

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20514 of 2013

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MINU DEVI W/O LATE AJAY KUMAR R/O VILL. - MAY - DARIAPUR,
P.O. BARIARPUR, P.S. MUNGER MUFFASIL, DISTRICT - MUNGER

... .. Petitioner/s

Versus

1. The State Of Bihar, Through The Home Secretary, Govt. Of Bihar, Patna
2. Director General Cum Inspector General Of Police, Bihar, Patna
3. Deputy Inspector General Of Police, Munger Range, Munger
4. Superintendent Of Police, Khagaria

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Yash Singh
For the Respondent/s : Mr. JAISHANKAR BARNWAL

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 25-01-2018

This application under Article 226 of the Constitution of India has been filed for setting aside the order passed by Superintendent of Police, Khagaria, dated 24.03.2007 by which late husband of petitioner was dismissed from service as constable with effect from 10.04.2007.

Briefly stated the fact of the case is that husband of petitioner was appointed as constable in Bihar Police on 02.01.1985 in the district of Siwan wherefrom he was transferred to Gaya and after serving in various districts husband of petitioner was finally posted at Khagaria district.

Husband of petitioner was married to one Rekha Devi in the year 1986 and he has two sons and one daughter from Rekha Devi. However, Rekha Devi died in a motorcycle



accident on 13.05.2002 and thereafter, petitioner was married to late Ajay Kumar on 19.05.2003 and a son was born from the said wedlock on 08.08.2004, namely, Nishant Kumar.

The husband of the petitioner was posted in police line Khagaria in the Service Book Section and was residing with his family in a rented house of one Lalu Singh at village-Sanhoul, Gulabnagar, Khagaria.

The husband of petitioner left his residence on 02.03.2005 at about 10 A.M., for Khagaria Police Line but never returned thereafter. All efforts and attempts were made to search her husband but no trace of him could be found. A written complaint at Chitraguptanagar Police Station at Khagaria district was filed with respect to missing of her husband on 06.03.2005. A complaint case under Sections 364 and 302 of the Indian Penal Code was also filed apprehending his kidnapping and murder. But he could not be recovered or traced till date. Petitioner made complaint to the Superintendent of Police, Khagaria, several times to know about her missing husband but she could not gather any information regarding her missing husband.

A counter affidavit has been filed on behalf of respondent no. 4 in which it has been stated that petitioner's



husband was absent from duty since 02.03.1985 without any information. On account of unauthorized absence and leave without any information, a show cause notice was issued to the husband of petitioner and he was put under suspension with effect from 07.03.2005, yet husband of the petitioner did not appear or file any show cause and thereafter his suspension allowance was also stopped by order dated 10.12.2005. It has been further stated in the counter affidavit that the Complaint Case No. 254 C of 2005 filed by the petitioners was sent to the Officer-in-Charge of Chitraguptanagar, Khagaria, but inspite of that no trace of him could be found.

A departmental proceeding was initiated against him and inspite of issuance of several notices dated 31.10.2006, 25.11.2006 and 08.12.2006, he did not appear and thereafter, Superintendent of Police, Khagaria, sent an official person to the native village of husband of petitioner and as per report of the said messenger A.S.I. Raj Kishore Singh, who enquired from the villagers regarding husband of the petitioner but no trace of husband of petitioner could be found. The departmental proceeding was conducted ex parte and second show cause notice was served upon the nephew of the petitioner and thereafter order of dismissal was passed on 24.03.2007.



Husband of the petitioner went traceless since 02.03.2005 and inspite of all efforts being made by petitioner as well as police he could not be traced and nothing could be heard about him thereafter and as such, in his absence no departmental proceeding could have been initiated against him. No notices of departmental proceeding could be served upon husband of petitioner as he went missing since 02.03.2005, as such, no proceeding could have been initiated against him for his absence. Pursuant to complaint case filed by the petitioner the case was referred to police under Section 156(3) of the Code of Criminal Procedure but even after all efforts made by police the husband of the petitioner could not be traced and his whereabouts could not be ascertained, as such, departmental proceeding could not have been continued against the missing person.

The counsel for the petitioner has relied upon a judgment and order of this Court as reported in **2011(4) PLJR 554 (Renuka Rani v. The State of Bihar & Ors.)** and paras-11 and 12 are extracted below :-

“11. From a bare perusal of order dated 8.2.2002 (Annexure-9) passed in C.W.J.C. No. 1544 of 2002 it becomes quite obvious tht at the time of hearing of the said writ petition all the parties to the said writ petition had admitted that the husband of the petitioner was an employee of the State Government and was traceless with effect from 7.5.1994 information of which was given to



Shashtri Nagar Police Station also. Even learned counsel for the State had stated before that court that the Superintendent of Police had also submitted his report (Annexure-9 to the said writ petition) stating that petitioner's husband was traceless with effect from 7.5.1994. After noting the aforesaid position, the said court considered the legal aspect of the matter as per Section 108 of the Evidence Act as well as the Government Circular dated 24.2.1990 with respect to such situation and held that the burden of proving that he was alive would be on the person who was claiming him to be alive as the husband of the petitioner had not been heard of for more than seven years and hence the husband of the petitioner can be treated as dead and direction can be issued to the respondents to pay the legal dues of her husband to the petitioner. Thereafter the said writ petition was disposed of directing the authority concerned to consider the aforesaid aspect of the matter and pass necessary order with respect to the grievances of the petitioner for payment of legal dues to her within a period of three months from the date of receipt/production of a copy of that order. It was also made clear that till the legal dues were not paid to the petitioner no coercive action shall be taken against her for vacating the premises where she was living at that time and the petitioner was also given liberty to file an application before the authority concerned for appointment on compassionate ground."

"12. In view of the aforesaid order of Bench of this court and the stand taken by the respondents themselves in that case, it is quite apparent that the husband of the petitioner admittedly became traceless from 7.5.1994 and even the Officer-in-Charge of Shashtri Nagar Police Station submitted his report finding that he was traceless with effect from 7.5.1994. In the said circumstances the said court rightly applied the provision of Section 108 of the Evidence Act and the circular of Government dated 24.2.1990 holding that when nothing was heard of the husband of the petitioner since more than seven years, the burden of proving that he was alive was shifted to the persons who claimed him alive but in that writ petition the authorities themselves did not claim him to be alive rather admitted that he was traceless since 7.5.1994. Hence, the husband of the petitioner was rightly presumed to be dead and the claim of the petitioner was directed to be decided by the authorities concerned accordingly."

It is further stated that husband of the petitioner is



still traceless and whereabouts of him could not be known after 02.03.2005 and as per Section 108 of the Evidence Act, if any person goes missing and whereabouts of him cannot be heard for seven years, it is presumed that such person is dead, therefore, it can be presumed that husband of petitioner is now no more and petitioner is entitled for terminal benefits as granted to a widow after death of a Government employee. In view of fact that husband of petitioner is missing since 02.03.2005, and no notice could be served upon him and therefore whole proceeding initiated by the department against the petitioner for unauthorized absence could not have been continued in his absence. Accordingly, the order dated 24.03.2007 passed by the Superintendent of Police, Khgaria, dismissing the service of the husband of the petitioner with effect from 10.04.2007 cannot be sustained in the eye of law and is set aside. The petitioner being widow of late constable Ajay Kumar is entitled to all post retirement benefits including gratuity and family pension and other terminal benefits due to her. Superintendent of Police, Khagaria, (Respondent no. 4), who is the pension sanctioning authority, is directed to issue sanction order for family pension, gratuity, terminal benefits, viz. GPF, leave encashment and others in the name of petitioner



and necessary orders in this regard be sent to the Accountant General, Bihar, Patna, so that he could authorize the family pension and gratuity at the earliest preferably within a period of three months from the date of production/receipt of a copy of this order passed by this Court.

(S. Kumar, J)

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CAV DATE	NA
Uploading Date	
Transmission Date	

