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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14820 of 2013

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1. Manoj Kumar S/O Sri Mahendra Prasad Singh Present Working As Trained Graduate Teacher (Science) At Jawahar Navodaya Vidyalaya Singodi, Distt- Chindwara, (M.P) Presently Residing At House No. 23, Road No. 8, S.K. Nagar, P.S- Budha Colony, Distt- Patna.

.... Petitioner/s

Versus

1. The Union Of India Through Commissioner Navodaya Vidyalaya Samiti Kailash Colony, New Delhi- 48
2. The Director, C.G.H.S, Govt. Of India, New Delhi.
3. The Dy. Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Boring Road, Patna- 13
4. A.K. Shukla, The Deputy Commissioner, Navodaya Vdiyalaya Samiti, Regional Office, Boring Road, Patna- 13
5. The Principal Jawahar Navodaya Vidyalaya, Bikram, Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Manoj Kumar
For the Respondent/s : Mr. Siddhartha Prasad

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

5 07 -01-2015 The present writ application arises out of the orders, dated 30.03.2012 and 31.01.2013, passed, in Original Application No. 124 of 2012 (hereinafter referred to as 'the said O.A.'), and also the order, dated 15.03.2013, passed, in R.A. No. 13 of 2013, by the learned Central Administrative Tribunal, Patna (hereinafter referred to as the 'learned Tribunal'), whereby the claim of the petitioner for *reimbursement* of the amount of *medical bills,* incurred on the treatment of the wife of the petitioner, has been

rejected. The writ petitioner further seeks to challenge the order contained in memo No. 77026, dated 08.03.2010, issued by the Deputy Commissioner, Navodaya Vidyalaya Samiti, Patna, respondent No. 3 herein, whereby respondent No. 3 has returned the *medical bills* to respondent No. 5 herein on the ground that the same cannot be *reimbursed* as per letter No. 195-197, dated 24.06.2003, issued by the Navodaya Vidyalaya Samiti's Head Office.

2. It is relevant to mention here that the order, dated 15.03.2013, aforementioned is an order passed in R.A. No. 13 of 2013, whereby the writ petitioner had preferred a review application before the learned Tribunal seeking review of the order, dated 31.01.2013, passed in the said O.A, but the review application has been rejected.

3. The factual matrix of the case is detailed hereunder :-

(i) The petitioner is a Trained Graduate Teacher in Jawahar Navodaya Vidalaya and has been working under the said Institution since 08.04.1998 and since 13.12.2010, the petitioner has been working at Jawahar Navodaya Vidyalaya, Chhindwara.

(ii) The contention of the petitioner is that the respondents rejected the petitioner's claim for *reimbursement* of the amount of *medical bills*, which were

placed by the petitioner before the concerned authority with regard to the expenses incurred by him on account of the treatment of the wife of the petitioner. It is also the case of the petitioner that Navodaya Vidyalaya Samiti has a scheme for *reimbursement* of *medical bills* as per approved norms of the Central Government Hospital Scheme (commonly known as 'C.G.H.S.'). The wife of the petitioner underwent treatment, in a private hospital, with effect from 13.08.2008 to 19.08.2008. According to the petitioner, the said treatment had to be undertaken, at the said private hospital, in emergent circumstances as there was *strike* at Patna Medical College and Hospital, Patna (popularly known as 'P.M.C.H.').

(iii) The petitioner has pleaded, in the said O.A, that he had submitted an application before the concerned authority, on 12.03.2009, through proper channel, stating the above facts. The said application has been brought on record as Annexure 4 to the said O.A. The further case of the petitioner is that the treatment, in a private hospital, which the petitioner's wife received, is *reimbursable* at the C.G.H.S rates as is evident from the fact that his wife had, on 23.07.2009, filed an application under the Right to Information Act, 2005, and in response thereto, the Director, Administration, C.G.H.S, Office of the Directorate

General of Health Services, Patna, vide his letter, dated 28.09.2009, informed that the treatment, taken in emergency, in a private hospital, is *reimbursable* at C.G.H.S rates. Consequently, the petitioner submitted another application, on 10.09.2009, addressed to the Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Patna, through the Principal, Jawahar Navodaya Vidyalaya, Patna, seeking *reimbursement* of his *medical bills* in view of the clarification issued by the Directorate Administration, C.G.H.S, Patna. However, the application of the petitioner was rejected by the concerned authority vide letter, dated 08.03.2010, which was duly communicated to the petitioner on 23.03.2011.

(iv) The said letter, dated 08.03.2010, contained in Memo No. 69 (15/Medical/N.V.S/Patna/ 2009-10/77026), annexed as Annexure 2, was put to challenge, in the said O.A., on the grounds :

(a) That the decision to reject the claim of the petitioner for *reimbursement* of the amount of *medical bills,* incurred on the treatment of his wife, in a private hospital, had been taken contrary to the policy of Navodaya Vidyalaya Samiti.

(b) The decision of Navodaya Vidyalaya Samiti was based on erroneous consideration as Navodaya

Vidyalaya Samiti had earlier *reimbursed* the claims of other employees of Navodaya Vidyalaya, who had undergone treatment in Apollo Hospital, New Delhi, namely, Sri S. K. Choudhary, and also in the case of Sri Mukesh, the Deputy Commissioner, Navodaya Vidyalaya Samiti, New Delhi.

(c) While alleging discrimination at the hands of the respondents, the petitioner submitted that it was on account of pitiable condition of the petitioner's wife that the petitioner's wife had to be admitted, in emergent condition, in the private hospital, namely, Dr. Sarojini Sinha Memorial Shiv-Shakti Hospital, East Boring Canal Road, Patna. The order of rejection of the petitioner's claim for *reimbursement* of the amount of *medical bills* was, thus, according to the petitioner, arbitrary and warranted interference by the learned Tribunal.

(v) The Navodaya Vidyalaya Samiti contested the said O.A. by filing written statement, wherein it was stated, *inter alia,* that Navodaya Vidyalaya Samiti mostly adopts rules and regulations formulated by the Government of India, but the amount of the *medical bills,* incurred over the treatment of Smt. Anita Devi, wife of the petitioner, undertaken at a private hospital, namely, Dr. Sarojini Sinha Memorial Shiv-Shakti Hospital, East Boring Canal Road, Patna, was not *reimbursable*, as per the existing Circular, on

the subject of medical treatment received by private doctors or at private hospital/nursing home, and, in a consequence thereof, the claim of the petitioner was rejected by Navodaya Vidyalaya Samiti vide letter, dated 08.03.2010, addressed to the Principal of the School (Annexure R/1). It was also submitted by the respondents that the petitioner was duly informed of the said order of rejection of his claim for *reimbursement* of the amount of medical bills, i.e. of Rs. 16,137/-.

(vi) The respondents also contended that the treatment of the petitioner's pregnant wife, whose due date of delivery was 05.09.2008, had been undertaken, at a private Nursing Home, as she was under the treatment of Dr. Neelima Sinha, one of the doctors of Dr. Sarojini Sinha Memorial Shiv-Shakti Hospital, East Boring Canal Road, Patna. Thus, the treatment received by the petitioner's wife was pre-planned and not due to any emergency.

(vii) With regard to the above, it has been pointed out by the respondents that in his application, dated 15.07.2008, the petitioner had sought for permission to claim *reimbursement* parallel to C.G.H.S approved rates, because of the fact that the delivery was to be through a *caesarian* operation and the said operation was to be conducted, according to the petitioner, as per *convenience*

and *faith* of a person. It was also mentioned by the petitioner, in his application, dated 15.07.2008, that in the event of there being normal delivery, the petitioner would not claim anything for the treatment. The respondents point out that it was apparent from the letter, dated 15.07.2008, that the petitioner had himself tried to set medical *reimbursement* claims much before the operation, which his wife underwent, stating that in case his wife was operated, then, he should be paid as per the C.G.H.S. approved rates.

(viii) Thus, the contention of the respondents is that the petitioner had pre-planned the medical treatment of his wife as per his own wish and had also selected the hospital of his choice, namely, Dr. Saraojini Sinha Memorial Shiv Shakti Hospital, which was a private hospital, not recognized under the C.G.H.S. and, as such, the *expenses,* incurred there for the treatment, were not *reimbursable*. The respondents categorically averred that the applicant had no cogent reason for taking his wife for treatment at private hospital, especially, because the petitioner was living in a prime location at Patna and, in proximity thereof, there were several government hospitals/recognized hospitals, where he could have taken his wife for treatment. It was contended by the respondents that the petitioner had made out a case only to circumvent the existent norms of the

Navodaya Vidyalaya Samiti and the C.G.H.S. The respondents reiterated that the treatment received, in the present case, was pre-planned and not for unforeseen circumstances, and, hence, the petitioner was not entitled to *reimbursement* of the sum of money, which he claimed to have incurred over the treatment of his wife at Dr. Sarojini Sinha Memorial Shiv Shakti Hospital.

(ix) The petitioner reacted to the contentions of the respondents by repeating his allegations of discrimination and partisan treatment and referred to the case of one Sri Mukesh, Deputy Commissioner, Navodaya Vidyalaya Samiti, New Delhi, who had undergone Kidney Transplantation, at Indraprastha Apollo Hospital, and also the case of Sri S.K. Choudhary, whose bills had also been *reimbursed*, whereas the claim, raised by the petitioner, for *reimbursement* of the *medical bills*, had been, according to the petitioner, arbitrarily rejected. The writ petitioner did not, however, dispute the assertions of the respondents that within the vicinity of the writ petitioner's residence, there were several Government hospitals/recognized hospitals where he could have taken his wife for treatment in case of emergency.

(x) The respondent, Navodaya Vidyalaya Samiti, categorically denied the allegations of discrimination by

pointing out that in O. A. No. 2814 of 1999, filed at Central Administrative Tribunal, New Delhi, it was found that as the applicant's wife had complained of chest pain, she had to be shifted to a nearby private hospital and, at a later stage, the said patient was shifted to Heart Institute and Research Centre, where she, eventually, passed away and, thus, the treatment having been received by the wife of the applicant, in O. A. No. 2814 of 1999, in emergent situation and since the treatment, so received, was not pre-planned, the *medical expenses* were *reimbursed*.

(xi) So far as the case of Mr. Mukesh Kumar is concerned, the same was, according to the respondents, a case of Kidney Transplantation, which was also occasioned in extreme emergent situation.

4. The case of the present petitioner is, thus, according to the respondents, distinguishable from the cases referred to above and, hence, no case of discrimination can be said to have been made out by him so as to sustain his claims of *reimbursement*. It is reiterated by the respondents that the decision of the petitioner to go for treatment, and delivery of the child, to the private hospital of his choice was a pre-meditated and planned decision, which was not occasioned on account of any emergent situation, and his claim was, therefore, not *reimbursable*, under the extant

rules and instructions issued in this regard.

5. We have heard learned counsel for the writ petitioner and perused the materials placed before us.

6. On perusing the documents filed by the writ petitioner seeking payment of *medical bills*, it becomes evident that long before the date of delivery of his baby, the writ petitioner had filed an application before his controlling authority, through the Principal, Jawahar Navodaya Vidyalaya, Patna, seeking permission to get his wife treated and *caesarian* operation to be performed in a private hospital of his choice as per the patient's *convenience* and *faith*. The said document (R/3) does not indicate as to whether there was any emergent situation necessitating the writ petitioner to take his wife, for treatment, to a private hospital. The said document also does not indicate that any such permission, as had been sought for by the petitioner, was granted to him nor has the writ petitioner been able to furnish any documents, thereafter, to show that an emergent situation had occurred compelling him to take his wife, for treatment, to the private hospital of his choice.

7. The respondents have contended, as already indicated above, that the expenses for treatment, in private hospitals, are *reimbursable* only if there was any emergency, which was completely lacking in this case as the

applicant had been obtaining treatment in the hospital of his choice as per his convenience. Further-more, the rules, in this regard, permitted treatment in private hospitals at CGHS rates provided that such private hospital is listed under the CGHS and, in the case, where there was emergent situation requiring immediate treatment in order to save life.

8. Regarding the contention of the writ petitioner that the petitioner had tried to admit his wife in PMCH, but could not do so in view of the fact that there was strike at the PMCH, suffice it to point out that apart from PMCH, there are, admittedly, various other Government/recognized hospitals within a radius of one kilometer of the location, where the petitioner was based.

9. Learned counsel for the petitioner has brought on record the documents, which were obtained by the wife of the petitioner, under the Right to Information Act, 2005, which also includes a certificate from the attending medical officer, namely, Dr. Ms. Neelima Kumari. According to this certificate, the *caesarian* operation was performed on the patient under emergent situation, when there was danger to the life of the patient. The petitioner has strenuously urged that since there was strike at PMCH and owing to absolute helplessness at that point of time, he had to take his wife,

for treatment, to the private hospital.

10. With regard to the above, we have perused Rule 6 of Central Services (Medical Attendance) Rules, 1944, which reads as follows:

> *"**Rule 6 MEDICAL TREATMENT***
>
> *Rule 6 (1)- A Government servant shall be entitled, free of charge, to treatment-*
>
> *(a) in such Government hospital at or hear the place where he falls ill as can in the opinion of the authorized medical attendant, provide the necessary and suitable treatment; or*
>
> *(b) if there is no such hospital as is referred to in sub- clause (a) in such hospital other than a Government hospital at or near the place as can in the opinion of the authorized medical attendant, provide the necessary and suitable treatment;*
>
> *Rule 6(2)- Where a Government servant is entitled under sub-rule (1), free of charge, to treatment in a hospital, any amount paid by him on account of such treatment shall, on production of a certificate in writing by the authorised medical attendant in this behalf, be reimbursed to him by the Central Government".*

11. Considering the aforementioned rules as applicable to the Government servants, it is clear that Rule

6(1)(b) of Central Services (Medical Attendance) Rules, 1944, stipulates that the patient can avail benefits of *reimbursement* at other hospital only if there is no such hospitals as is referred to in Sub-clause 6 (1) (a) of Central Services (Medical Attendance) Rules, 1944.

12. In the present case, the respondents have clearly submitted, in their written statement filed before the learned Tribunal, that apart from the Patna Medical College and Hospital, Patna, there were other Government hospitals available, which would have facilitated the treatment of the petitioner's wife in an emergent situation, but the petitioner had clearly made up his mind to receive treatment at the private hospital of his choice, which is impermissible under the present rules.

13. Considering the fact that the Central Service (Medical Attendance) Rules is specific on the issue of *reimbursement* of *medical claims* and provide for *reimbursement* of *medical expenses*, incurred in a private hospital, if there is no government hospital available, the learned Tribunal has disallowed the *reimbursement* claim of the applicant as being against the rules and instructions. In this regard, the learned Tribunal has also considered the allegations of discrimination, which the writ petitioner had made, and concluded that no case of discriminatory

treatment could be made out by the writ petitioner.

14. Considering the reasons as stated above and the fact that the learned Tribunal has given detailed reasons for rejecting the *reimbursement* claim of the writ petitioner, which are cogent, valid and in consonance with the existent rules, we do not find any reason to interfere with the impugned order passed by the learned Tribunal in the said O.A.

15. This writ petition is, therefore, dismissed.

(Anjana Mishra, J.)

I. A. Ansari, J.: I agree.

(I. A. Ansari, J.)

Prakash/AFR

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