

LAW ANALYSIS

Outside the scope of labour law

SAQUIB RAHMAN

SECTION 2 of Bangladesh's Labour Act 2006 identifies certain institutions that would not fall within the purview of this law. The list includes offices of or under the government (with some narrowly-defined exception), non-profit hospitals and clinics, and educational, training, and research institutions. With the assumption that most readers, as non-lawyers, might have limited idea of the existence and the implementation of the labour regulations, in simple words, I would like to clear the difference

Benckiser Bangladesh Ltd, the nature of the job being white collared or otherwise, would he or she be subject to the provisions of the Labour Act of 2006? Yes! Then what might be the reason for the same employee to mandatorily abide by another set of rules from the company's end? Of course, a company would better be able to accommodate its own regulations in accordance to its requirements, principles, work ethics, environment and convenience. But, taking into consideration an employee's side, it is only likely that an existing service regulation would be more flexible and pro-employee, than the minimum standards set in

not be less favourable than the provisions made in the Act. Hence, the multinational companies in practice are seen to possess the best of policies, while local companies hardly expand their hearts for their workers while drafting their own rules, beyond the least that the law requires.

When law does not protect?

Having spoken of the above, what would happen to an organisation that falls outside the scope of the Labour Act 2006? For the sake of understanding the depth of the matter, let us look at a few examples – provided a female teacher of a secondary school is entitled to a maternity leave of three months in accordance to the educational institution's service rules, whereas, the minimum set of standards (as per the Act) that would apply to a female garments worker is four months, does it not strike as something unfair? On the other hand, it is worth mentioning that the government had solely taken care of the female public servants by publishing a gazette notification on six months maternity leave – amendment made in the Bangladesh Service Rules in January 2011.

Moreover, if we look into the definition of a 'permanent worker' in the Labour Act, according to a university service rule book which I have recently come across, the definition of such kind of worker differs from the Act to an extent that the Act would have deemed a full-time faculty member of that particular university as a contractual worker (contracts renewed every year).

Furthermore, what would happen at an instance when the same teacher from secondary school might feel that a penal decision has been wrongfully imposed on her? The service rules usually contain provisions mentioning where appeals may lie. However, in reality, since appeals are made to superiors of the workplace anyway, chances are high that she would not be left with her desired remedy.

Above all, when services rules contain provisions mentioning that, subject to the discretion of a concerned board (of directors, trustees or others) the organisation's services rules might change overnight, to what extent

would an employee feel protected?

Inadequate solutions!

Writ petitions at the High Court Division of the Supreme Court, against an institution's service rules would only lie, provided the rules are contradictory to any provision(s) of the highest law of the land- Constitution of the People's Republic of Bangladesh. Though rules might seem unfair, tailoring a petition in a manner that provisions seem contrary to the principles of the Constitution would certainly not be the most feasible solution. Let alone, the costs associated with the process.

Also, the employee from the secondary school suing for breach of contract would not bear any fruit, until and unless the contract of employment specifically mentions that a new contract between the institution and the employee would have to be signed, every time alterations are brought to the service rules. Since otherwise, in almost all employment contracts, employees agree to serve with grace, accepting all changes that might be made in the service rules during their tenure of employment.

Whereas amendments in the Act were made in 2013, followed by the enactment of Labour Rules for better clarification of some of its provisions in 2015, the labour law in many aspects yet fall short of international standards and expectations. So, employees at the private sector institutions (with the exception of a few) that fall beyond its range are more regularly being subject to immoral practices, unfairness and hostile behaviour by the proprietors (in whichever name or form you might choose to address them) or their delegated managers/ high-ups of the respective institutions. Thus, employees who solely depend on their institutions' rules are the most deprived bunch, whose rights to be heard are questionable.

It is high time that the government makes rules for each of the institutions that the Labour Act excludes to cover.

THE WRITER TEACHES POSTGRADUATE CORPORATE GOVERNANCE AT NORTH SOUTH UNIVERSITY.

When services rules contain provisions mentioning that, subject to the discretion of a concerned board (of directors, trustees or others) the organisation's services rules might change overnight, to what extent would an employee feel protected?



between the Act and a company's service rules/regulations/policies (words interchangeable here), both of which binds employees to follow. Subsequently, I would like to introduce a problem, the solution to which we might be in need of in the near future.

Service rules and the law

Now, for instance, if someone works at Reckitt

accordance to the Labour Act. Meaning that, provided employee benefits, leaves or any other components of Reckitt Benckiser's policies are contradictory to or puts employees at a worse off position than what is mentioned in the Labour Act, such would be challengeable in the court of law. Section 3(1) provides that an establishment may have its own service rules as to the appointment of its workers, but such rules shall

LAWWATCH

Enforcing fire safety requirements

MD. IKRA

OVER the past few months, Bangladesh has been passing an anxious situation. Banani FR Tower and Gulshan DNCC Market fire incidents are the latest cementation to this misfortune. Before that, the nation witnessed in February a massive fire break-out in old Dhaka's Chawkbazar. The deaths keep piling up and what could be more tragic than this? It seems we are coping with death and grief despite the fact that we all as the human beings deserve protection for our right to life. Buildings are being constructed without following proper guidelines and maintaining minimum safety protocol. If the appropriate codes were followed, the level of loss would have been reduced the undermost.

Rule 17(1) of the Building Construction Rules 1996 requires establishment of the emer-

gency exit gate in every floor connected to its lower floors. It further provides installation of fire extinguisher machine or any other alternative arrangement as much as necessary in a conspicuous place of the building along with fire alarms as an indication to leave the building.

supply zones with automatic fire pump or intermediate gravity tank. Unfortunately, in most of the cases, the fire fighters do not find existence of any of such. Section 4 of the Fire Prevention and Extinguishment Act 2003 provides that if any person wants to use any building as warehouse or workshop, he shall have to take license from the Directorate General of Fire Service and Civil Defense. Contravention of this section will cause imprisonment for 3 years or fine and the building along with goods kept in it shall be forfeited. Section 7 depicts, notwithstanding anything contained in any other law, without approval of the Directorate General of Fire Service and Civil Defence regarding fire prevention or extinction, no structural design or layout of multi-storied commercial building shall be approved or amended. Section 18 connotes that contravention of section 7 shall be dealt



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with imprisonment for 6 months or fine. Section 8 (3) directs every owner of the building to take precautions and other measures necessary for public safety. The Fire Prevention and Extinguishment Act 2003 is supplemented by the Fire Prevention and Extinguishment Rules 2014 which enumerates that owner of the building shall have to apply for occupancy certificate of the building at the end of the construction (Rule 22). These enable the authority to inspect the building, to examine whether the owner met all the requirements of the building code for the public safety or not.

If an owner fails to insert these basic safety measures in the structural design of the building, his application must be rejected but somehow they get the approval and get on with it. Back in 2010, the High Court Division of Bangladesh, in response to a writ petition (Writ Petition no. 718/2008) filed by BLAST and Safety & Rights Society jointly, directed RAJUK, City Corporation to implement the National Building Code 2006 properly and also dictated to form Code Enforcement Agency within a year. After almost eight years, where we faced fire incidents like Tazreen Garments, Nimtoli, Chawkbazar, Banani and Gulshan DNCC Market tragedies, still there is no ostensible implementation of statutory provisions as well as verdict given by the High Court Division.

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COURT CORRIDOR

To strengthen government litigation service

SHUVADEEP PAUL

THE Judiciary is one of the most functioning organs of a State. Hence, litigation management is inseparable part of the Judiciary. Litigation management includes all suits and cases in which the government/public or private parties are involved and such management is being functioned by Solicitor's Office under the Law and Justice Division. At present, Government Pleaders (GPs) and Public Prosecutors (PPs) are under the jurisdiction of Solicitor's Office.

Basically, Government Pleaders along with Additional GP and Assistant GP deal with the civil cases for and against the government, whereas, Public Prosecutors with the help of Additional PP and Assistant PP look after the criminal cases for and against the government. The number of Government Pleaders, Public Prosecutors and other Pleaders and Prosecutors are not enough in proportion to number of million cases pending before the subordinate court. Nevertheless, it is high time to focus on the standard and skills development of them like other countries of the world. If we consider the barriers, challenges and success rate of Prosecutors and Government Pleaders, it will be demand of time to reconstruct the whole Prosecution Service like other countries' organised prosecutorial services.

In this regard, the basic challenges and lacunas which are mostly felt are that, in most cases the interest of government is not ensured in civil cases, the punishment of offences cannot be awarded due to failure of Prosecution. Again, Prosecutors and Government Pleaders are awarded with very little remuneration. For example: remuneration of a Public Prosecutor is BDT 500 per day, while an Additional PP gets 400 per day and Assistant PP gets BDT 200 per day excluding 15% vat on their earnings, no matter whether they deal with one or ten cases daily. That is why, they are keen to handle other pri-vate cases



frequently and so, their presence can be found in those cases which are rarely seen in government cases. To address these challenges, adoption of a new uniformed Prosecution Service can be a sustainable solution.

To introduce an organised and integrated prosecutorial service, Bangladesh Judicial Service Commission (BJSC) can play the vital role by appointing Assistant PPs/Assistant GPs. India, Pakistan, France, the USA and many other countries have introduced organised prosecutorial service. Bangladesh can follow those countries' models. Hence, our Law Commission can propose a model organised prosecutorial service for Bangladesh.

For introducing this new Act, some significant features are to be incorporated. Appointment of Prosecutors and Government Pleaders are to be restructured. It can be done by the fresh recruitment, open and competitive selection of young advocates. BJSC can frame Cadre and Recruitment Rules for the Department of Prosecution and Government Litigation. The Rules can be provided as like direct recruitment of Assistant PPs/Assistant GPs through a qualifying written

examination followed by viva voce conducted by BJSC. An Assistant PP/Assistant GP is required to have a law degree and two or three years of practice. All other appointments in the service are by promotion. Professional training is a must in all tiers of Prosecutors and Government Pleaders.

A structured salary scale has to be introduced for them like other gazetted officers. However, they will be evaluated by their performance, in Annual Confidential Report (ACR), evaluation from court shall also make our Prosecutors and Government Pleaders for accountable, responsible and a check and balance system will be ensured by this system. From the performance in district level, Prosecutors or Government Pleaders can be appointed in Attorney Office as one third of total appointment in Attorney Office. Without an accountable, responsive, dedicated Prosecution and Government Litigation Service, the interest of government and State cannot be ensured in both Civil and Criminal cases of our country.

THE WRITER IS JUDICIAL MAGISTRATE, SUNAMGANJ.

LAW EVENT

Model Law Commission to be organised by SCLS

SOCIETY for Critical Legal Studies (SCLS), a study circle based on Faculty of Law, University of Chittagong is going to host country's maiden Model Law Commission and Legislative Process Simulation, in the memory of Principal M. Wazhiullah Bhuiyan, on the 5th of April 2019 in Chittagong. Theme for this grand competition is "Enact Future Laws".

In this Model Law Commission, a total of 12 teams from different public and private universities of 36 participants will be representing their respective universities. This competition shall run for a day with multidimensional competitions. There will be 3 rounds named White Paper Presentation Round, Draft Preparation Round, Parliamentary Round. This competition will be felicitated by different legal personnel of the country. Academics, jurists, judges, advocates, NGO officials and many others from various

institutions will be acting as adjudicators at the competition.

The movement of SCLS started its journey with nothing but great enthusiasm and hope on the eve of December 2016 and over the past two and a half years SCLS has

spread its sweet fragrance among the law students of the country by giving law a new dimension. SCLS has successfully organised various national events including Law Olympiad, Professor Dr. Khair Uddin Memorial Moot Court Competition on International Law, SCLS Students' Tribunal

against the Genocide on Rohingya, workshops, seminars, field research, English Station which is a spoken English programme, public lectures etc. It has also published its own law review. Recently, SCLS has started running three wings, namely debate wing, moot court wing and research wing. SCLS aims to contribute to the facets of the legal study of Bangladesh. This Model Law Commission will be stimulating the spirit of young legal minds of the country and will provide them opportunities not only to learn law but also to experience the practical business of law. Model Law Commission will give them the chances to become well acquainted with the law-making process and also to give their conscience a notion regarding the existing laws. The Daily Star is the Official Print Partner of the event.

