
(2019) 07 JH CK 0185

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 181, 302 Of 2013

Dr. Nawal Kishore Prasad

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 25, 27, 34
Constitution Of India, 1950 — Article 32, 226, 226(2)

Citation : (2019) 07 JH CK 0185

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Prabhash Kumar, Saurav Arun, Akshay Sharma, Ujjawal Sinha, Shubham Mishra, Dr. Ashok Kumar Singh, Ramit Satender

Final Decision : Allowed

Judgement

1. As the common Judgment passed by the Hon'ble Single Judge is under challenge in both these Letters Patent Appeals, both these appeals have been heard together and are being disposed of by this common Judgment.
2. Heard learned counsels for the appellants and the learned counsels for the respondents in both these Letters Patent Appeals.
3. The appellants herein are aggrieved by the impugned Judgment dated 10.05.2013, passed by the Hon'ble Single Judge, in W.P.(S) No.1594 of 2003 and W.P.(S) No.5329 of 2007, whereby, without touching the merits of the case, the Hon'ble Single Judge has dismissed both the writ applications on the ground of territorial jurisdiction, holding that neither the cause of action, nor any part thereof, had arisen within the territorial jurisdiction of the High Court of Jharkhand, and as such, the writ applications were not at all maintainable.
4. We may clarify at this place that since the merits of the cases have not been touched by the Hon'ble Single Judge, it would not be appropriate for the L.P.A. Court to discuss the merits of the case, and as such, we shall confine ourselves

only to those facts, as are necessary to determine whether the High Court of Jharkhand had the territorial jurisdiction to decide the writ applications filed by the writ petitioners.

5. The petitioner in W.P.(S) No.5329 of 2007, giving rise to the L.P.A No.181 of 2013, was working as Medical Officer in Rajendra Medical College & Hospital, Ranchi, and he had superannuated from service on 31.07.1999, from the post of Medical Officer, Field Demonstration Centre, P.S.M. Department, Rajendra Medical College, Ranchi. As he had superannuated prior to the bifurcation of the then State of Bihar, he made the representations before the Secretary-cum-Commissioner, Department of Health, Government of Bihar, on 05.08.1999 for fixation of his pay in a particular pay scale, w.e.f., 01.01.1996, and also for the payment of arrears of his salary. He also moved this Court in W.P.(S) No. 5339 of 2004, which was disposed of by order dated 01.10.2004, directing the respondents to consider the grievance of the petitioner and pass an order within six weeks. He gave subsequent representations and ultimately, by order dated 22.03.2005, the representation of the petitioner was rejected by the Under Secretary, Department of Health, Government of Bihar. The petitioner again submitted a review petition to the Commissioner-cum-Secretary, Department of Health & Family Welfare, Government of Bihar, Patna, which was also rejected on 16.01.2006. This compelled the petitioner to move this Court again in W.P.(S) No.5329 of 2007.

6. The petitioners in W.P.(S) No. 1594 of 2003 giving rise to L.P.A No.302 of 2013, were working as Male Family Planning Workers, and they were posted at Primary Health Centre (P.H.C), Panki, in the District of Palamau. Their salaries were withheld on the ground that their initial appointment was illegal. As this was done prior to the bifurcation of the erstwhile State of Bihar, when the High Court of Judicature at Patna, was exercising its jurisdiction in the area through its Ranchi Bench, they moved before the Ranchi Bench of Patna High Court for redressal of their grievances in C.W.J.C. Nos. 1956, 2040, 1394 and 2056 of 1990(R), which were disposed of by order dated 05.09.1991, with a direction to the Secretary, Health Department, Government of Bihar, to decide whether the appointments of the petitioners were legal or illegal, regular or irregular and a direction was also given for payment of their salaries for the period they had actually worked. Thereafter, a show-cause notice was given to the petitioners on 26.02.1992, and their services were terminated by order dated 30.05.1992. The petitioners submitted their representations initially to the Health Directorate, Government of Bihar, followed by several representations to different authorities. After the bifurcation of the State, a decision was taken on 30.3.2002, not to review the earlier decision taken by the State of Bihar. Aggrieved thereby, they moved this Court by filing W.P.(S) No.1594 of 2003.

7. The Hon'ble Single Judge in both these matters held that neither the cause of action, nor any part thereof had arisen to the writ petitioners within the territorial jurisdiction of the High Court of Jharkhand, and dismissed both the writ

applications as not maintainable, by the impugned Judgement dated 10.5.2013.

8. We have gone through the detailed Judgment passed by the Hon'ble Single Judge, relying upon the several decisions and precedents, particularly, those in Union of India & Ors. Vs. Oswal Woolen Mills Ltd. & Ors., reported in (1984) 2 SCC 646, State of Rajasthan & Ors. Vs. M/s. Swaika Properties & Anr., reported in (1985) 3 SCC 217, Oil & Natural Gas Commission Vs. Utpal Kumar Basu & Ors., reported in (1994) 4 SCC 711, CBI Anti Corruption Branch, Mumbai Vs. Narain Diwakar, reported in (1999) 4 SCC 656, Union of India & Ors. Vs. Adani Exports Ltd. & Anr., reported in (2002) 1 SCC 567, which showed that in the facts of those cases, the concerned High Court had no jurisdiction to entertain the writ applications. The Hon'ble Single Judge has also discussed in detail the meaning of the 'cause of action' and has also taken into consideration the Article 226 of the Constitution of India and Section 27 of the Bihar Reorganisation Act, 2000, in order to hold that no cause of action had arisen to the petitioners in both these writ applications within the territorial jurisdiction of the High Court.

9. The Hon'ble Single Judge has negated the arguments of the learned counsels of the writ petitioners that since the petitioners were appointed and posted in the offices which now form part of the territory of the State of Jharkhand, this High Court had the jurisdiction to entertain the writ petitions, on the ground that Act of 1976 by which Permanent Bench of High Court of Patna was established at Ranchi, would no longer operate in view of the enactment of the Bihar Reorganisation Act, 2000, as Section 25 of the Bihar Reorganisation Act, 2000 declares that on and from the appointed day, there shall be a separate High Court for the State of Jharkhand, and Section 34 of this Act provides that the High Court of Patna shall, as from the appointed day have no jurisdiction in respect of the transferred territory, except in cases provided in the Act. (Paras 36 & 37 of the Judgement).

10. We have given our serious thoughts to the propositions laid down by the Hon'ble Single Judge, and with all due respects, we cannot contribute to the aforesaid reasoning given by the Writ Court for deciding the territorial jurisdiction of this High Court. Whether in the facts and situations discussed in the foregoing paragraphs, this High Court could have exercised its writ jurisdiction or not, shall be squarely governed by Article 226 of the Constitution of India, which reads as follows:-

226. Power of High Courts to issue certain writs-

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) 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.

(3)

(4)

11. A plain reading of Article 226(2) of the Constitution of India, clearly shows that the High Court has the power while exercising the writ jurisdiction with respect to the cause of action arising within its territorial jurisdiction, either wholly or in part, to issue directions, orders or writs to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is not within its territories, i.e., even outside the territorial jurisdiction.

12. As such, whether in the facts of the present cases, this Court shall have the Jurisdiction or not, shall not depend on the fact that the final decisions in the matters were taken by the authorities in the State of Bihar, as even after coming into force of the Bihar Reorganisation Act, 2000, if any decision of the authorities of the State of Bihar, gives rise to a cause of action, or any part thereof, in the State of Jharkhand, by virtue of the power under Article 226(2) of the Constitution of India, directions, orders or writs may be issued against the authorities in the State of Bihar. As such, the only question that arises for determination in these appeals, is whether the cause of action, or the part thereof, had arisen to the writ petitioners in the facts of their respective cases.

13. The fact, however, remains that the services of the petitioners in W.P.(S) No.1594 of 2003 were terminated while they were posted in the District of Palamau, within the territorial jurisdiction of the High Court of Jharkhand, and so far as the petitioner in W.P.(S) No.5329 of 2007 is concerned, he was posted in Rajendra Medical College, Ranchi, and also superannuated from the service from Rajendra Medical College, Ranchi. After coming into force of the Bihar Reorganisation Act, 2000, both these places admittedly fell within the territory of the State of Jharkhand, and thus, within the territorial jurisdiction of the High Court of Jharkhand. Prior thereto, the petitioners in both the writ applications were admittedly amenable to the Ranchi Bench of the Patna High Court, and they had also approached the Ranchi Bench of the Patna High Court on different occasions with some directions passed by the then Ranchi Bench of Patna High Court.

14. The Hon'ble Single Judge has tried to define the 'cause of action' with the help of several precedents, in order to come to the conclusion that no cause of action or any part thereof, had arisen to the writ applications in both these L.P.As.

15. We are unable to subscribe to this proposition also laid down by the Hon'ble Single Judge, for the reasons that taking into consideration the fact that the services of the writ petitioners in one writ application were terminated, though by the erstwhile State of Bihar, the effect thereof was on the writ petitioners, who were posted at the place, which is admittedly now within the territory of the State of Jharkhand. The writ petitioner in another writ application had also worked and superannuated from Ranchi. Admittedly, if he had been wrongly denied of his legitimate dues, by the authorities of State of Bihar, the consequences befell upon him, at the place which is now within the territory of the State of Jharkhand. We fail to understand as to how in the backdrop of these facts the Writ Court could come to the conclusion that the cause of action or any part thereof had not arisen within the territorial jurisdiction of this High Court.

16. Section 27 the Bihar Reorganization Act, 2000, clearly provides as follows:-

"27. Jurisdiction of High Court. - Jharkhand High Court shall have, in respect of any part of the territories included in the State of Jharkhand, all such jurisdiction, powers and authorities as, under the law in force immediately before the appointed day, are exercised in respect of that part of the said territories by the High Court at Patna."

17. Even in view of the provision quoted above, the remedy, if any, to the writ petitioners lay in the High Court of Jharkhand only, as the same authority was being exercised by the Patna High Court, through its Ranchi Bench. Learned counsel for the State of Bihar, also very fairly conceded that prior to 2000, the writ petitioners had the remedy before the Ranchi Bench of Patna High Court only.

18. In view of the aforesaid discussions, we find and hold that the Hon'ble Single Judge has erred in law in holding that no cause of action or any part thereof had arisen to the writ petitioners within the territorial jurisdiction of the Jharkhand High Court. We hereby, hold that the cause of action, if any, arose to the writ petitioners within the territorial jurisdiction of this Court.

19. Consequently, the impugned Judgment dated 10.05.2013, passed by the Hon'ble Single Judge, in W.P.(S) No.1594 of 2003 & W.P.(S) No.5329 of 2007 cannot be sustained in the eyes of law, and the same is accordingly, set aside.

20. Both the aforesaid writ applications under these appeals, are remitted before the Hon'ble Single Judge, for adjudicating them on merits afresh, as we have already clarified that since the merits of the cases have not been dealt with by the Hon'ble Single Judge, we have not ventured to enter therein.

21. Both the these Letters Patent Appeals accordingly, stand allowed.