

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.793 OF 2016
WITH
IN PERSON APPLICATION NO.22 OF 2016**

Chetana Institute of Management And Research ... Petitioner
Versus
Prof. Anahat Narismh Hulyalkar And Another ... Respondents
.....
Mr. P.C. Pavaskar for the Petitioner.
Prof. Anahat Narismh Hulyalkar Respondent No.1 in person.
.....

CORAM : S.C.GUPTE, J.

DATE : 26 APRIL 2016.

P.C. :

. Heard Learned Counsel for the Petitioner and also Respondent No.1 who appears in person. The impugned order refuses to permit the Petitioner to be represented through a Legal Practitioner in a pending appeal before the Industrial Court under the Payment of Gratuity Act, 1972.

2 The Industrial Court appears to have proceeded on the basis of Section 36(4) of the Industrial Disputes Act, 1947, which the Industrial Court calls "mother law of industrial disputes". Section 36(4) of the Industrial Disputes Act, 1947, permits a party to an Industrial dispute to be represented by a legal practitioner with the consent of the other parties to the proceedings and with leave of the Labour Court, Tribunal or National Tribunal, as the case may be. The Industrial Court appears to have

imported this provision into the texture of the Payment of Gratuity Act, 1972 and on that basis, denied the Petitioner's right to be represented through a legal practitioner of his choice.

3 The Payment of Gratuity Act, 1972 and the Rules framed therein, which provide for an appeal and a machinery for prosecution of such appeal before the appellate authority constituted under that Act, contain no such provision or restriction on the lines of Section 36(4) of the Industrial Disputes Act, 1947. Ordinarily, any party to a proceeding before a Court, be it a Civil Court or an Industrial Court, ought to be permitted to conduct his case with the help of a legal practitioner of his choice. It is only when the law contains a specific restriction in the matter of such representation that such right can be restricted. In the case of an appeal before appellate authority, namely, the Industrial Court, the Payment of Gratuity Act does not provide for any such restriction and none can be judicially carved out by importing the provisions of Section 36(4) of the Industrial Disputes Act, 1947 into the former Act.

4 The impugned order dated 9 February 2015 of the Industrial Court, accordingly, cannot be sustained. The same is set aside and the Industrial Court, Mumbai is directed to permit the Petitioner herein to be represented through a legal practitioner of his choice in the pending appeal, being Appeal (PGA) No.30 of 2014. No order as to the costs.

(S.C.GUPTE, J.)