

(2014) 01 AHC CK 0098

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (S/B) No. 1699 of 2008

Dr. Pramod Kishore Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 1 ADJ 668 : (2014) 2 ESC 697

Hon'ble Judges : Devi Prasad Singh, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : Anil Kumar Tiwari, I.P. Singh and V.S. Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties and perused the record. The present writ petition under Article 226 of the Constitution of India has been preferred by the petitioner feeling aggrieved with the impugned order dated 19th April, 1999 by which the opposite parties have declined to grant medical leave to the petitioner for the period from 17th April, 1997 to 13th October, 1997 inspite of opinion expressed by the Medical Board for grant of medical leave. The petitioner has further prayed for issuance of a writ, order or direction in the nature of mandamus commanding the opposite parties to release the amount of Rs. 1,48,218.40/- in lieu of medical expenses incurred in his treatment.

2. The petitioner, a P.H.M.S. Doctor was assaulted by the anti-social elements on 6th June, 1996 while discharging his duties at Primary Health Centre, Amawan, district-Raebareli. On account of murderous assault by the anti-social elements, the petitioner suffered with the fractures of his both legs and right hand alongwith other grievous injuries. In consequence thereof, the petitioner had undergone the medical treatment in different hospitals from 6th June, 1996 to 13th October, 1997. For the period during which the petitioner had undergone medical treatment, he had applied for medical leave. The Medical Board vide its opinion dated 25th October, 1997 has recommended for grant of medical leave to

petitioner from 7th June, 1996 to 13th October, 1997. The petitioner has also moved an application for reimbursement of medical expenses to the tune of Rs. 1,48,218.40/-. However, the Government has sanctioned the leave to the petitioner without pay for the period from 17th April, 1997 to 13th October, 1997 vide its order dated 19th April, 1999, as contained in Annexure 6 to the writ petition. Feeling aggrieved with the order dated 19th April, 1999 (Annexure 6 to the writ petition) and also non reimbursement of medical expenses, the petitioner has approached this Court by filing the instant writ petition.

3. During the pendency of instant writ petition, the State Government has reimbursed an amount to the tune of Rs. 1,39,962.00/- on 15th February, 2010 to the petitioner. Accordingly, the substantial amount with regard to medical expenses has been reimbursed to the petitioner by the State Government in the year 2010 (Supra). However, the grievance remains with regard to leave sanctioned by the State Government without salary by the impugned order dated 19th April, 1999.

4. Attention of this Court has been invited by learned counsel for the petitioner towards Rule 81-B(2) of the Financial Hand Book Volume-II (Parts II to IV). For convenience, relevant portion of Rule 81-B(2) of the Financial Hand Book Volume-II (Parts-II to IV) is reproduced as under:

(2) Leave on medical certificate.--(i) A Government servant to whom these rules apply may be granted leave on medical certificate not exceeding twelve months in all during his entire service. Such leave shall be given only on production of a certificate from such medical authority as the Governor may, by general or special order, specify in this behalf and for a period not exceeding that recommended by such medical authority:

Provided that when the maximum period of twelve months is exhausted, further leave on medical certificate not exceeding six months in all during entire service may be granted, in exceptional cases on the recommendations of a medical board:

Provided further that in all cases in which Government servants may have before the date of application of these rules to them availed of leave on medical certificate under Fundamental Rule 81-B and Subsidiary Rules 157 or 157-A, as the case may be, the period of such leave availed of, under Fundamental Rule 81-B and Subsidiary Rule 157-A, as the case may be, and half the period of such leave availed of under Subsidiary Rule 157, shall be taken into account in calculating the leave due to them under this rule.

(ii) Under this rule, leave upto sixty days may be granted by the competent authority on recommendation of the authorised medical authority. Leave exceeding this period may not be granted unless the competent authority is satisfied that there is a reasonable probability that the Government servant will be fit to return to duty on the expiry of the leave applied for:

Provided that when a Government servant dies during the treatment of his illness and the medical leave is otherwise due to such Government servant, the authority competent to grant leave shall sanction the medical leave.

5. From a plain reading of the aforesaid provisions contained in the Financial Hand book, it appears that under the said rules, medical leave can be granted not exceeding 12 months during the entire service period. However, under the proviso, an additional medical leave of six months may also be granted during the entire service period in exceptional cases on the recommendation of the Medical Board. Accordingly, the medical leave may be sanctioned by the State Government for the period of 18 months subject to recommendation of the Medical Board.

6. In the present case, it is not disputed that the petitioner was assaulted by the anti-social elements while he was discharging his duties in the Primary Health Centre, Amawan, Raebareli and he suffered with the fractures of his both legs and right hand alongwith other grievous injuries and had undergone for prolonged treatment in different medical hospitals. Keeping in view the injuries caused and the question with regard to injuries suffered by the petitioner and the treatment provided thereon was the subject-matter for consideration by the Medical Board. The Medical Board on 25th October, 1997, recommended for grant of medical leave in accordance to rules for the period from 17th June, 1996 to 13th October, 1997. The opinion of the Medical Board as contained in Annexure 3 to the writ petition, in its totality is reproduced as under:

7. A plain reading of the opinion of the Medical Board seems to make out a case for grant of medical leave under the terms of provisions contained in Clause-2 of Rule 81-B of the Financial Hand-Book (Supra). The provisions contained in the said Financial Hand-Book (Supra) entitles a Government servant to obtain medical leave ordinarily for the period of 12 months in all during his entire service only on production of a certificate from such Medical Authority as the Governor may, in general or by special order, specify in this behalf. However, an additional medical leave for a period of six months may also be granted in the case after a period of 12 months is exhausted on the recommendation of the Medical Board. The Legislature to their wisdom under the Proviso has used the words "Further leave on medical certificate not exceeding six months". It means that an additional medical leave of six months may be granted to a Government servant during the entire period of his service on the recommendation of the Medical Board. Accordingly, when the petitioner suffered with the injuries caused by the assailants on 6th June, 1996 and undergone for a prolonged medical treatment in different hospitals, then, after expiry of period of 12 months, an additional leave upto six months could have been granted to the petitioner keeping in view the unfortunate incident in which he suffered grievous injuries. Only rider imposed by the Financial Hand-Book is that an additional leave of six months shall be exceptional that too on the recommendation of the Medical Board. In the present case, admittedly, the Medical Board has recommended for

grant of medical leave from 7th June, 1996 to 13th October, 1997. The members of the Medical Board are the experts of the field and ordinarily, it is not open for the State Government to take a different view than what has been expressed and recommended by the Medical Board. In case, the State Government wants to take a different view than what has been expressed by the Medical Board, then, it must give justifiable reasons for doing so. The provisions contained in the Financial Hand-Book (Supra) are the financial provisions and ordinarily its benefits must be given to Government employees in case, they have undergone a prolonged medical treatment for their ailments or injuries. Once, the injuries have not been disputed followed by the prolonged medical treatment, there appears no reason for the State Government to sanction the leave without pay in contravention of the recommendation of the Medical Board.

8. The impugned order passed by the State Government seems to suffer from non application of mind to the statutory rights available to the petitioner in terms of the provisions contained in Financial Hand-Book (Supra).

9. It is well-settled proposition of law that the proviso contained in statutes are the exceptions to main provisions and in appropriate cases, the benefits available to the Government employees in terms of the said proviso should be provided after considering the material on record. In the present case, since the Medical Board has recommended for grant of medical leave, it is not open for the State Government to take a different view without assigning any reason.

10. Accordingly, the impugned order seems to have been passed arbitrarily without keeping in view the true spirit of the provisions contained in the Financial Hand-Book. Hence, not sustainable in law.

11. Since, the petitioner has been paid the outstanding dues with regard to medical reimbursement, no further order is required to be passed by this Court. However, the impugned order being not sustainable, as held hereinabove, the writ petition deserves to be allowed. Accordingly, the writ petition is allowed.

12. A writ in the nature of certiorari is issued quashing the order dated 19th April, 1999 as contained in Annexure 6 to this writ petition, with all consequential benefits.

13. A writ in the nature of mandamus is also issued directing the State Government to pass a fresh order with regard to medical leave of the petitioner keeping in view the observations made in the present order expeditiously say preferably within a period of two months from the date of receipt of a certified copy of the present order. No order as to costs.