

Form No. J (2)
Item No.52 ML
Court No.26

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**M.A.T. 1672 of 2024
IA NO: CAN/1/2024**

**The West Bengal Board of Secondary Education, represented by its
Secretary**

VS.

Smt. Rinku Majumder & ors.

For the Appellant : Ms. Koyeli Bhattacharyya, Advocate
Mr. Bibek Dutta, Advocate

For the Writ petitioner/
Respondent : Mr. Raghunath Das, Advocate
Ms. Monalisa Das, Advocate

Heard on : 04.09.2024

Judgment on : 04.09.2024

DEBANGSU BASAK, J.:-

1. Appeal is taken up for final hearing by the consent of the parties.
2. Appeal is directed against an order dated July 29, 2024 passed in
WPA 10793 of 2020.

3. By the impugned order, learned Single Judge allowed the writ
petition and directed payment of death cum retiral benefits to the heirs and

legal representatives of the employee concerned upon the writ petitioner furnishing indemnity bond with regard thereto and furnishing the particulars of the heirs and legal representatives of the employee concerned.

4. Learned advocate appearing for the appellant submits that, the employee concerned last reported for his duties on April 4, 2003. Learned Single Judge proceeded on the basis of May 7, 2003 as the death of date of the employee concerned. She submits that, the writ petitioner lodged a missing diary with the police authorities on July 11, 2007 prescribing the date of the employee to be missing as May 7, 2003.

5. Learned advocate appearing for the appellant points out that, the writ petitioner made a publication in the newspaper with regard to the concerned employee being missing in 2014. She points out that relationship between the writ petitioner and the employee concerned is husband and wife. She refers to the order of the Civil Court where, in a suit filed by the writ petitioner, the learned Civil Court refused to grant a decree of declaration as prayed for in respect of the missing employee.

6. Learned advocate appearing for the appellant draws the attention of the Court to the fact that, the missing employee applied on October 4, 2004 for voluntary retirement. However, the same was not considered. A disciplinary proceeding was initiated as against the concerned employee. Again such disciplinary proceeding was not concluded. Due to passage of time, concerned employee superannuated in 2014.

7. Learned advocate appearing for the appellant draws the attention of the Court to an exercise undertaken by the authorities pursuant to an order dated October 5, 2003, passed in the writ petition. She submits that, effort to reconcile the disputes and differences between the appellant and the writ petitioner failed. She refers to the minutes of the meeting dated November 9, 2023.

8. Learned advocate appearing for the appellant refers to the Memo No.84-F(Pen) of the Finance Department dated February 22, 2012. She submits that, before sanction of family pension it must be considered that missing employee was declared dead in terms of the Evidence Act, 1872.

9. Relying upon **(2004) 10 Supreme Court Cases 131 (LIC of India versus Anuradha)**, learned advocate appearing for the appellant submits that, no date of death can be fixed in terms of Section 108 of the Evidence Act, 1872. According to her, learned Single Judge erred in declaring the missing employee to be dead as on May 7, 2003 by the impugned order.

10. Writ petitioner is the wife of missing employee. Missing employee last reported for his duty with the appellant on April 4, 2003. Appellant heard about the missing employee lastly on October 4, 2004 when the appellant claims that it received a request for voluntary retirement made by the missing employee.

11. Since October 4, 2004, taking that as the last date when the appellant was aware of the missing employee, nothing is placed on record

before us to suggest let alone establish that the appellant is aware that the missing employee is alive.

12. Writ petitioner as the wife lodged a missing diary, in respect of the missing employee on June 11, 2007 stating that her husband went missing on May 7, 2003. She also made a paper publication in 2014. She filed a Civil Suit in the First Court of the Learned Civil Judge (Junior Division), Barasat being Title Suit No.484 of 2014, where, she claimed that, her husband, the missing person to be declared dead in terms of Section 108 of the Indian Evidence Act, 1872. Such suit was dismissed on July 10, 2018. Nothing is placed on record to suggest that any appeal was preferred against the Civil Court's order.

13. Appellant initiated disciplinary proceeding against the missing employee. Disciplinary proceeding is yet to attain its finality. Court is informed that, missing employee in normal course superannuated in 2014.

14. Situation with regard to employees of Article 12 authorities suddenly disappearing and grant of family pension and the other benefits to the eligible family members of such employees was dealt with by the Memorandum bearing No.84-F(Pen) dated February 22, 2012 issued by the Finance Department. Appellant is bound by such Memorandum.

15. Memorandum dated February 22, 2012 requires satisfaction of two conditions. First one being lodgment of a report with the concerned police station by the family and second is an indemnity bond as per Annexure I and II thereof. Writ petitioner as the family member of the missing employee

lodged a police complaint. First condition of the Memorandum dated February 22, 2012 was satisfied by the writ petitioner. The second condition will be fulfilled immediately on the decision by the employer to disburse the death cum retiral benefit of the missing employee as also the family pension.

16. Clause 6 of the Memorandum dated February 22, 2012 prescribes that, before sanction of family pension it may also be confirmed that missing employee was declared dead in terms of Evidence Act, 1872.

17. In the facts and circumstances of the present case, learned Single Judge, noted the result of the Civil Suit filed by the writ petitioner. Nonetheless, taking into consideration the fact that the missing employee is not being heard of since April 4, 2003 or at least since October 4, 2004, proceeded to pronounce a declaration in terms of Section 108 of the Indian Evidence Act, 1872. Learned Single Judge prescribed a date of May 7, 2003 to be the date on which the missing employee is required to be considered as dead.

18. Without entering into the controversy as to whether the learned Single Judge was correct prescribing a date of death suffice it to say that, a date is required for the purpose of commencement of family pension. The date prescribed by the learned Single Judge should be taken as such.

19. Learned Single Judge ascribed reasons as to why he arrived at the date of May 7, 2003. We find no reason to interfere with such finding of the learned Single Judge.

20. **Anuradha (supra)** deals with the scope of presumption under Section 108 of the Evidence Act, 1872. It states that although Section 108 of the Evidence Act, 1872 allows a person to be presumed dead, there is no presumption as to the date and time of death. The employee of the appellant is missing at least since October 4, 2004 if not earlier. Conditions prescribed by the Memorandum dated February 22, 2012 of the Finance Department stands satisfied.

21. In such circumstances, we find no merit in the instant appeal.

22. MAT 1672 of 2024, along with connected application being CAN/1/2024, is dismissed without any order as to costs.

23. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

24. I agree.

(Md. Shabbar Rashidi, J.)

CHC