



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.5090 of 2015

1. I.Yesudhas
2. Y.A.Shini

... Petitioners

-vs-

1. State of Tamil Nadu,
Represented by The Secretary to Government,
Department of School Education,
Fort St.George, Secretariat,
Chennai.
2. The District Educational Officer,
Office of the District Educational Officer,
Kuzhithurai, Marthandam P.O.,
Kanyakumari District.
3. The Chief Educational Officer,
Office of the Chief Educational Officer,
at Nagercoil, Kanyakumari District.
4. The Joint Director,
Medical and Rural Health Services,
Medical and Rural Development,
at Nagercoil, Kanyakumari District.
5. The United India Insurance Company Ltd.,
Third Party Administrator,
The New Health Insurance Scheme 2012 of
Government of Tamil Nadu, Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 4th respondent herein in his proceedings in Na.Ka.No.514/M1/13 dated 21.03.2013 and Na.Ka.No.416/N3/15 dated 24.02.2015, quash the same and consequently direct the respondents to disburse the medical claim of the 1st petitioner's wife Tmt.T.Alphonse, who was medically invalidated due to her decease arose during her service as Government School teacher and to bear her continuing treatment expenses on the basis of New Health Insurance scheme with interest at the rate of 12% per annum on the above said amount to the petitioners forthwith within a time frame that may be fixed by this Hon'ble Court.



For Petitioner : Mr.S.Titus
For R1 to R4 : Mr.K.P.Krishna Doss
Govt. Advocate
For R5 : Mr.N.Dilip Kumar

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O R D E R

The petitioner seeks to quash the impugned orders dated 21.03.2013 and 24.02.2015 respectively, by which his request for medical reimbursement for the treatment to his wife, was rejected on the ground that the hospital, in which she underwent treatment is not an approved hospital. The petitioner also sought a direction to the respondents to disburse the medical claim of the 1st petitioner's wife Tmt.T.Alphonse, who was medically invalidated due to her decease arose during her service as Government School teacher and to bear her continuing treatment expenses on the basis of New Health Insurance scheme with interest at the rate of 12% per annum on the above said amount to the petitioners forthwith.

2. The petitioners are husband and daughter of one T.Alphonse, who was working as Teacher in Government High School, Nattalam, Kanyakumari District and has now become unconscious bed ridden lady due to blood clot in her brain. Her husband / 1st petitioner herein has spent huge amount of approximately Rs.25,00,000/- and he and his daughter submitted a representation for reimbursement of the said amount. However, their claim was rejected on the ground stated supra, against which, they are before this Court.

3. While dealing with the similar issue of medical reimbursement, I have considered all the aspects, referred to various judgments of this Court and passed an elaborate order in **W.P.2059 of 2017 [T.Balamani vs The Principal Secretary to Government, Finance (Salaries) Department, Secretariat, Chennai-9 and others] decided on 27.02.2017** and directed the Government to sanction the amount to the petitioner therein. The order passed by me is extracted below:

"The petitioner seeks to quash the impugned order dated 04.10.2016, by which her request for medical reimbursement was rejected on the ground that the hospital, in which she underwent treatment is not an approved hospital. The petitioner also sought a direction to the 1st respondent to reimburse the medical expenses of Rs.4,44,965/- to the petitioner with adequate interest

2. The petitioner, who was an employee during the period of treatment and now attained superannuation, has approached this Court against the rejection order in respect of her medical claim for the treatment. The request of the petitioner has been rejected by the Government followed by the rejection of the High Level Committee.



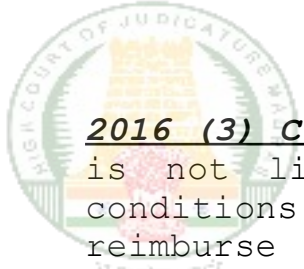
3. Learned Government Advocate would submit that the Government, having entered into a contract with the Insurance Company and having paid huge amount to them, cannot be compelled to reimburse the amount for the second time. He would further submit that there are number of net work hospitals in the State and it is impermissible for the Government employees to choose their own hospitals for treatment and thereafter claiming reimbursement. If this practice is allowed, then the very purpose of entering into the the contract with the Insurance Company will be defeated.

4. Learned counsel for the petitioner would contend that the Government issued an order in G.O.Ms.241 Finance (Salaries) Department dated 24.08.2016, which states that in order to redress the grievances of the Government employees/pensioners under New Health Insurance Scheme, District Level Empowered Committee / State Level Empowered Committee / High Level Committee have been constituted, which will go through the records and thereafter decide with regard to reimbursement of the amount and prior to that, the Government only extended the monetary benefits for the treatment.

5. Heard the learned counsel on either side.

6. It is seen that the Government has entered into a contract with the Insurance Company between the years 2014 and 2018 and as per the contract, the Insurance Company is liable to pay the entire amount directly to the network hospital and it cannot reimburse the amount in terms of money, as the facility extended itself is the cashless facility. But, at the same time, the State cannot take a stand that there is no provision to reimburse the amount to its employees in terms of money at all.

7. Admittedly, the petitioner has taken treatment in a non-network hospital on account of emergent situation, which ultimately resulted in rejection of her claim. Subsequently, the High Level Committee has also rejected the claim of the petitioner. It is not in dispute that if the claim is approved, the petitioner would be paid the medical benefits based on Tamil Nadu Medical Attendance Rules (in short "the Rules"). The benefit of scheme, namely, the contract cannot be rewritten and it is only the Government to pay the amount incurred by the petitioner/employee/ patient/pensioner irrespective of constitution of the Committee. It is pertinent to mention here that the patient cannot search for network hospital for getting admitted or for taking treatment during emergency.



2016 (3) CTC 394, has clearly 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. The Hon'ble Division Bench of this Court also, by order dated 16.12.2016 in W.A. (MD) No.1579 of 2016 [MD India Healthcare Services (TPA) Ltd., rep. by the Branch Manager, Chennai, Chennai vs. K.Parameshwari and others], directed the Government to reimburse the medical expenditure. In view of the above, this Court is of the view that pursuant to the existence of the contract, the Insurance Company cannot be directed to pay the amount and therefore, it is the Government, which is liable to reimburse the amount.

9. Accordingly, this writ petition is allowed and the impugned order dated 04.10.2016 is hereby set aside. The concerned respondent, namely, the 1st respondent is directed to sanction the medical expenses incurred by the petitioner/employee/pensioner, as per the eligibility criteria in terms of amount under the Scheme along with interest @ 9% p.a. without standing on technicalities and release the eligible amount within a period of two months from the date of receipt of a copy of this order.

10. Before parting with the matter, it is suggested that the Government shall ensure devising a proper scheme so that the employees / pensioners, who are the backbones for smooth running of Government machineries are not made to run from pillar to post for their claims, on the ground of technicalities being raised by the Insurance Company."

4. Finding that the present issue on hand is squarely covered by the earlier judgment of this Court dated 27.02.2017, this writ petition is allowed and the impugned order dated 21.03.2013 and 24.02.2015 respectively are hereby set aside. The respondents, more particularly the 1st respondent, are directed to sanction the medical expenses incurred by the 1st petitioner for the treatment given to his wife, as per the eligibility criteria in terms of amount under the Scheme along with interest @ 9% p.a. without standing on technicalities and release the eligible amount to the petitioner, within a period of two months from the date of receipt of a copy of this order. No costs.

SD/-
ASSISTANT REGISTRAR (CS-I)

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SUB ASSISTANT REGISTRAR



To:

1. The Secretary to Government,
State of Tamil Nadu,
Department of School Education,
Fort St.George, Secretariat,
Chennai.
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Medical and Rural Health Services,
Medical and Rural Development,
at Nagercoil, Kanyakumari District.
5. Third Party Administrator,
The United India Insurance Company Ltd.,
The New Health Insurance Scheme 2012 of
Government of Tamil Nadu, Chennai.

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