
(2003) 04 AHC CK 0034
In the Allahabad High Court
Case No : C.M.W.P. No. 16528 of 2003

Saroj Mahanta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Constitution (Forty-Second Amendment) Act, 1976 — Section 113(2), 207
Constitution of India, 1950 — Article 226(2)

Citation : (2003) 5 AWC 4324

Hon'ble Judges : Ghanshyam Dass, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : Ashok Kumar, for the Appellant; B.N. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition has been filed for issuing a direction to the Respondent No. 1 to intervene and examine the WOES of the Petitioner (Annexure-5), and to dispose of the same by a reasoned order before 30th April, 2003, and meanwhile, to rescind the impugned premature posting order.

2. Facts and circumstances, giving rise to this case are that Petitioner is serving in Medical Core of the Armed Forces and is posted in Military Hospital Kamptee (Nagpur). Petitioner has been transferred vide impugned order dated 10th March, 2003 (Annexure-2) to Udampur and she has been asked to join on transferred place on or before 13th May, 2003. Hence this petition.

3. The transfer order has been challenged on following grounds:

I. She had been posted in Kamptee only one year and nine months before, and in normal course she should have been permitted to continue there at least for 3-4 years.

II. Transfer order is in violation of the transfer policy dated 12th November, 2002 (Annexure-3).

III. Petitioner suffers from Bronchial Asthma and the climatic condition of the place of transfer is not suitable to her.

IV. Her husband is posted in Delhi Cantt., thus it would be a case of separation of spouses.

V. Her old parents are staying at Gwalior (Madhya Pradesh), which is nearer to her present place of posting and thus the transfer would force the Petitioner to stay far away from them.

VI. Transfer order would have adverse effect on the education of her children.

VII. The transfer order has been passed at the behest of Respondent Nos. 4 and 5 who have been impleaded by name as they were having some grudge against her, and thus, the transfer order suffers from mala fide.

4. Learned Counsel for the Petitioner has raised the same issues which have been taken in the grounds and submitted that the transfer order is liable to be quashed and the Respondent No. 1 should be directed to intervene and examine the WOES of the Petitioner (Annexure-5).

5. On the contrary, Shri Shishir Kumar Singh, learned Counsel for the Respondent Nos. 1, 2 and 3 has raised the preliminary objection regarding the maintainability of the writ petition contending that Petitioner at present is posted at Kamptee (Nagpur). None of the Respondents resides nor has office, nor any cause of action fully or partly has arisen within the territorial jurisdiction of this Court, thus this Court lacks territorial jurisdiction. The purpose of filing the writ petition before this Court is only to harass the Respondent Nos. 4 and 5 who have been impleaded by name and nothing else as Petitioner has not revealed under what circumstances or for what reason she has chosen to file a writ petition at Allahabad when there is a Bench of Bombay High Court in Nagpur itself. The transfer order does not violate any legal right nor it is justiciable in court of law. Petitioner has not sought the relief of quashing of the impugned transfer order. She has sought only a direction to the Respondent No. 1 to intervene and decide her WOES, without asking for quashing the basic order of transfer the writ itself is not maintainable. Therefore, petition is liable to be rejected.

6. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

7. Before proceeding further, we would like to make it clear that undisputed facts remain that Petitioner is at present posted at Kamptee (Nagpur). None of the Respondents resides nor has office, nor the cause of action even partly has arisen within the territorial jurisdiction of this Court. Petition has been filed on the assumption that as Chief of the Army Staff can be sued anywhere in India, this Court has jurisdiction to entertain the writ petition. Basic order of transfer dated 10th March, 2003, has not been sought to be quashed. Only relief has been sought to direct the Respondent No. 1 to decide her WOES.

8. Clauses (1) and (2) of Article 226 of the Constitution read as under:

(1) ...every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority...within those territories directions, orders or writs....

(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

9. A Constitution Bench of the Hon''ble Supreme Court in *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, , while examining the scope of territorial jurisdiction of the Court and exercise of the discretion held as under:

...There are only two limitations placed upon the exercise of these powers by a High Court under Article 226 of the Constitution; one is that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories" and this implies that they must be amenable to its jurisdiction either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Article 226 of the Constitution is to be determined.

...For purposes of this case it is enough to state that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

10. Another Constitution Bench of the Hon''ble Supreme Court in *Election Commission, India Vs. Saka Venkata Subba Rao and*, , had held that writ does not lie beyond the territorial jurisdiction of the High Court.

11. A seven-Judges Bench of the Apex Court in *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, , held that location of the seat of the Central Government was the only determining factor of jurisdiction of the writ court and no other factor could be taken into account. Similar view was taken by the Constitution Bench of the Apex Court in *Shriram Jhunjhunwala Vs. The State of Bombay and Others*, , observing that in case of mineral lease under the Mineral Concession Rules, 1949, Central Government was the only competent authority to deal with the matter and as the State Government could only carry the orders of the Central Government, Bombay High Court had no territorial jurisdiction to entertain a writ petition in respect of the same. Same view, in respect of the same Rules was taken by another Constitution Bench of the Supreme Court in

Madan Gopal Rungta Vs. Secretary to The Government of Orissa, .

12. Subsequent to these judgments vide 15th Constitutional Amendment Act, 1963, Clause (1A) was added to Article 226(1), which was renumbered as Clause (2) by 42nd Constitutional Amendment Act, 1976. Thus, after the 15th Amendment, jurisdiction of the writ court was extended also to those cases wherein the cause of action even if partly, has arisen within their territorial jurisdiction.

13. In Subodh Kumar Gupta Vs. Shrikant Gupta and Others, , the Apex Court held that in order to maintain the writ petition it is to be shown that a part of the cause of action arose within the territorial jurisdiction of that Court.

14. In Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another, , the Hon"ble Supreme Court examined a case which related to claim for waiver of port charges and release of the goods seized by the Board of Trustees of the Port of Calcutta. The consignment of imported goods by the Plaintiff had been unloaded at Calcutta Dock; the Respondents' representations to the Port Trust Authority to waive the port charges and release the goods were refused by the Board of Trustees of the Port at Calcutta. The suit was filed for waiver of the port charges and release of goods in the District Court, Bharatpur (Rajasthan). Obviously no part of the cause of action relating to the seizure of the goods by the Port Trust of Calcutta which was unloaded at Calcutta for non-payment of port charges had arisen within the territory of Rajasthan. The Court found that the cause of action had arisen at Calcutta. The Supreme Court affirmed the principle that the place where whole or part of the cause of action arises, gives jurisdiction to the Court within whose territory such place is situate. Whether cause of action has arisen within the territory of the particular Court will have to be determined in each case on its own facts in the context by the subject matter of the litigation, and relief claimed.

15. In Aligarh Muslim University v. Vinay Engineering Enterprises Ltd., (1994) 4 SCC 710 , the Apex Court said that the contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, 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 seems to have exercised jurisdiction where it had none.

16. In the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , it was held by the Apex Court as under:

Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the

said territories. The expression "cause of action means that bundle of facts which the Petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus, the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial.

While deciding the said case, the Hon''ble Supreme Court placed reliance upon the judgment in;Chand Koer v. Partab Singh, 15 IA 156,. wherein it had been observed as under:

The cause of action has no relation whatsoever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action; in other words, to the media upon which the Plaintiff asked the Court to arrive at a conclusion in his favour.

Therefore, in determining the objection of lack of territorial jurisdiction, the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embargo upon an inquiry as to the correctness or otherwise of the said facts.

17. In Union of India and Others Vs. Adani Exports Ltd. and Another, , the Hon''ble Apex Court held that in such a case, 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. Each and every fact pleaded by the party in its 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 lis 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 concerned.

18. Similarly in Rajasthan High Court Advocates" Association v. Union of India and Ors. AIR 2001 SC 416 , the Hon''ble Supreme Court held that Clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court and one of the tests may be as to whether the cause of action partly or fully has arisen within its territorial jurisdiction. While deciding the said case reliance has been placed upon its earlier judgment in U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others, , wherein it has been held that the expression "cause of action" has acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the

maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises.

19. In *Manju Bhatia and Anr. v. New Delhi Municipal Council and Anr.* 1998 (1) AWC 32 (SC): AIR 1998 SC 223, the Hon"ble Supreme Court considered a case for damages, under which a "cause of action" in a definite form may not be relevant except when necessary to comply with the laws relating to procedure and limitation etc. The Apex Court observed that

a cause of action in modern law is merely a factual situation, the existence of which enables the Plaintiff to obtain a remedy from the Court and he is not required to head his statement of claim with a description of the breach of the law on which he relies

20. In *State of Assam and Ors. v. Dr. Brojen Gogoi and Ors.* AIR 1998 SC 143, the Hon"ble Supreme Court examined a case wherein the Bombay High Court had granted anticipatory bail to a person who was allegedly connected with the offence, for all practical purposes, in a place within the territorial jurisdiction of Gauhati High Court and all such activities had prepatrated therein. The Hon"ble Apex Court transferred the case from Bombay High Court to Gauhati High Court to be heard further.

21. In *C.B.I. Anti-Corruption Branch, Mumbai Vs. Narayan Diwakar, ,* the Hon"ble Apex Court considered a case where the Respondent was the Incharge/Collector in Daman within the territorial jurisdiction of Bombay High Court and an F.I.R. had been lodged against him in Daman for hetching conspiracy. He stood transferred to Arunachal Pradesh within the territorial jurisdiction of Gauhati High Court. The C.B.I. gave him a wireless message from Bombay advising him to appear before its officers, in respect of investigation of the said case, in Bombay. The Respondent filed a writ petition under Article 226 of the Constitution before the Gauhati High Court. The Supreme Court did not decide the case on merit but observed as under:

Suffice it to say that on the facts and circumstances of the case and the material on record, we have no hesitation to hold that the Gauhati High Court was clearly in error in deciding the question of jurisdiction in favour of the Respondent. In our considered view, the writ petition filed by the Respondent in the Gauhati High Court was not maintainable.

The entire argument in the case had been that the Gauhati High Court had no jurisdiction to entertain the writ petition as no cause of action had arisen, even partly, within its territorial jurisdiction and receiving the message in Arunachal Pradesh to appear before the C.B.I. Authority at Bombay did not give rise to the

cause of action, even partly.

22. In Navinchandra N. Majithia Vs. State of Maharashtra and Others, , the Hon"ble Supreme Court while considering the provisions of Clause (2) of Article 226 of the Constitution, observed as under:

In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal; a group of operative facts giving rise to one or more basis for suing; a factual situation that entitles one person to obtain a remedy in Court from another person.... "Cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the Plaintiff must prove in order to obtain judgment...the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf.

The Apex Court held that while considering the same, the Court must examine as to whether institution of a complaint/plaint is a mala fide move on the part of a party to harass and pressurise the other party for one reason or the other or to achieve an ulterior goal. For that consideration, the relief clause may be a relevant criterion for consideration but cannot be the sole consideration in the matter.

23. In H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others, , the Hon"ble Supreme Court examined the issue of territorial jurisdiction of a Court in respect of the offence u/s 113(2) of the Indian Companies Act, 1956. Taking note of Sections 113 and 207 of the said Act, the Apex Court held that the cause of action for default of not sending the share certificates within the stipulated period would arise only at a place where the registered office of the company was situated as from that place the share certificates could be posted and are usually posted.

24. In Muhammad Hafiz v. Muhammad Zakariya AIR 1922 PC 23, the "cause of action" was explained as under:

...the cause of action is the cause of action which gives occasion for and forms the foundation of the suit....

25. Similarly, in Read v. Brown (1889) 22 QBD 128, this was explained as under:

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.

Same view has been reiterated by the Privy Council in AIR 1949 78 (Privy Council) , and by the Supreme Court in The State of Madras Vs. C.P. Agencies and Another, and A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, .

A "cause of action" is a bundle of facts which, taken with the law applicable, gives the Plaintiff a right to relief against the Defendant. However, it must include

some act done by the Defendant, since in the absence of an act, no cause of action can possibly occur. (Vide Radhakrishnamurthy Vs. Chandrasekhara Rao, ; Ram Awalamb and Others Vs. Jata Shankar and Others, and Salik Ram Adya Prasad Vs. Ram Lakhan and Others, .

26. The Bombay High Court in Damomal Kausomal Raisinghani Vs. Union of India and Others, , wherein the Court held that where the impugned order is made by an authority in other State outside the territorial jurisdiction of High Court, but has become effective in another on its communication, the latter High Court can exercise jurisdiction in respect of such matter as part of the cause of action had arisen thereunder.

27. In Umasankar Chatterjee v. Union of India 1982 Lab IC 1361, the Calcutta High Court examined a case where the services of an employee of Union of India were terminated and the order of removal was served on the Petitioner at Calcutta. As the principle is well-settled that an order of termination of removal becomes effective only on communication of the order, on the question of jurisdiction of the Calcutta High Court to entertain the petition under Article 226, the Court held as under:

...So long as the order was not effective there was no question of accrual of a cause of action or the right to sue. But the moment it became effective there was such accrual of cause of action or the right to sue. The impugned order of removal having become effective in Calcutta when it was received by the Petitioner, a part of the cause of action must be held to have arisen in Calcutta within the jurisdiction of the Court.

28. The Gujarat High Court in a similar case in M.F.I.(India) Ltd., Ahmedabad v. M.D. Juverkar 1989 Lab IC 224, held as under:

Passing of a dismissal order is not enough, it cannot become effective unless it is published and communicated to the concerned employee. If an order of dismissal remains on the file of the authority passing it, it would not have effect unless the concerned employee is informed about the same and told not to report to work. One of the essentials of an effective dismissal order is communication thereof to the concerned employee and this constitutes an important link in the chain of events constituting the cause of action.

In a Division Bench of Rajasthan High Court in Mohan Singh and Ors. v. Union of India and Anr. 2001 Lab IC 562, examined a case where the order of rejection of the claim of the Petitioner therein for pension, passed in Allahabad was communicated to him in Rajasthan. The Court held that the Rajasthan High Court had jurisdiction to entertain the writ petition of a retired army personnel for the reason that pension was receivable in Rajasthan. Therefore, the cause of action had partly arisen within the jurisdiction of the said Court.

In Dinesh Chandra Gahtori v. Chief of Army Staff and anr., (2001) 2 UPLBEC 1275, the Hon"ble Supreme Court examined a case wherein Petitioner had filed a

writ petition before this Court for quashing the communication sent to his wife stating that the Petitioner had been tried at a Summary Court Martial and had been found guilty of using criminal force against his superior officer and had been dismissed from service. This Court dismissed the writ petition observing that it had no territorial jurisdiction to entertain the petition. The Hon''ble Supreme Court set aside that order and remanded the case to be heard on merit observing as under:

The writ petition was filed in 1992. The impugned order was passed in 1999. This is a fact that the High Court should have taken into consideration. More importantly, it should have taken into consideration fact that the Chief of Army Staff may be sued anywhere in the country. Placing reliance only on the cause of action, as the High Court did was not justified.

The aforesaid judgment was delivered by the Hon''ble Supreme Court without making reference to the earlier judgments, some of which have been referred to above. More so it is apparent from the order that what prevailed in their Lordships mind for passing the order was that the petition remained pending for a very long time before this Court.

29. This Court in *Narendra Pal Singh v. Union of India and Ors.* (2001) 3 ESC 1274 and *Kailash Nath Tiwari v. Union of India and Ors.* 2002 ESC 366 (All), placing reliance upon the said judgment has held that a writ petition should not be dismissed merely on the ground of territorial jurisdiction and it has to dispose of the petition on merit.

30. On the contrary, the Division Benches of this Court in Special Appeal No. 300 of 1995, *Ex Sepoi Ranchhor Singh v. Union of India and Ors.* decided on 9th May, 1995, had taken a view that as none of the Respondents were having their office or residence nor the cause of action even partly had arisen within the territorial jurisdiction of this Court, the petition could not be entertained. In that case, the only prayer made had been that a direction be issued to the Chief of the Army Staff to consider the representation submitted by the Petitioner therein. However in view of the fact that the Division Bench came to the conclusion that it had no territorial jurisdiction, the appeal was turned down and the judgment of the single Judge dated 7.4.1995 passed in Writ Petition No. 10228 of 1994 rejecting the writ petition for want of territorial jurisdiction was upheld.

31. Another Division Bench while deciding the Writ Petition No. 19801 of 1999, *Sepoy Driver Rambir Singh v. U.O.I.*, decided on 14.7.1999, dismissed the petition only on the ground of not having the territorial jurisdiction as the order impugned therein had been passed in Chandi Mandir (Haryana) and no cause of action had arisen within the territory of this Court nor the Respondents were having office/residence within that limit.

32. Thus, in the aforesaid fact situation, it becomes necessary to examine the effect of the judgment of the Hon''ble Apex Court in *Dinesh Chandra Gahtori v. Chief of Army Staff and Anr.* (supra).

33. It is settled proposition of law that an issue, which has not been considered by the Court while delivering a judgment, cannot be said to be binding as a "decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision" of the Court. (Vide H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, ; Amar Nath Om Prakash and Others Vs. State of Punjab and Others, ; Rajput Ruda Meha and Others Vs. State of Gujarat, ; Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. and Another, and Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., .

34. In; Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the Hon"ble Apex Court held that Courts should not place reliance on decisions without discussing as to how the factual situation fits-in with the fact situation of the decision relied upon.

35. Similarly in Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal, , the Court held that if the Apex Court has given certain directions while disposing of the matter in the special circumstances noticed by the Court and the need felt, the same could not have been mechanically adopted as a general formula of disposal, as a matter of routine of other similar cases for the reason that such directions cannot be treated to be binding precedent.

36. In Delhi Administration (Now Govt. of N.C.T., Delhi) through Chief Secretary and others Vs. Nand Lal Pant and another, , the Hon"ble Supreme Court held that if the Court had granted relief in the facts and circumstances of the particular case, that may not be treated as a precedent. Similarly in Government of India Vs. Workmen of State Trading Corporation and Others, , it has been held that if the judgment remains non-speaking and no reasons have been stated in the order, it may not have an effect of binding precedent and it would not be justified by the High Courts to base its decision on such orders.

Similar view has been reiterated in National Insurance Co. Ltd. Vs. Santro Devi and Others, .

37. In Upton India Limited Vs. Shammi Bhan and Another, , the Court held that before accepting a judgment of having a binding nature the Court must determine as to whether the issue involved in a case has been decided by a reasoned order by the Court earlier. As sometimes the orders are passed to meet the ends of justice. Sometimes, accepting the wrong conception of questions made by a counsel, orders passed on such conceptions cannot be a ground for a binding decision.

Similar view has been taken in Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., ;

38. In Bhavnagar University v. Palitana Sugar Mill (P.) Ltd. and Ors. (2003) 2

SCC the Apex Court held as under:

A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. (See *Ram Rakhi v. Union of India* AIR 2002 Del 458 (FB)).

39. From the above, it is evident that Hon"ble Supreme Court in *Dinesh Chandra Gahtori* (supra) has not laid down any law of universal application. The observations have been made to meet a particular situation where the case remained pending for about a decade. Thus, the direction issued therein, if considered in the light of other judgments referred to above, does not seem to have a binding effect. Facts in the instant case are quite distinguishable. Even otherwise, case of dismissal from service cannot be equated with the case of transfer for the reason that it is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. An employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of his legal rights and Court cannot interfere with a transfer/posting, which is made in public interest or on administrative exigency. The Government instructions on transfer (Transfer Policy) are mere guidelines without any statutory force and the Court or Tribunal cannot interfere with the order of transfer unless the said order is alleged to have been passed by malice or where it is made in violation of the statutory provisions. It is settled law that writ petition under Article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by the Petitioner that there is a breach of the statutory duty on the part of the Respondents. Therefore, there must be judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction. (Vide *Union of India v. S.L. Abbas* AIR 1993 SC 2444; *Shilpi Bose v. State of Bihar* AIR 1991 SC 532; *Union of India and another Vs. N.P. Thomas*, ; Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. *Rajendra Ch. Bhattacharjee and others*, ; *State of U.P. v. Dr. R.N. Prasad* : 1995 (Supp) 2 SCC 151; *Union of India and Ors. v. Ganesh Dass Singh* .; *N.K. Singh Vs. Union of India and others*, ; *Abani Kanta Ray Vs. State of Orissa and Others*, ; *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*, ; *Union of India and Others Vs. H.N. Kirtania*, ; *Bank of India Vs. Jagjit Singh Mehta*, ; *The Samarth Transport Co. (P) Ltd. Vs. The Regional Transport Authority, Nagpur and Others*, ; *I.N. Saksena Vs. State of Madhya Pradesh*, ; *Banchhanidhi Rath Vs. The State of Orissa and Others*, ; *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, ; *State of Kerala Vs. Smt. A. Lakshmikutty and others*, ; *Mani Subrat Jain and Others Vs. State of Haryana and Others*, ; *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West*

Bengal and Others, ; Rajendra Singh Vs. State of Madhya Pradesh and others, and Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others, .

40. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the jurisdiction. Such an issue can be raised even at a belated stage in execution. The finding of a Court or Tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of party cannot confer jurisdiction upon a court and an erroneous interpretation equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. (Vide Smt. Nai Bahu Vs. Lala Ramnarayan and Others, ; Natraj Studios Pvt. Ltd. v. Navrang Studio and Anr. AIR 1981 SC 537 ; Sardar Hasan Siddiqui and Others Vs. State Transport Appellate Tribunal, U.P., Lucknow and Others, ; A.R. Antulay Vs. R.S. Nayak and Another, ; Union of India v. Deoki Nandan Aggarwal AIR 1992 SC 96 ; Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt) (Dead) and Another, ; U.P. Rajkiya Nirman Nigam Ltd. Vs. Indure Pvt. Ltd. and others, ; State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another, ; Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, ; and Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd. C-7, Panki Industrial Area, Kanpur, .

41. Rules of interpretation require that construction, which carries on objectives of the Statute, protects interest of the party and keeps the remedy alive, should be preferred looking into the text and context of the Statute. It must be so as to further the ends of justice and not to frustrate the same. Construction given by the Court must promote the object of the Statute and serve the purpose, for which it had been enacted, and should not efface its very purpose. (Vide Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. AIR 1987 SC 1023; N.K. Jain v. C. K. Shah AIR 1992 SC 1289 ; Smt. Meera Gupta Vs. State of West Bengal and others, ; Directorate of Enforcement Vs. Deepak Mahajan and another, ; The Food Corporation of India Vs. The New India Assurance Co. Ltd. and others, ; Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, ; S. Gopal Reddy Vs. State of Andhra Pradesh, ; Raipur Development Authority Vs. Anupam Sahkari Griha Nirman Samiti and Others, ; Gautam Paul v. Debi Rani Paul and Anr. (2000) 8 SCC 330; Tata Engineering and Locomotive Co. Ltd. v. State of Bihar and Ors. (2000) 8 SCC 346; Gayatri Devi Pansari v. State of Orissa AIR 2000 SC 1531 ; Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, ; Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal and Co. and Anr. (2001) 8 SCC 347 ; Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, and Joseph Joseph and Others Vs. State of Kerala and Others, .

42. In Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others, , the Hon"ble Supreme Court placed reliance upon the judgment in Whitney v. I.R.C.

1926 AC 37, wherein it had been observed as under:

A Statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object....

The Apex Court held as under:

The Courts strongly lean against any construction which tends to reduce a Statute futility. The provision of the Statute must be so construed as to make it effective and operative.

43. No word in a Statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction, a provision should not be reduced as a "dead letter" or "useless lumber". An interpretation, which renders a provision an exercise in futility, should be avoided, otherwise it would mean that enacting such a provision in subordinate legislation was "an exercise in futility" and the product came as a "purposeless piece" of legislation and provision had been enacted without any purpose and entire exercise to enact such a provision was "most unwarranted besides being uncharitable." (Vide M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, ; Institute of Chartered Accountants of India Vs. Price Waterhouse and Another, ; Martin Burn Ltd. Vs. The Corporation of Calcutta, ; Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another, ; Sultana Begum Vs. Prem Chand Jain, ; State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc., ; The South Central Railway Employees Co-operative Credit Society Employees Union, Secundrabad Vs. The Registrar of Co-operative Societies and Others, and Subhash Chander Sharma and Another Vs. State of Punjab and Others, .

44. The language of the Act is very clear and it does not require any interpretation because there is no ambiguity in it. In case the language of a Statute is unambiguous, there can be no need to interpret it or examine the intent or object of the Act and the Courts must give effect to it unless it leads to an absurdity or injustice. It is well recognized canon of interpretation that provision curbing the jurisdiction of the Court or Authority must normally receive strict interpretation unless the statute or the context requires otherwise. (Vide Abdul Waheed Khan Vs. Bhawani and Others, ; Sachida Nand Singh v. State of Bihar (1998) 2 SCC 493 ; Jagdish Ch. Patnaik and Others Vs. State of Orissa and Others, and Arul Nadar Vs. Authorised Officer, Land Reforms, .

45. Thus, in view of the above, we are of the considered opinion that in order to determine as to whether the writ court has a jurisdiction to entertain a petition, the pleadings in the petition have to be examined and opinion is to be formed as to whether a cause of action partly or fully has arisen or the Respondents reside or have office within the territorial jurisdiction of the Court. In absence thereof, if

the view if taken that petition is to be entertained on merit without considering as to whether such pre-requisite conditions are there, the provisions of Clauses (1) and (2) of Article 226 of the Constitution would render nugatory.

46. Thus, in view of the above, in our humble opinion, in the instant case, the fact situation does not provide for this Court to have territorial jurisdiction.

47. The learned Counsel for the Respondents has submitted that Petitioner has not disclosed as the appropriate forum was available to her in Nagpur, instead of presenting the petition there, why she has chosen to come to such a far place for this relief. His apprehension that the petition has been filed only to harass the Respondents impleaded by name may have some substance and in such an eventuality, if the bona fides of the Petitioner are doubted, even if the Court has jurisdiction to entertain the petition, there is no obligation on the part of the Court to exercise such discretion in favour of such a party.

48. Approaching this Court for achieving such an ulterior purpose would be an abuse of process of the Court. It is not permissible for any party to settle the scope with any other person using the forum of the Court. No explanation worth the name has been furnished as for what reason Petitioner has approached this Court when adequate and efficacious remedy was available to her at her place of posting (Nagpur), we also failed to appreciate that if Petitioner was aggrieved of the transfer order why she has not prayed for its quashment. Learned Counsel for the Petitioner could not explain how in the instant case the Union of India could be represented through the Chief of the Army Staff. The Union of India can be represented only through the Secretary, Ministry of Defence and the Chief of the Army Staff could have been made an independent non-Petitioner.

49. Thus, in view of the above, we are of the considered opinion that this Court has no jurisdiction to entertain the writ petition. It is accordingly dismissed.