IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.20865 of 2013

A.Abdul Subhan ..Petitioner

.vs.

1. The Director General (High Ways)
   PWD Complex, Chepauk,
   Chennai-5.

2. The Superintending Engineer,
   Highways (Construction & Maintenance)
   Salem 636 302.

3. The Divisional Engineer,
   Highways (Construction & Maintenance)
   Krishnagiri 635 001.

4. The Commissioner of Treasuries and Accounts,
   Chennai . ... Respondents
   (R-4 is suo motu impleaded as per order
   dated 17.11.2016)

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent herein to reimburse the medical expenses to the petitioner with 12% interest (which was paid by him for the Angioplasty Surgery Undergone when He was in service) with in a stipulated period of time.

For Petitioner : M/S.S.Siva Kumar
For Respondents : Mr.A.N.Thambi Durai, Spl.G.P.

ORDER

Writ Petition has been filed by the petitioner, to direct the respondents herein to reimburse the medical expenses to the petitioner with 12% interest (which was paid by him for the Angioplasty Surgery Undergone when he was in service) within a stipulated period of time.

2. It is the case of the petitioner that he is a member of Tamil Nadu Government Health Fund Scheme 1993 and while he was in service, on 28.09.2006, the petitioner had undergone Angioplasty Surgery at Vinayaga Mission Hospital, Salem,which was not approved by the Government on that date and has taken medical treatment as an inpatient and the petitioner incurred medical expenses of Rs.84,679/- and thereafter, he made a representation on 25.10.2006 along with relevant documents to the 3rd respondent herein, for reimbursement. In the mean time he attained superannuation and retired from service on 31.10.2006; the 3rd respondent herein sent a letter to the Commissioner, Treasuries and Accounts, Chennai vide Lr.No.5014/066B1 dated 31.10.2006, however the 4th respondent returned the same to the 3rd respondent with objection that Vinayaga Mission Hospital, Salem, where the petitioner had undergone surgery, is not a listed hospital under the Government Order viz., G.O.Ms.377, Finance (Salaries) Department dated 13.10.2005. Once again the 3rd respondent sent a letter dated 28.08.2008, quoting G.O.No.383 Finance (Salaries) Department dated 28.09.2001 stating that the Government employees who availed medical treatment at unaccredited private hospitals after 29.08.2000 are eligible for a maximum grant of Rs.50,000/- or 50% of the actual costs of specialized advanced surgery whichever is less; again the letter of the 3rd respondent was returned by the Commissioner of Treasuries and Accounts, Chennai for some reasons. Aggrieved by the same, the petitioner made a representation on 12.02.2009 to the 3rd respondent and on 27.09.2011, the petitioner sent a representation to the 1st respondent. On 16.03.2012, the 3rd respondent herein sent a letter No.3433/2010/B1 dated 16.03.2012 directing the petitioner to approach the hospital and get relaxation order and thereafter, the petitioner made several representations to the first and second respondents also, but no reply was forthcoming from the respondents. Hence the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that since amount has been deducted towards medical insurance from the monthly income of the petitioner, the petitioner is entitled to claim medical reimbursement. Learned counsel for the petitioner submitted that similar issue came up for consideration, wherein it was 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 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 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.

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 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."

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

5. In the light of the above said proposition of law as expostulated by this Court, the writ petition is liable to be allowed. Accordingly, the writ petition stands allowed and impugned order of the 4th respondent is hereby quashed. This Court directs the 1st respondent to examine the claim made by the petitioner for medical reimbursement and disburse the eligible amount towards the same within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director General (High Ways)
   PWD Complex,
   Chepauk, Chennai-5.

2. The Superintending Engineer,
   Highways (Construction & Maintenance)
   Salem 636 302.

3. The Divisional Engineer,
   Highways (Construction & Maintenance)
   Krishnagiri 635 001.

4. The Commissioner of Treasuries and Accounts,
   Chennai.

+1cc to the Government Pleader, Sr.No.27504

W.P.No.20865 of 2013

gp (co)
rr ii (19/10/2020)