

(1967) 05 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 63 of 1963

Ibrahimbhai Karimbhai Chhipa (Deceased, by His Heirs and
Legal Representatives)

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-05-1967

Acts Referred:

Bombay Civil Services (Classification and Recruitment) Rules, 1939 — Rule 55
Civil Procedure Code, 1882 — Section 373 , 647
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, 122, 141, 9
Constitution of India, 1950 — Article 226, 227, 311, 311(2)
Penal Code, 1860 (IPC) — Section 325, 380, 454

Citation : (1967) 8 GLR 793 : (1969) 2 LLJ 67

Hon'ble Judges : N.M. Miabhoy, J;D.A. Desai, J

Bench : Division Bench

Judgement

Desai, J.—This is a petition under Art. 226 of the Constitution of India, One Ibrahimbhai Karimbhai Chhipa was the original petitioner. He was a member of the Police Service of the State. He was appointed as sub-inspector of police on 1 January 1939 in the former State of Bombay. He was promoted as inspector of police on 8 November 1953 and was confirmed in that post on 19 August 1960. He was listed in the selection list of the police officers fit for promotion as Deputy Superintendent of Police by the Selection Board. He was appointed as an officiating Deputy Superintendent of Police by the Government of Gujarat on 3 May 1961. He took charges of the Sub-divisional Police Office, Morbi subdivision, Rajkot, on 28 May 1961.

2. During the course of his duties, he camped at Vankaner on 5 August 1961 in connexion with an investigation of a murder case. One Lalji Hirji complained to him that his nephew, a boy named Jayantilal, was taken to Vankaner City Police Station as suspect in a case of house-breaking and theft at the place of one Gambhirsinh Ratansinh on 3 August 1961 and that Haribhai, the maternal uncle of the said Jayantilal, beat left boy with a stick causing fracture of his left leg.

Lalji complained that Jayantilal was beaten in the presence of the police sub-inspector Ajitdan Jivraj Gadhvi and in spite of this, no action was taken by police sub-inspector against Haribhai. Ibrahimbhai (hereinafter referred to as the original petitioner) went to the police station and registered the offence under S. 325 of the Indian Penal Code against Haribhai. He also recorded the complaint of Gambhir sing, regarding the offence of house-breaking and theft under Ss. 454 and 380 of the Indian Penal Code. He reported to the District Superintendent of Police for suitable action against police sub-inspector Gadhvi. The District Superintendent of Police took serious view of the matter and passed an order of suspension against Gadhvi on 29 August 1961. While the original petitioner was camping at Vankaner City on 30 August 1961, Gadhvi came to see him and at the time a police constable from Morbi brought office post wherein the orders of suspension of Gadhvi were also received by him. The original petitioner, therefore, served the order of suspension on Gadhvi who signed the duplicate copy as a token of having received the order. The original petitioner was making an endorsement on a duplicate copy and at that time, he heard a shot of a revolver and saw his clears Rana falling down. Other shots were also fired and he himself received an injury on abdomen. These shots were fired by Gadhvi and Gadhvi committed suicide by shooting himself with the revolver. The Deputy Inspector-General Police, Rajkot Range, conducted an enquiry in respect of this incident and the visit of the original petitioner on that day to Vankaner. He submitted his report to the Government of Gujarat. The Government of Gujarat, General Administration Department, issued a notice dated 28 December 1961 stating therein that the Government had come to the conclusion that there was sufficient evidence to hold that the original petitioner had acted in contravention of rule 402 of the Bombay Police Manual as he had purchased some supplies through the subordinate officer during his camp at Vankaner; that the petitioner failed to use proper discretion in hastily registering an offence under S. 325 of the Indian Penal Code without proper verifications the complaint of Lalji against Haribhai and in entrusting the investigation of the two cases, namely, injury to Jayantilal and house-breaking and theft at the house of Gambhirsinh Ratansinh, to Misra, police sub-inspector, and therefore, the Government proposed to revert the original petitioner on the grounds of the aforesaid misconduct. The original petitioner submitted his reply to the said show-cause notice on 24 March 1962. He denied the above allegations and gave an explanation in respect of the charges levelled against him. An advance copy of this reply was forwarded to the Chief Secretary to the Government of Gujarat. The original petitioner thereafter filed Special Application No. 337 of 1962 in this Court. The said special civil application was withdrawn on 17 April 1962 as he had an alternative remedy of filing an appeal. On 14 April 1962, original petitioner received an order dated 10 April signed by the Chief Secretary to the Government of Gujarat, reverting the original petitioner from the post of officiating Deputy Superintendent of Police to the post of police inspector. He thereafter preferred an appeal to His Excellency the Governor of Gujarat challenging the show-cause notice and the order of reversion. The Deputy Secretary to the Government of Gujarat, Home and Civil

Supplies Department, informed the original petitioner by letter dated 29 December 1962 that his reversion from the post of the Deputy Superintendent of Police to the post of police inspector was on the ground of his unsuitability to the post and not by way of a punishment and therefore, the appeal did not lie and was filed. In the meanwhile, the original petitioner received an order signed by the Deputy Secretary to the Government of Gujarat, Home and Civil Supplies Department, dated 10 December 1962, intimating the original petitioner that the Government had carefully considered the explanation submitted by him and had come to the conclusion that allegations 1 and 3 mentioned in the show-cause notice were proved and the Government had, therefore, decided to award him a punishment of censure of those irregularities and accordingly he was censured for the same. The original petitioner, therefore, has filed the present petition against the State of Gujarat challenging the order of reversion dated 10 April 1962 and contending that the said order is illegal and of no effect on the ground, firstly that the said order of reversion was on account of misconduct mentioned in the show-cause notice dated 28 December 1961, secondly that the said order was passed by way of punishment and put a stigma on his competency and integrity and affected his future service. The order was also challenged on the ground that the same was passed without hearing him and in contravention of Art. 311 of the Constitution of India. The petitioner prayed amongst others for the following reliefs :

(a) to call for the record and proceedings in respect of the order No. DYS. 1062/9924-K dated 10 April 1962 passed by the respondent, and to issue writ of certiorari or mandamus or any other order of direction quashing the aforesaid order :

(b) to declare that the order dated 10 April 1962 is illegal and of no effect and that the petitioner remains in service as officiating Deputy Superintendent of Police."

3. During the pendency of this petition, the original petitioner died on 18 August 1965 and an Application No. 1927 of 1965 was preferred by the present petitioner as heirs and legal representatives of deceased Ibrahimbhai Karimbhai Chhipa. The following order was passed thereon by this Court on 8 November 1960 :

"Applicants are brought on the record as the legal representatives of the deceased petitioner. However, the respondents in the main petition will have a right to urge that the cause of action therein does not survive and that the legal representatives have no right to pursue the petition. The present application is granted subject to the above right of the respondents to raise the contention."

4. The respondent to the petition is the State of Gujarat. On behalf of the respondent, the Deputy Secretary to the Government of Gujarat, Home Department, has filed an affidavit in rejoinder and contended that the petition had become infructuous due to the death of Ibrahimbhai Chhipa. The contention

was that the petition did not survive as the relief claimed were personal to the deceased and the heirs and legal representatives, i.e., present petitioners had no right to continue the petition. On merits, the contention was that the order of reversion was not passed as a punishment but on the ground that Ibrahimbhai Chhipa was unsuitable for the post of Deputy Superintendent of Police. Paragraph 9 of the affidavit, raising the said contention runs as follows :

"I say that the said order of reversion has no relation at all with the show-cause notice issued to the petitioner and the action taken thereon. I say that the petitioner had submitted his reply on 24 March 1962 through the Inspector-General of Police. I say that an advance copy of his said reply was received by Government on 26 March 1962. I further say that the reversion was effected in view of the position explained by the Inspector-General of Police in Para. 3 of his demi-official letter No. A. 9, dated 23 and 26 March 1962 which says that the Selection Board of the Deputy Inspector General of Police which met in February 1962 classified the petitioner "not fit." The petitioner was therefore to be reverted without waiting for the receipt of his explanation through proper channel and examining it. If necessary I crave leave to reply upon the said demi-official letter, dated 23 and 26 March 1962. I say that the petitioner's name was on the provisional list and he was subsequently considered "not fit" by the Selection Board. I say that the aforesaid explanation dated 24 March 1962 submitted by the petitioner was received by the Government through proper channel as per Inspector-General of Police's endorsement No. A/10, dated 7 June 1962. I say that the said explanation was examined and he was given the punishment of censure for irregularities as per order annexure D to the petition. I therefore, deny that the said order dated 10 April 1962 is on account of misconduct as alleged, by the petitioner or that on the said submission it is without jurisdiction or contrary to the provisions of Civil Services (Classification, Control and Appeal) Rules. I say that the said order does not in any way state that the petitioner is guilty of any misconduct or that therefore he was reverted. I submit that provisions of Art. 311(2) of the Constitution of India are not attracted in the present case. I further submit that even though the petitioner had demanded opportunity to show-cause against the allegations, I say that inasmuch as the said order dated 10 December 1962 does not give any punishment as envisaged by Art. 311 of the Constitution of India, the petitioner is not entitled to make the various submissions contained in this paragraph."

5. At the time of the argument, Sri Chhaya, learned Additional Government Pleader appearing for the respondent, has produced demi-official letter dated 23/26 March 1962 addressed by the Inspector-General of Police to the Chief Secretary to the Government of Gujarat, General Administration Department, Ahmedabad. The said demi-official letter has been taken on record with the consent of both the parties.

6. The points which were raised for our consideration are :

(1) Whether the provisions of Order XXII of the CPC relating to the abatement of

the proceedings apply to the application under Art. 311(2) of Constitutions of India ?

(2) Whether the right to sue survives to the present petitioners and whether they are entitled to reliefs asked for in the petition ?

(2) Whether the order of reversion dated 10 April 1962, Ex. C, was passed by way of punishment and contravened the provisions of Art. 311 of the Constitution ?

7. Sri Daru, the learned advocate appearing for the petitioners, contends that the provisions of the CPC apply to the application under Art. 226 of the Constitution of India by virtue of the provision of S. 141 of the Code of Civil Procedure. Section 141 of the CPC reads as under :

"The procedure provided in this code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction."

8. The submission of Sri Daru is that an application under Art. 226 of the Constitution is a proceedings in Court of Civil jurisdiction, and, therefore, the provisions of the CPC will apply to such a proceeding. It is contended that the proceedings contemplated by S. 141 of the CPC are the proceedings which are original in the nature and reliance is placed on the decision of the Privy Council in the case of *Thakur Prasad v. Fakir Ullah* [I.L.R. 17 All. 106]. In that case, the Privy Council was interpreting S. 647 of the Code of Civil Procedure, 1892, which was in the same terms as S. 141 of the Code of Civil Procedure. The question before the Court in that case was whether S. 373 of the Code of 1892 which is equivalent to order XXIII, rule 1, applied to the execution proceedings by virtue of S. 647 of the Code of 1982. Their lordship made the following observation at p. 111 :

"Their lordship thinks that the proceedings spoken of in S. 647 include original matters in the probates, guardianships and so forth, and do not include executions."

9. The contention of Sri Daru is that an application under Art. 226 of the Constitution is a proceedings of original nature and for this reliance is placed on the decision of the Supreme Court in the case of *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, wherein it has observed at p. 951 :

"It is, therefore, clear from the nature of the power conferred under Art. 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Art. 226 of the Constitution exercises original jurisdiction, through the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdiction, is exercise throughout the territories in relation to which it exercise jurisdiction and may, for convenience, be described as extraordinary original jurisdiction."

10. Sri Chhaya, on the other hand, contends that the writ petitions under Art. 226 are quite different from the ordinary proceedings and S. 141, Civil Procedure Code, applies to proceedings in the nature of a suit and to a proceedings in the Court of civil jurisdiction. The argument is that the writ proceedings are different from the ordinary civil proceedings and the High Court when it acts under Art. 226, exercises extraordinary jurisdiction, and therefore, S. 141, Civil Procedure Code, has no application. The argument proceeds that the High Court when it exercises jurisdiction under Art. 226 of the Constitution, derives an authority from the provisions of the Constitution and exercises extraordinary jurisdiction and therefore, the writ proceedings do not fall within the expression "proceedings in any Court of civil jurisdiction" as contemplated by S. 141 of the Civil Procedure Code. Sri Chhaya also contends that the writ proceedings are not in the nature of a suit relies on the decision in *Bharat Board Mills, Ltd. v. Regional Provident Fund Commissioner and other* 1958 I L.L.J. 285. The question that arose in that case was whether the provisions of Chap. 27-A of the CPC were applicable to the writ proceedings and the Court observed at p. 294 as under :

"..... An application under Art. 226 of the Constitution is however not a suit. But it is to be noted that S. 141 of the Code states that the procedure provided in the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any Court of civil jurisdiction. It has been held by this Court that the jurisdiction which the High Court exercises under Art. 226 of the Constitution is a special and limited jurisdiction. It is not a revisional jurisdiction nor is it an appellate jurisdiction. The High Court also does not exercise any jurisdiction of superintendence under Art. 226 as it does under Art. 227 of the Constitution. Neither order XXVII-A nor S. 141 of the Code, therefore, apply literally to proceedings under Art. 226 of the Constitution"

11. Now, an application under Art. 226 praying for issuance of a writ, direction or order, is a proceedings in a Court. The proceedings contemplated by S. 141, CPC include the original matters in the nature of the suit as has been laid down by the Privy Council in *Thakur Prasad* case [I.L.R. 17 All. 106] (vide supra). The jurisdiction which the High Court exercised under Art. 226 is an original jurisdiction. Therefore, the writ proceedings are the proceedings of original nature. The jurisdiction which the Court exercise in issuing the writs of certiorari is a civil jurisdiction. We therefore, hold that the proceedings under Art. 226 are the proceedings in the Court of civil jurisdiction. The same view has been taken by the High Court of Andhra Pradesh in the case of *Annam Adinarayana and Another Vs. State of Andhra Pradesh and Another*, . Sri Chhaya argued that the High Court in issuing writ under Art. 226 exercise extraordinary jurisdiction. According to Sri Chhaya, when the High Court exercises this extraordinary jurisdiction it issue writ under Art. 226, it is not a Court of Civil judicature. Article 226 provides a remedy a remedy for the enforcement of rights. The source from which the authority is derived to issue writ for enforcement of right is not relevant for the purpose of determining the nature of jurisdiction which the Court exercises when issuing writs. When the High Court exercises the power to issue a

writ of certiorari (that is the writ with which we are concerned in this case), it exercises civil jurisdiction and the High Court is a Court of the civil judiciary. Sri Chhaya relies upon a decision of the Division Bench of this Court in Ramchandra Nihalchand Advani v. Anandlal Bapalal Kothari and another (1961) 2 Guj. L.R. 635 and particularly on the following observations of Raju, J, at p. 637 :

"The expression "Court of civil judiciary" is not defined. But it may have three different meanings :

(1) A Court (whether appellate or otherwise), administering justice in matters relating to enforcement of civil rights or to suits of a civil nature within the meaning of S. 9, Civil Procedure Code.

(2) A Court, whether appellate or otherwise, administering justice generally in civil matters.

(3) A Court whether appellate or otherwise, administering justice in any type of civil matters.

12. The scheme of the Civil Procedure Code, and, in particular S. 9 of that Code that the first of the above definitions is more appropriate for purposes of the Civil Procedure Code, otherwise Caste Panchayats would be Courts of civil judiciary. If the first meaning is given to the expression "Court of civil judiciary." then High Courts dealing with writ judications would not be Courts of civil rights but rights created by the Constitution. A civil suit does not lie for the issue of a writ. Although the High Court is a Court is a Court of civil judiciary, when deciding certain matters, it is not a Court of civil judiciary when deciding writ petition.

13. If the High Courts when deciding writ petitions are not Courts of civil judiciary for purposes of Civil Procedure Code, then order I, rule 1, of Civil Procedure Code, would not apply to the procedure of writ petitions. Section 141, Civil Procedure Code, provides that the procedure provided in that Code as regards suits shall be followed as far it can be made applicable in all proceedings in any Court of civil judiciary."

14. With respect, we cannot agree with these observations. Articles 226 of the Constitution of India provides for a writ or order direction for the enforcement of fundamental and statutory rights. If the rights that are enforced by the issuance of a writ under Art. 226 of the Constitution are civil rights, the Court exercises civil jurisdiction and the High Court of civil jurisdiction. Sri Chhaya submitted that this decision being a decision of the Division Bench is binding on us. Now, in that case, Raju, J., has observed at p. 638 as under :

"Assuming that when deciding petitions, High Courts are Courts of civil jurisdiction, it must be noted that in the CPC there are special provisions relating to the procedure in High Court. Section 122, Civil Procedure Code, provides that High Courts may make rules regulating their own procedure and may by such rules, annual, alter, or add to all or any of the rules in Sch. I. The High Courts has made special rules relating to the procedure in writ petitions . . . The rules

framed by the High Court would, therefore, supersede the under the Civil Procedure Code. Rules of procedure in the matter of writs would, therefore, be governed by the special rules relating to writ petitions framed by the Bombay High Court and not by Order I, Rule 1, of the Code of Civil Procedure."

15. In the said case Mehta, J., delivered a separate judgment and had observed at p. 642 that -

"I would like to add a few words of my own in regard to the preliminary point.

I agree in the main conclusion that for vindicating every right or claim a separate petition should be made. I also agree that order I, rule I, of the Civil Proceeding Code, does not apply to writ petitions by reason of the rules made by this Court."

16. Thus, it clear that the observations of Raju, J., that High Court when it exercises power under Art. 226 is not a Court of civil judicature are obiter. The Division Bench had held that order I, rule 1, of the Civil Procedure Code, did not apply to the writ proceedings because the High Court framed its rules for filing a writ application and the writ application was governed by the said rules. Admittedly no rules have been framed by the High Court as to what is to happen in a case when the petitioner dies during the pendency of the writ application. We, therefore, hold that the provisions of rules 1 and 2 of order XX will apply to the writ proceedings in the High Court by virtue of S. 141 of the Civil Procedure Code.

17. The next question is whether the right to sue survives in the present case to the present case to the heirs and legal representatives of the original petitioner. The expression "right to sue" means the right to obtain the reliefs which the deceased has prayed for and that is how the expression was construed in the case of Gopal Ganesh Abhyankar minor by his uncle Govind Gangadhar v. Ramchandra Sadashiv Sahasrabudhe [I.L.R. 26 Bom. 597] . In the present case, the reliefs which are prayed for are to quash the order of reversion dated 10 April 1962 passed by the State and for a declaration that the petitioner continued in the service as an officiating Deputy Superintendent of Police. The present petitioners, that is, the heirs and legal representatives of the deceased Ibrahimbhai Chhipa, can ask for relief for quashing the order of reversion dated 10 April 1962 as they are the persons interested in the estate of the deceased. If the order of revision is null and void and, therefore, of no legal effect, the deceased was entitled to his salary as Deputy Superintendent of Police. After death, his heirs - the present petitioners would be entitled to recover the amount of that salary. In respect of the second relief, Sri Daru conceded that the present petitioners cannot claim the same. Sri Chhaya contended that the existence of the right is the foundation of the exercise of jurisdiction of the High Court under Art. 226 of the Constitution and that the legal right that can be enforced under Art. 226 of the Constitution must ordinarily be the rights of the petitioner himself and for this Sri Chhaya relied upon a Supreme Court case of The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, . The

contention of Sri Chhaya was that the right to obtain the relief of a declaration that the order dated 10 April 1962 was invalid and ineffective and a writ for quashing the said order, was a personal right of the deceased Ibrahimbhai. The heirs, that is, present petitioners, had no personal right to obtain such a relief. Sri Daru, on the other hand, contends that they have such a right and relies on the following passage from the *Judicial Review of Administrative Action* by S. A. de Smith, 1959 Edn., at p. 310 :

"Whereas nearly all the cases on prohibition have arisen out of proceedings originally instituted before Courts *stricto sensu*, the locus standi required of an applicant for certiorari has been often been the subject of consideration in cases arising in the general field of administrative law. But most of the decisions have failed to provide a full exposition of the relevant principles, and many of the dicta are ambiguous. Moreover, it has never been clearly settled how far the rules relating to prohibition are application to certiorari.

Until recently there was a widespread impression that locus standi was confined to persons with a direct interest in the subject-matter of the impugned order. But in only one case had it expressly been held that a stranger could have no locus standi and there were numerous dicta supporting the contrary view. These dicta have now been powerfully reinforced by the Court of appeal. It is thought that the present law may properly be stated as follows. Certiorari is a discretionary remedy, and the discretion of the Court extends to permitting an application to be made by any member of the public. A person aggrieved i.e., one whose legal rights have been infringed or who has any other substantial interest in impugned an order, may be awarded a certiorari *ex debito justitiae* if he can establish any of the recognized grounds for quashing; but the Court retains a discretion to refuse his application if his conduct has been such as to disentitle him to relief. Only exceptional circumstances (which have yet to arise in a reported case) will the Court exercise its discretion in favour of an applicant who is not a person aggrieved."

18. Sri Daru also relies on the decision of a Division Bench of this Court in Special Civil Application No. 638 of 1965, dated 7 September 1965, by Miabhoy (as he then was) and M. U. Shah, JJ. In that case an application was filed under Arts. 226 and 227 of the Constitution of India by the petitioners who were operating tramway service and stage carriage service on the two routes between Wadhwan City and Surendrangar. The Regional Transport Authority granted a temporary permit to the Gujarat State Road Transport Corporation to carry operation of two station carriages between Wadhwan trolley station and Surendrangar junction. It was argued on behalf of the Gujarat State Road Transport Corporation that no existing legal rights of the petitioners was infringed by the impugned order and the petitioners in that case had no locus standi to file the petition and seek the relief on certiorari. The granting of temporary stage permit to the Gujarat State Road Transport Corporation was challenged on the ground that as a result of the operation of the carriages by the Gujarat State

Road Transport Corporation, the petitioners were put to monetary loss. The Division Bench, after considering the law and various decisions on the point, came to the conclusion that the issue of a writ of certiorari was discretionary and for the issuance of a writ, a distinction did exist between the stranger and an aggrieved party. The Division Bench further held that in both the cases a petition for a writ of certiorari is maintainable, and as the petitioners in that case claimed that they suffered pecuniary loss by virtue of the impugned it, held that the petition filed by them was maintainable. Relying on the aforesaid two authorities, Sri Daru contends that the order of reversion dated 10 April 1962 result in pecuniary dated the original petitioner and after his death the present petitioners are entitled to the estate of deceased Ibrahimbhai Chhipa and hence the right of the present petitioners was also affected and therefore, they were the aggrieved parties. In our opinion, there is great force in this argument of Sri Daru and we accept the same. It cannot be denied that the present petitioners are the aggrieved parties. They are entitled to inherit the estate of the deceased. If the order is declared to be null and void, the present petitioners will be entitled to recover the salary due to the deceased Ibrahimbhai Chhipa. The Supreme Court decision in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, on which Sri Chhaya relies merely says that person claiming relief must have "ordinarily a personal and individual right." The word "ordinarily" is important. In this case, it cannot be said that the present petitioners have no personal or individual right to enforce. After the death of the original petitioner, they are the persons who are entitled to his estate and the right of the deceased to recover the salary vests in them. Sri Chhaya next relies on a decision of the Madras High Court in *U. Vridhachalam and Others Vs. The State of Madras*, In that case the petitioner was a Government servant who was dismissed from the service after a departmental inquiry. The Government servant thereupon filed a writ petition in the High Court praying for the quashing of the order of the dismissal on the ground that the authorities had not followed the procedure and the order was opposed to the principal of natural justice and against the provisions of Art. 311 of the Constitution. After filing the petition, he died and his legal representatives were brought on record. The maintainability of the writ petition by petitioner's legal representatives was challenged and the Court held that the relief sought was purely personal to the delinquent officer and such a personal right, which really involved the continuance in service or otherwise of a person, would not survive to the legal representatives. Unless the person had a legal right, he could not seek to exercise the extraordinary jurisdiction under Art. 226 of the Constitution of India. It was further held that the relief sought therein, namely to quash the order of dismissal and restore him to his rights in the service of the State, was a personal right. The Court took the view that the Court can only quash the order if it comes to the conclusion that the order violated Art. 311 of the Constitution but the charges that were framed against the delinquent officer did not stand wiped out. The legal representatives of the delinquent officer had to file a fresh suit to recover from the State such emoluments and other monetary benefits which the delinquent officer would have been entitled to

during the period he was kept out of the office. According to the decision the issue of a writ was only sought as a step towards further legal steps which the legal representatives of the deceased officer proposed to take. We have already held that the legal representatives of the delinquent officer are aggrieved party and they have right to maintain the petition under Art. 226 of the Constitution of India. The legal representatives of the delinquent officers have also a right to obtain a declaratory decree, namely, that the order of revision is null, void and ineffective as it offended the provisions of Art. 311 of the Constitution. It cannot be said that in all cases the issue of a writ of such a nature is a step towards further legal steps which the legal representatives of the deceased officer proposed to take and it is not such a case as far as the facts of this petition are concerned for the reasons to be stated hereinafter. In the circumstances, we hold that the right to sue survives and the petitioners have the right to maintain the petition.

19. Now, coming to the merits of the case, the original petitioner was served with a show-cause notice on 28 December 1961. The show-cause notice was served under the nature of Sri H. K. Khan, Deputy Secretary to the Government of Gujarat, General Administration Department. The original petitioner had replied to this show-cause notice on 24 March 1962 and the reply was addressed to the Chief Secretary to the Government of Gujarat, General Administration Department. The advance copy of this reply was also forward to the Chief Secretary to the Government of Gujarat and that copy was received by the Government on 26 March 1962. The order revering the original petitioner to the post of police inspector was passed on 10 April 1962. The original petitioner had appealed to the Governor on 21 April 1962. By order dated 10 December 1962, the original petitioner was awarded a punishment of censure. He was censured for the irregularities which were detailed in the said show-cause notice dated 28 December 1961. The original petitioner received a letter from the Deputy Secretary to the Government of Gujarat, Home and Civil Supplies Department, that the appeal to His Excellency the Governor of Gujarat against the order of revision from the post of the Deputy Superintendent of Police to that of police inspector was not maintainable on the ground that he was reverted for the reason of his unsuitability to the post of Deputy Superintendent of Police. The allegation of the original petitioner was that the order of revision was passed as a punishment for misconduct mentioned in the show-cause notice dated 28 December 1961. According to the original petitioner, the impugned order of revision put a stigma on the competency and integrity and affected his future right of promotion in the service and that the order was passed without hearing and in contravention of the procedure laid down in rule 55 of the Bombay Civil Services (Classification, Control and Appeal) Rules and Art. 311 of the Constitution. For the aforesaid reasons, the original petitioner contained that the impugned order of revision dated 10 April 1962 was null, void and ineffective. The order of revision Ex. C dated 10 April 1962 runs as follows :

"I. K. Chhipa, officiating Deputy Superintendent of Police (on leave), is reverted

as police inspector with immediate effect."

20. The order of reversion does not give any reasons why he was reverted. The respondent contends that the order of reversion was not passed as a punishment and the same had no relation at all with the show-cause notice issued to the original petitioner and the action taken thereunder. According to the respondent, the revision was effected as the petitioner was not found to be fit for the post by the Selection Board and for this purpose the respondent relied upon a letter written by the Inspector-General of Police to the Chief Secretary to Government of Gujarat which is as follows :

"My dear Isvaran,

1. K. Chhipa, who was Deputy Superintendent of Police at Morvi before he went on leave, has now intimated to me that he wants to rejoin duties and a posting order be issued to him. I forward herewith a letter received from him.

2. You are aware of the circumstances under which he proceeded on leave and Government have also issued to him a show cause notice for revision - vide GAD letter No. DSP 1061/C-9718-K, dated 28 December 1961. Apparently, no further action has been taken on this because Chhipa has not submitted his reply to Government. In view of the fact that the charges against him are still under the consideration of the Government, I do not recommend his reposting as Deputy Superintendent of Police.

3. Incidentally, I may mention here that the Selection Board of Deputy Inspectors-General which met in February this year has reclassified him not fit. In the circumstances, may I request you kindly to move Government to issue immediate orders reverting him as police inspector to enable me to give his orders of posting as police inspector.

Yours sincerely, (Sd.) J. D. NAGARVALA."

21. The letter refers to the fact that the inquiry was pending against the original petitioner. The original petitioner had intimated his willingness to join duties and the question was of issuing the posting order to him. The Inspector-General of Police opined that as the charges against the original petitioner were under consideration of the Government, he did not recommend his posting as Deputy Superintendent of Police. This was one of the circumstances, which led the Inspector-General of Police to move the Government to issue immediate orders reverting him as police inspector. Sri Daru submits that his letter unequivocally suggests that the main object with which orders of revision was passed was to facilitate the departmental enquiry. No doubt a reference is made in the letter to the unsuitability of the original petitioner for the post of the Deputy Superintendent of Police, but that was not what mainly actuated his superior in ordering his revision. Sri Daru further contends that instead of suspending the original petitioner during the course of inquiry against him, which is normally done, a resort was taken in this case to passing an order of revision and that

order of revision in such circumstances imposed a penalty and admittedly in this case the order was passed without hearing the original petitioner. The order of revision, contends Sri Daru, therefore, contravenes the provisions of Art. 311 as no reasonable opportunity was given to the original petitioner to defend himself and therefore, was void ineffective. Sri Daru relies on the decision of the Supreme Court in P.C. Wadhwa Vs. Union of India (UOI) and Another, . The present case is similar to the case of P. C. Wadhwa, wherein the Supreme Code had held that the order was by way of penalty. There is much force in this argument of Sri Daru. When any departmental enquiry is being held against a person, the usual and straight forward course would be to suspend him and not to resort to dubious course of reverting him as has been done in this case. The punishment that has been inflicted on the original petitioner for his misconduct was only to censure him. His right to the post of Deputy Superintendent of Police was affected. Sri Chhaya contends that the order of revision was passed only because he was found unfit by the Selection Board. This argument of Sri Chhaya cannot be accepted in view of express terms of the letter of the Inspector-General of Police to the Chief Secretary to the Government dated 23/26 March 1962. We have discussed the effect of this letter and it is not necessary to repeat the same. It is an admitted fact that the original petitioner was not heard when the order of revision was passed and therefore, the order of revision contravenes the provisions of Art. 311 of the Constitution as no reasonable opportunity to defend himself against the action of reversion. We, therefore, held that the order of reversion was passed by way of punishment and without hearing the original petitioner.

22. The next question that arises for our consideration is the relief which the present petitioners are entitled to Sri Daru concedes that the relief that "the petitioner remains in service as officiating Deputy Superintendent of Police" cannot be granted as the original petitioner has died and the only relief which he now claims is a writ of certiorari quashing the order of reversion dated 10 April 1962. We have held that the present petitioner is an aggrieved party and as such entitled to relief asked for by the original petitioner, i.e., a declaration that the order of reversion dated 10 April 1962 is null, void and ineffective. The present petitioners are also entitled to a writ of certiorari quashing the said order. Sri Chhaya contends on the basis of the decision in K.M. Sugatha Prasad and Others Vs. State of Kerala and Others, that such a declaration would be a step towards further legal steps which the legal representatives of the deceased officer proposed to take and we should not grant such a relief. We cannot accede to this argument. In the said case an order was passed dismissing the delinquent from the service and that order was challenged in the writ proceedings. It was held by the Court that the Court can only quash the order but the charges that were framed against the delinquent were not wiped out. In the instant case, the disciplinary proceedings have come to an end. The original petitioner was censured by the Government for his misconduct and that was the only punishment inflicted on him. The order of revision dated 10 April 1962 was

admittedly passed without hearing the original petitioner. In the circumstances of this case, an order declaring that the order of reversion dated 10 April 1962 is illegal and void and ineffective is itself a substantial relief. Such an order will have a coercive effect and will not necessitate any further proceedings in respect of the charges framed against the original petitioner.

23. For the aforesaid reasons, we declare that the order of reversion dated 10 April 1962 is bad, illegal and void as it contravened the provisions of Art. 311 of the Constitution of India and quash the same.

24. This special civil application is allowed with costs. Rule absolute.