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(2016) 07 P&H CK 0204

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No.12279 of 2011 (O&M)

Sukhdei	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision: July 12, 2016

Acts Referred:

- Constitution of India, 1950 - Article 14, Article 16
- Evidence Act, 1872 - Section 107, Section 108

Citation: (2017) 1 SCT 330

Hon'ble Judges: Rajiv Narain Raina, J.

Bench: Single Bench

Advocate: Shruti Jain Goel, AAG, Haryana, for the Respondents; Ram Niwas Sharma, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

Rajiv Narain Raina, J. - Cases of presumption of death are governed by Sections 107 & 108 of the Evidence Act, 1872. The law provides that if a missing person remains unheard of for seven years, a presumption that he is dead can be raised thereafter in appropriate proceedings before the civil court. There cannot be any evidence about the actual date, time and place of death of a person. In cases where declaration of civil death is sought, the presumption of death can be reckoned from the date when the civil court passes a decree declaring person to be dead.

2. The petitioner''s husband Sadhu Ram worked as Junior Engineer in the PWD (B&R) Branch at Karnal. On June 24, 1991 Sadhu Ram disappeared never to return home and was not heard or seen. His wife approached Court for a declaration of civil death of her husband in a civil suit filed on September 22, 2004. The Civil Court decreed this suit ex parte on May 19, 2007 declaring Sadhu Ram as civil dead. The petitioner was allowed family pension from the presumptive date w.e.f. June 24, 1998 on expiry of the period of seven years from the date he was last seen. She was also granted financial assistance of

Rs. 2.5 lacs from which amount a sum of Rs. 54,438/- was recovered due from late Sadhu Ram without notice or hearing offered to the widow. These benefits were released on Court intervention in CWP No.11538 of 2008 filed by the petitioner praying for directions to the respondents to release family pension, leave encashment, GPF amount, GIS, Gratuity, ex-gratia grant. There was a prayer for providing employment to the petitioner''s son under Compassionate Assistance and Employment to the dependents of Deceased Government Employees Rules, 2005. The petition was allowed on January 12, 2009 and the benefits accruing under the order were released in favour of the petitioner. There was, however, no direction issued qua ex gratia employment.

3. In this petition, prayer is for a direction to the department to provide compassionate employment to the petitioner''s son under the exgratia scheme notified by the Haryana Compassionate Assistance to the Dependent of Deceased Government Employees'' Rules, 2003 as modified by Rules 2005 repealing the 2003 Rules leading finally to promulgation of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 replacing past policies on the subject. The further prayer is for a restraint order against the department not to recover the amount of Rs. 54,438/- from the hands of petitioner as no inquiry was held against Sadhu Ram when he was alive to establish guilt. Therefore the deduction is illegal.

4. The justification for deduction of this amount has been given in the written statement. It was on account of loss caused to the State by way of either not accounting for or handing over the material stock or misappropriating it at his level before the husband of the petitioner went missing and his whereabouts thereafter became unknown. The petitioner has also relied on the policies dated May 08, 1995 and August 31, 1995 regarding offering compassionate employment to a dependent of deceased Government employee under the ex-gratia scheme. This policy was issued in the light of the decision of the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138** which had called upon the Government to suitably modify the ex-gratia scheme insofar as it relates to compassionate appointments. The claims for ex-gratia appointment were confined to Class-III & IV posts only irrespective of the status of the deceased employee. Further, compassionate appointments being offered shall be at least one step lower than that of the deceased employee except in cases where the deceased employee is working at the lowest level in the Government. There was ceiling placed on family income at Rs. 2500/- per month and if it was more from all sources an applicant was rendered ineligible for appointment on ex-gratia basis. The policy of August 31, 1995 gave right to a married dependent for appointment under the scheme in view of early marriages in many cases. A few other changes were made which are not relevant to the present case.

5. The State has contested the case by filing written statement. The Full Bench of this Court in **Krishna Kumari v. State of Haryana & Ors, 2012 (2) SCT 736** has ruled that the relevant date for compassionate appointment and financial assistance is the date of death which in the present case is presumptive date of death runs from the date of passing of decree by the civil court on May 19, 2007. The issue before the Full Bench

was not regarding date of presumptive death. Therefore, the petitioner can claim only such rights as were available either on June 24, 1991 or June 1998 on first opportunity to seek declaration of civil death. The delay thereafter is of her own making.

6. In view of Krishna Kumari none of the policies on which reliance is placed will be of any help to the petitioner. It may be noted that the petitioner approached the civil court for the first time in the year 2004 seeking declaration of civil death i,e after 13 years of death and 6years after the presumption could arise. There is another reason why I think that compassionate appointment cannot be enforced by Court in the present proceeding is because the petitioner approached this Court in Civil Writ Petition No.11538 of 2008 claiming inter alia compassionate appointment for her son which was not decreed by the learned Single Judge in the order dated January 12, 2009. The learned Single Judge appears to have accepted the date of presumptive date of death as June 23, 1998 on expiry of seven years. The Court gave other financial benefits due towards late Sadhu Ram. The order terminating the services of Sadhu Ram vide order dated October 03, 2001 was held to be of no avail and in fact in the written statement the State says that the order has been withdrawn vide orders dated March 03, 2009 in the light of the orders passed by this Court.

7. This Court, therefore, finds no valid reason to issue directions to the State to provide compassionate appointment to the son of the petitioner, more so, as he has not claimed it for himself. It is the petitioner''s own case that she was provided family pension etc. and no further claim can be made of any enhancement etc. other than what has been released in her favour.

8. However, there is merit in the contention of the learned counsel that the amount of Rs. 54,438/- should not have been recovered from the estate of Sadhu Ram coming from employment under the State Government since no inquiry was conducted against Sadhu Ram while he was in service to establish the alleged misconduct. Therefore, this amount has to be returned by the State Government to the petitioner as it should not have been recovered to start with even on first principles without holding an inquiry to establish the guilt, if any, of Sadhu Ram in a departmental proceeding when he was alive and in service.

9. While dismissing this petition, a direction is issued to the respondents to refund the amount of Rs. 54,438/- with 9% interest from the date it was deducted when financial assistance was released to the petitioner on account of presumptive death calculated from the date he last reported for duty, till payment. The amount be determined and paid back within 6 weeks of receipt of this order.