

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKH AT SRINAGAR**

Reserved on: 18.07.2023  
Pronounced on: 26 .07.2023

**SWP No.1175/2011**

**SHAHNAWAZ AHMAD**

**...PETITIONER(S)**

*Through: - Mr. S. R. Hussain, Advocate,  
with Ms. Anjum, Advocate.*

Vs.

**UNION OF INDIA & ORS.**

**...RESPONDENT(S)**

*Through: - Mr. Nazir Ahmad, Advocate.*

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

- 1)** The petitioner has challenged order bearing No.P.VIII-5/2001-134-EC-II dated 31.07.2001, whereby he has been terminated from service for having remained unauthorizedly absent from duty.
- 2)** Briefly stated, case of the petitioner is that he was enrolled as a member of the Central Reserve Police Force (CRPF) in the year 1995. He applied for 15 days casual leave with effect from 18.09.2000 and the same was sanctioned in his favour. During the leave period, the petitioner returned to his native village at Chawalgam Kulgam but he was kidnapped from his residential house by some unidentified masked gunmen and was taken to some unknown destination. During his confinement, the petitioner was subjected to torture which had a deep

and adverse impact on his nervous system. The incident was reported to Executive Magistrate, Kulgam, who in turn intimated the same to SHO, P/S Kulgam. It has been submitted that the petitioner remained under a prolonged medical treatment and during his absence, respondent No.3 issued an order bearing No.D.II-2/2001-134-EC-II dated 05.03.2001, whereby he was declared as a 'deserter' in terms of Section 9(f) of the CRPF Act. The petitioner was also held liable to be prosecuted for having committed the offence under Section 10(m) of the CRPF Act.

**3)** It seems that initially the petitioner had challenged the order whereby he was declared as 'deserter' by way of instant writ petition but during pendency of the writ petition, the respondents filed objections in which it was averred that services of the petitioner have been terminated in terms of the impugned order. Accordingly, upon amendment of the writ petition, the petitioner has laid challenge to the aforesaid termination order.

**4)** It has been contended by the petitioner that the impugned order of termination is arbitrary and the same has been passed without following the due procedure of law and that the principles of natural justice stand violated. It has been further contended that there was no intention on the part of the petitioner to overstay the leave period but due to the reasons stated above, he was unable to attend the duties, as such, he could not have been declared as a 'deserter'. It has also been

submitted that the impugned order has been passed without his knowledge and without his participation in the enquiry.

5) The respondents have contested the writ petition by filing a reply thereto. In the reply, it has been submitted that the writ petition is not maintainable and the same is liable to be dismissed. It has been further contended that the petitioner had proceeded on casual leave with effect from 18.09.2000 to 09.10.2000 and he was expected to join his duties on 9<sup>th</sup> October, 2000 (AN) but he did not join. It has also been submitted that the petitioner was directed by the Officer Commanding of the concerned battalion to report for duty immediately in terms of his communication dated 15.10.2000 but he failed to respond to the said communication. Thus, according to the respondents, the petitioner has committed an act of disobedience which amounts to misconduct in terms of Section 11(1) of the CRPF Act. Accordingly, a warrant of arrest was issued against the petitioner vide letter dated 08.01.2001.

6) According to respondents, because the petitioner failed to report for duty, he was declared as 'deserter' in terms of order dated 05.03.2001 issued by Commanding Officer and memorandum of charges were sent to him at his home address vide communication dated 17.03.2001. It has been submitted that the petitioner failed to submit any reply to the charges and, accordingly, an enquiry was ordered vide office order dated 10.05.2001. It has been submitted that Enquiry Officer was appointed but the petitioner failed to appear before the Enquiry Officer even after having been provided ample

opportunities to do so. The proceedings were conducted by the Enquiry Officer in exparte against the petitioner and he submitted his report before the Disciplinary Authority on 05.07.2001. The Disciplinary Authority provided one more opportunity to the petitioner to file a representation and a copy of the enquiry report was sent to the petitioner on his home address vide communication dated 10.07.2001 through registered post but the petitioner did not respond to the same. Consequently, the impugned order dated 31.07.2001 came to be passed. No appeal against the said order was filed by the petitioner. It has been submitted that the petitioner has approached this Court after a long gap of ten years without there being any explanation for the delay.

7) I have heard learned counsel for the parties and perused the record.

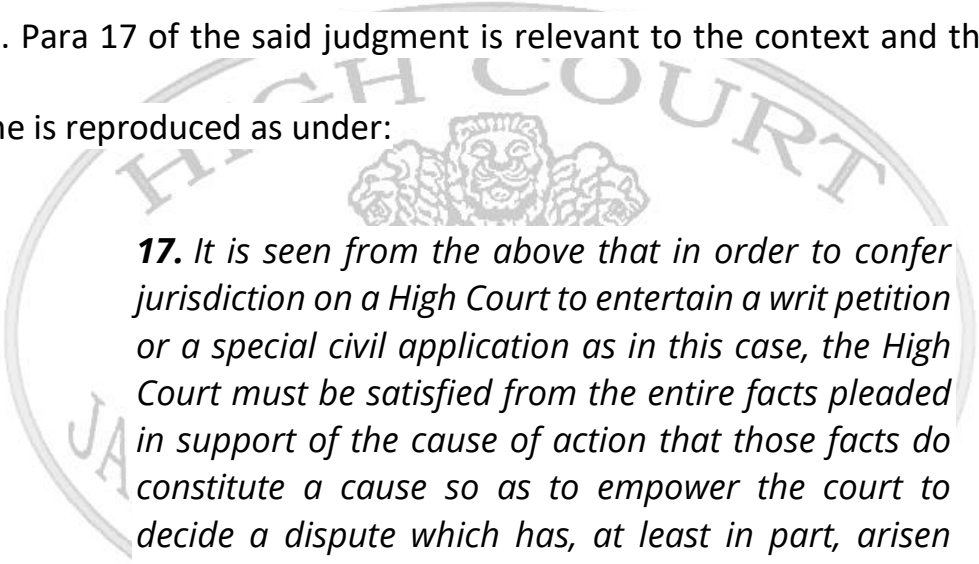
8) Learned counsel for the respondents has raised a preliminary objection to the maintainability of the writ petition on the ground that this Court lacks territorial jurisdiction to entertain the writ petition. It has been submitted that the impugned order of termination as well as the order declaring the petitioner as a 'deserter' have been passed by Commandant 134 Bn. CRPF at places that are outside the territorial limits of this Court. It has been further submitted that even the enquiry proceedings against the petitioner have been conducted at a place that is located outside the territorial limits of this Court, as such, this Court does not have jurisdiction to entertain this writ petition.

**9)** *Per contra*, learned counsel for the petitioner has submitted that the petitioner came to know about the passing of order declaring him as ‘deserter’ as also about the order of his termination in Kashmir, as such, a part of cause of action has arisen within the jurisdiction of this Court and, therefore, this Court has got territorial jurisdiction to entertain the writ petition. It has been submitted that the writ petition has been admitted to hearing and at the time of admission, the respondents have not raised any plea with regard to jurisdiction of this Court, as such, they are estopped from doing so at the time of final hearing of the case.

**10)** In the instant case, the order whereby the petitioner has been declared as a ‘deserter’ has been passed by Commandant of 134 Bn. CRPF at Gulzarbagh Patna, Bihar. The impugned order of termination of services of the petitioner has been passed by the Commandant at Ranchi Jharkhand and the enquiry proceedings have also taken place at Ranchi Jharkhand. All these places are beyond the territorial jurisdiction of this Court.

**11)** The petitioner has alleged that he came to know about the order whereby he was declared as a ‘deserter’ as also the order of his termination while he was in Kashmir, as such, a part of cause of action has arisen within the territorial jurisdiction of this Court. The question that arises for consideration is as to whether knowledge of termination order or the order declaring the delinquent official as a ‘deserter’ would give rise to cause of action.

**12)** In order to confer jurisdiction on a High Court to entertain a writ petition, it must be disclosed that the entire facts pleaded in support of the cause of action do constitute a cause so as to empower the court to decide a dispute which has arisen within its jurisdiction. Each and every fact pleaded by the petitioner in his writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the territorial jurisdiction of this Court unless those facts are such which have a nexus or relevance with the lis involved in the case. In this regard, I am supported by the judgment of the Supreme Court in the case of **Union of India & Ors vs Adani Exports Ltd**, (2002) 1 SCC 567. Para 17 of the said judgment is relevant to the context and the same is reproduced as under:



**17.** *It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of*

*action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.*

**13)** Again, the Supreme Court has, in the case of **Om Prakash Srivastava vs. Union of India**, (2006) 6 SCC 207, observed as under:

*7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.*

**14)** From the foregoing analysis of the law on the subject, it is clear that the cause of action means every fact which it would be necessary for the petitioner to prove, if traversed, in order to support his right to judgment of the court. It does not comprise of every piece of evidence which is necessary to prove each fact but every fact it is necessary to be proved. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the petitioner a right to claim relief against the respondents. It must include some act done by the respondents, since in the absence of such an act no cause of action would possibly accrue or would arise.

**15)** Coming to the facts of the instant case, the fact that the petitioner came to know about the order whereby he was declared as 'deserter' as also the order whereby he was terminated from service when he was at

Kashmir, are not such facts as would form a part of cause of action in his favour. None of the acts that are under challenge in this writ petition have been done by the respondents in Jammu and Kashmir. The plea of receipt of termination order does not give jurisdiction to a Court to entertain the writ petition. It is only those facts which relate termination of services of the petitioner and the enquiry conducted against him that would determine the seat of jurisdiction. All these events have taken place outside the territorial limits of this Court.

**16)** In the above context, I am supported by the judgment of this Court in the case of **Zahoor Ahmad Baba vs. Union of India & Ors.** 2012 (3) JKL 119[HC], wherein this Court has held that only the Court having territorial jurisdiction over the place where the dismissal order was made can entertain the writ petition challenging such dismissal order. It was further held that the mere fact that the petitioner had received copy of the impugned order at Ganderbal within the jurisdiction of this Court does not confer jurisdiction upon this Court to entertain and deal with the petition. The ratio laid down in the aforesaid judgment is squarely applicable to the present case. Therefore, this Court does not have jurisdiction to entertain the writ petition.

**17)** So far as contention of the learned counsel for the petitioner that the respondents are barred from urging the plea regarding maintainability of the writ petition on the ground of territorial jurisdiction in view of their conduct, is concerned, the same appears to be without any merit. It is a settled law that the parties by their conduct



and acquiescence cannot confer jurisdiction on a Court which otherwise does not possess the same. The matter regarding territorial jurisdiction of a court fundamentally relates to taking of cognizance of a case. If a Court, which lacks territorial jurisdiction, entertains a writ petition, it would be an inherent defect which cannot be cured even by consent of the parties. Therefore, even if it is assumed, though it is not correct, that the respondents acquiesced and submitted to the jurisdiction of this Court, still then, because this Court lacks inherent jurisdiction to entertain the writ petition, it cannot adjudicate upon the merits of this case.

**18)** For the foregoing reasons, the preliminary objection raised by the respondents is upheld and the writ petition is dismissed for lack of territorial jurisdiction. The petitioner shall, however, be at liberty to approach the appropriate forum in accordance with the law.

**19)** The record be returned to learned counsel for the respondents.

(Sanjay Dhar)  
Judge

Srinagar

26.07.2023

“Bhat Altaf, PS”

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No