
(1988) 08 AHC CK 0068

In the Allahabad High Court

Case No : Civil Revision No. 643 of 1988

Allahabad Bank and Another

APPELLANT

Vs

Smt. Mridula Kulshrestha and Others

RESPONDENT

Date of Decision : 19-08-1988

Acts Referred:

Citation : (1988) 2 AWC 1370

Hon'ble Judges : A.P. Misra, J

Bench : Single Bench

Advocate : B. Malik, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Misra, J.—The present revision has been filed as against an order dated 10th September, 1987, by virtue of which an application for substitution of the heirs of the deceased Plaintiff was allowed and it held that the suit does not abate.

2. The main contention raised on behalf of the applicants was that since the Plaintiff died the suit for declaration that his services were illegally terminated which is his personal right does not survive and thus the whole suit abates. It was vehemently urged that in a suit for personal right which is main relief that does not survive then ancillary relief also does not survive and the whole suit abates and since in the present case the deceased filed a suit for declaration that his services had been illegally terminated that if could not be granted since he having died the suit cannot proceed and permitting substitution and not abating it, the court's order is illegal and is liable to be set aside. The argument is untenable.

3. The principle is well settled. So long the personal right of a person or the personal damages claimed by a person is confined to the person who makes such a claim, no such relief can be granted after his death. However, in the matter where a declaration is sought that his services had been illegally terminated that declaration may not be possible to be decided after date of his death. However,

the legal representative is entitled to the finding that the dismissal of the Plaintiff was wrongful and further they are entitled to the relief in consequence thereof at least for the period upto the date of his death. It is true that after date of his death such a suit for such a relief in future cannot be continued but so far as seeking relief of declaration that his services were illegally terminated the court is competent to decide this on the substitution of the legal representative. However, the consequential relief of such declaration has to be confined upto the date of his death and not beyond it.

4. To the aforesaid effect is a decision in Jagdish Prasad Mathur and Others Vs. United Provinces Government, . In that decision the Plaintiff was dismissed from Government service who brought a suit for declaration that the order of dismissal was wrongful and ultra vires, and that he still continues to be in service with a claim for arrears of pay. The suit was dismissed by the trial Court. During the pendency of appeal, Plaintiff died and his widow and sons were substituted in his place as his legal representative. The question was raised whether such a legal representative could maintain and continue the appeal after death of the Plaintiff. It was in this light it was held that although the legal representative could not be entitled to seek a declaration which the Plaintiff sought after his death they are entitled to the finding that the dismissal of the Plaintiff was wrongful and further they are entitled as a result of such a finding to the consequences that flows from such a finding. In view of the aforesaid, the contention raised on behalf of the applicant is untenable.

5. There is nothing in the impugned order which calls for interference by this Court in its revisional jurisdiction.

6. Learned Counsel for the applicants urged that the suit is barred by limitation. However, it is not a controversy raised in the impugned order. It is for the applicants to take such a plea in the trial court if it is permissible under law.

7. Accordingly, this revision is dismissed.

8. Copy of this judgment shall issue to the learned Counsel for the applicants within a week on payment of usual charges.