

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

215

CWP-13382-2021

Date of Decision : 04.01.2024

KASHMIR KAUR AND ANOTHER

..... PETITIONERS

V/S

BHAKRA BEAS MANAGEMENT BOARD AND OTHERS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Gurcharan Dass, Advocate
for the petitioners.

Mr. Sudhanshu Makkar, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of Constitution of India are seeking setting aside of communication dated 05.05.2009 (Annexure P-21) and direction to the respondents to either extend benefit of compassionate appointment or pay solatium.

2. The husband of petitioner No.1 was working as Lineman with respondent-Board. He passed away on 10.06.2002 in harness. The petitioner No.2 is son of deceased employee. The petitioner No.2, on more than one occasion, was appointed on contract of 89 days. The petitioner No.2 opted to remain absent from duty which compelled the respondents to terminate his service.

3. Learned counsel for the petitioners submits that in terms of policy dated 03.11.2005, the petitioners are entitled to solatium. The petitioners do not press their claim for compassionate appointment, however, they may be considered for solatium in terms of policy dated 03.11.2005 (Annexure P-12). Learned counsel for the petitioner asserts that the petitioners would not lodge claim qua interest if they are granted benefit of solatium in terms of aforesaid policy.

4. Per contra, learned counsel for the respondents submits that the petitioner No.2 was time to time appointed for 89 days, however, he remained absent from duty, thus, respondent was forced to dismiss him from service. The death of the employee took place in 2002 whereas the petitioner is making claim of solatium on the basis of policy dated 03.11.2005. The said policy does not have retrospective effect, thus, the petitioners are not entitled to solatium.

5. I have heard the arguments of learned counsel for the parties and perused the record.

6. From the perusal of record and arguments of both sides, it is quite evident that husband of petitioner No.1 passed away in 2002 and at that time, policy of solatium was not in force. The respondent-board was making appointment of dependent of deceased employees for 89 days. The petitioner No.2 was also appointed on contract of 89 days. The service of petitioner No.2 was terminated on account of his absence from duty. The respondents are denying claim of the petitioner qua solatium on the ground that policy of solatium came into force on 03.11.2005 whereas employee passed away in 2002.

7. Para 5 of the policy dated 03.11.2005 makes it clear that it is applicable even to those employees who have passed away prior to 2005.

For the ready reference, the said paragraph is reproduced as below:

“5. This new policy shall be uniformly applicable to all regular BBMB own employees without any distinction and irrespective of financial status of the deceased. The case of those dependents of deceased BBMB (own recruited regular employees who have not yet been given compassionate employment or who have been continuing on contract basis on 89 days spell basis and have not been given regular employment (as per existing BBMB policy) will also be covered under the new policy. However, the option of availing the benefits of new policy shall also be given to the dependents of the deceased BBMB employees who have completed three terms of 89 days before 21.10.2005 and have become eligible for employment on compassionate grounds as per the policy of the Board as applicable prior to 21.10.2005 given them a choice of employment or the benefit of new policy.”

8. From the reading of aforesaid paragraph, it is quite evident that the said policy is applicable to all those dependents of deceased employees who have not yet been given compassionate employment or who have been continuing on contract basis for 89 days spell basis and have not been given regular appointment. The policy is also applicable to dependents of deceased employees who have completed three terms of 89 days before 21.10.2005 and have become eligible for employment on compassionate grounds. The policy is clearly applicable to all those dependents of deceased employees who have passed away prior to introduction of said policy.

9. The contention of respondents that policy is not applicable to the petitioners is misconceived and deserves to be rejected.
10. At this stage, learned counsel for the respondents submits that dependents of deceased employees are entitled to solatium subject to compliance of conditions embodied in the aforesaid policy. This contention of the respondents deserves to be accepted and accordingly, the petition is allowed by way of remand to respondents-authorities to consider claim of the petitioners in terms of policy dated 03.11.2005.
11. The respondents shall pass an appropriate order within three months from today. It is made clear that if petitioners are found entitled to solatium in terms of aforesaid policy, they, as conceded, shall not be entitled to interest.

04.01.2024
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>