

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.8170 OF 2018

Dr. Mrs. Anjali w/o Mohan Subhedar,
Aged about 66 years,
Occupation - Retired,
R/o. Flat No.103, Wing 'B',
Kanyakapuram, Dabha Chowk,
Nagpur

...PETITIONER

VERSUS

1. Union of India,
Ministry of Power,
through its Secretary,
Shram Shakti Bhawan,
Rafi Marg, New Delhi – 110001
2. National Thermal Power Corporation Ltd.
through its Chairman cum
Managing Director,
NTPC Bhawan, Scope Complex,
7-Institutional Area, Lodhi Road,
New Delhi / Delhi – 110003
3. National Thermal Power Corporation Ltd.
through its Director (HR),
NTPC Bhawan, Scope Complex,
7-Institutional Area, Lodhi Road,
New Delhi / Delhi - 110003

...RESPONDENTS

Shri A.S. Paunikar, Advocate for the petitioner.
Shri Apurv De, Advocate for respondent Nos.2 and 3.

CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.

DATED : JULY 13, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. **RULE.** Rule made returnable forthwith.

3. Present petition filed by the petitioner for seeking direction to the respondent Nos.2 and 3 to implement their Office Order No.366/2012 dated 27/09/2012.

4. The petitioner was serving as Specialist Medical Officer in National Thermal Power Corporation Ltd. (hereinafter referred to as the 'NTPC' for short) and had completed 20 years of service. She had taken voluntary retirement. Accordingly said voluntary retirement was accepted by respondent Nos.2 and 3 and she retired on 31/05/2000. On 27/09/2012, the petitioner had attained 60 years of age. At the relevant time HR Department of respondent Nos.2 and 3 had issued Office Order No.366/2012 by which the petitioner was entitled to avail the medical facilities for self and

spouse for lifetime with effect from 01/09/2012. Accordingly, the petitioner had deposited Rs.14,400/- as one time contribution under the Contributory Scheme for Post Retirement Medical Facility. She had also deposited Rs.10,000/- for availing OPD/LPD facilities at NTPC Hospital, Korba. Accordingly medical record book and smart photo ID card were issued to her and her spouse Dr. Mr. Mohan Subhedar. The petitioner along with her spouse had enjoyed post retirement medical facilities for six years. In the year 2017, she along with her husband shifted to Nagpur. She had applied for transferring Post Retirement Medical Scheme (hereinafter referred to as 'PRMS' for short) facilities from NTPC, Korba to NTPC, Mouda. The internal communication i.e. Office Memorandum dated 06/06/2017 revealed that the Competent Authority had approved the availing of PRMS facilities from NTPC, Mouda. Suddenly respondent Nos.2 and 3 i.e. National Thermal Power Corporation Ltd. without informing her denied PRMS facilities to her and her spouse. She had made several representations on 25/11/2017, 08/01/2018 and 06/02/2018 but the respondents did not consider it. Therefore, she sent a legal notice to respondent Nos.2 and 3 on 05/06/2018. Said notice was received by respondent Nos.2 and 3 on 08/06/2018. Despite

receipt of the notice the respondents did not continue her PRMS facilities. The grievance of the petitioner is that by the Office Order dated 27/09/2012, PRMS facility was given to her and suddenly without informing her it was discontinued. Thus, the action of respondent Nos.2 and 3 is arbitrary, illegal and liable to be set aside.

5. In response to the notice respondent Nos.2 and 3 appeared and have taken stand that as the petitioner had taken voluntary retirement, she was entitled for medical benefits as per the mediclaim policy obtained by the employees. Post Retirement Medical Benefits Scheme is applicable to the persons who are retired from the service on attaining the age of superannuation. Inadvertently communication dated 27/09/2012 was issued to the petitioner. She availed the PRMS facilities from 2012 to 2017. In fact, as per the scheme which is applicable to the petitioner is NTPC Voluntary Retirement Scheme. As per Clause 4.1(d) of the NTPC Voluntary Retirement Scheme, Post retirement medical facilities for self and spouse as per Mediclaim to be taken by NTPC for the said purpose (Benefits to commence when the individual attains prescribed age of superannuation) is applicable to the persons who

are retired on voluntary retirement. Therefore, as the PRMS scheme i.e. Post Retirement Medical Scheme is not applicable to the petitioner and, therefore, it was withdrawn.

6. Heard Shri A.W. Paunikar, learned Counsel for the petitioner. He submitted that as respondent Nos.2 and 3 communicated to the petitioner vide Office Order No.366/2012 dated 27/09/2012, the petitioner had contributed to the PRMS facilities. In accordance with the Scheme and as per the communication by respondent Nos.2 and 3, said facilities were made available to the petitioner. The contention of the respondents is that inadvertently said communication was communicated to the petitioner, has no substance. It is specifically mentioned in the communication dated 27/09/2012 that as the petitioner retired on her voluntary retirement she is entitled to avail the medical facilities for self and spouse for lifetime. She contributed in the said scheme by depositing Rs.14,400/-. Though the petitioner had stated that she had deposited Rs.10,000/- and Rs.14,400/- towards the contribution, Annexure-B shows her contribution towards post-retirement medical scheme is Rs.14,400/- but there is no document on record to show that she had also deposited

Rs.10,000/-. Before withdrawing the said scheme no notice or communication was issued to the petitioner by giving an opportunity to her and suddenly the said facilities were withdrawn. Said action of respondent Nos.2 and 3 is arbitrary and illegal. Though she had made several representations, her representations are not answered. She was replied by an e-mail that she is not entitled for the said facilities as she had taken the voluntary retirement. Said action of the respondent Nos.2 and 3 is arbitrary and due to the said action, the petitioner had undergone mental agony. Therefore, interference in the said action is called for.

7. On the other hand, Shri Apurv De, learned Counsel for respondent Nos.2 and 3 submitted that inadvertently said communication was communicated to the petitioner. In fact as she had obtained the voluntary retirement she was not entitled for the said scheme. It is submitted that the petitioner is now entitled to post retirement medical facilities for herself and spouse as per the mediclaim policy and not as per the scheme of PRMS. The petitioner had availed the PRMS facilities till 2017, now she is entitled for the medical facilities as per the new Office Memorandum dated 02/05/2019. The entire case of the petitioner

survives for the period of 18 months between 2017 till 02/05/2019. She is not entitled to the benefits in past and she is only entitled for the benefits from 02/05/2019. In such circumstances, present petition is survived for a limited period.

8. After going through the contentions of both the sides and on perusal of the relevant documents it revealed that the request of the petitioner for voluntary retirement was accepted by respondent Nos.2 and 3 on 06/05/2000. Accordingly, she was informed that the Competent Authority had approved her voluntary retirement with effect from 31/05/2000. On her voluntary retirement, she would be liable to receive the following benefits :

“Clause 4 shows that she would be entitled for the Post-retirement medical facilities for self and spouse (benefits to commence on attaining prescribed age of superannuation i.e. 60 years)”.

9. The communication dated 27/09/2012 vide Office Order No.366/2012 shows that respondent Nos.2 and 3 communicated to her that consequent upon her voluntary retirement from 20/06/2000, she is entitled to avail the medical facilities for herself and spouse for lifetime with effect from

01/09/2012. It is further clarified that in case of death of the retired employee who has been availing the benefits under the Scheme, his/her spouse will continue to avail the benefits under the Scheme subject to his continuing to meet the terms and conditions. Accordingly, she had contributed by way of contribution of Rs.24,400/-. In accordance with the said communication, medical record book and health cards were issued to her as well as her spouse. The petitioner had availed the said facilities till November, 2017. Suddenly, said facilities were withdrawn, therefore, she had sent representation to respondent Nos.2 and 3 to the HR department. Initially, she had forwarded a representation on 25/11/2017, thereafter on 06/02/2018 and 08/01/2018. By way of e-mail dated 25/05/2018, she was informed regarding her representation that her medical benefits in case of an employee who are governed by the terms and conditions of that particular Voluntary Retirement Scheme under which the voluntary retirement has been taken. She had taken voluntary retirement and, therefore, the medical facilities applicable in normal superannuation case, were not admissible to her. Therefore, she had issued legal notice on 05/06/2018 to respondent Nos.2 and 3. It is submitted on behalf of the petitioner

by the learned Counsel Shri Paunikar that the communication dated 06/05/2000 it was informed to her that PRMS facilities for self and spouse on attaining the age of superannuation would be given to her, nowhere it was informed to her that she is entitled for the medical facilities as per the mediclaim obtained by her. Therefore, the stand taken by the respondents that an inadvertent communication was made, has no substance. At the time of communication respondents were knowing that the petitioner had obtained voluntary retirement. Moreover, she has contributed for the said scheme, therefore, the action of the respondent Nos.2 and 3 is illegal and arbitrary. On the other hand, learned Counsel for the respondent Nos.2 and 3 relied upon the relevant Clause i.e. Clause No.4.1(d) of the NTPC Voluntary Retirement Scheme which states that :

“Post retirement medical facilities for self and spouse as per Mediclaim to be taken by NTPC for the purpose is available to the employees who obtains voluntary retirement under the NTPC voluntary retirement scheme.”

10. Needless to say that the petitioner is not at fault for the said communication. It is the respondents who have communicated

to her and accordingly she availed said facilities. Inadvertent communication could not be a defence for respondent Nos.2 and 3. The petitioner could not be blamed for availing the said medical facilities as respondent Nos.2 and 3 communicated to her to avail the said facilities. The petitioner did not suppress any material from the respondents. She had also contributed for the same and respondent Nos.2 and 3 were very well aware about her voluntary retirement at the time of the communication. It is not the case that first time she was informed about the said facilities by the respondent Nos.2 and 3 by communication dated 27/09/2012. But when her voluntary retirement was approved by the competent authority, she was informed by the communication dated 06/05/2000 and in the said communication also it was informed to her that she would be liable for the PRMS facilities for self and spouse. Said communication nowhere reflects that she would be entitled for the medical facilities under the Scheme of NTPC Voluntary Retirement Scheme as per clause 4.1(d).

11. In the above facts and circumstances, the writ petition deserves to be allowed. We, therefore, pass the following order :

(a) The writ petition is partly allowed.

(b) Respondent Nos.2 and 3 are directed to implement Office Order No.366/2012 dated 27/09/2012 on the basis of which the petitioner voluntarily retired from service.

(c) It would not be necessary for the petitioner to refund the amount of Rs.2,18,540/- which benefits has been released in her favour from 2013-14 to 2016-17.

(d) Respondent Nos.2 and 3 are free to implement the modified scheme applicable to the employees with regard to the voluntary retirement that has come into force from 02/05/2019 to the petitioner.

12. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)