

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2018

Delivered on : 26.04.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.554 of 2013 and
MP No.1 of 2013

- 1.The General Manager
Indian Overseas Bank
"Habeeb Towers"
756, Anna Salai, Chennai - 600 002.
- 2.The Chairman
Indian Overseas Bank
"Habeeb Towers", 756, Anna Salai,
Chennai - 600 002.Appellants
(Cause Title accepted vide order of Court
dated 14.03.2013 made in M.P.No.1/2013
in WASR 23520 of 2013)
- Vs
- S.Ganesan (Deceased)
1.Ameetha Ganesan
2.Bhavana Ganesan
3.S.Kamala
4.The Deputy Commissioner of labour
(Appellate Authority)
DMS Compound, Teynmapet,
Chennai - 600 006.Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in WPMP No.38 of 2013 in W.P.No.3738 of 2005 dated 22.02.2013.

PRAYER IN W.P.No.3738 of 2005:

Writ Petition praying to issue a writ of Certiorarified Mandamus calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 31.8.2004 in T.S.E.No.I/18/2001 and consequently direct the respondent No.2 and 3 to reinstate the petitioner with full backwages, continuity of service and all other attendant

benefits.

For Appellant : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.,

For Respondents : Mr.Balan Haridas
for R1 to R3

J U D G M E N T

K.K.SASIDHARAN, J.

Introductory Note

Whether the legal representatives of a deceased workman are entitled to continue the legal proceedings initiated by him challenging the order of dismissal from service and the related order passed by the Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947, by filing an application for impleading them as parties is the core legal issue raised in this intra court appeal.

Brief Facts

2. The predecessor-in-interest of the respondents 1 to 3 was an employee of Bharat Overseas Bank Limited, which was subsequently merged with the Indian Overseas Bank. The employee was dismissed from service. The order was confirmed in appeal. Thereafter, the employee filed a statutory appeal before the Appellate Authority constituted under Section 41 of the Tamil Nadu Shops and Establishment Act, 1947. The appeal was dismissed by order dated 31 August 2004. The order was challenged by the employee before the Writ Court in W.P.No.3738 of 2005. During the currency of the writ petition, the employee died. The legal representatives filed an application for impleading, which was allowed by the learned single Judge. Subsequently, the management filed an application to recall the order impleading the respondents 1 to 3 as parties, by placing reliance on a decision in *Molysaramo Lukose (Smt) v. Spencer & Co., Ltd., Madras* and another [1986 (1) LLN 469]. The application was dismissed. The order is under challenge at the instance of the management in this appeal.

Submissions of Parties

3. The learned counsel for the appellants by placing reliance on a Division Bench Judgment in *V.Veeramani v. Madurai District Co-operative Supply and Marketing Society Ltd.*, and another [1983 1 LLN 426], contended that the scope of an industrial adjudication cannot be enlarged by impleading the legal representatives. According to the learned counsel, the writ petition would abate consequent to the death of the

employee and it cannot be continued by the legal representatives.

4. The learned counsel for the respondents 1 to 3 contended that the right to sue would survive even after the death of the employee and such being the position, the litigation can be continued by the legal representatives.

Analysis

5. The writ petition in W.P.No.3738 of 2005 was filed by the predecessor-in-interest of the respondents 1 to 3 with a prayer to set aside the order imposing punishment of dismissal from service and the related appellate order and directing his reinstatement with backwages. The order passed by the Appellate Authority under the Tamil Nadu Act XXXVI of 1947 was the order impugned in the writ petition.

6. The employee died pending disposal of the writ petition. The legal representatives filed an application and got them impleaded as parties to prosecute the writ petition. The petition filed by the Management subsequently to recall the order was dismissed by the learned single Judge, resulting in filing this appeal.

7. The view taken by the Division Bench in V.Veeramani (cited supra) is relied on by the appellants to contend that the legal representatives have no right to continue the legal proceedings initiated by the employee, challenging the order of dismissal from service.

8. The Division Bench in V.Veeramani (cited supra) considered the provisions of the Industrial Dispute Act and taking into account Section 2(1) of the Act, defining the term "Industrial Dispute" held that only the dispute between the employer and employee could be the subject matter of adjudication before the Labour Court. To put it otherwise, the Division Bench was of the view that since the legal representatives were not included specifically, it would not be possible for them to enter the field of adjudication of industrial dispute.

9. The dispute in the subject case though related to dismissal would also involve a question as to whether the legal representatives would be entitled to the consequential benefits in case the order of dismissal is set aside. It is worth mentioning here that the employee has made a specific claim for back wages in his writ petition.

10. The Tamil Nadu Shops and Establishments Act, 1947 was enacted to provide for the regulation of conditions of work in shops, commercial and other establishments. Section 41 of the Act provides for filing an appeal to the competent authority by a workman challenging the order of dismissal. The Appellate Authority is empowered to set aside the order of dismissal and to direct reinstatement with or without back wages.

11. The order passed by the Appellate Authority could be subjected to judicial review by filing a writ petition as there is no other alternative remedy available to the aggrieved.

12. Section 2A of the Industrial Disputes Act conferred right on the workman to agitate his grievance caused by his dismissal before the Industrial Tribunal or Labour Court. Similarly, Section 41(2) of the Tamil Nadu Shops and Establishments Act, provides for an avenue to the workman to challenge the illegal termination before the competent authority under the Act.

13. The question is whether such right can be agitated by the legal representatives by stepping into the shoes of the deceased employee.

14. The legal representative of a deceased is not a stranger or a different person from the deceased. By impleading as a party to the pending proceedings, he would be continuing the "persona" of the deceased.

15. The Hon'ble Supreme Court in *Girijanandini v. Bijendra Narain* [AIR 1967 SC 1124] observed that the maxim 'actio personalis moritur cum persona' meaning a personal action dies with the person, has a limited application. The Supreme Court was of the view that the maxim would operate in a limited class of actions, such as actions for damages, for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party, the relief could not be enjoyed or granting it would be nugatory.

16. Section 306 of the Indian Succession Act recognises the survival of the cause of action and the right of the heirs and legal representatives.

The provision reads thus:

306. Demands and rights of action of or against deceased survive to and against executor or administrator.-All demands whatsoever and all

rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, (45 of 1860.) or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

17. The Appellate Authority under the Tamil Nadu Shops and Establishments Act is well within its jurisdiction to decide the legality and correctness of the order of termination and in case the order is set aside to grant the appropriate relief including payment of backwages. To put it otherwise, in case, the competent authority is of the view that the order of termination is illegal, it is open to the said authority to direct reinstatement. In case the employee has already attained superannuation, the authority is empowered to mould the relief. The jurisdiction would continue even after the death of the employee pending adjudication, inasmuch as in the event of termination being declared illegal, the legal representatives would be entitled to receive the monetary benefits.

18. The courts are now flooded with litigation. In view of the Himalayan arrears and docket explosion, it would not be possible for the Courts to dispose of the proceedings within a reasonable period. The litigants are not responsible for the delay in the disposal of cases. In case, the proceedings are declared as abated consequent to the death of the employee, long after his initiation of litigation, and without permitting the legal representatives to continue the litigation, it would be a travesty of justice.

19. The Hon'ble Supreme Court in 1990 (1) SCC 109 indicated that with the passage of time and with the consequent change of circumstances, the continued operation of an act which was valid when enacted may become arbitrary and unreasonable.

20. While interpreting a Labour Legislation enacted to preserve the industrial peace and harmony and welfare of the workmen, the Courts must approach it from a holistic perspective. Even an individual dispute would later become an industrial dispute, resulting in industrial unrest. The disputes must be settled for preserving industrial peace. Therefore, the Courts must adopt a justice oriented approach in a matter of this nature.

21. The Courts must interpret the law taking into account the social changes that has taken place with the passage of time.

22. The right to reputation is part of Article 21 of the Constitution of India. In case the employee was dismissed from service and pending adjudication of the dispute raised by him, or writ petition filed challenging the decision of the Labour Court, the employee died and the legal representatives are not permitted to continue the proceedings to give a clean chit to the delinquent, the employee would be denied of an opportunity to prove his innocence. Even after death, he would be branded as a person involved in a serious misconduct. The legal representatives got a right to prosecute the matter to remove the stigma. Such a right would be denied to them, in case they are not permitted to be impleaded in the pending proceedings.

23. There is a pious obligation to discharge the liability of the deceased. Similarly, there is a corresponding right to seek the benefits due to the deceased, if he is legally entitled.

24. We therefore make the position clear that on the death of the workman, his heirs and legal representatives, representing the estate are entitled to continue the legal proceedings.

25. The learned single Judge was correct in negating the plea taken by the appellants on the question of impleading the legal representatives as party to the pending proceedings.

26. For the reasons aforesaid, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

svki

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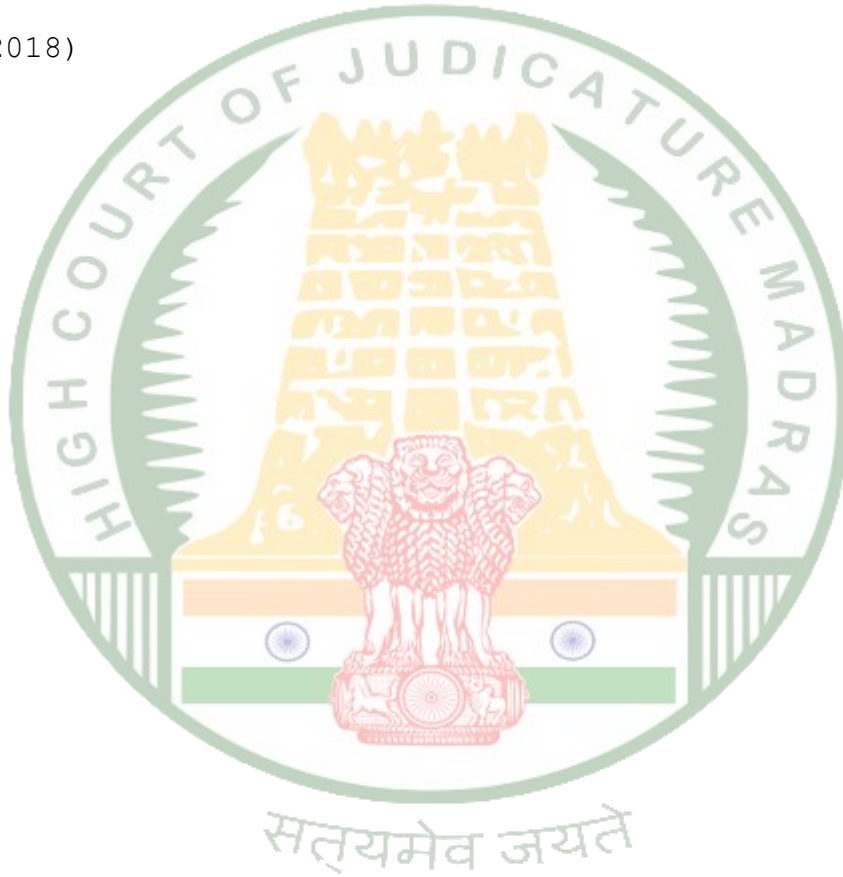
1.The Deputy Commissioner of labour
(Appellate Authority)
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Chennai - 600 006.

+1cc to Mr.T.S.GOPALAN & CO. Advocate, S.R.No.31171

+1cc to Mr.BALAN HARIDAS Advocate, S.R.No. 32131

W.A.No.554 of 2013

KAN(CO)
TR(15/05/2018)



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