

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.491 of 2011

In

Civil Writ Jurisdiction Case No.439 of 2003

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Alok Kumar Sinha (in Person) S/O Sri Birendra Kumar Sinha Resident Of
House No. 6, Kavi Raman Path, East Boring Road, P.S. Budha Colony, Patna.

... .. Appellant/s

Versus

1. The Presiding Officer, Labour Court, Bhagalpur.
2. Rakesh Ranjan Keshri S/O Sri Laxman Narain Keshri Resident Of Mohalla
Mohaddi Nagar, P.S. Mujahirpur, At And District Bhagalpur.
3. The Management Of Ravalgaon Sugar Form Ltd. Through Its Manager
Administration, Revalgaon, Nasik, Maharastra.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Sinha (IN Person)

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-09-2017

The appellant appears in person. A short question is involved in the present case pertaining to interpretation of Section 36 of the Industrial Disputes Act, 1947 and the issue is squarely covered by the judgment of the Hon'ble Supreme Court, we propose to deal with the issue.

Even though the appellant is not a party with regard to the impugned order that was challenged before the Writ Court, namely, the order dated 30th March, 2010 passed in CWJC No. 439 of 2003 (Rakesh Ranjan Keshri Vs. Presiding Officer, Labour



Court, Bhagalpur & Anr.) but due to certain findings and principles of law laid down by the learned Single Bench in the said judgment which, according to the appellant, is an incorrect interpretation of the provisions of Section 36 (2) and 36 (3) of the Industrial Disputes Act, 1947, which has adverse effect on his right also, he has filed this appeal and we find from the records that on 15.4.2011 and thereafter on 3.5.2011 permission has been granted to the appellant to file this appeal and challenge the action. That apart we find that the issue with regard to interpretation of Section 36 of the Act, as challenged in this appeal, laid down by the Single Bench was also stayed by this Court on 3.5.2011.

The issue lies in a narrow compass and it is as to whether a lawyer who is also an office-bearer of an employers' Association can represent the employer in a dispute being adjudicated by a Labour Court or Industrial Court in proceedings under the Industrial Disputes Act, 1947. According to the learned Writ Court a practising lawyer under the Advocates Act cannot be a full time employee of a company or Association or Federation of Association of the employer and therefore, he cannot be permitted to appear in a proceeding. In paras 11 and 12 the learned Writ Court has dealt with the issue in the following manner.

“11. I further find that the Apex Court has clearly noted the distinction between a practising Advocate



and a legal practitioner appointed as an Officer of Company or Corporation being in their pay under their control and held that his being earlier a legal practitioner or his legal degree will not stand in the way of the company to be represented by him and similar position would prevail with respect to an officer of Association or of a federation of such association and in such cases the bar of Section 36 (4) will not apply.

12. Thus, in view of the aforesaid propositions which have been enunciated, I am of the view that so far as the interpretation of Section 36(2) is concerned, the same would clearly exclude any person who is a practising Advocate in a Court of law or the Labour Courts. Such a person cannot, in any case, be called an officer of Association or federation of Associations of employers and he can merely be their office bearer, since no person can be both a practising advocate under the Advocates Act as also a full time employee of any company or Association or federation of association of employers.

It is this part of the order which is challenged by the appellant in this appeal and the appellant invites our attention to the principles of law settled and laid down by the Supreme Court far back in the year 1977 in the case of **Paradip Port Trust, Paradip Vs. Their Workmen: (1977) 2 Supreme Court Cases 339** . In the aforesaid case the Hon'ble Supreme Court has considered the



provisions of Sections 36(1), 36(2) and 36(4) of the Industrial Disputes Act and discusses the rights available to parties and persons to represent before the Industrial Court or the Labour Court. As far as the right of a practising Advocate or a Lawyer to be a member of an employer association and to represent the employer in an industrial disputes before the Labour Court and as an office-bearer of an employer association has been considered by the Supreme Court in paras 15, 16, 17 and 26 of the judgment the principles are crystallized in the following manner:

15. The parties, however, will have to conform to the conditions laid down in Section 36(4) in the matter of representation by legal practitioners. Both the consent of the opposite party and the leave of the tribunal will have to be secured to enable a party to seek representation before the tribunal through a legal practitioner qua legal practitioner. This is the clear significance of Section 36(4) of the Act.

16. If, however, a legal practitioner is appointed as an officer of a company or corporation and is in their pay and under their control and is not a practising advocate the fact that he was earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to prevent him from appearing before the tribunal under the provisions of Section 36(2) of the Act. Again, an office-



bearer of a trade union or a member of its executive, even though he is a legal practitioner, will be entitled to represent the workmen before the tribunal under Section 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office-bearer of the union in the case of workmen and not in the capacity of a legal practitioner. The fact that a person is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36(2) are fulfilled by him.

17. It must be made clear that there is no scope for enquiry by the tribunal into the motive for appointment of such legal practitioners as office-bearers of the trade unions or as officers of the employers' associations. When law provides for a requisite qualification for exercising a right, fulfillment of the qualification in a given case will entitle the party to be represented before the tribunal by such a person with that qualification. How and under what circumstances these qualifications have been obtained will not be relevant matters for consideration by the tribunal in considering an application for representation under Section 36(1) and Section 36(2) of the Act. Once the qualifications under Section 36(1) and Section 36(2) are fulfilled prior to appearance before tribunals, there is no need under the law to pursue the matter in order to find out whether the appointments are in circumvention of Section 36(4) of the Act. Motive of the appointment cannot be made an issue before the tribunal.



26. A lawyer, simpliciter, cannot appear before an Industrial Tribunal without the consent of the opposite party and leave of the tribunal merely by virtue of a power of attorney executed by a party. A lawyer can appear before the tribunal in the capacity of an office-bearer of a registered trade union or an office of associations of employers and no consent of the other side and leave of the tribunal will then, be necessary.”

If we analyse the principle as discussed from para-16 above, it is very clear that when a legal practitioner is appointed as an officer of the company or corporation and is in their pay roll under the control and is not a practising advocate, he is entitled to represent the corporation before the Labour Court and it has been held that similarly if a legal practitioner is an officer of an association of employers or of a federation of such associations there is nothing in Section 36(4) to prevent him from appearing before the tribunal under the provisions of Section 36(2) of the Act. This principle laid down by the Supreme Court has been totally ignored misconstrued and misread by the learned Writ Court.

Further in the case of **Paradip Port Trust, Paradip (supra)** para-26 of the judgment of the Hon’ble Supreme Court goes to record this finding and conclusion in the manner which clearly



shows that a lawyer simpliciter cannot appear before the Industrial Disputes Tribunal without the consent of the opposite party and leave of the tribunal but by virtue of his being an office-bearer of a registered trade Union or an officer of association of employer no consent or leave is required and he can appear. If that is the law laid down by the Supreme Court, we are unable to accept the observations made and the principles crystallized by the learned Writ Court in the order impugned and the finding recorded by the Writ Court in paras 11 and 12 as indicated hereinabove being contrary and inconsistent to the judgment of the Apex Court, we have no hesitation in allowing the appeal and quashing the aforesaid finding. That apart we may take note of the fact that this issue has also been decided by the Bombay High Court in identical situation in the case of **Associated Cement Staff Union Vs. Associated Cement Companies Limited: 2002(94) FLR 244** wherein after taking note of the law laid down in various cases the judgment in the case of **Paradip Port Trust, Paradip (supra)** has been considered and similar principle has been approved and therefore, we have no hesitation in approving the aforesaid principles also. That apart far back as in the year 1964 in the case of **The Behar Journals Ltd., Patna Vs. H.K. Chaudhuri and another: AIR 1954 Patna 532** the Court has permitted the



practising lawyer to represent a party namely, the employer in an industrial dispute before the Industrial Disputes Tribunal in his capacity as office-bearer of the Trade Union in an industrial dispute.

That being the position, we allow this appeal, quash the order passed by the learned Writ Court so far as it prohibits a practising lawyer to represent an employer or an employers' association in an industrial dispute before the Industrial Disputes Tribunal or the Labour Court in his capacity of office-bearer of the Trade Union or office bearer of an employer association or federation of associations.

The appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

spandey/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	AFR
CAV DATE	NA
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