IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

269 **CWP-24342-2017**
Date of Decision:02.05.2024

Darshana Rani **…Petitioner(s)**

Versus

State of Haryana and others **…Respondent(s)**

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Y.P. Malik, Advocate for the petitioner
Mr. Rohit Arya, DAG, Haryana
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TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the memos dated 14.07.2017 and 19.07.2017, Annexure P-10 and P-10/A respectively, whereby the petitioner's medical reimbursement claim for the treatment she had taken in Australia, was declined.

2. Briefly, as per facts apparent on record, the petitioner superannuated from service on 31.10.2010 after serving as Post Graduate Teacher (PGT) History in the respondent Secondary Education Department. She went to Australia sometime in the year 2015, and fell seriously ill there. In emergency, she had to take treatment from two hospitals; Calvary Public Hospital, Canberra, from 30.10.2015 to 03.11.2015, and National Capital Private Hospital, Canberra, from 20.11.2015 to 21.11.2015, for Pancreatitis (gallstone). On returning to the country, she claimed medical reimbursement from the Department by submitting her claim along with certificates by the Civil Surgeon, dated 22.03.2016 and 29.03.2016, Annexures P-8 and P-8/A respectively, certifying that the treatment was taken in emergency situation. The Department, however, rejected the claim, vide impugned memos dated

14.07.2017 and 19.07.2017, on the ground that as per Health Department instructions, dated 07.12.1979, no reimbursement could be given for the treatment outside India.

3. Learned counsel for the petitioner contends that the petitioner's case has been wrongly rejected by referring to government instructions dated 07.12.1979. The Health Department thereafter issued a new reimbursement policy vide letter dated 06.05.2005, Annexure P-12, stipulating under Clause 4 that reimbursement for treatment taken in an emergency in an unapproved hospital would be allowed at rates equal to the Postgraduate Institute of Medical Education and Research, Chandigarh, (for short, 'PGIMER') rates, with approval of the Finance Department. Accordingly, the petitioner is entitled to reimbursement of the expenses incurred.

4. Learned State counsel, on the contrary, contends that the Department has taken a decision vide instructions dated 07.12.1979, Annexure R-2, that no reimbursement shall be given for medical treatment taken outside India by any State Government employee, including All India Service officers serving in the State. The subsequent policy, dated 06.05.2005, does not deal with the issue of treatment taken abroad, accordingly, it cannot have application to the petitioner's case.

5. Heard.

6. As per facts apparent on record, the petitioner, who served as PGT History in a government school, had to take medical treatment in emergency while in Canberra, Australia. She was treated there at Calvary Public Hospital and National Capital Private Hospital. The emergency situation that she had to be treated in, was certified by the Civil Surgeon vide certificates dated 22.03.2016 and 29.03.2016. There is no dispute on these

facts, however, the respondents have chosen to decline the petitioner's case only by referring to instructions dated 07.12.1979, which are to the effect that *no reimbursement should be made for medical treatment secured outside India by any State Government employee including IAS and others*.

6.1. The government has reviewed its reimbursement policy, and framed a new one vide letter dated 06.05.2005, which has been made applicable to all government employees/pensioners/dependents. It provides for, (i) full reimbursement of medical treatment taken in all government hospitals within or outside the State, (ii) at rates equal to those of PGIMER for treatment taken from the hospitals on approved lists, (iii) also at PGIMER rates for the treatment taken in an unapproved hospital in emergency. Head of the Department in consultation with the Civil Surgeon has been prescribed as the competent authority to certify the emergency. The relevant Clause 4 of the Policy is as under:

> **4. Un approved Hospitals**
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> a) The reimbursement for the treatment taken in an emergency in an un approved hospital will be allowed equal to PGI, Chandigarh rates with the approval of the Finance Department.
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> b) Head of the department in consultation with concerned Civil Surgeon is competent to certify an emergency.

6.2. It is a comprehensive policy which takes care of medical reimbursement issues of the serving as well as superannuated government employees and their dependents. Instead of referring to and settling the petitioner's claim for reimbursement in terms thereof, the respondents have decided it on the basis of 07.12.1979 instructions. Although the instructions have not been specifically repealed or superseded by the new policy dated

06.05.2005, the same have not been protected either. In the absence of any saving provision for the instructions dated 07.12.1979, it cannot be said that the same have not been superseded by the subsequently notified comprehensive reimbursement policy, especially in the face of a Note incorporated therein which reads as under:

> **Note:** xxx xxx xxx
>
> Reimbursement of the medical bills pertaining to the treatment completed before the issue of this letter would be regulated or dealt with as per the instructions applicable before the issue of this letter.
>
> These instructions will be applicable from the date of issue of this letter.
>
> This issues with the concurrence of the Finance Department conveyed vide their U.O. No.70/29/2004-6FD-II/1659, dated 6.5.2005.

Apparently, the Note provides that only for the treatment taken before the issue of Policy/letter on 06.05.2005, the reimbursement will be regulated as per the instructions applicable prior thereto. This essentially implies, for the treatment taken after issuance of the Policy, the old instructions will not be applicable. The petitioner undisputedly got treatment after the Policy was issued, and her claim could not have been rejected by relying upon instructions dated 07.12.1979, which had no application to the case.

7. There is another aspect of the matter. By the new Policy, dated 06.05.2005, the government has permitted reimbursement of treatment taken from unapproved hospitals also at PGIMER rates, provided it has been taken in emergency. There is no dispute that the petitioner had to take the treatment in emergency from the hospitals while she was in Canberra. In case the respondents' stand is to be accepted, an employee who is visiting a foreign

country and has to take emergency treatment from a hospital there/ unapproved hospital, he/she will not be entitled to any reimbursement; at the same time, it will be admissible to him/her for the emergency treatment taken from an unapproved hospital within the country. Emergency knows no boundaries, it can occur within or outside the territorial limits calling for immediate treatment. An employee who met with an emergency within the country cannot be the preferred one and entitled to reimbursement, as against the one who met with such a situation abroad. Both remain employees for the government, and cannot be treated differently; it is discrimination against the one who has to take emergency treatment abroad.

7.1. The Policy has been framed to provide financial help by reimbursing medical expenses incurred on treatment by a government servant/retiree. The rates of reimbursement differ depending upon the type of hospital the treatment is taken from, and whether it is in emergency, as already discussed. In case it is emergency treatment from a hospital not on the approved lists of hospitals, the employees are entitled to reimbursement at PGIMER rates. Meaning thereby, the rates of reimbursement for emergency treatment from unapproved hospitals are pre-determined, no matter wherefrom the government servant takes the treatment. Accordingly, it would not make any difference whether the emergency treatment is taken within the country or from outside, as the government is committed to providing only a limited financial help/reimbursement at the PGIMER rates, irrespective of the actual expense incurred. Reimbursement of such treatment causes no prejudice or financial loss to the government. The hospital not being within the nation's territorial boundaries does not really matter. Resultantly, there is no rationale for the sub-classification of emergency treatment into the one

taken from a hospital within the country and from abroad; rather, it defeats the object of Policy itself which is to provide reimbursement at fixed rates for the emergency treatment taken from an unapproved hospital. Therefore, the classification is irrational also, apart from being discriminatory, and the respondents cannot decline reimbursement for emergency treatment to the petitioner on that basis.

8. There is another aspect of the matter, the words '*treatment taken in an emergency in an un approved hospital*' in the policy/letter dated 06.05.2005, are not qualified by the condition that that the unapproved hospital has to be within the country only. Any hospital which is not on the 'approved hospitals list' notified under the Policy, will be an unapproved hospital, whether within or outside the country, and treatment taken from any such hospital in emergency will be reimbursable at the PGIMER rates in terms of the Policy. On this ground also the respondents are wrong in denying reimbursement to the petitioner.

9. For the reasons recorded, the petition is allowed, and the impugned memos, dated 14.07.2017 and 19.07.2017, are hereby set aside. The respondents are directed to reimburse the medical treatment taken by the petitioner abroad in terms of Policy/letter dated 06.05.2005, within a period of four weeks of receiving a certified copy of this order. The amount of reimbursement shall carry interest at the rate of six per cent per annum from the due date to actual payment. No order as to costs.

(TRIBHUVAN DAHIYA)
JUDGE

02.05.2024
Payal

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*