
(1991) 12 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : L P. A. 5 of 1981

Amrit Kour and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-12-1991

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 22 Rule 1

Citation : (1992) JKLR 80 : (1992) KashLJ 43 : (1993) SriLJ 321

Hon'ble Judges : K.K.Gupta, J and M.L.Kaul, J

Bench : Division Bench

Advocate : J.A.Kazmi, D.P.Gupta, Advocates appearing for the Parties

Judgement

Gupta, J.—S. Gurcharan Singh and Shri Ghulam Qadir Keng, both Conservators, have filed writ petition No. 299 of 1979 claiming their

right to be assigned the year 1960 as year of allotment for their induction in I. F. S. and not the year 1973 actually given to them. During the

pendency of the writ petition S. Gurbachan Singh died and his two sons, Jatinder Singh and Parmvir Singh and widow Smt. Amrit Kour filed

application CMP 610 of 1980 for being substituted in his place. Learned Single Judge of this Court on April 22, 1981 rejected the application as

not sustainable in law as the right to sue did not survive of the legal representatives of the deceasedpetitioner. Aggrieved by that order the legal

representatives of the deceased have come up in Letters Patent Appeal before this Court.

2. We have heard the learned counsel for the parties and perused the record. Mr. Kotwal learned counsel appearing for the appellants has argued

that S. Gurbachan Singh deceased petitioner had claimed two rights, firstly his year of allotment in IPS service and, secondly; salary and other

emoluments attached to the service and in the event of, success of the petition pecuniary benefits permissible were required to be given to the

deceased petitioner. According to him appellants being the legal heirs of the deceased petitioner are entitled to the said pecuniary benefits and as

such are required to be substituted for the deceased petitioner. M/s. D P. Gupta and Kazmi have however, contended the above said plea of Mr.

Kotwal by contending that in fact the deceased wanted his seniority in the I. F. S. cadre which his right vanished with his death and as such right to

sue did not survive.

3. In accordance with Order XXII Rule 1 C.P.C. death of a party shall not cause the suit to abate if the right to sue survives. It cannot be denied

that provision regarding abatement of suits apply to writ proceedings. The only point for consideration in this case is whether right to sue survives in

the present case to the heirs and legal representatives of the deceased. No doubt the main relief sought by the deceased petitioner is his right of

allotment of a particular year for induction in I. F. S. but this petitioner had also claimed in para 25 of the amended petition his right, besides

seniority, to have salary and all other emoluments attached to the service.

4. In case, Ibrahim Bhai Karim Bhai and others vs State of Gujarat reported in AIR 1968 Guj 202, the Division Bench of that court has taken the

view that petitioners in that case being heirs and legal representatives of the deceased petitioner could ask for relief for quashing order of reversion

as they were the persons interested in the estate of the deceased and if the order of reversion was null and void the deceased was entitled to salary

as Dy. S.P. and after his death his heirs would be entitled to recover the amount of that salary. The full Bench of Kerala High Court in AIR 1977

Kerala 83 has made the following observation :

Order XXII Rule 1 about which a reference has already been made by us is not to be understood as meaning that in every case of the death of

the plaintiff or defendant there will be no abatement, at any time, if the right to sue does survive. Except in cases where the right to sue is personal,

such right survives normally. There is no abatement in such cases by death,

5. The expression "right to sue" in Order XXII Rule 1 CPC connote a right to obtain reliefs which the deceased had prayed for. In the instant case

the deceased petitioner besides seeking relief of allotment of year to be assigned

to him for his induction in IPS service, has also sought protection of his salary and other emoluments accruing thereon. If we apply the principle underlying the above referred provision of law we find that after the death of the deceased petitioner appellants are entitled to recover the amount of salary and other pecuniary benefits besides the benefit of family pension in case the petition succeeds. These legal representatives will also be entitled to enjoy the reliefs claimed by the petitioner in the petition by way of getting pecuniary benefits. In this manner right to sue does survive to the appellants, being heirs and legal representatives of the deceased petitioner.

6. For the aforesaid reasons we allow this appeal and set aside the order of learned Single Judge. Application of the appellants for their substitution as legal representatives of deceased Gurbachan Singh is allowed and they shall be substituted so.