

(2012) 01 MP CK 0125

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10172 (S) of 2011

Dr. Ashok Virang

APPELLANT

Vs

Dr. Amar Nath Mittal and Others

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

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

Citation : (2012) 134 FLR 327

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : Anupamlal Das with Amit Sharma and Ankit Dales, for the Appellant; Vivek Dalai, Counsel for the Respondent No. 1 and Mrs. Vinita Phaye, Learned Dy. G.A. Counsel for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.—This order will also govern the disposal of W.P. No. 6597/2011 (S), Dr. Ashok Virang v. Principal Secretary, Public Health and Family Welfare Department. Vallabh Bhawan, Bhopal and another.

W.P. No. 6597/2011 (S) has been filed by the petitioner challenging the order dated 28.7.2011 by which the petitioner is unfit for promotion to the post of Director. The W.P. No. 10172/2011 (S) has been filed questioning the promotion of the respondent No. 1 on the post of Director, vide order dated 24.8.2011. Counsel for the parties are heard on the preliminary objection in respect of territorial jurisdiction of Indore Bench to hear this writ petition.

2. Learned Counsel appearing for the petitioner submitted that the fresh DPC has been held and impugned order has been passed in pursuance to the direction issued by the Indore Bench in the earlier round of litigation and the present proceedings are in continuation of the earlier proceedings, therefore, this Bench has the jurisdiction. He further submitted that the cause of action has arisen in the State of Madhya Pradesh, therefore, in addition to the Principal Seat the

Indore Bench also has jurisdiction to hear the matter.

3. Learned Counsel appearing for the respondents submitted that impugned order has given fresh cause of action to petitioner and no part of cause of action has arisen before the territorial jurisdiction of Indore Bench, therefore, this Bench has no territorial jurisdiction to hear the matter.

4. I have heard the learned Counsel for the parties and perused the record.

5. The petitioner in W.P. No. 10172/2011 (S) has raised challenge to the DPC conducted on 2.8.2011 and the promotion order dated 24.8.2011. In W.P. No. 6597/2011 (S) the petitioner has challenged the order dated 28.7.2011 and questioned the review DPC held on 15.6.2011. It is undisputed in the matter that the DPC and review DPC have been held at Bhopal and the impugned orders have been passed from Bhopal. It is also undisputed that the petitioner is presently posted at Bhopal and the respondent No. 1, whose promotion has been questioned in W.P. No. 10172/2011(S), is also posted at Bhopal. Though the petitioner in the cause title has shown his address at Indore but on the query being put by this Court, it has been stated that the petitioner has disclosed his permanent address in the writ petition, whereas presently the petitioner is posted at Bhopal. Thus neither the petitioner nor any of the respondent is posted or residing within the territorial jurisdiction of this Bench.

6. After the amendment and insertion of Clause 2 in the Article 226 of the Constitution, accrual of cause of action within the territorial jurisdiction of the High Court is a relevant consideration which need to be examined before invoking writ jurisdiction. Writ jurisdiction at the instance of aggrieved party can be invoked if whole or part of cause of action arises within the territorial jurisdiction of the High Court. The territorial jurisdiction is to be decided on the basis of the averments made in the writ having nexus with the lis.

7. The Supreme Court in the matter of Alchemist Limited and Another Vs. State Bank of Sikkim and Others, while taking note of the amendment in Article 226 of the Constitution has held that by way of amendment in Article 226 in the year 1963 accrual of cause of action had been made an additional ground to confer jurisdiction on High Court under Article 226, therefore, after the amendment cause of action is relevant and germane for determination of the jurisdiction of the High Court under Article 226 of the Constitution and writ petition can be instituted after the amendment in the High Court within the territorial jurisdiction of which cause of action in whole or in part arises. While considering the issue of cause of action substance of the matter and not the form thereof has to be considered.

8. In the matter of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, it has been held that the question of territorial jurisdiction to entertain a writ petition must be arrived at solely on the basis of the averments made in the writ petition, the truth or otherwise thereof being immaterial.

9. In the matter of Union of India and Others Vs. Adani Exports Ltd. and Another, the Supreme Court has held that the facts giving rise to part of cause of action within the territorial jurisdiction of a High Court should be those having nexus or relevance with the lis involved in the case and none else and that every fact pleaded by a party in the application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts are such which have a nexus or relevance with the lis that is involved in the case and the facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction to the Court concerned.

10. In the matter of Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde, while dealing with the same question of territorial jurisdiction in a service matter where the issue was in respect of appointment on the post reserved for ST in a Public Sector Company at Hyderabad, which was procured by submitting a false caste certificate and the correctness of the caste certificate was decided by the scrutiny committee at Nagpur and services were terminated at Hyderabad on the basis of the report of the Scrutiny Committee, the Supreme Court held that the Nagpur Bench of the Bombay High Court had no jurisdiction.

11. Keeping in view the aforesaid position in law when undisputedly none of the parties is residing within the territorial jurisdiction of this Bench, the only question needs now is to see if any part of cause of action had arisen within the territorial jurisdiction of this Bench. It is not in dispute that the DPC in question and the impugned promotion orders have been issued from Bhopal, which does not fall within the territorial jurisdiction of this Court, therefore, the lis between the parties has not arisen on account of any action which has taken place within the territorial jurisdiction of this Bench.

12. Counsel for the petitioner has submitted that in the earlier round of litigation the directions were issued by the Indore Bench and in pursuance to those directions the review DPC has been held and impugned order has been passed, therefore, this Bench has the jurisdiction and that in the earlier round of litigation no such objection of territorial jurisdiction was raised.

13. Such an argument can not be accepted since holding of the review DPC and passing of the impugned order of promotion has given fresh cause of action to the petitioner to file the writ petition and these proceedings are not the continuation of the earlier proceedings but are separate, independent and fresh proceedings. Therefore, the issue of territorial jurisdiction is to be considered keeping in view the lis involved in the present proceedings.

14. It has also been contended by Counsel for the petitioner that even if no cause of action arose within the territorial jurisdiction of this Bench but since it is Bench of the High Court, therefore, it can hear matter since cause of action has arisen in Madhya Pradesh. Such an argument of Counsel for the petitioner can

not be accepted. By the Presidential order dated 28.11.1968 and 23.6.1971 the revenue districts have been specified in respect of which judges sitting at Indore Bench are to exercise the jurisdiction and power vested in the High Court. The Principal Seat and the benches of the High Court exercise their territorial jurisdiction in accordance with the said Presidential order and while exercising such jurisdiction principle underlying Article 226(2) is attracted.

15. In the matter of Rajasthan High Court Advocates Association Vs. Union of India and Others, similar issue of territorial jurisdiction between the Principal Seat at Jodhpur and Bench at Jaipur had came up, the Supreme Court held that the purpose of the Presidential order is to carve out and define the territorial jurisdiction between the Principal Seat and Bench. The cases to be heard accordingly unless the Chief Justice exercises its discretion and power as per the Presidential order. Though the clauses 1 and 2 of the Article 226, which provide for territorial jurisdiction deals with Principal Seat and permanent Bench of any High Court but there is no reason why principle underlying thereunder can not be applied to the functioning of the bifurcated territorial jurisdiction between the Principal Seat and permanent Bench at any High Court and the territorial jurisdiction in such cases to be decided applying and examining that as to in which district the cause of action can said to have been arisen.

16. Since in the present matter neither any of the parties is residing within the territorial jurisdiction of this Bench nor any part of cause of action has arisen within the territorial jurisdiction of this Bench, therefore, this Court has no territorial jurisdiction to entertain the present writ petition. Therefore, in terms of Chapter 3 Rule 4 of the High Court of Madhya Pradesh Rules, 2008, office is directed to return the main case to the petitioner for its presentation at proper place, after retaining one complete set of the main case.

17. In view of the aforesaid, the proceedings in these writ petitions stand closed. Original order is kept in W.P. No. 10172/2011(S) and a copy whereof be placed in the record of W.P. No. 6597/2011 (S).