

(2001) 01 P&H CK 0041

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 7080 of 1998

Baljinder Kaur

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Jan. 15, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. K.S. Dadwal, for the Appellant; Mr. Kamal Sehgal, for the Respondent

Judgement

R.L. Anand, J.

Petitioner Smt. Baljinder Kaur, has filed the present writ petition under Articles 226/227 of the Constitution of India against the respondents for the issuance of a writ in the nature of cer-tiorari quashing the communications dated 9.6.1997 (Annexure P-8) and 3.3.1998 (Annexure P- 11). The petitioner has further prayed that a direction be given to the respondents to release the Army Group Insurance benefits to him, keeping in view the fact that the husband namely Naik Surinder Singh be treated as "Missing Presumed Dead" person and further the directions be given to respondent No. 5. Deputy Commissioner, Hoshiarpur to give suitable post to the petitioner as per the order dated 19.4.1994, passed in Civil Writ Petition No. 10750 of 1993.

2. The case set up by the petitioner is that her husband Shri Surinder Singh joined the Indian Army on 17.1.1979. On 23.11.1992 he was posted at Deolali (Maharashtra) in 99 Fd. Regiment from where he proceeded on leave with effect from 23.10.1992 to 27.10.1992.

3. In the year 1993, the petitioner filed Civil Writ Petition 10750 of 1993 and sought the mandamus from this court that the matter be investigated by the C.B.I. On 11.4.1994 the Hon'ble High Court passed the order and gave permission to the

petitioner to make an application for pensionary benefits to the respondents and recommended the authorities to consider whether Naik Surinder Singh instead of being declared as de- serted, can be declared as Missing person and further observed that if the petitioner makes an application to the Deputy Commissioner, Ropar for any employment on compassionate grounds, the said authority will consider her request sympathetically in accordance with law. In compliance of the orders passed by the High Court, the respondents considered the case of the petitioner on 19.9.1995 and declared the husband of the petitioner as missing presumed dead. On 6.12.1995, respondent No. 4, wrote to respondent No. 3 regarding the sanctioning of the other benefits. On 12.10.1996, the petitioner submitted another representation to the army authorities for the release of Army group insurance benefits. On 2.11.1996, respondent No. 4 wrote to the headquarters for the release of Army Group Insurance benefits. Finally on 9.6.1997 the authorities informed the petitioner that she should seek a declaration from the Civil Court to the effect that her husband is declared "missing presumed dead". Petitioner is not satisfied with this order. Hence the present writ petition.

4. Notice of the writ petition was given to the respondents who filed the reply and denied the allegations. The major stand of the respondents is that under the rules, petitioner is supposed to get a declaration from the Civil Court of competent jurisdiction about the death of her husband and in the absence of any decree in her favour she cannot be granted the benefit of army group insurance.

5. I have heard Shri K.S. Dadwal, learned Counsel appearing on behalf of the petitioner and Shri Kamal Sehgal, learned Counsel appearing on behalf of the respondents and with their assistance have gone through the records of the case.

6. Admittedly, Shri Surinder Singh was serving in the army. He proceeded on leave in the year 1992. He has not been heard for the last more than 7 years. In these circumstance, a reasonable inference can always be drawn about the death of Naik Surinder Singh. The Hon"ble High Court gave the directions to the respondents and in pursuance of those directions the other benefits have been given to the petitioner treating as if Naik Surinder Singh has expired in the eye of law. When other benefits have been released to the petitioner, it will be unfair on the part of the respondents to direct the petitioner to go to the Civil court and obtain a decree for declaration to the effect that sbe is entitled to the benefit of Army Group Insurance.

7. In this view of the matter, the communications, dated 9.6.1997 (Annexure P-8) and 3.3.1998 (Annexure P-11), are hereby quashed and directions are given to the respondents to also release the benefit of Army Group Insurance to the petitioner within three months from the receipt of the copy of this order. It is always the anxiety of the court to protect the interest of the respondents. The petitioner shall furnish surety bond in the sum of Rs. 20,000/- to the Union of India that in the event of appearance of her husband. Shri Surinder Singh, she will refund the amount and if the amount is not refunded, it will be open to the Union of India to recover the

money by way of arrears of land revenue. There shall be no order as to costs.

8. Petition allowed.