations, as the case may be, and upon such cancellation of registration, the workers in the industrial unit or units, or the associations in the Zone, as the case may be, shall not be allowed to form association or federation, as the case may be, for next one year.

(3) If aggrieved by an order of the Executive Chairman under sub-section (2), an employer, association or federation may prefer an appeal to the EPZ Labour Tribunal, and the decision of the Tribunal may be challenged in the Appellate Tribunal, and the decision of the Appellate Tribunal shall be final on the matter.

(4) For the purposes of this section, political party shall mean a political party as defined in article 152 of the Constitution of the People's Republic of Bangladesh, and shall also include any other organization affiliated with such political party.

88. **Transitional and temporary provisions.-** Notwithstanding anything contained in this Act, the transitional and temporary provisions contained in this section shall be effective,-

(1) **No strike or lock out.-** No strike or lock out shall be permissible in any industrial unit in a Zone till October 31, 2008.

(2) **Mandatory and binding arbitration** - (a) Notwithstanding anything contained in section 53, arbitration shall be mandatory for the parties during the period beginning with commencement of this Act and ending with October 31, 2008.

(b) Mutually acceptable arbitrator shall be appointed by the parties form a list of arbitrators approved by the Authority. If the parties cannot agree on the selection of the arbitrator, the Executive Chairman shall assign an arbitrator form its approved list. The selection or appointment of the arbitrator shall be completed and the date of the arbitration hearing shall be fixed within 15 working days from the date of the request for

arbitration. The arbitration hearing shall be completed and a written award shall be given within 30 days form the date of the first hearing.

(c) The decision of the arbitrator shall be binding on the parties and enforceable by the Executive Chairman. The Executive Chairman shall be authorized to take punitive measures as required to enforce the terms of the arbitrator's decision.

(d) An appeal from an arbitrator's decision shall be limited to decisions where there is reasonable suspicion and evidence of fraud, corruption or other major defects in the arbitrator's decision.

(e) An appeal under clause (d) shall lie to the Labour Appellate Tribunal, and the Appellate Tribunal shall dispose the appeal within 30 days of the filing of the appeal, and the decision of the Appellate Tribunal shall be final and binding on the parties.

89. **Reference to CBA and WA to include Committee.**- Unless the context otherwise requires, any reference to Collective Bargaining Agent or Workers Association in Chapter IV and V of this Act shall be construed also to include Workers Representation and Welfare Committee.

90. **Executive Chairman to determine wages etc. in the absence of Workers Association.**- The Executive Chairman shall determine the minimum standards regarding wages, working hours, salaries, other financial benefits and other service conditions of the workers of an industrial unit in a Zone for which there shall be no workers association as the Collective Bargaining Agent :

Provided that, only the minimum starting wage applicable to the workers at the entry level in any zone shall apply to the workers employed in any industrial unit in a zone where a workers association is registered; and other wage issues, such as, increment of wages, promotion, or other enhanced facilities would be subject to negotiation between the workers association and the employer.-

91. **Monitoring of referendum and elections.**- (1) Any election or referendum under any of the provisions of this Act shall be fairly

monitored by representatives of the Authority, employers, workers and neutrals.

(2) The Authority shall determine and prescribe procedure and further details in respect of monitoring of election or referendum referred to in sub-section (1).

(3) The companies or employers shall provided lists with the names of all workers eligible to vote in the referendum or election in respect of workers association before any such referendum or election is held under this Act.

(4) The companies or employers shall affix the lists of workers referred to in sub-section (3) in a conspicuous place of the relevant factories in a visible manner for the 72 hours prior to the referendum or election.

(5) The election or referendum in relation to registration of any workers association shall be scheduled at such a time and location so that it does not obstruct the workers to vote.

(6) In the period between the request for election and ultimate completion of that election of workers association, there shall be no intimidation or threats of reprisal by either party.

(7) No party shall conduct campaigns or call or conduct any special or general meeting of the workers relating to the election for registration of workers association on the premises of the industrial unit or during its working hours.

92. **Executive Chairman to extend time.-** The Executive Chairman may, on reasonable grounds, extend time if certain duty or function cannot be discharged or performed within the specified time under any provision of this Act.

93. **Executive Chairman to delegate powers.-** The Executive Chairman may, subject to the approval of the Authority, delegate any of his powers under this Act to an officer subordinate to him.

94. **Executive Chairman, etc. to be public servants.-** The Executive Chairman, a Conciliator, the Chairman of an EPZ Labour Tribunal and the Member of the Tribunal and Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Penal Code (Act XLV of 1860).

95. **Authority to administer the Act and other matters.-** Notwithstanding anything contained in any other law, rules or regulations, for the time being in force, the Bangladesh Export Processing Zones Authority shall be responsible for administration of this Act and to deal with all matters relating to rights of workers and industrial relations in the Zones.

96. **Original text and text in English.-** The original text of this Act shall be in Bangla, and there shall be an authentic text of it translated into English.

Provided that in the event of conflict between the Bangla and the English texts, the Bangla text shall prevail.

97. **Powers to make rules and regulations.-** (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) The Bangladesh Export Processing Zones Authority may, with previous approval of the Government, by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.

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