

Kulwant Kaur Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 26, 2014

Citation: (2014) 176 PLR 5 : (2014) 3 SCT 822

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Abhinash Jain, Advocate for B.R. Mahajan, Advocate for the Appellant; Anshul Gupta, Assistant Advocate General, Advocate for the Respondent

Judgement

Rajesh Bindal, J.

The legal heirs of deceased-Dalbir Singh, who was working as Conductor, have filed the present petition impugning the order dated 24.11.2005 (Annexure P-1), vide which services of deceased-Dalbir Singh were terminated and order dated 26.7.2006 (Annexure

P-3), vide which the appeal filed by the legal heirs of deceased-Dalbir Singh was dismissed merely on the ground that the appeal could be filed

only by the concerned employee in his own name. Learned counsel for the petitioners submitted that deceased-Dalbir Singh was working as

Conductor with Punjab Roadways since 1974. On 4.2.2000, he was issued a charge-sheet with the allegation that while he was on duty on bus

No. 9936 plying from Delhi to Tarn Taran, at Rayya when the checking took place, 15 passengers were travelling in the bus, out of which one

passenger, who was travelling from Rajpura to Amritsar sitting on the front seat, was found without ticket though money had been charged from

her, as a result of which, deceased-Dalbir Singh misappropriated Rs. 95/-. The explanation given by deceased-Dalbir Singh that she was relative

of the driver was not accepted. His services were terminated on 24.11.2005. As deceased-Dalbir Singh could not suffer the shock, he was taken

to Mental Hospital, Amritsar on 16.12.2005 and ultimately died on 20.12.2005. As per Punjab Civil Services (Punishment and Appeal) Rules,

1970 (for short, "the Rules"), an appeal against the order of dismissal could be filed within 45 days from the date of receipt of copy of the order.

As in the present case, the employee died just within a week of the date of receipt of copy of the order terminating his services, he could not prefer

the appeal himself. The appeal was preferred by his legal heirs. The same was dismissed merely on the ground that the appeal could be preferred

by an employee concerned in his own name. The order is totally illegal as the right to sue survives on the legal heir(s), if an employee had died

before even the time for filing the appeal had expired. Even if during the pendency of appeal, an employee dies, his legal heirs can very well pursue

the appeal.

2. Learned counsel for the State submitted that Rule 18 of the Rules provides that any person preferring an appeal has to do the same in his own

name. As the employee had died, the appeal could not be preferred in his name, hence, the same was dismissed as not maintainable.

Heard learned counsel for the parties and perused the paper book.

3. Rule 15 of the Rules provides the orders against which appeal lies. Explanation (i) to the aforesaid Rule provides that a Government employee

shall include a person who has ceased to be in Government service. Rule 18 of the Rules provides that every person preferring appeal shall do so

separately and in his own name.

4. The issue under consideration in the present petition is that as-to whether an appeal filed by legal heirs of a deceased employee could be

dismissed as not maintainable.

5. The facts, which are not in dispute, are that deceased-Dalbir Singh was employed as Conductor with Punjab Roadways in the year 1974. In

pursuance to a charge-sheet, his services were terminated on 24.11.2005. Appeal could be preferred within 45 days. The order of termination

was served upon him on 14.12.2005. He expired on 20.12.2005. After his death, the appeal was preferred by his legal heirs, which was

dismissed as not maintainable vide communication dated 26.7.2006 (Annexure P-3) on the ground that as per Rule 18 of the Rules, the appeal had

to be preferred by an employee in his own name. The reason assigned by the appellate authority is totally erroneous. Such an absurd meaning

cannot be given to the Rules, which will make it unworkable in certain circumstances and keep the legal heirs of the employee remediless. The

appeal had been preferred by the legal heirs of the deceased employee in their name. Further, if an employee, who had been dismissed from

service, had died before even the time for filing the appeal had expired, his legal heirs could very well prefer and pursue the appeal as the right to

sue survives on them, as the effect of the order of dismissal was that the employee was not entitled to any benefits. In case the appeal is accepted

in toto or in part, the employee may be entitled to some service benefits which are ultimately to be paid to the family of the deceased employee.

For the reasons mentioned above, the present petition is allowed. The order dated 26.7.2006 (Annexure-P3), vide which the appeal filed by the

petitioners was dismissed as not maintainable is set aside. The appellate authority is directed to hear and dispose of the appeal filed by the

petitioners on merits. As the case is already quite old, the appellate authority is directed to decide the appeal within a period of four months from

the date of receipt of a copy of the order.