

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

CWP-23325-2018

Date of decision: 6.3.2019

Narinder Pal Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.SL Chandershekhar, Advocate for the petitioner

Mr.Vikas Mohan Gupta, Addl.AG, Punjab

JITENDRA CHAUHAN, J.

The present writ petition under Articles 226/227 of the Constitution of India has been filed for directing respondent Nos. 3 and 4 to grant all the relief such as ex- gratia grant, family pension, subsistence allowance on account of the killing of Surinder Kaur -mother of the petitioner on 17.2.1990 by unknown terrorist.

Learned counsel for the petitioner submits that with regard to the murder of the mother of the petitioner by the terrorists on 17.2.1990, a detailed enquiry was conducted by the Senior Superintendent of Police and an FIR No.44 dated 17.2.1990 under Section 302 read with Section 34 IPC and Section 25 of the Arms Act and under Sections 3/4/5 of the Terrorists and Disruptive Activity (Prevention) Act (for short 'TADA') was registered.

The compensation sought in terms of the policy/ instruction dated 10.5.1990

(Annexure P-5) issued by the Director -cum- Joint Secretary to Govt. of

Punjab, Department of Relief and Resettlement and the subsequent clarifications dated 30.9.1992 (Annexure P-6), 7.12.1998 (Annexure P-7) and 3.7.2001 (Annexure P-8 and the review of the policy by the Government of Punjab, Department of Revenue, Rehabilitation and Disaster management dated 6.3.2006 (Annexure P-9) for implementation of Justice Nanavati Commission of Inquiry.

On the other hand, the learned State counsel submits that the petitioner at the time of filing the petition was 65 years of age and her mother was murdered in the year 1990 on the basis of which, FIR was registered. He further submits that the petitioner being a married daughter does not fall in the eligible criteria framed in above referred policies/ instructions framed by the State of Punjab. He refers to Clause 2 of Notification dated 10.5.1990 (Annexure P-5) and submits that such relief can only be granted to the widow, orphan children, whose earning members/bread winner of the family has died in the terrorists activities. Apart from it, State counsel also submits that there is a delay of more than 28 years for claiming the relief and therefore, the same is hit by delay and laches. He also submits that application dated 17.2.2010 (Annexure P-3) was submitted by the father of the petitioner, which again would not give any cause of action to the petitioner to claim such relief being a married daughter even at the time of murder of her mother.

Heard.

As per Notification dated 10.5.1990 (Annexure P-5) issued by Government of Punjab, Department of Relief and Resettlement, the

eligibility criteria for grant of financial assistance to the Victims of Riots/ Terrorists under the Riots/ Terrorists Rules 1985 amended time to time is as under:-

2. Eligibility Sub Rule (i) and (ii) of Rule 3 shall be substituted as under:-

- i) Sikh migrant orphans who have no earning member to help them and have no means of livelihood;
- ii) Sikh migrant destitutes who have no earning member to help them and have no means of livelihood;
- iii) Disabled sikh migrants whose physical disability rendered them incapable of earning livelihood;
- iv) Sikh migrants/ widows who lost their bread winner during the period from 31.1.1984 to 7.11.1984 (both days inclusive), in the riots following the assassination of the Prime Minister Mrs. Indira Gandhi.
- v) Widows who lost their bread winner due to extremists/ terrorists activities/ action of security forces acting in aid of civil power;
- vi) Orphans, destitute and 100% physically disabled persons, rendered as such, due to terrorists/ extremists activities/ action by security forces serving in aid of civil power;
- vii) The dependent parent(s) of innocent civilians killed in terrorists violence by security forces acting in aid of civil power.
- Viii) Dependent parent(s) of the innocent civilians killed if he was unmarried, provided the son was the sole bread winner of his parent(s).

Provided that the subsistence allowance will stop as and when the beneficiary gets employed or an able bodied person becomes an earning member of the family.

In view of the aforesaid notification issued by the Government of Punjab, the petitioner does not fall in any category of the eligibility as she is neither the widow nor the dependent of the deceased mother. She is a married woman. Admittedly, the mother of the petitioner died during the period of terrorism and FIR No.44 dated 17.2.1990 was lodged against unknown person. From perusal of Annexure P-4 letter written by Senior Superintendent of Police, Taran Tarn to Sub Divisional Magistrate, Patti it emerges that the application was moved by the father of the petitioner only for taking financial help after a lapse of more than 15 years of the incident. In his application Annexure P-2, father of the petitioner stated that he is an illiterate person, whereas on application (Annexure P-3) moved by him before SDJM, Patti for providing copy of postmortem report of his wife Surjinder Kaur, he has signed the same.

The law on delay, laches and acquiescence has been summed up by Hon'ble the Supreme Court in **Prabhakar vs. Joint Director Sericulture Department and Another 2015(15) SCC 1**, which reads as under:-

“35. Let us examine the matter from another aspect, viz. laches and delays and acquiescence.

36. It is now a well recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without

any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".

37. This principle is applied in those cases where discretionary orders of the Court are claimed, such as specific performance, permanent or temporary injunction, appointment of receiver etc. These principles are also applied in the writ petitions filed under Articles 32 and 226 of Constitution of India. In such cases, Courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to Court within the period prescribed by the Limitation Act.

38. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.

39. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the Court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground

of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent”.

Applying the law laid down by Hon'ble the Supreme Court, the instant petition being hit by the principle of delay and laches, is hereby dismissed.

6.3.2019
gsv

[**JITENDRA CHAUHAN**]
JUDGE

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