

CWP-19023-2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(220)

CWP-19023-2021

Date of decision: - 30.05.2024

Kamal Kant

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Jagatvir Sindh Dhindsa, Advocate, and
Mr. Vivek Aggarwal, Advocate
for the petitioner.

Ms. Neha Sonawane, DAG, Punjab.

Mr. Vikas Malik, Advocate, and
Mr. Manoj Malik, Advocate
for respondent No.4.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus directing the respondents to reimburse the complete amount spent, along with interest thereon by the petitioner on his own medical treatment.

2. Learned counsel for the petitioner has submitted that the petitioner had suffered from a disease of the Prostate Gland in the year 2020 and on account of Covid-19 Pandemic, the State of Haryana, Punjab and UT Chandigarh had clamped lockdown and ordered closing of the

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OPD services in the government hospitals and during the said period, the surgeries were also not being performed in the operation theaters. It is further submitted that the petitioner had suddenly developed a serious problem of Prostate Gland and was experiencing acute and intense pain and absolutely pressing circumstances, he had to approach the nearby local hospital in his vicinity i.e. Healing Touch Super Special Hospital, Ambala for his emergent treatment as during the Covid-19 Pandemic the Government Hospitals were not holding OPDs and performing operations/surgeries. It is stated that the petitioner was admitted in the said hospital on 27.08.2020 as an Indoor Patient and remained in the said hospital till 29.08.2020 and during the said period he was diagnosed with “Prostatomegaly Grade IIIrd with R.O.U.” and was operated upon by the concerned Urologist on 27.08.2020 itself. Reference in this regard is made to page 24 of the paperbook, in which reference has been made to the diagnosis and also the fact that the petitioner was suffering from pain in the abdomen. It is further stated that the hospital authorities had raised a total medical bill of Rs.40,500/-, which the petitioner had paid from his own pocket. Reference has been made to the record annexed with the petition, more so at page 19 of the paperbook, to show that the said amount was paid by the petitioner on account of the said operation. It is submitted that specific averments have been made in para 8 of the writ petition to highlight the fact that the PGIMER, Chandigarh was not performing the routine operation work and since the petitioner was suffering from intense pain and there was acute emergency, thus, he was left with no other option but to get the said operation done from the

above-said hospital. It is further submitted that however an amount of Rs.17,350/- has been sanctioned by respondent No.3 and rest of the amount out of the total amount of Rs.40,500/- has not been sanctioned. Learned counsel for the petitioner has referred to para No.1 of the preliminary submissions of written statement, filed on behalf of respondent No.4/Hon'ble High Court, to highlight the facts which are not disputed. Para No.1 of the preliminary submissions of the reply filed on behalf of respondent No.4, which has been highlighted, is reproduced hereinbelow: -

“Preliminary Submissions:

1. That the petitioner is a retired Joint Registrar from this Hon'ble High Court. It has been stated by the petitioner that he suffered from Prostatomegaly Grade III with R.O.U. in August 2020 and required immediate hospitalization for treatment and management. Due to restrictions imposed in view of the Covid Pandemic, surgeries/operations were not being performed by the Government hospitals. Under such circumstances, the petitioner was forced to get admitted in the Healing Touch Super Specialty Hospital Ambala on 27.08.2020 where he was operated upon for above mentioned disease and was discharged from hospital on 29.08.2020. An expenditure of Rs.40,500/- was incurred by the petitioner on the said treatment/surgery and submitted his bills to respondent No.4 for reimbursement of the said amount.”

3. Learned counsel for the petitioner has submitted that in the present case, there are exceptional facts and circumstances so as to make out a case for invoking Rule 7 of the Punjab Services (Medical Attendance) Rules, 1940 (hereinafter referred as '1940 Rules') and Rule 7 of the 1940 Rules, which has been referred to, is reproduced hereinbelow:-

“Rule 7. - Nothing in these rules shall be construed as preventing the Government from granting to any person to whom they apply, any concession relating to medical treatment or attendance, which is not authorised by these rules.”

4. Learned counsel for the petitioner has further submitted that since three exceptional circumstances i.e. Covid; Government Hospital not being available for the operation to be performed; acute pain and extreme urgency, were existing in the present case, thus, it would be a fit case for the Government to exercise its powers under Rule 7 of the 1940 Rules and grant the relief to the petitioner by treating his case as an exceptional one and without the same being regarded as a precedent. It is stated that at any rate, on account of the above mentioned facts and circumstances, the competent authority of respondent No.1-State may reconsider the matter in the light of the above-said submissions.

5. Learned counsel appearing for respondent No.4-High Court has submitted that the amount was approved by respondent No.3, which is the competent authority and was paid to the petitioner and it is respondent No.3 and the State of Punjab, who had to take a final decision on the same.

6. Learned State counsel, on the other hand, has submitted that as per the policy instructions dated 13.02.1995, an employee has been given freedom to get treatment in any private institute/hospital of his/her choice in the country subject to an undertaking that he/she would accept reimbursement of expenses incurred by his/her treatment, as per the rates fixed by the Director, Health & Family Welfare, Punjab for a similar treatment package or actual expenditure, whichever is less and the rate for

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a particular treatment would be included in the advice issued by the District/State Medical Board and a Committee of technical experts would be constituted by the Director, Health and Family Welfare, Punjab to finalize the rates of various treatment packages. It is submitted that the assessment done in the present case is on the basis of the said policy. It is however submitted that in the exceptional circumstances, which have been highlighted by the petitioner, the competent authority of respondent No.1-State would be open to reconsidering the matter and seeing as to whether the present case would fall within the parameters so as to exercise the powers under Rule 7 of the 1940 Rules. It is however stated that the said reconsideration is being done on account of the exceptional facts and circumstances pointed out by the petitioner and the same should not be treated as a precedent and the competent authority of respondent No.1-State would decide the issue in accordance with law.

7. Keeping in view the facts and circumstances, the present petition is disposed of with a direction to the competent authority of respondent No.1-State to consider the exceptional circumstances of the present case as pointed out by the learned counsel for the petitioner and to take a final decision as to whether the case of the petitioner would fall within the parameters for the competent authority to exercise its power under Rule 7 of the 1940 Rules for granting relief to the petitioner within a period of two months from the date of the petitioner giving a representation to the competent authority of respondent No.1-State. In case, the competent authority of respondent No.1-State is of the opinion that the case of the petitioner does fall within the said parameters, then,

the necessary relief be granted to the petitioner immediately thereafter and in case, the same is not found to be so, then, a speaking order rejecting the same be passed.

8. It is made clear that the present order is being passed on account of the exceptional facts and circumstances brought before this Court and should not be treated as a precedent.

May 30, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No