

**HIGH COURT OF GUJARAT****DINESH V MANEK***Versus***BANK OF INDIA****Date of Decision:** 16 March 2005**Citation:** 2005 LawSuit(Guj) 171**Hon'ble Judges:** [Akil Kureshi](#)**Eq. Citations:** 2005 9 GHJ 325**Case Type:** Special Civil Application**Case No:** 15052 of 2003**Subject:** Constitution**Acts Referred:**[Constitution of India Art 21](#), [Art 12](#)**Final Decision:** Petition allowed**Advocates:** [Shalin Mehta](#), [Prabhav Mehta](#), [Nanavati Associates](#)**Cases Referred in (+): 3**

**[1]** At the joint request of learned advocates appearing for the parties, this petition was heard at the admission stage for final disposal. I have heard learned advocates appearing for both the sides at considerable length.

**[2]** In the present petition, the petitioner has prayed for a direction against the respondents for payment of full reimbursement of medical expenses incurred by the petitioner for the treatment which the petitioner had to undergo in the month of February and March, 2001.

**[3]** Short facts leading to the present petition can be noted at the outset.

**[4]** The petitioner, who was employed by the respondent No. 1-Bank of India (hereinafter to be referred to as the Bank), was discharging his duties on the post of Manager (MMG-III). On 1-11-2000, respondent No. 1-Bank circulated a voluntary retirement scheme and interested officers of the Bank were required to opt for

voluntary retirement by 15th November, 2000. The petitioner, desirous of accepting voluntary retirement opted for the same and his option was accepted by the Bank. It is the case of the Bank that the petitioner retired with effect from 28-2-2001, in terms of his option as accepted by the Bank and, therefore, with effect from 28-2-2001, the petitioner stood retired from service. Though the petitioner has raised certain disputes regarding actual effective date of his retirement in this petition, and contended that he had not retired before 19th March, 2001, learned counsel for the petitioner has not pressed this contention in service and has made submissions on the premise that the petitioner had in fact retired with effect from 28-2-2001.

**[5]** It is the case of the petitioner that on 19-2-2001, he developed some heart problem on account of which he had to receive medical attention. The petitioner complaining of chest pain had to consult his doctor on 19-2-2001 itself, and his doctor advised him to undergo stress test and other checkups. On 19-2-2001, the petitioner was in Mumbai and he, therefore, sent a telegram to the respondent No. 1-Bank explaining about his absence from duty. The petitioner made a formal application for leave on 21-2-2001 along with doctor's certificate.

**[6]** On 22-2-2001, the petitioner underwent stress test at P. D. Hinduja National Hospital and the result of the stress test was that the petitioner required further treatment and the blood cholesterol and blood sugar level of the petitioner were abnormally high. Therefore, the petitioner contacted a heart specialist, viz. , Dr. Dhiren Shah and he was advised to undertake stress test once again under his supervision at Bhatia General Hospital. Thus, on second medical opinion, the petitioner once again underwent stress test on 5-3-2001. His doctor, viz. , Dhiren Shah, upon conclusion of the stress test, advised the petitioner to undergo angiography urgently, which the petitioner underwent at Cumbala Hill Hospital on 7-3-2001. The petitioner was advised rest upto 17-3-2001 and he was declared fit for resumption of his duties on 19-3-2001. In the meantime, however, the respondent No. 1-Bank had already retired the petitioner from service and, therefore, there was no question of permitting the petitioner to resume his duties.

**[7]** The petitioner submitted his medical bills to the respondent No. 1-Bank on 20th March, 2001, of an amount of Rs. 27,122.38 ps. , which expenditure he had to incur for the above mentioned treatment. The respondent No. 1-Bank, however, paid an amount of Rs. 4,793/- to the petitioner as Bank found that total expenditure incurred by the petitioner for the above treatment upto 28-2-2001 was Rs. 5,325.20 ps. , and since the Bank regulations permitted expenditure incurred for medical treatment to be reimbursed to the extent of 90% of actual expenses, the Bank released the reimbursement of Rs. 4,793/-, as mentioned above.

**[8]** Though the respondents in affidavit-in-reply had not admitted the fact of treatment having been taken by the petitioner, in view of the fact that the Bank itself has reimbursed to the petitioner the amount of medical expenditure to the extent the treatment he received upto 28-2-2001, no serious arguments were advanced on behalf of the respondents to suggest that the petitioner had not undertaken the treatment at all. Thus, fact that the petitioner did receive the treatment as mentioned above in which he had incurred the expenditure of a total of Rs. 27,122.38 ps. , is not seriously in doubt. The real controversy lies in the question whether the Bank was justified in limiting the medical reimbursement to the extent the petitioner received his treatment upto 28-2-2001 and denying the reimbursement for the treatment which the petitioner received thereafter. As noted earlier, from the facts arising in this petition, the contention of the Bank is that the petitioner having been retired from the service of the Bank, w. e. f. 28-2-2001, for any treatment which he received after 28-2-2001 the Bank is not obliged to reimburse the expenditure incurred by the petitioner for the same.

**[9]** Counsel for the petitioner, Shri Shalin Mehta submitted that the stand taken by the respondent No. 1-Bank is improper and rigid and that the petitioner had to undertake the said treatment for his ailment, which he suffered prior to his retirement and the treatment that the petitioner has received, was one single integrated treatment and the same cannot be broken up in different parts as pre-retirement treatment and post retirement treatment. He submitted that the respondents erred in denying to the petitioner full reimbursement as per rules. 9.1 counsel for the petitioner places reliance on the decision of the Hon'ble Supreme Court in the case of Surjit Singh v. State of Punjab and Ors. reported in (1996) 2 SCC 336, as well as on the decision in the case of State of Punjab and Ors. , v. Mohinder Sing Chawla and Ors. , reported in (1997) 2 SCC 83.

**[10]** Appearing for the respondents, learned counsel Mr. Prabhav Mehta for Nanavati and Nanavati Associates submitted that the petitioner is a retired employee of the Bank and after 28-2-2001, the Bank owed no responsibility to reimburse the medical expenditure of the petitioner. He submitted that only an employee of the Bank is governed by the scheme for medical reimbursement. Undisputedly, after 28-2-2001, the petitioner was no longer in Bank's service and, therefore, any treatment which the petitioner received thereafter, would not be covered under the scheme for medical reimbursement. He submitted that this Court cannot issue mandamus when the Bank owes no legal responsibility to make reimbursement of medical expenditure incurred by the petitioner nor there is any entitlement of the petitioner to receive the same.

**[11]** Having heard the learned advocates appearing for the parties, the short question that calls for consideration is whether for any treatment that the petitioner might have

taken after 28-2-2001, the petitioner would be entitled to receive reimbursement of medical expenditure.

**[12]** Before attempting to answer the said question, one may have a closure look at some of the factual aspects of the matter.

**[13]** As noted earlier, on 19-2-2001 while in Mumbai, the petitioner felt acute chest pain. Complaining of chest pain, the petitioner approached his doctor. The petitioner was advised to undergo various tests including stress test. The petitioner got himself medically checked up on 20-2-2001 at P. D. Hinduja National Hospital and also underwent a stress test there. The petitioner informed about this development to the Bank through a telegram sent on 19-2-2001 and followed up the same by a written request for granting him sick leave on 21-2-2001, which letter was accompanied by the certificate of the doctor dated 19-2-2001. The petitioner has placed on record, a bill of the P. D. Hinduja National Hospital dated 22-2-2001 for an amount of Rs. 10,000/- which the petitioner paid for his health check up. The petitioner has also produced the opinion of Dr. Vanjani, Consultant Cardiologist, dated 24-2-2001, in which the petitioner was found diabetic, his stress test was found strongly positive, he was advised strict diabetic diet, he was advised further check ups and certain medicines were also prescribed to him. It was also noted that general physical examination and routine investigations included in the health check up have certain limitations and may not be able to detect all latent diseases and any new symptoms developing after the health check up should be brought to the attention of the physician. 13.1 the petitioner thereupon contacted a heart specialist, Dr. Dhiren Shah, who advised him to undergo another stress test, which the petitioner underwent on 5-3-2001. Consequent upon the report of this stress test, Dr. Dhiren Shah advised the petitioner to undertake angiography as the reports were strongly positive. The petitioner underwent angiography on 7-3-2001. The petitioner has produced material on record regarding his treatment, which he received at Bhatia General Hospital on 5th March, 2005 and thereafter. After taking prescribed rest, the petitioner approached the Bank authorities on being declared fit to resume duties on 19th March, 2003. There was, however, no question of permitting the petitioner to resume duties since the Bank treated him to have retired w. e. f. 21-2-2001.

**[14]** In light of the above factual background one has to decide whether the petitioner was entitled to receive full medical reimbursement of the expenditure incurred by him on his medical treatment between 19-2-2001 and 7-3-2001.

**[15]** Learned counsel for the respondents pointed out that the Bank of India Officers' Service Regulations, 1979, define the term "officer", in Regulation 3 (j) of the said regulations, to mean a person fitted into or promoted to or appointed to any of the

grades specified in Regulation 4 and any other person, who immediately prior to the appointed date, was an officer of the Bank, and shall also include any specialist or technical person as fitted or promoted or appointed and any other employee to whom any of these regulations have been made applicable. He points out that Regulation 4 of the said regulations, prescribes different categories of Bank officers. He, therefore, submits that only an officer, who is in active service of the Bank can be treated to be an officer and a retired Bank employee would not be covered under the said definition. He further points out that Regulation 24 of the said Regulations provides for medical aid within the prescribed limits. He points that at all places in the said scheme under Regulation 24, reference is to the term "officer" or his family member and that, therefore, a retired Bank employee cannot claim benefit of the scheme for medical reimbursement. 15.1 with respect to this contention, there cannot be any dispute. From the provisions of the Bank of India Officers' Regulations 1979, as noted above, there appears little doubt about the fact that only a Bank employee, who is covered under the term "officer" as defined under Regulation 3 (j) of the said Regulations and who is otherwise covered under the scheme for medical reimbursement under Regulation 24, can claim reimbursement of medical expenditure and the retired Bank employee would not be covered under the scheme of reimbursement of medical expenditure. This, however, does not answer the question required to be decided in this petition.

**[16]** The real question is whether the ailment of the petitioner was such which had arisen while the petitioner was in active service of the Bank and had spilled over his retirement, which required continuous treatment and the treatment received by the petitioner was one single integrated treatment for his ailment or whether the respondents are justified in contending that the petitioner can claim reimbursement only upto his actual date of retirement and no more.

**[17]** In the case of Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Anr. reported in (1996) 4 SCC 37, the Hon'ble Supreme Court discussed the concept of medical care for the employees of the State. It was observed that the Constitution envisages the establishment of a welfare state and in a welfare state, primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities to the people is an essential part of the obligations undertaken by the Government in a welfare state. In paragraph 9 of the said decision, Hon'ble Supreme Court made following observations :

"9. The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the

Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. "

**[18]** In the decision of *Surjit Singh v. State of Punjab and Ors.* , reported in (1996) 2 SCC 336, once again the question of medical reimbursement came up before the Hon'ble Supreme Court. It was observed that the self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. In paragraph 11 of the said decision, Hon'ble Supreme Court has made following observations :

"11.It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (A dialogue suggested between the Divine and Garuda, the bird) in the word of the Divine : 17 vinaa dehena kasyaapi canpurushartho na vidate Tasmaaddeham dhanam rakshetpunyakarmaani saadhayet without the body how can one obtain the objects of human life ? Therefore protecting the body which is the wealth, one should perform the deeds of merit. 18 rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam Rakshane yatnamaatishthejje vanbhaadraani pashyati one should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life. 20 shrirarakshanopaaayah kriyante sarvadaa budhah Necchanti cha punastyaagamapi kushthaadiroginah the wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body. 22 aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsyo hitakarastasmaadaatmaanam taarayishyati if one does not prevent what is unpleasant to himself, who else will do it ? Therefore one should do what is good to himself. "

**[19]** In the decision in the case of State of Punjab and Ors. , v. Mohinder Singh Chawla and Ors. , reported in (1997) 2 SCC 83, the Hon'ble Supreme Court once again discussed the concept of health care and observed that the Government is under a constitutional obligation to provide health facilities.

**[20]** From the above judicial pronouncements, it can be seen that providing appropriate health care to the employees is one of the primary duties and responsibilities of the State. The respondent No. 1-Bank which is a nationalized Bank and is undisputedly the State within the meaning of Article 12 of the Constitution of India also carries the responsibility to provide for appropriate health care to its employees. In fact, a scheme for reimbursement of medical expenditure has also been framed by the Bank.

**[21]** Reverting back to the fact of the present case, what one finds is that the petitioner had complained of chest pain on 19-2-2001 when he was very much in Bank's service. The events unfolded in quick succession thereafter. As noted earlier, on one hand the petitioner while in Mumbai had to undergo successive checkups and treatment which started on 19-2-2001 itself and ended with him undergoing angiography on 7th March, 2001. The entire treatment, which the petitioner needed to and actually underwent was one single integrated treatment, the origin of which was the development of chest pain on 19-2-2001. There is no gap of any considerable time between the treatment which the petitioner received starting from 19-2-2001 till 7th March, 2001. The petitioner was struggling with his heart problem and had to undertake stress test and other intensive medical checkups, which culminated into the petitioner's requirement to undergo angiography. The treatment taken by the petitioner cannot be broken up in different segments and it is not possible to view the treatment received by the petitioner as one which he undertook pre 28-2-2001 and post 28-2-2001. The treatment which the petitioner received was a one single integrated medical attention which the petitioner required on account of the heart ailment, which the petitioner suffered for the first time on feeling acute chest pain on 19-2-2001. It is not possible to segregate different portions of this treatment in separate terms which the petitioner received and divide the same into two categories as a part of the treatment which he received before his retirement and a part which he had to undertake shortly after his retirement. Such a rigid, narrow and unbinding view of the matter would lead to anomalous situation in a given case. For example, what would be the situation if an employee undergoes operation, which spills over to the next day, previous day being his last day of service with the Government or the Bank ? Would it be then open for the Government/bank to suggest that for part of the operation which the employee underwent on the previous day, the Bank would take the responsibility to reimburse the expenditure but the later part would not be covered by the scheme and the

employee would receive only part of the medical expenditure by way of reimbursement ? What would be the situation where the employee has undergone a major surgery for heart or any other ailment which requires post operative care, which happens to be a day or two after the date of retirement of the employee ? Would it be open for the Bank in such a situation to suggest that the employee would receive reimbursement for the operation but not for the post operative care ? This and number of other such situations can be envisaged where narrow and rigid stand taken by the Bank would fail the test of reasonableness. It is apparent that the scheme formulated by the Bank is one of beneficial implications. The same has to be interpreted in a manner which would further the aim for which it is formulated and envisaged and not in a manner in which the same would frustrate.

**[22]** Viewed from this angle, I have no manner of doubt in my mind that the entire treatment which the petitioner received would qualify for medical reimbursement and not only a part of it, as suggested by the respondent No. 1-Bank. When I find that the treatment which the petitioner received is covered by the scheme formulated by the Bank for reimbursement of medical expenditure, the Bank has a legal obligation and duty to reimburse the expenditure incurred by the petitioner to the extent permissible under the scheme. The question of lack of jurisdiction to issue a mandamus in the present case, therefore, does not arise.

**[23]** In the result, petition is allowed. Respondents are directed to reimburse to the permissible limit, entire expenditure incurred by the petitioner for his treatment which he received upto 7th March, 2001. This order shall be carried out within a period of four weeks from the date of receipt of copy of this order.

**[24]** This petition is allowed accordingly with no order as to costs.