



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/2/2022

Hage Amp
D/o Shri Hage Batt,
R/o Vivek Vihar, P.O. R.K. Mission, P.S Itanagar, District Itanagar Capital Complex,
Arunachal Pradesh, Pin 791113, email ID hage.ampi@gmail.com.
Mobile Phone No. 961210158

VERSUS

THE STATE OF AP and 6 Ors.
Represented by the Secretary (Research) to the Govt. of Arunachal Pradesh, Civil
Secretariat, Itanagar, Pin 791111 2:The Secretary
Age: 0
Occupation :

3:The Secretary
Age: 0
Occupation :

4:The Secretary
Age: 0
Occupation :

5:The Director of Research
Age: 0
Occupation :

6:The Director of Health Services
Age: 0
Occupation :

7:The Deputy Director

Age: 0
Occupation

Advocate for the Petitioner : Parswajyoti Das Nair

Advocate for the Respondent : GA (AP)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri P.D. Nair
Advocates for the respondents : Ms. P. Pangu, GA, AP
Shri T. Tagum

Dates of hearing : **22.01.2024**
Date of Judgment : **22.01.2024**

JUDGMENT & ORDER

Heard Shri PD Nair, learned counsel for the petitioner. Also heard Ms. P. Pangu, learned Government Advocate, AP for the respondent nos. 1, 2, 4 & 5 and Shri T. Tagum, learned Standing Counsel, Health & Family Welfare Department for the respondent nos. 3, 6 and 7.

2. Considering the subject matter involved and the fact that necessary pleadings have been exchanged, this writ petition is taken up for disposal at the admission stage.

3. The issue involved is with regard to a claim for reimbursement of medical bills.

4. The petitioner is a Government servant and posted as the Language Officer in the Directorate of Research. Her father was also a Government servant, who had retired in August, 2017. During the period when the father was in service, the mother of the petitioner was detected with Cancer and had

to be treated in the Rajiv Gandhi Cancer Institute and Research Centre, New Delhi. In this connection, the first approval was given on 24.06.2015 by the Directorate of Health Services. It may be mentioned that the approval letter dated 24.06.2015 also reveals that the approval was accorded for consultation and treatment at the aforesaid Hospital with an escort. It is the case of the petitioner that accordingly, the mother of the petitioner was receiving treatment in the said Hospital and the medical expenses were reimbursed. The aforesaid approval was renewed on 17.03.2017 and the treatment continued. On the retirement of the father of the petitioner in August, 2017, an application was made for reimbursement on 22.02.2018. The same was responded vide an order dated 23.02.2018 whereby such application was granted and the approval was renewed. It has been specifically stated in the said order that the same was under the CS(MA) Rules, 1994 (sic.) 1944 with an escort. The bills pertaining to the medical reimbursement were accordingly submitted. Unfortunately, the mother of the petitioner had passed away on 23.10.2018 whereafter on 28.02.2019, the final bill was submitted for an amount of Rs.33,53,278/-. However, vide the impugned communication dated 03.03.2020, the petitioner was informed that such request was denied. The reason cited was due to the implementation of APCMUHIS / CMAAY. In this connection, the petitioner had submitted a representation dated 23.12.2020 which however was not considered and therefore, the present writ petition has been filed.

5. Shri Nair, learned counsel for the petitioner has submitted that the reason cited for informing the inability is vague as two schemes have been referred without specifying as to under what scheme, such reimbursement could not have been paid. As regards the APCMUHIS, it is submitted that though the said scheme was notified on 06.11.2013, there is a clear stipulation that regular Government employees and dependents will not be the beneficiaries. He

submits that it is in view of such stipulation that in spite of the scheme being notified, till the time when the father of the petitioner was in service, the medical reimbursement was being made. As regards the CMAAY, he submits that the operational guidelines of the same was notified only on 08.01.2021 which is much after the scheme as well as death of the mother and therefore the same would have no manner of application. He clarifies that without the operational guidelines, a scheme cannot be put on application.

6. By referring to the additional affidavit filed by the respondent no. 4 on 20.12.2023, Shri Nair, learned counsel for the petitioner has drawn the attention of this Court to an Office Memorandum (OM) dated 03.11.2015 upon which the Department has fallen back to justify their action. He submits that apart from the fact that an OM cannot override / supersede the statutory Rules, even the said OM lays down a condition that under appropriate cases, the Health & Family Welfare Department is to take a decision. He submits that it is on the strength of such clauses that the Health & Family Welfare Department had granted approval and therefore the denial is not even justified. It is also submitted that the authenticity of the claim including the ailment and the amount involved are not otherwise the subject matter of any controversy or dispute.

7. In support of his submissions, the learned counsel for the petitioner has placed reliance upon the case of ***Employees' State Insurance Corporation Vs. Union of India and Others*** reported in ***(2022) 11 SCC 392***. In paragraph 13 of the said judgment, the following has been laid down:

“13. A two-judge Bench of this Court in Pepsu Road Transport Corporation, Patiala v. Mangal Singh interpreted a similar power to frame regulations under the Road Transport Corporations Act 1950. This Court held that regulations made under the statute have the force of law:

“29. It is well-settled law that the regulations made under the statute laying down the terms and conditions of service of the employees, including the grant of retirement benefits, have the force of law. The regulations validly made under the statutory powers are binding and effective as the enactment of the competent legislature. The statutory bodies as well as general public are bound to comply with the terms and conditions laid down in the regulations as a legal compulsion. Any action or order in breach of the terms and conditions of the regulations shall amount to violation of the regulations which are in the nature of statutory provisions and shall render such action or order illegal and invalid.”“

8. *Per contra*, Ms. Pangu, learned State Counsel has tried to defend the impugned action by stating that after notifying of the aforesaid two schemes, reimbursement can be done only under those schemes. By referring to the additional affidavit dated 20.12.2023 filed by the respondent no. 4, she submits that the Institute in question, namely, Rajiv Gandhi Cancer Institute is not one of the empaneled Institute and therefore the reimbursement cannot be made. She further submits that the CMAAY was notified on 16.08.2018 when the treatment was still going on and the bills were submitted on 05.08.2018.

9. With regard to the issue regarding application of the APCMUHIS vis-à-vis regular Government employees, the learned State Counsel has referred to two communications dated 19.05.2015 and 03.11.2015 wherein it has been stated that the funds would not be available for reimbursement after announcement of the said scheme.

10. Shri Tagum, learned Standing Counsel, Health & Family Welfare Department submits the role of the Health & Family Welfare Department is only confined to look into the veracity of the claim and the document submitted

which has been done and found to be in order. He submits that payment part is outside the ambit of the Health & Family Welfare Department and is looked into by the Finance Department.

11. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

12. Certain facts which have emerged from the pleadings are undisputed. Those facts include the first approval made on 24.06.2015 in the name of the father of the petitioner as he was also a Government servant and the subsequent renewal of the approval on 17.03.2017. The approval clearly mentions regarding the treatment to be done in the Rajiv Gandhi Cancer Institute, New Delhi and that the same was done under the CS (MA) Rules. All the approval orders mention that such treatment was allowed to be done with an escort. It is further not in dispute that pursuant to such approval, the reimbursements were made during the tenure of the father of the petitioner in service, who had retired only in August 2017. The fact of grant / renewal of the approval in the name of the petitioner on 23.02.2018 by the Competent Authority under the aforesaid Rules is also not disputed. The only reason which is discernible from the impugned letter dated 03.03.2020 is because of the implementation of the APCMUHIS / CMAAY Schemes. Though both the schemes are concerning Health Insurance, the impugned letter has not specified as to which of those schemes were taking into consideration for such denial. There is no explanation coming with regard to the fact that in spite of the APCMUHIS being notified in 06.11.2013, the approval as well as reimbursement was made subsequently on 24.06.2015 in the name of the father and also renewed on 17.03.2017. Though an explanation has been sought to be given on behalf of the Finance Department with regard to the scheme stating that regular

Government employee and dependents will not be the beneficiaries in the form of two communications dated 09.05.2015 and 03.11.2015 that no funds would be allocated subsequently, the same cannot be construed as an explanation at all. As regards the CMAAY scheme, though the same has been stated to be notified on 16.08.2018, the operational guidelines were notified on 08.01.2021. It is trite law that without operational guidelines, a scheme cannot be implemented practically. This Court is also otherwise of the view that there being no objection at the time of grant of approval and renewal in the name of the father of the petitioner and the subsequent grant of approval / renewal in the name of the petitioner under the Rules which also states that such approval was along with an escort, this Court is of the opinion that it would not be justified at all on the part of the respondent authorities to deny the benefit of the Rules which provides for reimbursement of medical expenses.

13. The law with regard to the proposition that an OM cannot supersede a statutory Rules is well settled. In any case, this Court has also noticed that the OM dated 03.11.2015 may not even be construed to be in conflict with the Rules as a clause has been left open that in appropriate cases, the Health & Family Welfare Department is to take a decision. The approval and renewals being in sync with such clause, the denial of medical reimbursement which is the subject matter of this writ petition does not appear to be justified and reasonable.

14. In view of the aforesaid discussions, this Court is of the view that the communication dated 03.03.2020 whereby the claim for medical reimbursement has been declined cannot be sustained in law and accordingly set aside. Consequently, it is directed that the final bill submitted on 28.02.2019 be considered and paid to the petitioner in accordance with law.

15. The aforesaid exercise be undertaken and completed expeditiously and

preferably within a period of 2(two) months from the date of receipt of certified copy of this order.

16. No order as to cost.

JUDGE

Comparing Assistant