IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM

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

W.P. No. 18088 of 2017

S. Moulana … Petitioner

-vs-

1. The Commissioner of Treasuries and Accounts,
   Panagal Buildings,
   Saidapet,Chennai – 600 015.

2. The District Treasury Officer,
   Krishnagiri, Krishnagiri District.

3. The Sub Treasury Officer, Hosur.

4. The Additional Treasury Officer,
   District Treasury, Krishnagiri.

5. The United India Insurance Co. Ltd,
   Divisional Office VI,
   5th Floor, P.L.A. Rathna Towers,
   No. 212, Anna Salai,
   Chennai – 600 006.

... 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 in pursuant to the impugned order passed by the Fourth Respondent in R.C.No. 224/2016/B1 dated 08.07.2016 and quash the same as illegal in respect of Petitioner concerned and consequently direct the Respondents to sanction and pay the medical reimbursement claim amount of Rs. 1,90,895/- with interest at the rate of 12% per annum within a period stipulated by this Court.

For Petitioner : Mr. R.Subburaj

For Respondents : Mrs. C.Sangamithirai,
Special Government Pleader
(for R1 to R4)

Mr. P.Sankaranarayanan (for R5)

ORDER

Heard Mr. R.Subburaj, Learned Counsel for the Petitioner, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First to Fourth Respondents and Mr. P.Sankaranarayanan, Learned Counsel for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is receiving pension on retirement from service in the Police Department of the State Government, has availed the benefits of the New Health Insurance Scheme, 2014 for Pensioners of the Government of Tamil Nadu in G.O. Ms. No. 171, Finance (Pension) Department dated 26.06.2014 by making periodical contributions towards insurance premia from his pension. According to the Petitioner, he was treated for urinary tract infection, acute kidney injury, reactive arthiritis, 1 HD/Lv dysfunction and type II from 28.04.2015 to 14.05.2015 at Manipal Hospital, Bangalore treatment and was subsequently an out patient till 01.11.2015 for treatment and had incurred medical expenses of Rs. 1,90,895/-, which has been paid by him. When the Petitioner made a claim for reimbursement of the said medical expenses under the New Health Insurance Scheme, 2014, the Fourth Respondent by Proceedings in RC. No. 224/2016/B1 dated 08.07.2016 informed him that the treatment taken in a hospital which was not empanelled under the New Health Insurance Scheme could not be considered as per G.O. Ms. No. 171, Finance (Pension) Department dated 26.06.2014 issued by the Government of Tamil Nadu, which is challenged by the Petitioner in this Writ Petition with a consequential direction to the Respondents to make payment of the said sum of Rs. 1,90,895/- towards reimbursement of medical expenses with interest at the rate of 12% per annum from the date of making the claim till actual payment.

3. The Second Respondent in the Counter-Affidavit dated 20.06.2018 has reiterated the rejection of the claim for reimbursement of the medical expenses made by the Petitioner under the New Health Insurance Scheme, 2014 of the Government of Tamil Nadu.

4. 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 the Insurance Company is not liable to reimburse the medical expenses under the New Health Insurance Scheme to the Government Servants/Pensioners, it would have to be processed under the Tamil Nadu Medical Attendance Rules by the Head of the Office with the concerned Department in which that employee had served and pay the eligible amount to him. 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.

5. The Hon'ble Supreme Court of India in Shiva Kant Jha -vs- Union of India [(2018) 16 SCC 187], 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, has 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."

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

(i) it shall be incumbent upon the concerned authority of the Government of Tamil Nadu to examine the claim made by the Petitioner for reimbursement of medical expenses incurred by him under the Tamil Nadu Medical Attendance Rules forthwith;

(ii) if it is found that any details or supporting documents satisfying the eligibility criteria for the actual amount claimed has 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;

(iii) in the event of not being satisfied with the requirements thereafter, an enquiry shall be conducted affording opportunity of personal hearing to the Petitioner to explain his position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law with details of any deductions made under various heads and the decision taken communicated under written acknowledgment;

(iv) if the Petitioner is found entitled to the claim made, the eligible amount with interest at the rate prescribed under the Rules and if no such rate of interest has been prescribed, at the rate of 4% per annum from the date on which the claim for reimbursement was made by the Petitioner, shall be disbursed within a period of 30 days from the date of passing of that order;

(v) if the Petitioner still has any grievance to be redressed in the matter, he is not precluded from working out his rights before the proper forum in the manner recognized by law; and

(vi) the report of completion of the aforesaid exercise shall be filed by 30.09.2022 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)

//True Copy//

Sub Assistant Registrar

skr
To

1. The Commissioner of Treasuries and Accounts,
Panagal Buildings, Saidapet,
Chennai - 600 015.

2. The District Treasury Officer,
Krishnagiri,Krishnagiri District.

3. The Sub Treasury Officer, Hosur.

4. The Additional Treasury Officer,
District Treasury, Krishnagiri.

5. The United India Insurance Co. Ltd,
Divisional Office VI,
5th Floor, P.L.A. Rathna Towers,
No. 212, Anna Salai,
Chennai - 600 006.

Copy to

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

+1cc to Mr. P.Sankaranarayanan, Advocate, S.R.No.12578
+1cc to the Government Pleader, S.R.No.12359

W.P. No. 18088 of 2017

PVS(CO)
CT 25/05/2022