

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22846-2016
DECIDED ON: 28.08.2023

RAM PAL CHAUHAN

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S. Dinarpur, Advocate, alongwith
Mr. Lalit Rishi, Advocate and
Mr. Aman Godhara, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Addl. AG, Haryana.

Mr. Vikas Chatrath, Advocate, alongwith
Mr. B.P.S. Thakur, Advocate,
Mr. Dharamvir Singh, Advocate and
Mr. Rajbir Singh, Advocate
for respondents No. 4 and 5.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India seeking a writ in nature of certiorari for quashing the decision taken by the Board of Directors, Haryana State Cooperative Development Federation Limited (“**HARCO Fed.**”), in its meeting dated 30.01.2015 (Annexure P-18) rejecting the claim of the petitioner for reimbursement of his medical bills, as well as the order dated 20.02.2015 (Annexure P-19) whereby the communication to this effect was sent to the petitioner.

2. The petitioner has alleged that the decision taken/ orders passed are in contravention to the Civil Service Rules duly adopted by HARCO Fed. and as

such, the petitioner has sought the reimbursement of the amount forthwith alongwith consequential benefits.

3. The case as set up by the petitioner is that he joined Haryana State Cooperative Development Federation (hereinafter referred to as “HARCO Fed.” in short) in the year 1968 as Clerk with promotion to the post of Store Keeper in the year 1974 and thereafter to the post of Assistant Manager in the year 1975, from which he retired on 31.08.2005, after rendering 37 years of service. It is the assertion on his behalf that during the course of his employment i.e. on 20.01.2005, his wife was suffering from Chronic Renal Failure and on recommendation to undergo dialysis, she underwent the dialysis procedure from 20.01.2005 to 30.07.2006 from National Dialysis Centre, Sector-10, Chandigarh, but unfortunately she succumbed to her ailment on 04.08.2006 i.e. due to renal failure. The counsel for the petitioner has also placed on record a certificate (Annexure P-2) issued by the department of Nephrology, PGI wherein it has been certified that- *‘Since the PGCI does not provide long term maintenance haemodialysis, he/she has been advised to undergo twice a week haemodialysis at any centre outside PGI. This treatment is of life saving nature and it is recommended that the expenses be disbursed as per rules.’*, justifying the treatment from a private centre.

4. The petitioner contends that though the bills from the period from 31.03.2005 to 29.08.2005 i.e. period before the date of retirement of the petitioner, already stands reimbursed to the petitioner, however, the bills relating to the period post the date of retirement of the petitioner have not been reimbursed. It has been alleged that such an action is in contravention with the Haryana Civil Services Rules.

5. On the other hand, the respondents had preliminarily opposed the maintainability of the petition while relying on the following amongst other judgments to contend that the petition is time-barred:

- a. *State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others* [2014 (4) SCT 648 SC];
- b. *Anita Yadav v. Central Administrative Tribunal, Chandigarh Bench Chandigarh and others* [2016 (2) S.C.T. 829 DB];
- c. *State of Uttranchal & Anr. v. Sri Shiv Charan Singh Bhandari & Ors.* [2013 (12) SCC 179]; and
- d. *S.S. Rathore v. State of M.P.* [1990 AIR (SC) 10].

6. On merits, it has been submitted on behalf of the HARCO Fed. that the petitioner is neither a government employee nor a pensioner, therefore he is not entitled to the benefit of reimbursement of the dependant's medical bill after his retirement on account of the fact that the job of the petitioner as well as other employees of the Federation is non-pensionable, rather Contributory Provident Fund Scheme is applicable to the petitioner. He also asserts that after the retirement, the employee-employer relationship between the parties comes to an end.

7. To counter the argument qua applicability of Civil Services Rules, Mr. Vikas Chathrath stats that as per the D.O. Letter no. 4366 dated 05.03.2010, wherein it has been stated that the Civil Services Rules are adopted by the Federation only to supervise and conduct of administrative matters and in fact, no pension is given to the HARCO Fed employees who are covered under the CSR Rules.

8. The arguments of the learned counsel for the respective parties have been

heard.

9. Insofar as the argument raised by the respondent regarding the maintainability of the present petition is concerned, this Court is of the opinion that the respondent himself has been addressing communications/DO letters to-and-fro seeking one opinion after another. The chronological set of the communications exchanged between the parties is as under:

Date	Relevant communication
02.09.2008	The MD, HARCO Fed. addressed a letter to the Registrar, Cooperative Societies, Haryana seeking guidance as to whether an employee is entitled to reimbursement of medical bills in terms of the Civil Services Rules in connection to the treatment of his dependents for the period after his retirement.
25.09.2008	In reply to the aforesaid letter, the Registrar, Cooperative Societies, Haryana confirmed that the reimbursement of medical bills is permissible in respect of the retired employees.
14.07.2009	A representation was made by the petitioner to the Registrar, Cooperative Societies, Haryana elaborating upon the difficulty being faced on account of the non-reimbursement of the medical bills, while seeking reimbursement of a sum of Rs.74,700/- forthwith.
16.09.2009	The aforesaid representation of the petitioner was forwarded by the Registrar to the MD, HARCO Fed. while asking to take action on the representation and apprising about the action taken.
21.10.2009	Interestingly, in place of taking any action, the communication dated 16.09.2009 was responded to while stating as under: <i>“Haryana Civil Services Rules are not applicable to the employees of HARCO Fed. for the purpose of payment of</i>

	<i>medical bills and the reimbursement of medical bills of retired employees and their dependents are not covered by Civil Services Rules. In addition to above, in such type of institution, neither there is any such provision nor there is any availability of any financial source for making payment of such bills. If the payment of this bill is made it would give rise to a new trend and the same would adversely effect the financial position of the institutions and this payment would be against the rules. Hence, keeping in view the aforesaid facts, you are requested to give fresh advice.”</i>
18.12.2009	Once again, the Registrar, Cooperative Societies, Haryana vide its memo dated 18.12.2009 (Annexure P-10) opined that as per Govt. instructions and Rules reimbursement of medical bills is permissible in respect of the retired persons.
05.03.2010	However, instead of taking any prompt action, a D.O. Letter was issued by the MD, HARCO Fed. stating that the employees of HARCO Fed. are covered under Contributory Provident Fund Scheme and no pension is given by HARCO Fed. to its employees who are covered under CSR Rules. It was also brought out that so far not reimbursed the medical bills of any retired employees for want of sufficient funds, in view of which, a fresh view was requested to be taken.
29.03.2010	In reply to the DO Letter, the Registrar opined that- <i>...matter relating to reimbursement of medical bill of Sh. Ram Pal Singh, retired Assistant Manager (Sales) may be referred to your Board of Directors for taking necessary action in the matter.”</i>

10. After a trail of aforesaid communications, a Board Meeting was convened by HARCO Fed. on 17.08.2010. As per the minutes of meeting (Annexure P-13)

the matter regarding reimbursement of Medical Bills of retired employees and their dependents in terms of Haryana Civil Services Rules was discussed. However, the claim of the petitioner was rejected. Thereafter, on an application made by the petitioner seeking re-consideration of matter, the matter was once again considered in BOD meeting dated 04.09.2014 whereby the following decision was taken

“Considered & resolved to examine the case of Sh. Ram Pal and put up before the Administrative Sub-Committee with complete detail. Further, as regards policy regarding reimbursement of medical bills, it was decided that for the purpose of an employee, mean an employee working in Federation and not a retired employee.”

11. In yet another Board meeting dated 31.01.2015 the agenda of reimbursement of medical bills of retired employees of HARCO Fed. and their dependants was considered once again, however, the Board unanimously resolved to reject the request of the petitioner. The rejection was conveyed vide letter dated 20.02.2015 (Annexure P-19).

12. This Court is of a firm view that with every re-consideration, a hope is instilled in the heart of the petitioner, only to be crushed by every subsequent rejection. The respondent cannot be permitted to take the benefit of any delayed action on the part of the petitioner when the respondent himself re-considered the matter n-number of times. As such, the argument with respect to delay is nugatory.

13. Proceeding further, the minutes of meeting dated 15.02.1979 (Annexure P-4) appended with the petition, which are not disputed by the respondents makes it amply clear that the service condition of all the HARCO Fed. Employees would be governed by the Haryana Civil Service Rules till HARCO Fed. frames its own Rules. Further, it has been duly recorded in the minutes of meeting dated 17.08.2010 (Annexure P-13 Colly.) that service rules framed by HARCO Fed. for its employees, which had been sent to the Registrar, Cooperative Societies for

approval, also contain provision for reimbursement of medical bills in the same manner as is available under the Haryana Civil Services Rules. As a matter of fact, vide its various communications, the Registrar, Cooperative Societies, Haryana has opined that reimbursement of medical bills is permissible in respect of the retired employees.

14. As such, the only question which requires to be answered by this Court is whether it is permissible for respondent-HARCO Fed. to deviate from its own Service Rules while basing its argument on past practices adopted and future financial difficulties which may be faced. The answer is simple and well-settled- No deviations can be made from the Service Rules merely relying upon resolution of the Board of Directors to reject the said claim despite the fact that admittedly Haryana Civil Services Rules are applicable to the employees of respondent-HARCO Fed. which would also mean that the same are applicable for the purpose of medical reimbursement to the retired employees and their dependants. The stand of the respondent-HARCO Fed. to the effect that Haryana Civil Services Rules have been adopted by it only to supervise and conduct the administrative matters but not for the purpose of medical reimbursement to the retired employees. Such an argument is not tenable as the set of Service Rules applicable to the employees of respondent-HARCO Fed cannot be made effective in piece meal at its own whims and fancies and also in the light of admitted fact that the Registrar Cooperatives Society Haryana had suggested that payment of medical bills relating to period after the retirement be also made in accordance with Service Rules. The decision of Board of Directors in the form of resolution cannot overwrite the service rules governing the conditions of service of the petitioner, which are applicable for all intents and purposes.

15. Apart from it a plain reading of impugned order dated 30.01.2015 (Annexure P-19), whereby medical reimbursement has been declined is totally non-speaking a cryptic wherein no reason whatsoever has been recorded and in the light of this aspect alone it cannot sustain. In fact on close scrutiny of the factual matrix, it is also evident from the letter dated 07.05.2012 (Annexure P-16), written by the Financial Commissioner and Principal Secretary, Government of Haryana, Cooperation Department to the Managing Director HARCO Fed. directing to ensure that medical bills of the petitioner be reimbursed at the earliest in compliance to the decision taken by the Registrar Cooperative Societies Haryana dated 29.10.2010 (Annexure P-15) and also sought clarification within a period of 15 days as to why the delay has occurred till the payment is made.

16. Having regard to the aforesaid discussion and the narration of facts on record as well as on consideration of submissions made by the respective parties, the present petition is allowed. Respondents No.4 & 5 are directed to reimburse the amount towards the medical bill on account of treatment of dependent-wife of the petitioner during the period w.e.f. 02.09.2005 to 30.07.2006, which shall carry interest @ 9% per annum from the date it became due till its payment.

17. The order be complied forthwith and not later than a period of one month from the date of receipt of the certified copy of this order.

(SANDEEP MOUDGIL)
JUDGE

28.08.2023

Poonam Negi

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No