(2011) 06 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : CWP (T) No. 14128 of 2008

G.S. Puniah — APPELLANT

Vs

State of H.P. — RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:
Constitution of India, 1950 — Article 21

Citation : (2011) 06 SHI CK 0022

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Petitioner was serving the Respondent-State. He developed heart problem in the year 1983. He was hospitalized in I.G.M.C; Shimla with effect from 19.12.1983 to 23.12.1983. He was again hospitalized in I.G.M.C; Shimla with effect from 6.4.1984 to 7.4.1984. He was granted permission to seek treatment outside the State vide memorandum dated 25.6.1984 (Annexure A-3). He was permitted to undergo treatment/ examination at A.I.I.M.S, New Delhi for Angina Pectoris (name of disease) as per recommendation. He had undergone heart bye pass surgery at A.I.I.M.S; New Delhi in the year 1991. His bills were reimbursed by the State of Himachal Pradesh. He accompanied by his wife left India on 6.12.2003 on a special visit to meet his kith and kin and other family friends in Canada and U.S.A. While staying with his daughter at Abbotsford (B.C.) Canada on 24.1.2004, Petitioner felt some discomfort in his stomach all of a sudden and in a few moments thereafter vomited almost 25% of blood from his body. He suffered heart attack and was taken in emergency Ambulance to the nearby Government Hospital, MSA, Abbotsfort (B.C.), Canada. He was revived in the hospital and thereafter he remained inpatient in I.C.U. of this hospital till 28.1.2004. He was referred to the Royal Columbian Hospital, New Westminster (B.C.) for cardiac catheterization. He informed the authorities about his illness on 11.2.2004 and 7.9.2004. He came back to India and made representation to reimburse him a sum of Rs. 3,06,605.52 paise vide Annexure A-7 dated 14.10.2004. The claim of the Petitioner was rejected on 16.3.2005

vide Annexure A-9. He filed O.A. No. 1291 of 2005, which was directed to be treated as representation to the Principal Secretary (Personnel). He decided the same on 24.9.2005 whereby the claim of the Petitioner was rejected.

2. Mr. Dilip Sharma has strenuously argued that the case of his client was squarely covered under the Central Services (Medical Attendance) Rules, 1944. He then argued that the Petitioner was hospitalized due to sudden illness and remained in Government Hospital, MSA, Abbotsford (B.C.) and thereafter he was referred to the Royal Columbian Hospital, New Westminster, (B.C.). He then argued that rejection of case of the Petitioner, vide Annexures A-9 and A-12 is arbitrary and unreasonable.

3. Mr. R.P. Singh, learned Assistant Advocate General has supported the issuance of Annexures A-9 and A-12.

4. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

5. The reimbursement to employees of the State Government is regulated under the Central Services (Medical Attendance) Rules, 1944. According to Rule 2 (f), "patient" means a Government servant to whom these Rules apply and who has fallen ill. "Treatment" means the use of all medical and surgical facilities available at the Government hospital in which the Government servant is treated and includes the employment of such pathological, bacteriological, radiological or other methods as are considered necessary by the authorized medical attendant.

6. Rule 11 provides for treatment outside India. It is stipulated under Rule 11 that a Government servent shall be eligible to obtain medical treatment outside India or, as the case may be, to claim reimbursement of the cost of medical treatment obtained inside or outside India in accordance with the provisions of this rule. However, a Government servant desirous of availing of medical treatment outside India has to make an application through the Department/ Ministry to which the Government servant is attached to the Standing Committee established under the rules. The treatment facilities, which can be undertaken by a Government servant, have been provided in tabulated form in Sub-rule (3) of Rule 7. It is competent to the Central Government to review from time to time the list of treatment facilities, as specified in Sub-rule (3). Sub-rule (5) of Rule 11 provides for constitution of Standing Committee. The Standing Committee on the basis of application for medical treatment outside India, if after due consideration is satisfied that the ailment or treatment can be treated only outside India, is required to issue a certificate to the concerned Department or Ministry to which the patient belongs by conveying its approval. However, as per Sub-rule (7) of Rule 11, it shall be competent to the Central Government to authorize reimbursement of expenditure on medical treatment obtained outside India, if it is satisfied that the prior approval could not be obtained by the central Government servant due to circumstances beyond control, provided that the Government servant fulfils all other conditions relating to medical treatment

outside India under this rule.

7. In the instant case, Petitioner had already undergone bye pass surgery at A.I.I.M.S. in the year 1991. He had a history of heart ailment. Since he vomited 25% blood from his body while visiting his kith and kin in Canada, he was rushed to hospital on 24.1.2004. He remained in I.C.U. in the Government Hospital, MSA, Abbotsford (B.C.) till 28.1.2004 and thereafter he was referred to Royal Columbian Hospital, New Westminster, (B.C.) for cardiac catheterization. Petitioner has immediately informed Respondent-State by way of representation dated 11.2.2004 and 7.9.2004 and submitted another representation on 14.10.2004 seeking medical reimbursement to the tune of Rs. 3,06,605.52 paise. The representation made by the Petitioner was rejected by the State without a speaking order on 16.3.2005. The original application preferred by the Petitioner was directed to be treated as representation to the Principal Secretary (Personnel). He rejected the same on 24.9.2005 only on the ground that his case was not covered under the instructions. According to him, the instructions provide that no expenses incurred on treatment abroad is admissible to be reimbursed in case of retired Government employees. A bare perusal of Rule 11 makes it abundantly clear that there is no distinction between the serving and retired Government servant. The employees, who was serving and has retired, has a right under Rule 11 to get the medical treatment and reimbursement of the amount incurred. It is clear from Rule 11 that the Government servant is eligible to obtain medical treatment outside India. It is also clear from Sub-rule 7 of Rule 11 that it shall be competent to the Central Government to authorize reimbursement of expenditure on medical treatment obtained outside India, if it is satisfied that the prior approval could not be obtained by the Central Government servant due to circumstances beyond control. Case of the Petitioner is squarely covered under Rule 11 of the Rules. Since the Petitioner had a sudden heart attack, he could not seek prior permission to obtain medical treatment outside India. Immediately, he has informed the authority about his ailment and has also moved a case for reimbursement. Neither in Annexure A-9 nor in Annexure A-12, there is mention how the case of the Petitioner was not covered. Rather, surprisingly even the details of the instructions have not been given.

8. What emerges from the discussions made hereinabove is that Petitioner suffered heart attack in Canada. He was rushed to the Government Hospital, MSA, Abbotsford (B.C.) and thereafter he was referred to the Royal Columbian Hospital, New Westminster, (B.C.) for cardiac catheterization. He informed the authorities immediately and it was beyond his control to seek prior permission as per the rules. There is a relaxation clause as per Sub-rule (7) of Rule 11 to meet the exigencies like one with which the Petitioner was beset. Respondent-State has to take a reasonable view in such like situation. Human life is precious.

9. In a similar case where a Government servant while posted as a Deputy Superintendent of Police, Anandpur Sahib, District Ropar went to visit his son in England and fell ill due to his heart problem and as an emergency case, he was

admitted in Dudley Road, Hospital Brimingham, their Lordships of the Hon''ble Supreme Court in Surjit Singh Vs. State of Punjab and Others, have directed the State Government to reimburse the claim at par with the private institutions, i.e. Escort. Their Lordships have held as under:

3. The Appellant, Surjit Singh (now retired) while posted as a Deputy Superintendent of Police, Anandpur Sahib, Distt. Ropar, Punjab, developed a heart-condition on 22-12-1987 and that very day went on a short leave extending it up till 10-1-1988, on medical grounds. It remains unclarified on the record of this case as to what steps the Appellant took thereafter to meet his ailment. However, six months later he obtained leave from his superiors from 15-6-1988 to 8-9-1988 and went to England to visit his son. It is the case of the Appellant that while in England, he fell ill due to his heart problem and as an emergency case, was admitted in Dudley Road Hospital, Birmingham. After diagnosis he was suggested treatment at a named alternate place. Thus to save himself the Appellant got himself admitted and operated upon in Human Hospital, Wellington, London for a Bye-Pass Surgery. He claims to have been hospitalised from 25-7-88 to 4-8-88. A sum of Rs. 3 lacs allegedly was spent on his treatment in London, borne by his son.

5. The Appellant challenging the orders of the High Court disposing of the writ petition in such manner now pitches before us his claim to payment on the basis of rates prevalent in the Escorts Heart Institute and Research Centre (for short `Escorts''), reducing his high claim to the expenses incurred for medical treatment in London. There is an inkling to that effect in the Appellant''s rejoinder affidavit in the High Court but it appears that this aspect of the matter was not dilated upon. The claim for such adoption of rates is now made in reiteration.

10. It is otherwise important to bear in mind that self preservation of one''s life is the necessary con-comitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right had recognised it. Attention can usefully be drawn to v. 17,18,20 and 22 in Chapter 16 of the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:

17 Vinna dehena kasyaapi canpurushaartho na vidyate tasmaaddeham dhanam rakshetpunyakarmaani saadhayet Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18 Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam Rakshane yatnamaatishthejee vandhaadraani pashyati One should project his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasion sin life.

20 Shariirarakshanopaayaa kriyante sarvadaa budhaiah neechanti cha punastyaagamapi kushthaadiroginah The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body. 22 Aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsya hitakarastasmaa-daatmaanam taarayishyati If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.

11. The Appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The Appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the Appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the Appellant remained in India, he could have gone to the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the Respondents pay to the Appellant, the rates admissible as per Escorts. The claim of the Appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs. 40,000/- already paid to the Appellant would have to be adjusted in computation. Since the Appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the Appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.

10. In Surjit Singh''s case (supra), the State Government has framed a policy on 25.1.1991 which was applicable to all the categories of employees whether retired or serving of All India Service/State Government, Judges of Punjab and Haryana High Court/M.L.A/Ex.M.L. As etc. The rules also talk of treatment outside India after completing the formalities. Their Lordships have also held that self preservation of one''s life is the necessary concomitant of the right to life enshrined under Article 21 of the Constitution of India.

11. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexures A-9 and A-12 dated 16.3.2005 and 24.9.2005, respectively are quashed and set aside. Respondent-State is directed to reimburse the amount to the Petitioner at par with the rates approved for any of the private institution or at the rates of A.I.I.M.S., New Delhi, Post Graduate Institute, Chandigarh, Escort or Fortis. Needful be done within a period of 8 weeks from the production of the certified copy of this judgment by the Petitioner. There shall, however, be no order as to costs.

