

(2019) 06 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Letter Patent Appeal (LPASW) No. 181 Of 2017

Dhiraj Kumar Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 04-06-2019

Acts Referred:

Classification, Control & Appeal) Rules, 1965 — Rule 14, 15 (1)
Constitution Of India, 1950 — Article 226(2)

Citation : (2019) 06 J&K CK 0009

Hon'ble Judges : Gita Mittal, CJ; Rashid Ali Dar, J

Bench : Division Bench

Advocate : Bhat Fayaz, Tahir Majid Shamsi

Final Decision : Dismissed

Judgement

Gita Mitta, CJ

1. By way of the instant appeal, the appellant has assailed the order dated 14 th September, 2017 whereby the learned Single Judge has accepted the objection raised by the respondents to the maintainability of SWP No. 2163/2015 on the ground that this Court did not have the territorial jurisdiction to entertain the subject matter of the writ petition.

2. The facts giving rising to the present appeal to the extent necessary are briefly noted hereafter. The petitioner was appointed in the Central Reserve Police Force (hereafter referred to as CRPF) and was working as a Deputy Commandant, when an order dated 19th August 2013 imposing the major penalty of reduction to a lower stage in the time scale of pay for a period of three years; stopping increments of pay during the period of such reduction; on the expiry of such period, postponing future increments of his pay; and accordingly reducing his pay from Rs. 28,420/- plus Grade Pay 6600/- to Rs. 27,400/- plus Grade Pay Rs. 6600/- for a period of three years i.e. from 01.09.2013 to 31.08.2016 in the pay band of 15,600-39,100 (PB-3).

3. It is an admitted position that this order was issued from Delhi.

4. This order was assailed by the petitioner by way of SWP No. 2117/2013 filed in this court inter alia on the ground that the advice of the UPSC which was received and relied upon by the respondents was not served upon him and he was deprived opportunity to represent against the same. The writ petition was disposed of by a judgment dated 19th March 2015. The operative part of this order reads as under:

"17. The principal that emerges from the above discussion is that whenever on consideration of Departmental enquiry, punishment is proposed to be imposed in terms of opinion given or recommendation made by some independent body like CVC or UPSC, copy of such opinion/recommendation is to be provided to the delinquent officer before imposing the penalty and he/she given an opportunity to rebut it. It may be stated at the cost of repetition that in the present case, exclusive reliance was placed upon UPSC advice for deciding the quantum of penalty. It was therefore, necessary for the respondents to provide a copy to petitioner for his rebuttal. The respondents by not furnishing such copy have violated principles of natural justice and in the process deferred petitioner of right to respond to the report."

"For the reasons discussed, Writ Petition is allowed and the order no.D.IX-17/2004-CRC dated 19.08.2013, is quashed to the extent it imposes major penalty on the petitioner. Resultantly, respondents shall supply copy of UPSC advice to petitioner, enabling him to file his response and make an effort to convince the respondents that penalty suggested by UPSC would be unwarranted in the facts and circumstances of the case."

5. By the above judgment, thus the Order no.D.IX-17/2004-CRC dated 19th August 2013, imposing the major penalty on petitioner, was quashed and the respondents were directed to supply copy of UPSC advice to petitioner, enabling him to file his response thereto.

6. In view of the failure of the respondents to comply with the judgment dated 19th March 2015 in SWP no.2117/2013, the petitioner filed a contempt petition being CPSW No.288/2015. Vide the order dated 14th August 2015, this court disposed of the contempt petition being not maintainable, with the following observations:

"Petition is not maintainable inasmuch as order imposing penalty stands quashed. In any case respondents are not interested in proceeding against the petitioner, petitioner need not seek directions to respondents to proceed against him, and that too in a contempt petition."

7. The Directorate General, CRPF thereafter communicated the Presidential Order dated 31st August 2015, to the appellant informing him of the further action which was being taken after the judgment dated 19th March 2015, as follows:-

"8. Now, therefore, the President considers that the ends of justice would be met

if:-

(i) The punishment imposing the penalty of "reduction to a lower stage in the scale of Pay from Rs. 28,420/- plus Grade Pay 6600/- to Rs. 27,400/- plus Grade Pay Rs. 6600/- in the pay band of Rs. 15,600/- 39,100 (PB-3) for a period of three years w.e.f. 01/09/2013 to 31/08/2016 with the stipulation that during the period of such reduction, he will not earn increments of pay and such reduction will have the effect of postponing his future increments of pay" imposed vide Presidential order No. D.IX.17/2014-CRC dated 19/08/2013 is set aside.

(ii) Further enquiry under the provision of the Rule 15 (1) of CCS (CCA) Rules, 1965, enquiry be held against Shri Dhiraj Kumar Singh, Dy. Comdt. 115 Bn. CRPF from the stage of serving a copy of advice tendered by UPSC vide Itr No. F.3/105/2012-SI dated 5/10/12, as ordered by the Hon'ble High Court of J&K at Srinagar vide their order dated 19.03.2015 and orders accordingly.

(Emphasis by us)

8. The petitioner filed a second petition being SWP No. 2163/2015 challenging the order dated 31st August, 2015. An interim order dated 5th October, 2015 came to be passed in this writ petition directing stay of the order dated 31st August, 2015. As a result, further disciplinary proceeding after the communication of the UPSC advice to the appellant came to uphold.

9. It is noteworthy that on 11th September, 2015, the respondents have tendered the UPSC advice dated 5th October, 2012 to the appellant. On receipt thereof, the appellant submitted a representation dated 10th October, 2015 to the respondents. However, on intervention of the interim order dated 5th October, 2015, the respondents could not proceed in the matter.

10. Mr. Fayaz, learned counsel for the petitioner has placed reliance on the further interim order dated 24th February 2016 which came to be passed in SWP No. 2163/2015 holding that the enquiry shall be held in terms of the order impugned. It was further directed that, however, the same shall be subject to outcome of the writ petition.

In view of this modification of the stay order, the petitioner participated in the further enquiry proceedings. The disciplinary authority examined the submissions of the appellant, and passed an order dated 18th April 2016.

11. During pendency of SWP No. 2163/2015, , the DIG (CR & Vigilance) located at the Directorate, CRPF, New Delhi communicated the Presidential Order dated 18th April 2016 to the petitioner. By this order it was directed as follows:-

"12. And whereas the Disciplinary Authority after examining the submission of the charged officer along-with evidences adduced in the enquiry proceedings observed that the CO has not put forth any new fact or cogent reasons, which may warrant reconsideration of the UPSC advice and accordingly rejected his representation being devoid of merit.

13. And whereas, the Commission, vide their letter No. F.3/105/2012-SI dated 05/10/2012 had observed that the charges levelled against charged officer out of four articles of charge, the Commission concluded Article-I of the charge against the charged officer stands fully proved and Article-III of the charge is proved to great extent on the basis of preponderance of probability and circumstantial evidence. Accordingly, Commission advised for imposition of penalty of "reduction to a lower stage in the time scale of pay for a period of three years with further directions that the charged officer will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay".

12. This order passed in New Delhi and was served upon the petitioner when he was posted as Deputy Commandant 148th Bn. CRPF which was located at Chandauli, UP.

13. We are informed by the learned counsel for the parties that the appellant was permitted to amend the SWP No. 2163/2015 to lay a challenge to the order dated 18th April, 2016. The respondents filed objections therein wherein, the respondents took a preliminary objection with regard to the territorial jurisdiction of this Court. So far as the challenge to the order dated 18th April 2016 is concerned, an objection was taken by the respondents with regard to the maintainability of the challenge for the reason that the same had been passed at Delhi and it was communicated to the petitioner when he stood posted in 148th Bn. CRPF located at Chandauli, UP.

14. The objection of the respondents with regard to the maintainability of SWP No. 2163/2015 on grounds of want of territorial jurisdiction stands heard by the learned Single Judge and decided by the order dated 14th September 2017. The learned Single Judge has held that this Court did not have the territorial jurisdiction to entertain and adjudicate upon the subject matter of the writ petition and the challenge raised by the appellant and has consequently dismissed the writ petition with liberty to the appellant to approach the Court of competent jurisdiction. While so concluding, the learned Single Judge has placed reliance on the law laid down by the Supreme Court of India in the case reported at (2007)6 SCC 769 *Ambica Industries vs. Commissioner of Central Excise*, and (2008) 3 SCC 455; *Eastern Coalfields Ltd. and others vs. Kalyan Banerjee*.

15. The appellant has assailed the judgment dated 14th September 2017 by way of the present appeal.

16. We have heard learned counsel for the parties at length and examined the available record.

17. The record before us shows that the departmental enquiry proceedings under Rule 14 of the CCA Rules 1965 were initiated against the appellant pursuant to a Presidential Memorandum dated 4th May 2007 which was issued from Delhi. The articles of charges on which the disciplinary proceedings were initiated and conducted relate to actions attributed to the appellant in Punjab.

18. We are informed by Mr. Shamsi, learned ASGI on the basis of the record that the disciplinary proceedings were held against the appellant in Hyderabad, Patna, Delhi & Bhopal. Therefore, the only fact premised whereon the appellant is seeking to vest jurisdiction in this Court is the fact that the first order dated 19th August 2013 imposing a major punishment was served upon him when he was posted at Srinagar.

19. It is to be noted that the appellant had laid a challenge to the order dated 19th August, 2013 before this Court by way of SWP No. 2117/2013, which proceedings culminated in the judgment dated 19th March, 2015 whereby the said order was set aside and quashed. Further more, the respondents accepted the said judgment. By the Presidential Order dated 31st August, 2015, the punishment which had been imposed upon the appellant by the order dated 19th August, 2013 was set aside and further disciplinary inquiry was directed in terms of order of this Court.

20. So far as the second writ petition, SWP No. 2163/2015 is concerned, it lays a challenge to the Presidential Order dated 18th April, 2016 passed against the appellant upon culmination of the inquiry proceeding.

21. It is admitted position before us that the Presidential Order dated 18th April, 2018 has been communicated to the appellant by the order issued from the Central Reserve Police Force Directorate at New Delhi. It is also an admitted position that the order was served upon the appellant while posted at Chandauli, UP.

22. It is submitted by Mr. Fayaz, learned counsel for the appellant that the respondents never took any objection with regard to the jurisdiction when the appellant filed SWP No. 2117/2013. In our view, the failure of the respondents to take an objection relating to the territorial jurisdiction of the Court would be immaterial inasmuch as it is a well settled principle of law that parties cannot even with consent vest jurisdiction in a Court which does not have jurisdiction in law. Therefore, the issue as to whether this Court would have jurisdiction to entertain and adjudicate upon the subject matter raised by the appellant has to be tested in accordance with the legal principles for testing jurisdiction of a Court.

23. It is submitted by learned counsel for the appellant that unless an order passed against a person is communicated to him, such person would not have any knowledge thereof and therefore not been in a position to challenge the same. The contention, therefore, is that the place at which an offending order is served would be a part of the cause of action and would entitle the person aggrieved to maintain the writ petition at such place. In support of this proposition, reliance is placed by Mr. Fayaz Ahmad on a Division Bench judgment of the High Court of Delhi in case WP (C) No. 10392/2015 P.K. Shrivastava vs. Union of India &Ors. decided on 1st December 2016.

24. This judgment is of no benefit to the appellant so far as the present case is concerned, for the reason that, it is an admitted position that by the time the

order dated 18th April 2016 was passed, the appellant stood transferred out of Srinagar and was located at Chandauli, UP. Therefore, even the place at which the impugned order was served on the appellant would not enable him to maintain the writ petition challenging such order in the High Court of Jammu & Kashmir at its Srinagar Wing.

25. Mr. Fayaz, learned counsel for the appellant has also relied on a judgment of the Supreme Court reported at (2010)1 SCC 457 *Rajendran Chingaravelu vs. R. K. Mishra*, Additional Commissioner of Income Tax & Ors. This judgment arose out of a criminal case wherein the entire events in the nature of search, seizure and detention by the Security/Intelligence officials were conducted at the Hyderabad Airport who alerted counterparts at the Chennai Airport to the effect that the appellant therein was carrying a huge sum of money and required him to be intercepted and questioned. In this background, the Supreme Court had concluded that a part of the cause of action had arisen at Hyderabad for which reason it was held that the High Court of Andhra Pradesh at Hyderabad would have the territorial jurisdiction to entertain and adjudicate upon the writ petition which was filed in the High Court of Andhra Pradesh.

26. Cause of action means that bundle of facts which the petitioner must prove, if traversed, to entitle him a judgment in his favour by the Court. It is trite that when a cause of action arises in favour of a person, it means that an enforceable right has accrued in law in his favour. When such a right accrues, liability also arises against the opposite party.

27. A Full Bench of the High Court of Delhi has occasioned to consider all aspects relating to the territorial jurisdiction in the case reported at AIR 2011 Delhi 174 *Sterling Agro Industries Ltd. V. Union of India & Ors.*, which was decided on 1st August, 2011. In this case, an objection relating to the territorial jurisdiction arose in the context of an order passed by the Assistant Commissioner of Customs, ICD Malanpur, MP, which order came to be challenged in the High Court of Delhi. The ratio laid down by the Full Bench is to be found in para 23 of the judgment, which reads as follows:

"23. Thereafter, in paragraphs 27 and 29, their Lordships stated thus:

"27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.

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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 (supra) has, thus, no application."

[Emphasis by us]

28. Even as per this pronouncement, it is necessary that at least the part of the cause of action has to be arisen in the State of Jammu & Kashmir to have the territorial jurisdiction to file the writ petition.

29. We find that the learned Single Judge has relied on the pronouncement of the Supreme Court reported at 1994 (4) SCC 711 Oil and Natural Gas Commission vs. Utpal Kumar Basu, wherein it was held that merely because a party read an advertisement in Kolkatta, submitted its offer from Kolkatta and made representations from Kolkotta, would not constitute firm facts forming an integral part of cause of action enabling invocation of jurisdiction of the High Court of Kolkatta.

30. In the case reported at 2002 (1) SCC 567 Union of India v. Adani Exports, the Supreme Court rejected the contention that existence of the registered office of the Company would ipsofacto give cause of action of the High Court within whose jurisdiction the office of the Company is situated. In this case, the Supreme Court also considered the location of the principal respondent.

31. So far as the objection relating to territorial jurisdiction of a writ court is concerned, the following observation in case reported at 1994 (4) SCC 711 Oil and Natural Gas Commission Ltd. V. Utpal Kumar Basu, shed valuable light on the issue under consideration:

"Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression cause of action means that bundle of facts which the petitioner must prove, if traversed, to entitle him a judgment in his favour by the Court. 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. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial."

32. The present appeal has to fail on yet another principle which, we find, has rightly been considered by the learned Single Judge. On application of doctrine of 'forum non-conveniens' also, the writ petition must fail for the reason that the

allegations giving rise to the disciplinary proceedings occurred in Punjab; the disciplinary proceedings stand conducted in Patna, Hyderabad and Delhi and the impugned order issued from and communicated from the Directorate at Delhi. Therefore, all relevant official records which would be necessary for adjudication of the present writ petition challenging order dated 18th April, 2016 would be available in Delhi. Maintenance of the writ proceedings in this Court would certainly work undue hardships to the official respondents. The writ petition must fail on application of the doctrine of forum non-conveniens as well.

33. The appellant is unable to point out any act or omission which could be held to be giving rise to any part of the cause of action in favour of the appellant having arisen in the State of J&K or Srinagar enabling him to file a writ petition within jurisdiction of the High Court of Jammu & Kashmir or maintain the writ petition here.

34. In view of the above discussion, the judgment of the learned Single Judge cannot be faulted on any legally tenable grounds. The present appeal is completely misconceived. We find no merit at all in this appeal which is hereby dismissed with costs which are quantified at Rs. 25,000/-. The costs shall be paid to the respondents, within a period of four weeks from today.