**(2013) 04 AHC CK 0078**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 20797 of 2013

Salik Mishri and Others APPELLANT

Vs

Regional Provident Fund Commissioner-II and Another RESPONDENT

**Date of Decision :** 30-04-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 3

**Citation :** (2013) 4 ALJ 701 : (2013) 3 LLJ 784 : (2013) 2 UPLBEC 1608

**Hon'ble Judges :** Tarun Agarwala, J

**Bench :** Single Bench

**Advocate :** Bhupendra Nath Singh, for the Appellant; Sacchindra Upadhyay, Ashok Mehta and Ms. Suman Sirohi, for the Respondent

## Judgement

Tarun Agarwala, J.—Sri Salik and 137 other ex-employees of the erstwhile U.P. State Cement Corporation Ltd. Churk Sonebhadra have filed the present writ petition collectively praying for a writ of mandamus commanding the Regional Provident Commissioner-II, Varanasi and Official Liquidator to update their Provident Fund Accounts and pay the entire Provident Fund dues including pension. The facts leading to the filing of the writ petition is, that the petitioners contend that they are members of the Employees Provident Fund Trust created by the then management of the U.P. State Cement Corporation Ltd. under the Employees Provident Fund and Misc. Provisions Act, 1952, which trust was approved by the Provident Fund Department. In this trust, the provident fund contribution was regularly being deducted from the salary of the petitioners. The Churk Unit of the U.P. State Cement Corporation Ltd. was wound up by an order of the Company Judge dated 08.12.1999, and the Official Liquidator was appointed as the liquidator of the Company. From time to time, the Company Judge has been passing various orders directing the Official Liquidator to provide the correct status of the Provident Fund Trust. The accounts of this trust are also being audited through an Auditor recommended by the Regional Provident Fund Commissioner. It has been stated that accounts of this trust has now been transferred to the Regional Provident Fund Commissioner, Varanasi by the Secretary of the erstwhile Trust, and after the receipt of the audited accounts, some of the employees were paid their dues, but now the Provident Fund dues are not been released. It has been alleged that more than five years have passed and the provident fund accounts have not been updated nor the dues of the petitioners have been released. It has also been stated that the petitioners are entitled for pension under the provision of Employees Pension Scheme 1995 and, in this regard, representations have been made to the Official Liquidator, which has remained pending. It is contended that neither the representation has been decided nor the pension is being released. Consequently, the present writ petition was filed by the 137 ex-employees of the erstwhile U.P. State Cement Corporation Ltd. for a writ of mandamus against the respondents. At the time of the presentation of the writ petition, the stamp reporter made an endorsement that there is a deficiency of court fee by Rs. 14,280/-. The petitioners made an objection below the report of the stamp reporter objecting to the levy of the court fee contending that the, petitioners are the members of the Employees Provident Fund Trust and have a jural relationship and that the relief claimed by them in the writ petition is one and the same for all the petitioners, and consequently, a single writ petition for their joint cause of action was maintainable and one set of Court fee was payable in view of the law laid down by the Full Bench of this Court in Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, as well as the decision of the Division Bench of this Court in Saroja Nand Jha and others v. M/s. Hari Fertilizers, Varanasi and others, 1994 (2) UPLBEC 1228 as well the decision of the learned single Judge in Track Parts of India Mazdoor Sabha Vs. State of U.P. and Others, .

2. The objection placed by the petitioner was duly considered by the Taxing Officer who by its order dated 09th April, 2013 rejected the contention of the petitioner and upheld the deficiency of court fee as reported by the stamp reporter. The Taxing Officer held that each of the petitioner has an independent and separate cause of action and in view of the decision of the Supreme Court in Mota Singh and Others Vs. State of Haryana and Others, all the petitioners are liable to pay separate court fee, and consequently, directed the petitioners to make good the deficiency of court fee. The petitioner, being aggrieved by the order of the Taxing Officer, has preferred a separate application dated 11.04.2013 in the present writ petition objecting to the order of the Taxing Officer and praying that the order of the Taxing Officer and the report of the stamp reporter be set aside and the writ petition be held to be maintainable on payment of one set of Court fee.

3. The Court found that the State Government was not a party in the writ petition, and accordingly, the Court directed the petitioner to serve a copy of the writ petition to the State Government, which was duly done.

4. The Court has heard Sri Bhupendra Nath Singh, the learned counsel for the petitioners, Sri Suman Sirohi, the learned Standing counsel for the State

 

Government, Sri Ashok Mehta, the learned counsel for the Official Liquidator and Sri Sacchindra Upadhyay, the learned counsel for the Provident Fund Authorities, respondent No. 1.

5. The issue is, whether a joint writ petition by 137 persons is maintainable and whether one set of Court fee is payable or not?

6. Various issues were considered by the Full Bench of this Court in Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, . The Full Bench answered the first question of law holding that an association of persons registered or unregistered could file a writ petition under Article 226 of the Constitution of India for the enforcement of the right of its members. On the second question of law, the Full Bench answered that a single writ petition was maintainable on behalf of more than one petitioner, not connected with each other as partners or those who have no other legal subsisting jural relationship, where the questions of law and fact are common. With regard to the third question, the Full Bench answered that, where an association of persons registered or unregistered could file a writ petition for the enforcement of the right of its members, only one set of court fees would be payable otherwise separate court fees became payable. With regard to question No. 4, the Full Bench held that where an association of persons filed a writ petition not for the enforcement of rights of its members, but for the enforcement of its own rights, in which case, a common writ petition seeking enforcement of their individual rights was a mis-joinder of parties and that the technical defect could be cured. The Full Court held that since there was an independent cause of action and that the cause of action was not joint, the writ petition would not be maintainable as a joint petition, but the defect of mis-joinder of parties was curable upon payment of separate court fee.

7. The Full Bench made a categorical distinction while considering question No. 1 and question No. 2. The Full Court held that question No. 1 related to locus standi of the petitioners and question No. 2 related to the maintainability of the writ petition on account of joinder or mis-joinder of parties. In that regard, the Full Court considered the case of another Full Bench decision of this Court in Mall Singh and others v. Smt. Laksha Kumari Khaitan and others 1968 All LJ 210 and held:

The joinder of more than one person under Article 226 can be permitted only where the right to relief arises from the same act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction the petitioners are jointly interest in the cause or causes of action.

8. The Full Bench also relied upon a decision of the Supreme Court in Mota Singh and Others Vs. State of Haryana and Others, in which, it was held that several truck operators, who have filed a single writ petition challenging their liabilities to pay tax by each of the petitioners were liable to pay separate court fee. The

 

Supreme Court held

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 a 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 the Company or the partnership and in 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 highway, he was common cause of action with the rest of truck pliers.

9. The Full Bench held that a single writ petition was maintainable on behalf of more than one petitioners, where the cause of action was the same, but such joinder was not permissible, where the cause of action was similar. The Full Bench distinguished the "same cause of action" from "similar cause of action" and, in that light, held that a single writ petition was maintainable, where the right to the relief arose from the same act or transaction in which case one writ petition was maintainable on one set of court fee, but whether the right of claim did not arise from the same act or transaction and where the petitioners were jointly interested in the similar cause of action, and even though, the writ petition filed by more than one person was maintainable, nonetheless, the cause of action not being joint and there being an independent cause of action of each of the petitioners, such petitioners would be liable to pay separate court fee.

10. In Mohammad Azaz and others Vs. Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad and another, , another Full Bench of this Court considered the case of mass copying by the students using unfair means who filed a joint writ petition in relation to the charge against them of using unfair means. The Full Bench held that there was an absence of jural relationship and that a joint petition was not maintainable.

11. In Prabhakaran and Others Vs. M. Azhagiri Pillai (Dead) by LRs. and Others, , the Supreme Court held that jural relationship between the parties means legal relationship between the parties with reference to their rights and obligations.

12. In Saroja Nand''s case 1994 (2) UPLBEC 1228, the facts were that separate notices were issued by the authorities to the petitioners to vacate the official quarters allotted to them. Since they failed to vacate the official quarters, the

 

management filed separate complaints before the Chief Judicial Magistrate. A joint writ petition was filed by all the allottees before the Writ Court and the stamp reporter gave a report about the deficiency of court fee. The Division Bench held that each of the petitioner had a separate cause of action and were jointly interested, and consequently, their case comes under the category of question No. 2 framed by the Full Court in Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, . The Division Bench held that since the relief was joint and common and since one writ petition was maintainable, consequently, one set of court fee was payable.

13. In Track Parts of India Mazdoor Sabha Vs. State of U.P. and Others, the facts in that case was that a trade union filed a writ petition for the quashing of the order passed by the Deputy Labour Commissioner u/s 3 of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 and for a writ of mandamus commanding the authority to issue a recovery certificate and pay the money that was due and payable to the workers, namely, the members of its union. The Taxing Officer held that separate court fee was required to be paid by each member of the trade union.

14. The learned single Judge relied upon the answer given by the Full Bench in Umesh Chand Case (supra) to question No. 1 and held that the writ petition of the petitioner who was a trade union, was maintainable, since the application was filed by the union before the Prescribed Authority under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 and that the Trade Union had also questioned the validity of the order rejecting the said application in the writ petition. The learned single Judge held that not only the writ petition was maintainable, but one set of court fee was payable.

15. In the light of the aforesaid decision, the learned counsel for the petitioner pressed that a joint writ petition was maintainable wherein the petitioners have a common goal and the relief claimed by each of the petitioners was the same, namely, for the release of their provident fund dues and for payment of pension. Consequently, not only a joint writ petition was maintainable, but only one set of court fee was payable. In this regard, the learned counsel has strongly relied upon the decision of the Division Bench in Saroja Nand''s Case.

16. On the other hand, the learned Standing counsel submitted that the decision of the Full Court in Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, as well as the decision of the Supreme Court in Mota Singh and Others Vs. State of Haryana and Others, makes it apparently clear that a joint writ petition, having a separate cause of action was not maintainable, and since there exist no common order, a single writ petition was not maintainable. It was urged that assuming without admitting that a single writ petition was maintainable, even then, each of the petitioners had a separate cause of action and consequently were liable to pay separate court fees. Similar arguments was raised by Sri Ashok Mehta, the learned counsel for the Official Liquidator.

 

17. Having heard the learned counsel for the parties, the Court finds that the Full Bench in Umesh Chand''s case (supra) has clearly held that a joint writ petition would be validly maintainable if there is a legal subsisting jural relationship of association of persons where they have the same cause of action. Assuming that the petitioners have a jural relationship amongst them with reference to their rights and obligations, and consequently, a joint writ petition becomes maintainable, but in the instant case, the Court finds that the petitioners do not have the same cause of action. In fact, each of the petitioners have an independent cause of action. Each of the petitioners have filed the petition for the enforcement of their individual rights, namely, for release of their provident fund dues and for payment of pension. There is no common order nor a common act or transaction.

18. The Court is of the opinion that in the instant case, a joint writ petition filed by the petitioners is for the enforcement of its individual rights, and consequently, joinder of more than one person though permissible, but where the cause of action is similar and not the same, separate court fees is payable.

19. In the light of the aforesaid, the Court in all humility is of the view that the Division Bench in Saroja Nand case (supra) did not consider paragraphs 36, 37, 38, 39, 40 and 41 of the decision of the Full Bench in Umesh Chand''s Case (supra).

20. This Court is of the view that in the light of the decision of the Full Bench in Umesh Chand (supra), each of the petitioners, having a separate cause of action, and having filed a joint writ petition for enforcement of their individual rights are liable to pay separate court fee. The order of the Taxing Officer is affirmed. The application of the petitioners dated 11.04.2013 is rejected. The petitioners are consequently directed to cure the defect and pay the court fee as reported by the stamp reporter within a week.

21. Put up this matter on Monday i.e. 06.05.2013 for admission. The Registrar General is directed to circulate this order to the Stamp Reporter as well as to the Taxing Officer within two weeks.

 