IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3118 of 2015

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1. Dr. Mira Singh. Wife of Dr. Ram Kishore Singh. Resident of Mira Nursing Home, Ashok Nagar, P.S.- Pokharia, District - Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Principal Secretary, Finance, Government of Bihar, Patna.
3. Deputy Secretary to the Government, Department of Health, Government of Bihar, Patna.
4. Director in Chief, Department of Health, Government of Bihar, Patna.
5. Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr Ajay Kumar Thakur Mr. Md.Imteyaz Ahmad Mr Nilesh Kumar Mr Ravi Ranjan Mr Amit Kumar
For the Respondent/s :	Mr. SC27- Kinkar Kumar Mr Mahboob Asharaf, AC to SC 27
For AG, Bihar :	Mr Kumar Priya Ranjan Ms Gunja

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 01-12-2015

Petitioner is a government doctor working under the State of Bihar. She continues to be in service of the State. She is married to one Dr Ram Kishore Singh, who also happens to be a doctor by profession. The issue which brings the petitioner before the Court is the order of rejection communicated to her by the Deputy Secretary, Department of Health, Government of Bihar through letter dated 23.12.2014 (Annexure- 1). By virtue of this decision, the petitioner has been told that the Department of Finance has decided to reject the claim for medical reimbursement of expenses incurred by the petitioner on the treatment of husband of the petitioner for the reason that he was an income tax payee for the year 2010-11 till 2012-13. Therefore, the Department of Finance opined that the husband is not dependent upon the petitioner.

Petitioner, therefore, is seeking quashing of Annexure-1 with a direction upon the respondents to extend the benefit of medical treatment as also reimbursement of expenses incurred therein. The thrust of the argument of the learned counsel for the petitioner is that the husband of the petitioner surely files income tax return but looking at the returns it is evident that it is more with the object of compliance with law. The returns do not disclose big income but is almost three lakhs a year. He seriously challenges the rational as well as the decision of the respondents to reject the claim of the petitioner that mere filing of return does not make the husband of the petitioner not dependent upon the petitioner or whether it absolves the respondent State authorities from honouring the obligation of meeting the medical expenses of the dependent.

On the question of law, attention of the Court was drawn to a similar kind of dispute which originated from the State of

Madhya Pradesh and travelled to Hon'ble Apex Court. The case in question is State of Madhya Pradesh & others v. M.P.Ojha & another, reported in AIR 1998 SC 659. The basic facts are that the son was a government servant in the State of Madhya Pradesh. His father had developed heart ailment which required treatment beyond the boundaries of the State of MP. He sought permission for treatment of his father. The permission was obtained. When it came down to reimbursement, the State raised certain objection that the father was a pensioner and, therefore, cannot be said to be dependent upon the son, therefore, the obligation of the State does not exist or subsist.

The Hon'ble Apex Court delved into the issue and dealt with various facets of the dispute and the ratio has been crystallized in paragraph 14 of the said decision. This is as under:

> ***"14. The expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would likely to lead to results which the relevant Rules would not have contemplated. The expression "wholly dependent" has to be understood in the context in which it is used keeping in view the object of the particular Rules where it is contained. We cannot***

curtail the meaning of "wholly dependent" by reading into this the definition as given in SR 8 which has been reproduced above. Further, the expression "wholly dependent" as appearing in the definition of 'family' as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of family it would mean other support, may be physical, as well. To be "wholly dependent" would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and was sick and it could not be said that he was not wholly dependent on his son. Son has to look after him in his old age. Even otherwise by getting a pension of Rs. 414 per month which by any standard is a paltry amount it could not be said that the father was not "wholly dependent" on his son. That the father had a separate capacity of being a retired Government servant is immaterial if his case falls within the Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the Rules in a case like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It was submitted before us that the father being a retired Government servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter

as we are satisfied that under the relevant Medical Rules, the father was member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other travelling expenses."

If this is what the Hon'ble Apex Court has to say with regard to dependence and has explained the concept as to what amounts to dependence or being wholly dependent then surely the petitioner has made out a case for interference with the decision contained in Anenxure-1.

Yet another decision to reinforce the obligation of the State against the husband of the petitioner on which reliance has been placed by the learned counsel for the petitioner is the famous case of the State of Punjab & others v. Ram Lubhaya Bagga, reported in (1998) 4 SCC 117. The Hon'ble Apex Court held the right of government servants to obtain proper medial treatment and advice even outside the State as a fundamental right guaranteed under Article 21 of the Constitution of India.

In fact, the Hon'ble Apex Court in clear terms established the right of a citizen to have medical treatment as one of the facets covered under Article 21 of the Constitution of India.

If this is the position then right to beget medical treatment by the husband of the petitioner is a constitutional right guaranteed in terms of the decision in the case of Ram Lubhaya Bagga (supra) coupled with the ratio laid down by the Hon'ble Apex Court in the case of M.P. Ojha (supra). The rational and reasoning for rejection of the claim of the petitioner contained in Annexure- 1 dated 23.12.2014 is erroneous and deserves to be interfered and quashed.

The writ application is allowed. Annexure- 1 is quashed. Matter is remitted back to the Principal Secretary, Department of Health, Government of Bihar to take a fresh decision on the claim of the petitioner. The decision must be taken within a period of three months from the date of production of a copy of this order.

(Ajay Kumar Tripathi, J)

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