

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 169 of 2013

Date	Order with signature of Judge
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For hearing of applications bearing CMA No.1915, 3459, 8903 and 9070 of 2013.

Date of hearing: 10.02.2014.

Mr. Muhammad Ali Lakhani for the plaintiffs as well as for interveners.

Mr. Khalid Javed for the defendant.

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Muhammad Shafi Siddiqui, J.- By these applications under order I Rule 10 CPC the applicants/interveners are seeking to be added as plaintiffs in the suit.

The main contention of learned counsel for the interveners/ applicants is that the cause of action for all the applicants/interveners and plaintiffs is common as they have jointly challenged the circular dated 08.10.2012 bearing reference No.DGM-HR(CS)/IOTL-1/12/146 and notices calling upon persons to appear before Board, which is in violation of Administrative Order No.24/2011 dated 09.08.2011. Learned counsel submitted that in view of the fact that common cause of action has been agitated, the applicants/interveners can join proceedings of the instant suit on the basis of one maximum Court fee which is payable on the suit/ plaint. Learned counsel submitted that in substance common question of law and facts are involve and as such the plaintiffs and interveners can maintain one suit. Learned counsel further submitted that in order to avoid multiplicity of proceedings in the interest of justice all the interveners may be allowed to join the proceedings as co-plaintiffs and in all fairness they would facilitate this Court in reaching a just and proper conclusion. In support of his contentions learned counsel has

placed reliance on the case of Umeed Ali v. Government of Sindh reported in PLD 2007 Karachi 224.

On the other hand learned counsel for the defendants at the very outset objected to the maintainability of these applications as it is an independent cause of action to these individuals who would maintain, if at all aggrieved, a separate suit. Learned counsel submitted that without prejudice every applicant and plaintiff has different facts and as such the relief could not be granted by allowing all applicants to join in the instant suit. More importantly the interveners and the applicants cannot join the proceedings by filing one suit as the cause of action may be common for all of them but it is independent right which is to be adjudicated in view of the facts and circumstances of the case as each one of the applicants and plaintiffs have different sets of facts for litigation.

I have heard the learned counsel and perused the record. The case of the applicants and plaintiffs is that since all applicants and plaintiffs are aggrieved by circular referred above hence all the applicants and plaintiffs can maintain one suit on account of common question of fact and law. The relevant provision in CPC that deals with such situation is apparently Order I Rule 1 CPC, which reads as under:-

“1. Who may be joined as plaintiffs.—All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate suits, any common question of law or fact would arise.”

Thus, it is clear that all persons may be joined in one suit as plaintiffs in whom any right to relief is alleged to exist whether jointly, severally or in case if such persons brought separate suits it would involve a common question of law or fact. Thus, only in a situation when

separate suits filed by individuals involving a common question of law and fact, such applicants can be joined in one suit. In the instant case apparently the circular dated 08.10.2012 bearing No. DGM-HR(CS)/IOTL-1/12 available as Annexure A/6 is challenged which primarily deals with revised promotion policy of 2011.

In the instant suit the plaintiffs have challenged the aforesaid circular dated 08.10.2012 bearing No. DGM-HR(CS)/IOTL-1/12 calling upon the persons to appear before the Review Board for consideration of their promotion which according to the plaintiff is not only contrary to the administrative order No. 24/2011 dated 09.8.2011 but is also against the principles of natural justice and ultra vires of the policy laid down by the defendant. The point that involved in deciding the pending applications is as to whether in view of the facts and circumstances all applicants and plaintiffs can join the proceedings in a single suit where;

(a) The cause of action is same.

(b) Where the grounds in terms whereof the impugned circular is challenged are same.

(c) Where it does not involve a trial on separate question of fact and law.

The test laid down to allow all applicants is not in-fact a test as prescribed U/O 1 Rule 10 CPC. In case such test is applied, the applicant and some of the plaintiffs would outrightly be scored off as apparently a case can be decided effectively and an effective decree can be passed in their absence but the test in my view for these applicants is available in Order 1 Rule 1 CPC where these applicants are interested to join proceedings as co-plaintiffs. As stated above that the test of Order 1 Rule 1 CPC is very specific that all those persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if such

persons brought separate suits, any common question of law or fact would arise.

In the instant proceedings the plaintiffs have not challenged or have not claimed their promotion or their rights and interests as against those of other individuals. The plaintiffs are jointly interested in challenging a circular which according to them is in violation of the policy referred above. By challenging this circular as against the policy any person interested or right of every individual including the applicant is involved as this is not a case where plaintiffs and applicants are directly seeking their promotion. It is a case wherein the applicants intend to join the proceedings where common circular is alleged to be not in accordance with law. The ground raised in challenging the said circular are also common and it does not depend upon any individual's right or entitlement. Certainly this is a case wherein through common grounds a common circular has been challenged. In my view under the present facts and circumstances where a circular has been challenged which involves a common question of fact and since involves common grounds, it certainly involve common question of law as such is covered by Order 1 Rule 1 CPC.

In the case of Ghulam Qadir v. Member (Revenue) Board of Revenue Punjab reported in 1988 SCMR 1311 same criteria was laid down. The instant case also seems to be covered by this provisio.

As far as the question of payment of Court fee is concerned, learned Counsel for the applicant has relied upon the case of Umeed Ali v. Government of Sindh reported in PLD 2007 Karachi 224 which has laid down the requirements of payment of Court fee. In the said case a reference was made to the Hon'ble Chief Justice for constitution of larger Bench to resolve the controversy being a case of public importance. The terms of the reference with order are as under:-

- “(i) whether the terms “subjects” appearing in section 17 of the Court Fee Act, 1870 is amenable to the same connotation as the terms “case of action”?
- (ii) Whether the court fee is to be calculated on the plaint of pleading in relation to “distinct subjects” irrespective of the number of parties to the case?
- (iii) Whether the aggregate Court fee calculated under section 17 of the Court Fees Act, 1870 is subject to the maximum statutory ceiling of Court fee of Rs.15,000, prescribed for the Province of Sindh through the Court Fee (Sindh Amendment) Ordinance, 1977 reported in PLD 1977 Sindh Statutes 98 read with the decision of the Supreme Court in *Aslam Industries Ltd. Khanpur v. Pakistan Edible Corporation and other*, 1993 SCMR 683?
- (iv) Whether the order of the learned Single Judge in Suit No. 1552 of 1997 dated 26.1.1998 and the order of the Division Bench in H.C.A. No. 15 of 1998 dated 3.4.1998 both of this Court, are not the correct pronouncements of law having been rendered in ignorance of the operative statute i.e. Court Fee (Sindh Amendment) Ordinance, 1977 and the judgment of the Supreme Court in *Aslam Industries*, having the binding force of law under Article 189 of the 1973 Constitution?

The office is therefore directed to place these matters expeditiously before the Hon’ble Chief Justice for appropriate orders. The office is further directed also to place along with the files copies of the orders passed in Suit No. 1553/1997 and H.C. No.15/19998”

The Full Bench of this Court while deciding the above reference followed the guidelines of the apex Court provided in the case of *Aslam Industries (Pvt.) Limited Khanpur v. Pakistan Edible Corporation & others* (1993 SCMR 683) and the reference was answered in affirmative as under:

*“23. To sum up, following the guidelines given by the Apex Court in the case of *Aslam Industries (Pvt.) Limited Khanpur v. Pakistan Edible Corporation and others* 1993 SCMR 683, all the four questions proposed in this reference application are answered in the affirmative.”*

The objection of the learned Counsel for the defendant thus is not tenable under the law, hence the applications are allowed.

Judge