IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 20th OF JUNE, 2023

WRIT PETITION No. 6340 of 2017

BETWEEN:-

STATE BANK OF INDIA THROUGH ASSISTANT GENERAL MANAGER REGIONAL BUSINESS OFFICE-6, BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ASHISH SHROTI - ADVOCATE)

AND

ANANDILAL DABKARA S/O SHRI MATHURALAL DABKARA R/O SAJJAN MILL ROAD OVER BRIDGE BEHIND RAM MANDIR, SAKHWAL NAGAR, RATLAM (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ARUN KUMAR SONI – ADVOCATE)

WRIT PETITION No. 6331 of 2017

BETWEEN:-

STATE BANK OF INDIA THROUGH ASSISTANT GENERAL MANAGER REGIONAL BUSINESS OFFICE-6, BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ASHISH SHROTI - ADVOCATE)

AND

VIJAY BAHADUR SODHA S/O SHRI HARINARAYAN SODHA R/O 359 KASTURBA NAGAR, DISTRICT RATLAM (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ARUN KUMAR SONI – ADVOCATE)

WRIT PETITION No. 6333 of 2017

BETWEEN:-

STATE BANK OF INDIA ASSISTANT GENERAL MANAGER REGIONAL BUSINESS OFFICE-6, BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ASHISH SHORTI - ADVOCATE)

AND

1. **MUKESH KUMAR SHARMA S/O NOT MENTION R/O H.NO. 17 BANGARO KA VAS, MADAHVPUR RATLAM, DISTRICT RATLAM (MADHYA PRADESH)**

2. **CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT JABALPUR GOLE BAZAR WRIGHT TOWN, DISTRICT JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ARUN KUMAR SONI – ADVOCATE FOR RESPONDENT NO.1)

WRIT PETITION No. 6335 of 2017

BETWEEN:-

STATE BANK OF INDIA THROUGH ASSISTANT GENERAL MANAGER REGIONAL BUSINESS OFFICE-6, BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ASHISH SHROTI - ADVOCATE)

AND

SAUBHAGYAMAL PAUDWAL S/O SHRI GANESHILAL PAUDWAL R/O H.NO. 83, SUKHLAL NAGAR, RANG KHARHANA KAPAL KUNJ, DISTRICT RATLAM (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ARUN KUMAR SONI - ADVOCATE)

……

These petitions coming on for admission this day, the court passed the following:

ORDER

By this common order, **W.P. No.6340/2017** (State Bank of India Vs. Anandilal Dabkara) **W.P. No.6331/2017** (State Bank of India Vs. Vijay Bahadur Sodha), **W.P. No.6333/2017** (State Bank of India Vs. Mukesh Kumar Sharma) and **W.P. No.6335/2017** (State Bank of India Vs. Saubhagyamal Paudwal) shall be decided.

2. The undisputed fact is that the respondent, namely; Anandilal Dabkara (in W.P. No.6340/2017), Vijay Bahadur Sodha (in W.P. No.6331/2017) Mukesh Kumar Sharma (in W.P. No.6333/2017) and Saubhagyamal Paudwal (in W.P. No.6335/2017) have worked for 78 days, 83 days, 81 days and 80 days respectively.

3. For the sake of convenience, the facts of W.P. No.6340/2017 shall be taken up.

4. It is the case of the respondent that he had worked at Ratlam Branch of SBI temporarily on daily wages basis for a period of 78 days from 29/03/1985 to 16/06/1985. Pursuant to a bi-partite settlement entered into between the management of the Bank and the workmen federation, it was agreed upon between the parties to give an opportunity of permanent appointment on available vacancies to the

persons working on daily wages basis in the Bank. The respondent was also called for interview and was placed in the panel of selected candidates. Since he was down below in the panel, therefore he was not given the permanent appointment for want of vacancy and the merit list stood expired on 31/03/1997. The respondent raised an industrial dispute, which was ultimately referred to CGIT, Jabalpur. By the impugned Award, the Tribunal has answered the reference in favour of the respondent and has directed for absorption with effect from the date of order of reference with 25% back wages. The main ground for allowing the reference was that the respondent was interviewed in the year 1989, however the select list pertaining to the said interview was not placed on record. The list placed on record is of the year 1997 in which the respondent was placed much below and thus, it was held that the management of the SBI has suppressed the select list of the year 1989.

5. Challenging the Award passed by the CGIT, Jabalpur, it is submitted by the counsel for the petitioner that the CGIT has travelled beyond the pleadings of the parties. It was not the case of anybody that multiple merit lists were prepared. It is submitted that after a bi-partite agreement took place between the management of the Bank and All India SBI Staff Federation, process had started for preparing the merit list for giving the permanent appointment to the daily wagers. The procedure continued till 1997 and accordingly, the final merit list was prepared and since the respondent was down below in the said merit list, therefore he was not granted regular appointment. It is further submitted that in absence of any pleading, the petitioner cannot be taken by surprise for the reason that no amount of evidence can be looked into

unless a plea is raised. Even otherwise, by referring to the evidence of the respondent, it is submitted that neither in the examination-in-chief nor in the cross-examination the respondent had uttered a single word challenging the consolidated merit list prepared by the petitioner.

6. *Per contra*, the petition is vehemently opposed by the counsel for the respondent. A preliminary objection has been raised with regard to the territorial jurisdiction of this Court. It is submitted that the respondent was posted in Ratlam Branch of SBI, which falls within the territorial jurisdiction of Indore Bench of this Court. No part of cause of action has arisen within the territorial jurisdiction of this Court, therefore the Principal Seat has no jurisdiction to entertain this petition. It is further submitted that it is incorrect to say that the petitioner had not led any evidence to show that multiple merit lists were prepared and the merit list of the year 1989 was not produced.

7. Heard the learned counsel for the parties.

Territorial Jurisdiction:-

8. It is the contention of the counsel for the petitioner that since the impugned Award was passed by CGIT Jabalpur, therefore this Court has territorial jurisdiction to entertain this petition. It is further submitted that the case has been decided in favour of the respondent on the basis of merit list, which was issued from Zonal Office of the petitioner, which is situated at Bhopal. Even if the reasons assigned by the CGIT are taken into consideration, even then the entire exercise was conducted at Bhopal. Merely because the respondent was posted in Ratlam Branch of SBI would not take away the jurisdiction of Principal Seat of this Court.

9. *Per contra*, the counsel for the respondent except by mentioning

that the Principal Seat has no territorial jurisdiction of this Court for the reason that the respondent was posted in Ratlam Branch of the petitioner, could not elaborate his submissions. Accordingly, he was requested to point out the meaning of "cause of action" but he fairly admitted that he does not know the meaning of "cause of action".

10. Be that whatever it may be.

11. The Supreme Court in the case of **The State of Goa Vs. Summit Online Trade Solutions Private Limited & Others** by judgment dated 14/03/2023 passed in **Civil Appeal No.1700/2023** has held as under:-

> "15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. The Constitutional mandate of clause (2) is that the 'cause of action', referred to therein, must at least arise in part within the territories in relation to which the high court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories. The expression 'cause of action' has not been defined in the Constitution. However, the classic definition of 'cause of action' given by Lord Brett in **Cooke vs. Gill (1873) 8 CP 107** that "cause of action means 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", has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such 'cause of action' is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily

> involve an exercise by the high court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the high court to decide the dispute and that, at least, a part of the cause of action to move the high court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests."

12. Thus, cause of action is a bundle of facts which are required to be considered for adjudicating the *lis*.

13. The Supreme Court in the case of **State of Rajasthan & Others Vs. M/s Swaika Properties and Another** reported in **(1985) 3 SCC 217** has held as under:-

> **"8.** The expression "cause of action" is tersely defined in *Mulla's Code of Civil Procedure*:
>
> > "The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court."
>
> In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action

culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.

9. It is to be deeply regretted that despite a series of decisions of this Court deprecating the practice prevalent in the High Court of passing such interlocutory orders for the mere asking, the learned Single Judge should have passed the impugned ad interim ex parte prohibitory order the effect of which, as the learned Attorney General rightly complains, was virtually to bring to a standstill a development scheme of the Urban Improvement Trust, Jaipur viz. Civil Lines Extension Scheme, irrespective of the fact whether or not the High Court Court had any

territorial jurisdiction to entertain a petition under Article 226 of the Constitution. Such arbitrary exercise of power by the High Court at the public expense reacts against the development and prosperity of the country and is clearly detrimental to the national interest."

14. This Court by judgment passed in the case of **Rajendra Singh Bhadoriya Vs. Union of India & Others** reported in **2020 (1) MPLJ 168** has held as under:-

> **"14.** Article 226 of the Constitution of India confers the power upon the High Court to issue directions etc. in relation to the territories within which the cause of action wholly or in part arises for the exercise of such power.
>
> **15.** The coordinate Bench of this Court in the case of ***Prem Prakash Ambedkar* v. *Union of India,*** reported in **2001 (1) MPHT 176** has held as under:—
>
> > "12. From this passage it is clear that the cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a Court of law. From the above referred judgment it would clearly appear that unless the cause of action wholly or in part or an action which is an integral part of the cause of action comes into play within the territories of a particular Court, the said Court would have no jurisdiction. The petitioner has placed his reliance on a judgment of Sikkim High Court in the matter of *Brg. Kanwar Kuldip Singh* v. *Union of India*, (1996) Vol. 2 All Indian Services Law Journal 72, to say that if a decision is conveyed to a particular person at the place of his residence, then the Court within whose jurisdiction such person resides would have the jurisdiction to entertain the lis.

The case of M/s Swaika Properties was taken into consideration in the said matter. Without being disrespectful to the Hon'ble Judge who decided the case in the matter of *Brg. Kanwar Kuldip Singh* (supra), I am bound to say that the judgment proceeded on certain wrong assumptions and misreading of the Supreme Court judgment in the matter of M/s Swaika Properties. The Hon'ble Judge observed in the said case that the question of jurisdiction came up incidentally and the main point involved in the case was otherwise. It was also observed that the decision of the Hon'ble Apex Court made scattering remarks about the tendency of the Calcutta High Court to take up and pass ex party prohibitory orders in the matters which do not strictly fall within its territorial jurisdiction. The learned Judge lastly observed that the Apex Court did not strictly hold that service of notice would never give rise to cause of action. A fair reading of the judgment of the Supreme Court in the matter of Swaika Properties Ltd., would show that against the entertainment of the petition and grant of ad-interim writ by Calcutta High Court, the State of Rajasthan felt aggrieved. The contention of the State Govt. before the Supreme Court was that the Calcutta Court had no jurisdiction. The question of jurisdiction did not come up incidentally, but in fact that was the sole issue before the Supreme Court. In the matter of Swaika Properties, the Supreme Court clearly observed that the Calcutta Court had no jurisdiction and if the petitioner (M/s Swaika Properties) felt aggrieved by the acquisition of their

> lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Govt. of Rajasthan under section 52(1) of the Act by a petition under Article 226 of the Constitution of India, the remedy of the respondents (M/s Swaika Properties) for grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench where the cause of action wholly or in part arose. I am unable to concede to the judgment of the Sikkim High Court in the matter of Brg. Kanwar Kuldip Singh.
>
> 13. …… So far as the petitioner's residence is concerned, it would always depend upon his own choice. He may settle in any part of India, but his settlement would not clothe such Court within whose jurisdiction he is residing any territorial jurisdiction. It is only that the Court, where the cause of action either in whole or in part arises, would have the jurisdiction to hear and decide a lis."

The Supreme Court in the case of ***Oil and Natural Gas Commission* v. *Utpal Kumar Basu***, reported in **1994 (4) SCC 711** has held as under:—

> "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* 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.

7. XXXXX

8. From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the

advertisement which appeared in the *Times of India* at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages, to EIL, ONGC, etc., at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on 27-1-1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. 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 it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of 15-1-

> 1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27-1-1993. We are, therefore, of the opinion that 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 Supreme Court in the case of ***M/s Kusum Ingots and Alloys Ltd.*** **v.** ***Union of India and another***, reported in **2004 (6) SCC 254** has held as under:—

> "25. 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. ***(SeeBhagar Singh Bagga*** **v.** ***Dewan Jagbir Sawhany*****, AIR 1941 Calcutta;** ***Mandal Jalan*** **v.** ***Madanlal*****, (1945) 49 CWN 357;** ***Bharat Coking Coal Limited*** **v.** ***Jharia Talkies and Cold Storage Pvt. Ltd.*****, 1997 CWN 122;** ***S.S. Jain and Co.*** **v.** ***Union of India*****, 1994 (1) CHN 445 and** ***New Horizon Ltd.*** **v.** ***Union of India*****, AIR 1994 Delhi 126)."**

The Supreme Court in the case of ***Nawal Kishore Sharma*** **v.** ***Union of India***, reported in **(2014) 9 SCC 329** has held as under:—

> "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."

The Jammu and Kashmir High Court in the case of ***Jaswant Singh* v. *UOI and Ors.***, reported in **2017 LIC 2996** has held as under:—

> "15. In view of the pleadings of the parties and the uncontroverted stand taken by the respondents in their objection, it is evident that no legal right of the petitioner has prima facie either been infringed or threatened to be infringed by the respondents within the territorial limits of this Court's jurisdiction. The petitioner has merely filed a statutory appeal during his tenure of posting at Jammu which does not amount to infringement of legal right of the petitioner within the territorial jurisdiction of this Court. Mere posting of the petitioner at the time of filing of the petition within the territorial jurisdiction of this Court taking into account the fact that entire action taken against the petitioner which is subject-matter of challenge of this petition has been taken place beyond the territorial jurisdiction of this Court would not confer any territorial jurisdiction on this Court to entertain the writ petition. The decision relied on by the learned senior counsel for the petitioner in the case of *Nawal Kishor Sharma* supra has no application to the fact situation of the case as the appellant in the said case was suffering from serious heart ailment which forced him to stay in the native place. Besides that, it is pertinent to mention here that the respondents

> responded to his representations and the same were communicated to him on his home address in Bihar. In the instant case, the representation submitted by the petitioner from the State of Jammu and Kashmir have failed to evoke any response, therefore it cannot be said that any part of the cause of action has arisen within the territorial jurisdiction of this Court. In the aforesaid context, the Supreme Court has held that part of cause of action has arisen within the jurisdiction of Patna High Court, which is not the case here.
>
> 16. In view of conclusion arrived at by this Court that no part of cause of action has arisen within the territorial jurisdiction of this Court, it is not necessary to deal with the matter on merits. In the result, the writ petition fails. Needless to state that the petitioner would be at liberty to approach the appropriate forum for redressal of his grievances."

16. The moot question for consideration is that:—

> "Whether the place of residence can be said to be the integral part of cause of action or not?"

17. The cause of action would mean those disputed issues which are required to be decided while adjudicating the claim of the litigating parties. When the place of residence of a litigating party has no relevance with the subject-matter of the *lis,* then the same cannot be said to be an integral part of cause of action.

18. Further, Article 226 of the Constitution of India reads as under:—

> **"226.** ***Power of High Courts to issue certain writs.***— (1) Notwithstanding anything in Article 32 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, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose],

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks

> from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.
>
> (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

19. Thus, Article 226 of the Constitution of India does not provide that the residence of the petitioner would give rise to a part of cause of action.

20. The Full Bench of this Court in the case of ***K.P. Govil* v. *Jawaharlal Nehru Krishi Vishwa Vidyalya, Jabalpur***, reported in **1987 JLJ 341** has held as under:—

> "8. The Presidential Order dated 28-11-1968 reads as follows:—
>
> "In exercise of the powers conferred by sub-section (2) of section 51 of the States Reorganisation Act, 1956 (37 of 1956), I, Zakir Husain, President of India, after consultation with the Governor of Madhya Pradesh and the Chief Justice of the High Court of Madhya Pradesh, hereby establish a permanent Bench of the Madhya Pradesh High Court at Gwalior and further direct that such Judges of the High Court of Madhya Pradesh, being not less than two in number, as the Chief Justice may from time to time nominate, shall sit at Gwalior in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of

cases arising in the revenue districts of Gwalior, Shivpuri, Datia, Guna, Vidisha (Bhitsa), Bhind and Morena:

Provided that the Chief Justice may, for special reasons, order that any case or class of cases arising in any such district shall be heard at Jabalpur."

It is not disputed that the jurisdiction of this Bench to hear cases is regulated by the said order of the President.

> 9. The first thing that is to be determined is the meaning of the expression "in respect of cases arising in the revenue districts of Gwalior, Shivpuri, Datia, Guna, Vidisha (Bhilsa), Bhind and Morena" used in the Presidential Order dated 28-11-1986. In *Nasiruddin* (supra), the Supreme Court considered the meaning of a similar expression used in first proviso to Paragraph 14 of the High Court (Amalgamation) Order, 1948, which was to the following effect:—
>
> "14. The new High Court, and the Judges and Division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint:
>
> "Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice, otherwise directs, such judges of the Court, not less than two in number, as the Chief Justice, may, from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas

> in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court:
>
> Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad."

After holding the conclusion and the reasoning of the Allahabad High Court to be incorrect, the Supreme Court concluded:

> "…… the expression 'cause of action' in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the area in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression 'cause of action' is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter, If the cause of action arises in part within the specified areas, in Oudh it

> would be open to the litigant dominus litis to have his forum convenient. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen partly within specified areas in Oudh and partly outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action."

Similarly in *Kanti Prasad* (supra) this Court held:

> "The ordinary dictionary meaning of the word 'case' is a thing that has happened. In its technical legal sense it means a cause or a state of facts which furnishes an occasion for exercise of the jurisdiction by a Court of justice, vide 14 C.J.S.L. In the present context the word 'case' means the facts or events which furnish a cause of action to a party."

It must, therefore, follow and we hold that the expression "in respect of cases arising in the revenue districts of Gwalior, Shivpuri, Datia, Guna, Vidisha (Bhilsa), Bhind and Morena" means the

> place or places within the specified revenue districts where the whole or a part of cause of action arises. If the cause of action arises wholly or in part at a place or places within the specified revenue districts, the Gwalior Bench will have jurisdiction.
>
> 10. …… That being the position, the fact that the order of appointment was made and the further fact that the appointment was accepted by joining the post would from part of a cause of action and it would arise at the place the order is made, as also at the place the order is implemented by joining the post. We accordingly hold that a part of cause of action having arisen at Gwalior, this Bench has jurisdiction to entertain the petition."
>
> **21.** Taking clue from the judgment passed by the Full Bench in the case of **K.P. Govil (supra)** it is submitted by the counsel for the petitioner that since the order has been implemented at Gwalior, therefore, a part of cause of action has arisen at Gwalior."

15. Thus, it can be said that the cause of action arose at following places:-

(i) Jabalpur, as the impugned Award has been passed by CGIT Jabalpur.

(ii) Bhopal, as the merit list in question was issued from Zonal Office of Bank situated in Bhopal.

(iii) Ratlam, where the respondent was posted.

16. Article 226 of the Constitution of India provides that if part of cause of action has arisen within the territorial jurisdiction of multiple High Courts, then any High Court in relation to the territories within which the cause of action wholly or partly arises for exercise of such

power, shall have a jurisdiction.

17. The Bench at Gwalior and Indore were established by the Presidential notification, therefore if a cause of action has arisen within the territorial jurisdiction of either Gwalior Bench or Indore Bench, then only the said Bench shall have jurisdiction to entertain the said *lis*. However, in the present case, not only the Award was passed by CGIT Jabalpur but the disputed merit list was prepared at Zonal Office Bhopal, which gave rise to cause of action.

18. It is true that the petitioner was posted at Ratlam Branch of SBI and the merit list issued from Bhopal was also implemented at Ratlam but the primary cause of action arose at Bhopal, which falls within the territorial jurisdiction of Principal Seat of High Court of Madhya Pradesh at Jabalpur.

19. The next question for consideration would be as to whether this Court should apply the principle of forum conveniens as laid down by the Supreme Court in the case of **Kusum Ingots and Alloys Ltd. Vs. Union of India and another** reported in **(2004) 6 SCC 254** and **Summit Online Trade Solutions Private Limited (supra)** as well as the order passed by this Court in the case of **Purendra @ Punendra Singh Vs. State of M.P. & others** decided on 19/07/2022 in **Writ Petition No.16454/2022**.

20. In the case of **Kusum Ingots (supra),** it has been held that merely because a small part of cause of action has arisen within the territorial jurisdiction of the High Court, the same may by itself may not be considered to be determinative factor compelling the High Court to decide the matter on merits. However, in the present case, this Court has already come to a conclusion that the major part of cause of action has

arisen in Bhopal from where the merit list in question was issued. Thus, by no stretch of imagination it can be said that a small part of cause of action has arisen within the territorial jurisdiction of this Court.

21. Under these circumstances, this Court is of the considered opinion that even after applying the principle of forum conveniens, this Court cannot hold that it has no territorial jurisdiction and cannot refuse to exercise its jurisdiction.

22. Accordingly, the preliminary objection with regard to the lack of territorial jurisdiction is hereby **rejected**.

<u>On Merits</u>:-

23. The statement of claim put forward by the respondent before CGIT is completely silent with regard to the manner in which a consolidated merit list was prepared by the petitioner. There is no whisper that a separate merit list was prepared in the year 1989 and by ignoring the said merit list, the petitioner was denied the benefit of permanent employment. Thus, neither there is any averment that a separate merit list was prepared in the year 1989 nor there is any averment that consolidated list prepared in the year 1997 was bad in law.

24. However, the CGIT has allowed the claim of the respondent only on the ground that the merit list prepared after the interview of workman in 1989 has been suppressed and there is no pleading as to why the same was not filed and accordingly, it was held that the allegation of respondent about the irregularity in selection list and illegal appointment made after his interview were held to be reliable. The operative part of the impugned Award is as under:-

> "13. Point No.2 In view of my finding in Point No.1 action of management not providing regular

> employment to him after his interview is illegal. Question arise to what relief workman is entitled? As per settlement dated 17-11-87 though Ist party workman was interviewed on 28-9-89, 2nd party management has not produced any document about select list prepared after interview of workman, Ist party cannot be compared with the candidates who are included in the select list Exhibit M-4 prepared subsequent in time. The denial of regular employment to Ist party workman is in violation of Settlement of 1987 is illegal. Ist party workman is entitled for regular employment in pursuance of settlement dated 17-11-87. The present dispute is raised in the year 2001. Legal position is settled that benefit of the award should be given from the date of order of reference. The evidence of Ist party shows that he is working in readymade cloth shop. Considering facts and circumstances of the case and Ist party workman is earning wages, Ist party is entitled for regular employment with 25% wages from the date of order of reference i.e. 19-6-01. Accordingly I record my finding in Point No.2."

25. The petitioner has also filed a copy of deposition sheet of the respondent. Even in the affidavit filed under Order 18 Rule 4 of CPC, there is no whisper with regard to the merit/ select list. Even in the cross-examination, the workman/ respondent had not challenged the select list. In the cross-examination, he has merely stated that he has filed the case for his appointment. Thus, it is clear that there was no challenge to the merit / select list, which was prepared by the petitioner Bank in the year 1997, on the basis of which regular appointments were given to the meritorious persons and the respondent was denied regular appointment on the ground that he was much below in the said merit/ select list.

26. The Supreme Court in the case of **Regional Manager, SBI Vs.**

Rakesh Kumar Tewari reported in **(2006) 1 SCC 530** has held as under:-

> **"14.** Section 25-G requires the employer to "ordinarily retrench the workman who was the last person to be employed in a particular category of workman unless for reasons to be recorded the employer retrenches any other workman". This "last come first go" rule predicates (*1*) that the workman retrenched belongs to a particular category; (*2*) that there was no agreement to the contrary; and (*3*) that the employer had not recorded any reasons for not following the principle. These are all questions of fact in respect of which evidence would have to be led, the onus to prove the first requirement being on the workman and the second and third requirements on the employer. Necessarily a fair opportunity of leading such evidence must be available to both parties. This would in turn entail laying of a foundation for the case in the pleadings. If the plea is not put forward, such an opportunity is denied, quite apart from the principle that no amount of evidence can be looked into unless such a plea is raised. (See *Siddik Mahomed Shah* v. *Saran* [AIR 1930 PC 57 (1)] and *Bondar Singh* v. *Nihal Singh* [(2003) 4 SCC 161])"

27. Thus, if the facts and circumstances of this case are considered in the light of the judgment passed by the Supreme Court in the case of **Rakesh Kumar Tewari (supra)**, then it is clear that in absence of any pleading and evidence, the Tribunal should not have directed for reinstatement of the respondent in absence of any challenge to the merit/ select list prepared by the petitioner in the year 1997.

28. Furthermore, the respondent, namely; Anandilal Dabkara (in W.P. No.6340/2017), Vijay Bahadur Sodha (in W.P. No.6331/2017) Mukesh Kumar Sharma (in W.P. No.6333/2017) and Saubhagyamal Paudwal (in

W.P. No.6335/2017) had worked only for 78 days, 83 days, 81 days and 80 days respectively.

29. Be that whatever it may be.

30. Once this Court has come to a conclusion that the Tribunal has travelled beyond the pleadings and evidence, therefore the findings given by the Tribunal with regard to the suppression of documents i.e. merit list of the year 1989 and without giving any finding that any separate list was prepared in the year 1989 is bad. In absence of any pleading, the petitioner was not required to independently prove that no separate merit/ select list was prepared in the year 1989. Accordingly, this Court is of the considered opinion that the Award dated 10/08/2016 passed by Central Government Industrial Tribunal cum Labour Court, Jabalpur in case Nos. CGIT/LC(R)-116/2001 (in W.P. No.6340/2017), CGIT/LC(R)-125/2001 (in W.P. No.6331/2017) and CGIT/LC(R)-115/2001 (in W.P. No.6335/2017) and Award dated 09/08/2016 passed by CGIT cum Labour Court Jabalpur in CGIT/LC(R)-124/2001 (in W.P. No.6333/2017), cannot be given the stamp of approval. Accordingly, the same are hereby **quashed**. The claim of the respondent(s) is/are hereby **dismissed**.

31. The petition succeeds and is hereby **allowed**.

32. No order as to cost.

(G.S. AHLUWALIA)
JUDGE

Shanu