

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CREF No. 3 of 2017 (O&M)
Date of Decision: 11.12.2017**

Court on its own motion

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

By Order.

JASWANT SINGH, J.

1. The present reference is received under Section 115 of Code of Civil Procedure read with Order 44 of Code of Civil Procedure whereby Additional District and Session Judge- Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon, in view of bar engrafted by Section 36 of the Industrial Disputes Act, 1947, has sought clarification with respect to appearance of Advocates before Labour Court Judge/Industrial Tribunal.

2. The question of authority of Advocates to represent employer before Labour Court came up for consideration before full Bench of 5 judges of this Court in *Hygienic Foods Vs Jasbir Singh and others (LPA No. 250 of 2009)*, 2010 (1) RCR (Civil) 243. This Court vide Order dated 13.11.2009 clearly held that a legal practitioner can neither be an officer of the association of the employer nor he can be member of any such association of employer because association of employer has to be only those of employers. In para 32, it was held that expression 'officer' used in Sub Section (2) of Section 36 would not include a legal practitioner because

employer and employee including salary whatever name called. Para 32 to 34 of the judgment laying down the law read as under:

32. In the light of the aforesaid discussion, it has to be concluded that the expression 'Officer' used in sub-section (2) of Section 36 would not include a legal practitioner because an advocate cannot satisfy various attributes concerning relationship of employer and employee including salary whatever name called. He can also not be under any professional or disciplinary control of anybody other than the Bar Council. An advocate also suffers a bar created by the rules framed by the Bar Council of India. Therefore, the first question is answered accordingly.

Re: Question (B)

33. The expression 'employer' has been defined in Section 2(g) of the ID Act to mean an industrial employer alone. Meaning of expression 'association of employer' or 'federation of association of employers' has been considered by the Full Bench of the Andhra Pradesh High Court in Andhra Pradesh Power Diploma Engineers' Association's case (supra). It has been observed that in the plain sense it would mean the status of the members of the association to be that of employer. The use of words is specific and without any ambiguity and accordingly have to be understood in their natural sense. The Full Bench observed that these words 'are susceptible to the only meaning that the association must be of persons who are employers and have formed themselves into an association because of their status as such. In other words, the membership of the association must be qua employers and not otherwise...'. The Full Bench has opined that an association of persons enjoying different and varieties of status of which some accidentally happen to be employers would not be covered by the definition of expression 'association of employers'. It is for the reason that when a statute speaks of an association of a specified kind of persons as forming a classification, it is the legislative intendment which is paramount and it is to be interpreted in that sense alone. Accordingly, it follows that these expressions as understood within the meaning of Section 36(2) to be an association of employers or federation of association of employers alone and not all others. For the aforesaid view, apart

*from placing reliance on the Full Bench of Andhra Pradesh in Andhra Pradesh Power Diploma Engineers' Association's case (supra), reliance can also be placed on a Division Bench judgment of the Mysore High Court rendered in the case of **Workmen of B.R. Darbar Ginning and Pressing Factory v. B.R. Darbar Ginning and Pressing Factory, (1969) 2 LLJ 25 Mysore**. In that case from the Memorandum of Association and Articles of Association of Federation of Chamber of Commerce it was found that the membership consist not only employer but all non-employer also such as practising lawyer. The Division Bench, therefore, took the view that the federation could not be regarded as an association of employers under Section 36(2) of the ID Act. Likewise, reliance may also be placed on another judgment of Gujarat High Court rendered in the case of **Hosing Ardasar Ichhaporiya v. Mahavir General Hospital, Surat, (1994)2 LLJ 326**. The further requirement of Section 36(2) is that such an employer has to be represented by an officer of any association of employer or federation of association of employers with which it has been affiliated or of which it is a member.*

34. *From the aforesaid discussion it becomes evident that a legal practitioner can neither be an officer of the association of employer nor he can be member of any such association of employer because essentially the association of employer or federation of association of employers has to be only those of employers.*

3. The assailing aforesaid judgment of this court, **Hygienic Foods filed SLP (C) No. 10138/2010** before Hon'ble Supreme Court which was disposed of on 08.05.2014 with following observations:

Having heard learned counsel for the parties, we think it appropriate to direct the Presiding Officer, Labour Court, Ludhiana to decide all the pending references i.e. Reference Nos. 1867/99, 1869/99, 1870/99, 108/2000, 112/2000, 136/2000, 150/2000, 151/2000, 995/2002 and 892/2003 by

*end of October, 2014. **Needless to say, the issue of law is kept open.** Neither the petitioner-management nor the respondents shall seek unnecessary adjournments before the Labour Court.*

“Emphasis supplied”

The Hon’ble Supreme Court even though initially stayed the operation of order passed by this Court in the case of **Hygienic Foods (LPA No. 250 of 2009)**, however, SLP was finally disposed of leaving issue of law open. In this way, the Hon’ble Supreme Court has not expressed any opinion on the issue involved and opinion expressed by the full bench of this Court, which holds the field till date. The opinion of this Court has not been set aside so all the Subordinate Courts working within jurisdiction of this Court are duty bound to follow its opinion.

4. In view of above, the reference is answered directing all the Subordinate Courts to decide matter in view of judgment dated 13.11.2009 of this Court in ***Hygienic Foods, Khanna Vs Jasbir Singh and others, 2010 (1) RCR (Civil) 243.***

December 11, 2017

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**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>