BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.02.2022
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.9169 of 2020
and
WMP(MD)No.8384 of 2020

M.Boopathi ... Petitioner

Vs.

1.The State of Tamil Nadu Rep.,
by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai - 9.

2.The Additional Chief Secretary to
Government of Tamil nadu,
Finance (Salaries) Department Secretariat,
Fort St.George,
Chennai - 9.

3.The District Collector,
Karur District, Karur.

4.The District Treasury Officer,
O/f. The District Treasury Office,
Collector Office Campus,
Karur, Karur District.

5.The Senior Divisional Manager,
United India Insurance Company Ltd.,
O/o.the Divisional Office VI, 5th Floor,
P.L.A.Rathna Towers,
212, Annasalai,
Chennai - 6. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent in G.O.Ms.No.202 Finance (Salaries) Department, dated 30.06.2016, quashing clause (iii) in paragraph 4 of the Annexure-1 attached to therein and consequent impugned order passed by the 5th respondent in his proceedings Nil dated 27.02.2020 quash the same as illegal and consequently direct the respondents to reimburse the medical expenses sum of Rs.2,31,112/- (Two Lakhs Thirty One Thousand and One

Hundred and Twelve Rupees only) paid by the petitioner for the surgery and medical treatment incurred by his father with 9% interest within the time that may be stipulated by this Court.

For Petitioner : Mr.MOHAMED IMRAN for M/s.Ajmal Associates
For Respondents RR1 to 4 : Mr.A.K.MANIKKAM Special Government Pleader
For R5 : Mr.A.SHAJAHAN, Advocate

O R D E R

The Writ on hand has been instituted to quash Clause (iii) in Paragraph 4 of Annexure-1 to G.O.Ms.No.202, Finance (Salaries) Department, dated 30.06.2016 and the consequential impugned order passed by the 5th respondent in proceedings dated 27.02.2020 and direct the respondents to settle the medical reimbursement claim of the writ petitioner.

2. The petitioner is working as P.G.Assistant (Biology) in Government Boys Higher Secondary School, Vangal, Karur District. Admittedly, the petitioner is subscribing under the New Health Insurance Scheme and therefore, he is eligible for medical reimbursement. The father of the writ petitioner was admitted in KMCH Hospital Private Limited, Coimbatore, as emergency case for 'Tumor of the Rectum with Inflammation of Prostate Gland' on 06.01.2020 and discharged on 14.01.2020. The petitioner's father was taking regular treatment. The petitioner states that he incurred an expenditure of Rs.2,31,112/- and he filed an application, seeking medical reimbursement. The case of the writ petitioner was rejected on the ground that, as per the New Health Insurance Scheme, 2016, the following family members of the employee shall be covered under the Scheme:-

> "(i). Legal Spouse of the Employee;
>
> (ii). Children of the Employee - till they get employed or married or attain the age of 25 years whichever is earlier and dependent on the Employee;
>
> (iii) Parents of the Employee, in the case of unmarried employee until the Employee get married;
>
> (iv) Physically Challenged and Mentally Retarded children of the employee without any age restriction, subject to the minimum of the handicap to the extent of 40% as certified by the District Disability Welfare / Rehabilitation Officer and wholly dependent on the employee."

3. The order of rejection passed is in consonance with the terms and conditions of the New Health Insurance Scheme, issued in G.O.Ms.No.202, Finance (Salaries) Department, dated 30.06.2016. The learned counsel for the petitioner made a submission that when the father is not included in the Health Insurance Scheme, then, who else will be the eligible person for medical reimbursement. The tenor of arguments though seems to be attractive, the Court of Law must examine the Service Jurisprudence for the purpose of determining the rights of the employees for medical reimbursement. Thus, the emotional argument would not be of any avail for the purpose of grant of medical reimbursement under the Scheme and the Courts are bound to look into the scope of the Scheme and the eligibilities of the persons, as such Schemes are welfare Schemes constituted to assist the Government employees / Pensioners / Family Pensioners.

4. A welfare State has to provide decent medical facilities to the Citizen. In the process of providing medical facility a concession has been extended to the Government employees for medical reimbursement. It may not be a part of service condition, as it is a welfare scheme introduced to assist the employees in the event of any medical emergency or treatment taken. Thus, the scope of medical scheme cannot be expanded by the Court by adding eligibility criteria. The power of judicial review is to be confined with reference to the scope of the schemes, as such schemes are concession / facility provided to the Government employees and cannot be construed as a service right contemplated under the service condition.

5. Several such schemes are introduced by the Government then and there to encourage the Government employees. For example, incentive increments are granted to the teachers, who are all acquiring additional educational qualifications for the benefit of the children studying in the school and to impart better education. So as uniform allowances and many other perquisites are granted by the Government in order to encourage the Government employees. Health Insurance Scheme is also one such Scheme where the Government provided certain facility to the Government employees to take treatment in particular hospitals and reimbursement of the amount spent. This being the scope of the Health Insurance Scheme, the Courts cannot add the persons to become eligible, who are otherwise ineligible under the Scheme.

6. In the present case, admittedly, the petitioner is a married person and has a living spouse. As per the Government Order issued in G.O.Ms.No.202, Finance (Salaries) Department, dated 30.06.2016, the eligibility is prescribed as under:-

> "4. The following family members of the employee shall be covered under the New Health Insurance Scheme, 2016:

"(i). Legal Spouse of the Employee;

(ii). Children of the Employee - till they get employed or married or attain the age of 25 years whichever is earlier and dependent on the Employee;

(iii) Parents of the Employee, in the case of unmarried employee until the Employee get married;

(iv) Physically Challenged and Mentally Retarded children of the employee without any age restriction, subject to the minimum of the handicap to the extent of 40% as certified by the District Disability Welfare / Rehabilitation Officer and wholly dependent on the employee."

7. Though the petitioner has challenged the said Clause, there is no acceptable legal ground for the purpose of assailing the eligibility criteria fixed by the Government. Such eligible criteria are fixed in various schemes by the Government and even in Tamil Nadu Pension Rules, many such restrictions are imposed for grant of pensionary benefits and the Family Pension etc. Even the payment of Pension is subject to good conduct of the pensioners under Rule 8 of the Tamil Nadu Pension Rules. When the Government has prescribed certain eligibility criteria under a concessional scheme, the scheme is to be implemented strictly in accordance with the terms and conditions and by following eligibility criteria. It is the prerogative of the employers to prescribe such conditions in view of the fact that the Medical Health Insurance Scheme is a concession extended to the Government employees and it is not part of the service conditions as stipulated. It is unconnected with the service conditions in respect of employment. It is an additional facility provided to encourage the employees and to protect the interest of the employees in respect of health aspect. Therefore, by challenging the Government Order, the petitioner cannot attempt to alter the Scheme, which is otherwise the policy decision taken for extending certain additional benefits, which are all not in the form of right.

8. The learned counsel for the petitioner made a submission that the scope of the scheme cannot be restricted to the family members. Parents of the Government employees are also to be considered as family members. In this regard, this Court is of the considered opinion that the Succession Law or the Personal Law cannot be compared with the service jurisprudence. The concept of service jurisprudence is entirely on different footing. A relationship between the employer and employee is rest on contract. Therefore, an offer of appointment made and acceptance by an employee implies that the terms and conditions between the parties

are agreed. The Additional benefits by way of concession cannot form part of service condition. It is only a facility provided in order to encourage the employees or to make the Public Administration in an effective manner. Thus, the Succession Law wherein the parents get right cannot be applied to the Service Law and the scope of Service Law based on contract between the employer and employee cannot be extended by applying the Succession Law or Civil Law or the Personal Law.

9. Under the Succession Law, Clause-1 Legal Heirs and Clause-II Legal Heirs are contemplated. However, in Service Law wherever such contemplations are made by the Government, by way of policy, then, the employees are entitled to utilize such facilities. If such facilities are not provided, then, they cannot seek expansion of the policy by filing a Writ Petition. The welfare schemes are the policy decision of the Government and therefore, the scope of judicial review under Article 226 of the Constitution of India is undoubtedly limited. The policy of the Government cannot be expanded by the Courts, which would result in unnecessary financial burden to the Government. The Courts are not empowered to enhance the financial burden by adding a new condition by incorporating the ineligible person as eligible under the Scheme.

10. Thus, the power of judicial review of the High Court under Article 226 of the Constitution India is to ensure the process though which a decision is taken by the competent authority in consonance with the statute and rules and schemes in force, but not the decision itself. Therefore, in the present case, whether the decision taken by the Authorities are in consonance with the welfare scheme or not is alone to be verified and the Court by exercising the powers of judicial review cannot expand the scope of the scheme, which would result in unnecessary financial burden and further scope is provided to the ineligible persons to get medical reimbursement, which is beyond the terms and conditions stipulated in the policy.

11. The grounds raised for assailing the Clause itself are untenable. Therefore, this Court is of the opinion that such welfare schemes introduced cannot be interfered with and such policy decision if expanded, which would result in unnecessary financial implications to the State Exchequer and therefore, this Court is not inclined to interfere with the order of rejection, so also the Health Insurance Welfare Scheme, which is already in force.

12. The petitioner in this case is claiming medical reimbursement for the treatment taken for his father. The father and mother of the married employee is not eligible for medical reimbursement. This being the scope of the Health Insurance Scheme, the petitioner is not eligible for medical reimbursement scheme and accordingly, the orders passed by the respondents are in accordance with the scope of the scheme and consequently, the Writ Petition

stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (A.E)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

To
1.The Principal Secretary to Government,
The State of Tamil Nadu
Health and Family Welfare Department,
Secretariat,
Chennai - 9.

2.The Additional Chief Secretary to
Government of Tamil nadu,
Finance (Salaries) Department Secretariat,
Fort St.George,
Chennai - 9.

3.The District Collector,
Karur District, Karur.

4.The District Treasury Officer,
O/f. The District Treasury Office,
Collector Office Campus,
Karur, Karur District.

+1 cc to M/s.AJMAL ASSOCIATES, SR.No.7982

+1 cc to Mr.A.SHAJAHAN, Advocate, SR.No.8012

+1CC to Spl.Government Pleader SR.No.8086

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