

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8386 of 2015

DATE OF DECISION:07.03.2019

Harinder Pal Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. H.S. Dhindsa, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General,
Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that vide order dated 19.01.2015, the petitioner has been denied the full reimbursement of his medical expenses, which the petitioner incurred while undergoing the treatment at Prince of Wales Hospital, Sydney, Australia w.e.f. 06.02.2012 till 10.02.2012.

As per the facts narrated in the present writ petition, the petitioner was suffering from neurological disorder for which he was getting the treatment from various hospitals including the CMC Hospital, Ludhiana. The procedure for the treatment was complicated which includes blood transfusion and administering of injections injecting liquid medicine prepared from a healthy human blood. As the ailment of the petitioner did not get cured while undertaking the treatment at Ludhiana, the petitioner was referred by the CMC,

Ludhiana for getting the treatment at the Neurologist in Prince of Wales Hospital, Sydney, Australia. It is on record to show that the petitioner has already been reimbursed for the treatment which the petitioner undertook at CMC, Ludhiana. In order to get the approval from the competent authority, the petitioner was asked to approach the medical Board on 04.01.2012. The said letter was received by the petitioner on 07.01.2012 due to which, the due approval could not be granted by the Board and the petitioner, keeping in view the emergent situation, left for Australia for undergoing the treatment. The petitioner remained under treatment from 06.02.2012 till 10.02.2012 and after getting the treatment, the petitioner came back and submitted the bill for reimbursement to the tune of ₹10,30,238/-. The above amount also included the expenses, which the wife of the petitioner incurred while accompanying the petitioner to Australia.

The claim of the petitioner was considered and the same was rejected and the petitioner filed CWP No.4836 of 2013(O&M) claiming the reimbursement of the medical claim. The said writ petition was allowed by this Court and a direction was issued to the respondents to consider the case to process the claim of the petitioner as per the rates prescribed by the Director, Health and Family Welfare, Punjab.

Keeping in view the direction given by this Court, the respondents cleared a sum of ₹6,61,849/- as medical reimbursement out of the total sum of ₹10,30,238/- This order dated 19.01.2015 (Annexure P-8) is under challenge before this Court.

Counsel for the petitioner states that the non-grant of full

amount which the petitioner incurred on his treatment, is contrary to the policy of the government of Punjab and the petitioner is entitled for full reimbursement of the amount including the amount spent by the petitioner on travelling from India to Australia and back as well as the amount spent by the wife of the petitioner while travelling alongwith him from India to take care of him during the period of his treatment.

Upon notice of motion, the respondents have filed the reply. It has been stated that the petitioner got the treatment from Australia without their being any approval from the State Medical Board which is contrary to Medical Reimbursement Policy. However, keeping in view the order passed by this Court in CWP No.4836 of 2013, the medical board which met on 07.03.2014 decided to grant the petitioner reimbursement of ₹6,61,849/-.

In reply, it has been submitted by the respondents that there is no provision for the reimbursement of the travelling expenses and further the petitioner has given in writing that he is fully satisfied with the reimbursement amount and, therefore, the present writ petition claiming travelling expenses is liable to be dismissed. The relevant para of the reply is as under:

“1. That, petitioner is a Medical Officer (Homeopathy), Govt. Homeopathy Dispensary, Civil Hospital, District-Jalandhar. He availed treatment for Multi Focal Neurology from Prince of Wales Hospital, Sydney, Australia, w.e.f. 06.02.2012 to 10.02.2012 after his case was referred to Prince of Wales Hospital, Sydney, Australia by CMC, Ludhiana on his request. However, as the requisite prior approval from the State Medical Board was not taken by

the petitioner, his claim for medical bill reimbursement amounting Rs.9,06,238/- was initially not entertained by the State Medical Board. However, the petitioner filed a CWP No.4836 of 2013 against the decision of State Medical Board, which was decided on 07.03.2014 and following order was passed by the Hon'ble Court:-

“The relationship of a doctor and a patient is a matter of confidence and trust. Any patient would like to go to the best doctor available. Even if the petitioner had not gone to any government or any of the approved hospitals and had chosen to get himself treated from an hospital abroad, the liberty cannot be left with the Head of the Department to refuse reimbursement, once it is found that the patient had taken treatment. It is not that only medicines are to be taken orally. The rejection of the claim on these hyperetechnical grounds, is totally arbitrary. The beneficial policy cannot be interpreted or kept in water tight compartment. These are to be interpreted liberally considering the facts and circumstances of the case. The fact that the petitioner had been operated upon in Prince of Wales Hospital, Sydney, Australia for his disease is not in dispute. Once that is so, the entitlement of the petitioner to reimbursement of the expenses incurred by him in terms of rates prescribed by Director, Health and Family Welfare, Punjab cannot be denied.

Accordingly, the action of the respondents is denying medical reimbursement to the petitioner is declared as illegal. They are directed to process the claim made by the petitioner as per rates prescribed by Director, Health and Family Welfare, Punjab. Needful be done within a period of two months from the date of receipt of copy of the order and due payment be made to the petitioner.”

The Department of Health and Family Welfare, Punjab had already issued post-facto approval for reimbursement of Rs.6,61,849/- to the petitioner against the claim of

Rs.10,30,238/- (including Rs.1,24,000/- as travelling expenses). That the main prayer in the present writ petition is for declaring/quashing the action of the respondent in not sanctioning the petitioner the travelling expenses of petitioner and his wife to the tune of Rs.1,24,000/- for availing treatment abroad.

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That, it is humbly submitted that the petitioner is a Medical Officer (Homeopathy), Govt. Homeopathy Dispensary, Civil Hospital, District- Jalandhar. He availed treatment for Multi Focal Neurology from Prince of Wales Hospital, Sydney, Australia, w.e.f. 06.02.2012 to 10.02.2012 after his case was referred to Prince of Wales Hospital, Sydney, Australia by CMC, Ludhiana on his request. However, as the requisite prior approval from the State Medical Board was not taken by the petitioner, his claim for medical bill reimbursement amounting Rs.9,06,238/- was initially not entertained by the State Medical Board. However, the petitioner filed a CWP No.4836 of 2013 against the decision of State Medical Board, wherein the following directions were given by the Hon'ble Court on dated 07.03.14:-

“The relationship of a doctor and a patient is a matter of confidence and trust. Any patient would like to go to the best doctor available. Even if the petitioner had not gone to any government or any of the approved hospitals and had chosen to get himself treated from an hospital abroad, the liberty cannot be left with the Head of the Department to refuse reimbursement, once it is found that the patient had taken treatment. It is not that only medicines are to be taken orally. The rejection of the claim on these hyperetechnical grounds, is totally arbitrary. The beneficial policy cannot be interpreted or kept in water tight compartment. These are to be interpreted liberally considering the facts and circumstances of the case. The

fact that the petitioner had been operated upon in Prince of Wales Hospital, Sydney, Australia for his disease is not in dispute. Once that is so, the entitlement of the petitioner to reimbursement of the expenses incurred by him in terms of rates prescribed by Director, Health and Family Welfare, Punjab cannot be denied.

Accordingly, the action of the respondents is denying medical reimbursement to the petitioner is declared is illegal. They are directed to process the claim made by the petitioner as per rates prescribed by Director, Health and Family Welfare, Punjab. Needful be done within a period of two months from the date of receipt of copy of the order and due payment be made to the petitioner.”

That abiding by the above directions of the Hon'ble High Court, the Department of Health and Family Welfare, Punjab had already issued post-facto approval for reimbursement of Rs.6,61,849/- to the petitioner against the claim of Rs.10,30,238/-. An order to this effect had already been issued vide letter No.Medical(6)/02/2015/1977-81 dated 19.01.2015.

Para 6&7. That the contents of para No.6&7 of the petition are admitted as a matter of record. It is submitted that the petitioner vide his present petition for reimbursement of travelling expenses for treatment abroad has already expressed that he is satisfied regarding the reimbursement amount sanctioned against his medical bills by the department.

Para 8. That the said State Government guidelines dated 25.01.1991 as referred to by the petitioner have been revised and overuled by the new State Government guidelines 12/193-94-5HB5/55251-54 dated 13.2.1995 (Annexure R-1). However, as per the guidelines, it has been clearly specified that prior approval from the State Medical Board is required for availing any treatment in abroad in case of extreme rare case where satisfactory

treatment is not available in the country.

Para 9. That, now since the petitioner has been sanctioned the reimbursement of the expenses against medical bills on the treatment abroad on the directions of Hon'ble High Court, he now also seeks the reimbursement of travelling expenses of Rs.1,24,000/- for himself and his wife, incurred during his visit to Australia, while giving reference of the guidelines issued by the State Government dated 25.1.1991 (para-K). In this case the petitioner did not take prior approval of the State Medical Board and went ahead with his treatment abroad. However, the reimbursement of the medical expenditure of the petitioner (falling under the ambit of respondent) was allowed on the basis of the directions of the Hon'ble Court dated 07.03.2014 and not on the basis of the State Government guidelines regarding treatment abroad.”

I have heard the counsel for the parties and have gone through the record of the case with their able assistance.

Counsel for the petitioner states that the petitioner is entitled for the travelling expenses from India to Australia and back for himself and his wife and relies upon the instructions dated 25.01.1991. Counsel states that though the instructions dated 25.01.1991 were superseded by the instructions dated 13.05.2015 but in respect of the travelling allowance, the earlier instructions remains in force and, therefore, the petitioner is entitled for the claim of the travelling expenses as well. In support of his claim, the petitioner is relying upon Clause 4(i) of the said instructions, which reads as under:

“(iv) The medical board shall consist of the following officers:-

Three members including one specialist should be present and will form the medical board. The board shall examine the concerned employees who is desirous of availing treatment and recommend his treatment either abroad or in any of the hospitals other than the Govt. In case the treatment is to be taken abroad, the medical board should state that such treatment is not available in India and treatment abroad is necessary.

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(vi) The Medical Board, if satisfied that in the interest of person concerned it is essential, may recommend one attendant to accompany the patient. The attendant will be allowed TA as admissible to the patient.”

Counsel for the petitioner states that in case the medical Board is satisfied, even one person can travel alongwith the patient as an attendant, who was entitled for travelling allowance as admissible to the patient and, therefore, in the present case, the travelling allowance has to mean the air fare, which the petitioner and his wife undertook from India to Australia and back.

Counsel for the respondents states that in the present case, the petitioner has not satisfied the conditions as incorporated in the said letter for the reason that the petitioner undertook the treatment without their being any approval of the Medical Board. Once the petitioner undertook the treatment without their being any approval, the petitioner will not be entitled for any travelling allowance as being claimed by him.

I am of the opinion that definition of travelling allowance as given in the instructions does mean that in case an employee has to go abroad and seek medical facility, he will be entitled for air fair as being claimed by the petitioner for himself and his wife. As far as

for his wife, no clear clause of the policy dated 25.01.1999 has been presented before this Court to contend that the air fair is admissible to the person, who is travelling as an attendant with the person who is seeking medical treatment abroad. In the absence of any such express clause, the travelling allowance as mentioned in Clause 6 reproduced above will be only in respect of the travelling, which the petitioner or the attendant undertakes after reaching abroad and not for travelling from India to a foreign country. Therefore, the claim which is being made by the petitioner is not supported by any instructions issued by the Government of Punjab in this regard. Furthermore, in any case the petitioner had undertaken the treatment without there being any approval from the Board. Even as per the clause, which has been relied upon by the petitioner, the approval of the board at a prior point of time is must. Therefore, in the present case even otherwise the petitioner is debarred from claiming the said amount as being claimed in the present writ petition. Under these circumstances, no interference is called for in the impugned order.

Dismissed.

March 07, 2019

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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No