

(1986) 06 RAJ CK 0005
In the Rajasthan High Court
Case No : C.W.P. No. 194 of 1986

Mahendra Kumar Khatri

APPELLANT

Vs

Judge, Labour Court and Another

RESPONDENT

Date of Decision : 16-06-1986

Acts Referred:

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

Citation : (1987) 54 FLR 97 : (1993) 3 LLJ 491

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Advocate : A.K. Rajvanshi, for the Appellant; R.P. Dave, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, J.—The petitioner by this writ petition has prayed that by an appropriate writ, order or direction the order dated 3rd December, 1985 Ext, 1 may be quashed and D.K. Parihar, Advocate, may be restrained from putting appearance before the Labour Court.

2. The petitioner was working as a Mistri under the respondent No. 2 and he was paid the salary of work charge Gangman. The respondent No. 2 terminated the services of the Petitioner without any notice and non-compliance with the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The Government of Rajasthan made a reference to the Labour Court and appointed Shri D.K. Parihar as Advocate to represent the respondent No. 2 before the Labour Court. The petitioner raised an objection u/s 36 of the Act on the first date of appearance that Shri D.K. Parihar cannot appear without the consent of the opposite party. Thereafter vide order dated 3rd December, 1985 the Labour Court overruled the objection of the petitioner and permitted Shri D.K. Parihar to represent respondent No. 2. Aggrieved against this order the petitioner has preferred this writ petition.

3. The learned counsel for the petitioner submits that in terms of Section 36(4) of the Act, the appearance of the legal professional is not permitted without the consent of the opposite party, thus the Labour Court could not have allowed Shri D.K. Parihar to appear on behalf of the respondent No. 2. In this connection the learned counsel for the petitioner has referred the cases of Paradip Port Trust, Paradip Vs. Their Workmen, and St. Mary's High School v. Gulam Mohammad and Anr. 1984 Lab.I.C.Noc.85.

4. After hearing learned counsel for the parties, I think the order of the Labour Court deserves to be set aside. It has been clearly laid down in Section 36(4) that if the opposite party objects then the Court cannot allow the appearance of legal practitioner. The exception is only Sub-section (2) of Section 36, but that is not the case of the respondent before me. Their Lordships of the Supreme Court have clearly laid down and interpreted the scope of Section 36 and held that a lawyer simpliciter cannot appear before the Labour Court without consent of the opposite party and leave of the Court or Tribunal as the case may be. A lawyer can appear, who is office bearer of the registered trade Union or member of association of employers. But this is not the case of the respondent. Thus, in the view of the matter Shri D.K. Parihar cannot be permitted to appear as he is not a member of any association of the employers and nor he is office bearer of registered trade Union.

5. In the result, the writ petition is allowed and the order of the Labour Court dated 3rd December, 1985 is quashed. No order as to costs.