

(1985) 07 MAD CK 0016
In the Madras High Court
Case No : Writ Appeal No. 267 of 1980

K.P. Marimuthu (Since Deceased), Ramayee, Mariamma,
Devaki, Raman, Lakshmanan, Krishnaveni, Anbu Selvi,
Bhagyalakshmi and Kumaravalli

APPELLANT

Vs

The Superintendent of Police, Dharmapuri, The Deputy
Inspector General of Police, Western Range, Coimbatore.,
Inspector General of Police, Mylapore, Madras and State of
Tamil Nadu

RESPONDENT

Date of Decision : 24-07-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A, 33C, 33C(1), 33C(2)
Workmens Compensation Act, 1923 — Section 33

Citation : (1986) 1 LLJ 229

Hon'ble Judges : M.N. Chandurkar, C.J;K. Venkataswami, J

Bench : Division Bench

Judgement

M.N. Chandurkar C.J.

1. This order will dispose of only the preliminary point which arises, namely, whether the present appellants which are the legal representatives of

the deceased original petitioner were entitled to be substituted in the writ petition which was filed by the original petitioner challenging the order of

dismissal dated 7th April, 1973 dismissing him from Government service. Since the relevant facts leading to the dismissal will be dealt with by the

judgment which will be delivered later on merits, it is only necessary to refer to the salient facts that are material fit the purpose of deciding the

preliminary point which arises in the appeal.

2. The deceased appellant was a Head Constable against whom certain charges were framed and in disciplinary proceedings, he came to be

dismissed from service on 7th April, 1973. His appeal also came to be dismissed on 13th September, 1973. On 29th September, 1975 he filed a

writ petition in this court challenging the said dismissal. It is necessary to refer to the nature of the prayer which is made in the writ petition as it

becomes relevant for deciding the point raised. In addition to the prayer for award of costs of the writ petition, the substantive relief sought in the

petition was as follows :

... Issue a Writ in the nature of Certiorarified Mandamus and quash the order made in P.R. 115/72 by the 1st respondent, the Superintendent of

Police, Dharmapuri dated 7th April, 1973 (Ex. "A") as modified in R.C. No. 60/AP/73 dated 13th September, 1973 of the Deputy Inspector

General of Police, Western Range, Coimbatore (2nd respondent) and confirmed in R.C. No. 52441/AP/73 dated 22nd April, 1974 by the

Inspector General of Police, Mylapore, Madras-4 (3rd respondent) and consequently direct the respondents to reinstate the petitioner back in

service with all attendant benefits...

3. During the pendency of this petition, the petitioner therein died on 11th January, 1978. On 13th March, 1978, a Miscellaneous Petition came to

be filed by the present appellants who are legal representatives of the deceased petition praying that they should be impleaded as legal

representatives of the deceased. The legal representatives are mother, wife, sons and daughters of the deceased. When the writ petition came up

for hearing, the only question which the learned Judge was decided whether the legal representatives could be brought on the record. Following a

decision of the learned single Judge reported in Vridhachalam v. State of Madras (1966)-II L.L.J. 903. - The learned Judge rejected the

application for substitution and dismissed the writ petition. In Vridhachalam's case (supra) this Court had taken the view that the relief sought was

purely personal to the delinquent officer and such personal right which really involves the continuance in service or otherwise of a person cannot

survive to the legal representatives in that case it was also observed : at page 905

... The State also will be placed in a somewhat anomolous position in not being able to continue the proceedings against the officer even if the writ

should be granted. Unless a person has a legal right, he cannot seek the exercise

of the extraordinary jurisdiction of this Court. A legal representative has no such legal right...

The learned Judge found that these observations applied with full force to the facts in the present litigation. There was no decision on merits.

4. The legal representatives have now challenged the dismissal of the writ petition both on the ground that the legal representatives were entitled to

continue the proceedings under Art. 226 of the Constitution of India and secondly, that on merits, the order of dismissal of the original petitioner

was not sustainable at all and the legal representatives were, therefore, entitled to all the monetary benefits which the deceased would have been

entitled till the date of his death and such other benefits as the other benefits as the other members of his family would have been entitled of the

deceased was in employment on the date of his death. By way of abundant caution, the legal representatives have also filed a Miscellaneous

Petition being C.M.P. No. 3542 of 1979 in this appeal for being permitted to be brought on record as the legal representatives of the deceased.

5. Since the learned Judge has merely applied the ratio of the decision in *Vridhachalam's* (supra), it would be proper at the outset to refer in little

detail to that decision. *Vridhachalam* was a Police Constable who was dismissed from service as a result of a departmental enquiry and he had

filed a petition for a writ of certiorari. He, however, died during the pendency of the petition. His legal representatives were brought on record. The

learned Judge decided the preliminary question whether the writ petition was maintainable in the circumstances of the case. After referring to the

decision in *Hari Vishnu Kamath v. Syed Ahmed Ishage* 1955 S.C.J. 267, the learned Judge held that if the impugned order was quashed on the

ground that the procedure adopted by the authorities was opposed to the principles of natural justice, or that the rules governing the enquiry have

not been followed, the position would be that the department would be entitled to continue the proceedings afresh against the delinquent officer

and now that the delinquent officer was dead, the department could not possibly recommence the proceedings against him. It was conceded

before the learned Judge that if the dismissal of *Vridhachalam* was improper, then the legal representatives would be entitled 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 out of office and the learned Judge seemed to be of the view that the recovery of such emoluments ""would not follow as a matter of course by the issue of a writ in the present case"" and the legal representative of the delinquent officer nevertheless have to file a suit, a proposition which in the light of the trend of the law relating to writ jurisdiction under Art. 226 of the Constitution of India does not now seem to be correct. A doubt was also expressed in the decision as to whether the suit was within the period of limitation if it was assumed that the limitation would commence from the date of the order of dismissal. After making these observations, the learned Judge observed as follows :

... I am inclined to agree with the contentions of the State that the relief sought is purely personal to the delinquent officer and such personal right

which really involves the continuance in service or otherwise of the person cannot survive to the legal representatives. The State also will be placed

in a somewhat anomalous position in not being able to continue the proceedings against the officer even if the writ should be granted...

The learned Judge also took the view that the right sought to be enforce in the writ proceeding being personal to the deceased petitioner, third

parties i.e., the legal representatives cannot seek the exercise of ordinary jurisdiction of this Court. The Judgment of the learned Judge shows that

the two grounds on which he found that the legal representatives were not entitled to pursue the writ petition filed by the writ petitioner were (i) that

the right to seek relief was personal to the deceased; and (ii) in case the dismissal was bad, the State could not proceed further by a fresh enquiry

because the delinquent was dead.

6. The learned counsel who has appeared in this appeal on behalf of the legal representatives has contended before us that the legal representatives

have certain rights depending upon the determination of the question as to whether the deceased was validly dismissed from service or not. It is

argued that it was not necessary to claim a relief of reinstatement which is automatic on a dismissal of Government servant being set aside and it is

enough if in a writ petition challenging the dismissal from Government Service, a relief of setting aside or quashing the order of dismissal is made.

The learned counsel contended that on a dismissal order being set aside, the

direction for payment of salary for the period from the date of dismissal till the date of the order setting aside the dismissal order is automatic and normal and there need not necessarily be an order of reinstatement because the effect of the order of dismissal being set aside was that the Government servant is deemed never to have been dismissed at all. Our attention has been invited to the Tamil Nadu Pension Rules which have been made for the benefit of Government servants who retire as also for the benefit of the dependents of the Government servants who die while in service or after retirement. We shall refer to these rules a little later. Relying on these rules, it is pointed out that it is vital for the enforcement of the rights under the Pension Rules which vest rights independently in the dependants of the Government servant that the order of dismissal should be set aside. Such a relief is not, according to the learned counsel, personal to the deceased petitioner and the legal representatives were, therefore, entitled to continue to prosecute the writ petition notwithstanding the fact that the original petitioner had died.

7. Heavy reliance is placed on the decision of the Gujarat High Court in Ibrahimbhai Karimbhai and Others Vs. State of Gujarat, , the decision of the Punjab and Haryana High Court in Manmohan Anand v. State of Punjab 1972 SL. R. 852 and the decision of the Kerala High Court in S.

Govinda Menon v. The Union of India (1973)-II L.L.J. 369. Reliance is also placed on the decision of the Supreme Court in State of U.P. v.

Mohd. Sherif 1982-II L.L.J. 180. Some decisions arising under the Industrial Disputes Act have also been brought to our notice in which Courts

have taken the view that a petition under S. 33-C(1) or (2) of the Industrial Disputes Act, 1947 could be continued by the legal representatives.

7(a). The learned Government Pleader has vehemently contended before us that before us that before the legal representative were brought on record

and allowed to continue the proceedings, it has to be ascertained whether the right to sue survives to the legal representatives. According to the

learned Government Pleader, reinstatement in Government service is a personal right and the other benefits which the deceased Government

servant would have earned consequent on his order of dismissal being set aside were only in the nature of a consequential relief. The learned

Government Pleader contended that if the substantive relief of reinstatement was

a personal relief, then, a question of consequential relief being pursued does not arise because the person who is entitled to the substantive relief in the nature of a personal right has ceased to exist. An argument was advanced before us that a right to the status of a Government servant was personal because the effect of setting aside an order of dismissal was that the Government servant had a right to continue in office and this right was a personal right. The contention advanced by the learned Government Pleader is supported squarely by the Division Bench decision of the Andhra Pradesh High Court in *P. V. Sarma v. S. C. Rly Employees Co-op. Cr. Socy.* AIR 1977 A.P. 319.

8. It is necessary at the outset to decide the question as to whether the relief prayed for in the original petition and generally where a Government servant challenges his order of dismissal as bad can be said to be so personal that his legal representatives who could have claimed certain benefits under the Tamil Nadu Pension Rules in case the Government servant had died during his tenure of service or after his age of superannuation can be said to be total strangers who have no legal rights whatsoever which have a nexus with the subject matter of the petition filed by the deceased.

9. Rule 50 of the Tamil Nadu Pension Rules reads as follows :

..... (1) (e) A Government servant, who has completed five years" qualifying service and has become eligible for service gratuity or pension under Rule 49, shall, on his retirement be granted death-cum-retirement gratuity as in the table below for each completed six monthly period of qualifying service subject to a maximum of 15 times the emoluments. (A part of the rule gives scale of death-cum-retirement gratuity).

.....

(b) If a Government servant dies while in service after completing five years" qualifying service, the amount of death-cum-retirement gratuity shall be equal to 12 times of his emoluments or the amount determined under Clause (e), whichever is higher and it shall be paid to his family in the manner indicated in sub-rule (1) of Rule 51 :

Provided that the amount of death-cum-retirement gratuity payable under this rule shall, in no case, exceed twenty-four thousand rupees.

(2) If a Government servant, who has become eligible for a service gratuity or pension, dies within five years from the date of his retirement from

service including compulsory retirement as a penalty and the sums actually received by him at the time of his death on account of such gratuity or

pension including ad hoc increase, if any, together with the death-cum-retirement gratuity admissible under sub-rule (1) and the commuted value of

any portion of pension commuted by him are less than the amount equal to 12 times of his emoluments, a residuary gratuity equal to the deficiency

may be granted to his family in the manner indicated in sub-rule (1) of rule 51.

Sub-rule 3(a) specifies the death gratuity payable to the family of a Government servant who dies in the first year of qualifying service. The Pension

Rules also contemplate family pension and death-cum-retirement gratuity in respect of Government servants dying while in service. It is

unnecessary to refer to the details of this rule because it is enough to point out that the Pension Rules which are in the nature of beneficial legislation

are intended to give some relief to the family of a Government Servant who dies while in service. There are also Rules dealing with ""sanction of

family pension and residuary gratuity in respect of deceased pensioners"". Rule 81(1) read as follows :

.... Where the Head of Office has received on intimation regarding the death of a retired Government servant who was in receipt of pension, he

shall ascertain whether any family pension or residuary gratuity or both is or are payable in respect of the deceased pensioner : Provided that the

Head of Office may, when he considers it necessary so to do, consult the audit Officer.

Sub-Rule 2(a)(i) provided that if the deceased pensioner is survived by a widow or widower who is eligible for the grant of contributory family

pension under Rule 58, the amount of contributory family pension as indicated in the Pension Payment Order shall become payable to the widow

or widower as the case may be, from the day following the date of death of the pensioner. There are detailed provisions made in Rule 81 with

regard to the payment of pension to the family of a deceased pensioner. We must also refer to Rule 24 which reads as follows :

..... Dismissal or removal of a Government servant from a service or post entails forfeiture of his a past service.

The effect to Rule 24, therefore, is that if a Government servant is dismissed or removed from Government service, all his past service stands

forfeited and the consequence, therefore, is that he not having any qualifying service to his credit, will be deprived of the pensionary benefits if he is dismissed and even his dependents and members who would have been otherwise entitled to the family pension would also be deprived of that right.

10. There are, therefore, independent right which are created in favour of the members of the family of a deceased Government servant. These rights with regard to the death-cum-gratuity or pension can become effective only if a Government servant is not dismissed or removed from service. In other words, if there is an order of dismissal or removal from service in respect of a Government servant and if such Government servant dies during the pendency of a litigation which he has commenced, in order to have his order of dismissal or removal set aside, apart from the Government servant, the members of the family are vitally interested in having that order set aside because the continuance of that order has serious consequences, in as much as independent rights which are otherwise enforceable by the members of the family of the deceased cannot be enforced if the order of removal or dismissal stands in the way. The members of the family of the deceased Government servant cannot, therefore, be treated as utter strangers who have no interest in the litigation commenced by the Government servant to set aside his order of removal or dismissal from service.

11. Undoubtedly, re-instatement in service is a relief personal to the employee concerned. In so far as the Government servant is concerned, it does not appear necessary for a Government servant who has been dismissed or removed from service to specifically pray for the relief of re-instatement. It would be enough if in a petition challenging the dismissal or removal of a Government servant the said Government servant merely asks for the quashing of the order of dismissal. The quashing of an order of dismissal has the effect that the Government servant is deemed to continue in service throughout the period during which the order of dismissal or removal was operative. The effect of quashing the order of dismissal is that the Government servant is deemed not to have been dismissed at all. Strictly speaking, therefore, though normally a petitioner may pray for a direction for reinstatement, such a direction is not necessary because

the moment an order of dismissal and removal is set aside, the liability of the Government to pay the person concerned his salary and emoluments for the period which is covered by the order of dismissal is automatic. The liability of the Government to pay his salary after the date on which the order of dismissal is set aside is also automatic. A Government servant who has succeeded in having his order of dismissal set aside can automatically claim the right to continue in office and the right to service the salary and emoluments for the period for which he was kept out of office by the order of dismissal and the salary for the period subsequent to the quashing of the order of dismissal. Undoubtedly, it is normal while setting aside an order of dismissal to give a direction that the petitioner will be entitled to all the benefits which he would otherwise have got if he had not been dismissed.

12. In *Radha Ram v. Municipal Committee, Barnala* 1983-I L.L.J. 163, a full Bench of the Punjab and Haryana High Court had occasion to consider the question as to whether, in a suit for declaration, the Civil Court or High Court, on appeal, is competent to give any direction for the payment of the arrears of pay as a result of the dismissal order being declared illegal or without jurisdiction and the Full Bench took the view that it is once held that a declaratory decree enjoins the employer to reinstate the degree holder and grant him all the benefits and privileges including his past and future emoluments then it is obvious that a direction to that effect only makes pointed explicit what is plainly implicit in the decree. Such a direction, according to the Full Bench, only clothes in peremptory terms what has been held to be enjoined by the decree itself and that such a direction would not only be feasible and within jurisdiction but would clothe the spirit of the decree with the letter of the law. In paragraph-12 of the judgment, the Full Bench observed as follows : at P. 168.

..... Once the relief of setting aside or quashing the order of termination has been granted or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from the status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. In the felicitous language of their Lordships

the emoluments of the post are a logical consequence of setting aside the order of termination. In such a situation to insist upon the filing of a second suit for a relief which directly flows from the declaratory decree can hardly be warranted. The hallowed rule that the law disfavors multiplicity of proceedings would again require that the consequential relief should be recorded in the original proceedings itself.....

The Full Bench has referred in their judgment to a decision in *Krishnan Murari Lal Sehgal v. State of Punjab* 1977-I L.L.J. 442. That was a case in

which Sehgal who was in the employment of the State of Patiala and later on in the new State of Punjab was dismissed from service on 21st

October, 1959. In March, 1962, he instituted a suit seeking a declaration that the dismissal order was non-set. The suit was decreed on 15th

January, 1963. In the meantime, he had also filed in June, 1962 a suit claiming a decree for arrears of salary and allowances from 5th June, 1962

upto the date of the decree. This suit was also decree on 15th January, 1963. Against both the decrees, the State of Punjab preferred two appeals

which were allowed and the suit were dismissed. Sehgal filed two appeals before the Supreme Court. Both the appeals were allowed and the

judgments of the High Court were set aside. In spite of the decisions of the Supreme Court, Sehgal was denied emoluments beyond 15th January,

1963 and he then filed a Miscellaneous Petition. On that miscellaneous, petition the Supreme Court passed the following order :

Heard counsel for the parties. This application is disposed of on a short ground. It has become necessary to clarify the order made by this Court

allowing the appeals of the petitioner. According to the decision of this Court, the petitioner was given a declaration that he would be deemed to

continue in service with effect from the date of the suit. As a logical consequence of this declaration, it is manifest that the petitioner would be

entitled to back salary right from 1st June, 1962 till 9th February, 1974. The only way in which the judgment of this court can be implemented is to

pay the aforesaid amount of salary to the petitioner. With these observations, this application is disposed of. The amount of the salary must be paid

within two months from today.

The order of the Supreme Court quoted in *Radha Ram's* case (*supra*) will show that the Supreme Court took the view that if an order declaring

that the dismissal was bad had to be implemented, then the only way in which it could be implemented was to pay the amount of salary for the period during which the dismissal order was operative. It must, therefore, now be taken as settled law that in the case of a Government servant who has been dismissed from service and whose dismissal has been set aside, the Government servant will as a matter of right be entitled to the salary without being required to go through a separate suit. This view of the Supreme Court creates a serious infirmity in the earlier decision in *Vridhachalam's* (supra) which must, therefore, now be held to be no longer good law. It also appears clear to us that the view legal representatives are utter strangers to a petition filed by a Government servant to set aside an order of dismissal or removal would not be good law in view of the rights of the family of a deceased Government servant under the Pension Rules to which we have adverted earlier.

13. The legal position that a Government servant whose dismissal has been set aside automatically continues to be in service also appears to be well settled, as will be clear from the decision of the Supreme Court in *Devendra Pratap v. State of Uttar Pradesh* 1962-I L.L.J. 266. That was a case in which the State Government sought to exercise its power under Rule 54 of the Fundamental Rules to fix the pay of a public servant whose dismissal was set aside and the Supreme Court pointed out that the said rule has no application to cases in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated. It was pointed out that it would not in such a contingency, be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work. Referring to the effect of the decree of the Civil suit which declared the dismissal as invalid, the Supreme Court observed as follows : at page 270 of 1962-I L.L.J. 266.

..... The effect of the decree of the civil suit was that appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil courts is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work.

This statement of the law will be equally applicable to the case of a Government servant who has approached the High Court under Art. 226 of the

Constitution of India and the order of dismissal is set aside by the High Court in the exercise of its writ jurisdiction.

14. It is undoubtedly true that if a relief that reinstatement is to be asked, such a relief will be personal to the Government servant concerned and if

a Government servant dies, the personal action in respect of this personal relief will also abate. The maxim "action personalis moritur cum personis"

is, however, as pointed by the Supreme Court in *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, of a very limited application. In

paragraph 14 of the judgment, the Supreme Court observed as follows :

.... The maxim "actio personalis moritur cum personis" a personal action dies with the person, has a limited application. It operates in a limited

class of actions ex delicto such as actions for damages for defamation assault or other personal injuries not causing the death of the party, and in

other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory.

The maxim, therefore, applies among other cases to a case where after the death of the party the relief could not be enjoyed or granting it would

be nugatory. A relief of reinstatement undoubtedly cannot be granted after the death of a Government servant because if it is granted, it would be

nugatory because the person who is reinstated in service is no more alive. Therefore, while it could be said that the doctrine that a personal action

dies with the person is true in the case of relief of reinstatement, in the case of other reliefs such as salary that would have been earned and the

benefits which would have accrued if the order of dismissal would not have been made, they cannot be said to abate on the ground that these are

personal actions. It would not also not be correct to characterise the relief of arrears of salary and the relief which the dependents of the deceased

Government servant could claim under the Pension Rules as consequential reliefs. The relief of arrears of salary is a substantive relief in view of the

fact that it is not necessary to ask for an order of reinstatement. We are not, therefore, inclined to take the view that a writ petition filed by a

Government servant for setting aside his dismissal cannot be prosecuted by his legal representatives in view of the benefits which the legal

representatives would be entitled to have as a result of the setting aside of the order of dismissal. We are supported in the view which we have

taken by the decisions of the Gujarat, Punjab and Haryana and the Kerala High Court referred to above, on which the learned counsel for the

appellants has relied. We will shortly refer to those decisions. Before that, we may refer to the decision of the Supreme Court in *State of U.P. v.*

Mohd. Sharif (supra) relied upon by this appellant short decision shows that a dismissed Government servant had filed a suit challenging his

dismissal on the ground that the said order was illegal and void.

The suit was dismissed. This decree was reversed by the appellate court. The State appealed against the decree of the first appellate court, but the

appeal was dismissed. The State Government then filed an appeal to the Supreme Court. While upholding the judgment of the first appellate court

and the High Court that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary enquiry, some observations were made

to the effect that the plaintiff had died during the pendency of the proceedings. It is not very clear as to at what stage the plaintiff had died. The only

observations made and which are relied upon by the learned counsel for the appellants before us are as follows : at p. 182 of 1982-II L.L.J. 180

..... Since the plaintiff has died during the pendency of the proceedings the only relief that would be available to the legal heirs of the deceased is

the payment of arrears of salary and other emoluments payable to the deceased.

This decision does not seem to be of much assistance to us.

15. In *Ibrahimbhai v. State* (supra) a Division Bench of the Gujarat High Court has taken the view that the legal representatives of the petitioner

who had filed a petition under Art. 226 for a declaration that the order of reversion of the petitioner was null and void were entitled to prosecute

the petition because if the reversion was held void, the petitioner would have been entitled to a salary on an enhanced scale. The Division Bench

took the view that the order of reversion had resulted in pecuniary loss to the original petitioner and after his death, the present petitioners were

entitled to the estate of the deceased and hence the right of the present petitioners was also affected and they were, therefore, aggrieved parties.

This decision of the Gujarat High Court was followed by the Punjab and Haryana High Court in *Manmohan Anand v. State of Punjab* (supra). The

original petitioner before the Court had filed a petition under Art. 226 of the Constitution challenging an order dated 6th June, 1970 by which the

Governor of Punjab had removed the petitioner from the office of the Chairman and non-official members of the Punjab Khadi and Village

Industries Board. The petitioner died on 30th October, 1970 leaving behind his widow, married daughters and a son. The question was whether

the legal representatives was entitled to continue the proceedings. On behalf of the State Government, reliance was placed on the decision of this

Court in Vridhachalam's case (supra). The Division Bench dissented from the view taken in Vridhachalam's case and observed as follows :

..... If the Government passes an unconstitutional or a wrong : or a void order, which is sought to be declared null and void by the Court, it is no

legal right of the Government to say that the order should not be annulled merely because in the changed circumstances the Government would not

be able to pass a fresh order in accordance with law. In case of an annulment of an annulment of an order of removal of dismissal from service, the

fresh order cannot possibly be passed retrospectively but can take effect only from the date on which such an order is passed. If the delinquent

official is dead before the annulment of the previous order, there is nobody in existence against whom a fresh order can be passed. Moreover, any

difficulty of the defendant or the respondent which is of his own certain cannot in my opinion take away the legal rights of heirs of a deceased to

claim emoluments to which the deceased would have been entitled if the order of his removal or dismissal from service were found to be illegal...

It was conceded before the Division Bench that the legal representatives of the original petitioner can institute a suit claiming emoluments to which

the original petitioner would have been entitled for the period commencing from 6th June, 1970, the date of his purported removal, to the date of

his death. After referring to this concession, the Division Bench further observed as follows.

..... Once this is granted it goes without saying that no such claim can be decreed unless it is first held that the purported order of removal of the

original petitioner from the membership and the chairmanship was illegal and ineffective. This is the basic relief without obtaining which no claim of

the legal representatives for salary or emoluments can succeed. It is that basic relief which is being claimed in the present petition. To that extent,

therefore, the right to sue survives to the legal representatives. If the original petitioner had claimed declaration to the effect that he continues in

service or had asked for a mandamus for being issued to the respondents, I would have held that right to claim such relief was personal to the

deceased and died with him and that the right to sue in respect to those reliefs did not survive to the legal representatives.

The Division Bench of the Punjab and Haryana High Court, therefore, took the view that the legal representative of a deceased Government

servant were entitled to prosecute a petition challenging the validity of the dismissal order.

16. In *S. Govinda Menon v. The Union of India* (Supra), it does appear that the legal representatives of a deceased Government servant were

permitted to prosecute the petition filed by the Government servant after the petitioner died during the pendency of the petition. However, it does

not appear from the judgment that the question as to whether the legal representatives were entitled to prosecute the petition was raised.

17. The decision of the Andhra Pradesh High Court in *P. V. Sarma v. S. C. Rly, Employees Co-op. Cr. Socy.* (supra) on which reliance has been

placed by the learned Government Pleader does undoubtedly support him. The learned Judges had chosen to follow the decision of the Court in

Vridhachalam's case 1966-II L.L.J. 903 and had dissented from the view taken by the Gujarat High Court. It appears from the Judgment that

apart from following the view taken by this Court in *Vridhachalam's case*, the Division Bench found itself bound by the earlier decision of another

Division Bench of that Court in *T. V. Venkatanathachari v. State of A.P.* 1969 1 AnWR 1. The Division Bench in that case had taken the view

that where a petitioner who had challenged an order imposing the punishment of compulsory retirement dies during the pendency of the writ

petition and the legal representatives had sought to come on record to continue the proceedings, they could not be brought on record because the

relief sought by the petitioner was purely personal to him as it involved his continuance in service and could not survive to the legal representatives.

18. As we have indicated earlier, we are inclined to accept the view that the claim in a petition challenging the order of dismissal or removal

relates only to the enforcement of the personal right. Apart from this, we have already pointed out that the decision in *Vridhachalam's case*

mentioned above must be held to be no longer good law. With respect, therefore we must dissent from the view taken by the Andhra Pradesh

High Court.

19. In the view which we have taken, it does not seem to be necessary for us to draw on the analogy of industrial law on which the learned counsel

for the appellants relied. However, in fairness to the effort put in by the learned counsel, we merely mention the decisions in which a view has been

taken that an application under S. 33C of the Industrial Dispute Act or under the Workmen's Compensation Act or an application for a reference

made under S. 2A of the Industrial Disputes Act could be prosecuted by the legal representatives.

20. In *Margarida Gomes and Another Vs. Mackinnor Mackenzie and Co. Pvt. Ltd.*, a learned single Judge of the Bombay High Court took the

view that a claim for compensation under the Workmen's Compensation Act does not abate on the death of the workman.

21. In *Sitabai Narune Pujari v. Auto Engineers* 1972-I L.L.J. 290, a Division Bench of the Bombay High Court took view that a cause of action

created in favour of a workmen under S. 33-C(2) of the Industrial Disputes Act survived to the workmen's legal heirs and, therefore, the wife of

the deceased workmen could file an application under S. 33-C(2) claiming gratuity which became payable to her deceased husband.

22. In *Bank of Baroda v. workmen* 1979-II L.L.J. 57, Division Bench of the Gujarat High Court held that in the case of a deceased workmen

where the reference is under S. 2A of the Industrial Disputes Act, the heirs and legal representatives can agitate the question first, whether the

termination of the deceased workmen was just, legal and proper; and secondly; if it was wrongful and invalid, then what compensation in terms of

money could have been given from particular date filed by the Tribunal till the date of reinstatement and if reinstatement cannot be granted because

of the death of the workman, till the date of his death.

23. In *Gwalior Rayons v. Labour court* 1978-II L.L.J. 188, the Kerala High Court took the view that in the case of death of workman, the

benefits due to him can be realised by his legal heirs under S. 33-C(2) of the Industrial Disputes Act.

24. In *V. Bhaskaran v. Union of India* 1982-I L.L.J. 485, in the course of

conciliation proceedings, the concerned workman had died and when the legal representatives asked for a reference of the dispute for adjudication, the State Government took the stand that since the workman himself had died, no reference could be made. The learned Judge held that S. 2A is intended to confer on a workmen the right to agitate before an industrial court his grievance caused by the termination of his service and that right can be agitate by his legal representatives as well.

25. As we have already pointed out, we have dealt with the matter extensively in the light of the status of a Government servant and the right of his dependents and we, therefore, do not think it necessary to consider whether on the analogy of an application under S. 33-C(2) or an application under the Workmens" Compensation Act being allowed to be proceeded with by the legal representatives, the same should be the view in the case of Government servant. It is possible to take the view that the right is which are agitated under S. 33-C(2) of the Workmen"s Compensation Act are rights to claims of money which will necessarily be heritable and could be agitated by the legal representatives. In the view which we have taken, we must hold that the learned Judge was in error in refusing to allow the legal representatives to prosecute the petition.

26. The next question is whether it is necessary for us to remand the petition back to the learned single Judge for decision. The order of dismissal was passed as far back as on 7th April, 1973, i.e., more than 12 years back. If the matter is sent back to the learned Judge and he decides it, there is a possibility of an appeal being preferred by either of the parties which again is likely to delay the determination of the claim of the legal representatives.

27. With the consent of the learned counsel for the petitioner-appellants and the learned Government Pleader, we have, therefore, decide to here the petition on merits. We have heard the petition on merits. The judgment on merits is being separately delivered.