

(2009) 02 P&H CK 0225

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 4322 of 2007

Jasbir Singh

APPELLANT

Vs

Hygienic Foods, Malerkotla Road
and Another

RESPONDENT

Date of Decision: Feb. 5, 2009

Acts Referred:

- Industrial Disputes Act, 1947 - Section 36(2), 36(4)

Citation: (2009) 2 ILR (P&H) 556

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: S.S. Chauhan, for the Appellant; Arun Palli and Jai Bhagwan, for the Respondent

Final Decision: Allowed

Judgement

Augustine George Masih, J.

In the present writ petition, the challenge is to the order of the Labour Court, dated 19th January, 2007 (Annexure P-3), wherein an application moved by the Petitioners u/s 36(2) of the Industrial Disputes Act has been rejected on the ground that there is an implied consent granted to the authorised representative.

2. Counsel for the Petitioner contends that the impugned order dated 18th October, 2000 cannot be sustained in the light of the Full Bench judgment of this Court in the case of Indrasan Parsad v. Presiding Officer and Anr. 2008(1) S.C.T. 522, wherein this Court has held that the consent of the party must be specific and so has to be the leave by the Court and it should be at the beginning of the proceedings so that there remains no ambiguity in the status of the legal practitioner who appears after due consent and leave. It has further been held that the implied consent of the party or implied leave of the Court are alien to the provisions of Section 36(4) of the Industrial Disputes Act.

3. Counsel for Respondent No. 1 contends that the objections, if any, should have been taken by the Petitioners when the legal practitioner has put in appearance on 18th October, 2000 before the Labour Court in the capacity of an authorised representative of the Respondent No. 1. He further contends that Mr. B.P. Bansal and Associates are the Legal Secretaries of Ludhiana Commercial Undertakings and Establishments Association (Regd.), copy of certificate of registration is appended as Annexure R-3 with the reply filed by the Respondent No. 1. He further contends that a specific stand has been taken before the Labour Court that the authorised representative therein had never practised in the Civil Courts and therefore, was exclusively working in the Labour Court, Labour Offices and Labour Tribunal. Counsel for the Respondent No. 1 relies upon Constitution of Ludhiana Commercial Undertakings and Establishments Association (Regd.) (Annexure R-2). According to Clause "D" thereof the functions of the Legal Secretary have been mentioned which are reproduced herein below:

D. Legal Secretary:

The Legal Secretary shall have charge of all correspondence. He shall keep accounts of the assets, credits and liabilities of the federation. He shall collect all dues and grant receipts. He shall institute, prosecute and defend suits and other proceedings in Labour Office, Labour Court, Labour Tribunal or in any court of law or elsewhere in arbitration proceedings on behalf of the federation or the members or any other person who shall be member of an association affiliated to the federation. He shall be the permanent office bearer. Shri B.P. Bansal, s/o Shri M.R. Bansal, 293-L Model Town, Ludhiana, shall be the Legal Secretary of the Federation.

4. He on this basis submits that although the authorised representative of the Respondent No. 1 holds licence under the Advocates Act and is also a member of the District Bar Association, Ludhiana, but in the light of the fact that he is not practising in any court of law as is the specific stand of the Respondent No. 1 which has not been controverted by the Petitioners, he would not fall within the ambit of Section 36(4) of the Industrial Disputes Act.

5. This contention of counsel for the Petitioner that he would not fall within the ambit of Section 36(4) of the Industrial Disputes Act, cannot be accepted in the light of the fact that authorised representative of the Respondent No. 1, who is holding a licence under the Advocates Act and is also a member of the District Bar Association, Ludhiana. The only submission, therefore, which needs to be considered is as to whether there can be an implied consent in the absence of a specific consent given by the Petitioner or the specific leave granted by the Court. This contention being covered by the Full Bench judgment of this Court in Indrasan Parsad's case (supra), the same deserves to be rejected.

6. In the light of the above, the present writ petition is allowed and the impugned order dated 19th January, 2007 (Annexure P-3), passed by the Labour Court,

Ludhiana, is hereby set aside.