

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3236 of 2011

In
C.W.J.C. No. 8918 of 2002

Shanti Devi

.... Petitioner/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Rabindra Kumar, Advocate.

For the Respondent/s : Mr. Sunil Kr. Mandal Sc24

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 22-09-2015 An application has been filed on behalf of the

Additional Director General Vigilance, Bihar for modification of

the order dated 21.07.2010 in the connected writ application,

C.W.J.C. No. 8918 of 2002, which reads as follows:

" I.A. No. 5441 of 2010

Having heard learned counsel for the petitioner as also counsel for the respondents and in view of the fact that the right to sue would still survive even after the death of the original writ petitioner, this Court would allow the prayer for substitution of the legal heirs/ representatives of the sole writ petitioner, who is said to have died on 25.9.2002 during pendency of this writ application.

I.A. No. 5441 of 2010 is accordingly disposed of.

CWJC No.8918 of 2002

Coming to the merits of this case, this Court would find that the prayer of the original writ petitioner, the deceased wife of one Sheonandan Gope, is as follows:-

"1(a) For the direction to the respondents to pay the retirement benefits to the petitioner whose husband Shivnandan Gope is traceless since 7.2.2001.

(c) For the direction to the respondent to immediately pay the matured amount deposited in N.S.S. and Kishan Vikash Patra.

(d) For the direction to the respondent to pay the amount held in saving bank of S.B.I. and Central Bank of India."

Learned counsel for the petitioners, with reference to the aforementioned relief, would submit that there is no dispute that Sheonandan Gope, the husband of the deceased original writ petitioner and the father of the substituted petitioners, was



a teacher of a taken-over high school, namely, Sardar Patel High School, Dewaria, which was partially recognized by the State of Bihar in the year 1962 and was given full recognition in the year 1977. Learned counsel for the petitioners would also submit that subsequently the school, in question, namely, Sardar Patel High School was taken over by the State Government in terms of 1980 amendment (1981 Act) and therefore, the aforesaid Sheonandan Gope became Government servant, who also continued in service of being a teacher of the high school till 1995 when he was transferred to High School, Lakhanpura in the year 1995 and subsequently to Daroga Prasad Rai High School, Saristabad in the year 1996. It is claimed that while Sheonandan Gope was continuing in service in Daroga Prasad Rai High School as an Assistant Teacher, he was sent on deputation for census work and on 7th February, 2001, when he had left his home for joining at deputed place, he had never returned back and is said to be traceless since 7.2.2001. Learned counsel for the petitioners would submit that the petitioners, being the legal heirs, would be entitled for the payment of death-cum-retirement benefit, inasmuch as, it has to be presumed that Sheonandan Gope has died as there is no trace of him for over seven years since 7.2.2001, the date of missing.

This Court would find some revealing features of this case. The date of birth of Sheonandan Gope is 27.11.1943 as recorded in the service book. He had entered in service in a private school on 6.9.1965 and thereafter is sought to have continued in service of the school in Daroga Prasad Rai High School till 7.2.2001 when his retirement was almost in the offing, inasmuch as, he had to retire on 30th November, 2001. The absence of the alleged missing of Sheonandan Gope on 7.2.2001 was in fact reported to the police as claimed by the original writ petitioner by an undated report, which was filed on or after 11.2.2001, has its own characteristic, inasmuch as, it has been stated therein that Mr. Gope was not even in a position to work by himself and was not even to speak.

Be that as it may, the story of Sheonandan Gope missing on 7.2.2001 is said to have brought to the notice of the Officer-in-charge of Gardanibagh police station immediately on or after 11.2.2001 and this writ application was filed on 2.8.2002 claiming that since Sheonandan Gope was missing for almost one and half years, the presumption of his death should be drawn and the family members should be paid their pension. The law envisages a gap of seven years for drawing such presumption and the family members, in fact, would have awaited at least for those seven years but the filing of this writ application, not only for the retirement benefit but also for all other deposits made by him by way of deposit in N.S.S. and K.V.P. and the amount in the State Bank of India, Gardanibagh and Central Bank of India, Rajgir, would really unfold that the family members were not worried for the payments, which they could have got in the event of the death of Sheonandan Gope.

True it is that there is presumption of death in law of a person not being heard after seven years of his date of missing but then such fact has to be asserted by way of a fact finding enquiry. The respondents have to be sure about the death of Sheonandan Gope so as to extend the consequential

benefit to his heirs and legal representative.

In that view of the matter, this Court would direct the Additional Director General, Vigilance of the police department to institute an enquiry for finding out the true state of affairs of the missing/death of Sheonandan Gope. Such an exercise must be got completed by the Ad.D.G., Vigilance within a period of six months from the date of receipt/production of a copy of this order, whereafter, he would submit his findings in his report to the Director, Secondary Education, the controlling authority and the Head of Department of the post of Assistant Teacher in Government High Schools. The resultant consequential action for payment of retrial benefit would be taken by the competent authority only in the light of the findings given by the Ad.D.G., Vigilance.

As with regard to claiming payment of the deposits made by Sheonandan Gope by way of N.S.S. and K.V.P. or in the State Bank of India or Central Bank of India, this Court would leave the matter to be decided by the concerned authority in accordance with the policy/norms under which either succession certificate or the indemnity bond is the usual course for claiming payment of a dead person.

With the aforementioned observation and direction, this application is disposed of."

on the ground that the inquiry entrusted to the Additional Director General (Vigilance) in the circumstances would be beyond the assigned duty of the Vigilance Department and in fact, such inquiry in relation to missing/ death of Sheonandan Gope, the husband of the petitioner, could be carried out by the Crime Investigation Department (C.I.D.) which has a separate cell, namely, Missing Person Squad.

2. Thus, for the reasons mentioned herein, this application and the prayer made therein is allowed and the order dated 21.07.2010 in C.W.J.C. No. 8918 of 2002 is modified to the extent that the inquiry, earlier entrusted to the Additional Director General, Vigilance, shall be carried out by the Missing Person

Squad Wing, C.I.D. The rest of the direction given in the aforesaid order shall remain intact.

3. Let a copy of this order be sent to the Director General of Police for ensuring its compliance by the Missing Person Squad Wing, C.I.D. in letter and spirit.

(Mihir Kumar Jha, J)

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