

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

W.P.(C) No.6744/2007

Judgment reserved on: 10.3.2010

Judgment delivered on: 19.04.2010

J.K. Sawhney

.....Petitioner.

Through : Mr. Piyush Sharma, Adv.

versus

Punjab National Bank

..... Respondent.

Through : Mr. Jagat Arora, Adv.

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* **HON'BLE MR.JUSTICE KAILASH GAMBHIR**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Kailash Gambhir, J.

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the orders dated 28.2.2007 and 21.5.2007 passed by the respondent bank and also seeks directions to direct the respondent bank to reimburse the medical bill of Rs. 3,14,487/- of the petitioner and also to formulate a scheme

for reimbursement of medical expenses of the retired employees of the bank.

2. Brief facts of the case as set out by the petitioner relevant for deciding the present petition are that the petitioner was an employee of the respondent bank and retired on 5.2.06. He developed an acute heart problem and was admitted to Escorts Hearts Institute where he incurred an expense of Rs. 3,14,487 and requested the respondent bank for the reimbursement of the same which was declined by the Bank on the ground that there was no such scheme of reimbursement of medical expenses to the retired employees. On 2.4.07, the petitioner filed a writ petition (C.W.P 2473/07) in this court whereby the bank was directed to consider the fresh representation of the petitioner for reimbursement of medical expenses, which representation, on 21.5.07, was rejected by the respondent bank. The petitioner on 12.6.07 again made a representation and on 18.8.07 filed Misc. Application for revival of the writ petition No. 2473/07 and the same was

dismissed as withdrawn with the liberty to the petitioner to file a fresh petition. Hence ,in the aforesaid circumstances, the petitioner has preferred the present writ petition.

3 . Mr. Piyush Sharma, counsel for the petitioner contended that the decision of the respondent bank to deny the medical reimbursement to the petitioner is in violation of Articles 14 and 21 of the Constitution of India and, therefore, such a decision of the bank is liable to be set aside. Counsel for the petitioner further submitted that the grant of medical reimbursement by the bank to the retired whole time Directors (Chairman, Managing Director, Executive Directors) is discriminatory vis-à-vis all other retired bank employees including the petitioner and there is no intelligible differentia to carve out a different classification of whole time Directors to grant them the medical benefits while to deny the same to the other retired bank employees. Counsel for the petitioner further submitted that the right to health and medical care is a

fundamental right guaranteed to every citizen under Article 21 of the Constitution of India and this Court while exercising power and jurisdiction under Article 226 of the Constitution of India can direct the respondent to grant such medical benefits even in the absence of any policy and rules. Counsel for the petitioner further submitted that the service conditions of the retired employees are not governed by the bipartite settlements and, therefore, absence of any such provision for the grant of medical reimbursement in bipartite settlement would not debar the petitioner to claim medical reimbursement under Article 21 of the Constitution of India. In support of his arguments, counsel for the petitioner placed reliance on the following judgments:-

1. All India Sainik School Employees Association Vs. The Defence Minister Cum Chairman, Board of Governors, Sainik School Society New Delhi & Ors. 1989 AIR SC-0-88.
2. Consumer Education & Reserch Centre & Ors. Vs. Union of India & Ors. (1995) 3 SCC 42.
3. State of Punjab Vs. Mohinder Singh Chawla etc. JT 1997(1) SC 416.

4. Whirlpool Corporation Vs. Registrar of Trade Marks Mumbai & Ors. (1998) SCC-8-1.
5. Milap Singh Vs. Union of India & Ors. 2004 (76) DRJ 126.
6. Rakesh Bedi Vs. Air India Ltd. & Anr. 2004 (76) DRJ 375.
7. Keshav Kishore Sharma vs MCD 2005 (8)) DRJ 180.
8. Mahendra Pal Vs. Union of India & Ors. 2005 (117) DLT 204.
9. The Registrar School of Planning & Architecture Vs. SPA Retired Employees Welfare Association Civil Appeal No. LPA 490/2004 dated 2.2.2004.
10. Confederation of Ex-Servicemen Association & Ors. Vs. Union of India & Ors. AIR 2006 SC 2945.
11. S. Srinivas Rao Vs. Union of India 2006 VIII AD (Delhi) 773.
12. State of West Bengal Vs. Anwar Ali Sarkar AIR 1952 SC 75.

4 . Refuting the said submissions of counsel for the petitioner, Mr. Arora, counsel for the respondent, submitted that the petitioner has no legal right to enforce his claim for the grant of medical reimbursement by approaching this court in the writ jurisdiction. Counsel further submitted that the petitioner is governed by the bipartite settlement and under the same, the petitioner has already received retiral benefits besides receiving his monthly pension and under

the said bipartite settlement neither the petitioner nor the other employees can claim grant of medical reimbursement after retirement. Counsel also submitted that in the absence of any rules and also in the absence of any provisions made in the said settlement, the petitioner is not entitled to claim his medical reimbursement.

Counsel for the respondent also submitted that so far the entitlement of the whole time Directors and Chairman of the bank is concerned, the said decision has been taken by the Board of Directors of the bank and the present petitioner cannot claim parity with that small segment of the bank. Counsel stated that there is no violation of Article 14 and 21 of the Constitution of India in providing the said medical benefits to the said separate class of high officials of the bank. Counsel for the respondent also submitted that the petitioner had an alternative remedy to raise an industrial dispute and therefore also the present petition would not be maintainable. In support of his arguments,

counsel for the respondent placed reliance on the following judgments:-

1. Union of India Vs. C. Krishna Reddy AIR 2004 SC 1194
2. Chairman, State Bank of India Vs. All Orissa State Bank Officers, Association AIR 2003 SC 4201
3. State of U.P. Vs. Birdge & Roof Company (India) Ltd. AIR 1996 SC 3515

5. I have heard learned counsel for the parties at considerable length.

6. The petitioner is a retired bank employee and had suffered a heart problem after his retirement for which he was admitted to Escort Hearts Institute and Research Center Limited, Okhla Road, New Delhi on 1.9.2006 and was discharged on 9.9.2006. He had incurred an expense of Rs. 3,14,487/- and the said medical reimbursement was denied to him by the bank on the ground that there is no provision in the existing rules/bipartite settlement to consider such hospitalization claim for retired employees. There is no dispute between the parties that under the

bipartite settlement the reimbursement of medical expenses is available only to the serving employees and not to the retired employees. It is also not in dispute that the service conditions of the bank employees are primarily governed by the 'Bipartite Settlements'. So far there has been no provision for reimbursement of the medical expenses incurred by the retired employees of the bank, which is a question to be answered by the various trade unions representing the bank employees. It is not a question of one bank employee, who has been denied the medical reimbursement after his retirement but thousands of such other bank employees are ineligible to claim such medical reimbursement after their retirement. I do not find myself in agreement with the counsel for the petitioner that there cannot be any provision under the bipartite settlement to deal with the grant of medical reimbursement and other benefits post retirement of bank employees. Thus, the question to be addressed by the trade unions and the management of the various banks is:-

“why, so far and on what grounds, no provision has been made to grant medical reimbursement to the retired employees of the banking industry.”

7. The issue is a clear matter of policy having financial and other economic implications, therefore, this Court while exercising jurisdiction under Article 226 of the Constitution of India would be hesitant to enter in the domain of the Executive to give directions to the respondent bank to grant medical reimbursement to the retired employees of the bank. The Apex Court in its authoritative pronouncement dealing with the issue of medical reimbursement in the matter of ***State of Punjab & Ors. Vs. Ram Lubhaya Bagga & Ors. (1998) 4 SCC 117*** observed as under:-

20. The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be. Let us now examine this new policy. Learned senior counsel for the appellants submits that the new policy is more liberal in as much as it gives freedom of choice to every employee to undertake treatment in any private hospital of his own choice any where in the country. The only clog is that the reimbursement would be to the level of expenditure as per rates which are fixed by the Director, Health and Family

Welfare, Punjab for a similar package treatment or actual expenditure which ever is less. Such rate for a particular treatment will be included in the advice issued by the District/State Medical Board for fixing this. Under the said policy a Committee of Technical Experts is constituted by the Director to finalize the rates of various treatment packages and such rate list shall be made available to the offices of the Civil surgeons of the State. Under this new policy, it is clear that none has to wait in a queue. One can avail and go to any private hospital anywhere in India. Hence the objection that, even under the new policy in emergency one has to wait in a queue as argued in Surjit Singh, case (supra) does not hold good.

21. In this regard Mr. Sodhi appearing for the State of Punjab has specifically stated that as per the Director's decision under the new policy, the present rate admissible to any employee is the same as prevalent in AIIMS. It is also submitted, under the new policy in case of emergency if prior approval for treatment in the private hospital is not obtained, the ex-post-facto sanction can be obtained later from the concerned Board or authority for such medical reimbursement. After due consideration we find these to be reasonable.

22. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article [21](#) of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion, it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new

policy violates Article [21](#) When it restricts reimbursement on account of its financial constraints.

23. When we speak about a right, it correlates to a duty upon another, individual, employer, Government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article [21](#) casts obligation on the State. This obligation is further reinforced under Article [47](#), it is for the State to secure health to its citizen as its primary duty. No doubt Government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its up-keep; maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service oriented training, not only at the entry point but also during the whole tenure of their service. 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.

24. Coming back to test the claim of respondents, the State can neither urge nor say that it has no obligation to provide medical facility. If that were so it would be ex facie violative of Article [21](#). Under the new policy, medical facility continues to be given and now an employee is given free choice to get treatment in any private hospital in India but the amount of payment towards reimbursement is regulated. Without fixing any specific rate, the new policy refers to the obligation of paying at the rate fixed by the Director. The words are;

"...to the level of expenditure as per the rate fixed by the Director, Health and Family Welfare, Punjab for a similar

treatment package or actual expenditure which ever is less."

25. The new policy does not leave this fixation to the sweet will of the Director but it is to be done by a Committee of technical experts.

"The rate for a particular treatment would be included in the advice issued by the District/State Medical Board. A Committee of technical experts shall be constituted by the Director, Health and Family Welfare, Punjab to finalize the roles of various treatment packages."

26. 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.

27. In Vincent v. [Union of India](#): : [1987]2SCR468 :

" In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health....In a series of pronouncements, during the recent years, this court has culled out from the provisions of Part-IV of the Constitution, the several obligations of the State and called upon it to effectuate them in order that the resultant picture by the Constitution fathers may become a reality."

28. 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.

29. 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.'"

8. No doubt the Apex Court in the case of ***Ram Lubhaya (Supra)*** and in many other judgments clearly took a view that the right to life has to be given a vital meaning which include better standard of living and not merely animal existence. There cannot be any dispute with the said proposition that the right to health is an integral facet of the meaningful right to life and any denial of the same would be in stark violation of fundamental rights of the citizens as guaranteed to them under Article 21 of the Constitution of India.

9. Counsel for the petitioner placed reliance on a plethora of judgments in support of the proposition that it is a Constitutional obligation of the Government to bear the

medical expenses of the Government servants while they remain in service or after retirement from their service as per the policy of the Government. All these judgments on which reliance was placed by the counsel for the petitioner does not cut any ice. Counsel for the petitioner strongly placed reliance on the judgment of the Division Bench of this court in ***UOI Vs. SPA Retired Employees' Welfare Association (LPA 488, 490 & 499/2004)*** where the Appellate Court took a view that even the retired employees are entitled to good health, which certainly includes medical facilities. In this case the court was dealing with the writ petition filed by the association of the retired employees of the School of Planning and Architecture and the grievance before the court was that CGHS Medical facilities were available to them while they were in service but the same were not extended to them after their retirement from service. The Division Bench of this court found that these employees were being extended all medical facilities under the CGHS Scheme when they were in service thus there

was no ground not to extend the said medical facilities after their retirement from service as there is a Constitutional obligation of the State under Article 21 of the Constitution of India to provide medical facilities to the retired employees as well.

10. Admittedly, the petitioner is not a civil servant and is not holding a civil post being a bank employee. He is not entitled to the same protection as a civil servant is entitled to under Article 309 of the Constitution of India. It is also not the case of the petitioner that CGHS facilities are available to the bank employees during service and the same are being denied to them only after retirement. As already discussed above, the bank employees are bound by the bipartite settlements which take place from time to time governing the service conditions of the bank employees and in the said settlement there is no provision to extend medical facilities to the bank employees after their retirement. To invoke jurisdiction of this court under

Article 226 of the Constitution of India, a person must disclose as to what is his legal right of which the enforcement has been sought and on what ground the State has denied such legal rights or opportunity to him and in what manner the denial of benefit of such legal right would violate the fundamental rights of such person. There is no gain saying that the petitioner in the present case has not placed any material on record to show that on what basis he has claimed his right of grant of medical reimbursement after retirement. Is it under any bipartite settlement or is there any rule or regulation of the bank existing granting extension of medical facilities after retirement and therefore, in the absence of the same petitioner cannot complain that by denying medical reimbursement, his fundamental rights have been violated. As already stated above, it is not the case of the petitioner that during his service he was being given any medical reimbursement under any statutory rule which he has been denied after his retirement and whatever medical facilities for

reimbursement he was entitled to were given to him during his tenure of service in terms of the bipartite settlement and not under any other banking statute or CGHS or any other health scheme of the Centre or State.

11. The Apex Court in ***Ram Lubhaya's Case (Supra)*** has clearly taken a view that the courts would dissuade themselves from interfering into the realm which belongs to the Executive. The Apex Court also recognized that it is a right of the State to change its policy from time to time under changing circumstances and certainly for bringing any new policy, the State takes into consideration various factors; economic, financial, social and political and it cannot in any manner be doubted that the financial resources are needed for providing all these medical facilities to the retired employees. Undoubtedly, at the same time, it is a sacred obligation of any employer in a Welfare State to adequately take care of the medical facilities of its employees. It is a 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 to life is a right to lead healthy life and not a life of mere animal existence. Grant of medical facilities therefore is a fundamental human right to protect one's health and such facilities should not be denied by the government to a government servant after retirement. So far the banking industry is concerned, a duty is cast upon them as well to take care of the medical facilities of their employees even after their retirement. Hence, it will be for the bank employees and the management of the banks to sit together and decide as to how best such medical facilities can be extended to the retired employees. The respondent bank in the present case in the additional affidavit dated 15.12.2008 made reference to some medical insurance scheme introduced by the bank for the retired employees. It is therefore the said medical insurance scheme or any other scheme which needs to be introduced by the banking sector so as to take care of the health of its retired employees and

so far the facts of the present case are concerned, in the absence of any such scheme already in existence, no writ of mandamus can be issued to the respondent to grant medical reimbursement of Rs.3,14,487/- to the petitioner. Though the court cannot formulate policies but it can certainly give impetus to the drafting of such policies. It would be worthwhile to quote the judgment of the Apex Court in the case of ***Mohd. Abdul Kadir & Anr. Vs. Director General of Police, Assam (2009) 6 SCC 611***

here:

"We are conscious of the fact that the issue is a matter of policy having financial and other implications. But where an issue involving public interest has not engaged the attention of those concerned with policy, or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interest, courts will be failing in their duty if they do not draw attention of the concerned authorities to the issue involved in appropriate cases. While courts cannot be and should not be makers of policy, they can certainly be catalysts, when there is a need for a policy or a change in policy."

Hence, emphasis can be laid on the fact that let various trade unions of the bank and the management of the bank 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.

12. The petitioner in the present case has also raised the issue of discrimination creating a distinct class by extending the facility of medical reimbursement to CMDs while denying the same facilities to other retired employees. I find this argument devoid of any merit as no parity can be claimed by these bank employees of various ranks with that of the Executive Directors and CMDs etc. The case of the petitioner is not that although they are equal to those directors of the bank but they are still being discriminated as similar treatment is not meted out to them. The service conditions of the Executive Directors of the Bank, drafted by the Central Government are not at par with that of the petitioner and therefore the petitioner cannot claim being a victim of any discrimination by virtue of medical reimbursement being denied, as all of them are governed

by a separate set of service conditions. Here, it would be useful to refer to the following para of the judgment of the Apex Court in ***State of Karnataka & Anr. Vs. Sri R. Vivekananda Swamy AIR 2008 SC 2080*** where it was held that:-

"It, however, goes without saying that while exercising such a power, the authority must act judiciously keeping in mind the purport and object thereof. Considerations therefor, although may not partake a mathematical exactable but should always be fair and reasonable. Although it may not be possible for an employee to enforce a purported right on the premise that another person had obtained reimbursement for a similar kind of treatment, ordinarily fair procedure envisages a broad similarity. If any person has been shown any undue favour, we may add, by itself may not be a ground to favour another but when such a contention is raised, the State should be able to demonstrate a fair treatment. It is possible to draw a distinction on the basis of several factors, emergent situation being one of them. So viewed, we do not find that the State of Karnataka had acted arbitrarily."

13. Hence, in the light of the above discussion, I do not find that there is any merit in the present petition. The same is hereby dismissed.

April 19, 2010

KAILASH GAMBHIR,J