

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

**WRIT PETITION NO. 5380 of 2020**

In the matter of:

An application under Article 102 of  
the Constitution of the People's  
Republic of Bangladesh.

-And-

In the matter of:

Islam Prodhan and another  
..... Convict-Petitioners

-Versus-

The Government of Bangladesh and  
others

..... Respondents

Mr. Md. Oziullah with  
Mr. Md. Tariqul Islam, Advocate  
..... For the petitioners  
Mr. Kazi Mynul Hassan, Deputy  
Attorney General  
..... For the respondent No. 5

**Heard on 24.02.2021, 23.06.2021 and**  
**Judgment on 19.08.2021**

Present:  
Mr. Justice Md. Ashfaul Islam  
And  
Mr. Justice Md. Iqbal Kabir

**Md. Ashfaul Islam, J:**

This Rule under adjudication, at the instance of the petitioners,  
issued on 20.09.2020, was in the following terms:

*“ Let a Rule Nisi be issued calling upon the respondents to  
show cause as to why the impugned judgment and order dated  
03.09.2020 passed by the learned Chairman of the Labour*

*Appellate Tribunal, Dhaka Respondent No. 2, in B.LA Appeal No. 66 of 2020, summarily dismissing the appeal and thereby affirming the judgment and order dated 21.08.2016 passed by the learned Chairman of 3<sup>rd</sup> Labour Court, Dhaka Respondent No. 3, in B.LA (Criminal) Case No. 348 of 2015 convicting the convict-petitioners along with another under section 303(e)/307 of the Bangladesh Labour Act, 2006 and sentencing all of them to suffer simple imprisonment for 6 (six) months and to pay a fine of Tk. 30,000/- (Thirty thousands) each of them in default, to suffer further simple imprisonment for 1 (one) month should not be declared as illegal, without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”*

Be it mentioned that on an application for bail filed by the petitioners this Division on 02.12.2020 enlarged the convict-petitioners on bail.

The background leading to the Rule in short is that at the initiation of one Happy Akter, Labour Inspector (General), Department of Inspection for Factories and Establishment, Narayanganj (complainant) B.L.A (Criminal) Case No. 348 of 2015 was filed before the Chairman of 3<sup>rd</sup> Labour Court, Dhaka against the convict petitioners under Section

303(e)/307 of the Bangladesh Labour Act, 2006 (hereinafter referred to as Act, 2006). After receiving the said complaint the case was registered and charge was framed under Section 303(e)/307 of the Act, 2006 against the petitioners and the trial proceeded accordingly. And upon completion of the trial the Chairman, Labour Court found the petitioners guilty under the said Section and sentenced him to suffer simple imprisonment for 6 (six) months and to pay fine of taka 30,000/- (Thirty thousand), in default, to suffer further simple imprisonment for 1 (one) month by the Judgment and order dated 21.08.2016. The petitioners challenging the said judgment and order filed an appeal being B.L.A. Appeal No. 66 of 2020 with an application for condonation of delay of filing the appeal. The said appeal was heard on 03.09.2020 and the learned Chairman of the Labour Appellate Tribunal, Dhaka, respondent No. 2 summarily dismissed the appeal as being barred by law. The petitioners being aggrieved by and dissatisfied with the said order of dismissal moved this Division and obtained the present Rule as aforesaid.

Mr. Md. Oziullah, the learned Advocate appearing with Mr. Tariqul Islam, the learned Advocate for the petitioners after placing the petition, judgment of both the Courts below mainly advanced his argument on the question of limitation which is the focal point and the decisive factor in respect of the impugned judgment passed by the Labour Appellate

Tribunal. He submits that the Appellate Tribunal misdirected itself in holding that section 5 of limitation Act, 1908 has no manner of application under section 217 which relates to filing an appeal in as much as the same being a special law. In elaborating his submissions the learned Counsel refers Section 218 and 219 of Act, 2006 read with Rule 205(4) of শ্রম বিধিমালা- ২০১৫ (hereinafter referred to as Rules, 2015) and also form 66 therein. It is his submissions that if the said law and Rule be read together, it can be well perceived that in filing appeal under Section 217, if there be any delay, an application under Section 5 of the limitation Act, 1908 is well applicable. In other words, as he reiterates, section 5 of the limitation Act will apply with all its trappings in case of filing an application before the Labour Appellate Tribunal. Therefore, he concludes that the Appellate Court should have taken into consideration the application for condonation of delay on merit while deciding the same.

The Rule is not opposed by filing any affidavit-in-opposition on behalf of the respondents.

We have heard the learned Counsel appearing for the petitioners and considered his submissions and also gone through the impugned judgment passed by the Labour Appellate Tribunal and also the judgment passed by the 3<sup>rd</sup> Labour Court, Dhaka carefully.

The only question that to be considered in this petition is whether upon analysis and interpretation of the provisions of Labour Act, 2006 and the Bangladesh Srama Bidhimala, 2015, the order impugned against would sustain.

For better understanding and appreciation let us have a glean on a relevant laws governing the issue. Section 217 of Act, 2006 enjoins:

"২১৭। এই আইন সাপেক্ষে, শ্রম আদালত কর্তৃক প্রদত্ত কোন রায়, সিদ্ধান্ত, রোয়েদাদ বা দণ্ডের বিরুদ্ধে কোন সংক্ষুব্ধ পক্ষ, উহা প্রদানের ষাট দিনের মধ্যে ট্রাইব্যুনালে আপীল দায়ের করিতে পারিবে, এবং উক্তরূপ আপীলের ক্ষেত্রে ট্রাইব্যুনালের সিদ্ধান্ত চূড়ান্ত হইবে।"

Next Section 219 states:

"২১৯। কোন শ্রম আদালতে কোন দরখাস্ত অথবা ট্রাইব্যুনালে কোন আপীল বিধি দ্বারা নির্ধারিত ফরমে পেশ করিতে হইবে, এবং উহাতে বিধি দ্বারা নির্ধারিত বিষয় ছাড়াও নিম্নলিখিত বিষয়সমূহ লিপিবদ্ধ থাকিতে হইবে, যথাঃ-

(ক) .....

.....

(ঘ) দরখাস্ত বা আপীল বিলম্বে পেশের ক্ষেত্রে উক্ত বিলম্বের কারণ এবং যে আইনের ধারার অধীন বিলম্ব মওকুফ প্রার্থনা করা হইয়াছে উহার উল্লেখ;"

Rule 205(4) of Rules, 2015 runs thus:

"২০৫। শ্রম আদালত বা আপিল ট্রাইব্যুনালে মামলা দায়ের।-

(৪) ফরম-৬৬ অনুযায়ী ধারা ২১৯ মোতাবেক আপিল দায়ের করিতে হইবে।"

And in form 66 column no. 2 it has been clearly mentioned 'আপীল দায়েরে বিলম্ব ও মওকুফের কারণসমূহ' It would be worthwhile to reproduced the form itself for construing and understanding:

ফর্ম-৬৬  
ধারা ২১৯ এবং বিধি ২০৫(৪) দ্রষ্টব্য।  
আপিলের দরখাস্ত

আপিল নং...../ ২০

বনাম

.....এ্যাপিল্যান্ট  
..... রেসপন্ডেন্ট

ঘসঙ্গ:

.....শ্রম আদালত কর্তৃক ধৃত .....সং মোকদ্দমায় ..... তারিখে ধৃত/অনুমতির বিরুদ্ধে বাংলাদেশ শ্রম আইন, ২০০৬ এর ধারা ২১৯ অনুযায়ী  
আপিল।

১। আপিলকারীর বিনীত নিবেদন  
(ক) .....  
(খ) .....  
(গ) .....  
(ঘ) .....

২। বিজ্ঞ শ্রম আদালত ..... তারিখের বায়ে নিম্নবর্ণিত কারণসমূহে ক্রমান্বয়ে সিদ্ধান্তে উপনীত হইয়াছেন-  
কারণসমূহ:  
(ক) .....  
(খ) .....  
(গ) .....  
(ঘ) .....

আপিল দায়ের বিলম্ব ও মওকুফের কারণসমূহ  
.....  
.....

এমতাবস্থায় ধার্খনা .....শ্রম আদালতের ..... তারিখের অর্কিত আদেশ বাতিলপূর্বক মোকদ্দমায় ধার্ষিত প্রতিবার মঞ্জুর করিতে মঞ্জি হয়।

স্বাক্ষর: .....  
তারিখ: .....

সংযুক্তি:  
১।

বাংলাদেশ শ্রম আইন, ২০০৬, অতিরিক্ত, সেকশন ১৫, ২০১৫  
৮২৬৮

However, the law and the Rules if be read together it gives a clear picture that an appeal filed before the Labour Appellate Tribunal under Section 217 has to be read with 219(gha) which clearly prescribed that appeal if be filed out of time the reasons for delay must be stated with a prayer for condonation of the delay of the said Ruling. Together with that when we visit Rule 205(4) of Rules, 2015 we find that in terms of the procedure of form 66 an appeal should be filed. In this connection section 219 of the Act, 2006 shall have to be mentioned. And in form 66 column 2 it has been clearly mentioned “আপীল দায়ের ও বিলম্বের কারণসমূহ”.

The law and the rules clearly spelt out that limitation act would certainly operate as an aid to a party seeking condonation of delay in filing

the appeal. This legal fiction or so to say the analogy has certainly escaped notice of the Appellate Tribunal. Further it has also failed to take into consideration the provisions of Rules, 2015 in the manner as we have discussed. Be it mentioned in this regard that right to appeal is a statutory right, a right which certainly should not be circumvent with any other provisions having prohibiting effect. Rules, 2015 came into force in chapter 15(9) of 2015 by SRO No. 291/Ain/2015. This Rule was framed and promulgated pursuant to Section 351 of Act, 2006 which is the enabling Section.

Therefore, we are of the view that the submissions of the learned Counsel for the petitioners merit substance and hold that with the introduction of Rules, 2015 the question of Section 5 of the limitation Act shall have clear application in filing of appeal before the Labour Appellate Tribunal. This aspect was not considered while passing the impugned judgment summarily rejecting the appeal on the ground of limitation. Therefore, this Rule succeeds,

In the result the rule is made absolute. The judgment and order passed by the Labour Appellate Tribunal in B.L.A Appeal No. 66 of 2020 summarily dismissing the appeal on the ground of limitation is declared to

have been passed without lawful authority having no legal effect and set aside.

Communicate at once.

*Md. Iqbal Kabir, J*

I agree.