

(2021) 12 JH CK 0025

In the Jharkhand High Court

Case No : Latter Patent Appeals No. 100 Of 2019

Union Of India And Others

APPELLANT

Vs

Baburam Yadav

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 32, 32(2), 226, 226(2)
Central Industrial Security Force Rules, 2001 — Rule 36, 37, 38, 46

Citation : (2021) 12 JH CK 0025

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Rajiv Sinha, Pratyush Kumar, Durga C. Mishra

Judgement

Â Sujit Narayan Prasad, J

1. With consent of the parties, hearing of the matter was done through video conferencing and there was no complaint whatsoever regarding audio and visual quality.

2. The instant intra-court appeal is under Clause 10 of Letters Patent directed against the order/judgment dated 10.10.2018 passed by learned Single

Judge of this Court in W.P.(S) No.1008 of 2016 whereby and whereunder the learned Single Judge has allowed the writ petition by quashing and

setting aside the order of punishment inflicted upon the writ petitioner dated 27.04.2014 which has been confirmed by the appellate authority vide order

dated 27/28.07.2014 by invoking the jurisdiction conferred under Article 226 of the Constitution of India.

3. The issue of maintainability of the writ petition has been raised by way of preliminary objection.

4. This Court, before hearing the issue of maintainability of the writ petition,

having been satisfied that there is sufficient cause for delay in filing the appeal, has condoned the same vide order dated 14.12.2020.

5. The appellants have filed an affidavit on 18.03.2021 stating inter alia therein to establish on fact about non-maintainability of the writ petition before the writ jurisdiction of this Court.

It has been stated that a departmental proceeding was initiated against the writ petitioner while he was posted in the Central Industrial Security Force

Unit, NTPC, Barh, Patna and on its conclusion the order of punishment was passed on 16.05.2014 inflicting upon the writ petitioner for withholding

one annual increment for three years without cumulative effect. The aforesaid punishment has been entered in the service book by the Assistant

Commandant, CISF Unit, NTPC Barh on 26.05.2014, the day when the writ petitioner was posted at NTPC Barh, in the State of Bihar. The writ

petitioner preferred statutory appeal as provided under Central Industrial Security Force Rules, 2001 in view of the provision of appeal under Section

46 thereof.

The appeal was dismissed vide order dated 28.07.2014 by Deputy Commandant CISF Unit NTPC, Barh in the State of Bihar but by that time the writ

petitioner was transferred at CISF Unit, TTPS, Lalpania falling within the jurisdiction of State of Jharkhand where the writ petitioner was transferred

on 01.06.2014 and as such, the fact about dismissal of the appeal vide order dated 27/28.07.2014 was endorsed in his service book on 10.10.2014 by

Deputy Commandant CISF Unit TTPS, Lalpania.

It has further been stated, on the basis of the service book of the writ petitioner, that the effect of the punishment order dated 16.05.2014 which was

entered in the service book of the writ petitioner on 26.05.2014 regarding withholding of annual increment for three years without cumulative effect

got completed in the year 2017 as such, the increment was released/restored in favour of the writ petitioner while he was posted in CISF Unit Bokaro

falling within the territorial jurisdiction of the State of Jharkhand.

In view of such statements, submission has been made that since the punishment order for stopping the increment got effected on the date it was

passed and entered in the service record dated 26.05.2014, on which date the writ petitioner was posted at CISF Unit NTPC, Barh in the State of

Bihar, the High Court of Jharkhand lacks jurisdiction in this matter.

6. On the other hand, Mr. Durga C. Mishra, learned counsel appearing for the writ petitioner, has submitted that the order of punishment, although has been passed while the writ petitioner was posted at CISF Unit NTPC, Barh which is falling within the territorial jurisdiction of the State of Bihar but subsequent thereto, he was transferred to the CISF Unit TTPS, Lalpania which falls under the territorial jurisdiction of the State of Jharkhand where the order of appellate authority has been communicated and thereafter the authority, within the territorial jurisdiction of the State of Jharkhand, has inserted the same in the service book and as such, it is incorrect to say that the part of cause of action is not within the territorial jurisdiction of this Court and, therefore, the writ was held to be maintainable and accordingly the same has been allowed.

7. We have heard the learned counsel for the parties on the point of maintainability of the writ petition and after taking into consideration their submissions, both on law as well as on facts, this Court deems it fit and proper first to deliberate upon the issue of principle of merger on the basis of the given facts of this case.

8. Admittedly, a departmental proceeding was initiated against the writ petitioner under the provision of Central Industrial Security Forces Rules which contains a provision for procedure of imposing penalties as under Rule 36 so far as it relates to imposing major penalty while Rule 37 provides for imposing minor penalty and Rule 38 provides for imposing petty punishments. The aforesaid provision of law also provides provision for appeal as under the provision of Rule 46.

The admitted fact herein is that a departmental proceeding was initiated at the time when the writ petitioner was posted at CISF Unit NTPC, Barh in the State of Bihar in which the original authority has passed an order on 16.05.2014 withholding one annual increment for three years without cumulative effect. The said order of punishment has been entered into the service book of the writ petitioner on 26.05.2014. The writ petitioner, thereafter, was transferred from CISF Unit NTPC, Barh falling within the jurisdiction of State of Bihar to CISF Unit TTPS, Lalpania falling within the jurisdiction of State of Jharkhand on 01.06.2014.

The writ petitioner preferred an appeal while he was posted at CISF Unit NTPC,

Barh which was rejected vide order dated 27/28.07.2014, the day when the writ petitioner has already been transferred and posted i.e. on 01.06.2014, to CISF Unit TTPS, Lalpania falling within the territorial jurisdiction of the State of Jharkhand. The fact about dismissal of the appeal has been inserted in the service book of the writ petitioner on 10.10.2014 by Deputy Commandant, CISF Unit TTPS, Lalpania. Thus, it is admitted fact that the order passed by the original authority dated 16.05.2014 has been confirmed by the statutory appellate authority who has dismissed the appeal vide order dated 27/28.07.2014. Therefore, the order passed by the original authority has merged with the order passed by the appellate authority.

9. Before answering this issue it would be relevant to bring certain authorities of the Hon'ble Supreme Court regarding position of law in entertaining the writ petition.

It is not in dispute that the writ petition is amenable under Article 226 of the Constitution of India if part of cause of action arises within the territorial jurisdiction of the High Court. Article 226 of the Constitution of India confers power upon the High Court to issue certain writs-

(1) notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them or the enforcement of any of the rights conferred by Part-III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause(2) of Article 32.

The Constitution Bench of the apex Court in Election Commission, India -vs- Saka Venkata Rao, [AIR 1953 SC 210] held that the writ court would not run beyond the territories subject to its jurisdiction and that the petitioner or the authority affected by the writ must be amenable to court's jurisdiction either by residence or location within those territories. The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issued under Article 226 of the Constitution which makes no reference to any cause of action or where it arises

but insist on the presence of the person or authority within the territories in relation to which High Court exercises jurisdiction.

In *K.S.Rashid and son -vs- Income Tax Investigation Commission and others*, [AIR 1954 SC 207] the Hon'ble Apex Court took similar view and held

that the writ court cannot exercise its power under Article 226 beyond its territorial jurisdiction. It is also held that the exercise of power conferred by

Article 226 was subject to two-fold limitations, firstly, the power is to be exercised in relation to which it exercises jurisdiction and secondly, the person

or authority on whom the High Court is empowered to issue writ must be within those territories. Both the judgments rendered by the Apex Court in

the case of *Election Commission, India -vs- Saka Venkata Rao(supra)* and *K.S.Rashid and son -vs- Income Tax Investigation Commission and others*

(*supra*) fell for consideration before the Larger Bench of Hon'ble Apex Court in *Lt. Col. Khajoor Singh -vs- Union of India and another*, [AIR 1961

SC 532] and the view taken by the Hon'ble Apex Court in the earlier two judgments has been confirmed by the larger Bench of the Apex Court which

stated that unless there are clear and compelling reasons, which cannot be denied, writ court cannot exercise jurisdiction under Article 226 of the

Constitution beyond its territorial jurisdiction.

Prior to the insertion of clause 1(A), it was held that the writ should not run beyond territories to which High Court exercise jurisdiction, but due to the

aforesaid ratio which resulted undue hardship and inconvenience to litigants in respect of jurisdiction, clause (1)(a) was inserted and that clause is

numbered as Clause (2) of the 42nd amendment Act, if the cause of action arises wholly or in part, within the jurisdiction of that High Court, it may

issue a writ against a person or authority resides within the jurisdiction of another High Court, as a result of insertion of the clause, a petition can be

presented in the High Court within whose jurisdiction cause of action in respect of which relief is sought under Article 226 of the Constitution of India

has arisen wholly or in part, reference in this regard may be made to the judgment rendered by the Apex Court in the case of *Oil and Natural Gas*

Commission - vs- Utpal Kumar Basu and others, [(1994) 4 SCC 711] wherein it has been held that 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.

Same view has been taken by the Hon'ble Apex Court while dealing with the matter in the case of Union of India and others -vs- Adani Exports Ltd.

and another, [(2002)1 SCC 567], it has been held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the

integral facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide the dispute and the entire or a part

of it arose within its jurisdiction.

In the judgment rendered by the Hon'ble Apex Court in the case of Kusum Ingots and Alloys Ltd. -vs- Union of India and another, [(2004) 6 SCC

254], it has been held that keeping in view the expression used in Clause(2) of Article 226 of the Constitution of India, indisputably even if a small

fraction of cause of action occurs within the jurisdiction of the Court, the Court will have jurisdiction in the matter. However, even if a small part of

cause of action arises within territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling

the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the

doctrine of forum convenient, that a part of cause of action arise of one or the other forums, it will be for the petitioner to choose its forum.

10. This Court has also scrutinized the issue on the angle of principle of merger for which the definition of ""merger"" is required to be seen which

has been dealt with by Hon'ble Apex Court in the judgment rendered in Kunhayammed and Others v. State of Kerala and Another [(2000) 6 SCC

359] wherein at paragraph 42 it has been held by defining the meaning of merger which means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up.

Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not

increased; an absorption or swallowing up so as to involve a loss of identity and individuality, paragraph 42 of the judgment is quoted as hereunder :-

“42. To merge means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up.

Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not

increased; an absorption or swallowing up so as to involve a loss of identity and individuality.”

The Hon'ble Apex Court on the principle of merger has been pleased to hold in the case of Collector of Customs, Calcutta v. East India Commercial

Co. Ltd., Calcutta and Others [AIR 1963 SC 1124] at paragraph 4 which is referred as hereunder :-

“4. The question therefore turns on whether the order of the original authority becomes merged in the order of the Appellate Authority even where

the Appellate Authority merely dismisses the appeal without any modification of the order of the original authority. It is obvious that when an appeal is

made, the Appellate Authority can do one of three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it

may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the

original authority is either reversed or modified it is the order of the Appellate Authority which is the operative order and if the High Court has no

jurisdiction to issue a writ to the Appellate Authority it cannot issue a writ to the original authority. The question therefore is whether there is any

difference between these two cases and the third case where the Appellate Authority dismisses the appeal and thus confirms the order of the original

authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the Appellate Authority and

the third kind of order passed by it. In all these three cases after the Appellate Authority has disposed of the appeal, the operative order is the order of

the Appellate Authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification. Therefore, if the Appellate Authority is beyond the territorial jurisdiction of the High Court it seems difficult to hold even in a case where the Appellate Authority has confirmed the order of the original authority that the High Court can issue a writ to the original authority which may even have the effect of setting aside the order of the original authority when it cannot issue a writ to the Appellate Authority which has confirmed the order of the original authority. In effect, by issuing a writ to the original authority setting aside its order, the High Court would be interfering with the order of the Appellate Authority which had confirmed the order of the original authority even though it has no territorial jurisdiction to issue any writ to the Appellate Authority. We therefore feel that on principle when once an order of an original authority is taken in appeal to the Appellate Authority which is located beyond the territorial jurisdiction of the High Court, it is the order of the latter authority which is the operative order after the appeal is disposed of; and as the High Court cannot issue a writ against the Appellate Authority for want of territorial jurisdiction it would not be open to it to issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of, though it may be that the Appellate Authority has merely confirmed the order of the original authority and dismissed the appeal.â??

Thus, it is evident by going through the quoted paragraph as hereinabove that the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification. If the Appellate Authority is beyond the territorial jurisdiction of the High Court it seems difficult to hold even in a case where the Appellate Authority has confirmed the order of the original authority which may even have the effect of setting aside the order of the original authority when it cannot issue a writ to the Appellate Authority which has confirmed the order of the original authority. It has further been held, in the aforesaid judgment, that issuing a writ to the original authority setting aside its order, the High Court would be interfering with the order of the Appellate Authority which had confirmed the order of the original authority even though it has no territorial jurisdiction

to issue any writ to the Appellate Authority. Therefore, on principle it has been held that once an order of an original authority is taken in appeal to the Appellate Authority which is located beyond the territorial jurisdiction of the High Court, it is the order of the latter authority which is the operative order after the appeal is disposed of; and as the High Court cannot issue a writ against the Appellate Authority for want of territorial jurisdiction it would not be open to it to issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of, though it may be that the Appellate Authority has merely confirmed the order of the original authority and dismissed the appeal.

The aforesaid judgment, if taken into consideration on the given facts, herein also the original authority has passed order on 16.05.2014 when the writ

petitioner was posted at CISF Unit NTPC, Barh and subsequent thereto he has been transferred to the CISF Unit TTPS, Lalpania falling within the

territorial jurisdiction of the High Court of Jharkhand and he was posted there, the original order passed by the original authority was affirmed in

exercise of power of statutory appeal as provided under Central Industrial Security Forces Rules, 2001 and hence, applying the principle laid down by

the Hon'ble Apex Court when the appellate order was passed by the appellate authority, the writ petitioner was posted within the territorial jurisdiction

of this Court, therefore, the argument advanced on behalf of learned counsel appearing for the appellants cannot be said to be acceptable merely

because the order passed by the original authority has been given effect to while the writ petitioner was posted within the territorial jurisdiction of the

State of Bihar and further on the plea that in the year 2017 the benefit has been restored after completion of period of three years when the writ

petitioner was posted in CISF Unit TTPS, Lalpania falling within the territorial jurisdiction of the State of Jharkhand as because, although the order

passed by the original authority has been given effect to but the order passed by the original authority has become operative only when the order

passed by the original authority has been confirmed by the appellate authority in exercise of power of statutory appeal as conferred under the

provision of Rule 46 of the Central Industrial Security Forces Rules, 2001 and as such, it cannot be said that the cause of action as required to be

available to invoke the jurisdiction of writ court under Article 226 of the Constitution of India as per the provision of sub-clause (2) of Article 226 of

the Constitution of India is not available within the territorial jurisdiction of the High Court of Jharkhand.

11. This Court has also gone across the proposition laid down by the Hon'ble Apex Court in this respect in *Oil and Natural Gas Commission v. Utpal*

Kumar Basu and Others (Supra) wherein it has been held that if a part of cause of action arose within the territorial jurisdiction of a High Court, it has

jurisdiction to entertain the petition which shall be decided on the facts pleaded in the petition.

In another judgment rendered by Hon'ble Apex Court in *Alchemist Ltd. and Another v. State Bank of Sikkim and Others [(2007) 11 SCC 335]* similar

proposition has been reiterated to the effect that if part of the cause of action has arisen within the territorial jurisdiction of a High Court, that High

Court has jurisdiction to entertain the writ petition.

Even in the case of *Shanti Devi alias Shanti Mishra v. Union of India and Others [2020 SCC OnLine SC 908]*, after taking into consideration the fact

that the pension was being disbursed from the bank situated within the territorial jurisdiction of the State of Bihar where the petitioner of that case was

settled after superannuation and the pension was stopped holding the writ petitioner disentitled for the same, the Hon'ble Apex Court has come to the

conclusion about maintainability of the writ petition before the Patna High Court since cause of action of stoppage of pension accrued within the

territorial jurisdiction of the Patna High Court. Even applying the principle laid down therein, in the given facts of this case, the instant case will be

maintainable before Jharkhand High Court.

We are not hesitating to come to the finding by taking into consideration the ratio laid down by the Hon'ble Apex Court in the cases referred

hereinabove more particularly, in the given facts of this case relying upon the judgment rendered in *Collector of Customs, Calcutta v. East India*

Commercial Co. Ltd., Calcutta and Others (Supra) that since the appellate order has been communicated to the writ petitioner while the writ petitioner

was transferred within the territorial jurisdiction of this Court by posting him in the CISF Unit TTPS, Lalpania, Jharkhand, the writ petition will lie

before this Court.

It requires to refer herein that this Court is not holding the maintainability of the writ petition within the territorial jurisdiction of this Court merely on the

basis of the communication of the appellate order to the writ petitioner, rather it has been held maintainable taking into consideration the fact about the communication of the aforesaid order coupled with the fact about his transfer during the pendency of the appeal within the territorial jurisdiction of this Court.

Further, this Court has also considered that on account of the continuation of the writ petitioner in service after his transfer from the territorial jurisdiction of the State of Bihar to the State of Jharkhand where the appellate order has been communicated and, therefore, has come to the finding about maintainability of the writ petition before the territorial jurisdiction of this Court which means that the relationship of the employer and employee has not ended in the given facts of this case as because it is the admitted case of the appellants that the order of appellate authority has been inserted in the service book of the writ petitioner by the authority posted at CISF Unit TTPS Lalpania which is within the territorial jurisdiction of this Court.

12. Accordingly, on the basis of the discussions made hereinabove, in our considered view, the writ petition is maintainable and hence, the issue has been answered.

13. Let this matter be posted on 25.01.2022 for hearing the issue on merit.