

(2003) 12 JH CK 0031
In the Jharkhand High Court
Case No : Writ Petition (S) No. 32 of 2002

Md. Sadique

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 645

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; P.D. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In order to appreciate the question raised by Mr. P.D. Agarwal learned counsel appearing for the respondents by way of preliminary objection regarding the maintainability of the present writ petition before this Court, I consider it pertinent to mention here some relevant facts arising out of the present writ petition.

2. The petitioner, resident of the district of Koderma within the State of Jharkhand, was a constable in Central Industrial Security Force Unit, Shar Centre, Sriharikota, Andhra Pradesh. While the petitioner was posted at Sriharikota, a charge memo under the CISF Rules dated 17.6.1999 was issued and subsequently the petitioner was awarded punishment of fine equivalent to seven day's wages. Thereafter, appeal filed by the petitioner against the said punishment was rejected by the Commandant, CISF (Ministry of Home Affairs) Unit Shar Centre Sriharikota 524124 (A.P.) vide order dated 2.8.1999. Again for some other charges, another memorandum of charge was served on the petitioner by the Senior Commandant, CISF (Ministry of Home Affairs) Vith RES.BN. Arakkonam while the petitioner was posted at Vellore within the State of Tamil Nadu and ultimately by a final order dated 19.1.2001 as contained in Annexure-8 to the writ application the petitioner was awarded penalty of removal

from Service. Thereafter, the petitioner is said to have filed appeal before the Deputy Inspector General of Police CISF which was also rejected vide order dated 13.4.2001 and copy of the said order was communicated to the petitioner which has been annexed as Annexure-9 to the writ petition.

3. Mr. P.D. Agarwal learned counsel for the respondents has raised preliminary objection regarding the maintainability of the present writ petition before this Court on the ground that since no part of cause of action has arisen within the State of Jharkhand, therefore, this Court has got no territorial jurisdiction to entertain the writ petition filed by the petitioner.

4. Mr. Rajiv Ranjan learned counsel for the petitioner submitted that since the petitioner is resident of the State of Jharkhand and after removal of service he was residing in the district of Koderma within the State of Jharkhand and from there only he filed an appeal against the order of removal from service and also because the order of appellate Court as contained in Annexure-9 to the writ petition dismissing his appeal was communicated to the petitioner in the address of his native village situated within the State of Jharkhand therefore, this Court has got jurisdiction to entertain this writ petition.

5. The Supreme Court in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, has held that:--

"In order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the Court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear that each and every fact pleaded 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 pleaded are such which have a nexus or relevance with the Us that is involved in the case. 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 on the Court concern."

6. Practically on the similar nature of the facts as in the present case the Division Bench of the Patna High Court in the case of Ex-Major Ganesh Prasad Sinha v. The Union of India and Ors. reported in 1993 (1) PLJR 85 relying on its earlier judgment in Nand Kishore Singh v. The Union of India and Ors. reported in 1983 PLJR 54(DB), held that consequence of the order of dismissal and removal from service have already been taken place within the territorial constitute accrual of the part of the cause of action and thereby the High Court refused to entertain the writ petition.

7. The learned counsel for the petitioner has relied on the decision of the Division Bench of the Patna High Court in the case of Brig. Ashok Malhotra v. Union of India and Ors. reported in 1997(2) PLJR 595. The contention of the petitioner is that since the appellate order was communicated to the petitioner on the address

of his village home situated within the State of Jharkhand, therefore, in view of the decision in Brig. Ashok Malhotra v. Union of India (Supra) this Court has got jurisdiction to entertain the present writ application. But, in my opinion, the facts of the case in the case of Brig. Ashok Malhotra is totally different from the facts of the present case. In the case of Brig. Ashok Malhotra (Supra) the order was served on the applicant at Danapur Cantt. while he was posted there and the effect of the supercession and rejection of statutory complaint was at Danapur Cantt, whereas in the present case the appellate order was communicated to the petitioner on the address of his village home, where he was residing after removal from the service and therefore, the case of Brig. Ashok Malhotra is quite distinguishable from the facts of the present case.

8. It is relevant to mention at this juncture that the Supreme Court has in very strong words deprecated the practice of the High Court invoking its jurisdiction merely on the ground of residence of the petitioner. The strong view of the Supreme Court in this regard may be seen in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, .

9. In respectful agreement with the decision of the Supreme Court in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, and Ex-Major Ganesh Prasad Sinha v. The Union of India and Ors. reported in 1993 (1) PLJR 85 I hold that since no part of cause of action arose within the territorial jurisdiction of Jharkhand State and only because the petitioner resides in the district of Koderma within the State of Jharkhand and the appellate order was communicated on the address of his village home situated within the State of Jharkhand will not amount accrual of the part of the cause of action for entertaining the writ application before this Court. Accordingly this writ application is dismissed as not maintainable.