

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 27214 of 2016 (O&M)
Reserved on : November 09, 2017

Date of Decision: November 27, 2017

Professor (Dr.) Deepak Kapur

... Petitioner

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Ms. Anu Chatrath Kapur, Sr. Advocate with
Mr. Richa Bansal, Advocate,
for the petitioner.

None for respondent no.1.

Mr. Salil Sablok, Advocate,
for respondents no. 2 and 3.

Mr. K.K. Gupta, Advocate,
for respondent No.4.

P.B. Bajanthri, J.

1. In the instant writ petition, petitioner has challenged the communication dated 02.02.2016 (Annexure P-33/II) of respondent No.3 – Institute of Management Technology, Ghaziabad (for short 'IMT') and letter dated 15.01.2016 (Annexure P-33/III) and further sought for directions to the 3rd respondent to re-fix pay of the petitioner on account of revision of pay scale for the period from 01.05.2006 to 31.03.2009, to grant arrears of salary and to issue last pay drawn certificate with reference to revision of pay.

2. Brief facts of the case are that petitioner was appointed as a

Professor of Strategic Management in respondent No.3 – IMT on 04.04.2006. His services were confirmed on 01.05.2007.

3. The Panjab University, Chandigarh issued advertisement in the year 2008 inviting applications from the eligible candidates for the post of Professor. Petitioner is a candidate who had submitted his application through IMT. He was selected and offer of appointment was issued as a Professor in Panjab University on 30.01.2009. IMT granted extra-ordinary leave for a period of 6 months on 25.03.2009 to the petitioner in order to enable him to join the post of Professor at Panjab University. At the same time, petitioner was involved in AICTE project which was pursuing by the petitioner. Necessary grant was granted to him. In this background, petitioner reported as a Professor in the Panjab University on 01.04.2009. Thereafter he was confirmed on the post of Professor on 01.04.2010 and it was approved by the Vice-Chancellor of Panjab University on 04.12.2010. In view of these factual aspects, IMT extended extra-ordinary leave on six months basis upto 31.03.2011. Petitioner sought for termination of his lien w.e.f. 01.04.2010. Whereas IMT granted monetary benefits upto 01.10.2009 with reference to old pay scale. Petitioner is stated to have submitted number of representations to IMT to extend revision of AICTE pay with reference to notification dated 18.08.2009 which has been given effect from 01.01.2006. Revised pay was not extended to the petitioner, he submitted a request that he is ready to give up arrears of pay from 01.01.2006 to 01.10.2009. Despite petitioner's request, IMT refused to extend benefit of revision of AICTE pay. A communication has been made on 02.02.2016 in respect of last pay drawn certificate stating that last pay drawn certificate was already issued on 15.01.2016 and a copy of last pay drawn certificate

was also enclosed and communicated to the Deputy Registrar (Estt.), Panjab University, Chandigarh on 02.02.2016 along with communication dated 15.01.2016. Thus, petitioner has challenged the IMT's communications dated 02.02.2016 and 15.01.2016 and further sought for directions to the IMT.

4. Notice of motion was issued on 23.12.2016. IMT has filed objections regarding territorial jurisdiction of this Court since the petitioner's grievance is with IMT and IMT institution is in Ghaziabad. Hence, this Court has no territorial jurisdiction. Therefore, before taking up the main matter, it is necessary to decide the preliminary issue relating to territorial jurisdiction. Thus, matter is heard on preliminary issue of territorial jurisdiction of this Court.

5. Learned counsel for the petitioner submitted that no doubt, petitioner has challenged the action of the IMT, Ghaziabad - 3rd respondent like communications dated 02.02.2016 and 15.01.2016 (Annexures P-33/II and P-33/III). It was submitted that in-action on the part of the 3rd respondent in not extending the benefit of a notification dated 18.08.2009 relating to revise AICTE pay scale w.e.f. 01.01.2006 and consequential benefits including arrears. Since notification dated 18.08.2009 has been given effect from 01.01.2006, therefore petitioner is very much in the office of the 3rd respondent as a Professor and thereafter continued upto 01.04.2010, the date on which the petitioner's lien was terminated in view of confirmation as a Professor in the Panjab University. The correspondence is being made by the petitioner from Chandigarh while working as a Professor in the Panjab University. Therefore, partial cause of action has accrued under the territorial jurisdiction of this Court. It was also contended that if the 3rd

respondent extend the benefit of AICTE revision of pay w.e.f. 01.01.2006, in that event, petitioner is entitled for pay protection in the Panjab University, Chandigarh. Hence, cause of action would continue in the Panjab University, Chandigarh. Therefore, partial cause of action accrued at Chandigarh. Hence, writ petition is maintainable. In support of her contention, she relied on decision of Supreme Court in the case of ***Naval Kishore Sharma vs. Union of India and others***, reported in ***AIR 2014 SC 3607***, wherein the Supreme Court while considering number of decisions read with Article 226(2) of the Constitution of India held that if partial cause of action arises within the Court's territorial jurisdiction, in that event, writ is maintainable. Since in the present case, petitioner's correspondence from Chandigarh to IMT, Ghaziabad amounts to cause of action in partial so also correspondence between IMT, Ghaziabad and Panjab University. Therefore, contention of the respondent – IMT Ghaziabad that writ petition is not maintainable on the ground of territorial jurisdiction is liable to be rejected and matter is to be heard on merit.

6. Per contra, learned counsel for the respondents submitted that whole cause of action arises in Ghaziabad. Ghaziabad is not under the territorial jurisdiction of this Court. Authority of IMT Ghaziabad is in Ghaziabad. Having regard to the action of the 3rd respondent – IMT Ghaziabad is under challenge. Even if a direction is given ultimately decision is required to be implemented by the 3rd respondent – IMT Ghaziabad. Therefore, this Court has no territorial jurisdiction in respect of order passed by the 3rd respondent – IMT Ghaziabad. The contention of the petitioner that he is resident of Chandigarh and there is internal correspondence between the 3rd respondent - IMT Ghaziabad and Panjab

University accrues cause of action partially may not be correct since the petitioner has challenged the action of the 3rd respondent-IMT Ghaziabad and consequential direction to 3rd respondent. Therefore, mere correspondence among petitioner and respondents are not sufficient to hold that this Court has jurisdiction.

7. Heard learned counsel of the parties.

8. Whether any writ could be issued to the 3rd respondent – IMT Ghaziabad which is a party - 3rd respondent to the writ petition and which is permanently located outside the jurisdiction of the High Court; Whether partially cause of action to the petitioner accrued at Chandigarh with reference to the relief sought in the present petition or not?

9. The 3rd respondent is a trust established as a Institute of Management Technology, Ghaziabad under the aegis of the Lajpat Rai Educational Society in the year 1980. Society was registered with the Registrar of Societies, New Delhi on 05.04.1966. AICTE approval was granted to the Institute of Management Technology (IMT) on 17.06.1983. In other words, IMT Ghaziabad is an institute registered under the Societies Act situated at Ghaziabad which is outside the territorial jurisdiction of this Court.

10. Cause of action means a right to sue. Therefore, the material facts which are imperative for the suitor to allege and prove constitute the cause of action. It is known fact that cause of action is not defined in any law or a statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his/her right to the judgment of the Court.

Otherwise, it would mean that everything which, if not proved, gives the

respondent - defendant an immediate right to seek a judgment, would be part of cause of action. Of course, its importance is beyond any doubt. Consequently, every action, there has to be a cause of action, if not, the plaint / petition, as the case may be, shall be rejected summarily.

11. Perusal of provision viz., clause 2 of Civil Procedure Code read with Article 226 (2) of the Constitution are in para materia. 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. In other words, material facts would also be known as integral facts or factual aspects.

12. Article 226 of the Constitution as it originally stood had two-fold limitations on the jurisdiction of the High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised “throughout the territories in relation to which it exercises jurisdiction”, that is to say, the writs issued by the court cannot run beyond the territories subject to its jurisdiction. Secondly, the person or authority to whom the High Court is empowered to issue such writs must be “within those territories”, which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories.

13. Statement of objects and reasons to incorporate Article 226 (1A) now (2) reads as under:-

“Under the existing Article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend Article 226 so that when any relief is sought against any Government

authority or person for any action taken, the High Court within whose jurisdiction the cause of action arise may also have jurisdiction to issue appropriate directions, orders or writs. The other new proposals are of a minor character”

14. Article 226 was amended while incorporating clause 2. Clause 2 reads as under:-

“(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.”

The effect of the amendment is that it made the accrual cause of action an additional ground to confer jurisdiction to a High Court under Article 226. Clause (2) would enable the High Court within whose jurisdiction the cause of action arises to issue directions, order or writs to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside territorial jurisdiction of the High Court. Writ can be issued by a High Court against a person, Government or authority residing within the jurisdiction of that High Court, or within whose jurisdiction the cause of action in whole or in part arises. Since one of the contention is that partial cause of action is accrued at Chandigarh, it is necessary to take note of what is the meaning of cause of action. After the insertion of clause (1-A), re-numbered as “2” to Article 226 of Constitution, now the jurisdiction of a High Court can be invoked if the cause of action arises, wholly or in part, within the territorial

jurisdiction of that High Court. However, the expression “cause of action” has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. But it may be described as “a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed”, or if not proved would give the defendant a right to judgment in his favour. It gives occasion for and forms the foundation of the suit. “Cause of action” 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 as expressed in the case of *Cooke vs. Gill, (1873) 8 CP 107: 42 LJ PC 98*. The petitioner has contended that one of the essential fact has arisen within the territorial jurisdiction of this High Court to the extent that he is resident of Chandigarh and correspondence with reference to the relief sought in the present petition is between the Panjab University and the IMT, Ghaziabad. Thus, it was contended that cause of action arose at Chandigarh in part since clause (2) of Article 226 enables a High Court to issue appropriate writs, orders or directions if the cause of action wholly or in part arises. Petitioner's grievance is relating to extend revision of pay, arrears of pay and to issuance of last pay drawn certificate by the 3rd respondent – IMT, Ghaziabad, therefore, whole cause of action is at Ghaziabad except the fact that the petitioner is a resident of Chandigarh and merely his new employer – Panjab University makes correspondence with the former employer of the petitioner, namely, 3rd respondent – IMT Ghaziabad, that does not mean that partial cause of action has accrued at Chandigarh. Question of partial cause of action is attracted only if there is any office of the 3rd respondent is under the territorial jurisdiction of this Court like Government of India / Union of India having its offices at different places. Therefore, the citation

referred by the petitioner in the case of **Naval Kishore Sharma's** case is distinguishable as in that case Naval Kishore Sharma was working under the Central Government Organization and it was part and parcel of Union of India. Therefore, any claim against Union of India and its sister concern territorial jurisdiction could be invoked all over India.

15. In the case of **Oil & Natural Gas Commission vs. Utpal Kumar Basu**, reported in **(1994) 4 SCC 711**, Supreme Court held that the question as to whether the Court has a territorial jurisdiction to entertain a writ petition, must be concluded on the basis of pleadings made in the petition, the truth or otherwise thereof being immaterial. In the same decision, Supreme Court was pleased to observe that :

“So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action.”
(Para No.8)

16. Hon'ble Supreme Court in the case of **State of Rajasthan vs. Swaika Properties**, reported in **(1985) 3 SCC, 217**, opined that mere service of a notice would not give rise to any cause of action unless service of notice was integral part of the cause of action. The said decision has also been noticed in **Oil and Natural Gas Commission** (supra). Supreme Court in para no. 8 held as under:

"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."

Supreme Court in the case of **Aligarh Muslim University and Another Vs.**

Vinay Engineering Enterprises (P) Ltd. and another, reported in **(1994) 4 SCC 710**, lamented in para no.2 as under:

"2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable."

Supreme Court in the case of ***Union of India and Others Vs. Adani Exports Ltd. and another***, reported in **(2002) 1 SCC 567**, 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.

17. Supreme Court in the case of ***National Textile Corpn. Ltd. vs. Haribox Swalram***, reported in **(2004) 9 SCC 786**, held as under:-

"As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the

reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petitioner and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed."

18. In the case of **Abdul vs. Union of India**, reported in **AIR 1979, Calcutta, 354** and also in the case of **Union of India vs. Oswal Industries**, reported in **(1984) 2 SCC 646**, the Courts have held that cause of action accrued in 'X' place, if the Head office – respondent is in 'Y' place. Aggrieved person who is at 'Y' cannot invoke jurisdiction at 'X' place on the ground that Head Office is situated in 'X' place. It was a case of disciplinary proceedings against railway servant who was subjected to disciplinary proceedings and it was concluded in Bihar, a petition cannot be entertained by the High Court of Calcutta merely on the ground that Head Office of the Railway was located in Calcutta. In the case of **Oswal Industries** cited supra, Supreme Court has strongly disapproved the practice of deliberately filing of writ petitions in distant High Courts as part of a manoeuvring legal battle. In the case of **Bloom Dekor Ltd. vs. Subhash Himatal Desai**, reported in **(1994) 6 SCC 322**, Supreme Court described as “judicial adventurism” and “forum shopping”. If a small portion 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. It is so held in *Bhagat Singh Bugga vs. Dewan Jagbir Sawhney*, reported in *AIR 1941 Cal. 670*, *Madan Lal Jalan v. Madanlal*, reported in *AIR 1949 Cal 495*, *Bharat Coking Coal Ltd. vs. Jharia Talkies & Cold Storage (P) Ltd.*, reported in *1997 CWN 122*, *S.S. Jain & Co. vs. Union of India*, reported in *(1994) 1 CHN 445* and *New Horizons Ltd. vs. Union of India*, reported in *AIR 1994 Del 126*.

19. In view of above facts and circumstances and merely the fact that petitioner is a resident of Chandigarh and certain correspondences have been made by him and his new employer – Panjab University, Chandigarh with the 3rd respondent – IMT Ghaziabad that does not accrues any partial cause of action to the petitioner at Chandigarh so as to entertain writ petition. If this analogy is accepted every aggrieved person sitting at his/her home town invoke territorial jurisdiction of the respective State High Court, even though contesting respondent's office or residence is in a different place – territorial jurisdiction. For example employee of the 3rd respondent if he is resident of Tamil Nadu and make correspondence from Tamil Nadu and he cannot invoke jurisdiction of Madras High Court as employer and employee relation would be only at Ghaziabad.

20. If the employer is Union of India one can understand. If the other than Union of India, in that event, invoking Article 226(2) of Constitution is not feasible and appropriate. Accordingly, writ petition stands rejected on the score that this Court has no territorial jurisdiction in respect of quashing the action of the 3rd respondent – IMT Ghaziabad vide Annexures P-33/II and P-33/III dated 02.02.2016 and 15.01.2016 respectively and further directing the 3rd respondent – IMT Ghaziabad to extend the benefit of notification / circular dated 18.08.2009 in giving

effect to the revised AICTE pay scale to the petitioner w.e.f. 01.01.2006, to pay arrears and to issue last pay drawn certificate with reference to revised AICTE pay scale.

November 27, 2017
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : Yes