

**N.Ramkumar Vs. P.Narayanan**

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**SooperKanoon Citation :** [sooperkanoon.com/922917](http://sooperkanoon.com/922917)

**Court :** Chennai

**Decided On :** Oct-12-2011

**Judge :** K.Chandru, J.

**Acts :** [Industrial Disputes Act, 1947](#) - Sections 36(4), 10; [Advocates Act, 1961](#) - Section 30; [Constitution of India](#) - Articles 14, 19(1) G, 39(A); Legal Aid Services Authority Act, 1987

**Appeal No. :** W.P.(MD)No.6060 of 2011 And M.P.(MD).No.1 of 2011

**Appellant :** N.Ramkumar

**Respondent :** P.Narayanan

**Judgement :**

1. The petitioner is an employer under Jeyaram Transport at Palayamkottai. In this writ petition, he has come forward to challenge the order passed by the second respondent, Labour Court, Tirunelveli, in I.A.No.32 of 2011 in I.D.No.46 of 2010, dated 12.05.2011. By the interim order, the Labour Court held that the petitioner management cannot engage a lawyer in terms of Section 36(4) of the [Industrial Disputes Act, 1947](#) (hereinafter referred as the Act) and that the parties before the Labour Court cannot engage an advocate as a matter of right except with the consent of the other side and with the direction of the Court.

2. In the present case, the Labour Court felt that the first respondent who was a conductor working in the private corporation was not having a lawyer and therefore, if the petitioner engages a counsel, it will create inequality between the parties and therefore, it held that the petitioner cannot engage the service of the counsel in conducting the dispute. Challenging the said order, the writ petition came to be filed.

3. When the matter came up on 10.06.2011, this Court directed notice regarding admission and also granted interim stay. On notice from this Court, the first respondent is represented by the counsel Mr.J.Ashok.

4. It is seen from the records that the first respondent raised the Industrial Dispute regarding non-employment and when no mediation was possible before the conciliation officer, on the strength of the failure report he filed a claim statement before the second respondent. The said claim statement was taken on file on 03.08.2010 and registered in I.D.No.46 of 2010. The first respondent filed a memo stating that on his behalf the General Secretary of his Trade Union will be taking his case, but whereas the petitioner management should not engage any lawyer and he has not given any consent. In the said objection, which was recorded in I.A.No.32 of 2011, notice was given to the petitioner management. The petitioner management filed a counter dated 04.02.2011. In the counter they have stated that Section 36(4) of the Act is invalid and ultra vires of Article 14 and 19(1) G of the [Constitution of India](#). The petitioner was a illiterate person and he cannot conduct his case on his own and he is also sick and he has got spinal cord problem and therefore, his movements were restricted. The second respondent heard the argument on either side in the interlocutory application and allowed the application.

5. It is seen that the first respondent's non-employment had taken place since June 2009 and dispute was registered in the Labour Court in the year 2010 and despite two years since non employment and one year since Industrial Dispute, the matter is yet to see any progress and it is not in the interest of the first respondent to stall any further adjudication. Under Section 10 of the Act, the Parliament has decided that non-employment should be disposed of by the Courts

within three months from the date of reference.

6. The technical issue raised by the first respondent cannot be countenanced especially in the context of the Judgment made by this Court in Management, Hindustan Motor Earth Moving Equipment V. Presiding Officer, Principal Labour Court (2007 (1) LLN 449). Though the facts of the judgment did not squarely apply in the present case. The findings of the Labour Court that the first respondent was a poor person cannot afford a lawyer cannot be a ground especially in the context of parliament enacting the Legal Aid Services Authority Act, 1987. Pursuant to the constitutional obligation made under Article 39(A) of the Constitution, no one can say that they cannot have counsel for conducting the dispute. Further, very recently the Government of India has modified Section 30 of the [Advocates Act, 1961](#), wherein the right to appear before any Court, Tribunal or authority empowered to take evidence, have been made as a matter of right. Even though it may be contended that such a general provisions cannot remove the special provisions under any enactment. The very issue has been referred for a determination to the larger bench of the Honourable Supreme Court.

7. In the present case, the petitioner has stated that he is an illiterate person and incapable of conducting a dispute and also physically disabled to move around due to spinal cord problem. Hence, this Court is thinking that he should have assisted by an advocate to prosecute his case on their side. The Labour Court did not have the benefit of rulings of this Court in Management, Hindustan Motor Earth Moving Equipment's case (cited supra). Hence, this Court oblige to interfere with the order passed by the second respondent, Labour Court. In view of the same, the order passed by the Labour Court, in I.A.No.32 of 2011 in I.D.No.46 of 2010 dated 12.05.2011 is set aside and the petitioner is entitled to engage a counsel on their choice to conduct the I.D.No.46 of 2010. But the matter cannot rest there. Since the petitioner management by a counsel will create inequality situation as found by the Labour Court, the first respondent is also entitled to engage a counsel of his choice. In such circumstances, fee of such counsel should be paid by the petitioner management. Therefore, this Court is oblige to fix the fee for the counsel, if any engaged by the first respondent. Therefore in case, the first

respondent engaged his counsel, the petitioner management shall pay Rs.2,000/- per month and the said payment will not be lost beyond six months. The Labour Court is directed to complete the enquiry, within a period of six months from the date of receipt of a copy of this order. This Court is fulfilled by making this direction in the light of the judgment of the Honourable Supreme Court in Director, BCG Vaccine Laboratory v. S. Pandian (1997) 11 SCC 346, wherein the Supreme Court in paragraphs 3 to 5 has held as follows:

3. It is no doubt true that in the rules governing the disciplinary proceedings no provision is made with regard to payment of fees or remuneration to the legal practitioner who is permitted to assist the government servant in cases where the Presenting Officer appointed by the disciplinary authority is a legal practitioner. Explaining this right of a government servant to seek the assistance of a legal practitioner in cases where the Presenting Officer happens to be the legal practitioner, this Court in Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni<sup>1</sup> has said: (SCC p. 130, para 10) "The Inquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not a euphemism for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi-judicial tribunal cannot view the matter with equanimity on inequality of representation. This Court in M.H. Hoscot v. State of Maharashtra<sup>2</sup> clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor, accused, for adequate representation, must have legal aid at State cost. This will apply mutatis mutandis to the present situation."

4. In that case this Court has referred to with approval the following observations of Lord Denning in Pett v. Greyhound Racing Assn. Ltd.<sup>3</sup> (SCC p. 129, para 8)

"The trend therefore is in the direction of permitting a person who is likely to suffer serious civil or pecuniary consequences as a result of an enquiry, to enable him to defend himself adequately, he may be permitted to be represented by a legal practitioner."

5. In the present case, the respondents were under suspension. They were employed as laboratory attendants, a class IV post. Since they were under suspension, they could not have the resources to bear the fees of the legal practitioner who was assisting them in the inquiry. Having regard to the aforesaid facts and circumstances, we are of the view that the Tribunal has not committed any error in giving the directions regarding payment of legal charges payable to their advocate assisting the respondents in the departmental inquiry on the same rate as were payable to the Presenting Officer who was also a legal practitioner. The appeals, therefore, fail and are accordingly dismissed. No orders as to costs.

8. Both sides are directed not to request any more adjournments and they must cooperate for the earlier completion of the Industrial Dispute in I.D.No.46 of 2010.

9. With the above direction the writ petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

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