
(2016) 10 P&H CK 0167
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 27736 of 2013

Krishan Chander	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 21, Article 309

Citation : (2016) 4 LawHerald 3381 : (2017) 2 PLR 362 : (2017) 1 SCT 578

Hon'ble Judges : Kuldeep Singh, J.

Bench : Single Bench

Advocate : Gaurav Goel, Asstt. A.G., Haryana, for the Respondent; Ashwani Talwar, Advocate, for the Respondent Nos. 4, 5 and 6; Manish Kumar Singla, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Kuldeep Singh, J. (Oral)—This order will dispose of above two writ petitions bearing CWP No. 27736 of 2013 and CWP No. 12263 of 2014 arising out of the same facts. For the purpose of brevity, the facts have been extracted from CWP No. 27736 of 2014.

2. Petitioners are the retired employees of the Housing Board, Haryana, who retired on different dates. One of the petitioner R.K. Gupta retired in the year 1998 and others retired between the years 2008 and 2013 as per list provided in the para 2 of the writ petition. The petitioners claimed that they are entitled to medical reimbursement facility at par with the Haryana Government employees. They have also sought quashing of order dated 21.08.2013 (Annexure P- 5) passed by the respondent No. 2 vide which such prayer of the petitioners was declined.

3. The petitioners claimed that as per the terms and conditions in the appointment letter as well as in the Haryana Housing Board (Recruitment and Conditions of Service of Officers and Employees) Regulations, 2006, (for short

"Regulations 2006") and the Rules applicable to the Haryana Government employees and therefore, they are entitled to medical reimbursement at par with the Haryana Government employees.

4. The respondents in the reply have taken the stand that Haryana Housing Board was constituted under the Haryana Housing Board Act, 1971, therefore, it is a statutory Board but under the control of the Haryana Government. With regard to allowances payable to the employees, requisite permission from Haryana Bureau of Public Enterprises (for short "HBPE") under the Finance Department, is required. The said HBPE vide letter dated 29.03.2005 (Annexure R-4/1), has taken the view that since the Board has not adopted the pension scheme for its employees, therefore, no benefit of medical reimbursement can be given to the retired employees of the Board as one time benefits are given at the time of retirement. It was further pleaded that the matter regarding medical reimbursement was once again taken up with the Government vide letter dated 31.07.2012 (Annexure R-4/2). However, the Government vide letter dated 05.10.2012 (Annexure R-4/3) had re-iterated the earlier decision conveyed vide letter dated 29.03.2005 (Annexure R-4/1) referred above.

5. It was further pleaded that only the pensioners/family pensioners of the State Government or Public Sector Enterprises are entitled to reimbursement of indoor and outdoor medical expenses and no other category of the retired employees is entitled to such facility.

6. It has been pleaded that the Board had framed its own Regulations in 2006 called Haryana Housing Board (Recruitment and Conditions of Service of Officers and Employees) Regulations, 2006. As per the Regulation 13, the members of the service shall ordinarily be governed by the corresponding rules of State Government. It was pleaded that 'ordinarily' means that the Haryana Board may have different Rules than that of State Government.

7. I have heard learned counsel for both the parties. Undisputedly, at the time of appointment, an appointment letter containing certain conditions was issued. Conditions No. 3, 5 and 7 of the said appointment letter are reproduced as under :-

"3. Conduct Rules: Till such time the Board frames its own conduct regulations, you will be subject to the rules as applicable to Haryana State Government employee in all matters.

5. Medical Attendance:

You will be entitled to free Medical Attendance for yourself and for the member of your family who are wholly dependent upon you and are actually residing with you except medical examination for first entry into Board's service for which you will have to pay the requisite medical fee, subject to such regulations as are adopted by the Haryana Government.

7. Till such time, the Board frames its own service Rules and Regulations in all

other matters not expressly provided for in this officer of appointment, you will be governed by the Haryana State Civil Services Rules as applicable to Haryana Government employees. These conditions go to show that until regulations are framed by the Board, the petitioners were to be governed by the rules and regulations as applicable to the Haryana State Government employees. It further comes out that in the year 2006, the Board framed the regulations referred above. The Regulation 13 of the same as relied upon by the learned counsel for the respondent, is reproduced below:-

"13. In respect of pay, leave and all other matters not expressly provided for in the regulations, the member of the service shall ordinarily be governed by the corresponding rules of the State Government"

The perusal of the said regulations also shows that in the pay, leave and all other matters not expressly provided for in regulations employees shall ordinarily be governed by the corresponding rules of the State Government.

8. Admittedly, no rules regarding medical reimbursement of the serving and retired employees have been framed by the Board. Therefore, by virtue of this default clause, the Rules as applicable to Haryana State Government employees will be attracted in the present case.

9. Now, coming to the orders of the HPBE, it comes out that the said Bureau from which the requisite permission is required, has taken the view that since Haryana Housing Board has not adopted the pension scheme for its employees, therefore, benefit of medical reimbursement cannot be given to the retired employees of the Board as one time benefit is given to the employees at the time of retirement.

10. The pension and the medical reimbursement are two different things. Even if, EPF Rules are applicable to the employees of the Board, it does not mean that if the pension is not granted, medical reimbursement is also not to be granted. At the time of retirement only the gratuity, leave encashment and EPF is granted and no one time reimbursement/special medical allowance is granted to the employees in lieu of the medical reimbursement. Moreover, it was the intra-departmental letter and it will not substitute the service conditions of its employees.

11. It also comes out that the board had sought opinion of the Advocate General in the matter and the Advocate General. In response thereto Mr. Ashok Aggarwal, Advocate General, Haryana gave the positive opinion in the matter. The relevant extract of the same is reproduced below: -

"In my considered opinion, "In view of the terms and conditions of the appointment letter, as reproduced above and the various instructions issued by the State from time to time regarding medical reimbursement, it may not be possible to draw a legally sustainable distinction between retired Government employees and retired housing Board employees in so far as the applicability of

Medical Rules. It is also important to note that some Boards and Corporations i.e. Haryana Warehousing Corporation, Haryana State Electricity Board, Haryana Financing Corporation and Haryana State Khadi and Village Industries Board and allowing medical reimbursement facility to their retired employees on the pattern of the retirees of the State Government. However, it is also mentioned in the Noting at page-15 that some other Boards and Corporation are not allowing the facility of medical reimbursement to their retirees. However, this question is not being examined or opined upon.

In view of the fact that the Housing Board, Haryana is certainly an instrumentality of a welfare State under Article 12 of the Constitution of India, the chances of raising a defence of a distinction, as noted above, between retired employees of the Board and retired State Government employees in so far as medical reimbursement is concerned, may be very bleak in a Court of law. However, it is for the Board to take a decision at its own level in the matter, more so, in view of the fact that a reference has already been made to the Haryana Bureau of Public Enterprises by the Board in this regard.

The opinion is rendered in the above terms and the file is sent back herewith."

12. After going through the appointment letter and the Regulations, 2006 this Court is of the considered view that in view of the said Regulations, the Rules regarding medical reimbursement as applicable to the Haryana Government are applicable to the employees of the Board until and unless some regulations in this regard are specifically framed by the Board making different Rules than Punjab Civil Service, Rules as applicable to the Haryana State Government employees.

13. Therefore, it is held that the petitioners is entitled to medical reimbursement at par with the Haryana State Government employees in terms of the Rules applicable to the Haryana State Government employees until and unless regulations regarding medical reimbursement are framed by the Haryana Housing Board. The writ petition is allowed. Consequently, the impugned order dated 21.08.2013 (Annexure P-5) is hereby quashed. The respondents are directed to extend the same medical benefits to the serving or retired employees of the Haryana Housing Board as applicable to the Haryana State Government employees.

14. In view of the above the present writ petition stands allowed.