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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7978/2012

RAM KUMAR KAUSHIK Petitioner
Through: Mr. Neeraj Kumar Jha, Adv.

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through: Ms. Niti Jain, Adv. for Mr. Anuj
Aggarwal, Adv. for GNCTD.

% Date of Decision: 04th March, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present writ petition has been filed with the following prayers:-

“i) Issue a writ in the nature of mandamus directing respondents to reimburse medical expenses/claim of the petitioner on account of Medical treatment immediately.

(ii) Impose appropriate cost on the respondent on account of the harassment caused to the petitioner and failure to take necessary step qua the said issues.

(iii) Pass such other and further order (s) as this Hon'ble Court may deem fit and proper in the circumstances of this case.”

2. The admitted facts are that the petitioner retired as a Teacher from a Government school on 31st July, 2005.

3. Though the petitioner suffered two cardiac attacks on 26th June, 2010 and 16th August, 2010, yet the petitioner obtained membership of Delhi Government Employees Health Scheme (DGEHS) only on 09th September, 2010.

4. While learned counsel for the respondents states that DGEHS membership taken on 09th September, 2010 cannot have retrospective effect, learned counsel for the petitioner states that it is settled law that a retired Government official cannot be denied the benefit of medical reimbursement simply because he had not opted for the scheme.

5. In the opinion of this Court, the issue raised in the present writ petition is no longer *re integra*.

6. A coordinate Bench of this Court in ***Kishan Chand Versus Govt. of NCT & Others, WP(C) 889/2007, decided on 12th March, 2010*** has held as under:-

“6. The issue is no more res integra as in the case of S.K. Sharma (supra), this Court clearly held that the petitioner after getting retired cannot be denied the benefit of the medical reimbursement simply because of the fact that he did not opt for the said scheme. In this case also the claim of the employee was rejected on the ground that he was not covered under the CGHS Rule not being a part of the scheme but still a retired Central Government employee residing in non-CGHS area can make a CGHS card for himself and his dependent family members from the nearest centre where CGHS is functional. Further placing reliance on some authoritative pronouncements of the Apex Court, this Court in the above case took a view that the petitioner cannot be discriminated against, merely because he is not a member of the CGHS scheme as he was staying in a non-CGHS area. In this case also the employee had applied to become a card holder later in the period.

7. In the case of V.K. Jagdhari (*supra*), which has been relied by the petitioner, a similar question arose before the Court and objection was taken that since the employee had opted for the CGHS card after his surgery, therefore, he was clearly disentitled to the claim of reimbursement. Answering the said question in negative, the Court clearly held that the pensioner cannot be discriminated against merely because he has not opted for CGHS scheme or he resides outside a non-CGHS area. Taking into consideration the ratio of the judgments in the S.K Sharma (*supra*) and Som Dutt Sharma (*supra*) case, this court consolidated the legal position and held that:

“The position emerging from various decisions of this Court may be summarised as follows:

1) *Even if employee contributes after availing medical facilities, and becoming member after treatment, there is entitlement to reimbursement (DB) Govt. of NCT v. S.S. Sharma : 118(2005)DLT144*

2) *Even if membership under scheme not processed the retiree entitled to benefits of Scheme - Mohinder Pal v. UOI : 117(2005)DLT204 .*

3) *Full amounts incurred have to be paid by the employer; reimbursement of entire amount has to be made. It is for the Government and the hospital concerned to settle what is correct amount. Milap Singh v. UOI : 113(2004)DLT91 ; Ran deep Kumar Rana v. UOI : 111(2004)DLT473*

4. *The pensioner is entitled to full reimbursement so long the hospital remains in approved list P.N. Chopra v. UOI, (111) 2004 DLT 190*

5) *Status of retired employee not as card holder: S.K. Sharma v. UOI, : 2002(64)DRJ620 ;*

6) *If medical treatment is availed, whether the employee is*

a cardholders or not is irrelevant and full reimbursement to be given, B.R. Mehta v. UOI : 79(1999)DLT388 .'

The status of a retired Government Employee was held to be independent of the scheme and rules in so far as the entitlement to medical treatment and/or CGHS benefits were concerned (ref. V.K. Gupta v. Union of India, : 97(2002)DLT337). Similarly in Narender Pal Singh v. Union of India, : 79(1999)DLT358 , this Court had held that a Government was obliged to grant ex-post factor sanction in case an employee requires a specialty treatment and there is a nature of emergency involved.”

8. It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the pensioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the said surgery undergone by him. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired. Clearly in the present case by taking a very inhuman approach, these officials have denied the grant of medical reimbursement to the petitioner forcing him to approach this Court. The respondents did not bother even after the judgment of this Court was brought to their notice and copy of the same was placed by the petitioner along with the present petition.

9. In the light of the aforesaid, the present petition is allowed.

10. The respondents are directed to pay the said medical claim of the petitioner along with 18% interest from the date of submission of his bill. The said payment shall be made by the respondent within one month from the date of this order. Additional costs of Rs. 10,000/- is also imposed on the respondents for causing delay in making the said payment to the petitioner.”

7. In view of the aforesaid mandate of law, the present writ petition is allowed and a direction is issued to the respondents to reimburse the petitioner’s medical expenses/claim on account of his treatment in the hospital, within a period of eight weeks.

MARCH 04, 2016
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MANMOHAN, J

