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W.P.No.4167 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.4167 of 2021 and
W.M.P.No.4757 of 2021

K.Santhakumar

... Petitioner

Vs.

1.The State Level Empowered Committee,
Director of Treasuries and Accounts,
Integrated Complex for Finance Department,
3rd Floor, Veterinary Hospital Campus,
Anna Salai,
Nandanam, Chennai 600 035.

2.The Treasury Officer,
District Treasury,
District Collectorate,
Perundurai Road,
Erode District 638 011.

3.The United India Insurance Company Limited,
No.24, Whites Road,
Chennai 600 014.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent vide his proceedings in Na.Ka.No.15383/U2/2019 and quash the impugned order dated



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12.12.2019 passed therein as illegal and further for a direction to direct the respondents herein to pay the petitioner the medical reimbursement for the treatment undergone by his wife in view of the Appeal dated 18.01.2021 filed by the petitioner before the 1st respondent.

For Petitioner : Ms.Karthikaa Ashok
For Respondents : Mr.G.Nanmaran, SGP for R1 & R2
Mr.P.Sankaranarayan for R3

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent vide his proceedings in Na.Ka.No.15383/U2/2019 and quash the impugned order dated 12.12.2019 passed therein as illegal and direct the respondents herein to pay the petitioner the medical reimbursement for the treatment undergone by his wife in view of the Appeal dated 18.01.2021 filed by the petitioner before the 1st respondent.

2. Heard Ms.Karthikaa Ashok, learned counsel for the petitioner and Mr.G.Nanmaran, learned Special Government Pleader for R1&R2 and Mr.P.Sankaranarayan, learned counsel for R3.



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3. The brief facts of the case are as follows:

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The petitioner is a retired Deputy Inspector of Survey and a member of Family Medical Insurance Scheme sponsored by the Government and he is making monthly subscription from his salary / pension. In the year 2015, the petitioner's wife had taken Diabetes and cardiac treatment in two hospitals in Coimbatore, for which, the petitioner had incurred expenses. Therefore, the petitioner sought reimbursement of the amount spent on her medical treatment. The second respondent rejected the claim by stating that the hospitals in which the petitioner's wife had undergone treatment are not approved under the scheme. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the petitioner's wife was advised to undergo cardiac surgery and in view of her elevated diabetes, she was immediately admitted in Kurinji Hospital, Sowripalayam, Coimbatore to prepare her for CABG surgery. After treatment, she was discharged from Kurinji Hospital on 05.03.2015 and subsequently, she was admitted in G.Kuppusamy Naidu Memorial



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Hospital on 30.03.2015 and discharged on 08.04.2015 with an advice to do CABG surgery. Later, the petitioner's wife got admitted on 13.04.2015 as in-patient in G.Kuppusamy Naidu Memorial Hospital and she had undergone surgery on 15.04.2015 and discharged on 22.04.2015. The petitioner had submitted the medical bills for reimbursement to the authorities under the medical reimbursement scheme and that has been rejected in view of the fact that the hospital in which the petitioner's wife had undergone treatment or surgery is not found in the list of accredited hospitals approved by the Government.

4.1. The learned counsel for the petitioner further submitted that the claim of the petitioner ought not to have been rejected for the simple reason that the petitioner's wife had taken treatment outside of the networking hospitals. She relied on the judgment of the learned Division Bench of this Court dated **09.11.2017 held in W.A (MD) No.1382 of 2017**. In the said judgment, it is held as under:

“35.It is to be pertinently pointed out that 'Right to Health' is an integral part of the Right to Life and the Government is under a Constitutional obligation to provide



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health welfare facilities. If a Government servant underwent a requisite treatment for his ailment and if necessary proof is produced, then it is the primordial duty of the State Government to bear the expenses incurred thereto and reimburse the same. Just because the Government servant had underwent the treatment at an unapproved Hospital, the expenses incurred thereto cannot be denied by the State Government notwithstanding the fact that the Government servant is a member of the scheme introduced by the Government. Also that the individual Government servant/patient or his family members is/are the proper persons to take a final decision as to where the treatment in question is to be provided, as opined by this Court.

36. It cannot be brushed aside that the State Government is to satisfy the Constitutional obligation to bear/refund the expenses incurred by a Government servant while in service or after retirement from service, of course, based on the policy of the Government. In emergency cases, the treatment that is required will be immediate/forthwith and if one has to comply with the procedure, ultimately, 'waiting' in this regard may prove disastrous and fatal.

37. It is to be aptly pointed out that a human being is to take care of himself and in this regard, the individual concerned is the best Judge suited to take a final



call/decision. In reality, the self preservation of one's life is enjoined under Article 21 of the Constitution of India, as an inviolable right, in the considered opinion of this Court.

38.No doubt, a patient as a lay human being cannot pick and choose the method/mode of surgery. It is for the Doctors/Medical experts to determine and suggest a right course of action as to what/which kind of surgery/treatment is suitable, ofcourse, taking into consideration the nature of the ailment and the status/condition of the concerned patient.

39.Although financial resources are required for providing medical facilities to the needy, ultimately, the State Government has the constitutional obligation to provide enough medical services to the public. On account of financial constraints, the Constitutional obligation to provide medical services/facilities to the people cannot be avoided.

40.Be that as it may, in the present case, there is no dispute as to the factum of actual expenses incurred by the Respondent/Petitioner, which she claims in the Writ Petition. Undoubtedly, the human being is to take necessary precautionary and protective measure for his body. The payment/reimbursement of medical expenses spent by the Government servant concerned or his family is not 'Bounty',



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but it is an obligation of the State Government to pay/disburse the said amount in question without harping on either technicalities or hyper technicalities. As such, this Court is of the considered opinion that the Learned Single Judge was correct in directing the First Appellant/First Respondent to sanction the medical expenses incurred by the Respondent/Petitioner for her husband's ailment, as per the eligibility criteria in terms of the amount under the scheme and the same is free from any flaw. However, this Court is of the considered view that the interest of 9% p.a. fixed by the Learned Single Judge is slightly on the higher side and to prevent an aberration of justice and in furtherance of substantial cause of justice, this Court reduces the rate of interest from 9% p.a. to that of 6%.

41.In view of the forgoing discussions and reasons, this Court, directs the Appellant/First Respondent viz., the Director of Pension, Chennai – 6, to sanction the medical expenses incurred by the Respondent/Petitioner/Employee's wife, as per eligibility criteria as regards the amount under the scheme together with interest at 6% p.a. and release the eligible sum to the Respondent/Petitioner (wife of the Employee) after subjectively satisfying about her legal heirship within a period of four weeks from the date of receipt of a copy of this order.”



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5. However, the learned Special Government Pleader appearing for R1 & R2 and the learned counsel appearing for R3 submitted that the petitioner is not remediless and he can always make a claim for reimbursement under Tamil Nadu Medical attendance Rules. He also relied upon the judgment of this Court held in the case of ***Star Health and Allied Insurance Co.Ltd Vs. A.Chokkar and Ors. dated 26.02.2010.***

6. The Tamil Nadu Government has sponsored New Health Insurance Scheme for Government servants in the year 2008. It was the Employees Health Fund Scheme in the year 1991 and in the year 1995, the Tamil Nadu Government Pensioner's Health Fund Scheme was in vogue. Under which, the State Government had provided free medical treatment in Government Medical Institutions to Government servants and pensioners by having tie up with Private Insurance Companies. The fact that the petitioner is also a member of such scheme and he has been making contribution is not denied. The only point on which reimbursement claim of the petitioner is denied is because the hospitals in which the wife of the petitioner had taken treatment is not in the



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approved list of hospitals. However, it is brought to light that the very same hospital in which the petitioner had taken treatment in the year 2015 has subsequently brought in the list of approved hospitals by the Government.

7. While providing reimbursement, the essential facts that has to be appreciated is whether the treatment alleged to have been undergone by the Government servant or his family members for whom he is eligible for reimbursement, have really taken treatment or else the medical reimbursement has been made for the alleged treatment. The list of accredited hospitals have come to the rescue of Government servants just in order to give them better access and not to deny the type of access which they had chosen as per the demanding situation on hand.

8. In the case in hand, the learned counsel for the petitioner submitted that the petitioner's wife needed emergent treatment and in view of such a medical condition, she needed to take immediate treatment from Kurinji Hospital and then G.Kuppusamy Naidu Memorial



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Hospital. If the option chosen by the beneficiary is a hospital which has not been accredited in the list, that can be at the worst be viewed as an irregularity. Since the larger purpose of providing medical treatment to the employees / pensioners is to ensure best medical service at the cost of the Government through any Insurance Schemes sponsored by the government or by the Government itself directly. Though it is advisable for the Government Servant / pensioners to take treatment in the accredited hospitals, the rule cannot be viewed so narrowly for denying the reimbursement for the treatment taken outside the purview of the listed hospitals. It is always open to the Government to refer the matter to any of its Expert Committee, if it is in the request of the Government to do so to assess the genuineness and necessity of the treatment alleged to have been taken by the Government servant on the case to case basis.

9. Since the impugned order has been passed for the simple reason that the hospital in which the treatment had been taken did not fall under the accredited list, I feel that the Government has to reconsider the claim made by the petitioner in the light of the above observation that has been



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made especially on the basis of the observations made by the learned Division Bench of this Court in **W.A (MD) No.1382 of 2017 dated 09.11.2017.**

10. In the result, this Writ Petition is allowed and the proceedings of the second respondent in Na.Ka.No.15383/U2/2019 dated 12.12.2019 is set aside and the respondents 2 and 3 are directed to reconsider the claim made by the petitioner and pass appropriate orders in a proactive manner by taking into consideration of the object of the Scheme. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes
Internet : Yes/No
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R.N.MANJULA, J.

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3rd Floor, Veterinary Hospital Campus,
Anna Salai, Nandanam, Chennai 600 035.

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