IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

206 **CWP-10015-2015**
Date of Decision :23.01.2024

Kamla Devi **...Petitioner**

Versus

State of Haryana and others **....Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.S. Duhan, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Sandeep Bansal, Advocate and
Mr. Roshan Lal Saini, Advocate for respondent No.4.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, prayer of the petitioner is for reimbursement of the medical expenses incurred by her on the liver transplant/surgery of her husband, who was working with the respondent-department.

2. As per the averments made in the petition, husband of the petitioner, who was working in the office of Advocate General, Haryana was suffering from chronic liver disease, which was diagnosed in November, 2012. As per the diagnoses, the only remedy to cure was liver transplant and a donor had to be arranged for the same. The petitioner decided to donate part of her liver for her husband. Keeping in view the fact that facility of liver transplant was not available with the PGIMER, Chandigarh, husband of the petitioner was admitted in Sir Ganga Ram

AARTI SHARMA
2024.01.30 13:05
I attest to the accuracy and
integrity of this document

Hospital, New Delhi on 26.03.2013. The estimated expenditure for the liver transplant was assessed @ Rs.17,02,780/- at the relevant hospital, which included expenses for indoor treatment after surgery for a period of 03 weeks for patient and for seven days for donor. After undergoing the medical tests required for undertaking the liver transplant, a surgery was undertaken on 21.02.2013. The petitioner and her husband initially remained in ICU and, thereafter, were shifted to wards. Despite the surgery, life of the husband of the petitioner could not be saved and he unfortunately died on 06.05.2013.

3. Keeping in view the medical expenditure incurred by the petitioner as well as her late husband, the petitioner raised the bills for medical reimbursement for a sum of Rs.17.02.780/-. The said bills were retained with certain observations and ultimately a sum of Rs.12,72,990/- was paid to the petitioner out of the total expenditure of Rs.17.02.780/-.

4. Prayer of the petitioner in the present petition is that the petitioner is entitled for full reimbursement of medical expenses incurred by her.

5. Upon notice of motion, the respondents have filed reply wherein, it has been stated that at the time when the liver transplant surgery was undertaken by the husband of the petitioner in the year 2013, there was no such policy under which the package reimbursement of the amount incurred by the patient as well as donor was admissible but in the year 2017, a policy was framed by the respondent-State so as to give a package reimbursement.

6. Learned counsel for the respondents submits that the

AARTI SHARMA
2024.01.30 13:05
I attest to the accuracy and
integrity of this document

petitioner's claim for reimbursement has been considered under the said policy dated 03.10.2017 and an amount for which the petitioner became entitled, has been paid to her hence, the claim of the petitioner for reimbursement of the medical expenses has already been finalized by the respondents.

7. Learned counsel for the petitioner submits that the respondents cannot bring 2017 policy in operation, which was not in existence on the date when the surgery was undertaken so as to decide the claim of the petitioner for reimbursement of medical expenses and the policy dated 03.10.2017 will be applicable on the surgery/treatment, which are undertaken after the issuance of the said policy/instructions and as there was no instructions/policy to the contrary, the petitioner is entitled for full reimbursement of the medical expenses incurred by her.

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

9. It is a settled principle of law that any action which is to be taken by the department should be supported by the rules governing the service qua the said aspect or any instructions, which have been issued by the State. In the present case, policy dated 03.10.2017 which has been brought into operation by the respondents, was not in existence at the time when the surgery of the husband of the petitioner was undertaken, reimbursement of which has been sought by the petitioner in the present case, hence the same could not be brought in operation to decide the claim of medical reimbursement raised by the petitioner.

10. In the absence of any such policy so as to put restriction upon

AARTI SHARMA
2024.01.30 13:05
I attest to the accuracy and
integrity of this document

the amount to be reimbursed, respondents were under an obligation to reimburse the full amount incurred on the liver transplant to the petitioner.

11. Learned counsel for the respondents submits that the claim of the petitioner has been considered as if, the surgery is presumed to have been undertaken at PGIMER, Chandigarh .

12. Said argument is also fallacious. Once the liver transplant surgery was not available at PGIMER, Chandigarh, the question of presuming the same to be undertaken at PGIMER, Chandigarh so as to decide the claim of the petitioner for medical reimbursement is totally artificial and has no basis and hence, reimbursement of medical claim on the basis of the PGIMER rates cannot be accepted in the facts and circumstances of the present case.

13. Learned counsel for the respondents further submits that the expenses incurred by the petitioner while donating the part of her liver for liver transplant of her late husband may be granted but the other expenses incurred on other facilities such as, consumables as well as room rent be fixed as per the rates of PGIMER, Chandigarh as per the entitlement of the patient.

14. The said argument has force. The consumables, which have been used while undertaking the surgery, for which the reimbursement is being sought, will be reimbursed as per the rate prevalent when the consumables were purchased by giving bills of the said consumables to the authority concerned. With regard to the room rent, the same be reimbursed as per the rate of PGIMER, Chandigarh as per the entitlement of the employee concerned.

15. Learned counsel for the petitioner submits that the details of

AARTI SHARMA
2024.01.30 13:05
I attest to the accuracy and
integrity of this document

expenditure qua consumables has already been submitted with the respondents, copy of which has been appended as Annexure R-1 by the respondents themselves hence, the same be taken into consideration while passing order on the claim of the petitioner qua full reimbursement of medical expenses.

16. Keeping in view the facts and circumstances recorded hereinbefore, present petition is allowed. The respondents are directed to finalize the claim of the petitioner for reimbursement of the medical expenses in pursuance to the present order, within a period of 08 weeks from the date of receipt of copy of this order and the amount so calculated be released to the petitioner by deducting the amount already paid to the petitioner.

17. Present petition is allowed in above terms.

18. Civil Miscellaneous application pending, if any is also disposed of.

January 23, 2024 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

AARTI SHARMA
2024.01.30 13:05
I attest to the accuracy and
integrity of this document