

# KERALA HIGH COURT

Sri Padmanabhaswamy

Vs.

Raghavan Pillai

C.M.P. No. 3405 of 1958 , in A.S. No. 584 of 1958

(Anna Chandy and P. Govinda Menon, JJ.)

25.05.1960

## JUDGMENT

### **Anna Chandy, J.**

1. The petitioner seeks leave to appeal against the judgment in O. Section 45 of 1958 of the Court of the subordinate Judge of Trivandrum. The suit was for arrears of salary and other emoluments. The plaintiff Raghavan Pillai was a Government Servant working as Melkankanakaran in the Sree Pandaravaka Department engaged in the collection of revenue. On 4-4-1951 the Government passed an order dismissing the plaintiff from service for mis-conduct. Against this order the plaintiff preferred O. P. 51 of 1952 before this court. This Court quashed the order of the Government for certain irregularities in the conduct of the enquiry and declared that the plaintiff was entitled to be treated by the Government as if the order of dismissal had not been passed. The Government's appeal against this order was unsuccessful. The plaintiff then requested the Government to reinstate him in service and for payment of arrears of salary. The plaintiff attained the age of superannuation on 3-10-1955 and as the arrears of salary and other dues were not paid up in spite of his repeated demands the plaintiff filed the above suit on 29-10-1956.

2. The sole defendant in the suit was the State of Travancore-Cochin. The defendant admitted that the plaintiff was a Government Servant and that he was dismissed from service on 4-4-1951. The defendant also admitted that the order of dismissal was quashed by the High Court. However, the defendant claimed that a fresh enquiry into the allegation against the plaintiff was conducted by the District Collector, Trivandrum, as a result of which an order was passed on 10-10-1954 dismissing the plaintiff from service as from 4-4-1951 and as such the plaintiff was not entitled to claim any arrears of pay. The learned Subordinate Judge finding that no valid order of dismissal was passed on 10-10-1954 as claimed by the defendant decreed the suit.

3. The defendant-State did not think it necessary to appeal against this judgment and hence the petitioner, the Executive Officer of the Sree Padmanabha Swami Temple seeks leave to file the appeal on behalf of the Sree Pandara Vaka Department. The petitioner's case is that by virtue of the special relationship between the State and the Sree Pandara Vaka Department, though the

former collects the dues on behalf of the latter, the Pandara Vaka Fund is kept distinct and the expenses of the department including the pay of its employees are met out of this fund. If the decree is made final the claim of the plaintiff will have to be satisfied by the department and as such it is the Sree Pandara Vaka Department that is really aggrieved by this judgment. According to the petitioner it is the absence of any financial liability to the Government that is responsible for their decision not to prefer an appeal, which decision the Government communicated to the Sree Pandara Vaka Department on 18-9-1958. The petitioner further alleges that the enquiry into the charges against the plaintiff which was pending during the trial of this suit was concluded only after the Judgment of the lower court and as a result of the enquiry an order was passed on 17-7-1958 compulsorily retiring the plaintiff from service as from the date of the original order of dismissal, i.e., 4-4-1951 and as that order has become final the plaintiff is only entitled to claim his pension and not any arrears of pay.

4. The petition for leave to appeal is contested by the plaintiff-respondent. He maintains that the petitioner was not a party to the suit and has no locus standi to take the case up in appeal.

5. The learned counsel for the counter-petitioner did not contend seriously for the position that a person who is not a party to the suit can under no circumstances be competent to file an appeal against the judgment of the trial court. There is nothing in the Civil Procedure Code which can be taken as giving sanction to a person not a party to a suit to appeal against the decision therein, but the trend of judicial opinion is that the English Practice in this respect may properly be followed in our country also. The English Practice as given in Halsbury's Laws of England is that :-

"Any of the parties to an action or matter and any person served with notice of the judgment or order may appeal (by leave, where leave is necessary). A person, who is not a party and who has not been served with such notice, cannot appeal without leave, but a person who might properly have been a party may obtain leave to appeal" - Vide Halsbury's Laws of England, IIIrd Edition Volume 30, page 461.

In a leading case on the point *In re Securities Insurance Company*<sup>1</sup>, Lindley, L.J., has stated the rule thus :-

"Now what was the practice of the Court of Chancery before 1862, and what has it been since? I understand the practice to be perfectly well settled that a person who is a party can appeal (of course within the proper time) without any leave, and that a person who without being a party is either bound by the order or is aggrieved by it, or is prejudicially affected by it, cannot appeal without leave. It does not require much to obtain leave. If a person alleging himself to be aggrieved by an order can make out even a prima facie case why he should have leave he will get it; but without leave he is not entitled to appeal".

6. This practice has been held repeatedly to be a just and equitable one fit to be

<sup>1</sup>(1894) 2 Ch 410

adopted in our country also. In *P. Ammal v. State of Madras*<sup>2</sup>, Rajamannar, C.J., after an exhaustive examination of authorities on the point came to the conclusion that :

"The provisions as regards appeal in England are not materially different from those

contained in the Civil Procedure Code or Letters Patent. In neither of them is there any express mention of persons who could appeal. In our opinion the practice consistently followed by the English Courts is a just and equitable practice and is in no way inconsistent with the doctrine that a right of appeal can only be created by statute. With respect to the learned Judges of the Bombay High Court we agree with them that there is no reason why the practice should not be followed by Courts in India".

The opinion expressed in Bombay case referred to above, *Bombay Province v. West India Automobile Association*<sup>3</sup>, is also to the same effect. Thus the rule seems to be well settled that while a party to a suit against whom, the judgment is given can appeal against it as of right, a person who is not on the party array but who is bound by the decree or whose interests are prejudicially affected by it may appeal with the leave of the appellate court.

7. Now in this case there can be little doubt that the interests of the petitioner are adversely affected by the decision of the lower court. The petitioner in his affidavit traces the history of the relationship between Sree Pandara Vaka Department and the Government first with the sovereign of Travancore, then with the State of Travancore-Cochin and later with the State of Kerala. He states that though the rents and other dues which are to be paid to the Sree Padmanabha Swamy Temple are collected by the Government, the money is kept as a separate fund from which expenses of the Department including the salary of its employees are met. As such the decree in this, suit which is one for arrears of salary, will have to be satisfied out of that fund. These averments are not disputed by the counter-petitioner. The petitioner has also filed a letter from the District Collector, Trivandrum to the Secretary, Revenue Department informing him about the judgment in the case and requesting him to arrange the deposit of the decree amount by the Private Secretary to His Highness the Maharaja. It is thus clear that though, the Sree Pandara Vaka Department was not a party to the suit the decree therein will by virtue of the arrangement between the Government and the Department be detrimental to the interests of the department. It was also not made out that alternative proceedings are open to the department wherein the correctness of the decision in the case, that is, the question whether or not the counter petitioner is entitled to arrears of salary can be effectively challenged. In these circumstances we think that this is a fit case in which the leave applied for should be granted. The petition is therefore allowed. We make no order as to the costs of this petition.

Petition allowed.

<sup>2</sup> AIR 1953 Mad 485

<sup>3</sup> AIR 1949 Bom 141