CHAPTER VII

SPECIAL PROVISIONS RELATING TO HEALTH, HYGIENE AND SAFETY

79. Dangerous operations : Where the Government is satisfied that any operation carried on in an establishment exposes any person employed in it to a serious risk of bodily injury, poisoning, or disease, it may make rules applicable to such establishment or class of establishments in which such operation is carried on-

(a) specifying the operation and declaring it to be hazardous;

(b) prohibiting or restricting the employment of women, adolescents or children in the operation ;

(c) providing for the periodical medical examination of persons employed in the operation and prohibiting the employment of persons not certified as fit for such employment ;

(d) providing for the protection of all persons employed in the operation or in the vicinity of the places where it is carried on and the use of any specified materials or processes in connection with the operation; and

(e) notice specifying use and precautions regarding use of any corrosive chemicals.

80. Notice to be given of accidents : (1) When any accident occurs in an establishment causing loss of life or bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water or fumes occurs in an establishment, the employer of the establishment shall give notice of the occurrence to the Inspector within two working days.

(2) Where an accident mentioned in sub-section (1) causes bodily injury resulting in the compulsory absence from work of the person injured for a period exceeding forty-eight hours it shall be entered in a register in the prescribed form.

(3) A copy of the entries in the register referred to in sub-section (2) shall be sent by the employer of the establishment, within fifteen days after the 30th day of June and the 31st day of December in each year, to the Chief Inspector.

81. Notice of certain dangerous occurrences : Where in an establishment, any dangerous occurrence of such nature as may be prescribed, occurs, whether causing any bodily injury or not, the employer of the establishment shall send notice thereof to the Inspector within three working days.

82. Notice of certain disease : (1) Where any worker in an establishment contacts any disease specified in the Second Schedule, the employer or the worker concerned or any

person authorised by him in this behalf shall send notice thereof to the Inspector in such prescribed form and within such time as may be prescribed by Rules.

(2) If any registered medical practitioner attends on a person who is, or has been employed in an establishment and who is, or is believed by such medical practitioner to be, suffering from any disease specified in the Second Schedule, the medical practitioner shall, without delay, send a report in writing to the Chief Inspector stating-

(a) the name and postal address of the patient ;

(b) the disease from which he believes the patient to be suffering ;

(c) the name and address of the establishment in which the patient is or was last employed.

(3) The Government may add to or subtract from the Second Schedule any disease by notification in the official Gazette.

83. Power to direct enquiry into cases of accident or disease : (1) When any accidental explosion, ignition, outbreak of fire or irruption of water or other accident has occurred in any establishment or when any disease specified in the Second Schedule has been or suspected to have been contracted in any establishment, the Government, if it is of opinion that a formal enquiry into the cases, of, and circumstance attending, the accident or disease ought to be held, may appoint a competent person to hold such enquiry, and may also appoint any person possessing legal or special knowledge to act as assessor in holding the enquiry.

(2) The person appointed to hold any such enquiry shall have all the power of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the Penal Code.

(3) Any person holding an enquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the enquiry.

(4) The person holding enquiry shall make a report to the Government stating the causes of the accident and its circumstances, and adding any observations which he and any of the assessors may think fit to make.

(5) The Government may, cause such report to be published at such time and in such manner as it may think fit.

84. Power to take samples : (1) An Inspector may, at any time during the normal working hours, informing the employer of an establishment, take, in the manner hereinafter provided, a sufficient sample of any substance used or intended to be used in the establishment such use being, in the opinion of the Inspector in contravention of the provisions of this Act or of the rules, or likely to cause bodily injury to or injury to the health of, workers in establishment.

(2) Where the Inspector takes such sample, he shall, in the presence of the employer, unless he willfully absents himself, divide the sample into three portions and effectively seal and suitably mark them and shall permit the employer to add his own seal and mark thereon.

(3) The employer shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section.

(4) The Inspector shall forthwith give one portion of the sample to the employer, send the second portion to a Government Analyst for analysis and report thereon and retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance.

(5) Any document, purporting to be a report under the hand of any Government Analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceedings instituted in respect of the substance.

85. Powers of Inspector in case of certain danger : (1) If, in respect of any matter for which no express provision is made by or under this Act, it appears to the Inspector that any establishment or any part thereof or any matter, thing or practice in or connected with the establishment or with the control, management or direction thereof, is dangerous to human life or safety or thereof, is dangerous to human life or safety or defective so as to threaten, or tend, to the bodily injury of any person, he may give notice in writing thereof to the employer of the establishment, and shall state in the notice the particulars in respect of which he considers the establishment, or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time and in such manner as he may specify in the notice.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Inspector may, by order in writing direct the employer prohibiting the extraction or reduction of pillars in any part of such establishment if, in his opinion, such operation is likely to cause the crushing of pillars or the premature collapse of any part of the workings or otherwise endanger the establishment, .

(3) If the Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any establishment or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, the employer concerned, until he is satisfied that the danger is removed, the employment in or about the establishment or part thereof of any person whose employment is not, in his opinion, reasonably necessary for the purpose of removing the danger.

(4) The employer, if is aggrieved by the order under sub-section (3) may, within ten days of the receipt of the order, appeal against the same to the Chief Inspector who may confirm, modify or cancel the order.

(5) The Inspector making an order under sub-section (1) or (3), shall forthwith report the same to the Government and shall inform the employer concerned that such report has been so made.

(6) The Chief Inspector, shall forthwith report to the Government any order, except the order of cancellation passed by him under sub-section (4), and shall also inform the employer concerned that such report has been so made.

(7) Any employer, if has any objection against any order made under sub-section (1), or (3), or (4) may inform the Government within 20 days of receipt of the order in writing with cause thereof and the Government shall sent it to a Committee for decision.

(8) The employer shall comply with the order against which objection has been made untill such decision of the committee is received.

Provided that on application made by the employer the order passed under sub-section (1) may be suspended, till pending decision of the Committee.

86. Information about dangerous building and machinery : (1) Where any worker finds that any machinery or building used by the workers in any establishment in which he is employed is in such a dangerous condition that it is likely to cause physical injury to any worker at any time he shall inform the employer of it in writing immediately after it has come to his notice.

(2) If the employer fails to take appropriate action on such information within three days and any injury is caused to any worker because of the use of such equipment, machinery or building, he shall be liable to pay compensation to the worker injured at a rate which may be double the rate of compensation payable for such injury under Chapter XII.

87. Restriction of employment of women in certain work : The provisions of sections 39, 40 and 42 shall apply to a woman worker as they apply to an adolescent worker.

88. Power to make rules to supplement this Chapter : The Government may make rules requiring that-

(a) in any establishment such further devices and measures for securing the safety of the persons employed therein, shall be adopted ;

(b) work on a manufacturing process carried on with the aid of power, shall not be begun, in any building or part of a building in an establishment until a certificate of stability in the prescribed form has been received by the Chief Inspector.

CHAPTER: VIII

WELFARE

** This Chapter, like Chapter V of the Factories Act, 1965 and the Rules framed thereunder provide for various amenities for the welfare of the workers which the factory authorities are bound to provide for. Besides the Factories Act, the welfare provisions of the Shops and Establishment Act, 1965 as well as the Tea Plantation Labour Ordinance, 1962 have also been incorporated in this Chapter.

89. First-aid appliances : (1) There shall, in every establishment be provided and maintained, so as to be readily accessible during all working hours, first-aid boxes or cupboards equipped with the contents prescribed by rules.

(2) The number of such boxes or cupboards shall not be less than one for every one hundred fifty workers ordinarily employed in the establishment.

(3) Every first-aid box or cupboard shall be kept in charge of a responsible person who is trained in first-aid treatment and who shall always be available during the working hours of the establishment.

(4) A notice shall be affixed in every work-room stating the name of person in charge of the first-aid box or cupboard provided in respect of that room and such person shall wear a badge so as to facilitate identification.

(5) In every establishment wherein three hundred or more workers are ordinarily employed, there shall be provided and maintained a sick room with dispensary of the prescribed size, containing the prescribed equipment or similar facilities, in the charge of such medical and nursing staff as may be prescribed.

90. Maintenance of Safety Record Book.- In every establishment/factory wherein more than twenty five workers are employed, shall maintain compulsorily, in the prescribed manner, a safety record book and safety board.

91. Washing facilities : (1) In every establishment-

(a) adequate and suitable facilities for washing and bathing shall be provided and maintained for the use of the workers therein ;

(b) separate and adequately screened facilities shall be provided for the use of male and female workers ; and

(c) such facilities shall be conveniently accessible and shall be kept clean.

(2) The Government may in respect of any establishment or class or description of establishments or of any manufacturing process, prescribed standards of adequate and suitable facilities for washing.

92. Canteens : (1) In every establishment wherein more than one hundred workers are ordinarily employed, there shall be provided adequate number of canteens for the use of the workers.

(2) The Government may make rules providing for—

(a) the standards in respect of construction, accommodation, furniture and other equipment of the canteen ; and

(b) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen.

(3) The managing committee to be formed under the rules shall determine the foodstuff to be served in the canteen, and the charges therefor.

NOTES/COMMENTS/PRECEDENTS

Workers of a canteen run by a co-operative society- A canteen was run by a co-operative society- later on the canteen became defunct- employees of the canteen claimed to be treated as employees of the factory- *Held* : It is true that the company is bound to provide and maintain a canteen under section 45 of the Factories Act, but when the canteen is run by a co-operative society as a separate entity and it becomes defunct, the occupier of the factory does not become the employer of the workmen employed in the canteen. *[Workmen of Ashok Leyland Ltd. Vs Ashok Leyland Ltd. & others (1991) 2 Lab LJ 12 (Mad)]*

93. Shelters, etc. : (1) In every establishment wherein more than fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms, and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers.

Provided that any canteen maintained in accordance with the provisions of section 92 shall be regarded as part of the requirements of this sub-section:

Provided further that where a lunch room exist, no worker shall eat any food in the work room.

(2) The shelters, rest rooms or lunch rooms provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) In the establishments wherein more than 25 female workers are employed, separate shelter rooms are to be maintained and in establishment wherein less then 25 female workers are employed, separate and adequate spaces with screen shall be provided.

94. Rooms for children : (1) In every establishment, wherein forty or more workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, adequately lighted and ventilated and maintained in a clean and sanitary condition and shall be under the charge of woman trained or experienced in the care of children and infants.

(3) Such rooms shall be conveniently accessible to the mothers of the children accommodated therein and so far as is reasonably practicable they shall not be situated in close proximity to any part of the establishment where obnoxious fumes, dust or odours are given off or in which excessively noisy processes are carried on.

(4) Such rooms shall be solidly constructed and all the walls and roof shall be of suitable heat resisting materials and shall be water-proof.

(5) The height of such rooms shall not be less than 360cm from the floor to the lowest part of the roof and there shall be not less than 600sq. cm of floor area for each child to be accommodated.

(6) Effective and suitable provisions shall be made in every part of such room for securing and maintaining adequate ventilation by the circulation of fresh air.

(7) Such rooms shall be adequately furnished and equipped and in particular there shall be one suitable cot or cradle with necessary bedding for each child, at least one chair or equivalent seating accommodation for the use of each mother while she is feeding or attending to her child and a sufficient supply of suitable toys for the older children.

(8) A suitable fenced and shady open air play-ground shall be provided for the older children;

Provided that the Chief Inspector may, by order in writing, exempt any establishment from compliance with this sub-rule if he is satisfied that there is not sufficient space available for the provision of such a playground.

NOTES/COMMENTS/PRECEDENTS

Object of establishment of Creches : The object of establishment of creches in factories as described by the Royal Commission in their report was as follows: "*Creches are not uncommon in factories employing women. In many of the factories* employing women in substantial number, no creches have been provided. As a result of their absence infants are taken into the mills and found lying on sacking, in bobbin boxes and other unsuitable places, exposed to the noise and danger of moving machinery and a dust laden atmosphere."

Based on the above comment and recommendation of the Royal Commission the provision for room for children was first embodied in the Factories Act, 1934. The provision has also been incorporated in the Factories Act, 1965.

95. Recreational and educational facilities in tea plantation : The Government may, in respect of the plantations :

(a) make rules requiring every employer to make provision for such recreational facilities for the workers and their children as may be prescribed ;

(b) where the children of the tea plantation workers between the ages of six and twelve of the workers exceed twenty-five in number, make rules requiring the employer to provide educational facilities for the children in such manner and of such standard as may be prescribed.

(c) In every tea plantation there shall be established adequate medical centers for the workers and their children as may be prescribed by rules.

96. Housing facilities in tea plantation : Every employer in a tea plantation shall provide housing facilities to every worker and his family residing in the tea plantation.

97. Facilities for daily necessities, etc. in tea plantation : Every employer in a tea plantation shall provide facilities within easy reach of the workers for obtaining the daily necessities of life.

98. Medical care for newspaper workers : Every newspaper worker and his dependents shall be entitled to medical care at the cost of the newspaper establishment in such manner and to such extent as may be prescribed.

Explanation : For the purpose of this section, 'dependents' means wife, or husband, as the case may be, widowed-mother, invalid parents and legitimate sons and daughters of a newspaper worker residing with him and wholly dependent upon him.

99. Compulsory Group Insurance : Government may, in the manner provided by rules, introduce group insurance, in the establishments wherein minimum 200 permanent workers are employed.

CHAPTER: IX

WORKING HOURS AND LEAVE

100. Daily hours : No adult worker shall ordinarily be required or allowed to work in an establishment for more than eight hours in any day:

Provided that, subject to the provisions of section 108, any such worker may work in an establishment not exceeding ten hours in any day.

NOTES/COMMENTS/PRECEDENTS

Extra work after stipulated hours of work : If the establishment reaches a settlement with the workers in reducing the hours of work the worker's overtime will begin from the hour when the settled hour of work is reached. The worker need not wait till he works for 48 hours a week to get the overtime allowance at double to ordinary rate of his wages. For him the working hours fixed by settlement is the normal working hour and any extra hour of work beyond the settled and stipulated working hours will be overtime allowance for overtime work will be governed by section 9 of the Shops and Establishments Act read with Rule 4 of the Rules. *[General Manager, Jumuna Oil Company Ltd. Vs. Labour Court Chittagong (1999) 51 DLR (AD) 91]*

101. Interval for rest or meal : Any worker in any establishment shall not be liable to work either-

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

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

(c) for more than eight hours unless he has had an interval under clause (a) or two such intervals under clause (b) during that day for rest or meal.

102. Weekly hours : (1) No adult worker shall ordinarily be required or allowed to work in an establishment for more than forty-eight hours in any week.

(2) Subject to the provisions of section 108, an adult worker may work for more than forty-eight hours in a week:

Provided that the total hours of work of an adult worker shall not exceed sixty hours in any week and on the average fifty-six hours per week in any year:

Provided further that in the case of a worker employed in an establishment which is a road transport service, the total hours or overtime work in any year shall not exceed one hundred and fifty hours.

Provided further that the Government, if satisfied that in public interest or in the interest of economic development such exemption or relaxation is necessary, in certain industries, by order in writing under specific terms and conditions, may relax the provision

of this section or exempt, for a maximum period of six months, from the provision of this section at a time.

NOTES/COMMENTS/PRECEDENTS

Extra work after stipulated hours of work : If the establishment reaches a settlement with the workers in reducing the hours of work the worker's overtime will begin from the hour when the settled hour of work is reached. The worker need not wait till he works for 48 hours a week to get the overtime allowance at double to ordinary rate of his wages. For him the working hours fixed by settlement is the normal working hour and any extra hour of work beyond the settled and stipulated working hours will be overtime allowance for overtime work will be governed by section 9 of the Shops and Establishments Act read with Rule 4 of the Rules. *[General Manager, Jumuna Oil Company Ltd. Vs. Labour Court Chittagong (1999) 51 DLR (AD) 91]*

103. Weekly holiday : An adult worker employed in an establishment -

(a) which is a shop or commercial establishment, or industrial establishment, shall be allowed in each week one and half days holiday and in factory and establishment one day in a week;

(b) which is a road transport service, shall be allowed in each week one day's holiday of twenty four consecutive hours ; and no deduction on account of such holidays shall be made from the wages of any such worker.

NOTES/COMMENTS/PRECEDENTS

Prohibition of work on Sunday or Friday : The opening words of sub-section (1) of section 52 indicate a prohibition from requiring or permitting an adult worker to work in a factory on Sunday or Friday of the week. The prohibition is, however, lifted if steps are taken under clauses (a) and (b) of the section. A perusal of clause (b) makes in abundantly clear that what is required to be done thereunder, that is to say, to give and display a notice is only for the purpose of securing an exemption from the prohibition contained in the opening parts of section 51 of the Act. Clause (b) cannot therefore, be linked to some other provisions of the Act which impose a positive duty upon the manager to do something. The prohibition contained in the opening words of this sub-section is general and is not confined to the Manager *[Joha Vs. West Bengal AIR 1965 Cal. 1347]*

General exemption cannot be given under : The provisions of section 52(1) (a) and (b) (corresponding to section 51 of the Factories Act, 1965) permit grant of exemption to specified workmen from the operation of the prohibition enacted under section 52 from working in factories on weekly holidays. No general permission can be granted under clause. (a) and (b) of section 52(1) for altering the day of the weekly holiday so as to cover all the workmen. Therefore, upon the proper construction of the provisions it is clear that whenever workers are required (or are permitted) to work on a weekly holiday the specific permission of the Chief Inspector of Factories in respect of each and every worker who is required to work on such a day should be obtained. *[John Douglas Keith Brown Vs. West Bengal. AIR 1965 SC 1341= (1965) 2 SCR 639=(1965) 2 Cri LJ 423]*

Liability of Manager and Occupier: Where something is done in breach of the prohibition enacted by sub-section 1 of section 51 both the manager and the occupier will be liable to the penalties prescribed in that behalf.*[Joha Vs. West Bengal AIR 1965 Cal. 1347]*

104. Compensatory weekly holiday : Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting an establishment or the workers therein from the provisions of section 103, a worker is deprived of any of the weekly holidays provided for in that section, he shall be allowed, as soon as circumstances permit, compensatory holidays, of equal number to the holidays so deprived of.

105. Spread over : The periods of work of an adult worker in an establishment shall be so arranged that, inclusive of his interval for rest or meal under section 101, it shall not spread over more than eleven hours, and subject to such conditions as be may imposed by the Government, either generally or in the case of any particular establishment.

106. Night Shift : Where, an adult worker in an establishment works on a shift which extends beyond midnight :

(a) for the purposes of section 103 a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning from the end of his shift ; and

(b) the following day for him shall be deemed to be the period of twenty-four consecutive hours beginning from the end of this shift and the hours he has worked after midnight shall be counted towards the previous day.

107. Restriction on cumulative hours of work on a vehicle : No worker shall work or be allowed to work on a vehicle or two or more vehicles in excess of the period during which he may be lawfully employed under this Act.

108. Extra-allowance for overtime : (1) Where a worker works in an establishment on any day or week for more than the hours fixed under this Act, he shall, in respect of overtime work, be entitled to allowance at the rate of twice his ordinary rate of basic wage and dearness allowance and ad-hoc or interim pay, if any.

(2) Where any worker in an establishment are paid on a piece rate basis the employer, in consultation with the representatives of the workers, may, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rates of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of wages of those workers.

(3) The Government may prescribe registers to be maintained in an establishment for the purpose of securing compliance with the provisions of this section.

NOTES/COMMENTS/PRECEDENTS

Limitation of Hours of work : Under the Shops and Establishments Act, 1965 the working hours in shops or commercial or industrial establishments or establishments for public entertainment or amusement are limited to nine per day and forty-eight per week in case of adult workers and in case of young persons the hours are seven a day and forty two a week :

Overtime work upto sixty hours in a week is permissible in case of adult workers which is to be paid for at double the ordinary rates, young person cannot be asked to do work overtime beyond fifty two hours a week. No worker is to work for more than nine hours in a day without a rest interval of over more than twelve hours in any one day. The Act provides for one and a half holiday with pay each week.

Ordinary rates of wages: The words "Ordinary rates of wages" in section 58 of the Factories Act, 1965 mean the wages as defined in the Payment of Wages Act, 1936. *In Union of India Vs Suresh C. Baskey and others [(1996) 1 LLJ 1094 (SC)]* it has been held that 'ordinary rates of wages' in order to calculate overtime allowance as basic wages plus allowances including the cash equivalent of foodgrains and other articles but not bonus and wages for overtime work. Workers who were not entitled to house rent allowance but who were occupying government accommodation are not entitled to include house rent allowance notionally in the ordinary rate of wages for computing their extra wages for overtime.

Extra payment for extra work : Some clerks of a corporation were required to work 42 hours a week. In the exigencies of service the corporation decided to increase working hours from 7 to 7 hours per day. These clerks claimed extra payment for overtime work of 1/2 hour. ***Held*** **:** in the absence of any statutory provision or case law in support of the proposition that in respect of the extra half hour work which was taken from the workmen by the corporation, the concerned workmen were not entitled to proportionate extra wages and in the absence of any provision in the contract of employment to enable the corporation to extra work from the workmen without incurring the liability of making proportionate extra payment, the workmen are entitled to proportionate extra payment for the extra work taken from them. *[New Victoria Mills Ltd. Vs. Labour Court, Kanpur and others (1990) 2 Lab LJ 575 (All)]*

Extra work after stipulated hours of work : If the establishment reaches a settlement with the workers in reducing the hours of work the worker's overtime will begin from the hour when the settled hour of work is reached. The worker need not wait till he works for 48 hours a week to get the overtime allowance at double to ordinary rate of his wages. For him the working hours fixed by settlement is the normal working hour and any extra hour of work beyond the settled and stipulated working hours will be overtime allowance for overtime work will be governed by section 9 of the Shops and Establishments Act read with Rule 4 of the Rules. *[General Manager. Jumuna Oil Company Ltd. Vs. Labour Court Chittagong (1999) 51 DLR (AD) 91]= 4 MLR 1999 (AD) (Vol-IV) 161].*

109. Limitation of hours of work for women : No women shall, without her consent, be allowed to work in an establishment between the hours of 10.00 p.m. and 6.00 a.m.

NOTES/COMMENTS/PRECEDENTS

Object of fixing female workers minimum hours of work : The Royal Commission on Labour in its report pointed out that "the main arguments in favour of fixing the maximum for women's hours at lower levels than those prescribed for men are that women have domestic duties to perform and that they find long hours as a greater strain".

General Prohibition order on employment of women worker : Held that the Inspector has no right to issue a general prohibition order against employment of women worker at night without going into the question whether the staff is sufficient. *[J N Cocalas Vs. Emperor A I R 1921 All 229.]*

110. Restriction on double employment : No adult worker shall be employed or allowed to be employed for work in more than one establishment on any day, except on

permission in writing from the Chief Inspector on such terms and conditions as he may impose.

111. Notice of periods of work for adults and preparation thereof : (1) There shall be displayed and correctly maintained in every establishment in accordance with the provisions of section 337, a notice of periods of work for adult workers showing clearly the periods which adult workers may be required to work.

(2) The periods shown in the notice shall be fixed beforehand in accordance with the provisions of this section and shall be such that workers working during such periods would not be working in contravention of the provisions of sections, 100, 101, 102, 103 and 105.

(3) Where all the adult workers in an establishment are required to work during the same period, the employer, shall fix those periods generally.

(4) Where all the adult workers in an establishment are not required to work during the same periods, the employer, shall classify them into groups according to the nature of their work, and indicate the number of workers in each group.

(5) For each group which is not required to work on a system of shifts, the employer shall fix the period during which the group may be required to work.

(6) Where any group is required to work on a system of shifts, and the relays are not on a undetermined periodical changes, the employer shall fix the periods during which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are or are intended to be subject to predetermined periodical changes of shifts, the employer, shall draw up a scheme of shifts, where under the periods during which any relay of the group may be required to work on the relay which will be working at any time of the day shall be known for any day.

(8) A copy of the notice shall be sent in duplicate to the Inspector before the day on which an establishment begins work, for approval of the periods of work by the Inspector.

(9) The Inspector shall return a copy of the notice to the employer within one week of its receipt, indicating modifications if any; the employer shall immediately comply with the modifications, if made and shall preserve the approval in the records of the establishment.

(10) Any proposed change in the system of work in an establishment which will necessitate a change in the notice shall be notified to the Inspector in duplicate before the change is made, and, except with the previous sanction of the Inspector, no such change shall be made.

(11) An employer may refuse to employ a worker for any day if on that day he turns up for work more than half an hour after the time fixed for the commencement of the days work.

112. Special age limit for Road Transport Service worker : (1) No person shall be employed as driver, in an establishment which is a road transport service unless he has attained the age of twenty one years.

(2) No person shall be employed in an establishment which is a road transport service in any other post unless he has attained the age of eighteen years.

113. Hours of work to correspond with notice and register : No adult worker shall be required or allowed to work otherwise than in accordance with the notice under section 111(1) and the entries made beforehand against his name in the register maintained under section 9.

NOTES/COMMENTS/PRECEDENTS

Maintenance of register- obligation of Manager: The obligation to maintain registers is imposed on the manager and not the occupier of the factory. An occupier therefore cannot be held liable for the failure of the manager to comply with the requirements of section 61 of the Act. The occupier cannot be said to have a guilty mind when he is not charged with the duty of maintaining the registers.*[State of Maharashtra Vs. Sampat Lal Mensukh Bothara (1992) 1 Lab LJ 107 Bom]."*

114. Closure of shops, etc. : (1) Every establishment which is shop or commercial or industrial establishment shall remain entirely closed for at least one and a half day in each week.

(2) The one and half day on which establishments shall remain entirely closed, shall be fixed for each area by the Chief Inspector.

Provided that the Chief Inspector may, from time to time, refix such day for each area in the public interest.

(3) No shop shall on any day remain open after the hours of 8..00 o'clock *post meridiem* :

Provided that any customer who was being or was waiting in the shop to be served at such hour, may be served during the period of thirty minutes immediately following such hour:

(4) The Government may, on consideration of special circumstances, alter, by notifications in the official Gazette, the closing hours of shops in any area in any season on such conditions as may be imposed.

(5) The provisions of this section shall not apply to-

(a) docks, wharves or stations and terminal offices of transport services including airports ;

(b) shops dealing mainly in any vegetable, meat, fish, dairy products, bread, pasties, sweetmeats and flowers ;

(c) shops dealing mainly in medicines, surgical appliances, bandages or other medical requisites ;

(d) shops dealing in articles required for funerals, burials or cremation ;

(e) shops dealing mainly in tobacco, cigars, cigarettes, biris, pan, liquid refreshments, newspapers or periodicals sold retail for consumption in the premises, ice ;

(f) petrol pumps for the retail sale of the petrol and automobile service stations not being repair workshops ;

(g) barbars' and hair dressers' shops ;

(h) any system of public conservancy or sanitation,

(i) any industry, business or undertaking which supplies power, light or water to the public ;

(j) clubs, hotels, restaurants, catering houses cinemas or theatres:

Provided that where several trades or business are carried on in the same shop or commercial establishment and, the majority of them, by their nature, are eligible to exemption under this section, the exemption will apply to the entire shop or commercial establishment:

Provided further that the Chief Inspector may, by a general or special order, published in the official Gazette, fix the opening or closing hours for any of the foregoing establishments or class of establishment.

115. Casual leave : Every worker shall be entitled to casual leave the full wages for ten days in a calender year, and such leave shall not be accumulated and carried forward to the succeeding year:

Provided that nothing in this section shall apply to a worker employed in a tea plantation.

116. Sick leave : (1) Every worker other than a newspaper worker, shall be entitled to sick leave with full wages for fourteen days in a calender year.

(2) Every newspaper worker shall be entitled to sick leave with half wages for not less than one-eighteenth of the period of services.

(3) No such leave shall be allowed unless a registered medical practitioner appointed by the employer or, if no such medical practitioner is appointed by the employer, any other registered medical practitioner, after examination, certifies that the worker is ill and requires sick leave for cure or treatment for such period as may be specified by him.

(4) Such leave shall not be accumulated and carried forward to the succeeding year.

117. Annual leave with wages : (1) Every adult worker, who has completed one year of continuous service in an establishment, shall be allowed during the subsequent period of twelve months leave with wages for a number of days calculated at the rate of one day-

(a) in the case of a shop or commercial or industrial establishment or factory or road transport service, for every eighteen days of work ;

(b) in the case of tea plantation, for every twenty two days of work ;

(c) in the case of a newspaper worker, for every eleven days of work. Performed by him during the previous period of twelve months.

(2) Every worker, who is not an adult, who has completed one year of continuous service in an establishment, shall be allowed during the subsequent period of twelve months leave with wages for a number of days calculated at the rate of one day—

(a) in the case of a factory, for every fifteen days of work ;

(b) in the case of a tea plantation, for every eighteen days of work ;

(c) in the case of a shop or commercial or industrial establishment, for every fourteen days of work performed by him during the previous period of twelve months.

(3) A period of leave allowed under this section shall be inclusive of any holiday which may occur during such period.

(4) If a worker does not, in any period of twelve months, take the leave to which he is entitled under sub-sections (1) or (2), either in whole or in part, any such leave not taken by him shall be added to the leave to be allowed to him, in the succeeding period of twelve months.

(5) Notwithstanding anything contained in sub-section (4), an adult worker shall cease to earn any leave under this section, when the earned leave due to him amounts to-

(a) in the case factory or road transport service, forty days ;

(b) in the case of a tea plantation or shop or commercial or industrial establishment, sixty days;

(6) Notwithstanding anything contained in subsection (4) an adolescent worker shall cease to earn any leave under this section, when the earned leave

(a) in the case of a factory or tea plantation, sixty days ;

(b) in the case of a shop or commercial or industrial establishment, eighty days :

(7) Any leave applied for by a worker but refused by the employer for any reason, shall be added to the credit of such worker beyond the aforesaid limit mentioned in sub-section (5) and (6).

(8) For the purpose of this section a worker shall be deemed to have completed a period of continuous service in an establishment notwithstanding any interruption in service during that period due to –

(a) any holiday ;

(b) any leave with wages ;

(c) any leave with or without wages due to sickness or accident ;

(d) any maternity leave not exceeding sixteen weeks ;

(e) any period of lay-off ;

(f) a strike which is legal or a lock-out which is not illegal.

NOTES/COMMENTS/PRECEDENTS

Section not to standadise annual leave with wages : Section 78(1) does not purport to standardise annual leave with wages. When Section 78(1) provides that every worker shall be allowed leave as prescribed, the provision *prima facie* sounds like a provision for the minimum rather than for the maximum leave which may be awarded to the worker. Standardisation of conditions of service in industrial adjudication generally does not recognise or permit exceptions Section 78, however, recognises exceptions to the leave prescribed by Section 79(1). Section 77 clearly negatives the theory that Section 78(1) provides for standardisation of annual leave with wages.*[Alembic Chemical Works Vs. Workmen A I R 1961 SC 647].*

118. Festival holidays : (1) Every worker shall be allowed in a calender year eleven days of paid festival holidays.

(2) The days and dates for such festivals shall be fixed by the employer in such manner as may be prescribed.

(3) A worker may be required to work on any festival holiday, but two days' additional compensatory holidays with full pay and a substitute holiday shall be provided for him in accordance with the provisions of section 103.

NOTES/COMMENTS/PRECEDENTS

No loss of earned leave even if worker absents for a period longer than that contemplated under : The leave provided under section 79 arises as a matter of right when a worker has put in a minimum number of working days and he is entitled to it. The fact that certain workers remained absent for a longer period than that provided in section 79 has no bearing on their right to leave, for if they so remained absent for such period they lost the wages for that period which they would have otherwise earned. That however does not mean that they should also lose the leave earned by them under section 79. *[Birdhichand Sharma Vs. First Civil Judge : AIR 1961 SC 644= (1961) 3 SCR 161.]*

Definite period of work in working days necessary under : When section 79 provides leave on the basis of the period of working days, it must contemplate a definite period of work per working day and not any definite period for which a person may like to work on a particular day. If a person is not bound to work for the period of work displayed in the factory, his days a work for the purpose of section 79 would not be calculated. It cannot be contended that each day on which he worked irrespective of the period or time would count as one day of work for the purpose of this section. Leave on the basis of working days contemplates a definite period of work per working day. *[Shankar Balaji Waje Vs. State of Maharashira, AIR 1962 SC 517=:(1962) 1 LLJ 119]*

119. Calculation of wages and payment during leave or holiday period : (1) For the leave or holidays allowed to a worker under the provisions of this Act, he shall be paid at the rate equal to the daily average of his full time wages including dearness allowances, and ad-hoc or interim pay, if any, for the days on which he worked during the month immediately preceding this leave but excluding any overtime allowance and bonus:

Provided that if a worker in any establishment is entitled to cash equivalent of any advantage accruing from the supply of food grains, it shall be included in his wages.

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

CHAPTER : X

WAGES AND PAYMENT

Law for Payment of Wages- history of : On complaint from workers regarding unreasonable deduction of wages the Government of British India set up an Enquiry Commission in 1926 to ascertain the loophole for irregularity of payment of wages to industrial workers. The Commission found that employers illegally withhold wages and unreasonably make deductions by way of fine. The Commission suggested some legislative measures to control the evils.

The Royal Commission on Labour appointed in 1929 considered the reports and suggestions of the aforesaid Enquiry Committee. The Royal Commission also recommended for enactment for prevention of the malady relating to payment of wages. On the basis of the recommendations made by the Royal Commission a bill was presented in 1933 and it was circulated for eliciting opinion, but the same was lapsed. Another revised bill was prepared on the basis of the lapsed bill and was circulated and the Payment of Wages Act was passed in 1936. The Act came into force on the 28th March, 1937.

The Payment of Wages Act aimed firstly at disbursement of actual distributable wages to workers within the prescribed wage period and secondly to ensure that the employees get their full wages without any deduction.

The Payment of Wages Act, 1936 remained in force during the Pakistan regime and so also after liberation of Bangladesh. A major amendment was made in the Act in 1980 vide the Payment of Wages (Amendment) Act, 1980 (Act No.XXVII of 1980. By the amending Act the Payment of Wages Act has been made applicable upon employed persons irrespective of quantum of wages. Be it mentioned here that before the amendment the Act was not applicable upon any person drawing Tk. 200.00 or more per month. Contractor's establishment also has been brought under the purview of the Act. The other main provisions of the amending Act are- bringing the trial of cases under the Act by the Chairmen of the Labour Courts who are ex-officio Authority under the Payment of Wages Act., increasing compensation in case of deduction, recovery of amount directed to be paid as public demands and making the order of the Payment of Wages Authority appealable to the Labour Appellate Tribunal.

Before amendment of the Act in 1980 the Payment of Wages Act did not apply to any person drawing wages more than two hundred Taka per month. It is now applicable to all employed persons irrespective of the amount drawn. For coming under the Act a person need not necessarily be a worker, what is important is that the person must be an employed person having no managerial or administrative function.

All the provisions of the aforesaid Payment of Wages Act have been incorporated the present chapter.

Precedents on Object, application and scope of the Payment of Wages Act : The Act aims at regulating the payment of wages to certain class of persons employed in industry and providing for a speedy and effective remedy to the employees in respect of their claims arising out of illegal deduction or unjustified delay made in paying the wages to them. *[Rameshwar Lal Vs. Jagendra Das A I R 1970 Orissa 76 =I L R 1970 Cutt. 587].*

It is well known that the Act was passed in 1936 to regulate the payment of wages to certain classes of persons employed in industry. The object of the Act obviously was to provide a cheap and speedy remedy for employees to whom the Act applied inter-alia, to recover wages due to

them, and for that purpose, a special tribunal has been created. Section 15 provides for making such applications and it prescribes the manner and method in which the applications have to be tried. *[Purshottam H.Judye Vs. Potdar (1966) 1 L.L.J. 412]*

The Act does not deal with conditions of services or any other matter connected with industrial problem. Since the object of the Act is to uphold economic justice and to protect the right of regular payment without unfair deductions from wages of the workers, it is expedient to construe the provisions of the Act liberally. If liberal interpretation of the provisions of the Act is made, the real purpose underlying in the Act will be achieved and full effect to its principles will be given. *[Dhanji Ram Sharma Vs. Union of India and another A I R 1961 Punj. 178].*

120. Special definition of 'wages' : In this Chapter, unless there is anything repugnant in the subject or context, 'wages, means wages as defined in section 2 (XLV), and includes-

(a) any bonus or other additional remuneration payable under the terms of employment ;

(b) any remuneration payable in respect of overtime work, holiday or leave ;

(c) any remuneration payable under any award or settlement between the parties or under order of any Court ;

(d) any sum payable under this Act or any agreement by reason of termination of employment whether by way of retrenchment, discharge, removal, resignation, retirement, dismissal or otherwise ; and

(e) any sum payable due to lay-off or suspension.

NOTES/COMMENTS/PRECEDENTS

Wages : The term "wages", as defined in this section, means wages actually earned and not potential wages. It means remuneration payable on the fulfillment of the contract. *[Aravind Mills Ltd. Vs. K R Gadgil AIR. 1941. Bom 26].* The expression 'wages' covers all the amounts which, on fulfillment of the terms of employment, become payable under the contract of employment or under a statute or an award or decision of court. Its scope is not limited to amounts payable under an express or implied term of the contract of employment *[P.T.Lawrence Vs. Kerala S R TC (1968) 2 LLJ 460 = Balaram Abhaji Patil Vs. M C Ragajiwala A I R 1961 Bom 59].*

"Wages" has been defined in section 2(vi) of the said Act and it includes any sum payable to person employed in respect of his employment by reason of the termination of his employment. Under section 34 of the Industrial Relations Ordinance any workman may apply to the Labour Court for the enforcement of any right guaranteed or secured to it or him by or under any law. As such, the respondent No. 2 could have applied to the Labour Court under section 34 of the Industrial Relations Ordinance for determination of the quantum of termination benefits.*[Sekandar Mia Vs. Chairman 1st Labour Court (1989) 41 DLR 203]*

Payment of Wages Act and newspaper employees : *Held* that the Working Journalists (Conditions of Service) Act (similar to our Newspaper Establishment Conditions of Service Act, 1974) does not exclude, either or by necessary implication the application of the Payment of Wages Act, 1936 *[Manager Searchlight Press Vs. Inspector of Factories A I R 1960 Pat 33= (1961) 1 LLJ 219].*

Payment of Wages Act applies to ascertained sums : The definition of wages shows that the sum must be an ascertained sum before it falls under the definition. Indeed, it expressly includes the word bonus or other additional remuneration which would be payable under the contract of

employment. In order to bring a particular payment under the definition of wages two things are necessary- (i) a definite sum and (ii) a contract indicating when the sum becomes payable. The last portion of the definition shows that payments stipulated to be made by reason of termination of employment are also wages. That will be in the nature of damages.*[F.W.Heilgers & Co. Vs. Nagesh Chandra AIR 1949 FC 142].*

Termination Benefit- whether wages : Form the definition of 'wages' in the Act of 1936 and in the Employment of Labour (Standing Orders) Act of 1965 it is quite clear that termination benefit as provided in section 19 of the Act of 1965 is also 'wages'. *[Managing Director, Contiforms Forms Limited and Peasant Trading Cold Storage (Pvt) Ltd. Vs Member, Labour Appellate Tribunal, Dhaka and others (1998) 50 DLR 476]*

It has been held in *Divisional Superintendent North Western Railway, Lahore Vs. Mohd. Sharif reported in 15 D L R (SC) 261* that from the amplified portion of the definition that some emphasis has been laid down on the expression 'any sum payable to such person by reason of the termination of the employment'. Thjs shows that any sum which is payable by reason of termination of the employment is also wages for the purpos of this Act. Therefore when the service of an employee is terminated without notice, in such case the sum which is payable to him in lieu of notice will be considered as wages.

Value of House accommodation : The definition of "wages" under this Act cannot include the value of any house accommodation supplied by the employer to the employees; otherwise it could not be a legally possible deduction from wages. It is equally clear that the house rent allowance which may in certain circumstances be included in wages is not the same thing as the value of any house accommodation referred to in the Act. *[Divisional Engineer, G I P Railway Vs. Mahadeo Raghoo and another A I R 1955 S.C. 295= 1955 SCR 1345].*

Gratuity- wages : Gratuity which may be payable to an employee by reason of his termination of his employment under the terms of an agreement or award is covered by the definition of Wages in section to of the Payment of Wages Act 1936 *[Purshottam H.Judye Vs. Potdar (1966) 1 L.L.J. 412]*

Who can make application : Not only the person in employment but anybody competent under section 15(2) of the Act on his behalf who was in employment can make an application for dues within the period of limitation. *Held :* There is no substance in the submission that an application made by a person not in employment is not maintainable. *[Editor, Bangladesh Observer, & another Vs Member, Labour Appellate Tribunal and others. (1998) 50 DLR 606]*

A wrongfully dismissed employee on retirement is entitled to wages, because the terms of contract are fulfilled. *[Diisional. Superintendent. NWR, Lahre Vs. Md Sharif 15 DLR SC 261= L.L.C 1959-60 H.C. 36].*

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

Wages for period when employee was denied work : *Held–* As the employee was all along challenging the legalities of the order of his removal from service, it could be said that he was all along ready he was all along ready and willing to render service to his employer. The mere fact that the employee was not given work by the employer will not derogate his right to receive wages *[Diisional. Superintendent. NWR, Lahre Vs. Md Sharif 15 DLR SC 261= L.L.C 1959-60 H.C. 36].*

Payment for overtime- whether wages : *Held* that remuneration for overtime work is calculated in the wages *[State of West Bengal Vs. Bachu Mondal 50 FJR 257 = Dist. Transport Manager Vs. Satrughna A I R 1970 Orissa 121].* Bomabay High Court also held that a claim under section 59 of the Indian Factories Act (corresponding to section 58 of the Factories Act, 1965), to unpaid overtime wages amount to a claim of wages unlawfully deducted *[Valajibhai Vs. Chimanlal A I R 1957 Bom 109]*

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

Provided that, except in the case of a worker employed by a contractor, the chief executive officer, the manager or any other person responsible to the employer for the supervision and control of an establishment shall also be responsible for such payment.

Provided further that when the wages of a worker employed by the contractor is not paid by the contractor, the wages shall be paid by the employer of the establishment and the same shall be adjusted from the contractor.

NOTES/COMMENTS/PRECEDENTS

Employer : The Word "employer" used in section 3 of the Act is to be given a wide meaning. *In Ganpat Laxman Vaite v Lioneal Holland* it is observed that in construing section. 3 and deciding what meaning has got to be giving to the expression "employer" one must look at section 15(3) of the Act. The Authority has got to hear the employer when an application is made by the employee, and it is clear that the person who has got to be heard is the person who is the employer at the date when the application for wages has been made. Therefore, the material date to consider is not who was responsible for payment of wages when the wages accrued but the material date to consider is who was the person responsible for the payment of wages at the date when the application is made. In that case a company incorporated in a foreign country appointed one *H* as its managing director. *A* was the local manager of its factory in India. Subsequently the factory was closed and services of all employees including *A* were terminated by the order of *H*. An application for the wages due was filed by the employees against *H*, who contended that the responsibility lay either with the company or with A. It was held that H was liable on the ground that *A* had ceased to be the manager. Further in view of the closure of the factory on the date of application, he became liable as the employer, because he had the most important power of an employer to dispense with the services of the employees and he and exercised it. *[In Ganpat Laxman Vaite v Lioneal Holland AIR 1955 Bom 431]*

Person employed : The expression 'person employed' means for the purpose of this Act a person who is entitled to apply under the Act. He need not be a worker as defined in the Factories Act. A person employed within the precincts of a factory, as defined by the Factories Act is also entitled to apply under the Payment of Wages Act. Employees working in wardrobe department of a film studio are 'persons employed' and are therefore entitled to apply under the Act. *[V.T. Ramaswami Vs. Gemini Studio A I R 1968 Mad 49= (1967) 1 LLJ 794].* In *Jay Gujrat Prakashan Ltd. Vs. Hari Prasad Hargovinda Pandsya and another (A I R 1960 Guj. 10)* it has been held that an editor of a newspaper whose duties are confined not merely to the work strictly of editing the paper, but embraces also the humbler duties of a reporter, the advertisement canvasser, a translator and a proof

reader is a person employed' within the meaning of section 1(4) of the Act (Payment of Wages Act, 1936).

122. Fixation of wage-periods : (1) Every person responsible for the payment of wages under section 121 shall fix periods, to be called wage periods, in respect of which such wages shall be payable.

(2) No wage period shall exceed one month.

123. Time of payment of wages : (1) The wages of every worker shall be paid before the expiry of the seventh day after the last day of the wage period in respect of which the wages are payable.

(2) Where the employment of any worker is terminated by retirement or by the employer, whether by way of retrenchment, discharge, removal, dismissal or otherwise, the wages payable to him shall be paid before the expiry of the seventh working day from the day on which his employment is so terminated.

(3) All payment of wages shall be made on a working day.

124. Wages to be paid in current coin or currency notes : All wages shall be paid in current coin or currency notes or bank cheque.

125. Deductions which may be made from wages : (1) No deduction shall be made from the wages of a worker except those authorised by or under this Act.

(2) Deductions from the wages of a worker shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely-

(a) fines imposed under section 25 ;

(b) deductions for absence from duty ;

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

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

(e) deductions for such amenities and services, other than tolls and raw materials required for the purpose of employment, supplied by the employer as the Government may, by general or special order, authorise ;

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

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

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

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies or any other recognised provident fund as define in the Income-tax Ordinance, 1984 (XXXVI of 1984), or any provident fund approved in this behalf by the Government, during the continuance of such approval ;

(j) deductions for payments to any co-operative societies approved by the Government or to a scheme of insurance maintained by any Government Insurance Company or Bangladesh Postal Department;

(k) deductions, made with the written authorisation of the workers for the contribution to any fund or scheme constituted or framed by the employer, with the approval of the Government, for the welfare of the workers or the members of their families or both. and

(l) deduction of subscription for the CBA union through check-off system.

NOTES/COMMENTS/PRECEDENTS

Claims can be made only against unauthorised deduction : Held - Under section 7(2), the deductions specified therein are permitted or authorised to be made, and in respect of the deductions so permitted or authorised to be made there can be no claim under section 15. In other words, claims for recovery of wages can be validly made under section 15(2) and can be awarded under section 15(3) only where it is shown that the impugned deduction is not authorised or justified by section 7. *[Ganeshi Ram Vs. District Magistrate, Jodhpur (1961) 2 LLJ 690].*

Deduction : An employer cannot make any deductions except those expressly mentioned is section 7 of the Payment of Wages Act from the wages payable to an employee on account of his employment. For the satisfaction of the claims that an employer might have against the employee on account of other transactions, make outside the scope his employment, he can bring a civil suit but he cannot touch the wages. This is a restriction of the general law for the benefit of the employee who is presumed to be less advantageously placed. *[Manager, Hindustan Journals Pvt. Ltd., Indore VS. Govind Ram Swami Ram of Indore AIR 1963 MP 25: (1962) 2 LLJ 242: (1962) 4 LR 520.*]

Non-payment of Gratuity- whether deduction : Non payment of the gratuity does not come within the scope of deduction from wages. No provision is made for deduction of gratuity from wages under this section. *[Shaw Wallace Bangladesh Limited Tofazzal Hossain son of late Abdul Kader and others. (1998) 50 DLR 22]*

126. Deductions for absence from duty : (1) Deductions may be made under section 125(2) (b) only on account of the absence of a worker from the place, where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall, in no case bear to the wages payable to the worker in respect of the wage period for which the deduction is made a larger proportion, he was required to work ;

Provided that, subject to any rules made in this behalf by the Government, if ten or more workers acting in concert absent themselves without due notice and without reasonable cause, such deduction from any such worker may include such amount not exceeding his wages for eight days as may, by the terms of his employment, be due to the employer in lieu of due notice.

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

NOTES/COMMENTS/PRECEDENTS

Deduction for absence : Deductions from wages on account of absence of an employed person should be in proportion to the period of absence. If a person is absent from duty for a day out of 8 days, he can lose one-eight of his wages *[Arvind Mills Ltd. Vs. K.R. Gadgil, A.I.R. 1941 Bom. 26].* The employer is, however, entitled to make deduction upto 8 days of wages if ten or more employed persons acting together absent themselves without giving due notice. In a Bombay case, it was observed that the employer retains his right to sue for failure to give notice. He is not however, entitled to forfeit the earned wages. *[13 Bom. L.R., 19]*

127. Deductions for damage or loss : (1) A deduction under section 125(2) (c) shall not exceed the amount of the damage or loss caused to the employer by neglect or default of the worker and shall not be made until the worker has been given an opportunity of showing cause and found guilty of the charge in compliance with the principles of natural justice.

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

128. Deductions for services rendered : A deduction under section125(2)(d) and (e) shall not be made from the wages of a worker unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as the Government may impose.

129. Deductions for recovery of loans or advances : Deductions under section 125(2) (f) shall be subject to the following conditions, namely:

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

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

130. Other deductions from wages : Deductions under section 125 (2) (j) (k) and (l) shall be subject to such conditions as the Government may impose.

131. Payment of undisbursed wages in cases of death of workers : (1) Subject to other provisions of this Chapter, all amounts payable to a worker as wages shall, if such amounts could not or cannot be paid on account of his death or on account of his whereabouts not being known before payment,-

(a) be paid to the person nominated by him in this behalf in accordance with the rules ;

(b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the Labour Court

who shall deal with the amounts so deposited in such manner as may be prescribed.

(2) Where, in accordance with the provisions of sub-section (1), all amounts payable to a worker as wages are paid by the employer to the person nominated by the worker ; or are deposited by the employer with the Labour Court, the employer shall be discharged of his liability in respect of payment of those wages.

NOTES/COMMENTS/PRECEDENTS

Held : Court can as well for doing complete justice in any cause treat the application under section 25 (b) [*application under section 33 of the Labour Act, 2006*] as an application under the Payment of Wages Act [*application under section 132 of Chapter X of the present Act*] for realisation of the benefits consequent upon retirement of the deceased worker. *[BWDB and others Vs Chairman, Divisional Labour Court, Khulna and others. 55 DLR(2003) (AD) 5].*

132. Claims arising out of deductions from wages or delay in payment of wages : (1) Where contrary to the provisions of this Act any deduction has been made from the wages of a worker, or any payment of wages has been delayed, or payment of wages or gratuity under any rule or his dues in the provident fund delayed, such person himself, or in case of his death any of his legal heirs or any legal representaive, may apply to the Labour Court for recovery of such unpaid wages or delayed wages or any other dues;

(2) Every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be, to the Labour Court within whose jurisdiction on the place where the payment was made :

Provided that, any application may be admitted after the said period of twelve months when the applicant satisfies the Labour Court that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (1) is entertained, the Labour Court shall hear the applicant and the employer or other person responsible for the payment of wages under this chapter, or give them an opportunity of being heard and take necessary evidence , and, may, direct the refund to the applicant of the amount deducted, or the payment of the delayed wages.

(4) Any order given under sub-section (3) shall not prejudice any other penalty to which such employer or other person is liable under this Act.

(5) Labour Court in passing an order under sub-section (3) may direct the employer or other person responsible for payment of wages to pay twenty-five per cent of the wages of the worker as compensation.

(6) No direction for the payment of compensation under sub-section (5) shall be made in the case of delayed wages if the Labour Court is satisfied that the delay was due to-

(a) a bonafide error or bonafide dispute as to the amount payable to the worker, or

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

(c) the failure of the worker to apply for or accept payment.

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

NOTES/COMMENTS/PRECEDENTS

Object of : The Act was passed in 1936 to regulate the payment of wages to certain classes of persons employed in industry. The object of the Act obviously was to provide a cheap and speedy remedy for employees to whom the Act applied inter-alia, to recover wages due to them, and for that purpose, a special tribunal has been created. Section 15 provides for making such applications and it prescribes the manner and method in which the applications have to be tried. *[Purshottam H.Judye Vs. Potdar (1966) 1 L.L.J. 412]*

Direction under sec. 15(1) - comprehensive : The word 'direction" in sub-section (1) of section 15 is fully comprehensive inasmuch as it includes the rejection of the claim of an employee too. *[A. Rashid & others Vs. S.A. Rahim LLC 1959-60 HC (Lahore 46)].*

Who can make application for recovery of wages : Not only the person in employment but anybody competent under section 15(2) of the Act on his behalf who was in employment can make an application for dues within the period of limitation. There is no substance in the submission that an application made by a person not in employment is not maintainable. *[Editor, Bangladesh Observer, & another Vs Member, Labour Appellate Tribunal and others. (1998) 50 DLR 606]*

Requirement for filing application under section 15(2): To come under section 15(2) of the Payment of Wages Act the requirements are that the complainant must be a worker in a factory and be still employed. *[Shaw Wallace Bangladesh Limited Tofazzal Hossain son of late Abdul Kader and others. (1999) 50 DLR 22]*

Payment of Wages Authority is a Court *: held* that the authority under this section is a Court subordinate to the High Court for the purpose of exercising revisional jurisdiction under section 115 of the Code of Civil Procedure. *[Vice A. Rashid & others Vs. S. Abdul Rahim LLC 1959-60 HC (Lah) '46]*

Compensation : According to sub-section 3, the order for compensation can be passed along with the order for the payment of delayed or withheld wages ; but where there could not be any order for payment of delayed wages, and if they were paid before the application was made, it is not open to the applicant to apply for a direction for the payment of compensation alone. *[AIR 1942 Bom. 273 ; A I R. 1952 All 804.]*

Termination benefit- application in Labour Court : In view of definition of 'Wages' in clause (vi) of section 2 of the Payment of Wages Act, 1936 any sum payable to a worker by reason of termination of his employment being 'wages', as such termination benefit as provided in section 19(1) of the Act of 1965 in respect of the worker being 'wage as per definition of section 2(u) of the Act of 1965- ***Held*** that the Labour Court, is the specified authority as per provisions of section 15(1) of the Act of 1936 competent to consider the claim of termination benefit and to decide the said claim arising out of delay in the payment of wages in the form of termination benefit. *[Managing Director, Contiforms Fors Ltd. Vs. Labour Appellate Tribunal and others (1998) 50 DLR 476].*

Compensation for Lay-off : If wages— *Held :*The definition of the term "wages" suggests that the word "remuneration' is used in the sense of any payment, which is made for work done or for services rendered. *[Ansuya Vs. T.H. Mehta (1959) 2 LLJ 742]* In an appeal Indian Supreme Court observed: "Remuneration is only a more formal version of 'payment' and payment is a recompense for service rendered". Compensation, which is payable for lay-off, that is, on account of the failure or inability of the employer to provide work, cannot therefore be said to be remuneration. The payment is made not as consideration for work done or services rendered, but as compensation for temporary loss of employment.*[Bala Subrahmanya Rajaram Vs. B.C. Patil AIR 1958 SC 518= (1958) 1 LLJ 773].*

Held that the Authority had the jurisdiction to determine whether or not an employee continued in employment during a period when there was a lay off order. *[Upper India Coupar Mills Ltd. Vs. T. C. Mathur AIR 1959 All 664].*

Wages during suspension period : it was contended that during the period of suspension the contract of employment was suspended and therefore no wages were due to the employee. Rejecting the said contention the court observed that in that case notwithstanding the order of suspension, the contract of employment was not suspended, that the relationship of master and servant between the employment was not suspended, that the relationship of master and servant between the employer and the employee continued to subsist and that the rights and obligations of the parties under the contract remained unaffected. *[Asghar Ali Vs. Naw Victoria Mills (1955) 1 LLJ 303*].

Subsistence allowance payable during suspension is covered by the definition of wages and is recoverable by resorting to provisions of Section 15. *[Divisional Superintendent, N.R. Vs. Mukand Lal, AIR 1957 Punj= (1957) 2 LLJ 452*

In the case of *K.P. Mushram Vs. B.C. Patel, reported in AIR 1952 Bom 235= (1951) 2 ILJ 584 Held :* It appears that the employee was under an obligation to serve, and if the employee was under an obligation to serve, the employer was under an obligation to pay wages. Therefore, the real nature of suspension order and the subsistence allowance is that the employer imposed a fine on the employee and deducted it from wages. the employee was held to be entitled to wages during the period of suspension.

Alternative remedy : Where there is alternative remedies the claimant can choose any of the remedies available. In an Indian decision Patna High Court *[Md. Qasim Lrri Vs. Md. Shamsuddin, AIR 1957 Pat 683]* observed that "Conceding that there is a remedy provided for in the Industrial Disputes (Appellate Tribunal), Act, 1950 (Act 48 of 21950) for recovery of any dues from an employer under an award or decision or there may be some penalty provided for in the Industrial Disputes Act, it cannot be held that the remedy provided for by the Act (Payment of Wages Act) is not available to the claimant from whose wages deductions have been made by the employer. If two remedies are provided, it is open to the person aggrieved to make his selection, and if in the present case the claimants have chosen to seek the forum provided for in the Payment of Wages Act, it cannot possibly be held that the Authority under the Payment of Wages Act should refuse to exercise his jurisdiction under the Act.

Termination benefit- Realisation thereof : 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]*

Determination of potential wages - Authority has no jurisdiction : The allegation of the workman is that he had been paid his actual wages as fixed by the railway administration but that after the introduction of the scheme of upgrading of persons employed under the daily wages scheme, others who were junior to him had been placed on the monthly wages scheme whereas his claim to be so placed had been ignored. The respondent's main grievance, therefore appears to be that he had not been paid wages on the scale to which he would have been entitled if he had been placed on the monthly wages scheme..... The authority has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages ; but the authority has no jurisdiction to determine the question of potential wages. *[G.I.P. Rly. Vs. B. C. Patel, AIR 1955 SC 412. = (1955) 1 LLJ 363 (SC)]*

The jurisdiction of the Authority is confined to deductions and delay in payment of actual wages and does not extend to potential wages i.e. a claim to pay in upgraded pay scale based on similar upgradation of juniors. The Authority could interpret the terms of contract of employment to find out the actual wages payable where deduction from or delay in payment of such wages was alleged but could not decide the question of the employee's right to upgradation. *[Ibid]*

Limitation for filing application : *Held* that according to the last proviso to sub-section (2) of section 15 of the Payment of Wages Act, 1936 if the 'authority' is satisfied that there was sufficient cause for the petitioners for not making the application within six months from the date on which the payment of wages was due, application will not be barred by time *[Railwaymen's stores Ltd. Vs. M.Sultan Ahmed Chowdhury and others (1957) 9 D L R 286].*

limitation under Section 15 is no bar to alternative remedy in other statute : Indian Supreme Court *Held* that the expiry of the period of limitation for recovery of wages under the Payment of Wages Act did not bar the maintainability of a claim for the recovery of such wages under Section 33-C (2) of the Industrial Disputes Act, which does not prescribe any period of limitation. The Court left open the question as to whether the jurisdiction of the Authority under the Payment of Wages Act was exclusive in the sense that a claim for wages could not be made by an industrial employee within the larger period of limitation of prescribed by Article 102 of the Limitation Act *[Bombay Gas Co. Vs. Gopal Bhiva AIR 1964 SC 752]*

Condonation where parties participate in hearing : Where the parties fully participated in the proceedings before the authority all through without raising any objection as to limitation, even in absence of an order to that effect, any delay in filing the application would be deemed to have been condoned. *[O. C., Engineering Stores Dept Vs. Payment of Wages Authority, 81 CWN 612= 1977 Lab IC 1228 (Cal)]*

Ignorance of law not a sufficient cause for condonation of delay : *Held-* there is a clear distinction between ignorance of law and mistake of law. Ignorance of law as understood by the authorities is ignorance of the rights of a party which the law confers upon him. Mistake of law is mistake an establishing those rights for instance, going to one forum instead of another.*[Sitaram Ramchrran Vs. M.N. Nagrashna [(1954) 2 LLJ 703: AIR 1954 Rom 537]*

Condonation of delay by authority not to be lightly interfered with : The discretion judicially exercised by the authority cannot be interfered with by the High Court. *[Mohanlal Chittora Vs. Labour Enforcement Officer (Central), Bhilwara, (1972) 2 LLJ 482]*

Limitation when starts : Limitation runs from the date of deduction from wages as from the date on which paymet of wages was due. It cannot be calculated from the last date of correspondence, if

there is any, between the parties. *[B.N. Elias & Co. Vs. Payment of Wages Authority, AIR 1960 Cal 603= (1961) 11 LLJ 297].* In the case of termination of service it was held that in case of termination order being set aside by a court limitation for claiming arrears of salary commences on the date of reinstatement and not on the date of termination of service. *[Union of India Vs. R.B. Hanfi (1982) Lab IC NOC 132 (All).].*

In case of reinstatement the deduction of back wages will take place when the question is decided by the departmental authorities and limitation would start from the date. *[Dilbagh Rai Jarry Vs. Union of India (1974) 3 SCC 554].* But when a suit is filed for setting aside the order of dismissal along with an additional relief in respect of part of arrears of salary, and the suit is decreed, Rule 2 of Order II of C.P.C., 1908 is attracted and an application to the Payment of Wages Authority for the remaining part of the arrears is barred. *[Divisional Personnel Officer Vs. Mahavirprasad, 1974 Lab IC 1224 (Raj)].*Condonation of delay in making an application for payment of arrears of wages does not amount to holding that no part of the claim is barred by limitation. Whether it is or is not, is to be decided, at the hearing of the application. *[National Tobacco Co. Vs. State of West Bengal 1973 Lab IC 1448 (Cal)]*

Claim for wages due on account of the introduction of upgrading of persons-Claimant's right to be placed on monthly wages ignored: The respondent had been an employee of the Central Railway as a daily rated casual labourer on specified daily wages since 1941. He continued to receive his wages at the specified rate until October 1949. In October 1949 he made an application through an official of the Registered Trade Union- -claiming his wages due in respect of six months from May to October 1949. The respondent did not allege delay in the payment of his wages or deduction of his wages in contravention of the provisions of sec.. 5 or sec.7. The respondent alleged that he had been paid his actual wages as fixed by the railway administration but that after the introduction of the scheme of upgrading of persons employed under the daily wages scheme, others who were junior to him had been placed on the monthly wages scheme whereas his claim to be so placed, had been ignored and that he had not been paid wages on the scale to which he would have been entitled if he had been placed on the monthly wages scheme. *Held*, that the respondent's complaint fell under the category of potential wages and the authority appointed under the Act had no jurisdiction to decide the question of potential wages. It had the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages. *[A V D'Costa Vs.C. Patel & another 1955 AIR 412 = 1955 SCR (1)1353]*

Awarding Compensation:-interference : The discretion judicially exercised by the authority cannot be interfered with by the High Court. *[Mohanlal Chittora Vs. Labour Enforcement Officer) Bhilwara, (1972) 2 LLJ 482 .]* Calcutta High Court in a case rejected the contention that the compensation awarded must be always in multiples of the wages deducted. The Court further held that the appellate authority was free to fix the compensation at the proportionate rate which that authority might think to be fair and just. *[Jitendra Nath Brahmachari Vs. Telecom Factory [(1988) 1 CLR 121 (Cal) (DB).].*

133. Court fees in proceeding under section 132 : (1) In any proceedings under section 132, the applicant shall not be liable to pay any Court fees other than fees payable for service of process in respect of such proceedings.

(2) Where the applicant succeeds, in such proceedings the Labour Court hearing the application shall calculate the amount of Court fees which would have been payable if the

application were a plaint in a civil suit for recovery of money, and direct the employer or other person responsible for payment of the wages under section 121 to pay such amount.

(3) If the amount directed to be paid under sub-section (2) is not paid within the time specified by the Labour Court, it shall be recoverable as a public demand.

134. Single application in respect of a class of workers whose wages have not been paid or wages deducted : (1) A single application may be presented under section 132 on behalf or in respect of any number of workers belonging to the same unpaid group whose wages have been delayed or deducted, and in such case compensation that may be awarded under section 132(5),

(2) The Labour Court may deal with any number of separate pending applications, presented under section 132 in respect of workers belonging to the same unpaid group, as a single application presented under sub-section (1), and the provisions of that sub-section shall apply accordingly.

(3) For the purpose of this section, 'unpaid workers includes in the same group' shall mean the workers who t are borne on the same establishment and if their wages for the same wage-period or period have remained unpaid.

NOTES/COMMENTS/PRECEDENTS

Scope of the section : Section 16 of the Payment of Wages Act authorises the employed persons belonging to the same unpaid group, i.e the persons of whom the wages for the same wage-period or periods have remained unpaid, to prefer their claims by a single application. The payment of wages Authority is also authorised by this section to consolidate the applications of the employed persons belonging to the same and try he cases as asingle application af if it has been made under section 15(2) of the Act.

In ca case reported in *A.I.R. 1952, Mad. 808* it has been held that a single application may be field on behalf of a number of employees belonging the same group who are unpaid

In a Kerala case it was held 'Section 15 enumerates the persons entitled to bring in an application under that section and section 16 provides for joinder of application. In view of the provision of section 15 when a joint application in respect of several workmen is brought by the workmen themselves, all of them must join it. However that section does not require all of them to sign or verify the application *[F.mely Deecruz Vs. Chief Administrative Office (1968) Lab I C 831 Ker.]*

135. Appeal : (1) An appeal against an order passed by the Labour Court under section 132, may be preferred, within thirty days of the date on which the order was passed, before the Tribunal .

(2) Notwithstanding anything contained in sub-section (1) no appeal by the employer or other person responsible for the payment of wages lie, if the total sum directed to be paid by way of wage and compensation exceeds one thousand Taka, or by any worker or, if he has died, by any of his heirs, or by his legal representative, if the total amount of wages claimed exceeds five hundred Taka, or

(3) No appeal shall lie unless the memorandum of appeal is accompanied by a certificate of the Labour Court to the effect that the appellant has deposited with the Labour Court the amount payable under the direction appealed against.

(4) Save as provided in the case of appeal under this section, all other orders passed by the Labour Court under section 132 shall be final.

(5) The provisions of section 5 of the Limitation act, 1908 (LX of 1908) shall be applicable to appeal under this section.

NOTES/COMMENTS/PRECEDENTS

Appeal - not to be dismissed for non prosecution : *Held-* "Section 17 of the Act provides an appeal against the order passed under Section 15 of the Act and Rule 12 of the Payment of Wages Procedure Rules, 1937 provides the manner how the appeal shall be preferred. The bare perusal of Section 17 and Rule 12 would indicate that there is no specific provision under which the appeal could be dismissed for want of non-prosecution... It is noteworthy that when there is no specific provision empowering the appellate Court to dismiss the appeal for want of prosecution the appellate Court to dismiss the appeal for want of prosecution the appellate Court exceeded its jurisdiction in dismissing the appeal and when an application was moved for recalling the order dismissing the appeal it was required of the appellate Court to realise its mistake and should have restored the appeal to its original number... In my opinion when the order passed by the appellate Court is in excess of its jurisdiction and suffers from patent error of law it deserves to be quashed." *[Jai Prakash Vs. 7th Additional District Judge, Kanpur, (1985) 51 FLR 38: (1985) 2 LLN 93.]* The Act does not provide for dismissal of appeal in case of default. The appeal has to be disposed of on merits. Dismissal as such is bad in law. *[Jamait Ramv Vs. H.G. Shukla, 35 FLR 320: 1977 Lab IC 1499: (1978) 1 LLN 46.]*

Appeal against awarding compensation : When the amount of delayed wages has already been paid before an application for a direction is made and the direction is simply for the payment of compensation the order is not appealable. *[Chimanlal Ishwarlal Mehta Vs. Junior Inspector of Factories A.IR. 1942 Bom, 273)*

Order of condonation of delay:-whether appeal lies : *Held* that an order of the Authority condoning the delay in making an application under Section 15 was non *appealable [Prem Narayan Amritlal Verma Vs. Divisional Traffic Manager [AIR 1954 Bom 78= (1953) 1 LLJ 334.],*

Held further that the order of condonation which the Authority is authorised to make is an order made under sub-section (2) of Section 15 and not under sub-section (3) of Section 15. Sub-section (3) is entertained, and an application under sub-section (2) can only be entertained if it is either within the statutory period of six months... or if it is beyond the period of six months, it is admitted by the order of the Authority condoning the delay. The authority is not competent to entertain the application at all unless it has condoned the delay if it is filed beyond six months. Therefore, no order of the authority condoning delay can ever fall under sub-section (3) of Section 15. It can never be a direction under that sub-section contemplated by Section 17. If it is not a direction under sub-section (3) but is an order under sub-section (2), then no appeal lies from such an order. *[ibid]*. In *Mahadeshwara Lorry Service Vs. Munlappa, (1970) 1 LLJ 546* held that he order refusing to condone delay is an order dismissing the application itself. The appeal against such an order will lie.

Limitation: Computation of- Provisions of Limitation Act, whether applicable : An appeal under section 17 (corresponding to section 135 of the present Act) must be preferred within thirty days from the date of the order sought to be appealed against. This period of limitation

cannot be extended for any sufficient cause by invoking Section 5 of the Limitation Act. Sections 6 to 8 and 19 21 of the Limitation Act will also not apply to such an appeal but Sections 4, 9 to 18 and 22 will apply by virtue of Section 29(2) of the Limitation Act. Hence, the time spent in obtaining a copy of the direction sought to be appealed shall be excluded under Section 12 of the Limitation Act. The term 'made' is to be liberally construed as the date on which the order is communicated to and reaches the affected party. *[A.C. Arumugham Vs. Jawahar Mills, AIR 1956 Mad 79: (1956) 1 LLJ 519.]*

136. Conditional attachment of property of employer or other person responsible for payment of wages : (1) Where at any time -

(a) after an application has been made under section 132, the Labour Court, or

(b) after an appeal has been filed under section 135, the Tribunal;

is satisfied that the employer or other person responsible for the payment or wages under section 121 is likely to evade payment of any amount that may be directed to be paid under section 132 or 135, the Labour Court or the Tribunal, as the case may be, after giving the employer or other person an opportunity of being heard, may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages:

Provided that, if there is possibility of defeating the purpose for the cause of delay, the said Court or Tribunal, before giving the opportunity of being heard, may pass such order of attachment.

Provided further that such amount of property may be attached, which, in the opinion of the Labour Court or the Tribunal, sufficient to satisfy the amount which may be payable under the direction.

(2) All provisions of the Code of Civil Procedure, 1908 (V of 1908), relating to attachment before judgment, apply to any order for attachment under sub-section (1).

137. Power to recover from employer in certain cases : When the Labour Court is unable to recover from any person, other than an employer, responsible under section 121 for the payment of wages any amount directed by such Court or Tribunal, as the case may be, to be paid by such person, it shall recover the amount from the employer.

CHAPTER: XI

WAGES BOARDS

History of Minimum wages Legislation : As early as in 1929 the Royal Commission on labour noticed the chronic problem of payment of inadequate wages to workers and recommended on this issue for setting up wage board for fixing minimum wages. The Commission particularly gave emphasis on fixation of minimum wages for the workers employed in plantations of Assam. Government of the then India appointed the Labour Investigation Committee in 1944 which commented on the low level of wages of workers in various industries. In 1946 Dr. Amberker, an erstwhile labour member in the Government of India introduced a Minimum Wages Bill in the Legislative Assembly. The bill was referred to the Select Committee in March 1947, but the law could not be passed during the British Regime. On 28th September, 1957 the Minimum wages Act was passes as a provincial Act in the then East Pakistan Parliament. The Act was published in the official gazette on 8th November of that. year.

The Minimum Wages Act, 1957 was made applicable only to the scheduled industries and undertakings viz., (1) Inland Water Transport, (2) Textiles (Cotton, Wool, Artificial Silk and Jute), (3) Sugar, (4) Matches, (5) Paper, (6) Rubber Manufacturers and (7) Tea.

The above Act was repealed in 1961 and in its place the Minimum Wages Ordinance, 1961 was enacted. All industrial undertakings for which no adequate machinery exists for effective regulation of wages were brought under the Ordinance.

After liberation of Bangladesh the Minimum Wages Ordinance, 1961 remained in force. In 1988 some amendments has been made in this Ordinance. By this amendment besides changing of some words section 10 relating to taking of cognizance of the offence was substituted. A labour court has been exclusively empowered to take cognizance and try offences under the ordinance. Person aggrieved by the commission of the offence has also been empowered by the amending Act to lodge prosecution against the person who has allegedly committed and offence.

In this chapter almost all the provisions of the Minimum Wages Ordinance, 1961 as amended have been incorporated

Object of Fixation of Minimum Wages : The object for enactment the Minimum Wages Act or Minimum Wages Ordinance was fixation of minimum rates of wages in certain employments The enactment was clearly directed against exploitation of the ignorant, less organised and less privileged members of the society. On fixation of minimum wages Indian Supreme Court held that the object of the Act is to prevent economic exploitation of the workers. It is intended to apply the Act to those industries or localities in which by reason of causes such as unorganised labour or absence of adequate machinery for regulation of wages, the wages paid to workers were, in the light of the general level of wages and subsistence level, inadequate *[Bhikusa Yamasa Kshatriya Vs. Union of India A I R 1963 806]*

138. Establishment of Minimum Wages Board : (1) The Government shall establish a Board to be called the Minimum Wages Board.

(2) the Minimum Wages Board, hereinafter referred to in this Chapter as the Wages Board, shall consist of-

(a) a Chairman ;

(b) one independent member ;

(c) one member to represent the employers, and

(d) one member to represent the workers.

(3) For the purpose of discharging the functions specified in section 139, the Wages Board shall also include-

(a) one member to represent the employers of the industry concerned ; and

(b) one member to represent the workers engaged in such industry.

(4) The Chairman and the other members of the Wages Board shall be appointed by the Government.

(5) The Chairman and the independent member of the Wages Board shall be appointed from persons with adequate knowledge of industrial labour and economic conditions of the country who are not connected with any industry or associated with any trade union of workers or employers.

(6) The member to represent the employers and the member to represent the workers under sub-section (2) or (3) shall be appointed after considering nominations, if any, of such organisations as the Government considers to be representative organisations of such employers and workers respectively.

Provided that, if no nomination is received for the representatives of the employers or workers inspite of more than one effort, the Government appoint such persons whom the Government considers to be fit in its opinion to be representative of such employers and workers respectively.

NOTES/COMMENTS/PRECEDENTS

Constitution of Board—Independent Member: Held that on the basis of recommendation of a committee appointed by the Government of India the minimum rates of wages of certain categories of employees in the scheduled employment in Barytes, Bauxite, Manganese and Gypsum Mines were fixed by Government by issuing necessary notification. The notification was challenged on the ground that the committee was improperly constituted for the employees of Labour Department appointed to the committee are not 'independent persons' and the representatives of employees are not engaged for profit in the particular employment. The Supreme Court held the constitution of committee as valid on the ground that where Government is not the employer the Government employees who are entrusted with the task of implementation of the minimum wages do not for that reason alone become "interested persons" and cease to be "independent persons". As for the representatives of employers are concerned it is not necessary that the person appointed on the committee to represent, the employers in a scheduled employment should be engaged for profit in the particular employment. It is enough if a nexus exist between such representative and the employment or if such members are intimately connected and are aware of the particular schedule employment. *[Ministry of Labour and Rehabilitation and another Vs Tiffin's Barytes Asbestos & Paints Ltd. (1985) 2 Lab LJ 412 (SC).]*

139. Recommendation of minimum rates of wages for certain workers : (1) Where, in respect of any industry, the Government is of the opinion that, in view of the prevailing rates of wages of workers engaged in that industry, it is reasonable and necessary to fix the minimum rates of wages for all or any class of workers employed in such industry, it may direct the Wages Board to recommend, after such enquiry as the Wages Board thinks fit, the minimum rates of wages for such workers or class of workers.

Explanation .- The Government, may upon an application made to it, by the employer or workers, or both the parties, consider fixation of minimum rates of wages for the workers employed in that industry.

(2) The Wages Board shall make its recommendation within a period of six months from the date of receipt of such direction made to it :

Provided that the Government may extend this period if the Wages Board so requests.

(3) In pursuance of a direction under sub-section (1), the Wages Board may recommend minimum rates of wages for all classes of workers in any grade and, in such recommendation, may specify-

(a) the minimum rates of wages for time-work and piece-work ; and

(b) the minimum time-rates specifically for the workers employed on piece work.

(4) The time-rates recommended by the Wages Board may be on hourly, daily, weekly or monthly basis.

(5) In its recommendation the Wages Board shall indicate whether the minimum rates of wages should be adopted uniformly throughout the country or with such local variations for such areas as are specified therein.

(6) The minimum rates of wages for any industry may be re-fixed after every five years as may be directed by the Government.

NOTES/COMMENTS/PRECEDENTS

"Where no adequate machinery exists" and " Government is of the opinion that....it is expedient to fix the minimum wages. "Whether adequate machinery exists or not for effective regulation of wages. Subjective satisfaction of Government enough.*[Pakistan Steel Re-Rolling Mills Association Vs. Province of West Pakistan. (1964 LLC689 = 1964 PLC 121 = PLD 1964 Lah. 138)]*

Publication in official Gazette mandatory : The Publication in the official Gazette of a recommendation of the Minimum Wages Board of minimum wages is mandatory, otherwise persons who are likely to be affected will be deprived of opportunity to raise any objection or give any suggestions to the proposed recommendation.

The Government can act or issue a gazette notification only on the basis of a recommendation of the Minimum Wages Board, and not on the basis of a draft recommendation. *[New Age Garments Ltd. and others Vs. Government of Bangladesh and others. 22 BLD 2002 (HCD) 13*

140. Power to declare minimum rates of Wages : (1) Upon receipt of a recommendation of the Wages Board under section 139, the Government may, by

notification in the official Gazette, declare that the minimum rates of wages recommended by the Wages Board for the various workers shall, subject to such exception as may be specified in the notification, be the minimum rates of wages for such workers.

(2) If the Government considers that such recommendation is not, in any respect, equitable to the employers or the workers, if any, within thirty days of receipt of the recommendation, refer it back to the Wages Board for reconsideration with such comments thereon and giving such information relating thereto as the Government may think fit.

(3) Where a recommendation is referred back to the Wages Board under sub-section (2), the Wages Board shall reconsider it after taking into account the comments made and information given by the Government and, if necessary, shall hold further enquiry and submit to the Government a revised recommendation, or if it considers that no revision or change in the recommendation is called for, make report to that effect stating reasons therefor.

(4) Upon receipt of the recommendation of the Wages Board under sub-section (3), the Government may, by notification in the official Gazette, declare that the minimum rates of Wages recommended under that sub-election by the Wages Board for various workers shall, subject to such modifications and exceptions as may be specified in the notification, be the minimum rates of wages for such workers.

(5) Unless any date is specified for the purpose in the notification under sub-section (4), the declaration thereunder shall take effect on the date of publication of such notification.

(6) Where after publication of a notification under sub-section (1) or (4) or after minimum rates of wages declared thereunder have taken effect, it comes to the notice of the Government that there is a mistake in the minimum rates of wages so declared, it may refer the matter to the Wages Board and any such reference shall be deemed to be a reference under sub-section (2).

(7) The minimum rates of wages declared under this section shall be final and shall not, in any manner, be questioned by any persons in any Court or before any authority.

NOTES/COMMENTS/PRECEDENTS

Prohibition of payment of wages lower than minimum fixed : The law prohibits payment of any wages by an employer to worker below the minimum wages fixed. The minimum wage fixed by the government by the notification has the force of law and was fixed in exercise of statutory power of the Government and, as such, the said minimum wages could not be varied or reduced to the disadvantage of a worker by any agreement whatsoever between the management and the collective bargaining agent. *[Kazi Giasuddin and another Vs. First Labour Court, Dhaka and another (1994) XLVI DLR 359= 13 BLD 266]*

141. Factors to be considered in making its recommendation : In making its recommendation the Wages Board shall take into consideration cost of living, standard of living, cost of production, productivity, price of products, business capability, economic and social conditions of the country and of the locality concerned and other relevant factors.

142. Periodical review of minimum rates of wages : (1) The Wages Board shall review its recommendations if any change in the factors specified in section 141 and other relevant factors so demand, and recommend to the Government any amendment, modification or revision of the minimum rates of wages declared under section 140 :

Provided that no recommendation shall be reviewed earlier than one year from the date on which it was made, unless the special circumstances of a case so require, and later than three years from such date.

(2) Review and recommendation under this section shall be deemed to be an enquiry and recommendation under section 139 and the provisions of this Chapter shall, as far as may be, apply accordingly.

143. Constitution of Newspaper workers 'Wage Board : (1) The Government may, if it thinks fit, by notification in the Official Gazette, constitute a separate Board, to be called the Newspaper Workers' Wage Board, for fixing rates of wages of newspaper workers.

(2) The Board hereinafter referred to as in this Chapter as the Newspaper Wage Board, shall consist of a Chairman and an equal number of member to represent the employers in relation to newspaper establishments and newspaper workers, to be appointed by the Government.

144. Fixation of Wages for newspaper workers : (1) In fixing rates of wages in respect of newspaper workers the Newspaper Wage Board shall take into consideration the cost of living, the prevalent rates of wages of comparable employment's in Government, Corporations and private sectors, the circumstances relating to the newspaper industry in different regions of the country, and to any other circumstances which to the Newspaper Wage Board may seem relevant.

(2) The Newspaper Wage Board may fix rates of wages for time work and for piece-work.

(3) The decision of Newspaper Wage Board fixing rates of wages shall be communicated, as soon a practicable, to the Government.

145. Publication of decision of Newspaper Wage Board : (1) The Government shall examine the decision of the Newspaper Wage Board and shall, within a period of three months from the date of its receipt publish by notification in the official Gazette with modifications as may be deemed necessary.

(2) The decisions of the Newspaper Wage Board, with modifications, if any, and published under sub-section (1) shall come into operation with effect from such date as may be specified in the notification, and where no date is so specified, it shall come into operation on the date of its publication.

146. Power of Newspaper Wage Board to fix interim rates of Wages : (1) Where the Newspaper Wage Board is of the opinion that it is necessary so to do, it may, by notification in the official Gazette, fix interim rates of wages.

(2) Any such interim rate of wages so fixed shall be binding on all employers in relation to newspaper establishments, and every newspaper worker shall be entitled to be paid wages at a rate which shall, in no case, be less than such interim rate of wages.

(3) Any such interim rate of wages fixed, shall remain in force until the decision of the Newspaper Wage Board comes into operation under section 145(2).

147. Application to Labour Court : Where any dispute relating to classification or re-classification of a newspaper or a newspaper establishment arises out of any decision of the Board, with modifications if any, and published under section 145(2), any person aggrieved by any such decision may apply to the Labour Court for adjudication and determination of the dispute.

148. Minimum Wages to be binding on all employers : The minimum rates of wages declared under section 140 or published under section 145 shall be binding on all employers concerned and every worker shall be entitled to be paid wages at a rate which shall, in no case, be less than the rate of wages so declared or published.

149. Prohibition to pay wages at a rate below the minimum rate of wages : (1) No employer shall pay any worker wages at a rate lower than the rate declared or published under this Chapter to be the minimum rate of wages for such worker.

(2) Nothing in sub-section (1) shall be deemed to affect, in any way, the right of a worker to continue to receive wages at a rate higher than the minimum rate declared under this Chapter, if, under any agreement or award or otherwise, he is entitled to receive wages at such higher rate, or to continue to enjoy such amenities and other advantages as are customary for such worker to enjoy.

CHAPTER : XII

WORKMEN'S COMPENSATION FOR INJURY BY ACCIDENT

In this Chapter the provisions of the Workmen's Compensation Act, 1923, which was a social legislation have been incorporated with a slight change mainly on the amount of compensation.

History of Law for compensation : Amongst the Labour Laws which were in force in Bangladesh the Workmen's Compensation Act, 1923 was the oldest law. The Statement of Objects and Reasons for passing of the Workmen's Compensation Act, 1923, as stated in the Gazette of India, 1922, is as follows: "The general principles of workmen's compensation command almost universal acceptance, and India is now nearly alone amongst civilized countries in being without legislation embodying these principles. For a number of years the more generous employers have been in the habit of giving compensation voluntarily, but this practice is, by no means, general. The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects of such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour, at the same time, a corresponding increase in the efficiency of the average workman may be expected. A system of insurance would prevent the burden from pressing too heavily on any particular employer.

After a detailed examination of the question by the Government of India, Local Governments were addressed in July 1921, and provisional views of the government of India were published for general information. The advisability of legislation has been accepted by the great majority of Local Governments and of employers' and workers' associations, and the Government of India believe that public opinion generally is in favour of legislation.

In June 1922, a committee was convened to consider the question. This committee was composed, for the most part, of members of the Imperial Legislature. After considering the numerous replies and opinions received by the Government of India, the committee was unanimously in favour of legislation, and drew up detailed recommendations regarding the lines which, in its opinion, such legislation should follow. The bill now presented follows these recommendations closely. A number of supplementary provisions have been added where necessary, but practically no variations of importance have been made.

The Bill contains two distinct proposals. In Chapter II modifications are made in the ordinary civil law affecting the liability of employers for damages in respect of injuries sustained by their workmen; these clauses will operate only in actions before the ordinary civil Courts. The main part of the Bill makes provision for workmen's compensation and sets up special machinery to deal with claims falling under this category.

Both parts of the Bill, however, apply to the same classes of workmen. If the scope of the employers' liability clauses was made wider than the scope of the workmen's compensation provisions, there would be considerable danger of a great increase in litigation. The classes

included are those whose inclusion was recommended by the committee, and are specified in Schedule II. Two criteria included- (1) that the Bill should be confined to industries which are more or less organised ; (2) that only those workmen whose occupation is hazardous should be included.

The general principle is that compensation should ordinarily be given to workmen who sustained personal injuries by accidents arising out of and in the course of their employment. Compensation will also be given in certain limited circumstances for disease. The actual rates of compensation payable are based on the unanimous recommendation of the committee. They are in every case subject to fixed maxim, in accordance with the committee's recommendations. It should be remembered, however, that the more highly paid workmen will be enabled, in case to which employers' liability clauses will apply to obtain damages on a scale considerably in excess of the maximum fixed for workmen's compensation.

A consistent endeavour has been made to give as little opportunity for disputes as possible. Throughout the Bill, in the definitions adopted, the scales selected, and the exceptions permitted, the great aim has been precision, in order that, in as few cases as possible should be validity of a claim for compensation or the amount of that claim be open to doubt. At the same time, on the unanimous recommendation of the committee, provision has been made for special tribunals to deal cheaply and expeditiously with any disputes that may arise, and generally to assist the parties in a manner which is not possible for the ordinary Civil Courts."

Scope of legislation on workmen's compensation : The Workmen's Compensation entitles an employee who is injured by an accident arising out of and in the course of employment and disabled for at least a week, to recover a sum as compensation. The employee's contributory negligence is no defence to the employer unless it amounts to serious and willful-misconduct, and not even then if the injury is permanent or fatal.

In Works Manager, Carriage and Wagons shop, Eastern Indian Railway Vs. Mohabir 1954 AIR 132 it has been held that "The Workmen's Compensation Act has created a new type of liability inasmuch as it makes an employer liable to pay compensation at a fixed rate to a servant incapacitated by an accident arising out of and in the course of employment. The liability to pay compensation is independent of any neglect or wrongful act on the part of the master or his servant. In other words, it is not a liability which arises out of tort. It is a liability which springs out of the relationship of master and servant. The total amount that a servant can get is fixed by the Act, is governed by a scale and is dependent not on the suffering caused to the workman or the expenses incurred by him in his illness but on the difference between his wage-earning capacity before and after the accident. The accident must have relation to the servant's employment. This would include not only the period when he is doing the work actually allotted to him but also the time when he is at a place where he would not be but for his employment. *[Works Manager, Carriage and Wagon Shop, E.I, Railway Vs. Mahabir, AIR 1954 All. 132.]*

As regards interpretation of the Act their Lordships have held that "The Act is a quasi penal statute and must not be interpreted with sympathetic leniency but must be construed strictly *[Bombay Burmah Trading Corp. Ltd. Vs. Ma E. Nam A I R 1937 Rang 45]*

150. Employer's Liability for compensation : (1) If personal injury is caused to a worker by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

(2) The employer shall not be liable to pay compensation-

(a) in respect of any injury which does not result in the total or partial disablement of the worker for a period exceeding three days ;

(b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to-

(i) the worker having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the worker to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of worker, or

(iii) the wilful removal or disregard by the worker of any safety guard or other device which he knew to have been provided for the purpose of securing the safety or worker.

(3) If -

(a) worker employed in any employment specified in part-A of the Third Schedule, attacked with any disease specified therein as an occupational disease peculiar to that of employment, or

(b) a worker, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Part-B of the Third Schedule, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section, and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation.- For the purposes of this sub-section, a period of service shall be deemed to be continuous which has not included a period of service under any other employer in the same kind of employment.

(4) The Government may, by notification in the official Gazette, add any description of employment to the employment's specified in the Third Schedule and shall specify in the case of the employment's so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to these employment's respectively, and the provision of sub-section (3) shall thereupon apply as if such diseases had been declared by this Chapter to be occupational diseases peculiar to those employment's.

(5) Save as provided by sub-section (3) and (4), no compensation shall be payable to a worker in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(6) Nothing herein contained shall be deemed to confer any right to compensation on a worker in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person ;

(7) No suit for damages shall be maintainable by a worker in any court of law in respect of any injury-

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

(b) if an agreement has been come to between the worker and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Chapter.

(8) For the purposes of this Chapter, 'worker' means any person employed by the employer directly or through contractors who is-

(a) the railway servant as defined in section 3 of the Railways Act, 1890 (IX of 1890), who is not employed in any administrative, district or sub-divisional office of the railway and not employed in any such capacity as is specified in the Fourth Schedule, or

(b) employed in any such capacity as is specified in the Fourth Schedule, whether the contract of employment is expressed or implied, oral or in writing ; and any reference to a worker who has been injured shall, where the worker is dead, include a reference to his dependents or any of them.

Explanation- The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Chapter, unless a contrary intention appears, be deemed to be the trade or business or such authority or department.

NOTES/COMMENTS/PRECEDENTS

Scope of Section: This section makes the employers liable for payment of compensation for personal injury caused to a workmen by accident arising out and in course of employment.

Accident : The word 'accident' in s.3 (1) is used in the popular and ordinary sense and means 'mishap' or untoward event not expected or designed.' Whether the accident 'arises out of employment or not' depends on the facts of each case ; the accident must be connected with the employment and must arise out of it. There must be casual connection or association between the employment and the accidental injury. In the case of a workman who collapsed and died due to heart attack it was held on the facts of the case that he died as a natural result of the disease from which he was suffering and that there was nothing to show that the heart attack was due to an exceptional strain or work that he did not the day in question. A claim for compensation was therefore, rejected. *[Parwatibai Vs. Manager, Rajkumar Mills, Indore A.I.R. 1959 IMP 281]*

Injury while going to work : Injury while going to work by transport provided by employer ; implication that there was an obligation on the part of the employer to provide the transport, and there was equally an obligation on the part of the workman to make use of the transport, the injury occurred out of and in the course of employment. *[Varandarajula Naidu Vs. Massaya Royan A.I.R. 1954 Mad. 1113].*

Steps a workman may take when he is injured in an accident arising out and in the course of employment : . Section 10 of the Workmen's Compensation Act provides that no claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given as soon as practicable after the happening thereof and unless the claim is preferred within two years of the occurrence of the accident or, in case of death, within two years from the date of death.

If any question arises as to the liability of any person to pay compensation including any question as to whether a person is or not a workman or as to the amount of duration of compensation

including any question as to whether a person is or not a workman or as to the amount of duration of compensation including any question as to the nature or extent of disablement, the question, in the absence of agreement, shall be settled by a Commissioner.

Section 22 of the Workmen's Compensation Act provides that an application containing prescribed particulars and accompanied by the prescribed fee must be submitted to the Commissioner.

In a case, it has been held that a claim cannot be thrown out merely because it is not in the proper form. *(AIR 1955 All. 82).*

Section 24 of the Act provides that any appearance application or act required to be made or done by any person before or to a commissioner may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company or a registered Trade Union or by an Inspector appointed under the Factories Act, the Mines Act or any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the Commissioner, by any other person so authorised.

Section 30 of the Act lays down that an appeal shall lie to the High Court from the orders of a Commissioner. The period of limitation for an appeal shall be 60 days. Appeal will lie on substantial question of law. *[AIR 1946 Bom. 110].* Order passed in appeal under Section 30 is a judgment within the meaning of Clause 15 of the Letters patent. Decision of the Commissioner, in an application for compensation, is a judgment, and not an award. *(1970-II L.L.J. 320 A.P.)*

Act whether applicable to student: The Act applies only to a person who is a "workman" within the meaning of the Workmen's Compensation Act. In order to be a "workman" within the meaning of the Act it is well settled that the person claiming to be a workman must be under the contract of service with some other person. Some apprentices may be excluded from the category of workmen. The Act may or may not apply to apprentices, the nature of contract being the deciding factor in each case. Unless there is contract of service, an apprentice cannot come under the category of "workman". A student of B Class of the Maclagan Engineering College, Lahore, is not an apprentice or workman. *[Inju Singh. Vs. Secretasry of State, A I R 1929 Lah. 573 = 1191 I.C. 272.]*

Nature of employment.: Where the question, whether the nature of employment is or is not of a casual nature, is reasonable debatable, it is a question of fact, depending upon circumstances of each case. *[Stoker Vs. Worthan (1919) 1 K.B. 499= 88 L.J.K.b. 457.].*

Employment of casual nature, owner is an employer.— The question whether an employment is of casual nature depends on evidence of each case. The onus in such cases would be on the employer to prove the condition which is necessary for the purpose of excluding a person from the category of a workman and it has to be shown that the workman's employment was of casual nature. *[Ebrahim Haji Jusabi Vs. Jaainbi Anuddin, (1933) Bom. 270= 35 Bar. L.R. 410= 145 I.C. 273.]*

In the course employment`--`Arising out of employment`: Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand he may draw an inference from the proved facts so long as it is a legitimate inference. The evidence must be such as would induce a reasonable man to draw the inference *[Mackinnon Mackenzie & Co Vs Ibrahim Md. Issak A I R 1970 SC 1906= 1970 SCR (1) 869]*

Accident to a bus driver- If occurred in course of employment-Claim of compensation by widow-Employer, if bound to pay : One P. Nanu Raman was a bus driver of the appellant corporation. After finishing the work for the day, he left the bus in the depot, boarded another bus to go to his residence and the bus met with an accident and, as a result of the injuries received in that accident, he died. His widow, the respondent, through an application in the Court of the Commissioner for Workmen's Compensation, claimed compensation by reason of the death of her husband in an accident alleged to have arisen `out of and in the course of his employment`. The application was dismissed by the Commissioner, but on appeal the High Court passed a decree in favour of the widow. Section 3 (1) of the Workmen's Compensation Act, 1923, is as follows :- `If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provision of this chapter.`*[General Manager, B.E.S.T. Undertaking Bombay Vs. Mrs. Angee A I R 1964 193 = 1964 SCR (3) 930D]*

Instances of cases of accident in course of accident : A collier along with either colliers, had to pass through a railway platform in order to reach the colliery in which he worked. Form the platform, the colliers had to walk by a high road to the colliery which was about a quarter of mile from the platform. A train conveyed the colliers from the platform to Dowslais which was the place of residence of collier. They were conveyed free charge. The collier was waiting on the platform to get into the return train, when he was knocked down by the train, and killed. The widow's application for compensation was allowed. By and large, a workman is not entitled to compensation in these cases were the accident occurs in a public place and the risk faced by him is not on account of his employment as such, but on account of his presence on the spot as a member of the public. The underlying reason for this appears to be that at such spot, the employer has no control over the employee and cannot regulate his movement It is true that an employee has to reach his usual place of duty every day at a fixed hour for that, as a normal human being he would adopt the easiest and most comfortable route so that he may conveniently reach his destination in proper time. He may, in case of two equally convenient routes, adopt any one of them. Human nature being what is, some would reach fairly in advance of the hour of duty, the others, less punctilious, may reach at the nick of time. Therefore, there is always room for individual vagaries. This is probably the backbone of the principle on which the dictum of no liability for accident at public places, appears to be founded. But exception to this general rule can be created in which an employee's passage even through a public place or highway becomes subject to regulation or control by his employer The facts of the instant case furnish such an exception. From the perusal of the facts of his case, it appears that the workmen were excepted to travel to and from the colliery by the trains and in the carriages provided for them by the employers, and that it was intended by both parties that this should be part of the contract of employment. In view of this, the compensation allowed to the widow is fully justified.

In *St. Helens Colliery Company Ltd. Vs. Hewitson (1924 A.C. 59)* it was observed that there may be cases in which the facility provided by the employer for journey to and from the place of work may be justly regarded as one of the incidents of the employment. In this case it was also observed that in all cases where a workman on going to, or on leading his work suffers an accident on the way, the first question to be determined is whether the workman was at the place where the accident occurred in virtue of his status as a workman or in virtue if his status as a member of the public.

The Supreme Court of India in *General Manager B.E.S. T. Undertaking Bombay Vs. Mrs. Agnes (A. I.R. 1964 S.C. 193),* the drivers of B.E.S.T. Undertaking were given free transport facility in buses belonging to the undertaking from the depot to their houses and vice versa. The driver

concerned met with an accident while going home from the depot. It was held that the accident had occurred during the course of the employment and had arisen out of the employment. It has been observed that as the free transport is provided to the bus driver in the interest of service having regard to the long distance a driver has to traverse to go to the depot from his house and vice versa, the user of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as a part of his duty. Workman under no obligation to use conveyance provided by employer ; workman meeting with accident while proceeding to work in aforesaid conveyance ; accident can be said to occur in course of employment. *[Becharam Malik Vs. Khas Jyrampur Colliery A.I.R. 1940 Pat. 599].*

Injury arising "out of employment"—Deceased at time of death employed to remove Bauxite Ore lying in hold of a ship—Deceased dying of suffocation due to inhalation of Bauxite Power—Death, held, consequence of inhaling Bauxite Powder although no post-mortem held save inquest under S. 174, Cr. P.C.—Expression "accident" used in ordinary sense of the word as denoting an unlooked for mishap or an untoward event not expected or designed—Absence of medical evidence held not to be a decisive factor in matter of compensation—Compensation allowed. *[Messrs Brigstock Eduljee & Co. Karachi Vs. Mst. Ajbai 1970 PLC 723 H.C Lahore.]*

Payment of Penalty : Under Section 2(i)(1) of the Workmen's Compensation Act, 1923, 'total disablement' means such disablement, whether of a temporary or Permanent nature, as incapacitates a workmen for all work which he was capable of per forming at the time of time occident resulting in such disablement. Under s. 4A(3), when an employer defaults in paying the compensation within one month from the date it fell due, the Commissioner may direct payment of penalty and interest if he is of the opinion that there was no justification for the employer's delay *[Pratap Narain Singh Vs. Srinivas Sabata A I R 1976 SC 222= 1976 SCR (2) 87]*

151. Amount of compensation : (1) Subject to the provisions of this Chapter, the amount of compensation shall be as follows, namely:

(a) where death results from the injury, a worker in receipt of monthly wages falling within limits shown in the third column of the Fifth Schedule the amount shown against such limit thereof ;

(b) where permanent total disablement results from the injury-

(i) in the case of an adult limits shown in Fifth Schedule the amount shown against such limits in the third column thereof ; and

(ii) in the case of a minor-Taka ten thousand ;

(c) where permanent partial disablement results from the injury-

(i) in the case of an injury specified in the First Schedule, such percentage of the compensation which would have been payable in the case of permanent total disablement's as is specified therein as being the percentage of the loss of earning capacity caused by that injury ;

(ii) in the case of an injury not specified in the First Schedule, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury ; and

(d) where temporary disablement, whether total or partial, results from the injury, a monthly payment payable on the first day of the month following the month in which it is due after the expiry of a waiting period of four days a from the date of the disablement, and thereafter monthly during the disablement or during a period as specified in the last column of the Fifth Schedule; whichever period is shorter.

(2) Where more injuries than one are caused by the same accident, the amount of compensation payable under sub-section (1), (c) shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

(3) On the ceasing of the disablement before the date on which any monthly payment falls due, there shall be payable in respect of that month a sum proportionate to the duration of the disablement in that month.

152. Method of calculating wages : (1) In this Chapter and for the purpose thereof the expression 'monthly wages' means the amount of wages deemed to be payable for a month's service, whether the wages are payable by the month or by whatever other period or at piece rates,

(2) Such wages shall be calculated as follows, namely:

(a) where the worker has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the worker shall be one-twelfth of the total wages to be paid to him by the employer in the last twelve months of that period ;

(b) where the whole of the continuous period of service immediately preceding the accident during which the worker was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the worker shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a worker employed on the same work by the same employer, or, if there was no worker so employed, by a worker employed on similar work in the locality ;

(c) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period

Explanation : a period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

153. Review : (1) Any monthly payment payable under this Chapter, either under an agreement between the parties or under the order of a Labour Court, may be reviewed by the Labour Court, if-

(a) on the application either of the employer or of the worker accompanied by the certificate of a registered medical practitioner that there has been a change in the condition of the worker, or

(b) on such application without medical certificate on the ground that the determination of compensation was obtained by fraud or under influence or other improper mean or that in such determination there is a mistake or error apparent on the face of the record.

(2) Any monthly payment may, on review under this section, subject to the provisions of this Chapter, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the worker is entitled less any amount which he has already received by way of monthly payment.

154. Commutation of monthly payments : (1) The employer may pay lump sum amount as monthly payments, by agreement between the parties or,

(2) If the parties do not agree as such and the payments have been continued for not less than six months, on the application of either party to the Labour Court be redeemed by the payment of a lump sum of such amount as may be determined by the Labour Court.

155. Distribution of compensation : (1) No payment of compensation in respect of a worker whose injury has resulted in death, and no payment of a lump sum as compensation to a person under a legal disability, shall be made otherwise than by deposit with Labour Court.

(2) No such payment made directly by an employer shall be deemed to be a payment of compensation under subsection (1), unless a worker, during the periods of his employment, nominated in the prescribed manner any of his dependents to receive the amount of compensation in the even of an injury resulting in his death:

(3) Notwithstanding anything contained in sub-section (1), in the case of a deceased worker, an employer may make to any dependent advances on account of compensation and such advances shall be deducted by the Labour Court from the compensation payable to that dependent and repaid to the employer.

(4) Any other sum which is payable as compensation may be deposited with the Labour Court on behalf of the person entitled thereto.,

(5) The receipt of the Labour Court shall be a sufficient discharge in respect of any compensation deposited with it.

(6) On the deposit of any money under sub-section (1) as compensation in respect of a deceased worker, the Labour Court shall, if it thinks necessary, cause notice to be published or to be serviced on each dependent in such manner as it thinks, fit, calling upon the dependents to appear before it on such date as it may fix for determining the distribution of the compensation.

(7) If the Labour Court is satisfied after any enquiry which it may deem necessary, that no dependant exists, it shall not less than two years after the date of deposit, transfer the

balance of the money to such fund or funds for the .benefit of workers as the Government may, by notification in the Official Gazette, specify or establish.

(8) The Labour Court shall, on application by the employer, furnish a statement showing in detailed all disbursements made.

(9) Compensation deposited in respect of a deceased worker shall, subject to any deduction made under the proviso to sub-section (1), be apportioned among the dependents of the deceased worker or any of them in such proportion as the Labour Court thinks fit, or may, in the discretion of the Labour Court, be allotted to any one dependant.

(10) Where any compensation deposited with the Labour Court is payable to any person, the Labour Court shall, if the person to whom the compensation is payable is not a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(11) Where any lump sum deposited with the Labour Court is payable to a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of such person during his disability, in such manner as the Labour Court may direct.'

(12) Where a half monthly payment is payable to any person under a legal disability the Labour Court may, of its own motion or on an application made to it in this behalf, order that the payment be made during the disability to any dependant of the worker or to any other person whom the Labour Court thinks best fitted to provide for the welfare of the worker.

(13) Where, on application made to it in this behalf or otherwise, the Labour Court is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or for any other sufficient cause, an order of the Labour Court as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Labour Court may make such order for the variation of the former order as it thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(14) Where the Labour Court varies any order under sub-section (13) by reason of the fat that payment of compensation to any person has been obtained by fraud, impersonation or other improper mans, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 329.

156. Compensation not to be assigned, attached or charged : Save as provided by this Chapter, no lump sum or monthly payment payable under the Chapter shall in any way, be capable of being assigned or charged or be liable to attachment or pass to any person other than the worker by operation of law, nor shall any claim be set off against the same.

NOTES/COMMENTS/PRECEDENTS

Restriction relating to the assignment, charge and attachment of the compensation : Section 9 of the Workmen's Compensation Act provides for the compensation not to be assigned, attached or charged. This section lays down that no lump sum or monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

157. Notice and claim : (1) No claim for compensation shall be entertained by a Labour Court unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before it within two years of the occurrence of the accident or in case of death, within two years from the date of death.

(2) Where the accident is the contracting of a disease in respect of which the provisions of section 150 (3) are applicable, the accident shall be deemed to have occurred on the first of the days during which the worker was continuously absent from work in consequence of the disablement caused by the disease.

(3) The want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim-

(a) if the claim is preferred in respect of the death of a worker resulting from an accident -

(i) which occurred on the premises of the employer, or

(ii) at any place where the worker at the time of the accident was working under the control of the employer or of any person employed by him, and the worker died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer of any one of several employers of any person responsible to the employer for the management of any branch of the trade or business in which the injured worker was employed had knowledge of the accident from any other source at or about the time when it occurred.

(4) The Labour Court may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time, as provided in the preceding sub-sections if it is satisfied that the failure so to give the notice or prefer the claim as the case may be, was due to sufficient cause.

(5) Every such notice shall give the name and address of the person inured and shall state in ordinary language the cause of the injury and the date on which the accident happened and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured worker was employed.

(6) A notice under this section may be served by delivering it at or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

NOTES/COMMENTS/PRECEDENTS

If it is a bar to the entertainment of a claim for the want of, or any defect or irregularity in a notice before the Compensation Commissioner : Sub-section (1) of Section 10 of the Workmen's Compensation Act, 1923 speaks of notice of accident as also the preferring of claim. As the statute itself fixes the amount of compensation payable, the notice of accident in sub-section (1) of Section 10 of the Act would mean the notice of the details of he accident and it may not be necessary to set out the details of any ascertained amount of claim. The word *"claim"* used in Section 10(1) of the Act cam up for consideration in *Central Engineering Corporation Vs. Doral Raj (A.I.R. 1960 Orissa 39)* wherein it has been observed that the word *'claim'* referred to in Section 22 and 10(1) does not refer to a claim made on the employers but denotes a formal claim made before the Commissioner.

In view of the above, the want of or, any defect or irregularity in a notice shall not be a bar to the entertainment of a claim and the proviso to Clause (b) of Section 10 (1) of the Workmen's Compensation Act, 1923 gives jurisdiction to the Commissioner to entertain and decide any claim to compensation in any case notwithstanding that notice has not been given.

158. Power to require from employers statements regarding fatal accidents : (1) Where a Labour Court receives information from any source that a worker has died as a result of an accident arising out of and in the course of his employment, it may send by registered post a notice to the workers' employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the worker, and indicating whether, in the opinion of the employee, he is or is not liable to deposit compensation on account of the death,

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

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

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

159. Reports of fatal accidents : Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death the person required to give the notice shall, within seven days of the death, send a report to the Labour Court giving the circumstances attending the death.

160. Medical examination : (1) Where a worker has given notice of an accident, the employer shall before the expiry of three days from the time at which service of the notice

has been effected, have the worker examined free of charge by a registered medical practitioner, and the worker shall submit himself for such examination,

Provided that where the accident or illness of the worker is of grave nature, the employer shall cause the examination at the place where the workers is.

(2) under this chapter and any worker who is in receipt of a monthly payment under this Chapter, shall if so required, submit himself for such examination from time to time.

(3) Where a worker is not examined free of charge as aforesaid, he may get himself examined by a registered medical practitioner and the expenses of such medical examination shall be *mutatis-mutandis* reimbursed to the worker by the employer.

(4) A worker shall not be required to submit for examination by a registered medical practitioner under sub-section (1) or (2) otherwise than in accordance with rules made under this Chapter, or at more frequent interval than may be prescribe.

(5) If a worker, on being required to do so by the employer under sub-section (1) or (2) by the Labour Court at any time, refuses to submit himself for examination by a registered medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(6) If a worker, before the expiry of the period within which he is liable under sub-section (1) or (2) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(7) Where a worker, whose right to compensation has been suspended under sub-section (5) or (6), dies without having submitted himself for medical examination as required by either of those sub-sections, the Labour Court may, if it thinks fit, direct the payment of compensation to the dependents of the deceased worker.

(8) Where under sub-section (4) or (5) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in section 151(1) (d), the waiting period shall be increased by the period during which the suspension continues.

(9) Where an injured worker has refused to be attended by a registered medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the worker has not thereafter been regularly attended by a registered medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonable have been expected to be if the worker had been regularly attended by a

registered medical practitioner whose instructions he had followed and compensation, if any, shall be payable accordingly.

(10) Where an employer or an injured worker is not satisfied with the report of the medical examination by a registered medical practitioner he may refer the case for re-examination by a medical specialist at least of the rank of an Associate Professor of a Medical College, and the expenses of such examination shall be borne by the employer or the worker, as the case may be.

161. Compensation on Contracting : (1) Where any person, hereinafter in this section referred to as the principal, in the course of or for the purposes of his trade or business contracts with any other person, hereinafter in this section referred to as the contractor, for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation which he would have been liable to pay if that worker had been immediately employed by him ; and where compensation is claimed from the principal, this Chapter shall apply as if reference to the principal were substitute for references to the employer expect that the amount of compensation shall be calculated with reference to the wages of the worker under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, any other person from whom the worker could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the worker could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Labour Court.

(3) Nothing in this section shall be construed as preventing a worker from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertake, as the case may be, to execute the work or which are otherwise under his control or management.

162. Insolvency of employer : (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Chapter to any worker, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the worker, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however, that the insurers shall not be under any greater liability to the worker than they would have been under to the employer.

(2) If the liability of the insurers to the worker is less than the employer to the worker, the worker may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1), the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract, other than a stipulation for the payment of premia, the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the worker :

Provided that the provisions of this sub-section shall not apply in any case in which the worker fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 or the Insolvency Dacca) Act, 1909 (III of 1909), or under section 61 of the Insolvency Act, 1920 (v of 1920), are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability where for accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effects accordingly.

(5) Where the compensation is a monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 151, and a certificate of the Labour Court as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily for the purposes of reconstruction or of amalgamation with another company.

163. Special provision relating to masters and seamen : (1) This Chapter shall apply in the case of workers who are masters of ships or seamen subject to the following modifications, namely:

(2) The notice of the accident and the clam for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(3) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant or,

where the ship has been or is deemed to have been lost with all hands, within eighteen months the date on which the ship was, or is deemed to have been, so lost.

(4) Where an injured master or seaman is discharged or left behind in a foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person proceedings for enforcing the claim, be admissible in evidence, if-

(a) the deposition is authenticated by the signature of the judge, Magistrate or Consular officer before whom it is made ;

(b) the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witnesses ; and

(c) the deposition was made in the course of a criminal proceeding on proof that the deposition was made in the presence of the person accused ;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(5) No monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in Bangladesh relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

(6) No compensation shall be payable under this Chapter is respect of any injury in respect of which provision is made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention Allowances (Indian Seamen, etc.,) Scheme, 1941, made under the Pensions (Navy, Army, air Force and Mercantile Marine) Act, 1939, or under the War pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Government.

(7) Failure to give a notice or made a claim or commence proceeding within the time required by this Chapter shall not be a bar to the maintenance of proceedings under this Chapter in respect of any personal injury, if-

(a) an application has been made for payment in respect of that injury under any of the Schemes referred to in the preceding clause, and

(b) the Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made, makes provision for payment, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and

(c) the proceedings under this Chapter are commenced within one month from the date on which the said certificate of the Government was furnished to the person commencing the proceedings.

164. Returns as to compensation : The Government may, by notification in the official Gazette, direct that every person employing workers, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as the Government may direct.

165. Contracting out : Any contract of agreement, whether made before or after the commencement of this Chapter, whereby a worker relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Chapter.

166. Reference to Labour Courts : (1) If any question arises in any proceedings under this Chapter as to the liability of any person to pay compensation, including any question as to whether a person injured is or is not a worker, or as to the amount or duration of compensation, including any question as to the nature or extent of disablement, the question shall, in default of agreement, be settled by a Labour Court.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Chapter required to be settled, decided or dealt with by a Labour Court or to enforce any liability incurred under this Chapter.

167. Venue of Proceedings : Where any matter is under this Chapter to be done by or before a Labour Court, the same shall subject to the provisions of this Chapter and any rules be done by or before a Labour Court having jurisdiction in the injury area in which the accident took place which resulted n the injury:

Provided that, where the worker is the master of a ship or a seaman, any such matter may be done by or before a Labour Court having jurisdiction in the area in which the owner or agent of the ship resides of carries on business.

168. Condition of application : No application for the settlement of any matter by a Labour Court under this Chapter, other than an application by a dependant for compensation, shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

169. Power of Labour Court to require further deposit in cases of fatal accident : (1) Where any sum has been deposited by an employer as compensation payable in respect of a worker whose injury has resulted in death, and in the opinion of the Labour Court such sum is insufficient, the Labour Court may, by notice in writing stating its reasons, call upon the employer to show cause why he should not make a further deposit within such time as my be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the Labour Court, the Labour Court may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

170. Registration of agreements : (1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a monthly payment or otherwise, whether by way of redemption of a monthly payment or otherwise, or where any compensation has been so settled as being payable to a person under a legal disability a memorandum thereof shall be sent by the employer to the Labour Court, which shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that-

(a) no such memorandum shall be recorded before seven days after communication by the Labour Court of notice to the parties concerned ;

(b) the Labour Court may at any time rectify the register ;

(c) where it appears to the Labour Court that an agreement as to the payment of a lump sum whether by way of redemption of a monthly payment or otherwise, or an agreement as the amount of compensation payable to a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, it may make such of order including an order as to any sum already paid under the agreement, a it thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Contract Act, 1872 (IV of 1872), or in may other law for the time being in force.

NOTES/COMMENTS/PRECEDENTS

Provisions for registration of an agreement : Section 28 of the Workmen's Compensation Act lays down that where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability, a memorandum shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register. But (a) no such memorandum shall be recorded before 7 days after communication by the Commissioner of notice to the parties concerned ; (b) the Commissioner has the power to rectify the register at any time; the Commissioner may refuse to record the memorandum of the agreement where it appears to him that an agreement as to the payment of a lump-sum whether by way of redemption of a half monthly payment of a lump-sum whether by way of redemption of a half monthly payment or otherwise or an agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or a amount or by reason of the agreement having been obtained by fraud or undue influence of other improper means.

The effect of failure to register an agreement has been dealt with in Section 29. This section provides that where a memorandum of any agreement the registration of which is required by

Section 28 of the Act, is not sent to the Commissioner as required under Section 28, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, shall not be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

171. Effect of failure to register agreement : Where a memorandum of any agreement the registration of which is required by section 170, is not sent to the Labour Court as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Chapter, and shall not, unless the Labour Court otherwise directs, be entitled to deduct more than half of any amount paid to the worker by way of compensation whether under the agreement or otherwise.

172. Appeals : (1) An appeal s hall lie to the Tribunal from the following orders of a Labour Court under this Chapter, namely:

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

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

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

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of section 161 (2);

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

(f) an order under section 155 (7).

(2) No appeal shall lie in any case in which the parties have agreed to abide by the decision of the Labor Court, or in which the order of the Labour Court gives effect to an agreement come to by the parties.

(3) No appeal by an employer under sub-section (1) (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Labour Court to the effect that the appellant has deposited with it the amount payable under the order appealed against.

(4) No appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in sub-section (1) (b) unless the amount in dispute in the appeal is not less than one thousand Taka.

(5) The period of limitation for an appeal under this section shall be sixty days.

(6) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908) , shall be applicable to appeals under this section.

173. Withholding of certain payments pending decision of appeal : Where on employer makes an appeal under section 172 (1) (a), the Labour Court may, and if so directed by the Tribunal shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

174. Rules to give effect to arrangement with other countries for the transfer of money paid as compensation : (1) The Government may, by notification in the official Gazette, make rules-

(a) for the transfer to any other country of money deposited with a Labour Curt under this Chapter which has been awarded to, or may be due to, any person residing or about to reside in any other country

(b) and for the receipt, distribution and administration in Bangladesh of any money deposited under the law relating to workers' compensation in any other country, which has been awarded to, or may be due to, any person residing or about to reside in Bangladesh:

Provided that no sum deposited under this Chapter in respect of total accidents shall be so transferred without the consent of the employer concerned until the Labour Court receiving the sum has passed orders determining its distribution and apportionment under the provisions of section 155(4) and (5).

(2) Where money deposited with a Labour Court has been so transferred in accordance with the rules made under this section, the provisions elsewhere contained in this Chapter regarding distribution by the Labour Court of compensation deposited with it shall cease to apply in respect of any such money.

CHAPTER—XIII

TRADE UNIONS AND INDUSTRIAL RELATIONS

This chapter is based on the provisions of the Industrial Relations Ordinance,1969 which had been the Industrial Relations Law in Bangladesh since 1969. It promulgated to amend and consolidate the law relating to formation of Trade Unions, regulation of the relations between Employer and Workmen and the avoidance and settlement of any difference or dispute arising between them or matters connected therewith and ancillary thereto. Chapter XIII of the Bangladesh Labour Act, 2006 is a reproduction of the said Ordinance with slight modification.

History of Industrial Relations Law : Before the First World War there was hardly any labour legislation for regulation of and settlement of disputes between the employers and the workmen. The only legislation on the subject was Employers and Workmen's Act 1860 which aimed at the settlement of disputes between the employers and the workmen. In the year 1924 a bill was drafted which was passed by and the Trade Disputes Act of 1929 came into being. This Act provided for the establishment of courts of enquiry and of boards of conciliation, on an ad hoc basic, with a view to investigating and settling trade disputes. This Act had a short life of five years and remained in force till the new Act, the Trade Disputes Act, 1934 was enacted. Trade Disputes Act, 1934 for the first time conceded the right of strike to workers and the right of lockout to management as legitimate weapons with some restrictions. The Act empowered the Government to refer the labour disputes to a Board of Conciliation or a Board of Enquiry In the case of public utility services the Act imposed an obligation upon the workers and the employers to give 14 days notice of the strike or lockout. The violation of this notice provision would have resulted the strike or lockout illegal and was made punishable under the Act. The Government was not obliged to refer the disputes to the Court of Enquiry or the Board of Conciliation. The main defect of the Trade Disputes Act was that the proceeding instituted thereunder were not made conclusive and binding on the parties. In 1938 another Act was passed which provided for the appointment of Conciliation Officers, as recommended by the Royal Commission. It also extended the scope of the Act so as to cover certain other disputes and some other public utility services. Till 1942 the law relating to trade disputes remained unchanged. At this time Government introduced a more definite method for the settlement of industrial disputes.

After Second World War, the industrial unrest was gaining momentum owing to the stress of postwar problems. The Industrial Disputes Act, 1947 was enacted with the purpose of providing a permanent machinery for their settlement. The main provisions of the Defence of India Rules (81-A) in so far as they related to public utility services were retained intact in the Industrial Disputes Act, 1947. Two new institutions for the prevention and settlement of industrial disputes provided for in the Act are the Works Committees consisting of representatives of employers and workmen, and Industrial Tribunals consisting of one or more members possessing qualifications ordinarily, required for appointment as Judge of a High Court. Power has been given to appropriate Government to require works Committee to be constituted in every industrial establishment employing one hundred workmen, or more and their duties will be to remove causes of friction between the employers and workmen, in the day-to-day working of establishments and to promote measures for securing amity and good relations between them. A reference to an Industrial Tribunal will lie where both parties to any industrial disputes apply for such reference and also where the appropriate Government considers it expedient so to do. An award of a tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. The power to refer disputes to Industrial Tribunals and enforce

their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to rendering the legitimate grievances of the parties thereto, such obligation arising from the imposition of the restrains on the rights to the strike and lock-out, which must remain inviolate, except where considerations of public interest override such rights. Conciliation will be compulsory in all disputes in public utility services and option in the case of other industrial establishments. With a view to expedite conciliation proceeding time-limits have been prescribed for conclusion thereof. A settlement arrived at in the course of the conciliation proceedings will be binding until revoked by written notice by either party to the dispute. Another important feature of the Act relates to the prohibition of strikes and lock-outs during the pendency of conciliation and adjudication proceeding of settlement reached in the course of conciliation proceedings and of awards of Industrial Tribunals declared binding by the appropriate Government. The Act also empowers the Government to declare, if public interest of emergency so requires, by notification in the Official Gazette any industry to be a public utility service.

Object of Industrial Relations Law : At the time of the promulgation of the Industrial Relations Ordinance, 1969 there were three East Pakistani enactments, regulating the relations between employees and employer namely, East Pakistan Trade Union Act 1965 (East Pakistan Act V of 1965) which provided for the formation and functioning of Trade Unions as organizations of workers, the East Pakistan Labour Disputes Act (Act VI of 1965) which provided for investigation and settlement of labour disputes and East Pakistan Employment of Labour (Standing Orders) Act (Act VIII of 1965) purporting to regulate the conditions of service of workers employed in shops and Commercial and Industrial Establishment and for matters connected therein. The first two of these acts were repealed by the said Ordinance of 1969 and the provisions of the repealed acts were consolidated after amendment and reenacted in the said Ordinance. *[Railway Men's Stores Vs. Labour Court, Chittagong (1978) 30 DLR (SC) 251]*

175. Special definition of 'worker' : In this Chapter, unless there is anything repugnant in the subject or context, 'worker' means a worker as defined in section 2(LXXV), and includes, for the purpose of any proceedings under this Chapter in relation to an industrial dispute, a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay off or removal has led to that dispute, but does not include a person employed as a member of the watch and ward or security staff or fire-fighting staff or confidential assistant or telex operator or fax operator or cypher assistant or any establishment.

NOTES/COMMENTS/PRECEDENTS

Two categories of workers or workmen distinction defined : The definition of 'workers" or 'workmen" in clause (XXVIII) of section 2 of the Ordinance has classified them into two distinct categories. The two categories fall in two parts of the clause and are constructionally joined together by the use of the conjunction and which is preceeded and followed by a comma. A "worker" or "workman" who falls in the first category means any person who is not an employer as defined in he Ordinance but is employed for hire or reward under any express or implied term of employment. An apprentice would also fall in this category. In the second category falls a "worker" or "workman" who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment, but beside such dismissal, retrenchment or removal two other factors must exist so as to bring him under this category. One is the existence of any proceedings

under the Ordinance in relation to an industrial dispute and the other is the existence of some connection between his dismissal, discharge, retrenchment, lay-off or removal and the industrial dispute. To be a more explicit, his dismissal must have arisen out of an industrial dispute or must have led to such dispute. *[General Manager Hotel Intercontinental, Vs. Second Labour Court (1978) 28 DLR 160]*

A worker is a person who enters into a contract of service under the management and does not include a person who works under the control and supervision of a contractor, or who is working in the premises of a certain establishment. *[Govt. of Bangladesh VS. Mr. Hossain, Proprietor of National Bag Traders 22 BLD 2002 (AD) 33].*

Watch and Ward and security staff : Members of the Watch and Ward and security staff belonging to the petitioner (North Bengal Paper Mills (Ltd.) have been excluded from the category of worker by clause (a) of the section. They cannot therefore enforce the right as guaranteed under section 10(a) & (b) of the Shops and Establishments Act, 1965.*[North Bengal Paper Mills Vs. Labour Court (1993) 45 DLR 167]*

Armed guard- whether worker : An armed guard of Rupali Bank is a worker and the impugned order is a termination *simpliciter* without any stigma, his remedy lies before the Labour Court. *[Tozammel Hussain Akonda Vs Deputy General Manager, Rupali Bank Limited and others 9 MLR (AD) 2004 (Vol. IX)114].*

176. Trade unions of workers and employers : Subject to the provisions of this Chapter,-

(a) Workers, without distinction whatsoever, shall have the right to form trade union primarily for the purpose of regulating the relations between workers and employers or workers and workers and, subject to the constitution of the union concerned, to joint trade union of their own choosing ;

(b) Employers, without distinction whatsoever, shall have the right to form trade union primarily for the purpose of regulating the relations between employers and workers or employers and employers and, subject to the constitution of the union concerned, to join trade union of their own choosing ; and

(c) Trade unions of workers and employers shall have the right to form and join federations and any such union and federation shall have the right to affiliate with any international organisation and confederation of worker's or employers organisations.

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

NOTES/COMMENTS/PRECEDENTS

Right to form unions : The right to form associations or unions, include the right of workmen to form trade unions for a lawful purpose. The purpose of an association is an integral part of the right, and if the purpose is restricted, the right is inevitably restricted. The right to form an association is not a right to be exercised in a vacuum or an empty or a paper right. Citizens do

not begin to enjoy this right effectively immediately after forming an association or a union on paper. The enjoyment and fulfillment of the right begins with the fulfillment of the purpose for which the association is formed. The word "form" has been held to refer not only to the initial commencement of the association but also to the continuance of that association. If, however, the State tries to circumvent the right by placing restrictions on the objects or purposes or the normal functioning of an association, this would amount to an indirect restriction on the right itself. The State cannot do indirectly what it is prohibited to do directly.*[In re Kerala Education Bill A I R 1958 S C 956].*

177. Application for registration : Any trade union may, under the signature of its president and secretary, apply for registration of the trade union to the Trade Unions of the concerned area under this Chapter.

NOTES/COMMENTS/PRECEDENTS

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

The Certificate of registration is given by the Director of Labour. The Director, on registering a trade union, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the trade union has been duly registered under this Act.

The mode of formation and registration of trade unions is defined in sections 177-185. According to section 182 the Director of Labour, on being satisfied that the trade union has complied with all the requirements of this Chapter, shall register the trade union in a prescribed register and issue a registration certificate in the prescribed form within a period of sixty days from the date of receipt of the application. In case the application is found by the Director to be deficient in a material respect or respects he shall communicate in writing his objection to the trade union within a period of 15 days from the receipt of the application and the trade union shall reply thereto within a period of fifteen days from the receipt of the objections. When the objection raised by the Director have been satisfactorily met, the Director shall register the trade union as provided in sub-section (1). In case the objections are not satisfactorily met, the Director may reject the application. (3) In case the application has been rejected or the Director has, after settlement of the objections delayed disposal of the application beyond the period of sixty days provided in sub-section (*1*) the trade union may appeal to the Labour Court who for reasons to be stated in the judgment may pass an order directing the Director to register the trade union and to issue a certificate of registration or may dismiss the appeal. Any party aggrieved by the verdict of the Labour Court may appeal to the Labour Appellate Tribunal.

Before submission of application for registration the trade union concerned has to observe some formalities. These have been enumerated in sections 177-179 According to section 177 any trade union may, under the signature of its President and the Secretary, apply for registration of the trade union to the Registrar of Trade Unions of the concerned area like the provisions of the Industrial Relations Ordinance, 1969. However this Act nowhere defined the term Registrar of Trade Unions, however, it is apparent that the Director of Labour shall function as Registrar of Trade Unions.

The Requirements for application is enumerated in section 178. According to the section every application for registration of a trade union shall be made to the Director or to the officer empowered in this behalf and shall be accompanied by- (a) a statement showing - (*i*) the name of

the trade union and the address of its Head Office; (*ii*) date of formation of the Union; (*iii*) the titles, names, ages, addresses and occupations of the officers of the trade union. (*iv*) statement of total paid membership; (*v*) in case of a federation of trade unions, the names, addresses and registration number of member unions; and (*b*) three copies of the constitution of the trade union together with a copy of the resolution by the members of the trade union adopting such constitution bearing the signature of the Chairman of the meeting; (*c*) a copy of the resolution by the members of the trade union authorising its President and the Secretary to apply for its registration; and (*d*) in case of a federation of trade unions, a copy of the resolution from each of the constituent unions agreeing to become a member of the federation. A duty has been cast upon the Director of Labour to inform the employer forthwith about the formation of trade union in his establishment.

The Requirements for registration is provided in section 179. These are- A trade union shall not be entitled to registration under this ordinance unless the constitution thereof provides for the following matters, namely :- (i) the name and address of the trade union; (ii) the objects for which the trade union has been formed; (iii) the manner in which a worker may become a member of the trade union specifying therein that no worker shall be enrolled as its member unless he applies in the form set out in the constitution declaring that he is not a member of any other trade union; (iv) the sources of the fund of the trade union and the purposes of which such fund shall be applicable; (*v*) the conditions under which a member shall be entitled to any benefit assured by the constitution of the trade union and under which any fine or forfeiture may be imposed on him; (*vi*) the maintenance of a list of the members of the trade union and of adequate facilities for the inspection thereof by the officers and members of the trade union; (*vii*) the manner in which the constitution shall be amended, varied or rescinded; (*viii*) the safe custody of the funds of trade union, its annual audit, the manner of audit and adequate facilities for inspection of the account books by the officers and members of trade union; (*ix*) the manner in which the trade union may be dissolved; (*x*) the manner of election of officers by the general body of the trade union and the term, not exceeding two years, for which an officer may hold office upon his election or re-election; (*xi*) the procedure for expressing want of confidence in any officer of the trade union; and (*xii*) the meetings of the executive and of the general body of the trade union, so that the executive shall meet at least once in every three months and the general body at least once every year

A trade union of workers shall not be entitled to registration under this Ordinance unless it has a minimum membership of thirty per cent of the total number of workers employed in the establishment or group of establishments in which it is formed. The employers' trade union do not require any such percentage of membership.

178. Requirements for application : (1) An application for registration of a trade union shall be made to the Director of Labour or to the Officer authorised in this behalf

(2) The application shall be accompanied by-

(a) a statement showing—

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

(ii) date of formation of the union ;

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

(iv) statement of total paid membership ;

(v) the name of the establishment to which the trade union relates and the total number of workers employed or engaged therein ;

(vi) in case of a federation of trade unions, the names, addresses and registration numbers of member-unions ;

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

(c) a copy of the resolution by the members of the trade union authorising its President and Secretary to apply for its registration ; and

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

(3) The Director of Labour or the officer authorised in this behalf shall, or receipt of an application under sub-section (1), forthwith send a copy thereof along with the list of officers of the union to the employer concerned for information.

Provided that in case where the applicant is a federation of trade unions, a public notice showing the names of the officers of the union shall be published at the expenses of the applicant.

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

(a) the name and address of the trade union ;

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

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

(d) the sources of the fund of the trade union and statement of the purposes for which such fund shall be applicable ;

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

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

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

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

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

(j) the manner of election of officers by the general body of the trade union and the term, not less than two years and not exceeding three years, for which an officer may hold office;

(k) the number of members of the executive which shall not be less than five and more than thirty-five as may be prescribed by rules;

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

(m) the meetings of the executive and of the general body of the trade union, so that the executive shali meet at least once in every three months and the general body at least once every year.

(2) A trade union of workers shall not be entitled to registration under this Chapter unless it has a minimum membership of thirty percent of the total number of workers employed in the establishment in which it is formed :

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

(3) Where any doubt or dispute arises as to whether any two or more establishments are under the same employer or whether they are allied to or connected with one another for the purpose of carrying on the same industry the matter may be referred to the Director of Labour for decision.

(4) Any person aggrieved by a decision of the Director of Labour under sub-section (3) may, within thirty days of the decision, prefer an appeal to the Labour Court ; and the decision of the Labour Court shall be final.

(5) Not more than three trade unions shall be registered in any establishment.

NOTES/COMMENTS/PRECEDENTS

Trade union with workers from different establishments under the same employer : The workers of more than one establishment under the same employer are free to form trade unions, as before. No doubt the existing trade unions lose their registrations in the process under the amended law and are unable to continue in their old forms, but the organisational structure of trade unions is a legitimate domain of legislative exercise and no worker has a fundamental right to a particular form of organisational set up. *[Secretary of Aircraft Engineers of Bangladesh & another. Vs. Registrar of Trade Unions and others. (1993) 45 DLR (AD) 122].*

The amended legislation aims to put an end to the concept of "as many trade unions as establishments" and introduce a scheme of "one employer, one establishment". The erstwhile registered trade unions can claim a fundamental right to their continuance only if they can establish that they have a fundamental right to the continuation of the old concept of organisational set-up. *[Secretary of Aircraft Engineers of Bangladesh & another. Vs. Registrar of Trade Unions and ors. (1993) 45 DLR (AD) 122]*

Single trade union with workers from establishments under separate employers : Construction of statutory Expression-whether the expression "Group of establishment" occurring in clause (b) of Sub-section (I) of section 7(A) of the Industrial Relations Ordinance refers to the "Group of establishment" owned by different, separate and independent owners and not by the same owner in which case the workers of such group of establishments will be disqualified for being members of the Registered Union. Workers of three Cinema Halls owned by 3 different independent owners of one group of establishment and they therefore cannot form the registered Union.....Workers of "group of establishment" owned by separate owners cannot be considered to be workers of one group of establishments. They cannot, therefore, form one trade union. The formations of one registered trade union, as in the present case, by workers of the three cinema halls owned by different owners, is illegal and as such the same is liable to be cancelled. *[Naogaon Chitra Bani Vs. Naogaon Cinema Hall Sramajibi Union BCR 1990 HCD 307 = (1991) 43 DLR 392] cf* ***sections 183, 184 and 185 of the Bangladesh Labour Act, 2006.***

Trade union remains registered untill cancellation : The provisions of sections 7(2), 10 and 22(1)(2)(3) of the Ordinance intend not to have more than 3 registered trade unions in an establishment. Admittedly, there are 5 registered trade unions for which legal proceedings or cancellation of registration of respondent Nos. 4 and 7 are pending before Labour Court and until and unless their registrations are cancelled they remain to be registered unions who are entitled to receive notice under sub-section (3) of section 22 of the Industrial Relations Ordinance for determining the collective bargaining agent. *[Md. Abul Hossain and others vs. Government of Bangladesh, and others (1997) 2 BLC 632].*

Trade Union does not cease to exist due to retrenchment of its workers : As it appears from the record that at the instance of the appellant the respondent No. 3 filed the Trade Union Case and it is only the appellant who, in fact, became aggrieved by the judgment and order of the Labour Court in rejecting the application filed by the respondent No. 3 under section 10(2) of Industrial Relations Ordinance. It appears that under section 11 of the Industrial Relations Ordinance appeal lies merely against an order of cancellation of registration under section 10 of Industrial Relations Ordinance and no appeal lies against an order of rejecting of an application for cancellation of a registration of Trade Union and thus there being no scope of any appeal before the Labour Appellate Tribunal the appellant was entitled to invoke writ jurisdiction. There is no provision in the Industrial Relations Ordinance to the effect that a Trade Union does not cease to exist due to retrenchment of its workers or he workers retain the membership of their union and it also appears the provisions of section 7A(1)(b) of IRO do not provide so.. *[Standard Match Factory Ltd. Vs Chairman, First Labour Court and ors 10 BLC (AD) (2005) 99]*

Constitution of a trade union- whether has statutory force : In the case of *Mohd. Ibrahim Vs. Assansol Iron and Steel Workers' Union A I R 1955 Cal 189* it was held that the constitution of a union does not acquire statutory force. The provision that no union can be registered unless its constitution provides for these matters does not mean that the rules relating to matters contained in this section acquire a statutory force. The rules in the constitution of the union relating to matters other than those enumerated in section 179 do not acquire any statutory force. Even though the rules are to be filed along with the application for registration, they have only a contractual force but the rules relating to matters enumerated in Section 179 do acquire statutory force as it is obligatory for the union before registration to provide for such matters in the rules. It is only a condition precedent for registration that the constitution has to provide for the matters given in section 179. No registration certificate can be issued unless the constitution provides for those matters but it cannot be said that the rules relating to these matters or rules framed under the authority of section 178. Section 178 itself does not confer any authority to frame any rules the existence of such rules as has been pointed out is a condition precedent for the registration of the union.

180. Disqualification for being an officer or a member of a trade union : (1) Notwithstanding anything contained in the constitution of a trade union, a person shall not be entitled to be, or to be elected as a member or an officer of a trade union if-

(a) he has been convicted of an offence involving moral turpitude or an offence under section 196(2) (d) or section 298 and unless two years have elapsed from the date of his release;

(b) he is not employed or engaged in that establishment in which the trade union is formed;

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

NOTES/COMMENTS/PRECEDENTS

Person not in service cannot be an officer of a trade union : Section 7A(1)(b) section 180 of the present Act] makes it clear that a person shall not be entitled to be a member or officer of a Trade Union if he is not employed or engaged in that establishment. The legal position under section 7A is that a dismissed member cannot be either an officer or member of the trade union. *[Padma Oil Co. Ltd. Vs. The registrar of Trade Unions and another 22 BLD 2002 (HCD) 611]*

181. Registered trade union to maintain register, etc. : Every registered trade union shall maintain the following registers and books in such form as may be prescribed :

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

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

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

182. Registration : (1) The Director of Labour, on being satisfied that a trade union has complied with all the requirements of this Chapter, shall register the trade union in a prescribed register and issue a registration certificate in the prescribed form within a period of sixty days from the date of receipt of the application for registration.

(2) If the Director of Labour finds the application to be deficient in any material respect, he shall communicate in writing his objection to the trade union within a period of fifteen days from the receipt of the application and the trade union shall reply thereto within a period of fifteen days from the receipt of the objection.

(3) When the objection raised by the Director of Labour has been satisfactorily met, the Director of Labour shall register the trade union as provided in sub-section (1) and if the objection is not met satisfactorily he shall reject the application.

(4) When the application has been rejected or the Director of Labour has, after settlement of the objection delayed disposal of the application beyond the period of sixty days provided in sub-section (1), the trade union may, within a period of thirty days from

the date of such rejection or the date of expiry of such period, whichever is earlier, appeal to the Labour Court.

(5) The Labour Court, after hearing the appeal, for reasons to be stated in its judgment, may pass an order directing the Director of Labour to register the trade union and to issue a certificate of registration within a period of seven days from the date of order or may dismiss the appeal.

(6) Any party aggrieved by the judgment passed by the Labour Court under sub-section (5) may prefer appeal to the Labour Appellate Tribunal within 30 (thirty) days from the date of receipt of the order of the Labour Court.

183. Registration of trade unions in a group of establishment : (1) Notwithstanding anything contained in this Chapter, for the purpose of formation of a trade union any group of establishments shall be treated as an establishment, and no separate trade union shall be formed in any establishment included in the group of establishments..

(2) A group of establishments shall, for the purposes of this section, mean all the establishments, none of which employs more than twenty workers, in a specified area carrying on the same or similar specified industry.

(3) Notwithstanding anything contained in sub-section (2), all the establishments,

irrespective of the number of workers employed therein, in a specified area carrying on any of the following industries shall be deemed to be a group of establishments for that area, namely:

(a) private road transport, including rickshaw ;

(b) private inland river transport ;

(c) tailoring and garments manufacturing industry wherein less than 100 workers are employed ;

(d) tea industry;

(e) jute bailing ;

(f) tennary ;

(g) bidi ;

(h) handloom ;

(i) hosiery ;

(j) printing press ;

(k) hotels or motels where number of guest rooms does not exceed twenty-five ;

(l) restaurant not forming part of a hotel ;

(m) small-scale metal industry ;

(n) book-binding ;

(o) cinema and theatre :

Provided that the Government may, if it deems fit so to do in the national interest, by notification in the official Gazette, add any industry to this list of industries.

(4) Specified area as mentioned in sub-section (2) or (3) shall mean such area specified for specific industries published by notification in the official Gazette, by the Government; and such area may be at national, regional or local level, as may be expedient; and different areas may be specified for different industries.

(5) Specified industries as mentioned in sub-section (2), shall mean such industries which, the Government, may by notification in the official Gazette, specify for the purpose.

(6) A trade union for a group of establishments shall be registered, if it has as its members not less than thirty percent of the total number of workers employed in the entire group of establishments taken together ;

(7) Notwithstanding anything contained in this Chapter A person who is not employed or engaged in an establishment may be entitled to be, or to be elected as, an officer of any trade union, formed in any group of establishments, if the constitution of such trade union provides for election of such person:

Provided that, the number of such persons shall not in any case be more than one-fourth of the total number of its off officers.

(8) Subject to this section other provisions of this Chapter shall apply to a trade union formed in a group of establishments as they apply to a trade union formed in an individual establishment.

184. Registration of trade union in civil aviation establishments : (1) Notwithstanding anything contained in this Chapter, where any recognised international organisation exists in respect of any specialised and skilled trade, occupation or service in the field of civil aviation, the workers engaged in such trade, occupation or service in a civil aviation establishment in Bangladesh may form trade union of their own, if such trade union is necessary for affiliation with such international organisation.

(2) Only one trade union may be formed by the workers engaged in each such trade, occupation or service in a Civil aviation establishment.

(3) No such trade union shall be registered unless more than half of the total number of workers engaged in the trade, occupation or service concerned apply in writing for such registration stating the international organisation with which it shall be affiliated.

(4) The registration of such trade union shall be liable to be cancelled if it is not affiliated to the international organisation concerned within six months of its registration or has ceased to be so affiliated.

185. Registration of trade union by seamen : (1) Notwithstanding anything contained in this Chapter, Bangladeshi seamen normally serving in oceangoing ships may form trade union of their own.

(2) No seamen shall be a member of such trade union unless be has a continuous discharge certificate or an appointment letter showing his employment as a seamen in any establishment engaged in merchant shipping.

(3) Only one trade union of seamen shall be registered under this Chapter.

186. Conditions of service to remain unchanged while application for registration pending : (1) No employer shall, while an application for registration of a trade union is pending, alter, without prior permission of the Director of Labour, to the disadvantage of any worker who is an officer of such trade union the conditions of service applicable to him before the receipt of the application by the Director of Labour.

(2) Notwithstanding anything contained in section 26 no employer shall, while an application for registration of a trade union is pending, terminate the employment of any worker who is a member of such trade union under that section.

NOTES/COMMENTS/PRECEDENTS

Protection given to an officer of a trade union leader : Protection given to an officer of a trade union during pendency of an application for registration of such union can be enforced by filing of an application under section 25 of the Act. Otherwise protection given under section 47A of the Ordinance to an officer of a trade union, application for registration of which is pending would be frustrated. *[Star Alkaid Jute Mills Ltd. Vs. Chairman, 2nd Labour Court and another. 49 DLR (1997) 537]*

187. President, etc. not to be transferred : Neither the President nor the General Secretary, Organising Secretary or Treasurer of any trade union shall be transferred from one district to another without his consent.

NOTES/COMMENTS/PRECEDENTS

Protection to a trade Union Leader : Main object of section 47B of the Industrial Relations Ordinance, 1969 is to give protection to a trade union leader so that for his trade union activities he may not be harassed by the employer by way of transfer without his consent but the remedy is not available to one working in a Corporation. *[Abdul Mannan Talukder Vs. Bangladesh House Building Finance Corporation (1990) 42 DLR (AD) 104]*

President, General Secretary not to be harassed : The purpose of section 47B of the Industrial Relations Ordinanceis to give protection to a Trade Union President and General Secretary so that they may not be harassed by their employer by transferring them from one place to another without their consent for Trade Union activities. *[Faruque Hasan vs Titas Gas Transmission and Distribution Company Ltd. 316]*

188. Certain changes in the constitution and executive to be notified : (1) Every alternation made in the constitution of a registered trade union, every change of its officers and change of its name and address shall be notified by the trade union by registered post or by hand to the Director of Labour within fifteen days of such alteration or change ; and the Director of Labour shall forthwith send a copy of the same to the employer concerned.

(2) The Director of Labour may refuse to register such alteration or change if it is in contravention of any of the provisions of this Chapter, or if it is in violation of the constitution of the trade union.

(3) Every inclusion or exclusion of any constituent unit of a federation of trade unions shall be notified by the federation by registered post to the Director of Labour within sixty days of such inclusion or exclusion.

(4) In case there is a dispute in relation to the change of officers of a trade union, or any trade union is aggrieved by the refusal of the Director of Labour under sub-section (2), any officer or member of the trade union may appeal to the Labour Court.

(5) The Labour Court, shall within seven days of receipt of the appeal under sub-section (4), pass an order either directing the Director of Labour to register the alteration or change in the constitution or in the officers of the trade union or may, for reasons to be recorded in writing, direct the Director of Labour to hold fresh elections of the union under his supervision.

189. Certificate of registration : The Director of Labour, on registering a trade union under section 182, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the trade union has been duly registered under this Chapter.

NOTES/COMMENTS/PRECEDENTS

Scope of section: Section 9 (section 189 of the present Act) of the Act makes it clear that as soon as the Registrar "is satisfied that the trade union", which has made an application for registration " has complied with all the requirements of this Act, in regard to registration", the Registrar "shall register the trade union by entering in a register. . . . ."Once, therefore, the Registrar is satisfied that the requirement of the statute has been complied with it is obligatory upon him to enter in a register the applicant union and he has no obligation to hear the existing unions in the field before making the order under Sec. 9. In fact, the statute does not deal with the matter of registration from the standpoint of any existing union at all. It is significant to note that though Sec. 8(3) provides a statutory appeal from an order of refusal to register a union, there is no provision for any appeal or other remedy against an order granting registration. If the terms of Sec. 9 are complied with, it is obligatory upon the Registrar to register a union and that he has no discretion in the matter.*[Kesoram Rayon Workers' Union Vs. Registrar of Trade Unions A I R 1967 Cal 507].*

190. Cancellation of registration : (1) Subject to the other provisions of this section, the registration of a trade union may be cancelled by the Director of Labour if the trade union has-

(a) applied for cancellation of registration;

(b) ceased to exist ;

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

(d) contravened any of the basic provisions of its constitution ;

(e) committed any unfair labour practice ;

(f) a membership which has fallen short of the number of membership required under this Chapter ; and

(g) contravened any of the provisions of this Chapter or the Rules.

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

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

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

NOTES/COMMENTS/PRECEDENTS

Cancellation of registration of trade union : An unregistered trade union cannot function i.e. if a trade union is not registered with the Registrar of Trade Unions it cannot conduct any trade union activities. In case the registration of a trade union is cancelled it attains the status of an unregistered trade union and it cannot continue as a trade union. The registration of a trade union may be cancelled on any of the following grounds as enumerated in section 10. The registration may be cancelled (i) if the trade union concerned itself applies for cancellation or ceased to exist: or (ii) in case it is detected that the union obtained registration by fraud or by misrepresentation of facts; or (iii) if it contravenes any of the provisions of its constitution; or (iv) the union commits any unfair labour practice; or (v) if the union's constitution contains any provision which is inconsistent with this Ordinance or the rules; or (vi) the membership falls short of 30% of the workers of the establishment.; or (vii) if the union fails to submit its annual report to the Registrar as required under this Ordinance; or (viii) if it elects as its officer a person who is disqualified under section 7A from being elected as, or from being, such officer; or (ix) it contravenes any of the provisions of the Industrial Relations Ordinance or the Industrial Relations Rules.

The Director of Labor or Registrar of trade unions cannot cancel registration of any trade union

except with the permission of the Labour Court. In case the Labour Court grants permission for cancellation it is mandatory for the Registrar to cancel the registration within seven days from the date of receipt of such permission.

Addition of party : In the appeal filed in case of refusal of registration it is the Registrar alone to support his action and presence of no other party is contemplated by law. *[Palli Daridra Bimochon Foundation vs Aalli Daridra Bimochon Foundation Karmachari Union, Bangladesh (Proposed) and others 57 DLR (AD) (2005) 155]*

Civil suit : Section 10(2) of the Industrial Relations Ordinance 1969 does not operate as a bar to challenge the order of registration of a trade union and issuance of certificate of registration as alleged. A close reading of sub-section (2) of section 10 of the Industrial Relations Ordinance, 1969 (Section 190 of the present Act) shows that the Registrar can cancel the certificate granted after obtaining necessary permission from the Labour Court. It seems , does not operate as a bar to challenge the order of registration of the trade union and issuance of certificate of registration on the grounds as alleged in the present case in a Civil Court. .....In view of the provision of section 10(2)(1)(b) the Registrar himself can challenge the registration but from that it cannot be held that because of existence of the provision in clause (b) of sub-section (1) of section 10 the

present plaintiff is debarred from instituting the present suit in Civil Court. *[TK Oil Refinery and Vegetable Products (Pvt). Ltd. Sramik League Vs. TK Oil Refinery (1990) 42 DLR 13]* ***Cf. Section 350 of the Bangladesh Labour Act wherein provision has been made barring all other courts jurisdiction to*** **entertain any suit, complaint or other legal proceeding which is triable or cognizable by the Labour Court or by the Tribunal under this Act.**

Remedy of trade union in case of cancellation of registration- In case the registration of a trade union is cancelled under section 10 of the Industrial Relations Ordinance, 1969 the trade union concerned whose registration has been so cancelled may prefer an Appeal against such cancellation to the Labour Appellate Tribunal under section 11 of the Ordinance. within two months from the date of the order which may uphold or reject the order.

Claim of legal obligation in support of injunction : The legal right as claimed by the plaintiff under the cover of registration of their trade union is similarly being enjoyed by the defendants under cover of valid registration of their trade union. It cannot therefore be said either trade union is under any obligation to be restrained by any order of injunction. *[Badsha Miah Vs. Tofael Ahmed Chowdhury (1990) 42 DLR 504]*

Trade Unions have to be organised establishment-wise: Trade Unions have to be organised "establishment-wise" and there cannot be at any given point of time more than 3 registered trade unions in an establishment. The registration may even be cancelled if membership of the union falls short of thirty percent. The purpose is not to restrict the right to form unions but to give trade unions a shape and to chart out a well-ordered territory for their operation. *[Secretary of Aircraft Engineers of Bangladesh & another. Vs. Registrar of Trade Unions and ors. (1993) 45 DLR (AD) 122]*

Trade union remains registered until cancellation : The provisions of sections 7(2), 10 and 22(1)(2)(3) of the Ordinance intend not to have more than 3 registered trade unions in an establishment. Admittedly, there are 5 registered trade unions for which legal proceedings or cancellation of registration of respondent Nos. 4 and 7 are pending before Labour Court and until and unless their registrations are cancelled they remain to be registered unions who are entitled to receive notice under sub-section (3) of section 22 of the Ordinance for determining the collective bargaining agent. *[Md. Abul Hossain and others vs. Government of Bangladesh, and others. (1997) 2 BLC 632]*

Submission of annual return : The Industrial Relations Rules, 1997 provide for sending of annual return by a trade Union to the Registrar, the Hou'ble Labour Appellate Tribunal Dhaka in a case held it to be directory, but not mandatory. *[Appeal No. 132 of 1995-Bangladesh Steel & Engineering Corporation]*

Registration obtained on fraud or misrepresentation : The registration of the trade union was obtained by fraud and misrepresentation of facts as contended by the learned Advocate for the petitioner cannot be taken into consideration while sitting under writ jurisdiction as it involves disputed questions of fact. The High Court Division is of the view that the Registrar has not violated and provision of law in registering Rajshahi Zila Truck Sramik Union as a trade union issuing registration certificates. The Labour Court is the proper forum to adjudicate the matter whether the registration was obtained by practicing fraud or by misrepresentation of facts and decided whether the registration of the trade union shall be cancelled or not while disposing of the IRO Case. *[Sadekul Islam Vs. Registrar of Trade Unions and others 9 BLC (2004) 316.]*

191. Appeal against permission, etc. : (1) Any person, aggrieved by an order of the Labour Court granting the prayer for permission to cancel registration of a trade union or rejecting such prayer under section 190 or by an order of cancellation of the registration of a trade union made by the Director of Labour under that section may, within thirty days

from the date of the order, appeal to the Tribunal and the decision of the Tribunal thereon shall be final.

(2) Where an appeal is filed under sub-section (1), the trade union shall be permitted to function as such till the disposal of the appeal.

192. No trade union to function without registration : (1) No trade union which is unregistered or whose registration has been cancelled shall, subject to section 191(2), function as a trade union.

(2) No person shall collect any subscription, other than enrollment fee, any fund of a trade union mentioned in sub-section (1).

193. Restriction on dual membership : No worker or employer, shall be entitled to enroll himself, as, or to continue to be, a member of more than one trade union at the same time.

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

(2) The Societies Registration Act, 1860 (XXI of 1860), the Co-operative Societies Ordinance, 1985 (Ordinance I of 1985) and the Companies Act, 1994 (XVIII of 1994), shall not apply to any registered trade union and the registration of any trade union under any of these Acts shall be void.

NOTES/COMMENTS/PRECEDENTS

Registered trade union is a body corporate : A registered union is made a body corporate by Section 13 of the Trade Unions Act, 1926 (corresponding to section 14 of the Industrial Relations Ordinance, 1969) and is empowered to sue and be sued in its own name.

In the case of a body incorporated by law, the corporate body acquires a legal personality of itself and is as such entitled to maintain legal proceedings. But an unincorporated association has no legal personality and it is nothing but an aggregation of its members who can only bring legal proceedings in their individual capacity. Even when all of them are affected by an official act, they can challenge that only if all the members join in the proceedings by name, the association, in such a case, cannot maintain any legal proceedings, in its own name, as has been established *A I R 1951 All 1].* by a number of decisions.*[Indian Sugar Mills Association Vs. Secy, Labour Deptt., State of U.P.*

195. Unfair labour practices on the part of employers : No employer or trade union of employers and no person acting on their behalf shall-

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

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

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

(d) dismiss, discharge, remove from employment or threaten to dismiss, discharge or remove from employment a worker or injure or threaten to injure him in respect of his employment by reason that the worker is or proposes to become, or seeks to persuade any other person to become a member or officer of a trade union, or participates in the promotion, formation or activities of a trade union ;

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

(f) compel or attempt to compel any officer of the collective bargaining agent to sing a memorandum of settlement or arrive at a settlement, by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of water, power and telephone facilities and such other methods ;

(g) interfere with, or in any way influence the election provided for in section 202 ;

(h) recruit any new worker during the period of strike under section 211 or during the currency or a strike which is not illegal, except where the Conciliator has, being satisfied that complete cessation of work is likely to cause serious damage to the machinery or installation, permitted temporary employment or a limited number of workers, in the section where the damage is likely to occur ;

(i) deliberately fails to take measures recommended by the Participation Committee ;

(j) fails to give reply to any communications made by the collective bargaining agent in respect of any industrial dispute ;

(k) transfer the President, General Secretary, Organising Secretary or Treasurer of any registered trade union in contravention of section187;

(l) commence, continue, instigate or incite others to take part in an illegal lock-out.

NOTES/COMMENTS/PRECEDENTS

Unfair Labour Practice : Unfair labour practice is of two types- (i) Unfair Labour Practice on the part of the employer and (ii) Unfair Labour Practice on the part of Workers.

Employers' unfair labour practice is defined in section 195 of the Act. According to this section

Unfair labour practices on the part of workmen is defined in section 16. According to this section certain acts on the part of an employer has been termed as 'unfair labour practice' Unfair Labour practice by the employers is a punishable offence under Sub section (1) of Section 291 of the Act, 2006. The punishment is *imprisonment which may extend to two years*, or fine which may extend to *Ten thousand Taka* or both.

196. Unfair labour practices on the part of workers : (1) No worker shall engage himself in any trade union activities during his office hours without the permission of his employer :

Provided that nothing in this sub-section shall apply to the trade union activities of the President or the General Secretary of a trade union which is the collective bargaining agent for the establishment, if such activities relate to the participation in any committee, negotiation, conciliation, arbitration or proceedings under this Act, and the employer has been duly informed of such activities.

(2) No worker or trade union of workers and no person acting on behalf of such trade union shall—

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

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

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

(d) compel or attempt to compel the employer to sign a memorandum of settlement or to accept or agree to any demand by using intimidation, coercion, pressure, threat, confinement to or ouster from a place, dispossession, assault, physical injury, disconnection of telephone, water or power facilities or such other methods ; or

(e) commence, continue an illegal strike or a go-slow; or instigate or incite others to take part in an illegal strike or a go-slow; or

(f) resort to gherao, obstruction to transport or communications system or destruction of any property in furtherance of any demand or object of a trade union.

(3) It shall be an unfair practice for a trade union to interfere with a ballot held under section 202 by the exercise of undue influence, intimidation, impersonation or bribery through its executive or through any other person acting on its behalf.

NOTES/COMMENTS/PRECEDENTS

Unfair labour practices on the part of workmen is defined in section 196 of this Act.. According to this section certain acts on the part of a worker or trade union of workers etc. has been termed as 'unfair labour practice' Unfair Labour practice by the workers and unfair labour practice by the trade union or by any other person is a punishable offence. Section 291. Sub section (2) and (3) of Section 291 provides for punishment for unfair labour practice by workmen and others. According to sub-section .(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. According to sub-section (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."

197. Law of conspiracy limited in application : No officer or member of a registered trade union or a collective bargaining agent as a determined by the Director of Labour shall be liable to punishment under section 120B(2) of the Penal Code, 1860 (XLV of 1860), in respect of any agreement made between the members thereof for the purpose of furthering any such object of the trade union as is specified in its constitution referred to in section 179, unless the agreement is an agreement to commit an offence, or otherwise violate any law other than this Chapter.

198. Immunity from civil suit in certain case : (1) No suit or other legal proceedings shall be maintainable in any Civil Court against any trade union or collective bargaining agent or any officer or member thereof in respect of any action done in contemplation or furtherance of an industrial dispute to which the trade union is a party on the ground that-

(a) such act induces some other person to break a contract of employment, or

(b) such act or deed is an interference with the trade, business or employment of some other person or

(c) such act interferes with the right of some other person to dispute of his capital or of his labour as he wills.

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

NOTES/COMMENTS/PRECEDENTS

Collective Bargaining- Civil Court's jurisdiction : Facts do not bring the case within the definition of industrial dispute to confer jurisdiction on Labour Court. Civil Procedure Code will apply and the Civil Court will have jurisdiction. *Held :* If there is no remedy for the grievance of the plaintiff in the Industrial Relations Ordinance then the Civil Court will have jurisdiction to try the matter. It is palpably clear that section 18 of the Ordinance has not even a remote connection with the present case which is an action by one Trade Union against being debarred from contesting the election for Collective Bargaining Agent. Right to contest the election has been vested in the plaintiff. For enforcing this right no forum has been provided in the Industrial Relations Ordinance. Therefore, the Civil Court has got jurisdiction to entertain the suit in question. The impugned judgment and order (holding the suit to be not maintainable) be set aside and the case sent back for decision on merits. *[Karnafully Paper Mills Sramik Union Vs. Registrar Trade Union (1990) 42 DLR 329=11BLD (HCD) 367]*

Dispute relating to cancellation of the membership of the petitioner of the workers union does not fall within the purview of section 18 of the Industrial Relations Ordinance, 1969 and as such the suit in the civil court is held to be quite maintainable. *[Nasiruddin Ahmed Vs. G.M. Shahabuddin and others. 11 MLR (HC) 2006) 96] 386]*

***Under the present Labour Act Labour Courts have exclusive jurisdiction over all matters triable by labour court. Under section 250 of this Act "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".

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

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

200. Registration of federation of trade unions : (1) Any two or more registered trade unions formed in establishments engaged, or carrying on, similar or identical industry may, if heir respective general bodies so resolved, constitute a federation by executing an instrument of federation and apply for the registration of the federation:

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

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

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

(4) Subject to this Chapter shall, so far as may be and with necessary modifications, apply to a federation of trade union as they apply to a trade union.

(5) Notwithstanding anything contained in the foregoing sub-sections not less than 20 trade unions formed in different types of industries may, jointly, constitute a federation on national basis.

201. Returns : (1) There shall be sent annually to the Director of Labour, on or before the 3oth April of the following year a general statement audited in the prescribed manner, of all receipts and expenditure and of the assets and liabilities of every trade union during the preceding calender year.

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

(3) If a registered trade union fails to send the general statement within the time specified in sub-section (1), the Director of Labour shall, by a notice, inform the union of such

failure, and if the union fails to submit the general statement within thirty days of the receipt of such notice, its registration shall be liable to be cancelled.

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

202. Collective bargaining agent : (1) Where there is only one trade union in an establishment, that trade union shall, be deemed to be collective bargaining agent for such establishment.

(2) Where there are more trade unions than one in an establishment, the Director of Labour shall, upon an application made in this behalf by any such trade union or by the employer, hold a secret ballot, within a period of not more than one hundred and twenty days from the date of receipt of such application, to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment.

(3) Upon receipt of an application under sub-section (2), the Director of Labour shall, by notice in writing call upon every trade union in the establishment to which the application relates to indicate, within such time, not exceeding fifteen days, as may be specified in the notice, whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to the establishment.

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

(5) If no trade union indicates, within the time specified in the notice, its desire to be a contestant in the secret ballot, the trade union which has made the application shall be declared to be the collective bargaining agent in relation to the establishment concerned, provided it has as its members not less than one-third of the total number of workers employed in the establishment.

(6) Every employer shall on being so required by the Director of Labour, submit to him a list of all workers employed in the establishment for not less than a period of three months in the establishment excluding those who are casual or *badli* workers, and the list shall contain the following particulars; namely :

(i) Name of each worker,

(ii) Name of his parents
(in appropriate case name of husband/wife shall be written)

(iii) Name of his section or department

(iv) place in which he is employed

(v) his ticket number and the date of his employment

(7) on being so required Director of Labour, every employer shall submit to the Director of Labour requisite number of additional copies of the list of workers mentioned in sub-section (6) and shall provide such facilities for verification of the list submitted by him .

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

(9) The objections, if any, received by the Director of Labour within the specified time shall be disposed of by him after necessary enquiry.

(10) The Director of Labour shall make such amendments, alterations or modifications in the list of workers submitted by the employer as may be required by any decision given by him on objections under sub-section (9).

(11) After amendments, alterations or modifications, if any, made under sub-section (10), or where no objections are received by the Director of Labour within the specified time, the Director of Labour shall prepare a list of workers employed in the establishment concerned duly certified and send copies thereof to the employer and such of the contesting trade unions at least seven days prior to the date fixed for the poll.

(12) The list of workers prepared and certified under sub-section (11) shall be deemed to be the list of voters, and every worker whose name appears in that list shall be entitled to vote in the poll to determine the collective bargaining agent.

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

(14) No person shall canvas for vote within a radius of forty-five meters of the polling stations.

(15) For the purpose of holding secret ballot to determine the collective bargaining agent, the Director of Labour shall-

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

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

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

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

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

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

(16) Where a registered trade union has been declared under sub-section (14) (e) to be the collective bargaining agent for an establishment, it shall be such collective bargaining agent for a period of two years and no application for the determination of the collective bargaining agent for such establishment shall be entertained within a period of two years from the date of such declaration :Provided that, in the case of a group of establishments, the trade union declared to be the collective bargaining agent therefor shall be such collective bargaining agent for three years.

(17) Notwithstanding anything contained in sub-section (16), where a registered trade union desires to be the collective bargaining agent for an establishment after the expiry of the terms of an existing collective bargaining agent or where an existing collective bargaining agent desires to continue as such for the next term, it may make an application to the Director of Labour, not earlier than one hundred and fifty days and not later than one hundred and twenty days immediately before the expiry of the term of the existing collective bargaining agent, to hold a secret ballot to determine the next collective bargaining agent for the establishment.

(18) Where an application under sub-section (17) is made, a secret ballot to determine the next collective bargaining agent shall be held within one hundred and twenty days from the receipt of such application, but the trade union declared to be the next collective bargaining agent shall be the collective bargaining agent from the date of the expiry of the term of the existing collective bargaining agent.

(19) Where after an application made under sub-section (17) a collective bargaining agent has not been determined for reasons beyond the control of the Director of Labour before the expiry of the term of the existing collective bargaining agent, the existing collective bargaining agent shall continue to function as such till a new collective bargaining agent is determined.

(20) Where no application is made under sub-section (17), the Director of Labour may, after the expiry of the term of the existing collective bargaining agent, recognise such collective bargaining agent or any registered trade union to act as collective bargaining agent for the establishment unless a registered trade union is deemed to be a collective bargaining agent for the establishment under sub-section (1) or until a collective bargaining agent is determined by secret ballot under the foregoing provisions of this section, as the case may be.

(21) Any dispute arising out of any matter in relation to an election for determination of collective bargaining agent shall be referred to the Labour Court, and the decision of the Labour Court thereon shall be final.

(22) If in any election for determination of collective bargaining agent any contesting trade union receives less than tenper cent of the total votes cast, the registration of that trade union shall stand canceled.

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

(24) The collective bargaining agent in relation to an establishment shall be entitled to-

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

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

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

(d) nominate representatives of workers on the board of trustees of any welfare institutions or Provident Funds, and of the Workers participation Fund established under Chapter XV,

(e) To conduct cases on behalf of any individual worker or group of workers.

(25) The provisions of this section shall *mutatis-mutandis* apply to the election or determination of collective bargaining agent in group of establishments under this Act.

NOTES/COMMENTS/PRECEDENTS

Director's duty to entertain application for determination of collective bargaining agent : The Registrar of Trade Unions (Now Director of Labour) is to consider the application as to whether the application conforms with the provision of section 2 of the Ordinance and rules for holding a secret ballot for determining the CBA for Adamjee Jute Mills Ltd. and the applicant Union is having one third of total members of workers of the establishment and to notify other Trade Unions for holding the election under secret ballot in accordance with law. *[5 BLC (AD) (2000) 539]*

203. Federation of trade unions to act as collective bargaining agent in certain cases : (1) Notwithstanding anything contained in this Chapter, a federation of trade unions shall be deemed to be the collective bargaining agent in any establishment or group of establishments, if its federated unions by resolutions passed in their annual general meetings or in general meetings specially convened for the purpose, by the votes of not less than the majority of the total membership of the union concerned authorise it to act as the collective bargaining gent on their behalf:

Provided that no such authorisation shall be permissible unless the constitutions of the federation and also of the federated unions provided for such authorisation

(2) A federation of trade unions shall act as the collective bargaining agent only in the establishments or group of establishments in which its federated unions are collective bargaining agents.

(3) Nothing in this section shall be applicable in case of federation of trade unions formed on national basis under section 200(5).

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

(2) An employer making any deduction from the wages under sub-section (*1*) shall, within 15 days, deposit the entire amount so deducted by him in the account of the collective bargaining agent- union.

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

205. Participation Committee : (1) The employer in an establishment in which fifty or more workers are normally employed shall constitute in the prescribed manner a Participation.

(2) Such committee shall be formed with representatives of the employer and the workers.

(3) The number of representatives of workers in such committee shall not be less than the number of representatives of the employer,

(4) The representatives of the workers shall be appointed on the basis of nomination given by the trade unions in the establishment.

(5) Each of the trade unions, other than the collective bargaining agent, nominating equal number of representatives and the collective bargaining agent nominating representatives, the number of which shall be one more than the total number of representatives nominated by the other trade unions.

(6) In the case of an establishment where there is no trade union, representatives of the workers on a participation Committee shall be chosen in the prescribed manner from amongst the workers engaged in the establishment for which the Participation Committee is constituted.

(7) Where an establishment has any unit in which at least fifty workers are normally employed, a unit participation committee, may, on the recommendation of the Participation Committee, be constituted in the manner prescribed by Rules.

(8) Such unit committee shall consist of the representatives of the employer and the workers employed in or under that unit.

(9) The provisions of this section applicable in case of participation committee shall *mutatis-mutandis* apply to the unit participation committee.

NOTES/COMMENTS/PRECEDENTS

Participation Committee : The Industrial Relations Ordinance, 1969 in order to promote, measures for securing and preserving amity and good relations between the employers and the

workmen, and to that end, to comment upon matters of their common interest or concern and endevours to compose any material difference of opinion provides for formation of participation committee for certain establishment. Same provision has also been embodied in the present Bangladesh Labour Act, 2006

206. Functions of Participation Committee : (1) The functions of the Participation Committee shall be to inculcate and develop sense of belonging and workers commitment and, in particular-

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

(b) to ensure application of labour laws ;

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

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

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

(f) to fulfill production target, improve productivity, reduce production cost and wastes and raise quality of products.

(2) A unit participation committee shall, subject to the supervision of the participation committee, discharge, as far as practicable, those functions as the specified in sub-section (1).

207. Meetings of the Participation Committee : (1) The Participation Committee shall meet at least once in every two months to discuss and exchange views and recommend measures for performance of the functions under section 202.

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

208. Implementation of recommendations of Participation Committee. (1) The employer and the registered trade union shall take necessary measures to implement the specific recommendations of the participation committee within the period specified by the Committee.

(2) If, for any reason, the employer or the registered trade union finds it difficult to implement the recommendations within the specified period, he or it shall inform the Committee about it and make all out efforts to implement the same as early as possible.

CHAPTER XIV

SETTLEMENT OF DISPUTES, LABOUR COURT, LABOUR APPELLATE TRIBUNAL, LEGAL PROCEEDINGS, ETC.

209. Raising of industrial disputes : No industrial dispute shall be deemed to exist, unless it has been raised in accordance with this Chapter by a collective bargaining agent or an employer.

NOTES/COMMENTS/PRECEDENTS

Industrial dispute to be raised in the prescribed manner : A dispute and difference between Employers and Employees or between Employers and Workers between Workers and Workers which were called a labour dispute in the Labour Dispute Act 1965 has been re-named as an industrial dispute. The provisions of this Ordinance, as they were in its original text, were not concerned with a worker's individual dispute with his employer but were concerned exclusively with an industrial dispute. *[Railway Men's Stores Vs. Labour Court, Chittagong (1978) 30 DLR (SC) 251]*

Such an industrial dispute shall not be deemed to be in existence unless, as has been provided in section 43 of the Ordinance (corresponding to section 210 of Bangladesh Labour Act, 2006) , it has been raised in the prescribed manner by a collective bargaining agent or employer. *[Railway Men's Stores Vs. Labour Court, Chittagong (1978) 30 DLR (SC) 251]*

An industrial dispute shall not be deemed to be in existence unless, as has been provided in section 43 of the ordinance, it has been raised in the prescribed manner by collective bargaining agent or employer. *[Railway Men's Stores Ltd. Vs. Chairman, Labour Court, Chittagong (1978) 30 DLR (SC) 25 1]*

Dispute raised by workers in individual capacity- held not industrial dispute : A dispute when it is not an industrial dispute within the meaning of sec. 43 of the Industrial Relations Ordinance is not an Industrial dispute under the Industrial Relations Ordinance. The present dispute alleged to be one under section. 34 of the Industrial Relations Ordinance (corresponding to sec 213 of the Bangladesh Labour Act, 2006) being brought by some workers in their individual capacity is not an industrial dispute. *[Chairman Chittagong Port Authority Vs. Kalipada Day.(1987) 39 DLR 39]* -There cannot be any recognition of industrial dispute under section. 43 of the Industrial relations Ordinance, 1969, unless the dispute has been raised by a collective bargaining agent. *Ibid.*

An industrial dispute can be raised only by a collective bargaining agent or an employer : Section 43 (corresponding to section 210 of Bangladesh Labour Act, 2006) which provides for the raising of an industrial dispute lays down that "no industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a collective bargaining agent or an employer". These provisions, therefore, expressly prohibit the raising of an industrial dispute except in the manner mentioned therein. As provided under this section an industrial dispute can be raised by a collective bargaining agent or an employer only in the manner prescribed by the Ordinance. The manner prescribed by the Ordinance for raising an industrial dispute is to be found in the provisions contained in section 26 to 33 of the Ordinance (corresponding to section 210 of the present Act). No other provisions in the Ordinance deal with the raising of an industrial dispute or prescribe the manner according to which such dispute can be raised. As section 34 (corresponding to sec 213 of the Bangladesh Labour Act, 2006) does not include any reference to an industrial dispute it cannot,

therefore, be said to have prescribed the manner of raising an industrial dispute. *[General Manager Hotel Intercontinental, Vs. Second Labour Court (1978) 28 DLR 160]*

Industrial Dispute- Definition, Ingredient and Nature: An industrial dispute as has been defined in section 2*(Lxii)* of the Bangladesh Labor Act, 2006 is as follows ***"industrial dispute*** means any dispute or difference between employers and employers or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person ."

If the above definition is dissected it will be seen that in order to be an industrial dispute there must be (1) a dispute or difference- and the dispute must be (i) between employer and workmen or (ii) between employer and employer or (iii) between workmen and workmen.- and (2) the dispute must be (i) in connection with employment or non employment; or (ii) in connection with the terms of employment or the conditions of work of any person

The word any person has not been explained here. As such it seems that in order to treat a dispute the subject matter of the dispute may be with regard to non workers even.

Although the definition of industrial dispute is wide enough to cover all disputes between employers and employers or between employers and workmen or between workmen and workmen the mode of raising of dispute suggests that no dispute except the dispute between the employer and workmen can be treated as industrial dispute.

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

(2) Within fifteen days of the receipt of a communication under sub-section (1), the party receiving it shall, in consultation with the representatives of the other party, arrange a meeting for collective bargaining on the issue raised in the communication with a view to reaching an agreement thereon, and such meeting may be held with the representatives of the parties authorised in this behalf.

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

(4) If—

(a) the party receiving a communication under sub-section (1) fails to arrange a meeting with the representatives of the other party for collective bargaining within the time specified in sub-section (2), the other party, or

(b) no settlement is reached through dialogue within a period of one month from the date of the first meeting for negotiation, or, such further period as may be agreed upon in writing by the parties, any of the parties, may, within fifteen days from the expiry of the period mentioned in sub-section (2) or clause (b) of this sub-section, as the case may be, report the matter to the Conciliator and request him in writing to conciliate in the dispute and the Conciliator shall, within ten days of receipt of such request, proceed to conciliate in the dispute.

(5) The Government shall, for the purposes of this Chapter, by notification in the Official Gazette, appoint such number of persons as it considers necessary, as Conciliator for such

specific area or any industrial establishment or industry, and the Conciliator shall take up the conciliation to whom the request shall be made for conciliation under sub-section (4),

(6) The Conciliator, upon receipt of the request as aforesaid, shall star conciliation and shall call a meeting of the parties to the dispute for the purpose of bringing about a settlement.

(7) The parties to the dispute shall appear before the Conciliator in person or shall be represented before him by person nominated by them and authorised to negotiate and enter into an agreement binding on the parties.

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

(9) If no settlement is arrived at within the period of thirty days of receipt of request under sub-section (4) by the Conciliator, the Conciliation proceedings shall fail or the conciliation may be continued for such further period as may be agreed upon in writing by the parties.

(10) If the conciliation proceeding fails, the Conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator.

(11) If the parties do not agree to refer the dispute to an Arbitrator, the Conciliator shall, within three days of failure of the conciliation proceedings, issue a certificate to the parties to the dispute to the effect that such proceedings have failed.

(12) If the parties agree to refer the dispute to an arbitrator, they shall make a joint request in writing for reference of the dispute to an arbitrator agreed upon by them.

(13) The arbitrator, to whom a dispute is referred under sub-section (12), may be a person borne on a panel to be maintained by the Government or any other person agreed upon by the parties.

(14) The Arbitrator shall give award within a period of thirty days from the date on which the dispute is referred to him or such further period as may be agreed upon in writing by the parties to the dispute.

(15) After he has made an award, the arbitrator shall forward a copy thereof to the parties and to the Government.

(16) The award of the arbitrator shall be final and no appeal shall lie against it.

(17) An award shall be valid for a period not exceeding two years as may be fixed by the arbitrator.

(18) The Director of Labour may, if he deems fit in the interest of settlement of a dispute, at any time, take over any conciliation proceedings pending before any Conciliator and proceed to conciliate in the dispute himself or transfer such proceedings to any other Conciliator, and the provisions of the preceding subsections shall apply to such proceedings.

(19) Notwithstanding anything Contained in this section, collective bargaining agent in the establishments in respect of which trade union of employers or federation of trade

unions of employers have been registered shall communicate with such trade union or federation regarding any industrial dispute and a settlement between them shall be binding upon all the employers and workers of those establishments.

NOTES/COMMENTS/PRECEDENTS

Strike or lock-out in public utility services : Some services specified in the Schedule of the Industrial relations Ordinance, 1969 have been declared as *public utility services.* These are (i) The generation, production, manufacture, or supply of electricity, gas oil or water to the public (ii) Any system of public conservancy or sanitation (iii) Hospitals and ambulance service (iv) Fire-fighting service (v) Any postal, telegraph or telephone service (vi) Railways and Airways (vii) Ports and (viii) Watch and ward staff and security services maintained in any establishment.

The Industrial Relations Ordinance has not snatched away the rights of strike or lock out of persons engaged in public utility services, but in order to minimise the sufferings of the people at large has put some restrictions on it.

It is provided in this chapter that in the case of any of the public utility services, the Government may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out. In any case in which the Government prohibits a strike or lock-out, it shall, like strikes or lock outs in other establishments forthwith refer the dispute to the Labour Court and the labour court shall, after giving both the parties to the dispute an opportunity of being heard, make such award as it deems fit as expeditiously as possible but not exceeding sixty days from the date on which the dispute was refereed to it The Labour Court may make an interim award on any matter of dispute An award of the Labour Court shall be for such period as may be specified in the award which shall not be more than two years.

Industrial dispute- how can be raised- Compulsory preliminary steps : Provisions have been made in section 26 of the Ordinance (section 209 of this Act) as to the manner how an industrial dispute may be raised by an employer or a collective bargaining agent on behalf of the workers and the negotiations may be commenced for the settlement of the issues raised between them. Negotiation, conciliation and arbitration for settlement of such issues have been prescribed in as compulsory preliminary steps so as to avert the taking of the extreme measure by either of the parties in the shape of strike or lock-out leading to a deadlock in the industry. *[Railway Men's Stores Vs. Labour Court, Chittagong (1978) 30 DLR (SC) 251]*

Common ground is that there must be in existence an industrial dispute: In a case where a dispute is likely to arise negotiation shall have to be taken recourse to by the employer or the collective bargaining agent, as the case may be. When such a negotiation fails, either party may serve a notice on the other party a 21 days notice of lock-out or strike as the case may be, and shall have to adopt a proceeding for conciliation. If no settlement is arrived at during the course of conciliation and the parties to the dispute do not agree to refer it to an arbitrator, the workers may go on strike or as the case may be, the employers may declare a lock-out, in accordance with the notice of lock-out and strike. If the lock-out or strike continues for more then 30 days the Govt. may by written order prohibit the lock-out or strike at any time before or after its commencement. When lock-out or strike has been so prohibited, the Govt. shall have to refer the dispute to the Labour Court for its adjudication immediately under sections 31 or 33 of the Ordinance, as the case may be, The jurisdiction of the Labour Court could also be invoked under section 34 of the Ordinance as it stood in the original text by any party to the industrial dispute themselves for enforcement of any right, guaranteed or secured to them by or under any law for time being in force or an award or settlement. So the labour Court could exercise jurisdiction. Whether under section 31 or 33 0r 34 of the Industrial Relations Ordinance, only if there was an existence of an

industrial dispute and that at the instance of collective bargaining agent, so far as the worker's dispute is concerned. *[Railway Men's Stores Vs. Labour Court, Chittagong (1978) 30 DLR (SC) 251]*

211. Strike and lock-out : (1) The party which raised the dispute may, within fifteen days of the issue to it a certificate of failure under section 210(11), either give to the other party a notice of strike or lockout, a the case may be, to commence on a day, not earlier than seven days and not later than fourteen days of the date of such notice, to be specified therein, or make an application to the Labour Court for adjudication of the dispute :

Provided that no collective bargaining agent shall serve any notice of strike unless three-fourths of its members have given their consent to it through a secret ballot specially held for he purpose, under the supervision of the Conciliator, in such manner as may be prescribed.

(2) If a strike or lock-out is commenced, either of the parties to the dispute may make an application to the Labour Court for adjudication of the dispute.

(3) If a strike or lock-out lasts for more than thirty days, the government may, by order in writing, prohibit the strike or lock-out :

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

(4) In the case of any of the public utility services, the Government may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out.

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

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

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

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

(7) An award of the labour Court shall be for such period as may be specified in the award which shall not be more than two years.

(8) No strike shall be permissible in an establishment for a period of three years from the date of commencement of production, if such establishment is a new one or is owned by foreigners or is established in collaboration with foreigners. But other provisions of this Chapter relating to resolving industrial dispute shall apply to such establishments.

212. Cessation of industrial dispute : (1) If the party raising an industrial dispute under section 210 fails to-

(a) make a request of the Conciliator to conciliate in the dispute under section 210(4) within in period specified therein ; or

(b) commence strike or lock-out, as the case may be, on the date specified in the notice served under section 211 (1) ; or

(c) refer the dispute to the Labour Court for settlement or serve notice of strike or lock-out, as the case may be, within the period specified in section 211 (1); the dispute shall cease to exist on the expiry of such specified period or date.

(2) When an industrial dispute has ceased to exist under sub-section (1), no fresh dispute on the same subject shall be raised within a period of one year from the date of cessation of such dispute.

213. Application to Labour Courts : Any collective bargaining agent or any employer or worker may apply to the Labour Court for the enforcement of any right guaranteed or secured to it or him by or under this Act or any award or settlement.

NOTES/COMMENTS/PRECEDENTS

Section 34 of the Industrial Relations Ordinance, 1969, (corresponding to section 213 of the Bangladesh Labour Act, 2006) is meant for enforcement or right– not for establishment : Held that Section 34 of the Industrial Relations Ordinance (corresponding to sec 213 of the Bangladesh Labour Act, 2006) provide for enforcement of any right of any worker or employer or collective bargaining agent guaranteed or secured under any law, settlement or award, but the section is not meant for creating any new right. *[Chairmen, Power Development Board Vs. Labour Court Khulna (1981) BLD (AD) 59].* Labour Court can only proceed under section 34 of the Industrial Relations Ordinance (corresponding to sec 213 of the Bangladesh Labour Act, 2006) for the enforcement of any legal right. The Labour Court had no jurisdiction to entertain the case or to determine what was the real date of birth of the respondent. *[Khulna Newsprint Mills Limited Vs Chairman, Labour Court 271].*

There must be some right to enforced : Section 34 of the Industrial Relations Ordinance, 1969, (corresponding to section 213 of the present Act) only allows a workman to apply to the Labour Court for the enforcement of any right guaranteed or secured to him by or under any law. *[Syed Abu Hossain Arshad and others Vs BSFIC and others. 54 DLR (AD) (2002) 33].*

Merely because the respondent No. 2 is still in service, the application under section 34 of the IRO cannot be maintained. In addition the Labour Court has to come to a finding that has some existing right guaranteed to him by or under any law or any award or settlement. *[Bangladesh Biman Airlines Corporation Vs Chairman, Second labour Court and others. 52 DLR (AD) (2000)191]*

Determination of the age- not a guaranteed right: Determination of the age of the petitioner is not a right secured or guaranteed within the meaning of section 34 of the Industrial Relations Ordinance, 1969 (corresponding to sec 213 of the Bangladesh Labour Act, 2006). *[Mozammel Haque Chowdhury Vs Chairman, Labour Court 10 BLC (HCD) (2005) 485]*

Collective bargaining agent or employer may maintain an application for enforcement of any right conferred by any law or award or settlement : After the amendment of section 34 the words "industrial dispute" do no longer occur in this section, the question arises whether such dispute can be raised by filing an application thereunder. In place of any party to an "industrial

dispute" as used in the unamended section 34, the expressions "any collective bargaining agent or any employer or workman" has been used. There is no reference to an industrial dispute or the adjudication of such dispute in the amended section 34. So far as a collective bargaining agent or an employer is concerned, it may maintain an application under this section whenever the necessity arises for the enforcement of any right guaranteed or secured to it by or under any law or any award or settlement, for, there is no dispute or controversy regarding the definition of a collective bargaining agent or an employer. *[General Manager Hotel Intercontinental, Vs. Second Labour Court (1978) 28 DLR 160]*

Memorandum issued by the Government- not enforceable under section 34: Memorandum issued by the Government being no award or settlement, the same cannot be enforced by the Labour Court. The petitioner company being a Public Limited Company with its own management is not bound to implement the executive order meant for government servants. *[Bangladesh Can Company Ltd. Vs. Chairman, Labour Court (1990) 42 DLR 368]*

Settlement- sending of copy to Government : Copy of agreement sent to the Government need not be approved for satisfying the definition of an enforceable settlement. *[Carew and Company (Bangladesh) Limited Vs Chairman Labour Court and others. (1998) 50 DLR 396]*

Application not maintainable whose remedy lies elsewhere : The Respondent No. 2 who is an employee of the Railway Department cannot file a petition under section. 34 of the Industrial Relations. Ordinance relating (corresponding to sec 213 of the Bangladesh Labour Act, 2006) to the terms and conditions of his service in view of section 4 of the Administrative Tribunal Act (VII of 1981) read with the provisions of Ordinance No. 24 of 1983. The Administrative Tribunal has exclusive jurisdiction to entertain and determine such matters and consequently the Labour Court has no jurisdiction to entertain and dispose of such matters. *[The General Manager, (West) Bangladesh Railway Vs. The Chairman, Labour Court Rajshahi (1988) 40 DLR 163]*

Maintainability of application : Right guaranteed under law, award or settlement only can be sought to be enforced– Agreement containing terms and conditions of training period– Not an agreement as enunciated in Sec. 34 (corresponding to sec 213 of the Bangladesh Labour Act, 2006)– Application under section 34, *held-* not maintainable against infringement of such agreement. *[Mohammad Siddique Vs. Engineer, Textile Accessories Manufacturing Ltd. Kotri and another (1974) PLC 20 = 1976 PLC 530].*

Discrimination– violation of fundamental rights : Giving benefit to some and denying the same to others under the same agreement and service condition is not only illegal but also the same offends the respondents' fundamental rights. *[Carew and Company (Bangladesh) Limited Vs Chairman Labour Court and others. (1998) 50 DLR 396]*

Labour Court- Its power to grant interim order of stay : An adjudication on an industrial dispute or a proceeding for enforcement of any guaranteed right through a matter of civil nature, is not a suit and does not attract all the panoply of powers of the Code of Civil Procedure. From a plain reading of section 36(2), it is clear that in adjudicating an industrial dispute, the Labour Court acts as a civil Court for limited purpose- it will not exercise power like those given in Or. IX or Or. XXXIX of the Code of Civil Procedure which civil Court may exercise in a suit but not necessary to decide an industrial dispute.*[Pubali Bank Vs. The Chairman, First Labour Court Dhaka (1992) 44 DLR (AD) 40]*

Worker's dismissal or discharge, not in connection with industrial dispute, is not a worker under Industrial Relations Ordinance : Having regard to the definition of 'workman' it is clear that a workman whose termination of service or dismissal or discharge from service has not been in connection with any industrial dispute is not a worker within the meaning of the Industrial

Relations Ordinance and therefore cannot apply under section 34 of the Ordinance (corresponding to sec 213 of the Bangladesh Labour Act, 2006) for relief against such termination, dismissal or discharge. It cannot be said that such termination or dismissal or discharge from, the service of a workman is an infringement of any right guaranteed to the collective bargaining agent by any law. *[Railway Men's Stores Vs. Labour Court, Chittagong (1978) 30 DLR (SC) 251]*

In an earlier decision it was held: A dismissed worker who falls within the second part of the definition of "worker" or "workman" in clause (xxviii) of section 2 can bring an application under section 34 (corresponding to sec 213 of the Bangladesh Labour Act, 2006) for the enforcement of any right guaranteed or secured to him by any law or any award or settlement when an industrial dispute exists which can exist only if it has been raised by a collective bargaining agent or an employer in the manner prescribed by any of the sections, namely, sections 26 to 33 of the Ordinance. During the continuance of such an industrial dispute which led to his dismissal or which arose on his dismissal, a dismissed worker can by filing an application under section 34 enforce any legal right or the term of any award or settlement. If no such dispute exists, a dismissed worker will not fall within the second category of workers or workmen, and he cannot, therefore, maintain an application under section 34. (corresponding to sec 213 of the Bangladesh Labour Act, 2006) *[General Manager Hotel Intercontinental, Vs. Second Labour Court (1978) 28 DLR 160]*

It does not appear that under this amended provision the existence of an industrial dispute is an indispensable requirement for the application of the said provision and an individual workman may apply to the Labour Court to enforce a right guaranteed or secured to him by any law or award or settlement. Such workman can take advantage of the said provision so long as he continues to be in employment. *[Railway Men's Stores Vs. Labour Court, Chittagong (1978) 30 DLR (SC) 251]*

Writ jurisdiction : Despite the general principle that the writ jurisdiction is not available to a worker for violation of the provisions of 9Standing Orders) Act and the Industrial Relations Ordinance, 1969, in exceptional cases like in the instant case the High Court Divion will exercise its extraordinary jurisdiction under Article 102 of the Constitution. *[Faruque Hasan vs Titas Gas Transmission and Distribution Company Ltd 316]*

Petition must be signed by the worker : Before the Labour Court workers were shown as petitioners but the petition was signed only by respondent No. 2 who is not a worker. The case was therefore not legally instituted. *[Virginia tobacco Co. Vs. Labour Court(1993) 45 DLR 233]*

Worker whose termination, dismissal or discharge from service is not in connection with industrial dispute : A worker or workmen whose termination of service or dismissal or discharge from service have not been in connection with an industrial dispute is not a worker within the meaning of the Industrial Relation Ordinance, 1969, and therefore cannot apply under section 34 of the Ordinance (corresponding to sec 213 of the Bangladesh Labour Act, 2006) for relief against such termination, dismissal or discharge. It cannot be said that such termination of or dismissal or discharge from, the service of a workman is an infringement of right guaranteed to the collective bargaining agent by any law *[M/S. Railway Men's Stores Ltd. and another Vs. Labour Court, Chittagong and another (1978) 30 DLR (SC) 251= [New Eastern Trading Corporation Vs. Third Labour Court, Dhaka (1993) 45 DLR 357]. Concurring with the view it has been decided in* a case reported in 30 DLR 211[*ref: Asstt Electrical Engineer, Pahartali Power House Vs. Chairman, Labour Court, Chittagong*] that a worker dismissed from service, if dismissal not related to any industrial dispute he cannot maintain an application under section 34 of the Industrial Relations Ordinance, 1969. Same principle regarding maintainability of an application under section 34 by a dismissed worker was followed in a case reported in *32 DLR 72.*

Whether an application filed by the C.B.A to enforce a worker's right is maintainable : *Held :* It appears clearly that for the enforcement of a right of a worker he is alone competent to file

an application under sec 34 and not his union. Similarly, for the enforcement of a right guaranteed or secured to C.B.A. neither a worker nor an employer is competent of file an application. It is, therefore, found that the application under section 34 (corresponding to sec 213 of the Bangladesh Labour Act, 2006) is not maintainable having been file by a wrong person. *[(1980) BSCR (AD) 437]*

Application under section 34 (corresponding to sec 213 of the Bangladesh Labour Act, 2006) **when barred :** ((a) If the employee was not dismissed in the course of an industrial dispute or his dismissal did not lead to any such dispute, his application under sec 34 (corresponding to sec 213 of the Bangladesh Labour Act, 2006) of the ordinance would appear to be barred. (b) A dismissed worker can bring an application under section 34 during the continuance of an industrial dispute which under the ordinance can only be raised by a CBA or an employer according to manner laid down in the above mentioned sections of the ordinance. (c) Section 34 at it stands after amendment puts no limitation in the filing of an application by a 'worker' or workmen before the labour court for the enforcement of his right guaranteed or secured under any law. (d) C.B.A. employer or workman can apply to the labour court for enforcement of any right. *[James Finlay Vs. Chairman, Labour Court, Chittagong (1981) 33 DLR (AD) 58= Sabita Datta Vs. Cinema Palace, Chittagong (1999) 51 DLR (AD) 215.]*

Transfer of worker : An employee of one Tea Estate transferred without his consent to another Tea Estate belonging to different owner-such transfer not valid in law- The employee can seek his remedy under section 34 of the IRO (corresponding to sec 213 of the Bangladesh Labour Act, 2006). *[M/s. Chowdhury Sons Ltd. Vs. Chairman, Labour Court Chittagong (1983) 35 DLR 356]*

Application by Railway servant - not maintainable : ***Held-*** the respondent No. 2 who is an employee of the Railway Dept. cannot file a petition under section 34 of the IRO (corresponding to sec 213 of the Bangladesh Labour Act, 2006) relating to the terms and conditions of his service in view of section 4 of the Administrative Tribunal Act 1981 read with the provisions of ordinance No. 24 of 1983. The Administrative Tribunal has exclusive Jurisdiction to entertain and determine such matters and consequently the Labour Court has no jurisdiction to entertain and dispose of such matters. *[The General Manager (West) Bangladesh Railway & another Vs. Chairman, Rajshahi Labour Court (1988) 40 DLR 163]*

Individual dispute not to be treated as industrial dispute : An individual dispute brought by a workman is adjudicated as an individual dispute and it terminates in a decision. ..When an application is filed by a Workman for relief in his "individual dispute" the dispute cannot be entertained by the Labour Court as an industrial dispute" and the decision of the Labour Court does not become an "award". *[A. Roberio Vs. Labour Appellate Tribunal (1975) 27 DLR 99]*

Promotion- verbal assurance -whether legal right : Held : Promotion is not a right of any employee and verbal assurance for promotion on the part of an employer does not create any legal right in the employee. *[Inland water transport Authority Vs. First Labour Court, Dhaka (1977) 29 DLR 85]*

There is no law which guaranteed or secured the right of an employee not to be promoted or upgraded. They could very well refuse to accept the promotion or upgradation and if they so desire quite but they could not as of right continue to hold the existing post and that the fist party before the Labour Court had no right guaranteed or secured by or under any law or award or settlement so as to enforce under section 34 of the IRO (corresponding to sec 213 of the Bangladesh Labour Act, 2006) and the IRO cases ought not to have been entertained by the Labour Court and that the upgradation /promotion was given to prevent the first party from carrying on their union activities is also without any materials basis. The contention that the promotion/upgradation was designed to restrain respondent No. 2 from carrying on their trade union activities cannot be accepted because

the upgradation was made to implement the scheme of the Corporation and its implement the scheme of the Corporation and its implementation was not confined only to the petitioner's mill and there is no denial that the policy was implemented only in the mills in question. *[BSFIC and another Vs Chairman, Second Labour Court, Dhaka & anr 6 BLC (2001) 718].*

214. Labour Courts : (1) For the purposes of this Act, the Government shall, by notification in the official Gazette, establish as many Labour Courts as it considers necessary.

(2) Where more than one Labour Court is established under sub-section (1), the

Government shall specify in the notification the territorial limits within which each one of them shall exercise jurisdiction under this Act.

(3) A Labour Court shall consist of a Chairman and two Members to advise him, but in case of trial of any offence or in disposal of any matter under Chapter X and XII it shall be constituted with the Chairman only.

(4) The Chairman of the Labour Court shall be appointed by the Government from amongst the District judges or an Additional District judges.

(5) The terms and conditions of appointment of the Chairman of the Labour Court shall be determined by the Government.

(6) One of the two Members of the Labour Court shall be the representative of employers and the other shall be the representatives of the workers and they shall be appointed in the manner hereinafter provided in sub-section (9).

(7) The Government shall constitute, in the manner prescribed by rules, by notification in the official Gazette, two panels, one of which shall consist of six representative of employers and the other of six representatives of the workers.

(8) The panel of Members prepared under sub-section (9) shall be reconstituted after every two years, notwithstanding the expiry of the said period of two years, The Members shall continue on the panels till the new panels are constituted and notified in the official Gazette.

(9) The Chairman of the Labour Court shall, for hearing or disposal of a case relating to a specific industrial dispute, select one person from each of the two panels constituted under sub-section (7), and persons so selected, together with the Chairman, shall be deemed to have constituted the Labour Court in respect of that specific industrial dispute:

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

(10) A Labour Court shall have exclusive jurisdiction to-(a) adjudicate and determine and industrial dispute or any other dispute or any question which may be or has been referred to or brought before it under this Act ;

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

(c) try offences under this Act ; and

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

(11) If any member of the Labour Court is absent at the time of its constitution or is absent at the time of its constitution or absent from or is otherwise unable to attend, any sitting of the Court, whether at the beginning of the hearing of a case or during the continuance of the hearing thereof, the proceedings of the Court may begin or continue, as the case may be, in his absence and the decision or award of the Court may be given in the absence of such member ; and no act, proceeding decision or award of the Court shall be invalid or be called in question merely on the ground of such absence or on the ground of any vacancy in, or any defect in the constitution of, the Labour Court.

Provided that if any Member informs the Chairman beforehand of his absence, the Chairman shall nominate another Member from the panel of the concerned parties :

Provided further that the opinions of the Members of both the sides shall be mentioned in the judgment.

(12) The provisions of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898) shall apply to a Labour Court, and for the purposes of that Chapter, a Labour Court shall be deemed to be a Civil Court.

*** In the gazette notification the word (দেওয়ানী আদালত) "Civil Court" has been inadvertently written in place of (ফৌজদারী আদালত) "Criminal Court"*

(13) All Labour Courts shall be subordinate to the Tribunal.

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 Other. (1996) 48 DLR 527]*

Defect in constitution of Labour Court– effect of : As the Labour Court was not constituted in accordance with the provisions of section 35 and rule 36 either at the time of trial of the case or at the time of delivery of the judgment and such judgment is also required to be signed by the members constituting the Labour Court and if it is signed only by the Chairman it will not be valid in law.*[S M Qumruzzaman alias Chunnu vs. Tabibur Rahman and State. 2 BLC (1997) 187]*

General jurisdiction to decide industrial dispute and dispute raised by a single workman: It does not appear that without any express mention of section 34 in the provisions of section 35 conferring jurisdiction on the Labour Court, it can not decide an application under the former section. Certainly clause (d) of section 35(5) does not confer the necessary jurisdiction upon the Labour Court to decide an application under section 34. Clause (d) of this sub-section enables the Labour Court to exercise other powers and functions under the Ordinance. General jurisdiction to decide an industrial dispute has been conferred by clause (a) of sub-section (5) of section 35 but this sub-section has not either expressly or impliedly negatived the power of the Labour Court to decide an individual dispute by a single worker under section 34. Section 35 is not, nor can it be deemed to be the only provision conferring jurisdiction upon the Labour Court to decide a dispute. Section 34 which enables the persons mentioned therein to apply to the Labour Court are both self-

contained as well as clear and the expressions "may apply to the Labour Court for the enforcement of any right" are sufficient to enable the Labour Court, to operate and, therefore, adjudicate any dispute presented for its determination by such application. No further conferment of jurisdiction on the Labour Court under sub-section (5) of section 35 is necessary. *[General Manager Hotel Intercontinental, Vs. Second Labour Court (1978) 28 DLR 160]*

Advice of members : *Held-* The Chairman should accept well-reasoned advice of the members-.*[Abdus Sattar Vs. Chairman, Labour Court Chittagong and another. (1996) 48 DLR 525]*

Tender of advice by any member : *Held-* Tender of advice by any member of the labour Court constituted u/s 35(2) of the Industrial Relations Ordinance, 1969, to the Chairman of the Court, mandatory where such opinion has not been tendered or taken the decision of the Court is null and void. *[National Bank Vs. Md. Golam Mustafa (1974) 26 DLR 266]*

Absence of Member : Total absence of one of the members from the entire proceeding is a violation of **section** 35 (7) and this violation renders the decision of the Labour Court null and void. [*26 DLR 266].* In a decision [Ref: *General Manger, Jamuna Oil Co. Vs. Golap Rahman reported in (1982) 34 DLR (AD) 166]* it has been held that (a) Absence of the Member of the Court from its sitting does not invalidate the decision given by the Court- It is, however not to be interpreted that the court may function without a member at all. (b) Provision of law is that a two member panel will be there to assist the court Absence of the one member does not render the decision of the Court illegal.

215. Procedure and powers of Labour Courts in trial of offences : (1) Subject to the provisions of this Act, a Labour Court shall, while trying an offence, follow as nearly as possible summary procedure as prescribed under the Code of Criminal Procedure.

(2) A Labour Court shall, for the purpose of trying an offence under this Act, have the same powers as the vested in the Court of a Magistrate of the first class under the Code of Criminal Procedure.

(3) Notwithstanding anything contained in sub-section (2), for the purpose of imposing penalty a Labour Court shall have the same powers as are vested in a Court of session under that Code of Criminal Procedure.

(4) A Labour Court shall, while trying an offence hear the case without the members.

216. Procedure and powers of Labour Courts in any matter other than trial of offences : (1) A Labour Court shall for the purpose of adjudicating and determining any matter or issue or dispute under this Act be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, including the powers of-

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

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

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

(d) delivering ex-parte decision in the event of failure of any party to appear before the Court;

(e) setting aside ex-parte decision ;

(f) setting aside order of dismissal made for non-appearance of any party.

(g) In order to save the frustration of purpose of the case property the Labour Court may pass interim order upon any party..

(2) Subject to this Act, no court-fee shall be payable for filing, exhibiting or recording any document in, or obtaining any document from a Labour Court.

(3) A Labour Court shall, by notice to be served through process server or special messenger or by registered post or by both the modes, ask the opposite party to file written objection or written statement, if any, within a period not exceeding ten days from the date of filing of the case.

(4) The Court may, for reasons to be recorded in writing, extend the time for filing objection or written statement for a period not exceeding seven days in all.

(5) If any party fails to file any written statement or objection within the time specified in the notice or the extended time the case shall be heard and disposed of *ex-parte.*

(6) The Labour Court shall not grant adjournment of the hearing of a case on the prayer of any party for more than seven days in all:

Provided that, if both the parties file application for adjournment, an adjournment for not more than ten days in all may be allowed.

(7) If the party filing the case is absent on the date of hearing, the case shall be dismissed for default.

Provided that the Court shall have jurisdiction to set aside the order of dismissal if any application is made by the petitioner within three months from the date of such order of dismissal of the case

(8) If the opposite party is absent on the date of hearing, the case shall be heard and disposed of exparte.(9) A case which is dismissed for default, shall not bar the filing of a fresh case on the same cause of action, provided such fresh case is filed, if not otherwise barred, within a period of three months from the date of dismissal.

(10) A Labour Court may, on an application filed by all the parties to a case, and after giving a hearing to them, allow the withdrawal of the case at any stage of the proceedings thereof, if it is satisfied that the dispute has been amicably resolved.

(11) An award or decision or judgment of a Labour Court shall be given in writing and delivered in open Court, and a copy thereof shall be given to each party.

(12) An award or decision or judgment of a Labour Court shall, in every case, be delivered, unless the parties to the dispute given their consent in writing to extend the time-limit, within sixty days following the date of filing of the case:

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

NOTES/COMMENTS/PRECEDENTS

Labour Court- Power to grant interim order of stay- An adjudication on an industrial dispute or a proceeding for enforcement of any guaranteed right through a matter of civil nature, is not a suit and does not attract all the panoply of powers of the Code of Civil Procedure. From a plain reading of section 36(2), it is clear that in adjudicating an industrial dispute, the Labour Court acts as a civil Court for limited purpose- it will not exercise power like those given in Order. IX or Order. XXXIX of the Code of Civil Procedure which civil Court may exercise in a suit but not necessary to decide an industrial dispute.*[Pubali Bank Vs. The Chairman, First Labour Court Dhaka (1992) 44 DLR (AD) 40].*

It is now settled the Labour Court shall be deemed to be a Civil Court and shall have the same powers as are vested in such court under the code of Civil Procedure subject to the limitation provided in the beginning of the sub-section namely, "for the purpose of adjudicating and determining any industrial dispute". It shall, therefore, not be deemed to be a Civil Court nor shall it enjoy such powers as are available to a Civil Court under the code of Civil procedure it the purpose is not to adjudicate and determine any industrial dispute, only such powers as are necessary of for the said purpose are to be exercised by the Labour Court. The Labour Court is therefore, a Civil Court of limited procedural powers while deciding industrial dispute. It Does not only enjoy the generality of procedural powers of Civil Court provided in the Code of Civil Procedure.

Labour Court and Court of Magistrate : Labour Court and a Magistrate, 1st Class, having jurisdiction in the relevant mater shall have concurrent jurisdiction to try an offence punishable under Industrial Relations Ordinance. Under section 64 of the Ordinance of Magistrate, 1st Class, has also been invested with power to try any offence under this Ordinance. The decision reported in 1985 BLD) (AD) 278 is not applicable in the facts of the present case. *[Kamaluddin Chowdhury Vs. Mashiudowllah (1991) 43 DLR 137]*

Labour Court when acts as a civil court : Labour Court acts as a civil court for a limited purpose. It will not exercise power like those given in Order IX or Order XXXIX rule I CPC which the civil court may exercise in a suit. *[Ibrahim Shaikh vs. Chairman, Labour Court, Khulna Division, Khulna and others (1995) 47 DLR 498]*

Definition as given in s. 2(XIII) of Industrial Relations Ordinance. includes all disputes as contemplated in the Industrial Relations Ordinance, 1969.- Labour Court constituted under the Ordinance shall be deemed as Civil Court for the purpose of adjudication of all Industrial disputes including granting of injunction, etc. *[Pubali Bank Vs. Chairman (1987). 39 DLR 128]*

Labour Court in deciding a labour dispute under the Industrial Relations Ordinance, 1969 is invested with the powers of a civil court available under the Civil Procedure Code including delivering ex-parte decision in the event of failure of a party to appear before it. *[Adamjee Jute Mills Vs. Chairman Labour Court. (1987) 39 DLR 11]*

***Ex-parte* judgment in case of failure in filing written statement :** *Held*–No *ex-parte* judgment can be passed where the defendant does not file written statement: –Petitioner duly appeared before the Labour Court every day to which the case was adjourned and applied on each occasion for time to put in written statement-On his failure to put in written statement. the court fixed a date for ex-parte hearing. –Having rejected the said two applications the Court proceeded to try the case ex-parte. The impression is unmistakable that the learned Advocate for the petitioner was thereafter not allowed to participate in the proceeding because the Labour Court was determined to proceed ex-parte. We consider, thereafter, that the ex-parte proceeding was totally uncalled for and without jurisdiction both in terms of clause (d) of sub-section (2) of section 36 of the said Ordinance and in

terms of Order VIII of the Code of Civil Procedure*[Adamjee Jute Mills Vs. Chairman Labour Court. (1987) 39 DLR 11]*

Labour court shall function as a civil court for some limited purposes for adjudication for labour disputes and as a criminal courtfor adoption of summary procedure: Labour Court shall be deemed to be a civil court and the same shall have the same powers as are vested in the civil court under the Civil Procedure code, for a limited purpose, that is, for the purpose of adjudicating and determining and industrial dispute, and the Labour Court shall follow, as nearly as possible, summary procedure as prescribed under the Code of Criminal Procedure, 1898. It indicates the nature of the powers which include the powers- (a) enforcing the attendance of any person and examining him on oath, (b) compelling the production of documents and material objects and (c) issuing commissions for the examination of witnesses or document. *[Khulna Tobacco Limited Vs. Labour Court (1978) 30 DLR 331]*

The expression "be deemed to be a civil court" clearly indicates the intention of the legislature that the Labour Court is not intended to be converted into a civil court. In sub-section (2) the Labour Court has been clothed wit only such powers as are available under the Code of Civil Procedure and are necessary for the purpose of adjudicating and determining any industrial dispute. Sub-section (3) provides that a Labour Court shall, for the purpose of trying an offence under the Ordinance, have the same powers as are vested in a Court of Magistrate of the First Class under the Criminal Procedure, Code 1898. *[Khulna Tobacco Limited Vs. Labour Court (1978) 30 DLR 331]*

Constitution of Court-when not proper : Rule 36-As the Labour Court was not constituted in accordance with the provisions of section 35 and rule 36 either at the time of trial of the case or at the time of delivery of the judgment and such judgment is also required to be signed by the members constituting the Labour Court and if it is signed only by the Chairman it will not be valid in law. *[S M Qumruzzaman alias Chunnu vs. Tabibur Rahman and State.(1997) 2 BLC 187]*

217. Appeal from judgments etc. of Labour Courts : Subject to this Act, any party aggrieved by an award, decision, sentence or judgment given or passed by a Labour Court may prefer an appeal to the Labour Appellate Tribunal within sixty days of the delivery thereof and the decision of the Tribunal in such appeal shall be final.

218. Labour Appellate Tribunal : (1) For the Purpose of this Act there shall be a Labour Appellate Tribunal which shall consist of a Chairman, and, if the Government so deems fit, such number of other members as the Government may appoint from time to time.

(2) The Chairman and the members, if any, of the Tribunal shall be appointed by the Government by notification in the official Gazette on such terms and condition as the Government may determine.

(3) The Chairman of the Tribunal shall be a person who is or was a Judge or an Additional Judge of the Supreme Court, and a member of the Tribunal shall be a person who is or was a Judge or an Additional Judge of the Supreme Court or who is or was a District Judge for not less than three years.

(4) If the Chairman is absent or unable to discharge his functions for any reason, the senior Member of the Tribunal, if any, shall perform the functions of the Chairman.

(5) Where members are appointed in the Tribunal, the Chairman may, for the efficient performance of the functions of the Tribunal, constitute as many Benches of the Tribunal, consisting of one or more Members of the Tribunal, including himself, where necessary, as he may deem fit.

(6) An appeal or any matter before the Tribunal may be heard and disposed of by the Tribunal sitting in Full Bench or by any Bench thereof.

(7) Subject to this Act, the Tribunal shall follow as nearly as possible such procedure as are prescribed under the Code of Civil Procedure, for hearing of appeal by an Appellate Court from original decrees.

(8) If the Members of a Bench differ in opinion as to the decision to be given on any point-

(a) the matter shall be decided according to the opinion of the majority, if any ; and

(b) if the Members are equally divided, they shall state the point on which they differ and the case shall be referred by them to the Chairman for hearing on such point by the Chairman himself, if he is not a member of the Bench, or by one or more of the other members of the Tribunal, and such point shall be decided according to the opinion of the Chairman or Member or majority of the Members hearing the point, as the case may be.

(9) Where a Bench includes the Chairman of the Tribunal as one of its Members and there is a different of opinion among the Members and the Members are equally divided, the decision of the Chairman shall prevail and the decision of the Bench shall be expressed in terms of the opinion of the Chairman.

(10) The Tribunal may, on appeal, confirm, set aside, very or modify the award, decision or sentence or remand a case to the Labour Court for re-hearing; and shall, save otherwise provided, exercise all the powers conferred by this Act on the Labour Court.

(11) The decision of the Tribunal shall be delivered, within a period of sixty days following the fling of the appeal:

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

(12) The Tribunal shall have authority to punish for contempts of its authority, or that of any Labour Court, as if it were a High Court Division of the Supreme Court.

(13) Any person convicted and sentenced by the Tribunal under sub-section (12) to imprisonment for any period, or to pay a fine exceeding two hundred Taka, may prefer an appeal to the High Court Division.

(14) The Tribunal may, on its own motion or on the application of a party, transfer any application or proceeding from a Labour Court to any other Labour Court.

(15) The Tribunal shall have superintendance and control over all Labour Courts.

219. Form of application or appeal : An application to a Labour Court and an appeal to the Tribunal may be made in such form as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely:

(a) the names and addresses of the parties.

(b) a concise statement of the circumstances in which the application is made or appeal is preferred and the relief claimed ;

(c) the provision of the law under which the application or appeal is made and the relief prayed for ;

(d) in the case of a delay in making the application or appeal, the reason for such delay and the provision of law under which condontion of delay is prayed for;

(e) in a case under Chapter X, a statement showing separately the basic wages and dearness allowance or ad-hoc or interim pay, if any, payable to the claimant per month and other sums payable as part of wages ;

(f) in the case of a claim under Chapter XII for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in time, the reason for such omission ;

(g) except in the case of an application by dependents for compensation under Chapter XII, in any case thereunder a concise statement of the matters on which agreement has and of those on which agreement has not been arrived at;

(h) the date on which cause of action has arisen ; and

(i) a statement showing the Labour Court has jurisdiction to entertain the application.

220. Appearance of parties : Any appearance, filing of application or any act required to be made or done by any person before or to a Labour Court or the Tribunal, other than an appearance of a party which is required for the purpose of his examination as a witness, may be made or done on behalf of such person by any person authorised in writing or by a lawyer.

Provided that such representative or lawyer shall not be a representative of the concerned Court.

221. Costs : All costs, incidental to any proceedings or appeal before a Labour Court or the Tribunal, shall, subject to this Act or any rules be awardable in the discretion of the Labour Court or the Tribunal.

222. Settlement and awards on whom binding : (1) A settlement arrived at in the course of a conciliation proceeding or an award of an arbitrator or an award, decision or judgment of Labour Court or the award, decision or judgment of the Tribunal shall be binding -

(a) on all parties to the dispute

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

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

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

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

NOTES/COMMENTS/PRECEDENTS

Binding force of settlement upon all workers : It is not obligatory, however, that a workman who is a party to a dispute must be represented by another. He may participate in the proceeding himself. Where conciliation proceedings are taken and a settlement is reached, it is a valid settlement and binding on the parties even if the workmen who are party to the dispute participate in the proceedings personally and are not represented by any of the persons mentioned in s. 36(1) of the Industrial Disputes Act, 1947 *[Ameteep Machine Tools Vs. Labour Court, Hariyana AIR 1980 SC 2135 = 1980 SCC (1) 768.]*

223. Effective date of settlements, awards, etc.: (1) A settlement shall become effective-

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

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

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

(3) Such settlement after expiry of the period mentioned in sub-section (2), shall continue to be binding on the parties until the expiry of two months from the date on which either party informs the other party in writing of its intention no longer to be bound by the settlement.

(4) An award of Labour Court shall, unless an appeal against it is preferred to the Tribunal, become effective on such date and remain effective for such period, not exceeding two years, as may be specified therein.

(5) Arbitrator, Labour Court or the Tribunal. as the case may be, shall, fix the date from which different demands mentioned in the award shall be effective and the dates by which each of the demands be enforced.

(6) If at any time before the expiry of the period mentioned in sub-section (4) or (5) any party bound by an award applies to the Labour Court which made the award for reduction of the said period on the ground they the circumstances in which the award was made have

materially changed, the Labour Court may, by order made after giving to the other party an opportunity of being heard, terminate the said period on a date specified in the order.

(7) A decision of the Tribunal in appeal in respect of the award shall be effective from the date of the award

(8) Notwithstanding the expiry of the period for which an award is to be effective under sub-section (4) or (5), the award shall continue to be binding on the parties until the expiry of two months from the date on which either party informs the other party in writing of its intention no longer to be bound by the award.

(9) Notwithstanding anything contained in this section, no industrial dispute or proceedings in respect thereof shall be raised or commenced before the expiry of one year from the date on which a memorandum of settlement is signed by the parties or the date of expiry of the period of settlement or aware, whichever is later.

Facilities to be continued even after termination of agreement : Section 7 of the Payment of Wages Act 1936 provides that wages of employed persons shall be paid without deduction of any kind except those authorised. It is clear that the employer cannot reduce the wages of the workers even after termination of a settlement until a new settlement is arrived at or award is given on the failure of the employer and the collective bargaining agent to arrive at a settlement to avoid industrial unrest. *[Zenith Packages Ltd. Vs. Labour Appellate Tribunal (1999) 51 DLR 284]*

There is no illegality in the interpretation that the rights and obligation under the terminated settlement shall remain operative till a new settlement is arrived between the parties or an award is given by the Labour Court. *[Zenith Packages Ltd. Vs. Labour Appellate Tribunal (1999) 51 DLR 284]*

Held : Where the employer unilaterally acts detrimental to the emolument and benefits obtained under a terminated settlement such emoluments and benefits shall continue to remain in force till a new agreement is reached between the employer and the worker or an award is made by the labour Court *[Zenith Packages Limited Vs. Member Labour Appellate Tribunal, Dhaka and other (2000) 20 BLD (AD) 267]*

In an Indian decision it was held that ' the terms of a settlement continue to govern the relations between the parties after the notice of termination of agreement and the expiry of two months thereafter, until the settlement is replaced by a valid contract or award between the parties. *[A I R 1980 SC 2181.]*

224. Commencement and conclusion of proceedings : (1) A conciliation proceeding shall be deemed to have commenced on the date on which a request for conciliation is received by the conciliator under section 210(4).

(2) A conciliation proceeding shall be deemed to have concluded, where a settlement is arrived, on the date on which a memorandum of settlement is signed by the parties to the dispute;

(3) Where no settlement is arrived at, a conciliation proceeding shall be deemed to have concluded-

(a) If the dispute is referred to an arbitrator under section 210(12), on the date on which the arbitrator has given his award; or

(b) If the dispute is not referred to an arbitrator, on the date on which the conciliator issues the certificate of failure of conciliation proceeding.

(4) Proceedings before a Labour Court shall be deemed to have commenced on the date on which any dispute or matter or issue is referred to the Labour Court.

(5) Proceedings before a Labour Court shall be deemed to have concluded on the date on which the award or decision or judgment is delivered.

225. Prohibition on serving notice of strike or lock-outs while proceedings pending : No notice of strike or lock-out shall be serviced by any party to an industrial dispute while any conciliation proceeding or proceedings before an arbitrator or a Labour Court or an appeal to the Tribunal are or is pending in respect of any matter constituting such industrial dispute.

226. Power of Labour Court and Tribunal to prohibit strike, etc. : (1) When strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time when in respect of such industrial dispute, there is made to, or is pending before Lab-our Court any application, the Labour Court may, by an order in writing, prohibit continuance of the strike or lock-out.

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

227. Illegal strikes and lock-outs : (1) A strike or lock-out shall be illegal, if-

(a) it is declared, commenced or continued without giving to the other party of the dispute in the prescribed manner a notice of strike or lock-out or before or after the date of strike or lock-out specified in such notice, or in contravention of section 225, or,

(b) it is declared, commenced or continued in consequence of an industrial dispute raised in a manner other than that provided in section 205 ; or

(c) it is continued in contravention of an order made under section 211 or 226 ; or

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

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

228. Conditions of service to remain unchanged while proceedings Pending : (1) No employer shall, while any conciliation proceeding or proceedings before an arbitrator, a Labour Court or the Tribunal in respect of an industrial dispute are pending, alter to the disadvantage of any worker concerned in such dispute the conditions of service applicable to him before the commencement of the conciliation proceedings or of the proceedings before the arbitrator, the Labour Court or the Tribunal, as the case may be, not shall he save with the permission of the conciliator, while any conciliation proceedings

are pending ; or save with the permission of the arbitrator, the Labour Court or the Tribunal, while any proceedings before the arbitrator, Labour Court or Tribunal are pending discharge, dismiss or otherwise punish any worker or terminate his service except for misconduct not concerned with such dispute.

(2) Notwithstanding anything contained in sub-section (1), an officer of a trade union shall not, during the pendency of any proceedings referred to in sub-section (1), be discharged, dismissed or otherwise punished for misconduct, except with the previous permission of the Labour Court.

NOTES/COMMENTS/PRECEDENTS

Termination of service of worker : Case filed by the respondent No. 2 as an individual worker cannot debar the employer from terminating his service during pendency of such a case. The employer cannot be allowed to frustrate a sub-judice matter in terminating the worker only on its fancy desire specially when worker is enjoying leave.*[Adamjee Jute Mills Ltd. represented by its Executive Director and another. (1997) 49 DLR 314]*

229. Protection of certain persons : (1) No person refusing to take part or to continue to take part in any illegal strike or illegal lock-out shall, by reason of such refusal, be subject to expulsion from any trade union or to any fine or penalty or to the deprivation of any right or benefit which he or his legal representatives would otherwise have been entitled, or, be liable to be placed in any respect, either directly or indirectly, under any disability or disadvantage as compared with other members of the trade union.

(2) Any contravention of the provisions of sub-section (1) may be made the subject-matter of an industrial dispute, and nothing in the constitution of a trade union providing the manner in which any dispute between its executive and members shall be settled, shall apply to proceedings for enforcing any right or exemption granted by sub-section (1).

(3) In any such proceedings, the Labour Court may, in lieu of ordering a person who has been expelled from membership of a trade union to be restored to membership, order that he be paid out of the fund of the trade union such sum by way or compensation or damages as the Court thinks just.

NOTES/COMMENTS/PRECEDENTS

Protection to a trade Union Leader : Main object of section 47B of the Industrial Relations Ordinance, 1969 is to give protection to a trade union leader so that for his trade union activities he may not be harassed by the employer by way of transfer without his consent but the remedy is not available to one working in a Corporation. *[Abdul Mannan Talukder Vs. Bangladesh House Building Finance Corporation (1990) 42 DLR (AD) 104]*

The appellant, a Supervisor, was posted at the Head Office of the Corporation in Dhaka and he was organizing secretary of the Karmachari Union of the Corporation. His case is that as a trade union of the Corporation. His case is that as a trade union leader he was not liable to be transferred without his consent to any station outside Dhaka under section 47B of the Industrial Relations Ordinance, 1969 (hereinafter referred to as the IRO, but he was illegally transferred from the Head Office to the Corporation's Regional Manager's Office at Comilla. The appellant challenged that

order by instituting IRO. Case No. 267 of 1988 before the First Labour court, Dhaka under section 34 of the IRO. *[Abdul Mannan Talukder Vs. Bangladesh House Building Finance Corporation (1990) 42 DLR (AD)104]*

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

(2) No party to an industrial dispute may be represented by a legal practitioner in any conciliation proceedings under this Chapter.

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

231. Interpretation of settlements and awards : (1) If any difficulty or doubt arises as to the interpretation of any provisions of an award or settlement, it shall be referred to the Tribunal.

(2) The Tribunal shall, after giving the parties an opportunity of being heard, decide the matter, and its decision shall be final and binding on the parties.

NOTES/COMMENTS/PRECEDENTS

Interpretation of Terminated Settlement : Held that the right and obligations of a terminated settlement shall remain in force till a new settlement is arrived at between the parties or an award is given by a Labour Court and that the employer cannot reduce the wages of the worker even after termination of the settlement. *[Zenith Packages Vs. Labour Appellate Tribunal (1999) 51 DLR 284].*

The Court is competent under sec. 50 of the Ordinance to give interpretation is respect of a terminated settlement where in a given case the employer unilaterally acts detrimental to the emoluments and benefits obtained under a terminated settlement, such emoluments and benefits shall continue to remain in force till a new agreement is reached between the employer and the workers or an award is made by the Labour Court. *[Zenith Packages Ltd. Vs Member, Labour Appellate Tribunal, Dhaka and ors 177]*

CHAPTER: XV

WORKERS 'PARTICIPATION IN COMPANIES PROFITS

232. Application of the Chapter : (1) This Chapter shall apply to all establishments which are companies engaged in industrial undertakings which satisfy any one of the following conditions, namely:-

(a) the number of workers employed by the company in any shift at any time during a year is one hundred or more ;

(b) the paid-up capital of the company as on the last day of its accounting year is one crore taka or more ;

(c) the value of the fixed assets of the company at cost as on the last day of the accounting year is not less than two crore taka or more.

(2) The Government may, by notification in the official Gazette, apply this Chapter to such other companies as it may specify therein.

233. Special definitions : (1) In this Chapter, unless there is anything repugnant in the subject or context,-

(a) 'Participation Fund' means the workers 'Participation Fund established under this Chapter ;

(b) 'Welfare Fund' means the worker's Welfare Fund established under this Chapter;

(c) 'Company' means a company within the meaning of the Companies Act, 1994, and includes-

(i) a body corporate established by or under any law for the time being in force ;

(ii) any institution, organisation or association whether incorporated or not, declared by the Government in the official Gazette to be a company for the purpose of this Chapter ;

(d) 'Fund' means the Participation Fund and the welfare Fund ;

(e) 'Board' in relation to Participation Fund and welfare Fund, means a Board of Trustees constituted under this Chapter ;

(f) 'Profits' in relation to a company, means such of the net profits as defined in section 87C of the Companies Act, 1994 as are attributable to its business, trade, undertakings or other operations in Bangladesh ;

(g) 'Industrial undertaking' means an establishment which involves the use of electrical, mechanical, thermal, nuclear or any other form of energy transmitted mechanically and not generated by human or animal agency and which is engaged in any one or animal agency and which is engaged in any one or more of the following operations, namely:

(i) the subjection of goods or materials to any manufacturing, assembly, finishing or other artificial, natural process, which changes their original condition or adds to their value ;

(ii) ship-building ;

(iii) the transformation, generation, conversion, transmission, or distribution of electrical energy including hydraulic power ; and

(iv) the working of a mine, oil well or any other source of mineral deposit, including blending, refining and purification of oils and gases ;

(v) the marketing and distribution of gas or oil ;

(vi) the carriage of men or goods by sea or air.

and includes any other operation which the Government may, by notification in the official Gazette, declare to be an industrial undertaking for the purposes of this Chapter ;

(h) 'Worker,' in relation to a company, means an employee of the company, whatever be his designation or position, who has been in the employment of the company for a period of not less than six months.; but does not include any such person–

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

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

(2) In this Chapter, 'paid-up capital' and the 'value of fixed assets' of a branch of company situated in Bangladesh but incorporated outside Bangladesh be construed as the 'paid-up capital' and the 'value of fixed assets' of the company.

234. Establishment of Participation Fund and welfare Fund : (1) Every Company to which this Chapter applies shall-

(a) establish a workers' Participation Fund and a workers' Welfare Fund in accordance with this Chapter within one month of the date of which the Chapter becomes applicable to it ; and

(b) pay every to the Participation Fund, and the Welfare Fund, not later than nine months from the close of that year, five percent of its net profits during such year, the proportion of the payment to the Participation Fund and the Welfare Fund being 80:20.

(2) The amount paid to the Funds under sub-section (1) (b) in relation to a year shall be deemed to have been allocated to the Funds on the first day of the next succeeding that year.

235. Management of Funds : (1) As soon as may be, after the establishment of the Participation Fund and the Welfare Fund, there shall be constituted a Board of Trustees, consisting of the following members, namely:

(a) two persons nominated by the collective bargaining agent and if there be no collective bargaining agent in the company, two persons elected by the workers of the company from amongst themselves ; and

(b) two persons nominated by the management of the company of whom at least one shall be a person from the accounts branch of the company.

(2) The members shall elect for one year a person to be the Chairman of the Board alternately from amongst the members under sub-section (1) (a) and under sub-section (1) (b), the first Chairman being from amongst the members under sub-section (1) (b).

(3) The Board shall manage and administer the Funds in accordance with the provisions of this Chapter and any rules made in this behalf.

(4) The Board shall, in the exercise of its powers and performance of its functions, be subject to such directions by the Government as may, from time to time, give.

(5) The Government, if it is of opinion that the Board or a member of the Board has been persistently failing in the performance of his or its functions or has generally been acting in a manner inconsistent with the objects and interests of the Funds may, after giving such member or, as the case may be, the Board, an opportunity of showing case against it, by order-

(a) remove such member from his office or direct that the Board shall stand superseded for such period as may be specified in the order, and

(b) direct that, pending the election or nomination of a person in place of the members removed from office or, as the case may be, the reconstitution of the Board, the powers and functions of the members so removed or the Board shall be exercised and performed by a person specified in the order.

(6) Upon the super session of a Board under sub-section (5) the members in that Board shall cease to hold office and references to the Board in this Chapter and the rules shall be construed as references to the officer specified in the order under that sub-section.

(7) Before the expiry of the period of suppression, the Board shall be re-constituted in accordance with the provisions of this Chapter, so as to enable it be take over its functions upon the expiry so such period.

236. Penalty : (1) Where any company fails to comply with the provisions of section 234, the Government may, by order in writing, require it to comply with those provisions within such time as may be specified in take order.

(2) If the company in relation to which an order has been made, fails to comply therewith within the time specified therein, every director, manager or other officer responsible for the management of the affairs of the company shall, if the Government, by order, so directs, pay by way of penalty a sum which may extend to ten thousand Taka and,

in the case of continuing failure, a further sum which may extend to one thousand taka for everyday after the first during which the failure continues.

(3) A penalty imposed by an order under sub-section (2) shall, if it is not paid within the time specified in the order, be recoverable as a public demand.

(4) The Government may, upon an application made in this behalf by any person aggrieved by an order made under sub-section (1) or (2) within a period of six months from the date of the order, review the order and may, upon such review, pass such orders as it may think fit.

237. Power to call for information : The Government may, at any time call upon a company or a Board of Trustees to furnish it with such information or documents, including the records of the proceedings of the company or the Board, as may be relevant or useful for the purposes of, or necessary, for ensuring proper compliance with, the provisions of this Chapter and the rules made in this behalf.

238. Settlement of disputes, etc. : (1) Any differences arising between the Board and the company relating to the administration of the Funds shall be reported to the Government, whose decision thereon shall be final.

(2) All claims of a worker relating to the benefits of the Funds, where against the Board or the company, shall be settled in the same manner as is provided for in Chapter, X, for the settlement of claims arising out of deductions from wages.

239. Delegation of power : The Government may, by notification in the official Gazette, direct that all or any of its powers or functions under this Chapter may, subject to such conditions, if any, as may be specified in the notification, be exercised by any of its officer or by any authority so specified.

240. Investment of Participation Fund. – (1) The amount allocated or accruing to the Participant in Fund shall be available to the company for its business operation.

(2) The company may request the Board to utilise the amount in the Participation Fund for investment under sub-section (11) and the Board may decide to so invest the amount.

(3) The company shall pay to the Participation Fund in respect of the amount in the Participation Fund available to it for its business operations as aforesaid interest at the rate of two and a half percent above the bank rate or seventy five percent of the rate at which dividend is declared on its ordinary shares, whichever is higher.

(4) In case there is more than one class of ordinary shares on which different rates of dividend have been declared, then the weighted average of the different rates of dividend shall be taken for the purpose of determining the rate of interest payable under sub-section (3).

(5) The interest to the Participation Fund shall accrue on and from the first day of the year next succeeding the year in which the Fund becomes applicable to the company.

(6) When the company does not wish to utilise the amount available to it under sub-section (1), interest of the rate aforesaid shall be payable by the company for the period

between the date of allocation of any amount to the Participation Fund and the date of its investment under sub-section (11).

(7) If, at any time after the establishment of the Participation Fund, the company raises any additional capital otherwise than through the issue of bonus or bonus shares, the Participation Fund shall have the first option to convert any amount available to the company under sub-section (1) or any of the assets of the Participation Fund into ordinary equity capital upto a ceiling of twenty percent of the paid-up capital of the company prior to such conversion or fifty percent of the additional capital, whichever is less.

Explanation : In this sub-section, 'additional capital' does not include any capital offered or to be offered to foreign participant of the company.

(8) For the exercise of the right of conversion under sub-section (7), the Board shall be given sufficient time to sell assets of the Participation Fund to realise the amount needed for subscription to the additional issue of capital by the company.

(9) The shares acquired in the manner stated in sub-section (7) shall participate in future bonus and right issues in the same manner as other shares.

(10) The shares acquired in the manner set out in sub-section (7) shall carry voting rights in the same manner as other shares and such voting rights shall be exercised by the Board on behalf of the Participation Fund.

(11) The amount in the Participation Fund which, under sub-section (2) the company has requested to be utilized for investment under this sub-section may be invested by the Board for the purchase of any of the following, namely:

(a) I.C.B. Mutual Fund Certificates ;

(b) I.C.B. Unit Certificates ;

(c) Government securities including Defence and Postal Saving Certificates ;

(d) Any other securities approved for the purpose by the Government.

241. Eligibility to benefits : (1) All workers shall be eligible to the benefits of this Chapter and to participate in the Funds.

(2) A worker not competing six months of employment with the company during a year of account shall not participate in the Funds in respect of that year.

242. Utilization of Participation Fund : (1) Of the total amount deposited in the Participation Fund every year, two-thirds shall be distributed in equal proportion to all workers in cash and one-third shall be invested in accordance with the provisions of section 240 (11), the profits of which shall also be distributed in equal proportion to all workers.

(2) If a worker voluntarily leaves the employment of the company he shall receive benefits of the Participation Fund and the Welfare Fund as admissible to him under this Chapter.

(3) A worker whose services are terminated otherwise than by way of dismissal shall be at per with a worker who retires from the service of the company.

(4) A worker who is dismissed from service shall forfeit his share in the Funds.

(5) In the event of transfer of a worker from one office or unit of a company to another office or unit of that company, the benefit accrued to the worker shall be transferred to the Funds of the office or unit to which he is transferred and his service in the previous office or unit shall be counted towards his entitlement to the benefits of the Funds of the office or unit to which he is transferred.

A worker in the event of his retirement or his nominated beneficiary, in the event of his earth while in the employment of the company, shall receive full benefit of this Chapter.

243. Utilization of Welfare Fund : The amounts deposited in the Welfare Fund shall be utilized for such purposes and in such manner ass the Board may decide ; and the Board shall inform the Government of such decision.

244. Fiscal concessions to the companies : All companies to whom this Chapter applies shall be allowed the allocation made to the Fund as a deduction to arrive at the taxable income.

245. Tax treatment of income of the Funds : The income of the Funds including capital gains shall be exempt from income tax.

246. Tax treatment of income to the workers : All sums paid out of the Funds shall be exempt from income-tax in the hands of the workers.

247. Working and location of Board of Trustees : (1) The office of the Board of trustees shall be located at the factory premises, or if there is more than one factory run by the company at the registered head-office of the company.

(2) All expenses of the Board, including the cost of maintaining accounts, shall be borne by the company.

248. Audit of accounts of the Fund : The Funds shall be audited annually at the company's expense in the same manner s the accounts of the company are audited:

Provided that the Government may, at its own cost, appoint independent accountants for a special audit of the accounts of the Funds.

249. Funds' benefits to be in addition to other benefits : The benefits to a worker under this Chapter shall be in addition to, and not in derogation or substitution of, any other benefits to which the worker may be entitled under any other law, contract, terms and conditions of employment or otherwise.

250. Special provisions for industries working seasonally: Notwithstanding anything contained in this Chapter, the Government may, by notification in the official Gazette, make special provisions for the participation of the workers in the profits of companies engaged in industrial undertakings which operate only for a part of the year.

251. Companies engaged in more than one industrial undertakings : Notwithstanding anything contained in this Chapter, the Government may, at the request of a company which is engaged in more than one industrial undertakings located at different places permit the splitting up of the Funds amongst the various undertakings or groups of undertakings and constitution of a Board of Trustee for each such undertaking or group of undertakings ; and there upon the provisions of this Chapter shall have effect in relation to such undertakings or groups as it each such undertaking or group were a company.

252. Entrustment of management of Participation Fund to Investment Corporation of Bangladesh, etc : The Board may, with the prior approval of the Government, enter into a contract with the Investment Corporation of Bangladesh or the Sonali Bank, entrusting the management of the Participation Fund to that Corporation or Bank on such fee, which shall be payable by the company, and on such terms and conditions as may be mutually agreed upon.