

**CWP No. 23663 of 2011 and
CWP No. 20393 of 2012**

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 23663 of 2011

Date of decision : January 08, 2016

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Ravinder Kumar

.....Petitioner

Versus

District and Sessions Judge, Rewari and another

.....Respondents

CWP No. 20393 of 2012

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Ravinder Kumar

.....Petitioner

Versus

District and Sessions Judge, Rewari and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sarvjit Singh Khurana, Advocate for the petitioner.

Mr. Parvindera Singh Chauhan, Addl.A.G, Haryana.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

Petitions bearing CWP Nos.23663 of 2011 and 20393 of

2012 (both titled ` Ravinder Kumar vs. Distt. and Sessions Judge, Rewari and another') shall be disposed of by way of this common judgment as a common question of law is involved in these petitions.

By way of filing CWP No. 23663 of 2011 and CWP No.20393 of 2012 petitioner is seeking a writ of certiorari for quashing the impugned order dated 12.9.2011 (Annexure P-3) and the order dated 13.8.2012 (Annexure P-4) respectively passed by respondent no.1 vide which the medical claim of the petitioner was ordered as not reimbursable.

The petitioner was working as Stenographer Grade-I to the Additional District and Sessions Judge, Rewari. Son of the petitioner, Piyush aged about seven years was suffering from brain tumour (Anaplastic Ependymoma-WHO grade – III). He was operated upon at Sir Ganga Ram Hospital and remained admitted in the hospital from 28.5.2011 to 5.6.2011. An application for reimbursement of medical bill was made on 9. 6.2011 (Annexure P-1). Reimbursement of this amount was allowed. On 10.6.2011 stitches of the head of the son of the petitioner were removed and after going through the biopsy report of the son of the petitioner, Director, Pediatric Hematology, oncology and Bone Marrow Transplantation, Sir Gang Ram Hospital, New Delhi referred the son of the petitioner to the Batra Hospital, New Delhi for getting radiotherapy treatment. Son of the petitioner remained under the care and treatment of Dr. D. Ghosh, Director, Radiation Oncology Department, Batra Hospital, New Delhi from 10.6.2011 to 2.8.2011.

Batra Hospital, New Delhi is duly recognized hospital for medical treatment. Thereafter an application was made on 24.8.2011 (Annexure P-2) for reimbursement of the amount spent on radiotherapy treatment which was rejected as not reimbursable by the respondent vide order dated 12.9.2011 (Annexure P-3) on the ground that the son of the petitioner took this treatment as an outdoor patient.

Petitioner filed the present writ petition challenging the order dated 12.9.2011 (Annexure P-3). During the pendency of this writ petition, son of the petitioner remained under the care and treatment of Dr. D. Ghosh working as a Director, Radiation Oncology Department, Batra Hospital, New Delhi from 27.2.2012 to 21.3.2012 and spent a sum of Rs.25,495/- on the radiotherapy treatment which was absolutely necessary and essential for his treatment. The petitioner submitted an application dated 2.7.2012 to the respondent no.1 for reimbursement of this amount. Respondent no.1 vide order dated 13.8.2012 ordered the medical claim of the petitioner as not reimbursable.

The stand taken in the written statement by the respondent no.1 is that the prayer of the petitioner regarding grant of follow up treatment does not support his case as per instructions contained in letter No. H.D Hr.No.2/8/88-IHBIII dated 06.05.2005 (as amended vide H.D. Hr. No. 2/8/88-1HBIII dated 8.7.2005 & H.D Hr. No.2/8/88-1HBIII of even date). As per these instructions (Annexure

R-1):

i) the reimbursement of the expenditure incurred on the purchase of medicines for a period of seven days after discharge from the hospital will also be allowed.

ii) “the expenditure incurred on physiotherapy while the patient remained indoor is reimbursed fully for treatment taken at Govt. hospitals/approved hospitals”.

A separate written statement was filed by the Deputy Secretary to Government Haryana Administration of Justice Department on behalf of respondent no.2. The stand taken in the written statement was that there was no reference to Batra Hospital, New Delhi by Director, pediatric Hematology, Oncology Bone Marrow Transplantation, Sir Ganga Ram Hospital, New Delhi. In the connected case (i.e CWP No. 20393 of 2012), he took the stand that the treatment taken by the son of the petitioner from 27.2.2012 to 21.3.2012 for which the petitioner had spent a sum of Rs.25495/- was neither a follow up treatment nor his son was an indoor patient in Batra hospital, New Delhi during the aforesaid periods. Moreover, the treatment record and cash memo besides being of the dates much after the period of seven days also show that the treatment was being taken as outdoor patient. As per Instructions Issued by the Government (Annexure R-1), the reimbursement of the expenditure incurred on the purchase of medicines for a period of seven days after discharge from the hospital will be allowed.

I have heard counsel for the parties at length.

At this stage, reference can be made to a judgment passed by this Court in the case of **Krishna Kumari vs. State of Haryana, 1999 (4) RSJ 386**, wherein the reimbursement of two medical bills of the petitioner's son was declined on the ground that the expenses had been incurred while he was an outdoor patient. The writ petition was allowed by observing that the outdoor treatment was a follow up and an integral part of the indoor treatment and it must be reimbursed as indoor treatment. There was a close connection between the indoor and outdoor treatment given to petitioner's son and it was not possible to separate the two.

In a Division Bench judgment of this Court in the case of **Sunita Rani vs. Union of India and others, 2008 (3) SCT 275** wherein reimbursement of post heart surgery medical expenses were denied after death of husband of the petitioner, writ petition was allowed while holding that benefit being given during life time of petitioners' husband cannot be denied after his death. Follow up treatment being integral part of indoor treatment expenses incurred on outdoor treatment must be reimbursed as indoor treatment. In paragraph 5, it was observed as under:

5. *In the case of Ravi Kant v. The State of Haryana and others, 1998(4) SCT 206: 1998(3) RSJ 705, wherein similar controversy i.e as to whether after kidney transplant of an employee/dependent, he/she is entitled to*

reimbursement of medical expenses incurred for post operative medical treatment, came up for consideration, a Division Bench of this Court observed as under:-

“It has been submitted that only a person who receives treatment as an indoor patient, is entitled to be reimbursed, may be that he is in receipt of fixed medical allowance as per the medical reimbursement rules as applicable to him. It has been submitted that as the petitioner is alleged to have taken treatment as an outdoor patient, he cannot claim reimbursement. It is true that the petitioner will not be entitled to reimbursement for this treatment if we go by the strict definition of ‘indoor and outdoor patients’. If we go by the strict definition of indoor and outdoor patient, the petitioner will not be an indoor patient. Fixed medical allowance to the tune of Rs.100/- is meant to compensate the employee/his family only for the treatment of casual diseases. Intention behind the provision of providing fixed medical allowances does not seem to be that employee/his family should not be compensated for such diseases which can prove fatal if consistency in treatment is not observed. It would bear repetition

that petitioner is constantly taking medicines he is on medicines, he has to take medicines daily. If he does not take medicines daily, his remaining alive will be seriously in danger. When he is constantly under treatment and treatment is indispensable for him, it has to be viewed as if he is receiving that treatment in the hospital.”

In the case of **Kundan Lal vs. Haryana Vidyut Parasaran Nigam Ltd. and another, 2009(3) RSJ 727**, the petitioner underwent a composite treatment of surgery followed by Radiotherapy and then Chemotherapy. The medical expenses with regard to indoor treatment which included the bills of surgery as well as Radiotherapy were reimbursed. The claim made by the petitioner regarding the expenses incurred on the treatment of chemotherapy was rejected on the ground that the chemotherapy is a treatment administered in the OPD. The Division Bench of this Court allowed the writ petition while observing that the treatment of the disease, namely, *Carcinoma Splenic Flexure* has to be treated under a composite scheme which commenced with the surgery and then Radiotherapy followed by Chemotherapy. Neither of these can be separated from each other as all the three dovetail each other although the treatment of Chemotherapy is given outdoor and therefore, merely on that basis the claim made by the petitioner could not have been rejected.

In compliance of the order dated 27.7.2015, Learned State counsel has got a copy of the Instructions dated 8.6.2005, whereby the State has reviewed the list of chronic diseases and **Brain Tumours & Malignancy of different organs** finds mention at **Sr. No.6**. Hence for all intents and purposes, the disease suffered by the son of the petitioner was covered under the definition of '*Chronic diseases*' and applying the ratio laid down in *Sunita Rani's case (supra)*, *Kundan Lal's case (supra)* and *Krishna Kumari's case (Supra)* in this case, outdoor treatment was a follow up and an integral part of the indoor treatment and it must be reimbursed as indoor treatment. In this case, radiotherapy treatment was absolutely necessary and essential for the treatment of this chronic disease and the medical claim cannot be rejected on the ground that he had taken radiotherapy as an outdoor patient.

In view of all that has been discussed above and in the facts and circumstances of this case, impugned order dated 12.9.2011 (Annexure P-3 in CWP No.23663 of 2011) and impugned order dated 13.8.2012 (Annexure P-4 in CWP No. 20393 of 2012) are hereby set aside. Present petition is allowed with a direction to the respondents to reimburse the medical claim submitted by the petitioner and to pay the petitioner interest on the sanctioned amount of medical reimbursement at 9% interest from the date of submission of the bill and till the date of the payment.

January 08. 2016

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**(RITU BAHRI)
JUDGE**