Sarojini Sawhney

vs

Punjab University And Ors.

Punjab-Haryana High Court

30 August, 2005

Citations: (2006) 142 PLR 175

Bench: S Nijjar, N Yadav

JUDGMENT

S.S. Nijjar, J.

1. With the consent of counsel for the parties, this writ petition is taken up for final disposal at motion stage.

This writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking the issuance of a writ in-the nature of Certiorari quashing para 48(i) of Punjab Medical Attendance Rules, 1940 (hereinafter referred to as "1940 Rules"). The petitioner also seeks the quashing of the communications dated 29.5.2003, 12.1.2004 and 28.4.2004 (Annexures P-4, P-8 and P-10)), respectively rejecting the claim of the petitioner for reimbursement of the medical expenses in the sum of Rs. 2,13,514.25.

2. Husband of the petitioner (hereinafter referred to as "the deceased") retired from State Bank of India on 30.9.2000. While in service, the deceased developed the ailment known as ALM-2 (Cancer) in the year 1999. He remained under treatment at the P.G.I., Chandigarh, during the service time of the deceased, the petitioner did not claim, any reimbursement of the expenses incurred on his treatment as he was entitled to claim the same from his employer. However, after retirement of the deceased on 30.9.2000, the deceased continued to receive treatment at the P.G.I., Chandigarh from 14.12.2002 to 28.1.2003. He was lastly given medical treatment at INSCOL, Sector 34, Chandigarh. He unfortunately expired on 11.3.2003. In the State Bank of India, there is no-provision for reimbursement of medical expenses of the retired employees. However, under the State Bank of India Retired Employees Medical Benefit Scheme, a member is entitled to claim upto Rs. 2.00 lacs on account of medical treatment either for himself or his spouse. Since the deceased was member of the Scheme, he was entitled to claim upto Rs. 2.00 lacs on account of the expenses incurred on his medical treatment. The petitioner is said to have spent approximately Rs. 4,13,514.25 on the treatment of the deceased. She submitted the claim for reimbursement to the State Bank of India and she was promptly paid the sum of Rs. 2.00 lacs vide Cheque No. 344050 dated 29.7.2003. She, therefore, submitted the remaining claim to the respondent-University on 5.5.2003. She was informed by letter dated 29.5.2003 (Annexure P-4) that her claim cannot be accepted as it is not covered under the Rule. Aggrieved against the aforesaid communication (Annexure P-4), the petitioner submitted a representation on 28.6.2003 (Annexure P-5) to the Vice-Chancellor-respondent No. 2 of the

University. This representation has also been rejected and the same has been communicated to the petitioner by the Registrar-respondent No. 3 by letter dated 12.1.2004 (Annexure P-8). The petitioner thereafter served legal notice on the respondents through her Advocate on 16.3.2004 (Annexure P-9). In this legal notice, the petitioner has set out not only the relevant rules, but also the law laid down by the Supreme Court as well as by this Court on a number of occasions. The legal notice has also been rejected by communication dated 28.4.2004 (Annexure P-10). The claim of the petitioner has been rejected on the ground that it is not covered under the 1940 Rules. The petitioner's claim has also been rejected on the ground that the deceased did not fall within the definition of "dependent" as given under Rule 2(xi) of the Punjab University Calendar Vol. III Edition 1996 at page 70 which is as under:

(xi) Family" means a University employees' wife or husband, as the case may be, residing with and dependent upon the employee and legitimate children and step children residing with and wholly dependent upon the employee. In the case of the Travelling Allowance Rules, it includes in addition parents, sisters and minor brothers. If residing with and wholly dependent upon the employee....

3. It was also observed in the order (Annexure P-10) that since the deceased was having an income of Rs. 7,000/- per month, she would not be entitled to claim any reimbursement in view of paragraph 48(i) of the 1940 Rules. In the aforesaid Paragraph, it is provided as under:

Punjab Government employee is not entitled to claim reimbursement of medical charges in respect of any member of his family who is an employee of other State/ Central Government or is working in any other Institution unless his case is covered under the provisions of Clarification 4(i) under Para No. 39 i.e. if the income of the spouse is not more than Rs. 250/- p.m. In such cases also, it will be necessary for the husband/wife to submit a joint declaration as to who will prefer the claim in respect of their dependent family members.

4. The respondents have filed a written statement in which the reasons given in the communication (Annexure P-10) have been reiterated. It is further stated that in her representation, the petitioner herself had stated that there is no precedent/rule under which she can claim medical reimbursement from the University, but as a special case, she may be allowed to claim the balance medical expenses of Rs. 2,13,514.25. It has been further stated that the deceased cannot be said to be dependant on the petitioner as per 1940 Rules. In the aforesaid 1940 Rules, the term "family" has been defined as under:

A Govt. servant's wife or judicially separated wife and husband in the case of a female Govt. servant, who is residing with and wholly dependent on him/her, legitimate children, step children, legally adopted children and parents, widowed daughter, unmarried minor sisters and minor brother, residing with and wholly dependent on him/her. (Para 3 of PG letter No. 12344-IHBI-67/17020, 18/19.9.1967).

5. Under the aforesaid Rules, for the employees joining service on or after 17.3.1994, the term "family" for the purpose of medical treatment has been defined as under:

Govt. employee's wife (including judicially separated wife) and husband in the case of premier Govt. employee who is residing with and wholly dependent on him/ her, legitimate children (including step and adopted children) upto two and father and mother residing with and wholly dependent on the Govt. employee." (PG letter No.12/9/93-5H5/9495 dated 17.3.1994).

6. Punjab Government vide letter No. 5919/5BV-79/19368 dated 20.11.1979 as modified vide No. 4250-5HBV-80 dated 20.5.1980 has clarified that the following may be deemed to be dependent on the employees:

The spouse of Punjab Govt. employee working in Institution other than Govt. be not allowed free medical facilities/treatment/ reimbursement expenses, by the employing institution whose income from all sources does not exceed Rs. 250/- p.m. and who ordinarily resides with him/her, on an undertaking in the form of an affidavit to the effect that his wife/husband is not claiming reimbursement from -the Institution she/he is serving in and that according to the terms and conditions of the appointment, she/he is not entitled to free medical facilities.

7. We have heard the learned Counsel for the parties at length and perused the paper-book.

8. Learned Counsel for the petitioner submits that the respondents have the power to relax the aforesaid rules in special cases of hardship. In support of this submission, learned Counsel has relied on the following provisions of the 1940 Rules:

Rule-7

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

Learned Counsel further submits that the Punjab Government has issued some instructions on the point of relaxation which are as under:

FD's Concurrence Necessary:

Rule 7 permits grant of any concession relating to medical treatment or attendance, which is not authorised by these rules by Govt. to its employees. The concession of the kind can only be granted in cases of reimbursement for medicines purchased by Govt. employees on the prescription of their authorised medical attendants. All such cases should be referred to the Finance Department for concurrence before necessary sanction is accorded. Such reference by the administrative Departments of Government should be made to the Finance Department directly. (PG Letter Nos. 8137-6HB-51/11, dated 27.9.1951 and 7510-6HB-53/58497 dated 22.1.1995)

Genuine Cases only to be referred.

Only such cases which merit consideration, in relaxation of the rules, should be sent to Govt. (Health Department) and the cases which do not deserve special consideration should be decided at the Department level. (PG Letter No. 4637-SGI-75/ 11942, dated 10.6.1975).

9. Learned Counsel for the petitioner also submits that the respondents have arbitrarily rejected the claim of the petitioner on the ground that the deceased cannot be said to be wholly dependent under the aforesaid Rules. In support of this submission, learned Counsel has relied on the judgment of the Supreme Court rendered in the case of State of Madhya Pradesh v. O.P. Ojha and Anr. 1998(1) R.S.J. 329 and a Single bench judgment of this Court rendered in the case of Nand Rani v. The State of Punjab and Ors. 2000(2) R.S.J. 597.

10. Having considered the submissions of the learned Counsel for the parties, we are of the considered opinion that none of the issues raised by the respondents are res integra, in view of the law laid down by Supreme Court in the case of O.P. Ojha (supra). In the aforesaid judgment, while considering the term "Wholly dependent", the Supreme Court has held as under:

14. The expression "Wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would likely to lead to results which the relevant Rules would not have contemplated. The expression "wholly dependent" has to be understood in the context in which it is used keeping in view the object of the particular Rules where it is contained. We cannot curtail the meaning of "wholly dependent" by reading into this the definition as given in SR 8 which has been reproduced above. Further the expression "wholly dependent" as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily, dependence means financial dependence but for a member of family it would mean other support, may be physical, as well. To be "wholly dependent" would therefore, include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and was sick and it could not be said that he was not wholly dependent on his son. Son has to look after him in his old age. Even otherwise, by getting a pension of Rs. 414/- per month which by any standard is a paltry amount it could not be said that the father was not "wholly dependent" on his son. That the father had a separate capacity of being a retired Government servant is immaterial if his case falls within the Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the Rules in a case like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It was submitted before us that the father being a retired Government Servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter as we are satisfied that under the relevant Medical Rules, the father was member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other travelling expenses.

11. The aforesaid observations of the Supreme Court leave no manner of doubt that the deceased would fall within the definition of "wholly dependent" under the 1940 Rules as also under the Rules of the University. The same provisions have been considered by a learned Single Judge of this Court in the case of Nand Rani (supra). We may notice the observations made in paragraph 9 of the aforesaid judgment as follows:

9. The law laid down by the Hon'ble Supreme Court of India is law of the land and is binding on all courts. The rules under interpretation in M.P. Ojha's case (supra) were more or less similar to the rules in question involved in the present case. There appears to be no plausible reasoning behind Annexure R/1T, which, as already noticed, is more than ambiguous. The protection granted to a Government employee under the constitutional provisions and rules, cannot be taken away by virtue of issuing such kind of instructions without there being an appropriate legislation or delegated legislative powers, vested in the authorities concerned.

12. We are in respectful agreement with the sentiment expressed by the learned Single Judge of this Court. As noticed earlier, the petitioner had candidly disclosed the entire sequence of events leading to the claim made for reimbursement of the medical expenses. She had even submitted that even if under the Rules, her claim is hot admissible, the same be treated as special case. The relaxation provisions under aforesaid Rule 7 was brought to the notice of the respondents. Yet the respondents did not consider the claim on any humanitarian ground. The provision of reimbursement of medical expenses has been made in various statutory rules to give meaning to the expression "right to life" as contained in Article 21 of the Constitution of India. The petitioner has culled out the observations made by the Supreme Court and this Court with regard to the aims and objectives of providing reimbursement of medical expenses. We may notice some of the judgments relied upon by the petitioner. In the case of Consumer Education and Research Centre and Ors. v. Union of India and Ors. 1995(3) R.S.J. 188 (S.C.), the Supreme Court has observed as under:

22. The expression "life" assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the work place and leisure. The Olga Tellis v. Bombay Municipal Corporation , this Court held that no person can

live without the means of living i.e. means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the" life of its effective content of meaningfulness but it would make life impossible to live, leave aside what makes life livable. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilisation which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In State of H.P. v. Umed Ram Sharma this Court held that the right to life includes the quality of life as understood in the richness and fullness by the ambit of the Constitution. Access to road was held to be an access to life itself in that State.

24. The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependents, should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provisional for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, level and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right life includes protection of the health and strength of the worker and is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such actions which will promote health, strength and vigour of the workman during the period of employment and leisure happiness. The health and strength of the worker is an integral fact of right to life.

Denial thereof denudes the workman the finer facts of life violating Article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution. Facilities for medical care and health to prevent sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the worker's best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruits of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workman.

25. Therefore, we hold that the right to health, medical aid to protect the health and vigour to a worker while in service or post retirement is fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.

13. In the case of State of Punjab v. Ram Lubhaya Bagga 1998(2) S.L.R. 220, again it was observed as under:

6. This Court has time and again emphasised to the Government and other authorities for focussing and giving priority to the health of its citizen, which not only make one's life meaningful, improves one's efficiency, but in turn gives optimum output. Further to secure protection of one's life is one of the foremost obligations of the State. It is not merely a right enshrined under Article 21 but a obligation cast on the State to provide this both under Article 21 and under Article 47 of the Constitution. The obligation includes improvement of public health as its primary duty.

14. In the case of Madhu Sharma v. The Principal Kendriya Vidyalaya 1998(4) R.S.J. 229 P&H (D.B.), it has been observed as under:

If the facts of this case are examined as illustration, it would become amply clear that petitioner was only to get Rs. 26,000/- out of the amount of Rs. 1,50,000/- and if she could not cater for a gap of Rs. 1,24,000/- she would have survived only on the prayers made to God and by no other means. Such instructions which trample justice in a given case be ignored with contempt. We accordingly follow this principle and direct respondents to reimburse the petitioner with regard to cost of pacemaker (Dual Chamber).

15. In the case of Shakuntla v. State of Haryana 2004(1) S.L.R. 563 P&H (D.B.), this Court has held as under:

7... De hors of this, in the case of saving a human life at a given point of time, it is not expected of an attendant to look into the list and then hunt for the hospital which is contained therein. Such procedure should not be expected to be followed in an emergency by the attendant of the patient. If such regulations are applied so strictly, the end result may be disastrous and in that situation the patient may die. If the death occurs, in that eventuality, the responsibility of the State cannot be washed out. No doubt, in normal circumstances the procedures prescribed should be followed but the procedure should not be made so cumbersome that one may get frustrated in adhering to such procedures. Emergency knows no law and no procedures. The emergency act when required to be committed should not be weighed in terms of money especially when human life is at stake.

"8. The authorities prescribed under the rules have also to apply their mind in a conscious and cautious manner in dealing with such kind of situations. Saving the life of near and dear, a person may have to commit any act which includes the selling of one's jewelry, borrowing money at exorbitant rate of interest or subject himself/ herself to every and any condition. No hospital, private or government would entertain the patient without the amount having been deposited, it is at that juncture, circumstances and situations, the attendant of the patient becomes so vulnerable that except for saving the life of near and dear nothing seems to be more important. Thus, gravity of the situation has to be understood by the government in a far more positive manner than applying the normal mathematics. The situations may arise and generally do arise when the attendant of the patient may not have or be possessed with the money or the jewellery for saving the life of near and dear. Can we not think of better solutions for providing facilities to the patient in such a given situation? This needs to be examined by the concerned quarters who are not only meant for ruling but for serving the society. For rendering service to the society, the necessary expenditure are not to be curbed but at the same time the action should be such that it may not open a possible wasteful tap in the State exchequer. Thus, the answer has to be provided by the persons who have been sitting at the helms of affairs of the State and have been facing such situations. According to us, the situation should be dealt with the persons as if he or she is involved in the situation himself or herself. We never know that the situation which is being dealt with may fall upon that person as well.

9. In the given case, saving the life of the child was paramount for the mother i.e. the petitioner and she had no option but to get the child in the first instance admitted in the Saxena Nursing Home, Rewari but upon their advice, for performing the operation, she had to weigh as to which institution is better equipped for saving his life of the child and as per her statement, she had been advised to take the child to Sir Ganga Ram Hospital, New Delhi. Fortunately, the child survived with efforts of the doctor and, of course, the credit went to the institution. No doubt, the expenditure incurred may be far more than what is prescribed in the Government Hospital or in a recognised hospital. The Government has recognised some of the hospitals and so far as rates are concerned, for administering medical help they, vary from one institution to the other. The only measuring law is that in case of grave emergency which hospital comes to the mind of the attendant and which hospital is considered best for saving the life of the patient. These decisions sometimes become crucial for saving the life of an individual.

10. The cumulative effect while considering the claims of all the petitioners is that the individual cases of all the petitioners need to be dealt with expeditiously because at the time of meeting out the medical expenditures in the hospitals, the payment is raised by taking loans upon interest, by sale of jewellery or liquidating their movable or immovable assets including the Fixed Deposits, if any. Such acts sometimes involve the life time saving of an employee. Thus, the question of dealing with such kind of payments does leave a healthy impression with an employee. Generally, speaking, the employer is expected to look after his employees though as per the terms and conditions or the rules framed in respect thereof. Wherever the rules prescribe the reimbursement to be made to the employees, the necessary delays should be avoided. The facts spelt out in all these cases relate to such kind of delays and thereby the petitioners have faced the unnecessary harassments. We are of the view that the impugned orders vide which the claims of the petitioners have been rejected are not sustainable under law, as the plea set up is that the hospitals are not recognised or are not contained in the list approved by the government which does not stand the test of law.

16. In the case of Sadhu R. Pal v. State of Punjab 1994(1) S.L.R. 283, a Division Bench of this Court has observed as under:

7...Since provision of free medical treatment of reimbursement in lieu thereof is a beneficial act of the welfare State for its employee, the rules/instructions have to be construed liberally in favour of the employees, for granting them the relief, rather than adopting a wooden attitude to deprive a person of his due.

8. In our considered opinion, while deciding such matters, the State should take a liberal and humanitarian attitude. Neither any principle nor any judgment nor anything else was shown, nor are we otherwise aware of any material fact could persuade us to hold that a Government employee is not entitled to the reimbursement for the expenditure incurred by him on his treatment in one of the hospitals recognised by the respondent-State. We are fully convinced that refusing the claim of the petitioner is unreasonable, unjust and arbitrary. The impugned order is categorically violative of Article 14 of the Constitution of India. The whole situation has to be judged in a common sense way. One may ask whether the conduct of the petitioner was not that an ordinary prudent person but was a biased act in his own favour, if it is not so, the just relief cannot be withheld.

17. In the case of Renu Saigal v. State of Haryana 1998(4) R.S.J. 557, a Single Bench of this Court has held as under:

5... It is common knowledge that a chronic disease and more particularly a malignant one destroys not only the financial but even the emotional health of the family and takes a very heavy on all who come into contact with the patient. To my mind, therefore, paragraph 3 of the Government Instructions, Annexure P-9, insofar as they deny the benefit of full reimbursement of medical expenses incurred on account of treatment as an out-door patient cannot be justified on the touchstone of Articles 14 and 21 of the Constitution of India as well Ram Lumbhaya Bagga's case (supra) therefore cannot come to the aid of the respondents.

18. In view of the aforesaid observations, we have no hesitation in coming to the conclusion that the petitioner has been treated unfairly. The action of the respondents in not reimbursing the claim for medical expenses incurred by the petitioner on the treatment of the deceased is arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India.

19. In view of the above, the writ petition is allowed. Impugned orders (Annexure P-4, P-8 and P-10) are quashed. The respondents are directed to release the entire amount claimed by the petitioner within a period of two months of the receipt of a certified copy of this order. We are, however, not inclined to accept the prayer of the petitioner for grant of interest from the date when the claim was submitted till the decision of this writ petition. However, in case the amount claimed by the petitioner is not paid within the period stipulated in this order, the respondents shall also be liable to pay interest at the rate of 9% per annum.

Copy of this order be given dasti on payment of requisite charges.