
(1999) 01 DEL CK 0008

In the Delhi High Court

Case No : C.M. No's. 2773/95 and 2773-a/95

Anant Ram Jain

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Citation : (1999) 2 AD 43 : (1999) 78 DLT 9 : (1999) 82 FLR 229 : (1999) 121 PLR 62

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Ms. Mala Goel and Mr. Baldev Raj, for the Appellant; Mr. Ramesh Chandra and Mr. Virendera Kr. Singh, for the Respondent

Judgement

Mukul Mudgal, J.—This is an application under Order XXII Rule 3 read with Section 151 CPC application for bringing the legal heirs of the deceased petitioner on record in the present writ petition. The writ petition challenges the petitioner's removal from service on 10th February, 1981. The writ petition was filed thereafter in this Court on 21st February, 1981. During the pendency of the writ petition, the petitioner died on 21st January, 1995 and the present application to bring the legal heirs on record was filed within 90 days.

2. The main plea of Shri Ramesh Chandra, the learned Senior Counsel for respondent No. 2 in opposing the substitution of the legal heirs on record is that even if this court were to set aside the dismissal and grant the reinstatement, it would be open to respondent No. 2 to hold an inquiry afresh against the petitioner. He further submits that the cause of action would not survive in such an eventuality and the substitution cannot then be permitted. In support of this plea he relied on a judgment of the Madras High Court U. Vridhachalam and Others Vs. The State of Madras, . The aforesaid judgment held that in a writ petition filed by a dismissed employees praying for quashing of the dismissal order as being vocative of the principles of natural justice, the charges against the petitioner/employee were not likely to be wiped out even by the issue of a

writ in his favor and consequently the bringing of legal heirs on record by deceased employee/petitioner would be at best lead to a issue of a futile writ as the petitioner did not have a legal right. With respect I am not persuaded to agree with the view taken by the learned Single Judge of the Madras High Court.

3. There are at least three judgments, i.e. K.L. Bashali Vs. The Chief Controller of Imports & Exports 1967 69 PLR 19 Delhi Section; Bhagwan Singh and Others Vs. Additional Director of Consolidation, Punjab, Ferozepore and Another AIR 1968 P&H 360 and Ibrahimbhai Karimbhai and Others Vs. State of Gujarat, which take a view contrary to the view taken by the Madras High Court.

4. In the first decision i.e. K.L. Bashali (supra) the Punjab High Court held that the law of abatement does not apply to the writ petitions under Article 226 of the Constitution and what is necessary to see is whether the right to sue is available to the legal representative.

5. In the second decision i.e. Bhagwan Singh and Others (supra) the High Court of Punjab & Haryana held that in disposing of any application for bringing the legal heirs of a deceased petitioner on record, the court will apply the principles of justice, equity and good conscience any may refuse to exercise its discretion if there were inordinate delay and laches without a proper Explanation.

6. In the third decision i.e. Ibrahim bhai Karim bhai and Others (supra), a Division Bench of the Gujarat High Court held that in a writ petition filed by the deceased petitioner challenging the reversion of the said deceased petitioner, the right to sue survived to the legal heirs. The Division Bench of Gujarat High Court held that the petitioner, and upon his death the legal heirs, would be entitled to salary on an enhanced scale upon the reversion being set aside. The "right to sue", following the judgment of (1902) 2nd 26 Bom. 597 Gopal Ganesh Vs. Ramchandra Sadashiv, was construed rightly, to mean the right to obtain the relief which the deceased had prayed for.

7. It is obvious that the view taken in the above three judgments lays down the correct position of the law as it is clear that the right to sue survives in favor of the petitioner's legal heirs because as and when the order of dismissal is held void the petitioner's legal heirs have the right to recover dues up to the date of his death upon reinstatement. In fact if the view propounded by the respondent is upheld it would put a premium on delay and put an end to a litigation even if the petitioner has a good case. The plea of the learned counsel for the petitioner of initiating a fresh enquiry does not take into account the fact that the petitioner is dead and further presupposes that such an enquiry is bound to find the employee guilty. In case the fresh enquiry by the employer were to find the employee as not culpable then his legal heirs would be left with no recourse even on the impugned order of dismissal being found illegal. Such a plea does not subserve the ends of justice and on the contrary leads to injustice.

8. I, Therefore, respectfully disagree with the view taken by the learned Single Judge of the Madras High Court and follow the position of law laid down by the

High Courts of Punjab & Haryana and Gujarat.

9. Accordingly, the application is allowed. Necessary and consequent amendment in cause title and memo of parties be made.

10. CM 2773/95 stands disposed of.

11. In view of the above observations, the application (C.M. 2773A/95) is also allowed. The same is disposed of.

CW 394/81

12. As this writ petition pertains to the year 1981, accordingly it may be listed for final hearing at the end of the list on 23rd March, 1999.