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Court : Rajasthan

Decided On : Feb-18-2009

Reported in : 2009(2)WLN273

Judge : Mohammad Rafiq, J.

Appellant : Rajvan Devi (Smt.)

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Shri. Ganesh Sharma

Advocate for Pet/Ap. : Shri. Tarun Choudhary

Disposition : Petition allowed

Judgement :

Mohammad Rafiq, J.

1. Heard learned Counsel for the parties.

2. This writ petition has been filed by the petitioner on the premise that her husband, who was serving the respondents since 17.08.1981 as Naik/Cook and was a patient of Affective Psychosis Bipolar has not been heard of since 04.02.1998. In fact, he was on active duty with the respondents and went missing from the Unit on 04.02.1998. The Court of Enquiry conducted by the respondents

declared him deserted and consequentially the respondents sent intimation vide communication dt. 06.07.1998 to Superintendent of Police, Jhunjhunu and Police Station, Khetri.

3. Shri Tarun Choudhary, learned Counsel for the petitioner citing the Army Instruction No. 12(16)/88-D (Pension/Services) dt. 03.06.1988 argued that President has in such like cases directed that when a member of Indian Armed Forces is declared missing while in service, the family will be immediately, after the lapse of one year from the date of declaration of disappearance/presumption of death, paid family pension/DCRG etc. as admissible in normal conditions. The petitioner has not been paid any of these benefits.

4. Shri Ganesh Sharma, learned Counsel for the respondents argued that even in the aforesaid Army Instruction, the condition precedent for grant of benefits claimed is that the family must lodge first information report with the police and obtain a report that the employee has not been traced after all efforts had been made by the Police. The claimant would then be required to furnish an indemnity bond with two solvent sureties to the effect that all payments thus made will be recovered from such person if he/she reappears and makes any claims. It was argued that petitioner did not lodge any first information report, therefore, she could not be paid any pension. There was no conclusion arrived by the police that her husband was not traceable, therefore, the benefits could not be granted.

5. Having heard learned Counsel for the parties and perused the material on record, I find that even the respondents do not deny the fact that the husband of the petitioner was found missing from the Unit where he was posted on 04.02.1998 and that consequent upon the report of Court of Enquiry, he was declared deserter as per the provisions under Section 106 of the Army Act. According to assertion made by the respondents, apprehension roll had to be issued for husband of the petitioner to Superintendent of Police, Jhunjhunu, SHO Police Station, Khetri as also to Collector, Jhunjhunu on 09.03.1998. Merely because the petitioner, who is an illiterate lady, being unaware of law, did not lodge first information report with the police station, it cannot be accepted as a valid reason for not extending the deserving entitlements to her. When the

respondents themselves issued apprehension roll to the Superintendent of Police, Jhunjhunu, SHO Police Station, Khatri as also to Collector, Jhunjhunu vide their communication dt. 09.03.1998 and if necessary FIR was not lodged by the police which did not after making proper enquiry/investigation reported back to respondents about the fact that husband of the petitioner was not traceable, in such an event, the consequence of law emanating from Section 108 of the Indian Evidence Act would follow and husband of the petitioner would be deemed to have attained civil death, in view of the aforesaid provisions of Section 108, which provides that when a question arises 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 on the person who asserts so.

6. In a present case, apart from the apprehension roll issued by the respondents to Superintendent of Police, Jhunjhunu, SHO Police Station, Khetri as also to Collector, Jhunjhunu on 09.03.1998 and the writ petition filed by the petitioner on 16.01.2001 asserting that her husband was unheard of since 04.02.1998, the petitioner also served a legal notice for demand of justice on the respondents on 31.07.2000, in which also it was asserted that she made all efforts to find out whereabouts of her husband but could not succeed. Nor did the police respond to the apprehension roll informing that her husband was still alive or dead. He shall be, in view of the aforesaid provisions of Section 108, be deemed to have attained civil death.

7. In the result, the writ petition is allowed. The respondents are directed to grant benefits of family pension/DCRG together with interest @ 6% per annum as admissible in terms of Army Instruction No. 12(16)/88-D (Pension/Services) dt. 03.06.1988 from the date of expiry of one year from 04.02.1998 and the petitioner shall be entitled to receive such benefits upon her furnishing an indemnity bond with two solvent sureties to the effect that all payments thus made will be recovered from the amount due to the person if he/she reappears and makes any claims.

8. Compliance of the judgment be made within three months from the date its copy is produced before the respondents.

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