

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 17677 of 2011

MARUTI SADA Son Of Shri Uday Kant Sada Resident Of Village-Telhar,Ps-
Mahishi,District-Saharsa,Bihar.

... .. Petitioner/s

Versus

1. THE UNION OF INDIA
2. The Director General, Central Industrial Security Force (CISF), Home Department, New Delhi
3. The Deputy Director General, General, CISF, Directorate, CISF, Home Department, Block,13, CGO Complex, Lodhi Road, New Delhi
4. The Inspector General, CISF, Premises No. 553, East Kolkata, Township Kasba, Kolkata 107, Ministry Of Home Affairs
5. The Deputy Inspector General, CISF, Unit DSP, Durgapur, Kolkata.
6. The Senior Commandant, CISF, Unit DSP, Durgapur, Kolkata.
7. The Assistant Commandant, Part II, CISF, Unit DSP, Durgapur, Kolkata.

... .. Respondent/s

For the Petitioner/s	:	Mr Satish Chandra Jha – 3, Advocate
For the Respondent/s	:	Mr S D Sanjay, ASG
		Mr Anshuman Singh, CGC
		Mr Mohit Agarwal, Advocate

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 27-02-2020

Heard Mr Satish Chandra Jha, Advocate for the petitioner as well as Mr S D Sanjay, learned Additional Solicitor General for the Union of India assisted by Mr Anshuman Singh, Central Government Counsel.

2 This writ petition has been filed praying for quashing of the order dated 31.05.2010 issued by the Senior Commandant, Central Industrial Security Force (for brevity, *Force*) Unit, Durgapur in another State, namely, the State of West Bengal whereby and where under the petitioner's services as a Constable in the Force has been terminated during the extended period of



probation. Petitioner had made a representation against the same before the Inspector General, which also has been rejected under order dated 10.10.2010 by the Inspector General of the Force at Kasba in the State of West Bengal. The same is also assailed in the instant proceedings.

3 The undisputed facts are that the petitioner was employed as a Constable in the Force on 16.06.2007. The petitioner's initial probation was for two years from the date of his appointment. On account of his unsatisfactory performance, his probation was extended twice. The first extension under order dated 20.09.2009 was for six months with effect from 15.06.2009. A second order dated 05.02.2010 came to be issued further extending his probation "due to unsatisfactory performance", by six months with effect from 14.01.2010 till 16.06.2010. In such a manner, the petitioner was continued on probation for three years. It is also not in dispute that beyond three years, there is no provision for extension of probation. The facts, therefore, reveal that petitioner's services were extended for the maximum period of probation possible in the Respondent-Force.

4 When the second extended probation period 14.01.2010 to 16.06.2010 was nearing completion, the petitioner was visited with an order of termination dated 31.05.2010 which



has been issued by the Senior Commandant of the Force, Durgapur Steel Plant Unit at Durgapur. At the relevant time, the petitioner was also posted as a Constable at the same Unit where the order of termination invoking powers under Rules 25 and 26 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as the *Force Rules, 2001*) was issued. The order terminates the petitioner's probationary service with immediate effect. One month's pay in lieu of the notice period has also been paid to the petitioner.

5 Being aggrieved by such order, the petitioner has made an application to the Inspector General of the Force at Kolkata. The Inspector General, under order dated 10.10.2010, has disposed of the representation of the petitioner. While doing so, the Inspector General has conveyed to the petitioner the background and reasons on account of which his probation period was found to be unsatisfactory. On basis of such consideration, he had not been made permanent in the Force and had been terminated during period of his probation.

6 The petitioner was visited with the order dated 31.05.2010 at his place of posting at Durgapur Steel Plant in the State of West Bengal. Writ petition has been filed assailing this order of termination. The learned Additional Solicitor General,



therefore, raises a preliminary objection regarding maintainability of the writ petition before this Court for want of territorial jurisdiction. It is submitted that the order dated 31.05.2010 is based on facts and circumstances, all of which have occurred within the State of West Bengal, in another State.

7 Even the order dated 10.10.2010 issued by the Inspector General, rejecting the petitioner's representation against the termination order is based on consideration and issued at Kolkata beyond the territorial jurisdiction of this Court.

8 Reliance is placed on judgments of the Apex Court in the case of *Lt Col Khajoor Singh -Versus- Union of India & Another*, AIR 1961 Supreme Court 532, *Nawal Kishore Sharma -Versus- Union of India & Others*, (2014) 9 Supreme Court Cases 329 as also the later judgment of this Court in the case of *Sunil Kumar Yadav -Versus- Union of India through Secretary, Home Department & Others*, 2016 (3) PLJR 870.

9 During course of his submissions, learned counsel for the petitioner has also referred to the decision in the case of *Nawal Kishore Sharma (supra)*. He has also relied upon decision of this Court in the case of *Dinesh Paswan -Versus- The Union of India through the Ministry of Home Affairs, New Delhi & Others*, 2010 (3) PLJR 379. Submission based on these two judgments is that



since the petitioner has preferred his appeal from his native address within the State of Bihar and order of the Inspector General dated 10.10.2010 had been communicated to him within the territorial jurisdiction of this Court, he would be wholly justified in invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. He submits that as per Clause (2) of Article 226 of the Constitution of India, the fact that the Authority, which has issued the petitioner's order of termination dated 31.05.2010 and rejected his representation dated 19.08.2010 is not seated within the territorial jurisdiction of this Court will not come in the way of the petitioner's remedy under Article 226 of the Constitution of India. Since the order dated 10.10.2010 rejecting the petitioner's representation issued by the Inspector General at Kolkata, has been communicated by post to the petitioner at his native village within the State of Bihar, the petitioner can approach this Court invoking Article 226 of the Constitution of India.

10 As per judgment, in the case of *Nawal Kishore Sharma (supra)*, the bundle of facts constituting the cause of action would be a relevant consideration to determine the issue of territorial jurisdiction in a writ proceeding. The Apex Court examined Section 20 (c) of the Code of Civil Procedure and



Clause (2) of Article 226 of the Constitution of India. It concluded as follows :

“11. On a plain reading of the amended provisions in Clause (2), it is clear that now High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court’s territorial jurisdiction. Cause of action for the purpose of Article 226 (2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20 (c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed.”

11 It is in this context that the bundle of facts constituting the cause of action, including communication of order dated 10.10.2010 by post, to the petitioner within the State of Bihar, has to be seen while determining the issue of territorial jurisdiction under Article 226 of the Constitution of India.

12 Since both parties have made detailed submissions on the merits of the matter, this Court considers it appropriate to take note of the same.

13 The submission with respect to the infirmity in the order of termination dated 31.05.2010, made by the petitioner’s counsel are broadly on three grounds.



14 Firstly, it is submitted, referring to Rule 26 (4) of the Force Rules, 2001 that jurisdiction to terminate an employee during probation without assigning reasons and by giving one month's notice or pay in lieu thereof, can be exercised only if it has been found that by furnishing false or incorrect information at the time of appointment in the Force, the petitioner has obtained such appointment; or upon his failure to pass the basic training or repeat course. Since the order dated 31.05.2010 does not indicate either of these two reasons, on the face of it, the order dated 31.05.2010 is not sustainable.

15 The second submission advanced by the learned counsel for the petitioner is that the petitioner has been discriminated against. It is his submission that during the petitioner's extended probation period, altogether three minor punishments were awarded to the petitioner. Citing the example of another Constable, namely, Ghanshyam Dhruv Singh, it is submitted that in his case, in fact three extensions were granted after the initial period of probation. He had been awarded four minor punishments during his probationary period, still the said Ghanshyam Dhruv Singh has been made a permanent Member of the Force. The petitioner, on the other hand, has been dealt with



otherwise and has been visited with the order of termination simpliciter during the period of his probation.

16 The third and last submission is that the punishment is having penal consequence and is stigmatic in nature. In view thereof, it is submitted that the same cannot be said to be an order issued under Rule 26 (4) of the Force Rules, 2001.

17 The learned Additional Solicitor General, addressing on merits, has drawn the attention of the Court towards the order dated 31.05.2010, i.e., the order of termination. It is his submission that from the face of the order itself, it is apparent that the same has been issued invoking the powers under Rules 25 and 26 of the Force Rules, 2001 and is, therefore, in accordance with law. Submission of the petitioner's counsel that the order of termination simpliciter could only be issued upon existence of the two grounds indicated in Rule 26 (4) of the Force Rules, 2001 is unsustainable. Rule 25 contemplates exercise of such power under various circumstances which are elaborated in the two provisos after Rule 25 (1) as well as under Rule 25 (2) of the Force Rules, 2001. The same is being reproduced:-

25. Probation. - (1) *Every member of the Force except those appointed on deputation/absorption, shall be on probation for the period specified in relevant column of the Recruitment Rules:*



Provided that in the absence of a specific order of confirmation or a declaration of satisfactory completion of probation, a member of the Force shall be deemed to be on probation:

Provided further that no member of the Force shall ordinarily be kept on probation for more than twice the period prescribed in respective Recruitment Rules.

(2) If during the period of probation the appointing authority is of the opinion that a member of the Force is not fit for permanent appointment, the appointing authority may discharge him [or terminated the services] from the Force after issue of notice of one month or after giving one month's pay in lieu of such notice, or revert him to the rank from which he was promoted or repatriate to his parent department, as the case may be.

(3) On successful completion of probation by a member of the Force, the appointing authority shall pass an order confirming the member of the Force in the grade in which he joined the Force.

18 The other submission advanced on behalf of the Union of India is that the counter affidavit contains all the materials to show that the petitioner has been dealt with fairly. Twice, he has been granted opportunity to improve his conduct and upon finding of the same being unsatisfactory, his probation was also extended twice. In spite of such extension when he failed to improve his conduct, he has been visited with the order of termination. It is submitted that the order of the Inspector General



also contains details of the minor punishments which have been awarded to the petitioner during his extended period of probation. The last punishment, which was awarded to the petitioner on 26.10.2009, was fine of an amount equal to 7 days pay. The same was based on a finding of the charge regarding disobeying order of his senior and misbehaving with his colleagues while on duty.

19 The punishments, which occasioned two extensions of probation period, are facts relevant and sufficient to decide whether a probationer (petitioner) is to be made permanent in a uniform service, or terminated simplicitor. These punishments have never been assailed or challenged by the petitioner. The material is, therefore, irrefutable as the petitioner has accepted all these facts without demur. In the circumstances, it is submitted that the petitioner is estopped and now he cannot be permitted to turn around and say that the order is without any basis.

20 It is also submitted that the order of termination dated 31.05.2010 does not carry any stigma as it has been issued terminating his services simplicitor after giving one month's pay in lieu of notice period. Further submission is that in the matter of grant of permanence or termination, the petitioner cannot be permitted to draw a comparison or claim parity with the other Constable, namely, Ghanshyam Dhruv Singh. Submission is



based on two grounds that Ghanshyam Dhruv Singh is not before this Court and secondly, his entire facts and circumstances are not before this Court. The assessment of suitability for granting permanence in the Force is made on an individual basis having regard to various factors other than merely the number of minor punishments awarded. The nature of the allegations, which had been found proved against the petitioner while on probation, is one such relevant consideration. The Force has not found the petitioner worthy of retention on account of an overall assessment of his conduct. The petitioner has not alleged any specific mala fide against any officer. The decisions have been taken under the Rules and are based on the input and discretion of various officers who have observed the petitioner's conduct during his probation period. Such a collective decision, therefore, has not been and cannot be termed as being mala fide against the petitioner.

21 Having submitted so, the learned Additional Solicitor General submitted that the writ petition is fit to be dismissed on grounds of want of territorial jurisdiction as also on the grounds of the same lacking any material for invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India even on merits.



22 having considered submissions advanced by the parties, this Court would find that the petitioner seeks to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India merely because the order of the Appellate Authority was communicated to him at his Village – Telhar in the district of Saharsa within the State of Bihar. The judgment of the Apex Court in the case of *Lt Col Khajoor Singh (supra)*, decided on 05.12.1960 which has been relied upon by the learned ASG was rendered prior to the Constitution (Fifteenth) Amendment Act, 1963 whereby Clause (1-A) was inserted in Article 226, subsequently renumbered as Clause (2) by the Constitution (Forty Second) Amendment Act, 1976. The subsequent amended Clause (2) to Article 226 of the Constitution of India, has been added subsequent to decision of the Apex Court in the case of *Lt Col Khajoor Singh (supra)*, and, as such, the Apex Court in the case of *Kusum Ingots and Alloys Limited -Versus- Union of India & Another, (2004) 6 Supreme Court Cases 254* has held that decision in *Lt Col Khajoor Singh (supra)* now has no application if the cause of action arises outside the jurisdiction of the High Court. The same has been considered in the case of *Nawal Kishore Sharma (supra)* in the following words:

12. In Kusum Ingots & Alloys Ltd v Union of India, 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, 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 has, thus, no application.
(emphasis mine)

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.”

23 It is in this background that this Court is considering the issue to see whether cause of action, a part thereof, or even a fraction thereof has occurred within the territorial jurisdiction of this Court. This has to be examined as per decision of the Apex Court in the case of *Nawal Kishore Sharma (supra)* to ascertain whether in view of Article 226 (2) of the Constitution of India, the instant writ proceedings would be maintainable within the territorial jurisdiction of this Court.

24 The service of the petitioner, which forms the basis of the assessment of unsatisfactory performance is based on facts which have all occurred beyond the territorial jurisdiction of this Court. The termination order dated 31.05.2010 has also been issued beyond the territorial jurisdiction of this Court. Exercise of jurisdiction, or improper exercise thereof, as alleged by the petitioner, leading to issuance of the appellate order by the Inspector General is also beyond the territorial jurisdiction of this Court, i.e., within the State of West Bengal. It is these facts which constitute the bundle of facts forming the “cause of action” in the instant case. It is nobody’s case that even a fraction of this cause of action has arisen within the territorial jurisdiction of this Court. Communication of the order of the Inspector General at the



petitioner's native village within the territorial jurisdiction of this Court is not a fact or matter in issue in the instant proceeding. The same, therefore, in the instant proceedings, does not constitute a part or fraction of the cause of action in this case. The writ petition filed within the jurisdiction of this Court exercising jurisdiction to issue writs throughout the territories of the State of Bihar, therefore, is not maintainable.

25 Having said so, this Court would also consider that bare perusal of paragraphs 21 and 22 of the decision of the Apex Court in the case of *Nawal Kishore Sharma (supra)* reveals that the same was passed in the peculiar facts and circumstances of that case.

26 Paragraphs 21 and 22 of the judgment are being reproduced for easy reference :

“21. Apart from that, from the counter affidavit of the respondents and the documents annexed therewith, it reveals that after the writ petition was filed in the Patna High Court, the same was entertained and notices were issued. Pursuant to the said notice, the respondents appeared and participated in the proceedings in the High Court. It further reveals that after hearing the counsel appearing for both the parties, the High Court passed an interim order on 18.09.2012 directing the authorities of Shipping Corporation of India to pay at least a sum of Rs 2.75 lakhs, which shall be subject to the result of the writ



petition. Pursuant to the interim order, the respondent Shipping Corporation of India remitted Rs 2,67,270/- (after deduction of income tax) to the bank account of the appellant. However, when the writ petition was taken up for hearing, the High Court took the view that no cause of action, not even a fraction of cause of action, has arisen within its territorial jurisdiction.

22. Considering the entire facts of the case narrated hereinbefore including the interim order passed by the High Court, in our considered opinion, the writ petition ought not to have been dismissed for want of territorial jurisdiction. As noticed above, at the time when the writ petition was heard for the purpose of grant of interim relief, the respondents instead of raising any objection with regard to territorial jurisdiction opposed the prayer on the ground that the writ petitioner-appellant was offered an amount of Rs 2.75 lakhs, but he refused to accept the same and challenged the order granting severance compensation by filing the writ petition. The impugned order, therefore, cannot be sustained in the peculiar facts and circumstances of this case.” (emphasis mine)

27 It is apparent from perusal of these two paragraphs that after notice, the respondents, in that case, had participated in the proceedings before the High Court. Interim order was also passed. At the stage of grant of interim relief, the respondents have also not raised any objection with regard to territorial jurisdiction. Only when the matter was taken up at the stage of



hearing, the High Court took a view that no cause of action or fraction thereof had arisen within the territorial jurisdiction of the High Court. The High Court had considered the case to be not maintainable for want of territorial jurisdiction, after it had already issued interim orders in favour of the petitioner at an early stage. Facts of the instant case are different where preliminary objection regarding territorial jurisdiction was raised by the Union of India on the very first date when the matter was taken up on 30.09.2011. Thereafter, the writ petition stood dismissed for non-prosecution on 24.10.2011, only to be restored on 21.03.2012 in the restoration proceedings arising out of MJC No 179 of 2012. Thereafter, matter came to be listed before this Court on 18.11.2019 *For Admission*, and submissions have been advanced by the learned CGC and ASG on the issue of maintainability for want of territorial jurisdiction. Facts, in the instant case, are, therefore, distinguishable from the case of *Nawal Kishore Sharma (supra)*.

28 In the instant case, objection as to territorial jurisdiction has been taken on the very first day when the matter was taken up and, therefore, as per established practice and procedure, the question of maintainability is required to be considered foremost. In this connection, this Court would refer to decision of the Apex Court in the case of *National Highway*



Authority of India -Versus- Ganga Enterprises & Another, (2003)

7 Supreme Court Cases 410. Paragraph 6 of the judgment mandates that the issue of maintainability in a writ petition is required to be answered first by the High Court as it would go to the root of the matter.

29 In view of the settled legal position, based on judgments of the Hon'ble Apex Court, taken note of hereinabove, without going into the merits of the case and expressing any opinion whatsoever on the merits of the matter, this Court, for the above noted reasons, would dismiss the writ petition as the same is not maintainable before this Court for want of territorial jurisdiction.

30 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.11.2020
Transmission Date	NA

