

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 12772 of 2012 (O&M)
Date of Decision: 22.05.2019**

D.K. Monga

..... Petitioner

Versus

The State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Tribhuvan Dahiya, Advocate
for the petitioner.

Ms. Anu Pal, Deputy Advocate General, Punjab.

Mr. Rajeev Kawatra, Advocate
for respondent No. 3.

JASWANT SINGH, J.

The petitioner, who retired as Additional District & Sessions Judge (Punjab Cadre) on 21.03.2001, while posted as Member Secretary, Punjab Legal Services Authority at Chandigarh, has sought for the issuance of a writ of *Mandamus*, seeking reimbursement of balance amount of **Rs.1,28,019.22** towards **actual medical expenditure** incurred by him for treatment as an Indoor Patient; **as also Rs.11,150/-** as an **Outdoor Patient** in a private hospital for the stated periods.

2. It is averred that the petitioner, after his retirement, has obtained medical treatment from Artemis Health Institute (a private hospital), as an Indoor Patient during the period from 08.11.2010 to 10.11.2010. The raised bill by the private hospital was settled for a sum of Rs.4,36,943.22 by the petitioner. Similarly, the petitioner had incurred the

expenses *qua* outdoor treatment, thus raised a medical claim for a sum of

Rs.11,150/- as an Outdoor Patient for the period from 10.11.2010 to 20.01.2011. It is further submitted that the medical bills submitted towards indoor treatment in the aforesaid private hospital were approved at the AIIMS rate and thus, the petitioner was held entitled to a sum of **Rs.3,08,924.00** towards medical reimbursement, out of the **actually incurred** medical expenses **Rs.4,36,943.22** for indoor treatment, and out of which, a sum of **Rs.2,00,000/-** was reimbursed by the New India Assurance Co. Ltd. under the Medi-claim policy, and further, a sum of **Rs.1,08,924.00** (**Rs.3,08,924 - 2,00,000 = Rs.1,08,924.00**) was reimbursed through a bank draft dated 10.02.2012 issued by the Member Secretary, Punjab Legal Services Authority, Chandigarh vide letter dated 15.02.2012 (**Annexure P-7**) on account of his (petitioner) outstanding medical reimbursement claim as an Indoor Patient treatment for the period 08.11.2010 to 10.11.2010.

The grievance of the petitioner, thus, is regarding non-release of the balance amount of **Rs.1,28,019.22** out of the **actual expenses** incurred to **Rs.4,36,943.22** *minus* the released amount of **Rs.3,08,924.00** (**Rs.4,36,943.22 - 3,08,924.00 = Rs.1,28,019.22**) towards treatment as **Indoor Patient** in a private hospital for the period 08.11.2010 to 10.11.2010 *plus* the actual expenses of **Rs.11,150.00** incurred as **Outdoor Patient** for the period 10.11.2010 to 20.01.2011. The total outstanding amount of indoor as well as outdoor treatment comes to **Rs.1,39,169.22** (**Rs.1,28,019.22 + 11,150.00 = Rs.1,39,169.22**). He has placed reliance upon Government of Punjab letter dated 20.04.2006 (**Annexure P-1**), whereby the State has sanctioned Medical Allowance to all Judicial Officers in the State at par with the Members of the State Legislature, Punjab.

3. Counsel for the petitioner, during the course of arguments, has also pointed out Rule 10 (1) of the Punjab State Legislature Members (Pension and Medical Facilities Regulation) Rules, 1984 (for short “The 1984 Rules”), formulated under the Punjab State Legislature Members (Pension and Medical Facilities Regulation) Act, 1977, which reads as follows:-

*“ A member shall be entitled, for himself and for the members of his family, full reimbursement of **actual expenses** on outdoor and indoor treatment and treatment of chronic diseases.”*

(Emphasis Supplied)

It is thus the contention of the petitioner that he is entitled to the actual expenditure incurred, as is admissible to the Members of the Legislature.

4. In the written statement filed on behalf of respondent Nos. 1 & 2 by way of affidavit dated 17.08.2012 of Sh. Munish Singal, Member Secretary, Punjab Legal Services Authority, Chandigarh, it is, *inter alia*, stated/admitted that the petitioner, as per AIIMS rate, was held entitled to a sum of **Rs.3,08,924.00** towards medical reimbursement out of **actual medical expenses** of **Rs.4,36,943.22** spent by him for taking treatment in a private hospital as an **Indoor Patient**, out of which, a sum of **Rs.2,00,000/-** was reimbursed by the New India Assurance Co. Ltd. under the Medi-claim policy, and further, a sum of **Rs.1,08,924.00** was reimbursed through a bank draft dated 10.02.2012 issued by the Member Secretary, Punjab Legal Services Authority, Chandigarh.

As regards the **claim for treatment as outdoor patient** is concerned, it has been stated that the the petitioner was asked to furnish the

chronic certificate from an authorized hospital of the State vide letter dated 02.08.2011 (**Annexure R-6**), but the same was not furnished, as such, the claim for outdoor treatment is premature. However, it is not shown that the Members or Ex-Members of the State Legislature were required to produce such certificates for re-imbusement for expenses towards outdoor treatment.

5. Application bearing *CM No. 6351 of 2019* was filed for early hearing of the matter and vide order dated 01.05.2019, notice was issued to the office of Advocate General, Punjab for 07.05.2019.

Vide order dated 07.05.2019, the Department of Home Affairs and Justice was impleaded as respondent No. 4.

6. When the matter came up for resumed hearing today, reply by way of short affidavit dated 20.05.2019 of Sh. Vijay Singh Chauhan, Under Secretary to Government of Punjab, Department of Home Affairs and Justice (respondent No. 4) was filed in Court. A perusal of the same would reveal that the State Government admittedly had issued letters dated 20.04.2006 (**Annexure R-1**) and 25.07.2007 (**Annexure R-2**), wherein the Judicial Officers were held entitled to reimbursement of actual medical charges at par with MLAs. Subsequently, these letters were withdrawn vide letter dated 09.07.2013 (**Annexure R-3**). For ready reference, letter dated 20.04.2006 (**R-1**), letter dated 25.07.2007 (**R-2**) and letter dated 09.07.2013 (**R-3**) are re-produced as under:-

“ Annexure R-1

*No. 4/61/99-3Judl.(1)/1521
Government of Punjab
Department of Home Affairs & Justice
(Judicial-1 Branch)*

Dated Chandigarh, the 20.4.2006

To

*The Registrar General,
Punjab and Haryana High Court,
Chandigarh*

Sub: *Implementation of recommendations of 1st
National Judicial Pay Commission approved by
the Hon'ble Supreme Court of India regarding
Medical Allowance and Home Arдали
Allowance.*

Sir,

*I am directed to refer to your letter No.
10676/Gaz.II(2) dated 7.3.2006 on the subject noted above
and to state that the Governor of Punjab is pleased to
sanction Medical Allowance to all Judicial Officers in the
State at par with the Members of State Legislature, Punjab
plus Rs. 100/- per month (fixed Medical Allowance) and also
to the grant of Domestic Help Allowance @ Rs. 1250/- per
month to all the retired Judicial Officers in the State of
Punjab.*

2. *This issues with the concurrence of
Department of Finance, as conveyed vide their I.D. No.
4/02/2006-2FP1/398 dated 18.4.2006.*

Yours faithfully,

-Sd-

Under Secretary Home (S)

Endst. No. 4/61/99-3Judl.(1)/1522-23 Dated, Chd. the: 20/04/2006

*A copy is forwarded to the following for
information and necessary action:-*

*1. Department of Finance (Finance Personnel-1
Branch) with reference to their I.D. No.
4/2/2006-2FP1/398 dated 18.4.2006.*

2. Accountant General, Punjab, Chandigarh.

-Sd-

Under Secretary Home (S)

“ Annexure R-2

*No. 4/61/99-3Judl.(1)/2392
Government of Punjab
Department of Home Affairs & Justice
(Judicial-1 Branch)*

Dated Chandigarh, the 25.7.2007

To

*The Registrar General,
Punjab and Haryana High Court,
Chandigarh*

Sub: Clarification regarding payment of Medical Allowance and Domestic Help Allowance.

Sir,

With reference to your letter No. 9870/Pen.2/VI.J., dated 28.03.2007 and in continuation of Government letter No. 4/61/99-3JUDL(1)/103-105 dated 9.1.2007 on the subject noted above, I am directed to state that:-

- (i) expenditure on account of Domestic Help Allowance to the Retired Judicial Officers is to be charged to account Head “(c) Pensions and Miscellaneous General Services, 2071-Pension and other Retirement Benefits (1)-01-Civil...”*
- (ii) As per the Apex Court's directions, the Judicial Officers (working or retired) are entitled reimbursement of actual medical charges at par with MLAs and fixed medical allowance of ₹ 100/- per month.*

2. This issues with the concurrence of Department of Finance vide their I.D. No. 1/02/2006-2FP1/265 dated 13.7.2007.

Yours faithfully,

-Sd-

Deputy Secretary Home (S)

Endst. No. 4/61/99-3Judl.(1)/2393-94 Dated, Chandigarh the: 25/07/2007

A copy is forwarded to the following for information and necessary action:-

- 1. Department of Finance (Finance Personnel-1 Branch)*
- 2. Accountant General (A&E), Punjab, Chandigarh.*

-Sd-

Deputy Secretary Home (S) ”

“ Annexure R-3

No. 4/61/99-3Judl.(1)/1815
Government of Punjab
Department of Home Affairs & Justice
(Judicial-1 Branch)

Dated Chandigarh, the 9.7.2013

To

*The Registrar General,
Punjab and Haryana High Court,
Chandigarh*

*Sub: Medical Allowance for Judicial Officers.
Sir,*

I am directed to refer on the subject cited above and to say that the matter has been re-considered and Punjab Government letter No. 4/61/99-3Judl.(1)/1521, dated 20.04.2006 and subsequent letter No. 4/61/99-3Judl.(1)/2392, dated 25.07.2007 are hereby withdrawn.

Yours faithfully,

-Sd-

Under Secretary Home (S)

Endst. No. 4/61/99-3Judl.(1)/1817-19 Dated, Chandigarh the: 9/7/13

A copy is forwarded to the following for information and necessary action:-

- 1. Accountant General (A&E), Punjab, Chandigarh.*
- 2. Department of Finance (Finance Personnel-1 Branch)*
- 3. Department of Health and Family Welfare (Health-5 Branch).*

-Sd-

Superintendent ”

7. After having scrutinized the arguments and the pleadings, we are of the considered view that the claim of the petitioner must succeed, being meritorious.

It is not in dispute that as per Rule 10 sub-Rule (1) of “The 1984 Rules”, as reproduced here-above, the Members including Ex-

Members of the State Legislature were held entitled, for himself and for the

members of their family, full reimbursement of **actual expenses** on the medical treatment of indoor, outdoor and chronic disease. It is also not in dispute that the Government of Punjab had taken a conscious decision, keeping in view the directions of the Hon'ble Supreme Court, to extend and sanction similar medical allowance to all Judicial Officers of the State of Punjab **at par** with the Members of the State Legislature vide Notification/Instructions dated 20.04.2006 (**R-1**), duly clarified vide subsequent Notification/Instructions dated 25.07.2007 (**R-2**), as re-produced here-above. Concededly both serving and retired judicial officers were entitled to similar treatment in terms of instructions Annexure R-1 & R-2, as per the recommendations of the Shetty Commission accepted and implemented by the government as duly acknowledged in para 1 Clause (ii) of R-2 hereabove. It also cannot be disputed that the withdrawal of the benefit of aforesaid **R-1 & R-2** vide subsequent Notification dated 09.07.2013 (**R-3**), as re-produced here-above, was to operate prospectively. Hence, it is crystal clear that the medical claims, set up by the petitioner **for payment of actual expenses**, are for the periods during which the entitlement was established as per the Instructions at **R-1 & R-2 at par** with the Members of Legislature, before the withdrawal of the said benefit vide instructions at 09.07.2013 (**R-3**). This Court is not going into the question as to what was meant or permissible to be withdrawn vide **R-3** in view of the decision of the Government in fully accepting and implementing the recommendations of the Shetty Pay Commission and in light of the issue raised being fully covered during the subsistence of previous decision/Instructions R-1 & R-2.

Accordingly, in view the above, the present **petition** is

allowed. The petitioner is held entitled to the balance amount of medical reimbursement of **actual expenses**, i.e., a sum of **Rs.1,39,169.22 (Rs.1,28,019.22 + 11,150.00 = Rs.1,39,169.22)** incurred by him as an Indoor Patient and Outdoor Patient, respectively, for the stated periods **alongwith interest** at the rate of **nine per cent (09%)** from the date of rejection of full claim till its realization, **to be paid within two (02) months** from the date of receipt of certified copy of this order, **failing which**, the rate of **interest** on the determined amount on the same terms shall become payable at the rate of **twelve per cent (12%)** with liberty to the State Government to recover the amount equal to enhanced rate of interest from the salary/personal account of the competent/sanctioning authority.

Since the main case has been decided, no orders are required to be passed in the pending miscellaneous application(s), if any, and the same stand(s) disposed of.

(JASWANT SINGH)
JUDGE

May 22, 2019
'dk kamra'/Vinay

(ARUN KUMAR TYAGI)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>