

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11982 of 2017

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1. Saroj Devi W/o late Chandrashekhar Purvey, Resident of Mohalla-Panjiar Toli,
P.s.-Posera, District-Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Education,
Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Vice-Chancellor, L.N.Mithila University, Darbhanga.
4. The Registrar, L.N. Mithila University, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar Jha, Adv.
For the Respondent/s : Mr. S.C. Mishra-SC16
For the University : Mr. Md. Nadim Seraj, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-10-2017

The husband of the petitioner Chandrashekhar Purvey after serving as Peon in U.R.College, Rosera, Samastipur superannuated on 31.03.2008. In February, 2014, he went to Delhi for treatment and while coming back on 16.03.2014, he suddenly became traceless at Mugalsarai Railway Station. After hectic search when her husband could not be traced, her son informed the G.R.P. Police Station, Mugalsarai on 19.03.2014 for necessary action.

2. The contention of the petitioner is that after retirement her husband had been paid all his post retrial dues. Even his pension was paid till November, 2014, but from December, 2014, payment of his pension was stopped. Till date, her husband could not be traced.



3. Under the circumstances noted above, the instant writ petition has been filed by the petitioner for issuance of a direction to the respondents to presume the husband of the petitioner to be dead and make payment of family pension with interest to her since December, 2014.

4. Learned counsel for the petitioner submitted that the petitioner has got no other source of income and is suffering from irreparable loss and injury due to non-payment of family pension by the respondents. He submitted that there is no hope that the husband of the petitioner could be found in future as he was suffering from mental ailment and he might have met with some sort of accidental death.

5. On the other hand, learned counsel for the respondents stated that the prayer made by the petitioner is not tenable in law. They have stated that there cannot be any presumption of death only because the husband of the petitioner is not traceable since 16.03.2014. In absence of any proof regarding death of the employee, family pension cannot be paid to the petitioner.

6. I have heard learned counsel for the parties and perused the record.

7. It would appear from the record that on 19.03.2014 a missing person report was instituted in the G.R.P. Police Station,



Mugalsarai. There is no other material to show that the police came to the conclusion that the husband of the petitioner has died in any accident. The petitioner has not filed First Information Report in any police station in this regard.

8. it would be relevant to note at this stage that Section 108 of the Indian Evidence Act deals with law as to presumption of death.

It reads as under :-

“108. Burden of proving that person is alive who has not been heard of for seven years. — Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.”

9. It would be manifest that Section 108 enables the court under the circumstances stated therein to draw the statutory presumptions that a man is not alive unless contrary is proved. The presumption as to death by reference of Section 108 would arrive only on a lapse of seven years and not before that.

10. Further, according to Section 107 of the Indian Evidence Act, when the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it. Thus, by virtue of Section 107 of the Indian Evidence Act, the burden of proving that the person is dead shifts on the person who affirms it. The presumption raised



under Section 108 is a limited presumption and is confined only to presuming the factum of death of the person, who has not been heard of for seven years, by those, who would normally have heard of him if he had been alive. Under such circumstance, the burden of proving that he is alive is shifted to the person who affirms it.

11. However, an occasion for raising the presumption would arise only when the question is raised before a court. So far as present case is concerned, the case of the petitioner is that her husband has not been heard of since 16.03.2014. Thus, admittedly, his whereabouts are not known for less than four years. Under such circumstance, there cannot be any declaration of presumption of death by any court.

12. In view of the discussions made above, in my considered opinion, no mandamus can be issued for grant of family pension to the petitioner by presuming her husband to be dead at this stage.

13. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03-11-2017
Transmission Date	

