

(2017) 02 DEL CK 0289

In the Delhi High Court

Case No : 1256 of 2017

SMT. CHAND SAHU BALA, & ORS.

APPELLANT

Vs

MINISTRY OF HUMAN RESOURCE DEVELOPMENT, & ORS.

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 19 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous

Citation : (2017) 02 DEL CK 0289

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Md. Ehrasz Zafar, Bhagwan Swarup Shukla, Amit Bansal

Judgement

1. In this writ petition the following reliefs are claimed:-

"(i) Issue a writ of Mandamus or any other Writ, Order or Direction for issuance of Appropriate, Strict And Necessary Directions against S.D. Public School, C-217, Sector 49, Noida, restraining the Petitioners from harassing and victimizing the Petitioners namely (i) Smt. Chand Sahu Bala, (ii) Ms. Richa Singh, (iii) Ms. Sapna Kumari and (iv) Ms. Ritu Jain under the garb of issuance of Arbitrary and Malafide Memo's, Issuance of Deliberate and Illegal Transfer Orders etc with the malafide intention to appoint their own persons with the School at the cost of their Fundamental Rights namely Right to Life and Livelihood and Freedom to do and pursue their Profession and Work with Dignity taking undue advantage of Non-availability of Forums, School Tribunals, Statutory Guidelines, Rules, Bye-Laws For Appointment, Transfer, Dismissal, Increment Etc of the Teachers;

(ii) Issue of Writ of Mandamus and other WRIT to Respondent No. 1 & 2 for formulating Special Law, Guidelines, Rules, Bye-Laws for regulating the Service conditions and for the Protection of the Teachers from the Arbitrary and illegal

acts of the School Management of CBSE affiliated Schools which is directly in infringement and in contravention to the Fundamental Rights under Article 14, 19 and 21 as enshrined under the Constitution of India.

(iii) Issue of Writ of Mandamus and other WRIT to Respondent No. 1 & 2 for taking appropriate steps and measures With Central Government, Ministry of Human Resource Development and with Other Necessary Governments/Local Bodies for establishment of free and fair independent Authority/School Tribunals/Redressal forums for Redressal all the grievances of Teachers and other employees in relation to their Employment and service conditions working in CBSE affiliated schools in Noida and in the state of Uttar Pradesh.

(iv) Issue writ of mandamus or any other writ, order or direction, directing the Respondents to pay to the Petitioners, all the arrears of any kind pending in terms of their entitlement as per the Pay Commission Recommendation, along with interest @ 14% per annum;

(v) pass any such other as this Hon"ble Court may deem fit and proper in the facts and circumstances of the present case."

2. Petitioners are admittedly employees not of a school in Delhi which is governed by the Delhi School Education Act and Rules, 1973 but are employees of S.D. Public School, C-217, Sector 49, Noida, Uttar Pradesh. Employees of schools in Uttar Pradesh will be governed by the Local Education Act and not by the Delhi School Education Act and Rules. Also, the entire cause of action with respect to petitioners, so far as relief prayers (i), (ii) and (iv) are concerned have arisen entirely at Noida where petitioners have been working as teachers of the S.D. Public School and directions also will have to be issued to the S.D. Public School at Noida.

3. This Court therefore does not have territorial jurisdiction so far as prayer clauses (i), (ii) and (iv) are concerned and therefore the writ petition is dismissed as this Court lacks territorial jurisdiction qua relief prayers (i), (ii) and (iv).

4. Also, even assuming that this Court has territorial jurisdiction this Court is a Court of forum non-conveniens because entire record of service of the petitioners and any impugned actions will be at Noida, Uttar Pradesh and evidence, therefore, will be available at Noida, Uttar Pradesh. This Court, therefore, is a forum non-conveniens in view of the Full Bench judgment of this Court in the case of Sterling Agro Industries Ltd. Vs. Union of India (UOI) AIR and Ors. 2011 Delhi 174, and the relevant paragraph of the said judgment reads as under:-

"33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline

to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra)

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra)

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled." (underlining added)

5. Accordingly, this writ petition is dismissed so far as relief prayer nos. (i), (ii) and (iv) are concerned on account of lack of territorial jurisdiction and in any case by applying the doctrine of forum non- conveniens so far as Courts in Delhi are concerned.

6. So far as relief prayer no. (iii) is concerned of directions to Central Government for appointing of an independent authority, etc., no doubt this Court would have jurisdiction because the authorities against whom directions have to be issued are situated at Delhi, but since the S.D. Public School itself is situated

at Noida, and which is a necessary party along with all other employees of schools in Uttar Pradesh as also all other schools in Uttar Pradesh, and with respect to which possibly Order I Rule 8 CPC situation would apply, therefore though this Court has jurisdiction so far as prayer no. (iii) is concerned, yet, this Court will be a Court of forum non-conveniens, inasmuch as, it cannot be accepted that thousands of employees of Uttar Pradesh who would be vitally interested in this writ petition's relief cause (iii), as also hundreds of schools in Uttar Pradesh who would be affected and who would be necessary parties, and all of whom are not at Delhi would find this Court as forum conveniens, and therefore, this Court is once again a Court of forum non-conveniens in view of the judgment in the case of Sterling Agro Industries Ltd. (supra).

7. In view of the above, this writ petition is dismissed on account of this Court lacking territorial jurisdiction qua prayer relief nos. (i), (ii) and (iv) are concerned, besides applying the principle of forum non-conveniens qua these reliefs and by applying the doctrine of forum non-conveniens so far as relief no. (iii) is concerned.

8. Learned counsel for the petitioner places reliance upon the judgment of the Supreme Court in the case of Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust and Ors. Vs. V.R. Rudani and Ors., AIR 1989 SC 1607 to argue that a writ of mandamus can be issued by the Court even against a private body once there is no alternative efficacious remedy, and to which principal of law there is no quarrel, but the issue here is of territorial jurisdiction and of application of the doctrine of forum nonconveniens and conveniens. The judgment in the case of Jayanti Mahotsab Smarak Trust (supra), therefore, cannot help the petitioner.

9. Dismissed.