

IN THE HIGH COURT AT CALCUTTA

Circuit Bench at Jalpaiguri

Constitutional Writ Jurisdiction

Appellate Side

W.P.A. No. 2876 of 2023

Sri Dilip Biswas

VS

Union of India & Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Kunaljit Bhattacharjee,

Mr. Alok Sah,

----- for the petitioner.

Mr. Sudipto Kumar Majumdar, Ld DSGI

Mr. Tridip Saha,

Mr. Saptok Sarkar,

----- for Union of

India.

Mr. Subir Kumar Saha, AGP

Ms. Pratusha Dutta Chowdhury,

----- for the State.

Hearing concluded on :

9.01.2024

Judgment On :

25.01.2024

M.V. Muralidaran, J.:

Heard learned counsel for the petitioner; learned Deputy Solicitor General of India for the respondent Union of India and learned Additional Government Pleader for the respondent State.

2. This writ petition has been filed by the petitioner to set aside the impugned order passed by the Commandant 142 Bn BSF, Jalipa, Harmet (Rajasthan) dated 2.3.2022 thereby ordering to retire the petitioner from service with admissible pensionary benefits, if any, which was affirmed by the Inspector General, FTR HQ (SPL OPS) BSF, Odisha dated 7.6.2023.

3. When the writ petition was taken up for hearing on 8.1.2024, the learned Deputy Solicitor General has challenged the maintainability of the writ petition before the Calcutta High Court on the ground that as against the order passed by the Commandant, 142 Bn, Rajasthan dated 2.3.2022, the present writ petition has been filed before this Court.

4. In reply, the learned counsel for the petitioner submitted that since the petitioner is residing within the jurisdiction of this Court, the writ petition is very well maintainable before this Court though the

original order was passed in Rajasthan. The learned counsel further submitted that the appeal preferred by the petitioner as against the order dated 2.3.2022 was issued by the appellate authority in the State of Odisha.

5. This Court heard the submissions of the respective counsel for the respondents on the question of maintainability of the writ petition before the High Court at Calcutta.

6. The petitioner joined in the service of Border Security Force in Battalion No.142 BSF. The Commandant, 142 Bn BSF, Jalipa, Rajasthan, having been satisfied that the petitioner has entered into a second marriage during the subsistence of the first wife, declared the petitioner unsuitable to continue as a member of the Force in terms of Rule 21(2) of the CCS (Conduct) Rules, 1964 and, accordingly, ordered to retire the petitioner from service with admissible pensionary benefits vide order dated 2.3.2022.

7. Aggrieved by the order dated 2.3.2022, the petitioner has preferred appeal petition under Rule 28A of BSF Rules, 1969 before the Inspector General of BSF, Gujarat Frontier, Gujarat. The said appeal was

heard by the Inspector General, FTR HQ (SPL OPS) BSF, Odisha and, by the order dated 7.6.2023, the appeal petition was rejected holding that the case of the petitioner has no substance as his retirement order was issued after following due procedure and in accordance with instructions on the subject. Being aggrieved by both the orders, the petitioner has filed the writ petition.

8. The learned Deputy Solicitor General appearing for the Union of India has raised a preliminary objection as regards the jurisdiction of this Court to entertain the present writ petition. In support, the learned Deputy Solicitor General relied upon the following orders of this Court:

- (i) *W.P.A.No.1014 of 2021, dated 5.1.2022 [Bhabhesh Chandra Barman v. Union of India and others]*
- (ii) *MAT 6 of 2020 CAN 2 of 2020, dated 8.6.2023 [Bapi Biswas v. Union of India and others]*

8. This Court is inclined to uphold such objection raised by the learned Deputy Solicitor General for the reason that the original order dated 2.3.2022 has been passed by the Commandant, 142 Bn, BSF, which is in the State of Rajasthan and the appeal preferred against the

said order was considered and rejected by the Inspector General, FTR, HQ (SPL OPS) BSF, Odisha.

9. The learned counsel for the petitioner submitted that since the petitioner is residing within the jurisdiction of this Court, the writ petition challenging the aforesaid two orders is very well maintainable before this Court. In support, the learned counsel placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of *Dinesh Chandra Gahtori v. Chief of Army Staff, 2002 SCC (CRI) 1083* and *Nawalkishor Sharma v. Union of India, 2014 AIR SCW 4713*.

10. This Court is unable to agree with the learned counsel for the petitioner, as the original proceeding had taken place at Rajasthan and the appeal preferred against the original proceeding was decided at Odisha. Admittedly, no part of cause of action arose in the State of West Bengal. Merely impleading respondents 6 and 7 in the present writ petition would not constitute a part of cause of action for filing the instant writ petition in the State of West Bengal. In fact, respondents 6 and 7 have nothing to do with the challenge made in the writ petition or the alleged cause of action of the petitioner.

11. In *Alchemist Limited and another v. State Bank of Sikkim and others*, (2007) 11 SCC 335, the Hon'ble Supreme Court held that for the purpose of deciding whether the facts averred by the petitioner would or would not constitute a part of cause of action, one has to consider whether such facts constitute a material, essential or integral part of the cause of action. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. The entire bundle of facts pleaded may not constitute the cause of action as what are required to be proved are material facts.

12. In *Om Prakash Srivastava v. Union of India*, (2006) 6 SCC 207, the Hon'ble Supreme Court held that in order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the concerned High Court's jurisdiction.

13. In *State of Rajasthan v. Swaika Properties*, (1985) 3 SCR 598, the petitioner had challenged proceedings for acquisition of land situated in the State of Rajasthan, in the Calcutta High Court. The jurisdiction of the Calcutta High Court was invoked on the basis that the petitioner

received the notice of acquisition in Calcutta. The matter was ultimately carried to the Hon'ble Supreme Court and it was held that the receipt of notice of acquisition proceedings by the petitioner in Calcutta did not constitute an integral part of the cause of action. All that the petitioner was required to prove in the writ petition was that the land belonged to him and that the same was being wrongfully taken away by the Government. This was sought to be done in the State of Rajasthan.

14. Following the aforesaid decisions of the Hon'ble Supreme Court, in similar situation, this Court in W.P.A.No.1014 of 2021, dated 5.1.2022 held as under:

"In the present case, as recorded above, the only thing that happened in the State of West Bengal is that the petitioner received a copy of the order of dismissal of his second appeal at his residence in Cooch Behar. In order to succeed in the writ petition, it would not be necessary for the petitioner to prove this factum. It is irrelevant as to where he received copy of the said order. His alleged cause of action may have arisen in Maharajgang (where he was posted and where the disciplinary proceedings were held and from where his termination letter was issued), or at Lucknow (where his statutory appeal was dismissed) or at New Delhi (where his second appeal was dismissed)."

Even assuming that's the SSB has an all India presence including in the State of West Bengal, the State Headquarters of SSB have no nexus at all with the alleged cause of action of the petitioner. Hence, even assuming that on an interpretation of Article 226(1) of the Constitution, technically this Court has jurisdiction to entertain the writ petition, I am of the view that as per the principle of forum non conveniens, this Court is not the convenient forum for adjudication of the issues involved in this writ petition. The facts in this case are intricately connected with the State of Uttar Pradesh and the entirety of the petitioner's alleged cause of action arose within the territory of Uttar Pradesh."

15. In the instant case, the alleged cause of action may have arisen in Rajasthan - where he was serving and where the impugned order dated 2.3.2022 was issued; or at Odisha - where his statutory appeal was rejected. The selection of the territorial jurisdiction of Calcutta High Court by the petitioner to challenge the impugned orders is not appreciable. As stated supra, no part of cause of action for the present *lis* arisen within the jurisdiction of the Calcutta High Court.

16. In *Oil and Natural Gas Commission v. Utpal Kumar Basu and another*, (1994) 4 SCC 711, a three Judge Bench of the Hon'ble Supreme Court observed that it is well settled that the expression "*cause of action*"

means the bundle of facts which the petitioner must prove, if traversed to entitle him to a judgment in his favour. Having given such a wide interpretation to the expression, the Hon'ble Supreme Court cautioned the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience.

17. As stated supra, merely because the petitioner is residing within the jurisdiction of West Bengal, the place of residence of the petitioner has no nexus at all with the alleged cause of action of the petitioner. The facts in this case are intricately connected with the State of Rajasthan, as the original order has been passed by the Commandant, 142 BN BSF, Barmer and the entirety of the petitioner's alleged cause of action arose within the territory of Rajasthan.

18. On a reading of the decisions in *Dinesh Chandra Gahtori and NawalKishor Sharma* (supra) relied on by the petitioner, it is clear that the said decisions have no relevance to the facts of the present case, as the same were delivered in different context. The said decisions are not

helpful to the case of the petitioner and, therefore, they are not further elaborated upon.

19. In view of the foregoing discussions, this Court is of the considered opinion that this Court has no territorial jurisdiction to maintain the present writ petition. However, this order will not prevent the petitioner from approaching the appropriate Court having jurisdiction to entertain the grievance of the petitioner.

20. Accordingly, WPA 2876 of 2023 is dismissed. No costs.

(M.V. Muralidaran, J.)