

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C. W. P. Nos. 6314, 12277, 12278 & 12308 of 2014

Reserved On : 26.05.2015

Pronounced On : 30.06.2015

C. W. P. No. 6314 of 2014 :

Ex. Dfr. Gurdial Singh		Petitioner
vs.		
Union of India and others		Respondents

C. W. P. No. 12277 of 2014 :

Vijay Kumar Joshi		Petitioner
vs.		
Union of India and others		Respondents

C. W. P. No. 12278 of 2014 :

Dr. Abhishek Thakur		Petitioner
vs.		
Union of India and others		Respondents

C. W. P. No. 12308 of 2014 :

Asha Devi		Petitioner
vs.		
Union of India and others		Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Ramneek Vasudeva, Advocate
for the petitioners.

Mr. Chetan Mittal, Senior Advocate
as Assistant Solicitor General of India
with Mr. Vivek Singla, Senior Panel Counsel
and Mr. Puneet Gupta, Advocate
for the respondents – Union of India.

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DEEPAK SIBAL, J. :

These petitions being **C. W. P. No. 6314 of 2014, C. W. P. No. 12277 of 2014, C. W. P. No. 12278 of 2014** and **C. W. P. No. 12308 of 2014**, involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment. For the sake of convenience, facts are being extracted from **C. W. P. No. 12278 of 2014 – Dr. Abhishek Thakur vs. Union of India and others.**

Through the present petition, the petitioner primarily seeks to restrain the respondent authorities from replacing him with respondent no. 8 – another contractual employee.

The facts, in brevity, which have emerged from the record of the case as also from the arguments raised at the bar, are that in the year 2003, the Ministry of Defence, Government of India introduced the Ex-Servicemen Contributory Health Scheme (hereinafter referred to as – the Scheme). The Scheme aimed to provide medicare to ex-servicemen and their dependents through a network of polyclinics and service medical facilities spread across the country. The Scheme was a contributory Scheme

and was to extend the earlier referred benefits on payment of contribution by its members. Under the Scheme, the appointment of the staff was to be on contractual basis.

Under the Scheme, the petitioner, in April 2012, was appointed and joined as a Dental Officer in the ECHS Polyclinic, Sarkaghat, Himachal Pradesh.

The petitioner was appointed on contractual basis and while the petitioner was discharging his duties as such, the respondents got published an advertisement in the newspaper namely 'The Tribune' dated 30.01.2014 seeking to invite applications for filling up the post, on which the petitioner was working on contractual basis. On going through the above said advertisement, apprehending his relieving, the petitioner requested the respondents to extend his period of service, but no extension in service of the petitioner was given and in the meanwhile, in pursuance to advertisement dated 30.01.2014, selections were made and respondent no. 8 was appointed on contractual basis against the post being manned by the petitioner. It is in these circumstances that the present writ petition has been filed by the petitioner for the relief mentioned above.

At the very outset, a preliminary issue was raised on behalf of the respondents with regard to the very maintainability of the present writ petition on the ground of territorial jurisdiction. It was submitted that the initial service contract as also the contract with regard to renewal of services between the petitioner and the respondents had been entered into at

Sarkaghat, Himachal Pradesh and it was there that the petitioner had discharged his entire service. It was further submitted that respondent no. 8, whose appointment was under challenge, had also been offered appointment at Sarkaghat, Himachal Pradesh. It was thus submitted that no cause of action had accrued to the petitioner within the territorial jurisdiction of this Court and the petition was sought to be dismissed on this ground alone.

Per contra, learned counsel appearing on behalf of the petitioner, submitted that the advertisement dated 30.01.2014 was issued in a newspaper, which had its publishing unit at Chandigarh and that the petitioner's appointing authority – respondent no. 3 was also stationed at Panchkula (Haryana), and therefore, only this Court would have jurisdiction to adjudicate upon and decide the present writ petition. It was submitted that no direction, as sought for by the petitioner, could be issued by any other Court to the employer of the petitioner, who was stationed at Panchkula (Haryana), and therefore, the petitioner could approach only this Court for the vindication of his grievance.

It is the undisputed position that the service contracts between the petitioner and the respondents were entered into at Sarkaghat, Himachal Pradesh and it is there that the petitioner was appointed and had served the respondents since the date of his appointment. It is further the admitted position between the parties that respondent no. 8, who seeks to replace the petitioner and whose appointment is under challenge, has also been appointed at Sarkaghat, Himachal Pradesh.

Only for the reason that the advertisement dated 30.01.2014 was issued in a newspaper, which had its publishing unit at Chandigarh or that the appointing authority of the petitioner is based in Panchkula (Haryana), would not confer territorial jurisdiction on this Court. In this regard, Article 226 (2) of the Constitution of India can usefully be referred to which is reproduced as under :-

***“226. Power of High Courts to issue
certain writs –***

(1) xx xx xx xx

***(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.”***

That being so, in the facts and circumstances of the case, the “cause of action”, if any, does not lie within the territorial jurisdiction of this Court.

The above view taken by me is supported by the judgment of

Apex Court, in the case of **State of Rajasthan and Others vs. M/s Swaika Properties and Another** reported as **(1985) 3 SCC 217**, wherein the facts were that the respondent-Company having its registered office in Calcutta, owned certain land on the outskirts of Jaipur and was served with notice for acquisition of land. The notice was served on the Company at its registered office at Calcutta. The Company, first appeared before the Special Court and finally the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came before the Apex Court to answer the question as to whether the service of notice at the registered office of the Respondent in Calcutta would constitute “cause of action” and was it sufficient to confer upon the Calcutta High Court jurisdiction to entertain the petition. Answering the question the Apex Court held :-

“7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any

steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

8. *The expression “cause of action” is tersely defined in Mulla’s Code of Civil Procedure:*

“The ‘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 a judgment of the court.”

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne

Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52 (1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary

for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.”

This proposition of law was again considered by the Apex Court in the case of **Oil and Natural Gas Commission vs. Utpal Kumar Basu and others** reported as **(1994) 4 SCC 711**. In that case, the Oil and

Natural Gas Commission (ONGC) got issued an advertisement in the

newspaper inviting tenders for setting up of Kerosene Recovery Processing Unit in Gujarat mentioning that the tenders containing offers were to be communicated to EIL, New Delhi. After the final decision was taken by the Steering Committee at New Delhi, NICCO moved the Calcutta High Court praying that ONGC be restrained from awarding the contract to any other party. It was pleaded in the petition that NICCO came to know of the tender from the publication in the “Times of India” within the jurisdiction of the Calcutta High Court. The Apex Court, by setting aside the order passed by the Calcutta High Court, concluded as under :-

“6. 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. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts

pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court.”

In **Kusum Ingots & Alloys Ltd. vs. Union of India and**

Another reported as **(2004) 6 SCC 254**, the Apex Court elaborately discussed Clause (2) of Article 226 of the Constitution of India, particularly the meaning of the word ‘cause of action’ with reference to Section 20(c) and Section 141 of the Code of Civil Procedure and observed:-

“9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c)

CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.”

Their Lordships further observed as under :-

“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.*

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.”

Further, in the case of **Union of India and others vs. Adani Exports Ltd. and another** reported as **(2002) 1 SCC 567**, the Apex Court 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. Each and every fact pleaded by the respondents in their application would not *ipso facto* lead to the conclusion that those facts give rise to a cause of action within the Court’s territorial jurisdiction unless those facts are such which have a nexus or relevance with the *lis*.

Similarly, in **Om Prakash Srivastava vs. Union of India and Another** reported as **(2006) 6 SCC 207**, the Apex Court observed that on a plain reading of Clause(2) of Article 226, it is manifestly clear that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights or for any other purpose if the cause of action in relation to which it exercises jurisdiction irrespective of 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 territory. In para 7, the Court observed :-

“7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court’s jurisdiction and such infringement may take place by causing him actual injury or threat thereof.”

In another judgment of the Apex Court in **Eastern Coalfields Ltd. and others vs. Kalyan Banerjee** reported as **(2008) 3 Supreme Court Cases 456**, following observations were made :-

“7. “Cause of action”, for the purpose of Article 226(2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged under Section 20(e) of the Code of Civil

Procedure. It means a bundle of facts which are required to be proved. The entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed.

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12. In Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P. this Court held: (SCC p. 367, para 44)

"44.The second impugned order dated 12-4-2004 is further vitiated for the following reasons:

(a) Forum.-The seniority list under challenge in the second writ petition was the seniority list of the Uttaranchal State Government of 2002 and such challenge could not have been made before the Lucknow Bench of the Allahabad High Court.

(b) Parties.-None of the direct recruits who would be directly affected by the order were made parties to the writ

petition. Therefore, the High Court did not have the benefit of competing arguments in the matter. Even though, the Principal Secretary of the State of Uttaranchal was made a party, the said party was never served. The only respondent which was heard was the State of V.P. which had no stake in the matter at all since all of the writ petitioners before the Lucknow Bench of the Allahabad High Court were employees of the State of Uttaranchal on the relevant date. It is, therefore, evident that the relevant material was not placed before the Allahabad High Court for the purpose of deciding the writ petition. Accordingly, the permission had to be taken from this Court by the present appellants to prefer the SLPs."

These directions are authorities for the proposition that only that court will have jurisdiction within which the entire cause of

action had arisen. In this case, no part of cause of action arose within the jurisdiction of the Calcutta High Court.

13. In view of the decision of the Division Bench of the Calcutta High Court that the entire cause of action arose in Mugma area within the State of Jharkhand, we are of the opinion that only because the head office of the appellant Company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court, a particularly when the head office had nothing to do with the order of punishment passed against the respondent.”

In a recent judgment, the Apex Court in the case of **Nawal Kishore Sharma vs. Union of India and others – Civil Appeal No. 7414 of 2014** (arising out of SLP (C) No. 19549 of 2013), after tracing out the entire law, has held as follows :-

“19. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or

not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."

The facts of the case in hand, when read with the above settled proposition of law, leave no manner of doubt in my mind that no part of the "cause of action" in the present case arises within the territorial jurisdiction of this Court for me to exercise my writ jurisdiction. The issuance of the advertisement in the newspaper, which has its publishing unit at Chandigarh or the circulation thereof and the posting of the appointing authority of the petitioner at Panchkula (Haryana) would not confer jurisdiction on this Court to adjudicate on the present writ petition.

In view of the above, all these four petitions being C. W. P. No. 6314 of 2014, C. W. P. No. 12277 of 2014, C. W. P. No. 12278 of 2014 and C. W. P. No. 12308 of 2014 are dismissed for lack of territorial jurisdiction of this Court, leaving it open to the petitioners to approach the appropriate Court for the vindication of their grievances.

**(DEEPAK SIBAL)
JUDGE**

Pronounced On : 30.06.2015

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