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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 01.12.2017

LPA 764/2017 & CM No.43698-43701

COLLEGE OF VOCATIONAL STUDIES

..... Appellant

versus

KUMAR RAM KRISHNA & ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Anurag Mathur, Advocate
For the Respondents : Mr. Ratan K. Singh, Advocate with Mr. Gaurav Lawania and
Mr. Aishwary Tiwari, Advocate for R-1
Mr. Mohinder J.S. Rupal, Advocate with Mr. Prang Newmai and Ms.
Slomita Rai, Advocate for R-2
Mr. Anuj Aggarwal, Advocate with Ms. Niti Jain, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present appeal under Clause X of the Letters Patent Act, 1865 read with Section 151 of the Code of Civil Procedure, 1908, assails the judgment dated 28.08.2017, passed by a learned Single Judge of this Court in Writ Petition (Civil) No.5824/2008 titled as '*Kumar Ram Krishna vs.*

College of Vocational Studies & Ors.’, whereby, whilst allowing the said writ petition, it has been directed that the appellant shall consider the medical bills submitted by the respondent No.1 from time to time; in accordance with the Rules, and shall not reject the same on the ground that the latter’s mother was not dependent on him.

2. The facts as are necessary for the adjudication of the present appeal are elaborated hereunder:-

- (i) The respondent No.1 joined the appellant college as a Lecturer on 13.3.2002 and was promoted to Senior Lecturer Grade in October, 2005;
- (ii) It is the case of respondent No.1 that his mother, who is admittedly a housewife; and has no independent income, has been residing with him from the date he joined the services of the appellant college and was solely dependent on him for her physical, as well as, financial support;
- (iii) Predicated on the documents filed by him at the time of his appointment, which are annexed at Page No.60 to the present appeal, the respondent No.1 informed the appellant college that his mother Smt. Asha Singh was wholly dependent on him;
- (iv) Admittedly, the mother of respondent No.1 was severely affected by serious heart ailments and had to be admitted to All India Institute of Medical Sciences (hereinafter referred to as ‘AIIMS’) on 12.06.2007. A claim for medical reimbursement was forwarded to the appellant by the respondent No.1 vide his letter dated 03.10.2007 along with a declaration to the effect

that his mother is wholly dependent on him and has been residing with him since he joined the said appellant college;

- (v) The mother of respondent No.1 was once again admitted to AIIMS from 15.10.2007 to 24.10.2007, on which occasion an open heart surgery requiring the replacement of aortic valve was conducted on her. The respondent No.1 furnished two bills amounting to Rs.98,975/- and Rs.6,000/- respectively, seeking reimbursement of the said payments disbursed by him to the hospital authorities for his mother's treatment. However, the appellant has not reimbursed even a single penny of the said amount to the respondent No.1 till date;
- (vi) Thereafter, the respondent No.1's mother again became critical and had to be re-admitted to AIIMS from 16.06.2008 to 30.06.2008, during which period she was also kept in emergency ward for a few days; and
- (vii) Even thereafter, since her medical condition did not improve, she had to be admitted to AIIMS once again on 03.07.2008 till 06.07.2008 and in view of her deteriorating medical condition, thereafter also, had to be rushed to Batra Hospital; which is in the immediate vicinity of the respondent No.1's residence. At the Batra Hospital, the mother of the respondent No.1 underwent the process of stunting, during which process, her condition became critical and she was rendered unconscious necessitating her treatment to be carried out in the Medical Intensive Care Unit.

3. The respondent No.1 has furnished bills to the extent of Rs.2.5 lakhs to the appellant college for the aforesaid hospitalization, as well as, bills for further treatment in this behalf. Unfortunately, all attempts made by the respondent No.1 to secure reimbursement have been in vain.

4. Eventually, after running from pillar to post for long years, the respondent No.1 was constrained to institute the subject writ petition, being W.P.(Civil) No.5824/2008 titled as '*Kumar Ram Krishna vs. College of Vocational Studies & Ors.*' before this Hon'ble Court, which came to be allowed, as afore-stated, by the impugned judgment dated 28.08.2017.

5. Mr. Anurag Mathur, learned counsel appearing on behalf of the appellant college would canvass before us that the CGH Scheme is not applicable to the University of Delhi; and the existent Rules provide for family of an employee, including his mother, to be treated as a dependent if the latter resides with the former. Mr. Mathur would invite our attention to a copy of the service book of the respondent No.1 to urge that the latter had declared the permanent residence of his mother at Bihar and further failed to give an yearly declaration showing his mother as his dependent, which disentitles him from any reimbursement of the latter's medical bills.

6. In order to appreciate the submissions made on behalf of the appellant college, it would be necessary to extract the relevant Rules adopted by University of Delhi in this behalf, which read as follows:

"Conditions of Dependency:-

For availing medical facilities under CGH Scheme, parents, sister, widowed sisters, widowed/divorced separated daughters, brothers, step mother and children shall be deemed to be dependent on the Government Servant if they are normally residing with him and their income from all sources

including pension and pension equivalent of DCRG benefit does not exceed Rs.1500/- p.m.

- Notes:
- (i) In case of pensioners, pension before commutation is to be taken as income. However, the dearness relief of pension sanctioned after December, 1995 and dearness pension granted w.e.f. 01.04.2004 is not to be considered for the purpose of income limit of Rs.1500/-
 - (ii) As an exception, parents can live away from the employee in another station with other members of the family.
 - (iii) The declaration regarding the income and the residence of parents should be furnished by the Government Servant concerned once in the beginning of every calendar year.

Source: Nabhi's Compendium of Orders under Central Government Health Scheme (CGHS), Seventh Revised Edition, 31st July, 2007"

7. A plain reading of the above Rule clearly postulates that it is a beneficial provision, which deems a mother of a Government servant to be dependent on the latter, if she is normally residing with him and if her income from all sources, including pension, does not exceed Rs.1500/- per month. However, as is axiomatic from a reading of the above rule, an exception is carved out in the case of parents, who are held entitled to the benefit of the said Rules, even if they live away from the employee at another station, with other member of the family.

8. In **State of Punjab vs. Ram Lubhaya Bagga and Others**, reported as (1998) 4 SCC 117 the Hon'ble Supreme Court clearly expounded the obligations of the State to provide medical facilities. The Hon'ble Supreme Court posited that denial of its obligation by the State would *ex facie* be

violative of Article 21 of the Constitution of India. The relevant portion of the said report is extracted hereinbelow:

“27. Coming back to test the claim of the respondents, the State can neither urge nor say that it has no obligation to provide medical facility. If that were so it would be ex facie violative of Article 21. Under the new policy, medical facility continues to be given and now an employee is given free choice to get treatment in any private hospital in India but the amount of payment towards reimbursement is regulated. Without fixing any specific rate, the new policy refers to the obligation of paying at the rate fixed by the Director. The words are:

“... to the level of expenditure as per rates fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure whichever is less.”

9. Learned Single Judge after considering the submissions made on behalf of the appellant college has found as follows:

“8. The plea taken by the learned counsel for the respondents is, the petitioner even though has shown his mother as dependant, she was residing in Bihar as per declaration given by the petitioner himself. That apart no yearly declaration as required under the Rules was filed by the petitioner to the College / University. The father of the petitioner being a Pensioner, she cannot be said to be dependent on the petitioner. The issue which arises for consideration is whether the mother of the petitioner was not dependant on the petitioner, and the respondents were justified in denying the reimbursement of the expenses incurred by the petitioner for her hospitalization / treatment. This court is of the view that the issue which falls for consideration is no more res integra in view of the judgment of the Supreme Court in State of M.P. and Ors. v. M.P. Ojha and Anr. (supra) wherein the Supreme court has interpreted M.P. Civil Services

(Medical Attendance) Rules, 1958 which has defined the word “wholly dependent” referred therein as under:

“The expression “wholly dependent” is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression “wholly dependent” to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would be likely to lead to results which the relevant Rules would not have contemplated. The expression “wholly dependent” has to be understood in the context in which it is used keeping in view the object of the particular Rules where it is contained. We cannot curtail the meaning of “wholly dependent” by reading into this the definition as given in SR 8 [sic SR 2(8)] which has been reproduced above. Further, the expression “wholly dependent” as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of family it would mean other support, may be physical, as well. To be “wholly dependent” would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and was sick and it could not be said that he was not wholly dependent on his son. Son has to look after him in his old age. Even otherwise by getting a pension of Rs. 414 per month which by any standard is a

paltry amount it could not be said that the father was not "wholly dependent" on his son. That the father had a separate capacity of being a retired Government servant is immaterial if his case falls within the Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the Rules in a case like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It was submitted before us that the father being a retired Government servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter as we are satisfied that under the relevant Medical Rules, the father was member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other travelling expenses."

Even this Court in the case of Union of India and Ors. v. Shyama Malhotra (supra) in which case, respondent no.1 Shyama Malhotra who was of about 80 years of age and herself being a Pensioner was admitted in Batra Hospital and Institute approved under the Central Govt. Health Scheme in critical condition. She was operated upon and remained in hospital for 3 months and expenses of more than Rs.14 Lacs was incurred, out of which Rs.10,06,666/- was refunded by CGHS to the respondent no.2, as respondent no.1 Shyama Malhotra was shown as dependant of the respondent no.2 in the CGHS Card. One of the issues

which arose for consideration was whether Shyama Malhotra being herself a Pensioner can be said to be dependant on respondent no.2, i.e., her son. This Court by relying upon the CGHS Scheme which defines the Family was of the following view:

“17. CGHS is a beneficial and benevolent scheme, a welfare measure to provide for medical treatment of government servants and family members who are "mainly dependent" on the Government servant. The scheme recognises and accepts that a Government servant must take care of his old and aged parents residing with him. A narrow construction may well be self defeating and contrary to the object behind the provision. Dependency for the purpose of the clause will mean dependency for purpose of medical treatment and aid. It is ironical that when medical treatment (even in government hospitals) can land you with bills in lacs, as in the present case, for the deeming clause monthly income of Rs. 1500/- has been prescribed. This apparent contradiction, refutes and negates the primary objective. We need not go into these aspects in great detail in view of the interpretation given by us.”

9. That apart, in the judgment of the Punjab and Haryana High Court in the case of Usha Kumari (Smt.) (supra), wherein the Punjab and Haryana High Court relied upon its earlier judgment in Nand Rani, Principal, Govt. Sr. Secondary School, Rajpura v. State of Punjab (2000-2) 125 PLR 617 has held as under:

“8. So far as the Instructions are concerned, which have been made the basis for rejection of the claim of the petitioner and have been highlighted in Para 2 of the preliminary objection of the written statement, this restricts the income of the dependents spouse, if his income is not more than Rs.1000/-P.M. Thus,he/she

can be treated as dependent on a government employee. These Instructions are not in furtherance to or bases upon any statutory rules. Dependency can not be determined merely on the basis of financial calculation. It has to be social and in terms of the health as well.

9. In the case of Ram Lubhaya Bagga (Supra), the Court had accepted the protection to health to include care for health and being fully protected under Article 21 of the Constitution of India which casts an obligation upon the State to provide such protection under article 47 of the Constitution of India.

10. In the case of Nand Rani (Supra), the husband of the petitioner had retired from service and was getting pension of Rs.3105/-P.M. He was suffering from heart ailment and had suffered three heart attacks, thereafter, had gone by pass surgery. He was also denied medical reimbursement on the ground that as per government Instructions dated 3-1-1994, family members of the Government employees whose monthly income is more than Rs.500/- is not considered as dependent upon Government employees for reimbursement purpose and since husband of the petitioner in that case was getting Rs.3105/-P.M having retired as Senior Post Master, Ambala, he was held to be not entitled for medical reimbursement. This Court while allowing the writ petition held "husband of the petitioner would squarely fall in the definition of family inspite of the fact that he is getting some meager pension from the government. The expression 'wholly dependent' would cover the husband of the

petitioner as per the aforesaid decision of the Hon'ble Apex Court.

11. This Court in the aforesaid case of Nand Rani (Supra), allowed the writ petition more particularly, in view of the judgment in the case of State of M.P. vs. M.P.Ojha (Supra) and had directed the respondents to consider the case of the petitioner for reimbursement in accordance with rules and make payment without any unnecessary delay.

12. Since the present case is also covered by the decision rendered by this Court in Nand Rani's Case (Supra) as well as the decision of the Hon'ble Apex Court in M.P.Ojha's Case (Supra), the present petition is allowed and the respondents herein, are directed to reimburse medical bills to the petitioner in accordance with law without any further delay, preferably within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs."

10. Similarly in Padma Sharma (Supra) wherein the Madhya Pradesh High Court by referring to the judgment of the Supreme Court in the case of State of M.P. and Ors. v. M.P. Ojha and Anr. (supra) as in Para 11 held as under:-

"11. In the present case the Petitioner a lady serving on the post of Upper Division Teacher is claiming reimbursement in respect of treatment availed by her husband at the All India Institute of Medical Sciences, New Delhi, who was pensioner and, therefore, keeping in view the judgment delivered by the Apex Court, it can be safely gathered especially in light of the fact that the husband of the Petitioner was receiving meager pension that he was wholly dependent upon his wife. This Court while deciding almost similarly matter in the case of Vishwanath Prasad Khare (Dr.) v. State of Madhya Pradesh and Ors. (supra) has approved medical claims of the

pensioner who has availed medical treatment even without permission of the State Government. This Court while deciding the aforesaid case, has held as under:

The Petitioner was immediate need of open heart surgery and he has rushed immediately to Bhopal Memorial Hospital and Research Centre, Bhopal. A Division Bench of Punjab and Haryana High Court in the case of Shakuntala v. State of Haryana reported in 2004 (1) SLR 563 has allowed the claim of Medical Reimbursement wherein the medical treatment was not availed from the approved hospital. It has been observed that saving the life of a sufferer should be the paramount consideration. Similarly the Apex Court in the case of Suman Rakheja v. State of Haryana and Anr. 2006 SCC (L and S) 890 has held that in case of emergency where a government servant has been rushed to a hospital though it is a private hospital, the employee/widow is entitled to get refund of 100 percent medical expenses at the All Ms rate. In the present case the rate fixed by State Government for open heart surgery is Rs. 2.5 lacs and the bills submitted by the Petitioner is less than half of the rates prescribed by the State Government for such surgery. Moreover, the certificate issued by the Bhopal Memorial Hospital and Research Centre, Bhopal has not been disputed by the State Government. Resultantly, the present writ petition is allowed, Respondents are directed to reimburse the amount of Rs. 1,07,254/- of medical expenses within a period of three months positively from the date of receipt of certified copy of this order.

12. Keeping in view the totality facts and circumstances of the case and also the judgment delivered by the Apex Court, this Court is of the considered opinion that the husband of the Petitioner

has to be treated wholly dependent for purpose reimbursement of medical bills amounting to Rs. 67940/=00 and, therefore, the Respondents are directed to reimburse the medical bills of the Petitioner within a period of 60 days from the date of receipt of certified copy of this Court. In the present case, the Petitioner is also a pensioner and as the Respondents have delayed the payment of medical bills, they are directed to pay interest also at the rate of 8%per annum from the date of filing of this petition.”

11. In so far as the plea of Mr. Mathur that the petitioner has shown his mother staying at Bihar in the declaration form, to contend that she was not staying with him is concerned, the same is not appealing. The form has to be seen in perspective, inasmuch as, it is not only the mother but the petitioner has given the particulars of his wife and children also, and the address of Bihar was, his permanent address as also of his parents. It appears the declaration given was for LTC purposes. In any case the particulars of the form cannot be construed to mean that the mother of the petitioner was staying in Bihar. If this plea is accepted then on the same analogy the petitioner's wife and children, whose permanent address was in Bihar, were also staying in Bihar; which is not the case of the respondents. Further the plea of the respondents that the father of the petitioner being a pensioner, his mother was dependent on him is also not appealing. Suffice to state the pension of the father being only Rs.5,200/- , the same could not have supported the medical treatment of the mother of the petitioner.

12. In view of the position of the facts and law narrated above, it must be held that the mother of the petitioner was dependant wholly on the petitioner as the dependency does not only relatable to financial dependency but also physical dependency as held by the judgments referred to above.”

10. A perusal of the above extracted paragraphs of the impugned judgment dated 28.08.2017, clearly and unequivocally lead to one inescapable conclusion that dependency cannot be determined merely on the

basis of financial dependency. It has to be social and in terms of the health as well.

11. It is an admitted position that the mother of respondent No.1 had undergone surgery and remained in hospital; as evidenced by the bills furnished on behalf of respondent No.1.

12. In our considered view, a scheme, which is in its very nature derived for the benefit of an employee; as a welfare measure to provide for medical treatment of Government servants and their immediate family members, cannot be interpreted in a narrow and constructive manner. The same would be anathema in a welfare State.

13. It is nobody's case that the respondent No.1's mother had independent means sufficient to defray the medical expenses incurred on her treatment. Even considering the submissions made on behalf of the appellant college that the respondent No.1's father was a retired Government servant; drawing a pension in the sum of Rs.5200/- per month, the same evidently would not suffice to pay for the expensive and necessary life saving treatment undergone by the respondent No.1's mother.

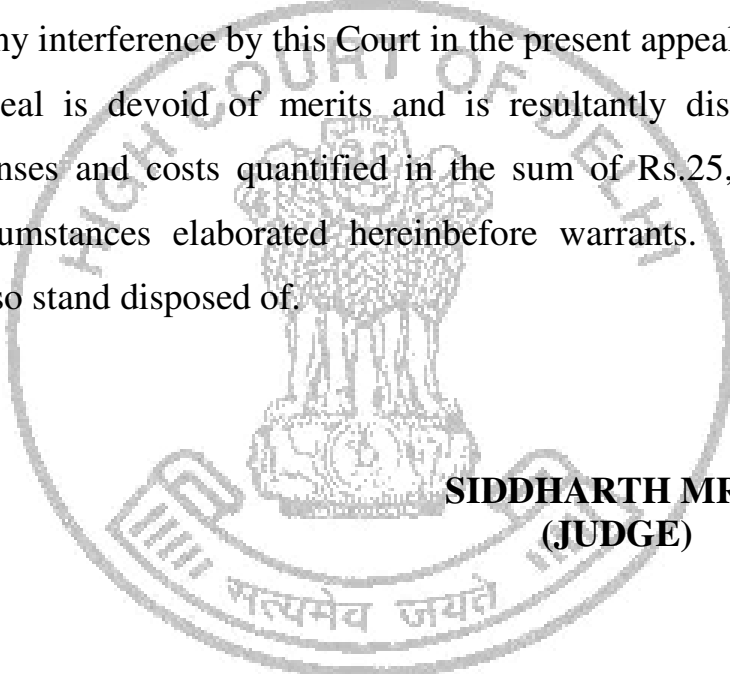
14. In other words, the meager pension being received by the father of respondent No.1, cannot in any manner disentitle the latter from receiving reimbursement for his ailing mother's treatment, in view of the extant Rules. Even otherwise, the plea of the appellant college that the respondent No.1 had not filed the necessary documents to establish the circumstance that his mother resided with him is belied by the material on record, as correctly found by the learned Single Judge.

15. In this behalf, we observe the dictum of the Hon'ble Supreme Court in **Wander Ltd. and Anr. vs. Antox India P. Ltd.**, reported as **1990 (Supp)**

SSC 727, wherein it has been held that “ *the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.*”

16. In this view of the matter, we are of the considered view that the said impugned judgment dated 28.08.2017, does not suffer from any infirmity so as to warrant any interference by this Court in the present appeal.

17. The appeal is devoid of merits and is resultantly dismissed, with litigation expenses and costs quantified in the sum of Rs.25,000/-, which facts and circumstances elaborated hereinbefore warrants. All pending applications also stand disposed of.



**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA, J
(JUDGE)**

DECEMBER 01, 2017
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