

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12th October, 2015

+ W.P.(C) 1113/2015

SHRI SHAILENDER KUMAR

..... Petitioner

Through: Mr . Javed Khan, Adv.

versus

THE SECRETARY (LABOUR) & ANR.

..... Respondents

Through: Mr.Pankaj Sinha and Mr. Nipun Grover,
Advs. For R-1.

Mr.Sanjay Ghose, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. In the present writ petition, the petitioner-workman has challenged the award dated 06.03.2014 passed by the Labour Court in LIR No.208/2013 wherein the reference as to whether the services of Sh.Shailender Kumar, S/o late Sh.Jogi Pandit have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled, has been answered against the petitioner-workman by holding that the Courts in Delhi have no jurisdiction to entertain the disputes between the parties as the last situs of work of petitioner-workman was at the Gautam Budh Nagar, Noida, Uttar Pradesh.

2. Briefly stated, the factual matrix of the case is that the petitioner-workman filed a claim against the management after reference of the industrial dispute by Secretary (Labour), Government of NCT of Delhi on 03.03.2009 to the Labour Court alleging *inter alia* that he was appointed by M/s Khanna Engineering Corporation on 20.07.2000 as a Latheman and he was made to work at B-68/3,

Wazirpur Industrial Area in May, 2000. The management closed its factory at the said address and started a new firm by the name of M/s Ashoka Gears and shifted at Sector 73-D, 208, near Dainik Jagran Printing Press, Noida District Gautam Budh Nagar, U.P and he was made to work at the said address. He worked there till October, 2006 when his services were illegally terminated when he had asked for increase in salary. On his objection, he was reinstated in service but the management withheld the facility of ESI card and also stopped his PF facility. He stood as a witness in the case of his co-worker Dhirender Kumar Singh on 11.04.2012. On 10.05.2012 when he went to join his duty, he was informed that his service has been terminated and his salary for the month of April and May, 2012 was also withheld. A demand notice dated 10.09.2012 was also sent but the management did not respond. Hence, the workman prayed for his reinstatement with full backwages and continuity of service alongwith other consequential benefits.

3. The management contested the claim of the workman submitting therein that M/s Ashoka Gears and M/s Khanna Engineering Corporation are different establishments. It was further submitted that since the workman lastly worked in Noida which is in Uttar Pradesh, therefore, Delhi Court has no territorial jurisdiction to try the case. It was also submitted that as per the information received, the workman was appointed by M/s Khanna Engineering Corporation with effect from 20.07.2000 and he left the job of his own with effect from 31.10.2006 after taking full and final settlement.

4. On the pleadings of the parties following issues were framed on 24.01.2014:

1. *"Whether this Court has no territorial jurisdiction to try the present claim? OPP*
2. *Whether there existed relationship of employer and employee between the parties? OPW*

3. *As per terms of reference.*
4. *Relief."*

5. Issue No.1 was treated as preliminary issue.

6. After hearing learned counsels for the parties, the learned Labour Court decided this issue in favour of the Management and against the workman on the ground that the last situs of work of the workman was at Noida, Uttar Pradesh. Even the demand notice has been addressed to the management at District Gautam Budh Nagar, U.P. The only averment by the workman against the management is that it was holding its office at Delhi at Mayapuri, however, that is not relevant because it is the last situs of work which is relevant for the purpose of deciding the jurisdiction of the Labour Court. That being so, the other issues would become redundant for the purpose of reference, as such, the reference was answered accordingly.

7. Learned counsel for the petitioner-workman submitted that the findings given by the Labour Court are misconceived and are based on wrong appreciation of facts. It was contended that the workman was gainfully employed with respondent no.2 in Delhi having its factory in Delhi under the name and style of M/s Khanna Engineering Corporation and thereafter the management shifted the factory to Noida. The respondent no.2 had provided the ESI facility and also deducted the PF and deposited the same with PF department of Delhi. The petitioner has mentioned the address of respondent no.2 as that of Delhi which is the corporate office of respondent no.2 and this fact has not been denied by respondent no.2 in its written statement. That being so, Delhi Courts had jurisdiction to entertain the dispute. The impugned award is liable to be set aside. Reliance was placed on ***Bikash Bhushan Ghosh and Ors. vs. Novartis India Ltd. and Anr.*** (2007) 5 SCC 591.

8. Learned counsel for the respondent, on the other hand, submitted that the

situs of employment of the petitioner-workman at the time of termination of his service was at Noida, thus, the subject matter of the dispute substantially arose in the State of Uttar Pradesh and as such, the Court at Delhi is not vested with the territorial jurisdiction simply on account of the fact that the PF is deposited in Delhi or facility of ESI card was granted at Delhi. Reliance was placed on *M.Vadivelu vs. Rajkishan & Company & Ors.* 214 (2014) DLT 573; *D.L.F. Universal Ltd. vs. Govt. of National Capital Territory, Delhi & Ors.* 96 (2002) DLT 825 and *Braham Parkash vs. Govt. of N.C.T of Delhi & Anr.* 2007 LAB. I.C. 3544. It was further submitted that while exercising powers under Article 226 of the Constitution of India, this Court is not sitting in appeal. In the absence of any error apparent on the face of record or perversity, the Court should not interfere in the findings given by the Trial Court. As such, petition is liable to be dismissed.

9. In *Braham Parkash* (supra) the workman was appointed as a Typist by the respondent-management in the head office. Due to directions issued by the Supreme Court in the case of *M.C.Mehta vs. Union of India*, one of the factories of the respondent-management being a highly polluting industry, was directed to be closed down and the respondent-management started its unit in Neemrana, Alwar, Rajasthan. The petitioner-workman was directed to report for duty at the aforesaid unit. It was alleged that a false and frivolous complaint was lodged against the petitioner-workman for stealing iron scrap pursuant to which an FIR was registered against him at Alwar and when the petitioner-workman was released on bail by the Trial Court and reached the office to resume his duty, he was refused to join duties. The services of the petitioner were terminated by the respondent-management, as such, the petitioner filed the claim in Delhi courts. The claim was opposed by the respondent-management. One of the preliminary objection taken in the written statement was that the Labour Court at Delhi did not have territorial jurisdiction to try and entertain the dispute as the petitioner-

workman was employed at Neemrana, Alwar, Rajasthan. The Labour Court decided the issue regarding jurisdiction in favour of the management by holding that the workman was transferred from Delhi to Neemrana and at the time of his alleged termination of services, he was posted at Neemrana and getting his wages from the management situated at Rajasthan. As such, the Labour Courts situated in Delhi have no jurisdiction to entertain the dispute. Challenging the findings of the Labour Court, similar plea was taken by the petitioner-workman as in the instant case that the petitioner-workman was appointed in the head office at Delhi, he got his ESI, PF contribution in Delhi, he resided at Delhi, residence of the Managing Director and Executive Director of the respondent was at Delhi, thus, the Labour Court at Delhi has the territorial jurisdiction to answer the reference. A single Judge of this Court referred to various judgments rendered by Hon'ble Supreme Court, this High Court and other High Courts and it was observed as under:-

7. *The Supreme Court in a recent judgment in the case of Bikash Bhushan Ghosh and Ors. v. Novartis India Ltd. and Anr. reported as (2007) 5 SCC 591 : (2007) AIR SCW 2990), while deciding the question with regard to the maintainability of a reference made by the State of West Bengal in respect of the appellant workmen therein who were transferred to the States of Bihar, UP and Assam, took note of the following judgments to hold that since the orders of termination were served on appellants therein at Calcutta and since the said orders were passed against them for not obeying the orders of transfer, Therefore their transfer had some nexus with the order of their termination from services, thus entitling the State of West Bengal to make a reference of the industrial dispute as an appropriate Government:*

(i) Indian Cable Co. Ltd. v. Workmen, 1962 Supp (3) SCR 589.

(ii) Workmen v. Shri Rangavilas Motors (P) Ltd. AIR 1967 DV 1040.

(iii) Paritosh Kumar Pal v. State of Bihar 1984 Lab IC 1254 (Patna (FB).

(iv) Indian Express Newspaper (Bombay) (P) Ltd. v. State of West Bengal, (2005) 2 LLJ 333.

(v) Om Prakash Srivastava v Union of India, (2006) 6 SCC 207 : (2006 AIR SCW 3823).

8. *In the case of Shri Rangavilas Motors (supra), the concerned workman was transferred from Bangalore to Krishnagiri, where the head office of the*

management was situated. When he questioned the validity of the order of transfer, the management initiated disciplinary proceedings against him and he was removed from service. The State of Mysore made a reference, the validity of which was questioned and the same was answered by the Supreme Court in the following manner:

“This takes us to the other points. Mr. O.P. Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Krishnagiri, and, that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the head office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is: where did the dispute arise? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose.” (Emphasis added)

9. In the aforesaid judgment, the Supreme Court also referred to an earlier decision in the case of Indian Cable Co. Ltd. (supra) where it was held that the Industrial Disputes Act does not deal with the cause of action, nor does it indicate the factors which confer jurisdiction upon the Labour Court, but applying the well known tests of jurisdiction, a court or tribunal would have jurisdiction if the subject matter of the dispute substantially arose within the jurisdiction. Applying the aforesaid principles, it was held by the Supreme Court in Shri Rangavilas Motors (AIR 1967 SC 1040)(supra) that the dispute substantially arose within the jurisdiction of Mysore.

10. In the case of Paritosh Kumar Pal (1984 Lab IC 1254) (supra), a Full Bench of the Patna High Court held as below:

“13. Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clear-cut principles or tests for determining jurisdiction emerge, there from. For clarity these may be first separately enumerated as under:

(i) Where does the order of the termination of services operate?

(ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?

(iii) That the well-known test of jurisdiction of a civil Court including the residence of the parties and the subject matter of the dispute substantially arising therein would be applicable."

By referring to the provisions of the Code of Civil Procedure, the Patna High Court concluded that the situs of the employment would be a relevant factor for determining the jurisdiction of the concerned court.

11. In the case of *Om Prakash Srivastava* (2006 AIR SCW 3823) (*supra*), while determining as to what would constitute cause of action, the Supreme Court held as under:

"12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". See *Rajasthan High Court Advocates' Assn. v. Union of India* (2001) 2 SCC 294: (AIR 2001 SC 416)

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit (See *Gurdit Singh v. Munsha Singh* : [1977] 1 SCC 791 : (AIR 1977 SC 640).

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see *Black's*

Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640): (AIR 2000 SC 2966).

12. In the case of Bikash Bhushan Ghosh (2007 AIR SCW 2990) (supra), the Supreme Court disagreed with the judgment of the Calcutta High Court in the case of Indian Express Newspaper (supra), wherein it was held that though the workman who was stationed at Calcutta office, and was rendering services in Calcutta at the relevant time was served with an order of termination of his services at Calcutta, as his services had been transferred to Bombay, it was the establishment at Bombay which had control over his services and Therefore notwithstanding the fact that he had been served with an order at Calcutta, the situs of employment was in Bombay Therefore he ought to have raised an industrial dispute relating to the termination of his services in Bombay as the Government of Maharashtra was the appropriate Government to make a reference of the dispute under Section [10](#) of the Industrial Disputes Act.

13. While taking note of the aforesaid judgment, the Supreme Court in the case of Bikash Bhushan Ghosh (2007 AIR SCW 2990) (supra), held as below:

"Para 15 : With respect to the Division Bench, we do not think that it has posed unto itself a correct question of law. It is not in dispute that the appellants did not join their duties at the transferred places. According to them, as the orders of transfer were illegal, their services were terminated for not complying therewith. The assertion of the respondent that the appellant were relieved from job was unilateral. If the orders of transfer were to be set aside, they would be deemed to be continuing to be posted in Calcutta. The legality of the orders of transfer, thus, had a direct nexus with the orders of termination...." (Emphasis added)

14. Taking note of the facts and circumstances of the present case, undoubtedly, the situs of the employment of the petitioner workman at the time of termination of his services was at Neemrana, Rajasthan. Thus the subject matter of the dispute substantially arose in the State of Rajasthan. Consequently, it has to be held that as the immediate occasion which resulted in the alleged infraction of the rights of the petitioner workman occurred in the State of Rajasthan, the courts in Delhi cannot be vested with territorial jurisdiction on the allegation that the head office of the respondent

management is in Delhi or that the PF etc. was being deposited in Delhi or even that the Directors of the respondent management are residing in Delhi. In other words, by sifting out the extraneous factors on which the petitioner workman sought to place emphasis, there is only one conclusion that can be arrived at, which is that in the facts and circumstances of the present case, the cause of action which constituted an infringement of the rights of the petitioner workman arose at Rajasthan where he was lastly employed.”

8. In ***D.L.F Universal Ltd.***(supra) a reference was made by Govt. of N.C.T of Delhi referring the disputes raised by respondent no.5 an Architect, earlier employed with the respondent. Challenge was made to the said reference on the ground that there was no authority with the concerned officer in the N.C.T of Delhi to make the said reference in view of lack of territorial jurisdiction. It was alleged that respondent no.5 was appointed as an Architect to work in the Real Estate Division and from the very first day he was working at Gurgaon. The company leased accommodation was also made available to him at Gurgaon. Relying upon ***Paritosh Kumar Pal*** (supra) and ***Rangavilas Motor's case*** (supra), it was held that though the order of appointment has been issued from the head office of the petitioner at Delhi, the registered office of the petitioner is at Gurgaon. From day one respondent no.5 was working at Gurgaon. Company leased accommodation was also provided to him at Gurgaon thus the situs of the employment has throughout been at Gurgaon and not at Delhi. The termination letter was also issued at Gurgaon which was the cause for raising the dispute and consequently, seeking reference as such, the only conclusion would be that the jurisdiction would be of competent courts at Gurgaon and jurisdiction does not vest in the Govt. of NCT of Delhi to make the reference.

9. In ***M.Vadivelu*** (supra), the Labour Court had dismissed the application filed by the petitioner under Section 33C(2) of Industrial Disputes Act, 1947 claiming all arrears of salary and other allowances. The claim was contested by the respondent and one of the grounds of challenge was that the Labour Courts at Delhi had no territorial jurisdiction to entertain the application as the petitioner

was not employed by respondent no.1 at Delhi but was working with its establishment at Dadri, Uttar Pradesh. It was further contended that the application filed by the petitioner was not maintainable as he was performing supervisory function and as such, was not a workman within the meaning of Section 2(s) of the Act. The Labour Court framed preliminary issue as to whether the court could adjudicate the issue about status of the claimant as a workman under Section 33C(2) of the Act and whether the Labour Courts at Delhi would have the territorial jurisdiction to entertain the application. The application of the petitioner was dismissed on holding that the status of the petitioner as a workman was disputed one and Labour Court dealing with the application under Section 33C(2) of the Act did not have the jurisdiction to adjudicate the issue relating to the status of the applicant as a workman. Further, neither any cause of action had arisen in Delhi nor did the petitioner worked in Delhi and, therefore, the Labour Courts at Delhi did not have the jurisdiction to entertain the petitioner's application. Aggrieved by the dismissal of the application, the writ petition was filed. It was held that the courts exercising jurisdiction over territories where cause of action had arisen, alone would have the jurisdiction to entertain applications/petitions/complaints under the Act. Since in that case, the application under Section 33C(2) emanates from the employment of the petitioner at Dadri, U.P, the cause of action, obviously, also arise in U.P. The cause of action in such cases is inextricably linked with the situs of employment. The situs of an office of the employer does not give rise to a cause of action within that territory. By relying upon the decisions rendered in *D.L.F Universal Ltd.* (supra), *B.B.Verma vs. National Project Construction Corporation Ltd.* 80 (1990) DLT 498, *Patel Roadways Ltd. vs. Tropical Agro Systems Pvt. Ltd.* AIR 1992 SC 1514, it was held that merely because the respondents have an office in Delhi would not enable the Labour Court of Delhi to exercise jurisdiction in the matter.

10. Reverting to the case in hand, as per the claim petition itself, though the

petitioner was initially appointed by M/s Khanna Engineering Corporation on 20.07.2000 and was made to work at Delhi, but as per his own case the management closed its factory at the said address and started new firm by the name of M/s Ashoka Gears and shifted to Noida, District Gautam Budh Nagar, U.P where he worked till 2006. Thus, the situs of the employment was in Noida and not at Delhi. The termination also took place at Noida which is the cause for petitioner raising the dispute and consequently seeking reference. The notice of demand was also sent by him at the address of management at Noida, U.P. The situs of the employment of the petitioner-workman at the time of termination of his services was at Noida, Uttar Pradesh, thus, the subject matter of the dispute substantially arose in the State of Uttar Pradesh. Consequently, as the immediate occasion which resulted in the alleged infraction of the rights of the petitioner-workman occurred in the State of Uttar Pradesh, the Courts in Delhi cannot be vested with territorial jurisdiction on the allegations that the initial appointment of the petitioner was at Delhi or that PF etc. was being deposited in Delhi or even the head office of the management is at Delhi. The decision rendered in *Bikash Bhushan Ghosh* was duly considered and dealt with in *Braham Parkash* (supra).

11. For the reasons stated above, there is no illegality, perversity or infirmity in the impugned award so as to warrant any interference with it by this Court under Article 226 of the Constitution of India. The petition is accordingly dismissed.

(SUNITA GUPTA)
JUDGE

OCTOBER 12, 2015/mb