

Chandra Sen Sharma (Dead)

Vs

Supdt. Engineer, Hydel (Ganga) Circle, Aligarh and Others

Civil Appeal No. 1113 of 1981

(A.M. Ahmadi, K. Ramaswamy, S.C. Agrawal JJ)

14.01.1992

ORDER

1. This appeal is directed against a judgment of the High Court of Allahabad dated August 28, 1978 in Special Appeal No. 31 of 1972 whereby the High Court treated the appeal as well as the writ petition as having abated leaving it to the workman to approach the Tribunal for relief. We may state that during the pendency of this appeal the workman expired on November 22, 1987 and an application for bringing the legal representatives on record has been filed along with an application for condonation of delay to which there is no opposition. We, therefore, condone the delay and allow the application for substitution of legal representative of the deceased on record. The necessary amendment in the cause title will be carried out forthwith.

2. So far as the appeal is concerned, the brief facts are that the workman had preferred a petition under Article 226 of the Constitution that the impugned order of reversion was violative of Articles 14 and 16 of the Constitution. The learned Single Judge allowed the petition against which the present respondent-management preferred an appeal, being Special Appeal No. 31 of 1972, before the Division Bench of the Allahabad High Court. When the said appeal came up for hearing the Division Bench relying on the judgment and order in Special Appeal No. 1515 of 1969 held that the appeal as well as the writ petition out of which it arose had abated under Section 58 of the Constitution (Forty-second Amendment) Act, 1976. By that provision Article 226 of the Constitution was amended and the amended article provided that where an alternative remedy is available a petition under Article 226 shall not be entertained and it further provided that every such petition pending before the High Court, which would not have been admitted under the amended Article 226 shall abate and any interim order made thereon or in any proceeding relating thereto shall stand vacated. It was on account of Article 226 as substituted by the amending Act that the High Court held that the writ petition before the learned Single Judge had abated and, therefore, the appeal also must be of the same fate. Now the said provision which was incorporated in Article 226 of the Constitution by the Forty-second amendment has been substantially altered by the Forty-fourth amendment and clauses (3) and (4) of that article have been substituted by Section 30 for clauses (3) to (6) introduced by the Forty-second amendment with effect from August 1, 1979. In view of this change, counsel for the appellant submitted that it is now permissible to the High Court to dispose of the appeal on merits rather than direct the legal representatives of the workman to initiate the proceedings in the Tribunal from scratch. We see merit in this submission.

3. We, therefore, allow this appeal, set aside the impugned order of the High Court in Special Appeal No. 31 of 1972 and remit the matter to the High for disposal of the said appeal on merits and in accordance with law at an early date having regard to the passage of time. There will be no order as to costs.

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