

(2012) 07 AHC CK 0094
In the Allahabad High Court
Case No : C.M.W.P. No. 55323 of 2004

Smt. Sushila Devi

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : (2012) 6 AWC 5987 : (2012) 135 FLR 526

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : R.N. Singh, B.R. Singh, R.N. Tripathi, S.C. Dubey and S.K. Srivastava, for the Appellant; Pushpendra Singh and C.S.C., for the Respondent

Judgement

Rajes Kumar, J.—The petitioner is the widow of Laxmi Narain Dubey, who was employee in civil police. The contention of the petitioner is that her husband has been transferred in the year 1973 in police station Chunar, district Mirzapur. Later on he has been transferred in Moradabad Training College and thereafter, in the year 1978 he has been transferred to Ballia and since then he is not traceable. The petitioner being wife claiming the family pension on the ground that in view of Section 108 of the Indian Evidence Act, 1872 (hereinafter referred to as the "Act") her husband is not traceable for more than seven years he is deemed to have died. When the claim of the petitioner has not been decided and the pension and other dues have not been paid, the present writ petition has been filed.

2. Counter-affidavit has been filed by learned standing counsel. In para 11 of the counter-affidavit it has been admitted that Sri. Laxmi Narain Dubey was employee in the civil police. In para 11 it is admitted that as per the record he has been paid salary upto 14.6.1977. Some doubt has been raised on account of the date of birth of the son of Laxmi Narain Dubey, which was claimed to be 31.12.1983 while claiming compassionate appointment and, therefore, the petitioner has been asked to produce the order of the Court regarding the civil

death.

Learned standing counsel submitted that let the petitioner may approach the Senior Superintendent of Police, Ballia for her claim and he may be directed to consider the same and pass appropriate order.

3. I have heard the submission of learned counsel for the parties.

4. Section 108 of the Act provides that 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 is the case of the petitioner that it has not been heard by any person that her husband, Laxmi Narain Dubey is alive. Therefore, her claim that Laxmi Narain Dubey is not traceable since 1978 is dead, has to be accepted and" the burden is now shifted on the other side to prove that he is still alive in view of Section 108 of the Act. In view of the above, the Court is of the view that let the petitioner may file fresh representation before Senior Superintendent of Police, Ballia and he is directed to decide the claim of the petitioner within two months from the date of filing of the representation in accordance to law having regard to Section 108 of the Act, by a speaking order.

With the aforesaid observation, the writ petition stands disposed of.