

Court No. - 20

Case :- WRIT - A No. - 7273 of 2023

Petitioner :- Prem Kumar Dubey

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Technical Education, U.P. Lucknow And 3 Others

Counsel for Petitioner :- Laxmi Kant Pathak, Jyotindra Prakash Pathak

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for the petitioner and State counsel for opposite parties.
2. Instant petition has been filed seeking a direction to opposite parties for payment of medical reimbursement to petitioner amounting to Rs.3,04,935/- as reimbursement in lieu of expenses incurred by petitioner for medical treatment of his wife, Late Smt. Durgawati Dwivedi.
3. It is submitted that petitioner's wife was employed on the post of Senior Assistant with the Principal, Government Polytechnic, Pratapgarh and was suffering from serious ailment due to which, she required hospitalisation and treatment but passed away on 24.09.2021. It is submitted that after demise of his wife, petitioner submitted medical claim amounting to Rs.3,41,029/- as medical reimbursement on 16.03.2022. The claim for reimbursement and bills annexed thereto were thereafter forwarded by opposite party no.4 on 28.03.2022 to the Chief Medical Officer, Pratapgarh for scrutiny and after scrutiny, the Chief Medical Officer verified the amount of Rs.3,04,935/- vide letter dated 07.04.2022 but even thereafter, medical reimbursement of the said amount has not been made to petitioner, hence present petition has been filed.
4. In the counter affidavit filed by opposite parties, it has been stated that medical reimbursement to petitioner could not be processed since it was not submitted within a period of thirty days from commencement of treatment as required under Rule 11 of Uttar Pradesh Government Servants (Medical Care) Rules, 2011 (hereinafter referred to as the Rules of 2011) and that they were not on the prescribed format given in appendix (C) and also since it is provided that claim for reimbursement is required to be made within three months from the date

treatment ends.

5. Learned State Counsel, therefore, submits that since petitioner's claim not being in consonance with the aforesaid Rules of 2011, medical claims of petitioner could not be processed although no rejection order has been passed.

6. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material available on record, it is evident that petitioner's claim for medical reimbursement has been rejected on the twin grounds:-

(a) It was not within the stipulated time period;

(b) It was not in the prescribed format.

7. With regard to the first ground, it would be necessary to advert to the Rules of 2011. While Rule 11 indicates reimbursement pertaining to emergency treatment of patient, Rule 16 pertains to reimbursement of medical claims. Rule 11 stipulates that information with regard to commencement of treatment is required to be provided to the concerned authority as soon as possible, within a period of thirty days from commencement of treatment. Rule 16 operates in a situation where treatment has already concluded and provides that claim for reimbursement should be made as soon as possible, within a period of three months from the date treatment ends. The Rules 11 & 16 of Uttar Pradesh Government Servants (Medical Care) Rules, 2011 are as follows:

"11. किसी लाभार्थी को राज्य के भीतर या बाहर तात्कालिक / आपात स्थिति में किसी निजी चिकित्सालय में उपचार प्राप्त करने की अनुमन्यता होगी। उपचार की लागत राज्य के भीतर उपचार कराने की दशा में संजय गाँधी स्नातकोत्तर आयुर्विज्ञान संस्थान और राज्य से बाहर की दशा में अखिल भारतीय आयुर्विज्ञान संस्थान, नई दिल्ली की दरों पर प्रतिपूरणीय होगी। प्रतिबन्ध यह है कि-

(क) उपचारी चिकित्सक द्वारा आपात दशा प्रमाणित की जाए।

(ख) रोगी द्वारा अपने कार्यालयाध्यक्ष को यथाशक्य शीघ्र किन्तु उपचार प्रारंभ होने के दिनांक से 30 दिनों के भीतर सूचित कर दिया जाय।

(ग) आपात स्थिति में एअर एम्बुलेन्स पर होने वाले व्यय की धनराशि भी प्रतिपूरणीय होगी।"

"16. लाभार्थी द्वारा स्वीकर्ता प्राधिकारी को, यथाशक्य शीघ्र किंतु उपचार की समाप्ति के पश्चात् तीन माह से अपश्चात् परिशिष्ट "ग" में दिये गये विधिप प्रारूप में प्रतिपूर्ति दावा प्रस्तुत किया जायेगा। बीजक के, साथ संदर्भ-पत्र, उपचार परामर्श पत्रक और उपचारी चिकित्सक द्वारा विधिवत् सत्यापित किये गये वाउचर और परिशिष्ट "ड" में (बहिरंग उपचार) और परिशिष्ट "च" (अंतरंग उपचार) में अनिवार्यता प्रमाण-पत्र मूल रूप में प्रस्तुत किया जायेगा। विशेष परिस्थितियों में दावे को पुष्ट करने के लिए अन्य मूल दस्तावेज भी संलग्न किये जा सकते हैं। अपूर्ण वावों पर विचार नहीं किया जायेगा।

प्रतिबन्ध यह है कि किसी पेंशन भोगी का प्रतिपूर्ति दावा उस जिले के कार्यालयाध्यक्ष को प्रस्तुत किया जायेगा जहाँ से वह पेंशन आहरित कर रहा है। जहाँ ऐसा कोई कार्यालय न हो वहाँ सम्बन्धित जिले का मजिस्ट्रेट इस प्रयोजनार्थ कार्यालयाध्यक्ष और विभागाध्यक्ष भी होगा।"

8. The aforesaid rules, therefore, operate in different fields altogether with Rule 11 pertaining to reimbursement of claims regarding expenses incurred in emergency treatment and Rule 16 pertaining to situations for reimbursement of treatment which has already concluded.

9. It is admitted between the parties that claim made by petitioner even otherwise was beyond the stipulated time period of three months as prescribed under Rule 16 of the Rules of 2011. In such a situation, it would be necessary to examine as to whether the time period indicated in Rules 11 and 16 of the Rules of 2011 are couched in mandatory terms or are merely directory. A perusal of both the said rules makes it evident that medical claims are required to be made 'as far as possible' within a period for thirty days in terms of Rule 11 and 'as soon as possible within a period of three months' as per Rule 16 of the Rules of 2011.

10. The aforesaid wordings in the Rule 11 and Rule 16 of the Rules of 2011, therefore, cannot be said to be couched in mandatory terms since the words 'as far as possible' and 'as soon possible' by their very connotation and implication cannot be termed to be mandatory in nature.

11. The aspect of when a guideline can be said to be mandatory and directory in nature has already been interpreted by Hon'ble Supreme Court in the cases of-

(i) **Chandrika Prasad Yadav vs. State of Bihar & Others 2004 (6) SCC 331**, the relevant portion of which is quoted here-in-under:-

"31. The question as to whether a statute is directory or mandatory would not depend upon the phraseology used therein. The principle as regards the nature of the statute must be determined having regard to the purpose and object the statute seeks to achieve."

(ii) **Kailash vs Nanhku and Others 2005 (4) SCC 480**, the relevant portion of which is quoted here-in-under:-

"All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar (1975) 1 SCC 774, are pertinent:-

"The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence - processual, as much as substantive."

12. Upon applicability of aforesaid judgments in the present facts and circumstances, it is evident that the language of Rules 11 and Rule 16 of the Rules of 2011 are not couched in negative terms imposing any penal liability for non adherence to the same. In such circumstances, it is held that the time period indicated in Rule 11 and Rule 16 of the Rules of 2011 are mainly directory and not mandatory in nature.

13. The aforesaid aspect has also been considered by a Co-ordinate Bench of this Court in the case of Mahesh Chand Jarari

vs. State of U.P. and Others, Writ-A No.10453 of 2019 and in the case of Devendra Dev Pandey vs. State of U.P. and Others, Writ-A No.1419 of 2013 wherein also the aforesaid time period has not been held to be mandatory in nature.

14. The aforesaid aspect would also be required to be seen in terms of the fact that the Rules of 2011 are beneficial in nature in consonance with the concept of a Welfare State and therefore are a means of reimbursing a government employee for expenses incurred during treatment of self or dependents. In the considered opinion of this Court, such a factor would also be directly relatable to Article 21 of the Constitution of India whereby right of dignity has been held to be a fundamental right.

15. In the case of **Consumer Education and Research Centre vs. Union of India and Others (1995) 3 SCC 42**, Hon'ble Supreme Court has held that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21 of the Constitution of India in order to make life of the employee meaningful and purposeful with dignity of a person. Relevant portion of the judgment is as follows:

"24...Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the c health and strength of the worker and is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such actions which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and d strength of the worker is an integral facet of right to life...."

"25. Therefore, we hold that right to health, medical aid to protect the health and vigour to a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."

16. In the case of **Kirloskar Brothers Ltd. vs ESI Corporation (1996) 2SCC 682**, again the medical facilities of a workman or employee has been held to be fundamental human right in order to enable him to enjoy the fruits of his

labour. The relevant paragraph is as follows:

"9. The expression 'life' assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. Health of the workman enables him to enjoy the fruits of his labour, to keep him physically fit and mentally alert. Medical facilities, therefore, is a fundamental and human right to protect his health. In that case health insurance, while in service or after retirement was held to be a fundamental right and even private industries are enjoined to provide health insurance to the workmen."

17. Similarly, in the case of **State of Punjab vs. Ram Lubhaya Bagga (1994) 4SCC 117**, it has been held as follows:

"...it is for the State to secure health to its citizen as its primary duty."

18. In the case of **Chairman Railway Board vs. Chandrima Das (2000) 2 SCC 465**, the definition of the word 'life' as defined in the universal declaration of human rights, 1948 has been explained *vis-a-vis* Article 21 of the Constitution of India in the following manner:

"32. The word "LIFE" has also been used prominently in the Universal Declaration of Human Rights, 1948. (See Article 3 quoted above.) The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the Declaration and the Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them, as set out by this Court in Kubic Darusz v. Union of India 36. That being so, since "LIFE" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country."

19. A perusal of the aforesaid judgments is, therefore, clearly indicative of the fact that right to medical facilities in case of an employee of the State or an instrumentality thereof or other

authorities which come within Article 12 of the Constitution of India is a right which is inherently fundamental and therefore comes within definition of Article 21 of the Constitution of India.

20. In the present facts and circumstances, it is, therefore, quite evident that rejection of petitioner's claim for reimbursement on the ground that it was not within a time frame indicated in the Rules of 2011 is not in consonance with the judgments rendered. Therefore, such contentions by the opposite parties are rejected.

21. So far as the second ground for rejection is concerned, it is also evident from the letter dated 07.04.2022 issued by the Chief Medical Officer, Pratapgarh that claims of petitioner for medical reimbursement were verified and found established and corroborated whereafter recommendation was made by the concerned authority in accordance with rules. The letter dated 07.04.2022 issued by the Chief Medical Officer does not indicate that petitioner's claim for reimbursement was not in the proper format. Therefore, it does not stand a reason that such a ground is being taken for the first time by the opposite parties in counter affidavit which has been filed.

22. Once petitioner has submitted original receipts and bills regarding reimbursement of claims pertaining to expenses incurred on treatment of his deceased wife and the same have been verified by the competent authority, such claim cannot be permitted to be denied mainly on the technical ground that it is not in the prescribed format.

23. Considering the aforesaid discussions, it is evident that the twin grounds taken by the opposite parties to deny petitioner's claim for reimbursement were not in accordance with either rules or the judgments indicated here-in-above.

24. In consideration thereof, a writ in the nature of mandamus is issued commanding the opposite party no.2, i.e The Director, Technical Education, Uttar Pradesh, Vikas Nagar, Kanpur and other competent authorities to ensure payment of reimbursement of amount of Rs.3,04,935/- to petitioner within a period of six weeks from the date of certified copy of this order is produced before the said authority. In view of the fact that petitioner's claims are lying unattended since 07.04.2022 (the date when they were verified by the Chief Medical Officer, Pratapgarh), it is directed that interest at the rate of 8% per annum on the outstanding amount shall also be payable to petitioner with effect from 07.04.2022 till the date of actual payment.

25. Resultantly, the petition succeeded and is **allowed**.

26. Parties to bear their own costs.

(Manish Mathur,J.)

Order Date :- 21.11.2023

Manoj K.