

(1998) 05 RAJ CK 0019
In the Rajasthan High Court
Case No : CW.P. No. 1492 of 1998

Project Director, Agriculture and Soil Survey	APPELLANT
Vs	
Surendra Singh and Another	RESPONDENT

Date of Decision : 07-05-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(4)

Citation : (2000) 3 LLJ 1475 : (1998) 3 RLW 1478 : (1999) 1 WLC 206

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.L. Gupta, J.—The State Government vide order dated May 25, 1997 referred industrial dispute to the Labour Court, Bikaner. Claim was filed by the workman through the labour Union. On behalf of the petitioner (employer) an advocate put in appearance which was objected to by the workman on the premises or Section 36(4) of the Industrial Disputes Act, 1947. The learned Judge of the Labour Court upheld the objection and ordered that the employer shall not be represented by an advocate. In this writ petition, this order has been challenged. Mr. Jangid contends that u/s 36(4) the word "and" after the word "proceeding" and before the word "with" should be read as "or" because it is the leave of the Court which is material and even if the workman does not give consent it is in the discretion of the Labour Court to permit the employer to be represented by an advocate.

2. Section 36(1) of the I.D. Act provides that a workman is entitled to be represented by any member of the executive or other office bearer of a registered trade union of which he is a member or 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. u/s 36(2) the employer is 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 association of employers to which the

association referred to in Clause (a) 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. Under Sub-section (3) of Section 36 it has been clearly provided that 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. Sub-section (4) of Section 36 is an exception to Sub-section (3) which reads as follows:

"(4) In any proceeding (before a Labour Court, Tribunal or National Tribunal), a party to a dispute may be represented by a legal practitioner with the consent of other parties to the proceeding and (with the leave of the Labour Court, Tribunal or National Tribunal), as the case may be."

3. It is thus obvious that a party to a dispute before the Labour Court, Tribunal or National Tribunal can be represented by a legal practitioner only when opposite party gives consent and also the Court grants leave. Both the conditions must be satisfied in order to enable an advocate to represent a party before the Labour Court. There is no justification of reading word "or" in place of word "and". The industrial laws have been enacted to maintain peace and harmonious relations between the workmen and the employer. The bar to be represented by a legal practitioner except with the consent of the opposite party and the leave of the Court in Section 36 of the I.D. Act, has been introduced with a view to preventing the parties from raising technical pleas which, naturally, impedes the smooth and speedy settlement. No authority has been cited by Mr. Jangid in support of his contention that word "and" should be read as word "or" in Sub-section (4).

4. It is significant to point out that Section 36 was the subject matter of consideration by the Apex Court in the case of Paradip Port Trust, Paradip Vs. Their Workmen, wherein at para 25 it was observed as follows at p. 416:

"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 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 associations of employers and no consent of the other side and leave of the Tribunal will, then be necessary."

5. In my opinion, the learned Judge of the Labour Court has rightly upheld the objection of the respondent workman and the petitioner is not entitled to be represented by an advocate.

6. The writ petition being devoid of merit is dismissed.