
(2009) 02 AHC CK 0125
In the Allahabad High Court
Case No : Special Appeal No. 39 of 2009

Namita Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 02 AHC CK 0125

Hon'ble Judges : Janardan Sahai, J and Rakesh Sharma, J

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—This is an appeal against an order of the learned single judge of this Court dismissing the writ petition filed by the appellant on the ground that the High Court of Judicature at Allahabad does not have jurisdiction to decide the case as no part of the cause of action has arisen within the territorial limits of its jurisdiction.

2. It appears that the appellant had applied for admission into the Special B.T.C. Training Course under the 10% quota reserved for Shiksha Mitra. The appellant was also provisionally selected, but by an order dated 2nd December, 2008 the provisional selection of the appellant was cancelled and her candidature was rejected by the order of the Principal, District Institute of Education and Training (in short "DIET), Rai Bareilly.

3. The learned single judge has taken the view that as the entire process of selection for the admission into Special B.T.C. Training Course took place at Rae Bareilly and the impugned order has also been passed by the Principal, DIET, Rae Bareilly, the cause of action wholly arose within the territorial limits of Rai Bareilly, which is one of the districts falling under the jurisdiction of the Lucknow Bench of the High Court of Judicature at Allahabad and as such the petition is not maintainable at Allahabad.

4. Sri Ashok Khare, learned senior Advocate, assisted by Sri Siddharth Khare,

learned counsel for the appellant has submitted that the view taken by the learned single judge is a very narrow view of the concept of cause of action. We have heard the learned Standing counsel also.

5. To appreciate the controversy, it is necessary to examine the nature of the right involved and its infringement and the definition of cause of action. Relief in any civil action can be granted only upon establishment of two things: First that the plaintiff or the petitioner has a legal right and second that that right has been infringed or in some cases that there is a threat to the legal right. In the present case the nature of the right involved is a right to be considered for admission into the Special B.T.C. Training Course under the 10% quota reserved for Shiksha Mitra. Under the terms of the government order 10.7.2007 one of the eligibility conditions for being granted admission into the Special B.T.C. Training Course is three years experience of working as Shiksha Mitra and also that the candidate is presently engaged as a Shiksha Mitra. The appellant had filed a certificate issued by the Principal, Prathamik Vidyalaya Shikarpur, Auraiya, Fatehpur countersigned by the Assistant Basic Shiksha Adhikari, Fatehpur in support of her experience and of the fact that she was currently engaged as a Shiksha Mitra. The Principal, DIET, Rai Bareilly had some doubt about the genuineness of the certificate and called for a report from the District Basic Shiksha Adhikari, Fatehpur. The District Basic Shiksha Adhikari, Fatehpur submitted a report dated 25.10.2008. On the basis of that report the Principal, DIET found to the effect that the appellant was not currently engaged as a Shiksha Mitra. Thus, the appellant was found ineligible for admission and the Principal, DIET, Rai Bareilly passed the impugned order.

6. Cause of action has not been defined in any statute. It has however been judicially interpreted in a large number of decisions. The definition of cause of action in *Read Vs. Brown*, (1889) 22 QBD 128 given more than a century back has been accepted by the courts ever since. The term was explained as;

"Every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

7. The aforesaid definition is in wide terms. Every fact, therefore, which goes to constitute the legal right set up by the plaintiff or petitioner and every fact, which constitutes an infringement of that right constitutes a part of the cause of action. Such facts would be only those essential facts without which the legal right claimed by the petitioner or plaintiff would not be constituted or such facts which constitute the breach of the legal right claimed. Any of such essential facts would form part of the cause of action and would have to be pleaded if the plaintiff is to succeed. Courts have not taken a narrow view of "cause of action" as meaning merely the infringement of the legal right; in which case the place of the cause of action would only be the place where the right is infringed. No doubt part of the cause of action also arises at the place the right is infringed. In *M/s. Kusum Ingots and Alloys Ltd. Vs. Union of India and another*, A.I.R. 2004 SC 2321 cause of action was defined in paragraph 6 as under;

"6. Cause of action implies a right to sue. The material facts, which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily."

8. In the present case the petitioner cannot succeed unless it is established that she had three years experience as Shiksha Mitra and was also currently engaged as Shiksha Mitra. This is one of the essential facts upon which the right of the petitioner to be considered for admission in the Special B.T.C. Training Course is based and which the petitioner would have to prove in order to succeed. This fact is, therefore, a part of the cause of action. According to the petitioner she had worked for three years as Shiksha Mitra at Fatehpur and was also currently engaged there at the relevant time. The cause of action, therefore, has arisen at least partly at Fatehpur. The certificate issued by the Fatehpur authorities regarding the experience of her working or regarding her being currently engaged as Shiksha Mitra in this case is merely evidence of the fact that she has worked but evidence of a fact is to be distinguished from the fact itself.

9. The infringement of the right to be considered for admission was in this case done by the order of the Principal, DIET, Rae Bareilly. The infringement of the right, therefore, occurred at Rae Bareilly. Part of the cause of action has therefore arisen at Rae Bareilly. The writ petition could therefore be filed in the Lucknow Bench. The report of the Basic Shiksha Adhikari, Fatehpur about the work experience of the petitioner as Shiksha Mitra is a finding on the basis of verification of certain facts. The facts about which the report has been given may be a component of the legal right of the petitioner but the report even if it were favourable would not be a component of the legal right nor would the report though adverse, infringe by itself any legal right of the petitioner for it would not be operative as it was for the Principal, DIET to accept it or not. The single judge was, therefore right to this extent that the report of the Basic Shiksha Adhikari, Fatehpur would not constitute a part of the cause of action.

10. As we have held that part of the cause of action has arisen at Fatehpur within the territorial jurisdiction of the High Court of Judicature at Allahabad, the writ petition is also maintainable at Allahabad. We therefore allow the special appeal and set aside the order of the learned single judge, dated 18.12.2008. The learned single judge may now decide the matter on merits.