

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7816 of 2015
Date of decision: 31.08.2016

Shamsher Singh Pattar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Anil Rathee, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG, Haryana.

RAMESHWAR SINGH MALIK, J. (ORAL)

The important question of law that falls for consideration of this Court is; whether the petitioner, having been appointed as a Law Officer, i.e. Senior Deputy Advocate General, in the office of Advocate General, Haryana, whose appointment was contractual in nature, was entitled for medical reimbursement or not.

Instant writ petition is directed against the impugned order dated 11.07.2012 (Annexure P-6), as well as impugned communications dated 11.07.2014 (Annexure P-5), 29.12.2008 (Annexure P-7) and 05.07.2012 (Annexure P-8), whereby claim of medical reimbursement of the petitioner, submitted on 17.11.2005 vide Annexure P-3, was not at all considered for long nine years and then petitioner was finally informed, vide impugned

communication dated 11.07.2014 (Annexure P-5), that he was not found entitled for medical reimbursement.

Briefly put, facts of the present case are that the petitioner was appointed as Senior Deputy Advocate General in the office of Advocate General, Haryana vide appointment order dated 02.05.2005 (Annexure P-1). However, terms and conditions of service of the petitioner along with 12 other Law Officers, came to be fixed later, vide communication dated 25.10.2005 (Annexure P-2). When petitioner was serving as Senior Deputy Advocate General in the office of respondent No.2, his mother fell ill and she was treated in Fortis Hospital, Mohali, for her heart ailment, in the month of June, 2005. Petitioner did not claim any advance and spent the amount from his own pocket, for the medical treatment of his mother.

Thereafter, medical bill for an amount of Rs.2,42,454/- was submitted by the petitioner to the office of Advocate General, Haryana vide Annexure P-3 dated 17.11.2005. Concerned officers/officials of the office of Advocate General, Haryana examined the medical bill submitted by the petitioner. Some of the claims, like Ambulance Charges, Food and charges of Doctor's visit, were not found reimbursable. Accordingly, the medical bill submitted by the petitioner was duly checked and verified. Petitioner was found entitled for medical reimbursement for an amount of Rs.2,08,972/- and it was forwarded by the office of Advocate General, Haryana, to the Financial Commissioner and Principal Secretary to Government of Haryana, Jail and Judicial Department-respondent No.1, vide letter dated 06.12.2005 (Annexure P-4), for issuance of necessary sanction for the payment.

Surprisingly, no action, whatsoever, was taken on the abovesaid

claim of medical reimbursement submitted by the petitioner. After an inordinate long delay of nine years, petitioner received the impugned communication dated 11.07.2014 (Annexure P-5), from the office of Advocate General, Haryana. With this communication (Annexure P-5), petitioner was sent copy of impugned communication dated 11.07.2012 (Annexure P-6), sent by respondent No.1 to the office of respondent No.2. After going through these two impugned communications (Annexures P-5 and P-6), petitioner tried to convince the respondent authorities that he was entitled for medical reimbursement but without any positive results. Having been left with no other option, petitioner approached this Court, invoking its writ jurisdiction, by way of present writ petition.

Notice of motion was issued and in compliance thereof, written statement was filed on behalf of respondents No.1 and 3. However, no reply has been filed on behalf of respondent No.2.

Heard learned counsel for the parties.

Learned counsel for the petitioner submits that claim of the petitioner is covered by the Government instructions dated 06.05.2005 (Annexure P-11). He refers to the opening paragraph of these instructions, at page 49-50 of the paper book, to contend that in compliance of the order dated 21.08.2003 issued by this Court, the matter was reconsidered by the Government and it was decided to formulate a new reimbursement policy, which would be applicable to all Haryana Government employees/pensioners/dependents. He also refers to Clauses (b) and (c) of para 10 of reimbursement policy (Annexure P-11), at page 57 of the paper book, to contend that whatever benefit or facility was to be denied to the contractual

employees, it was clarified in this very reimbursement policy, meaning thereby all the Haryana Government employees, irrespective of their category, were entitled for medical reimbursement.

He further submits that the respondent authorities could not have treated the contractual employees as adhoc or casual employees and the impugned communications dated 11.07.2012 (Annexure P-6), 29.12.2008 (Annexure P-7) and 05.07.2012 (Annexure P-8), are arbitrary on the fact of it and the same are liable to be set aside. In support of his contentions, learned counsel for the petitioner places reliance on a judgment of this Court in **Harpal Singh Baidwan Vs. State of Punjab and others, 2014 (2) SCT 799** and submits that LPA filed by State of Punjab against this judgment was also dismissed by the LPA Bench of this Court. He also places reliance on two Division Bench judgments of this Court in **Raj Bala Vs. State of Haryana and others, 2002 (3) RSJ 433** and **Shakuntla Vs. State of Haryana, 2004 (1) RSJ 283**. Another judgment of this Court which was relied upon by learned counsel for the petitioner was in the case of **Mast Ram Vs. State of Punjab, 2001 (2) RSJ 454**.

Learned counsel for the petitioner next contended that two similarly situated Law Officers, whose particulars have been given in para 20 of the writ petition, were granted similar benefit, whereas petitioner has been treated in a discriminatory manner. He concluded by submitting that since the petitioner was working on contractual basis, but in a regular pay scale and was governed under the Civil Service Rules, such Government employees have not been excluded from the benefit of medical reimbursement, in any of the instructions. He prays for setting aside the impugned order/communications

(Annexures P-5 to P-8), by allowing the present writ petition with exemplary costs. He also prays for a writ in the nature of mandamus, directing the respondents to release the amount of Rs.2,08,972/-, as verified by the office of Advocate General, Haryana, without any further loss of time, along with interest @18% per annum, from the date when the medical bill was submitted i.e. 17.11.2005 till the date of actual payment.

Per contra, learned counsel for the State submits that petitioner was rightly was not found entitled for medical reimbursement, as per the terms and conditions of his service. He further submits that since contractual employees have been treated as casual employees and the engagement of the petitioner was on adhoc basis, he is not entitled for medical reimbursement. Learned counsel for the State vehemently controverted the arguments raised by learned counsel for the petitioner, contending that case of the petitioner was not covered under reimbursement policy (Annexure P-11), because the contractual and casual employees have not been specifically held entitled for the benefit of medical reimbursement. Regarding issue of discrimination, leaned counsel for the State submits that those officers were granted the benefit in view of terms and conditions of their appointment, which are appended at Annexures R-1 and R-2, because of which it was not a case of discrimination. He prays for dismissal of the writ petition with costs.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case, instant writ petition deserves to be allowed. The impugned

order/communications contained in Annexures P-5 to P-8 have been found arbitrary as well as discriminatory, which can not be sustained. To say so, reasons are more than one, which are being recorded hereinafter.

A careful perusal of the record of the case leaves no manner of doubt that the respondent State has treated its Senior Law Officer, in a most arbitrary manner. It does not appeal to reason as to why the issue was kept pending for an inordinate long period of about nine years. No explanation, whatsoever, has been given as to why the matter could not be decided within a reasonable time, after the petitioner submitted his claim for medical reimbursement on 17.11.2005 vide Annexure P-3. It is so said because the impugned communication came to be issued as late as on 11.07.2014 (Annexure P-5).

If this is the manner in which a Senior Law Officer of the State has been treated, it can be well-imagined how a poor and illiterate citizen would be treated by the authorities of the State. Even if the respondent authorities were not inclined to accept the claim of the petitioner, it was least expected from them that they would have decided the matter immediately and would have informed the petitioner accordingly. However, the respondent authorities kept on sitting tight over the matter for a long period of about nine years, for the undisclosed reasons best known to them. This approach adopted by the respondent authorities is strongly deprecated by this Court, with this hope and trust that they would not treat any other citizen in this arbitrary manner.

Coming to the terms and conditions of service of the petitioner along with 12 other Senior Deputy Advocate Generals, where the name of the petitioner was at Sr. No.11, issued vide Annexure P-2 dated 25.10.2005, para 2

along with its relevant clauses as well as para 4 thereof which are relevant, read as under: -

“The Governor of Haryana is pleased to fix the terms and conditions of the engagement of the above mentioned Senior Deputy Advocate Generals in the office of Advocate General, Haryana as under: -

*i) The Senior Deputy Advocate Generals are to be entitled to the pay scale 18400-500-22400+700 NPA per month **plus usual allowance as sanctioned by the Haryana Government from time to time.***

ii) That the service of the above Senior Deputy Advocate Generals are contractual in nature and are liable to be terminated at any time without mentioning any reason or notice.

*iii) **They will be entitled house rent allowance as is admissible to Haryana Government employees.***

*iv) **In the matter of leave/travelling allowance, the CSR/PFR applicable to Haryana Government employees will be applicable to the said law officers.***

v) The officers so engaged will not be entitled to the payment of any pensionary benefits.

vi) This contractual service will not give any right to Senior Deputy Advocate Generals to claim the benefit of regular service in the office of Advocate General, Haryana or any other office of the State Government.

vii) They will be whole time Govt. servant and do all criminal,

civil and misc work entrusted to them by the Advocate General, Haryana.....”

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These issues with the concurrence of Finance Department conveyed vide their U.O. No.1/31/2005-2F.G.-1/1530, dated 25.10.2005.”

A perusal of the abovesaid terms and conditions of the service would show that although the appointment of the petitioner was contractual in nature, yet he was appointed in a regular pay scale plus usual allowances as sanctioned by the Haryana Government from time to time. He was also entitled for house rent allowance as admissible to Haryana Government employees. In the matter of leave, travelling allowance, CSR/PFR applicable to Haryana Government employees were made applicable to the Law Officers. It is pertinent to note here that whatever service benefit was not to be given to the petitioner, it was specifically excluded by abovesaid clauses (v) and (vi) of para 2.

Since the benefit of medical reimbursement was not excluded, while fixing the terms and conditions of service of the Senior Deputy Advocate Generals, including the petitioner, office of Advocate General, Haryana, rightly checked and verified the medical bills submitted by the petitioner for reimbursement, vide Annexure P-4. After thorough examination of the matter, whatever bills were found reimbursable, calculation was made accordingly and the petitioner was found entitled for an amount of Rs.2,08,972/- on account of medical reimbursement.

Accordingly, letter dated 06.12.2005 (Annexure P-4) was written

by the office of Advocate General, Haryana, to respondent No.1 for issuance of necessary sanction for payment and this letter reads as under: -

“From

*The Advocate General, Haryana
Chandigarh*

To

*The Financial Commissioner & Principal Secy.,
To Government Haryana Jail & Judicial
Department*

Memo No.41373

Dated Chandigarh, the 6.12.05

*Subject: Medical Reimbursement Claim of Sh. S.S. Patter, Sr.
Dy. Advocate General, Haryana.*

*The Medical Reimbursement Claim submitted by Sh.
Shamsher Singh Pattar, Senior Deputy Advocate General Haryana
amounting to Rs.2,08972/- (Rupees two lac eight thousand nine
hundred seventy two only) is sent herewith for issuance of
necessary sanction for the payment.*

Encls : As above

Sd/-

Superintendent

For Advocate General, Haryana.”

It is a matter of common knowledge and record as well that as and when any department of the State finds itself involved in any legal problem, it seeks expert legal advice from the office of Advocate General, Haryana. However, in the present case, it seems other way round. When the office of

Advocate General, Haryana, examined and verified the medical bills, and after due application of mind found the petitioner entitled for the medical reimbursement and thereafter sought the necessary sanction of respondent No.1 so that the payment could be released in favour of the petitioner, office of respondent No.1 kept on sitting on the file for nine long years. Thereafter, the genuine claim was sought to be declined in most arbitrary manner, by issuing the impugned communication dated 11.07.2012 (Annexure P-6). Having said that, this Court feels no hesitation to conclude that the impugned communication issued by the respondent authorities has been found suffering from patent illegality and the same cannot be sustained.

From the reading of impugned communication dated 11.07.2012 (Annexure P-6), it seems that respondent No.1 unilaterally sought to change the terms and conditions of service of the petitioner, after a period of more than seven years, pointing out that Law Officers were engaged on adhoc basis and because of that reason, they were sought to be treated as casual employees. Further, proceeding on a negative approach, office of respondent No.1 was searching for an inclusion clause in the Government instructions, which would specifically provide for medical reimbursement, instead of considering and appreciating that there was no exclusion clause in the instructions dated 06.05.2005 (Annexure P-11), denying the benefit of medical reimbursement to the employees working in regular pay scale, like the petitioner.

Respondent No.1 has also miserably failed to consider and appreciate the true meaning and import of instructions dated 06.05.2005 (Annexure P-11), in the correct perspective. In the recent past, it has been the bitter experience of needy and deserving citizens, who have been forced to

approach this Court. As and when it comes to the implementation of any welfare policy, even the genuine claims are sought to be defeated by the authorities of the State, proceedings on one or the other technicalities. This kind of unhealthy practice of back-tracking by the Government from its own policy is wholly unjustified. Under these circumstances, it can be safely concluded that the approach adopted by the respondent authorities has been found wholly arbitrary and the impugned order/communications cannot be sustained, for this reason also.

Opening para of the instructions dated 06.05.2005 (Annexure P-11) as well as para 10 (b & c), which are relevant for the purpose of present case, read as under: -

*“I have been directed to invite your attention to the subject mentioned above and to state that in the light of order of the Hon'ble High Court dated 21.08.2003 given in bunch cases pending in the court. It was felt by the Government that the present reimbursement policy of the State Govt. needs certain changes in view of the court orders, issuance of large number of instructions with the passage of time and to avoid the unnecessary delay in clearing the medical claims of serving and retired employees of State Government. **The matter was under active consideration of the Govt. and now in consultation with the Finance Department, Government have decided to formulate a new reimbursement policy which will be applicable to all Haryana Government employees/pensioners/dependents.** The salient features of the new policy are as under: -*

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*10. Advance:**Employee*

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b) No advance shall be admissible to the adhoc/contractual employees.

c) Advance to temporary employees shall be given subject to the submission of one surety of any regular State Government employee.”

Abovesaid relevant part of the instructions dated 06.05.2005 (Annexure P-11) would make it clear that the contractual employees like the petitioner were not entitled for any advance. Opening paragraph of these instructions has made it crystal clear that the new reimbursement policy would be applicable to all Haryana Government employees, irrespective of their categories, whether they were regular, temporary or contractual. It is so said because whatever benefit was sought to be denied to any particular category of employees, that was denied by way of abovesaid exclusion clauses (b) and (c) contained in para 10.

Had the competent authority intended to deny the benefit of medical reimbursement to the contractual employees as well, there would have been no difficulty in putting another exclusion clause in para 10, meaning thereby contractual employees were also entitled for the benefit of medical reimbursement, under this new reimbursement policy (Annexure P-11). It is a matter of record that petitioner submitted his claim for medical reimbursement on 17.11.2005 (Annexure P-3), for the medical treatment of his mother, who

remained hospitalized for her heart treatment, in the month of June, 2005. Thus, petitioner was/is very much entitled for the benefit of medical reimbursement under this new reimbursement policy (Annexure P-11). Ordered accordingly.

Coming to the issue of discrimination, there was hardly any difference in the terms and conditions of service contained in Annexure P-2 and Annexure R-2. A combined reading of para 2 (iv) of Annexure P-2, at page 34 of the paper book and para 4 of Annexure R-2, at page 75 of the paper book, leaves no scope of any doubt in this regard. Clause 4 of para 2 of Annexure P-2 has already been reproduced above, however, para 4 of Annexure R-2 reads as under: -

“In the matter of leave, T.A. and disciplinary matters Punjab C.S.R./P.F.R. and Punishment and Appeal Rules, 1987 and other Government instruction issued from time to time will be applicable to them.”

Neither there is any distinguishing feature nor there is any other apparent distinction in these two appointment orders. However, two sets of Law Officers have been treated differently, while granting them the benefit of medical reimbursement. Thus, the action of the respondent authorities has been found suffering from the vice of discrimination, which is not permissible in law. It is so said because there was no exclusion clause in the terms and conditions of appointment of the petitioner issue vide Annexure P-2, so as to deny him the benefit of medical reimbursement.

In fact, it was never intended to deny the benefit of medical reimbursement to the Law Officers, including the petitioner, whose terms and conditions were fixed vide Annexure P-2. However, at a later stage, when the

petitioner submitted his medical bills for reimbursement on 17.11.2005 vide Annexure P-3, initially it was kept pending for about nine years and that too without any explanation for this long delay. Thereafter, it was sought to be declined in most arbitrary and discriminatory manner. Such an arbitrary and discriminatory action on the part of the respondent authorities cannot be upheld, at the hands of this Court, while exercising its writ jurisdiction under Article 226/227 of the Constitution of India.

It was also expected from the office of Advocate General, Haryana that it should have tried to impress upon the office of respondent No.1 and other authorities of the State, for that purpose, that the Law Officers neither can be treated as casual employees nor such a genuine claim, like the one in the present case, of medical reimbursement, could have been declined, particularly when there was no exclusion clause, either in the terms and conditions of service or under any of the relevant policies of the State, including the new reimbursement policy (Annexure P-11). However, office of Advocate General, Haryana, also failed to render the appropriate legal advice at the relevant time, so as to make the authorities of the State understand the true import of the new reimbursement policy (Annexure P-11).

Had it been properly done in time, instant unwarranted litigation could have been easily avoided. However, it is also true that State is the biggest litigant in the Courts of law, but office of Advocate General could have been an exception. It is also pertinent to note here that no State Government can afford to engage its Law Officers on casual basis, because the Law Officers represent the State before the Courts. In case the Law Officers will not be feeling secure about their service even for a day, as the respondent State has sought to treat

them as casual employees, how any valuable assistance would be expected from them in the Courts of law.

This is one of the strong reasons that the Hon'ble Supreme Court had to intervene, rendering its recent judgment, issuing direction to the States for putting a proper mechanism in place, regulating the procedure for appointment of Law Officers in the offices of Advocate Generals of the States. So far as the present case is concerned, keeping in view the peculiar fact situation discussed hereinabove, it is unhesitatingly held that since the petitioner has been treated in an arbitrary and discriminatory manner, by the respondent authorities, instant writ petition deserves to be allowed with costs.

The abovesaid observations made by this Court also find support from more than one judgments of this Court. In para 8 of its judgment in **Mast Ram's** case (supra), this Court held as under: -

“I have considered the rival contentions of the parties and am of the opinion that the submission raised by the learned counsel for the respondents cannot be accepted. This is a country where the hands are more and the jobs are less. Sometime, candidates are recruited on regular posts, adhoc posts and as work charged employee and sometimes in the leave arrangement. The criteria should be whether a person is being funded from the exchequer of the State for the purpose of medical reimbursement. Any public servant can suffer a problem with his body while off the duty or on the duty. Moment the Government recognizes that a public servant is entitled to the medical reimbursement, then there cannot be an official distinction that such an employee is a work charged

employee or that he is working on adhoc basis or that he has no right to a particular post. We are living in a welfare society. In these circumstances, the Government should always see the welfare of his employees. The disease does not make a distinction while coming in to the body whether it is entering or penetrating in the body of a regular employee or an adhoc employee or a work charged employee. Once the Government is taking the benefit of public servant, in the performance of his duties, the Government is supposed to reimburse the medical expenses of such public servants also. The distinction that a work charges employee will be medically reimbursed if he suffers the problem on duty, has no nexus. Such distinction is irrational and has to be struck down. I have just stated above that in a welfare society the Government is supposed to see the welfare of its employees. The moment it is established that the employee has suffered the medical problem while he is in service, the Government is bound to reimburse such employee the medical expenses.”

Again, a Division Bench of this Court in paras 6 and 7 of its judgment in **Raja Bala's** case (supra), held as under: -

*“Different Division Benches of this Court had granted relief to the petitioners who were similarly placed alike the present petitioners. Reference can be made to **CWP No. 2783 of 1996 titled as Sunita Rani v. State of Punjab and others, decided on 12.12.1996; Vijay Bala and others v. State of Haryana, CWP No. 5277 of 1999, decided on 20.7.2000** and Uma Rani (supra). In the case of Popu*

Ram (supra) it was held that the practice of giving 89 days appointment was illegal and unconstitutional and offended Articles 14, 16 and 39-B of the Constitution of India. Direction was given to continue the petitioners till regular, selected candidates were appointed and they were directed to be paid regular pay scales. The special leave petition filed in the case of Uma Rani (*supra*) was dismissed by the Hon'ble Supreme Court 5.10.2001.

*In the case of **Municipal Corporation of Delhi v. Female Workers (Muster Roll) and another**, 2000(2) S.C.T. 258 : 2000(2) R.S.J. 131*, the Hon'ble Apex Court while dealing with the female workers working on muster roll in the Municipal Corporation, Delhi held that the Municipal Corporation was an industry. The Court held as under:-

"It is in the background of the provisions contained in Article 39, specially in Articles 42 and 43, that the claim of the respondents for maternity benefit and the action of the petitioner in denying that benefit to its women employees has to be scrutinised so as to determine whether the denial of maternity benefits by the petitioner is justified in law or not.

Since Article 42 specifically speaks of "just and humane conditions of work" and "maternity relief", the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which,

though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.

The Parliament has already made the Maternity Benefit Act, 1961. There is no dispute that the benefits available under this Act have been made available to a class of employees of the petitioner-Corporation. But the benefit is not being made available to the women employees engaged on muster roll, on the ground that they are not regular employees of the Corporation. As we shall presently see, there is no justification for denying the benefit of this Act to casual workers of workers employed on daily wage basis."

".....In the meantime, the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages."

*A Single Bench of the Gujarat High Court in the case of **Dipikaben R. Parmar v. State of Gujarat**, 1999(2) SCT 847 clearly held while relying upon different judgments of the Hon'ble Apex Court that lady employees appointed on ad hoc basis are entitled to maternity leave.*

*In the case of **Rattan Lal and others v. State of Haryana and others**, 1985(3) SLR 548 while requiring the State to be a modal employer and not to deny benefits to the adhoc teachers in an unfair way held as under :-*

"We strongly deprecate the policy of the State Government under which 'ad hoc' teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These ad hoc teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave, shall also be granted such leave in accordance with the rules."

In view of the above well settled principles of law we are of the considered view that the policy decision of the Government dated 29.9.2000 denying benefit of maternity leave to the petitioners offends the law of land as declared by the Hon'ble Apex Court. The Government has a duty to prevent un-necessary litigation. While it takes policy decision, it is the inherent duty of the concerned quarters to take into consideration the effect of various pronouncements of the Apex Court and the High Courts. Such approach on the part of the State, on the one hand, would prevent frivolous litigation, while on the other, would further the cause of justice. It would also enlarge the image of the State as a modal employer."

Harpal Singh Baidwan's case (supra) was very close on the facts with the present case. While deciding the case of **Harpal Singh Baidwan**, this Court relied upon three earlier judgments of this Court, pertaining to different Law Officers of the office of Advocate General, Punjab, regarding somewhat

similar issues pertaining to the service conditions. Relevant observations made by this Court in paras 6 and 7 of its judgment in **Harpal Singh Baidwan**'s case (supra), which can be gainfully followed in the present case, read as under: -

“Learned counsel for the petitioner has relied upon Rule 1.3 of the Punjab Civil Services Rules, Volume-1,Part-1 which lays down that when any special provisions inconsistent with the Punjab Civil Services Rules are required with reference to any particular post or any conditions of service, the competent authority may notwithstanding anything otherwise contained in the Punjab Civil Services Rules and subject to the provisions of Clause (2) of Article 310 of the Constitution of India, have an agreement with the person appointed to such post for any matters in respect of which in the opinion of that authority, special provisions are required to be made. He has also relied upon Rule 1.4 which lays down that the rules are not applicable in the case of any Government employee between whom and the Govt. a specific contract or agreement subsists etc. Rule 1.4 is reproduced below :-

"Rule 1.4 These rules shall not apply to-

(i) any Government employee between whom and the Government, a specific contract or agreement subsists in respect of any matter dealt with herein to the extent up to which specific provision is made in the contract or agreement

(ii) any person for whose appointment and conditions of service special provision is made by or under any law for the time being in force; and

(iii) any Government employee or class of Government employees to whom the competent authority may, by general or special order, direct that they shall not apply in whole or in part. One of such classes of Government employees is that employed only occasionally or which is subject to discharge at one month's notice or class. A list of such Government employees is given in Appendix 2."

*Learned counsel for the petitioner has relied upon **State of Punjab and another v. Suresh Kumar Sharma reported as 2010(4) S.C.T. 490 : 2011(1) SLR 280** to contend that The Assistant Advocate General and Deputy Advocate General are in the capacity of Govt. servants and therefore they are entitled to pension. They are in regular Govt. service. If they are allowed to continuous and qualifying service of pension, they cannot be denied pension on the basis of an arbitrary condition as to contract or service included in their appointments letters. Once this question is decided in another case up to the Supreme Court and the judgment is implemented, the same objection cannot be raised subsequently in other cases. Reliance has also been placed on **Dr. Mrs. S.K. Bhatia v. State of Punjab, reported as 1998(1) SCT 514** where a single bench of this Court, dealing with Rules 1.3 and 1.4 of the Punjab Civil Services Rules, Vol..1 Part 1 held*

*that appointment as Deputy Advocate General and Assistant Advocate General under the Rules are made on regular basis in regular pay scale and the incumbents are treated as Govt. servants and merely adding an arbitrary clause showing the appointment as contractual cannot empower the Government to terminate the services of the incumbent at any time without complying with the procedure and principles of natural justice. The unilateral and arbitrary clause in the appointment letter contrary to rules has to be struck down. Reference has also been made to **CWP No. 7078 of 2002, decided on 21.5.2012, Kanwaljit Singh Bakshi v. State of Punjab and another** wherein also there was an issue with regard to appointment of the petitioner as Assistant Advocate General on contractual basis. In that case also the judgment in the case of Dr. Mrs. S.K. Bhatia was followed.”*

It is relevant to note here that the abovesaid judgment rendered by this Court in **Harpal Singh Baidwan's** case (supra) was challenged before the LPA Bench in LPA No.2071 of 2014 (State of Punjab and others Vs. Harpal Singh Baidwan), which came to be dismissed vide order dated 16.12.2014, thus, it had attained finality. While deciding the case of another Law Officer of the office of Advocate General, Punjab, this Court in **Dr. Mrs. S.K. Bhatia Vs. State of Punjab, 1998 (1) SCT 514**, also relied upon many judgments of the Hon'ble Supreme Court, including the celebrated judgments in the cases of **Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly and another, AIR 1986 SC 1571** and **Shrilekha Vidyarthi Vs. State of U.P., AIR 1991 SC 537**.

In **Mrs. S.K. Bhatia's** case (supra), this Court set aside the order of termination of the Law Officer, working on the post of Deputy Advocate General, Punjab, turning down the stand taken by the State that it was a simple provisional engagement and the services could have been terminated at any time without assigning any reason. This Court held that the Law Officers appointed as Deputy Advocate Generals and Assistant Advocate Generals were Government servants. It was also held that merely adding an arbitrary clause showing the appointment as contractual, cannot empower the Government to terminate the service of the incumbent at any time, without complying with the procedure and principles of natural justice. However, since this is not the direct issue involved herein, further elaboration in this regard is not required. It goes without saying that authorities of the respondent State are expected to act reasonably and in accordance with the principles of natural justice. Since the respondent authorities have acted in arbitrary and discriminatory manner, particularly respondent No.1, the impugned communications and orders cannot be upheld, for this reason as well.

Similarly, in a bunch of cases of medical reimbursement, decided together by a Division Bench of this Court, in the case of **Waryam Singh Vs. State of Punjab, 1996 (2) RSJ 623**, employees were entitled for interest @ 15% per annum from three months after submitting medical bills. Relevant observations made in para 13 (irrelevant part excluded), which aptly apply to the facts of the case in hand, are as under: -

“Now the question which needs determination is whether the petitioners are entitled to be paid interest. In most of the cases decided earlier, this Court has awarded interest to the petitioners.

This is because the Court has taken the view that the Government and its functionaries have unjustifiably withheld the reimbursement. We do not find any reason to deviate from the earlier decisions. In addition to the reasons given to the decisions to which reference has been made above, we deem it necessary to add that it is extremely agonizing for a person to wait for months and years to receive reimbursement of the expenses incurred by him for treatment. The very nature of ailment like heart disease changes the life style of a human being and if he is under mental strain of paying back the amount incurred for medical treatment and the Government, it only increases risk to his life in future. Wholly unjustifiable approach on the part of the Government forcing these persons to approach the Court cannot also be ignored. One can reasonably assume that three months' time is sufficient for the Government to make an inquiry into the genuineness of the bill submitted by an employee for reimbursement. Therefore, it would be just and proper to direct the payment of interest with effect from expiry of three months of the submission of the application for reimbursement.

We also feel that after having taken note of the pendency of large number of cases involving claims of the employee for reimbursement of the medical expenses and having given notice to the Government of this issue, it would be appropriate to issue general directions to the Government to settle the pending claims of reimbursement within a specified time frame so that the

employees are not compelled to move this Court for similar relief.

We, therefore, allow the writ petitions and direct that:-

xxx

xxx

xxx

All the petitioners shall get interest at the rate of 15% per annum. This interest shall be paid for the period between a date, commencing from expiry of three months of the submission of the application for reimbursement till the date of payment.”

The abovesaid judgment in **Waryam Singh's** case (supra) came to be upheld by the Hon'ble Supreme Court in **State of Punjab and others Vs. Mohinder Singh Chawala etc., (1997) 2 SCC 83.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the action taken by the respondent No.1, has been found arbitrary as well as discriminatory, being violative of the Articles 14 and 16 of the Constitution of India, the same cannot be upheld. Accordingly, the impugned communications and orders contained in Annexures P-5 to P-8 are hereby set aside. Petitioner is declared entitled for the benefit of medical reimbursement, under the new reimbursement policy dated 06.05.2005 (Annexure P-11).

As the respondents have illegally withheld and have been using the amount of Rs.2,08,972/-, for which the petitioner was entitled in the year 2005, for this inordinate long period and that too without any reason much less cogent reasons, petitioner is held entitled to receive the amount of Rs.2,08,972/- along with interest @12% per annum, after three months from the date of application

dated 17.11.2005, Annexure P-3, till the date of payment. Since the petitioner has been put to an unwarranted harassment, despite being a senior Law Officer of the State, forcing him to approach this Court by way of present writ petition, he has been found entitled for costs for this avoidable litigation, which are quantified at Rs.50,000/-.

Let the abovesaid amount be paid to the petitioner at an early date and in any case within a period of six weeks from the date of receipt of certified copy of this order, failing which the petitioner shall be entitled to receive the abovesaid amount on account of medical reimbursement, along with interest @15% per annum after three months from 17.11.2005 till the date of payment, besides the costs.

Resultantly, with the abovesaid observations made and directions issued, instant writ petition stands allowed with costs, as indicated above.

[RAMESHWAR SINGH MALIK]
JUDGE

31.08.2016
vishnu

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