

S/L 6
19.03.2024
Court. No. 3
Sourav

WPA 8721 of 2021

Asim Kumar Pramanik
Vs.
Union of India & Ors.

Mr. Arup Kumar Lahiri
Mr. Debojyoti De

...for the petitioner.

Mr. Prithu Dudhoria
Mr. Shyamal Kr. Mukherjee

...for the Union of India.

1. Both the petitioner and the respondents/ Union of India and its officials are represented by their respective learned advocates.
2. Heard learned advocates for the contending parties at length.
3. By filing the instant writ petition, the writ petitioner has prayed for issuance of writ of mandamus commanding the respondents to pay to the petitioner the disability pension from the day of his invalidation i.e., from 01.12.2007 together with the arrears pension and other incidental consequential benefits with a further prayer for quashing of the Memo No. P. III-12/2017-GCPPM-Pension dated 19.01.2019 as issued by the respondent no. 3 to the petitioner.
4. From the materials as placed before this Court, it appears that in the year 2003, the writ petitioner was attached to Battalion No. 143 of the Central Reserve Police Force and was posted at Pallipuram, Kerara. It has contended on behalf of the petitioner that on 14.08.2003, the petitioner was detailed for duty as Guard in a temple which is

situated at a distance from his battalion and for which he was proceeding to his place of duty by riding a bicycle.

5. It is the further case of the petitioner that at that time, it was raining heavily and there was dearth of light too. On account of such heavy rain and paucity of sufficient light, the writ petitioner fell from his bicycle into a ditch and as a result of such accident, he suffered serious injury, became unconscious and blood started oozing from his body. Subsequently, a court of enquiry was held in absence of the writ petitioner since, at that time the petitioner was lying in the hospital and in absence of the writ petitioner in the said court of enquiry it has been recorded that the petitioner had consumed country-liquor while discharging his duty and since he was riding cycle in an intoxicated condition, the accident occurred, for which, the petitioner was himself responsible. Accordingly, by the office order dated 30.09.2003 as issued by the Commandant – 143 Battalion of the Central Reserve Police Force, Pallipuram, Kerala, the petitioner was communicated that though he would get the normal pension but he would not get extraordinary pension/family pension etc.
6. Mr. Dudhuria, learned advocate for the respondents i.e., Union of India and its officials at the very outset submits before this Court that since the cause of action for filing the instant writ petition arose outside the territorial jurisdiction of this High Court, this High Court may not entertain the instant writ petition under Article 226 of the Constitution of India for lack of territorial jurisdiction.

7. It is further argued by Mr. Dudhuria, learned advocate for the respondents/Union of India that from the materials as placed before this Court, it would reveal that on the relevant day, the writ petitioner was posted in Battalion No. 143 of the Central Reserve Police Force, Pallipuram, Kerala where the accident occurred. It is further argued that the court of enquiry was also held in Kerala and the finding of the court of enquiry was duly communicated to the writ petitioner also in Kerala. It is thus, argued that under no stretch of imagination, it can be said that cause of action for the instant writ petition either in whole or in part arose within the territory over which this Court has its territorial jurisdiction.
8. *Per contra*, Mr. Lahiri, learned advocate for the petitioner submits before this Court that from the materials as placed before this Court, it would reveal that after the retirement of the writ petitioner, the writ petitioner had come back to his home at Nadia and wherefrom he made communication with the respondent authorities for granting him extra pensionary benefit on account of accident as sustained by him in discharging duty and the same was negatived and communicated to the writ petitioner under cover of a letter dated 19.01.2019 at the residence of the petitioner at Nadia.
9. Mr. Lahiri, learned advocate for the writ petitioner thus submits that since the claim of the writ petitioner was not considered favourably by the respondents and since the same was communicated at his residence at Nadia, this Court has territorial jurisdiction to entertain the instant

writ petition since part of the cause of action arises within the territorial jurisdiction of the Court.

10. In course of his argument, Mr. Lahiri placed his reliance upon the following three reported decision, viz., i) ***Nawal Kishor Sharma Vs. Union of India & Ors.***, reported in ***AIR 2014 Supreme Court 3607***, ii) ***Umasankar Chatterje Vs. Union of India (Uoi) & Ors.***, reported in ***(1982) IILLJ 378 Cal*** disposed of on 13.01.1982 and iii) ***Shanti Devi Alias Shanti Mishra Vs. Union of India & Ors.***, reported in ***2021 (1) Supreme 240***.

11. In the reported decision of ***Nawal Kishor Sharma (Supra)***, the Apex Court of India while considering the territorial jurisdiction of a High Court in a writ petition under Article 226 of the Constitution expressed the following:

“We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India

issued an order on 12.04.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the district of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place,

wherefrom he had been making all correspondence which regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.”

12. In the reported decision in ***Shanti Devi Alias Shanti Mishra (Supra)***, the Supreme Court of India while deciding the territorial jurisdiction for entertaining a writ petition expressed the following view:

“A retired employee, who is receiving pension, cannot be asked to go to another court to file the writ petition, when he has a cause of action for filing a writ petition in Patna High Court. For a retired employee convenience is to prosecute his case at the place where he belonged to and was getting pension.”

13. In considered view of this Court, the proposition of law as discussed supra if applied to the facts and circumstances of the present case, it would reveal that though at the material time the present writ petitioner was posted in Kerala but after his retirement, he started residing at his residence in Nadia, West Bengal wherefrom he made communication with the respondents authorities for grant of extra pensionary benefit and the same was negatived and communicated to the writ petitioner under

cover of letter dated 19.01.2019 at his residence at Nadia and, therefore, this Court holds that part of the cause of action of the instant writ petition also occurred within the territorial jurisdiction of this Court and, therefore, this Court respectfully disagrees with the submission of Mr. Dudhoria, learned advocate for the Union of India that this Court lacks territorial jurisdiction to entertain the instant writ petition.

14. Coming to the factual aspect of this case, it reveals to this Court that it is the grievance of the writ petitioner that during his hospitalization, a court of enquiry was held wherein it has been allegedly recorded that the writ petitioner had admitted in his statement that on the relevant day and hour while discharging his duty, he consumed liquor, became intoxicated and fell in a ditch. In this writ petition, the writ petitioner has categorically denied that such a statement had at all been given by him in the said court of enquiry since at the relevant time he was admitted in the hospital and was not in a position to give any such statement.
15. This Court has meticulously perused the affidavit-in-opposition as filed by the respondents. It appears to this Court the assertion of not giving such statement has not been specifically dealt with in the affidavit-in-opposition. In course of the argument, Mr. Dudhoria, learned advocate for the respondents has failed to produce any such statement as alleged to have been given by the writ petitioner in course of court of enquiry. From page no. 27 being annexure P-2 of the writ petition as issued by the

office of the Commandant, Battalion No. 143 of the Central Reserve Police Force, Pallipuram, Kerala, the following facts reveal:-

- a) Accident of the petitioner : 14.08.2003 occurred on**
- b) The petitioner was admitted : 15.08.2003 in Medical College Hospital, TVPM on**
- c) Discharged from MCH, : 18.09.2003 TVPM on**
- d) Remained admitted in : 18.09.2003 Station Hospital, PPM from**
- e) Discharged from in Station : 25.11.2003 Hospital on**

16. On comparative study of the aforesaid facts as well as the corresponding dates vis-à-vis the date of enquiry as reveals from P-1 of the writ petition, it thus appears that on the day of enquiry and even on the day of issuing office order i.e., on 30.09.2003, the writ petitioner remained admitted in hospital i.e., either in Medical College Hospital, TVPM or in in-station Hospital, PPM.
17. In view of the facts as discussed above and in view of the failure on the part of the respondents to show any cogent document by way of affidavit that actually, the writ petitioner has admitted his guilt and/or fault, this Court holds that the writ petitioner's right of '*audi alteram partem*' has been seriously denied by the respondent authorities while holding the Court of Enquiry.
18. At this juncture, this Court proposes to look to a reported decision of ***High Court of Judicature at Bombay vs. Sashikant S. Patil & Anr.*** reported in **(2000) 1**

SCC 416, wherein the apex court while scrutinizing the scope of interference by a writ court in a departmental enquiry expressed the following:

“Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion or grounds very similar to the above. But we cannot overlook that the departmental authority is the sole judge of the facts, if the enquiry has properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

19. Keeping in mind the principles of law as discussed in the case of **Sashikant S. Patil (Supra)**, if this Court once again considers the facts and circumstances as involved in the instant writ petition, it appears to this Court that while holding the Court of Enquiry, the writ petitioner was not only denied of his valuable right of *audi alteram partem* and at the same time principle of natural justice

has not been followed at the instance of the respondents especially when it is evident from the facts and circumstances of the present case that at the material time, the writ petitioner was admitted in the hospital and there was little scope for the petitioner to give any statement of admission of guilt with regard to the allegation of consumption of liquor while discharging his duty.

20. As rightly pointed out by Mr. Lahiri, learned advocate for the petitioner that for the sake of argument even if it is admitted that the contention of the respondents are true even then no punishment was awarded to the petitioner under Section 10 of the CRPF Act, 1949.

21. In considered view of this Court, the applicability of Section 10 of the said Act is of little consequences in view of the fact, that this Court has already held that the Court of Enquiry as conducted by the respondents is vitiated for not observing the *audi alteram partem* as well as for violation of principle of natural justice.

22. Accordingly, this Court in exercise of its plenary power quashes the finding of the respondents as held in office order dated 30.09.2003 as well as in Memo No. P. III-12/2017-GCPPM-Pension dated 19.01.2019 with regard to the non-admissibility of the petitioner regarding his claim for 'Extra Pensionary Benefit'.

23. This Court thus directs the respondent authorities to grant extra pensionary benefit along with all arrears to the petitioner on account of his accident, however, the same will not carry any interest. It is further directed that

the current extra pensionary benefit shall have to be disbursed from the month of June 2024 and the arrears of extra pensionary benefit as admissible to the writ petitioner is to be paid in equal four installments within the last days month of June, 2024, October 2024, February 2025 and June 2025 respectively.

24. With the aforementioned observation, the writ petition being **WPA 8721 of 2021** is allowed and disposed of.
25. All parties to act on the server copy of this order duly downloaded from the official website of this Court.
26. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)