

Id No. 137/2022

23/09/2022

Present:- claimant in person.

Ms. Sunanda Kumari, Ld. A/R for the management.

This order deals with an application filed by the claimant under the provisions of section 36(4) of the Id Act stating that the claimant is the ex-employee of Axis Bank Ltd. He has raised this dispute before the tribunal in person. The respondent Bank has engaged advocate Ms. Sunanda Kumari who has filed WS. Since, the claimant has no means of engaging a legal practitioner and the management has not taken the permission of the claimant in this regard, the appearance of advocate Ms. Sunanda Kumari may be disallowed.

No written reply to the petition filed u/s 36(4) of the ID Act has been filed by the management. But it was heard being argued by both the parties.

The provisions of law laid u/s 36(4) provides that in any proceeding before the labour court and industrial tribunal, the party to a dispute may be represented by a legal practitioner with the consent of the other party to the proceeding. In this case admitted position is that the claimant has not given the consent to the management for engagement of the legal practitioner. On the contrary the claimant has raised objection to the same. On the ground that he is representing his own case in person. On behalf of the claimant reliance has been placed in the (i) cases of **Paradeep Port Trust vs. Their workmen 1977SCR(1) 537** (ii) **National Horticulture Research Development Foundation vs. GOI and Others** decided by the Hon'ble High Court of Madras (iii) **M/s Larsen and Turbo Ltd. vs. PO Industrial Tribunal and others** decided by the Hon'ble High Court of Orissa to argue that without the consent of the contesting adverse party, the other party can't engage an advocate to support his case. In the case of **Thyssen Krupp Industries India Pvt. Ltd. vs. Suresh Maruti Chougule and others decided in Civil Appeal No. 6586 of 2019** the Hon'ble Supreme Court have held that the legality and constitutionality of the provisions of section 36 of the Id Act should be decided by a larger bench of the Hon'ble Supreme Court where it shall be examined if the ID Act is a special statute or the advocates act being a General Statute shall have over riding effect on the former. That being the position of law a plain reading of the section leads to a conclusion that the advocate cannot represent the respondent without explicit consent of the claimant. The petition filed u/s 36(4) is thus allowed. Call on 01/11/22 for filing of written str.....

Presiding Officer

23.09.2022

