

# GUJARAT HIGH COURT

Ibrahimbhai Karimbhai

Vs.

State of Gujarat

Special Civil Appln. No. 83 of 1963

(Miabhoy, C.J. and A.D. Desai, J.)

04.05.1967

## JUDGMENT

### **A.D. Desai, J.**

1. This is a petition under Article 228 of the Constitution of India. One Ibrahimbhai Karimbhai Chhippa was the original petitioner. He was a member of the Police Service of the State. He was appointed as a Sub-Inspector of Police on January 1, 1939, in the former State of Bombay. He was promoted as Inspector of Police on November 8, 1953 and was confirmed in that post on August 19, 1960. He was listed in the selection list of the Police Officers fit for promotion as Deputy Superintendent of Police by the Selection Board. He was appointed as an officiating Deputy Superintendent of Police by the Government of Gujarat on May 3, 1961. He took charge from the Sub-Divisional Police Officer, Morbi Sub-Division, Rajakot, on May 28, 1961.

2. During the course of his duties, he camped at Vankaner on August 5, 1961 in connection with an investigation of a murder case. One Lalji Hirji complained to him that his nephew, a boy named Jayantilal, was taken to Vankaner City Police Station as a suspect in a case of house-breaking and theft, at the place of one Gambhirsinh Ratansinh on August 3, 1961 and that Haribhai, the maternal uncle of the said Jayantilal, beat the boy with a stick causing fracture of his left leg. Lalji complained that Jayantilal was beaten in the presence of the Police Sub-Inspector Ajitdan Jivraj Gadhvi and in spite of this, no action was taken by Police Sub-Inspector against Haribhai. Ibrahimbhai (hereinafter referred to as the original petitioner) went to the police, station and registered the offence under Section 325 of the Indian Penal Code against Haribhai. He also recorded the complaint of Gambhirsinh, regarding the offence of house-breaking and theft under Sections 454 and 380 of the Indian Penal Code. He reported to the District Superintendent of Police for suitable action against Police Sub-Inspector Gadhvi. The District Superintendent of Police took serious view of the matter and passed an order of suspension against Gadhvi on August 29, 1961, While the original petitioner was camping at

Vankaner City on August 30, 1961. Gadhvi came to see him and at that time a police constable from Morbi brought office post wherein the orders of suspension of Gadhvi were also received by him. The original petitioner, therefore, served the order of suspension on Gadhvi who signed the duplicate copy as a token of having received the order. The original petitioner was making an endorsement on a duplicate copy and at that time, he heard a shot of a however and saw his clerk Rana falling down. Other shots were also fired and he himself received an injury on abdomen. These shots were fired by Gadhvi and Gadhvi committed suicide by shooting himself with the revolver. The Deputy Inspector-General of Police, Rajkot Range, conducted an enquiry in respect of this incident and the visit of the original petitioner on that day to Vankaner. He submitted his report to the Government of Gujarat, General Administration Department, issued a notice dated December 28, 1981, stating therein that the Government had come to the conclusion that there was sufficient evidence to hold that the original petitioner had acted in contravention of Rule 402 of the Bombay Police Manual as he had purchased some supplies through the subordinate officer during his camp at Vankaner; that the petitioner failed to use proper discretion in hastily registering an offence under Section 325 of the Indian Penal Code without proper verification as the complaint of Lalji against Haribhai and in entrusting the investigation of the two cases, namely, injury to Jayantilal and house-breaking and theft at the house of Gambhirsinh Ratansinh, to Misra, P.S.I., and, therefore, the Government proposed to revert the original petitioner on the grounds of the aforesaid misconduct. The original petitioner submitted his reply to the said show-cause notice on March 24, 1962. He denied the above allegations and gave an explanation in respect of the charges levelled against him. An advance copy of this reply was forwarded to the Chief Secretary to the Government of Gujarat. The original petitioner thereafter filed Special Civil Application No. 337 of 1962 in this Court. The said special civil application was withdrawn on April 17, 1962, as he had an alternative remedy of filing an appeal. On April 14, 1962, the original petitioner received an order dated April 10, signed by the Chief Secretary to the Government of Gujarat, reverting the original petitioner from the post of officiating Deputy Superintendent of Police to the post of Police Inspector. He, thereafter, preferred an appeal to His Excellency the Governor of Gujarat challenging the show-cause notice and the order of reversion. The Deputy Secretary to the Government of Gujarat, Home and Civil Supplies Department, informed the original petitioner by letter dated December 29, 1962, that his reversion from the post of the Deputy Superintendent of Police to the post of Police Inspector was on the ground of his unsuitability to the post and not by way of a punishment and therefore, the appeal did not lie and was filed. In the meanwhile, the original petitioner received an order signed by the Deputy Secretary to the Government of Gujarat, Home and Civil Supplies Department dated December 10, 1962, intimating the original petitioner that the Government had carefully considered the explanation submitted by him and had come to the conclusion that allegations Nos. 1 and 3 mentioned in the show-cause notice were proved and the Government had, therefore, decided to award him a punishment of censure for those irregularities ;and accordingly he was censured for the same. The original petitioner, therefore, has filed the present petition against the State of Gujarat challenging the order of reversion dated April 10, 1962 and contending that the said order is illegal and of no effect on the ground, firstly, that the said order

of reversion was on account of misconduct mentioned in the show-cause notice dated December 28, 1961, secondly, that the said order was passed by way of punishment and put a stigma on his competency and integrity and affected his future service. The order was also challenged on the ground that the same was passed without hearing him and in contravention of Article 811 of the Constitution of India. The petitioner prayed amongst others the following reliefs :-

" (a) to call for the record and proceedings in respect of the order No. DYS.1062/ 9924-K dated 10th April 1962 passed by the respondent, and to issue writ of certiorari or mandamus or any other order or direction quashing the aforesaid order;

(b) to declare that the order dated 10th April 1962 is illegal and of no effect and that the petitioner remains in service as officiating Deputy Superintendent of Police. :'

During the pendency of this petition, the original petitioner died on August 18, 1965 and an application No. 1927 of 1965 was preferred by the present petitioners as heirs and legal representatives of deceased Ibrahimbhai Karimbhai Chhipa. The following order was passed thereon by this Court on November 8, 1965 :-

" Applicants are brought on the record as the legal representatives of the deceased petitioner. However the respondents in the main petition will have a right to urge that the cause of action therein does not survive and that the legal representatives have no right to pursue the petition. The present application is granted subject to the above right of the respondents to raise the contention."

3. The respondents to the petition is the State of Gujarat. On behalf of the respondent, the Deputy Secretary to the Government of Gujarat, Home Department, has filed an affidavit in rejoinder and contended that the petition had become infructuous due to the death of Ibrahimbhai Chhipa. The contention was that the petition did not survive as the reliefs claimed were personal to the deceased and the heirs and legal representatives, i.e., the present petitioner had no right to continue the petition. On merits, the contention was that the order of reversion was not passed as a punishment but on the ground that Ibrahimbhai Chhipa was unsuitable for the post of Deputy Superintendent of Police. The paragraph 9 of the affidavit, raising the said contention runs as follows :-

" I say that the said order of reversion has no relation at all with the show-cause notice issued to the petitioner and the action taken thereon. I say that the petitioner had submitted his reply on 24th March 1962 through the Inspector-General of Police. I say that an advance copy of his said reply was received by Government on 26th March 1962. I further say that the reversion was effected in view of the position explained by the Inspector-General of Police in paragraph 3 of his demi-official letter No. A-9, dated 23rd/26th March 1962 which says that the selection board of the Deputy I.G.Ps. which met in February 1962, classified the petitioner 'not fit'. The petitioner was, therefore, to be

reverted without waiting for the receipt of his explanation through proper channel and examining it. If necessary, I crave leave to rely upon the said demi-official letter dated 23rd/26th March 1962. I say that the petitioner's name was on the provisional list and he was subsequently considered 'not fit :' by the Selection Board. I say that the aforesaid explanation dated 24th March 1962 submitted by the petitioner was received by the Government through proper channel as per Inspector-General of Polices Endorsement No. A/10, dated 7-6-1962. I say that the said explanation was examined and he was given the punishment of censure for irregularities as per order annexed 'D :' to the petition. I, therefore, deny that the said order dated 10th April 1962 is on account of misconduct as alleged, by the petitioner or that on the said submission it is without jurisdiction or contrary to the provisions of Civil Services (Classification, Control and Appeal) Rules. I say that the said order does not in any way state that the petitioner is guilty of any misconduct or that therefore he was reverted. I submit that provisions of Article 311(2) of the Constitution of India are not attracted in the present case. I further submit that even though the petitioner had demanded opportunity to show cause against the allegations, I say that inasmuch as the said order dated 10th December 1962 does not give any punishment as envisaged by Article 311 of the Constitution of India, the petitioner is not entitled to make the various submissions contained in this paragraph."

4. At the time of the argument, Mr. Chhaya, learned Additional Government Pleader appearing for the respondent, has produced demi-official letter dated March 23/26, 1962, addressed by the Inspector-General of Police to the Chief Secretary to the Government of Gujarat, General Administration Department, Ahmedabad. The said demi-official letter has been taken on record with the consent of both the parties.

5. The points which were raised for our consideration are :-

- (1) Whether the provisions of O. 22 of the Code of Civil Procedure relating to the abatement of the proceedings apply to the application under Article 311(2) of the Constitution of India.
- (2) Whether the right to sue survives to the present petitioners and whether they are entitled to reliefs asked for in the petition.
- (3) Whether the order of reversion dated 10th April 1962, Exh. 'C :' was passed by way of punishment and contravened the provisions of Article 311 of the Constitution.

6. Mr. Daru, the learned Advocate appearing for the petitioners contends that the provisions of the Civil Procedure Code apply to the application under Article 226 of the Constitution of India by virtue of the provisions of Section 141 of the Code of Civil Procedure . Section 141 of the Code of Civil Procedure reads as under :-

" The procedure provided in this Code in regard to suits shall be followed, as far as it can

be made applicable, in all proceedings in any Court of civil jurisdiction." The submission of Mr. Daru is that an application under Article 226 of the Constitution is a proceeding in a Court of civil jurisdiction and, therefore, the provisions of the Code of Civil Procedure will apply to such a proceeding. It is contended that the proceedings contemplated by Section 141 of the Civil Procedure Code are the proceedings which are original in the nature and reliance is placed on the decision of the Privy Council in the case of *Thakur Prasad v. Fakir Ullah*<sup>1</sup>. In that case, the Privy Council was interpreting Section 647 of the Code of Civil Procedure, 1892, which was in the same terms as Section 141 of the Code of Civil Procedure. The question before the Court in that case was whether Section 373 of the Code of 1892 which is equivalent to Order 23, Rule 1 applied to the execution proceedings by virtue of Section 647 of the Code of 1892. Their Lordships made the following observation at p. 111 :-

" Their Lordships think that the proceedings spoken of in Section 647 include original matters in the nature of suits, such as proceedings in probates, guardianships and so forth, and do not include executions."

<sup>1</sup>(1895) ILR 17 All 106

The contention of Mr. Daru is that an application under Article 226 of the Constitution is a proceeding of original nature and for this reliance is placed on the decision of the Supreme Court in the case of *State of U.P. v. Dr. Vijay Anand*<sup>2</sup>, wherein it has been observed at p. 951 :

" It is, therefore, clear from the nature of the power conferred under Article 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Article 226 of the Constitution, exercises original jurisdiction, though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdiction, is exercisable throughout the territories in relation to which it exercises jurisdiction and may, for convenience, be described as extraordinary original jurisdiction.

7. Mr. Chhaya, on the other hand, contends that the writ petitions under Article 223 are quite different from the ordinary proceedings and Section 141 Civil Procedure Code applies to proceedings in the nature of a suit and to a proceeding in the Court of civil jurisdiction. The argument is that the writ proceedings are different from the ordinary civil proceedings and the High Court when it acts under Article 226, exercises extra-ordinary jurisdiction, and therefore, Section 141, Civil Procedure Code, has no application. The argument proceeds that the High Court when it exercises jurisdiction under Article 226 of the Constitution, derives an authority from the provisions of the Constitution and exercises extraordinary jurisdiction and, therefore, the writ proceeding does not fall within the expression " proceedings in any Court of civil jurisdiction" as contemplated by Section 141 of the Civil Procedure Code. Mr. Chhaya also contends that the writ proceedings are not in the nature of a suit and relies on the decision in *Bharat Board Mills Ltd. v. Regional Provident Fund Commissioner*<sup>3</sup>, The question that arose in

that case was whether the provisions of Chapter 27-A of the Civil Procedure Code were applicable to the writ proceedings and the Court observed at page 709 as under :-

" An application under Article 226 of the Constitution is however not a suit. But it is to be noted that Section 141 of the Code states that the procedure provided in the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any Court of civil jurisdiction. It has been held by this Court that the jurisdiction which the High Court exercises under Article 226 of the Constitution is a special and limited jurisdiction. It is not a revisional jurisdiction nor is it an appellate jurisdiction. The High Court also does not exercise any jurisdiction of superintendence under Article 226 as it does under Article 227 of the Constitution. Neither Order 27-A nor Section 141 of the Code therefore, apply literally to proceedings under Article 226 of the Constitution."

8. Now, an application under Article 226 praying for issuance of a writ, direction or order, is a proceeding in a Court. The proceeding contemplated by Section 141, Civil Procedure Code, include the original matters in the nature of the suit as has been laid down by the Privy Council in Thakur Prasad's case, (1895) ILR 17 Allahabad 106 (PC) (Supra). The jurisdiction which the High Court exercises under Article 226 is an original

<sup>2</sup> AIR 1963 SC 946

<sup>3</sup> AIR 1957 Cal 702

jurisdiction. Therefore, the writ proceedings are the proceedings of original nature. The jurisdiction which the Court exercises in issuing the writs of certiorari is a civil jurisdiction. We, therefore, hold that the proceedings under Article 226 are the proceedings in the Court of civil jurisdiction. The same view has been taken by the High Court of Andhra Pradesh in the case of *Annam Adinarayana v. State of Andhra Pradesh*<sup>4</sup>, Mr. Chhaya argued that the High Court in issuing writ under Article 226 exercises extraordinary jurisdiction. According to Mr. Chhaya, when the High Court exercises this extraordinary jurisdiction to issue writ under Article 226, it is not a Court of Civil Judicature. Article 226 provides a remedy for the enforcement of rights. The source from which the authority is derived to issue writ for enforcement of right is not relevant for the purpose of determining the nature of jurisdiction which the Court exercises when issuing writs. When the High Court exercises the power to issue a writ of certiorari (that is the writ with which we are concerned in this case), it exercises civil jurisdiction and the High Court is a Court of civil judicature. Mr. Chhaya relied upon a decision of the Division Bench of this Court in *Ramchandra Nihalchand Advani v. Anandilal Bapalal Kothari*<sup>5</sup>, and particularly on the following observations of Raju J., at p. 637 (of Guj LR) : (at p. 22 of AIR) :

" The expression 'Court of Civil Judicature :' is not defined. But it may have three different meanings :

(1) A Court, (whether appellate or otherwise) administering justice in matters relating to enforcement of civil rights or to suits of a civil nature within the meaning of Section 9 Civil Procedure Code.

(2) A Court, whether appellate or otherwise, administering justice generally in civil

matters.

(3) A Court, whether appellate or otherwise, administering justice in any type of civil matters.

The scheme of the Civil Procedure Code, and, in particular Section 9 of that Code show that the first of the above definitions is more appropriate for purposes of the Civil Procedure Code, otherwise Caste Panchayats would be Courts of Civil Judicature. If the first meaning is given to the expression 'Court of Civil Judicature', then High Courts dealing with writ petitions would not be Courts of Civil Judicature, because writs are not civil rights out rights created by the Constitution. A civil suit does not lie for the issue of a writ. Although the High Court is a Court of civil judicature, when deciding certain matters, it is not a Court of civil judicature when deciding writ petitions. If the High Courts when deciding writ petitions are not Courts of civil judicature for purposes of Civil Procedure Code , then Order 1, Rule 1 of Civil Procedure Code, would not apply to the procedure of writ petitions. Section 141 Civil Procedure Code , provides that the procedure provided in that Code as regards suits shall be followed as far as it can be made applicable in all proceedings in any Court of Civil Judicature" . With respect, we cannot agree with these observations. Article 226 of the Constitution of India provides for a writ or order or direction for the enforcement of fundamental and statutory rights. If the rights that are enforced by the issuance of a writ under Article 226 of the, Constitution are civil rights, the Court exercises civil jurisdiction and the High Court is a Court of civil jurisdiction. Mr. Chhaya submitted that this decision being a decision of the Division

<sup>4</sup> AIR 1958 And Prad 16

<sup>5</sup>1961-2 Guj LR 635 : ( AIR 1962 Guj 21)

Bench is binding on us. Now, in that case Raju, J., has observed at p. 638 (of Guj LR) :  
(at p. 23 of AIR) as under :-

" Assuming that when deciding writ petitions, High Courts are Courts of Civil Jurisdiction, it must be noted that in the Civil Procedure Code there are special provisions relating to the procedure in High Court. Section 122, Civil Procedure Code provides that High Courts may make rules regulating their own procedure and may by such rules, annul, alter, or add to all or any of the rules in the First Schedule ..... The High Court has made special rules relating to the procedure in writ petitions . . . The rules framed by the High Court would therefore, supersede the rules under the Civil Procedure Code. Rules of procedure in the matter of writs would, therefore, be governed by the Special Rules relating to writ petitions framed by the Bombay High Court and not by Order 1, Rule 1 of the Code of Civil Procedure" .

In the said case Mehta, J., delivered a separate judgment and had observed at p. 642 (of Guj LR) : (at p. 25 of AIR) that :-

" I would like to add a few words of my own in regard to the preliminary point. I agree in the main conclusion that for vindicating every right or claim a separate petition should be made. I also agree that Order 1, Rule 1 of Civil Procedure Code code not apply to writ petitions by reason of the rules made Court" .

Thus, it is clear that the observations of Raju, J., that the High Court when it exercises power under Article 226 is not a Court of Civil Judicature are obiter. The Division Bench had held that Order 1, Rule 1 of the Civil Procedure Code did not apply to the writ proceedings because the High Court had framed its rules for filing a writ application and the writ application was governed by the said Rules. Admittedly, no rules have been framed by the High Court as to what is to happen in a case when the petitioner dies during the pendency of the writ application. We, therefore, hold that the provisions of Rules 1 and 2 of the Order 20 will apply to the writ proceedings in the High Court by virtue of Section 141 of the Civil Procedure Code.

9. The next question is whether the right to sue survives in the present case to the heirs and legal representatives of the original petitioner. The expression " right to sue" means the right to obtain the reliefs which the deceased has prayed for and that is how the expression was construed in the case of *Gopal Ganesh Abhyankar v. Ramchandra Sadashiv*<sup>6</sup>, In the present case, the reliefs which are prayed for are to quash the order of reversion dated April 10, 1962 passed by the State and for a declaration that the petitioner continued in the service as an officiating Deputy Superintendent of Police. The present petitioners, that is, the heirs and legal representatives of the deceased Ibrahimbhai Chhipa, can ask for relief for quashing the order of reversion dated 10th April 1962 as they are the persons interested in the estate of the deceased. If the order of reversion is null and void and therefore, of no legal effect, the deceased was entitled to his salary as Deputy Superintendent of Police. After his

<sup>6</sup>(1902) ILR 26 Bom 597 (603)

death, his heirs-the present petitioners would be entitled to recover the amount of that salary. In respect of the second relief, Mr. Daru conceded that present petitioners cannot claim the same. Mr. Chhaya contended that the existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226 of the Constitution and that the legal right that can be enforced under Article 226 of the Constitution must ordinarily be the rights of the petitioner himself and for this Mr. Chhaya relied upon a Supreme Court case of *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal*<sup>7</sup>, The contention of Mr. Chhaya was that the right to obtain the relief of a declaration that the order dated 10th April 1962 was invalid and ineffective and a writ for quashing the said order, was a personal right of the deceased Ibrahimbhai. The heirs, that is, the present petitioners, had no personal right to obtain such a relief. Mr. Daru on the other hand contends that that they have such a right and relies on the following passage from the *Judicial Review of Administrative Action* by S.A. de-Smith 1959 Edition at p. 310 :

" Whereas nearly all the cases on prohibition have arisen out of proceedings originally instituted before Courts *stricto sensu*, the locus standi required, of an applicant for

certiorari has often been the subject of consideration in cases arising in the general field of administrative law. But most of the decisions have failed to provide a full exposition of the relevant principles, and many of the dicta are ambiguous. Moreover, it has never been clearly settled how far the rules relating to prohibition are applicable to certiorari.

Until recently there was a wide spread impression that locus standi was confined to persons with a direct interest in the subject-matter of the impugned order. But in only one case had it expressly been held that a stranger could have no locus standi and there were numerous dicta supporting the contrary view. These dicta have now been powerfully reinforced by the Court of Appeal. It is thought that the present law may properly be stated as follows. Certiorari is a discretionary remedy, and the discretion of the Court extends to permitting an application to be made by any member of the public. A person aggrieved i.e., one whose legal rights have been infringed or who has any other substantial interest in impugning an order, may be awarded a certiorari ex debito justitiae if he can establish any of the recognized grounds for quashing; but the Court retains a discretion to refuse his application if his conduct has been such as to disentitle him to relief. Only in exceptional circumstances (which have yet to arise in a reported case) will the Court exercise its discretion in favor of an applicant who is not a person aggrieved" .

Mr. Daru also relies on the decision of a Division Bench of this Court in Special Civil Appln, No. 638 of 1965, D/-7-9-1965 (Guj), by Miabhoy (as he then was) and M.U. Shah, JJ. in that case an application was filed under Articles 226 and 227 of the Constitution of India by the petitioners who were operating tramway service and stage carriage service on the two routes between Wadhwan City and Suvendranagar. The Regional Transport Authority granted a temporary permit to the Gujarat State Road Transport Corporation to carry operation of two stage carriages between Wadhwan trolley station and Surendranagar Junction. It was argued on behalf of the Gujarat State Road Transport Corporation that no existing legal rights of the petitioners was infringed by the impugned order and the petitioners in that case had no locus standi to file the petition and seek the relief of certiorari. The granting of temporary stage permit to the Gujarat State Road Transport Corporation was challenged on the ground that as a result of the operation of

<sup>7</sup> AIR 1962 SC 1044

the carriages by the Gujarat State Road Transport Corporation, the petitioners were put to monetary loss. The Division Bench, after considering the law and various decisions on the point, came to the conclusion that the issue of a writ of certiorari was discretionary and for the issuance of a writ, a distinction did exist between the stranger and an aggrieved party. The Division Bench further held that in both the cases a petition for a writ of certiorari is maintainable, and as the petitioners in that case claimed that they suffered pecuniary loss by virtue of the impugned order it held that the petition filed by them was maintainable. Relying on the aforesaid two authorities, Mr. Daru contends that the order of reversion dated 10th April 1962 resulted in pecuniary loss to the original petitioner and after his death the present petitioners are entitled to the estate of deceased Ibrahimhai Chhipa and hence the right of the present petitioners was also affected and therefore, they were the aggrieved parties. In our opinion, there is great force in this argument of

Mr. Daru and we accept the same. It cannot be denied that the present petitioners are the aggrieved parties. They are entitled to inherit the estate of the deceased. If the order is declared to be null and void, the present petitioners will be entitled to recover the salary due to the deceased Ibrahimhai Chhipa. The Supreme Court decision in *Calcutta Gas Co. (Proprietary) Ltd.*, AIR 1962 Supreme Court 1044 (supra), on which Mr. Chhaya relies merely says that person claiming relief must have "ordinarily a personal and individual right". The word "ordinarily" is important. In this case, it cannot be said that the present petitioners have no personal or individual right to enforce. After the death of the original petitioner, they are the persons who are entitled to his estate and the right of the deceased to recover the salary vests in them. Mr. Chhaya next relies on a decision of the Madras High Court in *Vridhachalam v. State of Madras*<sup>8</sup>. In that case the petitioner was a Government servant who was dismissed from the service after a departmental inquiry. The Government servant thereupon filed a writ petition in the High Court praying for the quashing of the order of dismissal on the ground that the authorities had not followed the procedure and the order was opposed to the principles of natural justice and against the provisions of Article 311 of the Constitution. After filing the petition, he died and his legal representatives were brought on record. The maintainability of the writ petition by petitioner's legal representatives was challenged and the Court held that the relief sought was purely personal to the delinquent officer and such a personal right, which really involved the continuance in service or otherwise of a person, would not survive to the legal representatives. Unless the person had a legal right, he could not seek to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India. It was further held that the relief sought therein namely to quash the order of dismissal and restore him to his rights in the service of the State was a personal right. The Court took the view that the Court can only quash the order if it comes to the conclusion that the order violated Article 311 of the Constitution but the charges that were framed against the delinquent officer did not stand wiped out. The legal representatives of the delinquent officer had to file a fresh suit 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 the office. According to the decision, the issue of writ was only sought as a step towards further legal steps which the legal representatives of the deceased officer proposed to take. We have already held that the legal representatives of the delinquent officer are aggrieved party and they have right to maintain the petition under Article 226 of the Constitution of India. The legal representatives of the delinquent officers have also a right to obtain a declaratory decree, namely, that the order of

<sup>8</sup> AIR 1966 Mad 260

reversion is null, void and ineffective as it offended the provisions of Article 311 of the Constitution. It cannot be said that in all cases the issue of a writ of such a nature is a step towards further legal steps which the legal representatives of the deceased officer proposed to take and it is not such a case as far as the facts of this petition are concerned for the reasons to be stated hereinafter. In the circumstances we hold that the right to sue survives and the petitioners have the right to maintain the petition.

10. Now, coming to the merits of the case, the original petitioner was served with a show cause

notice on December 28, 1961. The show cause notice was served under the signature of Mr. H.K. Khan, Deputy Secretary to the Government of Gujarat, General Administration Department. The original petitioner had replied to this show cause notice on March 24, 1962 and the reply was addressed to the Chief Secretary to the Government of Gujarat, General Administration Department. The advance copy of this reply was also forwarded to the Chief Secretary to the Government of Gujarat and that copy was received by the Government on March 26, 1962. The order reverting the original petitioner to the post of Police Inspector was passed on April 10, 1962. The original petitioner had appealed to the Governor on April 21, 1962. By order dated December 10, 1962, the original petitioner was awarded a punishment of censure. He was censured for the irregularities which were detailed in the said show cause notice dated December 28, 1961. The original petitioner received a letter from the Deputy Secretary to the Government of Gujarat, Home and Civil Supplies Department that the appeal to His Excellency the Governor of Gujarat against the order of reversion from the post of the Deputy Superintendent of Police to that of Police Inspector was not maintainable on the ground that he was reverted for the reason of his unsuitability to the post of Deputy Superintendent of Police. The allegation of the original petitioner was that the order of reversion was passed as a punishment for misconduct mentioned in the show cause notice dated December 28, 1961. According to the original petitioner, the impugned order of reversion put a stigma on the competency and integrity and affected his future right of promotion in the service and that the order was passed without hearing and in contravention of the procedure laid down in R. 55 of the Bombay Civil Services (Classification Control and Appeal) Rules and Article 311 of the Constitution. For the aforesaid reasons, the original petitioner contended that the impugned order of reversion dated April 10, 1962 was null, void and ineffective. The order of reversion Ex. 'C :' dated 10th April 1962 runs as follows :-

" Shri I.B. Chhipa, officiating Deputy Superintendent of Police (on leave) is reverted as Police Inspector with immediate effect." The order of reversion does not give any reasons why he was reverted. The respondent contends that the order of reversion was not passed as a punishment and the same had no relation at all with the show cause notice issued to the original petitioner and the action taken there under. According to the respondent, the reversion was effected as the petitioner was not found to be fit for the post by the Selection Board and for this purpose the respondent relied upon a letter written by the Inspector General of Police to the Chief : ' Secretary to the Government of Gujarat which is as follows :

" My dear Isvaran,

I.B. Chhipa, who was Deputy Superintendent of Police at Morvi before he went on leave, has now intimated to me that he wants to rejoin duties and a posting order be issued to him. I forward herewith a letter received from him.

2. You are aware of the circumstances under which he proceeded on leave and Govt. have also issued to him a Show Cause Notice for reversion vide GAD letter. No DSP 1081/C-9718-K dated 28-12-61. Apparently, no further action has been taken on this because Chhipa has not submitted his reply to Government. In view of the fact that the charts

against him are still under the consideration of the Government, I do not recommend his re-posting as Deputy Superintendent of Police.

3. Incidentally, I may mention here that the Selection Board of D.I.Gs. which met in February this year has reclassified him not fit. In the circumstances, may I request you kindly to move Government to issue immediate orders reverting him as Police Inspector to enable me to give his orders of posting as Police Inspector.

Yours Sincerely,

Sd/- J.D. Nagarvala" .

The letter refers to the fact that the inquiry was pending against the original petitioner. The original petitioner had intimated his willingness to join his duties and the question was of issuing the posting order to him. The Inspector General of Police opined that as the charges against the original petitioner were under consideration of the Government, he did not recommend his posting as Deputy Superintendent of Police. This was one of the circumstances, which led the Inspector General of Police to move the Government to issue immediate orders reverting him as Police Inspector. Mr. Daru submits that this letter unequivocally suggests that the main object with which the order of reversion was passed was to facilitate the Departmental Enquiry. No doubt a reference is made in the letter to the unsuitability of the original petitioner for the post of the Deputy Superintendent of Police; but that was not what mainly actuated his superior in ordering his reversion. Mr. Daru further contends that instead of suspending the original petitioner during the course of inquiry against him, which is normally done, a resort was taken in this case to passing an order of reversion and that order of reversion in such circumstances imposed a penalty and admittedly in this case the order was passed without hearing the original petitioner. The order of reversion contends Mr. Daru, therefore, contravenes the provisions of Article 311 as no reasonable opportunity was given to the original petitioner to defend himself and therefore, was void and ineffective. Mr. Daru relies on the decision of the Supreme Court in *P.C. Wadhwa v. Union of India*<sup>9</sup>, The present case is similar to the case of P.C. Wadhwa, wherein the Supreme Court had held that the order was by way of penalty. There is much force in this argument of Mr. Daru. When any departmental enquiry is being held against a person, the usual and straightforward course would be to suspend him and not to resort to dubious course of reverting him as has been done in this case. The punishment that has been inflicted on the original petitioner for his misconduct was only to censure him. His right to the post of Deputy Superintendent of Police was affected. Mr. Chhaya contends that the order of reversion was passed only because he was found unfit by the Selection Board. This argument of Mr. Chhaya cannot be accepted in view of express terms of the letter of the Inspector General of Police to the Chief Secretary to the Government dated 23/26th March 1962. We have discussed the effect of this letter and it is not necessary to repeat the same. It is an admitted fact that the original petitioner was not heard when the order of reversion was passed and therefore, the order of reversion contravenes the provisions of Article 311 of the Constitution as no

<sup>9</sup> AIR 1964 SC 423

reasonable opportunity was given to the original petitioner to defend himself against the action or reversion. We, therefore, held that the order of reversion was passed by way of punishment and without hearing the original petitioner.

11. The next question that arises for our consideration is the relief which the present petitioners are entitled to. Mr. Daru concedes that the relief that " the petitioner remains in service as officiating Deputy Superintendent of Police" cannot be granted as the original petitioner has died and the only relief which he now claims is a writ of certiorari quashing the order of reversion dated 10th April 1962. We have held that the present petitioner, is an aggrieved party and as such entitled to relief asked for by the original petitioner, i.e., a declaration that the order of reversion dated April 10, 1962 is null, void and ineffective. The present petitioners are also entitled to a writ of certiorari quashing the said order. Mr. Chhaya contends on the basis of the decision in AIR 1966 Madras 260 (Supra) that such a declaration would be a step towards further legal steps which the legal representatives of the deceased officer proposed to take and we should not grant such a relief. We cannot accede to this argument. In the said case an order was passed dismissing the delinquent from the service and that order was challenged in the writ proceedings. It was held by the Court that the Court can only quash the order but the charges that were framed against the delinquent were not wiped out. In the instant case, the disciplinary proceedings have come to an end. The original petitioner was censured by the Government for his misconduct and that was the only punishment inflicted on him. The order of reversion dated April 10, 1962 was admittedly passed without hearing the original petitioner. In the circumstances of this case, an order declaring that the order of reversion dated April 10, 1962 is illegal and void and ineffective is itself a substantial relief. Such an order will have a coercive effect and will not necessitate any further proceedings in respect of the charges framed against the original petitioner.

12. For the aforesaid reasons, we declare that the order of reversion dated 10th April 1962 is bad, illegal and void as it contravened the provisions of Article 311 of the Constitution of India and quash the same.

13. This Special Civil Application is allowed with costs. Rule absolute.  
Petition allowed.