

(2011) 12 P&H CK 0235
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 2248 of 2011

State of Haryana

APPELLANT

Vs

Gobind Thukral

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Constitution of India, 1950 — Article 316, 318

Citation : (2012) 2 ILR (P&H) 341

Hon'ble Judges : Tejinder Singh Dhindsa, J;Permod Kohli, J

Bench : Division Bench

Advocate : R.K.S. Brar,A.A.G., Haryana, for the Appellant;

Final Decision : Allowed

Judgement

Permod Kohli, J.

C.M. No. 6061 of 211

1. Heard. For the reasons recorded in the application, delay in filing the appeal is condoned. C.M. disposed of. LPA No. 2248 of 211

This LPA is directed against the judgment dated 25th April, 2011 passed by the learned Single Judge allowing CWP No. 20922 of 2008 filed by the respondent herein.

2. Admitted factual background is that the respondent was appointed as a member of the Haryana Public Service Commission (hereinafter referred to as "the Commission)" where from the retired on 3rd July, 1997 on attaining the age of superannuation. After his retirement, he underwent eye-surgery at PGI, Chandigarh. He claimed medical reimbursement to the tune of Rs. 13,180 incurred by him for availing the medical treatment at PGI Chandigarh in the year 2007. Vide letter dated 11th July, 2007, claim of the respondent for medical reimbursement was declined on the basis of a communication of the Chief Secretary to Government of Haryana dated 12th March, 2003 on the ground that

the non-official member of the Commission does not fall in the ambit of the definition of "Government employees". The petitioner thereafter filed writ petition before learned Single Judge which has been allowed vide the impugned judgment and a direction has been issued to reimburse the petitioner's medical expenditure incurred by him for getting treatment from PGI, Chandigarh. The state of Haryana has filed this appeal against the aforesaid judgment.

3. We have heard learned counsel for the appellant and also carefully perused the impugned judgment.

4. It is admitted case of the parties that the respondent was appointed as a member of the Commission and retired on attaining the age of superannuation. It is also not in dispute that while serving as a member of the Commission, respondent was receiving the claims for medical reimbursement in accordance with the rules. It was only after his retirement that his claim has been declined on the basis of distinction between the non-official and official members of the Commission.

5. The appellant-State took a stand before the learned Single that the non-official members appointed to the Commission are not government servants and thus on their retirement from the Commission, they are not entitled to the benefit of medical facility/reimbursement. The petitioner/ respondent, however, respondent to the above mentioned communication pleading that the members of the Commission are not government employees and thus the Chief Secretary's letter dated 12th March, 2003 is not valid. Respondent also pointed out that two former members of the Haryana Public Service Commission, namely, Ratti Ram and Gopi Chand Bhalla who were non-official members had been reimbursed medical claims.

6. Learned Single Judge, on examination of Regulation 13 of the Haryana Public Service Commission (Conditions of Service) Regulations of 1972 framed in respect of the service conditions of the members of the Commission under Article 318 of the Constitution of India and the Punjab Services (Medical Attendance) Rules 1940 and subsequent government instructions issued by the State of Haryana, held that the distinction sought to be created to deny medical reimbursement is impermissible and allowed the writ petition.

7. Mr. Brar, learned counsel for the State of Haryana has reiterated the grounds urged before the learned Single Judge.

Members of the Commission are appointed under Article 316 of the Constitution of India, which, inter alia, provides for two sources of appointment, i.e. one half of the members of every Public Service Commission are to be appointed from amongst government servants who held the office under the Government of India or under the Government of State. Respondent, herein was from the non-official source i.e. other than the government service. It has been held by the learned Single Judge that after appointment, irrespective of the source, the distinction between an official and non-official member disappears. Apart from

above, learned Single Judge has also referred to Regulation 13 where-under medical facilities are available to all the members of the Commission irrespective of source from where they came. Referring to Punjab Services (Medical Attendance) Rules 1940 applicable to Government servants, it has been ruled that the same are not applicable to the members of the Public Service Commission. We are in complete agreement with the findings recorded by the learned Single Judge in a well-considered judgement.

8. In the case of Roshan Lal Tandon Vs. Union of India (UOI), Hon"ble Supreme Court considered the question of preferential treatment to one of the source of appointment to a cadre and held as under: 15).....At the time when the petitioner and the direct recruits were appointed to Grade "D", there was one class in Grade "D" formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade "D" were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade "C". To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher grade "C".....

The object and purport of making appointment from different sources is to give representation to different categories/classes for the purpose of bringing efficiency in the functioning of the organization. However, on appointment, the distinction amongst the persons coming from different sources disappears and they become members of the common cadre or pool. The distinction sought to be created by the appellant is artificial, imaginary and non-existent. On appointment, as a member of the Commission, a person acquires the same status irrespective of the source from where they came. All such appointees are entitled to similar treatment not only during service, but even after the superannuation in respect of such facilities which are available to retired members of the Commission. It is admitted position that while serving as member of the Commission, all the members, including non-official members were drawing equal emoluments and were also entitled to medical facilities. After retirement, all the members are drawing pensionary benefits, irrespective of the source. Thus, they cannot be treated differently in the matter of providing medical facilities. We find no reason to interfere with the judgment impugned.