

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.24459 of 2019
and
W.M.P.No.24197 of 2019

The Director,
National Institute of Technical Teachers
Training & Research Chennai Society,
(Formerly Technical Teachers Training Institute),
TTTI Campus, Taramani, Chennai-600 113. .. Petitioner

-vs-

Mr.M.Rajakumar .. Respondent

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
records connected with the order dated 29.07.2019 passed in
I.A.No.1 of 2019 in C.P.No.58 of 2019 on the file of the I
Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr.Sanjay Mohan,
For Mr.R.Jayaprakash

For Respondent : Mr.M.Rajakumar
Party-in-person

ORDER

The order dated 29.07.2019, passed by the I Additional
Labour Court, Chennai, in I.A.No.1 of 2019 in C.P.No.58 of 2019
is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ
petitioner made a submission that the issue in nutshell requires
to be decided in this writ petition is whether, an office bearer
of the Employers' Association, with reference to Section 36(2)
(a) of the Industrial Disputes Act, 1947 (hereinafter referred
to as the "Act"), is entitled to represent the case of the writ
petitioner before the Labour Court or not.

3.This Court is not inclined to entertain the merits of the dispute, which is now pending before the Labour Court and it is for the parties to adjudicate the merits by filing documents and adducing evidences. However, the order impugned in this writ petition is that the request of the writ petitioner Management to appoint an office bearer of the Employers' Association as a representative of the writ petitioner before the Labour Court was rejected.

4.The learned counsel for the writ petitioner made a submission that the order of the Labour Court is perverse in view of the fact that the provisions of Section 36 of the Act are erroneously interpreted. The distinctions to be drawn with reference to Section 36(2) as well as Sections 36(3) and 36(4) of the Act are erroneously construed by the Labour Court and accordingly, the petition seeking permission not to engage an office bearer of an employers' association by the respondent/petitioner was rejected. In this regard, the learned counsel for the petitioner cited a judgment of the Three-Judges Bench of the Hon'ble Supreme Court of India in the case of Paradip Port Trust, Paradip and Another vs. Their Workmen and Another reported in AIR 1977 SC 36. The Hon'ble Supreme Court in unambiguous terms held as follows in paragraphs 17 and 18, which are extracted hereunder:-

"17.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.

18. 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 fulfilment 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."

5. Relying on the said judgment, the learned counsel for the petitioner reiterated that the application before the Labour Court was made by the respondent/petitioner under Section 36(2) of the Act and not under Section 36(4) of the Act. Only in case the application is filed under Section 36(4) of the Act, the consent of opposite party is mandatory. Therefore, the application filed under Section 36(2)(a) of the Act is to be allowed only on verification whether the representative is the member or an office bearer of the association of employers or not.

6. The respondent, appearing in person, opposed the contentions by stating that the writ petitioner Management initially filed an application to engage an advocate and in fact, the so called office bearer of the association of employers filed an application stating that he is appearing in his capacity as an advocate and at that point of time, the respondent raised an objection and in respect of that application, the objection was raised. Therefore, the contentions of the writ petitioner are incorrect.

7.The petitioner engaged an advocate at the first instance, which was objected by the opposite party and therefore, there is no infirmity in respect of the order passed by the Labour Court. The said reply is verified by the learned counsel for the writ petitioner Management that the person, who was appointed by the writ petitioner Management to represent their case before the Labour Court, is an office bearer of the association of employers and he would be appearing in that capacity and not as an advocate or otherwise. There is no bar if an office bearer of an employers' association is an Advocate, Doctor or practising any other profession. The only qualification prescribed in the statute is that he must be an officer of an association of employers of which he is a member. This being the provision, there is no impediment for the office bearer of an association of employers to represent the case of the writ petitioner before the Labour Court.

8.Considering the arguments as well as the clarifications made regarding the application filed by the writ petitioner Management before the Labour Court, this Court has to consider the findings of the Supreme Court in the case of Paradip Port Trust (cited supra) wherein, the Hon'ble Supreme Court in unequivocal terms held that "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". Further, the observation made by the Supreme Court is that "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". Therefore, the Labour Court has to ensure that whether the person, who is engaged by the Management, is falling within the ambit of Section 36(2) of the Act or not.

9.The ingredients of Section 36(2)(a) of the Act are that an employer must be "an officer of an association of employers of which he is a member". This being the requirement, this Court is of an opinion that there is no impediment for the writ petitioner Management to engage an office bearer of the association of employers and in such an event, the opposite party have no authority to object the same.

10.Further, the Hon'ble Supreme Court in paragraph 18 of the judgment in Paradip Port Trust (cited supra), clarified 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.

11.It is clarified by the writ petitioner Management that they have engaged a person strictly in accordance with the provisions of Section 36(2)(a) of the Act and the person, who is authorised to represent the case of the writ petitioner is an office bearer of the association of employers and he will file all necessary documents to establish the same before the Labour Court. Even in case, such engagement of an office bearer of the association of employers is made and the office bearer is an advocate, then it provides right to the opposite party to engage an advocate to defend their case. Further, the rights under Section 36(2)(a) of the Act cannot be denied on the ground that the office bearer of an association of employers is an advocate as observed by the Supreme court in the case cited supra.

12.The above being the principles to be followed, the interpretation of the Labour Court with reference to Section 36 (2)(a) as well as the observations of the Hon'ble Supreme Court in Paradip Port Trust (cited supra) are incorrect and consequently, the order of the Labour Court dated 29.07.2019, passed in I.A.No.1 of 2019 in C.P.No.58 of 2019 is quashed and the writ petition is allowed.

13.The respondent, in person, submits that the case is already in progress and requested for a direction for early disposal of the claim petition.

14.In view of the said submission, the I Additional Labour Court, Chennai, is directed to proceed with the claim petition and dispose of the same as expeditiously as possible preferably within a period of five months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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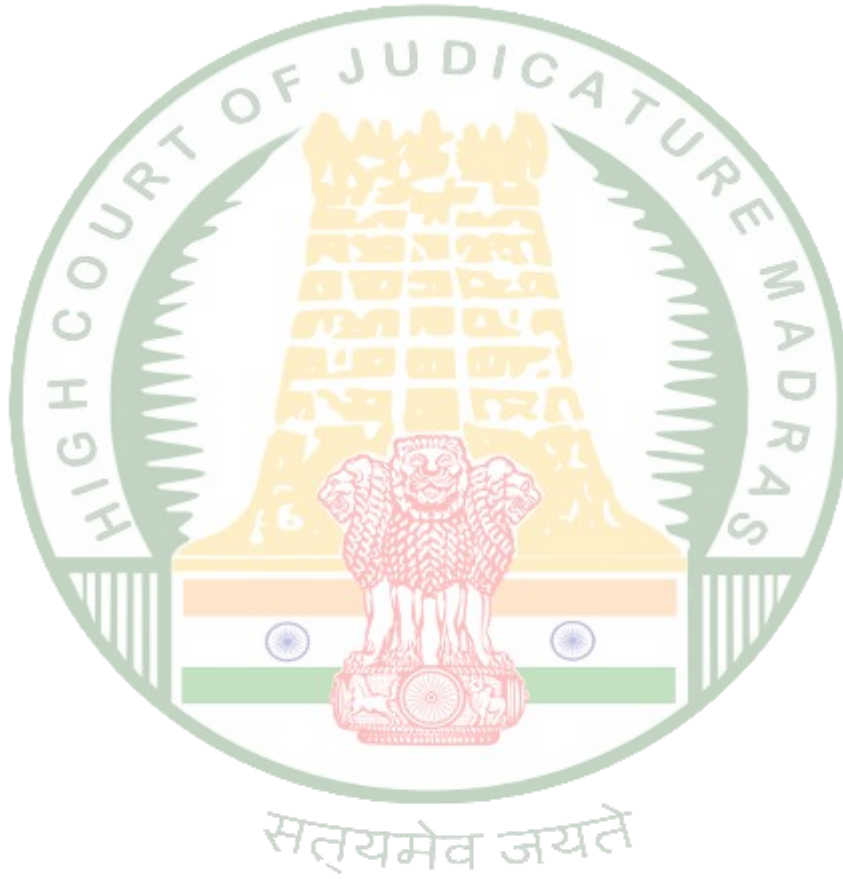
To

The I Additional Labour Court, Chennai.

+1cc to Mr.R.Jayaprakash, Advocate sr.99760

W.P.No.24459 of 2019

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