

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

W.A.No.27 of 2015 IN WP(C).23522/2014

AGAINST THE JUDGMENT IN WP(C) 23522/2014 of HIGH COURT OF KERALA DATED 03-09-2014

APPELLANT/PETITIONER:

T.V.ARUNACHALAM AGED 47 YEARS
S/O. BALAKRISHNA KURUP, PHYSICAL EDUCATION TEACHER
SNT HIGHER SECONDARY SCHOOL, THOTTADA, KANNUR -670 007.

BY ADVS.SRI.V.A.MUHAMMED
SRI.M.SAJJAD

RESPONDENTS/RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. THE DISTRICT EDUCATIONAL OFFICER,
KANNUR -670 002.
3. THE MANAGER,
SNT HIGHER SECONDARY SCHOOL, THOTTADA
KANNUR- 670 007.

R BY SENIOR GOVERNMENT PLEADER SRI. M.A.FAYAZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22-05-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

Writ Appeal No.27 of 2015

Dated this the 22nd day of May, 2015

JUDGMENT

Antony Dominic, J.

Appellant is a Physical Education Teacher in the third respondent school. He had availed medical reimbursement towards the treatment expenditure of his mother, a pensioner. Long after the claim was allowed, he was issued Ext.P2 order requiring him to refund the amount. This was on the ground that his mother being a pensioner, she is not wholly dependent on him and that same was clarified by the Government vide Annexure I circular, dated 31.3.2004. Thereupon, the appellant submitted Ext.P3 representation to the Government seeking to recall Ext.P2. It was thereafter the writ petition was filed asserting his claim for the reimbursement of the medical expenditure incurred for his mother and for a consideration of Ext.P3. The learned Single Judge declined the prayer and dismissed the writ petition. However, the appellant was allowed to pay the amount due in instalments. It is aggrieved by this judgment, the appeal is filed.

2. We heard the counsel for the appellant and the Government Pleader.

3. Although various contentions have been raised, we find that by Annexure I, Circular No.64215/G2/2004/H&FWD dated 31.3.2004 the Government have clarified *inter alia* thus:

“In the circumstances, Government further clarify that the expenses incurred in connection with the treatment of parents who are wholly dependent of the Government employee can only be reimbursed. If the parent is a pensioner, he/she will not be considered as wholly dependent on the Government Servant.

The Heads of Departments/Administrative Departments concerned are therefore, requested to ensure while recommending/sanctioning the application for Interest Free Medical Advance/Medical Reimbursement claims, that the claims are made for the treatment of the parents of the Government Employee who are wholly depended on them, and are not service pensioners.”

4. Reading of this order shows that if the parent of a Government servant is a pensioner, such parent will not be considered as wholly dependent on the Government servant to be eligible to claim reimbursement of the medical expenses incurred for the treatment of the pensioner parent. Admittedly, the petitioner's mother for whose treatment the expenses were incurred is a pensioner. It is also true that in the writ petition, petitioner did not challenge Annexure I Government Order. In such a situation, so long as Annexure I Government Order

governs the field, the appellant could not have found fault with Ext.P2, nor sought an order for the consideration of Ext.P2 representation made to the Government. However, having regard to the pendency of this appeal and the plea made by the counsel for the appellant, we allow the appellant to pay the amount due from him in eight equal monthly instalments. The first instalment shall be paid on or before 10.6.2015 and the subsequent instalments shall be paid on or before 10th of every succeeding month. Subject to payment as above, coercive action will stand deferred and in case of default, respondents will be free to continue the recovery proceedings.

Writ appeal is dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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//True Copy//

P.A. to Judge