

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 27, 2017

Judgment delivered on: October 10, 2017

+ W.P.(C) 3578/2016

K S SIDHU

..... Petitioner

Through: Mr. Rajiv Aneja, Adv. with
Ms. Maldeep Sidhu, Adv.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Bharathi Raju, CGSC for R-1
to 3.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 40281/2016 (for delay)

For the reasons stated in the application delay of 141 days in filing the counter-affidavit by respondent nos. 1 to 3 is condoned. The counter affidavit is taken on record. Application disposed of.

W.P.(C) 3578/2016

1. This petition is yet another round of litigation by the petitioner seeking the following reliefs:-

“The petitioner therefore humbly prays for a writ or order in the nature of a writ directing the respondents to pay to the petitioner the entire amount Rs.7,06,214.57/- (Rupees Seven lakhs six thousand two hundred fourteen and paise fifty seven only) as per bills raised by the concerned hospitals/labs/physiotherapist etc and paid by the petitioner, details and originals of which are available with the petitioner along with the

petitioners claim statement as was returned to him by respondent No.3. The respondents may also be directed to issue a valid CGHS Card to the petitioner and his wife so that they are able to get their day to day prescriptions and medications as per their entitlement, from the respondents centers. Any other further order or relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be granted including payment of costs in favour of the petitioner."

2. Suffice to state, the petitioner had earlier filed two writ petitions being W.P.(C) No. 5273/2010 and W.P.(C) No. 1423/2012 making a claim for reimbursement of the expenses incurred by him for his and his wife's treatment, which as seen is also his claim in the present petition. The claim, as seen from the prayer is for an amount of Rs.7,06,214.57. The petitioner, retired as a Judge of Rajasthan High Court in the month of April, 1985. Thereafter, he moved to Delhi. He became a Member of CGHS Scheme in the year 2005 and was given a card No.76206/997511. It is the case of the petitioner that he did not claim any medical benefits and bore the expenses of his and his dependant wife's treatment, i.e., for medications and surgeries during the period 2005-2009.

3. It is averred that his latest CGHS card bears the No. 997511 and showed the validity upto September 2015. On April 05, 2015, the petitioner fell down while on his evening walk in the local park. He was taken to Metro Hospital, Preet Vihar. An X-ray was done and it was discovered that his hip had broken/fractured due to the fall. It is his case that as the Orthopedic Surgeon/Doctor was not available at that time, his daughter called his regular Doctor at Apollo Hospital, who advised a surgery, for which, he was moved to Apollo Hospital. The petitioner was operated at Apollo Hospital. He was discharged on April 14, 2015. The petitioner submitted his claim for reimbursement.

The clarifications sought were given by the petitioner's daughter by personally going to the respondent No.3 office. The petitioner had also sent a copy of the CGHS card showing its validity till September 2015. It is noted that the reimbursement has not been effected for the reason that the CGHS card was not valid for the period of the claim.

4. The respondents have filed counter affidavit wherein it is pleaded that the petitioner has submitted a medical reimbursement claim of Rs.6,33,505/- for indoor treatment from April 05, 2015 to April 14, 2015 undertaken in Apollo Hospital. The said claim was received on July 20, 2015 and returned in original on July 28, 2015 as during scrutiny, the computer generated check list for reimbursement of medical claims showed the validity of the CGHS card only upto January 31, 2013. When clarification was sought from the petitioner, the petitioner submitted a copy of the CGHS card and passbook showing payment of Rs.6,000/- made on April 10, 2012 in favour of CGHS, for renewal. According to the respondents, the draft for Rs.6,000/- was for extending the validity of the CGHS card for one year i.e 2012-2013 whereas the lifetime subscription is a one-time payment of Rs.60,000/-. In the counter affidavit, a reference is also been made to Section 23D of the High Court Judges (Salaries and Conditions of Service) Act, 1954 to contend that the medical benefits post retirement are regulated by this Section. A reference is also made to Civil Appeal Nos. 9020-9021/2012 pending before the Supreme Court and the orders passed in the Civil Appeals.

5. A rejoinder affidavit has been filed by the petitioner wherein it is stated that the petitioner has paid a sum of Rs.74,030/-, which is an amount for covering the

beneficiary for lifetime.

6. Mr. Rajiv Aneja, learned counsel for the petitioner would submit that the alleged ground on which the reimbursement has been denied to the petitioner that his CGHS card was not valid, is without any basis, inasmuch as the card clearly depicts validity upto September, 2015. In view of such a representation, the petitioner was under a bona fide belief, that he would continue to be governed by the CGHS Scheme and any expenses incurred shall be reimbursed. Mr. Aneja stated, that this is not the first time that the petitioner had to approach this Court for a similar claim of reimbursement for the expenses incurred for his treatment. He would refer to orders passed by this Court in W.P.(C) Nos. 5273/2010 and 1423/2012 to contend that the earlier petitions were allowed in favour of the petitioner. According to Mr. Aneja, the respondents cannot now take a plea that validity was uptill September 2013 and deny the benefits. Had the petitioner known this fact in 2013 itself, he could have sought the extension of its validity for the period thereafter by paying requisite charges. His plea in any case is, in view of the judgment of this Court in *Union of India vs. T.S. Oberoi and ors LPA 898/2002 decided on November 07, 2003*, the petitioner being a retired Judge of the Rajasthan High Court, he would be entitled to the benefits irrespective of the fact that he is covered under the CGHS Scheme or not. That apart, he would rely upon the judgment of this Court reported as *138 (2007) DLT 210 Shyama Malhotra and Ors. v. Union of India and Ors* to contend that it is not necessary, a person should be a holder of CGHS card to be entitled to the benefits of the CGHS Scheme.

7. On the other hand, Ms. Bharathi Raju, learned counsel appearing for the

respondents, apart from reiterating the stand taken by the respondents in their counter affidavit, would contend that the reliance placed by Mr. Aneja on the judgment of *Shyama Malhotra (supra)*, is misplaced as that judgment has been overruled in the case of *Dal Chand Vashisht v. Govt. of NCT of Delhi* decided on March 14, 2008. She further stated, that a similar issue with regard to interpretation of provisions of Section 23 D of the High Court Judges (Salaries and Conditions of Service) Act, 1954 is pending consideration of the Supreme Court in Civil Appeal Nos. 9020-9021/2012. She has drawn my attention to the orders passed by Hon'ble Judges in the Civil Appeal. She states, that it would be appropriate to await the outcome of the Civil Appeals in the Supreme Court.

8. Having heard the learned counsel for the parties, the issue which falls for consideration is whether the petitioner being a retired Judge of a High Court would be entitled to be benefits of the CGHS irrespective of the fact that during the claim period, the validity of the CGHS Card was not renewed. The answer to this question has to be in the affirmative, for more than one reason, firstly, the validity having been shown up till September, 2015; surely the thinking / presumption of the petitioner that he is covered under the CGHS Scheme till September, 2015 cannot be doubted. He had rightly got himself admitted and undergone the procedure, for which he had submitted the claim. Secondly, this issue is no more *res integra* in view of the Judgment of this Court in *T.S. Oberoi (Supra)* as followed by this Court in the case *Dal Chand Vashisht (Supra)*. There is no denial to the fact that the petitioner on March 24, 2017 had deposited an amount of Rs.74,030/- as charges for seeking benefit of the CGHS Scheme

for life and the same having been accepted by the respondents in view of the judgment of the **T.S. Oberoi** case, wherein in Para 15 this Court has held as under, the claim cannot be denied.

“Even otherwise in the case in hand, Justice Chawla enjoyed a special position being a Judge of superior court. Therefore even in the absence of CGHS Membership, he would have been entitled to reimbursement of his medical expenses even after retirement. The fact of the matter is that he became life member of CGHS on 8th March, 2002 by paying a lump sum fee, which was accepted by CGHS knowing fully well that Justice Chawla is already admitted in the hospital since 13th December, 2001. Therefore, once the Life Membership Fee was accepted it had to relate back from the date when he was hospitalized, i.e., 13th December, 2001. The benefit of the same could not be restricted from 8th March, 2002. The purport and purpose of CGHS scheme is to grant medical benefit and not to deprive the medical benefit on technical grounds particularly when Justice Chawla enjoyed a special position being a retired Judge of a High Court.”

9. Further even in **Dal Chand Vashisht (Supra)**, the Division Bench of this Court has by relying on Para 15 of the **T.S. Oberoi (Supra)** has in Para 18 held as under:

“18. Consequently, the observation of the Division Bench of this Court in T.S. Oberoi (supra) that once life membership fee was accepted, it related back to the date of hospitalisation i.e. 13th December 2001 and the benefit could not be restricted beyond 8th March 2002 (when the life membership was granted) has to be understood, firstly, in the context that Justice Chawla, in any event, even without any payment of the subscription, and by virtue of his status and service conditions was covered by the CGH Scheme and, secondly, that when the membership fee for becoming a life member was accepted from him on 8th March 2002 it was accepted after knowing fully well that Justice Chawla was admitted in hospital since 13th December 2001. In our view, therefore, the observation of the Division Bench that life membership fee once accepted would relate back to the date of retirement or earlier hospitalisation and would cover prior illness and hospitalisation have to be understood in the context in which they were made, and cannot be universally applied in all cases in respect of other schemes pertaining to serving or retired government employees”.

10. In view of the above position which still holds the field, the life membership of the petitioner, would relate back to the period when the petitioner had undertaken the treatment as referred above. The details of the claims are as under:-

“i) Reimbursement for Emergency treatment Metro Hospital, Preet Vihar on 05.04.2015 (Annexure P-2)Rs.679/-

ii) Reimbursement for hospitalization and treatment/follow up at Apollo Hospital and for physiotherapy from 05.04.2015 to 08.07.2015 (per claim Annex. P-3)Rs.6,33,505/-

iii) Reimbursement for treatment/check-ups, physiotherapy, medical tests, medicines, etc. subsequent and till date (Annex.: P-8)Rs.72,030.57/-

TOTAL :Rs.7,06,214.57/-”

11. In so far as the submission made by the learned counsel for the respondents on the Civil Appeal Nos. 9020-9021/2012 pending before the Supreme Court is concerned, the facts, in the Civil Appeals are, they arise from the Judgment of the Bombay High Court in Writ Petition No. 6285/2005 dated January 15, 2007 and dated April 22, 2008 in W.P.(C) 6285/2005 and CA. No. 73/2008. The writ petition 6285/2005 was a suo moto writ petition initiated pursuant to a letter written by Justice S.C. Malte and four other retired Judges of the Bombay High Court settled in Aurangabad. Justice S.C. Malte and four other retired Judges addressed a letter to the Chief Justice of Bombay High Court mentioning therein the difficulties of retired Judges in getting the medical facilities under the CGHS Scheme including the fact that the facilities thereunder were provided only in the three cities in Maharashtra namely Mumbai, Nagpur and Pune. An

order dated July 17, 2006 was passed directing the Govt. of Maharashtra to frame Rules. The Maharashtra Govt. drafted Maharashtra Retired High Court Judges (Facilities for Medical Treatment) Rules, 2006. The Amicus Curiae appearing for the *suo moto* writ petitioners suggested changes in the draft Rules. The writ petition was disposed of on January 15, 2007 with a direction to the State Government either to notify the draft Rules in the form suggested by the Amicus Curiae or amend the GR for medical benefits to Sitting Judges and extend the same also to the retired Judges in exercise of its power under Sub-Section (2) of Section 24 of the Act. The Review Petition was also rejected.

12. Since there was a difference of opinion between the Hon'ble Judges, the matter was directed to be placed before the Hon'ble the Chief Justice of India for constituting a Larger Bench. In his opinion, Justice Swatanter Kumar as His Lordship then was, has while rejecting the civil appeals given the following directions:

“32. In order to ensure the absolute independence of judiciary, in the interest of administration of justice and for the Judges to act free of any apprehensive attitude and to provide complete certainty to the service conditions of the former Judges of the High Courts, I dispose of the above appeals and pass the following order-cum-directions:

a) I do not find any merit in the present appeals.

b) Rule 2(a) of the draft rules shall remain in the form as directed by the High Court. The word ‘available’ shall stand substituted by the words ‘availed of’. The State of Maharashtra is hereby directed to notify these rules forthwith.

c) Henceforth, there shall be complete uniformity in the ‘grant of medical benefits’ to the former Judges of various High Courts.

d) It may not only be desirable but necessary for the Centre and the State Governments to amend and alter the existing rules. If no rules are in force, to frame the rules on such uniform lines.

e) In relation to the medical facilities, the former Judges of the High Courts would be placed at parity with the facilities available to the sitting Judges and their dependent family members. Providing such benefit and bringing uniformity in the rules shall be in the interest of the State administration as well as administration of justice.

f) All the medical bills of the former Judges of various High Courts shall be submitted to the Registrar General of the concerned High Court, who shall, subject to approval of the Chief Justice of that Court and in accordance with the rules in force, pay such bills (upon due scrutiny) to the former Judges.

g) The Union Government and the State Governments are directed to provide such 'head of expenditure', being part of the High Court budget of the respective High Courts for reimbursement of medical bills of the former Judges. In other words, the payment would be directly made by the High Court to the former Judges and it, in turn, would be reimbursed by the State Government.

h) All the former Judges of the High Courts would be entitled to receive medical facilities from the hospitals so empanelled by the Central or the State Governments, as the case may be.

i) Till appropriate rules are framed by the appropriate authority, these directions shall remain in force and shall be abided by the executive."

Whereas Justice A.K. Patnaik as His Lordship then was, in his opinion was of the view that the Govt. of Maharashtra must consider extending better medical facilities to the retired Judges of the Bombay High Court, but what exactly should be the provisions for medical facilities can only be decided by the State Government in exercise of its powers under Sub-Section (2) of Section 23D of the Act.

13. Suffice to state the issue which is pending consideration before the Supreme

Court is, what medical facilities the retired Judges of the Bombay High Court are entitled to. Whereas in the case in hand, there is no dispute that the petitioner has enrolled himself under the CGHS Scheme. In other words, he is seeking the benefit of the CGHS Scheme and not grant of medical benefits / medical facility per se. So the pendency of the Civil Appeal before the Supreme Court has no bearing on the issue which arises for consideration of this Court.

14. Since I have already held the issue raised by the petitioner being no more *res integra* in view of the judgment of this Court in *T.S. Oberoi (Supra)* and the *Dalchand Vashisht (Supra)*, the petitioner is entitled to succeed in the present Petition. The claims of the petitioner amounting to Rs.7,06,214.57/- are liable to be allowed. Respondents are directed to release the said amount to the petitioner within a period of two months from today with interest @ 9% per annum computed from the date each of the claim was payable. No costs.

OCTOBER 10, 2017
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V. KAMESWAR RAO, J