
(2011) 09 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 137 of 2010

Krishna Devi

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Evidence Act, 1872 — Section 108, 3

Citation : (2012) 2 ILR (P&H) 422 : (2013) 1 SLJ 347

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : S.K. Hooda, for the Appellant; Alok Jagga, for the Respondent

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J.—The petitioner herein is seeking grant of death-cum-retiral benefits from the date of missing of her husband i.e.

30.06.2001 after presuming the death of her husband namely Om Parkash as the statutory period of seven years has since lapsed. The husband of

the petitioner Om Parkash was serving with the respondent as Peon and was posted at Central Bank of India Branch at VPO Bhagvai, Tehsil

Charkhi Dadri, District Bhiwani. On 30.06.2001, the husband of the petitioner in the evening went out of the house for some work but did not

come back. The petitioner and her relative as well family member of the husband tried their level best to search and locate her husband till

19.07.2001 but neither my husband returned home himself nor he could be traced or located by them. Then, the petitioner reported the matter to

the police on 19.07.2001 at 11.40 am vide report no. 10 at Police Station Charkhi Dadri.

2. Learned counsel for the petitioner contended that after completion of seven

years of the missing of the petitioner husband, the petitioner is entitled for all the retiral benefits admissible to her husband who is presumed to be dead after expiry of seven years from the date he is missing i.e.

from 30.06.2001 and the action of the respondents in not releasing the retiral benefits of the husband of the petitioner is illegal, unjust, arbitrary.

3. The petitioner requested and visited to the office of respondent No. 3 and 4 to grant family pension and other benefits of her missing husband

and also given in writing for release of the same but neither they released any benefit nor decided the request of the petitioner.

4. Written statement has been filed on behalf of respondents No. 1 to 3, wherein, it is stated that the claim of the petitioner is based upon Section

108 of the Indian Evidence Act which reads as under:-

108: Burden of proving that a 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.

Proved""-A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so

probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists.

The word used in Section 108 of the Evidence Act is "proved" which also has been defined u/s 3 of the Act to mean that a fact is said to be

proved when after considering the matter before it the "court" considers its existence to be probable. Thus, the person who contended that the

person is no longer alive has to prove before a Court of law in terms of Section of the Evidence Act. In the present case, the petitioner has not

produced any decree of the Court and in the absence of declaration from the competent Court, the respondent Bank is not able to process the

claim of the petitioner for grant of pensionary benefits pertaining to her husband by considering him as not alive.

5. Heard.

6. It is not disputed that the petitioner had reported the matter with respect to the missing of her husband to the police on 19.07.2001 at 11.40 am

vide report No. 10 at Police Station Charkhi Dadri and copy thereof placed on record as P1. The Bank itself has written to the petitioner on

27.04.2006 (P9) that "any benefit can accrue to a member only after expiry of the requisite period permitted under law".

7. No doubt that there is no declaration from the competent Court that the husband of the petitioner had died. However, the same may not be

necessary in the facts of the present case inasmuch as it is an admitted position that when the husband of the petitioner remained absent from office,

a letter was sent by the office of respondent No. 3 on 29.09.2000 on the residence of the husband of the petitioner to report for duty. Thereafter,

the petitioner visited the Bank Branch at Bhargavi, Charkhi Dadri, Bhiwani and informed respondent No. 4 and other staff about the missing of her

husband. The Manager of Rewari Branch, Shri RS Dahiya, vide letter dated 28.01.2002 informed that he had been appointed as enquiry officer to

hold enquiry with respect to the non joining of the husband of the petitioner on duty. Various letters were sent by the office. The said letters were

not delivered to the petitioner but received back with the report that the husband of the petitioner was not found available and is missing. Each

time, petitioner Smt. Krishna Devi wife of Om Parkash attended the enquiry proceedings. Finally, the enquiry officer submitted his enquiry report.

The disciplinary authority after taking into consideration the enquiry report dated 03.06.2002, passed the following order:-

It has also surfaced during the enquiry proceedings that CSE is continuously absent from 15.12.2001 and also his whereabouts are not known to

his wife even.

I, therefore, agree with the findings of the Enquiry Officer and hold that charge as proved. For proven act of gross misconduct of the CSE (for the

above charge), I propose to award punishment of ""Be removed from service with superannuating benefits"" i.e pension/ or provident fund and

gratuity as would be due otherwise under the rules and regulations prevailing at the relevant time without disqualification for future employment

under para 19.06 (b) of 1st Bipartite Settlement as amended from time to time to Mr. Om Parkash CSE Daftri of Bhagvai Branch with his union

representative, if so desired by him on 06.09.2002 at 11.00 a.m. At Regional Office, Rohtak. If Mr. Om Parkash does not appear before the

undersigned on the date and venue mentioned above no more chance for personnel hearing will be given to him and I will proceed to pass the final orders as proposed above.

8. It is clear from the perusal of the said order that the Punishing Authority granted all the superannuating benefits i.e. Pension/or Provident and gratuity as admissible to the husband of the petitioner under the regulations. Thus, the following facts emerge:

(a) Husband of the petitioner is missing from 30.06.2001. The matter was duly reported to the Police;

(b) The said finding has also been recorded by the Enquiry Officer and accepted by the disciplinary Authority; and

(c) Superannuating benefits i.e. Pension/or Provident and gratuity have been duly granted to the husband of the petitioner in his absence.

9. A careful perusal of Section 108 of the Evidence Act shows that if a person is missing for the statutory period, he is presumed to be dead and

only if someone is still claiming otherwise i.e. he is alive even after lapse of seven years, will require to be proved so in the court of law. In the

present case, the petitioner has no idea of the whereabouts of her husband since seven years, she has not heard for him. Thus, he is presumed to

be dead. She is not claiming that he is alive. Therefore, Section 108 of the Evidence Act does not come in the way of the petitioner for grant of

retiral benefits in the present case.

10. Thus, to insist that a proper declaration qua missing of the husband of the petitioner should be passed by a competent Court for the purpose of

releasing the retiral benefits is misplaced and nor necessary in the facts and circumstances of the case, especially when the person who is claiming

the relief is none-else but the wife of the employee and admittedly there is no evidence qua the whereabouts of her husband. Moreover, the

Enquiry Officer and the disciplinary authority themselves have come to the conclusion that husband of the petitioner is missing. There is no reason

to deny the retiral benefits of her husband to the petitioner.

11. Further, it is the own case of the Bank that benefit can accrue to a family member after the completion of required period of seven years.

12. In view of the above, the present petition is allowed and the respondents are directed to release all death cum retiral benefits forthwith along

with interest @ 8% to the petitioner from the date of completion of seven years i.e. 29.06.2008 since the husband of the petitioner is reportedly missing since 30.06.2001. Allowed in the above terms.