

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

Civil Writ Petition No.7727 of 2002

Date of decision: 13.02.2015

Mahinder Kaur widow of Malkiat Singh, resident of Guru Arjan
Dev Nagar, Moga, District Moga.

... Petitioner

versus

State of Punjab through the Secretary to Government of Punjab,
Department of Relief and Resettlement, Mini Secretariat,
Chandigarh, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Brijeshwar Singh Bhalla, Advocate,
for the petitioner.

Ms. Vandana Malhotra, Additional Advocate General,
Punjab.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. There is a complete misunderstanding of how a scheme for assessing ex gratia compensation payable to the family of terrorist victims could be worked out. The petitioner was a widow having lost her husband but she was not qualified to claim as a widow of a terrorist victim because she was making the claim for death of her son who was the victim of terrorist violence.

2. Originally they had granted the ex gratia payments @ ₹1,000/- per month when a dependent mother was entitled only to ₹100/- and when it had been enhanced to ₹300/-, she had been paid ₹1,500/-. The enhanced amounts of ₹1,000/- or ₹1,500/- were payable only to the widows of terrorist victims and not a dependent mother. The wrong understanding of the petitioner was that she was a mother of a terrorist victim who was incidentally a widow. Such a mixing of different situations cannot be done to claim the benefits under the scheme.

3. When the monthly ex gratia pension payable was suddenly withdrawn without notice, this court had made intervention on her behalf in a writ petition filed by her directing the State to continue to pay the monthly pension and also the arrears but observed at the same time that it will not preclude the State from serving an appropriate notice to show cause against the alleged excess payment said to have been made. The impugned order has, therefore, been passed pointing out to the mistake and holding that the excess payment during the relevant time when she was paid the amount due for widow of a terrorist victim. The petitioner would still have a grievance that it was a settled law that the payments already made even if it was a mistake cannot be directed to be refunded and that it could be effective only in future.

4. I am afraid, there is no such proposition of law that the payments made under a mistake cannot be directed to be refunded or adjusted. On the other hand, the law stated by the Supreme Court is different. It has been stated by the Supreme Court that the payment at mistake could be a justifiable circumstance for directing the refund or a readjustment. (see: **Chandi Prasad Uniyal and others Versus State of Uttarakhand and others-AIR 2012 (SC) 2951**).

5. The counsel for the petitioner argues that the dependent pension which was originally ₹100/- which was later raised to ₹300/- was still further raised to ₹750/-. Needless to state that the petitioner would be entitled to the enhanced pension for a dependent mother and if there is any amount still due and payable, the petitioner will be competent to work out the amounts which became due from the day when the amount was enhanced and make a demand on the respondents. If the demand made is correct by reference to the date of increase and the amount that have been already paid, the State shall also release any outstanding that may arise to the petitioner within a further period of 4 weeks from the date of a demand.

6. The writ petition is disposed of with the above observations.

(K.KANNAN)
JUDGE

13.02.2015
sanjeev