
(2015) 04 AHC CK 0042
In the Allahabad High Court
Case No : WRIT - A No. 16640 of 2015

Raj Bahadur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 5 ADJ 245 : (2015) 3 ALJ 752 : (2015) 3 AWC 2881

Hon'ble Judges : V.K. Birla, J

Bench : Single Bench

Advocate : Rakesh Kumar Singh and Vinay Malviya, for the Appellant; Gyan Prakash, A.S.G.I., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vivek Kumar Birla, J.—Heard Sri Vinay Malviya, learned counsel for the petitioner and Sri Gyan Prakash, learned A.S.G.I. for all the respondents.

2. The petitioner was appointed in Central Reserve Police Force on 19.4.2011. After availing 15 days casual leave from 18.7.2012 to 4.8.2012 the petitioner was declared "deserter" w.e.f. 8.8.2012 after overstaying leave. By registered post letter dated 9.1.2013 sent at his home he was required to appear before the Inquiry Officer on 25.1.2013. The petitioner did not appear and preliminary hearing concluded ex-parte. By notices dated 29.1.2013 and 21.2.2013 the petitioner was directed to submit written statement or representation in his defence, however, the same was also received back with the remark "praptakarta kahi bahar gaye hain, preshak ko vapas."

3. Subsequently, charges against the petitioner were found proved and he was dismissed from service on 27.4.2013. In the impugned order it has been clearly mentioned that the information sent to the petitioner by registered post was returned back inspite of "bar bar jane par praptkarta se mulakat nahi hoti atah preshak ko vapas". The petitioner preferred an appeal against the aforesaid

dismissal order dated 27.4.2013, which was also dismissed by order dated 31.3.2014. The revision preferred by the petitioner was also dismissed by order dated 16.9.2014.

4. At the very outset, Sri Gyan Prakash states that no cause of action has arisen in the State of U.P. as the petitioner was posted at Imphal and the orders were also passed by the authority at Imphal (Manipur) and therefore this Court has no territorial jurisdiction to entertain the present writ petition.

5. Hon"ble Full Bench in the case of Rajendra Kumar Mishra Vs. Union of India (UOI) and Others, (2005) 5 AWC 4542 : (2005) 104 FLR 71 : (2005) 1 UPLBEC 108 has held as under:--

"13. In our opinion merely because the petitioner is presently residing in Ballia this will not give jurisdiction to this Court in view of the Seven Judge Bench decision of the Supreme Court in Lt. Col. Khajoor Singh Vs. The Union of India and Another, AIR 1961 SC 532 : (1961) 2 SCR 828 . In paragraph 13 of the aforesaid decision the Supreme Court observed:--

"Now it is clear that the jurisdiction conferred on the High Court by Article 226 does not depend upon the residence or location of the person applying to it for relief, it depends only on the persons or authority against whom a writ is sought being within those territories. It seems to us therefore that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Article 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Article 226."

6. A reference may also be made to para 16 which quoted as under:--

"16. In Aligarh Muslim University v. Vinay Engineering Enterprises (P) Ltd., (1994) 4 SCC 710 the Apex Court noticed that the contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, and even the contracts provided that in the event of dispute the Aligarh court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta had no jurisdiction in the matter."

7. In the case of Nawal Kishore Sharma Vs. Union of India (UOI), (2014) AIRSCW 4713 : (2014) 9 SCALE 244 : (2014) 9 SCC 329 the Hon"ble Apex Court

has held that in order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction. The Hon'ble Apex Court further held that the case has to be decided on its own merits while entertaining the territorial jurisdiction. In the case of Nawal Kishore Sharma (supra) no preliminary objection was raised by the Union of India at the initial stage and the interim order passed by the Hon'ble High Court directing payment of certain amount was also complied with by the respondent authority. Subsequently, after a long time when the matter was being disposed of, objection of territorial jurisdiction was raised. Paragraph 16 of the said judgment is quoted hereinunder:--

"16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."

8. The contention of learned counsel for the petitioner in reply is that since the petitioner has received the dismissal order at Allahabad, therefore, this Court has jurisdiction to entertain the same. Learned counsel for the petitioner has relied upon a judgment of this Court dated 24.4.2012 passed in Special Appeal No. 742 of 2012 (Jeeut Yadav v. Union of India and others).

9. In my opinion, the facts of the case and grounds to assert that this Court has territorial jurisdiction were different except the ground that the petitioner is a permanent resident of State of U.P. and this ground alone cannot be a ground to entertain this petition. Even otherwise, while entertaining the petition once the preliminary objection regarding territorial jurisdiction is raised at the preliminary stage itself, the service of any order within the State of U.P. cannot be a ground to entertain the present petition by this Court.

10. Learned counsel for the petitioner has emphatically asserted that none of the notices was ever served to the petitioner on its local address. If that is so the service of notice within the State of U.P. cannot be claimed by the petitioner. In the present case, it is to be noticed that on one hand, the petitioner is claiming that he did not receive any notice or show cause notice sent by the respondent authorities, and on the other hand it is not in dispute that he had received dismissal order, the appellate order as well as the revisional order at the same local address. Therefore, story put up by the petitioner that he did not receive any notice is not worth belief. As such, it is very much clear that the petitioner has not acted in bona fide manner and has not come with clear hands before this Court to claim territorial jurisdiction of this Court.

11. In the facts and circumstances of the case the present petition is liable to be

dismissed on the ground of territorial jurisdiction and is dismissed accordingly.

12. No order as to costs.