

(12) In view of the above, this writ petition is allowed with costs and the impugned order, dated 3rd January, 2009 (Annexure P-14) is hereby set aside. The respondents are directed to accept the prayer of the petitioner for change of option from CPF to Pension Scheme and to release the pensionary benefits in accordance with law. The amount of CPF deposited/paid to the petitioner will be adjusted by the respondent University.

(13) The costs are assessed at Rs. 10,000/-.

R.N.R.

Before Mahesh Grover, J.

PREM KUMAR HANDA—Petitioner

versus

NATIONAL HOUSING BANK AND ANOTHER—Respondents

C.W.P. No. 7533 of 2008

2nd December, 2009

Constitution of India, 1950—Art. 226—National Housing Bank (Employees) Pension Regulations, 2003—Regs.2(d), 2(q) and 34(2)—Territorial jurisdiction—Retirement from National Housing Bank—Claim for pension—Neither principal office nor any branch/subordinate office situated within territorial jurisdiction of High Court—Petitioner settling after retirement and receiving some communications within territorial jurisdiction of High Court—Whether High Court competent to entertain a petition—Held, no-Petition dismissed.

Held, that averments which have been made to justify the invocation for the jurisdiction of this Court cannot, by no stretch of imagination, lead to a conclusion that this court had the power to exercise its jurisdiction under Article 226(2) of the Constitution of India so as to pass orders which may affect the authority which is not within its territorial jurisdiction. It has not been disputed that the respondents do not have any subordinate office or branch any where in the country except in New Delhi and simply because the petitioner has settled in Panchkula after retirement and had received

some communications there would not expand the scope of the territorial jurisdiction of this Court. Therefore, this Court declines to exercise its jurisdiction under Articles 226/227 of the Constitution of India in favour of the petitioner on the ground that it has no territorial jurisdiction to do so. The petitioner, if so advised, may file a petition in the Court of competent jurisdiction.

(Paras 16 & 17)

R.S. Mittal, Senior Advocate with Atul Gaur Advocate, *for the petitioner*

Aalok Jagga, Advocate, *for the respondent.*

MAHESH GROVER, J :

(1) The present petition under Articles 226 and 227 of the Constitution of India has been filed with a prayer for issuance of a writ in the nature of mandamus directing the respondents to pay pension due to the petitioner under the National Housing Bank (Employees') Pension Regulations, 2003 (for short, 'the Regulations') along with interest up to date. A further prayer has been made to issue a writ of certiorari for quashing order, dated 20th April 2006 (Annexure P 17) passed by respondent No. 2.

(2) The petitioner has contended that he retired from the service of the National Housing Bank (hereinafter described as 'respondent No. 1') as Executive Director on 31st October, 2000. Prior thereto, he had chequered career having joined the Reserve Bank of India in the initial years and thereafter joined respondent No. 1, w.e.f. 1st March, 1989 and after earning various promotions, retired as Executive Director as stated above. It is the case of the petitioner that the Regulations were notified in the year 2003 and in accordance thereof, he was entitled to receive pension on the basis of ten months average emoluments as contemplated in Regulation 2(d) read with Regulations 2(q) and 34(2) of the Regulations and despite the fact that he had been regularly representing to the respondents, his claim was not being granted and pursuant to his efforts, he had received communication dated 20th April, 2006 from respondent No 2, Informing him that the matter is under consideration and in the same very letter, the following two options were given :—

“(1) To consider the qualifying service for pension upto your service as GM (i.e. Dec. 1997) along with the applicable DR(Part-II). This will result in payment of arrears as shown in the annexure-I.

(2) To consider the qualifying service for pension including your service as ED (up to your retirement in October, 2000) along with applicable DR (Part-III). This will result in recovery of amount paid in excess on account of reduction in DR from 1st May, 2005 to 31st January, 2006 as shown in the Annexure-II”.

(3) The petitioner did not find these to be good options to satisfy his claim and, therefore, he rejected the same and persisted with his claim. Finding no response, he was constrained to file the instant writ petition.

(4) Upon notice having been issued, the respondents entered appearance and filed their written statement in which they took up a preliminary objection that this Court has no territorial jurisdiction to entertain this writ petition because the principal office of respondent No. 1 is situated at New Delhi and no branch or subordinate of it is situated within the territorial jurisdiction of this Court.

(5) When the matter was taken up for hearing, learned counsel for the respondents forcefully raised the objection contained in the preliminary submissions to question the territorial jurisdiction of this Court to answer the petition.

(6) Since it is a settled principle of law that the matter of jurisdiction goes to the entire root of the case, it was thought appropriate to direct the learned counsel for the parties to address arguments on this issue and it is for this reason that the facts of this case have been noticed in brief.

(7) Learned counsel for the petitioner contended that after his retirement, the petitioner has been staying at Panchkula and the entire correspondence which has been entered into between him and the respondents was at Panchkula where letter, Annexure-17 was also served upon him. He, thus, contended that this Court has certainly the jurisdiction to entertain the instant petition and more-so when Article 226(2) of the Constitution of India provides for such a contingency. He placed reliance on **Oil and Natural Gas Commission versus Utpal Kumar Basu and others (1)** wherein it has been held as under :—

“Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the

(1) (1994) 4 S.C.C. 711

fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial."

(8) Learned counsel for the respondents, on the other hand, refuted the contentions raised by the learned counsel for the petitioner and contended that simply because a person was residing at a particular place and had received an order or letter affecting his rights, would not confer jurisdiction on a particular High Court to decide his rights. In support of his contention, he placed reliance on a Division Bench Judgment of this Court in **Gurdial Singh Versus Food Corporation of India (2)**.

(9) I have given my thoughtful consideration to the rival contentions and have perused the material on record.

(10) There is no doubt that according to the provisions of Article 226 of the Constitution of India, the High Court can exercise jurisdiction if the cause of action wholly or partly has arisen within its territorial limits. According to Clause (2) of Article 226, the power conferred under Clause (1) can also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, may arise, warranting exercise of such power notwithstanding the fact that residence of such person is not within those territories. But, what is of essence is as to where the cause of action accrues.

(11) In **State of Rajasthan and others versus Swaika Properties and another (3)**, the Supreme Court categorically held that mere service of notice was not integral part of the cause of action to confer jurisdiction within the meaning of Article 226(2) of the Constitution of India.

12. In **Oil and Natural Gas Commission's case (supra)**, their Lordships observed as under :—

“In the present case even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi ; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because NICCO read the advertisement at Calcutta, submitted the offer from Calcutta, made representations from Calcutta and sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute facts forming an integral part of the cause of action.

(13) To the similar effect is the judgment of this Court in **Gurnam Singh versus Union of India, (4)** wherein it was laid down that the mere service of an order or notice cannot be deemed to confer territorial jurisdiction upon Court.

(14) In **Nakul Deo Singh versus Deputy Commandant, (5)** a Full Bench of Kerala High Court held as under :—

“The fact that a person who was dismissed from service while he was in service outside the State would have to suffer the consequence of that dismissal when he is in his native place by being rendered jobless, is not a fact which constitutes the bundle of facts giving rise to a cause of action in his favour to challenge

(3) 1985 (3) S.C.C. 217

(4) 1994 (3) S.C.T. 386

(5) 2000 (1) S.C.T. 217

his dismissal. That right accrued to him earlier when he was dismissed from service outside the State and he lost his employment. Similarly, when an appeal is filed by him to an appellate authority who is outside the jurisdiction of this High Court and that appeal is dismissed by the appellate authority, the merger in the decision of the appellate authority takes place when the appeal is dismissed and not when the appellant receives the order. What a writ petition needs to plead as a part of his cause of action is the fact that his appeal was dismissed wholly or in part and not the fact that the order was communicated to him. That plea is relevant only to show when the right of action arose in his favour. The receipt of the order only gives him a right of action on the already accrued cause of action and enables him to meet a plea of laches or limitation raised in opposition. That the consequences of a proceeding in the larger sense are suffered by a person in his native place is not a ground to hold that the High Court within the jurisdiction of which the native place is situate is also competent to entertain a writ petition under Article 226 of the Constitution. When a person is dismissed or reduced in rank, he suffers the consequences where he was employed at the relevant time and not in his native place to which he might have retired on his dismissal”.

(15) If the aforesaid position of law is juxtaposed to the facts of the present case, then the averments made in the writ petition clearly show that the petitioner did not even make an attempt to show as to what cause of action accrued to him within the territorial jurisdiction of this Court, apart from receiving notice and response to his notice. Reacting to preliminary objections in the reply filed to the writ petition, he filed a rejoinder in which for the first time, he tried to justify the invoking of jurisdiction of this Court under Article 226 of the Constitution of India. The averments which have been made to justify the invocation of the jurisdiction of this Court have to be perused and for appreciation thereof, the same are reproduced thereunder :—

“The petitioner admittedly retired from services of the National Housing Bank on 31st October, 2000. At that time, there were no pension regulations governing grant of pension to the retiree

employees of respondent no. 1. The pension regulations were framed under the Act under Section 55(2)(1) of the Act by respondent no. 1 and were notified in the Government gazette on 7th May, 2003. At the time of retirement, the petitioner was governed by the Provident Fund regulations according to which an equal amount of money was contributed by respondent No. 1 as was done by the petitioner. On the publication of the pension regulations, respondent No. 1 asked for the options of the petitioner who at that time, was settled at Panchkula at H. No. 262, Sector 4, Panchkula. The letter addressed to the petitioner by respondent No. 1 in this regard was delivered to him by the agent of respondent No. 1, namely, the Post and Telegraph Department of Government of India. By this letter, respondent No. 1 asked the option of the petitioner as to whether he would like to continue to be governed by the Provident Fund or would like to be governed by the Pension Regulations of 2003. This is by means of office order No. 23/2003 of 1st July, 2003. The petitioner exercised the option for being governed by the Pension Regulations by means of his letter dated 11th July, 2003 which is already on the record as Annexure P/2.

The dispute in the present petition is not with regard to the continuance or discontinuance of the services of the petitioner by respondent No.1 for which it may be necessary to determine whether the Head Office or any Branch Office of respondent No. 1 is situated within the territorial jurisdiction of this Hon'ble Court. The matter in dispute in the present writ petition pertains to the correct determination of the amount of pension admissible to the petitioner in accordance with Pension Regulations of 2003 which came into force nearly 3 years after the retirement of the petitioner from the service of the Bank. The cause of action or atleast a part of it has arisen to the petitioner at Panchkula because of the various communications addressed by respondent No. 1 to the petitioner and sent to him through their agent the Indian Postal Services.”

(16) I am afraid; the aforesaid averments cannot, by no stretch of imagination, lead to a conclusion that this Court had the power to exercise its jurisdiction under Article 226(2) of the Constitution of India so as to pass orders which may affect the authority which is not within its territorial jurisdiction. It has not been disputed that the respondents do not have any subordinate office or branch any where in the country except in New Delhi and simply because the petitioner has settled in Panchkula after retirement and had received some communications there would not expand the scope of the territorial jurisdiction of this Court.

(17) Therefore, this Court declines to exercise its jurisdiction under Articles 226/227 of the Constitution of India in favour of the petitioner on the ground that it has no territorial jurisdiction to do so. The petitioner, if so advised, may file a petition in the Court of competent jurisdiction.

(18) This petition is, accordingly, dismissed.

(19) All pending civil miscellaneous applications also stand dismissed in view of the above.

R.N.R.