

(2012) 03 AHC CK 0093

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 60065 of 2007

Zishan Khan

APPELLANT

Vs

District Inspector of Schools, Varanasi and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Evidence Act, 1872 — Section 107, 108, 3

Citation : (2012) 4 ADJ 501 : (2012) 133 FLR 996

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Advocate : M.S. Haq, Manoj Kumar Singh, Turabul Haq, Irshad Saleem and Anwarul Haq, for the Appellant;

Final Decision : Allowed

Judgement

Hon'ble Sabhajeet Yadav, J.—Heard Learned Counsel for the petitioner and the learned Standing Counsel on behalf of the State-respondents. By this petition, the petitioner has challenged the order dated 7.11.2007 passed by District Inspector of Schools, Varanasi, contained in Annexure 6 to the writ petition, whereby the representation of the petitioner for his compassionate appointment, has been rejected. Further relief of a writ of mandamus directing the respondents to appoint the petitioner in place of his father under the provisions of Dying in Harness Rules is also sought for.

2. The relevant facts leading to the case are that Cutting Memorial Intermediate College, Varanasi is recognized institution under U.P. Intermediate Education Act 1921 and receiving government aid under the provisions of U.P. Act No. 24 of 1971. The father of the petitioner namely Mohd. Farid Khan was employed in the institution of the respondent Nos. 2 and 3 as Librarian/Clerk and while he was in service he was disappeared in year 1998. After searching and due information to the police concerned he was not heard of by the persons who would naturally heard of him for more than seven years. After lapse of the reasonable time when the father of the petitioner could not traced out, the mother of the petitioner,

moved several applications to the respondents for releasing of terminal dues of father of petitioner and for payment of family pension by treating his civil death under Government Order dated 20.3.1987 but finding no favour from the concerned authority, she filed a civil misc. writ petition No. 2176 of 2000-Smt. Badrunnisa and another v. State of U.P. and others, which was disposed of by this Court on 18.1.2000. In the said writ petition only prayer was for getting the terminal dues and other service benefits of his father and on the assurance of the respondents the petitioner did not claim for his job under Dying in Harness Rules. In compliance of the said order the mother of the petitioner has been paid terminal dues of his father and is getting family pension. It is stated that the petitioner has been pursuing the matter with the respondents through several representations stating therein that he has passed High School in the year 1997, Intermediate in the year 1999, B.Com. in the year 2003, and M.Com. in the year 2005. The photostat copies of the High School Certificate, Intermediate certificate, Mark-sheet of M.Com. Final year as well as the original certificate of Drawing Grade Examination Mumbai of the year 2004 collectively are on record as Annexure No. 1 to the writ petition.

3. It is stated that after knowing the aforesaid facts and circumstances the respondent Nos. 2 and 3 has sent a letter dated 4.9.2006 to the District Inspector of Schools, the copy of which was also given to the petitioner in which respondent Nos. 2 and 3 has given their consent that they have no objection if the petitioner is appointed in their college on compassionate basis under the provisions of U.P. Intermediate Education Act 1921. A true copy of the said letter dated 4.9.2006 is on record as Annexure 2 to the writ petition. Thereafter, so many letters have been exchanged between the petitioner and respondents, and ultimately the petitioner had no option except to file a Civil Misc. Writ Petition No. 17934 of 2007 Zishan Khan v. District Inspector of Schools and others, which was disposed of by this Court with direction to the respondents to decide the representation of the petitioner vide order dated 5.4.2007. The photo-stat copy of the said order dated 5.4.2007 is on record as Annexure 3 to the writ petition. It is stated that the respondents were not ready to give the job to the petitioner and they were avoiding by one pretext and another and directed the petitioner to point out any person who has been appointed in identical circumstances, in pursuant thereto the petitioner has submitted the certificate issued by the Station Officer, Police Station Chetganj, Varanasi dated 30.1.2006 whereby it has been certified that the whereabouts of the father of the petitioner is not known since long back as such he is no more. The petitioner has also given the name of Shri Rajendra Prasad Yadav, whose father was not known since long back and on presumption of his Civil death, Sri Rajendra Prasad Yadav was appointed in Sarhi Bakharia Intermediate College, Varanasi, two years ago. Photo-stat copy of the certificate issued by the Station Officer, Police Station Chetganj, Varanasi dated 30.1.2006 is on record as Annexure 4 to the writ petition.

4. It is further stated that the respondents has directed the petitioner to bring the relevant Government order in which under identical situation terminal dues of

missing government servants is given to their nominees and their family members, in pursuant thereto the petitioner has brought the same. The true copy of the said Government Order dated 20.3.1987 is on record as Annexure 5 to the writ petition, but ultimately the respondent No. 1 has rejected the representation of the petitioner and denied the compassionate appointment inter alia on the grounds that death certificate of father of petitioner is not available in the institution and he had disappeared from the institution on 1.7.1998 without any information six month earlier to the date of his superannuation/retirement, and from police report dated 30.1.2006 there is nothing to indicate that father of petitioner Mohd. Farid Khan had died prior to the date of his retirement. The Photo-stat copy the impugned order dated 7.11.2007 is on record as Annexure 6 to the writ petition.

5. Learned counsel for the petitioner has submitted that the impugned order dated 7.11.2007 passed by the District Inspector of Schools, Varanasi indicates that compassionate appointment of the petitioner has been denied inter alia on the grounds that his father had disappeared on 1.7.1998 without any information six months earlier to his retirement and his death certificate is not available in the Institution. Further, from perusal of the certificate given by the Police Station Chetganj, district Varanasi dated 30.1.2006, there is nothing to indicate that the death of father of the petitioner has taken place prior to his date of superannuation/retirement, whereas from the date of missing of father of petitioner on expiry of a period of more than seven years, his death shall be presumed and in given facts and circumstances of the case, in all probabilities, such death shall be presumed to have taken place on 1.7.1998 or soon thereafter, accordingly the petitioner should have been given compassionate appointment on account of such civil death of his father under Dying in Harness Rules applicable to the employees of recognized institution under U.P. Intermediate Education Act. In support of his submission, learned counsel for the petitioner has placed reliance upon the reported decisions of various High Courts such as in Bhanumati Dayaram Mhatre Vs. Life Insurance Corporation of India, ; Subhash Ramchandra Wadekar Vs. Union of India, ; Smt. Narbada and Another Vs. Ram Dayal, ; Band Veeramma v. Gangala Chinna Reddi and others, AIR 1914 Mad 505; Ponduri Adeyya and Others Vs. Jaladi Burreyya and Others, .

6. Contrary to it, learned Standing counsel appearing for respondents has tried to justify the impugned order passed by District Inspector of Schools, Varanasi and has contended that assuming the fact that the father of petitioner has disappeared on 1.7.1998 and he has not been heard of by the person who would naturally have heard of him for more than 7 years from the date of his missing even then his death can be presumed only on expiry of a period of 7 years from the date of his disappearance and not earlier to it. And since father of petitioner was disappeared six months earlier to the date of his retirement, therefore, his civil death can be presumed only on expiry of 7 years from the date of disappearance after attaining his age of superannuation. Accordingly, the petitioner is not entitled to be considered for compassionate appointment under

Dying in Harness Rules.

7. In view of the rival submissions of the learned counsel for the parties, the questions arise for consideration are that as to whether a person who is unheard of for a period of seven years, shall be presumed to have died on the date of his missing or soon there after or at the close/end of period of seven years of missing. In other words as to when the death of a person who has not been heard of for seven years or more than seven years should be presumed to have taken place and whether such presumed date of death would be the date of his missing or soon thereafter or should be date at the end of seven years of his missing. Thus, which date would be the presumed date of death of Mohd. Farid Khan, father of the petitioner? The answer of such questions has drawn attention of several High Courts on various occasions. The High Courts have tried to resolve the aforesaid controversy by considering the content and scope of Section 108 and other provisions of Indian Evidence Act, 1872. The provisions of Section 108 of Indian Evidence Act are worded as proviso to Section 107 of Indian Evidence Act, therefore, appropriate answer can be found out by examining the aforesaid provisions of Evidence Act and examination of views taken in various judicial pronouncements as such before dealing with the case law referred by learned counsel for the petitioner, it would be appropriate to examine the provisions of Sections 107 and 108 of Indian Evidence Act, which have material bearing with the question in controversy involved as under :

107. Burden of proving death of person known to have been alive within thirty years.--when the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead, is on the person who affirms it.

108. Burden of proving that person is alive who has not been heard of for seven years.--Provided that when 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.

8. In *Band Veeramma v. Gangala Chinna Reddi and others*, AIR 1914 Mad 505, it was contended by learned counsel for appellant before a Division Bench of Madras High Court that the Appellate Court was bound to presume that husband of appellant lived for a period of seven years after he left the village and that as the father in law died before the expiration of the seven years, her husband must be taken to have survived him. In support of said contention reliance was placed on combined effect of Sections 107 and 108 of Indian Evidence Act, 1872. The Court observed as under :

It is argued by the learned vakil for the appellant that the appellate Court was bound to presume that her husband lived for a period of seven years after he left the village and that, as the father-in-law died before the expiration of the seven years, the husband must be taken to have survived him. Reliance is placed on

the combined effect of Sections 107 and 108 Evidence Act. The former Section states that, if a person is proved to have lived within a period of 30 years and the question is whether he is alive or dead, the onus is on the party who asserts that he is dead. This is qualified by Section 108, which lays down that when it is proved that a person 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 on the person who affirms it. It is argued that, inasmuch as u/s 107, it is enough to prove that a man was alive within 30 years to throw the onus of proving his death on the party who asserts it, there is a presumption that he lived during the 30 years, and that Section 108 modified it only where it is proved that the person was not heard of for seven years. We are unable to agree with the appellant's vakil as to the meaning to be put on Section 107.

9. In *Rekha Das v. Aft. Sheobai and another*, AIR 1923 All 495 while placing reliance upon a Pull Bench decision of Allahabad High Court in *Muhammad Sharif v. Sonde Ali*, (1912) 34 All 36-8 ALJ 1052 a Division Bench of this Court has held that what the Court may presume u/s 108 is confined to the factum of death. It cannot presume that because the person has not been heard of he died at any particular moment or in any particular way, or from any particular cause. The pertinent observations made by a Division Bench of this Court at page 496 of the aforesaid decision are extracted as under :

Now, if there is one thing more certain than another, it is that it is clearly established in India, as in England, particularly expressed in a Full Bench decision reported in *Muhammad Sharif v. Bande Ali*, (1912) 34 All 36-8 ALJ 1052, that what the Court may presume u/s 108 is confined to the factum of death. It cannot presume that because the person has not been heard of he died at any particular moment or in any particular way, or from any particular cause and that being so, the defence in the former suit was bound to fail because the presumption being sole thing which was relied upon, the Court was prohibited by law from finding that Kedar Nath had died before 1915, the date of adoption.

10. In *Smt Narbada and another v. Ram Dayal* AIR 1968 Raj 48, it was held that presumption about the death of a person who is unheard of for seven years u/s 108 of Evidence Act can earliest be drawn when the dispute in which the question as to whether a person is alive or dead is raised, is brought to the Court. The presumption cannot be given a further retrospective effect for the reason that the occasion for drawing a presumption under the provision arises only when the dispute regarding the death of a person who has been unheard of for seven years is raised in a Court of law and it is only then that the question of burden of proof would arise under the Evidence Act. Section 108 relates to the question of burden of proof in a matter before a Court of law. While placing reliance upon a decision of Privy Council reported in AIR 1926 PC 9 in paras 10 and 11 of the decision High Court observed as under:

(10) The basic authority relied upon by learned counsel for the appellants in this case is the Privy Council case of AIR 1926 PC 9. Their Lordships of the Judicial

Committee quoted in that case with approval the following well-known passage from *In re, Phene's Trusts*, (1870) 5 Ch. A. 139:

If a person has not been heard of for seven years, there is a presumption of law that he is dead; but at what time within that period he died is not a matter of presumption but of evidence and the onus of proving that the death took place at any particular time within the seven years lies upon the person who claims a right to the establishment of which that fact is essential.

And then they proceeded further:

Following these words, it is constantly assumed - not perhaps unnaturally - that where the period of disappearance exceeds seven years, death, which may not be presumed at any time during the period of seven years, may be presumed to have taken place at its close. This of course is not so. The presumption is the same if the period exceeds seven years. The period is one and continuous, though it may be divisible into three or even four periods of seven years. Probably the true rule would be less liable to be missed, and would itself be stated more accurately, if instead of speaking of a person who had not been heard of for seven years, it described the period of disappearance as one of not less than seven years.

(11) By making these observations, their Lordships of the Judicial Committee tried to remove the confusion that was then prevailing in the Courts of law about the true scope of the English Statute on this subject on account of the aforesaid passage in (1870) 5 Ch. A. 139. By this judgment the Privy Council laid down that there can be no presumption of death of a person who has not been heard of for 7 years that he died within that period or at the close of that period, The presumption that such a person is dead would be the same if the period exceeds by seven years, say three times or four times of that period but when did he die will always be the subject-matter of proof like any other fact. This view has been consistently followed in Indian Courts except the two dissenting judgments of Mysore and Andhra Pradesh relied on by learned counsel for the respondent.

Even before this dictum was laid down by the Privy Council, Allahabad and Bombay High Court took the same view in *Jeshankar v. Bai Divali*, AIR 1920(2) Bom 85; AIR 1923 Bom 163 : AIR 1923 Bom 208 and AIR 1923 All 495 . In all the cases relied upon by the appellants it has been held that such a person, in the absence of the proof of the exact date about the death shall be deemed that he is not alive on the day when the dispute arose about the death of the man and it has been brought for adjudication to the Court of law,

11. Further while dealing with the question that as to when the death of a person who has not been heard of for seven years or more than seven years should be deemed to have taken place in para 14 of the aforesaid decision the Rajasthan High Court observed as under:

(14) This question as to when the death of the person who has not been heard of

for seven years or more than seven years should be deemed to have taken place came up for consideration of this Court in ILR(1959) 9 Raj 276 and the learned Judge, after considering certain authorities, including the Privy Council case, came to the conclusion that although there is a presumption of death at the expiration of a period of not less than seven years in duration, there is no presumption that the death occurred at the end of seven years or at any other particular time during the period a person has not been heard of. Where a party relies on a specific date of death of a person, who has not been heard of for seven years or more, he must prove the specific date. It was also laid down that where a person is not heard of for seven years or more and no specific date of death has been or can be presumed, the earliest date on which it can be presumed that such a person was not alive shall be the date on which the suit was filed and it cannot be given a further retrospective effect.

12. In *Ram Singh Vs. Board of Revenue and Others*, , while dealing with the content and scope of provisions of Section 108 of Indian Evidence Act it was held that all that one can presume u/s 108 is that the person concerned is dead but one can not fix the time of person's death under the provisions of said Section. Section 108 however, is not exhaustive on the question of presumption as regards the death of a person. The Court may in the circumstances of each case make suitable presumption even regarding the time of death of person-concerned. In the said case Hon'ble Mr. Justice V.G. Oak, as he then was, observed as under :

Section 108, however, is not exhaustive on the question of presumption as regards death of a person. The Court may make a suitable presumption in accordance with the circumstances of each case :

(1) Suppose a man sails in a ship, and the ship sinks. Thereafter the man is never seen alive. Under such circumstances, it is reasonable to assume that the person died in the ship wreck.

(2) When a person goes for pilgrimage he or she ordinarily returns home in six months or in a year. In the present case, Smt. Rukmini left for Gangasagar Yatra 17 years ago. Since then she has not been heard of. It is reasonable to assume that, she died in some accident or of some disease during the journey or at Gangasagar.

13. In *Subhash Ramchandra Wadekar Vs. Union of India*, , the question arose for consideration that as to what was the presumed date of death of Ramchandra Arjun Wadekar who had left the home on 9th January 1984 and was not heard of by the petitioner and other relative since then. While dealing with the said question in paras 9 to 12 and 16 of the aforesaid decision Bombay High Court observed as under :

9. At the outset I would like to refer to the formulation of law having direct bearing on the question under consideration appearing in Halsbury's Laws of England, Fourth Edition, Volume 17, Para 116. The relevant principle of law

deduced from the decided English cases is formulated in the said standard work as under:

Where the presumption of death after seven years absence applies, the person will be presumed to have died by the end of that period.

10. Section 108 of Indian Evidence Act enacts law of rebuttable presumption in case of a person who has not been heard of more than 7 years. The relevant provisions of Indian Law and English Law are identical.

10. To my mind, the above referred proposition of law formulated in Halsbury's Laws of England cannot be considered as an absolute proposition of law applicable in all situations irrespective of facts although ordinarily the presumed date of presumed death can be fixed on expiry of statutory period of seven years. It must be clarified that the presumption of law concerning death of a person raised from continuous absence of a person for 7 years as more particularly set out in Section 108 of the Act is merely a rebuttable presumption of law and not a conclusive presumption.

11. If Section 108 of Evidence Act, 1872 were to be interpreted literally, it would have to be held that law presumes death of a person unheard of for seven years but is silent in respect of date of presumed death. It is therefore, a possible view that the date of presumed death must be proved by the party concerned as a fact by leading reliable evidence. This aspect of the matter is not very clear and one comes across conflicting observations in several decided cases on the subject. In light of authorities cited by the learned Counsel on both sides referred to in later part of this Order, I have reached the following conclusions;-

(1) Ordinarily a person unheard of for the statutory period shall be presumed to be dead on expiry of seven years and not earlier.

(2) Section 108 of Indian Evidence Act, 1872 is not exhaustive. It is permissible for the Court to raise a suitable presumption regarding date of presumed death depending upon the attendant circumstances and other reliable material on record. In other words, no rule of universal applicability can be spelt out regarding presumed date of death. In my opinion, proposition No. 1 must operate subject to proposition No. 2.

16. Having regard to facts of this case, I presume as a matter of law of rebuttable presumption that said Ramchandra Arjun Wadekar died on expiry of seven years from 9th January, 1984.

14. In Bhanumati Dayaram Mhatre Vs. Life Insurance Corporation of India, , Kushal had been missing since 13th November 1995 and was not heard of since then. The question for consideration before the Court was as to whether Kushal would be presumed to have died on 13th November, 1995 or on 13th November 2002 when the period of 7 years expired from the date of his missing. While interpreting the provisions of Sections 3, 107 and 108 of Evidence Act in para 4 and 5 of the decision the High Court observed as under :

4 ... Section 108 of the Act is in the nature of exception to the rule contained in Section 107 of the Act and states that when a person has not been heard of 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 is shifted to the person who asserts that the person is alive. In other words, if a person has not been heard of for a period of more than 7 years by the persons who would naturally have heard of him if he had been alive, then a presumption arises of his death. Though Section 108 of the Act raises a presumption of death of a person if he has not been heard of for a period of 7 years by the persons who would naturally have heard of him, it raises no presumption as to the date of his death. The date of his death, if disputed, must be proved as any other fact

5. Section 3 of the Evidence Act prescribes the standard of proof by defining the word "proved" as follows:

Proved. - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

If the test of preponderance of probability laid down by Section 3 of the Act is applied, that is to say a fact is said to be proved if the Court considers its existence to be so probable that a prudent man ought, under the circumstances of the particular case, to act upon certain supposition that it exists, then it would have to be held that Kushal has died on 13th November 1995 or soon thereafter. If he was alive after 13th November 1995, there was no reason for him not to contact his immediate family members. It is not the case that Kushal left the house in distress or he was under some disability which prevented him from returning home or even contacting his family members. Nor is it shown that Kushal was missing in such circumstances or could be at such place wherefrom he could not even contact his parents or close family members. Considering the fact that Kushal was not under any distress or disability nor was he in the situation wherefrom he could not contact his family members coupled with the fact that he has not contacted his family members at all since 13th November 1995 and has been declared to be dead by the declaratory decree of the competent Court makes us, as men of ordinary prudence, believe that Kushal must have died on 13th November 1995 or soon thereafter.

15. Thus from a careful consideration of the case law referred hereinbefore and the provisions of Sections 107 and 108 of the Indian Evidence Act, it is clear that Section 107 of the said Act provides procedure for proving the death of person known to have been alive within 30 years and Section 108 provides procedure for proving that a person is alive who has not been heard of for seven years. Section 107 states that when the question is whether a man is alive or dead, and it is shown that he was alive within 30 years, the burden of proving that he is dead is on the person who affirms it. Section 108 is enacted as proviso to Section 107 and carves out an exception to the provisions of Section 107 and stipulates

that when 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. Both the Sections are. contained under Chapter VII of the said Act, which contains provisions of both relating to burden of proof and presumption. Thus, in my considered opinion both the Sections do not contain merely the rules of procedure but they also contain substantive piece of law regarding rebuttable presumption to be drawn, therefore, the statement of law that both the Sections contain merely rules of procedure, laid down by various High Courts referred hereinbefore, cannot be said to be correct statement of law. Accordingly, it can also not be said to be correct proposition of law that u/s 108 a presumption of death can earliest be drawn when the dispute in which the question as to whether the person is alive or dead is raised, is brought to the Court

16. In Ram Singh Vs. Board of Revenue and Others, , it was held that Section 108 is not exhaustive on the question of presumption as regards death of a person. The Court may, in the circumstances of each case, make a suitable presumption, even regarding the time of death of the person concerned. In the aforesaid case the Court has given two classic examples stating the circumstances under which presumption of date or time of death of missing persons who had not been heard of for seven years, has been drawn before expiry of period of seven years of missing i.e. on the date of missing or soon thereafter. The said illustrations are that;(1) suppose a man sails a ship and the ship sinks, thereafter the man never seen alive under such circumstances it is reasonable to assume that the person died in the ship wreck, (ii) when a person goes for pilgrimage he or she ordinarily returns home in six months or in a year. In the said case Smt. Rukmani left for Ganga Sagar Yatra 17 years ago. Since then she has not been heard of. It is reasonable to assume that she died in some accident or of some disease during the journey or at Ganga Sagar. The aforesaid view taken by this Court appears to have been followed by the Bombay High Court in Subhash Ramchandra Wadekar Vs. Union of India, , wherein it was held that if Section 108 of Indian Evidence Act is to be interpreted literally, it would have to be held that law presumes death of a person unheard of for seven years but is silent in respect of date of presumed death. It was further held that the date of presumed death must be proved by the party concerned as a fact by leading reliable evidence and further Court has formulated two propositions viz. (1) Ordinarily a person unheard of for the statutory period shall be presumed to be dead on expiry of seven years and not earlier. (2) Section 108 of Indian Evidence Act, 1872 is not exhaustive, it is permissible for the Court to raise a suitable presumption regarding date of presumed death depending upon the attendant circumstances and other reliable material on record. In other words no rule of universal applicability can be spelt out regarding presumed date of death. It was further held that proposition No. 1 must operate subject to proposition No. 2. The aforesaid view, appears to have been reiterated by the Bombay High

Court in Bhanumati Dayaram Mhatre Vs. Life Insurance Corporation of India, , wherein Kaushal's death was presumed to have taken place on the date of his missing on 13th November, 1995 or soon thereafter. I am in respectful agreement with the view taken by this Court in Ram Singh's case (supra) as followed by the Bombay High Court in Subhash Ramchandra Wadekar's case and Bhanumati's case (supra).

17. Now, on testing the case in hand on touchstone of the principles, laid down in decided cases referred hereinbefore, from the material on record, I find that the father of petitioner namely Mohammad Farid Khan left the institution on 1.7.1998 without any information and has not returned to home. Since then he has never been seen alive. When the family members of the petitioner could not trace out his where about the matter was reported to the local police who thereupon submitted report that father of petitioner is not traceable. From the date of his missing he has not been heard of for seven years by those who would naturally have heard of him if he had been alive. It is not the case that Mohammad Farid Khan father of the petitioner had left the house in distress or he was in disability which prevented him from returning home or even contacting his family members nor it is shown that Mohd. Farid Khan was missing in such circumstances or could be at such place where from he could not contact his family members or close relatives. In these circumstances, coupled with the fact that the departmental authorities have cleared the terminal dues of late father of petitioner and paid to his mother and further started paying family pension to his mother being widow of Late Mohd. Farid Khan prior to expiry of seven years of his missing, in my considered opinion, it can be reasonably assumed that the father of the petitioner has died on the date of his missing i.e. on 1.7.1998 or soon thereafter. The aforesaid date admittedly falls while the father of the petitioner was in service and had not attained the age of superannuation, therefore, contrary view taken by District Inspector of Schools, Varanasi rejecting the claim of compassionate appointment of petitioner under Dying-in-Harness Rules, holding that date of the death of father of the petitioner shall be presumed to be on expiry of seven years or at end of seven years of his missing, in my considered opinion cannot be held to be correct as such cannot be sustained. Accordingly, the impugned order dated 7.11.2007 passed by District Inspector of Schools, Varanasi, contained in Annexure-6 of the writ petition, is hereby quashed. In the result, writ petition succeeds and is allowed. A writ of mandamus is issued directing the concerned respondent to consider the claim of compassionate appointment of petitioner by assuming the date of death of Mohd. Farid Khan, as on 1.7.1998 or soon thereafter before reaching his age of superannuation while he was in service, in accordance with the provisions of law within a period of two months from the date of production of certified copy of this order before him.