



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD)No.7178 of 2013

G.Rajan

... Petitioner

Vs.

The Superintendent of Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondents in his Proceedings O.Mu.No.15527/CC2/2008, dated 16.12.2008 and quash the same and further direct the respondent to disburse the amount of Rs.15,000/- towards the expenses incurred by the petitioner as per the bill submitted by the petitioner with 12% interest.

For Petitioner : Mr.B.Prahalad Ravi
for M/s.Hallmark Associates

For Respondent : Mr.R.Murugan
Additional Government Pleader

ORDER

Heard Mr.B.Prahalad Ravi, Learned Counsel for the Petitioner and Mr.R.Murugan, Learned Additional Government Pleader for the Respondent and perused the materials placed on record apart from the pleadings of the parties.

2. The Petitioner, at the time of filing of this Writ Petition, was working as Grade-I Police Constable in the Police Department and he had made an application dated 07.10.2008 to the Jail Superintendent of the Sub Jail, Sankarankovil, for reimbursement of the medical expenses incurred by him for a surgery relating to varicose vein disease which was forwarded to the Respondent for taking appropriate further action in the matter. In furtherance thereto, the Respondent by letter O.Mu.No.15527/CC2/2008 dated 16.12.2008 informed that 'varicose vein' had not been included in the list of diseases covered to avail the benefits of the Health Insurance Scheme from Star Health and Allied Insurance Company Ltd.



In that factual backdrop, the Petitioner has filed this Writ Petition challenging the said order passed by the Respondent and has sought for consequential direction to reimburse with interest the medical expenses that had been incurred by him.

3. It is now trite as held by the Division Bench of this Court in **Star Health and Allied Insurance Company Ltd. -vs- A.Chokkkar** [(2010) 2 LW 90] that when a claim for medical reimbursement is not covered under the health insurance scheme extended by Star Health and Allied Insurance Company Ltd to the Government Servants, it would have to be processed under Tamil Nadu Medical Attendance Rules by the Head of the Office with the concerned Department in which that employee serves and pay the eligible amount to him.

4. 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 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.

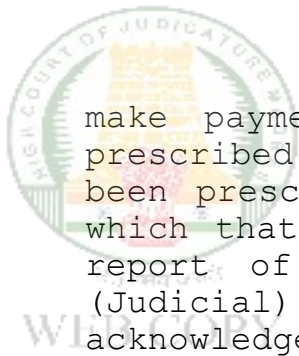
14. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated 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."

5. Having due regard to the aforesaid legal position, the impugned order in O.Mu.No.15527/CC2/2008 dated 16.12.2008 passed by the Respondent rejecting the claim made by the Petitioner for reimbursement of medical expenses for irrelevant considerations cannot be sustained and the same is quashed. The Respondent is directed to process that claim of the Petitioner under the Tamil Nadu Medical Attendance Rules through the competent authority and



make payment of the eligible amount with interest at the rate prescribed under those rules, and if no such rate of interest has been prescribed, at the rate of 7.5% per annum from the date on which that application was received from the Petitioner and file a report of the compliance in that regard before the Registrar (Judicial) of this Court by 30.06.2021 under written acknowledgement.

In the result, the Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

SRM

To

The Superintendent of Central Prison,
Palayamkottai,
Tirunelveli District.

Copy to:

Registrar(Judicial),
Madurai Bench Of Madras High Court,
Madurai.

+1 CC to M/s.SPL GP (SR-16770[F] dated 20/04/2021)

+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-16348[F] dated
19/04/2021)

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GS (20.05.2021) 4P 5C