IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2022

CORAM :
THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.33466 of 2004
and
WP.M.P.No.40454 of 2004

C.Suganya ...Petitioner

Vs.

1. The Government of Tamilnadu,
   Rep. by its Secretary,
   Finance (Salaries) Department,
   Fort St.George, Chennai-9.

2. The Deputy Inspector General of Registration,
   O/o. Deputy Inspector General of Registration,
   Bangaja Mill Road,
   Ramanathapuram, Coimbatore-45.

3. The Sub-Registrar,
   Office of the Sub-Registrar,
   Sanganoor Main Road, Rathinapuri,
   Gandhipuram, Coimbatore. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorari calling for the records relating to the order No.12773/Aa2/2004, dt. 14.10.2004 passed by the second respondent ordering for recovery of Rs.One lakh with interest and quash the same.

For Petitioner : Mr.V.Ajay Khose

For Respondent R1 : Mr.T.Chezhiyan
Additional Government Pleader

For Respondents R2 & R3 : Mr.Yogesh Kannadasan
Special Government Pleader

O R D E R

The petitioner has filed this Writ petition seeking for issuance of a Writ of Certiorari to call for the records relating to the order No.12773/Aa2/2004, dated 14.10.2004 passed by the 2nd respondent and quash the same.

2. The case of the petitioner is that, she joined as a Typist on 04.03.1993 in the District Registrar's Office, Coimbatore. Thereafter, she was promoted as Assistant on 04.11.1998 and she has been working in the office of the 3rd respondent from 02.06.2000. The petitioner joined in the fund called Tamil Nadu Government Employees Health Fund (in short TNGEHF, herein after referred as 'scheme') which was established by the Government, in order to provide medical assistance for major surgeries to the Government employees, their spouse and dependent family members and she has been paying subscription to such scheme every year from the salary regularly. While so, the petitioner was diagonised to have been suffering from severe heart ailment and after check-up was advised to undergo a major heart surgery, namely transcathetr Closure of VSD for correcting Apical muscular Ventricular Spetral Defect. Immediately thereafter, the petitioner made an application dated 11.04.2001 before the Inspector General of Registration to provide her financial assistance from the said scheme.

3. Thereafter, the petitioner appeared before the Medical Board and after examination, the Medical Board by their report/letter dated 06.06.2001 certified that the petitioner was suffering from Apical muscular Vertical Septral Defect and advised the petitioner to undergo transcathetr closure of VSD at Madras Medical Mission Hospital Research Training, Chennai. Thereafter, the 2nd respondent, after a through examination in terms of Rules for financial assistance under the said Scheme, sanctioned a sum of Rs.1,00,000/- in favour of the petitioner vide order dated 06.08.2001. Accordingly, petitioner received the said amount through cheque dated 27.08.2001. Thereafter, the petitioner had undergone the surgery on 13.09.2001 and got discharged on 19.09.2001. While such being the situation, the 2nd respondent passed the impugned order dated 14.10.2004, for recovery of the amount, which was already sanctioned to the petitioner for undergoing surgery together with interest. Hence, challenging the said order, this writ petition is filed.

4. The learned counsel appearing for the petitioner submitted that the issue that arises in the present Writ petition is no longer “res integra” and already this Court on

the very same issue held that, rejecting Health Insurance Scheme merely on the ground that the treatment was taken in a non-netwrok hospital or the disease is not covered under the Government Orders, is not sustainable and both were discussed by the Hon'ble Apex Court Shiva Kant Jha Vs. Union of India reported in (2018) 16 Supreme Court Cases 187, and the same was followed by the Division Bench of this Court in W.A.(MD) No.1617 of 2018 by judgment dated 04.12.2018.

5. The learned Special Government Pleader appearing on behalf of the respondents submitted that G.O.Ms.No.400, Finance (Salaries) Department, dated 29.08.2000 has clearly indicated that the "open heart surgery" including Coronary by-pass surgery(CABG), Valve replacement and Correction of Congenital complex heart diseases, were approved under the Scheme and the 'Transcathetr closure of VSD' is not an open-heart surgery and the petitioner has deliberately submitted a wrongful claim and obtained the financial assistance and recovery of such wrongful payment is legally valid and the amount was mistakenly sanctioned to the petitioner and it is not in accordance with Rules and Regulations of the Scheme and in such case, the payment should be treated as dues of the Government and it should be recovered immediately to avoid interest loss.

6. He further submitted that the audit of vouchers of the fund is allowed in Government Letter No.54897/Sal/99-2, dated 26.08.199, to detect fraud and irregularities and to safeguard the Public fund. He furthermore submitted that there are number of diseases, which all people including the Government servants, are afflicted with the situation and in such case, including all diseases under the Scheme is not possible and the Government has to provide a huge amount as its contribution and the Government has to provide a huge amount as its contribution to run the Scheme. As the source of fund is very limited, inclusion of all diseases for eligibility for financial assistance is imaginary and the Government should collect subscription at a very high rate. Hence, the Government is legally competent to frame Rules according to the financial viability of Tamil Nadu Government Employees Health Fund scheme and he vehemently opposed for the above said order being passed and he prays for dismissal of the present Writ petition.

7. Heard the arguments advanced by the learned counsel on either side and perused the materials available on record.

8. Facts in the present case are not in dispute. Admittedly, the treatment and the surgery undergone by the petitioner are also not in dispute. It is equally not in dispute that initially, the amount was sanctioned by the respondents, but however, the same was ordered to be recovered, vide the present impugned order dated 14.10.2004 passed by the 2nd respondent, due to audit objection. In this background, it is relevant to advert to the order of the Honourable Apex Court in Shiva Kant Jha's case (supra) and for better appreciation, the relevant portion of the order is extracted as below:

> " 18) 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 implanted 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.
>
> 19) In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central government

employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs. 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only.

20) Further, with regard to the slow and tardy pace of disposal of MRC by the CGHS in case of pensioner beneficiaries and the unnecessary harassment meted out to pensioners who are senior citizens, affecting them mentally, physically and financially, we are of the opinion that all such claims shall be attended by a Secretary level High Powered Committee in the concerned Ministry which shall meet every month for quick disposal of such cases. We, hereby, direct the concerned Ministry to device a Committee for grievance redressal of the retired pensioners consisting of Special Directorate General, Directorate General, 2 (two) Additional Directors and 1 (one) Specialist in the field which shall ensure timely and hassle free disposal of the claims within a period of 7 (seven) days. We further direct the concerned Ministry to take steps to form the Committee as expeditiously as possible. Further, the above exercise would be futile if the delay occasioned at the very initial stage, i.e., after submitting the relevant claim papers to the CMO-I/C, therefore, we are of the opinion that there shall be a time frame for finalization and disbursement of the claim amounts of pensioners. In this view, we are of the opinion that after submitting the relevant papers for claim by a pensioner, the same shall be reimbursed within a period of 1 (one) month"

Further the same was also followed by the Division Bench of this Court in W.A.(MD) No.1617 of 2018, dated 04.12.2018 and the relevant portion of the judgment is extracted as below:

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 hospitals9 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 is10 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 11 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 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.

9. In the light of the uncontroverted legal position and the decisions supra, this Court is inclined to extend the said relief in the present case also.

10.This Writ petition is accordingly allowed by setting aside the impugned order dated 14.10.2004 passed by the 2nd respondent. No costs. In view of allowing the main Writ petition, the connected Miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Skt/Psa
To

1. The Secretary,
   Government of Tamilnadu,
   Finance (Salaries) Department,
   Fort St.George, Chennai-9.

2. The Deputy Inspector General of Registration,
   O/o. Deputy Inspector General of Registration,
   Bangaja Mill Road,
   Ramanathapuram, Coimbatore-45.

3. The Sub-Registrar,
   Office of the Sub-Registrar,
   Sanganoor Main Road, Rathinapuri,
   Gandhipuram, Coimbatore.

+1cc to Mr.V.Ajoykhose, Advocate Sr.10064
+1cc to the Government Pleader Sr.10863, 10820

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and
WP.M.P.No.40454 of 2004

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