

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

**CWP NO. 14578 OF 2016
DATE OF DECISION : 20.08.2019**

Goldi Devi and another

...Petitioners

versus

**Bhakhra Beas Management Board
and others**

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. H. C. Arora, Advocate,
for the petitioners.

Mr. Abhay Gupta, Advocate for
Mr. Amar Vivek, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

1. Petitioners seek quashing the circular dated 06.05.2014, 26.08.2013 and 11.11.2013 Annexures P-2, P-9 and P-10 respectively, vide which they were required to surrender the solatium and special family pension @ 12% simple interest which had already been drawn by them in lieu of getting the compassionate employment. They have also prayed for getting the refund of solatium and special family pension with 12% annual simple interest.

2. Petitioners No.1 and 2 are widow and daughter, respectively of late Shri Tilak Raj, who was working as Electrician Grade-1 in Bhakra Beas Management Board (hereinafter referred

to as "BBMB") and died in harness on 27.07.2010.

3. At the time of aforesaid death compensation Policy dated 03.11.2005 (Annexure P-1) was in existence, under which the dependents of the deceased employee were entitled to solatium(lump sum compensation). In addition to solatium, the widow/dependents, as the case may be, were entitled to special family pension at the rate mentioned therein, which was payable till the date of superannuation of the deceased employee. There was no provision for compassionate appointment at that time.

4. On 06.05.2014, a Scheme (Annexure P-2) for employment on compassionate grounds to the dependents of the deceased BBMB employees was introduced retrospectively with effect from 16.04.2010. Vide circular dated 26.08.2013 (Annexure P-9), it was conveyed that widow/dependents of a deceased employee who had already been paid solatium and were getting special pension, by refunding solatium and the entire amount of special family pension along with 12% simple interest, could avail benefit of compassionate appointment for one of the dependents.

5. Petitioners neither had any other job option, nor any bargaining power with BBMB, submitted to the offer/dictate of the respondent-BBMB. Petitioner No.1 vide her letter Annexure P-4 dated 02.07.2014, agreed to surrender the amount of solatium and special family pension, drawn till then, along with 12% simple interest. Petitioner No.2 (daughter of the deceased)

was thereupon issued an appointment letter (Annexure P-5) dated 05.01.2015 for the post of Lower Division Clerk (LDC). Petitioner No.1 accordingly deposited two cheques (i) cheque dated 09.09.2014 for ₹3,54,000/- on account of interest and amount of solatium and (ii) cheque dated 26.04.2015 for an amount of ₹13,29,649/- on account of total amount of special family pension, including 12% simple interest thereon. On payment of the aforesaid amounts petitioner No.1 was allowed to draw ordinary family pension instead of special family pension.

6. Concededly, the petitioner No.1 thus voluntarily accepted offer letter dated 01.07.2014 (Annexure P-3) to surrender already drawn special family pension and lump sum solatium with 12% annual interest in lieu of compassionate employment to her daughter i.e petitioner No.2. To be noted that petitioner No.1 is now getting the normal family pension. Prayer of petitioners seeking refund of lump sum solatium with 12% interest, therefore, seems unjust. While, forcing them to refund special family pension with 12% annual interest seems unfair and unreasonable. If the policy of granting special family pension and lump sum solatium were not there, the petitioner would have availed the benefit of alternate policy of compassionate employment, earned monthly salary also and at the same time got the family pension. Having now opted for compassionate employment, monthly earning in terms of special family pension has been substituted by monthly earning in terms of salary.

Special family pension already disbursed for past cannot be, thus, recovered.

7. The impugned circulars requiring the widow/dependents of the deceased employee to refund/surrender special family pension paid to them on month to month basis for past 05 years, along with interest amounts to undue enrichment on the part of the respondent-BBMB. It is misuse of their dominant position by exploiting unequal bargaining power of the widow/dependents of a deceased employee. In my opinion, such an agreement got signed from the widow of the deceased employee is unconscionable and opposed to public policy, under Section 23 of the Indian Contract Act, 1872. In these days of unemployment, a person who is promised employment, even as a Clerk, would be too ready and willing to pay coercive amount to the employer, in lieu of such appointment. Even if he has to arrange such funds, by way of beg/borrow or steal. Such an agreement would not be binding on the widow/dependents. Neither are they estopped from challenging it on the ground of it being violative of Articles 14 and 19 of the Constitution of India.

8. The impugned circulars of the respondent-BBMB are liable to be quashed to the extent they required the widow/dependents of the deceased employee to refund special family pension already disbursed and consumed by the widow. Learned counsel for the petitioner also relied on a case titled as "*Air India v. Nargesh Meerza and another*" 1982(1) SLR 117",

wherein Hon'ble the Supreme Court held that an agreement between the prospective Air Hostesses and Air India stating that in the event of becoming pregnant an Air Hostess was required to discontinue service, was totally unethical and violative of Articles 14 and 19 of the Constitution of India.

8. Reference may be had to Apex Court judgment in "*State of Punjab and others v. Jagjit Singh and others*" 2016 (4) SCT 641. Compulsions on the part of the unemployed person to accept employment at whatever wages, and his right to claim salary in accordance with law after joining service was the issue therein. Para 55 of the judgment, *ibid*, is reproduced hereunder:-

"55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

9. A widow herein, who had already spent her special family pension for bringing up the children and on their education and other needs was suddenly told one fine morning after 5 years, that she has to refund the entire amount of special family pension, that too with 12% interest per annum.

10. Another aspect of the matter is that the appointment of the petitioner No.2 was made with prospective effect from 05.01.2015 and not with effect from 27.07.2010 (from the day, petitioner No.1 started getting special family pension on account of death of her husband). The conduct of the respondent-BBMB, therefore, in making the widow of the deceased to make her pay an amount of ₹13,29,000/- on account of special family pension, is grossly unfair, harsh and unconscionable.

11. Even otherwise, applying the analogous principles as enunciated by Hon'ble the Supreme Court in "*State of Punjab and others v. Rafiq Masih*" 2015(4) SCC 334, I am of the view that the conditional compassionate offer made by the respondents to first make recovery is not sustainable. The petitioner was under duress and circumstantial coercion to succumb to recovery demand qua solatium/special family pension. Such a conditional offer, therefore, is not sustainable in the eyes of law. But as discussed in preceding paragraphs, the petitioners cannot avail twin benefit of their husband/father having died in harness, they are either entitled to solatium or compassionate appointment. To that extent, therefore, the

condition of respondent-BBMB asking for refund of solatium along with interest is justified. Even though 12% interest seems to be unreasonable. The said question is, however, left open to be decided in appropriate proceedings.

12. Learned counsel for the petitioners fairly submits that this Court may observe that order passed in the peculiar circumstances of the present case shall not be treated as a precedent. It is ordered so.

13. The petitioners are, therefore, entitled to refund of the aforesaid amount of ₹13,29,649/- along with same interest that was paid by them.

14. The respondent-BBMB is directed to make the necessary calculations and pay back the amount qua special family pension which the petitioners were made to refund, along with interest @ 12% with effect from the date having recovered the same from the petitioners until the date of actual disbursement.

(ARUN MONGA)
JUDGE

AUGUST 20, 2019
shalini

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