

(2010) 09 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52735 of 2010

Smt. Manjesh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 25(2)
Constitution of India, 1950 — Article 226

Citation : (2010) 09 AHC CK 0070

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioner, who was working as Mahila Constable in the Central Industrial Security Force, Nuclear Fuel Complex, Hyderabad, has sought the quashing of the order dated 14th July, 2009 passed by the Commandant, CISF Unit NFC Hyderabad by which her services have been terminated with effect from the date of receipt of the order under the proviso to Rule 25(2) of the Central Industrial Security Force Rules, 2001. The petitioner has also sought the quashing of the order dated 13th September, 2009 passed by the Inspector General, Western Sector, CISF, Navi Mumbai by which the representation dated 18th August, 2009 filed by the petitioner against the aforesaid order dated 14th July, 2009 has been rejected. The petitioner has also sought the quashing of the order dated 9th October, 2009 by which the representation dated 20th August, 2009 filed by the petitioner before the Assistant Director General, New Delhi has been rejected.

2. A preliminary objection has been raised by learned Counsel appearing for the respondents that this Court will not have the jurisdiction to entertain this petition as cause of action or even part of cause of action has not been arisen within the territorial jurisdiction of this Court and in support of this contention he has placed reliance upon the Full Bench decision of this Court in Rajendra Kumar Mishra Vs.

Union of India (UOI) and Others, and the Division Bench judgment of this Court in *Deeptiman Logistics Pvt. Ltd. and Anr. v. Union of India and Ors.* 2010 (4) ADJ 148.

3. Learned Counsel for the petitioner, however, submitted that part of cause of action had arisen within the territorial jurisdiction of this Court as the orders dated 14th July, 2009, 13th September, 2009, 9th October, 2009 and 7th April, 2010 were received by the petitioner by post at District Auraiya and the appeal and the revision petition were sent by the petitioner from Auraiya and orders of rejection were received at Auraiya and so this Court will have the jurisdiction to entertain the petition and in support of his contention he has placed reliance upon the judgments of this Court in *Phool Singh Chauhan v. Chief of the Army Staff, New Delhi and Ors.* 2008 (1) ESC 423 and *Vinod Kumar Pandey v. Union of India and Ors.* (2009) 1 UPLBEC 200.

4. I have considered the submissions advanced by the learned Counsel for the parties.

5. The records of the writ petition indicate that the order dated 14th July, 2009 by which the services of the petitioner were terminated was sent to CISF Unit NFC at Hyderabad and it was not sent at the Auraiya address. It is only the subsequent letters regarding the final payment of provident fund that were sent at the Auraiya address but the appeal and the revision may have been sent by the petitioner by post from Auraiya and the orders may have been received by him at Auraiya.

6. A Full Bench of this Court in *Rajendra Kumar Mishra (supra)* held that since misconduct was committed at Calcutta and Summary Court Martial was also held at Calcutta, the entire cause of action arose at Calcutta and, therefore, the Allahabad High Court will have no jurisdiction and the observations are as follows:

12. In the present case it may be noted that the misconduct was committed at Calcutta and Summary Court Martial was also held at Calcutta. Thus the entire cause of action arose at Calcutta. We, therefore, fail to understand how a writ petition can be entertained at Allahabad High Court where no part of the cause of action had arisen.

13. In our opinion merely because the petitioner is presently residing at Ballia this will not give jurisdiction to this Court in view of the Seven Judges Bench decision of the Supreme Court in *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, 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 person 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 Mumbai 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....

41. We may mention that a "cause of action" is the 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,

42. In the present case no part of the cause of action has arisen in U.P. Hence in our opinion the writ petition is not maintainable in this Court. It is accordingly dismissed. The decision of the Division Bench in Kailash Nath Tiwari v. Union of India Special Appeal No. 997 of 1995, decided on 9.1.2002 in our opinion does not lay down the correct law and is overruled.

(Emphasis supplied)

7. Learned Counsel appearing for the petitioner has, however, placed reliance upon the judgment of this Court in Phool Singh Chauhan (supra) in support of his contention that since the appeal and the revision were sent by registered post by the petitioner from Auraiya and the orders passed in the said appeal and the revision were received by the petitioner at Auraiya, part of cause of action has arisen within the State of U.P. and, therefore, the Allahabad High Court will have the jurisdiction to entertain the petition.

8. In the aforesaid judgment in Phool Singh Chauhan (Supra), this Court considered whether it had the jurisdiction to examine the Summary Court Martial dated 15th March, 1980 as well as the order rejecting the appeal. The Court noticed that the Summary Court Martial was held in the State of Gujarat where the order dismissing the petitioner from service was awarded and, therefore, came to the conclusion the cause of action to challenge the Summary Court Martial punishment arose within the State of Gujarat. However, with regard to the appellate order, the Court observed:

However, the submission much pressed by Counsel for the petitioner is that since the petitioner has sent an application to the Chief of the Army Staff from district Kanpur for taking him back in service, which was rejected and communicated to the petitioner vide letter dated 20th May, 1986 at Kanpur (U.P.), the petitioner

had cause of action to challenge the said decision of not taking him back in service before this Court. In the counter affidavit filed by the respondents the allegations made in paragraph 9 and 10 of the writ petition, i.e., representation of the petitioner to the Chief of the Army Staff for his reinstatement on 7th October, 1985, rejection of the said request and communication at Kanpur vide letter dated 20th May, 1986 has not been denied. Thus in so far as the prayer of the petitioner to quash the order dated 20th May, 1986 refusing reinstatement of the petitioner in service, it can be held that this Court has territorial jurisdiction since the representation was sent from Kanpur and the refusal of the same was also communicated at Kanpur....

(emphasis supplied)

9. Learned Counsel for the petitioner has also placed reliance upon the judgment of this Court in Vinod Kumar Pandey (supra). In this case, the representation against the dismissal order was sent from Allahabad and the rejection was also communicated to the petitioner at Allahabad. The Court, in view of the judgment in Phool Singh Chauhan (Supra), held that this Court will have the jurisdiction to examine the validity of the said order.

10. However, a Division Bench of this Court in Deeptiman Logistics Pvt. Ltd. and Anr. v. Union of India and Ors. reported in 2010 (4) ADJ 148, has also examined this issue. In this case, the Government of India, Railway Board issued a Scheme, namely, Wagon Investment Scheme on 20th November, 2005 and the said Circular was sent to different Railway Zones including the South East Central Railway, Bilaspur. The petitioners submitted two applications to the Chief Commercial Manager, South East Central Railway, Bilaspur and the applications were approved by the order dated 22nd December, 2006 with reference to the letter dated 28th September, 2006 sent by the South East Central Railway, Bilaspur forwarding the applications of the petitioner for consideration. Thereafter, an agreement dated 28th May, 2007 was executed between the Indian Railway and the petitioners. The petitioners submitted a letter dated 11th December, 2009 to the Chief Commercial Manager, South East Central Railway, Bilaspur for extending the delivery period for one year. In response to the said letter, a communication dated 28th January, 2010 was received by the petitioner at the Allahabad Office stating that for extension of time limit, the petitioners may approach the Railway Board. The petitioners thereafter filed a writ petition in the Allahabad High Court. The Division Bench, after referring to the judgment in Phool Singh Chauhan (supra), held that the writ petition cannot be entertained by this Court since no part of cause of action had arisen within the territorial jurisdiction of this Court. The relevant observations are as follows:

The petitioners claim that part of cause of action has arisen within the territorial jurisdiction of this Court since the petitioners received all communications from Railway Board as well as from respondent No. 3 at its head office at Allahabad, which furnishes cause of action to the petitioners to approach this Court....

From the above exposition of the phrase "cause of action", it is clear that cause of action means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to his judgment. The petitioners claim that part of cause of action has arisen within the territorial jurisdiction of this Court, is based on its pleading that communications were received at its head office at Allahabad. The issue, thus, boils down to the fact that whether in facts of the present case sending of communication at Allahabad by the Railway Board as well as by respondent No. 3 gives part of cause of action to the petitioner to invoke the territorial jurisdiction of this Court. The question as to whether receipt of communication or notice furnishes a cause of action, has been considered by the Apex Court and this Court on several occasions....

...Another judgment relied by the petitioners is a judgment delivered by learned single Judge (by one of us Justice Ashok Bhushan) in Writ Petition No. 12411 of 1986 (Phool Singh Chauhan v. the Chief of the Army Staff) 2007 (10) ADJ 218 : 2008 (1) ESC 423 (All)....

The above case was on its own facts. The above was a case of Army soldier who made an application on certain ground for taking him back in service from his native place, which was turned down by the Army Chief and the said refusal was communicated from where he made the application for reinstatement. The above case was on its own facts and does not help the petitioners in facts of the present case.

Service of notice, communication of an order, when it form integral part of cause of action, the territorial jurisdiction may be at the place where notice is served or communication is received but when the said communication is only by way of sending information at the registered head office, which is not integral part of cause of action, the writ petition cannot be entertained at the place where the communication is said to be received. In the present case the challenge is to the decision of respondent No. 3 not to grant extension in the period of supply of wagons and further for not to accept the prayer for changing of loading station, which challenge cannot fall on non proving the fact of receiving the communication at head office at Allahabad. The decision of respondent No. 3 informing the petitioner 28th January, 2010 that petitioners may approach the Railway Board was taken at Bilaspur and the decision became effective as soon as it was taken. Even if the petitioners were not communicated the decision or even if the decision was not communicated or received by the petitioners, their cause of action is complete to challenge the action of respondent No. 3. Thus the receipt of communication at head office at Allahabad cannot be said to be an integral part of cause of action which furnished a cause of action to challenge the decision of South East Central Railway, Bilaspur at Allahabad.

(emphasis supplied)

11. In *State of Rajasthan and Ors. v. Swaika Properties and Anr.* (1995) 3 SCC 217, the Supreme Court held that mere service of notice u/s 52(2) of the

Rajasthan Urban Improvement Act, 1959 on the respondents at their registered office at Calcutta will not give rise to a cause of action within the territorial jurisdiction of the Calcutta High Court, unless the service of such notice was an integral part of the cause of action. It was found that the entire cause of action culminating in the acquisition of land arose within the State of Rajasthan and the remedy was to file a petition before the Rajasthan High Court where the cause of action wholly or in part arose.

12. It has, therefore, to be determined whether the sending of the appeal and the Revision from Auraiya and the receipt of the orders at Auraiya were an integral part of the cause of action. In the present case, as noticed hereinabove, though the order passed by the Inspector General Range, CISF, Unit NFC at Hyderabad was to become effective upon service of the order, but the order mentions that it was sent to CISF Unit NFC at Hyderabad and not at the Auraiya address. The subsequent letters regarding payment are not relevant. Pleadings are to the effect that the appeal and revision were sent by registered post from Auraiya and the orders were received at Auraiya. The submission of the appeal and revision by registered post from Auraiya or receipt of the orders at Aligarh have no relevance to the merit of the decision and, therefore, are not an integral part of the cause of action which may furnish cause of action to the petitioner to challenge the decision in the Allahabad High Court.

13. Thus, in view of the aforesaid decision of the Division Bench of this Court in M/s Deeptiman Logistics Pvt. Ltd. (supra) and the decision of the Supreme Court in State of Rajasthan (supra), the preliminary objection raised by the learned Counsel for the respondents has substance and the writ petition deserves to be dismissed for this reason.

14. The writ petition is, accordingly, dismissed as no cause of action or even part of cause of action has arisen within the territorial jurisdiction of this Court.