THE INDUSTRIAL RELATIONS ORDINANCE, 1969

(Ordinance XXIII of 1969)

(As amended by Ordinances XIX of 1970, XXXV of 1977, XXIX of 1980, XXVI of 1982 and XV of 1985.]

An Ordinance to amend and consolidate the law relating to the formation of trade unions, the regulation of relations between employers and workmen and the avoidance and settlement of any difference or disputes arising between them.

Notes

Industrial Relations Ordinance, 1969 repeats what is contained in E P. Industrial Disputes Act, 1965 and adds something more : Rules framed under Industrial Disputes Ordinance, 1969 continued to be the operative Rules under the E.P. Industrial Disputes Act, 1965 (E.P. 19. Industrial Disputes Act, 65, and Industrial Disputes Ordinance, 1959). *National Bank of Pak. Vs. Golam Mostafa* (1975) 27 DLR 158.

Industrial Relations Ordinance (1969) and Employment of Labour (Standing Order) Act are special statutes. In case of conflict special statutes shall prevail—Later of the two prevail. *Bangladesh Fishermen Vs. Chairman L. Court, Chittagong,* (1975) 27 DLR 368.

1. **Short title, extent, application and commencement.**—(1) This Ordinance may be called the Industrial Relations Ordinance, 1969.

(2) It extends to the whole of [1]Bangladesh.

(3) It shall not apply to any person employed in the police or any of the Defence Services of [1]Bangladesh and any services or installations connected with or incidental to the Armed Forces of Bangladesh, including an Ordnance Factory maintained by the [2]Government or to any person employed in the administration of the Republic other than those employed as workmen by the Railways, Posts, Telegraph and Telephone Departments.

(4) It shall come into force at once.

---

1. Subs. by I. R. (Amdt.) Ordinance of 1977 for "Pakistan."
2. Substituted for "Central Government" Ibid.

Note

This Ordinance consolidates the formation of trade unions and the settlement of disputes between employers and workmen. Previously, there were two separate laws on each subject in each Province. The Trade Unions Ordinance and the Industrial Disputes Ordinance stand repealed.

The Ordinance comes into force at once on the day of promulgation. It is not applicable to persons employed in the police, defence service (including installations and ordnance factories) and persons employed in the administration of the Republic. But workmen employed by the Railways, Posts, Telegraph and Telephone Department are covered by the Ordinance.

[1]**2. Definitions.**—In this Ordinance, unless there is anything repugnant in the subject or context—

(i) "Arbitator" means a person appointed as such under this Ordinance.

(ii) "Award" means the determination by a Labour Court, Arbitrator or Appellate Tribunal of any industrial dispute or any matter relating thereto and includes an interim award.

[2] * * * *

(v) "Collective Bargaining Agent", in relation to an establishment or industry, means the trade union of workmen which, under secton 22, is the agent of the workmen in the establishment or, as the case may be, industry, in the matter of collective bargaining.

(vi) "conciliation proceedings" means any proceedings before a Conciliator.

(vii) "Conciliator" means a person appointed as such under section 27.

[3][(vii)(a) "Director of Labour" means a person appointed as such by the Government].

(viii) "Employer", in relation to an establishment, means any person or body of persons, whether incorporated or not, who or

---

1. All words and expression used in Ordinance XXVI of 1982 shall, unless the context otherwise requires, have the meaning assigned to them in the I.R.O.

2. Clauses (iii) & (iv) omitted by Ord. XIX of 1970, s. 2 (a), Gazette of Pakistan Extraordinary Dated 17.10.70.

3. Inserted by I.R. (Amdt.) Act XXIX of 1980, Section 2.

which employs workmen in the establishment under a contract of employment and includes—

(a) an heir, successor or assign, as the case may be, or such person or body as aforesaid ;

(b) any person responsible for the management, supervision and control of the establishment ;

[1][(c) in relation to an establishment run by or under the authority of any Ministry or Division of the Government, the authority appointed in this behalf or, where no authority is appointed, the Head of the Ministry or Division ;]

(d) in relation to an establishment run by or on behalf of a local authority, the officer appointed in this behalf or where no officer is so appointed, the chief executive officer of that authority ;

Special provision.—For the purposes of distinction from the category of "workers or workmen", "officers and employees" of a [2][Ministry or Division of the Gornment] or a local authority, who belong to the superior, managerial, secretarial, directional, supervisory or agency staff and who have been notified for this purpose in the official Gazette shall be deemed to fall within the category of employers.

(e) in relation to any other establishment, the proprietor of such establishment and every director, manager, secretary, agent or other officer or person concerned with the manageament of the affairs thereof ; [3][and in the case of a banking company, also the prrson who holds a general power of attorney or has authority to sign,

1. Snbs. by I.R. (Amdt) Ord. XXXV of 1977, s-3).
2. Subs-Ibid for "department of the Central Government or Provincial Government,"
3. Added by Ord. XIX of 1970, s. 2(b)

endorse or discharge negotiable instruments on behalf of the banking company.]

(ix) "Establishment" means any office, firm, industrial unit, underta ing, shop or premises in which workmen are employed for the purpose of carrying on any [1](industry) ;

(x) "Executive" means the body, by whatever name called, to which the management of the affairs of a trade union is entrusted by its constitution ;

(xi) "Illegal Lock-out" means a lock-out declared, commenced or continued otherwise than in accordance with the provisions of this Ordinance ;

(xii) "Illegal Strike" means a strike declared, commenced or continued otherwise than in accordance with the provisions of this Ordinance ;

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

[2][(xiv) "Industry" means any business, trade, manufacture, calling, service, empleyment or occupation] ;

(xv) "Labour Court" means a Labour Court establishd under section 35 ;

(xvi) "Lock-out" means the closing of a place of employment or part of such place or the suspenslon, wholly or partly, of work by an employer, or refusal. absolute or conditional, by an employer to continue to employ any number of workmen employed by him where such closing, suspension or refusal occurs in connection with an industrial dispute or is intended for the purpose of compelling workmen employed to accept certain terms and conditions of or affecting employment ;

---

1. Subs. for the original words, ibid, s. 2(c).
2. Subs. for the original cl. (xiv) by Ord. XIX of 1970 s. 2(d).

(xvii) "Organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of emplcyers ;

(xviii) "Officer" in relation to a trade union means any member of thc executive thereof but does not include an auditor or legal adviser ;

(xix) "Prescribed" means prescribed by rules ;

(xx) "Public Utility Service" means any of the services specified in the Schedule :

(xxi) "Registered Trade Union" means a trade union registered under this Ordinance ;

(xxii) "Registrar" means a Registrar of Trade Unions appointed under section 12 ;

(xxiii) "Rule" means rule made under section 66 ;

(xxiv) "Settlement" means a settlement arrived at in the course of conciliation proceeding, and includes an agreement between an employer and his workmen arrived at otherwise than in the course of any conciliation proceeding, where such agreement is in writing, has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the [1]Government, the Conciliator and such other person as may be prescribed ;

[2](xxiv a) State-owned manufacturing industry means a manufacturing industry owned, or nationalised or taken over by or under any law, by the Government.

(xxv) "Strike" means cessation of work by a body of persons employed in any establishment acting in combination or a concerted refusal, or refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment ;

---

1. Subs. by Ord. XXXV of 1977.
2. Inserted by Act XXIX of 1980, s. 2.

(xxvi) "Trade Union" means any combination of workmen or employers formed primarily for the purpose of regulating the relations between workmen and employers or workmen and workmen or employers and employers, or for imposing restrictive conditions on the conduct of any trade or business and includes a federation of two or more trade unions ;

(xxvii) "Tribunal" means the Labour Appellate Tribunal constituted under section 38 of the Ordinance ;

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

(a) employed as a member of the watch and ward or security staff or confidential assistant, cypher assistant of any establishment ;

(b) employed in a managerial or administrative capacity ;

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

[**Exception.**—Notwithstanding anything contained in sub-clause (a), a person employed as a member of the watch and ward or security staff or confidential assistant or cypher assistant

---

3. Substituted by Act XXIX of 1980, s. 2,

of any establishment shall be entitled to all financial benefits admissible to a worker or workman of similar grade or category.]

Notes

Cl. (iii) *"Collective Agreement"*.—This must be between the employer of the workmem in the establishment or industry and the collective barg.ining agent under section 22. The agreement must be in writing.

Cl. (xiii) read with sections 34 and 36(1).

An application u/s. (34) *relates to an industrial dispute within the meanting of s.* 36(1) : From a reading of the definition of the word 'Industrial dispute' in section 2 (xiii), an application under section 34 of the Industrial Relations Ordinance though not arising out of an industrial dispute as contemplated under section 43 of the I.R.O. or which may be raised under sections (26) to 31 of the I.R.O., it is an industrial dispute as contemplated under section 36(1). If the word 'industrial dispute' as has been referred to in section 36(1), is an industrial dispute as may be raised under sections 26 to 31 and section 43, then the Labour Court would be devoid of any power and jurisdiction or a procedure to hear an application under section 34 of the I.R.O., which cannot be accepted.

Industrial dispute referred to in s. 36(2) is one which falls within the definition of the words given in section 2(xiii)—hence a Labour Court would be deemed to be a civil court having power to issue injunction order staying the proceeding in a Labour dispute.

If the submission of the learned Advocate for the petitioner that 'incustria dispute' contemplated under section 36(1) of I.R.O. does not include or is not intended ta apply to an application under section 34, then it would take us to that a Labour Court has no power to hear and decide an application under section 34 of the I.R.O. Hence in our view the indus trial dispute referred to in section 36(1) must be referrable to the definition of the word as given in section 2(xiii) of the I.R.O. which includes all disputes as have been contemplated in the I.R.O. It would therefore be reasonable to hold that the [Labour Court constituted unde the I.R O. shall be deemed to be a civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure.

When a Labour Court is deemed to be a civil court and had the same powers as are vested in the civil court, it must have power to grant injunction or stay operation of an impugned order to preserve the subject matter

of the dispute until it is finally decided. These powers to pass temporary or ad-interim orders are designed to preserve and protect the subject matter of the dispute under Order 39, rule 1, C.P.C., pending final determination of the case. *Pubali Bank Ltd. Vs. Chairman, Ist Labour Court Dhaka*, (1986) 38 DLR 427.

An industrial dispute is "a distinct and insistent phenomenon of modern society. Such disputes are not simply a claim to share the material wealth jointly produced and capable of registration in statistics. At heart they are a struggle constantly becoming more intense on the part of the employed group engaged in co-operation with the employing group in rendering services to the community essential for a higher general human welfare, to share in that welfare in a greater degree." [Federated School Teachers' Association of Australia v. Victoria (1929), 41 C.L.R. 569, per Isaacs, J. at pp. 576-578].

"*Any person*" *in the definition of industrial dispute*.'—The words "any person" have the effect of making definition of an "industrial dispute" very wide. Sympathetic and general strikes often occur. In such cases, the dispute or difference is connected with the terms of employment not of a co-worker of the same establishment but of some different establishment or industry. There is nothing in law to prevent such a dispute from becoming an 'industrial dispute' as defined in the Ordinance ; but it is very difficult to see how any conciliation or arbitration between the disputants who do not include the person whose terms of employment have given rise to the dispute can serve any useful purpose.

Finally, the words "any person" in the definition of 'industrial dispute' may have the effect of bringing remedy under the Ordinance within the reach of persons whom the Ordinance would normaliy afford no remedy. For example, when, over the discharge or demotion of a popular manager, labour officer, engineer or medical officer not a 'workman" under the Ordinance there is a dispute between the employer and workmen of that establishment who may take up the cause of the person affected and demand his re-instatement or his restoration to his former position. Conversely, they can demand his removal due to his objectionable activities or concerning his terms of employment or conditions of work. The words 'any person' are wide enough to include an officer. But in such cases the workmen must establish substantial interest to justify their action and support.

Dispute regarding large number of dismissed workmen sponsored by trade union.—Subsequent agreement between employer and union excluding certain number of workmen.—Dispute with excluded workmen is "industrial dispute", not "individual dispute". What began as an "industrial dispute" sponsored by a trade union regarding the dismissal of a large number of workmen and

was the subject-matter of conciliation proceedings cannot turn into an "individual dispute" simply because a mutual agreement was entered into between the employer and the trade union which in a sense excluded the case of a number of workmen. The dismissal of the excluded number of workmen would continue to be "industrial dispute" which can be referred to an Industrial Tribunal by the Government. [S.C. (Ind.) Bata Shoe Company (Private) Ltd. *vs.* D.N. Ganguly and others: 1961 LLC 317—1961 ILLI 303—1961 PLC 1978.]

Cl.(xiv) The word "calling" is wide enough to include in it activities not necessarily conducted with the object of making profit. The real emphasis is on the relationship of employers and workmen. If there is an undertaking carried on by employers and workmen and if in that undertaking a dispute occurs, then it is a dispute in an industry. (Province of Bombay v. Western India Automobile Association, A.I.R. 1949 Bom.)

Activities when "industry."—Research institute established for advancement of industry—Whether 'industry'.—Examination of objects of industry necessary.

Though section 2 (xiv) used words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings. If all the words used therein were given their widest meaning, all services and all callings would come within the purview of the definition including those services rendered by a servant purely in a personal or domestic matter and even in a casual way. It had, therefore, to be considered where the line should be drawn and what limitations should be reasonably implied in interpreting the wide words sued in section 2 (xiv). Further, the contention that the word "undertaking" used in section 2 (xiv) should be treated as analogous to trade or business must involve an economic activity in which capital is invested and which is carried on for profit or for the production or sale of goods by the employment of labour cannot be accepted in full ; but an activity could and must be regarded as an industry even though in its carrying on the object of making profit might be absent. Absence of investment of any capital would not necessarily mean that an undertaking was not included within section 2(xiv).

A textile research institute, founded for the purpose of carrying research and other scientific work in connection with the textile trade or industry, is an activity systematically undertaken with the object of rendering material services to a part of the community (viz., the member-mills)—the material services being the discovery of processes of manufacture, etc., with a view to securing greater efficiency, rationalisation and reduction of costs of the member-mills—with the help of employees (viz., the technical personnel) who have

no rights in the results of the research carried on by them, as it is arranged or organised in a manner in which a trade or business is organised, depending on the co-operation between the employers and the employees, such activity will fall within the definition of 'industry' and a dispute between the employer and employees in such a research organisation can be referred for adjudication under the provisions of the Act. [S.C. (Ind.) Ahmedabad Textile Industry's Research Association vs. State of Bombay and others : 1961 LLC 212=1960 II LLJ 720=1961 PLC 567.]

Agricultural operations carried on by a limited company like any other trade or business by investing capital and employing labour, held "industry" within the meaning of section 2 (xiv). Danger of laying down general propositions in industrial adjudications explained. [S.C. (Ind) Harinagar Cane Farm and another *vs.* State of Bihar and others : 1963 LLC 582=1963 I LLJ 692=1963 PLC 1008.

A partnership firm of chartered accountants employing nearly 380 employees (excluding menial servants) rendering professional service to their clients. Auditing work for the clients done by the chartered accountants with the help and assistance of the staff so employed. Such partnership firm held to be an "industry". [H.C. (Cal.) Allen Macgregor Smith Forge and other *vs.* First Industrial Tribunal West Bengal and others : 1963 LLC 508=1963 I LLJ 556.]

Cl. (xv): —Labour Court is a Criminal Court when trying offence under the Ordinance. *Mr. A.K.. Khan Vs. The Chairman, 2nd Labour Court*, (1973) 25 DLR 192.

Cl. (xvi) "*Lock-out.*"—The lock-out must be in connection with an industrial dispute or intended to compel the employees to accept certain terms or conditions of employment. If it is in some other connection such as lack of raw materials, it is not lock-out. Dismissal of one or more workers is not lock-out. The question of refusal by the employer to continue to employ persons by him can only arise when their services had continued. In a lock-out the workmen who have the right to be employed are prevented from exercising right. But in case of discharge or dismissal such right does not subsist.

Cl. (xxvi) A Fire Brigade, a fire service organised under the West Bengal Fire Services Act, 1950, must necessarily consist of an organised body of the employees. An organisation is set up, at public expenses, to render service to community at large or to a substantial portion of it. In such cases, the object of making profit is absent ; but it is now well established that the object of making profit is not essential. Hence, the workmen employed in the

West Bengal Fire Service must be held entitled to form a trade union and to apply for registration. [H.C. (Cal.) Resgistrar of Trade Unions *vs.* Fire Service Workers Union and others : 1963 LLC 357=1963 I LLJ 167].

Cl. (xxviii) : The word "includes" in s. 2(xxviii) extends scope of definition of 'worker' or 'workman.

The word "includes" indicates that the legislature intended to extend the scope of the definition of 'worker' or 'workman' to certain categories of 'workers' or 'workman' in relation to 'industrial disputes', whose dismissal, discharge, etc. has led to that dispute. *James Finlay. Vs. 2nd Labour Court* (1981) 33 DLR (AD) 58.

Master and servant. A 'bidi' manufacturer engaging a number of persons on contract for getting the work of rolling the bidis done.—Such person, in tum, engaging a number of other persons. The persons so engaged taking the leaves home for cutting in proper shapes.—The work of rolling the bidis done by such persons in the premises of the intermediaries with the materials supplied to them by such intermediaries.—The necessary materials such as thread, bidi leaves and tobacco supplied to his intermediaries by the bidi manufacturer.—Payment to the bidi-rollers made on piece-rate basis.—Such payment plus the commission due to the intermediaries ultimately made by the bidi manufaturer.—The intermediaries found to be men of impecunious means.—On the evidence on record the industrial tribunal finding that the real employer of the bidi-rollers was the bidi manufacturer and that the system of such work was adopted to camouflage the idustrial law.—Conclusions of the industrial tribunal holding the bidi-rollers as workmen of the bidi manufacturer as confirmed by the High Court in writ appeal, in the circumstances, held, justified. [S.C. (Ind.) D.C. Dewan Mohideen Shahib & Sons and Another *vs.* United Bidi Workers' Union, Saleem, and another ; 1965 LLC 260=1964 II LLJ 633].

"The *prima facie* test for the determination of relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the master of directing what work the servant is to do but also the manner in which he shall do his work. The nature or extent of control must necessarily vary from business to business and is by its very nature incapable of precise definition. The correct method of approach, therefore, would be the due control and supervision by the employer."

"Further, the question whether the relationship between the parties is one as between an emplyer and employee is one of facts which the Industrial Tribunal had the jurisdiction to determine and this High Court has no jurisdic-

tion to question it." The finding of the Tribunal on this demand is, therefore immune from any challenge in these proceedings. [British India Engineering Works., Karachi *vs.* Mr. Akhtar Hussain Khan and others : PLD 1959 (W.P.) Kar. 403=1960 PLD 185.

3. Trade unions and freedom of association.—Subject to the provisions contained in this Ordinance—

(a) workers. without distinction whatsoever, shall have the right to establish and, subject only to the Rules of the organisation concerned, to join associations of their own choosing without previous authorisation ;

(b) employers, without distinction whatsoever, shall have the right to establish and subject only to the Rules of the organisation concerned, to join associations of their own choosing without previous authorisation ;

(c) trade unions and employers' associations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes ;

(d) workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations and confederations of workers' and employers' organisations.

4. Workers and employers and their respective organisations, in exercising the rights provided for in section 2, like other persons or organised collectivities, shall respect the law of the land.

Note

The rights provided in section 3 concerning freedom of association are subject to the condition that workers and employers must respect the law of the land exercising thoso rights i.e., their activities and programmes are not prejudicial to other laws of the country.

5. Application for registration.—Any trade union may, under the signature of its chairman and the secretary, apply for registration of thc trade union under this Ordinance.

6. Requirements for application.—Every application for registation of trade union shall be made to the Registrar and shall be accompationied by—

(a) A statement showing—

(i) the name of the trade union and the address of its head office;

(ii) date of formation of the union;

(iii) the titles, names, ages, addresses and occupations of the officers of the trade union;

(iv) statement of total paid membership;

(v) in case of federation of trade unions, the names, addresses and registration number of member unions.

(b) Three copies of the constitution of the trade union together with a copy of the resolution by the members of the trade union adopting such constitution bearing the signature of the chairman of the meeting;

(c) A copy of the resolution by the members of the trade union authorising its chairman and the secretary to apply for its registration; and

(d) in case of a federation of trade unions, a copy of the resolution from each of the constitutent unions agreeing to become a member of the federation.

7. Requirements of registration.—(1) A trade union shall not be entitled to registration under this Ordinance unless the constitution thereof provides for the following matters, namely :—

(a) the name and adress of the trade union :

(b) the objects for which the trade union has been formed

(c) the manner in which a worker may become a member of the trade unin specifying therein that no worker shall be enrolled as its member unless he applies in the form set out in the constitution declaring that he is not a member of any other trade union ;

[1][(cc) the sources of the fund of the trade union and the purposes for which such fund shall be applicable ;

(d) Omitted by Act XXIX of 1980, s. 3.

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

(f) the maintenace of a list of the members of the trade union and of adequate facilities for the inspection thereof by the officers and members of the trade union ;

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

(h) the safe custody of the funds of trade union, its annual audit, the manner of audit and adequate facilities for inspection of the account books by the officers and members of trade union ; [2][***]

(i) the manner in which the trade union may be dissolved ;

[3][(j) the manner of election of officers by the general body of the trade union and the term, not exceeding two years, for which an officer may hold office upon his election or re-election ;

(k) the procedure for expressing want of confidence in any officer of the trade union ; and

(l) the meetings of the executive and of the general body of the trade union, so that the executive shall meet at

1. Substituted by Ordinance XXXV of 1977, s. 4.
2. The word "and" omitted, by Ord. XIX of 1970, S.3,
3. Clauses (j), (k), (l) added, ibid, s. 3(c)

***Please read this Amendment in sections 7, 7A and 7(2).**

Ord. XXIII of 1969 এর section 7 এর সংশোধন।-Industrial Relations Ordinance, 1969 (XXIII of 1969), অতঃপর উক্ত Ordinance বলিয়া উল্লিখিত এর section 7 এর sub-section (2) এর শেষে full-stop এর পরিবর্তে একটি colon প্রতিস্থাপিত হইবে এবং তৎপর নিম্নরূপ শর্তাংশগুলি সংযোজিত হইবে, যথাঃ-

"Provided that more than one establishments under the same employer, which are allied to and connected with one another for the purpose of carrying on the same industry irrespective of their place of situation, shall be deemed to be one establishment for the purpose of this sub-section:

Provided further that where any doubt or dispute arises as to whether any two or more establishments are under the same employer or whether they are allied to or connected with one another for the purpose of carrying on the industry, the decision of the Registrar shall be final." **(Act 22 of 1990. Section-2).**

Ord. XXIII of 1969 এর section 7A এর সংশোধন।-উক্ত Ordinance এর section 7A এর sub-section (1) এর clause (b) এর শেষে "or if he was dismissed from any such establishment" শব্দগুলি সংযোজিত হইবে। **(Act 22 of 1990. Section-3).**

বিশেষ বিধান।-(১) উক্ত Ordinance বা আপাততঃ বৎসৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, এই আইন দ্বারা সংশোধিত উক্ত Ordinance এর section 7(2) এর বিধান সম্মত নয় এমন সকল বিদ্যমান ট্রেড ইউনিয়নের নাম, প্রয়োজনীয় তদন্তের পর, ট্রেড ইউনিয়ন-সমূহের রেজিষ্ট্রার সরকারী গেজেটে প্রজ্ঞাপন দ্বারা প্রকাশ করিবেন।

(২) উপ-ধারা (১) এর অধীন প্রজ্ঞাপন জারীর তারিখ হইতে নব্বই দিন অতিবাহিত হইবার পর প্রজ্ঞাপনে উল্লিখত ট্রেড ইউনিয়নের রেজিষ্ট্রেশন, উপ-ধারা (৩) এর বিধান সাপেক্ষে বাতিল হইবে।

(৩) উপ-ধারা (১) এর অধীন প্রকাশিত কোন ট্রেড ইউনিয়নের নাম গেজেটে প্রকাশ করার বিরুদ্ধে আপত্তি থাকিলে উহার যে কোন কর্মকর্তা উক্তরূপ বাতিলের পূর্বে ট্রেড উউনিয়নসমূহের রেজিষ্ট্রারের নিকট উক্ত আপত্তি লিপিবদ্ধ করিয়া আবেদন দাখিল করিতে পরিবেন এবং যে ট্রেড ইউনিয়নের ব্যাপারে এইরূপ আবেদন দাখিল করা হইবে সেই ট্রেড ইউনিয়ন, উপ-ধারা (২) এর বিধান সত্ত্বেও, বহাল থাকিবে।

(৪) উপ-ধারা (৩) এর অধীন আবেদন প্রাপ্তির নব্বই দিনের মধ্যে ট্রেড ইউনিয়নসমূহের রেজিষ্ট্রার আবেদনকারী ও সংশ্লিষ্ট অন্যান্য পক্ষকে শুনানীর সুযোগ দিয়া বিষয়টির উপর তাঁহার সিদ্ধান্ত প্রদান করিবেন এবং উক্ত সিদ্ধান্ত মোতাবেক যদি সংশ্লিষ্ট ট্রেড ইউনিয়নটি উপরি-উক্ত section 7(2) এর বিধান সম্মত নয় বলিয়া সাব্যস্ত হয়, তাহা হইলে সিদ্ধান্ত প্রদানের তারিখ হইতে ট্রেড ইউনিয়নটি বাতিল হইবে। **(Act 22 of 1990. Section-5).**

Inserted at Page 95

least once in every three months and the general body at least once every year.]

[1](2) A trade union of workers shall not be entitled to registration under this Ordinance unless it has a minimum membership of thirty per cent of the total number of workers employed in the establishment or group of establishments in which it is formed.

7-A. Disqualifications for being an officer or a member of a trade union—(1) Notwithstanding anything contained in the constitution or the rules of a trade union, a person shall not be entitled—

(a) to be, or to be elected as, an officer of a trade union if he has been convicted of an offence involving moral turpitude or an offence under clause (d) of sub-section (1) of section 16 or section 61 ; and

(b) to be a member or officer of a trade union formed in any establishment or group of establishments if he is not or was never employed or engaged in that establishment or group of establishments.

(2) Nothing in clause (b) shall apply to any federation of trade unions.

Note

The constitution of a trade union seeking registration must provide for the matters set out in clauses (a) and (b) sub-section (1)

7-B. Registered trade union to maintain register, etc.—Every registered trade union shall maintain in such form as may be prescribed—

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

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

---

1. Added by Ordinance XXXV of 1977.
2. Sections 7A & 7B inserted, ibid, s. 4. Section 7A again substituted, by Ordinaence XV of 1985.

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

8. Registration.—(1) The Registrar, on being satisfied that the trade union has complied with all the requirements of this Ordinance, shall register the trade union in a prescribed register and issue a registration certificate in the prescribed form within a period of sixty days from the date of receipt of the application. In case the application is found by the Registrar to be deficient in a material respect or respects he shall communicate in writing his objection to the trade union within a period of 15 days from the receipt of the application and the trade union shall reply thereto within a period of fifteen days from the receipt of the objections.

(2) When the objections raised by the Registrar have been satisfactorily met, the Registrar shall register the trade union as provided in sub-section (1). In case the objections are not satisfactorily met, the Registrar may reject the application.

(3) In case the application has been rejected or the Registrar has, after settlement of the objections, delayed disposal of the application beyond the period of sixty days provided in sub-section (1), the trade union may appeal to the Labour Court who, for reasons to be stated in their judgement, may pass an order directing the Registrar to register the trade union and to issue a certificate of registration or may dismiss the appeal.

9. Certificate of registration.—The Registrar, on registering a trade union under section 7, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the trade union has been duly registered under this Ordinance.

[1]**10. Cancellation of registration.**—[2][(1) Subject to the other provisions of this section, the registration of a trade union may be cancelled by the Registrar if the trade union has—

1. Section 10 substituted for the original section by Ord. XIX of 1970, s. 5
2. Sub-section (1) substituted by Ord. XV of 1985.

(a) applied for such concellation or ceased to exist ;
(b) obtained registration by fraud or by misrepresentation of facts ;
(c) contravened any of the provisions of its constitution ;
(d) committed any unfair labour practice ;
(e) made in its constitution any provision which is inconsistent with this Ordinance or the rules ;
(f) a membership which has fallen short of 30% of the workers of the establishment or group of establishments for which it was formed.
(g) failed to submit its annual report to the Registrar as required under this Ordinance ;
(h) elected as its officer a person who is disqualified under section 7A from being elected as, or from being, such officer ; or
(i) contravened any of the provisions of this Ordinance or the rules.

[1][(2) Where the Registrar is of opinion that the registration of a trade union should be cancelled, he shall submit an application to the Labour Court praying for permission to cancel such registration.

(3) The Registrar shall cancel the registration of a trade union within seven days from the date of receipt of permission from the Labour Court.

(4) The registration of a trade union shall not be cancelled on the ground mentioned in clause (d) of sub-section (1) if the unfair labour practice is not committed within three months prior to the date of submission of the application to the Labour Court.

Note

The Labour Court is competent to cancel the registration of a trade union for violation of the provisions of this Ordinance on a complaint from the Registrar. An appeal from the decision of a Labour Court lies to the Labour Appellate Tribunal as per section 11.

1. Sub-sections (2), (3) & (4) substituted by Ord. XV of 1985.

[1][11. **Appeal against cancellation.**—(1) A trade union aggrieved by the order of cancellation of its registration under section 10 may, within sixty days from the date of the order appeal to the Labour Appellate Tribunal which may uphold or reject the order.

[2][11A. **No trade union to function without registration.**—(1) No trade union which is unregistered or whose registration has been cancelled shall function as a trade union.

(2) No person shall collect any subscription for any fund of trade union mentioned in sub-section (1).

11 B. Restriction on dual membership.—No worker shall be entitled to enrol himself as, to continue to be, a member of more than one trade union at the same time.

12. Registrar of trade unions.—For the purpose of this Ordinance, the [3]Government may, by notification in the official Gazette, appoint as many persons as it considers necessary to be Registrars of trade unions and where it appoints more than one Registrar, shall specify in the notification the area within which each one of them shall exercise and perform the powers and function under this Ordinance.

13. Powers and functions of the Registrar.—The following shall be the powers and functions of the Registrar :—

(a) the registration of trade unions under this Ordinance and the maintenance of a register for this purpose ;

(b) to lodge complaints with the Labour Courts for aetion against trade unions for any alleged offence or any unfair labour practice or violation of any provisions of this Ordinance ;

(c) the determination of the question as to which one of the trade unions in an establishment or an industry is entitled

---

1. Substituted by Ord. XV of 1985.
2. Sections 11A and 11B inserted by Ordinance XXXV of 1977, s. 5.
3. Subs—*ibid* for Provincial Government.

to be certified as the collective bargaining agent in relation to that establishment or industry; and

(d) such other powers and functions as may be prescribed.

Note

Amongst others, one of the important functions of the Rgistrar (as cited above) is to determine which trade union in an establishment or industry is entitled to be certified as collective bargaining agent.

14. Incorporation of registered trade union.—(1) Every registered trade union shall be a body corporate by the nams under which it is registered, shall have perpetual succession and a common seal and the power to contract and to acquire, hold and dispose of property, both movable and immovable and shall, by the said name, sue or be sued.

(2) The Societies Registration Act, 1860 (XXI of 1860), the Co-operative Societies Act, [1][1940 (Ben. Act XXI of 1940)] and the Companies Act, 1913 (VII of 1913), shall not apply to any registered trade union and the registration of any trade union under any of these Acts shall be void.

Note

An unregistered trade union cannot sue or be sued by its name; all its members must be parties to the suit. Thus, it cannot be sued in tort by suing a member thereof in a representative capacity. But a suit by one member against another not in a representative capacity but as a contracting party to a combination is maintainable (A. I. R. 1940, Nag. 228). In contrast, a suit by a registered trade union must only be brought by its registered name. Where, in the title of the suit the plaintiff purported to be North Western Railway Union, Lahore, through its two Vice-Presidents who were named and the body of the plaint stated that the plaintiffs were the Vice-Presidents of the Union, it was held that the proper plaintiff was not before the Court and that the Union was not properly represented (A.I.R. 1933, Lah. 203).

15. Unfair lnbour practices on the part of employers.—(1) No employer or trade union of employers and no person acting on behalf of either shall—

---

1. Substituted by Ord. XXXV of 1977. s-7 for "1912 (II of 1912)."

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

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

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

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

(i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union, or.

(ii) participates in the promotion, formation or activities of a trade union ;

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

(f) compel any officer of the collective bargaining agent to sign a memorandum by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of water, power and telephone facilities and such other methods ; [1] [* *]

(g) interfere with or in any way influence the ballotting provided for in section 23 ; [2](or)

---

1. The word "or" omitted by Ord. XIX of 1970, s. 6.
2. The word "or" added by Ord. XIX of 1970, s. 6.

[1][(h) recruit any new workman during the period of strike under section 28 or during the currency of a strike which is not illegal except where the Conciliator has, being satisfied that complete cessation of work is likely to cause serious damage to the machinery or installation, permitted temporary employment of a limited number of workmen in the section where the damage is likely to occur.]

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

Note

The list of unfair labour practices is quite exhaustive. Even the threat to dismiss, discharge, removal from employment or injure a workman is an unfair labour practice. Intimidation, coercion, etc. of any officer of a collective bargaining agent or disconnection of facilities is also an unfair labour practice. However, as per sub-section (2), an employer can require from an employee at the time of his appointment or promotion to a managerial position that he shonld cease to be and shall stand disqualified from being a member or officer of a trade union of workmen. Under clause (h) an employer is forbidden to recruit new workmen during the period of strike under section 28 or during a legal strike.

16. Unfair labour practices on the part of workmen.—(1) No workman or trade union of workmen and no person acting on behalf of such trade union shall,—

(a) persuade a workman to join or refrain from joining a trade union during working hours, or

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

(c) induce any person to refrain from becoming, or cease to be a member or officer of a trade union, by con-

1. Cl. (h) added, ibid.

ferring or offering to confer any advantage on or by procurring or offering to procure any advantage for, such person or any other person ; or

(d) compel [1](or attempt to compel) the employer to sign a memorandum of settlement by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of telephone, water and power facilities and such other methods ; [2][or]

[2][(e) compel or attempt to compel any workman to pay, or refrain from paying, any subscription towards the fund of any trade union by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of telephone, water and power facilities and such other methods]

(2) It shall be an unfair practice for a trade union to interfere with a ballot held under section 22 by the exercise of undue influence, intimidation, impersonation or bribery through its executive or through any person acting on its behalf.

Note

Canvassing for trade union membership or otherwise is prohibited during working hours. Intimidation or coercion on an employer to sign a memorandum of settlement and to interfere in ballot held under section 22 are also unfair labour practices on the part of workmen or their unions.

---

1. Words Ins. by Ord. XIX of 1970,s. 7.
2. Subs for full stop and thereafter Clause (e) was added by Ord. XXXV of 1977, s. 8.

RIGHTS AND PRIVILEGES OF REGISTERED TRADE UNIONS AND COLLECTIVE BARGAINING AGENTS

17. Law of conspiracy limited in application.—No officer or member of a registered trade union or collective bargaining agent as determined by the Registrar shall be liable to punishment under sub-section (2) of section 120-B of the [1]Penal Code (Act XLV of 1860). in respect of any agreement made between the members thereof for the purpose of furthering any such object of the trade union as is specified in its constitution referred to in section 7, unless the agreement is an agreement to commit an offence, or otherwise violate any law other than this Ordinance.

Notes

Section 120-B of the Penal Code makes punishable : (i) criminal conspiracy to commit an offence (sub-section 1 thereof) and (ii) criminal conspiracy other than a criminal conspiracy to commit an offence (sub-section 2 thereof). The immunity to registered trade unionists is from the latter and not from the former type of conspiracy. For example, if two members of a union agree to persuade other workmen to break their contract with their employers, it is criminal conspiracy not with the purpose of committing an offence, but all the same punishable with imprisonment under the Penal Code : *but* the present section overrides that provision of the Code by exempting them from any such punishment. On the other hand, if they agree to damage the property of the employer or to cause bodily injuries to any person, they would be punishable for 'criminal conspiracy to commit an offence.'

Strike and ***Picketing***.—Where a body of persons acting in combination do a lawful thing in a lawful manner, cause damage to another, such other person can file a suit against them, *if* the intention of those who combined was *only* to injure him and not to protect or advance their own interest. [32 Hals. (1939 Edn.) 522-23 : Law of Torts : Winfield (1937) p. 452 and Law of Torts, Salmond (1939) p. 636.] In the case of strikes, it is generally difficult to say that the intention is only to injure the employer. It is often a case of mixed intention to advance their own interest : but for attain-

---

1. The word "Pakistan" omitted ibid-s.9.

ing this object they put the employer to loss by not working for him. However, in the case of most strikes, it can be said that the domin ant intention is the advancement of workers' interest. It will be a question of fact to distinguish those aspects in which it is not so.

18. Immunity from civil suit in certain cases.—(1) No suit or other legal proceedings shall be maintainable in any civil court against any registered trade union or collective bargaining agent or any officer or member thereof in respect of any action done in contemplation or furtherance of an industrial dipute to which the trade union is a party on the ground only that such act induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

(2) A trade union shall not be liable in any suit or other legal proceedings in any civil court in respect of any tortious act done in contemplation or furtherance of an industrial dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instruction given by, the executive of the trade union.

Notes

Section 18 protects trade unionists from liability for furthering the objects of a trade union specified in its constitution. This section protects them from civil suits or other proceedings of a civil nature in respect of certain acts done in furtherance of industrial disputes.

Under the normal law, a civil suit can be filed against a person or body of persons, who do any act which induces some other person to break a contract of employment or which is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or labour as he wills, if the plaintiff has suffered or is likely to suffer damage as a result of these acts. The mere fact that damage has been caused does not make those acts actionable since other factors have also to be taken into account e.g. (i) whether the act done is lawful or unlawful, (ii) whether the means adopted are lawful or unlawful, and (iii) what is the intention behind the act.

In the first two cases, if the act done or the means adopted are unlawful, the person or a combination of persons responsible are liable to be sued in a court of law for civil liability *irrespective* of the intention of the act. In the third case, there is a difference between the individual and the combination. In the case of an individual, if the act and the means are lawful, the intention is immaterial; but in the case of a combination of persons the intention is material. Thus, when a person asks another not to join the service of a third person or not to buy goods from him and does not resort to violence or intimidation, the third person cannot file a suit against the first person although the intention of such person is to cause damage. On the other hand, where a body of persons acting in combination (say registered trade union) do a lawful thing in a lawful manner and thereby cause damage to another, such other person *can* file a suit against them *if* the intention of the combination is *only* to injure him and not to protect or advance their own interest. For example, if certain workers having failed in strike, out of sullenness and not with a view to protect or advancing their interest lower the out-put in a factory, the employer can file a suit against them for the damage caused to him by such action. It should be noted that the protection does not extend to inducements to break contracts *other than* contract of employment, *e.g.*, a contract for the sale and purchase of goods.

On the other hand, if the intention of the combination (doing a lawful thing in a lawful manner) is not to injure a third person but only to protect or advance their own interests and damage is thereby caused to the third person, such person cannot file a suit against them. [32 Hals. (1939 Edn. 523.]

The law is *not clear* where a body of persons is acting in combination but their *intention is a mixed one*, i.e. where it is neither their intention *only* to protect or advance their own interest nor it is their intention *only* to cause damage to another person. Most of the strikes are causes of mixed intentions. In such cases of mixed intentions, the law is uncertain and not yet finally settled. It is for the Courts to scan the dominant intention of the combination. The dominant intention would eliminate the subordinate intention. In each case, it will be a question of fact to be determined on the circumstances of each case. Barring certain exceptional case which must be proved by facts, it is generally agreed that the dominant intention in the case of most strikes is to advance or protect the interests of the strikers and the intention to injure the employer is, at best, a subordinate intention.

Sub-section (2) of this section protects a trade union (registered or unregistered) from liability in tort (wrongs not arising out of contract) in respect of tortious acts done by their agents in furtherance of industrial

disputes if the agent acted without the knowledge or contrary to express instructions given by the executive of the trade union.

19. Enforceability of agreement.—Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a trade union shall not be void or voidable by reason only that any of the objects of the agreement are in restraint of trade :

Provided that nothing in this section shall enable any civil court to entertain any legal proceedings instituted for the express purpose of enforcing, or recovering damages for the breach of any agreement concerning the conditions on which any member of a trade union shall or shall not sell their goods, transact business, or work, employ or be employed.

Notes

The word "trade" includes the disposal of labour by a workman. Section 27 of the Contract Act provides that any agreement by which one is restrained from exercising a lawful profession, trade or business of any kind, shall, to that extent, be void. The present section lays down an exception to that rule in the case of agreements between members of a trade union (registered or unregistered) in restraint of trade e.g., agreement not to accept employment unless certain conditions as to pay, hours of work, etc. are fulfilled.

No damages can be recovered for breach of any agreement concerning the conditions on which any member of a trade union may or may not sell his goods, transact business, work, employ or be employed.

20. Registration of Federation of Trade Unions.—(1) Any two or more registered trade unions may, if their repective general bodies so resolve, constitute a federation by executing an instrument of federation and apply for the registration of the federation :

Provided that a trade union of workmen shall not join a federation which comprises a trade union of employers, nor shall a trade union of employers join a federation which comprises a trade union of workmen.

(2) An instrument of federation referred to in sub-section (1) shall, among other things, provide for the procedures to be followed by federated trade unions and the rights and responsibilities of the federation and the federated unions.

(3) An application for the registration of a federation of trade unions shall be signed by the presidents of all the trade unions constituting the federation or by the officers of these trade unions respectively authorised by the trade unions in this behalf and shall be accompanied by three copies of the instrument of federation referred to in sub-section (1).

(4) Subject to sub-sections (1), (2) and (3) provisions of this Ordinance shall, so far as may be and with the necessary modifications, apply to a federation of trade unions as they apply to a trade union.

21. Returns.—(1) There shall be sent annually to the Registar on or before such date as may be prescribed, a general statement audited in the prescribed manner of all receipts and expenditure of every registered trade union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the trade union existing on such 31st day of December as may be prescribed.

(2) Together with the general statement, there shall be sent to the Registrar a statement showing all changes of officers made by the trade union during the year to which the general statement refers, together with a copy of the constitution of the trade union corrected up to the date of the despatch thereof to the Registrar.

(3) A copy of every alteration made in the constitution of registered trade union and of a resolution of the general body having the effect of a provision of the constitution shall be sent to the Registrar within 15 days of the making of the alteration or adoption of resolution.

(4) In case the registered trade union is member of a federation, the name of that federation shall be given in the annual statement.

[1][22. Collective bargaining agent.—(1) Where there is only one registered trade union in an establishment or a group of establishments, that trade union shall, if it has as its members not less than one-third of the total number of workmen employed in such establishment or group of establishments, be deemed to be collective bargaining agent for such establishment or group.

(2) Where there are more registered trade unions than one in an establishment or a group of establishments, the Registrar shall, upon an application made in this behalf by any such trade union which has as its members not less than one-third of the total number of workmen employed in such establishment or group of establishments or by the employer, hold a secret ballot to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment or group.

[2][(3) Upon receipt of an application under sub-section (2), the Registrar shall by notice in writing, call upon every registered trade union in the establisment or group of establishments to which the application relates to indicate, within the time specified in the notice, whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to the establishment or group of establishments.

(4) If a trade union fails to indicate, within the time specified in the notice, its desire to be a contestant in the secret ballot, it shall be presumed that it shall not be a contestant in such ballot.

(5) Every employer shall—

(a) on being so required by the Registrar, submit to the Registrar a list of all workers employed in the establishment, excluding those whose period of employment in the establishment is less than three months or who are casual or *badli* workers, showing in respect of each worker his parentage, age, the section or depart-

---

1. Subs. by Ord. XIX of 1970, s. 8.
2. Subs by Ord. XXXV of 1977 s. 10 for Sub-sections (3), (4) (5) and (6).

ment and the place in which he is employed, his ticket number and the date of his employment in the establishment, and also as many copies of such list as may be demanded by the Registrar ; and

(b) provide such facilities for verification of the list submitted by him as the Registrar may require.

(6) On receipt of the list of workers from the employer, the Registrar shall send a copy of the list to each of contesting trade unions and shall also affix a copy thereof in a conspicuous part of his office and another copy of the list in a conspicuous part of the establishment concerned, together with a notice inviting objections, if any, to be submitted to him within such time as may be specified by him.

(6A) The objections, if any, received by the Registrar within the specified time shall be disposed of by him after such enquiry as he deems necessary.

(6B) The Registrar shall make such amendments, alterations or modifications in the list of workers submitted by the employer as may be required by any decision given by him on objections under sub-section (6A).

(6C) After amendments, alterations or modifications, if any, made under sub-section (6B), or where no objections are received by the Registrar within the specified time, the Registrar shall prepare a list of workers employed in the establishment concerned and send copies thereof to the employer and each of the contesting trade unions at least four days prior to the date fixed for the poll.

(6D) The list of workers prepared under sub-section (6C) shall be deemed to be the list of voters, and every worker whose name appears in that list shall be entitled to vote in the poll to determine the collective bargaining agent.]

(7) Every employer shall provide all such facilities in his establishment as may be required by the Registrar for the conduct of the poll but shall not interfere with, or in any way, influence the voting.

(8) No person shall canvass for vote within a radius of fifty yards of the polling station.

(9) For the purpose of holding secret ballot to determine the collective bargaining agent, the Registrar shall—

(a) fix the date for the poll and intimate the same to each of the contesting trade unions and also to every employer ;

(b) on the date fixed for the poll to place in the polling station set up for the purpose the ballot boxes which shall be sealed in the presence of the representatives of the contesting trade unions as to receive the ballot papers ;

(c) conduct the poll at the polling station at which the representatives of the contesting trade unions shall have the right to be present ;

(d) after the conclusion of the poll and in the presence of such of the representatives of the contesting trade unions as may be present, open the ballot boxes and count the votes ; and

(e) after the conclusion of the count, declare the trade union which has received the highest number of votes to be the collective bargaining agent :

Provided that no trade union shall be declared to be the collective bargaining agent for an establishment or group of establishments unless the number of votes received by it is not less than one-third of the total number of workmen employed in such establishment or group.

(10) Where a registered trade union has been declared under clause (e) of sub-section (9) to be the collective bargaining agent for an establishment or group of establishments, no application for the determination of the collective bargaining agent for such establishment or group shall be entertained within a period of two years from the date of such declaration.

(11) A collective bargaining agent may, without prejudice to its own position, implead as a party to any proceedings under this Ordinance of which it is itself a party, any federation of trade unions of which it is a member.

(12) The collective bargaining agent in relation to an establishment or group of establishments shall be entitled to—

(a) undertake collective bargaining with the employer or employers on matters connected with employment, nonemployment, the terms of employment or the conditions of work;

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

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

(d) nominate representatives or workmen on the Board of Trustees of any welfare institutions or Provident Funds, and of the Worker's Participation Fund established under tne Companies Profits (Workers Participation) Act, 1968 (XII of 1968).

[1][(13) The Registrar may, by order in writing, delegate any of his powers under sub-section (9) to any officer subordinate to him.]

Note

The declaration of a collective bargaining agent in an establishment or industry is a new provision in this Ordinance. Once a trade union or a federation has been declared such agent through a secret ballot by the Registrar, no other claim to such status by a rival union or federation is to be entertained for a period of two years from the date of such declaration. The rights of a collective bargaining agent are to nominate representatives to certain funds, undertake collective bargaining concerning terms and conditions of employment, represent workmen in any proceedings and to declare strikes. A union which has not been declared as a bargaining agent is, therefore, not entitled to perform these tasks. The votes received by a collective bargaining agent must not be less than one-third of the number of workmen employed in such establishment or group.

1. Added by Ord. XXXV of 1977, s. 10(b).

[[1]22A **Collective bargaining agent for institutions with more than one establishment.**—(1) Where an employer carrying on an industry has, for the purpose of the industry, more establishments than one, any registered trade union which fulfils such conditions as may be prescribed in this behalf may make an application in such manner and to such authority as may be prescribed for being declared as the collective bargaining agent in relation to all such establishments and, upon such an application, there shall be determined in the prescribed manner a collective bargaining agent for such establishments.

(2) Where a collective bargaining agent has been determined under sub-section (1) for the establishments referred to therein, the collective bargaining agent determined, if any, under section 22 for any one or more of such establishments shall not undertake collective bargaining in respect of matters relating to the terms and conditions of employment applicable to workmen employed in any of such establishments.

Note

This section is inserted by Ordinance XIX of 1970. One registered trade union can be declared a bargaining agent for all the establishments of the same employer if it fulfils such conditions as may be prescribed. Upon such declaration, no other union declared as bargaining agent under section 22 in indivl-dual establishments of the same employer is competent to undertake collective bargaining in any such establishment i.e. it ceases to be the collective bargaining agent.

23. **Check off.**—(1) If a collective bargaining agent so requests, the employer of the workmen who are members of a trade union shall deduct from the wages of the workmen such amounts towards their subscription to the funds of the trade union as may be specified with the approval of each individual workman named in the demand statement furnished by the trade union.

(2) An employer making any deduction from the wages under sub-section (1) shall, within 15 days of the end of the period for

---

1 Sec. 22A inserted by Ord. XIX of 1970, s. 9.

which the deductions have been made, deposit the entire amount so deducted by him in the account of the trade union on whose behalf he has made the deductions.

[1][(3) The employer shall provide facilities to the collective bargaining agent for ascertaining whether deductions from the wages of its members are being made under sub-section (I).]

Note

The provision for check-off is a new one in this Ordinance. When requested by a collective bargaining agent, it is the duty of the employer to deduct the subscription of the union from the worker's wages with his approval and deposit the entire amount so collected in the account of the trade union within fifteen days. Deducations can only be made from workmen who are members of a trade union and not from other workmen.

JOINT CONSULTATION, CONCILIATION AND MEDIATION

[2][**24. Participation Committee**—The Director of Labour or any officer authorised by him in this bahalf, shall, by an order in writing, require the employer in any establishment in which fifty or more workmen are employed or were employed on any day in the preceding twelve months, to constitute, in the prescribed manner, a participation committee consisting of representatives of the employer and the workmen so however that the representatives of the workmen is not less than the number of the representatives of the employer in the participation committee.

(2) In the case of an establishment where there are one or more trade unions, the collective bargaining agent shall nominate the representatives of the workmen in such participation committee: **Provided** that where there is no collective bargaining agent, representatives of the workmen on a participation committee shall be

1. Sub-sec. (3) Ins. by Ord. XIX of 1970. s. 10.
2. Subs. by Act XXIX of 1980. s. 7.

chosen in the prescribed manner from amongst the workmen engaged in the establishment for which the participation committee is constituted.

Note

[Establishments employing fifty or more workmen must constitute a participation committee. The collective bargaining agent will nominate the representatives of the workmen on the committee. If there be no such agent, then the procedure for election as may be specified by rules under this Ordinance is to be followed.]

[1][25. **Function of the Participation Committee.**—The functions of the Participation Committee shall be to inculcate and develop a sense of belonging and workers' commitment and, in particular—

(a) to endeavour to promote mutual trust, understanding and co-operation between the employer and the workmen :

(b) to ensure application of labour laws ;

(c) to foster a sense of discipline and to improve and maintain safety, occupational health and working condition;

(d) to encourage vocational training, workers' education and family welfare training ;

(e) to adopt measures for improvement of welfare services for the workers and their families ;

(f) to fulfil production target, reduce production cost and wastes and raise quality of products.]

[1][25A. **Meetings of the Participation Committee.**—(1) The Participation Committee shall meet at least once in every two months to discuss, and exchange views and recommend measures for performance of the functions under section 25.

---

1. Subs. by Ao} XXIX of 1980 s. 7.

(2) The proceedings of every meeting of the Participation Committee shall be submitted to the Director of Labour and the Conciliator with in seven days of the date of the meeting.]

26. Negotiation relating to industrial disputes.—(1) If, at any time, an employer or a collective bargaining agent finds that an industrial dispute is likely to arise between the employer and of the workmen, the employer or, as the case may be, the collective bargaining agent shall communicate his or its views in writing to the other party.

(2) With [1][10 (ten) days of the receipt of a communication under sub-section (1), the party receiving it shall, in consultation with the representatives of the other party, arrange a meeting with the representatives of the other party, for collective bargaining on the issues raised in the communication with a view to reaching an agreement thereon through the procedure of a dialogue.

(3) If the parties reach a settlement on the issues discussed, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded to the Conciliator and the authorities mentioned in clause (xxiv) of section 2.

Note

It is obligatory to arrange a meeting within ten days on the receipt of the views of the employer or the collective bargaining agent in respect of an apprehended dispute. If a settlement is reached at, a memorandum of settlement is to be signed by the parties. 21 days' notice of strike or lock-out may be served by the bargaining agent or the employer on the other party as per section 28.

27. Conciliator.—The Government shall, by notification in the official Gazette, appoint as many persons as it considers necessary to be Conciliators for the purposes of this Ordinance and shall specify in the notification the area within which, or the class of establishments or industries in relation to which, each one of them shall perform his functions.

---

1. Subs. for 'seven' by Ord. XIX of 1970, s. 11.

[1][27-A. **Conciliation before notice of strike, etc.**—Where the parties to an industrial dispute fail to reach a settlement by negotiation under section 26, any of them may report to the Conciliator that the negotiations have failed and request him in writing to conciliate in the dispute and the Conciliator shall, on receipt of such request, proceed to conciliate in the dispute.]

Note

When the negotiations under section 26 have failed, any party may request the Conciliator to conciliate the dispute. Upon such request, it becomes obligatory on the Conciliator to start conciliation. Only ten days are allowed to him for this purpose as specified in section 28. If he fails, the parties are free to serve a notice of strike or lock-out.

[2][28. **Notice of strike or lock-out.**—If the Conciliator fails to settle the dispute within ten days from the date of receipt of a request made under section 27-A, the collective bargaining agent or the employer may, in accordance with the provisions of this Ordinance, serve on the other party to the dispnte twenty-one days' notice of strike or lock-out, as the case may be.] [3][:]

[Provided that no collective bargaining agent shall serve any notice of strike unless three-fourths of its members have given their consent to it through a secret ballot specifically held for the purpose.]

29. **Conciliation after notice of strike or lock-out.**—Where a party to an industrial dispute serves a notice of strike or lock-out under section 28, it shall, simultaneously with the service of such notice, deliver a copy thereof to the Conciliator who shall proceed to conciliate or, as the case may be, continue to conciliate in the dispute notwithstanding the notice of strike or lock-out [4][:]

---

1. Sec. 27-A Ins by Ord. XIX of 1970, s. 12.
2. Sections 28 and 29 were substituted for the original section by Ord. XIX of 1970, s. 13.
3. The colon was substituted for full stop at the end of section 28 and thereafter the proviso. was added by Ord. XXIX of 1980, s. 8.
4. The colon was subs for the full-stop at the end of s. 29 and thereafter the provio added by Act XXIX of 1980, s. 19.

[Provided that before proceeding to conciliate in the dispute the Conciliator shall satisfy himself as to the validity of the notice of strike and if the notice does not conform to the provisions of this Ordinance or the rules or of the constitution of the trade union concerned, the notice of strike shall not be deemed to have been given under the provisions of this Ordinance, and in such cases, whether the notice relates to a public utility service or not, the Conciliator may, at his discretion, decide not to procced with the conciliation :

Provided further that no concilation proceeding which has been undertaken by the Conciliator under this section shall however be invalid merely on the ground that such notice of the strike does not conform.]

Note

[Sections 28 aud 29 provide ten days' time to the Conciliator to conciliate after the parties have faled to reach settlement. Even after a notice of strike or lock-out has been served, the Conciliator must continue to conciliate in the dispute.]

30. Proceedings before Conciliator.— (1) The Conciliator shall, as soon as possible, call a meeting of the parties to the dispute for the purpose of bringing about a settlement.

(2) The parties to the dispute shall [1][appear before the Conciliator in person or shall be represented before him] by persons, nominated by them and authorised to negotiate and enter into an agreement binding on the parties [2][:]

[Provided that in the case of a dispute in which a state-owned manufacturing industry is involved, the representative of the Ministry or Division administratively concerned with that industry may also appear before the Conciliator.]

(3) The Conciliator shall perform snch functions in relation to a dispute before him as may be prescribed and may, in particular,

---

1. Subs-by Act XXIX of 1980, s.-10.
2. The colon was substituted for the full stop and thereafter the proviso was added by Act XXX of 1980, s. 10.

suggest to either party to the dispute such concessions or modifications in its demand as are, in the opinion of the Conciliator. likely to promote an amicable settlement of the dispute.

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

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

Note

Parties can be represented before a Conciliator by persons duly nominated and authorised. They may be (not necessarily) officers of a collective bargaining agent in respect of workmen and others so authorised in respect of the employer. With the consent of the parties, conciliation may be continued after the expiry of the period of notice of strike or lock-out.

31. Arbitration.—(1) If the conciliation fails, the Conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator. In case the parties agree, they shall make a joint request in writing for reference of the dispute to an Arbitrator agreed upon by them.

(2) The Arbitrator to whom a dispute is referred under sub-section (1) may be a person borne on a panel to be maintained by the Government or any other person agreed upon by the parties.

[2][(3) The Arbitrator shall give his award wthin a period of thirty days from the date on which the dispute is referred to him under sub-section (1) or such further period as may be agreed upon by the parties to the dispute.]

(4) After he has made an award, the Arbitrator shall forward a copy thereof to the parties and to the Government who shall cause it to be published in the official Gazette.

---

1. Sub-section (5) added by Ord. XIX of 1970, s. 14.
2. Sub-sec. (3) subs. for the orginal by Ord. XIX of 1970, s. 15.

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

Notes

An Arbitrator can only be appointed by mutual consent of the parties. His award being final, is not subject to appeal. The award will be binding up to a period of two years : but the Arbitrator is authorised to fix the duration of the award at his discretion.

32. Strike and Lock-out.—(1) If no settlement is arrived at during the course of conciliation proceedings and the parties to the dispute do not agree to refer it to an Arbitrator under section 31, the workmen may go on strike or, as the case may be, the employer may declare a lock-out, [1][on the expiry of the period of the notice under section 28] or upon [2][the issuance of a notice by the Conciliator to the parties to the dispute a certificate to the effect that the conciliation proceedings have failed, whichever is the later.]

[3][(1-A) The partiee to the dispute may, at any time, either before or after the commencement of a strike or lock-out, make a joint application to the Labour Court for adjudication of the dispute.]

(2) If a strike or lock-out lasts for more than 30 days, the Government may, by order in writing, prohibit the strike or lock-out :

[4][Provided that the Government may, [5][***] by order in writing, prohibit a strike or lock-out at any time before the expiry of thirty days if it is satisfied that the continuance of such strike or lock-out is causing serious hardship to the community or is prejudicial to the national interest.

(3) In any case in which the Government prohibits a strike or lock-out, it shall, forthwith, refer the dispute to the Labour Court.

---

1. These words were subs. by Ord. XIX of 1970, s. 16(1) for "in accordance with the notice of strike or lock-out."
2. Subs by Act XXIX of 1980, s. 11.
3. Sub-sec. I-A Ins by Ord. XIX of 1970, s. 16.
4. Proviso added, by Ord. XIX of 1970, s. 16(3).
5. Omitted by Ord. XXXV of 1977, s. 12.

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

Provided that the Labour Court may also make an *interim award* on any matter of dispute :

Provided also that any delay by the Labour Court in making an award shall not affect the validity of any award made by it.

(5) An award of the Labour Court shall be for such period, as may be specified in the award, which shall not be more then two years.

Note

When collective bargaining has falied, a 21 days' notice of strike or lock-out is to be given by one party to the other as per section 28. During this period of 21 days, the Conciliator is to make attempts to bring the parties to a settlement or make them agreeable to refer the dispute to an Arbitrator. If both these courses fail, a strike or lock-out, as the case may be, can be declared in accordance with the notice already given. In case the strike or lock-out lasts for more than 30 days, the Government may (not necessarily) prohibit it by an order and simultaneously refer the dispute to a Labour Court for decision within 60 days from the date of reference. But an award made after 60 days will not be invalid. Strikes and lock outs can also be prohibited earlier than 30 days in the national interest as per proviso to sub-section (2) inserted by Ordinance XIX of 1970.

[1][32A & 32B]

33. Strike or Lock-out in Public Utility Services.—(1) In the case of any of the public utility services, the Government may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out.

(2) The provisions of sub-section (3), (4) and (5) of section 32 shall also apply to an order made under sub-section (1) above as they apply to an order made under sub-section (2) of that section.

---

1. Sections 32-A and 32-B were omitted by Ord· XIX of 1970, s. 17.

Note

In public utility services, a strike or lock-out may be prohibited by the Government any time before or after the commencement of strike or lock-out. When this is done, the dispute has to be referred to a Labour Court simultaneously for an award within 60 days.

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

Cl. 2 (xiii) read with sections 34 and 36(I)

An application u/s (34) *relates to an industrial dispute within the meaning s.* 36(I). From a reading of the definition of the word 'Industrial dispute' in section 2(xiii), an application under section 34 of the Industrial Relations Ordinance though not arising out of an industrial dispute as contemplated under section 43 of the I.R.O. or which may be raised under sections 26 to 31 of the I.R.O., it is an industrial dispute as contemplated under section 36(I). If the word 'industrial dispute' as has been referred to in section 36(I), is an industrial dispute as may be raised under sections 26 to 31 and section 34, then the Labour Court would be devoid of any power and jurisdiction or a procedure to hear an application under section 34 of the I.R.O., which cannot be accepted.

Industrial dispute referred to in s. 36(2) is one which falls within the definition of the words given in section 2(xiii)—hence a Labour Court would be deemed to be a civil court having power to issue injunction order staying the proceeding in a Labour dispute.

If the submission of the learned Advocate for the petitioner that 'industrial dispute' contemplated under section 36(I) of I.R.O. does not include or is not intended to apply to an application under section 34, then it would take us to that that a Labour Court has no power to hear and decide an application under section 34 of the I.R.O. Hence in our view the industrial dispute referred to in section 36(I) must be referrable to the definition of the word as given in section 2(xiii) of the I.R.O. which includes all disputes as have been contemplated in the I.R.O. It would therefore be reasonable to hold that the Labour Court constituted under the I.R.O. shall be deemed to be a civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure.

---

1. Sec. 34 subs. for original section, ibid, s. 18.

When a Labour Court is deemed to be a civil court and had the same powers as are vested in the civil court, it must have power to grant injunction or stay operation of an impugned order to preserve the subject-matter of the dispute until it is finally decided. These powers to pass temporary or ad-interim orders are designed to preserve and protect the subject-matter of the dispute under Order 39, rule 1, C.P.C , pending final determination of the case. *Pubali Bank Ltd. Vs, Chairman, Ist Labour Court Dhaka,* (1986) 38 DLR 427.

Cl. 2(xxviii) ; The word "includes" in s. 2(xxviii) extends scope of definition of 'worker' or 'workman'.

The word "includes" indicates that the legislature intended to extend the scope of the definition of 'worker' or 'workman' to certain categories of 'workers' or 'workmen' in relation to 'industrial dispute'. whose dismissal, discharge, etc. has led to that dispute. *James Einalay, Vs. 2nd Labour Court* (1981) 33 DLR (AD) 58.

35. Labour Court.—(1) The Governmeot may, by notification in the Official Gazette, establish as many Labour Courts as it considers necessary and, where it establishes more than one Labour Court, shall specify in the notification the territorial limits within which each one of them shall exercise jurisdiction under this Ordinance.

[1][(2) A Labour Court shall consist of a Chairman appointed by the Government and two members to be appointed in the presecribed manner to advise the Chairman, one to represent the employers and the other to represent the workmen.]

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

(4) The members shall be appointed in consultation with the employers and workmen in such manner and on such terms and conditions as may be prescribed.

(5) A Labour Court shall—

[2][(a) adjudicate and determine an industrial dispute which has been referred to or brought before it under ths Ordinance.]

---

1. Sub-sec. (2) subs fot the original, by Ord. XIX of 1970.
2. Cl. (a) subs for the original, by Ord. XIX of 1970, s. 19(2)(a).

(b) enquire into and adjudicate any matter it relation to the implementation or violation of a settlement which is referred to it by the Government.

(c) try offences under this Ordinance, [1][and such other offences under any other law as the Government may, by notifications in the official Gazette, specify in this behalf.]

(d) exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under this Ordinance [2][or any other law.]

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

[3][(7) If any member of the Labour Court is absent from, or is otherwise unable to attend any sitting of the Court, the proceedings of the Court may continue and the decision or award may be given in the absence of such member ; and no act, proceedings, decision or award of the Court shall be invalid or be called in question merely on the ground of such absence.]

Notes

This section deals with the constitution and functions of Labour Courts. Its functions are to adjudicate and determine industrial disputes, adjudicate on matters concerning implementation or violation of a settlement, try offences under the Ordinance, perform other functions assigned by the Ordinance aud the Act as an authority under the Workmen's Compensation Act, 1923 and Payment of Wages Act, 1936 on the issue of a

1. Words added, ibid, s. 19(2) (b),
2. Words added, ibid, s. 19(2) (c),
3. Sub-sec. 7 added, by Ord. XIX of 1970.

notification to this effect. It should be noted that the Labour Court in exercising the powers and functions of authorities under those Acts is not a Labour Court with powers as stipulated in this Ordinance. In those cases it is an authority under those particular laws subject to all the powers, duties, functions and limitations of that particular law. The decision given in such cases will be governed by the provisions of the relevant law and not by the present Ordinance. The provisions regarding appeals against the awards and decisions of the Court are not applicable in the context of functions performed under other laws; but appeals will be governed by provisons of those laws.

Case Laws

No guiding principles have been enunciated in the Ordinance on which adjucation by the Court is to be based. The Court is, therefore, left with its own discretion to decide what is just and fair in the circumstances of each case having regard to considerations of equity, fairness and social justice. But in the application of those considerations and its own discretion, it must not act like a "benevolent despot" and "on its own ideas of social justice" as has been ruled by the Supreme Court of Pakistan (1957-58, LLC 666). The Court must act on the materials brought on record and law applicable to the matters in dispute. *(Ibid)*.

Jurisdiction of Court regarding re-instatement.—It has now been authoritatively established that the Court has jurisdiction to order re-instatement of a discharged or dismissed employee. "No machinery for the conciliation and settlement of industrial disputes could be considered effective unless it provides within its, scope a solution in cases of employees whose services are terminated improperly. So far as one can see, re-instatement may be an essential refief to be provided for in any machinery devised for settlement of industrial disputes. If the Tribunal could only decide disputes according to the law of master and servant, it would cease to have any importance at all whatsoever as a Tribunal for the settlement of industrial disputes". (Hotel Metrople, 1957 LLC Sec. 1, 57).

A number of authorities have expressed against this view and have held that doctrine of 'res judicata' has no application to industrial disputes.

Purpose of industrial law and object of industrial justice.—The basic role of the ordinary Courts is not to be capitalists, or humanitarians, or socialists, but dispense justice according to law and its own nature as honestly understood by them for all times and, subject to certain limitations, from time to time.

The purpose of industrial law and the object of industrial justice can be taken to establish a balance between the interest of the workers and those of the owners of industry so that harmony of their relations may be achieved. It is not easy perhaps not even possible, to strike a perfect balance; because limitations with respect to the interescs of either party are imposod by the existing conditions. The decisive factor for the decisions, in the existing state of affairs, would ultimately have to be the attitude of the mind or the policy designed by those who administer industrial justice. There is little authority from the purely legal point of view in support of one attitude or the other. In these circumstances, the Legislature has considered it best not to confer the industrial jurisdictions, on the ordinary Courts and has created special Courts. One of the reasons behind it appears to be that the Labour Courts are expected to be experienced in and appreciative of social, economic, labour and industrial problems, while the ordinary Courts are trained to administer purely legal justice with commendable emphasis, of course, on rationality and logic which is, however, not the same thing as the formulation of and adherence to a well designed policy within the law. [H.C. (Kar.) Flour Mills Employees' Union vs. Karachi Steam Roller Flour Mills Co Ltd. 1964 LLC 729—PLD 1964 (W.P.) Kar. 587]

Right to award new conditions of service or add to existing contracts.— It is open to a Labour Court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of industrial peace or make award which may have the effect of extending existing agreement or making a new one. This, however, does not mean that a Labour Court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject-matter with which it is dealing and also by the existing industrial law and it would not be open to it, while dealing with a particular matter before it, to overlook the industrial law relating to that matter as laid down by the Legislature or the Supreme Court. [S.C. (Ind.) New Maneckchowk Spg. & Wvg. Co. Ltd. Ahmedabad and others vs. Textile Labour Association, Ahmedabad: 1961 LLC 228—1960 I LLJ 521—1961 PLC 663]

36. Procedure and powers of Labour Court. (1) Subject to the provisions of this Ordinance' a Labour Court shall follow as nearly as possible summary procedure as prescribed under the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) A Labour Court shall, for the purpose of adjudicating and determining any industrial dispute, be deemed to be a Civil Court

and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 (Act V of 1908) including the powers of—

(a) enforcing the attendance of any person and examining him on oath,

(b) compelling the production of documents and material objects, [1][* *]

(c) issuing commissions for the examination of witnesses or documents, [2][and]

[3][(d) delivering *ex parte* decision in the event of failure of any party to appear before the Court.]

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

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

Notes

Cl. 2 (iii) read with sections 34 and 36(1).

An application u/s. (34) *relates to an industrial dispute within the meaning of s.* 36(1) : From a reading of the definition of the word 'Industrial dispute' in section 2 (xiii), an application under section 34 of the Industrial Relations Ordinauce though not arising out of an industrial dispute as contemplated under section 43 of the I. R. O, or which may be raised under sections 26 to 31 of the I.R.O., it is an industrial dispute as contemplated under section 36(1). If the word 'industrial dispute' as has been referred to in section 36(1), is an industrial dispute as may be raised under sections 26 to 31 and section 43, then the Labour Court would be devoid of any

1. The word 'and' omitted by Act XXIX of 1980, s-12,
2. Subs. ibid for full-stop.
3. Clause (d) added. Ibid.

power and jurisdiction or a procedure to hear an application under section 34 of the I.R.O., which cannot be accepted.

Industrial dispute referred to in s. 36(2) is one which falls within the definition of the words given in section 2(xiii)—hence a Labour Court would be deemed to be a civil court having power to issue injunction order staying the proceeding in a Labour dispute.

If the submission of the learned Advocate for the petitioner that 'industrial dispute' contemplated under section 36(1) of I.R.O. does not include or is not intended to apply to an application under section 34, then it would take us to that that a Labour Court has no power to hear and decide an application under section 34 of the I.R.O. Hence in our view the industrial dispute referred to in section 36(1) must be referrable to the definition of the word as given in section 2(xiii) of the I.R.O. which includes all disputes as have been contemplated in the I.R.O. It would therefore be reasonable to hold that the Labour Court constituted under the I.R.O. shall be deemed to be a civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure.

When a Labour Court is deemed to be a civil court and had the same powers as are vested in the civil court, it must have power to grant injunction or stay operation of an impugned order to preserve the subject matter of the dispute until it is finally decided. These powers to pass temporary or ad-interim orders are designed to preserve and protect the subject matter of the dispute under Order 39, rule 1, C.P.C., pending final determination of the case. *Pubali Bank Ltd. Vs. Chairman 1st Labour Court Dhaka* (1986) 38 DLR 427.

The Labour Court shall follow such procedure as may be prescribed. Sub-section (2) of this section provides that *only* for the purpose of adjudicating and determining an industrial dispute the Labour Court shall be deemed to be a Civil Court and shall have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908.

When a Labour Court tries an offence under this Ordinance, it shall be deemed to be a Court of the status and powers of a Magistrate of the first class under the Code of Criminal Procedure, 1898. (Sections 6 to 41 of that Code deal with constitution and powers of criminal courts and officers,) For the purpose of appeal to the High Court from a sentence passed by a Labour Court, it shall be deemed to be a Court of Sessions under the Code of Criminal Procedure. It follows that an appeal to the Court of Sessions does not lie from a sentence passed by a Labour Court, but only to the High Court.

37. Awards and decisions of Labour Court.—[1][(1) An award or decision of a Labour Court shall be given in writing and delivered in open Court and two copies thereof shall be forwarded forthwith to the Government.

[2]* * * *

[3][(1A) An award or decision of Labour Court shall, in every case, be delivered, unless the parties to the dispute give their consent in writing to extend the time limit within sixty days following the date of filing of the case :

Provided that no award or decision of a Labour Court shall be invalid merely on the ground of delay in its delivery.

(2) The Government shall, within a period of one month from the receipt of the copies of the award or decision, publish it in the official Gazette.

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

Note

Amenndmet made under Martial Law Order 19 of 1982—Any person aggrieved by any decision, other than an award, of a Labour Court, delivered before or after the commencement of this Order, may, within ninety days from the dateof delivery of the decision, file a petition for revision of the decision to the Zonal Martial Law Administrator within whose jurisdiction the decision is delivered and the decision of the Zonal Martial Law Administrator on such petition shall, subject to the approval of the CMLA, be final and binding upon the parties concerned.

(4) All decisions of a Labour Court, other than awards referred to in sub-section (3) of this section, and sentences referred to in sub-section (3) of section 36, shall be final and shall not be called in question in any manner by or before any Court or other authority.

---

1. Subs. by Ord, XXXV of 1977, s. 14.
2. Omitted, ibid.
3. Ins. by Act XXI of 1980. s. 13.

Note

The award or decision of the Labour Court is to be published by the Government in the official Gazette within one month of its receipt. The award is appealable to labour appellate tribunal within 30 days of its delivery to a party by the Labour Court : but all other decisions of the Labour Court are final and cannot be appealed before any Court or authority.

38. Labour appellate tribunal—(1) The tribunal shall consist of one member to be appointed by the Government by notification in the official Gazette.

(2) The member of the tribunal shall be a person who is or has been a Judge [1][or an Additional Judge] of a High Court and shall be appointed on such terms and conditions as the Government may determine.

(3) The tribunal may, on appeal, confirm, set aside, vary or modify the award and shall exercise all the powers conferred by this Ordinance on the Court, save as otherwise provided. The decision of the tribunal shall be delivered as expeditiously as possible, within a period of 60 days following the filing of the appeal :

Provided that such decision shall not be rendered invalid by reason of any delay in its delivery.

Note

Amendment under Martial Law Order 19 of 1982.—

Any person aggrieved by any decision of the Labour Appellate Tribunal, delivered before or after the commencement of this Order, may, within ninety days from the date of delivery of the decision, file a petition for review of that decision to the CMLA and the decision of the CMLA on such petition shall be final and binding upon the parties concerned.

(4) The tribunal shall follow such procedure as may be prescribed.

(5) The tribunal shall have authority to punish for contempts of its authority, or that of any Labour Court subject to its appellate jurisdiction, as if it were a High Court.

(6) Any person convicted and sentenced by the tribunal under sub-section (5) to imprisonment for any period, or to pay a fine

---

1. Ins by Ord. XIX of 1970. s.20.

exceeding fifty taka may prefer an appeal to the High Court Division.

Note

Only a person who is or has been a Judge of a High Court or an Additional Judge can be appointed as labour appellate tribunal to hear appeals from the awards of Labour Courts. It can award punishments for contempt of its authority as well as of the Labour Courts, as if it were a High Court.

39. Settlements and awards on whom binding.—(1) A settlement arrived at in the course of a conciliation proceeding, or an award of an Arbitrator published under section 31, or an award or decision of a Labour Court delivered under section 37 [1][or the decision of a tribunal under section 38] shall—

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

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

(c) be binding on the heirs, successors or assignees of the employer in respect of the establishment to which the industrial dispute relates where an employer is one of the parties to the dispute ; and

(d) where a collective bargaining agent is one of the parties to the dispute, be binding on all workmen who were employed in the establishment or industry to which the industrial dispute relates on the date on which the dispute first arose or who are employed therein after that date.

(2) A settlement arrived at by agreement between the employer and a trade union otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement.

Notes

Not only the parties to the industrial dispute shall be bound by a settlement or award, but also the parties which were summoned to appear as parties to the dispute shall be so bound unless the Court records the opinion that

1. Words Ins. by Ord. XIX of 1970, s. 21.

they were summoned without proper cause. When a collective bargaining agent is a party to the dispute, all workmen employed in the establishment to which the dispute relates on the date of the dispute and those subseqently employed in that establishment or part thereof will also be bound by the settlement or the award.

A settlement arrived at otherwise than through conciliation proceedings is binding only on the parties to the agreement, i.e., it will bind only those workmen of the establishment who are a party to it.

Award binding on new union formed subsequent to making of same. —"The representative unions entered into a settlement with the employers on bchalf of the workers.—Subsequently, a new union was formed in place of the two unions.—The new union felt that the settlement was not a fair settlement and not to their benefit. Can they be allowed to reopen the settlement? I think not. They, as successor of the old unions, will be bound by the award, They can terminate the award in accordance with the terms of the settlement. The said settlement, being part of the award, can also be terminated by the Government in a manner prescribed in the Act, Thus, the union cannot brush aside the said award at its sweet will. If they were allowed to ignore such an award, it would lead to extraordinary results. The workers would be able to get out of an award which was not to their liking by simply changing the name of the union.

In my view, this is not permissible under the Act." [H. C. (E.P.) Adamjee Jute Mills, Ltd. Dhaka vs. The Province of East Pakistan and others: 1960 LLC Pt. II, 17=PLD 1959 Dhaka 872=1960 PLC 166]

40. Effective date of settlement, award etc.—(1) A settlement shall become effective—(a) if a date is agreed upon by the parties to the dispute to which it relates, on such date; and (b) if a date is not so agreed upon, on the date on which the memorandum of the settlement is signed by the parties.

(2) A settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of one year from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties after the expiry of the aforesaid period until the expiry of two months from the date on which either party informs the other party in writing of its intention no longer to be bound by the settlement.

(3) An award given under sub-section (1) of section 37 shall, unless an appeal against it is preferred to the Tribunal, become effective on such date and remain effective for such period, not exceeding two years, as may be specified therein. The Arbitrator, the Labour Court, or as the case may be, the Tribunal, shall specify dates from which the award on various demands shall be effective and the limist by which it shall be implemented in each case :

Provided that if, at any time before the expiry of the said peroid, any party, bound by an award, applied to the Labour Court which made the award to reduction or the period on the ground that the circumstances in which the award was made have materially changed, the Labour Court may, by order made after giving to the other party an opportunity of being heard, terminate the said period on a date specified in the order.

(4) A decision of the Tribunal in appeal under sub-section (3) of section 38 shall be effective from the date of the award.

(5) Notwithstanding the expiry of the period for which an award is to be effective under sub-section (3), the award shall contiune to be binding on the parties until the expiry of two months from the date on which either party informs the other party in writing of its intention no longer to be bound by the award.

Notes

Sub-section (1)—A settlement shall become effective—

(a) on the date agreed to by the parties to the dispute, or

(b) if no such date has been agreed upon, the date on which the memorandum of settlement is signed by the parties to the dispute.

Sub-section (2)—A settlement shall be binding—

(a) for such period, as has been agreed upon by the parties, or

(b) if no such period is agreed upon, for a period of one year from the date on which the memorandum of settlement is signed by the parties to the dispute and after the expiry of this period of one year, shall continue to be binding until the expiry of two months' notice in writing given by one party to the other of an intention to terminate the settlement.

Sub-section (3)—An award given by the Court, unless appealed against, shall come into operation on such date and shall remain in force for such period not exceeding two years as may be specified in the award. An award can be terminated earlier than the period specified on the ground of material change in circumstances on which the award was based.

Sub-section (4)—The decision of the Tribunal is to be effective from the date of the award given by the Labour Court.

41. Commencement and conclusion of proceedings. (2) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out is received by the Conciliator under section 28.

(2) A conciliation proceeding shall be deemed to have concluded—

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

(b) where no settlement is arrived at—

(i) if the dispute is referred to an Arbitrator under section 31 on the date on which the Arbitrator has given his award ; or otherwise ;

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

(3) Proceedings before a Labour Court shall be deemed to have commenced—

(a) in relation to an industrial dispute on the date on which an application has been made under [1][section 32 or] section 34, or on the date on which it is referred to the Labour Court by the [2]Government under section 32 or 33 ; and

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

---

1. Inserted by Ord XIX of 1970. s 22
2. Subs by Ord XXXV of 1977, s. 16.

(4) Proceedings before a Labour Court shall be deemed to have concluded on the date on which the award or decision is delivered under sub-section (1) of section 37.

Notes

Conciliation proceedings are deemed to commence on recipt of notice of strike by the Conciliator and deemed to have concluded when a memorandum of settlement is signed or the Arbitrator has given his award, or on the date on which the period of the notice of strike or lock-out expires. Proceedings before a Labour Court commence on the date when application or reference is made to it and conclude when the award or decision is delivered in the open Court.

42. Certain matters to be kept confidential.—There shall not be included in any report, award or decision under this Ordinance any information obtained by a Registrar, Conciliator, Labour Court, Arbitrator or Tribunal in the course of any investigation or enquiry as to a trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through the evidence given before such authority, if the trade union, person, firm or company in question has made a request in writing to the authority that such information shall be treated as confidential, nor shall such proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be :

Provided that nothing contained in this section shall apply to disclosure of any such information for the purpose of a prosecution under section 193 of the Penal Code (Act XLV of 1860).

Note

The emphasis in this section is on the non-inclusion of confidential information in any report, decision or award and its non-disclosure or making public by a person present at the proceedings. It does not follow that any documents produced by a party before a Court can be kept confidential from the other party. Where in one case such documents were not shown by the Courts to the other party, the High Court held that this section was misconstrued and ordered fresh hearing on that particular issue. [Pakistan Security Press Employees Union, Writ Petition No. 402

of 1957, decided on 27-1-59 by West Pakistan High Court, Karachi Bench—1960 L.L.C. 1 (Part II]. But such information can be disclosed for the purpose of a prosecution under section 193 of the Penal Cod 1860 (Act XLV of 1860) which provides punishment for giving false evidence.

43. Raising of industrial disputes.—No industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a collective bargaining agent [1][or an employer.]

Note

The law does not recognise the existence of an industrial dispute unless it is raised by a collective bargaining agent in the prescribed manner i e., by negotiation (s. 26), conciliation (s. 30), arbitration (s. 31) and adjudication by Labour Court (s. 35). A rival trade union (though it may be registered) not certified as collective baragining agents is incompetent to raise industrial disputes.

44 Prohibition on serving notice of strike or lock-out while proceedings pending.—No notice of strike or lock-out shall be served by any party to an industrial dispute while any conciliation proceedings or proceedings before an arbitrator or a Labour Court or an appeal to the Tribunal under sub-section (3) of section 38 are or is pending in respect of any matter constituting such industrial dispute.

45. Powers of Labour Court and Tribunal to prohibit strike etc.—(1) When a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time when, in respect of such industrial dispute, there is made to, or is pending before, a Labour Court [2][*** or an application under section 34,] the Labour Court may, by an order in writing, prohibit continuance ofthe strike or lock-out.

(2) When an appeal in respect of any matter arising out of an industrial dispute is referred to a Tribunal under section 38 the Tribunal may, by an order in writing, prohibit continuance of any strike or lock-out in pursuance of such industrial dispute which had already commenced and was in existence on the date on which the appeal was preferred.

---

1. Words added by Ord. XIX of 1970, s. 23.
2. The words and figures "a reference under section 32 or section 33" omitted by Ord. XIX of 1970, s. 25.

Note

Both the Labour Court and the Tribunal are competent to prohibit a strike or lock-out when an industrial dispute is pending before them for adjudication or appeal respectively. But such strike or lock-out must have commenced before such pendency. If it commences during pendency of proceedings before a Court or Tribunal, it will be illegal as per the provisions of section 44.

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

(a) It is declared, commenced or continued without giving to the other party to the dispute, in the prescribed manner, a notice of strike or lock-out on or before the date of strike or lock-out specified in such notice, or in contravention of section 44 ; or

(b) it is declared, commenced or continued in consequence of an industrial dispute raised in a manner other than that provided in section 43 ; or

(c) it is continued in contravention of an order made under [1][section 33] or section 45 ; or

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

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

Notes

This section specifies cases of illegul strikes and lock-outs. It is very important to note that as per sub-section 1(b) any strike declared or continued is illegal if it is not raised by a collective bargaining agent or an employer. Only such agent and none else (not even other registered trade unions or federations of the establishment or industry) have the right to declare strike.

---

1. Ins by Ord. XIX of 1970, s. 26.

Distinction between lock-out and closure of business.—A lock-out does not mean closing down of a *business*. It only means closing down of a *place* of a business. It only means the refusal by an employer to employ the persons employed by him and not the refusal by an employer to carry on any longer his business. The Labour Court has got the jurisdiction to adjudicate on the question whether a particular lock-out was justified or not ; it cannot decide the question whether an employer can close down his business temporarily, for an indefinite period or permanently. An employer cannot be compelled to carry on his business. The closure of factory may be illegal, wrongful, unjustified or even *malafide*, but still a Court cannot direct the management to reopen and start the business.

Pay for the strike period.—As a general rule, employees choosing to strike work must bear the evident consequences of their act, namely, loss of wages. The basic principle of all employment is that an employee has only the right to receive payment for work done and that voluntary unemployment ordinarily carries no right to receive pay. However, if the conduct of the employer or the conditions imposed by him upon the employees have been such as to render it impossible for the employees to resume work or the demands made by the employees have been so obviously fair and reasonable that the employer's attitude in rejecting them can be characterised as capricious or vindictive, the Court may grant wages for the strike period or a part of it upon the appropriate facts of the proceedings before it.

If a strike is justified but it is illegal by law, the workers will not be entitled to wages for such strike period. To allow this would be to set the criminal law and the civil law iu couflict, as the worker who would be liable to punishment for the same conduct in criminal law, would be required to be compensated under the civil law, which would be anomalous.

Employer's right to dismiss an employee for participation in a strike.—An employer cannot dismiss a worker for mere participation in an illegal strike. But if a particular worker who joined the strike is guilty of violent acts or subversive activities, he should be individually dealt with and should be given a chance of defence before he can be dismissed. The Supreme Court of Pakistan held that dismissal was justified for a legal but unjustified strike. [Remington Rand Ltd. LLC 1947-57, Sec. III, P II(S.C).]

Illegal strike causes break in service.—In the case of Buckingham and Carnatic Co. Ltd. vs. their workers, the Supreme Court of India held that when the employees of a mill stopped work on a certain day for about

four hours (by concerted action) due to the management refusing to declare the forenoon of that day as a holiday for solar eclipse, (i) the stoppage of work was a "strike", (ii) the strike was an illegal strike for want of notice, the textile mills being public utility industry and (iii) the continuity of service being interrupted, claim for holidays with pay under the Factories Act was not sustainable (AIR 1953, S.C, 47). The same view was taken by the Tribunal in the case of Karachi Port Trust (1957 LLCI, 549) not only in respect of holidays but also for the purpose of granting provident fund etc.

The penalty for an illegal lock-out is imprisonment or fine and not the payment of wages.—The Supreme Court of Pakistan held that the penalty for the disobedience of an order prohibiting an illegal lock-out is imprisonment or fine and not the payment of wages for the period of lock-out. [Remington Kand Ltd. 1957 LLC Sec. III, p. 11 (S.C)].

47. Conditions of service to remain unchanged while proceedings pending.—(1) No employer shall, while any conciliation proceedings or proceedings before an Arbitrator, a Labour Court or Tribunal in respect of an industrial dispute are pending, alter to the disadvantage of any workman concerned in such dispute, the conditions of service applicable to him before the commencement of the conciliation proceedings or of the proceedings before the Arbitrator, the Labour Court or Tribunal, as the case may be, nor shall he,—

(a) save with the permission of the Conciliator, while any conciliation proceedings are pending, or

(b) save with the permission of the Arbitrator, the Labour Court or Tribunal, while any proceedings before the Arbitrator, Labour Court or Tribunal are pending,

discharge, dismiss or otherwise punish any workman [1][or terminate his service] except for misconduct not connected with such dispute.

(2) Notwithstanding anything contained in sub-section (1), an officer of a registered trade union shall not, during the pendency of any proceedings referred to in sub-section (1), be

1. Subs. by Ord. XV of 1985.

discharged, dismissed or otherwise punished for misconduct, except with the previous permission of the Labour Court.

Notes

All alterations of service conditions are not prohibited, but only those alterations which are prejudicial or detrimental to the interests of workmen concerned in the dispute are prohibited. A prejudicial alteration cannot be made even with the permission of the conciliation officer or the Court—there being an absolute bar on it. The employer's knowledge of the pendency of proceedings is not relevant. In order to get the protection of this section, the workmen must have some substantial concern with the pending dispute. The concern must be real and material having bearing on their service condition; it should not be theoretical, fictitious or philosophical. There is no bar on the employer to prejudicially alter the service conditions of those workers who are not concerned in a labour dispute. At the same time, the dispue must be considered as one and indivisible. If there were several issues before the Court adjudicating upon the dispute, and if an award was published on all issues except some, it must be taken to mean that dispute was still pending before the Court. For, it is neither permissible nor contemplated in this Ordinance to split up a dispute into several parts.

Workmen concerned in the dispute.—By enacting this section, the Legislature wanted to ensure a fair and satisfactory enquiry of the industrial dispute undisturbed by any action on the part of the employer or the employee which would create fresh cause for dis-harmony between them. During pendency of an industrial dispute *Status quo* should be maintained and no further element of discord should be introduced. That being the object of the section a narrow construction of the material words used would tend to defeat the said object. If it is held that the workmen concerned in the dispute are only those who are directly or immediately concerned with the dispute, it would leave liberty to the employer to alter the terms and conditions of the remaining workmen and that would inevitably introduce further complications which it is intended to avoid. Similarly, it would leave liberty to the other employees to raise disputes, and that, again, is not desirable. Having regard to the object of this section and the definition of industrial dispute, the expression "workmen concerned in such dispute" cannot be limited only to such of the workmen who were directly concerned with the industrial dispute in question. That expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute. [S.C. (Ind.) New India Motors (Private) Ltd. New Delhi *vs.* K. T. Morris 1961 LLC 107=1960 I LLJ 551=1961 PLC 46.]

The employer preferring an application under this section, held, could request the Labour Court to consider the preliminary point as to whether the worker in respect of whom approval is sought for is a "workman concerned in the dispute" and whether application for approval of punishment is necessary in such a case.

Where judicial decisions differed on the construction of the word "workmen concerned in such dispute," it would be idle and unreasonable to suggest that the employer should make up his mind whether this section applies or not, and if he thinks that it does not apply, he need not make the application. On the other hand, if he thinks that it applies, he should make an application ; but then he cannot be permitted to urge that the application is necessary. Such a view would be wholly illogical and unsatisfactory. [S C. (Ind.) Tata Iron and Steel Co Ltd. *Vs.* Singh (DR): 1966 LLC 162=1965 11 LLJ 122.]

All kinds of discharges of workmen without permission are not barred, but only those discharges which are by way of punishment. The Ordinance uses the words "discharge, dismiss or otherwise punish". The expression "otherwise punish" connotes that discharge or dismissal must also be by way of punishment. Normally, discharge and dismissal include an element of punishment. But there can be cases where they don't. For example, discharge on account of superannuation according to rules is not punishment. In that case, no permission is necessary. Similarly, discharge of workers without permission on economic grounds such as shrinkage or closure of business, etc. is not forbidden. But the action must be *bona fide*. If these are proved *mala fide* and with ulterior motives they will be hit by the provisions of section 47.

It is necessary to enquire into bona fide of the management whtle dealing with an application under section 47.—All that is necessary for giving permission is to see if the discharge has *prima facie* been established. The Court may base its decision upon—

(1) entirely on the evidence taken by the management at the enquiry and the proceedings of the enquiry, or

(2) that evidence and in addition thereto further evidence led before the Court, or

(3) evidence placed before the Court for the first time in support of the charges. There is, in law. no bar to an application for permission to dismiss if it is made without holding a prior enquiry.

The Supreme Court of Pakistan held that mere participation in an illegal strike is not always enough to give permission for dismissal under this section. The Court observed : "It is true that participation in an illegal strike is a

criminal act.... Yet, if by such participation, a workman was to forfeit his right to continue in his employment, which thereupon becomes terminable by any way of punishment, at the will of the employer, subject only to the automatic grant of permission under section 33 (now 47), the result would clearly be to frustrate the entire proceedings before an Industrial Tribunal. Despite the fact that strike was illegal, the Industrial Tribunal is still continuing his enquiry into the dispute and it is clearly impossible to hold that the continuation of these proceedings to be regarded as dependent upon a unilateral act on the part of tee employer namely, the formation of an intention to dismiss each of the employees who participated in the illegal strike." The Supreme Court further held that permission to dismiss can be given for mere participation in an illegal strike if such strike is attended by circumstances of aggravation such as intention to cause grave and irreparable injury to the employer. "Such a case would bear no resemblance to those in which a strike is resorted to by way of direct action to bring about amelioration of the conditions of a certain employment with a view to its continuation on a more equitable basis in the light of modern conception of socio-justice". On the facts of the case, refusal of permission to dismiss by the Tribunal was upheld. [River Steam Navigation Co. Ltd. 1957-58 L.L.C. 677 (S.C.)[

Dismissal for misconduct not connected with dispute is not covered by section 47. [S.C. (Pak.) Pakistan Petroleum Ltd. Karachi *vs.* Pakistan Petroleum Workers Federation : 1961 LLC 55=PLD 1961 S.C. 479=1961 PLC 1169.]

Action under terms of service.—"Re-instatemement" does not have the effect of "improving contractual rights of workman under the terms of his service."

Employer may re-instate a workman in compliance with Tribunal's order while at the same time, take action against him for alleged 'misconduct' in accordance with the terms of service of the workman. If a direction is given for re-instatement of the workman on account of want of due enquiry preceding his dismissal, it does not destroy the right of the Company after re-instatement, to proceed against him, in accordance with the mode permitted by law. The Company would be at liberty after complying with the order of re-instantement, to resort to such action as may be open to it in respect of such workmen under the terms of their service, provided that such action is taken *bona fide* and is not merely a cloak for victimisation on account of Trade Union activities. [(S.C.) Glaxo Laboratories (Pakistan) Ltd. *vs.* Pakistan ; 1962 PLC=362 PLD 1962 S.C. 60.]

Re-instatement of worker not affected by general law of master and servant.—It is too late in the day to urge that the power of re-instatement is not vested in an Industrial Tribunal or in an Appellate Court from his award. The definition of an industrial dispute clearly includes the question of re-instatement of dismissed emplyee within its scope. [(S.C.) Glaxo Laboratories (Pakistan) Ltd. *vs.* Pakistan : 1962 LLC I—1962 PLC 362=PLD 1962 S.C. 60.)]

Indulgence in activity of criminal nature does not necessarily destroy *nexus* between the conduct of a workman and an industrial dispute pending before a Tribunal. So far as the Company is concerned. there may be certain types of misconduct which do not fall within the purview of criminal law. But there appears to be no warrant for the contention that if such misconduct also happens to be covered by the definition of an "offence", it ceases to have any connection with the industrial dispute. [S.C. (Pak.) Glaxo Laboratories (Pakistan) Ltd. *vs.* Pakistan : 1962 LLCI—1962 PLC 362—PLD 1962 S.C. 60.]

Services of probationers may be terminated during pendency of dispute. Discharge from service a normal incident of probationer's employment, if not tainted with *mala fide*. S.C. (Pak.) Glaxo Lab. (Pak.) Ltd. *vs.* Pakistan : 1962 LLC I—1962 PLC 362—PLD 1962 S.C. 60.

[1][47A. **Conditions of service to remain unchanged while application for registration pending.**—No employer shall, while an application under section 5 for registration of a trade union is pending, alter, without prior permission of the Registrar, to the disadvantage of any workman who is an officer of such trade union, the conditions of service applicable to him before the receipt of the application by the Registrar.]

[1][47B. **Officers not to be transferred.**—No officer of any trade union shall be transferred from one place to another without his consent.]

48. **Protection of certain persons.**—(1) No person refusing to take part or to continue to take part in any illegal strike or illegal lock-out shall, by reason of such refusal, be subject to expulsion from any trade union or to any fine or penalty or to the deprivation of any

1. Section 47A and 47B inserted by Ordinance XV of 1985.

right or benefit which he or his legal representatives would otherwise have been entitled, or, be liable to be placed in any respect, either directly or indirectly, under any disability or disadvantage as compared with other members of the trade union.

(2) Any contravention of the provisions of sub-section (1) may be made the subject-matter of an industrial dispute, and nothing in the constitution of a trade union providing the manner in which any dispute between its executive and members shall be settled, shall apply to proceedings for enforcing any right or exemption granted by sub-section (1). In any such proceeding, the Labour Court may, in lieu of ordering a person who has been expelled from membership of a trade union to be restored to membership, order that he be paid out of the funds of the trade union such sum by way of compensation or damages as the Court thinks just.

49. Representation of parties.—(1) A workman who is a party to an industrial dispute shall be entitled to be represented in any proceedings under this Ordinance by an officer of a collective bargaining agent and, subject to the provisions of sub-section (2) and sub-section (3) any employer who is a party to an industrial dispute shall be entitled to be represented in any such proceeding by a person duly authorised by him.

(2) No party to an industrial dispnte shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Ordinance.

(3) A party to an industrial dispute may be represented by a legal practitioner in any proceedings before the Labour Court, or before an Arbitrator, with the permission of the Court or the Arbitrator, as the case may be.

Notes

A workman can be represented in any conciliation proceedings under the Ordinance by an officer of a collective bargaining agent. An employer can be represented by a person duly authorised. These officers must not be legal practitioners. Legal practitioners can only represent a party or parties before the Arbitrator or the Labour Court with their permission.

Legal practitioners are not entitled to appear, in guise of office-bearers of associations or unions, in proceedings before Courts. The Legislature regarded the appearance of legal practitioners before Industrial Courts undesirable and, therefore, if the legal practitioners who are office-bearers of association of employers or unions of employeess were to be allowed to represent parties before the Court, the very object of the law could be easily defeated. For, there is no bar to the legal practitioners being appointed honorary office-bearers of unions or associations and in all cases legal practitioners could, without any difficultf be thus introduced in proceedings before the Industrial Court in the guise of office-bearers. Legal practitioners who are office-bearers of associations or unions are, therefore, not entitld to appear before the Industrial Court. [S.C. (Pak.) Karachi Union of Emplopers and others *vs.* The Industrial Court, Karachi and others: 1961 LLC 4—1961 PLC 109—PLD 1961 SC 57.]

As a dispute between an individual workman and an employer cannot be an industrial dispute as defined in section 2(k) of the Industrial Disputes Act, 1947 unless it is taken up by a trade union of the workmen or by a considerable number of workmen, it follows that the individual workman is, at no stage, a party to the industrial dispute independently of the trade union. The trade union, or those workmen who have, by their sponsoring turned the individual dispute, can, therefore, claim to have a say in the conduct of the proceedings before an Industrial Tribunal. Where, therefore, a workman was represented in such proceedings by an officer of the trade union sponsoring his cause, it would not be open to him, unless there were exceptional circumstances, to submit later on that he had no faith in the officer of the trade union and he should be permitted to appoint representatives of his own choice. [S.C. (Ind.) Ram Prasad Vishwakarma vs. Industrial Tribunal, Patna and others: 1961 LLC 220—1961 I LLJ 504—1961 PLC 588].

50. Interpretation of settlement and awards.—(1) If any difficulty or doubt arises to the interpretation of any provision of an award or settlement, it shall be referred to the Tribunal constituted under this Ordinance.

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

51. Recovery of money due from an employer under a settlement or award.—(1) Any money due from an employer under a settlement, or under an award or decision of the Arbitrator, Labour Court or Tribunal may be recovered as arrears of land revenue or as a public demand upon application by the [1]Government if it is moved in that behalf by the person entitled to the money under that settlement, award or decision.

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

Notes

The word used is 'may' and not 'shall'. Hence, the Government has the discretion to recover or not, any money due from an employer as arrears of land revenue.

The expression "benefit" which can be computed in terms of money is wide enough to include claim for arrears of salary at a particular rate per month. The plea of discharge to such claim raised by the employer could and should be decided by Labour Court in such a claim petition as an incidental question.

Where the employee claims salary at a particular rate per month and on that basis claims arrears of salary, such claim would be a "benefit" which could be computed in terms of money. The word "computed" merely means calculation whether simple or otherwise. The word "benefit" would include also benefits express or otherwise in terms of money but requiring computation. The word "computed" is not to be understood only as involving a complex process of arithmetic or calculation.

Where, in such a claim petition for arrears of salary, the employer raised a plea of discharge, in such a case the right or claim to arrears of salary would necessarily depend on a decision whether the plea of discharge was well-founded and in an order to decide the claim it would

---

1. Subs by Ord, XXXV of 1977 s. 18, for "Provincial Government."

be necessary to decide such pleas as an incidental question. [H.C. (Mad.) Lenox Photo Manufacturing Madurai *vs.* Labour Court, Madurai, and another ; 1966 LLC 265—1965 II LLJ 423.]

52. Any act or function which is, by this Ordinance, required to be performed by or has been conferred upon a collective bargaining agent may, until a collective bargaining agent has been ascertained under the provisions of this Ordinance, be performed by a registered trade union which has been recognised by the employer or employers.

PENALTIES AND PROCEDURE

53. Penalty for unfair labour practices.—(1) Whoever contravenes the provisions of section 15, shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand Taka or with both.

(2) Any workman who contravenes the provisions of section 16, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to two hundred Taka or with both.

(3) A trade union or person other than a workman which or who contravenes the provisions of section 16, shall be punishable with imprisonment which may extend to one year, or with fine which may extend to two thousand Taka or with both.

54. Penalty for committing breach of settlement.—Whoever commits any breach of any term of any settlement, award or decison which is binding on him under this Ordinance, shall be punishable—

(a) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred Taka or with both ; and

(b) for each subsequent offence with imprisonment for a term which may extend to two years or with fine which may extend to one thousand Taka or with both.

55. Penalty for failing to implement settlement, etc.—Whoever wilfully fails to implement any term of any settlement, award or

decision which it is his duty under this Ordinance to implement, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred Taka or with both, and, in the case of continuing failure, with a further fine which may extend to two hundred Taka for every day after the first during which the failure continues.

56. **Penalty for false statements, etc.**—Whoever wilfully makes or causes to be made in any application or other document submitted under this Ordinance or the rules thereunder any statement which he knows or has reason to believe to be false, or wilfully neglects or fails to maintain or furnishes any list, document or information he is required to maintain or furnish under this Ordinance or the rules thereunder, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Taka, or with both.

57. **Penalty for illegal strike or lock-out.**—(1) Any workman who commences, continues or otherwise acts in futherance of, an illegal strike shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two hundred Taka or with both.

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

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

59. Penalty for taking part in or instigating 'go-slow'.— Whoever takes part in, or instigates or incites others to take part in or otherwise acts in furtherance of a 'go-slow' shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Taka or with both.

Explanation.—In this section, 'go-slow' means an organised, deliberate and purposeful slowing down of normal output of work by a body of workmen acting in a concerted manner, but does not include the slowing down of normal output of work which is due to mechanical defect, break-down of machinery, failure or defect in power supply or in the supply of normal materials and spare parts of machinery.

60. Penalty for discharging officer or trade union in certain circumstances, etc.—Any employer who contravenes the provisions of section 47, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand Taka or with both.

61. Penalty for embezzlement or misappropriation of funds.— Any officer or any other employee of a registered trade union, guilty of embezzlement or misappropriation of trade union funds shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine, which shall not exceed the amount found by the Court to have been embezzled or misappropriated. Upon realisation, the amount of fine may be re-imbursed by the Court to the trade union concerned.

[1][**61-A. Penalty for activities of unregistered trade unions.**— Whoever takes part in, or instigates or incites others to take part in the activities of an unregistered trade union or of a trade union whose registration has been cancelled or collects subscription except enrolment fee, for the fund of any such trade union, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Taka or with both.]

1. Inserted by Ordinance XXXV of 1977, s. 20.

[1][61-B. **Penalty for dual membership of trade unions.**—Whoever enrols himself as, or continues to be, a member of more than one trade union at the same time shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Taka, or with both.]

62. **Penalty for other offences.**—Whoever contravenes, or fails to comply with any of the provisions of this Ordinance, shall, if no other penalty is provided by this Ordinance for such contravention or failure, be punishable with fine which may extend to two hundred and fifty Taka.

[2][62A. **Penalty for non-appearance or non-representation before a Conciliator.**—A person who fails, except for reasons satisfactory to the Conciliator, to comply with the provisions of sub-section (2) of section 30 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Taka or with both.]

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

64. **Trial of offences.**—No Court other than a Labour Court or that of a Magistrate of the First Class shall try any offence punishable under this Ordinance [3][and no prosecution for an offence punishable under section 53 or 62A shall be instituted except by or under the authority, or with the previous permisson of the Director of Labour or an officer authorised by him in this behalf.]

---

1. Inserted by Ordinance XXXV of 1977, s. 20.
2. Sec 62A Ins. by Ord. XXIX of 1980. s. 14.
3. Added by Ordinance XXIX of 1980.

MISCELLANEOUS

65. Indemnity.—No suit, prosecution or other legal proceedings shall lie against any person for anything which is, in good faith, done or intended to be done in pursuance of this Ordinance or any rule.

[1][**65-A. Registrar, etc. to be public servants**—A Registrar, a Conciliator, the Chairman of a Labour Court and the member of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Penal Code (Act XLV of 1860).

[2][65B * * * *]

66. Powers to make rules.—(1) The Government may, by notification in the official Gazette, make rule for carrying out the purposes of this Ordinance.

(2) Rules made under this section may provide that a contravention thereof shall be punishable with fine which may extend to one hundred Taka.

67. Repeal and savings.—(1) The following laws are hereby repealed, namely :—

(a) The Trade Unions Act, 1965 (E.P.Act V of 1965) ;

(b) The Labour Dispute Act, 1965 (E.P. Act VI of 1965) ;

(c) The Industrial Disputes Ordinance, 1968 (W.P. Ordinance IV of 1968), and

(d) The Trade Unions Ordinance, 1968 (W.P. Ordinance V of 1968).

(2) Notwithstanding the repeal of any law by sub-section (1), and without prejudice to the provisions of section 24 of the General Clauses Act 1897 (X of 1897)—

(a) every trade union existing immediately before the commencement of this Ordinance, which was registered

---

1. S. 65A added by Ord. XIX of 1970
2. S. 65-B omitted by Ordinance XXXV of 1977, s. 23

under any such law, shall be deemed to be registered under this Ordinance and its constitution, shall, [1][* * *] [2][in so far as it is not inconsistent with the provisions of this Ordinance] continue in force until altered or rescinded ; and

(b) anything done, rules made, notification or order issued, officer appointed, Court constituted, notice given, proceedings commenced or other actions taken under any law, shall be deemed to have been done, made, issued, appointed, constituted, notice given, proceedings commenced or other actions taken, as the case may be, under the corresponding provisions of this Ordinance [3][* * *]

1. Certain words omitted by Ord. XIX of 1970. s. 28(1)
2. Comma and certain words inserted by Ord. XXIX of 1980.
3. Certain words omitted by Ord. XIX of 1970, s. 28(2).

SCHEDULE

Public utility services.—[See section 2 (XIX)]

[1][1. The generation, production, manufacture or supply of electricity, gas, oil or water to the public.]

2. Any system of public conservancy or sanitation.

3. Hospitals and ambulance service.

4. Fire-fighting service.

5. Any postal, telegraph or telephone service.

6. Railways and Airways.

7. Ports.

[2][8. Watch and Ward staff and security services maintained in any establishment.]

Note

Section 30 of Ordinance XIX of 1970 which comprised of "saving" is reproduced below for reference purposes :—

"**Savings.**—(1) Notwithstanding the commencement of this Ordinance, any Labour Court constituted under the said Ordinance and functioning immediately before such commencement shall, until the Labour Court is constituted in accordance with the provisions of the said Ordinance, continue to exercise its powers and perform its functions as if it had been constituted in accordance with those provisions.

(2) A trade union which, immediately before the commencement of this Ordinance, was a collective bargaining agent for any establishment or group of establishments shall, upon such commencement, be deemed to have been declared under the said Ordinance as amended by this Ordinance to be the collective bargaining agent for such establishment or group."

---

1. Subs. for the original entry, by Ord. XIX of 1970 s. 29(1).
2. Subs. for "Watch and Ward and security services" ibid. s. 29(2).

THE INDUSTRIAL RELATIONS (AMENDMENT) ORDINANCE, 1985

Ordinance No. XV of 1985

AN

ORDINANCE

further to amend the Industrial Relations Ordinance, 1969

Whereas it is expedient further to amend the Industrial Relations Ordinance, 1969 (XXIII of 1969), for the purposes hereinafter appearing ;

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

1. Short title.—This Ordinance may by called the Industrial Relations (Amendment) Ordinance. 1985.

2. Substitution of section 7A. Ord. XXIII 1969.—In the Industrial Ralations Ordinance, 1969 (XXIII of 1969), hereinafter referred to as the said Ordinance, for section 7A the following shall be substituted, namely :—

"7A Disqualification for being an officer or a Member of a trade union—(1) Notwithstanding anything contained in the constitution or the rules of a trade union, a person shall not be entitled :—

(a) to be, or to be elected as, an officer of a trade union if he has been convicted of an offence involving moral turpitude or an offence under clause (d) of sub-section (1) of section 16 or section 61 ; and

(b) to be member or officer or a trade union formed in any establishment or group of establishments if he is not, or was never, employed or engaged in that establishment or group of establishments.

(2) Nothing in clause (b) of sub-section (1) shall apply to any federation of trade unions.",

3. Substitution of section 10, Ord. XXIII of 1969.—In the said Ordinance, for section 10 the following shall be substituted, namely :

10. Cancellation of registration.—(1) Subject to the other provisions of this section, the registration of a trade union may be cancelled by the Registrar if the trade union has—

(a) applied for such cancellation or ceased to exist ;

(b) obtained registration by fraud or by misrepresentation of facts ;

(c) contravened any of the provisions of its constitution ;

(d) committed any unfair labour practice ;

(e) made in its constitution any provision which is inconsistent with this Ordinance or the rules ;

(f) a membership which has fallen short of 30% of the workers of the establishment or group establishments for which it was formed ;

(g) failed to submit its annual report of the Registrar as required under this Ordinance ;

(h) elected as its officer a person who is disqualified under section 7A from being elected as, or from being, such officer ; or

(i) contravened any of the provisions of this Ordinance or the rules.

(2) Where the Registrar is of opinion that the registration of a trade union should be cancelled he shall submit an application to the Labour Court praying for permission to cancel such registration.

(3) The Registrar shall cancel the Registration of a trade union within seven days from the date of receipt of permission from the Labour Court.

(4) The registration of a trade union shall not be cancelled on the ground mentioned in clause (d) of sub section (1) if the unfair labour practice is not committed within three months prior to the date of submission of the application to the Labour Court",

4. Substitution of section 11, Ord. XXIII of 1969.—In the said Ordinance, for section 11 the following shall be substituted, namely :

"**11. Appeal against cancellation.**—A trade union aggrieved by the order of cancellation of its registration under section 10 may, within sixty days from the date of the order appeal to the Labour Appellate Tribunal which may uphold or reject the order."

5. Amendment of section 47 Ord XXIII of 1969.— In the said Ordinance, in section 47 for the words "otherwise punish any workman" the words "otherwise punish any workman or terminate his service" shall be substituted.

6. Insertion of new sections 47A and 47E. Ord. XXIII of 1969.—In the said Ordinance, after section 47, the following new section shall be inserted, namely :—

"**47A. Condition of service to remain unchanged while application for registration pending**—No employer shall, while an application under section 5 for registration of a trade union is pending alter, without prior permission of the Registrar, to the disadvantage of any workman who is an officer of such trade union, the conditions of service applicable to him before the receipt of the appli cation by the Registrar.

47B. Officers not to be transferred.—No officer of any trade union shall be transferred from one place to another without his consent.",

THE INDUSTRIAL RELATIONS RULES, 1977

CHAPTER I

GENERAL

1. Short title and commencement.—(1) These rules may be called the Industrial Relations Rules, 1977.

(2) They shall come into force at once.

2. Definition.—In these rules, unless there is anything repugnant in the subject or context,—

(a) "Form" means a form appended to these rules ;

(b) "Ordinance" means the Industrial Relations Ordinance, 1969 (Ordinance XXIII of 1969) ; and

(c) "Section" means a section of the Ordinance.

3. Agreement in writing.—(1) An agreement in writing between the employer and his workmen arrived at otherwise than in the course of conciliation proceedings shall be signed by at least two representatives of the employer and of the workmen at a meeting and a copy of such agreement shall be sent to the Conciliator concerned, Director of Labour and the Secretary, Labour and Social Welfare Division.

(2) The agreement shall be drawn in Form A.

4. Application for registration.—(1) Every application for registration of a trade union made under section 5 shall be in Form B.

(3) Every application for registration of a federation of trade unions made under section 20 shall be in Form C.

6. Maintenance of registers of members, account books, minute books, etc.—(1) Every application for membership of a trade union shall be in Form D.

(2) Every registered trade union shall maintain a register of members in Form E showing particulars of subscriptions paid by each member.

(3) Every federation of trade unions shall maintain a register in Form F showing all moneys received by it.

(4) Every registered trade union or federation of trade unions shall maintain an account book in Form G showing its receipts and expenditure and the account book shall be a bound register and all pages shall be numbered serially.

(5) The minute book of a registered trade union or federation of trade unions shall be kept in a bound register, every page of which shall be numbered serially, and shall contain the following information, namely :—

(*a*) date, place and time at which the meetings of the general body or the executive committees of the registered trade union or federation of trade unions are held ;

(*b*) details of all points discussed and all resolutions passed ;

(*c*) in the case of meeting of the general body, the approximate number of members who attended the meeting and, in the case of meetings of the executive committee, the names and signatures of the officers of the executive who attended the meeting.

(6) (*a*) Proceedings of every meeting shall be recorded in the minute book and signed by the person who presided over the meeting.

(*b*) All minutes shall be confirmed in the subsequent meeting after reading out loudly and taking consent of all members present.

(7) Every registered trade union or federation of trade unions shall issue printed receipts for all money received and shall maintain printed receipt books, every page of which shall be numbered serially and an account of all such receipt books shall be maintained.

(8) All expenses to be incurred by a registered trade union or federation of trade unions shall be supported by vouchers in original.

6. Limit of members of the executive.—(1) The number of persons forming the executive in an establishment shall be as under—

Column (1)		Column 2	
Where the total number of persons forming the trade union is not more than	50	Maximum number of persons forming the executive of the trade union shall be	5
Ditto	100	Ditto	8
Ditto	200	Ditto	10
Ditto	300	Ditto	12
Ditto	400	Ditto	14
Ditto	500	Ditto	16
Ditto	600	Ditto	18
Ditto	1,000	Ditto	20
Ditto	5,000	Ditto	25
More than	5,000	Ditto	30

(2) The provisions of sub-rule (1) shall, *mutatis mutandis*, apply to a trade union whose membership extends to more than one establishment :

Provided that there shall be one member amongst the workers employed in every such establishment who may be in addition to the number specified in column (2) of sub-rule (1)

7. Register of trade unions and federation of trade unions.—The Registrar shall maintain a register of trade unions in Form H and that of the federation of trade unions in Form I.

8. Certificate of registration.—A certificate of registration of trade unions or federation of trade unions shall be issued in Form J.

9. Fees.—(1) The fee payable for the registration of a trade union shall be twenty Taka and the fee for the registration of a federation of trade unions shall be fifty Taka.

(2) The Registrar may supply a certified copy of the constitution of a registered trade union and the certificate of registration of a trade union to a registered trade union or a member thereof or to any representative of the employer on payment of five Taka for

the first two hundred words or less and two Taka for every additional hundred words or fraction thereof.

10. **Powers and functions of Registrar.**—(1) The Registrar or any other officer authorised by him in writing may enter the office of any registered trade union or federation of trade unions or any other premises, which he has reason to believe is being used as an office of a registered trade union or a federation of trade unions, and make such inspections of the office or premises and of any register or documents and take such evidence of any person as he may deem necessary for carrying out the purposes of the Ordinance.

(2) The Registrar, while inspecting the office of a registered trade union or federation of trade unions may call for any register or document and inspect the same.

(3) The Registrar may inspect the account books of a registered trade union or a federation of trade unions and call for any clarification or obtain any information in writing from the officers of the executive of such trade union or federation of trade unions relating to the maintenance of accounts.

(4) Where the outgoing officers of the executive of any registered trade union or federation of trade unions fail or refuse, without any reasonable cause, to hand over the records, papers and other documents of the office of the trade union or federation of trade unions or make over the account books and funds of the trade union or federation of trade unions to the newly elected officer of the executive, the Registrar may, on an application made by the Secretary or President of the newly elected executive, by an order in writing, direct the outgoing officers of the executive, to hand over such records, papers and other documents or make over the account books and funds to the newly elected executive within such time as may be specified in such order ; and any person aggrieved by such an order of the Registrar may prefer an appeal against such order to the Labour Court within 15 days from the date of such order.

(5) The Registrar or any officer authorised by him in writing may, at any time during working hours, enter the office or premises

of any establishment and make such examination of any register and document maintained by the employer in connection with the trade unions and take such evidence of any person as he deems necessary for carrying out the purposes of the Ordinance.

(6) The Registrar or any officer authorised by him in writing shall have the power to seize any record, register or other documents of any registered trade union or federation of trade unions with due acknowledgement as he may consider necessary for carrying out the purposes of the Ordinance.

11. **Change of name or address.**—Whenever a registered trade union changes the name of the trade union or the address of the Head Office, the Secretary or the President of such trade union shall, within fifteen days of the making of such change, present the certificate of registration to the Registrar for entering the change in the name of the trade union or address of the Head Office in the certificate.

12. **Auditors.**—The accounts of a registered trade union or a federation of trade unions shall be audited annuallly by a chartered accountant within the meaning of the Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 1973) :

Provided that when the membership of a trade union did not, at any time during the year concerned, exceed 200. accounts may be audited by one or more independent persons, not being member or members of the trade union, selected for the purpose by the executive or, if it is a member of a federation of trade unions, the federation of trade unions to which it is affiliated :

Provided further that no person who, at any time, during the year concerned, was entrusted with any part of the funds or securities belonging to the trade union or the federation of trade unions shall be appointed to audit its accounts.

13. **Submission of general statement.**—The general statement which a registered trade trade union or federation of trade unions is required to send annually to the Registrar under sub-section (1) of section 21 shall be sent in Form K on or before the 30th April of the year next following the year in respect of which the statement relates.

CHAPTER II

DETERMINATION OF COLLECTIVE BARGAIN'NG AGENT FOR INSTITUTIONS WITH MORE THAN ONE ESTABLISHMENT

14. Determination of collective bargaining agent.—(1) A registered trade union may make an application under sub-section (1) of section 2A to the Registrar having jurisdiction over the area for being declared as the collective bargaining agent for all the establishments of the industry. It shall also state that it has as its members not less than one-third of the total number of workmen employed in each establishment of the industry. The application shall be signed by the President and the Secretary of the registered trade union. The Registrar shall reject the application if it is found on enquiry that the registered trade union has got as its members less than one-third of the total number of workmen in any of the establishments of the industry for which the application is made for the determination of the collective bargaining agent.

(2) The constitution of every registered trade union making an application under sub-rule (1) or indicating its desire to be a contestant in the secret ballot under clause (a) of sub-rule (3) shall provide scope for membership to the workmen employed in all the establishments of the industry.

(3) Upon receipt of an application under sub-rule (1), the Registrar shall, by notice in writing, call upon every registered trade union in the establishments of the industry to which the application relates—

(*a*) to indicate whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to such industry ; and

(*b*) if it so desires, to submit to him within the time specified in the notice of list as its members showing, in respect of each member, his parentage, age, the section or

department and the place in which he is employed, his ticket number and the date of his becoming a member and, if the trade union is a federation of trade unions, a list of its affiliated trade unions together with a list of members of each such trade union showing in respect of each such member the said particulars and also the symbol to be affixed on the ballot box.

(4) Every page of the members' list submitted by a registered trade union to the Registrar under clause (b) of sub-rule (3) shall be numbered serially and signed either by the President or the Secretary of the trade union.

(5) If any registered trade union expresses its unwillingness to contest in the secret ballot or fails to furnish a list to its members within the period specified by the Registrar, the Registrar shall not include such trade union as a party in the ballot.

(6) Every employer shall—

(*a*) on being so required by the Registrar, submit a ilst of all workmen employed in the establishments excluding those whose period of employment in the eslablishment is less than three months and showing, in respect of each workmen, his parentage, age, the section or department and the place in which he is employed, his ticket number and the date of his employment in the establishment ; and

(*b*) provide such facilities for verification of the lists submitted by him and the trade unions as the Registrar may require.

(7) The Registrar shall, after verification of lists submitted by the trade unions, prepare a list of voters in which shall be included the name of every workman whose period of employment is not less than three months and who is a member of any of the contesting trade unions and shall, at least seven days prior to the date fixed for the poll, send to each of the contesting trade unions a certified copy of the list of voters so prepared.

(8) Every workman who is a member of any of the contesting trade unions and whose name appears in the list of voters prepared under sub-rule (3) shall be entitled to vote at the poll.

(9) Every employer shall—

(*a*) provide all such facilities in his establishments as may be required by the Registrar for the smooth conduct of the poll but shall not interfere with, or in any way influence, the voting ;

(*b*) construct polling booths as per specification given by the Registrar or the presiding officer appointed under clause (*a*) of sub-rule (1) of rule 18 ; and

(*c*) supply such stationery articles, ballot papers and ballot boxes as may be required.

(10) No person shall canvass for vote within a radius of fifty yards of the polling station.

15. Worker participating in the ballot to carry identity cards.—(1) The workers participating in the ballot shall carry tickets or identity cards issued by the employer. The presiding officer appointed by the Registrar under clause (*a*) of sub-rule (1) of rule 18 may check the identity cards of the voters if he has got doubt about the identity of the workmen.

(2) If the presiding officer is not satisfied with the identity of the voter, he may disallow him to vote in the secret ballot and his decision in this respect shall be final.

16. Ballot boxes.—There shall be as many ballot boxes as the number of the contesting trade unions with the symbols selected by them affixed on the ballot boxes. In case more than one trade union select the same symbol to be affixed on the boxes, the Registrar shall decide the matter and his decision shall be final. Additional ballot boxes, if required, shall also be supplied to the presiding officer by the employer.

17. Nomination of representatives.—Each contesting trade union may nominate in writing not more than one representative to remain present in each polling booth at the time of secret ballot.

18. Conduct of Poll.—(1) For the purpose of holding secret ballot to determine the collective bargaining agent, the Registrar shall—

(*a*) appoint presiding officers and polling officers for conducting the poll ;

(*b*) fix the date and time for the poll and intimate the same to each of the contesting trade unions and also to the employer.

(2) The presiding officer shall—

(*a*) conduct the poll at the polling station where the representatives of the contesting trade unions shall have the right to be present ;

(*b*) prior to the start of the poll, seal the ballot boxes and place them in appropriate places in the presence of the representatives of such contesting trade unions as may be present ;

(*c*) after conclusion of the poll, open and count the ballot papers in the presence of such representatives of the contesting trade unions as may be present.

(3) After the conclusion of the count, the result of the count under clause (*c*) of sub-rule (2) shall be consolidated by the presiding officer and communicated to the Registrar.

(4) After receipt of the result under sub-rule (2) from the presiding officer, the Registrar shall declare in Form L the trade union which has received the highest number of votes to be the collective bargaining agent :

Provided the no trade union shall be declared to be the collective bargaining agent for the establishments unless the number of votes received by it is not less than one-third of the total number of workmen employed in each of such establishments.

(5) Where a registered trade union has been declared under sub-rule (4) to be the collective bargaining agent for the establishments, no application for determination of collective bargaining agent for such establishments shall be entertained within a period of two years from the date of such declaration.

CHAPTER III

WORKS COUNCIL

19. Constitution of Works Council.—The number of members constituting the Works Council shall not be less than 10 and not more than 20 and shall be so fixed by the employer in consultation with the collective bargaining agent, if any, as to afford representation to the various categories, groups and classes of workmen engaged in, and to the section, shops or departments of, the establishment.

20. Nomination of representatives by the collective bargaining agent.—In an establishment where there is a collective bargaining agent, such agent shall communicate the names and particulars of the representatives of the workmen on the Works Council to the employer

21. Publication of names of the representatives on the Works Council.—Within seven days of the receipt of nominations from the collective bargaining agent, the employer shall constitute the Works Council by a notice to be hung on the notice board and furnish copies thereof to the collective bargaining agent, Director of Labour and the Registrar :

Provided that the collective bargaining agent may make fresh nominations in respect of any representatives of the workmen on the Works Council at any subsequent time where the collective bargaining agent has reason to believe that any such representative has lost his representative character and the employer shall, within seven days of receipt of such nomination, reconstitute the Work Council with such new representative.

22. Constitution of Works Council where there is no collective bargaining agent.—In an establishment where there is no collective bargaining agent, the representatives of workmen shall be chosen by the employees themselves by secret ballot for the Works Council and within seven days of such secret ballot the employer shall constitute the Works Council by a notice as laid down in rule 21. Thereafter, such election shall be held at an interval of every two years.

23. Qualifications of candidates for election as a representative of the Works Council.—Any workman of not less than 21 years of age and with service of not less than one year in the establishment may be a candidate for election by secret ballot as a representative of the workmen on the Works Council :

Provided that the service qualification shall not apply to the first election in an establishment which has been in existence for less than a year.

24. Qualifications of voters.—All workmen who have put not less than 3 months' service in the establishment shall be entitled to vote in the election of the representatives of the workmen.

25. Procedure for election.—(1) For the purpose of election by secret ballot to choose the representatives of workmen, the employer shall, by notice affixed to the notice board and by giving adequate publicity amongst the workmen, call upon the workmen to elect representatives for the Works Council.

(2) As soon as may be after the workmen have been called upon to elect representatives to the Works Council under sub-rule (1) the employer shall appoint—

(*a*) a day, at least seven days after the date of such notice, for the nomination of candidates ;

(*b*) a day for the scrutiny of nomination papers ;

(*c*) a day, which shall not be less than three days or more than ten days after the scrutiny day, for the holding of the election by secret ballot.

(3) The notice under sub-rule (2) shall also specify the number of representatives to be chosen from amongst various groups, sections, shops or departments of the establishment.

26. Nominations.—(1) Any voter may, for the purpose of election as representative on the Works Council, propose or second the name of any person who is duly qualified to be elected as such representative.

(2) Every proposal shall be made by a separate nomination paper in Form M which shall be supplied by the employer, and signed by the proposer, seconder and the candidate.

(3) Every nomination paper shall be delivered on or before the nomination day by the candidate or his proposer or seconder to the employer who shall acknowledge in writing the receipt of the nomination paper.

27. Scrutiny.—(1) The candidates, their proposers and seconders, and any other person authorised in this behalf by such candidate may attend the scrutiny of nomination papers, and the employer shall give them reasonable opportunity for examining all nomination papers delivered to him under rule 26.

(2) The employer shall in the presence of the persons attending the scrutiny under sub-rule (1), examine the nomination papers and dispose of any objection raised by any such person to any nomination.

(3) The employer may reject any nomination paper if he is satisfied that—

(*a*) the candidate is disqualified to be a representative of the workmen under rule 24 ; or

(*b*) any provision of rule 26 has not been complied with.

28. Voting in election.—(1) If the number of candidates who have been validly nominated is equal to the number of representatives to be elected, the employer shall, by a notice, declare such candidates to be elected.

(2) If in any group, section, shop or department the number of candidates is more than the number of seats allotted to it, voting shall take place on the day fixed for election.

(3) The election shall be held through secret ballot and shall be conducted by the employer.

29. Arrangement for election.—The employer shall be responsible for making all arrangements in connection with the election.

30. Office-bearers of the Works Council.—(1) The Works Council shall, subject to the provisions of sub-rule (2), elect office-bearers including one Vice-President and two Joint Secretaries. The President shall be nominated by the employer from amongst the employer's representatives on the Council.

(2) The workers' representatives on the Works Council shall elect the Vice-President and one Joint Secretary from amongst themselves. Employers' representatives in the Works Council shall elect one Joint Secretary from amongst themselves.

(3) Until the Works Council elects an office-bearer or makes some suitable arrangement for keeping records of the meetings, each Joint Secretary shall maintain the records of the proceedings for six months alternately.

31. Term of office.—(1) The term of the Works Council shall be two years from the date of its constitution.

(2) A member chosen to fill a casual vacancy shall hold office for the remaining term of the Works Council.

32. Vacancies.—In the event of workmen's representative ceasing to be employed in the establishment or in the event of his resigning the membership in the Works Council, his successor shall be elected from the group, section, shop or department to which the member vacating the seat belonged.

33. Number of meetings.—The Works Council may meet as often as necessary but not less than once a month.

34. Facilities for meetings, etc.—The employer shall provide accommodation for holding meetings of the Works Council. He shall also provide all necessary facilities to the Council and to the members thereof for carrying out the functions of the Works Council.

CHAPTER IV

JOINT CONSULTATION, MEDIATION AND CONCILIATION

35. Functions of Conciliators.—(1) For the purpose of bringing about a settlement of an industrial dispute, a Conciliator—

(*a*) may call for and inspect any register, document, certificate or notice which he has reason to believe to be

relevant to the dispute and may, in case of failure of the person to produce it in time, seize it ; and

(b) may enter the premises occupied by any establishment to which the dispute relates, and require any person whom he finds in the establishments to give such information relating to the dispute as are within his knowledge.

(2) Every Conciliator shall keep records of the conciliation proceedings in such a manner as he deems fit.

(3) Where a notice of strike has been received by the Conciliator, he shall satisfy himself as to its validity before conducting the conciliation proceedings and if the notice of strike does not conform to the provisions of the Ordinance and these rules, he may ask the party to the dispute to comply with the provisions of the Ordinance and these rules.

CHAPTER V

LABOUR COURTS, ETC.

36. Members of the Labour Courts. – (1) For the purpose of appointment of members of the Labour Courts the Government shall call for nomination of representatives of employers and workmen from such organisations of employers and of workmen as may be considered to be representatives of the employers and the workmen for the purpose of constituting two panels, one representing the employers and the other representing the workers for each Court, each panel consisting of not more than five persons :

Provided that the Government shall reconstitute such panels after every two years ; but the members of the panels shall, notwithstanding the expiry of the said period of two years, continue on the panels till the new panels are constituted.

(2) Every organisation to whom a request has been made under sub-rule (1) shall furnish to the Government, within 15

days of the date of receipt of such a request, the names and particulars of persons for inclusion in the panel and for appointment as members of the Labour Court.

(3) Where names and particulars called for under sub-rule (1) have not been furnished within the period specified in sub-rule (2), the Government shall be competent to nominate any person in the panel who is, in the opinion of the Government, competent to represent the interests of the employers or the workmen, as the case may be.

(4) A person whose name has been included in the panel shall remain so included for a period of two years from the date on which his name is notified in the official Gazette.

(5) The Chairman shall, for adjudication, enquiry, determination or disposal of a case relating to a specific industrial dispute or trial of an offence or any other matter falling within the jurisdiction of the Labour Court under the Ordinance, select one person from each of the two panels, and the persons so selected, together with the Chairman shall be deemed to have constituted a Court in respect of that specific labour dispute :

Provided that the Chairman may select any member from either of the panels as a member of the Labour Court in repect of more than one case pending before the Court.

(6) A person whose name has been included in a panel may resign from the panel by a letter addressed to the Chairman who shall forward the same to the Government and such resignation shall take effect from the date of its acceptance by the Government.

37. Removal of members.—The Government may, by notification in the official Gazette, remove any person from the panel if he—

(*a*) has, in the opinion of the Government, lost his representative character ;

(*b*) has been convicted of an offence involving moral turpitude or an offence punishable under the Ordinance ;

(*c*) is adjudged insolvent ;

(*d*) absents himself as a member of a Labour Court from three consecutive sittings of the Labour Court without leave from the Chairman.

38. Casual vacancies.—A vacancy caused by death or resignation under sub-rule (6) of rule 36 or removal under rule 37 of a person in a panel may be filled by the Government in the same manner in which the panel was originally constituted under rule 36 and the person so included in the panel shall remain in the panel for the unexpired portion of the period of two years from the date his name is included in the panel by notification in the official Gazette.

39. Leave of absence.—Application for leave of absence of a member of the Labour Court shall be addressed to the Chairman who may grant the leave.

40. Allowances.—A member of a Labour Court shall be paid such daily allowance for each day on which he attends the Court and such travelling allowances as may be fixed by the Government.

Provided that no daily or travelling allowance shall be claimed under this rule if a member has drawn or is entitled to draw the same from the organisation he represents or from his employer.

41. Procedure of the Labour Appellate Tribunal.—In hearing an appeal against an award, the Labour Appellate Tribunal shall follow the same procedure as is followed by an Appellate Court in hearing appeals as under the Code of Civil Procedure, 1908 (Act V of 1908).

42. Determination of computed money.—Where any workman is entitled to receive from the employer any benefit under a settlement or under an award or decision, he may apply to the Labour Court for computation of the benefit in terms of money. The Labour Court shall determine the amount at which such benefit shall be computed after hearing the parties to the dispute.

43. Penalty for contravention of rule.—Whoever contravenes any of the provisions of these rules shall be punishable with fine which may extend to one hundred Taka.

***Please read this Amendment Cancelling Ordinance No. 17 of 1989.**

রহিতকরণ ও হেফাজত।-(১) The Industrial Relations (Amendment) Ordinance, 1989 (অধ্যাদেশ নং ১৭, ১৯৮৯) এতদ্বারা রহিত করা হইল।

(২) অনুরূপ রহিতকরণ সত্ত্বেও, রহিত Ordinance দ্বারা সংশোধিত উক্ত Ordinance এর অধীন কৃত কাজকর্ম বা গৃহীত ব্যবস্থা এই Act দ্বারা সংশোধিত উক্ত Ordinance এর অধীন কৃত বা গৃহীত হইয়াছে বলিয়া গণ্য হইবে। **(Act 22 of 1990. Section-6).**

Inserted at Page 168

FORM A

Form of Agreement

[*See rule* (3)]

MEMORANDUM OF AGREEMENT

Name of parties and designation.

Representing employers.

(1)
(2)

Representing employees.

(1)
(2)

Short recital of the case
Terms of Agreement.

(1)
(2)
(3)
(4)
etc.

Signature of parties.
date

FORM B

[*See rule* 4(1)]

Application for registration of a trade union

dated the ... ... day... ... of 19... ... ...

TO
THE REGISTRAR OF TRADE UNIONS,
GOVERNMENT OF THE PEOPLE'S REPUBLIC
OF BANGLADESH

DEAR SIR

1. We hereby apply for the registration of a Trade Union under the name of ... ...

2. The address of the Head Office of the Trade Union is ...
3. The Union was formed on the ... ... day of... ... — ... ...19... ...
4. The particulars required under section 6(*a*)(*iii*) of the Industrial Relations Ordinance, 1969, are given in Schedule I.
5. The statement required under section 6(*a*)(*iv*) showing total paid membership is given in Schedule II.
6. Three copies of the constitution of the trade union conforming to the provisions of section 7 of the Industrial Relations Ordinance, 1969, together with a copy of the resolution mentioned in section 6(*b*) are given in Schedule III.
7. A copy of the resolution mentioned in section 6(*c*) is given in Schedule IV.

Yours faithfully,

President ... .
Secretary ... ...
Date ... .

FORM C

[*See* rule 4(2)]

Application for registration of a Federation of Trade Unions

Dated.. .. ... *day of* ... 19...

TO
THE REGISTRAR OF TRADE UNIONS,
GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
Dear Sir,

1. We hereby apply for the registration of our Federation of Trade Unions under the name of... ... ... Address of the Head Office of the Federation is... ... .
2. Telephone number, if any ... .

3. The Federation was formed on the... .. day of ... 19 ... ... and had ... ... registered Trade Unions affiliated on the date of application.
4. Particulars of the affiliated registered Trade Unions are given in Schedule I.
5. Resolutions of the general body of the registered Trade Unions affiliated to the Federation expressing their agreements for joining the Federation are given in Schedule II.
6. We have been duly authorised to make this application in a meeting of this Federation and resolution thereof is given in Schedule III.
7. Particulars of the Officers of the Federation are given in Schedule IV.
8. Copies of instruments of Federation executed between the Federation and each of the registered Trade Unions are given in Schedule V.

Yours faithfully,

1.
2.
Dated..... 3.
4.

FORM D

[*See rule* 5(1)]

Form of Application for Membership

(Name of the Trade Union)

Dated the.....

TO
THE SECRETARY,
(Name and address of the Trade Union).

DEAR SIR,

I hereby apply for admission as a member of the—

(Name of the Trade Union)

I have carefully read and understood the provisions/the constitution of the Trade Unton/have been read to and understood by me and I hereby agree to abide by them.

My particulars are given below :

1. Name with father's/husband's name
2. Age and mark of identification
3. Industry/Establishment in which employed
4. Department and ticket No., if any
5. Whether permanent or temporary
6. Date of entry into present employment
7. Whether member of any other Trade Union
8. Address : (i) Local

   (ii) Permanent

Signature/Thumb impression.

Date... .....

FORM E

[*See* rule 5(2)]

Membership Register

Name of members.	Father's Name/ Husband's name	Address	Designation of worker/ Token No.	Establishment in which working	Admission fee, if any	Collection on other accounts, if any	January	February	March	April
1	2	3	4	5	6	7	8	9	10	11

Monthly subscriptions/other collections									Remarks, if any.
May.	June.	July.	August,	September.	October.	November.	December.	Total	
12	13	14	15	16	17	18	19	20	

Signature of the Secretary/
authorised officer of the trade union

FORM F

[*See* rule 5(3)]

Receipt Book

Name and address of the federation of union .. ..

Name and particulars of registered trade unions from which money is received	Date of receipt	Amount received												
		Jan.	Feb.	March	April	May	June	July	August	Sept.	Oct.	Nov.	Dec	Total.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Total														

Signature of the Secretary/authorised officer of the Federation

Date... ... ...

***Please read this as Amendment of section 47B.**

Ord. XXIII or 1969 of 1969 এর section 47B এর প্রতিস্থাপন।-উক্ত Ordinance এর section 47B এর পরিবর্তে নিম্নরূপ section 47B প্রতিস্থাপিত হইবে, যথাঃ-

"47B.President and General Secretary not to be transferred—Neither the President nor the General Secretary of any trade union shall be transferred from one place to another without his consent". **(Act 22 of 1990. Section-4).**

Inserted at Page 142

FORM G

[*See* rule 5(4)]

Name of the Registered Trade Union/Federation... ... ...

Name of the month to which the account relates... ... ...

Receipts.					Expenditure.				
Date.	Description	Voucher No	Current	Grand Total.	Date.	Description	Voucher No.	Current	Grand Total
1	2	3	4	5	6	7	8	9	10
			Tk. Paisa.	Tk. Paisa.				Tk. Paisa.	Tk. Paisa.

Secretary/authorised officer of the Registered Trade Union/Federation.

Date... ... ...

FORM H

[*See* rule 7]

Register of Trade Unions

Sl. No.	Name of trade union with address.	Registration No. and date.	Nam of President and Secretary, with address.	Name and address of Industry/establishment with which connected.	Number of members of the trade union.	Name and address of the federation of trade unions, if affiliated.	Remarks.
1	2	3	4	5	6	7	8

FORM I

[*See* rule 7]

Register of Federation of Trade Unions

Sl. No.	Registration No. and date	Name of federation with address.	Name and address of Industry/establishment with which the federation is connected.	Name of the President and Secretary of the federation with their address	Name of registered trade unions affili[illegible] the	Total number of members of each of the affiliated trade unions.	Remarks
1	2	3	4	5	[illegible]	7	8

FORM J

(*See rule* 8)

No ... ...

It is hereby certified that the (name of the trade union/federation) representing employers/workers employed in (name of the establishment) has been registered under the Industrial Relations Ordinance, 1969 (Ord. XXIII of 1969), this day of..... 19.....

Registrar of Trade Unions

Date ... ...

FORM K

(*See rule* 13)

Form for Annual Return

(*Annual return required to be submitted under section* 21 *of the Industrial Relations Ordinance,* 1969, *for the year ending* 31*st December,* 19)

Name of the trade union

Registered Head Office

Registration No.

Return to be submitted by a federation of trade unions.

Dated

1. Number of trade unions affiliated at the beginning of the year and the number of members of each of those trade unions.
2. Number of trade unions joined during the year and the number of members of each of those trade unions.
3. Number of trade unions disaffiliated during the year.
4. Number of affiliated trade unions at the end of the year

and with their respective membership.

Return to be submitted by a trade union.

1. Number of members on record at the beginning of the year.
2. Number of members admitted during the year.
3. Number of members who left during the year.
4. Total number of members on record at the end of the year :
   Male—
   Female—
5. Name of the federation of trade unions, if any, to which the trade union is affiliated.

A copy of the constitution of the trade union, corrected up to the date of despatch of the return, is appended.

Dated... ... ... *Secretary.*

FORM L

[*See* rule 18(4)]

Declaration of Collective Bargaining Agent

(Name of the trade union or federation with its address) is hereby declared as collective bargaining agent for

... ...

(Name of establishments in an industry with address)

... ...

... ...

under rule of the Industrial Relations Rules, 1977, this day of ... ... 19... ... .

Registrar of Trade Unions

FORM M

[See rule 26(2)]

Form of Nomination Paper

Name of Industrial Establishment. Group/Section/Shop/Department.

I propose.....
(Here enter the name of the workmen's representative eligible for election) as a candidate for election to the Works Council.

Signature of Proposer with Department and Token No.

Date.....

I second the proposal
I agree to the proposed nomination

Signature of Seconder with Department and Token No.

Signature of Candidate with Department/Token No.

Case Laws

Case laws under Employer and Employee.

Temporary higher post ceased to exist. No liability on the part of the employer in respect of that post to keep the employee there. Employer can determine the period of employment in case of provisional employment. *M.M.Ispahani Vs.Ispahani Co. Office Employees Assn. (1960) 12 DLR(SC) 71.*

If the employee goes on leave he reverts to his permanent post during the leave period.

In the day-to day management of its affairs, a company is not under any obligation to keep the employees' Association or its employees informed of any action which it might take in respect of any individual employee, whether a member of the Association or not. *M.M.Ispahani Vs. Ispahani Co. Office Employees Assn.(1960) 12 DLR(SC) 71.*

Employees(of a local body) without statutory right-Employees under a Municipal Committee(in the present case Collecting Sarkars) whose posts do not carry any legal guarantee to the tenure of service hold the posts at the pleasure of the Committee and liable to be dismissed at any moment. *Munshi Abdul Jabbbar Vs.Barisal Municipal Committee, (1968) 20 DLR 1186.*

Duty which employees are duty-bound to perform in discharge of their normal duties.

With regard to the clearance of work which had accumulated during the period of strike by the employees, the employees maintained that they would try and clear as much as possible of the accrued arrear work during office hours but for the clearance of the arrearswork they demanded that honorarium will have to be paid to them. As a matter of fact the arrears which had accumulated were cleared by the staff in a short time during normal working hours.

Held: The claim for honorarium is not at all tenable. The duty of good employees is to co-operate with the employer, to further the objects of the employment (which in this case were all matters connected with the proper and efficient functioning of the Bank.) *State Bank of India Lahore Vs.State Bank of India Employees(1960) 12 DLR(SC) 82.*

Case Laws Under Employment of Labour (Standing Orders) Act(VIII of 1965)

Employment of Labour (S.O.) Act not applicable to Bangladesh Inland Water Transport Authority.

Bangladesh Inland Water Transport Authority is a local authority under the Government created by a statute.

The provisions of Employment of Labour(Standing Orders) Act are not applicable to Bangladesh Inland Water Transport Authority in view of the nature and function of such authority as enumerated in section 15 of the Inland Water Transport Authority Ordinance of 1958. *Director of Ports & Traffic Vs. Chairman(1980) 32 DLR 104.*

S.2(d): Commercial establishment: Dhaka Improvement Trust is neither a commercial establishment nor an industrial establishment as defined in the Employment of Labour (Standing Orders) Act VIII of 1965. *Chairman, D.I.T.Vs. Chairman, 2nd. Labour Court.(1982) 34 DLR(AD) 37.*

2(d): A bus is not a commercial or industrial establishment and so the provisions of Standing Orders Act'65 are not attracted to a bus.

On behalf of the petitioner it was urged that the bus being neither a commercial nor industrial establishment as defined under section 2 of the Act, the said Act has no manner of application so far as the instant case was concerned. Section 1 of the Act lays down that the Act shall apply to industrial establishment in which 5 or more workers are employed. Having regard to the definition of commercial and industrial establishment as contained in the said Act, we are of the view that a bus cannot be termed as a commercial or industrial establishment within the meaning of section 2 of the Act. *Md. Idris Khan vs. The Chairman, 1st Labour Court, (1976) 28 DLR 473.*

S.2.(h)-Writ petition-Grievance of single worker-Writ petition not maintainable.

Where a single industrial worker had a grievance, it cannot be said that it is an industrial dispute and the worker cannot have any remedy under the Ordinance, therefore, he can file a writ petition to get his grievance redressed. *Muhammad Ataullah Vs.P.I.D.C,, Karachi, PLD 1963 Dacca 767=14 DLR 654(BD).(Ali, J).*

S.2(k): Reference to the Industrial Disputes Ordinance LVI of 1959 in sec.2(k) of the Standing Orders Act. 1965 is to the E.P. Labour Dispute Act VI of 1965. *Secy. C. S. Ltd. Vs. Chairman, 2nd L.Court.(1977) 29 DLR 50.*

Functions of Labour Court-
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 of East Pakistan,(1970) 22 DLR 577.*

Function of Industrial Court-Such Courts have the trappings of a Court of law and are required to conform to judicial norms-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.*

Retrospective effect with effect from 25th Oct.1965 was repealed.
E.P.L.D.Act 1965 was repealed by section 67(I) of Industrial Relations Ordinance 1969, on 25th Oct.1969-But the Court constituted under the repealed Act deemed to be constituted under the Ordinance, 1969. *Secy. C.S. Ltd. Vs. Chairman, 2nd Labour Court(1977) 29 DLR 50.*

S.2(v): Exception: A worker when on very solitary occasions 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.*
Pesh Imam of a Mosque is not a Labourer within the meaning of s.2(v). *Manager, Shahjibazar Power Station, Vs. Md.Gulam Hossain Khan.(1981) 33 DLR 29.*

S.2.(v): Worker, who is-
Dhaka Improvement Trust-Employee under the Trust not a worker within the meaning given in Act VIII of 1965.
Privilege conferred on the workers under the Employment of Labour (S.O.) Act can not be invoked by a worker serving in the Dhaka Improvement Trust. *Chairman, D.I.T. Vs. Chairman, 2nd. Labour Court. (1982) 34 DLR(AD) 37.*

S.2(v) and s.25: 'Worker': A person does not cease to be a worker only because he is employed in a supervisory capacity. It depends on the nature of the job done to say whether he is a worker or not.

What is important in determining whether a person is 'worker' or not is to see the main nature of the job done by him and not so much his designation. *Mujibur Rahman Sarker Vs. Chairman, (19679) 31 DLR 301.*

S.2(V): Employees of nationalized Rupali Bank are not workers within the meaning of s.2(V) of the Employment of Labour (S.O.) Act and can, therefore, bring a suit in civil court against an order by the Bank terminating their service. *Asstt.General Manager Vs. N.Islam. (1987) 39 DLR167.*

S.5(3): 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 to forthcoming from the worker concerned. *Glaxo Bangladesh Ltd. Vs. Chairman, and another(1980) 32 DLR 134.*

Loss of lien to the 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. 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(1979) 31 DLR(AD) 120.*

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 it 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 a misconduct for ultimate dismissal of the 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. *Glaxo Bangladesh Ltd.Vs.Chairman and another (1980) 32 DLR 134.*

S.17(I)(b),(2): 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. *Md.Wazhiullah Vs.Secretary (1980) 32 DLR 36.*

S.17(2): If any doubt exists as to the presence of any extenuating circumstance, the benefit thereof should go to the worker and lesser punishment given. *Wazhiullah vs.Secretary(1980) 32 DLR 36.*

S.17(3): Miscounduct: To constitute misconduct as meant in s.17(3)(e), (f), (h) or (i)-Neglect of worker must be habitual: In clause (a), (b)(e),(g) or (k) in sub-section(3) of section 17 of the Employment of Labour (S.O.) Act 1965 one solitary or single act or omission may be treated as misconduct but in clauses(e), (f), (h) or (i) an act or omission can be regarded as misconduct only when it is habitual or frequent. Clause(d) provides for two variants of absence without leave, one habitual and the other for more than 10 days. In either case absence must be more than one occasion. Neglect of worker means an omission to do some work. To constitute misconduct such omission must be of habitual nature.

A solitary act of omission may not constitute misconduct unless it is as specifically provided in sub-section(3) of section 17 of the Act.

To constitute misconduct or neglect of work mentioned in clause(h) of sub-section (3) of section 17 of the Employment of Labour (Standing Orders) Act, 1965 it must be of habitual nature. *Managing Partner, Messrs. Bank Line Navigation Company. Vs. Mohammad Golam Mostafa.(1981) 33 DLR 149.*

S.17(3)-When a single act of neglect amounts to misconduct u/s.17(3)-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.

A single act of neglect in plying the vessel during the night and in a foggy condition of weather amounted to a misconduct under clause(h) of sub-section(3) of section 17 of the Employment of Labour (Standing Orders) Act. *Managing Partner Vs. Chairman,(1982) 34 DLR 55.*

Secs.17 and 18: Absence without leave for more than 10 days does not lead to automatic termination of service. *P.W.V. Rowe Vs. Chairman Labour Court. (1979) 31 DLR(AD) 120.*

Ss.17,18, &19: 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 employer's goods.

Held: 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.*

Ss. 17 and 19: 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 or the conciliation proceeding. *Ramani Ranjan Nath Vs. Messrs. Spencer & Co., (1969) 21 DLR 206.*

S.18: 3 days' time for giving notice by the employer to the employee to enable the latter to show cause against any proposed punishment referred to in clause(b) of section 18(I) is the minimum time allowed, and there is no embargo on giving more time for the purpose. *Mansor Ahmed Vs.Burmah Easxtern Limited (1968) 20 DLR 120.*

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

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. *S.H.Quddus & ors. Vs. Chairman, Labour Court Ctg.(1981) 33 DLR I.*

S.18(I): Labour Court is not a court of appeal-It can interfere only when the Enquiry Officer or the Committed acts unfairly and against the principles of natural justice.Its function is to see whether the delinquent is lawfully punished. *Manager Z.B.S.Mills Vs.Chairman, Ist.Labour Court, (19k82) 34 DLR I.*

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

Sub-section(I) 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,(1980)32 DLR 265.*

Circumstances which should be kept in view while dismissing an employee.

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

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

S.18(6): 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 . *Md.Wazhiullah Vs.Secretary, (1980) 32 DLR 36.*

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(I) of the *Act.Saheb Ali Vs. Chairman(1980) 32 DLR 16.*

S.18(7) : 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) 329.*

Secs.18,19 and 25: Labour Court can convert a dismissal order into an order of termination. *S.H. Quddus & Ors. Vs. Chairman, Labour Court Ctg.(1981)33 DLR I.*

S.19: Termination benefits can not be claimed when the employee resigns on his own accord. *I.W.T.A.Vs.Chairman, Ist.Labour (1977) 29 DLR 85.*

"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 a 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. *Bangla Tea Estate Vs.Staff Association(1976) 28 DLR(SC) 190.*

Termination of service of a worker may lead to a dispute which may be a labour dispute. *Bangla Tea Estate Vs. Staff Association(1976) 28 DLR(SC) 190.*

Employer's factory having been shifted from Dacca:

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 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 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.*

Employer's inherent power to terminate employee's service giving the latter certain benefits in appropriate cases. *S.H.Qudus & Ors.Vs. Chairman, labour Court Ctg.(1981) 33 DLR I.*

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. *S.H.Qudus & Ors.Vs. Chairman, Labour Court Ctg.(1981) 33 DLR I.*

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. *Azad and Publications Ltd. Vs. Chairman.(1980) 32 DLR 29.*

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 Labours(S.O) Act as it cannot be said that their services were terminated by the employer which when happened could attract provisions of section 19. *Azad and Publications Ltd. Vs.Chairman,1st Labour Court(1980) 32 DLR 29.*

S.19-Permanent worker-right to terminate his service by one month's notice,and 14 days' notice in the case of other employees. *Belal Rahman Vs.Purbachel Jute Industries.(1987) 39 DLR 239*

Employer can waive the period of notice and acceptance of resignation and release the worker before one month. *Belal Rahman Vs.Purbachal Jute Industries.(1987) 39 DLR 239*

S.19(I): 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.

From the judgment of the labour Court it appears that observed as follows:-

"Regarding re-instatement, 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 Labour Court provide sufficient justification for granting termination benefits instead of re-instatement. *S.M.Quddus Vs. Chairman.(1981) 33 DLR(AD) 12.*

Ss.19 and 25: Court not to go behind the order of a service termination to see if it is really a victimization: The ratio decldendi of the two cited decisions reported in 25 DLR(SC)85 and in PLD 1961(SC) 403 appear to be that 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. *Bangla Tea Estate Vs.Staff Association(1976) 28 DLR(SC)190.*

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. *Bangla Tea Estate Vs. Staff Association(1976) 28 DLR(SC) 190.*

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) cannot 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 victimization 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) 33.*

S.24(I): Ex-employee entitled to stay in his quarter under sub-section(I) of sec.24 for 15 days after termination of his service. *Abdul Khaleque Vs.Cresent Jute Mills Co.Ltd.(1969) 21 DLR 913.*

S.24(I) (2) : Dismissed worker can claim no right to be in the quarter by instituting a suit after the expiry of 15 days under section 24(I) while a case under sub-section(2) is pending. *Abdul Khaleque Vs. Crescent Jute Mills Co.Ltd.(1969)21 DLR 913.*

S.25: 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 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 three workers was malafide and by way of victimization.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.*

Proviso--Proviso to section 25 has no application to a labour dispute 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 Vs.Azad Pres Karmachari Union, (1968)20 DLR 1176.*

Relief of reinstatement available in a case arising under the Labour Disputes Act even though no provision for such relief exists in this Act(VIII 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 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 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 Vs. Azad Press Karmachari Union, (1968)20 DLR 1176.*

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.L.Court(1977) 29 DLR 296.*

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 letter is received by the Employer beyond 15 days, he cannot ask for extension of time. *M.A.Hamid Vs. Chairman, 2nd.L.Court(1977)29 DLR 296.*

A dismissed worker--his remedy u/s.25 of 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 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(19k76)28 DLR 162.*

An individual workman seeking remedy may apply to the Court u/s.25 of 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 Orders) Act.1965 has been changed.Section 25 of the latter statute is still available to a workman for his remedy before the Labour Cousrt which is competent to entertain such matters. *A Rebeiro Vs.Labour Appellate Tribunal(1975)27 DLR 99.*

Proper procedure which a worker must follow against an employer, if he has any grievance against him-such as nonpayment 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. *Dy.Managing Director Vs. K.Fazlul Karim(1976) 28 DLR 445.*

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. *Rly. Mens Stores Vs.Chairman,L.Court(1978) 30 DLR(SC)251.*

Distinction between amended section 25 of the Standing Orders Act and Sec.34 of Industrial Relations Ordinance. *Rly Mens Stores Vs.Chairman, L.Court(1978) 30 DLR(SC) 251.*

Respondent falls within the definition of "a worker" under the Industrial Relations Ordinance which is applicable to workmen employed in Postal Department.As such he can file an application u/s.34 for enforcement of his right secured or guaranteed under any law including the Employment of Labour(Standing Orders) Act even if that Act is not applicable to him.As this Act is not applicable to him he cannot file any petition for complaint before a Labour Court u/s.25 of this Act.But he may file an application u/s.34 of the Ordinance so long he is a worker thereunder. *Govt.of Bangladesh,Vs.The Chairman 2nd.Labour Court.(1979) 31 DLR 62.*

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 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.Majibur Rahman.(1979)31DLR 269.*

Leave was granted to consider that the Company and its Managing Director both being residents of Chittagong and the petitioner though in charge of Bogra Sales Depot of Company was employer of the Company and hence the complaint case clearly fell within the jurisdiction of the Chittagong and Rajshahi Labour Courts.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. *Md.Mahmudul Haque Vs.Md.Shamsul Alam,(1984)36 DLR(AD) 179.*

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. *S.H.Quddus & Ors. Vs. Chairman, Labour Court Ctg.(1981) 33 DLR I.*

S.25. (Read with Ordinance XXXVI of 1978)

The worker is to send his grievance notice by registered post within 15 days of the occurrence. *Abul Kalam vs.Chairman(1986)38 DLR 399*

S.25(I): 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 refusals to examine the witnesses amounted to denial of a fair judicial hearing in the matter. *E.P.Road Transport Corporation Vs. Second Labour Court(1970)22 DLR 569.*

S.25(I)(b): A worker can come to Labour Court for relief in any matter covered by the Act. A worker's grievance may be a cause of labour

dispute under Labour Disputes Act. *Bangladesh Tea Estate Vs.Staff Association(1976)28 DLR(SC) 190.*

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

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

S.25(I)(c) : Labour Court cannot act as a court of appeal from finding of a domestic enquiry: 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(I) of section 18 of the Employment of Labour(Standing Orders) 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 2nd Labour Copurt(1980)32 DLR 265.*

S.25(I)(d): A Labour Court u/s.25(I)(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.C. 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. *Management Board A.R.Howlader Jute Mills Vs. Chairman Labour Court(1976)28 DLR 368.*

S.26: 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 (S.O.) Act-High Court Division has no jurisdiction to quash the order passed by the Labour Court. *Md. M.Hoque Vs. Md.Shamsul Alam Opp. Party.(1983) 35 DLR 219.*

Case laws Under Industrial Court.

Industrial Court-Not a Court-nevertheless cannot act on mere conjectures but must act according to law: A Tribunal dealing with an industrial dispute is not a Court but that does not mean that it can act on mere conjecture and its own peculiar ideas of social justice.

It is obligatory on its part to act within the jurisdiction and according to the law applicable to the matter in dispute. *Muhammad Jamil Vs. Chairman, Industrial Court,W.P.(1964) 16 DLR(SC) 386.*

Case Laws Under Industrial Corporation (Dissolution) Ordinance (XXXVI of 1962)

S.3 (b)- Employee transferred to E.P.I.D.C. by P.I.D.C.- Employment approved by E.P.I.D.C.-Employee cannot be dismissed by Secretary, E.P.I.D.C.

The Secretary, E.P.I.D.C. has been delegated the power to dismiss or remove only such officers, staff, workmen and other employees as are appointed by him, but this delegated power, does not include the power to dismiss or remove the officers, advisers and employees who were transferred to the E.P.I.D.C. by the P.I.D.C. in pursuance of the order of the Central Government made under section 3(b) of Ordinance No.XXXVI of 1962, and whose appointments were approved by the E.P.I.D.C.itself by its resolution of the Ist July,1962. In this view of the matter, the Secretary was not empowered to dismiss the petitioner from service as he was one of the employees received by the E.P.I.D.C. on transfer from the P.I.D.C. Accordingly,the impugned order dismissing the petitioner from service is illegal and without jurisdiction. *Rostam Ali vs. Chairman E.P.I.D.C., PLD 1964 Dacca 721=16 DLR 651 (DB) (M.R.Khan,J.).*

Case Laws Under Industrial and Commercial Employment(Standing Orders) Ordinance (III of 1960).

S.0.8(3): In case where a workman loses lien on his appointment he is nevertheless, entitled to be kept on "badli list". *M/S.Pakistan Tobacco Co.ltd.vs.Pak Cigarette Labour Union(1964) 16 DLR(WP)157.*

S.0.9: Sick leave with or without pay within discretion of Management: Standing Order No.9 clearly leaves the question of grant of sick leave with or without pay to the Management.Simply because the

Mills may be in a position to bear this expense,that could not be a ground for granting sick leave with pay.In these circumstances the award of the Industrial Court was set aside. *Abbasi Textile Mills Ltd.vs.Industrial Court,West Pak.(1967)19 DLR(SC) 8.*

S.O.12: From the workman's service record it appeared that till 13th January,1954, he had been fined on three occasions but even then he was promoted as a Mistry on Ist June,1954. In May, 1955, he was merely censured for wrong stamping.In view of the above the Industrial Court came to the conclusion " that workmans services were dispensed with on account of the Union activities because he admittedly was a member of the Union". The above also found support from the fact that at the time of his termination of service,no notice as provided under Standing Order No.12 was served on him.It was only after his representation, notice of discharge was served on him.In these circumstances it could not be said that the view taken by the Industrial Court was perverse or patently wrong.As the view taken by the Industrial Court on the evidence before it was a possible view,the Supreme Court declined to interfere with the said findings. *Abbasi Textile Mills Vs.Industrial Court W.Pak.(1967)19 DLR(SC) 8.*

S.O.12(1) and 13(3) : The provisions of Clause 12(1) are applicable only where there is termination of service simpliciter-Termination on payment of one month's pay in lieu of notice on ground of prolonged absence- Provisions of Clauses 13(3) and 12(I) can be resorted to. Industrial Court in such case of termination of service is competent to consider the bonafide of employer in terminating service of the Workman. *M/S. Pakistan Tobacco Co.Ltd. Vs.Pak, Cigarette Labour Union(1964) 16 DLR(WP) 157.*

S.O. 12(I): Permanent workman-His service can be terminated under clause 12(1) of the Standing Orders by the employer by giving requisite notice(i.e. one month's notice in case of permanent worker and 2 weeks' notice in case of other workmen) or pay in lieu thereof. *Khulna News Print Mills Ltd. Vs. Khulna News Print, Employees(1973) 25 DLR(SC) 85.*

Provisions of clause 11(3) not attracted when a workman's service terminated under clause 12(I):

It is true that under clause 11(3) of the Standing Orders the service of a permanent workman can be terminated in case of lay-off for an indefinitely long period by giving him due notice or pay in lieu thereof but we find no ground for holding that the power of the employer to, terminate the

employment of a permanent workman under clause 12(I) must be restricted to the circumstances mentioned in clause 11(3),namely, in case of lay-off only.

Whereas in the case of lay-off for an indefinitely long period, the service of all workmen, whether permanent or temporary, can be terminated under clause 11(3) by giving notice or pay in lieu thereof, the employment of only permanent workmen can be terminated under clause 12(I) by giving notice or pay in lieu thereof. *Khulna News Print Mills Ltd.Vs. Khulna News Print, Employees(1973) 25 DLR(SC) 85.*

Employee was previously arraigned for a criminal offence. The charge fell through-Employer terminates his service under clause 12(I)-acts within his rights.

If in the instant case, the termination of employment of the employee by giving him salary in lieu of notice was in accordance with the statutory condition of his employment and the employer exercised the right to terminate the employment in accordance with the provision of the statute. The mere fact that the charge drawn up against him earlier was either dropped or was not pursued through,cannot affect the right of the employer to so terminate the employment.*Khulna News Print Mills Ltd. Vs. Khulna News Print Employees (1973) 25DLR(SC) 85.*

S.O.12(2): No temporary workman and no probationer or badli is entitled to any notice or pay in lieu thereof. *Khulna News Print Mills Ltd. Vs. Khulna News Print Employees (1973) 25DLR(SC) 85.*

S.O.13(2): An employee cannot be suspended for more than four days: Under the Industrial and Commercial Employment(Standing Orders) Ordinance, 1960, an employee cannot be suspended for more than four days but in the present case, no time was fixed but it indicates that the suspension was indefinite and secondly, the reason for suspension was an assumed one. Consequently the suspension order held illegal. *Nishat Jute Mills Ltd. Vs. Nishat Jute Mills Workers,(1969) 21 DLR 27.*

Case Laws Under Industrial Dispute.

Profits made by a company at any one place or location should be set against the result of the working of the whole company-losses elsewhere should also be taken into account to determine the entitlement of bonus. *Pakistan Petroleum Workers Federation. Karachi Vs. Burmah Shell Oil Storage and Distributing Company of Pak. Ltd.Karachi(1961) 13 DLR (SC) 299.*

Bonus-Tribunal's award granting three months' basic wages plus dearness allowance and overtime earnings-Increase on existing rate of startling nature-Increase should not be assumed upon conjecture about companies' capacity to pay. *Pakistan Petroleum Workers Federation--Karachi Vs. Burmah Shell Oil Storage and Distributing Company of Pak. Ltd.Karachi (1961) 13 DLR(SC) 299.*

Disposal by a single award of several disputes Between Worker's Union and seven oil companies two of which were prospecting and producing companies while the others were distributing companies-Not proper. *Pakistan Petroleum Workers Federation--Karachi Vs.Burmah Shell Oil Storage and Distributing Company of Pak.Ltd. Karachi(1961) 13 DLR(SC) 299.*

Demand for increase in basic wages-Tribunal rejecting demand on grounds that existing salaries were as good and better than those of any other industrial employers that there was no material on which increase in minimum living wage could be established-grounds, held, unanswerable. *Pakistan Petroleum Workers Federation. Karachi Vs.Burmah Shell Oil Storage and Distributing Company of Pak. Ltd.Karachi(1961) 13 DLR(SC) 299.*

House allowance-Tribunal award granting-Without regard to ultimate cost to employer-set aside.

Post of a clerk inter-changeable between Head Office and installations of Company-Longer hours of work at Head Office to be remunerated.

Medical facilities-Maternity benefits award granting benefits-set aside-benefits not available in "entire private sector of Industry".

Medical facilities should remain confined to workman, wife and children only.

Medical facilities-Central dispensary method being more normal is preferable to panel of doctors in different parts of city.

Retirement benefits-gratuity scheme, observed by companies, allowed to remain unaffected. *Pakistan Petroleum Workers Federation--Karachi Vs.Burmah Shall Oil Storage and Distributing Company of Pak.Ltd. Karachi (1961)13 DLR(SC) 299.*

Whether low-paid workers permanent or temporary: Where the establishment is so large, a question whether a low-paid worker from among a very large number of such workers, was permanent or temporary should be treated as matter of special knowledge possessed by the worker himself. *Karnafully Paper Mills Ltd. Vs. Karnafully Paper Mills Workers Union(1961) 13 DLR(SC) 160.*

1. AGE OF SUPERANNUATION

-Age of Superannuation-Sixty years is a reasonable age.

The age of sixty years fixed as age of superannuation is reasonable and the Court upheld it. *Flour Mills Employees Vs. Karachi Steam Roller Flour Mills Co.Ltd., PLD 1964 Kar. 587(DB). (Qadeeruddin,J.)*

2. APPEAL

Appeal-Employee not made party within limitation-Appeal dismissed as time-barred.

Where it was urged that as the employee had not been made a party in appeal against the award within the limitation prescribed for filing an appeal, the appeal was not maintainable.

Held; that the employer had acquired a valuable right which should not be taken away from him in the circumstances of the case, and so the objection ought to prevail. *Mohd. Jamil Vs. Chairman, Industrial Court, West Pakistan, PLD 1964 Supreme Court 559=16 DLR (SC) 386.(Fazle-Akbar,J).*

3. AWARD

Award-Time for making may be extended 'ex post facto.'

The time for the making of award could be extended even ex post facto. *Glaxo Laboratories (Pak) Ltd.vs.Pakistan, PLD 1962 Supreme Court 60=14 DLR S.C.17=APR 1962 S.C. 32=1962(1) PSCR 314. Foll: PLD 1961 S.C. 480(S.A.Rahman,J).*

4. BONUS

Bonus-Company not making any profit during the year-workers not entitled to any bonus.

Held: that the Management did not make any profit in the year 1956 and as such the workers were not entitled to get any bonus that year. *Saifee Development Corporation Ltd. Vs. Pakistan, PLD 1961 Supreme Court 39-13 DLR S.C. 27=1960(3) PSCR 50=PLR 1961(2) WP 329.(Fazle-Akbar,J).*

5. DECISION OF TRIBUNAL

Inquiry against worker held irregular by Tribunal-Reasons for declaration must be given.

The Tribunal held that the inquiry against the workers was irregular,

Held: the Tribunal did not state in what respect that enquiry was irregular. In taking the view he did, the Tribunal has acted as if he were sitting in appeal from the decision in the enquiry. That was not his true function. *Karnafully Paper Mills Ltd. Vs.Workers' Union, PLD 1961 Supreme Court 329=13 DLR(S.C.) 160=PLR 1961 Dacca(S.C.) 919=1961 (2) PSCR 99. (Cornelius,CJ).*

6. DISCHARGE OF WORKER

Discharge for misconduct-Company ostensibly acting as if termination of services is not penal-Question whether termination is penal or not should be decided by looking at all facts of the case.

Where a workman was discharged on a charge of misconduct but the company paid him one month's pay in lieu of notice and acted as if the discharge was a termination of services in terms of the contract with the employee.

Held: The Company could not plead that the termination of services had no connection with the alleged misconduct of the employee, Although rule 23 provides that an employee found guilty of misconduct may be dismissed without notice or without salary in lieu of notice, yet it was open to the Company not to enforce any such penal provision and this is what the Company seems to have done though it specifically resorted to rule 23. Therefore, the discharge was ordered as a penalty and the Industrial Tribunal could order the reinstatement of the workman. *Glaxo Laboratories (Pak) Ltd.vs.Pakistan, PLD 1962 Supreme Court 6O=14 DLR S.C. 17=APR 1962 S.C.32=1962(1)PSCR 314.(S.A.Rahman,J.)*

Discharge of worker-Guilt not proved before Tribunal-Reinstatement not necessary-Worker may still be discharged by employer.

The principle that because the enquiry was not "proper or regular", the worker should be reinstated is not available in a case of private employment. In certain cases affecting public servants,who enjoy exceptional protection under constitutional provisions, Courts have acted on this principle. But in the case of private employment, the ordinary rule of master and servant must be sustained, namely, that without cause assigned the master may dispense with the services of the servant with notice or on payment of salary in lieu of relinquishing his appointment on similar terms. These are mutual and reciprocal promises, and there is no principle available in the relevant law which could operate to minimize the effect of the counterpart promises. *Karnafully Paper Mills Ltd. Vs. Workers' Union, PLD 1961 Supreme Court 329=13 DLR(S.C.) 160=PLR 1961 Dacca(S.C.) 919=1961(I) PSCR 99.(Cornelius,CJ).*

Dismissal of employee-Industrial Court should not justify on grounds other than those urged by employer.

Where the Industrial Court justified the dismissal of an employee on grounds other than those urged by the management.The Supreme Court did not express any opinion on the merits of the case but it was observed that it is true that a Tribunal dealing with an industrial dispute is not a Court in the sense that it is not strictly bound by the rules of evidence but that does not mean that it can act on mere conjecture and its own peculiar ideas of social justice.It is obligatory on its part to act within the jurisdiction and according to the law applicable to the matter in dispute. *Muhammad Jamil Vs. Chairman,Industrial Court,West Pakistan, PLD 1964 Supreme Court 559=16 DLR(SC) 386.(Fazle-Akbar,J).*

Increase in emoluments-Grant on sympathetic consideration-Not justified.

The Tribunal has been guided mainly by sympathetic speculation with practically no evidence upon which a general increase in emoluments could at all have been justified. This was held to be improper. *National & Grindlays Bank Ltd.vs.East Pak.Bank Employees Union, PLD 1961 Supreme Court 383=13 DLR(S.C.) 169=PLR 1961 Dacca(S.C.) 731=1961(2) PSCR 85.(Cornelius, CJ).*

7. HOUSE RENT

House rent, demand for increase in-When may be granted.

The demand for house rent allowance is in effect a demand for an increase in pay and should not be allowed in the absence of evidence to show that rents in the area are higher than normal or that there has been an increase in rents since pay scales were last fixed. *Sutlej Cotton Mills Ltd.vs.Industrial Court, PLD 1966 Supreme Court 472=18 DLR(SC.) 154.(Hamoodur Rahman,J.).*

8. LEAVE

Leave to employees-Instances of reasonable standard.

The fact that a workman gets 15 days earned leave per year and he also gets 10 days sick leave and 5 days casual leave in addition to festival holidays clearly shows that the workmen are given reasonable facilities by the employers in respect of their demand. *Saifi Development Corp. Ltd. vs. Workers' Union, PLD 1965(W.P.) Karachi 347.(Wahiduddin,J).*

The Tribunal has allowed 30 days privilege leave accumulating up to 60 days, and 10 days sick leave.The decision is quite a reasonable one. *Pak. River Steamers Ltd; Vs.Province of East Pak, PLD 1961 Supreme Court 393=13 DLR(SC) 153=PLR 1961 Dacca 636=1961 (2) PSCR 131.(Kaikaus,)J.*

9. MEDICAL FACILITY

Lady doctor-Companies should employ to look after the wives of employees.

Held: knowing the prejudice of women against being treated by a male doctor it might have been thought that by this time the Companies would have provided a woman doctor upon their own initiative particularly when the supply of qualified lady doctors is now sufficient. The necessity for such a facility cannot be denied. *Pakistan Petroleum Workers Federation vs. Burmah Shell Oil Storage & Distributing Co.of Pak. Ltd., PLD 1961 Supreme Court 479=13 DLR(SC)299=1962(I) PSCR 117.(Cornelius,C ,J.).*

Medical aid-Worker may go to outside practitioner in emergency.

Held: In the case of emergency or if the service of the company's doctor is not available the worker may avail of the services of an outside doctor without prior sanction of the management. *Pak. River Steamers Ltd. vs.Province of East Pak., PLD 1961 SC 393=1961 (2) PSCR 131=13 DLR SC 153=PLR 1961 Dacca 936.(Kaikaus,J).*

Medical treatment-Companies to provide facilities for medical aid to workmen,their wives and children.

The duty of the Companies to provide full and free medical treatment will be confined to a workman,and his wife and children. *Pakistan Petroleum Workers Federation Vs. Burmah-Shell Oil Storage & Distribution Co. Of Pak.Ltd., PLD 1961 Supreme Court 479=1962(I) PSCR 117=13 DLR 299. (Cornelius,J).*

Medical treatment-Scheme laid down.

Held: The Tribunal laid down a scheme of an elaborate nature which would require the engagement of doctor with the degree of M.B.B.S. either whole time or part time to attend at the Bank dispensary or at his own dispensary during office hours twice a day, and also to attend patients from among the staff at their residences within the Chittagong municipal limits upon requisition, without any charge of fee or conveyance and further that all medicines prescribed by the doctor however expensive, should be supplied by the Banks free of charge.If the Bank's doctor were not available, the employee would be entitled to treatment by a similarly qualified doctor and recover the cost upon presentation of bills. Extraordinary surgical and

specialist attendance would not be at the Bank's charge, and treatment for members of the employees family also would be at the cost of the employee. So far as we can see,this scheme, although it may appear to be elaborate,contains all that is essential,and little that is nonessential,and is calculated to furnish adequate relief to the employees without over burdening the Bank with expenses. *National & Grindlays Bank Ltd.vs.East Pak.Employees Union, PLD 1961 Supreme Court 383=13 DLR(S.C.) 169=PLR 1961 Dacca 731=1961(2) PSCR 85.(Cornelius, CJ).*

10. MISCELLANEOUS.

Discharge of worker-When is a part of Industrial Dispute.

Unless the discharge be proximately connected with the main subject-matter of the dispute either by direct nexus,or at the very least by proximity of time,it will not result in a "non-employment" so as to constitute an industrial dispute. *Karnafully Paper Mills Ltd.Vs.Workers Union, PLD 1961 Supreme Court 329=13 DLR(SC) 160=PLR 1961 Dacca(SC) 919=1961(2) PSCR 99.(Cornelius,CJ).*

11. OVERTIME ALLOWANCE.

Overtime allowance-Not to be merged in basic pay.

The request that overtime allowance should be merged in basic pay was refused by the Supreme Court. *Pakistan Petroleum Workers Federation vs. Burmah Shell Oil S.and D.Co.Pak.Ltd., PLD 1961 Supreme Court 479=1962(I) P.S.C.R. 117=13 DLR S.C.299.(Cornelius, CJ.)*

12. PAY SCALE.

Pay Scale raised by Tribunal without giving reasons-Improper-Order quashed.

Held: the Tribunal has merely given a bounty out of the goodness of his heart, and in doing so has not cared even to consider how deeply he was dipping into the pocket of the employer.A mere idea that the large body of workers involved were given salaries which seemed to be "rather a bit low" is no ground at all for disturbing the wage structure of a large industrial unit.This grant by the Tribunal cannot be upheld. *Karnafully Papers Mills ltd. vs. Workers Union, PLD 1961 S.C. 329=1961(2) P.S.C.R. 99=13 DLR S.C. 160=PLR 1961 Dacca 919.(Cornelius,CJ).*

Temporary worker absorbed into permanent cadre on stated salary-Tribunal fixing his salary by multiplying his daily wages with thirty-Award set aside.

Where workers who had been working for seven years on daily wages were offered permanent jobs on stated salaries and they accepted them but the Tribunal awarded them salaries on a different basis.

Held: By awarding to each of these three persons salary equivalent to that which he was earning on a daily wage basis multiplied by 30 to make it a month's wages, the Tribunal has gravely interfered with the wage structure of the Department in which these men are working, and into which they were absorbed in a rational manner on equal terms as for permanent employees, and with their own consent. *Karnafully Paper Mills Ltd. vs. Workers Union, PLD 1961 S.C.329=1961 (2) PSCR 99=13 DLR S.C.160=PLR 1961 Dacca 919.(Cornelius,C.J.).*

13. PENSION

Premature death of workman after retirement-Pension should be paid to his family for five years.

Held: it is certainly not too much to ask that in the case of the premature death of a retired workman,the Company should pay balance of the pension which would have been payable if he had survived for five years. *Pakistan Petroleum Workers Federation vs. Burmah-Shell Oil S.& D.Co Pak . Ltd., PLD 1961 Supreme Court 479=13 DLR(S.C,) 299=1962(I) P.S.C.R. 177.(Cornelius,CJ).*

14. PROCEDURE.

Consolidation of cases of different companies.-Improper.

Held: the Tribunal would have avoided the danger of applying false analogies if he had dealt with the case of A Company,and that of the P Company as two separate cases, while dealing with the cases of the remaining Oil Companies jointly since they are all distributing companies. *Pakistan Petroleum Workers Federation vs.Burmah-Shell Oil Distributor Co.of Pak.Ltd., PLD 1961 Supreme Court 479=13 DLR (S.C.) 299=1962(I) PSCR 117.(Cornelius.C.J.).*

Evidence produced by company-Union not satisfied with evidence-Union must produce its own evidence.

If the Union was not satisfied with the evidence that was produced by the Company,then it ought to have taken steps to get such other documents produced as could establish its case and cannot in substitution of that take the stand that a presumption should be raised against the Company. The facts were not of such a nature as could not be brought on the record at the instance of the Union if it desired to prove them. *Flour Mills Employees' Union Vs. Karachi Steam Roller Flour Mills Co.Ltd., PLD 1964 (W.P.) Karachi 587(DB). (Quadeeruddin, J.).*

Parties to-Some of the Unions making demands-Others may also be made parties.

Held: as it was apprehended that disputes similar to those raised by the three respondent Unions would be raised by the remaining four unions too, they were added as parties to the reference before the Tribunal. *Pak. River Steamers Ltd. vs. Province of East Pak., PLD 1961 S.C. 393=1961(2) PSCR 131=13 DLR S.C. 153=PLR 1961 Dacca 936.(Kaikaus,J).*

15.WAGES.

Wages, demand for increase in- May be refused where wages are better than those given by other establishments.

Held: the grounds advanced by the Tribunal for declining to interfere with the basic structure of the wages of the workers are that they are getting as good and better salaries than those paid by any other industrial employers in Karachi, and secondly, that the reason put forward, namely, increase in the minimum living wage had not been established since there was no material upon which the minimum living wage could be determined in the inquiry. These grounds appear to me to be unanswerable. *Pak. Petroleum Workers Federation vs. Burmah-Shell Co.S.& D Co.Pak.Ltd., PLD 1961 Supreme Court 1479=1962(I) PSCR 117=13 DLR S.C. 299.(Cornelius, C.J.).*

Wages-Principles for increase of.

An increase in wages has to be made on some judicial principle.The Tribunal starts by saying that the minimum wage has to be found,but it has not in fact recorded any finding on the amount of minimum wages.If a company is not paying the minimum wage,but according to the practice of the industry in the region higher wages are being paid such wages can in the absence of any special circumstances be directed to be paid.But if the company is paying the highest wages and it is at the same time suffering

losses there is no principle on which it can be made to pay more. *Pak River Steamers Ltd.vs.Province of East Pak., PLD 1961 S.C.393=(1961 2) PSCR 131=13 DLR S.C.153=PLR 1961 Dacca 936.(Kaikaus J.)*

16. WORKING HOURS.

Working hours--extra time permitted to banks.

In the morning, the extra time would be employed in getting the bank in readiness for the day's work when it opens its doors at 9-30 a.m. and in the evening the extra time for a few of the employees would be spent in clearing up the work before closing for the night.This is in accordance with the necessities of the Banks and also with their common practice. *National & Grindlays Bank Ltd. vs. East Pak. Employees Union, PLD 1961 Supreme Court 383=13 DLR(S.C.) 169=PLR 1961 Dacca 731=1963(2)PSCR 85.(Cornelius,C.J.).*

Case Laws Under Industrial Disputes Act. (XIV OF 1947)

When the proceedings which continued after expiration of the three month's limit were the same proceedings on the basis of a fresh notification, no part of the proceedings is invalid. *State Bank of India--Lahore vs.State Bank of India Employee Association(1960) 12 DLR(SC) 82.*

S.2(a). It was contended that the Industrial Disputes(Amdt.)Act (XXXI of 1958) which is given retrospective effect has the effect of making even failures to comply with any direction in any award passed after 17.10.55(the date on which the original Act came into operation) and before September,1958 (when the amending Act XXXI of 1958 has been passed) punishable and, therefore being in contravention of Article 6 of the late Constitution is void.

Held: A mere possibility that an Act which is not ex facie discriminatory but is capable of being administered in a discriminatory manner is not sufficient to hold the Act void; *Sui Gas Transmission Co.vs.Islamic Republic of Pakistan.(1959) II DLR(SC) 301.*

S.2(b): Worker-clerk-A clerk checking the valuation of articles done by other clerks and recalculating the total supply of such articles of the factory is also a clerk-His case falls within the definition of workman under the Industrial Disputes Act,1947. *Workers of Bata Shoe Co.Vs.Bata Shoe Co.Ltd.Batapur Lahore.(1971) 23 DLR (SC) 60.*

S.2(b)(k): Termination of workers' service for unlawful activities not provided, Not lawful: Reinstatement order by the Tribunal in such circumstances legal.

Where it has been found that the termination of service of workmen was by way of punishment for their alleged participation in unlawful activity during the strike and that no enquiry was held to bring any such charge home to them, prima-facie the discharge of these workmen from service could not be sustained.

The Industrial Disputes Act is designed to ensure industrial peace and harmony between the employers and their workmen.With that object in view the legislature appears to have provided that in suitable cases the re-instatement of a victimised worker may be ordered by the Industrial Tribunal.

It is now well settled that a Tribunal, functioning under the Act, can alter the terms of contract between the employer and his workmen in order to resolve any industrial dispute and the Supreme Court has in several cases upheld order of re-instatement of workmen whose services were terminated illegally. *Glaxo Laboratories(Pakistan) Ltd. vs. Pakistan(1962) 14 DLR(SC) 17.*

'Industrial dispute'--reinstatement of dismissed employee: The definition of an 'industrial dispute', given in the Act clearly includes the question of reinstatement of a dismissed employee within its scope. *Glaxo Laboratories(Pakistan) Ltd. vs. Pakistan(1962) 14 DLR(SC)17.*

Reinstatement order not of special benefit to the workmen-Company's right to remove the workmen in accordance with law remains unaffected: In the case of re--instatement an order passed in favour of the workman does have the effect of improving his contractual rights under the terms of his service.

The Company would be at liberty,after complying with the order of reinstatement,to resort to such action as may be open to it,in respect of such workmen under the terms of their service, provided that such action is taken bonafide and not merely as a cloak for victimization on account of trade union activities of the workmen.

The rights of workmen are by no means improved by "misconduct" of which he may be guilty and for which he may be liable to be dismissed by the company after due enquiry.

If a direction is given for reinstatement of such a workman on account of want of due enquiry preceding his dismissal,it does not destroy the right of the company after reinstatement, to proceed against him, in accordance with the mode permitted by law.

Time for the making of an award could be extended even ex post facto. *Glaxo Laboratories (Pakistan) Ltd. vs. Pakistan(1962) 14 DLR(SC) 17.*

S. 2(h)-Industrial dispute-Question of existence is to be decided by Industrial Court.

The point of locus standi, and the consequential point of the existence of an "Industrial dispute" were, matters requiring adjudication, which an Industrial Court appointed under the Ordinance is to deliver, in the first instance, under the existing law. *Hotel Metropolis Ltd., Karachi vs.Hotel Metropolis Employees 'Union,16 DLR S.C.468=PLD 1964 S.C.633 (Cornelius,C.J).*

S.2(K): "Industrial dispute"-A teacher of a school under the Railway Administration is not "a workman" within the meaning of industrial dispute. *Abu Bakkar Siddique vs.Province of E.Pak.(1966) 18 DLR 299.*

"Non-employed persons"- workers dismissed five years back-demand for their re-instatement was added along with principal demand-cannot be regarded as non-employed persons and the matter of their dismissal cannot come within the category of 'industrial dispute'. *National and Grindlays Bank Ltd., Chittagong vs.E.P.Bank Employees Union,Chittagong(1961) 13 DLR(SC) 169.*

"Industrial dispute"-Workmen raising dispute in regard to service conditions of salesman-Dispute not "industrial dispute". *Pakistan Tobacco Company Ltd. vs. Pakistan Tobacco Company Employees Union(1961) 13 DLR(SC) 280.*

"Any person"- A salesman cannot be included in the expression "any person": Persons such as salesmen who are engaged exclusively in the field of distribution of the products(of a company) are not assimilable either to the group of workers whose manual labour contributes to that product,or

those of the clerical establishment who perform the paper work connected with the operation of the company.The work of salesman is in a wholly different category from manual work or clerical work,and therefore salesman does not fall within the definition of "workman". *Pakistan Tobacco Company Ltd.vs.Pakistan Tobacco Company Employees Union(1961) 13 DLR(SC) 280.*

Main principle-maintenance of harmonious relation between workers and employers,between workers themselves.Unless the right principles are kept in view; provisions of the section will lead to abuse. *Pakistan Tobacco Company Ltd. vs. Pakistan Tobacco Company Employees Union(1961) 13 DLR(SC) 280*

Industrial Dispute-Workmen are not entitled to raise an industrial dispute with their employers relating to other employees who are not workers-Such dispute is not an industrial dispute and Industrial Court has no jurisdiction to adjudicate upon such dispute. *Workers of Bata Shoe Co. Vs. Bata Shoe Co.Ltd.Batapur, Lahore, (1971)23 DLR(SC) 60.*

S.2(I): Lock-out-Dismissal of employees by the employer does not amount to refusal by an employer to continue to employ any number of persons employed by him. *Workers of Bata Shoe Co. Vs. Bata Shoe Co.Ltd., Batapur, Lahore,(1971)23 DLR(SC) 60.*

S.2(q): Break of service.Illegal strike-Entitlement to gratuity,etc.-There is no break of service where striking workers are allowed to return to their work and dismissed workers are re-instated on the basis of mediation or arbitration-Such workers are entitled to gratuity, provident fund and other emolument. *Workers of Bata Shoe Co.Vs. Bata Shoe Co. Ltd., Batapur, Lahore, (1971) 23 DLR(SC) 60.*

S.2(s): Worker-Foreman not a worker-A foreman who supervises and controls the work of his staff is not a worker-Fact that he is to do something with his own hand by way of checking or testing works done by others does not make his work manual within the meaning of the definition of a 'worker'. *Workers of Bata Shoe Co.Vs.Bata Shoe Co.Ltd.,Batapur,Lahore,(1971)23 DLR(SC)60.*

S.2(s): Salesman-Not a workman-Question of condition of service of Salesmen-Cannot be raised under the Act.

Persons who are engaged exclusively in the field of distribution through proper agencies of the products of the Company are not assimilable either to the group of workers whose manual labour contributes to that product,or those of the clerical establishment who perform the paper work connected with the operations of the company.The work of salesmen is in a wholly different category from manual work or clerical work. Salesman do not fall within the definition of "workmen". Therefore, a question of the serving conditions of salesmen of a company is not a question which could validly have been referred to the Tribunal. *Pak. Tobacco Co. Ltd. vs. Employees' Union, PLD 1961 Supreme Court 403=PLR 1961 Dacca 1065=PLR 1961 Dacca 403=13 DLR S.C.280=1961(2) PSCR 145.(Cornelius,C.J).*

S.5(4): Failure certificate--When may be issued.

The Industrial Disputes Ordinance is not to be read as if the failure certificate can be issued at no later time than the close of the period of 28 days following after the dispute comes before him,but such a certificate may be issued at any time after close of that period. *Hotel Metropolie Ltd., Karachi vs. Metropolie Employees,16 DLR S.C.468=PLD 1964 S.C.633.(Cornelius,C.J.).*

S.5(4): Scope-Settlement not possible-Failure certificate should be issued-Conciliation Officer cannot adjudicate on the dispute or refer the matter to his superior.

Adjudication is wholly outside the purview of conciliation,and once the Conciliation Officer saw that a settlement in respect of these points, which are points of law,was not possible, his duty plainly was to declare a failure under section 5(4). In such a case, he expressed an opinion to that effect, but as the High Court has pointed out, he took a course not warranted by law,namely he referred the causes to his superior officer,to whom he left it to make the necessary declaration, or not to make it, as he pleased. *Hotel Metropolie Vs. Metropolie Employees,16 DLR S.C.468=PLD 1964 S.C. 633 (Cornelius,CJ.).*

S.7: Dispute referred in general terms-Specific demands referred later on-Reference of specific demands-Valid-Award binding.

A dispute between the Company and its workers was initially referred by the Government to the Industrial Tribunal in general terms.Later on being approached by the workers the Government added two more specific demands and referred them to the Industrial Tribunal.

It was contended that as the first reference was in general terms, and not with reference to specific demands or disputes as such the reference itself was bad, and therefore, the additional demands though referred to the Tribunal specifically could not be gone into by the Tribunal,therefore the Tribunal was from the beginning acting without jurisdiction.

Held: Even if the first reference being in general terms was bad in law, the appointment of the Industrial Tribunal under section 7 of the Act was not bad in law, as the subsequent two demands were specifically referred by the Government the award in respect of them would not be bad simply because the first reference was bad. *Bengal River Service Co.vs. EB Marine Union, PLD 1961 Dacca 559=PLR 1960 Dhaka 923=12 DLR 865(DB) (Sattar,J.).*

Ss.7,10: Tribunal not constituted under S.7-Dispute referred to it under S.10-Objection to constitution of Tribunal not sound.

It was contended that the Tribunal was constituted by the Government under section 7(I) of the Act,which confers necessary power of constitution, but it was pointed out that no notification under this provision was issued in relation to the appointment of the Tribunal but only a notification was issued under section 10 referring the dispute to him.The argument is of a technical nature.Even though section 7 was not mentioned it is clear that the words of the notification under section 10 are words of constitution and have the effect of constituting a Tribunal composed of a single member. *Pak Petroleum Workers Federation vs.Burmah-Shell Oil S & D Co.of Pak.Ltd.PLD 1961 Supreme Court 479=1962(I) PSCR 117=13 DLR S. C.299.(Cornelius,CJ).*

S.10: Declaration of a bonus to the employees of a company is not the function of an Industrial Tribunal,it is a function belonging exclusively and entirely to the company. *Pakistan Match Co.Vs.Pak.Match Factory Workers Union (1959) 11 DLR(SC) 293.*

When Supreme Court will interfere: Within the operative and detailed provision of awards, the Supreme Court is not likely to interfere, except in extreme cases of patently unjust proposals which are based on no evidence, or are made in defiance of the law of evidence. *Sui Gas Transmission Co. Vs. Islamic Republic of Pak.(1959)11 DLR(SC) 301.*

It is not within the province of the Tribunal to go into the merits of the allegations but its jurisdiction is only to see if there was a fair enquiry and

the employee was given opportunity to explain the charge. *Sui Gas Transmission Co.Vs.Islamic Republic of Pak.(1959) II DLR(SC) 301.*

Question of providing free primary school for employee's children-Not company's responsibility. *Sui Gas Transmission Co.Vs.Islamic Republic of Pak.(1959)11 DLR(SC) 301.*

Discrimination between employee at headquarters of a company and at places outside-Permissible. *Sui Gas Transmission Co.Vs. Islamic Republic of Pak.(1959)11 DLR(SC) 301.*

It is not the obligation of employers to give maternity benefits to wives of employees. *Sui Gas Transmission Co.Vs.Islamic Republic of Pak.(1959)11 DLR(SC) 301.*

It is true that a Tribunal dealing with an industrial dispute is not Court in the sense that it is strictly bound by the rules of evidence but that does not mean that it can act on mere conjecture and its own peculiar ideas of social justice.It is obligatory on its part to act within the jurisdiction and according to the law applicable to the matter in dispute. *Sui Gas Transmission Co. Vs. Islamic Republic of Pak.(1959)11 DLR(SC) 301.*

"Appropriate Government", in case of dispute arising in the capital of the Federation-Whether Central Government or Government of West Pakistan-Difficulties underlying question indicated in para 10 and others following. *Remington Rand of Pak. Vs. Islamic Republic of Pak.(1958) 10 DLR(SC) 84.*

S.10: Award on experimental basis-Valid.,

It was argued that award in experimental form with the appointment of another arbitrator is not contemplated by the Act.

Held; having regard to the scheme envisaged in the Industrial Disputes Act to bring about settlement of disputes between the workers and their employers engaged in industries, and to bring about industrial peace in the country, it cannot be said that the award in this respect is either illegal or in excess of jurisdiction. *Bengal River Service Co. Vs. E.B. Mariners Union, PLD 1961 Dacca 559=PLR 1960 Dacca 923=12 DLR 865(DB).(Sattar,J).*

S.10: Demand referred to Tribunal at a later stage after Reference of subsequent demand-Valid.

The contention was that section 10 of the Industrial Disputes Act does not contemplate a second reference, and therefore, the Tribunal had no jurisdiction to go into the demands referred to it subsequently.

Held; there is no reason why the Government cannot call in aid the provisions of section 21 of the General Clauses Act in support of the view that they had the power to add to the disputes already referred to the Tribunal. *Bengal River Service Co.Vs. E.B.Mariners' Union, PLD 1961 Dacca 559=PLR 1960 Dacca 923=12 DLR 865(DB).(Sattar,J).*

S.10: Non-employment-Meaning of - when becomes a dispute.

The expression "non-employment" has to be given a restricted meaning and one of the restrictions must be that non-employment must be regarded as a condition following upon a state of employment, and that such non-employment must be the result of incidents or actions which are a matter falling within the definition of an industrial dispute. Thus, for instance, if by change in a system of working which has been protested against by the workers the employers succeed in making a number of the employees surplus to his requirement, and dispenses with their service as redundant, as would arise where persons who had been employed became non-employed in consequence of an action which was the subject of a dispute between the employers and the employees, other circumstances also may be readily conceived in which in consequences of such disputed actions, a state of employment is brought to an end,and the person thus rendered unemployed could claim that his condition of non-employment "was a matter for adjudication being connected with the main dispute". The only circumstances in which the necessity for such a nexus might perhaps be excused is where the loss of employment and the raising of the main dispute are reasonably close to each other in point of time, so as to raise a presumption that the two incidents had something to do with each other. *National & Grindlays Bank Ltd. vs.E. Pak. Bank Employees' Union, PLD 1961 Supreme Court 383=13 DLR S.C. 169=PLR 1961 Dacca 731=1961 (2) PSCR 85.(Cornelius,CJ).*

S.10: Reference of dispute without specification of issues-Reference not always bad.

Held; that State action by a Government referring " general" industrial dispute to a Tribunal cannot be approved, but in case where it may be presumed that although the order was made in that frame without specification of issue,the Government were in fact apprised of the difference

which had given rise to the industrial dispute,then the reference need not be avoided, especially where the parties have submitted to it and having duly presented their cases before the Tribunal and have gone even further and accepted a number of the Tribunal decisions. *Karnafully Paper Mills.Ltd. vs.Workers Union, PLD 1961 S.C. 329=1961 (2) PSCR 99=13 DLR S.C.160=PLR 1961 Dacca 919.(Cornelius,CJ.).*

The same was held in. *N & G. Bank Ltd.vs.E.Pak.Employees Union,PLD 1961 Supreme Court 383=13 DLR S.C. 169=PLR 1961 Dacca 731=1961 (2) PSCR 85. (Cornelius,CJ).*

S.10(I): Reference to the Industrial Tribunal must be with respect to the points of dispute raised and dealt with by the Conciliation officer-A general reference made in wide terms, illegal and the Tribunal not competent to adjudicate on demands beyond those dealt with by the Conciliation Officer.Government's assent to the adjudication made by the Tribunal in such a case will not make it valid. Pakistan Match Co.Vs.Pak.Match Factory Workers Union. (1959)11 DLR(SC) 293.

S.10(I)(3): Matter not referred to the Tribunal-It has no jurisdiction to pass any order on that matter. Where the legality of illegality of a lockout was not referred to the Tribunal, the order or payment of wages in consequence of an illegal lockout was beyond the jurisdiction of the Tribunal.

Under the general provisions of section 10, if an industrial dispute exists or is apprehended, the Government may, by order in writing, refer the dispute to a Board for promoting a settlement thereof, or refer any matters appearing to be connected with or relevant to the dispute to a Court of Inquiry, or refer the dispute to a Tribunal for adjudication. Thus what can be referred to a Board or Tribunal is a dispute whereas the subject of reference to a Court can only be matters appearing to be connected with or relevant to a dispute. Where the reference is to a Board, it is for the purpose of promoting a settlement of the dispute but where the reference is to a Tribunal it is for adjudication of the dispute. The power to refer is discretionary with the Government except where the dispute relates to a public utility service and a notice under section 22 has been given or where the parties to a dispute apply for a reference to a Board, Court or Tribunal. *Remington Rand of Pak.vs.Islamic Republic of Pak.(1958) 10 DLR(SC) 84.*

S.15: Award-Appeal against an award of Industrial Tribunal-Supreme Court exercising supervisory jurisdiction can interfere to correct errors of

Law. *Dalmia Cement Co.Vs. Dalmia Cement Factory Workers Union(1958) 10 DLR(SC) 157.*

Where the Tribunal did not appreciate the basic principles applicable to the case, but based the award on opinion and inference which are unsupported by facts,the Supreme Court would interfere and set aside such award. *Dalmia Cement Co.Vs. Dalmia Cement Factory Workers Union(1958)10 DLR(SC) 157.*

Industrial Tribunal has the indicia of a Court and though not bound strictly by rules of evidence could not yet act on mere conjecture. *Dalmia Cement Co. Vs. Dalmia Cement Factory Workers Union(1958)10 DLR(SC)_ 157.*

Award based on mere guess work-Award extending rule regarding confirmation of probationers to all temporary workers whereas the demand of union related only to probationers-Allowing increased rate of acting allowance arbitrarily-Allowing overtime wages to non-workmen without any functual basis-award set aside. *Dalmia Cement Co. Vs. Dalmia Cement Factory Workers Union(1958)10 DLR(SC) 157.*

S.15: " Shall submit award within 3 months"- Time limit imposed is for securing expedition of the award only. *Pak. Petroleum Workers Federation Vs. Burmah Shell(1961)13 DLR(SC) 299.*

Proceedings taken after the expiry of extended time are capable of being validated. *Pak. Petroleum Workers Federation Vs.Burmah Shell(1961) 13 DLR(SC) 299.*

When the period of three months expire without the Tribunal making the award-Time not extended by Government-Reference infructuous in law.. P*ak. Petroleum Workers Federation Vs. Burmah Sheel(1961)13 DLR(SC) 299.*

S.15: Extension of time to Tribunal-if may be after the expiry of previously granted time-Award after such extension-Valid.

There are no words in section 15(1) of the Industrial Disputes Act, 1947 to prevent the referring Government from extending time for the making of the award after the expiry of the previously extended period. In other words, interediate proceedings of the Tribunal taken after the expiry of extended time are capable of being validated ex post facto, by an extending order of

the referring Government, and there seems no good reason why this principle should not extend to the final proceeding, namely, the making of the award. By the making of an order of extension after the award has been made during a period not covered by an extension order, "the award and all else done in the adjudication proceedings, during such extended time are rendered valid and effective."*Pak. Petroleum Workers Federation Vs. Burmah-Shell Oil S and D Co.of Pak.Ltd., PLD 1961 Supreme Court 479=1962 PSCR 117 = 13 DLR S.C. 199.(Cornelius, CJ).*

S.15: Objection of limitation of time.

The imposition of limits of time upon successful conclusion of the adjudication must be intended for the purpose of securing expedition. *Pak. Petroleum Workers Federation Vs. Burmah-Shell Oil S & D Co. of Pak, Ltd., PLD 1961 S.C.479=1962 (I) PSCR 117=13 DLR S.C.299.,(Cornelius,)CJ).*

S.19: Award to remain in force for one year- If may be reagitated after that period.

In accordance with section 19 as it stood on the date when the award was delivered it was to remain in force only for a period of one year. The award cannot, therefore, be any bar to the reagitation of the matter involved after that period. *Pak. River Steamers Ltd. vs. Province of E.Pak., PLD 1961 S.C. 393=1961 (2) PSCR 131=13 DLR S.C. 153=PLR 1961 Dacca 936.(Kaikaus,J).*

S.19: Settlement-=Meaning of-When is a bar to agitation.

The word "settlement" is defined in section 1(p) of the Industrial Disputes Act,1947 and it means "a settlement arrived at in the course of conciliation proceedings." Where the settlement was not arrived at in the course of conciliation proceedings but while proceedings were pending before a Tribunal, section 19(2) is inapplicable.

Neither an award nor a settlement can in a case where it does not bind the parties under section 19 be relied upon as a bar and it can only be considered as a relevant circumstance when dealing with that particular demand which has already been the subject-matter of the award or the settlement. *Pak. River Settlement Ltd. Vs. Province of East Pak, PLD 1961 Supreme Court 393=13 DLR(S.C.) 153=PLR 1961 Dacca 936=1961(2) PSCR 131.(Kaikaus, J).*

S.19(2): Applicability of the section 19(2): The provisions of section 19(2) of Industrial Disputes Act are not applicable to the case of a settlement between employers and workers when such settlement was not arrived at in course of a conciliation proceedings before a Conciliation Officer or Board but they are applicable in the case of proceedings which were pending before a Tribunal; *Pak. River Steamers Ltd. vs. Province of East Pakistan(1961) 13 DLR(SC) 153.*

Ss.22 and 33: Employer's right to dismiss employees who have gone on strike is not taken away even though the strike is legal but unjustified. Remington Rand vs.Islamic Republic of Pak.(1958) 10 DLR(SC) 84.

S.26: 'Mens rea'-Not essential ingredient of offence under the section.

Mens rea is not an essential element in constituting an offence under section 26 of the Act. The object of the Act is the speedy settlement of an industrial dispute.If mens rea be considered an essential element, then the object of the Act will be frustrated as in that case, strikes and lockouts may be going on and a vicious atmosphere may be created which will obstruct all attempts to investigate into the matter and settle the disputes between the parties. *Abdul Gani vs.The State, PLD 1961 Dacca 21=12 DLR 400.(Hasan,J).*

S.33: The question before an Industrial Tribunal dealing with an application under section 33 of the Act,for permission to dismiss a workman, and thus to determine the employer-employee relationship, the existence and continuation of which is the foundation and purpose of the Industrial Tribunal's jurisdiction in the matter, cannot be dealt with by the Industrial Tribunal arbitrarily or without regard to principle. It is an act of quasi-judicial nature. *River Steamer Navigation Vs. A.B.S.Chowdhury, (1959) II DLR(SC) 108.*

Application under sec.33- Mere participation in illegal strike-Will not in all circumstances be a sufficient ground justifying expertise of discretion in employer's favour.

Where a strike is attended by circumstances of aggravation the authority acting under section 33 should consider carefully whether the act of the employee does or does not give rise to a right in the employer to say that continuation of such a person in the employment is injurious to the interest

of the employer. *River Steamer Navigation Vs. A.B.S. Chowdhury(1959) II DLR (SC) 108.*

Discharge of certain employees in the interest of the industry: Discharge of certain employees from an industry in the interest and for the good of the industry is not a matter under section 30 of the Ordinance and therefore in respect of such retrenchment, the Industrial Court exercises no jurisdiction. *Zeal Pak Cement Factory Ltd.Vs.Chairman, West Pakistan Industrial Court, Lahore (1965) 17 DLR(S.C.) 317.*

Dismissal for misconduct not connected with dispute under consideration-Constitutes no violation of section 33: Company's standing order requires termination of service for act of insubordination, or refusal to obey reasonable order- cannot be objected to. *Pakistan Petroleum Workers Federation Vs. Burmah-Shell Oil Storage and Distributing Co.(1961) 13 DLR(SC) 299.*

S.33: Probationer-May be discharged during continuation of dispute where the discharge is not related to the dispute.

For every termination of employment of a permanent employee, one month's notice in writing should be given either by the Company or the employee, or one month's pay is given in lieu of notice. In the case of casual or probationary employees, however, it is expressly provided that they shall not be entitled to any notice or pay in lieu thereof, on termination of service, nor would they be required to give notice to the Company if they desire to leave the Company's service. It is clear that the service of the probationers is of a tentative nature. During the period of probation both parties are at liberty to decide whether they would substitute the provisional agreement between them by a contract of permanent service or not.The very idea of probation is that it would be a trial period during which the employer might make up his mind whether he wishes to retain the services of the workmen or not. If, therefore, the Company forms an unfavourable impression about an employee during the period of probation, there would be nothing to prevent the Company from sending him away without notice. But the Tribunal may interfere where the discharge of the probationers is malafide or on ground of misconduct, etc. *Glaxo Laboratories (Pak). Ltd. vs.Pakistan, PLD 1962 Supreme Court 60=14 DLR S.C. 17=1962(I) P.S.C.R. 314=APR 1962 SC 32 (S.A. Rahman,J.).*

Ss.33, 33-A: Reinstatement of workers.

-Tribunal or Court hearing appeal has power to order reinstatement of workman.

There are no words of limitation suggesting that in an appropriate case the Tribunal can not order reinstatement of a workman. The Act is designed to ensure industrial peace and harmony between the employers and their workmen. With that object in view the legislature appears to have provided that in suitable cases the reinstatement of a victimized worker may be ordered. It is now well settled that a Tribunal,functioning under the Act, can alter the terms of contract between the employer and his workmen in order to resolve any industrial dispute and this Court has in several cases upheld orders of reinstatement of workmen whose services were terminated illegally. It is too late in the day to urge that such a power is not vested kin an Industrial Tribunal or in a Court that entertains an appeal from an award of such a Tribunal. The definition of an "industrial dispute " given in the Act clearly includes the question of reinstatement of a dismissed employee within its scope *Glaxo Laboratories (Pak.) Ltd. vs. Pakistan, PLD 1962 Supreme Court 60=14 DLR S.C. 17=1962(I) P.S.C.R. 314=APP 1962 S.C. 32. (S.A. Rahman,J).*

S. 33: Workers guilty of commission of offence during Industrial dispute-Order of discharge illegal.

Where some of the workers were discharged on the ground that they had committed a criminal offence during an Industrial dispute.

Held: There appears to be no warrant for the contention that if such misconduct also happens to be covered by the definition of an "offence". then it ceases to have any connection with the industrial dispute. The termination of service of these workmen was by way of punishment for their alleged participation in unlawful activity during the strike and no enquiry was held to bring any such charge home to them. Prima facie, the purported discharge of these workmen from service could not be sustained. *Glaxo Laboratories (Pak) Ltd. vs.Pakistan, PLD 1962 Supreme Court 60=14 DLR S.C. 17=1962 (I) P.S.C.R. 314=APR 1962 S.C. 32 (S.A. Rahman,J.).*

S.33-A: Reinstatement- When justified - Effect of reinstatement on employee.

It would depend upon the circumstances of each case whether the relief of reinstatement or compensation for wrongful discharge from service would be the appropriate remedy. No hard and fast rule can be laid down in this connection. In the case of reinstatement, however, it seems to be necessary to clarify that an order passed in favour of the workman does not have the effect of improving his contractual rights under the terms of his service. *Glaxo Laboratories (Pak) Ltd. Vs. Pakistan, PLD 1962 Supreme Court 60=14 DLR S.C. 17=1962(I) PSCR 314=APR 1962 S.C. 32. Foll. PLD 1959 S.C. 31. (S.A. Rahman,J).*

S.33-A: Reinstatement of workman- Workman may still be dismissed after proper inquiry for misconduct.

The rights of a workman are, by no means, improved by "misconduct" of which he may be guilty and for which he may be liable to be dismissed by the Company after due inquiry.If a direction is given for reinstatement of such a workman on account of want of due inquiry preceding his dismissal, it does not destroy the right of the Company after reinstatement, to proceed against him, in accordance with the mode permitted by law. *Glaxo Laboratories (Pak) Ltd. vs. Pakistan, PLD 1962 Supreme Court 60=14 DLR S.C. 17=1962(I) PSCR 314=APR 1962 S.C.32.(S.A.Rahman,J).*

Industrial Relations Ordinance, (XXIII OF 1969).

Industrial Relations Ordinance, 1969 repeals what is contained in E. P. Industrial Disputes Act, 1965 and adds something more : Rules framed under Industrial Disputes Ordinance, 1959 continued to be the operative Rules under the E. P. Industrial Disputes Act. 1965 (E. P. 19, Industrial Disputes Act, 65 and Industrial Disputes Ordinance, 1959). *National Bank of Pak. vs. Golam Mostafa (1975) 27 DLR 158.*

S. 2 (Xiii)-read with sections 34 and 36 (I).

An application u/s. 34 relates to an industrial dispute within the meaning of s. 36 (I). *Pubali Bank Ltd. vs. Chairman (1986) 38 DLR 427.*

Industrial dispute referred to in s. 36 is one which falls within the definition of the words given in section 2(xiii)- hence a Labour Court would

be deemed to be a civil court having power to issue injunction order staying the proceeding in Labour dispute.
Pubali Bank Ltd. Vs. Chairman,(1986) 38 DLR 427

S.2(xv)-Labour Court is a criminal court when trying offence under the Ordinance. *Mr. A. K. Khan Vs. The Chairman, 2nd Labour Court, (1973) 25 DLR 192.*

S. 2(XXVIII)-The word "includes" in s. 2 extends scope of definition of 'worker' or 'workman'. *James Finlay & Co. Ltd. Vs. The Chairman, Second Labour Court (1981) 33 DLR (AD) 58.*

Meanings of the definition of 'worker' and 'workman' have been elaborated in order to see whether a dismissed or discharged worker may apply under the provisions of I. R. O. to redress his grievances in relation to an Industrial dispute. *James Finlay & Co ; Ltd. Vs. The Chairman, Second Labour Court, (1981) 33 DLR(AD) 58.*

Employee of Postal Department is a workman within the meaning of Ordinance XXIII of 1969 and can apply for enforcement of his right u/s.34. Employment of Labour (S.O.) Act not applicable in his case. *Govt.of Bangladesh Vs. The Chairman 2nd Labour Court (1979) 31 DLR 62.*

S. 12(2)-Labour Court not to be deemed a Civil Court: Labour Court trying a complaint of an individual worker was not a labour court adjudicating and determining a labour dispute and as such could not be deemed to be a civil court under section 12(2) of the Labour Disputes Act 1965. *Bangladesh Fishermen Vs. Chairman L. Court, Chittagong (1975) 27 DLR 368.*

Co-operative Society Act is a general Act-Industrial Relations Ordinance (1969) and Employment of Labour (Standing Orders) Act are special statutes. In case of conflict special statutes shall prevail-Later of the two prevails. *Bangladesh Fishermen Vs. Chairman L.Court, Chittagong (1975) 27 DLR 368.*

Ss.15 & 34-Supposing a worker who has been dismissed by the employer in contravention of section 15 of the Industrial Relations Ordinance, what will be his remedy ? The dismissal from service can be made under section 17 of the Standing Orders Act if the worker is found guilty of misconduct and termination can be done under section 19. Apart from such dismissal and termination if the employee is dismissed by the

employer and where there is no such trade union and collective bargaining agent then it is to be understood that all such employees are without remedy. Such cannot be the contemplation of the legislature.

In the Industrial Relations Ordinance, section 34 has been amended in 1970 and both the collective bargaining agent and the individual employer or worker has been given the right to invoke its jurisdiction. Whereas, before amendment it was only for a party to an industrial dispute which could invoke the jurisdiction. There lies the whole difference, *James Finlay & Co. Ltd. Vs. The Chairman, 2nd Labour Court. (1981) 33 DLR (AD) 58.*

Ss. 26-31-Industrial disputes-how can be raised- compulsory preliminary steps. *Rly. Men's Stores Vs.Chairman, L. Court (1978) 30 DLR (SC) 251.*

Ss. 31, and 34-Procedure as laid down in sections 31, 33 and 34-Common ground is that there must be in existence an industrial dispute. *Rly. Men's Stores Vs. Chairman, L.Court(1978) 30 DLR(SC) 251.*

S. 34--Existence of industrial disputes is a must u/s. 34 before amendment-After amendment of sec. 34 in 1970 existence of an industrial dispute not essential- An individual industrial worker competent to apply for relief. *Rly. Men's Stores Vs. Chairman, L. Court (1978) 30 DLR (SC) 251.*

Application u/s. 25 of the Employment of Labour (Standing Orders) Act by an individual worker is certainly maintainable as the said provision has been specifically made under the Act. *Rly. Men's Stores Vs. Chairman, L. Court (1978) 30 DLR (SC) 251.*

Worker's termination, dismissal or discharge, not in connection with any industrial dispute-is not a worker under Industrial Relations Ordinance and can not apply through the collective bargaining agent. *Rly Men's Store Vs. Chairman, L. Court (1978) 30 DLR (SC) 251.*

A worker dismissed from service, if dismissal not related to any industrial dispute he can not maintain application u/s. 34. *Assistant Electrical Engineer Vs. Chairman, Labour Court, Chittagong (1978) 30 DLR 211.*

E. P. Employment of Labour (Standing Orders) Act. (VIII of 1965). Under s. 19 of Act VIII of 1965 by amendment on 17th Oct. 1970 what has

been barred was the remedy under it, but the right secured to a worker u/s. 19 did not extinguish but survived. *Omar Sons Ltd. Vs. Chairman, Ist. Labour Court (1976) 28 DLR 178.*

Where functions assigned is ministerial, even though name of the post indicates otherwise the person concerned is a worker: The question arose whether Mr. Kashim, the opposite party No. 2 herein is worker within the meaning of s. 34 of the Industrial Relations Ordinance, 1969; his post being described as the Assistant Superintendent of the petitioner's Company.

Both are enactments at par, one supplementary to the other. *Omar Sons Ltd. Vs. Chairman, Ist. Labour Court (1976) 28 DLR 178.*

After amendment of s. 34 a collective bargaining agent or an employer may maintain an application for enforcement of any right conferred by any law or award or settlement. *G.M. Hotel Intercon. Vs. 2nd Labour Court (1976) 28 DLR 160.*

A dismissed worker can bring an application u/s.34 for enforcement of guaranteed or secured right in an industrial dispute when raised by collective bargaining agent or an employer. *G.M.Hotel Intercon, Vs. 2nd Labour Court (1976)28 DLR 160.*

The express omission of all references to section 34 and the repeal of the expressions "relating to a matter in respect of which an application is made to it under section 34" from clause (a) shows the positive intention of the legislature that the Labour Court will not, while proceeding under this clause, decide an application under section 34. *G. M. Hotel Intercon, Vs. 2nd Labour Court (1976) 28 DLR 160.*

Over-time work was done many years before the Industrial Relations Ordinance was enacted. These claims ought to have been enforced under the law which was in force at the relevant time. These claims cannot be enforced under the Industrial Relations Ordinance which came into force long after the cause of action arose. *Bangladesh Shilpa Bank Vs. M/S. S. S. Mujibullah (1977) 29 DLR 68.*

S. 34-Dismissed worker cannot maintain an application u/s. 34. His remedy in a complaint u/s. 25 of the Employment of Labour (Standing Orders) Act: A dismissed worker, his dismissal having no connection with industrial dispute, cannot maintain an application u/s. 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 Barek Sarder (1979) 31 DLR 240.*

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. *A. K. Khan Vs. Chairman, Labour Court (1980) 32 DLR 164.*

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 Vs. Chairman, Labour Court (1980) 32 DLR 164.*

A worker who voluntarily resigns from his service is not a worker u/s. 2 of the Ordinance and can not maintain an application u/s. 34 for wages in respect of compensatory leave. *Manager, Kushtia Sugar Mills Vs. Chairman Khulna Labour Court (1980) 32 DLR(AD) 162.*

Respondent No. 2 cannot seek remedy under the Industrial Relations Ordinance since he does not fall within the definition of worker as given in section 2(XXVIII) of that Ordinance. Having ceased to be a worker by voluntarily resigning from the petitioner's company which has also accepted such resignation before he filed an application under section 34 of the Ordinance before Labour Court, his remedy under that Ordinance is barred. The respondent No. 2 has then no locus standi to file an application under section 34 of the Ordinance, and this application under the section is not maintainable. *Manager, Kushtia Sugar Mills Vs. Chairman Khulna Labour Court (1980) 32 DLR(AD) 162.*

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 Relations Ordinance on and from 16th October, 1970. *A. K. Khan & Co. Ltd. Vs. Chairman Labour Court, Ctg.(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 worker's right under sections 17, 18 and 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. *A. K. Khan & Co. Ltd. Vs. Chairman Labour Court, Ctg.(1980) 32 DLR 164.*

Section 34 of the Industrial Relations Ordinance does not apply to a person who has ceased to be in employment of the employer., Messrs Malconssis Shipping Co. Vs. Chairman, Labour Court, Chittagong (1980) 32 DLR 72.

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. *A. K. Khan & Co. Ltd. Vs. Chairman, Labour Court Chittagong (1980) 32 DLR 164.*

Application u/s. 34 when is barred. (Per Fazle Munim, J. with whom K. Hossain C. J. & K. M. Subhan, J. agreeing). *James Finlay vs. Chairman 2nd Labour Court (1981) 33 DLR(AD) 58.*

If the employee was not dismissed in the course of an industrial dispute or his dismissal did not lead to any such dispute, his applications under section 34 of the Ordinance would appear to be barred. *James Finlay vs. Chairman 2nd Labour Court (1981) 33 DLR(AD) 58.*

As the section now stands existence of any industrial dispute is no longer a pre-condition to taking a proceeding before the Labour Court. It is now open to an 'employer' or a 'workman' without being a party to an 'industrial dispute' to apply to the Labour Court for enforcement of any right, etc. Section 34 does not have any manner of application to the case of an individual worker in raising an individual dispute. *James Finlay vs. Chairman 2nd Labour Court (1981) 33 DLR(AD) 58.*

Victimisation is an infringement of right-Relief can be had u/s. 34. *Rly. Men's Stores vs. Chairman, L. Court (1978) 30 DLR(SC) 254.*

This section contemplates disputes other than industrial disputes. *James Finlay & Co. Ltd. Vs. The Chairman, 2nd Labour Court. (1981) 33 DLR (AD) 58.*

In case of dismissal, etc. the workman can avail of the provisions of s. 34. *James Finlay & Co. Ltd. Vs. The Chairman, 2nd Labour Court.(1981) 33 DLR (AD) 58.*

A worker is without a right when his dismissal, etc. is illegal. *James Finlay & Co. Ltd. Vs. The Chairman, 2nd Labour Court.(1981) 33 DLR(AD) 58.*

Section 34 as it stands after amendment, puts no limitation in the filing of an application by a 'worker' or 'workman' before the Labour Court for the enforcement of his right guaranteed or secured under any Law. *James Finlay & Co. Ltd. Vs. The Chairman, 2nd Labour Court. (1981) 33 DLR(AD) 58.*

Collective bargaining agent, employer or workman can apply to the Labour Court for enforcement of any right. *James Finlay & Co. Ltd. Vs.The Chairman, 2nd Labour Court. (1981) 33 DLR(AD) 58.*

When findings of domestic inquiry is challenged, the Labour Court is bound to examine the proceedings of the domestic inquiry. *James Finlay & Co. Ltd. Vs. The Chairman, 2nd Labour Court. (1981) 33 DLR(AD) 58.*

The moot point is whether a dismissed worker can file a petition under section 34 of the Industrial Relations Ordinance.

After the amendment of section 34 it appears that the contention that first part of the definition of 'worker' or 'workman' does not include a dismissed worker does not appear to be sound. *James Finlay & Co. Ltd. Vs. The Chairman, 2nd Labour Court. (1981) 33 DLR(AD) 58.*

When application u/s. 34 can be brought: A dismissed worker can bring an application under section 34 during the continuance of an industrial dispute which under the Ordinance can only be raised by any collective bargaining agent or an employer according to the manner laid down in the above mentioned sections of the Ordinance. *James Finlay & Co. Ltd. Vs. The Chairman, 2nd Labour Court. (1981) 33 DLR(AD) 58.*

Workman out of employment can not make an application following an indirect method of making such an application through the collective

bargaining agent. *James Finlay & Co. Ltd. Vs. The Chairman, 2nd Labour Court. (1981) 33 DLR(AD) 58.*

Question whether the applications under section 34 can be converted to be under section 25 of the Act of 1965.

Conditions to be observed in regard to filing an application by a worker before the Labour Court which has not already taken cognizance of the dispute under I. R. O.

Clauses (a) & (b) of sub-sec. (I) of sec. 25 provide time-limits for doing certain things prior to his filing the application before the Labour Court. Clause(a) requires that the worker concerned should submit his grievance to his employer in writing by registered post and the employer has to communicate his decision in writing to the said worker within the prescribed period. Clause (b) provides that if the employer gives any decision under clause (a) or if given, the worker is not satisfied, then he may move the Labour Court within the time-limit mentioned therein. Another condition is that the Labour Court must not have already taken cognizance of the dispute under the provisions of the Industrial Disputes Ordinance of 1959.

Unless provisions of s. 34 are complied with an application u/s. 34 cannot be converted into one u/s. 25 of Employment of Labour (S.O.) Act. 1965. *James Finlay & Co. Ltd. Vs. The Chairman, Second Labour Court (1981) 33 DLR (AD) 58.*

An employee of one Tea Estate transferred without his consent to another Tea Estate belonging to a different owner-Such transfer not valid in law-The employee can seek his remedy u/s. 34 of the I. R. O. M/s. *Chowdhury Sons Vs. Chairman, Labour Court.(1983) 35 DLR 356.*

Ss. 34 and 35 (5)(d)-General jurisdiction to decide industrial dispute has been given to a Labour Court under section 35(5)(d). The Court as well can decide an industrial dispute raised by a single workman under section 34. *G. M. Hotel Inter Con. Vs. 2nd Labour Court (1976)* 28 DLR 161.

Ss. 34 and 43-An industrial dispute can only be raised by collective bargaining agent or employer in the manner prescribed in the Ordinance and not otherwise. *G. M. Hotel Inter Con. Vs. 2nd Labour Court(1976) 28 DLR 161.*

When an application is filed by a workman for relief in his "individual dispute", the dispute cannot be entertained by the Labour Court as an "industrial dispute", and the decision of the Labour Court does not become an "award". This view gets full support from section 43 of the Ordinance. An individual dispute brought by a workman is adjudicated as an individual dispute, and it terminates in a decision.

In his individual capacity the relief to a workman against his dismissal under section 34 of the Industrial Relations Ordinance is to be sought under the provisions of S.25 of the Employment of Labour(S.O.) Act. A decision on such an application is to be termed a "decision" and not an "award". *A. Roberio Vs. Labour Appellate Tribunal (1975) 27 DLR 99.*

--Secs. 34 & 43-A dispute when it is not an industrial dispute within the meaning of sec.43 of I.R.O. is not an Industrial dispute under the Industrial Relations Ordinance. The present dispute alleged to be one u/s. 34 of I. R. O. being brought by some workers in their individual capacity is not an industrial dispute. *Chairman C.P.A. Vs. Kalipada Day. (1987) 39 DLR 39*

-There cannot be any recognition of industrial dispute u/s. 43 of the I.R.O., unless the dispute has been raised by a collective bargaining agent. *Chairman C.P.A. Vs. Kalipada Day. (1987) 39 DLR 39*

-Before the amendment of sec. 34 on 17.10.70 dispute of individual worker could be raised by collective bargaining agent. By the amendment of s. 34 on 17.10.70 individual worker allowed to apply u/s. 34. *Chairman C.P.A. Vs. Kalipada Day. (1987) 39 DLR 39*

Ss. 34, 43 & 36(2)-Before the amendment on 17.10.70 as found in sections 34 & 43 individual disputes could only be raised by the collective bargaining agent- Since section 36(2) exists as it was before, the position is, the Labour Court shall not be deemed to be a civil court while dealing with the individual disputes. *Chairman C.P.A. Vs. Kalipada Day. (1987) 39 DLR 39*

-After the amendment when an individual worker raises an individual dispute before the Labour Court, the latter shall dispose of the case in accordance with the principle of natural justice. *Chairman C.P.A., Vs. Kalipada Day. (1987) 39 DLR 39.*

-Consequently while determining such a dispute raised by an individual worker, the Labour Court shall not be deemed to be a civil court. *Chairman C.P.A. Vs. Kalipada Day. (1987) 39 DLR 39*

-Provisions regarding temporary or permanent injunction are in the Specific Relief Act which can be granted in a suit- Procedure regarding granting of temporary injunction is laid down in the C.P. Code- Labour Court dealing with an individual dispute raised by an individual worker, not being a civil court can not grant temporary injunction. *Chairman C.P.A. Vs. Kalipada Day. (1987) 39 DLR 39.*

S. 35.-Absence of the member of the Court from its sitting does not invalidate the decision given by the Court- It is, however, not to be interpreted that the court may function without a member at all. *General Manager Vs. Golap Rahman. (1982) 34 DLR(AD) 166.*

-Provision of law is that a two-member panel will be there to assist the court-Absence of one member does not render the decision of the court illegal. *General Manager. Vs.Gopal Rahman. (1982) 34 DLR(AD) 166.*

Leave was granted to consider that the Company and its Managing Director both being residents of Chittagong and the petitioner though in charge of Bogra Sales Depot of Company was employer of the Company and hence the complaint case clearly fell within the jurisdiction of 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. *Md. Mahmudul Haque Vs. Md. Shamsul Alam. (1984)36 DLR(AD) 179.*

Industrial Relations Rules of 1977 do not provide for the consequence of the failure of any member of the Labour Court to give his advice as required under section 35. It provides for removal of a member of the Labour Court on the ground of absence from three consecutive sittings of the Court. *Project in charge, Vs. Mr.Aminur Rahman Khan (1979)31 DLR 124.*

S. 35(2)-The advice must be tendered and taken into consideration of the case. The tender of advice by both the members constituting the Labour Court is mandatory in terms of section 35(2) read with rule 34(I).

Failure to tender advice in terms of section 35(2) read with rule 34(I) amounts to a violation of the mandatory provision which vitiates the decision of the Labour Court. *National Bank of Pak. Vs. Golam Mostafa (1975) 27 DLR 158.*

Advice of a member as required under rule 34(1) to the Chairman is mandatory-Failure to give such advice is fatal to the award.

Rule 34(I) not inconsistent with what is said in s. 35(2) of the Industrial Relations Ordinance.

A comparision of the language of the two enactments reveals that there is no substantial departure as to requirements of the constitution of the Labour Court in the latter enactment. *National Bank of Pak. Vs. Golam Mostafa (1975)27 DLR 158.*

Tender of advice by any member of the labour Court constituted under section 35(2) of the Industrial Relations Ordinance, 1969, to the Chairman of the Court mandatory- Where such opinion has not been tendered or taken the decision of the Court is null and void.

It is true that the Chairman has been given the liberty to accept or not to accept their advice. But the enactment does go no further. The law, therefore, does not dispense with the tender of advice itself. The advice must be tendered and taken into consideration by the Chairman before the determination of the case.

Rule 34(I) merely adumbrates the manner and method of obtaining the advice. The rule is in no way repugnant to or inconsistent with or in excess of the requirements of sub-section (2) of section 35 of the Industrial Relations Ordinance. It is intra vires. The tender of advice by both the members constituting the Labour Court is mandatory in terms of section 35(2) read with rule 34(I).

Where there is failure to tender advice in terms of section 35(2) read with rule 34(I), it amounts to violation of the mandatory provision and as such vitiates the decision of the Labour Court. *National Bank of Pak. Vs. Golam Mustafa (1974) 26 DLR 266.*

S. 35(7)-Any sitting referred to in sub-section (7) of s. 35 means one or more than one sitting, but it does not mean all the sittings, or in other words, a total absence.

Total absence of the members from the entire proceedings is a violation of sub-section(7) of section 35, and this violation renders the decision of the Labour Court null and void. *National Bank of Pak. Vs. Golam Mustafa(1974) 26 DLR 266.*

Proceeding once started continues in the absence of a member- Total absence of a member means court has not been properly constituted: Sub-section(7) of section 35 appears to be an enabling provision, that is to say, if a member of the Labour Court is absent from any sitting, "the proceeding may continue' in his absence. The words "the proceeding may continue" in this sub-section show that the proceeding has already started with the required number of members. If thereafter there is any casual absence of any member, or if he ceases to be a member or is incapable of sitting in the Court further, the proceeding need not be stopped but it may be carried to its conclusion.

Sub-section (7) provides for continuation of a proceeding in absence of a member if proceeding already started with Chairman and both the members, and that the total absence of a member means in effect that the Court has not been duly constituted. *Project in charge Vs. Md. Aminur Rahman Khan. (1979) 31 DLR 124.*

S.36--Labour Court is to be deemed a Civil Court for specified purpose; not for all purposes: By virtue of clause (2) of section 36 of the Industrial Relations Ordinance, 1969, the Labour Court shall be deemed to be a Civil Court for the specified purpose of adjudicating and determining an industrial dispute. *Bangladesh Fishermen vs. Chairman L. Court, Chittagong (1975) 27 DLR 368.*

Expression 'shall be deemed to be a civil court' in s.36(2) shows that the Labour Court is a civil court for the purpose of adjudicating and determining a labour dispute. *Khulna Tobacco vs. Chairman L. Court (1977) 29 DLR 148.*

Labour Court can not set aside an exparte order: Labour Court not competent to set aside an exparte order passed by it as the statute does not provide for exercise of such power. *Khulna Tobacco vs. Chairman L. Court(1977) 29 DLR 148.*

Labour Court is not a civil court exercising all the powers of such court under the Civil Procedure Code. It is a civil Court only for the limited

purpose of adjudicating and determining an industrial dispute under Ordinance, XXIII of 1969- It not competent to set aside an exparte order passed by it in exercise of powers available under Or. 9, r. 13 C. P. Code. *Khulna Tobacco vs. Chairman L. Court (1977)29 DLR 148.*

Industrial disputes, how their existence recognised: A conditional agreement was made between the employer and the employees of the Sonali Jute Mills regarding payment of certain additional benefit to the employees. The agreement was subject to approval by the Bangladesh Jute Mills Corporation. The Corporation disapproved this agreement and further directed realisation of the amount already paid to the employees on the basis of the aforesaid agreement.

The Workers Union of Sonali Jute Mills thereafter moved the Labour Court against the Manager, Sonali Jute Mills for having stopped payment of benefit on the basis of the agreement and further prayed for injunction against realisation of money already paid. The Labour Court granted both the prayers and issued injunction.

Held: The law does not recognise the existence of industrial dispute unless it is raised by a collective bargaining agent in the prescribed manner, namely, by negotiation (Section 26), conciliation (section 29), arbitration (section 31), and adjudication by Labour Court (section 35).

Exercise of the jurisdiction by the Labour court under section 36 was unwarranted.

Labour Court is a civil court for limited purpose and since the power of injunction has not been conferred on it such power is not available because the power must be conferred expressly. *Manager S.J.M. Ltd. vs. Secy S.J.M.W. Union (1978) 30 DLR 141.*

S. 36--From a sentence passed by a Labour Court, an appeal shall lie to the High Court Division.

A Labour Court shall have the same powers as are vested in the Court of a Magistrate, First Class under the Criminal Procedure Code, and shall "for the purpose of appeal from the sentence passed by it, be deemed to be a Court of Sessions under the Code". In other words, for the purpose of an appeal from a sentence passed by Labour Court, it shall be deemed to be a court of sessions under Criminal Procedure Code and therefore an appeal lies

to the High Court Division. *Maqbul Hossain Vs. Bangladesh Milk Producers' Co-Operative Union Ltd. (1985) 37 DLR(AD) 38.*

S. 36(1) read with S. 2(XIII)- Definition as given in s. 2(XIII) of Industrial Relations Ord. includes all disputes as contemplated in I.R.O.- Labour Court constituted under the Ordinance shall be deemed as Civil Court for the purpose of adjudication of all Industrial disputes including granting of injunction, etc. *Pubali Bank Vs. Chairman. (1987) 39 DLR128.*

The Industrial Relations Ordinance (XXIII of 1969). S. 36 (I)-Code of Civil Procedure (V of 1908) Or. 39 r. I.

--S. 36(I)--Labour Court-Whether the Labour Court constituted under Industrial Relations Ordinance 1969 as amended has power to grant interim or temporary orders of stay or injunction to keep in status quo of the subject matter of the dispute till its final disposal- The industrial dispute referred to in section 36(I) must be referable to the definition of the word as given in section 2(xiii) of the I.R.O. which includes all disputes as have been contemplated in the I.R.O.- It would therefore he reasonable to hold that the Labour Court constituted under the I.R.O. shall be deemed to be a civil court and shall take the same power as are vested in such court under the Code of Civil Procedure- When a Labour court is deemed to be a civil court and has the same powers as are vested in the civil court it must have power to grant injunction or stay to preserve the subject matter of the dispute until it is finally decided- These powers to pass temporary or ad-interim order are designed to preserve and protect the subject matter of the dispute under Order 39, Rule 1 of the C.P.C. pending final determination of the case. *Pubali Bank Ltd., Vs. The Chairman, First Labour Court, Dhaka and Another (1986) BLD- 378.*

S. 36(2)--Labour Court in deciding a labour dispute under I.R.O. is invested with the powers of a civil court available under the C.P. Code including delivering ex-parte decision in the event of failure of a party to appear before it. *Adamjee Jute Mills Vs. Chairman Labour Court. (1987) 39 DLR 11*

S. 36(2)(d)--No ex-parte judgment can be passed where the defendant does not file written statement. *Adamjee Jute Mills Vs. Chairman Labour Court. (1987) 39 DLR 11*

-Petitioner duly appeared before the Labour Court every day to which the case was adjourned and applied on each occasion for time to put in

written statement—On his failure to put in w.s. the court fixed a date for ex-parte hearing. *Adamjee Jute Mills Vs. Chairman Labour Court.* (1987) 39 *DLR* 11.

—Having rejected the said two applications the Court proceeded to try the case ex-parte. The impression is unmistakable that the learned Advocate for the petitioner was thereafter not allowed to participate in the proceeding because the Labour Court was determined to proceed ex-parte. We consider, thereafter, that the ex-parte proceeding was totally uncalled for and without jurisdiction both in terms of clause (d) of sub-section (2) of section 36 of the said Ordinance and in terms of Order VIII of the Code of Civil Procedure. *Adamjee Jute Mills Vs. Chairman Labour Court,* (1987) 39 *DLR* 11.

S. 36(2)—Labour Court assumes the status of a civil court within the meaning of court as envisaged in C.P. Code for enforcing witness's attendance for production of documents and for issuing commission. *Bangladesh Fishermen Vs. Chairman Labour Court, Chittagong* (1975) 27 *DLR* 368.

S. 36(3)—Labour Court is a Court subordinate to the High Court. *A K. Khan vs. Chairman 2nd Labour Court.* (1973) 25 *DLR* 192.

S. 36(3) –When the Labour Court tries for offences under the Ordinance it does so as a Magistrates Ist. Class, but when it passes sentence of punishment, an appeal against such sentence shall lie to the High Court Division, *Maqbul Hossain Vs. Bangladesh Milk Producer's Co-Operative Union Ltd.* (1985) 37 *DLR (AD)* 38.

—S. 36(3)—Section 36(3) refers that for the purpose of appeal from all sentences the Labour Court shall be deemed to be Court of sessions. Otherwise, it has the powers as are vested in the Court of Magistrate, Ist. Class under the Code. The legislative intendment for the purpose of appeal is to take away it from the ambit of Code of Criminal Procedure and by legal fiction make it a court of sessions for which under Code of Criminal Procedure an appeal lies to the High Court Division. *Maqbul Hossain Vs. Bangladesh Milk Producer's Co-Operative Union Ltd.* (1985) 37 *DLR (AD)* 38.

S 37(4) – An appeal is incompetent (to the Labour Appellate Tribunal) under sub-section (4) of section 37 of the Ordinance unless decision of the Labour Court is an 'award' within the meaning of cl. (ii) of section 2 relating to an industrial dispute as defined in cl. (xiii) of section 2 of the Ordinance. *Jhmes Finlay Employees Union Vs. J.F. & Co.* (1975) 27 *DLR* 70.

S. 43—This section provides that an industrial dispute can be raised only by a collective bargaining agent or an employer in circumstances provided in sections 28-33 of the Ordinance. *G.M. Hotel Intercon. Vs. 2nd L. Court* (1976) 28 *DLR* 160.