

(2011) 03 SHI CK 0088
In the High Court Of Himachal Pradesh
Case No : CWP No. 3120 of 2010

Sh. Gulzar Singh Bajwa

APPELLANT

Vs

Managind Director Afcons Infrastructure Ltd. and Another

RESPONDENT

Date of Decision : 05-03-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2011) 03 SHI CK 0088

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition was initially filed against Respondents No. 1 & 2, a private limited company and its Deputy Project Manager. Later on Respondent No. 3-Union of India was also added as a party-Respondent.

2. The Petitioner is seeking the following reliefs:

I. The termination of the Petitioner be set aside and quashed.

II. Respondent be ordered to reinstate the Petitioner in service with all consequential service benefits.

3. Respondents No. 1 & 2 have taken the following objection vide para 1 of the preliminary submissions:

1. That the replying Respondents No. 1 & 2 are private limited company and is not instrumentality of the State under Article 12 of the Constitution of India, therefore, the present writ petition on behalf of the Petitioner against the replying Respondents No. 1 & 2 is not maintainable, therefore, the present writ petition may be dismissed on this ground only.

4. Similarly, Respondent No. 3 has raised, inter alia, following preliminary objection:

That the impleading of Union of India as a Respondent in the case is total mis-

joinder of parties and it has been done with the mischievous mind to mislead this Hon"ble Court to invoke the extra ordinary jurisdiction of this Hon"ble court under Article 226 of the Constitution of India. The name of the Union of India therefore deserves to be deleted from the list of the Respondents in the instant writ petition and the present petition deserves to be dismissed on ground of maintainability.

5. According to the Petitioner, he joined the employment of Respondent No. 1-Company as Manager (Execution) pursuant to offer letter dated 17.6.2008, Annexure P-1 and appointment letter dated 31.7.2008, Annexure P-2. However, later on vide e-mail dated 11.5.2010, Annexure R-1/E as communicated to the Petitioner vide e-mail dated 14.5.2010, Annexure P-6, his services were terminated by Respondent No. 1-Company to which he has laid challenge by way of present petition under Article 226 of the Constitution of India.

6. I have no hesitation to say at the very outset that on the face of it, the petition is not maintainable as the Petitioner is an employee of a private limited company, that is, AFCONS INFRASTRUCTURE LIMITED. In this regard, I seek support from the law laid by the Hon"ble Supreme Court in G. Basi Reddy Vs. International Crops Research Instt. and Another, Furthermore, the petition is also not maintainable albeit the fact that Union of India has been impleaded as a party-Respondent thereto apparently for the reason that one of its instrumentalities, namely, Border Roads Organization has awarded the work of execution of Rohtang Tunnel, a project of national importance connected with security of the country to Respondent No. 1-Company. That alone will not vest the Petitioner with the status of an employee of Respondent No. 3-Union of India. When faced with this situation, the Petitioner has drawn the attention of this Court to Annexure P-9 with the rejoinder to the reply filed on behalf of Respondent No. 3, which is titled "AFCONS INFRASTRUCTURE LIMITED eligible claim from client (Border Roads Organisation) the following staff in the month of Feb., 2010 posted at Rohtang Highway Tunnel Manali (H.P.)", which also includes the name of the Petitioner. However, the fact remains that for all intent and purposes the Petitioner was an employee of Respondent No. 1-Company and not of Union of India by any stretch of imagination.

7. In view of the above, no writ can be issued against Respondents No. 1 & 2 and the petition not being maintainable against Respondent No. 3, the same is dismissed with liberty reserved to the Petitioner to seek his remedy, if any, against Respondents No. 1 & 2 in a Court of competent jurisdiction in accordance with law, if so advised.

8. The petition stands disposed of in the above terms, so also pending application(s), if any.