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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3168 of 2017

M.Issaivanan

... Petitioner

-vs-

1. Union of India,
Rep. by Government of Puducherry,
Chief Secretariat,
Puducherry - 1.
2. The Chairman cum Secretary to Government (Education),
Staff Selection (Non-Teaching) Committee,
Pondicherry Engineering College,
Pondicherry - 605 001.
3. The Director,
Directorate of Health and Family Welfare Service,
Government of Pondicherry,
Pondicherry - 605 001.
4. Pondicherry Engineering College,
Rep. by its Principal,
Pillaichavady,
Pondicherry - 605 014.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records and quash the Order No. PEC/MRC/2016 No. 689 dated 25.02.2016 on the file of the Fourth Respondent and direct the Fourth Respondent to forward Petitioner medical reimbursement to the Third Respondent on the basis of earlier judgment in W.P. No. 631 of 2016 of this Court within a stipulated period.

For Petitioner : Mr. D.Sreenivasan

For Respondents: Mrs. Djeraney,
Government Advocate (Pondy)
(for R1 and R3)

Mrs. N.Mala (for R2 and R4)



O R D E R

Heard Mr. D.Sreenivasan, Learned Counsel for the Petitioner, Mrs. Djeraney, Learned Government Advocate appearing for the First and Third Respondent and Mrs. N.Mala, Learned Counsel for the Second and Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is working as Assistant in the college of the Fourth Respondent, had underwent emergency treatment of Left URS Lithotripsy at Madhava Hospital, Puducherry during the period from 28.11.2013 to 30.11.2013 and 14.12.2013 for which medical expenses had been incurred by him in that regard. When the Petitioner made representations dated 05.06.2014, 04.06.2015 and 01.12.2015 seeking its reimbursement, it did not evoke any response from the Respondents, which necessitated him to file the Writ Petition in W.P. No. 631 of 2016 before this Court. In pursuance of the order dated 08.01.2016 passed in that Writ Petition, the Fourth Respondent by Proceedings No. PEC/ MRC/2016 No. 689 dated 25.02.2016 has rejected the claim of the Petitioner stating that the treatment had taken place in an unrecognized private hospital without obtaining prior 'no objection certificate' in that regard. Aggrieved thereby, the Petitioner has filed this Writ Petition.

3. It requires to be highlighted here that the denial of medical reimbursement on the ground that the treatment had been taken in a hospital, which has not been recognized for extending such benefit under the Central Services (Medical Attendance) Rules, 1944 (hereinafter referred to as 'the Rules' for short), has been severely deprecated by the Hon'ble Supreme Court of India in Shiva Kant Jha -vs- Union of India [(2018) 16 SCC 187] as follows:-

"16. 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 CGHS rates and, hence, the same are paid as per the procedure. Though the respondent State has pleaded that CGHS has to deal with large number of such retired beneficiaries and if the petitioner is compensated beyond the policy, it would have large-scale 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.



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17. It is a settled legal position that the government employee during his lifetime 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 specialised 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 CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

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 abovesaid hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken



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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 CGHS rates and that too after following a proper procedure given in the circulars issued on time to time by the Ministry concerned, 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."

4. In view of the aforesaid legal position coupled with the facts of this case, the following order is passed:-

- (i) the Order No. PEC/ MRC/2016 No. 689 dated 25.02.2016 passed by the Fourth Respondent, rejecting the claim of the Petitioner for medical reimbursement, is quashed;
- (ii) it shall be incumbent upon the concerned authority to examine the claim of the Petitioner for medical reimbursement under the Medical Attendance Rules without reference to the fact that the Petitioner had taken treatment in a hospital which had not been included in the list of recognized hospitals for extending such benefit;
- (iii) if it is found that any details or supporting documents satisfying the eligibility criteria for the actual amount claimed had not been produced, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 15 clear working days in that regard;
- (iv) in the event of not being satisfied with the requirements thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner to explain his position in that regard and reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment;
- (v) if the Petitioner is found entitled to the claim made, the eligible amount shall be disbursed within a period of 30 days from the date of passing of that order; and
- (vi) the report of completion of the aforesaid exercise shall be filed by 31.07.2022 before the Registrar (Judicial) of this Court.



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

Sd/-
Assistant Registrar (CS II)

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Sub Assistant Registrar

To

1. The Chief Secretary,
Government of Puducherry,
Chief Secretariat,
Puducherry - 1.
2. The Chairman cum Secretary to Government (Education),
Staff Selection (Non-Teaching) Committee,
Pondicherry Engineering College,
Pondicherry - 605 001.
3. The Director,
Directorate of Health and Family Welfare Service,
Government of Pondicherry,
Pondicherry - 605 001.
4. The Principal,
Pondicherry Engineering College,
Pillaichavady,
Pondicherry - 605 014.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to Mr.D.Sreenivasan, Advocate, S.R.No.18355
+1cc to Mr.N.Mala, Advocate, S.R.No.17852
+1cc to the Government Pleader, S.R.No.12894

W.P. No. 3168 of 2017

AJB (CO)
GN(24/05/2022)