

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-307-2021(O&M)

Date of decision:01.02.2021

Avinash Chander Gupta

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Namit Kumar, Advocate for the petitioner

Mr. Samarth Sagar, Addl. AG, Haryana

ANIL KSHETARPAL, J.

Through this writ petition filed under Article 226/227 of the Constitution of India, the petitioner prays for issuance of a writ in the nature of Mandamus directing the respondents to release the remaining amount of medical reimbursement alongwith interest.

The petitioner claims to have retired on 31.08.2014 as Superintending Engineer from the Department of Irrigation, Haryana. On 15.02.2019, the petitioner's wife after having been found infected with swine flu was admitted in Holy Heart Hospital, Rohtak. She remained there for a period of one month. Since there was no improvement, therefore, on medical advice, she was shifted to Apollo Hospital, Delhi on 11.03.2019. She regained health and was discharged on 12.04.2019. The petitioner submitted a claim of Rs.14,53,669/- for reimbursement on account of medical expenses. The respondent, as per the policy decision, released the amount on the rates equivalent to All

India Institute of Medical Sciences/Post Graduate Institute.

The petitioner now claims that a writ be issued directing the respondents to release the remaining amount.

At this stage, it would be appropriate to notice that the petitioner has annexed Annexure P-7 spelling out the bullet points of the medical reimbursement policy for the State Govt. employees. Relevant clause of the aforesaid policy is as under:-

“Full reimbursement for the treatment taken in an emergency in unapproved hospitals will be allowed equal to PGI, Chandigarh rates with the approval of Administrative Department.”

It may be noted here that the petitioner has not challenged the aforesaid policy. In fact, such policy, even if challenged, would not advance the case of the petitioner because such policy framed by the State of Punjab has already been upheld by the larger Bench of the Hon'ble Supreme Court in **State of Punjab vs. Ram Lubhaya Bagga** (1998) 4 SCC 117. Their Lordships while discussing the entitlement of the employees to reimbursement of medical bills have held as under:-

“25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is

arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

27 to 34 xxxx

35. Learned counsel for the appellant submits that in the writ petition filed, the respondent did not specifically challenge the new policy of 1995. If that was done the State would have placed all such material in detail to show the financial strain. We having considered the

submission of both the parties, on the aforesaid facts and circumstances, hold that the appellant's decision to exclude the designated hospital cannot be said to be such as to be violative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of a large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of the public at large. No Fundamental Right under Part III of the Constitution is absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies. But we do hope that Government will give due consideration and priority to the health budget in future and render what is best possible.”

Learned counsel for the petitioner submits that in view of the subsequent judgment passed by the Hon'ble Supreme Court in **Shiva Kant Jha vs. UOI AIR 2018 SCC 1975**, the petitioner is entitled to complete reimbursement.

This Court has carefully gone through the judgment. In the aforesaid case, the petitioner has submitted two sets of medical bills. With regard to first set of medical bills, the reimbursement was rejected whereas with regard to second set of medical bills, some amount was released. The Court after discussing various aspects, allowed the petition, however, directed that such decision is confined to that case only. In view of the aforesaid position, the judgment passed in Shiv Kant Jha's case (supra) cannot be followed as a precedent. Learned counsel further relies upon a judgment passed by the Division Bench in **Ram Pal vs. Central Administrative Tribunal and others'** 2019 (1) SCT 763. On reading of the aforesaid judgment, it is apparent that the petitioner who was working in Northern Railway had got the treatment of his daughter from PGIMER, Chandigarh. The Court after discussing

the relevant instructions and guidelines held that the petitioner, in the aforesaid case, is entitled to reimbursement.

It is apparent that in both the judgment relied upon, the Court did not have an occasion to examine the validity of a policy adopted by the State. As noticed above, such policy framed by the State of Punjab on 13.02.1995, has already been upheld by the Hon'ble Supreme court.

Keeping in view the aforesaid authoritative pronouncement of the Supreme Court, there is no ground to issue a writ as prayed for. Hence, dismissed.

01 .02.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)

JUDGE