
(2013) 04 PAT CK 0065

In the Patna High Court

Case No : CWJC No"s. 22888, 23067, 22363, 23447, 22204, 19092, 20490 of 2012; 11172 of 2011 and 1033, 3208, 3406, 82, 197, 305, 757 of 2013

Binod Kumar Sharma and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 226(2)

Citation : (2013) 2 PLJR 649

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Advocate : Vijay Kumar Mishra in 22888, Braj Nandan Kumar Tiwary, Hare Ram Singh in 22363, Mr. Binod Kumar Sinha in 11172, Arun Kumar Pandey, Om Prakash Upadhyay in 1033, Ashok Kumar, Rajesh Kumar in 3208, Mr. Alok Kumar, Mrs. Madhuri Lata in 3406, Mr. Kinkar Kumar in 23447, Mr. Nityanand Mishra in 197, 305, Mr. Nityanand Mishra, Balmiki Pandey Bhaskar in 757, 22204, Mr. Rajendra Prasad Singh, Mukesh Kumar in 19092 and Mr. Arun Kumar Pandey in 20490, for the Appellant; N.A. Shamsi in 22888, 1033, 3208, 20490, N.A. Shamsi, Dwivedi Surendra in 22363, Mr. Raghib Ahsan in 11172, Mr. Md. Nadim Seraj in 3406, Mr. Dwivedi Surendra in 1033, 197, 305, 757, 22204, Mr. Kumar Priya Ranjan in 19092 and Mr. Dwivedi Surendra in 22888, 1033, 19092 for the SSC, for the Respondent

Judgement

Birendra Pd. Verma, J.—In this batch of 15 writ petitions, at the very outset, the respondents have raised the question of maintainability of these writ petitions before this Court on account of lack of territorial jurisdiction, as also on the ground of specific clause incorporated in the advertisement/employment notice itself regarding the Court's jurisdiction. Learned counsel appearing on behalf of the respondents are unanimous in their submissions that taking into consideration the aforesaid aspect, C.W.J.C. No. 17724 of 2012 Reported in Sanjeev Kumar Suman and Others Vs. The Union of India and Others, and few other writ petitions filed for almost similar and identical relief's have been held

to be not maintainable before this Court by a Bench of this Court. Therefore, according to them, this batch of writ petitions should also follow the suit and should be disposed of exactly in same and similar terms holding them not maintainable before this Court.

2. Per contra, learned counsel appearing on behalf of the petitioners have submitted in one voice that major part of cause of action having taken place within the territorial limits of the State of Bihar, therefore, in view of provisions contained in Article 226(2) of the Constitution of India, this Court has jurisdiction to entertain and adjudicate upon the issues raised there in the writ petitions filed on behalf of the petitioners.

3. It is the case of the petitioners that as per advertisement/employment notice issued in the year 2011 selection process was initiated and concluded by the Staff Selection Commission for recruitment of Constables (G.D.) in BSF, CISF, CRPF and SSB, but Physical Standard Test, (in short "PST"), Physical Efficiency Test or Physical Endurance Test (in short "PET"), Written Examination as also the Medical Examination of almost all the petitioners were conducted and held within the territorial jurisdiction of Patna High Court, and, accordingly, the final select list was prepared by the Staff Selection Commission at its Regional Office at Allahabad. Therefore, according to the petitioners, major part of cause of action having arisen within the territorial jurisdiction of this Court, this Court will be fully entitled to entertain the writ petitions and adjudicate upon the issues raised therein under the scheme and scope of Article 226(2) of the Constitution of India, irrespective of situs of the authority of the respondent Staff Selection Commission. It is further case of the petitioners that clause incorporated in the advertisement/employment notice indicating therein that dispute regarding recruitment will be subject to courts/tribunals having jurisdiction over the city/town in which the concerned Regional/Sub-Regional Office of the Staff Selection Commission is situate and where the candidate has submitted his/her applications is contrary to the constitutional scheme of Article 226(2) of the Constitution of India, and as such it should be held to be nullity in the eye of law, and, therefore, on that ground the territorial jurisdiction of this Court cannot be held to have been ousted.

4. In this batch of writ petitions, all the petitioners are unsuccessful candidates in the selection process started and concluded by the respondent Staff Selection Commission and its functionaries for recruitment of Constables for Para-Military Forces/Central Police Organization like BSF, CISF, CRPF and SSB, and the petitioners have approached this Court either for issuance of direction for re-consideration of their cases on the ground of discrimination and violation of Articles 14 and 16 of the Constitution of India, or they have sought a writ of mandamus directing the respondents to appoint them on the posts applied for.

5. In almost all the writ petitions, counter affidavits have been filed on behalf of the respondent Staff Selection Commission and its functionaries raising the issues of non-maintainability of these writ petitions before this Court on the

ground of lack of territorial jurisdiction, but in most of the writ petitions counter affidavits have not been filed with respect to the merits of the claims raised on behalf of each of the petitioners. Since the issues raised in almost all the writ petitions are identical and similar, therefore, in order to appreciate the issues raised on behalf of the parties, it would be appropriate to notice the facts emerging in C.W.J.C. No. 19092 of 2012 in a representative capacity, unless contrary facts are pleaded in some other writ petitions.

6. The respondent Staff Selection Commission issued an advertisement/employment notice, published in the Employment News/Rozgar Samachar dated 5.2.2011 (Annexure-1 to the aforesaid C.W.J.C. No. 19092 of 2012), inviting applications from eligible candidates for recruitment of altogether 49080 posts of Constable (G.D.) in the Border Security Force (BSF), Central Reserve Police Force (CRPF), Central Industrial Security Force (CISF) and Sashastra Seema Bal (SSB). Matriculation or 10th Class pass was fixed as the minimum educational qualification. Recruitment process comprised of height bar, prescribed race, Physical Standard Test, Physical Endurance Test, Written Examination and Medical Examination. Candidates were required to apply before any Regional Office, out of nine Regional Offices of the respondent Staff Selection Commission, under whose jurisdiction the centre selected by him/her falls. Statewise vacancies were also notified in the said advertisement. Separate number of posts for the State of Bihar for each category were indicated in that advertisement/employment notice (Annexure-1). Last date for submission of applications for the candidates belonging to the State of Bihar, was 4th March, 2011.

7. All the petitioners being eligible, submitted their applications before the respondent Staff Selection Commission (Central Region), Allahabad and they had been issued admit cards. It is the case of the petitioners that their Physical Standard Test and Physical Efficiency Test were conducted in the State of Bihar and on being successful, their written examination was conducted at different centers in the State of Bihar. Learned Senior Counsel appearing on behalf of the petitioners has rightly pointed out that in the State of Bihar examination centres were fixed at Patna, Bhagalpur, Darbhanga and Muzaffarpur. Apart from above, other examination centres fixed for the Central Region were in the State of U.P. Similarly for other Regions in the country, examination centres were indicated in the aforesaid advertisement as contained in Annexure-1. It is also the case of the petitioners that on being successful in the written examination their medical test was conducted in the State of Bihar and they have been declared medically fit, yet they have not been selected for the post of Constables for the Central Police Organization. Therefore, they have approached this Court under Article 226 of the Constitution of India seeking a direction to the respondent authorities to consider their cases for their appointment on the post of Constable, as persons having lesser percentage of marks than that of the petitioners have been appointed on the post of Constable and the claims of the petitioners have been arbitrarily and illegally ignored in violation of Articles 14 and 16 of the Constitution of India.

8. It is not in dispute that as per terms of advertisement, the petitioners submitted their applications to the Regional Director (Central Region), Staff Selection Commission, Allahabad (U.P.) whereafter, the petitioners were allowed to participate in the selection process. As stated earlier, the respondents have, at the very outset, raised the question of territorial jurisdiction of this Court particularly in view of clause 15 of the advertisement (Annexure-1), which reads as follows:--

15. COURTS JURISDICTION.--Any dispute in regard to this recruitment will be subject to courts/tribunals having jurisdiction over the City/Town in which the concerned Regional/Sub-Regional Office of the SSC is situated and where the candidate has submitted his/her application.

9. At this stage, it would be relevant to mention that in some of the writ petitions of this batch, the claims raised on behalf of the petitioners are not based exactly on the advertisement/employment notice dated 5.2.2011 (Annexure-1), but their claims are based on similar selection process started and concluded by the Staff Selection Commission, wherein also advertisement issued by the respondent Staff Selection Commission was having similar and identical clause regarding court's jurisdiction. Therefore, in those matters also the question of territorial jurisdiction is being raised by the respondents by taking similar pleas.

10. In order to appreciate the issues raised in this batch of writ petitions, it would be necessary to notice the legislative history of constitutional provisions, and amendments introduced and incorporated in Article 226 of the Constitution of India. Article 226 of the Constitution of India, as originally stood, did not conceive of cause of action as relevant and material factor for entertaining a writ petition by any High Court. For determination of territorial jurisdiction of a High Court neither location of persons affected by order of the Central Government and its agencies nor the place of cause of action was a relevant factor. Only situs of Central Government and its agencies was determining factor for deciding the territorial jurisdiction of the High Court. The matter came up for consideration before a Constitution Bench of seven Judges of the Hon'ble Apex Court in the case of Lt. Col. Khajoor Singh Vs. The Union of India and Another, . By a majority judgment, the Hon'ble Supreme Court rejected the plea of accrual of cause of action at a particular place for giving territorial jurisdiction to a High Court within whose jurisdiction the cause of action had so arisen for exercising powers under Article 226 of the Constitution of India. For better appreciation, I am tempted to reproduce the relevant portion of paragraph 16 of the aforesaid judgment, which reads as follows:--

The concept of cause of action cannot in our opinion be introduced in Art. 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of

the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Art. 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Art. 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it.

11. Though law was set at rest in view of the aforesaid majority judgment by a Constitution Bench of the Hon'ble Supreme Court in the case of Lt. Col. Khajoor Singh vs. Union of India & Another (supra), yet the Parliament of our country was seized with the problems and hardships faced by the litigants at different parts of the country. As the seat of the Central Government being New Delhi, at the relevant time the Punjab High Court alone had jurisdiction to issue any writ under Article 226 of the Constitution of India with respect to any order passed/action taken by the Central Government and its agencies. In view of the persistent demand and taking a cue from the observations of the Hon'ble Supreme Court in the case of Lt. Col. Khajoor Singh vs. Union of India and Another (supra) Article 226 of the Constitution of India was amended by the Constitution (Fifteenth Amendment) Act, 1963, and after Clause (1), new Clause (1-A) was inserted, which reads as follows:--

226(1-A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

It would further be relevant to mention here that by 42nd Constitutional Amendment Act, 1976 Clause (1-A) of Article 226 was renumbered as Clause (2).

12. Now, in view of the aforesaid amendments in Article 226 of the Constitution of India, the cause of action has become relevant and germane factor for determining the territorial jurisdiction of a High Court within whose territorial jurisdiction cause of action in whole or in part has arisen. The scheme and scope of Article 226(2) of the Constitution of India came up for consideration before the Hon'ble Apex Court on number of occasions and, by now, it is settled proposition of law that even if a small fraction of cause of action arises within the jurisdiction of a particular High Court, then that High Court would have territorial jurisdiction to entertain a writ petition under Article 226 of the Constitution of India, irrespective of the seat or location of the Government/authority whose action/order may be subject matter of challenge in that writ proceeding under Article 226 of the Constitution of India. However, facts occurring in particular writ petition must form an integral part of cause of action giving territorial jurisdiction to the High Court for exercising powers under Article 226 of the Constitution of India.

13. In *State of Rajasthan and Others Vs. Swaika Properties and Another*, , subject matter of dispute was regarding initiation of land acquisition proceeding by the State Government of Rajasthan. A writ petition was filed before the Calcutta High Court which was entertained and an ad interim order of stay was passed by a learned single Judge of Calcutta High Court on the ground that notice was served on the writ petitioner at its registered office at Calcutta. The Hon'ble Apex Court deprecated the approach of the Calcutta High Court and held that the transaction must be integral part of cause of action sufficient to invest the High Court with jurisdiction to entertain a writ petition under Article 226 of the Constitution of India. A land acquisition proceeding having been initiated by the State Government of Rajasthan with respect to land situate in Jaipur, and writ petition filed by the Company having its registered office at Calcutta, questioning the correctness of the said acquisition proceeding, before the Calcutta High Court on the ground of receipt of notice at Calcutta, it was held by the Hon'ble Apex Court that Calcutta High Court had no territorial jurisdiction to entertain such proceeding because no cause of action had arisen within the territorial jurisdiction of Calcutta High Court.

14. A three Judge Bench of the Hon'ble Apex Court in the case of *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, while considering the scope of Article 226(2) of the Constitution of India with respect to determination of territorial jurisdiction of a High Court has laid down the law in paragraph 6 of the judgment, relevant portion of which is being reproduced hereinbelow:--

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition.

15. The principles laid down in the cases of *State of Rajasthan and Others vs. M/s Swaika Properties and Another* (supra) and *Oil and Natural Gas Commission vs. Utpal Kumar Basu and Others* (supra) have not only been reiterated but further explained by a three Judge Bench of the Hon'ble Apex Court in the case of *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, wherein it has been held that even if small fraction of cause of action arises within the territorial jurisdiction of a High Court, the Court will have jurisdiction to exercise powers under Article 226 of the Constitution of India. For better appreciation paragraphs 10, 25 and 29 of the aforesaid judgment are reproduced hereinbelow:--

10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the

matter.

25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.

29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh has, thus, no application.

16. In the case of Alchemist Limited and Another Vs. State Bank of Sikkim and Others, after taking into consideration the legislative history of constitutional provisions, the Hon"ble Apex Court has held that effect of amendment was that accrual of cause of action has now become an additional ground for conferring jurisdiction on a High Court for exercising powers under Article 226 of the Constitution of India.

17. It is common knowledge that the term "cause of action" has neither been defined in the Constitution of India nor in the Code of Civil Procedure, 1908. The cause of action can be described as a bundle of essential facts necessary for the petitioner to prove such facts before he can succeed. Failure to prove such facts would give the defendant/respondent a right to judgment in his favour. Thus, cause of action constitutes the foundation of a suit or a writ petition. If no cause of action is shown by the plaintiff or the petitioner, then a plaint or the writ petition has to be dismissed since for every action there has to be a cause of action.

18. In the light of judicial pronouncements made by the Hon"ble Apex Court, noticed above, now I will consider the issues raised in the present batch of the writ petitions. There is no dispute raised by the respondents that in response to the advertisement/employment notice as contained in Annexure-1, the petitioners submitted their applications for their appointment on the posts so advertised with respect to the vacancies notified and earmarked for the State of Bihar. Physical Standard Test, Physical Efficiency Test and the written examination of the petitioners were conducted within the territorial jurisdiction of this Court. However, for one reason or the other, the petitioners' name could not find place in the final select list prepared by the respondent Staff Selection Commission, Preparation of final select list by the respondent Commission either

at its Regional Office at Allahabad or its Headquarters at New Delhi was on the basis of Physical Standard Test, Physical Efficiency Test, Written Examination as also Medical Examination held and conducted, in most of the cases, within the territorial limits of the State of Bihar. Therefore, the aforesaid facts and events form an integral part of cause of action. The final selection made by the respondent Staff Selection Commission and its functionaries cannot be separated from the selection process held and conducted within the territorial limits of the State of Bihar particularly for conducting and holding Physical Standard Test, Physical Efficiency Test, written examination as also the medical examination in the case of most of the petitioners, who have approached this court under Article 226 of the Constitution of India for appropriate reliefs enumerated in paragraph 1 of each of the writ petitions separately.

19. Apparently, part of cause of action has arisen within the territorial jurisdiction of this Court. Therefore, Patna High Court as also Allahabad High Court both would have jurisdiction to entertain a writ petition under Article 226 of the Constitution of India with respect to selection made on the basis of advertisement/employment notice as contained in Annexure-1. If both the High Courts have jurisdiction, then it is for the petitioners to decide as to where they should approach for appropriate reliefs. If the petitioners have opted to approach this Court for appropriate reliefs, and since part of cause of action has arisen within its territorial jurisdiction, this Court would be fully justified in exercising its power under Article 226 of the Constitution of India and adjudicating upon the issues raised in this batch of writ petitions.

20. However, there are two difficulties. Firstly, as pointed out by the learned counsel appearing on behalf of the respondents that in similar and identical matters, writ petitions filed on behalf of some other unsuccessful candidates were held to be not maintainable before this Court on the ground of lack of territorial jurisdiction. Some of the orders have been brought on record by the respondents in their counter affidavits and one of the orders dated 30.10.2012 passed in C.W.J.C. No. 17724 of 2012 Reported in Sanjeev Kumar Suman and Others Vs. The Union of India and Others, has been brought on record as Annexure-B to the counter affidavit filed in C.W.J.C. No. 19092 of 2012. Few more orders following the said order passed by the learned single Judge have also been brought on record by the respondents. Therefore, according to the learned counsel appearing on behalf of the respondents, in order to maintain consistency and judicial discipline, the present batch of writ petitions should also be held to be not maintainable. Secondly, in the advertisement/employment notice as contained in Annexure-1, clause 15 has been incorporated, whereby with respect to recruitment process in question, if any dispute arises then the jurisdiction has been vested only in courts/tribunals depending upon situs of Regional/Sub-Regional office of the respondent Staff Selection Commission where the candidates have submitted their applications. In the present case, it is admitted case of the parties that the petitioners had submitted their applications before the Regional Office of the respondent Staff Selection Commission at

Allahabad. Therefore, according to the respondents only Allahabad High Court has jurisdiction to entertain writ petition and to adjudicate upon the dispute arising out of the aforesaid recruitment process.

21. Though neither learned counsel appearing on behalf of the petitioners nor learned counsel appearing on behalf of the respondents could cite any judicial pronouncement that jurisdiction of a High Court, even if cause of action has arisen within its territorial jurisdiction, could be ousted by inserting such clause in the advertisement itself, but, I am afraid that on the basis of such provision/ clause inserted in the advertisement, jurisdiction of a High Court cannot be ousted, since it would be in the teeth of the scheme and scope of Article 226(2) of the Constitution of India and further it would be contrary to judicial pronouncements made by the Hon''ble Supreme Court, which have been noticed and referred to in the preceding paragraphs. However, this is not free from all difficulties. This requires deeper and further examination, so that this issue is decided once for all.

22. So far the judgments and orders passed by the learned single Judge, heavily relied upon by learned counsel appearing on behalf of the respondents are concerned, this Court finds that in none of the judgments/orders the scheme and scope of Article 226(2) of the Constitution of India, referred to above, have been considered and decided. Further, this Court finds that judicial pronouncements made by the Hon''ble Apex Court, in the cases referred to above, were not brought to the notice of the learned single Judge. This Court also finds that the same Hon''ble Judge (Hon''ble S.N. Hussain, J.) by an order dated 4.10.2012 passed in C.W.J.C. No. 18524 of 2012 has issued a direction to the respondent Regional Director of the respondent Staff Selection Commission (Central Region), Allahabad to consider and decide the representation of the aforesaid writ petitioner by a speaking order within a period of two months and further if the petitioner was found eligible, then direction was that he should be immediately appointed. A question rises, if this Court has no jurisdiction to entertain a writ petition, then how a direction can be issued to the functionaries of the respondent Staff Selection Commission to consider the representation filed by an unsuccessful candidate. Apparently, the learned Judge has passed inconsistent and contradictory orders without considering the scheme and scope of Article 226(2) of the Constitution of India and without taking into consideration the judicial pronouncements made by the Hon''ble Apex Court, which have been referred to in the preceding paragraphs.

23. I am of the considered view that a High Court must act and speak in one voice as a family. Different and contradictory orders passed by different Benches of the High Court will lead to uncertainty in the mind of litigants, which would be contrary to the judicial decorum and legal propriety which are the basis of judicial procedure. Admittedly, India is governed by a judicial system identified by hierarchy of courts, where doctrine of binding precedent is cardinal features of its jurisprudence and constitutional philosophy. It has been held in catena of

judgments by the Hon''ble Apex Court that judicial decorum and legal propriety demand that where a learned single Judge or a Division Bench does not agree with the decision of a Bench of coordinate jurisdiction, the matter should be referred to a larger Bench for an authoritative decision. In view of the above conclusions arrived at, and for the reasons recorded in the preceding paragraphs, as also in view of ratio laid down by the Hon''ble Apex Court in the cases of Shri Bhagwan and Another Vs. Ram Chand and Another, as also Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, , let the records of this batch of writ petitions be placed before Hon''ble the Chief Justice either for referring the matter to a Division Bench or for constituting a larger Bench for an authoritative decision on all the issues involved in the present batch of writ petitions and indicated in the present order.