

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.856 of 2016
and
CMP.No.10990 of 2016

The Director General of Police,
Tamil Nadu, Mylapore,
Chennai - 600 004. ... Appellant/Respondent

vs.

Thiru M.D.Venugopal
Superintendent (Retired)
Office of the Joint Commissioner of Police,
South Zone, Chennai - 600 016.
residing at D-4/8, TNHB Flats,
South Siva Koil Street,
Puliyoor,
Kodambakkam,
Chennai - 600 024. ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 28.08.2014 made in W.P.No.22222 of 2012
passed by the learned Single Judge of this Court.

Petition Under Article 226 of the Constitution of India,
Praying this Court to call for the records connected with the
proceedings issued in R.Dis.No.262759/PHF-3/2010 dt 17.8.2011
passed by the respondent herein and quash the same and
consequently direct the respondent to pay Medical re-imbusement
of Rs. 90 400/- as per Government Order issued in GO.No.174
Finance (Salaries) Department dt 28.4.2008 to the petitioner.

For Appellant : Mrs.A.Srijayanthi, SGP

For Respondent : Mr.S.Ilamvaluthi

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Being aggrieved over the order passed by the learned Single Judge of this Court, the appellant -Director General of Police has filed the present Writ Appeal.

2. The facts leading to filing of this Writ Appeal are as follows:

2.1 The respondent herein joined as Junior Assistant in the Police Department on 03.06.1981 and retired from service as Office Superintendent in the office of the Joint Commissioner of Police, South Zone, Chennai on 30.04.2012.

2.2 According to the respondent, he was a severe cardiac patient since 2005. The various Senior Cardiologists had advised him to undergo Angiogram followed by a by-pass surgery, but he was not willing to undergo an invasive treatment, since both his father and brother died, while performing Angiogram test. Hence, he opted to undergo a non-invasive treatment called EECPT (Enhanced External Counter Pulsation Therapy). Accordingly, he approached Oxymed Hospital, which is also an approved Hospital for the aforesaid Non-invasive treatment. The Hospital stated that the estimated cost for such treatment would come around Rs.1,27,000/-. Thereafter, as per the advice of Star Health Insurance, the respondent has approached four other Hospitals, which suggested only invasive treatment, for which, he was not agreeable.

2.3 While so, the respondent has undertaken treatment from SAAOL Heart Centre at T.Nagar from 15.09.2010 to 13.11.2010 for his severe neck pain and chest pain. The Hospital charged him Rs.90,400/- for the said Non-invasive treatment. He made a representation dated 22.11.2010 requesting to reimburse the medical expenses incurred by him for such treatment, to the Commissioner of Police, Chennai, who, in turn, sent a letter dated 03.12.2010 to the Director General of Police, recommending to sanction the said amount as a 'special case'.

2.4 On receipt of the said communication, the Director General of Police, Chennai directed the respondent to appear before the Medical Board for examination. Accordingly, he appeared before the Medical Board, which after examination, submitted a report. Based on the report submitted by the Medical Board, the Director General of Police, passed an order dated 17.08.2011, rejecting the request of the respondent for reimbursement of the medical expenses. Aggrieved over the same,

the respondent filed a petition in WP.No.22222/2012, which was on contest, allowed and the Director General of Police was directed to pay the amount of Rs.90,400/- forthwith to him within a period of six weeks. Challenging the same, the Director General of Police, Chennai has filed the present Writ Appeal.

3. Learned Special Government Pleader appearing for the appellant submits that the sanction of funds from the Tamil Nadu Police Benevolent Fund would only encourage the police personnel including Ministerial Staff for such treatment with qualifiable result. In the present case, the Medical Board has opined that the treatment taken by the respondent was unorthodox and post treatment and C.T showed 60-70% Block in RCA and such treatment without qualifiable result should not be encouraged. Based on the same, the appellant has rejected the respondent's claim for medical reimbursement. Therefore, the order so passed by the appellant is in order.

4. Per contra, learned counsel for the respondent/writ petitioner submits that the learned Single Judge, after analysing the entire factual aspects and documentary evidence, allowed the writ petition by setting aside the order passed by the appellant herein and directed the appellant to pay the medical expenses incurred by the respondent. Therefore, the same need not be interfered with by this Court.

5. We have heard the rival submissions made on either side and perused the materials available before this Court.

6. On a perusal of the order impugned herein, we find that the learned Single Judge has allowed the writ petition by observing as under:

"The non-invasive treatment is approved by the Government in G.O.No.174. It is also not the case of the respondent that the reimbursement could not be given under the Tamil Nadu Police Benevolent Fund for non-invasive treatment, if such a stand is taken, I am of the view that the same is violative of Article 21 of the Constitution of India. The right of the patient to choose the treatment should be respected. In this case, the apprehension of the petitioner to take non-invasive treatment cannot be found fault with. Hence, I am of the view that the impugned order is liable to be interfered with."

7. Admittedly, the respondent was working in the police department and he was insured with Star Health and Allied Insurance Co. Ltd. and also a subscriber of Tamil Nadu Police Benevolent Fund. As per the letter of one Dr.K.N.Srinivasan, attached to Apollo Hospitals, he was suffering from Ischemic

heart disease with strongly positive TMT and he has to undergo early coronary Angiogram to decide about further line of treatment. All the Hospitals have also suggested him to undergo Angiogram followed by a by-pass surgery, which is an invasive treatment, whereas, the respondent was not willing to undergo such treatment, since his father and brother had died, while performing Angiogram test. Therefore, he opted to undergo a non-invasive treatment called EECPT (Enhanced External Counter Pulsation Therapy). It is not in dispute that such non-invasive treatment is covered with the insurance scheme provided for the government employees, as per G.O.Ms.No.174, Finance (Salaries) Department, dated 28.04.2008.

8. It is equally not in dispute that the respondent has taken treatment in SAAOL Heart Centre, T.Nagar, Chennai from 15.09.2010 to 13.11.2010, for his severe neck and chest pain. According to the discharge summary dated 13.11.2010 and medical bills issued by the said Hospital, he was treated with 35 sittings of ECP (External Counter Pulsation) and 18 infusions of BCA (Biochemical angioplasty), for which, the Hospital charged him Rs.90,400/-. According to the respondent, after the said treatment, he got relieved from the neck and chest pain.

9. It is to be noted at this juncture that the Commissioner of Police, Egmore, Chennai by his letter dated 03.12.2010 to the appellant -Director General of Police, Chennai, recommended to sanction the medical expenses incurred for such non-invasive treatment by the respondent, from the Tamil Nadu Police Benevolent Fund as a special case, whereas, the appellant rejected such claim, based on the Medical Board's report, wherein, it is opined as follows:

"3. A Medical Board was constituted in which the Chief Medical Officer and Dr.B.Rajeswari, AMO., were present. The expert opinion of visiting cardiologist Dr.Somasundaram was also obtained. All three doctors were of the opinion that the treatment taken by Mr.Venugopal was unorthodox and post treatment, CT showed 60-70% Block in RCA. In this situation, sanction of funds will only encourage further such situations.

4. As medical personnel, such treatment without qualifiable results should not be encouraged. Hence, it may be declined."

10. From the opinion given by the Medical Board as extracted above, it appears that there is semblance of persisting cardiac disease, for which, the respondent has to undergo further treatment. We are of the view that the appellant is bound by such opinion given by the Medical Board and it is the duty of

the Medical Board to verify as to whether any false claim has been made or not and only based on such opinion given by the Medical Board, decision has to be taken by the appellant.

11. At the same time, the contention of the respondent that he has undergone the non-invasive treatment, as per the advise of the qualified doctor and such treatment taken by him is also covered under the Insurance Scheme provided for the Government employees, cannot be slightly brushed aside. Suppose the respondent has taken such non-invasive treatment in a Hospital approved by the Insurance Company, the medical expenses claimed by him would have been sanctioned to him. Of-course, there may be some variations with regard to the amount charged for such treatment, according to each Hospital. However, the same cannot be disentitled the respondent from claiming the medical expenses already incurred by him. In view of the same, considering the fact that the respondent has undergone treatment for heart disease, especially, at the verge of his retirement, in our opinion, the respondent is entitled for reimbursement of the medical expenses incurred by him.

12. Next comes the quantum of medical expenses claimed by the respondent. In this context, the Medical Board shall examine the nature of the treatment undergone by the respondent and the quantum of expenses spent for the same and file a report to the appellant, so as to enable the respondent to get reimbursement of the same.

13. Accordingly, the writ appeal is allowed and the impugned order is set aside. The matter is remitted back to the appellant, who in turn, shall refer the same to the Medical Board for fresh opinion. The Medical Board is directed to reconsider the case of the respondent by examining the nature of the treatment taken by the respondent and the medical expenses incurred by him and thereafter submit a fresh opinion, so as to enable the respondent to make his claim. It is for the appellant to get the opinion of the Medical Board and take a fresh decision, in accordance with law, after providing an opportunity to the respondent. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Director General of Police,
Mylapore, Chennai-4.

+1cc to Mr.S.Ilamvazhudi, Advocate Sr.39288
+1cc to the Government Pleader Sr.39953

W.A.No.856 of 2016

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