

(1984) 08 KL CK 0042

High Court Of Kerala

Case No: C.M.P. No. 17881 of 1984 in O.P. No. 4566 of 1984

P.V. Sreekumaran

APPELLANT

Vs

Kerala Agricultural University
and Others

RESPONDENT

Date of Decision: Aug. 8, 1984

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11

Citation: (1984) KLJ 653

Hon'ble Judges: U.L. Bhat, J

Bench: Single Bench

Advocate: K. Sukumaran and Usha, for the Appellant; T.P. Kelu Nambiar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This is a petition filed under Rule 148 of the Kerala High Court Rules (for short "the Rules") seeking permission to implead the third respondent in a representative capacity to represent all non-graduates employees who came to the service of the first respondent, Kerala Agricultural University, under Sec- 58 of the Kerala Agricultural University Act (for short "the Act") and to implead the fourth respondent in a representative capacity to represent those who came to the University service from the Rural Institute, Thavanur and to take out notice by paper publication. The application is opposed by the third respondent. Petitioners who are graduates were directly recruited as L.D. Clerks. Third respondent was originally an employee of the State Government. She came to the service of the University by virtue of Section 58 of the Act. She is a non-graduate. Fourth respondent was originally in the service of the Rural Institute, Thavanur. She came to the service of the University when the employees of the Institute were absorbed in the service of the University. Under the University Statutes, minimum qualification for the post of L.D. Clerk is graduation.

The posts of Asst. Grade I and U.D.C. are promotion posts for L.D. Clerks. Therefore, according to petitioners, a non-graduate cannot become an Assistant Grade I or U.D.C. It is averred in the petition that employees who came from various colleges into the service of the University u/s 58 of the Act included a large number of L.D. Clerks and U.D. Clerks and a few other categories, a substantial number of them being non-graduates. However, promotions were effected provisionally. Meanwhile, the University Statutes are amended by adding a note to state that for transferred ministerial employees from the Department of Agricultural and Animal Husbandry, the requirement of minimum qualification as graduation will be relaxed for the purpose of promotion. This amendment is said to have come into force on 10-2-1978 and according to petitioners would not affect regular promotions to vacancies which arose prior thereto. According to petitioners, Rural Institute, Thavanur was an independent institution and not a Department of Government. The control and management of the Institute was transferred to the University and the staff was absorbed conditionally, as per the provisions of Sec. 59 of the Act, According to petitioners, the staff of the institution had no right to say that their service must be integrated from the date of taking over. In 1977, the University ordered integration of staff with effect from 1-4-1977 as per Ext. P3. But this did not affect the petitioners. However, Ext. P3 was challenged in O.P.. 2930 of 1978 claiming integration with effect from 12-12-1975. The original petition was allowed without impleading the petitioners. Thereupon, the University modified Ext. P3 order on 9-3-1984 ordering integration with effect from 12-12-1975 under Ext. P5. That has adversely affected the petitioners and they seek to challenge the same. According to them, the past services of those employees in the Institute could not be reckoned. The exemption clause would not apply to the non-graduate staff who came from Rural Institute, Thavanur. Ext. P7 is the order of postings and reversions on the basis of the integrated list which petitioners are challenging. Petitioners want this action to be a representative one that is, representative of the employees who were absorbed under Sec. 58 of the Act as well as employees who came from the Rural Institute, Thavanur. Third respondent is a non-graduate employee who came to the University service under Sec. 58 of the Act and according to the petitioners she has to be impleaded- in a representative capacity. The fourth respondent is to represent the employees who came from the Rural Institute, Thavanur.

2. The objections raised in the counter-affidavit filed by third respondent can be summarised as follows: Third respondent is not willing to assume any representative capacity. She is not agreeable to represent persons who are not even known to her. She cannot be impleaded in a representative capacity without her consent and petitioner has no right to do any such thing under Rule 148 of the Rules. She can urge only her case and not that of others. She is not obliged to act on behalf of others. If the Rule requires her to play a role of representative, the rule is bad. Resort to Rule 148 is not warranted. The number of persons to be represented is not mentioned in the petition. There is no material to show that those persons are

numerous. Rule 148 of the Rules does not contain safeguards contained in Order 1 Rule 8 C.P.C.

3. Rule 148 of the Rules states that "All persons directly affected shall be made parties to the petition. Where such persons are numerous, one or more of them may, with the permission of the Court on application made for the purpose, be impleaded on behalf of or for the benefit of all persons so affected; but notice of the original petition shall, on admission, be given to all such persons either by personal service or by public advertisement as the Court in each case may direct." It is open to the petitioners to sue in a representative capacity. Equally, when persons likely to be affected by the decision in the original petition are numerous, one or more of them may be impleaded on behalf or for the benefit of all so affected, with the permission of the Court. What is required is only the permission of the Court and not the consent of the person sought to be impleaded in a representative capacity. To insist on such consent would render the Rule unworkable. The Rule is evidently based on the provisions in Order 1 Rule 8 C.P.C. Even under Order 1 Rule 8 C.P.C, what is required is the permission of the court and not the consent or willingness of the person sought to be impleaded in a representative capacity.

4. In Mulla's commentaries on the Code of Civil Procedure, it is stated at page 610 (12th Edn.).

This Rule applies not only to the case of numerous plaintiffs having the same interest but also to the case of numerous defendants having the same interest..... The consent of the defendants on the record is not necessary for this purpose.

In *Kumaravelu Chettiar and others v. P. Ramaswami Ayyar and others* (1933 P.C. 183), the Privy Council traced the developments in the English law and the Indian law on the subject and observed:

... (this is) an exception to the general principle that all persons interested in a suit shall be parties thereto. It is an enabling rule of convenience prescribing the conditions upon which such persons when not made parties to a suit may still be bound by the proceedings therein. For the section to apply the absent persons must be numerous; they must have the same interest in the suit, which, so far as it is representative, must be brought or prosecuted with the permission of the Court. On such permission being given it becomes the imperative duty of the Court to direct notice to be given to the absent parties in such of the ways prescribed as the Court in each case may require: while liberty is reserved to any represented person to apply to be made a party to the suit. The direction of all these matters, in Striking contrast to the English rule, is placed in the hands of the Court, and the obtaining of the judicial permission and compliance with the succeeding orders as to notice, are, as it seems to their Lordships, quite clearly the conditions on which the further proceedings in the Suit become binding on persons other than those actually parties thereto and their privies.... (Emphasis supplied)

In *Shiv Sankar Lal v. M/s, Behari Lal* (AIR 1961 Punj. 111) the Court was dealing with a case where all the members of a registered body were impleaded but nevertheless permission to sue one of the defendants in a representative capacity under Order 1 Rule 8 C.P.C. was sought. The Court observed:

It is well to remember that the defendants were impleaded as members of the Karyana Committee. It is irrelevant what each of the 355 defendants may have thought about the merits of the plaintiff's case. All that is essential to see is that their interests are not separate and distinguishable from the Karyana Committee of which they were members.

It cannot, however, be overlooked that essentially the, membership of the Karyana Committee is fleeting and indeterminate. Many new members may be added and some persons in a firm may have died the order of the trial Judge therefore, cannot be assailed on the ground that the defendants were not too numerous to be represented by a single individual." (Emphasis supplied)

In [Ismail Munshi and Another Vs. Niamat Khan and Others](#), a Division Bench of the Calcutta High Court held that,--

an order for representation under R. 8 may be made by a Court notwithstanding that it is objected to by the person who is asked by the Court to represent the public.

The Punjab High Court in the above case relied on these observations.

5. It has to be remembered that though the provisions of the CPC as such are not applicable to writ proceedings, some of the principles may be applicable. The principles of Order 1 Rule 8 C.P.C. are reflected in Rule 148 of the Rules. In *Law of Writs* by V. G. Ramachandran (1983 Edn), it is observed at page 805:

Where a right infringed is the same and there is common interest and common question of law affecting many, Courts insist all the latter to be impleaded as respondents. Often the latter are strewn in many parts of the country with addresses not fully known. There is thus inordinate delay occasioned in servicing them with the result that when the hearing date is fixed, the writ matter becomes stale and of no practical utility or causes great hardship to the petitioner. There is no reason why the principle of Order X Rule 8, C.P.C. cannot be applied to such cases enabling the Court to allow the respondents as a class to be represented by a few.

I am unable to see anything in Rule 148 of the Rules or in Order 1 Rule 8 C.P.C. which requires the consent of the person sought to be impleaded in a representative capacity for being impleaded as such. Permission is to be granted by the Court and not by the party concerned. It is the right of the petitioner to move the court for such permission and it is for the court, on a consideration of all the circumstances obtaining in each case, to grant or withhold permission. The fact that party sought to be impleaded in a representative capacity is not willing to represent others is not a circumstance relevant for the consideration of the Court. To hold that

without the consent of the party concerned, the Court cannot grant permission is to invest a sort of power of veto in that party which is not only unworkable and not contemplated by the Rules but also goes against the substance of the Rule.

6. The next contention urged is that the third respondent cannot represent persons not known to her and she can only represent her case and not that of others. That may be. She is not being called upon to represent others in fact. She is being called upon to represent others in law. The others also have to be served notice either personally or by paper publication. It is open to those others to come on record as obviously their interest also would be affected. It is futile for the third respondent to contend that she has no interest common with those others. She is a person who has entered the University service by virtue of the provisions of Sec. 58 of the Act. To that extent, she is situated similarly to all other employees who came to the University service by virtue of this provision. She certainly shares a common interest with those and could in law represent them. Learned counsel for the third respondent contended that the third respondent cannot be burdened with representative capacity. There is no such burden involved in law. Naturally, to protect her interest, she would be putting forward certain contentions which if accepted would protect not only her but also those similarly situated. That is all that she is expected to do.

7. In the C.M.P., the number of persons who share the common interest with the third respondent is not mentioned. Representative action can be launched only when persons sharing the common interest are certain and numerous. The word "numerous" is not a term of art. Its connotation must depend on the facts of each case. While it is true that in the C.M.P., the exact number of persons who came to the University service by virtue of Sec. 58 of the Act is not mentioned, it is not as if there is no data available at all. In the original petition, it is clearly averred that there were 68 L.D. Clerks, 33 U.D. Clerks, three Senior Superintendents, two Junior Superintendents and three Head Clerks who came to the service of the University from the service of the Government of Kerala by virtue of the provisions of Sec. 58 of the Act. The number of graduates among them is also mentioned in the original petition. This data would certainly establish that such employees are numerous and therefore the court has jurisdiction to invoke Rule 148 of the Rules. It is also not correct to say that the third respondent has no interest, identical with those others. Her interest lies in the protection of employees who came to the University service in the manner mentioned above and that is the interest of those others also.

8. Learned Counsel for the third respondent contended that there are certain safeguards provided in the CPC which are absent in the High Court Rules. Learned counsel invited my attention to Explanation VI to Sec. 11 C.P.C. which lays down, inter alia, that where persons litigate bona fide in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of Sec. 11; be deemed to claim under the persons so litigating. In such a

case, the provisions of Sec. 11 would naturally apply. There is no reason why this principles should not be held to be applicable to writ proceedings also. Learned counsel for the third respondent asked what will happen if the third respondent chose to withdraw her contentions. That is a contingency which is, in a way, met by Rule 148 of the Rules. There would be service personal or by publication and when such publication is effected, persons interested could naturally approach the court and come on record and protect themselves or protect their interest or their class interest. In the counter filed by the third respondent, it is stated that if the third respondent is to be compelled to represent others, the rule is bad. The counter does not state why the rule is to be regarded as bad. The rule is only a procedural device intended to meet contingencies where numerous persons are interested in the subject-matter of litigation. It casts no particular burden on the person who is made to represent others. I am not able to agree that the Rule is in any way bad. The contentions urged on behalf of the third respondent are overruled. In the circumstances I am of opinion that permission sought for should be granted.

The permission sought for is granted. Publication will be effected in Mathrubhumi daily.