

Krishna Gopal Rastogi Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Jan. 8, 1991

Acts Referred: Family Courts Act, 1984 " Section 4(5)

Citation: (1991) 1 AWC 295

Hon'ble Judges: R.R.K. Trivedi, J

Bench: Single Bench

Advocate: U.N. Sharma, for the Appellant; G.L. Tripathi, for the Respondent

Final Decision: Dismissed

Judgement

R.R.K. Trivedi, J.

This writ petition has been filed by the Petitioner seeking number of reliefs but the main relief appears to be for quashing

of order dated 19-12-1989 by which the services of the Petitioner as Principal Judge of the Family Court at Lucknow have been terminated. The

Petitioner has further prayed for directing Respondents Nos. 1 and 2 to comply with the decision of the administrative committee of this Court

dated 7-12-1989 which was communicated to the Respondents Nos. 1 and 2 of the Joint Registrar on the same date. According to this letter of

the Joint Registrar the decision of the administrative committee was that the Petitioner is entitled to continue on the post upto the age of 62 years.

In respect of this relief reference has also been made to the order dated 19-3-1990 passed by the Hon"ble Supreme Court. The other reliefs

claimed are not necessary to be referred to as this stage.

2. In brief, the case of the Petitioner is that he was appointed Judge of the Family Court at Lucknow vide order dated 25-9-1986. Subsequently

he was appointed Principal Judge. The order of appointment has been filed as Annexure IX to the writ petition. According to the Petitioner the

term of Judge of a family court in view of the provisions of Sub-section (5) of Section 4 of the Family Courts Act, 1984 (Act No. 66 of 1984)

(hereinafter referred to as the Act) is upto 62 years and he could not be terminated from service on 19-12-1989 by Respondent No. 1. The order

is illegal and void. Certain allegations have also been made in the writ petition against Respondent No. 2 and it has been alleged that he ignored the

decision of the Administrative Committee of this Court. The Petitioner firstly filed writ petition No. 182 of 1990 before the Lucknow Bench of this

Court and sought relief of quashing the order dated 19-12-1989. In that writ petition also the contention of the Petitioner was that he is entitled to

continue as Principal Judge of the Family Court at Lucknow until he attains the age of 62 years. Some other reliefs were also claimed in the writ

petition. This writ petition was ultimately dismissed as withdrawn on 2-5-1990 in the application of the Petitioner.

3. The present writ petition was got reported from the Stamp Reporter on 16-5-1990. The Stamp Reporter recorded his opinion on the writ

petition that the instant writ petition should be filed at Lucknow bench of this Court. On 17-5-1990 the writ petition was admitted by a division

bench of this Court and notices were issued to the Respondents. Some day the application for interim order was also considered and an order to

the following effect was passed:

Issue notice.

The learned Standing Counsel is granted three weeks to file counter affidavit.

Until further orders, the operation of the order dated 19-12-1989 shall remain stayed.

A writ of mandamus is issued to the Respondents Nos. 1 and 2 to pay salary to the Petitioner regularly in accordance with law and to provide the

other necessary amenities which the Petitioner is entitled to, till the Petitioner attains the age of 62 years.

4. I have been informed that the Petitioner has already attained the age of 62 years and has thus completed, the full term as claimed by him in the

present writ petition. Normally in the aforesaid circumstances the writ petition could be said to be in fructuous but as the question whether the

Petitioner was legally entitled to continue on the post upto the age of 62 years as claimed by him and directed by this Court by way of interim

order; has yet to be decided and the determination of the question may affect the Petitioner's right to get salary and may also affect his right to

receive pensioner benefits, the writ petition still deserves to be decided on merits. On service of the notice counter and rejoinder affidavits have

been exchanged between the parties and the writ petition was listed for hearing before me. At the time of hearing preliminary objection have been

raised by the Respondents challenging the maintainability of the writ petition on two counts; firstly, on the ground that cause of action for filing the

writ petition has arisen at Lucknow and thus the writ petition could not be filed before this Hon'ble Court at Allahabad and secondly, that the

Petitioner filed his first writ petition before Lucknow Bench of this Court for the same relief which was withdrawn by him without obtaining the

leave of the Court to file a fresh petition and hence the present petition is barred.

5. Learned Counsel for the Respondents in support of his contention that the present writ petition could not be legally filed and entertained at

Allahabad has placed reliance on the cases Sri Nasiruddin Vs. State Transport Appellate Tribunal, and Surendra Singh v. State of U.P. 1988

AWC SC 15. The contention of the learned Counsel is that the Petitioner was working as Principal Judge of the Family Court at Lucknow at the

time the impugned order dated 19-12-1989 was passed against him. The order was passed by Respondents Nos. 1 and 2 at Lucknow which is

the seat of the Government, hence the cause of action only arose at Lucknow and the writ petition could only be filed before the Lucknow Bench

of this Court. The writ petition has been wrongly filed and entertained at Allahabad.

6. The learned Counsel for the Petitioner contested the aforesaid preliminary objection raised by the Respondents and contended that the writ

petition could be legally filed at Allahabad in view of the fact that the decision of the Administrative Committee of this Court was taken at

Allahabad on 27-12-1989 and secondly as the Supreme Court vide its order dated 19-3-1990 expressed opinion to approach this Court for the

enforcement of its order dated 27-12-1989. The learned Counsel for the Petitioner has thus tried to establish on the basis of these two orders that

the part of cause of action for the Petitioner has arisen outside the erstwhile Avadh and the writ petition could be legally filed at Allahabad.

7. In this writ petition an application was moved on behalf of U.P. Judicial Services Association, Lucknow for being impleaded as Respondent No.

4 and for an opportunity of being heard in opposition as an intervener. After hearing the learned Counsel for the Petitioner and the Respondents

this application was allowed vide order dated 17-12-1990 and I have heard Shri Sushil Harkauli who appeared for the aforesaid Association. Shri

Harkauli was supported the preliminary objections taken by the Respondents.

8. I have heard the learned Counsel for the Petitioner and Respondents at length and perused the relevant documents. The Respondents also filed

a supplementary counter affidavit on 21-12-1990 enclosing there with a copy of the writ petition No. 182 of 1990 which was filed before the

Lucknow Bench and was dismissed as withdrawn on 2-5-1990 and two supplementary affidavits of the Petitioner filed in the above writ petition. I

have perused these documents also. The two facts are undisputed that the Petitioner was working as Principal Judge of the Family Court at

Lucknow on 19-12-1989 when the impugned order was passed and served on him and secondly that the impugned order has been passed at

Lucknow by the Respondents Nos. 1 and 2. The Petitioner has sought to justify the filing of the writ petition at Allahabad on the basis of the

decision of the Administrative Committee dated 27-12-1989 and the order of the Supreme Court dated 19-3-1990. For giving rise to a cause of

action to initiate legal proceedings the order should be such by which the Petitioner's right or status or property has been affected adversely in

some manner. The decision of the Administrative Committee dated 27-12-1989 did not affect the Petitioner adversely in any manner. Rather, it

gave opinion in favour of the Petitioner that once appointed Judge of the Family Court, he is entitled to continue up to the age of 62 years. There

could be no reason for the Petitioner to be aggrieved by the decision of the Administrative Committee. The expression "cause of action" is well

known. It means the entire bundle of facts which the Plaintiff has to allege and prove in order to succeed. The relief to the Petitioner is mainly

based on the interpretation of the provisions of the Act. The opinion expressed by the Court being in favour cannot come in his way in proving the

other facts. Even in absence of the opinion of the Administrative Committee of this Court he could prove his claim. A part of cause of action to the

Petitioner could be said to have arisen only in case the opinion of the Administrative Committee had been against him and was acted upon. It is

also noteworthy at this place that the High Court sitting at Allahabad and at Lucknow forms one High Court after the United Provinces High

Court's Amalgamation Order, 1948. There is only a division for purpose of exercise of jurisdiction on the basis of area. This arrangement for

historical reasons and for the purpose of convenience and certainty. The decision of the Administrative Committee of the High Court could thus be

said to be of the Lucknow Bench as well, irrespective of the revenue of its meetings. The Petitioner could not, in these facts and circumstances, say

that the decision of the Administrative Committee gave rise to the part of cause of action at Allahabad for this petition.

9. So far as the second contention of the Petitioner that he could file writ petition at Allahabad in view of the order passed by the Supreme Court is

concerned, it has also no force. Firstly, the order dated 19-3-1990 was passed in a writ petition filed by some other litigant and the Petitioner

could not avail the direction in the order for himself. Secondly, the order passed by the Supreme Court did not specify the bench before which the

writ petition could be filed for enforcement of the decision of the Administrative Committee. As already stated the High Court is one and the

decision of the Administrative Committee could be enforced by the bench sitting at Lucknow. The Petitioner could only file the writ petition on the

basis of the cause of action at the place where it ought to be filed in accordance with law.

10. The present writ petition was admitted on 17-5-1990 in spite of the opinion of the Stamp Reporter that the writ petition should be filed at the

Lucknow bench of this Court. It appears that the order of admission was passed inadvertently and in ignorance of the opinion of the Stamp

Reporter. Since now the present writ petition is cognizable by a single judge as directed by Hon'ble the Chief Justice and there is nothing to

indicate that the order dated 17-5-1990 admitting the writ petition was passed after considering the opinion of the Stamp Reporter and further as

the Respondents are legally entitled to raise preliminary objection challenging the maintainability of the writ petition at this stage of the final hearing,

in my opinion the question can be decided inspite of the writ petition having been entertained and admitted by this Court earlier.

11. For the reasons recorded above, I am of the opinion that the writ petition could not be legally filed and entertained at Allahabad as the

Petitioner's cause of action only arose at Lucknow and no part of cause of action arose in any non-Awadh area of Uttar Pradesh and in view of

the above the writ petition cannot be heard at Allahabad. The record of the case shall, therefore, be transmitted to Lucknow where the writ

petition shall be listed for hearing before the appropriate bench. In view of the finding arrived at that this writ petition could not be filed and

entertained at Allahabad and the record is being transmitted to Lucknow bench, there is no necessity of deciding the second question challenging

the maintainability of the second writ petition in view of the fact that the earlier writ petition was dismissed as withdrawn on 2-5-1990 without

obtaining the leave of the Court. This question is being left open and the parties may press it again before the bench where the case is ultimately

listed for hearing. The office shall transmit the record of this case forthwith to the Lucknow Bench.