
(1999) 11 MAD CK 0026

In the Madras High Court

Case No : W.M.P. No. 21411 of 1999 in W.P.SR. No. 70689 of 1999

Management, E.I.D. Parry India Ltd.

APPELLANT

Vs

Assistant Commissioner of Labour-I and Others

RESPONDENT

Date of Decision : 04-11-1999

Acts Referred:

Citation : (2001) 3 LLJ 1335

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The writ petitioner in W.P.SR. No. 70689 of 1999, the management of EID Parry India Limited, has taken out this

application to permit the petitioner to file a single writ petition against the order passed by the Assistant Commissioner of Labour-I (Controlling

Authority under the Payment of Gratuity Act), Chennai-6, the first respondent in LA. No. 140 to 179 of 1998 in P.G. Application Nos. 67 to 106

of 1999. Respondents Nos. 2 to 40 are the applicants in LA. Nos. 140 to 179 of 1998 in P.G. Application Nos. 67 to 106 of 1999 wherein they

have sought for condonation of delay in filing the applications. The writ petitioner is the management and the petitioner-establishment is covered

under the provisions of the Payment of Gratuity Act, 1972, which came into force on September 21, 1972.

2. According to the writ petitioner, the writ petitioner-management had been paying gratuity as prescribed, while excluding the incentive earnings

for the purpose of gratuity.

3. Respondents Nos. 2 to 40 were the employees and they ceased to be

employees between 1982 and 1989. The said employees claimed for payment of gratuity and the petitioner-management accepted their claims and settled their dues. Thereafter, the employees on June 5, 1998, moved the first respondent u/s 7(4) of the Payment of Gratuity Act, 1972, claiming difference, as according to the employees the salary should also include the incentive earnings and on that basis gratuity has to be calculated. In filing such claims, there was delay and the employees were advised to file necessary applications to condone the delay. Respondents Nos. 2 to 40 filed applications seeking to condone the inordinate delay in preferring claims u/s 7(4) of Payment of Gratuity Act while seeking to explain the delay by assigning various reasons.

4. The said 39 applications to condone the delay were resisted by the writ petitioner-management on various grounds. Arguments were advanced in the said interlocutory applications, namely, LA. Nos. 140 to 179 of 1998, taken out to condone the delay ranging from 3081 days to 8966 days.

5. By a common order dated May 17, 1999, the first respondent allowed the applications and condoned the delay as sufficient cause had been shown by the employees/respondents Nos. 2 to 40. Being aggrieved by the order dated May 17, 1999, passed in I.A. 140 to 179 of 1998, the writ petitioner had filed the present writ petition praying for the issue of writ or certiorari to call for and quash the said orders.

6. The writ petitioner had taken out the present application to permit the petitioner-management to file a single writ petition against the order passed in I.A. Nos. 140 to 179 of 1998, as according to the writ petitioner it is a common order and that single writ petition could be maintained.

7. In the affidavit, filed in support of the application it has been set out that the petitioner should be permitted to file a single writ petition challenging the common order passed by the first respondent in the 34 interlocutory applications.

8. Learned counsel Mr. Ibrahim Kalifullah, appearing for T.S. Gopalan & Co., placed reliance on a Division Bench pronouncement of this Court in General Manager, EID Parry (India) Ltd. Vs. Presiding Officer, Labour Court and Others, , in support of his contention that a single writ petition at the instance of the writ petitioner-management is maintainable in that case.

The Division Bench, while considering the said question, held thus,

General Manager, EID Parry (India) Ltd. Vs. Presiding Officer, Labour Court and Others, :

13. The learned single Judge has relied on the judgment of a Division Bench of this Court in Sellakumar Talkies v. Board of Revenue, [1984]

WLRSuppl. 113, in support of his conclusion that one writ petition is not maintainable in the present case. The observation relied by the learned

Judge is really obiter. On the facts of the case, the Bench found that one writ petition was maintainable, as the Commissioner for Land Revenue

had consolidated 18 revision petitions and given only one number to the said proceeding. The Bench said that the ratio laid down in the case of

Chandra Bhan Gossain v. State of Orissa, [1963] 14 STC 918, was applicable to the said case and extracted the relevant portion from the

judgment of the Supreme Court. Thereafter, the Bench observed :

(17) The position, however, would be otherwise if the Board had treated all the revisions before it as different proceedings giving them different

numbers and disposing them all by a common order. That would necessitate filing separate writ petitions in the High Court, as ordinarily and

generally, as many writ petitions as there are orders complained of and sought to be quashed have to be filed. Where the order complained of has

been passed in different cases, the order though one, is really as many orders as there are cases requiring separate writ petitions for challenging

those orders. There are no rules relevant on the point framed by the High Court under Article 226 of the Constitution. Nor the procedural rule

made under Article 226 would have the effect of substantial law, as held by the Supreme Court in the case of Prabhu Narayan Vs. A.K.

Srivastava, . All that we find is that a fee of Rs. 100 has to be paid for each writ petition under Schedule II of Article 11-A of the Tamilnadu Court

Fees and Suits Valuation Act, 1955, other than a writ or habeas corpus or a petition under Article 227 of the Constitution. The Court may,

therefore, insist that where there are a number of cases disposed of by a common order, there should be as many writ petitions registered as there

are cases in which a common order was passed. This is a self-imposed limitation adopted by the Court in exercise of its own power under Article

226 and does not flow from the ambit of power under Article 226 of the

Constitution."

14. The observation made in the above passage was wholly unnecessary for the disposal of that case, We are unable to accept that whenever

different numbers are given in the proceedings before a Tribunal or a lower Court, there should be different writ petitions challenging the orders in

those proceedings. As pointed out in the above passage itself, there is no limitation imposed or procedure indicated under Article 226 of the

Constitution. The rules framed by the High Court under Article 225 of the Constitution do not contain any provision applicable to the present case.

Neither Rule 2-A nor Rule 2-B will come into play. The question has to be decided only on first principle. Under the Code of Civil Procedure,

appeals are against the decrees. Hence, there must be an appeal against each decree because there will be a separate decree in each suit.

Therefore, even if there is one common judgment in several suits, an appeal has to be filed against each decree separately. But, in the case of a

petition for issue of a writ of certiorari, the procedure prescribed in the CPC is not applicable. (See Explanation to Section 141, CPC). If the

common award of the Labour Court is quashed, the orders in favour of the claimants get nullified. If all the claimants are made parties to the writ

petition, the requirement of law is satisfied. The matter considered in the order is common to all the employees. In fact, by consent of both parties,

the petitions were all heard together and evidence was recorded in common. The Labour Court has not gone into the individual claims of each

employee. In the absence of any express rule insisting on a separate writ petition against each claim petition, one writ petition will suffice.

15. We are aware that a Division Bench of this Court has in, *Management of Rainbow Dyeing Factory v. Industrissal Tribunal*, AIR 1959 Mad.

137, considered the question whether several establishments could join together and file one writ petition to challenge a common award passed by

the Industrial Tribunal and held that the interests of the establishments in that case was several and distinct though similar and, therefore, each one

of them must file a separate writ of certiorari and pay Court fee. The ruling in that case will not apply here. However, we must point out that when

the decision was rendered by the Division Bench in that case, Rules 2-A and 2-B were not in existence. Those two rules were framed by the High

Court only in 1979. Rule 2-B enables the Court to permit several persons to join in a single petition having regard to the nature of their grievance,

the source of the right which they seek to enforce, the nature of the cause of action alleged and the nature of the relief prayed for.

16. It is also brought to our notice by learned senior counsel for the appellant that in view of the judgment of the learned single Judge treating the

present writ petition as one against C.P. 18 of 1992, the appellant has now presented 13 more writ petitions against the other claim petitions and

they have not yet been numbered by the Registry. We hold in the facts and circumstances of the case, the single writ petition filed by the appellant

is maintainable against the common order of the Labour Court.

9. In the present case it is to be noted that 39 workmen have taken out separate applications u/s 7 of the Payment of Gratuity Act and also taken

out separate applications to condone the delay in filing claims u/s 7(4) of the Payment of Gratuity Act, which delay ranges from 3,081 days to

8,966 days. The claim of each individual is for a different sum depending upon the date of their superannuation and the quantum of last drawn

salary as calculated by each one of them. The cause of action for filing of such a claim as well as the cause of action for taking out different

applications are distinct and separate, as admittedly, the claim is for a different sum. The claim itself relates to different dates and different rate of

emoluments or salary as the case may be. ;

10. Each one of the 39 employees have filed separate applications to condone the different number of days of delay. As such facts relating to each

one of the claims as well as each one of the interlocutory applications are different and each one of them had taken out separate applications as the

workmen could not have joined in a common petition and raised on different facts, different questions, some of the may be answered one way or

other or may be answered in different ways. The employees could not have joined together in filing a common petition or single application.

11. Based upon a common order, learned counsel for the writ petitioner contends that the writ petitioner-management could very well maintain a

single writ petition and seeks leave to file a single writ petition.

12. In this respect the decisions of the Apex Court required to be referred. In Dhanyalakshmi Rice Mills and Others Vs. The Commissioner of

Civil Supplies and Another, : their Lordships of the Apex Court while noting that each petitioner has individual and independent cause of action and

by such a combination the petitioner would be open to misjoinder, held that the remedy under Article 226 of the Constitution is not appropriate

and held thus:

The remedy under Article 226 is not appropriate in the present case for these reasons as well. First, several petitioners have joined. Each

petitioner has individual and independent cause of action. A suit by such a combination of plaintiffs would be open to misjoinder. Second, there are

triable issues like limitation, estoppel and questions of fact in ascertaining the expenses incurred by the Government for administrative surcharges of

the scheme and allocating the expenses with regard to quality as well as quantity of rice covered by the permits.

13. ""In P. Radhakrishna Naidu and Others Vs. Government of Andhra Pradesh and Others, : their Lordships of the Apex Court had occasion to

consider whether several petitioners could combine themselves when the cause of action are separate and independent. In that context, the Apex

Court held thus :

Further, it has to be observed that in the present writ petitions several petitioners have combined as petitioners. Their causes of action are

separate and independent. Each is alleged to be an instance of individual assertion of constitutional right in regard to facts and circumstances of

each case. Where several petitioners combine for alleged violation of i their rights, it is difficult for Court to go into each and every individual case.

In the present case the affidavit evidence on behalf of the State is preferred and, therefore, the first petitioner cannot agitate the question of

disputed age.

14. In A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another, the Apex Court had occasion to consider the

maintainability of joint petition by several petitioners and, on facts of the case, held that such joint petition by several persons could be maintained.

15. The relief and prayer would show that the petitioner has jumbled up 39 cases or interlocutory applications arising out of distinct claims which

was disposed of by the first respondent and had filed a single writ petition. Such a single writ petition clearly suffers from misjoinder of various

causes of action. That apart the case of each one of the 39 workmen is distinct and separate and the cause of action for their claim is also distinct

and separate and hence the same could be challenged by filing separate writ petition.

16. In *Narendrakumar J. Modi Vs. Commissioner of Income Tax, Gujarat II, Ahmedabad*, : the Apex Court laid down that large number of

proceedings and orders cannot be challenged in a single petition. In fact, in the said case the High Court dismissed the appellant's petition in limine

and on that score their Lordships of the Apex Court declined to interfere with the said order holding that in a single writ petition rambling

allegations were made challenging multifarious proceedings and the orders on various grounds and such writ petition has been rightly dismissed.

17. Whether a joint petition should be permitted or not depends on facts and circumstances of each case. No hard and fast rule can be laid down.

Persons having different cause of action and the identity of interest not being the same cannot join each other to file a joint writ petition. Where the

orders impugned by a single petition under Article 226 are passed in various appeals when the same are not interconnected, the petitioner cannot

maintain a single writ petition.

18. The single writ petition against the decision of several appeals is not maintainable even if several appeals were decided by a common judgment.

Though common order has been passed in respect of identical claims, assigning identical reasons, the order affects the individual claim and not

being a common right, no joint writ petition is maintainable.

19. In respect of an individual grievance, each aggrieved person must file independent petition for relief and even if the objection is common, the

joint petition is not maintainable and such view has been taken by this Court in *P. Subbiah v. Loyal Textile Mills*, 1975 31 FLR 291 (Mad). A

single application for the relief of composite character based on distinct cause of action is not maintainable.

20. In the present case by a common order number of claim petitions have been disposed of by the same authority. Be that so, it does not mean

that the injury caused is common so as to justify a single writ petition by clubbing the challenge to all the claim petitions.

21. In *Management of Rain Bow Dyeing Factory v. Industrial Tribunal*, (supra) it

has been held by a Division Bench of this Court that several persons who were aggrieved by an order of Tribunal cannot join together as petitioners in a common single writ petition to quash that order under

Article 226, even though the grievance of the petitioners and remedy sought for might be similar. The Division Bench of this Court held thus :

M.S. Ganapathi Nadar and Sons Factory and Others Vs. The State of Madras and Others, , was a case in which the managements of a number of

handloom factories attempted to take out a single petition for the issue of a writ prohibiting the Industrial Tribunal from proceeding with an enquiry

in an industrial dispute in pursuance of a notification made by the Government. The Court held that separate petitions should be filed.

22. I have heard learned counsel for the petitioners who urged that as the reference by the Government, which was impugned in the petition, was a

single one the petitioners were entitled to file a single writ petition but, I am not persuaded that this contention is correct. Notwithstanding that the

reference was one, what is sought to be ventilated in the petition is the right of each petitioner to carry on its business without the interference by

the State Government or the Tribunal acting under the provisions of the Industrial Disputes Act. That " the right whose violation is alleged is an

individual right which inheres in each petitioner cannot be disputed and merely because similar rights possessed by the other persons are also

violated, it does not follow that their grievances have a unity.

23. To the same effect is the decision in Sri Shanmuga Rajeswara Sethupathi, Rajah of Ramnad Vs. State of Madras, :

That any one of the persons affected can come and apply for a writ does not support the contention that all of them can come together on a single

petition. The action of one may benefit many; but, it does not follow that all the many can file a single petition. Nor are we willing to subscribe

generally and without qualification to the statement that a writ of certiorari must destroy the order as a whole or not at all.

24. We consider that in appropriate cases and where the circumstances require it, the order can be so moulded as to give relief only to the persons

who are before the Court, or other limited class of persons. The destruction of the order complied of, may in such cases, be a partial destruction. It

will have been noticed that even in the present case two of the managements

complained of took special pleas before the Tribunal. They contended that there was no dispute between them and the members of their establishments.

25. The view has been consistently held in this Court that in matters of this kind each person aggrieved must file a separate petition, and, of course pay the requisite Court fee. That view appears to us to be the correct one, and we, therefore, adopt it."

26. In the light of the above pronouncement of the Apex Court as well as the earlier Division Bench of this Court, I am of the considered view that

the petitioner herein cannot be permitted to file a single writ petition against the orders passed by the Assistant Commissioner of Labour-1,

(Controlling Authority under the Payment of Gratuity Act) in I.A. Nos. 140 to 179 of 1998 in P.G. Applications Nos. 67 to 106 of 1999. The

petitioner has to challenge each order passed in each Interlocutory Application arising out of the Payment of Gratuity Application by filing separate

writ petitions and the writ petitioner cannot be permitted to join all the causes of action, and challenge separate and identical orders passed by the

very same authority by filing a single writ petition. The cause of action for each of the application is different and the application before the forum

below is also different and distinct.

27. In the circumstances, the petitioner is not entitled to maintain a single writ petition. The Division Bench judgment relied upon by the learned

counsel for the petitioner, in my considered view, will not enable the petitioner to maintain a single writ petition. In the light of the pronouncements

of the Apex Court referred to above, as well as earlier Division Bench, this Court holds that the petitioner is not entitled to maintain a single writ

petition and it has to file separate writ petitions challenging each one of the orders passed in each one of the Interlocutory Applications arising out

of separate Payment of Gratuity Applications.

28. In the result, the writ miscellaneous petition is dismissed.