

Before : A. L. Bahri & V. K. Bali, JJ.

HINDUSTAN WIRES LIMITED,—Petitioner.

versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND ANOTHER,—Respondents.

Civil Writ Petition No. 17685 of 1991.

April 22, 1992.

*Constitution of India, 1950—Art. 226—Industrial Employment (Standing Orders) Act 1946—Domestic enquiry—Both Inquiry Officer and Presiding Officer appointed by management law graduates—Employee denied assistance of advocate—Tribunal justified in holding that no fair trial was given to employee.*

*Held, that the Industrial Tribunal was fully justified in coming to the conclusion that fair trial was not given to the workman in the facts and circumstances of the present case, when both the Presenting Officer, as well as the Inquiry Officer were Law Graduates, and the workman was denied the assistance of an Advocate to represent him.*  
(Para 5)

*Petition Under Articles 226 and 227 of the Constitution of India praying that the Hon'ble Court may be graciously pleased to :—*

PRAAYER

- (a) *Issue a writ of certiorari or any appropriate writ order or direction calling for the records which led to the vitiating of the enquiry on the sole ground that the delinquent workman was not allowed to be represented before the Enquiry Officer by an outsider or a legal practitioner and on a consideration of the submissions made in the present petition, the same be quashed ;*
- (b) *Set ASIDE the Order (Annexure 'P-1') of the learned Tribunal and issue an appropriate writ in the nature of "mandamus" or any other writ, order or direction to the learned Tribunal to exercise its jurisdiction in terms of the STANDING ORDER 19 of the Certified STANDING ORDERS of the Petitioner's establishment as also the law enunciated in various authoritative pronouncements ; relevant portions whereof have been gisted in the Ground 'H' of the present petition ;*
- (c) *ISSUE a writ of prohibition or any other appropriate order direction calling upon the respondents not to take steps pursuant to and in furtherance of the impugned Order (Annexure P-1) ;*
- (d) *STAY the operation of the impugned Order (Annexure 'P-1') ;*

(e) Issue any other writ, order or direction granting to the petitioner all other necessary and consequential reliefs as are just and proper in the facts and circumstances of the case ; and

(f) AWARD costs to the petitioner.

AND FOR this your petitioner as in Duty bound shall ever pray.

None, for the Petitioner.

Rajeshwar Singh in person, for the Respondent.

#### ORDER

(1) Short question that arises in this case is as to whether in a domestic inquiry against a workman, could he seek assistance of an Advocate to represent him, when the Presenting Officer as well as the Inquiry Officer appointed by the management were law graduates.

(2) Rajeshwar Singh raised an industrial dispute which was referred to the Labour Court. It is as under :—

“Whether the termination of services of Shri Rajeshwar Singh was justified and in Order ? If not, to what relief is he entitled to ?”.

It may be stated that services of the workman were dispensed with on the basis of inquiry report. The Industrial Tribunal, Faridabad,—*vide* its award dated 17th May, 1991 held that the inquiry was vitiated, on account of denial of proper representation of the workman in the domestic inquiry. This award is challenged by the management of M/s Hindustan Wire Ltd., Faridabad. The stand of the management is based on the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the ‘Standing Orders’). Clause 19 of the Standing Orders, on which reliance has been placed by the petitioner, reads as under :—

“19. Procedure for dealing with major offences :

(a) The workman against whom a major offence is alleged shall be served with a charge-sheet setting out the details of the alleged misconduct requiring him to submit the explanation within 48 hours. If the workman refuses to accept the charge-sheet in the presence of another workman, it should be deemed to have been served upon him. On receipt of explanation, if found satisfactory, the matter shall be closed, and if not found satisfactory, a regular domestic enquiry shall be conducted according to law of natural

justice by an officer or outsider to be appointed by the Manager. Provided always that the Manager will also be competent to hold an enquiry himself. (The workman while defending himself before the Enquiry Officer may be represented by any co-worker of his choice but shall have no right of representation through any person who is not an employee of the establishment). If the workman fails to present himself at the proper place before the Enquiry Officer to participate in the enquiry he shall be proceeded *ex parte*."

The case of the Management is that in view of the standing order aforesaid, there was an embargo on the employees not to get assistance of a person in the domestic inquiry who was not an employee of the establishment. Since an Advocate, whose assistance was denied, as held by the Labour Court, was not an employee of the establishment, the inquiry proceedings were not vitiated on that account.

(3) The stand of the Management is refuted by the workman in the written statement, *inter alia*, alleging that when the Inquiry Officer and the Presenting Officer were Law Graduates, the workman could legitimately ask for assistance of a Law Graduate, i.e., an Advocate.

(4) On behalf of the petitioner at the stage of motion hearing reliance was placed on the decision of the Rajasthan High Court (Jodhpur Bench) in *M/s Derby Textiles Ltd. v. Mahamantri, Derby Textiles Karmchhari and Shramik Union, Jodhpur* (1) Photostat copy of the judgment referred to above was attached with the writ petition. We have perused the aforesaid judgment, particularly a passage at page 179, to which reference is considered necessary. It is as under :—

"We have considered these submissions of Shri Mohan Poonamiya and we are unable to accept them so far as this case is concerned. In the case of *Shri C. L. Subramani* A.I.R. 1972 S.C. 2178, the Government was assisted by a legally trained person and, therefore, it was felt by their Lordships of the Supreme Court that refusal to permit a government servant to engage a legal practitioner would amount to the denial of reasonable opportunity to the workman. Likewise in *Board of Trustee's case* (supra), it has been held

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that if the Rules do not place any embargo to be represented by a legal practitioner and the prosecuting and presenting Officer has a legal mind then the denial of assistance of legal man to the delinquent official would amount to the denial of reasonable opportunity to defend his case, which will be against the principles of natural justice. Here, in this case, the Standing Orders clearly put an embargo on taking any assistance of a legal practitioner.....”

(5) We have given due consideration to the observations reproduced above, but we are of the opinion that the Management cannot take any benefit therefrom. If the Standing Order No. 19 is read closely, it would appear that it refers to giving assistance to the workman of an employee of the establishment. Normally in the domestic inquiry against a workman, he was to get the assistance of a co-employee. The Advocates form a class by itself, and it is only when the Inquiry Officer and the Presenting Officer, though they may be employees of the Management, are so appointed to hold domestic inquiry against the workman, who is not fully conversant with the legal procedures, the question arises as to how the workman is to be afforded a reasonable opportunity to defend himself in such an inquiry. It is not necessary that in all establishments there may be Law Graduates employed that a workman could ask for the assistance of such employees, that the terms of the Standing Orders aforesaid could be complied with. It has been noticed that usually Management recruits very few persons possessing legal knowledge or the persons who are law graduates. Such persons are employed for their own benefit to hold domestic inquiries and to represent the Management in such inquiries. It is in such circumstances that when a workman is Pitted against such Management and such Presenting Officers and Inquiry Officers who possess a specialised legal knowledge, that he is to be equated so that he may get fair justice and that he must be afforded the assistance of an Advocate. (The Industrial Tribunal was fully justified in coming to the conclusion that fair trial was not given to the workman in the facts and circumstances of the present case, when both the Presenting Officer, as well as the Inquiry Officer were Law Graduates, and the workman was denied the assistance of an Advocate to represent him).

(6) Finding no merit in the writ petition, the same is dismissed with costs, which are quantified at Rs. 1,000.

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*J.S.T.*