

(2005) 02 PAT CK 0047
In the Patna High Court
Case No : CWJC No. 8716 of 2002

Smt. Kamla Devi and Sudhir Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Citation : (2005) 2 PLJR 155

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Judgement

Barin Ghosh, J.—Heard Learned Counsel for the parties. On 7th March, 1994, the father of petitioner No. 2, a Government employee, was found untraceable. The appropriate police complaints were made. However, the father of petitioner No. 2 could not be traced. Even after expiry of seven years from the date the father of petitioner No. 2 was found untraceable, he could not be traced. In such circumstances, in view of the provisions contained in the Evidence Act, a presumption of the death of the father of the petitioner No. 2 is to be drawn. Accordingly, such presumption has been drawn. In terms of the presumption, the death occurred not after expiry of seven years from the date when the person stood untraceable but from the date the person was found untraceable. In such view of the matter, the date of death of the father of petitioner No. 2 relates back to 7th March, 1994. The petitioner No. 2 after obtaining necessary death certificate applied for compassionate appointment; that has been rejected only on the ground that in terms of the government policy there is no scope of giving appointment to a person who is presumed to be dead in terms of the provisions of the Evidence Act. A learned Single Judge of this Court in the case of Renuka Rai Vs. The State of Bihar and Others, has held that the law is that when word "death" is to be construed and understood, the same should take into account not only death occasioned as a natural consequence but also by reason of the presumption laid down by the Legislature in the Evidence Act. In such view of the matter, respondents ought to have decided the application of the petitioner in accordance with law and should have brought the same to a logical conclusion

which they have not done for no just reason.

2. Be that as it may, in the counter affidavit, it has been contended by the respondents that since the father of petitioner No. 2, in accordance with his service record, was born on 2nd March, 1943, he would have retired on 4th March, 2001 much before the presumption could be drawn in relation to his death. It is unfortunate that such a submission could be made. After all by reason of the government employee becoming untraceable, his family suffered much more pain and much more anguish than the family of an employee who died in the natural course, for they could not have recourse to what they were otherwise entitled to as a consequence of death and had to wait for seven years to take the shelter of the legislative presumption but showing blind eye to such sufferings, this kind of submissions and contentions were advanced. As aforesaid, the fact remains that although the death was pronounced after seven years, but the effect of the pronouncement relates back to the date of his disappearance. In such view of the matter, for all practical purposes it must be deemed that father of petitioner No. 2 died while in service and accordingly, the claim of petitioner No. 2 founded on compassion should be decided.

3. It is true that there is a limit for making application for compassionate appointment. This limit, however, will start running from the date when the period of presumption will come to an end and not on the date of the death for by reason of a fiction of the statute made through the legislative mandate, although the death has occurred, the cognizance thereof can be taken after expiry of the time specified. In these circumstances, the respondents are directed to reconsider the application of petitioner No. 2 for appointment on compassionate ground afresh within a period of four weeks from the date of service of a copy of this order upon the appropriate respondent. It goes without saying that the impugned order of the respondents not to consider the application of petitioner No. 2 for the reasons furnished in the impugned order is quashed. There shall be no order as to costs.