2025 INSC 1280

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14786 OF 2024

THE COMMISSIONER, NAGPUR MUNICIPAL CORPORATION & ORS. **APPELLANT(S)**

VERSUS

LALITA & ORS. **RESPONDENT(S)**

JUDGMENT

PANKAJ MITHAL, J.

1. Heard learned counsel for the parties.

2. This is an appeal preferred by the appellants assailing the judgment and order dated 18.07.2024, passed by the High Court in Writ Petition No. 913 of 2024. The High Court directed the appellants to issue an appointment order to respondent No.2, Shubham(son) on a suitable post, by treating the date of death of the father of respondent No.2, Gulab Mahagu Bawankule as 01.09.2012 i.e., the day on which he went missing.

3. The submission of learned counsel for the appellants is that the date on which the father of respondent No.2 went missing i.e. 01.09.2012, cannot be treated as the date of his death. In cases of civil death, a person will be presumed to be dead only if his whereabouts are not heard of for seven years from the date the person went missing. Therefore, the High Court manifestly erred in treating the date on which the father went missing as the date of his death. There is no evidence on record to prove the date of his death.

4. It is further submitted that the date of civil death of father of the respondent No.2 would, in fact, be 01.09.2019, i.e., on the expiry of seven years period from the date he went missing. During the period he was missing, he was treated to be in service and he duly retired on 31.01.2015. The family was extended all retiral benefits amounting to Rs.6,49,000/-(Rupees six lakhs forty-nine

thousand only) and odd. Additionally, the family is receiving monthly pension of Rs.12,000/-(Rupees twelve thousand only). Since, the family member(s) including respondent no. 2 have accepted the retirement of father and his retiral dues, it is not open for respondent No.2 to claim compassionate appointment.

5. Per contra, the learned counsel for the respondent(s),in defence, contended that the respondent No.2 could not have sought a decree declaring the death of his father prior to 2019, as the statutory period of seven years had to first elapse. It is therefore, submitted that the decree declaring the death of his father passed by the Court of Civil Judge, Senior Division Nagpur on 11.01.2022, would, in effect, relate back to the date on which his father went missing.

6. We have perused the decree of the Civil Court dated 11.01.2022. It records that the father

of the respondent No.2, Gulab Mahagu Bawankule, went missing on 01.09.2012. Consequently, the suit was decreed, thereby declaring him to be dead. However, the decree is completely silent on the specific date of death of the father of the respondent No.2. The civil court has not declared him to be dead as on 01.09.2012.

7. In ***LIC Vs. Anuradha***[1], it has been laid down in matters of civil death, the question of the date or time of the death must be determined on the basis of direct or circumstantial evidence, and not on mere assumption or presumption. The burden to prove the date or time of the death lies upon the person who makes such an assertion of death. It has been further clarified in the aforesaid case that the decree of declaration of civil death only recognizes the fact that the person is presumed to be dead after expiry of seven years of disappearance, without fixing any

1 (2004) 10 SCC 131

precise date or time of death.

8. In the instant case, the respondent No. 2 has not asserted any specific date or time of the death of his father, nor has he adduced any evidence in this regard. Therefore, the date or time of the death of the father of the respondent No.2 remains uncertain. Section 108 of the Indian Evidence Act, 1872, states that in cases of civil death, the death will be presumed to be after the expiry of seven years from the date the person went missing. Hence, as per Section 108, he will be presumed to be dead on the expiry of 7 years from the date he disappeared or went missing unless contrary or specific date of death is proved by adducing cogent evidence.

9. Thus, in the facts and circumstances of the case, the father of the respondent No.2 would be deemed to have died a civil death upon the expiry of seven years from the date he went missing i.e., 01.09.2019. It is pertinent to note that despite having gone missing, he was

treated to be in continuous service and he duly retired on 31.01.2015. The family members were paid all the retiral dues and have also been receiving monthly pension. In these circumstances, when the respondent No.2 has accepted that his father had retired, he cannot claim compassionate appointment.

10. This apart, the High Court manifestly erred in directing the appellants to straight away grant compassionate appointment to respondent No.2, instead of directing them to consider his case for compassionate appointment and thereafter to extend the appointment, upon satisfaction of prescribed conditions.

11. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned judgment and order dated 18.07.2024 passed by the High Court cannot be sustained in law. Accordingly, the impugned judgment and order dated 18.07.2024 passed by the High Court is hereby set aside. However, we leave

it open to the appellants to consider the case of the respondent No.2 for appointment for any suitable post within its jurisdiction, independent of claim for compassionate appointment, if necessary by granting age relaxation, provided the same is otherwise permissible in law.

12. The appeal stands allowed in the above terms.

13. Pending application(s), if any, shall stand disposed of.

……...J.
[PANKAJ MITHAL]

……...J.
[PRASANNA B. VARALE]

NEW DELHI;
OCTOBER 29, 2025.
SD

ITEM NO.117 COURT NO.7 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 14786/2024

THE COMMISSIONER,
NAGPUR MUNICIPAL CORPORATION & ORS. APPELLANT(S)

VERSUS

LALITA & ORS. RESPONDENT(S)

(IA No. 78417/2025 - EARLY HEARING APPLICATION)

Date : 29-10-2025 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE PANKAJ MITHAL
HON'BLE MR. JUSTICE PRASANNA B. VARALE

For Appellant(s) Mr. Gagan Sanghi, Adv.
Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s) Ms. Chitra Parande, Adv.
Mr. Shishir Deshpande, AOR
Mr. Nilakanta Nayak, Adv.
Mr. Amit Yadav, Adv.
Mr. Kaushal Narayan Mishra, Adv.

Mr. Naman Tandon, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Shrirang B. Varma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal stands allowed in terms of the signed non-reportable judgment which is placed on the file.

2. Pending application(s), if any, shall stand disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(NIDHI MATHUR)
COURT MASTER (NSH)