

**HIGH COURT OF JAMMU AND KASHMIR**  
**SRINAGAR**

**Case No:** SWP 2287/2013

**Dated :** 18<sup>th</sup> MAY, 2016

**BASHIR AHMAD KHAN**

**VERSUS**

**U.O.I & ORS**

**ORDER SHEET**

**CORAM:**

**HON'BLE** MR. JUSTICE MUZAFFAR HUSSAIN ATTAR- JUDGE

*Whether approved for reporting :*     **yes**

**FOR THE PETITIONER/s :** MR. A.HAQANI

**FOR THE RESPONDENT/s:** M/S. S.A.MAKROO, ASGI & J.IQBAL

**(ORAL)**

**01/** The petitioner is aggrieved of the order dated 10<sup>th</sup> September, 2013 passed by Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-1, Chandigarh to the extent of paragraph-11 thereof, wherein it has been held by the said authority that the enquiry against the petitioner has been conducted in tune with the principles of natural justice.

**02/** The matter has reached to the Industrial Tribunal-Cum-Labour Court-1, Chandigarh in terms of the reference made to it at the instance of the petitioner, which reference has arisen out of Central Government Notification dated 1<sup>st</sup> February, 2011. The Central Government referred the dispute, which had arisen between the petitioner and J&K Bank Ltd. to the tribunal for its adjudication. The reference is taken note of:-

*“Whether the action of the management of J&K Bank Limited in terminating the services of Sri Bashir Ahmad Khan, S/O Sri Noor Mohd Khan w.e.f. 15.01.2008 is legal and justified? To what relief the workman is entitled to?”*

**03/** The petitioner was working as Cashier-cum-Clerk in J&K Bank. He remained posted at Branch Office Fruit Complex Srinagar of the J&K Bank w.e.f. 23<sup>rd</sup> June, 1996 to 1<sup>st</sup> May, 1997 in the

capacity of Cashier-cum-clerk. He was transferred from the said branch to Hari Singh High Street Branch of J&K Bank Srinagar on 1<sup>st</sup> May, 1997. It was alleged that a fictitious insertion in SB Account No. 2204/23 in the name of Hafiz Ali Baba was made and thereafter fraudulently the amount of Rs. 1,00,000/- was raised to Rs.7,00,000/-, out of which Rs. 5,79,025/- was withdrawn by presentation of cheque during the period 19<sup>th</sup> May, 1997 to 24<sup>th</sup> May, 1997. FIR. No. 167/97 was registered at concerned Police Station. The J&K Bank initiated in-house enquiry also. After the enquiry the petitioner was dismissed from services. 1<sup>st</sup> appeal against the dismissal of services also suffered dismissal and ultimately he raised dispute which, on failure of Conciliation Proceedings, was referred to the Tribunal-cum-Labour Court at Chandigarh, by the Central Government.

**04/** This Court on 22<sup>nd</sup> November, 2013 directed the respondents 2 not to proceed in the matter till next date before the Bench. On 4<sup>th</sup> September, 2014, the petition was admitted to hearing and it was provided that interim direction will continue till final disposal of the petition, which otherwise, would mean that the proceedings by now are not concluded.

**05/** The petitioner, at paragraph-5, has specifically pleaded that the respondent no. 3 which is the bank authority did not provide copies of FSL report, notwithstanding this fact that he had filed application for same. The copy of FSL report was sought by the petitioner to project his defense about his innocence.

**06/** It is the case of petitioner that respondent-Bank itself had referred the matter to FSL authorities and the report sent by them proved his innocence. It is further case of the petitioner that these documents are of fundamental importance so far as the enquiry

conducted is concerned. It is one such reason which is projected to say that the enquiry has not been conducted in fair, just and proper manner.

**07/** The respondent-Bank, in its Reply Affidavit has stated that the Bank while conducting enquiry did not rely upon FSL report and final order was never based upon the same. Therefore, providing of copy thereof to the petitioner was of no consequences.

**08/** The respondent-Bank initiated a departmental enquiry and had referred the matter to FSL. It being a fact, the bank was duty bound to provide copy of FSL report to the petitioner. Whether bank relied upon the FSL report or not, in passing the dismissal order, is inconsequential because the petitioner has been deprived by the act of the respondent-Bank to defend himself in the enquiry. The enquiry in these circumstances has not been conducted properly and fairly, moreso, when assertion of the petitioner that the FSL report proved him innocent, has not been denied by the bank.

**09/** For the above stated reason the finding recorded at paragraph (11) of the order dated 10<sup>th</sup> September, 2013 passed by Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-1, Chandigarh is set-aside. The Tribunal to proceed ahead with reference made to it by the Central Government and conclude the same within four weeks from the date copy of this order is served.

**On board for tomorrow – the 18<sup>th</sup> May, 2016**

**01/** This case was listed yesterday – the 17<sup>th</sup> May, 2016 at S.No. 84 of the Regular Cause List. Petitioner appeared and submitted that the case being listed at the tail end of the Cause List, it may not reach. He made a passionate appeal that his son is suffering from serious disease and he (petitioner) is not in a position, at this stage,

to treat him properly because of the pendency of this writ petition. He further submitted that if this petition is considered and decided on its merits, he will be relieved of great agony.

**02/** In view of submission made at bar by the petitioner, he was requested to call his lawyer and, in the meantime, case was taken up, out of turn. Case was heard and order was passed, whereunder, paragraph (11) of the impugned order dated 10<sup>th</sup> September, 2013, passed by respondent No.2, was set aside and respondent No.2 was directed to proceed with the matter and conclude it within the period mentioned therein.

**03/** When the aforesaid order was being dictated yesterday, Mr. Javed Iqbal, learned counsel for respondent No.3 (J&K Bank), appeared and after pronouncement of order, submitted that since the case was listed at S.No.84 of the Cause List, he was under the impression that it will be taken up at its own turn. That is how he could not appear in the case at the right time and make his submissions.

**04/** Mr. Javed Iqbal was requested to make his submissions. He said that since order has been pronounced by the Court, therefore, he may not now be in a position to make his submissions about the case. Mr. Iqbal was informed that the order has only been dictated and not signed by the Court and it will take effect only after it is signed and he is free to make his submissions. It is for this reason that even after dictating and announcing the order in the open Court, the case was kept on Board for today – the 18<sup>th</sup> May, 2016, for affording opportunity of hearing to Mr. Javed Iqbal.

**05/** The constitutional Court has the power to recall its order/s even after they are signed, provided a case thereof is made out or the Court itself, at a subsequent occasion, finds that the order, in the

interest of justice, and for maintaining the correct record in terms of section 94 of the Constitution of J&K and article 215 of the Constitution of India, would require to be recalled or modified.

**06/** Mr. Javed Iqbal – learned counsel for respondent No.3 submitted that this Court is lacking territorial jurisdiction to hear this writ petition. He further submitted that in case his objection about maintainability of writ petition fails, then he would concede to the order passed by the Hon'ble Court yesterday as, in his submission also, the order passed by respondent No.2 on 10<sup>th</sup> September, 2013 was not in accordance with law. Learned counsel referred to section 103 of the Constitution of J&K and article 226 of the Constitution of India. He submitted that though the petitioner has called in question order of his dismissal from service of J&K Bank but that order cannot be questioned in a writ petition in view of the Full Bench judgement of this Court reported in SLJ 2006 Vol. 1 page 1. He further submitted that the order of dismissal of the petitioner from service of J&K Bank was challenged in an Appeal, which was dismissed. He further submitted that ultimately the appropriate authority in the Central Government made reference of the dispute, between the petitioner and the J&K Bank, to the Industrial Tribunal/Labour Court – I, Chandigarh. Learned counsel submitted that the appropriate authority in the Central Government at New Delhi, has passed the order of reference and referred the dispute to the Industrial Tribunal/Labour Court – I, Chandigarh, and both these areas fall outside the territorial jurisdiction of this Court. He, accordingly, submitted that this Court, in law, cannot issue any writ, order or direction to an authority, which has passed order outside its territorial jurisdiction. He, however, added that in view of the subsequent changes made in article 226 of the Constitution of India,

this Court would also have jurisdiction to pass orders, if it is shown by the pleadings that a part of the cause of action has accrued within the territorial jurisdiction of this Court. He also, hastily, added that since, in the facts of this case, no cause of action has accrued within the territorial jurisdiction of this Court, this writ petition merits dismissal. Learned counsel, in support of his contention, referred to and relied upon judgement of Hon'ble the Supreme Court, reported in AIR 2007 SC 1812. He made specific reference to paragraphs 18 to 20 thereof. Mr. Javed Iqbal also referred to decision of the apex Court, reported in 1994 (4) SCC 711, AIR 1999 SC 2180, 2004 (6) SCC 254 and AIR 1970 JK page 45. He, accordingly, prayed for dismissal of this writ petition on the sole ground that this Court is lacking territorial jurisdiction to issue writ or order.

**07/** Mr. A.Haqani, learned counsel appearing for the petitioner, submitted that part of the cause of action, in this case, has arisen within the territorial jurisdiction of this Court, in as much as, the respondent – J&K Bank, initiated disciplinary action against the petitioner at Srinagar. The order of termination was passed at Srinagar. The appeal order was passed by the authority within the territory of J&K. Learned counsel submitted that the conciliation proceedings failed within the territorial jurisdiction of this Court. Mr. Haqani further submitted that the Conciliation Officer, thereafter, referred the matter to the appropriate authority in the Central Government, which authority made reference to the Industrial Tribunal/Labour Court – I, Chandigarh. He submitted that in view of facts of this case, which are delineated in the writ petition itself and further in view of law laid down by Hon'ble the Supreme Court in the decision reported in 2014 SCC vol. 9 page 329, this Court is having jurisdiction to entertain this writ petition. At this stage, Mr.

Javed Iqbal – learned counsel for respondent No.3, submitted that he also relies upon the judgement in M/S. Kusum Ingots & Alloys Ltd., reported in AIR (2004) SC 2321. Mr. Haqani also referred to judgement of this Court dated 07<sup>th</sup> April, 2016, passed in SWP 2177/2013 and submitted that this case is covered by the aforesaid decision and the matter falls within the territorial jurisdiction of this Court.

**08/** True it is that only a Court, which, in law, can exercise jurisdiction in a particular cause, can entertain a petition and thereafter pass orders in accordance with law. It is settled position in law that the bundle of facts, which are pleaded/projected in the pleadings of a petition/suit, constitute cause of action for filing of petition/suit before a particular Court of law. Normally it is these pleadings/facts, which are to be taken together for determining whether cause of action, in fact and in law, has arisen and whether further cause of action has arisen within the territorial jurisdiction of a particular Court. The judgements cited at bar by learned counsel for the parties, do state that for determining whether cause of action, in fact, is available and whether it has arisen within the territorial jurisdiction of a particular Court, it is all the pleadings, which have to be considered conjunctively and not disjunctively. The facts pleaded cannot be segregated from each other.

**09/** The cause of action in a particular case arises when an action is initiated which, by process of subsequent events, gets culminated into a different order, which may or may not be final. For determining whether cause of action has arisen and whether it has arisen, wholly or in part, within the territorial jurisdiction of a particular Court, all the events from initiation of action or passing of first order till final determination of legal rights of a party have to be

considered together and conjointly. The chain of events cannot be broken as that will not allow the Court to determine the issue whether cause of action has arisen and whether the Court, which has taken cognizance of the matter, has territorial jurisdiction to entertain the same.

**10/** The legal expression “*cause of action*” has many facets. It is only when there is a “*cause*”, there is “*action*” and “*reaction*”. Without a “*cause*”, there will be neither “*action*” nor “*reaction*”. A “*cause*” may arise at one place and its “*action*” or “*reaction*” may generate at another place. A “*cause*” may rear its head at one place and its “*settlement*” may take place at a different place. In other words, if there is no “*cause*”, there is no legal “*settlement*”, which comes into existence by passing of order(s). An order passed by an authority at a place outside the territorial jurisdiction of a Court, can be challenged in a Court, within whose territorial jurisdiction the cause or dispute has arisen. The “*cause*” and “*effect*” theory can be employed in determining the court’s jurisdiction to entertain a plea and decide the same.

**11/** Reverting to the facts of this case, the disciplinary action was initiated against the petitioner at Srinagar. Order of termination was passed at Srinagar. He challenged that order in an Appeal at Srinagar, which was dismissed by the appellate authority at Srinagar. Conciliation proceedings were initiated within the territorial jurisdiction of J&K. The Conciliation Officer recorded failure of conciliation proceedings, which order was passed by the said authority at Jammu. The said authority, thereafter, referred the matter to the appropriate authority in Central Government at New Delhi, which referred the matter to Industrial Tribunal/Labour Court – I, Chandigarh, as in the wisdom of the Central Government, the



dispute had arisen between the Workman and the Industry, which needed to be settled in accordance with the provisions of Industrial Disputes Act 1947.

**12/** The Industrial Tribunal/Labour Court – I, Chandigarh, did not initiate action over the “*dispute*” by drawing the same from vacuum. The dispute was referred to it by the appropriate authority at New Delhi. The appropriate authority at New Delhi did not refer the dispute to the Industrial Tribunal/Labour Court – I, Chandigarh, without there being any foundation or basis laid for the same. The appropriate authority at New Delhi got jurisdiction to refer the dispute only when it was referred to it by the Conciliation Officer based at Jammu. The chain of events in this case, taken from initiation of disciplinary proceedings upto the landing of matter in the Industrial Tribunal/Labour Court – I, Chandigarh, cannot be segregated from each other, because, if the events, which have been set into motion at Srinagar, would not have travelled beyond the territorial jurisdiction of the State of J&K, in as much as, the Conciliation Officer would not have made any reference to the appropriate authority at New Delhi, the appropriate authority at New Delhi would not have got jurisdiction to take a decision that the dispute had arisen between a Workman and the Industry, which would require to be settled in accordance with the provisions of Industrial Disputes Act 1947, and in sequel thereto, it would not have landed at Chandigarh. In other words, the jurisdiction assumed, both by the appropriate authority at New Delhi and Industrial Tribunal/Labour Court – I, Chandigarh, originates from the orders passed by the authority within the territorial jurisdiction of this Court, which, in turn, brings all the orders, which have been passed or may be passed by the Industrial Tribunal/Labour Court – I,

Chandigarh, within the territorial jurisdiction of this Court. As already stated, the source of stream of jurisdiction flows from the authority which falls within the territorial jurisdiction of this Court. This Court has, thus, territorial jurisdiction to entertain and deal with this petition.

**13/** The judgements cited at bar by learned counsel for the parties, when given a close look, do support the reasoning recorded in this order. It may not be out of place to mention here that respondent No.2 - Industrial Tribunal/Labour Court – I, Chandigarh, has not, despite service, appeared to contest this petition. It is respondent No.3 – J&K Bank, Ltd., which has raised objection about the maintainability of this writ petition.

**14/** In law, the respondent – J&K Bank, could not raise objection about maintainability of writ petition on the ground that this Court is lacking territorial jurisdiction. This objection could have been raised by respondents 1 & 2, which has not been done in this case. However, since the issue has been raised and has been dealt with in this order, non raising of objection by respondents 1 & 2 would, thus, pale into insignificance.

**15/** For the reasons recorded hereinabove, the objection about maintainability of this writ petition is rejected. The order passed in this petition yesterday – the 17<sup>th</sup> May, 2016, would, thus survive and this writ petition along with connected IAs stands, accordingly, **disposed** of.

*MUZAFFAR HUSSAIN ATTAR*  
 SRINAGAR  
18-05-2016

*(MUZAFFAR HUSSAIN ATTAR) J*

