

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP- 4892-2016 (O&M)
Date of decision: 19.05.2017

Manoj Kumar

.....Petitioner

versus

State of Haryana and others

.....Respondents

CWP- 4647-2016 (O&M)

Subhash

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Deepak Sonak, Advocate for the petitioner in both the cases
Mr.Naveen Sheoran, DAG Haryana

- 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?*

Kuldip Singh, J. (Oral)

By this single order, I shall dispose of two writ petitions bearing CWP Nos.4647-2016 and 4892-2016. The facts are being extracted from CWP 4892-2016 filed by Manoj Kumar petitioner.

Petitioner Manoj Kumar is working as a Warder in District Jail

Kaithal. His father namely, Bhali Ram who was an agriculturist by profession and owns 39 kanals 19 marlas of land, was living with the petitioner. Father of the petitioner was suffering from cancer and remained admitted in Fortis Hospital, Mohali from 10.12.2011 to 10.1.2012 for one month and then remained admitted in PGI, Chandigarh and ultimately expired on 11.2.2012. Petitioner submitted the medical reimbursement bill to the tune of Rs.7,05,936/-. Petitioner claimed that his father was wholly dependent on him. However, vide order dated 23.1.2014 (Annexure P5) while passing a speaking order in compliance with the order passed by this Court in CWP 20954 of 2013, the claim of the petitioner was declined on the ground that Bhali Ram father of the petitioner was having income of more than Rs.3500/- per month. Therefore, he was not wholly dependent and the claim was declined.

In case of Subhash, petitioner in CWP No.4647-2016, petitioner was working as a Jail Warder in District Jail, Karnal. His father was having a heart problem and remained admitted in G.B. Pant Hospital, New Delhi from 29.5.2012 to 1.6.2012. Petitioner spent Rs.1,77,818/- on his treatment. It is stated that his father, namely, Ved Parkash was wholly dependent on the petitioner. In the said case also, claim has been rejected on the ground that Ved Parkash father of the petitioner was having income of more than Rs.3500/- per month, which was assessed on the basis of the fact that said Ved Parkash was having 4.75 acres of land. In the said case also, impugned order (Annexure P3), declining the reimbursement was passed in pursuance to the order passed in CWP 20954 of 2013.

The State, in both the cases, has justified the rejection of the claim of the petitioners on the ground that their fathers were not wholly

dependent upon the petitioners. Reliance has been placed on the instructions of the Government dated 15.1.2008, wherein the Government has fixed the income of Rs.3500/- per month for the purpose of making reimbursement to determine whether the parents are wholly dependent or not. Further plea has been taken that father of the petitioner is having about 4.5/4.75 acres of land, from which he had sufficient income of more than Rs.3500/- and thereafter, father was not wholly dependent.

I have heard learned counsel for both the parties and have also carefully perused the record.

The law point arising for consideration before this Court is as to whether on account of income of more than Rs.3500/- per month father of the petitioner can said to be not wholly dependent on the petitioner or not?

The perusal of the Punjab Medical Attendance Rules, 1940 (for short, '1940 Rules') shows that in definition of family wholly dependent parents are also included. Petitioner claims that his father was living with him. In both the cases, father was suffering from a chronic disease. In one case, it was cancer while in the other case it was heart problem. In the 1940 Rules, there is no mention about the ceiling of income to determine whether the parents are wholly dependent or not? Government subsequently, issued the notification dated 14.12.2007, wherein while removing the ceiling of income for the dependent spouse, the ceiling of income for the others categories, including parents was increased from Rs.750/- per month to Rs.3500/- per month.

Now, the question would arise as to whether by the executive instructions, statutory Rules can be modified or altered?

I find the reply in negative. In the statutory Rules, word used is

“wholly dependent”. Therefore, without qualifying any income in the rules to determine whether parents are wholly dependent or not and without amending the Rules to define as to who is wholly dependent by mere executive instructions, the statutory Rules cannot be modified. The word “wholly dependent” came for interpretation before Hon'ble Apex Court in State of Madhya Pradesh vs. M.P.Ojha, 1998(1) S.C.T. 333. The Apex Court interpreted the word “wholly dependent” and observed as under:-

12. The expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would likely to lead to results which the relevant Rules would not have contemplated. The expression "wholly dependent" has to be understood in the context in which it is used keeping in view the object of the particular Rules where it is contained. We cannot curtail the meaning of "wholly dependent" by reading into this the definition as given in SR 8 which has been reproduced above. Further, the expression "wholly dependent" as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of family it would mean other support, may be physical, as well. To be "wholly dependent" would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and was sick and it could not be said that he was not wholly dependent on his son. Son has to look after him in his old age. Even otherwise by getting a pension of Rs. 414 per month which by any standard is a paltry amount it could not be said that the father was not

"wholly dependent" on his son. That the father had a separate capacity of being a retired Government servant is immaterial if his case falls within the Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the Rules in a case like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It was submitted before us that the father being a retired Government servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter as we are satisfied that under the relevant Medical Rules, the father was member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other travelling expenses.

Therefore, whether the parents are wholly dependent or not will depend upon the facts of each case. The 'wholly dependent' as per Apex Court would mean financial and physical dependence. In both the cases, father of the petitioners were suffering from deadly disease. One was the cancer to which he ultimately succumbed and the other was heart problem, which is a chronic disease. On account of deadly disease, the father will become physically dependent on his son.

Therefore, in the given circumstances, it has to be held that the fathers of the petitioners in both the cases were wholly dependent upon them. Consequently, the petitioners are entitled to medical reimbursement of the bills submitted by them ignoring the instructions of the Government dated 15.1.2008.

Accordingly, both the writ petitions are allowed. Respondents

are directed to reimburse the medical bills of the petitioners to the tune of Rs.7,05,936/- in CWP 4892-2016 and Rs.1,77,818/- in CWP Nos.4647-2016 along with interest @ 9% per annum from the date of filing of petition till the payment within a period of two months from the date of receipt of a certified copy of this order.

A copy of the order be placed on the connected case file.

19.05.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes