

(2004) 04 UK CK 0002

In the Uttarakhand High Court

Case No : Civil Writ Petition No. 155 of 2003 (S/S)

Rajeev Barthwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 13A

Citation : (2005) 1 AWC 71 : (2004) 3 UPLBEC 124

Hon'ble Judges : P.C. Pant, J

Bench : Single Bench

Advocate : B.P.S. Mer and M.C. Pant, for the Appellant; V.B.S. Negi, Senior Central Government and S.C., for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pant, J.—By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought quashing of order dated 21.3.2001 (Annexure P-1) passed by the Ministry of Labour, Government of India, where by the dispute arise by the petitioner was refused from being referred for adjudication to the Labour Court.

2. Brief facts of the case, as narrated in the writ petition are that the petitioner was employed in Forest Research Institute, Dehradun in perennial nature of work since 1.5.99. However, just to deprive the petitioner of his service benefits, the said institute introduced camouflaged and contract system whereby the petitioner as shown engaged under a contractor for his services. It is alleged that petitioner was working as Account Clerk with the respondent No. 3 w.e.f. 1.5.1999 but his engagement was shown through respondee: No. 4 i.e. M/s. Eagle Hunter Solutions Ltd. Copy of the State agreement as Annexure P-2 to the writ petition. During the service period, the petitioner remained under control and administration of respondent No. 3 i.e. Forest Research Institute (for brevity FRI) and was getting salary of Rs. 2,376/-. On 8.6.2002 petitioner moved an application to respondent No. 3 for increase in his salary in alternative for

regularizing his services. A Union named as FRI Mazdoor Union, Dehradun raised industrial dispute through an application dated 12.11.2001 for the regularisation of the services of the petitioner. The said application of the Union was forwarded to the Conciliation Officer and Central Assistant Labour Commissioner, who directed respondent Nos. 3 and 4 to settle the issue and also fixed 20.11.2001 for conciliation in his office. The petitioner continued to work till 14.11.2001 whereafter verbally the respondent Nos. 3 & 4 refused to accept the services of the petitioner as did not permit him to join his duties. On this, petitioner moved an application u/s 13A of Industrial Disputes Act, 1947 before the Assistant Labour Commissioner on 19.11.2001. The respondents filed their reply before the said authority. The Assistant Labour Commissioner submitted his report to the Government that no amicable settlement was possible on which respondent No. 1 again started conciliation proceedings before the Regional Labour Commissioner, Kanpur where even after several dates being fixed no result came out and the proceedings were closed on 14.2.2002. Consequently, impugned order dated 21.3.2003 was passed informing that the dispute cannot be referred for adjudication to the Labour Court on the ground that the workman (petitioner) left the job of his own and the contractor was ready to place the workman in other branches, where the vacancy exists. The petitioner has challenged the order declining to refer the dispute to the Labour Court on the ground that he was a regular employee as Account Clerk of the FRI and not working under contractor. It is further alleged in the writ petition that the C.C.S.C.C.A. Rules prohibit the engagement of contract employee. Also it is alleged that as per the principle of the law laid down by the Apex Court in *Rourkela Shramik Sangh v. Steel Authority of India Ltd.*, 2003 SLR 251, as veil should be lifted to see the controversy if the person is actually working under a contractor.

3. A counter affidavit has been filed on behalf of respondent No. 3 in which it has been stated that the petitioner was an employee of M/s. Eagle Hunter Solutions (P) Ltd., Dehradun and not an employee of FRI. It is further stated that the petitioner while getting employment entered into an agreement with M/s. Eagle Hunter Solutions (P) Ltd., a copy of which is annexed as Annexure CA-1 to the counter affidavit. It is also alleged in the counter affidavit that it is totally false and baseless to say that the petitioner has ever remained posted as an Account Clerk in FRI. There is no such designation in the institute. The petitioner used to get his salary from the aforesaid firm with whom he had an agreement. A copy of extract of attendance register has been annexed as Annexure CA-2 to the counter affidavit. By entering into the contract of the above firm petitioner does not become the employee of the institute. Defending the impugned order it is stated in the counter affidavit that the dispute was not referable as industrial dispute because there was no relationship of employee and employer between the respondents. It is further stated in the counter affidavit that M/s. Eagle Hunter Solutions (P) Ltd. took a stand before the Assistant Labour Commissioner (Central) that petitioner was his employee who had to join his duties now at

Bangalore which he did not comply. Consequently, the contractor was ready to engage him in some other branch.

4. Respondent No. 4 i.e. M/s. Eagle Hunter Solutions (P) Ltd. has filed its own counter affidavit in which it has been stated that petitioner being an employee of respondent No. 4 was entrusted the duties at the places where there was work on contract. Respondent No. 4 had worked with the FRI only for one year, where after all the workers including the petitioner were withdrawn by the respondent No. 4. Defending the impugned order challenged by the petitioner it is stated that by raising the industrial dispute petitioner cannot compel the respondent No. 4 or respondent No. 3 to engage him in the Institute, where the work on contract was already over.

5. I heard learned Counsel for the parties and perused the affidavit, counter affidavits and rejoinder affidavit along with the annexures annexed thereto,

6. The short question for consideration before this Court is whether, the dispute arise by the petitioner was wrongly refused by the respondent Nos. 1 & 2 for making reference for adjudication to the Labour Court.

7. Perusal of the Annexures to the counter affidavit of the respondent No. 3 show that the letter of appointment given to the petitioner by respondent No. 4 M/s. Eagle Hunter Selections (P) Ltd. has engaged the petitioner for six months as Account Clerk on payment of Rs. 2,376/- per month. The Para 18 of the said appointment letter/agreement reads as under:

"On termination of our contract with M/s. FRI your services may be terminated without notice if there is no possibility of your absorption else where in any station of our contract."

This clause clearly belies the stand taken by the petitioner that he was an employee of FRI.

8. Learned Counsel for the petitioner drew my attention to the certificate issued by the Account Officer of FRI, which is annexed as Annexure P-10 to the writ petition, where by said officer has certified that Shri Rajeev Barthwal was working as Account Clerk on contractual basis from 1.9.2000 to 13.11.2001. I have gone through the said certificate. It nowhere says that the petitioner was an employee of FRI. Annexure CA-3 filed with the counter affidavit of respondent No. 3 shows the explanation given for issuing aforesaid certificate in which it has been stated by Account Officer that the aforesaid certificate was issued to the petitioner so that it may help him to seek employment else where and it was only regarding the experience he has gained under M/s. Eagle Hunter Solutions (P) Ltd. while working in FRI. In the circumstances, the aforesaid certificate does not establish if the petitioner was at all employee of the FRI.

9. On behalf of the petitioner, Shri B.P.S. Mer, learned Counsel drew my attention to the principle law laid down in Paras 117 and 125 of the judgment of the Apex Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union

Water Front Workers and Others etc. etc., , and argued that the dispute raised by the petitioner should not have been refused from being sent for adjudication to the Labour Court. I have gone through the said paras of the aforesaid refereed case and it nowhere says that conciliator is bound to refer the dispute even if the contractor offering the petitioner job and he is not willing to accept it. As discussed above, from the record it is very clear that the petitioner was engaged as an employee by the contractor from whom he was getting salary and under whom he was working. It is not a case where the petitioner was engaged by the contractor and left to work under administration and supervision of the FRI. Had it been so, in view of the aforesaid case Law it could have been said that the dispute should have been referred for adjudication. Annexure P-7 filed with the writ petition, is copy of the letter dated 4.1.2002 sent by M/s. Eagle Hunter Solutions (P) Ltd. to the Labour Commissioner. Para last but one of this letter reads under:

"It is also submitted that Sri Rajeev Barthwal was working under the control and supervision of Capt. Ajit Kumar Nagarkoti who is the Supervisor of Eagle Hunter Solutions Ltd. deployed at Forest Research Institute, Dehradun."

10. Lastly my attention was drawn on behalf of the petitioner to the principle of law laid down in Sharad Kumar v. Govt. of NCT of Delhi 2002 LILR 269, in which rejection of the request to refer the dispute to Labour Court was held to be wrong. This Court is unable to apply the principle laid down in said case as the facts and circumstances of this case are totally different. In the said referred case of Sharad Kumar v. Govt. of NCT of Delhi, the question raised was whether Area Sales Executive is a workman or not. Hon'ble Apex Court was of the view that this dispute cannot be held up by rejecting the reference from being sent to adjudication. While in the present case the dispute related to the matter if the FRI has wrongly denied the petitioner from joining his duty as Account Clerk, on this the Conciliation Officer after hearing all the concerned parties found (Annexure P-I) that:

"Shri Rajeev Barthwal was employed by Contractor M/s. Eagle Hunter Solutions (P) Ltd. He was transferred to Bangalore due to non-availability of work in Dehradun and the workman left the job on his own. M/s. Eagle Hunter Solutions (P) Ltd. stated that if the workman so desires, they are ready to place Accounts Clerk in on of their branches where vacancy exists."

11. In view of the above discussion this Court is of the view that the reference was rightly refused by the Conciliation Officer from being sent for adjudication to the Labour Court. Accordingly, the writ petition is liable to be dismissed. The same is dismissed. No order as to costs.