

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 284

Civil Writ Petition No.12658 of 2017 (O & M)

Date of Decision: July 27, 2017

Harteg Singh & another

..... PETITIONERS

VERSUS

Union of India & others

..... RESPONDENTS

. . .

Civil Writ Petition No.10631 of 2017 (O & M)

Captain Kawar Pal Chauhan & another

..... PETITIONERS

VERSUS

Union of India & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. Rajeev Anand, Advocate, for the petitioners in CWP
No.12658 of 2017.

Ms. Jasneet Kaur, Advocate, for the petitioners in CWP
No.10631 of 2017.

Mr. Shivoy Dhir, Advocate, for the respondents in CWP
No.12658 of 2017.

Ms. Rajni Narula, Advocate, for Union of India.

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Jaspal Singh, J

1. This judgment shall dispose of aforesaid two civil writ petitions as they involve similar questions of law and facts.

2. For reference to facts, file of CWP No.12658 of 2017 titled 'Harteg Singh & another vs. Union of India & others' is being taken up.

3. The instant writ petition has been preferred by the petitioners under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari quashing Letter dated January 02, 2017 (Annexure P-10), through which, petitioner No.1 who is patient of 'Chronic Renal Failure' and holder of White Card for lifelong medical treatment is informed that he is not eligible for 'Ex-servicemen Contributory Health Scheme' facility relying upon letter dated November 20, 2015 (Annexure P-11) limiting the number of disabilities eligible for lifelong medical treatment, which is against letter dated December 30, 2002 (Annexure P-2) and clarified through Clarification dated December 18, 2007 (Annexure P-3), through which, Government sanction was given to the scheme in which sons of the defense pensioners were held entitled to the lifelong medical treatment for physical/mental disabilities of permanent nature. Further prayer is for issuance of a writ in the nature of certiorari quashing letter dated November 20, 2015 (Annexure P-11) which is basis for denying petitioner No.1 benefits of ECHS treatment. Prayer has also been made for issuance of a writ in the nature of Mandamus, directing the respondents to continue without any interruption the treatment of petitioner No.1 in the light of Lifelong Medical Facilities already granted to the petitioner as per Master Scheme and letter dated December 30, 2002 (Annexure P-2) and Clarification dated December 18, 2007 (Annexure P-3) as well as directing the respondents that letter dated January 02, 2017 (Annexure P-10) be kept

in abeyance and petitioner(s) be allowed to avail the Health care facilities already granted to him for life under aforesaid Letter (Annexure P-2) and Clarification (Annexure P-3).

4. Petitioner No.1 is son of ex-serviceman, petitioner No.2 who served the Indian Army and retired as 'Subedar'. Petitioner No.2 was enrolled in Indian Army (Territorial Army) on July 17, 1976 in the SHAPE-I medical category and retired on February 01, 2003 with pensionary and retirement benefits upon invalidation due to disability attributable to service. Petitioners averred that a comprehensive scheme in the shape of Ex-servicemen Contributory Health Scheme (for short, 'ECHS') authorized vide Government of India, Ministry of Defence letter No.22(1)/01/US/D (Res) dated December 30, 2012 was formulated. Through this scheme, ex-servicemen pensioners are entitled for treatment in civil hospitals/ private hospitals which were specifically empanelled with ECHS. Through this scheme, dependent member(s) of army pensioners are also entitled to free medical facilities subject to certain conditions mentioned in the brochure of ECHS, making it clear that sons of army pensioner will get the benefit of the scheme till attaining the age of 25 years but the age bar is lifted when the disability is of permanent nature. A letter/clarification dated December 18, 2007 was issued in regard to children of the army pensioners who are entitled for benefit of ECHS whereby rights and entitlements of service pensioners and their dependents were crystallized, vide which, petitioner No.2 (army pensioner) was also taken into ECHS.

5. Petitioner No.1 was undergoing treatment for kidney problem since 2007 at Escort Hospital, Amritsar. On December 10, 2008 petitioner No.1 underwent renal allograft transplant successfully and donor

to be suffering from another kidney problem also. Petitioner No.1 was 24 years old at that time. He was issued Complicated Chronic Disease Certificate dated October 04, 2012 (Annexure P-6) by Guru Teg Bahadur Hospital, Amritsar which was valid till October 03, 2015 and it was mentioned therein that disease of petitioner No.1 is declared as 'complicated chronic disease' by Punjab Government vide Annexure 'A' of letter No.12/77/2000-5C5/21950 dated September 10, 2007. On November 24, 2012 petitioner No.1 was issued a Certificate of Disability, countersigned by Commandant, Ex-Servicemen Hospital or Chief Medical Officer/Civil Surgeon, Government Hospital mentioning that he is physically challenged and his disability is of permanent nature, and he is unable to be gainfully employed being 100% disable. He was issued ECHS White Card in the year 2013 so that he could continue his medical treatment even after crossing the age bar of 25 years being suffering from chronic physical disablement.

6. Subsequently, in December 2016, petitioner No.1 was informed that condition of disability of permanent nature to get the lifelong benefit of ECHS has been removed and certain limited disabilities of permanent nature have been inserted. In reply dated January 02, 2017 (Annexure P-10) from Adjutant General Branch to letter of petitioner No.1 regarding dependency criteria dated December 20, 2016, it was informed that renal failure is out of purview for issuance of white card as the same is not mentioned in Persons with Disabilities Act (Equal Opportunities Protection of Rights and Full Participation), 1995 (for short, 'Act') and therefore, petitioner No.1 is not entitled to lifelong medical treatment now. The object of the scheme is to provide free medical aid to dependents of the army pensioner(s) and ceiling of age limit was removed in any kind of disability of permanent nature but respondents have created a class within a

class by defining certain disabilities to which the facility of white card is applicable. Similarly, in another CWP No.10631 of 2017, petitioner No.1 is retired from Army and petitioner No.2 is son of retiree, who is seeking same relief.

7. Heard.

8. ECHS was floated vide letter dated December 30, 2002 (Annexure P-2), followed by clarification dated December 18, 2007 (Annexure P-2) providing defence pensioners and their dependents, free medical treatment in empanelled hospital(s). The unemployed sons of army pensioners were granted free medical treatment till the age of 25 years but the age bar was lifted in case dependent is having lifelong permanent disability. Vide Annexure P-2, all the mental and physical lifelong disabilities were covered. In the case in hand, both the kidneys of petitioner No.1 (son of petitioner No.2 – army pensioner) have failed and he was issued White Card in the year 2013. He was being granted medical treatment, free of cost for dialysis and kidney failure treatment. However, vide letter dated January 02, 2017 (Annexure P-10), he has been informed that letter dated November 20, 2015 (Annexure P-11) has retrospective effect and his White Card is being taken away meaning thereby he is not entitled to free medical treatment.

9. The ECHS was authorized by the Government of India, Ministry of Defence, letter dated December 30, 2002 (Annexure P-2) and the 2nd paragraph of the scheme states that son with lifelong medical disability will be eligible for lifelong medical treatment. The relevant part of the same is reproduced as under:-

“The Scheme would cater for medicare of all Ex servicemen in receipt of pension including disability pension and family pensioners, as also dependents to include wife/husband,

legitimate children and wholly dependent parents. The son with permanent disability of any kind (physical or mental) of entitled category of ECHS would be eligible for lifelong facility of medical treatment.”

10. The aim of the Act *ibid* is for providing equal opportunities and protecting the rights and full participation of the persons with disabilities with the non-disabled persons. The Act has been formulated with the objective of taking care of the disabled persons in Government service and taking care of them in the matters of appointment, promotion, retention etc. whereas ECHS is a contributory scheme of the army personnel and has been formulated with the objective of the taking medical care of the army pensioners as well as their families. The children of army pensioners with lifelong disabilities were given lifelong medical treatment by the Government and the same cannot be changed by mere policy letter. The respondents cannot take away the White Cards which are already issued to the petitioners by making amendment in the Act. Even if any amendment is to be made, it cannot be retrospective. The respondents cannot change provisions of the original scheme to which Government sanction was accorded. The Hon’ble Apex Court in **Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh & others, (1979) 2 SCC 409** has held that mere claim of change of policy would not be sufficient to exonerate Government from its liability and obligations and the Government would be compelled to carry out promise made by it. In **Lalaram & others vs. Jaipur Development Authority & another, (2016) 11 SCC 31**, the Apex Court further stressed on the importance of complying with a promise made by the State on the basis of a public policy in the absence of which immense prejudice is caused to the other party involved and invoking the doctrine of promissory estoppel for ensuring the same.

11. The law cannot be changed retrospectively other than by legislative action and even if the legislature may have the power to legislate retrospective laws, the same cannot be taken away the accrued rights. In the instant case, respondents have attempted to tacitly extinguish the rights of petitioners in a retrospective manner and that too, through an administrative action which is clearly impermissible in law. The Apex Court in **Ex-Major N.C. Singhal vs. Director General, Armed Forces Medical Services, New Delhi & another, (1972) 4 SCC 765**, has held that conditions of services cannot be altered or modified to prejudice an employee/ retiree by a subsequent administrative instruction having retrospective effect.

12. In the light of what has been discussed above, instant petitions are allowed. Impugned orders/letters dated January 18, 2015 (Annexure P-11) and January 02, 2017 (Annexure P-10) are set aside and the respondents are directed to continue the treatment of petitioners and extend all the benefits to them in the light of Lifelong Medical Facilities as per ECHS dated December 30, 2002 (Annexure P-2) and Clarification dated December 18, 2007 (Annexure P-3).

July 27, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No