



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD) No.1472 of 2018
and
CMP(MD)No.10479 of 2018

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Anna Nagar, Madurai.
2. The District Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Madurai South, SIPCOT,
Kappalur, Madurai District. ... Appellants/Respondents 2&3

vs.

1. S.Veerapandi ... 1st Respondent/Writ Petitioner
2. The Joint Director of Medical and
Rural Health Services,
Madurai. ... 2nd Respondent/1st Respondent

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.(MD)No.4117 of 2018 dated 21.03.2018 on the file of this Court.

Prayer in WP(MD)No.4117 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.101/2017/A1, dated 26.09.2017 and the impugned order passed by the 3rd respondent in Na.Ka.No.50/2015/A, dated 03.10.2017, quash the same and direct the respondents to reimburse a sum of Rs.3,,56,506/- towards medical expenses incurred for the treatment of petitioners father, within the time frame fixed by this Honourable Court.

<https://hcservices.ecourts.gov.in/hcservices/>
For Appellants : Mr.H.Arumugam
For Respondent-1 : Mr.R.V.Rajkumar

**JUDGMENT**

[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

This writ appeal has been preferred against the order of the learned Single Judge in allowing the writ petition by setting aside the order impugned which was passed on the ground that the scheme which provides for medical reimbursement cannot be extended to the father of a married employee as against an unmarried one.

2. Before going into the submissions made by the learned counsel appearing for the appellants, it would be appropriate to produce the relevant Rule, governing the case, as under:

Amendments to Tamil Nadu Government Employees Health Fund Rules, 1991.

Amendment - I

Substitute the following for the existing Rule 2:-

1. Extent of Application:

Those rules shall extend to the whole of the state of Tamil Nadu. Those rules shall apply to all categories of full time regular (Time-Scale) Government Employees of the Government of Tamil Nadu and their family members and to All India Service Officers serving in the State and to their family members.

"Family" for the purpose of this scheme will include, "wife and children" of the Government servant. In case of female Government servant "husband and children" and in the case of unmarried Government servant, the dependant parents."

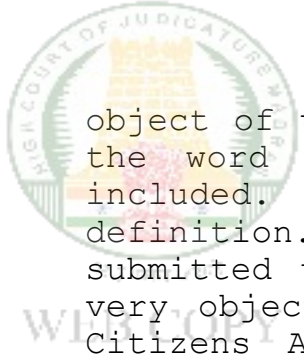
3. The learned counsel appearing for the appellants would submit that a reading of the aforesaid Rule would make it clear that only the 'wife and children' of a male working employee are entitled for the benefit under the scheme, as they alone come within the purview of "family". In support of his contention, the learned counsel has made reliance upon the following decisions:

(i) (1998) 2 SCC 554 [State of M.P. and others Vs. M.P.Ojha and another;

(ii) (1991) 3 SCC 11 [Union of India and others Vs. Tejram Parashramji Bombhate and others]

(iii) (2006) 4 MLJ 1183 [K.Sundararaj Vs. Management of Tamil Nadu State Transport Corporation (Madurai), Ltd., Madurai, rep.by its Managing Director, Bye-pass Road, Madurai.

4. The learned counsel appearing for the respondents would submit that the submission of the learned counsel for the appellants on the construction of the Rule, is not correct. One has to see the



object of the Rule. A restrictive interpretation cannot be given to the word "family". It merely says the other categories to be included. Thus, there is no exclusion of the father from the definition. Therefore, no interference is required. It is further submitted that any restricted interpretation, would go against the very object of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which mandates a son to maintain the aged parents. The learned counsel further submitted that Section 3 of the aforesaid enactment deals with, the act to have overriding effect on the provisions of any other enactment, which is inconsistent. The learned counsel seeks support from Section 20 of the aforesaid enactment, which provides for medical support for senior citizens by the State Government.

5. The Rule is meant for public purpose. Therefore, a literal interpretation cannot be adopted for understanding it. As rightly submitted by the learned counsel appearing for the respondents, the Rule does not specifically exclude a dependant parent. When we interpret the word 'include', it can adverse the illustration in nature. To put it differently, such definition does not exclude any other category. Therefore, when the definition "family" is mentioned to include the wife and children, it cannot be stated that it excludes dependant parent. There cannot be a different yardstick that has to be adopted for a married son and an unmarried son. The question is with respect to the dependency of the parent which has got no rationale with the status of the son. After all, as per the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, a son is the duty bound to maintain the dependant parent. Though Section 3 of the aforesaid enactment has got an overriding effect, we have to read the said provision along with other provisions of different Rules and enactments by way of purposive interpretation. Even under the Hindu Law, there is an implicit obligation upon the son to maintain the dependant parent. Thus, the contention of the learned counsel for the appellants cannot be sustained.

6. Coming to the decisions relied upon by the learned counsel appearing for the appellants, in our considered view that there is no applicability to the case on hand. In fact, the decision rendered in **(1998) 2 SCC 554 [State of M.P. and others Vs. M.P. Ojha and another]**, helps the case of the respondents. It is apposite to refer paragraph - 13 of the said judgment, which reads as under:

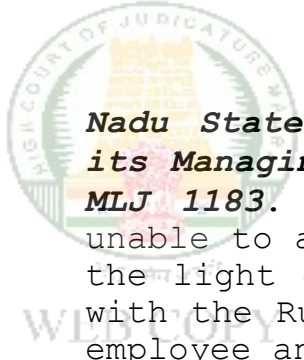
"13. The expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would 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 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."

7. From the above, one can say that it is still open to the appellants to reject a request for reimbursement, if they are satisfied that a parent is not a dependant. Secondly, in the aforesaid judgment, the Hon'ble Apex Court was dealing with the provision which defines a "family". There is a difference between the words "omits" and "includes". Hence, the aforesaid judgment cannot be read in support of the contention of the learned counsel appearing for the appellants.

8. The judgment rendered by the Hon'ble Apex Court in the case of **Union of India and others Vs. Tejram Parashramji Bombhate and others** reported in (1991) 3 SCC 11, also does not have an application. The facts are totally different in the said case. The respondent therein sought for regularisation, which was rejected. Much reliance has also been made on the decision of the learned Single Judge in the case of **K. Sundararaj Vs. Management of Tamil**



Nadu State Transport Corporation (Madurai), Ltd., Madurai, rep.by its Managing Director, Bye-pass Road, Madurai, reported in (2006) 4 MLJ 1183. With due respect to the learned Single Judge, we are unable to agree with the reasoning rendered therein, particularly in the light of the reason furnished above. After all, we are dealing with the Rule, which is meant to help the members of a family in an employee and thus, requires a purposive interpretation.

9.This writ appeal is dismissed accordingly. However, we make it clear that it is still open to the appellants to consider the matter on merit and if they are satisfied that the parent of the first respondent is not dependant, then, it is open to them to reject the claim of reimbursement. No costs. Consequently, CMP(MD) No.10479 of 2018 is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

+ 1 CC TO Mr.H.ARUMUGAM, ADVOCATE IN SR No. 92115
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 91789

MJ
TE/SKN/SAR-4 : 13/11/2018 : 5P/3C

W.A. (MD) No.1472 of 2018
24.10.2018