BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD) No.4892 of 2020

D.Sivasu ... Petitioner

-Vs-

1.The State of Tamil Nadu
Represented by its Secretary
Department of Finance(Pension)
Fort St.,George,
Chennai 600 009

2.The Commissioner of
Treasuries & Accounts
Panagal Building
Saidapettai
Chennai

3.The District Treasury Officer
Hosur Treasury
Pudukkottai
Pudukkottai District

4.The Additional Treasury Officer
District Treasury
Pudukkottai

5.The General Manager
United India Insurance Company Limited
PLA, Rathina Tower 5th Floor
212, Anna Salai, Chennai 600 006 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus,calling for the records pertaining to the impugned order issued by him in Na.Ka.No.7375/2016/E2, dated 26.09.2016 issued based upon the order by the first respondent in 34231 (Pension) 2015 (1) dated 01.07.2015 rejecting the claim of Rs.235929/- for the surgery underwent by the wife of the petitioner for permanent Pace Maker Implantation and quash the same and pass an order directing the respondents to sanction reimbursement of the claim.

For Petitioner : Mr.Y.Arulanandasamy
For R1 to R4 : Mr.M.Rajarajan
Government Advocate

ORDER

The writ petition has been filed to call for the records pertaining to the impugned order issued by him in Na.Ka.No.7375/2016/E2, dated 26.09.2016 issued based upon the order by the first respondent in 34231 (Pension) 2015 (1) dated 01.07.2015 rejecting the claim of Rs.235929/- for the surgery underwent by the wife of the petitioner for permanent Pace Maker Implantation and quash the same and pass an order directing the respondents to sanction reimbursement of the claim.

2.According to the petitioner, he was working as Junior Assistant in Rural Development Department at Aranthangi Panchayat Union on 23.11.1983 and was retired from service on 31.07.2013 on attaining the age of superannuation. He is a member of the New Health Insurance Scheme. The Government has issued order in G.O.No.171, Finance (Pension) Department, dated 26.06.2014, implementing the New Health Insurance Scheme of 2018 for the pensioners with effect from 01.07.2014, which has also been amended in the year 2018. As per G.O.No.171, a sum of Rs.350/- has been recovered from the petitioner's pension towards that scheme.

3.In this circumstance, the petitioner's wife was admitted in the Madurai Velammal Medical College Hospital and underwent for the treatment of permanent pace maker implantation surgery and the petitioner incurred an expenditure of Rs.2,35,929/-. As per New Health Insurance Scheme, he is entitled to claim reimbursement. Therefore, he submitted an application to the respondents along with necessary documents. The said application was rejected by the fourth respondent dated, 26.09.2016 based upon the order of the first respondent, dated 01.07.2015 on the ground that 'the alleged reason attributed for the claim not being recommended to the Insurance Company as per G.O.Ms.No.171, dated 26.06.2014 and making claim under the PNHIS Scheme, the treatment must have been undertaken for the diseases listed in G.O.Ms.No.171 as well as in the listed Hospitals' . Aggrieved over the same, the petitioner is before this Court.

4.The learned counsel appearing for the petitioner submitted that the petitioner is entitled for reimbursement of amount, as he is the member of the New Health Insurance Scheme and the amounts are deducting from his salary towards premium. The rejection of the claim of the petitioner is not valid. Hence, he prays to allow this Writ Petition.

6.The learned Government Advocate appearing for the respondents 1 to 4 contended that the treatment taken by the petitioner for the disease does not come under the diseases listed in G.O.Ms.No.171, dated 26.06.2014 and therefore, the petitioner is not entitled for reimbursement Hence, he prays for dismissal of this Writ petition.

7.Heard the learned counsel appearing for the petitioner as well as learned Government Advocate appearing for the respondents 1 to 4.

8.Perusal of record shows that the respondents have rejected the claim of the petitioner by stating that the disease for which the treatment was taken by the petitioner does not come under the diseases listed in G.O.Ms.171, dated 26.06.2014 and the hospital in which the petitioner's wife took treatment is also not a listed hospital as per the said G.O.

9.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.

10.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 <u>Shiva Kant Jha -vs- Union of India</u> [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 *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. <u>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.</u> 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 claims 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".*

11.In my considered opinion, the above Judgment is squarely applicable to the facts and circumstances of the present case. Under such circumstances, the impugned order of the fourth respondent, dated 26.09.2016 is set aside and the respondents 2 to 4 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 respondents 2 to 4, 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 respondents 2 to 4.

12.With the above direction, this Writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Secretary
State of Tamil Nadu
Department of Finance(Pension)
Fort St.,George, Chennai 600 009

2.The Commissioner of
Treasuries & Accounts
Panagal Building
Saidapettai
Chennai

3.The District Treasury Officer
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