

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

**CWP No.3852 of 2019
Date of Decision:02.04.2019**

Santosh DeviPetitioner

Versus

Union of India and othersRespondents

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

Present: Mr. Sukhdev Singh Khokher, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India praying for quashing of the order dated 10.11.1997 (Annexure P-8) vide which husband of the petitioner was discharged from service from 30.06.1997. It is alleged that he joined the ITBP in the year 1988 and undergone a junior cadre course at 25th Battalion of ITBP Kullu. The claim is for releasing of retiral benefits relating to the service of husband of the petitioner.

The petitioner and her son have been communicating with the respondents on the ground that the husband of the petitioner, namely, Ashok Kumar went missing from July, 1997 while serving in ITBP and were duly informed that he had been discharged, vide communication dated 19.05.1998 (Annexure P-1) and 08.07.1998 (Annexure P-2). The petitioner's son Parveen Goyat was also informed on 24.04.2014 (Annexure P-5) regarding this aspect. Eventually, a legal notice was served on 18.08.2016 (Annexure P-9) and request was made to withdraw the discharge

order after a period of almost 20 years.

The show cause notice was duly replied vide letter dated 28.02.2017 (Annexure P-10) in which a plea has been taken that on account of his domestic circumstances and being mentally disturbed the husband of the petitioner was living far away from his actual residence. An unsigned application dated 22.10.1997 had also been received by ITBP that he was not interested to serve in ITBP due to his domestic circumstances. Further reference has also been made to letter dated 16.02.1997 whereby the petitioner herself had informed the battalion that her husband was in relationship with another woman and living with her separately at village Dadri. The petitioner and her children were living at village Subana with her brother.

It is not disputed that on an earlier occasion the petitioner had filed CWP No.20695 of 2017 which was dismissed as withdrawn on 14.09.2017 (Annexure P-12) with liberty to avail the alternate remedy. The said order reads as under:

“After arguing for some time, learned counsel for the petitioner submits that he may be permitted to withdraw the instant petition with liberty to avail the alternate remedy.

Dismissed as withdrawn with aforesaid liberty.”

The only ground for filing the second writ petition is now which the counsel would point out is that a civil suit as such for declaration of civil death of her husband had been filed on 01.03.2017 which was decided on 01.09.2018 (Annexure P-11), which fact allegedly could not be brought to the notice of the Court on an earlier occasion.

As noticed, disputed questions are coming forth as to the strained relationship between husband and wife and whether the husband is

staying away on his own and still alive, which is the plea taken by the respondents in their reply on the strength of the letters written by the petitioner herself.

In such circumstances, this Court can not get into disputed questions of facts and specially keeping in mind the fact that petitioner had herself withdrawn the earlier writ petition without taking any liberty to file a fresh on the same cause of action.

Resultantly, no case is made out to entertain the present writ petition and the same is hereby dismissed. It is open to the petitioner to avail the alternative remedy before the competent forum in view of the disputed questions raised.

Dismissed in limine.

02.04.2019
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No