

THE EMPLOYMENT OF LABOUR (STANDING ORDERS) ACT, 1965*

Act VIII of 1965

An Act to repeal and with certain amendments, re-enact the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960.

WHEREAS it is expedient to repeal and, with certain amendments, re-enact the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960 (Ordinance No. III of 1960) for regulating conditions of service of workers employed in Shops and Commercial and Industrial Establishments and for matters connected therein ;

It is hereby enacted as follows :—

1. **Short title, extent, commencement and application.**—(1) This Act may be called the ¹(*) Employment of Labour (Standing Orders) Act, 1965.

(2) It extends to the whole of ²(Bangladesh).

(3) It shall come into force at once.

(4) It shall apply to—

(a) every shop or commercial establishment to which the Shops Establishments Act, 1965 applies ;

(b) every industrial establishment in the areas in which the Shops and Establishments Act, 1964 applies ;

(c) every industrial establishment in all other areas of ³(Bangladesh), in which five or more workers are employed, or were employed on any day of the preceding

^{*}(As amended by P.O. No. 100 of 1972 and Ordinance XXXVI of 1978.)

1. The words "East Pakistan" occurring between the words "The and Employment" omitted by Ordinance XXXVI of 1978.

2. Suba.—ibid.

Provided that the provisions of this Act shall not apply to any shop or commercial or industrial establishment, owned and directly managed by the * (Government) and the persons employed therein are governed by the * (Government) Servants' Conduct Rules.

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

- (a) 'apprentice' means a learner who is paid an allowance during the period of his training;
- (b) 'badli' means a worker who is appointed in the post of a permanent worker or of a probationer who is temporarily absent ;
- (c) 'casual worker' means a worker whose employment is of a casual nature ;
- (d) 'commercial establishment' means an establishment in which the business of advertising, commission or forwarding is conducted, or which is a commercial agency, and includes a clerical department of a factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment employs workers, a unit of a joint-stock company, an insurance company, a banking company or a bank, a broker's office or stock exchange, a club, a hotel or a restaurant or an eating house, cinema or theatre, or such other establishment or class thereof as the Government may, by notification in the official Gazette, declare to be a commercial establishment for the purpose of this Act;
- (e) 'Director of Labour' means an officer so appointed by the Government ;

* (Subs. by Ord. XXXVI of 1978)

—S. 2: clauses (f), (g), (h) & (i)

- (f) 'discharge' means the termination of services of a worker by the employer for reasons of physical or mental incapacity or continued ill health of the worker or such other similar reasons not amounting to misconduct ;
- (g) 'dismissal' means the termination of services of a worker by the employer for misconduct :
- (h) 'employer' means a person, a body of persons or body corporate, company or institutions owning or managing a shop, commercial establishment or industrial establishment, or their heirs, successors or assigns, as the case may be, and includes—
- (i) in a factory, any person working as manager of the factory.
- (ii) in any shop, commercial establishment or industrial establishment, carried on by or behalf on a local authority, the officer appointed, the chief executive officer of that authority, and
- (iii) in relation to any other shop, commercial establishment or industrial establishment, every Director, Manager, Secretary, Agent or other officer or person concerned with management thereof and responsible to the owner for the supervision and control of such shop, commercial establishment or industrial establishment ;
- (i) 'go-slow' means organised deliberate and purposeful slowing down of normal output of work by a body of workers in a concerted manner, and which is not due to any mechanical defect, breakdown of machinery, failure or defect in power supply or in the supply of normal materials and spare parts of machinery.

—S. 2 : clauses (j) & (k)

(j) 'industrial establishment' means any workshop or other establishment in which articles are produced, adapted or manufactured or where the work of making, altering, repairing, ornamenting, finishing or packing or otherwise treating any article or substance, with a view to their use, transport, sale, delivery or disposal, is carried on or such other class of establishments including water transport vessels or any class thereof which the Government may, by notification in the official Gazette, declare to be an industrial establishment for the purpose of this Act, and includes—

(i) any ¹(**) motor omnibus service, any dock, wharf or jetty.

(ii) any mine, quarry, gas-field or oil-field.

(iii) any plantation, or

(vi) a factory as defined in the Factories Act, 1965,²

(k) 'Labour Court' means a Court constituted under the Industrial Relations Ordinance, 1969 ;

CASE LAW

S. 2(j) : A bus is not a commercial or industrial establishment and so the provisions of the Act are not attracted to a bus.

A bus cannot be termed as a commercial or industrial establishment within the meaning of section 2 of the Act. *Md. Idris Khan Vs. Chairman 1st Labour Court* (1976) 28 DLR 473.

S. 2(k) : Reference to the Ordinance in section 2(k) of the Standing Order Act, 1965 should be construed to mean the East Pakistan Labour Disputes Act, 1965.

Reference to the Industrial Disputes Ordinance LVI of 1959 in sec. 2(k) of the Employment of Labour Standing Orders Act, 1965 is to the

1. The word "tramway" omitted by Ord. XXXVI of 1978.
2. Subs-ibid.

—Case law

—S. 2 : clause (k)

E.P. Labour Dispute Act VI of 1965. The Industrial Disputes Ordinance 1959 was repealed by Section 44(1) of the East Pakistan Labour Disputes Act 1965, but clause (2) of the said section provided that notwithstanding the said repeal, anything done, action taken, rules framed or notification or order issued under the Ordinance should be deemed to have been done, taken, made or issued under the corresponding provision of the Act and clause (3) thereof laid down that any reference to the Industrial Dispute Ordinance, 1959 in any other law for the time being in force should be construed to have a reference to this Act. So after the repeal of the 1959 Ordinance, the reference to the said Ordinance in section 2(k) of the Standing Order Act, 1965 should be construed to mean the East Pakistan Labour Disputes Act, 1965. *Secy. C.S. Ltd. Vs. Chairman, 2nd Labour Court (1977) 29 DLR 50.*

Retrospective effect with effect from 25th Oct. 1965, the day on which Labour Dispute Act, 1965 was repealed. E.P. Labour Disputes Act 1965 (VI of 1965) was repealed by section 67(1) of Industrial Relations Order, 1969, on 25th Oct., 1969—But the court constituted under the repealed Act deemed to be constituted under the said Order, 1969. The said East Pakistan Labour Disputes Act, 1965 was repealed by section 67(1) of the Industrial Relations Ordinance, 1969 which was promulgated on the 25th October, 1969. Under clause 2(b) of section 67 of the said Ordinance notwithstanding the said repeal the Court constituted under the repealed Act is to be deemed to have been constituted under the newly promulgated Ordinance. The definition of Labour Court as contained in section 2(k) of the East Pakistan Employment of Labour (Standing Orders) Act was amended on the 18th August, 1970 by substituting the words Industrial Relations Ordinance, 1969 in place of Industrial Disputes Ordinance, 1959 with retrospective effect from the 25th October, 1969 i.e. the day on which the Industrial Relations Ordinance, 1969 was promulgated.

The Labour Court which had jurisdiction to entertain an application under section 25 of the Standing Order Act, 1965, was the Labour Court constituted or deemed to be constituted under the Labour Disputes Act, 1965, but the labour court which had been functioning in February, 1970 was the Labour Court constituted or deemed to be constituted under the Industrial Relations Ordinance, 1969. So, a necessity arose for amendment of the definition of Labour Court as given in section 2(k) of the Standing Orders Act, 1965 with retrospective effect from the 25th October, 1969, i.e. the day on which the Labour Disputes Act, 1965 was repealed.

—Case law

—S. 2 : clauses (k), (l), (m) & (n)

It is clear, therefore, that the amending provision having been given a retrospective effect from the 25th October, 1969 and the petition in question having been filed on the 2nd of February, 1970, in the eye of law the Labour Court should be deemed to have been invested with necessary jurisdiction on the said date. *Secretary U.S. Ltd. Vs. Chairman, 2nd Labour Court (1977) 29 DLR 50.*

Labour Court—its function—*Functions that a Labour Court* is called upon to exercise are *judicial in nature*. It can decide the subject-matter of the complaint in a summary way—but principles of natural Justice cannot be disregarded in such trial. *Md. Abdul Hoque Vs. Second Labour Court. (1970) 22 DLR 577.*

Such Courts have the trappings of a court of and are required to conform to judicial forms—Its function is to adjudicate between the rights and liabilities of parties in a judicious manner basing their findings on reason and logic. *E.P. Road Transport Corporation Vs. Second Labour Court (1970) 22 DLR 569.*

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- (l) 'lay-off' means the failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stock or the break-down of machinery or for any other reason, to give employment to a worker whose name is borne on the musterrolls of his shop, commercial establishment or industrial establishment ;
 - (m) 'permanent worker' means a worker who has been engaged on a permanent basis or who has satisfactorily completed the period of his probation in the shop or the commercial or industrial establishment ;
 - (n) 'plantation' means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea and includes agricultural farms under sugar mill for growing sugarcane, employing twenty-five or more persons for that purpose ;

—S. 2 : clauses (o), (p), (q), (r), (s), (t), (u) & (v)

- (o) 'public servant' shall have the same meaning as in section 21 of the¹ Penal Code, 1860.
- (p) 'probationer' means a worker who is provisionally employed to fill a permanent vacancy in a post and has not completed the period of his probation ;
- (q) 'retrenchment' means the termination by the employer of services of workers, not as a measure of punishment inflicted by way of disciplinary action, but on the ground of redundancy ;
- (r) 'shop' means a shop as defined in the East Bengal Shops and Establishments Act, 1951 ;
- (s) 'temporary worker' means a worker who has been engaged for work which is essentially of temporary nature and is likely to be finished within a limited period ;
- (t) *'trade union' means a trade union registered under the IRO, 1969,
- (u) 'wage' means wages as defined in the Payment of Wages Act, 1936 ;
- (v) 'worker' means any person including an apprentice employed in any shop, commercial establishment or industrial establishment to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person—
 - (i) who is employed mainly in a managerial or administrative capacity ; or

1. The word "Pakistan" omitted by Ord. XXXVI of 1978.

*(Subs by Ord. XXXVII of 1978.)

—S. 2 : clause (v)

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

CASE LAW

Pesh-Imam of a Mosque is not a worker within the meaning of s.2(v).
From definition, in section 2(v) it can not be said that a Mosque can be construed to be a shop or commercial and industrial establishment or that a Pesh Imam is required to do any skilled, unskilled manual, technical or clerical work as such. Taking into consideration definition of worker within the meaning of section 2(v) of the Employment of Labour (Standing Order) Act of 1965 it must be held that a Pesh Imam of a Mosque is not a worker under any circumstances. *Manager Vs. Md. Gulam Hossain Khan.* 33 DLR (1981) 29.

A worker when on every solitary occasion doing the function of a manager or an Administrative Officer does not cease to be a worker. *Indo-Pak. Corporation Ltd. Vs, Chairman.* (1969) 21 DLR 285.

Worker : A person does not cease to be a "worker" merely because he is employed in a supervisory capacity. To be able to say that he is not a worker it has to be established further that he exercises functions mainly of a managerial or administrative nature.

What is important in determining whether a person is a 'worker' or not is to see the main nature of the job done by him and not so much his designation.

The issue as to whether a person was a worker or not has to be resolved in each case with reference to the evidence on record. *Mujibur Rahman Sarkar Vs. Chairman, Labour Court, Khulna.* (1979) 31 DLR 301.

3. Conditions of employment.—(1) In every shop or commercial or industrial establishment, employment of workers and other matters incidental thereto shall be regulated in accordance with the provisions of this Act ;

—Ss. 3-4

Provided that any shop or commercial or industrial establishment may have its own rules regulating employment of workers or any class thereof, but no such rules shall be less favourable to any worker than the provisions of this Act.

(2) The service rules regulating employment of workers or any class thereof in any shop or commercial or industrial establishment as mentioned in the proviso to sub-section (1) shall be submitted by the employer of such shop or commercial or industrial establishment to the Inspector appointed under section 30 for approval and such service rules shall not be put into effect until such approval of the Inspector has been obtained.

(3) Any person aggrieved by the order of the Inspector may within thirty days of the issue of such order, appeal to the Chief Inspector who may either confirm, modify or set aside the order of the Inspector.

(4) A second appeal from the order of the Chief Inspector shall lie to the Government if made within thirty days of the issue of the order of the Chief Inspector and the decision of the Government shall be final.

4. Classification of workers and period of probation.—(1) A worker employed in any shop or commercial or industrial establishment shall be classified in any of the following classes according to the nature and condition of work and in the manner provided in this Act—

- (a) apprentices.
- (b) badlis.
- (c) casual.
- (d) permanent.
- (e) probationer and
- (f) temporary.

—Ss. 4-5

(2) The period of probation for a worker whose function is of clerical nature, shall be six months and for other workers such period shall be three months, including breaks due to leave, illegal lock-out or strike (not being an illegal strike) in the shop or commercial or industrial establishment :

Provided that in the case of a skilled worker, the period of probation may be extended by an additional period of three months if, for any circumstances, it has not been possible to determine the quality of his work within three months' period of his probation.

(3) If any worker, whose service has been terminated during his probationary period, including the extended period of three months in case of a skilled worker as mentioned in sub-section (2), is again appointed by the same employer within a period of three years, he shall, unless appointed on a permanent basis, be deemed to be a probationer and the period or periods of his earlier probation shall be counted for determining his total period of probation.

(4) If a permanent worker is employed as a probationer in a new post, he may, at any time during the probationary period, be reverted to his old permanent post.

5. Leave and holidays.—(1) Workers employed in shops or commercial or industrial establishments shall be entitled to leave and holidays with wages as provided in the East Bengal Shops and Establishments Act, 1951, the Factories Act, 1965, or in any other law for the time being in force, as the case may be, and other holidays which the Government may specially declare to be holidays for workers by notification in the official Gazette.

(2) A worker who desires to obtain leave of absence shall apply to the employer for the same, in writing, stating his leave-

—S. 5

address therein, and the employer or his authorised officer shall issue orders on the application within a week of its submission to two days prior to the commencement of leave applied for, whichever is earlier :

Provided that if, due to emergent reasons, the leave applied for is to commence on the date of application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons thereof shall be recorded in writing in a register to be maintained by the employer for the purpose. If the worker, after proceeding on leave, desires an extension thereof, he shall, if such leave is due to him, apply sufficiently in advance before the expiry of the leave to the employer who shall, as far as practicable, send a written reply either granting or refusing extension of leave to the worker to his leave-address.

(3) If the worker remains absent beyond the period of leave originally granted or subsequently extended, he shall be liable to lose his lien to his appointment unless he returns within ten days of the expiry of his leave and explains to the satisfaction of the employer his inability to return earlier :

Provided that in case any worker loses his lien to his appointment under this section, he shall not be deprived of the benefits and privileges which already accrued to him under the law due to his past services and, in addition, he shall also be kept on the *badli* list, if any :

Provided further that if such a worker fails to explain to the satisfaction of the employer the reason of his failure to return at the expiry of the leave, the employer may, on consideration of extenuating circumstances, if any, suspend him, as a measure of

—S. 5

punishment, for a period not exceeding seven days from the date of his return and the worker shall not be entitled to wages for such periods of unauthorised absence and of suspension ; but he shall not lose the lien to his appointment.

(4) If the services of a worker, to whom any annual leave is due under the provisions of the East Bengal Shops and Establishments Act, 1951, the Factories Act, 1965, or of any other law for the time being in force, as the case may be, is dispensed with whether as a result of retrenchment, discharge, dismissal, termination, retirement or by reason of his resignation before he has availed of any such leave, the employer shall pay his wages in lieu of the unavailed leave, at the rate he is entitled to the payment of wages during the period of leave in accordance with the provisions of those laws and such payments shall be made before the expiry of the second working day after the day on which his employment is dispensed with.

CASE LAW

Loss of lien to appointment of a worker—Worker does not automatically lose his lien to his appointment on his failure to return within 10 days of the expiry of his leave.

Worker does not automatically lose his lien to his appointment on his failure to return within 10 days of the expiry of his leave and gives a satisfactory explanation of his inability to return earlier, but on the happening of such a contingency he "shall be liable to lose his lien." The second proviso to sub-section (3) also shows that on the failure to give satisfactory explanation the loss of lien is not automatic.

When one's service is liable to be terminated on the happening of certain event it is obviously not automatically put to an end on the happening of such event but it requires a further act on the part of the authority to finally terminate his service on such ground. *P.W.V. Rowe Vs. Chairman Labour Court Ctg.* (1979) 31 DLR (AD) 119.

—Case law

S. 5 (3)

Over-stay beyond 10 days—Dismissal of the employee by the employer—Consequence of over-stay, without leave, if constitutes misconduct—Order directing loss of lien on the appointment is not a penal action and as such no show-cause notice on the employee necessary.

Although under sub-section (3) of section 5 of the Employment of Labour (Standing Order) Act of 1965 by mere over-stay without leave beyond ten days, a worker does not ipso facto lose his lien to his appointment, but the employer has a right to be satisfied on the explanation of the worker as to why he could not resume his duties within ten days from the expiry of his leave. This satisfaction of the employer is to be based upon such explanation as might be forth coming from the worker concerned.

Loss of lien as contemplated under sub-section (3) of section 5 of the Employment of Labour (Standing Order) Act 1965 is not a penal action. Absence without leave for more than ten days can constitute a misconduct for which a worker is liable to be dismissed from service under clause (d) of sub-section (3) of section 17 of the Employment of Labour (Standing Order) Act of 1965. If such absence without leave for more than ten days is constituted as a misconduct for ultimate dismissal of worker, in that event a proceeding is required to be taken under the law to comply with the rule of the principle of natural justice.

An order directing the loss of lien to an appointment under sub-section (3) of section 5 of the Employment of Labour (Standing Order) Act is not a penal action for committing misconduct as contemplated under sub-section (3) of section 17 of the Employment of Labour (Standing Order) Act of 1965. Under section 5 of the Employment of Labour (Standing Order) Act the worker concerned is neither dismissed nor removed nor retrenched nor terminated as such, but he merely loses the lien in his appointment on account of his staying out of work for more than ten days without any leave whatsoever. He is entitled to be enlisted in the 'bodli' list, if any, for future reappointment and to all other benefits with regard to past service mentioned in sub-section (3) of section 5 of Employment of Labour (Standing Order) Act. In that event no charge of misconduct as such is levelled against the worker. In that view of the matter the question of initiating a proceeding by way of a show-cause notice explaining his absence as such does not arise.

—S. 5 (3).

In the event of any further 'bodli' list being prepared by the petitioner the respondent No. 2 shall be enlisted therein as contemplated under sub-section (3) of section 5 of the Employment of Labour (Standing Order) Act of 1965. *Glaxo Bangladesh Ltd. Vs. Chairman Labour Court of Chittagong* (1980) 32 DLR 134.

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

✓ (2) In the event of such stoppage occurring at any time beyond working hours, the employer shall notify the workers affected, by notices posted, in the case of a factory, on the notice board in the section or department concerned and, in other cases, at a conspicuous place before the work is due to begin next, indicating as to when the work will be resumed and whether such workers are to remain at their place of work at any time before the actual resumption.

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

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

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

—Ss. 6-7

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

(5) If the period of stoppage of work does not exceed one working day, a worker, unless entitled to wages under clause (b) of sub-section (4) for detention beyond one hour, may not be paid any wages; but if the period of stoppage of work continues for more than a working day, a worker affected (other than a casual or *badli* worker), shall be paid wages for the day or days by which it will exceed one working day, and if the stoppage of work extends beyond three working days, the workers may be laid-off in accordance with the provisions of section 9 and such lay-off shall be effective from the day of stoppage of work and any wage paid to a worker for the first three days may be adjusted against the compensation payable for such subsequent lay-off :

Provided that for the piece-rate workers affected, their average daily earnings in the previous month shall be taken to be the daily wage for the purposes of the foregoing sub-sections.

(6) The employer may, in the event of a strike by any section or department of a shop or commercial or industrial establishment, close down either wholly or partly such section or department or any other section or department affected by such closing down and the workers affected may not be paid any wages for such closure :

Provided that the fact of such closure shall be notified by the employer, as soon as practicable, by notice posted, in the case of a factory, on the notice board in the section or department concerned and in the time-keeper's offices, if any, and in any other case, in a conspicuous place and the fact of resumption of work, following such closure shall likewise be notified.

✓ 7. **Calculation of 'one year' or 'six months' of continuous service.**—For the purpose of this Act, a worker who, during the preceding twelve calendar months, has actually worked in a shop or

—Ss. 7-8

commercial or industrial establishment for not less than two hundred and forty days and one hundred and forty days, as the case may be, shall be deemed to have completed 'one year' or 'six months' respectively, of continuous service in the shop or the commercial or industrial establishment.

Explanation.—In computing the number of days on which a worker actually worked in a shop or commercial or industrial establishment the days on which—

- (a) he has been laid-off under an agreement or as permitted under this Act or under any other law applicable to the shop or the commercial or industrial establishment the total number of days during which he has been so laid-off ;
- (b) he has been on leave with or without wages due to sickness or accident ;
- (c) in the case of a female, she has been on maternity leave not exceeding twelve weeks ;

shall be counted.

8. Restrictions of application of sections 6, 9, 10 and 11.—
Notwithstanding anything contained elsewhere in this Act—

- (a) the provisions of sections 6, 9, 10 and 11 shall not apply to any shop, commercial or industrial establishment in which five or more workers are not employed, or were not employed on any day of the preceding twelve months ;
- (b) the provisions of section 9 to 11, both inclusive, shall not apply to a shop, commercial or industrial establishment which is of seasonal character or in which work is performed only intermittently, irrespective of the number of workers employed therein ;

—Ss. 8-9

Provided that if a question arises whether a shop or commercial or industrial establishment is of seasonal character or whether work is performed therein intermittently, the decision of the Government shall be final :

Provided further that it will not be necessary for an employer to follow the provisions of sections 9 to 11, in respect of any lay-off due to stoppage of work extending beyond three days as provided in sub-section (5) of section 6, in a shop, commercial or industrial establishment to which clause (b) of this section applies.

✓ **9. Right of laid-off workers for compensation.**—(1) Whenever a worker (other than a *badli* or casual worker), whose name is borne on the muster-rolls of a shop or commercial or industrial establishment and who has completed not less than one year of continuous service under the employer is laid-off, he shall be paid by the employer, for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to half of the total of the basic wages and dearness allowance, and the full amount of housing allowance, if any, that would have been payable to him had he not been so laid-off :

Provided that a *badli* worker whose name is borne on the muster-rolls of the shop or commercial or industrial establishment shall cease to be regarded as such for the purpose of this section, if he has completed one year of continuous service in the shop or the commercial or industrial establishment :

Provided further that no worker shall, unless there is an agreement to the contrary between him and the employer, be entitled to the payment of compensation in the aforesaid manner for more than forty-five days during any calendar year.

(2) Notwithstanding anything contained in the proviso to sub-section (1) if during a calendar year a worker is laid-off for

—Ss. 9-11

more than forty-five days, whether continuously or intermittently, and the lay-off after the expiry of the first forty-five days comprises period or periods of fifteen days or more, the worker shall, unless there is an agreement to the contrary between him and the employer, be paid for all the days comprised in every subsequent period of lay-off for fifteen days or more, compensation which shall be equal to one-fourth of the total of the basic wages and dearness allowance, and the full amount of housing allowance if any, that would have been payable to him had he not been so laid-off.

Important (3) In any case where, during a calendar year, a worker is to be laid-off after the first forty-five days as aforesaid, for any continuous period of fifteen days or more, the employer may, instead of laying-off such a worker, retrench him under section 12.

✓ **10. Muster-roll for laid-off workers.**—Notwithstanding that the workers or any section thereof employed in a shop or commercial or industrial establishment have been laid-off, it shall be the duty of every employer to maintain a muster-roll, and to provide for the making of entries therein by or for the laid-off workers who may present themselves for work at the shop or the commercial or industrial establishment at the appointed time during normal working hours.

✓ **11. Workers not entitled to compensation in certain cases.**—Notwithstanding anything contained elsewhere in this Act, no compensation shall be payable to a worker who has been laid-off—

- (a) if he refuses to accept, on the same wages, any alternative employment not requiring any special skill or previous experience, in the same shop or the commercial or industrial establishment from which he has been laid off, or in any other shop or commercial or industrial establishment belonging to the same employer

—Ss. 11-12

and situated in the same town or villa or situated within a radius of five miles from the shop or the commercial or industrial establishment ;

- (b) if he does not present himself for work at the shop or the commercial or industrial establishment at the appointed time during normal working hours at least once a day if so required by the employer ; or
- (c) if such lay-off is due to a strike in another part of the shop or the commercial or industrial establishment.

Explanation.—For the purpose of clause (b), every laid-off worker who presents himself for work at the shop or the commercial or industrial establishment, as the case may be, at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this section ; and if the worker instead of being given employment at the commencement of any shift for any day, is asked to present himself for the purpose during the second half of the shift for the day, and if he so presents himself, he shall be deemed to have been laid-off only for one-half of that day, the other half being treated as on duty, irrespective of the fact whether he is given work or not.

✓ **12. Conditions of retrenchment.**—No worker employed in any shop or commercial or industrial establishment who has been in continuous service for not less than one year under an employer shall be retrenched by the employer unless—

- ✓ (a) the worker has been given one month's notice in writing, indicating the reasons for retrenchment or the worker has been paid in lieu of such notice, wages for the period of notice ;

—S. 12

- (b) a copy of the notice in respect of the retrenchment is sent to the Chief Inspector or any other officer authorised by him ; and
- (c) the worker has been paid, at the time of retrenchment, compensation which shall be equivalent of fourteen days' wages for every completed year of service or for any part thereof in excess of six months, or gratuity, if any, whichever is higher :

Provided that in case of retrenchment of a worker under subsection (3) of section 9, no notice as mentioned in clause (a) will be necessary ; but the worker shall be paid fifteen days' wages in addition to the compensation or gratuity, as the may be, which may be payable to him under clause (c).

Explanation. For the purpose of calculation of compensation under this section, wages shall mean the average of the basic wages plus dearness allowance, if any, paid to the worker during the period of twelve months immediately preceding the date of retrenchment.

CASE LAW

To effect retrenchment, conditions of the section must be fulfilled: In the present case services of the employees have not been terminated in the manner provided in section 12 of the Act. The termination of the services on the ground of retrenchment in terms of section 12 cannot take place when all the conditions mentioned thereunder have been complied with and not before. *M/s. Caltex Oil (Pakistan) Ltd. Vs. Chairman 2nd Labour Court.* (1967) 19 DLR 264.

Essentials of termination of service under sections 12 and 19.

The essential of a termination on the ground of retrenchment as prescribed under section 12(a) the worker must be given one month's notice in writing indicating the reason for retrenchment or he has been paid in lieu of such notice in respect of retrenchment and a notice is sent to the Chief Inspector, and (c) the worker has been paid at the time of retrenchment compensation or gratuity whichever is higher as required under clause (c) of section 12.

***Please read this Amendment in clause (c) of section 12.**

Amendment of section 12, E.P. Act VIII of 1965—In the Employment of Labour (Standing Orders) Act, 1965 (E.P. Act, VIII of 1965), hereinafter referred to as the said Act, in section 12, in clause (c), for the word "fourteen" the word "thirty" shall be substituted. (Ordinance XVI of 1985. Section 2).

Inserted at Page 20

—Ss. 12-16

If notice to the Chief Inspector has not been served in terms of section 12, the retrenchment of the employee is not in accordance with law. *M/s. Caltex Oil (Pakistan) Ltd. Vs. Chairman 2nd Labour Court* (1967) 19 DLR 264.

✓ 13. **Procedure for retrenchment.**—Where any worker is to be retrenched and he belongs to a particular category of workers, the employer shall, in the absence of any agreement between him and the worker in this behalf, ordinarily retrench the worker who was the last person to be employed in that category, unless, for reasons to be recorded in writing, the employer retrenches any other worker.

✓ 14. **Re-employment of retrenched workers.**—Where any number of workers are retrenched, and the employer proposes to take into his employ any person within a period of one year from the date of such retrenchment, he shall give an opportunity to the retrenched workers belonging to the particular category concerned by sending a notice to their last known addresses, to offer themselves for employment and the retrenched workers who so offer themselves for reemployment shall have preference over other persons, each having priority according to the length of his service under the employer.

✓ 15. **Fine.**—A worker may be fined in accordance with the provisions of the Payment of Wages Act, 1936.

✓ 16. **Discharge from service.**—A worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health or such other reasons not amounting to misconduct :

Provided that a worker having completed not less than one year of continuous service, so discharged, shall be paid by the employer compensation at the rate of [thirty days]¹ wages for every

1. Subs. for 'fourteen days' by Ordinance XVI/1986.

—Ss. 16-17

completed year of service or for any part thereof in excess of six months, or gratuity, if any, whichever is higher.

Explanation.—For the purpose of calculation of wages under this section, wages shall mean the average of the basic wages and dearness allowance, if any, paid to the worker during the period of twelve months immediately preceding the date of discharge.

17. **Dismissal from service**—[(1) Notwithstanding anything regarding lay-off, retrenchment, discharge and termination of service as provided elsewhere in this Act, a worker may

(a) be dismissed without prior notice or pay in lieu thereof or any compensation—

or

(b) be dismissed without prior notice or pay in lieu thereof, if he is found guilty of misconduct under section 18.]

(2) Any worker found guilty of misconduct but not dismissed under the provisions of sub-section (1) in consideration of any extenuating circumstances, may be discharged, or suspended, as a measure of punishment, without wages as well as subsistence allowance, for a period not exceeding seven days and such period may be within or in addition to the period of suspension of the worker for enquiry under sub-section (2) of section 18, if any, or he may be otherwise punished less severely.

(3) The following acts and omissions shall be treated as misconduct—

Subs by Ord. XVI of 1985

The former sub-s. (1) ran as follows—

(1) Notwithstanding anything regarding lay-off, retrenchment, discharge and termination of service as provided elsewhere in this Act, a worker may be dismissed without prior notice or pay in lieu thereof or any compensation—

(a) if he is convicted for an offence involving moral turpitude ;

or

(b) if he is found guilty of misconduct u/s 18,

***Please read this Amendment in section 17.**

Amendment of section 17. E.P. Act VIII of 1965—In the said Act, in section 17, for sub-section (1) the following shall be substituted, namely —

"(1) Notwithstanding anything regarding lay-off, retrenchment, discharge and termination of service as provided elsewhere in this Act, a worker may—

- (a) be dismissed without prior notice or pay in lieu thereof or any compensation if he is convicted for an offence; or
- (b) be dismissed without prior notice or pay in lieu thereof, if he is found guilty of misconduct under section 18 :

Provided that the worker who is so dismissed shall, if his continuous service is not less than one year, be paid by the employer compensation at the rate of fourteen days wages for every completed year of service, or for any part thereof in excess of six months or gratuity, if any, whichever is higher.

Explanation—For the purpose of calculation of compensation under this sub-section, "wages" shall mean the average of basic wages and dearness allowance, if any, paid to the worker during the period of twelve months immediately preceding the date of his dismissal". (Ordinance XVI of 1985. Section 4).

—S. 17

- (a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful or reasonable order of a superior ;
- (b) theft, fraud or dishonesty in connection with the employer's business or property ;
- (c) taking or giving bribes or any illegal gratification in connection with his or any other worker's employment under the employer ;
- (d) habitual absence without leave or absence without leave for more than ten days ;
- (e) habitual late attendance ;
- (f) habitual breach of any law or rule or regulation applicable to the shop or commercial or industrial establishment ;
- (g) riotous or disorderly behaviour in the shop or commercial or industrial establishment, or any act subversive of discipline ;
- (h) habitual negligence or neglect of work ;
- (i) frequent repetition of any act or omission for which a fine may be imposed ;
- (j) resorting to illegal strike or 'go-slow' or inciting others to resort to illegal strike or 'go-slow' ;
- (k) falsifying, tampering with, damaging or causing loss of employer's official records.

CASE LAW

Absence without leave for more than 10 days does not lead to automatic termination of service : Clause (d) of sub-section (3) of section 17 of the Act provides that absence without leave for more than 10 days is a kind of misconduct and a worker may be dismissed or otherwise dealt with under sub-section (1) and (2) of section 17 read with section 18 of the Act. If absence without leave for more than 10 days is a misconduct and a proceeding is to be drawn up for dismissal or for other kind of punishment for such absence, it does not stand to reason that if there is

—Case law

—S. 17

such absence after leave has once been taken, there shall be automatic termination of service and no opportunity should be given to explain his inability to return to join his service after the expiry of the leave : *PWV Rowe vs. Chairman Labour Court*, (1979) 31 DLR (AD) 119.

A single act of neglect in plying a vessel during the night in a foggy condition of weather amounted to misconduct under clause (h) of sub-section (3) of sec. 17 : *Managing Partner. B. L. Navigation vs. Chairman, 2nd Labour Court*. (1982) 34 DLR 55.

Benefits under s. 19 can be claimed when termination of an employee's service takes place u/s 17 and 18, but not when he is found guilty of theft of the employers goods. The Labour Court was wrong in holding that the employee was entitled under law to the payment of termination benefits when the court itself found that he was rightly dismissed of the petitioner : *Pakistan Match Co. Ltd. vs. Chairman, Third Labour Court* (1975) 27 DLR 65.

Until cognizance of the dispute is taken by Conciliation Officer and he issues notice to the employer and the employees, it cannot be said that order of termination of service was passed during the pendency of conciliation proceedings and as such it is a termination under section 19 and not one under section 17 for union activities.

Until and unless cognizance of the dispute is taken by the Conciliation Officer and he moves in the matter by issuing notice to the employer and the parties have got notice from the Conciliation Officer it is difficult to hold that the order in the present case was passed during the pendency of the Conciliation proceeding : *Ramani Ranjan Nath vs. Spencer & Co.* (1969) 21 DLR 206.

In case of existence of any extenuating circumstance in favour of a worker, lesser punishment, namely, discharging him from his employment without wages should be awarded, instead of outright dismissal : Clause (b) of sub-section (1) of section 17 of the Employment of Labour Standing Order Act provides that a worker may be dismissed without prior notice or pay in lieu thereof, if such worker is found guilty of misconduct under section 18 of the Employment of Labour Standing Orders Act. Sub-section (2) of Section 17 of the Employment of Labour (Standing Orders) Act further provides that a worker found guilty of misconduct, but not dismissed, may in consideration of any extenuating circumstances be dischar-

—Case law

—S. 17

ged without wages and he may be otherwise punished less severely. Thus in the case of an extenuating circumstance for committing an offence of misconduct a worker may be awarded lesser punishment than the highest one, namely, dismissal. *Md. Wazhiullah Vs. Secretary BSC (1980) 32 DLR 36.*

If any doubt exists as to the presence of any extenuating circumstance, the benefit thereof should go to the worker and lesser punishment given : In the present case whether any extenuating circumstances was existing was not mentioned in the order of dismissal and in the event of any doubt whether any such extenuating circumstance ever existed, the benefit should go to the workers who were punished for their misconduct. Sub-section (2) of section 17 of the Employment of Labour (Standing Orders) Act itself has suggested that in consideration of any extenuating circumstance, a worker even if found guilty of misconduct, instead of being dismissed can be discharged without wages.

In that view of the matter we consider it a fit case where the petitioner's punishment be converted from dismissal into discharge without any wages, compensation or any other financial benefit : *Md. Wazhiullah Vs. Secretary, Bangladesh Shipping Corporation (1980) 32 DLR 36.*

When a single act of neglect amounts to misconduct u/s 17(3) : The observations of the Labour Court is as follows :

"That the accident took place at 10 p.m. when the tide was high and there was fog and Master Abdullah did not take extra precautionary measure when the launch and the flat were plying in this risky and dangerous condition."

Held : In this state of findings and evidence the plying of the launch and the flat in that hour of night and in foggy condition of the weather must be held to be act of neglect of work. Now this single act of neglect would constitute a misconduct. Whether an act of neglect amounts to misconduct or not depends upon the nature of neglect of work or the seriousness of the act. If an employee commits a particular act which might have resulted in an accident or injury to the goods and property of the employer then it cannot be said that this single act of neglect would not amount to a misconduct under Employment of Labour (Standing Orders) Act.

The certificate of survey clearly shows that the vessels were not to ply during the night time but in violation of the conditions of the

—Ss. 17-18

certificate both Sukani Abdul Mannan and the Master Abdullah plied the vessel. Sakhani Abdul Mannan is held responsible for plying the vessel at night and in foggy condition and as such he was guilty of neglect of work. Master Abdullah was responsible for wrongly plying the vessel at night time and in foggy weather; *Managing Partner, M/S. Bob Navigation (1982) 34 DLR 55.*

18. **Procedure for punishment.**—(1) No order for discharge or dismissal of a worker shall be made unless—

- (a) the allegations against him are recorded in writing ;
- (b) he is given a copy thereof and not less than three days' time to explain ;
- (c) he is given a personal hearing if such a prayer is made ; and
- (d) the employer or the manager approves of such order.

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

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

(3) An order of suspension shall be in writing and may take effect immediately on delivery to the worker.

(4) (a) If, on enquiry, a worker is found guilty of any of the charges alleged and is punished under sub-section (1) of section 17, he shall not be entitled to his wages for any period of suspension for enquiry but shall be entitled to the subsistence allowance under the proviso to sub-section (2).

(b) If the worker is found not guilty, he shall be deemed to have been on duty for the period of suspension for enquiry, if any

—S. 18

and shall be entitled to his wages for such period of suspension and the subsistence allowance shall be adjusted accordingly.

(c) In cases of punishment, a copy of the order inflicting such punishment shall be supplied to the worker concerned.

(5) If a worker refuses to accept any notice, letter, charge-sheet, order or any other document addressed to him by the employer, it shall be deemed that such notice, letter, charge-sheet, order or the document has been delivered to him if a copy of the same has been exhibited on the notice board and another copy has been sent to the address of the worker as available from the records of the employer, by registered post.

(6) In awarding punishment under this Act the employer shall take into account the gravity of the misconduct, the previous record, if any, of the worker and any other extenuating or aggravating circumstances that may exist.

(7) Notwithstanding anything contained in the foregoing subsections or elsewhere in this Act, an employer, in cases of 'go-slow' or illegal strike, may discharge or dismiss one or more workers or inflict such other punishment on him or them, individually or collectively, by notice posted on the notice board, after obtaining permission from the Labour Court.

CASE LAW

3 days' time referred to in clause "b" of s. 18 (1) is the minimum time allowed, and there is no embargo on giving more time : High Court not a court of appeal or revision to correct any and every error appearing on the face of the record, in this case the order of the Labour Court. Section 18 imposes an obligation on the employer to give a notice to the employee and sufficient time, namely, 3 days as mentioned in the section itself to enable him to show cause against the proposed punishment. But that does not mean that more than 3 days time can not be given. Even if it be held that the petitioner did not receive the letter within time and submit his explanation within the time allowed yet there is no reason for the petitioner

—Case law

—S. 18

not to have moved the employer by either a telegram or a letter asking for extension of time stating the reason thereof. The High Court will not convert itself into a Court of appeal or a court of revision to correct each and every error appearing on the face of record which does not occasion any injustice. *Monsur Ahmed Vs. Burmah Eastern Ltd.* (1968) 20 DLR 120.

When a worker is dismissed without any show-cause notice, the only remedy that can be given to him is his re-instatement in service. *M/s. Hafiz Jute Mills Ltd. Vs. Second Labour Court* (1970) 22 DLR 713.

Procedure to be followed when ordering a discharge or dismissal of a worker.

Sub-section (1) of section 18 of the Employment of Labour (Standing Orders) Act specifically provides for a procedure for punishment wherein it is stated that no order for discharge and dismissal of a worker shall be made unless.

- (a) the allegations are recorded in writing.
- (b) a copy of the allegations is given to explain against such allegations, and
- (c) a personal hearing is given, if such prayer is made.

When a charge sheet was framed against delinquent persons and they were asked to appear before the enquiring officer by a regular notice and when the delinquent persons did appear before such enquiry officer for four consecutive days when their statements were recorded it cannot be said that the aforesaid conditions were not complied with on any account. *Bangladesh Shilpa Rin Sangstha Vs. Chairman, Second Labour Court* (1980) 32 DLR 265.

Circumstances which should be kept in view when dismissing an employee: In a dispute where there is an allegation of theft against respondent No. 2 even if such allegation may not be proved in evidence there always remains an uncongenial relationship between the employer and the employee based on mutual suspicion arising out of a major allegation of theft. In such uncongenial relationship clouded with suspicion it cannot be said that it would be an appropriate case where reinstatement could be allowed.

The management while passing the final order of dismissal against the respondent No. 2 did not take into account the extenuating circumstance

—Case law

—S. 18

that the delinquent was the first offender during his service for over 10 years. That being so, the petitioner instead of dismissing the respondent No. 2 ought to have discharged him under sub-section (2) of section 17 read with sub-section (6) of section 18 of the Employment of Labour (Standing Order) Act, 1965. *Manager Z.B. Sugar Mills. Vs. Chairman Ist Labour Court.* (1982) 34 DLR 1.

Labour Court is not a court of appeal—It can interfere only when the enquiry officer or the committee acts unfairly and against the principles of natural justice. Its function is to see whether the delinquent is lawfully punished.

The enquiry officer or enquiry committee is only required to follow the procedure laid down in sub-section (1) of section 18 of the Employment of Labour (Standing Orders) Act. If such procedure is followed and the principles of rules of natural justice are complied with in that event there is no occasion for interfering with the finding of any enquiry officer or enquiry committee. The Labour Court can only interfere with the finding of the enquiry of the officer or enquiry committee if it is found that the enquiry was held unfairly, with bad faith without complying with the principles of rules of natural justice and without following the procedure laid down in sub-section (1) of section 18 of the Employment of Labour (Standing Orders) Act. Ibid.

The only function of the Labour Court is to see whether the delinquent has been punished in accordance with law following the procedure laid down in sub-section (1) of section 18 of the Employment of Labour (Standing Order) Act. Unless any unfairness or bad faith or malafide is found in the proceeding before the enquiry officer, the Labour Court could not reverse the finding of the enquiry officer to hold that the delinquent was not guilty of the charge levelled against him. Ibid.

In case of awarding a major punishment (such as dismissal from service) upon a worker, the employer has an obligation to consider extenuating circumstances in favour of the worker u/s 18(6) such as period of service and previous record.

Any employer while finding any employee guilty of misconduct is obliged to consider the gravity of such misconduct and while awarding punishment thereof where it is the highest punishment like dismissal, the employer is also obliged to consider any extenuating circumstances like the

—Case law

—S. 18

period of service and previous records, etc. This obligation under sub-section (6) of section 18 of the Employment of Labour (Standing Order) Act, though is of a directory nature, no employer is absolved from its obligation to consider the implication of such previous record while awarding a major punishment under the law. *Md. Wazhiullah Vs. Secretary, BSC* (1980) 32 DLR 36.

Employer is empowered to dismiss an employee following the alternative allowed u/s 18 (7) in cases of misconduct, etc. sub-section (7) of sec. 18 does not limit employer's right to take such disciplinary action by following the procedure laid down u/s 18(1).

It has contended that prior permission from the Labour Court is required under section 18(7) of Employment of Labour (Standing Orders) Act, 1965 to dismiss a worker for adopting go-slow tactics and since the the employer has dismissed the worker without such prior permission in the present case, the order of dismissal was liable to be set aside.

Held : Provisions of section 18(7) of Bangladesh Employment of Labour (Standing Orders) Act, 1965 gives an alternative power to the employer to dismiss collectively or individually any worker in case of misconduct or go-slow tactics or illegal strike without following the procedure of holding enquiry as laid down in section 18(1) of the Act.

Provision of section 18(7) does not in any way limit or affect the employer's right to take disciplinary action by himself after complying with the procedure of section 18(1) of the said Act. The procedure prescribed in section 18(7) of the said Act are extraordinary and in addition to the procedure prescribed in section 18(1) of the said Act : *Saheb Ali Vs. Chairman, Labour Court*. (1980) 32 DLR 16

Disciplinary action by a Company against its employees can only be taken after obtaining permission from the Labour Court. No agreement between the Employer and Employees can override this statutory provision of s. 18(7) : *General Manager, Bogra Cotton Spinning Co. Ltd. vs. Chairman, Rajshahi Labour Court*. (1979) 31 DLR (AD) 328.

The only function of the Labour Court is to see whether the delinquent has been punished in accordance with law following the procedure laid down in sub-section (1) of section 18 of the Employment of Labour (Standing Orders) Act. Unless any unfairness or bad faith or mala fide is found in the proceeding before the enquiry officer, the Labour

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Court could not reverse the finding of the enquiry officer to hold that the delinquent was not guilty of the charge levelled against him : *Manager, Zeal Bangla Sugar Mill Ltd. Vs. Chairman, First Labour Court* 34 DLR (1982)...1.

Labour Court's duty as provided u/s 18 (1).

The Labour Court constituted under section 35 of the Industrial Relations Ordinance, so far as it determines a case under section 25 of the Standing Orders Act, does not act as a court of appeal over the judgment of a Domestic Tribunal : its punishment has been made according to law, namely, whether the requirements of section 18(I) of the Standing Orders Act have been fulfilled. Its functions are in the nature of a revision : *S.H. Quddus & ors. Vs. Chairman, Labour Court Chittagong*. 33 DLR (1981) 1.

Requirements of S. 18.

Requirements of section 18 are that an allegation against a worker must be recorded in writing, he is given a copy thereof and at least 3 days time to explain, he is given a personal hearing if prayed for and the Employer has approved the order of discharge or dismissal.

It is not the function of the Labour Court to make reassessment of evidence recorded by the Tribunal. The fact that on reassessment of evidence by some other person a different findings could have been arrived at is not a ground to hold that the enquiry was improper or unfair.

Ibid.

Amoy
19. Termination of employment.—(1) For terminating the employment of a permanent worker by the employer, otherwise than in the manner provided elsewhere in this Act, ¹[one hundred twenty days'] notice in the case of monthly rated workers and ²[sixty days'] notice in the case of other workers, in writing, shall be given by the employer :

Provided that wages for ¹[sixty days] or sixty days, as the case may be, may be paid in lieu of such notice :

1. inserted for 'ninety days' by Ord. XVI/1985.
2. for 'forty-five days' by *ibid*.

—S/ 19

Provided further that the worker whose employment is so terminated, shall be paid by the employer compensation at the rate of [thirty days'] wages for every completed year of service or for any part thereof in excess of six months, in addition to any other benefit to which he may be entitled under this Act or any other law for the time being in force.

Explanation.—For the purpose of calculation of wages under this sub-section, wages shall mean the average of the basic wages and dearness allowance, if any, paid to the worker during the period of twelve months immediately preceding the date of termination.

(2) If a permanent worker desires to terminate his employment, one month's notice in the case of monthly rated workers, and fourteen days' notice in the case of other workers in writing, shall be given by him to his employer :

Provided that a worker who terminates his employment under this sub-section shall not be entitled to the payment of any compensation mentioned in sub-section (1) ; but he shall be entitled to other benefits, if any, under this Act or under any other law for the time being in force.

(3) For terminating the employment of a temporary worker by the employer, otherwise than in the manner provided elsewhere in this Act, and if it is not due to the completion, cessation, abolition or discontinuance of the temporary work which he was appointed to perform, one month's notice in the case of monthly rated workers and fourteen days' notice in other cases, in writing shall be given by the employer :

Provided that wages for one month or fourteen days as the case may be, may be paid in lieu of such notice.

1. For 'fourteen days' ins. by Ord. XVI/1985.

—S. 19

CASE LAW

The Labour Court found that the evidence on record was not sufficient to warrant the order of dismissal and set aside the orders of dismissal, but instead of ordering reinstatement of the petitioners directed the employer to give termination benefits to the respective petitioners under section 19(I) of the Employment of Labour (Standing Orders) Act, 1956.

Termination benefits rather than re-instatement deemed appropriate order. From the judgment of the Labour Court it appears that while considering the prayer for reinstatement the Court observed as follows :—

“Regarding reinstatement, I am of opinion that there is lack of confidence on the first party and as such he should not be thrust on the shoulder of the second party. Under the circumstances, he should be given termination benefits”.

Held : The reasons given by the Labour Court provides sufficient justification for granting termination benefits instead of re-instatement : *S.M. Quddus Vs. Chairman, Labour Court Chittagong.* (1981) 33 DLR (AD) 12.

Until cognizance of the dispute is taken by conciliation officer and he issues notice to the employer and the employees, it cannot be said that order of termination of service was passed during the pendency of conciliation proceedings and as such it is a termination under section 19 and not one under section 17 for union activities. *Ramani Ranjan Nath Vs. Spencer & Co.* (1969) 21 DLR 206.

Benefits u/s 19 can be claimed when termination of an employee's service takes place under section 17 or 18 but not when he is found guilty of theft of employers goods. The Labour Court was wrong in holding that the employee was entitled under law to the payment of termination benefit when it has found that he was rightly dismissed : *Pak. Match Co. Vs. Chairman 3rd Labour Court* (1975) 27 DLR 65.

Essentials of termination of service under sections 12 and 19.

The essential of a termination on the ground of retrenchment as prescribed under section 12 (a) the worker must be given one month's notice in writing indicating the reason for retrenchment or he has been paid in lieu of such notice in respect of retrenchment is sent to the Chief Inspector, and (c) the worker has been paid at the time of retrenchment compensation or gratuity whichever is higher as required under clause (c) of section 12.

—Case law

—S. 19

If notice to the Chief Inspector has not been served in terms of section 12, the retrenchment of the employee is not in accordance with law. *M/S. Caltex Oil (Pakistan) Ltd. Vs. Chairman, 2nd Labour Court.* (1967) 19 DLR 264.

Employer's inherent power to terminate employee's service giving the latter certain benefits in appropriate cases.

Section 19 empowers the employer to terminate his employee wherever he thinks it necessary in the interest of his industry but on payment of certain dues. Exercises of this power cannot be assailed as arbitrary because the employer is required to pay pecuniary benefits to the person sought to be terminated. Even independent of section 19 an employer has got inherent power to terminate the service of his servant on payment of certain benefits and in absence of any malafide, the Court shall not interfere with the exercise of such power and when a matter like this is brought before that Labour Court the latter in his discretion allows those benefits to a worker suo motu. *S.H. Quddus Vs. Chairman. Labour Court, Chittagong.* (1981) 33 DLR 1.

Labour Court can convert a dismissal order into an order of termination.

In the present cases the Labour Court after hearing the parties scrutinised and reassessed the evidence and came to a finding that for want of sufficient materials the finding recorded against them by the Employer was not proper, fair and legal and on that finding converted the orders of dismissal into orders of termination of service under section 19 of the Standing Orders Act, allowing them all benefits as admissible under the rules.

Ibid.

Employer's right to dismiss an employee giving him certain benefits.

Employer has got every right under section 19 of the Standing Orders Act to terminate the service of his employees on payment of termination benefits as admissible.

Ibid.

Termination of employment : The transfer of the services of the employees not being a condition of their services, the respondent employees, by not acceding to the direction of the petitioner's company to go to the factory in Chittagong Hill Tracts (from Dacca) have not been guilty of misconduct, and as such they could not be discharged. Under the circumstances the order of discharge should be interpreted as

—Case law

—S. 19

the order of discharge passed under section 19 of the E. P. Employment of Labour (Standing Orders) Act, 1965, and the employees will get the benefits of termination of service as contemplated by the said section. *M/s. Pakistan Manufacturers Vs. Chairman Second Labour Court* (1969) 21 DLR 218.

Benefits under s. 19 can be claimed when termination of an employee's service takes place u/ss. 17 & 18 but not when he is found guilty of theft of the employer's goods.

The Labour Court was wrong in holding that the employee was entitled under law to the payment of termination benefits when the court itself found that he was rightly dismissed by the petitioner. *Pak. Match Co. Vs. Chairman 3rd Labour Court* (1975) 27 DLR 65.

Termination benefits can not be claimed when the employee resigns on his own accord. *I. W. T. A. Vs. Chairman, 1st Labour Court* (1977) 29 DLR 85.

Reinstatement is the most effective remedy available to workmen. Court can order reinstatement of an employee if it is not a case of termination simpliciter, for example, where termination has amounted to victimization as on account of employee's trade union activities. *James Finlay & Company Ltd. Vs. Aminul Islam*, (1969) 21 DLR 84.

Termination of the services of workers held malafide.

Termination simpliciter and therefore the order of re-instatement was illegal. The learned Labour Court has rightly pointed out that in spite of their long periods of service the Manager did not hesitate to dispense with their services and it has held on the basis of the evidence led that the termination of the services of the three workers was malafide and by way of victimisation. In awarding their reinstatement the learned court has allowed them full wages of only one year. *M/s. Azad Vs. Azad Press Karmachari Union* (1968) 20 DLR 1176.

The Daily Azad ceased publication as required under the Newspapers (Annulment of Declaration) Order from 17-6-75. Employees who were thrown out of employment following the Ordinance are not entitled to any benefit under the Employment of Labour (S. O.) Act, as it can not be said that their services were terminated by the employer which when happened could attract provisions of section 19.

—Case law

—S. 19

By reason of the Newspapers (Annulment of Declaration) Ordinance the publication of the petitioner "Daily Azad" ceased since the 17th June, 1975 and respondents, the erstwhile employees of the petitioner, went out of its employment but began to get their basic salary from the Government under a Notification pending absorption in suitable posts. The question is whether it can be said that in the facts stated above there was termination of employment of the respondents by the employer under section 19 of the Employment of Labour (Standing Order) Act so as to entitle them to the termination benefits or that the facts were covered by any of the provisions of the Act so as to warrant a complaint under section 25 of the Act.

Held : Apparently the employer did not cause the termination of employment nor for that matter it had its own choice. It was by reason of the Law that the respondents went out of employment of the petitioner and pursuant to a Notification by the Government they started getting their basic salary from it. Thus, plainly, s. 19 of the Act does not seem to be attracted to a case. The provisions of s. 19 are meant to provide some protection and relief to an employee when the employer decides to terminate his employment : *Azad and Publications Ltd. Vs. Chairman, First Labour Court (1980) 32 DLR 29.*

Employees' services were terminated in the larger context of the 2nd Revolution.

The process by which the respondents went out of the employment of the petitioner was being carried on in the larger context of what had been described at the relevant time as the second revolution. In such a situation neither the employer nor the employee had anything to do in accordance with the Act to regulate their relationship. Ibid

Termination simpliciter of an employee's service under section 19 effective and in view of s. 25 he being no longer in service within the meaning of s. 2(s) can not move the Court under section 25. It was contended that services of Aminul Islam were terminated for his trade union activities and as such it was an act of victimisation and the termination virtually amounted to dismissal under the cloak of the term "termination."

Held : This contention does not hold good as the termination of the services of Aminul Islam without any charge or stigma was termina-

—Case law

—S. 19

tion simpliciter under section 19 of the Standing Orders Act, 1965 and as such he was no longer a worker within the meaning of section 2(s) of the Act and had no locus standi to raise any labour dispute. Further remedy provided under section 25 of the Standing Orders Act, 1965 was not available to him in view of the fact that he became out of employment by an action taken against him by the Company under section 19 of the Standing Orders Act, 1965: *Aminul Islam Vs. James Finlay & Co. Ltd.* (1974) 26 DLR (S.C.) 34.

“Any person” in sec. 19 explained.

It is true that expression ‘any person’ is very wide, but it does not appear to have been used in an unqualified sense. ‘Any person’ must be construed in the context of the words in the definition clause. In the dispute, there must therefore be a direct relation between the person and his employment or non-employment or condition of work. Similarly, the persons raising the dispute must be workers having some interest in the dispute. A combination of them in the totality will constitute ‘labour dispute.’: *Bangladesh Tea Estate Ltd. Vs. Bangladesh Tea Estate Staff Association*, (1976) 28 DLR (AD) 190.

Termination of service of a worker may lead to a dispute which may be a labour dispute: The terminated worker obviously is a person in whose employment or non-employment the workers have some interest. The termination of service may lead to a dispute between the employer and the workers, and may in certain circumstances be a labour dispute. For example, the termination may be a cloak to victimize a worker who is an officer of a registered trade union for his trade union activities. This interpretation, it appears, has been so construed by the Supreme Court of Pakistan: Ibid.

Worker can claim relief if the termination of service of an officer of registered union is for his union activities or he is deprived of benefit u/s. 19. Such a matter constitutes a labour dispute.

Though section 25 bars all complaints against the order of termination under section 19 of the said Act, yet it authorises the worker to claim relief if termination is of an officer of the registered trade union for his trade union activities or the worker is deprived of the benefits under section 19. The two acts are in para materia and the provision in sec. 25 indicates that if the termination of a worker is for his trade union activities and if he is an officer of a registered trade union, he

—Ss. 19-20

cannot only individually ask for relief, but such dispute may be raised as labour dispute and in such event, it would be treated as labour dispute under the Labour Dispute Act. Ibid

Court can go behind the order of a service termination to see if it is really a victimization.

The employer has a right to terminate the service of a worker under section 19 of the Standing Orders Act without disclosing any cause, and that the Court should not go behind an order of termination simpliciter to find out whether the order was malafide or not.

There is however an exception to this proposition contained in section 19 itself when read with section 25. It says that if the purported termination is in reality victimization of an officer of a registered trade union for his trade union activities, the Court can go behind the order to see the real purpose of termination and grant such relief as it thinks fit. The two propositions should be read together in order to arrive at the true import of section 19 of the Standing Orders Act. Ibid

1[20. Provident Fund—No worker, who is a member of any Provident Fund, shall be deprived due, to retrenchment, dismissal, discharge or termination of service, of the benefit of the Provident Fund including the employers' contribution thereto, if he is entitled to it under the rules of that Fund.]

1. Subs. for the former S. 20 by Ord. XVI of 1985. The former section ran as follows :

20. Provident Fund—No worker, who is a member of any Provident Fund, shall be deprived, due to retrenchment, discharge or termination of service in any other manner provided in this Act other than by way of dismissal for misconduct, of the benefit of that Provident Fund including the employer's contribution thereto, if he is entitled to it under the rules of that Fund.

Provided that, in case of dismissal for misconduct no worker shall be deprived of any portion of his own contribution to such Provident Fund.

—Ss. 21-24

21. Certificate of service.—Every worker (other than a casual or *badli* worker) shall be entitled to a certificate of service at the time of his retrenchment, discharge, dismissal, retirement or termination of service.

22. Protection of existing conditions of employment.—Nothing in this Act shall affect any law, usage or any award, agreement or settlement, in force immediately before the commencement of this Act, if such law, custom, usage, award, agreement or settlement ensures conditions of employment more favourable to the workers than those provided in this Act.

23. Power to exempt.—The Government may, by notification in the official Gazette, exempt, on such conditions as may be imposed, any shop or commercial or industrial establishment or any class thereof from the operation of all or any of the provisions of this Act.

24. Eviction from residential accommodation.—(1) A worker occupying a residential accommodation provided by his employer, who has been retrenched, discharged, dismissed or whose services have been terminated, shall vacate such residential accommodation within a period of fifteen days from the date of his retrenchment, discharge, dismissal or termination of service, as the case may be, unless a case in respect of such retrenchment, discharge, dismissal or termination of service is pending before any Court.

(2) On default of a worker in vacating the residential accommodation under sub-section (1), the employer may lodge a complaint to a Magistrate of the first class, having jurisdiction.

(3) The Magistrate, on hearing the parties, may notwithstanding anything contained in any other law for the time being in force, summarily decide the case and may pass an order of eviction giving the worker reasonable time to quit.

—Ss. 24-25

(4) The Magistrate may also pass an order directing a police-officer to evict such a worker, if necessary, by force, in case he fails to quit the residential accommodation within the time allowed under sub-section (3).

(5) The police-officer, while acting under an order of the Magistrate under sub-section (4), shall notify the occupants of the premises in question of the contents of the Magistrate's order and his intention to enter into such premises and shall allow at least two hours' time to the occupants to vacate the premises and shall give all reasonable facilities to the children before applying any force for taking over the possession of such premises.

CASE LAW

Ex-employee entitled to stay in his quarters under sub-section (1) of sec. 24 for 15 days after termination of his service: *Abdul Khaleque vs. Crescent Jute Mills Co. Ltd.* (1969) 21 DLR 913.

Dismissed worker can claim no right to be in the quarter by instituting a suit after the expiry of 15 days under section 24(1) while a case under sub-section (2) is pending. Ibid.

Importance
25. Grievance procedure.—(1) Any individual worker ¹[including a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment] who has a grievance in respect of any matter covered under this Act and intends to seek redress thereof under this section, shall observe the following procedure :—

(a) the worker concerned shall ¹[submit] his grievance to his employer, in writing, ²[by registered post] within fifteen days of the occurrence of the cause of such grievance and the employer shall within ¹[fifteen] days

1. Subs. by Ord. XXXVI of 1978.

2. The words "notice of" is omitted *ibid*,

—S. 25

of receipt of such grievance, enquire into the matter, give the worker concerned an opportunity of being heard and communicate his decision, in writing, to the said worker ;

- (b) if the employer fails to give a decision under clause (a) or if the worker is dissatisfied with such decision, he may make a complaint to the Labour Court having jurisdiction, within thirty days from the last date under clause (a) or within thirty days from the date of the decision, as the case may be unless the grievance has already been raised or has otherwise been taken cognizance of as labour dispute under the provisions of the Industrial Disputes Ordinance, 1959: ✓

⁴[Provided that no complaint shall lie against an order of termination of employment of a worker under section 19, unless the services of the worker concerned is alleged to have been terminated for his trade union activities or unless the worker concerned has been deprived of the benefit in that section]. ✓

- (c) on receipt of any complaint under clause (b), the Court after notice and given the parties hearing, may decide the matter ; ✓

1. Subs for the former Proviso, by Ordn, 16/1985. The former proviso ran as follows.

Provided that no complaint shall lie against an order of termination of employment of worker under section 19, unless the worker concerned is an officer of a registered trade union and his employment is alleged to have been terminated for his trade union activities or unless the worker concerned, whether an officer of a registered trade union or not, has been deprived of the benefits specified in that section ;

- (c) on receipt of any complaint under clause (b), the Court, after notice and given the parties hearing, may decide the matter in such summary way as it deems proper ;

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- (d) in deciding the matter, the Court may pass such orders including orders regarding cost, as it may deem just and proper and it may, in appropriate cases, require, by such order, the reinstatement of the complainant thereof and such order shall be final.

Provided that any complaint under this section shall not amount to prosecution under section 27 of this Act ;

- (e) no Court fee shall be payable for filing or exhibiting of any complaint or document of any kind in the Court.

CASE LAW

The worker is to send his grievance notice by registered post within 15 days of the occurrence.

In order to remedy a palpable injustice in the law, the amendment introduced by the Ordinance No. XXXVI of 1978 requires the worker concerned to send his grievance petition by registered post within fifteen days of the occurrence of the cause of such grievance. Thereafter the time taken by the postal authority for delivery of the grievance petition will be the responsibility of the postal authority.

Section 25 (I)(a) of the Employment of Labour (Standing Orders) Act uses the word "submit" and requires the grievance petition to be submitted "in writing by registered post". : *Abul Kalam Vs. Chairman, Labour Court, Chittagong and ors.* (1986) 38 DLR 399

Labour Court's discretionary power.

Under section 25 the Labour Court has got power to pass any order including an order for reinstatement in appropriate cases on an application under this section. The Labour Court is found to have been invested with abundant discretionary power to allow termination benefits to a worker instead of reinstatement in the circumstances of a particular case.

There is no basis for contention that in every case where an order of dismissal of a Domestic Tribunal is set aside by the Labour Court, it shall pass an order of reinstatement only : *S. H. Quddus Vs. Chairman, Labour Court, Chittagong.* (1981) 33 DLR 1.

—Case law

—S. 25

Grievance petition sent under a registered cover to the employer within 3 days of the receipt of the dismissal order is enough compliance regarding despatch of grievance to the employer to whom due to his absence this letter could not be delivered within 15 days.

The fact that the grievance petition was despatched within 3 days of receipt of the order of dismissal by registered letter which was taken for delivery within that period but could not be delivered for absence of the addressee then the sending of the letters in this manner must be treated as due compliance with provision of section 25 relating to service of grievance petition within the period of 15 days.

The law-makers amended section 25 providing that if a grievance petition is sent by registered post within the period mentioned in the section it would be treated as having been filed within the period. : *Abdul Karim Khan vs. Chairman, 1st Labour Court, Dacca (1979) 31 DLR 269.*

Worker can claim relief if the termination of service of an officer of registered union is for his union activities or he is deprived of benefit u/s. 19. Such a matter constitutes a labour dispute.

Though section 25 bars all complaints against the order of termination under section 19 of the said Act, yet it authorises the worker to claim relief if the termination is of an officer of the registered trade union for his trade union activities or the worker is deprived of the benefits under section 19. The two acts are in para materia and the provision in sec. 25 indicates that if the termination of a worker is for his trade union activities and if he is an officer of a registered trade union, he cannot only individually ask for relief, but such dispute may be raised as labour dispute and in such event, it would be treated as labour dispute under the Labour Dispute Act : *Bengla Tea Estate Vs. Staff Association (1976) 28 DLR (SC) 190.*

Court can go behind the order of a service termination to see if it is really a victimization.

The employer has a right to terminate the service of a worker under section 19 of the Standing Orders Act without disclosing any cause, and that the Court should not go behind an order of termination simpler to find out whether the Order was malafide or not.

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—S. 25

There is however an exception to this proposition contained in section 19 itself when read with section 25. It says that if the purported termination is in reality victimization of a registered Trade Union for his trade union activities, the Court can go behind the order to see the real purpose of termination and grant such relief as it thinks fit. The two propositions should be read together in order to arrive at the true import of section 19 of the Standing Orders Act. Ibid

Termination simpliciter of an employee's service under section 19 effective and in view of s. 25 he being no longer in service within the meaning of s. 2 (s) can not move the Court under section 25.

It was contended that the services of Aminul Islam were terminated for his trade union activities and as such it was an act of victimisation and the termination virtually amounted to dismissal under the cloak of the term "termination."

Held : This contention does not hold good as the termination of the services of Aminul Islam without any charge or stigma was termination simpliciter under section 19 of the Standing Orders Act, 1965 and as such he was no longer a worker within the meaning of section 2(s) of the Act and had no locus standi to raise any labour dispute. Further remedy provided under section 25 of the Standing Orders Act, 1965 was not available to him in view of the fact that he became out of employment by an action taken against him by the Company under section 19 of the Standing Orders Act, 1965 : *Aminul Islam Vs. James Finlay & Co. Ltd.* (1974) 26 DLR (SC) 34.

Worker must first of all submit his grievance to the employer within 15 days of the occurrence of the grievance : *M.A. Hamid vs. Chairman, 2nd Labour Court*, (1977) 29 DLR 297.

15 days' time-limit counted from the date of the occurrence of the grievance is unalterable so that if the worker sends his grievance by registered post within this time-limit but the latter is received by the employer beyond 15 days, he cannot ask for extension of time. Ibid

A dismissed worker—his remedy u/s 25 the Act.

A dismissed worker who falls within the definition of worker in Act VIII of 1965 can avail of the procedure laid down in section 25 of the Act of 1965 for challenging his dismissal. A dismissed worker who

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is not included within the narrower definition of worker as provided in the Act of 1965 will not, however, be without any legal remedy, though unable to seek the protection against dismissal under section 25 : *G.M. Hotel Inter Cont. Vs. 2nd Labour Court* (1976) 28 DLR 162.

An individual workman seeking remedy may apply to the Labour Court u/s 25 of the Act.

It may be noted that while amending section 34 of the Industrial Relations Ordinance, 1969 none of the provisions of the Employment of Labour (Standing Order) Act, 1965 has been changed. Section 25 of the latter statute is still available to a workman for his remedy before the Labour Court which is competent to entertain such matters : *A Robeiro vs. Labour Appellate Tribunal* (1975) 27 DLR 99.

Distinction between amended section 25 of the Employment of Labour (Standing Orders) Act and sec. 34 of Industrial Relations Ordinance. Ibid

Proviso—Proviso to section 25 has no application to a labour disputes arising under the Labour Disputes Act.

The benefits specified in section 19 of the East Pakistan Employment of Labour (Standing Orders) Act, 1965 are that for termination of his service a worker is to be given 90 days or 45 days notice according as he is a monthly-rated worker or a piece-rated worker or wages for such period in lieu thereof and he is also to be paid compensation at the rate of 14 days wages for every year of completed service or for any part thereof in excess of six months in addition to other benefits. It is evident that the above proviso, whatever may be its exact import, is applicable only in case of a "complaint" under section 25 of the Standing Orders Act. That proviso to section 25 has no application whatsoever to a labour dispute brought before the Labour Court under the provisions of the Labour Disputes Act : *M/s. Azad and Publication Ltd. vs. Azad Press Karmachari Union* (1968) 20 DLR 1176.

Relief of reinstatement available in a case arising under the Labour Disputes Act even though there is no provision for such relief in this Act (VI of 1965).

It is true that in clause (d) of section 25 of the East Pakistan Employment of Labour (Standing Orders) Act, 1965 it is provided that in deciding

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a matter (complained of) the Court may pass such order as it may think just and proper including reinstatement of the complainant, but there is no such express provision in the Labour Disputes Act specifying the reliefs that may be granted in a labour dispute. But this cannot be interpreted to in a dispute under the Labour Disputes Act to mean that in a dispute under the Labour Disputes Act the relief of reinstatement is not available. This relief is the most effective remedy against any arbitrary dismissal, such relief is available in labour dispute case under the Labour Disputes Act to a worker who is not an officer of a Trade Union. *M/s. Azad and Publication Ltd. Vs. Azad Press Karmachari Union* (1968) 20 DLR 1176.

Dismissed worker can not maintain an application u/s 34 of the Industrial Relations Ordinance. His remedy in a complaint u/s 25 of the Employment of Labour (Standing Orders) Act of 1965.

A dismissed worker, his dismissal having no connection with industrial dispute, cannot maintain an application under section 34 of the Ordinance. His remedy lies in a complaint under section 25 of the Employment of Labour (Standing Orders) Act, 1965. *Sonali Bank Vs. Abdul Batek Sarder*. (1979) 31 DLR 240.

Under section 34 of the Industrial Relations Ordinance an existing worker can avail himself of the rights conferred under sec. 34 and move the Labour Court; Whereas under sec. 25 of the Employment of Labour (S. O.) Act any worker including those dismissed or discharged can move the Labour Court.

In accordance with the amendment of section 34 of the Industrial Relations Ordinance dated 16th October, 1971, any worker can take resort to the remedy available under section 34 without raising any industrial dispute at all. At present the main distinction between section 34 of the Industrial Relations Ordinance and section 25 of Employment of Labour (Standing Orders) Act, is that under section 34 of the Industrial Relations Ordinance only an existing worker can move Labour Court whereas under section 25 of the Employment of Labour (Standing Orders) Act all workers including those who are dismissed or discharged from service can move the Labour Court.

Thus an existing individual worker has a dual remedy under section 34 of the Industrial Relations Ordinance as well as under section 25 of the

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—S. 25

Employment of Labour (Standing Orders) Act. From the language employed in section 25 of the Employment of Labour (Standing Orders) Act it clearly appears that a special proceeding is available initially before the Management and subsequently before the Labour Court. An existing individual worker may very well skip over the proceeding under section 25 of the Employment of Labour (Standing Orders) Act and move the Labour Court directly under section 34 of the Industrial Relations Ordinance. Thus an alternative remedy is available to an existing individual worker by virtue of the amendment of section 34 of the Industrial Ordinance on and from 16th October, 1970. *A. K. Khan & Co. Vs. Chairman Labour Court* (1980) 32 DLR 164.

Remedies under section 34 of the Industrial Relations Ordinance not dependent on remedy available under section 25 of the Employment of Labour (S.O.) Act.

Industrial workers' right under sections 17, 18 & 19 of Employment of Labour (S.O.) Act can be enforced through section 25 of that Act or through section 34 of the Industrial Relations Ordinance.

It would also not be correct to say that the right available under section 34 of the Industrial Relations Ordinance is subject to the period of limitation as prescribed under section 25 of the Employment of Labour (Standing Orders) Act. This is not so as both the provisions of section 25 of the Employment of Labour (Standing Orders) Act and section 34 of the Industrial Relations Ordinance are procedural remedies available to existing worker concerned and the aforesaid remedies are not only alternative to each other but mutually exclusive.

The remedy available under section 34 of the Industrial Relations Ordinance is not dependent upon the remedy available under section 25 of the Employment of Labour (Standing Orders) Act. The substantive rights available to individual workers under sections 17, 18 and 19 of the Employment of Labour (Standing Orders) Act can be enforced either through the provisions of section 25 of the Employment of Labour (Standing Orders) Act or through the provisions of section 34 of the Industrial Relations Ordinance.

The right guaranteed and secured to a worker under sections 17, 18 and 19 of the Employment of Labour (Standing Orders) Act can thus be adjudicated by a Labour Court under section 34 of the Industrial Relations Ordinance without availing the proceeding or procedure laid down under section 25 of the Employment of Labour (Standing Orders) Act.

—Case law

—S. 25

In this connection it may be mentioned that the period of limitation as prescribed in section 25 of the Employment of Labour (Standing Orders) Act, is only applicable in a proceeding taken under section 34 of the Industrial Relations Ordinance : *A. K. Khan & Co. Vs. Chairman, Labour Court* (1980) 32 DLR 164.

The existing facilities of management staff in Group-III have been made applicable to respondent No. 1 who is the Chief Driver of the oil tanker, the note shows that he will not enjoy certain facilities of Group-III. Therefore, some discrimination existed between the respondent No. 1 and employees in Group-III management staff which negatives the contention that respondent No. 1 is not a worker : *General Manager, Vs. Golap Rahman*. 34 DLR (1982) 166.

Labour Court functioning under the Act is vested with all the powers mentioned in the Act. It exercises the jurisdiction of Civil Court under the C.P. Code and therefore can exercise Court's power under Order 9, rule 13. C.P. Code.

The Labour Court mentioned in section 25(1) (b) of the Standing Orders Act, 1965 is how the labour court as constituted under the Labour Disputes Act, 1965 accompanied with all trappings and powers of that Court under the latter Act. It is definitely implied in s. 25 of the Standing Orders Act, 1965 that the Labour Court mentioned therein will function with all the powers of that court conferred on it under the Labour Disputes Act, 1965 : *M/s M.M. Ispahani Ltd. vs. Chairman, 2nd Labour Court* (1967) 19 DLR 612.

The Labour Court constituted under section 35 of the Industrial Relations Ordinance, so far as it determines a case under section 25 of the Standing Orders Act, does not act as a court of appeal over the judgment of a Domestic Tribunal : its duty is to see whether a particular order of punishment has been made according to law, namely, whether the requirements of section 18(I) of the Standing Orders Act have been fulfilled. Its functions are in the nature of a revision : *S. H. Qudus & ors. Vs. Chairman, Labour Court Chittagong* 33 DLR (1981) 1.

Reinstatement is the most effective remedy available to workmen, Court can order reinstatement of an employee if it is not a case of termination simpliciter, for example, where termination has amounted to victimization as on account of employee's trade union activities : *James Finlay & Company Ltd. vs. Aminul Islam*, (1969) 21 DLR 84.

—Case law

—S. 25

Termination of the services of the workers (in the present case) held malafide.

Termination simpliciter and therefore the order of reinstatement was illegal. The learned Labour Court has rightly pointed out that in spite of their long periods of service the Manager did not hesitate to dispense with their services and it has held on the basis of the evidence led that the termination of the services of the workers was malafide and by way of victimisation. In awarding their reinstatement the learned Court has allowed them full wages of only one year : *Azad Vs. Azad Press Karmachari Union*, (1968) 20 DLR 1176.

Proper procedure which a worker must follow against an employer, if he has any grievance against him, such as non-payment of his subsistence allowance—during his suspension. Time limited to make the representation if allowed to lapse will put him out of Court, if he seeks Court's intervention in the matter.

Section 25 clearly lays down that any worker who has a grievance in respect of any matter covered under the Act and intends to seek redress thereon under this section shall bring his grievance to the notice of the employer in writing within 15 days of the occurrence of the cause of such grievance and the employer shall within 30 days of the receipt of such grievance inquire into the matter and communicate his decision in writing to the worker and if the employer fails to give a decision or the worker is dissatisfied with the decision he may make a complaint to the Labour Court within 30 days from the date of the decision. *Dy Managing Director Vs. K. Fazlul Karim* (1976) 28 DLR 445.

Application u/s 25 of the Employment of Labour (Standing Orders) Act by an individual worker.

A workman whose service has been terminated may with equal competence apply for his reinstatement either under section 34 of the Industrial Relations Ordinance or under section 25 of the Employment of Labour (Standing Orders) Act, 1965 did not take notice of the true import of the definition of 'a worker' or 'workman' as given in the two enactments. An application under section 25 of the Employment of Labour (Standing Orders) Act is certainly maintainable as the said provision has been specifically made for adjudication of the grievances of an individual worker in respect of any of the matters covered under the said Act. *Railway Men's Stores Ltd. Vs. Chairman, Labour Court, Chittagong*. (1978) 30 DLR (SC) 252.

—Case law

—S. 25

Individual worker includes worker no longer in employment either by termination or dismissal or discharge order and can make complaint u/s 25 on compliance of the other terms of the section.

The main provision of the definition clause of a 'worker' as given in section 2 (v) of the (Standing Orders) Act does not prima facie appear to include a worker who has ceased to be in employment but if the provisions of section 25 are read as a whole, particularly having regard to the proviso to clause (b) section 25(1), it appears that when the said section provides that any individual worker who has a grievance in respect of any matter covered under this Act the legislature used the word 'worker' in an extended sense including a worker who is no longer in employment. The said proviso having directed that no complaint shall lie against an order of termination of employment of a worker under section 19 but that such a complaint may be made by a worker in respect of an order of termination of his employment for Trade Union activities if such worker is an officer of a registered Trade Union, or by a worker who has been deprived of the benefits specified in section 19, clearly indicates that a worker who is out of employment because of the termination of his services is within the scope of section 25 of the Act. From the said proviso it is clear that a worker who has ceased to be in employment may make a complaint under section 25 under certain circumstances. It is manifest therefore that so far as section 25 of the Standing Orders Act is concerned an individual worker, as has been referred to in the said section, includes a worker who has ceased to be in employment either by an order of termination or of dismissal or discharge or any other order or removal, provided he fulfils the terms of the said section. *Railway Men's Stores Ltd. Vs. Chairman, Labour Court, Chittagong* (1978) 30 DLR (SC) 251.

Labour Court's Jurisdiction : Leave was granted to consider that the Company and its Managing Director both being residents of Chittagong the petitioner though in charge of Bogra Sales Depot of the Company was employer of the Company and hence the complaint case clearly fell within the jurisdiction of the Chittagong and Rajshahi Labour Court. Consequently under such circumstances the Second Labour Court, Dhaka had the exclusive jurisdiction to decide the said complaint case under section 25 of Employment of Labour (Standing Orders) Act, 1965 read with Government Notification under section 35 of the Industrial Relations Ordinance, 1969.

As the principal office of the company was at Chittagong and the dismissal order was passed at a place within the jurisdiction of Rajshahi

—Case law

—S. 25

Labour Court it was clear that both the Labour Courts had jurisdiction over this matter.

But in accordance with a Notification issued by the Government it is provided that in respect of cases falling within the concurrent jurisdiction of more than one Labour Court, the Labour Court II of Dhaka shall be forum for decision in respect of such cases. The present case having been filed in Rajshahi Labour Court, which had no jurisdiction to entertain it in view of the above-mentioned notification its decision was coram non iudice.

When the law has conferred jurisdiction expressly, no amount of consent by the parties can invest a Court with jurisdiction which is not given by law : *Md. Mahmudul Hoque Vs. Md. Shamsul Alam* (1984) 36 DLR (AD) 179.

In a complaint brought by the employee against his employer (a Statutory body) the Labour Court did not permit the employer to examine more than one witness on the ground that those witnesses being employees of the said employer would serve no purpose by their examination because they are interested witnesses.

Held : Such refusal to examine the witnesses amounted to denial to fair judicial hearing in the matter : *E.P. Transport Corporation Vs. Second Labour Court* (1970) 22 DLR 569.

Results of domestic enquiry wherein conclusions have been arrived at bonafide and after complying with principles of natural justice, should not be lightly interfered with : *Md. Abdul Hoque vs. Second Labour Court* (1970) 22 DLR 577.

A worker can come to Labour Court for relief in any matter covered by the Act—A worker's grievance may be cause of labour dispute under Labour Dispute Act : Clause (b) of sub-section (1) of section 25 of the Standing Orders Act clearly provides that an individual worker can come to Labour Court for relief in respect of a grievance in any matter covered by the said Act, unless the grievance has already been raised and otherwise taken cognizance of as labour dispute. The section contemplates that what could be a grievance of an individual worker under this Act may in appropriate occasion be the cause of labour dispute under the Labour Disputes Act. When a labour dispute has been raised and taken cognizance of by the Labour Court that is to be adhered to. *Bangla Tea Estate vs. Staff Association* (1976) 28 DLR (SC) 190.

—Ss. 25-26

Aggrieved worker shall have to bring his grievances to the notice of the employer within 15 days—After 30 days he shall have the power to file a complaint u/s. 26(1)(b).

When an amendment allowed by the Labour Court makes the complaint a new complaint, such amendment not sustainable in law which time has run out against the petitioner : *Management Board A. R. Howlader Jute Mills Ltd. Vs. Chairman, 1st Labour Court* (1976) 28 DLR 368.

A Labour Court u/s 25(1)(d) functions as a statutory tribunal of limited jurisdiction and has no power of allowing amendment in the complaint petition like that granted under C. P. Code so as to make the amendment relate back to the date of filing of the said petition. Labour Court, however, can allow amendment to the petition which shall date, from the date on which such amendment is made and not earlier to that. Ibid

Results of domestic enquiry wherein conclusion have been arrived at bona fide and after complying with principles of natural justice, should not be lightly interfered with : *Md. Abdul Hoque vs. Second Labour Court* (1970) 22 DLR 577.

26. Penalty for non-compliance of Court's order under section 25.—

(1) Whoever refuses or fails to comply with an order passed by the Court under section 25, may be punished with simple imprisonment for a term not exceeding three months or with fine not exceeding Taka one thousand or with both.

(2) No Court shall take cognizance of an offence under subsection (1) except on complaint made by the aggrieved person. ✓

CASE LAW

Labour Court cannot act as a court of appeal: It has been held in a number of cases that the jurisdiction of a Labour Court or an Industrial Tribunal is very limited and restricted and it cannot sit as a court of appeal against a decision of a domestic enquiry made by any industrial or commercial establishment. In this connection reference may be made to the decision of the Supreme Court of Pakistan reported in PLD 1950 (SC) 66 and PLD 1961 (SC) 329.

—S. 26-27

Aggrieved worker shall have to bring his grievances to the notice of the employer within 15 days—After 30 days he shall have the power to file a complaint u/s 26 (1)(b). *Management Board Vs. Chairman Ist Labour Court.* (1976) 28 DLR 368.

The Labour Court in the present case exceeded its jurisdiction in upsetting the finding of a domestic enquiry when nothing could be found specifically as to the non-compliance of any rule of natural justice as governed by the conditions laid down in sub-section (1) of section 18 of the Employment of Labour (Standing Order) Act. That being so the decision of the labour court herein suffers from clear illegality and it was passed without any lawful authority having no legal effect. *Bangladesh Shilpa Rin Sangstha Vs. Chairman, Second Labour Court.* (1980) 32 DLR 265.

Failure to give effect to the order of the Labour Court reinstating an employee to his post is punishable u/s. 26 of the Employment of Labour (SO) Act—High Court Division has no jurisdiction to quash the order passed by the Labour Court.

The decision and order of the Labour Court in the matter of reinstatement in service of the opposite party is final and in this proceeding for quashing a criminal proceeding we have no scope to reopen and decide upon the contested question of the jurisdiction as it is not the proper forum for adjudicating upon the legality of the said order.

The dismissal was ordered not by the Managing Director but by the petitioner and implementation of the order was to be made by petitioner alone. So the criminal proceeding does not lie and cannot legally proceed against the Managing Director. The criminal proceeding is therefore quashed only as against the Managing Director of Glaxo Bangladesh Ltd. but will proceed against the petitioner alone. *Md. M. Hoque Vs. Md. Shamsul Alam.* (1983) 35 DLR 219.

27. Penalties and procedure.—(1) An employer who contravenes any provision of this Act, as applicable to his shop or commercial or industrial establishment, shall, for the first offence, be punishable with fine not exceeding Taka five hundred and in the case of a continuing offence, with a further fine which may extend to Taka fifty for every day after the first during which the offence

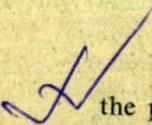
—Ss. 27-28

continues and for each of the subsequent offences with a fine which may extend to Taka five hundred or with simple imprisonment not exceeding one month or with both and in the case of a continuing offence arising out of such subsequent offence with further fine which may extend to Taka fifty for every day after the first during which such offence continues.

(2) Whoever contravenes any of the provisions of this Act shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable, for the first offence, with a fine which may extend to Taka two hundred and for each subsequent offence with a fine which may extend to Taka two hundred or with simple imprisonment not exceeding one month or with both.

(3) No prosecution for an offence punishable under this section, shall be instituted except by, or under the authority of, or with the previous permission, in writing, of the Chief Inspector or his authorised officers.

(4) No Court inferior to that of a Magistrate of the first class shall try any offence punishable under this section as well as under section 26.

 **28. Display of notice of abstracts of the Act—***An abstract of the provisions of this Act and rules made thereunder as well as the rules of service regulating employment as mentioned in the proviso to section 3, if any, shall be prominently posted and kept in a legible condition by the employer in Bengali, and *[English] on special boards to be maintained for the purpose, in conspicuous places of the shop or commercial or industrial establishment ;

*Vide rule 17 of the Employment of Labour (S. O.) Rules, to be read with Display of Abstract of Acts and Rules in Form P. *infra*.

*[Subs, by Ord. XXXVI of 1978.]

—Ss. 28-30

Provided that this section shall not apply to any shop or commercial or industrial establishment where the total number of workers employed is less than seven.

✓✓ **29. Liability of employer.**—The employer of every shop or commercial or industrial establishment shall personally be held responsible for proper and faithful observance of the provisions of this Act.

✓✓ **30. Chief Inspector and Inspectors.**—(1) The *[Chief Inspector of Factories and Establishments] shall be the Chief Inspector, who shall, in addition to the powers conferred on the Chief Inspector under this Act, have the powers of an Inspector throughout *[Bangladesh] and shall also have powers of supervision and control over the Inspectors :

Provided that the Chief Inspector may authorise any other officer or officers under him to exercise all or any of his powers for such person as may be specified by him.

(2) The Government may, by notification in the official Gazette, appoint such persons or class of persons as it thinks fit to be Inspectors for the purposes of this Act, within the local limit as may be assigned to each.

(3) An Inspector may, at all reasonable hours, enter any premises and make such examination of any record, register or other document relevant to the enforcement of the provisions of this Act and take, on the spot or otherwise, such evidence of any person and may require the owner or the occupant of such premises to render all reasonable assistance which may be necessary for carrying out the purposes of this Act.

1. Subs. by the Employment of Labour (Standing Orders.) Amdt. Order, 1972.

2. The word 'Pakistan' omitted by Act XIII of 1973.

—Ss. 30-32

(4) The Chief Inspector and every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Penal Code, 1860.

31. Powers to make rules.—(1) The Government may, subject to the conditions of previous publication in the official Gazette, make rules for carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any matter which is to be or may be prescribed under this Act.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding Taka one hundred.

32. (Repealed.) *Rep. by the Repealing and Amending Ordinance, 1966 (Ord. XIII of 1966).*



**THE EMPLOYMENT OF LABOUR (STANDING
ORDERS) (AMENDMENT)
ORDINANCE, 1985**

Ordinance No. XVI of 1985

**AN
ORDINANCE**

further to amend the Employment of Labour (Standing Orders) Act, 1965.

Whereas it is expedient further to amend the Employment of Labour (Standing Orders) Act, 1965 (E.P. Act VIII of 1965), for the purposes hereinafter appearing ;

Now, therefore, in pursuance of the Proclamation of the 24th March, 1982, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :—

1. Short title.—This Ordinance may be called the Employment of Labour (Standing Orders) (Amendment) Ordinance, 1985.

2. Amendment of section 12 E P. Act VIII of 1965.—In the Employment of Labour (Standing Orders) Act, 1965 (E.P. Act VIII of 1965), hereinafter referred to as the said Act, in section 12, in clause (c), for the word “fourteen” the word “thirty” shall be substituted.

3. Amendment of section 16, E.P. Act VIII of 1965.—In the said Act, in section 16, in the proviso, for the word “fourteen” the word “thirty” shall be substituted.

4. Amendment of section 17, E.P. Act VIII of 1965.—In the said Act, in section 16, in sub-section (1) the following shall be substituted, namely :—

“(1) Notwithstanding anything regarding lay-off, retrenchment, discharge and termination of service as provided elsewhere in this Act, a worker may—

- (a) be dismissed without prior notice or pay in lieu thereof or any compensation if he is convicted for an offence ; or
- (b) be dismissed without prior notice or pay in lieu thereof if he is found guilty of misconduct under section 18 ;

Provided that the worker who is so dismissed shall, if his continuous service is not less than one year, be paid by the employer compensation at the rate of fourteen days wages for every completed year of service, or for any part thereof in excess of six months or gratuity, if any, whichever is higher.

Explanation—For the purpose of calculation of compensation under this sub-section, “wages” shall mean the average of basic wages and dearness allowance, if any, paid to the worker during the period of twelve months immediately preceding the date of his dismissal.”

5. Amendment of section 19, E. P. Act VIII of 1965.—In the said Act, in section 19, in sub-section (1).—

- (a) for the words “ninety days”, occurring twice, the words “one hundred and twenty days” shall be substituted ;
- (b) for the words “forty-five days”, occurring twice, the words “sixty days” shall be substituted ; and
- (c) for the words “fourteen days” and words “thirty days” shall be substituted.

6. Substitution of section 20, E. P. Act VIII of 1965.—In the said Act, for section 20 the following shall be substituted, namely :—

“20. Provident Fund—No worker, who is a member of any Provident Fund, shall be deprived due to retrenchment, dismissal, discharge or termination of service of the benefit of that Provident Fund including the employers’ contribution thereto, if he is entitled to it under the rules of that Fund.”

7. Amendment of section 25, E. P. Act VIII of 1965.—In the said Act, in section 25,—

- (a) in clause (b) for the proviso the following shall be substituted, namely :—

“Provided that no complaint shall lie against an order of termination of employment of a worker under section 19, unless the services of the worker concerned is alleged to have been terminated for his trade union activities or unless the worker concerned has been deprived of the benefits specified in that section.” ; and

- (b) in clause (c), the words “in such summary way as it deems proper” shall be omitted.
-

**EMPLOYMENT OF LABOUR (STANDING ORDERS)
RULES, 1968**

1. **Short title.**—These Rules may be called the Bangladesh Employment of Labour (Standing Orders) Rules, 1968.

2. **Definitions.**—(a) “Act” means the Bangladesh Employment of Labour (Standing Orders) Act, 1968.

(b) “form” means a form appended to these Rules.

(c) “section” means a section of the Act.

(d) “Inspector” means an Inspector appointed under sub-section (2) of section 30 of the Act.

(e) “establishment” means a shop, a commercial or industrial establishment as defined in the Act.

(f) The words and expressions used in the Act but not defined in these Rules shall have the same meanings as assigned to them in the Act.

3. **Leave Register.**—The leave register under section 5 of the Act shall be maintained in Form “A”.

4. **Notice of stoppage of work beyond working hours.**—Notice of stoppage of work beyond working hours under sub-section (2) of section 6 of the Act shall be in Form “B”.

5. **Notice of stoppage of work during working hours.**—Notice of stoppage of work during working hours under sub-section (3) of section 6 of the Act, shall be in Form “C”.

6. **Notice of closure due to strike.**—Notice of closure under sub-section (6) of section 6 of the Act due to strike shall be in Form “D”.

7. **Notice of resumption of work after strike.**—Notice of resumption of work after strike under sub-section (6) of section 6 of the Act shall be in Form “E”.

8. Muster-roll for laid-off workers.—Muster-roll for laid-off workers under section 10 of the Act shall be maintained in Form “F”.

9. Notice of retrenchment.—Notice of retrenchment from service under section 12 of the Act shall be in Form “F”.

10. Certificate of service.—Certificate of service under section 21 of the Act shall be in Form “H”.

11. Complaint to the Labour Court.—A complaint to the Labour Court under clause (b) of sub-section (1) of section 25 of the Act shall be made in Form “I”. The Labour Court may, however, in its discretion, entertain any complaint written on a plain paper provided other formalities have been complied with.

12. Sanction.—Sanction for prosecution under sub-section (3) of section 27 of the Act shall be in Form “J”.

13. Submission of draft service Rules.—(1) In the draft service rules to be submitted by any employer to the Inspector under sub-section (2) of section 3 of the Act, the particulars of the workers employed in any establishment shall be in duplicate and shall be in Form “K”.

(2) The employer of any establishment desiring to have his own rules regulating employment of workers or any class thereof, as mentioned in the proviso to sub-section (1) of section 3 of the Act shall submit to the Inspector so empowered under clause (d) of rule 2 of these Rules at least five copies of the draft service rules, as proposed by him for adoption in his establishment.

(3) Provisions shall be made in the draft service rules for every matter set out in the Act, excepting the provisions regarding eviction from residential accommodation under section 24 of the Act and grievance procedure under section 25 of the Act which shall be applicable to the workers of the establishment and these provisions shall not be less favourable to any worker than the corresponding provisions of the Act.

(4) The draft service rules submitted to the Inspector shall be accompanied by a statement giving the number of the workers employed in the establishment in Form "L" including the particulars of the trade unions, if any, operating in the establishment.

(5) A group of employers in similar establishment desirous of submitting joint draft service rules may, through a person authorised in this behalf by the group, submit such draft service rules along with the following, namely :

- (i) a list of employers constituting the group with the name and address in full of each of the establishments, and
- (ii) a declaration that the establishments constituting the group will abide by the conditions laid down in the service rules submitted for the group.

(6) As soon as any establishment joins any group, the persons so authorised shall notify the fact to the Inspector within 7 (seven) days from the date on which the establishment joins the group.

(7) An establishment leaving the group shall continue to be governed by the service rules already approved until such time as it submits a separate draft service rules of its own and the same has been duly approved. Any establishment joining the group shall be governed by the service rules approved for the group by signing a declaration that it shall be so governed, and a copy thereof shall be sent to the Inspector.

14. Procedure for approval of service rules.—(1) Within thirty days of receipt of the draft service rules, the Inspector shall forward a copy thereof by registered post with acknowledgement due together with a notice in Form "M" to the employer requiring him to publish, within seven days of receipt of the same, the notice along with the draft service rules in his notice board and to certify that the publication has been duly made, mentioning the actual date of publication.

Copies of the draft service rules shall also be forwarded by the Inspector to the registered and recognised trade unions of the

establishment requiring them to submit within thirty days of receipt of the draft rules of such unions, their objections or suggestions, if any, in respect of the draft service rules.

(2) Workers or the trade unions may submit the suggestions or objections, if any, in Form "N".

(3) On receipt of objections or suggestions from the workers or trade unions concerned, the Inspector shall proceed to hear the objections or suggestions on the date, time and place already notified to workers and the trade unions, the employer shall be furnished with copies of objections or suggestions submitted by the workers or the trade unions immediately on receipt of the same by the Inspector.

The Inspector shall take into consideration the objections and suggestions and decide whether the draft service rules shall be adapted with or without modifications. While making his decision, he shall ensure that the provisions of the draft service rules, with or without amendments, are not less favourable than the corresponding provisions of the Act. He shall, then, make an order approving the draft service rules.

(4) The Inspector may withhold his approval to the draft rules if he considers that the same, with or without amendments, are contrary to the provisions of the Act or are otherwise inadequate or unacceptable. While withholding approval, the Inspector may also direct the employer to submit a fresh draft of the service rules incorporating such suggestions of the workers or trade unions as are considered proper.

(5) The employer shall re-submit the draft service rules referred to in sub-rule (4) within fifteen days, and the Inspector shall finalise the same after giving joint hearing to the parties concerned. The provisions of sub-rules (6) and (7) shall follow thereafter.

(6) The employer shall, within seven days of the approval of the draft service rules by the Inspector, submit to the Inspector at least 5 fair copies of the service rules written on one side of the paper only duly signed and sealed by the employer with date.

(7) The service rules shall not come into force until after expiry of thirty days from the date on which the Inspector puts his seal and signature under sub-rule (6), or if any appeal has been preferred against the order of the Inspector under sub-section (3) of section 3 of the Act, until the disposal of the appeal.

(8) Certified copies of the service rules may be supplied to any person applying for them on payment of a fee of Taka one for the first 200 words or less and Poisa fifty for every additional hundred words or less.

(9) One copy of the attested service rules shall be maintained in the office of the Inspector, one copy shall be sent to the office of the Chief Inspector, one copy shall be maintained by the employer and one copy each by the registered and recognised trade union.

(10) A register shall be maintained in the office of the Chief Inspector in Form "O" and a copy thereof may be supplied to any person applying thereof on payment of Taka one for first 200 words or less, and poisa fifty for every additional 100 words or fraction thereof.

15. **Existing Service Rules.**—Establishments which have already got their own service rules in operation before the enforcement of these rules, shall submit the same to the Inspector for approval and he shall follow the same procedures as laid down in rule 14 while according approval to those service rules.

16. **Contravention of Rules.**—Contravention of any of these rules shall be punishable with fine which shall not exceed Taka one hundred.

17. **Display of Abstract of Act and Rules.**—Display of the Abstract of the Act and Service Rules, as required under section 28 of the Act, shall be in Form "P".

Annexure to
EMPLOYMENT OF LABOUR (Standing Orders)
RULES, -1968
 APPENDIX I
 FORM A
 (Rule 3)

Name of the Establishment.....
 Name of the Worker.....
 Section/Department

Date of appointment

Nature of leave asked for.		If refused or postponed, cause of refusal or postponement.		Leave due after adjustment.
Annual	Casual	Sick	No. of days granted	

Signature of the Employer or
 Manager.

APPENDIX II
FORM 'B'
(Rule 4)

Notice of stoppage of work beyond working hours

Notice is hereby given that the work of.....
Section/Department of the Mills has/have been stopped from.....
.....a.m./p.m. of (date) to.....a.m./
p.m. of (date) due to.....The work is likely to be resumed at
.....on.....and the workers are to remain at
.....on.....and the workers are to remain at
their place of work before the actual resumption of work.

Signature of Employer or Manager

Date... ..

APPENDIX III
FORM 'C'
(Rule 5)

Name of Establishment.....

Notice of stoppage of work during working hours

Notice is hereby given that the work in... ..
Section/Department has/have been stopped from... ..
a.m./p.m.due to... ..
The work is likely to be resumed at on and the
workers are to leave/or remain at their place of work or to report
for duty at... .. on

Signature of Employer or Manager

Date... ..

APPENDIX IV

FORM 'D'

(Rule 6)

Name of Establishment

Notice of closure due to strike

Notice is hereby given that due to strike in

Section/Department Section/Department will remain closed from a.m./p.m. of (date) until further notice.

Signature of Employer or Manager

Date

APPENDIX V

FORM 'E'

(Rule 7)

Name of the Establishment

Notice of resumption of work after strike

Notice is hereby given that the Section/Department of the Mill.....which was closed down from due to strike will re-open on at The workers are informed to resume their work accordingly.

Signature of Employer or Manager

Date.....

APPENDIX VI
FORM 'F'
(Rule 8)

Muster-Roll of laid-off worker

Name of establishment (s) Section/Department

Sl. No.	Name of the worker	Ticket No.	Date of appointment	Date on which the worker is laid-off	Causes of lay-off
1	2	3	4	5	6
Total period of lay-off	Amount paid as compensation (in Taka)	Housing allowance (in Taka)	Dearness allowance (in Taka)	Total amount paid (Taka) col. 8 to 10	Date or dates on which the worker presented himself for work.
7	8	9	10	11	12

APPENDIX VII

FORM 'G'

(Rule 9)

Name of the Establishment... ..Name of worker
.....Ticket No.....class of worker.....
date of Notice and the date from which retrenched.....
cause of retrenchment Period of service rendered...
... ..wages for the period of notice... ..
period for which wages are to be paid/total amount paid as com-
pensation gratuity... ..Tk.... ..

Copy to Chief Inspector/Authorised Officer for information

Signature of Employer or Manager

Date... ..

APPENDIX VIII

FORM 'H'

(Rule 10)

Certificate of Service

Name of the Establishment... ..
Name of worker... ..Ticket No... ..Section/
Department... ..worked in the Establishment as a... ..
from... ..toHe was retrenched/discharged/
retired from service with effect from.....

(Particulars of workers as per records of Establishment)

- (1) Address in full-
- (2) Date of birth-
- (3) Religion-
- (4) Identification mark-
- (5) Rate of wages-
- (6) Last wages drawn-

Signature of Employer or Manager

Date... ..

APPENDIX IX
FORM 'P'
(Rule 11)

Form of Complaint to the Labour Court

In the Labour Court at... ..

1. Name, address and full description of the aggrieved worker:
2. Name, address and full description of the employer complained against :
3. Here describe the grievances clearly and serially :
 - (a)
 - (b)
 - (c)
 - (d)
4. Date of occurrence of the cause of grievance... ..
5. Date on which the grievance was brought to the notice of the employer for redress.
6. State whether the employer has communicated his decision in the matter ; if so, enclose a copy of such decision, or give the substance of the same :
7. Mention the date of decision, if any, of the employer :
8. State whether the grievance has already been raised or has otherwise been taken cognizance of as a labour dispute under the provisions of Labour Disputes Act, 1965 :
9. Enclosure, if any :
10. Here describe the relief prayed for item by item :
 - (a)
 - (b)
 - (c)
 - (d)

Signature of the applicant aggrieved
worker.

Date

Copy to—

- (1) Director of Labour, Bangladesh, and
- (2) Deputy Director of Labour, for information.

Signature of applicant

APPENDIX X

FORM 'J'

(Rule 12)

Sanction is hereby accorded under section 27 (3) of the Employment of Labour (Standing Orders) Act, 1965 for prosecution
.....for violation of the following provisions of the Act/Rules
for which a complaint was lodged with the undersigned on.....
by.....

(1)

(2)

(3)

Chief Inspector or his
Authorised Officer

Date.....

APPENDIX XI
FORM 'K'
[Rule 13 (1)]

Matters which shall be provided for in the Service Rules	Reference to paragraph or clause of the Service Rules where provided
--	--

- (1) Classification of workers, e.g., apprentices, badli, casual, permanent, probationer or temporary.
- (2) Manner of intimating to the workers' hours of work and number of leaves and holidays.
- (3) Conditions and procedures in applying for leave and the authority which may grant such leave and holidays.
- (4) Closing and re-opening of section of the establishment and temporary stoppage of work, and the rights and liabilities of the employers and workers arising therefrom.
- (5) Condition for compensation for the laid-off workers.
- (6) Conditions and procedures for retrenchment of worker, re-employment of such retrenched workers and the notice thereof to be given by the employers.
- (7) Conditions for fine.

- (8) Condition for discharge, dismissals, suspensions and the acts and omissions, which constitute misconduct, and the procedure in respect thereof.
- (9) Conditions for termination of employment and the notice thereof to be given by the employers and the workers.
- (10) Provident Fund.
- (11) Housing.
- (12) Medical facilities.
- (13) Insurance.
- (14) Any other matters not covered by the above.

APPENDIX XII

FORM 'L'

[Rule 13 (4)]

Name of the Establishment... ..

Workers		Trade Unions	
Classification of workers	No. of workers categorywise	Name of Trade Union with address	Whether registered or recognised.
(1) Apprentice			
(2) Badli, etc.			
(3)			
(4)			
(5) Total.....			

APPENDIX XIII

FORM 'M'

[Rule 14 (1)]

All trade unions/workers are hereby notified that the employerhas submitted to undersigned a draft service rules (copy enclosed) to regulate employment of its workers or any class thereof under section 3(2) of the Standing Orders Act, 1965 and that they may, within 30 days of the publication of this notice by the employer, submit to the undersigned suggestions or objections, if any, in Form 'N' (copy enclosed in triplicate) in respect of draft service rules. Objections submitted will be heard at my office at a.m. /p.m. on.....Any one raising objection may appear in person or through an authorised agent on that date.

Inspector under the Employment
of Labour (Standing Orders)
Act, 1965.

APPENDIX XIV

FORM 'N'

[Rule 14(2)]

Objections or suggestions in respect of draft Service Rules submitted by Establishment... ..

Objections or suggestions with grounds :

- (1)
- (2)
- (3)

Signature/Signatures of the
Workers/ Trade Union
representatives

Address
... ..

Forwarded to :

The Employerfor comments on the objections noted
above to reach me on or before... ..

Inspector.

Address and date.....

Comments of employer :

Signature of the employer

Date... ..

Decision :

Inspector under Employment
of Labour (Standing Orders)
Act, 1965.

APPENDIX XV
FORM 'O'

[Rule 14 (10)]
Register of Service Rules

Sl. No.	Date	Name and address of the shop or commercial or industrial establishment	Name of the offices draft and submitting the same on behalf of the employer or group of employers	Date of submission	Date of notice calling for objection
1	2	3	4	5	6

Objections, if any, received		Approval of Service Rule					
Name of parties submitting objections	Date of submission	Date of order by the Inspector	Date of receipt of final and fair copies of the Service Rule	Date of approval by the Inspector	Name of the employer or his agent receiving the authenticated Service Rules	Appeal, if any, preferred with result and date thereof	Remarks
7	8	9	10	11	12	13	14

APPENDIX XVI

FORM 'P'

(Rule 17)

Abstract of the Employment of Labour (Standing Orders) Act, 1965 and the Employment of Labour (Standing Orders) Rules, 1968.

1. In every shop or commercial or industrial establishment the workers shall be classified according to section 4 of the Act, i.e., apprentice, badlies, casual, permanent, probationer and temporary and there shall be Service Rules defining the conditions of employment of workers.

2. **Leave and holidays.**—(a) Workers employed in establishments shall be entitled to leave and holidays with wages as provided in the Shops and Establishments Act, 1965 and the Factories Act, 1965 or any other law for the time being in force, as the case may be, and any other holidays which the Government may specially declare.

(b) A worker desiring to obtain leave of absence shall apply to the employer in writing stating his leave address therein, and the employer or his authorised officer shall issue orders on the application within a week of its submission or two days prior to the commencement of leave applied for, whichever is earlier : Provided that if due to emergent reasons the leave is to begin on the date of application or within three days thereof, the orders shall be given on the same day. A leave pass shall be issued if the leave is granted. In case of refusal or postponement of the leave, the reasons thereof shall be recorded in a register to be maintained for the purpose. A worker desiring to extend his leave shall apply sufficiently in advance before the expiry of the leave and he should be informed whether the extension of leave has been granted or not.

(c) A worker remaining absent beyond the period of leave originally granted or subsequently extended, shall be liable to lose his lien to his appointment unless he returns within ten days of the expiry of the leave, provided that a worker losing his lien to his appointment, shall not be deprived of the benefits and privileges, to which he is entitled and in addition he shall be kept on the *badli* list, if any. A worker failing to explain to the satisfaction

of the employer the reason of his failure to return at the expiry of the leave may, on consideration of extenuating circumstances, be suspended as a measure of punishment, for a period not exceeding seven days and shall not be entitled to any wages for this period, but he shall not lose his lien to his post.

(d) If the services of a worker who is entitled to any annual leave under the Shops and Establishments Act, 1965 and the Factories Act, 1965, are dispensed with as a result of discharge, dismissal, etc., before he has availed of any such leave, the employer shall pay his wages in lieu of the unavailed leave before the expiry of the second working day from the day on which the employment is dispensed with.

3. Stoppages of work.—(a) An employer may, at any time in the event of fire catastrophe, break down of machinery, etc., stop any section of his establishment, wholly or partly, for any period.

(b) In the event of such stoppage beyond working hours, the employer shall duly notify it indicating as to when the work will be resumed and whether the affected workers are to remain at their place of work before resumption.

(c) In the event of such stoppage during working hours, the affected workers shall be notified duly with the indication as to when the work will be resumed, and whether the workers are to leave or remain at their place of work. Wages will have to be paid to the workers for detention exceeding one hour.

(d) If the period of stoppage of work does not exceed one working day, a worker, unless as provided above, may not be paid any wages ; but wages shall be payable to him if the stoppage of work continues for more than a working day. Workers may be laid-off in accordance with provision of law if the stoppage of work continues for more than three working days and paid accordingly the wages for the first three days being adjusted against the compensation payable for such lay-off.

(e) The employer may, in the event of a strike by any section of an establishment, close down either wholly or partly, such sec-

tion, and the affected workers may not be paid any wages of such closure, provided that the fact of such closure, and the resumption of work thereafter is duly notified by the employer.

4. Calculation of 'One Year' or 'Six Months' continuous service.—For the purpose of this Act, a worker who, during the preceding twelve calendar months has actually worked in any establishment for not less than two hundred and forty days and one hundred and forty days, as the case may be, shall be deemed to have completed 'one year' or 'six months' respectively, of continuous service in that establishment.

5. Restrictions—The provisions of sections regarding stoppage of work, right of laid-off workers, maintenance of muster-rolls and non-eligibility of compensation in certain cases are not applicable to establishments which employ less than five workers, and are of seasonal character.

6. Right of laid-off workers for compensation.—(a) A worker (other than a *badli* or casual worker) having his name in the muster-rolls of any establishment and completing not less than one year of continuous service, when laid-off, shall be paid by the employer for all days during which he is laid-off except for the intervening weekly holidays, compensation for half of the total or basic wages and dearness allowance together with full amount of housing allowance, if any that would have been payable to him had he not been so laid-off :

Provided that a *badli* worker having a continuous service of one year in any establishment shall cease to be regarded as such for the purpose of this section, and no worker, unless there is an agreement to the contrary between him and his employer, shall be entitled to compensation arising out of "lay-off" for more than forty-five days during any calendar year.

(b) If a worker is laid-off for more than forty-five day during a calendar year and if the lay-off comprises period or periods of fifteen days or more after the expiry of the first forty-five days he shall, unless there is an agreement to the contrary, be paid for all the days comprised in every subsequent period of lay-off for fifteen

days or more compensation equal to one-fourth of total of basic wages and dearness allowances and full housing allowance, if any.

(c) Any worker to be laid-off for any continuous period of fifteen days or more during a calendar year after the first forty-five days, the employer may retrench him instead of laying him off.

7. Muster-roll for laid-off worker.—Every employer shall maintain a muster-roll for the laid-off workers who may present themselves for work at the establishment at appointed time.

8. No compensation for laid-off workers in certain cases.—(a) No compensation shall be payable to a laid-off worker if he refuses to accept any alternative employment on the same wage, in the same establishment from which he has been laid-off, or in any establishment belonging to the same employer situated within a radius of five miles ;

(b) if he does not present himself for work at the establishment at the appointed time at least once a day if so required by the employer ; or

(c) if such lay-off is due to strike in another part of the establishment.

9. Conditions for retrenchment.—No worker having a continuous service for not less than one year in any establishment shall be retrenched unless,—

(a) he has been given one month's notice in writing indicating the reasons for retrenchment or he has been paid wages for the period in lieu of notice ;

(b) a copy of notice in respect thereof sent to the Chief Inspector or his authorised officer ; and

(c) he has been paid, at the time of retrenchment, compensation equivalent to fourteen days' wages for every completed year of service or any part thereof in excess of six months, or gratuity, if any, whichever is higher.

10. Procedure for retrenchment.—If any worker, belonging to a particular category is to be retrenched, the employer shall ordinarily retrench the worker who was employed last in that category, unless otherwise necessary.

11. Re-employment of retrenched workers.—An employer intending to take back any of his retrenched workers within one year of the date of retrenchment shall give opportunity to the retrenched workers of that particular category by sending a notice to offer themselves for re-employment and the retrenched workers offering themselves for re-employment shall have preference over others, each having priority according to the length of his service.

12. Fine.—A worker may be fined in accordance with the provisions of the Payment of Wages Act, 1936.

13. Discharge from service.—(1) A worker may be discharged from service for reasons of physical or mental incapacity or for such other reasons not amounting to misconduct, provided that a worker having completed not less than one year of service is paid compensation at the rate of fourteen days' wages for every completed year of service, or any part thereof in excess of six months or gratuity, if any, whichever is higher.

14. Dismissal from service.—(1) A worker may be dismissed without prior notice or pay in lieu thereof or any compensation.—

- (a) if he is convicted for an offence involving moral turpitude or
- (b) if he is found guilty of misconduct under section 18 of the Act.

(2) Any worker found guilty of misconduct but dismissed for any extenuating circumstances, may be discharged or suspended as a measure of punishment, without wages as well as subsistence allowance for a period not exceeding seven days and such period may be within or in addition to the period of suspension of the worker for enquiry under sub-section (2) of section 18.

15. Procedure of punishment.—No order for discharge or dismissal of a worker shall be made unless the allegations against him are recorded in writing, he is given not less than three days' time to explain his conduct and is given a personal hearing, if necessary, and the provisions of section 18 of the Act are to be complied with in awarding punishment to a worker.

16. Termination of employment.—(a) For terminating the employment of a permanent worker ninety days' notice in case of monthly rated worker and forty-five days' notice in case of other worker shall be given in writing by the employer, or pay in lieu of notice thereof, together with compensation at the rate of fourteen days' wages for every completed year of service or for any part thereof in excess of six months.

(b) Any monthly rated or other worker desiring to terminate his employment shall give his employer one month or fourteen days' notice, as the case may be, and in such a case the worker shall not be entitled to any compensation as aforesaid but shall be entitled to other benefits, if any, under the Act or under any other law for the time being in force.

(c) For terminating the employment of a temporary worker if it is not due to the completion, cessation, abolition or discontinuance of the temporary work which he was appointed to perform, the employer shall be given one month's notice in the case of monthly rated workers and fourteen days' notice in other case or shall give one month's or fourteen days' wages, as the case may be, in lieu thereof.

17. Provident Fund.—No worker contributing to provident fund shall be deprived of the benefit of the fund including the employee's contribution thereto for losing his employment except by way of dismissal for misconduct. But in case of dismissal for misconduct, he shall not be deprived of any portion of his own contribution to the Fund.

18. Certificate of service.—Every worker (other than a casual or badli worker) shall be entitled to a certificate of service at the time of his retrenchment, dismissal, retirement or termination of service.

19. Protection of existing conditions of employment.—Nothing in the Act shall affect any law, custom, usage, etc., in force before the commencement of the Act, if such law, custom, etc., ensure more favourable condition of employment to the workers.

20. Power to exempt.—The Government may exempt any such establishment from the operation of all or any of the provisions of this Act, by notification in the official Gazette.

21. Eviction from residential accommodation.—A worker occupying a residential accommodation provided by his employer and losing his employment from the employer by way of discharge, dismissal, etc., shall vacate it within 15 days of such discharge, dismissal, etc., unless a case in respect thereof is pending before any Court. The provision of section 24 of the Act shall be complied with before evicting a worker from his residential accommodation.

22. Grievance procedure.—A worker intending to seek redress of his grievances under the Act shall observe the following procedure :—

- (a) he shall bring his grievance to the notice of the employer, in writing within fifteen days of occurrence of the grievance, and the employer shall, within thirty days of its receipt, enquire in the matter and communicate his decision in writing to the worker after giving him an opportunity of being heard ;
- (b) if the employer fails to give a decision as aforesaid, or if the worker is dissatisfied with the decision he may make a complaint to the Labour Court within thirty days, unless the grievance has been taken cognisance of as a Labour Dispute under the Labour Disputes Act, 1965 :

Provided that no complaint shall lie against an order of termination of employment of a worker under section 19 unless the worker is an officer of a registered trade union and his employment has been terminated for his trade union activities, or unless the worker, whether an officer of a registered trade union or not, has been deprived of the benefits specified in section 19 ;

- (c) the Court may pass such orders including order regarding cost and require by such orders, the re-instatement of the complainant, and such order shall be final ; and
- (d) no Court-fee shall be payable for filing or exhibiting of any complaint or document of any kind in the Court.

23. Liability of the employer.—The employer of every establishment shall personally be held responsible for proper and faithful observance of the provisions of the Act.