

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4348/2010

MCD

Through Petitioner
Mr.Gaurang Kanth, Ms.Biji
Rakesh, Advocates

versus

RN GUPTA

Through Respondent
Mr.G.K.Srivastava, Mr.Daleep
Singh, Advocates

+ W.P.(C) 4667/2010

MCD

Through Petitioner
Mr.Gaurang Kanth, Ms.Biji
Rakesh, Advocates

versus

ISHWAR CHAND GUPTA

Through Respondent
Mr.G.K.Srivastava, Mr.Daleep
Singh, Advocates

+ W.P.(C) 4692/2010

MCD

Through Petitioner
Mr.Gaurang Kanth, Ms.Biji
Rakesh, Advocates

versus

RAMA NAND JOSHI

Through Respondent
Mr.G.K.Srivastava, Mr.Daleep
Singh, Advocates

+ W.P.(C) 5672/2010

MCD

Through Petitioner
Mr.Gaurang Kanth, Ms.Biji
Rakesh, Advocates

W.P.(C) 4348/2010 & conn.matters

Page 1 of 6

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the digital data is as per the physical
file and no page is missing.

versus

RISHI PRAKASH GUPTA Respondent
Through Mr.G.K.Srivastava, Mr.Daleep
Singh, Advocates

+ W.P.(C) 6029/2010

MCD Petitioner
Through Mr.Gaurang Kanth, Ms.Biji
Rakesh, Advocates

versus

KRISHNA KUMAR AGRAWAL Respondent
Through Mr.G.K.Srivastava, Mr.Daleep
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

ORDER
06.10.2010

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1. The respondents of the five writ petitions captioned above, who have succeeded before the Tribunal were employees of the Municipal Corporation of Delhi and superannuated from service on the undernoted dates and availed medical treatment on different dates as under:

- (a) R.N.Joshi respondent of W.P.(C)No.4692/2010 superannuated on 31.10.1988. He availed medical treatment between 26.05.2002 and 10.06.2002. He joined the medical scheme notified by MCD on 10.02.2003.
- (b) I.C.Gupta respondent of W.P.(C)No.4667/2010

superannuated on 31.05.1989. He availed medical treatment between 17.09.2002 and 30.09.2002. He joined the medical scheme notified by MCD on 18.02.2003.

- (c) R.N.Gupta respondent of W.P.(C)No.4348/2010 superannuated on 31.03.1997. He availed medical treatment between 26.07.2002 and 01.08.2002 and thereafter from 26.10.2002 till 10.05.2003. He joined the medical scheme notified by MCD on 30.06.2003.
- (d) R.P.Gupta respondent of W.P.(C)No.5672/2010 superannuated on 31.03.1997. He availed medical treatment between 03.01.2002 and 19.01.2002. He joined the medical scheme notified by MCD on 13.01.2003.
- (e) Krishan Kumar Aggarwal respondent of W.P.(C)No.6029/2010 superannuated on 31.01.2002. He availed medical treatment between 02.12.2003 and 08.12.2003. He joined the medical scheme notified by MCD on 23.12.2003.

2. Medical reimbursement bills submitted by all of them were rejected on the plea that the date on which they undertook medical treatment, they had not joined the medical health scheme notified by MCD. The Central Administrative Tribunal has held in their favour and directions have been issued to the MCD to reimburse the medical bills.

3. Shri Gaurang Kanth, learned counsel for the MCD draws our attention to the decision dated 14.03.2008 of a Division Bench of this Court disposing of W.P.(C) No.539/2007 Dal Chand Vashisht Vs. Govt. of NCT Delhi & Ors. and relying upon paragraph 26 thereof urges that

having joined the medical scheme after availing medical treatment, the respondents would not be entitled to any reimbursement as held by the Division Bench in Dal Chand Vashisht's case.

4. In para 26 of the decision in Dal Chand Vashisht's case, it was observed as under:-

"To be able to obtain the benefit of a scheme, it is essential that the person/claimant is a member of the said scheme. If the membership is automatic i.e. it comes with the status of the person, the person would be entitled to the benefits thereof, unless he expressly, or by his conduct evinces his intentions not to participate in the scheme – e.g. where he does not pay the subscription due from him. However, where he has an option, - whether or not to subscribe to the scheme and the scheme is contributory and voluntary in character, he cannot claim any benefits under the scheme unless he exercises his option to get covered by the scheme and also takes the necessary steps by paying the subscription thereof."

5. Save and except Krishan Kumar Aggarwal, in respect of whom we shall be dealing with the issue separately, the petitioner has no case and the decision in Dal Chand Vashisht's case is not attracted to the facts of other four writ petitions.

6. The ratio of Dal Chand Vashisht's case is that a person must become the member of the health scheme if the scheme requires an option to be exercised for becoming a member of the scheme and further makes the contribution required as a condition for becoming a member of the scheme. The reason is obvious, if a scheme is to be funded, it needs a corpus. If the scheme contemplates the corpus to be created from the subscriptions received from the members and a contribution by the sponsor of the scheme, the member has to contribute to the corpus.

7. The undisputed facts are that prior to 27.09.1994 retired MCD employees had no medical coverage. On 27.09.1994, for the first

time MCD made available free medical facilities to its retired employees i.e. pensioners but only if medical treatment is availed in hospitals/dispensaries established by the Municipal Corporation of Delhi. The Govt. of NCT Delhi notified a medical health scheme for its pensioners on 13.03.1997, made effective from 01.04.1997, which became the guiding force for the MCD to notify a medical health scheme for its pensioners on 03.06.2002 which required a lump sum amount to be contributed by such retired employees who joins the scheme. The lump sum amount varied dependent upon the last basic pay drawn by the pensioner. Relevant would it be to note that the scheme was made applicable retrospectively from the date Govt. of NCT Delhi notified the medical health scheme dated 13.03.1997 i.e. the effective date was 01.04.1997. The scheme notified by the Corporation on 03.06.2002 was kept in abeyance by the circular dated 22.11.2002 and finally was brought into force by the circulated dated 14.05.2003 vide clause 5 whereof it was expressly stated that the last date for joining the scheme for existing pensioners/family pensioners will be 30.06.2003 and in case of employees who retire in future, within three months of their retirement they would have to opt for the scheme.

8. Suffice would it be to state that the medical health scheme notified has a retrospective operation i.e. it comes into effect with a retrospective date i.e. 01.04.1997 and thus all those who become members of the scheme would be entitled to even pass benefits. The cut-off date notified for becoming member of the scheme was 30.06.2003. R.N.Gupta, I.C.Gupta, R.N.Joshi and R.P.Gupta joined the scheme on various dates all of which are prior or up to 30.06.2003 and thus they have rightly been awarded reimbursement.

9. As regards Krishan Kumar Aggarwal, no doubt he became

member of the scheme on 23.12.2003 i.e. 5 months and 23 days after 30.06.2003, but we note that when he made a representation to the Commissioner MCD, on his application, the Commissioner MCD passed an order regularizing the delay in making the payment and becoming a member of the scheme and thus as a special case, even Krishan Kumar Aggarwal would be entitled to reimbursement.

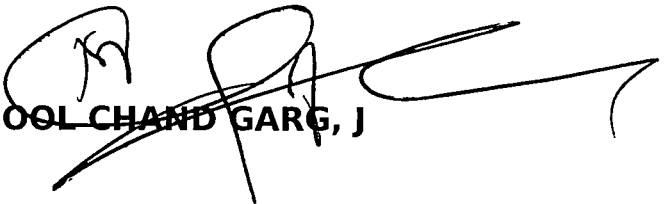
10. Thus, all writ petitions are disposed of holding that all respondents of the five writ petitions are entitled to reimbursement under the policy of the MCD pertaining to the Medical Health Scheme covering its retired employees and for which all of them would be entitled to reimbursement as per the scheme. Thus, we direct the Municipal Corporation of Delhi to process their claim and make payment as per their entitlement under the scheme. Needful would be done within 10 weeks from today.

11. No costs.

CM No. 8643/2010 in W.P.(C) 4348/2010
CM No. 9236/2010 in W.P.(C) 4667/2010
CM No. 9277/2010 in W.P.(C) 4692/2010
CM No. 11162/2010 in W.P.(C) 5672/2010
CM No. 11866/2010 in W.P.(C) 6029/2010

Dismissed as infructuous.


PRADEEP NANDRAJOG, J


MOOL CHAND GARG, J

OCTOBER 06, 2010
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