

Rajender Pahwa Vs UOI & Ors

Court: Delhi High Court

Date of Decision: Nov. 29, 2022

Acts Referred: Constitution Of India, 1950 – Article 226, 227

Industrial Disputes Act, 1947 – Section 7I, 10(1)(d), 10(2A)

Central Excise Act, 1944 – Section 25F, 35G

Income Tax Act, 1961 – Section 256(2)

Companies Act, 1956 – Section 10F

Hon'ble Judges: Gaurang Kanth, J

Bench: Single Bench

Advocate: Meenu Mainee, Shreya Gupta, Ruchir Mishra, Mukesh Kumar Tiwari, K. K. Tyagi, Iftexhar Ahmad

Final Decision: Disposed Of

Judgement

Gaurang Kanth, J

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The present writ petition has been filed assailing the award dated 02.08.2002 (hereinafter referred to as "impugned award") passed by the

Presiding Officer, Central Government Industrial Tribunal (CGIT) cum Labour Court, Aliganj, Lucknow whereby the order passed by Respondent No.

4 for removal of the Petitioner was upheld.

FACTS RELEVANT FOR THE CONSIDERATION OF THE PRESENT WRIT PETITION ARE AS FOLLOWS:

2. It is the case of the Petitioner that she had joined the services of Respondent No. 4/Central Warehousing Corporation as a Lower Division Clerk

and was subsequently re-designated as Warehousing Assistant Grade-II.

3. A charge sheet dated 26.08.1985 was issued against the Petitioner for insubordination and dereliction of duties, as she remained on alleged

authorised absence intermittently for periods ranging from 21.11.1984 till the date of issue of the charge sheet. The proceedings of the inquiry were

held at CWC Head Office, New Delhi. On account of absence of the Petitioner, the Enquiry Officer proceeded with the enquiry ex-parte.

4. The Enquiry Officer submitted his report and held the charges to be proved. Thereafter, the competent authority passed the order of removal dated

19.09.1986. This removal was challenged by the Petitioner and a reference was made by the Central Government in the exercise of powers conferred

by Section 10 (1) (d) and sub-section (2A) of the Industrial Disputes Act, 1947.

5. The aforesaid reference was initially made to the CGIT-cum-Labour Court at New Delhi and was subsequently transferred by the Central

Government to Central Government Industrial Tribunal (CGIT) cum Labour Court, Aliganj, Lucknow (hereinafter, "CGIT, Lucknow") vide order

No. Z-20025/54/2001-CLS.II dated 19.04.2002. The reference under adjudication is reproduced as hereunder:

"Whether the proceedings of termination of services of Smt. Rajender Pahwa by the management of Central Warehousing Corporation, New

Delhi w.e.f. 19.9.1986 are legal? If No, the relief for which the workman is entitled for?"

6. Subsequent to the transfer, an award was passed by the CGIT, Lucknow on 23.08.2002, whereby the learned Labour Court held that the

management had acted in a just and fair manner to pass removal order against the workman as she had displayed utter disregard to the norms

followed in services.

7. Aggrieved by the aforesaid award, the Petitioner has assailed the same in the present Writ Petition.

LEGAL ANALYSIS

8. This Court has heard the Counsel for the parties and also examined the evidence placed on record.

9. Before one enters the thicket of the controversy, it becomes imperative to address the preliminary issue of maintainability of the present Writ

Petition on the ground of lack of territorial jurisdiction. It is pertinent to note that the learned counsel for Respondent No. 4, Mr. K.K. Tyagi, has

objected to the territorial jurisdiction of this Court by pointing out that the impugned award had been rendered by the CGIT, Lucknow.

10. It is the submission of the learned counsel for the Petitioner that this Court has the jurisdiction to entertain the present Writ Petition on the ground

that the situs of employment was in Delhi, the parties resided in Delhi and the hearings of the case had also been held in Delhi.

11. These submissions are refuted by the learned counsel for Respondent No. 4 who states that the Petitioner's case was referred to CGIT,

Lucknow and the same had been adjudicated by the CGIT, Lucknow.

12. At this juncture, it becomes pertinent to note the observations of the Hon'ble Supreme Court in *Calcutta Gujarati Education Society v.*

Regional Provident Fund Commissioner reported as (2020) 19 SCC 380. The factual matrix of the case had some semblance to the one at hand. The

relevant portion of the order are being reproduced hereinbelow:

"6. Insofar as that aspect of the matter as already noted in the instant case, the original authority, namely, the Assistant Provident Fund

Commissioner, Calcutta situated in West Bengal and the order dated 20.10.2005 was passed by the authority under the provisions of the Employees

Provident Fund Act at Calcutta. The appeal provided under Section 7-I of that Act would, however, lie to the Tribunal situate at New Delhi. If that be

the position, the original authority is situate, within the jurisdiction of the Calcutta High Court. On the aspect relating to the jurisdiction to entertain the

writ petition at the place where the original authority is situate, the issue is no more res integra inasmuch as this Court while considering the matter in

the case of Ambica Industries vs. Commissioner of Central Excise, (2006) 6 SCC 769 has addressed such issue.

7. In Ambica Industries case, the consideration in the appeal was with regard to the determination of the situs of the High Court in which the appeal

would lie under Section 35-G of the Central Excise Act, 1944. The issue therein was with regard to the maintainability or otherwise of the writ petition

before the High Court at New Delhi merely because the Central Excise and Service Tax Appellate Tribunal (CESTAT) is situated at New Delhi.

While considering the said question, this Court has arrived at the conclusion that when such Tribunals exercise its jurisdiction in respect of the issues

arising from the different parts of the country, the territorial jurisdiction for filing the writ petition at the place where the Tribunal is situated would not

be justified. It has been held therein that the writ petition would be maintainable at the place where the original authority/court had exercised the

jurisdiction.

8. The relevant paras 13 and 17 read as follows: (Ambica Industries case, SCC pp. 775-76)

“13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the

event, the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the

decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities

functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of

one High Court would not be a binding precedent for other High Courts or courts or tribunals outside its territorial jurisdiction, some sort of judicial

anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High

court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the

High Court at Bombay.

“17. There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also Clause (2) of

Article 226 thereof, the High

Court would exercise its discretionary jurisdiction as also power to issue writ of certiorari in respect of the orders passed by the subordinate courts

within its territorial jurisdiction or if any cause of action has arisen therewithin but the same tests cannot be applied when the appellate court exercises

a jurisdiction over a tribunal situated in more than one State. In such a situation, in our opinion, the High Court situated in the State where the first

court is located should be considered to be appropriate Appellate Authority. The Code of Civil Procedure did not contemplate such a situation. It

provides for jurisdiction of each court. Even a District Judge must exercise its jurisdiction only within the territorial limits of a State. It is inconceivable

under the code of Civil Procedure that the jurisdiction of the District Court would be exercisable beyond the territorial jurisdiction of the district, save

and except in such matters where the law specifically provides therefor.

9. The learned counsel for the respondents no doubt referred to the decision in the case of *Kusum Ingots & Alloys Ltd. Vs. Union of India & Anr.*

(2004) 6 SCC 254 wherein it is held that the territorial jurisdiction will be at the place where part of the cause of action arises. Apart from the fact that

Calcutta has the territorial jurisdiction since the cause of action has arisen there, it is seen that this Court while considering this aspect in the case of

Ambica Industries (supra) has referred to the decision in *Kusum Ingots (supra)* and declared the position of law. Hence no further discussion is

required on that aspect.

10. If the said enunciation of law is kept in view, as already taken note, in the instant case the original order passed is by the Assistant Provident Fund

Commissioner situated at Calcutta, West Bengal and the Calcutta High Court can exercise territorial jurisdiction. In that light we are of the view that

the Calcutta High Court was not justified in its decision to decline to entertain the writ petition.

(emphasis supplied)

13. In the case at hand, the Calcutta High Court had rejected the Writ Petition filed by the Appellants therein on the ground that it did not have the

jurisdiction to entertain the said petition. The Hon'ble Calcutta High Court took this stand in view of the fact that the impugned order had been

passed by the Employees Provident Fund Appellate Tribunal situated at New Delhi and therefore the situs of the Tribunal was outside the territorial

jurisdiction of the Calcutta High Court. Upon an appeal being preferred to the Hon'ble Supreme Court, the appeal was allowed and the order

passed by the Calcutta High Court was set aside. The Hon'ble Supreme Court opined that the High Court situated in the state where the

adjudicatory authority of the first instance was situated (in this case, Calcutta) would be the appropriate appellate forum.

14. The observations made by the Hon'ble Supreme Court in the aforesaid case apply with full force to the factual matrix of the present case. It

transpires from a perusal of the record that no evidence has been placed on record to show that the hearings had been conducted at Delhi. A bare

perusal of the impugned award (Annexure P-1) reveals that the same had been rendered by CGIT, Lucknow. Moreover, it is also apparent

from the record that the impugned award notes that the same was issued in ID No. 56/2002 by Government of India, Ministry of Labour, Office of the

CGIT Cum Labour Court, Aliganj, Lucknow. The covering letter accompanying the impugned award reads as under:-

“GOVERNMENT OF INDIA

MINISTRY OF LABOUR

OFFICE OF THE C.G.I.T.CUM LABOUR COURT

B-1/36 SECTOR A ALIGANJ.

LUCKNOW.

NO. CGIT/LKO/56/2002 (DELHI NO. 77/88)

DATE 07/X/02

TO

1. SMT. RAJENDER PAHWA W/O

SHRI MAHENDER PRATAP, B25-B Nehru Vihar,

Near Timar Pur. New Delhi.

And

CENTRAL WARE HOUSING CORPORATION,

WAREHOUSING BHAWAN, 4/1 Sri Institutional Area,

Haus Khas, New Delhi.

Sub: Copy of the Law Award dated 02.08.2002. Notification dated 23.08.2002 in ID Case No. 56/2002

Sir,

A copy of the Award dated 02.08.2002 in ID No;- 56/2002 (Delhi No. 77/88) Ref. No. L-420/111.87.D 2(B) dated 23.8.02 is being sent to you in

terms of Ministry of Labour, Govt. of India, Delhi vide letter No. L13025/8/2001 IR(C-11) dated 20.10.2001

Please acknowledge.

Sd. C.K. SINHA

Copy for information to

1. Regional Labour Commissioner (C) Kanpur.

15. The aforementioned material on record leads to the inescapable inference that the appropriate forum in the present case will be the High Court in

the state where the original Adjudicatory authority had been situated. It is pertinent to note that the impugned award has been rendered by the

Presiding Officer of the CGIT situated at Lucknow and therefore, the Allahabad High Court would be the appropriate forum to entertain the present

Writ Petition.

16. Another short judgment of this Hon'ble Court in the case of Commissioner of C. Ex., Delhi-III v. Enkay HWS India Limited reported as 2001

SCC OnLine Del 1573 is of relevance, wherein it was held that reference in terms of section 25-F of the Central Excise Act would lie only to the

High Court within whose territorial jurisdiction original adjudicating authority functioned. The relevant portion of the judgment reads as hereunder:

"2. When the matter was placed for admission, we pointed out to learned counsel for the petitioner that this High Court does not have jurisdiction to

deal with the matter, in view of the decision of this Court in Seth Banarasi Dass Gupta v. Commissioner of Income Tax (Central) [1978 (113) ITR

817]. In the said case, while dealing with the scope of entertaining reference under the Income Tax Act, 1961 (in short, the I.T. Act), it was

observed that this High Court, that the State within whose territorial jurisdiction original adjudicating authority functions would have jurisdiction to deal

with the reference under the concerned Statute.

3. The view was again reiterated in Suresh Desai and Associates v. Commissioner of Income Tax [71 (1998) DLT 772]. That was also a case under

Section 256(2) of the I.T. Act. In a petition for reference arising under the Act in Central Excise Case No. 5 of 1997 (Commissioner of Central

Excise v. Technological Institute of Textile decided on 9-11-1998), it was held that the High Court within whose jurisdiction adjudicating authority

functions would have territorial jurisdiction to entertain the matter. We have also expressed similar view in Central Excise Act Case No. 7 of 2000

disposed of on 30-10-2000 taking note of decision of the Apex Court in Stridewell Leather (P) Ltd. v. Bhankerpur Simbhaoli Beverages (P) Ltd.,

[(1994) 1 SCC 34 : AIR 1994 SC 158], while dealing with the scope of expression "the High Court" under Section 10F of the Companies Act,

1956 (in short, the Companies Act).

4. We find no substance in the plea of learned counsel for petitioner that site of the Commissionerate or appellate authority determines the jurisdiction

in view of what has been stated in the aforesaid decision.

5. In view of the aforesaid decisions, the inevitable conclusion is that this Court does not have jurisdiction to entertain the petition.

17. It is pertinent to observe that although the aforesaid decision has been rendered in a controversy pertaining to The Central Excise Act, 1944, this

Hon'ble Court has made an observation with respect to the thorny question of territorial jurisdiction in cases where the original adjudicating

authority and Appellate authority are located under territorial jurisdictions of different High Courts. In the considered opinion of this Court, this

observation seems to be a logical one keeping in view the considerations of convenience and expediency.

18. In the present case, an answer to a somewhat straightforward question of territorial jurisdiction in an industrial dispute has remained pending for

almost twenty years in this Court. It is painful for this Court to hear the objection pertaining to the territorial jurisdiction in the light of the plight of the

workman after twenty years have elapsed since the impugned award was rendered. However, in view of the reasoning given hereinabove, this Court

finds it difficult to assume jurisdiction in a case where the same has not been entrusted to it.

19. For the foregoing reasons, the objection to the territorial jurisdiction of this Court to hear the petition is sustained. The present Writ Petition is

dismissed for lack of territorial jurisdiction. The Petitioner shall have the liberty to seek the appropriate relief by approaching the competent High

Court, which in the considered opinion of this Court is the High Court at Allahabad.

20. This Court, however, makes it clear that it has not gone into the merits of the case and it will be open to the parties to agitate all the points argued

before this Court before the appropriate forum.

21. Writ Petition is disposed of in the aforesaid terms. There shall be no order as to costs.