

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

LPA No. 1153 of 2018 (O & M)
Date of decision: 25.05.2022

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Phool Singh Aola

....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Sandeep Goyat, Advocate,
for the appellant.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 3091-LPA of 2018

Application for condonation of delay of 239 days in re-filing the appeal is allowed, in view of averments made in the application supported by affidavit.

Delay of 239 days in re-filing the appeal is condoned.

C.M. stands disposed of.

LPA No. 1153 of 2018

The present letters patent appeal is directed against the order dated 21.07.2017 passed by the learned Single Judge in CWP No. 8944 of 2014. The learned Single Judge dismissed the claim for reimbursement on account of cardiac problem of the total amount on the ground that PGI rates plus 75% of the balance amount had already been reimbursed and, therefore,

the rest of the amount was to be borne by the employee.

Counsel for the appellant has vehemently submitted that the writ petition was based on the judgment of the Apex Court in ***Secretary to the Government of Haryana vs. Vidya Sagar, (2009) 14 SCC 652*** in as much as it was also quoted in para No.4 of the writ petition that the appellant was a chronic disease patient being heart patient. Reimbursement was sought on that ground and, therefore, in view of the judgment, the whole amount had to be reimbursed as per the circular dated 28.05.2003, which he had reproduced and put on record by virtue of C.M. No. 8002-CWP of 2015 in the writ petition.

Counsel for the State, on the other hand, has justified the order and submitted that as per instructions dated 24.06.2013 (Annexure P-3), 75% had to be reimbursed and the balance had to be borne by the employee and, therefore, it is submitted that no fault can be found in the order of the learned Single Judge.

A perusal of the order of the learned Single Judge would go on to show that the learned Single Judge did not advert to this aspect at all whereby, the specific pleadings were made in para No. 14 of the writ petition and reference was made to the above said judgment. Reply of the State to the writ petition was strangely silent to this aspect. Rather, there was an admission. Para No.14 of the reply reads thus:-

“14. That the content of para No.14 of writ petition are admitted to the extent of Hon'ble Supreme Court judgment dated 16.07.2009 in Civil Appeal No.4384 of 2009. Preliminary submissions are reiterated here.”

The defence in the preliminary submissions was that the

instructions dated 28.05.2003 do not expressly supersede the policy dated 24.06.2013 (Annexure P-3) and, therefore, 75% of the amount as such was only payable.

The Apex Court was dealing with a similar situation wherein, the employee who also had undergone a bypass surgery at Fortis Heart Institute and Multi-Speciality Hospital, Mohali but had been reimbursed only 75% of the amount. The co-ordinate Bench of this Court had directed that the payment of 75% was legally unsustainable, which was challenged before the Apex Court. The Apex Court took into consideration the policies and the communications dated 11.08.1992, 30.11.1993 and 28.05.2003 and came to the categorical view that though the said circular dated 28.05.2003 expressly supersedes the earlier one dated 30.11.1993 but it talked about the category of disease namely “Chronic Disease” and thus it was to prevail over the earlier general circular letter and upheld the judgment of this Court. The relevant portion reads thus:-

“6. Mrs. Nanita Sharma, learned counsel appearing on behalf of the respondent, on the other hand, urged that the heart disease having been considered to be one of the chronic diseases, the circular letter dated 28.5.2003 would prevail.

7. The Commissioner and Secretary of the state of Haryana, Health Department, by a circular dated 30.11.1993 directed as under :

"I have been directed to invite your attention to the Haryana Government letter No.2/296/86-H.R.II-III dated 19.11.1985 (sic 1986) and to say that the decision for granting recognition to Nivedic Prosyek Centre Daulat Singh Zirakpur (Punjab) Batra Hospital New Delhi for taking

special treatment to serving Haryana Govt.officers/officials/pensioners/family pensioners and members of their family and dependants subject to the condition that the conditions that the officers/officials/pensioners who would undergo for treatment in those approved institutions will get reimbursement at the rates of All India Institute of Medical Sciences (AIIMS) New Delhi/PGI. The 75% of the excess expenditure in comparative to AIIMS will also be re-imbursed and the rest of 25% will be borne by the claimant himself. If a Patient avails extra comfort as single room instead of double occupy room facilities, as such the whole expenditure will be borne by the claimant himself.

2. This has the concurrence of the finance department vide their memo No.56/80A/86-6 Fin. Deptt. TT/229-1532-2297 dated 13.10.93.

3. This order will come into force from the date of issue."

8. However, it appears that on or about 28.5.2003, the same authority, referring to an earlier memo dated 11.8.1992, directed as under :

"I have been directed to draw your attention on the above subject to the memo No.2/160/89-1 H.B. III dated 11.8.1992 whereby reimbursement on the out door treatment of chronic diseases upto maximum of Rs.6,000/- to the Haryana Govt. employees/ officers/ pensioners/ family members of pensioners used to be allowed. The matter regarding removing the maximum limit for reimbursement of expenses incurred on

the treatment of chronic diseases has been under consideration of the Government keeping in view the interest of employees and pronouncements delivered by the Courts in this respect. Now the Government has decided that in view of instructions dated 11.8.1992 reimbursement of all the expenses incurred on the treatment of chronic diseases outdoor as well indoor shall be allowed.

All the other conditions issued on 11.8.92 shall remain in force.

These instructions will take effect from the issue of this letter.

The concurrence of the Finance Department has been obtained vide their endst. No.70/20/2000-6 H.A. III/1450 dated 28.5.2003."

9. The High Court, as noticed hereinbefore, was of the opinion that heart disease having been treated to be one of the chronic ailments in terms of the circular letter dated 11.8.1992, the respondent was entitled to reimbursement of the medical bill in its entirety.

We see no reason to differ with the views of the High Court. Although the circular dated 28.5.2003 does not expressly supersede the circular letter dated 30.11.1993, but the latter having been issued subsequent to the former and in relation to a particular category of disease, namely, the chronic diseases, shall prevail over the earlier general circular letter. The said circular letter dated 28.5.2003 brings within its umbrage not only the expenses incurred for the treatment of chronic disease outdoor but also indoor. In that view of the matter, the impugned judgment must be sustained.

10. Mr. Singh had relied upon a decision of this Court in State of Punjab & Ors. v. Ram Lubhaya Bagga & Ors. [(1998) 4 SCC 117] to urge that obligation on the part of the State to foot the medical bill of its employee can be restricted by framing appropriate rules and/or by issuance of requisite circular. No exception to the dicta laid down therein can be taken. However, the said decision is itself an authority for the proposition that the State can change its policy decision from time to time. Once the State in its magnanimity adopted a decision that the medical bills in their entirety in connection with the heart diseases shall be reimbursed, the authorities of the State being bound thereby were obligated to comply therewith.

11. The question has also been considered by this Court in State of Karnataka & Anr. v. R. Vivekananda Swamy [(2008) 5 SCC 328] in the following terms :

"24. In view of the aforementioned settled principles of law there cannot be any doubt that the Rules regarding reimbursement of medical claim of an employee when he obtains treatment from a hospital of his choice can be made limited. Such Rules furthermore having been framed the proviso to Article 309 of the Constitution of India constitute conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognized government hospital and on the other he, at his option, may get himself treated from other recognized hospitals/institutions subject of course to the condition that the reimbursement by the State therefor would be limited."

12. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly with costs. Counsel's fee assessed at Rs.10,000/- (Rupees ten thousand only).

Appeal dismissed.”

Thus, we are of the considered opinion that the said judgment escaped the notice of the learned Single Judge, who dismissed the writ petition. In view of the fact that the matter is squarely covered by the above said judgment, the said order dated 21.07.2017 under appeal is not liable to be sustained and is accordingly set aside. The appeal is allowed.

The State shall pay the balance amount of 25% within a period of two months from the date of receipt of certified copy of the order. In case the payment is not made, the amount shall carry interest @ 6% per annum from the date it became due till its payment.

(G.S. SANDHAWALIA)
JUDGE

25.05.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No