

13. 29.07.2024
bd. Ct.24

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 10793 of 2020

Smt. Rinku Majumder

-vs-

The State of West Bengal & Ors.

Mr. Raghunath Das

Ms. Monalisa Das

.....for the petitioner.

Mr. Mrinal Kanti Ghosh

...for the State

Ms. Koyeli Bhattacharyya

Mr. Bibek Dutta

... for the WBBSE

The husband of the present petitioner namely Parimal Chandra Majumder, was an employee of West Bengal Board of Secondary Education, posted working as a Senior Assistant. The husband of the present petitioner lastly attended his office on 4th April, 2003.

It is the case of the petitioner that Parimal Chandra Majumder, was missing since 07.05.2003. Initially, the petitioner thought that her husband would be returned, but ultimately he could not return and thus she lodged a missing diary before the Barasat Police Station on 11th June, 2007 which was recorded as GD Entry No. 840. Initially, the petitioner approached to the concerned authority for disbursement of service benefits, pension and arrear on account of salary and service benefits of Parimal Chandra Majumder. The authority did not take any appropriate steps thus, the petitioner approached this Court.

A coordinate Bench of this Court in a writ petition being W.P.A.10973 of 2020 on 5th October, 2023, directed the

respondent no. 4 to draw up a joint meeting with the present petitioner to settle the dispute. In terms of the said order, a joint meeting was held on 9th November, 2023 and it was decided by the Secretary, West Bengal Board of Secondary Education that unless the petitioner furnished an order of competent Court relating to the date of missing husband according to section 108 of the Evidence Act, it is not possible for the concerned authority to release the retiral benefit.

Learned counsel appearing on behalf of the petitioner submits that Government of West Bengal, Finance Department, Audit Branch, has issued a memorandum dated 22nd February, 2012 being Memo No. 84-F(Pen) wherein the cases of missing employee was taken care of and specific instruction was passed. He submits that by virtue of the said instructions an Indemnity Bond was furnished by the petitioner following Annexure I and II.

Learned counsel for the petitioner further submits that the case of the present petitioner is covered the observation of the Hon'ble Apex Court in **Narayan Nayak -vs- State Bank of India** reported in **2002 2 CLR 639**, **Smt. Ruda Devi & Anr. - vs- Coal India Ltd. & Ors.** reported in **2013 2CalJ 639**, **Zishan Khan -vs- District Inspector of Schools, Varanasi and Ors.** reported in **[2012(4)ADJ501](Allahabad High Court)** and **Chief Engineer, Central Zone, APSEB, Vijayawada -K. Naga Hema** reported in **1996(1) ALD 304**.

Learned counsel by citing those decisions of Hon'ble High Court submits that in all the cases the Hon'ble Court has declared the date of death from the date of missing of the employee and directed the concerned authority to pass necessary orders for retiral benefit in favour of the petitioner. He prayed for necessary relief.

Learned counsel appearing on behalf of the Board submits that Parimal Chandra Majumder was an employee of

the Board of Secondary Education, who last attended the office on 4th April, 2003 while holding the post of senior assistant. Thereafter he never joined in his office. Due to his unauthorized absence, Board issued show-cause notice but no reply of show-cause notice was received, thus, initially he was placed under suspension. Thereafter, second show-cause notice was issued but no reply was received. Finding no other alternative the Board issued a general notice to the local newspaper intimating the prolonged unauthorized absence without informing the Board. Thereafter, a disciplinary proceeding was initiated and a charge-sheet was issued by appointing enquiry officers.

Initially the petitioner wrote the Board for compassionate appointment for herself and the children but at that time she issued no letter regarding the prayer for release of retiral benefits of her missing husband. However, in terms of the direction of this Court in WPA 10793 of 2020 a joint meeting was held with the petitioner wherein the petitioner was directed to produce the necessary order from a competent Court regarding declaration of death of a missing husband under section 108 of the Evidence Act, 1872. As the petitioner could not furnish the said requirement, relief as sought for by the present petitioner was denied.

Heard the learned advocates. Perused the entire issue and also perused the memorandum of the Government of West Bengal, Finance Department, Audit Branch, dated 22nd February, 2012, which is set out below:

“ Memo No. 84-F(Pen)

Dated, Kolkata,
the 22nd February, 2012.

Memorandum .

The undersigned is directed to say that a number of cases are referred to this Department for grant of family etc. to the eligible family members of employees/pensioners of Panchayats, Munitipalities, Non-Govt. aided Educational

Institutions/Colleges/ Universities etc. who have suddenly disappeared and whose whereabouts are not known. At present such benefit has been extended to the State Govt. employees in terms of the Memo No. 4671-F dt. 14.05.90.

2. The matter has been under consideration of Govt. for some time past and after careful consideration of the matter, the Governor has been pleased to decide that when an employee/pensioner of these categories disappear leaving his family, family pension etc. may be granted to the family concerned, subject to the fulfillment of the following conditions;

- i) the family must lodge a report with the concerned Police Station concerned and obtain a report that the employee/pensioner has not been traced after all efforts had been made by the Police.*
- ii) An Indemnity Bond as per Annexure-I&II should be taken from beneficiaries concerned to the effect that all payments received from Government shall be refunded to Government in the event the missing employee/pensioner reappears and claims his dues.*

3. The above benefit may be sanctioned by the administrative Department concerned.

4. All Government dues outstanding against the employees/pensioners shall be recovered normal rules/orders.

5. The family concerned shall apply to the Head of Office where the employee of such category was attached last for grant of family pension etc. after one year from the date of disappearance of the employee/pensioner.

6. Before sanction of family pension it may also be confirmed that the missing employee has been declared dead in terms of Indian Evidence Act, 1872.

The Head of Office, after scrutiny of the case, will recommend or sanction of family pension etc. to the administrative department concerned.”

The attending situation before this Court is not new to the Government of West Bengal, consequently, they issued a memorandum. By such memorandum the family of the missing employee has to lodge a report to the concerned police station and they are also to furnish the indemnity bond. The memorandum also requires the fact of confirmation that missing employee has been declared dead in terms of Indian Evidence Act, 1872.

By plain reading of the memorandum it appears to me that the memorandum have dual faces. Once the authority asks for the indemnity bond and the lodging of missing report before the police and the same time, they are asking for the specific confirmation regarding the declaration of death of the missing employee. The indemnity bond requires the undertaking of the family that if the missing employee reappears and claims his dues, all payments received from the Government shall have to be refunded back.

Considering the said issue the memorandum dated 22nd February, 2012 asking the order of declaration from a competent Court regarding the date of death of missing employee appears to me not justified. Moreover, the section 107 and 108 of Evidence Act, 1872 enables the Court under the given circumstances regarding claiming of date of death by any party and denying by others in a legal proceedings. This provision regarding fixing burden of proof does not bind any Court to declare any person to be dead. Section 108 of Indian Evidence Act, 1872 only discussed about determination of onus of proof- a person whether alive or not, lies upon whom and what would be the circumstances thereof. Section 108 does not provide any relief to any person claiming that a person is dead in a particular date. No Court can pass a

Decree of Declaration under section 108 of Indian Evidence Act, 1872, that a particular person is dead. Thus, the impugned direction of the respondent authority asking the petitioner to bring an order of competent court declaring date of death of her husband under section 108 of Evidence Act, appears to me improper and unjust.

By virtue of decisions of this Court in **Narayan Nayak** (supra) as well as **Smt. Ruda Devi (supra)** it appears that this Court has specifically quote that if any person is not heard of by the person, who naturally have heard of him he had been alive for more than seven years then the authority concerned can take an appropriate steps in favour of the family members of the deceased employee. On such circumstances, this Hon'ble Court in the above citations has issued favourable order and directed the authority concerned to dispose of the representations. In **Chief Engineer, Central Zone, (supra) (Allahabad High Court)** has also adopted the same view. In **Zishan Khan (supra)** has also adopted the view that the date of missing employee would be taken to be a date of death of the missing employee.

Considering the entire aspect it appears to me that the present petitioner has issued indemnity bond as required by the memo dated 22nd February, 2012.

It has already been discussed that it is not possible for any competent court to pass appropriate order declaring the husband of the present petitioner Parimal Chandra Majumder to be dead. However, I make it clear that by virtue of the decision of the Hon'ble coordinate Bench, as mentioned above, the date of death of the Parimal Chandra Majumder should be considered as 7.5.2003.

The authority concerned is directed to act upon the indemnity bond as furnished by the present petitioner and release all available retiral benefits to the petitioner within four weeks from the date.

Under the above observations, the instant writ petition is disposed of. Connected application if any, are also disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of necessary formalities.

(Subhendu Samanta, J.)