

(1986) 08 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 113 of 1983

Puran Chand and Others

APPELLANT

Vs

H.R.T.C. and Another

RESPONDENT

Date of Decision : 30-08-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3
Constitution of India, 1950 — Article 311

Citation : (1986) 15 ILR HP 591

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Advocate : M.C. Mandhotra, for the Appellant; Deepak Gupta, for the Respondent

Judgement

P.D. Desai, C.J.—The suit, out of which this Revision Petition arises, was instituted by one Biri Singh for a declaration that the order whereby his services were terminated was null and void and for the recovery of a sum of Rs. 2,000/- as arrears of salary and for enforcing other rights and claiming other benefits including future emoluments due in accordance with law. Biri Singh died during the pendency of the suit on November 2, 1985. The petitioners herein, claiming to be the legal representatives of the deceased-plaintiff, moved an application for being brought on record since, according to them, the right to sue survived in their favour. The application was resisted by the Respondents on the ground that since the relief claimed by the deceased Plaintiff was of a personal nature, the right to sue did not survive. The Trial Court accepted the plea of the Respondents and rejected the application on the ground that since the right to sue was of a purely personal nature, it could not survive in favour of the legal representatives of the deceased plaintiff. Consequently, the suit was declared to have abated. Hence the present Revision Petition.

2. In Ibrahimbai Karimbhai and Others Vs. State of Gujarat, a similar question arose in the context of a writ petition, which was instituted by a member of the

Police Services (Ibrahimbhai Chhipa), challenging the order of his reversion and, inter alia, praying that the said order be declared as illegal and of no effect and that he be treated as having remained in service as if the said order was not passed. During the pendency of the petition, the petitioner died. An application was thereupon preferred by his legal representatives for being brought on the record of the case so as to prosecute the petition. The application was granted subject to just exceptions. The question which arose at the final hearing of the petition against the aforesaid background was whether the right to sue survived to the legal representatives of the petitioner. A Division Bench of the Gujarat High Court partly upheld the claim of the legal representatives to prosecute the petition in the following words:

The expression 'right to sue' means the right to obtain the reliefs which the deceased has prayed for.... The present petitioners, that is, the heirs and legal representatives of the deceased Ibrahimbhai Chhipa, can ask for relief for quashing the order of revision (reversion) dated 10th April 1962 as they are the persons interested in the estate of the deceased. If the order of reversion is null and void and, therefore, of no legal effect, the deceased was entitled to his salary as Deputy Superintendent of Police. After his death, his heirs-the present petitioners would be entitled to recover the amount of that salary. In respect of the second relief, Mr. Daru conceded that present petitioners cannot claim 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. 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?. The legal representatives of the delinquent officers have also a right to obtain a declaratory decree, namely, that the order of reversion is null, void and ineffective as it offended the provisions of Article 311 of the Constitution. In the circumstances we hold that the right to sue survives and the petitioners have the right to maintain the petition.

3. The decision in Ibrahimbhai Karimbha's case was followed by a Division Bench of the Punjab and Haryana High Court in Manmohan Anand (deceased) v. State of Punjab and Ors. 1972 SLR 852. It was there held that the right to sue survived to the legal representatives of the deceased petitioner, whose services were terminated, to the extent that they could seek a declaration to the effect that the purported order of removal of the original petitioner was illegal and ineffective since that was the basic relief without which their claim for salary or emoluments would not succeed. However, if the deceased petitioner had claimed a declaration to the effect that he continued in service or sought reinstatement, the right to sue in respect of such relief, being personal in nature, did not survive to the legal representatives.

4. I am in agreement with the views expressed by the Gujarat as well as by the Punjab and Haryana High Courts in the aforementioned cases. The view taken in those cases is just, legal and equitable.

5. For the foregoing reasons, the petitioners are entitled to succeed in the present petition. The impugned order is quashed and set aside. The application under Order 22 Rule 3 of the CPC made by the petitioners is granted subject to the clarification that they would be entitled to prosecute the suit only insofar as it relates to the challenge to the purported order of termination and to the consequential claim for arrears of salary and other benefits but not as regards the relief, if any, concerning continuance in service or reinstatement. The suit is ordered to be restored to the file and to be proceeded with in accordance with law and in light of the observations made hereinabove.

6. Rule made absolute accordingly with a further direction that the Respondents shall pay to the petitioners the costs of the revision petition, which are quantified at Rs. 150/-, and that the said sum shall be paid to them or deposited in the Trial Court before the next day of hearing and that in case the amount is deposited, the petitioners shall be at liberty to withdraw the same.

7. The parties to appear before the Trial Court on September 22, 1986. The Trial Court will dispose of the suit on an expeditious basis and in any case on or before October 31, 1986.