

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

Date of decision: May 03rd, 2016

+ **W.P.(C) 3796/2016**

JAYSHREYESH KAUSHIK

..... Petitioner

Through: **Mr. Nagesh Kapoor, Advocate.**

versus

UNION OF INDIA & ANR.

..... Respondents

Through: **Mr. Abhay Prakash Sahay, CGSC
with Mr. Pratap Singh Ahluwalia,
Advocate.**

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

C.M. Appl. No.16147/2016

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P. (C) No.3796/2016

1. By way of present petition, the petitioner seeks direction against the respondents to consider his candidature for appointment as Scientist I.E. Junior Research Fellowship (JRF) in Indira Gandhi Centre for Atomic Research, Kalpakkam, Tamil Nadu.

2. The respondent No.2, Indira Gandhi Centre for Atomic Research, Kalpakkam, Tamil Nadu, published an advertisement for Junior

Research Fellowships in various disciplines and invited applications from the interested candidates. The petitioner also applied for category 'D' as given in Clause-4 of the advertisement/ information brochure issued by the respondent No.2.

3. The candidates were to be selected through the written test, which were to be held at four Centres i.e. Chennai, Kolkata, Bhubneshwar and Hyderabad. The petitioner appeared at the Kolkata examination centre and obtained 95 marks out of 400.

4. Eleven candidates were selected for interview as JRF (Computer Science). The petitioner alleged biasness in the results. It is stated that by virtue of rigging, the candidates with low marks were selected and appointed. However, the name of the petitioner was not reflected in the selected list of candidates.

5. Without going into the merits of the case, I am of the considered view that this Court has no territorial jurisdiction to entertain the present petition as no part of cause of action has arisen within the territorial jurisdiction of this Court. Neither the advertisement was published within the territorial jurisdiction of this Court nor did the petitioner appeared for examination within the territorial jurisdiction of this Court. Rather, respondent No.2 which issued the advertisement and against which the petitioner has sought the relief is not situated within the territorial jurisdiction of this Court.

6. Learned counsel for the petitioner, however, argued that respondent No.1, Union of India, which is located in Delhi is the controlling authority of respondent No.2 and is responsible for the day to day affairs of the respondent No.2 and the petitioner is also residing in Delhi, therefore, this Court has jurisdiction to entertain the present petition.

7. The Division Bench of this Court in the case of '**Ex.Rect./Gd Vinod Kumar Vs. Union of India (UOI) & Ors.**', 135 (2006) DLT 414, decided on 16th November, 2006, while dealing with the issue of territorial jurisdiction observed as under:-

“Cause of action determines the Court of competent jurisdiction when a party invokes extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In discern contradiction to the provisions of Section 16 to 20 of the Code of Civil Procedure, Article 226 (2) restricts the principle of territorial jurisdiction only to ‘cause of action’. The expression would take in its ambit partial or entire cause of action. Part of cause of action is again a term of wide magnitude and thus, has to be construed liberally. However, once the element of cause of action or any part thereof in its minutest form is absent, the court may not have territorial jurisdiction, only on the basis of the residence/location of the party. The provisions of Section 20 of the Code states that subject to the limitation contained in the preceding Sections, a suit could be instituted in a court within the local limits of whose jurisdiction, the defendant or each of the defendants voluntarily resides or where the cause of action wholly or in part arises. Thus, there are two factors which independent of each other, can grant jurisdiction for a party to institute a suit in the court of competent jurisdiction. However, these provisions would not be applicable to writ

jurisdiction strict sensu. It is settled principle of law that provisions of Civil Procedure Code would not apply in full vigour or strictly to the writ proceedings.”

It was further held by the Division Bench as under: -

“16. It is a paramount principle of law of jurisdiction that the court has to determine whether it has jurisdiction to entertain and decide a case brought by a litigant before it. Undue hardship is one of the factors which the court would consider while answering such an issue. The doctrines of forum conveniens & forum non conveniens are the legal doctrines used by the court to determine the issue of jurisdiction. Ubi jus ibi remedium there is no wrong without a remedy, is an effective legal maxim often applied to administration of justice but the question is which is the proper and convenient legal forum or court whose jurisdiction a party ought to invoke. The petitioner being dominus litis is master or has domain over the case but these rights are subject to law of jurisdiction. The laws and procedure provided under the Code are lex fori and wherever in terms of such law, the ingredients of territorial jurisdiction are not satisfied, the court would not assume jurisdiction merely on the ground of residence (office of one of the respondents is within the court’s jurisdiction). The doctrine ‘forum non conveniens’ has a limited application but certainly is not an irrelevant factor, which adjudicating question of jurisdiction under the terms of Article 226 of the Constitution of India.....”

8. I may also refer to a decision of the Supreme Court in the case of **‘Eastern Coal Field Limited and Ors. Vs. Kalyan Baneerjee’**, (2008) **3 SCC 456**, wherein the respondent had sought to challenge the termination of his services with the appellant, which had its head office in West Bengal, by approaching the courts at Calcutta. The respondent was an employee who was posted in Jharkhand State. His appointing

authority was also located in Jharkhand State. The termination order was not subject to sanction of the head office in West Bengal, and had been issued from Jharkhand State. The Supreme Court held that in these circumstances no part of the cause of action could be said to have arisen within the State of West Bengal and the entire cause of action had arisen outside West Bengal. Mere location of the head office of the company in West Bengal would not confer jurisdiction upon the Calcutta High Court to entertain a writ petition to challenge the termination.

9. In order to maintain a writ petition, the 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 respondents within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.

10. Admittedly, the advertisement No.3/2014 for selection of Junior Research Fellows was issued by the respondent No.2, which is situated in Kalpakkam, Tamil Nadu. It was proposed in the advertisement that written test would be conducted at Chennai, Kolkatta, Bhubaneswar and Hyderabad. It was also mentioned in the advertisement that the interview for all short listed candidates would be conducted at Chennai/ Kalpakkam. No cause of action or even a fraction of cause of action has arisen within the territorial jurisdiction of this Court. Merely impleading the Union of India through the Secretary, Government of India, Department of Atomic Energy, which is located at Delhi, would not by itself vest this Court with territorial jurisdiction.

11. For the aforesaid reasons, the writ petition is dismissed in limine. Since I have not touched upon the merits, it shall be open to the petitioner to approach the appropriate Court to agitate his grievance and seek appropriate remedy.

(VED PRAKASH VAISH)
JUDGE

MAY 03rd, 2016

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