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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-5833-2017
Date of Decision: 15.02.2024

Chotti Devi

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.S. Kamboj, Legal Aid Counsel,
for the petitioner.

Mr. Kapil Bansal, D.A.G., Haryana.

Mr. Kuldip Singh, Advocate,
for respondent No.3-Bank.

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<u>JASGURPREET SINGH PURI, J.</u> (ORAL)

1. The present is a writ petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* for directing the respondents to pay medical reimbursement to the petitioner for the period from 11.03.2013 to 21.04.2013 which was not paid by the respondent-Bank.

2. The brief facts of the present case are that the husband of the petitioner was working as a Branch Manager with the respondent-Bank and unfortunately he died on 09.05.2013 and the petitioner is the widow of the aforesaid employee, namely, Baljeet Singh. Before the death of the husband of the petitioner, he was having kidney ailment and for that purpose of getting treatment for the same, he was admitted in Sir Ganga Ram Hospital,

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Delhi from 01.03.2013 till 07.03.2013. Thereafter, the petitioner raised the bills to the respondent-Bank in accordance with the Policy (Annexure P-1) dated 06.05.2005 as amended from time to time. Admittedly, these bills were paid to the petitioner without any dispute as per the Policy.

3 After six days of the discharge from the aforesaid Sir Ganga Ram Hospital, the husband of the petitioner again got admitted and this time not in Sir Ganga Ram Hospital but in another hospital, namely, City Hospital, New Delhi which is stated to be affiliated to the aforesaid Sir Ganga Ram Hospital and he remained admitted in that hospital till 21.04.2013 which was for more than one month. While the husband of the petitioner was still in the aforesaid City Hospital, he was shifted to Sir Ganga Hospital again on 21.04.2013 and unfortunately on 09.05.2013, he passed away. So far as the medical reimbursement of the aforesaid second stage of his admission in Sir Ganga Ram Hospital from 21.04.2013 till 09.05.2013 is concerned, admittedly, those bills were reimbursed by the respondent-Bank in accordance with the Policy (Annexure P-1). However, the dispute in the present case is pertaining to the intervening period of 11.03.2013 to 21.04.2013 wherein the husband of the petitioner was admitted in the City Hospital and not in Sir Ganga Ram Hospital because of the reason that the aforesaid City Hospital is not an empanelled/approved hospital of the Bank and so far as Sir Ganga Ram Hospital is concerned, the same is admittedly an approved and empanelled hospital of the Bank. The prayer in the present petition is for medical reimbursement for the aforesaid period when he was admitted in City Hospital, New Delhi and has raised a bill of Rs.4,06,495/- in this regard.

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4. Learned counsel for the petitioner submitted that as per the Policy (Annexure P-1) which is so applicable to the Bank and which has been so stated in the reply as well that the same is applicable to the Bank, it has been so provided in Para No.4 that the reimbursement for the treatment taken in emergency in an unapproved hospital will be allowed equal to PGI, Chandigarh rates with the approval of the Finance Department and the Head of the department in consultation with concerned Civil Surgeon is competent to certify an emergency. He further submitted that when the husband of the petitioner was admitted on 11.03.2013 i.e. after six days of his discharge from Sir Ganga Ram Hospital, he again went to the aforesaid hospital for admission because of an emergency condition but due to rush of the patients there was no availability of any bed at Sir Ganga Ram Hospital and thereupon because of the aforesaid reason, the husband of the petitioner was admitted in City Hospital which is also an affiliated hospital of Sir Ganga Ram Hospital. He further submitted that at that point of time, there was no option for the husband of the petitioner and for the petitioner to have further found any other empanelled hospital in the time of emergency and at that point of time, as they were suggested in order to save the life of the husband of the petitioner, he was admitted in the City Hospital which is affiliated to Sir Ganga Ram Hospital and in this way, he remained admitted for the aforesaid period i.e. from 11.03.2013 to 21.04.2013. While he was still in the aforesaid City Hospital, a bed was later on made available in Sir Ganga Ram Hospital and while he was still in the City Hospital, he was shifted to Sir Ganga Ram Hospital on 21.04.2013 and where he remained till his death. He submitted that in such like situation, there was no other option available

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to the petitioner but to admit her husband in the City Hospital in order to save his life and now because of the aforesaid reason, the medical reimbursement of the bills for the aforesaid period could not have been stopped and about 10 years have elapsed and the petitioner has been deprived of her rights by the respondents for non-existing reason. He submitted that the aforesaid amount be paid to the petitioner along with interest.

5. On the other hand, Mr. Kuldeep Singh, learned counsel for respondent No.3-Bank submitted that so far as the period from 01.03.2013 to 07.03.2013 and also from 21.04.2013 till 09.05.2013 i.e. the death of the husband of the petitioner when he was admitted in Sir Ganga Ram Hospital is concerned, the entire bills have been paid by way of medical reimbursement. So far as the period from 11.03.2013 till 21.04.2013 is concerned, since the husband of the petitioner was not in an empanelled hospital or an approved hospital, such bills could not have been passed for the purpose of reimbursement. He also submitted that even a clarification was sought from the State Government as to what should be done in these cases to which the State Government replied that the action be taken at the end of the Bank as per the Policy.

6. Learned counsel for the respondent No.3-Bank also referred to Para No.4 of the reply wherein it has been so stated that in case the husband of the petitioner was to be admitted in the City Hospital, it was for the petitioner to have got a certificate from the aforesaid hospital that he was admitted in emergency and in the absence of the same, the aforesaid reimbursement cannot be made to the petitioner because her husband was

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admitted in an unapproved hospital under Para No.4 of the Policy (Annexure P-1). He also referred to Para No.3 (e) & (d) to the aforesaid Policy to contend that even if the City Hospital is an affiliated hospital of Sir Ganga Ram Hospital still it cannot fall in the category of the approved hospital.

7. Learned counsel for respondent No.3 has also taken a preliminary objection that the present petition is not maintainable because relief is being sought against a Co-operative Bank and has submitted that although a specific preliminary objection has not been taken in the written statement but being a legal objection, it can be taken at the time of arguments.

8. I have heard the learned counsel for the parties.

9. The only issue involved in the present case is pertaining to grant of medical reimbursement for the period from 11.03.2013 till 21.04.2013. The only reason which has been stated in the reply and so submitted by learned counsel for the respondent-Bank is that when the husband of the petitioner was admitted in the City Hospital, New Delhi for the aforesaid period no medical reimbursement can be made because the aforesaid hospital was not an approved hospital. However, sequence of facts in the present case suggest that for the first time the husband of the petitioner was admitted in Sir Ganga Ram Hospital on 01.03.2013 and he remained admitted there till 07.03.2013 for which he has already been paid medical reimbursement and after six days again he was admitted in City Hospital, New Delhi which is stated to be a hospital affiliated to Sir Ganga Ram Hospital. While he was still in the City Hospital, he was again shifted to Sir Ganga Ram Hospital on 21.04.2013 and was admitted there till the time of

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his death and for that period when he was admitted for the second time in Sir Ganga Ram Hospital, he was admittedly reimbursed all the medical bills. However, the respondents have disputed the payments of bills pertaining to the period when he remained in City Hospital on the ground that it was not an approved hospital. Para No.4 of the aforesaid Policy (Annexure P-1) is reproduced as under:-

> ***4. Un approved Hospitals***
> *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.*
> *b) Head of the department in consultation with concerned Civil Surgeon is competent to certify an emergency.*

10. A perusal of the aforesaid would show that when an employee is admitted in an emergency condition even in an unapproved hospital then at least he is entitled to the reimbursement equal to the PGI, Chandigarh rates. Clause (b) also provided that the Head of the department in consultation with concerned Civil Surgeon is competent to certify an emergency. In the present case, it is a categoric case of petitioner that the husband of the petitioner was in emergency state because after six days of discharge from Sir Ganga Ram Hospital as aforesaid, he was rushed to City Hospital, New Delhi and the reason for the same was that there was no bed available at Sir Ganga Ram Hospital and in order to save the life of the husband of the petitioner, he was admitted in the aforesaid City Hospital and while he was in the City Hospital, he was again shifted to Sir Ganga Ram Hospital on 21.04.2013. A perusal of the reply filed by the respondent-Bank

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would show that there is nothing in the reply nor any submission made by the learned counsel for the respondent-Bank to show as to whether any effort or endeavour made by the respondent-Bank to verify as to whether the husband of the petitioner was admitted in emergency condition or not. The respondent-Bank is an employer and as per Clause 4(b) of the aforesaid Policy as reproduced above, the certificate with regard to the emergency was to be issued by the Head of department and therefore, it was the duty of the Head of the Department to have verified and issued ceritificate with regard to emergency and now onus cannot be put on a widow, who is the petitioner to get all the documents completed for the purpose of ascertaining as to whether it was a case of an emergency or not. Rather on the other hand, a plain language used in Clause 4(b) of the Policy (Annexure P-1) would show that the onus is on the head of the department and not upon the employees or their dependent and in the present case, admittedly, no exercise was undertaken by the respondent-Bank. Rather the petitioner, who is a widow has been deprived of legitimate rights of medical reimbursement for about a period of 10 years regarding a bill of Rs.4,06,495/- and therefore, Right under Article 21 of the Constitutuion of India has been infringed.

11. During the course of arguments, learned counsel for the petitioner submitted that the petitioner would be satisfied in case she is given the aforesaid medical reimbursement for the period of 11.03.2013 till 21.04.2013 at least at the PGI, Chandigarh rates even as per Para No.4 of the Policy (Annexure P-1).

12. During the course of argument, the learned counsel for the petitioner has also relied upon the judgments of the Division Bench of this

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Court passed in ***CWP-14860-2005*** titled as "***Mahipal Singh Vs. State of Haryana and others***" and also in ***CWP-299-2007*** titled as "***Vasu Dev Bhanot Vs. Union of India and others***" in this regard by contending that it is not expected from an employee to run from pillar to post to find approved hospitals whereas at that point of time, the only focus is on saving of the life of the patient and not to enter into the super technicalities of finding an approved hospital. The facts and circumstances of the present case would show that after getting discharged from Sir Ganga Ram Hospital on 07.03.2013, he was again admitted to City Hospital just after six days where he remained admitted till 21.04.2013 and while he was in the aforesaid City Hospital, he was again shifted to Sir Ganga Ram Hospital and therefore, it cannot be inferred that the husband of the petitioner was not in an emergency state. Even otherwise also, duty was cast upon the head of the department of concerned department to have verified at its own level as to whether the husband of the petitioner was admitted in state of emergency or not as per Clause 4(b) of the Policy as aforesaid.

13. So far as the preliminary objection taken by the learned counsel for respondent No.3-Bank with regard to the maintainability of the present petition is concerned, the same deserves to be rejected only on the ground that this Court has already arrived at a conclusion that in the present case there has been an infraction of Article 21 of the Constitution of India which is a Fundamental Right. When a Fundamental Right is being effected then the jurisdiction of the High Court under Article 226 of the Constitution of India cannot be ousted. Even otherwise also, this Court is of the considered view that it is a fit case for invoking Article 226 of the Constitution of India.

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14. This Court is of the considered view that there has been an infraction of Article 21 of the Constitution of India so far as the present case is concerned. The respondents have failed to discharge their duties in this regard by non-payment of the medical reimbursement bills to the petitioner, who is a widow.

15. In view of the aforesaid totality of facts and circumstances, the present petition is allowed. The respondents are directed to process the bills of the husband of the petitioner pertaining to the period from 11.03.2013 to 21.04.2013 and pay to the petitioner on the basis of PGI, Chandigarh rates forthwith and within a period of three months from today along with interest @ 6% per annum (simple).

16. In case, the aforesaid amount is not paid to the petitioner within a period of three months from today, then the petitioner shall be entitled for future interest @ 9% per annum (simple) instead of 6% per annum (simple).

15.02.2024 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No

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