

(1999) 05 P&H CK 0092
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2002 of 1999

Sh. Ajit Singh Kakkar

APPELLANT

Vs

The Secretary to Govt. Punjab, Higher Education and
Language Deptt. Punjab Chandigarh and Others

RESPONDENT

Date of Decision : 24-05-1999

Acts Referred:

Citation : (1999) 123 PLR 305

Hon'ble Judges : Harjit Singh Bedi, J

Bench : Single Bench

Advocate : Mr. H.S. Sidhu, for the Appellant; Mr. Anil Sharma, DAG, for the Respondent

Judgement

Harjit Singh Bedi, J.—The petitioner retired as Director of Languages, Punjab, on 29th February, 1996. On a medical check up undertaken by him in 1994, it was found that both his Kidneys had failed. He remained under treatment upto 1997 but in May 1997, the doctors attending on him advised that the treatment in question had not given the desired result and that it was essential for him to undergo dialysis in order to survive. The petitioner was accordingly put on dialysis from May, 1997, and underwent the procedure at the Patiala Dialysis and Kidney Centre and Kidney Hospital, Patiala. The petitioner also submitted an application for ex-post-facto sanction of the expenses incurred on his treatment and the District Medical Board in its meeting held on 4th February, 1998, Annexure P-I to the petition, granted sanction at Government rates. The petitioner also underwent a regular check up in the Nephrology Department of the PGI, Chandigarh, but was told that as there were only seven dialysis machines available in the Institute, which could cater for only eight patients a day, he could not be entertained. The petitioner was also got examined at the Dayanand Medical College and Hospital, Ludhiana, as also at the All India Institute of Medical Sciences, New Delhi and was told that dialysis on a regular basis alone could ensure his survival. The petitioner has accordingly been undergoing continuous Ambulatory Peritoneal Dialysis (short the "CAPD") for the

last several years. The petitioner, thereafter, submitted bills for reimbursement to the Director of Languages Punjab, the Director Health Services and the Civil Surgeon, Patiala, as mentioned in para No. 5 of the writ petition. Copies of these bills have been appended as Annexures P-3 to P-5 with the writ petition but as no relief has been forthcoming, has come to this Court praying that a direction be issued to the respondents to reimburse the medical expenses forthwith.

2. In the reply filed by respondent Nos. 1 to 3, it has been pleaded that the State Government had on the recommendations of the Fourth Punjab Pay Commission, taken a decision that the treatment taken by an employee as an indoor patient alone would be reimbursable and for outdoor treatment a fixed medical allowance at the rate of 250/- per month would be paid to all its employees without any exception and without any option open to them. In this connection, reliance has been placed by the respondents on the Government Instructions dated 31.12.1997/1.1.1998 (Annexure R-1) with the reply. Reliance has also been placed on the two judgments of the Hon'ble Supreme Court in *Dr. A.K. Mitra, DG, C.S.I.R. and Anr Vs. D. Appa Rao and Anr*, and *the Director State Transport and others v. Kiran Reikhy* (Special Leave to Appeal (Civil) No. 10335 of 1997) decided on 11.2.1998 to contend that it was for the State Government to lay down a policy for medical reimbursement in the light of the resources available at its command and no employee would claim a right to reimbursement at a particular rate. It has accordingly been pleaded that as the petitioner had undergone dialysis as an outdoor patient. He was not entitled to reimbursement of his claim.

3. Mr. Sidhu, the learned Counsel for the petitioner has first and foremost argued that the petitioner was entitled to full reimbursement in the light of a Division Bench judgment of this Court reported as *Ravi Kant v. State of Haryana and others* 1998 (3) R.S.J. 705 and Civil Writ Petition No. 15938 of 1998 *Jagsir Singh Sandhu v. The Punjab State Electricity Board, Patiala and others*, decided on 1.2.1999, the copies whereof have been appended as Annexures P-7 and P-8, respectively with the writ petition and also a Single Bench decision of this Court reported as *Renu Saigal v. State of Haryana* 1998 (4) RSJ 557. In the alternative, he has argued that as the ex-post facto sanction had been granted to the petitioner at Government rates vide Annexure P-1, to the reimbursement of the expenses incurred on dialysis, and an essentiality certificate (Annexure P-3) had also been issued as the petitioner had fulfilled all the requirements for reimbursement, he was entitled to reimbursement, if not, to the full amount at the Government rates in any event.

4. Mr. Anil Sharma, the learned Deputy Advocate General, has argued that this two judgments cited by Mr. Sidhu were distinguishable, in as much that they were applicable to only Government Hospitals and not the expenses incurred in the Dayanand Medical College, Ludhiana. In the alternative, he has relied upon Annexure R-1 to contend that it was not open to this Court to grant reimbursement of an amount larger than the amount mentioned in the

instructions.

5. It is the conceded position that renal failure is a chronic disease. It is also the conceded position that had the petitioner undergone the dialysis as an indoor patient in any hospital and as an indoor or an outdoor patient in a Government Hospital, as held in Ravi Kant and Renu Saigal's cases (supra) he would have been entitled to some if not full reimbursement. In the light of the fact that Kidney failure is an irreversible process and the disease itself is a chronic one, it would not be necessary for the patient to be admitted in the hospital for undergoing the process. To my mind, the process of dialysis is merely a follow up to the treatment that the petitioner had received in the various Institutions that he had attended. It is also the conceded position that regular dialysis was the only procedure that could ensure the petitioner's survival. It also appears that the facility for regular dialysis is not readily available in any Government Hospital in the State of Punjab and even the P.G.I. Chandigarh has seven machines which can take care off only eight patients a day and it is because of lack of facilities that the petitioner had been granted sanction to take dialysis from the Patiala Dialysis and Kidney Center and Kidney Hospital, Patiala, a Private Hospital. The petitioner, who is present in Court, has pointed out that he is even now undergoing dialysis under the CAPD process from the Dayanand Medical College and Hospital, Ludhiana. To my mind, this would not make any difference as to the rate of reimbursement as the petitioner is entitled to and is in fact claiming reimbursement at Government rates and no more.

6. This petition is accordingly allowed and a direction is issued to the respondents to reimburse the expenses incurred by the petitioner as detailed in paragraph 5 of the writ petition, within a period of one month from the date that a certified copy of this order is supplied to the respondents. It is also directed that the reimbursement in further shall be made to the petitioner within a period of one month from the date that he submits the medical bills. No costs.

7. Petition allowed