

(2000) 07 MP CK 0059

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3018 of 2000

Purushottam Lal Tamrakar and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-07-2000

Acts Referred:

Citation : (2000) ILR (MP) 1247 : (2000) 4 MPHT 435

Hon'ble Judges : Bhawani Singh, C.J.;A.K. Mishra, J

Bench : Division Bench

Advocate : P. Diwakar, for the Appellant; Naman Nagrath, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—Petitioner P.L. Tamrakar filed the petition before M.P. State Administrative Tribunal, Jabalpur seeking promotion to the post of Agricultural Development Officer from the post of Rural Agricultural Extension Officer. This petition was filed in 1993 and the return was filed by State on 5-3-1999. Unfortunately, petitioner died on 23-6-1995. Purushottam Lal Tamrakar and Durgesh Tamrakar are legal heirs of P.L. Tamrakar being his sons. They approached the Tribunal for substitution so that they could prosecute the case further. This application has been dismissed by the Tribunal through order dated 3-4-2000 (Annexure P-4) holding that O.A. No. 676/93 stood abated due to the expiry of the applicant. Further, the substitution application should have been filed within a period of 90 days. The order has been assailed through writ petition.

2. Heard learned counsel for the parties.

3. Shri P. Diwakar, learned counsel for the petitioners submits that the order of the Tribunal is liable to be set aside. The legal heirs of deceased P.L. Tamrakar could seek their substitution to prosecute the same. Since right after the death of their father evolved to them they would be entitled to the benefits that may accrue in case the result of the case turns in their favour. Reliance is placed on two decisions of Apex Court, reported in Rameshwar Manjhi (Deceased) through

his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery and others, and Smt. Sudha Shrivastava Vs. Comptroller and Auditor General of India, . The first case pertains to death of workman pending reference before the Tribunal. It is held that on the death of a workman, his heirs and legal representatives can continue the reference or an application u/s 33C(2) of the Act before the Tribunal/Labour Court. Proceedings do not abate on the death of workman, and maxim "actio personalis moritur cum persona" depends upon the "relief claimed" and the facts of each case. The provisions of Section 18 (3) (c) and (d) cannot be invoked for the purpose of denying a right to the heirs of a deceased workman to be substituted in a pending industrial dispute. Section 18 (3) (c) is intended to safeguard the interest of the workmen in the sense that after the death of the employer his heirs, successors or assigns may not say that they are not bound by the settlement. Substance is that the benefit that falls to the workman can be availed by the legal heirs. Second case pertains to consideration if employee dies during the pendency of prosecution and following of sealed cover procedure in the case it has no to be opened after determination of the proceedings in his favour. The benefits flow to the legal heirs in case the employee dies during the pendency of the proceedings.

Consequently, it is not difficult to hold that legal heirs are entitled to implead themselves in the case and prosecute the same and in case the same terminates in their favour, consequential benefits which would have been available to the deceased are available to them. Therefore, the order of the Tribunal is liable to be set aside.

4. Shri Naman Nagrath, learned counsel for the State submitted that applicants have committed delay in seeking their substitution in the case. Shri P. Diwakar explains that since the applicants did not know about filing of the case by their father before the Tribunal, they could not approach within time. They came to know about the matter when noticed the information of the counsel that rejoinder in the case was to be filed after reply by the State. We think, explanation is sufficient and reasonable, therefore, should be accepted. Moreover, the period of 90 days may not apply for filing such application before the Tribunal.

5. Consequently, the petition is allowed. The order dated 3-4-2000 of the Tribunal is set aside. The Tribunal may proceed to decide the claim of Shri P.L. Tamrakar through his legal heirs on merit. Since the case is of 1993, parties to appear before the State Administrative Tribunal on August 21, 2000.

Certified copy of the order be supplied.