
(2017) 02 AHC CK 0253
In the Allahabad High Court
Case No : 1802 of 2010

MANJESH

APPELLANT

Vs

UNION OF INDIA & OTHERS

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

[Constitution of India](#), [Article 226](#), [Article 226](#) - Power of High Courts to Issue certain writs - Power of High Courts to Issue certain writs

Citation : (2017) 02 AHC CK 0253

Hon'ble Judges : Tarun Agarwala, Vivek Chaudhary

Bench : Division Bench

Advocate : Bhoopendra Nath Singh, Devendra Pratap Singh, Mahendra Bahadur Singh, Yogendra Kumar

Final Decision : Dismissed

Judgement

1. The appellant has filed the special appeal against the judgment of the learned Single Judge whereby her writ petition was dismissed on the ground that the writ Court had no territorial jurisdiction to entertain the writ petition under Article 226 of the Constitution of India. The facts in brief was that the appellant was working as a Mahila Constable in Central Industrial Security Force at Hyderabad. A termination order dated 4th July, 2009 was passed by the Commandant at Hyderabad. The appellant filed an appeal, which was dismissed by the Inspector General, Mumbai by an order dated 13th September, 2009. Thereafter, the appellant preferred a revision, which was rejected by an order 9th October, 2009 by the Assistant Director General, New Delhi. All these orders have been challenged by the appellant in the writ petition contending that a part of cause of action arose in the State of Uttar Pradesh, inasmuch as the order of termination was received by her at her native place at Auraiya, which is in the State of Uttar Pradesh. Not only that, the appeal and the representation was sent by her from Auraiya through post and the order rejecting her appeal and representation was also received by her at Auraiya. It was thus, contended that the High Court of

Judicature at Allahabad had the territorial jurisdiction to entertain the writ petition and decide the matter on merits.

2. The writ Court however, dismissed the writ petition on the ground that no cause of action or part of cause of action arose in the State of Uttar Pradesh and, therefore, the writ Court had no territorial jurisdiction to decide the matter. The appellant, being aggrieved, has filed the present appeal under Chapter 8, Rule 5 of the Rules of the Court.

3. In support of his submission, the learned counsel for the appellant has filed photostat copies of the envelope to show that the impugned orders was received by the appellant at Auraiya. On this basis, the appellant contends that a cause of action or at least part of cause of action arose in the State of Uttar Pradesh.

4. Having heard the learned counsel for the appellant, we are of the opinion that the jurisdiction conferred on the High Court under Article 226 of the Constitution does not depend upon the residence or location of the writ petitioner applying for the relief. It depends on the person or authority against whom a writ is issued within the territories of the High Court. Thus, it is not permissible to read under Article 226 of the Constitution, the residence or location of the person affected by the order in order to determine the jurisdiction of the High Court. The jurisdiction depends on the person or authority passing the order.

5. The learned counsel for the appellant have cited a decision of the Supreme Court in Naval Kishore Sharma Vs. Union of India and others, JT 2014 (9) SC 46, wherein it was held that even if a part of cause of action arises in the State of Uttar Pradesh, the writ would be maintainable. The said decision is on the principle that when a person or authority against whom the writ is to be issued is located outside its territorial jurisdiction, if the cause of action partly or wholly arises then such a writ could be issued, which would be in consonance with Section 20(c) of the Code of Civil Procedure.

6. There is no quarrel with the aforesaid principle. Assuming without admitting that a part of cause of action arose in the State of Uttar Pradesh, on account of the fact that the impugned orders was received by the appellant in the State of Uttar Pradesh, this Court can still refuse to exercise its discretionary jurisdiction by invoking the doctrine of "forum convenience".

7. In Kusum Ingots & Alloys Ltd. Vs. Union of India and another, 2004 (6) SCC 254, the Supreme Court after considering the provision of Article 226(2) of the Constitution considered the import of the words "cause of action" in reference to Section 20(c) of the Code of Civil Procedure and held that even if a small fraction or cause of action accrues within the jurisdiction of the Court, the Court will have the jurisdiction to entertain the matter. However, such small part of cause of action by which jurisdiction is imposed upon the High Court may not be itself be the determinative factor compelling the High Court to decide the matter on merit. In appropriate cases the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of "forum convenience".

8. In the instant case, the appellant was supposed to be on duty at Hyderabad where disciplinary proceedings were initiated and the order of punishment was passed at Hyderabad. The appeal was decided in Mumbai. The representation was decided in Delhi. The respondents are outside the territorial jurisdiction of this Court. The mere fact that the appellant may have received the impugned orders by post in Uttar Pradesh by itself will not allow the appellant to invoke the discretionary jurisdiction under Article 226 of the Constitution. The appropriate remedy is to approach the Court where the defendants resides.

9. Consequently, we do not find any error in the impugned order. The appeal fails and is dismissed.