

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.18730 of 2008**

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Pradeep Kumar Mishra, son of Late Laxman Mishra, resident of Rauja, Police Station Chapra Muffasil, District -Saran (Chapra) posted as Assistant in District Establishment Section, Collectorate, Chapra ( Saran)

.... .... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner –cum- Secretary, Department of Health Education and Family Welfare, Government of Bihar, Patna
3. The Director –in-Chief Department of Health Education and Family Welfare Government of Bihar, Patna
4. The Deputy Director, Health Services ( Primary ) Patna
5. The Commissioner , Saran Division, Chapra
6. The District Magistrate, Saran, Chapra
7. The Civil Surgeon –cum- Chief Medical Officer, Saran, Chapra
8. The Establishment Deputy Collector, Saran, Chapra

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Gyan Prakash

For the Respondent/s : Mr. Rakesh Kumar Sharma, AC to SC No. 9

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**ORAL JUDGMENT**

**Date: 20-04-2017**

1. Heard Sri Gyan Prakash, learned counsel for the petitioner and Sri Rakesh Kumar Sharma, learned AC to SC No. 9.

2. The petitioner, has approached this Court under Article 226 of the Constitution of India , with a prayer to direct the respondents to pay meager medical reimbursement amount i.e. Rs. 54432/- with interest, which petitioner incurred on the treatment of his wife, who was suffering from serious disease i.e. cancer.

3. It has been pleaded that in the year 2001 itself petitioner's wife developed some pain and thereafter, she was treated



at Mahavir Cancer Institute, Phulwarisharif. Immediately thereafter, she was referred for further treatment to Tata Memorial Hospital, Mumbai and thereafter, she was treated and finally the petitioner raised the claim for medical reimbursement by submitting bills along with all relevant documents. However, his claim for reimbursement was rejected by the Deputy Director, Health Services, Bihar, Patna vide its communication contained in memo no. 4554 dated 23.12.2002. It is case of the petitioner that after rejection he filed several representations before the authority concerned but petitioner's all efforts went in vain. In the meanwhile, it was submitted by learned counsel for the petitioner that in identical situation, a Bench of this court in CWJC No. 3778 of 2006 and another connected writ petition had allowed the medical reimbursement claim and brushed aside the objections raised by the respondent /State regarding non-grant of permission for outside treatment. Learned counsel for the petitioner has referred to Annexure '11' to the writ petition i.e. copy of judgment dated 16<sup>th</sup> May 2007 passed by a Bench of this court. It has been argued that petitioner's case also stands on similar footing and petitioner deserves to be granted the same relief.

4. In this case though the order whereby the claim of the petitioner was rejected i.e. Annexure '6' to the writ petition earlier, there was no specific pleading for quashing of the same, and as such,



subsequently, an interlocutory application vide I.A. No. 2571 of 2017 was filed for allowing the petitioner to amend the prayer portion in the writ petition to the extent of quashing of memo no. 4554 dated 23.12.2003 issued by the Deputy Director, Health Services (Annexure '6' to the writ petition). The interlocutory application was heard on 11.4.2017 and it was directed to treat the amendment petition as part of the writ petition. Learned counsel for the petitioner submits that the order impugned i.e. Annexure '6' is liable to be set aside and petitioner is entitled to get medical reimbursement as earlier it was claimed with interest.

5. Sri Rakesh Kumar Sharma, learned AC to SC No. 9 opposing the prayer of the petitioner by way of referring to the facts disclosed in the counter affidavit submits that there is nothing on record to suggest that petitioner was even earlier granted permission while exercising power under Rule 26 of the Bihar Medical Attendance Rules, 1947. He submits that since there was no permission granted by the competent authority, there was no question for entertaining the claim for reimbursement and as such, the claim of the petitioner for medical reimbursement was rightly rejected vide Annexure –' 6' to the writ petition. He has also raised serious objection on the point that writ petition is fit to be rejected since the claim of the petitioner is stale one. He submits that the order



impugned was passed long back in the year 2002 whereas, the present writ petition was filed in the month of December, 2008. He further submits that in the case on which petitioner has placed reliance i.e. Annexure '11' to the writ petition is concerned, their claim was rejected in the year 2005 and immediately thereafter they had rushed to this Court and filed writ petition in the year 2006 and on aforesaid ground a prayer was made to reject the writ petition.

6. Besides hearing learned counsel for the parties I have perused the materials available on record. So far point of law which has been adjudicated by this court in CWJC No. 3778 of 2006 i.e. Annexure – '11' to the writ petition is concerned, learned counsel for the State was not in a position to dispute the same. He also was not in a position to dispute the similarity of the claim of the petitioner with the claim of petitioners of writ petition i.e. CWJC No. 3778 of 2006. However, he has raised objection that petitioner had approached this court belatedly. It is admitted fact that wife of the petitioner was noticed with serious ailment of cancer. In such a situation, there was no reason for the petitioner to wait for obtaining prior permission from the State officials. In such cases, there was urgent need for rushing for specialised treatment and as such, the petitioner rightly went to Tata Memorial Hospital, Mumbai for proper treatment. Moreover, this issue was examined by this Court in detail in CWJC



No. 3778 of 2006. Since case of the petitioner can not be distinguished from the case of the writ petitioners of CWJC No. 3778 of 2006, there cannot be any reason to pass different order. However, so far claim of interest is concerned, the Court is of the opinion that since the petitioner himself has approached this Court at much belated stage, petitioner may not be entitled to claim for interest. So far as the amount of medical reimbursement is concerned, the amount appears to be meager i.e. Rs. 54432/- and as such, at least petitioner, even at belated stage, is entitled to get the same amount reimbursed. Accordingly, the order contained in Annexure '6' is hereby set aside with a direction to the respondents to credit the amount as mentioned in paragraph no. 1 of the writ petition to the account of the petitioner within a period of three months from the date of receipt / production of a copy of this order.

7. It is made clear that that if the said amount is not credited to the account of the petitioner, the petitioner shall be entitled to get interest on the same amount at simple rate interest of @ 6% per annum which shall be calculated from the date on which claim for medical reimbursement was raised by the petitioner. In that eventuality, the State Government would be entitled to recover the interest amount from the pocket of official (s) / employee(s) responsible for non-compliance of the order of this court within time.



8. The writ petition stands allowed.

9. It goes without saying that in peculiar facts and circumstances of the present case this Court has ignored the objection of delay and as such, this Order may not be treated as a precedence.

**(Rakesh Kumar, J)**

Praful/-

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