

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6858 of 2004

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Bimal Chandra Jha, son of Late Upendra Narayan Jha 'Azad' of Mohalla Samanpura Road, P.S. Shastri Nagar, District-Patna at present General Secretary Shree Baidyanath Ayurved Bhawan Mazdoor Union, Chiraiyatar, Patna, P.S. Jakkampur, Patna.

.... Petitioner/s

Versus

- 1.Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Bhavishyanidhi Bhawan, R. Block, Road No. 6, Patna.
- 2.Assistant Provident Fund Commissioner(Shri S. K. Singh) Employees Provident Fund Organisation, Bhavishyanidhi Bhawan, Road No.6, R-Block, Patna.
3. Regional Director, Employees State Insurance Corporation, ESI Bhawan, Income Tax Roundabout, Baily Road, Patna.
4. Managing Director, Shree Baidyanath Ayurved Bhawan Private Limited, Chiriyatand, Patna.
5. Manager, Shree Baidyanath Ayurved Bhawan Private Ltd., Chiriyatand, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/S. Satya Prakash Tripathy, Nishant Kumar Jha and Satyavrat

For the Respondent nos.1 & 2 : Mr. Prashant Sinha

For respondent no.3 : Mr. Lakmesh Marvind

For respondent nos. 4&5 :Mr. Alok Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-04-2015

Heard learned counsel for the petitioner, learned counsel for respondent nos. 1 and 2, learned counsel for respondent no.3 and learned counsel for respondent nos. 4 and 5.

2. Counsel for the petitioner has raised a grievance against the order dated 5-5-2014 by which the prayer of the petitioner for debarring the appearance of Advocate has been rejected on the ground that section 30 of the Advocates' Act empowers Advocates to appear in all courts including Supreme Court; before any

tribunal ; and before any other authority.

3. Learned counsel for the petitioner submits that section 7A of the Employees Provident Fund and Miscellaneous Act, 1952(hereinafter referred to as the Act) does not specify an Advocate to be allowed to represent the case of the parties before the authority under the Act, taking the plea that sub-section (3-A) of section 7-A of the Act provides that where the employer, employee or any other person fails to represent the case before the Authority without any valid reason, the authority will decide the case on its merit. On that strength, he submits that the legislature has not allowed an Advocate to represent the cases of parties before the authority under the Act. Had there been intention of allowing Advocates to participate there, then certainly in place of employer, employee or any other person, there must have reference of Advocates, and as such in absence of the same the Advocates are debarred to represent the case of the petitioner. The petitioner consolidating his case, placed reliance on section 7-K of the Act, which provides representation in appeal through a legal practitioner, similar such provision is silent.

4. The learned counsel for the respondents have disputed the claim of the petitioner and submitted that section 30 of the Advocates Act gives ample power and right to an Advocate to appear in all Courts, tribunal or any authority, and further submitted that in certain legislation, the appearance of Advocates has specifically been debarred, and unless there is specific debarment of appearance of the Advocates, it cannot be understood in absence of specific provision, that the Advocates cannot be allowed to participate.

5. Learned counsel for the petitioner submits that the Employees Provident Funds and Miscellaneous Provisions Act is a beneficial legislation for protection of poor workmen and in the absence of any specific mention allowing

Advocates to represent, it will be presumed that Advocates have been debarred to represent the case.

6. Having considered the rival contentions of the parties, I find that section 30 of the Advocates Act gives right to the Advocates to appear throughout the territories to which the Act extends for any party before any Court, tribunal or any authority, but in certain legislations, such as, Industrial Disputes Act and Family Courts Act, the representation of Advocates has been barred, but they have been allowed to appear with the consent of parties. But, in the whole of the section 7-A of the Act there is no such provision which prohibits the representation of the parties through Advocates. Section 7-K of the Act cannot give strength to the argument of the petitioner for debarring Advocates to appear for respective parties. This Court finds that the order passed by the authority, refusing to debar an Advocate to conduct a case, cannot be held to be illegal.

7. Accordingly, this Court does not find any merit in the present application. This application is , accordingly, dismissed. However, since the matter is pending before the Provident Fund authority, he will dispose of the matter expeditiously, preferably within a period of six months from the date of production of a copy of this order. If the authority does not get co-operation, he will have liberty to proceed ex-parte.

B.Roy/-

(Shivaji Pandey, J)

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