

Before Rajesh Bindal & B. S. Walia, JJ.

STATE OF PUNJAB AND OTHERS—Appellants

versus

SMT. TEJINDER KAUR—Respondent

LPA No.1631 of 2015

January 23, 2018

Letters Patent, Clause X—Constitution of India, 1950—Art. 226—Punjab Medical Services (Medical Attendance) Rules, 1940—Respondent’s husband underwent liver transplant procedure—Reimbursement not granted by State on the basis of actual expenditure but on government rates—Upholding the judgment of the Single Judge, the LPA Bench held that State has not been able to show that at the relevant time, liver transplant facility was available in any Punjab Government Hospital or in AIIMS, New Delhi—Respondent/Petitioner entitled to reimbursement at the rates claimed on the basis of actual expenditure—Appeal dismissed.

Held that learned counsel for the respondent/petitioner has referred to the decision dated 06.01.2016 passed by the learned Single Bench of this Court in CWP No. 5714 of 2014 in case titled as Hari Chand v. State of Punjab and others wherein a claim was made by an employee for reimbursement of medical expenses incurred for liver transplant with the treatment taken from Apollo Hospital, New Delhi during the period from 01.01.2010 to 22.01.2010 by incurring total medical expenses of Rs.22,43,818/-. A similar defence was taken up in the said case that as per the Rules, treatment taken from a private hospital would be subject to the condition that an undertaking would be given by the employee/pensioner for reimbursement to be claimed as per the rates fixed by the Director, Health and Family Welfare, Punjab and as per the advise issued by the Technical Committee constituted by the Director to finalize the admissible rates. While taking note of the instructions of the Government of Punjab dated 13.02.1995, Department of Health and Family Welfare which provide under heading “(b)” that the treatment taken in private institute/hospital, of the choice of the patient is available as per rates fixed by the Director, Health, Punjab for similar treatment package or actual expenditure incurred, whichever is less as also the fact that at that point of time similar treatment was neither available in any of the hospitals in Punjab

or in AIIMS, New Delhi, the learned Writ Court allowed the claim for reimbursement of entire medical expenses incurred by the Government employee therein on the ground that Live Liver Transplant facility was not available at AIIMS, New Delhi, when the treatment was taken, therefore policy dated 13.02.1995 had to be read in favour of the claimant as there was no fixed point of assessment to incur medical expenses. The treatment undergone by the respondent/petitioner's husband for similar ailment at Sir Ganga Ram Hospital, New Delhi is during the same year as was undergone by the Government employee in Hari Chand's case (Supra) though it was not in Sir Ganga Ram Hospital but in Apollo Hospital, New Delhi.

(Para 3)

Further held that learned counsel for the appellants has not been able to show that during the period when respondent/petitioner's husband underwent treatment at Sir Ganga Ram Hospital, Live Liver Transplant facility was available in any of the hospitals under the Punjab Government or in AIIMS, New Delhi. Besides, neither was Punjab Government letter No.12/193/04-5HB-5/5251-54 dated 13.02.1995 relied upon in paragraph Nos.5 and 6 of the Letter Patents Appeal placed before the learned Writ Court at the time of decision dated 25.08.2014. Moreover, in view of the decision of the learned Single Bench in Hari Chand's case (Supra) since, Live Liver Transplant facility was not available at AIIMS, New Delhi at the relevant point of time when treatment was taken (as is the position in the instant case), therefore, policy dated 13.02.1995 had to be read in favour of the claimant as there was no fixed point of assessment to incur medical expenses.

(Para 4)

Vikas Mohan Gupta, Addl. A.G., Punjab.

Naveen Batra, Advocate,
for the respondent.

B.S. WALIA, J.

(1) Challenge in this intra-court appeal to the judgment of the learned Writ Court dated 25.08.2014 is on the ground that letter dated 13.02.1995 under the Punjab Services (Medical Attendance) Rules, 1940 (hereinafter referred to as 'the Rules') providing freedom to employees and pensioners to get treatment in any private medical institute in the country subject to giving an undertaking that the employee/pensioner would accept reimbursement of expenses incurred

on treatment as per rates fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure whichever was less, could not be brought to the notice of the learned Writ Court and since, the husband of the respondent-petitioner had undergone live liver transplant from Sir Ganga Ram Hospital, New Delhi i.e. a private hospital, outside the State of Punjab, the respondent/petitioner was not entitled to reimbursement at the rates claimed. Application has also been filed for condonation of 401 days' delay in filing of the appeal.

(2) At this stage it needs noticing here that earlier the appellants had filed LPA No. 875 of 2015 impugning the order of the learned Writ Court dated 25.08.2014 but the same was dismissed as withdrawn vide order dated 02.07.2015 with liberty to file Review Application before the learned writ court. The appellants filed Review Application No.417 of 2015 along with application for condonation of 371 days' delay in filing thereof. Incomplete copy of the Review Application i.e. only 1½ pages have been filed along with the order of the learned Writ Court dated 08.10.2015 dismissing the review on the ground that it had been sought on the basis of material which was never before the Writ Court at the time of the decision of the writ petition. However, delay was condoned. The learned Writ Court allowed the writ petition by ordering deduction of Rs.78,722/- i.e. the disputed amount from the amount of Rs.23,73,621/- claimed by the respondent/petitioner on account of the treatment (i.e. live liver transplant from Sir Ganga Ram Hospital, New Delhi), undergone by her husband from 22.04.2010 to 27.05.2010, 14.06.2010 to 27.09.2010 and 03.06.2010 to 12.06.2010. The appellants on the other hand vide Annexure P2 dated 30.08.2011 had sanctioned an amount of Rs.12,57,178/- towards medical reimbursement as per AIIMS, New Delhi/Government rates.

(3) Learned counsel for the respondent/petitioner has referred to the decision dated 06.01.2016 passed by the learned Single Bench of this Court in CWP No.5714 of 2014 in case titled as Hari Chand v. State of Punjab and others wherein a claim was made by an employee for reimbursement of medical expenses incurred for liver transplant with the treatment taken from Apollo Hospital, New Delhi during the period from 01.01.2010 to 22.01.2010 by incurring total medical expenses of Rs.22,43,818/-. A similar defence was taken up in the said case that as per the Rules, treatment taken from a private hospital would be subject to the condition that an undertaking would be given by the employee/pensioner for reimbursement to be claimed as per the

rates fixed by the Director, Health and Family Welfare, Punjab and as per the advise issued by the Technical Committee constituted by the Director to finalize the admissible rates. While taking note of the instructions of the Government of Punjab dated 13.02.1995, Department of Health and Family Welfare which provide under heading “(b)” that the treatment taken in private institute/hospital, of the choice of the patient is available as per rates fixed by the Director, Health, Punjab for similar treatment package or actual expenditure incurred, whichever is less as also the fact that at that point of time similar treatment was neither available in any of the hospitals in Punjab or in AIIMS, New Delhi, the learned Writ Court allowed the claim for reimbursement of entire medical expenses incurred by the Government employee therein on the ground that Live Liver Transplant facility was not available at AIIMS, New Delhi, when the treatment was taken, therefore policy dated 13.02.1995 had to be read in favour of the claimant as there was no fixed point of assessment to incur medical expenses. The treatment undergone by the respondent/petitioner’s husband for similar ailment at Sir Ganga Ram Hospital, New Delhi is during the same year as was undergone by the Government employee in Hari Chand’s case (Supra) though it was not in Sir Ganga Ram Hospital but in Apollo Hospital, New Delhi.

(4) Learned counsel for the appellants has not been able to show that during the period when respondent/petitioner’s husband underwent treatment at Sir Ganga Ram Hospital, Live Liver Transplant facility was available in any of the hospitals under the Punjab Government or in AIIMS, New Delhi. Besides, neither was Punjab Government letter No. 12/193/04- 5HB-5/5251-54 dated 13.02.1995 relied upon in paragraph Nos.5 and 6 of the Letter Patents Appeal placed before the learned Writ Court at the time of decision dated 25.08.2014. Moreover, in view of the decision of the learned Single Bench in Hari Chand’s case (Supra) since, Live Liver Transplant facility was not available at AIIMS, New Delhi at the relevant point of time when treatment was taken (as is the position in the instant case), therefore, policy dated 13.02.1995 had to be read in favour of the claimant as there was no fixed point of assessment to incur medical expenses.

(5) In the circumstances, we do not find any reason whatsoever to interfere with the well-reasoned order passed by the learned writ Court.

(6) Accordingly, the present appeal is dismissed. Consequently,

the application seeking condonation of 401 days' delay in filing the appeal is also dismissed.

P.S. Bajwa