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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9276/2016 & CM 37437/2016**

Date of Decision: 3rd November, 2016

SAGARIKA DAS

..... Petitioner

Through Mr Abu Phukan and Mr Surya
Prakash, Advs.

versus

MINISTRY OF HEALTH AND FAMILY WELFARE & ORS

..... Respondent

Through Mr Rajesh Kumar, Adv. for R2
Mr Rajesh Katyal, Adv. for R3 & 4

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J: (ORAL)

1. We have heard learned counsel for the petitioner – Sagarika Das and counsel for the respondents in this writ petition which impugns the order dated 02.09.2016 passed by the Chairman of the Central Administrative Tribunal rejecting the prayer made by the petitioner that OA No.1006/2016 should be retained and decided by the Principal Bench at Delhi. The impugned order records that the disciplinary proceedings were held at Ranchi, the petitioner is posted at Ranchi and thus the Circuit Bench at Ranchi is the appropriate Bench to hear the OA as it would be convenient not only for the petitioner but for the respondents.

2. While we agree with the learned counsel for the petitioner that reliance on the decision of the Delhi High Court in *Commissioner of Central Excise vs. M/s Technology Institute of Textile Bhiwani*, 76 (1998)

DLT 862, was possibly inappropriate because the said case had dealt with filing of statutory appeals before the jurisdictional High Court under the Central Excise Act. However, this would not compel us to accept the challenge and modify the final and affirmative decision, for the reasons recorded below. But first, we would take notice of the submissions made by the petitioner.

3. Learned counsel relies on the decision of the Division Bench of High Court of Delhi dated 25.07.2016 passed in W.P.(C) No.6383/2016 **Sagarika Das v Union of India & Ors.**, which is to the following effect:

“At this stage, learned counsel for the petitioner seeks leave to withdraw this petition but prays for a direction to the Tribunal to decide the matter expeditiously and also decide all the issues in the OA including the issue qua Rule 43 (4) (b) of the CCS (Leave) Rules, 1972.

10. Heard. The writ petition is dismissed as withdrawn, however, we request the Tribunal that OA No. 1006/2016 filed by the petitioner pending before the Tribunal shall be decided expeditiously considering that the first matter pertained to the year 2013 and on account of acute hardship being faced by the petitioner. We also direct the Tribunal to decide the issue qua Rule 43 (4) (b) of the CCS (leave) Rule, 1972 raised by the petitioner.”

It is accordingly submitted that the Division Bench had directed that OA No.1006/2016 should be decided by the Principal Bench of Central Administrative Tribunal at Delhi. It is suggested that the impugned order contradicts and conflicts with the said directions.

The contention, in our opinion, is incorrect and fallacious for no such direction or observation as asserted has been made in paragraph 10. The issue before the High Court in the said case was relating to the order dated 23.05.2016 by which OA No.556/2013 filed by the petitioner herein was dismissed. The question whether or not OA No. 1006/2016 should be

decided by the Principal Bench in Delhi or Circuit Bench at Ranchi was not the issue raised and decided. There is nothing to suggest that this aspect had weighed with the Division Bench when the order dated 23.05.2016 was passed.

4. On the question of cause of action, we are satisfied that substantial part of the cause of action had arisen at Ranchi. The petitioner was and is working as a staff nurse in Central Institute of Psychiatry, Ranchi. She was granted study leave for completing M.Sc (Nursing). Later on, the petitioner became pregnant and had applied for maternity leave from 19.07.2011. She gave birth to a child on 20.08.2011 through caesarean section. The petitioner claims that she was medically unfit to resume her duty and had sought extension of medical leave on 10.01.2012 under Rule 43(4)(b) of the CCS (Leave) Rules, 1972, which application was unfairly and wrongly rejected on 01.02.2012. In the meanwhile, the petitioner was served with Memos dated 09.07.2012 and 17.07.2012, asserting therein that the petitioner was on unauthorized leave from 15.01.2012. The petitioner was thereafter issued a show-cause notice and then charge-sheeted for unauthorized leave. The petitioner thereupon had filed OA No.556/2013 which was dismissed vide order dated 12.05.2015. However, in W.P.(C) No.7113/2015 the matter was remanded back to the Tribunal for a fresh decision. The Tribunal then passed the order dated 23.05.2016 recording that the Inquiry Report dated 30.04.2014 and Disciplinary Authority's order dated 06.04.2015, have duly considered the petitioner's plea with reference to Rule 43(4)(b) of the CCS (Leave) Rules, 1972. By the order dated 06.04.2015, the Disciplinary Authority had imposed a penalty of reduction of pay to the stage of 9300 in the time scale of pay (Pay Band) 9300 – 34800, Grade Pay 4600 with effect

from 01.05.2015 for a period of five years. It was directed that the petitioner would not earn increments during the period of reduction and on the expiry of the period of reduction the said period would have the effect of postponing her future increments. The Appellate Authority i.e. Director General of Health Services, New Delhi had modified and granted partial relief to the petitioner and imposed a penalty of reduction of pay to the stage of 9300 in the time scale of pay (Pay Band) Rs.9300 – 34800, Grade Pay Rs.4600 with effect from 01.05.2015 for a period of three years instead of five years imposed by the disciplinary authority.

5. Aggrieved by the order dated 06.04.2015 passed by the Disciplinary Authority and order dated 11.12.2015 passed by the Appellate Authority, the petitioner had filed the aforesaid OA No.1006/2016 before the Principal Bench of Central Administrative Tribunal, New Delhi.

6. Learned counsel for the petitioner is correct that the Appellate Authority the Director General of Health Services is located at Nirman Bhawan, New Delhi. However, it is also correct that the disciplinary proceedings were held in Ranchi. The Disciplinary Authority had passed the order dated 06.04.2015, which is the first order, at Ranchi. The petitioner is working at Ranchi. The records of proceedings are in Ranchi.

7. The decision of this Court dated 01.08.2011 in ***Sterling Agro Industries Ltd. v. Union of India (UOI) and others*** [W.P.(C) No.6570/2010)] had examined the questions relating to forum conveniens. After extensively referring to case law on the subject, it was held as under:

“30. From the aforesaid pronouncements, the concept of forum conveniens gains signification. In Black’s Law Dictionary, forum conveniens has been defined as follows:

“The court in which an action is most appropriately

brought, considering the best interests and convenience of the parties and witnesses.”

31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

- (a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e. Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.*
- (b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be*

maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

- (c) *An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.*
- (d) *The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.*
- (e) *The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.*
- (f) *While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).*
- (g) *The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) “that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens” is not correct.*
- (h) *Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled.”*

8. In view of the legal position and also noticing the fact that the petitioner is working and residing in Ranchi, the contesting respondents are based at Ranchi, and the entire record is at Ranchi, we are not inclined to interfere with the impugned order.

9. The petitioner at the time of hearing has expressed apprehension that hearing and adjudication would be delayed for the reason that there is only a Circuit Bench at Ranchi. Learned counsel for the respondents, on the other hand, submits that as per information available notice has been issued by the Circuit Bench at Ranchi for 16.11.2016. The Circuit Bench sits for 6 days in a month at Ranchi.

10. There is nothing to suggest that the proceeding would get delayed if the hearing is held at Ranchi. On the other hand, proceedings may get delayed in Delhi as it would be inconvenient and it would take time to obtain instructions. Parties may well like to present at the time of hearing Original records may have to be seen. We hope and trust that the Circuit Bench of the Tribunal at Ranchi would expeditiously examine the aforesaid OA. The issue involved is rather limited and we have noted the relevant facts. In fact, we believe there would be an earlier decision at Ranchi as neither the petitioner nor the respondents would have to travel to Delhi. Learned counsel for the respondents has assured the Court that the respondents would not seek any adjournment in the matter.

11. We clarify that we have not examined the merits of the case or made any observations or expressed any opinion relating to the stand of the petitioner and the respondents.

12. The writ petition is disposed of.

Pending CM is also disposed of.

SANJIV KHANNA, J

SUNITA GUPTA, J

NOVEMBER 03, 2016/rd