

(2005) 02 MP CK 0111

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 691 of 2004

Vipin Kumar Shrivastava

APPELLANT

Vs

Jhabua Dhar Kshetriya Gramin Bank and Another

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Citation : (2005) 1 MPLJ 591

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : C.B. Patne, for the Appellant; S.R. Kochatta, for the Respondent

Judgement

N.K. Mody, J.

Short facts of the case are that deceased Vipin Kumar Shrivastava filed the petition for quashing order dated 9-11-2002 (Annexure P/7) and also order dated 11-7-2003 (Annexure P/9) whereby the deceased was punished with an order of dismissal from service and the same was confirmed.

Since petitioner died, therefore, contention of Mr. Kochatta, learned counsel for respondents is that the petition has abated and deserves to be dismissed. For this, reliance has been placed on a decision of Madras High Court in the case of U. Vridhachalam and others vs. The State of Madras, AIR 1966 Mad 260, wherein an employee against whom certain charges including corruption, were framed and after departmental enquiry, he was dismissed from service against which Writ Petition was filed, the Madras High Court has held that it was true that if the dismissal of the officer was 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. But it could not be denied that the recovery of such emoluments would not follow as a matter of course by the issue of a writ. The issue of a writ was only sought as a step towards further legal steps which the legal representatives of the deceased officer proposed to take. The relief sought

was purely personal to the delinquent officer and such personal right which really involved the continuance in service or otherwise of a person would not survive to the legal representatives.

Further reliance has been placed on the decision in the case of Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair, wherein in a suit for defamation, which has been dismissed and the plaintiff has filed an appeal, Hon"ble Supreme Court has held that if it is dismissed and plaintiff has filed an appeal, what the appellant plaintiff is seeking to enforce in the appeal is his right to sue for damages for defamation and as this right does not survive his death, his legal representative has no right to be brought on record of the appeal in his place and stead if the appellant dies during the pendency of the appeal. It was further observed that the position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case cause of action has merged in the decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff respondent which his legal representative is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent plaintiff.

Facing to this, Mr. Patne, learned counsel for petitioner submitted that in case legal representatives of the deceased succeeds and order of dismissal is set aside, then the petitioners will be entitled for the emoluments for which the petitioner would have been entitled. Since in the decision of Madras High Court and Hon"ble Apex Court, this aspect has already been considered and it was held that right to sue does not survive and in the present case, vide order (Annexure P-7), deceased petitioner has been dismissed from service, therefore, present petition does not survive. However, if the widow of petitioner moves an application for compassionate appointment, then the same shall be considered by the respondents on merits and in accordance with law, without being impressed that the deceased petitioner was dismissed from service.

With the aforesaid observation, this petition stands disposed of. No order as to costs.