

(1974) 03 OHC CK 0010
In the Orissa High Court

Balakrushna Sahu

APPELLANT

Vs

Executive Engineer, G.E.D. and Another

RESPONDENT

Date of Decision : 27-03-1974

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 227
Industrial Disputes Act, 1947 — Section 36

Citation : (1974) 2 LLJ 118

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Judgement

B.K. Ray, J.—The petitioner is an employee under the Executive Engineer, Electrical Division (opp-party No. 1). By an award of the Industrial Tribunal, Orissa in Industrial Dispute Misc. Case No. 104 of 1969, heard along with Industrial Dispute Case No. 73 of 1969, the petitioner was held to be entitled to certain benefits, such as, continuity in service as Gr. 1 Electrician, his reversion being held not legal and justified. As a result of the award, the petitioner was entitled to certain benefits, such as, differential pay between Gr. II and Gr I salary and increment. When in spite of several representations opposite party No. 1 did not pay the differential pay for the period of reversion, the petitioner filed a petition u/s 33(c) of the Industrial Disputes Act for computation of the amount payable to him before the Labour Court, Orissa. The said case was numbered as Industrial Dispute Case No. 30 of 1971. opposite party No. 1 having entered appearance in the case sought permission from the presiding officer, Labour Court (opp-party No. 2) for engaging the Government Pleader on his behalf. The petitioner who is the secretary of the union of workmen objected to the appearance of the Government advocate in the case, opposite party No. 2, however, overruling the objection of the petitioner by his order dated 16-12-71 allowed the Government Pleader to represent the management in the case. A copy of this order is annexure- 2. The petitioner, therefore, has come up with this application under Articles 226 and 227 of the Constitution for issue of an appropriate writ in the nature of certiorari cancelling the impugned order

(Annexure-2).

2. Opposite, party No. 1 in his counter contends that the management in the case being Government Pleader is competent to appear for the management. The Government Pleader is appointed under the Rules called the Orissa Law Officer Rules, 1971; His appointment as such is prescribed under the Rules and his "term of office and remuneration are defined. His duties have also been prescribed under the Rules. Under Rule 31, he is entitled to T. A. under the Orissa Travelling Allowance Rules as a first class officer of the State. The District Magistrate and Collector of the district concerned exercise administrative control and supervision on him. The Government Pleader is prohibited to appear against the State. Hence, he being an officer of the State Government has every right to represent the State of Orissa before opposite party No. 2. It is also mentioned in the counter that the petitioner is represented by Mr. S. Misra and Bhagbat Behera who are president and general secretary respectively of the petitioner's union which has been recognised by the employer. Both these persons being practising advocates, the petitioner's objection to the appearance of the Government Pleader on behalf of opposite party No, 1 is not justified.

3. Section 36 of the Industrial Disputes Act, 1947 provides for representation of parties before the Labour Court. So far as a workman is concerned who is a party to a dispute under the provisions of the said section is entitled to be represented in any proceeding under the Act by an officer of a registered trade union of which he is a member or by an officer of a federation of trade unions to which the registered trade union of the workmen is affiliated or where the worker is not a member of any trade union, by an official 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. So far the presentation of the employer is concerned, according to the said section, he shall be entitled to be represented by an officer of an association of employers of which he is a member or by an officer of a federation of associations of employees to which the association of the employer is affiliated or 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. The said section prohibits a party to a dispute under the Act to be represented by a legal practitioner unless such representation is with the consent of the other party to the proceeding and with the leave of the Labour Court or Tribunal, It is, therefore, urged that a Government Pleader not being one of the persons entitled to represent the employer cannot appear in the proceeding without the consent of the petitioner. Hence, according to Mr. S. Misra, learned Counsel for petitioner, the Presiding Officer of the Labour Court committed an illegality in allowing opposite party No. 1 to be represented by the Government Pleader by the impugned order (annexure-2), when such representation is objected by the petitioner.

4. It is conceded by learned Counsel for petitioner as well as learned Government Advocate for opposite party No. 1 that apart from the provision contained in Section 36 of the aforesaid Act, a party to a dispute before a Labour Court or Tribunal, itself has the right to represent its own case. In the case before us, the State Government being a party to the dispute pending before opposite party No. 2, it is open to it to be represented by one of its officers. It follows that if the Government Pleader who has been allowed by opposite party No. 2 to represent opposite party No. 1 is an officer of the Government of Orissa, there can be no bar to his representing the case, for opposite party No. 1. Hence, the sole question for consideration is whether the Government Pleader is an officer of the State Government. Learned Government Advocate on behalf of the States relies upon a decision reported in *The State of Uttar Pradesh Vs. Sri Bhola Nath Srivastava and Others*, . The question for determination before their Lordship in that case was as to whether Law Officers of the State in the High Court, viz., Government Advocate, Additional Government Advocate, etc., hold posts under Government and as to whether in appointing persons to these posts Article 16(1) of the Constitution has to be complied with. Their Lordships after reviewing several decisions came to the conclusion that the posts of the Law Officers in the High Court are "officers" and since the appointments and continuance in the office of the persons appointed to these offices rests solely with Government and their remuneration is fixed and paid by Government, they are "offices under the State". After having come to this conclusion their Lordships in that case, however, negated the contention that by not calling for applications from intending candidates by advertisements before filling up these offices there cannot be said to be any violation of the provision contained in Article 16(1) of the Constitution. But while saying so, their Lordships have clearly stated in that decision that even after appointment as a Law Officer the advocate so appointed continues in the legal profession and appears as an advocate before the High Court on behalf of the State and the relationship between him and the State is still essentially that of counsel and client.

5. On the side of the petitioner, reliance is placed on a decision reported in *Srimati Kanta Kathuria Vs. Manak Chand Surana*, . In that case, an advocate appointed as a special Government Pleader to assist the Government Pleader in a particular case was not held to be holding an office. In that decision, the following observation of Rowlatt, J, in (1922) 8 Tax Cas. 231 at page 235 has been quoted with approval.

Now it is argued, and to my mind argued most forcibly, that that shows that what those who use the language of the Act of 1842 meant, when they spoke of an office of an employment, was an office or employment which was a subsisting, permanent, substantive position, which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders; and if you merely had a man who was engaged on whatever terms, to do duties which were assigned to him, his employment to do those duties did not create an office to which those duties were attached. He merely

was employed to do certain things and that is an end of it, and if there was no office or employment existing in the case as a thing, the so-called office of employment was merely an aggregate of the activities of the particular man for the time being.

6. After hearing learned Counsel for both sides and after carefully examining the provision of Section 36 of the aforesaid Act, we are of the view that the very object of the section would be frustrated if a Government Pleader or a Government Advocate is permitted to represent the State Government in a case before the Labour Court or Tribunal as an officer holding a post or office and representing the State. All the Judicial pronouncements noticed above emphasise that even in spite of the fact that a Government Pleader or a Government Advocate is appointed by the State, so far as the duties to be performed by him are concerned, they are the same as are required to be performed by a legal practitioner and in spite of the appointment the relationship between the State and either the Government Pleader or the Government Advocate is the same as between a client and his counsel. This being the position, according to us, the view taken by opposite party No. 2 does not appear to be tenable in law,

7. Accordingly, we allow the writ application and quash the impugned order (annexure-2). In the peculiar facts and circumstances of the case, we direct the parties to bear their own costs.

R.N. Misra, J.

8. I agree.