

10 SCOB [2018] HCD

HIGH COURT DIVISION (SPECIAL ORIGINAL JURISDICTION)

Writ Petition Nos. 16781 of 2012 with

16679/2012, 16680/2012, 16681/2012, 16682/2012, 16683/2012, 16684/2012, 16685/2012,
16686/2012, 16687/2012, 16688/2012, 16689/2012, 16690/2012, 16691/2012, 16692/2012,
16693/2012, 16694/2012, 16695/2012, 16696/2012, 16697/2012, 16698/2012, 16699/2012,
16700/2012, 16701/2012, 16702/2012, 16703/2012, 16704/2012, 16705/2012, 16706/2012,
16707/2012, 16708/2012, 16709/2012, 16710/2012, 16711/2012, 16712/2012, 16713/2012,
16714/2012, 16715/2012, 16716/2012, 16717/2012, 16724/2012, 16725/2012, 16726/2012,
16727/2012, 16728/2012, 16729/2012, 16730/2012, 16731/2012, 16732/2012, 16733/2012,
16734/2012, 16735/2012, 16736/2012, 16737/2012, 16738/2012, 16739/2012, 16740/2012,
16741/2012, 16742/2012, 16743/2012, 16744/2012, 16745/2012, 16746/2012, 16747/2012,
16748/2012, 16749/2012, 16750/2012, 16751/2012, 16752/2012, 16782/2012, 16783/2012,
16784/2012, 16785/2012, 16786/2012, 16787/2012, 16788/2012, 16789/2012, 16790/2012,
16791/2012, 16792/2012, 16793/2012, 16794/2012, 16795/2012, 16796/2012, 16797/2012,
16798/2012, 16799/2012, 16801/2012, 16802/2012, 16803/2012, 16804/2012, 16805/2012,
16806/2012, 16807/2012, 16808/2012, 16809/2012, 16810/2012, 16811/2012, 16812/2012,
16813/2012, 16814/2012, 16815/2012, 16816/2012, 16817/2012, 16818/2012, 16819/2012,
16820/2012, 16821/2012, 16822/2012, 16823/2012, 16824/2012, 16825/2012, 16826/2012,
16827/2012, 16828/2012, 16832/2012, 16833/2012, 16834/2012, 16835/2012, 16836/2012,
16837/2012, 16838/2012, 16839/2012, 16840/2012, 16841/2012, 16842/2012, 16843/2012,
16844/2012, 16846/2012, 16847/2012, 16848/2012, 16849/2012, 16850/2012, 16851/2012,
16852/2012, 16853/2012, 16854/2012, 16855/2012, 16856/2012, 16857/2012, 16858/2012,
16859/2012, 16926/2012, 16927/2012, 16928/2012, 16929/2012, 16930/2012, 16931/2012,
16932/2012, 16933/2012, 16934/2012, 16952/2012, 16953/2012, 16954/2012, 16955/2012,
16956/2012, 16957/2012, 16958/2012, 16959/2012, 16960/2012, 16961/2012, 16962/2012,
16963/2012, 16969/2012, 16970/2012, 16972/2012, 16973/2012, 16974/2012, 16975/2012,
16976/2012, 16977/2012, 16978/2012, 16979/2012, 16980/2012, 16981/2012, 16982/2012,
16983/2012, 16984/2012, 16985/2012, 16986/2012, 16987/2012, 16988/2012, 16989/2012,
16990/2012, 17000/2012, 17001/2012, 17002/2012, 17003/2012, 17004/2012, 17005/2012,
17006/2012, 17007/2012, 17008/2012, 17009/2012, 17010/2012, 17011/2012, 17012/2012,
17013/2012, 17014/2012, 17015/2012, 17016/2012, 17017/2012, 17018/2012, 17058/2012,
17059/2012, 17060/2012, 17061/2012, 17062/2012, 17063/2012, 17064/2012, 17065/2012,
17066/2012, 17067/2012, 17068/2012, 17069/2012, 17070/2012, 17071/2012, 17072/2012,
17073/2012, 17074/2012, 17075/2012, 17076/2012, 17077/2012, 17078/2012, 17079/2012,
17080/2012, 17081/2012, 17082/2012, 17083/2012, 17084/2012, 17085/2012, 17086/2012,
17087/2012, 17088/2012, 17089/2012, 17090/2012, 17091/2012, 17092/2012, 17093/2012,
17094/2012, 17095/2012, 17096/2012, 17097/2012, 17098/2012, 17099/2012, 17100/2012,
17101/2012, 17102/2012, 17103/2012, 17104/2012, 17105/2012, 17106/2012, 17107/2012,
17108/2012, 17109/2012, 17110/2012, 17111/2012, 17112/2012, 17113/2012, 17114/2012,
17115/2012, 17116/2012, 17117/2012, 17268/2012

Grameenphone Limited
.....Petitioner in all the Writ
Petitions
Vs.
**Chairman, First Labour Court, Dhaka
and others**

..... Respondents
Mr. A.F. Hassan Ariff with
Mr. Sheikh Fazle Noor Taposh with
Mr. Meah Mohammad Kawsar Alam,
Advocates
.....for the petitioner

Mr. Monsurul Hoque Chowdhury with
Mr. Syed Mizanur Rahman and
Mr. Abdul Mannan with
Mr. Haroon Ar Rashid Advocates
....For the respondent No.3.

Mr. Amit Das Gupta
....for the respondent No.4.

Heard On 11.05.2016,09.11.2016 and
17.11.2016
Judgment on 15.12. 2016

Present:

Mr. Justice Tariq ul Hakim

And

Mr. Justice Md. Faruque (M. Faruque)

The concept of Outsourcing services in Bangladesh.

Outsourcing services is a new concept in our country. Not just labour but also professional services may be procured through outsourcing. It is a process by which the recipient of service enters into an agreement with a contractor / service provider who engages persons to render services to the service recipient. In such a situation, there is nemployment contract between the service recipient and the service renderer. The contract exists between the service recipient and the contractor and consideration for the services are provided by the service recipient to the contractor . If the service recipient is not satisfied with the service rendered by the persons engaged by the contractor then his remedy lies for breach of the terms and conditions of the agreement against the contractor. Likewise if the contractor does not receive adequate consideration for providing his service through his appointed employees, his remedy lies against the service recipient. The service recipient is generally not concerned who renders the service to him as long as the service sought is rendered adequately . As can be reasonably expected the service recipient may set certain criteria and conditions to be observed by the service renderer and he has a discretion to reject any person through whom the service is provided by the contractor; but in all such cases the matter is governed by the contract between the service recipient and contractor. It is a contract of services as opposed to a contract of employment. ... (Para 21)

Judgment

Tariq ul Hakim,J:

1. Rules Nisi have been issued calling upon the respondent Nos. 1-3 to show cause why the judgments dated 12.09.2012 passed by the Chairman, Labour Appellate Tribunal, Dhaka in Appeal No. 82 of 2011 (Annexure D) dismissing the Appeal along with 263 similar Appeals affirming the judgment dated 30.03.2011 passed by First Labour Court, Dhaka in BLL Case No. 284 of 2008 along with 263 similar cases should not be declared to have been passed without lawful authority and of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper .

2. All these Rules concern common questions of law and facts and were heard together and are being disposed of by this single judgment.

3. Facts relevant for disposal of these Rules is that the Respondent Nos. 3 in all the Writ Petitions as plaintiff filed separate applications under section 213 of the Labour Act, 2006 (Act No. XLII of 2006) against the petitioner Grameenphone for a direction to treat them as permanent workers and provide them facilities of permanent workers alleging inter alia that the Respondent Nos. 3 were appointed as drivers on 18.02.2007 and since their appointment have been driving the cars of the petitioner company and were provided with 'Identity Cards', staff uniforms and were paid salaries, bonus, overtime and other benefits by the petitioner Grameenphone and has thus become permanent workers of the petitioner .

4. The further case of the Respondent Nos. 3 plaintiff workers is that the Respondent No.4 is a company engaged in supplying workers and that the Respondent Nos. 3 are not employees of the Respondent No.4 but employees of the petitioner but the petitioner is illegally treating the Respondent Nos. 3 as employees of the Respondent No.4 . The Respondent Nos. 3 on several occasions requested the petitioner Grameenphone to treat them as permanent workers but the petitioner refused to do so and hence they have been constrained to file petitions under Section 213 of the Labour Act, 2006 in the Labour Court for a direction upon the petitioner to treat the Respondent Nos. 3 permanent workers of the petitioner company Grameenphone.

5. The petitioner contested the case by filing written statement denying the material allegations alleged in the plainatiff's petition contending inter alia that there was no contractual relationship between the petitioner and the Respondent Nos. 3 and the Respondent Nos. 3 were engaged by the Respondent No.4 to render services for the petitioner Grameenphone on outsourcing basis as employees of the Respondent No.4 and that the Respondent No.4 was being paid by the petitioner company for the service and that the Respondent No.4 paid the salaries and other benefits to the Respondent Nos. 3 for the services they rendered to the petitioner company and therefore the Respondent Nos. 3 had no locus standi to file the cases against the petitioner Grameenphone in the Labour Court and the said Labour Cases were not maintainable in their present form and manner.

6. The Respondent No. 4 also contested the said Labour Cases by filing separate written statements contending inter alia that there is no relationship between the Respondent Nos. 3 and the petitioner Grameenphone and that the Respondent No.4 is engaged in providing workers on outsourcing basis and in the course of their business the Respondent No.4 entered into agreement with the petitioner Grameenphone on the 1st day of April, 1999 for a period of one year which was renewed yearly and lastly on 01.12.2008 for a period of one year upto 31.12.2008 to carry on its business of providing drivers on outsourcing basis and the Respondent No.4 employed and appointed a number of drivers , issued letters of appointment in their favour including the Respondent Nos. 3 and thereafter placed them with the petitioner Grameenphone for discharging the duties as drivers.

7. It is further stated that according to the terms of the said agreement the Respondent No.4 received remunerations from the petitioner and the Respondent No.4 recruited the Respondent Nos. 3 on temporary basis to render services as drivers for the petitioner Grameenphone as employees of the Respondent No.4 and that the petitioner Grameenphone never appointed the drivers on temporary or permanent basis and never issued any letters of appointment to them or gave them any assurance that they would be absorbed permanently in the employment of the petitioner company Grameenphone and that the impugned judgment and orders of the Court below are liable to be set aside.

8. The Respondent No. 2 First Labour Court after hearing the learned Advocates of the parties and adducing evidence by witnesses and perusing the relevant documents passed the judgment and order dated 30.03.2011 against the petitioner Grameenphone. The petitioner Grameenphone thereafter filed Appeals before the Labour Appellate Court against the said judgment and order of the Labour Court who after hearing the parties dismissed the Appeals vide its judgment dated 12.09.2012.

9. Being aggrieved, the petitioner Grameenphone has come to this Court and obtained the present Rules.

10. As against this, the Respondent Nos. 3 has filed Affidavits-in-Opposition stating inter alia that the said respondents were employed by the petitioner and were provided indenty cards and after completing their probation period satisfactorily they have acquired the status of a permanent worker as per the provisions of the Labour Law, 2006.

11. It is further stated that the Respondent Nos. 3 have been working for the petitioner as per their requirement and driving their cars as drivers and that the Respondent No.4 have no control and supervision in their services and work rendered by the Respondent Nos. 3 and therefore they are the employees of the petitioner Grameenphone and they are entitled to be treated as permanent employees/ workers of the petitioner and get benefits as permanent workers.

12. The Respondent No.4 in its Affidavit-in-Opposition stated inter alia that the said Respondent under its agreement with the petitioner provided outsource persons to the petitioner Grameenphone as per its requirement and after their recruitment the petitioner has the authority to control the service of the Respondent Nos. 3. It is further stated that the wages and salaries were paid to the Respondent Nos. 3 after getting paid from the petitioner for the services rendered by the Respondent Nos. 3. It is further stated that the Respondent No.4 recruited the Respondent Nos. 3 on temporary and contract basis to fulfill the requirements of the petitioner company and they are not permanent workers of the said Respondent No.4.

13. Mr. A.F. Hassan Arif, assisted by Mr. Sheikh Fazle Noor Taposh and Mr. Meah Mohammad Kawsar Alam, learned Advocates for the petitioner Grameenphone took us through the judgments of the Labour Court and Labour Appellate Court below and submits that the said courts committed a gross error in law in holding that the Respondent Nos. 3 are employees/ workers of the petitioner because there is no relationship of employer and employees between the petitioner and the Respondent Nos. 3. The learned Advocate further submits that there is no privity of contract between the Respondent Nos. 3 workers and the petitioner Grameenphone and that the Respondent Nos. 3 was not a party to the contract between the petitioner Grameenphone and the Respondent No.4 Smart Services Ltd./Jamsons International and therefore the said Respondent Nos. 3 cannot claim to be a worker or employee of the petitioner company or claim any benefit from it. The learned Advocate further submits that section 213 of the Labour Law, 2006 is for enforcing a right guaranteed to a worker under an award, settlement or law and that since it is not admitted by the petitioner that the Respondent Nos. 3 are its workers the question of treating them permanent under the law does not arise.

14. Mr. Monsurul Hoque Chowdhury, assisted by Mr. Syed Mizanur Rahman and Mr. Abdul Mannan assisted by Mr. Md. Haroon Ar Rashid, learned Advocates for the

Respondent Nos.3 submit that the Respondent Nos. 3 have completed three months probationary period with the petitioner Grameenphone and have become permanent in their jobs and are entitled to be treated as permanent workers of the petitioner Grameenphone . The learned Advocate further submits that the Respondent Nos. 3 are getting salaries and other benefits by the petitioner Grameenphone through the Respondent No.4 Smart Services Ltd./Jamsons International and the courts below rightly found them permanent workers of the petitioner which calls for no interference by this Court .

15. The learned Advocate further submits that even though no appointment letter was issued by the petitioner in favour of the Respondent Nos. 3 nevertheless since they have been working for the petitioner Grameenphone for several years at their premises and driving their cars and rendering other services as per their requirement they are deemed to be permanent employees of the petitioner company.

16. Mr. Amit Das Gupta, the learned Advocate for the Respondent No.4 submits that the Respondent Nos. 3 were recruited by them as per instruction of the petitioner Grameenphone on temporary basis to provide services as drivers to the petitioner company and that the salaries and other financial benefits were paid to the Respondent Nos. 3 after getting paid by the petitioner for the services rendered by them. The learned Advocate further submits that the Respondent Nos. 3 were recruited for temporary period only and that they are not permanent workers of the Respondent No.4 .

17. We have considered the submissions of the learned Advocates.

18. In the instant case the Respondents workers filed cases before the Labour Court to be treated as permanent workers of the defendant petitioner Grameenphone. They have alleged in the plaint that they are workers of the petitioner Grameenphone and are receiving salaries from the petitioner . This fact has been denied by the petitioner all along . The Labour Court in its judgments and orders have held that the Respondent No.1 workers have been working for more than three months and as such as per the provisions of Labour Law, 2006 they are deemed to be permanent workers. The Labour Court has also held that the Respondent No.1 plaintiffs satisfied the conditions in section 2(65) of the Labour Law, 2006 and they should be considered workers. In the judgment and order however no reasoning appear to be given why and on what grounds the Labour Court found the plaintiff respondent permanent workers of the petitioner Grameenphone .

19. It is admitted by the petitioner Grameenphone and all the parties that the Respondent No.1 are workers within the definition of Labour Law, 2006 . It is also admitted that they have been employed for more than three months and that they are rendering service to the petitioner Grameenphone. The point for adjudication therefore is to decide whose workers the Respondent No.3 is i.e. who is the employer of the Respondent No.3 plaintiff worker . For an application under section 213 of the Labour Law, 2006 to be maintainable in the Labour Court for being treated as permanent worker of the petitioner Grameenphone it must be first evident that he is a worker of the petitioner Grameenphone.

20. The petitioner's case is that the Respondent No.3 are workers of the Respondent No. 4, Smart Services Ltd. and/or Jamsons International and that the service of the Respondent No.3 workers have been procured through a contract between the petitioner and the Respondent No. 4 . The Respondent No. 4 are contractors and they issued appointment letters

in favour of the Respondent Nos.3 for rendering services to the petitioner as outsourced workers without being a party in the contract between the petitioner and the respondent No. 4. The Respondent Nos.3 plaintiff workers on the other hand, claimed that they are rendering services to the petitioner Grameenphone at their premises and driving their Vehicles and getting their salaries from the petitioner Grameenphone through the Respondent No. 4 and therefore they should be considered workers of the petitioner Grameenphone .

21. Outsourcing services is a new concept in our country. Not just labour but also professional services may be procured through outsourcing. It is a process by which the recipient of service enters into an agreement with a contractor / service provider who engages persons to render services to the service recipient. In such a situation, there is no employment contract between the service recipient and the service renderer. The contract exists between the service recipient and the contractor and consideration for the services are provided by the service recipient to the contractor . If the service recipient is not satisfied with the service rendered by the persons engaged by the contractor then his remedy lies for breach of the terms and conditions of the agreement against the contractor. Likewise if the contractor does not receive adequate consideration for providing his service through his appointed employees, his remedy lies against the service recipient. The service recipient is generally not concerned who renders the service to him as long as the service sought is rendered adequately . As can be reasonably expected the service recipient may set certain criteria and conditions to be observed by the service renderer and he has a discretion to reject any person through whom the service is provided by the contractor; but in all such cases the matter is governed by the contract between the service recipient and contractor. It is a contract of services as opposed to a contract of employment.

22. A recruiting agency on the other hand, recruits persons including workers and professionals for being employed by a third party. After the candidates are selected they are sent to the service recipient who employs them under a employment contract on terms and conditions agreed between the service renderers and service recipients who becomes the employer . After the worker /professional is employed by the service recipient the person recruiting the worker drops off the picture and there is a direct relationship of employer and employee between the service recipient and the worker. Such situation is commonly seen in our country when workers are recruited for employment for overseas, construction sites, industries etc. The recruiting agency gets a commission for his service from the overseas employer and also sometimes from the recruited workers and the workers get their salaries and other benefits directly from their employer for the duration of their employment . In the case of outsourcing the worker gets his salary and other benefits from the contractor as long as he renders his services to the service recipient.

23. In an unreported decision of this Court in ***Writ Petition No.7068 of 2011 in Sharmeen Annie Vs. First Labour Court , Dhaka and another*** it has been held:

“To be an employee one has to be in the employer’s pay roll and subject to the latter’s control on questions of employment. There has to be a contract of employment inter se, containing terms of employment. Nothing like that is present in the file before us. It transpires, the respondent No.2 is indeed an employee of an independent contractor named TEAM Services. The contractual relationship is between the petitioner and TEAM Services, the respondent No.2 is not a privy to it. So, he has no cause of action against the petitioner.”

24. In the instant case it is admitted that the Respondent No.3 workers are rendering services as drivers for the petitioner Grameenphone. It is also admitted that their salaries and allowances and other benefits are being paid directly by the Respondent No. 4 although it has been urged on behalf of the Respondent No.3 workers that the salaries and other financial benefits are being paid to them by the Respondent No. 4 on behalf of the petitioner Grameenphone although there is no written contract of employment between the petitioner Grameenphone and the Respondent No. 3 . From the facts and circumstances of the case it has to be seen whether any unwritten contract of employment can be construed between the petitioner Grameenphone and the Respondent No.3 workers or whether there is any contract of employment between the Respondent No.3 workers and the contractor /service provider Respondent No. 4.

25. The consistent case of the respondent workers is that they are rendering services to the petitioner as drivers by driving their cars as per their requirements by wearing uniforms provided to them, carrying ID cards and even receiving salaries from the petitioner through the respondent No. 4 Smart Services Ltd. and Jamson International . However, it has been admitted by the P.W.1 in the Labour Court ((hereinafter referred to as the Labour Court case) that Staff Uniforms have been provided by the petitioner Grameenphone but in cross examination he admitted that there is no logo of the petitioner grameenphone on his uniform. Moreover, in the agreement between the petitioner and the respondent No.4 Smart Services dated 16.1.2006 in clause 4 it has been stated that uniforms will be provided by Smart Services and in Clause D-5 it has been stated that a sum of Taka 400 would be given monthly by the petitioner Grameenphone to the respondent No.4 Smart Services Ltd. as dress allowance . Thus it cannot be said with certainty that uniforms were provided by the petitioner Grameenphone. The “ID Cards” provided to the respondent workers have the petitioner company’s name as well as that of the respondent No.4 Smart Services/Jamsons International . Moreover it appears that they are not called ‘ID Cards’ bus ‘Gate Pass’ as evident from the evidence of P.W.1 in the said case. Thus this is also not conclusive evidence that the workers / drivers are the exclusive employees of the petitioner Grameenphone.

26. Quite apart from the evidence adduced by the witnesses in the Labour case the petitioner and the respondent No.4 entered into a contract dated 16.2.2006 under the heading “ Agreement for providing Outsource Personnel” Exhibit Kha . In the said agreement it has been stated in the preamble that

“Whereas First Party has offered to provide the outsource personnel for the Second Party and Second party has agreed to assign the outsource personnel of the First party on the terms and conditions hereinafter contained.”

27. In the first clause of the said agreement in paragraph A Clause 1 it has been stated that outsource personnel services will be rendered at different locations of the Second Party. In letters dated 31.10.2016 and 23.10.2016 from the respondent No.4 Jamsons International and Smart Service respectively addressed to the petitioner (Annexures G and G-1 in the Supplementary Affidavit dated 09.11.2016) the respondent No.4 has admitted that they are providing outsource workers to the petitioner and they are being paid by them . The two letters are reproduced below: (G and G-1)

“JAMSONS INTERNATIONAL

Dated 31.10.2016

To

*Mr. Zahed Bin Ahsan
Chief Procurement Officer (Acting)
Global Sourcing
Grameenphone Ltd.
Dhaka.*

*Re: No further renewal of agreement Ref: No: GP/SA/POP/JI/06 made on 16.02.2006
after 30.11.2016*

Dear Sir,

We have a long standing business relationship with you since 2000. We have tried our best to serve your company upon providing outsource workers. It may be mentioned here that most of the workers provided by us to you, had filed cases to be treated permanent workers under you as per the provision of Labour Act, 2006. Mentionable, here that under the agreement executed between us, we could not treat the workers as our permanent workers as well. The agreement executed between us will be expired on 30.11.2016. Due to enhancement of taxes and other expenditure it had become difficult for us to continue our business and as such we are not inclined to extend our last agreement with you which will be expired on 30.11.2016.

Hope our relation will remain same.

With thanks

Sd/ Illegible 31.10.16.

Md. Mostofa Kamal Khan

On behalf of CEO ”

Annexure G-1

“Smart Services Ltd.

*Mr. Zahed Bin Ahsan
Chief Procurement Officer (Acting)
Global Sourcing
Grameenphone Ltd.
Basundhara
Dhaka.*

Subject: Deduction of money from the monthly bill of Smart Services Ltd.

Dear Sir,

We have noticed that a huge amount of money have been deducted from the service Bill of Smart Services Limited for the month of September 2016. The deduction was so sudden and without any notice and the amount is almost half of the service charge of Smart Services Ltd.

We would like to say that this information was not communicated to us neither by Grameen Phone nor by any other sources. We are a business company and we will not do any business where there is no profit since we have to pay to the workers.

We have 24 clients and none of them have deducted money from our bill showing the cause of Tax.

We would request you to kindly solve the issue as early as possible so that the October 2016 bill can be forwarded to Grameen Phone.

In short we would like to inform you that we cannot bear the loan of such a big amount deduction from our bill.

Thank you for our goods understanding.

*Yours sincerely,
Sd/- Illegible*

Peter P Sarkar
Managing Director.”

28. From the language of the aforesaid letters it appears that the workers are not employees of the petitioner. Further more in all the pleadings of the respondent No.4 it has been clearly and categorically stated that the said respondent No.3 workers were appointed by them for a temporary period. Paragraph 13 and 22 of the written statement of the respondent Nos. 3 and 4 in the Labour case is as follows:

“13. That Grameen Phone Ltd. did not issue them any appointment letter as an employee rather they are the user of the services against which Grameen Phone Ltd. pays service charge to the respondents (Jamsons International) every months as per the contractual agreement .”

“22. That Jamsons International is the temporary and contract basis employer of the petitioner.”

29. Our attention has also been drawn to an undertaking given by the respondent plaintiff worker to the respondent No.4 marked as exhibit “Ta” where at the time of giving appointment by the respondent No.4 , the respondent worker clearly stated that “আমি স্মার্ট সার্ভিসেস লিঃ এর একজন ড্রাইভার হিসাব গ্রামীন ফোন অফিস চাকুরী করত আগ্রহী ” Exhibit Ta runs as follows:

“Smart Services Ltd.

অঙ্গীকার নামা

১. আমি স্মার্ট সার্ভিসেস লিঃ এর একজন ড্রাইভার হিসাব গ্রামীন ফোন অফিস চাকুরী করত আগ্রহী।
২. আমার মাসিক বেতন হব ৫৩২০.০০ টাকা।
৩. যদি আমি এ্যাক্সিডেন্ট না কর গাড়ী চালাত পারি ও আমার পরিষ্কার পরিচ্ছন্নতা, ব্যবহার ও গাড়ী চালনায় কর্তৃপক্ষ সন্তুষ্ট হন তাহল আরা ৫৬০ টাকা প্রতি মাস পেত পারি। যা তিন মাস পর পাওয়া যাইত পার।
৪. আমার চাকুরীর মেয়াদ যোগদান হত ১২ মাস পর্যন্ত হব। ভাল কাজের জন্য সময় বৃদ্ধি হত পার।
৫. আমি অথবা কর্তৃপক্ষ চাইল এক মাসের নোটিশ চাকুরীর চুক্তিপত্র বাতিল করত পারব।
- ৬। তব চরি, অসামাজিক কার্যকলাপ, খারাপ ব্যবহার, মাদকাসক্তি ও নিয়ম ভঙ্গর কারন এবং মারাত্মক দুর্ঘটনার কারন যে কোন সময় আমাক চাকুরী হত বরখাস্ত করা যাব। এক্ষত্র আমি কোন প্রতিবাদ করত পারব না অথবা কোন সংস্থার সাহায্য প্রার্থনা করব না।
- ৭। আমি যখনই গ্রামীন ফোন অফিসের গাড়ী চালাবা তখনই আমাক কোম্পানী থেকে প্রদত্ত ইউনিফর্ম পরত হব। যে কোন কারনই এর অনাথা করা যাব না।
- ৮। প্রতিদিন ১০ ঘন্টা কাজ করত হব এবং এর অতিরিক্ত কাজ করল তা ওভারটাইম বল বিবচিত হব।
- ৯। ওভারটাইমের জন্য প্রতিঘন্টায় আমি ২৭ টাকা কর পাবা এবং কার্যস্থলের বাইর কোন অফিসিয়াল কাজ াত্রি যাপন করর প্রতি রাত্রির জন্য ৬০০ টাকা থাকা ও খাওয়া হিসাব পাবা।
- ১০। ১২ মাস চাকুরী পূর্ন করার পর আমি দুইটি উৎসব উৎসব ভাতা পেত পারি যা গ্রামীন ফোন অফিস স্মার্টের মাধ্যম দেবন। এক একটি বোনাস ২৮০০ টাকা।
- ১১। স্মার্ট সার্ভিসেস লিমিটেড তাদর নিয়ম অনুসার আমার কাছ থেকে মোট ৬০০০(ছয় হাজার টাকা) সিকিউরিটি ডিপজিট রাখব। আমার ব্যক্তিগত কারণ গ্রামীন ফোন এর গাড়ীর ক্ষতি হল এই টাকা থেকে কেট রাখা হব। অন্যথায় চাকুরী ছেড় গেল ঐ টাকার বাকী অংশ ফেরত পাবা।
- ১২। গ্রামীন ফোন থেকে নির্ধারিত মাইলজ আমাক দিত হব। দিত অপারগ হল আমাক চাকুরী থেকে বরখাস্ত করা যাব। অথবা অন্য ব্যবস্থা গ্রহন করত পারব।
- ১৩। আমি জানি য গাড়ী চালানার সময় আমাক সিটবল্ট বাঁধত হব।
- ১৪। গাড়ীর লগবই যথাযথ লিপিবদ্ধ করত হব।
- ১৫। কোম্পানীর প্রদত্ত মোবাইল ফোন এর ব্যবহার মাসিক ১৫০০ (ভ্যাট ও ট্যাক্স ছাড়া পনের শত টাকা) সীমিত রাখিব বেশি হল অতিরিক্ত অর্থ দিত বাধ্য থাকব। পর পর ০৩ মাস বিল বেশি হল কোম্পানী আমার বিরুদ্ধ ব্যবস্থা নিত পারব।
- ১৬। মাত্র এক মাসের নোটিশ আমাক চাকুরী থক বরখাস্ত করা যাব, সে ক্ষেত্র আমার কোন বক্তব্য অথবা দাবী প্র-যাজ্য হব না।

আমি সুস্থ্য অবস্থায় স্বজ্ঞান ও ইচ্ছাপ্রনাদিত হয় এই অঙ্গিকার নামায় আমার দস্তখত দিলাম এবং এর নিয়ম পালন করবা বর স্বীকারান্তি করলামঃ

তাং-

নামঃ

স্বাক্ষরীঃ

আইডি নংঃ

30. After having given the aforesaid undertaking to the respondent No.4 and thereafter receiving salary and other benefits from the respondent No.4 for several years without any objection it does not lie in their mouth to say that they are not employees of the respondent No.4 Smart Service Limited but employees of some one else like the petitioner simply because they are rendering services to the petitioner as driver as per the petitioner's requirements.

31. Further Section 3Ka of the Labour Law, 2006 as amended by section 5 of the Bangladesh Labour Law, 2013 states as follows:

“৩ক। ঠিকাদার সংস্থা রেজিস্ট্রেশন।- (১) অন্য কোন আইন ভিন্নতর যাহাই কিছু থাকুক না কেন, কোন ঠিকাদার সংস্থা, যে নামই অভিহিত হউক না কেন, যাহা বিভিন্ন সংস্থায় চুক্তিত বিভিন্ন পদ কর্মী সরবরাহ করিয়া থাক সরকারর নিকট হইত রেজিস্ট্রেশন ব্যতীত এইরূপ কার্যক্রম পরিচালনা করিত পারিব না।

(২) এই আইনের অধীন এতদুদ্দেশ্য বিধি প্রণীত হইবার ০৬ (ছয়) মাসর মধ্য দশ বিদ্যমান সকল ঠিকাদার সংস্থা সরকারর নিকট হইত রেজিস্ট্রেশন গ্রহণ করিত বাধ্য থাকিব।

(৩) ঠিকাদার সংস্থা দ্বারা সরবরাহকৃত শ্রমিকগণ সংশ্লিষ্ট ঠিকাদারর শ্রমিক হিসাব গন্য হইবন এবং তাহারা শ্রম আইনের আওতাভুক্ত থাকিবন।

(৪) এই ধারার অধীন রেজিস্ট্রেশন প্রদানর পদ্ধতি বিধি দ্বারা নির্ধারিত হইব।

ব্যাখ্যাঃ এই ধারার উদ্দেশ্য পূরণকল্প কর্মী বলিত শ্রমিক সহ নিরাপত্তাকর্মী, গাড়ীচালক ইত্যাদিক বুঝাইব।”

32. The aforesaid provision gives statutory recognition to outsourcing arrangements and provides clearly that outsourced employees will be employees of the contractor. It has been urged on behalf of the respondent worker that this provision came into force in the year 2013 and will not be applicable to the respondent workers as they started their employment prior to the said provision being enacted. This contention is however misconceived since even though statutory recognition was not given prior to 2013 the practice of outsourcing services of workers and professionals has been prevalent all over the world including our country for several years before getting statutory recognition in the Labour Law, 2006 and was never restricted by law and the parties anyone to the contract and for providing of such service . After inclusion of section 3Ka in the Bangladesh Labour Law, 2006 there remains little room for doubt on the arrangement of outsourcing services of workers .

33. In an unreported decision of this Court in **Writ Petition No. 1105 of 2012 along with 19 others in Arirtel and others Vs. Chairman First Labour Court, Dhaka** on similar facts as in the present case before us the concept of outsourcing service from third party has been recognized and affirmed by this Court.

34. On the facts and evidences before us therefore we do not see any contract of employment or service between the respondent worker and the petitioner Company Grameenphone. The respondent workers are merely outsourced workers /drivers employed by the respondent No.4 on the terms and conditions agreed between the Petitioners and the Respondents No. 4. Smart Services Ltd. and/or Jamsons International. Thus since the respondent Nos. 3 plaintiff workers are not even employees of the petitioner Grameenphone the question of treating them ‘permanent workers’ of the petitioner does not arise.

35. Section 213 of the Labour Law, 2006 states as follows:

"213. Application to Labour Court –Any Collective Bargaining Agent, employer or worker may apply to the Labour Court to enforce any right guaranteed to him or by any award, settlement of contract under this Act"

36. Under the aforesaid provision of law, a worker, Collective Bargaining Agent (CBA) or an employee may file an application before the Labour Court for the enforcement of a right guaranteed under any settlement, award, contract or law.

37. The aforesaid section 213 cannot be used as an instrument for establishing any right but only for enforcing an existing right guaranteed by law.

38. The cases in the Labour Court for direction upon the petitioner Grameenphone Limited to treat the respondent plaintiff workers as permanent worker is therefore not maintainable under section 213 of the Labour Law, 2006 on this ground as well.

39. Thus the judgments and orders dated 12.09.2012 passed by the Chairman, Labour Appellate Tribunal, Dhaka dismissing Appeal No. 82 of 2011 (Annexure D) along with 263 similar Appeals affirming the judgment dated 30.03.2011 passed by the First Labour Court, Dhaka in BLL Case No. 284 of 2008 allowing the case along with 263 similar cases are declared to have been passed without lawful authority and of no legal effect and set aside.

40. Accordingly, all the Rules are made absolute.

41. There will be no order as to costs.