

(1988) 06 KAR CK 0027
In the Karnataka High Court
Case No : W.A. No. 2201 of 1984

Sulochana S. Shetty

APPELLANT

Vs

Chief Executive Officer

RESPONDENT

Date of Decision : 23-06-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (8)

Citation : (1988) ILR (Kar) 1998 : (1988) 2 KarLJ 179

Hon'ble Judges : Prem Chand Jain, C.J.;Shivashankar Bhat, J

Bench : Division Bench

Advocate : P. Viswanatha Shetty, for the Appellant; S.V. Jagannath, Govt, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—This Appeal is by the widow and children of Dr. Sadashiva Shetty, who was the petitioner in W.P.No. 592/ 1979.

2. The petitioner was serving as a Medical Officer in L.P. Dispensary, Wandse, Coondapur Taluk. By an order dated 18-5-1977, penalty of removing him from service was imposed on him. This order was affirmed by the Appellate Authority on 28-12-1978. Consequently, the services of the petitioner were terminated. These orders were challenged by the petitioner in the Writ Petition.

3. During the pendency of the Writ Petition, petitioner died on 21-9-1983. The present appellants, thereafter filed various applications to come on record as the legal representatives of the deceased petitioner, for condonation of delay in filing the application and for setting aside the abatement. The relevant papers are not placed before us, and we are not able to make out the dates of these applications and the delay involved.

4. The learned single Judge rejected these applications, by holding that, the main relief sought in the Writ Petition was personal to the petitioner, as it pertained to the validity of his removal from service. Therefore, it was held that right to sue

did not survive to the legal representatives. Consequently the applications were rejected, and the Writ Petition was dismissed as having abated.

5. The learned single Judge, preferred to follow the reasoning of the Andhra Pradesh High Court found in the decision reported in P.V. Sarma and Others Vs. Chairman, Committee of Management the S.C. Railway Employees Co-operative Credit Society as against the decision of the Gujarat High Court reported in Ibrahimbhai Karimbhai and Others Vs. State of Gujarat, .

6. Sri P. Viswanatha Shetty, learned Counsel for the appellants, repeated his arguments which he addressed before the learned single Judge and cited before us a few more decisions, to contend, that when an employee challenges the order of removal or dismissal from service and seeks consequential benefits of restoration of office and arrears of salary, to the extent of the arrears of salary, the legal representatives of the employee has an interest in the litigation. It was contended that if in such a situation, the employee dies, the Writ proceedings can be continued by his legal representatives, who are entitled to claim the arrears of salary, in case, the termination of the services of the deceased petitioner was found to illegal. It was pointed out by the learned Counsel that, whenever, an order imposing penalty of removal/dismissal from service is set aside, the employee is entitled to all the arrears of emoluments, even in a case, where fresh enquiry is permitted. At any rate, this is a matter that will have to be decided at the time of making the final order in the Writ Petition; when claim to monetary benefits are, thus involved in the Writ Petition, right to sue survives.

7. One of the earliest decisions on the question is found in Jagdish Prasad Mathur and Others Vs. United Provinces Government, In this J.P. Mathur was a dismissed Government employee and he filed a suit for a declaration that his dismissal was illegal and also sought consequential reliefs. The suit was dismissed; the plaintiff filed an appeal and during the pendency of the appeal, he died. His legal representatives came on record; but their locus standi was challenged by the State. In this context, Division Bench of Allahabad High Court held at para-10 thus :-

"These legal representatives are not entitled to the declaration to which the plaintiff would have been entitled but nevertheless the legal representatives are entitled to a finding that the plaintiff's dismissal on 23-8-1941 was an illegal dismissal. Mr. Dhaon appearing for the respondent contended that we could give no relief whatsoever to the legal representatives of the plaintiff after his death, inasmuch as, the primary relief and the other consequential reliefs sought by him were only personally available to the plaintiff and did not enure to the benefit of the legal representatives.

The argument of Mr, Dhaon in its broad aspect is not sound, for we are unable to hold that in no case can the legal representatives be entitled to the benefit of a declaration which a plaintiff would have got if his rights were in some way dependent on such a declaration. In this case from the fact of the plaintiff's

unlawful dismissal flow certain consequences the result of which would affect the legal representatives in the absence of the plaintiff.

The plaintiff was alive at the time when his dismissal was made. Indeed, he lived for over ten years after his illegal dismissal. The consequence of our holding that the dismissal was illegal must be that the plaintiff would be entitled to the salaries or allowances or such other benefits that accrued to him under the law. To this money and it must be interpreted in terms of money in many a case, the legal representatives would be entitled to after his death.

In this view of the matter it is impossible for us to say that with the death of the plaintiff the suit died and the Court could give no relief to the legal representatives who were before the Court continuing the appeal on behalf of and in place of the plaintiff. We, therefore, hold that although the legal representatives would not have been entitled to seek a declaration which the plaintiff sought after his death, they are entitled to our finding that the dismissal of the plaintiff was wrongful and further that they are entitled as a result of such a finding to the consequences that flow from such a finding."

This decision fully supports the contention advanced by Sri Viswanatha Shetty in this case.

8. To the contra is the view of a learned single Judge of the Madras High Court in *U. Vridhachalam and Others Vs. The State of Madras*, It was conceded by the Counsel for the legal representatives of the deceased Government servant in the Madras case that the recovery of emoluments and other monetary benefits which the delinquent officer would have been entitled to during the period he was kept out of office, would not follow as a matter of course by the issue of the Writ in the said case - the Writ sought was only for quashing the order of dismissal and to restore petitioner's rights in the service. Therefore, it was held that, for money benefits and other emoluments, the legal representatives had to file a separate suit, even if the Writ Petition succeeded. It was further observed that, it was doubtful whether the suit would be within the period of limitation, as the order of dismissal was made as early as 1958 ; the Court had doubt as to the operative date for computing period of limitation. Hence the Court held that, --

"The issue of a Writ is only sought as a step towards further legal steps which the legal representatives of the deceased officer propose to take."

Thereafter, the Court proceeded at para-5, thus:-

"I am not satisfied that in these circumstances this Court can entertain the Writ Petition. 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 a 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. Mr. Mohan does not deny that if the

legal representatives are regarded as third parties, they cannot claim to seek the issue of a writ to displace the offending order, for unless the person has a legal right, he cannot seek the exercise of the extraordinary jurisdiction of this Court. I am accordingly satisfied that no relief can be granted to these petitioners in these proceedings."

9. Two aspects of this decision have to be noted. There, no consequential relief on setting aside the order of dismissal was sought. The doubt expressed by the Court as to the starting point of limitation for the arrears of salary etc., does not survive, because, now it is firmly established that the cause of action for such a claim arises only on the setting aside of the dismissal order [vide - *The State of Madhya Pradesh Vs. The State of Maharashtra and Others*, and *Maimoona Khatun and Another Vs. State of Uttar Pradesh and Another*, . The right for the arrears of salary and emoluments for the period during which the Government servant was kept out of service by the illegal dismissal order is enforceable when the said order is set aside. In these circumstances, one of the major premises on which the Madras decision rested, has to be held as non-existent.

10. The next decision is that of a Division Bench of the Gujarat High Court in *Ibrahimhai Karimbhai and Others Vs. State of Gujarat*, . The original petitioner challenged his reversion. During the pendency of Writ Petition he died. Question arose whether his legal representatives were entitled to continue the proceedings. The Court held that if reversion was held to be void, petitioner would be entitled to salary on an enhanced scale, which could be claimed by his legal representatives, on his death. Hence it was held that right to sue survived to the legal representatives, to prosecute the Writ Petition. At page 208, it was reasoned, --

"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 Ibrahimhai Chhipa."

Earlier, at para-9 it was stated that, --

"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."

The Court disagreed with the view expressed by the Madras High Court in *U. Vridhachalam and Others Vs. The State of Madras*, by observing :

"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."

11. Next decision, chronologically, is that of a Division Bench of Punjab & Haryana High Court in MANMOHAN ANAND (deceased) v. STATE OF PUNJAB & ORS.. 1972 SLR 852 The High Court disagreed with the reasoning of the Madras High Court. The contention of the State, that, in the absence of the delinquent employee, the State cannot proceed afresh against him after the annulment of the earlier dismissal order and therefore, legal representatives should not be permitted to continue the proceedings, was negated by observing, at page 856:

"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 order of removal or 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 creation 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. As pointed out earlier the respondents in the present case have also conceded in writing in paragraph 8 of their application that the legal representatives of the original petitioner can institute a suit for claiming the emoluments to which the original petitioner would have been entitled for the period commencing from June 6, 1970, the date of his purported removal to the date of his death. 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."

The High Court agreed with the Allahabad view, referred already.

12. A Division Bench of Andhra Pradesh High Court in P.V. Sarma and Others Vs. Chairman, Committee of Management the S.C. Railway Employees Co-operative Credit Society has taken a contrary view which was found to be acceptable by the learned single Judge in the present case. It was held by the Andhra Pradesh High Court that right to office being personal, any relief seeking continuation in or restoration of, office is persona! to the employee which does not survive his death; therefore, legal representatives are not entitled to prosecute the proceeding commenced by the employee for such a relief. The claim for arrears of salary for the period when the employee was kept out of office, was held to be merely consequential, dependent upon the first relief. If the legal representatives

cannot seek the first relief, they cannot continue the proceeding, to claim the ancillary or consequential relief for arrears of emoluments etc. At page 321, (Para-9) it was observed, --

"If the right is purely a personal one then the right to sue cannot survive. The mere fact that there is a possibility of the petitioner obtaining further reliefs in case he succeeds in establishing the right which he claims in the particular proceeding cannot be taken into account in determining whether the right to sue survives or not."

The Court further held that the situation was comparable to the claim to a personal office to which certain properties are also attached; in such cases, on the death of the claimant to the office, his legal representatives were held as not entitled to continue the suit on the ground that the claim included a claim to possession of certain properties.

13. With utmost respect, it is not possible to agree with this line of reasoning of the Andhra Pradesh High Court. Right to an office under the Governmental service involves constitutional status. Removal from such an, office, illegally, amounts to an unconstitutional act and is to be ignored as void. An illegal dismissal order is always treated as a void order resulting in the office holder being vested with a right to claim the arrears of salary and other emoluments. In fact specific order for reinstatement was held to be superfluous when a civil Court declares the dismissal order as illegal. In *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, it was laid down:-

"The effect of the decree of the civil suit was that the 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 Court 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."

14. The arrears of salary and payment of other emoluments are to be treated as having accrued already and vested in the delinquent employee, in respect of the period during which he was kept out of service, though, the same could be demanded by him from the State, immediately on the setting aside of the illegal order which kept him out of service. To call such a right, to the arrears, as only consequential to the main relief of setting aside the order by which the employee was kept out of service, is to attach undue importance to a technicality. It is a usual practice, atleast, in recent times, to direct the grant of all such consequential benefits, whenever, termination orders are set aside. Such a relief to the benefits called consequential benefits, actually has an independent stature. It is called a consequential benefit, to signify that, occasion has arisen for the respondent to restore these service benefits to the delinquent employee, which he was deprived of earlier, by the void order of the respondent. The

benefits had already accrued, though enforcement of the claim for these benefits stood postponed by an eclipse to the rights of the employee. When the order keeping him out of office, is held to be bad, it is deemed that, he has been in service all along earning his salary and other benefits. These are material gains of the personal right, he had to the office. These material things which had already been earned cannot get obliterated by the cessation of the personal right to the office.

15. The legal concepts cannot be kept static. With the years, service law has grown vastly and several old concepts are being given up, to be replaced by more modern equitable considerations. In equity no answer could be found as to why the heirs of a deceased delinquent employee should be deprived of the material benefits earned or accrued to an employee during his life time, just because, the said employee died before he could himself get redressal from the Court. Many a times, the delay is caused for no fault of the petitioner who invoked the Court's jurisdiction. Such a delay should not result in depriving his dependents of the material gains, that should have normally been realised by him during his life time. The Industrial Disputes Act, by Section 10(8) has recognised this principle. Equitable considerations justify the extension of such a principle to the claims of any other employee, seeking redress by invoking the Writ jurisdiction. In the circumstances, we are of the opinion that the view taken by the High Court of Allahabad, Gujarat and Punjab and Haryana, on the point in issue, is to be preferred.

16. We may also refer to a decision of Supreme Court in *Kirti Bhushan Singh Vs. State of Bihar and Others*, Here, during the pendency of his appeal arising out of the Writ proceedings, the delinquent official died. While allowing the appeal, the Supreme Court, on being informed of the death of the appellant, directed the State, to pay the monetary benefits of pension to the legal representatives, accrued to the deceased till the date of his death. Though the locus standi of the legal representatives was not in issue, the decision of the Supreme Court impliedly, supports the view, taken by us, as above.

17. Consequently this appeal has to be allowed. Since there is no order on merits of the I. As filed by the legal representatives, the same has yet to be considered by the appropriate Bench which is to be seized of the matter on the original side, dealing with Writ Petitions. If Writ Petition is held as having not abated, a further question also will arise, as to whether the matter has to be transferred to the Karnataka Administrative Tribunal.

18. In view of the above, it is ordered that, (i) the order dismissing the Writ Petition as having abated, is set aside; (ii) the applications, I.A.Nos. IV to VII, in W.P.No. 592 of 1977 shall stand revived; (iii) the questions that survive for consideration shall be decided afresh, in the light of the decision in this appeal by this Court on its original side and (iv) each party to bear his or its costs in this appeal.