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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 6690/2010</u>**

DEV RAJ SINGH ..... Petitioner

Through: Mr Madhu Mukul Tripathi and Mr Arvind Kumar, Advocates.

versus

GOVT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Anju Bhattacharya, Ms. Deepika Kumari and Ms. N. Chandra, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **04.02.2019**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning the decision of respondent no.2 to reject the petitioner's claim for reimbursement of ₹5,31,510/- incurred by the petitioner for his medical treatment.

2. The controversy involved in the present petition is whether the petitioner is entitled to the benefits of the scheme framed by respondent no.2- Delhi State Civil Supplies Corporation (hereafter 'DSCSC') for providing medical benefits to its employees. Whereas, the petitioner claims that he is entitled to the same notwithstanding that he is not a member of the said Scheme and had not contributed to the same; the respondents contend to the contrary.

Relevant Facts

3. DSCSC is a Government Company and 99.9% shares of the respondent corporation are held by the Government of NCT of Delhi (respondent no.1).

4. The petitioner was issued an appointment letter by DSCSC on 13.11.1982 and pursuant to the same, he joined its employment. The petitioner continued to serve the DSCSC till his retirement from service, on 19.08.2009.

5. After his retirement from service, the petitioner suffered acute Inferior Wall Myocardial Infraction and was admitted to Escorts Heard Institute and Research Centre (Escorts Hospital) on 21.01.2010. The petitioner was discharged from Escorts Hospital after surgery. The petitioner was operated upon at the said hospital and was discharged on 25.01.2010 after surgery. The petitioner claims that he incurred an expenditure of ₹5,31,510/- towards the medical expenses for treatment at the said hospital.

6. On 07.04.2010, the petitioner filed an application with the Chairperson of DSCSC for seeking reimbursement of his medical expenses and also submitted the original bills along with his application. He relied upon the decision of a Coordinate Bench of this Court in ***Kishan Chand v. Govt. of NCT & Ors.*** : ***W.P. (C) No. 889/2007*** in support of his claim for reimbursement.

7. The aforesaid application for reimbursement was rejected by a letter dated 26.04.2010 with the observation that the "Corp. Medical Scheme is not applicable for retired employees of this Corp."

8. Aggrieved by the same, the petitioner has filed the present petition.

9. Mr. Madhu Mukul Tripathi, learned counsel appearing for the petitioner contended that DSCSC had framed a new medical scheme which entailed an option to the employees to become a member of the scheme at the time of retirement. The said scheme is a contributory scheme and a *lump sum* amount equal to ten years subscription was required to be deducted at the time of retirement of the employees for providing them a life time membership of the Scheme. He drew the attention of this Court to the additional affidavit enclosing the said Scheme. He contended that the said scheme was approved by the Board of Directors of DSCSC at a meeting held on 28.08.2008. He contended that the adoption of the same was binding and the petitioner was entitled to the benefits of the same.

10. He also referred to the decision of a coordinate Bench of this Court in ***Kishan Chand v. Govt of NCT of Delhi & Ors.*** (*supra*) wherein it was, *inter alia*, held that the benefits of reimbursement of medical expenses could not be denied to an employee who had retired from services merely on the ground that he had not opted for the said scheme at the time of his retirement.

11. Ms Anju Bhattacharya, learned counsel appearing for the DSCSC countered the aforesaid submissions. She submitted that DSCSC is a Government Company and has its own charter. She pointed out that prior to 01.01.2011 all employees were covered under

a scheme named "*Reimbursement of Hospitalization Expenses to the Employees of DSCSC Ltd.*". The said scheme was only available to serving employees and it was not available to retired employees/pensioners. She submitted that the respondent corporation adopted the Delhi Government Employees Health Scheme (DGEHS), which was a contributory scheme with effect from 01.01.2011. She stated that the petitioner was not entitled to the benefits of the said scheme as the petitioner was not a member. She further submitted that although DSCSC had adopted the DGEHS, however, the same was funded by contributions by members as well as DSCSC but not by Government of NCT of Delhi.

12. She referred to the extracts of the Minutes of the Board of Directors of DSCSC held on 29.06.2011. She also cited the decision of the Division Bench of this Court in ***Dal Chand Vashisht v. Government of NCT of Delhi & Ors.*** : ***2008 VI AD (DELHI) 44*** in support of her contention that the benefits of a contributory medical scheme could not be extended to a non-member.

13. This Court has examined the minutes of the Board of Meeting of DSCSC held on 28.08.2008 and it is apparent that the Board of Directors had the DGEHS and had also decided to make the necessary contribution to the Govt. of NCT of Delhi. However, it is also apparent from the minutes of the meeting held on 26.09.2011 that the said proposal did not fructify. The minutes of the said meetings indicate that the Board of Directors had approved the adoption of DGEHS on 28.08.2008 and had, accordingly, requested that

Directorate of Health Services Government of NCT of Delhi to issue cards in order to enable the employees of the Corporation for getting treatment from empanelled hospitals. The Finance Department of Government of NCT of Delhi had approved the Scheme, albeit, with the condition that DSCSC bears the medical expenses and had further revised to accept the subscription from DSCSC and had suggested to DSCSC to create a specific fund to meet the expenses on medical treatment of employees as per DGEHS approved rates.

14. The DGEHS was finally adopted by the Board of DSCSC at a meeting held on 26.09.2011 and the Board of Directors decided to implement the DGEHS with effect from 01.01.2011. It also directed that deductions towards contributions be made from the salaries of employees with effect from the said date. With regard to covering ex-employees, the Board of DSCSC has resolved that ex-employees be also covered under the Scheme on payment of a *lump sum* contribution. The relevant extract of the resolution passed by the Board of Directors of DSCSC is set out below:-

> "(a) the DGEHS is implemented w.e.f. 01.01.2011.
>
> (b) The medical claims upto the period 31.03.2011 in r/o employees who were not issued medical cards prior to getting treatment, be settled as per previous scheme.
>
> (c) The DGEHS will be applicable to all employees retiring after 1.01.2011. The employees retired/died/terminated/resigned before 01.01.2011 will not be covered under the scheme."

15. It is clear from the above that the petitioner is not covered under the DGEHS and, therefore, the decision of DSCSC to reject the petitioner's application for reimbursement of medical expenses cannot be faulted.

16. The decision in ***Kishan Chand v. Govt. of NCT & Ors*** (*supra*) relied upon by the learned counsel for the petitioner was rendered following an earlier decision of this Court in ***S.K. Sharma v. Union of India and Anr.*** : ***2002 (64) DRJ 620***. It is relevant to note that the view expressed by the Court in ***S.K. Sharma v. Union of India and Anr***. (*supra*) was not accepted by the Division Bench of this Court in ***Dal Chand Vashisht v. Govt. Of NCT of Delhi & Ors***. (*supra*). The relevant extract of the said decision is set out below:-

> "25. The decision in S.K. Sharma v. Union of India and Anr., was rendered in a situation where the Petitioner who earlier was a member of the CGHS decided not to continue as a member of the scheme when he shifted to Bareily, since benefit of the CGHS was not extended to Bareily. The court was therefore guided by the consideration that the retired officer should not suffer on account of the failure on the part of the Government to extend CGHS to all areas of the Country. This decision proceeds on the foundation that the retired government servant has a fundamental right to unconditional medical aid, irrespective of the fact whether the retired servant is a member of a health scheme or not, and whether or not he has paid the subscription therefore. This is contrary to the decision of the Supreme Court in Confederation of Ex-Servicemen Association (supra). Both S.K. Sharma (supra) and B.R. Mehta (supra) proceed on the basis that if the retired government servant lives in an area

which is not served by the CGHS he need not become a member of the scheme and still would be entitled to the benefits thereof i.e. for reimbursement under the scheme. We do not agree with the reasoning of the Court in these decisions. In case the retired government employee is situated in a location not serviced by CGHS, or the concerned scheme the retired government servant can legitimately claim reimbursement for any emergency treatment even from a non-recognised hospital at the maximum of the rates prescribed under the scheme. In our view, nothing stops the retired government employee from contributing to the scheme and obtaining treatment in a CGHS area even though he resides in a non CGHS area. Even while living in such non CGHS/other scheme covered area, he is entitled to be compensated for any treatment obtained in an emergency situation at the prescribed rates. This has been held in Narendra Pal Singh v. Union of India and Ors. .

26. To be able to obtain the benefit of a scheme, it is essential that the person/claimant is a member of the said scheme. If the membership is automatic i.e. it comes with the status of the person, the person would be entitled to the benefits thereof, unless he expressly, or by his conduct evinces his intentions not to participate in the scheme - e.g. where he does not pay the subscription due from him. However, where has an option, - whether or not to subscribe to the scheme and the scheme is contributory and voluntary in character, he cannot claim any benefits under the scheme unless he exercises his option to get covered by the scheme and also takes the necessary steps by paying the subscription therefore."

17. In view of the above decision of the Division Bench of this Court in ***Dal Chand Vashisht*** (*supra*), the view expressed in ***Kishan Chand*** (*supra*)**,** which follows the decision in ***S.K. Sharma*** (supra) is

not sustainable.

18. It is also relevant to note that the petitioner has not challenged the resolution of the Board of Directors dated 29.06.2011 or the circular dated 20.12.2010 which also expressly provided that the retired employees could become members only on payment of subscription. Admittedly, the petitioner is not covered under the DGEHS Scheme as adopted by the Board of DSCSC.

19. In view of the above, no relief can be granted to the petitioner. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

FEBRUARY04, 2019
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