PART-2

BANGLADESH LABOUR ACT, 2006

THE BANGLADESH LABOUR ACT, 2006

(XLII of 2006)

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THE BANGLADESH LABOUR ACT, 2006

(XLII of 2006)

11th October, 2006

An Act to consolidate and amend the laws relating to employment of labour, relations between workers and employers, determination of minimum wages, payment of wages and compensation for injuries to workers, formation of trade unions, raising and settlement of industrial disputes, health, safety, welfare and working conditions of workers, and apprenticeship and matters ancillary thereto.

Whereas it is expedient to consolidate and amend the laws relating to employment of labour, relations between workers and employers, determination of minimum wages, payment of wages and compensation for injuries to workers, formation of trade unions, raising and settlement of industrial disputes, health, safety, welfare and working conditions of workers, apprenticeship and matters connected therewith;

It is hereby enacted as follows-

CHAPTER I

PRELIMINARY

1. Short title, commencement and application : (1) This Act may be called the Bangladesh Labour Act, 2006

(2) It shall come into force at once.

(3) Save as otherwise specified elsewhere in this Act, it extends to the whole of Bangladesh.

(4) Notwithstanding anything contained in sub-section (3), this Act shall not apply to-

(a) offices of or under the Government ;

(b) security printing press;

(c) ordnance factories ;

(d) establishments for the treatment or care of the sick, infirm, aged, destitute, mentally disabled, orphan, abandoned child, widow or deserted woman, which are not run for profit or gains ;

(e) shops or stalls in any public exhibition or show which deal in retail trade and which is subsidiary or to the purpose of such exhibition or show ;

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(f) shops or stalls in any public fair or bazar for religious or charitable purpose ;

(g) educational, training and research institutions ;

(h) hostels and messes not maintained for profit or gains ;

(i) in respect of Chapter, II, any shop, commercial establishment or industrial establishment owned and directly managed by the Government where the workers are governed by Conduct Rules applicable to government servants;

(j) workers whose recruitments and terms and conditions of service are governed by laws or rules made under article 62, 79, 113 or 133 of the Constitution, except, for the purposes of Chapters XII , XIII and XIV workers employed by the –

(i) Railway Department

(ii) Posts, Telegraph and Telephone Departments,

(iii) Roads and Highways Department, (iv) Public Works Department, (v) Public Health Engineering Department,

(vi) Bangladesh Government Press.

(k) workers employed in an establishment mentioned in clauses (b), (c), (d), (e), (f), (g) and (h), but workers other than teachers, employed by any university shall not be subject to the restrictions except the purposes of Chapters XII, XIII and XIV;

(l) seamen, except for the purposes of Chapters XII, XIII and XIV ;

(m) ocean going vessels, except for the purpose of Chapter XVI ;

(n) agricultural farms where less than ten workers are normally employed ;

(o) domestic servants ; and

(p) establishments run by the owner with the aid of members of his family and without employing any hired labour.

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

(i) 'retirement' means normal termination of employment of a worker on attaining certain age under section 28 of the Act.

Provided that retirement shall also include voluntary retirement from service on completion of 25 years of service in any establishment.

(ia) 'partial disablement' means, where the disablement is of temporary nature, such disablement as reduces the earning capacity of a worker in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

Provided that every injury specified in the First Schedule shall be deemed to result in permanent partial disablement ;

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Partial disablement. : A disablement may be either partial or total. A partial disablement means a disablement which reduces the earning capacity of a workman but the total disablement means such a disablement which incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement. Again partial disablement may be either temporary or permanent.

Temporary partial disablement.: A temporary partial disablement is of a temporary nature. It reduces the earning capacity of a workman in any employment in which he was engaged at the time of accident.

Permanent partial disablement.: A permanent partial disablement is of a permanent nature. It reduces the earning capacity of the workman in every capacity in every employment which he was capable of undertaking at the time of accident. According to Schedule I of the Act the following injuries are deemed to result in permanent partial disablement: (1) Loss of right arms above or at the elbow. (2) Loss of left arm above or at the elbow. (3) Loss of right arm below the elbow. (4) Loss of leg at or above the knee. (5) Loss of left arm below the elbow. (6) Loss of leg below the knee .(7) Permanent total loss of hearing. (8) Loss of one eye. (9) Loss of one thumb. (10) Loss of all toes of one foot. (11) Loss of one phalanx of thumb. (12) Loss of index finger. (13) Loss of great toe. (14) Loss of any finger other than index finger.

Complete and permanent loss of the use of any limb or member referred to in this list shall be deemed to be equivalent to the loss of that limb or member.

Test of partial disablement : While assessing the compensation in the case of a permanent partial disablement what the Court has got to see in the fact as to whether the earning capacity of the workman has been reduced in every employment which he was capable of undertaking at the time of accident and not merely the particular employment in which he was engaged at the time of accident resulting in the disablement. Consequently it is not enough if a blacksmith fitter is disabled to perform his duties of a blacksmith fitter with hand by the loss of the index and middle fingers, the Court should take into consideration as to whether he has been incapacitated from undertaking any other employment and whether in that employment the rest of the hand, namely the thumb and other two fingers can be utilised. *[Upper Doab Sugar Mills Ltd. Vs. Daulat Ram, A I R 1936 All. 493= 1936 A.L.J. 701.]*

(ii) 'manufacturing process' means any of the following processes-

(a) for making, altering, repairing, ornamenting, painting, washing, finishing, packing or otherwise treating any articles or substance with a view to its use, sale, transport, delivery, display or disposal,

(b) for pumping, oil, gas, water, sewerage or other fluids or slurries,

(c) for generating, transforming or transmitting power or gas,

(d) for constructing, reconstructing, repairing, refitting, finishing or breaking up of ships or vessels, or

(e) for printing by letter press, lithography, photogravure, computer, photo-compose, offset or other similar work or book-binding which is carried on by way of trade or for purposes of gain or incidental to another business so carried on ;

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Subject of Manufacturing Process : There is reason why if the connection with the subject of manufacturing process is seen to be direct, proximate and immediate such work cannot be considered to be work connected with such subject. The expression "subject of manufacturing process" may mean any or all the materials which are to be or have been used in the manufacturing process. They may not lose their character as subject of manufacturing process if the manufacturing process in which they have been used is over. *[(1975) Nurul Alam Vs. Second Labour Court 27 DLR 244]*

Manufacturing Process - Processes held to be manufacturing process or not:

Moistening, Stripping and Packing of Tobacco leaves : The moistening of tobacco leaves was an adaptation of tobacco leaves. The stalks were stripped by breaking them up, the leaves were packed by bundling them up and putting them into gunny bags. The breaking up, the adaptation and packing to tobacco leaves were done with a view to their use and transport. All these processes are manufacturing process. *[V.P. Gopala Rao Vs. Public Prosecutor AIR 1970 SC. 66 = (1969) 3 SCR 875].*

Bidi factory : Bidi making industry- held to be a manufacturing industry *[State of Bombay Vs. Ali Saheb Kashim Tambuli (1995) 2 LLJ 182]*

Transmission of electricity : The process of transforming and transmitting electricity held to be a manufacturing process *[Nagpur electric light and power Co. Ltd. Vs. The Regional Director, Employees State Insurance Corps AIR 1967 SC 1364]* But the conversion of high voltage into low voltage and distribution of electricity, since does not involve generation of power, held not to be a factory *[Gujarat Electricity Board Vs State of Gujarat (1984) 2 LLJ 370 (Guj)]*

Water works : The Municipal Board was running a waterworks for the supply of water to the town, It was held that the pumping of water is a manufacturing process according to the definition given in this Act, even though it may not be so in the common parlance. Waterworks, is therefore, clearly covered by the definition of 'factory' and the Act is applicable to it. It is not disputed that ten or more persons are working in it and water is pumped by use of power. *[Harthas Municipality Vs. Union of India A I R 1975 All 364].*

Salt industry : Salt was manufactured from sea water by applying different processes- held the process carried out in salt works comes within the definition of manufacturing process inasmuch as salt can be said to have been manufactured from sea water by the process of treatment and adaptation of sea water into salt. *[Ardeshir Vs Bombay state AIR 1962 SC 29]*

Conversion of raw film : Conversion of raw films into a finished product held to be manufacturing process. *[In the matter of K.V.V. Sharna (1950) ILLJ 29]*

Preparation of foodstuff : Preparation of foodstuffs and other eatable in the kitchen of a restaurant and use of a refrigerator for treating or adopting any article with a view to its sale was held to be a manufacturing process *[New Tajmahal Cafe Ltd., Mangalore Vs Inspector of Factories (1956) 1 LLJ 273]*

Petrol pump and Lubricating service : In the lubricating services of motor Vehicles, power is used to drive compressors which supply compressed air for operating service hoists and pressure and oil spray guns. Pump is installed on the petrol tank underground and with the aid of power, petrol is lifted and poured into tanks of vehicles held manufacturing process. *[Gate way Auto Services. Vs. Regional Director of Employees State Insurance Corps (1980) 2 LLJ 250 Bombay)]*

(iii) 'officer' in relation to a trade union, means any member of the executive thereof, but does not include an auditor or legal adviser ;

(iv) 'hours of work' means the time during which the workers employed are at the disposal of the employer excluding any interval allowed for rest and meals ;

(v) 'working journalist' means a person who is a whole time journalist and is employed as such in, or in relation to, any newspaper establishment, and includes an editor, leader writer, news editor, sub-editor, feature writer, reporter, correspondent, copy tester, cartoonist, news-photographer, caligraphist and proof-reader ;

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Working Journalist : A person can claim the status of a *"working journalist"* only when he can show, (a) that his principal vocation or calling is that of journalism, (b) that he is employed as such in a newspaper establishment, and (c) that he is in the exclusive employment of the owner of that establishment. A journalist who works for more than one newspapers cannot claim the benefit of the Act, but even a part-time employee can claim that benefit, provided that journalism is his main vocation. The test lies, not so much in the time spent, as in the income derived from that vocation being the main income, and the onus of proof thereof lies on the person claiming the status.*[Express Newspapers Ltd. Vs. B. Somayajulu 25 F.J.R. 14 = 1963-2 L.L.J. 385].*

(vi) 'workshop' means any premises, including the precincts thereof, wherein any industrial process is carried on.

(vii) 'factory' means any premises including the precincts thereof whereon five or more workers ordinarily work on any day of the year and in part of which a manufacturing process is being carried on, but does not include a mine ;

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Factory– ingredients of : In order to be a factory two conditions should be satisfied, firstly ten (in Indian Factories Act twenty) or more persons should work on any day of the preceding twelve months and secondly in any part thereof a manufacturing process should be carried on. If these two conditions are fulfilled then entire premises including the precincts thereof would be a factory although manufacturing process is carried on in only one part of the premises. The premises constituting a factory may be a building or open land or both. Inside the same compound wall, there may be two or more premises. *[Nagpur Electric Light & Power Co. Vs Regional Director, Employees State Insurance Corp. AIR 1967 SC 1364 = (1967) 3 SCR 92 = (1967) 2 LLJ 40].*

Word "factory"–Wide enough to include a press inasmuch as it carries on manufacturing process defined in Act and Act does not exclude factories run by or under authority of a Government. *[Workers' Union Vs. Sind Government Press, Karachi and 2 others. (1980) PLC 244].*

Public Health Engineering Department—Carrying on laying of sewerage drains, pumping out water, installation of tube-wells, supply of water, construction of water reservoirs—Such establishments, held- covered by definition of "factory". *[Muhammad Ishaq Vs. Chief Engineer, Public Health Engineering Department. (1976 PLC 239)].*

(viii) 'adolescent' means a person who has completed his fourteenth year but has not completed eighteenth year of age ;

(ix) 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tram-ways and sidings, whether above or below ground, in or adjacent to or belonging to a mine;

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for pulp making or the dressing of minerals ;

(x) 'gratuity' means wages payable on termination of employment of a worker which shall be equivalent to not less than thirty days' wages for every completed year of service or for any part thereof in excess of six months;

It shall be in addition to any payment of compensation or payment in lieu of notice due to termination of services of a worker on different grounds.

(x-a) 'tea plantation' means any land used or intended to be used for growing tea, and includes a tea factory ;

(xi) 'retrenchment' means the termination by the employer of services of workers, not as a measure of punishment but on the ground of redundancy ;

(xii) 'public utility service' means-

(a) the generation, production, manufacture, or supply of electricity, gas, oil or water to the public,
(b) any system of public conservancy or sanitation,
(c) hospitals and ambulance service,
(d) fire-fighting service,
(e) postal, telegraph or telephone service,
(f) railways, airways, road and river transport,
(g) ports,
(h) watch and ward staff and security services maintained in any establishment,
(i) oxygen acetylene, and
(j) banking ;

(xiii) 'Tribunal' means the Labour Appellate Tribunal established under this Act ;

(xiv) 'transmission machinery' means any shaft, wheel, drum, pulley, system of pulleys, couplings, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or plant ;

(xv) 'trade union' means trade union of workers or employers formed and registered under Chapter XIII of this Act and shall include a federation of trade unions

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Trade union with workers from different establishments : 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]*

Protection given to an officer of a trade union : 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 (1997) 49 DLR 537].*

(xvi) 'federation of trade unions' means a federation of trade unions registered under Chapter XIII ;

(xvii) 'discharge' means the termination of services of a worker by the employer for reasons of physical or mental incapacity or continued ill-health of a worker ;

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Physical incapacity : An employee even after availing 211 days leave out of 365 days of the year applied for another one month's leave on identical medical ground, it cannot be said that even then the employee should be treated by the employer as physically fit to serve the employer. *[Mohsen Jute Molls Ltd. Vs. Labour Court, Khulna (1999) 4 BLC (AD) 172].*

(xviii) 'go-slow' means an organised, deliberate and purposeful slowing down of normal output of work by a body of workers in a concerted manner, and which is not due to any mechanical defect, breakdown of machinery, failure or defect in power supply or in the supply of normal material and spare parts of machinery ;

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Go slow' in comparison to strike- *Held* **:** Go slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontented or disgruntled workmen sometimes resort to. It would not be far wrong to call this dishonest. For, while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, "go slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off, during the "go slow" the machinery is kept going on a

reduced speed which is of ten extremely damaging to the machinery parts. For all these reasons, "go slow" has always been considered a serious type of misconduct. *[Bharat Sugar Mills Ltd. Vs Jai Singh, (1962) 3 SCR 684= (1962) 2 LLJ 466].*

(xix) 'day' means a period of twenty-four hours beginning at 6.00 a.m. ;

(xxi) 'shop' means any premises used wholly or in part for the whole-sale or retail sale of commodities or articles either for cash or credit, or where services are rendered to customers, and includes an office, store-room, godown, warehouse or workplace, whether in the same premises or elsewhere, mainly used in connection with such trade or business, and such other premises as the Government may, by notification in the official Gazette, declare to be a shop for the purpose of this Act ;

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

(xxiii) 'seamen' means any person forming part of the crew of any ship, but does not include the master of the ship ;

(xxiv) 'executive committee' in relation to a trade union means the body of persons, by whatever name called, to which the management of the affairs of a trade union is entrusted by its constitution:

(xxv) 'settlement' means a settlement arrived at in the course of a conciliation proceeding, and includes an agreement between an employer and his worker arrived at otherwise than in the course of any conciliation proceedings, where such agreement is in writing, has been signed by the parties thereto and a copy thereof has been sent to the Director of Labour and the Conciliator ;

NOTES/COMMENTS/PRECEDENTS

Giving benefit to some and denying the same to others : 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].*

Settlement arrived at by agreement signed by the Employer and the Employees binding upon the parties and is enforceable without any approval of the Government. *[Carew and Co. Bangladesh Ltd. Vs. Chairman, Khulna Labour Court &others 5 MLR 1999 (AD) (Vol-IV) 187].*

When the agreement was signed by both the parties it became settlement within the meaning of section 2 (XXIV) of the Industrial Relations Ordinance, 1969 where approval of the Government is not necessary only sending the agreement to the Government will be the compliance of such section. *[Carew and Co. Bangladesh Ltd. Vs. Chairman, Khulna Labour Court and ors* 5 BLC (AD) (2000) *132]*

(xxvi) 'river transport service' means a service carrying passengers or goods by river in vessels for hire or reward ;

(xxvii) 'vessel' means may mechanically propelled vessel used or capable of being used for the purpose of river transport and includes a tug or flat or barge ;

(xxviii) 'administrative worker' means a person who is employed on a whole-time basis in, or in relation to, any newspaper establishment in any capacity other than that of a working journalist or a newspaper press worker ;

(xxix) 'shift' means, where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such periods ;

(xxx) 'dependant', in relation to a deceased worker, means any of the following relatives, namely:

(a) a widow, minor child, unmarried daughter, or a widowed mother; and

(b) if wholly or partly dependant on the earnings of the worker at the time of his death, a widower, father or widowed mother, a daughter if unmarried or minor or widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, a minor child of a deceased daughter where no father of the child is alive or, where no parent of the worker is alive, a paternal grandparent and illegitimate son or illegitimate unmarried daughter ;

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Dependent: After the amendment of the clause by Act 15 of 1937 the interpretation of the word "dependent" is widened on account of inclusion of some more persons. Under the old clause the actual dependence on the deceased workman was not the criterion for judging whether compensation should be paid to the persons mentioned in the definition or to any of them. The mere proof of the specified relationship was sufficient to entitle the person concerned to compensation. *[Mst. Moti Bai Vs. Agent, N. W. Rly 33 P.L.R. 126.= A I R 1932 Lah. 12].* The present sub-clause divides the dependents into two groups.

The following relatives become dependents without any further qualification: (1) Wife, (2) Minor legitimate son, (3) Unmarried legitimate daughter, (4) Widowed mother.

The question of dependency on the earnings of the workman at the time of his death does not arise in their case. The only thing that they have to establish under the Act is the specified relation.

The following relatives of a deceased workman cannot claim compensation by merely proving the specified relationship. They have to prove that they were wholly or in part dependent on the earnings of the workman at the time of his death: (1) A widower, (2) A parent other than a widowed mother, (3) A minor illegitimate son, (4) An unmarried illegitimate daughter, (5) A daughter legitimate or illegitimate if married and a minor or if widowed, (6) A minor brother, (7) An unmarried or widowed sister, (8) A widowed daughter-in-law, (9) A minor child of a deceased son, (10) A minor son of a deceased daughter, (11) Where no parent of the child is alive or where the parent of the workman is alive, a paternal grand-parent.

The definition of the word "dependent" as given in section 2 (1) (d) is exhaustive. *[Jamadar Munshiram, in the matter of 32 P.L.R. 341= A I R 1931 Lah. 399= 131 I.C. 234].* The term dependent as defined in this clause includes certain near relatives. But certain relatives (for

instance a major son) are expressly excluded. Hence it follows that particular persons who do not or may not include certain heirs to the deceased are entitled to compensation. *[M.T. Hanifa Bai Vs. Korand Port Trust, A I R 1929 Sind 177= 117 I.C. 151 23 S.L.R. 359].*

Dependency : The question of dependency is a question of fact which must be decided in relation to the circumstances of particular case. It is by no means sufficient to establish a condition of dependency as a fact. *[Ibid.]* It cannot be presumed from legal obligation to support. *[Petrs Vs. Overhead, C.a.B. 27, W.C.C. 190].* Dependency under the Act means dependency at the time of death of the deceased workman. Persons who are dependent on the earnings of the workman at the time of his death are dependents within the meaning of section 2(1) (d) and are entitled to compensation and are not affected by the subsequent events. Consequently the right of the widow of the deceased workman to compensation is not affected by the mere fact that she remarried after her husband's death. *[Khulna Electric Supply Corporation Ltd. Vs. Bhodu Sardar, 68 C.L.J. 467= 42 C.W. N. 516].*

Whether a person is partially dependent on the earnings of a deceased workman is a matter essentially of fact to be decided in the circumstances of each case. *[Ponnuswamy Gounder Vs. Rangswamy, A I R 1953 R Mad. 516= (1953) 1 M.L.J. 684].*

Widow : The right of the widow of the deceased workman to compensation is not affected by the mere fact that she remarried after her husband's death. *[Khulna Electric Supply Corporation Ltd. Vs. Bhodu Sardar, 68 C.L.J. 467= 42 C.W. N. 516].*

Posthumous child : The rule in *Villar Vs. Gillbey [(1907) A.C. 139]* that child en ventre sa mere shall be deemed to have been born where it is for its benefit that it should be born, applies in the cases of posthumous child and consequently such child is a dependent within the Act. *[Williams Vs. Ocean Coal Co. Ltd., (1907) 2 K.B. 422= 76 J.K.B. 1073= 23 T.L.R. 584= 9 W.CC. 44 C.A.*

Widowed mother : For a husband of a deceased workman to be adjudged a dependent he must establish that he was wholly or in part dependent on the earnings of his wife at the time of her death.

Parent : The expression "parent other than a widowed mother" in clause (d) (ii) to section 2 (1) does not include "a widowed step-mother". *[Manda Debi Vs. Bengal Bone Mill,A I R 1940 Cal. 285= 44 C.W.N. 471].*

Father : When a father of deceased workman claims compensation, he must establish that he was wholly or in part dependent on the earning of his son at the time of his death. *[Yekhal Venkataramayya Vs. Achugatla Baba Sahib, 55 L.W. 206= (1942) 1 M.L.J. 406].* The question whether the mother and the father were dependent partially on the contribution from the deceased workman at the time of his death is a question of fact in each case. Where the father and his deceased son paid their wages to the family purse to maintain themselves and some other relatives, each one was to some extent dependent on the wages of the father. Hence mother and the father were partial dependants within the meaning of section 2(1) (d) and entitled to some portion of the compensation money. *[42 C.W.N. 516= 68 C.L.J. 467].* When the earnings of the deceased workman far from being an asset to the family were not sufficient to maintain him and the father had to spend considerable portions of his earnings on the maintenance of his deceased son, the father not being dependent wholly or partly on the earnings of the deceased workman was not a dependent within the meaning of the definition in section 2(1) (d). *[Proprietor, St. Joseph's Automobiles & Mechanical Works, Tuticorin Vs. Maria Siosai Pillai,A I R 1953 Mad. 206= 1952 M.L.J. 436].*

Brother : The expression "minor brother" in section 2 (1) (d) does not include a minor half-brother. The term brother in its primary sense means a brother of the whole blood and it is only in a secondary and extended sense that the term is deemed to include a brother of the half blood.

Whether the term is to be taken in its primary or secondary sense depends in each case upon the context in which it is found. *[Maung Kyan, In re, 1931 Rang. 173= 131 I.C. 734].* The terms "minor brother" and "unmarried sister" which occur in the definition of expression "dependent" in clause (d), sub-section (1), section 2 of the Act include such brother and sister of the half blood. *[Kartar Sing, In re, A I R 1931 Lah. 752 (2)= 131 I.C. 734].*

Unmarried sister.: A widowed sister who has not remarried does fall within the definition of "dependent" in the Workmen's Compensation Act. *[Mst. Moti Bai Vs. Agent, N.W. Rly., 1932 A I R Lah. 1= 134 I.C. 108= 33 P.L.R. 126.]* The words "unmarried sister" in section 2 (1) (d) include a widowed sister. *[Shansbai Vs. Daya Ram, 1934 Lah. (115 (1)= 153 I.C. 458].* Ordinarily the expression "unmarried" is used in the first sense, that is to say, it implies a person who has never been married ; at the same time the expression is susceptible of the second meaning as well, that is, unmarried at the time or without having a husband or wife at the time rather than without ever having been married. *[Mst. Moti Bai Vs. Agent, N.W. Rly., A I R 1932 Lah. 1= 134 I.C. 108= 33 P.L.R. 126.]*

(xxxi) 'establishment' means any shop, commercial establishment, industrial establishment or premises in which workers are employed for the purpose of carrying on any industry ;

(xxxii) 'group of establishments' means more than one establishment under different employers, carrying on the same, similar or identical industry ;

***(xxxiii) 'regulation'* means** regulation made under this Act ;

(xxxiv) 'maternity benefit' means the sum of money payable under the provisions of Chapter IV to a woman worker with leave;

(xxxv) 'prime mover' means any engine, motor, or other appliance which generates or otherwise provides power;

(xxxvi) 'adult' means a person who has completed eighteenth year of age ;

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Adult : The word 'adult' bore different meaning in different laws. In the Factories Act, 1965. Adult meant a person who has completed the age of 18 years. In the Workmen's Compensation Act, 1923 the word 'adult' meant person who has completed the age of 15 years. In the Minimum Wages Ordinance, 1961 the word bore the same meaning as in the Factories Act, 1965. The Tea Plantation Labour Ordinance defined adult to be a person who has completed his 17th year.

(xxxvii) 'Code of Criminal Procedure' means Code of Criminal Procedure, 1898 (V of 1898)

(xxxviii) 'closed' means not open for service to any customer or to conduct any business;

(xxxix) 'dismissal' means the termination of services of a worker by the employer for misconduct ;

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Meaning of dismissal : Held that the two expressions namely 'dismissed on the ground of misconduct' and termination of service on the ground of misconduct have the same connotation. The word 'dismissal in the ordinary meaning as found in the Concise Oxford Dictionary connotes dishonourably removed or sent away from service or office while the expression 'terminable on the ground of misconduct' carries the same meaning and stigma *[Abdul Jalil Vs. Bangladesh Steel & Engineering Corporation (1991) 11 BLD 35].*

(xl) 'plantation' means any estate which is maintained for the purpose of growing rubber, coffee or tea and includes agriculture farms other than experimental or research farm, employing ten or more persons ;

(xli) 'commercial establishment' means an establishment in which the business of advertising, commission or forwarding is conducted or which is a commercial agency, and includes-

(a) a clerical department of a factory or of any industrial or commercial undertaking,

(b) the office establishment of a person who for the purpose of fulfilling a contract with any commercial establishment or industrial establishment employs workers,

(c) a unit of a joint-stock company,

(d) an insurance company, a banking company or a bank,

(e) a broker's office

(f) a stock exchange,

(g) a club, a hotel or a restaurant or an eating house,

(h) a cinema or theatre,

(i) such other establishment or class thereof as the Government may, by notification in the official Gazette, declare to be a commercial establishment for the purpose of this Act ;

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Sonali Bank- Commercial establishment : Sonali Bank is a creature of Statute namely, P.O. No. 26 of 1972, which has made it a juristic person. It has its own identity, it functions as per the said statute, so it cannot be said to be an office under the Government. *[Managing Director, Sonali Bank and others Vs. Md. Jahangir Kabir Molla. (1996) 48 DLR 396]*

Establishments held not to be commercial establishments :

Rajuk : *Held* that *Dhaka Improvement Trust-* D.I.T.(presently named Rajuk) is neither Commercial establishment nor an industrial establishment as defined in the Employment of Labour (Standing Orders) Act, 1965 and as such the provisions of the said Act is not applicable

upon the employees of Trust.*[Chairman, D I T Vs. Second Labour Court 1981 BLD (AD) 462= (1992) 34 DLR (AD) 37].*

Bus : ***Held :*** Section 1 of the Employment of Labour (Standing Orders) Act lays down that the Act shall apply to industrial establishment in which 5 or more workers are employed. Having regard to the definition of commercial and industrial establishment a bus cannot be termed as a commercial or industrial establishment within the meaning of section 2 of the Act.*[Md. Idris Khan Vs. First Labour Court, Dhaka. (1976) 28 DLR 473= (1977) 29 DLR 371].*

(xLii) 'rule' means rule made under this Act ;

(xLiii) 'illegal strike' means a strike declared, commenced or continued otherwise than in accordance with the provisions of Chapter XIV ;

(xLiv) 'illegal lock-out' means a lock-out declared, commenced or continued otherwise than in accordance with the provisions of Chapter XIV ;

(xlv) 'wages' means all remuneration, expressed in terms of money or capable of being so expressed, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a worker in respect of his employment or of work done in such employment, and includes any other additional remuneration of the nature aforesaid which would be so payable, but does not include—

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

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

(c) any traveling allowance on the value of any travelling concession,

(d) any sum paid to the worker to defray special expenses entitled on him by the nature of his employment ;

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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].*

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]*

(xLvi) 'arbitrator' means a person appointed as such under Chapter XIV ;

(xlvii) 'Chief Inspector', Deputy Chief Inspector', 'Assistant Chief Inspector' and 'Inspector' shall respectively mean persons so appointed under Chapter XX ;

(xiviii) 'Director of Labour', 'Additional Director of Labour', 'Joint Director of Labour', Deputy Director of Labour' and 'Assistant Director of Labour' shall mean persons so appointed under Chapter XX ;

(xLix) 'employer', in relation to an establishment, means any person who employs workers therein and includes—

(a) a heir, successor, assign, guardian or legal representative, as the case may be, or such person ;

(b) any manager or person responsible for the management and control of the establishment,

(c) in relation to an establishment run by or under the authority of the Government, the authority appointed in this behalf or where no authority is so appointed, the head of the Ministry or Division concerned,

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

(e) in relation to any other establishment, the owner of such establishment and every director, manager, secretary, agent or other officer or person concerned with the management of the affairs thereof, and

(f) in relation to an establishment under the occupation of any person other than the owner, the person in occupation of that establishment or in ultimate control over the affairs of the establishment and the manager or other person concerned with the management of the affairs thereof ;

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Who is an employer : The question as to who is an employer is a question of fact depending on particulars of each case. In the case of *Pollard Vs. Goole & Hull Steam Towing Co., Ltd., [(1910) 3 B.W.C.C. 360 C.A.]* a workman was drowned while mooring a ship of respondents, he was paid by a Stevedore who worked for respondents and other firms. Respondents contended that he was employed by the Stevedore and not by them. The Stevedore gave evidence that the money was paid through him merely for convenience of respondents. The Country Judge held that the man was employed directly by respondents and not by the Stevedore. It was held that it was a question of fact and the Court could not interfere as there was some evidence to support

the decision. In *Reed Vs. Smith, Wilkinson & Co., [(1910) 3 B.W.C.C.]* respondents were owners of a threshing machine which they let out on hire to farmers. They were bound by statute to have three men to attend the machine, two to look after the engine and third as a "roadman". At farms the roadman acted as assistant in the threshing, being paid for this by the farmer, and not by respondents. While engaged in threshing, applicant, the "roadman" was injured and claimed compensation from respondents, who denied their liability, stating the farmer was employer. It was held that the Country Court Judge had decided a question of fact and there was evidence to support his decision. Similarly, in the case of *Bagley Vs. Growesend Gas Co. [(1903) 16 B.W.C.C]* the applicant was a pupil at a sea training school learning the work of a stoker. By arrangement with the Gas Company the pupils visited the gas works for the purpose of learning trimming and staking coal, as part of their training, for which they received no remuneration. Subsequently the Gas Company having difficulty in obtaining labor made by arrangement with the school whereby the work required was done by the pupils. Boys were selected by the school authorities and marched to work, supervised and marched back by the school instructor. The Gas Company paid each boy 6 d. an hour. During their employment applicant was injured and claimed compensation. He said that he thought this employment was part of his training. The Country Court Judge found that this was not so, but the applicant was in the employment at the time of accident and under the control of the Gas Co. Upon this he made an award in favour of applicant against Gas Company. It was held that it was a question of fact upon which there was evidence to support the finding and there was no misdirection.

Independent contractor : An independent contractor is one who undertakes to produce a given result without being subject to the orders of his employer as regards the manner in which the work is to be done. He cannot be overlooked and directed in regard to the manner of doing his work. Such a person is not a "workman" within the meaning of the Act. A person having liberty as to hours of work may be a workman under a contract of service. In Lewis Vs. Stanbridge *[(1913) 6 B.W.C.C. 568 C.A.]* a decorator agreed with a builder to prepare a house, being erected by the latter. The decorator was to have complete liberty as to hours of work. He made out a bill for the work done by him on the payment of which he gave a receipt. On a claim for compensation for injury by accident it was held that the decorator was under a contract of service with the builder. Similarly a person receiving payment by tonnage or at a piece rate may not be an independent contractor. Method of remuneration is no test for determining whether a person is an independent contractor or a workman under contract of service. *[Evans Vs. Penwy Mt. Dines Silica Brick Co. (1901) 18 T.L.R. 58= 4 W.C.C. 101 C.A.].* A quarryman was employed under a written agreement that he should be paid a certain sum per ton of material worked, his employers, supplying the necessary tool. He engaged and discharged men to work under him. He determined his employment, but resumed it again upon his employers assuring him that he should be compensated in case he was injured by accident. It was held that there was no evidence that he was a workman within English Workmen's Compensation Act, 1897 (C. 37) and not an independent contractor. *[Ibid.]*

(L) 'machinery' includes prime movers, transmission machinery and other appliances whereby power is generated, transformed, transmitted or applied;

(Li) 'vehicle' means any mechanically propelled vehicle, used or capable of being used for the purpose of road transport and includes a trolley vehicle and a trailer ;

(Lii) 'collective bargaining agent', in relation to an establishment or group of establishments, means the trade union of workers or federation of trade unions which, under Chapter XIII, is the agent of the workers in the establishment, or group of establishments in the matter of collective bargaining ;

(Liii) 'relay' *means,* where work of the same kinds is carried out by two or more sets of workers working during different periods of the day, each of such sets ;

(Liv) 'registered medical practitioner' means any person registered as such under the Medical and Dental Council Act, 1980 (XVI of 1980) ;

(Lv) 'registered trade union' means a trade union registered under Chapter XIII;

(Lvi) 'award' means the determination by an arbitrator, or a Labour Court, or the Tribunal of any industrial dispute or any matter relating thereto and includes an interim award;

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

(Lviii) 'lay-off' means the failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stock or the break-down of machinery to give employment to a worker ;

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Go slow' in comparison to strike- *Held* : Go slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontended or disgruntled workmen sometimes resort to. It would not be far wrong to call this dishonest. For, while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, "go slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off, during the "go slow" the machinery is kept going on a reduced speed which is often extremely damaging to the machinery parts. For all these reasons, "go slow" has always been considered a serious type of misconduct. *[Bharat Sugar Mills Ltd. Vs Jai Singh, (1962) 3 SCR 684= (1962) 2 LLJ 466]*

(Lix) 'power' means electrical energy and any other form of energy which is mechanically transmitted and is not generated by human or animal agency ;

(lx) 'industry' means any business, trade, manufacture, calling, service, employment or occupation ;

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"Industry"- Its meaning- Whether Cholera Research Laboratory and Kumudini Hospital did come within the purview of the Industrial Relations Ordinance. If a hospital is run as business in commercial way there may be found element of industry. The Cholera Research Laboratory has been financed by donations of other countries and the services rendered are free and it is a non-profit making charitable organisation whose dominant purpose is to conduct research in cholera in order to eradicate the same. The argument that since this is a public utility services it automatically comes under the Industrial Relations Ordinance as an industry is a fallacious one. It must be first an industry as defined in Industrial Relations Ordinance and unless it comes within the meaning of 'industry" the protection that has been afforded against strike and lockout in public utility services is not available as contemplated in section 33. The fallacy of the argument can be revealed by demonstrating that electricity, gas, water by itself is not industry. The opinion of the Labour Appellate Tribunal that the definition of industry in Industrial Relations Ordinance is wider does not appear to be sound. These institutions are not industry within the meaning of Industrial Relations Ordinance. *[Kumudini Hospital Vs. Kumudini Hospital Karmachari Union & others(1991) 43 DLR 655]*

Research centres- whether industries : In an Indian decision it has been held that research centres and institutes run by the members of particular industries, such as the textile industry or the tea industry, for the purpose of research with a view to improvement in the quality of production leading to increase in profits, are "industry's, and the employees working therein are entitled to the benefits of the Industrial Acts.....A research institute having for its purpose the carrying on of research in connection with the textile industry with the object of improving the method of production leading to larger profits is "industry"; such an establishment has little in common with a purely educational institution. *[Ahmedabad Textile industry's Research Association vs. State of Bombay, A.I.R. 1961 S.C. 484 - 1961-2 S.C.R. 480]*

'Industry' as has been held is (a) Where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical); (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious, but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale prasad or food), prima facie there is an 'industry' in that enterprise. (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector. (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. (d) If the Organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking *[Bangalore Water Supply &Sewerage Board Vs. R. Rajappa & others 1978 AIR 548 = 1978 SCR (3) 207]*

Family Planning Association- whether an establishment : The aims and object of Bangladesh Family Planning Association is to render services to the people as regard matters relating to control of population and allied matters. The aims and objects of the 'samity' are no doubt services but mere rendering to service does not make an 'organisation' or 'establishment' and 'industry' as defined in the Ordinance. *[Bangladesh Paribar Parikalpana Samity Vs. Bangladesh Paribar Parikalpana Samity Karmachari Union (2000) 20 BLD (HCD) 261]*

The workers employed by the samity are not 'Workers' as defined in section 2 (XXVIII) of the Ordinance and as such merely because of forming a union by them they cannot have the union so formed registered as a Trade Union the certificate that was granted in respect of Union that was formed by the samity cannot be said to have been issued legally. *[Bangladesh Paribar Parikalpana Samity Vs Bangladesh Paribar Parikalpana Samity Karmachari Union and others. 52 DLR (AD) (2000) 151]*

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Atomic Energy Commission : Atomic Energy Commission being a research-oriented institution the law does not permit registration of the trade union. But the registration was given mistakenly on the representation of the sponsors of the petitioner union, who represented them as "worker" and "workmen". *[Bangladesh Anablic Shakti Commission Karmachari Union Vs Labour Appellate Tribunal. 54 DLR (2002) 430]*

Nature of work : The kind of works done by the Pesh Imam, Muazins, teachers of School and College and staff members of Medical Centre and Hospital run by the factory management cannot be equated with the works done by the workers or workmen in the factory. *[Amir Hossain Bhuiya (Md.) Vs. Harisul Haq Bhuiya and others. 52 DLR (AD) (2000) 267].*

Section 2 (XXVII) of the Industrial Relations Ordinance puts a bar on a security staff to be treated as a worker and as such the petitioner after his transfer and change of status as a Darowan cannot be treated as a worker. *[Matiur Rahman (Md.) Vs People's Republic of Bangladesh and others 55 DLR (2003) 26].*

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

(a) road transport service or railway transport service,

(b) river transport service,

(c) airlines,

(d) dock, wharf or jetty,

(e) mine, quarry, gas-field or oil-field,

(f) plantation,

(g) factory,

(h) newspaper establishment ;

(i) contractor's or sub-contractor's establishment for the purpose of construction, reconstruction, repair, alteration or demolition of any building, road, tunnel, drain, canal or bridge or ship-breaking or rebuilding or loading or unloading of cargo into vessel or carrying thereof ;

(Lxii) '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 ;

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Mode of settlement of industrial dispute : The mode of settlement of Industrial dispute has been described in sections 26-33 of the Industrial Relations Ordinance. Section 26 provides for raising of dispute and it casts a duty on the other side to arrange for bipartite talks within ten days of the receipt of the demands. If the parties reach a settlement on the issues discussed, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded to the Conciliator. A conciliator is a person appointed by the Government to conciliate into the disputes. According to section 27A Where the parties to an industrial dispute fail to reach a settlement by negotiation under section 26, any of them may report to the Conciliator that the negotiations have failed and request him in writing to conciliate in the dispute and the Conciliator shall, on receipt of such request, proceed to conciliate in the dispute. Section 28 provides for notice of strike or lock-out. If the Conciliator fails to settle the dispute within ten days from the date of receipt of a request made under section 27A, the collective bargaining agent or the employer may, in accordance with the provisions of this Ordinance, serve on the other party to the dispute twenty-one days' notice of strike or lock-out, as the case may be. Conciliation, however may continue after notice of strike or lock-out. Section 29 lays down that where a party to an industrial dispute services a notice of strike or lock-out under section 28, it shall, simultaneously with the service of such notice, deliver a copy thereof to the Conciliator who shall proceed to conciliate or, as the case may be continue to conciliate in the dispute notwithstanding the notice of strike or lock-out

If the conciliation fails, the Conciliator, according to section 31 (1) shall try to persuade the parties to agree to refer the dispute to an arbitrator. In case the parties agree, they shall make a joint request in writing for reference of the dispute to an Arbitrator agreed upon by them. Sub-section (2) of the said section state that the Arbitrator to whom a dispute is referred may be a person borne on a panel to be maintained by the Government or any other person agreed upon by the parties. Sub-section (*3*) states that the Arbitrator shall give his 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 by the parties to the dispute. According to sub-section (4) after he has made an award, the Arbitrator shall forward copy thereof to the parties and to the Government who shall cause it to be published in the official Gazette. Sub-section (5) of the said section reads that the award of the Arbitrator shall be final and no appeal shall lie against it. It shall be valid for a period not exceeding two years, as may be fixed by the Arbitrator.

(Lxiii) 'child' means a person who has not completed his fourteenth year of age ;

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Child : The age of children is different in different labour laws. In the Factories Act, 1965 a Child has been defined as person who has not completed sixteenth year of age. In the Shops and Establishment Act, 1965 persons under twelve years of age are termed as children, In other labour laws viz., the Mines Act, 1923, the Children Pledging of Labour Act, 1933, the Children Act, 1938, the Employment of Children Rule, 1955, the Tea Plantation Labour Ordinance, 1962 etc. a child has been defined as a person under the age of fifteen years.

(Lxiv) 'Labour Court' means a Labour Court established under this Act ;

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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 u/s. 34 : 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]*

Civil Court's jurisdiction : 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]*

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.

Conversion of application u/s 213 to application u/s 33 : A person who is worker within the meaning of Section 2(XXVIII) of the Industrial Relation Ordinance, 1969 can maintain an application under section 34 of the Ordinance, 1969. On the other hand a worker before bringing an application under section 25 of the Employment of Labour (Standing Order) Act 1965 in the Labour Court shall have to comply with the requirements under section 25(1)(a)(b) of the Act. Since the provisions of these two laws operate in different contexts, the application under section 34 of Ordinance, 1969 cannot be converted into one under section 25 of the Act of 1965. *[Sabita Dutta (Mrs.) Vs. Manager, Cinema Palace, Chittagong and another 4 MLR 1999 (AD) (Vol-IV) 248].*

(Lxv) 'worker' means any person including an apprentice employed in any establishment or industry, either directly or through a contractor, to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include a person employed mainly in a managerial or administrative capacity ;

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Word "employed" -Ingredients of employment : The concept of employment involves three ingredients: (1) employer (2) employee and (3) the contract of employment. The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision. *[Chintaman Rao Vs. State of M.P., 1958 SCR 1340 = AIR 1958 SC 388 = (1958) 2 Cri LJ 803]*

The kind of works done by the Pesh Imam, Muazzins, teachers of School and College and staff members of Medical Centre and Hospital run by he factory management cannot be equated with the works done by the workers or workmen in the factory. *[Amir Hossain Bhuiya (Md.) Vs Harisul Haq Bhuiya and others. 52 DLR (AD) (2000) 267].*

Worker : The expression wages whether a factor of being worker : A person, in order to be a worker within the meaning of this section, need not necessarily receive wages *[State of Bombay Vs. Alisaheb Kashim Tamboli AIR 1955 Bom 209]*

Relationship of master and servant necessary : There is no abstract a prior test of the work control required for establishing a contract of service. The principal requirements of a contract of service is the right of the master "in some reasonable sense" to control the method of doing the work. The fact that the workmen have to work in the factory imply a certain amount of supervision by the management.

On the facts held that the work of stripping of tobacco was being done under the supervision of the management's clerk and at the end of the day, the clerk collected the stripped tobacco and noted the quantity of work done in the work sheet allotted to the worker. This is the positive evidence that the work of stripping stalks was done under the supervision of the management and there is no evidence to show that the other work in the premises was not done under the like supervision. Hence, persons employed were workers. *[V.P.Gopala Rao vs. Public Prosecutor, (1969) 1 SCC 704, 705= (1969) 3 SCR 875= AIR 1970 SC 66.]*

Supervision of independent contractor : Certain persons were working at a factory within certain hours and were not at liberty to work at their home, their attendance was noted but they could come and go away any time they liked except that they had to come before mid-day and they could not remain after 7 p.m. The payment was made at piece-rates but the management could reject the bidis which did not come up to proper standard. The nature of work was such that supervision at all time was not required. The operation was simple and the control was exercised at the end of the day by rejecting the bidis which did not come up to proper standard. It was the right to supervise and not so much the mode in which it was exercised which was important. In view of these facts they were held to be workers under the Act. *[Birdhichand Sharma vs. First Civil Judge, Nagpur, AIR 1961 SC 644 = (1961) 3 SCR 161= (1961) 2 LLJ 86]*

Time-keepers: Held to be 'workers' : There are certain enactments which are more responsive to urgent social demands and also have more amenity and feasible impact on social vices by operative more directly to achieve social reforms and Factories Act is one of them. The definition of workman does not exclude employees entrusted with clerical duties and, therefore, it includes time-keepers. *[Works Manager, Central Railway Workshop Vs. Vishwanath AIR 1970 SC 488=,(1969) 3 SCC 95= (1970) 2 SCR 726.]*

Worker- scope of definition: The term "worker", contemplates not only a person to be employed in the work for productive purposes in any commercial or industrial establishment, but also embraces a person who on being employed does any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the term of employment be express or implied. *[Managing Director, Rupali Bank Limited vs. Md. Nazrul Islam Patwary and others.(1996) 48 DLR (AD) 62]*

Worker-performing clerical job- *held* worker : The definition of worker as given in the Employment of Labour (Standing Orders) Act has not named any employee in its concept. It is a general definition starting with the person employed in any shop and commercial establishment who is not employed in any managerial or administrative capacity is a worker. Bank has already been found to be a commercial establishment and the plaintiff being an Assistant Cashier was not doing managerial or administrative job, but he was doing a clerical work. Therefore the plaintiff can undoubtedly be said to be a worker within the meaning of worker as defined in the

Employment of Labour (Standing Orders) Act. *[Sonali Bank and another vs. Chandon Kumar Nandi. (1996) 48 DLR 330]*

Worker– occasionally performing managerial duty : *Held that* a Worker when on very solitary occasions doing the function of a Manager or an Administrative officer does not ceased to be a worker. The exceptions to the definition of the word 'worker' as given in the exception in clause (v) of section 2 clearly indicates that if a person who is mainly employed in a managerial or administrative capacity exercises functions mainly of managerial or administrative nature then and then only a worker shall be taken out of the purview of the definition of worker.*[Indo Pakistan Corporation Ltd. Vs. First Labour Court of East Pakistan 21 DLR 285]*

What is important in determining whether a person is a 'Worker` or not is to see the main nature of the Job done by him and not so much his designation. ..... The issue as to whether a person was worker or not has to be resolved in each case with reference to the evidence on record. *[Mujibur Rahman sarkar Vs. Labour Court, Khulna (1981) 31 DLR 301]*

Mere designation is not sufficient to indicate whether a person is worker : *Held*– (a) Mere designation is not sufficient to indicate whether a person is worker or an employer, but it is nature of the work showing the extent of his authority, which determines whether he is a worker or an employer.

A Person does not cease to be a worker only because he is employed in a Supervisory capacity. To be able to say that he is not a worker it has to be established further that he exercises functions mainly of a managerial or administrative nature. *[Dosta Text. Mills Vs. Sudhansu Bikash Nath (1988) 40 DLR (AD) 45 = BCR 1987 (AD) 454= 1988 BLD (AD) 66]* = Mere designation is not sufficient to indicate where a person is a 'worker' or an 'employer', but it is the nature of the work showing extent of his authority which determines whether he is a worker or employer.*[M/s. Pioneer Garments Ltd. Vs. Md. Abul Kalam Azad (2000) 20 BLD (AD) 62]*

The respondent was working as Chief Inspector of a Company and his nature of the work was to collect demands from different organizations and establishment and supply the guards. In view of the definition of workers and the recent decision of the Appellate Division it is clear that the respondent was a worker and the Labour Court acted within its jurisdiction in giving the termination benefit to the respondent. *[Gen. Manager, Shield Limited Vs. First Labour Court Dhaka and another. (1997) 2 BLC 366].*

Worker -nature of job to be proved by employer: In the absence of establishing by the management that the worker discharged duties or functions of the office of administrative nature or of managerial nature mere designation is not sufficient to show that a person is not a worker. *[Managing Director, Contiforms Forms Ltd. Vs. Labour Appellate Tribunal and others (1998) 50 DLR 476].*

The term "worker", contemplates not only a person to be employed in the work for productive purposes in any commercial or industrial establishment, but also embraces a person who on being employed does any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the term of employment be express or implied.*[Managing Director, Rupali Bank Limited vs. Md. Nazrul Islam Patwary and others (1996) 48 DLR (AD) 62]*

Persons held not to be workers

Foreman : Foreman who supervises and controls the work of his staff is not a worker. Fact that he is to do something with his own hand by way of checking or testing works done by other does not make his work Manual within the meaning of the definition of Worker. *[The workmen of Bata shoe Co. Vs. Bata Shoe Co. Ltd. 23 DLR (SC) 60]*

Pesh Imam : Pesh Imam of Mosque is not a Labour within the meaning of sec 2(V) of the Employment of Labour (Standing Order)s Act, 1965 *[Manager Shahjibazar Power Station Vs. Md. Golam Hossain (1981) 33 DLR 29]*

Teacher of school : A teacher in a secondary school set up by the Mill and his service is not regulated by the provisions of the Employment of Labour (Standing Orders) Act and the terms of his letter of appointment but by the service regulation made by the Board in 1979 the petitioner cannot be said to be a worker within the meaning of this Act. *[Md. Abdur Rahman Vs. Secretary, Ministry of Industries, & others. (1996) 1 BLC 453]*

Security Guard : ***Held-*** Considering the nature of work attached with the post of security guard of the Rupali Bank unhesitatingly it can be said that the plaintiff clearly comes within the definition of 'worker' provided in section 2(v) of the Employment of Labour (Standing Orders) Act 1965 but the civil suit is yet maintainable as the proviso to section 25(1) of the Act does not provide him any scope for lodging any complaint before the Labour Court as the order of termination of employment was not passed for his trade union activities or did not deprive the plaintiff for all the benefits specified in section 19 of the Act and as such the civil Court's jurisdiction is not ousted. *[Managing Director, Rupali Bank Ltd. vs. Nazrul Islam Patwary and others [1 BLC (AD) (1996) 159']*

Worker- whether can challenge the order of dismissal in civil suit : Held that if a person is a worker and dismissed from service under the Labour law, his suit in the civil court against the order of dismissal is not maintainable. *[Dosta Text. Mills Vs. S.B. Nath (1988) 40 DLR (AD) 45 = BCR 1987 (AD) 454= (1988) 8 BLD (AD) 66].*

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 preceded 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]*

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]*

(Lxvi) 'week' means a period of seven days beginning at 6.00 p.m. on Friday or such other night as may be fixed by the government in relation to an establishment in any area.

(Lxvii) 'total disablement' means such disablement, whether of a temporary or permanent nature, as incapacitates a worker for all work which he was capable of performing at the time of the accident resulting in such disablement ;

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

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Total disablement. : A total disablement means a disablement which incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement. The disablement must be of such a character that the person concerned is unable to do any work and not only the duties of the post which he was doing on the date of the accident. The works for all work which he was capable of performing at the time of accident in the clause should not be read as "for the work which he was performing at the time of accident". *[General Manager, G.I.P. Rly. Vs. Shankar, A I R 1950 Nag. 201 = 2 F.J.R. 127].* A total disablement may be either temporary or permanent total disablement is deemed to result from—(i) the permanent total loss of the sight of both eyes ; or (ii) from any combination of injuries specified in Schedule I if the aggregate percentage of the loss of earning capacity as specified in that schedule amounts to at least one hundred per cent. In Ball Vs. William Hunt and Sons. [1912 A.C. 496] Earl Loreburn L.C. pointed out the Distinction between in capacity for work and 'incapacity to work' and stated: "there is incapacity for work when a man has a physical defect which makes his labour unsaleable in any market reasonably accessible to him".

In the case of *All-India Construction Co. Vs. Munshi Ram [A I R 1931 Lah. 319= 134 I.C. 290]* where a crane driver in the construction of a bridge across the Indus lost two-thirds of the index and middle fingers of his right hand and the whole of the third and fourth fingers of the same hand but his thumb and hand were however left intact, it was held that as the loss of his earning capacity was at the most 25 per cent, there was no permanent disablement. In the case of General manager of the *G.I.P. Railway, Bombay Vs. Shankar, [A I R 1950 Nag. 201]* the workman sustained injuries as a result of collision between two engines resulting in loss of left eye and loss of teeth, it was held it was a case of permanent partial disablement and not one of permanent total disablement. It was further held that the workman was not entitled to receive any compensation on account of loss of teeth as an injury resulting from loss of teeth is not one of the injuries included in the list in Schedule I. *In E.I.Rly. Vs. Maurice Cecil Rayan, [A I R 1937 Cal. 526= 173 I.C. 655.]* the workman was found to be unfit for any post in any one of the numerous and varied categories of employment which they provide. It was therefore held that there was 100 per cent loss of earning capacity of the workman after the accident and he was entitled to compensation. In the case of *Tanach Vs. Brownieside Coal Co. [1929 A.C. 642= 98. L.J. P.C. 156]* though the workman was found physically able to resume his former work and earn his former wages, he was trying without success to obtain work as a minor or any other suitable employment. Their Lordships held that the workman had taken all reasonable steps to obtain work as a miner or in any other suitable employment, and his failure to obtain such work was mainly a consequence of that injury. In that view they held that the arbitrator was entitled to award him compensation on the basis of total incapacity.

(Lxviii) 'road transport service' means a service carrying passengers or goods by road in vehicles for hire or reward ;

(Lxix) 'newspaper' means any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as the Government may, by notification in the official Gazette, declare to be newspaper ;

(Lxx) 'newspaper press worker' means a person who is employed on a whole-time basis in any newspaper establishment for doing any printing work ;

(Lxxi) 'newspaper establishment' means an establishment for the printing, production or publication of any newspaper or for conducting any news agency or news or feature syndicate ;

(Lxxii) 'newspaper worker' means a working journalist, an administrative worker or a newspaper press worker ;

(Lxxiii) 'conciliator' means a person appointed as such under Chapter XIV ;

(Lxxvi) 'conciliation proceedings' means any proceedings before a conciliator;

(Lxxv) 'serious bodily injury' means any injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to any limb, or the permanent loss of or injury of the sight or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding twenty days ;

(Lxxvi) 'decision' , in relation to a Labour Court, means any decision or order of that Court, other than an award, finally disposing of a case ;

(Lxxvii) 'scheme' means scheme made under this Act ;

CHAPTER II

CONDITIONS OF SERVICE AND EMPLOYMENT

Law on conditions of service- history of : Since there was no effective law for regulating the service conditions of workers and the conditions of workers were governed by contracts either express or implied and there was no uniformity in service conditions of the workers of same trade and the situation very often led to frictions between the employers and workmen. In order to make a law defining precisely the conditions of employment, a new law on the subject named *'The Industrial Employment (Standing Orders) Act'* was passed in 1946. The Act required all employers of industrial establishments formally to define the conditions of employment under them.

The Industrial Employment (Standing Orders) Act, 1946 was repealed in 1960 by the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960 which brought the commercial establishments other than industries under the ambit of the Ordinance. The said Ordinance was repealed in 1965 by the Employment of Labour (Standing Orders) Act, 1965 (Act No VIII of 1965). The Employment of Labour (standing Orders) Act, 1965 provided for facilities to be given to the workers as minimum. These are to be compulsorily given to workers of every shop, commercial and industrial establishments. The employers may, however give more facilities to workers and may make own service rules subject to approval by the Inspector. The Employment of Labour (S.O.)Act, 1965 also provided for adequate inspection as per the provisions of the ILO conventions. Chapter II of the Bangladesh Labour Act contains virtually the same provisions of The Employment of Labour (S.O.)Act, 1965 with a slight change.

3. Conditions of employment : (1) In every establishment employment of workers and other matters incidental thereto shall be regulated in accordance with the provisions of this Chapter:

Provided that any establishment may have its own rules regulating employment of workers, but no such rules shall be less favourable to any worker than the provisions of this Chapter.

(2) The service rules in any establishment as mentioned in the proviso to sub-section (1) shall be submitted for approval by the employer of such establishment to the Chief Inspector who shall, within six months of the receipt thereof make such order therein as he deems fit.

(3) No service rules as mentioned in sub-section (2) shall be put into effect except with the approval of the Chief Inspector.

(4) Any person aggrieved by the order of the Chief Inspector may, within thirty days of the receipt of the order, may prefer appeal to the Government and the order of the Government on such appeal shall be final.

(5) Nothing provided in sub-section (2) shall apply to an establishment which is owned by or under management or control the Government.

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Service Regulation-must not be less favourable to a worker : Sonali Bank may have its Service Regulations but that will not take it outside the ambit of the Employment of Labour (Standing Orders) Act, 1965. *[Managing Director, Sonali Bank and 2 others vs. Md. Jahangir Kabir Molla. (1996) 48 DLR 395]*

Own service Rule- right of employer for framing of : The Corporation has a right to frame its own Rules concerning the condition of employment of workers as provided under the Proviso to section 3 of the Act- Rules not found invalid- Labour Court travelled beyond the pleading of the party. *[Brigadier Chowdhury Khalequzzman Vs. Sk. Shahabuddin (1990) 42 DLR 293]*

Classification by Service Rule : The classification of officers and other employees as given in schedule I of the Sonali Bank Employees Service Regulations, 1981 is nothing but an internal agreement made by the Bank for staff management for the purpose of their internal administration only. This classification made in the schedule has nothing to do with the definition of worker. *[Sonali Bank and another Vs. Chandon Kumar Nandi. (1996) 48 DLR 330]*

A service regulation, even if a statutory one, cannot exclude or supersede the Employment of Labour (Standing Orders) Act. The FDC (Film Development Corporation) may have its own Service Regulations but it cannot be beyond the ambit of Employment of Labour (Standing Orders) Act. If any provision of the Service Regulations of the FDC is less favourable to the express provision of the Standing Orders Act that provision, is *void ab initio. [Bangladesh Film Development Corporation vs. Chairman, 1st Labour Court and others (1997) 49 DLR 396]*

4. Classification of workers and period probation : (1) Workers employed in any establishment shall be classified in any of the following classes according to the nature and condition of work; namely—

(a) apprentice,

(b) badli,

(c) casual,

(d) temporary,

(e) probationer, and

(f) permanent.

(2) A worker shall be called an apprentice if he is employed in an establishment as a learner, and is paid an allowance during the period of his training.

(3) A worker shall be called a badli if he is employed in an establishment in the post of a permanent worker or of a probationer during the period who is temporarily absent.

(4) A worker shall be called a casual worker if his employment in an establishment is of casual nature.

(5) A worker shall be called a temporary worker if he is employed in an establishment for work which is essentially of temporary nature, and is likely to be finished within a limited period.

(6) A worker shall be called a probationer if he is provisionally employed in an establishment to fill a permanent vacancy in a post and has not completed the period of his probation.

(7) A worker shall be called a permanent worker if he is employed in an establishment on a permanent basis or if he has satisfactorily completed the period of his probation in the establishment.

(8) The period of probation for a worker whose function is of clerical nature shall be six months and for other workers such period shall be three months:

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

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

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

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Temporary worker : The term "temporary worker" has a connotation which is different from popular and dictionary meaning of the term. Having regard to the language employed in the sub-section of the Act, a worker in order to be treated as permanent worker need not require appointment on permanent basis. It will be sufficient if he has satisfactorily completed the period of probation. *[Managing Director, Rupali Bank Limited and others Vs. Chairman, First Labour Court and others (1994) 46 DLR 143.]* It has been held in *Film Development Corporation Vs. Chairman Labour Court reported in (1997) 49 DLR 396* that the period of probation is for a particular period provided in the Standing Orders Act and cannot be extended unless in cases allowed by the Standing Orders Act.

Appointment on temporary basis : Appointment of employees on temporary basis cannot be termed as probationers inasmuch as the appointments are not given against any permanent or sanctioned post. In view of the continuos service rendered by the employees to the Bank, their service should be regularised as temporary employees, and they are entitled for absorption in permanent posts on preferential basis. *[Rupali Bank Ltd. Vs. The Chairman, Second Labour Court, Dhaka 22 BLD 2002 (HCD) 143]= [Rupali Bank Ltd. Vs. Chairman, Second Labour Court, Dhaka. 54 DLR (2002) 602]*

The respondent No. 2 was serving as security guard in the main installation of Meghna Petroleum Ltd at Chittagong continuously since 2-9-1989. The respondents are workers within the meaning of section 2(v) of the Act of 1965 and they have become permanent workers after expiry of 3 months from the date of appointment. Mere appointment on a temporary basis is not

the sole criteria for holding the worker as temporary one. Mere misquoting of section would not deprive the workers to get the benefits, if they are otherwise entitled to get the same under the law. *[Meghna Petroleum Ltd Vs Chairman, 1st Labour Court, Chittagong and another 10 BLC (AD) 2005) 114]*

Temporary worker- differs from dictionary meaning : The term 'temporary worker' has a connotation which is different from popular and dictionary meaning of the term. The term temporary worker as defined in section 2(s) of the Employment of Labour (Standing Order) Act, 1965 means 'workers' who has been engaged for work which is essentially of temporary nature and is likely to be finished within a limited period. *[Samir Malaker Vs. The Chairman, Divisional Labour Court. 22 BLD 2003 (HCD) 417]*

5. Letter of Appointment and Identity Card : No employer shall employ any worker without giving such worker a letter of appointment and every such employed worker shall be provided with an identity card with photograph.

6. Service book : (1) Every employer shall, at his own cost, provide a service book for every worker employed by him.

(2) Such service book shall be kept in the custody of the employer.

(3) Before employing a worker, the employer shall require from him the previous service book if the worker claims that he has been previously in employment under any other employer.

(4) If such worker has any service book, it shall be handed over to the new employer by him and shall be kept in the custody of the employer, for which a receipt shall be given to him.

(5) If such worker has no service book, a service book shall be provided under sub-section (1).

(6) If the worker desires to keep and maintain a duplicate copy of his service book, he may do it at his own cost.

(7) The employer shall hand over the service book to the worker on the termination of the workers' service with him.

(8) If the service book handed over to the worker or the duplicate thereof maintained by him is lost by the worker, the employer shall provide him with a duplicate service book at the cost of the worker.

(9) Nothing in this section shall apply to an apprentice, badli or casual worker."

7. Form of Service Book : (1) The service book shall be of such size and in such form as may be prescribed and a photograph of the worker shall be affixed to it.

(2) The service book shall contain the following particulars, namely:

(a) name of the worker, name of mother and father and address of the worker,

(in appropriate case name of husband/wife shall be written)

(b) date of birth,

(c) particulars necessary for identification,

(d) name and address of the employer under whom previously employed, if any,

(e) period of employment,

(f) occupation or designation,

(g) wages and allowance, if any,

(h) leave availed, and

(i) conduct of the worker.

8. Entries in the service book : The employer shall at the commencement of the employment and during the continuance of the same, make such entries therein from time to this as are required by this Chapter and the Rules and both the employer and the worker shall sign the entries as they are made.

9. Register of workers and supply of tickets and cards : (1) The employer of every establishment shall maintain a register of workers, to be available to the Inspector at all times during working hours.

(2) The register of workers shall contain the following :(a) the name and date of birth of each worker in the establishment ;

(b) date of appointment ;

(c) the nature of his work ;

(d) the periods of work fixed for him ;

(e) the intervals for rest and meals to which he is entitled ;

(f) the days of rest to which he is entitled ;

(g) the group, if any, in which he is included ;

(h) where his group works on shifts, the relay to which he is allotted ; and

(i) such other particulars as may be prescribed by rules;

(3) If the Inspector is of opinion that any muster roll or register maintained a part of the routine of an establishment gives in respect of all or any of the workers in the establishment the particulars required under sub-section (2), he may, by order in writing, direct that such muster roll or register shall, to the corresponding extent, be maintained in place of, and be treated as, the register of workers, in that establishment.

(4) The Government may make rules prescribing the form of the register of workers, the manner in which it shall be maintained and the period for which it shall be preserved.

(5) The employer shall supply Tickets or cards to every worker in the following manner:

(a) every permanent worker shall be provided with a permanent departmental ticket showing his number ;

(b) every badli worker shall be provided with a badli card on which shall be entered the day on which he has worked and which shall be surrendered if he obtains permanent employment ;

(c) every temporary worker shall be provided with a temporary ticket which shall be surrendered on his leaving the job or getting a permanent employment ;

(d) every casual worker shall be provided with a casual card on which shall be entered the days on which he has worked in the establishment ; and

(e) every apprentice shall be provided with an apprentice card which shall be surrendered if he obtains permanent employment or if he leaves his training.

10. Procedure for leave : (1) A worker who desires to obtain leave of absence shall apply to the employer for the same in writing stating his leave address therein.

(2) The employer or his authorised officer shall issue orders on the application within seven days of the application or two days prior to the commencement of leave applied for, whichever is earlier ;

Provided that, if , due to urgent reasons the leave applied for is to commence on the date of application or within three days thereof the order shall be given on the same day.

(3) If the leave asked for is granted, a leave pass shall be issued to the worker.

(4) If the leave asked for is refused or postponed, the fact of such refusal or postponement, and the reasons thereof shall be communicated to the worker before the date on which the leave was expected to be commenced. and shall also be recorded in a register to be maintained by the employer for the purpose.

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

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Application for extension of leave- mandatory provision : If a worker desires extension of leave he must apply for it before expiry of the leave. *[Chittagong Textile Mills Vs. Labour Court, Chittagong (1993) 45 DLR 159]*

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

When one's service is liable to be terminated on the happening of certain event it is obviously not automatically put to an end on the happening of such event but it requires a further act on the part of the authority to finally terminate his service on such ground.

Clause (d) of sub section (3) of section 17 of the Act provides that absence without leave for more than 10 days is a kind of misconduct and a worker may be dismissed or otherwise dealt with under sub-section (1) & (2) of section 17 read with section 18 of the Act. If absence without leave for more than 10 days is a misconduct and a proceeding is to be drawn up for dismissal or for other kind of punishment for such absence, it does not stand to reason that if there is such absence after leave has once been taken, there shall be automatic termination of service and no

opportunity should be given to explain his inability to return to join his service after the expiry of the leave. *[P W V Rowe Vs. Labour Court Chittagomg (1979) 31 DLR (AD) 119.]*

Absence without leave-employers right to terminate the service of a worker: Although under sub-section (3) of section 5 of the Employment of Labour (Standing Orders) Act of 1965 by mere overstay without leave beyond 10 days a worker does not *ipso facto* lose his lien to his appointment but the employer has a right to be satisfied on the explanation of the worker as to why he could not resume his duties within ten days from the expiry of his leave. This satisfaction of the employer is to be based upon such explanation as might be forthcoming from the worker concerned.*[Glaxo (Bangladesh) Ltd. Vs. Labour Court Chittagong (1980) 32 DLR 134]* In *Works Manager G E C Manufacturing Vs. Labour Court, Chittagong (1981) 1 BLD (HCD) 484* it has been held that employer may terminate the service by giving notice to worker to show as to why his lien should not be terminated or he can be proceeded for misconduct.

loss of lien- keeping the worker in badli list - such worker to be kept on the badli list only if there be a badli list--keeping of a badli list is not imperative under the law. *[The Manager, Mc Gregor & Balfour (Bangladesh) Ltd. Dhaka Vs. Chairman First Labour Court, Dhaka & others. 1983 BLD (AD) 8]*

11. Payment of wages for unavailed leave : If the services of a worker, to whom any annual leave is due, is dispensed with whether as a result of retrenchment, discharge, removal, dismissal, termination, retirement or by reason of his resignation before he has availed of any such leave, the employer shall pay his wages in lieu of the unavalied leave at the rate he is entitled to the payment of wages during the period of leave in accordance with the provisions of this Act.

12. Stoppage of work : (1) The employer may, at any time, in the event of fire, catastrophe, breakdown of machinery, or stoppage of power supply, epidemics, civil commotion or any other cause beyond his control, stop any section or sections of the establishment, wholly or partly for such period as the cause for such stoppage continues to exist.

(2) In the event of such stoppage occurring at any time beyond working hours, the employer shall notify the workers affected, by notice posted on the notice board in the section or department concerned or at a conspicuous place in such establishment before the work is due to begin next.

(3) In the notice mentioned in sub-section (2) direction shall be given indicating as to when the work will be resumed and whether such workers are to remain at their place of work at any time before the actual resumption.

(4) In the event of such stoppage occurring at any time during working hours, the workers affected shall be notified, as soon as practicable, in the manner specified in sub-section (2) indicating as to when the work will be resumed and whether such workers are to leave or remain at their place of work.

(5) In the case where workers have been directed to stay at their place of work following such stoppage, the workers so detained may not be paid for the period of such detention if it

does not exceed one hour, and the workers so detained shall be paid wages for the whole period of such detention if it exceeds one hour.

(6) If the period of stoppage of work does not exceed one working day, a worker, unless entitled to wages under sub-section (5), may not be paid any wages.

(7) If the period of stoppage of work continues for more than a working day, a worker affected, other than a casual or badli worker, shall be paid wages for day or day by which it will exceed one working day.

(8) If the period of stoppage of work extends beyond three working days, the workers may be laid-off in accordance with the provisions of section 16.

(9) A lay-off mentioned in sub-section (8) shall be effective from the day of stoppage of work and any wage paid to a worker for the first three days may be adjusted against the compensation payable for such subsequent layoff.

(10) For the piece-rate workers affected, their average daily earning in the previous month shall be taken to be the daily wage for the purpose of the sub-section

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Stoppage of work, layoff and retrenchment of workers by the employer: Stoppage of power supply is a valid ground for stoppage of work even if it is not beyond the control of the employer. The Labour Court acted without lawful authority in directing the petitioner to start work in the mill by getting electric supply after payment of arrears bills. There is no law prohibiting the employer from retrenching his workers during pendency of Labour dispute. *[Sultana Jute Mills Ltd. Vs. Chittagong, Labour Court. (1990) 42 DLR 340= (1990) 10 BLD (HCD) 211]*

Closure- right of employer : The right of the company to stop or discontinue the industry at any time if it is satisfied that there is no prospect to continue the industry is available to the company and the workers for that matter have no say in this regard and are not entitled to seek a direction from the Labour court to open the Industry by instituting a case under section 34 of the ordinance and the Labour court has no such power to make such order and the workers are left with no remedy except that as provided in section 9 of the Act during the period they were laid off. *[Virginia Tobacco Co. Vs. Labour Court (1994) 45 DLR 233].*

Employer's financial inability– ground for Layoff- Employer's financial inability is covered by the expression "other cause beyond his control" appearing in section 6 and his right to take action thereunder cannot be fettered with limitation. *[Virginia Tobacco Co. Vs. Labour Court (1994) 45 DLR 233].*

Closure and lock out- Distinction between : Whether closure is real or not is question of fact- The theoretical distinction between a closure and a lock-out is well-settled. In the case of a closure, the employer does not merely close down the place of business, but he closes the business itself, and so, the closure indicates the final and irrevocable termination of the business itself. Lock-out, on the other hand, indicates the closure of the place of business and not the closure of business itself. Experience of Industrial Tribunals shows that the lock-out is often, used by the employer as a weapon in his armoury to compel the employees to accept his proposals just as a strike is a weapon in the armoury of the employees to compel the employer to accept their demands. Though the distinction between the two concepts is thus clear in theory, in

actual practice it is not always easy to decide whether the act of closure really amounts to a closure properly so-called or whether it is a disguise for a lock-out. In dealing with this question, industrial adjudication has to take into account several relevant *[Express Newspapers (op) Ltd. Vs. Workers AIR 1963 SC 569 = (1962) 2 LLJ 22]*

Closure and lay off- Difference between : The closure is different from lay off. While in the case of closure the employer does not merely close down the place of business but the business itself indicating a final and irrevocable termination of the business itself, lock out is the purpose of compelling the employees to accept the proposals of the employer. The question whether a particular case would be closure or lay off would depend upon the facts of that case. The mere fact that it was hoped that the mills might be reopened would not negative their intention to close the mills on the date when they resolved to close down the mills. *[Hathissingh Manufacturing Co. Ltd., Ahmedabad Vs. Union of India, AIR 1960 SC 923= (1960) 2 LLJ 1]*

Closure real but *malafide* is nevertheless a closure : If no closure in the eye of law in spite of actual closure- As there was appreciable decline in the activities and business of the appellant it decided, by means of a resolution, to close down two local agencies About the same time the appellant also thought of retrenching its employees and decided to retrench ten of its employees. Statutory compensation had been paid to the retrenched workmen. An industrial dispute having arisen as a result of the said closure and retrenchment it was referred to the industrial tribunal for adjudication. As regards the question of closure the tribunal came to the conclusion that the closure was not bona fide, and it held that the legal consequence was that there was not a real closure. *[Tea Districts Labour Association Vs. Ex-Employees of Tea District Labour Association, AIR 1960 SC 315= (1960) 1 LLJ 802]*

Motive of employer cannot be enquired into in a closure : Once the Tribunal finds that an employer has closed its factory as matter of fact it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that because of the previous history of the dispute between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute.*[Indian Hume Pipe Co. Ltd. VS. Workmen,: AIR 1968 SC 1002 = (1968) 3 SCR]*

Entire establishment need not be closed at once-Closure can be in stages. The decision to close the Straw Board Mills was taken in March 1967 and the first batch of 98 workman was discharged on 7th May 1967 and it was finally closed on 28th July 1967. It cannot be said that termination of service of the workmen on 7th May was not in pursuance of closure because the mill was functioning till 28th July. When a decision to close is taken, it may not always be possible to close a concern at once. There is nothing wrong if the management retains some workers for exhausting the unused stock of raw-material. *[Workmen Vs. Straw Vs. Board Mfg. Co. Ltd. AIR 1974 SC 1132.= (1974) 4 SCC 601= (1974) 1 LLJ 499]*

13. Closure of establishment : (1) The employer may, in the event of an illegal strike by any section or department of any establishment, close down either wholly or partly such section or department and the workers participated in the illegal strike shall not be paid any wages for such closure.

(2) Where by reason of closing down of any section or department of any establishment under sub-section (1), any other section or department is so affected that it is not possible to keep that section or department open, that section or department may also be closed down and the workers affected thereby shall be paid wages as in the case of lay-off for a period of three days and thereafter they may not be paid any wages for such closure.

(3) The fact of such closure shall be notified by the employer, as soon as practicable, by notice posted on the notice board in the section or department concerned or at a conspicuous place in the establishment and the fact of resumption of work, following such closure, shall likewise be notified.

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Stoppage of work, layoff and retrenchment of workers by the employer: Stoppage of power supply is a valid ground for stoppage of work even if it is not beyond the control of the employer. The Labour Court acted without lawful authority in directing the petitioner to start work in the mill by getting electric supply after payment of arrears bills. There is no law prohibiting the employer from retrenching his workers during pendency of Labour dispute. *[Sultana Jute Mills Ltd. Vs. Chittagong, Labour Court. (1990) 42 DLR 340= (1990) 10 BLD (HCD) 211]*

Closure- right of employer : The right of the company to stop or discontinue the industry at any time if it is satisfied that there is no prospect to continue the industry is available to the company and the workers for that matter have no say in this regard and are not entitled to seek a direction from the Labour court to open the Industry by instituting a case under section 34 of the ordinance and the Labour court has no such power to make such order and the workers are left with no remedy except that as provided in section 9 of the Act during the period they were laid off. *[Virginia Tobacco Co. Vs. Labour Court (1994) 45 DLR 233].*

Employer's financial inability– ground for Layoff- Employer's financial inability is covered by the expression "other cause beyond his control" appearing in section 6 and his right to take action thereunder cannot be fettered with limitation. *[Virginia Tobacco Co. Vs. Labour Court (1994) 45 DLR 233].*

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Closure and lay off- Difference between : The closure is different from lay off. While in the case of closure the employer does not merely close down the place of business but the business itself indicating a final and irrevocable termination of the business itself, lock out is the purpose of compelling the employees to accept the proposals of the employer. The question whether a particular case would be closure or lay off would depend upon the facts of that case. The mere fact that it was hoped that the mills might be reopened would not negative their intention to close the mills on the date when they resolved to close down the mills. *[Hathissingh Manufacturing Co. Ltd.. Ahmedabad Vs. Union of India, AIR 1960 SC 923= (1960) 2 LLJ 1]*

Closure real but *malafide* is nevertheless a closure : If no closure in the eye of law in spite of actual closure- As there was appreciable decline in the activities and business of the appellant it decided, by means of a resolution, to close down two local agencies About the same time the appellant also thought of retrenching its employees and decided to retrench ten of its employees. Statutory compensation had been paid to the retrenched workmen. An industrial dispute having arisen as a result of the said closure and retrenchment it was referred to the industrial tribunal for adjudication. As regards the question of closure the tribunal came to the conclusion that the closure was not bona fide, and it held that the legal consequence was that there was not a real closure. *[Tea Districts Labour Association Vs. Ex-Employees of Tea District Labour Association, AIR 1960 SC 315= (1960) 1 LLJ 802]*

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14. Calculation of 'one year', 'six months' and 'wages' in certain cases : (1) For the purpose of this Chapter, a worker who, during the preceding twelve calendar months, has actually worked in an establishment for not less than two hundred and forty days and one hundred and twenty days as the case may be, shall be deemed to have completed 'one year' or 'six months' respectively of continuous service in the establishment.

(2) For the purpose of calculation of the number of days on which a worker actually worked in an establishment as mentioned in sub-section (1) the days on which-

(a) the days during which he has been laid-off ;

(b) he has been on leave with or without wages due to sickness or accident ;

(c) he has been on legal strike or out of work due to illegal lock-out ;

(d) in the case of female worker, she has been on maternity leave not exceeding sixteen weeks; shall be counted.

(3) For the purpose of calculation of compensation under section 19, 20 or 23 or wages under section 22, 23, 26 or 27 'wages' shall mean the average of the basic wages and dearness allowance and ad-hoc or interim pay, if any, paid to the worker during the period of twelve months immediately preceding the date of his retrenchment, dismissal, removal, discharge, retirement or termination of employment, as the case may be.

15. Restrictions of application of sections 12, 16, 17, and 18. : Notwithstanding anything contained elsewhere in this Chapter, the provisions of sections

12, 16, 17, and 18 shall not apply to any establishment in which five or more workers are not employed, or were not employed on any day of the preceding twelve months.

16. Right of laid-off workers for compensation : (1) Whenever a worker, other than a badli or casual worker, whose name is borne on the muster-rolls of an establishment and who has completed not less than one year of continuous service under the employer is laid-off, he shall be paid compensation by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene.

(2) The amount of compensation as mentioned in sub-section (1) shall be equal to half of the total of the basic wages and dearness allowance, and ad-hoc or interim pay, if any, and the full amount of housing allowance, if any, that would have been payable to him had he not been so laid-off.

(3) A badli worker whose name is borne on the muster-rolls of an establishment shall cease to be regarded as 'badli' for the purpose of this section, if he has completed one year of continuous service in the establishment.

(4) No worker shall, unless there is an agreement to the contrary between the worker and the employer, be entitled to the payment of compensation under this section for more than forty-five days during any calendar year.

(5) Notwithstanding anything contained in sub-section (4), if during a calender year a worker is laid-off for more than forty-five days, whether continuously or intermittently, and the lay-off after the expiry of the first forty-five days comprises period or periods of fifteen days or more, the worker shall, unless there is an agreement to the contrary between the worker and the employer, be paid compensation for all the days comprised in every subsequent period of lay-off for fifteen days or more.

(6) The amount of compensation as mentioned in sub-section (5) shall be equal to one-fourth of the total of the basic wages and dearness allowance, and ad-hoc or interim pay, if any, and the full amount of housing allowance, if any.

(7) In any case where, during a calender year, a worker is to be laid-off after the first forty-five days as aforesaid, for any continuous period of fifteen days or more, the employer may, instead of laying-off such a worker, retrench him under section 20.

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Lay off- right of the employer : The right of the company to stop or discontinue the industry at any time if it is satisfied that there is no prospect to continue the industry is available to the company and the workers for that matter have no say in this regard and are not entitled to seek a direction from the Labour court to open the Industry by instituting a case under section 34 of the ordinance and the Labour court has no such power to make such order and the workers are left with no remedy except that as provided in section 9 of the Act during the period they were laid off. *[Virginia Tobacco Co. Vs. Labour Court (1993) 45 DLR 233]*

Financial inability- ground for lay off : Employer's financial inability is covered by the expression "other cause beyond his control" appearing in section 6 and his right to take action

thereunder cannot be fettered with limitation. *[Virginia Tobacco Co. Vs. Labour Court (1993) 45 DLR 233]"*

17. Muster-roll for laid-off workers : Notwithstanding that the workers employed in an establishment have been laid-off, the employer shall maintain a muster-roll, and provide for the making of entries therein by or for the laid-off workers whom may present themselves for work at the establishment at the appointed time during normal working hours.

18. Laid-off workers not entitled to compensation in certain cases : (1) Notwithstanding anything contained elsewhere in this Chapter, no compensation shall be payable to a worker who has been laid-off-

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

(b) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day if so required by the employer.

(2) For the purpose of sub-section (1) (b), every laid-off worker who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself, shall be deemed to have been laid-off for that day within the meaning of this section.

(3) If a laid-of worker who presents himself for work as mentioned in sub-section (2), instead of being given employment at the commencement of any shift for any day, is asked to present himself for the purpose during the second half of the shift for the day, and if he so presents himself, he shall be deemed to have been laid-off only for one-half of that day, the other half being treated as on duty, irrespective of the fact whether he is given work or not.

19. Death benefit : If a worker dies while in service after a continuous service of not less than three years, his nominee or in the absence of any nominee, his dependant shall be paid by the employer a compensation at the rate of thirty days wages for every completed year of service; or for any part thereof in excess of six months or gratuity, if any, whichever is higher, in addition to any other benefit to which the deceased worker would have been entitled had he retired from service:

Provided that if such worker is covered by any compulsory insurance scheme of the establishment, or, if any compensation is payable for such death under Chapter XII, the worker shall be entitled to whichever is higher.

20. Retrenchment : (1) A worker employed in an establishment may be retrenched from service on the ground of redundancy.

(2) No worker who has been in continuous service for not less than one year under an employer shall be retrenched by the employer unless-

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

(b) a copy of the notice is sent to the Chief Inspector or any other officer authorised by him and also to the collective bargaining agent in the establishment, if any ; and

(c) he has been paid, compensation which shall be equivalent to thirty days wages or gratuity for every completed year of service if any, whichever is higher.

(3) Notwithstanding anything contained in sub-section (2), in the case of retrenchment of a worker under section 16(7), no notice as mentioned in sub-section (2) (a) shall be necessary ; but the worker so retrenched, shall be paid fifteen days wages in addition to the compensation or gratuity, as the case may be, which may be payable to him under sub-section (2) (c).

(4) Where any worker belonging to a particular category of workers is to be retrenched, the employer shall, in the absence of any agreement between him and the worker in this behalf, retrench the worker who was the last person to be employed in that category.

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Retrenchment-essential conditions of : The essentials of a termination on the grounds of retrenchment under section 12 are: (a) the worker must be given one month's notice in writing indicating the reasons for retrenchment or he has been paid in lieu of such notice wages for the period of notice; (b) a copy of the notice in respect of retrenchment is sent to the Chief Inspector; and the worker has been paid at the time of retrenchment compensation or gratuity whichever is higher as required under clause (c) of section 12. *[M/S Caltex Oil (Pak) Ltd. Vs. Second Labour Court, East Pak and others (1967) 19 DLR 264]*

Retrenchment during pendency of Labour dispute : *Held* that there is no law prohibiting the employer from retrenching his workers during pendency of Labour dispute. *[Sultana Jute Mills Ltd. Vs. Chittagong. Labour Court , (1990) 42 DLR 340= (1990) 10 BLD (HCD) 211]*

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

22. Discharge from service : (1) A worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health certified by a registered medical practitioner.

(2) If a worker who has completed not less than one year of continuous service is so discharged, he shall be paid by the employer compensation at the rate of thirty days wages for every completed year of service, or gratuity, if any, whichever is higher.

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Continued ill health- employer's right to discharge a worker : Held that the employer has rightly connected the nature of illness of the worker, the duration and relationship of the illness with the nature of job performed by him and has rightly come to a conclusion as to his further usefulness in service bonafide and such use of power by the employer cannot be hedged with interpretive conditions which make the exercise of the power impossible. The order of discharge from service was passed legally and lawfully. *[Karim Jute Mills Ltd. Vs. Chairman, Second Labour Court, Dhaka and another. 1997 BLD (AD) 208]*

Physical incapacity : An employee even after availing 211 days leave out of 365 days of the year applied for another one month's leave on identical medical ground, it cannot be said that even then the employee should be treated by the employer as physically fit to serve the employer. *[Mohsen Jute Molls Ltd. Vs. Labour Court, Khulna (1999) 4 BLC (AD) 172]*

Conversion of dismissal into discharge: While awarding punishment the employer ought to have considered the length of service and previous record of the employees before issuing orders of dismissal. Considering their length of service and the circumstance of the case the order of dismissal of the employees are modified to treat the dismissal as discharge with compensation as provided in law. *[Shaukat Ali Vs. Chairman, Labour Court, Khulna and others (1992) 44 DLR 410].* Where the Labour Court finds that an order of dismissal from service cannot be maintained on facts and there is no procedural defect in holding enquiry by the domestic tribunal, it can convert the order of dismissal to one of termination. Such order cannot be declared as made without jurisdiction merely on the ground of stigma unless the proceeding of the Domestic Tribunal is vitiated by procedural defect. *[Anil Krishna Mondal Vs. Chairman, Labour Court (1993) 45 DLR 367]*

23. Punishment for conviction and misconduct : (1) Notwithstanding anything regarding lay-off, retrenchment, discharge and termination of service as provided elsewhere in this Act, a worker may be dismissed without prior notice or pay in lieu thereof if he is -

(a) convicted for any criminal offence ; or

(b) he is found guilty of misconduct under section 24.

(2) Any worker found guilty of misconduct may, instead of being dismissed under sub-section (1), in consideration of any extenuating circumstances, be awarded any of the following punishments, namely:

(a) removal ;

(b) reduction to a lower post, grade or scale of pay for a period not exceeding one year;

(c) stoppage of promotion for a period not exceeding one year ;

(d) withholding of increment for a period not exceeding one year ;

(e) fine ;

(f) suspension without wages and subsistence allowance for a period not exceeding seven days ;

(g) censure or warning.

(3) A worker who is dismissed under sub-section (1) or removed as a measure of punishment under sub-section (2)(a) shall, if his continuous service is not less than one year, be paid by the employer compensation at the rate of fourteen days wages for every completed year of service, or gratuity, if any, whichever is higher ;

Provided that no compensation shall be payable if the worker is dismissed for misconduct as specified in sub-section (4) (b).

(4) The following acts and omissions shall be treated as misconduct-

(a) willful insubordination or disobedience, whether alone or in combination with others to any lawful or reasonable order of a superior ;

(b) theft, fraud or dishonesty in connection with the employer's business or property;

(c) taking or giving bribe in connection with his or any other worker's employment under the employer ;

(d) habitual absence without leave or absence without leave for more than ten days ;

(e) habitual late attendance ;

(f) habitual breach of any law or rule or regulation applicable to the establishment ;

(g) riotous or disorderly behavior in the establishment, or any act subversive of discipline ;

(h) habitual negligence work ;

(i) habitual breach of any rule of employment, including conduct or discipline, approved by the Chief Inspector ;

(j) falsifying, tampering with, damaging or causing loss of employers official records.

(5) If a worker who is dismissed from service under sub-section (1) (a), is acquitted on an appeal, he will be reinstated to his original post without back wages or to any new post suitable to him ; and if such reinstatement is not possible, he shall be paid compensation at the rate payable to a person on discharge excluding the compensation already paid to him for his dismissal.

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Misconduct : Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law, a forbidden act. It differs from carelessness *[Ballentin : Law Dictionary, 1984 edn.]*

Misconduct- Kinds of : Misconduct could be of three kinds : (1) technical misconduct which leaves no trail of indiscipline, (2) misconduct resulting in damage to the employer's property which might be compensated by forfeiture of gratuity or part thereof, and (3) serious misconduct such as acts of violence against the management or other employee or riotous or disorderly behaviour in or near the place of employment, which though not directly causing damage, is

conducive to grave in indiscipline. The first should involve no forfeiture, the second may involve forfeiture of the amount

equal to the loss directly suffered by the employer in consequence of the misconduct and the third will entail forfeiture of gratuity due to the workman. In other words if a workman in guilty of a serious misconduct of the third category, then his gratuity can be forfeited in its entirety.*[Tournamulla Estate Vs. Workmen (1973) 2 SCC 502]*

Misconduct- Absence without leave : Clause (d) of sub section (3) of section 17 of the Act Provides that absence without leave for more than 10 days is a kind of misconduct and a worker may be dismissed or otherwise dealt with under sub-section (1) & (2) of section 17 read with section 18 of the Act. If absence without leave for more than 10 days is a misconduct and a proceeding is to be drawn up for dismissal or for other kind of punishment for such absence, it does not stand to reason that if there is such absence after leave has once been taken, there shall be automatic termination of service and no opportunity should be given to explain his inability to return to join his service after the expiry of the leave. *[P W V Rowe Vs. Labour Court Chittagomg (1979) 31 DLR (AD) 119.]*

Absence from duty—Accused arrested and in jail– Charge-sheet sent at home address received back with remarks of postman that he was in jail—Enquiry held *ex parte*—Despite knowledge of accused being in Jail *ex parte* inquiry, in circumstances, held, improper violation of law. Absence being for reasons beyond control of accused, dismissal set aside. *[Crescent Products Limited Jaranwala Vs. Allah Ditta (1978 PLC 278]*

Misconduct– when single act amounts to : When a single act of neglect amounts to misconduct under section 17 (3) if an employee commits a particular act which might have resulted in an accident or injury to the goods and property of the employer than it cannot be said that this single act of neglect would not amount to a misconduct under Employment of Labour (S.O.) Act-. *[Messrs. Bank Line Navigation Company Vs. Chairman 2nd Labour Court (1975) 34 DLR 55= 1 BLD (HCD) 470]*

Misbehaviour with customer- misconduct : No commercial firm can tolerate an employee who insults its customers because they do not make use of the services of that because of the behaviour of one of his employees can have no use for the services of that employee. The question of punishment is essentially for the management decides. *[Eastern Electric and Trading Co. Vs. Baldeb Lal, (1975) 4 SCC 684]*

Habitual negligence and neglect of work : The word *'habitual'* qualifies the term 'negligence' and not the expression 'neglect of work' and as such *held* that if the employee is removed from service for neglect of work it is not necessary to prove, under the Standing Order, that he was guilty of habitual neglect of work.*[Azizur Rahman Vs. The Burmah Oil Co.(Pak) Trading Ltd. (1961) 13 DLR 458].*

Theft of property of Third Party– whether Misconduct : Theft of property not belonging to the employer, but to contractor of employer does not constitute misconduct on the part of the Employee. *[(1979) BSCR (AD) 197]*

Dismissal on charge condoned earlier : Justification of the dismissal a question of fact. A master who with full knowledge of a servant's misconduct, elects to continue him in his service, cannot subsequently dismiss him for the offence which he was condoned". *[Bank of Credit and Commerce Ltd. Vs. Tajul Islam Chowdhury & others (1993) 45 DLR (AD)61]* It has been held in an Indian decision *(AIR 1925 Cal. 87)* that If a master on discovering that his servant has been

guilty of misconduct which would justify a dismissal, yet elects to continue him in his service, he cannot at any subsequent time dismiss him on account of that which he waived or condoned.

Temporary possession of goods- misconduct : Temporary possession of goods without knowledge or consent of the person entitled to the possession amounts to misappropriation. *[Zeenat Textile Mills Ltd. Vs. Third Labour Court, Dhaka (1992) 44 DLR 213].*

24. Procedure for punishment.- (1) No order of punishment under section 23 shall be made against a worker unless-

(a) the allegations against him are recorded in writing ;

(b) he is given a copy thereof and not less than seven day's time to explain ;

(c) he is given an opportunity of being heard ;

(d) he is found guilty, after enquiry ;

(e) the employer or the manager approves of such order.

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

Provided that during the period of such suspension, a worker shall be paid by his employer a subsistence allowance equivalent to half of his average wages, and dearness allowance and ad-hoc or interim pay, if any.

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

(4) In an enquiry the accused worker may be helped by any person nominated by him who is employed in the establishment.

(5) If in an enquiry, any oral evidence is given on behalf of any party, the party against whom the evidence is given may cross examine the witness.

(6) If, on enquiry, a worker is found guilty and is punished under section 23(1), he shall not be entitled to his wages for any period of suspension but shall be entitled to the subsistence allowance for such period.

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

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

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

(10) In awarding punishment, the employer shall take into account the previous record of the worker concerned, the gravity of the misconduct, and any other that may exist.

NOTES/COMMENTS/PRECEDENTS

Dismissal-Procedure of : Sub-Section (1) of section 18 of the Employment of Labour (Standing Orders) Act specifically provides for a procedure for punishment wherein it is stated that no order for discharge and dismissal of a worker shall be made unless. (a) the allegations are recorded in writing (b) a copy of the allegations is given to explain against such allegations, and (c) a personal hearing is given if such prayer is made. *[Bangladesh Shilpa Rin Sangstha Vs. Chairman, 2nd Labour (1980) 32 DLR 265]*

The respondent was dismissed from the service of the company for misconduct after due inquiry with the prior approval of the Managing Director who is the Chief Executive of the company. The dismissal order was issued as a matter of routine procedure by the Assistant Labour officer and as such the High Court Division found nothing wrong with the order and accordingly declared the Judgment and order of the Labour Court to have been passed without any lawful authority and of no legal effect. *[Mashriqi Jute Mills. Ltd. Vs. The Chairman, Second Labour Court, Dhaka and another 11 MLR (HC) 2006) 96]*

Suspension beyond period of 60 days : (a) The maximum period of suspension of a worker may be 60 days . In the undernoted case it has been held that- (a) The continued suspension of the respondent No. 2 beyond 60 days form 19.8.82 is illegal in view of section 18 (2) of the Act.

The total period of suspension that can be passed is 67 days, 60 days for purposes of enquiry and only 7 days as a measure of punishment.

(b) The petitioner corporation is not authorised by law to take action against the respondent No. 2 at stages in pursuance of the Enquiry report. It has to take action only once against the delinquent worker. The corporation cannot continue the order of suspension and infinitum though it is entitled to issue a fresh order of suspension. *[Secretary, Bangladesh Jute Corporation Vs. 2nd Labour Court (1989) 41 DLR 265]*

Subsistence allowance- to be paid on suspension : The suspended worker will be entitled to the subsistence allowance under the proviso to sub-section (2) of section 17. *[Secretary, Bangladesh Jute Corporation Vs. 2nd Labour Court, Dhaka [Secretary, Bangladesh Jute Corporation Vs. 2nd Labour Court (1989) 41 DLR 265]*

Dismissal without show cause notice : When a worker is dismissed without any show cause notice, the only remedy that can be given to him is his reinstatement in service. *[M/s. Hafiz Jute Mills Ltd. Vs. 2nd Labour Court, (1970) 22 DLR 713]*

When the petitioner failed to establish that respondent No.2 was served with the charge-sheet mere proof that he was served with notice to appear before the Enquiry Committee cannot make the enquiry in accordance with law. *[Kushtia Sugar Mills Ltd. vs. Chairman, Labour Court, Khulna and another. (1997) 49 DLR 236]*

Dismissal not to be based on ground not stated in the charge sheet : Held that Dismissal cannot be based on a Ground not stated in the charge sheet *[AIR 1975 SC 1896]*

Dismissal on charge condoned earlier : Relying upon a decision in the case of *LW Middleton Vs. Harry Playfair A I R 1925 Cal 87* that If a master on discovering that his servant has been guilty of misconduct which would justify a dismissal, yet elects to continue him in his service, he

cannot at any subsequent time dismiss him on account of that which he waived or condoned. *[Bank of Credit and Commerce Ltd. Vs. Tajul Islam Chowdhury & others (1993) 45 DLR (AD)61]*

Construction of charge-sheet: *Where the draft of the charge-sheet is prepared by a person not familiar with legal terminology, it must be considered as a whole and should be construed in a reasonable manner. :* In the case the allegation was that the charge-sheeting authority had made up his mind to dismiss and the only opportunity provided was against sentence. Though the words, if liberally taken, were capable of such construction but the draft is prepared by persons not familiar with legal terminology and should be considered as a whole in a reasonable manner. The respondent understood the scope of the notice to be wide enough to enable him to give defence to the allegation and the entire matter was investigated. Therefore, it cannot be said that the employer had already made up its mind. *[Doom Dooma Tea Co. Ltd. VS. Workmen of Daimukhia Tea Estate, (1960) 2 LLJ 56 = (1960-61) 18 FJR 138.]*

Charge-sheet drafted in questionnaire form not justified- What purpose to be the charge-sheet framed against the respondent is no more than a questionnaire, and some of these questions clearly show that the approach adopted by the authorities that drafted the questions was completely unreasonable, if not perverse. .... What purports to be the charge sheet itself discloses a serious infirmity in the approach adopted in initiating the proceedings against the respondent.*[State of Punjab Vs. Amar Singh Harika, AIR 1966 SC 1313 = (1966) LLJ 188]*

Omission of words in charge-sheet: Allegations in the charge sheet relating to misconduct of "go slow"- Relevant Standing Order relating to "go slow" mentioned-Held, mere omission to use the words "go slow" in the charge-sheet would not mean that the workers were not charged for their "go slow" in the charge-sheet would not mean that the workers were not charged for their "go slow" movement. *[Dunlop Rubber Co. Vs. Workers AIR 1965 SC 1392= (1965) 2 SCR 139 : (1965) 1 LLJ 426]*

Instances of vague charge- The following types of charges were held to be vague by the Indian Supreme Court in the undernoted case:-

(1) To instigate and conspire to paralyse the working of the factory at the time of the impending general meeting by collectively submitting sick certificates.

(2) Taking active part in the issue and distribution of certain leaflets issued against the management of the society.

(3) Carrying vilifying propaganda in connection with the election of the society at the annual general meeting.

(4) Instigating the depositors to withdraw their deposits from the society and thus undermining the very existence of the institution.

The mere fact that the charged employee did not appear on the date fixed for the enquiry will not, in the circumstances of the present case, satisfy the requirement of principles of natural justice that he should have of these charge should have been disclosed to him. *[Northern Railway Co- operative Credit Society vs. Industrial Tribunal, Rajasthan AIR 1967 SC 1182= 2 LLJ 46]*

Charge against the petitioner as to when, where and to whom the defamatory statement as alleged was made. No reasonable person can reply to or show cause against vague allegations. The entire proceedings on the basis of vague charges was illegal and violative of the principles of natural justice. *[A K M Hedayetul Islam Vs. Bangladesh Agricultural Research Council (1991) 43 DLR 44]*

Language of charge-sheet showing conclusion of guilt should be avoided- *But charge-sheet does not become invalid :* After reciting the allegation against the delinquent the charge-sheet added that the information furnished has been checked and the charge sheeting officer was satisfied that the worker had been guilty of such misconduct. [*Bata Shoe Co (P) Ltd. Vs. D. N. Ganguly AIR 1961 SC 1158= (1961) 3 SCR 308]*

Charge- involves no opportunity to show cause provided : Charge in respect of which no opportunity of explanation is given: *Held* cannot be taken into consideration. *[State of Punjab Vs. Bhakawar Singh, (1972) 4 SCC 730.]*

Time allowed to show cause : 3 days time referred to in clause (b) of Section 18 (i) is the minimum time allowed and there is no embargo on giving more time for the purpose. *[Mansor Ahmed Vs. Burmah Eastern Ltd. & others (1968) 20 DLR 120]*

Enquiry- The departmental enquiry is not an empty formality; it is serious proceeding intended to give the employee a chance to meet the charge and to prove his innocence. In the absence of enquiry it would not be fair to strain facts against an employee and to hold that in view of the admissions the enquiry would out of place in dealing with cases of orders passed against employees terminating their service. *[Jadish Prasad Saxena Vs. State of Madhay Bharat, AIR 1961 SC 1070 = (1963) I LLJ 325]*

The enquiry covers the hearing of the case, i.e., recording evidence, admitting documents and generally completing the record upon which a finding would be based. It is only after all the material has been placed on the record by both the sides that the stage of reporting a finding would arise. *[M. N. Dasama Vs. State of A.P.AIR 1973 SC 2275 = (1972) 2 SCC 378]*

Departmental enquiry-whether should be conducted twice: It is erroneous impression that every disciplinary proceeding must consist of two enquiries, one before issuing show cause notice to be followed by another enquiry thereafter. Law may or may not prescribe such a course, but such is not the requirement of the principles of natural justice in the absence of any rule statutory or otherwise. *[Suresh Koshy George Vs. University of Kerala, AIR 1969 SC 198 =(1969) I SCR 315]*

Preliminary enquiry: Record of preliminary enquiry cannot be used in the subsequent formal enquiry without notice to the delinquent. *[C. L. Shah VS. Union of India, AIR 1964 SC 1854= (1964) 5 SCR 190]*

Preliminary enquiry- Enquiry officer should not be prejudiced : Even in holding preliminary enquiry the Enquiry Officers must not act in any preconceived idea of guilt of the person whose conduct was being enquired into..... The normal practice in such cases is for the authority to take down statements of persons involved in the matter and to examine documents having a bearing on the issue involved. This should be followed when enquiry is held for the purpose of starting criminal proceedings. Where the Enquiry Officer proceeded in the manner which suggested that he conclusively formed the opinion that the employee was guilty and recorded self-incriminatory statements of a number of persons apparent that the statement were taken under inducement, threat or promise as mentioned under S. 24 of the Evidence Act. *[P. Serajuddin Vs. State of Madras, (1970) 1 SCC 595: = AIR 1971 SC 520]*

Enquiry Report to be provided with second show cause notice : In cases where provisions are there in the service rule for second show cause notice- *Held:* whether or not rules or regulation provide for a copy of the report to be given to the delinquent the rules of natural

justice requires that along with the second show cause notice the petitioner should have been furnished with the report *[Mustafa Miah Vs. First Labour Court, Dhaka (1994) 46 DLR 373].*

Enquiry proceeding without filing charge-sheet- Presumption regarding non-existence of charge-sheet-Where only the record of proceeding before the enquiry officer was filed and charge-sheet was not filed, there is presumption that no charge-sheets, in fact, were delivered specially when the management was later on asked to produce the document but they were not produced on the plea that they were not traceable. *[India General Navigation & Railway Co. Vs. Workmen AIR 1960 SC 219= (1960) 1 LLJ 13]*

Enquiry- right of self defence : It is well settled that even in a domestic inquiry witnesses cannot be examined behind the back of the worker without informing him regarding the place, date and time for examination of witnesses and thereby giving him an opportunity to cross-examine them if he so wants. There is nothing in the recorded evidence that the worker had put signature on any page of the deposition sheet. The Labour Court has rightly held that the witnesses were examined behind the back of the worker. The worker was also deprived of the opportunity of being heard as guaranteed under section 25(1)(a) of the aforesaid Act. The aforesaid section provided that the worker shall bring his grievance to the notice of his employer in writing within 15 days of the occurrence of the cause of such grievance and the employer shall within 30 days of receipt of such grievance, enquire into the matter and give the worker concerned an opportunity of being heard and communicate his decision in writing to the said worker. *[Eastern Pharmaceuticals Ltd. Vs. Labour Court, Rajshahi (1993) 43 DLR 223]*

Enquiry- If an inquiry is held at the back of a delinquent or without notifying the delinquent, it cannot be found that the inquiry was conducted in accordance with the provisions of section 18 of the Employment of Labour (Standing Orders) Act- Labour Court's finding is illegal. *[Nurul Amin Chowdhury Vs. Chairman, Second Labour Court ,(1990) 42 DLR 217]*

Absence in enquiry after notice : Absence of employee in spite of notice oral examination of witness can be dispensed with-Enquiry to proceed *exparte. [(SCLSD (1) 535. AIR 1962 SC 1934]*

Enquiry conducted by witness of occurrence- illegal : Same person cannot be a witness and a Judge at the same time. *[Murari Mohan Das Vs. State (1977) 29 DLR 53]*

Principles of Natural Justice- (a) Principle of natural justice require that before awarding punishment the delinquent concerned should be given a chance of being heard. (b) Witness examined behind the back of the delinquent officer should be allowed to be cross-examined by such officer. *[Bangladesh Vs. Md. Abu Taher (1981) 31 DLR (AD) 33*

Principles— its essential feature : The principle is that (a) is no person should be deprived of his rights without a hearing before an independent authority its purpose is to prevent miscarriage of justice. (b) An unjust decision by an administrative authority affecting the right of a person can be judicially scrutinised. (c) Principles of natural justice is also applicable in respect of administrative proceeding where the authority concerned is required to act on objective determination of facts. *[Bangladesh Steamer Agents' Association Vs. Bangladesh and others (1981) 31 DLR (AD) 272]*

When an order has taken effect and in pursuance of the order certain right has been created in favour of any person that order cannot be withdrawn or rescinded to the determent of that person. When a right has accrued to a person by virtue of an order that cannot be rescinded by the person who made it. *[M. Abdul Hai Vs Bangladesh and others (1981) 31 DLR 88.]*

Principles of natural justice to be completed with an enquiry against an employee dismissed (no charges of corruption). If any enquiry is held witnesses should be examined in the presence of the delinquent employee and he should be allowed to cross examines the witnesses. "While the appointing authority is not bound to accept the recommendation of the enquiry officer, but in inflicting a higher punishment the appointing authority is expected to assign some reasons for coming to such a decision". *[M. A. Hai Vs, Trading Corporation of Bangladesh (1982) 32 DLR (AD) 47]*

"Admission of guilt"- ingredients of minimum requirements for awarding punishment for misconduct if allegations are denied, enquiry is to be held to establish the guilt personal hearing the enquiry, distinction between absence of prayer for personal hearing does not absolve the employer form the duty of holding a fair enquiry. *[Civil Appeal No. 91 of 1979 Supreme Court Digest]* On workman's **admission of guilt** management need not proceed further with the enquiry. *[(SCLSD (1) -515 AIR 1968 SC 266]*

Enquiry during pendency of Criminal case : Departmental enquiry can be proceed during pendency of Criminal case- The principles of natural Justice do not require that the employer must wait for the decision of a Criminal case or an appeal before proceeding with a domestic enquiry.*[(SCLSD (1) 510)= (1955) 2 LLJ 153]*

Opportunity to cross-examine : Fair opportunity to cross-examine should be given where statement of witness is not recorded in presence of the charged employee. *.[(SCLSD (1)-527).]*

Recording of evidence- Witness signing at a later date-Does not vitiate the enquiry- Some of the witnesses signed the statements at a later date. It may be that they had not signed due to over sight when they made the statements and might have been asked to sign at a latter date. This does not necessarily make the enquiry unfair and improper. *[(SCLSD (1)-533)]*

Cross-Examination on the basis of copies of statements- When the statements of witness were not recorded in presence of respondents but copies were given and he was allowed to Cross-examine then there is no violation of principles of natural Justice *[(SCLSD (1)-529). Civil Appeal No. 1054/63]*

Record of Preliminary enquiry cannot be used in the formal enquiry : Held— :Record of Preliminary enquiry cannot be used in the formal enquiry without notice to the delinquent. *(SCLSD (1)-505). AIR 1964 SC 1854.*

Labour Court's Power to go into merits of the case : Labour Court's Power to go into merits of the case when enquiry is defective when enquiry is found to be defective, the Labour Court would be entitled to consider the merits of the dismissal order on the evidence led before it and can come to a finding that dismissal was Justified *[(SCLSD(1)- 612). AIR 1963 SC 1756]*

Domestic Enquiry- rule of evidence : There is no rule of evidence that evidence of a solitary witness cannot be relied upon and no conclusion can be based upon the evidence of such a solitary witness. *[AIR 1972 SC 2182]*

Opportunity of defence- The domestic tribunal is not a Court to follow procedures of the trial or enquiry according to the Civil Procedure Code. In appropriate cases, considering the facts and circumstances thereof, such a tribunal may arrive at a decision simply by questioning the accused and considering his explanation. *[Bashir Ahmed Vs. Bangladesh Jute Mills Corporation (1992) 12 BLD (AD) 125 = (1992) 44 DLR (AD) 267]*

Non Examination of Outside Complainant- It is not necessary that outside complainant should be necessarily examined in departmental enquiries and his non-examination does not make the enquiry invalid.*[(SCLSD (1) 522 = AIR 1974 SC 696].*

Failure to hold enquiry where misconduct charged- *Held,* does not automatically vitiate the order of dismissal-Management may still satisfy the tribunal about the misconduct. *(1980) 1 LIJ 137].*

Domestic Tribunal- The domestic tribunal is not a court to follow procedures of a trial or enquiry according to the Civil Procedure Code. In appropriate cases, the domestic tribunal may at a decision simply by questioning the accused and considering the explanation. In some cases, examination of witnesses in presence of the accused may be absolutely necessary. *[Bashir Ahmed Vs. Bangladesh Jute Mills Corporation (1992) 44 DLR (AD) 267 = (1992) 12 BLD (AD) 125]*

When an order of a Domestic Tribunal is challenged all that the Court is to see, is that whether the charge framed against the delinquent was such as constituted an offence or default which calls for a penal action, and that the employee was given an opportunity to defend himself in allowing him to cross examine the witnesses and to call evidence in his support, and that the Tribunal was constituted by impartial persons and that there materials before the Domestic Tribunal to come to a finding.*[Bikash Ranjan Nath Vs. Second Labour Court, Dhaka (1977) 29 DLR (SC)280.]*

Domestic enquiry—Fundamental rule of natural justice—Mandatory– Person named as accused in counter-complaint by accused appointed as Enquiry Officer—Bias strongly presumed on part of such person—Accused from initial state objecting to his appointment as Enquiry Officer-Enquiry report of such officer, held, vitiated by bias and nullity in eye of law—Consequential order passed on basis of such order, held, not sustainable *[Anwar and another Vs. Crown, PLD 1955 F.C. 185]*

Enquiry Officer appointed simultaneously with charges-sheet : Enquiry Officer appointed simultaneously with charges-sheet stating that enquiry proceedings will be held in case of non-submission of explanation or if explanation found unsatisfactory-Enquiry started not on date mentioned in charge-sheet but after considering and declaring explanation of accused as unsatisfactory—Prejudice to accused neither suggested at any stage of inquiry or thereafter nor indicative, full defence opportunity being availed of by accused—Mere appointing of Inquiry Officer in charge sheet before receipt of explanation, in circumstances, held, not an error sufficient to reverse or quash findings of enquiry or consequential punishment order. *[PLD 1958 SC (Pak.) 437 and PLD 1979 SC 711]*

Duty of Court to go into the merit when the enquiry was not proper : Where it is found that a fair domestic enquiry has not been held, the duty of the Court would be to go into the merits of the case and find out if there are sufficient materials before the Court to sustain an order passed by the management on the basis of the domestic enquiry. *[Administrative Officer, Chittaranjan Cotton Mills Ltd. Vs. Chittaranjan Cotton Mills Staff Union (1969) 21 DLR 35]*

Proceedings of domestic enuiry- Labour Court's power of- reassessment of evidence : It is not the function of the Labour Court to make reassessment of evidence recorded by the tribunal. The fact that on reassessment of evidence by some other person a different findings could have been arrived at is not a ground to hold that the enquiry was improper or unfair. *[S H Quddus Vs. Labour Court, Chittagong and others (1981) 33 DLR 1]*

When Labour Court does not find any procedural defect in the domestic tribunal's enquiry into a case, Labour Court has no authority to assume its jurisdiction to set aside the tribunal's conclusion. Labour Court cannot act as a court of appeal and reassess the evidence so as to arrive at finding of its own. *[GM, Kohinoor Spinning Mills Ltd. Vs. Chairman, First Labour Court, Dhaka (1992) 42 DLR 344]*

Domestic Tribunal- conclusion arrived at bonafide : Results of domestic enquiry wherein conclusions have been arrived at bonafide and after complying with principles of natural justice, should not be lightly interfered with. *[Md. Abdul Haque Vs. 2nd Labour Court (1970) 22 DLR 577]*

Scope of interference with finding of domestic tribunal by the Labour Court Principles of natural Justice-Applicability. *Held:-* (i) The phrase "the principles of natural Justice" can only mean in this connection the principles of fair trial. A provision for an enquiry necessarily imports that the accused should be given a chance of defence and explanation. This was done by the domestic tribunal. The Labour Court was therefore, clearly wrong to come to the conclusion that the principle of natural justice was violated.

(ii) The relationship of the employer and the employee is to some extent governed by statute but that is only in a limited manner. The moment it is established person who answers the description mentioned in section 17 of the Standing Orders Act, 1965 the master can decide whether he would still keep and employment whose guilt has been established before an Enquiry Committee. The Jurisdiction of Labour Court in such circumstances is not attracted. It is settled proposition that court will be slow in interfering with the finding of the domestic tribunal.

(iii) No case has been made out the charges are so vague that they have led to miscarriage of justice.*[Bangladesh Steamer Agents' Association Vs. Bangladesh and others (1981) 31 DLR (AD) 272]*

Labour Court is not a court of appeal : (a) Labour court is not a court of appeal it can interfere only when the enquiry officer or the committee acts unfairly and against the principles of natural justice. Its function is to see whether the delinquent is lawfully punished *[Manager Zeal Bangla Sugar Mill Vs. First Labour Court, Dhaka (1982) 34 DLR 1= (1982) 2BLD (HCD) 57].*

Labour Court cannot act as an Appellate Court in deciding cases by giving a finding of its own re-assessment of evidence.

In view of the fact that the domestic enquiry was held in accordance with the provisions of the Act, the decision of the Labour Court that the charges against the delinquent employees have not been established is without lawful authority. *[Dhaka Dyeing & Manufacturing Company Ltd. Vs. Chairman, Second Labour Court Dhaka , (1990) 42 DLR 278]*

Technical irregularity in proceeding of domestic Tribunal : Mere technical irregularity of minor nature will not invalidate the proceeding of domestic Tribunal if the proceeding is not vitiated by any irregularity. No interference warranted. *[Md. Motahar Hossain Khan Vs. Bangladesh Jute Mills Corporation (1984) 36 DLR (AD) 282]*

In case of punishment for the workers Labour Court cannot re-open the Factual merit and reassess evidence to disprove findings given by the domestic.*[Adamjee Jute Mills Ltd. Vs. Third Labour Court, Dhaka (1990)42 DLR 371]*

Domestic enquiry may be stayed during pendency of criminal trial : It is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course

where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different form saying that if an employer proceeds with the domestic enquiry inspite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or *malafide. [Tata Oil Mills Company VS. Workmen, AIR 1965 SG 155= (1964) 7 SCR 555 : (1964) 2 LLJ 113]*

Discrimination in awarding punishment- Some Workmen participating in communal riot were reinstated while one worker was discharged for assaulting the superior officer-Held, this does not show any discrimination.*[(1969) 2LLJ 799]*

The Fact that the witnesses who gave evidence at the enquiry subsequently promoted cannot lead to presumption that the witnesses were interest and the enquiry is not *bonafide.* The promotion to the witnesses may be due otherwise *(SCLSD (1)-581) (1961) 2 LLJ 99.*

Dismissal on charge condoned earlier : Relying upon a decision in the case of *LW Middleton Vs Harry Playfair (AIR 1925 Cal. 87)* that If a master on discovering that his servant has been guilty of misconduct which would justify a dismissal, yet elects to continue him in his service, he cannot at any subsequent time dismiss him on account of that which he waived or condoned.*[Bank of Credit and Commerce Ltd. Vs. Tajul Islam Chowdhury & others (1993) 45 DLR (AD)61]*

Dismissal order based on conviction- No Departmental Enquiry held- conviction set aside- Dismissal in valid- *Held :* When no enquiry is held and dismissal is based on conviction alone and such a conviction is set aside there remains no valid reason for refusing re-employment *[(SCLSD (1)-601)].*

Extenuating circumstances- Consideration of : In case of awarding a major punishment (such as dismissal form service) upon a worker, the employer has an obligation to consider extenuating circumstances in favour of the worker under section 18(5) such as period of service and previous record.

In case of the existence of any extenuating circumstance in favour of worker, lesser punishment, namely, discharging him form his employment without wages should be awarded, instead of outright dismissal.

If any doubt exists as to the presence of any extenuating circumstance, the benefit thereof should go to the worker and lesser punishment given. *[Md. Waziullah Vs. Bangladesh Shipping Corporation (1980) 32 DLR 36].*

Section 18 (7) of E.L.(S.O.) Act- Disciplinary action by a Company against its employees can only be taken after obtaining permission form the Labour court. No Agreement between the Employer and Employees can override this statutory provisions. of Sec. 18 (7).*[Bogra Cotton Spinning Co. Ltd. Vs. Rajshahi Labour Court (1973) 31 DLR (AD) 329].*

Section 18 (7) of E.L. (S.O.) Act- Provision of section 18 (7) does not in any limit or effect the employer's right to take disciplinary action by himself after complying with the procedure of section 18 (1) of the said Act- The procedure Prescribed in Section 18 (7) of the said Act are extraordinary and in addition to the Procedure prescribed in 18 (1) of the said Act. *[Shaheb Ali Vs. First Labour Court, Dhaka (1980)32 DLR 16].*

Non-consideration of previous records, effect of- Non- consideration of the previous record of the worker is no ground to strike down the order of his dismissal, but a lesser punishment may

be given and, accordingly, the order is modified to the extent that the worker's dismissal be treated as discharge from service.*[Adamjee Jute Mills Ltd. Vs. The Chairman, Third Labour Court (1990) 42 DLR 371]*

In case of *Serajul Islam Vs. Bangladesh (1993) 46 DLR (AD) 100* it has been *held* that it is purely a matter of discretion of the employer to take into consideration previous good services of an employee before awarding him punishment.

Enquiry report of the enquiry officer having not been furnished along with the second show cause notice to the petitioner and his previous record of service having not been taken into consideration before awarding the punishment of dismissal from service, the punishment is illegal. *[Mostafa Miah Vs. Chairman, First Labour Court, Dhaka and others (1994) 46 DLR 73]*

The petitioner-Corporation is not authorised by law to take action against the respondent No 2 at stages in pursuance of the Inquiry Report- It has to take action only once against the delinquent worker-The Corporation cannot continue the order of suspension ad infinitum through it is entitled to issue a fresh order of suspension. *[Secy. Bangladesh Jute Corporation & other Vs. Chairman, 2nd Labour Court (1989) 41 DLR 265]*

Labour Court cannot-re-open the factual merit : In a case of punishment for the worker Labour Court cannot-re-open the factual merit and re-assess evidence to disprove findings given by the domestic tribunal. Labour Court may interfere only when there is inadequacy of evidence or want of strict proof. Functions of the Labour Court is to see only whether requirements of law are complied with by the employer before passing order of dismissal and in deciding the point it is to rely on the findings of fact arrived at by the enquiry committee. Labour Court acted without lawful authority in disbelieving the observation of the enquiry committee that the witnesses were examined in presence of the worker and he refused to cross- examine the witnesses though opportunity was given. In the domestic enquiry like the present one the enquiry committee is not bound by the Evidence Act. Labour Court took a different view purely on question of facts which is beyond its jurisdiction. *[Adamjee Jute Mills Ltd. Vs. Third Labour Court, Dhaka (1990) 42 DLR 371]*

Judgment by domestic tribunal - Extent of Labour Court's jurisdiction over such judgment : The finding of the domestic tribunal in the present case is not contrary to evidence or perverse and as such it cannot be interfered with by the Labour Court. This is not a case of no evidence but a case of improper assessment of evidence on record. It is not the function of the Labour Court to make re-assessment of evidence recorded by the Tribunal. *[Zeenat Textile Mills Ltd. Vs. Third Labour Court, Dhaka (1992) 44 DLR 213].*

Domestic enquiry- Plea for fresh enquiry : - if the petitioners had any doubt about the fairness of the enquiry they should have raised it at the initial stage before enquiry committee concluded its proceeding. Therefore, the contention that the enquiry is not fair is not tenable.

Such enquiry was demanded after examination of witnesses and the order of dismissal on the contention that the enquiry was not fair. If the employees had any doubt about the fairness of the enquiry they should have raised it at the initial state and before the enquiry committee concluded its proceeding. This having not been done the contention is not tenable. *[Shaukat Ali Vs. Chairman, Labour Court, Khulna and others (1992) 44 DLR 410.]*

Dismissal with retrospective effect : Dismissal of a worker with retrospective effect is illegal, but not in toto- dismissal is legal prospectively with effect from the date when the order was issued. *[Chittagong Textile Mills Vs. Labour Court (1993) 45 DLR 159]*

The retrospectivity of the order of dismissal is illegal, but the order of dismissal itself is not SO. (In the instant case, the we find that part of the order dated 28.5.84 dismissing the respondent No. 2 retrospectively form 13.4.84 to be illegal, but that would not make the dismissal illegal. The order of dismissal is legal prospectively with effect from 29.5.84 when the order of dismissal was issued) *See also 16 DLR page 49.*

Dismissal- Dismissal from service is a serious matter and only a competent authority under the law is entitled to pass an order of dismissal. The resolutions which have been relied upon by the learned Advocate for the appellant are clearly not adequate enough to read in them a power authorizing the Director General to dismiss a person appointed by the Parishad. *[Bangladesh Shilpakala Academy Vs. Shahidul Islam and another. (1997) BLD (AD) 245]*

Termination with stigma- amounts to order of dismissal : From the order of termination it appears that the petitioner has been branded to be a "habitual absentee' i.e. a stigma has been attached which calls for opportunity to the petitioner to defend himself. The petitioner has not been afforded an opportunity of being heard in the matter and no enquiry has been held. This is an order of dismissal in the garb of termination and as such the same is declared to have been passed without lawful authority and the petitioner be- re-instated in service at once. *[Modares Miah Vs. The Chairman, 1st Labour Court (1992) 44 DLR 165]*

Refusal by worker to receive order : The mandate of Sub-Section (5) of Section 18 of the Act is that in Case refusal by a worker to accept the order giving rise to a cause of grievance the employer must not only send the order to the address of the worker available from the record of exhibit such document of the notice board of the employer office. If either of these two requirements is not satisfied order etc. Such as contemplated in section 18 (4) (c) of the Act.*[Kohinoor Spinning Mills Ltd. Vs. First Labour Court, Dhaka (1992) 44 DLR 344].*

Section 114 (f) of Evidence Act. (i) Letter posted comes back with the remark "refused" presumption : If a letter is found to have been properly addressed and posted but returned with the endorsement "refused" the presumption under section 114(f) of the evidence Act would be that it was presented to the addressee and he refused to receive it and in such a case it would not be necessary to call the postal peon to prove the endorsement and refusal. (ii) Proof of the service of the notice contained in a registered cover containing an endorsement by the Post Master-service properly made-proof of the posting of a notice in registered cover and the production of the cover in court, that cover containing the notice with an endorsement upon it purporting to be by an officer of the post office stating the refusal by the defendant to receive the document is sufficient proof of service *[(1982) Amullya Kumar Ghosh Vs. Kshama Prabha Halder 34 DLR 267].*

Service of notice by post-Presumption (i) Service of notice by post-Presumption of the due service though rebuttable, mere denial by the addressee that he did not receive the notice is not sufficient to rebut the presumption. When a letter is sent by registered post there arises a presumption according to the provision of section 27 of the General Clauses. Act that the letter duly reached the addressee and this presumption is further strengthened by acknowledgment receipt of the letter. *[(975) Md. Shoib Vs. Bangladesh 27 DLR 315]*

Notice sent by registered post returned with the endorsement 'left' : Notice sent by registered post returned with the endorsement 'left' on the registered cover by the postman although at the material time the addressee-presumption is that the notice was duly tendered to the addressee and the addressee must be fixed with constructive notice. *[22 DLR 664]*

Dismissal and order of injunction : Although an employee may establish that he has been wrongly dismissed, still he is not entitled to the remedy of an injunction or of specific performance in as much as a contract involving his personal service cannot be specifically enforced in view of section 21(b) of the Specific Relief Act. *[Azizur Rahman vs. The Burmah Oil Co.(Pak) Trading Ltd. (1961) 13 DLR 458].*

Termination before taking cognizance of dispute : Until Cognizance of the dispute taken by the conciliation officer and he issues notice to the employer and the employees, it can not be said that order of termination was passed during the Pendency of Conciliation Proceedings and as such it is a termination under section 18 and not one under section 19 for union activities. *[Ramani Ranjan Nath Vs. M/S Spencer &Co (1969) 21 DLR 206].*

25. Special provisions relating to fine : (1) No fine exceeding one-tenth of the wages payable to a worker in respect of a wage-period may be imposed in any one wage-period on any worker.

(2) No fine shall be imposed on a worker who is under the age of fifteen years.

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

(4) Every fine shall be deemed to have been imposed or the day of the commission of the offence in respect of which it was imposed.

(5) All fines and all realisations thereof shall be recorded in a prescribed register to be kept by the employer and all such realisations shall be spended only to such purposes beneficial to the workers employed in the establishment.

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Reduction in wages- whether may be treated as fine : Using the word "five" in its ordinary meaning of a penalty as money, the penalty imposed is nothing other than fine. Cutting of pay is not a deduction. *[Mir Mohamed Haji Umar Vs. Divisional Superintendent N.W. Railway, AIR 1941 Sind 191]*

26. Termination of employment by employers otherwise than by dismissal, etc.: (1) The employment of a permanent worker may be terminated by the employer, otherwise, than in the manner provided else-where in this Chapter, by giving to him in writing -

(a) one hundred and twenty days' notice, if he is a monthly rated worker ;

(b) sixty days' notice, in case of other worker.

(2) The employment of a temporary worker may be terminated by the employer, otherwise than in the manner provided elsewhere in this Chapter, and if it is not due to the completion, cessation, abolition or discontinuance of the temporary work for which he was appointed, by giving to him in writing-

(a) thirty day's notice, if he is a monthly rated worker ;

(b) fourteen days notice, in case of other worker.

(3) Where an employer intends to terminate the employment of a worker without any notice, he may do so by paying to the worker, wages in lieu of the notice, which is required to be given under sub-section (1) or (2), as the case may be.

(4) Where the employment of a permanent worker is terminated under this section, he shall be paid by the employer compensation at the rate of thirty days' wages for every completed year of service or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act.

NOTES/COMMENTS/PRECEDENTS

Termination : Termination is recognized method of dispensing with the Service of a worker by an employer after fulfilling certain condition such as, by providing termination benefits. - The wide powers with which the Labour court is vested under section 25 (1) (d) aiso includes the power to order Termination with termination benefits.*[Haider Ali Mollah Vs. Second Labour Court, Dhaka (1990) 42 DLR 200].*

Employers right to terminate the service of employee : Employer has got every right Under section 19 of Employment of Labour (S.O.) Act to terminate the service of his employees on payment of termination benefits as admissible. *[S H Quddus and others Vs. Chairman Labour Court (1981) 33 DLR 1].* Any employer is always free to take recourse to a simple order of termination in order to avoid the complex disciplinary action provided the intended action is not taken with a view to victimising the worker for trade union activities. *[Karnaphuli Fertilizer Co. Ltd. Vs. Chairman First Labour Court and another56 DLR (2004) 502].*

Termination of Service of a Worker may lead to Labour dispute.: Termination of Service of a Worker may lead to dispute which may be Labour dispute. *[Bangladesh Tea Estate Ltd. Vs. Bangladesh Tea Estate Staff Union (1976) 28 DLR (AD) 190]*

Court can go behind the order of a service termination to see if it is really a Victimization.: Court can go behind the order of a service termination to see if it is really a Victimization.*[ibid.]*

Termination as a measure of victimisation : A's service was terminated by the Management of the Company in which he was employed on the ground that his service was no longer required. On evidence it has been established that A's service had been terminated because he took active part in Union affairs. *Held* : His service has been improperly terminated. *[24 DLR 250.]*

Termination of service of an employee on ground of trade union activities being not permissible in law is set aside by the apex court. *[United Commercial Bank Ltd. represented its Managing Director Vs. Mohammad Ahsanullah and another 9 MLR (AD) 2004 (Vol. IX)365].*

Termination- whether only officer of trade union can challenge : Proviso to section 25 of the Act (sub-section 9 of section 33 of the present Act) provides that no complaint shall lie against the order of termination of a worker if the same was made for his trade union activities. There is nothing in the proviso that termination should be of an officer of the trade union and not of any member. In the instant case respondent No. 2 by oral and documentary evidence substantiated his claim that his service was terminated by his trade union activities *[A.R. Howlader Jute Mills Ltd. Vs. Chairman, Labour Court (2001)21 BLD (HCD) 6]*

Termination with stigma: Avoiding the normal procedure the authority restored arbitrarily to Rule 150 terminating the petitioner from service on the ground of inefficiency which is a ground of penalty under Rule 138 and such termination can well be construed as removal from service

under Rule 139G depriving the petitioner of his statutory right which is colourable exercise of power, malafide and an abuse of Rule 150(1) of the Rule of 1982.*[Nurul Huda Chowdhury Vs Chairman, Bangladesh Water Development Board and others (1999) 4 BLC 11]*

Termination of service in terms of law of contract when termination order casts stigma on the servants its amounts to removal necessitating enquiry and show cause. *[Jamini Ranjan Jala Vs. Board of Trustees, Port of Chittagong and others (1981) 33 DLR 300].*

Termination simpliciter : Departmental proceeding was initiated against the employee but the same was subsequently dropped and a simple order of termination containing no charge or stigma was issued- The order was valid.*[Managing Director, Sonali Bank and 2 others Vs. Md. Jahangir Kabir Molla. (1996) 48 DLR 395]*

Conversion of order of dismissal into termination : Labour Court has the power to convert an order of dismissal into one of termination of service in appropriate circumstances. *[Bank of Credit and Commerce Vs. Tajul Islam (1993) 45 DLR (AD) 61]*

Labour Court did not act illegally or in excess of its authority in converting the order of dismissal into an order of *termination simpliciter.[Md. Nurul Islam Vs. Chairman, 1st Labour Court, Dhaka and another (1994) 46 DLR 661].* Hon'ble Appellate Division also took the view in an earlier case that termination benefits rather than reinstatement deemed appropriate order Labour court observed as follows: Regarding reinstatement, I am of opinion that there is lack of confidence on the First Party and a such he should not be thrust on the shoulder of the second party. Under the circumstances, he should be given termination benefits. *Held:* The reason given the Labour court provides sufficient justification for granting termination benefits instead of re-instatement. *[S H Quddus Vs. Chairman, Labour Court (1981) 33 DLR (AD) 12].*

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

Discharge on refusal to accept transfer : *Held-* Employer's factory having been shifted form Dacca to Chittagong, the employees were asked to join the factory at Chittagong- transfer not being the conditions of appointment, their refusal to join the Chittagong Factory does not amount to a misconduct and therefore their discharge form service amounts to a termination within the meaning of section 19 of the Act. *[Pak. Manufacturers & Industries Vs. Second Labour Court (1969) 21 DLR 218]*

Resignation from service when takes effect- Resignation letter from service becomes effective, that is irrevocable with effect from the date of resignation. But if before the date when resignation takes effect the concerned officer withdraws his resignation it amounts that his resignation is withdrawn and there is in effect no resignation.*[(1981) 33 DLR 40]*

Termination of worker- Termination when to take effect- Labour Court has given no reasons for treating the date of its judgment as the date of termination of service of the worker. It is not correct to say that the language of section 25(d) of the Act and the facts and circumstances of the

case warrant treating the date of judgment of the Labour Court as the date of termination of his service. Labour Court's order treating the date of its judgment as the date of termination is without lawful authority.*[Chittagong Textile Mills Ltd. Vs. Labour Court, Chittagong and another (1991) 43 DLR 471]*

When fact of termination of service has not been brought home by either side the question of termination benefit does not arise. *[Managing Director, United Hosiery Mills and another Vs. Chairman, Second Labour Court, Dhaka and another (1994) 46 DLR 445]*

Resignation : *Held* that Permanent worker has a right to terminate his service by one month's notice and 14 days' notice in the case of other employees. *[Belal Rahman Vs. P.J. Industries. (1987) 39 DLR 239]*

Resignation– waiver of notice : Employer can waive the period of notice and acceptance of resignation and release the worker before one month.. *[Belal Rahman Vs. P.J. Industries. (1987) 39 DLR 239]*

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]*

Termination benefit- whether wages : Form the definition of 'wages' in the Act of 1936 and in the 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]*

Termination benefit- on resignation : Termination benefits cannot be claimed when the employee resigns on his own accord.*[Inland water transport Authority Vs. First Labour Court, Dhaka (1977) 29 DLR 85] :*

Termination- maintainability of civil suit : The respondent though a worker his civil suit is maintainable as the provision to section 25(1) does not provide him any scope for redress as the order of termination was not passed for trade union activity or for depriving him of benefits specified under section 19.*[Managing Director, Rupali Bank Limited vs. Md. Nazrul Islam Patwary and others. (1996) 48 DLR (AD) 62]*

Order of termination- civil court's jurisdiction : Considering the nature of work attached with the post of security guard of the Rupali Bank unhesitatingly it can be said that the plaintiff clearly comes within the definition of 'worker' provided in section 2(v) of the Employment of Labour (Standing Orders) Act 1965 but the civil suit is yet maintainable as the proviso to section 25(1) of the Act does not provide him any scope for lodging any complaint before the Labour Court as the order of termination of employment was not passed for his trade union activities or did not deprive the plaintiff for all the benefits specified in section 19 of the Act and as such the civil Court's jurisdiction is not ousted. *[Managing Director, Rupali Bank Ltd. vs. Nazrul Islam Patwary and others 1 BLC (AD) (1996) 159= (1996) 48 DLR (AD) 62]*

It was held in *Pubali Bank Limited Vs. Monsur Ali Akanda and others* that there is no specific provision either in the President's Order in the Bank (Employees) Service Regulation against termination of employment or imposition of penalty before any court. There is therefore no

question of inconsistency of any provision of the Regulation with action 25 of the Standing Order, Act as to forum for judicial redress. This section must be read to have been made applicable in respect of any liability created under the service regulations. The Courts below therefore, fell into an error of law in not holding that the suits were impliedly barred and the civil Court had no jurisdiction to entertain the same *[(1992) 44 DLR 589].*

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 Ltd. Vs. Labour Appellate Tribunal and others (1998) 50 DLR 476].*

Writ jurisdiction : Despite the general principle that the writ jurisdiction is not available to a worker for violation of the provisions of (Standing Orders) Act and the Industrial Relations Ordinance, 1969, in exceptional cases like in the instant case the High Court Divisions will exercise its extraordinary Jurisdiction under Article 102 of the Constitution. *[Faruque Hasan vs. Titas Gas Transmission and Distribution Company Ltd. 58 DLR (2006) 316]*

27. Termination of employment by workers : (1) A permanent worker may resign from his service by giving to the employer in writing sixty day's notice.

(2) A temporary worker may resign from his service by giving to the employer in writing-

(a) thirty days' notice, if he is a monthly rated worker ;

(b) fourteen days notice in case of other worker.

(3) Where a worker intends to resigns from his service without any notice, he may do so by paying to the employer wages in lieu of the notice which is required to be given under sub-section (1) or (2), as the case may be.

(4) Where a permanent worker resigns from his service under this section, he shall be paid by the employer compensation-

(a) at the rate of fourteen days' wages for every completed year of service, if he has completed five years of continuous service or more but less than ten years ;

(b) at the rate of thirty days' wages for every completed year of service, if he has completed ten years of continuous service or more;

or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act.

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Termination benefit- on resignation : Termination benefits cannot be claimed when the employee resigns on his own accord.*[Inland water transport Authority Vs. First Labour Court, Dhaka (1977) 29 DLR 85] :*

28. Retirement of worker : (1) A worker employed in any establishment shall, notwithstanding anything contained elsewhere in this Chapter, retire from employment *ipso facto* on the completion of the sixtieth year of his age.

(2) For the purpose of counting age of the worker under this section the date of birth recorded in the service book of the concerned worker shall be the conclusive proof.

(3) Every retiring worker under the provisions of section 26(4) or under own service rule of the establishment, shall be paid his benefits due to him.

(4) Appropriate authority, if thinks proper, may afterwards, employ the retiring worker under contract

29. Payment of Provident Fund : No worker, who is a member of any Provident Fund, shall be deprived due to retrenchment, dismissal, removal, discharge or termination of service of the benefit of the Provident Fund including the employer's contribution thereto, if he is entitled to it under the rules of that Fund.

30. Time limit of final payment of worker : Where the employment of a worker has been ceased due to a retirement, discharge, retrenchment, dismissal and termination etc. all amounts due to him shall be paid within maximum thirty working days by the employer.

31. Certificate of service : Every worker other than a casual or badli worker shall be entitled to a certificate of service from his employer at the time of his retrenchment, discharge, dismissal, removal, retirement or termination of service.

32. Eviction from residential accommodation : (1) A worker occupying a residential accommodation provided by his employer, whose service has been ceased by any means, shall vacate such residential accommodation within a period of sixty days from the date of cessation of employment.

(2) On default of a worker in vacating the residential accommodation within such time, the employer may lodge a complain to the Labour Court.

(3) The Court, on hearing the parties, may, summarily decide the case and direct the worker to vacate the residential accommodation within reasonable time.

(4) The Court may also pass an order directing a police officer to evict such a worker, if necessary, by force, in case he fails to quit residential accommodation within the specified time.

(5) The police officer, while acting under an order of the Court under sub-section (4), shall notify the occupants of the premises in question the contents of the Court's order and his intention to enter into such premises and shall allow at least six hours' time to the

occupants to vacate the premises and shall give all reasonable facilities to the children before applying any force for taking over the possession of such premises.

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Eviction from residential accommodation : This section provides for a period of 15 days to surrender residential accommodation by a worker from the date of his retrenchment, discharge, dismissal or termination from service, as the case may be, unless a case in that respect is pending before any Court. *Held* that in view of the provision, the employer cannot ask the worker to vacate the premises while the case is pending before the Labour Court *[Abdur Rahim Vs. Bangladesh Sarak Paribahan Corporation (1999) 51 DLR 339]*

In an earlier case it was held that 'Ex employee entitled t stay in his quarter u/a 24 (1) for 15 days after termination of service *[Abdul Khaleque Vs. Crescent Jute Mills Co. Ltd.(1969) 21 DLR 973].* It was further held in that case that dismissed worker can claim no right to be in the quarter by instituting a suit after the Expiry of 15 days under section 24 while a case under section 24 (2) is pending.

33. Grievance procedure : (1) Any worker, including a worker who has been laid-off, retrenched, discharged, dismissed, removed, or otherwise removed from employment, who has grievance in respect of any matter covered under this Chapter, and intends to seek redress thereof under this section, shall submit his grievance to his employer, in writing, by registered post within thirty days of being informed of the cause of such grievance.

Provided that if the employer acknowledges receipt of the grievance, in that case the service by registered post shall not be essential.

(2) The employer shall within fifteen days of receipt of such grievance, enquire into the matter, give the worker an opportunity of being heard and communicate his decision, in writing to him.

(3) If the employer fails to give a decision under sub-section (2) or if the worker is dissatisfied with such decision, he may make a complain in writing to the Labour Court within thirty days from the last date under sub-section (2) or within thirty days from the date of the decision, as the case may be.

(4) The Labour Court shall, on receipt of the complaint hear the parties after giving notice to them and make such orders as it my deem just and proper.

(5) The Labour Court, may amongst other relief, direct reinstatement of the complainant in service, either with or without back wages and convert the order of dismissal, removal or discharge to any other lesser punishment specified in section 23(2).

(6) Any person aggrieved by an order of the Labour Court, may, within thirty days of the order, prefer an appeal to the Tribunal, and the decision of the Tribunal on such appeal shall be final.

(7) No court-fees shall be payable for lodging complaint or appeal under this section.

(8) No complaint under this section shall amount to prosecution under this Act.

(9) Notwithstanding anything contained in this section, no complaint shall lie against an order of termination of employment of a worker under section 26, unless such order is alleged to have been made for his trade union activities or passed motivatedly or unless the worker concerned has been deprived of the benefits specified in that section.

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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 filled by the workers on technical grounds. The Labour court having found the order of dismissal of the petitioner not tenable in law had no option but to do justice to the petitioner..*[Md. Azizul Huq Vs. Chairman Labour Court Khulna and Others. (1996) 48 DLR 527]*

Individual worker : Section 25 (b) of E.L. (S. O.) Act- Individual worker includes worker no longer in employment either by termination or dismissal or discharge order can make complaint under section 25 on compliance of the other terms of the Section :

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

Termination- relief under section 25 whether available : The respondent though a worker his civil suit is maintainable as the provision to section 25(1) does not provide him any scope for redress as the order of termination was not passed for trade union activity or for depriving him of benefits specified under section 19.*[Managing Director, Rupali Bank Limited vs. Md. Nazrul Islam Patwary and others. (1996) 48 DLR (AD) 62]*

The plaintiff was neither terminated under section 19 of the Act nor was he an officer of a registered trade union. As such, the doors of the labour Court were not open to him to vindicated his termination. The relief sought for in the suit could not be prayed before the labour Court *[Uttara Bank Ltd. Vs. Syed Abidur Reza and othrers 56 DLR (2004) 46].*

Protection given to an officer of a trade union : 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. (1998) 49 DLR 537]*

Grievance notice a *sinequanon* for filing a case under section 25 :An Aggrieved individual worker including a dismissed or discharged retrenched or laid-off or otherwise removed person shall have to submit his grievance to his employer within 15 days of the occurrence of the cause of such action. *[M/s. Karim Jute Mills Ltd. Vs. Chairman, 2nd Labour Court, (1990) 42 DLR 255]*

Since the worker did not send his grievance petition to the employer within 15 days of his alleged removal, he cannot come before the Labour Court also under section 25 of the Act. *[NETC Vs. Labour Court (1993) 45 DLR 357].*

Sending of Grievance Notice by registered post : The worker is to send his grievance notice by registered post within 15 days of the occurrence. *[Abul Kalam vs. Chairman, Labour Court.(1986) 38 DLR 399].* Under section 25(1)(a) [sec 33 of the present Act] it is the unambiguous obligation of the worker concerned to bring his grievance to the notice of his employer in writing within 15 days of the occurrence o the cause of such grievance. Once the employer admits the receipt of notice sent without any registered cover, the employer could not raise the plea that the notice was not sent by registered post. *[BRTC VS. Md. Esken Mollick & anr.) 25 BLD (AD) 2004] = [9 MLR (AD) 2004 (Vol. IX)161]*

Grievance petition sent under a registered cover to the employer within 3 days of the receipt of the dismissal order is enough compliance regarding despatch of grievance to the employer to whom due to his absence this letter could not be delivered within 15 days. The Law makers amended Section 25 providing that if a grievance petition is sent by registered post within the period mentioned in the section it work be treated as having been filed within the period.*[Abdul Karim Khan Vs. Mujibur Rahman (1979) 31 DLR 269]*

An aggrieved individual worker including a dismissed or discharged or retrenched or laid for otherwise removed person shall have to submit his grievance petition to his employer within 15 days of the occurrence of the cause so such action.

Submission of grievance petition within 15 days must be first fulfilled and then complaint petition to the Labour Court lies. *[M/s. Karim Jute Mills Vs. Chairman 2nd Labour Court, (1990) 42 DLR 255]*

Grievance petition- to be served by registered post : The petition field by hand could not be considered to be a grievance petition. At best, the same could be considered as an appeal or a petition for review of the order of dismissal passed by the respondent No. 1, but by no means a grievance petition as meant by section 25 of the Employment of Labour (Standing Orders) Act. *[Sultan Ahmed vs. Chairman, Divisional Labour Court, and others. (1997) 49 DLR 215]*

A dismissed worker-his remedy under section 25 of the Act. : A dismissed worker who falls within the definition of 'worker' in Act VIII of 1965 can avail of the procedure laid down in section 25 of the Act of 1965 for challenging his dismissal. A dismissed worker who is not included within the narrower definition of "worker" as provided in the Act of 1965 will not, however, be without any legal remedy, though unable to seek the protection against dismissal under section 25. *[General Manager Hotel Intercontinental, Vs. Second Labour Court (1978) 28 DLR 160]*

Though section 25 bars all complaints against the order of termination under section 19 of the said Act yet it authorities the worker to claim relief if the termination is of an officer of the registered trade union for his trade union activities or the worker is deprived of the benefit under

section 19 of the Employment of Labour (Standing Orders) Act, 1965. *[SM Salim Vs Chairman, Ctg Club Ltd and others 57 DLR (AD) (2005) 191]*

Application under section 25 of the Employment of Labour (Standing Orders) Act by an individual worker : The view which has been expressed by the learned Judges of the High Court Division in the instant case that a workman whose services has been terminated may with equal competence apply for his reinstatement either under section 34 of the Industrial Relations Ordinance or under section 25 of the Employment of Labour (Standing Orders) Act, 1965 did not take notice of the true import of the definition of 'a worker' or 'workman' as given in the two enactment. An application under section 25 of the Employment of Labour (Standing Orders) Act is certainly maintainable as the said provision has been specifically made for adjudication of the grievances of an individual worker in respect of any of the matters covered under the said Act. *[Railway Men's Stores Vs. Labour Court, Chittagong (1978) 30 DLR (SC) 251]*

Aggrieved worker shall have to bring his grievances to the notice of the employer within 15 days : According to the provision of clause (a) of Section 25, sub-section (1) the pre-condition for filing a complaint case under clause (b) of the section 25(1) is that the worker concerned shall bring his grievance to the notice of his employer within 15 days of the occurrence of the cause of his grievance and thereafter he can wait for 30 days for the decision of the employer and then he shall have to file the complaint petition under clause (b) of the said section. *[A.R. Howlader Jute Mills Vs. 1st Labour Court (1976) 28 DLR 368]*

Proper procedure which a worker must follow : Section 25 clearly lays down that any worker who has a grievance in respect of any matter covered under the Act and intends to seek redress thereon under this section shall bring his grievance to the notice of the employer in writing within 15 days of the occurrence of the cause of such grievance and the employer shall within 30 days of the receipt of such grievance inquire into the matter and communicate his decision in writing to the worker and if the employer fails to give a decision or the worker is dissatisfied with the decision he may make a complaint to the Labour Court within 30 days from the date of the decision. *[National Bank of Pakistan Vs. Kazi Fazlul Karim (1976) 28 DLR 445]* (The Respondent brought to the notice of the employer his grievance regarding non-payment of his subsistence allowance that he is entitled under the Rules. The employer replied on 1.6.67 but the respondent did not take any step till 7.10.69 when he filed another representation and thereafter filed the instant case on 22.11.69. *Held* that the petitioner's cause of grievance arose on the following month of his suspension in August, 1966 when he was not paid any subsistence allowance, and the case having been filed more than 3 years after i.e. on 22.11.69, the case was barred under section 25 of the Act.)

Labour Court- interference when Inquiry Officers acts malafide : Labour Court is not a Court of appeal, but it can interfere only when the Inquiry Officer or the Inquiry Committee, as the case may be, acts unfairly and against the principles of natural justice.*[(1973) 25 DLR 242]*

The Labour Court can only interfere with the finding of the Inquiry Officer or Inquiry Committee if it is found that inquiry was held unfairly, with bad faith, without complying with the principles of natural justice and without following the procedure laid down in section 18 of the Employment of Labour (Standing Orders) Act.*[Nurul Amin Chowdury Vs. Chairman, Second Labour Court (1990) 42 DLR 217]*

It is not the function of the Labour Court to make any reassessment of the evidence recorded by the Enquiry Committee. The fact that upon the assessment of the evidence a different finding could be arrived at is not a ground to hold that the enquiry was inappropriate or unfair.

[Superintendent (Now General Manager) James Finlay PLC Vs Chairman 2nd Labour Court 57 DLR (AD) (2005) 196]

When Labour Court does not find any procedural defect in the domestic tribunal's enquiry into a case, Labour Court has no authority to assume its jurisdiction to set aside the tribunal's conclusion. Labour Court cannot act as a court of appeal and reassess the evidence so as to arrive at finding of its own. *[GM, Kohinoor Spinning Mills Ltd. Vs. Chairman, First Labour Court, Dhaka (1992) 42 DLR 344]*

Procedure for adjudication by Labour Court—Evidence—Admissibility of—Dismissal for misconduct on account of unauthorised absence—Absence explained as on account of prolonged illness-Two certificates from different doctors indicating different nature of ailment—Labour Court relying on such certificates coming to conclusion Doctors not examined –Such certificates in absence of examination of doctors by Labour Court, held, inadmissible—Contention that admissibility having not been objected to before Labour Court could not be questioned at appeal stage before Appellate Tribunal—Contention repelled and held, that it is for Court to decide whether a document is admissible or not in evidence—Mere fact that a party fails to object does not make an inadmissible document admissible. *[Mohammad Yousuf Khattak Vs. S.M. Ayub, PLD 1973 SC 160]*

Power of Labour Court to award termination benefit : Termination is a recognised method of dispensing with the services of a worker by an employer after fulfilling certain conditions, such as by providing termination benefits- The wide powers with which the Labour Court is vested under section 25(d) also includes the power to order termination with termination benefits. *[Haider Ali Mollah Vs. Chairman, Second Labour Court (1990)42 DLR 200]*

Termination- If the termination is found to be within the four corners of the law the Court cannot nullify it on the ground that it is harsh. There is no requirement in the Rules that termination would be void when no reason for it was assigned. The principle of natural justice is also not applicable in the case as this principle has been excluded in the Rule itself. The appointing authority has got power to reinstate a terminated employee, in exclusion of some others, on the merit of individual case-The contention of discrimination on that score is without any substance. *[Bangladesh Parjatan Corporation Vs. Shahid Hossain Bhuiyan and others (1991) 43 DLR (AD) 154]*

Termination of service of an employee on ground of trade union activities being not permissible in law is set aside by the apex court. *[United Commercial Bank Ltd. represented its Managing Director Vs. Mohammad Ahsanullah and another 9 MLR (AD) 2004 (Vol. IX)365].*

Armed Guard : 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 & ors (Civil) 9 MLR (AD) 2004 (Vol. IX)114].*

Termination before taking cognizance of dispute : Until Cognizance of the dispute taken by the conciliation officer and he issues notice to the employer and the employees, it can not be said that order of termination was passed during the Pendency of Conciliation Proceedings and as such it is a termination under section 18 and not one under section 19 for union activities. *[Ramani Ranjan Nath Vs. M/s. Spencer Co. 21 DLR 206].*

Reinstatement of dismissed worker- power of Labour Court : *Held*– Whether a Labour Court which has sufficient materials to draw a conclusion that it would be inappropriate to make an order for re-instatement can pass an order of termination of service instead, though the

Labour Court had found that the order of dismissal was illegal. *[Shahjahan Ali Vs. Chairman, Labour Court (1988) 40 DLR 132].*

Protection given to an officer of a trade union- whether can be enforced under section 25 : 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. (1998) 49 DLR 537]*

Power of the Labour Court: The power of the Labour Court to pass such orders as may appear to it to be just and proper is limited by the general provision that a worker dismissed lawfully cannot be imposed on the employer on compassionate ground or on the ground of severity of penalty. *[Maqbular Rahman Jute Mills Limited vs. Chairman Labour Court and other. (1996) 48 DLR 566]*

Non appearance of party : Since the overriding responsibility of the Labour Court is to decide the complaint case after giving notice and hearing to the parties it had no option but to set aside the order of rejection for non-appearance of the complainant who was able to satisfy the Labour Court as to the cause of his non-appearance. Deciding a case means deciding it on merit and not by passing a default order. *[Crescent Jute Mills Company Ltd. vs. Chairman, Labour Court and another. (1997) 49 DLR 201*

Review Power of Labour Court : No power of review has been conferred in a Labour Court by implication and as such a Labour court cannot review its earlier order.

Review is not a matter of procedure, but involves a substantive right. *[(1974) 25 DLR 242]*

Proceedings of domestic enquiry- Labour Court's power of- reassessment of evidence of witnesses : It is not the function of the Labour Court to make reassessment of evidence recorded by the tribunal. The fact that on reassessment of evidence by some other person a different findings could have been arrived at is not a ground to hold that the enquiry was improper or unfair. *[S H Quddus Vs. Labour Court, Chittagong and others (1981) 33 DLR 1]*

When Labour Court does not find any procedural defect in the domestic tribunal's enquiry into a case, Labour Court has no authority to assume its jurisdiction to set aside the tribunal's conclusion. Labour Court cannot act as a court of appeal and reassess the evidence so as to arrive at finding of its own. *[Kohinoor Spinning Mills Ltd. Vs. Chairman, First Labour Court, Dhaka (1992) 42 DLR 344]*

Limitation- to be strictly followed : Section 25(1) provides that the worker concerned shall bring his grievance to the notice of his employer, in writing, within fifteen days of he occurrence of the case of such grievance. In all the cases the grievance petitioners were submitted long after the expiry of 15 days' time limit. Employment of Labour (Standing Orders) Act being a special law should be applied strictly. The limitation cannot be condoned either by the tripartite agreement or by the Labour Court. *[Syed Ahmed Bhuiyan Vs Karnaphuli Fertiliser Co. Ltd 10 BLC (AD)(2005) 103]*

Labour Court whether can allow amendment of application under the Employment of Labour (S.O.) Act : Labour Court under section 25 (1) (d) function as statutory tribunal of limited jurisdiction and has no power of allowing amendment in the Complaint Petition like that granted under Order C.P.C so as to make the amendment relates back to the late of filing of the said petition. Labour Court, however can allow amendment to the petition which shall date form the date on which such amendment is made and not earlier to that.

When an amendment allowed by the Labour Court makes the complaint a new complaint, such amendment not sustainable in law when time has run out against the petitioner.

Labour Court functions as a statutory tribunal of limited jurisdiction. Labour Court is not a Civil Court when it determines an individual complaint and does not purport to decide an industrial dispute within the meaning of Industrial Relations Ordinance, 1969. Under clause (d) of sub-section (1) of section 25, the Labour Court may pass such order including order regarding cost as it may deem just and proper. In this view of the matter, the power of a Labour Court in deciding an individual complaint, which has nothing to do with an industrial dispute under section 25 of the Employment of Labour (Standing Orders) Act 1965 is that of a statutory tribunal of limited jurisdiction and it has no power of making an amendment of the complaint-petition so as to make it relate back to the date of the filing of the said petition. *[A.R. Howlader Jute Mills Vs. 1st Labour Court (1976) 28 DLR 368]*

Conversion of application u/s34 IRO into an application u/s 25 S.O Act : In the absence of compliance of statutory requirements of section 25 of the Act no worker can hope to have his application under section 34 of the Industrial Relations Ordinance treated as an application under section 25 of the Act- The employee's application under section 34 could be converted under section 25 if it were found that prior to his filing of the application under section 34 he fulfilled the provisions of clause (a) of section 25 of the Act *[James Finlay and Co. Vs. Second Labour Court, Dhaka (1981) 1 BLD (AD) 21]*

Function of Labour Court : Functions that a Labour Court is called upon to exercise is judicial in nature. It can decide the subject matter of the complaint in a summary way but principles of natural justice cannot be disregarded in such trial. *[Md. Abdul Hoque Vs. Second Labour Court, Dhaka (1970) 22 DLR 577*

Labour Court exercising power under section 25 of the Employment Labour (Standing Orders) Act, 1965 is not a Civil Court and therefore cannot exercise the powers as have been incorporated in the code of Civil Procedure. *[A.R. Howlader Jute Mills Vs. 1st Labour Court (1976) 28 DLR 368]*

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

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

In a dispute where there is an allegation of theft against Respondent No. 2 even if such allegation may not be proved in evidence there always remains an incongenial relationship between the employer and the employee based on mutual suspicion arising out of a major allegation of theft. In uncongenial relationship clouded with suspicion it cannot be said that it would be appropriate case where reinstatement could be allowed. *[Zeal Bangla Sugar Mills Ltd. Vs. First Labour Court, Dhaka (1982) 34 DLR 1].*

Whether a Labour court is empowered to reinstate a dismissed worker : whether a Labour Court which has a sufficient materials to draw a conclusion that it would be inappropriate to make an order of reinstatement can pass an order of termination of service instead though the Labour Court had found that the order to dismissal was illegal ..... Acting on the authorities above mentioned we have, therefore, no hesitation to hold that exercise of the discretion by the Labour court in passing the impugned order was a judicial one and consequently the Labour court did not act beyond the scope of section 25 (i) (d) in allowing termination benefits to the petitioner instead of re-instatement *[Shahjahan Ali Vs. Chairman, Labour Court (1988) 40 DLR 132].*

Employee of Co-operative Society- Labour Court's jurisdiction : Respondent No. 2 an employee of the appellant Co-operative Society is governed by the Co-operative Societies Act. His petition before the Labour Court was incompetent *[The Bangladesh Jatio Mastyajibi Samabaya Samity Ltd. Vs. Labour Court, Chittagong (1976) 28 DLR (AD) 187].*

Trial-territorial jurisdiction :Leave was granted to consider that the Company and its Managing Director both residents of Chittagong and petitioner though incharge of Bogra Sales Depot. of the Company was employer of the Company and hence the Complaint case clearly fell within the jurisdiction of the Chittagong and Rajshahi Labour Court. Consequently under such circumstances the second court, Dhaka had exclusive Jurisdiction to decide the said complaint case under section. 25 of Employment of Labour (S.O.) Act read with Government Notification under section. 35 of the Industrial relations Ordinance, 1969.

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

Application of section 14 and 29 of limitation Act- In view of the provisions of section 29(2) of the Limitation Act, section 14 of the said Act is applicable to a special law like the Employment of Labour (Standing Orders) Act. *[Secy. Bangladesh Jute Corporation & other Vs. Chairman, 2nd Labour Court (1989) 41 DLR 265]*

Civil Court's jurisdiction : Considering the nature of work attached with the post of security guard of the Rupali Bank unhesitatingly it can be said that the plaintiff clearly comes within the definition of 'worker' provided in section 2(v) of the Employment of Labour (Standing Orders) Act 1965 but the civil suit is yet maintainable as the proviso to section 25(1) of the Act does not provide him any scope for lodging any complaint before the Labour Court as the order of termination of employment was not passed for his trade union activities or did not deprive the plaintiff for all the benefits specified in section 19 of the Act and as such the civil Court's jurisdiction is not ousted. *[Managing Director, Rupali Bank Ltd. vs. Nazrul Islam Patwary and others (1996) 1 BLC (AD)159].*

Retirement from service- whether grievance notice can be served : Whether retirement from service is a grievance coming within the preview of section 25 of the Act- since the retirement, right or wrong,. is not covered under any of the provisions of the Act as grievance; the workers so retired cannot invoke the Jurisdiction of the Labour Court. *[M/s. Adamjee Jute Mills Ltd. Vs. The Chairman, Third Labour Court (1990) 42 DLR 275].*

Writ : Discretion to pass an order under section 25(1)(d) rests with the Labour Court- Writ Court cannot substitute its own discretion or its concept of propriety for the discretion or the concept of propriety of the Labour Court- It can only examine the legality or otherwise of the impugned order passed by the Labour Court. *[Haider Ali Mollah Vs. The Chairman, Second Labour Court (1990) 42 DLR 200].*

Reinstatement of worker dismissed of union activities : Although the claims of the petitioners in the writ petitioners were dismissed by the labour Court on the ground of their being not entitled to the benefit under the law as they were not parties to the decisions of the Review Committee, the High Court Division in exercise of its extra-ordinary jurisdiction could will interfere with the order of dismissal and direct their reinstatement. *[Janata Bank and others Vs. Mohammad Bashir and others. 6 MLR 2001 (AD) Vol-VI 251].*

Suspension- Grievance notice - Section 25 of the Act does not contemplate filing of grievance notice after 15 days of the order of suspension of an employee on the plea that cause of action in case of suspension is recurring one. *[General Manager, Kohinoor Spinning Mills Ltd. Vs. Chairman, 1st Labour Court, Dhaka 344].*

Additional written statement- Limitation- Labour Court acted in excess of its jurisdiction by relying upon the additional written statement filed beyond the period of limitation giving rise to new cause of action. *[Kohinoor, Spinning Mills Ltd. Vs. Chairman, 1st Labour Court, Dhaka (1990) 42 DLR (1990) 42 DLR 344]*

Re-instatement- Order of re-instatement of the dismissed employee passed by the employer subject to his unconditional withdrawal of his pending Writ Petition against the said dismissal-Re-instatement order not complied with by the employee within reasonable time. *Held:* Order of re-instatement has already spent its force and is no longer available to the petitioner (employee) *[Nurul Amin Chowdhury Vs. Second Labour Court, Dhaka (1990) 42 DLR 217].*

Dismissal- whether double jeopardy : Deposit of tax and fine payable by the employee did not absolve him of the liability of disciplinary action for misconduct, although the employer did not incur any monetary loss. Labour Court acted without lawful authority in holding that the employee was punished twice for the same offence by dismissing him from service for misconduct. *[Bangladesh Road Transport Corporation represented by the Chairman Vs. Chairman, First Labour Court & another (1994) 46 DLR 483]*

Presumption of registered notice- Notice sent by registered post at the correct address of the notice carries with it a legal presumption of due service. *[Musammat Mohsena Khatun Vs. M/s. Habib Knitting Mills. (1997) 17 BLD (AD) 47]*

Back Wages- The petitioner is out of employment for the last 18 years. So he cannot be allowed full back wage for such a long period as the same will cause hardship to the employer. Respondent No. 2 is directed to reinstate the petitioner in his service with 50% back wages within 60 days. *[Md. AZizul Huq Vs. Chairman Labour Court Khulna and Others (1996). 48 DLR 527]*

CHAPTER : III

EMPLOYMENT OF ADOLESCENT

34. Prohibition of employment of children and adolescent : (1) No child shall be employed or permitted to work in any occupation or establishment.

(2) No adolescent shall be employed or permitted to work in any occupation or establishment unless-

(a) a certificate of fitness in the prescribed form and granted to him by a registered medical practitioner is in the custody of the employer ; and

(b) he carries, while at work, a token giving a reference to such certificate.

(3) Nothing in this sub-section (2), shall apply to the employment of any adolescent in any occupation or establishment either as an apprentice or for the purpose or receiving vocational training therein:

(4) The Government may, where it is of opinion that an emergency has arisen and the public interest so requires, by notification in the official Gazette, declare that the provisions of this sub-section (2), shall not be in operation for such period as may be specified in the notification.

35. Prohibition of certain agreement in respect of children : Subject to the provisions of this Chapter, no person, being the parent or guardian of a child, shall make an agreement, to allow the service of the child to be utilised in any employment.

Explanation : In this section, 'guardian' includes any person having legal custody of or control over a child.

36. Disputes as to age : (1) If any question arises as to whether any person is a child or an adolescent, the question shall, in the absence of a certificate as to the age of such person granted by a registered medical practitioner, be referred by the Inspector for decision to a registered medical practitioner.

(2) A certificate as to age of a person granted by a registered medical practitioner as mentioned in sub-section (1), shall be conclusive evidence as to age of the person to whom it relates.

37. Certificate of fitness : (1) A registered medical practitioner shall, on the application of any adolescent or his parent or guardian or by the employer whether the concerned adolescent is fit to work in any occupation or establishment, examine such person and shall give his decision as to his fitness :

Provided that when such application is made by the adolescent or his parent or guardian, the application shall be accompanied by a document signed by the employer in whose

establishment the adolescent is an applicant, stating that such person will be employed if certified to be fit for work.

(2) Any certificate of fitness granted under this section shall remain valid for a period of twelve months from the date on which it was issued. (3) Any fee payable for a certificate under this section shall be paid by the employer and shall not be recoverable from the adolescent or his parents or guardians.

38. Power to require medical examination : Where an Inspector is of opinion-

(a) that any person working in an establishment is an adolescent, but he has no certificate of fitness, or

(b) that an adolescent working in an establishment with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the employer a notice requiring that such adolescent shall be examined by a registered medical practitioner and may direct that such adolescent shall not, be allowed to work until he has been so examined and has been granted a certificate of fitness or has been certified by the registered medical practitioner not to be an adolescent.

39. Restriction of employment of adolescent in certain work : No adolescent shall be allowed in any establishment to clean, lubricate of adjust any part of machinery while that part is in motion or to work between moving parts or between fixed and moving parts, of any machinery which is in motion.

40. Employment of adolescent on dangerous machines : (1) No adolescent shall work at any machine unless-

(a) he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and—

(b) has received sufficient training in work at the machine, or is under adequate supervision by a person who has thorough knowledge and experience of the machine,

(2) This provision shall apply to such machines as may be notified by the Government to be of such a dangerous character that an adolescent ought not to work at them unless the requirements of sub-section (1) are complied with.

(3) The Government may from time to time publish in the official gazette the list such of hazardous works where, no adolescent shall be employed.

NOTES/COMMENTS/PRECEDENTS

Dangerous Machine: A machine is dangerous if in the ordinary course of human affairs, danger may be reasonably anticipated from its use if unfenced, not only to the prudent or alert but also to the careless or inattentive worker whose inadvertent conduct may expose him to risk of injury from the unguarded part *[Michell Vs. North British Rubber & Co. Ltd. (1954) SCJ 73].*

In Walker Vs. Bletchley Flettans Ltd. (1973) 1 All ER 170] it was held that a machine is dangerous if it is a possible cause of injury to anybody acting in a way in which a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur.

Dangerous Part of the machinery : The term dangerous part of machinery was not defined in the Factories Act. 1965. In the present Act also the same has not been defined. So it has to be understood according to the meaning given to them in common parlance. The test whether a part of a machine is dangerous or not is objective. The question to be answered for determining as to whether a particular part of a machine is dangerous or not is whether the part of the machinery is in such position and the method of operation is such that in ordinary course of human affairs danger may reasonably result from its use if it is not fenced. In considering whether a machine is dangerous the contingency of carelessness on the part of the workman in-charge and the frequency with which the contingency is likely to arise are matters for consideration. A Part of the machinery would be called dangerous if it is possible to cause injury to anybody while acting in a way in which a human being may reasonably be expected to act in normal circumstances.

41. Working hours for adolescent : (1) No adolescent shall be required or allowed to work in any factory or mine, for more than five hours in any day and thirty hours in any week ;

(2) No adolescent shall be required or allowed to work in any other establishment, for more than seven hours in any day and forty-two hours in any week.

(3) No adolescent shall be required or allowed to work in any establishment between the hours of 7.00 p.m. and 7.00 a.m.

(4) If an adolescent works overtime, the total number of hours worked, including overtime, shall not exceed-

(a) in any factory or mine, thirty six hours in any week ;

(b) in any other establishment, forty eight hours in any week.

(5) The period of work of an adolescent employed in an establishment shall be limited to two shifts which shall not overlap or spread over more than seven and a half hours each.

(6) An adolescent shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Inspector, be changed more frequently than once in a period of thirty days.

(7) The provisions of weekly holiday shall apply also to adolescent workers, and no exemption from the provisions of that section shall be granted in respect of any adolescent.

(8) No adolescent shall be required or allowed to work in more than one establishment in any day.

42. Prohibition of employment of adolescent in underground and under-water work : No adolescent shall be employed in any underground or underwater work.

43. Notice of periods of work for adolescent : (1) In every establishment in which adolescent are employed, there shall be displayed in the manner prescribed by rules, a notice of specified periods of work for adolescent.

(2) The periods shown in the notice under sub-section (1) shall be fixed beforehand in the manner laid down for adult workers and shall be such that adolescent working on those periods would not be working in contravention of this Act.

(3) The relevant provisions laid down for adult workers in the occupation or establishment shall also apply to the notice under sub-section (1). (4) The Government may make rules to prescribe the form of such notice and the manner in which it shall be maintained.

44. Exception in certain cases of employment of children : (1) Notwithstanding anything contained in this Chapter, a child who has completed twelve years of age, may be employed in such light work as not to endanger his health and development or interfere with his education:

Provided that the hours of work of such child, where he is school going, shall be so arranged that they do not interfere with his school attendance.

(2) All provisions applicable to an adolescent workers under this Chapter shall *mutatis-mutandis* apply to such child workers.

CHAPTER : VI
MATERNITY BENEFIT

Before passing of this Act there were three Acts for regulation of the employment of women in for certain periods before and after child-birth and to provide for the payment of maternity benefit to them. The Acts were The Maternity Benefit Act, 1939 (IV of 1939) , The Mines Maternity Benefit Act, 1941 (XIX of 1941) and The Maternity Benefit (Tea Estate) Act, 1950 (XX of 1950). These Acts have been repealed and almost all the provisions of those acts have been incorporated in this Chapter.

45. Employment of women worker prohibited during certain period: (1) No employer shall knowingly employ a woman in his establishment during the eight weeks immediately following the day of her delivery.

(2) No woman shall work in any establishment during the eight weeks immediately following the day of her delivery.

(3) No employer shall employ any woman for doing any work which is of an arduous nature or which involves long hours of standing or which is likely to adversely affect her health; if-

(a) he has reason to believe or if she has informed him that she is likely to be delivered of a child within ten weeks ;

(b) she has to the knowledge of the employer been delivered of a child within the preceding ten weeks :

Provided that in case of tea plantation worker, a woman worker can undertake light work if and for so long as the medical practitioner of the concerned tea estate certifies that she is physically fit to do so ; and, for the days that she does such work, she shall be paid at the prevailing rate of pay for such work, and such pay shall be paid to her in addition to the maternity benefit which she may be entitled to receive under existing this Act.

46. Right to, and liability for, payment of maternity benefit : (1) Every woman employed in an establishment shall be entitled to, and her employer shall be liable for, the payment of maternity benefit in respect of the period of eight weeks preceding the expected day of her delivery and eight weeks immediately following the day of her delivery:

Provided that a woman shall not be entitled to such maternity benefit unless she has worked under the employer, for a period of not less than six months immediately preceding the day of her delivery.

(2) No maternity benefit shall be payable to any woman if at the time of her confinement she has two or more surviving children, but in that case she shall be entitled to the leave to which she would otherwise be entitled.

NOTES/COMMENTS/PRECEDENTS

Weekly holiday- whether to be counted : The question was whether Sunday is to be counted in calculating the amount of maternity benefit. It was held that in the context of sub-sections (1) and (3) of Section 5, the terms week has to be taken to signify a cycle of seven days including Sundays. The Legislature intended that computation of maternity benefit is to be made for the entire period of the woman workers' actual absence, i.e., for all the days, including Sundays, which may be wageless holidays falling within that period and not only for intermittent periods of six days thereby excluding Sundays falling within that period. *[B. Shah Vs. Labour Court, Coimbatore AIR 1978 S.C. 12]*

47. Procedure regarding payment of maternity benefit : (1) Any pregnant woman entitled to maternity benefit under this Act may, on any day, give notice either orally or in writing to her employer that she expects to be confined within eight weeks next following and may therein nominate a person for purposes of receiving payment of maternity benefit in case of her death.

(2) Any woman who has not given such notice and has been delivered of a child, shall, within seven days, give similar notice to her employer that she has given birth to a child.

(3) When a notice referred to in sub-section (1) or (2) is received, the employer shall permit the women to absent herself from work-

(a) from the day following the date of notice in the case mentioned in sub-section (1);

(b) from the day of delivery in the case mentioned in sub-section (2) until eight weeks after the day of delivery.

(4) An employer shall pay maternity benefit to a woman entitled thereto in such one of the following ways as the woman desire, namely:

(a) for eight weeks, within three working days of the production of a certificate signed by registered medical practitioner stating that the woman is expected to be confined within eight weeks of the date of the certificate, and for the remainder of the period for which she is entitled to maternity benefit under this Act within three working days of the production of proof that she has given birth to a child ; or

(b) for the said period up to and including the day of delivery, within three working days of the production of proof that she has given birth to a child, and for the remainder of the said period, within eight weeks of the production of such proof ; or

(c) for the whole of the said period, within three working days of the production of proof that she has given birth to a child:

Provided that a woman shall not be entitled to any maternity benefit or any part thereof, the payment of which is dependent upon the production of proof under this sub-section that she has given birth to a child, unless such proof is produced within three months of the day of her delivery.

(5) The proof required to be produced under sub-section (4) shall be either a certified extract from a birth register under the Births and Deaths Registration Act, 2004 (XXIX of 2004), or a certificate signed by a registered medical practitioner or such other proof as may be accepted by the employer.

48. Amount of maternity benefit : (1) The maternity benefit which is payable under this Act shall be payable at the rate of daily, weekly or monthly average wages, as the case may be, calculated in the manner laid down in sub-section (2), and such payment shall be made wholly in cash.

(2) For the purpose of sub-section (1) the daily, weekly or monthly average wages, as the case may be, shall be calculated by dividing the total wages earned by the woman during the three months immediately preceding the date on which she gives notice under this Act by the number of day she actually worked during the period.

49. Payment of maternity benefit in case of a woman's death : (1) If a woman entitled to maternity benefit under this Act dies at the time of her delivery or during the next period of 8 months, the employer shall pay the amount of maternity benefit due, if the newly born child survives her, to the person who undertakes the care of the child, and if the child does not survive her ; to the person nominated by her under this Chapter, or if she has made no such nomination, to her legal representative.

(2) If a woman dies during the period for which she is entitled to maternity benefit but before giving birth to a child, the employer shall be liable only for the period up to and including the day of her death, provided that any sum already paid to her in excess of such liability shall not be recoverable from her legal representative, and any amount due at the woman's death shall be paid to the person nominated by her under this chapter, or if she has made no such nomination, to her legal representative.

50. Restriction on termination of employment of a woman in certain cases : If any notice or order of discharge, dismissal, removal or termination of employment is given by an employer to a woman within a period of six months before and eight weeks after her delivery and such notice or order is given without sufficient cause, she will not be deprived of any maternity benefit to which she would have become entitled under this chapter.

CHAPTER : V

HEALTH AND HYGIENE

** This Chapter is for Safeguard providing for protection of Health of workers in their place of work. These provisions have been borrowed from Chapter III of the Factories Act 1965. This chapter deals with the provisions the protection of Health of workers employed in factories. The provisions are (i) Cleanliness (section 51), (ii) Ventilation and temperature (section 52) (iii) Dust and fume (section 53) , (iv) Disposal of wastes and effluents (section 54) (v) Artificial humidification (section 55), (vi) Overcrowding (section 56), (vii) Lighting (section 57) , (viii) Drinking water (section 58) , (ix) Latrines and urinals (section 59), and (x) Dust Bean and Spittoon (section 60).]

51. Cleanliness : Every establishment shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

(a) accumulation of dirt and refuge shall be removed daily by sweeping or by any other effective method from the floors and benches of work-rooms and from staircases and passage and disposed of in a suitable manner ;

(b) the floor of every work-room shall be cleaned at least once in every week by washing, using disinfectant where necessary or by some other effective method;

(c) where the floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;

(d) all inside walls and partitions, all ceilings, or tops of rooms, and walls, side and tops or passages an staircases shall—

(i) where they are painted or varnished, be repainted or revarnished at least once in every three years,

(ii) where they are painted or varnished and have smooth imperious surface, be cleaned at least once in every fourteenth months, by such methods as may be prescribed,

(iii) in any other case, be kept white-washed or colour-washed and the white-washing or colour-washing shall be carried out at least once in every fourteen months ; and

(e) the date on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

52. Ventilation and temperature : (1) Effective and suitable provisions shall be made in every establishment for securing and maintaining in every work-room adequate ventilation by the circulation of fresh air ;

(2) such temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health.

(3) the walls and roofs, as required by sub-section (2), shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;

(4) where the nature of the work carried on in the establishment involves, or is likely to involve, the production of excessively high temperature, such adequate measures as are practicable, shall be taken to protect the workers there from by separating the process which produces such temperature from the work-room by insulating the hot parts or by other effective means.

(5) If it appears to the Government that in any establishment or class or description of establishments excessively high temperature can be reduced by such methods as white-washing, spraying or insulating and screening outside walls or roofs or windows or by raising the level of the roof, or by insulating the roof either by an air space and double roof or by the use of insulating roof materials, or by other methods, it may prescribe such of those or other methods to be adopted in the establishment.

53. Dust and fume : (1) In every establishment in which, by reason of any manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, effective measures shall be taken to prevent its accumulation in any work-room and it inhalation by workers, and if any exhaust appliance is necessary for this purpose, it shall he applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any establishment no stationary internal combustion engine shall be operated unless the exhaust is conducted into open air, and no internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to the workers employed in the work-room.

54. Disposal of wastes and effluents : Effective arrangements shall be made in every establishment for disposal of wastes and effluents due to the manufacturing process carried on therein.

55. Artificial humidification : (1) In any establishment in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

(2) If it appears to an Inspector that the water used in an establishment for increasing humidity which is required to be effectively purified under sub-section (1) is not effectively purified, he may serve on the employer of the establishment an order in writing, specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date..

56. Overcrowding : (1) No work-room in any establishment shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of the provisions of sub-section (1), there shall be provided for every worker employed in a work-room at least 9.5 cubic metre of space in the establishment.

Explanation : For the purpose of this sub-section no account shall be taken of a space which is more than 4.25 metre above the level of the floor of the room.

(3) If the Chief Inspector by order in writing so requires, there shall be posted in each work-room of an establishment a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.

(4) The Chief Inspector may, by order in writing, exempt, subject to such conditions as he may think fit to impose, any work-room from the provisions of this section if he is satisfied that compliance therewith in respect of such room is not necessary for the purpose of health of the workers employed therein.

57. Lighting : (1) In every part of an establishment where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(2) In every establishment all glazed windows and skylights used for the lighting of the work-room shall be kept clean on both the outer and inner surfaces and free from obstruction as far as possible.

(3) In every establishment effective provisions shall, so far as is practicable, be made for the prevention of-

(a) glare either directly from any surface of light or by reflection from or polished surface, and

(b) the formation of shadows to such an extent as to cause eye strain or risk of accident to any worker.

58. Drinking water : (1) In every establishment effective arrangement shall be made to provide and maintain at a suitable point conveniently situated for all workers employed therein, a sufficient supply of wholesome drinking water.

(2) All such points where water is supplied shall be legibly marked 'Drinking Water' in Bangla.

(3) In every establishment wherein two hundred fifty or more workers are ordinarily employed, provision shall be made for cooling the drinking water during the hot weather by effective means and for distribution thereof.

(4) Where dehydration occurs in the body of workers due to work near machineries creating excessive heat, there workers shall be provided with oral re-hydration therapy.

(a) sufficient latrines and urinals of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are in the establishment ;

(b) such latrines and urinals shall be provided separately for male and female workers ;

(c) such latrines and urinals shall be adequately lighted and ventilated ;

(d) all such latrines and urinals shall be maintained in a clean and sanitary condition at all times with suitable detergents and disinfectants.

59. Latrines and urinals: In every establishment-

(a) sufficient latrines and urinals of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are in the establishment ;

(b) such latrines and urinals shall be provided separately for male and female workers ;

(c) such latrines and urinals shall be adequately lighted and ventilated ;

(d) all such latrines and urinals shall be maintained in a clean and sanitary condition at all times with suitable detergents and disinfectants.

60. Dust bean and Spittoon : (1) In every establishment there shall be provided, at convenient places, sufficient number of dust beans and spittoons which shall be maintained in a clean and hygienic condition.

(2) No person shall throw any dirt or spit within the premises of an establishment except in the dust beans and spittoons provided for the purpose.

(3) A notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

CHAPTER : VI

SAFETY

** This Chapter deals with Precautions and safety measure of workers. Chapter IV of the Factories Act 1965 contained almost same safety provisions of high standard based on modern industrial practice.

This Chapter like the provisions of the previous law places the responsibility of safety matters upon the employer. The employer must comply with safety provisions of the Act. However the inspector are always available for consultation and they have to pay periodical visits to look after the safety measure.

61. Safety of building and machinery : (1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in an establishment is in such a condition that it is dangerous to human life or safety, he may serve on the employer of the establishment an order in writing specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date.

(2) If it appears to the Inspector that the use of any building or part of a building or of any part of the ways, machinery or plant in the establishment involves imminent danger to human life or safety, he may serve on the employer of the establishment an order in writing prohibiting its use until it has been properly repaired or altered.

62. Precaution in case of fire : (1) Every establishment shall be provided with at least one alternative connecting stairway with each floor and such means of escape in case of fire and fire-fighting apparatus, as may be prescribed by rules.

(2) If it appears to the Inspector that any establishment is not provided with the means of escape prescribed under sub-section (1) he may serve on the employer of the establishment an order in writing specifying the measures which, in his opinion, should be adopted before a date specified in the order.

(3) In every establishment the doors affording exit from any room shall not be locked or fastened so that they can be easily and immediately opened from inside while any person is within the room and all such doors, unless they are of the sliding type, shall be constructed to open outwards or where the door is between two rooms, and all such doors, unless they are of the sliding type, shall be constructed to open outwards or where the door is between two rooms, in the direction of the nearest exit from the building and no such door shall be locked or obstructed while work is being carried on in the room.

(4) In every establishment every window, door, or other exit affording means of escape in case of fire, other than the means of exit in ordinary use, shall be distinctively marked in Bangla and in red letters of adequate size or by some other effective and clearly understood sign.

(5) In every establishment there shall be provided effective and clearly audible means of giving warning in case of fire to every person employed therein.

(6) A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in every room of the establishment.

(7) In every establishment wherein more than ten workers are ordinarily employed in any place above the ground floor, or explosive or highly inflammable materials are used or stored, effective measures shall be taken to ensure that all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such case.

(8) In factories wherein fifty or more workers and employees are employed shall arrange at least once in a year a mock fire-fighting and the employer shall maintain a book of records in this regard.

63. Fencing of machinery.- (1) In every establishment the following shall be securely fenced by the safeguards of substantial construction which shall be kept in position while the part of machinery required to be fenced are in motion or in use, namely-

(a) every moving part of a prime mover, and every fly wheel connected to a prime mover ;

(b) the head-race and tail-race of every water wheel and water turbine;

(c) any part of a stock-bar which projects beyond the head stock of a lathe; and

(d) unless they are in such position or of such construction as to be as safe to every person employed in the establishment as they would be if they were securely fenced-

(i) every part of an electric generator,- a motor or rotary converter,

(ii) every part of transmission machinery, and

(iii) every dangerous part of any machinery :

Provided that, for the purpose of determining whether any part of machinery is safe as aforesaid, account shall not be taken of any occasion when it being necessary to make an examination of the machinery while it is in motion, such examination or operation is made or carried in accordance with the provisions of section 64.

(2) Without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle wheel or pinion and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced, to prevent such contact.

NOTES/COMMENTS/PRECEDENTS

Obligation to fence dangerous machinery : No doubt the default on the part of the person accused has to be established by the prosecution before there can be a conviction. It has to be observed that S.21(1) (v) (c) requires not only that the dangerous part of a machine shall be

securely fenced by safeguards but also that the safeguards "shall be kept in position while the parts of the machinery they are fencing in motion or in use", suggest that the fencing should always be there. The statute has, however, put the matter beyond doubt by expressly saying that the fencing shall be kept in position while the machine is working. When the statute says that it will be the duty of the occupier or manager to keep the guard in position when the machine is working and when it appears that he has not done so, it will be for him to establish that notwithstanding this he was not liable. It is not necessary for the Court to say that in every case where it is proved that the manager or occupier had provided the necessary fence or guard but at a particular moment it appeared that the fence or guard had been removed, he must be held liable. Suppose the fence for some reason for which the manager or occupier is not responsible, suddenly breaks down and the machine remains unfenced for some time before the owner or occupier found that out and replaced the fence. It may be that in such a case he cannot be made liable. A statute does not, of course, require an impossibility of a person. But, there is nothing to show that that is the case here. *[State of Gujarat Vs. Tethalal Ghelahai Patel AIR 1964 SC 779 = (1964) 5 SCR 801 = (1964) 1 Cri LJ 558.]*

Interpretation of : A plain reading of S.21 (1) (iv) (c) would indicate that every dangerous part of any other machinery shall be securely fenced by safeguard of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use and that is to be done unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced. In other words, if those dangerous parts are in such position or are of such construction as to be safe to every person employed, the question of securely fencing by safeguard of substantial construction and of keeping them in position while the parts of machinery they are fencing are in motion or in use will not arise. *[P.D. Jambekar Vs. State of Gujarat, AIR 1973 SC 309= (1973) 3 SCC 524 = (1973) 2 SCR 714.]*

64. Work on or near machinery in motion : (1) Where in any establishment it becomes necessary to examine any part of machinery referred to in section 61 while the machinery is in motion or as a result of such examination to carry out any mounting or shipping of belts, lubrication or other adjusting operation while the machinery is in motion such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight-fitting clothing whose name has been recorded in the register prescribed in this behalf and while he is so engaged such worker shall not handle a belt at a moving pulley unless the belt is less than fifteen centimeters in width and unless the belt-joint is either laced or flush with the belt.

(2) The Government may, by notification in the official Gazette, prohibit, in any specified establishment or class or description of establishments, the cleaning, lubricating, or adjusting by any person of specified part of machinery when those parts are in motion.

65. Striking gear and devices for cutting off power : (1) In every establishment-

(a) suitable striking gear or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which from part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from cropping back on the first pulleys ;

(b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

(2) In every establishment suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room.

66. Self-acting machines : No traversing part of a self-acting machine in any establishment and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass whether in the course of his employment or other distance of forty five centimeters from any fixed structure which is not part of the machine:

Provided that the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

67. Casing of new machinery : In all machinery driven by power and installed in any establishment after the commencement of this Act-

(a) every set screw, belt or key or any revolving shaft, spindle wheel or pinion shall be so, sunk, encased or otherwise effectively guarded to prevent danger ; and

(b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased unless it is so situated as to be as safe it would be if it were completely encased.

68. Cranes and other lifting machinery : The following provisions shall apply in-

(a) every part thereof, including the working gear, whether fixed or movable, ropes and chains and anchoring and fixing appliances shall be-

(i) of good construction, sound material and adequate strength,

(ii) properly maintained,

(iii) thoroughly examined by a competent person at least once in every period of twelve months and a register shall be kept containing the prescribed particulars of every such examination ;

(b) no such machinery shall be loaded beyond the safe working load which shall be plainly marked thereon ; and

(c) while any person is employed or working on or near the wheel-tract of a travelling crane in any place, where he would be liable to be struck by the crane, effective measures shall be taken to ensure that crane does not approach within six metre of that place.

69. Hoists and lifts : (1) In every establishment every hoist and lift shall be-

(a) of good mechanical construction, sound material and adequate strength,

(b properly maintained,

(c) shall be thoroughly examined by competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination ;

(2) every hoistway and liftway shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part ;

(3) the maximum safe working load shall be plainly marked on every hoist or lift and no load greater than such load shall be carried thereon ;

(4) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing ;

(5) every gate referred to in subsection (2) or (4) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(6) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in an establishment after the commencement of this Act, namely-

(a) where the cage is supported by rope or chain there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load ;

(b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments ;

(c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

(7) The Chief Inspector may permit the continued use of a hoist or lift installed in an establishment before the commencement of this Act which does not fully comply with the provisions of sub-section (1), (2), (3), (4) and (5) upon such conditions for ensuring safety as he may think fit to impose.

70. Revolving machinery : (1) In every room in an establishment in which the process of grinding is carried on, there shall be permanently affixed to, or placed near, each machine in use a notice indicating the following -

(a) maximum safe working peripheral speed of every grind stone or abrasive wheel:

(b) the speed of the shaft or spindle upon which the wheel is mounted ;

(c) the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measures shall be taken in every revolving vessel, cage, basket, flywheel, pulley dice or similar appliance driven by power is not exceeded.

71. Pressure plant : If in any establishment any part of the plant or machinery used in manufacturing process is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such part is not exceeded.

72. Floors, stairs and means of access : In every establishment—

(a) all floors, stairs, passages and gangways shall be of sound construction and properly maintained and where it is necessary to ensure safety steps, stairs, passages and gangways shall be provided with substantial handrails;

(b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person is, at any time, required to work; and

(c) all floors, ways and stairways shall be clean, wide and clear of all obstructions.

NOTES/COMMENTS/PRECEDENTS

Compliance with the provisions of the section : Obligation imposed by this section is not discharged by saying that the occupier has taken all practical steps to ascertain the goodness and efficiency. *[Cole Vs. Blackstone Co. Ltd. (1954) 1 KB 615]*

Accumulation of rain water is passage : It was held that no breach of statutory duty imposed under this section is occasioned if an injury is caused by accumulation of rain water in little depression in the concrete passage. *[Davies Vs. Havill and Aircraft Co. Ltd. (1950) 2 All ER 582].*

73. Pits, sumps, opening in floors, etc. : (1) In every establishment, every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction or contents is or may be a source of danger, shall be either securely covered or securely fenced.

74. Excessive weights : No person shall be employed in any establishment to lift, carry or move any load so heavy as to be likely to cause him injury.

75. Protection of eyes : The Government may, in respect of any manufacturing process carried on in any establishment, by rules, require that effective screens of suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of a process which involves-

(a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or

(b) risk to the eyes by reason of exposure to excessive light or heat.

NOTES/COMMENTS/PRECEDENTS

Requirement of section to be complied with: Hanging of goggles in the office room is not enough, but the workers must be informed of their whereabouts, only then the requirements of section 37 can be said to have been complied with.*[Finch Telegraph Construction and Maintenance Co. Ltd. (1949) All ER 452]*

76. Powers to require specifications of defective parts or tests of stability : If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in an establishment, is in such a condition that it may be dangerous to human life or safety, he may serve on the employer of the establishment an order in writing, requiring him before a specified date-

(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or

(b) to carry out such tests as may be necessary to determine the strength or quality or any specified parts and to inform the Inspector of the result thereof.

77. Precautions against dangerous fumes : (1) In any establishment no person shall enter or be permitted to enter any chamber, tank, vat pit, pipe, flue or other confined space in which dangerous fumes are likely to be present to such an extent as to involve risks of persons being overcome thereby, unless it is provided with a manhole of such size, as may be prescribed or other effective means of egress.

(2) No portable electric light of voltage exceeding twenty-four volts shall be permitted in any establishment for use inside any confined space such as is referred to in sub-section (1) and where the fumes present are likely to be inflammable, lamp or light other than of flame proof construction shall be permitted to be used in such confined space.

(3) No person in any establishment shall enter or be permitted to enter any such confined space until all practicable means have been taken to remove any fumes which may be present and to prevent any ingress of fume and unless either-

(a) a certificate in writing has been given by a competent person, based on a test carried out by himself, that the space is from dangerous fumes and fit for persons to enter, or

(b) the worker is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person standing outside the confined space.

(4) Suitable breathing apparatus, reviving apparatus and belts and ropes shall, in every establishment, be kept ready for instant use beside any such confined space as aforesaid which any person as entered, and all such apparatus shall be periodically examined and certified by a competent person to be fit for use ; and a sufficient number of persons employed in every establishment shall be trained and practised in the use of all such apparatus and in the method of restoring respiration.

(5) No person shall be permitted to enter in any establishment, any boiler furnace, boiler, flue chamber, tank, at, pipe or other confined space for the purpose of working or making any examination therein until it has been sufficiently cooled by ventilation or otherwise to be safe for persons to enter.

78. Explosive or inflammable dust, gas, etc. : (1) Where in any establishment any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by-(a) effective enclosure of the plant or machinery used in the process ;

(b) removal or prevention of the accumulation of such dust, gas, fume or vapour ;

(c) exclusion or effective enclosure of all possible sources of ignition.

(2) Where in any establishment the plant or machinery used in a process is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measure shall be taken to restrict the spread and effects of the explosion by the provision in the plant or machinery of chokes, baffles, vents or other effective appliances.

(3) Where any part of the plant or machinery in an establishment contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely-

(a) before the fastening of any joint of any pipe connected with the part of the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part or any such pipe shall be effectively stopped by a stop-valve or other means ;

(b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure ;

(c) where any such fastening, as aforesaid, has been loosened or removed, effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part or pipe until the fastening has been secured ; or as the case may be, securely replaced:

Provided that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air.

(4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected in any establishment to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have been first taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non-explosive or non-inflammable, and no such substance shall be allowed to enter such plant, tank or vessel after any such operation until the mental has cooled sufficiently to prevent any risk of igniting the substance.