

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12158 of 2018

Date of decision: 11.9.2018

Lajwanti

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Abhimanyu Singh, Advocate for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to release the disability pensionary benefits/ other benefits on account of rendering service by the husband of the petitioner.

It has been averred that the petitioner's husband was appointed as Constable in Border Security Force on 27.3.1990 who was suffering from Epilepsy which led to his discharge on 15.9.1992 after 2 years 5 months and 19 days service. He had been brought back home and thereafter on 26.6.1996, he had left the home without informing anybody and did not return back. The civil suit for declaration was filed which was decreed on 9.1.2008 (Annexure P/1) by the Additional Civil Judge (Senior Division), Bhiwani that he had not been heard dead or alive and therefore under Sections 107 and 108 of the Indian Evidence Act, he was deemed to be dead. Resultantly, legal notice dated 26.9.2009 (Annexure P/2) claiming the benefit of disability pensionary benefits was served upon the respondents.

A perusal of the reply to the said legal notice which had been

received from the respondents would go on to show that the stand of the respondents was that the deceased was suffering from Grundmal Epilepsy and was taking Ayurvedic treatment from the age of 15 to 21 years. Therefore, he had been boarded out and he had not disclosed his illness of convulsions in front of Medical Board and hidden his medical condition.

A perusal of the writ petition would go on to show that nothing has been mentioned as such as to under which rules and regulations, the petitioner is entitled for benefit of disability pensionary benefits especially keeping in view the short service as such which the deceased had rendered with the respondents. It has already been noticed that he was suffering from the said disease from his childhood and the period of service is also just for 2 years. A writ of mandamus can only be issued as such if there was some legal or statutory right of the petitioner to enforce the claim as such.

In the absence of any such claim, the present petition is bereft of any merit and the same is accordingly dismissed in limine.

September 11, 2018
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No