R.N.R.

Before Ranjit Singh, J.

GOBIND THUKRAL,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondent*

CWP No. 20922 of 2008

25th April, 2011

Constitution of India, 1950—Art. 226—Haryana Public Service Commission (Conditions of service) Regulations, 1972—Regs. 2 (d) & 13—Punjab Services (Medical Attendance) Rules, 1940—Petitioner retired as member of HPSC—Claim for medical reimbursement—Rejection of—Whether non-official members of

Commission fall in ambit of definition of Government employee—Held, yes—No provision in 1972 Regulations to make a distinction in regard to definition of members drawn from different sources and their right of reimbursement of medical allowances—State allowing reimbursement of medical allowance to two similarly situated members—Petitioner also held entitled to same concession—Petition allowed, respondents directed to reimburse medical expenditure incurred by petitioner.

Held, that there is no provision made in the Regulations 1972 to make a distinction in regard to the definition of members drawn from different sources and the right of reimbursement of medical allowances. If the intention of Legislation was to deny this benefit to those members of the public service commission, who are appointed from public, then the same was clearly required to be provided for in the Regulations.

(Para 20)

Further held, that the provision of one section of a statute cannot be used to defeat the other provision unless the court finds it impossible to effect reconciliation between them. If the essence of these provisions is that medical attendance is allowed to Government pensioner, then there is much weight in the plea that petitioner is getting pension from the State. The petitioner may have served with the connection of affairs of the State, but no such distinction as such is noticeable in the provision of Regulation 13 of 1972 Regulations. The plea that this regulation would apply to serving members and not to those who are pensioners may sound attractive, but then how would the State explain the reimbursement of medical attendance to two members as given in Annexure P-11 and P-12. Admittedly, the petitioner is in receipt of pension. To me, the source from which the petitioner is drawing pension would sound immaterial. His pension is debated and voted by the State Assembly. These are beneficial provisions, which have allowed reimbursement of medical allowance of retired employees. Retired employees are recipient of pension. So is the petitioner. How would the source of pension make any difference for grant of medical reimbursement ? At the most, the amount of reimbursement may be debatable to that head or source of pension from which the petitioner is being paid this pension.

Once cannot ignore that two of the similarly situated members have earlier been allowed medical reimbursement and now the same concession has been denied to the petitioner, which does not appear to be fair.

(Para 20)

J. S. Toor, Advocate, *for the petitioner.*

Sunil Nehra, Sr. DAG, Haryana, *for the State.*

H.N. Mehtani, Advocate, *for respondent No. 3.*

RANJIT SINGH, J.

(1) A retired member of Haryana Public Service Commission (for short "HPSC") has approached this court to seek reimbursement of his medical claim to which he claims to be entitled to under Haryana Public Service Commission (Conditions of Service) Regulations, 1972 (hereinafter called as the "1972 Regulations") The claim of the petitioner for medical reimbursement has been declined on the ground that non-official members of the commission are not entitled to medical attendance/allowance.

(2) The petitioner concededly was appointed member of the HPSC from where he retired on 3rd July, 1997. The petitioner was held entitled to pension which he is drawing. He, thus, claims to be entitled to all the benefits as Ex-member of the H.P.S.C.. The petitioner had undergone an operation of his right eye at PGI, Chandigarh. For his admission and treatment, petitioner has incurred expenses of Rs. 13,180, the details of which are given in Annexure P-2 annexed with the petition. On 11th July, 2007, petitioner submitted his claim for reimbursement of this amount and in response he was apprised that facilities of medical reimbursement are available to the Government employees. This is as per the advise of Chief Secretary, Government of Haryana through his letter dated 12th March, 2003 to the effect that non- official members of the commission do not fall in the ambit of definition of Government Employee. Copy of this letter is annexed with the petition as Annexure P-3.

(3) Petitioner thereafter wrote a letter to Chief Secretary on 12th July, 2007 pointing out that members of the commission need not be Government employees and the Medical Attendance Rules would be applicable to members of the commission irrespective of the fact whether

they have previously been Government employees or not. As per the petitioner, no classification had been made in the rules or in the constitution in regard to the condition of service of the members. The petitioner maintained that neither Articles 311 to 323 of the Constitution nor the rules notified make any distinction between the members drawn from the public or from the Government service. Mention is also made to the definition of members as contained in the Rules notified on 18th August, 1972, copy of which has been appended with the petition as Annexure P-4. The Chief Secretary, however, responded by reiterating the stand earlier taken by the commission that non-official members are not entitled to medical attendance. In his communication, Chief Secretary had made a distinction that non-official members of the commission are not Government servants and rather they serve in connection with the affairs of the State. Petitioner, would describe this distinction to be funny. Copy of this communication is on record as Annexure P-5.

(4) Before filing the petition, the petitioner filed an application under Right to Information Act to know if any other retired member of HPSC has ever been disbursed medical reimbursement under the rules. The specific query made in this regard by the petitioner was as under :—

> "The rules about medical attendance for the retired HPSC members. How many representations/bills for medical attendance were received from the retired member of HPSC ? Who were the former members who sought payment for their medical treatment from the Haryana government ? How many were paid and how many were refused payment ? What were the grounds for refusal or payment in each case ?"

(5) In response, the petitioner received a reply stating that there was no provision for grant of medical reimbursement to the retired members of the HPSC and, thus, it was not possible to supply the photocopy. The petitioner thereafter filed a statutory appeal as complete information had been denied to him and misleading statement was made. The appellate authority, however, passed an order on 17th September, 2008 noticing the contention of the SPIO that no record in this regard was available. The petitioner later was able to receive cogent information that reimbursement of medical claim of two Ex-HPSC members, who were public men, was

allowed. In this regard, reference is made to the cases of Shri Rati Ram Sharma and Shri Gopi Chand Bhalla to whom the medical reimbursement had been allowed on 31st March, 1995 under the signatures of Chief Secretary, Government of Haryana in the name of Governor. The petitioner thereafter served a legal notice and when no action was taken, he filed the present petition before this court.

(6) Written statement has been filed on behalf of respondent Nos. 1 and 2. After making reference to Article 316 of the Constitution, it is stated that nearly half of the members of every Public Service Commission shall be persons who have held office under the Government of India or the Government of State. Reference is then made to Regulation 13 of the Regulations, 1972, which makes a provision for grant of medical attendance to the Chairman and members and reads as under :—

> "13. For purposes of Medical attendance on them, Members of the Commission will be governed by the Punjab Services (Medical Attendance) Rules, 1940, as adopted by State of Haryana."

(7) As per the respondents, it is clear from the above provision that this regulation is only for working member of the commission and not for retired members. It is further state that the Punjab Services (Medical Attendance) Rules, 1940 (for short "1940 Rules") provide medical facilities to working Government employees and there are separate Government instructions for the pensioners. These instructions have been annexed with the reply as Annexures R-1 and R-2 and on this basis, it is stated that the case of the petitioner would not be covered under Regulation 13 as reproduced above.

(8) Mr. Toor appearing for the petitioner would first make reference to Regulations, 1972 to urge that these regulations would apply to members of the commission holding office at the commencement of these regulations. As per the counsel, these regulations apply to all the members, who are appointed thereafter and in this regard would make reference to the definition of a members as contained in regulation 2(d) where member is defined to "a member of the commission and includes the Chairman thereof". Rule 13 governs the grant of medical attendance and this is further governed by 1940 Rules. The 1940 Rules have been adopted by Haryana State and medical reimbursements are being made on the basis of these rules. The counsel

for the petitioner submits that there is no distinction made in the rules so far as definition of member is concerned and, thus, the distinction sought to be made to deny the claim of the petitioner is termed as artificial, arbitrary and illegal.

(9) Rule 13 of the 1940 Rules also apparently is not making any distinction so far as members drawn from difference sources are concerned and what all it provides is that the medical attendance to them will be governed by 1940 Rules. Necessarily, therefore, one would have to see the 1940 Rules to determine whether the petitioner would be entitled to medical reimbursement or not. These rules had not been placed on record initially. When this case came up for hearing, it was considered essential to ascertain if the petitioner was in receipt of any pension and whether he was being treated as a retired employee or one who had resigned. An additional affidavit was then filed disclosing that petitioner was getting pension as per the provisions contained in sub-regulation 9A(1) of the Regulation, 1972. It is also stated that these regulations were framed under Article 311 of the Constitution, whereas the Government servants are covered under the provisions of CSR Volumes I & II. It is accordingly pointed out that conditions of service of the Chairman and members of the HPSC are regulated under Article 318 of the Constitution and not under Article 309 of the Constitution as is the case of the Government employees and, thus, the members of the Public Service Commission are not covered under the definition of government employee.

(10) The petitioner thereafter filed a detailed response to this affidavit reiterating that there is no difference between the members of the commission appointed through different sources either from general public or as government employees and once a person was appointed as a member, he would be entitled to medical attendance as is permissible to Government servant under 1940 Rules. AS per the petitioner, the word "public servant' wherever used in 1940 Rules would have to be read as a member and, thus, the petitioner would reiterate his submission and entitlement. Along with this response, copy of the Medical Attendance Rules, 1940 was also placed on record.

(11) The writ petition was thereafter admitted and was posted for hearing. During the course of arguments, it transpired that medical

reimbursement was primarily permissible to those who were allowed pension. The Government counsel was accordingly required to have instructions whether Government could deny medical reimbursement to the petitioner, who was in receipt of pension or not. Subsequently, however, the counsel for the petitioner took time to place on record some additional documents to show that the petitioner was an employee of the State of Haryana and, thus, would be governed by Medical Attendance Rules as applicable to the State employees. Through Civil Misc. Application No. 6128 of 2010, the petitioner made reference to Article 322 to highlight that expenses of the Union or the State Public Service Commission including any salary, allowances and pensions payable to or in respect of the Members or staff of the Commission, were to be charged on the consolidated fund of India or the consolidated fund of the State. The petitioner, thus, highlighted that the pension payable to the petitioner was charged to the consolidated fund of the State and, thus, Haryana Public Service Commission had no such funds. It is also pointed out that the consolidated fund of the State budget is passed by the legislative assembly and an appropriation bill is also passed by the State assembly. Reference is made to the budget for the year 2010-2011 to highlight that funds had been allocated for the State Public Service Commission from the consolidated funds of the State of Haryana for the heads, like salaries, wages, dearness allowances, travel expenses, office expenses, rent, rates and taxes, publication, advertising and publicity, secret service expenditure, motor vehicles, P.O.L., proficiency & special service, **Medical reimbursement,** leave travel concession, *ex-gratia* and establishment expenses. From this, it is highlighted that pension of the members of the staff of Public Service Commission is not one of the heads for which the fund is allocated to Haryana Public Service Commission. From this, it is pointed out that disbursement of pension and other retrial benefits is within the jurisdiction of the State of Haryana and not the Haryana Public Service Commission. A reference is also made to some communication by the Chief Secretary to the Accountant General for fixing the pension for disbursement. Relevant portion of the budget 2010-2011 has also been annexed with the application. Plea accordingly is that the petitioner is a State pensioner and so entitled to medical reimbursement of his claim.

(12) The State took time to file response to this additional pleadings. It is pointed out that the state budget is of three types, i.e. voted budget, charged budget and decretal amount. It is stated that the voted budget of

the State has been provided by the Government of India under Article 309 and charged budget has been provided for the Constitutional body working in the State and for Public Service Commission. This budget has been provided under Article 322 of the Constitution. It is accordingly stated that the expenses of the State Public Service Commission are to be paid from the consolidated funds of the State, i.e. charged budget and not from the voted budget. It is otherwise conceded that these three budgets are passed by the legislative assembly. It is also clarified that pension is payable to the members under Article 318 of the Constitution and so the condition of Service Regulations, 1972 has been framed. An attempt is made to draw distinction between the government employees and the members of the Public Service Commission on these lines.

(13) The first reason for which the reimbursement of medical bills has been declined to the petitioner is contained in Annexure P-3. It is stated therein that facilities of medical reimbursement are available to Government employees and the non-official members of the commission do not fall within the ambit of definition of a Government employee. Chief Secretary further elaborated the same by disclosing in Annexure P-5 that non-official members of the HPSC are not Government servants, rather they serve in connection with the affairs of the State and, therefore, after retirement are not entitled to medical reimbursement claim. The argument of the counsel for the petitioner is that this distinction as drawn by the respondents cannot be made out from the provisions of the Regulations 1972, where no distinction is drawn between the non-official and other members of the commission. As per the counsel, the petitioner shall be entitled to medical reimbursement on account of his entitlement to pension and he would be entitled to the said medical reimbursement being a member of the commission. The State counsel, however, would insist that member being not a Government pensioner would not be entitled to medical reimbursement and such reimbursement is permissible only to those members, who had been a Government servant earlier. Reliance is made on the instructions issued by the Government to urge that it is meant for retired Government employees.

(14) Regulation 9A(1) of 1972 Regulations governing the condition of service of the members of the Public Service Commission makes a provision for pension payable to the members who were not members of the Service of the Central or the State Government. On ceasing to hold the office, they are to be paid pension for life at a rate that is provided in

this paragraph of the Regulation. Thus, it is undisputed that the petitioner is in receipt of pension. The provisions of Regulation 13 cannot be read to mean that there is a distinction drawn for grant of medical attendance to those who were in the government service prior to their appointment as members and those who were appointed directly from public. That is why, the member while serving as such, was entitled to medical attendance. The State is pressing the provisions of Punjab Service Medical Attendance Rules in service to interpret Regulations governing the condition of service of the members of the Commission. For interpreting the provisions of the Regulations 1972, Punjab Service Medical Attendance Rules may not be open to be pressed for aid.

(15) It can be noticed from the copies of certain communications addressed with the reply of the respondents that the grant of medical facilities in Haryana is to the pensioners and their wives/husbands. A perusal of Annexure R-1 would clearly show that the Government itself has realised the difficulty faced by the retired Government pensioners, who ceased to be entitled to medical facilities, which, they were receiving immediately before retirement. The Haryana Government pensioners drawing pension were accordingly held entitled to these facilities. Reference has also been made to various policies where the Government had reviewed the rules governing the grant of medical reimbursement and the hospital from where treatment could be taken for reimbursement purposes. The respondents would explain that but for these instructions, retired employee would not have been entitled to medical reimbursement. Pleas appear to be that the petitioner is not a retired Government employee and hence, not entitled to reimbursement of medical attendance as these instructions are not applicable to him. If that be so, then how the respondents would explain the reimbursement of medical attendance to two members as given in Annexures P-11 and P-12. The distinction sought to be drawn by the respondents may not appear justified. It could not be disputed before me that the petitioner was entitled to medical reimbursement while he was serving as a member of the commission. Why the petitioner would not be entitled to medical reimbursement once he is a pensioner ? In my view, the payment of pension be it from the consolidated fund or any other fund is made by the State and hence it is not possible to urge that the petitioner is not a pensioner of the Haryana Government. That distinction to me would appear to be unjust and inequitable and artificially pressed.

(16) To substantiate his plea, the State counsel has invited my intention to the case of **G.L. Batra** *versus* **State of Haryana and others (1)** where this court had observed that the regulation providing for deduction of pension from the total emoluments payable to the Chairman and members appointed after retirement from Government service create illegal classification where this court upheld by observing that apparently both constitute different classes. The court accordingly observed that there would be no legal difficulty to adopt different principles of fixation of pay in respect of two different classes of persons. This distinction was made on the basis of legislation and it is observed that there is a presumption in favour of the constitutionality of the same. It is held that equal protection clause of Article 14 cannot be construed to mean that the same rules of law should be applied to all irrespective of difference. It is, thus, held that re-employed pensioner cannot be permitted full salary attached to the office as it would result into much more pay than he was getting before retirement. In my view, the ratio in this case perhaps would have no applicability to the facts of the present case. In the **G.L. Batra's case** *(supra),* a distinction has been drawn by the legislature itself for fixing the pay of two classes of members, one who are appointed from public and another who are so appointed after their retirement from the government service. It is on the basis of this legislated provision that the allegation of discrimination and arbitrariness was negated. As already noticed above, no distinction has been drawn so far as grant of medical reimbursement is concerned in the condition of service as regulated by Regulations of 1972. Thus, the consideration which weighed with the court in **G.L. Batra's case** *(supra)* would not strictly apply to the facts of the present case. This was a case where primarily Regulation 6 of Regulation 1072 governing the fixation of remuneration was under consideration.

(17) On the other hand, the counsel for the petitioner had made reference to number of judgments to plead if no distinction is made in the members by the regulations, then that ***casus omissus*** cannot be supplied by the court except in case of clear necessity and when reason for it is found in the four concerns of statute itself. ***Casus omissus*** means a point unprovided for by a statute. A case not provided for by a statute and therefore would be government by common law. It is noticed that a 'casus omissus' should

(1) 2010 (1) S.C.T. 562

not be readily inferred and for that purpose all the parts must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof, so that construction to be put on a particular provision makes a consistent enactment of the whole statute. (*See* **Commissioner of Income-tax Central Calcutta** *versus* **National Taj Traders, (2)** It is further observed that this position would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been attended by the Legislature. The court has noticed two principles of Constitution in the case. One relating to 'casus omissus' and other in regard to reading of statute as a whole. Observation of Maxwell on interpretation of Statutes is noticed which is as under :—

> "Omissions not to be inferred-" It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Morsay said : 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do'. 'We are not entitled', said Lord Loreburn L.C., 'to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional."

> In regard to the latter principle the following statement of law appears in Maxwell at page 47 :

> A statue is to be read as a whole—" It was resolved in the case of Lincoln College's case (1595) 3 Co Rep 58b, at page 59b that the good expositor of an Act of Parliament should make construction on all the parts together, and not of one part only by itself.' Every clause of a statute is to 'be construed with reference to the context and other clauses of the Act, so as, as

(2) AIR 1980 S.C. 485

far as possible, to make a consistent enactment of the whole statue.' (Per Lord Davey in Canada Sugar Refining Co. Ltd. *versus* R. 1898 AC 735 (Canada))."

(18) Reference is made to **Sultana Begum** versus **Prem Chand Jain (3)** to urge that while interpreting the statutes, harmonious construction rule is to be applied. It is observed that the courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letters" or "useless lumber" is not harmonious construction. To harmonise is not to destroy any statutory provision or to render it construction otiose. The following principles are discernible from the various judgments noticed in this case :—

"(1) It is the duty of the Courts to avoid a head on clash between two Sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonize them.

(2) The provisions of one Section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, is possible, effect should be given to both. **This is the essence of the rule of "harmonious construction".**

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonize is not to destroy any statutory provision or to render it otiose."

(19) In this regard only, reference is made to **Padmasundara Rao (Dead) and others** *versus* **State of T.N. And others (4)** where two principles of construction, one relating to **'casus omissus'** and other in

(3) AIR 1997 S.C. 1006
(4) AIR 2002 S.C. 1334

regard to reading the statute as a whole has been held to be well settled. It is further observed that under the first principle a **"casus omissus"** cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself, but at the same time a **casus omissus** should not be readily inferred, for that purpose all parts of a statute or section must be construed together and every clause of the section should be construed with reference to the context and other clauses thereof, so that construction to be put on a particular provision makes a consistent enactment of the whole statute. Reference is also made to **V.S. Mallimath** *versus* **Union of India and another (5)** and **M.S. Chawla and others** *versus* **State of Punjab and another (6)** where the expression "Government" used in the National Human Right Commission Chairperson and Members (Salaries, Allowances and Other Conditions of Service) Rules 1993 has been construed in a wider sense. In **Bhagat Ram Sharma** *versus* **Union of India and others (7)** the Hon'ble Supreme Court observed that newly added Regulation is a remedial measure to remove an anomaly and hence it must receive a beneficial construction and if it is capable of two interpretations, the court must prefer that construction which permits the beneficent purpose behind it. It is further observed that when language of a statute is free from ambiguity, no duty is cast upon the court to do anything more to give effect to the word or words used. Some other judgments have also been placed before me to urge that discrimination cannot be made in favour of recruits from one source against the recruits from other sources in the matter of further promotion as once they are absorbed in one cadre they formed one class. **Roshan Lal Tandon** *versus* **Union of India and others (8)** is relied in this regard.

(20) There is no provision made in the Regulations, 1972 to make a distinction in regard to the definition of members drawn from different sources and the right of reimbursement of medical allowances. If the intention of Legislation was to deny this benefit to those members of the public service commission, who are appointed from public, then the same was clearly required to be provided for in the Regulations. As noticed above, a case omitted is to be held an intentionally omitted. **Casus omissus,** thus, cannot

(5) (2001) 4 S.C.C. 31
(6) (2001) 5 S.C.C. 358
(7) 1998 (Supp) S.C.C. 30
(8) 1967 S.L.R. 832

be created by interpretation. The position has to be governed by common law. This aspect is being read into the Regulation on the basis of provision made in the 1940 Rules. If it is a case of '**casus omissus**', then the principle as annunciated in regard to interpretation of statute cannot be over looked. This cannot be readily inferred and all provisions of the Regulations have to be construed together. Any other interpretation would lead to a construction which would be less beneficial. As already noticed, the court must prefer that construction which permits the beneficent purpose behind the legislation. If the language of the statute is free from ambiguity and court is called upon it to give effect to the word or the words used. As observed above, the provision of one section of a statute cannot be used to defeat the other provision unless the court finds it impossible to effect reconciliation between them. If the essence of these provisions is that medical attendance is allowed to Government pensioner, then there is much weight in the plea raised by the counsel for the petitioner that petitioner is getting pension from the State. The petitioner may have served with the connection of affairs of the State, but no such distinction as such is noticeable in the provision of Regulation 13 of 1972 Regulations. The plea that this regulation would apply to serving members and not to those who are pensioners may sound attractive, but then how would the State explain Annexures P-11 and P-12. Admittedly, the petitioner is in receipt of pension. To me, the source from which the petitioner is drawing pension would sound immaterial. His pension is debated and voted by the State Assembly. These are beneficial provisions, which have allowed reimbursement of medical allowance of retired employees. Retired employees are recipient of pension. So is the petitioner. How would the source of pension make any difference for grant of medical reimbursement ? At the most, the amount of reimbursement may be debatable to that head or source of pension from which the petitioner is being paid this pension. One cannot ignore that two of the similarly situated members have earlier been allowed medical reimbursement and now the same concession has been denied to the petitioner, which does not appear to be fair.

(21) The writ petition, therefore, deserves to be allowed. Direction is hereby issued to reimburse the petitioner the medical expenditure incurred by him while getting eye treatment from PGI, Chandigarh. There shall be no order as to costs.

R.N.R.