

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 437/2010

J.K. SAWHNEY Appellant
Through: Mr. Piyush Sharma, Advocate

versus

PUNJAB NATIONAL BANK Respondent
Through: Mr. Rajat Arora, Advocate.

% Reserved on 26th July, 2010.
Date of Decision : 06th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

MANMOHAN, J

CM 11563/2010

Allowed, subject to all just exceptions.

LPA 437/2010

1. The present Letters Patent Appeal has been filed challenging the judgment and order dated 19th April, 2010 passed by the learned Single Judge in W.P.(C) No.6744/2007 whereby the learned Single Judge has dismissed the writ petition filed by the appellant.
2. The brief facts of the case are that the appellant was an employee of the respondent-Bank and he retired from services on 05th February,

2006. After his retirement, he developed acute heart problem and incurred expenses of Rs.3,14,487/- on his treatment at Escorts Heart Institute. The appellant requested for reimbursement of medical expenses from the respondent-Bank which was declined on the ground that there was no such scheme for reimbursement of medical expenses to the retired employees of the respondent-Bank.

3. Mr. Piyush Sharma, learned counsel for the appellant submitted that the right to health and medical care is an integral part of right to life which is a fundamental right of every citizen under Article 21 of the Constitution of India. He further submitted that the powers of the High Court to issue writ of mandamus are of wide import and they must be available to reach injustice wherever it is found. According to him, technicalities should not come in the way of granting relief under Article 226 of the Constitution. He submitted that it is within the competence of the High Court to direct the respondent-Bank to formulate a scheme for reimbursement of the medical expenses to the retired employees of the respondent-Bank. In this context, Mr. Sharma placed reliance upon Apex Court's decisions in *Food Corporation of India & Ors. Vs. Parashotam Das Bansal & Ors., (2008) 5 SCC 100* and *Cannanore District Muslim Educational Association vs. State of Kerala , (2010) 6 SCC 373*.

4. Mr. Rajat Arora, learned counsel for the respondent-Bank submitted that appellant has no legal right to enforce his claim for grant of medical reimbursement by approaching this Court in writ

jurisdiction. According to him, the appellant is governed by the bipartite settlement under which in lieu of absence of any scheme for reimbursement of medical claims after retirement, neither the appellant nor the other employees can claim the same.

5. Having heard learned counsel for the parties as well as having perused the paper book, we are of the opinion that though it is the constitutional obligation of the State under Article 21 of the Constitution of India to safeguard the right to life of every person and such right is a right to lead healthy life and not a life of animal existence, but no law mandates that every citizen is entitled to free medical treatment without any limitation on the amount that can be claimed as reimbursement. In fact, even serving bank employees are governed by regulations put in place by the respondent-Bank keeping in view the financial and economic considerations. In this context, we may refer to a decision of the Apex Court in *State of Punjab & Ors. Vs. Ram Lubhaya Bagga & Ors. (1998) 4 SCC 117* wherein the Supreme Court observed as under :-

“26.Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

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29. No State or any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.

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31. The next question is whether the modification of the policy by the State by deleting its earlier decision of permitting reimbursement at the Escort and other designated hospital's rate is justified or not? This of course will depend on the facts and circumstances. We have already held that this court would not interfere with any opinion formed by the government if it is based on relevant facts and circumstances or based on expert advice.

32. Any State endeavor for giving best possible health facility has direct co-relation with finances. Every State for discharging its obligation to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect. 'Article 41: Right to work, to educate and to public assistance in certain cases: The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age sickness and disablement, and in other cases of undeserved want''

(emphasis supplied)

6. Moreover, it is imperative to emphasise that the formulation of a policy is within the exclusive domain of executive and the Courts

should shy away from issuing directions for formulation of a policy which has financial, economic and other implications, which at the best should be left to the wisdom of the executive.

7. Consequently, we are in agreement with the learned Single Judge that it is not for the Court to formulate policies but certainly the Court can draw attention of the concerned authority to the issue involved so that appropriate steps can be taken for redressal of the grievances. In the context, learned Single Judge has rightly suggested that it is for various trade unions of the bank and the management of the Bank to make appropriate provisions in their bipartite settlement to make suitable policy to take care of the health of the retired employees and for their necessary medical reimbursement. Accordingly, the appeal, being bereft of merit, is dismissed.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 06, 2010

Ms/js