

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.12121 of 2020

M.Mallika

... Petitioner

Vs

1. The Additional Chief Secretary to Government,
Finance Department,
Fort St. George,
Chennai 600 009.
2. The Director of Pensions,
Integrated Complex for Finance Department,
Animal Husbandry Hospital Complex,
Nandanam, Chennai 600 035.
3. The District Collector of Tirunelveli District/
Chairman, District Level Empowered Committee,
Tirunelveli.
4. The District Collector,
Tenkasi District,
Tenkasi.
5. The Joint Director of Medical & Rural Health Services,
Tirunelveli 627 009.
6. The Treasury Officer,
District Treasury,
Tirunelveli.
7. The Assistant Treasury Officer,
Sub Treasury,
Tenkasi.
8. The Senior Manager,
United India Insurance Company Limited,
Divisional Office VI,
PLA Rathna Towers,
5th Floor, No.212, Anna Salai,
Chennai 600 006.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records pursuant to the impugned order of rejection issued by the 8th Respondent in proceedings No.'Nil' dated 12.11.2019 and the consequential impugned order issued by the 6th Respondent in Proceedings vide Na.Ka.No.9127/N.1/2019, dated 12.12.2019 and quash these orders and consequently direct the Respondents to pay a sum of Rs.5,25,980/- towards medical reimbursement with interest at the rate of 12% per annum.

For Petitioner : Ms.Swadhi Subramaniam

For Respondents 1 to 7: Mr.A.Arul Doss,
Additional Government Pleader

For 8th Respondent : Mr.P.Sankaranarayanan

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned order of rejection issued by the 8th Respondent vide proceedings No.'Nil' dated 12.11.2019 and the consequential impugned order issued by the 6th Respondent in Proceedings vide Na.Ka.No.9127/N.1/2019, dated 12.12.2019 and for a consequential direction to the Respondents to pay a sum of Rs.5,25,980/- towards medical reimbursement with interest at the rate of 12% per annum.

2. The Petitioner/pensioner has approached this Court against the rejection order in respect of her medical claim for treatment. The request of the petitioner for reimbursement of the medical expenses incurred by her, has been rejected by the 8th and 6th Respondents, respectively. Having no other alternative, she has approached this Court.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. While dealing with the similar issue of medical reimbursement, this Court has considered all the aspects, referred to various judgments of this Court and passed an elaborate order in W.P.No.2059 of 2017 [T.Balamani vs The Principal Secretary to Government, Finance (Salaries) Department, Secretariat, Chennai-9 and others] decided on 27.02.2017 and directed the Government to sanction the amount to the Petitioner therein. Relevant portion of the said order is extracted hereunder:

"The petitioner seeks to quash the impugned order dated 04.10.2016, by which her request for medical reimbursement was rejected on the ground that the hospital, in which she underwent treatment is not an approved hospital. The petitioner also sought a direction to the 1st respondent to reimburse the medical expenses of Rs.4,44,965/- to the petitioner with adequate interest

2. The petitioner, who was an employee during the period of treatment and now attained superannuation, has approached this Court against the rejection order in respect of her medical claim for the treatment. The request of the petitioner has been rejected by the Government followed by the rejection of the High Level Committee.

3. Learned Government Advocate would submit that the Government, having entered into a contract with the Insurance Company and having paid huge amount to them, cannot be compelled to reimburse the amount for the second time. He would further submit that there are number of net work hospitals in the State and it is impermissible for the Government employees to choose their own hospitals for treatment and thereafter claiming reimbursement. If this practice is allowed, then the very purpose of entering into the the contract with the Insurance Company will be defeated.

4. Learned counsel for the petitioner would contend that the Government issued an order in G.O.Ms.241 Finance (Salaries) Department dated 24.08.2016, which states that in order to redress the grievances of the Government employees/pensioners under New Health Insurance Scheme, District Level Empowered Committee / State Level Empowered Committee / High Level Committee have been constituted, which will go through the records and thereafter decide with regard to reimbursement of the amount and prior to that, the Government only extended the monetary benefits for the treatment.

5. Heard the learned counsel on either side.

6. It is seen that the Government has entered into a contract with the Insurance Company between the years 2014 and 2018 and as per the contract, the Insurance Company is liable to pay the entire amount directly to the network hospital and it cannot reimburse the amount in terms of money, as the facility extended itself is the cashless facility. But, at the same time, the State cannot take a stand that there is no provision to reimburse the amount to its employees in terms of money at all.

7. Admittedly, the petitioner has taken treatment in a non-network hospital on account of emergent situation, which ultimately resulted in rejection of her claim. Subsequently, the High Level Committee has also rejected the claim of the petitioner. It is not in dispute that if the claim is approved, the petitioner would be paid the medical benefits based on Tamil Nadu Medical Attendance Rules (in short "the Rules"). The benefit of scheme, namely, the contract cannot be rewritten and it is only the Government to pay the amount incurred by the petitioner/employee/patient/pensioner irrespective of constitution of the Committee. It is pertinent to mention here that the patient cannot search for network hospital for getting admitted or for taking treatment during emergency.

8. This Court in the case of N.Raja vs. The Government of Tamil Nadu, rep. by its Secretary, Chennai and others, reported in 2016 (3) CTC 394, has clearly held that when the Insurance Company is not liable on account of the violation of the terms and conditions of the contract, it is the duty of the Government to reimburse the medical expenses incurred. The Hon'ble Division Bench of this Court also, by order dated 16.12.2016 in W.A. (MD) No.1579 of 2016 [MD India Healthcare

Services (TPA) Ltd., rep. by the Branch Manager, Chennai, Chennai vs. K.Parameshwari and others], directed the Government to reimburse the medical expenditure. In view of the above, this Court is of the view that pursuant to the existence of the contract, the Insurance Company cannot be directed to pay the amount and therefore, it is the Government, which is liable to reimburse the amount.

9. Accordingly, this writ petition is allowed and the impugned order dated 04.10.2016 is hereby set aside. The concerned respondent, namely, the 1st respondent is directed to sanction the medical expenses incurred by the petitioner/employee/pensioner, as per the eligibility criteria in terms of amount under the Scheme along with interest @ 9% p.a. without standing on technicalities and release the eligible amount within a period of two months from the date of receipt of a copy of this order.

10. Before parting with the matter, it is suggested that the Government shall ensure devising a proper scheme so that the employees / pensioners, who are the backbones for smooth running of Government machineries are not made to run from pillar to post for their claims, on the ground of technicalities being raised by the Insurance Company."

5. Finding that, the present issue on hand is squarely covered by the judgment of this Court rendered in W.P.No.2059 of 2017 [T.Balamani vs The Principal Secretary to Government, Finance (Salaries) Department, Secretariat, Chennai-9 and others] decided on 27.02.2017, the impugned orders dated 12.11.2019 and 12.12.2019 passed by the 8th and 6th Respondents respectively, are hereby set aside. The concerned Respondents are directed to sanction the medical expenses incurred by the Petitioner/pensioner as per the eligibility criteria in terms of amount under the Scheme along with interest at 9% per annum without standing on technicalities and release the eligible amount to the Petitioner within a period of two months from the date of receipt of a copy of this order.

The Writ Petition is allowed with the above direction. No costs. Consequently, connected W.M.P.No.14864 of 2020 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

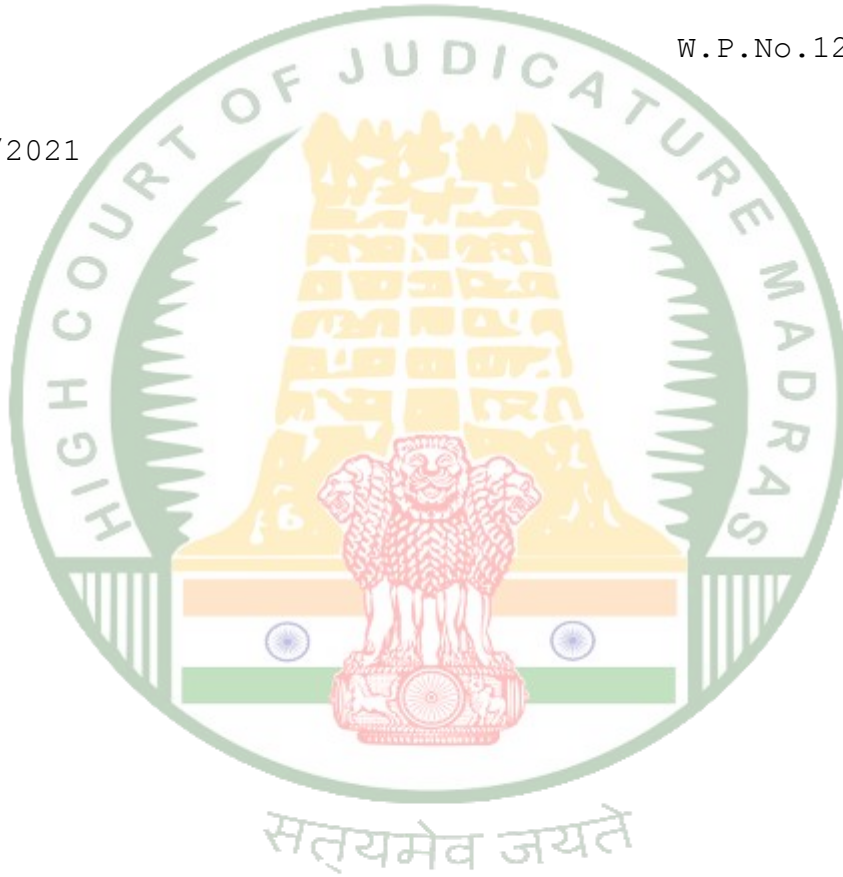
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+1cc to Mr.R.Prem Narayan, Advocate Sr.6757
+1cc to Mr.P.Sankaranarayanan, Advocate Sr.6772
+1cc to the Government Pleader Sr.7097

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srg 12/02/2021



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