

(1988) 09 RAJ CK 0036
In the Rajasthan High Court
Case No : .C.W.P. No. 2779 of 1987

Budhar Lal

APPELLANT

Vs

Judge, Labour Court and Others

RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(2), 36(3), 36(4)

Citation : (1989) 58 FLR 472 : (1994) 3 LLJ 91

Hon'ble Judges : Milap Chand Jain, J;Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Milan Chandra, J.—This writ petition has been filed for quashing the order of the learned Judge, Industrial Tribunal, Jodhpur dated September 21, 1987, by which he overruled the objection of the petitioner that the Executive Engineer, P.H.E.D., Balotra (respondent No. 2) is not entitled to be represented before him by Miss Shanta Ozha, Advocate. The fact of the case giving rise to this petition may be summarised thus.

2. The petitioner was in the service of the respondent No. 2. His services were terminated with effect from June 3, 1985. A reference u/s 10, Industrial Disputes Act (hereinafter referred to as "the Act") was made by the State Government regarding this dispute. Miss Shanta Ozha, Advocate put her appearance on behalf of the respondent No. 2. The petitioner moved an application u/s 36(3) of the Act, objecting the representation of the respondent No. 2 by Miss Shanta Ozha, Advocate. After hearing the parties, the learned Judge, Industrial Tribunal, Jodhpur (respondent No. 1) repelled the objection by his impugned order.

3. It is contended by the learned counsel for the petitioner that the provision of Section 36(3) of the Act are quite clear and the respondent No. 2 is not entitled to be represented by Miss Shanta Ozha, Advocate who is admittedly a legal practitioner. He relied upon the judgment given in Writ Petition No. 194 of 1986

Mahendra Kumar Khatri v. Judge, Labour Court, Jodhpur and Anr. 1987 I.C.L.R. 265 dated June 16, 1986,

4. The learned Additional Government Advocate tried his best to support the impugned order.

5. Sub-sections (2) and (3) of Section 36 of the Act run as under:

"36(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 associations 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".

It is not the case of the respondent No. 2 that Miss Shanta Ozha is an officer of any of the categories mentioned in Sub-section (2) of Section 36. It is not in dispute that she is a legal practitioner. It is, thus, clear that the provision of Sub-section (2) are not attracted and the provisions of Sub-section (3) of Section 36 are fully attracted in this case. It is not the case of the respondent No. 2 that the consent of the petitioner and the leave of the Industrial Tribunal (respondent No. 1) were obtained for his representation by Miss Shanta Ozha, Advocate, as required u/s 36(4) of the Act. It has been observed in *Paradip Port Trust v. Its Workmen* 1976 (II) LLJ 409 Para 26 as follows:-

"A lawyer, simpliciter, cannot appear before an Industrial Tribunal without the consent of the opposite party and leave of the Tribunal merely by virtue of a power of attorney executed by a party. A lawyer can appear before the Tribunal in the capacity of an office bearer of a registered trade union or an officer of association of employers and no consent of the other side and leave of the Tribunal will then be necessary".

6. The learned Judge, Industrial Tribunal Jodhpur overruled the objection on the ground that the provisions of Section 36(3) of the Act are not applicable to the State Government and its departments as neither the State Government, nor its departments can be a member of an Association of employers or of a Federation of Association of employers. Suffice, it to mention here that the reference was made against the Executive Engineer, P.H.E.D., Balotra and not against the State Government. It is, therefore, very difficult to sustain the impugned order.

7. Consequently, the writ petition is allowed. The order of the learned Judge, Industrial Tribunal, Jodhpur, dated September 21, 1987, is quashed. Miss Shanta Ozha. Advocate, cannot be allowed to represent the respondent No. 2 before the respondent No. 1. No order as to costs.