

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1208 OF 2021

ANIKET NATTHU PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mrs. S.T. Kazi
AGP for Respondent No. 1 : Mr. K.N. Lokhande
Advocate for Respondent Nos. 2 to 5 : Mr. S.V. Adwant

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**
DATE : 5 JULY, 2022.

ORDER :-

By this petition, the petitioner is challenging the communication/order dated 3 December, 2019 of the respondent No.4 – Chief Engineer, Maharashtra State Electricity Transmission Board, Nasik Road, Nasik, thereby refusing to grant the application of the petitioner for compassionate employment in place of his father Natthu Daulatrao Patil. Natthu Patil was in the employment of the respondent – Board as a Machine Operator which is a class III post. Natthu Patil went missing on 4 May, 1999, and the matter was reported to the police station Mohadi, on the basis of which Missing complaint No. 6 of 2019 was registered. It appears that Natthu Patil could not be traced and, therefore, the widow of Natthu Patil alongwith other LRs including the petitioner filed RCS No. 83 of 2018, against the Executive Engineer of the respondent – Board

before the Joint Civil Judge Senior Division, Dhule, for a declaration that plaintiff No. 1 wife of Natthu Patil continues to be the legally wedded wife of Natthu Patil. The Civil Court decided the said suit by judgment and order dated 22 June, 2009, and granted a decree declaring the plaintiffs as the legal heirs of Natthu Patil. Perusal of the judgment shows that, however, the Civil Court came to the conclusion that the exact date of death of Natthu Patil could not be determined as per Section 108 of the Indian Evidence Act.

2. The petitioner applied to the respondent – Board for employment on compassionate ground on 26.2.2014, which application has been rejected vide the impugned communication on the ground that as per Section 108 of the Evidence Act, deemed date of death of Natthu Patil will be 3 May, 2006, on completion of 7 years from 4 May 1999, when Natthu Patil went missing. Secondly, it was found that even going by the judgment of the Civil Court Natthu Patil could be said to have died on 22.6.2009. The date of birth of Natthu Patil is 29.3.1948 and as such, he would have retired from service on completion of 58 years of age on 31 March, 2006. Thus, the respondent – Chief Engineer has found that on the deemed date of death i.e. 3 May, 2006, Natthu Patil would have already retired. These are the reasons for which the application has been rejected.

3. We have heard the learned counsel for the parties. Perused record.

4. The learned counsel for the petitioner strenuously urged

that the Civil Court has observed that Natthu Patil could be said to have gone missing 7 years prior to the filing of the suit. She pointed out that the suit was filed in the year 2008 and as such, Natthu Patil could be said to have gone missing somewhere in 2001 and going by the said date, the application for compassionate employment could not have been rejected. It is submitted that the petitioner applied after he attained majority. The learned counsel fairly conceded that the date of birth of the petitioner is not forth coming in the petition. Except this there are no other contentions raised.

5. The learned counsel for the respondent – Board has submitted that as per the scheme for compassionate employment (a copy of which is produced at page 67 of the compilation), the application has to be made within 5 years of the death of the employee concerned. It is submitted that the application is belated inasmuch as Natthu Patil went missing on 4 May 1999 and the application is made on 26.2.2014. It is pointed out that even after the judgment of the Civil Court in the year 2009, the application is made approximately 5 years thereafter. Secondly, it is submitted that the Civil Court has specifically found that the exact date of death could not be determined in accordance with section 108 of the Evidence Act. Therefore, no exception can be taken to the impugned communication.

6. We have given our anxious consideration to the circumstances and the submissions made. It is not in dispute that Natthu Patil was in the employment of respondent – Board as a

Machine Operator, which is a class III post and the age of retirement/superannuation was 58 years. It is also not in dispute that going by the date of birth of Natthu Patil, he would normally have retired from service on attaining 58 years of age on 31st May 2006. The question is, whether there is material to show that Natthu Patil had died prior to that date, inasmuch as, it is only the dependent family member of an employee who dies-in-harness are entitled for appointment on compassionate ground. The record discloses that Natthu Patil went missing on 4th May 1999. The matter was reported to the police. However, he could not be traced.

7. Section 107 and 108 of the Evidence Act which are relevant for the purpose, may be reproduced as under :-

“Section 107. Burden of proving death of person known to have been alive within thirty years. – 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.

Section 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.”

Section 108 has to be seen in the nature of a proviso to Section 107 of the Evidence Act. It can thus be seen that under section 108 of the Evidence Act, the burden of proving that a person

is alive who has not been heard for 7 years within the meaning of the said Section is on the person who claims that such person is alive. Thus, if the petitioner wants to succeed, it is for the petitioner to show that Natthu Patil died on or before the date of his retirement. It can be seen that Natthu Patil went missing on 4th May, 1999. Thus, presumption of his death as per Section 108 of the Evidence Act would arise on 3rd May, 2006 i.e. on completion of 7 years from 4th May, 1999, as he has not been heard of during the said period by those, who would naturally have heard of him, had he been alive. The said date falls beyond the date of normal retirement of Natthu Patil. Thus, it cannot be conclusively said that Natthu Patil died in harness i.e. on or before the date of his retirement.

8. The reliance placed on behalf of the petitioner on the observations of the trial court, to our mind, are misplaced. All that the Civil Court has said is that Natthu Patil had gone missing prior to 7 years of filing of the civil suit, the civil suit being filed in the year 2008. This observation is about the date on which Natthu Patil went missing and not about his death. Looked from either angle, we do not find that any case for interference is made out.

9. In the result, petition stands dismissed with no orders as to costs.