

I.D. No. 124/2021

February 10, 2023

Present: Sh. N.A. Sebastian, A/R alongwith the claimant.
Sh. Rajat Arora, Alongwith Sh. Neeraj Kumar, A/R for the management.

The instant application dated 16.03.2022 in hand is moved by the claimant arising an objection with regard to this representation of the unauthorized AR Sh. Rajat Arora Advocate & Sh. Neeraj Kumar Advocate on behalf of the management Union Bank. The application is moved under Section 36 of the I.D. Act 1947.

The applicant states that on his behalf no legal practitioner is appearing in the proceeding and his case is being pursued by Sh. N.A. Sebastian duly authorized AR to the workman who is Vice President of Union Bank of India. It is further stated that the legal practitioners Advocates Sh. Rajat Arora & Sh. Neeraj Kumar though can not appear in accordance to Section 36 of the I.D. Act in the proceeding filed by the workman, they are appearing without any authorization. The said advocates have filed written statement and reply against the application of the workman under Section 36 of the I.D. Act without having been signed by the appropriate management 'Bank' or its Authorized Representative. The workman has further stated that cases filed by different workmen bearing different Industrial Dispute Case Number against Union Bank of India are appearing on behalf of the Union Bank unauthorisedly. It is prayed from the court to take appropriate action against the named legal practitioners and the unauthorized management of the Union Bank of India on whose behalf they are pursuing their case against the workman in the Industrial Dispute case.

A reply to the aforesaid application of the workman/claimant is moved by the Union Bank of India through it's Chief Manager (HR) on several grounds against the said application under Section 36 of the I.D. Act. It is submitted that the written statement filed by the Union Bank of India is signed by Chief Manager Sh. Shailender Jha who is competent authority. It is further controverted that the claimant/workman in Para-3 of the application has stated that Sh. N.A. Sebastian is representing the applicant as a Vice President "Union Bank of India". It is firmly stated that Sh. N.A. Sebastian is a practicing lawyer registered with the Bar Counsel of Delhi having Registration No. D-390/94. The application under Section 36 is therefore opposed on the ground that when the case of the workman before the tribunal is being pursued by an Advocate the legal practitioner how he can debar appearance of the lawyers from the side of the management. The management has

further relied upon judgments of various High Courts on the issue of appearance on behalf of the party by a legal practitioner. The Section 36 does not put an absolute bar or the representation through legal practitioner by a party in the proceeding before the courts under Industrial Dispute Act 1947. Moreover, the workman has no unfettered right to refuse consent as to the representation through legal practitioner on behalf of his opponent. The opposite party management has cited *A & B Fashions Pvt. Ltd. V. Ramesh Kumar WP (C) No. 8929/2021* decided on 24.08.2021, *Bhagat Brothers V. Paras Nath Upadhyay 149 (2008) TLT 381* and the Apex Court decision in *Thiysen Krupp Industries India Pvt. Ltd. V. Suresh Maruti Chougale CA 6586 of 2019* on the right of an Advocate to practice in any court or any tribunal under Section 30 of the Advocates Act in the context of Section 36 of the I.D. Act. And *MRL Ltd. V. Inspector Kerala Govt. 1998 (8) SCC 227* in the context of Section 13 of the Family Courts Act. where there is a bar on the appearance of lawyer before the family court.

Heard, the learned councils perused their authorization by the respective parties to the proceeding before the tribunal, the materials placed on record by them. Before proceeding to discuss the merit of the arguments done by the respective parties in favor of their contentions over right of legal practitioner to appear before the tribunal in proceeding under Section 36 of Industrial Dispute Act, it would be relevant to quote the provision of Section 36 of the Industrial Dispute Act.

36. Representation of parties.- (1) *A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-*

(a) any member of the executive or other office bearer] of a registered trade union of which he is a member;

(b) 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;

(c) where the worker is not a member of any trade union, by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) *An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-*

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in Clause (a) is affiliated;

(c) 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.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceeding under this Act or in any proceeding before a Court.

(4) In any proceeding 1[before a Labour Court, Tribunal or National Tribunal] a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and 2[with the leave of the Labour Court, Tribunal, or National Tribunal as the case may be.

From the wordings of Sub Section 3 & 4 of the Section 36 of I.D. Act 1947 it is amply clear that there is no any absolute bar on the appearance of legal practitioner in the proceeding running before a tribunal or court under Industrial Dispute Act. Both the parties to dispute or given right under Sub Section 4 of Section 36 to get their representation through a legal practitioner with the consent of the other parties through the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal as the case maybe.

If one of the parties to dispute pending for adjudication before the tribunal is perusing his case through legal practitioner it can not be supposed to reasonably withhold his consent as to the representation of his contesting parties through legal practitioner. In the present case when Sh. N.A. Sebastian is admittedly perusing the case of workman/claimant before this tribunal, it is clear that the workman is perusing his legal battle with professional skill and knowledge of law which his representative Sh. N.A. Sebastian has. The officer through whom the workman has sued the management Union Bank of India is Managing Director and CEO of Bank. Therefore, the management has a right to get representation and persuasion of this case through an equally capable legal practitioner against Mr. N.A. Sebastian. The workman in the aforesaid circumstance and context of the matter has no right to withhold his consent or to deny from giving consent to the representation through legal practitioner of his opponent the opposite party management of Union Bank of India.

On the discussion made herein above I am the opponent that the workman/claimant has no right to refer the consent as to the representation of the management opposite party through their Authorized Representative Sh. Rajat Arora & Sh. Neeraj Kumar and it would be just and proper to accord to grant leave of the court to such representative to appear on behalf of the management and persue their case under Section 36 (4) of the Industrial Dispute Act.

Order

The application dated 16.03.2022 moved by the claimant under Section 36 of the Industrial Dispute Act is here by rejected. List the case on 01.03.2023 for framing of issues. The parties to the proceeding are directed to submit all their evidences oral and documentary both on the next date fixed.

(Presiding Officer)
February 10, 2023