

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5477 OF 2017

Ajay D. Likhar	...Petitioner
Versus	
The State of Maharashtra and ors.	...Respondents

Mr. Anilkumar R. Joshi for the Petitioner.
Mr.N.C. Walimbe, AGP for the Respondents - State.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 11.07.2018.

ORAL JUDGMENT:

- 1] Heard learned counsel for the parties.

- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

- 3] The challenge in this petition is to the judgment and order dated 24.11.2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 159 of 2015 instituted by the petitioner seeking for reimbursement of an amount of Rs.3,32,681.24/- towards medical expenses said to have been incurred by the petitioner, on account of illness of his mother.

4] Mr. Joshi, learned counsel for the petitioner submits that the respondents have failed to comply with the G.R. dated 16.11.2011 and G.R. dated 19.3.2005, despite directions issued by the MAT and this Court on earlier occasions. He submits that in cases where the income of family member is above the prescribed ceiling of Rs.3500/- (basic) per month, the matter has to be referred to a Committee which is to comprise of at least six Committee Members as prescribed. He submits that in the present case, a Committee to which the petitioner's case was referred comprised only of two Members.

5] Mr. Joshi submits that this court in case of **Anil Dattatraya Kulkarni Vs. State of Maharashtra - 2014 (1) Mh.L.J. 667**, has held that the income limits prescribed in Government G.Rs. must not be strictly or pedantically construed. He submits that in the said decision, even though, the mother of the petitioner, who was physically and financially dependent upon him, had an income of more than Rs.3500/- (basic), this court, directed reimbursement. Mr. Joshi submits that the MAT had erred in not following the ruling of this court in *Anil Kulkarni (supra)*, even though, the facts were almost identical.

6] Mr. Walimbe, learned AGP for the respondent - State, points out that the petitioner's mother could not be regarded as wholly dependent upon the petitioner, since, she was herself a retired government servant and thereby, having income much above ceiling prescribed in the various G.Rs., for the purpose of determining dependency. Mr. Walimbe points out that the ruling in *Anil Kulkarni (supra)*, was delivered in the peculiar facts of the case and such facts, are not in any manner comparable to the facts in the present case. Mr. Walimbe points out that in the present case, not only, was the petitioner's mother a retired government servant getting pension, but further even the petitioner's father was retired government servant getting pension. Mr. Walimbe points out that the petitioner had in fact suppressed the particulars as regards his father whilst claiming for reimbursement. He submits that the MAT has considered all the facts as well as the legal position and there is absolutely no error in the view taken by the MAT. Therefore, Mr. Walimbe submits that this petition may be dismissed.

7] The rival contentions now fall for our determination.

8] The G.R dated 11.11.2011 which has been referred to by the MAT prescribes that a parent can be said to be dependent upon the government servant concerned, provided income of such parent from all sources does not exceed Rs.3500/-. In this case, the record bears out that the petitioner's mother was getting a monthly basic pension of Rs.8990/- per month, which, even after commutation came to Rs.5994/- per month. The MAT observed that the petitioner whilst making his claim, had in fact suppressed this fact.

9] As if, this were not enough, the record bears out that even the petitioner's father was retired government servant drawing pension far in excess of the limits prescribed in G.R. dated 11.11.2011. Again, even this fact was suppressed by the petitioner in making his claim.

10] Therefore, in terms of G.R., which is applicable, the petitioner's parent cannot be regarded as dependent upon him. The facts in case of *Anil Kulkarni (supra)* were quite different and has rightly submitted by Mr. Walimbe cannot offer any comparison. In that case, the mother of the

petitioner was 85 years of age was physically and financially dependent upon him and in the such peculiar facts, this court has held that the circumstance that the mother was drawing income which slightly higher than the prescribed limit was not sufficient to deny the claim of reimbursement.

11] The contention based upon the composition of the Committee is not made good, even otherwise, taking into consideration the circumstance that both the petitioner's parents are pensioners and draw income in excess of the ceiling prescribed in the relevant GRs., we do not think this is a fit case to once again order any recommendation. The petitioner, as we have noted, had in fact suppressed the fact regards his father's income.

12] The MAT has considered the case of the petitioner in some details and we are unable to detect any errors so as to warrant interference. This petition is, therefore, dismissed. Rule is discharged. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)