

(2018) 02 CHH CK 0300

Chhattisgarh High Court

Case No: Writ Petition (S) No. 1482 Of 2018

Shivshankar Gupta

APPELLANT

Vs

Union Of India Ministry Of Home
Affairs North Block New Delhi
And Ors

RESPONDENT

Date of Decision: Feb. 19, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 226, 226(2)

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Harish Khuntiya, Rajkumar Gupta

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. The petitioner was working as Constable in Mumbai under the Central Industrial Security Force (CISF). He was placed under suspension by order

dated 27.06.2011 passed by the Assistant Commandant, CISF, Mumbai which was revoked by Appellate Authority - Senior Commandant, CISF,

Mumbai by order dated 05.07.2011. Thereafter, petitioner was inflicted with penalty of withholding of two increment without cumulative effect for the

period of two years by order dated 28.07.2011 by the Assistant Commandant, CISF, Mumbai which was appealed and the Appellate Authority by

order dated 31.10.2011 modified the order thereby reducing the punishment as withholding of increment of one instead of two years. Revision was

preferred and it has been dismissed by order dated 27.03.2012 by the Director General, CISF, New Delhi. Questioning the aforesaid orders, the

instant writ petition has been filed before this Court.

2. At the outset, learned counsel for the respondents would submit that this Court has no territorial jurisdiction to hear the matter, as the original order, the appellate order and the revisional order, all have passed by the competent authority of CISF Unit Mumbai and Delhi, therefore the writ petition deserves to be dismissed on the ground of want of territorial jurisdiction.

3. Learned counsel appearing on behalf of petitioner would submit that petitioner is resident of State of Chhattisgarh, therefore, this Court has territorial jurisdiction to hear the matter by virtue of Article 226(2) of the Constitution of India. He further submits that the impugned orders of punishment have been passed without conducting any enquiry and without affording any reasonable opportunity of hearing to the petitioner which are unsustainable and bad in law as the same are liable to be set aside.

4. I have heard learned counsel for the parties, considered their rival submissions and perused the impugned orders with utmost circumspection.

5. A Constitution Bench decision of the Supreme Court in the matter of Election Commission, India v. Saka Venkata Rao¹ and another Constitution Bench decision of the Supreme Court in the matter of K.S. Rashid and Son v. Income Tax Investigation Commission and others² came-up for

consideration before a larger Bench of seven judges of the Supreme Court in the matter of Lt. Col. Khajoor Singh v. Union of India 1 AIR 1953 SC

210 2 AIR 1954 SC 207 and another³ in which Their Lordships have held that it is not permissible to read in Article 226 the residence or location of

the person affected by the order passed in order to determine the jurisdiction of the High Court, and observed as under: -

(13) ... The relevant words of Art. 226 are these--

Every High Court shall have power .. to issue to any person or authority .. within those territories..."".

So far as a natural person is concerned, there can be no doubt that he can be within those territories only if he resides therein either permanently or

temporarily. So far as an authority is concerned, there can be no doubt that if its office is located therein it must be within the territory. But do these

words mean with respect to an authority that even though its office is not located within those territories it will be within those territories because its

order may affect persons living in those territories?

Now it is clear that the jurisdiction conferred on the High Court by Art. 226 does not depend upon the residence or location of the person applying to it

for relief; it depends only on the person or authority against whom a writ is sought being within those territories. It seems to us therefore that it is not

permissible to read in Art. 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High

Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person

affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is

aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though

the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be

wrong to introduce in Art. 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court

which can give relief under Art. 226. The introduction of such a concept may give rise to confusion and conflict of jurisdictions. Take, for example, the

case of an order passed by an authority in Calcutta, which affects six brothers living, say, in Bombay, Madras, Allahabad, Jabalpur, Jodhpur and

Chandigarh. The order passed by the authority in Calcutta has thus affected persons in six States. Can it 3 AIR 1961 SC 532 be said that Art. 226

contemplates that all the six High Courts have jurisdiction in the matter of giving relief under it? The answer must obviously be 'No', if one is to avoid

confusion and conflict of jurisdiction. As we read the relevant words of Art. 226 (quoted above) there can be no doubt that the jurisdiction conferred

by that Article on a High Court is with respect to the location or residence of the person or authority passing the order and there can be no question of

introducing the concept of the place where the order is to have effect in order to determine which High Court can give relief under it. It is true that

this Court will give such meaning to the words used in the Constitution as would help towards its working smoothly. If we were to introduce in Art.

226 the concept of the place where the order is to have effect we would not be advancing the purposes for which Art. 226 has been enacted. On the other hand, we would be producing conflict of jurisdiction between various High Courts as already shown by the illustration given above. Therefore, the effect of an order by whomsoever it is passed can have no relevance in determining the jurisdiction of the High Court which can take action under Art. 226. Now, functioning of a Government is really nothing other than giving effect to the orders passed by it. Therefore it would not be right to introduce in Art. 226 the concept of the functioning of Government when determining the meaning of the words ""any person or authority within those territories"". By introducing the concept of functioning in these words we shall be creating the same conflict which would arise if the concept of the place where the order is to have effect is introduced in Art. 226. There can, therefore, be no escape from the conclusion that these words in Art. 226 refer not to the place where the Government may be functioning but only to the place where the person or authority is either resident or is located. So far therefore as a natural person is concerned, he is within those territories if he resides there permanently or temporarily. So far as an authority (other than a Government) is concerned, it is within the territories if its office is located there. So far as a Government is concerned it is within the territories only if its seat is within those territories.

6. In view of the aforesaid authoritative pronouncement of the Supreme Court, if the facts of the case are applied to the principles of law laid down in

Lt. Col. Khajoor Singh (supra), none of the respondents reside or located within the jurisdiction of this High Court and therefore the petition has to be

presented before the High Court within whose jurisdiction the respondents have had their offices or where the impugned order was passed. Merely

because, the petitioner is resident of the State of Chhattisgarh would not confer jurisdiction to this Court to entertain the writ petition.

7. In view of the aforesaid facts, this Court is of the considered opinion that this Court has no territorial jurisdiction to entertain this writ petition. The

writ petition, is therefore, liable to be dismissed and is accordingly dismissed. However, this will not bar the petitioner to approach the jurisdictional

High Court for redressal of his grievance. No order as to cost(s).