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The Hiring and Termination Procedures for Employees in Bangladesh Under the Labour Act of 2006 and the Role of the Courts

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ABSTRACT

The Bangladesh Labour Act of 2006 is the primary legislation in Bangladesh that addresses issues related to employment. The main objective of the Act is to rectify previous disparities and create a favourable working environment for workers. The legislation sets out detailed regulations concerning job conditions and services. In practice, employers often hold significant powers, including the authority to hire, terminate and dismiss employees at their discretion for various reasons. However, the Labour Act and the Labour Court are tasked with ensuring fair treatment and upholding the principles of natural justice. Specifically, the Bangladesh Labour Act empowers the Labour Courts to intervene in cases of employee termination through the grievance procedure. This study thoroughly examines, with case references, the extent to which the courts apply principles of fairness and equity in job termination cases under the Bangladeshi Labour Act of 2006. The research concludes with insights into the recruitment and termination processes in Bangladesh, highlighting the need for amendments to the current labour legislation to ensure employment stability and economic support for the workforce.

Keywords: Hiring firing; Employer employee; Discharge dismissal; Grievance procedure; Misconduct; Natural justice; Procedural fairness

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1. Introduction

The Bangladesh Labour Act 2006¹ serves as the primary legislation in Bangladesh governing employment-related matters. Enacted by the parliament of Bangladesh in 2006 the Gazette Notification of the Act was published on 11th October 2006. The Preamble of the Bangladesh Labour Act 2006 outlines its purpose as amending and consolidating all prevailing laws about workers, employers, trade unions and industrial disputes.² The objective of this Act is to establish a more robust framework for labour law in Bangladesh, aimed at fostering a conducive work environment and rectifying any disparities in labour and employment matters. It achieves this by amalgamating and revising numerous scattered laws about labour and employment.³

The Labour Act of Bangladesh specifies how it is to be applied in section 1 (3). It clearly states that Bangladesh as a whole would be covered by the Act. The Labour Act is a comprehensive regulation that applies to all types of businesses, including factories, stores, docks, tea plantations, and other commercial and industrial spaces. Tea plantations, stores, factories, and other commercial and industrial institutions are all covered under the Bangladesh Labour Act of 2006.

However, section 1(4) of the Bangladesh Labour Act, 2006 provides some exceptions to the applicability of the Act. These exceptions are listed in subsections (a) to (p). According to the Act, it does not apply to certain entities such as government offices, security printing presses, arms factories, non-profit establishments providing care for the sick, including the elderly, disabled, deserted women or children, shops or stalls in public exhibitions or trade shows, educational, training or research institutions, non-profit hostels and messes, agricultural farms with fewer than five workers and domestic servants.

It is noted that the Labour Act of Bangladesh, 2006 is a vast legislation. It contains a total of 354 sections that are divided into 21 Chapters with numerous sub-headings and sub-sections, which outline the individual provisions regarding employment-related matters, whereas the act consolidates and amends the previous 25 labour-related acts of Bangladesh.⁴

¹ The Bangladesh Labour Act, 2006.

² The Preamble of the Bangladesh Labour Act, 2006 states: 'An Act to amend and consolidate the laws relating to employment of workers, relations between workers and employers, determination of minimum rates of wages, payment of wages, compensation for injuries to workers during working hours, formation of trade unions, raising and settlement of industrial disputes, health, safety, welfare and working conditions and environment of workers and apprenticeship and matters ancillary thereto.'

³ The Bangladesh Labour Act, 2006, s 353.

⁴ Section 353 of The Bangladesh Labour Act, 2006 provides a list of laws that were amended and repealed by the Labour Act of 2006: (a) The Workmen's Compensation Act, 1923; (b) The Children (Pledging of Labour) Act 1833; (c) The dock Labourers Act, 1934; (d) The Workmen's Protection Act, 1934; (e) The Payment of Wages Act, 1936; (f) The Employer's Liability Act, 1938; (g) The Employment of Children Act, 1938; (h) The Maternity Benefit Act, 1939; (i) The Mines Maternity Benefit act, 1941; (j) The Motor Vehicles (Drivers) Ordinance, 1942; (k) The Maternity Benefit (Tea Estate) Act, 1950; (l) The Employment (Records of Service) Act, 1951; (m) The Bangladesh (Plantation Employees) Provident Fund Ordinance, 1959; (n) The Coal Mines (Fixation of Rates of Wage) Ordinance, 1960; (o) The Road Transport Workers Ordinance, 1961; (p) The Minimum Wages

Therefore, it is not possible to discuss all the areas of the Labour Act in this article comprehensively. The objective of this research focuses on a particular area of labour law. It only focuses on the hiring and termination procedures of employment in Bangladesh with the grievance procedure under the Labour Act of 2006 and the role of the courts in this matter.

Considering the above background, this research examines the definition of a worker, conditions of employment, provisions for discharge from service, the concept of misconduct, termination of service, grievance procedures, the principles of natural justice and case laws. Finally, the analysis concludes with a summary of the findings.

2. Definition of Worker

Section 2 (65) of the Labour Act, 2006 describes the term ‘worker’. It defines:

‘worker’ means any person, including an apprentice employed in any establishment or industry, either directly or through a contractor, by whatever name he is called, to do any skilled, unskilled, manual, technical, trade promotional, or clerical work for hire or reward, whether the terms of employment are expressed or implied, but does not include a person employed mainly in a managerial, administrative or supervisory capacity.

Section 4 (1) enumerates seven categories of workers. According to this section, workers in any institution will be categorised into several groups based on the type and circumstances of their job. These classifications include: (i) apprentice; (ii) substitute; (iii) casual; (iv) temporary; (v) probationer; (vi) permanent; and (vii) seasonal worker.

The court examined the definition of worker and provided an interpretation of it. In *Sonali Bank and Another v Chandon Kumar Nandi*,⁵ the High Court of Bangladesh held that if a person was hired in any shop and the commercial establishment and did not do any managerial or administrative job, that employee was a worker. In *Dosta Textile Mills v SB Nath*,⁶ the Appellate Court of Bangladesh ruled that the mere designation of the employee was not sufficient to be considered a person as a worker; instead, the nature of work was an essential factor in this situation. In the case of *Amir Hossain Bhuiya (Md) v Harisul Haq Bhuiya*, the High Court of Bangladesh ruled that team members of schools, medical centres, and hospitals operated by company administration cannot be classified as workers based on

Ordinance, 1961; (q) The Plantation Labour Ordinance, 1962; (r) The Employees Social Insurance Ordinance, 1962; (s) The Apprenticeship Ordinance, 1962; (t) The Factories Act, 1965; (u) The Shops and Establishments Act, 1965; (v) The Employment of Labour (Standing orders) Act, 1965; (w) The Companies Profits (Worker’s Participation) Act, 1968; (x) The Industrial Relations ordinance, 1969; (y) The Dock Workers (Regulation of Employment) Act, 1980.

⁵ *Sonali Bank and another v Chandon Kumar Nandi* [1996] 48 Dhaka Law Reports 330.

⁶ *Dosta Textile Mills v SB Nath* (1988) 40 Dhaka Law Reports (AD) 45.

their job responsibilities.⁷ However, the Security Guard of a company⁸ and Store Keeper⁹ is defined as a worker by the courts in Bangladesh.

As a result, according to the definition of worker in Bangladesh Labour Act 2006, skilled, unskilled, manual, technical, trade promotional, or clerical workers are treated as workers, but if any worker does any managerial job or school teaching or admin worker of a hospital medical or hospital is not a worker.¹⁰

On the other hand, an employer can terminate a worker by discharge, dismiss laid-off, and retrench. The following section of the paper focuses on these issues.

3. Discharge from Work

The Bangladesh Labor Act of 2006 does not prescribe any detailed procedure for appointing an employer. Only section 5 of the Labour Act provides,

No employer shall employ any worker without giving such worker an appointment letter, and every such employed worker shall be provided with an identity card with his photograph.

On the other side, section 22 outlines the specific steps that an employer must follow to terminate an employee's employment. Section 22 (1) provides that an employee may be terminated from their job due to persistent ill health or mental incompetence if certified by a medical practitioner. The term 'discharge' is defined under section 2(17) of the Act. Discharge is the phrase used to describe the action taken by an employer to terminate the employment of a worker because of the person's physical or mental inability or continuous poor health. In this context, section 22(1).

In the context of the discharge of an employee, section 22 (2) is also important. Section 22 (2) provides the provision of compensation for termination of employment. According to this section, an employer should offer compensation to an employee who has been working consistently for at least one year before initiating the termination procedure. It is recommended that the amount of compensation be comparable to thirty days' earnings for each year of service that the worker must have completed before being discharged. Alternatively, the employer is obligated to pay the gratuity instead of the estimated compensation if the amount of the gratuity is greater than the compensation that was calculated.

⁷ *Amir Hossain Bhuiya (Md) v Harisul Haq Bhuiya and Others* [2000] 52 Dhaka Law Reports 267.

⁸ *Managing Director, Rupali Bank Ltd v Nazrul Islam Patwary and Others* [1996] 1 Bangladesh Law Chronicles (AD) 159.

⁹ *Managing Director, Sonali Bank and Others v Md Jahangir Kabir Molla* [1995] 15 Bangladesh Legal Decision (HC) 575.

¹⁰ Hassan Faruk Al Imran, 'Definition of Workers and Application of the Bangladesh Labour Act 2006: An Appraisal' (2020) 9(1) *The E-Journal of International And Comparative Labour Studies* 34-52.

The case of *Karim Jute Mills v Chairman, Second Labour Court* (1997) is highly significant in the context of discharge from service in Bangladesh.¹¹ The Appellate Court of Bangladesh reviewed the legality of an employee's termination decision concerning the specific nature of their disease. The court determined that the discharge order was valid and following the law, taking into account the employee's condition and the effect of their illness on their work capacity. In the case, the court made a clear distinction between the terms 'continued ill health' and 'physical and mental incapacity.' The term 'continuous poor health' refers to a condition in which a worker's ability to work is diminished owing to illness but can be restored. On the other hand, 'physical and mental incapacity' indicates a total inability to work due to disability. Furthermore, the Appellate Division stressed that the understanding of 'continuous ill health' should not be inflexible or limited by predetermined standards. Conversely, it ought to be adaptable and contingent upon the particular facts and circumstances of each situation. This approach guarantees that employers can use their authority without encountering unworkable or too intricate interpretation requirements.

In sum, according to section 22 of the Bangladesh Labour Act, if an individual experiences severe physical and mental sickness that hinders their ability to carry out their job, the employer has the legal right to terminate their employment. Nevertheless, it is crucial to emphasise that the release must be accompanied by a certificate from a licensed medical professional verifying the individual's condition. This article of the Bangladesh Labour Act grants employers the authority to take necessary measures when an employee's physical and mental well-being substantially hinders their capacity to fulfil their job responsibilities. By acquiring a certification from a competent medical practitioner, the employer can verify the legitimacy of the termination and guarantee adherence to the legal obligations specified in the legislation.

4. Dismissed from Work

Employers are granted extensive authority to terminate the service of a worker under section 23 of the Bangladesh Labour Act, 2006. According to section 23(1), an employer has the authority to terminate an employee's contract without giving any advance notice under specific circumstances. These factors encompass whether the worker has a criminal conviction or has been deemed guilty of misbehaviour as outlined in Section 24 of the Act.

Section 23(4) additionally includes a clear enumeration of actions and failures that are regarded as misconduct. This list delineates behaviours or activities that may result in disciplinary measures or the termination of one's employment. Employers have the authority to enforce this rule if a worker is discovered to have participated in any of the stated wrongdoing.

It is important to note that the powers conferred to the employer under section 23 of the Bangladesh Labour Act should be exercised carefully and in compliance with the principles

¹¹ *Karim Jute Mills v Chairman, Second Labour Court, Dhaka, and Other* [1997] 2 Mainstream Law Reports (AD) 203.

of natural justice. In this relation, section 23(4) lays down a detailed list of actions that are to be treated as misconduct.

In summary, as per section 23(4), the following acts and omissions are considered as misconduct: (a) Deliberate refusal or disobedience, either individually or in collaboration with others, towards any lawful or reasonable order given by a superior; (b) Stealing, misusing, engaging in fraudulent activities, or behaving dishonestly in relation to the employer's business or assets; (c) Offering a bribe in relation to his or any other employee's employment with the employer; (d) Regularly being absent without permission or being absent without permission for more than ten days; (e) Regularly arriving late for work; (f) Regularly violating any law, rule, or regulation applicable to the establishment; (g) Engaging in disorderly conduct, rioting, arson, or causing damage within the establishment; (h) Consistently displaying negligence in work duties; (i) Repeatedly violating any employment rule, including approved conduct and discipline guidelines set by the Chief Inspector; (j) Altering, forging, unlawfully changing, damaging, or causing loss to the employer's official records.

It is crucial to highlight that according to Section 23(5) of the Bangladesh Labour Act, if a worker is terminated from their job based on subsection (1)(a) (ie, due to a criminal conviction) and later cleared of charges on appeal, the worker will be reinstated to their original position without receiving any unpaid wages. If it is not possible to return the worker to their former position, they will be provided with a suitable alternative employment. If it is not practicable to reinstate the worker or find them another job, they will be entitled to receive compensation at the same amount as someone who has been fired, except for any compensation that has already been given for the termination.

This provision ensures that workers wrongly convicted and later acquitted can resume employment or receive compensation for the loss due to the wrongful dismissal.

The Supreme Court of India rendered an important judgment in the case of *Tournamulla Estate v Workmen* (1973) of the categorisation of workplace misconduct.¹² The court classifies wrongdoing into three distinct categories: (i) Technical misconduct refers to small transgressions that do not include any substantial breach of discipline. (ii) Employer property damage misconduct: This refers to actions that cause harm or loss to the employer's property. In such instances, the loss of gratuity or a fraction of it could be a suitable consequence. (iii) Serious misconduct: This classification includes acts of aggression towards management or fellow employees, as well as participating in tumultuous or disorderly conduct at or in the vicinity of the workplace. Even though these activities may not directly cause harm to the employer, however, they do amount to a significant violation of discipline in employment.

The Supreme Court of India's decision provides a framework for understanding and addressing different forms of misconduct in the workplace, allowing for appropriate disciplinary measures based on the nature and severity of the misconduct.

¹² *Tournamulla Estate v Workmen* [1973] 2 Supreme Court Cases (India) 502.

In the case of *PWV Rowe v Labour Court, Chittagong*,¹³ the Supreme Court of Bangladesh, the highest court, established that if a worker is absent without permission for more than ten days, it can be regarded as misconduct. Consequently, the employer holds the power to terminate or impose suitable disciplinary measures on the employee. This verdict highlights the need to follow leave policy and shows that extended unauthorized absence can be considered a violation of job responsibilities.

In *Karnaphuli Fertilizer Co Ltd v Chairman* case, it has been held that,

Any employer is always free to take recourse to a simple order of termination in order to avoid the complex disciplinary action provided the intended action is not taken with a view to victimizing the worker for trade union activities.¹⁴

In the case of *Messrs Bank Line Navigation Company v Chairman 2nd Labour Court*,¹⁵ the question arose regarding whether a single act of an employee could be considered misconduct. The court concluded that if an employee's specific action has the potential to cause an accident and damage to the employer's goods or property, it cannot be argued that such an act does not amount to misconduct under Labour law. This ruling highlights the significance of individual actions and their potential consequences in determining whether misconduct has occurred in the workplace.

Misconduct encompasses instances of misbehaviour towards customers, as established in the case of *Eastern Electric and Trading Co v Baldeb Lal*.¹⁶ The Indian Court emphasised that commercial firms cannot afford to tolerate employees who insult or mistreat customers, as such behaviour may result in the customers choosing not to utilize the firm's services. It is vital for management to carefully consider the appropriate punishment in these cases, considering the potential impact on the company's reputation and customer relationships.

Engaging in a consistent pattern of neglecting work duties or demonstrating negligence as an employee is regarded as misconduct. When an employee repeatedly fails to fulfil their job responsibilities or displays a lack of care in performing their tasks, it is considered a breach of expected conduct in the workplace and can be classified as misconduct.¹⁷

The court further determined that the temporary possession of goods without the knowledge or consent of the lawful owner, which results in the deprivation of their rightful possession, constitutes an act of misappropriation. This means that if someone unlawfully takes control of goods without permission from the owner, even temporarily, it is considered misappropriation and can be legally viewed as a wrongful act.¹⁸

¹³ *P W V Rowe v Labour Court, Chittagong* [1979] 31 Dhaka Law Reports (AD) 119.

¹⁴ *Karnaphuli Fertilizer Co Ltd v Chairman, First Labour Court and Other* [2004] 56 Dhaka Law Reports 502.

¹⁵ *Messrs Bank Line Navigation Company v Chairman 2nd Labour Court* [1975] 34 Dhaka Law Reports 55.

¹⁶ *Eastern Electric and Trading Co v Baldeb Lal* [1975] 4 Supreme Court Cases (India) 684.

¹⁷ *Azizur Rahman v The Burmah Oil Co (Pak) Trading Ltd* [1961] 13 Dhaka Law Reports 458.

¹⁸ *Zeenat Textile Mills Ltd v Third Labour Court, Dhaka* [1992] 44 Dhaka Law Reports 213.

In contrast, the court held that in cases where a worker is dismissed without prior show cause notice, the only available remedy for the worker is reinstatement in their previous position or employment. This means that if an employer terminates a worker's work without providing any opportunity to explain or justify their actions, the appropriate remedy, as determined by the court, is to reinstate the worker to their former position or employment.¹⁹

If any charges are brought against an employer, they can exercise self-defence. It is firmly established that even in a domestic inquiry, witnesses cannot be examined without the worker's knowledge and the worker must be informed about the place, date and time of the witness examination. This allows the worker the opportunity to cross-examine the witnesses if they choose to do so. It ensures that the worker is given a fair chance to present their defence and participate in the inquiry process.²⁰

However, it is important to acknowledge that a domestic tribunal is not obligated to adhere to the specific procedures of a trial or inquiry as stipulated in the Civil Procedure Code of 1908. Based on the particular circumstances and facts of the case, a tribunal may render conclusions by interrogating the accused and taking into account their explanation. The primary emphasis is placed on reaching an equitable and impartial result, taking into account the specificities of the current circumstance.²¹ In the case of *Bangladesh v Md Abu Taher*,²² the Supreme Court of Bangladesh ruled that the principle of natural justice must be observed while rendering a judgment against an employee for misbehaviour. This principle necessitates that the employee be allowed to express their perspective and offer their version of events before reaching any conclusion. The text underscores the significance of equity and guarantees that individuals are given a just opportunity to defend themselves and present justifications or facts to substantiate their argument.

The principles of natural justice play a crucial role in protecting the rights of individuals by ensuring certain fundamental principles are upheld. These principles include—(a) The right to a fair hearing: No person should be deprived of their rights without being allowed to present their case before an independent authority. This helps prevent any unfair treatment or denial of rights without proper consideration. (b) Judicial scrutiny of administrative decisions: If an executive authority makes a decision that unjustly affects a person's rights, it can be subject to judicial review. This means that a court of law can assess the decision for fairness, legality, and compliance with established procedures. (c) Objective determination of facts: In administrative proceedings, the authority responsible must base its decisions on accurately assessing the facts. This ensures that decisions are not influenced by personal biases or external pressures, promoting fairness and transparency.²³

¹⁹ *M/S Hafiz Jute Mills Ltd v 2nd Labour Court* [1970] 22 Dhaka Law Reports 713.

²⁰ *Eastern Pharmaceuticals Ltd v Labour Court Rajshahi* [1993] 43 Dhaka Law Reports 223.

²¹ *Bashir Ahmed v Bangladesh Jute Mills Corporation* [1992] 12 Bangladesh Legal Decisions (AD) 125.

²² *Bangladesh v Md Abu Taher* [1981] 31 Dhaka Law Reports (AD) 33.

²³ *Bangladesh Steamer Agents' Association v Bangladesh and Others* [1981] 31 Dhaka Law Reports (AD) 272.

By adhering to these principles, the principles of natural justice help safeguard individual rights and promote fairness in administrative and legal processes.

As to section 23(4) of the Bangladesh Labour Act, if a worker engages in any of the listed offences, it may be deemed as misconduct and the employer has the authority to terminate the worker's employment.

However, suppose the worker appeals the decision and it is determined that the employer's decision was incorrect or unfair. In that case, the worker may be reinstated to their original position or offered an alternative suitable job. In such cases, the worker may also receive compensation for any losses or hardships they may have suffered due to the wrongful dismissal. The appeal process aims to ensure that decisions regarding misconduct are made fairly and justly and that workers are allowed to contest any unjust or erroneous dismissals.

5. Misconduct and Case Laws

The Black's Law Dictionary (1990, 999) explains misconduct as:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are a misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

Accordingly, any behaviour by an employee that goes against their obligation to fulfil their duties faithfully towards their employer can be considered misconduct. This includes any violation of an employee's explicit or implicit responsibilities towards their employer. However, it is important to note that the misconduct should be directly linked to the employee's duties and obligations towards their employer.²⁴

Misconduct, which refers to inconsistent or improper conduct, must be proven and cannot be assumed or inferred without sufficient evidence.²⁵ The employer has the authority to establish guidelines that define misconduct based on the specific requirements of the industry or establishment. However, providing an exhaustive list of all types of misconduct is not feasible as grounds for disciplinary action against employees.²⁶

In most cases, smoking at the workplace is considered a minor offence. While there may be a prohibition on smoking, it is often overlooked by supervisory staff. However, if smoking becomes a habitual behaviour rather than an occasional occurrence, it can be classified as misconduct and should not be ignored. Smoking can be deemed a severe offence in situations with high fire risk, such as in textile mills, jute mills, match factories, or

²⁴ *New Victoria Mills Co Ltd v Presiding Officer, Labour Court* [1970] All India Reports (Allah. HC) 210.

²⁵ *Ramkrina Ramnath Shop v Union of India and Others* [1960] 62 Bombay Law Reporter 445.

²⁶ *Employers of Express Newspapers (Pvt) Ltd Madras v Labour Court* [1962] 2 Labour Law Journal 227.

places where explosives are manufactured. Consequently, dismissal as a punishment for smoking in such prohibited areas may be deemed appropriate.²⁷ Additionally, an employee's acts that harm the employer's interests and reputation can be considered misconduct.²⁸

Dismissal from employment is a significant matter and it should only be carried out by a competent authority as prescribed by the law. The authority responsible for dismissing an employee must have legal jurisdiction and power to do so.²⁹ However, the employer must adhere to procedural fairness when making a dismissal decision. Failure to do so may result in the determination being challenged in court. If witnesses are examined in the absence of the employee facing charges, it would violate the principles of natural justice.³⁰ Denying the opportunity to defend oneself also goes against the principles of natural justice. Therefore, it is essential to ensure that the principles of natural justice are upheld throughout the entire dismissal procedure.³¹

During a domestic inquiry, it is optional for the inquiry officer to write an excessively long and detailed report. However, when the findings of the investigations are likely to result in the employee's dismissal, the officer must record the conclusions clearly and precisely. The findings should include the reasons for arriving at those conclusions. If the report is unfair or dishonest, it would be considered unfair Labour practice and a violation of the principles of natural justice.³²

A dismissal order is not capable of having a retroactive impact. The order of dismissal should take effect from the day it is issued. Terminating an employee with retroactive effect is against the law.³³ Furthermore, it is illegal to backdate the order of dismissal.³⁴

The employee should get a legal notification that includes all pertinent information. The only recourse available to an employee who is fired without being given a reason is for him to be reinstated.³⁵ Absence without leave is a common form of misconduct in industrial employment. It includes situations where the worker is absent from the employer's business premises or fails to be present at the specific place of duty without obtaining permission.³⁶

Engaging in a 'go slow' process as an employer is considered a severe form of misconduct under Labour law. 'Go slow' refers to the deliberate slowing down of production by workers, giving the appearance of being engaged in their tasks while intentionally causing delays. This misconduct can be more detrimental than a complete

²⁷ *Caltex (India) Ltd v E Fernandes* [1957] All India Reporter (SC) 326.

²⁸ *MH Devendrappa v KSSID Corporation* [1998] All India Reporter (SC) 1064.

²⁹ *Bangladesh v Mahbubuddin Ahmed* [1998] 50 Dhaka Law Reports (AD) 154.

³⁰ *Union of India v TRVerma* [1957] All India Reporter (SC) 882.

³¹ *DK Yadav v JNA, Industries Ltd* [1993] 3 Supreme Court Reporter 930.

³² *Khardah Co Ltd v Their Workmen* [1964] All India Reporter 719.

³³ *Chittagong Textile Mills Ltd v Labour Court, Chittagong* [1990] Chancery Law Chronicles (HC) 19.

³⁴ *Remington Rand of India Ltd v Tahir Ali Saifi* [1975] All India Reporter (SC) 1896.

³⁵ *Serajul Islam v Bangladesh Consumer's Supply Company Ltd* [1993] Chancery Law Chronicles (AD) 22.

³⁶ *Burn & Co Ltd v Workmen* [1959] All India Reporter (SC) 529.

work stoppage during a strike, as the machinery continues to operate at a reduced speed, potentially leading to damage. Therefore, engaging in or encouraging intentional ‘go slow’ practices that disrupt company production is deemed significant misconduct.³⁷ Moreover, encouraging others to do so is considered considerable misconduct. Such actions deliberately slow down the work process, leading to decreased productivity and potential damage to machinery. As a result, employees involved in or promoting these practices can face disciplinary actions due to their negative impact on the company’s operations.³⁸ However, temporary absence from work for two consecutive days after the designated tiffin hour may not be considered misconduct.³⁹ In contrast, habitually sleeping during duty hours is regarded as grave negligence and a severe failure to fulfil one’s duty.⁴⁰ Moreover, engaging in systematic acts of leaving work without permission, despite prior warnings, is considered grave misconduct.⁴¹

Any behaviour that disrupts discipline and causes disturbance or disorder can be considered misconduct, as it violates peace and good order within the workplace.⁴²

Intentionally switching off the electric power during working hours without permission by an employer is generally considered misconduct unless it can be proven that the act resulted from an error in judgment.⁴³

However, in the case of *Bawa Gockery House v RN Bhowmick*, the Indian Court ruled that short-term absence from the workplace cannot be considered misconduct.⁴⁴ Additionally, a private argument between an employee and a resident outside the establishment’s premises is typically not considered misconduct.⁴⁵ Furthermore, in the case of *Andhra Scientific Co Ltd v Seshagiri Rao*, it was established that the refusal of a worker to perform tasks that are not within their obligations does not amount to misconduct.⁴⁶

In summary, while Section 23(4) provides a list of activities that constitute misconduct, case law offers guidance on what would be considered as such. It is essential to prove the employee’s misconduct and provide them with an opportunity to defend themselves, ensuring a fair dismissal procedure and adherence to the principles of natural justice. Only a competent authority can dismiss a worker and a dismissal order based on misconduct cannot have a retrospective effect—practices like ‘go-slow’ and intentional absence from work that negatively impact production may warrant dismissal. However, the court has

³⁷ *Bharat Sugar Mills Ltd v Jai Singh* [1962] 3 Supreme Court Cases (India) 684.

³⁸ *Bathgate Employee’s Union v Bathgate & Co Ltd* [1953] Labour Law Journal (India) 492-493 (LAT).

³⁹ *Shalimar Rope Works v State of West Bengal* [1965] Labour Law Journal (India) 625 (Cal).

⁴⁰ *Ford Motor Co India Ltd v SKK Naik* [1952] Labour Law Journal (India) 388 (LAT).

⁴¹ *Indian Iron & Steel Co, Ltd v Their Workmen* [1958] All India Reporter 130.

⁴² *Shalimar Rope Works Mazdoor Union v Management* [1953] Labour Law Journal (India) 876.

⁴³ *Indian General Navigation & Railway Co v Workmen* [1961] Labour Law Journal (India) 372.

⁴⁴ *Bawa Gockery House v RN Bhowmick* [1954] LAC 293.

⁴⁵ *Agnani v Badri Das* [1963] Labour Law Journal (India) 46 (SC).

⁴⁶ *Andhra Scientific Co Ltd v Seshagiri Rao* [1961] Labour Law Journal (India) 117 (SC).

ruled on multiple occasions that the refusal to perform work outside one's obligations and short-term absence from the workplace cannot be grounds for dismissal based on misconduct.

6. Termination of Employment by Laid-Off and Retrenchment

An employer has the authority to hire and appoint a worker. An employer also has the right to terminate a worker's employment by laid-off and retrenchment. 'Layoff' is defined in the Bangladesh Labour Act. It is defined as an employer's inability, unwillingness, or failure to hire a worker because of a lack of raw materials, coal, electricity, or stock, or a breakdown of machinery (s. 2(58)). Black Law Dictionary defines layoff as 'a termination of employment at the will of employer' (Black Law Dictionary, 1990, 888).

Section 16 states that an employer must compensate a worker for all days they are laid off, except weekly holidays, provided the worker's name is on the master rolls of the business and he has worked for the company for at least one (1) year.

According to Section 18(1) of the law, a laid-off worker may not be eligible for compensation under certain circumstances. This includes situations where the worker refuses to accept employment with the same wages in the same establishment or another establishment owned by the same employer within a certain proximity (same town or within 8 (eight) kilometres of the original establishment). Additionally, if workers fail to report to work at the designated time during regular working hours as the employer requires, they may also be ineligible for compensation.

As per Section 2(11) of the Bangladesh Labour Act, 'retrenchment' refers to the termination of services of workers by the employer due to redundancy. Section 20 outlines the procedure for retrenchment and Section 21(1) states that a worker can be retrenched from an establishment on the grounds of redundancy.

As per Subsection (2) of Section 20, in the event of a layoff, an employer is required to comply with the following criteria if the worker has been engaged continuously for a minimum of one year: (a) Give the employee a written notice of one month's notice that includes the reasons for the layoff, or pay the employee's salary during that time; (b) Forward a duplicate of the notification to the Chief Inspector or any other designated official and an additional copy to the establishment's collective bargaining representative, if relevant; (c) Give the employee pay, which should be equal to the gratuity amount or thirty days' salary for every year of service, whichever is higher. Accordingly, these requirements ensure that proper notice, reasons and compensation are provided to workers in the event of retrenchment due to redundancy.⁴⁷

Under Section 20(4) of the Bangladesh Labour Act, if an employer wishes to retrench a specific category of workers and there is no agreement between the employer and the

⁴⁷ *Caltex Oil (Pak) Ltd v Second Labour Court, East Pak and Others* [1967] 19 Dhaka Law Reports 264.

workers regarding the retrenchment procedure, the employer has the authority to retrench the worker who was the most recently employed in that particular category.

This provision allows the employer to determine the order of retrenchment within a specific category of workers when there is no prior agreement. The worker who was the last person to be employed in that category would be the one to be retrenched first, following the principle of last in, first out.

The employment may also be terminated by 'retirement'. According to Section 28 of the Bangladesh Labour Act, 'retirement' refers to a worker's regular termination of employment upon reaching a specific age. The Act specifies that the retirement age of a worker in Bangladesh is 60 years. When a worker voluntarily retires from service after completing 25 years of service in any business, it is also considered retirement under the Act. Retirement is a form of termination where the worker's employment ends due to reaching the prescribed retirement age or voluntarily retiring after completing a specified service period.

7. Termination of Employment by Employer

As per the law, employers can hire and fire employees. They can dismiss the service of a worker at any time, provided they comply with specific provisions. Section 26 of the Bangladesh Labour Act, 2006 allows employers to terminate employment through various means.

For permanent workers, the employer must give written notice according to the following timelines:

- (i) One hundred and twenty days' notice for monthly rated workers.
- (ii) Sixty days' notice for other workers.

For temporary workers, written notice is required as follows:

- (i) Thirty days' notice for monthly rated workers.
- (ii) Fourteen days' notice for other workers.

However, in cases where the employer wishes to terminate employment without notice, they can pay wages instead of the notice period specified in subsection (1) or (2) of section 26.

In addition, when the employment of a permanent worker is terminated under section 26, the employer is obligated to provide compensation. The compensation amount is calculated at thirty days' wages for each completed year of service or gratuity, whichever is higher, as stated in subsection (4) of section 26.

When a permanent worker is terminated, they are entitled to receive the benefit of 30 days' wages for every completed year of service, in addition to any other benefits they are eligible for. This provision ensures that workers are compensated for their years of service

upon termination. However, suppose an employer dismisses a worker and the court determines that the dismissal decision was not based on misconduct or valid grounds. In that case, the court can convert the dismissal into a termination order. This means that the worker would be treated as having been terminated rather than dismissed and entitled to the corresponding benefits and protections associated with a termination rather than a dismissal.⁴⁸

When a departmental proceeding is initiated against an employee but is later dropped and the employer issues a simple order of termination, the High Court has held that such an order is valid. This means that the termination of the employee's services, even without continuing the departmental proceeding, is legally acceptable and upheld by the court. The court's decision affirms the employer's authority to terminate the employee's employment in such circumstances.⁴⁹

In the case of *Haider Ali Mollah v Chairman*,⁵⁰ the High Court of Bangladesh established that 'termination' is a recognized method by which an employer can cease the services of a worker, provided certain conditions are fulfilled, such as the provision of termination benefits. The court recognized that termination is a valid and lawful means of ending the employment relationship between the employer and the worker. It emphasised that terminating an employee is a legally valid action for an employer to take as long as it is done in compliance with all applicable rules and regulations, including providing the worker with the proper benefits.

Under Labour law, an employer possesses the right to terminate the services of their employees while providing them with the applicable termination benefits.⁵¹ This permits employers, provided that the action is not meant to victimise workers engaged in trade union activity, to utilise a straightforward order of termination rather than pursuing elaborate disciplinary procedures.⁵² If a termination order is found to be an act of victimization, a court can examine its validity.⁵³

In the case of trade union activities, it is impermissible in law to terminate an employee's service on such grounds, as determined by the Supreme Court of Bangladesh.⁵⁴ The apex court has held that the Labour Court can convert a dismissal order into a termination order under appropriate circumstances.⁵⁵

On the other side, permanent workers have the right to terminate their services by providing one month's notice to the employer, while other employees must provide 14 days'

⁴⁸ *NETC v Labour Court* [1993] 45 Dhaka Law Reports 357.

⁴⁹ *Managing Director, Sonali Bank and Others v Md Jahangir Kabir Molla* [1996] 48 Dhaka Law Reports 395.

⁵⁰ *Haider Ali Mollah v Chairman, Second Labour Court* [1990] 42 Dhaka Law Reports 200.

⁵¹ *SH Quddus and Others v Chairman Labour Court* [1981] 33 Dhaka Law Reports 11.

⁵² *Karnaphuli Fertilizer Co Ltd v Chairman First Labour Court* [2004] 56 Dhaka Law Reports (2004) 502.

⁵³ *Bangladesh Tea Estate Ltd v Bangladesh Tea Estate Staff Union* [1976] 28 Dhaka Law Reports (AD) 190.

⁵⁴ *United Commercial Bank Ltd v Mohammad Ahsanullah* [2004] 9 Mainstream Law Reports (AD) 356.

⁵⁵ *Bank of Credit and Commerce v Tajul Islam* [1993] 45 Dhaka Law Reports (AD) 6.

notice. However, the employer has the discretion to waive the notice period and accept the worker's resignation for an earlier release.⁵⁶ In cases where there is a delay in the payment of wages in the form of termination benefits, the Labour Court is the competent authority to consider the claim and decide on the amount of such benefits. The Labour Court has jurisdiction to handle claims of termination benefits and can resolve difficulties that arise from the delay in payment.⁵⁷

In summary, under the Labour law of Bangladesh, employers possess the prerogative to terminate the employment of workers of all categories, including those who are permanent, temporary and others. The termination must be carried out in compliance with the notice time and remuneration requirements outlined in Section 26 of the legislation. If an employer desires to dismiss an employee without giving the necessary notice, they are obligated to remunerate the employee by disbursing earnings in lieu of the notice period.

However, it is important to note that if a court determines that the termination process was not followed correctly, it may intervene and issue an order against the termination decision. This means that if the court finds any irregularities or violations of the termination procedure, it can provide relief or remedy to the worker. The court acts as a safeguard to ensure the workers' rights and justifies that termination decisions must comply with labour law. Alternatively, the worker also has the right to terminate his employment.

The following part of the paper examines the termination process of employment by workers in Bangladesh.

8. Termination of Employment by Employee

8.1 Resignation Letter

If workers (permanent or temporary) find a better opportunity elsewhere or for any other reason, they can resign. Resignation formally notifies the employer of the worker's decision to end employment.

Under Section 27 of the Bangladesh Labour Act, 2006, workers' rights regarding the termination of employment are outlined. According to this section:

A permanent worker must give the employer a written notice sixty days before their intended resignation date.

A temporary worker must give written notice to the employer as follows:

- (i) Thirty days' notice if they are a monthly rated worker;
- (ii) Fourteen days' notice in the case of other workers.

⁵⁶ *Belal Rahman v PJ Industries* [1987] 39 Dhaka Law Reports 239.

⁵⁷ *Managing Director, Contiforms Ltd v Labour Appellate Tribunal* [1998] 50 Dhaka Law Reports 476.

However, if a worker intends to resign without giving the prescribed notice period, in that case, they can compensate the employer by paying an amount equal to the wages for the notice period instead of providing notice under subsection (1) or (2) of Section 27. This allows the worker to terminate their service immediately without completing the notice period.

It is important to note that the purpose of the notice period is to provide sufficient time for the employer to make necessary arrangements and ensure a smooth transition. By compensating the employer for the notice period, the worker fulfils their obligation to provide advance notice or make a financial settlement in lieu of notice.

Section 27(3A) of the Bangladesh Labour Act, 2006, provides an exception to the usual rules of resignation. It specifically deals with cases where a worker is gone from work for more than 10 days without giving any notice or obtaining authorization. Under such circumstances, the employer must undertake specific measures.

The employer is required to inform the worker, asking for an explanation about their absence and instructing them to return to work within a period of 10 days. If the worker does not furnish a written explanation or fails to resume work within the specified 10 day timeframe, the employer is obligated to grant an additional 7 day period for the worker to present their defence.

If the worker does not return to work or provide a defence within the given timeframe, they will be officially terminated from their position starting from the date of their initial absence.

Section 27 (3A) grants the employer the authority to take suitable action in cases where a worker is absent without providing due notice or obtaining permission. This policy guarantees that employees are provided with a fair opportunity to clarify their absence and present their case before any determination is made affecting their employment standing.

According to Section 27(4) of the Bangladesh Labour Act, 2006, an employer is obligated to give financial compensation to a permanent employee who voluntarily leaves their job. The subsequent equation is employed to compute remuneration according to the duration of uninterrupted employment:

(a) The employee will get a payment equivalent to fourteen days' income for each year of service completed, provided that the service period is between five and ten years. (b) The employee will be given a compensation equal to thirty days' earnings for each year of work completed, if the work period is ten years or more. The employee will get the higher of two amounts: the calculated compensation or, if applicable, the gratuity amount. Furthermore, this compensation is granted in addition to any other benefits that the worker may qualify for under the provisions of this Act.

Furthermore, in exceptional situations, such as sudden natural disasters or other uncontrollable emergencies, where there is a need to shift or permanently close an industry,

the government has the authority under Section 28A to determine the relations between the employer and workers according to the declared rules and policies.

Termination benefits typically encompass compensation or benefits granted to an employee when the employer terminates their employment. These benefits are generally not applicable when an employee voluntarily resigns or leaves the job of their own accord.⁵⁸

8.2 Retirement of Worker

The Labour Act lays down the provision for the retirement of a worker. Now, the retirement age of a worker is 60 years of his age (s. 28).

9. Grievance Procedure

Even though companies possess significant power when it comes to dismissing employees, it is worth mentioning that the Bangladesh Labour Act 2006 has measures to safeguard workers by providing a formal system for addressing grievances or filing complaints.

Section 33 sets a grievance procedure to enable workers to challenge and seek redress for what they perceive as unjust termination or other adverse employment decisions. It serves as a mechanism to safeguard the rights of employees and empowers them to have their complaints addressed and resolved fairly and impartially.

Section 33 of the Act outlines the detailed grievance procedure. According to section 33,

- (1) Any worker, including a worker who has been laid-off, retrenched, discharged, dismissed, removed, or otherwise removed from employment, who has grievance in respect of any matter covered under Chapter II of this Act, and intends to seek redress thereof under this section, shall submit his grievance to his employer, in writing, by registered post within thirty days of being informed of the cause of such grievance. Provided that if the employer acknowledges receipt of the grievance, in that case the service by registered post shall not be essential.
- (2) The employer shall within fifteen days of receipt of such grievance, enquire into the matter, give the worker an opportunity of being heard and communicate his decision, in writing to him.
- (3) If the employer fails to give a decision under subsection (2) or if the worker is dissatisfied with such decision, he may make a complaint in writing to the Labour court within thirty days from the last date under subsection (2) or within thirty days from the date of the decision, as the case may be.
- (4) The Labour court shall, on receipt of the complaint hear the parties after giving notice to them and make such orders as it may deem just and proper.

⁵⁸ *Inland Water Transport Authority v First Labour Court, Dhaka* [1977] 29 Dhaka Law Reports 85.

- (5) The Labour court may amongst other relief, direct reinstatement of the complainant in service, either with or without back wages and convert the order of dismissal, removal or discharge to any other Lesser punishment specified in section 23(2).
- (6) Any person aggrieved by an order of the Labour court, may, within thirty days of the order, prefer an appeal to the tribunal, and the decision of the Tribunal on such appeal shall be final.
- (7) No court fees shall be payable for lodging complaint or appeal under this section.
- (8) No complaint under this section shall amount to prosecution under this Act.

In summary, if an employee perceives that he/she has been unjustly terminated, whether by a layoff, retrenchment, discharge, dismissal, removal, or any other means, he/she shall submit his/her grievance to his/her employer in writing. If the employer within fifteen days of receiving the grievance complaint does not make any inquiry about the matter, does not take any step to resolve the matter, or the employee does not satisfy the decision of the employer, then the employee has the right to submit a complaint to the Labour Court regarding the issue within 30 days of receiving the grievance notification. Upon receiving the complaint, the Labour Court will conduct a thorough hearing involving all relevant parties and then give instructions that it deems equitable and appropriate while considering the merits of the case. There are no court fees required for filing a complaint or appeal under this grievance procedure of section 33.

The inclusion of the grievance procedure in the Bangladesh Labour Act aims to maintain a balanced relationship between employers' power and workers' rights, promoting fairness and ensuring that workers have a fair resolution process in case of disputes. Significantly, section 33(9) of the Bangladesh Labour Act states:

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

In *Adamjee Jute Mills Limited*, the High Court of Bangladesh held that the Labour Court should intervene in a grievance matter only under specific circumstances. The court ruled that the Labour Court has the authority to intervene in a grievance determination if it finds that the employer's inquiry was unjust, conducted in bad faith, did not follow the principles of natural justice, or did not conform to the established legal procedures.⁵⁹

This verdict underscores the significance of guaranteeing an equitable and impartial investigation procedure when dealing with employee complaints. This emphasizes the requirement for employers to adhere to the norms of natural justice, which encompass

⁵⁹ *The Executive Director, Adamjee Jute Mills Limited v The Chairman, 3rd Labour Court, Dhaka and Others* [1996] 16 Bangladesh Legal Decisions (HC) 211.

granting the worker an opportunity to present their case, providing evidence, questioning witnesses, and maintaining transparency and impartiality throughout the procedures.

The High Court's ruling in the *Adamjee Jute Mills Limited* case serves as a reminder to employers that grievance inquiries must be conducted in accordance with the principles of natural justice and in compliance with the established procedures stated in the law. Furthermore, it confirms the Labour Court's responsibility to examine these issues and intervene if required to address any instances of unfair or inequitable treatment of employees during the grievance procedure.

As per the rules of Labour legislation, an employee is required to send a formal written complaint to their employer through registered mail within a specified timeframe from the occurrence of the issue that caused the complaint. Upon receipt of the grievance notification, the employer is obligated to investigate the matter within a designated timeframe and provide the worker with an opportunity to present their case. The employer is required to convey their choice to the worker in written form. If an employer issues an order of dismissal, the Labour Court has the authority to convert this decision into termination of service in suitable situations.⁶⁰ This implies that the Labour Court has the authority to examine the details surrounding the termination and decide whether it should be changed to a termination of service instead. This exemplifies the jurisdiction of the Labour Court to intervene and guarantee equitable treatment of employees, even in instances of termination.

The Labour Court possesses the authority to convert a dismissal into a termination of service, highlighting the significance of carefully evaluating the particular circumstances and ensuring that the ruling adheres to standards of equity and impartiality. This provision functions as a protective measure for workers, enabling a fair and impartial settlement to conflicts between employers and employees.

Even though the Labour Court does not operate as an appellate court, it possesses the power to intervene in specific circumstances. The court's intervention is justified when it is determined that the Inquiry Officer or Inquiry Committee has acted unjustly and violated the norms of natural justice.⁶¹

Consequently, the Labour Court has the authority to scrutinize the proceedings of the inquiry and determine if they were carried out in a manner that was equitable and in accordance with the norms of fairness and impartiality. The principles of natural justice, encompassing the entitlement to a just and unbiased hearing, the absence of bias and the chance to express one's arguments, are crucial in protecting the rights of individuals engaged in legal proceedings, including disciplinary inquiries. If it is established that these standards have been ignored or breached, the Labour Court has the authority to intervene and correct any unfairness or injustice that may have taken place during the inquiry.

⁶⁰ *Bank of Credit and Commerce v Tajul Islam* [1993] 45 Dhaka Law Reports (AD) 61.

⁶¹ *Nurul Amin Chowdhury v Chairman, Second Labour Court* [1990] 42 Dhaka Law Reports 217.

The Labour Court safeguards workers' rights by scrutinizing the inquiry process to ensure it is fair and adheres to principles of natural justice. This guarantees that workers have a just chance to submit their arguments and defend themselves. Implementing this precaution is crucial in order to avoid the imposition of arbitrary or unreasonable decisions on workers, hence fostering fairness and justice in the employment relationship.

The Labour Court's main purpose is to adjudicate on Labour disputes, encompassing topics pertaining to salaries, working conditions, termination, disciplinary proceedings and other employment-related concerns. The jurisdiction of this entity is limited to topics pertaining to Labour law and does not encompass matters outside the realm of Labour legislation. In the case of *Khulna Newsprint Mills Limited v Labour Court*, the High Court ruled that the Labour Court does not have the power to ascertain an individual's precise date of birth.⁶² Thus, the issue of determining a person's date of birth falls outside the purview of the Labour Court. The Labour Court can only enforce any legal right under the labour law. Further, the Appellate Court of Bangladesh in the *Syed Abu Hossain Arshad and Others v BSFIC* case ruled that under the Labour law of Bangladesh, workers can only approach the Labour Court to enforce their rights as provided by Labour or industrial laws.⁶³

According to the principle of natural justice, no person must be condemned without being allowed to present their case. The order in question, which excludes certain areas from the petitioner's jurisdiction without providing them a chance to explain themselves, violates the principle of natural justice. This order should be invalidated as it goes against the Constitution of Bangladesh, 1972 and is considered illegal and arbitrary.⁶⁴ The court always ensures a fair trial and natural justice. The court ruled that delivering an '*ex parte*' judgment is inappropriate when the defendant fails to submit a written statement.⁶⁵ Issuing an '*ex parte*' order goes against the principle of natural justice.⁶⁶

10. Explanation to Section 33(9) and Natural Justice

Section 33, subsection 9, states that an employer may fire an employee at any time, including without giving them notice, in accordance with section 26. Nonetheless, in these situations, the employee is usually not entitled to a judicial challenge to the employer's decision and is required to pay salaries in lieu of the notice period. A worker may, nonetheless, bring a complaint under section 33(9) challenging the termination decision under certain conditions. These conditions are as follows:

- (i) In the event where trade union activity is said to have led to the order;

⁶² *Khulna Newsprint Mills Limited v Chairman, Labour Court* [2000] 52 Dhaka Law Reports 271.

⁶³ *Syed Abu Hossain Arshad and Others v BSFIC and Others* [2002] 54 Dhaka Law Reports (AD) 33.

⁶⁴ *Md Lutfur Rahman v Ministry of Law and Parliamentary Affairs, Govt of Bangladesh* [1997] 17 Bangladesh Legal Decisions (HC) 192.

⁶⁵ *Adamjee Jute Mills v Chairman, Labour Court* [1987] 39 Dhaka Law Reports 11.

⁶⁶ *Abdul Hai Mina and Others v Shaik Bazlur Rahman* [1998] 18 Bangladesh Legal Decisions (HC) 591.

- (ii) In the event that it is claimed that the order was placed maliciously;
- (iii) In the event that the employee feels they have been denied their benefits upon termination.

It should be highlighted that there is no breach of natural justice when the petitioner's removal from service is carried out in accordance with the correct protocol, which includes giving them a chance to present their case and issue a show-cause notice.⁶⁷

A worker who feels aggrieved, whether due to dismissal, discharge, retrenchment, lay-off, or any other form of removal, must submit their grievance to the employer within the specified statutory time limit following the occurrence of the incident.⁶⁸ If a worker fails to submit their grievance petition to the employer within the prescribed period of their alleged removal, they cannot seek remedy from the Labour Court.⁶⁹

If an employee's service is terminated solely due to their active involvement in trade union activities, such termination is considered improper by the High Court in Bangladesh.⁷⁰ In such cases, the Labour Court can grant an interim order to prevent the employee from being dismissed.⁷¹ The purpose of the Labour Court is to ensure justice for the workers who file complaints rather than dismissing cases on technical grounds.⁷² Therefore, if a petitioner's claim regarding the termination of their service is still pending disposal, any order directing them to vacate their residential accommodation would be considered unauthorised.⁷³

It is firmly established that in a domestic inquiry, witnesses cannot be examined without the worker being informed about the details of the examination, including the place, date and time. This ensures that the worker can cross-examine the witnesses if they wish to do so.⁷⁴

It is important to note that the submission of a grievance petition within the specified time limits must be fulfilled before a complaint petition can be filed with the Labour Court.⁷⁵

A grievance petition must be served through a registered post. Petitions submitted by hand cannot be considered valid grievance petitions.⁷⁶

⁶⁷ *Momttazuddin Khan v Managing Director, Agrani Bank and Others* [1996] 48 Dhaka Law Reports 550.

⁶⁸ *Karim Jute Mill v Chairman, Second Labour Court* [1990] 42 Dhaka Law Reports 255. Note: The statutory time limit is 30 days (Labour Act, 2006, as amended). Previously it was 15 days.

⁶⁹ *NETC v Labour Court* [1993] 45 Dhaka Law Reports 357.

⁷⁰ *Md Filyas Khan, Khan Brothers Ltd Khulna v Third Labour Court* [1972] 24 Dhaka Law Reports 250.

⁷¹ *Pubali Bank Ltd v Chairman, First Labour Court, Dhaka* [1992] 44 Dhaka Law Reports (AD) 40.

⁷² *Azizul Huq (Md) v Chairman Labour Court Khulna and Others* [1996] 48 Dhaka Law Reports 527.

⁷³ *Abdur Rahim (Md) v Bangladesh Sarak Paribahan Corporation* [1999] 51 Dhaka Law Reports 339.

⁷⁴ *Eastern Pharmaceuticals Ltd v Labour Court* [1991] 43 Dhaka Law Reports 223.

⁷⁵ *Karim Jute Mills v Chairman, Second Labour Court* [1990] 42 Dhaka Law Reports 255.

⁷⁶ *Sultan Ahmed v Chairman, Divisional Labour Court and Others* [1997] 49 Dhaka Law Reports 215.

A dismissed worker who falls within the definition of 'worker' under the Labour Act of 2006 can utilize the procedures outlined in the act to challenge their dismissal. However, a dismissed worker who does not fall within the narrower definition of 'worker' is not entitled to seek protection against dismissal under the act.⁷⁷

When the Labour Court does not identify any procedural deficiencies in the inquiry conducted by the domestic tribunal, it does not have the authority to intervene and overturn the tribunal's decision. The Labour Court cannot function as an appellate court and reevaluate the evidence to reach its conclusion.⁷⁸

In the case of *Maqbular Rahman Jute Mills Limited v Chairman Labour Court and Others*, the High Court ruled that the power of the Labour Court to make decisions that are fair and just is limited by the provision that a worker who has been lawfully dismissed cannot be reinstated solely based on compassionate grounds or the severity of the penalty.⁷⁹

According to the labour act in Bangladesh, the Labour Court has the authority to issue various orders related to workers in appropriate cases. Thus, the Labour Court can pass any necessary orders based on the application made under the Labor Act.⁸⁰ In *Bangladesh Jatio Maslyajibi Samabaya Samity Ltd v Labour Court, Chittagong* case, the highest court in Bangladesh ruled that while a Co-operative Society is governed under the Co-operative Societies Act, the Labour Court has no jurisdiction over the disputed matter.⁸¹

In cases of termination without any stigma or misconduct, the armed guard of a bank is recognized as a worker. In such situations, the appropriate course of action for the guard would be to seek a remedy through the Labour Court. The Labour Court has jurisdiction to address disputes and resolve matters related to the termination of employment for workers, including armed guards employed by banks.⁸²

On the other hand, in the case of *Md Azizul Huq v Chairman Labour Court Khulna and Others*, the High Court recognized that awarding total back wages to the petitioner for his 18 year absence from employment could cause undue hardship for the employer. As a result, the court deemed it inappropriate to grant the petitioner total back wages in this particular case.⁸³

In the event of a disciplinary procedure, the employee is required, absent any applicable statutes, to provide sufficient notice of the proceedings so that he or she can mount a

⁷⁷ *General Manager Hotel Intercontinental v Second Labour Court* [1978] 28 Dhaka Law Reports 160.

⁷⁸ *Kohinoor Spinning Mills Ltd v Chairman, First Labour Court, Dhaka* [1992] 42 Dhaka Law Reports 344.

⁷⁹ *Maqbular Rahman Jute Mills Ltd v Chairman Labour Court & Others* [1996] 48 Dhaka Law Reports 566.

⁸⁰ *Zeal Bangla Sugar Mills Ltd v First Labour Court, Dhaka* [1982] 34 Dhaka Law Reports 1.

⁸¹ *Bangladesh Jatio Maslyajibi Samabaya Samity Ltd v Labour Court, Chittagong* [1976] 28 Dhaka Law Reports (AD) 187.

⁸² *Tozammel Hussain Akonda v Deputy General Manager, Rupali Bank Limited & Others (Civil)* [2004] 9 Mainstream Law Reports (AD) 114.

⁸³ *Md Azizul Huq v Chairman Labour Court Khulna and Others* [1996] 48 Dhaka Law Reports 527.

defence.⁸⁴ In cases when guidelines are lacking for carrying out the investigation, the natural justice concept must be adhered to.⁸⁵ In cases when an employee is dismissed due to legislative regulations that prohibit inquiries in specific situations, the natural justice concept does not apply.⁸⁶

In a disciplinary proceeding, when there are no specific statutory rules, it is necessary to provide the employee with prior notice of the proceedings and an adequate opportunity to defend themselves.⁸⁷ Without particular rules and regulations, the value of natural justice should be shadowed.⁸⁸ However, if an employee is removed under statutory regulations that exclude the requirement for an inquiry in certain situations. In that case, the principle of natural justice may not be applicable in such cases.⁸⁹

11. Grievance Procedure and Collective Bargaining Agent

As already mentioned, this research only focuses on a worker's hiring and firing-related matters along with grievance procedures as mentioned in section 33 of the Labour Act. The text of section 33 clearly states that the section is concerned with an individual worker, at the section lays down as 'any worker ... who has grievance in respect of any matter covered under this chapter, ... shall submit his grievance to his employer, in writing'.

On the other side, if there is any industrial dispute between the workers and the employer, where a group of workers is involved, no individual dispute between the employer and employee, procedures of collective bargaining agent will be applicable (sections 202 and 209).

It is to be mentioned that even though the collective bargaining agent is not the subject matter of this research, however, an overview of the collective bargaining agent is given, thus, the reader will get a clear view of the grievance procedures regarding employment matters under the Bangladesh Labour Act of 2006.

Section 2 (Lii) defines the term 'Collective Bargaining Agent'. According to the section, 'Collective Bargaining Agent in relation to an establishment or group of establishments, means the trade union of workers or federation of trade group of establishments in the matter of collective bargaining.' Section 2 (Lxii) defines 'Industrial Dispute'. It states 'industrial dispute means any dispute or difference between employers and employers or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person.'

⁸⁴ *Jamuna Oil Company Ltd v Sk Dey* [1992] 44 Dhaka Law Reports (AD) 104.

⁸⁵ *Ehsanul Hoque v General Manager, Agrani Bank* [1990] 42 Dhaka Law Reports 60.

⁸⁶ *Wahiduzzaman v Chairman, BIWTA and Others* [1993] 45 Dhaka Law Reports 679.

⁸⁷ *Jamuna Oil Company Ltd v Sk Dey and Another* [1992] 44 Dhaka Law Reports (AD) 104.

⁸⁸ *Ehsanul Hoque v General Manager, Agrani Bank* (1990) 42 Dhaka Law Reports 60.

⁸⁹ *Wahiduzzaman v Chairman, BIWTA and Others* (1993) 45 Dhaka Law Reports 679.

The rights and obligations of a collective bargaining agent is defined in subsections 23 and 24 of section 202 of the Bangladesh Labour Act of 2006. Subsection 23 provides that 'A collective bargaining agent may, without prejudice to its own position, impaled as a party to any proceeding under this Chapter (Chapter XIII: Trade Unions and Industrial Relations) to which it is itself a party any federation of trade unions of which it is a member.'

According to subsection 24 of section 202, the collective bargaining agent in relation to an establishment shall be entitled to:

- (a) undertake collective bargaining with the employer on matters connected with the employment, non-employment, non-employment, the term of employment or the conditions of work;
- (b) represent all or any of the workers in any proceedings;
- (c) give notice of, and declare, a strike in accordance with the provisions of this chapter; and
- (d) nominate representatives of workers on the board of trustees of any welfare institutions or provident funds, and of the workers participation fund established under Chapter XV,
- (e) to conduct cases on behalf of any individual worker or group of workers.

In the *Railway Men's Stores Ltd v Chairman of Labour Court Chittagong*, it was held that an industrial dispute shall not be deemed to be in existence unless it has been raised in the prescribed method of the collective bargaining agent.⁹⁰ An industrial dispute can only be raised by a collective bargaining agent or an employer.⁹¹ If any dispute is brought by some workers in their individual capacity, not by the collective bargaining agent or their employer, then the dispute will not be considered as an industrial dispute.⁹²

A collective bargaining agent is a registered trade union and it enjoys the rights of a registered trade union according to sections 197–199 of the Act. According to section 197, 'No officer or member of a registered trade union or a collective bargaining agent as a determined by the Director of Labor shall be liable to punishment under section 120B(2) of the Penal Code, 1860 (XLV of 1860) in respect of any agreement made between the members thereof for the purpose of furthering any such object of the trade union as is specified in its constitution referred to in section 179'. As per the provision of section 198, 'No suit or other legal proceedings shall be maintainable in any trade union or collective bargaining agent or any officer or member thereof in respect of any action done in contemplation or furtherance of an industrial dispute to which the trade union is a party.' And section 199 outlines that 'Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a trade union shall not be void, or violable by reason only that of the objects of the agreement are in restraint of trade.'

⁹⁰ *Railway Men's Stores Ltd v Chairman of Labour Court Chittagong* [1978] 30 Dhaka Law Reports (SC) 25.

⁹¹ *General Manager Hotel Intercontinental v Second Labour Court* [1978] 28 Dhaka Law Reports 160.

⁹² *Chairman Chittagong Port Authority v Kalipada Day* [1987] 39 Dhaka Law Reports 39.

12. Unfair Labour Practice

The Labour Act of Bangladesh, 2006 is not only designed to ensure the best interest of workers but also aims to stop the malpractice of the Act. As a result, the provisions of unfair labour practices are incorporated. The Act particularly allegorised two types of unfair labour practices: (i) Unfair labour practices on the part of employers and (ii) Unfair labour practices on the part of workers.

Employers' unfair labour practices is defined in section 195. According to the section, certain acts, especially if a worker joins in a trade union, refuses to employ the person or discriminates him being a member of a trade union, then the acts on the part of the employer will be considered as 'unfair labour practice.' The unfair labour practice by the employer is a punishable offence under section 291(1). The punishment is imprisonment which may extend to two years, or fine which may be extend to ten thousand taka, or with both.

On the other side, the unfair labour practices on the part of workers is defined in section 196(1). It states that:

No worker shall engage himself in any trade union activities during his office hours without the permission of his employer: Provided that nothing in this subsection shall apply to the trade union activities of the president or the General Secretary of a trade union which is the collective any committee, negotiation, conciliation, arbitration or proceeding under this Act, and the employer has been duly informed of such activities.' In this relation, section 291(2) provides the punishment for unfair labour practices by workmen or others. According to section 291 (2), 'Any worker who contravenes any provision of section 196 shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand taka, or with both.

13: An Overview of the Findings

This article aims to examine the hiring and finding procedure for an employee by an employer and the role of the court in this process.

The findings of this research can be summarised as follows:

- The Labour Act of Bangladesh 2006 defines if a worker does any managerial tasks, he/she will not fall within the ambit of the Act (section 2(65));
- An employer can terminate an employee due to continuous ill health by paying compensation (sections 22(1) and 22).
- An employer can dismiss an employee if the worker has a criminal conviction or conduct misbehaviour during his job that causes damage/loss to the employer or affects reputation (section 24). In this context, the Supreme Court of Bangladesh ruled that if a worker remains

absent without permission for more than ten working days, the worker can be terminated for this type of misconduct (*Rowe vs Labour Court (1979)*);

- But the act of an employee is an accident in nature, it will not be treated as misconduct (*Bank Line Navigation Company v Labour Court (1975)*).
- The employer can dismiss an employee by 'laid-off' (sections 2(58) and 18), or by 'retrenchment' (sections 2(11) and 20);
- An employer can also terminate the employment of a permanent worker by giving written notice, depending on the nature of the job: (i) one hundred and twenty days' notice, if he is a monthly rated worker, and (ii) sixty days' notice, in case of other worker, or by paying the worker wages instead of the notice (section 26(1));
- The employment of a temporary worker can also be terminated by an employer by giving to him in writing—(i) thirty days' notice if he is a monthly rated worker, and (b) fourteen days' notice, in case of other workers (section 26(2)).
- A worker also has the right to terminate his/her employment by giving notice. In this context, a permanent worker may resign from his service by giving to the employer in writing sixty days' notice (section 27(1)).
- A temporary worker may resign from his service by giving to the employer in writing—(i) thirty days' notice, if he is a monthly rated worker; and (ii) fourteen days' notice in case of other worker (section 27(2)).
- If a worker feels that he has been laid-off, retrenched, discharged, dismissed, removed, or otherwise removed from employment unfairly and without due process, he shall submit his grievance to his employer, in writing, by registered post within thirty days of being informed of the cause of such grievance (section 33).
- *Adamjee Jute Mills Limited (1987)* case the High Court of Bangladesh ruled that if the employee is dismissed unfairly, the Labour Court has the authority to in the case.
- If a group of workers is involved in any industrial dispute (section. 2 (62)), the grievance procedure of the 'Collective Bargaining Agent' should be followed according to the Labour Act of Bangladesh 2006 (sections 202 and 209).
- If there are any unfair practices of the Labour Act, either by the employer or by workers, the Labour Court can intervene in the matter to ensure justice (sections 195 and 196).

14. Conclusion

The primary objective of the Bangladesh Labour Act of 2006 is to provide a conducive working environment for workers via the implementation of comprehensive legislation governing employment conditions and services. Nevertheless, some aspects of the legal framework, such as the protocols for appointing workers, remain in need of further

clarification. However, the Act provides comprehensive instructions for the termination of employment. Employers have significant authority in actuality. This encompasses the capacity to hire and terminate employees at any given time, particularly in cases of misconduct and occasionally remunerate workers without prior notice. However, the court is obligated to maintain the principles of natural justice, as the purpose of the law is to ensure the rights of those who require the most protection.

Section 33(9) of the Act grants the court extra jurisdiction to examine employment terminations under three specific circumstances: (i) when the decision is influenced by trade union activity; (ii) when there is a suspicion of malicious intent behind the termination; or (iii) when the employee is concerned about losing termination benefits. The High Court of Bangladesh, in the case of *Adamjee Jute Mills Limited*, acknowledged its power to interfere in employment concerns. Judicial intervention is justified when the court finds that an employer has engaged in unfair practices, shown dishonesty, and failed to comply with the legal obligations specified in the Labour Act of 2006, leading to a violation of the principles of fairness and justice. In addition, the court has determined that when an employer issues an '*ex parte*' order, it violates the principles of natural justice. When there are no clear employment norms and regulations in a workplace, it is crucial to follow the principles of natural justice.

Nevertheless, the court has also determined that if an employee does not make a formal complaint within the legally prescribed timeframe, the court will not consider the employee's request. Moreover, the court must refrain from dismissing a case on the grounds of procedural mistakes. The findings of this study demonstrate that the Bangladesh Labour Act of 2006, along with relevant legal precedents, successfully ensures fairness and safeguards the rights of employees in circumstances of termination of employment.

This research also highlights the issue of inadequate termination pay for both full-time and part-time employees. As to section 22 of the Bangladesh Labour Act, the maximum compensation that can be given to a terminated ill-health employee is equivalent to thirty days' income, which is not only a very poor amount of money in the present world, but also be considered an inhuman treatment, especially when a worker has dedicated a significant portion of their life to the employer. In such cases, when the employee needs support, the compensation provided is insufficient.

Furthermore, those who have been dismissed or laid off do not have a definite assurance of rapid reemployment. Considering the comparatively modest salaries in a developing nation such as Bangladesh, it is crucial to reassess the conditions and advantages associated with employment termination. Enhancing employees' socioeconomic position may be greatly achieved by providing them with increased financial support. Consequently, this would not only advantage the workers themselves but also push employers to reassess their discretionary authority when dismissing employees, eventually fostering job stability. By implementing these measures, there is potential for a significant enhancement in the socioeconomic circumstances of the working class. The Labour Act also lays down that if there is any industrial dispute, where a group of workers is involved, then the grievance

procedure of the Collective Bargaining Agent should be followed. Moreover, if there are any unfair practices of the Labour Act, the Labour Court can interfere in the matter.

In conclusion, this study suggests further examination is needed of the existing hiring and termination regulations outlined in the Bangladesh Labour Act. Particularly, workers should be given more compensation for termination than the existing provisions. For example, a maximum of 120 days' notice or wages for a permanent worker is not sufficient considering the present socioeconomic condition of Bangladesh. By implementing such reform, the dynamic between employers and employees as well as the work environment can undergo a positive transformation, resulting in enhanced circumstances for all individuals concerned.

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