

(2018) 01 GAU CK 0009
In the Gauhati High Court
Case No : 6901 of 2016

SMTI. JONAKI BORO

APPELLANT

Vs

THE STATE OF ASSAM and ORS

RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

[Evidence Act, 1872](#), [Section 108](#) -
Burden of proving that person is alive who has not been heard of, for seven years

Citation : (2018) 01 GAU CK 0009

Hon'ble Judges : Achintya Malla Bujor Barua

Bench : Single Bench

Advocate : B GOGOI, KR Patgiri, N Sarma, DD Barman, R Barpujari

Final Decision : Disposed

Judgement

1. Heard Mr. KR Patgiri, learned counsel for the petitioner. Also heard Mr. N Sarma, learned Standing counsel, Elementary Education

Department and Ms. DD Barman, learned State counsel for respondent Nos.2 and 4 and Mr. R Barpujari, learned Standing counsel, Finance

Department, Assam for the respondent No.7.

2. The petitioner claims to be the legally married wife of one Kalicharan Bora, who was working as a Headmaster in different LP Schools including

Kandulichapori LP School and Hatimora LP School in the district of Lakhimpur. While he was so working, the husband of the petitioner

disappeared w.e.f. 25.09.1994 and to that effect, the Officer-in-charge of Boginadi Police Outpost had issued a certificate corresponding to

Boginadi Outpost GDE No.402 dated 21.05.1995 that the husband of the petitioner, Sri Kalicharan Boro had remained untraced from the house

since 20.05.1994.

3. In the present writ petition, the wife of Sri Kalicharan Boro has claimed for family pension where the claim for family pension of the petitioner was rejected. The Director of Elementary Education, Assam in the affidavit-in-opposition dated 20.12.2017 in paragraph 4 has taken a stand that the husband of the petitioner, who was working as a Headmaster of Hatiamora LP School disappeared w.e.f. 20.05.1994 and ever since he remained absent from service till now. It is also stated that as per report received from the Boginadi Police Out post (North Lakhimpur), the enquiry in the matter is still going on and he could not be traced out from 20.05.1994. It further states that although the petitioner has preferred a representation before the respondent No.6 on 27.05.2016 for grant of her family pension but the family pension cannot be settled due to non-receipt of death certificate and next of kin certificate.

4. Perused and considered the averments of paragraph 4 of the affidavit of the Director of Elementary Education, Assam. If the husband of the petitioner is missing from 1994, the Director in 2017 cannot take a stand that the enquiry is still going on. Section 108 of Evidence Act, 1872 provides that if a man is not heard for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive shifts to the person who affirms it. The aforesaid provisions of Section 108 makes it explicitly clear that if the husband of the petitioner has not been heard by his wife for more than 7 years, the provision of Section 108 of the Evidence Act would be applicable and if the Director intends to take a view that the husband of the petitioner is still alive and he is absenting himself from service, the burden would be on the Director to prove it as per Section 108 of the Evidence Act.

5. Secondly, Rule 143 A of the Assam Services (Pension) Rules 1969 provides for payment of family pension and death-cum-retirement gratuity to the families of Government servant who suddenly disappears leaving their families and whose whereabouts are not known, after observing the formalities stated therein. If the husband of the petitioner had disappeared from 1994, this Court does not find any reason as to why the provisions of Section 143 A of the Assam Services (Pension) Rules 1969 is not applicable in the present case.

6. In view of the aforesaid provisions of law, the conclusion of the Director of the

Secondary Education Assam that the family pension paper of the petitioner could not be settled due to nonreceipt of death certificate is found to be unacceptable. If the husband of the petitioner had disappeared and on enquiry his death could not be traced, the question of death certificate does not arise. The petitioner being the wife of the disappeared person, it is rather unacceptable on the part of the Director to insist on the next of kin certificate, unless the Director is of the view that the petitioner is not the wife of the disappeared person.

7. In the above premises, this writ petition is disposed of directing the Director of Elementary Education, Assam as well as the Director of Pension, Assam to give due consideration to the case of the claim of family pension of the petitioner by following appropriate provisions of law as indicated above, meaning thereby under Section 108 of the Evidence Act and Section 143 A of the Assam Services (Pension) Rules 1969 and pass an appropriate order thereon.

8. If upon such consideration, the authorities are of the view that the petitioner is entitled to a family pension, consequential action thereof also be taken.

9. The aforesaid exercise be completed within a period of 3(three) months from the date of receipt of a certified copy of this order.

10. In terms of the above, this writ petition stands disposed of.