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**(2013) 11 P&H CK 0205**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 19735 of 2003 (O&M)

Savitri

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 28-11-2013

**Acts Referred:**

**Citation :** (2014) 2 PLR 526 : (2014) 2 SCT 465

**Hon'ble Judges :** Ajay Tewari, J

**Bench :** Single Bench

**Final Decision :** Disposed Off

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## **Judgement**

Ajay Tewari, J.—The present petition has been filed for quashing of the order dated 03.06.1999 (Annexure P-2) whereby his services were terminated and the order dated 18.09.2003 (Annexure P-6) whereby the retiral benefits of the husband of the petitioner has been denied to her. The husband of the petitioner, Mir Singh, was working as Conductor in the Haryana Roadways Depot, Gurgaon on regular basis. He went missing on 06.07.1990. By an order dated 03.06.1999, his services were terminated on account of absence. Thereafter the petitioner filed a suit for declaration that her husband had died under the presumption of death by taking recourse of Section 108 of the Evidence Act and by judgment and decree dated 25.10.2001 the said suit was decreed. Subsequently the petitioner represented to the respondents that the order of termination of the services of her husband be set aside and she be granted retiral benefits and her son be given compassionate appointment. Since no action was taken thereon she filed writ petition bearing C.W.P. No. 3582 of 2003 which was disposed of vide order dated 04.03.2003 with the direction to the respondents to consider her claim and decide her legal notice by passing a speaking order. By order dated 18.09.2003 her claim was rejected on the ground that she had not lodged an FIR regarding her husband's disappearance. This order has been challenged in the present writ petition.

2. Learned counsel for the petitioner at the very outset states that he would not

now press the claim of compassionate appointment of the son of the petitioner since 26 years have elapsed from the disappearance of the petitioner and restrict his claim towards setting aside the order of termination of the husband of the petitioner and release of retiral dues. He argues that once the Civil Court had issued a declaration that the husband of the petitioner had died her claim could not have been rejected on the ground that she had not lodged an FIR for his disappearance because after the decision of the Civil Court it is not open to any person or authority to dispute the factum of death of the husband of the petitioner.

3. Learned Assistant Advocate General has tried to justify the action of the respondents by arguing that as per the rules it was incumbent upon the petitioner to have lodged an FIR and therefore the respondents were correct in not accepting the factum of death of the husband of the petitioner.

4. I find myself to disagree with the submission of the learned Assistant Advocate General. Once the presumption has arisen and the Civil Court has issued the necessary declaration the death cannot be disputed by anybody. In the circumstances, the order of termination of the husband of the petitioner has to be examined in this context.

5. Learned counsel for the petitioner has relied upon the judgment in the matter of K. Indira Vs. Union of India and Others, , wherein the learned Single Judge of the Kerala High Court held that after 7 years the presumption would arise from the date of disappearance. As per the learned counsel, the death of the petitioner has also to be presumed on the date of his disappearance.

6. Learned Assistant Advocate General has however countered by placing reliance on the decision of this Court in the matter of Krishna Devi v. Central Bank of India and others, passed in C.W.P. No. 137 of 2010, decided on 01.09.2011, wherein it was held that according to Section 108 of the Evidence Act the date of death would be deemed to be the date 7 years after the disappearance. This judgment is binding on me.

7. Consequently, the prayer of learned counsel for the petitioner to declare the petitioner dead on 06.07.1990 cannot be accepted. However, it has to be held that he was dead on 05.07.1997. Even if the date of death is presumed to be 05.07.1997 the order dated 03.06.1999 would be illegal because it was passed against a dead person. Once the order of termination is set aside the petitioner would be entitled to all retiral benefits like family pension including gratuity, leave encashment etc. w.e.f. 05.07.1997.

8. In the circumstances, the order of termination of the petitioner dated 03.06.1999 (Annexure P-2) is set aside and the order denying retiral benefits dated 18.09.2003 (Annexure P-6) is also set aside. Let the necessary exercise to compute the retiral benefits be worked out and to release them to the petitioner within a period of three months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim the same with

interest @ 8% p.a. from 05.07.1997 till the date of disbursal. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.