
(1994) 04 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 578 of 1994

The Lecturers Association

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-04-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1994) 2 WLC 271 : (1994) 1 WLN 283

Hon'ble Judges : P.K. Palli, J; Jasraj Chopra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jasraj Chopra, J.—This case comes up for orders on an application filed under Article 226 of the Constitution by applicant Rajasthan Shiksha Sewa Parishad (for short "the Parishad") for impleading it as a party to this writ petition on the ground that in case, this writ petition challenging the Notification Annexure-1 dated 30.10.1993 issued by the Govt. of Rajasthan is allowed then it will adversely affect the rights of the Head Masters of the Secondary Schools, who are the members of the applicant Parishad.

2. This application has been opposed at the bar by Mr. M.R. Singhvi, the learned Counsel appearing for the petitioner. However, Mr. C.R. Jhakar, the learned Deputy Govt. Advocate appearing for respondent Nos. 1 to 3 has nothing to say about this application.

3. We have heard Mr. M.R. Singhvi, the learned Counsel appearing for the petitioner and Mr. M.S. Singhvi the learned Counsel for the applicant-Parishad.

4. It was contended by Mr. M.S. Singhvi the learned Counsel appearing for the applicant Parishad that earlier, Rajasthan Educational Subordinate Service Rules, 1971 were amended by the State Govt. vide its Notification Annexure-3 dated 6.9.1990 and those amendments were made with retrospective effect i.e. with effect from 1.9.1988. Aggrieved against that Notification, the applicant Parishad

filed a writ petition before this Court but that writ petition came to be dismissed. Thereafter, the State Govt. thought it proper to make those amendments with prospective effect rather than with retrospective effect and, therefore, the Notification Annexure-1, dated 30.10.1993 was issued by the State Govt. making those amendments in the Rajasthan Educational Subordinate Service Rules, 1971 with prospective effect i.e. with effect from 6.9.1990, the date when the Notification Annexure-3 was issued by the State Govt. The effect of prospectivity stands explained in Ground No. (f) of this writ petition, wherein it has been averred that if this Notification Annexure-1 dated 30.10.1993 is allowed to stand, all the existing posts of Vice Principals or its equivalent shall be made available en-block to the Head Masters of Secondary Schools. Mr.M.S. Singhvi has submitted that when this very Notification dated 30.10.1993 (Annexure-1) is being challenged by the petitioner Association and if this Notification is set aside, that will certainly adversely affect the rights of the Head Masters of the applicant Parishad. He has submitted that if all of the Head Masters of the Secondary Schools are not made parties to this writ petition, at least this applicant Association should have been made a party to this writ petition.

5. It was candidly conceded by Mr. M.S. Singhvi, the learned Counsel for the applicant Parishad that although, no relief is being claimed against the Head Masters of the Secondary Schools specifically but the import of this writ petition is that if this Notification Annexure-1 is quashed or it is held as ultra vires then Head Masters of the Secondary Schools shall certainly be vitally and adversely affected and, therefore, they are proper parties to these proceedings and so, they should be made parties to this writ petition.

6. In support of his submissions, Mr. M.S. Singhvi, has placed reliance on a decision of their lordships of the Supreme Court in Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, , wherein it has been observed as under:

A High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

Where the Shikshak Sangh, representative body of teachers appointed in educational institutions run by local bodies and private management filed a writ petition to challenge validity of U.P. Ordinance No. 22 of 1978, but did not make Reserve Pool teachers who were to be deprived of their chance of appointment in vacancies in the post of teachers in such institution, in case of success, it was held that High Court ought not to have proceeded to hear and dispose of the writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was too large and had the petitioners refused to do so, to dismiss that writ petition for

non-joinder of necessary parties.

It was contended by Mr.M.S. Singhvi, the learned Counsel appearing for the applicant-Parishad that in the earlier writ petition, which was filed on behalf of the Head Masters of the Secondary Schools the petitioner-Association was made a party because their interest was going to be affected and now when the interest of the applicant-Parishad or its members is going to be adversely affected, the Head Masters of the Secondary Schools ought to have been made parties to this writ petition. Mr. M.S. Singhvi has submitted that the applicant-Parishad is not seeking any relief for the rejection of the writ petition at this stage. What it wants is that it should be heard because its members (Head masters of the Secondary Schools) are going to be adversely affected by this writ petition and, therefore, either all Head Masters of the Secondary Schools or their representative body i.e. applicant Parishad should be impleaded as a proper party to this writ petition.

7. These submissions made by Mr. M.S. Singhvi were seriously opposed by Mr. M.R. Singhvi, the learned Counsel appearing for the petitioner. He has submitted that the petitioner-Association has not sought any relief against the applicant-Parishad. What it wants is that the impugned notification by which the judgment of the court has been sought to be nullified should be held as ultra vires and, therefore, when no specific relief is being sought against the applicant Parishad, the applicant Parishad is not a necessary party to the proceedings and even if it is a proper party, lis can be disposed of without impleading it as a party to the proceedings. In this respect, he has placed reliance on a decision of their lordships of the Supreme Court in *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, . In that case, the validity of policy decisions of the Railway Board regulating seniority of Railway staff was challenged on the ground of their being violative of Article 14 and 16 of the Constitution and the relief was claimed only against the Railway and therefore, it was held that it is sufficient if the Railway was impleaded and non-joinder of the employees likely to be affected by the decision in the case is not fatal to the writ petition. Those employees were at the most proper parties but not necessary parties. Thus, it is clear that in that case, neither constitutional validity of any provision of law nor vires of any provision of law was under challenge. However, in that case, it has been held that adversely affected parties are proper parties but not necessary parties.

8. Mr. M.R. Singhvi has next placed reliance on a decision of this Court in *Miss Kamlesh Bhardwaj v. State of Raj.* 1982 RLR 638, wherein while following the decision of their lordships of the Supreme Court in *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, Where in it has been observed that the policy decision covers the very big canvas, because all those who applied to the Public Service Commission and who appeared in the Screening examination are guided by this policy decision. This policy decision being challenged on the ground of constitutionality under Article

14 and 16 of the Constitution and further on the ground of the legal and logical meaning which should be given to the proviso, covers the entire range and need not be confined to individual cases. In view of this, the objection that the petitioner must fail on account of non-joinder of adversely affected parties fails.

9. Our attention was next drawn to a decision of their lordships of the Supreme Court in *D.D. Joshi v. Union of India* 1983 SCC 321. That was representative writ petition, wherein the question involved was interpretation of a provision affecting the seniority in a service as a whole binding the Govt. and not of any individual claim of seniority. In those circumstances, it was held that impleading of all the incumbents as respondents whose seniority might be adversely affected on the basis of the petitioner's claim are not required to be impleaded as parties.

10. Mr. M.R. Singhvi has next placed reliance on a decision of this Court in *Jogendra Singh v. State of Raj.* 1986 RLR 876, wherein the petitioners challenged constitutional validity of Rules relating to selection of candidates by PSC for Rajasthan Forest Service. The relief was only claimed against the State and PSC. On those facts, it was held that selected and appointed candidates are not necessary parties and writ petitions do not suffer from defect of non-joinder of necessary parties.

11. Lastly, reliance was placed on a decision of their lordships of the Supreme Court in *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others*, , wherein it has been observed that a necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case. The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervenor has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervenor so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

12. It is true that in this case, no specific relief has been sought against the applicant-Parishad and therefore, the applicant-Parishad is not a necessary party but the petitioner has sought the relief regarding quashing of the impugned notification, which would certainly affect the applicant-Parishad or for that matter its members viz., Head Masters of Secondary Schools, adversely and, therefore, Head masters of Secondary Schools or for that matter, the applicant-Parishad being a representative body of the Head Masters of the Secondary Schools is a proper party as per the decision of their lordships of the Supreme Court in *General Manager, South Central Railway, Secunderabad's case* (supra). In that case, their lordships have gone to the extent in holding that if the High Court

chose not to make everybody as party, at least some persons should have been made parties to the proceeding in representative capacity. Thus, this decision is on all fours so far as the controversy before us is concerned.

13. It is not a case, where the applicant-Parishad has sought the relief that the writ petition should be rejected for non-joinder of necessary or proper parties. Rather, the applicant Parishad has claimed that it being a proper party, it should be allowed to put up its case regarding the impugned Notification. Under these circumstances, we are of the considered view that the application of the applicant Parishad for impleading it as a party to this writ petition should be allowed.

14. In the result, the application filed by applicant- Parishad under Article 226 of the Constitution for impleading it as party to this writ petition is allowed. The applicant-Parishad be impleaded as respondent No. 4 in this writ petition. Let amended cause title be filed within a week from today.