

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6518 of 2018**

Phuliya Bai Bandichhor W/o Shri Ram Narayan Bandichhor, R/o Ward
No. 12, Aama Nala Daphai, Haldi Bari, Chirimiri, District Koriya,
Chhattisgarh

---- Petitioner**Versus**

1. South Eastern Coalfield Limited Through Chairman Cum Managing
Director, Seepat Road, Bilaspur, District Bilaspur, Chhattisgarh
2. Chief General Manager NCPH Colliery, Chirimiri Area, Po - Haldibari,
Chirimiri, District Koriya, Chhattisgarh
3. Deputy General Manager, NCPH Colliery, Chirimiri Area, Po -
Haldibari, Chirimiri, District Koriya, Chhattisgarh
4. Regional Hospital NCPH Colliery, Chirimiri Area, District Koriya
Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Jitendra Pali, Advocate
For SECL	:	Mr. V. R. Tiwari, Sr. Advocate with Mr. Atul Kesharwani, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30.09.2021**

1. Aggrieved by the order of Termination dated 29.04.2015 the present writ petition has been filed.
2. The brief facts relevant for adjudication of the present writ petition are that the husband of petitioner was an employee under the respondents and was working as a Sweeper at Regional Hospital, NCPH Colliery, Chirimiri, District Koriya. It is said that on 04.05.2013 the husband of petitioner went to visit a temple of Virasini Devi at

Virsinghpur, District Umariya and since then he has been missing. The family members waited and searched for the employee at all known locations and houses and finally an FIR was lodged on 06.05.2013 at Police Station Pali, District Umariya. The whereabouts of the husband of petitioner is not known since then and till date his whereabouts are not known.

3. The respondent authorities, on the other hand, considering the absence of the husband of petitioner for a considerable period of time decided to have a disciplinary proceedings initiated against him under the standing orders governing the field.
4. The petitioner herein had already intimated the respondent authorities much before initiation of the disciplinary proceedings itself in respect of her husband going missing and the FIR having been lodged. In spite of this intimation and the FIR being brought to the notice of the respondents, they issued a charge sheet to the employee, Inquiry Officer and Presenting Officer were appointed, a departmental inquiry was conducted and finally on 29.04.2015 the termination order was passed.
5. Counsel for the petitioner submits that meanwhile the petitioner, apart from intimating the employer about the missing of her husband and lodging of FIR, had also brought this fact to the notice of the Inquiry Officer and had prayed for deferring the enquiry proceedings. However, the request of the family members of the employee was not answered. Thereafter in 2017, the petitioner moved an application for grant of pension and other benefits payable to the family which again was not answered by the respondents which has led to the filing of the present writ petition.

6. It would be relevant at this juncture to take note of the circular of the Govt. of India, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners' Welfare dated 25th June, 2013 which for ready reference the contents of the said circular are being reproduced hereinunder:

“F.No.I/17/2011-P&PW (E)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Pension & Pensioners' Welfare

Lok Nayak Bhawan,
Khan Market, New Delhi
Dated: 24th June, 2013

OFFICE MEMORANDUM

Sub: Grant of family pension and gratuity to the eligible member of the family of an employee/pensioner/family pensioner reported missing - consolidated instructions - regarding.

The provisions regarding grant of gratuity and family pension to the members of families of the deceased Government servants/pensioners who were appointed on or before 31st December, 2003 and who are/were born on pensionable establishments are contained in Rules 50-54 of the Central Civil Services (Pension) Rules, 1972. The instructions regarding grant of family pension and gratuity under these rules to the eligible member of the family of an employee reported missing had been issued vide this Department's earlier office memorandum No. I/17/86-P&PW, dated 29th August, 1986. Clarifications/amendments in this regard were issued vide OM No. 1/17/86-P&PW, dated 25th January, 1991 and 18th February, 1993 and OM No. 1128/04-P&PW(E) dated 31st March, 2009 and 2nd July, 2010, O.M. of even number, dated 14th September, 2011 and OM No. I/17/2010-P&PW(E), dated 2nd January, 2012.

2. A reference has been received in this Department to clarify whether in a situation where SHO states that FIR is not required to be lodged in the case of person gone missing, the eligible member of the family can be granted family pension. The matter has been examined in consultation with the Ministry of Home Affairs. Section 154 (1) of the Criminal Procedure Code mandates filing of an FIR by the Police authorities on a report received of the commission of a cognizable offence. A missing person per se does not point to commission of a cognizable offence. In view of this, cognizance of a person's disappearance can be taken by the Head of Office on the basis of an authenticated Daily Diary (DD)/General Diary Entry (GDE), filed by the Police authorities concerned, as per the practice prevalent in that State/UT.

3. It has now been decided to issue consolidated instructions in supersession of previous instructions regarding grant of family pension to the eligible members of family of the employee/pensioner/family pensioner reported missing and whose whereabouts are not known. It includes those kidnapped by insurgents/terrorists but does not include those who disappear after committing frauds/crime etc.

4. In the case of a missing employee/pensioner/family pensioner, the family can apply for the grant of family pension, amount of salary due, leave encashment due and the amount of GPF and gratuity (whatever has not already been received) to the Head of Office of the organisation where the employee/pensioner had last served, six months after lodging of Police report. The family pension and/or retirement gratuity may be sanctioned by the Administrative Ministry/Department after observing the following formalities:-

(i) The family must lodge a report with the concerned Police Station and obtain a report from the Police, that the employee/ pensioner/ family pensioner has not been traced despite all efforts made by them. The report may be a First Information Report or any other report such as a Daily Diary/General Diary Entry.

(ii) An Indemnity Bond should be taken from the nominee/dependants of the employee/pensioner/family pensioner that all payments will be adjusted against the payments due to the employee/pensioner/family pensioner in case she/he appears on the scene and makes any claim.

5. In the case of a missing employee, the family pension, at the ordinary or enhanced rate, as applicable, will accrue from the expiry of leave or the date up to which pay and allowances have been paid or the date of the police report, whichever is later. In the case of a missing pensioner/family pensioner, it will accrue from the date of the police report or from the date immediately succeeding the date till which pension/family pension had been paid, whichever is later.

6. The retirement gratuity will be paid to the family within three months of the date of application. In case of any delay, the interest shall be paid at the applicable rates and responsibility for delay shall be fixed. The difference between the death gratuity and retirement gratuity shall be payable after the death of the employee is conclusively established or on the expiry of the period of seven years from the date of the police report.

7. Before sanctioning the payment of gratuity, the Head of Office will assess all Government dues outstanding against the employee/pensioner and effect their recovery in accordance with Rule 71 of the CCS (Pension) Rules, 1972 and other instructions in force for effecting such recoveries.

8. The amount of salary due, leave encashment due and the amount of GPF will be paid to the family in the first instance as per the nominations made by the employee/pensioner on filing of a police report and submission of an indemnity bond as indicated above.

9. The benefits to be sanctioned to the family/nominee of the missing employee/pensioner will be based on and regulated by the emoluments drawn by him/her and the rules/orders applicable to him/her as on the last date he/she was on duty including authorised periods of leave.

10. Formats of separate Indemnity Bonds to be used in the case of missing employees, missing pensioners and missing family pensioners are available at this department's website "

7. A bare perusal of the contents of the circular it is evidently clear that the Govt. of India has taken a policy decision for grant of benefits to the family members in respect of the employees who suddenly go

missing and where a report is lodged in respect of missing of the said person.

8. Learned counsel for the respondents, on the other hand, submits that it is a case where the employee had been unauthorizedly absent for a considerable long period of time and on his absence, the authorities thought of initiating a disciplinary proceeding under the governing standing orders and thereby the charge sheet was issued and a departmental inquiry was conducted. Due steps were taken for making all necessary intimation to the employee even to the extent of making a paper publication. Yet when the employee did not turn up, the respondents concluded the departmental inquiry and took a decision for terminating the services of the employee. Therefore, according to the counsel for respondents, there cannot be said to be any illegality on the part of the respondents in terminating the services of the employee concerned. He further submits that the employee concerned or the petitioner has also not preferred a departmental appeal in spite of knowing the fact that the order of termination is an appealable order and for this reason also the writ petition should not be entertained.
9. Having heard the contentions put forth on either side, the factual matrix of the case as is extracted and available from the pleadings is that the employee concerned went missing since 04.05.2013. FIR in this regard was lodged on 06.05.2013. In the FIR itself it was mentioned that the employee went missing since 04.05.2013. Counsel for respondents also does not dispute the fact that the FIR so lodged by the petitioner was intimated to the respondents and the missing report was also brought to the notice of the Inquiry Officer.

Under the given admitted factual matrix, the point to be considered is “what is the consequence of such a departmental inquiry initiated by the department”.

10. Once when the categorical stand of the family members and which is also evident from the FIR lodged that the concerned employee had suddenly gone missing and his whereabouts were not known to the family members and his availability also was not known at the known sources & locations of the family, any efforts made by the employer in concluding the departmental inquiry even if it is after making necessary paper publication, the same would be only an empty formality for the purpose of concluding the departmental inquiry.

11. The case of petitioner herein cannot be equated with a case where the employee was alive and he was very much within the vicinity of the family members and he deliberately goes on unauthorized leave and also deliberately does not appear at his workplace. In the instant case, the employee concerned was missing. Undoubtedly, his whereabouts were not known and his availability was also not known. In that circumstances conducting of an departmental inquiry would be an empty formality and it would result only one conclusion that of the charge of unauthorizedly absence being proved exparte. There cannot be any other finding and this would otherwise be detrimental to the interest of the family members like in the instant case. It is under these circumstances that the Govt. of India was compelled to issue the circular dated 25.06.2013 which specifically deals with situations of similar nature where the Central Govt. has come up with a policy of ensuring that the family members

of the missing person should not be put to a state of penury or a state of destitute upon the sole earning member of the family going missing. It is under that circumstance, the Union of India decided to issue instructions to all the authorities to ensure providing pension and gratuity amount etc. to the family members. True it is that in the instant case since the employee has been missing for more than 7 years, it is now for the petitioner to approach the concerned Civil Court for getting a decree of civil death in respect of the concerned employee which would entail her claiming for all other consequential benefits. But as of now the petitioner would be entitled for grant of pension in terms of the policy of the Central Govt. for which office memorandum has been issued on 25.06.2013.

12. The fact that the petitioner had brought it to the notice of the employer at the first instance i.e. the FIR dated 06.05.2013 subsequently the intimation to the Inquiry Officer in respect of the missing report, the petitioner herein was helpless in the further proceedings of the departmental inquiry. The decision to proceed with the departmental inquiry therefore cannot be said to be a fair and reasonable step taken on the part of the respondents in the given factual back drop of the case. The impugned order therefore to that extent would not be sustainable and the same deserves to be and is accordingly set aside. The respondents are directed to consider the claim of petitioner for grant of family pension as of now.

13. As regards the other consequential benefits, the petitioner is directed to obtain an appropriate decree of civil death from the concerned Civil Court thereafter put forth her claim before the respondents and which upon being furnished, the respondents shall

forthwith process the same and settle the other admissible dues i.e. gratuity, leave encashment, CMPF etc. payable to the petitioner at the earliest.

- 14.** The writ petition to the aforesaid extent stands allowed and disposed of. Let necessary compliance be carried out at the earliest preferably within an outer limit of 90 days from the date of receipt of copy of this order.

**Sd/-
(P. Sam Koshy)
Judge**