



W.P.(MD) No.1453 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 31.08.2023

ORDERS PRONOUNCED ON : 27.09.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.1453 of 2017

and

W.M.P.(MD) No.1184 of 2017

John Britto

... Petitioner

Vs.

1.The Secretary,
Family Welfare and Health Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Secretary to Government,
Collegiate Department,
College Education,
Fort St. George, Secretariat,
Chennai-600 009.

3.The Director of Collegiate Education,
D.P.S.Campus,
College Road, Chennai.



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4.The Director of Treasuries and Accounts,
Pannagal Building,
No.1, Jennis Road, Saidapet,
Chennai-600 015.

5.The Joint Director of Collegiate Education,
Tirunelveli District,
Tirunelveli.

6.The Principal,
St. Jude's College,
Thoothur, Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in G.O(Ms) No.199 dated 08.09.2016 as far as sanction of Rs.50,000/- and quash the same and further direct the respondents to enhance medical reimbursement amount from Rs.50,000/- to Rs.1,57,244/- with 12% interest for the medical expenses incurred by petitioner for the treatment of Multiple Myeloma within the time frame that may be stipulated by this Court.

For Petitioner : Mr.A.Robinson

For RR1 to 5 : Mr.V.Nirmal Kumar
Government Advocate



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ORDER

The case of the petitioner is that he served as Senior Grade Lecturer (Chemistry Department) in the 6th respondent-College, which is a State Government Aided Institution. During the year 2007, he was diagnosed with Multiple Myeloma (Cancer arising from the plasma cells of BM) and was admitted on 10.05.2007 at the Regional Cancer Centre, Trivandrum in the Department of Medical Oncology and he had undergone high dose Chemo with Peripheral blood stem cells transplantation and was discharged on 07.07.2007. The petitioner subscribed to Tamil Nadu Employees Health Fund Scheme and as such, he is entitled to get all the benefits under the Scheme. After recovering from the treatment, the petitioner had applied for medical reimbursement of the medical expenses through the 6th respondent. Though the total expenses incurred by the petitioner is amounting to Rs.2,85,704.50, Respondents No.2, 3 and 5 requested the 6th respondent-College to submit bill at Tamil Nadu Government Hospital Rates. Therefore, the 6th respondent-College submitted bill as per the Government Hospital Rates at Rs.1,57,244/-. The claim was sent to the 5th respondent by enclosing all the bills and treatment



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particulars. The 5th respondent again requested the 6th respondent to submit the claim excluding rent and mess charges. Accordingly, the 6th respondent again sent a revised bill for a sum of Rs.1,57,022/- on 02.04.2013.

2. The petitioner retired from service on attaining superannuation on 31.05.2012. But till today, the petitioner is taking treatment continuously for Multiple Myeloma at Regional Cancer Centre at Trivandrum by spending huge amount. Though the 6th respondent has sent the revised claim as early as on 02.04.2013 and the same was forwarded by the 5th respondent to the 3rd respondent on 03.05.2013, so far no action has been taken by the respondents to pay the medical reimbursement amount. The petitioner has sent a detailed report to the Respondents No.1, 2, 3 and 5 on 06.11.2015 to pay the medical expenses incurred by him. Even after receipt of the said representation, the respondents did not take any action to pay the medical expenses. The petitioner has filed a writ petition before this Court in W.P.(MD) No.273 of 2016 seeking a direction to pay the medical reimbursement amount. The said writ petition was allowed with a direction to the 1st respondent to pass appropriate orders in respect of the medical



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claim of the petitioner within a period of four weeks from the date of receipt of a copy of the order of the 2nd respondent. Subsequently, the 2nd respondent has passed a Government Order in G.O.(Ms) No.199, dated 08.09.2016 and the same was forwarded by the 3rd respondent on 14.09.2010 to the petitioner through the 6th respondent, wherein the 2nd respondent has only sanctioned a sum of Rs.50,000/- to the petitioner.

3. Learned counsel for the petitioner contends that the petitioner has spent a sum of Rs.2,85,704.50 for treatment and as per the request of the Respondents No.2, 3 and 5, the 6th respondent-College sent a revised bill for a sum of Rs.1,57,244/- as per the Tamil Nadu Government Hospital Rates. But the respondents have sanctioned a sum of Rs.50,000/- only, which is very meagre and the respondents have not paid any interest for the delayed payment.

4. Learned counsel further contends that the proceedings of the 2nd respondent sanctioning meagre amount of Rs.50,000/- only without paying any interest is impugned in this writ petition and it violates Article 21 of the



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Constitution of India. Learned counsel would submit that self preservation of one's life is the necessary concomitant of the Right to Life enshrined in Article 21 of the Constitution of India and accordingly, he sought to set aside the impugned proceedings for the reason that the Government is bound to pay the actual treatment expenses incurred by the petitioner with interest.

5. Learned counsel further contends that the real test must be the factum of treatment and if it is supported by records duly certified by Doctors/Hospitals concerned and once it is established, the claim cannot be denied on technical grounds. As per Government Employees Pension Fund Scheme, for cancer treatment, the employees are entitled to get reimbursement up to Rs.1,00,000/- and as such, sanctioning Rs.50,000/- by the 2nd respondent is against to the scheme and the petitioner is legally entitled for enhancement of medical reimbursement and requested to allow this writ petition.



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6. A counter affidavit has been filed by the Respondents No.2, 3 and 5, wherein it is stated that the petitioner was covered under the Tamil Nadu Government Employees Health Fund Scheme, 1991. In G.O.(Ms) No. 383, Finance (Sal) Department, dated 28.09.2001, it has been stated as follows:

“The Government employees who had undergone specialized advanced surgeries / treatment in respect of diseases which are included in the approved list, before and after 29.08.2000, in the unaccredited private hospital, are eligible for a maximum grant of Rs.50,000/- (Rupees Fifty thousand only) or 50% (fifty percent) of the actual cost of specialised advanced surgery / treatment whichever is less subject to the following conditions:

a) The Director of Medical Education / Director of Medical and Rural Health Services shall certify that the specialized advanced surgery / treatment has been undertaken in the unaccredited private hospital due to emergency.

b) Such orders shall be issued by the Administrative Department of Secretariat alone after obtaining the concurrence of Finance (Salaries) Department without any omission.”



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7. Considering the fact that the petitioner underwent a special treatment in the Regional Cancer Centre, Trivandrum, which is an unaccredited institution under the said scheme as per G.O.(Ms) No.383, dated 28.09.2001, the 2nd respondent sanctioned the amount of Rs.50,000/- as per the impugned order and the same was disbursed to the petitioner.

8. Learned Government Advocate appearing for Respondents No. 1 to 5 submits that as per the order of this Court in W.P.(MD) No.273 of 2016, the 2nd respondent treating the case of the petitioner as a special case, passed G.O.(Ms) No.199, Higher Education (E2) Department, dated 08.09.2016 sanctioning a sum of Rs.50,000/- to the petitioner as per G.O.Ms.No.383, Finance (Sal) Department, dated 28.09.2001 for undergoing specialised advanced treatment in the unaccredited hospital. He further contends that since the Government has already sanctioned and disbursed the amount as per the norms, that too, by relaxing conditions, the claim of the petitioner to pay a sum of Rs.1,57,244/- is not permissible as per the Rules in force and thus, not feasible for acceptance and sought to dismiss the writ petition.



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9. Learned counsel for the petitioner placed reliance on the order of this Court in **C.Nagamuthu v. State of Tamil Nadu** reported in (2006) 2 **M.L.J.** 747. While considering identical issue, this Court passed the following order:

“7. As rightly contended by the learned counsel appearing for the petitioner, it is not disputed that the petitioner paid contribution towards the Health Fund from the inception i.e., from 1991-1992 onwards and therefore he is entitled to get medical assistance under the Tamil Nadu Government Employees Health Fund Scheme as ordered in G.O.Ms.No.846 dated 14.12.1993. The Joint Director of Health Services, Kanyakumari District at Nagercoil certified that the petitioner's son underwent the surgery and the petitioner spent a huge amount towards medical expenses. It is pertinent to note that the Government in G.O.(D)No.40, dated 22.3.1999, sanctioned medical reimbursement to one T.Nayarani, Junior Assistant, Office of the Joint Director of Agriculture, Nagercoil, who underwent heart surgery at Sree Chitra Tirunal Institute for Medical Science & Technology, Thiruvananthapuram, Kerala State. In paragraph 2 of the said order it is stated that the proposal



of the Director of Agriculture has been examined by the Government and since the surgery performed to T.Narayani is included in the specialised surgery/treatment, Government have decided to sanction the amount incurred by T.Narayani and accordingly Rs.36,774/-was sanctioned, even though it is stated 'as a special case' and the said amount was paid.

8. While sanctioning medical reimbursement to T.Narayani, who underwent similar operation in the very same hospital, the action of the Government in not sanctioning medical reimbursement to the petitioner towards his son's surgery, cannot be justified. The fact that the petitioner has paid contributions to the Health Fund is admitted. The treatment taken by the petitioner's son and the surgery he underwent are not also not in dispute. When both T.Narayani and petitioner's son underwent surgery in the very same hospital, the non-sanctioning of medical reimbursement to the petitioner alone is violative of [Article 14](#) of the Constitution of India. As contended by the learned counsel for the petitioner, the object of the Scheme is to give financial support to the deserving persons, who contributed towards the Health Fund Scheme. Such being the object of the scheme, it is not open to the respondents to deny the benefit given under the scheme on the ground



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that the treatment should be taken only in the listed hospitals.

9. I have also perused G.O.Ms.No.400 Finance (Salaries) Department, dated 29.8.2000 listing the hospitals authorised to give treatment for the purpose of getting medical reimbursement. As per Schedule-II in Annexure-II to the said Government Order, the nearest hospital is 'Getwell Private Hospital, Tirunelveli', having specialisation in cardiology and there is no approved hospital in the whole of Kanyakumari District. Therefore there is every justification on the part of the petitioner to get his son treated in the Sree Chitra Tirunal Institute for Medical Science and Technology, Thiruvananthapuram. In the absence of listed hospital in the whole of Kanyakumari District, the respondents cannot deny medical reimbursement to the petitioner on the ground that his son did not get treatment in the approved hospital as per the Government Order.

10. Viewing the matter in that angle, I hold that the action of the respondents in not sanctioning the medical reimbursement claim of the petitioner to the tune of 75% of the actual expenses incurred, cannot be considered as valid and therefore the petitioner is entitled to get a direction for sanction and payment of 75% of the



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actual expenses incurred by the him towards treatment of his son.

11. The writ petition is allowed with a direction to the respondents to pay the sum of Rs.48,749/- already sanctioned by the 5th respondent by his proceedings dated 22.10.1998 along with 12% interest from 17.12.1998 till the date of payment. The respondents shall pay the amount to the petitioner within a period of four weeks from the date of receipt of copy of this order. No costs.”

10. Learned counsel also placed reliance on the judgment of the Hon'ble Apex Court in ***Surjith Singh v. State of Punjab and others*** reported in ***(1996) 2 SCC 336***, wherein the Hon'ble Apex Court at Paragraph No.11 held as extracted hereinunder:

“It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable.”



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11. In *S.M.V.Kalaiyarasu v. State of Tamil Nadu [W.P.No.6767 of 2010, dated 21.06.2013]*, this Court while dealing with a case in similar circumstance, directed the respondents therein to reimburse the amount of Rs.89,805/-, which is 75% of the total medical expenses incurred by the petitioner therein for undergoing treatment along with interest at the rate of 9% per annum from the date of application of the petitioner for the reimbursement of the medical expenses till the date of the actual payment of the said amount.

12. This Court gave anxious consideration to the submissions made by the respective counsels and carefully perused the material available on record.

13. On perusal of the authorities relied by the learned counsel for the petitioner, there is no dispute with regard to the treatment undergone by the petitioner or with regard to the expenditure incurred by him.



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14. The only issue to be considered herein is whether the Respondents No.2, 3 and 5 are justified in sanctioning only a sum of Rs.50,000/- against the claim of the petitioner for a sum of Rs.2,85,704.50.

15. The aim and object of the Tamil Nadu Government Employees Health Fund Scheme is to provide special support to the employees and retired employees and their dependants, who had contributed towards the Scheme. As such, it is not open to the respondent-authorities to deny the benefit provided under the scheme on the ground that the treatment should have been taken only in the listed hospitals.

16. It is settled law that while the object of the medical scheme is to give financial support to the deserving persons, it will not be open to the authorities concerned to suggest the manner of treatment or that it should have been undergone in a particular hospital.

17. In the present case, as per the contention of the petitioner, he incurred expenses of Rs.2,85,704.50 for taking treatment at Regional



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Cancer Centre, Trivandrum. But as per the instruction of the Respondents No.2, 3 and 5, the claim is restricted to Rs.1,57,244/- as per the Tamil Nadu Government Hospital Rates. Though the claim was forwarded to the 5th respondent by the 6th respondent on 02.04.2013, the 2nd respondent issued G.O.(Ms) No.199, dated 18.09.2016 sanctioning an amount of Rs.50,000/- which was disbursed to the petitioner on 14.07.2017. Admittedly, there is a delay of four years in sanctioning the said sum of Rs.50,000/- to the petitioner. There is no dispute with regard to the taking treatment by the petitioner for cancer arising from the plasma cells of BM and he has undergone high dose Chemo with Peripheral blood stem cells transplantation while he was in the hospital in the Regional Cancer Centre, Trivandrum from 10.05.2007 to 07.07.2007.

18. On consideration of the treatment undergone by the petitioner for two months as inpatient in the Regional Cancer Centre, Trivandrum, definitely the petitioner has spent a sum of Rs.2,85,704.50. Though the petitioner restricted his claim as per Tamil Nadu Government Hospital Rates for a sum of Rs.1,57,244/-, sanctioning only a sum of Rs.50,000/- by the 2nd



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respondent saying technical grounds is unjustified and contrary to the aim and object of the Tamil Nadu Employees Health Fund Scheme.

19. In view of the facts and circumstances of the case and on consideration of the orders of the Courts referred above, in the considered opinion of this Court, the action of the 2nd respondent in sanctioning only a sum of Rs.50,000/- vide G.O.(Ms) No.199, Higher Education (E2) Department, dated 08.09.2016 is unjustified, unreasonable, unjust and in violation of Article 21 of the Constitution of India.

20. Accordingly, this Writ Petition is allowed with the following directions:

- i. The Respondent No.2 is directed to pay a sum of Rs.1,07,244/- along with interest at the rate of 9% per annum from the date of the submitting the claim of the petitioner, i.e., 02.04.2013 to till the date of actual payment;
- ii. The Respondent No.2 is further directed to pay interest at the rate of 9% for the amount of Rs.50,000/-, which was already paid to the



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petitioner from the date of submission of the claim by the petitioner to till the actual date of disbursement of the amount (02.04.2013 to 14.07.2017); and

iii. It is directed to disburse the said amount within a period of six weeks from the date of receipt of a copy of this order.

21. There shall be no order as to costs.

22. Consequently, connected miscellaneous petition is closed.

27.09.2023

Note: Issue order copy by 03.10.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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BATTU DEVANAND, J.

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To

1. The Secretary to Government,
Family Welfare and Health Department,
State of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Secretary to Government,
Collegiate Department,
College Education,
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5. The Joint Director of Collegiate Education,
Tirunelveli District,
Tirunelveli.

Pre-delivery Order made in
W.P.(MD) No.1453 of 2017

27.09.2023