

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :03.08.2018

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.44141 of 2002

Pon.Anbazhagan

... Petitioner

Vs

1. The General Manager,
BHEL/BAP,
Ranipet
2. Pay Officer,
Finance Department,
BHEL,
Ranipet
3. Chief Medical Officer,
BHEL,
Ranipet

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 27.07.2002 and quash the same and consequently direct the Third Respondent to refund the amounts recovered from the pay of the Petitioner.

For Petitioner : Mr.V. Kalyanaraman for
M/s Aiyar and Dolia

For Respondent : Mr.P. John for
M/s Fox Mandal and Associates

ORDER

The Petitioner is an employee of Bharat Heavy Electricals Limited, the Respondent herein. The Respondent provides medical facilities to its employees and permissible dependants as per the Rules and Regulations including the medical attendance rules

contained in its Personnel Manual. In pursuance of the same, the Respondent has entered into arrangements with certain approved hospitals, by which medical treatment and facilities can be availed by the employees and their permissible dependants at those hospitals without any need to make any payment for the same and those hospitals send their bills directly to the Respondent, who in turn, makes payment, irrespective of whether the Respondent is liable as per the Personnel Manual to bear the costs of the medical treatment. In the event it is found by the Respondent that the patient has received medical treatment for which the Respondent is not liable to bear the costs as per the rules and regulations, such amount paid is deducted from the salary of the concerned employee, which procedure has been vogue for several years and such deductions are made on that basis regularly.

2.The Respondent has one such agreement with Sankara Nethralaya and the daughter of the Petitioner, viz., Selvi. A. Aarthi had undergone an Argon Laser Lasik Surgery on both her eyes on 09.05.2002 and 10.05.2002 and the charges for the same had been directly paid by the Respondent to Sankara Nethralaya as per the provision in the Personnel Manual. However, it had been later realised by the Respondent that the aforesaid Argon Laser Lasik Surgery underwent by the daughter of the Petitioner was a cosmetic surgery which was excluded for such payment and the Respondent by order dated 27.07.2002 sought to recover a sum of Rs. 32,200/- (Rupees Thirty two thousand two hundred only) from the Petitioner towards the aforesaid treatment taken by his daughter. The Petitioner has impugned the said order of recovery in this Writ Petition.

3.The Respondents have filed counter affidavit dated 26.06.2018 contending that cosmetic surgery has been specifically mentioned as Item No.16 in Article 12 of the Medical Attendance Rules contained in the Personnel Manual of the Respondent for Treatment/Procedures/Medicines which is not permissible and Article 11 thereof provides as follows:-

" 11.7.1. The reimbursement of expenditure incurred on Contact Lenses upto maximum of Rs.1000/- (per pair) in respect of employee/family members is allowed provided it has been recommended by an Ophthalmologist and prescribed on therapeutic grounds and not for cosmetic reasons and duly certified by BHEL's Medical Officer/AMA..."

Further a Letter No.JR/PP/160/2011 dated 26.04.2011 from Sankara Nethralaya addressed to the Respondent has been produced in

which it has been stated that as per the record, the LASIK was performed for 'cosmetic requirement'.

4.The learned Counsel for the Petitioner is unable to rebut the aforesaid contentions of the Respondent seeking recovery of the amount claimed in the impugned order. Hence, it has to be held that the LASIK treatment which the daughter of the Petitioner had undergone was a cosmetic surgery which is not permissible for coverage under the Medical Attendance Rules contained in the Personnel Manual of the Respondent and the Respondent having paid the sum at the first instance to Sankara Nethralaya under the existing arrangement, is justified in seeking recovery of the same from the Petitioner.

5.It is brought to the notice of this Court that the Petitioner had retired from the service of the Respondent on 24.10.2017 as Executive Additional Engineer and he is now working under contract with the Respondent. In such circumstances, it is open to the Respondent to arrive at an understanding to decide the mode of recovery from the Petitioner and in the event the same is not possible, it shall be open to the Respondent to recover the same from the Petitioner in the manner recognised by law.

6.The Writ Petition is dismissed with the aforesaid observations. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The General Manager,
BHEL/BAP,
Ranipet.

2.The Pay Officer,
Finance Department,
BHEL,
Ranipet.

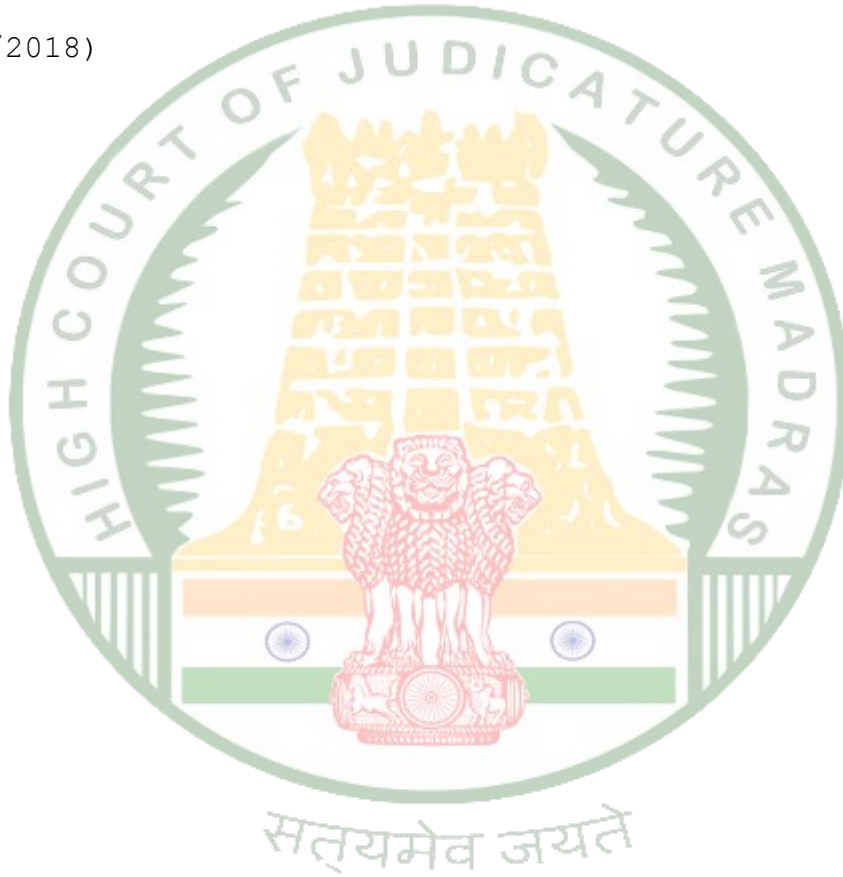
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3.The Chief Medical Officer,
BHEL,
Ranipet.

+1cc to Mr.Fox Mandal and Associates, Advocate, S.R.No.53129

W.P.No.44141 of 2002

MR (CO)
GSP (12/10/2018)



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