

(2003) 08 P&H CK 0135
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11605 of 2003

Radhey Shyam

APPELLANT

Vs

Presiding Officer, Labour Court II

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 36(4)

Citation : (2004) 1 LLJ 483 : (2003) 135 PLR 827

Hon'ble Judges : S.S. Nijjar, J;S.S. Grewal, J

Bench : Division Bench

Advocate : S.D. Bhatti, for the Appellant;

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—We have heard learned counsel for the petitioner at length.

During the proceedings in the Labour Court for adjudication of an industrial dispute, the workman had filed an application u/s 36(2) of the Industrial Disputes Act, 1947 (for short, "the Act"). In that application, he had challenged the appearance of S.S. Saini and N.S. Rajput Officers of M/s Progressive Employers & Traders Association, Faridabad to represent "the management." It was pleaded that the two officers" being Advocates were precluded from representing the management without the counsel of the workman and without the leave of the Court.

2. The Labour Court, after considering the submissions made by the learned counsel for the parties has concluded that since the two officers are office bearers of the employer's association, the bar contained u/s 36(4) of the Act would not be applicable. In support of its finding, the Labour Court has relied on a judgment of the Supreme Court in the case of Paradip Port Trust, Paradip Vs. Their Workmen, .

3. We have perused the aforesaid judgment and are of the opinion that the matter is squarely covered against the present "petitioner. In the aforesaid case,

the Supreme Court has held in paragraphs No. 15, 16 and 17 as under:-

"15. The parties, however, will have to conform to the conditions laid down in Section 36(4) in the matter of representation by legal practitioners. Both the consent of the opposite party and the leave of the Tribunal will have to be secured to enable a party to seek representation before the Tribunal through a legal practitioner qua legal practitioner. This is the clear significance of Section 36(4) of the Act.

16. If, however, a legal practitioner is appointed as an officer of a company or corporation and is in their pay and under their control and is not a practising advocate the fact that he was earlier a legal practitioner or has a legal degree will not stand in the way of the company or the corporation being represented by him. Similarly if a legal practitioner is an officer of an association of employers or of a federation of such associations, there is nothing in Section 36(4) to prevent him from appearing before the Tribunal under the provisions of Section 36(2) of the Act. Again, an office bearer of a trade union or a member of its executive, even though he is a legal practitioner, will be entitled to represent the workman before the Tribunal u/s 36(1) in the former capacity. The legal practitioner in the above two cases will appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office bearer of the union in the case of workmen and not in the capacity of a legal practitioner. The fact that a person is a legal practitioner will not affect the position if the qualifications specified in Section 36(1) and Section 36(2) are fulfilled by him.

17. It must be made clear that there is no scope for enquiry by the Tribunal into the motive for appointment of such legal practitioner as office bearers of the trade unions or as officers of the employers' associations. When law provides for a requisite qualification for exercising a right, fulfilment of the qualification in a given case will entitle the party to be represented before the Tribunal by such a person with that qualification. How and under what circumstances these qualifications have been obtained will not be relevant matters for consideration by the Tribunal in considering an application for representation u/s 36(1) and Section 36(2) of the Act. Once the qualifications u/s 36(1) and Section 36(2) are fulfilled prior to appearance before Tribunals, there is no need under the law to pursue the matter in order to find out whether the appointments are in circumvention of Section 36(4) of the Act. Motive of the appointment cannot be made an issue before the Tribunal."

4. A perusal of the aforesaid ratio of law would make it abundantly clear that normally the parties have to conform to the conditions laid down in Section 36(4) of the Act in the matter of representation by legal practitioners. In normal circumstances, both the consent of the opposite parties and the leave of the Tribunal has to be secured to enable the party to seek representation before the Tribunal through a legal practitioner. However, exceptions are made in case:-

a) a legal practitioner is appointed as an officer of a company or corporation and

is in their pay and under their control and is not a practising advocate. In such circumstances, the fact he was earlier legal practitioner or has a legal degree becomes irrelevant:

b) Similarly, if a legal practitioner is an officer of an association of employers or of a federation of such association, the bar contained u/s 36(4) would not be applicable.

c) an office bearer of a trade union or a member of its executive, even though he is a legal practitioner will be entitled to represent the workmen before the Tribunal u/s 36(1) of the Act in the former capacity.

5. It has been made clear that in the aforesaid two cases, the legal practitioner appears in the capacity of an officer of the Association in the case of the employer and in the capacity of office bearer of the Union, in the case of workman and not in the capacity of a legal practitioner.

6. Mr. Bhatti has vehemently argued that the appointment of the two officers as office bearers is motivated to enable the management to get over the bar contained u/s 36(4) of the Act. We are unable to accept this submission of the learned counsel as the same has been clearly answered by the Supreme Court in para No. 17 of the judgment, which has been reproduced above. It has been clearly held that there is no scope for enquiry by the Tribunal into the motive for appointment of legal practitioners as office bearers of the trade unions or as officers of the employers' associations.

7. In view of the above, we find no merit in this petition. Dismissed.

Sd/-

S.S. Grewal, J.