
(2013) 03 DEL CK 0117
In the Delhi High Court
Case No : W.P. (C) 11821/2009

Gurjit Singh

APPELLANT

Vs

Registrar (General) and Others

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Citation : (2013) 3 SCT 619

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Judgement

Rajiv Shakdher, J.—The petitioner, before this court, is the son of late Justice Jagjit Singh who presided as a judge of this court between 04.01.1967 and 13.08.1975. On 13.03.1990, Justice Jagjit Singh passed away. He was survived by his wife and three children.

2. It appears that the wife of late Justice Jagjit Singh fell ill in December, 2005. Consequently, on 07.01.2006, Smt. Bhupinder Kaur was admitted to Inscol Health Centre, situate in Sector-34, Chandigarh. Smt. Bhupinder Kaur, succumbed to her illness, on 27.01.2006.

3. The petitioner, on 19.12.2006 preferred an application with the Registrar General of this court, seeking reimbursement of medical expenses in terms of Section 23D of the High Court Judges (Salaries and Conditions of Services) Act, 1954 (in short 1954 Act). The petitioner apparently lodged the claim based on a Will dated 18.01.2005 executed in his favour by Smt. Bhupinder Kaur.

4. Since, there was no movement in the matter, on 01.07.2008, the petitioner approached the then Chief Justice of this court, for redress. In view of the fact that no reimbursement was forthcoming, the petitioner filed the instant writ petition under Article 226 of the Constitution of India.

5. On 18.09.2009, notice was issued in the writ petition and, on an oral prayer of the petitioner, Govt. of NCT of Delhi was impleaded as respondent No. 2 in the

instant writ petition.

5.1 While, the writ petition was pending, the petitioner appears to have moved an application with the Public Information Officer (in short PIO) of this court. This application is dated 09.11.2010. By this application, the petitioner sought information with regard to the correspondence, if any, which had been exchanged between this court and late Justice Jagjit Singh or his late wife Smt. Bhupinder Kaur, on the aspect of medical entitlements, under various Government Schemes and Rules.

5.2 The PIO of this court vide communication dated 18.12.2010, furnished the information, which was available with this court. A perusal of the information supplied, which ran into several pages, would show that there was no intimation to either Justice Jagjit Singh or his late wife Smt. Bhupinder Kaur with regard to the fact that Central Government Health Scheme (in short the said Scheme) had come into force, and that, they could apply and become members under the said scheme.

5.3 One of the documents though, which the petitioner obtained copies of, through the RTI route was a communication dated 23.01.2007, which emanated from this court to the Director of Health Services. In this letter, a stand was taken on the administrative side of this court that, since late Smt. Bhupinder Kaur was the wife of a judge of this court i.e., Justice Jagjit Singh, the expenses incurred on her treatment were reimbursable to the petitioner under the All India Services (Medical Attendance) Rules, 1954 (in short 1954 Rules). Consequently, a request was made that, a sum of Rs. 1,59,407.76 ought to be reimbursed to the petitioner.

5.4 It may be important to note that the said scheme was first formulated and extended to the retired Judges of the superior courts i.e., Supreme Court and the High Courts w.e.f. 21.09.1977.

5.5 Continuing with narrative, respondent No. 1 i.e., Registrar General of this court, in his return upon service of notice in the petition, has taken a stand briefly that, retired Judges of this court and/or their dependent family members are entitled to reimbursement of medical expenses only if, membership of the scheme is obtained upon payment of the necessary fee in that behalf. The other alternative, according to respondent no. 1, which is available to a retired Judge of this court is, to become a member of the Delhi Government Employees Health Scheme (in short DGEH Scheme).

5.6 It is important to note at this stage that, the DGEH Scheme was formulated, and thus, brought into force w.e.f. 04.04.2007.

5.7 It is thus contended by respondent No. 1 that, since late Justice Jagjit Singh was not a member of the Scheme (i.e., the Central Government Health Scheme), his dependent family members i.e., his wife was not entitled to reimbursement of medical expenses and therefore, by logical corollary, the petitioner could not

claim reimbursement of expenses incurred on her treatment. Quite obviously the DGEH Scheme which came into existence only after the death of Justice Jagjit Singh and Smt. Bhupinder Kaur, was not available to them. As noticed above, Smt. Bhupinder Kaur died on 27.01.2006.

5.8 Respondent No. 1 in its counter affidavit goes on to state that, in so far as the sitting judges of this court are concerned, they are entitled to reimbursement of expenses under the 1954 Rules.

5.9 It may also be perhaps of the relevance to note that the Scheme according to respondent on. 1, got extended to the city of Chandigarh w.e.f. 10.09.2001. Thus, the stand of respondent No. 1 is that, since the scheme had got extended to the place where late Smt. Bhupinder Kaur was residing at the time of her death, she ought to have become member of the said Scheme. Having failed to become a member of the scheme, her claim, for reimbursement of medical expenses could not be entertained.

6. It may be relevant to note that, during the course of pendency of this writ petition, by order dated 22.11.2012, Union of India, Ministry of Health and Family Welfare alongwith Director General of Health Services were also impleaded as parties to the present proceedings. Even though counsel had entered appearance on behalf of the two newly impleaded respondents, on 19.12.2012, no return has been filed on behalf of Union of India, Ministry of Health and Family Welfare or the Director General of Health Services. Therefore, on record, there is no exposition of the stand in the matter, of either the Union of India or the Director General of Health Services.

7. In the background of the aforesaid facts and circumstances, Mr. Bawa, who appears for the petitioner has briefly submitted that, since late Smt. Bhupinder Kaur was the wife of a judge of this court, who was holding a constitutional position, the expenses incurred on her treatment were required to be reimbursed notwithstanding the fact that, at the relevant time, she was not a member of the Scheme. For this purpose, the learned counsel for the petitioner relies upon the judgment of this court in Union of India Vs. T.S. Oberoi, LPA No. 898/2002, decided on 07.11.2003, as also another judgment of a Division Bench of this court titled Dal Chand Vashisht Vs. State of NCT of Delhi in WP(C) 539/2007 decided on 14.03.2008, which has expressed the same view, in so far as the judges of the superior courts are concerned.

8. On the other hand, Mr. Bansal, who appears for respondent No. 1 submits, in consonance with the stand taken in the counter affidavit that, while the sitting judges are governed by the 1954 Rules, the retired Judges and their dependent family members would be governed by the provisions of Section 23D of the 1954 Act. Mr. Bansal submits that, in view of the provisions of Section 23D, in order to obtain reimbursement of medical expenses, they would necessarily have to be the members of the Scheme, which is a condition applicable to retired officers of the Central Civil Services, falling in class-1.

8.1 It is thus Mr. Bansal's contention that, since late Smt. Bhupinder Kaur had not become a member of the scheme, the medical expenses incurred on her treatment could not be reimbursed.

8.2 Mr. Bansal also submits that, position taken by this court on the administrative side vide communication dated 23.01.2007 was not in accordance with the provisions of the 1954 Act and therefore, ought to be ignored.

9. Having heard the learned counsels for the parties, what emerges from the record is as follows:-

9.1 There is no dispute with regard to the fact that at the time of her death, Smt. Bhupinder Kaur was not a member of the Scheme. As indicated above, Smt. Bhupinder Kaur died on 27.01.2006. What has also emerged from the record is that at no stage were Smt. Bhupinder Kaur or even late Justice Jagjit Singh ever informed that in order to obtain medical reimbursement, they would have become members of the Scheme.

9.2 In the background of these facts, what has to be considered is: would the petitioner be entitled to reimbursement of medical expenses despite the fact that Smt. Bhupinder Kaur was not a member of the Scheme?

9.3 In my view, in so far as the position of the sitting and retired judges of the superior courts generally and this court particularly, is concerned, the same has already been explained and commented upon by a Division Bench of this court in Union of India Vs. T.S. Oberoi. It was noticed by the court that Justice M.K. Chawla, on whose behalf an intervention was made, had paid the subscription fee to obtain membership of the scheme only after his admission in the hospital. The Division Bench of this court, in that case, observed that this fact would make no difference in view of the status accorded under the Constitution to both a sitting and a retired judges of a superior court, which included the High Court. Late Justice Jagjit Singh being constitutional appointee, his case could not be equated with an administrator of the State, which included Class I civil servants. The rationale which runs through the judgment is that, any other interpretation would impact the independence of judiciary; for those who are forced to ask cannot serve, without fear or favour. Therefore, the argument of Mr. Bansal that, retired Judges would be governed by the provisions of Section 23D of the 1954 Act and not by 1954 Rules has, in my opinion, no relevance.

9.4 As indicated above, this position is articulated in the observations of the Division Bench, which are for the sake of convenience culled out hereinbelow:-

..14. In this regard, we can do no better than to repeat what the Supreme Court has said in All India Judges' Association and Others Vs. Union of India and Others, . In paragraphs 7 to 9 of the Report, the Supreme Court said:

The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the

legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the state and each one of them in turn represents the authority of the State. However, those who exercise the State power are the Ministers, the Legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the Legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the Legislators and the Judges and not between the Judges and the administrative executive. In some democracies like the USA, members of some State judiciaries are elected as much as the members of the legislature and the heads of the State. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on a par with the members of the judiciary, either constitutionally or functionally.

8. This distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary, and no price is too heavy to secure it to keep the Judges in want of essential accoutrements and thus to impede them in the proper discharge of their duties, is to impair and whittle away justice itself.

9. So much for the contention of the review petitioners that the directions given by this Court would lead to the demand from the members of the other services for similar service conditions. It is high time that all concerned appreciated that for the reasons pointed out above there cannot be any link between the service conditions of the Judges and those of the members of the other services. It is true that under Article 309 of the Constitution, the recruitment and conditions of service of the members of the subordinate judiciary are to be regulated by the Acts of the appropriate legislature and pending such legislation, the President and the Governor or their nominees, as the case may be, are empowered to make rules regulating their recruitment and the conditions of service. It is also true that after the Council of States makes the necessary declaration under Article 312, it is the Parliament which is empowered to create an All India Judicial Service which will include posts not inferior to the post District Judge as defined under Article 236. However, this does not mean that while determining the service conditions of the members of the judiciary, a distinction should not be made between them and the members of the other services or that the service conditions of the members of all the services should be the same. As it is, even

among the other services, a distinction is drawn in the matter of their service conditions. This Court has in the judgment under review, pointed out that the linkage between the service conditions of the judiciary and that of the administrative executive was an historical accident. The erstwhile rulers constituted, only one service, viz., the Indian Civil Service for recruiting candidates for the judicial as well as the administrative service and it is from among the successful candidates in the examination held for such recruitment, that some were sent to the administrative side while others to the judicial side. Initially, there was also no clear demarcation between the judicial and executive services and the same officers used to perform judicial and executive functions. Since the then Government had failed to make the distinction between the two services right from the stage of the recruitment, its logical consequences in terms of the service conditions could not be avoided. With the inauguration of the Constitution and the separation of the State power distributed among the three branches, the continuation of the linkage has become anachronistic and is inconsistent the constitutional provisions. As pointed out earlier, the parity in status is no longer between the judiciary and the administrative executive but between the judiciary and the political executive. Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on a par with the administrative executive has to be discouraged. The failure to grasp this simple truth is responsible for the contention that the service conditions of the judiciary must be comparable to those of the administrative executive and any amelioration in the service conditions of the former must necessarily lead to the comparable improvement in the service conditions of the latter.

15. Even otherwise in the case in hand, Justice Chawla enjoyed a special position being a Judge of superior court. Therefore even in the absence of CGHS Membership, he would have been entitled to reimbursement of his medical expenses even after retirement. The fact of the matter is that he became life member of CGHS on 8th March, 2002 by paying a lump sum fee, which was accepted by CGHS knowing fully well that Justice Chawla is already admitted in the hospital since 13th December, 2001. Therefore, one the Life Membership Fee was accepted it had to relate back from the date when he was hospitalised i.e. 13th December, 2001. The benefit of the same could not be restricted from 8th March, 2002. The purport and purpose of CGHS Scheme is to grant medical benefit and not to deprive the medical benefit on technical grounds particularly when Justice Chawla enjoyed a special position being a retired Judge of a High Court?

(emphasis supplied)

10. Having regard to the observations made above, it is quite clear that respondents cannot reject the claim of the petitioner on the ground that late Smt. Bhupinder Kaur was not a member of the Scheme. If this objection is taken out of the way, it is quite clear that claim made, in the ordinary course, would have to be accepted; as there is no other substantial objection taken in the

counter affidavit. There are two minor, though ministerial objections raised with regard to absence of original Discharge/Death Summary and the Emergency Certificate, this is especially so, as the fact that she was treated in a hospital and died therein, is not in dispute.

10.1 Having regard to the fact that nearly seven (7) years have passed since the death of Smt. Bhupinder Kaur, I am not too sure whether these records would now be available with the treating hospital. The petitioner has, however, placed on record, the death certificate and the bills with regard to the treatment extended to late Smt. Bhupinder Kaur. Therefore, subject to respondent nos. 3 and 4 examining the quantum of claim for expenses incurred based on the documents presently on record, there ought to be no other impediment in the claim for reimbursement of medical expenses being processed. It is thus, made clear that respondent nos. 3 and 4 shall not insist upon, given the lapse of time, on either the production of Emergency Certificate or, the Discharge/Death Certificate, in this particular case. Given the peculiar facts and circumstances obtaining in this case, the Death Certificate could suffice.

11. Accordingly, respondent nos. 3 and 4 are directed to process the claim de hors the objections raised with regard to the membership of the Scheme, production of Emergency Certificate as also the Discharge/Death Certificate. The claim will be processed within a period of three weeks from today. If found in order, the money, as claimed, shall be paid to the petitioner within a maximum period of six (6) weeks from today.

The writ petition is accordingly disposed of.