

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition No. 5576 of 2017

Gokhale Institute of Politics and Economics
(Deemed University)

... Petitioner

Vs.

Mrs. Anjana Vitthal Sutar

... Respondent

*Mr. K.S. Bapat, instructed by M/s. Desai & Desai Associates, for the Petitioner.
None for the Respondent.*

CORAM: S. J. KATHAWALLA, J.

DATE: 13th November, 2017

P.C.:

1. By the above Writ Petition, the Petitioner, Gokhale Institute of Politics and Economics ('Deemed University') has impugned the Order dated 1st August, 2016, passed by the Labour Court No.2, Pune, in Reference (IDA) No. 202 of 2012 (Exhibit-H to the Petition). A copy of the Petition was sought to be served on the Respondent Anjana Vitthal Sutar before the Writ Petition was taken up for admission. However, the Respondent refused service. In view thereof, the Writ Petition was admitted on 30th October, 2017 and was directed to be placed on 13th November, 2017, at 3.00 p.m. i.e.

today. The Petitioner was once again directed to serve a copy of the Writ Petition on the Respondent by hand delivery. Since the Respondent was not accepting service, the Senior Inspector and/or Inspector-in-charge of the local Police Station was directed to assist the Petitioner in serving a copy of the Order along with the copy of the Writ Petition on the Respondent and obtain her acknowledgement. However, even today none appear for the Respondent. The Writ Petition is therefore taken up for hearing and final disposal in the absence of the Respondent.

2. As stated hereinabove, the Petitioner is a Deemed University. According to the Respondent, she was employed by the Petitioner from 1st January, 1999, and her services were terminated with effect from 15th July, 2011. The Respondent thereafter raised an industrial dispute claiming that she was illegally terminated. According to the Petitioner, the Respondent was given employment on casual basis mainly for cleaning the ladies toilets and was not a regular employee of the Petitioner.

3. The Petitioner has pointed out to this Court that upon the Government referring the matter for adjudication to the Labour Court, the Labour Court issued notices to both the sides in Reference IDA No. 202 of

2012. The Petitioner on receipt of the notice appeared before the Court through their Advocates Mr. A.D. Patwardhan and Mr. N.A. Malunekar. The Advocates accordingly filed their Vakalatnama on 21st November, 2012, a copy of which is annexed as Exhibit-A to the Petition.

4. On 24th July, 2013, the representative of the Respondent - Premji L. Patel, Secretary, Maval Taluka Kamgar Sanghatana Talegaon Dabhade, Dist. Pune, in the absence of the Respondent filed her authority. The Court has made its endorsement on the said authority letter to the effect that the same is filed in absence of the workman. A true copy of the said Letter of Authority is annexed and marked as Exhibit-B to the Petition.

5. According to the Petitioner, the Representative of the Respondent in her absence filed her Statement of Claim. A true copy of the said Statement of Claim dated 24th July, 2013, was served upon the Advocates for the Petitioner, a copy of which is annexed as Exhibit-C to the Petition.

6. The Petitioner filed their Written Statement through their Advocates on 20th January, 2015 which was taken on record by the Labour Court. A copy of the Written Statement was also served by the Advocates for the Petitioner upon the Representative of the Respondent. A true copy of the

Written Statement filed by the Petitioner is annexed and marked as Exhibit-D to the Petition.

7. According to the Petitioner, the Respondent thereafter filed an Application before the Labour Court for interim relief which Application was served upon the Advocate for the Petitioner. The Petitioner states that the Advocate for the Petitioner accepted the Application and also put its 'say' on the said Application. A true copy of the said Application for interim relief is annexed and marked as Exhibit-E to the Petition.

8. Thereafter, the Application filed by the Respondent seeking interim reliefs was heard by the Labour Court. The Labour Court heard the Representative of the Respondent as well as the Advocate for the Petitioner and rejected the said Application for interim relief by an Order dated 1st August, 2016.

9. The Petitioner thereafter learnt that the Respondent had filed an Application on 15th July, 2015 (Exhibit U-6) purportedly objecting to the Petitioner being represented by the Advocates. It is alleged in the said Application that the Respondent had taken objection on 24th July, 2013 on the ground that the Petitioner is represented by Advocates, which

Application was not yet decided. According to the Petitioner the purported Application dated 15th July, 2015 shows the endorsement of the Learned Judge directing the 'say' of the Petitioner. However, according to the Petitioner, at no point of time the Application dated 15th July, 2015, or the purported Application dated 24th July, 2013, was served on the Petitioner or their Advocates. A true copy of the Application dated 15th July, 2015, is annexed and marked as Exhibit-G to the Petition.

10. The Petitioner has submitted that the Labour Court thereafter passed the impugned Order dated **1st August, 2016** and allowed the said Application (Exhibit U-6) and directed that the Petitioner cannot be represented through a lawyer in view of Section 36 (3) (4) of the Industrial Disputes Act, 1947. A true copy of the said Order is annexed and marked as Exhibit-H to the Petition.

11. It is therefore submitted by the Petitioner that the Labour Court ought to have appreciated that the purported Application (Exhibit U-6) was never served upon the Petitioner and therefore there was no question of the Petitioner putting its say on the said Application. The Petitioner has also submitted that the Labour Court ought to have appreciated that right since

day one the Petitioner was being represented through their Advocates and at no point of time the said appearance was objected to by the Respondent. It is submitted that the Labour Court ought to have further appreciated that the conduct of the Respondent clearly shows that there was an implied consent given by the Respondent for the Petitioner to appear through its legal practitioners. It is therefore submitted that the Order passed by the Labour Court dated 1st August, 2016 in Reference (IDA) No. 202 of 2012 not allowing the Petitioner to be represented by legal practitioner/s be quashed and set aside.

12. I have perused the papers and have considered the submissions advanced on behalf of the Petitioner.

13. As stated earlier, the Respondent has repeatedly failed to appear before this Court despite service. The Respondent has also not filed her say/reply to the above Writ Petition.

14. The impugned Order dated 1st August, 2016, passed by the Labour Court No.2, Pune, is reproduced hereunder:

“1. This is an application filed by second party u/s 36 (3) & (4) of the I.D. Act, 1947 for not giving permission to first party to be represented by legal practitioner.

2. First party has not filed say and hence this application proceeded without say.

3. As per Section 36 (3) & (4) of the I.D. Act it is necessary to take consent of other party to be represented by legal practitioner. However, in the present case the first party has not obtained such consent from other side and also not sought leave of this Court. Thus application stands allowed. Hence first party is not allowed to be represented by legal practitioner.

15. As submitted by the Petitioner, the Respondent has not served a copy of any Application dated 15th July, 2015, or 24th July, 2013, raising objection to the Petitioner being represented by a legal practitioner. The Learned Judge ought to have therefore called upon the Respondent and/or her Representative to produce proof of service of the Applications filed by the Respondent dated 15th July, 2015 and 24th July, 2013 objecting to the Petitioner being represented by Advocates, on the Petitioner. Even today, the Respondent has not come forward to show that any such application was served on the Petitioner. In view thereof, on this ground alone the Order passed by the Labour Court dated 1st August, 2016, deserves to be quashed and set aside.

16. In the case of *Salvation Army vs. Sunil J. Ingle*¹, the Respondent Sunil J. Ingle was an Officer in the Salvation Army and his services were terminated on 25th June, 2001. Conciliation proceedings took place before the Deputy Commissioner of Labour and a reference to adjudication was made, after the conciliation proceedings ended in failure. The roznama of the proceedings before the Labour Court shows that the reference, together with the conciliation papers, were forwarded by the Deputy Commissioner of Labour on 11th December, 2001. Notice was issued to the respondent to file his statement of claim. On 6th March, 2002, the petitioner was represented by an official before the Labour Court. The matter was adjourned for the filing of the written statement to 27th March, 2002. On 27th March, 2002, the respondent was present. The petitioner filed the authority at Exhibit C-3 of its advocate. A preliminary objection to the jurisdiction of the Labour Court was taken on that day. On the next date of hearing which was 10th April, 2002 the respondent was present and he filed an objection questioning the entitlement of the petitioner to be represented by an advocate in the proceedings. The objection was heard by the Labour Court and was allowed by the impugned order dated 24th April, 2002. At the time

¹ 2006 (2) LLN 625

of final hearing of the writ petition, a learned Single Judge of this Court - Justice Dr. D.Y. Chandrachud, J., (as he then was) in paragraph 4 of his Judgment, analysed the requirements of Section 36 of the Industrial Disputes Act, 1947 as under :

Section 36 of the Industrial Disputes Act, 1947 deals with the representation of parties. Sub-section (1) provides that a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by any of those persons who meet the qualifications in Clauses (a), (b) and (c). A provision is similarly made in relation to the representation to an employer in Sub-section (2). Sub-section (3) then provides that no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceeding under the Act or in any proceedings before the Court. Sub-section (4) provides that in any proceeding before a Labour Court, Tribunal or National Tribunal a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be. Therefore, two requirements must be fulfilled before a legal practitioner can appear in such proceedings viz.

(i) the consent of the other party to the proceedings and

(ii) the leave of the Court or Tribunal as the case may be.”

The Learned Judge in paragraph 5 of his Judgment referred to several decisions of this Court, as well as of other High Courts wherein it was, inter alia, held that sub-section (4) of Section 36 does not contain a requirement that the consent or leave must always be in writing and implied consent is not negated by the statute. Paragraph 5 of the said Judgment is reproduced hereunder:

“5. These provisions have been interpreted in decisions of several High Courts. [In Engineering Mazdoor Sabha v. Meher \(M.R.\)](#) (Industrial Tribunal, Bombay, 1966(1) L.L.J. 580 an industrial dispute between the petitioning union and the employer, the second respondent was referred for adjudication. An application for interim relief was kept for hearing on 12th September, 1963. On that day, the employer was represented by an advocate. The advocate for the union appeared and prayed for an adjournment. The matter was thereafter adjourned to 21st September, 1963 on which date an objection was raised to the appearance of the advocate. The objection was rejected by the Tribunal holding that if an objection had to be taken it ought to have been taken on the first date of hearing. Before the Division Bench of this Court, it was urged on behalf of the union that there was no effective hearing of the matter on 12th September, 1963 since only a prayer for adjournment had been made. The Division Bench held that this argument could not be accepted because the roznama of the case showed that on 12th September, 1963 an adjournment had been sought on behalf of the union on the ground that its representatives was out of Bombay. The advocate for the employer had no objection to the matter being adjourned. The Division Bench held that these entries in the rozanama clearly showed that the fact that the advocate

had appeared for the employer must have come to the notice of the representative who appeared on behalf of the union and no objection had been raised to his appearance. Even though the union had not given its express consent, the Division Bench held that it must be held as having given its consent atleast impliedly by not objecting to the appearance of the advocate for the employer. Consequently it was not open to the union to object to his appearance. In a decision of the Calcutta High Court in [Shiraz Golden Restaurant v. State of West Bengal](#), 2000(11) L.L.J. 1101, Mr. Justice S.B. Sinha (as the Learned Judge then was) speaking for a Division Bench held that once leave has been granted in terms of [Section 36\(4\)](#) there is no provision in the Act to review it. The Calcutta High Court relied inter alia on several decisions in which it has been held that where a Vakalatnama is filed by a lawyer without any objection by the other side and it is accepted by the Court then it is to be inferred that the latter has given consent for the appearance of a lawyer and that leave of the Court was also given. In [MSCO \(P\) Ltd. v. S.D. Rane](#), 1982(1) L.L.J. 434 Mr. Justice D.P. Madon (as the learned Judge then was) speaking for this Court held that neither the Act nor the Rules provide for the form or the manner in which, the Consent of the other party is to be given. Normally, leave that is to be granted by a Court or Tribunal would be in writing and ordinarily the consent of a party to the engagement of a legal practitioner by the other side would also be given in writing. However, Sub-section (4) of [Section 36](#), it was held, does not contain a requirement that the consent or leave must always be in writing and implied consent is not negatived by the statute. The same view has been taken by the High Court of Kerala in [Calicut Co-operative Milk Supply Union v. Calicut Co-operative Milk Supply Workers Union](#), 1986(11) L.L.N. 1130 and in [Francis Gomez v. President, Thiruvananthapuram Shops & Commercial](#).

Employees' Union, 1999(I) L.L.N 836. There is also a judgment of Mr. Justice R.J. Kochar speaking for this Court in T.K. Varghese v. Nichimen Corporation, 2001(4) LLN 187 (vide supra)''

17. The Learned Judge thereafter applying the ratio laid down in the aforesaid Judgment, and considering the decisions referred in paragraph 5 of his Judgment, held that it was clearly not open to the respondent to raise an objection, having failed to raise it on the very first day of appearance of the Advocate, and proceeded to hold that the order of the Labour Court was erroneous and directed that the same be quashed and set aside.

18. In the instant case, right from day one i.e. immediately upon the Labour Court issuing notices to both the sides in Reference IDA No. 202 of 2012, the Petitioner appeared before the Labour Court through their Advocates Mr. A.D. Patwardhan and Mr. N.A. Malunekar and filed their Vakalatnama on 21st November, 2012, The Statement of Claim of the Respondent was served upon the Advocate for the Petitioner. The Petitioner filed their Written Statement to the Statement of Claim through their Advocate on 20th February, 2015. The Respondent filed an Application for interim relief before the Labour Court which was also served on the Advocate for the Petitioner. In fact, the Advocate for the Petitioner accepted

the Application and also put his/their say on the said Application. Thereafter the interim relief application filed by the Respondent was opposed by the Advocate/s of the Petitioner and the Labour Court by its Order dated 1st August, 2016, rejected the Application of the Respondent seeking interim reliefs. Therefore, the question of thereafter allowing the Application of the Respondent dated 15th July, 2015, alleging that they had also objected on 24th July, 2013, ought not to have been accepted by the Labour Court. If the Respondent would have been serious qua her objection, the papers and proceedings in the matter would not have been served by the Respondent on the Advocate for the Petitioner and the Respondent through her Representative would not have proceeded with her Application seeking interim relief before the Labour Court and obtained an Order dated 1st August, 2016, rejecting the said Application, without making a whisper of an objection that the Petitioner cannot/should not be allowed to be represented by an Advocate. The ratio laid down in the case of *Salvation Army* (supra), therefore squarely applies to the present case. I, therefore, hold that the Labour Court is manifestly in error and the interference of this Court under Article 227 of the Constitution is warranted. Rule is therefore made absolute.

The Writ Petition is allowed and the impugned Order of the Labour Court is quashed and set aside. The Application at Exh. U-6 filed by the Respondent shall stand dismissed. The Labour Court shall now proceed to dispose of Reference (IDA) No. 202 of 2012.

(S.J. KATHAWALLA, J.)