

(2016) 10 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 2125 of 2016 (O&M)

State of Haryana	Vs	APPELLANT
Shamsher Singh Pattar		RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Citation : (2017) 2 PLR 236

Hon'ble Judges : Surya Kant and Sudip Ahluwalia, JJ.

Bench : Division Bench

Advocate : Ms. Palika Monga, DAG Haryana, for the Appellants

Final Decision : Allowed

Judgement

Sudip Ahluwalia, J.—This appeal is directed by the State of Haryana and others against the Judgment passed by the Ld. Single Judge in CWP No.7816 of 2015 on 31.8.2016.

2. The Writ Petition was allowed in favour of the Respondent- Petitioner, who at the relevant time, had been appointed as Senior Deputy Advocate General in the office of Advocate General, Haryana, and whose appointment was Contractual in nature. Though the Appointment Order was issued on 02.05.2005 (Annexure P-1), but the common terms and conditions of service of a group of Law Officers came to be fixed later, vide communication dated 25.10.2005 (Annexure P-2). The Writ Petitioner's mother fell ill during the tenure of his appointment. She was treated in Fortis Hospital, Mohali for her ailment in the month of June, 2005. He did not claim any advance and paid the expenses towards his mother's treatment from his own pocket. He subsequently submitted a Medical Bill for an amount of Rs. 2,42,454/- to the Office of Advocate General, Haryana on 17.11.2005. Some of the claims mentioned therein were not found to be reimbursable after verification and he was found to be entitled for Medical Reimbursement for reduced amount of Rs. 2,08,972/-. Such claim was forwarded by the office of Advocate General to the Financial Commissioner & Principal

Secretary to the Government of Haryana, Jail and Judicial Department on 6.12.2005 (Annexure P-4) for sanction.

3. No action was, however, taken on the Writ Petitioner's aforesaid claim for a long time and several years later, he received a copy of the impugned Communication dated 11.7.2012 from the office of Advocate General, Haryana, originally issued by the present appellants. Such communication was ostensibly on the subject of "Clarification for Reimbursement of Medical bills of Senior Deputy Advocate General, Deputy Advocate General and Assistant Advocate General", by virtue of which, the Writ Petitioner's Medical claim was virtually rejected since it was mentioned therein -

"Copy of advice received from Health Department vide U.O. No.2/245/2012-1H.B.III dated 05.07.2012 in the matter cited above is sent to you and it is made clear that the Health Department has issued instructions from time to time in connection with Medical Reimbursement bills of employees/ officers/ pensioners of Haryana Government and their dependents. In these instructions there no provision for reimbursement of medical bills of casual employees. It is also made clear that vide advice issued by the Chief Secretary, Haryana Government, Administrative Department (New Group Insurance Scheme Branch) U.O. No.1/1/2008-1 N.G.I.S. Dated 29.12.2008 (copy attached) employees engaged on contractual basis have been treated as casual employees.

Law officers mentioned above are engaged on adhoc basis. Therefore, the instructions issued by the Health Department, from time to time in connection with reimbursement of medical bills of the employees/ officers/ pensioners of the Haryana Government and their dependents are not applicable to them."

4. The respondent, therefore, filed the Writ Petition, which was allowed by the Ld. Single Judge. Not only was his claim for Medical disbursement to the tune of Rs. 2,08,972/- allowed along with interest at the rate of 12 % per annum, but even Penal costs to the tune of Rs. 50,000/- were also imposed on the State for the delay occasioned, and it was further stipulated that such payment would have to be made within a period of six weeks, failing which, the Writ Petitioner would be entitled to receive the aforesaid amount along with interest at the rate of 15 % per annum after three months from 17.11.2005 till the date of payment, besides the costs.

5. The appellants representing the State of Haryana being aggrieved by such decision, have, therefore, filed the appeal.

6. The basic contention raised from their side is that since the Writ Petitioner was a Contractual Employee, he was to be treated as a Casual Employee, in view of the communication emanating from the Office of Chief Secretary, Haryana in 2008, and the subsequent clarification to the effect that "there is no provision for Reimbursement of Medical bills of Casual Employees". To support this contention, the appellants have placed on record the following extracts from the official correspondences in this regard. In Annexure P-7, it has been noted -

"HARYANA GOVERNMENT

Department of General Administration

(New Group Insurance Scheme)

The matter has been examined by the Chief Secretary to Government, Haryana (New Group Insurance Scheme Branch). It is clarified/advised that the Contractual employees engaged in the department are to be treated as casual employees.

2. The office file is also returned (in original).

Sd/-

Superintendent, NGIS

For Chief Secretary to Government, Haryana

To

The Financial Commissioner & Principal

Secretary to Govt. Haryana Administration &

Judicial Deptt. Hr. Chandigarh

U.O. No.1/1/2008-1NGIS

Dated, Chandigarh, the 29.12.08....."

7. Thereafter, Annexure P-8 happens to be the clarification, which is set out as below -

"Haryana Government

Subject: Clarification for reimbursement of Medical Bills of Sr. D.A.G., D.A.G. & Asstt. A.G.

It is made clear that the instructions have been issued by the Health Department, from time to time, in connection with reimbursement of medical bills of employees/ officers/ pensioners of Haryana Government and their dependents. In these instructions, there is no provision for reimbursement of medical bills of casual employees.

2. Original file is attached.

Sd/-

Superintendent Health-III

For Financial Commissioner & Principal

Secretary, Haryana Government

Health Department

To

Under Secretary, Haryana Government,

Jail and Judicial Department

U.O. No.2/245/2012-1 H.B. III

Dated, Chandigarh 05.07.2012"

8. Relying on the aforesaid communications, it is the contention of the appellants that the Medical Reimbursement was rightly refused in case of the Writ Petitioner-Respondent, since he being the Contractual Employee, had to be treated as a Casual Employee in terms of the Communication covered in Annexure P-7 and, therefore, he was not entitled to any reimbursement, in view of the separate communication covered in Annexure P-8.

9. The respondent-Writ Petitioner has, however, drawn attention of this Court to the undisputed terms & conditions of service of the Writ Petitioner along with 12 other Senior Deputy Advocate Generals, to which, a detailed reference was made by the Ld. Single Judge in the impugned Judgment. The relevant extracts in this regard are set out as below -

",.....Coming to the terms and conditions of service of the petitioner along with 12 other Senior Deputy Advocate Generals, where the name of the petitioner was at Sr. No.11, issued vide Annexure P-2 dated 25.10.2005, para 2 along with its relevant clauses as well as para 4 thereof which are relevant, read as under:-

"The Governor of Haryana is pleased to fix the terms and conditions of the engagement of the above mentioned Senior Deputy Advocate Generals in the office of Advocate General, Haryana as under:-

i) The Senior Deputy Advocate Generals are to be entitled to the pay scale 18400-500-22400+700 NPA per month plus usual allowance as sanctioned by the Haryana Government from time to time.

ii) That the service of the above Senior Deputy Advocate Generals are contractual in nature and are liable to be terminated at any time without mentioning any reason or notice.

iii) They will be entitled house rent allowance as is admissible to Haryana Government employees.

iv) In the matter of leave/travelling allowance, the CSR/PFR applicable to Haryana Government employees will be applicable to the said law officers.

v) The officers so engaged will not be entitled to the payment of any pensionary benefits.

vi) This contractual service will not give any right to Senior Deputy Advocate

Generals to claim the benefit of regular service in the office of Advocate General, Haryana or any other office of the State Government.

viii) They will be whole time Govt. servant and do all criminal, civil and misc. work entrusted to them by the Advocate General, Haryana"

xxx xxx xxx

These issues with the concurrence of Finance Department conveyed vide their U.O. No.1/31/2005-2 F.G.-1/1530, dated 25.10.2005....."

10. Perusal of the highlighted portion in the agreed terms & conditions of the Writ Petitioner's service as noted in item (i) above by the Ld. Single Judge clearly goes to reveal that he was entitled to the Specific Remuneration & "plus usual allowance as sanctioned by the Haryana Government from time to time".

11. It is the logical contention raised on behalf of the Respondent/Writ Petitioner that the words "Plus Usual Allowance" automatically cover the "Medical Reimbursement" as admissible to the employees of Haryana Government from time to time, since the same was not specifically excluded anywhere in the undisputed terms & conditions.

To that extent, therefore, the Ld. Single Judge has logically held that the Medical disbursement was admissible to the Writ Petitioner.

12. It has, however, been urged on behalf of the appellants, who have placed on record a copy of the Communication No.2/8.88-1HB III dated 6.5.2005 (Annexure P-11) issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Health Department, in which, the salient feature of the new Disbursement Policy of the State Government pertaining to the Medical Claims to serving and retired employees of the State have been listed. Ms. Palika Monga, DAG Haryana has drawn our attention to Item No.10 pertaining to Advance towards Medical expenses, particularly for Sub-Items b & c, which are set out as below -

"10. Advance :

Employee

a) Utilization certificate should be obtained by the Administrative department/head of Department within three months of the sanction of the advance for the treatment failing which penal interest shall be charged.

(b) No advance shall be admissible to the adhoc/contractual employees.

(c) Advance to temporary employees shall be given subject to the submission of one surety of any regular State Government employee."

13. By thus emphasizing that the Policy did not permit advance towards Medical expenses, as being admissible to Ad hoc/Contractual Employees, Ms. Palika Monga sought to convince us that by virtue of this inadmissibility, the Contractual

Employees were altogether barred from receiving any Medical expenses. Such submission, however, on the face of it is stretching the meaning too far beyond the realms of logical thinking and conclusion. If anything, the conduct of the Writ Petitioner in having initially borne the Medical expenses of his mother from his own pocket, was in full accordance with the aforesaid condition since he had not drawn the "Advance" for his mother's treatment, which only to that limited extent was not admissible to him. But there is absolutely nothing else on record to indicate that there was any provision to even bar the Ad hoc/Contractual Employees from receiving the disbursement subsequently in the relevant Communication dated 6.5.2005.

14. Ms. Palika Monga thereafter valiantly tried to support the Government's case by drawing attention to a similar Appointment Order dated 3.11.1999 issued by the Financial Commissioner and Secretary to Government of Haryana, Administration of Justice Department (Annexure R-I), which was in relation to a much earlier appointment of one Shri Ram Avtar Singh as Additional Advocate General, Haryana, in which, a fixed Retainer fees of Rs. 35000/- was allowed to the appointee with the further rider -

"(ii) He shall not be entitled to any other allowances and fees for the work assigned to him by the Advocate General, Haryana. He shall not undertake any other legal work except that of State. He shall be whole time at the disposal of the State."

15. The purport of the aforesaid restriction regarding disentitlement to "any other allowances and fees" has, however, to be understood in the context of the performance of professional obligations/Legal work, as would have been entrusted to the concerned appointee inasmuch as he was also barred from taking any other Legal work, except that of the State, and that he was required to place his "whole time" at the disposal of the State. It would thus appear that in drawing attention to the aforesaid item in the previous Appointment Order of Shri Ram Avtar Singh as Additional AG, the consideration of the remaining facilities to be provided to him was apparently lost sight. Those included the Telephone facility of STD at the appointee's residence upto the ceiling limit of 2000 calls by monthly at State expense, as also the Car Allowance at the rate of Rs. 2500/- per month, (which undoubtedly was a substantial amount in 1999). But the most important omission in this regard happens to be in respect of facilities provided to Shri Ram Avtar Singh as covered in item (v) of his aforesaid Appointment Order, which is set down below -

"He shall be entitled to TA Medical attendance facilities and leave etc. as are admissible to senior class-I officers of the Haryana Govt."

(Emphasis supplied)

16. It is thus seen that the Government of Haryana had been providing the Medical Attendance Facilities to their Law Officers appointed as Additional Advocate Generals at par with those admissible to Senior Class-I Officers in the

past as well. As such, in the absence of any specific dis-entitlement to Medical Facility/Expenses/Disbursement in the Appointment Order of the Respondent/ Writ Petitioner, it would logically follow that he would also be entitled to the same, which undoubtedly was meant to be covered in the words "Plus Usual Allowances" in his Appointment Order and the terms of service in relevant year 2005. The subsequent Communications covered in Annexures P-7 and P-8 to the effect that the Contractual Employees are to be treated as Casual Employees, or that Medical Reimbursement is not admissible to them, therefore, become altogether irrelevant in the present case.

17. For the aforesaid reasons, we see absolutely no impropriety in the finding of the Ld. Single Judge that the Writ Petitioner was entitled to disbursal of the admissible Medical expenses incurred by him for his mother's treatment. We, however, do appreciate the contention advanced on behalf of the appellants that there was no occasion to award any Penal costs or high interest on the delayed payment, apart from certain other observations in the nature of stricture against the State Authorities in the impugned Judgment. We say so for the reason that there were contentious issues and it was not a case where the appellants/State can be said to have declined the reimbursement of Medical Claim for extraneous consideration or for no reason.

18. For the reasons stated above, the appeal is allowed in part. The Order of Ld. Single Judge to the extent of imposing costs of Rs. 50,000/- and awarding interest @ 12% per annum is set aside. Similarly, the observations made by the Ld. Single Judge with regard to functioning or expected functioning of the Office of Advocate General are ordered to be deleted and no direct or indirect inference in this respect shall be deemed to be there against that Office.