

Industrial Dispute Settlement Mechanism and Its Effectiveness: Bangladesh Perspective

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I. Introduction:

Grievance arises on part of the worker on violation of rights. If the very grievance is proper and just then any individual worker can raise it.² Again, if there occurs any dispute or difference between employers and employees or between employers and workers or between workers and workers, in relation with the employment, or non-employment or the terms of employment or the conditions of work of any person will be treated as industrial dispute.³ Grievance or Industrial dispute whatever may be the type of chaos; it can be settled through extra judicial or judicial process. Extra judicial means non- adjudicatory process and under this process participation committee⁴ can play an important role to settle industrial dispute. Extra judicial process also covers negotiation, conciliation and arbitration outside the court. On the other hand, judicial process covers settlement of disputes or differences through judicial administration that is Labour Courts; Labour Appellate tribunal etc.⁵

II. Extra Judicial Process:

II. I. Negotiation, Conciliation and Arbitration

When an industrial dispute between the employer and workers is likely to arise the employer or the Collective Bargaining Agent⁶ shall try to

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² Section 33, *Bangladesh Labour Act, 2006*

³ Section 2(62), *ibid*

⁴ Participation committee is formed by an employer in an establishment in which fifty or more workers are employed. Participation committee consists of representative of both the employers and the workers. Section 205 of the *Bangladesh Labour Act* deals with the matter.

⁵ Section 214, *Bangladesh Labour Act, 2006*.

⁶ Collective Bargaining Agent is a selected trade union by the Director of Labour or an elected trade union by the workers of the establishment concerned under the authority of the Director of Labour which is authorised to bargain with the

communicate his or its views in writing to the other party. After receipt of a communication the party receiving it shall, in consultation with the other party, arrange a meeting with the other party for Collective Bargaining on the issue raised in the communication with a view to reaching an agreement thereon through the procedure of a dialogue, and such meeting may also be held between representatives of both the parties.

If through the reciprocal dialogue of the parties no settlement can be reached then the disputed matter will be referred to the Conciliator⁷ for conciliation. After receiving the dispute the Conciliator shall start his conciliation, and call a meeting of the parties to the dispute for the purpose of bringing about a settlement. If a settlement of the dispute is arrived at in the course of conciliation, the conciliator shall send a report thereof to the Government together with a memorandum of settlement signed by the parties to the dispute.

If the conciliation fails, the conciliator shall try to persuade the parties to agree to refer the dispute to an arbitrator⁸ for settlement. If the parties agree to refer the dispute to an arbitrator for settlement, they shall make a joint request in writing for reference of the dispute to an arbitrator⁹ agreed upon by them. Then the arbitrator shall give his award and no appeal can lie against that award.¹⁰ No fresh suit can be brought to the labour court by either of the parties concerning the issue, which was decided earlier by the arbitrator. Parties to the dispute may refer the dispute to an arbitrator instead of filing a suit to the labour court for quick disposal as well as easy access to the arbitrator.

Government and with the employers regarding the issues relating to the labour welfare and labour rights.

⁷ Conciliator means a Conciliator appointed by the Government by Gazette Notification from time to time as many persons as the Government may think necessary.

⁸ Section 210, *Bangladesh Labour Act, 2006*

⁹ Arbitrator means an arbitrator determined by the parties to the disputes.

¹⁰ Section 210, *Bangladesh Labour Act, 2006*

III. Labour Court:

III. I. Development of Labour Courts

In a series of informative articles S.A Sadullah¹¹ traces the mechanism that was set up for the settlement of disputes. In 1929 the Trade Disputes Act displaced the earlier Employers and Workmen's (Dispute) Act 1860. The 1929 Act had provisions for establishing Courts of Enquiry and Boards of Conciliation. Strikes were prohibited, as were Lockouts without notice in public utility services. Though a Royal Commission in 1932 on Labour had recommended impartial examination of disputes in public utility services and the establishment of permanent courts to settle labour disputes, this was not done.¹²

In 1942 to prevent the 'war effort'¹³ being held up by industrial strikes, the government was empowered to make special orders to suit local requirements, and though strikes and lockouts were both prohibited, there was scope to refer disputes for conciliation. Employers were also urged to observe agreed terms and conditions of employment and to enforce the decisions of the adjudicators. These exhortations in themselves indicated the problems that employees faced in these situations.

Once the war was over in 1945, the emergency wartime legislation was incorporated into the permanent new Industrial Disputes Act passed in 1947. Under this Act two institutions for the prevention and settlement of disputes were established in 1949. The first institution for conciliation purposes was to consist of representatives of both employers and employees. The second institution was the constitution of an industrial tribunal, which governed the investigation, adjudication, and settlement of disputes. The said Act was replaced in 1959 by an Ordinance named Industrial Disputes Ordinance. Under the very Ordinance the name of the Industrial Tribunal was changed to Labour Court, which is still in use. In 1969 when the Industrial Relations Ordinance was passed the composition of the court was changed. The rules

¹¹ S.A Sadullah "Making Labour Courts More Effective in the Country" *Bangladesh Times*, October 1983.

¹² [http:// www.worksafebc.com](http://www.worksafebc.com) last accessed on 03/05/2010

¹³ When England went to war on September 3, 1939, the Dominions had the right to decide in their legislatures whether to fight. Ireland remained neutral; Canada waited a few days to show their independence. India with colonial status had no such choice. India went to war when England went to war. In 1941, India went from colonial combatant to potential battlefield when the Japanese attacked the western powers. India became the scene of political upheaval. Indian leaders tied Indian participation in the war to Indian independence.

formulated under 1969 Ordinance were reissued in 1977 as rules for the newly formed courts. In 2006, Government was given discretion to establish as many Labour Courts as it considers necessary.¹⁴

III. II. Jurisdiction of Labour Court

At present there are seven Labour Courts in Bangladesh, three at Dhaka, two at Chittagong and one each at Khulna and Rajshahi. These Labour Courts hear application of both the aggrieved parties either as worker or employer. These Labour Courts have exclusive jurisdiction on the matters namely-

- a) To adjudicate and determine an industrial dispute which has been referred to it either by employers or employees.
- b) To enquire into and adjudicate any matter relating to the implementation or violation of a settlement, which is referred to it by the Government.
- c) To try offences,
- d) To exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under Bangladesh Labour Act, 2006 or any other law existing in Bangladesh for the time being.¹⁵

In *Muhammadul Haque vs. Md. Shamsul Alam*¹⁶ (1984) it has been held that the law itself mentioned its territorial limits for exercising jurisdiction and therefore when a Labour Court exercises jurisdiction which is beyond its territorial limits, that exercise of jurisdiction is void and without jurisdiction and consequently the proceedings are also void.

The researcher visited the 3 Labour Courts at Dhaka and 1 at Rajshahi around five times within the last two years. Unfortunately he failed to meet the chairman of the said Labour Courts. On query he was informed by the staffs of those courts that the chairman was on leave on different pretexts. It seems that either retired personnels do not feel the urge to attend the office regularly or there are no caseload. The former seems to be true than the latter. Labour court can punish an offender only for refusal or failure to comply with the order of the Labour Court.¹⁷ Researcher also came to know from the Registrar of Rajshahi Labour Court that there is a lack of system of

¹⁴ Section 214, *Bangladesh Labour Act, 2006*

¹⁵ Section 214(10), *ibid*

¹⁶ 36 DLR 1984 AD 179

¹⁷ *Sekendar Miah Director BISIC, Dhaka and Others vs. Chairman First Labour Court Dhaka and Another*, 41 DLR 1989 HCD 204.

scrutiny to eliminate time barred cases and there is no proper means of giving training to the Chairman of the Labour Courts.

III. III. Formation of Labour Court

As per the provisions of law Labour Court shall consist of a Chairman and two members to advise him, however in the case of trial of an offence or adjudication for any matter regarding wages and its payment and compensation for injury caused by accident it shall consist of the chairman alone.¹⁸ Government from amongst the sitting District Judges or Additional District Judges shall appoint the chairman of the Labour Court¹⁹ on deputation.

Government shall determine the conditions of employment of the chairman and members of the Labour Court.²⁰ Among the two members of the Labour Court one is to represent the employers²¹ and the other to represent the workers,²² and they will be appointed from the panels of members which shall be constituted by the Government, by notification in the official Gazette and which shall bear the names of six representatives of employers and the other six representatives of workers.²³

The chairman shall, for hearing an adjudication of a specific industrial dispute, select one representative from each of the two panels and the representatives so selected, together with the chairman, shall be deemed to have constituted the Labour Court in respect of that Industrial dispute. Members of the Labour Court will advise the chairman, the advice tendered by the members is not binding on the chairman. But the chairman is to consider the advice in deciding a matter. If after considering the advice tendered by the members the chairman finds the same contrary to law or unreasonable then the chairman can discard the same.²⁴ But when the advice tendered by the members is well reasoned and in consonance with law and justice the chairman should give proper weight to such advice. While discarding well-reasoned advice of the members or member, the chairman should give reasons for not accepting the same.²⁵

¹⁸ Section 214(3), *Bangladesh Labour Act, 2006*

¹⁹ Section 214(4), *ibid*

²⁰ Section 214(5) *ibid*

²¹ S.R.O no. 124-Ain/2008/srakama/adhishakha-9/a-17/2001

²² S.R.O.no.125-Ain/2008/srakama/adhishakha-9/a-17/2001

²³ Section 214 (6) & (7), *Bangladesh Labour Act, 2006*

²⁴ *Abdus Sattar vs. Chairman Labour Court*, 48 DLR 1996 HCD 526

²⁵ *Ibid*

In *General Manager Jamuna Oil Company Ltd. vs Golap Rahman and another*²⁶ (1982) it was decided that Labour Court may proceed to function without any member being present at all. On the other hand, even if a member is absent or ceases to be a member or incapable of sitting as a member, it has been empowered to continue to function. As no obligation has been imposed upon a member to attend the sitting of the Court, no consequences follow its failure to attend the sitting of the Court. Labour Court is constituted with a chairman and two members to advise the chairman. Advice tendered by the members is not binding upon the chairman.²⁷

III. IV. Proceedings of Labour Court

Labour Court at the same time exercises both civil and criminal jurisdiction. There is a debate whether Labour Court is a civil court or not. Labour Court acts as a civil court for limited purpose but it is not a civil court in its full sense. It is only by a legal fiction or a statutory hypothesis that it is to be treated as a civil court.²⁸ A Labour Court shall for the purpose of adjudicating and determining any matter, question or dispute be deemed to be a civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure²⁹ including the powers of-

- a) Enforcing the attendance of any person and examining him on oath;
- b) Compelling the production of documents and material objects;
- c) Issuing commissions for the examination of witnesses or documents;
- d) Delivering *ex parte* decision in the event of failure of any party to appear before the court;
- e) Setting aside *ex parte* decision;
- f) Setting aside the order of dismissal of a suit given in the event of failure of any party to appear before the court;
- g) So that the purpose of the case is not frustrated, the court may issue injunction against any party in the dispute.³⁰

No Court fee shall be payable for filing, exhibiting, or recording any document in, or obtaining any document from a Labour Court.³¹ The Labour

²⁶ 34 DLR 1982 AD 166.

²⁷ *Abdus Sattar Fitter, L B No.4784, G Shift, Victory Jute Products Ltd. Chittagong vs. Chairman Labour Court, Chittagong and another*, 48 DLR 1996 HCD 525.

²⁸ *Pubali Bank vs. The Chairman 1st Labour Court*, 44 DLR 1992 AD 40

²⁹ *Code of Civil Procedure, 1908*

³⁰ Section 216(1), *Bangladesh Labour Act, 2006*

Court shall, within not more than ten days of institution of a suit, direct the opposite party through executor/ process server³²/ special bearer or through registered post or through both to submit its written statement or objections.

The Labour Court may, for reasons recorded in writing, extend such time for not more than seven days in total. If the opposite party fails to submit a written statement or objection within the time, specified in the notice or, extended, the matter shall be decided *ex parte*.³³ The Labour Court shall not adjourn the hearing of any case for more than seven days in total on the application of a party but if both the parties apply for adjournment, the hearing of the case may be adjourned for not more than ten days in total.

If the petitioner of the case does not appear on the date fixed for hearing, the case shall be dismissed but the court shall have the jurisdiction to set aside the dismissal order on the application of the petitioner within three months of the order of dismissal. If the opposite party to the case does not appear on the date of hearing, the case shall be decided *ex parte*.³⁴

The Labour Court may, if it is satisfied that the dispute has been amicably resolved, allow the withdrawal of a case before it at any stage of the proceedings thereof upon consideration of an application signed by all the parties to the case and after giving hearing to both the parties.³⁵ This amicable settlement may be within the court or outside the court. If that is within the court that may turn into a compromise suit.³⁶ On the other hand if that is outside the court then that will turn to be an extra judicial settlement. An award by Labour Court, decision or judgment of a Labour Court shall be given in writing and delivered in open court and a copy thereof shall be forwarded to each of the parties concerned.

An award, decision or judgment of a Labour Court, in every case be delivered, unless the parties to the dispute give their consent in writing to extend the time-limit, within sixty days following the date of filing of the case. No award, decision or judgment of a Labour Court shall be invalid merely on the ground of delay in its delivery.³⁷

³¹ Section 216(2), *ibid*

³² Process server means a person who bears the notice of a suit or case to a party of that very suit or case.

³³ Section 216(3), (4) & (5), *Bangladesh Labour Act, 2006*.

³⁴ Section 216(6), (7) & (8), *ibid*

³⁵ Section 216(10), *ibid*

³⁶ Compromise suit has been described in order 23, rule 3 of *Code of Civil Procedure*.

³⁷ Section 216(11)&(12) of *Bangladesh Labour Act, 2006*

Labour Court is not a court of appeal. It can only interfere with the finding of the Inquiry officer or Inquiry Committee if it is found that inquiry was held unfairly, in bad faith, without complying with the principles of natural justice.³⁸

Section 214(2) of Bangladesh Labour Act, 2006 declares that the provisions contained in the Criminal Procedure Code³⁹ shall apply to the Labour Court, and for the purpose of the said Code the Labour Court shall be deemed to be a civil court. In trying offences a Labour Court shall follow as nearly as possible summary procedure as prescribed under the Code of Criminal Procedure.⁴⁰ Section 215(2) provides that a Labour Court shall for the purpose of trying an offence have the same powers as are vested in the court of a Magistrate of the first class under the Code of Criminal Procedure.⁴¹ The Labour Court shall, for the purpose of inflicting punishment, have the same powers as are vested in Court of Sessions⁴² under that Code. It is not clear in trying offences how can the same Court be deemed as a Civil Court and a Court of Magistrate 1st class. This is contradictory. While trying an offence the Labour Court shall administer its proceedings without its members⁴³ as they are the representatives of both the employers and employees. Those provisions regarding the status of Labour Court have been enumerated in Bangladesh Labour Act, 2006. Earlier provisions regarding the status of Labour Court were also the same. Labour Court shall follow as nearly as possible summary procedure as prescribed under the Code of Criminal Procedure, 1898.⁴⁴ A Labour Court shall, for the purpose of adjudicating and determining any industrial dispute, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908.⁴⁵ Those provisions have failed in a limited extent to focus the actual status of Labour Court in respect of settlement of disputes before and after passing the Bangladesh Labour Act, 2006. Judge made laws on the same issue are also conflicted as well as overlapping.

³⁸ *Nurul Amin Chowdhury vs. Chairman Labour Court Dhaka and ors*, 42 DLR 1990 217

³⁹ *Code of Criminal Procedure, 1898*

⁴⁰ Section 215(1) *Bangladesh Labour Act, 2006*

⁴¹ *Quazi Habibullah and Others vs. Abul Monsur and Another*, 29 DLR 1977 HCD 358

⁴² Court of session's means courts formed under section 9 of *Code of Criminal Procedure, 1898*

⁴³ Section 215(3) & (4) of *Bangladesh Labour Act, 2006*

⁴⁴ Section 36(1), *Industrial Relations Ordinance, 1969*

⁴⁵ Section 36(2), *ibid*

III.V. Functions of Labour Court

Labour Court functioning under the law is vested with all the powers mentioned in the Act.⁴⁶ Labour Court is not a court of appeal. It can interfere only when the enquiry officer or the committee acts unfairly and against the principles of natural justice. Its function is to see whether the delinquent is lawfully punished. The enquiry committee or enquiry officer is only required to follow the procedure laid down in sub section (1) of section 24 of the Bangladesh Labour Act, 2006. If such procedures are followed and the principles of rules of natural justice are complied with in that event there is no occasion for interfering with the findings of any enquiry officer or enquiry committee.

The Labour Court can only interfere with the findings of the enquiry if it is found that the enquiry was held unfairly, in bad faith without complying with the principles of natural justice and without following the procedure laid down in sub section (1) of section 24.⁴⁷ Sub section (1) of section 24 of the Bangladesh Labour Act, 2006, specifically provides for a procedure for punishment wherein it is stated that no order for discharge or dismissal of a worker shall be made unless –

- a) the allegations are recorded in writing
- b) a copy of the allegations is given to explain against the allegations and
- c) a personal hearing is given, if such prayer is made.

When a charge sheet was framed against delinquent persons and they were asked to appear before the enquiring officer by a regular notice and when the delinquent persons did appear before such enquiry officer for four consecutive days when their statements were recorded it cannot be said that the aforesaid conditions were not complied on any account.⁴⁸

The only function of the Labour Court is to see whether the delinquent has been punished in accordance with law following the procedure laid down in sub section (1) of section 24 of the said Act unless unfairness or bad faith or malafide is found in the proceeding before the enquiry officer in which case,

⁴⁶ *M/ S M.M. Ispahani Ltd. vs. Chairman 2nd Labour Court* 19 DLR 1967 HCD 612

⁴⁷ *Ibid*

⁴⁸ *Bangladesh Shilpa Rin Sangstha vs. Chairman Second Labour Court* 32 DLR 1980 HCD 265

the Labour Court will not reverse the finding of the enquiry officer to hold that the delinquent was not guilty of the charge levelled against him.⁴⁹

Labour court has been set up to do justice to the worker complainants and not to throw out the cases filed by the workers on technical grounds. Labour Court can take into consideration the previous record of a worker to direct the employer to reinstate him.⁵⁰ The statutory provision is that if any member of the Labour Court is absent from, or is otherwise unable to attend any sitting of the Court, the proceedings of the Court may continue, and the decision or award may be given in the absence of such member, and no act, proceedings, decision or award of the Court shall be invalid or be called in question merely on the ground of such absence.⁵¹ Violation of the above statutory provision renders the decision of the Labour Court null and void.⁵² Moreover consultation with a member will not suffice. The chairman is required to state the reason for his concurring with or dissenting against views of such members.⁵³

In *Superintendent (Now General Manager) James Finlay PLC vs. Chairman 2nd Labour Court*⁵⁴ (2005) it has been stated that it is not the function of the labour court to make any reassessment of the evidence recorded by the Enquiry committee. The fact that upon the assessment of the evidence a different finding could be arrived at is not a ground to hold that the enquiry was inappropriate or unfair⁵⁵. Since the overriding responsibility of the Labour Court is to decide the complaint case after giving notice and hearing to the parties Labour Court has jurisdiction to set aside or vacate the order of dismissal for default or rejection of the complaint.⁵⁶ Especially when it is to

⁴⁹ *Ibid*

⁵⁰ *Golam Md. Shiblee, Manager Jogachora Tea Estate vs. 2nd Labour Court Dhaka* 61 DLR 2009 HCD 49, *Superintendent James Finlay PLC vs. Chairman 2nd Labour Court* 57 DLR 2005 AD 191, *Chittagong City Corporation represented by its Mayor and 3 others vs. Md. Afzal Hussain and others*, 57 DLR 2005 HCD 741, *Chairman Utara Management Ltd. vs. Labour Court Rajshahi*, 56 DLR 2004 HCD 627

⁵¹ Section 35(7), *Industrial Relations Ordinance*, 1969 corresponding section 214(11), *Bangladesh Labour Act*, 2006

⁵² *Siddiqur Rahman vs. Chairman Labour Court*, 59 DLR 2007 HCD 49

⁵³ *Ibid*

⁵⁴ 57 DLR 2005 AD 196

⁵⁵ *Chittagong City Corporation represented by its Mayor and 3 others vs. Afzal Hossain and others*, 57 DLR 2005 HCD 741

⁵⁶ *Crescent Jute Mills Company Ltd. vs. Chairman Labour Court and another*. 49 DLR 1997 HCD 201

restore a case to give a chance to the complainant to substantiate his case so that the Labour Court can give decision on merit.

Any worker who has been removed from employment shall submit his grievance to his employer, in writing by registered post within fifteen days of the occurrence of the cause of such grievance. The High Court Division considered it as mandatory.⁵⁷ In awarding punishment employer shall take into account the gravity of the misconduct, the previous record, if any, of the worker and any other extenuating circumstances that may exist.⁵⁸ For not complying the said provision by the employer, one member of the Labour Court recommended for reinstatement of the petitioner. Other members recommended for converting order of dismissal into an order of termination of the petitioner considering his long 22 years service and circumstances of the case that the petitioner did not attempt to remove any of the articles out of the mills premises. It does not appear also from the enquiry report or from the dismissal order that the petitioners past service of 22 years was taken into consideration. It also does not appear from the record of the proceedings that any extenuating or aggravating circumstances from the previous service record of the petitioner was at all considered by his employer in awarding punishment of dismissal against him.⁵⁹

No Court other than a Labour Court or that of a Magistrate of the First Class shall try any offence.⁶⁰ Labour Court and Magistrate First Class, having jurisdiction in the relevant matter had concurrent jurisdiction to try an offence and a Magistrate 1st class, had also been invested with power to try any offence.⁶¹

Labour Court acts as a civil court for limited purpose. It will not exercise power like those given in order IX or order XXXIX rule 1 of Code of Civil Procedure, 1908 which the civil court may exercise in a suit.⁶² The power of the Labour Court to pass such orders as may appear to it to be just and proper is limited by the general provision that a worker dismissed lawfully cannot be imposed on the employer on compassionate ground or on the

⁵⁷ *Sultan Ahmad vs. Chairman Labour Court and Others*, 49 DLR 1997 HCD 215

⁵⁸ Section 18(6), *Employment of Labour (Standing Order) Act, 1965* corresponding section 24, *Bangladesh Labour Act, 2006*

⁵⁹ *Abdus Sattar vs. Chairman Labour Court*, 48 DLR 1996 HCD 526.

⁶⁰ Section 64, *Industrial Relations Ordinance, 1969* corresponding Chapter 2, *Bangladesh Labour Act, 2006*

⁶¹ *Kamaluddin Chowdhury vs. Mashihudowllah*, 43 DLR 1991 HCD 137

⁶² *Ibrahim Sheikh vs. Chairman Labour Court Khulna Division Khulna*, 47 DLR 1995 HCD 498

ground of severity of penalty⁶³. If there is no remedy for the grievance of the plaintiff in the Industrial Relations Ordinance, 1969⁶⁴ then the Civil Court will have jurisdiction to try the matter.⁶⁵

It is the responsibility of the Labour Court to examine cautiously the grounds for dismissal of a worker. It has also been stated in this case that labour court's power is not restricted to the grant of relief of reinstatement only.⁶⁶ It can pass any order deemed just and proper in the facts and circumstances of the case.⁶⁷ Labour Court has been set up to do justice to the worker complainants and not to throw out the cases filed by the workers on technical grounds. Defective drafting of the petition of complaint should not stand in the way of giving relief to a worker when the complaint is found correct by the Labour Court. Earlier by case law it was held that, although a Labour Court in trying an offence under the Code of Criminal Procedure follows summary procedure yet it is considered as a criminal court.⁶⁸

The Labour Court trying an offence under the Industrial Relations Ordinance 1969⁶⁹ had got the power of a Magistrate, 1st class and he could take cognizance of an offence on receipt of a complaint.⁷⁰ Since there was nothing in the Ordinance to indicate that only a person affected by the offence can lodge a complaint, any person having knowledge of the commission of an offence may set the law in motion by a complaint even though he is not personally affected by the offence.⁷¹

Labour Court shall be deemed to be a Civil Court for limited purpose, that is, for the purpose of adjudication and determination of any industrial dispute shall exercise such powers as are necessary for the proceedings.⁷² When a

⁶³ *Moqbular Rahman Jute Mills Ltd. vs. Chairman Labour Court and another*, 48 DLR 1996 HCD 566

⁶⁴ Corresponding Chapter 14, Bangladesh Labour Act, 2006

⁶⁵ *Karnafully Paper Mills Sramik Karmachari Union vs. Registrar of Trade Union*, 42 DLR 1990 HCD 329

⁶⁶ *Hashmot Ali vs. Chairman 3rd Labour Court Dhaka*, 61 DLR 2009 HCD 410

⁶⁷ *Azizul Hoq (Md.) vs. Chairman Labour Court Khulna and Others*, 48 DLR 1996 HCD 133

⁶⁸ *A.K. Khan vs. Chairman, 2nd Labour Court*, 25 DLR 1973 HCD 192

⁶⁹ Corresponding section 215(2), Bangladesh Labour Act, 2006

⁷⁰ Section 64, *Industrial Relations Ordinance*, 1969 corresponding chapter 14, Bangladesh Labour Act, 2006, See also Chapter 5.3.2

⁷¹ *Quazi Habibullah and Others vs. Abul Monsur and Another*, 29 DLR 1977 HCD 358

⁷² *Khulna Tobacco Company vs. Chairman Labour Court Khulna and Another*, 29 DLR 1977 HCD 148 -149

Labour Court is deemed to be a civil court and has the same powers as are vested in the civil court, it must have power to grant injunction or stay operation of an impugned order to preserve the subject matter of the dispute until it is finally decided. These powers to pass temporary or ad- interim orders are designed to preserve and protect the subject matter of the dispute under Order 39 rule 1 of the Code of Civil Procedure, pending final determination of the case.⁷³

A Labour Court shall for the purpose of trying an offence under the Ordinance, has the same powers as are vested in a Court of Magistrate of the First Class under the Code of Criminal Procedure.⁷⁴ At present Bangladesh Labour Act, categorically declared the Labour Court as a civil court. Labour Court is a civil court for limited purpose and since the power of injunction has not been conferred on it, the canons of interpretation suggest that such power is not available because the power must be conferred expressly.⁷⁵

Sub section (7) of section 35 appears to be an enabling provision, that is to say, if a member of the Labour Court is absent from any sittings, the proceeding may continue in his absence. The words "the proceeding may continue" in this sub-section show that the proceeding has already started with the required number of members. If thereafter there is any casual absence of any member, or if he ceases to be a member or is incapable of sitting in the court further, the proceeding need not be stopped but it may be carried to its conclusion.⁷⁶

In *Aminul Islam vs James Finlay* (1974)⁷⁷ it has been held that when a member becomes incapable to sit as a member of the Labour Court or cease to be so, the chairman of the court in giving an award is not under any obligation to have such member's opinion. Acceptance of such member's opinion is merely directory not obligatory.

III.VI. Domestic Enquiry

⁷³ *Pubali Bank Ltd. vs. Chairman Ist Labour Court Dhaka and Another*, 38 DLR 1986 HCD 427

⁷⁴ *Ibid.*

⁷⁵ *Manager Sonali Jute Mills Ltd. vs. Secretary Sonali Jute Mills Workers Union and Others*, 30 DLR 1978 HCD 141 - 142

⁷⁶ *Project in charge Paruma (Eastern) Ltd. vs. Mr. Aminur Rahman Khan and Another*, (1979) 31 DLR 1979 HCD 124-127

⁷⁷ 26 DLR 1974 AD 33

Any individual worker who has a grievance may make a complaint to the Labour Court having jurisdiction.⁷⁸ Any Collective Bargaining Agent, or any employer or workman may apply to the Labour Court for the enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement.⁷⁹ A workman whose service has been terminated may with equal competence apply for his reinstatement under both the said provisions.⁸⁰

Aggrieved worker should bring his grievance to the notice of the employer within 15 days. After 30 days he should have the power to file a complaint before the Labour Court.⁸¹ No order for discharge or dismissal of a worker shall be made unless-

- a) the allegations against him are recorded in writing
- b) he is given a copy thereof and not less than three days time to explain
- c) he is given a personal hearing if such prayer is made and
- d) the employer or the manager approves such order⁸²

The Labour Court should be careful in not exceeding its jurisdiction in upsetting the findings of a domestic enquiry when it complies with the rule of natural justice.⁸³ Results of domestic enquiry wherein conclusions are arrived at bonafide and after complying with principles of natural justice should not be lightly interfered with.⁸⁴

Whoever refuses or fails to comply with an order passed by the Labour Court may be punished with simple imprisonment for a term not exceeding three months or with fine not exceeding Taka One thousand or with both.⁸⁵ Failure to give effect to the order of the Labour Court reinstating an

⁷⁸ Section 25, *Employment of Labour (Standing order) Act, 1965* corresponding section 33, *Bangladesh Labour Act, 2006*

⁷⁹ Section 34, *Industrial Relations Ordinance, 1969* corresponding section 213, *Bangladesh Labour Act, 2006*

⁸⁰ *Railway Men's Stores Ltd. vs. Chairman Labour Court, Chittagong*, 30 DLR 1978 SC 252

⁸¹ Section 25(1)(b), *Employment of Labour (Standing Order) Act, 1965* corresponding section 33, *Bangladesh Labour Act, 2006*

⁸² Section 18(1), *Employment of Labour (Standing Order) Act, 1965*, corresponding section 24, *Bangladesh Labour Act, 2006*

⁸³ *Bangladesh Shilpa Rin Sangstha vs. Chairman 2nd Labour Court*, 32 DLR 1980 HCD 265

⁸⁴ *Md. Abdul Haque vs. Second Labour Court Dhaka*, 22 DLR 1970 HCD 577

⁸⁵ Section 26(1), *Employment of Labour (Standing Order) Act, 1965*, corresponding Chapter 2, *Bangladesh Labour Act, 2006*

employee to his post is punishable under section 26 of the said Act. High Court Division has no jurisdiction to quash the order passed by the Labour Court. The decision and order of the Labour Court in the matter of the reinstatement in service of the opposite party (Complainant in the original case) is final and in this proceeding for quashing a criminal proceeding the bench has no scope to reopen and decide upon the contested question of the jurisdiction as it is not the proper forum for adjudicating upon the legality of the said order. The dismissal was ordered not by the Managing Director but by the petitioner and implementation of the order was to be made by the petitioner alone. So the criminal proceeding does not lie and cannot legally proceed against the Managing Director. The criminal proceeding is therefore, quashed only as against the Managing Director of Glaxo Bangladesh Ltd. but will proceed against the petitioner alone.⁸⁶ Thus, simply for the implementation of the order of reinstatement by a Labour Court an employee has to wait for a long time and has to overcome a complex situation like the above mentioned case is quite oppression for the workers class. From this, it is found that the said Labour Court without showing a minimum respect to the principle of natural justice i.e. without giving the said petitioner an opportunity of being heard passed the verdict, which is a clear violation of law.

If the Labour Court like above, violates the law it is quite impossible to implement the labour rights through execution of labour laws. When an order of a domestic tribunal is challenged all that the court is to see is that whether the charged framed against the delinquent was such as constituted an officer or default which calls for a penal action and that the employee was given an opportunity to defend himself in allowing him to cross examine the witnesses and to call evidence in his support and that the tribunal was constituted by impartial persons and that there was materials before the domestic tribunals to come to a finding.⁸⁷

IV. Labour Appellate Tribunal:

There shall be a Labour Appellate Tribunal in Bangladesh consisting of a Chairman or if the Government deems fit, of a Chairman and such number of members as are determined by Government.⁸⁸ Any party aggrieved by an award, decision or judgment of the Labour Court, may prefer an appeal to

⁸⁶ *Md. Mahmudul Haque vs. Md. Shamsul Alam* 35 DLR 1983 HCD 219

⁸⁷ *Bangladesh Shilpa Rin Sangstha vs. Chairman Second Labour Court, Dhaka and Others*, 32 DLR 1980 HCD 265, 271.

⁸⁸ Section 218(1) of *Bangladesh Labour Act, 2006*

the Labour Appellate Tribunal within sixty days of the delivery thereof and the decision of the Tribunal in such appeal shall be final.⁸⁹

The chairman and the members, if any of the Tribunal shall be appointed by the Government, by notification in the official Gazette, and the terms and conditions of their service shall be determined by the Government.⁹⁰ The Chairman shall be from amongst person who is or has been a Judge or an Additional Judge of the Supreme Court and any member thereof shall be from amongst person who is or has been a Judge or Additional Judge of the Supreme Court or is or has been a District Judge for at least three years.⁹¹

IV. I. Proceedings of Labour Appellate Tribunal

The Chairman may, for the smooth functioning of the Court, constitute required number of Benches and such Benches may consist of one or more members or the Chairman and one or more members.⁹² The hearing or disposal of an appeal or a case pending or under consideration before the tribunal may be held in the full Court in any one of its Benches.⁹³

If the chairman is absent or unable to discharge his functions, the senior most members, if any, of the tribunal shall discharge the functions of the Chairman.⁹⁴ The Tribunal shall as far as practicable, follow the procedure followed by an Appellate court as prescribed in the Code of Civil Procedure while hearing an appeal against an original decree.⁹⁵

If the members of a Bench are divided in their opinion in giving decision on a matter the same shall be disposed of as per the decision of the majority members, if any, and if the members of the Bench are equally divided, they shall together with their opinion, send the disputed matter to the Chairman for hearing and the Chairman may, if he is not a member of that Bench, himself hear the matter or send the same for hearing to any other Bench consisting of one or more members, and the matter shall be disposed of as per the decision of the Chairman or the majority members of such newly constituted Bench.

Where a Bench consists of the Chairman and a member and the members thereof are equally divided in their opinion on any issue, the decision of the

⁸⁹ Section 217, *ibid*

⁹⁰ Section 218(2), *ibid*

⁹¹ Section 218(3), *ibid*

⁹² Section 218(5), *ibid*

⁹³ Section 218(6), *ibid*

⁹⁴ Section 218(4), *ibid*

⁹⁵ Section 218(7), *ibid*

Chairman on that shall prevail and the decision of the Bench shall be expressed in terms of the opinion of the Chairman.⁹⁶

The Tribunal may on appeal, confirm, set aside, vary or modify any award, decision, judgment, or sentence given by the Labour Court or send the case back to the court for rehearing; and shall exercise all the powers conferred by existing laws for the time being in Bangladesh on the Labour Court. The judgment of the tribunal shall be delivered within a period of not more than sixty days following the filing of the appeal and that no such judgment shall be rendered invalid by reason only of any delay in its delivery.⁹⁷ There is no provision of appeal or revision from the Labour Appellate Tribunal to the High Court Division or the Appellate Division of the Supreme Court of Bangladesh. The decision of the Labour Appellate Tribunal is final except for contempt of court cases where appeal may lie to the High Court Division of the Supreme Court of Bangladesh.⁹⁸

V. Obstacles to the Labour Courts in Execution of Labour Laws:

Labour court formed under the Bangladesh Labour Act, 2006 is neither a civil court nor a criminal court but it bears the characteristics of both of them in some respects. That's why labour court cannot operate its verdict fully through civil or criminal process. On the other hand, civil or criminal laws are not applicable to the labour matters as it is under the special law like Bangladesh Labour Act, 2006. In this connection, it appears that if the provisions contained in section 4 and section 9 of the Code of Civil Procedure are read together then it would indicate that where a right is created by a special law and the method of enforcing the right is pointed out by the law creating such a right, the general remedy of suit under section 9 of the said code will be impliedly barred and method provided by such special law must prevail.⁹⁹ In this connection, it may be mentioned that for the determinations of the place of suing, the features of labour laws are to be looked into. It may be said that the provision for ouster of jurisdiction of civil court has not been expressly provided in Bangladesh Labour Act, 2006 but it impliedly provides that disputes relating to labour matters under this Act is to be instituted in Labour Courts.

Under Bangladesh Labour Act, 2006, only the workers, employers, and trade unions concerned can file a suit to labour court. The period within which he

⁹⁶ Section 218(8) & (9), *ibid*

⁹⁷ Section 218(10)(11), *Bangladesh Labour Act, 2006*

⁹⁸ Section 218(13), *ibid*

⁹⁹ *Jalal Uddin Ahmed vs. Matiur Rahman Khan and others*, 41 DLR 1989 HCD 77

is to seek such relief is another important matter for consideration before instituting a labour case in a labour court. Any party to the dispute must have to appear before the court within the time limit prescribed in the Labour Act, 2006. If that does not happen the issue will be barred by law and limitation as well.

The jurisdiction of civil courts and special law courts has been clearly enunciated by the Appellate Division of the Supreme court in the case of *Managing Director Rupali Bank Ltd. and Others vs Tofazzal Hossain and Others*¹⁰⁰ According to the decision it may be reiterated that where the question arises on point of relation between the general laws and civil laws and the availability of a remedy, it has been said that if any legal remedy is ordinarily available under both general law and special law, the remedy prescribed by the special law must be sought in exclusion of the one available under the general law.

V. I. Barriers to the Labour Courts for fruitful Execution and Recommendation

V. I. I. Members Allowance /Honorarium

The salary of the chairman and the sitting allowance of the members are raised from time to time considering the economic devaluation of currency and condition. But the salary and allowance is always insufficient compared to the overall economic condition of the society. It is often reflected in the behavior pattern of court personnels, which adversely affects the court systems. It can be suggested that, honorarium may be fixed to a reasonable amount so that better participation in court proceeding from their end can be expected. Another option could be that the member's emolument may be fixed and paid by their respective organizations, subjecting them to attend the courts proceedings for the whole period of court hours during the period of their tenure.

V. I. II. Court Personnel

Lack of adequate support personnel is another constraint in quick disposal of cases. In this regard it may be said that a Labour Court for being, a grass root level court for workers and employers, needs the service of judicial officers other than a Registrar or Administrative officers. It can be pointed out that upon examination of a complainant under section 200 of Cr.P.C 1898, when an order for enquiry under section 202(1) has been passed to ascertain the truth or falsehood of the allegation, the lack of the requisite personnel often inordinately delays the disposal of such cases.

¹⁰⁰ 44 DLR 1992 AD 260

There are fifteen staffs in each Labour Court including the chairman. The members are not the regular staffs of the court. The staffs other than the chairman and Registrar belong to class III or class IV employees group¹⁰¹. Researcher's personal observation is that one or two posts of judicial officers are required to assist the chairman in dispensing of cases.

Delay of delivery of judgement creates backlog of pending cases as because the personnels do not come to the court in time. It's a dire problem in giving justice to the workers in Bangladesh. To overcome the situation, it may be suggested that where a case is under the exclusive jurisdiction of the Chairman, a separate Labour Court may be established. Jurisdiction of such a court may be vested separately by a notification in the official Gazette.

Alternatively, a judicial officer at the Rank of a Sub-ordinate Sessions Judge may be deputed to the post of a Registrar to whom the Labour Court could send enquiry under section 202 of the Cr.P.C. for complaints alleging offences against employers or *vice versa* under the relevant penal sections of the Labour Act, 2006. Such enquiries by the judicial officer may minimise the likelihood of false claims as well as, at least impliedly, convey a pre-trial conciliation and settlement of dispute process between the parties at the enquiry stage.

V. I. III. Absence of Authority in Recording Compromise in Cases of Criminal Nature

This is another impediment in the early disposal of labour cases. In this context, it may be said that neither the labour laws as special law nor the Cr.P.C provides for compounding of offences in respect of criminal nature of labour cases like the ordinary criminal cases. In a good number of cases compromise has been reached between the concerned worker and the employer in criminal nature of labour cases. However, compromises can not be recorded or taken cognizance of even after the accused employer appears or brought before the Labour Court under arrest in terms of section 497 of the Cr.P.C. as the labour cases fall under the category of offence which are bailable but not compoundable.

It is not out of place to mention here that despite a compromise of a criminal case between the employer and the worker outside the court, the employer-accused is required to appear before the court for termination of the criminal proceeding. In default of which measures to the extent of issuance of warrant of arrest or proclamation of attachment under section 87 of the Cr.P.C. or

¹⁰¹ The researcher came to know this by interviewing Mr. Tushar Kanti Das, Registrar of Rajshahi Labour Court on 11/09/2011

Gazette notification for his appearance under section 339-A of the Cr.P.C. is required to be taken by the Labour Court.

Therefore, it is strongly recommended that, related labour laws especially the penal provisions of the Labour Act, 2006 may be amended to provide for the recording of compromises in criminal proceedings with the permission of the court or without making appearance of the accused mandatory.

V. I. IV. Other Barriers

In addition to the issues discussed above, a number of practical barriers also cause significant delays in disposing cases which amounts violation of labour rights. Among these are-

- a) Consumption of court hours in recording evidence is one of the practical barriers in respect of some cases. So, we may suggest that similar to Administrative Tribunals, the practice of adducing documentary evidence by affidavit or counter affidavit may be developed. Facts involved in a case may be proved or disproved by affidavit and counter affidavit.
- b) Working hours of the courts, especially in Dhaka, is another barrier for the quick disposal of cases. In this regard it may be said that though there is no specific rule like Civil Rules and Order (C.R.&O) prescribing court hour, the Chairman of Labour Court follows the timings prescribed for Government officials. Besides, a chairman of the Labour Court sits in *ejlash* as per the accommodative timing of the local Bar. Regarding the functioning of the court, it may be said that the day's work as per the cause list should be the guiding factor in determining when a court is to rise from the *ejlash*. Chairman of the Labour Courts are also reluctant to attend the Labour Courts in time.
- c) Supervision of labour courts is undertaken by the chairman of the Labour Appellate Tribunal, including the Annual Confidential Report (A.C.R)¹⁰² of the Chairman of the Labour Courts. Copies of the statements of the judicial works performed by the presiding officers of Labour Courts are sent in the first week of every month to the Labour Appellate Court and another copy to the Registrar of the Supreme Court of Bangladesh, as well as to the Government.
- d) The lack of a system of scrutiny to eliminate time barred cases at the time of filing increases the workload of the court and, as such, it is

¹⁰² Annual Confidential Report (ACR) is given by the proper authority to determine the employees working report annually.

also one of the practical barriers. It is true that, the Code of Civil Procedure, 1908 is not applicable in *toto* in respect of Labour Court cases and as such, there shouldn't be difficulties in introducing a system of scrutiny by the Chairman of the Labour Court and all the learned senior members of the local Bar Association can cooperate and assist the court to ensure that time-barred claims do not clog the courts.

- e) Appropriate training of presiding judges of labour court is another aspect for consideration. The Director General of Judicial Administration Training Institute (JATI) may be requested to open a course on labour laws for the Labour Court Judges to ensure effective implementation of labour rights.¹⁰³

VI. Bangladesh Supreme Court:

Any person convicted and sentenced by the Tribunal for contempt of court to imprisonment for any period, or to pay a fine exceeding two hundred taka, may prefer an appeal to the High Court Division.¹⁰⁴ Other than this no original industrial dispute can be filed to either of the divisions of the Supreme Court for discharge. If any body wants to get relief of the Supreme Court he may file a writ petition under Article 102 of the Constitution of Bangladesh.

VII. Process of Filing Application or Appeal:

For filing an application to the Labour Court or appeal to the Tribunal shall be in such form prescribed by rules and such form shall contain, in addition to particulars prescribed by rules, the following:

- a) Name and address of the parties.
- b) A short description of the reason of the application or appeal and remedies sought,
- c) Name of the law under which the application or appeal has been made and remedies sought,
- d) If there has been delay in filing the application or appeal, the reason for such delay and the name of the law under which conditions of delay has been prayed for,

¹⁰³ *Ibid*

¹⁰⁴ Section 218(13), *Bangladesh Labour Act, 2006*

- e) A statement containing separate description of monthly basic wages, dearness allowances, ad-hoc or interim wages, if any, and anything given in addition to wages, if the dispute arises as regards wages,
- f) If the application is against an employer for drawing compensation, the date of notice served on the employer, and if such notice has not been served the reason for why that is not served,
- g) If the application by a dependant against an employer for drawing compensation, the short description of matters where agreements took place and matters where agreement has not taken place,
- h) Date of cause of action, and
- i) Statement that the Labour Court has jurisdiction to accept the application.¹⁰⁵

VIII. Appearance of the Parties:

Except appearances for giving evidence, in all other cases before a Labour Court or a Labour Appellate Tribunal a person may perform the filing of an application, giving of attendance or any other work either by himself or by representative or lawyer duly authorized by him in writing.¹⁰⁶

IX. Cost of the Suits:

All ancillary costs relating to suits and appeals in the Labour Court and Labour Appellate Tribunal shall be payable as per the discretion of the courts.¹⁰⁷ This discretion may be guided by the nature of dispute, nature of parties and the circumstances of the dispute.

X. Effective Dates of Settlement:

A settlement will become effective if a date is agreed upon by the parties to the dispute to which it relates, on such date and if a date is not so agreed upon, on the date on which the memorandum of settlement is signed by the parties and this is applicable for all sorts of awards. A settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of one year from the date on which the memorandum of settlement is signed by the parties to the dispute. Settlement shall continue to be binding on the parties after the expiry of the said period until the expiry of two months of the date on which either party informs the other party in writing of its intention no longer to be bound by the

¹⁰⁵ Section 219, *Bangladesh Labour Act, 2006*

¹⁰⁶ Section 220, *Bangladesh Labour Act, 2006*

¹⁰⁷ Section 221, *ibid*

settlement.¹⁰⁸ An award of the Labour Court shall unless an appeal against it is preferred to the Tribunal, becomes effective on such date and remain effective for such period, not exceeding two years.¹⁰⁹ The Arbitrator, the Labour Court, or, as the case may be, the Tribunal, shall specify dates from which the award on various demands, shall be effective and the time limit by which it shall be implemented in each case. A decision of the Tribunal in appeal against an award shall be effective from the date of the award.¹¹⁰ If any industrial dispute or proceedings shall be raised or commenced and a memorandum of appeal is signed by the parties then no fresh dispute can be raised before the expiry of one year regarding the concerned issue.¹¹¹

XI. Commencement and Conclusion of Proceedings:

Conciliation proceedings shall be deemed to have commenced on the date on which the Conciliator receives a notice of Strike or Lockout. When a settlement is arrived at, a conciliation proceeding shall be deemed to have concluded on the date on which the parties to the dispute sign a memorandum of settlement.¹¹² Where no settlement is arrived at, a conciliation proceeding shall be deemed to have concluded if the dispute is referred to an Arbitrator on the date on which the Arbitrator has given his award, or otherwise on the date on which the period of the notice of strike or lockout expires.¹¹³ Conciliation proceedings are available only for Strike and Lock-out and in other cases the matter will be referred to the Labour Court. Proceedings before a Labour Court shall be deemed to have commenced in relation to any industrial dispute, question or an issue on the date on which it is referred to the Labour Court and the Proceedings before a Labour Court shall be deemed to have concluded on the date on which the judgment, decision or award thereof is delivered.

XII. Conclusion:

Settling industrial disputes and to promote industrial peace and to establish a harmonious and cordial relationship between labour and capital by means of mediation, conciliation, arbitration and adjudication are treated as execution. For ensuring proper execution system, Bangladesh Labour Act, 2006 has

¹⁰⁸ Section 223(1)(2)(3), *ibid*

¹⁰⁹ Section 223(4), *ibid*

¹¹⁰ Section 223(5) (7), *ibid*

¹¹¹ Section 223(9), *ibid*

¹¹² Section 224(2), *ibid*

¹¹³ Section 224(3), *ibid*

streamlined for some non-adjudicatory as well as adjudicatory authorities. Non- adjudicatory authorities include participation committee, Conciliator and Arbitrator while adjudicatory (judicial) authorities includes Labour Court and Labour Appellate Tribunal. These authorities are constituted under the different provisions of Bangladesh Labour Act, 2006 and have powers and functions in respect of adjudication of industrial disputes. While participation committee has been constituted for redressing day-to-day grievances and promoting smoother co-operation, the other authorities that have been provided are for settlement of industrial dispute in the first instance by conciliation and failing it by arbitration or adjudication. Besides, the Act provides for two-tier adjudication machinery, the Appellate Division and the High Court Division of the Supreme Court are available for Writ or Revisional jurisdiction in labour matters.