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

+ W.P.(C) 10299/2015

SRI KISHAN

..... Petitioner

Through Mr. S.B. S. Vashistha, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION..... Respondent

Through Ms. Biji Rajesh, Advocate for Mr.
Gaurang Kanth, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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04.03.2016

The impugned order dated 13th March, 2015 holds that the petitioner herein would not be entitled to reimbursement of medical treatment expenses incurred on his deceased wife during the period 29th October, 2007 to 2nd November, 2007 as he had become a member of the scheme floated by the Municipal Corporation of Delhi (Health Department) on 4th March, 2008. Thus, the petitioner was not a member of the scheme on the dates when the expenditure was incurred.

2. The issue is covered against the petitioner by two Division Bench decisions of this Court. In W.P. (C) No. 539/2007, titled *Dal Chand Vashisht versus Goernment of NCT of Delhi and Others* decided on 14th

March, 2008, it has been held as under:-

“26. To be able to obtain the benefit of a scheme, it is essential that the person/claimant is a member of the said scheme. If the membership is automatic i.e. it comes with the status of the person, the person would be entitled to the benefits thereof, unless he expressly, or by his conduct evinces his intentions not to participate in the scheme- e.g. where he does not pay the subscription due from him. However, where has an option,- whether or not to subscribe to the scheme and the scheme is contributory and voluntary in character, he cannot claim any benefits under the scheme unless he exercises his option to get covered by the scheme and also takes the necessary steps by paying the subscription therefore.”

3. This judgment of the Division Bench overrules three earlier decisions of single Judges of this Court in which a different view/ratio was accepted.

4. In W.P.(C) No. 12711/2009, titled *Union of India and Another versus Shanti Devi Sharma*, decided on 12th July, 2010, reference was made to the decision of the Supreme Court in *Confederation of Ex-Servicemen Association and Others versus Union of India and Others*, (2006) 8 SCC 399 and it was held that the petitioner therein would not be entitled to reimbursement of medical treatment expenses, as the said expenditure was incurred when he was not a member of the CGHS scheme. This judgment distinguishes cases where the post-retirement employee had settled down in a town where CGHS facilities were not available.

5. In the present case, as per the scheme in question, the petitioner as any other member was required to pay a lumpsum amount before he could

join and take benefit of the scheme. It is not the case of the petitioner that on retirement, he became a member of the scheme automatically, in the sense that no further act on his part or subscription to the scheme was required.

6. In view of the aforesaid legal position, we do not find any reason to interfere with the impugned order passed by the tribunal which is in accordance with law. The writ petition is dismissed. No costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 04, 2016
VKR/NA