

2016 SCC OnLine All 4642

In the High Court of Allahabad

(BEFORE NARAYAN SHUKLA AND ASHOK PAL SINGH, JJ.)

Bibhuti Narain Singh 9694 (S/S) 2006 ... Appellant;

Versus

Food Corporation of India Thru its Chairman and
Ors. ... Respondent.

Special Appeal Defective No. - 785 of 2014

Decided on February 2, 2016

Advocates who appeared in this case:

Counsel for Appellant : Upendra Nath Misra

Counsel for Respondent : Veena Sinha, Kamesh Gupta

The Judgment of the Court was delivered by

NARAYAN SHUKLA, J. and ASHOK PAL SINGH, J.:— Heard Mr. Upendra Nath Misra, learned counsel for the appellant as well as Mr. Kamesh Gupta, learned counsel for the respondents. This appeal has arisen out of the order dated 14 August 2014 passed by the learned Single Judge in writ petition No. 9694 (SS) of 2006. The appellant/petitioner had challenged the order of penalty dated 7 October 1998 imposing the stoppage of two annual increments with cumulative effect w.e.f. 1 January 1999 passed by the opposite party No. 5 General Manager (Punjab) Food Corporation of India, Chandigarh who is at Chandigarh State of Punjab as also the appellate order upholding the order of punishment passed by the opposite party No. 3 who is, placed at NOIDA, Gautam Budh Nagar, State of U.P. and further the order passed on the review application passed by the opposite party No. 2 who is also placed at New Delhi.

2. The learned Single Judge, in view of the placement of the authorities who had issued the order of punishment, dealt with appeal and review petition and discussed the question of jurisdiction of this Court. In light of the decision of the larger Bench of the Supreme Court in *Lt. Col. Khajoor Singh v. Union of India* 1 the learned Single Judge had arrived at conclusion that this Court lacks jurisdiction to entertain the writ petition. Aggrieved petitioner had filed the present appeal.

3. In *Lt. Col. Khajoor Singh v. Union of India* (supra) the Hon'ble Supreme Court has held that "the view taken in (1953) 1 SCC 320 : 1953 SCR 1144; (AIR 1953 SC 210) (supra) and (1954) 1 SCC 69 : 1954 SCR 738 ((1954) 1 SCC 69 : AIR 1954 SC 207) (supra) that 'there is two-fold limitation on the power of the High Court to issue

writs etc. under Art. 226, namely, (i) 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, and (ii) the person or authority to whom the High Court is empowered to issue such writs must be "within those territories" which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories, is the correct one."

4. The interpretation given by this Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke writ jurisdiction. As a result, clause (1-A) was inserted in Article 226 by the Constitution (Fifteenth) Amendment Act, 1963 and subsequently renumbered as clause (2) by the Constitution (Forty-second) Amendment Act, 1976. The amended clause (2) now reads as under:

"226. Power of High Courts to issue certain writs:—

(1)

(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."

5. The Hon'ble Supreme Court in *Kusum Ingots and alloys Ltd. v. Union of India 2* had discussed the term 'cause of action' and in reference of its other decisions held that whether the Court has a territorial jurisdiction to entertain the writ petition, must be arrived at on the basis of avements made in the writ petition, the truth or otherwise thereof being immaterial.

"10. 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 accrues within the jurisdiction of this Court, the Court will have jurisdiction in the matter.

29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in *Khajoor Singh* has, thus, no application."

6. Recently in *Nawal Kishore Sharma v. Union of India 3* the Hon'ble Supreme Court has discussed the scope of Article 226(2) of the Constitution of India and on a plain reading of the amended provisions in Clause (2), it is clear that now the High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or

partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed. The term "cause of action" as appearing in clause (2) came up for consideration time and again before this Court.

7. The facts of the present case are that whole departmental proceeding took place at the place being beyond the territorial jurisdiction of this Court, but the order of penalty was served upon the petitioner at Faizabad where he was posted. The order of punishment is stoppage of annual increment. Since the petitioner is posted at Faizabad it has to be given effect to at Faizabad by withholding increment from his salary to be drawn at Faizabad.

8. The learned counsel for the appellant has submitted that definitely the order of imposition of penalty infringes the appellants right to get full salary at Faizabad, therefore, he has every legal right to defend it by espousing its cause before the Court within whose jurisdiction his place of posting is covered. In the case of *Nawal Kishore Sharma* (supra) the Hon'ble Supreme Court while disclosing the facts of the case has held that since the respondents of the said case had been staying at his home address being under ailment where the order of punishment was served a part of cause of action arose within the jurisdiction of this Court where he received a letter of refusal disentitling him from disability compensation. Indisputably in the present case the partly cause of action has arisen within the jurisdiction of this Court at Lucknow by giving effect to the punishment awarded to the petitioner. Therefore, the writ petition preferred by the appellant before the learned Single Judge was well maintainable to be adjudicated upon on merit.

9. With the aforesaid observations we set-aside the judgment and order dated order dated 14 August 2014 passed by the learned Single Judge in writ petition No. 9694 (SS) of 2006. The writ petition is restored to the record of Learned Single Judge for its decision a fresh after providing opportunity of hearing to the parties concerned. In the result the appeal stands allowed.

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