

06.04.2022

Present:- Shri S.A Sebastian, Ld. A/R for the claimant.  
Shri Rajat Arora, 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 office bearer of the union representing the employees of Union Bank of India. He has raised this dispute before the tribunal and is being represented by his authorized representative who is not an advocate. The respondent bank has engaged advocate Rajat Arora who has sought time for filing of 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 Rajat Arora may be disallowed.

No written reply to the petition filed u/s 36(4) of the ID Act has been filed by the management.

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 behalf of the claimant reliance has been placed in the **Thyssen Krupp Industries India Pvt. Ltd. vs. Suresh Maruti Chougule and others decided in Civil Appeal No. 6586 of 2019** wherein 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 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 04.05.2022 for filing of written statement.

Presiding Officer  
06.04.2022