

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

+ **W.P.(C) No. 3013/2017**

% **10th April, 2017**

SUGAN SINGH

..... Petitioner

Through: Mr. Rajinder Kumar Uppal,
Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Neha Rastogi and Mr. Animesh
Rastogi, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India petitioner seeks the following reliefs:-

“It is therefore, most respectfully prayed that this Hon’ble court may kindly be pleased to:-

- i) Admit the Writ Petition.
- ii) Direct the Respondent to issue Transfer Order, and take him on duty, and pay salary and arrears with all consequential benefits in the interest of justice.
- iii) Direct the respondents to pay the petitioner compensation for providing him mental tension and mental torture for their illegal acts.”

2. Petitioner has pleaded his last appointment with the respondent no.3/D.A.V.I.M NH-3, N.I.T. Faridabad, Haryana. Petitioner claims that he

has worked with the DAV Group from 1988. Petitioner was appointed in Jaipur as a clerk-cum-cashier. Petitioner was thereafter transferred to Delhi as an employee of respondent no.2/DAV College Managing Committee, Chitra Gupta Road, New Delhi. Thereafter the petitioner had worked with the respondent no.3 as an Estate Officer. Petitioner pleads that since he has worked with DAV group since 1988 hence the petitioner should be regularized in his services. Petitioner also seeks the relief that with respect to the break in service from February 1992 till he joined the respondent no.3 as an Estate Officer, for such period, he be paid arrears of salary. Petitioner also seeks compensation for alleged mental tension and torture caused to the petitioner by the respondent nos. 2 and 3.

3. Firstly, it is seen that this Court would not have territorial jurisdiction because the competent court which would have territorial jurisdiction will be the court with respect to determination of disputes of employees of respondent no.3 with the respondent no.3, at Faridabad in Haryana. Secondly, even assuming that this Court has territorial jurisdiction, this Court would be the Court of *forum non-conveniens* and therefore once again the writ petition will not be maintainable in this Court. Thirdly, so far as respondent no.2 is concerned, it is a private entity and it is not a school in Delhi and hence a writ petition will not lie against

respondent no.2. Detailed reasons are given hereinafter for dismissing of this writ petition on account of the aforesaid three reasons.

4. As per the writ petition the petitioner was appointed as a clerk-cum-cashier with the DAV Centenary Public School at Jaipur in Rajasthan and he was confirmed at the said post w.e.f 2.7.1988. Petitioner then pleads that he was transferred from the school at Jaipur to DAV College Managing Committee, Chitra Gupta Road, New Delhi as per the letter dated 22.11.1990 and that petitioner joined his services with the respondent no. 2 /DAV College Managing Committee on 2.2.1991. Petitioner then pleads that as per an oral order petitioner was promoted to the post of Estate Officer and told to join the respondent no.3 at Faridabad and where he joined w.e.f 1.6.1992. Petitioner then pleads that he has been regularly sending representations for his regularization but the same have not been considered and also that certain arrears of salary have not been paid.

5. The writ petition is really bereft of necessary particulars, and this Court has understood the contents of the writ petition from the documents attached with the writ petition, and especially the reply dated 8.2.2016 sent by the respondent no.2 to the legal notice dated 21.12.2015 of the petitioner.

6. It is seen that petitioner's last appointment was a contractual appointment with the respondent no.3 at Faridabad. Petitioner was appointed with the respondent no.3 purely on contractual basis from time to time, with the first appointment being on 30.9.2003. Petitioner's contractual appointment came to an end on 9.6.2015. Accordingly, petitioner as per the respondent nos. 2 and 3 is not an employee of the respondents and hence there is no question of his regularization or any payment of arrears of salary and according to the respondent no.2 at best 9 days unpaid wages of the petitioner are lying in his account.

7. Petitioner, as per the writ petition, and his representations, states that he is a regular employee of the respondent no. 2 with last posting as an Estate Officer with the respondent no.3 at Faridabad, and therefore, petitioner has to be regularized in his services and be not treated as a contractual employee. Petitioner has also pleaded that he be re-transferred from respondent no.3 at Faridabad either to respondent no.2 at Delhi or back to Jaipur where his first appointment was there.

8. Since petitioner's last appointment was with respondent no.3 at Faridabad, therefore, this Court would have no territorial jurisdiction inasmuch as the reliefs which the petitioner seeks will have to be taking that

the petitioner was lastly employed with the respondent no.3 at Faridabad in Haryana.

9. Even for the sake of argument, if it is held that some part of cause of action has accrued in Delhi inasmuch as petitioner had worked at Delhi till the year 2003, even then this Court will be the Court of forum *non-conveniens* and this Court therefore refuses to exercise its discretionary jurisdiction under Article 226 of the Constitution of India for entertaining this writ petition in view of the ratio of the Full Bench judgment of five judges of this Court in the case of ***Sterling Agro Industries Ltd. etc. etc. Vs. Union of India (UOI) and Ors. etc. etc., AIR 2011 (Delhi) 174*** and the relevant para of which judgment reads as under:-

“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 mala fide 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." (underlining added)

10. Petitioner is not an employee of a school in Delhi, and therefore, petitioner will not be governed by the Delhi School Education Act and Rules, 1973 and hence petitioner cannot invoke the writ jurisdiction of this Court as against the respondent no.2 which is only a Managing Committee. Writ jurisdiction of this Court can be invoked in an education matter if an employee is an employee of a school and not of a Managing Committee or trust or society which runs the school. Petitioner therefore would not have any cause of action for filing this writ petition as against the respondent no.2 under Article 226 of the Constitution of India and which entity is a private entity.

11. In view of the aforesaid discussion, it is seen that the petitioner was lastly employed by respondent no.3 as a contractual appointee and

which contractual appointment came to an end on 9.6.2015. Petitioner therefore if he seeks regularization will have to approach the concerned court which has jurisdiction over the respondent no.3 at Faridabad in Haryana. Petitioner therefore cannot approach this Court at Delhi. Also, respondent no.2 is only a Managing Committee and since petitioner as per his own admission is only an employee of a Managing Committee and not an employee of a school, Delhi School Education Act and Rules will not apply, and therefore, this is not an education matter, and therefore this Court cannot exercise jurisdiction under Article 226 of the Constitution of India, and petitioner therefore will have to file a suit, assuming petitioner has a valid cause of action, as against the respondent no.2. Though prima facie, the reliefs claimed by the petitioner appeared to be time barred, I do not comment on the same finally one way or the other inasmuch as the writ petition is being dismissed on account of lack of territorial jurisdiction or writ petition being not maintainable against the respondent no.2 or in any case this Court being the Court of *forum non-conveniens*.

12. This writ petition is accordingly dismissed as this Court does not have territorial jurisdiction or in any case is a Court of *forum non-conveniens*. So far as the relief claimed against the respondent no.2 is concerned since the petitioner is not an employee of a school in Delhi,

hence a writ petition will not lie, and the petitioner will have to approach a civil court for seeking reliefs, against the respondent no.2 of course in accordance with law.

13. The writ petition is accordingly dismissed with the aforesaid observations.

APRIL 10, 2017
ib

VALMIKI J. MEHTA, J

