
(1972) 09 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petition No. 512 of 1968

Gul Mohammed through L.Rs.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-09-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 77

Citation : (1973) RLW 141 : (1972) WLN 811

Hon'ble Judges : Shinghal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shinghal, J.—This writ petition was filed by Gul Mohammed on July 1, 1968, but it was dismissed summarily by a learned Single Judge on August 1, 1968. The petitioner preferred a special appeal, which was allowed on March 30, 1972 and the case was sent back for a fresh decision after allowing the respondent to file a reply. The petitioner died during the pendency of the appeal and his legal representatives are now prosecuting the writ petition,

2. Gul Mohammed was an employee of the Western Railway when he received order Ex. 2 dated August 24, 1967, to the following effect.

ORDER

The President is further satisfied that the retention of Shri Gul Mohammed, Stenographer, Deputy Chief Accounts Officer, (Traffic Accounts) Office, Western Railway, Ajmer, in service is prejudicial to National Security and that the said Shri Gul Mohammad ought to be removed from service.

2. The President is further satisfied under Sub-clause (c) of the proviso to Clause (2) of Article 311 of the Constitution that in the interest of the security of the State, it is not expedient to hold an inquiry in the case of the said Shri Gul Mohammed.

3. Accordingly, the President hereby removes the said Shri Gul Mohammed from service with effect from the 12th of September, 1967.

He felt aggrieved against that order and made representation to the authorities concerned. He was however informed by memorandum Ex 10 dated May 18, 1968, that his representation had been "considered by the President but it was not proposed to make any change in the order already passed". He therefore filed the present writ petition for quashing the order of his removal and for his reinstatement in service with retrospective effect.

3. It was alleged by the petitioner that even though proviso (c) to Clause (2) of Article 311 of the Constitution required that the President should be satisfied that in the interest of the security of the State it was not expedient to hold the inquiry prescribed by Clause (2), the matter never reached the President and some one else exercised the President's power by virtue of an order of delegation made under Article 77 of the Constitution. The main grievance of the petitioner therefore was that as no such delegation was permissible, the impugned order (Ex. 2) was illegal and he was entitled to reinstatement.

4. The petitioner died on September 13, 1971, and it has been argued by Mr. R. C. Bhargava, on behalf of the Union of India, that the writ petition cannot be maintained by the legal representatives and must be dismissed because the cause of action was entirely personal to Gul Mohammed and did not survive. The learned Counsel has placed reliance on *U. Vridhachalam and Others Vs. The State of Madras*, and *T.N. Venkatanathachari v. State of Andhra Pradesh* and *Anr. 1969 (3) SLR 188* in support of his argument. On the other hand it had been argued by the learned Counsel for the legal representatives that as they are interested in the estate of the deceased, they are aggrieved against the impugned order and are entitled to relief. The learned Counsel has placed reliance on *Ibrahimhai Karimbhai and Others Vs. State of Gujarat*,

5. As has been stated, the petitioner was an employee of the Union of India. His employment was therefore a matter of "status" and not of contract. The right to the status which was conferred on. and was enjoyed by the petitioner was therefore such a personal right that it could not enure to the benefit of his legal representatives. Thus if Gul Mohamad died after his removal from service (by the impugned order dated August 24, 1967), but before the filing of the writ petition, it would not have been permissible for his legal representatives to file the present petition for redress under Article 226 of the Constitution. It would not therefore matter if he died after the filing of the writ petition.

6. As has been stated, the impugned order WAS made under proviso (c) to Clause (2) of Article 311 of the Constitution on the ground that the President was satisfied that in the interest of the security of the State it was not expedient to hold the inquiry contemplated by Clause (2). Even if it were assumed that the satisfaction required by proviso (c) was not of the President in the present case, and that some one else exercised his power by virtue of some order of

delegation, and even if the impugned order were to be quashed" for that reason, that would not put an end to the matter because there was nothing to prevent the President from passing a fresh order according to the law. If, therefore, the legal representatives of Gul Mohammed are held to be entitled to maintain the writ petition, it would give rise to an anomalous situation inasmuch as while the impugned order would be set aside, the respondent would be disabled from passing a fresh order according to the law because, of Gul Mohammed's death, it would not be desirable to create such a situation in the exercise of this Court's discretionary jurisdiction, and this is another reason against the maintainability of the petition.

7. It may also be mentioned that the legal representatives only claim to be interested in the estate of the deceased and their learned Counsel has argued that they want to recover the salary or any other benefit that might be found to be due to Gul Mohammed up to the date of his death. But the quashing of the impugned order would not grant that relief in these proceedings as a matter of course, and it will be necessary for them to file a suit. At any rate, their success in these proceedings will not save the legal representatives from the necessity of filing a suit, and it is not therefore necessary to grant a discretionary relief by way of certiorari. This view finds support from the decisions in *U. Vridhachalam and Others Vs. The State of Madras*, and *T.N. Venkatanathachari v. State of Andhra Pradesh* 1969 (3) SLR 188.

8. I have gone through the decision in *Ibrahimbhai Karimbhai and Others Vs. State of Gujarat*, on which reliance has been placed by the learned Counsel for the legal representatives. The facts of that case were however quite different because the disciplinary proceedings had come to an end once for all as the penalty of censure had been imposed on the petitioner. The grant of relief in that case was not therefore likely to give rise to an anomaly.

9. As I have reached the conclusion that the right involved in this case was purely personal to Gul Mohammed, his legal representatives cannot maintain the present petition and it is dismissed. There will however be no order as to the costs.