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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 11.10.2022***
Pronounced on: 31.10.2022

\+ W.P. (C) 253/2010

THE WORKMAN, SH.N.K.GARG ..... Petitioner
Through: Mr. Arunav Patnaik, Advocate

versus

THE MANAGEMENT OF M/S JAI PRAKASH ASSOCIATES PVT.LTD. ..... Respondent
Through: Mr. Jagat Arora and Mr. Niraj Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present petition filed under Article 226 of the Constitution of India emanates from the Award dated 04.07.2009 (***'impugned Award'***) passed by the learned Presiding Officer, Labour Court No. V, Karkardooma Courts, Delhi in I.D. No. 537/2008. The learned Labour Court vide the impugned Award dated 04.07.2009 held that since the situs of the petitioner's employment was in Vishakhapatnam at the time of his termination, Government of NCT of Delhi is not the '*appropriate government'* to make reference under Section 10 of The Industrial Disputes Act 1947 ***('ID Act')***.

FACTS RELEVANT FOR THE ADJUDICATION OF THE PRESENT MATTER

2. The petitioner workman was appointed as a Clerk by the Respondent Company and was posted at Rishikesh, Uttarakhand. After the passage of one year from his initial appointment, he was transferred to Tehri Garhwal, Uttarakhand wherein he dispensed his duties for a period of 4 years. In the year 1982, he was again transferred to Vishakhapatnam, Andhra Pradesh. While he was working at the Vishakhapatnam office, on 09.07.1985, the petitioner was sent to Delhi for the purpose of receiving training in company accounts, and he was provided with an advance of Rs.2,000/- as Travelling Allowance and Dearness Allowance.
3. It is the case of the Petitioner that he stayed in Delhi for four days and met General Manager (HQ) and other higher officials of the Respondent. Mr. Suresh Kumar, Executive Director of the Respondent Company told him verbally that his services are not required anymore. Thereafter he met Mr. Daya Prakash, Chairman who assured him that the posting order will be issued to him by the end of October,1985. Hence he returned back to his native place.
4. The Petitioner was served with a letter of termination dated 03.09.1985 issued from the headquarter situated at Delhi. Vide this letter of termination, petitioner's service was terminated

w.e.f 15.07.1985. Relevant extract of the letter of Termination dated 03.09.1985 is reproduced below:

> *"You were required to report for duty at head office Delhi on or before 15th July 1985, vide letter dated 9th July 1985, duly received by you at our Vishakhapatnam site. You have, however, not joined Head Office Delhi by due date. Having remained unauthorisedly absent for more than eight (8) continuous days, you have lost the lien on the job under Clause 14 (XI) of our standing orders. Your name has therefore been struck off from the rolls of the company with effect from 15th July 1985.*
>
> *You are, therefore, requested to get your accounts finally settled on any working day at the earliest*
>
> *(Suresh Kumar)*
> *Executive Director (HQrs)"*

5. Aggrieved by the afore-said letter of termination, the petitioner raised an industrial dispute, which was later referred by the Delhi Administration to the Labour Court, Delhi for adjudication with the following terms of reference:

> *"Whether the termination of services of Shri Nawal Kishore Garg is illegal and/or unjustified and if so to what relief is he entitled and what directions are necessary in this respect?"*

6. The petitioner filed his statement of claim before the learned Labour Court wherein he challenged the termination letter dated 03.09.1985. It was alleged by the petitioner that the termination letter was issued in contravention of Section 25-D, G and N of the ID Act and against the principles of natural Justice. The Respondent vide its written statement contested the claims made

by petitioner, taking preliminary objection that Delhi Administration has no territorial jurisdiction to refer the dispute to the learned Labour Court for adjudication.

7. Based on the pleadings of the parties, the learned Labour Court framed the following issues on 04.09.1993:

> *"(i) Whether the workman is not a workman within the meaning of Section 2(s) of the I.D. Act?*
> *(ii) As in terms of reference?"*

8. Subsequently, based on the application of the Respondent, learned Labour Court framed the following additional issue:

> *"(i) Whether the learned Labour Court of Delhi has no territorial jurisdiction to try the present reference?"*

9. The parties led their respective evidence to prove their case. On behalf of the Petitioner, 3 witnesses, WW-1,WW-2 and WW-3 were examined and on behalf of the Respondent, MW-1 was examined.

10. The learned Labour Court, after hearing the parties, vide the impugned Award dated 04.07.2009, decided the question of territorial jurisdiction in favour of respondent. The relevant portion of the impugned Award, reads, inter alia, as follows:

> *"18. As already noted workman was posted at Vishakhapatnam and was sent to Delhi for training in accounts and was never posted in Delhi. As per the plea taken by workman, even if termination order dated 3.9.85 was issued from Head Office at Delhi, merely on this basis jurisdiction on Delhi Courts cannot be*

conferred and Government of NCT of Delhi do not become appropriate Government.

19. In view of the aforesaid reasons, in my opinion, this Court has no territorial jurisdiction to deal with this matter. This issue is accordingly decided in favour of the management and against the workman.

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20. In view of the findings on above issue, both these issues get redundant. The claimant is accordingly held not entitled to any relief. Reference is answered accordingly."

11. The present petition has been preferred by the petitioner challenging the validity and legality of the impugned Award dated 04.07.2009.

SUBMISSIONS MADE ON BEHALF OF PETITIONER

12. Mr. Arunav Patnaik, learned counsel appearing on behalf of petitioner argued before this Court challenging the legality of impugned order. Submission has been made that it was only on the instructions received from the Respondent's headquarters situated at Delhi, the petitioner came and reported at the Delhi office on 15.07.1985 for receiving training in Company accounts. Further that while he was undergoing training at the Delhi office, the higher officials of the Respondent Company interacted with him and decided to terminate his services. Learned counsel has laid emphasis on the fact that the letter of termination was duly signed and issued from the Respondent Company's headquarters

located at Delhi. By this very fact that Delhi is the place where the dispute between the petitioner and respondent substantially occurred, the Government of NCT of Delhi qualified as the 'appropriate government' under Section 10 of the ID Act to refer the dispute to the learned Labour Court in Delhi for adjudication. Also, the Courts in Delhi would have jurisdiction to try the dispute.

13. For providing legal backing to the arguments advanced, the petitioner relied upon judgments delivered in ***Bikash Bhushan Ghosh v. Novartis India Ltd. (2007) 5 SCC 591***; ***Workmen v. Shri Rangavilas Motors (P) Ltd.*** **AIR 1967 SC 1040;** ***Paritosh Kumar Pal v. State of Bihar [1984 Lab IC 1254 (Patna) (FB)]; V.G. Jagdishan v. Indofos Industries Ltd.*****, (2022) 6 SCC 167;**; ***Bageshwar Maurya vs The Management Naveen Projects P. Ltd. (2009) SCC OnLine Del 1970*****,** ***Raj Kumar Sharma v. P.O. Industrial Tribunal No. 1, 2014 SCC OnLine Del 2920.***

SUBMISSION MADE ON BEHALF OF RESPONDENT

14. Mr. Jagat Arora, learned counsel on behalf of the respondent vehemently opposed the present writ petition. He argued that there exists sufficient ground for the termination of the petitioner's employment. Petitioner was removed from the services on account of non-compliance of instructions under which he was required to report to the Delhi Office for undergoing a training programme. Learned counsel has contended that the petitioner never reported to Delhi for training purpose and did not work for a single day in Delhi. Further, situs

of employment was in Vishakhapatnam at the time of termination, therefore Government of Andhra Pradesh would be '*appropriate government'* for referring the dispute to the Labour Court. Since not even a part of 'cause of action' has arisen within territorial jurisdiction at Delhi, the reference has been rightly rejected by the learned Labour Court.

15. Learned counsel for the respondent has relied upon judgements delivered in ***V.G. Jagdishan v. Indofos Industries Ltd.*****, (2022) 6 SCC 167;** ***Workmen v. Shri Rangavilas Motors (P) Ltd.*** **AIR 1967 SC 1040;** ***Paritosh Kumar Pal v. State of Bihar [1984 Lab IC 1254 (Patna) (FB)]; Braham Prakash v. Govt. of NCT Delhi (2007) Lab.I.C. 3544 (Delhi).***

LEGAL ANALYSIS

16. This Court has gone through the documents placed by both the parties on record and have also heard the arguments advanced by both the counsels.

17. The issue to be decided in the present matter is whether the Government of NCT of Delhi can be considered as the appropriate Government under Section 2(a) of the ID Act to refer the industrial dispute qua the workman to the learned Labour Court for adjudication.

18. It is the argument of the Petitioner that part of cause of action has arisen within the jurisdictional limits of Delhi and hence Government of NCT of Delhi can also act as the appropriate Government for the instant dispute. On the other hand, the Respondent submitted that situs of employment is in

Vishakhapatnam and hence Government of Andhra Pradesh is the appropriate Government. It becomes crucial at this juncture to carefully analyse the Judgements cited by both the parties on this issue:

(i) ***Workmen v. Shri Rangavilas Motors (P) Ltd.*, (1967) 2 SCR 528**

In this case, the Workman was transferred from Bangalore to Krishnagiri where the head office of the Management was situated. State Government of Mysore referred the dispute to Labour Court, Bangalore. While examining whether State Government of Mysore can act as the 'appropriate government' under the ID Act, the Hon'ble Supreme Court held as follows:

> ***"14.*** *Therefore, the appeal must succeed unless the Company can satisfy us that the points decided against it should have been decided in its favour. This takes us to the other points. Mr O.P. Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Kishanagiri, and, that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workmen working in this place. The order of transfer, it is true, was made in Krishnagiri at the head office, but the order was*

to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is: where did the dispute arise? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. This Court in Indian Cable Co. Ltd. v. Workmen [(1962) 1 LLJ 409] held as follows:

> *"The Act contained no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C.J. observed in Lalbhai Tricumlal Mills Ltd. v. Vin [1956—1 LLJ 557, 558] :*
>
> > *'But what we are concerned with to decide is: where did the dispute substantially arise? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-known tests of jurisdiction, a court or tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject-matter of the dispute substantially arises within jurisdiction.'*

> *In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference under Section 10 of the Act."*
>
> *Applying the above principles to the facts of this case it is quite clear that the subject-matter of the dispute in this case substantially arose within the jurisdiction of the Mysore Government."*

(ii) ***Bikash Bhushan Ghosh v. Novartis India Ltd. (2007) 5 SCC 591***

Workmen in this case were transferred from Calcutta to Siwan (Bihar), Farrukhabad (U.P.) and Karimganj (Assam). After the failure of the conciliation proceedings, the State of West Bengal referred the matter to the Third Industrial Tribunal, West Bengal. Both the Labour Court and the learned Single Judge held that State of West Bengal is the appropriate Government, however, the Division Bench of Calcutta High Court taken a contrary view and held that State of West Bengal is not the appropriate Government. While setting aside the Judgment of the Hon'ble Division Bench of Calcutta High Court, the Hon'ble Supreme Court, held as follows:

> "*What would constitute cause of action, has recently been considered by this Court in Om Prakash Srivastava v. Union of India and Another [(2006) 6 SCC 207] wherein it was held;*
>
> > *"12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances*

forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means very fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294])

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit (See Gurdit Singh v. Munsha Singh [(1977) 1 SCC 791])

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court

> *from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra [(2000) 7 SCC 640 : 2001 SCC (Cri) 215]"*
>
> *Judged in that context also, a part of cause of action arose in Calcutta in respect whereof, the State of West Bengal was the appropriate government. It may be that in a given case, two States may have the requisite jurisdiction in terms of clause (c) of sub-section (1) of* Section 10 *of the Industrial Disputes Act. Assuming that other State Governments had also jurisdiction, it would not mean that although a part of cause of action arose within the territory of the State of West Bengal, it would have no jurisdiction to make the reference.*

(iii) **Nandram Vs. Garware Polyster Limited; (2016) 6 SCC 290**

In this case, the Workman was initially working in Aurangabad. From there, he was transferred to Gujarat and then to Pondicherry. Finally, his service was terminated on account of the closure of the establishment at Pondicherry. The workman raised industrial dispute at Aurangabad. While

holding that Labour Court at Aurangabad has jurisdiction to deal with the present matter, the Hon'ble Supreme Court, held as follows:

> *"5. Though, the learned counsel on both sides had addressed in detail on several issues, we do not think it necessary to go into all those aspects mainly because in our view they are only academic. In the background of the factual matrix, the undisputed position is that the appellant was employed by the Company in Aurangabad, he was only transferred to Pondicherry, the decision to close down the unit at Pondicherry was taken by the Company at Aurangabad and consequent upon that decision only the appellant was terminated. Therefore, it cannot be said that there is no cause of action at all in Aurangabad. The decision to terminate the appellant having been taken at Aurangabad necessarily part of the cause of action has arisen at Aurangabad. We have no quarrel that Labour Court, Pondicherry is within its jurisdiction to consider the case of the appellant, since he has been terminated while he was working at Pondicherry. But that does not mean that Labour Court in Aurangabad within whose jurisdiction the Management is situated and where the Management has taken the decision to close down the unit at Pondicherry and pursuant to which the appellant was terminated from service also does not have the jurisdiction. In the facts of this case both the Labour Courts have the jurisdiction to deal with the matter. Hence, the Labour Court at Aurangabad is well within its jurisdiction to consider the complaint filed by the appellant. Therefore, we set aside the order passed by the High Court and the Industrial Court at*

Aurangabad and restore the order passed by the Labour Court, Aurangabad though for different reasons."

(iv) ***V.G. Jagdishan v. Indofos Industries Ltd.*, (2022) 6 SCC 167**

The Workman was employed at Ghaziabad and his services were terminated at Ghaziabad itself. Subsequent to his termination, the workman shifted to Delhi. He sent a demand notice challenging his termination to the head office of the Management at Delhi. Labour dispute was raised in Delhi. While dealing with the above-mentioned factual context, the Hon'ble Supreme Court, held as follows:

"6. The question which is posed for the consideration of this Court is, whether, the Labour Court, Delhi would have territorial jurisdiction to decide the case or the Labour Court, Ghaziabad would have territorial jurisdiction to decide the case.

6.1 From the findings recorded by the Labour Court, Delhi and the learned Single Judge and the Division Bench of the High Court, it is not much in dispute that the workman was employed as a driver at Ghaziabad office. He was working at the Ghaziabad. His services were retrenched at Ghaziabad. All throughout during the employment, the workman stayed and worked at Ghaziabad. Only after the retrenchment/ termination the workman shifted to Delhi from where he served a demand notice at Head Office of the Management situated at Delhi. Merely because the workman after termination/

retrenchment shifted to Delhi and sent a demand notice from Delhi and the Head Office of the Management was at Delhi, it cannot be said that a part cause of action has arisen at Delhi. Considering the facts that the workman was employed at Ghaziabad; was working at Ghaziabad and his services were terminated at Ghaziabad, the facts being undisputed, only the Ghaziabad Court would have territorial jurisdiction to decide the case."

(v) **Eastern Coalfields Ltd. and Ors. Vs. Kalyan Banerjee; (2008) 3 SCC 456**

In this case, the workman was employed in Mugma area in the district of Dhanbad, Jharkhand. His services were terminated at Mugma. However, the workman filed a writ petition before the Calcutta High Court as the head office of the management was situated within the State of West Bengal. Calcutta High Court held that since the workman was serving at Mugma area under the supervision of the General Manager of the area which is the State of Jharkhand, the Calcutta High Court had no jurisdiction. Affirming the aforesaid decision, the Hon'ble Supreme Court held that the entire cause of action arose in Mugma area within the State of Jharkhand and only because the head office of the company was situated in the State of West Bengal, the same by itself will not confer any jurisdiction upon the Calcutta High Court particularly when the head office had nothing to do with the order of punishment passed against the workman.

(vi) **Paritosh Kumar Pal v. State of Bihar [1984 Lab IC 1254 (Patna) (FB)],**

While examining similar issue, Full bench of the Patna High Court held, inter alia as follows:

> **"*13.*** *Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clear-cut principles or tests for determining jurisdiction emerge, therefrom. For clarity these may be first separately enumerated as under:*
>
> *(i) Where does the order of the termination of services operate?*
>
> *(ii) Is these some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?*
>
> *(iii) That the well-known test of jurisdiction of a Civil Court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable."*

(vii) ***Bageshwar Maurya vs The Management Naveen Projects P. Ltd. (2009) SCC OnLine Del 1970***

The Division Bench of the Delhi High Court held that :

> *"**10.** As pointed out earlier, the appointment letter, transfer order as well as the termination letter were all issued from Delhi, substantial cause of action has thus arisen within the jurisdiction of Delhi. Merely because the appellant was posted in Rajasthan at the time of*

his termination will not oust the jurisdiction of Delhi Government to make a reference to the Labour Court…"

19. In light of the above-mentioned judicial pronouncements, the following legal principle emerges:

(1) There is no specific provision in the ID Act which governs the issue of jurisdiction, hence recourse may be taken to the provisions of Code of Civil Procedure, 1908, for deciding the jurisdictional aspects.

(2) The jurisdiction is to be determined based on the occurrence of cause of action.

(3) The situs of employment is an important factor which determines the jurisdiction.

(4) The cause of action is to be determined by applying the principle as enumerated in Code of Civil Procedure, 1908.

(5) The Court within whose jurisdiction part of cause of action has arisen also has the jurisdiction to entertain the dispute.

20. On careful examination of the present case, this Court notes the following facts:

(i) The workman was posted at Vishakhapatnam.

(ii) He came to Delhi to attend a training program.

(iii) It is the case of the Respondent that the workman never attended the said training program.

(iv) Head Quarters of the Management is situated at Delhi.

(v) The service conditions of the employees are regulated by the management through their Head Quarter situated at Delhi.

(vi) The decision to terminate the services of the workman was taken by the management from their Head Quarters situated at Delhi.

(vii) The termination letter was issued from Delhi under the signature of Executive Director (HQ), Delhi

21. That from the facts narrated herein above, it is evident that even though the situs of employment was in Vishakhapatnam, part of cause of action has arisen in Delhi. The management took the decision to terminate the service of the workman from their Head Quarter situated at Delhi. The termination letter was signed by Executive Director (HQ), Delhi. The said termination letter was issued from Delhi. Hence in view of the law laid down by the Hon'ble Supreme Court in ***Nandram (supra)***, this Court is of the considered view that part of cause of action has arisen in Delhi.

22. As far as the judgment of the Hon'ble Supreme Court in ***V.G. Jagdishan (supra)*** is concerned, the said decision is not applicable to the facts of the case in hand as there was a specific finding in that case that no part of the cause of action had arisen in Delhi. As discussed herein above, in the present case, part of cause of action has arisen in Delhi.

23. In view of the detailed discussions herein above, this Court is of the considered view that part of cause of action has arisen in

Delhi and hence Government of NCT of Delhi is well within its power under Section 10 of the ID Act to refer the dispute for adjudication to the learned Labour Court. Hence the present Writ Petition succeeds, and the impugned Award is hereby set aside.

24. Since the learned Labour Court has not decided the terms of reference, the present matter is remanded back to the learned Labour Court for deciding the terms of reference in accordance with law. Considering the fact that the dispute pertains to the year 1985, the learned Labour Court is directed to decide the present matter as expeditiously as possible and not later than a period of 6 months from the date of pronouncement of this Judgement.

25. With the above direction, present Writ Petition is disposed of. No order as to cost.

GAURANG KANTH, J.

OCTOBER 31, 2022