

**(1996) 02 PAT CK 0017**

**In the Patna High Court**

**Case No : C.W.J.C. No"s. 1495 and 10761 of 1992**

R.K. Jha and K.T.V. Prasad

APPELLANT

Vs

H.D. Tanpe and Others

RESPONDENT

**Date of Decision : 06-02-1996**

**Acts Referred:**

Bihar Shops and Establishments Act, 1953 — Section 26  
Civil Procedure Code, 1908 (CPC) — Section 20

**Citation : (1997) 1 LLJ 319**

**Hon'ble Judges : J.N. Dubey, J**

**Bench : Single Bench**

**Advocate :** Birendra Kumar Sinha, Ratan Prasad Singh, Rajeshwar Ray and Rajesh Tiwari, S.J. Rahman, Govt. Pleader No. 7 and R.K. Jha, J.C. to CP.VII, for the Appellant; Sunil Srivastava, for the Respondent

**Final Decision : Allowed**

## **Judgement**

J.N. Dubey, J.—The point for determination in these two writ petitions being common they are being disposed of by a common judgment

2. It appears that the petitioners, R.K. Jha and K.T.V Prasad, were working as Medical Sales Representatives in Patna Depot of M/s Maharashtra Antibiotics and Pharmaceuticals Ltd, Nagpur (for short "Company"). On March 20, 1989 they were transferred from there to Kolhapur and Moradabad Depot of the Company, respectively. They raised a dispute before the Deputy Labour Commissioner, Patna, in which reconciliation proceedings were initiated. In the meantime, the company vide its order dated September 5, 1990 directed them to join their new places of posting immediately failing which their services would stand terminated . On November 5, 1990 their services were terminated on the ground that they failed to join their new places of posting. They filed complaints under Section 26 of the Bihar Shops and Establishments Act, 1953 before the respondent No.4, the Presiding Officer, Labour Court, Patna, which were dismissed on November 20 1991 by two separate but identical orders. Feeling

aggrieved the petitioners have approached this court for relief under Article 226 of the Constitution.

3. Heard the learned counsel for the parties and perused the record.

4. Learned counsel for the petitioners contended that the view of the respondent No. 4 that he had no territorial jurisdiction to decide the dispute, is wholly wrong and erroneous. According to him respondent No.4 has made out a new case in favour of the company to hold that in view of the fact, that the petitioners were posted at Laheriasarai the complaints could not be legally filed at Patna. I find substance in the argument of the learned counsel for the petitioners. The specific case of the company in the written statement filed before the respondent No. 4 was that the petitioners were working as Professional Service Representative at Laheriasarai, under the jurisdiction of the Patna Depot of the Company from where they were transferred to Kolhapur and Moradabad on March 20, 1989. Thus on the day of termination of their services petitioners were not working in any establishment within the State of Bihar and, as such, the provisions of Bihar Shops and Establishments Act, 1953, were not applicable. It was further claimed that in view of the fact that the services of the petitioners were terminated when they were working at Kolhapur Depot and Moradabad Depot of the Company, the Labour Court at Patna had no territorial jurisdiction to decide the dispute.

5. Thus the claim of the petitioners that they were working in Patna depot of the Company before their transfer to Kolhapur and Moradabad was specifically admitted by the Company in its written statement. This being so, respondent No. 4 was not legally justified in holding that in view of the fact that the petitioners were working at Laheriasarai he had no territorial jurisdiction to try the dispute. Both the writ petitions can be allowed on this finding alone but in view of the fact that the Company had challenged the territorial jurisdiction of the respondent No.4 on the ground that the petitioners were not working in any establishment under the State of Bihar at the time of termination of their services it will be appropriate to consider this aspect of the case also.

6. Admittedly the orders of termination of services of the petitioners were passed at Nagpur after they failed to comply with the orders of their transfer to Kolhapur and Moradabad. Thus it is to be seen whether the Labour Court, Patna will have territorial jurisdiction to decide the dispute in such circumstances. It is now well settled that situs of employment of the workman determines the territorial jurisdiction of the Tribunal in the case of Industrial and Labour disputes arising from the termination of such employment. In *Paritosh Kumar Pal v. The State of Bihar and Ors.* 1984 BLJ 435, A Full Bench of this Court after discussing entire case law on the point held thus:

"Applying the above, one of the primary tests is as to where the impugned order of the termination of service of a workman in effect operates. In *Rangavilas Motor's* case (Supra) the Supreme Court in terms noticed that though the original order of transfer and the subsequent order of termination of the services

of the workman were passed at Krishnagri in Kerela yet in effect it operated at Bangalore where the workman was employed. Consequently the situs of the Workman's employment in the case of the termination of his service is patently a paramount factor if not being wholly conclusive. It is within the area of employment that the order of termination operates and the workman ceases to be a workman and loses his right to hold the post and receive wages therefor. Therefore on the anvil of the principle of where the impugned order operates the situs of employment of the workman is patently significant. Can it possibly be said that the order of termination of a workman does not operate within the area of his employment? The answer, therefore has to be in favour of the Tribunal having territorial jurisdiction over the place of work or the situs of employment."

"Again on the second principle attached to the industrial dispute having some nexus with the territory of the State, the situs of employment of the workman assumes single importance. Once a firm finding is arrived at that the workman was employed within a specific territory or State, the termination of his services therein has an obvious and direct nexus with such territory or such State. Consequently on the nexus test also the situs of employment of the workman has a direct connection with the territory where such employment is terminated.

"Coming now to the third principle, it appears to me that by binding precedent it is now well established that the well known test of jurisdiction of the Civil Court would be equally attracted to the situation in the absence of any provision in the Act on the point..... In particular, Clause (c) of Section 20 of the Code provides that a suit shall be instituted in the Court within the local limits of whose jurisdiction, the cause of action wholly or in part arises. It is axiomatic that the territory within which the services of an employee are wrongfully terminated would be the territory where the cause of action substantially arises and in a case if not wholly but a part of the cause of action so arises. On this acid test also the situs of employment of the workman would forthwith give jurisdiction to the Civil Courts and a fortiori to the Tribunals and the Labour Courts under the Act."

7. The Full Bench while considering the approach which should be adopted for interpretation of a social legislation enacted largely in the beneficent interest of the workman further held:

"In the wake of the above, the raw reality which is to be faced is whether the situs of the employment of a poor workman should determine the jurisdiction or exclusively the registered head office or the distinct business establishments of the employer industry. It would be patent that any stringent construction to the contrary would force the workman, whose services have been terminated, to seek redress at a remote head office of the industry even with regard to the dispute arising right at his door steps of the place of work; as in the present case, the employee industry is located at Calcutta and the workman at Patna. However if the matter is carried to its logical end, a case may be visualised where the workman was even further away in Kerala. Would it then be fair to

compel him to seek his remedy not where he is actually employed and working but necessarily where the head office of the industry may be located, and as in the present case, far away in Calcutta. I feel sure that the tilt herein must necessarily be in favour of the workman on the firm foundation of the situs of employment rather than on the technicalities of the registered office of the industry which may well even be a multi national company."

8. The case is squarely covered by the above Full Bench decision. In view of the fact that the petitioners were working in the Patna Depot of the Company their services will be deemed to Have been terminated at Patna and as such the Labour Court, Patna will have territorial jurisdiction to decide the dispute. The Bihar Shops and Establishments Act, 1953 will also be applicable to the case for the same reason. In other words, in view of the fact that the services of the petitioners were terminated at Patna it cannot be legally claimed that the petitioners were not employed in any establishment in the State of Bihar at the time of termination of their services. Thus both the preliminary objections raised by the Company in their written statement before the respondent No. 4 are without substance and are liable to be rejected. Coming to the findings of the respondent No. 4 that in view of the fact that the petitioners were posted at Laheriasarai, Patna. Labour Court will have no jurisdiction to decide the dispute, as stated above, no such plea was raised by the Company in its written statement. On the other hand, it had admitted that the petitioners were arrested at Laheriasarai within the jurisdiction of Patna Depot. This fully supports the claim of the petitioners that they were employed at Patna Depot of the Company from where entire business of the Company, in the State of Bihar, was managed and that the petitioners were merely working as Travelling Sales Representatives, in Laheriasarai and its surrounding areas. The claim of the petitioners that there was no establishment of the Company in Laheriasarai and entire activities of the Company were controlled from Patna Depot has also not been controverted by the Company. In this view of the matter, Patna Labour Court will have territorial jurisdiction to decide the dispute.

9. The respondent No. 4 has misinterpreted the decision of this Court in Tata Robins Fraser Co. Ltd. and The Tata Iron and Steel Co. Ltd. Vs. The residing Officer, Labour Court and Another, to hold that he has no jurisdiction to decide the dispute in view of the provisions of Section 20 C.P.C. On correct interpretation this judgment supports the case of the petitioners that Patna Labour Court had territorial jurisdiction to decide the dispute. Under Clause (c) of Section 20 C.P.C. proceedings can be initiated in the Court or Tribunal where cause of action wholly or in part arises. In view of the admitted position the petitioners were working within the jurisdiction of Patna Depot of the Company from where their Services were terminated, cause of action wholly arose within the jurisdiction of Labour Court, Patna, but even assuming that the petitioners were actually working at Laheriasarai, at least part of cause of action arose at Patna, in view of the fact that Laheriasarai was within the jurisdiction of Patna Depot. Thus respondent No.4 has failed to exercise jurisdiction legally vested in

him.

10. The impugned orders of the respondent No.4 suffer from an error apparent on the face of the record and are therefore liable to be quashed.

11. In the result both writ petitions succeed and are allowed. The orders dated November 20, 1991 of the respondent No. 4 are quashed and he is directed to decide the dispute afresh in accordance with law.

No order as to costs.