

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.22214 of 2010 (O&M)
Date of Decision: 28.03.2016**

Sinder Singh

... Petitioner

Versus

Managing Director, Pepsu Road
Transport Corporation and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S. Chauhan, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner is dead. He is represented by his legal heirs and representatives who have been brought on record. The cause of action has not abated because the claim is monetary, that is, for medical reimbursement and money spent on the treatment of the late petitioner who suffered from Type-2 DM C Nephropathy which led to failure of his Kidneys. He was treated at the Sidhu Hospital, Ludhiana as an indoor and outdoor patient. He succumbed to his illness on January 21, 2013. He claimed medical reimbursement from the respondent Corporation on bills submitted to the tune of towards treatment as outdoor patient. He was reimbursed for indoor treatment for a sum of Rs.37,554/-and the claim is presently restricted to the amount spent on outdoor treatment.

2. The written statement has been filed by the Corporation in which the claim for reimbursement as outdoor patient is contested. The

defence is that due to financial constraints the Corporation has not been able to adopt the instructions dated September 01, 2000 and July 21, 2004 issued by the Punjab Government on the subject of medical reimbursement under the Punjab Services (Medical Attendance) Rules, 1940.

3. No one appears for the Corporation.
4. Mr. Manuja is requested to act as Amicus Curiae.
5. Learned counsel for the petitioner has placed reliance on the Division Bench judgment of this Court delivered in CWP No.14426 of 2003 titled *Ram Karan v. Managing Director, PRTC and another*. The Division Bench dealt directly with the issue of medical reimbursement incurred by a PRTC employee towards outdoor treatment for chronic ailment where the patient had earlier been an indoor patient. This Court had observed as follows:-

“We are surprised at the insensitive attitude adopted by the respondent-Corporation in respect of its own employees/pensioners. An employer is not only to look forward to the economic growth but also to look after the welfare of its employees including health, social security and other human needs. It is the obligation of the State or its functionaries to work within the scope of their authority to combat and overcome the miseries of its employees. The Courts in which a situation are obligated to issue necessary directions to mitigate the extreme hardship of the employees involving violation of their human rights by the State or its functionaries like the respondent-Corporation, which are fully controlled by it.

In view of the discussion made above, the writ petition is allowed. The respondents are directed to disburse the amounts spent by the petitioner on treatment of his complicated chronic disease within a period of one month from the date of receipt of a certified copy of this order.”

6. The case before the Division Bench related to medical reimbursement in a case of Cardiomyopathy (Myocardial Infarction) which is a complicated chronic disease. The dispute was also with respect to medical expenditure as an outdoor patient. The Division Bench applied the Punjab Government circular dated December 31, 1997 which allowed reimbursement of medical expenses exceeding Rs.6,000/- per month to Punjab Government employees in receipt of fixed medical allowance per month to its employees.

7. The argument raised before the Bench by the respondent Corporation was similar to the one pressed in this case that due to financial constraints the Corporation could not adopt the instructions and, therefore, the claim had to be rejected.

8. Per contra, the learned counsel for the petitioner has urged that Corporation has in fact adopted the instructions *de facto* and since the Corporation is an authority controlled and run by the State Government it cannot take the plea of weak financial position to deny fundamental rights to the citizens. It is well settled that right to medical reimbursement is right to life protected by Article 21 of the Constitution of India and is therefore in the nature of a fundamental right. It is an obligation of the State to look after its employees in the days of sickness and for this proposition, this order need not be burdened by numerous judgments on the point including **State of Punjab v. Ram Lubhaya Bagga**, (1998) 4 SCC 117 where the Supreme Court considered the issue of medical reimbursement falling in Articles 21 and 47 of the Constitution of India. It may be that financial aspect is a relevant consideration but the plea having not been successfully explained

in the case of the Corporation itself in *Ram Karan's* case it would no longer be open to the Corporation to take a stand different from the one taken in *Ram Karan*. The Division Bench relied on a number of decisions including **Municipal Council, Ratlam v. Shri Vardhichand & Ors**, (1980) 4 SCC 163; **B.L. Wadhera v. Union of India**, AIR 1996 SC 2969; **All India Imam Organisation and others v. Union of India and others**, (1993) 3 SCC 584 and **Kapila Hingorani v. State of Bihar**, 2003 (3) RSJ 42 to hold that financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental rights arises. A right to carry on business is reciprocated with the duty and constitutional obligations provided under the Constitution. The Division Bench quoted a passage from *All India Imam Organization* as follows:-

“6..... Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above the fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created.”

9. The amount claimed to have been spent on outdoor treatment is stated by the petitioner to be a sum of Rs.2 lacs and odd for the period 2008 to 2011 broken into four distinct periods involving sums of Rs.1,02,958/-,

Rs.40,000/-, Rs.74,525 and Rs.31,452/- respectively.

10. In view of the legal position with respect to the Corporation viz.-a-viz. medical reimbursement and expenses incurred in outdoor treatment, this petition is allowed. The respondents are directed to consider payment of the amounts spent on outdoor treatment after verification of bills and at the rates fixed by AIIMS, New Delhi. In order to settle the amount, the eldest knowledgeable member of the family well acquainted with the facts would sit after notice with the dealing hand in the Head Office of the respondent-Corporation to work out the amount due, who would place the result before the competent authority for medical reimbursement cases who would then finally settle the balance financial dues with the family and pay the amount determined, if it different from the claimed amount as per the late petitioner. Let this exercise be done within a period of three months from the date of receipt of certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

28.03.2016
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