

25.07.2023
DL-58
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 29022 of 2022

Ramakanto Mahato
Vs.
Union of India & Ors.

Mr. Shambhunath Ray,
Ms. Tuhina Parvin,
Ms. Amrita Tewari,
Mr. Bikramjit Mandal

....for the petitioner.

Mr. Kumaresh Dalal

....for the respondent nos.1 to 5.

An issue regarding the maintainability has been urged by Mr. Dalal, in respect of the present writ petition.

Mr. Ray, learned counsel appears on behalf of the petitioner and submits that this Court has the territorial jurisdiction to entertain the writ petition.

The facts of the case, in short, are that the petitioner was recruited to the post of Constable (Cook) with the Border Security Force (BSF) on November 17, 2020. The petitioner was recruited to undergo Basic Recruitment Training (BRT) with effect from April 18, 2022. The petitioner was recruited under South Bengal Frontier Force and was required to report at Jalandhar, Punjab by a letter dated July 22, 2021. During the course of his training, the

petitioner was declared to be permanently **unfit** in the Initial Medical Examination (IME) conducted by the Chief Medical Officer. The Medical Board was constituted at the Composite Hospital, BSF, Jalandhar. The said medical board also declared the petitioner to be **unfit**. It recommended “*weeding out*” of the petitioner. Therefore, the petitioner was discharged from service in accordance with Rule 13 of the BSF Rules, 1969. Order of discharge was served within the territorial jurisdiction of this Court.

The grievance of the petitioner is that such discharge from service by order dated November 24, 2022, is illegal and arbitrary. The petitioner prays for quashing of the said order and his reinstatement as a Constable (Cook) with the BSF.

Several judgments have been cited by Mr. Ray in support of his contention that this Court has the territorial jurisdiction to entertain the present writ petition.

The first judgment is dated March 10, 2003 passed by a Coordinate Bench of this Hon'ble Court in WP 15028 (W) of 2002 (**Badal Pal vs. Union of India & Ors.**). The question in the said case was whether in the absence of any specific law authorising the respondents/authorities to investigate a particular alleged *misconduct* of the petitioner against

the wife of a co-employee, which was otherwise an offence, triable by a Court of Sessions alone and which was not connected with the petitioner's duty as an enrolled member of the force, the respondent authorities could adjudicate thereupon and find the petitioner guilty of such offence. In such a case, it was held that where a cognizable offence is alleged to have been committed by a member of the Force, against the wife of another member of the Force in the official quarter, the authorities could not usurp the jurisdiction of a Sessions Court. In that matter, no criminal complaint was even lodged before the police. Therefore, the Hon'ble Coordinate Bench recorded that the **order of dismissal** was without jurisdiction and directed the petitioner to be reinstated with all the service benefits.

This Court fails to see how the said case of **Badal Pal** (supra) aids the petitioner since no issue of territorial jurisdiction was either raised or addressed in the said case. Even though the alleged act was committed in Jorhat, where the disciplinary proceedings were conducted and the order of penalty was passed cannot be deciphered upon perusal of the order.

Then, he relies on an order passed by an Hon'ble Coordinate Bench on February 23, 2004 in WP 877 of

2001 (**Debranjana Chakraborty vs. Union of India & Ors.**). A preliminary point was taken by the respondents that the writ petition was not maintainable due to lack of territorial jurisdiction. The petitioner was working in Assam. He was charge-sheeted in Assam. He was removed from service by way of a penal order. However, the Appellate Authority, being the respondent no.3, was situate in Kolkata. Since the Appellate Authority was situate in Kolkata and such order of the Appellate Authority was under Challenge, the Coordinate Bench held that it had territorial jurisdiction to entertain the writ petition.

This Court again fails to see how the decision in **Debranjana Chakraborty** (supra) aids the case of the petitioner when the disciplinary authority is neither situate within the territorial of this Court nor has any part of cause of action arisen within the jurisdiction of this Court.

Next, he relies on a judgment of the Hon'ble Division Bench of this Court dated February 5, 2009 in APO 482 of 2008 (**Zafar Khan vs. Coal India Limited & Ors.**). In that case, it was held that the High Court at Calcutta had the territorial jurisdiction to entertain the writ petition under Article 226(1) of the Constitution of India as the seat of the offending

authority/Coal India Limited (CIL), i.e., the Head Office and the registered office were within the territorial jurisdiction of the Court. Also it was held that a substantial part of the cause of action arose within the territorial jurisdiction of the Hon'ble Court as the written representation for correction of the date of birth of the petitioner in the service records was submitted to the respondent no.4. Before the disposal of the representation by the respondent no.4, the Impugned notice of superannuation was issued by the respondent no.3 on the basis of the disputed date of birth of the Appellant. Admittedly, the Respondent no.4 was a superior authority of the respondent no.3 and the seat of the respondent no.4 was located in West Bengal. Therefore, the Hon'ble Division Bench have no hesitation to hold that the seat of the offending authority was located in West Bengal and a part of the cause of action arose in West Bengal.

In the view of this Court, the case of **Zafar Khan** (supra) does not aid the case of the petitioner in any manner.

This Court relies on a judgment passed by a Coordinate Bench on March 5, 2003 (**Sukanta Mitra vs. Union of India & Ors.**). The Hon'ble Coordinate Bench held that undisputedly when all the respondents are residing out of the territorial limits of

the Court and the disciplinary proceedings were initiated and disposed of outside the territorial jurisdiction of the Court only the communication of the final order within the State will not have any relevance in the matter of cause of action of the dispute arising within the territorial jurisdiction of the Court.

Relying on the decision in **Sukanta Mitra** (supra), this Court holds that the Respondent authority concerned/respondent no.5 is not situate within the territorial jurisdiction of this Court. Even though the respondent nos.3 and 4 have been made parties, they are neither necessary nor proper parties nor has any part of cause of action arisen within the territorial jurisdiction of this Court.

In the light of the discussions hereinabove, this Court holds that it does not have the jurisdiction to receive, try and entertain the instant writ petition.

Accordingly, **WPA 29022 of 2022** is **dismissed**, for lack of territorial of jurisdiction.

However, this Court makes it clear that it has not gone into the merits of this writ petition.

The petitioner will be at liberty to take appropriate steps in accordance with law.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)