**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 20.09.2024

CORAM

**THE HONOURABLE MR.JUSTICE BATTU DEVANAND**

W.P. No. 1869 of 2019
and
W.M.P. No. 2070 of 2019

1.R. Vetrivel
2.S. Kala
3.G. Shamala Raja
4.R. Pricilla Priya
5.S. Lakshmi
6.Sudha Ravichandran
7.V.E. Jhancy
8.M. Shreya Yadav
9.N. Devakarunamma
10.Shanthi. L
11.Shanthi
12.T.S. Ravi ... Petitioners

Vs.

1.The Union of India,
Represented by its Secretary to Ministry of Civil Aviation,
New Delhi – 110 003.

2.Airport Authority of India,
Represented by its Executive Director (HR),
Rajiv Gandhi Bhavan,
Safdarjung Airport, New Delhi – 110 003.

3.The Airport Director,
Airport Authority of India,
Chennai Airport, Chennai – 600 027.

4.The Regional Executive Director,
Airport Authority of India,
Southern Region, Chennai – 600 027.

5.The General Manager – HR,
Airport Authority of India, HRM Department,
Southern Region, Chennai – 600 027.

6.The Deputy General Manager – HR,
Airport Authority of India, HRM Department,
Chennai Airport, Chennai – 600 027.

7.The Assistant General Manager – HR,
Airport Authority of India, Rajiv Gandhi Bhavan,
Safdarjung Airport, New Delhi – 110 003.

8.The Assistant General Manager (HR),
Airport Authority of India, HRM Department,
Chennai Airport, Chennai – 600 027.

9.The Assistant General Manager (HR),
Airport Authority of India, HRM Department,
Southern Region, Chennai – 600 027. ... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the circular giving wrong interpretation of regulations in clarification No. A 60011/38/2014 – HRPC dated 09.04.2014 issued by seventh respondent and circular No. AAI/SR/M/Med.All./GC dated 08.07.2014 issued by fifth respondent and order passed in No. A 60011/26/2014 – HRPC dated 15.10.2014 issued by second respondent and Circular No. AAM/HRM/MED/2015/14662 – 708 dated 02.06.2015 and circular No. AAM/HRM/MED/2015/17500/17544 dated 26.06.2015 and office note No. AAM/HRM/MED/OPMA/2015/23541 – 552 dated 21.08.2015 and memorandum No. AAM/HRM/Med Allowance – OPD/2018 dated 09.11.2018 issued by eighth respondent and consequential memorandum No. AAM/HRM/Med

Allowance – OPD/2018 dated 11.12.2018 and 20.12.2018 respectively issued by sixth respondent unreasonably denying monthly medical allowance (OPD) for the petitioners since their spouse are working in same AAI and attempt of recovering the monthly medical allowance paid so far on no fault of the petitioners and quash the same and direct the respondents to restore the monthly payment of medical allowance and refund the OPD medical allowance already recovered if any from the salary of the petitioners by the respondents.

For Petitioners : Mr. M. Udhayakumar

For Respondents : Ms. A. Arul Mary, for RR2 to 9

**O R D E R**

Heard the learned counsel for the petitioners and the learned counsel for the respondents 2 to 9.

2. The case of the petitioners are that, they employed in Airport Authority of India under the first respondent at Chennai in their respective posts. The spouses of all the petitioners are working in the first respondent establishment in different cadres. The Airport Authority of India was established under Section 3 of Airport Authority of India Act, 1994. It is fully owned by Union of India. It has issued notification dated 26.06.2003 for regulation of medical reimbursement under Airport Authority of India (Employees Medical Attendance and Regulations, 2003). Further, Airport Authority of India introduced revision of perks and allowance of executive

w.e.f 26.11.2008 vide Circular No. A.60011/10/2010-IR/ dated 21.01.2011. In which they introduced new scheme/system of medical allowance by way of medical reimbursement with annual ceiling on self certification basis for OPD/Domicile Medical Treatment to be paid on monthly basis was implemented. All the employees were getting monthly fixed medical allowance as per the scheme from the date of notification/scheme i.e., 21.01.2011. At the time, the second respondent has issued clarification on 30.03.2011 relating to payment of perks with respect to LTC, Medical (OPD) and Fuel Reimbursement etc. Even in the said clarification, the payment of medical reimbursement for husband and wife, both working in Airport Authority of India are not excluded or restricted to any one of the spouse.

2.1. All of a sudden, on 09.04.2014 the second respondent has issued clarification that if husband and wife are employed in Airport Authority of India, one of the spouses is alone entitled to get the fixed medical allowance. This clarification has given wrong interpretation of Clause 3 (4) of Regulations. The said Clause specifies that when spouse are working in other organisations and not within the organisation, the conditions will apply. The regulations does not prohibit payment of medical reimbursement to all the employees including the employees whose spouses are working in the same organisation.

2.2. On the basis of wrong clarification dated 09.04.2014, the Southern region at Chennai, the eight respondent herein has sent a circular dated 08.07.2014, to stop medical allowance to one of the spouse, if husband and wife are employed in Airport Authority of India, in violation of Regulation and Scheme and order to recover the amount rightly paid from the date of implementation of OPD medical allowance i.e., from January 2011. In furtherance to the above circular, the second respondent has also issued yet another circular on 15.10.2014, to stop medical allowance to one of the spouse, if husband and wife are employed in Airport Authority of India only to avoid audit objection in gross violations of the scheme in an unilateral way and without even informing the petitioners.

2.3. As per Clause 3 (2) of Regulations, it is clear that in case husband and wife are employed in authority, they, as well as their eligible dependants are allowed to avail medical concession. But, this was not taken into account while giving clarification and issuing circular and order. Stopping the medical allowances which the petitioners were getting on the basis of A60011/26/2014 HRPC dated 15.10.2014 and referring to the Regulations and notification dated 21.01.2011 is illegal, unsustainable and against the norms. Aggrieved by the same, the present writ petition is filed.

3. During the course of hearing, the learned counsel for the petitioner has placed reliance of the judgment of the Division Bench of High Court of Kerla at Ernakulam in ***S. Venugopal and Other v. Airports Authority of India and Others*** in ***W.A.No. 1225 of 2017***; ***Geetha. K v. Airports Authority of India and Others*** in ***W.A.No. 1315 of 2017***; and a copy of the order of the Apex Court in ***Special Leave to Appeal (C) No. 29550 of 2017*** and would submit that the issue involved in the present writ petition is similar to the issue decided in the judgments stated (supra). He further contends that, the judgments rendered by a Division Bench of High Court of Kerla are confirmed by the Apex Court by its order dated 16.04.2019 in Special Leave to Appeal (C.) No. 29550 of 2017.

4. Learned Standing Counsel appearing for the respondents also endorsed the same.

5. The relevant portion of the judgmenet of the Division Bench of High Court of Kerla, is extracted herein under: -

> *"6. We have heard both the counsels and we feel that there is some genuine confusion. It cannot be denied that employment is a matter of contract as between the employee and the employer. Merely because a husband and wife are both employed under the same employer, the concept and the jurisprudence of employment does not change. The employment contracts framed are*

*independent and individual. But, at the same time, there cannot be duplication of claims. For example, the husband by nature of his employment and conditions of employment is entitled to house rent allowance. The house rent allowance is for the husband as an employee and his family. The wife, if posted at the same station and residing with her husband, cannot thus claim house rent allowance over and above her husband. The condition may be different if they are posted at different stations, or otherwise there would be duplication.*

*7. Now when we come to Clause 11 this is not an allowance, in the sense that whether or not expense is incurred, it is to be paid. Clause 11.1.1 would itself show that it is a medical reimbursement with annual ceiling. Therefore, it is reimbursement of actual expenses with a annual ceiling. From that we can understand is that the annual ceiling between the range of Rs.30,000/- to Rs.50,000/-, as the case may be, is available for actual expenses incurred and would include the family/dependent and obviously the spouse. But, when both the spouses are employed, can it be said that for the same expenses incurred, both the husband and wife could claim reimbursement. The answer is obviously no, in as much as duplication of reimbursement is not at all contemplated nor permissible. Thus one thing is clear that for expenses incurred, there can be only one source of reimbursement and the same cannot be claimed again by the other spouse. But there is a difference which would be clear from the illustration given herein.*

*8. We could do no better than illustrate the arbitrariness of Ext.P2, which restricts the claim of medical allowances/reimbursement to one of the spouses only, in case where both the spouses are under employment of the Airport authority. As also the arbitrariness of direction to recover, as contained in paragraph 2 of Ext.P2, where medical reimbursement have been independently claimed by both the spouses instead of through one only.*

*9. Let us consider the case of two individuals; a male employee (A) and a female employee (B). If the two are not married, each would independently be entitled to a medical reimbursement subject to the ceiling provided independent of each other. Thus, if the ceiling be Rs.30,000/- and (A) incurs expenses of Rs.20,000/-, he would get full reimbursement of Rs.20,000. At the same time, in the same financial year (B) would similarly get reimbursement of Rs.20,000/- for medical expenses incurred by her. The sum total of the medical reimbursement received by (A) and (B), who are not married, would be a sum of Rs.40,000/-. They may be in a live-in relationship or divorced. But, the movement (A) and (B) gets into holy matrimony, they are put to disadvantage. (A) being the husband and (B) being the wife, would not have to make a declaration to claim medical benefits only on one of their accounts and in default of that option, it would be the husband's account.*

*10. If we refer back to the illustration, what will now happen? The maximum ceiling in one account is Rs.30,000/-. Either the wife's full medical reimbursement would be curtailed to Rs.10,000/- or the* *husband's medical reimbursement would be curtailed to Rs.10,000/-. Thus seen, upon holy matrimony, they would be put to serious disadvantage. This is what is arbitrary. It is for this reason we have held that medical reimbursement is an individual entitlement and by reason of matrimony parties cannot be put to disadvantage. A caveat would be necessary. Parties being entitled to independent claims there cannot be duplication of the claim, in the sense, the wife cannot claim her medical reimbursement from her account as her own independent claim and then for the same event, claim through her husband's account showing herself to be the dependent spouse. That would be duplication of claim and is impermissible. Thus, the circular to the extent to which it directs recovery of amount , when the same is claimed by both the spouses is bad to the extent indicated above. It could apply only in case of duplication of claims and not otherwise.*

*11. Thus, we have to hold that there cannot be any discrimination or any arbitrary application of the provisions in relation to medical allowances / reimbursement putting persons to disadvantage merely by reason of marriage.*

*To the extent indicated above, we modify the judgment of the learned single Judge and to the limited extent indicated above, the appeal stands allowed. Consequently, no amount should be sought to be recovered unless they are beyond individual limits or there is duplicity of claim for reimbursement.”*

6. On perusal of the above judgment, this Court is of the considered opinion

that there cannot be any discrimination or any arbitrary application of the provisions in relation to the medical allowances / reimbursement putting persons to disadvantage merely by reason of marriage.

7. Accordingly, this Writ Petition is allowed with the following direction: -

i) No amount should be recovered unless they are beyond individual limits or there is duplicity of claim for reimbursement.

ii) In case of any recoveries already made from any of the employees on the strength of the provisions of Clause 3(2) of Airport Authority of India (Employees Medical Attendance and Treatment) Regulations, 2003, the same would be refunded.

8. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

**20.09.2024**

Index :Yes/No
Neutral Citation :Yes/No
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**BATTU DEVANAND, J.**

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