
(2011) 03 DEL CK 0126

In the Delhi High Court

Case No : Writ Petition (C) 2965 of 2010

Shamshuddin and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0126

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.S. Mishra, for the Appellant; Ashwani Bhardwaj and M.P. Singh and Jagrati Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioners No. 1 and 2 are engaged as cooks with BSF. Petitioner No. 3 is employed as a Safai Karamchari. All of them claim entitlement to receive Hospital Patient Care Allowance in terms of the policy decision dated 04.02.2004. It may be noted at the outset that after the writ petition was filed, Petitioner No. 3 has started receiving the said allowance and thus we need to decide the issue qua Petitioner No. 1 and Petitioner No. 2 who are working as cooks in BSF Hospitals.

2. Petitioners rely upon the decision dated 19th March, 2008 in W.P.(C) No. 1866/2008 Sis. R. Khan & Ors. v. UOI and Ors. wherein a Division Bench of this Court held that Pharmacist, ANM, Radiographer and Kahar (Waterman) being combined paramilitary staff and posted in BSF Hospitals would be entitled to the said allowance.

3. It be noted at the outset that no Petitioner in W.P.(C) No. 1866/2008 was a cook.

4. Relevant extract of the policy guideline dated 04.02.2004 on which Petitioners rely, reads as under:

No.Z.28015/24/2001-H

Government of India

Ministry of Health & Family Welfare

Nirman Bhavan, New Delhi

Dated the 4th February, 2004

To

The Director General of Health Services, Nirman Bhavan, New Delhi.

Subject:-Payment of Hospital Patient Care Allowance/Patient Care Allowance to Group C & D (Non-Ministerial) employees working in hospitals, dispensaries and organizations.

Sir,

I am directed to state that Ministry of Finance had suggested to this Ministry that a clear cut policy for payment of Hospital Patient Care Allowance/Patient Care Allowance to Group C&D (Non-Ministerial) employees working in hospitals, dispensaries and organizations be evolved. Subsequently in consultation with Department of Personal & Training and Ministry of Finance, it was decided that in the light of the Cabinet decision on the payment of Hospital Patient Care Allowance/Patient Care Allowance, it may not be appropriate to lay down the policy for Hospital Patient Care Allowance/Patient Care Allowance as the major para-meters of the policy have already been decided. Instead, perhaps a consolidated letter be issued in consultation with Dte. General of Health Services to remove all ambiguity in this regard.

Accordingly, the following Guidelines for implementing Hospital Patient Care Allowance/Patient Care Allowance are consolidated in consultation with the Dte. General of Health Services:

i) Eligibility for Hospital Patient Care Allowance:

The Hospital Patient Care Allowance is admissible to all Group C & D (Non-Ministerial) employees excluding nursing personnel @ Rs. 700/- per month and Rs. 695/- per month respectively working in General Hospitals (those with 30 beds or more); and in Super Speciality, Hospital (those with 10 beds or more), subject to the condition that no Night Weightage Allowance and Risk Allowance, if sanctioned by the Central Government, will be admissible to these employees.

ii) Eligibility for Patient Care Allowances:

The Patient Care Allowance is admissible to the Group C & D (Non-Ministerial) employees excluding nursing personnel @ Rs. 690/- per month working in the health care delivery institutions/establishments (other than hospitals) having less

than 30 beds, subject to the condition that no Night Weightage Allowance and Risk Allowance, if sanctioned by the Central Government, will be admissible to these employees. (Copies of this Ministry's Orders No. Z28015/26/98-MH (H), dated 28.09.1998 and Z.28015/41/98-H (i) dated 2.1.1999 are enclosed).

iii) The condition which an organization must satisfy before its employees can be considered for grant of Hospital Care Allowance.

Only persons (Group C & D, Non-Ministerial employees) whose regular duties involve continuous and routine contact with patients infected with communicable disease or those who have to routinely handle, as their primary duty, infected materials, instruments and equipments which can spread infection as their primary duty may be considered for grant of Hospital Patient Care Allowance. It is further clarified that HPCA shall not be allowed to any of those categories of employees whose contact with patients or exposure to infected materials is of any occasional nature.

iv) The condition which an organization must satisfy before its employees can be considered for grant of Patient Care Allowance:

The persons (Group C & D, Non-Ministerial) employees whose regular duties involve continuous routine contact with patients affected with communicable diseases or are handling infected material, instruments and equipments which can spread infection as their primary duty working in health care delivery institutions other than Hospital (30 beds for General Hospital; 10 beds for Super Speciality Hospital) may be considered for grant of Patient Care Allowance. PCA shall not be allowed to any Group "C" & "D" (Non-Ministerial) employees whose contact with patients or exposure to infected materials is of occasional nature.

5. Suffice would it be to state that the very preamble i.e. the opening paragraph of the circular makes it clear that Hospital Patient Care Allowance has to be paid to Group C & D (Non-Ministerial) employees working in hospitals, dispensaries and organizations. Prima facie, the word "organizations" must take colour from the preceding two words i.e. "hospitals and "dispensaries. Thus, it would be those organizations of BSF where medical treatment is given, for example an M.I. Room.

6. That apart , the policy under caption (iii) makes it clear that only those Group C & D (Non-Ministerial) employees would be paid the allowance whose duties involve continuous and routine contact with patients infected with communicable diseases or those who have to routinely handle, as their primary duty, infected materials which can spread infection.

7. This explains the logic of the Division Bench's decision relied upon in direction Kahars i.e. Watermen to be paid the allowance for the reason in BSF Kahars not only fetch water but even wash utensils. They wash utensils, if attached to hospitals, in which patient eat food. This also explains why Safai Karamcharis in hospitals are receiving the allowance. They clean the floors of the various wards.

They clean toilets attached to the wards. They come into contact with patients.

8. As regards cooks, they simply cook food in the kitchen and do no duty which makes them in contact with patients.

9. The writ petition is accordingly dismissed but noting that the Respondents have themselves accepted the claim of Petitioner No. 3.

10. No costs.