

29.11.2022.  
Item No.6  
Court No.550  
Saswata

**W.P.A. 18562 of 2017**

**Deb Kumar Roy**  
**versus**  
**The 2<sup>nd</sup> Labour Court, Kolkata & Ors.**

Mr. Aninda Lahiri  
Mr. M. Malakar

...For the petitioner

Mr. Soumya Mazumder  
Mr. Barnomay Basak

...For the respondent nos. 2 to 4

The instant writ application has been filed, inter alia, praying for an order to set aside the award dated 28<sup>th</sup> February 2017 passed by the Learned 2<sup>nd</sup> Labour Court in Case no. 63/04. From a perusal of the award passed by the learned Labour Court, it would appear that the learned Labour Court has been pleased to dismiss the case, inter alia on the ground that the Court had no territorial jurisdiction to try the case. The writ petitioner claims he was employed with M/s Rexcel Pharmaceuticals Ltd., a company having its office at Kolkata, as headquarter. It is the petitioner's case that previously the petitioner was employed with M/s Jal Ltd., a pharmaceutical company based in Mumbai. In the year 1997, M/s Rexcel Pharmaceuticals Ltd. had taken over the brand equities of M/s Jal Ltd., and by virtue of an agreement entered between M/s Jal Ltd. and, M/s Rexcel Pharmaceuticals Ltd., all the employees of M/s Jal

Ltd., including the petitioner were absorbed by M/s Rexcel Pharmaceuticals Ltd. It is submitted that M/s Rexcel Pharmaceuticals Ltd., was a group company of Ranbaxy laboratories, which was later merged with M/s Sun Pharmaceuticals Ltd., the respondent no. 2. In course of employment, the petitioner was transferred to Mumbai sometimes in May 1998. While working in Mumbai, he was directed by the management of the respondent no.2 to stop working at Mumbai headquarter with effect from 17<sup>th</sup> February 2000 and was directed to return to Kolkata.

The petitioner says that the respondent no.2 had issued verbal orders of transfer, whereupon the petitioner had come back to Kolkata. Although the petitioner had insisted for written order, the same was not issued. This prompted the petitioner to recorded such fact in his letter dated 22<sup>nd</sup> February 2000. Mr. Lahiri, learned advocate representing the writ petitioner, submits that although the petitioner had come down to Kolkata as per the instructions issued by the management of the respondent no.2, yet by a letter dated 12<sup>th</sup> April, 2000 the management of the respondent no.2 had illegally disowned such fact. He says that the respondent no.2 did not stop there. The respondent no. 2 once again called upon the petitioner to join their Mumbai Office. According to the petitioner, no formal transfer order was issued and as

such the petitioner was not willing to proceed to Mumbai. Unfortunately on or about 28<sup>th</sup> April, 2000 the petitioner received a letter of termination in Kolkata. The petitioner says that such termination is bad in law.

Challenging such illegal termination an application under section 10(1b)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act), was filed by the petitioner before the 2<sup>nd</sup> Labour Court, West Bengal praying for reinstatement and back wages. The same was registered as Case No.63/04 under section 10(1b)(d) of the said Act.

The said proceedings ultimately culminated in an award dated 28<sup>th</sup> February, 2017. The petitioner is aggrieved by the aforesaid award dated 28<sup>th</sup> February 2017 passed by the learned 2<sup>nd</sup> Labour Court in dismissing the case, inter alia, on the ground that the learned Labour Court does not have the territorial jurisdiction to try and entertain the said case. Mr. Lahiri submits that the learned Labour Court had erred in dismissing the case, inter alia, on the ground that cause of action had arisen outside the jurisdiction of the State of West Bengal, in Mumbai. He says that the order of termination was served on the writ petitioner, within the State of West Bengal in Kolkata and the effect of such order was felt within the State of West Bengal in Kolkata. As such, he submits that the

learned Labour Court, in the State of West Bengal in Kolkata has jurisdiction to try, entertain and determine the present proceedings.

In support of his contention, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Bikash Bhushan Ghosh and others – Vs- Novartis India Ltd. and another.***, reported in ***(2007) 5 SCC 591***. He says that the Hon'ble Supreme Court in paragraph 18 of the said judgement has categorically held that the place where the order of termination is served would give rise to a cause of action, for a dispute to be referred to a Labour Court. He has also placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Nawal Kishore Sharma –Vs- Union of India & Ors.***, reported in ***(2014) 9 SCC 329*** and an unreported judgment delivered by the Division Bench of this Hon'ble Court in the case of ***M/s Alembic Limited – Vs- State of West Bengal & Ors.*** He says that this Hon'ble Court, while considering a judgment delivered by another Division Bench of this Hon'ble Court has held that infringement of a right, gives rise to a cause of action and consequently the right to sue and in case of removal from service, the order of removal becomes effective only when it is served, giving rise to a cause of action for a right to sue. Having regard to the above, it is submitted that the learned Labour Court had erred

in dismissing the case, *inter alia*, by holding that the cause of action has arisen in Mumbai and that the learned Labour Court does not have jurisdiction to entertain the reference.

Per contra, Mr. Mazumder, learned advocate appearing for the respondent nos. 2 to 4 submits that the adjudication of a reference in an industrial dispute is not akin to adjudication of a commercial cause. He says that unlike in a commercial cause, the cause of action is not the only criteria for determining the jurisdiction of a particular Court. He says that the petitioner was posted in the Mumbai office of respondent no. 2. The petitioner had unauthorisedly come back to his residence in Kolkata from the Mumbai office. Admittedly, the petitioner by a written communication was called upon by the management of respondent no.2 to assume his duties at Mumbai office. Since, the petitioner refused to adhere to the directions issued by the management, his service was terminated. Mr. Mazumder submits that it is true that the notice of termination has been served on the petitioner at Kolkata, however, such notice of termination has to have direct nexus with the employment of the petitioner, for the petitioner to invoke jurisdiction of the Labour Court in Kolkata. He says that the situs of employment is in Mumbai. The petitioner was dismissed while he was working in

Mumbai. The dispute, therefore, if at all, arose within the jurisdiction of the Labour Courts in Mumbai. It is further submitted that the cause of action is not the only test for determining the jurisdiction of a particular Court, in relation to an industrial dispute. While, on one hand it is important to ascertain where the order of termination of service operates, it is equally important to ascertain whether there is some nexus between the industrial dispute arising from termination of service of the workman and territory of the State where the reference is made.

In support of his aforesaid contention, Mr. Mazumder has placed reliance on a full Bench judgment of the Patna High Court delivered in the case of ***Paritosh Kumar Pal -vs- State of Bihar and others.***, reported in **1984 SCC Online Pat 345** and a judgment of the Hon'ble Supreme Court delivered in the case of ***Nandram -vs- Garware Polyester Limited.***, reported in **(2016) 6 SCC 290**. He also places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Hindustan Aeronautics Ltd. -vs- Workmen and Others.***, reported in **(1975) 4 SCC 679** and a judgment of this Hon'ble Court delivered in the case of ***Chatterjee (S.K.) and others -vs- Eastern Coalfields, Ltd. and others.***, reported in **1985 SCC Online Cal 103**.

By relying on the judgment delivered in the case of Chatterjee (S.K.) and Ors. (supra), he has also, inter alia contended that mere communication of an order does not give rise to a cause of action. He says that since the situs of employment of the petitioner was at Mumbai, the Labour Courts at Mumbai would have jurisdiction over the dispute raised by the petitioner and the learned 2<sup>nd</sup> Labour Court, Kolkata has rightly refused to entertain the case and has dismissed the same.

I have heard the submissions made by the respective advocates for the parties and have considered the materials on record.

In the case at hand, admittedly, the petitioner was an employee of the respondent no. 2. On the basis of the documents disclosed by the parties and the statements made by the petitioner, it would be apparent that in the month of February 2000, the petitioner was posted in Mumbai. Although, the petitioner contends that the petitioner had since been transferred to Kolkata, there is no document on record to demonstrate that he had, in fact, been transferred to Kolkata. On the contrary, it would appear from the letter dated 12<sup>th</sup> April 2000 that the management of respondent no.2 had called upon the petitioner to report to the Mumbai office, since according to them the petitioner had unauthorisedly stopped working at

Mumbai. The said letter, however, remains unanswered. Subsequently, on 28<sup>th</sup> April 2000, the petitioner's service was terminated, and factum of such termination was communicated to the petitioner by letter dated 28<sup>th</sup> April 2000.

The said letter of termination was also admittedly received by the petitioner at Kolkata. The question that arises for consideration is whether factum of receipt of the letter in Kolkata, gives rise to a cause of action to sue in relation to an industrial dispute within the meaning of the said Act. In the instant case, however, it must be noted that the petitioner was not working within the territorial limits of Kolkata, at the relevant point of time when the notice of termination was issued and served on him. The petitioner was lastly posted at Mumbai, wherefrom on the petitioner's own showing, he had returned to Kolkata based on verbal direction issued by the management of respondent no.2. There is no order of transfer to substantiate the same.

As indicated hereinabove, one must not lose sight of the fact that adjudication of an industrial dispute by Industrial/Labour Court, there must be some nexus between the industrial dispute arising from termination of service of the workman and the territory of the State. It is apparent that the petitioner was working at Mumbai when the order of termination

was issued. The industrial dispute, ordinarily therefor in relation to dismissal of the petitioner, ought to arise in Mumbai. The termination order, in my view, though received at Kolkata, does not operate in Kolkata as there is no nexus between the termination of service of the petitioner and Kolkata, for the dispute to be referred to a Labour Court in Kolkata. In the case of ***Paritosh Kumar Pal (supra)*** referred to by Mr. Mazumder, a Full Bench of the Patna High Court while considering the effect of an order of termination in relation to an industrial dispute and where it operates has, inter alia, held as follows: -

*“14. Applying the above, one of the primary tests is as to where the impugned order of the termination of service of a workman in effect operates. In Sri Ranga Vilas Motor case, (A.I.R. 1967 S.C. 1040) (vide supra), the Supreme Court in terms noticed that though the original order of transfer and the subsequent order of termination of the services of the workman were passed at Krishnagiri in Kerala yet in effect it operated at Bangalore, where the workman was employed. Consequently, the situs of the workman's employment in the case of the termination of his services is patently a paramount factor if not being wholly conclusive. It is within the area of employment that the order of termination operates and the workman ceases to be a workman and loses his right to hold the post and receive wages therefor. Therefore, on the anvil of the principle of where the impugned order operates the situs*

*of employment of the workman is patently significant. Can it possibly be said that the order of termination of a workman does not operate within the area of his employment? The answer, therefore, has to be in favour of the Tribunal having territorial jurisdiction over the place of work or the situs of employment.*

**15.** *Again on the second principle attached to the industrial dispute having some nexus with the territory of the State, the situs of employment of the workman assumes signal importance. Once a firm finding is arrived at that the workman was employed within a specific territory or State, the termination of his services therein has an obvious and direct nexus with such territory or such State. Consequently, on the nexus test also the situs of employment of the workman has a direct connection with the territory where such employment is terminated. To put it in the converse, where the industrial dispute pertains to the termination of the employment of a workman can it possibly be said that the situs of such employment would not have a direct nexus with the territory and the dispute? It calls for a pointed notice that in Sri Ranga Vilas Motor case (vide supra), their Lordships in terms approved the High Court's view that this nexus has to be betwixt the industrial dispute and the territory of the State and not necessarily with the industry or its headquarters as such."*

The Hon'ble Supreme Court in the case **Bikash Bhushan Ghosh (supra)** has also noted with approval the aforesaid tests for determining jurisdiction as

identified in the Full Bench judgment of the Patna High Court, by noting as under:

*“13. We may notice that in Paritosh Kumar Pal v. State of Bihar a Full Bench of the Patna High Court held :*

*“13. Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clear-cut principles or tests for determining jurisdiction emerge, therefrom. For clarity these may be first separately enumerated as under:*

*(i) Where does the order of the termination of services operate?*

*(ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?*

*(iii) That the well-known test of jurisdiction of a civil court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable.”*

*Referring to the provisions of the Code of Civil Procedure, it was held that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the court concerned.”*

It is important to note that in the case of **Bikash Bhushan Ghosh (supra)** the concerned workman while posted in Kolkata were issued transfer orders for being posted in Mumbai. Allegedly such transfer orders were violative of a memorandum of

understanding and were intended to victimize the workmen. Despite request, the transfer orders were not revoked which prompted the workmen to seek intervention of the Labour Commissioner, West Bengal. Allegedly a conciliation proceeding was initiated but during pendency thereof their services were terminated by the management. By contending the said orders of termination were unauthorized and illegal an industrial dispute was raised, which prompted the State of West Bengal in exercise of its jurisdiction, under section 10(1c) read with section 2A of the said Act to refer the dispute for adjudication to an industrial Tribunal in West Bengal. It is in that context and having regard of the aforesaid facts that the Hon'ble Supreme Court had held that the legality of the orders of transfer had a direct nexus with the orders of termination. If the orders of transfer were to be set aside the workmen would be deemed to be continuing to be posted in Kolkata, legality of the orders of transfer, thus had a direct nexus with the order of termination and proceeding on such premise the Hon'ble Supreme Court in paragraph 18 of such judgment was inter alia pleased to hold that the communication of the orders of termination would give rise to a cause of action for initiating an industrial dispute within the State of West Bengal. As understood from the context of the said judgment that

the order of termination had a clear nexus with the order of transfer, for the dispute to be referred to an industrial Tribunal in West Bengal.

Admittedly, in the present case the situs of employment of the petitioner was in Mumbai and by applying the test as enunciated in the case of **Paritosh Kumar Pal (supra)** it cannot be said that a letter of termination though served in the state of West Bengal constituted a cause of action for the purpose of raising an industrial dispute in Kolkata for the learned 2<sup>nd</sup> Labour Court to assume jurisdiction.

The judgment delivered by the Hon'ble Supreme Court in the case of **Nawal Kishore Sharma (supra)** does not concern an industrial dispute and as such cannot come in aid of the petitioner.

The judgment delivered by this Hon'ble Court in the case of **M/s Alembic (supra)** was delivered in a different set of facts, where the unilateral action of the management, in alteration of the service conditions of the employees in violation of section 9A of the said Act formed subject matter of reference under section 10 of the said Act. The same did not adjudicate the question of jurisdiction of a Labour Court to entertain a dispute in relation to service of notice of termination on an employee. For reasons more fully discussed

hereinabove the aforesaid judgment also does not assist the petitioner.

In the facts of the instant case, as narrated above, it cannot be said that the letter of termination which was received by the petitioner within the State of West Bengal, operated in Kolkata to give rise to a cause of action, for the petitioner to raise an industrial dispute within the State of West Bengal. The petitioner was working in Mumbai when the impugned order had been issued. Since the situs of employment was in Mumbai, the order of termination operated in Mumbai and effect of such order was also be felt in Mumbai where the employment of the petitioner was terminated. Taking into consideration the aforesaid factors, I am of the view that there is no irregularity far less any illegality or jurisdictional error on the part of the Learned 2<sup>nd</sup> Labour Court in refusing to entertain the case on the ground of lack of territorial jurisdiction.

Accordingly, the writ petition fails and the same is dismissed.

There shall be no order as to costs.

***(Raja Basu Chowdhury, J.)***