

Court No. - 5

Case :- WRIT - A No. - 1027 of 2025

Petitioner :- Ramashray Singh Yadav

Respondent :- State Of U.P. Thru. Prin. Secy. Cooperative Deptt. U.P. Lko. And 6 Others

Counsel for Petitioner :- Avinash Chandra, Akhilesh Kumar Kalra, Alok Yadav, Pooja Singh

Counsel for Respondent :- C.S.C., Rakesh Kumar Chaudhary

Hon'ble Abdul Moin, J.

1. Heard Sri Akhilesh Kalra, learned counsel for the petitioner, Sri Anil Pratap Singh, learned Additional Advocate General, assisted by Sri P.K. Singh, learned Additional Chief Standing Counsel appearing for respondents no.1 and 2, Sri Alok Sharma and Sri Anuj Tandon, learned counsels appearing for respondents no.3 to 6, and Sri Prashast Puri, learned counsel, who files Vakalatnama on behalf of respondent no.7, which is taken on record.

2. At the very outset, Sri Akhilesh Kalra, learned counsel for the petitioner, was given a choice of withdrawing the petition for filing at Allahabad considering the preliminary objections raised on behalf of respondents but he brazenly insisted that this Court should proceed to decide the matter on merits of the objection. Accordingly, the Court proceeds to hear and decide the matter.

3. Instant petition has been filed praying for quashing of the Government Order dated 18.03.2020, a copy of which is Annexure-1 to the petition. A further prayer is for setting aside the recommendation of the Departmental Promotion Committee dated 08.12.2017 so far as it relates to the petitioner and further to direct the respondents to consider the petitioner for promotion to the post of Manager (General) w.e.f. 08.12.2017 or from the date when juniors to the petitioner have been promoted to the said post.

4. A preliminary objection has been taken by Sri P.K. Singh, learned Additional Chief Standing Counsel by contending that the writ petition has been filed with material concealment of fact.

5. The fact which has not been disclosed by the petitioner is that the petitioner along with several others had filed a Writ-A No.791 of 2022 in re: Ajay Pratap Singh & 9 others vs. State of U.P. and others, in which he had prayed for a mandamus commanding the respondents to grant the benefit of annual increments

admissible and payable to the petitioners for the year 2019-2020 and 2020-2021.

6. The said writ petition was dismissed as withdrawn with liberty to file a fresh vide order dated 16.02.2022.

7. This fact has not been disclosed while filing the instant petition, which indicates concealment of facts.

8. Subsequent thereto, the petitioner along with several others filed Writ-A No.2847 of 2022 in re: Shiv Pratap Singh and others vs. State of U.P. and others, before this Court at Allahabad seeking grant of benefit of annual increments admissible and payable, which is pending as has been disclosed in paragraph 29 of the instant petition. In the said writ petition, the Government Order as is challenged in the instant petition has also been annexed as Annexure-13 to the petition.

9. The objection is that apart from the fact that the petitioner has not disclosed the filing of the earlier writ petition before this Court even though it was for grant of the increments and the said writ petition having been withdrawn with liberty to file a fresh which patently amounts to concealment of fact. The other objection is that once the petitioner was perfectly aware about the Government Order dated 18.03.2020 while filing the petition at Allahabad, as has been challenged in the instant petition, consequently, in case he only confined his prayer for a mandamus for grant of annual increments, as such considering the provisions of Order 2 Rule 2 CPC the instant petition would not be maintainable for a challenge to the said Government Order in a fresh petition as has now been filed by the petitioner.

10. In this regard, reliance has been placed on the Division Bench judgment of this Court passed in Writ-A No.2330 of 2023 in re: **Smt. Gopa Bahadur vs. State of U.P. and others** decided on 17.02.2023.

11. Responding, Sri Akhilesh Kalra, learned counsel for the petitioner, states that various petitioners had filed Writ-A No.791 of 2022 before this Court and the same was admittedly dismissed as withdrawn with liberty to file a fresh which petition was filed along with other persons by the petitioner also at Allahabad and the said writ petition is pending.

12. Sri Kalra specifically admits that he has not disclosed the fact of the earlier petition having been filed here at Lucknow and having been withdrawn as not pressed with liberty to file a fresh.

13. So far as non-challenge to the Government Order dated 18.03.2020 before this Court at Allahabad, it is contended that there is a separate cause of action for raising a challenge to the Government Order dated 18.03.2020 and as such provisions of Order 2 Rule 2 of CPC would not be applicable, even though the petitioner was aware of the Government Order dated 18.03.2020 while filing the petition at Allahabad.

14. Heard learned counsels for the parties and perused the records.

15. From perusal of the records, it emerges that earlier the petitioner along with several others had approached this Court by filing Writ-A No.791 of 2022. Although in the said writ petition, the prayer was for grant of annual increments yet there is no disclosure in the instant petition as has candidly been admittedly by Sri Akhilesh Kalra, learned counsel for the petitioner, of the earlier writ petition having been filed here at Lucknow and having been withdrawn with liberty to file a fresh. Thus, the same would amount to patent concealment of fact.

16. So far as the writ petition namely Writ-A No.2847 of 2022 having been filed at Allahabad is concerned which the petitioner claims to have filed along with several other persons, a perusal of copy of the said writ petition which has been produced by Sri P.K. Singh, learned Additional Chief Standing Counsel, would indicate that although the petitioner along with others have only prayed for a mandamus commanding the respondents to grant the annual increments admissible and payable to the petitioners for certain number of years yet the Government Order dated 18.03.2020 had also been filed in the said writ petition.

17. As already indicated above, the aforesaid writ petition filed at Allahabad namely Writ-A No.2847 of 2022 only contains a prayer for grant of increments and there is no prayer as has been made in the instant petition praying for quashing of the Government Order dated 18.03.2020.

18. In this regard, it would be suffice to refer to the provisions of Order 2 Rule 2 CPC which have been considered by the Division Bench of this Court in the case of **Smt. Gopa Bahadur (supra)** wherein this Court has held as under:-

"6. Order 2, Rule 2 of C.P.C., provides that while filing a petition or a suit, whole of the claim, which the plaintiff or the petitioner is entitled to make in respect of a cause of action, shall be required to be added failing which he shall not afterwards be entitled to sue in respect of the portion of the omitted or relinquished claim. Similarly, Explanation IV of Section 11 of the C.P.C., also provides that any matter which might and ought to have been made a ground of defence or attack in such former suit or petition under Article 226, shall be

deemed to have been a matter directly or substantially in issue in such suit or proceedings.

7. The Hon'ble Supreme Court has also, on more than one occasion deprecated the practice of filing multiple writ petitions on same or similar cause of action. Reference in this regard can be made to the judgment rendered in the case of Udyami Evam Khadi Gramodyog Welfare Sanstha Vs. State of U.P.¹. The question is "Whether this Court should entertain second petition particularly in view of the defects pointed out above? The answer to the aforesaid question, in the considered view of this Court, has to be negative."

8. Supreme Court in Commissioner of Income Tax, Bombay Vs. T.P. Kumaran²; Union of India Vs. Punnial³, observed as under:

"..... It is why the rule of judicial practice and procedure that a second writ petition shall not be entertained by the High Court on the subject matter respecting that the writ petition of the same person was dismissed by the same Court even if the order of such dismissal was in limine, be it on the ground of laches or on the ground of non-exhaustion of alternative remedy, has come to be accepted and followed as salutary rule in exercise of writ jurisdiction of the Court."

9. Therefore, in view of the above referred authorities, it is abundantly clear that even if the provisions of the C.P.C. are not applicable in writ jurisdiction, the principle enshrined therein can be resorted to for the reason that the principles, on which the C.P.C. is based, are founded on public policy and, therefore, require to be extended and made applicable in writ jurisdiction also in the interest of administration of justice. Any relief not claimed in the earlier writ petition should be deemed to have been abandoned by the petitioner to the extent of the cause of action claimed in the subsequent writ petition and in order to restrain the person from abusing the process of the Court, such an order/course requires not only to be resorted to but to be enforced."

19. From perusal of the aforesaid judgment in the case of **Smt. Gopa Bahadur (supra)** it clearly emerges that the Division Bench of this Court after considering the provisions of Order 2 Rule 2 CPC has held that while filing a petition or a suit, whole of the claim, which the plaintiff or the petitioner is entitled to make in respect of a cause of action, shall be required to be added failing which he shall not afterwards be entitled to sue in respect of the portion of the omitted or relinquished claim.

20. As already indicated above, in both the petitions that had been filed by the petitioner along with others although the petitioner was aware of the Government Order dated 18.03.2020 as is challenged in the instant petition yet no challenge was raised to the aforesaid Government Order and, as such, considering the Division Bench judgment in the case of **Smt. Gopa Bahadur (supra)** the instant writ petition will not be maintainable.

21. Another aspect of the matter would be that the petitioner cannot be allowed to

do forum hunting inasmuch as having earlier filed a writ petition here at Lucknow and having withdrawn the same with liberty to file a fresh and the subsequent petition having been filed at Allahabad there cannot be any occasion for the petitioner to again approach this Court may be as a single petitioner for raising a challenge to the Government Order dated 18.03.2020.

22. In this regard, suffice is to refer the Division Bench judgment of this Court in the case of **Prem Prakash Yadav vs. Union of India**-(2024) 1 UPLBEC 119], wherein this Court has held as under:-

"6. Petitioner insists that the present petition is filed against a cause of action that arises within Lucknow. However, he has admitted in paragraph 68 and 85 that he has earlier filed two petitions at Allahabad with regard to same property. Filing of present petition at Lucknow amounts to forum hunting and not forum convenience. Supreme Court has settled law with regard to forum convenience in the case of Kusum Ingots & Alloys Ltd. (supra), the relevant paragraph-30 of the same reads:-

"Forum convenience

30. We must, however, remind ourselves that even if a small part of cause of action arises within the 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 conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney [AIR 1941 Cal 670 : ILR (1941) 1 Cal 490] , Madanlal Jalan v. Madanlal [(1945) 49 CWN 357 : AIR 1949 Cal 495] , Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. [1997 CWN 122] , S.S. Jain & Co. v. Union of India [(1994) 1 CHN 445] and New Horizons Ltd. v. Union of India [AIR 1994 Del 126]."

7. In Krishna Veni Nagam (supra), the Supreme Court in Para 13 held:

"13. We have considered the above suggestions. In this respect, we may also refer to the doctrine of forum non conveniens which can be applied in matrimonial proceedings for advancing interest of justice. Under the said doctrine, the court exercises its inherent jurisdiction to stay proceedings at a forum which is considered not to be convenient and there is any other forum which is considered to be more convenient for the interest of all the parties at the ends of justice. In Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd. [Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd., (2003) 4 SCC 341] this Court observed : (SCC pp. 356-57, para 19)

"19. In Spiliada Maritime case [Spiliada Maritime Corpn. v. Cansulex Ltd., (1986) 3 All ER 843 : 1987 AC 460 : (1986) 3 WLR 972 (HL)] the House of Lords laid down the following principle : (All ER p. 844a) ?The fundamental principle applicable to both the stay of English proceedings on the ground that some other forum was the appropriate forum and also the grant of leave to serve proceedings

out of the jurisdiction was that the court would choose that forum in which the case could be tried more suitably for the interests of all the parties and for the ends of justice."

The criteria to determine which was a more appropriate forum, for the purpose of ordering stay of the suit, the court would look for that forum with which the action had the most real and substantial connection in terms of convenience or expense, availability of witnesses, the law governing the relevant transaction and the places where the parties resided or carried on business. If the court concluded that there was no other available forum which was more appropriate than the English court, it would normally refuse a stay. If, however, the court concluded that there was another forum which was *prima facie* more appropriate, the court would normally grant a stay unless there were circumstances militating against a stay. It was noted that as the dispute concerning the contract in which the proper law was English law, it meant that England was the appropriate forum in which the case could be more suitably tried.?(emphasis in original)

Though these observations have been made in the context of granting anti-suit injunction, the principle can be followed in regulating the exercise of jurisdiction of the court where proceedings are instituted. In a civil proceeding, the plaintiff is the *dominus litis* but if more than one court has jurisdiction, court can determine which is the convenient forum and lay down conditions in the interest of justice subject to which its jurisdiction may be availed [Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254, para 30] ."

(emphasis added)

8. In *Kusum Ingots & Alloys Ltd.* (supra) and *Krishna Veni Nagam* (supra), Supreme Court has held that plaintiff/petitioner alone does not have exclusive discretion to choose jurisdiction when the same lies at multiple places. In appropriate cases, Court can exercise its inherent jurisdiction and fix jurisdiction taking into consideration the convenience of parties, witnesses, Court and any other relevant factors, which would impact the proceedings.

9. No doubt petitioner is master of his petitions. In case jurisdiction partially falls at Lucknow in appropriate case a petition can be filed at Lucknow also. But in the present matter earlier repeatedly petitioner chose to file petitions at Allahabad and some of them are pending at Allahabad. The said fact ought to have been disclosed by the petitioner in the very first paragraph of his writ petition. The same was not done. Even otherwise, the unique position with regard to Allahabad High Court is that under Clause-14 of United Provinces High Court (Amalgamation) Order, 1948 the petitions can be transferred by the Chief Justice while sitting at Lucknow to Allahabad but same can neither be transferred by him from Allahabad to Lucknow nor any Court can summon them. The matters at Allahabad can only be heard at Allahabad. Therefore, in the given circumstances, this Court can not summon the records from Allahabad. It creates a unique difficulty. Thus, in this peculiar situation it is necessary that once petitioner chooses between Lucknow or Allahabad for filing his petitions the same is a judicial discipline and ought to be followed in later petitions, if any filed. In absence of the same it becomes difficult for Courts at Allahabad and Lucknow, to have all the matters together and decide the same. Petitioner in garb of his power to chose forum can not cause inconvenience to Court and keep list pending unnecessary in bifurcated manner.

11. Merely because petitioner has a right to file writ petition before any Court of their choice either at Allahabad or Lucknow, it does not give them a kangaroo right to hop around jurisdiction on whims. It is not only his convenience, which is to be looked into, but convenience of all related is also relevant, including that of Court. Facts of this case are a glaring example of the same. The difficulty being faced by this Court is created by petitioner only.

12. A party has a choice to invoke jurisdiction of this Court either at Allahabad or at Lucknow and once they have exercised the said choice, parties should restrict themselves to their initial choice of forum while filing later petitions. Hopping around forums would be highly inconvenient to the working of the Court as in the present case. Once petitioner chooses a jurisdiction, out of many available, in normal course, he should stick with the same, unless he can provide cogent reasons for his hopping around. In the present case the petitioner has not provided any such reasons."

23. The instant case is on worse footing than what has been considered by this Court in the case of **Prem Prakash Yadav (supra)** inasmuch as, as already indicated above, there has been concealment of fact on the part of the petitioner of having earlier filed a writ petition and having withdrawn the same with liberty to file at Allahabad.

24. Keeping in view the aforesaid discussion as well as judgments of the Division Bench of this Court in the case of **Smt. Gopa Bahadur (supra)** and **Prem Prakash Yadav (supra)**, the writ petition is dismissed.

Order Date :- 14.2.2025

A. Katiyar