

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7305 OF 2013

Mrs. Madhuri Praful Patil

Age: 59 yrs.,

Occ: Retired from the post of Assistant
Registrar,

R/o: 404, B 65, Sector 5, Shanti Nagar,
Mira Road (E), Mumbai

)...Petitioner

V/s.

1 The State of Maharashtra,
Through the Secretary,
Industry, Energy and Labour Dept.
Madam Cama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032

2 The Registrar,
Industrial Court,
Administrative Bldg., 1st Floor,
Government Colony, Bandra (E),
Mumbai 51

)...Respondents

Mrs. Vaishali K. Jagdale, advocate for Petitioner.

Mr. C.P.Yadav, AGP for respondent nos.1 and 2.

Mr. Mukund Saidaji Diggikar, Additional Director, Public Health
Department, Mumbai present.

**CORAM : ANOOP V.MOHTA AND
K.R.SHRIRAM, JJ.
RESERVED ON : 07.05.2015
PRONOUNCED ON: 14.8.2015**

Oral Judgment : (Per K.R.Shriram, J.)

Rule. Rule made returnable forthwith. With consent of the parties, petition is taken up for final hearing forthwith.

1 Petitioner has filed this petition under Article 226 of the Constitution of India challenging the communication dated 21.11.2012 passed by respondent no.1 pursuant to which claim of petitioner for medical reimbursement was rejected by respondent no.1.

2 Petitioner, on 20.10.1976, joined the Industrial Court at Mumbai as Junior Clerk. Thereafter, petitioner was promoted as Senior Clerk in 1978 and as Clerk of Court in 1984.

3 Petitioner thereafter was promoted to the post of Assistant Registrar in the year 2004. It is the case of the petitioner that she had been suffering from pain in both her knees and was taking treatment for the same since 2003. The pain in the knees was due to osteoarthritis. Over the years muscles in the knees got wasted. The pain in the knees became unbearable and the petitioner found it difficult to commute to her work and was a cause for concern. The

petitioner was advised by an orthopedic surgeon to go for knee replacement surgery. Petitioner, therefore, got her knees replaced by surgery at Sancheti Hospital, Pune which is a multispeciality hospital specially known for knee joint replacements, ortho problems and related diseases. Though it is a private hospital, the said Sancheti Hospital is recommended and recognized by the Government of Maharashtra in its hospital panel for treatment and medical reimbursement.

4 Petitioner underwent the surgery on 28.4.2011. The whole medical expenditure incurred by petitioner for replacement of both of her knees by surgery is about Rs.4,02,244.77. After recovering from the surgery, petitioner resumed her duties and retired from services on 30.6.2011 after rendering 34 years of service. Petitioner submitted her medical bills for reimbursement to respondent no.2 who forwarded it to respondent no.1. This claim of petitioner has been rejected. It is the case of petitioner that her claim has been wrongly rejected. It is also submitted that as per the Government Resolution dated 15.7.1986, the Public Health Department has specified that 100% medical reimbursement will be provided for the surgery of painful diseases of joints as well as their replacements and the treatments done at Sancheti Institute for Orthopedic & Rehabilitation, Pune. Moreover, the benefit of the said G.R. was extended to one Mr. P.K.Chaware, President, Industrial Court at Mumbai by giving him 100% medical reimbursement. Therefore, there is discrimination.

5 As per G.R. dated 16.11.2011, the Public Health Department has provided that the reimbursement of medical expenses of more than Rs.1 Lakh will be sanctioned by the head of the Ministerial Administrative Department. The said G.R. also provides the list of the ailments and the private hospitals where such treatments can be taken and in the list of ailments, painful diseases of joints and their replacement is included as well as the name of Sancheti Hospital, where petitioner got her knees replacement by surgery performed.

6 The Government had to be pushed to file a proper reply. The first affidavit that was filed on behalf of the Government of Maharashtra was on 1.4.2015 by one Mr. D.S.Rajput. In the said affidavit, it was stated that the G.R. dated 19.3.2005 provided that only 27 diseases which are mentioned therein are applicable for medical reimbursement and in exceptional cases, which are not covered in the said 27 diseases, the file is kept before the committee headed by the Additional Chief Secretary, Public Health Department for consideration. It is stated that the Public Health Department returned the proposal of the petitioner and again at the request of the petitioner, proposal for medical reimbursement was placed before the said committee. In a meeting of the committee held on 23.10.2012, the petitioner's proposal for medical reimbursement came to be rejected by the committee. As the details as to who

attended the said meeting and who were in the committee was not available in the affidavit, the respondents were told to file fresh affidavit on 6.4.2015 providing all details. Respondent No.1 filed the fresh affidavit annexing explanation given by the Public Health Department. It is stated in the said affidavit that as the disease of the petitioner was not covered by 27 emergency diseases and 5 serious diseases as mentioned in Annexure A to the Government Resolution dated 19.3.2005, claim was not payable.

7 Thereafter, as per our directions, respondent no.1 filed one more affidavit dated 7.5.2015. In the said affidavit, the stand taken by respondent no.1 is different.

8 Before we proceed further, it should be noted that respondent no.1 has not denied that the petitioner was suffering from Osteoarthritis of knee joints since the year 2003 nor that the petitioner underwent surgery for replacement of both her knees. In the fresh affidavit, the stand of the respondent is that osteoarthritis is a chronic disease which has developed over a period of time and the surgery is a planned surgery and not an emergency and, therefore, not payable. Respondent no.1 has also stated that the petitioner should have taken prior approval or advice of her authorized medical attendant before she went for surgery from non-government hospital. It is the case of the respondent no.1 that even though Sancheti hospital where the surgery was performed was an approved private hospital of respondent no.1, just because petitioner

did not take prior advice of her medical attendant, bills were not payable.

9 Curiously respondent no.1 also states in paragraph 12 that as per the G.R. dated 16.11.2001, the approved diseases or disease conditions are spine diseases, joint diseases, painful joint diseases and joint replacement surgery, diagnostic and therapeutic arthroscopy of knee joints and there are eight recognized hospitals for these conditions and in case of emergency, patients can directly seek treatment from these hospitals. But in all other cases, patient requires to get prior consent of her authorized medical attendant as per Rule 2(5) of the Maharashtra State Services (Medical Attendance) Rules, 1961 ('**Said Rules**'). It is the case of respondent no.1 that the treatment received by petitioner is not an emergency but specialized treatment and that petitioner has not submitted any emergency certificates issued by Sancheti Hospital and not submitted any document of her authorized medical attendant referring her to Sancheti Hospital. It is also stated that the petitioner's medical condition is chronic disease and not an emergency. Though respondent no.1 has taken various stands, the main grounds for rejection according to the respondent no.1 is that (a) in exceptional cases like that of petitioner, granting approval for medical reimbursement has to be decided by a High Level Committee constituted under the chairmanship of Additional Chief Secretary, Public Health Department and it has been rejected by the committee, and (b) Prior advice of her medical attendant was not taken.

10 On the ground of discrimination raised by petitioner that one Mr. P.K.Chawre was reimbursed in the year 2004, it is stated that same was sanctioned by Industrial, Energy and Labour Department at their level on 19.5.2004 and before G.R. dated 19.3.2005 came into existence.

11 It is true that Clause 8, Sub-clause 5 of the Said Rules, provides that written prior approval of an authorized medical officer is required before the Government employee goes and seeks private medical assistance. In this case, it is not the case of the petitioner either that she had obtained any such prior approval. The question that we are asking is, is it so vital to the case of the petitioner ? Sancheti Hospital where the petitioner underwent surgery is in the panel of hospitals approved by the Government. The knee replacement surgery or joint related problems are also approved to be performed at Sancheti Hospital. By a letter dated 28.5.2011 (Ex.'I') to the petition, it is stated that Sancheti Institute for Orthopedic and Rehabilitation, Pune is an approved hospital where Government employee or the members of the family of such Government employee can take treatment for the ailments mentioned therein. Items (2) and (3) of the said letter states "Painful disease of joints and their replacement surgery" and "diagnostic and surgical arthroscopy and knee joints", respectively. If it has been so approved, we fail to understand why the claim of the petitioner was rejected as it appears from the said letter, the petitioner is entitled to be reimbursed her medical cost. In the G.R. dated 16.11.2011, at

Item 7, the name of Sancheti Institute of Orthopedic Rehabilitation is included for treatment of the ailments relating to knee joints. If one considers the minutes of the meeting held on 23.10.2012, petitioner's case is simply rejected on the basis that “**Operation of the petitioner is not disease**”. In the minutes, it is nowhere explained as to how the operation performed on the petitioner is not a disease. The relevant column of the said Minutes is as under:

Decision taken in the meeting of the Committee on 23.10.2012

An operation on the knee of Smt. M.P.Patil, Asst. Registrar was done in Sancheti Institute of Orthopedic & Rehabilitation, Pune. But as the disease of knee was not included in the list of the prescribed disease and hence it was proposed by the Dept. to present the case of Smt. M.P.Patil before the Committee as a special case. But the operation on Smt. Patil is not any disease but it is a decided operation and “when such cases had been presented before the formed Secretariat Committee before this, then as the Committee had rejected such cases, hence the above said case cannot be presented before Committee” and such remarks were recorded by the Health Department and had denied to present the case before the Committee.
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But as Smt. M.P.Patil again requested for to present the above said proposal before the Committee , hence the Dept. has presented the above said case for the consideration of the committee as the Special point but the committee has rejected the above said proposal.
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This is also contrary to the affidavit filed by the Government on 7.5.2015 where it is stated that the condition of the petitioner is a chronic disease. The Committee has rejected without even going into the case in detail or applying its mind and simply stated that when such cases had been presented before the Formed Secretariat Committee before this, then as the committee had rejected such cases, hence the case of the petitioner cannot be presented before the Committee and the Health Department had denied to present the case before the committee but because the petitioner again requested for to present her case before the committee as a special point, the department has presented the case before the committee but the committee has rejected the proposal. This shows there is total non-application of mind and from the decision as recorded by the Committee, it shows the petitioner's case has not even been considered and analysed. The proposal of the petitioner was rejected simply for the sake of rejecting because in the past committee had rejected such proposal. That cannot be a ground to reject. The committee ought to have given detailed reasons after considering the proposal of the petitioner.

12 Therefore, impugned communication of the respondent ought to be quashed and set aside.

13 In our view, in view of the G.R. dated 16.11.2011 read with the communication dated 28.5.2011 (Ex.'I' to the petition), petitioner's case has to be considered and the Government is directed

to reimburse petitioner's claim of Rs.4,02,244.77 together with interest @ 9% p.a. from the date of the impugned communication i.e. 21.11.2012, within 4 weeks. Respondent no.1 also to pay a sum of Rs.25,000/- as cost to the petitioner.

14 Rule made absolute accordingly.

15 Petition stands disposed.

(K.R.SHRIRAM, J.)

(ANOOP V. MOHTA, J.)