

(2003) 05 P&H CK 0142
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1897 of 1987

H.C. Dhawan

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 07-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 134 PLR 756

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Arun Nehra, for the Appellant; R.D. Sharma, A.A.G., for the Respondent

Judgement

S.S. Nijjar, J.—The petitioner retired as Engineer-in-Chief (Irrigation Department, Haryana) in July, 1983. In March, 1986 the petitioner developed high temperature which did not come down despite the prescriptions of various antibiotics and other strong medicines. He was an outdoor patient in PGI and got various tests conducted as desired by the PGI authorities. These tests did not show any infection or other detectable disease. The petitioner was suspected to be suffering from cancer. Mr. Nehra informs at the time of arguments that he actually died of cancer, PGI authorities did not have any cat scan facility. They, therefore, referred the petitioner for cat scanning at Chandigarh Neurological Research Centre. The cat scan test was performed on 15.4.1986. Not satisfied with the aforesaid cat scan, the PGI doctors desired that the cat scanning be got done from Sir Ganga Ram Hospital, New Delhi. The petitioner therefore, got the cat scanning done at Sir Ganga Ram Hospital, New Delhi on 24th April, 1986. The aforesaid hospital also advised that the cat scanning should be done again after 10 weeks. In the petition, it has been claimed by the petitioner that at the relevant time the claim for medical reimbursement of medical expenses was covered under Rule 1(17) of the Statutory Rules. These averments are however, denied by the respondents. They have stated that the case for reimbursement of medical expenses of the petitioner was to be examined under instructions dated

27.5.1968, Annexure R-1.

2. In view of the above, Mr. Nehra does not press the argument that the claim of the petitioner for reimbursement on medial expenses had to be decided under any statutory rules. He has, however, submitted that even under the instructions dated 27.5.1968 the petitioner was fully entitled to the expenses incurred for the medical treatment, even as an OPD patient.

3. On the other hand, it is submitted by Mr. Sharma that in view of Annexure R-2 the petitioner was not entitled to any reimbursement. He has not placed on the record any prescription or reference made by the PGI authority either to the Chandigarh Neurological Centre or to Sir Ganga Ram Hospital, New Delhi for cat scanning. That being so, even, if the petitioner is entitled to get reimbursement of expenses incurred on medical treatment as an outdoor patient, no case is made out in the facts and circumstances of the case. Furthermore, it is submitted that even if it is held that the petitioner is entitled to reimbursement of medical expenses still the same is limited only to the amount of Rs. 150 per month in lump sum with effect from the financial year 1986-87.

4. I have given my thoughtful consideration to the submission made by the counsel for the parties. I am unable to accept the submissions made by Mr. Sharma. It is not denied by the respondents that the instruction dated 27.5.1968 were issued by the competent authority with regard to the grant of free medical facilities to Haryana Government pensioners and their wives/husbands. It is also not denied that these instructions were applicable at the time when the petitioner was undergoing medical treatment as an outdoor patient in PGI. Cat scan was performed on 15.4.1986 by the Chandigarh neurological Centre and on 24.4.1986 by the Sir Ganga Ram Hospital, New Delhi. A perusal of the instruction R-1 makes it abundantly clear that it has been decided by the Haryana Government that pensioners and their wives/husbands, as the case may be, will be entitled to free medical treatment, as indoor and outdoor patients including X-ray, laboratory and other such examinations, at the State Hospitals, dispensaries etc. according to the status enjoyed by them at the time of retirement. The free treatment will also include the free supply of such medicines as are available/supplied at the Hospitals/dispensaries etc. The case of the petitioner clearly falls" within the aforesaid instructions. Therefore, the petitioner was entitled to be granted the reimbursement of medial expenses. The aforesaid facility was subsequently extended by the instructions issued by the State of Haryana on 24th September, 1979. These facilities were continued by instructions dated 6.5.1986 as noticed earlier. Under these instructions the payment for outdoor medical treatment was limited to Rs. 150 per month from the financial year 1986-87. The aforesaid instructions would not affect the claim of the petitioner as the period of treatment is prior to the issuance of these instructions. There is also no merit in the submission of Mr. Sharma to the effect that there is no proof of reference of the petitioner to either of the Chandigarh Neurological Centre or of the Sir Ganga Ram Hospital, New Delhi. The petitioner has categorically stated

in Paragraph 9 of the petition that he had been referred to the aforesaid institute for cat scanning. The petitioner has made an application giving the aforesaid detail which is attached as Annexure P-1 to the writ petition. In the written statements contents of paragraphs 9 and 10 of the writ petition are stated to be admitted. In paragraph 10 the petitioner has categorically stated that he had got the cat scanning from Sir Ganga Ram Hospital, New Delhi on 8.7.1986 and the bill was sent on 1st August, 1986. These averments not having, been denied, it would not be open to the respondent now to say that there is no proof of either reference or the treatment claimed by the petitioner.

5. Sadly it has to be noticed that the petitioner has died during the pendency of the writ petition. Mr. Sharma has, therefore, argued that at this stage no relief can be granted in this petition. Since the petitioner has died and his LRs have not been brought on the record, the petition has abated, and has to be dismissed. If the provisions of the CPC were strictly applicable to writ proceedings, and a very technical legal view, be taken, the submission of Mr. Sharma would have to be accepted. However, the High Court, in exercise of the powers under Articles 226 and 227, passes orders to secure justice, unchecked or hampered by the shackles of Civil Procedure Code. But, since the High Court exercises very wide powers under Articles 226/227 of the Constitution, they are exercised with great care and caution. In order to do justice while exercising jurisdiction under Articles 226/227 of Constitution of India, the High Court has the power to mould the relief to suit the facts and circumstances of a particular case. In order to mould the relief which was due to the petitioner I would direct the respondents to make the payment of the amount claimed upto the date of issuance of the instructions dated 6.5.1986 to the widow of the deceased petitioner. Let the payment be made within a period of two months from the date of receipt of the certified copy of this order. The amount shall also be paid with interest at the rate of 9 per cent annum for the date of the amount became due till payment.