
(2002) 02 PAT CK 0107
In the Patna High Court
Case No : C.W.J.C. No. 1544 of 2002

Renuka Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : (2002) 1 BLJR 608 : (2002) 2 PLJR 46

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Judgement

R.N. Prasad, J.—The petitioner is wife of Shri Chandra Mauli Mishra. He was employee of the State Government. He was posted as Private Assistant to Special Secretary Vigilance. According to learned Counsel for the petitioner, the petitioner with her husband was living in Government Flat No. 55/800, Shashtri Nagar. Her husband is traceless with effect from 7-5-1994. In spite of best efforts he could not be traced out and as such writ petition has been filed for issue of direction to allow legal benefits of her husband to her and allow her to live in the said flat till payment of legal dues.

2. From the averment made in the writ petition it is evident that husband of petitioner, who was employee of the State Government, is traceless with effect from 7-5-1994. Information to the aforesaid effect was given to Shashtri Nagar Police Station. The report of Officer-in-charge of Shashtri Nagar Police Station has also been annexed as Annexure-9 to the supplementary affidavit. Learned Counsel for the State also says that Superintendent of Police has also reported that he is traceless with effect from 7-5-1994. Section 108 of the Evidence Act deals with burden of proving that person is alive who has not been heard of for seven years. It says "(Provided that then) 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". It means that if

the person is not heard of for seven years and if a person claims that he is alive the burden shifts on him to prove it. On the other hand, it can be said that if a person is not heard of for seven years he can be treated as dead. The circular of the Government dated 24-2-1990 also considered the aforesaid aspect and deals with pension etc. for such employee. Learned Counsel for the petitioner, accordingly, says that direction be issued to the respondent concerned to pay legal dues of her husband to the petitioner. The matter requires to be considered by the authority concerned.

3. Thus the writ petition is disposed of directing the authority concerned to consider the aforesaid aspect of the matter and pass necessary reasoned order with respect to the grievance of the petitioner for payment of legal dues to her within a period of three months from the date of receipt/production of copy of this order. It is, however, made clear that till legal dues are not paid to the petitioner no coercive action shall be taken against him for vacating the premises where she is living at present. The petitioner is at liberty to file an application before the authority concerned for appointment on compassionate ground.