

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15828 OF 2022

Jayesh Madhukar Ambodkar ... Petitioner.

V/s.

The State of Maharashtra and Another ... Respondents.

.....

Mr. P. F. Patni a/w Mr. Aniesh Jadhav i/b Ms Aditi Naikare for the
Petitioner.

Mr. B. V. Samant, AGP for the State.

.....

**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 13 SEPTEMBER 2023.

P.C. :

The Petitioner herein is a Judicial Officer working as Metropolitan Magistrate at Kurla, Mumbai. The Petitioner has challenged the communication dated 2 August 2022 issued by Respondent No. 2 and the communications dated 26 September 2022 and 25 November 2022 addressed by the District and Sessions Judge, Aurangabad.

2 It is the case of the Petitioner that his senior citizen parents are wholly dependent on him. His parents time and again require

medical attendance and treatment. His mother was required to be hospitalized and was given emergency treatment with regular intervals from August 2021 to April 2022 that is till her death, which was caused on account of serious ailment.

3 The Petitioner's father is also suffering from various acute heart-related ailments and he also is required to undergo treatment like pacemaker lead re-implantation. The Petitioner has paid for medical expenses of his parents, he has spent an amount of Rs.5,18,012/- for the medical treatment of his parents. Considering that both his parents are wholly dependent on the Petitioner for the medical expenses and treatment, the Petitioner has submitted medical bills for reimbursement in the prescribed format to the District and Sessions Judge, Aurangabad. As at the relevant time he was working as a Civil Judge, Senior Division at Aurangabad. The Petitioner has also enclosed copies of the Judgments in Writ Petition No. 8899 of 2012 dated 03 April 2013 and in Writ Petition No. 2859 of 2017 dated 13 February 2019, passed by this Hon'ble Court alongwith his application for reimbursement of his medical expenses.

4 The District and Sessions Judge, Aurangabad on receiving the said application has sought opinion from Respondent No. 2 i.e. the Principal Secretary, Law and Judiciary Department, as to whether the amount of medical expenditure incurred by the Petitioner can be reimbursed to him in view of the fact that the Petitioner's father was drawing a pension of Rs.9,509/- which was above the prescribed

limit. In response to the said communication, the District and Sessions Judge, Aurangabad received a communication dated 2 August 2022, addressed to him wherein it was communicated that in view of the Government Resolution dated 2 August 2019, parents of Government Servants who are drawing monthly income of more than Rs.9,000/- shall not be eligible to receive medical reimbursement.

5 The Registrar of the District and Sessions Judge, Aurangabad addressed communication to the Petitioner dated 26 September 2022, rejecting the application for reimbursement of medical expenditure in view of the opinion received from the Law and Judiciary Department dated 2 August 2022. The District and Sessions Judge, Aurangabad has also addressed a communication dated 25 November 2022 to the Petitioner communicating the rejection of the Petitioner's application for medical reimbursement.

6 It is the contention of the Petitioner that the reason assigned for the rejection of his claim for medical reimbursement is that the Government Resolution dated 2 August 2019 restricts its applicability, to the dependent parent, whose monthly income is within the limit of Rs.9,000/- since his father's income from pension at that time was Rs.9,509/- per month, the benefit is refused to him.

7 It is also contention of the Petitioner that his case squarely stands covered by the decisions of this Court in Writ Petition Nos.

8899 of 2012 and 2859 of 2017. Therefore, the Respondents have committed an error in ignoring the interpretation of the rules laid down by this Court while deciding both writ petitions.

8 Respondent Nos. 1 and 2 have filed their reply affidavit and have supported the impugned communications. It is opposed by the Respondents on the basis of the contents of the Government Resolution dated 2 August 2019 and have justified the refusal of reimbursement of medical expenses to the Petitioner. The Petitioner has filed additional affidavit on 10 July 2023 to demonstrate that how his father is totally dependent on him.

9 This Court in Writ Petition No. 8899 of 2012 has dealt with the similar situation of a Judicial Officer whose parents were dependent on him. This Court has also interpreted the expression “wholly dependent” which have been used in the Rules i.e. the Maharashtra State Services (Medical Attendance) Rules, 1961, and has observed that the expression “wholly dependent” cannot be confined to mere financial dependence. This Court after taking into consideration various judgments which have been delivered on the expression “wholly dependent” has observed that various courts have given a purposive interpretation to the said words “wholly dependent”. It has been observed that the pension which was received by the mother was totally inadequate to meet her medical expenses. It is observed in paragraph 17 as under:

“17. In our view, the Apex Court, Punjab & Haryana High Court and Delhi High Court have, therefore, given a purposive interpretation to the said words “wholly dependent” and allowed the application for medical reimbursement. Ratio of the said judgments squarely applies to the facts of the present case. The contention of the learned Government Pleader appearing on behalf of the State, therefore, cannot be accepted. The Petitioner’s mother was 85 years old. She was both, physically and financially dependent on him. The said pension was wholly inadequate to meet her medical expenses. It has to be borne in mind that purpose of incorporating the said Clause (Seven) is to ensure that those parents or divorced sister who are physically fit and financially self-sufficient should not be allowed to take advantage of the fact that they are residing with the Government Servant and under that pretext the Government Servant should not be allowed to claim reimbursement of medical expenses. In this case, in our view, the Respondents erred in rejecting the application made by the Petitioner for medical reimbursement.”

10 In another decision rendered by this Court in Writ Petition No. 2859 of 2017, this Court has placed reliance on the observations made by the Hon’ble Supreme Court in paragraph 13 of the judgment in the case of *State of M.P. and Others V/s. M.P. Ojha and Another*¹ wherein the expression “wholly dependent” has been interpreted. Relying on the said decision, this Court in the said matter had directed the Respondents to sanction the medical reimbursement bills of the father of the Judicial Officer towards medical expenses. It is observed in the said order that the pensionary benefits received by the pensioner, i.e. father of the petitioner therein, is inadequate for meeting the huge medical expenses and

¹(1982) 2 SCC 554

considering the interpretation of “wholly dependent” as given by the Hon’ble Supreme Court, the directions were issued by this Court.

11 The Petitioner has filed an additional affidavit demonstrating certain facts. It is stated in his affidavit that his parents have always been residing with him and he has been taking care of them. He has mentioned the reasons for his parents residence with him and as to how they are “wholly dependent” on him. He has also mentioned certain additional facts. Considering that, the additional facts mentioned in the affidavit were not before the Authorities while taking the decision, therefore, it would be appropriate to grant liberty to the Petitioner to make a detailed representation to the Respondent-Authorities and the concerned Authorities to examine the case of the Petitioner on the background of the additional facts and the ratio laid down in two decisions rendered by this Hon’ble Court.

12 Consequently, the impugned communications dated 2 August 2022, 26 September 2022 and 25 November 2022 are quashed and set aside. The Petitioner is granted liberty to make a fresh application to the Respondent-Authorities. The Respondent- Authorities are directed to decide the application of the Petitioner afresh in the context of the two decisions of this Hon’ble Court on its own merits.

13 The Writ Petition is partly allowed in terms of the above order.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)