



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

111

CWP-30760-2024 (O&M)
Date of decision: 19.11.2024

Shamsher Singh and Another

....Petitioners

Versus

Union of India and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rajeev Anand and Mr. Ujwal Anand, Advocates
for the petitioners

Mr. Karan Kumar Jund, Sr. Panel Counsel for the respondent-UIOI

AMAN CHAUDHARY, J. (ORAL)

1. The prayer in the present petition is for quashing the action of respondents, wherein without passing any formal order towards rejection as also towards entitlement of petitioner No.1 to continue dependency under the ECHS Scheme Post on attaining the age of 25 years due to disability chronic renal failure, which has further been aggravated, despite the kidney transplant with the donation by his grandfather, to acute graft dis-function, which is permanent and life long disability, for which treatment is imperative till he is alive. The parents of the petitioner are left with no source of income, it continue such treatment beseech this Court, the issue being squarely covered by the judgment passed by this Court in **Harteg Singh and Another vs. Union of India and Others**, CWP-12658-2017, decided on 27.07.2017, Annexure P-7, to which no challenge was made, relevant paras whereof read thus:

“XX XX XX

8. ECHS was floated vide letter dated December 30, 2002 (Annexure P-2), followed by clarification dated December 18, 2007 (Annexure P-2) providing defence pensioners and their dependents, free medical treatment in empanelled hospital(s).



The unemployed sons of army pensioners were granted free medical treatment till the age of 25 years but the age bar was lifted in case dependent is having lifelong permanent disability. Vide Annexure P-2, all the mental and physical lifelong disabilities were covered. In the case in hand, both the kidneys of petitioner No.1 (son of petitioner No.2 – army pensioner) have failed and he was issued White Card in the year 2013. He was being granted medical treatment, free of cost for dialysis and kidney failure treatment. However, vide letter dated January 02, 2017 (Annexure P-10), he has been informed that letter dated November 20, 2015 (Annexure P-11) has retrospective effect and his White Card is being taken away meaning thereby he is not entitled to free medical treatment.

9. The ECHS was authorized by the Government of India, Ministry of Defence, letter dated December 30, 2002 (Annexure P-2) and the 2 nd paragraph of the scheme states that son with lifelong medical disability will be eligible for lifelong medical treatment. The relevant part of the same is reproduced as under:-

“The Scheme would cater for medicare of all Ex servicemen in receipt of pension including disability pension and family pensioners, as also dependents to include wife/husband, legitimate children and wholly dependent parents. The son with permanent disability of any kind (physical or mental) of entitled category of ECHS would be eligible for lifelong facility of medical treatment.”

10. The aim of the Act *ibid* is for providing equal opportunities and protecting the rights and full participation of the persons with disabilities with the non-disabled persons. The Act has been formulated with the objective of taking care of the disabled persons in Government service and taking care of them in the matters of appointment, promotion, retention etc. whereas ECHS is a contributory scheme of the army personnel and has been formulated with the objective of the taking medical care of the army pensioners as well as their families. The children of army pensioners with lifelong disabilities were given lifelong medical treatment by the Government and the same cannot be changed by mere policy letter. The respondents cannot take away the White Cards which are already issued to the petitioners by making amendment in the Act. Even if any amendment is to be made, it cannot be retrospective. The respondents cannot change provisions of the original scheme to which Government sanction was accorded. The Hon’ble Apex Court in **Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh & others**, (1979) 2 SCC 409 has held that mere claim of change of policy would not be sufficient to exonerate Government from its liability and obligations and the Government would be compelled to carry out promise made by



it. In **Lalaram & others vs. Jaipur Development Authority & another**, (2016) 11 SCC 31, the Apex Court further stressed on the importance of complying with a promise made by the State on the basis of a public policy in the absence of which immense prejudice is caused to the other party involved and invoking the doctrine of promissory estoppel for ensuring the same.

11. The law cannot be changed retrospectively other than by legislative action and even if the legislature may have the power to legislate retrospective laws, the same cannot be taken away the accrued rights. In the instant case, respondents have attempted to tacitly extinguish the rights of petitioners in a retrospective manner and that too, through an administrative action which is clearly impermissible in law. The Apex Court in **Ex-Major N.C. Singhal vs. Director General, Armed Forces Medical Services, New Delhi & another**, (1972) 4 SCC 765, has held that conditions of services cannot be altered or modified to prejudice an employee/ retiree by a subsequent administrative instruction having retrospective effect. 12. In the light of what has been discussed above, instant petitions are allowed. Impugned orders/letters dated January 18, 2015 (Annexure P-11) and January 02, 2017 (Annexure P-10) are set aside and the respondents are directed to continue the treatment of petitioners and extend all the benefits to them in the light of Lifelong Medical Facilities as per ECHS dated December 30, 2002 (Annexure P-2) and Clarification dated December 18, 2007 (Annexure P-3).”

2. Learned counsel for the respondents despite his best efforts, has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.
3. In wake of the aforesaid, the present petition is disposed of in terms of **Harteg Singh** (supra).

(AMAN CHAUDHARY)
JUDGE

19.11.2024
M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No