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Compendium on Bangladesh Labour Act, 2006 and Bangladesh Labour Rules, 2015:

Frequently Asked Questions by the Management



Bangladesh Employers' Federation (BEF)
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FAQ

Foreword

Bangladesh's labor market has come a long way since its independence. The country's large informal sector is the source of employment for 85% of the total labor force. Formal sector, though relatively small, but is still generating over half of the Gross Domestic Product.

Our economy has been exhibiting a healthy growth for over a decade. Industrial relations, decent working conditions, and social dialogue are growing in popularity and practice. The Government has already declared the minimum wages of 46 sectors. As the number of sectors grows, complexities concerning labor handling will only increase, pointing towards a need for proper monitoring and understanding.

There is no denying of the fact that labor law (BLA), labour rules (BLR), and policies play a major role in ensuring appropriate labor market governance. From an implementation perspective, however, an understanding and appreciation of the legal framework may seem daunting to the average Bangladeshi. Therefore, to improve this understanding of laws and make them more accessible for the industry players, Bangladesh Employers' Federation (BEF) took initiative to publish the handbook.

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This handbook is a dynamic, work-in-progress document, with this version being the primary-level publication. Important suggestion from the readers will be incorporated into the subsequent versions accordingly.

We hope many will find this handbook interesting and useful.

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CHAPTER 01



OVERVIEW OF ACT AND RULES

►Question:

What was the legal landscape prior to the BLA 2006 and BLR 2015?

►Answer:

Before 2006, labour laws in Bangladesh were fragmented across various statutes. The Bangladesh Labour Act, 2006 was enacted to consolidate these regulations, effectively repealing and replacing 25 separate labour-related laws. Following this consolidation, the Ministry of Labour and Employment issued the Bangladesh Labour Rules in 2015 to provide specific guidelines for the Act's implementation.

►Question:

When did the BLA and the BLR come into force?

►Answer:

The BLA was enacted by the National Parliament, received the assent of the President on 11 October 2006, and came into force immediately (the latest amendment made on 10 April 2026). The BLR was published in the official gazette by the Ministry of Labour and Employment on 15 September 2015 and also came into effect immediately (the latest amendment made on 16 February 2026).

►Question:

How are the distinct provisions categorized within the Act and Rules?

►Answer:

The nomenclature for specific provisions differs slightly between the two documents:

In the Act : Provisions are organized by section, sub-section, clause, and sub-clause.

In the Rules : Provisions are organized by rule, sub-rule, clause, and sub-clause.

►Question:

Which has a higher legal status—an Act or Rules?

►Answer:

The Bangladesh Labour Act, 2006 (BLA) has a higher legal status than the Bangladesh Labour Rules, 2015 (BLR). As primary legislation enacted by Parliament, the BLA prevails over the BLR, which is subordinate legislation made under the rule-making powers conferred by the Act. The BLR is intended to facilitate the implementation of the BLA by prescribing procedural and administrative details, but they cannot amend, override, or contradict the substantive provisions of the Act. Accordingly, the BLA and the BLR should be read harmoniously wherever possible; however, in the event of any inconsistency, the BLA prevails, and the inconsistent provision of the BLR is liable to be regarded as ultra vires and unenforceable to the extent of the inconsistency.

►Question:

Can Rules override or amend the provisions of an Act?

►Answer:

No. The BLR cannot override, amend, or curtail the provisions of the BLA, as the BLR is subordinate legislation made under the rule-making powers conferred by the Act. Their function is to supplement and facilitate the implementation of the BLA by prescribing procedural and administrative details, not to alter the substantive rights, obligations, or legislative scheme established by Parliament. Accordingly, any provision of the BLR that is inconsistent with, or purports to modify, the BLA would be beyond the delegated rule-making authority (ultra vires) and would be unenforceable to the extent of such inconsistency.

►Question:

What is the jurisdictional scope of the BLA?

►Answer:

While the BLA is generally applicable throughout the entire territory of Bangladesh, there are specific exemptions:

The provisions of this Act shall not apply to the 13 categories of establishments and institutions expressly excluded under Section 1(4) of the Bangladesh Labour Act, 2006. However, subject to the specific provisions of the Act, certain provisions may still be applicable to seafarers, agricultural workers and domestic workers, as provided for under the relevant provisions of the Act.

Special Zones: BLA does not apply to Export Processing Zones (EPZs). Labour matters within these zones are governed by the Bangladesh EPZ Labour Act, 2019. However, BLA is applicable for the Special Economic Zones (SEZ).

►Question:

How many definitions are provided in the Act and the Rules, and what are some important ones?

►Answer:

The Act provides 79 definitions under Section 2, while the Rules provide 19 definitions under Rule 2. Some of these definitions are particularly important for understanding and applying the provisions of the Act and the Rules-

(a) **"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 officer or employee, by whatever name he is called, employed for clerical work for hire or reward, whether the terms of employment are expressed or implied, except a person employed as defined under section 2(49)(b);

(b) **"supervising officer"** means any person who has been authorized in writing by the employer or management, who shall, for the sake of such power, determine the target of any work or service, control the workload, control the implementation activities, evaluate or review the work, give instruction or supervise to the workers of any section of the factory or establishment;

(c) **"any person engaged in administrative or managerial work"** means any person authorized in writing by the employer or management, who shall be engaged in appointing worker or employee, determining salary and allowances, removal or dismissal from the employment, payment of final payment to the workers or employees of the factory or establishment and ratifying or controlling the activities in relation to the expenditure of the establishment by virtue of such power vested upon him.

(d) **"employer",** in relation to an establishment, means any person who employs workers therein, and includes an heir, guardian, or successor in assignment or legal representative of such person; and any person vested with written authority to act in a managerial, or administrative, or supervisory capacity for the establishment.

(e) **"working hour"** means the time during which the workers employed are at the disposal of the employer excluding any interval allowed for rest and meals; **"wages"** means all remuneration, expressed in terms of money or capable of being so expressed, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a worker in respect of his employment or of work done in such employment, and includes any other additional remuneration of the nature aforesaid which would be so payable, but does not include the value of any house accommodation, light, water, medical facilities or other amenity or the value of any service excluded by general or special order by the Government;

► Question

Who is a worker, and who is an employer?

► Answer:

The definition of "worker" under section 2(65) of the Bangladesh Labour Act, 2006 (BLA) has been amended by the Bangladesh Labour (Amendment) Act, 2026, which came into force on 10 April 2026. To properly understand the scope of this revised definition, it is also necessary to consider the definition of "employer" as provided under section 2(49) of the Act. According to the amended section 2(65), "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, except appointed under section 2(49(b).

Section 2(49)(b), on the other hand, defines an employer to include a managerial or chief executive officer, manager, or any person who is charged in writing with administrative or supervisory responsibilities of the establishment. Therefore, the exclusion from the definition of "worker" depends not merely on designation but on the existence of specific managerial, administrative, or supervisory authority.

To determine what constitutes supervisory, administrative, and managerial work in this context, reference must be made to Rules 2(1)(g) and 2(1)(j) of the Bangladesh Labour Rules, 2015 (BLR). These provisions have been the main reference point for the nature and scope of such responsibilities. However, since sections 2(49) and 2(65) of the BLA have now been amended, the Rules must be read subject to the amended Act; where the Rules are unclear or inconsistent with the amended Act, the Act prevails. A combined reading of these Rules reveals three essential criteria: **first**, the employer or management must confer authority on the person; **second,** such authority must be provided in writing; and **third**, the person must actually perform one or more of the functions specified in Rules 2(1)(g) and 2(1)(j) pursuant to that authority. Only when all these conditions are fulfilled can a person be treated as a manager, administrative officer, or supervisor.

Accordingly, an employee holding a supervisory or managerial title but lacking the requisite written authority and functional responsibilities will not fall outside the scope of the definition of "worker." In the absence of satisfaction of the above three criteria, such an employee cannot be regarded as a manager, administrative officer, or supervisor for the purposes of the Act.

This interpretation is supported by judicial precedent. In Dosta Textile Mills V. S.B. Nath, 40 DLR (AD) (1988) 45 (50) (para 7): 1988 BLD (AD) 66: BCR 1987 (AD) 454, the Appellate Division held that mere designation is not sufficient to indicate whether a person is a 'worker' or an 'employer', but it is the nature of the work, showing the extent of his authority, which determines whether he is a worker or an employer.

While the labour laws provide for a written document outlining duties and responsibilities of a manager, administrative officer, or supervisor, most factories and establishments have not followed this practice since the provision was introduced in 2015. Nevertheless, gradual implementation at the factory level is currently underway.

In conclusion, a person may be excluded from the definition of a "worker" only if he or she possesses and exercises the authority contemplated under Rules 2(1)(g) and 2(1)(j) of the BLR. Accordingly, where an individual is lawfully vested with and exercises administrative, managerial, or supervisory functions in accordance with those provisions, he or she will be regarded as an employer rather than a worker for the purposes of the laws.

CHAPTER 02



CONDITIONS OF EMPLOYMENT, MODE OF SEPARATION OF EMPLOYMENT AND CALCULATION OF SERVICE BENEFITS

► Question:

What do you mean by Service Rules? Can an employer introduce Service Rules for the workers of his establishment? If so, how the employer can frame the rules? Who is the authority to approve the Rules? Can an employer frame rules according to his desire? What are the basic provisions which may be incorporated in the Service Rules?

► Answer:

Service Rules are those rules that seek to regulate the condition of service of workers employed in shops, commercial and industrial establishments, the extent and scope of applicability of which have been prescribed under Chapter II of the BLA. In short Service Rules means the rules that deal with conditions of service and employment.

Can an employer introduce Service Rules for the workers of his establishment?

Yes, an employer can introduce Service Rules or Service Rules for his workers in accordance with the proviso of section 3 of the BLA. The law has authorized an employer to frame its rules regulating employment of workers, but no such rules shall be less favorable to any worker than the benefits provided in this Act.

If so, how the employer can frame the rules?

Any employer desirous of having its own service rules for the workers is to submit the draft rules so framed to the Inspector-General of Factories and Establishments for approval. The Inspector-General within 120 days of receipt of the rules make such order therein as he deems fit. The manner of submission of the draft rules and the procedure for the approval and amendment has been prescribed under rule 3-6 of the BLR.

Who is the authority to approve the Rules?

The Inspector-General of Factories and Establishment, appointed by the Government, is the authority to approve the Rules.

Can an employer frame rules according to his desire?

Yes, he can frame rules as he desires subject to the condition that Rules shall not be less favorable to any worker than the benefits provided in this Act and no service rules shall be put into effect except with the approval of the Inspector-General. If the Inspector General fails to pass an order within the 120 (one hundred and twenty) days, any person may, within 30 (thirty) days of the expiry of such period, or if aggrieved by an order passed by the Inspector General, within 30 (thirty) days of receipt of such order, apply to the Government for redress or, as the case may be, prefer an appeal. The Government shall dispose of such application or appeal within 45 (forty-five) days of receipt thereof, and the decision of the Government in this regard shall be deemed to be final.

Basic provisions which may be incorporated in the Service Rules

Basic subjects are mentioned under Form-1 of the BLR, such as, classification of workers and period of probation, letter of appointment and identity card, service book, entries in the service book, register of workers and supply tickets and cards, leave of all types, weekly holiday, Festival holiday, bonus, shift, stoppage of work, closure of establishment, laid-off workers, death and injury of workers, compensations, retrenchment, employment and re-employment, discharge from service, dismissal, retrenchment, termination of service, retirement, provident fund, gratuity, service compensation, employment of children, leave salary, working hours for adult, adolescent and children, certificate of service, maternity leave and benefits, insurance, certificate of fitness, payment of wages, first-aid box, and various other matters.

►Question:

A company has no service rules for the employees. The employees have been working for longtime with the same wages since appointment. The employer on his own accord increases wages to employees who are favorite to him, depriving the others. Can the employer run his company in such manner? What is the obligation of the employer?

►Answer:

A company does not have approved service rules, but the company is obliged to follow the provision of the BLA and its Rules. The provisions envisaged under section 3(1) that in every establishment, employment of workers and other matters incidental thereto shall be regulated in accordance with the provision of Chapter II of the BLA.

The employer on his own accord increases wages to employees who are favorite to him. It means the employer deprived other employees. It was a discrimination against workers. In the matter section 345 clearly says "in determining wages or fixing the minimum rate of wages for any worker, the principle of equal wages for male, female and handicapped workers for work of equal nature or standard or value shall be followed; and no discrimination shall be made in this respect on the ground of being male-female-handicapped."

Besides, section 195(1)(c) says that "discriminate against any worker in regard to any employment, promotion, conditions of employment or working conditions on the ground that such worker is, or is not, a member or officer of a trade union." This attitude of the employer is considered to the unfair labour practice on the part of employer is a punishable offence under section 291 of the BLA.

Workers who are deprived of the right envisaged under BLA may file a case to the labour court under section 307 against the employer to redress his grievance.

►Question:

What is the difference between direct casual employment and engagement of casual workers through contractor in a factory? What is the definition of casual nature of work?

►Answer:

The BLA visualized under section 4 of it that workers employed in any establishment shall be classified in any of the following classes according to the nature and condition of work, namely -

(a) apprentice;

(b) substitute;

(c) casual;

(d) temporary

(e) probationer;

(f) permanent; and

(g) seasonal worker.

Casual employment means the employer employs a person directly by him for the work of casual nature which is of occasional or unforeseen. On the other, engagement of casual workers through contractor means the contractor is advised to employ his workers for doing casual or unforeseen works of the employer. That is such worker is employed by the employer directly and the other is employed by a contractor.

The casual worker is defined under section 4(4) of the BLA. It says that a worker may be called a casual worker if he is employed on ad-hoc basis in an establishment for work of a casual nature. Casual nature means the work which is of occasional or of unforeseen work. The first category worker is the worker of the employer. Another one is the worker of the contractor as per section 3A(3) of the BLA.

► **Question:**

Whether a person employed in a factory or office for part time work on regular basis is entitled to the benefits provided under the BLA.

► **Answer:**

Section 4 of the BLA provides that workers employed in any establishment shall be classified in any of the seven categories according to the nature and condition of work, viz. apprentice, substitute, casual, temporary, probationer, permanent and seasonal worker. The definitions of each of the categories have been clearly spelled out under sub-sections (2), (3), (4), (5), (6), (7) and (11) of section 4. As there is no mention of any part-time worker under the Act, it is to be construed that a worker employed for part-time work does not come under the scope of the BLA.

The definition of worker as given under section 2(65) excludes the part-time worker. According to section 5 the employer is obliged to give a letter of employment, and every such employed worker shall be provided an identity card with photograph, but part-time worker is neither provided appointment letter nor a card or ticket. Besides, since the provisions of the BLA regarding hours of work, overtime work, interval for rest, weekly holiday etc. do not apply to the part-time workers, they are not entitled to financial benefits envisaged in the statute.

However, in absence of any provision under the existing law, it would be desirable to have conditions of employment clearly specified under the employment contract in writing before appointing any person on part-time basis.

► **Question:**

What are the financial benefits available to a worker in the event of voluntary resignation and discharge from service?

► **Answer:**

According to section 27 of the BLA, a permanent worker may resign from his service by giving the employer sixty days' notice in writing. Section 27(3) says that where a worker intends to resign from his service without any notice, he may do so by paying an amount of money equivalent to the wages for the notice period to the employer in lieu of the notice.

Where a permanent worker resigns from his service under section 27 of the BLA he shall be paid by the employer compensation at the rate of 7 days' wages for every completed year of service, if he has completed three years of continuous service. He shall be paid compensation at the rate of 15 days' wages for every completed year of service, if he has completed more than 3 years but less than 10 years. He shall be paid compensation at the rate of 30 days' wages for every completed year of service, if he has completed 10 years of continuous service or more, or gratuity, if payable, whichever is higher, in addition to any other benefit to which he may be entitled under this Act.

According to the section 22 of BLA, a worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health certified by a registered medical practitioner. If a worker who has completed not less than one year of continuous service is so discharged, he shall be paid by the employer compensation at the rate of 30 days wages for every completed year of service, or gratuity, if payable, whichever is higher.

In both cases, the worker will be entitled to the benefits of Provident Fund, if any. Provision as envisaged under section 29 of the BLA that no worker, who is a member of the Provident Fund, shall be deprived due to retrenchment, discharge, dismissal, retirement, removal or termination of service of the benefit of the P.F. including the employer's contribution thereto, if he is entitled to it under the rule 263 of the BLR. In addition to the above benefits and compensation, the worker will be entitled to wages (gross) for the annual leave 40 or 60 days as envisaged under section 11 and 117 of the BLA.

►Question:

One office employee murdered a local person on his personal conflict and accordingly he was arrested and sent to jail. As he was arrested and sent to jail, he could not attend office. His absence from duty dislocated company's normal work. Under the circumstances, what would be the legal action to be taken by the employer?

►Answer:

The provision of law as envisaged under section 27(3A) of the BLA, may be applied in such case. The employer will issue notice to the incumbent to explain the reason of his absent and to resume the duties. If the employee fails to resume duties or explain the reason of absent within the specified time, the employer shall give him again 7 days' time for self-defense and in-spite of this if such worker does not defend himself or resume work, the worker shall be deemed to be resigned from service from the day of absent.

The employer cannot wait for unending time for his resumption of work. The employer should release him from employment without further consideration. The employer may terminate the services of the employee, or the employer should act upon acceding to the provision of section 27(3A) of the Act.

►Question:

During the period of first 45 days of lay-off, a three-day Government holidays or festival holidays with pay intervened. Now, whether the laid-off worker shall be entitled to full wages or lay-off compensation for those three days?

►Answer:

There are two types of holidays. One is the Government holiday, and the other is the festival holiday. The Government holidays may not be necessarily festival holidays and so, unless the Government order of holidays specifically mentions that it will be applicable for all, the employer is at liberty to declare the festival holidays.

On the other, if the Government holiday is also a festival holiday of that company the matter may be otherwise. In case of festival holiday, the wages of the workers shall be paid as per provision of law. Section 118 of the BLA envisages that– "every worker shall be allowed in a calendar year 13 (thirteen) days of paid festival holiday." The festival holidays are paid holidays. Therefore, the laid off worker shall be entitled to compensation.

►Question:

What is the difference between lock-out and stoppage of work? The management of an establishment decided to close-down a portion of the business due to depressing trading condition. Whether the workers can challenge this action of the management in the Court of Law as an instance of victimization of workers?

►Answer:

Lock-out as defined in section 2(57) of the BLA means the closing of a place of employment or part of such place, or the suspension, wholly or partly, of work by an employer, or refusal, absolute or conditional, by an employer to continue to employ any number of workers employed by him, where such closing, suspension or refusal occur in connection with the industrial dispute or is intended for the purpose of compelling workers employed to accept certain terms and conditions of or affecting employment.

According to section 13 of the BLA, an employer may, in the event of an **illegal strike** by any section or department of any establishment, close-down either wholly or partly such section or department and the workers participated in the illegal strike shall not be paid any wages for such closure.

Concerning stoppage of work section 12 of the BLA empowers the employer to stop any section or sections of the establishment, wholly or partly in the event of fire, catastrophe, breakdown of machinery, stoppage of power supply, epidemics, civil commotion or any other cause beyond his control for such period as the cause

for such stoppage continues to exist. The other cause, though not spelled out, may mean contingencies like depressing trading condition, shortage of raw materials, accumulation of finished goods etc. The law has also empowered employer to declare lay-off and retrench workers during the period of such closure.

The point at issue is whether the workers can challenge management's action in closing-down a factory in the court of law as an instance of victimization. According to section 33 of the Act, any individual worker including a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment who has a grievance in respect of any matter covered under this Act and intends to seek redress thereof shall submit grievance petition to his employer for justice, failing which the worker concerned can seek redress in the court of law.

Again, according to section 213 of the BLA any collective bargaining agent, trade union or worker or any employer may apply to the labour court for enforcement of any right guaranteed or secured to it or him by or under this Act or any award or settlement. In view of the above legal provisions there is no bar for the workers to challenge the action of the management in the court of law to seek legal redress against any victimization.

► **Question:**

The management of an industrial establishment closed operation according to the provision of law due to shortage of working capital. Whether the closure conforms to the requirement of the law?

► **Answer:**

The employer of an establishment reserves the right to close operation of his establishment wholly or partly for such period as the cause of such stoppage continues to exist in accordance with the provision of section 12 of the BLA.

The section 12 of the Act specifically mentions the causes of closure of operation, such fire, catastrophe, breakdown of machinery, stoppage of power supply, epidemics, civil commotion or any other cause beyond his control. When such causes exist, the employer may declare his establishment stoppage of operation. The section does not mention the cause of shortage of **working capital.** It does not mean that the employer cannot declare stoppage of work. He can use the cause as mentioned **"beyond his control"**. The situation is as such that it is beyond his control, he may stop any section or sections of his establishment.

► **Question:**

What are the grounds under which the laid-off workers shall not be entitled to get compensation?

► **Answer:**

According to the provisions as laid down under section 18 of the BLA, no compensation shall be payable to a worker who has been laid-off, if he refuses to accept on the same wages, any alternative employment not requiring any skill or previous experience in the same establishment or in any other establishment belonging to the same employer and situated in the same town or village or situated within 8 (eight) kilometres of the establishment. The worker does not present himself for work at the establishment at the appointed time during normal working hours at least once a day if so, required by the employer.

► **Question:**

A worker is involved in riotous, disorderly behavior, fire or vandalism in the factory or establishment. Are these acts of a worker considered to be misconducts? If so, what action the management can take against him? In case of dismissal from service what are the benefits the alleged worker is entitled to get?

► **Answer:**

A worker may be dismissed for his misconduct under section 23(1)(b) of the BLA. Section 23(2) says that any worker is found guilty of misconduct may, instead of being dismissed, in consideration of any extenuating circumstances, be awarded any of the following punishment, namely:

(a) removal;
(b) reduction to a lower post, grade or scale of paying for a period not exceeding one year;
(c) stoppage of promotion for a period not exceeding one year;
(d) withholding of increment for a period not exceeding one year;
(e) fine;
(f) suspension without wages or subsistence allowance for a period not exceeding seven days;
(g) censure and warning.

A worker who is dismissed or removed as a measure of punishment shall, if his continuous service is not less than one year be paid by the employer compensation at the rate of 15 days wages for every completed year of service. However, the proviso of section 23(3) says that a worker who is dismissed for theft, misappropriation, fraud or dishonesty in connection with business or property of the employer or disorderliness, riot, arson or breakage in the establishment (mentioned under clause (b) and (g)) shall not be entitled to any compensation, but in such case concerned worker shall be entitled to get other legal benefits.

From the above explanation a worker, who is involved in riotous, disorderly behaviour, fire or vandalism in the factory or establishment and is dismissed for such misconduct, shall not be entitled to get any compensation.

►**Question:**

What are the detailed procedures for holding domestic inquiry against a work charged for misconduct?

►**Answer:**

A worker, if found guilty of misconduct, may be dismissed from service under section 23 of the BLA. Alternately, in consideration of any extenuating circumstances he may be awarded any of the light punishments. Acts and omissions which constitute misconduct have been enumerated under section 23(4) of the Act. Any worker committing any of the above offences can be issued a show-cause notice, charge-sheeted, and an enquiry can be held against him, and he can be dismissed or otherwise punished if the allegation brought against him is established through the process of enquiry. The requirements of framing the charge, obtaining explanation, holding of enquiry and awarding punishment are covered under section 24 of the BLA. However, the procedure for holding domestic enquiry charged for misconduct may be dealt with as follows:

FIRST STAGE:

The first stage is the issue of a charge-sheet or a show cause notice. As soon as an act of misconduct by a worker is brought to the notice of the manager or concerned department he should, without any delay, issue a charge-sheet to the worker concerned. The misconduct for which the disciplinary action is proposed to be taken should be clearly mentioned in the letter of charge and the charge should be specific, giving the date, time, etc. of commission of the offence. The relevant section of the BLA should be quoted in framing the charges and the worker should be given not less than seven days' time to submit explanation. It should be ensured that the charge-sheet or the letter of charge has been received by the worker concerned.

SECOND STAGE:

The Second stage is the consideration of the explanation submitted by the worker concerned. The worker may either admit or refute the charges. In the case of admission of the charges, and appeal for leniency, the employer will complete the enquiry process. If, however, the charges is refuted by the worker, the explanation submitted by the worker should be scrutinized to see if the explanation offered is satisfactory. If so, further proceedings should be dropped. Otherwise, a formal enquiry should be instituted by forming a committee with equal number of representatives. There may be cases when the worker concerned fails or refuses to submit explanation. In both the cases the employer should proceed with the formal enquiry.

THIRD STAGE:

TThe third stage is the issuance of a notice for the enquiry to the worker. Under this stage the employer is required to form an enquiry committee. As per requirement of section 24(1)(d) of the Act, a committee should be formed consisting of equal number of representatives from employer and worker. The employer should very carefully includes the members of the workers' representatives in the committee. The provision relating to including representatives of workers in the committee is a critical task. However, it should be done carefully ensuring all the step by step procedures; otherwise, whole enquiry process will be void ab initio. It should be remembered that the enquiry shall be completed within sixty days from the show cause date. The notice should contain the names of the members of the enquiry committee, the date of enquiry, time, venue etc. and the relevant information.

FOURTH STAGE:

The fourth and most important step in the procedure is the actual holding of the enquiry. The principle of natural justice that no one should be punished unheard is the important point to be kept in mind and the worker should be given an opportunity of being heard and every opportunity to defend himself. All provisions as stated under sections 24 of the Act should be considered while conducting enquiry.

FIFTH STAGE:

The fifth stage is the consideration of the findings of the Enquiry Committee by the owner or the manager, empowered to decide the punishment and to make an order. It is for the authority to see and satisfy him whether the charges against the worker have been proved or not, on the evidence recorded at the enquiry. The authority in awarding punishment shall consider the previous record of the worker concerned, the gravity of the misconduct, achievement and contribution during the employment, and any other matters that may exist.

SIXTH STAGE:

The sixth and final step is the letter informing the worker of the punishment which has been decided upon by the authority. This letter should contain references to the charge-sheet, the findings of the Enquiry Committee and the punishment awarded along with the date from which the punishment would be effective.

► Question:

A worker of a factory assaulted an officer of the same factory outside the factory premises and beyond working hours. Whether the assault may be treated as an act of misconduct and the worker be punished after proper enquiry?

► Answer:

BLA has authorized an employer to dismiss an employee or a worker in case of violation of the provision of section 23(4) of the Act. Dismissal can be affected in the event of conviction for any criminal offence. In such case no prior notice or enquiry is required. That is, it would not be necessary to observe the formalities of framing the charges, formation of a committee, holding of an enquiry, submission of an enquiry report etc.

But in case of misconduct under section 24 enquiry is essential for dismissing a worker. Assaulting a supervision or any other officer in the establishment may be attributed to breaking of service discipline or breaching of any law or rule or regulation applicable to the establishment as enunciated under section 23(4) (f) and (i) of the Act. The assaulting may be treated as an act of subversive of service discipline. But there is no specific provision of law relating to assault outside the factory premises. Of course, but for the sake of maintaining discipline, action against such worker is needed.

►Question:

In a disciplinary case an enquiry committee has been formed with equal number of members from the employers and workers. The case was complicated. The enquiry committee desired more times to complete the enquiry. The alleged worker was under suspension. Can the worker be kept under suspension till the enquiry is completed? Can the enquiry committee continue enquiry beyond sixty days?

►Answer:

In a disciplinary case enquiry committee is required to be formed to establish whether there have been misconducts on the part of the accused. As required under section 24(1)(d) of the BLA, enquiry committee shall be formed consisting of equal number of representatives of owners and workers.

In the matter the Enquiry Committee cannot be allowed more than sixty days to complete the enquiry. The provision of law as envisaged under proviso of section 24(1)(d) says that such enquiry shall be completed within sixty days. However, 60 days shall be calculated from the day of issuing show cause notice.

Further, the accused person may be suspended pending enquiry. The provision of law says that a worker charged for misconduct may be suspended pending enquiry into the charges against him and unless the matter is pending before any court, the period of such suspension shall not exceed sixty days as mentioned under section 24(2) of the BLA.

Therefore, the worker charged for misconduct cannot be kept under suspension for more than sixty days. Likewise, the enquiry committee must complete the enquiry within sixty days, otherwise the whole process shall be void ab initio.

►Question:

A worker against whom complaint was lodged with the Police by the management as he was reportedly involved in a theft of company's property was arrested by the Police. After a few days he was released on bail and subsequently acquitted of the charge. Whether the worker can claim wages for the period he was absent because the worker was under lock-up?

►Answer:

Theft in connection with employer's business or property has been enumerated as an act of misconduct under section 23(4)(b) of the BLA and accordingly the management informed the police. Subsequently, the police arrested the worker, against whom charges initiated. According to the provision of law, the employer was required to initiate enquiry proceeding into the charge, but he failed to do so. Normally, a worker charged with an act of misconduct may be dismissed from service or punished otherwise on compliance with the formalities of enquiry. He could suspend the defaulting worker pending enquiry into the charges. However, the employer did not take any action, perhaps due to his lack of knowledge or otherwise.

Provisions of law have not debarred an employer to proceed departmentally against a worker for which the employer filed a criminal case. In such a situation the management may dismiss a worker or punish him otherwise after complying with the prescribed formalities, though the criminal case might remain pending for disposal in the Court. This interpretation is supported by the judicial decisions, according to which the pendency of a case against a worker for an act of misconduct in the court does not oust the jurisdiction of the employer to take departmental action adhering to the procedure of punishment prescribed under Section 24 of the BLA.

In the instant case the court declared the accused free of charges and acquitted him. In the matter the provision of law is quite clear. Under Section 23(5) of the BLA it is envisaged that if a worker who is dismissed from service for the conviction of criminal charge, is acquitted on an appeal, he will be reinstated to his original past or to any new post suitable to him, and if such reinstatement is not possible, he shall be paid compensation at the rate payable to a person on discharge (30 days wages for every completed year of services) excluding the compensation already paid to him for his dismissal.

Here, if the employer desires to reinstate the worker to his original post, there is no problem, but if the employer does not like to retain him in service, he may release him by paying him the service compensation like that of a discharged worker. That is, the worker shall be paid by the employer compensation at the rate of 30 days wages for every completed year of service, or gratuity, if payable, whichever is higher in accordance with the provision of section 22(2) of the BLA, if the worker has completed not less than one year of continuous service. But the worker cannot claim the wages for the period he was absent because the worker was under lock-up. The period may be adjusted against his leave.

►Question:

Whether demotion of a worker or stoppage of his yearly increment for unsatisfactory performance is permissible under the provision of labour law?

►Answer:

Answer:

The questions relate to the provision of section 23 concerning punishment for conviction or misconduct. Under section 23(2) of the BLA, any worker found guilty of misconduct may, instead of being dismissed, in consideration of any extenuating circumstances, be award any of the following punishment, namely:

a) removal;

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

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

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

e) fine;

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

g) censure and warning.

But "unsatisfactory performance" has not been mentioned under section 23(4) where the acts and omissions treated as misconduct are listed. The section 23(4)(h) concerning "habitual negligence of work" may be considered to cover "unsatisfactory performance" and therefore, the employer may be permitted, after following the procedure under section 24, to impose demotion of a worker or stoppage of his yearly increment.

►Question:

In a theft case, an employer lodged a First Information Report (F.I.R) with a local police station against a worker. Police arrested him and sent him to court. On hearing the Court convicted him for jail of one week. Under the circumstances can the employer issue a charge-sheet against the worker for enquiry or he can dismiss him from service under section 23? Further in such case whether the worker can claim compensation from the employer?

►Answer:

A worker of an establishment was involved in a theft case, and the employer made an F.I.R. (First Information Report) to the local police station and the local police station arrested him and sent him to Court. On hearing the Court convicted him for jail of one week.

In the instant case the employer should prefer to dismiss the worker without prior notice or pay in lieu thereof when the worker is convicted for a criminal offence under section 23(1)(a) of the Act. The question of charge-sheet does not arise as the worker is convicted by a Court for criminal offence.

►Question:

An employer desires to dismiss one of his workers without conducting enquiry into the charges. Can it be possible? If yes how? If not, what should be done? Some legal advisers advised terminating his services instead of dismissal. The employer agreed to do so. What are the benefits to be given to such worker in case of termination of services?

►Answer:

According to the question, the desire of the employer is to dismiss one of his workers for committing misconduct without conducting enquiry into the charges. Employer may dismiss without conducting enquiry only in case of conviction for criminal offence by any competent Court. Besides this, no worker can be dismissed without conducting enquiry into the charges.

From the question it is known that an advisers advised terminating the services of the worker without mentioning the misconduct committed by the worker, if the employer intends to get rid of the worker. The employer agreed to do so. Now the question is what are the benefits require to be given to the terminated worker? The employer is obliged to the follow the provisions of section 26 of the BLA and pay the followings to the worker:

(1) 120 days' notice to the worker as he is a permanent and monthly rated worker. If the employer intends without issuing notice, he shall pay the worker wages in lieu of the notice period.

(2) the employer shall pay the compensation under section 26(4) at the rate of 30 days' wages for every completed year of service or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act.

(3) he is entitled to get the money deposited in his account of the provident fund including the employer's contribution subject to the condition that he had completed 2 years of service, or he was member of the provident fund for 1 year.

(4) the worker is entitled to encash his earned or annual leave upto 40 days or 60 days.

(5) share of the Participation Fund according to the provision of section 242(1), if any.

(6) if the worker is a female worker, she will not be deprived of maternity benefits subject to the condition mentioned in section 50 of the BLA.

►Question:

Management of an establishment wants to shift his factory from Baridhara to Ashulia on his purchased land. 1500 workers are engaged in the factory. Fifty percent of the workers expressed their opinion to go the new premises and demanded one month's basic salary as extra bonus. Other workers expressed unwillingness to join in new premises. They demanded retrenchment benefit.

►Answer:

A new provision under section 28A has been framed in the matter. The provision says that notwithstanding anything contained in this chapter, the Government may determine the relation between employer and worker in prescribed rules in the case of sudden natural disaster or disaster beyond human control or transfer of any industry on emergency or stoppage of manufacturing process of any industry permanently.

The rules have been framed in 2015. Clear provisions have been envisaged under rule 32(b) of the BLR. In the case of transfer of a factory within 40 kilometers from the existing place the workers may be separated under section 27 and benefits shall be given if the workers express unwillingness to go to the new place of shift. Further in case transfer of the factory beyond 40 kilometers from the existing place of the factory, the workers may be retrenched under section 20 of the BLA, and benefits shall be given to them.

► **Question:**

One worker absented from service without notice or permission for ten days. Employer issued a notice to explain the reasons within ten days and resume work. Even then the worker did not reply. The employer again issued a notice to explain within 7 days to defend him. But he neither explained his position nor he turned up. Just before the issuance of order for removal from service, he came and desired to join his service. Under the circumstances should the employer allow him to join or remove him from service? If removed, whether the worker is entitled to service compensation? If so or if not under which provision of Law action will be taken?

► **Answer:**

According to the provision of law as envisaged under section 27(3A) of the BLA in such circumstances, the employer gave 7 days' time to the concerned worker for self-defense, who did not explain in writing or did not resume work, the concerned worker in such circumstances shall be deemed to be resigned from employment from the day of such absence.

The employer correctly acted upon the provision of law. But just before the issuance of order for resignation from service, the concerned worker turned up and expressed his desire to resume his work. This is a very critical situation before the employer as to whether the employer will allow him to join or issue the resignation order from service. The employer has authority to allow him to join in service or reject him.

The last question, whether the concerned worker, if resigned, is entitled to service compensation? Yes, the worker, who is resigned from service, is entitled to service compensation under section 27.

► **Question:**

An employee submits resignation letter with immediate effect. The employer accepts the resignation letter but with effect from 60 days from the date of the letter. The employee does not attend office since submission of the letter. Can the employer consider these 60 days as unauthorized leave and adjust the same with his annual leave when the employee returns to collect his dues?

► **Answer:**

An employee is legally empowered to submit his resignation from service under section 27 of the BLA, but he is required to give sixty days' notice to the employer in writing. It means after the expiry of notice period, i.e., sixty days the resignation will be effective. Further, he may resign from service without giving notice of 60 days to the employer. In such case he is required to pay an amount of money equivalent to the wages for the notice period to the employer under section 27(3) of the Act.

There are some obligations on the part of the employer. Where a permanent worker resigns from service, he shall be paid compensation by the employer at the rate of 7 days wages for every completed year of service, if he has completed 3 years of continuous service. He shall be paid compensation by the employer at the rate of 15 days wages for every completed year of service, if he has completed more than 3 years but less than 10 years of continuous service. The employer is required to pay compensation to the worker at the rate of 30 days wages for every completed year of service if he has completed 10 years of continuous service or more. When the service of the worker is less than 3 years, he will not be entitled to get any compensation.

Now, whether the 60 days of notice period can be considered an unauthorized leave. In such case therein no such scope under the law, that is, it cannot be considered unauthorized leave. The next question is whether the 60 days can be adjusted from the annual leave. In such case there is no scope for adjustment of leave. Besides, in such case of adjustment the worker who resigned from service would be deprived of wages. Because payment of wages for the unused leave is given at the rate he is entitled to the payment of wages, i.e., the gross wages, whereas for the purpose of calculation of notice pay under the Act, the wages shall mean the last basic wages and dearness allowance.

►Question:

A worker was charge-sheeted for misconduct and after enquiry as per provision of law found him guilty of the charges. At this stage he submitted his resignation. Whether resignation submitted by the said worker at this stage can be acceptable?

►Answer:

A worker may be charge-sheeted when he commits any act of misconduct specified under section 23(4) of the BLA. When such worker is suspected of misconduct, he is required to be enquired following the procedure for punishment as envisaged under section 24 of the Act. When according to the procedure for punishment enquiry is followed and the enquiry committee found him guilty of the charges framed against him, the employer is entitled to dismiss the worker from service and in such case, the worker will be entitled to his wages for such period of suspension, and the subsistence allowance shall be adjusted accordingly.

At this stage the concerned worker submitted his resignation. Whether such worker's resignation can be acceptable. The employer for the interest of the organization should not accept the resignation of the worker who was found to be guilty of the charges. Such action will be an instance for other workers. The employer may act as per the report of the committee.

►Question:

What are the circumstances under which a grievance can be raised against an order of termination of service of a union executive?

►Answer:

Grievance means cause or source of grief, that is, ground of complaint. When any such situation arises, the workers then have real ground of complaint against the cause of it. In case of employment there is a procedure for making complaint under chapter II of the BLA. Detailed procedures for making complaint have been envisaged under section 33 of the BLA.

Section 33 says that any worker, including a worker who has been laid-off, retrenched, discharged, dismissed, removed, or otherwise removed from employment, who including any such worker has grievance in respect of any matter covered under this chapter (Chapter II), and intends to seek redress thereof under this section, shall send his grievance to his employer, in writing, by registered post within 30 days of being informed of the cause of such grievance. Proviso of this section says that if the appointing authority accepts the complaint or grievance directly and acknowledges the receipt thereof in writing, such complaint or grievance shall not be required to be sent by registered post.

In this situation it is obligatory on the part of the employer, within 30 days of the receipt of such grievance, to enquire into the matter, give the worker an opportunity of being heard and communicate his decision, in writing to the worker.

The provision gives opportunity to the worker to file case in the Labour Court in the matter if the employer fails to give any decision, or if the concerned worker is dissatisfied with such decision within 30 days from the last date or within 30 days from the date of the decision.

When the Labour Court receives, the complaint shall arrange hearing for both the parties, i.e., the worker and the employer, after giving notice to them and make such orders as it may deem just and proper considering the circumstances of the case.

The Labour Court may, by an order passed, amongst other reliefs, direct for reinstatement of the complainant in service, with or without arrear wages and convert the order of dismissal, removal or discharge to any minor punishment specified in section 23(2) of the BLA.

If the complainant is not satisfied by the order of the Labour Court, he may, within 30 days of the order, prefer an appeal to the Labour Appellate Tribunal and the decision of the Tribunal on such appeal shall be final.

But the question centered round the grievance concerning termination of service. The provision of law says that no complaint shall be lie against an order of termination of employment of a worker under section 26 of

the BLA. Despite this provision there are certain specific grounds under which a worker can make complaint in case of termination of services. The specific circumstances or the grounds are- (1) the terminated order is given for his trade union activities or (2) the terminated order is given with an ill motive (3) the worker concerned has been deprived of the benefits specified under section 26 of the Act.

► Question:

What is the difference between "reinstatement" and "re-employment"? Whether a worker, whose services were terminated a few years back with termination benefits and subsequently reinstated on humanitarian ground, can claim service benefits, such as, gratuity compensation for the period of absence from the date of termination till the date of reinstatement?

► Answer:

Literary meaning of "reinstatement" is re-establishment in a former post or station or condition. The term is not defined in the labour laws, but the word is very much familiar in the labour administration. The term generally means that a worker who lost his job by dint of termination, dismissal discharge, or otherwise removed, is re-established in his former post through court or otherwise.

Regarding "re-employment" there are provisions of law as envisaged under section 21. The section concerns "Re-employment of Retrenched Workers". The provision says that when any worker is retrenched and the employer desires to employ any worker within one year from the date of retrenchment, the employer by sending a notice to his last known address ask him to apply for service and if any worker by responding to such calling applies for re-employment, he will be given preference in the case of employment and if more than one such retrenched workers apply for employment, they will get preference on the basis of their seniority.

Besides, subsequent employment of a retired worker is also considered to be re-employment as stated under section 28(4) of the BLA. The provision says that appropriate authority, if thinks proper, many afterwards, employ the retiring worker under contract.

Let us see what another part of the question says. A terminated worker subsequently was re-instated in his former post on humanitarian ground. The question is whether he can claim the service benefits or compensation at the end of his service. All service benefits as per law were given to him at the time of termination of service. He was reinstated in service on humanitarian ground without considering the implication of the term reinstatement. There is, however, no provision for reinstatement of terminated worker on humanitarian ground. Here re-instatement was entirely the discretion of the management and in such case payment of benefits may also form part of the management discretion. At the time of retrenchment, he received all the benefits as per law. He cannot claim same benefits twice. He can claim the service benefits for the period after his reinstatement in service. Such worker may take shelter at the court, if he thinks that he is deprived of the benefits second time. The word "reinstatement" creates confusion here. The word "re-employment" is the proper word for managing the situation.

► Question:

Whether during the period lay-off for 45 days an employer can retrench all the laid off workers after payment of notice pay and compensation as per provisions of Law?

► Answer:

Yes, an employer can retrench all the laid off workers of his establishment after the expiry of 45 days or 15 days of lay-off or after declaring stoppage of work under section 12 of the BLA and Rule 32(a)(i) of the BLR. In case of retrenchment the employer is required to give one month's notice in writing, or the workers are paid in lieu of such notice, wages for the period of notice under section 20(2)(a). Under section 20(2)(b) a copy of the notice shall also be sent to the Chief Inspector (or any officer authorized by him) and to the collective bargaining agent (CBA) of the establishment, if any.

In addition, the worker shall be paid compensation which shall be equivalent to thirty days wages or gratuity, if any, for every completed year of service; whichever is higher under section 20(2)(c) of the BLA. Further, the

workers shall be entitled to the benefits of P.F. including employer's contribution under section 29 and Rule 263 of the BLR and leave salary (gross) under sections 11 and 117 of the BLA.

►Question:

Is there any retirement age of workers under labour law? If so, what is the retirement age? What are the benefits a worker gets when retires?

►Answer:

The retirement age of workers and employees is 60 (sixty) years in accordance with the BLA. The provision of law says that a worker employed in an establishment shall, notwithstanding anything contained elsewhere in this Chapter (Chapter II), retire from employment ipso facto on the completion of the sixty years of his age. Concerning date of birth of the worker the provision says that for the purpose of counting age of the worker under section 28 the date of birth recorded in the service book of the concerned worker shall be the conclusive proof.

A worker who retires from service on the completion of 60 years of his age under section 28 shall be paid his benefit at the rate of 30 days' wages for every completed year of service or gratuity, if any, whichever is higher, in addition to any other benefit to which he may be entitled under this Act. The provision says that the appropriate authority, if thinks proper, may afterward, employ the retiring worker under contact.

CHAPTER 03



EMPLOYMENT OF CHILD AND ADOLESCENT WORKER

►Question:

How does the Bangladesh Labour Act define a "child", an "adolescent" and an "adult"?

►Answer:

The employment of child and adolescent workers is regulated under Chapter Three of the BLA, which comprises sections from 34 to 44. Under the Bangladesh Labour Act, 2006 (BLA), workers are explicitly categorized into three distinct groups based on age to regulate their employment and protect child. The Act defines a "child" and an "adolescent" as follows:

"Child" means a person who has not completed 14th (fourteenth) years of age according to section 2(63) of the BLA.

"Adolescent" means a person who has completed fourteenth year but has not completed eighteenth year of age according to section 2(8) of the BLA.

"Adult" means a person who has completed eighteenth year of age according to section 2(36) of the BLA.

►Question:

What is the minimum legal age for employment under the BLA?

►Answer:

Under the Bangladesh Labour Act, 2006, the minimum legal age for general entry into employment is set at 14 years. This threshold aligns with the country's national legislation and its international commitments, specifically the ratification of the International Labour Organization's Minimum Age Convention (Convention 138). Individuals who have reached this turning point are legally classified as adolescents, meaning they can formally participate in the workforce under strict regulatory protections, reduced working hours, and an absolute prohibition from performing dangerous or hazardous labor.

►Question:

Are children allowed to work in any sector under the Labour Act?

►Answer:

Under the Bangladesh Labour Act, 2006, children are not allowed to work in any sector in the sense of being formally employed in regular jobs. Under the BLA, a "child" is defined as a person who has not completed 14th (fourteenth) years of age. Under the Act, employment of children in any establishment is strictly prohibited. This means children cannot be engaged in industrial work, factory jobs, commercial establishments, transport services, or any other formal sector employment. The purpose of this prohibition is to ensure protection from exploitation and to guarantee access to education and healthy development.

The section 34 of the BLA says that " No child shall be employed or permitted to work in any occupation or establishment." Therefore, under the Act, children are not allowed to work in any occupation or establishment at all, and adolescents are allowed only in limited, regulated, and non-hazardous employment under strict legal safeguards.

►Question:

What types of work are prohibited for children?

►Answer:

Under the Bangladesh Labour Act, 2006, children are prohibited from being employed in any form of work. The law adopts a strict protective approach, treating all types of employment of children in any occupation or establishment as unlawful.

In practical terms, this prohibition covers all workplaces and sectors where employment relationships exist. Children cannot be engaged in factories, industrial establishments, shops, commercial enterprises,

transport services, construction activities, or any other organized economic activity. The Act does not make a distinction between "light" or "heavy" work for children; rather, it imposes a general ban on their employment to ensure their safety, education, and development.

Therefore, under the Act, any type of employment of children in formal or economic sectors any occupation or establishment, is prohibited, regardless of the nature of the work, with the aim of protecting them from labour exploitation and harm.

► **Question:**

What is considered hazardous work under the BLA?

► **Answer:**

Under the Bangladesh Labour Act, 2006, "hazardous work" refers to any occupation or process that is likely to endanger the health, safety, or moral development of a worker, particularly adolescents. The Act does not leave this concept entirely general; instead, it empowers the Government to formally declare and publish a list of hazardous occupations and processes from time to time. Section 39(1) of the BLA says that "The Government shall, by notification in the official Gazette, declare, from time to time, a list of hazardous work." In accordance with the provisions of the Act, the Government issued a gazette notification on 05 March 2013 declaring 38 sectors as "hazardous work" and subsequently added five more sectors to that list in 2022.

In substance, hazardous work includes activities that expose workers to dangerous machinery, toxic chemicals, excessive heat, dust, fumes, or other harmful physical or environmental conditions. It also covers work that involves heavy physical labour beyond the capacity of young workers, as well as tasks carried out in unsafe or high-risk environments such as underground work, construction sites with significant risk, or industrial processes involving explosive or highly flammable materials.

CHAPTER 04



MATERNITY BENEFITS AND ITS CALCULATION

► Question:

A female worker dies at the time of delivery of her child in a hospital. There was none to undertake the care of the child. One hospital nurse took the child to take care. The worker before her death did not nominate anybody in the matter. Who is legally entitled to receive the benefit of maternity?

► Answer:

The diseased should have some relatives at the time of death, such as husband, son, daughter, brother, sister, father, mother etc. but in the instant case there was none to look after the newborn child. The female worker died just after her delivery of a child in a hospital, but there was none to take care of the child. One hospital nurse voluntarily offered herself to take care of the child. Now, the question is who the persons are entitled to take the maternity benefits.

In the matter there is a specific provision of law under the BLA. The provision of law as envisaged under section 49 of the BLA says if a woman entitled to maternity benefit dies at the time of her delivery or during the next period of 60 days, the employer shall pay the amount of maternity benefit due, if the newborn child survives her, to the person who undertakes the care of the child. The legal provision on this point is quite clear.

► Question:

A female executive has certain power of exercising the responsibility of employer in a factory. Whether such woman executive is entitled to maternity benefit under Chapter Four of the BLA?

► Answer:

According to the provisions as envisaged under section 46 of the BLA every female worker employed in an establishment shall be entitled to and her employer shall be liable for, the payment of maternity benefit in respect of the period of 60 days preceding the expected day of her delivery and 60 days immediately following day of her delivery. But a female worker shall not be entitled to such maternity benefit unless she has worked under the employer for a period of not less than six months immediately preceding the day of her delivery.

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

Concerning amount of maternity benefit the provision says as envisaged under section 48(2) of the BLA. The section says to calculate the average daily wages, the last fixed monthly wages of a female worker concerned shall be divided by 26 (twenty-six). In this case, the female executive is also entitled to payment of maternity benefits.

► Question:

An employer employed a woman during the 60 days immediately preceding the day of her delivery. One day the woman worker during working hour in the factory fell on the floor and delivered a child. However, she was immediately taken to the clinic of the factory and provided medical aids. The CBA union protested the action of employer and filed case in the Labour Court. What would be possible verdict of the case?

► Answer:

The provision of the BLA prohibits employment of an women during the 60 days immediately following the day of her delivery as envisaged under section 45 of the BLA, Section 46 of the Act says that any women worker shall be entitled to maternity benefit from her employer for the period of 60 days preceding the expected day of her delivery and 60 days immediately following the day of her delivery, and her employer shall be under legal obligation to give her this benefit.

From the abo ve provisions preceding the day of her delivery such woman worker is entitled to a period of 60 days leave. The employer, instead of granting leave, engaged her in work. This action of the employer is a violation of the provision of law and is a punishable offence under section 286. Not only that if a women worker does any work for cash or kind during the period when she has been permitted by her employer to absent herself under the provisions of Chapter IV, she shall be punished with fine which may extend to 1,000 (one thousand) taka.

The CBA union protested the action of the employer and filed case in the Labour Court. Concerning possible verdict of the court, it may be said that the employer may be punished according to the provision of law but if the employer put an argument that the woman worker was a regular employee of the establishment that she did not give notice, either orally or in writing, to the employer that she expected to be confined within 60 days next following. Had the notice was served, the employer could have granted leave for a period of 60 days and would not have allowed her to work. If the contention is proved by witnesses, the court may exonerate the employer.

CHAPTER 05



REPORTING SYSTEM OF OSH AND OCCUPATIONAL ACCIDENT

►Question:

In every establishment there shall be provided first-aid boxes. What are the contents the box should be equipped with? Under whose custody the first-aid box should remain.

►Answer:

According to the provision of law as mentioned under section 89 of the BLA that there shall, in every establishment be provided, to be readily accessible during all working hours first-aid boxes or cupboards equipped with the contents prescribed by rules. The provision further says that the number of such boxes or cupboards shall not be less than one for every hundred fifty workers ordinarily employed in the establishment.

The contents with which the boxes shall be equipped are prescribed by rules as envisaged under rule 76 of the BLR. The first-aid box or cupboard shall be clearly worked with Red Crescent or Red Cross symbol.

Further, a notice shall be affixed in every workroom stating the name of such person and such person shall wear a badge to facilitate identification, as required under section 89(4) of the BLA.

►Question:

There is an establishment situated in the district of Gazipur. The establishment has several units. One of the units is established in the nearby district of Mymensingh. The distance between the establishment and the unit is one kilometer. Can an Inspector post at Gazipur inspect the unit at Mymensingh?

►Answer:

The factory inspectors are empowered to inspect the factories concerning implementation of legal provision within their territorial jurisdiction. It is not desirable that the factory inspectors go beyond their territorial jurisdiction. It would be considered violation of the notifications of the Government or of order of the Inspector-General of Factories and Establishments, and as such he may face questions from the authorities for legal action.

According to the provisions, as envisaged under section 318(1) the Government appoints an Inspector-General, Deputy Inspector-General, Assistant Inspector-General, Inspectors, for the purpose of the BLA.

Similarly, the Inspector-General reserves the powers to direct that all or any of his powers and function may also be exercisable by any Deputy Inspector-General, Assistant Inspector-General, or Inspectors under section 318(5) of the Act.

Further, the powers and responsibilities of the Inspector-General, Deputy Inspector- General, Assistant Inspector-General, and Inspectors, have been envisaged under section 319 of the Act where territorial jurisdiction is mentioned. It means Inspectors are permitted exercise their duties as mentioned under section 319 within their respective jurisdiction.

Therefore, an inspector posted at Gazipur cannot inspect the unit at Mymensingh, because Mymensingh is beyond his jurisdiction.

►Question:

Labour Inspector of the Government inspected a factory and advised the employers to present certain documents within a specified period concerning the factory. He also sent reminders, but the employers remained engaged in some other important works for which they could not respond. The inspector filed case in the Labour Court. In this case the employers also failed to respond to call of the court. The L.C. issued warrant and directed the employers by names to present themselves before the court on certain date. What should the employers do under such circumstances?

►Answer:

The inspectors are employed to see whether provisions of labour law are being implemented in factories and establishments. The inspectors are empowered to enter, at any reasonable time, to inspect and examine the manufacturing process and documents of a factory or establishment according to the provision envisaged under section 319 of the BLA. He can call for any document or register etc and seize such documents. So, the inspector inspected a factory and advised the employer to present certain documents to him. But the concerned employers failed to comply with the notice. The inspector reserves the right to lodge complaints to the Labour Court against any person regarding commission of any offence under the BLA or Rules made thereunder as envisaged under section 319(5) of the Act.

Due to failure to present documents etc., the inspector filed case in the Labour Court. The Labour Court is empowered to enforce the attendance of any person and compel production of any document in the Court according to the provision of section 216 of the BLA. The concern employer violated the court's order. That is, the employer failed to respond to the call of the Court. The Court then issued warrant and directed the employers by name to present them before the Court.

The case was very serious and there was likelihood of taking the employers under custody. That was why the employers were afraid of being arrest. Under the circumstances, the employers were required to present themselves before the Court to the date and time as directed and surrender to the Court and seek mercy for not attending the Court. Avoiding attendance to the Court would be further violation. Before attending the Court, the employer should have prepared all the documents called by the inspector. In this way the case may be handled.

Further, employer was required to employ very senior legal practitioner or advocate for handling the case, because senior advocates have expertise on the legal issues. This is another technique of handling the case. Ignoring the advice of Labour Inspector or non-compliance of court's order is suicidal and prejudicial to the employer's own interest.

► Question:

Department of Inspection for Factories and Establishment advised an industry to get his industry registered or renewed as per section 326 of the BLA and rule 354 of the BLR. Whether a showroom under the industry where articles are displayed for publicity and sale, comes under registration?

►Answer:

The provisions concerning registration of a factory, shop, etc. have been envisaged under section 326 of the BLA. The subject matter has been illustrated under Rule 354 of the BLR. Under this section registration and licensing have been clearly mentioned concerning factories, industrial establishments, commercial establishments, commercial banks and insurance company, shops and contracting organizations. The Rule advises for registration and licensing to the employers and apply to the Inspector General of Factories and establishments according to the form 77 (in-duplicate). For the existing or under production establishments, application shall be submitted within 6 (six) months from the date of enforcement of the Rules, but in case of the establishment established after the enforcement of the Rules, application shall be submitted at least within 30 (thirty) days from the date of manufacturing or operation.

The question now is whether a showroom, where articles are displayed for publicity and sale, is subject to the requirement of registration or licensing. A showroom falls within the meaning of a "shop" and, accordingly, is required to be registered or licensed under Rule 354 of the Bangladesh Labour Rules, 2015.

CHAPTER 06



WORKING HOUR, OVERTIME ALLOWANCE AND ITS CALCULATION

► Question:

An employer wants to run his factory five days in a week due to shortage of raw materials. The workers demand six days of work in a week. This is an industrial dispute that needs to be resolved immediately.

► Answer:

This type of dispute normally is not raised but the circumstances compelled the employer to run the factory for five days. The demand of the workers to run the factory for six days was reasonable. This is an industrial dispute. It needs resolved internally/bipartitely. The legal position concerning weekly hours as envisaged under section 103 that an adult worker is required to work 6 days in each week and one day holiday in a week in case of factory. Concerning weekly working hours, as envisaged under section 102 of the BLA that an adult worker is ordinarily required to work for 48 hours in any week, i.e., 8 hours x 6 days = 48 hours.

Here, if the worker works for 5 days in a week, means he is deprived of some facilities for one day. So, he does not desire it. The employer is in critical condition because of shortage of raw materials. Employers reserve the right to stop of work on certain circumstances according to the provisions as mentioned under section 12 of the BLA. That is the wages of the workers will considerably be reduced if the workers are laid-off, and on the other the employer will suffer from loss of production if the factory is declared laid-off. Therefore, the employer considers it to run the factory for five days a week. Further, the employer, of course, reserves the right to retrench workers giving them the benefits of 30 days' wages, or gratuity for every completed year of service, whichever is higher, but this measure will make the workers unemployed and on the other the employer must pay a huge amount of money for compensation in lieu of complete stoppage of production.

Under the circumstances, the employer proposes for five days work in a week instead of six days. However, the dispute between the employer and the workers needs to be solved. Here, the role of human resources manager or officers in very crucial in resolving the issue. In such case, employer may take any actions, like declare lay-off or retrench the workers or sitting with the workers' representatives. In this regard, to make workers understand the actual situation along with the pros and cons of the issue and resolve the issue through negotiation will be the best solution.

► Question:

What are the provisions for overtime in a factory? Whether a worker can refuse to do overtime work? If refuses can the employer take action against him?

► Answer:

Weekly working hours of an adult worker in an establishment to be fixed by the employer are not to exceed 48 hours in a week as envisaged under section 102(1) of the BLA and the daily working hours are not to exceed 8 hours in any day. The employer may, however, require an adult worker to do overtime work subject to limitation of 60 hours in any week and 56 hours per week in any year on an average. It means that in an establishment where working hours have been fixed at 48 hours, the employer may require a worker to do overtime work for 10 hours every week vide section 105 of the BLA. The daily working hours including overtime work should not, however, exceed 10 hours in any day vide section 105 of the Act.

The daily working hour may be extended beyond 10 hours subject to getting exemption from the Ministry of Labour and Employment under Section 324 of the BLA. If the working hours of an adult worker exceed 8 hours in any day, he is to be given overtime allowance. The allowance is to be calculated in the manner as envisaged in section 108. Where a worker works on any day or week for more than 8 hours, he shall, in respect of overtime work, be entitled to allowance at the rate of twice his ordinary rate of basic wage and dearness allowance and ad-hoc or interim pay, if any. The consent of such worker must be taken in this regard, and he shall be informed at least two hours before starting the overtime period as envisaged under Rule 99 of the BLR

A directive or an order given to a worker by the manager or a duly authorized officer to do overtime work is to be treated as a reasonable and lawful order. A worker receiving such an order or directive is to comply with

it if he has no genuine reason. He may present his difficulty, if any, to the management and in consideration of the difficulty, management may not press the worker for doing overtime work. But if the ground appears to be frivolous and a lame excuse, management may reject the same and direct the worker to do the work. Refusal by the worker to carry out the order may be treated as disobedience to lawful and reasonable order which is an act of misconduct within the meaning of section 23(4)(a) of the BLA, and disciplinary proceedings may be initiated against the worker.

► **Question:**

Manager of a factory revised the working hours of the factory at a short notice under compelling circumstances. But workers defied the notice and continued to work according to the previous arrangement. What action can management take against the workers?

► **Answer:**

An employer or occupier is legally competent to fix working hour of an establishment unilaterally by adhering to the relevant provisions of the BLA which are in sections 100, 101 & 102. The period of working is required to be so arranged that it should not ordinarily exceed 8 hours in a day as per section 100 of the Act. Provided that subject to the provisions of section 108, any such worker may work in an establishment not exceeding ten hours in any day. Section 108 concerns extra-allowance for overtime. In respect of overtime work the worker shall be entitled to allowance at the rate of twice his ordinary rate of basic wage and dearness allowance and ad-hoc or interim pay, if any.

An employer may be required to change the system of work under compelling circumstances. Whenever a change becomes imperative, revised notice is to be prepared and sent to the Inspector in duplicate for his approval and the revised schedule may be put into effect with previous sanction of the Inspector (Section 111(10)). Whenever working hours are changed with the sanction of the Inspector, it becomes obligatory on the workers to attend to their duties according to the revised notice. If workers defy the notice and work according to their whims, they may be charged for disobedience to the lawful order of the management within the meaning of section 23(4)(a) of the BLA, and disciplinary action may be taken against them on compliance with the formalities. Further, if the worker refuses to do their duties in a concerted manner, the refusal may be treated as an illegal strike and in that eventually management may declare lock-out of the factory.

Besides, a notice requiring workers to work according to the timing in the notice may also be deemed to be an order within the meaning of section 305 of the Act. A worker refusing to obey the order will make him liable to penal action under the said section. Despite the above legal provisions, it is advisable, the employer or the manager, for better and congenial work environment and good industrial relations in the establishment, may discuss the issue with the CBA or the Participation Committee or the representatives of workers prior to change so that implementation of the changed working hours may be peaceful and agreeable.

► **Question:**

One employer engaged a worker on weekly holiday or on festival holiday. What would be the liability of the employer in respect of payment to the worker?

► **Answer:**

An adult worker employed in a factory or establishment is entitled to one day weekly holiday with full wages as envisaged under section 103 of the BLA. When an employer needs service of a worker on weekly holidays, he may obtain exemption from the authority and may engage such worker in service. In such case, the employer is obliged under law, as envisaged under section 104 of the BLA, the holidays so deprived of. The worker whose service is taken on weekly holidays shall be paid wages as usual. The section 104 further says that subject to consultation with the representatives of the Collective Bargaining Agent or Participation Committee can work on the weekly holiday and such weekly holiday can be added to the festival holiday and enjoy. In such cases, there shall not be any overtime allowance for the work on weekly holiday.

An employer is entitled to engage workers on festival holidays, if required, but in such case the employer is liable to provide a substitute holiday and two days' compensatory wages to the worker so deprived of in accordance with the provisions of section 118. In this situation compensatory wages for two days means basic wages for two days as per Rule 110(5) of the BLR.

► Question:

What is the procedure for declaration of festival holidays for workers in factories and other establishments?

► Answer:

In the labour law, a procedure has been determined as to how declaration of festival holidays can be made. Section 118 of the BLA, it is envisaged that every worker shall be allowed in a calendar year 13 days of paid festival holiday. Further the provision says that days and dates for such festival shall be fixed by the employer in such manner as may be prescribed by rules. Rules have been prescribed under rule 110 of the BLR. The rule says that every employer in consultation with the CBA of his organization will determine within 31st December every year festival leave for the next year which will be not less than 13 days.

The employer will hang the list of the leave for information of all workers, and one copy shall be forwarded to concerned Inspector. In absence of CBA the employer in consultation with the Participation Committee, list of festival leave will determine. In the organization in absence of CBA or Participation Committee, the employer as far as possible will discuss with workers, the list of festival holidays will determine.

► Question:

Is festival bonus mandatory for the management employee who has completed one year of service of any factory/establishment as paid workers?

► Answer:

According to BLA and its Rules, management employee has not been defined. There are two categories like employer and worker. All are covered either under employer or worker. In this question, the issue is whether the management employee will be entitled to get festival bonus or not.

Rule 111(5) of the BLR says that "workers employed in every factory or establishment who have completed 1 (one) year of service continuously, shall be provided with two festival bonuses in every year."

If the management employee falls under the category of employer, then he will not be entitled to get festival bonus. On the other hand, if the management employee falls under the category of worker, then he will be entitled to get festival bonus by fulfilling other terms and conditions.

► Question:

If Government holiday falls on a date which is a weekly holiday for an establishment, whether it is obligatory for the management to give a substitute holiday?

► Answer:

Section 103 of the BLA provides for grant of holiday of one day in a week in case of factory and establishment and no deduction from the wages of worker can be made such holidays. Any worker is deprived of any of the weekly holidays shall be allowed compensatory holiday as soon as circumstances permit. But Rule says that such compensatory holidays shall be allowed within 3 working days of its entitlement as envisaged under rule 101 of the Rules. The proviso of the Rule 101 further says that the provisions shall not apply if the workers wish to work on weekly holidays and enjoy the holiday in addition to the festival holiday shall be treated as an exemption under the provision of Section 102 of the BLA.

The holidays declared by the Government normally covers the festival days or days of national importance. According to the provision of section 118 every worker shall be allowed in a calendar year 13 days of paid festival holidays in a calendar year. The days and dates for such festival holidays shall be fixed by the employer in such manner as may be prescribed by rules.

IIn the matter rule 110 says that every employer in consultation with the CBA shall fixed festival holiday for the next year before 31st December of every year. In absence of CBA employer shall determine in consultation with the Participation Committee and in absence of CBA or Participation Committee, employer shall determine such leave as far as possible in consultation with the workers.

Holidays declared by the Government are not automatically applicable to industrial and commercial establishment unless it is clearly stipulated that the holidays in question will also apply to the commercial and industrial establishments. In view of the above, holidays declared by the Government are not binding on the industrial and commercial establishment unless specifically so declared and since there is no provision of substituted holiday which falls on a weekly holiday, it is not obligatory for the management to allow substituted holiday on such occasion.

►**Question:**

How many types of leave for the workers and employers, employed in industrial and commercial establishments under the labour law?

►**Answer:**

There are various leaves for the workers, engaged in factories and establishments or shops and commercial establishments under the BLA. Each type of leaves is mentioned hereunder:

1. **Weekly holiday:** Section 103 of the Act says that an adult worker employed in an establishment-which is a shop or commercial establishment shall be allowed in each week one and half $\left(1\frac{1}{2}\right)$ days' holiday and in factory and establishment one day in a week;

2. **Casual leave:** Section 115 of the BLA envisages that every worker shall be entitled to casual leave with full wages for ten (10) days in a calendar year, and if for any reason he does not enjoy such leave, it will not remain in his credit and leave admissible in one year cannot be enjoyed in the following year.

3. **Sick Leave:** Section 116 envisages that every worker, other than a newspaper worker, shall be entitled to sick leave for 14 days with full wages in a calendar year. Besides, such leave shall not accumulate and if such leave is not availed of in any year, it cannot be enjoyed in the following year.

4. **Festival holiday:** Section 118 of the BLA envisages that every worker shall be allowed festival holiday with wages for a period of 13 days in a calendar year.

5. **Annual leave:** Section 117 of the BLA determines how, when and where annual leaves will be given. The section says that every adult worker, who has completed one year of continuous service in an establishment, shall be allowed during the subsequent period of 12 months leave with wages for a number of days calculated at the rate of one day– in the case of shop or commercial or industrial establishment or factory or road transport service, for every 18 days of work. It may be mentioned here that a period of leave allowed under section 117 shall be inclusive of any holiday which may occur during such period.

Beside the above categories of leave for the workers and employees, there is another category of leave especially provided for the female workers, which is called maternity leave for a period of 60 days preceding the expected day of her delivery and 60 days immediately following the day of her delivery, i.e. 120 days' leave. Another category of leave is included in the BLR in the amendment of 2022. That is miscarriage leave for 4 weeks for the female worker considering her health condition. The miscarriage leave cannot be adjustable with any other leave.

►**Question:**

As per section 117(a) of the BLA, worker is entitled to one day annual leave for every eighteen days of work. He desires to encash all the days of such leave in a year. Whether he is entitled to encash all the days of annual leave?

►**Answer:**

According to the provision of section 117 concerning annual leave with wages, every adult worker/ employee, who has completed one year of continuous service in an establishment shall be allowed during the subsequent period of 12 months leave with wages for the service given during the previous period of 12 months on the basis of- the workers of a shop or commercial or industrial establishment or factory or road transport service, one day annual leave for every 18 days of work.

In the matter of encashment, BLA does not say anything, but its rules, i.e., the BLR gives a guideline that a worker, if desires, can encash his unused annual leave, but at the end of the year such encashment shall not be more than half of it and such encashment shall be made once in a year, as envisaged under rule 107 of the BLR. So, no worker can encash all the days of annual leave in a year.

►**Question:**

A worker submitted a medical certificate to the manager obtained from private doctor in support of his request for grant of medical leave. Whether the latter can refuse to accept the certificate on the grounds that it has not been authenticated by the Factory Medical Officer?

►**Answer:**

Section 116 of the BLA provides that every worker other than a newspaper worker shall be entitled to sick leave with full wages for 14 days in a calendar year. Further the provision says that no such leave shall be allowed unless a registered medical practitioner, appointed by the employer or, if no such medical practitioner is appointed by the employer, any other registered medical practitioner, after examination, certifies that the worker is ill and requires sick leave for cure or treatment for such period as may be specified by him. At the end of the provision, it is envisaged that such leave shall not be accumulated and carried forward to the succeeding year.

The provision does not mention whether any qualifying period of service will be required to be rendered by a worker before he becomes eligible for leave. Therefore, it may be construed that any worker within the meaning of section 2(65) of the Act irrespective of period of service put in by him shall be entitled to such leave.

It is a requirement of law that a worker seeking medical or sick leave is to produce a certificate from a medical practitioner in support of sickness. The worker is required to be under examination of a medical practitioner, appointed by the employer or if no such medical practitioner is appointed by the employer, any other registered medical practitioner. Such practitioner after examination will issue a certificate to the effect that the worker is sick or ill, and he requires leave for treatment for such period as may be specified in the certificate by him.

A worker who requires medical leave or sick leave shall apply along with the certificate for such leave. The management reserves the right to refuse such leave if the certificate is not produced before the employer. A worker, whose village home is in the remote area, may collect certificate from a registered medical practitioner or from a hospital in his locality and submit it along with his application for leave to the employer. The management may send the worker to the company's medical officer for authentication of the certificate in case of doubt.

►**Question:**

Whether temporary workers employed in factories are entitled to annual leave after completion of one-year service?

►**Answer:**

Temporary workers are worker, and they are entitled to annual leave according to the provision of section 117 of the BLA, but they must complete one year of continuous service, like that of permanent workers. The conclusion of leave shall be made in accordance with the following rate- in case of a shop or commercial or industrial establishment or factory or road transport service, one day for every 18 days of work. So, the temporary workers shall also be entitled to get the annual leave, if he fulfils the other requirement.

►Question:

An officer of a company due to his old age resigned from service. The employer paid him his wages, overtime allowance, arrear wages and all other dues but did not pay him his wages of un-availed leave. Whether the officer can file case against the employer for non-payment of un-availed leave salary? And what are the legal provisions under the existing law?

►Answer:

When a worker becomes old and cannot work as usual and he can resign from service. On his resignation, his employer paid his all dues, e.g., outstanding wages, overtime allowances, and all other dues but did not consider paying wages of un-availed leave. In the provision of law as envisaged under section 11 of the BLA the worker is entitled to wages of un-availed leave. The provision is quoted here: "If the services of worker, to whom any annual leave is due, is dispensed with whether as a result of retrenchment, discharge, removal, dismissal, termination, retirement or by reason of his resignation or any other reason and if annual leave is due to him, the employer shall pay his wages in lieu of the un-availed leave at the rate he is entitled to the payment of wages during the period of leave in accordance with the provisions of this Act."

Such employee is entitled to get wages of un-availed leave up to certain limit. He can receive wages for the un-availed leave up to sixty days as per provision of section 117(5)(b) of the BLA. Now, whether the officer can file case against the employer who deprived of the officer from the wages of un-availed leave? Yes, the officer can file case against the employer under section 132 of the BLA, if he falls under the category of worker under section 2(65) of the BLA. Before going to the Labour Court, the aggrieved worker may go to the Inspector-General for conciliation under section 124A of the BLA.

►Question:

According to section 115 and 116 of the BLA, the workers are entitled to 10 days casual leave with full wages and 14 days sick leave with full wages in a year. Whether the workers employed in the middle of the year are entitled to full benefits of the casual leave and the sick leave or they will get it on pro-rata basis?

►Answer:

It is found out that the only available relevant provision of law in this connection is rule 106 of the BLR, which has prescribed the solution of the query. The second proviso of the Rule 106 says that a worker employed in any part of the year shall be entitled to enjoy the leave on pro rata basis. Such worker shall not be entitled to full benefit of the casual leave and the sick leave. According to rule, he will get leave in proportion.

►Question:

In a factory 80 workers are employed, of which 50% workers are female, and they are compelled to work upto midnight, whereas they are not paid overtime allowance. The employer warned them not to complain to anybody about the work of the factory, otherwise the complainant will be sacked. Workers are paid their wages regularly. Is the action of the employer lawful? Advise the employer.

►Answer:

A worker shall not be made to work for more than 8 hours in a day subject to the provision of section 108. Any such worker may work not exceeding 10 hours in any day. It means his normal working hours are 8 hours in a day and may work 10 hours with overtime allowance of two hours.

The owner of the factory compelled the workers to work upto midnight, but no overtime allowance was given to the workers. Concerning work of the female workers consent of the workers was not taken. It would be a violation if consent of the female workers was not taken. Non-payment of O.T. allowance at the double the ordinary rate of basic wages is a violation of section 108. Exemption of working hours beyond 10 hours was required under section 324. It would also be a violation of the provision of law if exemption of working hours was not taken.

The employer is very clever in paying wages in time and regularly. It satisfied the workers, because the workers were unaware of the provisions of law. It is suggested that it cannot be continued in a long run. The employer should follow the legal provision to be in safe side.

► Question:

Whether a worker remaining absent from duty continuously for three months on the plea of sickness by submitting medical certificates one after another from an outside medical practitioner can be discharged from service under the provisions of the BLA?

► Answer:

According to section 116 of the BLA, every worker, other than newspaper worker is entitled to sick leave for 14 days with full wages in a calendar year. Any un-availed part of the leave shall expire with the end of the year and shall not be carried forward to the succeeding year.

A worker, who is absent from duty due to sickness and desires to avail sick leave for his inability to attend to his duty is to submit a Medical Certificate from a medical practitioner, appointed by the employer or, if no such medical practitioner is appointed by the employer, any other registered medical practitioner. The medical practitioner after examination of the applicant certifies that the worker is ill or sick, and he requires sick leave for cure or treatment for such period as he mentions in the certificate.

A worker may remain absent for an indefinite period on the plea of sickness by submitting medical certificates from outside medical practitioners. If at any time management feels that the plea of sickness is an excuse to remain absent from duty, the management may ask the worker to appear before the medical practitioner, appointed by the employer or an expert for medical examination and, if the worker fails to do so, he may be changed for acts of misconduct within the meaning of section 23(4) of the BLA and legal action will be taken if the charge is established.

If the worker is sick and there is not certainty of his recovery and resumption of work within a reasonable period, the employer may discharge him under section 22 of the Act by paying the benefits as envisaged under the section. Confusion often arises as to the period of sickness for which one can be discharged as the provision of law has not prescribed any period in this regard.

► Question:

Whether it is permissible under the BLA and BLR to prefix or suffix weekly holidays or festival holidays with annual leave.

► Answer:

According to the provision of Section 117 of the BLA an adult worker who has completed one year of continuous service shall be allowed during the subsequent year of 12 months leave with wages based on calculation made in case of a factory, shop, road transport service, one day for every 18 days of work.

The question is whether a worker can prefix or suffix weekly holidays or festival holidays with annual leave. In this matter, rule 106 of the BLR says that according to section 115 and 116 of the BLA in case of casual leave and sick leave the concerned worker if desires can prefix or suffix weekly or festival leave which will not be treated casual leave, subject to the condition that if weekly holiday or festival leave falls within casual leave or sick leave, such leave will be included in the original leave i.e., casual leave or sick leave as the case may be. It means suffix or prefix is allowed under the existing provision of law.

CHAPTER 07



WAGES AND MODE OF PAYMENT

► Question:

A worker employed in a factory under a contractor was refused payment of his wages by the contractor. Whether the worker can sue the occupier/employer of the factory for non-payment of wages?

► Answer:

According to the question the contractor is the employer of the workers and is liable to pay wages to the workers employed by him. The contractor is also responsible to maintain record, service books, leave records, wages records, and all other matters which are supposed to be kept by the contractor under law. There must be a contract signed by the employer and the contractor concerning terms and conditions etc. According to the terms of agreement the contractor is liable to pay the wages etc. to the worker.

But in any case, any worker is deprived of wages by the contractor, reserves the right to complain to the employer and the employer is as per law will pay the wages of the worker and the wages shall be adjusted from the contractor.

Yes, the worker who was deprived of the payment of wages may file complaint to the Labour Court. He can do so when he files complaint to the employer against contractor for non-payment and if the employer doesn't take any action or pay the wages of the worker.

► Question:

A worker absented himself on the day of General Hartal/Strike called by a Political Party. Whether the worker is entitled to the wages for the day of absent?

► Answer:

Payment of wages to workers and other ancillary maters are regulated by the Chapter X concerning Wages and Payment of the BLA. An employer has been authorized to make deductions from wages of workers and employees for absence from duty vide section 125(2)(b) of the BLA.

Political parties may call for "Hartal" at any time, but it is the duty of workers to remain in duty so that productions remain uninterrupted. Any worker, who violates the discipline, ignores the responsibility and remains absent on the day of "Hartal" cannot claim wages for the day of absent. According to the provision of law no wage should be paid for unauthorized absence, and the management has every right to deduct wage under section 125 of the BLA.

Exception may be there in cases where a circumstance deserves different consideration. Depending upon the merits of circumstances, the matter should be decided by individual employer having regard to the situation which might differ from establishment to establishment.

► Question:

A worker has damaged a very costly machine by his sheer negligence which he has admitted, and he has agreed to pay the compensation for the damages of the machine in installments by deduction from his monthly wages. Can the employer realize the compensation by way of monthly deduction from him? What should be the amount of deduction? What is the time limit of deduction?

► Answer:

Deduction from the basic wages is admissible from a worker who damages a machine by his sheer negligence. Under section 125(2)(c) it has been mentioned that deduction for damage to or loss of goods expressly entrusted to the worker for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default.

Further, concerning deduction for damage or loss has been mentioned under section 127 of the BLA. It is envisaged that a deduction under section 125(2)(c) shall not exceed the amount of the damage or loss caused to the employer by neglect or fault of the worker and shall not be made until the worker has been given an opportunity of showing cause and found guilty of the charge in compliance with the principle of natural justice.

In the matter rules have been framed under rule 116 of the BLR. It is said that to fulfil the intension of section 127, all deduction and realization must be recorded in accordance with the form 39 of the BLR. Various questions arise as to the realization of the damage. If the cost of the machine damaged by a worker, is very high, how the worker can pay the damage? Besides, the length of service of the worker cannot cover the deduction period. However, considering the total impact and the feasibly, the employer is required to settle the issue.

CHAPTER 08



COMPENSATION FOR OCCUPATIONAL ACCIDENT AND DEATH

►Question:

A worker during working period in a chemical factory met with an accident and as a result he became blind of eyes. His monthly wages were Tk. 40,000. Calculate the amount of compensation in accordance with the provision of law.

►Answer:

The worker was employed in a chemical factory and during working hours he met with an accident and as a result he became blind of eyes. In this case the employer is liable to provide treatment to the worker at his own cost and responsibility by appropriate or specialized medical practitioner until complete recovery as per section 89(7) of the BLA.

The employer provided treatment as required by law, but the worker lost his sight of both eyes. In such case the worker is entitled to compensation under section 151(1)(b)(i) of the BLA, 151(1)(b) of the BLA because the permanent total loss of the sight of both eyes is deemed to be permanent total disablement under the proviso to the definition of "total disablement" in section 2. That is, irrespective of whether the worker is an adult or a minor. That is, if the concerned worker is an adult, he shall be entitled to the amount shown in the third column of the Fifth Schedule, i.e. Tk. 250,000.

In addition to the above compensation the worker shall be entitled to group insurance money as per section 99 and Rule 98, if group insurance was introduced. In this case the employer may discharge the worker from service because of 100% loss of earning capacity under section 22 of the BLA. In such case the employer is obliged to pay compensation as required under law and all other benefits shall be given. Instead of discharge, the employer may provide alternate job suitable to his fitness and train him accordingly on humanitarian gourd.

►Question:

Any machinery or building normally used is in such a dangerous condition that it is likely to cause physical injury or death of worker at any time. Who will inform such condition of the building or machinery to employer? When an employer is liable to pay double the rate of compensation to worker?

►Answer:

Any building or part of a building or any part of ways, machinery or plant or internal management of electricity of an establishment is in such a condition that it is dangerous to human life or safety, the inspector may serve an order in writing on the employer specifying the measures which, in his opinion, shall be adopted, and requiring them to be carried out before a specified date under section 61 of the BLA.

Any building or establishment involves imminent danger to human life or safety Inspector of Factories may serve on the employer an order prohibiting its use until it has been properly repaired or altered as per section 61(2) of the BLA.

A worker shall inform the employer in writing; if the employer fails to take appropriate action, the employer shall be liable to pay compensation to the required worker at the rate which may be double the rate of compensation in accordance with section 86 of the BLA.

►Question:

An accident occurred in a factory and there was a fire. Two persons were burnt to death. Twenty persons were seriously injured. What are the legal responsibilities of the owner of the factory under the circumstance?

►Answer:

Whenever fire or accident occurs in a factory the employer must comply with certain obligations. The obligations may be divided in two categories, e.g.;

1) Immediate and prompt action.
2) Subsequent legal obligations.

In the first category the persons who were burnt or physically injured must be rescued and be sent carefully to the hospital or clinics for immediate medical treatment. Simultaneously, Fire Service and Civil Defense (FSCD) Department must be informed for immediate action in the matter. In case of disaster or break down of building or machinery, again the Fire Service and Civil Defense (FSCD)Department must be informed for rescue operation. Vis-a-vis the factory firefighting staff, rescue staff as well as the workers and local people may be deployed. In addition to it, the authority is required to switch off the main line of electric supply. Besides any action, which is necessary, be taken.

In the second category the management must inform relevant offices, administration etc. for immediate action. This is a legal requirement. The legal provisions, as envisaged under section 80 of the BLA, are mentioned here under:

When any accident occurs in an establishment causing loss of life or bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water or fumes occurs in an establishment, the employer of the establishment shall give notice of occurrence to the inspector or Department of Labour within two working days. Provided that soon after occurrence of such accident the authority of the establishment shall inform the Government, fire service, directorate of inspection for factories and establishments, Police Station, nearest hospital, or Government, Non-Government health care establishment by phone, mobile phone, SMS or fax with a view to taking immediate necessary steps for controlling the situation or reducing possible loss.

Concerning reporting of accidents the Rule 69 of the BLR says that when there occurs in any factory an accident to any person which results in death or such injury that there is no reasonable prospect that he will be able to resume his employment in the factory within 20 days, such accidents shall be called in all communication as “Fatal” or “Serious”, as the case may be, and the manager of the factory shall give notice of the occurrence forth with by telephone, telegram, or special messenger to–

(a) the Inspector-General or relevant Inspector,

(b) the Deputy Commissioner,

(c) Director-General (DG) or relevant officer,

(d) Nearest fire service station,

(e) Nearest hospital or health center

(f) in case of death or fatal accident only, the officer-in-charge of the police station within the local limits of which the factory is located or industrial police.

► Question:

During working hours, a worker sustained injury by accident resulting cutting of two fingers (Thump and fore finger), but the employer did not pay compensation on the plea that the worker removed safety guard willfully. How can the worker get remedy?

►Answer:

It is an obligation on the part of the employer to make the workers aware of ensuring protection of occupational health and safety by providing training concerning risk of worker in workplace as required under section 78A(3) of the BLA. The worker who is engaged in work after providing training in respect of any job, the concerned worker is obliged to work accordingly. If he violates any provision of law, he will be liable and if any personal injury is caused to a worker by accident, he shall not be paid compensation.

The provision of law as envisaged under section 150(2)(b)(iii) states that no employer shall be liable to pay compensation, if the worker is charged with willful removal or disregard by the worker of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of worker. According to the provision of law the worker who sustained injury by accident resulting cutting of two fingers (thumb and fore finger) is entitled to compensations and the employer shall be liable to pay compensation in accordance with the provision of law but according to the question such worker will not be entitled to compensation if he willfully removes or disregards of any safety guard or other device as mentioned under section 150(2)(b)(iii) of the Act.

►Question:

A security guard while on duty went out of the factory main gate with permission of his superior to entertain his guest. On the way of his return to the factory, he met with an accident on the road causing serious injury. Whether this security guard will be entitled to accident compensation under Twelfth Chapter of the BLA?

►Answer:

Section 150 of the BLA says that if personal injury is caused by accident arising out of and in the course of his employment, the employer of the worker shall be liable to pay compensation in accordance with the provisions of the Chapter XII of the Act. Section 150(2) envisaged when the worker will not be entitled to compensation. A list has been enumerated:

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

(b) in respect of any injury not resulting in death, caused by an accident which directly attributable to- the worker having been at the time thereof under the influence of drink or drugs, or the willful disobedience of the worker to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of worker, or the willful removal or disregard by the worker of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of worker.

The provisions in detail have been elaborated under which a worker will not be entitled to compensation. According to the question listed for discussion a security guard who was on duty went out of the factory's main gate with the permission of his superior to entertain his guest. On his way back to the factory, he met with an accident on the road which caused serious injuries to him. The purpose of the question was to determine whether the security guard was entitled to compensation for the accident.

Section 150 of the BLA has obliged an employer to pay compensation to a worker for an injury caused to him by an accident arising out of and in the course of employment. Entertainment of a guest by the Security Guard at a place outside the factory premises was not in any way connected with his official performance and the accidental injury could not be said to be arising out of and in the course of his employment with the company and as such he could not claim any compensation for the accident. If the worker's employment compels him to be in a particular place where the accident happens, the accident must be taken to arise out of employment. But in this case the accident happened at a place outside the company's premises where the Security Guard had gone to entertain his guest. Permission taken from his superior to go outside the factory's main gate will not be considered to get the compensation.

►Question:

A worker in the course of his employment met with an accident and was hospitalized. During his treatment in the hospital the worker died. What are the procedures of settling compensation in such a case and whether the management should pay the compensation money directly to the legal heir of the deceased or through the Labour Court?

►Answer:

It is the liability of the employer to pay compensation for personal injury caused to the worker by an accident arising out of and in the course of his employment in accordance with the section 150 of the Act. According to the question the worker met with an accident and was hospitalized and during his treatment the worker died. The accident was arising out of and in the course of employment and as such the worker concerned shall be entitled to the amount of compensation as envisaged under section 151(1)(a) of the Act. The amount of compensation shall be as mentioned in the second column of the Fifth Schedule that is Tk. 200,000.

In addition to the above compensation, the worker concerned shall be entitled to 45 days of wages or gratuity, whichever is higher under section 19 of the BLA, because the worker died due to accident during working period.

According to the provision of section 155 no payment of compensation in respect of a worker whose injury has resulted in death and no payment of a lump sum as compensations to a person under a disability, shall be made otherwise than by deposit with the Labour Court. Direct payment of compensation can be made in the case, the deceased during the period of his employment nominated in the prescribed manner any of his dependents to receive the amount of compensation in the event of an injury resulting in his death as envisaged under section 155(2) of the Act.

In view of the above provisions of law, there is no scope for the management to make payment of the compensation money directly to the legal heir of the deceased but to follow the method of payment as provided under section 155 of the BLA.

►**Question:**

What are the procedures for settlement of compensation cases under the BLA, as amended, and who are the beneficiaries entitled to get compensation in the event of death of a worker?

►**Answer:**

According to the provision as envisaged under section 155 of the BLA, no payment of compensation in respect of a worker whose injury has resulted in death, and no payment of a lump sum as compensation to a person under a legal disability, shall be made otherwise than by deposit with the Labour Court.

The employer shall submit a statement in Form No. 45 mentioning the amount of compensation as per rule 137 of the BLR. In other cases of compensation, he shall submit a statement of money concerning compensation in Form No. 46 to the Labour Court. In both cases the Labour Court shall give receipt to the employer in form No. 47.

On receipt of the statement of money concerning compensation, the Labour Court, for the purpose of disposal of the cases, shall follow the procedure as laid down under the code of Civil Procedure, 1908 as envisaged under section 216 of the BLA and the Court shall follow the course of business as laid down under Sixth Schedule of the BLR. This is specifically mentioned under rule 146 of the BLR.

Whether the employer can directly pay the compensation to the nominated person shall be examined. In the matter, provision of law envisaged under section 155(2) of the BLA is that no such payment made directly by an employer shall be deemed to be a payment of compensation under section 155(1), unless a worker, during the periods of his employment, nominated in the prescribed manner any of his dependents to receive the amount of compensation in the event of an injury resulting in his death. The Labour Court normally will follow the procedure as laid down under section 153(6) and (7) of the BLA.

►**Question:**

Whether an employer is under obligation to allow a worker to continue in his employment after he has been physically incapacitated partially due to an accidental injury?

►**Answer:**

Compensation under Chapter XII of the BLA is payable for accident death, total or partial permanent disablement or for temporary disablement. Worker employed in mills and factories and other industrial establishments are to be paid compensation by employers at varying rates depending on the extent of disablement due to accidental injuries sustained in course of employment. Persons who are entitled to compensation and the relative occupations to which provision of the BLA applies have been enumerated under sections 2(2A), 2(69), section 151 and in the First Schedule of the Act. Besides, accidental injuries, compensation is also payable if workers contact occupational disease in course of employment in occupations specified in the Third Schedule. Compensation to the heirs of a worker in the event of his accidental death is payable to his nominee or nominees or legal heirs.

The extent of loss of earning capacity due to accidental injury is to be determined based on percentage prescribed under Schedule I of the Act. Now, let us discuss the question whether an employer is under obligation to allow a worker to continue in his employment after he has been physically incapacitated particularly due to accidental injury.

A worker is engaged by the employer to perform certain functions assigned to him. He will not be able to discharge the same duties if he is physically incapacitated by accident injury or occupational disease. Under such circumstances, the employer will not be under obligation to keep him in employment and if the employer decides to terminate his services, proper way to do that is to discharge him from service under section 22 of the BLA. Payment of compensation is meant for loss of earning capacity of the worker, but he remains in service till he is discharged on medical ground under section 22 of the Act. So, if at any time management finds that a worker is unable to perform his duty due to accidental injury, he should be discharged in accordance with the provision of section 22 of the Act and paid financial benefits on account of discharge. Besides, payment of compensation admissible under the Act shall also be affected.

Beyond legal provisions, the management may retain him in alternate service suitable for him on humanitarian ground, if the management finds him active, sincere and honest.

CHAPTER 09



SETTLEMENT OF INDUSTRIAL DISPUTE, NEGOTIATION, CONCILIATION, ARBITRATION

►Question:

Trade union executives of some establishments do not attend to their respective duties on the plea that they are not required to do their assigned job, but to perform the trade union functions only. Whether such claim of trade union executives is supported by law?

►Answer:

The BLA has conferred certain rights on the registered trade unions, the CBA and trade union executives. But there is no mention in law that the workers who are trade union executives are to be exempted from attending their duties or performing their normal duties for doing trade union activities.

However, the collective bargaining agent entitled to do certain works during working hours which have been enumerated under section 202(24) of the BLA. As per example, undertake collective bargaining with the employers, represent works in any proceedings, conduct cases on behalf of worker etc. On the other union activities are allowed with the permission of his employer during working hours under section 196(1) of the BLA. The provision says "no worker shall engage himself in any trade union activities during his working hour without the permission of his employer. Provided that nothing shall apply to the trade union activities of the President or the General Secretary of the collective bargaining agent of an establishment, if such activities relate to the participation in any committee, negotiation, arbitration, mediation or any other proceeding under this Act, and the employer has been duly informed thereof.

But the officers of trade union when undergo a training, the training period shall be deemed to be a period spent on duties as mentioned under section 348(3) of the BLA. In view of the above it may be concluded that the claim of the trade union executives does not have any legal support.

►Question:

How a trade union becomes collective bargaining agent when there are more than two registered trade unions in an establishment?

►Answer:

The provision of law as envisaged under section 202(1) that where there is only one registered trade union in an establishment, that trade shall be deemed to be the collective bargaining agent for such establishment. That is, by dint of the provision of law such trade union becomes CBA and as such no declaration is necessary.

Where there are more than one trade unions in an establishment the unions shall, by nominating an election commissioner form amongst themselves take steps for election of collective bargaining agent (CBA). If the unions do not do so, they can apply to the Director-General, Department of Labour for determining CBA through secret ballot. DG shall, upon an application made in this behalf by any such union or by the employer, hold a secret ballot.

This ballot shall be held within a period of 120 (one hundred and twenty) days from the date of receipt of such application. The purpose of the ballot is to determine which trade union shall be the collective bargaining agent (CBA) for the establishment.

DG shall hold a meeting with the existing trade unions of the establishment, and the existing trade union shall inform him whether they contest in the secret ballot within 15 days. Under such circumstances if no trade union informs the DG within the time specified as to its contest in the secret ballot, the trade union which has made the application under section 202(2), shall be declared to be the collective bargaining agent for that establishment. For conducting secret ballot detailed procedures have been envisaged from section 202(6) to (26) of the BLA.

►**Question:**

Whether President, Secretary and Executive Members of the Trade Union can be punished for unfair labour practice or misconduct?

►**Answer:**

Unfair labour practices on the part of workers have been envisaged under section 196 of the BLA. Participation in trade union activities during working hours is unfair labour practice but if permission taken from employer for participation in trade union activities, it would not be unfair labour practice.

This provision is exempted for the president and the general secretary of collective bargaining agent for negotiation, conciliation or arbitration etc. and the employer has been duly informed of such activities. This exemption will not be applicable for other registered trade union.

Any worker or trade union of workers shall not be entitled to engage in any activity as mentioned under section 196(2) of the BLA. A worker would be subject to punishment if he engages in the activities of unfair labour practices. Concerning punishment section 291(2) says that any worker who contravenes any provision of section 196 shall be punishable.

Similarly, a worker may be dismissed if he is found guilty of misconduct under section 24 of the BLA. This is such case provision of section 24 shall be followed, that is, misconduct of a worker shall be enquired into following the procedure of this section.

►**Question:**

A worker, the President of a Trade Union, was transferred by the management from one place to another in the same office compound in the interest of work of the establishment. The worker refused to comply with the transfer order terming it as not according to law. Whether the claim of the worker is supported by the law?

►**Answer:**

"Any officer including the president and the general secretary of any trade union shall not be transferred from one district to another without their consent". In view of the expressive legal provision, the president of the trade union was transferred from one place to another within the same office compound and as such the transfer order was issued in accordance with the provision of law. The provision of law says that any officer of the trade union shall not be transferred from one district to another. The transfer order was issued from one place to another in the same premises and verily the order was justified. The consent of the president could be sought if the transfer order was from one district to another district.

The plea of the President of the union that the order of transfer was not in accordance with the law was not supported by law. The president of the union must execute the transfer order. Disobedience to reasonable order of a superior is misconduct on the part of the president of trade union and the management can proceed with the worker as per provision of law.

►**Question:**

Under section 176 of the BLA workers reserve right to form trade union with the workers employed in the establishment. Can the workers elect some persons who are not employed in the establishment in the executive committee of the union?

►**Answer:**

Under section 180(1)(b) the provision says that notwithstanding anything contained in the constitution of a trade union, a person shall not be entitled to be, or to be elected as a member an officer of a trade union if he is not employed or engaged in that establishment which the trade union is formed.

The workers have the right to form trade union with the workers employed of the establishment for the purpose of regulating the relations between the employers and workers subject to the constitution of the union concerned, and there must a provision in the matter in the constitution. Section 180(1)(b) say

that a person who is not employed or engaged in the establishment in which the trade union is formed is not entitled to be a member or an officer of the union. It means a worker who is not employed in the establishment cannot be member of the trade union.

► Question:

Whether a dismissed worker of an establishment can be elected as an office-bearer of the workers' trade union of that establishment if the constitution of the union provides for election from amongst the workers only?

► Answer:

The provision of law as envisaged under section 180 that notwithstanding anything contained in the constitution of the trade union, a person shall not be entitled to be, or to be elected as a member or an officer of a trade union if is not employed or engaged in that establishment in which the trade union is formed. It means only the workers and employees who were in employment could seek election to the executive committee of a union of workers and employees of such establishment. This restriction was applicable only to executive body of plant level unions and not to registered federation. The manner of election of executive committee members was to be prescribed in the constitution of the union. In keeping with the statutory provision, the unions in their respective constitutions did not make any provision of election of outsiders and ex-workers as committee members.

It is referred to the provision as envisaged under section 180(1)(b) of the Act, where it has been mentioned that a person shall not be elected if he is not employed or engaged in that establishment in which the trade union is formed.

► Question:

Whether employees who are not designated as supervisors but perform administrative functions can become members of a trade union?

► Answer:

Workers of any organization, without distinction whatsoever, shall have the right to form trade union primarily for the purpose of regulating the relations between the workers and employers or workers and workers and, subject to the constitution of the union concerned, to join trade union of their own choosing as per section 176(a) of the BLA.

It means workers as defined under section 2(65) and section 175 of the BLA reserve the right to join trade union of their own choosing.

► Question:

Whether a supervisor can be a member of a trade union?

► Answer:

A supervisor who is not a supervising officer as defined under rule 2(1)(g) of the BLR, can become member of a trade union but if such supervisor is officially authorized in writing to look after the affairs of administration and control, he/she cannot be a member of a trade union.

► Question:

What is collective bargaining? What are the Rights of the Collective Bargaining Agent?

► Answer:

What is collective bargaining?

According to ILO Convention No. 98, Article 4 collective bargaining is a mechanism for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. In other words, collective bargaining

is a process of negotiations between employers and a group of employers or workers aimed at reaching agreements that regulate working conditions. The interests of the workers are commonly presented by representatives of a trade union to which workers or employers belong. The collective agreements reached by these negotiations usually set out wage scales, working hours, training, health and safety, overtime, grievance mechanisms, and right to participate in workplace or company affairs.

What is collective bargaining agent?

Collective bargaining agent in relation to an establishment or group of establishments means the trade union of workers or federation of trade unions is the agent of the workers in the establishment, or group of establishments in the matter of collective bargaining as envisaged under Chapter XIII of the BLA.

Where there is only one trade union in an establishment, that trade union shall be deemed to be collective bargaining agent for such establishment. But where there are more trade unions than one in an establishment, the Director-General shall, upon an application made in this behalf by any such trade union or by the employer, hold a secret ballot, within a period of not more than one hundred and twenty days from the date of receipt of such application, to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment. In the ballot the union which has received the highest number of votes shall be declared the collective bargaining agent for the establishment.

What are the Rights of the collective Bargaining Agent?

This relates to the entitlement of a collective bargaining agent. That refers to section 202(24) of the BLA. It says that a collective bargaining agent in relation to an establishment to which it relates shall be entitled to-

(a) bargain with the employer in matters of the state of jobless, conditions of work or environment of work of the workers;

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

(c) nominate representatives of the workers in any welfare institution or provident fund and in the board of trustees of the workers participation fund established under Chapter XV; and

► **Question:**

An agreement signed between the Employer and the CBA of an establishment provided for retrospective financial benefits to workers. Whether the employer would be liable to pay such benefits to the workers who ceased to be in employment immediately prior to signing of the agreement?

► **Answer:**

The collective bargaining agent of an establishment may sign an agreement with the employer of the establishment concerning financial benefits in case of cessation of service under the BLA. The agreement may give effect retrospective if parties agree. In the instant case it needs to be determined whether a worker whose service has been terminated prior to signing of the agreement, is entitled to financial benefit under the agreement.

Here, retrospective effect should have a date, and the cessation of service should also have a date to determine the entitlement of the benefits. If the cessation of service occurs after the date of retrospective effect, the worker is verily entitled to the benefits. If otherwise, the worker will not be entitled to the financial benefits. Here the date of signing the agreement is not important. Important is the date of retrospective effect and the date of cessation of service.

►Question:

The only trade union of an establishment submitted a charter of demands to the management under section 210(1) and after failure of negotiation under section 210(4)(b) of the BLA, the union applied to the conciliator and requested to conciliate the dispute. The Conciliator called a meeting of the parties to the dispute for the purpose of bringing about a settlement under section 210(7) of the BLA, but the management refused to attend the conciliation meeting on the ground that the union was not validly constituted as the same did not represent 300 workers of the establishment as required under section 179(2)(d) of the BLA. Whether the objection raised by the management conforms to the requirement of law and the conciliator cannot proceed to conciliate in the dispute?

►Answer:

Collective bargaining is a right of the workers and the employers of an establishment. Where there is only one trade union in an establishment the trade union shall be deemed to be the collective bargaining agent under section 202 of the BLA, if it has as members not less than the required number of workers employed in the establishment. Such trade union reserves the right of raising dispute and communicates its view in writing to the employer under section 210(1) of the BLA. The employer when receives such communication is obliged to arrange a meeting for collective bargaining on the issue raised in the communication within 15 days of the receipt of the communication. However, in the instant case the bipartite negotiation either not held or held but failed. In such case the union applied to the Conciliator in writing and requested him for conciliation of the dispute under section 210(4)(b) of the Act.

In the instant case the Conciliator upon receipt of the request call both the parties for consultation under section 210(6) of the Act for conciliation under section 210(7) of the Act. But the management of the establishment disagreed to appear before the conciliator of settling the dispute on the ground that the union did not represent the number of workers of the establishment as required under section 179(2) of the Act and as such the union cannot claim to be the collective bargaining agent.

Now, what is the action to be taken by the Conciliator under such circumstances? Here the employer disagreed to appear before the Conciliator for consultation in a meeting called by the conciliator. It is obligatory under section 210(7) of the BLA to appear before the conciliator for conciliation or negotiation of the dispute. If any employer, without any valid reason, refuses or does not comply with the provision of section 210(7) is a punishable offence under section 301 of the BLA. Under such circumstances, the Conciliator may file a case against the employer in the Labour Court for non-appearance in the conciliation meeting under section 301 of the BLA.

►Question:

What are the steps mentioned in the labour law for settlement of industrial conflict in an establishment?

►Answer:

In an industrial establishment at any time may arise or a situation is likely to arise which leads to industrial dispute or conflict between the workers or collective bargaining agent (CBA) and the employer. In such circumstances the employer or the CBA shall communicate his or its views in writing to the other party.

The party which received the communication, within 15 days of the receipt of the communication, in consultation with the representatives of the other party, shall arrange a meeting for collective bargaining or direct negotiation on the dispute raised, with a view to reaching an agreement. In the meeting both the parties will discuss the issue, a number of times if required, and settle the issue in full understanding. Then a memorandum of settlement shall be recorded in writing, and both the parties shall sign the memorandum. The employers then send a copy to the Government, the Director-General and the conciliator. This is the first step of settling the dispute or conflict.

It cannot be granted that bipartite negotiation shall be successful to settle the issue. The provision of law under section 210(4) of the BLA says that if the party receiving a communication fails to arrange a meeting with the representatives of the other party for collective bargaining within 15 days from the date of receipt

of the communications, or the parties could not reach to a settlement through direct dialogue within a period of one month from the date of the first meeting, or, such further period as may be agreed, any of the parties may, within 15 (fifteen) days from the expiry of the period, report the matter to the conciliator and may request him in writing to conciliate in the dispute and settle the issue.

The conciliator, upon receipt of the request, shall start conciliation within 10 (ten) days of the receipt of the request and shall arrange a meeting of the parties for the purpose of bringing about a settlement. In the tripartite discussion or conciliation if the dispute is settled, the conciliator shall prepare a memorandum of settlement and the parties including conciliator shall put signature on the memorandum. The conciliator shall send a copy of the memorandum to the Government.

Now, if no settlement is arrived at within the period of 30 days of the receipt of the request, the conciliation proceedings shall fail. In this case the conciliator may continue conciliation for such further period as may be agreed upon by the parties in writing. Even then if the conciliation proceedings fail, the conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator.

If the parties do not agree to refer the dispute to an Arbitrator, the conciliator shall, within 3 days of failure, issue a certificate of failure to the parties.

Now, if the parties agree to refer the dispute to an Arbitrator, they shall make a joint request in writing. The Arbitrator shall give an award within a period of 30 days or such further period as may be agreed upon in writing by the parties. The award of the arbitrator is final, and no appeal shall lie against it.

Now, if the parties do not agree to refer the dispute to an Arbitrator and the conciliator issued a certificate of failure, the party which raised the dispute will give to the other party a notice of strike or lock-out as the case may be or the dispute raising party may make an application to the Labour Court for adjudication of the dispute.

► Question:

Who is an Arbitrator? Can the CBA or the employer be obliged to go to the Arbitrator for settlement of disputes? Whether award of the Arbitrator is final? Whether any party can appeal to the Labour Court against of the Arbitrator? How long the award of the Arbitrator remains valid? Can an Arbitrator give an award when the CBA only request him for award? Can any person be an Arbitrator if the parties agreed upon?

► Answer:

Who is an Arbitrator?

An Arbitrator may be a person from the panel of Arbitrators prepared by the Government or any other person agreed upon by parties for adjudication of the industrial conflict.

Can the CBA or the employer be obliged to go to the Arbitrator for settlement of disputes?

Neither the CBA nor the employer is obliged to go to the Arbitrator.

Whether award of the Arbitrator is final?

The award of the Arbitrator shall be final, and no appeal shall lie against if according to section 210(16) of the BLA.

Whether any party can appeal to the Labour Court against the Arbitrator?

No. No appeal shall lie.

How long the award of the Arbitrator remains valid?

An award shall be valid for a period not exceeding two years.

Can an Arbitrator give an award when the CBA only requests?

No.

Can any person be an Arbitrator if the parties agreed upon?

Yes. Any person can be an Arbitrator if both the parties agreed upon.

►Question:

Conciliation proceedings failed. The Conciliator asked the parties whether they will go for arbitration, but none agreed. Thereafter, the Conciliator started delaying the issuance of failure certificate. What action the CBA can take under such circumstances?

►Answer:

When no settlement is reached through bipartite dialogue between employer and the CBA within a period of one month from the date of the first meeting for negotiation, or such period as may be agreed upon in writing by the parties, may, within fifteen days from the expiry of the period report the matter to the conciliator and request him in writing to conciliate in the dispute.

Under section 210(6), it is envisaged that the conciliator, upon receipt of the request, shall start conciliation within ten days and shall call a meeting of the parties to the dispute for the purpose of bringing about settlement. If the parties agree to settle the dispute, a memorandum of agreement will be signed.

If no settlement is arrived at within the period of 30 days of receipt of the request, the conciliation proceedings shall fail. But under such circumstances, the conciliator may continue conciliation for further period as may be agreed upon in writing by the parties.

Now, if the conciliation proceedings fail, the Conciliator shall try to persuade the parties to agree to refer the dispute to an Arbitrator.

If the parties do not agree to refer the dispute to an Arbitrator, the Conciliator shall, within three days of failure of the Conciliation proceedings, issue a certificate to the parties to the dispute to the effect that such proceedings have failed. It may be mentioned here that the parties normally do not agree to refer the dispute to an Arbitrator, because the award of the Arbitrator is final and no appeal shall lie against it.

At this stage of settlement of dispute, the Conciliator is obliged to issue failure certificate within three days of the failure. But the conciliator started delaying the issuance of failure certificate. In such case the parties may apply to the Labour Court under section 213 of the BLA for directive in the matter, or before going to the Labour Court the parties may apply to the Director-General, Depart of Labour for directive.

►Question:

The CBA union of an establishment threatened strike action in support of their charter of demands pending with the management. What is the course of action left to the management to avoid such illegal strike or stop the CBA taking recourse to the said illegal action?

►Answer:

In the procedure laid down in Chapter Fourteen of the BLA for settlement of disputes or disposal of charter demands, there is no scope for the CBA to resort to strike at the stage of bipartite negotiation under section 210 of the BLA. There is an obligation of the employer to arrange meeting within fifteen days of the receipt of the charter of demands as required under section 210(2) of the BLA. If the employer fails to arrange a meeting within the time, the CBA may report the matter to the conciliator and request him in writing to conciliate the dispute and the conciliator shall, within ten days of receipt of such request, proceed to conciliate in the dispute.

In the question, the CBA threatened strike action. If the CBA enforce strike, it would be illegal strike and it is a punishable offence under section 294. Further, it is considered unfair labour practice under section 196(a) of the BLA, and it is a punishable offence under section 291(2) of the BLA.

Further, if the enterprise is a public utility service, the Government may, by order in writing, prohibit the strike at any time before or after the commencement of strike.

The above are the legal provisions. However, in such situation the employer may draw the attention of the CBA to the legal provision and advise the CBA not to resort to illegal strike. By this time the employer should

sit with the members of the CBA for bipartite discussion or dialogue for settlement of the disputes raised by the CBA.

► Question:

The CBA of an establishment served notice of strike after obtaining certificate of failure from the conciliator for realization of their demands. After the expiry of notice period, they went on hunger strike. Whether hunger strikes are permissible under the law? If not permissible, then what should be procedure of resolving the dispute?

► Answer:

Section 211 of the BLA provides that a CBA can serve notice of strike in support of its charter of demands, if the conciliation proceedings initiated by the conciliator under section 210(6) of the Act have failed to achieve any settlement. According to the provision of law as envisaged under section 210(6) of the Act, the conciliator upon receipt of the request, shall start conciliation within 10 days and shall call a meeting of the parties to the dispute for the purpose of bringing about a settlement. If no settlement is arrived at within the period of 30 days of receipt of the request by the conciliator, the conciliation proceedings shall fail, or the conciliation may continue for such further period as may be agreed upon in writing by the parties under section 210(9) of the Act.

Further, if the parties do not agree to refer the dispute to an Arbitrator, the conciliator shall, within three days of failure of the conciliation proceedings, issue a certificate to the parties to the dispute to the effect that such proceedings have failed under section 210(10) and 210 (11) of the Act.

On receipt of failure certificate of the dispute from the conciliator, the CBA directly shall not serve notice of strike unless 51 percent of its members have given their consent to it through a secret ballot specially held for the purpose under the supervision of the conciliator, in such manner as envisaged under rule 208 of the BLR. On the expiry of the notice period the CBA may resort to strike and in such case either of the parties to the dispute may make an application to the Labour Court for adjudication of the dispute as envisaged under section 211(2) of the Act.

The discussion centered on the question whether hunger strike can be considered as a strike within the meaning of section 211 and of the BLA. The strike as defined under section 2(22) of the Act means “cessation of work by a body of workers employed in any establishment acting in combination or a concerted refusal, or refusal under a common understanding of any number of workers who are or have been so employed to continue to work or to accept employment.”

The meaning of strike there is no provision of hunger strike in the BLA. If any group or individual or CBA or trade union go on hunger strike, the owner can go to the Labour Court for adjudication.

► Question:

What is Charter of Demands? Who can submit it to whom? What do you mean by conciliation? Who is Conciliator? What is memorandum of agreement? Are the terms of memorandum binding on the parties?

► Answer:

What is Charter of Demands?

Charter means a deed or any written document. The charter of demands means a charter that contains certain demands of a trade union prepared for negotiations with the employer. In Bangla it is called (দাবীনামা). A collective bargaining agent is authorized to prepare a charter of demands and submit it to the employer for negotiation.

Who can submit it to whom?

As mentioned above, the collective bargaining agent can submit it to the employer for negotiation. An employer also reserves the right to submit a charter of demands to the CBA.

What do you mean by conciliation?

Conciliation is an effort of the parties for voluntary settlement of disputes or differences. Conciliation is a tripartite forum where the government office (conciliator), the employer and the representatives of workers or CBA play role in negotiating or winning over the dispute and arrive at a settlement or agreement. That is, conciliation is an act of redressing or mitigating industrial dispute through negotiation in a tripartite meeting. This has reference to sections 2(74), 210(4), 210(6) and 210(8) of the BLA.

Who is Conciliator?

Conciliator is an officer of the Department of Labour, appointed by the Government as required under section 210(5) of the BLA. His main role is to conciliate or facilitate disputes between the employer and the workers or CBA and get an agreement signed by the parties.

What is a memorandum of agreement?

Memorandum of agreement means memorandum of settlement of disputes that contains the terms of settlement of disputes. In other words, memorandum of agreement is a document prepared when a settlement of the dispute is arrived at during the proceedings through negotiation. It may be bipartite agreement or tripartite agreement.

Are the terms of memorandum of settlement binding on the parties?

Yes, the terms of memorandum of settlement or awards are binding on the parties. Section 222 of the BLA says that a settlement arrived at during a conciliation proceeding or an award of an arbitrator or an award, decision or judgment of Labour Court or award, decision or judgment of the Tribunal shall be binding on all parties to the disputes.

In addition, a settlement arrived at by agreement between the employer and a trade union otherwise than during conciliation proceeding shall be binding on the parties to the agreement. That is, the bipartite agreement is also binding on the workers and the employer signed on it.

►**Question:**

What obligation law has imposed on the employer in respect of holding a secret ballot for determination of collective bargaining agent in an establishment?

►**Answer:**

The CBA election or ballot is held within the premises of the employer. The employer shall provide a list of the workers, who will be the voters. The employer of the establishment shall on being so required by the Director-General, submit a list of all workers employed in the establishment for not less than a period of three months in the establishment excluding those who are casual or substitute workers providing particulars of the workers as envisaged under section 202(6) of the BLA.

In addition to the above, the employer shall supply the requisite number of additional copies of the list of workers and shall provide such facilities for verification of the list submitted as required under section 202(7) of the Act. Further the employer shall provide all such facilities in his establishment as may be required by the DG for conducting the poll but shall not interfere with, or in any way, influence the voting.

►Question:

What is a Participation Committee? How is it formed? What are its functions? Do you consider that a Participation Committee can play a role of a trade union where trade union does not exist?

►Answer:

The term Participation Committee has not been defined under section 2 of the BLA. The term should have been defined under law. Participation committee is a bipartite body formed with equal number of representatives of employers and the workers in an establishment in which 50 or more workers are normally employed.

How is it formed?

It is the responsibility of the employer of an establishment in which 50 or more workers are normally employed, shall constitute Participation Committee with the representatives of the employers and the workers as per rule 183 of the BLR. The number of members of the Committee shall not be less than 6 and more than 30. The number of representatives of workers in the Committee shall not be less than the number of representatives of the employers. Nomination of the workers shall be elected by the workers. It may be mentioned here that if there is a registered trade union in any establishment, there is no need to form a Participation Committee

Do you consider that a Participation Committee can play a role of a trade union where trade union does not exist?

Participation Committee of an establishment is a Recommending Body. It cannot play the role of a trade union. That is, the role of Participation Committee is different enumerated under section 206 of the BLA. The Provision says that the functions of the Participating Committee shall be to include and develop sense of belonging and workers commitment and, in particulars–

(a) to endevour to promote trust, understanding and co-operation between the employer and the worker;

(b) to ensure application of labour laws;

(c) to foster a sense of discipline and to improve and maintain safety, occupational health and working condition;

(d) to encourage vocational training, workers education and family welfare training;

(e) to adopt measures for improvement of welfare services for the workers and their families;

(f) to fulfill production target, improve productively, reduce production cost and wastes and raise quality of products.

►Question:

Participation Committee of a factory provoked general workers to stop the factory's production for some reasons. According to suggestion of the Committee, workers went to illegal strike and staged protest outside the factory. Now, the employer wants to bring charge of misconduct against some members of the Committee.

►Answer:

The Participation Committee of any factory/establishment has some legal duties prescribed by the BLA. Section 206 of the BLA says that "the main function of the Participation Committee shall be to inculcate and develop sense of belonging to the establishment among the workers and employers and to aware the workers of their commitments and responsibilities to the establishment, and, in particular-

(a) to endeavour to promote mutual trust and faith, understanding and co-operation between the employers and the workers;

(b) to ensure the application of labour laws;

(c) to foster a sense of discipline and to improve and maintain safety, occupational health and working condition;

(d) to encourage vocational training, workers' education and family welfare training;

(e) to adopt measures for improvement of welfare services for the workers and their families; and

(f) to fulfill production target, increase productivity, reduce production cost, prevent wastage and raise quality of products."

From the abovementioned functions of the Participation Committee, we can understand that they cannot provoke workers to stop the regular production and go for strike. If any Participation Committee made such type of unlawful work, then the employer may bring charge of misconduct against any member of the Committee under section 23(4)(a) of the BLA.

►**Question:**

There is restriction on termination of services of workers and employees under certain circumstances. What are those circumstances?

►**Answer:**

To protect the workers from any action concerning conditions of service while forming trade unions or participating in trade union activities, the provisions of law have been incorporated under the BLA. Such restrictions are mentioned under section 228.

The provision of law as envisaged under section 228 are mentioned here. The provisions of law say that conditions of service will remain unchanged while proceedings pending. It mentions that no employer shall, while any conciliation proceedings or proceedings before an arbitrator, a Labour Court or the Tribunal in respect of an industrial dispute are pending, alter to the disadvantage of any worker concerned in such dispute, the conditions of service applicable to him before the commencement of the conciliation proceedings or of the proceedings before the arbitrator, the Labour Court or the Tribunal, as the case may be, nor shall he, save with the permission of the Conciliator, while any conciliation proceedings are pending; or save with the permission of the arbitrator, the Labour Court or the Tribunal, while any proceedings before the arbitrator, Labour Court or Tribunal are pending discharge, dismiss or otherwise punish any worker or terminate his service except for misconduct not concerned with such dispute.

The words, "except for misconduct not concerned with such dispute" mean that the employer reserves the right to dismiss worker for misconduct, but this right has been ruled out under section 228(2) in case of officers of trade unions. That is, an officer of a trade union cannot be dismissed, discharged or otherwise punished for misconduct, except permission of the Labour Court.

It means if an employer desires to punish a trade union executive for misconduct, during pendency of labour dispute, he must obtain permission from the Labour Court.

CHAPTER 10



FORMATION AND JURISDICTION OF THE LABOUR COURTS

►Question:

What is a Labour Court under the Bangladesh Labour Act?

►Answer:

Under the Bangladesh Labour Act, 2006 a Labour Court is a statutory judicial body established to adjudicate and resolve disputes arising out of employment relationships between workers and employers. It is created under the framework of the Act and operates as a specialised forum distinct from the ordinary civil and criminal courts, focusing exclusively on labour and industrial matters.

A Labour Court in Bangladesh is typically constituted by the Government and consists of a Chairman, who is a sitting District Judge or an Additional District Judge, along with two members representing employers and workers in certain cases, depending on the nature of the dispute. Its core purpose is to ensure speedy and effective resolution of conflicts in the workplace.

Unlike ordinary courts, the Labour Court functions with a specialised mandate aimed at maintaining industrial peace and ensuring compliance with labour laws. Its decisions are binding, though they may be challenged in higher judicial forums.

►Question:

How many Labour Courts are currently established in Bangladesh?

►Answer:

Under section 214 of the Bangladesh Labour Act, 2006, the Government of Bangladesh is empowered to establish as many Labour Courts as necessary through official gazette notifications. The Act itself does not fix any specific number of Labour Courts; rather, the number depends on government notification and administrative necessity.

At present, Bangladesh has 14 Labour Courts established across the country according to SRO No. 373-Law/2025, dated 18 September 2025. The Labour Courts exercise jurisdiction over disputes relating to employment, wages, compensation, trade union matters, and other labour-related issues arising under the Bangladesh Labour Act. These courts are specialized judicial forums intended to ensure speedy disposal of labour disputes. However, despite the expansion in the number of courts, a substantial backlog of cases still exists throughout the country.

►Question:

What types of disputes are handled by Labour Courts?

►Answer:

Under the Bangladesh Labour Act, 2006, Labour Courts are entrusted with jurisdiction to adjudicate a wide range of disputes arising out of employment and industrial relations. The primary objective of these courts is to provide an effective mechanism for resolving conflicts between employers and workers.

Labour Courts mainly deal with disputes relating to wrongful dismissal, discharge, retrenchment, termination of employment imposed upon workers. The Courts also hear disputes concerning non-payment or delayed payment of wages, overtime allowances, bonus, gratuity, provident fund benefits, leave encashment, and other statutory financial benefits guaranteed by the BLA. In addition, Labour Courts exercise jurisdiction over compensation claims arising from workplace injuries, occupational diseases, or death of workers occurring during employment.

Industrial disputes between employers and collective bargaining agents or trade unions also fall within the jurisdiction of Labour Courts. Such disputes may involve unfair labour practices, illegal lockouts or strikes, and implementation of settlement agreements or awards. The Courts further deal with matters concerning trade union registration.

Moreover, Labour Courts are empowered to try certain offences and contraventions under the Bangladesh Labour Act, including violations of health and safety provisions, employment of child labour contrary to law, failure to maintain statutory records, and breaches of working hour regulations. Thus, the Labour Court functions both as a specialized adjudicatory body for labour disputes and as an enforcement mechanism for ensuring compliance with labour legislation in Bangladesh.

► Question:

Can criminal matters be tried in Labour Courts?

► Answer:

Yes, certain criminal matters can be tried by Labour Courts under the Bangladesh Labour Act, 2006. Although Labour Courts are primarily established for adjudicating industrial and employment-related disputes, the Act also confers upon them limited criminal jurisdiction in respect of offences specifically created under the BLA.

Under the provisions of the Bangladesh Labour Act, Labour Courts are empowered to take cognizance of and try offences arising from violations of labour laws and statutory duties imposed upon employers or other responsible persons. The criminal jurisdiction of Labour Courts is, however, restricted to offences expressly provided in the Bangladesh Labour Act itself. Labour Courts do not possess general criminal jurisdiction like ordinary criminal courts established under the Code of Criminal Procedure.

The Bangladesh Labour Act further provides that Labour Courts shall follow, as far as practicable, the procedure prescribed for criminal trials under the Code of Criminal Procedure while trying offences under the Act. In such proceedings, the Labour Court may impose fines, imprisonment, or both, depending on the nature and gravity of the offence prescribed by the statute.

Accordingly, Labour Courts in Bangladesh exercise a mixed jurisdiction. They function not only as specialized tribunals for settlement of labour disputes but also as special courts for prosecution of statutory labour offences created under the Bangladesh Labour Act, 2006.

► Question:

Who can file a case in a Labour Court?

► Answer:

Under the Bangladesh Labour Act, 2006, a case may be filed in the Labour Court by different categories of persons depending on the nature of the dispute or proceeding involved. Primarily, an aggrieved worker has the right to institute a case before the Labour Court in matters concerning dismissal, discharge, retrenchment, termination of employment, non-payment of wages, compensation, or deprivation of statutory benefits guaranteed under the Act. Where a worker believes that any action of the employer has been taken in violation of the provisions of the BLA, the worker may seek appropriate relief before the Court.

In industrial disputes involving collective interests, a registered trade union or collective bargaining agent (CBA) may also initiate proceedings before the Labour Court on behalf of workers. Such cases commonly relate to unfair labour practices, conditions of service, implementation of settlements, trade union rights, or disputes between employers and workers as a group. The law recognizes the representative role of trade unions in protecting the collective rights and interests of employees.

Employers are likewise entitled to file cases before the Labour Court in circumstances authorized by the Bangladesh Labour Act. For example, an employer may approach the Court regarding industrial disputes, legality of strikes, or enforcement of rights arising under labour laws and employment agreements.

In addition, Labour Inspectors or authorized government officers may institute complaints before the Labour Court in relation to offences committed under the Bangladesh Labour Act. Since Labour Courts also exercise limited criminal jurisdiction under the Act, prosecutions for violations of labour standards, safety regulations, child labour restrictions, and other statutory obligations may be initiated by inspectors or persons authorized by the Government.

The Bangladesh Labour Act further permits legal heirs or representatives of deceased workers to file claims in certain cases, particularly where compensation or financial benefits are payable following the death of a worker. Accordingly, the right to institute proceedings before the Labour Court is not confined to workers alone; rather, it extends to employers, trade unions, government authorities, and other legally recognized representatives depending on the subject matter of the dispute or offence under the BLA.

►Question:

Is there any provision for appeal against Labour Court decisions?

►Answer:

Yes, the Bangladesh Labour Act, 2006 provides a statutory right of appeal against decisions, awards, orders, or sentences passed by the Labour Court. For this purpose, the Act establishes a specialized appellate forum known as the Labour Appellate Tribunal.

The Labour Appellate Tribunal possesses authority to affirm, modify, set aside, or remand the decision of the Labour Court. In exercising appellate jurisdiction, the Tribunal may review both questions of law and questions of fact arising from the proceedings before the Labour Court. Where necessary, it may also direct rehearing of the matter or pass any order deemed just and proper in the circumstances of the case.

In criminal matters tried by the Labour Court under the Bangladesh Labour Act, the convicted person likewise has the right to appeal against conviction, sentence, or fine before the Labour Appellate Tribunal in accordance with the procedure prescribed by the Act. Thus, the appellate mechanism ensures judicial scrutiny and safeguards against erroneous or unjust decisions of Labour Courts.

The decision of the Labour Appellate Tribunal is generally final under the Bangladesh Labour Act. However, in appropriate cases involving constitutional or jurisdictional questions, the supervisory jurisdiction of the High Court Division of the Supreme Court of Bangladesh may still be invoked under the Constitution. Accordingly, the BLA establishes a comprehensive appellate structure to ensure fairness, accountability, and proper administration of labour justice in Bangladesh.

►Question:

What happens if an employer does not comply with a Labour Court order?

►Answer:

If an employer fails to comply with an order of the Labour Court under the Bangladesh Labour Act, 2006, the Act provides a structured enforcement mechanism to ensure that the Court's decision is not rendered ineffective. A Labour Court order is not merely advisory; it has legal force, and non-compliance is treated as a serious violation of labour law.

When an employer does not obey a Labour Court's award or order—such as reinstatement of a worker, payment of wages or compensation, or implementation of any other directive—the aggrieved party may initiate execution proceedings before the same Labour Court. In such situations, the Court is empowered to enforce its own judgment in a manner like the execution of a civil court decree.

In addition to civil enforcement, the Bangladesh Labour Act also treats non-compliance with certain Labour Court orders as an offence. Where an employer wilfully disobeys or obstructs the implementation of an order, they may be prosecuted under the relevant penal provisions of the Act. Upon conviction, the Labour Court may impose fines, and, in more serious cases, imprisonment as prescribed by law. This criminal liability is intended to ensure compliance and deter deliberate violation of labour rights.

Furthermore, continued non-compliance may also expose the employer to additional legal consequences, including further penalties for each day the violation continues, depending on the nature of the order and the specific provision of the Act involved. In appropriate cases, government labour inspectors may also intervene to ensure enforcement and bring the matter back before the Labour Court for appropriate action.

Overall, the Bangladesh Labour Act, 2006 establishes a dual mechanism of enforcement—civil execution of orders and penal consequences for disobedience—so that Labour Court decisions are effectively implemented and workers' rights are meaningfully protected.

CHAPTER 11



PARTICIPATION OF WORKERS IN THE COMPANY'S PROFIT

►Question:

What are the provisions for utilization of Participation Fund and Welfare Fund according to the Companies Profits as envisaged under the BLA?

►Answer:

The provisions concerning Workers' Participation in Companies Profits as envisaged under section 232 are applicable to such companies or establishments which fulfils any one of the following conditions, namely -

(a) the amount of its paid-up capital on the last day of an accounting year is not less than taka 1 (one) crore;

(b) the value of its permanent assets on the last day of an accounting year is not less than taka 2 (two) crore.

Every company to which the Fifteenth Chapter of the BLA applies shall under section 234 -

(a) establish a Workers' Participation Fund and a Workers' Welfare Fund in accordance with the chapter within one month of the date on which the chapter becomes applicable to it; and

(b) pay, within 9 (nine) months of the close of every year, five percent (5%) of the net profit of the previous year at the proportion of 80:10:10 to respectively the Participation Fund, Welfare Fund and Workers Welfare Foundation Fund established under section 14 of the Bangladesh Workers Welfare Foundation Act, 2006.

Utilization of Participation Fund

Of the total amount deposited in the Participation Fund every year, shall be distributed in equal proportion to all beneficiaries in cash as per section 242 of the BLA.

Utilization of Welfare Fund

The money deposited in the Welfare Fund shall, subject to this chapter, be used in the way and for that purpose, which the Trustee Board decides, and the Board shall inform the Government thereof as envisaged under section 243.

►Question:

Recently Bank owners believed all the schedule banks are operating as per Banking Companies Act where labour law should not be applicable. They observed what providing 5.0 percent of net profits of the banks to Workers' Welfare Fund will result in profitability drop, depletion of bank's capital base, decrease in share prices and possible negative impact on the capital market. Do the bank owners stand not to contribute 5.0 percent net profit to workers Welfare Fund is reasonable?

►Answer:

The purpose of the question is to determine whether the banks are included within the purview of the provisions of section 232(1) and 233(1)(g) of the BLA and are obliged to pay the Participation Fund, the Welfare Fund and the Fund established under section 14 of the Bangladesh Workers Welfare Federation Act, 2006 five percent (5%) of their net profit.

Section 232 of the BLA says that the Chapter fifteenth shall be applicable to all such companies or establishments which satisfy anyone of the following condition, namely, (a) the paid-up capital as on the last day of its accounting year is at least one crore taka; (b) the value of the fixed assets as on the last day of the accounting year is at least two crore taka.

Besides, according to the definition of "Industrial undertaking" as envisaged under section 233(1)(g) of the Act, banks fall within the category of industrial undertaking. The activities of any establishment, business establishment, industry, factory, banks, money lending establishment or insurance company run for profit shall be **industry related activities.** It means bank falls within the category of industry related activities and as such it is obliged to pay 5% of its net profit to the funds.

Section 234 of the BLA says that every company to which the chapter fifteen applies shall-

(a) establish a Workers' Participation Fund and a Workers' Welfare Fund in accordance with this chapter within one month of th e date on which the chapter becomes applicable to it; and

(b) owner of such company pay to the Participation Fund, the Welfare Fund and the fund established under section 14 of the Bangladesh Workers' Welfare Foundation Act, 2006, not later than nine months from the close of that year, five percent (5%) of its net profits during such year, the proportion of the payment to above-mentioned funds shall be 80:10:10 respectively.

From the above provisions it has been clear that banks, are companies and are obliged to pay 5% of their net profits to the funds in the following manner:

(1) Participation Fund- 80%

(2) Workers' Welfare Fund- 10%

(3) and the fund established under the Bangladesh Workers Welfare Foundation Act, 2006- 10%.

Violation of the provision of law is a punishable offence under section 307 of the BLA.

►Question:

Under the BLA there is a Chapter under the name of Workers' Participation in Companies Profit. Who are the beneficiaries to be entitled to get the companies' profit? Whether any management people are entitled to receive such benefit?

►Answer:

The persons who are the beneficiaries to be entitled to receive the benefits under the Workers' Participation in Companies Profit. Section 233(1)(i) define who the persons to be beneficiaries of the fund are. It says that beneficiary means any person including probationer who has been, irrespective of position, in the employment of the company for a period of not less than nine months excluding owner or partner or member of the board of directors. It means all workers and employees are entitled to receive the benefits of the fund except.

- owner,
- partner,
- member of the board of directors

A partner is also an owner. It means owners are not entitled to receive the benefits of the company's profit. Now, the question is who is owner? As per definition of owner as envisaged under section 233(1)(ee), "owner means owner of any company or establishment, or management authority or Chief Executive or any person in place of them."

►Question:

Every employer to which the Fifteenth Chapter of the BLA applies shall pay 5% of its net profits to the funds for the workers. What are the names of the funds and what are the proportions of the profits to be deposited?

►Answer:

What are the names of the funds?

There are mainly two types of funds namely, (a) Participation Fund and (b) Welfare Fund. There is another (c) Fund established by the Government under section 14 of the Bangladesh Workers Welfare Foundation Act, 2006 (BWWFA).

What are the proportions of the profits to be deposited to the Funds?

According to the provisions as envisaged under section 234 of the BLA, five percent (5%) of the company's net profits during the year shall be paid to the workers every year. The proportions of the payment to the above-mentioned funds shall be 80% to the Participation Fund, 10% to the Welfare Fund and 10% to the fund constituted under BWWFA, 2006.

Utilization of the Participation Fund:

According to the provision of section 242(1) of the BLA, of the total amount deposited in the Participation Fund every year shall be distributed in equal proportion to all beneficiaries.

A worker who leaves the employment voluntarily, whether he will be entitled to the benefit of the Fund?

Yes, he will be entitled. The provision of law as envisaged under Section 242(2), if a beneficiary voluntarily leaves the employment of the company, he shall receive the benefits from the fund.

A worker (beneficiary) who is terminated, discharged from service of a company can be entitled to the benefits of the Fund?

Yes, he/she shall be entitled to the benefits of the Fund, even a worker who is retired from service shall equally be entitled to the Fund as per provision of Section 242(3) of the BLA.

Whether a worker who is dismissed from service for his misconduct is entitled to the benefit of the Funds?

The provision as envisaged under section 242(4), a worker who is dismissed from service for misconduct shall forfeit his share in the Fund, but a worker who is transferred from one office to another, shall be entitled to the benefits of the Funds.

Whether in the event of retirement or in the event of death of a worker such benefits will the forfeited?

The benefits of the funds, in such cases, shall not be forfeited. In the event of retirement, the worker himself shall receive the benefits, and in the case of death of the beneficiary (worker) his nominated beneficiary shall receive full benefits under the provision of law as per section 242(6) of the BLA.

Whether a worker who is apprentice or is on probation and a worker who is in the employment of the company for five months, shall be entitled to the funds?

A worker who is a probationer or apprentice in a company shall be entitled to the benefits of the funds, but a worker who is in the employment for five months shall not be entitled to the benefits of the Fund. Such person is required to be in the employment for a period of not less than nine months for getting the benefits of the fund as per section 233(1)(i) of the Act and Rules 232 -233.

Utilization of Welfare Fund:

In the matter the provision of law as envisaged under section 243 of the BLA is that the money deposited in the Welfare Fund shall, subject to this chapter, be used in the way and for that purpose, which the Trustee Board decides, and the Board shall inform the Government thereof.

CHAPTER 12



ELIGIBILITY OF THE CONTRIBUTORY PROVIDENT FUND

►Question:

Under a public limited company there is a production units located in different premises, e.g., Ballpen Unit, Battery Unit, Biscuit Unit etc. Out of all the Units, in one unit there a provision of Provident Fund. Besides, the employees of the Head office of the Company are members of the Provident Fund. In such situation what would be the liability of the Company?

►Answer:

Section 264(1) of the BLA says that "Any establishment in the private sector may constitute a provident fund for the benefits of its workers."

The provision further says under section 264(10) that "Notwithstanding anything contained in this section, the employer of an establishment wherein at least 100 (one hundred) permanent workers are employed shall be bound to constitute a provident fund for the benefit of the workers, if the two-thirds of the total workforce applies in writing to the employer to introduce the Provident Fund. Provided that, if any group of workers among the manpower employed in a private establishment expresses interest in writing to participate in the Universal Pension Scheme 'Pragati' introduced by the National Pension Authority, such establishment shall be exempted from the provision of constituting a provident fund. Provided further that, the employer shall contribute 50% and the employed worker shall contribute 50% of the subscription to the said scheme. Provided also that, if any worker expresses disinterestedness in writing to become a member of the scheme, the employer shall not be bound to provide the 50% contribution payable by him.

Where a Provident Fund exists and employees are duly enrolled, the employer is under a continuing statutory obligation to contribute to the fund at the prescribed rate as agreed under the fund rules or service conditions, and to deduct the employees' contributions from their wages and deposit both shares into the fund within the stipulated time.

In short, once employees are members of a Provident Fund, the company's liability is to properly operate, contribute to, and safeguard the fund in strict compliance with the Bangladesh Labour Act and the governing rules, and any deviation from these obligations exposes the employer to statutory enforcement.

►Question:

A worker was dismissed from service for his misconduct. He applied for the benefits of the Provident Fund of the company. According to the Provident Fund Rules of the company, he is not entitled to the benefits. The Managing Director referred the case to the Manager (HR & Compliance) for his comments.

►Answer:

Concerning payment of the benefits of the Provident Fund Section 29 of the BLA says, "No worker who is a member of any provident fund shall be deprived due to retrenchment, discharge, dismissal, retirement, termination or cessation of service, of the benefits which is he is entitled as per provision provided for in the Provident Fund Rule including employer's contribution". Besides, Rule 263 of the BLR gives the clear instructions for payment of the benefits from PF.

Here, a worker who is dismissed for his misconduct shall not be deprived of the benefit of the Provident Fund and he shall not be deprived of the contribution of the employer to the fund, if he is entitled to it under rules.

NOTES

NOTES

Frequently Asked Questions by the Management

INTERPRETATION DISCLAIMER

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