

CHAPTER: XVI
REGULATION OF EMPLOYMENT AND SAFETY OF DOCK WORKERS.

253. Power to make schemes : (1) The Government may, by notification in the official Gazette, make for the Chittagong Port and the Port of Chalna, a scheme for the regulation of employment of dock workers, and also for the registration of dock workers and employers with a view to ensuring greater regularity of employment and for efficient and economic turn-round of ships and vessels.

(2) In particular, and without prejudice to the generality of the foregoing power, such scheme may provide for-

- (a) the application of the scheme to such classes of dock workers and employers as may be specified therein ;
- (b) defining the obligations of dock worker and employees subject to fulfilment of which the scheme may apply to them and the circumstances in which the scheme shall cease to apply to any dock workers or employers ;
- (c) regulating the recruitment and entry into the scheme of dock workers ;
- (d) registration of dock workers and employers, maintenance of registers, removal, either temporarily or permanently, of names from the registers and the imposition of fees for registration ;
- (e) regulating the employment of dock workers, whether registered or not, and the terms and conditions of such employment, including rates of remuneration ;
- (f) prohibiting, restricting or otherwise controlling the employment of dock workers to whom the scheme does not apply and the employment of dock workers by employers to whom the scheme does not apply ;
- (g) the training and welfare of dock workers, in so far as satisfactory provision therefor does not exist apart from the scheme ;
- (h) the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed ; and
- (i) such incidental and supplementary matters as may be necessary or expedient for the purposes of the scheme.

(3) The Government may, by notification in the official Gazette, and to, amend, vary or revoke any scheme.

(4) In this section 'dock workers' means a person employed or to be employed in any port on work in connection with loading, unloading, movement or storage of cargoes into vassels, or making other vassels for the receipt or discharge of cargoes or any other thing.

254. Dock Workers Management Boards : (1) The Government shall, by notification in the official Gazette, constitute separately for Chittagong and Mongla Port a Board to be called the Dock workers Management Board for the purposes of this Chapter.

(2) A Dock Workers Management Board, hereinafter in this Chapter referred to as the Board, shall be a body corporate having perpetual succession and a common seal with powers, subject to the provisions of this Chapter, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by its name sue and be sued.

255. Composition of a Board : (1) A Board shall consist of the following members, namely:

- (a) a Chairman ;
- (b) a Vice-Chairman ;
- (c) two members representing the Government, of whom one shall be from the Ministry of Labour and Man Power ;
- (d) one member representing the Chittagong Port Authority or the Port of Chalna Authority, as the case may be ;
- (e) two members representing the employers ;
- (f) two members representing the ship owners and shipping agents ; and
- (g) four members representing the dock workers.

(2) All members, other than the Chairman, shall be appointed by the Government.'

(3) The Chairman of the Chittagong Port Authority or the Port of Chalna Authority, as the case may be, shall *ex-officio* be the Chairman of a Board.

(4) A member of a Board, other than its Chairman and Vice-Chairman, shall, unless removed earlier, hold office for a period of two years from the date of his appointment, and shall be eligible for re-appointment

(5) The Vice-Chairman of a Board shall-

- (a) hold office on such terms and conditions as the Government may determine;
- (b) perform such duties as may be specified in the scheme or as may be assigned to him by the Board or as may be prescribed.

(6) A member of a Board, other than the Chairman and the Vice-Chairman, may resign from office by writing under his hand addressed to the Chairman."

256. Meetings : (1) The meetings of a Board shall be held at such times and places and in such manner as may be prescribed.

(2) To constitute a quorum at a meeting of a Board not less than five members, of whom at least one being a member representing the employers and another being a member representing the workers, shall be present.

(3) At a meeting of a Board each member shall have one vote, but in the event of equality of votes the person presiding shall have a second or casting vote.

(4) The meetings of a Board shall be presided over by the Chairman or, in his absence, by the Vice-Chairman of the Board.

257. Functions of a Board : (1) A Board shall be responsible for the administration of the schemes for the Port for which it is constituted.

(2) The Board shall exercise such powers and perform such functions as may be specified in the scheme or as may be prescribed.

(3) A Board, in exercising its powers and performing its functions, shall be guided by such directions as may be given to it, from time to time by the Government.

258. Advisory Committee : (1) The Government may constitute an Advisory Committee to advise on such matters arising out of the administration of this Chapter

(2) The number of members of the Committee shall be fixed by the Government and they shall be appointed by the Government.

(3) The Committee shall advise the Government only on such matters as may be referred to it by the Government for advice.”

259. Appointment of officers and employees : A Board may appoint such officers and other employees as it may consider necessary for the efficient performance of its functions on such terms and conditions as may be prescribed.

260. Fund : (1) A Board shall have its own fund which shall be utilised by it to meet the charges in connection with its functions under this Chapter.

(2) The Fund shall consist of-

- (a) grants made by the Government ;
- (b) grants made by the concerned Port Authority ; and
- (c) receipts from any other source.

261. Budget : A Board shall, by such date in each year as the Government may direct, submit to the Government for approval a budget, in such form as the Government may specify, for each financial year showing the estimated receipts and expenditure during that financial year.

262. Delegation of powers : A Board may, by general or special order in writing, delegate any or all of its powers, in such circumstances and under such conditions as may be specified in the order, delegate to the Chairman, Vice Chairman, or any Member or Officer.

263. Special provisions for safety, etc. of dock-workers : (1) The Government may, by notification in the official Gazette, make Regulation-

- (a) providing for safety or working places on shore and of any regular approaches over a dock, wharf, quay or similar premises which workers have to use for going to or from a working place at which the processes are carried on, and for the lighting and fencing of such places and approaches ;

- (b) prescribing the nature of the means of access which shall be provided for the use of workers proceeding to or from a ship which is lying alongside a quay, hulk or other vessel ;
- (c) prescribing the measures to be taken to ensure that the safe transport of workers proceeding to or from a ship by water and the conditions to be complied with by the vessels used for the purpose ;
- (d) prescribing the nature of the means of access to be provided for the use of the workers from the dock of a ship to a hold in which the processes are 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 effective lighting of the means of access to ships on which the processes are carried on and of all places on board at which the workers are employed or to which they may be required to proceed ;
- (g) providing for the safety of the workers engaged in removing or replacing hatch coverings and beams used for hatch coverings ;
- (h) prescribing the measures to be taken to ensure that no hoisting machine gear, whether fixed or loose, used in connection therewith, is employed in the processes on shore or on board ship unless it is in a safe working condition ;
- (i) providing for fencing machinery, live electric conductors and steam-pipes ;
- (j) regulating the provision of safety appliances on derricks, cranes and winches ;
- (k) prescribing the precautions to be observed in regard to exhaust and live steam ;
- (l) requiring the employment of competent and reliable persons to operate lifting or transporting machinery used in the processes, or to give signals to a driver of such machinery, or to attend to cargo falls on which ends or which drums, and providing for the employment of signaller where this is necessary for the safety of the workers ;
- (m) prescribing the measures to be taken in order to prevent dangerous methods of working in the stacking, unstacking, stowing and unstowing of cargo, or handling in connection therewith ;
- (n) prescribing the precautions to be taken to facilitate the escape of the workers when employed in a hold or between decks in dealing with coal or other bulk cargo ;
- (o) prescribing precautions to be observed in the use of stages and trucks ;
- (p) prescribing the precautions to be observed when the workers have to work where dangerous or noxious goods are, or have been, stowed, or have to deal with or work in proximity to such goods ;
- (q) providing for the rendering of first-aid to injured workers and removal to the nearest place of treatment ;

- (r) prescribing the provision to be made for the rescue of immersed workers from drowning ;
- (s) providing for the submission of notices of accidents and dangerous occurrences and prescribing the forms of such notices, the persons and authorities to whom they are to be furnished, the particulars to be contained in them and the time within which they are to be submitted ;
- (t) specifying the persons and authorities who shall be responsible for compliance with regulations made under this section ;
- (u) defining the circumstances in which the conditions subject to which exemptions from any regulations made under this section may be given, specifying the authorities who may grant such exemptions and regulating their procedure ; and
- (v) providing for the safety of workers.

(2) The provisions of this section shall be in addition to, and not in derogation of, any other provisions of this Act.

CHAPTER: XVII

PROVIDENT FUNDS

** Provision for Provident Fund is a social security measure against old age, invalidity and death of a worker. The Royal Commission on Labour, in 1931 opined that the Government should at least make effort to institute either a general scheme of old age pension or provident funds for industrial workers as one of the vital needs of the country. The Provident Fund Act, 1925 was the first enactment on the subject, but it was applicable only upon a few establishments. Private sector was not covered by this Act. Provisions, however for provident fund was there in many establishments created under the Trust Act, but there was no Government contribution to the same or regulation or control over the same. There had been a persistent demand for a law for Provident Fund for all categories of workers irrespective of Government owned or Private industries or establishments. Afterwards a provident fund was created for the Tea Plantation workers under the control, supervision also with contribution from the Government.

The Labour Act 2006 for the first time introduced a provident fund for private sector workers. This Chapter deals with provident funds for all workers which is a social security legislation. Social security means as guarantee provided for against certain risks to which the members of the society may be exposed. Social assistance scheme provides benefit for persons of small means granted as of right in amount sufficient to met a minimum standard of need.

Social security measures are significant especially in countries like us where workers are poverty stricken. Lack of social security impedes production and prevents formation of a stable and efficient labour force. It has become a fact of life. Considering these aspects this chapter has been introduced for the first time in the Labour Act covering workers employed in private sectors. By the present provision the provident funds will be controlled and regulated by the appropriate agencies.

264. Provident Funds for workers in private sector establishments :

(1) An establishment in the private sector may constitute for the benefits of its workers a Provident Fund.

(2) Such Provident Fund shall be constituted in such manner as may be prescribed by rules made by the establishment in this behalf under section 3.

(3) Notwithstanding anything contained in sub-section (2), the Government may make rules for constitution of Provident Funds for workers employed in establishments in private sector, and where such rules are made, each establishment to which the rules apply, shall comply with the requirements of such rules.

(4) Such Provident Fund shall be held and administered by a Board of Trustees

(5) Such Board of Trustees shall consist of an equal number of representatives of the employer and workers employed in the establishment, and a person nominated by the Government shall be its Chairman.

(6) The representatives of the employer shall be nominated by the employer, and the representatives of the workers shall be nominated by the collective bargaining agent.

(7) Where there is no collective bargaining agent in an establishment, the representatives of the worker shall be elected by the workers under the supervision of the Director of Labour.

(8) All the representatives shall hold office for a period of two years.

Provided that they shall continue to hold office until their successors enter upon office.

(9) Every permanent worker shall, after the completion of his one year of service in the establishment constituting the Provident Fund, subscribe to the Fund, every month, a sum, unless otherwise mutually agreed, not less than seven per cent and not more than eight per cent of his monthly basic wages, and the employer shall contribute to it an equal amount.

(10) Notwithstanding anything contained in this section, an establishment in the private sector shall constitute a Provident Fund for the benefit of its workers, if three-fourths of the total number of workers employed in it so demand to the employer by an application in writing.

(11) Where a demand for constitution of a Provident Fund is made under sub-section (10), the employer of the establishment shall make necessary rules for its constitution under section 3 within a period of six months and the Fund shall start operation before the expiry of that period.

(12) At least half of the total accumulations in such Provident Fund shall be invested for the purpose of any of the following, namely:

- (a) I.C.B. Mutual Fund Certificates;
- (b) I.C.B Unit Certificates ; and
- (c) Government securities including Defence and Postal Saving Certificates.

(13) the cost of maintenance of the Provident Fund shall be borne by the employer.

(14) The accounts of the Provident Fund shall be audited annually at the cost of the establishment in the same manner as the accounts of the establishment are audited:

Provided that the Government may, at its own cost, appoint independent auditor for a special audit of the Fund.

(15) A statement of accounts of the Provident Fund, together with the audit report thereon, shall be forwarded to the Director of Labour within one month of the submission of audit report.

(16) Where the Government is satisfied that a Provident Fund constituted by an establishment in the private sector is working satisfactorily and the workers have no complaint against it, the Government may, on the application of the employer of the establishment, by order in writing, exempt the establishment from the operation of this section.

(17) An establishment constituting a Provident Fund shall be deemed to be a public institution for the purposes of the Provident Funds Act, 1925 (XIX of 1925).

(18) In this section, 'establishment in private sector' shall mean an establishment which is not owned or managed directly by the Government or by any local authority or to which any Provident Fund rules made by the Government or by any local authority does not apply.

265. Tea Plantation workers 'Provident Fund : (১) এযবৎব্ব ংযধষষ নব বংঃধনষরংযবফ চৎড়ারফবহঃ ঝঁহফ গুড় নব পধষষবফ ংযব এঃবধ চষধহঃধঃঃরডহ ড়িৎশবৎঃচৎড়ারফবহঃ উঁহফ.

(2) The Tea Plantation workers 'Provident Fund, hereinafter in this Chapter referred to as the Fund, shall vest in and be administered by, the board of Trustees constituted under section 266.

266. Board of Trustees : (1) The Government shall, by notification in the official Gazette, constitute a Board of Trustees to be called the Board of Trustees for the Tea Plantation workers' Provident Fund.

(2) The Board of Trustees, shall consist of the following members, namely-

- (a) a Chairman,
- (b) three representatives of employers
- (c) three representatives of tea plantation workers,
- (d) two members who are not connected with tea industry.

(3) Chairman and other members shall be appointed by the Government :

Provided that the members under sub-section 2(b) and (c) shall be appointed by the Government in consultation with such organizations of employers and workers as may be recognised by the Government for the purpose ;

(4) The Chairman and the other members shall hold office for a term of three years from the date of their appointment:

Provided that, notwithstanding the expiry of such term, they shall constitute to hold office until their successors enter upon office.

(5) The Chairman and the other members shall perform such duties as are assigned to them under this Chapter or by the rules.

(6) The Trustee Board shall be a body corporate and have perpetual succession and a common seal and shall be the said name sue and be sued.

267. Cost of administration : (1) The Trustee Board may levy an administrative charge on the basis of contribution.

(2) The Government in consultation with the Board, shall fix such percentage of the total employers 'and workers' contributions as cost of administration.

(3) The employers shall, within fifteen days of the close of every months, pay the charge so fixed to the Fund by separate bank draft or cheque.

(4) When the payment of the administrative charge is made by a cheque the collection charge, if any, shall be included in the amount for which the cheque is drawn in respect of the administrative charge.

268. Contributions : (1) Every employer of a Tea Plantation, which is in existence for more than three years, shall, in respect of every worker, other than an apprentice, employed in his tea plantation for more than a year, pay to the Fund a contribution at the rate of seven and a half per cent of the basic wages for the time being payable to that worker.

(2) Every worker mentioned in sub-section (1) shall pay to the Fund a contribution equal to be contribution payable by the employer in respect of him.

(3) Where the amount of any contribution payable under this section involves a fraction of Taka, such fraction shall be rounded of to the nearest Taka.

(4), If, in any case, the contribution made at the time of coming into force of this Act to an existing Provident Fund is higher than that provided in this section then that rate of contribution shall continue to be made as if this Act had not been enacted.

(5) The total accumulations in the Fund shall be held in deposit and shall be invested in the manner prescribed by rules.

269. Recovery of damages : Where an employer makes default in the payment of any contribution to the Fund or in the payment of any charges payable under any other provision of this Chapter or the rules, the Board in addition to the amounts of arrears so due, may recover from the employer such damages, not exceeding twenty-five percent, of the amount of such arrear.

270. Provident Fund not liable to attachment : (1) The amount standing to the credit of any worker on account of his Provident Fund accumulation, shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the worker not any receiver appointed under the Insolvency Act, 1920 (V of 1920), shall be entitled to, or have any claim on, any such amount.

(2) Any amount standing to the credit of any worker in his Provident Fund account at the time of his death shall, subject to any deduction authorised under any law for the time being in force, vests in his nominee and shall be free from any debt or other liability incurred by him or by his nominee before his death.

271. Priority of payment of contribution over other debts : The amount due in respect of any contribution under this Chapter shall, where the liability has accrued before the employer is adjudged insolvent, or in the case of a company ordered to be wound up before the date of such order, be deemed to be included among the debts which under section 61 of the insolvency Act, 1920 (V of 1920) or under section 230 of the Companies Act, 1994 (VII of 1913) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the Company being wound, up, as the case may be.

272. Employer not to reduce wages or other amenities : No employer shall, by reason only of his liability for payment of any contribution to the Fund or any

charges under this Act or the rules, reduce, whether directly or indirectly, the wages of any worker or other benefit to which the worker is entitled under the terms of his employment.

273. Provident Fund for Newspaper workers : (1) Every newspaper establishment shall constitute, for the benefit of its newspaper workers, a provident fund in such manner as may be prescribed by Rules.

(2) The Provident Fund shall be held and administered by a Board of Trustees.

(3) The Board of Trustees shall consist of an equal number of representatives of the employer of the newspaper establishment and of the newspaper workers employed in it, chosen and appointed in such manner as may be prescribed by Rules. (4) Every newspaper worker shall, after the completion of the first two years of his service with any newspaper establishment, subscribe to the Provident Fund, every month, a sum not less than seven per cent and not more than eight per cent of his monthly wages, and the employer shall contribute to it an equal amount.

(5) During the first two years of his service, a newspaper worker may or may not, at his option, subscribe to the Provident Fund, if he so subscribes, the newspaper establishment employing him may or may not, at its option, contribute to it.

(6) A newspaper establishment shall be deemed to be a public institution for the purpose of the Provident Fund Act, 1925 (XIX of 1925).

CHAPTER: XVIII

APPRENTICESHIP

Object and scheme of the Ordinance : Increasing productivity is a *sine-qua-non* of economic development skilled labour is a part and parcel of productivity. For producing and increasing the number of skilled workers systematic arrangement of training them up is inevitable. To ensure training of workers known as 'apprenticeship' in accordance with the programmes, schedule and syllabi drawn up by expert bodies Apprenticeship Act, 1850 was enacted. Prior to the passing of the Apprenticeship Act, 1850 there was no such systematic arrangement of training of the apprentices. Only a few leading companies in the private sector took up apprentices and gave training to them. The matter drew the notice of the British Government and as a result of which the Apprenticeship Act, 1850 was passed.

With the setting up of new industries both in private and public sector, the old Act, naturally was found inadequate and necessity arose for an enactment of a comprehensive legislation containing more detailed provision in the matter.

With a view to regulate and control the training of apprentices in trades and matters connected therewith the Apprenticeship Ordinance, 1962 was promulgated. This chapter is in essence a replica of the Apprenticeship Ordinance, 1962. The object of this chapter is essentially to meet an increasing demand for skilled workers in the development of the country especially in the era of globalisation and competition.

274. Application of the Chapter : This Chapter shall apply to an establishment, ordinarily employing more than fifty workers, which is in existence for more than two years and employs more than five workers in an apprenticeable trade.

275. Special Definitions. In this Chapter, unless there is anything repugnant in the subject or context,-

- (a) '*competent authority*' means such officer as the Government may, by notification in the official Gazette, appoint to be competent authority for the purposes of this Chapter.
- (b) '*apprentice*' means a person undergoing training through the system of apprenticeship ;
- (c) '*apprenticeship*' means a system of training in which an employer undertakes to employ a person and to train him or have him trained systematically in an apprenticeable trade for a period the duration of which has been fixed in advance and in the course of which the apprentice is bound to work in the employer's service ;

- (d) '*apprenticeable trade*' means such trade or occupation in an establishment as the competent authority may, from time to time, declare, by notification in the official Gazette, to be an apprenticeable trade for the purposes of this Chapter;

276. Tripartite Advisory committees : The Government may, by notification in the official Gazette, constitute in the prescribed manner such Tripartite Advisory Committees to advise the Government and the competent authority on matters relating to apprenticeship as it may consider necessary.

277. Obligations of employers.- Subject to the other provisions of this Chapter and the rules, an employer-

- (a) shall be bound to ensure proper compliance with the provisions of this Chapter and the rules in his establishment ;
- (b) shall, in accordance with the rules, introduce and operate an apprenticeship programme in his establishment and get the programme registered with the competent authority within such time as may be prescribed ;
- (c) shall train apprentices in the proportion of a minimum of twenty percent of the total number of persons employed in apprenticeable trades, on an average in his establishment, or in such other proportion as the competent authority may, by order in writing, determine in respect of his establishment;
- (d) who has already introduced an apprenticeship programme shall modify the programme so as to bring it in conformity with the provisions of this Chapter and the rules and register such modified programme with the competent authority within such time as may be prescribed ;
- (e) shall be responsible to ensure that an apprentice receives within the normal working hours related theoretical instruction to the extent of at least twenty percent of the total working hours ;
- (f) shall initiate and operate an apprenticeship programme entirely at his own cost ; and
- (g) shall not, without the approval in writing of the competent authority, engage as an apprentice any person who has been an apprentice with another employer and has left his apprenticeship or been discharged by such other employer on disciplinary grounds.

278. Relief from income-tax, etc.: (1) Notwithstanding anything to the contrary contained in the Income-tax Ordinance, 1984 (XXXVI of 1984), income-tax shall not be payable by an employer in respect of any expenditure incurred by him on the operation of an apprenticeship programme in accordance with the provisions of this Chapter and the rules.

(2) Notwithstanding anything to the contrary contained in the Imports and Exports (Control) Act, 1950 (XXXIX of 1950) or any rule or order, the Government may, by order, make provision for the grant to the employers of incences for the import of such goods or articles as may in its opinion be required by the employers for operating apprenticeship programme under this Chapter.

279. Advice and guidance to employers : Subject to the provisions of this Chapter and the rules, the competent authority shall offer to the employers all possible technical advice and guidance in all matters relating to the apprenticeship programmes put into operation by the employers in their establishments in accordance with the provisions of this Chapter and the rules.

280. Obligations of apprentices : (1) Subject to the other provisions of this Chapter and the rules, an apprentice-

- (a) shall learn his trade conscientiously and diligently and shall endeavour to qualify himself as a skilled worker on the completion of his apprenticeship ;
- (b) shall attend the practical training and related theoretical instruction according to the programme laid down by the employer ;
- (c) shall carry out all lawful orders of the employer or his representative relating to his apprenticeship and shall fulfil his obligations under the contract of apprenticeship ;
- (d) shall submit himself to any test or examination held from time to time for assessing the progress of his training ;
- (e) shall not become the member of a trade union of any class of workers other than his own ;
- (f) shall, in case of any grievance against his employer arising out of his apprenticeship, approach the competent authority for the redress of the grievance, if the same is not redressed by the employer, and shall abide by the decision of the competent authority ; and
- (g) shall not, without the previous approval in writing of the competent authority, leave his apprenticeship after the completion of his probationary period.

(2) If an apprentice fails to carry out the terms of the contract of apprenticeship, or if at any time during the period of his apprenticeship voluntarily quits such apprenticeship, or there are continued adverse reports regarding the progress of his studies, or he is discharged for misconduct which shall include insubordination, breach of the rules, absence from duty or neglect of his work, then he or, as the case may be, his parent or guardian and the surety shall jointly and severally be liable to the payment of such refund of expenses and compensation as may be prescribed.

281. Powers of entry, inspection, etc. : The competent authority may-

- (a) with such assistants, if any, as it thinks fit, enter, inspect and examine any undertaking or part thereof at any reasonable time ;
- (b) examine any apprentice employed therein or require the production of any register, record or other documents maintained in pursuance of this Chapter and take on the spot or otherwise statements of any person which it may consider necessary for carrying out the purposes of this Chapter ;

- (c) make such examination and enquiry as it thinks fit in order to ascertain whether the provisions of this chapter and the rules are being observed in the undertaking ;
and
- (d) exercise such other powers as may be prescribed.

282. Delegation of powers : Subject to any rules made in this behalf, the competent authority may, by order in writing, direct that any power conferred upon it by or under this Chapter, shall be Exercisable also by such officer subordinate to it and subject to such conditions, if any, as may be specified in the order.

CHAPTER: XIX

PENALTY AND PROCEDURE

283. Penalty for non-compliance of Labour Court's order under section-33 : Whoever refuses or fails to comply, with an order passed by the Labour Court under section-33 shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to five thousand Taka, or with both.

NOTES/COMMENTS/PRECEDENTS

Labour Court to do justice : Labour Court has been set up to do justice to the worker-complainants and not to throw out the cases filed by the workers on technical grounds. The Labour court having found the order of dismissal of the petitioner not tenable in law had no option but to do justice to the petitioner..[*Md Azizul Huq Vs. Chairman Labour Court Khulna and Others. (1996) 48 DLR 527*]

Termination benefit- Realisation thereof : The Labour Court and the Labour Appellate Tribunal on due consideration has concurrently held that the respondent was a worker- in case of acceptance of the contention made of on behalf of the management, that for realisation of termination benefit the worker is to file application alone under section 25 (b) of the Act of 1965 upon compliance of the procedure respect in section 25 (1) of the Act- *Held :* For not availing of the forum as provided in section 25 of the Act of 1965 a worker is not precluded from realising the termination benefits by filing an application under section 15(2) of the Act of 1936. [*Managing Director, Contiforms Forms Limited and Peasant Trading Cold Storage (Pvt) Ltd. Vs Member, Labour Appellate Tribunal, Dhaka and others (1998) 50 DLR 476*]

Principles of Natural Justice- The petitioner seems to have been condemned unheard. This condemnation or sticking of stigma on her person is ex-facie violative of the principle of natural justice. Whatever actions have been taken by the respondents against the petitioner by way of blacklisting and debarring her from carrying on business in Bangladesh is without lawful authority and of no legal effect. [*Doris Waldman, Vs Bangladesh represented by M/O Home affairs and others. (1998) 50 DLR 151*]

284. Penalty for employment of child and adolescent : Whoever employs any child or adolescent or permits any child or adolescent to work in contravention of any provision of this Act; shall be punishable with fine which may extend to five thousand Taka.

285. Penalty for making agreement in respect of a child in contravention of section-35 : Whoever, being the parent or guardian of a child, makes an agreement in respect of such child in contravention of section 35, shall be punishable with fine which may extend to one thousand Taka.

286. Penalty for contravention of the provisions of Chapter IV by an employer : (1) If any employer contravenes any provision of Chapter IV, he shall be punishable with fine which may extend to five thousand Taka.

(2) Whenever a Court imposes a fine under this section, the Court may, when passing judgment, order the whole or any of the compensation to the women concerned for any loss or damage caused to her by the contravention for which the fine has been imposed.

287. Penalty for working for payment during permitted period of absence : If a woman does any work in lieu of cash or kind during the period she has been permitted by her employer to absent herself under the provisions of Chapter IV, she shall be punishable with fine which may extend to one thousand Taka.”

288. Penalty for contravention of section 67 : Whoever sells or lets on hire or as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in an establishment any machinery driven by power which does not comply with the provisions of section 67, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand Taka, or with both.

289. Penalty for payment or wages at a rate below the minimum rate of wages : (1) Any employer who pays any worker wages at a rate lower than the rate declared under Chapter XI to be the minimum rate of wages shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand Taka, or with both.

(2) Where the Court imposes penalty under sub-section (1), while passing judgment, order that the employer shall also pay to the worker concerned such sum to represent the differences between the amount actually paid to such worker and the amount which would have been paid to him had there been no such contravention.

290. Penalty for failure to give notice of accidents : Whoever, in contravention of any provision of this Act fails to give notice of any accidental occurrence, he shall, if the occurrence results in serious bodily injury, be punishable with fine which may extend to one thousand Taka, or if the occurrence results in loss of life, be punishable with imprisonment which may extend to six months, or with fine which may extend to three thousand Taka, or with both.

291. Penalty for unfair labour practices : (1) Whoever contravenes any provision of section 195, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand Taka, or with both.

(2) Any worker who contravenes any provision of section 196 shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand Taka, or with both.

(3) Any trade union which, or any person, other than a worker, who, contravenes any provision of section 196, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand Taka, or with both.

292. Penalty for committing breach of settlement, etc. : Whoever commits any breach of term of any settlement, award or decision which is binding on him under this Act shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand Taka, or with both.

NOTES/COMMENTS/PRECEDENTS

Section Provides for penal action : This provision provides for penal action and does not empower the Labour Court to pass an order for deposit of arrear lay-off benefits and wages in court. [*Virginia Tobacco Vs. Labour Court (1993) 45 DLR 233*]

293. Penalty for failing to implement settlement, etc. : Whoever wilfully fails to implement any term of any settlement, award or decision, which is his duty under this Act to implement shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand Taka, or with both.

NOTES/COMMENTS/PRECEDENTS

Section Provides for penal action : This provision provides for penal action and does not empower the Labour Court to pass an order for deposit of arrear lay-off benefits and wages in court. [*Virginia Tobacco Vs. Labour Court (1993) 45 DLR 233*]

For Penal action- Failure to implement must be willful : Under section 55 of the Industrial Relations Ordinance willful failure to implement the award has been made question of any decision or order and such they cannot be prosecuted under section 55 of the Industrial Relations Ordinance. [*Ekrumul Huq & others Vs. Mansure Ahmed & another (1987) BLD 120*]

Sanction required for taking cognizance against public servant : Labour Court cannot take cognizance of an offence for violation of its order against a public servant without prior sanction from Government and any proceeding with such sanction is liable to be quashed. [*Moqbul Ahmed & another Vs, Hamidul Bari (1987) BLD 108*]

Offence lies only against persons who were party in the original proceedings : Petitioners who were not party to the industrial dispute case and no direction was made upon them- held that there is no question of violation of any decision or order and as such they cannot be prosecuted under section 55 of the Industrial Relations Ordinance. [*Ekrumul Huq and others Vs. Mansur Ahmed and anothe (1987) BLD 120*].

294. Penalty for illegal strike or lock-out : (1) Any worker who commences, continues or otherwise acts in furtherance of, an illegal strike shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand Taka, or with both.

(2) Any employer who commences, continues or otherwise acts, in furtherance of an illegal lock-out shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand Taka, or with both.

295. Penalty for instigating illegal strike or lock-out : Whoever instigates or incites others to take part in or expends or supplies money or otherwise acts in furtherance or support of an illegal strike or lock-out, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand Taka, or with both.

296. Penalty for taking part in or instigating go-slow : Whoever takes part in, or instigates or incites others to take part in, or otherwise acts in furtherance of, a go-slow shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand Taka, or with both.

297. Penalty for contravention of section 228 (2) : Any employer who contravenes the provisions of section 228(2), shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand Taka, or with both.

298. Penalty for misappropriation of provident funds and trade union funds : (1) Whoever dishonestly embezzles or misappropriates or converts to his own use any money of the workers' provident fund, shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Explanation : Whoever, being an employer, fails duly to deposit his own contribution or the contribution of a worker already deducted from his wages by him to the workers 'provident fund' of his establishment, if any, for a period of more than three months without any reasonable excuse to the satisfaction of the Director of Labour, shall be deemed to have misappropriated the money of that provident fund.

(2) Whoever, being an officer or employee of a trade union of workers or employers embezzles or misappropriates or converts to his own use any money of the trade union fund, shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

(3) A fine which may be imposed under this section may extend to the amount found by the Court to have been embezzled or misappropriated by, or converted to the use of, the accused, and upon realisation the amount of fine shall be reimbursed by the Court to the provident fund or trade union fund concerned.

NOTES/COMMENTS/PRECEDENTS

Benefit of doubt : As the prosecution has failed to prove the vital part of the allegations of misappropriation, the appellant is entitled to get benefit of doubt and the conviction and sentence passed by the Chairman of the Labour Court cannot be sustained in law. [*S M Qumruzzaman alias Chunnu vs. Tabibur Rahman and State (1997) 2 BLC 187*]

299. Penalty for activities of unregistered trade unions : Whoever takes part in or instigates or incites others to take part in the activities of an unregistered trade union or of a trade union whose registration has been cancelled or collects subscription, except enrollment fee, for the fund of any such trade union, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand Taka, or with both.

300. Penalty for dual membership of trade unions : Whoever enrolls himself as, or continues to be a member of more than one trade union at the same time shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand Taka, or with both.

301. Penalty for non-compliance with the provisions of section 210 (7) : Any person who fails, except for reasons satisfactory to the conciliator, to comply with the provisions of section 210 (7) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand Taka, or with both.

302. Penalty for using false certificates of fitness : Whoever knowingly uses or attempts or use as a certificate of fitness granted to himself under any provision of this Act a certificate of fitness granted to another person under such provision or whoever, having procured such a certificate, knowingly allows it to be used or allows another person to attempt such a use, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand Taka, or with both.

303. Penalty for false statements, etc. : Whoever-

- (a) with intent to deceive, makes or causes or allows to be made in any register, record, notice or other document required or prescribed to be maintained under any provision of this Act or any rules, regulations or schemes an entry which, he knows or has reason to believe, to be false in any material particular, or
- (b) wilfully omits or causes or allows to be omitted from any such register, record, notice or document any entry required to be made therein, or
- (c) maintains or allows to be maintained more than one set of registers, records, notices or documents, except the office copies thereof, or
- (d) wilfully sends or causes or allows to be sent to the Director of Labour, Chief Inspector, Controller or any officer sub-ordinate to him any application, plan, record, statement, information, return, report, notice or other document required or prescribed to be sent under any provision of this Act or any rules, regulations or schemes, which he knows, or has reason to believe, to be false in any material particular ; or
- (e) wilfully neglects or fails to maintain or furnish any plan, list, record, register, information, return, report or other document he is required to maintain or furnish under this Act or under any rules, regulations or schemes,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand Taka, or with both.

304. Penalty for wrongful disclosure of information : Whoever, in contravention of any provision of this Act, discloses any information relating to any manufacturing or commercial secret coming to his knowledge in the course of his official duties or any result of an analysis made under any provision of this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand Taka, or with both.

305. Penalty for general offences by workers : Subject to other provisions of this Act, if any worker employed in an establishment contravenes any provision of this Act or any rules, regulations or schemes, or any orders, imposing any duty or liability on workers, he shall be punishable with fine which may extend to five hundred Taka.

NOTES/COMMENTS/PRECEDENTS

Burden on prosecution to prove that all reasonable steps were not taken by occupier or manager : If a worker contravenes the provisions of Factories Act and has been prosecuted then sub-section (2) of section 97 provides that the occupier or manager shall not be deemed to be guilty of the offence, unless it is proved that he failed to take all reasonable measures for its prevention. The burden thus is on the prosecution to prove that all reasonable steps were not taken and not on the occupier or the manager. [*Chinubhai Haridas Vs. State of Bombay*, (: AIR 1960 SC 37= (1960) 1 LLJ 572.)]

306. Penalty for obstruction : (1) Whoever wilfully obstructs any officer in discharging his duties under any provision of this Act, or the rules, regulations or schemes, or refuses or wilfully neglects to afford him any reasonable facility for making any entry, inspection, examination or enquiry authorised by or under any provision of this Act, or the rules, regulations or schemes, in relation to any establishment, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand Taka, or with both.

(2) Whoever wilfully refuses or fails to produce on the demand of any officer mentioned in sub-section (1) any register or other document kept in pursuance of any provision of this Act or any rules, regulations or schemes, or prevents or attempts to prevent from appearing before, or being examined, by such person acting in exercise of his powers or in pursuance of his duties under any provision of this Act or the rules, regulations or schemes, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand Taka, or with both.

307. Penalty for other offences : Whoever contravenes, or fails to comply with, any of the provisions of this Act or the rules, regulations or schemes shall, if no other penalty is provided by this Act or by such rules, regulation or schemes for such contravention or failure, be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand Taka, or with both.

308. Enhanced penalty after previous conviction : If any person who has been convicted of any offence punishable under this Act or under any rules, regulations or schemes is again convicted of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with double the punishment provided for that offence:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the subsequent offence.

309. Penalty for contravention of law with dangerous results : (1) Notwithstanding anything contained elsewhere in this Chapter, whoever contravenes any provision of this Act or any rules, regulations or schemes, shall be punishable-

- (a) if such contravention results in loss of life, with imprisonment which may extend to four years, or with fine which may extend to one Lakh Taka, or with both ; or
- (b) if such contravention results in serious bodily injury, with imprisonment which may extend to two years, or with fine which may extend to ten thousand Taka, or with both ; or
- (c) if such contravention otherwise causes injury or danger to workers or other persons in an establishment, with imprisonment which may extend to six months, or with fine which may extend to two thousand Taka, or with both.

(2) Any Court imposing a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured, or in the case of his death, to his legal representative.

(3) Nothing in this section shall apply to any contravention for which higher penalty is specified in this Act or the rules, regulations or schemes.

310. Power of Courts to make orders : (1) Where the employer of an establishment is convicted of an offence punishable under this Act or the rule, regulations or schemes, the Court may, in addition to awarding any punishment, by order in writing require him, within a period specified in the order, which may, on application in that behalf, be extended from time to time to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

(2) Where an order is made under sub-section (1) the employer of the establishment shall not, during the period specified therein or extended period, if any, be liable under any provision of this Act or the rules, regulations or scheme for continuation of the offence for the which he has been convicted.

(3) If the order of the Court under sub-section (1) is not fully complied with during the aforesaid period, the employer shall on the expiry of such period, be deemed to have committed further offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand Taka, or with both.

311. Onus as to age : (1) When an act or omission would, if a person were under or over a certain age, be an offence publishable under this Act, and such person is, in the

opinion of the Court apparently under or over such age, the burden of proving that such person is not under or over such age shall be on the accused.

(2) A certificate by a registered medical practitioner relating to a worker that he has personally examined him and believe him to be under or over the age set forth in such certificate shall, for the purposes of this Act, be conclusive evidence as to the age of the worker.

NOTES/COMMENTS/PRECEDENTS

Proof of age : Section 311 of this Section (like section 106 of the Factories Act, 1965) lays down the rules relating to the onus as to the proof of age and the certifying surgeon's declaration as to the age of workman. According to this section when any act or omission would, if a person were under a certain age, be an offence punishable under this Act, and such person is in the opinion of the court *prima facie* under such age, the burden shall be on the accused to prove that such person is not under such age.

A declaration in writing by a registered medical practitioner in relation to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purpose of this Act and the rules made thereunder, be admissible as evidence of the age of that worker.”

312. Offences by companies, etc. : Where an offence punishable under this Act or under any rule, regulation or scheme is committed by a company or other body corporate or by a firm, every director, partner, manager, secretary or other officer or agent thereof shall, if actively concerned in the conduct of the business of such company, body corporate or firm, be deemed to have committed the offence unless he proves that the offence was committed without his knowledge or consent or that he exercised all due diligence to prevent the commission of the offence.

313. Cognizance of offences : (1) No Court other than a Labour Court shall try an offence under this Act or under any rules, regulations or schemes.

(2) No Labour Court shall take cognizance of an offence under this Act or under any rules, regulations or schemes except upon complaint made by-

- (a) the person aggrieved, or aggrieved trade union;
- (b) the Director of Labour, in the case of an offence under Chapter XIII or under section 298;
- (c) the Chairman of the Trustee Board or the Controller of Provident Funds, in the case of an offence under Chapter XVII;
- (d) Competent authority in the case of an offence under Chapter XVIII;
- (e) Any officer authorised in that behalf, in the case of any other offence.

314. Limitation of prosecution : Unless otherwise specified elsewhere in this Act or in any rules, regulations or schemes, no Labour Court shall take cognizance of an offence punishable under this Act or under any rules, regulations or schemes, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

315. Report of offences : Any contravention of, or refusal or omission to carry out, the provisions of this Act, or of the rules, regulations or schemes, by any person may be reported to the Director of Labour, the Chief Inspector or Controller of Provident Fund, as the case may be, or to any officer subordinate to him for information or for taking such action as may be deemed fit or proper.

316. Withdrawal of cases : No case under this Act, or under any rules, regulations or schemes, shall be permitted to be withdrawn except on an application for such withdrawal made by the person on whose complaint the case has been started:

Provided that no such case shall be withdrawn without the permission of the Director of Labour or the Chief Inspector or the Controller of Provident Funds, as the case may be, if such case was filed by any officer subordinate to him.

CHAPTER : XX
ADMINISTRATION, INSPECTION, ETC.

317. Director of Labour of Labour, etc. : (1) The Government may, by notification in the official Gazette, appoint a Director of Labour and such number of Additional Director of Labour, Joint Directors of Labour, Deputy Directors of Labour and Assistant Directors of Labour as it thinks fit for the purposes of this Act.

(2) Where Additional Directors, Joint Directors, Deputy Directors or Assistant Directors are appointed, the Government shall specify in the notification the area within which each one of them shall exercise powers and perform functions under this Act.

(3) The Director of Labour shall have powers of supervision and control over all Additional Director of Labour, Joint Directors of Labour, Deputy Directors of Labour and Assistant Directors of Labour.

(4) The following shall be the powers and functions of the Director of Labour-

- (a) to register trade unions under Chapter XIII and maintain a register for this purpose ;
- (b) to lodge complaints with the Labour Courts for action against any offence or any unfair labour practice or violation of any provisions of Chapter XIII;
- (c) to determine the question as to which one of the trade unions in an establishment or group of establishments is entitled to be certified as the collective bargaining agent in relation to that establishment/ group of establishments;
- (d) to supervise the election of trade unions executives and the holding of any secret ballot ;
- (e) to act as conciliator in any industrial dispute ;
- (f) to supervise the functioning of participation committees ; and
- (g) such other powers and functions as are conferred by this Act or Rules

(5) The Director of Labour may, by general or special order in writing, direct that all or any of his powers and functions, be also exercisable by the Additional Director of Labour, Joint Director of Labour, Deputy Directors of Labour or Assistant Directors of Labour,.

318. Chief Inspector, etc. : (1) The Government may, by notification in the official Gazette, appoint a Chief Inspector and requisite number of Deputy Chief Inspectors, Assistant Chief Inspectors or Inspectors as it thinks fit for the purposes of this Act.

(2) Where Deputy Chief Inspectors, Assistant Chief Inspectors or Inspectors are appointed, the Government shall specify in the notification the area within which and the class of establishments in respect of which each one of them shall exercise power and perform functions.

(3) The Chief Inspector shall, in addition to the powers conferred on him under this Act, have the powers of an Inspector throughout the country.

(4) The Chief Inspector shall also have powers of supervision and control over Deputy Chief Inspectors, Assistant Chief and Inspectors.

(5) The Chief Inspector may, by general or special order in writing, direct that all or any of his powers and functions may, be also exercisable by any Deputy Chief Inspector, Assistant Chief Inspector and Inspector.

(6) All Principal Officers of the Mercantile Marine Department shall be Inspectors *ex-officio* for the purpose of regulations made under Chapter VI within the limit of their charge.

NOTES/COMMENTS/PRECEDENTS

Duties of Inspector- nature of : The Inspectors appointed under the Factories Act do not simply carry out the duties laid on them under the Act. In course of discharge of their duties and obligations the Inspectors are expected to give proper advice and guidance so that there may be due compliance with the provisions of the Act. It can well be said that on certain occasions factory owners are bound to receive a good deal of benefit by being saved from the consequences of the working of dangerous machines or employment of such processes as involve danger to human life by being warned at the proper time as to the defective nature of the machinery or of the taking of precautions which are enjoined under the Act. It involves a good deal of technical advice. [*Delhi Cloth and General Mills Co. Vs. Chief Commissioner, Delhi. AIR 1971 SC. 344*]

319. Powers of Chief Inspector, etc. : (1) For carrying out the purposes of this Act, the Chief Inspector, a Deputy Chief Inspector, an Assistant Chief Inspector or Inspector, shall have the following powers and responsibilities within the area for which he is appointed-

- (a) with such assistants, if any, as he thinks fit, enter, inspect and examine any place, premises, vessel or vehicle, at any reasonable time, which is, or which he has reason to believe to be, an establishment or used for an establishment;
- (b) require the production of the registers, records, certificates, notices and other documents kept or maintained in pursuance of this Act or the rules, regulations, orders or schemes and seize, inspect, examine and copy any of them ;
- (c) make such examination and enquiry as may be necessary to ascertain whether the provisions of this Act or the rules, regulations, orders or schemes in respect of any establishment or any worker employed therein are complied with ;
- (d) examine, in respect of matters pertaining to this Act or the rules, regulations, orders or schemes any person whom he finds in any establishment or whom he has reason to believe to be or to have been within the preceding two months employed in any establishment ;
- (e) require every person so examined to sign the record of such examination by way of verification ;

- (f) require such explanation from the employer or any person employed by him in respect of any registers, record, certificates, notices or other documents kept or maintained by him as he deems necessary ;
- (g) exercise such other powers and functions as are conferred by this Act or may be prescribed.

(2) The employer of every establishment, shall furnish such means as may be required by an Inspector for entry, inspection, examination, enquiry or otherwise for the exercise of the powers under this Act, and the rules, regulations, orders or schemes.

(3) Every employer shall produce for inspection by an Inspector all records, registers and other documents required to be kept or maintained for the purposes of this Act and the rules, regulations and schemes, and shall furnish any other information in connection therewith as may be required by such Inspector.

(4) An Inspector shall have the power to call for, or to seize, any record, register or other document of any employer relevant to the enforcement of the provisions of this Act or the rules, regulations or schemes as he may consider necessary for the purpose of carrying out his functions under this Act and the rules, regulations or schemes.

(5) The Chief Inspector or, if authorised by him in this behalf, any other officer subordinate to him, may lodge complaint with the Labour Courts for action against any person for any offence or violation or any provisions of this Act or of any rules, regulations or schemes.

320. Controller of Tea Plantation Worker' Provident Fund : (1) The Government, shall, by notification in the official Gazette, appoint a Controller of the Tea Plantation Workers' Provident Fund

(2) The Controller shall be the Chief executive officer of the said Fund.

(3) The Controller shall perform his functions under the general control and superintendence of the Trustee Board and shall act as the secretary to that Board.

(4) The Controller may take part in the meetings of the Board of Trustees, but shall not be entitled to vote.

(5) The Controller shall, in consultation with the Chairman of the Trustee Board, convene meetings of the Board and keep records of its minutes.

(6) The aforesaid Controller shall be responsible for carrying out the decisions of the Trustee Board.

(7) The Controller may require an employer to furnish such accounts relevant to the aforesaid Provident Fund, as he may consider necessary.

(8) The Controller or any person authorised by him may, at any reasonable time and after giving notice of his intention to do so, enter any tea plantation or any premise connected therewith and require any one found in-charge thereof to produce before documents relating to the employment of workers or the payment of wages in such plantation.

(9) The Controller or any person authorised by him may examine with respect to any matter relevant to any of the purposes as stated in sub-section (8), the employer, his officer, employee or agent or any other person found in charge of the tea plantation or any premises connected therewith or whom the Controller or his authorised officer has reason to believe to be, or to have been, a worker in such plantation.

(10) The Controller may exercise such other powers as may be prescribed by rules.

321. Accounts and audit : (1) A Board shall maintain its accounts in such manner and form as the Government may direct.

(2) The accounts of a Board shall be audited every year by the Controller and Auditor-General of Bangladesh, hereinafter referred to as the Auditor-General, in such manner as he deems fit.

(3) For the purpose of audit, the Auditor-General or any person authorised by him in this behalf shall have access to all records, books, documents, accounts, cash, stores, documents and other properties of the Board and may examine any member or any officer or other employee of the Board.

(4) The Board shall, at the time of such audit, produce the account books and connected documents and furnish such explanation and information as the Auditor-General or any officer authorised by him in this behalf may ask for.

(5) The Auditor-General shall submit his audit report to the Board and shall forward a copy thereof to the Government.

(6) The Board shall take steps forthwith to rectify any defects or irregularities pointed out in the audit report.

(7) The Government may, at any time, require the Auditor-General to report to it upon the financial affairs of the Board.

(8) In this section, Board means a Dock Workers Management Board or the Board of Trustees of the Tea Plantation Workers Provident Fund.

322. Reports, etc. : (1) A Board mentioned in section 321 shall, as soon as possible after the end of every financial year, furnish to the Government a statement of accounts audited by the Auditor-General together with an annual report giving therein an account of its activity during that year and its proposal for the next financial year.

(2) The Government may require the Board to furnish—

(a) any return, statements, estimate, statistics or other information regarding any matter under the control of the Board.

(b) a report on any such matter,

(c) a copy of any document in the custody of the Board.

323. National Council for Industrial health and Safety : (1) The Government may, by notification in the official Gazette, constitute a Council, to be called the National Council for Industrial Health and Safety.

(2) The Council shall consist of the following members, namely:

- (a) the Minister for Labour and Manpower, *ex-officio*, who shall *ex-officio* also be its Chairman ;
- (b) Secretary, Ministry of Labour and Manpower, *ex-officio* ;
- (c) Secretary, Ministry of Industries, *ex-officio* ;
- (d) Secretary, Ministry of Health, *ex-officio* ;
- (e) Secretary, Ministry of Jute and Textile, *ex-officio* ;
- (f) Secretary, Ministry of Shipping *ex-officio* ;
- (g) Secretary, Ministry of Communications, *ex-officio* ;
- (h) seven members representing industries, to be nominated by the Government in consultation with such employers' organisations as it may deem fit ;
- (i) seven members representing workers, to be nominated by the Government in consultation with such trade union organisations as it may deem fit ; and

Provided that at least one Female representative shall be included in the members representing workers, as well as employers;

(j) Chief Inspector, *ex-officio*, who shall also be its Secretary.

(3) The nominated members shall hold office for a term of three years.

(4) The Council shall follow its own rules of procedure.

(5) The Council shall-

- (a) prepare national policy for ensuring safety in industrial establishments and maintaining healthy and hygienic conditions of work and atmosphere therein ;
- (b) frame guidelines for implementation of its policy.

(6) Every establishment shall take steps necessary for implementation of the policy prepared by the Council following the guidelines framed by it.

CHAPTER : XXI
MISCELLANEOUS

324. Power to exempt : (1) The Government may, by notification in the official Gazette, exempt, subject to such conditions and restrictions as it may specify therein, any employer or class of employers or any establishment or class of establishments or any part thereof or any worker or class of workers from the operation of, or compliance with, all or any provisions of Chapter II, V, VI, VII, VIII, IX and XVIII and sections 325, 326, 337 or 338 of Chapter XXI.

(2) An order of exemption under sub-section (1) may be made in the public or national interest and shall be in operation for such period not exceeding six month at a time.

(3) The Chief Inspector may, by notification in the official Gazette, suspend the operation of all or any provisions of sections 100, 101, 102, 103, 105 or 114 in respect of any establishment or class of establishments with respect to any festival, public fair or exhibition .for any such period and conditions as may be specified in the Official gazette.

325. Notice to Chief Inspector before commencement of work : (1) The employer shall, at least fifteen days before he begins or starts work or business in his establishment, send to the Chief Inspector a written notice containing-

- (a) name and situation of the establishment,
- (b) name and address of the employer ;
- (c) address to which communications relating to the establishment may be sent ;
- (d) nature of the work or business to be carried or in the establishment ;
- (e) nature and quantity of power to be used ;
- (f) name of the manager of the establishment ;
- (g) number of workers likely to be employed in the establishment ;
- (h) such other particulars as may be prescribed by rules;

(2) An establishment 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 employer 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.

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

(4) During any period for which no person has been designated as manager of the establishment or during which the person so designated does not manage the establishment,

any person found acting as manager or if no such person is found, the employer himself, shall be deemed to be the Manager of the establishment for the purposes of this Act.

NOTES/COMMENTS/PRECEDENTS

Scope of Section : This section provides that 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 the following particulars viz. : (a) the name and situation of the factory, (b) the name and address of the Occupier etc.

Duty of Occupier : Section 6 of the Factories Act, 1965 lays down the duty of the occupier to send notice to the chief Inspector before he begins to occupy or use any premises as a factory.

Payment of fees for registration and renewal : The appellant company had a number of industrial establishments in Delhi. These establishments were factories within the meaning of the Factories Act. The factories could be run only after registration and under a licence granted under the Act and the Rules on payment of a prescribed fee. The licensee was renewable every year on payment of the same fee as for grant of the licence. The company filed a writ petition challenging the validity of the Rules under which the fee for renewal of the licence for each of its factories in Delhi was being levied and collected. The petition being dismissed by the High Court, an appeal was filed in this Court with certificate. The contention on behalf of the appellant was that there was no *quid pro quo* for the fee paid for renewal of the licence and that the maintenance of a team of Inspectors under the Act did not amount to such *quid pro quo*. **HELD:** In each case when the question arises whether the levy is the nature of a fee, the entire scheme of the statutory provisions, the duties and obligations imposed on the inspecting staff and the nature of tire work done by them wilt have to be examined for the purpose of determining the rendering of the services which would make the levy of a fee.In the present case in which contributions for the purpose of maintaining an authority and the staff for supervising and controlling public institutions were held to be fee and not tax A large number of provisions of the Act, particularly in the chapters dealing with safety, involve a good deal of technical knowledge and in the course of discharge of their duties and obligations the Inspectors are expected to give proper advice and guidance so that there may be due compliance with the provisions of the Act. On certain occasions the factory owners are bound to receive a good deal of benefit by being saved from the consequences of the working of dangerous machines or employment of such processes as involve danger to human life by being warned at the proper time as to the defective nature of the machinery or of the taking of precautions which are enjoined under the Act. Similarly if a building or a machinery or plant is in such a condition that it is dangerous to human life or safety the Inspector by serving a timely notice on the manager saves the factory owner from all the consequences of proper repairs not being done in time to the building, or machinery. [*Delhi Cloth & General Mills Co. Ltd. Vs. Chief Commissioner 1971 AIR 344 = 1970 SCR (2) 348*].”

326. Approval of plans and fees for licensing and registration : (1) The Government may-

- (a) require that previous permission in writing be obtained in the prescribed manner from the Chief Inspector for the construction or extension of any factory or class of factories ;

- (b) require registration and licensing of factories or any class of factories and payment of fees for such registration and licensing or for the renewal of licenses, in the proscribed manner.

(2) If, in accordance with the provisions of sub-section (1), an application for permission accompanied by the plans and specifications is sent to the Chief Inspector and no order is communicated to the applicant within two months from the date of its receipt by the Chief Inspector, the permission applied for in the said application shall be deemed to have been granted.

(3) Where the Chief Inspector refuses to grant permission for construction or extension of a factory or to registration and licensing of a factory, the applicant may, within sixty days of the date of such refusal, appeal to the Government.

Explanation. –A factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery or, within such limits as may be prescribed, of the addition of any plant or machinery.

NOTES/COMMENTS/PRECEDENTS

Duty of Licencing Authority : This Section of the Factories Act cast a statutory duty upon the licencing authority to issue licence applied for on his satisfaction that the requirements of the Act and the Rules have been complied with.

327. Appeals from certain orders of Inspectors : (1) Where an order in writing of an Inspector has been served under this Act on an employer he may, within thirty days of the service of the order, appeal against it to the appellate authority which may, subject to rules made in this behalf, confirm, modify or reverse the order.

(2) Subject to such rules as may be framed in this behalf and subject to such conditions as to compliance as the appellate authority may, authority, if it thinks fit, suspend the order appealed against pending the decision of the appeal.

(3) The Government may make rules for the purpose of this section.

(4) In this section, appellate authority means the Government or such authority as the Government may appoint in this behalf.

328. Seasonal factories : The Government may, by notification in the official Gazette, declare any factory in which manufacturing processes are ordinarily carried on for not more than one hundred and eighty working days in the year and cannot be carried on except during particular seasons or at times dependent on the irregular action of natural forces, to be a seasonal factory for the purposes of this Act.

329. Recovery of money due under this Act : (1) Subject to this Act, any amount directed to be paid by the Labour Court or the Tribunal under any section of this Act, or any amount payable by any person under any provision of this Act, or any money due from an employer or any other person under a settlement or agreement or under an award or decision of an arbitrator or of the Labour Court or Tribunal under any provision of

this Act may, at the option and on the prayer of the applicant entitled to such amount or money, be recovered by or at the direction of the Labour Court-

- (a) as a public demand;
- (b) in the prescribed manner, by attachment and sale of the movable property belonging to the person by whom the amount or the money is to be paid;
- (c) if the entire amount is not so recovered, in the prescribed manner, by attachment and sale of the immovable property belonging to such person, or
- (d) as a money decree of a Civil Court.

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

(3) No application for recovery of any money shall be entertained under this section unless it is made within one year from the date the money became due to the applicant:

Provided that any such application may be entertained after the expiry of the said period of one year, if the Labour Court is satisfied that the applicant had sufficient cause for not making the application within the said period.

Provided further that there shall be paid the amount due to workmen in highest priority.

330. No defuction for any facilities provided : No employer shall, recover any fees or money, from any worker for providing any facilities or supplying of any equipment or appliances to be provided under this Act, except the price for food supplied in the canteen.

331. Obligation of workers : No worker in an establishment shall-

- (a) wilfully interfere with or misuse any appliance, convenience or other thing provided in the establishment for the purpose of securing the health, safety or welfare of the workers therein ;
- (b) wilfully and without reasonable cause do anything which is likely to endanger himself or other ;
- (c) wilfully neglect to make use of any appliance or other things provided in the establishment for the purposes of securing the health or safety of the worker therein.

332. Conduct towards female workers : Where any female worker is employed in any work of the establishment, irrespective of her rank or status, no one of that establishment shall behave with the female worker which may seem to be indecent or repugnant to the modesty or honour of the female worker.

333. Service of notices and returns : The Government may make rules—

- (a) prescribing the manner of the service of orders under this Act, and

- (b) requiring employers to submit such return, occasional or periodical , as it may consider necessary for the purposes of this Act.

334. Certain persons to be public servants : The Chairman, Member or Officer of a Board, by whatever name called, constituted under any provision of this Act, the Controller, the Director of Labour, the Chief Inspector, the Chairman of a Labour Court and the Chairman of the Tribunal and any person appointed under Chapter XX shall be deemed to be public servant within the meaning of section 21 of the Penal Code, 1860 (XLV of 1860).

335. Indemnity : No suit, prosecution or other legal proceeding shall lie against any person or authority for anything which is in good faith done or intended to be done under this Act or under the rules, regulations or schemes.

336. Protection of existing conditions of employment : Nothing in this Act or the rules, regulations or schemes shall affect any right or privilege to which a worker was entitled on the date of commencement of this Act under any law repealed by this Act or under any award, agreement, settlement, custom or usage, so long he continues to be employed under the employer under which he was employed on such date, if such right or privilege is more favourable to him than those provided in this Act, or in the rules, regulations or schemes.

337. Abstracts of the Act, Rules and Regulations to be displayed : (1) The employer of every establishment shall cause to be displayed in a conspicuous and accessible place at or near the main entrance of the place of work or the establishment, as the case may be, a notice in Bangla containing an abstract of the important provisions of this Act and of the rules and regulations.

(2) All notices displayed under sub-section (1) shall be maintained in a clean and legible condition.

(3) The Chief Inspector may, by order in writing served on the employer, require that there shall be displayed in the establishment any other notice or poster relating to the health, hygiene, safety or welfare of the worker employed in the establishment.

338. Liability of owner of premises in certain circumstances : (1) Where in any premises separate buildings are leased to different employers for use as separate establishment, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation.

(2) Where in any premises, independent or self-contained floors or flats are leased to different employers for use as separate establishments, the owner of the premises shall be liable, as if he were the employers of the establishments, for any contravention of the provisions of this Act or the rules in respect of-

- (a) latrines, urinals and washing facilities in so far as the maintenance of the common supply of water for these purposes is concerned ;

- (b) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an employer ;
- (c) safe means of access to the floors or flats and maintenance and cleanliness of staircases and common passages ;
- (d) precautions in case of fire ;
- (e) maintenance of hoists and lifts ; and
- (f) maintenance of any other common facilities provided in the premises.

(3) The provisions of sub-section (2) relating to the liability of the owner shall apply where in any premises independent rooms with common latrines, urinals and washing facilities are leased to different employers for use as separate establishments:

(4) Where in any premises portions of a room or a shed are leased to different employers for use as separate establishments, the owner of the premises shall be liable for any contravention of the provisions of Chapter v, except section 53 and 55, and Chapter VI, except sections 40, 64, 74, 75 and 77, and section 91 :

Provided that in respect of the provisions of section 63, 65 and 72 the owners liability shall be only in so far as such provisions relate to things under this control :

Provided further that the employer shall be responsible for complying with the provisions of Chapter VI in respect of plant and machinery belonging to or supplied by him;

(5) The Chief Inspector shall have, subject to the control of the Government, power to issue orders to the owner of the premises in respect of carrying out the provisions of this section.

(6) In respect of sub-section (3) and (4), while computing for the purpose of any of the provisions of this Act the total number of workers employed, the whole of the premises shall be deemed to be a single establishment.

NOTES/COMMENTS/PRECEDENTS

Premises given to a firm on hire- Owner not liable : In an Indian decision it has been held that Section 85 of the Factories Act empowered the State Government to extend the provisions of the Act to other premises where manufacturing process is carried on. Where with the permission of or under agreement with the owner, the premises were given over to partnership firm in return for a periodic payment, it cannot be said that the work was under the control of the owner and therefore section 85 was not applicable. the owner is liable when the machinery is not entrusted to the custody or use of any other person. [*State of Maharashtra Vs. Famnabai Purshottam Asar AIR 1968 SC 53=(1967) 3 SCR 808=(1968) 1 LLJ 12.*]

Liability of owner vis- a-vis occupier : The difference between the owner of the premises and the occupier is at once visible. The liability of the occupier is patent but the liability of owner arises only when the machinery and plant is not specifically entrusted to the custody or use of an occupier. In the present case, for example the machinery and plant has been so specifically entrusted to the custody or use of the various partnership firms and the owner of the premises cannot be made liable. [*State of Macharshira Vs. Famnabai Purshottam.Asar AIR 1968 SC 53=(1967) 3 SCR 808=(1968) 1 LLJ 12.*]

339. Powers to collect information : Any Board, or any officer or authority exercising powers under this Act or any rules, regulations or schemes, may, for the due discharge of its or his functions, direct any employer to furnish such records, documents or information or do such other acts as it or he, as the case may, be, may require, and every such employer or person shall comply with such direction.

340. Presumption as to employment : Every person, who is found in a factory at any time, except during intervals meals or rest, when work is going on or the machinery is in motion shall, until the contrary is proved, be deemed, to be at that time employed in the factory.

341. Restriction on disclosure of information : (1) No person empowered to exercise any power or discharge any duty under this Act or under any rules, regulation or scheme shall, while in service or after leaving the service, disclose other than in connection with the administration of this Act any information relating to any manufacturing or commercial secret which may come to his knowledge in the course of his official duties.

(2) Nothing in sub-section (1) shall apply to any disclosure of information made with the previous consent in writing of the employer of such secret or for the purposes of any legal proceeding including arbitration pursuant to this Act or of any criminal proceedings which may be taken, whether pursuant to this Act or otherwise, or for the purposes of any report of such proceedings as aforesaid.

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

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

343. Protection of proceedings of Boards : No act or proceedings of any Board, by whatever name called, constituted under any provision of this Act, shall be invalid or questioned merely on the ground of existence of a vacancy in, or defect in the constitution or in the appointment or qualification of any member thereof.

344. General provisions relating to tenure, powers, procedures, etc. of Boards : (1) Unless otherwise specified in this Act, the term of office and the condition of service of the Chairman and other Members of any Board, by whatever name called, constituted or established under any provisions of this Act, the manner of filling

casual vacancies therein, the procedure and conduct of its business and its Committees, if any, the fees or allowances to be paid for attending meetings thereof, shall be such as may be prescribed.

(2) Unless otherwise specified in this Act, any such Board may, for the purpose of performance of its functions,-

- (a) direct any employer to furnish such records, documents or information or do such other acts as it may require ;
- (b) enter at all reasonable times, in any establishment ;
- (c) inspect any books, registers and other documents relating to such establishments;
- (d) record statements of persons connected with the management of such establishment ;
- (e) like a Civil Court,--
 - (i) enforce the attendance of any person and examine him on oath ;
 - (ii) compel the production of documents and material objects ; and
 - (iii) issue commissions for the examination of witnesses.

(3) The aforesaid powers of a Board may be exercised by its Chairman or by any member or officer of the Board authorised by it in this behalf.

345. Payment of equal wages for equal work : In determining wages or fixing minimum rates of wages for any worker, the principle of equal wages for male and female workers for work of equal nature or value shall be followed and no discrimination shall be made in this respect on the ground of sex.

346. Court fees in general : Subject to the provisions of this Act, the Government may, by rules, prescribe the amount of Court fees or other fees payable for, or in respect of, any appeal, application or proceedings under this Act.

347. Restriction upon certain questionings etc : No person shall be compelled under this Act to answer any question or make any statement which may tend directly or indirectly to incriminate him.

348. Training on this Act : (1) The Government, shall take such steps as may be necessary to organise training courses on this Act for officer of trade union of workers and employers.

(2) Every person who is an officer of a trade union of workers shall undertake such training course when invited by the appropriate authority to do so.

(3) The employer of every establishment in which fifty or more workers are ordinarily employed or an officer of such establishment specified by the employer shall undertake such training course when invited by the appropriate authority to do so.

(4) The cost of such training course shall be borne by the Government and the employer in such proportion as the Government may determine.

(5) The period spent on training under this section shall be deemed to be a period spent on duty.

(6) In this section, 'appropriate authority' means the Government or any institute or authority established or authorised by the Government to organise or conduct training courses under this section.

(7) Notwithstanding anything contained in this section a collective bargaining agent or a federation of trade unions may organise training courses on this Act for officers of trade unions for a period not exceeding seven days with the approval of the Director of Labour and any officer attending such course with the permission of the employer concerned shall be deemed to be on duty.

349. Certain activities of trade union prohibited : No trade union shall engage in any activities which are not within the aims and objects of the union as specified in its constitution.

350. Bar to jurisdiction of other Courts : No Court shall entertain any suit, complaint or other legal proceeding which is triable or cognizable by the Labour Court or by the Tribunal under this Act.

NOTES/COMMENTS/PRECEDENTS

Before passing of this Act in different labour laws different courts were empowered to try cases covered by labour laws and in some cases Labour Courts and other courts such as Court of Magistrates had concurrent jurisdiction. In some cases Civil Courts also had jurisdiction to try cases under labour laws. Especially when the jurisdiction of labour courts with respect to injunction and ad-interim orders were shrunk due to some rulings of the apex court the civil courts had full power to try some labour matters. This controversy has put to an end by this section.

351. Power to make rules : (1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act and for providing for all or any matter which is to be or may be determined or prescribed by rules made thereunder.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules-

(a) under Chapter V, may provide for-

- (i) prescribing standards of adequate ventilation and reasonable temperature for an establishment and for maintaining thermometer therein ;
- (ii) prescribing arrangements to be made in an establishment for disposal of its wastes and effluents or for requiring approval from prescribed authority for such arrangements ;
- (iii) in the case of an establishment in which humidity of the air is artificially increased,-

- (a) prescribing standards of humidification,
 - (b) regulating the methods used for artificially increasing the humidity of the air,
 - (c) test for determining and recording the humidity of the air, and
 - (d) prescribing methods for securing adequate ventilation and air cooling ;
- (iv) prescribing standards of sufficient and suitable lighting for an establishment;
 - (v) securing compliance with the provisions relating to drinking water in an establishment;
 - (vi) prescribing the number of latrines and urinals to be provided in an establishment ;
 - (viii) prescribing the type and number of spittoons to be provided in an establishment and their location and maintenance ; and
 - (viii) additional matters in respect of health and hygiene in an establishment ; and
- (b) under Chapter VI, may provide for-
- (i) prescribing additional precautions in respect of any particular machinery or part thereof;
 - (ii) specifying safeguards to be provided in respect of any dangerous part of any machine ;
 - (iii) prescribing additional requirements to be complied with in respect of any lifting machinery ;
 - (iv) examination and testing of any plant or machinery and prescribing additional safety measures in relation thereto ; and
 - (v) prescribing maximum weights which may be lifted, carried or move by male and female, adult or adolescent workers in an establishment ;
- (c) under Chapter X, may provide for-
- (i) requiring the maintenance of such records, registers, returns and notices as are necessary for the enforcement of that Chapter and prescribe the forms thereof ;
 - (ii) requiring display in a conspicuous place or on premises where employment is carried on of notices specifying rates of wages payable to workers on such premises ; and
 - (iii) providing for the regular inspection of the weights, measures and weighting machines used by the employers in checking or ascertaining the wages of workers employed by them ;
- (d) under Chapter XI, may provide for—

- (i) procedure to be followed by a Board in fixing rates of wages ;
 - (ii) giving opportunities to persons likely to be affected by the minimum rates of wages to offer comments and make suggestions ; and
 - (iii) maintenance of books, wage slips, registers and other records and prescribing their forms and particulars to be entered therein and the manner of authenticating such entries ;
- (e) under Chapter XII, may provide for—
- (i) prescribing the manner in which money deposited with a Labour Court may be invested for the benefit or dependents of a deceased worker and for the transfer of money so invested from one Labour Court to another ;
 - (ii) prescribing the manner in which any balance of money may, under section 152(5) be transferred to a fund or funds for the benefit of the workers and for the establishment and administration of such fund or funds ;
 - (iii) prescribing the form and manner in which memorandum of agreements shall be presented and registered ;
 - (iv) withholding by the Labour Court, whether in whole or in part, of monthly payments pending decision on applications for review of the same ; and
 - (v) maintenance of registers and records of proceedings by the Labour Court ;
- (f) under Chapter XVII, may provide for-
- (i) the time and manner in which contributions shall be made to a Provident Fund by the employers and by or on behalf of workers, and the manner in which such contributions may be recovered ;
 - (ii) powers and duties of the Board of Trustees for the administration of such Fund ;
 - (iii) the conditions under which withdrawals from such Fund may be made and any deductions or forfeiture may be made and the maximum amount of such deduction or forfeiture ;
 - (iv) the forms in which a member shall furnish particulars about himself and his family whenever required ;
 - (v) the nomination of persons to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination ;
 - (vi) the registers and records to be maintained with respect to members and returns to be furnished by the members ;
 - (vii) the form or design of any contribution card, token or dice and for the issue, custody and replacement thereof ; and
 - (viii) the conditions under which a member may be permitted to pay premia on life insurance from such Fund ;

(g) under Chapter XVIII, may provide for-

- (i) the selection of apprentices and the conditions and terms of a contract of apprenticeship ;
- (ii) the procedure of discipline, welfare, supervision and control of apprentices ;
- (iii) the forms of records to be maintained by the employers pertaining to the training of apprentices ;
- (iv) the periodical tests and grant of certificates on the successful conclusion of training ; and
- (v) the standards for practical and related theoretical training.

352. Provision for penalty in rules, regulations and schemes : Rules, regulations or schemes may provide that a contravention thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand Taka, or with both.

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

- (a) The Workmen's Compensation Act, 1923 (III of 1923) ;
- (b) The Children (Pledging of Labour) Act 1833 (II of 1933) ;
- (c) The Dock Labourers Act, 1934 (XIX of 194) ;
- (d) The Workmen's Protection Act, 1934 (IV of 1934) ;
- (e) The Payment of Wages Act, 1936 (IV of 1936) ;
- (f) The Employer's Liability Act, 1938 (XXIV of 1938) ;
- (g) The Employment of Children Act, 1938 (XXVI of 1938) ;
- (h) The Maternity Benefit Act, 1939 (IV of 1939) ;
- (i) The Mines Maternity Benefit Act, 1941 (XIX of 1941) ;
- (j) The Motor Vehicles (Drivers) Ordinance, 1942 (V of 1942) ;
- (k) The Maternity Benefit (Tea Estate) Act, 1950 (XX of 1950) ;
- (l) The Employment (Records of Service) Act, 1951 (XIX of 1951) ;
- (m) The Bangladesh (Plantation Employees) Provident Fund Ordinance, 1959 (XXXI of 1959) ;
- (n) The Coal Mines (Fixation of Rates of Wage) Ordinance, 1960 (XXXIX of 1960);
- (o) The Road Transport Workers Ordinance, 1961 (XXVIII of 1961) ;
- (p) The Minimum Wages Ordinance, 1961 (XXXIV of 1961) ;
- (q) The Plantation Labour Ordinance, 1962 (XXXIX of 1962)
- (r) The Employees Social Insurance Ordinance, 1962 (XXII of 1962) ;

- (s) The Apprenticeship Ordinance, 1962 (LVI of 1962) ;
- (t) The Factories Act, 1965 (IV of 1965) ;
- (u) The Shops and Establishments Act, 1965 (VII of 1965) ;
- (v) The Employment of Labour (Standing Orders) Act, 1965 (VIII of 1965) ;
- (w) The Companies Profits (Worker's Participation) Act, 1968 (XII of 1968) ;
- (x) The Industrial Relations Ordinance, 1969 (XXIII of 1969) ;
- (y) The Dock Workers (Regulation of Employment) Act, 1980 (XVII of 1980).

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

- (a) anything done, any rule, regulation, scheme or appointment made, any notification or order issued, any Chairman, member, officer appointed, any Court, Tribunal, Board or Fund constituted, any notice given, any proceeding commenced, any trade union registered, any collective bargaining agent elected, any committee formed, any complaint lodged, any application filed, or any other action taken under any provision of any such law shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, made, issued, appointed, constituted, given, commenced, registered, elected, formed, lodged, filed or taken, as the case may be, under the corresponding provision of this Act, and have effect accordingly until altered, amended, rescinded or repealed ;
- (b) all proceedings under any such law pending in any Court or Tribunal, at the time of commencement of this Act, shall be heard and disposed of by such Court or Tribunal, as if such laws were not repealed.

354. Original Text and Authentic English Text : The original text of this Act shall be in Bangla and there may be an authentic English text .

THE FRIST SCHEDULE

(See Section 2 (I), (LXVII) and 151)

List of injuries deemed to result in permanent partial disablement.

SI No.	Description of injuries	Percentage of loss of earning capacity.
1	2	3
1.	Loss of both hands of amputation at higher sites	100
2.	Loss of a hand and a foot.....	100
3.	Loss of sight of both eyes to such an extent as to render the claimant unable to perform any work for which eyesight is essential	100
4.	Double amputation through leg or thigh, or amputation of leg or thigh on one thigh, or amputation of leg or thigh on one side and loss of either foot	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	70
AMPUTATION CASES—UPPER LIMBS (EITHER ARM).		
7.	Amputation through shoulder joint	80
8.	Amputation below shoulder with stump less than 20 cm. from tip of acromion	70
9.	Amputation from 20 cm. from tip of acromion to less than 11 cm. below tiip of olecranon.	60
10.	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11 cm. below tip of olecranon	60
11.	Loss of thumb.....	30
12.	Loss of thumb and it metacarpal bone	30
13.	Loss of four fingers of one hand	50
14.	Loss of three fingers of one hand	30
15.	Loss of two fingers of one hand	10
16.	Loss of terminal phalanx of thumb	10
AMPUTATION CASES—LOWER LIMBS		
17.	Amputation of both feet	90
18.	Amputation through both feet proximal to the metatarso phalangeal joint	80

19.	Loss of all toes of both feet through the metatarso phalangeal joint	40
20.	Loss of all toes of both feet proximal to the proximal inter phalangeal joint	40
21.	Loss of all toes of both feet distal to the proximal inter phalangeal joint	20
22.	Amputation at hip	90
23.	Amputation below hip with stump not exceeding 12.5 cm. in length measured from tip or great trochanter but not beyond middle thigh	80
24.	Amputation below hip with stump not exceeding 12.5cm. in length measured from tip of great trochanter	70
25.	Amputation below middle thigh to 9 cm. below knee.	60
26.	Amputation below knee with stump exceeding 9 cm. but not exceeding 12.5 cm.	50
27.	Amputation below knee with stump exceeding 12.5 cm.	40
28.	Amputation of one foot resulting in endbearing stump	30
29.	Amputation through one foot proximal to the metatarso phalangeal joint	30
30.	Loss of all toes of one foot through the metatarso phalangeal joint	20

OTHER INJURIES.

31.	Loss of one eye, without complications, the other being normal	40
32.	Loss of vision of one eye without complications or disfigurement of eyeball, the other being normal	30

FINGERS OF RIGHT OR LEFT HAND INDEX FINGER.

33.	Whole	14
34.	Two phalanges	11
35.	One phalanx	9
36.	Guillotine amputation of tip without loss of bone	5

MIDDLE FINGER

37.	Whole	12
38.	Two Phalanges	9
39.	One phalanx	7
40.	Guillotine amputation of tip without loss of bone	5

RING OR LITTLE FINGER

41.	Whole	7
42.	Two phalanges	6
43.	One phalanx	5
44.	Guillotine amputation of tip without loss of bone	5

TOES OF RIGHT OR LEFT FOOT, GREAT TOE.

45.	Through metatarso-phalangeal joint	10
46.	Part, with some loss of bone	3

ANY OTHER TOE.

47.	Through metatarso-phalangeal joint	3
48.	Part, with some loss of bone	2

TWO TOES OF ONE FOOT, EXCLUDING GREAT TOE.

49.	Through metatarso-phalangeal joint	5
50.	Part, with some loss of bone.....	2

THREE TOES OF ONE FOOT, EXCLUDING GREAT TOE.

51.	Through metatarso-phalanial joint	6
52.	Part, with some loss of bone	3
53.	Through metatarso-phalangeal joint	9
54.	Part, with some loss of bone.....	5

THE SECOND SCHEDULE

(See Sections 82 and 83)

List of Notifiable Diseases.

1. Lead poisoning.
2. Lead tetraethyl poisoning.
3. Phosphorus poisoning.
4. Mercury poisoning.
5. Manganese poisoning.
6. Arsenic poisoning.
7. Poisoning by Nitrous fumes.
8. Carbon bi-sulphide poisoning.
9. Benzene poisoning including poisoning by any of its homologues.
10. Chrome alceration.
11. Anthrax.
12. Silicosis.
13. Poisoning by Halogens.
14. Pathological manifestations due to Radium or other radio active substances X-rays.
15. Primary Epithilmatous cancer of the skin.
16. Toxic anaemia
17. Toxic jaundice due to poisonous substances.
18. Oil acne or dermatitis due to mineral oils and compounds containing mineral oil base.
19. Byssionosis.
20. Absestosis.
21. Occupational or contract dermatitis caused by direct contact with chemicals and paints. These are of two types, that is, primary, irritants and allergic sensitizers.
22. Defenses due to high sound ;
23. Beryllium poisoning ;
24. Carbon-monoxide ;
25. Coal mines' Pneumoconiosis ;
26. Phosgene poisoning ;
27. Occupational Cancer ;
28. Isosientis poisoning
39. Poisonous Kidney inflammation
30. Tremulous occupational disease.

THE THIRD SCHEDULE

(See Section 150)

List of Occupational Diseases.

Sl. No.	Occupational disease.	Employment
PART A		
		Any employment--
1.	Anthrax	(a) involving the handling of wool, hair, bristles, animal carcasses or residues thereof ; or (b) in connection with animals infected with anthrax ; or (c) involving the loading, unloading or transport of any merchandise.
2.	Compressed air illness or it sequelae	Any process carried on in compressed air.
3.	Poisoning by lead tetra-ethyl..	Any process involving the use of lead tetra-ethyl.
4.	Poisoning by nitrous fumes	Any process involving exposure to nitrous fumes.
5.	Poisoning by manganese	The use or handling of, or exposure to the fumes, dust or vapour of manganese or a compound of manganese or substance containing manganese.
6.	Poisoning by carbon bisulphide	The use or handling of, or exposure to the fumes or vapour of, carbon bisulphide or a compound of carbon bisulphide or a substance containing carbon bisulphide.
7.	Poisoning by tetrachlorethane.	The use or handling of, or exposure to the fumes or vapour containing tetrachlorethane.
8.	Poisoning by insecticides or pesticides.	The spraying of insecticides or pesticides.
PART- II		
9.	Infection by leptospira icterohaemorrhagica.	Employment in rat infected work places.
10.	Poisoning by Dinitrophenol or a homologue.	The use or handling of, or exposure to the fumes of, or vapour containing dinitrophenol or any of its homologues.
11	Poisoning by tricresyl phosphate	The use or handling of, or exposure to the fumes of, or vapour containing tricresyl phosphate.
12.	Chrome ceration or its sequelae	The use or handling of chromic acid, chromates or bichromate of ammonium,

- potassium, sodium or zinc, or any preparation or solution containing any of these substances.
13. Contract produced by exposure to the glare of, or rays from molten glass molten or red hot metal. Frequent or prolonged exposure to the glare of, or rays from, molten glass or red hot metal.
14. Poisoning by beryllium The use or handling or, or exposure to the fumes, dust or vapour of beryllium or a compound of beryllium or a substance containing beryllium.
15. Carcinoma of the mucous membrane of the nose or associated air sinuses or Primary carcinoma of a branchus or of a lung. Any occupation in a factory where nickel is produced by decomposition of a gaseous nickel compound which involves work in or aouta building or buildings where that process or any other industrial process ancillary or incidental thereto is carried on.
16. Primary necplasm of the epithelial lining of the epithelial lining of the urinary bladder (papilloma of the bladder). (a) work in a building in which any of the following substances if produced for commercial purposes ;
 (i) lpha-rahthylamine, betanaphthylamine or benzidine or any of their salts ;
 (ii) auramine or magenta ;
 (b) the use or handling of any of the substances mentioned in paragraph (a) (i) or work in a process in which any such substance is used or handled or is liberated.
17. Lead poisoning or its sequelae excluding poisoning by led tetraetyhyl. Any process involving the use of lead or its preparation or compounds except lead tetra-ethyl.
18. Phosphorous poisoning or its seuelae Any process involving the use of phosphorus or its preparations or compounds.
19. Mercury poisoning or its sequelae. Any process involving the use of mercury or its preparations or compounds.
20. Poisoning by benzene and its homologues of the sequelae of such poisoning. Handling benzene or any of its homologues and any process in the manufacture or involving the use of benzene or any of its homologues.
21. Arsenical poisoning or its sequelae Any process involving the production, liberation or utiliation of arsenic or its

- compounds.
22. Pathological manifestations due to--
(a) radium and other radioactive substances ; (b) x-rays
Any process involving exposure to the action of radium, radio-active substances, or
23. Primary epitheliomatous cancer of the skin.
Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances.
24. Silicosis
Any employment involving exposure to the inhalation of dust containing silica.
25. Coal miner's pneumoconiosis
Any employment in coal mining.
26. Abbestosis
Any employment in--
(1) the production of--
(i) fiber cement materials ; or
(ii) absbetos mill board.
(2) the processing of ores containing asbestos.
27. Bagassosis
Any employment in the production of bagasse mill board or other articles from bagasse.
28. Byssinosis
Any employment in cotton-rooms, blowing rooms or carding rooms in such factories where spinning of raw cotton is carried on.
29. Writer's cramp
Hand-writing for prolonged periods.
30. Twister's cramp
the twisting of cotton or woolen (including worsted) yarn.
31. Miner's nystagmus
Work in poorly illuminated mines.
32. Dermatitis
(1) Any occupation where organic or inorganic chemicals are used or handled.
(2) Any occupation where any materials are handled manually.
33. Fibrosis of lung
Arises out of Jute and Cotton fibres.

THE FOURTH SCHEDULE**(See Section 150(7))**

List of persons who, subject to the provisions of section 150(7), are included in the definition of worker.

Any person who is—

- (i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity ;
- (ii) employed in any premises wherein, or within the precincts whereof, five or more persons are employed in any manufacturing process, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used, but not persons employed solely in a clerical capacity in any room or place where no manufacturing process is being carried on ;
- (iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article in any premises wherein or within the precincts whereof five or more persons are so employed ;
- (iv) employed in the manufacture or handling of explosives in any premises wherein or within the precincts whereof, ten or more persons are so employed ;
- (v) employed, in any mine as defined in section 3(f) of the Mines Act, 1923 (IV of 1923), in any mining operation, or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained or in any kind of work whatsoever below ground ;

Provided that any excavation in which on no day of the preceding twelve months more than fifty persons have been employed or explosives have been used and whose depth from its highest to its lowest point does not exceed six meter shall be deemed not be a mine for the purpose of this clause ;

- (vi) employed as the master, seaman, sailor or otherwise on any ship or any inland vessel which is propelled wholly or in part by steam or other mechanical power or wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled ;

- (vii) employed for the purpose of loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship or which he is not the master or a member of the crew, or in the handling or transport within the limits of any port subject to the Ports Act, 1908 (XV of 1908), of goods which have been discharged from or are to be loaded into any vessel ;
- (viii) employed in loading and unloading of goods in the mechanically propelled vehicles in the Chittagong Port and the Port of Chalna ;
- (ix) employed in the construction, repair or demolition of—
 - (a) any building or structure ; or
 - (b) any dam or embankment which is six meters or more in height from its lowest to its highest point ; or
 - (c) any road, bridge or tunnel ; or
 - (d) any wharf, quay, sea-wall or other marine work including any moorings or ships ;
- (x) employed in setting up, repairing, maintaining or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard for the same ;
- (xi) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, cannal pipe-line or sewer ;
- (xii) employed in the service of any fire-brigade ;
- (xiii) employed upon a railway as defined in section 3(4) and section 148(1) of the Railways Act, 1890 (IX of 1890), either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration ;
- (xiv) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service, or employed in any occupation ordinarily involving outdoor work in the Posts and Telegraphs Department ;
- (xv) employed as treasurer clerks performing out-door duties in the Posts, Telegraph and Telephone Department ;
- (xvi) employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas ;
- (xvii) employed in any occupation involving blasting operations ;
- (xviii) employed in the making or any excavation in which more than twenty five persons are employed or explosives have been used, or whose depth from its highest to its lowest point exceeds six meters
- (xix) employed in the operation of any ferry boat capable of carrying more than ten persons ;

- (xx) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing coffee, rubber or tea, and on which twenty five or more persons are so employed ;
- (xxi) employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical energy or in the generating or supplying of gas ;
- (xxii) employed in lighthouse as defined in section 2(d) of the Lighthouse Act, 1927 (XVII of 1927) ;
- (xxiii) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures ;
- (xxiv) employed in the training, keeping or working of elephants or wild animals ;
- (xxv) employed in the tapping of palmtrees or the felling or logging of tree, or the transport of timber by inland waters, or the control or extinguishing of forest fire ;
- (xxvi) employed in operations for the catching or hunting of elephant or other wild animals ;
- (xxvii) employed as a driver ;
- (xxviii) employed in the handling or transport of goods, in or within the precincts of,--
 - (a) any warehouse or other place in which goods I, or within the precincts of,--
 - (b) any market in which one hundred or more persons are so employed ;
- (xxix) employed in any occupation involving the handling and manipulation of radium or X-ray apparatus, or contact with radio-active substances ;
- (xxx) employed as drivers, cleaners, conductors and checkers by a road transport service ; or
- (xxxi) employed in the service of watch and ward.

THE FIFTH SCHEDULE

(See Section 151)

Compensation payable in certain cases

Monthly wages of the worker injured	Amount of compensation for		Monthly payment as compensation for temporary disablement.
	Death	Permanent/total disablement.	
1	2	3	4

1,00,000/= 1,25,000/=

Compensation shall be paid for the period of disablement or for one year whichever period is shorter, such compensation shall be paid at the rate of full monthly wages for the first two months, two-thirds of the monthly wages for the next two months and at the rate of half of the monthly wages for the subsequent months.

In case of chronic occupational diseases half of the monthly wages during the period of disablement for a maximum period of two years shall be paid.

NOTES/COMMENTS/PRECEDENTS

** Legislative Reference : Schedule 4 of the Workmen's Compensation Act, 1923

SCHEDULE IV

[See Section 4]

Compensation payable in certain cases

Monthly wages of the workman injured.		Amount of compensation for Permanent/Death total disablement.		Monthly payment as compensation for temporary disablement.
But not more than	more than	Tk	Tk.	
0 to	100	8,000	10,000	Compensation shall be paid for the period of disablement or for one year whichever period is shorter. Such compensation shall be paid at the rate of full monthly wages for the first two months, two-thirds the monthly wages for the next two months and at the rate of half of the monthly wages for the subsequent months. In case of chronic occupational diseases, half of the monthly wages during the period of disablement for a maximum period of two years shall be paid.
101 to	200	12,000	16,000	
201 to	300	14,000	19,000	
301 to	400	16,000	21,000	
401 to	500	18,000	26,000	
501 and	above	21,000	30,000	