[2020] 12 S.C.R. 279

SHANTI DEVI ALIAS SHANTI MISHRA

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 3630 of 2020)

NOVEMBER 05, 2020

[ASHOK BHUSHAN, R. SUBHASH REDDY AND M.R. SHAH, JJ.]

Constitution of India – Art. 226 – Code of Civil Procedure – s. 20 – Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 – Family Coal Mines Pension Scheme, 1998 – Territorial jurisdiction – The Government notified a Family Coal Mines Pension Scheme, 1998 dated 05.03.1998 – Earlier, the late husband of the appellant did not opt for the said pension scheme – However, later the husband of appellant opted for the pension scheme by notification dated 09.01.2002 – The late husband of the appellant claimed payment for pension from Darbhanga, State of Bihar – A writ petition was filed by the husband of the appellant in Patna High Court where prayed for grant of refund of Rs.1,33,559/- which was wrongly withheld/ illegally deducted from him – The said writ petition was dismissed on 08.02.2013 on the ground of lack of territorial jurisdiction – After dismissal of the said writ petition, the husband of appellant filed writ petition in Jharkhand High Court for the same relief – Thereafter, letters dated 07.10.2013 and 06.11.2013 were issued from the office of Regional Provident Fund Commissioner to the husband of the appellant – The letter stated that since husband of appellant initially had not opted for pension scheme in pursuance of 1998 notification, he could not have opted for pension in the year 2002 – It was further stated that pension was erroneously settled by Regional Commissioner, hence, more than Rs.08 lakhs was to be recovered from the husband of the appellant – It was also communicated through same letters that it was decided to stop payment of monthly pension w.e.f. November, 2013 – Husband of appellant filed another writ petition in Patna High Court where he challenged the letters dated 07.10.2013 and 06.11.2013 – The Single Judge of the High Court after noticing the earlier order of the High Court dated 08.02.2013 and observing that after dismissal of writ petition, the petitioner had filed another writ

petition before the Jharkhand High court and the same was pending, held that the order of stoppage of pension is part of retirement benefit, and petitioner ought to have filed the writ petition before the Jharkhand High Court – Hence, the writ petition challenging letters was again dismissed on ground of lack of territorial jurisdiction – The LPA filed against the order of the Single Judge was also dismissed – On appeal, held: The Single Judge of the High Court did not correctly consider the facts and pleadings in the writ petitions filed – The earlier writ petition was filed for refund of wrongly withheld/ illegally detained amount and the subsequent writ petition challenging letters dated 07.10.2013 and 06.11.2013 was filed when payment of pension after 08 years was stopped and husband of appellant was directed to return the amount of more than Rs.08 Lakhs – The cause of action for filing a subsequent writ petition was entirely different – The Single Judge of the High Court committed error in dismissing the subsequent writ petition because of dismissal of earlier writ petition on the ground of lack of territorial jurisdiction – For a retiree, who is settled and receiving pension at Darbhanga, it cannot be said that it was necessary for him to file his petition in the Jharkhand High Court where his earlier writ petition was pending – The part cause of action had arisen in the territorial jurisdiction of Patna High Court as the husband of appellant was continuously receiving pension for last 8 years in Darbhanga – The stoppage of pension at the same place gave a cause of action – Thus, the said writ petition is revived at the Patna High Court.

Allowing the appeal, the Court

HELD: 1. The Single Judge of the High Court did not correctly consider the facts and pleadings in Writ Petition No.13955 of 2006 and Writ Petition No. 5999 of 2014. The earlier writ petition filed by the petitioner in the year 2006 was where petitioner had prayed for refund of wrongly withheld/illegally detained amount of Rs.1,33,559/-. When the earlier writ petition was filed, there was no issue of non-payment of pension or stoppage of pension since the pension had been started w.e.f. May, 2005. The subsequent Writ Petition No. 5999 of 2014 was filed when payment of pension after 08 years was stopped and

the petitioner was directed to return the amount of Rs.8,09,268/-. The cause of action for filing Writ Petition No.5999 of 2014 was entirely different. The Single Judge committed error in holding that in view of dismissal of the earlier writ petition on the ground of lack of territorial jurisdiction, the Writ Petition is also dismissed. [Para 15][290-D-G]

2. The second reason given by Single Judge that petitioner ought to have filed the writ petition before the Jharkhand High Court also does not commend to this Court. For a retiree, who is settled in Darbhanga and receiving pension at District Darbhhanga, it cannot be said that it was necessary for him to file his petition in the Jharkhand High Court where his earlier writ petition was pending. The subject matter of the earlier writ petition was entirely different and the dismissal of the writ petition does not preclude the petitioner to file subsequent writ petition in the same High Court. [Para 16][290-G-H; 291-A]

3. Form the facts of the present case, this Court is of the considered opinion that part of cause of action has arisen within the territorial jurisdiction of Patna High Court. The deceased petitioner was continuously receiving pension for the last 08 years in his saving bank account in State Bank of India, Darbhanga. The stoppage of pension of late husband of appellant affected him at his native place, he being deprived of the benefit of pension which he was receiving from his employer. The employer requires a retiring employee to indicate the place where he shall receive pension after his retirement. Late husband of appellant had opted for receiving his pension in State Bank of India, Darbhabga, State of Bihar, which was his native place, from where he was drawing his pension regularly for the last 08 years, stoppage of pension gave a cause of action, which arose at the place where the petitioner was continuously receiving the pension. This Court thus, is of the view that the view of the Single Judge as well as the Division Bench holding the writ petition not maintainable on the ground of lack of territorial jurisdiction was completely erroneous and has caused immense hardship to the petitioner. Therefore, the writ petition stands revived before Patna High Court. [Para 29][298-F-H; 299-A-B]

A *Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors*. **(1994) 4 SCC 711 : [1994] 1 Suppl. SCR 252;** *Navinchandra N. Majithia v. State of Maharashtra and Ors.* **(2000) 7 SCC 640 : [2000] 3 Suppl. SCR 82;** *Kunjan Nair Sivaraman Nair v. Narayanan Nair and Ors.* **(2004) 3 SCC 277 : [2004] 2 SCR 202;** *Kusum Ingots & Alloys Ltd. v. Union of India and Anr.* **(2004) 6 SCC 254 : [2004] 1 Suppl. SCR 841;** *Nawal Kishore Sharma v. Union of India and Ors.* **(2014) 9 SCC 329 : [2014] 7 SCR 1027 – relied on.**

C *Saryu Singh v. The Union of India and Ors.* **2015 (2) PLJR 256 – referred to.**

Case Law Reference

[1994] 1 Suppl. SCR 252	**relied on**	**Para 21**
[2000] 3 Suppl. SCR 82	**relied on**	**Para 22**
[2004] 2 SCR 202	**relied on**	**Para 24**
[2004] 1 Suppl. SCR 841	**relied on**	**Para 25**
[2014] 7 SCR 1027	**relied on**	**Para 26**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3630 of 2020.

F From the Judgment and Order dated 03.05.2018 of the High Court of Judicature at Patna in Letters Patent Appeal No. 1265 of 2017.

Arvind Kumar Gupta, Rishi Bharadwaj, Shaurya Dogra, Abhiesumat Gupta, Jayant K. Sud, Adv. G.S. Makker, Sreekumar C.N., Bhuvan Kapoor, Uddyam Mukherjee, Krishnayan Sen, Lalit Kumar, Kaustubh Shukla, Parijat Kishore, Abhay Singh, Advs. for the appearing parties.

H

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. Leave granted.

2. This appeal has been filed questioning the Division Bench judgment of Patna High Court in Letters Patent Appeal No.1265 of 2017 dismissing the Letters Patent Appeal of the appellant. Letters Patent Appeal was filed against the judgment of learned Single Judge dated 04.08.2017 by which Writ Petition No.5999 of 2014 filed by her late husband in which she was substituted after death of her husband was dismissed by learned Single Judge on the ground of lack of territorial jurisdiction.

3. Brief facts of the case for deciding this appeal are:

3.1 The husband of the appellant Shri Bashishtha Narayan Mishra was employed in Coal India Limited. He was working at Moira Colliery, Bankola Area, District Burdwan, West Bengal. Ministry of Coal, Government of India in exercise of power under Section 3E of Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 and in supersession of the Coal Mines Family Pension Scheme, 1971 notified a Family Coal Mines Pension Scheme, 1998 dated 05.03.1998. Late husband of the appellant did not opt for the pension Scheme notified under Notification dated 05.03.1998.

3.2 By Notification dated 09.01.2002 Coal Mines Pension Scheme, 1998 was amended by inserting paragraph 2A in the Scheme providing that an employee, who had not opted for the Coal Mines Family Pension Scheme, 1971 but is covered by the Provident Fund Scheme may opt for pension within a period of nine months. After the Notification dated 09.01.2002, the same was circulated by Eastern Coal Fields Limited to all Regional Commissioners/ Assistant Commissioners.

3.3 The husband of the appellant in pursuance of the Notification dated 09.01.2002 submitted the option opting for Pension Scheme, which option was forwarded to the Sr. Personnel Officers by Manager, Moira Colliery by

letter dated 18.11.2003 requesting for transfer of Rs.1,38,164/- from provident fund account of B.N. Mishra to his pension fund. By further letter dated 20.11.2003 of Regional Commissioner, it was informed that amount of Rs.48,467/- has been adjusted under para 4(2) of Scheme, 1998. Late B.N. Mishra was to retire on 30.04.2005. His papers for settlement of pension were forwarded to The Regional Commissioner–1, Coal Mines Provident Fund, Asansol. By letter dated 30.11.2005 written by Regional Commissioner, Coal Mines Provident Fund, Region-1, Asansol, the late husband of the appellant was asked to deposit the amount of Rs.39,198/- towards recovery of pension contribution. The pension was sanctioned to Shri Mishra after about 14 months from retirement, thereafter, he started receiving pension w.e.f. May, 2005.

3.4 Late Shri B.N. Mishra being native of Village Bhuskol, Police Station, Darbhanga, District Darbhanga, he had claimed payment for pension from Darbhanga, State of Bihar. Pension started in account of Late Shri B.N. Mishra with State Bank of India, Darbhanga, State of Bihar. A Writ Petition No. 13955 of 2006 was filed by late Shri B.N. Mishra in Patna High court where he prayed for grant of refund of Rs.1,33,559/-, which was wrongly withheld/ illegally deducted from the writ petitioner. The said writ petition was dismissed on 08.02.2013 on the ground of lack of territorial jurisdiction. Learned Single Judge held that petitioner served in the State of West Bengal under the authorities and organizations which are located either in States of West Bengal or Jharkhand, hence, High Court of Patna had no territorial jurisdiction.

3.5 After dismissal of the above Writ Petition No.13955 of 2006 on 08.02.2013, late Shri B.N. Mishra filed Writ Petition No. 4930 of 2013 in Jharkhand High Court for the relief which he had claimed in the Writ Petition No.13955 of 2006 before Patna High Court. When notice of the writ petition filed by late Shri B.N. Mishra in Jharkhand High Court was received by office of Regional Provident Fund Commissioner, Asansol, a letter dated

07.10.2013 was issued to the husband of the appellant at his place of residence, i.e., Village Bhuskol, Police Station Darbhanga, District Darbhanga, State of Bihar stating that Shri B.N. Mishra having not opted initially for pension scheme in pursuance of 1998 notification, he could not have opted for pension in the year 2002. It was stated that Pension of Shri B.N. Mishra was erroneously settled by Regional Commissioner, hence, Rs.8,01,334/- is to be recovered towards pension payment from May, 2005 to September, 2013.

3.6 By further letter dated 06.11.2013 issued by Regional Commissioner, Coal Mines Provident Fund, Region-1, Asansol, he was directed to refund amount of Rs.8,09,268/- and entire pension contribution alongwith interest. He was communicated that it has been decided to stop payment of monthly pension w.e.f. November, 2013. After receipt of the letter dated 07.10.2013, Shri B.N. Mishra sent a reply on 07.11.2013 stating that letter dated 07.10.2013 has been issued due to personal bias arising due to punitive action taken by appropriate authorities against Regional Commissioner, Region-1, Asansol on a petition filed by Shri B.N. Mishra under the Right to Information Act, 2005. Petitioner sent representations to Secretary, Ministry of Coal and Commission.

3.7 A Writ Petition No. 5999 of 2014 was filed by late Shri B.N. Mishra in Patna High Court where he challenged the letter dated 07.10.2013 and 06.11.2013 and also sought direction for payment of pension to the petitioner with interest. The writ petition came for hearing before learned Single Judge on 04.08.2017. Learned Single Judge noticed the earlier order of the High Court dated 08.02.2013 by which his earlier Writ Petition No.13955 of 2006 was dismissed on the ground of lack of territorial jurisdiction. Learned Single Judge observed that on similar facts, the said writ petition having been dismissed on 08.02.2013 on the ground of lack of territorial jurisdiction and writ petition having been filed by petitioner before the Jharkhand High

Court, which is pending, the order of stoppage of pension is part of retirement benefit, hence, the writ petition is dismissed on the ground of lack of territorial jurisdiction. A LPA No.1265 of 2017 was filed against the judgment of learned Single Judge dated 04.08.2017. During the pendency of writ petition, Shri B.N. Mishra died and his wife Shanti Devi was substituted as writ petitioner. LPA was filed before the Division Bench against the judgment of learned Single Judge, which has been dismissed by the impugned judgment, aggrieved by which order, this appeal has been filed.

4. We have heard Shri Arvind Kumar Gupta, learned counsel for appellant, Shri Sreekumar C.N., for the respondent Nos. 1 to 3 and Shri Kaustubh Shukla for respondent Nos. 5 and 8. Shri Uddyam Mukherjee appeared for respondent No.4.

5. Learned counsel for the appellant submits that High Court committed error in dismissing the writ petition on the ground of lack of territorial jurisdiction. High Court of judicature at Patna had territorial jurisdiction to entertain the writ petition. The part of cause of action had arisen within the territorial jurisdiction of Patna High Court. Late Shri B.N. Mishra was receiving pension from State Bank of India, Darbhanga w.e.f. May, 2005 after his retirement on 30.04.2005. After issuance of order dated 07.10.2013 and 06.11.2013 directing for refund of amount of Rs.8.01.334/- and 8,09,268/- and stopping the pension w.e.f. November, 2013, the cause of action arose at Darbhanga where late Shri B.N. Mishra was residing and receiving pension. The earlier Writ Petition No.13955 of 2006 was filed on different cause of action where the substantial prayer was for refund of the amount illegally deducted whereas Writ Petition No.5999 of 2014 was on entirely different cause of action. Late Shri B.N. Mishra was receiving pension at Darbhanga, which pension having been stopped from November, 2013, the cause of action arose within the territorial jurisdiction of Patna High Court and learned Single Judge as well as the Division Bench erred in dismissing the writ petition relying on dismissal of earlier writ petition whereas cause of action of both the writ petitions were different and the Writ Petition No. 5999 of 2014 could not have been dismissed on the ground of lack of territorial jurisdiction.

6. Learned counsel for the respondent Nos.1 to 3 submits that the writ petition had rightly been dismissed on the ground of lack of territorial jurisdiction. He submits that late Shri B.N. Mishra after dismissal of the writ petition had filed writ petition in the Jharkhand High Court, which writ petition was still pending when he filed Writ Petition No.5999 of 2014 and the writ petition could not have been entertained by Patna High Court. Learned counsel for the respondent Nos. 1 to 3 does not dispute that part of cause of action arose in territorial jurisdiction of Patna High Court, however, he submits that on the principle of ***forum conveniens***, the writ petition could not have been entertained at Patna and the writ petition ought to have been prosecuted in the Jharkhand High Court.

7. Learned counsel for the respondent Nos. 5 and 8, Shri Kaustubh Shukla submits that late Shri B.N. Mishra had served in Eastern Coal Fields Ltd. at West Bengal and had retired on 30.04.2005 from Burdwan, West Bengal. It is submitted that Shri B.N. Mishra having accepted the jurisdiction of the Jharkhand High Court could not have filed writ petition at Patna High Court. The husband of the appellant had not opted for the Coal Mines Pension Scheme in 1998 but he opted for the Scheme second time in the year 2002 after subsequent notification dated 09.01.2002. The deductions made by Regional Provident Fund Commissioner was in accordance with Coal Mines Pension Scheme, 1998. Earlier writ petition filed by petitioner being Writ Petition No.13955 of 2006 having bene dismissed by the Patna High Court on the ground of lack of territorial jurisdiction and no appeal having been filed by Shri B.N. Mishra the said judgment became final. Shri B.N. Mishra after dismissal of his earlier writ petition filed Writ Petition No.4930 of 2013 before the Jharkhand High Court at Ranchi, which clearly proves that Shri B.N. Mishra had accepted the jurisdiction of Jharkhand High Court and pursued his writ petition there. The mere fact that letters dated 07.10.2013 and 06.11.2013 were received at Darbhanga, the Patna High Court shall have no territorial jurisdiction to entertain the writ petition.

8. Learned counsel appearing for the respondent No.4 also adopted the above submissions.

9. Learned counsel for the parties have also placed reliance on various judgments of this Court as well as judgment of Patna High Court, which shall be noticed while considering the submissions in detail.

10. From the submissions of the learned counsel for the parties and the materials on record, the following questions have arisen in this appeal:-

(i) Whether the writ petition filed by late Shri B.N. Mishra being Writ Petition No. 5999 of 2014 is similar to Writ Petition No. 13955 of 2006 and the Patna High Court had territorial jurisdiction to entertain the writ petition?

(ii) Whether part of cause of action for filing the Writ Petition No. 5999 of 2014 arose within the territorial jurisdiction of Patna High Court?

11. Both the questions being interrelated are being taken together. We may first notice the relevant pleadings in Writ Petition No. 5999 of 2014, which are the material facts or integral facts for claiming relief in the writ petition. In paragraph 5 of the writ petition, petitioner had pleaded that he retired on 30.04.2005 and thereafter settled at his native place in Darbhanga District, State of Bihar where in his savings account with State Bank of India, Darbhanga his monthly pension is being paid since May, 2005. In paragraphs 20 and 22, petitioner has pleaded about the letter dated 07.10.2013 issued by Regional Provident Fund Commissioner, Region-1, Asansol and the letter dated 06.11.2013. Paragraphs 5, 20 and 22 are extracted below for ready reference:-

> **"5.** That the petitioner was subsequently promoted as Personnel Manager in Moira Colliery, Eastern Coal Fields Ltd., Bankola Area, P.O. Moira, Dist. – Burdwan from where he retired from service on 30/04/2005 and thereafter settled at his native village in Darbhanga Dist., Bihar where in his S/B A/C with State Bank of India, Darbhanga his monthly pension is being paid since May, 2005.
>
> Copy of notice of Super-annuation vide letter no. ECL/C-5 (D) Superannuation/EE 1572 dated 23/24/11/2004 is annexed herewith and marked as Annexure-1.
>
> **20.** That upon receipt of a copy of writ petition from the learned Central Govt. Counsel the Regional P.F. Commissioner, Region-1, Asansol issued a notice vide No. CPF/32/Legal/B.N. Mishra/R-1/ASN/3481 dated 7/10/2013 whereby he declared the payment of pension to the petitioner from May 2005 till date as wholly

against the provisions of Para-15 of Coal Mines Pension Scheme 1998 which says that option once exercised shall be final and since the petitioner had firstly submitted a negative option so the subsequent submission of option in the affirmative is against the Scheme. Further the petitioner was also directed to refund the entire amount of pension amounting to Rs.8,01,334/- with interest paid to him from May 2005 to October 2013. Furthermore, the pensioner was also informed vide the aforesaid notice that payment of pension to him shall be stopped from November, 2013.

Copy of letter no. CPF/32/Legal/B.N. Mishra/R-1/ASN/3481 dated 7/10/2013 along with relevant portion of Para-15 of CMPS 1998 is annexed herewith and marked as Annexure-12.

22. That the Regional P.F. Commissioner did not wait for a reply from the petitioner to the notice issued by him and instead in a haste issued letter No. CPF/32/1/Legal/B.N. Mishra/R-1/4056 dated 6/11/2013 whereby he stopped payment of pension to the petitioner from the month of Nov. 2013 and also directed him to refund the entire amount of pension paid to the petitioner from May 2005 to Oct. 2013 amounting to Rs.8,09,268/-.

Copy of letter no. CPF/32/1/Legal/B.N. Mishra/R-1/4056 dated 6/11/2013 is annexed herewith and marked as Annexure-14."

12. The copy of the letters dated 07.10.2013 and 06.11.2013 were also annexed with the writ petition, which were addressed to late Shri B.N. Mishra at his address of Village Bhusakoul, Police Station Darbhanga Sadar, District Darbhanga, State of Bihar. Petitioner after receipt of the letter dated 07.10.2013 immediately represented on 07.11.2013. There is no dispute between the parties that the pension of late Shri B.N. Mishra was stopped from November, 2013 and the Writ Petition No.5999 of 2014 was filed after stoppage of pension, which he was getting for the last 08 years. Further by letter dated 06.11.2013, petitioner was also directed to return the amount of Rs.8,09,268/-, which was amount of pension he received in his bank account in State Bank of India, Darbhanga from May, 2005.

13. We may first notice the order of learned Single Judge dismissing the writ petition on the ground of lack of territorial jurisdiction dated

04.08.2017. Paragraph 5 of the judgment gives reasons for dismissing the writ petition. In paragraph 5, mainly two reasons have been given by the learned Single Judge for dismissing the writ petition; (i) Earlier Writ Petition No.13955 of 2006 for grant of retiral benefits was dismissed on 08.02.2013 on the ground of lack of territorial jurisdiction. The petitioner did not move in LPA or before the Supreme Court; and (ii) When the petition of payment of retiral benefits is pending before the Jharkhand High Court, the petitioner should have filed the writ petition before the same High court against the order of stoppage of pension as the payment of pension is also a part of retiral benefits.

14. In the LPA against the order of learned Single Judge, Division Bench vide judgment dated 03.05.2018 after quoting paragraphs 4 and 5 of the judgment of the learned Single Judge, Patna High Court observed that:-

> "We do not find any legal infirmity in the view so taken by the learned Single Judge. The appeal is dismissed."

15. The learned Single Judge did not correctly consider the facts and pleadings in Writ Petition No.13955 of 2006 and Writ Petition No. 5999 of 2014. The earlier writ petition filed by the petitioner in the year 2006 was where petitioner had prayed for refund of wrongly withheld/ illegally detained amount of Rs.1,33,559/-. When the earlier writ petition was filed, there was no issue of non-payment of pension or stoppage of pension since the pension had been started w.e.f. May, 2005. The subsequent Writ Petition No. 5999 of 2014 was filed when payment of pension after 08 years was stopped and the petitioner was directed to return the amount of Rs.8,09,268/-. The cause of action for filing Writ Petition No.5999 of 2014 was entirely different. The learned Single Judge committed error in holding that in view of dismissal of the earlier writ petition on the ground of lack of territorial jurisdiction, the Writ Petition is also dismissed.

16. The second reason given by learned Single Judge that petitioner ought to have filed the writ petition before the Jharkhand High Court also does not commend us. For a retiree, who is settled in Darbhanga and receiving pension at District Darbhhanga, it cannot be said that it was necessary for him to file his petition in the Jharkhand High Court where his earlier writ petition was pending. The subject matter of the earlier writ petition was entirely different and the dismissal of the writ

petition does not preclude the petitioner to file subsequent writ petition in the same High Court.

17. The Division Bench of the High Court did not advert to the facts or pleadings of the writ petition and only after quoting paragraphs 4 and 5 of the judgment of the learned Single Judge dismissed the writ petition without adverting to any issue, which was raised in the LPA by the writ petitioner. Copy of the grounds of LPA No. 1265 of 2017 has been filed as Annexure P-24, which indicate that petitioner has clearly pleaded the relevant facts and specifically stated that cause of action arisen in the year 2013 cannot be subject matter of writ petition filed 08 years ago in the year 2006. The main pleadings in the writ petition were not dealt with by the High Court and the High Court having dismissed the writ petition on the ground of lack of territorial jurisdiction, we need to advert as to whether there was any **cause of action** for entertaining the writ petition by Patna High Court.

18. Mulla on the Code of Civil Procedure while commenting on Section 20 of the Civil Procedure Code defined cause of action in following words:-

> "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 action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact by which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court……."

19. P. Ramanatha Aiyar in Advanced Law Lexicon, 3rd Edition, Volume 1, has defined the cause of action in following words:-

> "'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the

A subject matter of the grievance founding the action, not merely the technical cause of action."

20. Black's Law Dictionary defines the cause of action in following words:-

B "A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person……"

21. This Court had occasion to consider the cause of action in context of Article 266 of the Constitution and has explained the expression "**cause of action**" in large number of cases. We may refer to a Three C Judge Bench judgment of this Court in **Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Ors., (1994) 4 SCC 711** where in paragraphs 5 and 6 following has been laid down:-

D **"5.** Clause (1) of Article 226 begins with a non obstante clause — notwithstanding anything in Article 32 — and provides that every High Court shall have power "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, for the enforcement of any of the rights conferred by Part III or for any other purpose. E Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of F Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the 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 G 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. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. H That is at best its case in the writ petition.

6. It is well settled that 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. In *Chand Kour* v. *Partab Singh* [ILR (1889) 16 Cal 98, 102 : 15 IA 156] Lord Watson said:

> "… the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

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. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

22. This Court in **Navinchandra N. Majithia Vs. State of Maharashtra and Ors., (2000) 7 SCC 640** had occasion to consider territorial jurisdiction of High Court under Article 226(2). Dealing with constitutional amendment made in Article 226(2), this Court laid down following in paragraph 37:-

> **"37.** The object of the amendment by inserting clause (2) in the article was to supersede the decision of the Supreme Court in *Election Commission* v. *Saka Venkata Subba Rao* [AIR 1953 SC 210] and to restore the view held by the High Courts in the decisions cited above. Thus the power conferred on the High

A Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which "the cause of action, wholly or in part, arises" and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts."

B

23. It was further held that the collocation of the words "cause of action, wholly or in part, arises" seems to have been lifted from Section 20 of the Code of Civil Procedure. This Court also quoted the definition of "cause of action" given by Lord Esher in Read Vs. Brown in paragraph 39. In paragraphs 38, 39 and 41, following was laid down:-

C

"38. "Cause of action" is a phenomenon well understood in legal parlance. Mohapatra, J. has well delineated the import of the said expression by referring to the celebrated lexicographies. The collocation of the words "cause of action, wholly or in part, arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the courts. As per that section the suit could be instituted in a court within the legal limits of whose jurisdiction the "cause of action wholly or in part arises". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean "the bundle of facts which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court".

D

E

39. In *Read* v. *Brown* [(1888) 22 QBD 128 : 58 LJQB 120 : 60 LT 250 (CA)] Lord Esher, M.R., adopted the definition for the phrase "cause of action" that it meant

F

> "every 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. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved".

G

41. Even in the context of Article 226(2) of the Constitution this Court adopted the same interpretation to the expression "cause of action, wholly or in part, arises" vide *State of*

H

Rajasthan v. *Swaika Properties* [(1985) 3 SCC 217]. A three-Judge Bench of this Court in *Oil and Natural Gas Commission* v. *Utpal Kumar Basu* [(1994) 4 SCC 711] observed that it is well settled that 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. Having given such a wide interpretation to the expression Ahmadi, J. (as the learned Chief Justice then was) speaking for M.N. Venkatachaliah, C.J. and B.P. Jeevan Reddy, J., utilised the opportunity to caution the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own choice or convenience. The following are such observations. (SCC p. 722, para 12)

> "If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

24. In **Kunjan Nair Sivaraman Nair Vs. Narayanan Nair and Ors., (2004) 3 SCC 277**, this Court explained the expression "cause of action" and has quoted with approval the cause of action as defined by Halsbury's Laws of England in paragraph 16 and 17:-

> **"16.** 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 action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with

A the right itself. Compendiously the expression means every fact which 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".

B

17. In *Halsbury's Laws of England* (4th Edn.) it has been stated as follows:

> "'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

C

D

25. Another judgment which needs to be noticed is **Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr., (2004) 6 SCC 254** wherein this Court reiterated the meaning of cause of action in paragraph 6. This Court reiterated that even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter. In paragraph 18, following was held:-

E

> **"18.** The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court."

F

26. Another judgment which has been relied by learned counsel for the appellant is **Nawal Kishore Sharma Vs. Union of India and Ors., (2014) 9 SCC 329**. In the above case, the petitioner had filed a writ petition seeking various reliefs including disability compensation and pecuniary damages. The petitioner approached the Patna High Court for grant of various reliefs. Although, he was declared unqualified by orders issued by the Shipping Department, Government of India, Mumbai.

G

H

This Court held that Patna High Court has a jurisdiction to entertain the petition. Following was laid down in paragraph 17:-

> **"17.** We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscle disease). As a result, the Shipping Department of the Government of India issued an Order on 12-4-2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the district of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, the appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing problem which forced him to stay in his native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation."

27. Learned counsel for the appellant has also placed reliance on a Division Bench judgment of Patna High court in **Saryu Singh Vs. The Union of India and Ors., 2015(2) PLJR 256**. The above was a case where the petitioner had claimed the due pensionary benefits whose grievance was that payment made to him was less payment. In the

above context, the Division Bench in paragraphs 63, 64 and 66 laid down following:-

> **"63.** Recently pointed out the Supreme Court, in *Nawal Kishore Sharma* v. *Union of India*, reported in (2014) 9 SCC 329, that the question, whether or not *cause of action*, wholly or in part, has arisen within the territorial limit of any High Court, shall have to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution of India. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.
>
> **64.** In the backdrop of the position of law, as discussed above, it needs to be noted that the writ petitioner was, admittedly, an employee of Coal India Limited and as per the terms and conditions of his employment, the writ petitioner, as an employee, is, admittedly, required to be paid his pension and pensionery benefits by his employer at Patna.
>
> **66.** If, therefore, the writ petitioner is not paid the sum of money, which is due and payable to him as pension and pensionery benefits, at Patna, it becomes obvious that his right to receive due and payable pension and pensionery benefits, at Patna, is being denied; consequently the infringement of his right or his sufferance of injury is at Patna."

28. The above judgment of the same High Court was relevant in the facts of the present case, which judgment although was delivered prior in time, but was not noticed by the learned Single Judge as well as the Division Bench.

29. Form the facts of the present case, we are of the considered opinion that part of cause of action has arisen within the territorial jurisdiction of Patna High Court. The deceased petitioner was continuously receiving pension for the last 08 years in his saving bank account in State Bank of India, Darbhanga. The stoppage of pension of late B.N. Mishra affected him at his native place, he being deprived of the benefit of pension which he was receiving from his employer. The employer requires a retiring employee to indicate the place where he shall receive pension after his retirement. Late Shri B.N. Mishra had opted for receiving his pension in State Bank of India, Darbhabga, State

of Bihar, which was his native place, fromwhere he was drawing his pension regularly for the last 08 years, stoppage of pension gave a cause of action, which arose at the place where the petitioner was continuously receiving the pension. We, thus, are of the view that the view of the learned Single Judge as well as the Division Bench holding the writ petition not maintainable on the ground of lack of territorial jurisdiction was completely erroneous and has caused immense hardship to the petitioner.

30. Another submission which has been advanced by learned counsel for the respondent Nos. 1 to 3 is that the writ petition was rightly dismissed on the principle of *forum* ***non conveniens.*** *Forum non conveniens* has been defined by P. Ramanatha Aiyar, Advanced Law Lexicon, 3rd Edition in following words:-

> "The principle that a case should be heard in a Court of the place where parties, witnesses, and evidence are primarily located."

31. Black's Law Dictionary defines *forum conveniens* in following words:-

> "The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses."

32. This Court in **Kusum Ingots & Alloys Ltd. (supra)** has also referred to principle of forum conveniens. Following was stated in paragraph 30:-

> ***"Forum conveniens***
>
> **30.** We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.[See *Bhagat Singh Bugga* v. *Dewan Jagbir Sawhney* [AIR 1941 Cal 670], *Madanlal Jalan*v. *Madanlal* [AIR 1949 Cal 495], *Bharat Coking Coal Ltd.* v. *Jharia Talkies & Cold Storage (P) Ltd.* [1997 CWN 122], *S.S. Jain & Co.* v. *Union of India* [(1994) 1 CHN 445] and *New Horizons Ltd.* v. *Union of India* [AIR 1994 Del 126]."

33. As noted above, the learned single Judge has also observed that petitioner ought to have filed the writ petition in Jharkhand High Court where his earlier writ petition was pending. The earlier writ petition which was initially filed in 2006 in Patna High Court was for refund of the amount as noted above. After dismissal of the writ petition by Patna High Court on the ground of lack of territorial jurisdiction, Shri B.N. Mishra had filed a Writ Petition No.4930 of 2013 in Jharkhand High Court for the relief which was claimed in Writ Petition No.13955 of 2006. As noted above, the cause of action for filing the Writ Petition No. 5999 of 2014 was entirely different. Stoppage of pension and asking for refund of more than Rs. 08 lakhs amount had serious adverse effect on the petitioner, who was staying at his native place Darbhanga. A retired employee, who is receiving pension, cannot be asked to go to another court to file the writ petition, when he has a cause of action for filing a writ petition in Patna High Court. For a retired employee convenience is to prosecute his case at the place where he belonged to and was getting pension. The submission of the learned counsel for the respondent Nos.1 to 3 on principle of *forumnon conveniens* has no substance.

34. In result, we allow the appeal, set aside the judgment of the Patna High Court and hold that Writ Petition No. 5999 of 2014 was fully maintainable at Patna High Court and learned Single Judge and Division Bench committed error in dismissing the writ petition on the ground of lack of territorial jurisdiction. The writ petition stands revived before the Patna High Court.

35. We are also of the view that appellant is entitled for an interim order in the writ petition for her sustenance. The appellant's husband, who had filed the writ petition had died during the pendency of the writ petition. After his death, the appellant, the widow was substituted. Six years have passed after filing of the writ petition wherein stoppage of pension was questioned. Appellant being the widow is also entitled for pensionary benefit for her sustenance since her husband was receiving pension. We are of the view that during the pendency of the writ petition the appellant is entitled to be paid provisional pension which shall be subject to final decision in the writ petition. We, therefore, direct respondent Nos.4 to 8 to ensure that provisional pension to the appellant is paid from the month of December, 2020, which shall be subject to final orders passed in the writ petition. The appeal is allowed accordingly.

Ankit Gyan Appeal allowed.