



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.19578 of 2016

and

W.M.P. (MD)No.14117 of 2016

WEB COPY

N.K.Mathavaraj Ganesan

... Petitioner

vs.

1.The Government of Tamil Nadu,
represented by the Principal Secretary to Government,
Public Works (F1) Department,
Secretariat, Fort St.George, Chennai.

2.The Engineer-in-Chief,
Water Resources Department and
Chief Engineer (General)
Chepuak, Chennai-5.

3.The Finance (Salary) Department,
represented by the Principal Secretary to Government,
Secretariat, Fort St.George, Chennai.

4.The Director of Medical & Rural Health Services,
DMS Compound, Chennai -6.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for records relating to the impugned order of the first respondent dated 08.09.2016 in G.O.(D)No.251, Public Works (F1) Department and to quash the same insofar as restricting the claim of the petitioner to a sum of Rs.62,456/- against the claim of Rs.4,24,437/- and for a consequential direction to the respondents to pay the entire claim of Rs.4,24,437/- as reimbursement of medical bills to the petitioner with appropriate interest within a reasonable time period to be fixed by this Court.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.D.Linga Durai

Government Advocate

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order vide G.O.(D) No.251, Public Works Department, dated 08.09.2016, passed by the first respondent and to direct the respondents to pay the entire



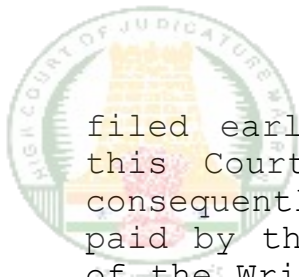
amount of Rs.4,24,437/-, as medical reimbursement to the petitioner.

2. Brief facts, that are necessary for the purpose of disposal of this Writ Petition, are as follows:

3. The petitioner was working as Superintending Engineer in Public Works Department and the petitioner had put in more than 33 years of service and retired from service on 31.12.2012. The first respondent issued G.O.Ms.No.174, dated 28.04.2008 regarding the implementation procedure of New Health Insurance Scheme for employees of Government departments. The Government Order was issued referring to previous Government Orders and the consent of third respondent. As per the Government Order, the Government accorded sanction for the implementation of New Health Insurance Scheme through a private Insurance Company known as, "Star Health and Allied Insurance Company Limited" from 03.06.2008. This scheme provides for issue of photo identity cards to the employees covered under the scheme by the third respondent. It also includes the list of hospitals notified by the third respondent and the details of procedure and treatments, for which the Government employee is entitled to apply. It is the specific case of the petitioner that M/s.Appollo Speciality Hospital, Madurai, is one of the notified hospitals covered under the schemes.

4. It is the case of the petitioner that he developed sudden cardiac problem, while he was in service in Madurai and became unconscious. It is stated that his family members took the petitioner to Appollo Speciality Hospital at Madurai. The Doctors, who attended the petitioner, opined and advised the petitioner's family that angioplasty with stenting should be immediately performed to save the petitioner's life. Since the family members of the petitioner were informed that a delay will lead to unwanted situation, it was decided to perform the angioplasty procedure, that was suggested by the Doctors in the hospital. It was also stated by the petitioner that the hospital authorities despite showing the photo identity card issued by the third respondent, as the petitioner is covered under the New Health Insurance Scheme, the hospital authorities demanded immediate payment as advance. Hence, on the date of admission, ie., on 29.02.2012, a sum of Rs.50,000/- was deposited by the petitioner and further a sum of Rs.3,50,000/- was also paid on 01.03.2012. The balance amount was paid on 03.03.2012 and the petitioner was discharged from the hospital on 05.03.2012. From the bill produced by the petitioner, it is seen that the hospital authorities have collected a total sum of Rs.4,24,437.92/- towards the treatment that was given to the petitioner in the said hospital.

5. Stating that it is a cashless scheme and that the petitioner was not supposed to pay any cash to the hospital when he gets treatment, the respondents refused to pay any money to the petitioner towards medical reimbursement. Hence, the petitioner



filed earlier a Writ Petition in W.P.(MD)No.14154 of 2012 before this Court challenging the letter of the Insurance Company and consequently to direct the respondents to pay the amount, which was paid by the petitioner towards the treatment. This Court disposed of the Writ Petition by order, dated 11.12.2013, with the direction to the respondents to consider the petitioner's representation, dated 23.04.2012 within a period of eight weeks. Thereafter, in response to the petitioner's representation and in compliance of the direction of this Court, the impugned order, dated 08.09.2016, vide G.O.Ms.No.251, is passed. As per the impugned order, the first respondent decided to reimburse a sum of Rs.62,456/- alone as against the medical bill for a sum of Rs.4,24,437/-. As against the same, the present Writ Petition is filed.

6.The learned Counsel for the petitioner submitted that the decision of the first respondent is contrary to several precedents of this Court while allowing the Writ Petition for medical reimbursement in similar cases. It is seen that by the impugned order, the petitioner's claim was considered under Medical Attendance Rules for the treatment undergone by him. It is to be noted in the impugned order that the quantum payable to the petitioner was arrived at on the basis of a report of the Director of Medical and Rural Health Service, Chennai, which was on the basis of a report of the Deen, Rajiv Gandhi Government General Hospital, Chennai.

7.In the counter affidavit, the respondents submitted that the amount sanctioned was within the scope and ambit of Tamilnadu Medical Attendance Rules and that the medical claim for the petitioner was after consulting the Deen, Rajiv Gandhi Government General Hospital, Chennai and the Director of Medical and Rural Health Services, as to the expenses that would have been incurred by the petitioner herein, if he had taken treatment, as an inpatient in the Government Hospital.

8.This Court is unable to accept the reasons stated in the counter affidavit for restricting the petitioner's medical claim. It is not in dispute in this case that the hospital, in which the petitioner took treatment, is also one of the hospitals recognized under the New Health Insurance Scheme. Nowhere in the counter affidavit, it is stated that the treatment that was given to the petitioner is not within the purview of disease/treatments or procedures covered under the scheme. When the petitioner has produced medical bill, as it was raised and collected from the petitioner by an institution, which is recognized by the respondents, it is not open to the respondents to restrict the claim on the basis of a calculation on assumption.

9.This Court in several judgments has ruled that treatment taken in private hospitals for any ailment cannot be rejected on the ground that there was no provision for reimbursement of the amount



spent for taking treatment by the employee. In this case, the claim for medical reimbursement was not on the ground that the hospital was not included in the scheme or that the kind of treatment undergone by the petitioner was not included in the list. It is to be noted that the verdict of this Court in similar cases are not being followed by the respondents. Majority of the cases relating to medical reimbursement are settled only by judgments of this Court and the respondents did not care to implement the judgments of this Court even on identical facts.

10.The Honourable Supreme Court in the case of **Shiva Kant Jha vs Union of India**, reported in **2018 (5) MLJ 317**, with reference to reimbursement of medical claim under Central Government Health Scheme, specifically observed that treatment availed in emergency circumstances to save life of Government employee can be considered and the Government employee should be reimbursed. This Court had also an occasion to deal with similar issue and the practical difficulty of Government employees, who have undergone treatment during service or after retirement. In most of the cases, the Insurance Company rejected the claim simply because the treatment is not in a network hospital or on the ground that the treatment undergone by the employee is not for the ailment found place in the agreement entered into between Government and private Insurance Company.

11.This Court in several cases has consistently taken a view that irrespective of the rejection of claim by the Insurance Company, the first respondent should consider the claim for medical reimbursement under Tamil Nadu Medical Attendance Rules. This Court also noticed that the Insurance Company used to reject the claims on the ground that the policy is cashless and that the claimant, who has paid the medical bill, cannot approach the Insurance Company for reimbursement. It is stated in this case by the petitioner that the petitioner had shown his photo identity card issued by the third respondent for insurance coverage but the hospital, in which the petitioner was given treatment, insisted the petitioner to deposit cash and collected the entire amount before discharging the petitioner from the hospital.

12.In the case of **Ali Akbar vs The Principal Secretary to the Government and antoher**, reported in **2018 (1) WLR 767**, this Court pointed out the need for the Government to issue clear guidelines including the direction to inform every network hospitals that if the Government receives complaints from claimants that money was demanded for admission or for giving treatment to the Government servants, who are covered by General Health Scheme, then that hospital should be removed from the network.

13.The learned Counsel for the petitioner relied upon the judgment rendered by a Honourable Division Bench of this Court in W.A.(MD)No.2749 of 2018 dated 04.02.2019 in the case of **The**



Government of Tamil Nadu and two others vs K.Rajendran and two others. While dealing with a similar case, based on the judgment of Honourable Supreme Court and earlier judgments of this Court, the Division Bench has held that the Government employees are entitled to get a medical facility or medical reimbursement as a matter of a right and no fetters can be placed on such right being exercised in a fair manner. It is further observed that since ultimate decision as to how a patient should be treated vests only with the Doctor, who is an expert, and a very little scope is left to the patient or his relatives to decide to choose the hospitals, the Government should reimburse the medical expenses irrespective of the hospitals or the nature of ailments for treatments. The learned Government Advocate could not cite any other judgments to sustain the impugned order restricting the petitioner's claim abruptly.

14.Having regard to the admitted facts and circumstances indicated above, this Court is unable to sustain the impugned order and therefore, the impugned order vide G.O.(D)No.251, Public Works (F1) Department, dated 08.9.2016, is quashed and consequently, the first respondent is directed to pay the entire sum of Rs.4,23,437/- after deducting a sum of Rs.62,456/- with interest at 4% per annum to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. The reduced interest is due to the COVID-19 situation in the State and the financial constraints of State Government.

15.The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Principal Secretary to Government,
The Government of Tamil Nadu,
Public Works (F1) Department,
Secretariat, Fort St.George, Chennai.

2.The Engineer-in-Chief,
Water Resources Department and
Chief Engineer (General)
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4.The Director of Medical & Rural Health Services,
DMS Compound, Chennai -6.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-30408[F] dated 27/09/2021)

+1 CC to M/s.SPL.GP (SR-30349[F] dated 27/09/2021)

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