
(1998) 11 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4039/98

Bhawani Art Handicrafts

APPELLANT

Vs

Gulab Singh and Others

RESPONDENT

Date of Decision : 18-11-1998

Acts Referred:

Advocates Act, 1961 — Section 30
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 36

Citation : (1999) 1 RLW 278 : (1999) 2 WLC 483 : (1999) 1 WLN 208

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The petitioner M/s. Bhawani Art Handicrafts, 19-A Light Industrial Area, Jodhpur, through its proprietor Suresh Kumar Bhawani has filed this writ petition under Article 226 of the Constitution and challenged the impugned order dated 2.11.1998 (annex.3) passed by the labour court, Jodhpur, whereby, Shri Dhanpat Raj Lunkar, a practicing advocate of this Court has been prevented from representing the petitioner employer on the ground that he is an advocate, therefore, he cannot appear on behalf of the petitioner. Learned Counsel Shri Lunkar himself appeared in this writ petition on behalf of the petitioner employer and relying upon the Apex Court judgment in case of Paradip Port Trust, Paradip Vs. Their Workmen, vehemently submitted that as a lawyer he can appear before the Industrial Tribunal in his capacity as an office bearer on behalf of the petitioner employer. He, therefore, submits that learned Labour Judge was wrong in preventing him from appearing on behalf of the petitioner.

2. The petitioner employer M/s Bhawani Art Handicrafts terminated the services of his 10 workmen for which State of Rajasthan had made a reference before the Labour Court. Before the Labour Court Advocate Shri Lunkar appeared as a representative of the petitioner employer, which was objected by the workmen

on the ground that Mr. Lunkar being a practicing advocate was not entitled to appear on behalf of the employer and present his case. That objection was upheld by the Labour Court and Mr. Lunkar was prevented from presenting the case of petitioner employer before the Labour Court.

3. Learned Counsel Shri Lunkar for the petitioner vehemently submitted that he was appearing before the Labour Court in his capacity as a co-opted Honorary Member and honorary Addl. Secretary of the Executive Committee of the petitioner employer and not in his capacity as a lawyer. He, therefore, submits that he was entitled to represent the case of the employer before the Labour Court and the Labour Court has wrongly deprived him from presenting the case of employer through him. When asked, Mr. Lunkar has produced the original letter dated 26.10.1998 of Jodhpur Industries Association of co-opting him as a Honorary Member and Honorary Addl. Secretary of its Executive Committee which is taken on record. Annex. 1 to the writ petition dated 1.10.1998 issued by the petitioner employer is an authority letter authorising Mr. D.R. Lunkar, Labour Advisor and Honorary Member and Honorary Addl. Secretary of Executive Committee of Jodhpur Industries Association to represent and plead the case of petitioner's firm Section 36(3) of the Industrial Disputes Act clearly provides that no party to the dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under the Act or in any proceedings before the Court. Mr. Lunkar in his capacity as a legal practitioner was not entitled to appear before the Labour Court. However, his submission was that before the Labour Court he was not appearing in his capacity as a lawyer but he was appearing in his capacity as an officer of the Association of employers, therefore, his case would fall u/s 36(2Xa) and (b) of the Industrial Disputes Act. Section 36(2)(a)(b) of the Act reads as under -

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceedings 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....

4. In Paradip Port Trust, case (supra) the Apex Court made the following observations-

A lawyer can appear before the Tribunal in the capacity of an office-bearer of a registered trade union or an officer of associations of employers, and no consent of the other side and leave of the Tribunal will, then be necessary.

5. The letter dated 26.10.1998 produced by learned Counsel Shri Lunkar, issued by Jodhpur Industries Association, Jodhpur stating that he was co-opted as a Honorary Member and Honorary Addl. Secretary of its Executive Member is a camouflage. If this practice is allowed then it would clearly frustrate the very object of the Industrial Disputes Act for preventing the lawyers from appearing

before the Labour Court in the proceedings. Subsequent letter dated 31.10.1998 (annex. 1) issued by the petitioner employer clearly shows that Shri Lunkar was authorised as a labour advisor. It is an admitted fact that Shri Lunkar is a practicing lawyer, therefore, under the provisions of Section 30 of the Advocates Act he would not be entitled to appear as office bearer of any other employer and if it is so then he would incur disqualification as a lawyer. The Supreme Court observations in Paradip Port Trust's case (supra) that a lawyer can appear before the Tribunal in the capacity of an office bearer by a registered trade union or an officer of an association of employers, meaning thereby, a permanent employee of the employer. If he is a permanent employee for a part time employee then he can appear before the court for his employer, otherwise not. The very fact that in this writ petition Mr. Lunkar had himself presented the case shows that he was not the office bearer of the association. Merely branding him as an Honorary Member or Honorary Addl. Secretary of the Executive Committee would not entitle him to appear before the Labour Court and represent the case of petitioner employer.

6. In my opinion, learned labour Judge has rightly dis-allowed him from representing the case of petitioner employer.

7. In view of the above discussion, this writ petition fails and is hereby dismissed.