IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No. 6723 of 2020
Reserved on: 29.05.2025
Date of Decision: 18.06.2025.

Ishwar Dass

....Petitioner

Versus

State of H.P &Ors. **....Respondents**

Coram

Hon'ble Mr Justice Vivek Singh Thakur, Judge.
Hon'ble Mr Justice Ranjan Sharma, Judge.

Whether approved for reporting?[1] *Yes*

For the Petitioner : **Ms. Sangeeta Vasudeva, Advocate.**

For the Respondents-State : **Ms. Seema Sharma, Deputy Advocate General.**

Vivek Singh Thakur,Judge

Petitioner being aggrieved by the inaction on the part of the respondents for reimbursement of the medical bills amounting to Rs.2,93,295/- incurred on the treatment (Knee replacement) of wife of the petitioner at Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh, submitted in the office of respondent No.3 – Deputy Director, Elementary Education, Kangra, District Kangra, Himachal Pradesh on 22.10.2016, approached the erstwhile Himachal Pradesh State Administrative Tribunal, by filing an O.A. No. 1705 of 2019 on 26.04.2019.

2. On abolition of Himcahal Pradesh State Administrative Tribunal, petition was transmitted to this High Court and has been registered as present Petition i.e. CWPOA No.6723/2020.

3. Respondents have not opted to file reply despite granting opportunities, either before the Himacahl Pradesh State Administrative Tribunal or in this Court.

4. As per pleadings and documents placed on record alongwith petition, it transpires, which has not been disputed by the respondents, that petitioner's wife had undergone treatment in PGIMER, Chandigarh in Department of Orthopedics for replacement of both knees during the month of August and September, 2016 and she was operated on 29.08.2016. Petitioner had submitted duly verified and certified claim for reimbursement on 22.10.2016 to Block Elementary Education Officer, Raja Ka Talab, District Kangra, Himachal Pradesh (Respondent No.4), who in turn sent the medical bills of worth Rs.2,93,295/- to Deputy Director, Elementary Education Kangra (Respondent No.3) on 19.01.2017. The medical bills were sent back by the Deputy Director, Elementary Education, Kangra (Respondent No.3) to Block Elementary Education Officer, Raja Ka Talab, Kangra (Respondent No.4) on 14.02.20217 with certain objections. Whereafter on 11.05.2017, Block Elementary Education Officer, Kangra (Respondent No.4) had restricted the claim to Rs.2,08,495/- and submitted the bills to Deputy Director, Elementary Education, Kangra (Respondent No.3) on 11.05.2017.

5. Further, on 03.06.2017, medical bills were again referred back by Deputy Director, Elementary Education, Kangra (Respondent No.3) to Block Elementary Education Officer, Kangra (Respondent No.4) with certain objections, whereupon Block Elementary Education Officer, Kangra (Respondent No.4) resubmitted the bills on 11.07.2017 by restricting the medical claim to Rs.1,43,495/-.

6. The medical bills were again referred back by Deputy Director, Elementary Education, Kangra (Respondent No.3) to Block Elementary Education Officer, Kangra (Respondent No.4) on 02.08.2017 with the objection that medical claim was time barred.

7. Thereafter, on 22.09.2017, Block Elementary Education Officer, Kangra (Respondent No.4) again sent the bills to Deputy Director, Elementary Education, Kangra (Respondent No.3) after completing all codal formalities.

8. The medical bills were again referred back in November, 2017 from the office of Deputy Director, Elementary Education, Kangra (Respondent No.3) to Block Elementary Education Officer, Kangra (Respondent No.4). After completing further formalities again bills were resubmitted by Block Elementary Education Officer, Kangra (Respondent No.4) to Deputy Director, Elementary Education, Kangra (Respondent No.3) on 21.11.2017.

9. Nothing was heard for about two years about the fate of medical claim. Whereupon, petitioner was constrained to approach the Tribunal by filing OA No.1705/2019, i.e. the present petition.

10. On 15.05.2019, four weeks' time was granted by Erstwhile Tribunal for filing reply.

11. On 30.10.2023 , four weeks time, as prayed by the respondents, was granted to file reply and, thereafter, the matter was listed in the Court on 18.04.2024. On that day, learned Deputy Advocate General had placed on record instructions dated 30.12.2023, received from the Director alongwith inter-Department communication and detail of disbursement of medical claim, stating therein that as per information received from Block Elementary Education Officer, Kangra (Respondent No.4) payment of medical reimbursement payable to the petitioner amounting Rs.2,08,495/-, had been made to the petitioner on 27.08.2019 through the Sub Treasury Office, Nurpur, District Kangra vide Bill No.100064 dated 18.06.2019.

12. For the aforesaid information placed on record, with observation of the Court that, *prima-facie*, it was indicated that grievance of the petitioner stood redressed, two weeks time was granted to learned counsel for the petitioner to obtain instructions.

13. On 02.05.2024, matter was adjourned for 16.05.2024, and thereafter for 23.05.2024 and 28.05.2024.

14. On 28.05.2024, one week's time was granted to the petitioner to file affidavit with respect to surviving grievance if any.

15. In sequel to order dated 23.05.2024, petitioner has filed affidavit dated 09.06.2024, stating therein that against the claim of medical reimbursement

of Rs.2,93,295/-, only Rs.2,08,495/- has been disbursed and Rs.84,800/- is yet to be paid.

16. It was contended on behalf of the petitioner that wife of the petitioner had undergone treatment from PGIMER, Chandigarh, which is a Government Institution and the medical claim of Rs.2,93,295/-, has been duly verified and countersigned by the concerned Doctors/Officers and thus respondent had no authority or reason to deduct Rs.84,800/- from the claim.

17. Instructions received from Director of Elementary Education, Shimla (Respondent No.2) dated 25th June, 2024 as well as instructions received from Block Elementary Education Officer dated 20.09.2024 have been placed on record by the respondents, stating therein that remaining balance amount of Rs.84,800/- is not admissible due to restriction of the claim as per Government approved rates, as contained in Office Memorandum No. GI, MH&FW, OM No. S-11018/1/95-CGHS(P), dated the 7th March, 1995, by placing on record photocopy of this O.M. as published in Muthuswamy & Brinda Medical Attendance Rules Hand Book alongwith the instructions, which reads as under:-

> "**(19) Ceilings for reimbursement of the case of Knee and Hip implants-**
>
> The issue of fixation of ceilings for reimbursement of the cost of Knee and Hip implants to beneficiaries covered under CGHS and CS(MA) Rules and the procedure for their reimbursement have been under consideration of the Government. Considering the procedural delay involved in getting reimbursement of their costs, it has been decided to fix the maximum ceilings for reimbursement of the implants to the beneficiaries covered under CGHS and CS(MA) Rules as under-
>
> | Maximum Ceiling | | |
> |---|---|---|
> | I. Knee implant | …. | Rs.60,000 plus Rs.5,000 as the cost of Bone cement. |
> | II. Hip implant | ….. | Rs.35,000 plus Rs.5,000 as the cost of Bone cement. |
>
> 2. The reimbursement of the cost of the implants is subject to fulfilmnet of the following conditions:-
>
> (i) The beneficiary should have been taken treatment in a Government/ private organized hospital with prior permission of competent authority.

> (ii) The beneficiary should have purchased the implant on the recommendations of the Orthopaedic Specialist of the recognized hospital and on the basis of the lowest of three quotations.
>
> (iii) The treating Orthopedic Specialist of the recognized hospital will give a certificate in writing to the effect that the implant has been implanted successfully and is functioning satisfactorily.
>
> 3. The above ceiling will be effective from 01-04-1995 and will remain in operation for a period of five years.
>
> 4. Reimbursement of the cost of the implants in respect of working CGHS beneficiaries and the beneficiaries covered under CS (MA) Rules will be done by the respective Ministries /Department from their service Heads. As regards retired Central Government employees, Ex-Members of Parliament, retired Judges and Freedom Fighters covered under CGHS, the reimbursement in this regard will be made by the Additional Director, CGHS of the city concerned from CGHS Head.
>
> 5. Medical advance in this regard may be granted direct to the supplying agent up to 80% of the lowest of the three quotations or 80% of the above maximum ceiling, whichever is less.
>
> 6. This issues with the concurrence of Finance Division *vide* Dy.No1375/JS(FA), dated 23-3-1995.
>
> [G.I., M.H, & F.W., O.M. No. S-11018/1/95-CGHS(P), dated the 7th March, 1995.]

18. Learned counsel for the petitioner to substantiate the reimbursement of entire amount of claim has placed reliance upon the judgment of this High Court passed in ***Jagat Singh Negi Vs. Secretary HP Vidhan Sabha, Shimla & Anr,*** reported in ***Latest HLJ 2012(HP) 755; State of Punjab Vs. Mohinder Singh Chawla,*** reported in ***AIR 1997 Supreme Court 1225; Shiva Kant Jha Vs. Union of India,*** reported in ***(2018) 16 Supreme Court Cases 187; Secretary of the Government of Haryana & Ors Vs. Vidya Sagar,*** reported in ***(2009) 14 Supreme Court Cases 652;*** and ***Waryam Singh Vs. State of Punjab,*** reported in ***(1996) 113 PLR 339,*** decided on 12.04.1996.

19. Learned Deputy Advocate General has placed reliance upon the judgment passed by the Supreme Court, ***State of Punjab & Ors. Vs. Ram Lubhaya Bagga & Ors.,*** reported in ***(1998) 4 Supreme Court Cases 117;*** and ***State of Rajasthan Vs. Mahesh Kumar Sharma,*** reported in ***(2011) 4 Supreme Court Cases 257.***

20. In **Jagat Singh Negi's case (supra),** issue involved was altogether different than the present case, as in that case reimbursement of certain claim was withheld for difference of rate of charges between the Government Hospital and the Private Hospital wherefrom treatment was undertaken and the reimbursement was restricted to rates of AIIMS. In this case restrictions of medical reimbursement to the rate of Government Hospital, i.e. AIIMS was set aside by the Court by taking into consideration of judgment dated 05.05.2010, passed in CWPT No.16357/2008, titled ***Sudha Kaisha Vs. State of H.P*** and claim of the petitioner was allowed in toto. In the present case, it is not in dispute that treatment has been taken from the Government Hospital i.e. PGIMER, Chandigarh.

21. In ***Mohinder Singh Chawla's case (supra),*** relied upon by the petitioner, it was held that for approval granted for specified treatment in hospital outside the State, reimbursement of room rent charges cannot be rejected. This judgment is also not relevant for adjudication of issue involved in the present petition.

22. In ***Shiva Kant Jha's case (supra),*** restriction imposed on medical reimbursement was set aside with following observations.

> "19. In the present view of the matter, we are of the considered opinion that CGHS is responsible for taking care of healthcare needs and well-being of the Central Government employees and pensioners. In the facts and circumstances of the case, we are of the opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent State to pay the balance amount of Rs.4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined in this case only."

23. In view of the observation of the Supreme Court that decision was confined to the ***Shiva Kant Jha's case (supra)*** only, this judgment is not of much help to the petitioner.

24. Issue involved in ***Waryam Singh's case (supra)*** was with respect to delay in payment of claims of employees for reimbursement of medical reimbursement. No doubt in present matter, there is delay in releasing even the amount of medical expenses which was admitted by the respondents payable to the petitioner, however, the amount admissible, according to the respondents-State and as also endorsed by petitioner has been released during the pendency of the petition without any contest.

25. In ***Vidya Sagar's case (supra),*** on the basis of instructions circulated by the State of Haryana on 28.05.2003, the restriction of reimbursement to 75% was rejected with the observation that last order dated 28.05.2003 shall prevail upon earlier orders dated 11.08.1992 and 30.11.1993.

26. In ***Ram Lubhaya Bagga's case (supra),*** it was held that medical bill of employee can be restricted by framing appropriate rules and / or issuing requisite circular, and State can change its policy decision from time to time.

27. In ***Mahesh Kumar Sharma's case (supra),*** the restriction of medical reimbursement was upheld by the Supreme Court on the basis of peculiar rules of Rajasthan, namely Rajasthan Civil Services (Medical Attendance Rules, 1970). In present case, neither any Rule framed by the State, if any, nor any circular other than the circular/office memorandum referred (supra) issued by the

Ministry of Family Welfare & Union of India, has been placed on record or brought to our notice.

28. Contradictory to ***Ram Lubhaya Bagga's case (supra),*** in present matter except the aforesaid office memorandum of 1995 referred (supra), no other policy decision of the State restricting the medical claim of Knee replacement, has been referred, relied upon, or placed on record. No policy decision of the State has been brought to our notice or placed on record despite having opportunity to do so except the office memorandum of 1995 of Government of India referred supra, imposing restriction of medical claim with respect to Knee replacement as has been done in the present case. Once a medical claim is admissible in terms of beneficial policy of the State, the same should not be denied on flimsy grounds or irrelevant factors.

29. Though neither referred by the State nor on behalf of the petitioner, however as published in Latest Medical Attendance Rules in Swamy's Compilation, Office Memorandum [G.I., M.H, & F.W., O.M. No. S-11018/1/95-CGHS(P), dated the 7th March, 1995] has been issued by the Government of India in 2017, with reference to the ceiling rates for Knees replacement/implant and Hip implant under CGHS and CS (MA) Rules.

30. It is noteworthy, which is not in dispute, that wife of the petitioner has undergone for treatment of knee replacement. O.M. No. S-11018/1/95-CGHS(P), dated the 7th March, 1995, provides ceiling for reimbursement of cost of knee implants. Whereas in the recent office memorandum of 2017, ceiling for

medical reimbursement for Primary Knee Replacement System & Revised Knee Implant System has been notified separately.

31. In this Office Memorandum of 2017 revised ceiling for reimbursement of cost of Primary Knee Replacement System and Revised Knee Implant as well as Hip Implant has been notified. Noticeably, this Office Memorandum has not been given retrospective effect and is applicable prospectively w.e.f. 26.09.2017.

32. Plea of the counsel for petitioner has not been disputed that all Office Memorandums/Circulars issued by the Central Government are not *ipso-facto,* applicable to the State of Himachal Pradesh, and the same are applicable only on adoption thereof by the State of Himachal Pradesh by issuing appropriate order Circular/Office Memorandum. Nothing has been placed on record on behalf of the respondents indicating that the aforesaid Office Memorandums of 1995 and /or 2017 were ever adopted by the State of Himachal Pradesh. Even if these office memorandums are considered to be applicable to the State of Himachal Pradesh, then also, for discussion hereinafter, these office memorandums have no bearing on claim for reimbursement of medical bills by the petitioner.

33. The recent office memorandum of 2017 shall not be applicable to the petitioner as his wife had undergone knees replacement on 29.08.2016 and medical bills were also submitted on 22.10.2016 i.e. prior to issuance of office memorandum on 2017.

34. In Clause 3 of Office Memorandum of 1995, it has been categorically notified that the ceiling contained in this Office Memorandum of 1995 will be effective from 01.04.1995 and will remain in operation for a period of 05 years. Therefore, this ceiling was applicable and valid up till 30.03.2000. There is nothing on record placed by the respondents-State or brought in the notice of the Court indicating that the ceiling was continued after 30.03.2000 also. Even, Office Memorandum of 2017, noticed by the Court during hearing, for the discussion (supra), is not of any help to the State as ceiling notified therein shall be applicable w.e.f. 26.09.2017.

35. It is apparent from the aforesaid facts that currency of ceiling provided in OM of 1995 was for 05 years and at the time of treatment of the wife of petitioner for knee replacement and submission of medical reimbursement bills, there was no ceiling in force for reimbursement of knee replacement. Therefore, petitioner is entitled for entire amount of medical reimbursement of the cost of knee replacement of his wife.

36. Considering the pleadings, documents and instructions placed on record and judgments referred by the parties, we are of the considered opinion that the entire cost of treatment for knees replacement of wife of the petitioner has to be reimbursed and, therefore, respondents are directed to reimburse the balance amount of Rs.84,800/- to the petitioner on or before 30.07.2025, failing which petitioner shall also be entitled for interest thereon @ 6% per annum from the date of submitting the medical bill i.e. 22.10.2016 till payment.

37. The present petition is allowed in aforesaid terms, so also the pending application(s), if any.

(Vivek Singh Thakur)
(Judge)

(Ranjan Sharma)
Judge

18th June, 2024
(Shamsh Tabrez)