

(2021) 03 RAJ CK 0023

Rajasthan High Court

Case No: Writ Contempt No. 1185 Of 2018, Civil Writ Petition No. 7612 Of 2018

Ashish Dave

APPELLANT

Vs

Atul Bal Ratnoo And
Ors

RESPONDENT

Date of Decision: March 5, 2021

Acts Referred:

- Constitution of India, 1950 - Article 226, 226(3)

Hon'ble Judges: Dinesh Mehta, J

Bench: Singal Bench

Advocate: Salil Trivedi, Sundeep Bhandawat

Final Decision: Dismissed

Judgement

1. By way of the present contempt petition, the petitioner has sought that appropriate proceedings be initiated against the respondent-University and its

Registrar, as they have failed to comply with the interim order dated 30.5.2018 passed by this Court.

2. The petitioner has asserted that he has produced/served a copy of the interim order to the Registrar and requested him to allow him joining, but he was not allowed to join him.

3. Interim order dated 30.5.2018 reads thus:

In the meanwhile, the respondents are directed to continue the services of the petitioner on the post of Computer Operator till the next date.

4. A reply to the contempt petition has been filed by the respondents, inter alia, stating that the petitioner was never engaged by the respondent-

University directly and he was engaged through placement agency namely, 'Royal Guards Security Services'. It is also indicated that the said

placement agency has disengaged him and thus, respondents cannot allow him to join.

5. Mr. Bhandawat, learned counsel appearing for the respondent-University submitted that instead of hearing the contempt petition, the writ petition itself be heard.

6. Normally, this Court would not have acceded to such request of Mr. Bhandawat, because the contempt proceedings are altogether different than the proceedings in the writ petition, but having regard to the factual dispute, particularly when the respondents have denied the very employer-employee relationship, this Court deemed it appropriate to have a glance over the averments made in the writ petition and the documents filed therewith.

7. A perusal of the pleadings of the writ petition reveals that the petitioner has asserted that he was engaged as Computer Operator on contract basis, whereas the respondents have come with a specific case that there was no privity of contract between the petitioner and the respondent-University and he was engaged through a contractor, viz., Royal Guards Security Service.

8. Though the petitioner has disputed the fact that he was engaged through placement agency in his rejoinder, but a perusal of the documents filed by the petitioner himself raises a serious doubt about his status, whether he was directly engaged or was engaged through the contractor.

9. The petitioner has placed on record his bank statement (Annex.2), which though shows some payments made to him electronically, but that too, are from Nov., 2017 and from May, 2016. However, a perusal of the entries dated 12.4.2018 and 27.4.2018 reveals that monthly payment has been made by Royal Guards Security Services. It can also not be ascertained that the monthly payment, which is said to have been made to the petitioner, has been made by the respondent-University.

10. It is rather surprising that petitioner has made a sweeping statement that he entered the respondent University as Computer Operator on 2.5.2016.

Petitioner has neither placed on record any letter or order nor has he made any averment about the salary or monthly payment. Petitioner has not even

stated by which process he was selected and who had appointed him.

11. What has been placed by the petitioner are, certain orders of the Registrar of University or other officers of the University assigning duties to the petitioner. The same cannot be treated to be order(s) of appointment nor are they conclusive evidence to establish employer-employee relationship.

12. It is to be noted that the petitioner has not impleaded said placement agency namely, Royal Guards Security Services as a party respondent through whom he has received payment. Even on receiving the reply, petitioner has chosen not to implead the said agency/contractor.

13. This being the position, it is very difficult for this Court to ascertain who is petitioner's employer even as a contractor/placement agency and who is responsible to comply with the interim order passed by this Court.

14. True it is, once an interim order has been passed by this Court, the University is under an obligation to comply with the same, but a perusal of the record reveals that on 30.5.2018 this Court has passed an interim order and immediately on receiving copy of the interim order (within three days) i.e., on 3.6.2018 itself, the respondent-University has filed its reply to the writ petition and application under Article 226(3) of the Constitution of India with a plea that petitioner is not its employee.

15. The application so filed by the respondent-University remained pending for one reason or the other-neither can the petitioner be blamed nor the respondent-University.

16. It is noteworthy that documents cumulatively placed as Annexure-2 also show different status of the petitioner-some documents shows him as Computer Operator, while other shows him as a contractor's man (). A careful scanning of these documents shows that against petitioner's name and some other persons' name expression 'Bsdk' has been used. If there was a direct relationship through some contract, the expression would have been used, as has been used in case of one Bhikaram Chouhan in all these documents.

17. The writ petition involves numerous disputed questions of facts, including the foundational fact as to whether the petitioner was in fact, engaged by the University itself, or through placement agency. These facts cannot be adjudicated by this Court in exercise of its jurisdiction under Article 226 of

the Constitution of India.

18. For the reasons aforesaid, the writ petition (SBCWP No.7612/2018) is dismissed. The stay application is rejected as well.

19. For the reasons indicated for dismissal of the writ petition and considering the fact that the respondents have filed reply and application seeking

vacation of the interim order immediately on receipt of the interim order (within 3 days) asserting that the petitioner is not its employee, the

contemnors cannot be said to be guilty of willful disobedience of the orders passed by this Court.

20. The notices of contempt are hereby discharged.

21. The captioned contempt petition is also dismissed.