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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2020

CORAM:

THE HONOURABLE MRS JUSTICE J.NISHA BANU

W.P(MD)No.5036 of 2020

and

W.M.P(MD)No.4372 of 2020

J.R.Gnanaselvi : 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 Department
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,
Tirunelveli, Tirunelveli District

5.The District Treasury Officer
The District Treasury Office
Tirunelveli
Tirunelveli District

6.The Joint Director of Medical and Rural Health Service
Tirunelveli, Tirunelveli District : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 5th respondent pertaining to its order bearing Na.Ka.No.9127/N.1/2019 dated 13.01.2020 and to quash the same and consequently direct the respondents to disburse Rs.1,03,961.46 spent by the petitioner's husband P.Paul Vethamoni for the treatment underwent by him within a stipulated time to be fixed by this Court.

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For Petitioner : Mr.S.C.Herold Singh
For Respondents 1.2and 4 to 6 : Mr.M.Murugan, Government Advocate.

O R D E R

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 its order bearing Na.Ka.No.9127/N.1/2019 dated 13.01.2020 and to quash the same and consequently direct the respondents to disburse Rs.1,03,961.46 spent by the petitioner's husband P.Paul Vethamoni for the treatment underwent by him within a stipulated time to be 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 the petitioner was working as B.T.Assistant at Margochis Higher Secondary School, Nazarath and she retired from service on 05.06.2007. She is the member of the Government of Tamil Nadu Employees New Health Insurance Scheme and she is also contributing to the said scheme. On 01.02.2015, the petitioner's husband was admitted to KIMS Hospital Trivandrum, since he was suffered by Inguinal Hernia and after taking treatment, he was discharged on 06.02.2015. The petitioner had totally spent a sum of Rs.1,03,961.46 for medical treatment. Thereafter, she made an application to the 5th respondent, enclosing all the bills and discharge summary for medical reimbursement. The 5th respondent by its proceedings dated 29.01.2019 forwarded the same to the 6th respondent. Thereafter, once again, the petitioner submitted an application on 15.02.2019. The entire file regarding the treatment underwent by her husband was placed before the District Level Empowered Committee. After scrutinizing the documents, the District Level Empowered Committee, rejected her claim for medical reimbursement stating that she is not eligible to get medical reimbursement and the hospital, where her husband has taken treatment, does not found place in the list of Network hospital mentioned in G.O.No.171, Finance Department dated 26.06.2014. Challenging the same, this writ petition has been filed.

4.The learned Government Advocate appearing for the respondents 1, 2 and 4 to 6 would submit that the fifth respondent has addressed the communication to the Joint Director of Medical and Rural Health Service, Tirunelveli District. After scrutinizing the entire documents, the District Level Committee rejected the claim of the petitioner stating the disease does not come under the diseases listed in G.O.No.171, Finance Department dated 26.06.2014 and the hospital in which the petitioner's husband took treatment is also not a listed hospital as per the said G.O.

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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.

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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*

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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."

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

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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".

7. In my considered opinion, the above Judgment is squarely applicable to the facts and circumstances of the present case.

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Under such circumstances, the impugned order dated 13.01.2020 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.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

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(Finance and Pension Department)
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+1 CC to M/s.A.SHAJAHAN, Advocate (SR-10846[F] dated 10/03/2020)

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-10883[F]dated10/03/2020)

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