

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

I joined a well known company (a reputed bank) last July 2011 and was on probation period. I liked the job there and was doing quite good. However, I got a better job offer in January 2012, and submitted resignation to be released with effect from 1st February 2012. I also gave up 1 month's salary as

per the terms of the employment agreement. The problem is that when I joined I had to sign a bond which contained that I will stay in the job for a minimum period of 5 years. In case I resigned before that, I will be required to give up one year's basic salary to the company (my previous employer). Now they wish to execute the bond because I left within

7 months. My query is, is this bond proper and executable in the eye of law? What should I do now? Sincerely

Saqeef Shahabuddin

Chittagong

Response

Thank you very much for your queries. I have fully understood your situation and have made necessary legal research in order to equip myself to respond to your query.

I understand that you have resigned from service from a company you joined in July 2011, i.e. your previous employer (hereinafter referred to as 'Your Employer'). As a prior condition for employment, you signed and executed a bond guarantying that you will serve Your Employer as an employee for a minimum period of 5 (five) years. And in the event of your voluntarily resigning before this guaranteed period, Your Employer will be entitled to your 12 (twelve) months' basic salary.

The main question regarding the lawfulness and correctness of execution of such a bond revolves around the validity of the bond. If the bond is valid, it shall be enforceable. Conversely, if it is found not to be 'valid' or 'lawful', it will have no value before the Courts of Law.

The validity of the bond shall be governed by the laws of contract as the bond you must have signed is a contract between Your Employer and you. The

bond itself is not unlawful; but depending on the circumstances, it may not be enforced as lawful.

Many employers nowadays require their employees to sign such bonds as a condition of getting the job and/or facilities therein. If an employer provides any additional facility or training and invests some money and time for the training and groomof yours. Note that this shall be valid if the employer has also given some 'consideration' against your consideration of serving the employer for 5 years period. In such a case, the Employer's expenditure (e.g. training expense) shall be considered as valid consideration.

You have not mentioned whether in these seven

months you have taken any training or whether the Employer faced some expenditure for training purposes etc. We also do not know whether the Employer promised in the bond to provide any "additional benefit" as a consideration. Note that only giving you the job may not be found as a lawful consideration which may render such a bond to be unlawful.

If your Employer cannot show that it has provided any additional benefit beyond the salary for the service, a bond requiring to surrender the entire salary or even half of it for the termination of employment may be considered as against public policy and hence unlawful due to the fact that allowing such a contract would mean legalizing slavery. The salary that is provided by Your Employer is a consideration that the Bank is pro-

viding against receiving your service under the employment contract. By providing the same consideration, the Bank cannot receive further consideration from you to stay for a specific period.

In light of the above discussion, therefore, in our opinion, a bond without providing any additional benefit to the employee is likely to be rendered unenforceable as being against public policy.

In light of the above discussion, it is advisable that, if Your Employer has promised consideration other than the giving you a job and/or salary, then please do as the bond demands. On the other hand, if Your Employer did not give such consideration then the bond may not be enforceable and you can resign without paying so. In case you take the latter course of action, make sure you send Your Employer a letter to that effect, explaining the reason for you not conforming to the bond in plain language.

I hope this opinion helps you to understand and solve your problem.

For detailed query contact: omar@legalcounselbd.com.



ing of a particular employee, then it is very likely that the employer would want him to serve it for, usually, a long period of time. Otherwise, the financial investment will have no return and the employer cannot run such loss. The rationale behind such a bond is that an employer is investing the money and time behind an employee for higher training purposes, enhancing the quality of his work and enlarging his experience for the ultimate gain of the employer. Therefore, it is only fair that the employee must commit himself to serve the employer for a certain period so that the investment made by the employer is not wasted.

The most common default clause for this kind of bond is that in case the employee decides to leave the job before the reserved period, he must pay the amount that the employer spent in providing the employee with higher training. It is also very common in many companies to obtain a bond whereby the employee guarantees that he shall serve the company for a certain period or shall surrender some salary in default. That may be the exact case



#### Govt officials must give info

The High Court on February 08 upheld an Information Commission verdict, fining a government official Tk 1,000 under the Right to Information Act, 2009 for refusing to provide information. The HC ruled that any responsible official is bound to furnish information to anybody within 20 days or within 30 days in particular cases after filing of the application as per the RTI act. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim observed that the Information Commission is a quasijudicial body and every public servant is bound to comply with its orders and instructions.-The Daily Star February 09 2012.

#### **HCtotakesteps**

The High Court on February 08 directed the University Grants Commission (UGC) to take immediate steps in stopping Darul Ihsan University's (DIU) two-year Bachelor of Law course as it was being run without the commission's approval. Delivering a verdict on a writ petition, the court also directed the DIU authorities to pay Tk 5 lakh to each of five petitioners as their "careers were affected" after studying the course at DIU. The five petitioners, Khan A Salam, Afifa Aktar, Shamim Ara, Abul Hasnat and Imam Hasan, had completed the course and attained certificates.- The Daily Star February 09 2012.

#### HC asks govt to explain

The High Court on February 07 sought an explanation from the government why the initiation and continuation of the tax evasion case against BNP leader Moudud Ahmed should not be declared illegal. The National Board of Revenue (NBR) lodged the case against Moudud, a former law minister, with the Senior Special Judge's Court on January 15 on a charge of dodging Tk 6.85 crore in income tax for 1997-98 to 2006-07 fiscal years. Following a writ petition, the HC bench of Justice Mirza Hussain Haider and Justice Md Khurshid Alam Sarker issued a rule upon the government to explain in three weeks why the proceedings of the case against Moudud should not be declared illegal.-The Daily Star February 08 2012.

#### DoE certificate stayed

The High Court on February 07 stayed for 10 days the effectiveness of the environmental certificate issued by the Department of Environment (DoE) for implementation of a water supply project of Khulna City Corporation (KCC). In response to a writ petition, the court also issued a rule upon the government to explain in 10 days why the DoE's decision to issue the certificate for Phultala Water Supply Project of KCC should not be declared illegal. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim also fixed February 19 for hearing the rule. - The Daily Star February 08 2012.

#### Why EC's decision not illegal

The High Court on February 07 issued a rule upon the Election Commission (EC) and the government to explain in three weeks why the EC's decision, which cancels the parliamentary membership of former Awami League lawmaker Maj (retd) Jasim Uddin, should not be declared illegal. The rule came after Jasim Uddin filed a petition, saying that as per Article 66(4) of the constitution and the Member of Parliament Determination of Disputes Act 1980, the Speaker of the Jatiya Sangsad (JS), not the EC, is the authority to cancel the parliamentary membership of any elected lawmaker on acceptable grounds. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim issued the rule after hearing Jasim Uddin's petition.- The Daily Star February 08 2012.

#### HCasks govt to submit report

The High Court on February 07 asked the government to submit a report on how many Bangladeshi nationals were languishing in different jails of Saudi Arabia and their legal status before it by April 8. During the hearing of a petition, the court also ordered the secretaries to the ministries of foreign and home affairs to state in the report what steps they had taken to bring the detained Bangladeshi nationals from Saudi Arabia back to the country. The HC bench of Justice Mohammad Bazlur Rahman and Justice Md Habibul Gani passed the order following a petition filed by the human rights organisation Ain O Salish Kendra (ASK). - The Daily Star February 08 2012.

#### HCasks govt and Milk Vita to explain

The High Court on February 06 issued a rule asking the government and the Milk Vita authorities to explain why they should not be directed to compensate the family of schoolgirl Sidratul Muntaha Paloma, who was allegedly crushed to death by a Milk Vita bus in the city. In response to a writ petition, the court also asked the government officials concerned to respond to the question of why they should not be directed to ensure effective traffic management and taking necessary steps to reduce the number of accidents in the city. On February 1, nine-year-old Paloma, a class-II student of the Ibrahimpur branch of Monipur High School and College, was killed when a bus rolled over her in Mirpur-14 while she was on her way to school. The following day, some newspapers reported that Paloma had been run over by a bus of Milk Vita, a cooperatives enterprise. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim also directed the MilkVita chairman to appear before it on February 14 to explain his conduct on the issue.

#### LAW LEXICON

Primary authority - Constitutions, codes, statutes, ordinances, and case law sources.

Private law - That law, such as a contract between two persons or a real estate transaction, which applies only to the persons who subject themselves to it.

Privilege - A benefit or advantage to certain persons beyond the advantages of other persons, i.e., an exemption, immunity, power, etc.

Pro se - For himself; in his own behalf. One who does not retain a lawyer and appears for himself in court.

Probable cause - A reasonable belief that a crime has or is being committed; the basis for all lawful searches, seizures, and arrests.

Probate - Court proceeding by which a will is proved valid or invalid. Term used to mean all proceedings pertaining to the administration of estates such as the process by which assets are gathered; applied to pay debts, taxes, and expenses of administration; and distributed to those designated as beneficiaries in the will. Conducted in states courts.

Probate court - The court with authority to supervise estate administration.

Source: Jurist International.

### **LEGAL MAXIM**



Magister rerum usus; magistra rerum experientia - Use is the master of things; experience is the mistress of things.

Major continet in se minus - The greater contains the

Majus est delictum se ipsum occidere quam alium - It is a greater crime to kill one s self than another.

Mala fide - In bad faith.

Mala grammatica non vitiat chartam - Bad grammar does not vitiate a deed.

Malain se - Bad in themselves.

Mala prohibita - Crimes prohibited.

Malitia supplet aesatem - Malice supplies age.

Malo animo - With evil intent.

Mandamus - We command.

Source-Inrebus.com

# CRIMESPUNISHMENT

## Unlawful assembly

ECTION 141 of the Penal Code defines what is an unlawful assembly. It provides:

An assembly of five or more persons is designated an "unlawful assembly "if the common object of the persons composing that assembly is

1.To overawe by criminal force, or show of criminal force the Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or

2. To resist the execution of any law, or of any legal process; or

3. To commit any mischief or criminal trespass, or other offence; or

4. By means of criminal force or show of criminal

force, to any person (i) to take or obtain possession of any property, or (ii) to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or (iii) to enforce any right or supposed right; or

5. By means of criminal force, or show of criminal force, (i) to compel any person to do what he is not legally bound to do, or (ii) to omit to do what he is legally entitled to do.

The essence of the offence of unlawful assembly is the common object of the persons forming the assembly.

In the case of Emperor v. Abdul Qadir (1930) Cr.L.J.249 it has been observed that where more than five persons were charged with being members of an unlawful assembly but only four of them were found to have take part in the assembly it was held that none of the

accused could be convicted. Member of an unlawful assembly: Sec 142 provides that Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is

said to be a member of an unlawful assembly. Punishment: Imprisonment of either description for 6 months or fine or both. (Sec 143) Liability of a member of an unlawful assembly:

Section 149 of the Penal Code lays down that " if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely committed in pros-

time of committing that offence, is a member of the same assembly, is guilty of that offence. In the case of Rahman Sardar v. Crown (1955) 7

ecution of that object, every person who, at the

D.L.R.57, it has been observed that the primary basis of constructive charge under section 149 is the existence and membership of an unlawful assembly and the commission of an offence by a member thereof in prosecution of the common object or such as the members knew it to be likely to be committed in prosecution of such object.

In the case of Janab Ali v. State 12 D.L.R 808, it has been held that the phrase 'in prosecution of the common object' in two clauses have different shades of meaning and these words in prosecution



of the common object in the first clause must be strictly construed as equivalent to ' in order to attain the common object'. When that is the case, every person, who is engaged in prosecution the same object, may well be held guilty of an offence which fulfills or tends to fulfill the object which he is himself engaged in prosecuting.

And an offence will fall within the second clause if the members of the assembly, for any reason, knew before-hand that it was likely to be committed in the prosecution of the common object, though not knit thereto by the nature of the object itself.

Source: Penal Code by L. Kabir. -Compiled by Law Desk.

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You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, The Daily Star 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: