

Bangladesh Labour and Industrial Law

Prof. A. A. Khan

PRAVATI PRAKASHANI

BANGLADESH LABOUR AND INDUSTRIAL LAW

[As modified up-to-date]

COMPILED AND EDITED

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FOREWORD

This edition covers the syllabuses of the Preliminary LL. B. examination of the Universities of Dhaka, Rajshahi and Chitagon particularly meant for the students.

The question and hints at the end of the book are designed to present guidelines of which the students will do well to prepare themselves for the examinations with confidence.

The Acts and the Regulations have been thoroughly revised and brought up-to-date.

We will consider our labour amply rewarded if the book serves the purpose of a standard textbook for the students and also as a ready reference as companion volume to the enlarged editions for busy lawyers and business concerns and such other organisations dealing with the subject.

- The Editor

PREFACE

In order to adhere strictly to the syllabii of the Preliminary LL. B. examinations of different Universities, the Minimum Wages Act, 1957 (though repealed by the Minimum Wages Ordinance, 1961) has been included in this edition up-to-date being kept in view, the Minimum Wages Ordinance, 1961 has also been included along with the Minimum Wages (Fixation) Ordinance, 1969.

Sufficient notes and leading cases have been placed under those sections of the Acts and the Regulations where intricate questions of law and procedure are involved to make the study not only useful but also realistic and interesting. Further, most of the provisions of the Acts and Regulations have been duly illustrated and explained with reference to the relevant rules made therein.

The Introduction following this Preface has been arranged in 4 paragraphs as follows:—

- a. Para 1—Principles of Labour Law
- b. Para 2—Origin of Labour Legislation
- c. Para 3—History of the Trade Union Movement in East Bengal.
- d. Para 4—Gist of the Acts and Regulations

The object of each of these paras is to analyse and discuss the subject to meet the requirements of the

students for attempting questions on any or all of these headings. These will also be of help to assimilate the subject comprehensively and with ease and confidence.

Finally, some of the past university questions along with some suggestions have been appended at the end of the book for providing some guidelines for grasping the requirements of the syllabus.

While preparing the book, I had freely consulted the standard Law Journals including the DLR to the management of all of which I express my sincere gratitude.

—A. A. Khan.

INTRODUCTION

1. *Principles of Labour Law*.—In brief, Labour and Industrial Law may be said to be based on the following principles.

✓(a) **Social justice**— It means, first, an equitable distribution of the profits and benefits between the employers and employees in an industry and, secondly, safeguarding the protection of the workers against the harmful effects of health, safety and morality. The Workmen's Compensation Act, the Factories Act, the Shops and Establishment Act etc. are based on these principles.

✓(b) **Social equity**.—This provides for flexibility of labour laws. In order to maintain this with the rapidly changing situations in the society, the Government has been empowered to make rules supplementing the provisions of the Act.

✓(c) **International uniformity**.—This is to be maintained in accordance with the spirit and tenor of the ILO Conventions. It is to be recollected that Pakistan ratified a number of ILO Conventions out of which Conventions No. 87 and 89 are most important ones, since these Conventions deal with the workmen's rights to combine and to make collective bargaining. This is amply provided for in the Industrial Relations Ordinance, 1969.

2. *Origin of Labour Legislation*.—The first ever known labour legislation is the Indian Factories Act, 1881.

Its provisions were not satisfactory since the children of the age of 9 years could be made to work for seven hours at day time and women could work for eleven hours per day and so on. Consequently, labour movements started during the partition of Bengal in 1905 and a number of strikes ensued. However, the movement eased with the passing of the Factory Act, 1911.

Thereafter, a good number of laws were enacted almost regularly.

The Workmen's Compensation Act was passed in 1923 and the Trade Unions Act was passed in 1926. In order to meet growing public agitations, the Indian Trade Disputes Act was passed in 1929. The Act made provisions for the establishment of Tribunals to decide labour disputes and an amending Act was passed in 1934. In the same year, too, the Factory Act was revised as a result of the ILO Convention on working hours. The Payment of Wages Act was, then passed in 1936. The Bengal Maternity Benefit Act followed in 1939.

3. History of the Trade Union movement in East Bengal.—It will be of interest to deal with this subject in bare outlines since the history of the Trade Union movement in this region is of various recent origin.

The Trade Union movement in Bangladesh (the then East Pakistan) took its root from the All India Trade Union Congress (AITUC). The East Pakistan Trade Union Federation (EPTUF) was formed on 28th September, 1947. Subsequently, the name of the EPTUF was changed, to All Pakistan Trade Union Federation (APTUF). In the year 1948, another federation named

Trade Union Federation of Pakistan (TUFP) was formed in Dhaka.

In the year 1950, APTUF was amalgamated with TUFP.

In 1959, The Pakistan Federation of Labour and the Trade Union Federation merged into one union named the All Pakistan Confederation of Labour (APCOL). This organisation had two constituent federations, one in West Pakistan named W.P. Federation of Labour and the other EP Federation of Labour. Each of these had complete freedom relating to their internal affairs.

In the year 1956, the Pakistan Mazdoor Federation (East Pakistan Zone) was formed. It mainly controlled the Tejgaon Industrial Area.

In the year 1956, the East Pakistan Mazdoor Federation was formed by the NAP. The Federation had sixty three affiliated unions. It came to an end when Martial law was imposed.

The United Council of Associations of the Civil Employees of Pakistan (UCAEP) was formed in 1962.

The year 1964 is important for the upheaval among the jute workers who had launched an effective strike continuing for two months. The activities of the Chatkal Sramik Federation brought about fruitful results.

4. Gist of the Acts and Regulations.—

(a) The Workmen's Compensation Act, 1923.— Those who are employed in an administrative or clerical capacity and those whose monthly earnings exceed Taka 400/- (excepting some railway servants) are excluded from the operation of the Act. Broadly speaking, the Act applies to

mines as defined in the Mines Act, railways, factories employing ten or more persons and using power, seamen, docks, workers engaged in the construction, repair or demolition of buildings, the setting up, repairing, maintaining or taking down any telegraph or telephone line or overhead electric line or cables, pipeline or sewers, the fire brigade, railway mail service, etc. The Government is empowered to extend the operation of the Act to any class of persons employed in hazardous occupations.

The employer is liable to pay compensation for personal injury caused to a workman by accident arising in the course of employment. The contracting of some occupational diseases peculiar to the nature of the work done is also considered an injury by accident arising out of or in the course of employment. The employer is not, however, liable to pay compensation in respect of any injury which does not cause "total" or "partial" disablement of the workman for more than seven days. He is also not liable in respect of any injury (except one which results in death) which is directly attributable to the workman being under the influence of drink or to the wilful disobedience of the workman to any order expressly given for the purpose of securing safety or the wilful removal or disregard by the workman of a safety device.

"Total disablement" means disablement (whether of a temporary or permanent nature) which incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement provided that permanent total disablement

shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I of the Act where the aggregate percentage of the loss of earning capacity as specified in that Schedule against those injuries amounts to one hundred per cent.

"Partial disablement" means (where the disablement is of a temporary nature) disablement which reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement is of a permanent nature such disablement as reduces his earning capacity in every employment which he was capable of undertaking at the time provided that every injury specified in Schedule I of the Act shall be deemed to result in permanent partial disablement.

The amount of compensation depends upon the amount of monthly wages of the injured workman and the extent of his disablement. (See Schedules I & IV for details).

The Act provides for review of half-monthly payments, computation of half-monthly payments into a lump-sum payment, distribution of compensation, medical examination of workmen, appointment of commissions for workman's compensation and appeals etc. The Act also provides for the dependants of the workman in case of his fatal accident. All cases of fatal accidents are to be brought to the notice of the Commissioner for workmen's compensation. If the employer admits the liability, the amount of compensation is to be deposited with the

Commissioner. If however the liability is disputed, the Commissioner will supply the dependants with necessary informations to enable them to decide whether they would prefer a claim or not. The employer can make advances to any dependant which will not exceed Taka one hundred.

The Act was considerably improved in 1933, but there are still much to be desired.

(b) **The Dock Labourers Act, 1934.**—It provides for safety of dock workers engaged in handling cargo. The Act authorises the Government to make regulations—

- (a) providing for the safety of working places on shore and of any regular approaches over a dock, wharf quay or similar premises which workers have to use for loading and unloading of cargo or fuel and for the lighting and fencing of such places and approaches;
- (b) prescribing the nature of the means of access for the use of the workers proceeding to or from a ship;
- (c) prescribing the measures to be taken to ensure the safe transport of workers proceeding to or from a ship;
- (d) prescribing the nature of the means of access for the use of the workers from the deck of a ship to a hold in which loading and unloading is carried on;
- (e) prescribing the measures to be taken to protect hatchways accessible to the workers and other

- openings in a deck which might be dangerous to them;
- (f) providing for the efficient lighting of the means of access to ships;
 - (g) providing for the safety of the workers engaged in removing or replacing hatch coverings and beams;
 - (h) prescribing the measures to ensure that no hoisting machine or gear used in connection therewith is employed unless it is in a safe working condition;
 - (i) providing for fencing of machinery, live electric conductors and steam pipes;
 - (j) regulating the provision of safety appliances on derricks, cranes and winches;
 - (k) prescribing the precautions with regard to exhaust and live steam;
 - (l) requiring the employment of competent persons to operate lifting or transporting machinery used in the processes or to give signal to a driver of such machinery;
 - (m) prescribing the measures to prevent dangerous methods of working in the stacking, unstacking, stowing and unstowing of cargo;
 - (n) prescribing the precautions to facilitate the escape of the workers when employed in a hold or between decks;
 - (o) prescribing the precautions to be observed in the use of stages and trucks;

- (p) prescribing the precautions when the workers have to work where dangerous or noxious goods are stowed;
- (q) providing for the rendering of first aid to injured workers;
- (r) prescribing the provision to be made for the rescue of immersed workers from drowning;
- (s) prescribing the abstracts of this Act'
- (t) providing for the submission of notices of accidents;
- (u) specifying the persons and authorities who shall be responsible for compliance with regulations made under this Act;
- (v) defining the circumstances in which and conditions subject to which exemptions from any of the regulations made under the Act may be given;
- (w) defining the additional powers of Inspectors; and
- (x) providing generally for the safety of workers.

(c) **The Payment of Wages Act, 1936.**— The Act applies, in the first instance, to factories and railways, with power to the Government to extend all or any of the provisions of the Act to any class of persons employed in any industrial establishment. The Act has been extended to the Port of Chittagong. It applies only to the payment of wages of persons drawing less than Tk. 200/-p. m. No wage-period exceeds one month. Wages are payable in current currency.

Wages in any railway, factory or industrial establishment employing less than one thousand persons are to be paid within seven days after the expiry of the wage period and within ten days employing more than one thousand workers. In case of termination of employment by the employer, all wages due are to be paid within two days of the termination of employment. Wages are to be paid on a working day and contracting out is not permitted. Deductions from wages are allowed only in respect of fines, absence from duty, damage to goods, house accommodation supplied by the employer, amenities provided, advances, income-tax, payment by order of Court, contribution or repayment of advances from provident fund, payment to co-operative societies, postal insurance premia, war saving scheme and Government securities.

Fines can be imposed by the employer for such acts or omissions as the employer might have specified by a notice to the worker with the approval of the Government. The total amount of fine in a wage-period should not exceed .03 Paisa per Taka of the wages. Fines cannot be imposed on any person below the age of fifteen years. Fines cannot be recovered in instalments or after sixty days from the date it is imposed. All fines are to be entered in a register and credited to a fine fund which shall be applied for the benefit of the workers.

Deductions from wages on account absence from duty should be pro-rata provided that, subject to any rules made by the Government, if ten or more persons acting in concert absent themselves from duty without

due notice as required under their terms of contract and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may, be any such terms, be due to the employer in lieu of such notice. A worker shall be deemed to be absent from the place of work, if he, though present, refuses to work in pursuance of a stay-in-strike. A deduction for damage shall not exceed the amount of the damage or loss caused to the employer by the neglect of the worker and shall not be made until the worker had an opportunity to show cause against the deduction. A deduction of service rendered shall not be made unless the house accommodation, amenity or service has been accepted by the worker. The deduction shall not exceed the value of the amenity.

(d) **The Employers' Liability Act, 1938.**—The Act provides that certain specified defences shall not be raised in suits for damages in respect of injuries sustained by workman. When personal injury is caused to a workman by reason of (a) the omission of the employer of the person employed by him to maintain in good and safe condition any machinery or plant, (b) the negligence of any supervisory person in the service of the employer, (c) the negligence of any person in the service of the employer to whose orders the workman was bound to conform, (d) any act or omission of any person done or made in obedience to any rule or bye-law of the employer; a suit for damages in respect of the injury sustained by the workman or by any person entitled in the case of his death shall not fail by reason only of the fact that the workman was at the time of the injury

engaged in the work of the employer. In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless it is proved that he voluntarily undertook the same. [The "workman" means any person who works under a contract (implied, oral or written) of service with an employer whether by way of manual labour, clerical work or otherwise.] "Employer" includes any body of persons whether incorporated or not, and any managing agent of an employer and legal representative of a deceased employer.

(e) **The Bengal Maternity Benefit Act, 1939.**—The Act originally applied to women workers employed in factories under the Factories Act, 1934. It had undergone major amendments in 1951 after the E.B. Maternity Benefit (Tea Estate) Act, 1950 was passed. It applies to female employees engaged by an employer for manual, clerical, skilled or unskilled labour for hire or reward or any consideration for the purpose of carrying on his calling, trade or business, etc. Such female employees will be entitled to maternity leave for six weeks before and six weeks after child-birth at the rate of Take one a day.

(f) **The Fatal Accidents Act, 1955.**—The Act provides for suits for compensation to the family of a person for loss occasioned by his death by actionable wrong. The Interpretation clause explains the word "persons" as including bodies politic and corporate and the word "parent" shall include father, mother, grand-father and grand-mother. In the same way, the word "child" shall include son and son and daughter, grand-son and grand-daughter and step-son and step-daughter.

(g) **The Minimum Wages Act, 1957.**—The Act was passed to regulate the minimum wages of workmen employed in industries in Bangladesh. The industries are listed in the Schedule and notes thereunder. The Act was repealed by the Minimum Wages Ordinance, 1961. The E. P. Minimum Wages (Fixation) Ordinance was, then passed in 1969 to fix rates of wages for unskilled workers employed in certain commercial and industrial establishments and in tea gardens.

(h) **The Factories Act, 1965.**— The Act applies to factories employing 20 or more workes and using power excluding a mine. A factory which is exclusively engaged in cotton ginning, cotton or jute pressing, the decoractification of ground nuts, the manufacture of cofee, indigo, lac, rubber, sugar or tea or any manufacturing process which is identical to or connected with any of the aforesaid processes is termed a seasonal factory.

Factories (actories)

No adult worker should work in a factory for more than 48 hours in a week and for more thn 50 hours in a seasonal factory. An adult worker employed in a factory engaged in work which, for technical reasons, must be continuous throughout the day, may work for fiftysix hours in a week. The working hours of adults should not exceed nine per day in a factory. A male adult worker in a seasonal factory may work for ten hours in any day. The periods of work of adult worker shall be so fixed either that (1) no worker shall work for more than six hours continuously before he had an interval of rest of at least half an hour, or for more than $8\frac{1}{2}$ hours before he had at

least two such intervals. The periods of work of adult workers along with their rest interval shall not spread over more than ten and half hours in the case of perennial factories and eleven and half hours in the case of seasonal factories. Women are allowed to work between 6 a. m. and 7 p. m., but this limit can be extended from 5 a. m. to 7-30 p. m. A weekly holiday is prescribed for all adult workers on a Sunday or on one of the holidays immediately before or after that Sunday provided that no worker is, thus, made to work for more than ten days consecutively without a holiday. An adult worker is prohibited from working in two factories during the same day.

A person who has not completed 16th year is a child. Children under the age of 14 years are not allowed to work in a factory. An adolescent is a person between the age of 16 and 18 years who does not hold a medical certificate to work as an adult. In such a case, he is treated as a child. A child between the age of 14 and 16 years and an adolescent shall work in a factory if certified as physically fit and also carries a token to this effect while working. The working hours of children are limited to five hours per day and spread over to seven and a half hours. Children should only work between 7 a. m. and 7 p. m. which may be varied by the Government. No child shall work in any factory on any day in which he has already been working in another factory. The Act provides for a weekly holiday to children. The provisions for health, safety, hours of work etc. relating to children and adolescents apply to small factories in which child labour is employed. A "small factory" means any premises which

use power in which ten or more but less than twenty workers are employed.

The Act provides for paid holidays. An adult worker after twelve months of continuous work in a factory is entitled to paid holidays at the rate of one day for every 22 days of work performed by him or, if a child, one day of for every 15 days of work performed by him. The worker can accumulate his paid holidays earned during the last two years. A worker is entitled to overtime payent at the rate of twice his ordinary pay for work done in excess of nine hours a day or 48 hours a week in a non-seasonal factory and in excess of nine hours a day or 50 hours a week in a seasonal factory.

The Act provides for rest, shelters, creches and canteens. The Government may make rules requiring, First, that in any specified factory employing more than 100 workers, a rest shelter shall be provided for the use of workers; Secondly, in any specified factory employing more than 50 women workers a suitable room is to be reserved for the use of children under the age of six years belonging to women workers; and, Thirdly, in any specified factory ordinarily employing more than 250 workers, an adequate canteen should be provided for the use of workers.

The Act has made ample provisions for health and safety, such as, cleanliness, ventilation, artificial humidification, cooling, over-crowding, lighting, supply of drinking water, latrines, urinals, position of doors, precautions against fire, fencing of machinery, safety of buildings, notice of accidents etc. When any building or

machinery appears to a factory Inspector to be dangerous to human life, he may order the manager of the factory to carry out tests to determine its stability or order some specified precautionary measures to be taken. If he foresees imminent danger to human life, he may prohibit the use of such building or machinery till proper repairs or alterations are carried out.

(i) The Employment of Labour (Standing Orders) Act, 1965 [as amended by the Employment of Labour (Standing Orders) (Amendment) Ordinance, 1978].—

The Act was passed to regulate the conditions of service of workers employed in shops and commercial and industrial establishments other than those directly managed by the Government.

The Act defines the terms discharge, go-slow, plantation, retrenchment, lay-off etc. On termination of their employment, ample consideration for the workers have been provided for. The rules have made provisions for submission of Draft Service Rules, Master Roll for laid-off workers; notice of retrenchment and also the procedure for approval of Service Rules by the Inspector.

The amendment of section 25 by Ordinance XXXV of 1978 is very important as it now admits the dismissed and discharged workers etc. to the benefits of the Act for redress of grievances.

(j) The East Bengal Shops And Establishments Act, 1965 (Repealing and with certain amendments re-enact the EB Shops and Establishments Act, 1951, the Bengal Shops and Establishments Act, 1951)

The Act applies to shops, commercial or industrial establishments or establishments for public entertainment in certain specified towns with power to extend to other areas by notification. It provides for a nine hour a day and a fifty-one hour week as well as a half holiday on Thursday and full holiday on Friday with pay in shops and establishments covered by the Act. Wages are to be paid within ten days of their becoming due. Provisions also exist for 14 days' privilege leave, 10 days' casual leave and 14 days' sick leave in a year with full pay. Employment of children below 12 years is prohibited. Industrial disputes in shops and establishments are to be dealt with according to the procedure laid down in the Industrial Disputes Act, 1947.

(k) State-owned Manufacturing Industries Workers (Terms and Conditions of Service) Act, 1974.—The Act is popularly known by its number, namely, Act X of 1972.

The Act amends the provisions of the industrial Relations Ordinance, 1969 and all other laws, rules, regulations etc. regarding the determination of wages, bonus, medical allowances etc.

The State-owned Manufacturing Industries Workers (Terms and conditions of Service) Ordinance, 1973 is repealed by this Act.

(L) The Industrial Relations Ordinance, 1969.—The Ordinance amends and consolidates all laws regarding the following:—

- (i) formation of trade unions,

- (ii) Regulation of relations between employers and workmen, and
- (iii) Avoidance and settlement of any difference or disputes arising between them.

The Ordinance does not apply to any person employed in the police or any of the Defence services in Bangladesh including an Ordinance Factory maintained by the Government etc.

It provides for "Collective Bargaining Agents" and defines the very essential terms in section 2 applicable to all industrial concerns.

The term "Trade Union" has been defined in section 2(xxvi). Provision have been made in the Ordinance regarding establishment of Trade Unions, their registration and maintenance of register of such unions, certificate of registration and cancellation of registration, the appointment and powers of Registrars of Trade Unions, unfair labour practices of employers and in trade unions, unfair labour practices on the part of workmen, rights and privileges of registered trade unions etc. (Vide sections 3 to 21).

Sections 22 and 23 deal with 'Collective Bargaining Agents' and their functions.

The regulations relating to industrial disputes are provided for under section 26. Sections 27 to 31 deal with negotiations through Conciliators and Arbitrators and finally by Labour Courts under section 34. Sections 32 to 33 deal with 'strikes' and 'lock-out'.

The establishment of Labour Courts, their powers and procedure and their awards have been dealt with under sections 35 to 37.

Provisions have been made under section 38 for the Labour Appellate Tribunal.

Under section 45, both the Labour Courts and the Labour Appellate Tribunal have been empowered to prohibit strikes etc.

Under section 67 of the Ordinance, following laws have been repealed—

- (a) The Trade Unions Act, 1965
- (b) The Labour Disputes Act, 1965
- (c) The Industrial Disputes Ordinance, 1968
- (d) The Trade Unions Ordinance, 1968.

A list of 'public utility services' as defined in section 2(xx) has been given in the SCHEDULE at the end of the Ordinance.

(m) The Industrial Relation (Regulation) Ordinance, 1975.—The aim of this Ordinance is to regulate industrial relations with a view to achieving higher national productivity. Under section 4 of the Ordinance unless the Government otherwise directs, there shall not be any registration of new trade unions under the Industrial Relations Ordinance, 1969.

Under section 5, persons employed as watch ward or security staff or confidential assistants of any establishment shall have no right to be members or officers of any trade union.

Under section 6, except in the case of any federation of trade unions, non-workers of any trade union shall not be entitled to be a member or officer of any trade union for any establishment.

Under section 7, there shall not be any election for determination of collective bargaining agent, unless the Government directs otherwise.

The procedure for settlement of industrial disputers at different stages starting from direct negotiations between the employer and the collective bargaining agent is laid down in section 9.

For further details, see notes under section 9.

(n) The Dock Labourers Regulations, 1948.—These Regulations are made in eight parts. There are two SCHEDULES and some forms.

The first part deals with the definitions and powers and duties of Inspectors etc.

The second part deals with fencing, lighting of working places, provision of first-aid, reports of accidents and hygienic condition of the premises etc.

The third part deals with the duty of the owner, master, officer-in-charge or agents of the ship to comply with Regulations set forth in regulations 16 to 24.

The fourth part deals with the duty of the owner of machinery or plant to comply with regulations 26 to 43.

The fifth part deals with every person who by himself, his agents or employees, carries on the process, and of all agents, employees and workers employed by him in the process to comply with regulations 45 to 57.

The sixth part deals with the duty of all persons, whether owners, occupiers or workers to comply with regulations 58A to 60.

The seventh part deals with the employer's liability for machinery etc., safe access and lighting.

The eighth part deals with the affixing of the Abstracts of the Act and Regulations in the premises where processes are carried on.

[N.B. It is to be noted that Acts like 'The Workmen's Compensation Act, 1923', 'The Employer's Liability Act, 1938', and 'the Bengal Maternity, Benefit Act, 1939' are **Social Security Legislations.**]

DHAKA UNIVERSITY SYLLABUS

Labour and Industrial Law

(100 Marks)

1. Standing Orders for employment of labour : Formation of the contract of service. Conditions of employment and classification of workers. Leave and holidays. Stoppage of work and right of laid-off workers. Retrenchment, fine, discharge and dismissal from service, punishment, termination of employment and grievance procedure.

2. Wages " fixing of and right to wages. Payment of Wages, deductions and claims out of deductions from wages.

3. Factories Law : Early factory legislation. Health hygiene, welfare, working hours, employment of young persons, leave and holidays in factories.

4. Workmen's compensation : Industrial accidents and diseases. fatal accidents. Employer's liability for compensation and the procedure for its determination. The function of commissioners.

5. The Law of Trade Unions : History of trade union movement. Role, functions and utility of trade unions. Rgistration of trade unions. Rights and privileges of registered trade unions and collective bargaining agents. Unfair labour practices.

6. Settlement of disputes : Origin of labour legislation. Right to strike and lock-out. Industrial Disputes and their settlement through negotiation, conciliation, arbitration

and by Labour Courts. Constitution, function and powers of Labour Courts and the Labour Appellate Tribunal. Labour policy of the Government.

Minimum Wages Legislation

Social Security Legislation

Books and Statutes recommended:

Prof. A.A. Khan: Labour & Industrial Law

M. Shafi: Labour Code

Employment of Labour (Standing orders) Act, 1965.

The Payment of Wages Act, 1936

The Factories Act, 1965

The Workmen's Compensation Act, 1923

The Employers' Liability Act, 1938

The Fatal Accidents Act, 1955

The Industrial Relations Ordinance, 2969 (as amended in 1970)

Shops & Establishments Act, 1965

Minimum Wages Act, 1857

Maternity Benefit Act, 1939 (as amended)

State-owned Manufacturing Industries Act, 1974

Dock Labourers Act, 1934

Dock Regulation, 1948

Books for reference:

1. Wedderburn : The Worker and the Law
2. Wedderburn : Cases and Materials on Labour Law

3. Citrine : Trade Union Law
4. Allan Flanders : Trade Union
5. Fridmans : The Modern Law of Employment
6. Frunfeld : The Law of Redumdancy
7. Happle & O Higgins: Individual Employment Law
8. Flenders & Cleggs: The System of Industeial Relations in Great Britain.
9. Aikin & Reid: Employment, Welfare and Safey at Work
10. Schmidt: The Law of Labour Relations in Sweden
11. Selwyn: Guide to the Industrial Relations Act, 1971 (England)
12. The Industrial Relations Act, 19271 (England)
13. Report of the Royal Commission on Trade Unions, 1965-68 (the Denovan Report, 3623)
14. Croren & Crime : Labour Law.

RAJSHAHI UNIVERSITY SYLLABUS

Labour Law

The scope and sources of Labour Laws —Law relating to health, safety, hours and other conditions of works of individual workers—Emploment of young persons and conditions of employment in Factories—Settlement of labour disputes—Strikes, Look-out in factories—Law relating to Trade Union.

CHITTAGONG UNIVERSITY SYLLABUS

Labour & Industrial Law

Employment of Labour (Standing orders) Act, 1965: Condition of employment. Classification of Workers. Leave and holidays. Stoppage of Work. Retrenchment. Discharge. Dismissal. Termination. Eviction. Grievance procedure. Penalties.

Industrial Relations Ordinance, 1969: Trade Unions. Unfair labour practices. Collective Bargaining Agent. Conciliation Conciliation and Mediation, Arbitration. Strike and Walk-out. Labour Court, Labour Appellate Tribunal. Representation of Parties. Penalties.

Industrial Relation (Regulation) Ordinance, 1975: Procedure for settlement of industrial disputes.

Shops and Establishment Act, 1965: Weekly holidays. Daily and weekly hours of work. Overtime, Interval. Wages. Leave and holiday. Cleanliness. Ventilation, lighting and facilities. Penalties.

Factories Act, 1965: Factory. Notice before commencement of work. Chief Inspector. Inspector and Certifying Surgeons. Health and Hygiene. Safety, Welfare, Working Hours. Employment of young persons. Leave and Holidays. Penalties.

Payment of Wages Act, 1936: Wages Responsibility for payment. Time of payment. Deductions. Fines. Claims. Penalties. Contracting out.

Minimum Wages (Fixation) Ordinance, 1969: Minimum wages.

Workmen's Compeation Act, 1923: Workmen. Employer, Dependant. Disablement, Employer's liability for compensadtion. Amount of compensation. Distribution of compensation,. Notice and claim. Repoyer. Masters and Seamen. Commissioners. Injuries resulting in Permanent partial oisablement. Ocupational diseases.

Book recommended: Prof. A. K. Khan.

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✓ THE EMPLOYMENT OF LABOUR (STANDING ORDERS) ACT, 1965 [Act VIII of 1965]

[As amended by P. O. No. 100 of 1972, Employment of Labour (Standing Orders) Amdt. Ordinance 1978, Ordinance XXXV of 1978, Ordinance XVI of 1985, ACTXV of 1989, ACT XXII of 1990 and 1993]

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

Note

It is meant for regulating conditions of service of workers employed in Shops and Commercial and Industrial Establishments and for matters connected therein.

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

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

(3) It shall come into force at once.

(4) It shall apply to—

(a) every shop or commercial establishment to which the East Bengal Shops and Establishments Act, 1965³ applies;

- (b) every industrial establishment in the areas in which the East Bengal Shops and Establishments Act, 1965³ applies;
- (c) every industrial establishment in all other areas in *Bangladesh in which five or more workers are employed, or were employed on any day of the preceding twelve months :

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

*[Subs. by Ordinance XXXV of 1978]

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

- (a) 'Apprentice' means a learner who is paid an allowance during the period of his training;
- (b) 'badli' means a worker who is appointed in the post of a permanent worker or of a probationer who is temporarily absent;
- (c) 'casual worker' means a worker whose employment is of a casual nature;
- (d) 'commercial establishment' means an establishment in which the business of advertising, commission or forwarding is conducted, or which is a commercial agency, and includes a clerical

1. Omitted by Ordinance XXXV of 1978 and 2 & 3 Subs. Ibid.

department of a factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment employs workers, a unit of a joint-stock company, and insurance company, a banking company or a bank, a broker's office or stock exchange, a club, a hotel or a restaurant or an eating house, a cinema or theatre, or such other establishment or class thereof as the Government may, by notification in the official Gazette, declare to be a commercial establishment for the purpose of this Act;

- (e) 'Director of Labour' means an officer so appointed by the Government;
- (f) 'discharge' means the termination of services of a worker by the employer for reasons of physical or mental incapacity or continued ill health of the worker or such other similar reasons not amounting to misconduct;
- (g) 'dismissal' means the termination of services of a worker by the employer for misconduct;
- (h) 'employer' means a person, a body of persons or body corporate, company or institutions owning or managing a shop, commercial establishment or industrial establishment, or their heirs, successors or assigns, as the case may be, and includes—
 - (i) in a factory, any person working as manager of the factory,

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- (ii) in any shop, commercial establishment or industrial establishment, carried on by or on behalf of a local authority, the officer appointed, the chief executive officer of that authority, and
 - (iii) in relation to any other shop, commercial establishment or industrial establishment, every Director, Manager, Secretary, Agent or other officer or person concerned with management thereof and responsible to the owner for the supervision and control of such shop, commercial establishment or industrial establishment;
- (i) 'go-slow' means an organised, deliberate and purposeful slowing down of normal output of work by a body of workers in a concerted manner, and which is not due to any mechanical defect, breakdown of machinery, failure or defect in power supply or in the supply of normal materials and spare parts of machinery;
- (j) 'industrial establishment' means any workshop or other establishment in which articles are produced, adapted or manufactured or where the work of making, altering, repairing, ornamenting, finishing or packing or otherwise treating any article or substance, with a view to their use, transport, sale, delivery or disposal, is carried on or such other class of establishments including water transport vessels or any class thereof which the

*[Government] may, by notificatin in the official Gazette, declare to be an industrial establishment for the purpose of this Act, and includes—

*[Subs. by Ordinance XXXV of 1978]

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

*[Omitted by Ordinance XXXV 1978]

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

(iii) any plantation, or

(iv) a factory as defined in the Factories Act, 1965*,

*[Subs. Ibid]

- (k) 'Labour Court' means a Court constituted under the Industrial Disputes Ordinance, 1959;
- (l) 'lay-off' means the failure, refusal or inability of an employer on account of shortage of coal, power or raw-material or the accumulatin of stock or the break-down of machinery or for any other reason, to give employment to a worker whose name is borne on the muster-rolls of his shop, commercial establishment or industrial establishment;
- (m) 'permanent worker' means a worker who has been engaged on a permanent basis or who has satisfactorily completed the period of his probation in the shop or the commercial or industrial establishment;
- (n) 'plantation' means any estate which is maintained

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for the purpose of growing cinchona, rubber, coffee or tea and includes agricultural farms under sugar mill for growing sugarcane, employing twenty-five or more persons for that purpose;

- (o) 'public servant' shall have the same meaning as in section 21 of the *Penal Code, 1860;
*[Omitted by Ordinance XXXV of 1978]
- (p) 'probationer means a worker who is provisionally employed to fill a permanent vacancy in a post and has not completed the period of his probation;
- (q) 'retrenchment' means the termination by the employer of services of workers, not as a measure of punishment inflicted by way of disciplinary action, but on the ground of redundancy;
- (r) 'shop' means a shop as defined in the East Bengal Shops and Establishments Act, 1951;
- (s) 'temporary worker' means a worker who has been engaged for work which is essentially of temporary nature and is likely to be finished within a limited period;
- (t) 'trade union' means a trade union registered under the *Industrial Relations Ordinance, 1969;
*[Subs. Ibid]
- (u) 'wage' means wages as defined in the Payment of Wages Act, 1936;
- (v) 'worker' means any person including an apprentice employed in any shop, commercial establishment

or industrial establishment to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person—

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

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

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

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

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

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

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

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

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

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

(3) If any worker, whose service has been terminated during his probationary period, including the extended period of three months in case of a skilled worker as mentioned in sub-section

(2), is again appointed by the same employer within a period of three years, he shall, unless appointed on a permanent basis, be deemed to be a probationer and the period or periods of his earlier probation shall be counted for determining his total period of probation.

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

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

(2) A worker who desires to obtain leave of absence shall apply to the employer for the same, in writing, stating his leave-address therein, and the employer or his authorised officer shall issue orders on the application within a week of its submission to two days prior to the commencement of leave applied for, whichever is earlier :

Provided that if, due to emergent reasons, the leave applied for is to commence on the date of application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained by the

employer for the purpose. If the worker, after proceeding on leave, desires an extension thereof, he shall, if such leave is due to him, apply sufficiently in advance before the expiry of the leave to the employer who shall, as far as practicable, send a written reply either granting or refusing extension of leave to the worker to his leave-address.

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

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

Provided further that if such a worker fails to explain to the satisfaction of the employer the reason of his failure to return at the expiry of the leave, the employer may, on consideration of extenuating circumstances, if any, suspend him, as a measure of punishment, for a period not exceeding seven days from the date of his return and the worker shall not be entitled to wages for such periods of unauthorised absence and of suspension; but he shall not lose the lien to his appointment.

(4) If the services of a worker, to whom any annual leave is due under the provisions of the East Bengal Shops and Establishments Act, 1965, the Factories Act, 1965, or of any other law for the time being in force, as the case may be, is dispensed with whether as a result of retrenchment, discharge,

dismissal, termination, retirement or by reason of his resignation before he has availed of any such leave, the employer shall pay his wages in lieu of the unavailed leave at the rate he is entitled to the payment of wages during the period of leave in accordance with the provision of those laws and such payments shall be made before the expiry of the second working day after the day on which his employment is dispensed with.

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

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

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

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

- (a) the workers so detained may not be paid for the period of such detention if it does not exceed one hour;
- (b) the workers so detained shall be paid wages for the whole period of such detention if it exceeds one hour.

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

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

(b) The employer may, in the event of a strike by any section or department of a shop or commercial or industrial establishment, close down either wholly or partly, such section or department or any other section or department affected by

such closing down and the workers affected may not be paid any wages for such closure :

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

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

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

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

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

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

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

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

9. Right of laid-off workers for compensation.—

(1) Whenever a worker (other than a *badli* or casual worker), whose name is borne on the muster-rolls of a shop or commercial or industrial establishment and who has completed not less than

one year of continuous service under the employer is laid-off, he shall be paid by the employer, for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to half of the total of the basic wages and dearness allowance, and the full amount of housing allowance, if any, that would have been payable to him had he not been so laid-off :

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

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

(2) Notwithstanding anything contained in the proviso to sub-section (1), if during a calendar year a worker is laid-off for more than forty-five days, whether continuously or intermittently, and the lay-off after the expiry of the first forty-five days comprises period or periods of fifteen days or more, the worker shall, unless there is an agreement to the contrary between him and the employer, be paid for all the days comprised in every subsequent period of lay-off for fifteen days or more, compensation which shall be equal to one-fourth of the total of the basic wages and dearness allowance, and the full amount of housing allowance, if any, that would have been payable to him had he not been so laid-off.

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

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

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

- (a) if he refuses to accept, on the same wages, any alternative employment not requiring any special skill or previous experience, in the same shop or the commercial or industrial establishment from which he has been laid-off, or in any other shop or commercial or industrial establishment belonging to the same employer and situated in the same town or village or situated within a radius of five miles from the shop or the commercial or industrial establishment;

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

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

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

- (a) the worker has been given one month's notice in writing, indicating the reasons for retrenchment or

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

*[Subs. by Ordinance XVI of 1985]

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

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

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

category, unless, for reasons to be recorded in writing, the employer retrenches any other worker.

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

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

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

Provided that a worker having completed not less than one year of continuous service, so discharged, shall be paid by the employer compensation at the rate of *[thirty] days' wages for every completed year of service or for any part thereof in excess of six months, or gratuity, if any, whichever is higher.

*[Subs. Ibid]

Explanation.—For the purpose of calculation of wages under this section, wages shall mean the average of the basic wages and dearness allowance, if any, paid to the worker during

the period of twelve months immediately preceding the date of discharge.

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

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

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

Explanation.—For the purpose of calculation of compensation under this sub-section "Wages" shall mean the average basic pay and dearness allowance if any, paid to the worker during the period of twelve months immediately preceding the date of his dismissal *[Substituted by Ordinance XVI of 1985]

(2) Any worker found guilty of misconduct but not dismissed under the provisions of sub-section (1) in consideration of any extenuating circumstances, may be discharged or suspended, as a measure of punishment, without

wages as well as subsistence allowance, for a period not exceeding seven days and such period may be within or in addition to the period of suspension of the worker for enquiry under sub-section (2) of section 18, if any, or he may be otherwise punished less severely.

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

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

- (j) resorting to illegal strike or 'go-slow' or inciting others to resort to illegal strike or 'go-slow';
- (k) falsifying, tampering with, damaging or causing loss of employer's official records.

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

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

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

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

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

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

(b) If the worker is found not guilty, he shall be deemed to have been on duty for the period of suspension for enquiry, if any, and shall be entitled to his wages for such period of suspension and the subsistence allowance shall be adjusted accordingly.

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

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

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

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

19. Termination of employment.—(1) For terminating the employment of a permanent worker by the employer, otherwise than in the manner provided elsewhere in this Act, one

hundred and twenty day's, notice in the case of monthly rated workers and sixty days' notice in the case of other workers, in writing, shall be given by the employer :

Provided that wages for one hundred and twenty days as the case may be, may be paid in lieu of such notice ;

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

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

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

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

(3) For terminating the employment of a temporary worker by the employer, otherwise than in the manner provided

elsewhere in this Act, and if it is not due to the completion, cessation, abolition or discontinuance of the temporary work which he was appointed to perform, one month's notice in the case of monthly rated workers and fourteen days' notice in other cases, in writing, shall be given by the employer :

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

20. Provident Fund.—No worker, who is a member of any Provident Fund, shall be deprived, due to retrenchment dismissal discharge or termination of service of the benefit of the Provident fund including the employer's contribution thereto, if he is entitled to it under the rules of that Fund : [substituted by Ordinance XVI of 1985]

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

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

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

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

24. Eviction from residential accommodation.—

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

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

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

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

(5) The police-officer, while acting under an order of the Magistrate under sub-section (4), shall notify the occupants of

the premises in question, the contents of the Magistrate's order and his intention to enter into such premises and shall allow at least two hours' time to the occupants to vacate the premises and shall give all reasonable facilities to the children before applying any force for taking over the possession of such premises.

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

(a) the worker concerned shall *submit his grievance to his employer, in writing, within fifteen days of the occurrence of the cause of such grievance and the employer shall, within **fifteen days of receipt of such grievance, enquire into the matter, give the worker concerned an opportunity of being heard and communicate his decision, in writing, to the said worker;

** [Ins. by Ordinance XXXV of 1978]

** [Subs.—Ibid]

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

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

*[Substituted by Ord. 16/85]

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

*** Omitted by Ord. 16/85

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

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

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

26. Penalty fro non-compliance of Court's order under section 25.—(1) Whoever refuses or fails to comply with an order passed by the Court under section 25, may be punished with simple imprisonment for a term not exceeding three months or with fine not exceeding Taka one thousand or with both.

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

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

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

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

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

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

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

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

*[Ins. by Ordinance XXXV of 1978]

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

30. Chief Inspector and Inspectors.—(1) The [*Chief Inspector of Factories and Establishments] shall be

*[Subs. by the Employment of Labour Standing Orders Amdt. Order, 1972]

the Chief Inspector, who shall, in addition to the powers conferred on the Chief Inspector under this Act, have the powers of an Inspector throughout *Bangladesh and shall also have powers of supervision and control over the Inspectors :

*[Subs. by Ordinance XXXV of 1978]

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

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

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

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

*[Omitted by Ordinance XXXV of 1978]

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

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

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

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

THE PAYMENT OF WAGES ACT, 1936
(Act IV of 1936)
(As modified by Act LIII of 1974)

As modified

[An Act to regulate the payment of wages to certain classes of persons employed in industry.]

1. Short title, commencement and applications.—

- (1) This Act may be called the Payment of Wages Act, 1936.
- (2) It extends to the whole of Bangladesh.
- (3) It shall come into force at once.
- (4) It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon *[the railway] by the railway administration or, either directly or through a sub-contractor, by person fulfilling a contract with *[The railway] Administration.

*[Subs. by Act LIII of 1974]

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

Notes

The provisions of the Act extend to the payment of wages to persons employed in any—

- (a) dock, wharf and jetty,

(b) coal mines and oil fields,

(c) salt mines and quarries,

(d) all inland steam vessels,

(e) plantations,

(f) workshops or other establishments in which articles are produced, adapted or manufactured with a view to their use, transport or sale,

(g) road transport service as defined in section (7) of the Road Transport Workers Ordinance, 1961.

(6) Nothing in this Act shall apply to wages payable in respect of wage-period which, over such wage-period, average Taka two hundred a month or more.

2. Definitions.—

(i) "factory" means a factory as defined in clause *[(f) of section 2 of the Factories Act, 1965;] *[Subs. by Act LIII of 1974]

(ii) "industrial establishment" means any—

(a) Tramway or motor omnibus service;

(b) dock, wharf or jetty;

(c) inland steam-vessel;

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured with a view to their uses, transport or sale;

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(iii) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty-five or more persons are employed for that purpose;

(iv) "prescribed" means prescribed by rules under this Act;

(v) "railway administration" has the meaning assigned to it in clause (6) of section 3 of the Railways Act, 1890 (IX of 1890); and

~~(vi)~~ "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed or otherwise, to a person employed in respect of this employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—

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

(b) any contribution paid by the employer to any pension fund or provident fund;

(c) any travelling allowance or the value of any travelling concession;

- (d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- (e) any gratuity payable on discharge.

Notes

The Act applies to all persons employed whether they may be officers or otherwise and whether they do clerical, manual or other kind of work, provided their wages average less than Taka two hundred per month.

Clause (iv) **Wages** : The term "wages", as defined in this section, means wages actually earned and not potential wages. It means remuneration payable on the fulfilment of the contract. (AIR, 1941, Bom 26).

A wrongfully dismissed employee on retirement is entitled to wages, because the terms of contract are fulfilled. (The Div. Supdt. NWR, Lhr Vs. Md. Sharif L. L. C 1959-60 H. C. 36.)

In a question whether the employee who is entitled to a notice pay can recover the same under this Act, it is to be decided whether such an employee can apply under the Act for recovery of the sum payable on account of want proper notice according to the express or implied terms and conditions of employment. Since wages consist not only of the sum earned by a workman but also a sum payable by reason of the termination of the employment, he can do so. Hence, if the payment of the sum is delayed, the workman has a right to claim it under section 15.

3. Responsibility of payment of wages.—Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed (otherwise than by a contractor)—

(a) in factories, if a person has been named as the manager of the factory under clause *[(f) of sub-section (1) of section 6 of the Factories Act, 1956],

*[Subs. by Act LIII of 1974.]

(b) in industrial establishments, if there is a person responsible to the employer of the supervision and control of the industrial establishment,

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer or the person so nominated, as the case may be, shall be responsible for such payment.

Notes

The Bengal Payment of Wages Rules, 1937 defines "paymaster" under section 2 (k) who is responsible for such payment. A 'paymaster', according to that section, means an employer or other person responsible under section 3 of the Act for the payment of wages.

Under this section, a manager in a factory, industrial establishment or railways is the paymaster.

4. Fixation of wage-periods.—(1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

5. Time of payment of wages.—(1) The wages of every person employed upon or in—

(a) any *factory or industrial establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

*[The word 'railway, or any other factory] or industrial establishment, shall be paid before the expiry of the tenth day,

*[[Substituted Ibid.]

after the last day of the wage-period in respect of which the wages are payable.

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

(3) The Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in

a factory) from the operation of this section in respect of the wages of any such person or class of such persons.

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

Note

Section 20 (1) provides for penalty for any breach of the provisions of this section.

6. Wages to be paid in current coin or currency notes.—All wages shall be paid in current coin or currency notes or in both.

Notes

In accordance with rule 5 of the Bengal Payment of Wages Rules, 1937, a Register of wages shall be maintained in every factory and may be kept in such form as the paymaster finds convenient but shall include the following particulars :—

(a) the gross wages earned by each person employed for each wage-period;

(b) all deductions made from these wages, with an indication in each case of the clauses of sub-section (2) of section 7 under which the deduction is made;

(c) the wages actually paid to each person employed for each wage-period.

7. Deductions which may be made from wages.—
(1) Notwithstanding the provisions of sub-section (2) of section 47 of the Railways Act, 1890 (IX of 1890), the wages of an

employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation.—Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely :—

(a) fines;

(b) deductions for absence from duty;

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

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

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

Explanation.—The word "services" in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment.

(f) deductions for recovery of advances or for adjustment of over-payments of wages;

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

(h) deductions required to be made by order of a Court or other authority competent to make such order; (1) deductions for subscriptions to, and for repayment of advances from, any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies or any other recognised provident fund as defined in section 58A of the Income-Tax, Act, 1922 (XI of 1922) or any provident fund approved in this behalf by the Government, during the continuance of such approval;*

*[The word 'and' omitted by the Payment of Wages (Amdt.) Ordinance 3 of 1940]

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

*[The word 'and' ins. by Ordinance 3 of 1940]

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

8. Fines.—(1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed

upon the railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to *[three Poisa] in the Taka of the wages payable to him in respect of the wage-period.

*[Subs. by Act LIII of 1974]

(5) No fine shall be imposed on an employed person who is under the age of fifteen years.

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

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

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.—When persons employed upon or in any railway, factory or industrial establishment are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a

whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

9. Deductions for absenc from duty.— (1) Deductions may be made under clause (b) of sub-section (2) of section 7 only account of the absence of an employed person from the place or places, whereby the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is required to work.

(2) The amount of such deduction shall, in no case, bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work :

Provided that, subject to any rules made in this behalf by the Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may, by any such terms, be due to the employer in lieu of due notice.

*Explanation.—For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in-strike or any other cause which is not reasonable in the circumstances, to carry out his work.

*[Explanation ins. by the Payment of Wages (Amdt.) Act, 1937.]

10. Deductions for damage or loss.— (1) A deduction under clause (c) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such deductions and all the realisations thereof shall be recorded in a Register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

11. Deductions for services rendered.—A deduction under clause (d) of clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation, amenity or service supplied and, in this case of a deduction under the said clause (e), shall be subject to such conditions as the Government may impose.

12. Deductions for recovery of advances.—Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely :—

(a) recovery of an advance of money given before employment began shall be made from the first payment of

wages in respect of a complete wage-period; but no recovery shall be made of such advances given for travelling expenses;

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

Notes

Rule 17 deals with this subject pursuant to section 12 (a) which is reproduced below :

Advances.—(1) An advance of wages not only earned shall not, without previous permission of an Inspector, exceed an amount equivalent to the wages earned by the employed person during the preceding two calendar months, or if he has not been employed for that period an amount equivalent to the wages he is likely to earn during the subsequent calendar month.

(2) The advance may be recovered in instalments by deductions from wages ordinarily spread over not more than twelve months. No instalment shall exceed one-third, or where the wages for any wage-period are not more than Taka twenty, one-fourth of the wages for the wage-period in respect of which deduction is made.

(3) The amounts of all advances and the repayments thereof shall be entered in a register in Form III.

13. Deductions for payments to co-operative societies and insurance schemes.—Deductions under clause (j) *[and clause (k)] of sub-section (2) of section 7 shall be subject to such conditions as the Government may impose.

*[Ins. by the Payment of Wages (Amdt) Ordinance, 1940]

14. Inspectors.—(1) An Inspector of Factories appointed under sub-section *[(2) of section 9 of the Factories Act, 1965], shall be an Inspector for the purposes of the Act in respect of all factories within the local limits assigned to him.

*[Subs. by Act LIII of 1974]

(2) The Government may appoint Inspectors for the purpose of this Act in respect of all persons employed upon the railway (otherwise than in a factory) to whom this Act applies.

(3) The Government may, by notification in the official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

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

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

15. Claims out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.—(1) The Government may, by notification in the official Gazette, appoint any Commissioner for workmen's compensation or other officer with experience as

a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in the payment of wages, or persons employed or paid in that area.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for direction under sub-section (3) :

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be :

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is intertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further enquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the

refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding Taka ten in the latter :

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a bonafide error of bonafide dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) The failure of the employed person to apply for or accept payment.

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

(5) Any amount directed to be paid under this section may be recovered—

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

Note

Deduction from pay by the employer during the period the employee is placed under suspension is unauthorised if this suspension is not covered by the provisions of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960, or expressly provided in the bye-laws of the establishment or in the contract of employment.

16. Single application in respect of claims from an unpaid group.—(1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (3) of section 15 shall be Taka ten per head.

(3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provision of that sub-section shall apply accordingly.

17. Appeal.—(1) An appeal against a direction made under *[sub-section (3) or sub-section (4)] of section 15 may be preferred, within thirty days of the date on which the direction was made before the District Court—

*[Subs. by Repealing and Amending Act, 1937]

- (a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensatin exceeds Taka three hundred, or
- (b) by an employd person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds Taka fifty, or
- (c) by any person directed to pay a penalty under *[sub-section (4)] of section 15.

*[Subs. by Repealing and Amending Act, 1937]

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

19. Power to recover from employer in certain cases.—Whan the authority referred to in section 15 or the Court referred to in section 17 is unable to recover from any person (other than an employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person, the authortiy shall recover the amount from the employer of the employed person concerned.

20. Penalty for offences under the Act.—(1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the

5. Power to exempt.—The Government may, by notification in the official Gazette, exempt any factory or any class or description of factories from all or any of the provisions of this act for such period as it may think fit in the public interest:

Provided that no such exemption shall be made for a period exceeding six months at a time.

6. Notice to Inspector before commencement of work.—(1) The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory send to the Chief Inspector a written notice containing—

- (a) name and situation of the factory;
- (b) name and address of the occupier;
- (c) address to which communications relating to the factory may be sent;
- (d) nature of the manufacturing process—
 - (i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act,
 - (ii) to be carried on in the factory during the next twelve months in the case of all factories;
- (e) nature and quantity of power to be used; name of the Manager of the factory for the purposes of this Act;
- (g) number of workers likely to be employed in the factory;

- (h) average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act; and
- (i) such other particulars as may be prescribed.

(2) In respect of all factories which come within the scope of this Act for the first time, the occupier shall send a written notice to the Chief Inspector containing particulars specified in sub-section (1) within thirty days from the date of the commencement of this Act.

(3) Before a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year, resumes working, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days before the date of the commencement of work.

(4) Whenever another person is appointed as Manager, the occupier shall send to the Chief Inspector a written notice of the change, within seven days from the date on which such person assumes charge.

(5) During any period for which no person has been designated as Manager of the factory or during which the person so designated does not manage the factory, any person found acting as Manager or if no such person is found, the occupier himself shall be deemed to be the Manager of the factory for the purposes of this Act.

by this Act shall be null and void in so far as it purports to deprive him of such right.

[N. B. : Section 24 omitted by P.O.I of 1964 Sch.]

25. Display by notice of abstracts of the Act.—The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such abstracts of this Act and of the rules made thereunder in *Bengali.

*[Subs. by Act LIII of 1974]

26. Rule-making power.—(1) The Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.

(2) The Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may—

- (a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the forms thereof;
- (b) require to display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;

- (c) provide for the regular inspection of the weights, measures and weighing machines used by the employers in checking or ascertaining the wages of persons employed by them;
- (d) prescribe the manner of giving notice of the days on which wage will be paid;
- (e) prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be imposed ;
- (f) prescribe the procedure for the imposition of fines under section * and for making of the deductions referred to in section 10;
- (g) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of section 9;
- (h) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended;
- (i) prescribe the extent to which advances may be made and the instalments by which they may be recovered with reference to clause (b) of section 12;
- (j) regulate the scales of costs which may be allowed in proceedings under this Act;
- (k) prescribe the amount of Court-fees payable in respect of any proceedings under this Act; and

(1) prescribe the abstracts to be contained in the notices required by section 25.

(4) In making any rule under this section the Government may provide that a contravention of the rule shall be punishable with fine which may extend to Taka two hundred.

(5) All rules made under this section shall be subject to the condition of previous publication and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than three months from the date on which the draft of the proposed rules was published.