
(2006) 08 DEL CK 0108

Delhi High Court

Case No: LPA No's. 463 and 464 of 2006 and CM 4088 of 2006

University of Kashmir
Srinagar and Another

APPELLANT

Vs

H.L. Warikoo and
Others

RESPONDENT

Date of Decision: Aug. 24, 2006

Acts Referred:

- Constitution of India, 1950 - Article 21, 226, 226(1), 226(2), 32

Citation: (2006) 132 DLT 606

Hon'ble Judges: Mukul Mudgal, J; Dr. S. Muralidhar, J

Bench: Division Bench

Advocate: Non, for the Appellant; R.M. Tufail, for the Respondent

Final Decision: Dismissed

Judgement

Mukul Mudgal, J.

There is no appearance on behalf of the appellants.

2. While admitting this appeal on 17.3.2006, the Division Bench of this Court observed that it was prima facie of the opinion that the High Court of Jammu and Kashmir alone had territorial jurisdiction in the matter. Accordingly, it stayed the operation of the impugned judgment dated 13.1.2006 of the learned Single Judge by which WP(C) 6828/2002 filed by the Respondent No. 1 was allowed.

3. The facts leading to the filing of this appeal are that the Respondent No. 1 was employed in the Appellant No. 1, University of Kashmir, Srinagar ('University') as a Lecturer in Mathematics on 31.10.1962. He was thereafter promoted to the post of Reader with effect from 1.1.1983. On account of the precarious law and order situation in the Kashmir Valley, the Respondent No. 1 had to flee Srinagar some time in August 1990 leaving behind his home, and all his belongings. A large number of similarly placed

persons thus became internal refugees seeking shelter in various cities in the neighbouring States. Delhi, being a megapolis, witnessed an influx of a large number of such Kashmiri internal migrants. Acknowledging the problem faced by its employees, including Respondent No. 1 herein, the appellant No. 1 took a decision some time in May 1991, on the lines of a similar decision of the Government of Jammu and Kashmir, to authorise the Resident Commissioner of the Jammu and Kashmir at New Delhi, Respondent No. 2 herein, to release the monthly pay to the employees of the University. Accordingly the Respondent No. 1 started getting his salary from the Office of Respondent No. 2 herein from May 1991 onwards.

4. Consequent upon his superannuation on 31.5.2000, Respondent No. 1 made several representations to the University for the release of his retiral benefits. On 1.1.2002, 19 months after his retirement, the University released the commuted value of the pension without mentioning anything about the arrears of pay, general provident fund, arrears/salary and medical claims. This was followed by a letter dated 14.2.2002 sent to Respondent No. 1 stating that 26 books and journals were outstanding against the Respondent No. 1 the cost of which was calculated at Rs. 1,28,239.45 paise. Aggrieved by the failure of the University to release the retiral benefits, Respondent No. 1 filed Writ Petition (Civil) 6828 of 2002 in this Court praying for the following reliefs:

(A) Take this petition for consideration and may be pleased to issue the appropriate writ order or direction issuing a mandamus to the Respondents released all the pending emoluments in shape of G.P. Fund Arrears of pay from 01.01.1999 to 31.05.2000 along with gratuity, leave salary, spl med. allowance and less commutation of CVP.

(B) Also the Hon"ble Court may be pleased to grant 18% interest from 13.05.2000 to 01.01.2002 on the delayed payments of arrears of pension and CVP. And the same interest on the remaining retiral benefits to the actual date of payment with costs.

5. In its counter affidavit filed on 17.6.2003, the University raised a preliminary objection that the Respondent No. 1 should have filed the writ petition in the High Court of Jammu and Kashmir and that this Court did not have jurisdiction to hear and decide the writ petition. The precise contention in the counter affidavit reads as follows:

That the cause of action, if any, legal allegedly accrued at Srinagar and the Petitioner was also serving as Reader in the University of Kashmir at Srinagar up to the year 1990, as such the Petitioner should have filed Writ Petition in the High Court of Jammu & Kashmir, so the present Writ Petition deserves to be dismissed on this score. The Hon"ble High Court of Delhi has no jurisdiction. Merely, because Respondent No. 4 who is only a disbursing agency which acts only as a post office and who has no jurisdiction to decide any claim is stationed at Delhi, does not make this petition triable at Delhi.

6. The reply in the rejoinder by the Respondent No. 1 herein reads as under:

That the preliminary objection regarding the jurisdiction of this Court is devoid of any merit. This Court is competent to hear and decide all the relief claimed by the Petitioner and the same is evident from the averments of the Respondent. To equate the Respondent No. 4 as post office is self claimed dejection. Respondent No. 4 maintains the records of the migrant employees. He draws, disburses and deducts the pay salary of the Petitioner and all other employees who are stationed at Delhi. The Petitioner has remained on their roll of service while at Delhi and has received pay with various deductions only at Delhi. He after the exodus is residing at Delhi. His total correspondence is at Delhi. The facts giving the Petitioner the cause of action have in all arisen at Delhi. Respondent No. 4 has deducted G.P. Fund from the salary of Petitioner and has contributed the same to J & K Govt. Fund Organization. The said deducted G.P. Fund is not as yet released with interest.

7. It appears that during the pendency of the writ petition, Respondent No. 1 began receiving his pension. Thereafter he filed an application being CM. No. 11069/2002 which came to be disposed of by a detailed order dated 9.3.2004 of a learned Single Judge of this Court. By the said order, the University was directed to forthwith release the amount lying credited with in the General Provident Fund Account of the Respondent No. 1 herein together with interest. The University was also directed to file an affidavit regarding the deduction of special medical allowance. As regards the holding back of the sum of Rs. 1,50,000/- on account of dues pertaining to books alleged to have been taken by the Respondent No. 1 herein, the learned Single Judge directed that this issue should be decided after the Respondent No. 1 visits Kashmir and tries to resolve the issue with the Registry of the University. It appears that the University did not challenge this order dated 9.3.2004 passed by the learned Single Judge in CM. No. 11069/2002.

8. The matter was further heard by the learned Single Judge on 10.2.2005 when an order was made directing the University to deposit with the Registrar of this Court a sum of Rs. 1,50,000/- withheld from the Respondent No. 1 herein on account of the outstanding books. The learned Single Judge observed as under:

There is no legitimate excuse to rake up this issue only at the time when terminal and pensionary benefits were released to the Petitioner. It is inconceivable that a person, who is constrained to leave Kashmir because of fear to his life, should take along with him a large number of books. They would be bulky and also is extremely heavy. After such a long time the Court must choose between two versions presented to. Since the claim for outstanding books has been raised only at the belated stage of payment of terminal/pensionary benefits, I cannot accede to the submission of the University that books are outstanding against the Petitioner. In these circumstances, the Respondents are directed to pay to the Petitioner or deposit with the Registrar General of this Court the sum of Rs. 1,50,000/- within four weeks from today. Renotify this matter for consideration on 18th March, 2005.

9. The University challenged the said order dated 10.2.2005 by way of LPA Nos. 1069-1071 of 2002. A Division Bench of this Court dismissed the said appeals on 9.5.2005 on the ground that the order had been made at an interlocutory stage.

10. Thereafter the learned Single Judge finally heard the writ petition and by the impugned judgment dated 13.1.2006, overruled the preliminary objection as to maintainability, and issued the following directions:

(i) The Petitioner is entitled to the sum of Rs. 1,50,000/- i.e. the amount deducted from the gratuity amount payable to him. It is open to the petitioner to withdraw the said amount, from the registry of this Court. A further direction is issued to the Respondent University to pay interest @ 7% on the amount of Rs. 1,50,000/- from 1.6.2002 to 31.12.2005;

(ii) The respondent University shall pay to the petitioner, interest @ 7% p.a. on the amount of Rs. 5,46,546/- from 1-1-2001 to 1-1-2002;

(iii) The Respondent University is directed to pay compensation assessed at Rs. 50,000/- to the petitioner, towards the loss of interest on account of not renewing the provident fund, kept in a fixed deposit receipt with the Jammu & Kashmir Bank in a timely manner;

(iv) The amounts payable as per the above directions shall be disbursed to the petitioner, within a period of 8 weeks from today. In case of non-compliance, the petitioner shall be entitled to interest @ 10% on these amounts on the expiry of the period till the payment is made.

22. The petition is allowed to the extent indicated above. The petitioner shall also be paid costs amounting to Rs. 7500/-, within the period of 8 weeks from today.

11. As regards the preliminary objection as to maintainability, the Learned Single Judge observed in para 16 of the impugned judgment as under:

Since the respondent have raised a preliminary objections as to the maintainability of the proceedings, it is necessary to first deal with that aspect. Under normal circumstances the cause of action in this case would perhaps have been beyond the territorial jurisdiction of this Court. In disputably the petitioner was an employee of the University of Kashmir; the University is located outside the territorial jurisdiction of this Court. Never the less two circumstances are of the importance in this case. The first is that the petitioner and the other employees fled the State, apprehending danger to their life. The Government of Kashmir as well as University took cognizance of this reality and rightly so. They provided a mechanism whereby the salary and emoluments of such employees continued to be disbursed by the University through the Resident Commissioner. Therefore, I am of the opinion that all these years the University consciously recognized the need for having an arrangement in New Delhi. The terminal dues ultimately disbursed to the petitioner were also paid at New Delhi. Hence, I have no manner of doubt that at least part of the cause

of action arose within the jurisdiction of this Court. These proceedings are, Therefore, maintainable.

12. Learned Single Judge further dealt with the issue of deduction of Rs. 1.5 lakhs in para 18 of the impugned judgment:

It is too well-known that the disturbed state of affairs has been prevailing in the State for the last 15 years or more. Thousands of people have lost their lives and several times more that number have become migrants, refugees within their own country; the petitioner is one such person. Providentially, he and his family members managed to escape from the State of Kashmir before any harm befell them. In these circumstances, the insistence of the University, in my considered opinion, that the petitioner should somehow return the books or face a substantial cut from the gratuity amounts payable to him, is not only unreasonable but completely insensitive. After having recognized the fact that there was no normalcy within the State, which led to an arrangement whereby the petitioner and the other employees were continuously paid their salary and allowances in New Delhi and treated as having been in service, it cannot be legitimately contended that the petitioner has to suffer a deduction from his just dues. I am, Therefore, of the considered opinion that the amount of Rs. 1,50,000/- withheld from the petitioner should be paid to him.

13. We are in complete agreement with the above reasoning and findings of the learned Single Judge. We find no merit in the preliminary objection raised by the University as to the maintainability of the writ petition. If indeed the Respondent No. 1 has been compelled to reside in Delhi on account of the disturbed situation prevailing in the Kashmir Valley since August 1990, it stands to no reason to deny access to justice to the Respondent No. 1 by raising an objection to the maintainability of this writ petition on the ground of territorial jurisdiction of the Delhi High Court.

14. The facts and circumstances of the present case reveal that the cause of action for the Respondent No. 1 to approach this Court arose in Delhi since all the payments have been received since May 1991 within the territorial jurisdiction of this Court. The Respondent No. 1 has continuously resided in Delhi since August 1990. The Resident Commissioner, Respondent No. 2 who is the disbursing authority is also within the territorial jurisdiction of this Court. The payments that were directed to be made by the interim orders of this Court were in fact made in Delhi. Those interim orders made in this writ petition have been complied with without demur. To now send the Respondent No. 1 to the High Court of Jammu and Kashmir would, apart from not serving any purpose, cause severe hardship and prejudice to him. It would also involve further expense and delay. In fact, it would result in denial of an effective access to justice.

15. It is well settled that the right of access to justice is integral to the fundamental right to life and liberty guaranteed under Article 21 of the Constitution. The decisions of the Hon^{ble} Supreme Court in [Madhav Hayawadanrao Hoskot Vs. State of Maharashtra](#), and

[Suk Das Vs. Union Territory of Arunachal Pradesh](#), are the leading cases which declare this settled legal position. The failure to provide access to justice to our own citizens, who may be internal refugees from some other State in the country on account of serious law and order problems threatening their life and liberty, would violate their fundamental rights under Article 21. This would be a relevant factor to be considered when a preliminary objection is raised before a High Court on the ground of territorial jurisdiction. The matter may be examined from another perspective. Article 226(1) and (2) read as under:

226. Power of High Courts to issue certain writs.__(1) Notwithstanding anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose].

(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.]

The wording of Clause (2) of Article 226 indicates that the power under Article 226 may be exercised by a High Court if, within the territories to which its jurisdiction extends, "the cause of action wholly or in part, arises".

16. This has been explained in several decisions including [Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others](#), to imply that the question had to be decided with reference to the pleadings in the writ petition. The Clause (2) of Article 226 seems to have been inserted to confer jurisdiction even where "seat of such Government or authority or the residence of such person" against whom the writ is sought "is not within those territories". The facts of the present case show that the part of the cause of action did arise in the territorial jurisdiction of this Court. Viewed from this angle also, the preliminary objection of the appellants herein to the maintainability of the writ petition, is without basis. In these circumstances, the preliminary objection as to the maintainability was rightly overruled by the learned Single Judge.

17. As regards the other directions contained in the impugned judgment of the learned Single Judge, we find no infirmity whatsoever in any of those directions that warrants interference by us. It is indeed unfortunate that Respondent No. 1, a retired academic, has been denied justice for so many years and has had to engage in litigation for his retiral dues. Accordingly we are of the view that the direction issued by the learned Single Judge regarding payment of costs of Rs. 7,500/- by the University to the Respondent No. 1 was perfectly justified.

18. For all the above reasons, we find no merit in this appeal which is accordingly dismissed with no order as to costs. The interim order 17.3.2006 stands vacated.