

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3105 OF 2018

DNYANESHWAR RAMKRISHNA SAVANT
VERSUS
APEX SUPERSPECIALITY HOSPITAL THROUGH ITS
AUTHORIZED SIGNATORY AURANGABAD

...
Advocate for the Petitioner : Shri N.L. Dhoble
Advocate for the Respondent : Shri S.V. Dankh
...

CORAM : RAVINDRA V. GHUGE, J.
DATED : 27th March, 2018.

PER COURT :-

1] Learned advocates for the respective sides submit, on instructions, that they have no objection if this Court hears this matter.

2] The petitioner/workman has challenged the order of the Enquiry Officer dated 09/08/2017 by which, he was disallowed from engaging an advocate in a domestic enquiry being conducted against him. The petitioner is also aggrieved by the interim order dated 12/01/2018 passed by the Industrial Court below application Exhibit U-2, which is an application for seeking interim relief under Section 30(2) of the Maharashtra Recognition of Trade Union (MRTU) and

Prevention of Unfair Labour Practices (PULP) Act, 1971 as the said application has been rejected.

3] The learned advocate for the petitioner/workman has strenuously criticized the orders of the Enquiry Officer as well as the Industrial Court.

4] Grievance is that, he is practically defending himself alone in the enquiry with reference to the charge-sheet that has been served upon him. He submits that the representative of the Management, who is commonly called as the Management Representative (M.R.), is an educated person and the respondent/Management has the assistance of advocates.

5] It was in this backdrop, that the petitioner had moved an application before the Enquiry Officer seeking leave to appoint his Defence Representative (D.R.), who should be an advocate. The Management opposed the said application without divulging the educational qualifications of the M.R. Mr. Krishna Pawar. The Enquiry Officer has rejected the

request of the petitioner merely on the ground that the standing Orders do not expressly provide for the engagement of an advocate. His grievance is that though the standing Orders do not expressly so provide, they also do not prohibit the engagement of an advocate, in as much as, the Management suppressed the educational qualifications of the M.R. and the Enquiry Officer also over-looked this material aspect.

6] Learned Advocate for the respondent/Hospital has submitted a small hand written note under the signature of Mr. Pravin D. Shahane, who is said to be the Administrator of the respondent/Hospital, for declaring that the M.R. has acquired the qualification of Bachelor of Arts. The said note is taken on record and marked as 'X' for identification.

7] Learned Advocate for the Management further submits, on instructions, that the M.R. has not acquired any further qualifications besides Bachelor of Arts and and can neither be said to be a law graduate nor a legally trained person. He, therefore, submits that no fault can be found with

the order of the Enquiry Officer, as well as, the order of the Industrial Court.

8] The issue as to when a charge-sheeted workman (CSW) can engage a D.R., who is an advocate is now well crystallized. If the Management engages as a M.R., who is an advocate or a legally trained person, the CSW can also engage a D.R., who can be an advocate. It is also settled that if an Elected Union Representative is co-incidentally an advocate or a legally trained person, he can also be engaged as a D.R., not in his capacity as a legally trained person, but in his capacity of being an elected representative of the Union of which the CSW is a member.

9] This Court, in the case of *Yeshwant Harishchandra Gharat V/s Clairant Chemicals (I) Ltd., 2010(3) Mh.L.J. 642*, has considered a somewhat similar situation and has concluded that representation of the employee by a lawyer is not expressly barred by law. This Court further concluded that even if the charges are simple and uncomplicated, an employee would be entitled to the

assistance of a legal practitioner if the Management Representative is a legally trained person.

10] Learned Advocate for the petitioner has placed reliance upon the judgment of Delhi High Court in ***Vijay Thakur Vs. Videsh Sanchar Nigam Limited 2007 LLR 690***. In the said case, the Delhi High Court noted that the representative of the Management was not only a law graduate, but he had also worked as a legal manager till April-2006. In this backdrop, the said petitioner was permitted to engage an advocate to represent his case.

11] Taking into account the fact that the Industrial Court has permitted the petitioner to engage a representative from the employees working in the said Hospital, it can be safely observed that the petitioner can also engage an elected representative of the Union of which he may be a member.

12] This petition is, therefore, disposed of by permitting the petitioner to either engage a co-employee working with the respondent/Hospital or an elected

representative/Office Bearer of the Union, if he is the member of any such union.

13] Since this litigation has caused the prolonging of the enquiry and for which neither of the parties could be blamed, it is directed that the Enquiry Officer would afford a period of about 2 or 3 weeks to enable the petitioner to engage his D.R. as observed above, if not already appointed.

14] Learned Advocate for the petitioner submits that during this litigation, one witness of the Hospital has been examined and discharged without the cross-examination by the petitioner. Learned Advocate for the respondent submits, on instruction from the representative present in the Court, that if the petitioner moves an application in the enquiry for seeking permission to cross-examine the discharged witness, the Management would make the said witness available for cross-examination by the petitioner.

(RAVINDRA V. GHUGE, J.)

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