

(1983) 07 MAD CK 0020

In the Madras High Court

Case No : W.M.P. No. 4040, 4041 of 1983 in Writ Petition No. 4669 of 1979

V. Radhakrishnan (Deceased) by his Lrs. Ors.

APPELLANT

Vs

Indian Bank and Another

RESPONDENT

Date of Decision : 27-07-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 306

Tamil Nadu Shops and Establishments Act, 1947 — Section 41(1)

Citation : (1986) 2 LLJ 443

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Judgement

1. Application, under Art. 226 of the Constitution of India, for review of the Judgment of the Honourable Mr. Justice Ramanujam, dated 18th

January, 1983 and made in W.P. No. 4669/79, presented to this Court to issue a Writ of Certiorari, calling for the records pertaining to TSE/75-

76, on the file of the second respondent and the order of the second respondent dated 20th December, 1978 as communicated by the gist order

of the second respondent dated 27th October, 1978 and quash the order of the second respondent dated 20th October, 1978.

2. This application coming on for hearing on 24th June, 1983, upon perusing the petition of review and the judgment and order of this Court dated

18th January, 1983 and made in W.P. No. 4669/79, and upon hearing the arguments of Mr. N. G. R. Prasad for M/s. Row and Reddy, K.

Chandra and R. Rajaram, advocates for the petitioners and of Mr. G. Venkataraman for M/s. Aiyar and Dolia, advocates for the first respondents

and of Mr. S. Jagadeesan, Government advocate, on behalf of the second respondent, and having stood over for consideration till this day the

Court made the following order :

3. These are two miscellaneous petitions filed in the above writ petition which has been finally disposed of by a judgment dated 18th January, 1983.

4. The first petition is for review of the judgment rendered in the writ petition and the second petition is for bringing on record the legal representatives of the deceased first respondent in the writ petition.

5. Both the petitions are opposed by the management of the Indian Bank, the petitioner in the writ petition on the ground that the petitioners who are the legal representatives of the deceased first respondent cannot be impleaded and that in any event, no case is made out for review. Having regard to the nature of the petitions, W.M.P. 4041 of 1983 has to be considered first as the question of review will arise only if they are permitted to be impleaded as legal representatives of the deceased first respondent.

6. According to the petitioners the decision rendered by this Court upholding some of the findings of the lower authority viz; the Additional Commissioner for Workmen's Compensation, Madras whose order was challenged before this Court would enable them to claim some monetary benefits, even though the main relief of declaration that the order of discharge passed by the Management is bad cannot be granted after the death of the first respondent in the writ petition. The petitioners submit that they are interested in sustaining the order of the lower authority as that will entitle them to claim pecuniary benefits in the place of reinstatement of the deceased first respondent, and therefore, they are entitled to come on record and seek a review of the order passed in the writ petition as person who are in fact affected by the order of remand made by this Court.

The learned counsel for the management, however, submits that the right claimed by the deceased first respondent before the lower authority is personal and that right dies with him and, therefore, the legal representatives of the deceased first respondent cannot agitate the question of non-employment of the first respondent after his death.

7. After a due consideration of the matter, I have to hold that the petitioners have sufficient interest in the subject matter before the lower authority as well as the writ petition to entitle them to get themselves impleaded as parties in the writ petition in the place of the deceased first respondent.

8. In *S. Govinda Menon v. The Union of India* 1973 II L.L.J. 360 the Kerala High Court held that the legal representatives of the deceased

employee who had challenged the order of dismissal passed against him are entitled to all the benefits under Service Rules even if the employee has

died after the filing of the writ petition. In a recent decision of the Supreme Court in *State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs.*,

, the Supreme Court has held that where in a suit challenging the dismissal of the Government servant on the ground that the order of dismissal was

illegal and void, the concerned employee died pending the proceedings, the relief that would be available to the legal heirs is the payment of arrears

of salary and other emoluments payable to the deceased. These decisions proceed on the basis that even if the employee has died pending the

proceeding challenging his dismissal or termination of service, the legal representatives can continue the proceedings even after his death as they

will be entitled to the pecuniary benefits if the Court were to hold that the dismissal or termination of services is illegal and void. In this case the

deceased filed an appeal under S. 41 of the Tamil Nadu Shops and Establishments Act against the order terminating his services. The appellate

authority under that Act has held that the discharge from service was wrongful and that he should be deemed to be in service. A writ petition has

been filed before this Court by the Management questioning the order of the appellate authority. This Court accepted the finding of the appellate

authority on some of the charges and the findings in respect of other charges were set aside and the matter remitted for further enquiry. It is at this

stage the first respondent in the writ petition died and the legal representatives of the deceased employee has come forward with the present

application for bringing them on record.

9. According to the legal representatives of the deceased first respondent, they are interested in sustaining the order passed by the appellate

authority as that will enable them to claim pecuniary benefits as against the management after the death of the first respondent, and, therefore, they

are persons interested in the proceedings and, as such should be impleaded as parties. If the deceased had died immediately after the appellate

authority had passed its order it cannot be disputed that the management will have to challenge that order in any proceeding by impleading the legal

representatives of the deceased as party respondents or they have to face the pecuniary claims of the legal representatives based on the order of the appellate authority. The position does not differ merely because of the fact that the first respondent died after the filing of the writ petition. Since the decision of the appellate authority acting under S. 41 of the Shops and Establishments Act and the decision of this Court in the writ petition, in one way or the other, affects the pecuniary benefits which can be claimed by the legal representatives, they should be taken to have subsisting interest to come on record in these proceedings. This view is in accord with the view taken by the Gujarat High Court in Ibrahimbhai Karimbhai Chhipa (Deceased, by His Heirs and Legal Representatives) Vs. State of Gujarat, . There a writ petition under Art. 306 of the Constitution of India was filed for quashing a reversion order passed against the writ petitioner who died pending the writ petition. After his death, his legal representatives were held entitled to be brought on record on the ground that though they are not entitled to the relief claimed in the writ petition that the deceased continues to be in service in the original post cannot be granted after his death, the relief of declaration that the order of reversion is null and void could be granted in favour of the legal representatives for, such a declaration will confer some pecuniary benefits on the legal representatives. An objection was taken by the employer in that case relying on the decision of this Court in U. Vridhachalam and Others Vs. The State of Madras, , that such a declaration would be a step towards further legal step which the legal representatives of the deceased propose to take and hence such a relief could not be granted. But the court rejected that objection.

10. The learned counsel for the management refers to the following decisions in support of his submission that legal representatives cannot be impleaded as party respondents after the death of the original first respondent in the writ petition :

(1) U. Vridhachalam and Others Vs. The State of Madras, (2) Keshavpuri v Union of India 1980 L.I.C. 343.

In the first case Srinivasan, J. took the view that the legal representatives are not entitled to continue the writ proceedings initiated by the deceased

challenging the order of dismissal on a departmental enquiry against him. The reasoning given there is by the learned Judge is that where the issue of

a writ was sought only to quash the order of dismissal and restoration of the petitioner to his rights in the service of the State, it is only a personal right of the petitioner, that is sought to be ventilated and therefore if the petitioner is no longer alive to avail himself of the benefits of the remedy, the legal representatives of the petitioner cannot continue the writ. In *Keshavpuri v Union of India* (supra) the decision of this Court in the above case has been approved and followed. In that case there was a compulsory retirement of an employee by the Central Government on 28th February 1967. A writ petition was filed by the employee before the Rajasthan High Court Challenging the order of compulsory retirement. The said writ petition was allowed partly in his favour and partly against him. Aggrieved by that order the employee filed an appeal. At that stage the employee died and the question arose as to whether the appeal could be taken to have abated or whether the legal representatives of the deceased could continue the proceedings. It was held that it cannot be said that in all cases the issue of a writ is a step towards further legal steps which the legal representatives of the deceased propose to take and that, therefore, the right to sue does not survive to the legal representatives and they had no right to continue the appeal proceedings.

11. However, I find that these decisions are clearly distinguishable on facts. In this case the deceased employee had succeeded before the appellate authority constituted under S. 41 of the Shops and Establishments Act and it is the management who filed a writ petition and it is the management which sought the relief against the deceased. But for the filing of the writ petition before this Court the legal representatives of the deceased first respondent would be in a position to proceed on the basis that the employee continued in service right through till his death and claim the pecuniary benefits from the management. For getting over the decision of the appellate authority which is in favour of the employee the management has necessarily to continue the writ petition for getting the relief even after the death of the employee by bringing on record his legal representatives. Thus it is clear that the legal representatives of the employees in this case who are likely to be affected by the decision of this court can be impleaded as parties. Hence W.M.P. No. 4041 of 1983 is allowed and the petitioners are permitted to impleaded as party respondents in

the writ petition No. 4669 of 1979.

12. Now coming to W.M.P. No. 4040 of 1983, which is one for review, it is the case of the petitioners that on the findings rendered by this court

in its judgment, dated 18th January, 1983 no question of remand could arise, that once this court has found that the enquiry has not been

conducted as required by the Rules in respect of charges 1, 3 and 4, then automatically the charges are to be held not proved and as such it is

unnecessary for this court to remit the matter calling upon the appellate authority under S. 41 of the Shops and Establishments Act to give a finding

on charge Nos. 1, 3 and 4 on merits.

13. It is seen from the judgment in the writ petition dated 18th January 1983 that four charges had been framed by the management against the

employee. After the explanation had been given by the employee in respect of those charges, the management proceeded on the basis that charges

1, 3 and 4 had been admitted by the employee and conducted an enquiry only as regards charge No. 2. The enquiry officer found that charge No.

2 has been proved. Having regard to the findings rendered by the enquiry officer the employee was discharged from service by the management.

When the matter was taken in appeal under S. 41(1) of the Tamil Nadu Shops and Establishments Act, to the appellate authority, it allowed the

appeal holding that the order of discharge dated 27th February 1976 is not compliance with the second limb of S. 41(1) of the said Act. The

appellate authority has held that charge No. 2 alone is serious and that charge cannot be taken to have been established by the evidence. It also

held the extreme penalty of discharge cannot be sustained merely on the basis of charges 1, 3 and 4 which are minor in nature and which are

alleged to have been admitted by the employee. Against the decision of the appellate authority, the management filed the writ petition. This Court

agreed with the findings of the appellate authority that charge No. 2 cannot be taken to have been established. But so far as charge Nos. 1, 3 and

4 are concerned this court took the view that even if the employee had admitted the charges, still as per paragraph 19, 12(e) of the by-partite

settlement arrived at between the Bank and its employees, an enquiry has to be held on those charges as the alleged admission has not been made

after knowing the nature of punishment to be imposed on those charges. This

court, therefore, felt that as the appellate authority has not gone into the question as to whether an enquiry is called for in relation to charges, 1, 3 and 4, the matter was remitted to the appellate authority to go into those questions. According to the petitioners, Once the court has found that in view of paragraphs 19, 12(e) of the settlement an enquiry should necessarily be conducted on charges 1, 3 and 4, then there is no necessity to send the matter back to the appellate authority to find out whether an enquiry is called for on those charges or not. Since the enquiry as contemplated by paragraph 19, 12(e) has not been conducted by the management, it should be taken that charges 1, 3 and 4 have not been proved and order of the appellate authority could have been upheld by this Court.

14. I am inclined to agree with the contention advanced on behalf of the petitioners. Out of the four charges, one charge viz., charge No. 2 which is serious was held not proved by the appellate authority. The other three charges being minor charges will not justify the order of discharge according to the appellate authority. This court upheld the finding of the appellate authority on charge No. 2. As regards charges 1, 3 and 4, this court has held that an enquiry should have been conducted on those charges under paragraph 19, 12(e). If an enquiry has not been conducted on charges 1, 3 and 4 as per the by-partite agreement, then the order of discharge should be taken to be vitiated and the order of the appellate authority setting aside the discharge order should straightaway be upheld by this Court. But this court felt that as the question of necessity for an enquiry in respect of the three charges was not gone into, the matter was remitted. But as contended by the learned counsel for the petitioners, the remand is a mere formality for the appellate authority has no other alternative except to accept the view of this Court, that as per paragraph 10. 12(e) on enquiry should have been conducted and the non-conduct of an enquiry vitiates the order of discharges. Therefore, on the findings rendered by this court that there should have been enquiry in relation to charge Nos. 1, 3 and 4 in view of paragraph 19.2(e) of the by partite agreement, this court should have upheld the order of the appellate authority holding the discharge to be invalid. I am of the view that in view of the findings rendered by this Court as regards charges 1, 3 and 4, the writ petition

filed by the management should have been dismissed without remitting the matter to the appellate authority.

15. The learned counsel for the management would, however, contend that the appellate authority has no jurisdiction to entertain and dispose of

the appeal in view of the later decision rendered by this court in Writ Petition No. 2013 of 1979 Bank of India v. C. V. Raman & another (batch)

wherein it has been held that the Nationalised Banks are exempt from the provisions of the Tamil Nadu Shops and Establishments Act and,

therefore, the appellate authority constituted under S. 41 of that Act will have no jurisdiction to entertain appeals under S. 41(2) and hence the

appeal filed before the appellate authority by the deceased employee in this case is incompetent and as such, there is no question of a review being

granted in this case. The management did not question the jurisdiction of the appellate authority at any time and it has submitted to its jurisdiction.

Further, the management has not asked for review of the judgment on the basis of the decision referred to above. So long as the decision of the

Court passed in the writ petition stands, the petitioners are entitled to ask for review. Merely because there is a later decision, the decision

rendered by this Court in this writ petition cannot be taken to have become invalid automatically. At the time of the delivery of the judgment in the

writ petition the jurisdiction of the appellate authority was not canvassed and it is not now open to the management to question the jurisdiction of

the appellate authority at the stage of the disposal of the review petition.

16. In this view of the matter, the review asked for is granted and the writ petition will stand dismissed. The direction given in the writ petition to

the appellate authority to consider the questions formulated will stand cancelled. No costs.