
(2019) 09 CAL CK 0173

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 10054 (W) Of 2019

Manas Kumar Dhar

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Citation : (2019) 09 CAL CK 0173

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Jaayanta Das, Soumita Ghosh, Susanta Kumar Gangopahdyay

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioner was a member of the Indo-Tibetan Border Police Force. He was appointed in the year 2007. He joined service on 14th January, 2008 and posted at Uttarakhand. Thereafter, he was transferred to various places.

By an order dated 14th January, 2019, the petitioner was declared unfit by the Medical Board due to Alcohol Dependence Syndrome (Relapse). He was declared unfit for continuance of service in the Force.

The petitioner is aggrieved by the same. The petitioner preferred an appeal against the said order which was turned down by the respondents.

The learned advocate appearing on behalf of the respondents raises a preliminary objection with regard to the maintainability of the writ petition before the Calcutta High Court.

It has been submitted that the cause of action of the instant proceeding arose outside the jurisdiction of the Calcutta High Court. The petitioner was detected with the Alcohol Dependence Syndrome at Noida. He was treated at Noida and the order of the Medical Board declaring him unfit for continuance in the service

was passed at Noida.

Accordingly, no part of the cause of action arose within the jurisdiction of the Calcutta High Court.

The learned advocate appearing on behalf of the petitioner submits that the petitioner is a permanent resident of Midnapur in the State of West Bengal. The letter of appointment was issued in his favour in West Bengal. Being a resident of West Bengal the principle of forum conveniens ought to be applied in his case.

The petitioner has relied upon a judgment delivered in this Court in the matter of Sadhan Kumar Kundu -vs- Union of India reported in 2012 (4) CHN (CAL) 186 wherein the Court held that the Court can entertain an application on the concept of "Forum Conveniens". The petitioner who lives in Kolkata and works in the same City should not be driven to file a writ before any other High Court where the Principal Bench is situated.

The learned advocate appearing on behalf of the respondents relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of Oil and Natural Gas Commission -vs- Utpal Kumar Basu & Ors. reported in (1994) 4 SCC 711 wherein the Court held that mere sending and receiving of a message at Calcutta would not constitute an integral part of the cause of action.

The respondents further rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of Alchemist Limited & Anr. -vs- State Bank of Sikkim & Ors. reported in (2007) 11 SCC 335 wherein the Court decided that for the purpose of deciding whether the facts averred by the petitioner would or would not constitute a part of cause of action, one has to consider whether such facts constitute a material, essential or integral part of the cause of action.

In the case at hand, apart from the service of an order upon the petitioner at Midnapur, West Bengal no part of the cause of action arose within the territorial limits of this Court.

The principle of forum conveniens will not be applicable in the facts and circumstances of the instant case as the cause of action of the instant case arose completely outside the jurisdiction of the Calcutta High Court.

In view of the above, in my considered opinion, this Court does not have the territorial jurisdiction to entertain and determine the issue raised in the instant writ petition.

Accordingly, W.P. 10054 (W) of 2019 is dismissed on the ground of lack of territorial jurisdiction.

However, dismissal of the writ petition will not stand in the way of the petitioner to approach the appropriate forum, in accordance with law, if so advised.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.