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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.11.2016
CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P(MD)No.22382 of 2016

R.Subramanian : Petitioner

Vs.

1.The Director of Pension, DMS Complex, Chennai – 6.
2.The Director, Medical and Rural Health Services Department, Chennai – 6.
3.The District Collector, Theni District, Theni.
4.The Treasury Officer, District Treasury, Theni District. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records connected with impugned order passed by the 2nd respondent in his proceedings O.Mu.No.51885/Ka Pi 1/3/2016 dated 16.06.2016 and quash the same and consequently direct the 1st respondent to reimburse Rs.67,522/- (Rupees Sixty seven thousands five hundred twenty two only) being the actual medical expenditure incurred by the petitioner for the treatment given to the petitioner's wife for the Tumor in Spinal Cord diagnosed as MENINGIOMA, TRANSITIONAL TYPE (WHO Grade I) D11-D12 level spinal at the Sree Chitra Tirunal Institute for Medical Science and Technology, Trivandrum within a specified period.

For Petitioner : Mr.S.Govindan
For Respondents : Mr.V.R.Shanmuganathan, Additional Government Pleader.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus praying to quash the impugned order of rejection of medical reimbursement passed by the second respondent in his proceedings O.Mu.No.51885/Ka Pi 1/3/2016 dated 16.06.2016 and consequently, to direct the first respondent to reimburse Rs.67,522/- (Rupees sixty seven thousand five hundred and twenty two only), being the actual medical expenditure incurred by the petitioner for the treatment given to his wife at Sree Chitra Tirunal Institute for Medical Science and Technology, Trivandrum.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

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3.0.The facts leading to the filing of this writ petition are as follows:

The petitioner was retired from service as Secondary Grade Teacher, on 31.05.2001. While he was in service, he has been contributing to the Tamil Nadu Government Employees Health Fund Scheme, from the year 1991-1992 and after retirement, he became a subscriber to the Tamil Nadu Pensioners Health Fund Scheme, 1995.

3.1.The wife of the petitioner suffered from Spinal Cord Problem due to Tumor, which has been diagnosed as MENINGIOMA, TRANSITIONAL TYPE (WHO Grade I) D11-D12 level spinal and she was admitted in Sree Chitra Tirunal Institute for Medical Science and Technology, Trivandrum, on 22.05.2015 and discharged on 11.06.2015. The petitioner incurred an expenditure of Rs.67,522/- for the said medical treatment. The petitioner is entitled to claim Rs.2,00,000/-, under the New Health Insurance Scheme.

3.2.The petitioner applied to the fourth respondent for reimbursement on 14.09.2015, along with necessary certificates. But, the second respondent rejected his claim on the ground that the petitioner's wife took treatment in a non-network hospital. The said order is under challenge in this writ petition.

4.The learned counsel appearing for the petitioner relied upon the Judgment of the Principal Bench of this Court in N.Raja v. The Government of Tamil Nadu rep. by its Secretary, Adi Dravidar Welfare Department, Fort St. George, Chennai - 600 009 and Others reported in 2016(3) CTC 394, where-under, it has been held that when the Insurance Company is not liable on account of the violation of the terms and conditions of the contract, it is the duty of the Government to reimburse the medical expenses incurred. This Court while passing the Judgment, has also highlighted the concern expressed by the Division Bench, under which, the Government has been directed to clarify certain aspects and the said directions are as follows:

> (i)The State shall make it clear that if for some reason, which is satisfactory, the Claimant is unable to take treatment in a network Hospital but has been advised or had to go to a non-network Hospital, then his claim would be considered under the Rules.
>
> (ii)f the Claimant has been advised some procedure which is not covered by the Scheme, there again, it must be made clear that he can apply under the Rules.
>
> (iii)To safeguard duplication of payment, the Government can make sure and when they apply under the Rules, that the Claimant himself certifies that he has not made claim under the Scheme or vice-versa.
>
> (iv)The State shall inform every network Hospital that if it receives Complaints from Claimants that money was demanded for admission or for treatment, then that Hospital will be removed from the network. This warning is necessary, since, at times of crisis, the Claimants

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will not be in a position to argue with the Hospital that this is a `cashless' Scheme. We are aware that there is an officer of the Star Health Insurance Company at every network Hospital to ensure that Hospitals adhere to the terms of the Scheme, but, yet, it is better to make this position clear to the Hospitals, since one of the questions that has arisen before us is that whether the Claimants will be entitled to reimbursement if, by mistake, they pay cash".

4.1.In addition to that, there is also a direction to the Director of Pension under G.O.No.477, Finance (Pension) Department, dated 30.09.2009, by which, the Director of Pension has been delegated with powers to sanction pending claims as well as future claims for medical assistance from the pensioners in respect of ineligible treatments as well as eligible treatments taken in unaccredited institutions, both within the State as well as outside the State. Paragraphs 4 to 6 of the said G.O. read as follows:

"4.The Director of Pension has also stated that the Hon'ble High Court has observed in various judgements that "mode of treatment is at the discretion of the Doctors and the departments cannot insist particular mode of treatment alone can be taken by the patient" and that "the pensioners cannot be imposed any condition that a particular type of treatment alone should be taken or the treatment should be taken in a particular hospital".

5.The Director of Pension has therefore requested for delegation of powers to him for sanction of assistance under Tamil Nadu Government Pensioners' Health Fund Scheme towards treatments not approved and not listed in the G.O. (Ms) No.378, Finance (Pension) Department, dated 13.10.2005 and also for treatments taken in institutions of other States in order to reduce hardship to the pensioners from moving Court often (on rejection of the proposals).

6.The Government, after careful consideration of the request of the Director of Pension in paragraph 5 above, pass the following orders:-

The Director of Pension is delegated with powers to sanction pending claims as well as future claims for medical assistance from the pensioners in respect of ineligible treatments as well as eligible treatments taken in unaccredited institutions, both within the State, as well as outside the State, subject to the following procedure:-

In respect of treatments taken in unaccredited hospitals within the State:

Procedure prescribed in para 4(i) (a) of the GO. sixth read above shall be continued.

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In respect of treatments taken in unaccredited hospitals outside the State:
The Pension Pay Officer/District Treasury Officer/Sub-Treasury Officer/Branch Manager of Public Sector Banks after satisfying about the details furnished in the application received in his office shall send the claim direct to the Director of Pension within a week. However, certification from the District Medical Officer/Director of Medical Education need not be insisted in respect of Hospitals outside the State".

5.Under such circumstances, in the light of the Judgment of the Principal Bench of this Court in N.Raja v. The Government of Tamil Nadu rep. by its Secretary, Adi Dravidar Welfare Department, Fort St. George, Chennai - 600 009 and Others reported in 2016(3) CTC 394 and also G.O.No.477, Finance (Pension) Department, dated 30.09.2009, the impugned order dated 16.06.2016 passed by the second respondent is set-aside and the first respondent, Director of Pension, Chennai - 6, is directed to sanction the medical expenses incurred by the petitioner, which is the below the eligibility limit, to the petitioner, under the Scheme.

6.The writ petition is allowed on the above terms. No costs.

sd/
Assistant Registrar(A.S)

/True copy/

Sub Assistant Registrar

To

1.The Director of Pension, DMS Complex, Chennai - 6.
2.The Director, Medical and Rural Health Services Department, Chennai - 6.
3.The District Collector, Theni District, Theni.
4.The Treasury Officer, District Treasury, Theni District.
5.The Director of Pension, DMS Complex, Chennai - 6.

+1CC TO M/S.S.GOVINDAN, Advocate,SR.NO.72071
+1CC TO SPECIAL GOVERNMENT PLEADER,SR.NO.72675

ORDER MADE IN
W.P(MD)No.22382 of 2016
23.11.2016

JM/CM MSA/13.03.2017/4P/8C

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