
(2011) 01 P&H CK 0071

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15674 of 2008

Om Parkash Kashyap

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 162 PLR 645

Hon'ble Judges : Mahesh Graver, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Graver, J.—The grievance of the Petitioner who is a retired employee, is that he was afflicted with Cancer diagnosed as Non Hodgkin Lymphoma, for which he took treatment in Mohan Dai Oswal Centre & Research Centre & Foundation (Hospital), Ludhiana. The medical bills were submitted to the Respondents which after verification were sent for approval to Respondent No. 3. The Petitioner received a letter dated 13.9.2007 from Respondent No. 2 saying that only one bill amounting to Rs. 35,484/- had been cleared for reimbursement at the admissible rates of AIMS Dehi/PGI. The Petitioner was informed that the remaining bills cannot be reimbursed and that he will have to obtain Chronic Disease Certificate from the Civil Surgeon/C.M.O., Ambala, The Petitioner submitted the requisite certificate and also submitted the bills for reimbursement. The Petitioner was then informed that only those bills which pertained to the period after the issuance of the Chronic Disease Certificate, could be cleared and the remaining bills cannot be cleared. Despite representations, the claim of the Petitioner was not satisfied, which has resulted in the filing of the instant writ petition, wherein the learned Counsel for the Petitioner has referred to the Instructions Annexure P-6 to contend that the Petitioner is entitled to the complete reimbursement of the bills that he has submitted on account of the treatment taken by him.

2. Upon notice of motion having been issued, the Respondents filed a reply to

state that since the Petitioner was claiming Fixed Medical Allowance with his pension, he could not be granted this reimbursement in view of the instructions issued by the Health Department vide letter dated 11.8.1992, wherein in para-3 of the said instructions, it has been mentioned that a person claiming reimbursement of chronic disease will not be entitled to another medical allowance whether at fixed rate or @ Rs. 100/- per month as out-door patient and as per Health Department letter No. 2/186/94-1HB(III) dated 9.2.1995, a person suffering from chronic disease will have an option to claim the expenditure of chronic disease treatment. If he opts for reimbursement of chronic disease treatment, he will not be entitled for fixed medical allowance and in such an eventuality, his Fixed Medical Allowance shall be stopped from the date of change of such option and he will be entitled to open medical reimbursement for chronic disease from that day. Since the Petitioner obtained chronic disease medical certificate on 7.12.2007, he is entitled for reimbursement of expenditure incurred for chronic disease on his treatment from that day after change of his option.

3. It was then contended by the learned Counsel for the Respondents that in view of the categoric instructions, the case of the Petitioner for reimbursement has rightly been declined.

4. I have heard the learned Counsel for the parties and perused the writ petition and the counter reply filed by the Respondents.

5. It is not denied that the Petitioner is a retired employee and had opted for Fixed Medical Allowance Scheme and this has been cited as the sole reason for denying him the benefit of reimbursement. The Petitioner had submitted the following bills:

S. No.

Reimbursement Bills for treatment

PERIOD

AMOUNT

1.

-do-

11.5.2006 to 13.5.2006

Rs. 3,980.00

2.

-do-

19.5.2006 to 27.5.2006

Rs. 3,090.00

3.

-do-

2.6.2006 to 17.6.2006

Rs. 35,484.00

4.

-do-

23.6.2006 to 23.6.2006

Rs. 17,215.00

5.

-do-

15.7.2006 to 15.7.2006

Rs. 20,256.00

6.

-do-

5.8.2006 to 5.8.2006

Rs. 17,695.00

7.

-do-

26.8.2006 to 26.8.2006

Rs. 16,654.00

8.

-do-

16.9.2006 to 16.9.2006

Rs. 19,520.00

9.

-do-

26.9.2006 to 28.9.2006

Rs. 8,840.00

10.

-do-

17.10.2006 to 17.10.2006

Rs. 4,245.00

TOTAL:

Rs. 1,39,909.00

6. The facility of medical reimbursement to an employee is a valuable right which the employer offers to its employees. The inhibitive interpretation of such a beneficial policy which has the effect of defeating it altogether can never be accepted.

7. A person who has been afflicted with a threateningly terminal ailment, is likely to incur the expenditure of his treatment and to say that the Fixed Medical Scheme is just sufficient for him to meet such expenses, is only defeatist in character.

8. The Hon"ble Supreme Court in *The Secretary to the Government of Haryana and Ors. v. Vidya Sagar* 2009 (5) S.L.R. 435, observed as follows:

We see no reason to differ with the view of the High Court.

Although the circular dated 28.5.2003 does not expressly supersede the circular letter dated 30.11.1993, but the matter having been issued subsequent to the former and in relation to particular category of disease, namely, the chronic diseases, shall prevail over the earlier general circular letter. The said circular letter dated 28.5.2003 brings within its umbrage not only the expenses incurred for the treatment of chronic disease outdoor but also indoor. In that view of the matter, the impugned judgment must be sustained.

9. Similarly, a Division Bench of this Court in *Kundan Lal v. Haryana Vidyut Parasaran Nigam Ltd. and Anr.* 2009 (5) S.L.R. 362, while specifically referring to the treatment incurred by an employee on account of a malignant situation, granted the medical reimbursement on account of the Chemotherapy to the incumbent, who had approached this Court.

10. Likewise, a Division bench of this Court in *Raghuvir Parsad Mittal v. State of Haryana and Ors.* 2008 (3) S.C.T. 362, has held that to deny a person complete medical reimbursement on account of his having exercised the option for Fixed Medical Allowance, cannot be construed to be a valid reason.

11. There is no denial to the fact that the condition of the Petitioner would fall in the chronic disease, as has been certified by the C.M.O. also, but to say that the medical reimbursement shall be made only for the treatment which has ensued the issuance of such a certificate, is totally arbitrary, for the simple reason that the issuance of a certificate is a mere acknowledgment of the existing condition of the Petitioner's problem which condition existed prior thereto and for which the Petitioner had been taking the treatment.

12. Therefore, to say that the because the certificate has been issued on a

particular date, the medical reimbursement for the treatment shall be recognised only after the issuance of such certificate, would be wholly unjustified. What is to be seen by the authorities is that a certificate acknowledges the veracity of the chronic illness of the incumbent only, but it cannot be said that the expenses for the treatment which commenced earlier, would not be reimbursed. A person afflicted with serious ailment, cannot be expected to wait for the certificate of the C.M.O. and commence the treatment thereafter.

13. Thus, the stand of the Respondents is highly arbitrary and unjustified. Consequently, I am of the opinion that the writ petition deserved to be allowed and the Petitioner is held entitled to the reimbursement of entire amount which has been claimed by him in the writ petition and which has been submitted to the Respondents. The needful be done within a period of three months from the date of receipt of a copy of the order and the amount shall be paid to the Petitioner.