
(1965) 04 MAD CK 0030
In the Madras High Court
Case No : Writ Petition No. 863 of 1961

U. Vridhachalam and Others

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 14-04-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1966 Mad 260 : (1966) 2 LLJ 903

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

(1) The petitioner, since deceased, was a police head constable against whom certain charges were framed. A departmental enquiry thereinto resulted in an order of dismissal from service. The petitioner, after exhausting his remedies by way of appeal, came to this court, seeking the issue of a writ of certiorari on certain grounds, which it is unnecessary to refer to. Since filing the petition, he died and his legal representatives have come on record.

(2) The preliminary question arises whether the writ proceedings are maintainable in the circumstances of the case. It is contended by the learned counsel appearing for the State, that any order that can be made in this case is of an interest personal only to the dismissed officer, and that since the legal representatives can claim no personal right, they cannot agitate the question. On behalf of the petitioners, Mr. Mohan urges that this being an application for the issue of a writ of certiorari, what is sought is only to have the offending record removed. Reference has been made to T.C.

Basappa Vs. T. Nagappa and Another, , dealing with the features of a writ of certiorari, their Lordships of the Supreme Court point out that it can

be availed of to remove or adjudicate on the validity of judicial acts, which includes the exercise of quasi judicial functions, by administrative bodies

or authorities. Another feature is that the control by way of a writ of certiorari is exercised over judicial or quasi judicial tribunals not in an

appealable but in a supervisory capacity. The superior court only demolishes the order which it considers to be without jurisdiction or palpably

erroneous. The offending order is put out of the way as one which should not be used to the detriment of any person.

In Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, where a question arose whether a writ could issue against a Tribunal which had

ceased to exist, their Lordships of the Supreme Court observe that a writ of certiorari is only directed against a record & that the fact that the

tribunal which made the order became functus officio could not affect the jurisdiction of the court to remove the record. Relying upon these

decisions, learned counsel for the petitioners argues that whether or not the petitioner, the dismissed officer, is dead can make no difference to the

relief sought, viz, that the order which is impugned should be quashed on grounds which are relevant to a proceeding in writ.

(3) On behalf of the State, a decision of the Supreme Court in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and

Others, , has been relied upon. Dealing with Art. 226, it is pointed out therein that it does not cover only the area of fundamental rights and that

persons other than those claiming fundamental rights can also approach the High Court for relief under the Article. But it is emphasised that the

exercise of the extraordinary jurisdiction in granting the relief must be one to enforce a legal right. The right sought to be enforced under that Article

should ordinarily be a personal and individual right of the petitioner himself, though in the case of some writs like habeas corpus or quo warranto

this rule may be relaxed. It is accordingly the contention of the State that since the issue of a writ as sought is only to quash the order of dismissal

and restore him to his rights in the service of the State, it is a personal right that is sought to be ventilated and that therefore when the petitioner is

no longer alive, to avail himself of the benefits of the remedy, the writ cannot issue.

(4) There is considerable force in the contention of the State. It may be noticed that the charges against the head constable included corruption.

Assuming that the impugned order is quashed on the ground urged in the petition, viz, 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. What this Court does is only to vacate the impugned order. The

charges that were framed against the delinquent officer do not stand wiped out by this proceeding. Now that the delinquent officer is dead, the

department cannot possibly re-commence the proceedings against him. Mr. Mohan claims that if the dismissal of the officer is 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 kept out of office. Mr. Mohan does not deny that the recovery of such emoluments would not

follow as a matter of course by the issue of a writ in the present case. The legal representatives of the delinquent officer nevertheless have to file a

suit. It is again doubtful whether the suit would be within the period of limitation, for the order of dismissal was made as long back as 1958.

Whether that would be the operative date for computing the period of limitation or the date of the issue of rule by this court is again a doubtful

question. Mr. Mohan does not deny that if a suit is filed, in that suit it would have to be independently established that the petitioner was not guilty

of anything that would justify his dismissal as a preliminary to obtaining any relief sought in that suit. It follows, therefore, 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.

(5) 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.

(6) The petition is dismissed, but there will be no order as to costs.

(7) Petition dismissed.