

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

***Reserved on:- 30.12.2024***  
***Pronounced on:- 21.02.2025***

Case:- SWP No. 1212/2018  
IA No. 2/2018  
IA No. 1/2018

Madan Lal Gorla, aged 54 years  
S/o Shri Puran Chand,  
R/o H. No. 102, Wazir Lane, Talab Tillo,  
Behind Modern Breweries, Jammu

.... Petitioner(s)

Through :- Mr. Sunil Sethi, Sr. Advocate with  
Mr. Kunal Saini, Advocate.

V/s.

1. State Bank of India and others,  
Corporate Centre, Mumbai  
Through its Chairman.
2. General Manager Network-I,  
State Bank of India,  
Vigilance Department,  
2<sup>nd</sup> Floor Local Head Officer,  
Sector 17-A Chandigarh.
3. Chief General Manager,  
Appellate Authority,  
State Bank of India,  
Local Head Officer, Chandigarh.
4. Reviewing Committee  
State Bank of India,  
Chandigarh.

....Respondent(s)

Through :- Mr. Sumeet Bhatia, GA.

**Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**JUDGMENT**

1. The petitioner through the medium of the instant petition, is seeking quashment of order dated 01.04.2014, passed by respondent No. 3-Chief General Manager, Appellate Authority, State Bank of India, Local Head Office,

Chandigarh, whereby penalty of “Compulsory Retirement” in terms of Rule 67(h) of State Bank of India Officers Service Regulations (SBIOSR) has been imposed upon the petitioner and also order dated 14.03.2018 passed by respondent no. 4-Reviewing Authority whereby his review petition has been rejected.

**FACTUAL MATRIX OF THE CASE**

2. It is the specific case of the petitioner that while serving as Manager, SBI, Branch Bharmar, Himachal Pradesh, he came to be wrongly and falsely implicated in a corruption case and an FIR No. 1/2010 dated 09.01.2010 was registered with Police Station, State Vigilance & Anti-Corruption Bureau Dharamshalla, for commission of offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act. Upon conclusion of the investigation, a chargesheet was submitted against the petitioner before the Court of learned Special Judge Kangra at Dharamshalla, District Kangra (Himachal Pradesh) on 06.07.2011. Following an extensive trial, the Court of learned Special Judge Kangra at Dharamshalla, District Kangra (Himachal Pradesh) vide judgment dated 15.09.2017, acquitted the petitioner of the charges leveled against him.

3. Simultaneously, after the registration of FIR against the petitioner, the respondents also initiated disciplinary action against him and framed the following three Articles of charges against him:-

**a. “Charge no. 1**

- i. You did not follow Bank's laid down instructions in the matter of pre/post sanction, appraisal and sanction of advances.*

**b. Charge no.2**

- i. *You were caught red headed by state Vigilance Deptt. While accepting bribe.*

**c. Charge No.3**

- i. *You caused loss of Image to the Bank.”*

4. It is the specific case of the petitioner that the petitioner submitted his detailed reply to the Article of Charges and the respondents instead of dropping the charges against the petitioner, proceeded against the petitioner and appointed an Inquiry Officer on 03.02.2011. The said Inquiry Officer so appointed, proceeded with the inquiry against the charges framed against the petitioner and without properly evaluating the reply/defence submitted by the petitioner to the said charges and without there being any clinching evidence against the petitioner during the enquiry proceedings, the Inquiry Officer submitted his Inquiry report on 31.03.2012, against the petitioner, wherein all the charges and allegations levelled against the petitioner were proved. It is stated that the criminal case was pending against the petitioner at the time when the inquiry proceedings were being conducted by the Inquiry Officer. The petitioner, thereafter, submitted his representation against the report of Inquiring Authority before respondent No. 2, which according to the petitioner was not accorded due consideration by the respondents while proceeding against the petitioner.

5. It has been urged by Mr. Sunil Sethi, learned senior counsel appearing on behalf of the petitioner that respondent No. 2, thereafter, without proper evaluating the reply submitted by the petitioner and evidence which has come on record proceeded to pass order dated 17.04.2013 and imposed penalty

of “Dismissal” as a measure of punishment on the petitioner in terms of Rule 67 (j) of State Bank of India Officers Service Rules.

6. Learned senior counsel appearing on behalf of the petitioner has drawn the attention of this Court to order passed by the concerned General Manager (Appointing Authority) dated 17.04.2013, a perusal whereof reveals that a major punishment of “Dismissal” has been inflicted on the petitioner as a measure of punishment in terms of the aforesaid Rules and the petitioner was conveyed that in case, if he so desired can prefer an appeal before the Appellate Authority i.e., Chief General Manager against the aforesaid penalty within a period of 45 days from the date of receipt of the aforesaid communication as provided in terms of Rule 69 of State Bank of India Officers Service Rules.

7. The petitioner contends that feeling aggrieved of the aforesaid order dated 17.04.2013, he filed a statutory appeal before respondent No. 3 and the Appellate Authority after considering the said appeal vide order dated 01.04.2014 partially allowed the appeal filed by the petitioner, whereby the major punishment of “**Dismissal**” from service was modified to the extent of imposing penalty of “**Compulsory Retirement**” in terms of Rule 67(h) of State Bank of India Officers Service Rules.

8. Mr. Sethi further submits that the punishment imposed upon the petitioner was disproportionate to the gravity of offence and the stand of the petitioner stood vindicated, whereby the Appellate Authority modified the punishment of “Dismissal” to “Compulsory Retirement”. However, the other grounds urged by the petitioner before the Appellate Authority were not addressed by the said Authority.

9. Learned counsel further submits that a totally absurd/ irrational view has been taken by the Appellate Authority wherein he has observed that since, the petitioner has previously presented the same plea/ argument before the Inquiry Officer and the Disciplinary Authority, thus, it will not be appropriate for the Appellate Authority to reconsider that plea. This stance contravenes established principle of service jurisprudence and is legally untenable.

10. The learned counsel further submits that it was incumbent on the part of the Appellate Authority to have re-appreciated and accorded due consideration to the pleas raised by the petitioner but the Appellate Authority without due application of mind and in most haste manner has upheld the view of the Disciplinary Authority and failed to thoughtfully consider the claim of the petitioner.

11. However, Mr. Sethi was confronted by the Court and a query was raised why the order of the Appellate Authority was not called in question. In response, he contends that since the petitioner had preferred a review against the order passed by the Appellate Authority before the Reviewing Authority which was superior to the Appellate Authority, the petitioner did not deem it proper to challenge the said order of the Appellate Authority as the petitioner has called in question the subsequent order of the Reviewing Authority which was superior to the Appellate Authority as the order of the Appellate Authority has merged into the order of the Reviewing Authority.

12. The record substantiates the stand of the petitioner and indicates that feeling aggrieved of the order of the Appellate Authority, the petitioner preferred a review petition against the order dated 01.04.2014 before respondent

No. 4 and the Reviewing authority has rejected the review petition filed by the petitioner vide order dated 14.03.2014 which order was communicated to the petitioner by the respondents on 03.05.2018.

13. The petitioner asserts that at the time when the review petition was preferred, the petitioner has already earned acquittal in the criminal case from the competent Court and this aspect of the matter was also brought to the knowledge of the Reviewing Authority.

14. Learned counsel for the petitioner has drawn the attention of this Court to the order passed by the Reviewing Authority, a perusal whereof vindicates the stand of the petitioner that the order of acquittal earned by the petitioner was in active knowledge of the Reviewing Authority.

15. At this stage, the learned Senior counsel submits that the foundation for the initial dismissal and subsequently, compulsory retirement was on the basis of impugned FIR and criminal case registered against the petitioner in which the petitioner has earned acquittal. Thus, it was incumbent on the part of the Reviewing Authority to have given due weightage to the aforesaid important fact, while according due consideration to the review petition preferred by the petitioner. However, the Reviewing Authority on the other hand in cursory manner with a preconceived notion has upheld the order of the Appellate Authority which order has been called in question in the instant petition.

16. Learned counsel for the petitioner has also drawn the attention of this Court to the operative part of the aforesaid order passed by the Reviewing Authority, a perusal whereof, reveals that the Reviewing Authority was alive to

the acquittal of the petitioner on 15.09.2017, vindicating his innocence. Furthermore the Reviewing Authority explicitly noted in the order that the petitioner was acquitted of all the charges, as the prosecution could not prove any other allegation against him. The petitioner through the medium of the instant petition has called in question order dated 01.04.2014 passed by respondent No. 3 besides challenging the order of the Reviewing Authority dated 14.03.2018.

17. It is the specific case of the petitioner that both the orders passed by the respondents are illegal, arbitrary and contrary to the provision of law.

18. Mr. Sethi has laid much emphasis on the issue that while imposing the major punishment of Compulsory Retirement on the petitioner and thereafter, while rejecting the review petition preferred by the petitioner against the order of punishment have failed to take into consideration the allegations forming the basis of punitive action which were also subject matter of the criminal charge, which allegations could not stand the test of judicial scrutiny as the petitioner had earned acquittal in the said criminal case.

19. It is the specific case of the petitioner that the Reviewing Authority was alive to the fact of petitioner's earning acquittal on merits, yet upheld the order of Appellate Authority imposing punishment to the petitioner for Compulsory Retirement. Thus, it was incumbent on the part of the Reviewing Authority to have taken a holistic view in the matter by reinstating the petitioner, rather than forming an opinion of compulsory retirement which was an offshoot of a criminal case registered against the petitioner in which the petitioner has already earned acquittal.

20. Another legal issue has been raised in the instant petition by the learned counsel for the petitioner that at the time, when the order of Compulsory Retirement was passed, only an FIR was registered against the petitioner and the matter was pending before the competent Court and thus, mere registration of FIR is no ground for retiring the petitioner compulsorily. The relevant consideration of passing the order of Compulsory Retirement is primarily the Annual Performance Report of the concerned Officer for the last 3 to 5 years which aspect of the matter has not been considered at all by the respondents. Thus, the order impugned as per Mr. Sethi smacks foul play and malafide on part of the respondents who in spite of the fact that the petitioner has earned acquittal proceeded with the punishment of compulsory retirement against the petitioner.

21. Learned counsel for the petitioner with a view to fortify his claim has placed reliance upon the judgment passed by the Apex Court in case titled, ***“Ram Lal Vs. State of Rajasthan and others”***, in Civil Appeal No. 7935/2023, decided on 04.12.2023 and has placed reliance upon para 27 of the aforesaid judgment. For facility of reference, the same is reproduced as under:-

27. ***“ We are additionally satisfied that in the teeth of the findings of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra)”***.

22. On the basis of the aforesaid judgment, learned counsel for the petitioner contends that in the teeth of the findings of the Competent Court, whereby the petitioner stands acquitted, the disciplinary proceedings and the

orders passed thereon cannot be allowed to stand as the charges which were levelled against the petitioner in the criminal case as well as in the disciplinary proceedings were not just similar, but identical and the evidence, witnesses and the circumstances were also the same. Thus, in the light of law laid down by the Apex Court in the aforesaid case the orders passed by the Disciplinary Authority/Appellate Authority/Reviewing Authority cannot stand the test of law as the same will be unjust, unfair and oppressive. Relying upon the principle laid down in the identical case mentioned (supra), Mr. Sethi, submits that both the orders impugned are liable to be quashed and prays that a direction be issued to the respondents to reinstate the petitioner with all the consequential benefits including seniority, notional promotion, salary and all other benefits as has been granted by the Apex Court in the similar case mentioned (supra).

23. Learned Senior counsel appearing on behalf of the petitioners further submits that before imposing the major punishment of firstly “Dismissal” and subsequently, modified punishment i.e., “Compulsory Retirement”, it was incumbent on the part of the respondent to have issued a show cause notice to the petitioner for proposing the said punishment which has not happened in the instant case and on this ground also, the order impugned cannot sustain the test of law and is liable to be quashed.

24. ***Per contra***, reply has been filed by the respondents, wherein specific stand has been taken by the respondents that there is no specific challenge to the enquiry report by the petitioner in the instant case, as such, in absence of any specific challenge to the enquiry report, the grounds urged by the petitioner in

the present petition are not tenable, insofar as, the allegations that the enquiry report is legally flawed.

25. Mr. Bhattia, appearing on behalf of the respondents has drawn the attention of the Court to the three charges which have been levelled against the petitioner as extracted above and submits that the petitioner has been exonerated only in so far as charge No. 2 is concerned and his whole arguments revolves around charge No. 2. But in so far as charges 1 and 3 are concerned the allegations levelled against the petitioner have been enquired by the respondents by conducting a preliminary enquiry and the charges stood proved against the petitioner. Thus the grounds urged by the learned counsel for the petitioner that since the petitioner has been exonerated and the respondents cannot proceed on the other set of charges by way of disciplinary proceedings, is factually incorrect and not tenable in the eyes of law and liable to be rejected.

26. Learned counsel for the respondents has drawn the attention of the Court to the enquiry report, wherein Charge No. 1 stands proved against the petitioner after considering both the prosecution and the arguments on behalf of the defence. This aspect of the matter has not been contested by the petitioner in the present petition. The counsel has also highlighted the petitioner's admission in the detailed representation filed. In the said representation, the petitioner has admitted that due to the heavy workload and staff shortage, he was the sole officer in charge of the Branch, managing both daily routine tasks and the advance portfolio without any clerical assistance. This, according to the learned counsel for the respondents, constitutes an admission by the petitioner regarding the allegations vis-a-vis Charge No.1. Additionally, the learned counsel for the

respondents refutes the petitioner's claim that his representation was not accorded due consideration. This assertion according to the counsel for the petitioner is factually incorrect, as it is evident from the observations made by the Appellate Authority, which noted that the petitioner was granted a personal hearing by the appointing authority. The operative part of the order reads as follows:

*“Having considered the above, I am of the view that most of the submissions made by the appellant are reiteration of his earlier submissions, which had already been taken into consideration by the authorities concerned on their merits. However, after making an independent assessment of the case, I am of the view that the punishment imposed by the Appointing Authority is not proportionate to the gravity of the lapses I see the mitigating factors that a) complainant subsequently had stated through an notarized attested affidavit dated 07.02.2013 that the appellant has been wrongly implicated by him owing to some misunderstanding, b) defense witness has deposed in the inquiry that complainant had a habit of creating nuisance in public & pressurizing government officials and c) appellant’s submission in respect of punishment being harsh his being only source of livelihood for the family, hold some merit and am inclined to take a lenient view and is of the opinion that the ends of justice will be adequately met with the modification of the penalty to "Compulsory Retirement" in terms of rule 67(h) of SBIOSR. I, therefore, modify the penalty as above and order accordingly. ”*

27. Learned counsel for the respondents has also referred to the order passed by the Reviewing Authority which after making assessment of the case, agreed that the punishment made by the Appointing Authority was not proportionate to the gravity of the lapses and keeping in view the mitigating factors, the punishment was modified to “Compulsory Retirement” in terms of Rule 67 (h) of SBIOSR. Accordingly, the punishment was modified. At

this stage, Mr. Bhatia, learned GA submits that law has been settled in a catena of judgments by the Apex Court that compulsory retirement is not a punishment, as it casts no stigma.

28. Lastly, the learned counsel for the respondents submitted that the order passed by the Reviewing Authority, reveals that the petitioner's submissions regarding Charge No. 1 were not accepted. The Reviewing Authority rejected the petitioner's argument on the grounds that he had increased the Cash Credit limit for the borrowing firm, M/s Rana General Store, without taking into account the firm's unsatisfactory past record. Furthermore, the firm was not maintaining proper books of accounts, and there was only a negligible stock available at the firm. The Reviewing Authority, accordingly, agreed with the view of the Appellate Authority and also concurred with the view of the Appellate Authority to the extent of imposition of punishment of compulsory retirement, which was commensurate to the gravity of the lapses. Mr. Bhatia, submits that the petitioner has earned acquittal only on the ground of witnesses including the complainant turning hostile. This was a precise reason that petitioner has earned acquittal and that too only in so far as charge No. 2 is concerned. He further submits that insofar as, the charge No. 1 and 3 are concerned, those are independent charges for which a detailed inquiry was conducted including charge No. 2 and after following the procedure as prescribed under law, all the three charges stood proved against the petitioner and on the basis of which, the order was passed initially by the Appointing Authority which was subsequently, modified by the Appellate Authority and upheld by the Reviewing Authority.

29. Learned counsel for the respondents has placed reliance on a judgment passed by the Apex Court on the ground that the criminal proceedings and the departmental proceeding can go hand in hand and that charge nos. 1 and 3 levelled against the petitioner were not independent charges, as such, there was no impediment coming in the way of the respondents to have conducted an enquiry against the petitioner.
30. In rebuttal, Mr. Sethi has referred to the Rule 67 State Bank of India , Officer Service Regulations Rules, 1992 which have been framed in exercise of the powers conferred by Section 43(1) of the State Bank of India Act, 1955. These rules govern the terms and conditions of the appointment and service of officers within the State Bank of India (SBI).
31. Learned counsel for the petitioner has placed reliance upon Rule 67 which deals with discipline and appeals and defines the penalty, both minor and major. Minor and major penalties defined are as under:-
- i. **“Penalties**
    - ii. **67. Without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer, for an act of misconduct or for any other good and sufficient reason to be recorded in writing:-**
      - iii. **Minor penalties**
        - (a) Censure;
        - (b) Withholding of increments of pay with or without cumulative effect;
        - (c) withholding of promotion;
        - (d) (i) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.
      - iv. (ii) Imposition of fine or monetary penalty.
      - v. (e) reduction to a lower stage in time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the officer’s pension;
      - vi. **Major penalties**
      - vii. (f) save as provided for in (e) above reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the officer will earn

*increments to pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;*

- viii. *(g) reduction to a lower grade or post*
- ix. *(h) compulsory retirement;*
- x. *removal from service;*
- xi. *dismissal."*

32. Learned counsel submits that from a bare perusal of the charges levelled against the petitioner with particular reference to charge No. 1, petitioner, has not been notified by the respondents with respect to the violation of a particular rule which could be the basis of imputation and imitation of disciplinary proceedings in absence of any such notification, the findings recorded by the enquiry officer cannot sustain the test of law and is liable to be quashed. It is stated that since the petitioner has not been notified with respect of the violation of the particular rule thus petitioner was unable to provide an effective response to the respondent.

33. Lastly, he submits that the charge No. 1 is not an independent charge and charge No. 1 and charge 2 are interlinked and once, the petitioner stood exonerated in so far as charge no. 2 is concerned then, the petitioner is deemed to have been exonerated of all charges and respondents by no stretch of imagination could have proceeded against the said charge by way of a disciplinary proceeding in which the petitioner has already been exonerated from the competent Court on a criminal side.

### **LEGAL ANALYSIS**

34. Heard learned counsel for the parties and perused the record. With the consent of the learned counsel for the parties, the instant petition was taken up finally for disposal.

35. Since the issue of maintainability has been raised by the respondents in the instant writ petition, this Court deems it proper to address the same at first instance before going into the merits of the case.

36. From a bare perusal of the record it has come to fore that this Court lacks inherent territorial jurisdiction to adjudicate the case in hand. The record reveals that no cause of action has arisen within the territorial jurisdiction of this Court. The record further indicates that the petitioner is not an employee of the State of J&K, as he was serving as a Manager, SBI Bharmar, Himachal Pradesh. Furthermore, the disciplinary action, inquiry proceedings, inquiry report and the imposition of penalty upon the petitioner have not taken place within the territorial jurisdiction of the State of Jammu and Kashmir.

37. The expression “**cause of action**” refers to the set of facts and legal grounds that give rise to a right to sue. The jurisdiction of a Court is contingent upon the cause of action arising within its territory. The determination of the fact whether a Court has territorial Jurisdiction is fundamentally based on whether any part of the cause of action arose within its territorial limits or not. Therefore, the cause of action is fundamental to the admissibility of a writ as it forms the basis on which a party claims legal relief.

38. The learned Counsel for the petitioner with a view to infuse jurisdiction in this Court, has asserted that it is an admitted fact that the petitioner’s dismissal from service was later on converted into compulsory retirement and since then, the petitioner has been residing in Jammu and the orders impugned in the instant petition have also been served upon the petitioner

at Jammu. Accordingly he submits that this Court has the territorial jurisdiction to adjudicate the issue in question.

39. After considering the material available on record, this Court is of the considered view that no cause of action, not even a fraction of cause of action has arisen within the territorial jurisdiction of this Court. Admittedly, as per record, the petitioner remained in service in Himachal Pradesh, as a Manager, SBI Branch Bharmar. It is also admitted that the FIR was registered with the Police Station, State Vigilance & Anti-Corruption Bureau, Dharamshala and the criminal challan, titled “**State of Himachal Pradesh vs. Madan Lal Gorla**” was also presented before the Court of Ld. Special Judge, Kangra at Dharamshala, even the disciplinary proceedings have been conducted outside the territory of Jammu and Kashmir. Therefore, the petitioner’s contention that he was served with the impugned orders in Jammu, does not confer jurisdiction in this Court to adjudicate the instant petition, as this Court lacks inherent jurisdiction to adjudicate the same.

40. Thus, merely that the order of dismissal was issued from the territory of erstwhile State of J&K and was communicated to the petitioner at his residence within the State of J&K, would not confer a cause of action to the petitioner to invoke the writ Jurisdiction of this Court in Jammu.

41. In similar facts and circumstances, the Hon’ble Apex Court in case titled **Krishna Prasad Singh v. The Union of India, (2006) 6 SCC 104**, in para 7 has observed as under:-

*“The only factual aspects in support of the petitioner’s contention for invoking the jurisdiction of this Court are (i) the petitioner’s residence which is within the territorial jurisdiction of this Court, (ii) service of revisional or appellate order within the territorial*

jurisdiction of this Court. But on those facts this Court cannot entertain this writ petition when the original order of dismissal which is sole cause of action of the petitioner was passed outside the territorial jurisdiction of this Court and was served upon the petitioner also outside the territorial jurisdiction of this Court. Incidentally, it may be mentioned that the Hon'ble Supreme Court has strongly deprecated the practice of some High Courts which have allowed the litigants to invoke its jurisdiction regardless of cause of action merely on the ground of residence of the petitioner. The said opinion of the Hon'ble High Court has been expressed very strongly in the three Judge Bench of the Supreme Court in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu* reported in (1994) 4 SCC 711. The said decision of the Supreme Court is binding on the Court under Article 141 of the Constitution of India and this Court is also in respectful agreement with the same".

42. This Court is further fortified with the Apex Court judgment titled ***Lt. Col. Khajoor Singh v. Union of India AIR 1961 SC 532***, wherein the Apex Court in para 13 of the judgment has observed as follows:-

"Now it is clear that the jurisdiction conferred on the High Court by Article 226 does not depend upon the residence or location of the person applying to it for relief it depends only on the person or authority against whom a writ is sought being within those territories. It seems to us, therefore, that it is not permissible to read in Article 226 the residence or the location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That the jurisdiction depends upon the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Article 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of High Court which can give relief under Article 226."

43. . In ***Union of India v. Adani Export Ltd and Anr*** reported as **2002 SCC (1) 567**, Hon'ble Supreme Court of India opined as under (SCC p. 233):

"It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of

*the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded or the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to as cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in paragraph 16 of the petition, in our opinion, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."*

28. Similar view was taken by Hon'ble Supreme Court of **India in Oil and Natural Gas Commission (ONGC) v. Utpal Kumar Basu and Ors.** reported as (1994)4 ICC 711, where it was held as under:

*"11. Strong reliance was placed on the decision of this Court in the State of Rajasthan case by the learned Counsel for ONGC. The facts of that case reveal that the respondent-company having its registered office at Calcutta owned a large chunk of land on the outskirts of Jaipur. The Special Officer, Town Planning Department, Jaipur, at the instance of the Improvement Trust, Jaipur issued a notice intimating that the State Government proposed to acquire a large part of the said parcel of land for a public purpose, namely, implementation of a development scheme. The said notice was duly served on the respondents at their Calcutta office. The respondents thereafter participated in the inquiry and contended that they proposed to use the land for constructing a three star hotel. The Special Officer, however, felt that the alleged need of the respondents was just a pretence and the land was not needed bona fide by them, but the real object was to get the land released from acquisition. Consequently, the requisite final notification for the acquisition of the land was issued. Thereafter an attempt was made to seek exemption in regard to the notified land under Section 20 of the Urban lands (Ceiling and Regulation) Act, 1976, but in vain. Having failed to get the land released from acquisition, the respondents filed a writ petition under Article 226 of the Constitution in the High Court of Calcutta challenging the acquisition wherein rule nisi was issued and an ad interim ex parte prohibitory order was granted restraining taking of possession of the acquired land, etc. The question which arose for consideration in the backdrop of the said facts was whether the High Court of Calcutta had jurisdiction to entertain the petition and grant ex parte ad interim relief. This Court observed that upon the said facts, the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Judge had no jurisdiction to issue rule nisi or to grant the ad interim ex parte prohibitory order. After extracting the definition of the expression "cause of action" from Mulla's Code of Civil Procedure, this Court observed as under:*

*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”.*

44. Placing reliance on the judgements passed by the Apex Court, it can safely be concluded that once, a Court lacks inherent territorial jurisdiction to adjudicate the matter, then in that eventuality, the Court is not bound to go into the merits of the case. Thus, in view of the aforesaid factual background of the case and also the settled legal position as observed above, the preliminary objection raised by the respondent qua the maintainability of the instant writ petition before this Court is hereby affirmed.

45. This Court while examining the record supplied by the respondents, has found that the petitioner had previously filed a writ petition before the High Court of Himachal Pradesh, Shimla, which has been registered as **CWP 6714 of 2012-B** and the same was dismissed vide order dated 01.03.2013, involving facts and circumstance that are strikingly similar to those in the present case. However, the petitioner has deliberately concealed this crucial and material fact from this Court and after earning dismissal, the petitioner has now again approached this Court through the medium of instant petition to avail the efficacious remedy on equitable grounds. Specifically, there is no mention or clear averment in the instant petition regarding the filing of the previous writ petition before the High Court of Himachal Pradesh despite the strikingly similarity of the issue raised.

46. In the aforesaid writ petition, the Hon'ble High Court of Himachal Pradesh has been pleased to dismiss the same vide order dated 01.03.2013 wherein the petitioner has sought the following reliefs:

- a. *To issue writ in nature of Mandamus directing the respondents especially respondent no. 2 to stay the disciplinary proceedings pending against the petitioner till the disposal of the case arising out of the FIR No. 01/2010 dated 09.01.2010 registered with Police Station Dharamshala under the provisions of Section 7 and 13 (2) of the Prevention of Corruption Act and further which is pending before the trial court at Dharamshala.*
- b. *To issue writ in the nature of mandamus directing for the speedy and expeditious trial of the case arising out of the above mentioned FIR in a time bound manner"*

For facility of reference, relevant portion of the judgment (supra) is reproduced as under:

*"It is well settled that for the same offence/incident in addition to criminal proceedings, disciplinary proceedings may also be proceeded by the Department concerned if required and even if criminal proceedings come to an end, then State Government is always free to proceed with the disciplinary proceedings separately. Only important aspect has to be kept in mind is that for same cause a person has not to be punished twice keeping in view the provision of Article 20 (2) of the Constitution of India which says that no person shall be prosecuted and punished for the same offence more than once. In the present case, since inquiry has already been completed and even if the disciplinary inquiry has come to an end, under the circumstances, the criminal proceedings cannot be stayed. As such, the petitioner is not entitled for any relief. Accordingly, the writ petition is dismissed."*

47. The omission on part of the petitioner is not a mere oversight, but a deliberate attempt to withhold material information, that could potentially influence the Court's decision. The failure to disclose the existence of the prior petition filed before High Court of Himachal Pradesh is a material fact, that goes to the very foundation of the petitioner's case. Such non-disclosure on part of the petitioner not only falls within the realm of misleading the Court, but also

raises serious questions about the credibility of the petitioner's current claim in the instant petition.

**48.** The petitioner has engaged himself in a conduct by representing a petition before this Court without revealing the earlier proceedings and earning dismissal in the same and also by relying on false and flimsy grounds, and the same tantamount to fraudulent misrepresentation. The act of concealing such a significant fact from the Court amounts to an attempt to mislead the judicial process, thereby violating the principles of good faith and transparency, that actually govern the legal proceedings. The petitioner's conduct clearly constitutes an abuse of the legal remedies and the deliberate misrepresentation of facts with an intent to deceive the Court. His actions are designed to mislead the Court and obtain a favourable judgement by suppressing the material facts, which is a serious legal and ethical violation of the fundamental principles of justice and fairness.

**49.** Thus, the law is well settled that the discretionary relief under Article 226 of the Constitution will only be granted to the person, who comes to the Court with clean hands, which means that a party seeking judicial intervention must come to the Court in good faith without any form of deception, misrepresentation or fraud. The Court has to exercise its discretion in favour of justice, fairness and equity and will deny relief to a party, whose conduct does not fall within these principles. Hence, a person, who is found guilty of such fraudulent conduct, is not entitled to get a relief under Article 226 of Constitution of India.

50. This Court while deciding the case titled *Satpal Sharma vs. State of J&K*, OWP No. 2015/2018 decided on 20.09.2024 has observed as follows;

44. *"In Prestige Lights Ltd. v. SBI reported in (2007) 8 SCC 449 it was held that in exercising power under Article 226 of the Constitution of India, the High Court is not just a court of law but is also a court of equity and a person who invokes the jurisdiction of this Court under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any suppression of material fact which has a direct bearing on the merits of the case.."*

45. *Reliance is also placed on the judgment of Hon'ble Apex Court in Scrutton, L.J. in R. v. Kensington Income Tax Commissioners [(1917) 1 KB 486 (CA)], wherein it has been observed as under:*

*" The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."*

55. *It is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief interim or final. The Apex Court in the case of "Kusha Duruka v.s The State of Odisha" reported in 2024 SCC OnLine SC 56 has taken a similar view which is reproduced as under:*

*"7. It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is "satya" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice- delivery system in the pre-Independence era, however, post- Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now a litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually c/w playing fraud with the court. The maxim suppressio veri, expressio falsi, i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. It's nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that `Lies are very sweet, while truth is bitter, that's why most people prefer telling lies."*

56. *The object underlying the above principle has been succinctly stated in K.D. Sharma Versus Steel Authority of India Ltd. and Ors. rendered in (2008) 12 SCC 481 wherein, following has been held:-*

35. *"It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on a ex-parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help the Court is supposed to know the law. But it knows nothing about the facts, c/w and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement".*

57. *The Hon'ble Apex Court in the case of K. Jayaram and others vs Bangalore Development Authority and ors reported in 2022 (12) SCC 815, has held as under:*

38....*As per settled law, the party who invokes the extraordinary jurisdiction of m this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts"*

51. This Court in case titled "*Fayaz Ahmad Rather v. U.T of J&K and ors.*", LPA NO. 20/2023 c/w LPA NO. 46/2023, decided on 03.04.2023 for the convenience of understanding has deduce following principles, in para-23 of the judgement as follows;

*Jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary.*

*To invoke this extraordinary, discretionary and equitable jurisdiction, it is of utmost necessity that the petitioner approaching the Writ Court must come with clean hands and put forward all facts before the court without concealing or suppressing anything.*

*A litigant is bound to state all facts which are material or relevant to the litigation.*

*The litigant must candidly state all the facts before the court without reservation. He cannot be permitted to play “hide and seek” or to “pick and choose” the facts he likes to disclose and keep back or conceal facts.*

*Jugglery, manipulation, manoeuvring or misrepresentation has no place in equitable and prerogative jurisdiction.*

*Suppression of material facts, concealment of full details of litigation, present and past, between the parties qua subject matter of dispute, distortion or manipulation of relevant facts, misleading the court by stating false facts or withholding true facts disentitle a party to invoke equitable jurisdiction under Article 226 of Constitution of India.*

52. Thus, due to lack of the territorial jurisdiction and the petitioner's failure to come to the Court without clean hands, this Court is not inclined to venture into the merits of the case. After analyzing all the material facts on record, coupled with the stand of rival parties and arguments advanced, this Court is of the considered view that the instant petition is misconceived, false, frivolous and liable to be dismissed.

53. The Apex Court has time and again addressed the issue of concealing material facts in petition, emphasising the importance of full disclosure of the material facts and the potential consequences of suppression. When a party suppresses material facts, it renders the proceedings a nullity. It is the duty of every litigant to disclose all material facts, as withholding material facts from the Court not only undermines the process of justice but is also violation of the principle of ‘coming to the Court with clean hands’. The Apex Court has further observed that failure to disclose material facts could lead to the dismissal of the petition, even if it has merit otherwise. Thus the imposition of costs for concealment of material facts has been used as a remedy to deter such fraudulent practices.

54. Similar view was taken by the Hon'ble Apex Court in case titled ***Dnyandeo Sabaji Naik & anr v. Mrs. Pradnya Prakash Khadekar & ors.*** 2017 SCC (5) 496 wherein it was held as under:

*“13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others would not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on truth.”*

55. This Court, with a view to deprecate such practice, while dealing with a similar case titled ***Satpal Sharma & ors. v. State of J&K and ors.***, OWP No. 2015/2018 , decided on 20.09.2024 wherein the petitioners had not come to the Court with clean hands and suppressed the material fact, imposed a costs of Rs 50,000/- on the petitioner to deter such practice.

56. Since in the instant petition, the petitioner has approached this Court by concealment of the facts, therefore, it is a fit case that he is burdened with the costs of Rs. 25,000/-, to be deposited within four weeks from today before the Registry of this Court. Thereafter, Registry is directed to submit report whether the costs in terms of this order has been deposited or not and for this limited purpose the petition will be listed, in case the costs is not deposited.

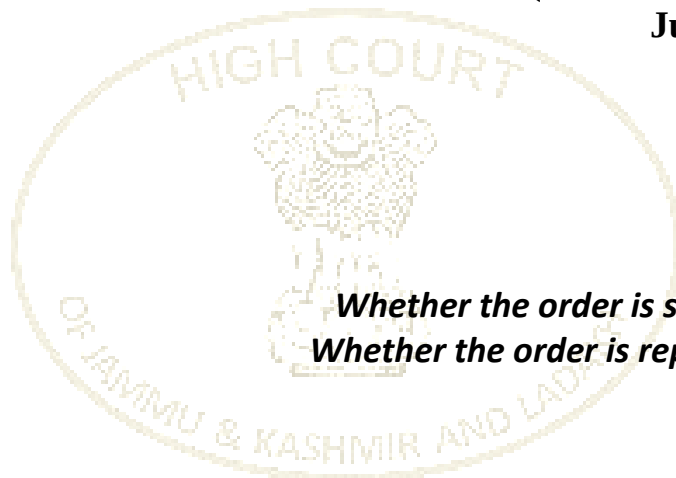
57. For the reasons stated hereinabove, the instant petition deserves dismissal and, accordingly, the same is ***dismissed*** along with connected application(s). if any.

58. However, it is made clear that dismissal of the instant petition will not come in way of the petitioner to seek appropriate remedy before the competent Court having jurisdiction.

59. Record, which has been produced by Mr. Bhatia, learned GA may be returned to him.

(Wasim Sadiq Nargal)  
Judge

Jammu:  
21.02.2025  
Renu



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