

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Appeal No. 226 OF 2018

Constable No. 833350033 A. P. Sharma S/o Late Shri Krishna Prasad Pandey
 Aged About 55 Years R/o Village Chicha, Police Station Dhamdha District Durg
 (C.G.).

---- Appellant

Versus

1. Secretary Home Department Government of India, New Delhi.
2. Inspector General (SWS) Central Industrial Security Force, (Ministry of Home Affairs) RCFL Complex Chembur, Mumbai.
3. Dy. Inspector General/WZ, Central Industrial Security Force, (Ministry of Home Affairs) RCFL Complex, Chembur, Mumbai - 400074.
4. Commandant, CISF Unit MPT Goa.

---- Respondents

For Appellant	:	Shri Jitendra Gupta, Advocate.
For Respondents	:	Shri Raj Kumar Gupta, Advocate

Hon'ble Shri Prashant Kumar Mishra, Acting Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Prashant Kumar Mishra, Acting Chief Justice

09/04/2019

1. This intra Court appeal would call in question the order passed by the learned Single Judge dismissing appellant's/petitioner's writ petition on the ground of lack of territorial jurisdiction.
2. Brief facts necessary for disposal of this writ appeal, are that, while posted as Constable in CISF Unit, Mormugao Port Trust, Goa, the appellant/petitioner was subjected to a departmental enquiry and eventually, he was removed from service by an order dated 15th June 2004. The appeal preferred by appellant/petitioner before the Deputy Inspector General, CISF Unit Goa was dismissed on 23rd September 2004 (Annexure-2 in writ petition) and thereafter, the revisional order

was passed by the Deputy Inspector General/WZ CISF, Mumbai. The original order of termination was served to the appellant/petitioner while he was still staying at Goa, whereas the appellate and revisional orders were served upon him on his address at village Chicha, District Durg, Chhattisgarh.

3. The writ petition was filed in the year 2005. It was taken up for hearing on 20th February 2018, when the impugned order has been passed dismissing the writ petition on the ground of maintainability as the Court found that this Court lacks territorial jurisdiction to examine the issue, in which, the order of termination was passed by the authorities of CISF at Goa. While dismissing the writ petition, reliance has been placed on judgment rendered by the Hon'ble Supreme Court in the matter of **Lt. Col. Khajoor Singh v. Union of India and another**¹.

4. We have heard learned counsel appearing for the parties at length and perused the papers.

5. In a more recent judgment in the matter of **Nawal Kishore Sharma v. Union of India and others**², the Hon'ble Supreme Court was considering the scope of Article 226 (2) of the Constitution of India to decide the question of maintainability of the writ petition when part of cause of action would arise within the jurisdiction of the High Court, even though, the respondent authorities were located outside the territorial limits of the High Court.

6. The Hon'ble Supreme Court considered **Lt. Col. Khajoor Singh** (supra) and thereafter proceeded to deal with the issue as to the meaning of the expression 'cause of action'. The Hon'ble Supreme Court referred to its judgment in the matter of **Kusum Ingots & Alloys Ltd. v. Union of India and another**³, and observed thus :-

¹ AIR 1961 SC 532

² (2014) 9 SCC 329

³ (2004) 6 SCC 254

“12. Kusum Ingots & Alloys Ltd. v. Union of India and another, (2004) 6 SCC 254, this Court elaborately discussed Clause (2) of Article 226 of the Constitution, particularly the meaning of the word “cause of action” with reference to Section 20(c) and Section 141 of the Code of Civil Procedure and observed (SCC p.259, paras 9-10)

“9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the 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. The expression material facts is also known as integral facts.

10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.”

Their Lordships further observed as under: (*Kusum Ingots & Alloys Ltd. Case (supra)*, SCC p. 264, paras 29-30)

“29. In view of clause (2) of Article 226 of the Constitution of India, now if a part of cause of action arises outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in *Khajoor Singh (supra)* has, thus, no application.

Forum conveniens

30. We must, however, remind ourselves that even if a small part 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.”

7. Thus, in **Kusum Ingots & Alloys Ltd.** (supra), the Hon'ble Supreme Court refused to apply the ratio in the matter of **Lt. Col. Khajoor Singh** (supra) for the reason that even when a fraction of cause of action would arise within the limits of particular High Court, the writ petition should not be thrown out on the ground that the respondents' office are located outside the jurisdiction. The Hon'ble Supreme Court in **Nawal Kishore Sharma** (supra) observed thus at para-16.

“16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.”

The Hon'ble Supreme Court also noticed that the concerned employee was on medical treatment, therefore, he had shifted to his native place in the State of Bihar. The order passed by Shipping Corporation of India outside the limits of Patna High Court was served upon him at his native place in Bihar and the decision on rejection of his representation was also served to him at his native place. It was also noticed by the Hon'ble Supreme Court that the counter affidavit of the respondents was filed on merits, therefore, the respondents appeared and participated in the proceedings.

8. In the case at hand, the return which was originally filed in September 2008 did not object to the jurisdiction of this Court. The said issue was raised for the first time by way of an additional reply filed on 19/12/2013. Thus, having participated in the proceedings on merits, the respondents raised objection as to the jurisdiction of this Court after 8 years i.e. in 2013 and the issue was considered and decided after 5 years thereafter i.e. in 2018.

9. Considering the observation made by the Hon'ble Supreme Court in **Nawal**

Kishore Sharma (supra) that while deciding the issue of territorial jurisdiction of the High Court *viz a viz* its territorial limits and considering the accrual of cause of action within its limits, the nature and character of the proceedings under Article 226 of the Constitution of India is required to be gone into. Therefore, considering that the appellant/petitioner is an employee who has been removed from service and the appellate as well as revisional orders have been served upon him at his native place in the State of Chhattisgarh and the objection as to the jurisdiction was not raised in the return initially, we are of the considered view that part of cause of action has arisen within the State of Chhattisgarh and the writ petition is maintainable in this Court.

10. Since the learned Single Judge has not gone into the merits of the matter, while setting aside the impugned order, the writ petition is required to be sent back to the Single Bench for decision afresh on merits.

11. Accordingly, writ appeal is allowed. Impugned order is set aside and the matter is remanded back to the writ Court for deciding the matter afresh on merits in accordance with law. Since the writ petition was filed in the year 2005, let the regular Bench take up the matter for disposal expeditiously.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge