IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.21698 of 2019

M.Mathiazhagan .. Petitioner

Vs..

1.The Director of Pension,
D.P.I. Compound,
Chennai - 600 006.

2.The Joint Director of Medical and
Rural Health Services,
Salem, Salem District.

3.The Sub-Treasury Officer,
Omalur, Salem. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to grant medical reimbursement by considering the letter dated 07.11.2016 of the third respondent.

For Petitioner : M/s.V.Thirupathi
For Respondents: Mr.R.Janagi,
Additional Government Pleader

O R D E R

Writ Petition is filed for issuance of a Writ of Mandamus, to direct the respondents to grant medical reimbursement by considering the letter dated 07.11.2016 of the third respondent.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The case of the petitioner is that the petitioner retired from service as Agricultural Instructor. After retirement, he is receiving pension. The Government of Tamil Nadu introduced Tamil Nadu Government Pensioners Health Fund Scheme, 1995 for the welfare of the retired State Government employees to meet

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out their medical expenses. Subsequently, the Tamil Nadu Government introduced New Health Insurance Scheme 2014 for pensioners (including spouse)/family pensioners. The petitioner is a subscriber to the above said scheme and the subscription is regularly deducted from his monthly pension. The petitioner was suffering from Coronary Artery Disease. Hence he was admitted on 06.10.2016 in the Sri Gokulam Speciality Hospital, Salem and the petitioner was discharged on 09.10.2016. The petitioner incurred a total medical expenses of Rs.1,92,885/-. Thereafter, the petitioner made a representation, dated 12.02.2018, seeking reimbursement of the amount of medical expenses, but till date his representation was not considered by the respondents. Aggrieved by the same, the petitioner has filed the above writ petition.

4. Learned counsel for the petitioner submitted that amount has been deducted towards medical insurance from the monthly income of the petitioner and therefore, the petitioner is entitled to claim medical reimbursement. However, the same issue came up for consideration in the following judgments, wherein it is held that the pensioner, who underwent treatment in a non network hospital, is also entitled for medical reimbursement.

(i) (2018) 16 SCC 187 (Shiva Kant Jha vs. Union of India);

> "17. It is a settled legal position that the Government employee during his lifetime or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported

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by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court."

(ii) Order of the Division Bench of this Court dated 04.02.2019 made in W.A.No.2749 of 2018 (The Government of Tamil Nadu, Rep. by its Secretary, Rural Development and Panchayat Department, Fort St. George, Secretariat, Chennai-600 009 and others vs. K.Rajendran and others);

"7. We are unable to countenance the submissions made on behalf of the First, Second and Fourth Respondents, particularly in view of the ruling of the Division Bench of this Court in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which has been followed in India Healthcare Services (TPA) Limited -vs- K. Parameshwari, reported in CDJ 2017 MHC 2213 and Director of Pension -vs- B. Sarada, reported in CDJ 2017 MHC 7488. In the aforesaid decisions, the earlier Judgments of the Hon'ble Supreme Court of India and this Court on the subject have been extensively referred. It would suffice here to refer to paragraphs 24 and 25 of the decision in Star Health and Allied Insurance Company Limited -vs- A. Chokkar [(2010) 2 LW 90], which read as follows:-

"24. In the present case, what we have to decide is whether the State is bound to reimburse the claim, whether the insurance company is bound to indemnify the beneficiary for the claim made by him. As held in the decisions referred to above, the insurance company is strictly bound to strictly by the terms of contract and cannot be asked to settle a claim which does not fall within the terms of the contract and therefore the claim made by the beneficiaries in respect of treatments that were taken in a Non-Network hospital or for reimbursement of the claim made the insurance company is not liable. For this reason, the insurance company had made it clear that only if the beneficiary took treatment in a Network hospital they would settle the claim and more importantly the facility itself is a cashless facility. The insurance company cannot pay cash and if we issue direction to the insurance company

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to reimburse the claim, we would be virtually re-writing the contract which we are not entitled to.

25. The Tamil Nadu Medical Attendance Rules ("the Rules" in short) clearly lay down the rules regarding dependents and who is entitled to medical concessions under the Rules. It also defines who is a well to do person. The Rules lay down the manner in which claims can be made. According to the learned Advocate General, these Rules are still in force and therefore when it is a claim not covered by the present Insurance Scheme, the Government Servants have the right to make their claims under the Rules. Therefore, as regards Category-A, where treatment has been taken in a Non-Network hospital, the insurance company cannot be asked to cover the expenses, since the scheme itself make the Network hospitals as intrinsic. However, the Petitioner/Claimants were also not no remediless and that is why we will issue directions to the claimants to make an application under the Rules or go before the Redressal Committee."

8. The Hon'ble Supreme Court of India in Shiva Kant Jha -vs- Union of India [2018 (5) MLJ 317], dealing with unfair treatment meted out to Government servants for medical reimbursement under similar provisions of the Central Government Health Scheme, held in paragraphs 13, 14 and 15 as follows:-

"13. With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the Government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the Respondent-State has pleaded that the CGHS has to deal with large number of such retired beneficiaries and if the Petitioner is compensated beyond the policy, it would have large ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.

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14. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the Claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the Petitioner forcing him to approach this Court.

15. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the Central Government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the Writ Petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the

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law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implemented CRT-D device and have done so as one essential and timely. Though it is the claim of the Respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the Petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals."

9. In view of this incontrovertible legal position coupled with the facts of this case, we confirm the findings of the Writ Court. Accordingly, we direct that the competent authority of the Government of Tamil Nadu to examine the claim made by the Petitioner for medical reimbursement under the Tamil Nadu Medical Attendance Rules and disburse the eligible amount towards the same along with interest thereon at the rate of 9% per annum from 16.03.2017 till date of payment and file report of such compliance before the Registrar (Judicial) of this Court by 18.02.2019.

10. It is made clear that the aforesaid direction issued to the First, Second and Fourth Respondents, to forthwith settle the claim made by the Petitioner for reimbursement of medical expenses under the Tamil Nadu Medical Attendance Rules at the first instance, would not preclude those Respondents from placing the matter before the High Level Committee constituted under the implementation procedure in clause 17 of Annexure 1 of G.O. Ms. No. 222, Finance (Pension) Department dated 30.06.2018 issued by the Government of Tamil Nadu for a decision on the question whether the Insurance Company would be liable to meet claims, like the present one, where the Hospital at which the Government Servant concerned had undergone treatment had not been included in the list of Network Hospital at that time, has been subsequently added for coverage by the New Health Insurance Scheme, 2016."

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5. Learned Additional Government Pleader appearing for the respondents has not disputed the facts submitted by the learned counsel appearing for the petitioner.

6. In the light of the above said judgments, I am inclined to issue direction to the respondents to consider the petitioner's representation dated 12.02.2018 and dispose of the same in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order. With the above direction, the Writ Petition is disposed of. No costs.

-s/d-
Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

AT
To
1.The Director of Pension,
D.P.I. Compound,
Chennai - 600 006.

2.The Joint Director of Medical and
Rural Health Services,
Salem, Salem District.

3.The Sub-Treasury Officer,
Omalur, Salem.

+1 CC to Mr.V. Thirupathi, Advocate sr 84053.

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BP(CO)
SP(07/11/2019)

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