

(2002) 11 AHC CK 0101
In the Allahabad High Court
Case No : C.M.W.P. No. 18943 of 2002

Ram Kishun Maurya and Others

APPELLANT

Vs

U.P. Power Corporation Ltd. and Others

RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 AWC 458

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Suman Sirohi and K.P. Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Narain, J.—The question is whether one set of court fee is payable when there is common cause for each of the petitioners and the question of law and facts involved in the writ petition are the same.

2. The facts raising controversy are that the four petitioners in this petition were under the employment of U. P. Electricity Board. Their services were terminated. The orders of termination of services were quashed in Writ Petition No. 16885 of 1992. The petitioners were reemployed. The grievance of the petitioners in the writ petition is that whereas in Azamgarh Division of the U. P. Power Corporation, the muster roll employees are being paid the same wages which are being paid to the regular employees but they are not being paid the same wages. They have sought mandamus commanding the respondents to place the petitioners in the pay scale of Rs. 4,200-6,400 which is the pay scale for those who are employed as regular employees of the respondents.

3. The Full Bench of this Court in Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, considered the following five questions which were referred to the larger Bench as under :

"(1) Whether an association of persons, registered or unregistered can maintain

a petition under Article 226 of the Constitution for the enforcement of the rights of its members as distinguished from the enforcement of its own rights?

(2) Whether a single writ petition under Article 226 of the Constitution is maintainable on behalf of more than one petitioners, not connected with each other as partners or those who have no other legally subsisting jural relationship, where the questions of law and fact, involved in the petition, are common?

(3) In case the answer to question No. 1 is in the affirmative, whether only one set of court fees would be payable on such petition or each such individual petitioner has to pay court fees separately?

(4) In case answer to question No. 1 is in the negative, whether the defect of misjoinder of several petitioners in the writ petition can be cured by requiring each such petitioner to pay separate court fees?

(5) Whether the petition is maintainable for questioning similar actions taken by different Mandi Samitis independently of each other in cases where the aggrieved party seeks relief against each such committee on identical grounds?

The question Nos. 1, 3 and 4 may be grouped in one category. The question Nos. 2 and 5 may be grouped in second category. The first category may be examined first.

First Category.

4. The question as to whether any association of persons registered or unregistered can maintain a petition under Article 226 of the Constitution of India for enforcement of the rights of its members as distinguished from the enforcement of its own rights. The Full Bench in Umesh Chand Vinod Kumar's case (supra) answered the question in affirmative as under :

"To summarise, the position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights-

(1) In case members of such an association are themselves unable to approach the Court by reason of poverty, disability or socially or economically disadvantaged position "little Indians").

(2) In case of a public injury leading to public interest litigation provided the association has some concern deeper than that of a way-farer or a busybody, i.e., it has a special interest in the subject-matter.

(3) Whether the Rules or Regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the Court in such proceedings will be binding on the members."

5. The answer to question No. 3 was that where single writ petition by an association or by more than one person is maintainable, then the single set of

court fees would be payable, else each of petitioners is liable to pay separate court fees.

6. The question No. 4 was answered that the technical defect of misjoinder of the petitioners can, in the discretion of the Court, be cured by each petitioner to pay separate court fees.

Second Category.

7. The second category is of those cases where more than one petitioner, not connected with each other as partners or those who have no other legally subsisting jural relationship where the questions of law and fact, involved in the petition, are common, can maintain a single writ petition and if so, whether only one set of court fee is payable in such petition. In Umesh Chand Vinod Kumar's case (supra), the Bench had framed 5 questions. Question Nos. 3 and 4 related to liability to pay court fee in reference to answer on question No. 1 but in respect of answer to question No. 2, no separate question was referred to the larger Bench but while deciding question No. 2, the Full Bench considered the liability to pay court fee by the petitioners. It was held that if the petitioners have independent cause of action, though the question of law and fact involved in the petition be same but each of the petitioners joining in the petition will have to pay court fee separately.

8. In para 36 of the judgment in Umesh Chand Vinod Kumar's case (supra), the Court observed as under :

"36. Where a single writ petition by an association or by more than one person is maintainable as mentioned above, only one set of court-fees would be payable. The levy of court fee will not depend on the number of persons who have joined in the writ petition. But, where a single writ petition is not validly maintainable, but nonetheless several persons join in it, then the principle laid down in Mota Singh and Others Vs. State of Haryana and Others, will apply ; namely, each petitioner will have to pay court fee separately as if he had filed a separate writ petition. In such cases, the writ petition may not, in the discretion of the Court, be dismissed outright. The defect of misjoinder of petitioners can be cured by requiring each petitioner to pay separate court fees."

9. There were two writ petitions before the Court. In Writ Petition No. 13367 of 1981, 36 partnership firms had filed a single writ petition. Each of such firms carried on business independently and under a licence granted to them separately by the Mandi Samiti. In Writ Petition No. 6886 of 1980, there were 22 petitioners. Petitioner Nos. 1 and 3 to 21 were traders who carried on business of commission agent in finished tobacco and petitioner No. 2 was a registered Association of which petitioner Nos. 1 and 3 to 21 were members. They all challenged the notices issued to them for realizing market fee. The Court held that each of the petitioners were liable to pay separate court fee. Para 40 of the aforesaid judgment reads as under :

"It is true that the principal question raised in these petitions is the same, but nonetheless each petitioner has an independent cause of action because each petitioner has been made liable to pay market fee. The cause of action is not joint. Under these circumstances the petitioners cannot validly maintain a joint writ petition."

10. The Full Bench relied upon the decision of the Supreme Court in *Mota Singh and Others Vs. State of Haryana and Others*, wherein the question before the Supreme Court was whether each of the petitioners who joined together in the writ petition challenging the liability to pay tax were liable to pay separate court fee, it was held that though they have joined in one petition but each one of them was liable to pay separate court fee. It was observed :

"Having regard to the nature of these cases where every owner of a truck plying his truck for transport of goods has a liability to pay tax impugned in the petition, each one has his own independent cause of action. A firm as understood under the Partnership Act or a Company as understood under the Indian Companies Act, if it is entitled in law to commence action either in the firm name or in the Company's name, can do so by filing a petition for the benefit of such a case court fee would be payable depending upon the legal status of the petitioner. But it is too much to expect that different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay only one set of court fee simply because they have joined as petitioners in one petition. Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person would be liable to pay legally payable court fee on his petition. It would be a travesty of law if one were to hold that as each one uses high way, he has common cause of action with the rest of truck pliers."

11. Sri K. P. Agarwal, the learned senior counsel for the petitioners, has emphatically stressed that the Court if finds that there is a "common cause" or "common grievance" though the causes of action insofar as each individual getting the benefit from the order in relation to the relief claimed may be separate but only one set of court fee would be payable if all the petitioners join together in the writ petition. He has referred to the observation made in *Akhil Bharatiya Soshit Karmchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, wherein the Supreme Court took the view that single writ petition is maintainable in respect of an action for common cause. In this case, the question in regard to payment of court fee was not decided.

12. Learned counsel for the petitioners submitted that *Mota Singh's* case was decided by two Hon'ble Judges and *Soshit Karmchari Sangh's* case was decided by three Hon'ble Judges of the Supreme Court and, therefore, the judgment of three Hon'ble Judges must prevail. This question may be relevant when it is found that the decisions or their observations in those cases are contradictory.

Both these decisions were considered in Umesh Chand's case (supra). The joining of the petitioners in one writ petition is a matter of joinder of more than one person in a petition but maintainability of a writ petition is a matter of locus standi. In para 23 it was observed :

"23. It will be seen that this question raises the issue of maintainability on ground of joinder or misjoinder of petitioners. Question No. 1, on the other hand, raised the point about locus standi or standing. The concept of focus standi is different and distinct from the question of joinder of parties. The former relates to the right of a person to approach the Court ; the latter to join with others in approaching the Court. One may not be confused with the other."

13. In Writ Petition No. 11013 of 1985, Gopal Lal and 41 others v. State of U. P. and others, where 45 petitioners sought for regularisation of their services by virtue of Government orders on the ground that each of them has completed three years of service, the Court relying upon Umesh Chand's case held that each of the petitioners has individual cause of action and were liable to pay separate court fees.

14. Learned counsel for the petitioners has placed reliance upon the decision A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another, where relief was sought for declaring the Defence Production (Directorate of Production and Inspection, Naval) Group-A and Group-B Technical Post Recruitment Rules, 1976, and the list of seniority, the Supreme Court, on raising a preliminary objection that the writ petition was not maintainable by several petitioners in one writ petition, repelled the objection. In this case neither the question of payment of court fee was raised nor decided. The great emphasis has been laid on the decision in Sarqja Nand Jha and Ors. v. Hari Fertilizers, Varanasi and Ors. (1994) 2 UPLBEC 1228 where 14 petitioners filed writ petition against the notices for vacation of residential quarters allotted to them in consequence of closure of the factory, it was held that though the causes of action may be different but as they have joint interest in the causes of action, they can file single writ petition and can maintain one writ petition on the payment of one set of court fee relying upon the decision of Umesh Chand (supra). The Full Bench while answering question No. 2, held that single writ petition under Article 226 of the Constitution of India by more than one petitioner, not connected with each other as partners or any other subsisting jural relationship is maintainable where the right to relief arises from the same act or transaction or where though the right of claim does not arise from the same right or transaction, the petitioners are jointly interested in the cause or causes of action but it was not held that only one set of court fee would be payable in case such writ petition is found maintainable. The Court made distinction between the maintainability of the writ petition and joinder of parties in a writ petition. As regards payment of court fee, it relied upon the decision of Mota Singh's case, and final decision was that each of the petitioners though have a common cause of action but each of them is to pay separate court fee as

the causes of action were different. I would have referred the matter to a larger Bench but as the Full Bench has not been overruled, I am bound to follow the said decision.

15. In the present case, each of the petitioners has sought a writ of mandamus commanding the respondents to pay salary, which is admissible to a regular employee. Each of the petitioners has a separate cause of action. They may join in one writ petition but they have to pay separate court fee.

16. The question in regard to payment of court fees is answered accordingly.