

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18738 of 2021**

Vinit Kumar Prakash Son of Maheshwar Prasad, Resident of Mohalla -  
Ramkrishna Nagar, Near Bypass Road, P.S. - Ramkrishna Nagar, Town and  
District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Labour,  
Patna.
2. The Presiding Officer, Labour Court, Patna.
3. The Sun Pharma Laboratory Limited, through its Managing Director, Sun  
House, Plot No. 201, B/1 Western Express Highway, Goregaon (East)  
Mumbai, State Maharashtra, Pin 400063.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 10095 of 2023**

Om Prakash Son of Late Bhaskara Nand, Raj Naina, Nandgaon L.B.S. Nagar,  
P.O. and P.S.-Shastringar, District-Patna-800023.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Labour Resources  
Department, Govt. of Bihar, Patna.
2. The Presiding Officer, Labour Court, Patna.
3. Abbott Health Care Pvt. Ltd. Godrej BKC, Plot C- 68, G Block, 13-19 Floor  
BKC, Near MCA Club Bandra (East) Mumbai-400051 through its Managing  
Director.
4. The Zonal Manager Abbott Health Care Pvt. Ltd. Multispecialty, B Block  
Sai Corporate Park, Rukanpura Bailey Road, Patna.

... .. Respondent/s

**Appearance :**

(In Civil Writ Jurisdiction Case No. 18738 of 2021)

For the Petitioner/s : Mr.Akhilesh Dutta Verma

For the Respondent/s : Mr.Raghwendra Kumar (Sc22)

(In Civil Writ Jurisdiction Case No. 10095 of 2023)

For the Petitioner/s : Mr.Sunil Kumar Singh

For the Respondent/s : Mr.Smt. Anuradha Singh (Sc21)

**CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY**  
**ORAL JUDGMENT**

**Date : 12-05-2025**

Heard the learned counsel for the parties.



The CWJC No. 18738 of 2021 has been filed for the following relief(s):-

*“That the application is for issuance of writ in the nature of certiorari for quashing the order dated 27.08.2021 passed by the presiding officer, Labour Court, Patna in I.D. Case No. 08/2019 whereby and where under the petition filed by the management u/s 36(2) of the Industrial Dispute Act has been allowed and the objection raised by the petitioner whereby and where under it was objected that as per section 36(4) of the statute which barred for appearance of practicing advocate, and for any other order or orders as may deem fit and proper in the fact and circumstances of the case and also for any other relief/ reliefs the petitioner may found entitled.”*

3. The CJWC No. 10095 of 2023 has been filed for the following reliefs:-

*“(i) For quashing the order dated 20.1.2023 and 25.4.2023 passed by learned Labour Court in Reference Case No. 46/2019 and Reference Case No.1/2021 whereby and where under practicing Advocates has been allowed to appear in this case on behalf of the employer of the said company as it is in contravention of section 36 of Industrial Dispute Act, 1947.*

*(ii) For restraining Advocates to appear on behalf of the company in Reference Case No. 46/2019 and Reference Case No.1/2021 pending in the Labour Court, Patna*

*(iii) For grant of any other reliefs for which petitioner is found entitled in the facts and circumstances of the case.”*

4. The issue involved in both the cases is one and similar, therefore, both the cases are disposed of by this common order.



5. The CWJC No. 18738 of 2021 is filed assailing the order dated 27.08.2021 passed by the learned Presiding Officer, Labour Court, Patna in the I.D. Case No. 08 of 2019 whereby the learned Presiding Officer has allowed the application filed under Section 36(4) of the Industrial Disputes Act, 1947 (ID Act).

6. The brief facts of the case are that the petitioner is working as an employee in the third respondent-company and disciplinary proceedings were initiated against the petitioner. After enquiry, an order of termination was passed on 25.05.2018. Therefore, the petitioner has filed a case under Section 2A of the ID Act before the Labour Court, Patna challenging order of termination dated 25.05.2018 and the same was registered as ID Case No. 08 of 2019. That after issuance of the notices to the respondent No. 3 herein, the management has appeared through its lawyers Mr. Alok Kumar Sinha and one Mr. Rakesh Kumar Tiwari representing themselves as the office bearers of the Bihar Employers' Association. That the petitioner has raised his objection under Section 36(4) of the ID Act objecting to the appearance of the lawyers. However, the Labour Court has rejected the objection of the petitioner and allowed the application filed by the respondent No. 3 herein, vide order dated 27.08.2021 aggrieved by the same, the present writ petition is filed.



7. It is the case of the petitioner that the so called representatives of Bihar Employers' Association Mr. Alok Kumar Sinha and Mr. Rakesh Kumar Tiwari are both practicing advocates and styling themselves as Honorary Secretary and Honorary Joint Secretary of the said association have filed the said application. That the application filed by the said lawyer is a false claim made without there being any evidence on record. That the Labour Court has failed to see that the provisions of the Act more particularly, Section 36 of the ID Act cannot be defeated by the management by employing advocates masquerading as office bearers of an association. The Labour Court failed to verify the credentials of the said persons and allowed the application made by the management to represent this case. That Section 36 of the ID Act is meant to safeguard the interests of the workers/ employees and the same cannot be defeated by showing practicing advocates as the office bearers of an association.

8. Learned counsel appearing on behalf of the petitioner has stated that not a scrap of paper has been filed to substantiate the claim of the management that the above two named advocates are really the office bearers. That the post held by the said two advocates i.e., Honorary Secretary and Honorary Joint Secretary clearly points out to the fact that they have been solely engaged by



the management only for the purpose of defeating the provisions of the Act. Learned counsel for the petitioner has relied on the following judgments.

“i. *In the case of Purbanchal Cables and Conductors Pvt. Ltd. & Ors. Vs. Assam State Electricity Board and Ors.*

ii. In the case of *M/s. Hygienic Foods Malerkotla Road Khanna, District-Ludhiana vs. Jasbir Singh and Ors.* reported in *2009 SCC OnLine P&H 10299.*

iii. In the case of *Andhra Pradesh Power Diploma Engineers' Association vs. Andhra Pradesh State Electricity Board and Ors.* reported in *1996 LAB I.C. 2654.*”

9. *Per contra*, the learned counsel appearing on behalf of the respondent No. 3 has vehemently opposed the very maintainability of the present writ petition and stated that the provisions of the Act more particularly, Section 36(4) gives the power to the management to engage the services of advocate who are an office bearers of an association of employers or federation of such association. Learned counsel has stated that office bearer of a trade union or member of its executive even if he is a legal practitioner can represent the management and there is nothing in the Act that prevents the management from engaging the services of the member of an association who is also a practicing advocate. Learned counsel for the respondents has relied on the following judgments.



- “i. In the case of *Rakesh Ranjna Keshri son of Sri Laxman Narain Keshri Vs. The Presiding Officer, Labour Court, Bhagalpur & Anr.* reported in 2011 (1) *PLJR (HC) 418.*
- ii. In the case of *Engineering Mazdoor Sabha vs. State of Jharkhand* reported in 2024 *LAB I.C. 1022.*
- iii. In the case of *Paradeep Port Trust Versus Their Workmen with Management of Keonjhar Central Co Operative Bank Limited Versus Their Workmen* reported in 1977 (2) *SCC 339.*
- iv. In the case of the *Behar Journals Ltd. Patna Vs. H.K. Chaudhari and Anr.* reported in *AIR 1964 Patna 532.*
- v. In the case of *Supreme Court Employees Welfare Association Petitioner vs. Union of India and ors.* reported in *AIR 1990 Supreme Court 334.”*

10. In order to resolve the issue involved in the present writ petition, it is necessary to extract the relevant portion of the ID Act more particularly, Section 36 which reads as under;

**“36. Representation of parties.—**

(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) [any member of the executive or office bearer] of a registered trade union of which he is a member:

(b) 2 [any member of the executive or other office bearer] of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by 2 [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—



*(a) an officer of an association of employers of which he is a member;*

*(b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;*

*(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.*

***(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.***

***(4) In any proceeding 2 [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 3 [with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be]***

**11.** A perusal of the Section 36 makes it abundantly clear that unless and until the employee consents to the request of the management for engaging an advocate, an advocate cannot represent the management. Further, it is to be noted that the said advocate can represent the management only after the leave of the Labour Court with the consent of the employee only.

**12.** The Hon'ble Supreme Court in the case of ***Paradeep Port Trust Versus Their Workmen with Management of Keonjhar Central Co Operative Bank Limited Versus Their Workmen*** reported in ***1977 (2) SCC 339*** has held as under;



*“13. As stated earlier, Section 36 deals with representation of the parties. Neither the Act nor Section 36 provides for appearance of the parties themselves when they are individuals or companies or corporations. The tribunals and the labour courts being quasi-judicial authorities dealing with rights affecting the parties cannot adjudicate their disputes in absence of the parties. It is, therefore, incumbent upon the tribunals and labour courts to afford reasonable opportunity to the parties to appear before them and hear them while adjudicating industrial disputes. This position is indisputable. Section 36, therefore, is not exhaustive in the sense that besides the persons specified therein there cannot be any other lawful mode of appearance of the parties as such. As indicated earlier Section 36 does not appear to take count of companies and corporations as employers. It is, however, common knowledge that industrial disputes are raised in a predominantly large number of cases where companies or corporations are involved. Since companies and corporations have necessarily to appear through some human agency there is nothing in law to prevent them from being represented in any lawful manner. As Salmond says:*

*"Every legal person, therefore, has corresponding to it in the world of natural persons certain agents or representatives by whom it acts...."*  
(Salmond on Jurisprudence, 12th Edn., p. 312)

*It is not intended under the Act that companies and corporations are confined to representation of their cases only through the officers specified in Section 36(2) of the Act. They can be represented by their directors or their own officers authorised to act in that behalf in a lawful manner provided it is not contrary to any provision of the Act. This would not, however, mean that the companies and corporations, and for the matter of that any party, are free to engage legal practitioners by means of a special power of attorney to represent their interests before the tribunals without consent of the opposite party and leave of the tribunal.*

*14. Again, although under Section 36(2)(c) there is provision for the contingency of an employer not being a member of an association of employers, the device of representation provided therein would*



*not fit in the case of a government department or a public corporation as an employer. These categories of employers, known to the Act, will be put to the most unnatural exercise of enlisting the aid of an outside association, albeit connected with the same type of industry, to defend their cases before tribunals. Such an absurd intent cannot be attributed to the legislature in enacting Section 36, which will be, if that section is the be-all and end-all of the types of representations envisaged under the Act. The impossibility of the position indicated above is a crucial pointer to Section 36 being not exhaustive but only supplemental to any other lawful mode of representation of parties.*

*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.”*

**13.** Further, the Hon’ble Supreme Court at Para No. 16

has held as under;

*“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. ”*

**14.** A perusal of the impugned order reveals that there was no material before the authority to substantiate the claim of the respondent management that the above two named advocates were actually the Honorary Secretary/ Honorary Joint Secretary as claimed, except filing Form-E as per Rule 30 of the ID (Bihar) Rules, 1961, no other documents has been filed by the management.

**15.** It is to be noted that bye-laws of the association have not been filed to show as to whether there is any post of Honorary Secretary or not in the said Association. Further, it is to be noted that there is nothing on record to show as to when the above two named persons were appointed or elected to the post of the Honorary Secretary/ Honorary Joint Secretary. In the absence of any material on record, the Labour Court ought not to have allowed the application made by the respondent/ management. Though reliance has been placed on the judgment of a Division Bench of this Hon'ble Court passed in LPA No. 491 of 2021 dated 07.09.2017, it is to be noted that the same is distinguishable from the facts of the present case. The provisions of Section 36 mandate that an employer cannot be represented by an advocate. The



benefits of the provision to appoint an office bearer who is also an advocate can accrue only if there is any evidence to substantiate the claim made by the said employer. In the absence of any material to show that the bye-laws of the association provide for the appointment of any Honorary Secretary/ Honorary Joint Secretary, who is also a practicing advocate, the same cannot be allowed.

**16.** Having regard to the above, the CWJC No. 18738 of 2021 is allowed and the impugned order dated 27.08.2021 is set aside. The facts in CWJC No. 10095 of 2023 are also similar. By virtue of the order dated 20.01.2023 & 25.04.2023 passed in Reference Case No. 46 of 2019 & Reference Case No. 01 of 2021 respectively has allowed the application of the Management to represent the employer by the above named advocates.

**17.** Having regard to the above made discussion, the CWJC No. 10095 of 2023 is allowed and both the order dated 20.01.2023 & 25.04.2023 are set aside. However, it is made clear that in case the management files any application seeking appointment of an office bearer who is also a practicing advocate along with material to substantiate its claim i.e., bye-laws of the association provide for appointment of an Honorary Secretary/ Honorary Joint Secretary before the Labour Court, the same shall



be dealt with by the Labour Court on its own merits without reference to the present order.

**18.** With the above direction, both the writ petitions stand allowed.

**(A. Abhishek Reddy, J)**

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