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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 13.04.2023

+ W.P.(C) 6093/2012

RS YADAV

..... Petitioner

versus

GOVT.OF NCT OF DELHI & OTHERS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vikramaditya Singh, Adv.

For the Respondent : Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advs.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Vide the present petition, the petitioner seeks the following prayer:-

“(i) quash the order dated 17.02.2012 and 30.08.2012 rejecting the claim of the petitioner for reimbursement of medical bills and issue writ of mandamus directing the Respondents to pay the medical claim of the Petitioner with interest on delayed payment and costs.

ii) Pass such other and further orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.”

2. The facts germane in the present are stated as under:-

- (i) The petitioner joined the service of Delhi Administration as an Agricultural Assistant in the year 1957 and became the officer of Dhani Civil Services and thereafter was posted to different posts under the Delhi Administration.
- (ii) On 31.10.1992 petitioner retired on completion of age of superannuation while working as District Excise Officer.
- (iii) Petitioner had applied for services of a medical facility card in the year 1997 which was granted to him by the Excise Department. In the year 1997 and 2003, the petitioner fell ill and submitted application for his reimbursement of medical claim to the department and at that point of time were cleared.
- (iv) Sometime in the year 2011 petitioner went to Lucknow and suddenly fell seriously ill and was admitted to Army Hospital for emergency treatment of Heart ailment i.e. Anterior Wall Myocardial Infraction. Subsequently, after the initial treatment, the petitioner was discharged from the Army Hospital on 03.08.2011. It is the submission of the petitioner that he incurred a sum of Rs.8205/-for the treatment at Army Hospital at Lucknow.
- (v) Subsequently, for the further treatment, the petitioner was shifted from Lucknow to National Heart Institute, East of Kailash, New Delhi and was admitted for further emergency treatment of heart ailment. Subsequently, he was discharged from the National Heart Institute after

paying a sum of Rs.2,67,150/- towards treatment and medicines.

- (vi) On 23.09.2011 the petitioner submitted the medical bills to the Directorate of Health Services for reimbursement of the aforesaid amount of Rs.2,75,355/- for the treatment in the Lucknow as well as in Delhi.
 - (vii) However, by the communication dated 17.02.2012 the Director of Health Services rejected the request of the reimbursement of the two bills on the ground that the petitioner was not the member of the Delhi Govt. Employees Health Scheme (DGEHS) and as such was not eligible for the reimbursement.
 - (viii) In order to overcome to the lacuna, the petitioner applied for a fresh medical card on 27.03.2012 after making the payment of Rs.39,000/- as one time charge for life.
 - (ix) Subsequently, on 14.08.2012 the petitioner resubmitted the bills to the Directorate of Health Services for reimbursement of the aforesaid amount. Having not received any response thereto, the present writ petition was filed challenging the aforesaid decision.
3. Mr. Nitesh, learned counsel appearing for the respondent submits that petitioner was not eligible at that particular point of time since he was not a member Delhi Govt. Employees Health Scheme (DGEHS) and therefore there was no question of any entitlement for reimbursement. However, Mr. Singh learned counsel very fairly submitted and handed over a copy of judgment of this Court in **Ram**

Kumar Kaushik Vs. Govt. of NCT Of Delhi & Ors. bearing W.P.(C) 7978/2012 decided on 04.03.2016 whereby on similar facts, basing on the judgment of this Court in ***Kishan Chand Vs. Govt. of N.C.T. & Others*** delivered on 12.03.2010, the learned Coordinate Bench of this Court directed the respondent therein to reimburse the medical expenses for the treatment which the petitioner, in that case, had undergone.

4. This Court has considered the facts of the present case as submitted by learned counsel appearing for the petitioner as also the submission rendered by Mr. Singh, learned counsel appearing for the respondent.

5. Having regard to the fact that the issue raised in the present petition is no more *res integra* and is covered by catena of judgments including the aforesaid judgment of ***Ram Kumar Kaushik (Supra)*** against which it is stated, that an LPA, which was filed, has also been dismissed.

6. A coordinate Bench of this Court in ***Kishan Chand Versus Govt. of NCT & Others, WP(C) 889/2007, decided on 12th March, 2010*** has held as under:-

“6. The issue is no more res integra as in the case of S.K. Sharma (supra), this Court clearly held that the petitioner after getting retired cannot be denied the benefit of the medical reimbursement simply because of the fact that he did not opt for the said scheme. In this case also the claim of the employee was rejected on the ground that he was not covered under the CGHS Rule not being a part of the scheme but still a retired Central Government employee residing in non-CGHS area can make a CGHS card for himself and his dependent family members from the nearest centre

where CGHS is functional. Further placing reliance on some authoritative pronouncements of the Apex Court, this Court in the above case took a view that the petitioner cannot be discriminated against, merely because he is not a member of the CGHS scheme as he was staying in a non- CGHS area. In this case also the employee had applied to become a card holder later in the period.

7. In the case of V.K. Jagdhari (supra), which has been relied by the petitioner, a similar question arose before the Court and objection was taken that since the employee had opted for the CGHS card after his surgery, therefore, he was clearly disentitled to the claim of reimbursement. Answering the said question in negative, the Court clearly held that the pensioner cannot be discriminated against merely because he has not opted for CGHS scheme or he resides outside a non-CGHS area. Taking into consideration the ratio of the judgments in the S.K Sharma (supra) and Som Dutt Sharma (supra) case, this court consolidated the legal position and held that:

“The position emerging from various decisions of this Court may be summarised as follows:

1) Even if employee contributes after availing medical facilities, and becoming member after treatment, there is entitlement to reimbursement (DB) Govt. of NCT v. S.S. Sharma : 118(2005)DLT144

2) Even if membership under scheme not processed the retiree entitled to benefits of Scheme - Mohinder Pal v. UOI : 117(2005)DLT204 .

3) Full amounts incurred have to be paid by the employer; reimbursement of entire amount has to be made. It is for the Government and the hospital concerned to settle what is correct amount. Milap Singh v. UOI : 113(2004)DLT91 ; Ran deep Kumar Rana v. UOI : 111(2004)DLT473

4. *The pensioner is entitled to full reimbursement so long the hospital remains in approved list P.N. Chopra v. UOI, (111) 2004 DLT 190*

5) *Status of retired employee not as card holder: S.K. Sharma v. UOI, : 2002(64)DRJ620 ;*

6) *If medical treatment is availed, whether the employee is a cardholders or not is irrelevant and full reimbursement to be given, B.R. Mehta v. UOI : 79(1999)DLT388 .'*

The status of a retired Government Employee was held to be independent of the scheme and rules in so far as the entitlement to medical treatment and/or CGHS benefits were concerned (ref. V.K. Gupta v. Union of India, : 97(2002)DLT337). Similarly in Narender Pal Singh v. Union of India, : 79(1999)DLT358 , this Court had held that a Government was obliged to grant ex-post factor sanction in case an employee requires a specialty treatment and there is a nature of emergency involved."

8. *It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the pensioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the said surgery undergone by him. 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 on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired. Clearly in the present case by taking a very inhuman approach, these officials have denied the grant of medical*

reimbursement to the petitioner forcing him to approach this Court. The respondents did not bother even after the judgment of this Court was brought to their notice and copy of the same was placed by the petitioner along with the present petition.”

9. In the light of the aforesaid, the present petition is allowed.

10. The respondents are directed to pay the said medical claim of the petitioner along with 18% interest from the date of submission of his bill. The said payment shall be made by the respondent within one month from the date of this order. Additional costs of Rs. 10,000/- is also imposed on the respondents for causing delay in making the said payment to the petitioner.”

7. Keeping in view the aforesaid mandate of law, as also the circumstances which have arisen in the present case, the present petition is allowed with a direction to the respondent to reimburse the petitioner's medical expenses as submitted by him along with application seeking reimbursement.

8. The same be remitted to the petitioner within a period of six weeks from today.

9. Keeping in view the earlier catena of judgments whereby on such delayed on reimbursement of medical expenses, this Court is of the considered opinion that interest @ 12% per annum from the date of filing the present writ petition be also granted till date of actual payment.

10. Judgment in the case of **Ram Kumar Kaushik** (Supra) is taken on record.

TUSHAR RAO GEDELA, J .

APRIL 15, 2023/ms