

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14838 of 2019

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Umal Devi W/o Jai Prakash Paswan Vill.- Bochahi, P.s.- Mufassil, Distt.-
Munger

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Bihar, patna
2. The District Magistrate Munger
3. The Superintendent of Police Munger
4. The District Prosecution Officer Jamui
5. The Accountant General Bihar at Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar Ojha, Advocate
		Ms. Nutan Mishra, Advocate
For the Respondent/s	:	Mr. Anil Kumar, AC to SC 8

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 29-07-2019

Heard Mr. Ajit Kumar Ojha, learned counsel for
the petitioner and Mr. Anil Kumar, learned AC to SC 8.

2. The petitioner has approached this Court for a
direction to the respondents to pay the retiral dues/family
pension to the petitioner because her husband went
missing and has remained traceless for more than seven
years by now.

3. It appears from the records that the husband
of the petitioner went missing on 23.11.2004, when he
went out of house to attend the call of nature. A FIR vide



Munger Muffasil Sadar P.S. Case No. 78/2010 was registered for the offences under Sections 302, 201/34 read with Section 120(B) of the Indian Penal Code. The aforesaid case was investigated and when no clue was found, a final report was filed in the aforesaid case as mistake of fact.

4. In fact, there is an unhappy wording in the police report and the report ought to have been that there is no clue of the person concerned and therefore no accusation could be levelled against anybody.

5. In any view of the matter, because of the husband of the petitioner not attending his office, a show cause notice was issued to him to explain as to the reason for his unauthorized absence. Ultimately, without applying their mind to the facts of the case, the authorities concerned dismissed the husband of the petitioner from service for his unauthorized absence.

6. The petitioner has brought on record various news clippings in support of the fact that her husband had gone missing and every effort was made to recover him



but to no avail. It is under these circumstances that the petitioner has sought a direction to the respondents for making available the retiral dues/family pension to the petitioner for whom the only bread earner was her husband, who is presumed to be dead for his not having been heard of for more than seven years.

7. The husband of the petitioner worked as Clerk-cum-Typist in the District Prosecution Office, Munger.

8. Learned counsel for the State in a fair manner has drawn the attention of this Court to the fact that various circulars of the Government have been issued mandating that dependents of those Government servants who have remained traceless for seven years may be considered for appointment on compassionate ground. Many a times, the Government on the basis of such circulars have considered the claim of such persons who have sought compassionate appointment in place of such employees who have become traceless.

9. Section 108 of the Evidence Act provides that whenever a question whether a man is alive or dead arises



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. In other words, Section 108 of the Evidence Act enables the courts under the circumstances to draw a statutory presumption that a man is not alive unless contrary is proved by the opposite party.

10. However there still remains few issues which cannot be presumed *viz.* the date of death; and the manner of death.

11. The presumption as to death by reference to Section 108 of the Evidence Act arises only on lapse of seven years. The occasion for proving that a man is dead arises only when a presumption is made with respect to such person about his death. Otherwise, there is no presumption generally. The husband of the petitioner has not been heard of for seven years and the case with respect to the possible killing of the husband of the petitioner ended in a final report intimating mistake of fact



but not affirming that the husband of the petitioner/the victim is alive or can be found. In view of the aforesaid finding of the police after thorough investigation, the only presumption after seven years of the husband of the petitioner going missing is that he is no longer in existence.

12. "Death" is required to be construed and understood not only under a circumstance where a person has died as a natural consequence or in normal course of life but also by virtue of presumption laid down by the legislature in the Evidence Act, which presumption gets activated after seven years of the missing of a person. There is no dispute as of now that the husband of the petitioner is not heard of for all these (more than seven) years.

13. Thus, the respondents would be under an obligation to pass an order for providing the family pension and other benefits to which widow of an employee is entitled.



14. The petitioner under the aforesaid circumstances is directed to make a detailed representation along with a copy of this order to the District Magistrate, Munger (respondent no. 2) within a period of two weeks who after verifying necessary facts from the Superintendent of Police, Munger as also from the District Prosecution Office, Jamui shall pass/caused to be passed a reasoned order in accordance with law making available all the dues to which a widow of the deceased employee is entitled to. The aforesaid order shall be passed within a period of six weeks of the receipt/production of a copy of this order.

15. With the aforesaid direction/observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
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Transmission Date	

