

(2014) 12 CAL CK 0086
In the Calcutta High Court
Case No : W.P. 26302(W) of 2014

Shiba Pada Sarkar

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20(c)
Constitution of India, 1950 — Article 226

Citation : (2014) 12 CAL CK 0086

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Rajendra Banerjee and Subhendu Roy Chowdhury, Advocate for the Appellant; Tanmoy Kumar Ghosh, Advocate for the Respondent

Judgement

Harish Tandon, J.—This is one of the unfortunate case where a person is made to suffer without any fault on his part in the hands of the employer.

2. The petitioner was working as a Constable in Central Reserve Police Force and opted for voluntary retirement with effect from 31st July, 2012. At the time of voluntary retirement, the petitioner was posted at Imphal in the State of Manipur. The petitioner came back to his native place at Village-Janail, P.O. Aminpur, Dist. Dakshin Dinajpur, West Bengal. The petitioner issued a letter from his native place to the Assistant Account Officer (GPF), Pay and Account Office situated at New Delhi, claiming the release of the General Provident Fund amount and to remit the same to his bank account through Electronic Clearance System (ECS).

3. By a letter of 12th June, 2013, the petitioner was informed that the final payment of Rs. 5,50,800/- (rupees five lakh fifty thousand eight hundred) on account of General Provident Fund has already been remitted to the bank account of the petitioner through ECS on 10th January, 2013.

4. Since the said amount is not recorded in the statement issued by the

petitioner's banker, the petitioner apprises the authorities that those have not been deposited in his bank account. The authority by its letter dated 7th September, 2013 accepted their mistake that the said amount has been remitted to somebody else account and steps are being taken to get the return of the same so that it may be remitted to the account of the petitioner. Since the authorities were showing their reluctance and inaction in promptly addressing the issue, the petitioner was constantly knocking the doors of the authorities to remit the General Provident Fund amount to his account.

5. By a letter dated 10th February, 2014, the petitioner was communicated that the official record reveals that the General Provident Fund amount of the petitioner has been fraudulently taken by another Constable, namely, G D Durga Prasad and the authorities are taking steps against the said Constable as the enquiry is going on and the moment the money is recovered from the said Constable, the same would be remitted to the account of the petitioner.

6. Challenging the said decision communicated to the petitioner through letter dated 10th February, 2014, the petitioner has approached this Court.

7. Learned advocate for the respondents took a preliminary objection as to the maintainability of the writ petition before this Court. According to him, the petitioner was allowed to retire voluntarily while posted in the State of Manipur and the impugned letter is issued by the Director of Inspector General, Group Centre, Central Reserve Police Force, Hyderabad and, therefore, none of the part of the cause of action arose within the territorial jurisdiction of this Court.

8. By virtue of the Fifteenth Amendment having brought in the Constitution of India, Clause (1A) was introduced in Article 226 of the Constitution, which was subsequently renumbered as Clause (2) by virtue of 42nd Amendment Act, 1976.

9. By the said Clause, the High Court exercise its jurisdiction in relation to the territories within which the cause of action, wholly or in part arises, notwithstanding that the seat of such Government or the authority or residence of such person is not within the territorial jurisdiction of the High Court. By the said Amendment, the principles of Section 20(c) of the Code of Civil Procedure is made applicable to exercise the jurisdiction if a fraction of the cause of action arose within the territorial jurisdiction of the High Court. The cause of action is not a stray fact or the incident but a bundle of facts, which is required to be proved by the party to claim the right to a decision and/or judgment from the Court.

10. It is not in debate that miniscule part of the cause of action can confer the jurisdiction on the High Court to entertain the writ petition, irrespective of the fact that seat of the authorities are outside the territorial jurisdiction. Though the petitioner was posted in the State of Manipur at the time of exercise of an option for voluntary retirement, but, subsequently, he was all along residing in his native place within the territorial jurisdiction of this Court.

11. Had the challenge been made to any of the decision taken on the issue of the option for voluntary retirement, the objection raised by the respondents may succeed as none of the part of the cause of action did arise within the jurisdiction of this Court. The claim of the petitioner was in respect of the benefits including the General Provident Fund, which he is entitled to after the voluntary retirement and claimed the said amount from his native place by way of sending an application. The authorities exchange the correspondences and such correspondences have been sent to the petitioner at his native place within the territorial jurisdiction of this Court. Even a letter impugned in this writ petition is also sent to the petitioner at his native place delaying and/or postponing the rights of the petitioner contingently.

12. The reference can be safely made to a recent judgment of the Hon'ble Supreme Court in case of Nawal Kishore Sharma Vs. Union of India (UOI), , wherein it is held that if all the correspondences are exchanged between the parties and ultimate decision is communicated at the address within the territorial jurisdiction of the High Court, the High Court retains the jurisdiction when challenges is made to the decision as part of the cause of action arose within its territorial jurisdiction. It would be apt to quote paragraph 19 and 20 of the said judgment, which reads thus:

"19. 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.

20. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya. Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the district of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by

the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation."

13. In view of the law enunciated in the aforesaid report that since the claim on account of General Provident Fund has been postponed and/or withheld for no fault on the part of the petitioner, this Court, therefore, finds that the fraction of the cause of action arose within the territorial jurisdiction of this Court. The preliminary objection, therefore, fails.

14. As indicated at the opening sentence of this judgment that this is one of the unfortunate case where a person is being penalized not on account of his fault but for the fault of the employer. The authorities did not dispute the entitlement of the petitioner to get the General Provident Fund on voluntary retirement. In fact, the authorities signify their intention to remit the said amount in the bank account of the petitioner, but subsequently it was detected that the same was deposited in the bank account of another Constable. The petitioner certainly does not have any hand to play in the remittance of the money in the bank account.

15. A peculiar stand has been taken by the respondent authorities that an enquiry is being conducted against another Constable, who fraudulently taken the said amount and unless the said amount is recovered from him, the petitioner would not be paid. The authority, who commits wrong, does not deserve any blessings from the Court. The petitioner is penalized by way of deprivation to enjoy the usufruct of the said amount as the same has been fraudulently taken by another Constable. It is further galore that the amount was never remitted in the petitioner's bank account rather it went to the bank account of another Constable and, therefore, the petitioner cannot wait indefinitely until the amount is recovered by the respondent authorities.

16. This Court, therefore, finds that the decision of the authorities to defer the remittance of the General Provident Fund amount till the same is recovered from another Constable is arbitrary, illegal and cannot be allowed to stand even for a moment.

17. The concerned department of the Central Reserve Police Force is directed to remit the General Provident Fund amount in the bank account of the petitioner through ECS within six weeks from the date of communication of this order.

18. With these observations, the writ petition is disposed of without, however, any order as to costs.