

07.02.2023
DL-50
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13003 of 2022

Purnima Banerjee
Vs.
State of West Bengal & Ors.

Mr. Nilanjan Bhattacharjee,
Mr. Abhilash Chatterjee,
Mr. Saikat Dey

....for the petitioner.

Mr. Subrata Kumar Sinha
....for the respondent nos.2 to 4/SBI.

The petitioner prays for retiral benefits on the ground that her husband went missing on and from the last week of December, 2009. The petitioner states that since her husband went missing from the last week of December 2009, she rushed to the police station on January 2, 2010 to lodge General Diary No. 65 of 2010 with the Officer-in-Charge, Chatterjeehat Police Station. The petitioner's husband was an employee of the State Bank of Indore, which was amalgamated with the State Bank of India on February 22, 2015 and, therefore, the petitioner has made the present claim against the State Bank of India.

Mr. Bhattacharjee, learned counsel, appearing on behalf of the petitioner submits that no proof is required for declaration of death under Section 108 of the Indian Evidence Act, 1872. He relies on a

judgment reported in 2002 (2) CLR 639 (**Narayan Nayek Vs. State Bank of India & Ors.**).

Furthermore, reliance is placed on a Division Bench judgment reported in (2015) 3 CLJ 23 (**Smt. Shipra Chatterjee Vs. Union of India & Ors.**).

Mr. Sinha, learned counsel, appears on behalf of State Bank of India and submits that the office circular dated March 12, 2010 states that only claims up to a threshold limit of Rs.1,00,000/- can be entertained by the bank without a valid death certificate. A copy of the circular dated March 12, 2010 is retained with the records. Furthermore, he relies on a circular dated May 20, 1988 to show that after a passage of period of one year, benefits like compassionate gratuity or the gratuity under service rules or pension fund dues may be paid to the family in the event the bread earner of the family disappears in order to mitigate the financial hardship to the family members. But the said circular has to be read in the light of the circular dated March 12, 2010 where a capping of Rs.1,00,000/- has been made. He refers to a judgment reported in (2004) 10 SCC 131 (**L. I. C. of India Vs. Anuradha**) in support of his contention that under Section 108 of the Evidence Act, the presumption of death will only arise if the same is raised in a court, tribunal or an authority

which is called upon to decide whether a person is dead or alive. So long as the dispute is not raised before any forum or in any legal proceedings, the presumption does not arise. The burden of proof would lay on the person who makes assertion of death having taken place at a given date or time in order to succeed in his claim.

Having considered the rival submissions of the parties and the materials placed on record, this Court is of the view:

- (a) In paragraph 7 of the writ petition, the petitioner has stated that her husband has disappeared since the last week of December, 2009.
- (b) In paragraph 8 of the writ petition, she has stated that she has rushed to the local police station on January 2, 2010. Both the paragraphs 7 and 8 of the writ petition have been affirmed true to the knowledge and belief of the petition.
- (c) From the missing diary dated January 2, 2010, it appears that the petitioner has stated that her husband has gone missing since March 1, 2009.
- (d) From the representation made by the petitioner before the Chief Managing Director/General Manager, State Bank of India on August 1, 2016, it appears that the petitioner has stated that her husband

has gone missing since last week of February, 2009.

- (e) It seems to this Court that the petitioner is claiming the benefits on account of disappearance of her husband, but she is not aware of the date and time from which her husband has gone missing.
- (f) In the complaint annexed at page 35 of the writ petition made to the Officer-in-Charge, the petitioner has stated that her husband has gone missing from January 2, 2009.
- (g) The petitioner has not brought on record any proof from a competent court of law declaring that her husband has gone missing from a particular date and should be presumed to be dead, 7 years thereafter.
- (h) It is expected that since the retiral benefits of her missing husband is claimed by the petitioner, she should at least be aware of the date on which her husband has gone missing.
- (i) The facts of the case in **Shipra Chatterjee** (supra) is not applicable to the facts of the present case. In that case, the Hon'ble Division Bench held that since neither the notice of initiation of the disciplinary proceedings nor the penalty of removal could be served upon the delinquent employee, the petitioner, being the wife of the delinquent employee, should not bear the brunt of the punishment given in a purported disciplinary proceedings and should be entitled to service benefits of her husband who is presumed to be dead.

- (j) In **Narayan Nayek** (supra), it was held by an Hon'ble Coordinate Bench that since the bank has not denied the factum of disappearance of the employee as his superannuation benefits have been disbursed presuming the father of the petitioner as dead, the prayer for compassionate appointment should be considered by the bank in accordance with law.
- (k) This Court places reliance on **Anuradha** (supra) passed by the Apex Court for the purpose of holding that the burden of proof would lay on the person who makes assertion of death having taken place at a given date or time in order to succeed in his claim.
- (l) This Court is of the view that the petitioner has not been able to discharge the burden of proof in respect of the date and time of death since the petitioner has claimed that her husband has gone missing on different dates in different documents/representations. The petitioner has also affirmed wrong statements on oath in order to get sympathy of this Court.

For the reasons aforesaid, **WPA 13003 of 2022** is **dismissed** without any order as to costs.

Since no affidavits have been called for in the writ petition, the allegations contained therein be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)