

because after 1986 the petitioner continued to be employed for one year. Therefore, the allegation of embezzlement could not be related to the termination of service of the workman brought about on 24th June, 1987. In view of all this, it must be held that the employer has not exercised his right to terminate the service of the petitioner in good faith. Rather the power vesting in the employer to dictate the terms of employment has been misused by it. Merely because the petitioner accepted the oppressive, unreasonable and arbitrary conditions of service, he cannot be denied relief despite the fact that the respondent society committed a patent violation of Section 25 F. In our considered view the award passed by the Labour Court suffers from an error of law and deserves to be set aside.

(39) In the result, the writ petition is allowed. Award (Annexure P-1) is declared illegal and is quashed. The case is remanded back to the Labour Court for passing a fresh award in the light of the observations made in this Judgment. Parties are left to bear their own costs.

S.C.K.

Before Hon'ble R. P. Sethi and S. S. Sudhalkar, JJ.

K. L. KOHLI,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 18562 of 1994.

10th May, 1995.

Constitution of India, 1950—Art. 226—Medical reimbursement—Immediate open heart surgery advised in Private recognised (Escorts) Hospital—Treatment in Private hospital—Claim for reimbursement cannot be rejected for want of prior permission of the Medical Board.

Held. that the petitioner was entitled to be reimbursed for the treatment he received at the Escorts Heart Institute and Research Centre, New Delhi, even if the prior permission of the Medical Board constituted for this purpose was not obtained.

(Para 8)

Further held, that the Treatment which a Government servant is required to take in these types of cases differs from the ordinary treatment which is required to be taken when there is no emergency. The time will wait for no one and if the petitioner had delayed the treatment which he needed for the completion of formalities of the prior permission of the Medical Board, there was possibility that he would not have survived for receiving such treatment. It would be harsh, cruel and inhuman to ask a person, facing death ahead, to wait for the procedural formalities of the Government. In view of these circumstances, we find that rejection of the claim of the petitioner for want of prior permission of the Medical Board was not justified.

(Paras 9 & 10)

S. K. Pruthi, Advocate, for the Petitioner.

S. S. Shergill, DAG, Punjab, for the Respondents.

JUDGMENT

S. S. Sudhalkar, J.

(1) Two questions arise for our consideration in this writ petition are (i) whether the petitioner can be reimbursed for the medical treatment taken in a private hospital and (ii) whether the petitioner can be refused *expost facto* permission by the Medical Board when he was not in a position to wait because of the need of immediate open heart surgery.

(2) The petitioner is a retired Government servant and he had suffered heart attack in the year 1985 and again in the year 1991 he developed the same problem. He was advised open heart surgery. He approached the authority authorised medical attendant at the Civil Hospital, Jalandhar on 14th December, 1991 and was advised to get further treatment of heart at P.G.I. Chandigarh or C.M.C. Ludhiana because the Treat Mill Test had revealed TMT positive for Ischemia. The petitioner, therefore,—*vide* letter written to the Secretary to Government, Punjab, Industries Department annexure P/1 requested for permission for medical treatment at private hospitals approved by the Punjab Government (Health Department). Thereafter the condition of the petitioner deteriorated and, therefore, on 14th January, 1992 he approached the Civil Surgeon who issued sanction for further investigation at P.G.I. Chandigarh instead of forwarding the case to respondent No. 4 for placing it before the Medical Board.

On 23rd January, 1992 the petitioner approached respondent No. 4 directly and requested him to place his case before the Medical Board for permission for medical treatment at Escorts Heart Institute and Research Centre, New Delhi.

(3) The condition of the petitioner further deteriorated on 29th January, 1992 and he got himself examined from Purthi Hospital, Jalandhar and he was advised to proceed immediately for Delhi for open heart surgery in order to save his life. Having left with no option, the petitioner proceeded for Delhi in a serious condition and was admitted in emergency on 2nd February, 1992. However before proceeding to Delhi, the petitioner informed respondent No. 4,—*vide* letter dated 1st February, 1992 that because of deterioration of his health he was proceeding to Escorts Heart Institute and Research Centre, New Delhi in anticipation of approval of respondent No. 4. On 2nd February, 1992 the petitioner was diagnosed as a case of severe triple vessel disease and was advised immediate surgery, and he was operated upon on 5th February, 1992 and discharged on 17th February, 1992. He was further advised to stay at Delhi for 10 days for further check up. Thereafter also he was advised to report for cardiological check up after two months. The petitioner was admitted in the said hospital on 21st June, 1992 again and remained under observation upto 25th June, 1992.

(4) The petitioner thereafter submitted his claim for reimbursement of expenses incurred by him and requested respondent No. 4 for *ex-post facto* sanction for the medical expenses incurred by him at New Delhi. Respondent No. 4 wrote a letter dated 3rd February, 1993 informing the petitioner that his case was not received by him and if it was received by them before 11th February, 1993, it will be placed before the Medical Board on the same date.

(5) Respondent No. 2 forwarded the claim of the petitioner to respondent No. 4.—*vide* its letter dated 3rd June, 1993, strongly recommending that the case of the petitioner be placed before the Medical Board for *ex-post facto* approval. However, respondent No. 2 rejected the claim of the petitioner without giving him an opportunity of being heard. Respondent No. 2 thereafter informed the petitioner by sending a copy of letter dated 28th July, 1993 stating therein that the petitioner was not officially referred to the said institute and he could have undergone the same treatment at a much cheaper cost in P.G.I., Chandigarh or All India Institute of Medical Sciences, New Delhi. Respondent No. 1,—*vide* its letter, Annexure P-10 addressed to respondent No. 4 again recommended

the case of the petitioner stating therein that the petitioner had taken the treatment at Escorts Heart Institute and Research Centre, New Delhi in emergent circumstances and had not obtained the prior approval of the Medical Board, and in the said circumstances requested that the case may be put up again before the Medical Board for *ex-post facto* approval. The action of the respondents in rejecting the claim of the petitioner is contended to be illegal, unconstitutional, unfair and is liable to be quashed. Hence, this petition, for the reimbursement of the medical treatment expenses incurred by the petitioner with interest at the rate of 18 per cent per annum.

(6) Respondents have contested the claim of the petitioner in the written statement filed by them. Their contention is that Pruthi Hospital, Jalandhar is a private hospital and the same is not recognised by the Government for the treatment of such diseases. They contended that the prior permission of the Medical Board was not obtained for taking treatment outside the State. It is also contended by them that though the case of the petitioner was referred by Civil Surgeon, Jalandhar to P.G.I. for further investigation, he got his treatment from the Escorts Heart Institute and Research Centre, New Delhi at his own will which was contrary to the State Government's instructions. Therefore, the petitioner violated the Government instructions,—*vide* which he was required to get prior approval of the Medical Board for treatment outside the State in a private hospital. They also contend that though the case for *ex-post facto* approval for the medical treatment undergone by the petitioner in Escorts Heart Institute and Research Centre, New Delhi was recommended by respondent No. 1, it was put up before the Medical Board, who rejected the case of the petitioner with the remarks that the similar treatment was available at a much cheaper cost at P.G.I., Chandigarh and A.I.I.M.S., New Delhi. They further contend that treatment from the Medical Institute/Hospital or institutions outside the State can only be reimbursed if it was with the prior permission of the Medical Board constituted for the purpose, and hence, the petitioner is not entitled for medical reimbursement.

(7) We have heard learned counsel for the parties.

(8) Regarding the treatment which the petitioner taken at private hospital i.e. Escorts Heart Institute and Research Centre, New Delhi, it has been alleged by the petitioner that according to the policy of the Government, the said Institute at New Delhi is duly recognised for treatment of heart diseases for the employees,

pensioners, and their dependents in the State of Punjab. In the written statement, this contention is admitted by the respondents but it is contended that the treatment from the hospital/institution outside the State can only be got with the prior permission of the Medical Board constituted for the purpose. The learned counsel for the petitioner drew our attention to an earlier decision of a Division Bench in case of *Sadhu R. Pall v. State of Punjab and others*, C.W.P. No. 13493 of 1992, in which it has been held by the Division Bench that "we cannot restrain ourselves from observing that respondents plea is not only unsustainable but is totally bereft of any plausible reason. The plea does not merit consideration in view of the admitted fact to the effect that Escorts Heart Institute and Research Centre, New Delhi was duly recognised for treatment of heart problems." Therefore, it is clear that the petitioner was entitled to be reimbursed for the treatment he received at the Escorts Heart Institute and Research Centre, New Delhi even if the prior permission of the Medical Board constituted for this purpose was not obtained. Therefore, the first point in this case has to be answered in affirmative.

(9) This takes us to the consideration of the second point i.e. whether the petitioner could be granted *ex-post facto* permission or not. The treatment which a Government servant is required to take in these types of cases differs from the ordinary treatment which is required to be taken when there is no emergency. The time will wait for no one and if the petitioner had delayed the treatment which he needed for the completion of formalities of the prior permission of the Medical Board, there was possibility that he would not have survived for receiving such treatment. In the case of *Dr. Prem Nath Garg v. State of Punjab and others*, C.W.P. 16145 of 1992, the petitioner was required to go abroad for double heart surgery. The Government initially did not grant him permission to go abroad for the same and it was only when he had given in writing that he would not claim medical reimbursement, that the Government revised its decision and granted the necessary permission. The contention raised by the Government in that case was that this amounted to estoppel on the part of the petitioner and even if reimbursement might be permissible under the rules and regulations, the petitioner was not entitled to the same. The Division Bench of this court observed in that case that "if the medical reimbursement rules, which are statutory in nature, and having been made under Article 309 of the Constitution, permit the petitioner to claim medical reimbursement, the mere fact that the petitioner had given in writing for the purpose of seeking permission to go abroad, that he would not claim

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reimbursement, would not amount to estoppel on his part, as there is no estoppel against a statute. Otherwise also, in a welfare state, governed by the rule of law, to deny a just and genuine claim of a Government servant does not bring any credit to the State." Therefore, in that case the petitioner had gone abroad after giving in writing as aforesaid but the Division Bench of this court has held that the said petitioner was entitled to get the expenses reimbursed. The case of the present petition stands on a better footing because he has not given in writing as the petitioner in the case of Dr. Prem Nath Garg (Gupta) had.

(10) Here in the present case, the Escorts Heart Institute and Research Centre, New Delhi was recognised and except that the prior approval of the Medical Board was not obtained, there remains no other defence to the Government. It would be harsh, cruel and inhuman to ask a person, facing death ahead, to wait for the procedural formalities of the Government. In view of these circumstances, we find that rejection of the claim of the petitioner for want of prior permission of the Medical Board was not justified.

(11) As a result the petition succeeds and we direct the respondents to reimburse the medical expenses incurred by the petitioner for open heart surgery. The petitioner is also held entitled for the interest at the rate of 18 per cent per annum over the reimbursed amount from the date he underwent the treatment till the amount is paid.

R.N.R.

Before Hon'ble R. P. Sethi & S. S. Sudhalkar, JJ.

SITA RAM.—Petitioner.

versus

**THE PRESIDING OFFICER, LABOUR COURT, PATIALA AND
OTHERS.—Respondents.**

C.W.P. No. 17337 of 1994.

18th May, 1995.

Constitution of India 1950—Arts. 226/227—Industrial Disputes Act 1947—S. 2(oo) 25F—Absence from Duty—At most can be held to be misconduct—Cannot be equated with abandonment of service—Abandoned meaning thereof.