

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-8829-2021

Date of Decision: 26.07.2023

Manoj Kumar**...Petitioner****Versus****Union of India and Others****...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Ashutosh Kaushik, Advocate for the petitioner

Mr. Shivoy Dhir, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of order dated 13.11.2018 (Annexure P-12), order dated 31.05.2017 (Annexure P-10), order dated 17.02.2017 (Annexure P-8) and order dated 27.12.2016 (Annexure P-6) whereby services of the petitioner have been terminated from the post of Assistant Sub-Inspector.

2. The petitioner joined respondent-department as Assistant Sub-Inspector/Motor Mechanic on 21.09.2013. The probation period of the petitioner was extended till September, 2016. The charge-sheet dated 23.08.2016, under Rule 36 of CISF Rules, 2001 came to be issued to him. The charge against the petitioner was that he misbehaved while being in intoxicated condition with local residents and over stayed for 12 days while on casual leave. Enquiry Officer vide report dated 09.11.2016 found the petitioner guilty on the basis of statement of witnesses. The

petitioner made representation dated 07.12.2016 denying the charges against him. The petitioner vide order dated 27.12.2016 was removed from service. The petitioner preferred an appeal assailing order dated 27.12.2016 which came to be dismissed vide order dated 17.02.2017. The petitioner preferred revision petition dated 27.03.2017 which was also dismissed vide order dated 31.05.2017. The petitioner made final appeal to final appellate authority which also came to be dismissed vide order dated 13.11.2018.

3. The allegations against the petitioner is that he consumed liquor and demanded girls for sex from villagers. He along with his one colleague went to a village and knocked door of a local resident. They demanded girls for sex. The villagers gathered there and snatched their bike. They fled from the spot. The accomplice of the petitioner came to be arrested by police and during inquiry villagers identified petitioner as main accused. The petitioner was suspended and during suspension he sought leave. He over-stayed for 12 days while on leave. During departmental proceedings, he remained absent for 22 days. The petitioner even during training was found guilty of misconduct and he was awarded punishment of censure. On account of unsatisfactory act and conduct of the petitioner, the probation period was extended twice.

4. Mr. Shivoy Dhir, learned counsel for the respondents submits that petitioner at the time of commission of alleged offence was posted in Orissa. All the proceedings including adjudication of

appeal/review took place outside the jurisdiction of this Court, thus, this Court has no jurisdiction.

5. On being confronted with aforesaid fact, Mr. Ashutosh Kaushik, learned counsel for the petitioner submitted that petitioner was communicated impugned orders in the State of Haryana, thus, this Court has jurisdiction to entertain the writ petition. The communication of impugned order is part of cause of action and in this case part of cause of action has arisen within the jurisdiction of this Court, thus, writ petition before this Court is maintainable.

6. In support of his contention, learned counsel for the petitioner relied upon a two Judge Bench judgment of Hon'ble Supreme Court in *Nawal Kishore Versus Union of India and Others; (2014) 9 SCC 329*.

7. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

8. From the perusal of record, it comes out that petitioner at the time of commission of alleged offence was posted in State of Orissa. The disciplinary proceedings were initiated at Orissa, which culminated into punishment of dismissal from service. The order of dismissal of service as well as appellate order came to be passed at Patna (Bihar). The petitioner preferred revision petition which also came to be dismissed at Patna. The appellate order as well as revisionary order were communicated at Kurukshetra (Haryana). As per the petitioner, mere

communication of order is sufficient to invoke writ jurisdiction of this

Court. The petitioner is relying upon a two Judge Bench judgment of Hon'ble Supreme Court in *Nawal Kishore (supra)* which is not applicable to the facts of the present case. The Hon'ble Supreme Court in the said judgment has considered that appellant therein reported sickness and he was permanently declared unfit for sea service. The appellant therein had sent representation from his own home address Gaya, Bihar claiming disability compensation. The said representation was replied to by the respondent which was addressed to him at his home address in Gaya, Bihar. The appellant was signed off & declared medically unfit. He went back to his home in the District of Gaya, Bihar and thereafter, he made all claims and representation from District Bihar and those representations were entertained and replied and a decision on those representation was communicated to him at his home address in Bihar. In all these facts and circumstances, the Hon'ble Supreme Court has held that part or fraction of cause of action arose within the jurisdiction of Patna High Court.

Hon'ble Supreme Court has passed order in *Nawal Kishore (supra)* in view of facts and circumstances involved therein. Full Bench of Allahabad High Court in ***Manish Kumar Mishra Versus Union of India and Others; 2020 SCC OnLine All 535*** after considering judgment of Hon'ble Supreme Court in *Nawal Kishore (supra)* has held that facts and circumstances of each case should be considered.

Full Bench of Kerala High Court in ***The Registrar, Indian Maritime University Versus K.G. Viswanathan and Another; 2014***

SCC OnLine Ker 21221 has considered issue involved in the present case and has dismissed writ petitions on the ground that no cause of action has arisen in the jurisdiction of Kerala High Court. The relevant paragraphs read as:-

“5. In Selvin Abraham (supra), the correctness of which is doubted, while working as Assistant Manager in the Punjab & Sind Bank at Coimbatore, the appellant was proceeded against for certain misconducts. Enquiry was conducted at Coimbatore and the charges were proved. The Disciplinary Authority dismissed him from service. This order was served on him at his native place in Kerala. His appeal and review were also dismissed. He filed a writ petition before the Kerala High Court challenging the order of suspension, dismissal and the orders passed by the appellate and review authorities. Objection was raised by the bank that this Court lacked territorial jurisdiction to entertain the writ petition as the entire cause of action arose outside the State. This contention was accepted by the learned single Judge, relying on the judgment of the Full Bench in Nakul Deo singh (supra) and the writ petition was accordingly dismissed.

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52. Since Nawal Kishore Sharma (supra) was decided “in the peculiar facts and circumstances” of the case, in view of the principles laid down in Rafiq Masih (supra), we should accept the contention that relief was granted in Nawal Kishore Sharma, in exercise of the powers of the Apex Court under Article 142 of the Constitution of India.

53. Thus, the conclusion is irresistible, that the principles laid down in Selvin Abraham are contrary, not only to the Full Bench judgment in Nakul Deo Singh but also to the Apex Court judgments we have referred to. As a

result, Selvin Abraham does not laid down good law and therefore, is overruled. The question referred to the Full Bench is answered as aforesaid.

54. Coming to the cases that are referred to the Full Bench, in W.A. 743/14, by Ext.P2 notification issued by the appellant from Chennai where its head office is situated, applications were invited to various posts, including the post of Professor (Management). In response to the notification, the respondent, who is presently working as a Professor in the NSS College of Engineering, Palakkad applied and he was invited for an interview at Chennai. He appeared for the interview and was issued Ext.P4 communication from Chennai, whereby, he was offered the post and was asked to report at Chennai. He accepted the offer by Ext.P5 and requested for a posting at the Cochin campus of the appellant. By Ext.P7 e-mail, he was informed that his request was accepted and was requested to report at the head quarters of the appellant. However, by Ext.P6 e-mail, he was informed that the offer is kept in abeyance and was thereafter issued Ext.P1 communication from Chennai, informing that the offer of appointment was withdrawn. It was in these circumstances, he filed W.P. (C) 22184/13 with the following main prayers:

“(a) Issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to the issue of Ext.P-1 and quash the same;

(b) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to allow the petitioner to join duty as Professor (Management) as originally ordered in terms of Exhibit P4 read with Exhibit P7 with all consequential benefits emanating therefrom;”

55. *In so far as W.P. (C) 8678/14 is concerned, since 30.3.2009, the petitioner herein was working as Branch Manager of Indian Bank at Microsate at Puducherry. He continued there till 29.4.2010 when he was transferred and posted to Perinthalmanna, where, he joined on 1.5.2010. He was later transferred to Kunnankulam on 11.7.2011 and while working at Kunnankulam, by Ext.P2 order, he was placed under suspension pending disciplinary action. He was thereafter issued with Ext.P3 memo of charges containing various misconducts, all relating to his tenure at Puducherry and the disciplinary authority was the Assistant General Manager, Zonal office, Puducherry, the 4th respondent. Preliminary enquiry was conducted at the Zonal office, Puducherry on 30.12.2011 and the petitioner participated in the enquiry.*

56. *Thereafter, enquiry was also conducted at the Zonal office, Puducherry in which also, the petitioner participated. Ext.P4 is the report of the enquiry that was submitted to the disciplinary authority. The disciplinary authority, thereafter, forwarded the enquiry report along with his letter dated 20.7.2012, which was served on the petitioner while he was at Palakkad. The petitioner submitted his objection against the findings of the enquiry officer. This was considered by the disciplinary authority, who, thereafter, issued Ext.P5 order dated 26.9.2012, removing the petitioner from service. This order was issued from Puducherry and was served on the petitioner while he was at Palakkad. He filed an appeal to the General manager, Indian Bank, Chennai which was rejected and this order was also communicated to the petitioner at Palakkad. He filed a review application to the first respondent, the Chairman and Managing Director of the Bank at Chennai. That was also rejected by Ext.P9 order which also was served on the petitioner at Palakkad.*

It was in these circumstances, the writ petition was filed with the following main prayers:

1) To issue Writ in the (nature of) certiorari to quash Ext.P3, Ext.P4, Ext.P5, Ext.P6 & Ext.P9 as legally unsustainable and violative of Article 14 & 16 of the Constitution of India.

2) To issue Writ in the nature of mandamus commanding the 4th respondent to reinstate the petitioner in service with retrospective effect from the date of dismissal and grant all other consequential benefits including arrears of pay, pay and allowance etc.

3) To issue writ in the nature of mandamus commanding the 4th respondent to treat the period of absence from the date of suspension to date of reinstatement as duty for all purposes and grant such other service benefits which were otherwise entitled to the petitioner untrammelled by the suspension and subsequent dismissal from service.

57. Having gone through the pleadings, we do not see any averment in the writ petitions where the petitioners have raised any plea as to how the Kerala High Court has territorial jurisdiction over the cause of action which led them to file the writ petitions. Instead, counsel wanted us to infer from the above pleading that an integral part the cause of action arose within the jurisdiction of this Court. However, if the facts which we have noticed above are evaluated in the light of the law laid down in Nakul Deo Singh and the Apex Court judgments, according to us, the only conclusion that is possible is that no part of the cause of action, much less any integral part of the cause of action, has arisen within the territorial jurisdiction of this Court justifying the entertainment of these writ petitions.”

9. A similar question came up for consideration before Division Bench of this Court in *M/s Vijay K. Jairath And Co. Versus Union of India and Another; CWP No.12420 of 2008 (decided on 01.05.2012)*. There was a difference of opinion among the Judges of the Division Bench, thus, matter was referred to third Judge of this Court. On the basis of opinion of majority, it was concluded that this Court on the basis of mere communication of order has no jurisdiction to entertain writ petition.

10. In view of afore-stated facts and findings, this Court is of the considered opinion that no cause of action has arisen within jurisdiction of this Court, thus, present petition is not maintainable. The petitioner is at liberty to avail remedies as permissible by law.

(JAGMOHAN BANSAL)
JUDGE

26.07.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>