

(2014) 10 KL CK 0375
In the High Court Of Kerala
Case No : R.P. No. 538 of 2014

B. Khadarkunju and Others	Vs	APPELLANT
A. Surendran and Others		RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Citation : (2015) 1 KLJ 815 : (2015) 2 KLT 447

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : K. Jaju Babu, Sr., M.U. Vijayalakshmi and Brijesh Mohan, Advocates for the Appellant; P.C. Sasidharan and George Mathew, SC, Advocates for the Respondent

Judgement

T.B. Radhakrishnan, J.—These review petitions are filed against a common judgment dated 27.06.2014. Heard the learned counsel for the parties. Disputes relating to seniority between promotees and direct recruits in the category of Draftsman Grade I in the Kerala Water Authority were the subject matter of two original petitions. They were decided as per a common judgment. That led to a bunch of writ appeals. They were allowed setting aside the impugned common judgment on the ground of non-joinder of necessary parties to the original petitions. Resultantly, the original petitions were remitted paving way for impleadment of the necessary parties and consideration of all issues after such impleadment. That judgment, which is an order of open remand, is sought to be reviewed on the premise that paper publication was made, with notice on the private respondents in the original petitions, who, going by the contentions, were impleaded in representative capacity, as well.

2. The learned senior counsel for the review petitioners argued that the finding in paragraph No. 8 of the judgment sought to be reviewed is vitiated by error apparent on the face of the record, inasmuch as, the paper publication was made after order of court was obtained for such publication and, therefore, it is in conformity with the requisite notice in accordance with Rule 148 of the Rules of

the High Court of Kerala, 1971, for short, "Rules".

3. The learned counsel for the opponents to the review petitions, who were the appellants in the writ appeals, impeached the aforesaid; stating, inter alia, that the principle of audi alteram partem cannot be ignored in the situation and the judgment sought to be reviewed is well founded and is not vitiated on any count warranting review.

4. Paragraph 8 of the judgment sought to be reviewed reads as follows:-

"8. Keeping aside all the other contentions and arguments for the time being, it is the undisputed position that the correctness of the seniority list was decided and directions to re-cast the seniority list and as regards the ratio were issued without all parties to the seniority list impugned before the learned single Judge being on array in those proceedings. As rightly pointed out by the learned counsel, the seniority list itself would show the identity of the persons included in the list. Those persons would definitely be affected by the decision rendered in such original petitions. It is trite law that while deciding such seniority disputes, including as to the modality in which a particular rule has to be operated, all persons who would be affected by the decision that would be rendered in the writ proceedings are entitled to be heard. Though we, at the first blush, thought that this matter could be further adjudicated by the Division Bench by deciding all other issues, including the effect of the finality of the judgment rendered by the Division Bench in W.A. No. 1906 of 1998 and connected cases and the argument that the said judgment is not correct, on a deeper consideration, we are of the view that it would not be wise for us to do so because, when the correctness of that decision is being decided, the persons who would be affected by any such exercise, including those employees in the cadre who would stand by that judgment would be eligible to be heard. Therefore, we think that the proper course that would be open to us is to preserve the examination of all issues and set aside the impugned judgment on the ground that the original petitions in which the impugned judgment was issued ought to have been decided only after affording opportunity to the petitioners therein to seek impleadment of all persons included in the seniority list which was subject matter of the original petitions, if so advised, or otherwise, to their peril. The two original petitions having been consolidated for consideration, it would be inappropriate for us to segregate and decide issue partly here, thereby excluding opportunity for all the parties to raise all contentions before learned single Judge."

5. On the basis of the aforesaid reasoning and finding, the common judgment impugned in the writ appeals was set aside on the ground of non-joinder of necessary parties and leaving open all other issues, paving way for reconsideration of the original petitions on merits, after necessary parties are brought on record on application of the petitioners in those original petitions.

6. Rule 148 of the Rules reads as follows:

"148. Addition of parties. All persons directly affected shall be made parties to

the petition. Where such persons are numerous, one or more of them may with the permission of the Court on application made of the purpose, be impleaded on behalf of or for the benefit of all persons so affected; but notice of the Original Petition shall, on admission, be given to all such persons either by personal service or by public advertisement as the Court in each case may direct."

(emphasis supplied)

7. The aforesaid Rule fell for pointed consideration of the Honourable Supreme Court of India in *K.H. Siraj Vs. High Court of Kerala and Others*, , a case which arose from the judgment of the Kerala High Court relating to recruitment in relation to which there was a select list with specified definite number of persons who were identifiable from that list. Faced with the situation of non-joinder of necessary parties, the writ petitioners in that case contended before the Apex Court that they are only challenging the select list to a limited extent. The Apex Court held that acceptance of such challenge will result in total re-arrangement of the select list. It was found that it is imperative that all the candidates in the select list should have been impleaded as parties to the writ petition, as otherwise they will be affected without being heard. Publication in the newspaper does not cure that defect, it was held. Construing Rule 148 of the Rules, it was held that the said Rule can be applied only when very large number of candidates are involved and it may not be able to pinpoint those candidates with details and that in cases where the persons who would be affected are of specified definite number and identifiable on the basis of the list in dispute, the said Rule cannot be resorted to. This is the net effect of the interpretation given to Rule 148 of the Rules by the Apex Court in *K.H. Siraj (supra)* - see paragraph No. 75 of that judgment as reported in the SCC.

8. Identity of persons in a seniority list is a fact available and one that can be noticed from that list itself. Hence, individual notice to each of them cannot be excluded on the specious plea that they are numerous, to excuse their impleadment and to exclude notice to each of them, individually. In service litigations, particularly when inter se seniority lists are under challenge, impleadment of some of the persons in a seniority list which is sought to be impugned and publication of notice of that writ petition in news paper are insufficient substitution to due personal service on all persons, who may be affected if the relief sought for against a seniority list is granted, in any manner, affecting any such person who is not joined in the array of parties. This principle would apply in service litigations relating to seniority disputes, select list, etc., notwithstanding whether they are impeached in writ jurisdiction or otherwise. If that is not done, the lis will be ill-constituted as those persons who would be so excluded from the array would be condemned unheard if the select list or seniority list is interfered with.

9. In further support of the aforesaid view, is the judgment of the Apex Court in *Vijay Kumar Kaul and Others Vs. Union of India (UOI) and Others*, , wherein it was laid down that if any direction is issued for fixation of seniority affecting

those persons who are already placed as seniors, that will jeopardize the interest of such persons and such a relief cannot be granted when they have not been impleaded as parties to the litigation. Profitable reference was made in that precedent to the decisions of the Apex Court in *Indu Shekhar Singh and Others Vs. State of U.P. and Others*, and in *Public Service Commission, Uttaranchal Vs. Mamta Bisht and Others*, categorically holding that the principles enshrined in the provisions of the Code of Civil Procedure would apply to writ proceedings, as well. Such doctrines are salutary and operate in public policy domain, which includes the salutary doctrine of exclusion of the rule of hearing.

10. The aforesaid position notwithstanding, it cannot be disputed that what has been done through the impugned judgment is to provide fair opportunity following settled precedents governing practice and procedure in writ jurisdiction. That is why an order of open remit has been made for consideration of the original petitions, after impleadment, rather than foreclosing the challenge to the seniority positions merely on ground of non-joinder of necessary parties. For the aforesaid reasons, no ground for review of the judgment is made out. These review petitions, therefore, fail.

In the result, these review petitions are dismissed.