

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 189 OF 2017

Promod Zumbar Jadhavar,
Age: 31 Years, Occu.: Service,
R/o.: At post Ware-wadgaon,
Taluka Bhoom,
District: Osmanabad 413 504 .. **Petitioner**

Versus

1. The Union of India
2. The Cotton Corporation of India Ltd.
[A Government of India undertaking,
Ministry of Textile], Kapas Bhawan,
Plot No. 3A, Sector-10, CBD Belapur,
Navi Mumbai – 400 614
3. The Cotton Corporation of India Ltd.
[A Government of India Undertaking,
Ministry of Textile], 3rd Floor,
WB Plaza, New Cotton Market,
P. B. No. 606, Hubli – 580 029,
Through its Manager
4. Anurag Warehousing and Agro Processing
Warehousing and Cotton Ginning-Pressing
Factory, Survey No. 221,
Opp. Cap. Krishnakant Highway
Petrol Pump, Beed Road, Gevrai – 431127,
Through its Manager .. **Respondents**

Mr. Santosh S. Jadhavar, Advocate for the
Petitioner.

Mrs. Dipali S. (Jape) Ansingkar, Advocate for
Respondent Nos. 1 to 3.

Mr. L. D. Vakil, Advocate for Respondent No. 4.

**Coram: S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

Reserved for Orders on: 31st July, 2018

Order pronounced on: 28th September, 2018

ORDER (Per: S. V. GANGAPURWALA, J.):

1. Respondent no. 2 – the Cotton Corporation of India Ltd., terminated the services of the petitioner under order dated 10th August, 2016. The same is assailed in the present writ petition.

2. Mr. Jadhavar, learned Advocate for the petitioner submits that after following due selection process the petitioner was selected and appointed as a 'Junior Cotton Purchaser' on 03.03.2015. Show Cause notice came to be issued to the petitioner that the experience of working at an Institute cannot be considered and the petitioner does not meet the experience criteria. The petitioner replied giving the details of his experience, however, the respondent terminated the services of the petitioner. The learned Advocate

submits that the petitioner has necessary experience. As per the advertisement the candidate was required to possess experience of one year. The petitioner has worked at Anurag Warehousing and Agro Processing Firm / Unit at Gevrai for more than three years. The certificate of experience is issued by the Manager of the said firm certifying that the petitioner has worked with the said firm with effect from 10th February, 2010 till 17th April, 2013. The learned Advocate submits that the respondents could not have discarded experience gained by the petitioner with Anurag Warehousing and Agro Processing Firm / Unit. The respondents have discarded the said experience on the ground that there is no record to show that the petitioner has worked with the said firm. The firm where the petitioner has worked has given a certificate and also clarified that the petitioner has worked with them. Only on the ground of minor discrepancies in the record, the respondents have inferred that the petitioner does not have the

experience. The petitioner was also asked to refund the salary paid to him. According to the learned Advocate, the firm where the petitioner was working and has gained experience is also a party in the present petition and the said firm has also accepted that the petitioner has worked during the said period. The said firm on affidavit accepted that the petitioner has worked from 10th February, 2010 to 17th April, 2013. The petitioner was drawing a salary of Rs. 6000/- per month in cash. The petitioner was exempted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and as such, no statutory deduction was made. Some of the copies of the Attendance Register is also placed on record. The petitioner has stated that he received Rs.18,000/- per month, he is to receive Rs. 6,000/- per month as a salary and the other amount as incentive.

3. Learned Advocate for the petitioner further submits that the ground raised by the respondents about the territorial jurisdiction of this Court

is erroneous. The petitioner is served with the notice of recovery of salary at Aurangabad, as such, this Court has territorial jurisdiction to entertain the present writ petition. The learned Advocate relies on the judgment of the Apex Court in the case of Om Prakash Srivastava Vs. Union of India and another reported in AIR 2007 SC (Supp.) 1834, so also, the judgment of the Apex Court in the case of Nawal Kishor Sharma Vs. Union of India and others reported in 2014 AIR SCW 4713. The judgment of the Kerla High Court in the case of C. Pitcheiyan and others Vs. Regional Manager, Co-optex, Kochi and others reported in AIR 1999 KERLA 328. According to the learned Advocate the part of cause of action has arisen at Aurangabad as the notice of recovery has been served upon the petitioner at Aurangabad.

4. Learned Advocate for the petitioner further submits that, the petitioner has produced before this Court his experience of having worked with respondent no. 2 – the Cotton Corporation of India

Ltd., as a 'Field Assistant' from 10th December, 2008 to 18th June, 2009. For more than six months he has worked as a 'Field Assistant' at Gevrai, as such, even if it is considered the working of the petitioner with respondent no. 2 is for eight months though the record and the Attendance Sheet produced by respondent no. 4 for a period of more than a year, the petitioner would meet the experience criteria of one year. The learned Advocate submits that termination order be set aside.

5. Mrs. Ansingkar, learned Advocate for respondent nos. 1 to 3 submits that the petitioner was appointed at Hubli -Karnataka. The Termination Order was issued to the petitioner at Hubli - Karnataka. Even the Show Cause notice was issued at Hubli - Karnataka. In view of that, this Hon'ble Court would not possess the territorial jurisdiction to entertain the present writ petition. No part of cause of action has arisen within the territorial limits of the jurisdiction

of this Court. The learned Advocate relies on the judgment of the Calcutta High Court in a case of **Abdul Kafi Khan Vs. Union of India and others** reported in **1979 AIR (Calcutta) 354**.

6. Learned Advocate for respondent nos. 1 to 3 further submits that the petitioner had submitted wrong information. As per the Advertisement the experience prescribed was one year of dealing in agricultural commodities in reputed organizations / enterprises. It is also stated in the Advertisement that if the information furnished by the candidate is found to be false, then he would be terminated from service. The Experience Certificate of the petitioner was verified and it was found to be suspicious. The Attendance Register placed on record of his service with the erstwhile employer is false. There is large scale discrepancies in the record. There is no record to show that prior to the year – 2012 the petitioner worked with respondent no. 4 – Firm, whose Experience Certificate is relied by

the petitioner.

7. Mr. Vakil, learned Advocate for respondent no. 4 submits that the petitioner had worked for the period as is certified in the certificate, but the record and the Attendance Register prior to the year - 2012 is not now available.

8. We have considered the submissions canvassed by the learned counsel for respective parties.

9. The petitioner was appointed as a 'Junior Cotton Purchaser' under appointment order dated 3rd March, 2015 and was posted at branch office of respondent no. 3 at Hubli - Karnataka. The petitioner was issued with the show cause notice dated 9th June, 2016 as to why his services should not be terminated by the Corporation and that salary paid should not be recovered. The said show cause notice is served upon the petitioner at Hubli. The petitioner replied the show cause notice under his reply dated 28th June, 2016 from Bijapur - Karnataka. On 10th August, 2016 the order

was passed terminating the services of the petitioner, so also, directing him to refund to the Corporation the salary received by him from the date of his appointment as he has secured employment by misrepresentation. The said order of termination and seeking recovery is served upon the petitioner at Hubli. The case of the petitioner is that he has received the salary recovery notice dated 30th September, 2016 at Bhoom, District – Osmanabad within the territorial jurisdiction of this Court.

10. It needs to be considered that the salary recovery notice dated 30th September, 2016 is only by way of execution of the order dated 10th August, 2016 terminating the services of the petitioner and seeking recovery of salary under the said order. The salary recovery notice dated 30th September, 2016 would not be of any avail as the recovery is already claimed under the order of termination dated 10th August, 2016 served to the petitioner at Hubli. The salary recovery notice

dated 30th September, 2016 would be a part of execution which will depend upon the fate of the order of termination and recovery dated 10th August, 2016 served to the petitioner at Hubli. The petitioner at the relevant time was working at Hubli. It cannot be said that the part of cause of action has arisen within the territorial jurisdiction of this Court. The judgment of the Apex Court in a case of **Nawal Kishor Sharma Vs. Union of India and others** (*supra*) referred by the petitioner is on altogether different grounds. In the said case, the order of cancellation of the registration of the appellant therein was passed in Mumbai and the appellant made all his correspondence regarding his disability compensation from his native place. The Apex Court held that the part or fraction of cause of action arose within the jurisdiction of the Patna High Court. In a case of **C. Pitcheiyan and others Vs. Regional Manager, Co-optex, Kochi and others** (*supra*) the employees were working in the office

of Regional Warehousing of Tamilnadu Handloom Weavers. The complaints were filed regarding bogus sale. The bogus sale according to the complaints took place within the jurisdiction of the Kerala High Court. The Kerala High Court, as such, held that part of cause of action has arisen within its territorial jurisdiction. In a case of Om Prakash Srivastava Vs. Union of India and another (*supra*) relied by the petitioner the Delhi High Court had only observed that Allahabad High Court could deal with the matter more effectively, and as such, did not entertain the petition. The Apex Court in the said case, remitted the matter to the Delhi High Court.

11. The Apex Court in a case of Union of India and others Vs. Adani Exports Ltd. and another reported in AIR 2002 SC 126 observed that all facts pleaded do not give rise to cause of action. The facts pleaded must have relevance to the lis / dispute.

12. In the present matter, as discussed above, no part of cause of action has arisen within the territorial limits of the jurisdiction of this Court. The petitioner at the relevant time was posted at Hubli. He received the show cause notice at Hubli. The petitioner gave reply to the show cause notice from Bijapur - Karnataka. The petitioner received the order of termination and recovery of his salary at Hubli. Only because second notice by way of executing the order which was already passed was served at Bhoom would not *ipso facto* amount to cause of action. It cannot be said that the cause of action has arisen within the territorial jurisdiction of this Court.

13. In the light of above, we are not inclined to entertain the writ petition on the ground of territorial jurisdiction. The writ petition, as such, is disposed of with liberty to the petitioner to avail the proceeding before the appropriate Court. In that regard all contentions of respective parties are kept open.

14. Writ Petition is disposed of. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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