
(2017) 05 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : 4793 of 2013

UNION OF INDIA & OTHERS

APPELLANT

Vs

JITENDER SINGH & OTHERS

RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court

Citation : (2017) 05 SHI CK 0014

Hon'ble Judges : Sanjay Karol, Ajay Mohan Goel

Bench : Division Bench

Advocate : Ashok Sharma, Sukarma, B C Negi, Surinder Sharma

Final Decision : Dismissed

Judgement

1. 322 employees (respondents herein and referred to as employees) of Central Research Institute, Kasauli, Himachal Pradesh, belonging to Group "C" & "D", have been litigating for more than a decade, claiming a sum of Rs. 700/695.00 per month, as a Patient Care Allowance (hereinafter referred to as the allowance). The claim is laid for the period from the year 1987 upto March, 2009.

2. It is a matter of record that on 5.3.1990, benefit of Patient Care Allowance came to be accorded to Group "C" & "D" (Non-Ministerial) employees of the Hospital (Annexure A-3, Page 105). Employees of the Central Research Institute (hereinafter referred to as the Institution) continued to agitate their grievance with the relevant authorities, for the reason that vide communication dated 2.1.1999 (Page-112), such benefit also came to be accorded to institutions other than the hospitals, w.e.f. 29.12.1998. And they being NMEP, NICD, RAK College of Nursing, LRHS, RHTC ? Najafragh and Port Health Organizations and Port/ Airport Health Organizations. Relevant portion of such communication is extracted as under:

"To

The Director General of Health Services,

Nirman Bhavan,

NEW DELHI - 110011

Subject: Extension of Patient Care Allowance to Group "C" & "D" (Non-Ministerial) employees working in NMEP, NICD, RAK College of Nursing, LRHS, RHTC? Najafgarh and Port Health Organisation and Port/Airport Health Organisation.

Sir,

I am directed to convey the sanction of the President to the extension of Patient Care Allowance (PCA) to Group "C" & "D" (Non-Ministerial) employees working in NMEP, NICD, RAK College of Nursing, LRHS, RHTC? Najafgarh and Port Health Organisation and Port/Airport Health Organisation @ Rs.690/- per month with effect from 29th December, 1998.

....."

3. Crucially all employees, such as Laboratory Assistants, Insect Collector, Technicians (BCG), Laboratory Attendant, etc. and even Draftsmen were held entitled for such benefit.

4. On 4.2.2004 (Page 123-127), Government of India issued yet another communication, covering other institutions, namely National Malaria Eradication Programme and National Institute of Communicable Diseases, entitling their employees to the benefit of the Scheme. In fact, it laid down criteria entitling the employees of the institution for monetary benefit. Relevant portion thereof is reproduced as under: "ii) Eligibility for Patient Care Allowance: 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.Z.28015/26/98-MH(II), dated 28.9.1998 and Z.28015/41/98-H(i), dated 2.1.1999 are enclosed)." "(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 materials, 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." (emphasis supplied)

5. Finding the authorities not to have accorded similar benefits, the employees were constrained to approach the Central Administrative Tribunal and vide order dated 25.11.2008, a direction came to be issued to the petitioners herein for deciding the claim of the employees, in accordance with law. It be only observed that considering the nature of duties being performed by the employees, the Tribunal emphasized the need for according the benefits. The fact of the matter being that the issue never came to be decided, forcing the employees to initiate proceedings of contempt, which came to be disposed of vide order dated 10.2.2010 (Page-176). It is only pursuant thereto, that the petitioners considered the entitlement of the employees. The competent authority vide order dated 21.5.2010 (Page 96), rejected the claim holding that employees of the organizations, more specifically the respondents herein, never came in contact with human patients and also did not fall within the prescribed scope of guidelines, so issued by the Ministry.

6. It is this order, which the employees assailed and now stands quashed by the Central Administrative Tribunal, in terms of impugned order dated 17.8.2012 (Page 263), with the following directions: "A conjunctive perusal of Annexure A-5 and the communication dated 26.6.2009 addressed by the Director CRI Kasauli to the D.G. Health Services (appearing at page 140- 141 of the OA, appreciated in the light of the fact that the observations recorded by a learned Coordinate Bench of this Tribunal in the course of order dated 21/4/2010 (Annexure A-17) have attained finality for want of a challenge in judicial review jurisdiction, would leave no manner of doubt that the impugned order deserves to be invalidated and we so hold accordingly.

In the light of the aforementioned discussion, we are of the considered view that the denial of the patient care allowance to the applicants and likes of them is indefensible. They are held entitled to patient care allowance for the duration it was in vogue."

7. Having heard learned counsel for the parties, as also perused the record so made available, we are of the considered view that the order passed by the Tribunal is based on correct and complete appreciation of facts as also the principles of law. It cannot be said that the order is illegal, perverse, based on extraneous factors or that the Tribunal has not considered the material in its entirety. Definitely, it has not exceeded its jurisdiction. It is a speaking order. What weighed with the Tribunal was the nature of duties, performed by the employees, as also the recommendation so made by the Director of the Institution in question. As such, we see no reason to interfere with the same.

8. We take this view, also considering the fact that the benefit of the Scheme is not confined to the hospitals and nursing institutions. The object and purpose, as is evident from the bare reading of the communication is that all such persons, who are likely to come in contact with infected materials, instruments and

equipments, which can spread infection, are entitled to benefit thereof.

9. The fact that the employees in the course of discharge of various duties/ functions, in different capacities, are likely to come in contact, directly or indirectly, with infected machinery and equipment, in the laboratory and dispensary of the institute, was not only considered affirmatively by the Director of the Institution, who in fact recommended the employees' case for according such benefit, vide communication dated 26.6.2009 (Page 173), but also stands not denied in response to the Original Application, so filed before the Tribunal, in the following terms, "The possibility of contact with seed strains and challenge strains, during the production of the vaccine and sera and Quality Control testing as well as contact with samples materials received from the field under surveillance programme are minimized by observing universal precautions of prevention and specific protection by vaccination of the individual employees with specific vaccine and observing safe laboratory practices".

10. At this juncture, we may only observe that the observations made by the Tribunal that no reasons, much less justifiable, came to be assigned by the authorities, for either differing with the stand taken by the Head of the Institution or rejecting the claims are legally tenable and justifiable.

11. A Five-Judge Bench of the apex Court in *Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477: ".....In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

12. More recently, in *Radhey Shyam & another v. Chhabi Nath & others*, (2015) 5 SCC 423, a three-Judge Bench of the apex Court, while overruling its earlier view taken by a two-Judge Bench in *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675, has elaborately discussed the scope of jurisdiction under Articles 227 and 226 of the Constitution of India, as also the statutory appellate and revisional powers of the Constitutional Court.

13. One finds that employees are discharging their duties, in Group C & D, as Laboratory Attendants, Supervisors, Assistants, Safai Karamcharis, Animal

Attendant, etc. and the fact that they are directly exposed to all sorts of infectious material, infected equipments and instruments, infected laboratory animals and large animals, infected effluents and are in contact with human patients for collection of various infected pathological specimen and that they come in contact with most pathogenic bacteria, viruses, fungi, Toxins, etc., could not be disputed before us, nor was it so done before the Tribunal.

14. Hence, we see no reason as to why employees, who are directly exposed to such infectious material, be not accorded the benefit of the Scheme, particularly when such benefits stand accorded to the employees of National Malaria Eradication Programme and National Institute of Communicable Diseases.

15. We also notice that the Scheme does not restrict according benefits to the employees, working in organizations such as hospitals, where they directly come in contact with the patients. It is not the case of the Government that only such of those employees, who work in hospitals and come in direct contact with the patients, alone are entitled to such benefits. The object, intent and purpose is somewhat different. It is to accord benefit, monetary in nature, to all those employees, who are exposed to all sorts of infectious material, articles or objects, during the course of discharge of their duties. Hence, for all the aforesaid reasons, we find no reason to interfere with the impugned order dated 17.8.2012, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, in OA No.147-HP-2012, titled as Jitender Singh & others v. Union of India & others. Hence, the present petition is dismissed. Pending application(s), if any, also stand disposed of.