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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.5058 of 2022

and

W.M.P.No.5171 of 2022

R.Sivabalan

...Petitioner

Vs

1.The State of Tamil Nadu

Rep. by its Additional Chief Secretary to Government (FAC)
Finance (LF) Department
Secretariat,
Chennai - 600 009.

2.The Director of Local Fund Audit Department

Integrated Office Complex for Finance Department
IV Floor, Near Tod Hunter Nagar
Veterinary Hospital Campus
No.571, Anna Salai
Nandhanam,
Chennai - 600 035.

3.The Commissioner & Tribunal for Disciplinary Proceedings

Tribunal for Disciplinary Proceedings
No.5/1B, Vinayaga Nagar
Madurai - 20.

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the First Respondent in his proceedings in G.O. (D) No. 288 Finance (LF) Department dated 31.12.2020 and quash the same and consequently, to direct the First Respondent to promote the petitioner as Assistant Director /Deputy Director of L.F. Audit from the date on which his juniors got promotion with seniority and all other monetary benefits with the period that may be stipulated by this Hon'ble Court.

For Petitioner : Mr.S.Satheeshkumar

For Respondents : Mr. V.Jeevagiridharan
Additional Government Pleader



O R D E R

Heard Mr. S.Satheeshkumar, Learned Counsel for the Petitioner, Mr. V.Jeevagiridharan, Learned Additional Government Pleader for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed challenging the order dated 31.12.2020 in G.O. (D) No. 288 Finance (LF) Department passed by the First Respondent and to consequently direct the First Respondent to promote the Petitioner as Assistant Director/Deputy Director of L.F. Audit from the date on which his juniors got promotion with seniority and all other monetary benefits.

3. It is the case of the Petitioner that while he was serving as Inspector of Internal Audit in the office of the Assistant Director of Internal Audit, Sivagangai, a charge memo came to be issued by the Third Respondent, whose office is located within the territorial limits of jurisdiction of the Madurai Bench of this Court. The only reason stated for having approached the Principal Seat of this Court instead of approaching the Madurai Bench of this Court is that the office of the First and Second Respondents are situated at Chennai within the territorial limits of jurisdiction of the Principal Seat of this Court. There cannot be any doubt that the First and Second Respondents exercise powers for the whole of the State of Tamil Nadu, but that cannot be said to mean as if the cause of action arises within the territorial limits of jurisdiction of the Principal Seat of this Court.

4. In this context, reference may be made to the decision of the Division Bench of this Court in C.Ramesh -vs- Director General of Police, Chennai (Order dated 06.06.2013 in W.P. (MD) No. 8790 of 2013), in which it has been held as follows:-

"7. Exercise of jurisdiction is based on arising of the cause of action, either in whole or in part in any one of the said Revenue Districts. [See RAJASTHAN HIGH COURT ADVOCATES' ASSOCIATION Vs. UNION OF INDIA AND OTHERS (2001 (2) SCC 294) and B.STALIN Vs. THE REGISTRAR, SUPREME COURT OF INDIA AND OTHERS (2012 (3) LW 489 (FB))].

8. It should be remembered that the part of cause of action must be substantial in nature. The territorial jurisdiction of the Court is linked with the place of accrual of cause of action. [See U.P. RASHTRIYA CHINI MILL ADHIKARI PARISHAD, LUCKNOW Vs. STATE OF U.P. AND OTHERS (1995 (4) SCC 738)].



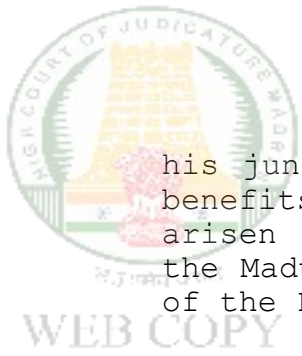
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9. Referring to KUSUM INGOTS & ALLOYS LTD. Vs. UNION OF INDIA (2004 (3) CTC 365), a Full Bench of this Court in SANJOS JEWELLERS Vs. SYNDICATE BANK, BANGALORE AND OTHERS (2007 (5) CTC 305), held as under:- "30. We must, however, remind ourselves that 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. [See BHAGAT SINGH BUGGA Vs. DEWAN JAGBIR SAWHNEY, AIR 1941 CAL 670 : ILR (1941) 1 CAL 490; MADANLAL JALAN Vs. MADANLAL, 1945 (49) CWN 357: AIR 1949 CAL 495; BHARAT COKING COAL LTD. Vs. JHARIA TALKIES & COLD STORAGE (P) LTD., 1997 CWN 122; S.S.JAIN & CO. Vs. UNION OF INDIA, 1994 (1) CHN 445, and NEW HORIZONS LTD. Vs. UNION OF INDIA, AIR 1994 DEL 126].

10. Question of entertaining a lis disclosing a cause of action or part of cause of action is based on the averments contained in the affidavit etc. At that stage, the truth or otherwise of the averments need not be gone into. But, there must be necessary averments disclosing a cause of action, so that the Court can take cognizance of/entertaining the lis exposed in the petition for taking further action. [See OIL AND NATURAL GAS COMMISSION Vs. UTPAL KUMAR BASU AND OTHERS (1994 (4) SCC 711)]

11. A Court cannot arrogate/assume/confer upon itself a jurisdiction- territorial jurisdiction, when it has no such jurisdiction. Lack of jurisdiction to entertain a matter goes to the root of the matter, otherwise whatever action taken or orders passed by the Court becomes a nullity, it is non est and of no consequence at all resulting in wasting of precious public time. Courts are barred from indulging in hypothetic and academic exercises."

Having regard to the aforesaid legal position, viz-a-viz, factual matrix of this case, the cause of action for the Writ Petition, viz., challenging the order dated 31.12.2020 in G.O. (D) No. 288 Finance (LF) Department passed by the First Respondent and consequently seeking direction to the First Respondent to promote the Petitioner as Assistant Director/Deputy Director of L.F. Audit from the date on which



his juniors got promotion with seniority and all other monetary benefits, would have to be necessarily construed as having arisen wholly within the territorial limits of jurisdiction of the Madurai Bench of this Court, notwithstanding that the office of the First and Second Respondents are located in Chennai.

5. When it is pointed out that the Writ Petition cannot be entertained in the Principal Seat of this Court in that backdrop, Learned Counsel for the Petitioner seeks permission of the Court to withdraw this Writ Petition with liberty to file fresh Writ Petition for the same relief before the Madurai Bench of this Court and he has made an endorsement to that effect in the court record.

In fine, the Writ Petition is dismissed as withdrawn granting such liberty. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-III)

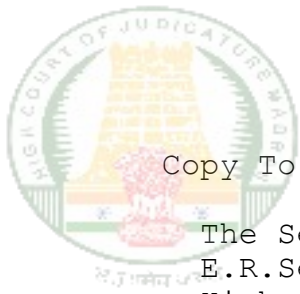
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Sub Assistant Registrar

Maya

To

- 1.The Additional Chief
Secretary to Government (FAC)
Finance (LF) Department
Secretariat,
Chennai - 600 009.
- 2.The Director of Local
Fund Audit Department
Integrated Office Complex
for Finance Department
IV Floor, Near Tod Hunter Nagar
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Madurai - 20.



Copy To

The Section Officer,
E.R.Section,
High Court, Madras.

(for return the impugned order)

+1cc to the Government Pleader Sr.No.15834

W.P.No.5058 of 2022

SSV(CO)

RVM(09/05/2022)