

(2007) 10 RAJ CK 0012
In the Rajasthan High Court

Bhanwar Lal Bunker and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Penal Code, 1860 (IPC) — Section 323

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3

Citation : (2008) 2 RLW 992 : (2009) 3 SLJ 448

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Judgement

Dinesh Maheshwari, J.—The petitioners, 17 in number, holding the posts of teacher with qualification of School Training Certificate ("STC" for short), and posted at different Upper Primary Schools, having been transferred to different Primary Schools on the vacant posts under Sarva Shiksha Abhiyan ("SSA" for short) by the order dated 25.09.2007 (Annex.3) issued by the respondent No. 3 District Education Officer (Elementary Education) and Additional Chief Executive Officer, Zila Parishad, Dungarpur in pursuance of an order dated 30.07.2007 (Annex.4) issued by the State Government seek to question the said orders dated 25.09.2007 and 30.07.2007 by way of this joint petition for writ.

2. While considering the matter for motion-admission, this Court expressed its reservations on competence of such petition jointly on behalf of 17 petitioners where the transfer/posting order in relation to each of the petitioner affords a separate and distinct cause of action; and the petitioners cannot be considered having the same cause of action. In response, learned Counsel appearing for the petitioners has made elaborate submissions giving out the grounds of challenge to the orders impugned and contended that essentially the petitioners are commonly challenging the very basis of the order dated 30.07.2007 (Annex.4) issued by the State Government directing that the STC qualification holder teachers be shifted to Primary Schools under SSA without regard to the rules and

the law; and the petitioners are commonly aggrieved of the action of the respondents in shifting them to SSA on a pick and choose method and without framing proper policy. According to the learned Counsel, the challenge to the transfer/posting order is merely an ancillary relief and else, the petition has been filed essentially to question the order dated 30.07.2007 (Annex.4) as being wholly unauthorised and without jurisdiction. Learned Counsel contended that cause of action in relation to the challenge to such order being one and the same, the petitioners have rightly joined in this single petition. Learned Counsel has referred to and relied upon the decision of this Court in Jagdish Narayan Sharma and Ors. v. State of Rajasthan and Ors. 1994 (2) WLC 615 and that of the Hon''ble Supreme Court in A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another, . Learned Counsel further submitted with reference to the decision of this Court in the case of Laxmi Narayan Sharma and Ors. v. State of Rajasthan and Ors. 2001 (5) WLC 729 that if at all there be any dispute about joining of the petitioners in a single petition, they are ready to make payment of additional court fees in relation to each of the petitioners and the petition may be entertained thus.

3. Having given anxious consideration to the submission made by the learned Counsel for the petitioner, having examined the subject matter of this petition, and having considered the law applicable to the case, this Court is firmly of opinion that this joint petition cannot be entertained.

4. Chapter-XXII of the Rules of High Court of Judicature for Rajasthan, 1952 (referred to as "the Rules of 1952" hereafter) deals with the application for direction under Article 226 of the Constitution of India other than a writ in the nature of habeas corpus; and Rule 375 thereof deals with the frame of such application, i.e. a writ petition. Sub-rule (4) of Rule 375 provides that,-

(4) An application by more than one person shall not be entertained except when the relief claimed is founded on the same cause of action.

5. A Division Bench of this Court in the case of Chandmal Naurat Mal and Others Vs. State of Rajasthan and Another, has specifically considered the effect and operation of the said Rule 375(4) of the Rules of 1952. In the said case the question arose about maintainability of the joint petition filed by 41 petitioners for restraining the respondents from enforcing the provisions of Rajasthan Agricultural Produce Markets Act, 1961, the Rules made thereunder and the bye-laws made by Krishi Upaj Mandi Samiti, Kishangarh; and it was contended on behalf of the petitioners that such joint petition was maintainable for it raises common questions of law and fact as the petitioners' freedom to carry on trade and commerce would be affected by the law, validity whereof was put to challenge in the petition. The Hon''ble Division Bench negated such contention and held,-

It is true the petitioners are challenging the validity of the same law in the same manner and it may be assumed that they are affected in the same way. But all

the same this is not sufficient for holding that they have the same rights which are allegedly infringed by this law. In other words, the injury with which they are threatened or have already suffered cannot be said to be the same.

6. The Hon''ble Division Bench further noticed, observed, and held,-

(11) It has been laid down in Halsbury's Laws of England Vol.2 (Vide para 155 page 83) that persons having a common and joint interest in the subject-matter in controversy may be joined as relators in mandamus, but persons having similar but wholly separate and distinct interests in the subject-matter of the controversy may not do so. This again prompts us to consider as to what is really the subject matter of the present writ petition, that is, whether it is merely for the declaring of the impugned law as unconstitutional or at the same time it is the upholding of the petitioners' right to carry on their business unhampered and for this to issue an adequate writ forbidding the respondents from interfering with the petitioners' rights and on going through the writ petition we are again confirmed in our belief that the rights of the petitioners being different though identical, their causes of action are not the same.

7. The Hon''ble Division Bench, thus, in the aforesaid case of Chandmal Naurat Mal and Ors. held that in the matters where the petitioners are having similar or identical cause, they could still not be said to be having the same cause and, therefore, cannot maintain a joint petition. The course adopted by the Hon''ble Division Bench in such an incompetent petition has been to give an opportunity to such joint petitioners to choose as to on whose behalf the petition would be continued leaving the others to file separate petitions, if they wish to do so.

8. So far the decision of Hon''ble Supreme Court in the case of A.N.Pathak and Ors. (supra) is concerned, therein 6 petitioners filed a joint writ petition (under Article 32 of the Constitution of India) before the Hon''ble Supreme Court raising the grievance about operation of the service Rules to the detriment of the petitioners who were promotees and were being deprived of rightful placement in the seniority list vis-a- vis the direct recruits. While disposing of the preliminary objection on maintainability of the joint petition, the Hon''ble Supreme Court observed that nothing prevents it from modulating the relief and giving directions to the respondents to reconsider the offending lists. The said observations of the Hon''ble Supreme Court on its powers of modulating the relief are obviously inapplicable to the present writ petition. In the said case, the Hon''ble Supreme Court was not concerned with kind of a Rule as is available for the petitions for writ under the Rules of 1952; nor the Hon''ble Supreme Court has held that in every such case involving similar cause, a joint petition could be maintained.

9. So far the case of Jagdish Narayan Sharma and Ors. (supra) decided by a learned Single Judge of this Court is concerned, it appears that the decision of the Hon''ble Division Bench in the case of Chandmal Naurat Mal and Ors. (supra) was not brought to the notice of the court and the said decision in Jagdish Narayan Sharma, with respect, cannot be read as an authority for the proposition

that in every matter where a common order is made in relation to the petitioners, a joint petition would be competent. It appears that in the said case of Jagdish Narayan Sharma and Ors. the petitioners who were the Ward Members of Municipal Board, Merta City challenged their suspension order particularly after a single FIR leveling common allegations was lodged whereupon a case u/s 323 IPC read with Section 3(1)(x) Scheduled Castes & Schedule Tribes (Prevention of Atrocities) Act was registered against them and consequent thereto, a common suspension order was passed. In any case, in view of the law declared by the Division Bench of this Court in the case of Chandmal Naurat Mal and Ors. in no uncertain terms, the said decision in Jagdish Narayan Sharma is of no assistance to the petitioners.

10. So far the proposition of maintaining the petition by payment of additional court fees with reference to the decision in the case of Laxmi Narayan Sharma and Ors. (supra) is concerned, this Court is unable to find any basis or authority for such proposition that invariably a joint petition, contrary to the requirements of Rule 375 (4) of the Rules of 1952, could be entertained upon payment of additional court fees. Noteworthy it is that in the said case of Laxmi Narayan Sharma and Ors., the joint writ petition filed in the year 1998 by 15 petitioners for directions to the respondents to accord them benefit of revised upgraded UGC pay-scales had already been entertained with reply by the respondents and rejoinder to the reply by the petitioners having been taken on record; and the petition was decided on 30.10.2001. The learned Single Judge of this Court in the said case has observed and directed,-

The petitioners had filed the joint petition, though each petitioner has individual, distinct and separate cause of action. Even if they decide to file this joint petition to this their act there may not be any serious objection but certainly they have to pay the amount of Court fee which is payable on 15 writ petitions. The petitioners are directed to pay Rs. $25 \times 14 + 1 \times 2 \times 14 + 2 \times 14 + 2 \times 14 + 10 \times 14 =$ Rs. 660.00 additional court fee. The Registry is directed not to issue the certified copy of this order either to any of the petitioner or to their Counsel unless this amount of the addl. court fee as aforesaid is paid by them.

11. The procedure as adopted in Laxmi Narayan Sharma (supra) of issuance of directions for payment of additional court fees has no reference to any Rule or any binding precedent. It may be pointed out that by way of the directions of the nature aforesaid, this Court has, looking to the facts and circumstances of each individual case, moulded the requirements of procedure particularly for not shunting out the writ petitioners after their joint petition had already been, for any reason, taken up for consideration on merits; that is to say, when the joint petition had already been entertained. However, such procedure and the said directions, by their very nature, could only be read confined to the facts and circumstances of the said case/s and not laying down a rule of universal application.

12. For the discussion on the issue having gone thus far, it appears apposite to

point out another facet of the matter that even the said proposition of recovery of additional court fees on a joint petition has not been approved by another learned Single Judge of this Court in the case of Sangarsh Samiti Pradhan Adhyapak Madhyamik Vidhyalaya Vs. The State of Rajasthan and Others, wherein it has been held that the court fees is chargeable on the writ petition and not on the individual person who has approached the court; and that the provisions of item 11 (r) of Schedule-II to the Rajasthan Court Fees and Suits Valuation Act, 1961 are attracted in the case of writ petition and fixed court fees of Rs. 25/- is chargeable on the writ petition, irrespective of the number of persons who have been arrayed as petitioners. Therefore, it is also not available as a settled position if additional court fees is payable on every joint petition nor could it be taken a universal rule that a joint petition be entertained upon payment of additional court fees.

13. A significant feature, yet and however, in relation to Sangarsh Samiti's case (supra) is further required to be pointed out. In the said decision, the essential attributes like subject matter of the said writ petition, the cause of action and the relief claimed are not available and it is, therefore, difficult to find as to for which subject matter and relief the learned Single Judge found that court fees of Rs. 25/- only was payable for the said joint writ petition with reference to item 11 (r) of Schedule-II of the Rajasthan Court Fees and Suits Valuation Act, 1961? The learned Single Judge in the said case has proceeded to observe that the office had not raised any objection regarding maintainability of the joint petition and, therefore, the writ petition was maintainable. With utmost respect, such observations by the learned Single Judge cannot be taken to be a declaration of law because it is the mandate of Rule 375(4) that a joint petition shall not be entertained except when the relief claimed is founded on the same cause of action. The operation of the said Rule is not and cannot be dependent on a mere report, or omission thereof, by the Office. Therefore, it need be clarified, with respect, that the decision in Sangarsh Samiti's case cannot be read as an authority for the proposition that a joint petition is always maintainable irrespective of the requirements of Rule 375 (4) of the Rules and irrespective of the law laid down by the Division Bench of this Court in the case of Chandmal Naurat Mal and Ors. (supra).

14. Thus having examined the submissions of the learned Counsel for the petitioner; and the decisions having co-relation with the submissions and having bearing upon the matter in issue, the position of law obtainable and applicable could be summarised as under:- (i) Having regard to the requirements of Rule 375 (4) of the Rules of 1952 a joint petition by more than one person cannot be entertained unless the relief claimed in the petition is founded on the same cause of action; and it is not sufficient to show similarity or even identity of cause of action, as held by the Division Bench of this Court in the case of Chandmal Naurat Mal and Ors. (supra). The other decisions of this Court proceeding on any proposition contrary to the ratio of the said Division Bench decision cannot be read as binding precedents; (ii) The decision of the Hon'ble Apex Court in A.N.

Pathak's case (supra) is not applicable for considering maintainability of a joint petition for writ under Article 226 of the Constitution of India when to be dealt with under the Rules of 1952; and (iii) The proposition of entertaining a joint petition by way of payment of additional court fees is not of universal application; and such procedure whenever adopted and applied, ought to be considered being confined to the facts and circumstances of the individual case only. The present petition is silent on any averment for maintaining a joint petition. The petitioners have stated their particulars regarding qualification, place of posting, and the place whereto they have been transferred in Schedule-A attached to the petition. The petitioners have claimed the relief of quashing of the impugned orders dated 25.09.2007 and 30.07.2007 and for declaration that they may not be shifted in pursuance of the order dated 25.09.2007 from their place of posting. The petitioners seek to submit that the method adopted by the respondents of shifting the incumbents having STC training to Primary Schools of SSA and retaining B.Ed. trained teachers in the Upper Primary Schools is unauthorised for, according to the petitioners, no rule or law empowers the respondents to adopt such irrational classification. While elaborating on the grounds of such challenge, learned Counsel contended that the grievance of the petitioners being common and being related essentially to one and same order issued by the Government, the petitioners have a common cause of action and this joint petition is maintainable. This Court is unable to agree. Even if the petitioners have been transferred/shifted by a common order dated 29.07.2007 (Annex.3) and even when the said common order has been issued with reference to and on the basis of the same order dated 30.07.2007 (Annex.4); and further, even if the petitioners have framed the petition while putting in front their grounds of challenge to the said order dated 30.07.2007, the relief as claimed by the petitioners cannot be said to be founded on the same cause of action. Cause of action, the essential bundle of facts required to be established in order to support a right to relief, even when alleged to be similar for the petitioners, cannot yet be said to be the same one because each petitioner is an individual employee under a separate appointment order, holds a separate post, and gets a separate posting; and has been transferred separately from one place of posting to another. Merely because a common order has been issued for transfer/posting and merely because such transfer/posting order is based on one single order of the Government, the relief in relation to each of the petitioner regarding his/her transfer/posting cannot be said to be founded on the same cause of action, individual's posting fundamentally being of a different cause. It may also be pointed out that none of the petitioners would be entitled to challenge the said order dated 30.07.2007 issued by the Government unless could make out a case of infringement of any of his legal rights thereby. In other words, the petitioners or any of them would not be entitled to put a challenge in abstract merely to the Government Order dated 30.07.2007 unless there be a cause therefor. Such cause, and thus being the cause of action for the present petitioners, imperatively consists of challenge to the transfer/posting order dated 29.09.2007. It is, therefore, not correct to suggest that challenge to the transfer/

posting order is only that of an ancillary relief. Such challenge to the transfer/ posting order is an integral, rather essential, part of cause of action so far this petition is concerned; and the same being individual to each of the petitioners, the petitioners cannot join in one single petition. In the aforesaid view of the matter, this joint petition cannot be entertained.

15. However, having regard to the subject matter of this writ petition and the course adopted by the Hon''ble Division Bench in the case of Chandmal Naurat Mal and Ors. (supra), the petitioners are granted an opportunity to choose, if so desired, to pursue this writ petition only on behalf of one of the petitioners leaving the others to pursue their remedies in accordance with law. The petitioners ought to state their option within two weeks from today. As and when such option is stated, the office shall deal with the same and list the petition appropriately; and in other event, the petition may be listed for rejection after two weeks.

16. It is made clear that herein this Court has pronounced only on the question of maintainability of joint writ petition; and else, this order shall have no bearing on any other aspect related to any individual''s petition.