
(2012) 08 AHC CK 0024
In the Allahabad High Court
Case No : C.M.W.P. No. 34468 of 1994

Dinesh Pratap Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 4 AWC 3594

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : G.D. Mukherji, N.A. Khan and Sunil Kumar Singh, for the Appellant; N.P. Shukla, Ashutosh Upadhyaya, V.K. Shukla and A.K. Gaur, C.S.C. (U.O.I.), for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri N.A. Khan, learned counsel for the petitioner and Sri Ashutosh Upadhyaya, advocate, holding brief of Sri V.K. Shukla, learned counsel for the respondents.

By means of the present writ petition, the petitioner has sought the following reliefs:

- (a) Issue a writ, order or direction in the nature of certiorari quashing the order of dismissal dated 23.9.1993 (Annexure-6 to the writ petition) passed by the respondent No. 3;
- (b) Issue a writ, order or direction in the nature of mandamus directing the respondents to re-instate the petitioner in service with all consequential benefits for which the petitioner is entitled;
- (c) Issue a writ, order or direction in the nature of mandamus directing the respondents to pay the petitioner arrears of salary and allowances as per his entitlement;

(d) Issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case in favour of the petitioner;

(e) Award costs of this writ petition to the petitioner.

It appears that the petitioner was in C.R.P.F. He was posted at Neemuch (M.P.). The petitioner sought leave from 31.7.1991 to 10.8.1991 for ten days. The leave was granted.

When the petitioner did not report after the expiry of the aforesaid period, a letter dated 16.8.1991 has been sent to the petitioner asking him to join but it appears that instead of joining, the petitioner sent two letters dated 22.8.1991 and 31.8.1991 seeking leave for 60 days and 30 days. However, it appears that even after the expiry of the aforesaid period the petitioner did not Join. On 29.12.1992, the Commandant 89 Battalion Neemuch (M.P.) has declared the petitioner deserter and an inquiry proceeding has been initiated against the petitioner and Sri Sukhwant Singh 2-I/C of 89 Battalion C.R.P.F. was appointed as inquiry officer to inquire the charges framed against the petitioner. It appears that a notice was sent to the petitioner by the inquiry officer but he did not turn up, therefore, an ex parte report dated 25.6.1993 was submitted. The charges framed against the petitioner were found proved. On receipt of the Inquiry report, the Commandant 89 Battalion, C.R.P.F., New Delhi, 18 vide registered letter dated 16.7.1993 had sent the inquiry report and by letter of even No. dated 1.9.1993 and other by letter of even number dated 7.9.1993 called upon the petitioner to file reply but no reply was filed, therefore, the order dated 23.9.1993 was passed dismissing the petitioner from service. In the writ petition, it is alleged that against the dismissal order the petitioner has filed appeal before the Deputy Inspector General of Police, Central Reserve Police, Force Neemuch (M.P.). The said appeal was returned to the petitioner with the advice to file an appeal before the Deputy Inspector General of Police, C.R.P.F., Allahabad, U.P. The appeal was filed on 24.1.1994 before the D.I.G. C.R.P.F., Allahabad under Rule 28 of the Central Reserve Police Force Rules, 1955. When the appeal could not be decided within the reasonable time, the petitioner filed Writ Petition No. 20204 of 1994. This Court directed the respondent No. 2 to decide the appeal of the petitioner within two months from the date of filing of the certified copy of the order. According to the petitioner, certified copy of the order was filed before the appellate authority but the appeal has not been decided. Apart from the aforesaid facts, nothing has been said about the appeal. In paragraph-17 of the counter-affidavit, it is stated that the appeal filed by the petitioner was returned to his counsel as the same was not submitted by the petitioner in his own name but in the name of his advocate. In the present writ petition, neither the action of the D.I.G. C.R.P.F., Allahabad has been challenged nor any relief has been sought against him. The petitioner has challenged the dismissal order dated 23.9.1993 passed by the Commandant 89 Battalion, C.R.P.F., New Delhi, 18.

2. The Court is of the view that the writ petition is not maintainable in this Court inasmuch as no cause of action arises in the State of U.P. The petitioner was

posted at Neemuch (M.P.). The impugned dismissal order has been passed by the Commandant 89 Battalion, C.R.P.F., New Delhi. 18. Therefore, either the cause of action arose at Neemuch (M.P.) or at New Delhi and not in the State of U.P.

3. A Full Bench of this Court in *Rajendra Kumar Mishra Vs. Union of India (UOI) and Others*, , held that since misconduct was committed at Calcutta and Summary Court Martial was also held at Calcutta, the entire cause of action arose at Calcutta and, therefore, the Allahabad High Court will have no jurisdiction and the observations are as follows:

12. In the present case, it may be noted that the misconduct was committed at Calcutta and Summary Court Martial was also held at Calcutta. Thus, the entire cause of action arose at Calcutta. We, therefore, fail to understand how a writ petition can be entertained at Allahabad High Court where no part of the cause of action had arisen.

13. In our opinion merely because the petitioner is presently residing at Ballia this will not give jurisdiction to this Court in view of the Seven Judges Bench decision of the Supreme Court in *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, . In paragraph 13 of the aforesaid decision the Supreme Court observed:

Now it is clear that the jurisdiction conferred on the High Court by Article 226 does not depend upon the residence or location of the person applying to it for relief; It depends only on the person or authority against whom a writ is sought being within those territories. It seems to us, therefore, that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Mumbai High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Article 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Article 226.

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41. We may mention that a "cause of action" is the bundle of facts which, taken with the law applicable, gives the plaintiff a right to relief against the defendant. However, it must include some act done by the defendant, since in the absence of an act, no cause of action can possibly occur (*Vide Radhakrishnamurthy Vs. Chandrasekhara Rao*, ; *Ram Awalamb and Others Vs. Jata Shankar and Others*, and *Salik Ram Adya Prasad Vs. Ram Lakhan and Others*,)

42. In the present case, no part of the cause of action has arisen in U.P. Hence, in our opinion the writ petition is not maintainable in this Court. It is accordingly dismissed. The decision of the Division Bench in Kailash Nath Tiwari Vs. Union of India (UOI) and Others, in our opinion does not lay down the correct law and is overruled.

(Emphasis supplied)

4. A Division Bench of this Court in Deeptiman Logistics Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, has also examined this issue. In this case, the Government of India, Railway Board issued a Scheme, namely, Wagon Investment Scheme on 20th November, 2005 and the said Circular was sent to different Railway Zones including the South East Central Railway, Bilaspur. The petitioners submitted two applications to the Chief Commercial Manager, South East Central Railway, Bilaspur and the applications were approved by the order dated 22nd December, 2006 with reference to the letter dated 28th September, 2006 sent by the South East Central Railway, Bilaspur forwarding the applications of the petitioner for consideration. Thereafter, an agreement dated 28th May, 2007 was executed between the Indian Railway and the petitioners. The petitioners submitted a letter dated 11th December, 2009 to the Chief Commercial Manager, South East Central Railway, Bilaspur for extending the delivery period for one year. In response to the said letter, a communication dated 28th January, 2010 was received by the petitioner at the Allahabad Office stating that for extension of time limit, the petitioners may approach the Railway Board. The petitioners thereafter filed a writ petition in the Allahabad High Court. The Division Bench, after referring to the judgment in Phool Singh Chauhan Vs. The Chief of the Army Staff, The Commanding Officer, General Officer Commanding, 11th Division, Southern Command and Commanding Officer, 91-Field Regiment (Chairman of Summary Court Martial), held that the writ petition cannot be entertained by this Court since no part of cause of action had arisen within the territorial jurisdiction of this Court. The relevant observations are as follows:

The petitioners claim that part of cause of action has arisen within the territorial jurisdiction of this Court since the petitioners received all communications from Railway Board as well as from respondent No. 3 at its head office at Allahabad, which furnishes cause of action to the petitioners to approach this Court.

From the above exposition of the phrase "cause of action", it is clear that cause of action means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to his judgment. The petitioners claim that part of cause of action has arisen within the territorial jurisdiction of this Court, is based on its pleading that communications were received at its head office at Allahabad. The issue, thus, boils down to the fact that whether in facts of the present case sending of communication at Allahabad by the Railway Board as well as by respondent No. 3 gives part of cause of action to the petitioner to invoke the territorial jurisdiction of this Court. The question as to

whether receipt of communication or notice furnishes a cause of action, has been considered by the Apex Court and this Court on several occasions.

....

Service of notice, communication of an order, when it form integral part of cause of action, the territorial jurisdiction may be at the place where notice is served or communication is received but when the said communication is only by way of sending information at the registered head office, which is not integral part of cause of action, the writ petition cannot be entertained at the place where the communication is said to be received. In the present case the challenge is to the decision of respondent No. 3 not to grant extension in the period of supply of wagons and further for not to accept the prayer for changing of loading station, which challenge cannot fall on non proving the fact of receiving the communication at head office at Allahabad. The decision of respondent No. 3 informing the petitioner 28th January, 2010 that petitioners may approach the Railway Board was taken at Bilaspur and the decision became effective as soon as it was taken. Even if the petitioners were not communicated the decision or even if the decision was not communicated or received by the petitioners, their cause of action is complete to challenge the action of respondent No. 3. Thus, the receipt of communication at head office at Allahabad cannot be said to be an integral part of cause of action which furnished a cause of action to challenge the decision of South East Central Railway, Bilaspur at Allahabad.

(Emphasis supplied)

5. In *State of Rajasthan and others v. M/s. Swaika Properties and another*, (1995) 3 SCC 217, the Supreme Court held that mere service of notice u/s 52(2) of the Rajasthan Urban Improvement Act, 1959 on the respondents at their registered office at Calcutta will not give rise to a cause of action within the territorial jurisdiction of the Calcutta High Court, unless the service of such notice was an integral part of the cause of action. It was found that the entire cause of action culminating in the acquisition of land arose within the State of Rajasthan and the remedy was to file a petition before the Rajasthan High Court where the cause of action wholly or in part arose. Thus, in view of the aforesaid decision of the Full Bench of this Court in *Rajendra Kumar Mishra (supra)*, the decision of the Division Bench of this Court in *M/s. Deeptiman Logistics Pvt. Ltd. (supra)* and the decision of the Supreme Court in *State of Rajasthan (supra)*, the preliminary objection raised by the learned counsel for the respondents that as no cause of action or even part of cause of action has arisen within the territorial jurisdiction of this Court, the Court should not entertain the petition, has substance.

In view of the above, the writ petition is dismissed as not maintainable.