

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) No. 496 of 2014

Smt. Piya Bala Bahadur,
wife of late Nil Bahadur Chhetri,
resident of Tri-junction,
Amarpur Town,
P.O: Amarpur,
District: Gomati, Tripura.

.....Petitioner.

- Vs -

- 1. The State of Tripura,**
Represented by the Secretary-
to the Government of Tripura,
Public Works Department (R&B),
New Capital Complex,
P.O: Agartala-799010
District: West Tripura, Tripura.
- 2. The Engineer-in-Chief,**
Public Works Department (R & B),
New Capital Complex,
P.O: Agartala-799010
District: West Tripura, Tripura.
- 3. The Executive Engineer,**
PWD (R & B) Division,
Amarpur, P.O: Amarpur,
District: Gomati, Tripura.
- 4. The District Magistrate & Collector,**
Gomati District, Udaipur,
P.O: Radhakishorepur,
Gomati, Tripura.

.....Respondents.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. D.K. Das Choudhury, Advocate
For the respondents : Mr. T.D. Majumdar, Govt. Adocate.
Date of hearing & delivery of Judgment & Order : 31.8.2015.
Whether fit for reporting : **No.**

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

By means of this writ petition, the petitioner has prayed for grant of retiral benefits to her and has also prayed that the order dated 01-09-1995 dismissing her husband Sri Nil Bahadur Chhetri from service be set aside.

2. The undisputed facts are that Sri Nil Bahadur Chhetri, husband of the petitioner, joined as Chowkider in the office of the Engineer-in-Chief of the Public Works Department on 17-05-1982. On 02-11-1992 Sri Nil Bahadur Chhetri proceeded on leave. He availed of Leave Travel Concession (LTC) to visit Haridwar. This leave was sanctioned w.e.f. 02-11-1992 to 01-12-1992.

3. The case of the petitioner is that her husband proceeded towards Haridwar but he never returned back. More than 23 years have elapsed and the petitioner has not heard of her husband and he is presumed to be dead. She, therefore, prays that she should be granted pension and the order of termination which was issued on 01-09-1995 be treated to be *null and void*.

4. The main issue is whether Sri Nil Bahadur Chhetri should be presumed to be dead. Sri D. K. Das Choudhury, learned counsel is right that under Section 108 of the Indian Evidence Act, if the question arises whether a man is alive or not and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive shifts to the person who affirms it.

5. Section 108 uses the phrase “*and it is proved that he has not been heard of for seven years*”. The fact that Sri Nil Bahadur Chhetri has not been heard of for 7 years shall have to be proved by the petitioner in appropriate proceedings. We are of the view that in writ proceedings we cannot decide this fact because the State has not admitted this fact.

6. We, therefore, dispose of this petition with liberty reserved to the petitioner to file a suit before the appropriate Court seeking a declaration that her husband has not been heard of for 7 years and, therefore, be presumed to be dead. We make it clear that if the Court comes to the conclusion that Sri Nil Bahadur Chhetri has not, in fact, been heard of after 02-11-1992 he shall be presumed to be dead and in that eventuality, the order terminating his services has to be treated as *null and void* because there can be no termination of a person who is presumed to be dead. In that eventuality the petitioner shall be entitled to all retiral benefits.

7. We also made it clear that if such a suit is filed within two months from today the learned trial Court shall make an endeavour to dispose of the suit within 6 months from the filing of the suit. We permit the petitioner to file the suit without issuance of notice under Section 80 CPC because this writ petition may be treated as a notice, in terms of Section 80 CPC.

JUDGE

CHIEF JUSTICE

Satabdi/sima