

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2859 OF 2017

Nazera S. Shaikh ... Petitioner.

V/s.

The State of Maharashtra and anr. ... Respondents.

Mr. Vishal S. Khanavkar for the Petitioner.

Ms Geeta R. Shastri, Addl. G.P for Respondent Nos.1 and 2 –
State.

CORAM : R. M. BORDE AND

PUSHPA V. GANEDIWALA, JJ.

DATE : 13th FEBRUARY 2019.

ORAL JUDGMENT : (PER R.M. BORDE, J.)

1] Rule. With the consent of parties, the petition is taken up for final disposal at the admission stage.

2] The petitioner is a Judicial Officer and is presently functioning as Ad-hoc District Judge and Assistant Sessions Judge at Beed. The rejection of the request made by the petitioner to forward the bills for medical reimbursement of the father of a Judicial Officer by the Industrial Court, Maharashtra, Mumbai in view of communication dated 20th May 2016 has compelled the petitioner to approach this Court.

3] It is not in dispute that the father of the petitioner has been treated for the ailment and bill for an amount of Rs.3,33,872/-

was raised for Coronary Bypass Surgery. The reasons assigned for rejection of the claim is referable to the Government Resolution (G.R.) dated 11th November 2011. It is communicated that since the father of the petitioner was drawing pension more than an amount of Rs.3500/- at relevant time, he cannot be considered as a dependent for purpose of claiming medical reimbursement by the petitioner. The second reason assigned is that in view of G.R. dated 18th August 1999, the petitioner can choose either her parents residing with her, or in-laws for medical reimbursement from one of the category of dependents. The objection raised as regards making of choice is irrelevant since the choice can be exercised at any point of time and the petitioner by raising bill for medical reimbursement of her father shall be deemed to have made a choice within the applicable policy.

4] At this stage, a notice was directed to be issued to the respondents and in response to the notice, the Additional Government Pleader has caused appearance on behalf of the Industrial Court. The learned Addl. Government Pleader appearing for the State has placed on record a communication issued by the President, Industrial Court, Mumbai dated 11th February 2019. The same is taken on record and marked as “**X**” for identification. It is recorded in the communication that in view of decision of the Bombay High Court in case of **Anil Dattatray Kulkarni V/s. State in Writ Petition No. 8899 of 2012 decided on 3rd April 2013** and the judgment of the Hon’ble Supreme Court in **Appeal**

(Civil) No. 1368 of 1990 (State of M.P. v/s. M.P. Ojha) decided on 18th December 1997, the office of Industrial Court is ready to revoke the order dated 20th May 2016 and sanction the medical reimbursement bill of the petitioner. It is further recorded in the communication that the medical bill once submitted to the Treasury, the same shall be subject to approval by the Treasury office.

5] In view of the communication placed on record and marked 'X', the Industrial Court shall revoke the earlier order dated 20th May 2016 and forward the bills to Treasury Office expeditiously and there shall be no difficulty for the respondents – State and the Treasury Office to sanction the bill and disburse the amount as claimed by the petitioner.

6] In this context, the observations made by the Division Bench of this Court in paragraph 17 of the judgment in the matter of **Anil D. Kulkarni vs. State of Maharashtra – 2014 (1) Mh.L.J. 667** would be relevant and the same reads thus:

“17. In our view, the Apex Court, Punjab and Haryana High Court and Delhi High Court have, therefore, given a purposive interpretation to the said words “wholly dependent” and allowed the application for medical reimbursement. Ratio of the said judgments squarely applies to the facts of the present case. The contention of the learned Government Pleader appearing on behalf of the State, therefore, cannot be accepted. The petitioner’s mother was 85 years old. She was both, physically and financially dependent on him. The said pension was wholly inadequate to meet her medical

expenses. It has to be borne in mind that purpose of incorporating the said Clause (Seven) is to ensure that those parents or divorced sister who are physically fit and financially self-sufficient should not be allowed to take advantage of the fact that they are residing with the Government Servant and under that pretext the Government Servant should not be allowed to claim reimbursement of medical expenses. In this case, in our view, the respondents erred in rejecting the application made by the petitioner for medical reimbursement."

7] It would also be appropriate to refer the observations made by the Hon'ble Supreme Court in paragraph 13 of the judgment in the matter of **State of M.P. and ors vs. M.P. Ojha and anr. - (1982) 2 SCC 554**, which read thus:

"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 [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, maybe 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."

8] As has been informed to us, the father of the petitioner in respect of whom the medical reimbursement bill has been raised is found to be wholly dependent upon the petitioner physically as well as financially. The pensionary benefits received by the pensioner, i.e., father of the petitioner is quite inadequate for meeting the huge medical expenses. In the instant case, a claim put up by the petitioner squarely falls within the frame work of

the decision rendered by the Hon'ble Supreme Court cited supra. In this view of the matter, we direct the respondents to sanction the medical bills those would be forwarded by the Industrial Court, expeditiously.

9] Rule is accordingly made absolutely. There shall be no order as to costs.

(PUSHPA V. GANEDIWALA, J.)

(R. M. BORDE, J.)