

Right to health is a human right: Himachal High Court

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In a landmark judgment, the Himachal Pradesh High Court Wednesday directed the central government to provide full medical benefits, including reimbursements of medical emergencies, to employees post-retirement.

A Division Bench comprising Justices Rajiv Sharma and Sureshwar Thakur passed the orders while dismissing an appeal filed by the central government, challenging an order of the Central Administrative Tribunal (CAT) in favour of Shankar Lal Sharma who underwent heart surgery post-retirement and incurred an expenditure of Rs 1.80 lakh – which the government declined to reimburse.

In a 101-page order handed down by Justice Sharma, the court ruled that right to health is a human right and questioned as how could the government, a principal employer, abdicate the responsibility of taking care of the health of its retired employees.

Denial of reimbursements of medical expenses amounts to violation of rights of the employee, the court added. The order observed that “a socialist state, as the Preamble depicts, is the basic structure of the Constitution of India “.

“Similarly, the welfare state is the basic feature of the Constitution. There is a difference between basic structure and basic features of the Constitution. The action of the Union of India not to reimburse the medical bills to the respondent (Shankar Lal Sharma) and also not giving option to him and similarly situate persons residing in a city not covered under CGHS is illegal, arbitrary, capricious, discriminatory, thus, violative of Articles 14, 16 and 21 of the Constitution of India.”

Using the legal maxim *Salus populi suprema lex esto*, the bench said “the health of the people should be supreme law.” The order further reads: “A serving employee, who enjoys benefits under the CS(MA) Rules, 1944, cannot be left high and dry immediately after retirement for want of medical care. His medical issues are required to be looked into with more sensitivity, compassion and sympathy. His genuine requirements for medical treatment cannot be permitted to be buried in the labyrinth of red tapism.

The court further held that it was the prime responsibility of the state to protect the health and vigour of retired government officials, this being their fundamental right under Article 21, read with Articles 39(3), 41, 43, 48-A of the Constitution.