

(1999) 03 AHC CK 0102
In the Allahabad High Court
Case No : C.M.W.P. No. 9693 of 1999

Dinesh Kumar Pandey

APPELLANT

Vs

Technical Director, Mahadeo Fertilizers Ltd., Fatehpur and
another

RESPONDENT

Date of Decision : 18-03-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Constitution of India, 1950 — Article 12, 226
Constitution of India, 1950 — Article 12, 226

Citation : (1999) 2 AWC 1496 : (1999) 82 FLR 542 : (1999) 2 UPLBEC 1134

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : K.M. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

D. K. Seth, J.—Shri P. K. Ganguly, learned counsel for the petitioner submits that Mahadeo Fertilizers Ltd, is an authority within the meaning of Article 12 of the Constitution and as such, its action in terminating the petitioner's services cannot be Justified since the principle of natural Justice and equality has not been observed. He relied on the decision in the case of M.C. Mehta and another Vs. Union of India and others, , particularly paragraph 28 in order to contend that the respondent company is an agency and instrumentality of the State by reason of the ingredients pleaded in the writ petition.

2. Only pleading that are available in the record is that the company is registered company under the Companies Act and it receives subsidies from the Central Government and the State Government. Pursuant to certain policies of the Government, subsidies are made available even to private entrepreneurs. Availability of subsidies in the process of carrying on an industry does not render an enterprise into an instrumentality and agency of the State in relation to its activity concerning its employees.

3. In the present case, the petitioner was employed pursuant to the contract of an employment as is evident from Annexure-2 to the writ petition. The said contract embodies clause 8 which provides for termination with one month notice or payment in lieu thereof. Notwithstanding any clauses contained in the appointment letter even after confirmation while allowing the petitioner to resign with notice upon one month or payment in lieu thereof. This relation between the petitioner and his employer is a pure contractual relation. The company may be State within the meaning of Article 12 of the Constitution in relation to some of its activity and it may not be so in relation to other activities. The test is as to whether while discharging such action, it discharges any statutory obligation rendering itself to the State of Instrumentality and agency.

4. In the present case in relation to its employee, the company did not discharge any statutory obligation since the employment of the petitioner was not governed by any statutory rules but by contractual agreement. Therefore, it is not an instrumentality and agency while discharging its transaction in relation to its employees.

5. Similar question was posed in the case of M. C. Mehta (supra) relied upon by Mr. Ganguly, learned counsel for the petitioner. In para 28 of the said judgment. It was observed that prima facie it is arguable that when the State's power as economic agent, economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, why should a private corporation under the functional control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with public interest and which the State ultimately proposes to exclusively run under its industrial policy, not be subject to the same limitation? But the Apex Court immediately thereafter had observed that "we do not propose to decide this question and make any definite pronouncement upon it for reasons which we shall point out later in the course of this judgment". Therefore, this question was not determined finally in the said Judgment.

6. In the present case, the functional control is not exercised by the Government in relation to its employees. Therefore. In my view, the respondent is not being authority within the meaning of Article 12 of the Constitution in relation to its employees, this writ petition is not maintainable and is accordingly dismissed. This order, however, will not prevent the petitioner to avail any other remedy as may be available to him in law.

7. However, there will be no order as to cost.