
(2004) 04 AHC CK 0162
In the Allahabad High Court
Case No : Special Appeal No. 433 of 2004

Kehar Pal Singh

APPELLANT

Vs

Pradeshik Co-operative Dairy Federation and Another

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K
Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K
Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2004) 4 AWC 3432 : (2004) 101 FLR 1066 : (2004) 2 UPLBEC 2063

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : A.P.S. Raghav, for the Appellant; G.D. Misra, for the Respondent

Judgement

M. Katju and R.S. Tripathi, JJ.—This special appeal has been filed against the judgment of the learned Single Judge dated 12.3.2004. We have carefully perused the judgment and have heard the learned Counsel for the appellant.

2. Bulandshahr Dugdha Utpadan Sahkari Sangh is a co-operative society which entered into a contract with M/s. S.S. Security Services, Salempur, Bulandshahr for supply of labour. It is alleged that in pursuance of the contract the petitioner was assigned by the contractor to work in the society where he is working since 1985. It was alleged by the petitioner that the society is his principal employer and the petitioner has been illegally removed by order dated 10.8.1999.

3. A counter affidavit was filed before the learned Single Judge in which it was alleged that the petitioner was never employed by the society and the relationship of master and servant does not exist between them.

4. In law there is a difference between a servant and an independent contractor. The prima facie distinction is that in the case of an employee the master has the

right to control his working, whereas in the case of an independent contractor his principal cannot supervise and control the working of the contractor vide *Chintaman Rao and Another Vs. The State of Madhya Pradesh*, . In the case of an employee the master not only tells the servant what he has to do but he also tells him how to do it. On the other hand, in the case of independent contractor his principal only tells him what to do but does not tell him how to do it, vide *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, *Shanker Balaji Wage v. State of Maharashtra*, (1962) I LLJ 119, etc.

5. No doubt the supervision and control test sometime breaks down e.g. in the case of a captain of a ship who though an employee is not told by his employer how to run his ship vide *Medley v. Pinkney Steamship Co.* (1892) I QB 58. In such a case the test applied is the part and parcel of the organization test, vide *Bank Voor Handel v. Slatford* (1953) I QB 248. There are several other tests also which can be adopted to determine where there is a master and servant relationship or not, but the prima facie test is that of supervision and control.

6. The learned Single Judge has observed in his judgment that the nature of control over the petitioner has not been conclusively established. In our opinion this is a factual matter and hence it would be appropriate if the petitioner raises an industrial dispute and the matter is referred to the Labour Court/Industrial Tribunal where the parties can lead evidence as to whether there was power of supervision and control in the society over the petitioner or not, and whether there are other factors indicating a master and servant relationship.

7. This special appeal is, therefore, disposed off with liberty to the petitioner to raise an industrial dispute u/s 4-K of the U.P. Industrial Disputes Act. If a reference is made we hope and trust that the same will be adjudicated very expeditiously. The appeal is disposed off.