

Before : A. L. Bahri & V. K. Bali, JJ.

RADHEY SHAM,—Petitioner.
versus
 STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 13249 of 1991.

31st January, 1992.

Constitution of India, 1950—Art. 226—Medical reimbursement—Petitioner's claim of medical reimbursement related to period of his *ad hoc* service before regularization—Government instructions allowing reimbursement of medical bills incurred during the *ad hoc* service to those who were regularised—After regularization, period of *ad hoc* service to be taken into consideration for service benefits—Medical reimbursement included.

Held, that person employed through Employment Exchange on *ad hoc* basis were not to be granted this concession of medical reimbursement even if they had continued beyond six months. However, exception was made that if they were made regular they would be entitled. Present is a case where services of the petitioner were regularised in December 19, 1990 which fact is not disputed and in view of the instructions aforesaid, he would be entitled to reimbursement of the medical expenses incurred during the period of *ad hoc* service also. For reimbursement of medical bills after regularisation, case would be covered under the Rules. After regularisation the period of *ad hoc* service is to be taken into consideration for service benefits like seniority, pension, gratuity etc. and also for medical re-imbursement.

(Para 4)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :—

- (a) a writ in the nature of Mandamus or any other writ, order or direction directing the respondents to allow the medical reimbursement claim of the petitioners, be issued.
- (b) Any other relief to which the petitioner is found entitled to in the facts and circumstances of the case may kindly be allowed to the petitioner.
- (c) Filing of certified copies of annexures and issuance of prior notice to the respondents may be dispensed with; and
- (d) the writ petition may kindly be allowed with costs.

Anjana Manocha, Advocate, for the Petitioner.

Jaivir Yadav, D.A.G. Haryana, for the Respondent.

JUDGMENT

Radhey Sham, a driver, working in that office of Financial Commissioner, Haryana has approached this court under Articles 226 and 227 of the Constitution for a direction to the respondents to allow medical reimbursement of his claim which related to the period of his *ad hoc* service before he was regularised.

(2) The petitioner was appointed on *Ad hoc* basis in 1986. With effect from December 31, 1990, he was made regular. Copy of the letter in this respect is Annexure P/1. Son of the petitioner was operated upon in the P.G.I. in April, 1990. He was discharged on April 28, 1990 and thereafter he got treatment in O.P.D. of P.G.I. till November 18, 1990. The entire history is contained in Annexure P/2. The petitioner claimed reimbursement of this bill to the tune of Rs. 1337.69 as per details given in Annexure P/3. The claim was rejected on May 2, 1991,—*vide* order Annexure P/4 which is under challenge.

(3) The stand of the respondents is that as per the instructions contained in Annexure P/1, the petitioner was not entitled to reimbursement of expenditure incurred during the period of *ad hoc* service.

(4) After hearing counsel for the parties, we are of the view that the impugned orders have been passed in clear violation of the instructions Annexure R/1. *Vide* letter dated September 20, 1968 on the subject, instructions were issued as under :

“This question has been considered by the State Government and decided that the concession regarding reimbursement of medical expenses cannot be extended to the officials employed through Employment exchanges on *Ad hoc* basis, as they are not covered by the rules governing free medical treatment to State Government employees.”

Subsequently,—*vide* letter dated 24th January, 1969, the aforesaid instructions were clarified. This letter is also contained in Annexure R/1 and the relevant portion is as under :—

“In continuation of Haryana Government letter No. 1642-USFP-Cell (3HBI)-68/22290 dated the 20th September, 1968, on the subject noted I am directed to say that various

departments have approached for seeking clarification on the following two points :—

- (i) Date with effect from the orders under reference have to be operative viz. whether from the date of issue of the letter under reference.
 - (ii) Whether the officials who are continuing after the expiry of six months against the regular posts are eligible for the concession to draw the medical reimbursement charges or not.
2. The State Government have considered the said questions and decided that as regards (i) above, I am to say that since the employees *inter alia* appointed on *ad hoc* basis are not covered under the Medical Attendance Rules for the purpose of claiming the reimbursement of medical charges right from the beginning, it was not in order to allow reimbursement of such employees. Accordingly medical charges reimbursement in such cases should be recovered.
 3. So far as (ii) above is concerned, I am to point out that the officials employed through Employment Exchanges are not covered under Medical Attendance Rules, even if they continue to work after six months, unless they are regularised by the Commissioner as such they are not eligible for availing of the concessions regarding reimbursement of medical charges etc."

A perusal of the instructions makes it clear that it was policy of the Government not to allow concession of Medical reimbursement to the *ad hoc* employees. Obviously, if a person was employed for short term, say six months, and he leaves the job, he was not to be granted such a concession and this is apparent from the instructions referred to above. In the case of a person who was made to work against regular post, a specific point was raised as (ii) in letter of January 24, 1969, which was answered in para 3 of the aforesaid letter reproduced above. It was clarified that persons employed through Employment Exchange on *ad hoc* basis were not to be granted this concession of medical reimbursement even if they had continued beyond six months. However, exception was made that if they were made regular they would be entitled. Present is a case

where services of the petitioner were regularised on December 19, 1990, which fact is not disputed and in view of the instructions aforesaid, he would be entitled to reimbursement of the medical expenses incurred during the period of *ad hoc* service also. For reimbursement of medical bills after regularisation, case would be covered under the Rules. After regularisation the period of *ad hoc* service is to be taken into consideration for service benefits like seniority, pension, gratuity etc. and also for medical reimbursement.

(5) For the reasons stated above, order Annexure P/4 is quashed with the direction to the respondents to reimburse the medical bill submitted by the petitioner forthwith. The petitioner will get costs which are quantified at Rs. 1000.

J.S.T.

(FULL BENCH)

Before : M. R. Agnihotri, A. S. Nehra & N. K. Sodhi, JJ.

MEENAKSHI SHARMA,—*Petitioner.*

versus

THE BOARD OF SCHOOL EDUCATION, HARYANA, BHIWANI
AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1802 of 1992.

21st July, 1992.

Haryana Board of School Education Act, 1969—S. 19—Haryana Board of School Education Regulations—Regl. 26—Scope of—Grant of grace marks in compartment examination—Allocation of grace marks—Validity of the Regulation—Regulation whether arbitrary and unjust.

Held, that the regulation provides that candidate appearing in compartment examination will be eligible for 1 per cent of the maximum marks allotted to the subject as grace marks.

(Para 7)

(C.W.P. No. 13981 of 1991 decided by Division Bench of Punjab and Haryana High Court, on 14th December, 1992).

(UPHELD)

Held further, that there is no constitutional or legal infirmity or any arbitrariness in the said regulation. The intention of the legislature and the object of the legislation were only to promote the interest of education by requiring the students to achieve success in