

The Dacca Gazette



Extraordinary
Published by Authority

WEDNESDAY, NOVEMBER 25, 1964

PART IA—Orders and Notifications by the Government of Pakistan republished for general information.

PROVINCIAL ELECTION AUTHORITY, EAST PAKISTAN

NOTIFICATION

No. PEA/3A-25/64/3207—17th November 1964—In exercise of the powers contained in sub-section (5) of section 23 of the Electoral College Act, 1964 (Act No. IV of 1964), as delegated to the Provincial Election Authority, for East Pakistan, by Commissioner under notification No. F. 2(5)/64(A)-ELS., dated 3rd May 1964, the Provincial Election Authority hereby appoint the Officers noted in column 1 of the schedule below as appellate Authorities for the purpose of disposal of appeals filed against rejection of nomination papers by the Returning Officers for bye-elections in respect of the Electoral units as mentioned in the column 2 of the said schedule:

Officers. 1	Schedule.	Electoral Units. 2
	Rangpur District	
1 Subdivisional Officer, Sadar	...	Gajaghanta—VI
	Kushtia District	
1 Subdivisional Officer, Sadar	...	Mokarimpur—I
	Rajshahi District	
1 Subdivisional Officer, Naogaon	...	Parampur—III
	Jessore District	
1 Subdivisional Officer, Jhenidah	...	Fatehpur—XI

By order of the Provincial Election Authority,
S. RAHMAN,
Secretary.

Printed and Published by A. K. M. Zakariah, Officer on Special Duty, Services and General Administration Department,
In-charge, East Pakistan Government Press, Dacca.

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WEDNESDAY, NOVEMBER 25, 1964

PART I.—Orders and Notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-75/64/1351-L/II—20th November 1964—
Whereas the Dacca Aluminium Workers Association, 71, Arambagh, Dacca-2, applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between the Dacca Aluminium Workers Association, 71, Arambagh, Dacca-2, and the Managing Partner, Pakistan Aluminium Karkhana, 30/2, Devidas Ghat, Dacca;

And whereas the said Court has given its award as appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAILHUQ,
Section Officer,
Government of East Pakistan.

IN THE FIRST INDUSTRIAL COURT OF EAST PAKISTAN, DACCA

Industrial Dispute Case No. 140 of 1963.

The Dacca Aluminium Workers Association, 71, Arambagh, Dacca—2—1st Party,

versus

The Managing Partner, Pakistan Aluminium Karkhana, 30/2, Devidas Ghat, Dacca—2nd Party.

Present—

Abdul Hakim Khan, Esq.—*Chairman*.

Major Q. N. Zaman

Mr. Ghulam Martuza

} *Members*.

AWARD

1. In this industrial dispute under section 5(5) of the Industrial Disputes Ordinance, 1959 (hereinafter referred to as the Ordinance), the first party Union—the Dacca Aluminium Workers Association, 71 Arambagh, Dacca, have raised the following demands on the basis of a valid Failure Certificate from the Conciliation officer:—

(1) Recognition of the Union.

(2) Re-instatement of the following workers:

(i) Messrs. Sharbat Ali, (ii) Tota Miah, (iii) Hazrat Ali, (iv) Rashid Khan, (v) Sk. Bakridu, (vi) Mahtabuddin, (vii) Amir Hossain, (viii) Rashid Khan, (ix) Khan Mohammad (x) Md. Yousuf, (xi) Abdul Hashem..

(3) Pay scale.

(4) Bonus.

(5) Contributory Provident Fund.

(6) Involuntary Unemployment.

(7) Leave facilities.

Demand No. 1:

2. This demand in the present proceeding was not pressed, and rightly, as such a demand does not constitute an industrial dispute and there is separate provision of law for securing recognition of a Trade Union by the employers. The demand is accordingly rejected.

Demand No. 2:

3. Out of the eleven workmen whose re-instatement has been demanded, seven of them, namely (1) Sharbat Ali, (2) Tota Miah, (3) Hazrat Ali, (4) Mahtabuddin, (5) Amir Hossain, (6) Md. Yousuf and (7) Rashid Khan, were not even produced in Court to give evidence. It is therefore clear that the first party is not serious about the demand for their re-instatement. It is also not known whether these workers are still desirous of serving in this factory. I therefore find that no case has been made out for an order of their re-employment. The demands for re-employment of these workers are therefore rejected.

4. The claim of the remaining four workmen, viz. (1) Rashid Khan, son of late Raushan Khan, (2) Sk. Bakridu, (3) Khan Mohammad and (4) Abdul Hashem who were examined by the first party requires serious consideration.

5. From the evidence on record it is clear that all the 70 workmen or so of Aluminium Utensils Section of the second party's factory which has about 100 workmen in all, were laid off on account of temporary closure of that section on 28th June, 1962 after service of a general notice (Ext. G) because of reduction of sales and heavy accumulations of finished utensils. The factory re-opened on the 12th October, 1962. Just after the closure there was a tripartite agreement (Ext. U) on 30th June, 1962 according to which services of the workers were terminated with pay in lieu of notice and the management agreed to give the workers first preference for re-employment, when the factory would be re-opened. It also provided that date of opening would be notified one week before the re-opening date with intimation to the Labour Directorate. The last term of the agreement was that the charter of demands submitted by the Union on 13th June, 1962 was dropped, reserving however the right to revive it when the trade position of the company would improve. According to the first party three workmen Rashid Khan, Khan Mohammad and Bakridu were not taken back by the second party after the factory re-opened because of their trade union activities, while according to the second party these 3 workers did not approach the management for re-appointment after the re-opening of their factory and the second party deny that they were not taken back for their trade union activities. With regard to the remaining workmen Abdul Hashem, the second party's case is that after re-opening of the factory he was re-employed and thereafter he was charge-sheeted on 30th April, 1963 (Ext. A) on account of excessive defects in his *dhalai* work resulting from gross habitual negligence in the performance of his duty.

6. With regard to the workers Rashid Khan, Sk. Bakridu and Khan Mohammad, I find from the evidence on record that they knew about the re-opening of the factory. It appears from the evidence of both parties that only workers receiving wages up to a certain amount were taken at first after re-opening and those receiving above that amount were not taken then. According to P. W. Bakridu only workers receiving daily wages up to Rs.2.50 were then taken at the time of re-opening while according to O.P.W.A Sattar, Managing Partner of the second party, workers whose wages were below Rs.5.00 daily were taken immediately. The latter has admitted that daily wages of Rashid Khan was Rs.7.00 to Rs.7.50 and that of Khan Mohammad was Rs.5.50 to Rs.6.00.

7. Rashid Khan in his evidence has stated *inter alia*, that he was a spinner in the second party's factory for 12 years and that he has been an office bearer of Dacca Aluminium Workers Association for 2½ years, and Secretary of the Branch Union of second party's workmen since its inception. He has deposed that a few days after submission of the charter of demands to the second party, the factory was closed down and the workers were laid off. He has also deposed that after re-opening of the factory he approached the management for re-appointment but he was not taken back along with some others because of their union activities. On the other hand, the second party brought a false criminal case against some workers including himself and after he himself and two others, Khan Mohammad and Mahtabuddin were discharged by the Magistrate, the management filed an application for Revision before the Sessions Judge. In his cross-examination he has stated that he approached the management one week after the re-opening of the factory but the Managing Partner told him that they required workmen of low wages for the time being, and further that he would be taken when the factory would be in full operation. He has also stated that after the Revision petition before the Sessions Judge was disposed of (on 5th December, 1963, vide Ext. 3) he again approached the management for re-appointment and at that time the Management told him that as the present case was pending in this Court, he would not get any re-employment and that he would be given work after termination of the case. According to Rashid Khan when the management failed to re-appoint 11 workers including himself, they presented the charter of demands in this case on 11th March, 1963.

8. It is clear from the oral evidence of the first party and the letter, Ext. 8, dated 31st January, 1963 and an earlier letter of the management, dated 12th November, 1962 [Ext. A(f)], that even before 12th November, 1962 the Union had been pressing for re-employment of the workers who had not been already taken.

9. Khan Mohammad, another discharged worker who was working as a Polishman, has deposed that he too was not re-employed and the management also implicated him in the criminal case and that the employer assured him and others against whom the criminal case was brought, that they would be given work after the termination of the criminal case. The management has examined three witnesses, two workers, Md. Shafiuddin, Amir Hossain, and the Managing Partner O. P. W. A. Sattar. According to O. P. Ws. Amir Hossain and A Sattar, both Khan Mohammad and Rashid Khan attended the Milad Mafil held at the factory just before the re-opening of the factory and Amir Hossain has stated that after the Milad, Rashid Khan canvassed the workers (at the gate) not to resume duties saying that it would be harmful to the Union. Amir Hossain has also stated that after the factory re-opened old workers re-joined, some within 3 days and some within 4 days. Amir Hossain has admitted that Rashid Khan is the Secretary of their Branch of the Union. According to Abdus Sattar he heard Rashid Khan telling the workers at the gate after the Milad not to join their duties unless the Company took all the workers at a time. A Sattar has further stated that Rashid Khan never approached him for re-appointment and only on 5th February, 1963 he received the letter from the Union (Ext. 8) requesting re-employment of 20 workers including Rashid Khan. His further evidence is that since the request was made after lapse of a long time, they could not be re-employed.

10. Now, there is nothing in the written Statement of the second party, nor is there any mention in the letter of the management [Ext. A(f)], dated 12th November, 1962 to the President of the Union

that Rashid Khan or any one else had canvassed the workers against resumption of duties. From Ext. A(f) it appears that as early as on November, 12, 1962 the Managing partner, A Sattar, was writing to the President of the Union saying that he had told the Labour Officer on the 22nd of October, 1962 when the latter rang him up that ex-workers have not cared to approach the management and that the management "was ready to accept them if they came at early date". Here too, there was no mention that some workers (Rashid Khan and Khan Mohammad) were canvassing the workers against re-joining their posts. In the above letter, dated 12th November, 1962 the management in effect informed the President of the Union that it was too late for them to re-employ any of the old workers. It is thus clear that on the 22nd of October, 1962, the Labour Officer was pressing the management for re-employment of the ex-workers and the management while assuring that they would be taken "if they come at an early date" actually appointed (as admitted by A. Sattar, Managing Partner) 2 new spinners and 2 new polishmen on that very date or on the following day (i. e., within 10 days from the date of re-opening of the factory, after having advertised the posts earlier) instead of re-appointing spinner Rashid Khan and polishman Khan Mohammad or asking them to resume their work if they liked. From this it seems to be quite clear that the management from the very beginning had no intention to take Rashid Khan and a few others. This is further confirmed by the fact that just on the day following the day of re-opening of the factory a criminal case was started against some workers under Section 365, P. P. C., for alleged abduction of one worker Pear Ali, and Abdur Rashid Khan and 2 other workers Khan Mohammad and Mahtabuddin were cleverly implicated in it after the filing of the F. I. R. by the Managing Partner A. Sattar without mentioning the name of these persons as involved in the case. A. Sattar, the Managing Partner has deposed that "some unwanted incident happened in the factory presumably due to outcome of Rashid Khan's hint" and he lodged the F. I. R. (Ext. Z) on that very date 13th October, 1962. According to P. Ws. Khan Mohammad and Rashid Khan, they were implicated in the criminal case at the instance of the management. A. Sattar has stated in his evidence that he does not know how they came to be implicated in the case and consistently with his statement in the F.I.R. he did not mention the name of Rashid Khan and Khan Mohammad as among the accused in his evidence before the Magistrate, Ext. Z(1). According to the F. I. R. the abduction of the worker took place at 1-15, p.m. when he was crossing the Buriganga. It appears that the Magistrate discharged accused Rashid Khan, Khan Mohammad and Mahtabuddin under section 253(1), Cr. P.C. Though the names of Mahtabuddin, Rashid Khan and Khan Mohammad were not in the F.I.R. and though P.W. 7 and P.W. 1, A. Sattar, the Managing Partner, deposed before the Magistrate mentioning the 3 names named in the F.I.R. as the accused (i.e., Sarbat Ali, Tota Mia and Amir Hossain), one witness P.W. 7 was procured to give evidence before the Magistrate implicating Rashid Khan, Khan Mohammad and Mahtabuddin, and when the Magistrate rightly discharged these 3 accused declining to place any reliance on the statements of P.W. 7, the complainant party without any reasonable ground promptly filed a revision petition before the Sessions Judge and the revision petition was still pending before the Sessions Judge on the date of filing of the Written Statement by the second party on 31st October, 1963 making it possible for the second party to state in paragraph 6 of the written Statement, "These persons as well as Sarbat Ali, Amir Hossain and Tota Mia are still under trial under section 365, P.P.C."

11. Considering the entire facts and circumstances it seems to be quite clear that the revision petition against Abdur Rashid Khan and the 2 others were filed with the sole object of keeping the criminal case alive against them. Entanglement of Rashid Khan and the two others in the criminal case also offered a plea to the management to state in their letter Ext. 9, dated 18th April, 1963 that they could not recognize the first party Union with Rashid Khan as Secretary and Mahtabuddin and Tota Mia as Members of the Executive Committee as the criminal case was pending against them. O.P.W. Abdus Sattar in his evidence has stated that he did not know who were the office-bearers of the Union before he receives a list of the names of the office-bearers from the President of the Union in April, 1963. I am unable to believe this in view of his statement in cross examination that 3 to 4 months before the closure of the factory (Utensil Department) the management came to learn about the existence of the Union and receipt of the charter of demands and that time the witness (Managing Partner A. Sattar) tried to know who were the members of the Executive Committee of the Branch Union. It cannot be believed that the Managing Partner of this small factory of about 100 workers would fail to know the names of the Branch Secretary and the other leading members of the Union who, from their point of view were out to create trouble for the management starting with the charter of demands. In his evidence A. Sattar has stated that after the closure of the factory the Labour Officer along with two or three workers came to the factory for investigation and that he held a tripartite meeting which resulted in an agreement, dated 30th June 1962. Rashid Khan in his evidence has stated that when the factory was closed the Labour Officer came for investigation, and himself, Mahtabuddin Mia and Tota Mia accompanied the Labour Officer to the factory. It is therefore, quite clear, that the workers who accompanied the Labour Officer and took part in the negotiation regarding the agreement, dated 30th June, 1962 included Rashid Khan, Mahtabuddin and Tota Mia. I am inclined to believe that the managing partner A. Sattar knew quite well that these people were the leaders of their Branch Union. Rashid Khan in his evidence has stated that the management asked him to give up Union activities which he refused to do saying that he had been a worker in the establishment for 12 years and had to undergo many sufferings. It is the case of both parties that Rashid Khan knew of the re-opening. It cannot be believed that Rashid Khan would not approach the management for re-employment after the factory re-opened, he having been a worker there for such a long time, having been a leader of the workers and General Secretary of their branch of the Union since its inception. The management have produced office copy of the letter Ext. 5, addressed to 2 persons P.W. Bakridu and Md. Ilias, dated March 25, 1963 (i.e., several months after re-opening of the factory) in which it is stated that one post of Polishman was vacant and if they liked they might call on the management within a week and it was also stated that preference would be given according to seniority. It is further stated in the letter that in case the addressee failed to approach the management within prescribed time, "they will have no other alternative but to fill up the vacancy with other suitable man". The management has failed to produce any document to show that they wrote any letter to Rashid Khan or Khan Mohammad for re-employment at any time.

12. Considering the foregoing facts and circumstances, I find no reason to disbelieve the evidence of Rashid Khan that he was not re-appointed because of his Union activities and not because he did not approach the management in time. According to the agreement

Ext. U, dated 30th June, 1962, the management was bound to re-appoint the old workers if they appeared for re-employment in time. I, therefore, find, agreeing with the advice of both the Members, that Rashid Khan is entitled to be re-employed by the management with effect from 23rd of October, 1962 when two new spinners were appointed. I also find that he should get back wages at half the rate of his daily wages of Rs. 7.00 (Rupees Seven only) for 26 (Twenty-six) average working days per month from the above date.

13. As regards Khan Mohammad his evidence is to the effect that after his services were terminated he was not re-employed by the management because of his trade union activities and he was also implicated in the criminal case by the employer. His further evidence is that the "employer" assured him and other against whom he brought the criminal case that they would be given work after the termination of the criminal case and further that he was discharged by the Magistrate and that order was upheld by the Sessions Court under order Ext. 3, dated 5th December, 1963. He has also stated in his examination-in-chief that he did not know when the factory re-opened. In the last 2 paragraphs of his cross-examination he has stated as follows :

"I cannot say when the factory was re-opened. After the criminal case was over I went to you for work. This was 1 or one and a half months back from today. I did not approach you before that.

"I was summoned in the criminal case. I do not know what it was about. I attended the Court. You brought that criminal case through your men. Piar Ali brought that case. He is a member of the Union. In October I worked only for 2 weeks in another factory at Kayet Tuly and at that time you got me arrested. Elias of Polish Deptt. is my brother. I took Elias to you. (Then says)—I did not take my brother Elias to you for providing him with work saying that I was working in another factory. My brother Elias received this letter from the Company (Ext. 5). Elias is a member of our Union."

14. The letter, Ext. 5, is dated March 25, 1963, i.e., long after the re-opening of the factory on the 12th of October, 1962. Khan Mohammad, in my opinion did go to the Managing Partner Abdus Satter with his brother Illias after the latter got the letter, Ext. 5. This was at a time when the criminal case had been already pending since 13th October, 1962. According to his examination-in-chief, the employer assured him and others against whom the employer brought the criminal case that they would be given work after the termination of the criminal case. In the penulti-mate paragraph of his cross-examination as quoted above, he has stated that after the criminal case was over he went to the Managing Partner for work and this was one or one and a half months before the date of his deposition on 8th February, 1964. The revision petition before the Sessions Judge was disposed of on 5th December, 1963. It is thus clear that Khan Mohammad approached the Managing Partner for re-employment about two months after the disposal of the Revision petition. He has also admitted that he did not approach the management for re-appointment before that. Does it mean that his statement in examination-in-chief that he and others approached the "employer" and he assured him and others against whom the employer brought the criminal case that they would be given work after the termination of the criminal case, is to be taken as untrue because of the above statement in cross-examination that he

did not approach the management for re-appointment before the dismissal of the revision petition on 5th December, 1963? In view of the categorical statement in his cross-examination that he did not approach the employer (Managing Partner) before the disposal of the revision petition in the Sessions Court and in view of the fact that even in his examination-in-chief he does not say when he approached the Management for re-employment and was told that he would be taken after the termination of the criminal case, it is difficult to hold that Khan Mohammad actually approached the management shortly after the re-opening of the factory, though it is clear that he must have known about the re-opening of the factory. In the last paragraph of his cross-examination he has stated that in October he was working in another factory at Kayet Tuly and it was at that time that he was arrested in connection with the criminal case. It is, therefore, likely that as he was already working in another factory he was not anxious to join this factory specially when the criminal case was brought against him.

15. In the circumstances, I am unable to hold that the first party has succeeded in making out a case for an order of re-employment of Khan Mohammad.

16. As regards Sk. Bakridu, he has admitted that he attended the Milad Mahfil held immediately before the re-opening of the factory and that in those days he was working in Kayet Tuly factory. It appears from the evidence of Rashid Khan (P.W. 4), that Bakridu also received a letter similar to Ext. 5, issued to Md. Ilias. Therefore, it is difficult to hold that the Management had any prejudice against him. It seems highly probable that he was not anxious to resume his work in this factory as he was already working in another factory. I therefore find that in respect of Bakridu too, no case for an order of re-employment has been made out.

17. I next come to the question of re-instatement of Abdul Hashem. After the termination of his services following closure of the factory he was re-appointed as Dhalai Mistry after the re-opening of the factory. The management found that due to the defect in the dhalai work of Abdul Hashem there was high percentage of breakage of utensils. On June 16, 1963, the Managing Partner A. Sattar appointed a Committee of 3 persons with Head Mistry Abdul Gani as Chairman and Md. Shafiuddin (O. P. W. 1) and one Momtajuddin, Supervisor as Members, vide Ext. A(c) and they held an enquiry in presence of Abdul Hashem and examined the utensils produced for a week from 14th June, 1963 to 20th June, 1963 and submitted a report, Ext. A (d) on the 22nd of June, 1963 in which they reported that out of a total production of 2,364 pieces, 676 pieces were found defective out of which 614 were found to be so on account of defective dhalai work of Abdul Hashem. The Committee also reported that this excessive defect was due to bad workmanship of Dhalai Mistry Abdul Hashem. Before the appointment of the aforesaid Committee too, there had been previous charges of defective work against him and explanations, Exts. A, B and C covering the period from 30th April 1963 to 16th May, 1963 were called for from him which he received signing his name and according to his own statement each time he promised to improve his work. Ext. D, dated 15th June, 1963 is the last explanation called for and on that very date the aforesaid Committee was appointed. Abdul Hashem submitted his explanation to Ext. D which was received on 20th June, 1963 in which he pleaded that his dhalai work was not worse than that of others and that there was bound to be high percentage of breakage with circles prepared by

melting old utensils (*Bhangari mal*). The final report of the Committee, Ext. A (d) is dated 22nd June 1963. Before this they submitted separate reports Ext. G to G (5) for each of the dates 15th to 20th of June, 1963 giving details of breakage. O. P. W. Shafiuddin, one of the Members of the Committee appointed by the Management to examine the breakage and report thereon, is the President of the Branch Union of the first party composed of the workers of the second party's establishment as deposed to by him and as shown in the report of Mr. Idris Mia, General Secretary of the first party Union (Ext. Y, dated 5th April, 1963). His evidence is that while Abdul Hashem was working in the factory as Dhalai Mistry after the re-opening of the factory as defects were found in his dhalai work, he himself, Abdul Gani, Chief Mistry, and Supervisor Momtajuddin were appointed to check the goods produced by Dhalai Mistry Abdul Hashem for 7 days and Ext. F was the letter issued by the management appointing the Committee. His further evidence is that they checked the goods for 7 days and Ext. G-series are the reports submitted by them in respect of the defects and that most of defects were "due to dhalai Mistry Abdul Hashem". Abdul Hashem also in his evidence admitted that the goods that were coming out of his dhalai were defective and he also admitted having received the charge-sheets Exts. A to C, besides Ext. D, and that in reply to notices Exts. A to C calling for explanation he had replied that he would try to improve his work. In his cross-examination he has also admitted that he was present at the enquiry held by Shafi Mistry, Gani Mistry and Momtajuddin and the "defective products were divided into 3 categories, namely, the defective products by the spinners, the defective products produced by the Dhalai Mistry and the defective products produced by Tapai Mistry" and further that the Enquiry Committee examined the defective products for 8 to 10 days from 15th June, 1963. He has admitted that Shafi Mistry is the President of their Branch Union. Abdul Hashem in his evidence has asserted that he was a Member of the Executive Committee of their Branch Union but the list, Ext. Y, dated 5th April, 1963 does not show that he was a member of the Executive Committee even of the Branch Union. Therefore, it was not necessary to obtain permission of this Court to dismiss Abdul Hashem on account of his long continued gross habitual negligence of duty or incurable incompetence. It may be mentioned here that clauses (3) of Standing Order No. 13 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960 simply enumerates some of the acts and omission which amount to misconduct and the list is not exhaustive but enumerative. A workman could be dismissed for an act of misconduct though not falling in any of the categories mentioned in clause (3) of the said Standing Orders. Reference in this connection may be made to the ruling of the Supreme Court of Pakistan reported in 1962 PLC. 528 (the Province of East Pakistan *Vs.* Md. Sabdar Ali Majumder). In the present case Abdul Hashem's dhalai work was found to be extremely defective over a long period. It is thus clear that he was either grossly negligent or extremely incompetent and did not or could not improve his work inspite of repeated previous warnings.

18. From the evidence on record it appears to be quite clear that Abdul Hashem's dhalai work was actually found to be extremely defective and it was on this account that his services were terminated. There was no suggestion at all by Abdul Hashem that the Members of the Committee appointed by the management were prejudiced against him. It is true that there was no formal charge-sheet against

Abdul Hashem or any formal enquiry but considering the evidence on record and facts and circumstances of the case I find that Abdul Hashem has not been prejudiced on account of the absence of such formal enquiry. In the absence of such prejudice Abdul Hashem is not entitled to any relief on the score of violation of the principle of natural justice. In the result, I find that Abdul Hashem is not entitled to an order for re-instatement.

Demand No. 3 :

19. With regard to this demand both parties in course of the hearing of the case agreed to the increase of wages with effect from 1st September, 1964 at the rate of 25 paise of those workers whose wages are up to Rs. 2.50 per day and at the rate of 12 paise per day for those workers whose daily wages are above Rs. 2.50. Both parties also agreed that the minimum wages for any worker would be Rs. 1.75 paise per day from the above date. An award is made in respect of this demand accordingly.

Demand Nos. 4 and 5 :

20. As regards these demands for Bonus and Contributory Provident Fund I find that the first party have failed to make out a case for an award of Bonus or Provident Fund. Accordingly these two demands are rejected.

Demand No. 6 :

21. This is provided for in Standing Order No. 11 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960 and no award is called for in this demand.

Demand No. 7 :

22. Regarding this demand also I find that no case has been made out for an award regarding leave facilities in excess of what is provided for in the Standing Orders Nos. 8 and 9 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960.

23. In the result, all the demands except demand for re-employment of Rashid Khan, son of late Roushan Khan and increase of wages, are rejected. Rashid Khan shall be re-appointed if he approaches the Management within one month of the publication of this award in the official gazette. On such re-appointment he shall be deemed to be re-appointed with effect from the 23rd of October, 1962 and he shall get back wages at the rate of Rs. 3.50 per day as ordered in para 12 of this award.

24. This award shall come into operation from the date of its publication in the official gazette except in the case of award in respect of increase of wages which shall be deemed to have come into operation from the 1st of September, 1964, as agreed to by the parties.

25. The award shall remain in force for a period of one year from the date it comes into operation.

A. H. KHAN,

Chairman,

1st Industrial Court,
East Pakistan.

31-10-1964.

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WEDNESDAY, NOVEMBER 25, 1964

PART I.—Orders and Notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-65/64/1352-L/II—20th November 1964—
Whereas Mannu Textile Mills Labour Union, 71, Arambagh, Dacca-2 applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between Mannu Textile Mills Labour Union, 71, Arambagh, Dacca-2 and Mannoo Textile Mills Ltd., P. O. Mannoo Nagar, Tongi, Dacca;

And whereas the said Court has given its award as appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,

Section Officer,
Govt. of East Pakistan.

IN THE FIRST INDUSTRIAL COURT, EAST PAKISTAN, DACCA

Industrial Dispute Case No. 84/1963.

Mannu Textile Mills Labour Union, 71, Arambagh,
Dacca-2—1st party,

versus

Mannoo Textile Mills Ltd., P. O. Mannoo Nagar,
Tongi, Dacca—2nd party.

Present:

Abdul Halim Khan, Esq.—Chairman.

Major Q. N. Zaman

Mr Ghulam Martuza

} Members.

AWARD

The present industrial dispute under section 5 (5) of the Industrial Disputes Ordinance, 1959 (henceforth

referred to as the Ordinance) was filed by the Mannu Textile Mills Labour Union on the basis of a valid Failure Certificate issued by the Conciliation Officer on 4th May 1963. This Union was recently registered, while there was another existing Union called the Monnoo Textile Mills Workers Union. At the date of filing of the present application under section 5 (5) of the Ordinance a large number of the workers belonging to the rival Union went on strike instead of coming to the Industrial Court and filing an application under section 5 (5) of the Ordinance on the basis of the Failure Certificate issued to them by the Conciliation Officer on 14th May 1963. Subsequently during the pendency of this case, admittedly all the remaining workers of the Mill have also joined the strike which is still continuing.

The second party have raised the preliminary objection that the present application under section 5 (5) of the Ordinance is not maintainable as the first party Union is a mushroom Union while other Union is the Union recognised by the second party and that the majority of the workers of the second party belong to this old Union.

Now, the representative for the second party has failed to cite any law under which a valid registered trade union is barred from raising an industrial dispute on the ground that there is already a recognised registered trade union composed of a body of workers of the same establishment. According to Section 5 (5) of the Ordinance any party to whom a Certificate of Failure has been issued may make an application thereunder. Section 13 of the Ordinance provides, *inter alia*, that (1) all parties to the dispute and (2) all other persons summoned by the Court with proper cause, and (3) where one party to the dispute is composed of workmen of an establishment or part of an establishment, all persons who become subsequently employed in that establishment or part thereof shall be bound by an award of the Court or settlement arrived at in course of conciliation proceedings. It is thus clear that where two rival unions exist among workers of the same establishment, the Court may summon the other rival union to appear in the case so that the award of the Court

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WEDNESDAY, NOVEMBER 25, 1964

PART I.—Orders and Notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-65/64/1352-L/II—20th November 1964—
Whereas Mannu Textile Mills Labour Union, 71, Arambagh, Dacca-2 applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between Mannu Textile Mills Labour Union, 71, Arambagh, Dacca-2 and Mannoo Textile Mills Ltd., P. O. Mannoo Nagar, Tongi, Dacca;

And whereas the said Court has given its award as appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,

Section Officer,
Govt. of East Pakistan.

IN THE FIRST INDUSTRIAL COURT, EAST PAKISTAN, DACCA

Industrial Dispute Case No. 84/1963.

Mannu Textile Mills Labour Union, 71, Arambagh,
Dacca-2—1st party,

versus

Mannoo Textile Mills Ltd., P. O. Mannoo Nagar,
Tongi, Dacca—2nd party.

Present:

Abdul Halim Khan, Esq.—Chairman.

Major Q. N. Zaman

Mr Ghulam Martuza

} Members.

AWARD

The present industrial dispute under section 5 (5) of the Industrial Disputes Ordinance, 1959 (henceforth

referred to as the Ordinance) was filed by the Mannu Textile Mills Labour Union on the basis of a valid Failure Certificate issued by the Conciliation Officer on 4th May 1963. This Union was recently registered, while there was another existing Union called the Monnoo Textile Mills Workers Union. At the date of filing of the present application under section 5 (5) of the Ordinance a large number of the workers belonging to the rival Union went on strike instead of coming to the Industrial Court and filing an application under section 5 (5) of the Ordinance on the basis of the Failure Certificate issued to them by the Conciliation Officer on 14th May 1963. Subsequently during the pendency of this case, admittedly all the remaining workers of the Mill have also joined the strike which is still continuing.

The second party have raised the preliminary objection that the present application under section 5 (5) of the Ordinance is not maintainable as the first party Union is a mushroom Union while other Union is the Union recognised by the second party and that the majority of the workers of the second party belong to this old Union.

Now, the representative for the second party has failed to cite any law under which a valid registered trade union is barred from raising an industrial dispute on the ground that there is already a recognised registered trade union composed of a body of workers of the same establishment. According to Section 5 (5) of the Ordinance any party to whom a Certificate of Failure has been issued may make an application thereunder. Section 13 of the Ordinance provides, *inter alia*, that (1) all parties to the dispute and (2) all other persons summoned by the Court with proper cause, and (3) where one party to the dispute is composed of workmen of an establishment or part of an establishment, all persons who become subsequently employed in that establishment or part thereof shall be bound by an award of the Court or settlement arrived at in course of conciliation proceedings. It is thus clear that where two rival unions exist among workers of the same establishment, the Court may summon the other rival union to appear in the case so that the award of the Court

may be binding on all workers of the establishment belonging to one the other union, and I propose to pass such an order in this case.

It appears that on the 17th of December 1963 while the present case was pending, the other union entered into a (*bipartite*) settlement with the management in respect of most of the demands included in the present case, except those for Bonus, increased Wages, Classification of workers into A, B & C categories, etc. and that agreement is still binding upon the parties to that settlement. But it cannot be held on that ground that the present petition by the first party Union is not maintainable. From the provisions of rule 3 (1) (a) of the East Pakistan Industrial Dispute Rules, 1960 and Section 28D of the Trade Unions Act, it is clear that an establishment may enter into a settlement by direct negotiation with a registered trade union or where there are rival trade unions, with the trade union recognised by the establishment, while from Rule 24 (3) of the said Rules it is evident that a conciliation proceeding may be initiated by applicants having authority and representative character, that is, by a representative body of workmen. Where there is a single trade union among the workers of an establishment, normally the Union would be the proper representative of the workmen. But where there are two valid rival unions among them, one recognised by the establishment and the other not so recognised, there appears no bar to either of the unions raising an industrial dispute. In this connection the view expressed by the then Chairman, Mr. A. Jalil in a case of this Court reported in 1962 PLC. 381 (384) may be profitably quoted:

“But to say that a registered Trade Union, such as the first party is, has no right to present

demand or prosecute the dispute arising out of it is to assume that a trade union which, though registered, has not been recognised by the employer can have no remedy in law so long as it is not recognised. In our view, this is an astounding assumption and giving effect to it would mean that no Trade Union can present a claim to an intransigent employer unless and until the employer is forced to recognize it by the process of law. The Ordinances do not envisage such a position and we have no doubt that it was never contemplated. On the other hand, Section 13 of the Trade Unions Act lays down that every registered Trade Union shall have the right to sue and to be sued and Section 15 of the Act that the general funds of a registered Trade Union may be spent for, amongst other objects, the prosecution and defence of any legal proceeding for the purpose of securing or protecting any rights arising out of the relations of any member with his employer, and the conduct of industrial disputes on behalf of the Trade Union or any member thereof. The Sections do not use the word “recognized” which means that for the purposes above-mentioned it is sufficient if the Trade Union is registered.”

Both members have advised that the preliminary objections should be accepted and the application under section 5(5) of the Ordinance should be dismissed.

But for the reasons already stated, I find no substance in the preliminary objection raised by the Second party and the same is summarily rejected.

ABDUL HAKIM KHAN,

Chairman,

1st Industrial Court, East Pakistan.

against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

- “(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234:

Provided that the time included between the first and last of such dates shall not exceed one year.”.

Now, against each of the two accused persons there is a charge of non-implementation of the Court's award in respect of four different persons in the matters of leave, medical facilities and overtime wages. It is thus clear that there was a multiplicity of charges against the two accused in respect of four different persons. Further, the accusation does not mention that the offences were committed within the space of twelve months as required by section 231, Cr.P.C. In view of all this, I find that the trial of the accused persons has been vitiated by misjoinder.

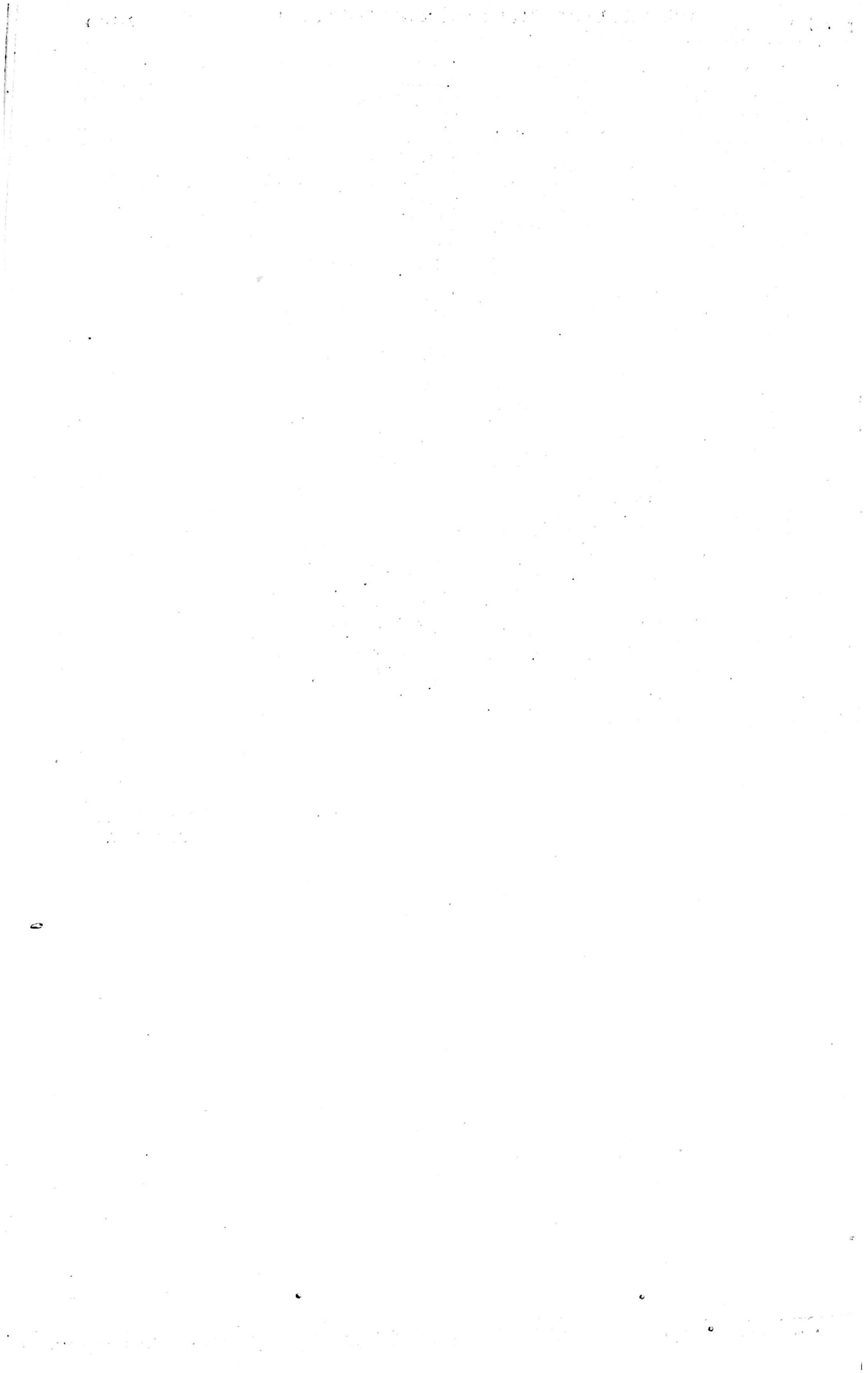
Let me now discuss the merits of the case. At the hearing of the case a number of witnesses were examined by the prosecution, namely, complainant Abdul Majid, P. W. 2 Bashir Ahmed, P. W. 3 Amir Hossain, P. W. 4 Mohor Chand, P. W. 5 Azim Mia and P. W. 6 Sk. Nasrullah. It is to be noted that out of the persons mentioned in the accusation in each case only Amir Hossain has been examined by the prosecution. According to his evidence he was first a *Badli* Conductor and then a *Badli* Driver under the accused Company. The accused have

denied that he was ever a worker under them. P. W. Azim Mia has stated in his cross-examination that he has been working under the accused Company for the last six years in Town Service and that he does not know any driver of the name of Amir Hossain having ever served under the Accused Company. According to the evidence of Amir Hossain himself as already stated, he was first a *Badli* Conductor under the accused Company and then a *Badli* Driver. In his cross-examination he has stated that he used to work as *Badli* Conductor and then as *Badli* driver under arrangement with the permanent drivers and conductors. In view of this evidence it is difficult to hold that it was the accused persons who did not give him overtime wages as alleged by him. As he was a *Badli* driver for short periods the question of leave and medical facilities hardly arises. Nor has he given any evidence on this point. The other witnesses examined by the prosecution have simply made general statements regarding non-implementation of the terms of the award and is of no assistance to the prosecution in this case.

Thus, on merits also I find that it has not been established beyond reasonable doubt that the accused persons committed an offence under section 26 of the Industrial Disputes Ordinance. Accordingly, I acquit them of the charge under section 26 of the Ordinance.

In this connection, I may mention that from the evidence on record it would appear that the management of H. R. Khan and Co. failed to implement the terms of the award in respect of overtime wages in the bus services on routes outside the Dacca Town and the Union has been agitating for a long period over this, but without any success. It is extremely desirable that harmonious relationship should be established between employers and employees of the Bus services and the employers among whom Messrs H. R. Khan and Co. are one of the foremost, should implement such terms of the award that have not already been implemented.

ABDUL HAKIM KHAN,
Chairman,
1st Industrial Court,
East Pakistan.
26-10-1964.



1	2	4	5(a)	5(b)
4	Mr. Nurul Islam	Late A. Rahman Sarker.	Vill. Bangalinagar, P.O. Radhaganj Bazar.	2828 Mirzanagar—IV
5	Mr. Abdul Hashim Pathan.	Minnat Ali Pathan	Vill. Bangalinagar, P.O. Charsubuddi.	2829 Mirzanagar—V
6	Mr. Shahajuddin	Jamsher Ali Haji	Vill. Hatubanga, P.O. Radhaganj Bazar.	2830 Mirzanagar—VI
7	Mr. Suruj Bhuiyan	Late Samser Ali Bhuiyan.	Vill. Hatubanga, P.O. Radhaganj Bazar.	2831 Mirzanagar—VII
8	Mr. Barju Miah	Sadar Uddin	Vill. Moheshber, P.O. Charsubuddi.	2832 Mirzanagar—VIII
9	Mr. Afsar Uddin Miah	Late Jahir Uddin	Vill. Charsubuddi, P.O. Charsubuddi Bazar.	2833 Mirzanagar—IX
10	Mr. Abdul Baset Khandaker.	Khalilur Rahman Khandaker.	Vill. and P. O. Charsubuddi.	2834 Mirzanagar—X
11	Mr. Suruj Miah Doctor	Late Subed Ali Master	Ditto	2835 Mirzanagar—XI
12	Mr. Tafazzal Hossain	Akram Uddin	Vill. Boroitala, P.O. Charsubuddi.	2836 Mirzanagar—XII
13	Mr. A. Sattar Master	Munshi Jafar Ali	Vill. Abdullapur, P.O. Charsubuddi.	2837 Mirzanagar—XIII
14	Mr. Rustam Ali Master	Sonaullah Bepari	Vill. Meher Nagar, P.O. Nilakhiya.	2838 Mirzanagar—XIV
15	Mr. Chan Miah	Late Syed Ali Sarker	Vill. Purbakandi, P.O. Rahimabad.	2839 Mirzanagar—XV

Sreenagar U. C.

1	Mr. Md. Sekandar Ali	Ahammad Ali	Vill. Fakirer Char P. O. Raipura.	2785 Sreenagar—IX
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Chandpur U. C.

1	Mr. Md. Mofizuddin	Kalu Munshi	Vill. Mohinipur, P. O. Madhyanagar.	2807 Chandpur—VIII
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S. M. ZAHURUL HOQUE,
Returning Officer.

NOTIFICATION

No. 13—19th November 1964—In exercise of the powers conferred by sub-section (2) of section 46 of the Electoral College Act, 1964 (Act No. IV of 1964), I, Nurul Monem, C. O. (Dev.), MUNSHIGANJ P. S. as the Returning Officer do hereby publish the names of the following candidates returned from the Electoral Units mentioned against each :—

Serial No.	Name of returned candidate.	Name of father/husband of returned candidate.	Address of returned candidate.	Serial No. of Electoral Unit of DACCA District.	Unit from which returned. Name of Units.
1	2	3	4	5(a)	5(b)
1	Mr. Ansaruddin Ahmad.	Mr. Altabuddin Mridha.	Vill. Silai, P. O. Dighirper.	2994	Charsilai—I
2	Mr. Kala Chand Majhi	Brojabashi Majhi	Vill. Moheshpur Chenguabunia Kandi, P. O. Moheshpur.	2995	Charsilai—II
3	Mr. Abdul Kader Prodhan.	Haji Ranja	Vill. Silai, P. O. Dighirper.	2996	Charsilai—III
4	Mr. Serajuddin Bepari	Mahajan Bepari	Vill. Akalmegh, P. O. Mulchar.	2997	Charsilai—IV
5	Mr. Hatem Ali	Misir Ali Bepary	Vill. Purba Rakhi, P. O. Dighirper.	2998	Charsilai—V
6	Mr. Soleman Molla	Haji Jafar Molla	Vill. Jafar Mollakandi, P. O. Dighirper.	2999	Charsilai—VI
7	Mr. Kadir Sarder	Tajuddin Sarder	Vill. Sarder Kandi, P. O. Moheshpur.	3000	Charsilai—VII
8	Mr. A. Matin	Haji Abu Bakar Munshi.	Vill. and P. O. Moheshpur.	3001	Charsilai—VIII
9	Mr. Sultan Mea	Sadaque Ali Bepari	Vill. Ashulir Char, P. O. Moheshpur.	3002	Charsilai—IX
10	Mr. Joynal Abedin	Samiruddin Munshi	Vill. Banial Purba Bagu Char, P.O. Moheshpur.	3003	Charsilai—X
11	Mr. Nural Islam	Besu Bepari	Vill. Uttar Bhukailash, P. O. Moheshpur.	3004	Charsilai—XI
12	Mr. Ansaruddin Master.	Mahamed Yunus	Vill. Bhukailash, P. O. Moheshpur.	3005	Charsilai—XII

NURUL MONEM,
Returning Officer.

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PART I—Orders and notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN
LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-66/64/1353-L/II—20th November 1964—
Whereas Hardeo Glass Aluminium, Enamel and Silicate Works, 4, Hatkhola Road, Dacca applied to the Industrial Court, East Pakistan, for adjudication of Industrial Dispute between Hardeo Glass Aluminium, Enamel and Silicate Works, 4, Hatkhola Road, Dacca and Baser Khan, Blower, Ticket No. 859/62, C/o. Hardeo Glass Mazdoor Union, 71, Arambagh, Dacca—2;

And whereas the said Court has given its award as appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,
Section Officer to the
Govt. of East Pakistan.

IN THE FIRST INDUSTRIAL COURT OF
EAST PAKISTAN, DACCA

From:

Abdul Hakim Khan, Esqr.—*Chairman*.
Major Q. N. Zaman } .. *Members*.
Mr Ghulam Martuza }

Miscellaneous Case No. 6 of 1964

Hardeo Glass, Aluminium, Enamel and Silicate
Works, 4, Hatkhola Road, Dacca—*1st party*,

versus

Baser Khan, Blower, Ticket No. 859/62, C/o. Hardeo
Glass Mazdoor Union, 71, Arambagh, Dacca—*2nd party*.

AWARD

This is an application under section 30 of the Industrial Disputes Ordinance (hereinafter referred to as the Ordinance) praying for permission to the first party, Hardeo Glass Aluminium, Enamel and Silicate Works, 4, Hatkhola Road, Dacca, to dismiss the second party-Baser Khan, a worker of the first party's factory, on the ground of misconduct—he being an office-bearer of the Union of the workers of the first party and an Industrial Dispute being pending against the first party by the Union registered as Industrial Dispute Case No. 24 of 1964.

A charge-sheet was issued to Baser Khan on 25th of May 1964, and the charges were as follows:

- "1. While out of duty hours, you along with Taleb Hossain, Noor Mohammad, Abdul Kassem—your fellow workers forcibly entered into the factory at about 10 at night on 21st May 1964 through the main gate just defying the lawful order made by the Darwan in-charge at the gate in due discharge of his duty prohibiting you not to enter into the factory. Thus you not only committed an act of trespass into the factory and thereby committed an offence but you did so with a view to commit certain overt act as mentioned in charge No. 2 below which is another offence coming within the purview (sic) of misconduct as defined in clause 13(3) of the said standing orders.
- "2. Thus by the said forcible entry into the factory you along with your said three co-workers pasted a number of handbills on the different walls inside the factory the content of which are objectionable and prejudicial to the interests of the Company, and maintenance of general discipline of the factory. Thus you have committed an offence which comes within the purview of misconduct as defined in clause 13(3) of the said standing orders."

Baser Khan submitted an explanation, Ext. A(8), dated the 26th May 1964 denying the charges. On

28th May 1964 another charge-sheet was issued to him and the charges were as follows:

"1. You along with your co-worker Nur Mohammad formed a habit of remaining absent quite care-free from the place of your duty from time to time in the past and most often detected to have been idling away your time outside in gossiping with other workers mostly outside the canteen in spite of repeated warnings given to you by your supervisor.

"2. On 26th May 1964 at night while on duty, you along with your co-worker Nur Mohammad, and at your initiative and instance all the remaining 14 workers of your gang so daringly left the place of your and their duty at about 8-30 p. m. resulting in dead stoppage of the entire work of your gang and passed away the time outside until you were detected by the Supervisor at 9-15 p. m, while you were holding a meeting just outside the canteen quite care-free.

"Thus, not only you yourself remained habitually absent from duty and in particular remained absent on 26th May 1964 as aforesaid, but as a leader of the gang you incited all the workers of the gang to leave work on the said date and time and thereby you have committed serious misconduct within the meaning of clause 13(3) causing great loss of production, financial loss to the Company and above all, loss to the country and thereby you have made yourself liable to disciplinary action as provided in clause 13(2) of the Standing Orders under the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960."

On 28th May 1964 the management under Ext. A(9) informed Baser Khan that his explanation dated the 26th May 1964 was found unsatisfactory and that there would be an enquiry against him in respect of the charges on the 1st of June 1964, and Works Supervisor Samarendra Guha would hold the enquiry. On the same date (28-5-1964) the another charge-sheet was issued to Baser Khan along with another worker Nur Mohammad as specified above. In his explanation dated the 29th May 1964 Ext. A(1) Baser Khan denied the first charge in that charge-sheet, dated the 28th May 1964 and with regard to the second charge he stated as follows:

"On 26th May 1964 at night while I was on duty have not left the place of work at 8-30 p. m. and there was no stoppage of

work as alleged and the word of gang in the charge-sheet is quite false and insult to me. I have no gang in the factory. I am the Executive Committee Member of the Hardeo Glass Mazdoor Union and the dispute is under *sub judice* in the Industrial Court and you are trying to victimise that we have brought the dispute to the Industrial Court."

Baser Khan thus denied the charges in both charge-sheets. Two enquiries were held—one on 1st June 1964 in respect of the charge-sheet, dated the 25th May 1964 and the other on 3rd June 1964 in respect of the charge-sheet, dated the 28th May 1964. In the enquiry held on 3rd June 1964, Baser Khan stated that at about 8 p. m. on 26th May 1964 Ball-Holder Khaleque had an attack of vomiting and so work of his gang had to be stopped and then others of the gang said that it was too hot and went out for a breath of air and so he and the others of his gang went out and sat in front of the canteen and took tea and at that time Jamal Mistry (Supervisor) came there. Jamaluddin Supervisor examined by the second party has also stated that he found Baser Khan and others of his gang taking tea at the Canteen at 8 p. m. and when he was told that a worker had become unwell, he asked them to start work while he was trying to arrange for a substitute and after that in spite of his direction they did not resume work.

It does not appear that Baser Khan was given an opportunity to cross-examine the Supervisor. Further, the Supervisor Jamaluddin in his statement does not say that he was holding a meeting as stated in the charge; nor is it mentioned in the charge that in spite of the Supervisor's direction they did not resume duty. It appears to me from the perusal of the statements of witnesses that a *prima facie* case in respect of the charges has not been established against Baser Khan. In any case, both the charge-sheets to my mind substantially relate to the Union activities connected with the dispute pending in the Court and Baser Khan being an officer of the Trade Union cannot be dismissed or discharged for misconduct connected with the dispute pending in this Court as this appears to be barred under sub-section (3) of section 30 of the Ordinance as amended in 1961.

The application under section 30 of the Ordinance for permission to dismiss Baser Khan who is already under suspension should, therefore, be dismissed. Both the Members have also given the advice that the petition should be rejected.

The petition is accordingly rejected.

ABDUL HAKIM KHAN,
Chairman,
1st Industrial Court, East Pakistan.
31-10-1964.

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PART-I. Orders and Notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-67/64/1355-L/II—20th November 1964—
Whereas North Bengal Sugar Mills Field Workers Union, Registered No. E. P. 849, P. O. Gopalpur, Dist. Rajshahi applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between North Bengal Sugar Mills Field Workers Union, Registered No. E. P. 849, P. O. Gopalpur, Dist. Rajshahi and North Bengal Sugar Mills Co. (Pvt.) Ltd., Gopalpur, Dist. Rajshahi;

And whereas the said Court has given its award as appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,
Section Officer,
Government of East Pakistan.

IN THE FIRST INDUSTRIAL COURT OF EAST PAKISTAN, Dacca-2

Present:

Abdul Hakim Khan, Esq.—*Chairman*.

Major Q. N. Zaman

Mr Ghulam Martuza

} *Members.*

Industrial Dispute Case No. 40 of 1963

North Bengal Sugar Mills Field Workers Union,
Registered No. E. P. 849, P. O. Gopalpur, Dist.
Rajshahi—*1st party*

versus

Noth Bengal Sugar Mills Co. (Pvt.) Ltd., Gopalpur,
Dist. Rajshahi—*2nd party*.

AWARD

This is an application under section 10(1)(a) of the Industrial Disputes Ordinance, 1959 (hereinafter referred to as the Ordinance) arising out of Industrial Dispute Case No. 40 of 1963 filed by North Bengal Sugar Mills Field Workers Union, Post Gopalpur, Rajshahi, against the said Sugar Mills (hereinafter called the Company) as the second party. The Union have raised a number of demands including increment of wages of field workers, etc.

The first objection is that the Sugar Mills Field workers are not workmen within the meaning and scope of the Ordinance. Now, admittedly, the field workers of the Company are employees of the Company and they are engaged in the production of sugarcane in the company's own sugarcane plantations and they comprise of ploughmen, canemen, fieldmen, farm-watchers and the like. These employees are thus employed directly in the production, guarding and carting of sugarcane for the Company's sugar mills and the industry for production of sugar is absolutely dependant on this sugarcane. Therefore, there can be no manner of doubt that the above employees are workmen of the company within the definition of that term in section 2(n) of the Ordinance, as they are employed in the industry of the company to do manual work for hire. This view finds support in the ruling of Supreme Court of India reported in 1963 PLC. 1008 in which it has been held that a joint Stock Company carrying on agricultural operation with a view to making profit is an industry within the meaning of the term "Industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 which is identically the same as the definition of "Industry" in the Pakistan Industrial Disputes Ordinance, 1959. In another case also (J. K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Labour Appellate Tribunal of India and other, reported in 1964 PLC. 39) the Supreme Court of India has held that 'malis' (gardeners) employed by the management to maintain gardens in quarters allotted to officers of the management are workmen within the definition of that term in the Industrial Disputes Act which is the same as in the Industrial Disputes Ordinance, 1959. There is nothing in the

definition of "workman" or "Industry" in the Industrial Disputes Ordinance from which it can be held that an agricultural worker directly connected with an industry as in the present case, is not a workman. Accordingly I find no substance in the Company's contention that the agricultural workers of the Company are not workmen as defined in the Industrial Disputes Ordinance.

The second objection is that the Union of the first party is an unrecognized union and as such, they cannot raise an industrial dispute.

Now, there is no controversy that the first party Union is a Union of the Field Workers of the Second party company. The rules of the Union (Ext. 3) show that membership of the Union is confined to workers of the age of 15 or above engaged or employed in the North Bengal Sugar Mills Ltd. under Cane or Agricultural Department of the Company only. It also appears from Ext. 3, that it was registered as a Trade Union on the 12th of February, 1962. There is no law that the workers of the same industrial establishment must be members of the one and the same Union and there may not be two or more rival unions composed of the different workmen of the same establishment, nor is there any law laying down that to enable a particular Union to raise an industrial dispute the same must be recognized by the management; or where there are two unions one recognized and the other unrecognized the latter union may not raise an industrial dispute. Any considerable body of workmen may raise an industrial dispute even if this body may not form the major part of the workmen. In the circumstances, I do not find any substance in the contention that the present Union of Field workers of the Company are not entitled to raise any industrial dispute even if they are workmen within the meaning of Section 2(n) of the Ordinance.

Let me now take up the third and last point of preliminary objection taken by the second party which is as follows:

"There was an agreement between the Company and the East Pakistan Sugar Mills Workers Union, which according to the Company, represents all the employees of the Company, dated 17th August 1961 is still in force and

binding on the parties and therefore, the first party Union is stopped from raising a fresh dispute during the currency of the aforesaid settlement."

It appears that on the 25th of February, 1957 there was an agreement between the second party company and the East Pakistan Sugar Mills Workers Union which is an unregistered Union the membership of which is open to all the sugar mill workers of East Pakistan. In this agreement, Ext. A(1), there was no agreement regarding agricultural workmen of the Company. Subsequently there was a tripartite agreement on 5th January, 1958 between the second party and the East Pakistan Sugar Mills Workers Union for non-implementation of the agreement, dated 25th February 1957 and the agreement was incorporated in an award of this Court (*vide* Ext. 1). In this agreement of 5th January 1958 also the agricultural workers were not covered [*vide* issue No. 3 of Ext. (1)]. Thereafter there was another agreement between the same parties dated 17th August, 1961 in paragraph 6 of which it was provided that except the terms specifically provided for in this agreement all other clauses of the agreement, dated 25th February 1957 would continue to remain in force, with the result that the agricultural workers of the Company were not again covered by this agreement.

The First party have sworn an affidavit that the agricultural workers of the Company were not members of the East Pakistan Sugar Mills Workers Union. There is no statement in the affidavit sworn by the Second party to controvert this. In view of the above, there can be no manner of doubt that the First Party Union are entitled to raise the present dispute and there is nothing in the previous agreements to bar them from doing so.

In the result, the Preliminary Objections raised by the second party are liable to be rejected. Both the Members have given the same advice. The objections under section 10 (1) (a) of the Ordinance are accordingly summarily rejected.

ABDUL HAKIM KHAN,
Chairman,
1st Industrial Court, East Pakistan.

The Dacca Gazette

Extraordinary
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WEDNESDAY, NOVEMBER 25, 1964

PART-I. Orders and Notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-68/64/1356-L/II—20th November 1964—
Whereas Pakistan Industrial Corporation Workers Union, 71, Arambagh, Dacca—2, applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between Pakistan Industrial Corporation Workers Union, 71, Arambagh, Dacca—2, and Messrs. Pakistan Industrial Corporation, 149/150, Industrial Area, Tejgaon, Dacca—8;

And whereas the said Court has given its award as appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the Extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,
Section Officer,
Govt. of East Pakistan.

**IN THE FIRST INDUSTRIAL COURT OF
EAST PAKISTAN, DACCA**

Present:

Abdul Hakim Khan, Esq.—*Chairman.*

Major Q. N. Zaman .. }
Mr Ghulam Martuza .. } *Members.*

Industrial Dispute Case No. 13 of 1964

Pakistan Industrial Corporation Workers Union,
71, Arambagh, Dacca—2—*1st party.*

versus

Messrs. Pakistan Industrial Corporation, 149/150,
Industrial Area, Tejgaon, Dacca—8—*2nd party.*

AWARD

In this industrial dispute under section 5(5) of the Industrial Disputes Ordinance, 1959, raised by the Pakistan Industrial Corporation Workers Union against the Pakistan Industrial Corporation, Dacca, the parties came to an amicable settlement of the dispute during the pendency of the case and filed a petition of agreement with a prayer for disposal of the same in terms of the agreement.

Both the members have advised that an award be made as desired by the parties.

As the agreement appears to be fair and reasonable, it is ordered that the case be disposed of in terms of the agreement which are as follows:

- “1. That the parties have come to a settlement on the following terms and conditions:—
- “2. That the said worker Nazir Ahmed will be taken back to his former job with the management on the same terms of payment he was receiving there, provided he will submit a letter of apology to the management. The laid off period will be treated as leave without pay as a special case. Another worker Abdur Rajjak has already been taken back to his former job.
- “3. That the demands in respect of increment in the rates, being far reasonable compared with other similar units of the area, are hereby withdrawn.”

It should be mentioned here that Nazir Ahmed resumed duty according to the above term No. 2, on 16th October 1964, as reported by the representative of the Union by his petition filed on 28th October 1964.

ABDUL HAKIM KHAN,
Chairman,
1st Industrial Court, East Pakistan.
31-10-1964.

The

Public Health Service



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1940

Volume 1

Number 1

The Public Health Service is a part of the Department of Health and Human Services. It is responsible for the promotion and protection of the public health, the prevention of disease, and the control of communicable diseases. The Service is composed of several bureaus, including the Bureau of Preventive Medicine, the Bureau of Quarantine, the Bureau of Venereal Diseases, the Bureau of Tuberculosis, the Bureau of Communicable Diseases, and the Bureau of Laboratories.

Director
Assistant Director
Chief of Bureau
Chief of Division

Public Health Service
Department of Health and Human Services

Washington, D. C.

1940


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WEDNESDAY, NOVEMBER 25, 1964

PART I.—Orders and Notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section—II

NOTIFICATION

No. 10A-69/64/1357-L/II—20th November 1964—
Whereas Film Development Corporation Technicians' Association, 98, Testory Bazar, Dacca-5, applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between Film Development Corporation Technicians' Association, 98, Testory Bazar, Dacca-5 and M/s. Film Development Corporation, Tejgaon, Dacca-5;

And whereas the said Court has given its award as appened hereto;

Now therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the Extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,
Section Officer,
Govt. of East Pakistan.

IN THE FIRST INDUSTRIAL COURT OF EAST PAKISTAN.

Industrial dispute Case No. 146 of 1963.

Film Development Corporation Technicians' Association, 98, Testory Bazar, Dacca-5—1st party.

versus

M/s. Film Development Corporation, Tejgaon, Dacca-5—2nd party.

Present :

Abdul Hakim Khan, Esq.—Chairman.

Major Q. N. Zaman

Mr. Ghulam Martuza

} Members.

AWARD

In this case under Section 5(5) of the Industrial Disputes Ordinance, 1959 (hereinafter referred to as the Ordinance), both parties have filed a petition of agreement in respect of all the demands except one, and have prayed for awards in respect of those demands in terms of the said agreement.

The only demand which was left for decision by this Court is one for reinstatement of Hasan Ali, an employee of the Second Party Film Development Corporation, Tejgaon, Dacca (hereinafter referred to as the F.D.C.). The first party is the registered Trade Union of the F.D.C. styled "Film Development Corporation Technicians' Association" of which Hasan Ali has been the President since its inception.

Regarding this demand the case of the first party is that Hasan Ali had a training course of two years in "Sree-Niketan" which he successfully completed in 1940, in course of which he acquired proficiency in moulding, crafts and Leather Work and then he had five years' course in "Kala Bhavan" at "Santi Niketan" and received training in painting, modelling, stage decoration, Fresco work, designing of costumes, make up, etc. and got his Diploma in Fine Arts in 1945. Thereafter he worked for six years in the famous "New Theatres Studio" of Calcutta till 1957. When the F.D.C. started work in 1958, Hasan Ali was appointed as set-designer and his duties included also modelling and painting models, preparation of the "armature" of the models, keeping accounts, etc. Further case of the first party is that because of his trade union activities the then Managing Director of

F.D.C., Mr. Khairul Kabir came to dislike him and some time before 28-3-1962 Mr. Khairul Kabir in course of a meeting used insulting words to Hasan Ali and ordered his suspension under an order, dated 28-3-1962 for alleged 'gross negligence of duty and mismanagement'. Thereafter Hasan Ali sent a representation to Managing Director, F.D.C. on 4th April, 1962 (Ext. 2) in which he denied the charges of negligence and mismanagement but conceded that there were occasions on which there were misunderstandings between himself and the Managing Director and exchange of words for which Hasan Ali also expressed his regret. As Hasan Ali got no response to his representation he addressed another letter [Ext. 2(a)] on 4th June, 1962 in which he protested against his continued suspension for such a long period. In reply to his letter, Hasan Ali was informed by Mr. Tajuddin Ahmed, Secretary, F.D.C. that his case would be placed before the Board of Directors in the third week of June, 1962. Then getting no further information, Hasan Ali again addressed a letter to the Managing Director on 25th August 1962 [Ext. 2(b)] again complaining of his long suspension without payment of any pay and allowances, and requesting immediate decision in his case. Thereafter on 26th September 1962, the F.D.C. terminated his service with effect from 27th September 1962 by an order (Ext. 3), dated 26th September 1962 without any charge-sheet and any proceeding against him.

The F. D. C. have opposed the prayer for reinstatement contending—(1) that Hasan Ali was not a workman within the definition of that term in Section 2(n) of the Ordinance; (2) that he was entangled in submission of false bills for daily-rated workers, exaggerated statement of expenditure and pilferage of Set materials; (3) that he was guilty of gross negligence and mismanagement; (4) that he was guilty of misbehaviour and insubordination, and (5) that his services were terminated under Clause 12(1) of the Industrial and Commercial Employment (Standing Orders) Ordinance, and he himself had written in his petition, dated 4th June, 1962—"I would prefer a simple termination of my service from your side or I shall be ready to resign if I am asked."

Now, as regards the first point: "Workman" as defined in Section 2(n) of the Ordinance, "means any person including an apprentice employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward....." It has been contended on behalf of the F. D. C. that Hasan Ali was "Art Director" and in-charge of the "Art Department" in the scale of Rs.400.00 to Rs.600.00 plus Dearness Allowance and as such, he was not a 'workman' within the above definition.

Only two witnesses have been examined in this case, namely, Hasan Ali for the first party and Mr. Tajuddin Ahmed, Secretary, F. D. C., for the second party. It is clearly established from the evidence of Hasan Ali that he was appointed in F. D. C. in September, 1958 as Set-Designer on a monthly salary of Rs.300.00 and his duties included set-designing for which he used to submit sketches as desired by the Film Director and his duties included making frames for models ("Armature"), modelling, painting models, etc. and he had also to do clerical work and maintain certain accounts. His further evidence discloses that on 1st June, 1959 he was given two increments of pay and he was given the designation "Artist" but after this also he continued to do the same work as he had been doing previously including all the manual work that he had been doing. Mr. Tajuddin Ahmed, Secretary of the F. D. C. has not denied in his evidence that Hasan Ali used to do the manual work as mentioned by the latter in his evidence. In his cross-examination Mr. Tajuddin

has also admitted that Hasan Ali had to do manual work for modelling, etc. and that he was a technician and he was head technician of his Department and he also used to do clerical work. In view of the above evidence there can be no manner of doubt that in spite of the grandiose designation of "Artist" or "Head of the Art Department" the essential nature of Hasan Ali's most important work was that of a skilled manual worker. Accordingly, I find that Hasan Ali is a 'workman' within the meaning of Section 2(n) of the Ordinance.

I shall now take up the point regarding insubordination. Admittedly there was no charge-sheet against Hasan Ali by the F. D. C. at any time in respect of any of the present accusations against him. In the letter of suspension, Ext. 1, dated 28th March, 1962, it is simply mentioned that he was "placed under suspension for gross negligence of duty and mismanagement" and he denied both the charges in his explanation, Ext. 2, dated 4th April, 1962. In this explanation he gives a resume of his training at "Sree-Niketan" and "Santi-Niketan" and his work under the F. D. C. and how he trained up new workers and worked heart and soul for the F. D. C. After denying the charges of mismanagement and gross negligence of duty he stated as follows:

".....Now let me bring to light the unwritten charge which might have guided you to issue the order of suspension. Just and prior to your decision of suspending me I had exchange of words with you."

"I admit such exchanges of hot words might have annoyed you as the Managing Director of the Corporation. I feel sorry that such a situation should have occurred. Similar cases of annoyance on your part did happen on 2 or 3 other occasions. I feel sorry for that too. But every time I expected you to judge an issue from its own standpoints and I expected you to realise that a judgement cannot be thrust upon externally and off hand. In the course of my talk with you and in clarifying my position to you I might have wounded your feelings but certainly I did not exhibit signs of being unfaithful to my service in this organisation. I have appreciated your enthusiasm to eradicate all wrongs from the Corporation but the wrong way to detect wrongs will add more wrongs to the set up."

"To all honest workers of this organisation it is the common feeling that the leadership needs further knowledge, sincere approach, spirit of co-operation and down to earth policies."

"In conclusion, I would request you not to judge the issue sentimentally but to do it analytically and you will find that I have been accused of charges of which I am not guilty."

Reading Ext. 2, as a whole it would appear that according to Hasan Ali the reason for his suspension was the displeasure incurred by him because of exchange of hot words between him and the Managing Director for which Hasan Ali also expressed his regret. In his evidence Mr. Tajuddin Ahmed, Secretary, F. D. C., also has stated that Hasan Ali had a "heated discussion" with the then Managing Director Mr. Kabir just before the order of suspension. I am inclined to believe that by the expression "exchange of hot words" used by Hasan Ali all that he meant was really nothing more than a discussion in raised voices. Hasan Ali as the Head

Technician and Chief Officer of his Department undoubtedly had the right to express his views freely in the interest of the F.D.C. in matters concerning his Department. The discussions might have been carried on in raised voices of the participants but this cannot be termed as an insubordination on the part of Hasan Ali. In this connection it may be observed that the portion of his explanation, Ext. 2 where Hasan Ali said that there was "exchange of hot words" between him and the Managing Director was not put to Hasan Ali at the time of his cross-examination to enable him to explain what he meant by "exchange of hot words" and under what circumstances there was "exchange of words" or "heated discussion" as put by Mr. Tajuddin Ahmed, Secretary of the F.D.C. At page 13 of the petition under Section 5(5) of the Ordinance it has been stated that in the meeting of the Departmental Heads where an eminent journalist was incidentally present, the Managing Director Mr. Kabir used insulting words to Hasan Ali and asked the Secretary, F.D.C., to take over charge from him immediately. It is clear from the above evidence that the above incident was the reason for the order of suspension on the allegation of negligence and mismanagement. In view of the above I am unable to hold that the above conduct of Hasan Ali amounted to insubordination. Had this been taken as insubordination, there is no reason why this accusation would not have found place in the order of suspension, Ext. 1, dated 28th March 1962.

As regards the accusation of corrupt practice, it is alleged that Hasan Ali was entangled in submission of false bills for daily-rated workers, exaggerated statement of expenditure and pilferage of set materials. But there was no mention of any such matter in the suspension order, nor has Mr. Tajuddin Ahmed made any such statement in his evidence before this Court. A report of Mr. Tajuddin Ahmed, Ext. J, dated 30th May 1962 lists a number of "irregularities and mismanagement" done by Hasan Ali. This report (submitted long after the suspension) cannot be treated as evidence in this case. There also appears certain allegations in the order of Mr. Khairul Kabir, dated 28th March 1962, [Ext. A(1)]. The contents of this order too cannot be treated as evidence in this case.

As already stated, there was no charge-sheet against Hasan Ali at any time even with regard to negligence of duty and mismanagement before or after the order of suspension. In the above circumstances, termination of his services without holding any enquiry was flagrant violation of the principle of natural justice unless it can be held that the termination was done at Hasan Ali's own request.

This brings us to the question whether in his letter, Ext. 2(a)(1), dated 4th June, 1962, Hasan Ali voluntarily asked for termination of his services. Now, on reading this representation in its entirety one cannot but be convinced that he wrote that he would "prefer a simple termination of his service or he would be ready to resign if he would be asked to do so" out of sheer desperation, being driven to hopelessness about getting any justice from the administration. This appears to be quite clear when we remember that he was suspended on the 28th of March, 1962, and thereafter no charge-sheet was drawn up against him, nor was he getting any pay or allowance, and as deposed to by him, he had to sell his lands to maintain himself. He had not even received any reply to his representation, dated 4th April, 1962 (Ext. 2). It must also be remembered that Hasan Ali, as evident from his petition, Ext. 2(a)(1), was labouring under the impression that he was holding a temporary post and that his services could be terminated at the sweet will of the F.D.C. Now, having been appointed as early

as in 1958 and having continued to do the same work in addition to discharging other duties and responsibilities that might have been entrusted to him on his being appointed under Ext. 1 as "Artist" on July 24, 1959 with an increase of pay and rise of status presumably in consideration of his satisfactory services, Hasan Ali, in the eye of law, cannot be deemed to have been a temporary worker on the date of his suspension on 28th March 1962. Under Standing Order No. 1(b) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960, a permanent workman includes a person who has completed a probationary period of 3 months. Further, according to Standing Order No. 12(2) of the said Ordinance, the services of even a temporary workman cannot be terminated by way of punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him. It is also against the well established principle of natural justice to punish a person without giving him an opportunity of being heard.

In the present case, the services of Hasan Ali were dispensed with not because his services were no longer required but because there were certain allegations against him and the administration instead of holding an enquiry into those allegations, arbitrarily passed an order for termination of his services giving a month's wages in lieu of notice. Had this been a case of normal termination, no exception could be taken. But in the circumstances of the case it must be held that the termination was illegal, as in fact it amounted to dismissal without any enquiry and giving Hasan Ali an opportunity of being heard and making his defence.

It has been argued on behalf of the Management that as the services of Hasan Ali was terminated under Clause 12(1) of the Standing Orders Ordinance, in view of the ruling given by the Supreme Court of Pakistan in the case of Karnaphuli Paper Mills Ltd., reported in 1961 PLD 329 (S.C. Pak.), this Court has no jurisdiction to interfere with that order. Now, the general principle enunciated in the aforesaid case has been qualified by their Lordships of the Supreme Court of Pakistan in the subsequent case of Glaxo Laboratories (Pak) Ltd. Vs. Pakistan and others reported in 1962 PLC. 362. From this latter ruling it can be clearly gathered that the services of a workman cannot be terminated by giving a notice or pay in lieu thereof on account of misconduct when action against the workman appears to have been taken as a disciplinary measure for misconduct, instead of resorting to the relevant provisions for termination of service for misconduct by holding an enquiry and giving the worker an opportunity to be heard in respect of the alleged misconduct. In this connection reference may also be made to the ruling of the Supreme Court of India reported in 1961 PLC. 1 (Assam Oil Company Ltd. Vs. its Workmen). In that case one Miss Scott worked as a Stenographer, being one of the employees of the Assam Oil Company Ltd., and as her work was not found to be satisfactory, Miss Scott was given one month's pay in lieu of notice and her services were terminated. It was contended on behalf of the Management that it had purported to terminate the services of Miss Scott in terms of the contract after paying her one month's wages in lieu of notice and the Industrial Tribunal would not be justified in interfering with such order. In that case their Lordships observed as follows:

"If the contract gives the employer the power to terminate the services of his employee after a month's notice or subject to some other condition it would be open to him to take

recourse to the said term or condition and terminate the services of his employee; but, when the validity of such termination is challenged in industrial adjudication it would be competent to the Industrial Tribunal to enquire whether the impugned discharge has been effected in the *bona fide* exercise of the power conferred by the contract. If the discharge has been ordered by the employer in *bona fide* exercise of his power then the Industrial Tribunal may not interfere with it; but, the words used in the order of discharge and the form which it may have taken are not conclusive in the matter and the Industrial Tribunal would be entitled to go behind the words and the form and decide whether the discharge is a discharge simpliciter or not. If it appears that the purported exercise of the power to terminate the services of the employee was, in fact, the result of the misconduct alleged against him then the Tribunal will be justified in dealing with the dispute on the basis that despite its appearance to the contrary the order of discharge is, in effect, an order of dismissal. The exercise of the power in question to be valid must always be *bona fide*. If the *bona fides* of the said exercise of power are successfully challenged the Industrial Tribunal would be entitled to interfere with the order in question."

In the case of A. R. Varma and another Vs. Mettur Industries Ltd. and another reported in 1961 PLC. 184, the Madras High Court observed as under:

"In principle it makes no difference to the jurisdiction of the Industrial Tribunal whether it is a case of dismissal for misconduct or termination simpliciter of an employee's services. Both are cases of non-employment. If such a termination is a subject-matter of an industrial dispute, then the Tribunal will be well within its jurisdiction to deal with it in order to give or decline to give in its award the relief of re-instatement of an employee. In so dealing with the question of re-instatement, the jurisdiction of the Tribunal is in no way limited or circumscribed by considerations based on contractual power permitting the employer to terminate an employee's services in terms of a particular contract or Standing Order governing the employment."

It was further held in that case that "the power of the Tribunal to find on the propriety or otherwise of an order of termination of the service of an employee is but incidental to its jurisdiction to adjudicate on an industrial dispute and direct re-instatement."

In view of the above I find that there is no substance in the contention of the Second Party that this Court would not be justified in going into the question whether the service of Hasan Ali was illegally terminated and whether he is entitled to be re-instated. As already observed, I hold that the termination of his services was illegal as it amounted to dismissal without an enquiry.

In view of the facts and circumstances of the case discussed above, I also find that it is a fit case for re-instatement of Hasan Ali in the post that he was holding. Mr. Tajuddin Ahmed in his evidence has stated that after the discharge of Hasan Ali two persons have been appointed in his place to do the jobs which Hasan Ali had been doing, namely, an "Artist" and a "Modeller" (as deposed to by Hasan Ali).

Mr. Tajuddin Ahmed has also stated that the work of the F.D.C. has increased manifold. If this is so, Hasan Ali may be reinstated in his post even without dispensing with the services of either of the two persons appointed in his place. It may be observed here that in a suitable case, the services of newly appointed persons if necessary, may be terminated if re-instatement of a wrongfully dismissed worker necessitates it. Therefore, the fact that two new persons have been appointed in Hasan Ali's place cannot be a valid reason for refusing the prayer for re-instatement of Hasan Ali.

Both Mr. Martuza, Member representing the Employees and Major Q. N. Zaman, Member representing the employers have advised re-instatement of Hasan Ali. For the reasons already stated, I find that Hasan Ali should be re-instated in his post. I would like to observe here that it appears that Hasan Ali is a talented technician who has made signal contribution to the success of the F.D.C. in its initial and most difficult stage of development and I am inclined to believe that whatever may have been his shortcomings in the past, the sufferings he has undergone during the long period since his suspension on 28th March 1962 must have had a chastening and beneficial effect on him and I am confident that given the proper guidance, sympathy and encouragement by his superior authorities he would be able to make greater contribution to the success of the F.D.C.

As regards the question whether Hasan Ali should get his entire back wages from the date of his discharge, considering the facts and circumstances of the case I find that it would be just and fair if he is awarded back wages at half the rate of his monthly remuneration of Rs.654.00 including allowances which he was drawing before his dismissal.

As regards the other demands as already stated, both parties have filed a petition of agreement regarding them, and as the terms are just and reasonable, it is ordered that the said demands be disposed of in terms of the said agreement which are as follows:

A. Apprenticeship.

The Corporation if and when feels necessary, may arrange apprenticeship facilities under it. The period of apprenticeship shall be one year.

On the expiry of the said period of one year, successful candidates, as shall be decided by the Corporation, shall be awarded a Certificate for successful completion of the apprenticeship. Temporary appointments shall be given to, according to the discretion of the Corporation, from amongst the successful candidates according to the number of vacancies that may exist, and the rest shall be enlisted for giving appointment in future as and when vacancies will occur subject to the condition that the Corporation take no responsibility to the absorption of all the successful candidates.

As regards allowance to be paid for the period of apprenticeship, it has been agreed that the allowance shall be Rs.30.00 per month for the first 6 months and thereafter if he is found suitable the allowance shall be increased to Rs.75.00 per month for the rest 6 months, otherwise he will be discharged.

B. Promotion.

Cases of promotion shall be considered by the Corporation on the basis of seniority-cum-efficiency keeping in view the recruitments rules, qualification and past record of service as and when vacancies in

the higher cadre shall occur. Such promotion in the existing vacancies where they are, shall be considered by the Corporation within the current year.

Every employee of the Corporation shall have a probationary period not exceeding two years to be prescribed or determined by the Corporation in each case or category of cases on the expiry of which his case for confirmation will be taken up for consideration having regard to his suitability, efficiency and Confidential Character Roll. If he is not found suitable for confirmation his probationary period may be extended or he may be discharged.

C. House Rent.

The question of enhancement of House Rent will be placed before the Board of Directors in its next meeting for consideration.

D. Medical Facility.

A scheme to provide medical facilities for Class IV and Class III employees of the Corporation is under preparation. As soon as this is approved by the Board it will be given effect to.

E. Provident Fund.

As soon as a scheme for provident fund is approved by the Board of Directors this will be given effect to.

F. Overtime.

Overtime work for the period exceeding 8 hours of normal work per day or exceeding 48 hours of normal work per week shall be paid at double the ordinary rate of pay, subject to the approval of the Board of Directors.

G. Bonus.

Bonus which is dependant on profit shall be considered by the Corporation as and when profit shall justify such payment in future.

H. Preference to the existing Technicians for appointment in higher posts.

In the matter of filling up of vacancies in the higher posts, local talents shall be given the preference provided foreign talents are not required to raise the standard and quality of production and suitable talents from amongst the staff are available for appointment to maintain the required standard."

ABDUL HAKIM KHAN,
Chairman,
1st Industrial Court, E. P.

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PART I.—Orders and Notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-70/64/1358-L/II—20th November 1964—Whereas Abdul Rouf and six others, C/o. Kazi Harun-al-Rashid, Mirpur Setllite Town, I-B/AI/31, Mirpur, Dacca, at Present C/o. M. A. Kassim Choudhury, 9, Agamusi Lane, Dacca—2, applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between Abdul Rouf and six others, C/o. Kazi Harun-al-Rashid, Mirpur Satellite Town, I-B/AI/31, Mirpur, Dacca, at present C/o. M. A. Kassim Choudhury, 9, Agamusi Lane, Dacca—2 and the Bux Rubber Co. Ltd., P. O. Bux Nagar, Mirpur, Dacca;

And whereas the said court has given its award be appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,
Section Officer,
Govt. of East Pakistan.

IN THE FIRST INDUSTRIAL COURT OF EAST PAKISTAN, DACCA.

Industrial Dispute Case No. 165 of 1963

Abdul Rouf and six others, C/o. Kazi Harun-al-Rashid, Mirpur Satellite Town, I-B/AI/31, Mirpur, Dacca, at present C/o. M. A. Kassim Chowdhury, 9, Agamusi Lane, Dacca—2—1st party.

versus

The Bux Rubber Co. Ltd., P.O. Bux Nagar, Mirpur Dacca—2nd party.

Present:

Abdul Hakim Khan, Esq.—*Chairman*.

Major Q. N. Zaman

Mr. Ghulam Martuza

} *Members.*

AWARD

This is an application under section 5(5) of the Industrial Disputes Ordinance (hereinafter referred to as the Ordinance) filed by one M. A. Kassim Chowdhury, as President of the Trade Union of Workers of M/s. Bux Rubber Company Ltd., Mirpur Dacca, on behalf of seven workers of the said industry, as representative of its workers. It was filed on the basis of a failure certificate issued by the Conciliation Officer, Dacca Division in a conciliation proceeding initiated by the abovementioned seven workers (named Abdur Rouf, A. Kader, Gul Bahar, Abdur Rahman, Md. Hanif, Muradur Rahman, and Badiur Rahman) in which they raised the demand for re-instatement of ten workers whose services had been terminated according to the petitioners, for their activities in the matter of formation of a trade union of the workers of the second party's establishment. Admittedly, the management closed the factory with effect from 26th August, 1963 and services of 8 of the ten workers in question as also of all others were terminated under Standing Order No. 11(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960 and the factory was re-opened one month nineteen days after that.

According to the management, Kazi Harun-al-Rashid and A. Aziz out of the ten workers whose re-instatement is sought, were dismissed for misconduct with effect from 13th August 1963 after observing legal formalities while those of the remaining eight workers were terminated on 21st August, 1963 under Standing Order No. 11(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1960, by giving them pay in lieu of due notice and all the ten workers accepted payments in full and final settlement of all their dues, and

thereafter the entire factory was ultimately closed on 26th August 1963 for an indefinite period as there was huge accumulation of finished products and the trading position was deteriorating fast.

The second party have raised a number of preliminary objections. The first one is that the application under section 5(5) of the Ordinance is not maintainable as it is not signed and filed by the seven workers who filed the representation for conciliation but by a third party who has not been authorised by the seven workers to file the present petition.

Now, the provisions of law that fall to be considered in this connection are :

(a) Section 5(5) of the Ordinance :

"Any party to whom a Certificate has been issued under sub-section (4) may make an application to a Court for adjudication and determination of the industrial dispute or any matter constituting such dispute."

(b) Section 34 of the Ordinance :

"(1) A workman who is party to an industrial dispute shall be entitled to be represented in any proceedings under this Ordinance by an officer of a registered trade union, and any employer who is a party to an industrial dispute shall be entitled to be represented in any such proceedings by an officer of an association of employers, if such officer of a registered trade union or of an association of employers is not a legal practitioner.

(c) "(2) No party to an industrial dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings, or, except with the consent of all the parties to the dispute, in any proceedings before a Court adjudicating such dispute."

(d) Rule 26 of the East Pakistan Industrial Dispute Rules, 1960.

"Application to Court : (1) On receipt of a certificate from the Conciliation Officer under sub-section (4) of section 5, any party to the dispute may apply to the Court for adjudication of the dispute within sixty days from the date of issue of the certificate, and if no such application is made within the said period the dispute shall be deemed to have ceased to exist.

"(2) A Certificate issued by the Conciliation Officer under sub-section (4) of section 5 shall be enclosed in original with the application made to the Court under sub-section (5) of that section of the Ordinance.

"(3) The application shall be made in duplicate in form D.

"(4)(i) The application shall be addressed to the Industrial Court of the particular region.

"(ii) The application shall fully describe the applicant as the first party and other side as the second party.

"(iii) The dispute shall be described as they were before the Conciliation Officer serially.

"(iv) A brief background of the dispute shall be stated.

"(v) The nature of relief against each issue or item of dispute shall be clearly stated.

"(vi) The application shall be signed by the party to whom the certificate under sub-section (4) of section 5 has been issued by the Conciliation Officer.

"(vii) Duplicate copy or copies of the application shall be filed along with the main application for service upon the second party or parties, as the case may be.

"(viii) Copies of all documents upon which a party relies in support of the demands shall also be filed along with the application :

"Provided that the original documents, if required by the Court, shall be filed on the date fixed by the Court."

(The underlineation is by me)

From the above provisions it is clear that the application under section 5(5) of the Ordinance is required to be signed and filed by the party to whom the certificate of failure is granted. In the present case the certificate was granted to the seven workers—A. Rouf and 6 others; but the application under section 5(5) of the Ordinance has been signed and filed by a third party, viz., A. Kassim Chowdhury as Representative of the general workers and President of the Trade Union, admittedly registered subsequent to the conciliation proceedings but before the filing of the petition under section 5(5) of the Ordinance. According to section 11(2) of the Ordinance the Industrial Court for the purpose of adjudicating and determining any industrial dispute shall be deemed to be a Civil Court and shall have the same powers as are vested in such Court as per the Civil Procedure Code. According to the Civil Procedure Code though a party may be represented by a lawyer, it is the party himself who has to sign the plaint and someone else cannot sign it on his behalf unless he has a valid power of attorney from the party. There is a clear distinction between filing a plaint or original application in a Court and representing a party before the Court after the case is filed. There is nothing in the provisions of law referred to above to justify a conclusion that where a worker is a party to an industrial dispute any officer of the Trade Union may file a petition under section 5(5) of the Ordinance in his name. The expression "shall be entitled to be represented" in section 34 of the Ordinance obviously means representation after filing of the dispute by a party himself, but the present petition has been filed by Mr. M.A. Kassim Chowdhury accompanied by a petition stating that he has filed it as President of the "newly formed Union, namely the Bux Rubber Company Workers' Union and as authorised by the general workers of the Bux Rubber Co. Ltd."

In view of the above, I find that the first objection raised by the second party must be upheld.

The second preliminary objection is that the seven workers who filed the conciliation petition before the Conciliation Officer were not duly elected by the general body of workers as required by rule 3(3) and 24(3) of the East Pakistan Industrial Dispute Rules and as such the seven workers had no authority to file the representation before the Conciliation Officer or to maintain the present application under section 5(5) of the Ordinance. Since this objection was taken in the written statement of the second party, the onus was on the first party to produce evidence before this Court to repel the above contention but they did not do so. In the circumstances, this second contention of the second party must also be upheld.

The third objection taken by the management is that one of the seven workers in whose name the present application has been filed has informed this Court by a petition for withdrawal of his name from among the applicants in this case and as such, the present application as a whole is not maintainable. I find no substance in this contention.

Yet another contention of the second party is that as a matter of fact there was first one conciliation proceeding which began on 29th August 1963 and

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PART I.—Orders and Notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-71/64/1361-L/II—21st November 1964—
Whereas Messrs. Prasanna Match Factory Ltd., 18, Dewan Bazar Road, Dacca-1 applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between M/s. Prasanna Match Factory Ltd., 18, Dewan Bazar Road, Dacca-1 and the President, Prasanna Match Workers' Union, 71, Arambagh, Dacca-2;

And whereas the said Court, has given its decision as appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said decision be published in the extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,
Section Officer,
Govt. of East Pakistan.

IN THE FIRST INDUSTRIAL COURT OF EAST PAKISTAN, DACCA

Industrial Dispute Case No. 32 of 1964.

M/s. Prasanna Match Factory Ltd., 18, Dewan Bazar Road, Dacca-1—1st party.

versus

The President, Prasanna Match Workers Union, 71, Arambagh, Dacca-2—2nd party.

Present:

Abdul Hakim Khan, Esq.—Chairman.

Major Q. N. Zaman

Mr Ghulam Martuza

... Members.

DECISION

This is a reference under section 35 of the Industrial Disputes Ordinance, 1959 (hereinafter referred to as the Ordinance) for interpretation of certain terms of the award of this Court in the case of Prasanna Match Workers Union vs. Prasanna Match Factory Ltd., Dacca, given by my predecessor in Office and published in the *Dacca Gazette, Extraordinary*, dated 27th January 1964. The terms of award in question are those given in respect of Issue No. (ii) concerning demand for Bonus equivalent to two months' wages for every year of service from the year 1957 according to the length of service of each worker, and demand No. (viii) that all piece-rated, time-rated and other workers should be treated in the same way in respect of pay, bonus, leave and other facilities.

Now regarding Bonus, the advice of Mr K. M. M. Abdul Qader, Member representing the Employees in the above case was that Bonus should be granted for 2 months for every year of completed service and proportionate Bonus for service less than one year. He did not mention from which year Bonus should be granted. Major Q. N. Zaman, Member representing the Employers, advised that the Bonus should be granted to the workers at the rate of a month's pay every year with effect from the financial year 1962-63.

With regard to Demand No. (viii) mentioned above, Mr Abdul Qader advised that there should not be any discrimination between the piece-rated, time-rated and other workers in matters of pay, bonus, leave and other facilities. Major Q. N. Zaman gave the advice that all confirmed and permanent workers should be treated alike in respect of pay, bonus, leave and other facilities.

Now, the decision of the Court regarding issue Nos. (ii) and (viii) are as follows:

"As regards Issue No. 2, I hold in the circumstances of the case that all workers who have put in one year's employment under the second party but who have not completed 10 years

ended on 3rd September 1963, and the proceedings were dropped as the Conciliation Officer found that no dispute existed and then a second conciliation proceeding was started on the basis of a second representation dated 3rd September 1963 and the present certificate was issued on 14th September 1963, that is on the 17th day from the commencement of the first conciliation proceeding and as such, the failure certificate in this case of public utility service is invalid and the application under section 5(5) on the basis of the same is incompetent. I find no substance in this contention. It is true that the Conciliation Officer should have issued a failure certificate on the conclusion of the first conciliation proceeding. But it cannot be held that the second petition for conciliation was incompetent because the Conciliation Officer had erred in dropping the first conciliation proceeding instead of issuing a failure certificate. This is clearly supported by the interpretation of section 5(4) of the Ordinance in the case of *Hotel Metropole Ltd., Karachi vs. Hotel Metropole Employees' Union and Palace Hotel (Karachi) Ltd. vs. Karachi Kafe Hotel Employees' Union*, disposed of by one judgement reported in 16 D.L.R., page 498, in which their Lordships of the Supreme Court of

Pakistan have held that a failure certificate may be issued at any time after the close of the conciliation proceeding.

The last contention of the second party is that the seven workers in whose name the petition under section 5(5) of the Ordinance has been filed, ceased to be workers as their services were terminated legally under Standing Order No. 11(3) before the dispute arose. Now, according to the failure Certificate the dispute arose on 13th August 1964. There is nothing to show that the services of the seven applicants were terminated on or before that. Presumably they were terminated when the factory was closed down on 26th August 1963. I, therefore, find no substance in this contention as the definition of workman in section 2(n) of the Ordinance includes a workman discharged during the industrial dispute.

In view of my findings regarding points Nos. 1 and 2, I find that the present petition under section 5(5) of the Ordinance is incompetent and the petition should be summarily dismissed under section 10(1)(a) of the Ordinance. The two Members have also given the same advice.

The petition is accordingly summarily dismissed.

ABDUL HAKIM KHAN,
Chairman,
1st Industrial Court, East Pakistan.
31-10-1964.

employment under the second party be allowed one Bonus equivalent to 26 days' average wages or pay, as the case may be, and those workers who have completed 10 years' employment under the second party each of them be allowed two Bonuses each equivalent to 26 days' average wages or pay, as the case may be. Such Bonus system be introduced from 1st July 1963:

"As regards issue No. 8, I hold in the circumstances of the case that the same be allowed only to the extent that all piece-rated, time-rated, and other workers be treated in the same way in respect of leave facilities and medical facilities but their demand to be treated in the same way with regard to pay and bonus and Provident Fund be disallowed."

The points that require interpretation in this reference are:

- (1) Regarding the period from which Bonus is to be paid.
- (2) Whether the piece-rated workers and the time-rated workers are both entitled to get Bonus at the rate of the award under issue No. (ii).

The contention of the Management is that Bonus system is to begin from the 1st of July 1963, but it has been contended on behalf of the Union that the management has already implemented the award and given Bonus for the year 1962-63 which became payable from 1st of July 1963. Now the exact expression used by the Court is—"Such Bonus System be introduced from 1st July 1963."

Reading the award as a whole, my interpretation regarding the commencement of the period of Bonus is that payment of Bonus at the rates fixed for each year shall begin from the financial year beginning from 1st July 1963.

With regards to the other point, my interpretation is that only in respect of medical and leave facilities all classes of workers—time rated, piece rated and others shall be treated in the same way, but not in respect of pay, bonus and provident fund. This is so because in respect of pay (*i. e.* remuneration), bonus and Provident Fund there is difference between different classes of workers and also between workers of the same class with varying lengths of service. As for example, under the award Bonus rates for workers with ten years' service and less are treated differently; so also workers with five years' service and less in the matter of Provident Fund, and also workers of ten years' standing and less in the matter of Gratuity. Similarly, remuneration of time-rated and piece-rated workers cannot be treated in the same way, nor skilled workers and unskilled workers and semi-skilled workers. Again, in the matter of Bonus, the time-rated workers according to the award, will get bonus on 26 days' pay and piece-rated workers on 26 days' average wages.

The two Members of the Court have also given their advice in conformity with the interpretation given above.

ABDUL HAKIM KHAN,

Chairman,

1st Industrial Court, East Pakistan.

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PART I—Orders and Notifications, by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-72/64/1362-L/II—21st November 1964—
Whereas Dacca Cotton Mills Workers Union, Postogola, Dacca—4 applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between Dacca Cotton Mills Workers Union, Postogola, Dacca—4 and Messrs. Dacca Cotton Mills Ltd., Postogola, Dacca—4;

And whereas the said Court has given its award as appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the Extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,
Section Officer to the
Govt. of East Pakistan.

**THE FIRST INDUSTRIAL COURT OF
EAST PAKISTAN, DACCA**

Present:

Abdul Hakim Khan, Esq.—*Chairman*.

Major Q. N. Zaman

Mr Ghulam Martuza

... *Members.*

Industrial Dispute Case No. 48 of 1964.

Dacca Cotton Mills Workers Union, Postogola,
Dacca—4—*1st party*

versus

Messrs. Dacca Cotton Mills Ltd., Postogola, Dacca—4
—*2nd party*...

AWARD

In this dispute under section 5(5) of the Industrial Disputes Ordinance, 1959, the first party Dacca Cotton Mills Workers Union, Dacca, as prayed for re-instatement of a dismissed worker named Lal Mia.

The representative of the Second Party Messrs. Dacca Cotton Mills Ltd. admitted that the worker was dismissed on the charge of an attempted cheating without any formal enquiry as he was caught red-handed in the said attempt. According to the management Lal Mia was issued a pay slip for Rs.3.40 and by putting a figure '2' on the left-hand side of the figure '3' the amount was made to appear as Rs.23.40. Admittedly Ext. B is the slip that was issued to Lal Mia. It is admitted that Lal Mia was dismissed without any charge-sheet and enquiry on 16th of June, 1964. Thereafter while the conciliation proceeding was pending before the Conciliation Officer, Dacca Division, for the illegal dismissal, the Management issued a letter dated 27th July 1964 to the Conciliation Officer stating that as there was some technical defect in the matter of dismissal, the Management "have decided and do hereby withdraw their action of dismissal pending disposal of the misconduct committed by Lal Mia as per provision of the Standing Order." The Management also informed the Conciliation Officer that a copy of the letter was being sent to the Union for their information and also to Lal Mia with a direction to report for duty immediately. The management also prayed that the case under conciliation might be disposed of accordingly. The copy of the letter to the Conciliation Officer forwarded to the President of the first party Union was received by him on 29th July 1964. A letter was also sent to Lal Mia's home address in a village of Comilla to the same effect as indicated above and asking him to report for duty immediately.

It is not known when the Conciliation Officer received the aforesaid letter of the Management. It appears that the conciliation proceedings, were

closed on 29th July 1964 and a failure Certificate was issued on that very date, the date on which the letter directing Lal Mia to resume his duties was written. Lal Mia did not resume his duty but came to this Court for relief.

It has been contended by the representative of the second party that there is no dispute as the second party have already asked Lal Mia to resume his duties and as he did not choose to do so, there is no question of his being re-instated. He has also argued that even if he is re-instated, he should not get any back wages and the management will be at liberty to proceed against him and hold an enquiry on the charge of his attempt to cheat the management by producing the interpolated pay-slip.

Now, since the failure certificate was issued and since the Union expected that the matter may be decided once for all by coming to this Court, Lal Mia cannot be blamed for not resuming his duties, being under the apprehension that he would be dismissed at once after holding a nominal enquiry. Further, after the management had acted with gross illegality in dismissing the worker without any enquiry it is difficult to believe that they were acting in good faith when towards the end of the Conciliation proceeding they purported to withdraw the order of dismissal on condition of holding a proper enquiry.

In the circumstances, I find that first party is entitled to an order for re-instatement. After complying with the order of re-instatement with back wages for the period mentioned hereafter the Management will be at liberty to hold an enquiry against him in respect of the alleged charge. This decision is supported by the view taken by their Lordships of Supreme Court of Pakistan in the case of Glaxo Laboratories Ltd. Vs. Pakistan and others reported in 1962 PLC. 362.

Lal Mia will get his wages for the period beginning from the 16th of June 1964 till the end of July, 1964 before which Lal Mia could not probably resume his duties from his village home. Considering the facts and circumstances of the case I do not allow any back wages to him for the subsequent period.

This award will come into operation from the date of its publication in the official gazette. Lal Mia shall resume his duties within one month from the above date.

ABDUL HAKIM KHAN,

Chairman,

1st Industrial Court, East Pakistan.

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PART-I. Orders and Notifications by the Governor of East Pakistan, the High Court, Government Treasury, etc.

GOVERNMENT OF EAST PAKISTAN

LABOUR DEPARTMENT

Section II

NOTIFICATION

No. 10A-73/64/1363-L/II—21st November 1964—
Whereas Abdul Majeed, General Secretary, Dacca District Transport Employees' Union, 102, Nawabpur Road, Dacca, applied to the Industrial Court, East Pakistan, for adjudication of Industrial dispute between Abdul Majeed, General Secretary, Dacca District Transport Employees' Union, 102, Nawabpur Road, Dacca and Habibur Rahman Khan and Haji Amir Mia Khan, Partners of M/s. H. R. Khan and Co., 89, Nasiruddin Sardar's Lane, Dacca;

And whereas the said Court has given its award as appended hereto;

Now, therefore, in pursuance of sub-section (2) of section 12 of the Industrial Disputes Ordinance, 1959 (Ordinance No. LVI of 1959), the Governor is pleased to direct that the said award be published in the extraordinary issue of the *Dacca Gazette*.

By order of the Governor,
S. M. ISRAIL HUQ,
Section Officer,
Govt. of East Pakistan.

IN THE FIRST INDUSTRIAL COURT OF EAST PAKISTAN, DACCA

Complaint Case No. 32 of 1963:

Abdul Majeed, General Secretary, Dacca District Transport Employees' Union, 102, Nawabpur Road, Dacca—1st party,

versus

Habibur Rahman Khan and Haji Amir Mia Khan, Partners of M/s. H. R. Khan and Co., 89, Nasiruddin Sardar's Lane, Dacca—2nd party.

Present:

Abdul Hakim Khan, Esq.—Chairman.

Major Q. N. Zaman

Mr. Ghulam Martuza

} Members.

AWARD

The accused persons H. R. Khan and Haji Amir Mia Khan, proprietors of the firm of Messrs H. R. Khan and Co. which carries on transport business being owners of a number of passenger buses, stand accused under section 26 of the Industrial Disputes Ordinance, 1959 (hereinafter referred to as the Ordinance) for alleged breach of the terms of the award of this Court in Industrial Dispute Case No. 233 of 1960 which was heard along with a number of other disputes and disposed of by an award of this Court which was published in the *Dacca Gazette, Extraordinary*, dated October 30, 1961.

The petition of complaint in this case was filed by Abdul Majeed, General Secretary, Dacca District Transport Employees' Union, 102, Nawabpur Road, Dacca, on 5th February, 1963. The case was at first treated not exactly on the footing of a criminal case but as a dispute, and it was not until 15th July, 1963 that the complainant M. A. Majied was examined and at the request of the complainant some members of the Union were also examined, namely, Abdul Majid, Ashrafuddin, Saifullah and Amir Hossain and thereupon only the two accused named above were summoned leaving out the remaining five accused persons, namely, a third partner of the H. R. Khan and Co. and their two Managers. Considerable delay in hearing of the case was occasioned by the fact that the terms of the old Members of this Court had expired and new Members were not appointed for a long time.

Now, the accusations against the accused persons under section 242, Cr. P. C. as drawn up by the then Presiding Officer, are to the effect that the accused persons failed to grant leave and medical facilities

and overtime wages to their employees—(1) Bus driver Abdul Majid, (2) Conductor Ashrafuddin, (3) Conductor Saifullah and (4) Bus driver (previously conductor) Amir Hossain and thus committed breach of the terms of the award of this Court in the Industrial Dispute Case published in the *Dacca Gazette, Extraordinary*, dated October 30, 1961, and thereby they committed an offence under section 26 of the Industrial Disputes Ordinance.

Mr Shamsul Huq, learned Muktear appearing for the accused persons, has raised a number of objections regarding the maintainability of the present petition of complaint. He has firstly contended that as the complainant was not examined under section 200, Cr. P. C. just on filing of the petition of complaint but was examined long afterwards, the petition of complaint is bad.

Now, though section 200, Cr. P. C. provides that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant on oath, delay in examination of the complaint cannot be fatal to the complainant. In the Industrial Court complaints are often received by post and examination of the complainant is often delayed. Though it is desirable that the complainant should be examined as soon as possible, it cannot be held that the delay in examination of the complainant will vitiate the trial.

It has been next contended that the present petition of complaint has been filed by Abdul Majid, General Secretary of the Dacca District Transport Employees' Union as the complainant and not by any of the workers and as such, the complaint is bad.

Now, only in certain specific cases a petition of complaint in a criminal case is to be filed by the aggrieved person but the present complaint cannot be treated as one of such nature. Further, in the industrial dispute in which the award in question was obtained, the present complainant was the first party and the Union under the said award obtained for the workers certain reliefs thereunder. In the circumstances, it cannot be held that the present complaint is not maintainable by the complainant as General Secretary of the Union.

It has been next contended by Mr. Huq that Abdul Majid, the General Secretary of the Union has not stated anything in his examination under section 200 Cr. P. C. on which the accusation against the accused persons could be made. Now, the Court also examined certain other persons and the accused persons appear to have been summoned on the basis of their statements before the Court. These statements in the circumstances, were in the nature of an enquiry under section 202, Cr. P. C. and the summons have been issued on the basis of such enquiry. It cannot therefore, be held that the order for issue of summons was illegal.

It has been lastly contended by Mr. Shamsul Huq, the learned Muktear for the accused, that the accusations as drawn up against the accused are vague and the trial of the two accused persons jointly on the basis of such accusations was illegal.

As already stated, the accusations against each of the accused persons under section 242, Cr. P. C. are that the accused persons failed to grant leave, medical facilities and overtime allowance to their workers: (1) Bus driver Abdul Majid, (2) Conductor Ashrafuddin, (3) Conductor Saifullah, (4) Bus driver (or conductor) Amir Hossain in terms of the award of the Industrial Court and thereby the accused persons committed offence under section 26 of the Industrial Disputes Ordinance.

Now, section 233, Cr. P. C. provides for framing of a separate charge for every distinct offence and trial of every such charge separately except in the cases

mentioned in sections 234, 235, 236 and 239. In the present case we are concerned with the provisions of sections 234 and 239, Cr.P.C. which are as under:

"234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

"(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or any special or local law:

Provided that, for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence."

"239. The following persons may be charged and tried together namely:—

"(a) persons accused of the same offence committed in the course of the same transaction;

"(b) Persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

"(c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months;

"(d) persons accused of different offences committed in the course of the same transactions;

"(e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last named offence;

"(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and

"(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence;

"and the provisions contained in the former part of this chapter shall, so far as may be applied to all such charges."

Section 222, Cr. P. C. is also required to be considered in this connection and it is as under:

"222. (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any)