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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.03.2020
CORAM

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

W.P.(MD) No.3915 of 2020
and W.M.P.(MD)No.3307 of 2020

S.Senthil Kumar

... Petitioner

Vs.

- 1.The Secretary to Government,
(Finance and Pension Department)
Secretariat, Fort St.George, Chennai.
 - 2.The Commissioner of Treasuries and Accounts,
Integrated Office Complex for Finance Dept.,
3rd Floor, Veterinary Hospital Campus,
Anna Salai, Chennai-600 035.
 - 3.The United India Insurance Co.Ltd.,
Rep.by its Divisional Manager,
Divisional Office VI,
5th Floor, P.L.A. Rathana Towers,
No.212, Anna Salai, Chennai-6.
 - 4.District Level Committee,
Rep.by District Collector,
Pudukottai District.
 - 5.The District Treasury Officer,
The District Treasury Office,
Collectorate Campus,
Pudukottai,
Pudukottai District-622 005.
 - 6.The Joint Director of Medical and Rural Health Service,
Pudukottai, Pudukottai District.
- ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 5th respondent pertaining to his order bearing Na.Ka. No.975/2019/A5 dated 31.12.2019 and to quash the same and consequently direct the respondents to disburse Rs.4,07,520/- spent by the petitioner for the treatment underwent by him within a stipulated time fixed by this Court.

For Petitioner
For R1, R2, R4 to R6

: Mr.S.C.Herold Sing
: Mr.K.Mu.Muthu,
Additional Government Pleader.

**ORDER**

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 5th respondent pertaining to his order bearing Na.Ka.No.975/2019/A5 dated 31.12.2019 and to quash the same and consequently direct the respondents to disburse Rs.4,07,520/- spent by the petitioner for the treatment underwent by him within a stipulated time fixed by this Court.

2.By consent, this writ petition is taken up for final disposal at the stage of admission itself.

3.The case of the petitioner is that he is working as a Secondary Grade Assistant in Ramanathan Chettiar Higher Secondary School, Nachandupatty. The third respondent is deducting a sum of Rs.180/- from his monthly salary towards health fund scheme. He suffered Familial Adenomatous Polyps (FAP) and diagnosed in GEM Hospital and research Center (P) Ltd., Coimbatore, on 12.09.2017. He was admitted in the said hospital on 12.09.2017 and a surgery was conducted on 15.09.2017 and he was discharged from the hospital on 22.09.2017. According tot he petitioner, he incurred a sum of Rs.4,07,520/- towards medical expenses. He made an application to the fourth respondent on 10.09.2019, by enclosing all the bills and discharge summary seeking medical reimbursement and the same was placed before the District Level Empowered Committee. As directed by the fourth respondent, the petitioner appeared before the District Level Empowered Committee meeting held by the fifth respondent and the fourth respondent having satisfied with the treatment underwent by the petitioner recommended to the third respondent to disburse the amount spent by the petitioner, based on the petitioner's application. The third respondent on 28.11.2019, rejected the claim for medical reimbursement stating that the treatment underwent by the petitioner is not covered under G.O.No.202. Citing the rejection order passed by the third respondent the fifth respondent passed the impugned order returning all the original documents to the petitioner. Challenging the same, this writ petition has been filed.

4.The learned Additional Government Pleader appearing for the official respondents would state that since the treatment underwent by the petitioner does not come under G.O.No.202, his claim for reimbursement was rightly rejected and therefore, the interference of this Court is not necessary.

5.In a similar circumstances, this Court on several occasions has held that the claim of reimbursement cannot be rejected on the ground that the treatment was not taken in the listed hospital and the disease for which, treatment was taken is not the listed diseases in G.O.Ms.No.171 Finance Department, dated 26.06.2014.

6.In this context, it is relevant to consider the Division bench Judgment of this Court in W.A(MD).No.1617 of 2018 in State



Level Empowered Committee Vs. S.Paramasivam and another reported in (2019) 2 MLJ 1, wherein, the Hon'ble Division Bench has held as follows:

"7. 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 several retired Government servants in their old age for medical reimbursement under similar provisions of the Central Government Health Scheme, held in para nos. 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 <http://www.judis.nic.in> 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 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."

8. In this context, it would also be useful to refer to clause 14(4) of the Guidelines for Implementation of New Health Insurance Scheme, 2018, for Pensioners (including Spouse)/Family Pensioners in the Appendix to G.O. Ms. No. 222, Finance (Pension) Department, dated 30.06.2018 issued by the Government of Tamil Nadu, which is extracted below:-

"14.(4) In case, a Pensioner/Family Pensioner undergoes emergency treatments/surgeries not covered under this Scheme in either Network Hospital or Non-Network Hospital, no claim can be filed under the Health Insurance Scheme. However, they shall be eligible for claim to the extent permissible under the Tamil Nadu Medical Attendance Rules and the G.O. Ms. No. 1023, Health and Family Welfare Department, dated 17.06.1980. It may be noted that the Tamil Nadu Medical Attendance Rules requires that treatment in private hospitals should not be resorted to except in case of emergencies. Clause 2(3) of the aforesaid Government Order states that in genuine cases of emergency, the claim will be restricted to the expenditure that would have been incurred had the patient taken treatment in a

Government hospital excepting diet charges. For claims under Tamil Nadu Medical Attendance Rules, the Beneficiaries may apply to the authority in the department in which the Government employee last served who is competent to process and forward pension proposal to the Accountant General, Tamil Nadu. The Head of Office shall process the claims and pay the eligible claims under the Tamil Nadu Medical Attendance Rules."

Though that Governmental Order has been issued after the claim has been made in this case, the aforesaid guidelines, which are based upon the instructions provided in the earlier Government orders and the Tamil Nadu Medical Attendance Rules, are obviously clarificatory in nature and would apply to past cases as well.

9. In the light of this incontrovertible legal position coupled with the facts of this case, we confirm the findings of the Writ Court. However, we are of the considered view that it would suffice to award interest at the rate of 7.5% per annum instead of 9% per annum that had been granted for the delay in medical reimbursement to the Petitioner.

10. In the result, the Writ Appeal is allowed in part and the order dated 27.02.2017 in W.P. (MD) No. 23912 of 2016 is modified to the effect that the competent authority of the Government of Tamil Nadu shall examine the claim made by the Petitioner for medical reimbursement under the Tamil Nadu Medical Attendance Rules and sanction and disburse the eligible amount towards the same along with interest thereon at the rate of 7.5% per annum and file a report of such compliance before Registrar (Judicial) of this Court by 31.01.2019. No costs. Consequently, the connected Miscellaneous Petition is closed".

7. In my considered opinion, the above Judgment is squarely applicable to the facts and circumstances of the present case. Once the District Level Empowered Committee recommended for medical reimbursement to the petitioner, the fifth respondent / District Treasury Officer ought not to have returned the original documents to the petitioner citing the proceedings of the third respondent that the treatment is not covered under G.O.202. Therefore, the impugned order passed by the fifth respondent dated 31.12.2019 is set aside and the District Level Empowered Committee shall examine the claim of the petitioner for medical reimbursement under the Tamil Nadu Medical Attendance Rules and forward a report to the first respondent for sanction and disbursement of the eligible amount, within a period of four weeks, from the date of receipt of a copy of this order and on receipt of such report from the District Level Empowered Committee, the first respondent shall sanction and disburse the eligible amount of medical reimbursement to the petitioner, within a period of four weeks from the date of receipt



of the report from the District Empowered Committee.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (crl.side)

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Sub Assistant Registrar(CS)

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To

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(Finance and Pension Department)
Secretariat, Fort St. George,
Chennai.
2. The Commissioner of Treasuries and Accounts,
Integrated Office Complex for Finance Dept.,
3rd Floor, Veterinary Hospital Campus,
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5. The Joint Director of Medical and Rural Health Service,
Pudukottai, Pudukottai District.

+1 CC to M/s.SPL GP (SR-12290[F] dated 18/03/2020)

W.P. (MD) No. 3915 of 2020
16.03.2020

KB(08.07.2020) 6P 7C