

18.01.2021
Item No. 08
Ct. No. 04
PG

**F.M.A. 1892 of 2016
with
I.A. No. CAN 4 of 2020 (Old No. CAN 666 of 2020)
(Via Video Conference)
Anal Kumar Dey
Vs.
Union of India & Ors.**

Mr. Mujibar Rahaman.....for appellant

Mr. Rudra Jyoti Bhattacharjee
Ms. Debjani Ghosal.....for respondents

Mr. Rahaman, learned advocate appears on behalf of appellant, whose writ petition was dismissed by order dated 5th January, 2016. He submits, his client seeks reinstatement as he had already put in 17 years of service. Without prejudice to above contention he submits, calculation of compassionate allowance per rule 41 of Central Civil Rule Pension, 1960 was incorrectly made. He draws attention to the punishment of removal from the battalion. On query from Court, he points out items of charge.

Ms. Ghosal, led by Mr. Bhattacharjee, learned advocates appear on behalf of respondents and reiterate submission made at hearing of the writ petition being that this Court does not have jurisdiction over respondents and all the records are lying at Rohtak in Haryana. The incident also occurred there at petitioner's posting. He had assaulted superior officer.

We have perused the items of charge. We find, *inter alia*, petitioner stood removed from service on charges made against him in respect of minor punishments provided in section 11 of Central Reserve Police Force Act, 1949. Following from punishment order dated 6th January, 2014 is reproduced below:

*“In exercise of the power conferred under Section 11(1) CRPF read with rule 27 of CRPF rules 1949 I punished Force no. 971230389 C/GD Anal Kumar Dey F-220 Battallion with the **punishment of removal from service**. From the date of 06.01.2014 afternoon date of issue of this order as he was not found fit for the force.*

Accordingly from this date that is 06.01.2014 afternoon is being removed from the service of this Battalion.”

(emphasis supplied/page-315 of Paper Book)

When the appeal was heard last on 12th January, 2021, we had recorded, *inter alia*, as follows:

“In impugned order there is record of objection on jurisdiction, to maintainability, taken but the writ petition was disposed of on merit. The appeal, though filed earlier became in order and ready on 19th February, 2016. Respondents omitted to file cross-objection, inspite of the appeal filed and notice of it had by them. As such, whether this Court is at all called upon to decide on the question of jurisdiction, at this stage when parties had by their conduct have submitted to it, will be decided on adjourned date, since respondents have prayed for adjournment.”

Today Mr. Bhattacharjee submits, the question of jurisdiction needs to be decided and the inevitable conclusion is that this Court does not have territorial jurisdiction. Only after decision on the

issue of jurisdiction, can his client be called upon to answer on merits. On this Mr. Rahaman has not been able to demonstrate requisite pleading in the writ petition, to show cause of action or any part of it arose within the territory, over which this Court exercises jurisdiction under article 226 of the Constitution of India. He submits, however, respondents have office at Salt Lake and on being dismissed from service, his client, being resident of this State, has been residing here and therefore moved this Court for relief. The writ petition should be decided on merits in appeal, for reversing impugned order.

Article 226 provides for power of High Courts to issue certain writs, throughout the territory, in relation to which it exercises jurisdiction. The power is same for all High Courts as conferred by the Constitution. It is circumscribed by territorial extent. There was amendment of the Constitution, initially by the Constitution (Fifteenth Amendment) Act, 1963, to extend the territory to include seat of such Government or authority or residence of such person not within the territory, to be amenable to the jurisdiction of a High Court, within whose territory the cause of action wholly or in part arose. Section 21 in Code of Civil Procedure, made applicable as far as practicable by operation of the Writ Rules of this

Court, requires objection as to place of suing being allowed by, *inter alia*, appellate Court, when such objection was taken in the Court of first instance at the earliest opportunity etc.

We find objection to jurisdiction was taken at the time the writ petition was moved but dealt with on merits. The objection was not decided. True it is that on this appeal being filed and made ready, thereafter respondents did not file cross objection. Territorial jurisdiction being a matter of convenience for the answering party, a finding of waiver is possible based on conduct of respondents in having submitted to jurisdiction of this Court. However, respondents cannot also be faulted for pressing for answer on the issue of jurisdiction, taken by them at the first instance. The answer to the issue must, in the facts and circumstances, be in the negative, to say this Court does not have jurisdiction.

The appeal is dismissed with liberty to appellant to find remedy since he filed this appeal and prosecuted it in a Court, which, for defect of jurisdiction, is unable to entertain it. Connected application [I.A. no. CAN 4 of 2020 (Old no. CAN 666 of 2020) is disposed of accordingly.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)