BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.06.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.26119 of 2023
and
W.M.P(MD)Nos.22473 & 22474 of 2023

Thiyagarajan ... Petitioner

Vs.

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

2.The Additional Chief Secretary to Government of Tamil Nadu,
Finance (Salaries) Department,
Secretariat,
Fort St.George,
Chennai - 600 009.

3. The District Treasury Officer,
District Collector Office, Pudukkottai District.

4. The District Collector,
O/o.District Collectorate,
Pudukkottai District.

5. United India Insurance Company Ltd,
Divisional Office: 010600, 5th Floor,
PLA Rathna Tower,
Raji Buildings, 212,
Anna Salai,
Chennai - 600 006.

6.MD India Health Insurance TPA Private Limited,
No.27, Lakhmi Tower,
3rd Floor,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the second respondent in G.O.Ms.No.202, Finance (Salaries) Department dated 30.06.2016, quashing clause (iii) in paragraph 4 of the Annexure-I attached to therein and the consequent impugned order passed Denial of Authorization letter (Manual) by the Respondent No.5 dated 13.03.2019 quash the same as illegal and consequently directing the respondents to reimburse the medical expenses, totaling a sum of Rs.73,848/- (Seventy Three Thousand and Eight Hundred and Forty Eight Rupees Only) paid to him for the surgery and medical treatment incurred by his mother in the Velammal Hospital with 9% interest within a reasonable time to the petitioner in the light of the Judgment rendered by this Court in W.P.No. 35621 of 2019, dated 02.01.2020.

For Petitioner : Mr.S.Mohammad Kasim

For Respondents : Mr.J.Ashok – for R1 to R4
Additional Government Pleader
: Mr.A.Shajahan – for R5 & R6

ORDER

The present writ petition has been filed seeking a Writ of Certiorarified Mandamus, to call for the entire records relating to the second respondent in G.O.Ms.No.202, Finance (Salaries) Department dated 30.06.2016, quashing clause (iii) in paragraph 4 of the Annexure-I attached to therein and the consequent impugned order passed Denial of Authorization letter (Manual) by the Respondent No.5 dated 13.03.2019 quash the same and consequently to direct the respondents to reimburse the medical expenses, totaling a sum of Rs.73,848/- (Seventy Three Thousand and Eight Hundred and Forty Eight Rupees Only) paid to him for the surgery and medical treatment incurred by his mother in the Velammal Hospital with 9% interest within a reasonable time to the petitioner in the light of the Judgment rendered by this Court in W.P.No. 35621 of 2019, dated 02.01.2020.

2. Heard Mr.S.Mohammad Kasim, learned counsel for the petitioner, Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.A.Shajahan, learned counsel appearing for the respondents 5 and 6.

3. The petitioner who is aggrieved due to the rejection of claim for medical reimbursement treatment taken for his mother for undergoing treatment for Acute Appendicitis disease by getting admission in the hospital for the period from 10.03.2019 to 15.03.2019.

4. The learned counsel for the petitioner submitted that the request for authorization letter itself is not considered favourably for the reason that the parents of the petitioner will not be covered under the New Health Insurance Scheme (NHIS), once the employee gets married. Hence, the petitioner has filed this writ petition challenging the clause–(iii) of G.O.(Ms)No.202 Finance Salaries Department, dated 30.06.2016 along with the order denying the authorization letter of the fifth respondent, dated 13.03.2019 and consequential direction to the respondents to reimburse the medical expenses totally Rs.73,848/- (Rupees Seventy Three Thousand and Eight Hundred and Forty Eight only).

5. So far as the clause-(iii) in G.O.(Ms).No.202, dated 13.06.2016 is concerned in its annexure-I, paragraph No.4 the following are accepted to be the family members of the employee and be included in the New Health Insurance Scheme :

> *"4. The following family members of the employee shall be covered under the New Health Insurance Scheme, 2016:*

(i) Legal Spouse of the Employee;

(ii) Children of the Employee - till they get employed or married or attain the age of 25 years whichever is earlier and dependent on the Employee;

(iii) Parents of the Employee, in the case of unmarried employee until the Employee get married; and

(iv) Physically Challenged and Mentally Retarded children of the employee without any age restriction, subject to the minimum of the handicap to the extent of 40% as certified by the District Disability Welfare / Rehabilitation Officer and wholly dependent on the employee."

6. The petitioner claims that just because the employees get married, the status of his parents will not change and they are still his parents and hence, they should also be covered under the ambit of family members so as to get the benefit of the scheme.

7. Attention was drawn to the earlier judgment of this Court held in W.P.No.35621 of 2019, dated 02.01.2020, wherein, the learned

Single Judge had dealt at length about the relevancy of considering the parents of an employee as members of the family irrespective of the marital status of the employee. However, the learned single Judge did not give any direction to the Insurance Company to cover the medical expenses incurred by the petitioner therein for the treatment given to his father. The directions have been given to the Government respondents and not to the parents.

8. Apart from the New Health Insurance Scheme, the employees have also got other benefits under Medical Attendance Rules for getting reimbursement of their medical expenses, subject to the terms of the above rules.

9. The very same clause was put under challenge in earlier W.P.(MD)No.9169 of 2020, wherein, the Court has dealt the matter at length and passed the following order on 22.02.2022 :

> *"7. Though the petitioner has challenged the said Clause, there is no acceptable legal ground for the purpose of assailing the eligibility criteria fixed by the*

Government. Such eligible criteria are fixed in various schemes by the Government and even in Tamil Nadu Pension Rules, many such restrictions are imposed for grant of pensionary benefits and the Family Pension etc. Even the payment of Pension is subject to good conduct of the pensioners under Rule 8 of the Tamil Nadu Pension Rules. When the Government has prescribed certain eligibility criteria under a concessional scheme, the scheme is to be implemented strictly in accordance with the terms and conditions and by following eligibility criteria. It is the prerogative of the employers to prescribe such conditions in view of the fact that the Medical Health Insurance Scheme is a concession extended to the Government employees and it is not part of the service conditions as stipulated. It is unconnected with the service conditions in respect of employment. It is an additional facility provided to encourage the employees and to protect the interest of the employees in respect of health aspect. Therefore, by challenging the Government Order, the petitioner cannot attempt to alter the Scheme, which is otherwise the policy decision taken for extending certain additional benefits, which are all not in the form of right.

8. The learned counsel for the petitioner made a submission that the scope of the scheme cannot be *restricted to the family members. Parents of the Government employees are also to be considered as family members. In this regard, this Court is of the considered opinion that the Succession Law or the Personal Law cannot be compared with the service jurisprudence. The concept of service jurisprudence is entirely on different footing. A relationship between the employer and employee is rest on contract. Therefore, an offer of appointment made and acceptance by an employee implies that the terms and conditions between the parties are agreed. The Additional benefits by way of concession cannot form part of service condition. It is only a facility provided in order to encourage the employees or to make the Public Administration in an effective manner. Thus, the Succession Law wherein the parents get right cannot be applied to the Service Law and the scope of Service Law based on contract between the employer and employee cannot be extended by applying the Succession Law or Civil Law or the Personal Law.*

9. Under the Succession Law, Clause~1 Legal Heirs and Clause~II Legal Heirs are contemplated. However, in Service Law wherever such contemplations are made by the Government, by way of policy, then, the employees are entitled to utilize such facilities. If such *facilities are not provided, then, they cannot seek expansion of the policy by filing a Writ Petition. The welfare schemes are the policy decision of the Government and therefore, the scope of judicial review under Article 226 of the Constitution of India is undoubtedly limited. The policy of the Government cannot be expanded by the Courts, which would result in unnecessary financial burden to the Government. The Courts are not empowered to enhance the financial burden by adding a new condition by incorporating the ineligible person as eligible under the Scheme.*

10. Thus, the power of judicial review of the High Court under Article 226 of the Constitution India is to ensure the process though which a decision is taken by the competent authority in consonance with the statute and rules and schemes in force, but not the decision itself. Therefore, in the present case, whether the decision taken by the Authorities are in consonance with the welfare scheme or not is alone to be verified and the Court by exercising the powers of judicial review cannot expand the scope of the scheme, which would result in unnecessary financial burden and further scope is provided to the ineligible persons to get medical reimbursement, which is beyond the terms and conditions *stipulated in the policy.*

11. The grounds raised for assailing the Clause itself are untenable. Therefore, this Court is of the opinion that such welfare schemes introduced cannot be interfered with and such policy decision if expanded, which would result in unnecessary financial implications to the State Exchequer and therefore, this Court is not inclined to interfere with the order of rejection, so also the Health Insurance Welfare Scheme, which is already in force.

12. The petitioner in this case is claiming medical reimbursement for the treatment taken for his father. The father and mother of the married employee is not eligible for medical reimbursement. This being the scope of the Health Insurance Scheme, the petitioner is not eligible for medical reimbursement scheme and accordingly, the orders passed by the respondents are in accordance with the scope of the scheme and consequently, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed."

10. The impact of the above order is that the New Health Insurance Scheme being a tripartite agreement between the employer,

employees and the third party Insurance Company, the parties to the scheme are bound by its terms. Since, it is only a contract through which a scheme is framed, the parties cannot seek to include any other member of the family, other than those members who are agreed to be the family members as per the scheme.

11. The learned counsel for the petitioner submitted that in the earlier Health Insurance Scheme, the parents were included irrespective of the marital status of the employees. In such case, it should be in the best appreciation of the Government and the employees to purchase such schemes either from the 5th respondent or by any other insurance company by completely analyzing the beneficial factors.

12. If the employer and the employees could not find any terms offered by one insurance company beneficial and it does not give better coverage in respect of family members, they can give the offer to some other company. In the best interest of the Government, if it decides to continue to have the scheme only with the 5th respondent, then it is open to them to re-negotiate the terms by considering the larger

grievance of the employees for non-inclusion of the parents of an employee irrespective of his marital status and other disadvantages experienced by the members. So this Court can only observe that the respondents 1 to 4 can re-negotiate the terms with the sixth respondent and explore the possibilities of new terms for the scheme by amending the same in order to get a better coverage under the definition of "family members" and issue a fresh Government Order in this regard.

13. In the instant case, the petitioner's claim is with respect of his mother. The petitioner, who has already married and whose mother is covered under the New Health Insurance Scheme as per its terms, can seek recourse under the Tamil Nadu Medical Attendance Rules, if those Rules atleast cover the parents of the petitioner.

14. In view of the above discussion, the writ petition is **disposed of** with liberty to the petitioner to renew his claim for the medical reimbursement under the Tamilnadu Medical Attendance Rules, if the said rules cover the parents of an employee irrespective of his marital status. The respondents 1 & 2 shall take a call and pass

appropriate orders on the claim made by the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.06.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM

To

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Dr.Radhakrishnan Salai,
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Chennai - 600 004.

R.N.MANJULA, J.

RM

Order made in
W.P.(MD)No.26119 of 2023

Dated:
12.06.2024