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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 31.01.2024*+ **W.P.(C) 1171/2024****KENDRIYA VIDYALAYA SANGTHAN**

..... Petitioner

Through: **Mr. N.K.Bhatnagar, Km. Rupali, Ms.
Pratishtha Majumdar, Advocates.**

versus

RAJESH KUMAR

..... Respondent

Through: **Appearance not given.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)****CM APPL. 4944/2024 (exemption)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 1171/2024 & CM APPL. 4945/2024 (stay)

3. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 16.02.2023 passed by the learned Central Administrative Tribunal in O.A.1874/2021. Vide the impugned order, learned Tribunal has allowed the original application filed by the respondent, and has consequently, directed the petitioner to issue CGHS card to him and his wife, subject to his paying the service charge on a cost to cost basis.
4. Before dealing with the rival submissions of the parties, the



brief factual matrix, as emerging from the record may be noted.

5. The respondent joined the services of the petitioner as an Account Clerk in 1980, and was posted at the Kendriya Vidyalaya Sangathan (KVS) Headquarters at New Delhi. He was thereafter transferred to regional office, Dehradun in 1997, and again transferred back to Delhi in July, 2010. The Ministry of Health and Family Welfare, (MH&FW) issued an O.M. dated 29.05.2015, as per which all employees who had retired from services of KVS and were settled in Delhi /NCR were to be extended the CGHS facilities. Consequently, the petitioner issued an O.M. dated 21.08.2015 extending the benefits of CGHS facilities to all its superannuated employees who were settled in Delhi/NCR. Accordingly, the respondent, who had superannuated from service on 31.07.2015, was extended the CGHS facilities w.e.f. 11.12.2015, which facilities were continued till 30.11.2019.

6. However, when the respondent sought renewal of his CGHS card, he was informed that the Ministry of Human Resource Development (MHRD) had issued an O.M. dated 13.03.2019, as per which the CGHS facilities to retired employees could be extended only to those individuals who had availed of CGHS facilities while in service. Since the respondent did not fall under this category, his request for extension of his CGHS card was rejected. Being aggrieved, the respondent made various representations to the petitioner on 07.08.2019 and 16.09.2019 and upon receiving no reply thereto, he approached the learned Tribunal by way of the aforesaid OA, which O.A. has been allowed vide the impugned order.



7. In support of the petition, Mr. N.K. Bhatnagar, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that the petitioner was bound by the O.M. dated 13.03.2019 issued by the MHRD which clearly stipulated that only employees who were members of the CGHS during their service, would be entitled to receive the benefits thereof, after their superannuation. The respondent, was admittedly not holding a CGHS card during his service and had sought benefit thereof only w.e.f. 11.12.2015 and therefore, merely because he was granted the benefit of the CGHS facilities from 11.12.2015 to 30.11.2019, would not be a ground to override the conditions imposed vide O.M. dated 13.03.2019.

8. On the other hand, learned counsel for the respondent supports the impugned order and submits that the OM dated 13.03.2019 issued by the MHRD, on which reliance is sought to be placed by the petitioner, does not in any manner, direct that no such facilities will be extended to employees, who were not the members of the CGHS during service. Infact, the petitioner has, by misinterpreting the O.M. dated 13.03.2019 issued by the MHRD, wrongly issued an O.M of the same date wherein they have on their own, introduced a condition which has been found by the learned Tribunal to be arbitrary and illegal. He further submits that infact, the respondent was to be extended the CGHS facilities on the basis of the O.M. dated 27.05.2015 issued by the MHRD, which O.M continues to hold the field and the only condition therein is that the CGHS facilities will be extended only to those retired employees of KVS who were settled in



Delhi/NCR. He, therefore, prays that the writ petition be dismissed.

9. In order to appreciate the rival submissions of the parties, it would be apposite to refer to the relevant extracts of the impugned order, which read as under.

11. The respondents in the impugned order dated 21.07.2021 have ardently averred that the applicant was issued the CGHS cards afresh after retirement pursuant to the decision of Government of India as circulated by the KVS vide its OM dated 21.08.2015. However, after the OMs dated 06.03.2019 and 13.03.2019, it was decided to extend the CGHS facilities to all the retired employees of KVS, who were having CGHS card while in service, ie. up to and including the date of retirement in all CGHS covered cities.

12. The OM dated 21.08.2015, which contains a clause for extending the medical facilities that were being availed by serving employees; leaves some scope for interpretation. After a careful reading of OMs dated 20.03.2018 and 13.03.2019, it is unequivocal that the master OM on the issue of extending medical facilities to retired employees of KVS is the one, which was issued on 21.08.2015. After glancing through this OM, it is nowhere found that it speaks about the extension of CGHS facilities to the retired employees of KVS, who were having such facilities while in service. This condition is added only in the OM dated 13.03.2019, which, in our opinion, is not at all issued in supersession of OM dated 21.08.2015. In fact, in all the OMs referred to above, it is clearly mentioned that the terms and conditions contained in OM dated 21.08.2015 will remain unchanged, meaning thereby the tone and tenor of the OM dated 21.08.2015 remains intact. More so, the OM dated 13.03.2019, nowhere speaks that it would be applicable from retrospective effect.”

10. Since it is the petitioner's case that the respondent's request for extension of CGHS facilities has been rejected on account of the O.M. dated 13.03.2019 issued by the MHRD, it would be apposite to refer to the said O.M., which is reproduced herein below:



“To

The Commissioner,

Kendrtya Vidyalaya Sangathan

18.Institutional Area,

Shaheed Jeet Singh Marg.

New Delhi -110016.

*Sub Extension of CGHS facilities to the retired employees of
Kendriya Vidyalaya Sangathan (KVS)-regarding.*

Sir.

I am directed to refer to KVS's letter No 11013/06/2017-KVS (HQ)/Admn.II dated 17.10.2018 on the subject cited above and to convey the approval of this Ministry for circulating the copy of the the O M of the Ministry of Health & Family Welfare No. S.11016/8/2015-CGHS (P) dated 6 3 2019 among all its establishments for implementation. A compliance affidavit may also be filed before the Hon'ble CAT, Hyderabad Bench on the next hearing scheduled to be held on 14.3.2019 for final compliance. A copy of the Ministry of Health & Family Welfare OM dated 6.3.2019 had already been transmitted to KVS by e-mail dated 6.3.2019.

2. This issues with the approval of Secretary (SE&L)”

11. We may now refer to the O.M dated 13.03.2019 issued by the petitioner, which O.M, it is claimed by the petitioner, is in consonance with the O.M dated 13.03.2019 issued by the MHRD. It would therefore be useful to herein below, to the petitioner's O.M dated 13.03.2019, which reads as under:

“OFFICE MEMORANDUM

Subject: Extension of CGHS facilities to the retired employees of Kendriya Vidyalaya Sangathan (KVS) - matter regarding.

Ministry of HRD, vide letter No.F3-5/2011-UT-2 dated: 13.03.2019 has conveyed the approval of the Ministry of Health & Family Welfare O.M. No. S.11016/8/2015-CGHS dated 06.03.2019 vide which Ministry of Health & "Family Welfare has extended the implementation of CGHS facilities to all the retired employees of KVS, who were having CGHS cards while in service, in all CGHS covered Cities, on the same terms and conditions on the same terms and conditions on which retired



employees of KVS were extended CGHS facilities in Delhi/NCR vide Ministry of Health & Family Welfare OM dated 29.05.2015.

Other terms and conditions of MoH&FW OM dated 29.05.2015 circulated vide KVS (HQ) OM No. 11086/01/2012-KVS HQ (Admn.11)/793-805 dated 21.08.2015 will remain unchanged.”

12. From a cumulative reading of the aforesaid two OMs, one issued by the MHRD and the other issued by the petitioner, it is evident that there was no condition imposed in the O.M. dated 13.03.2019 issued by the MHRD that employees of the KVS who had started availing of the CGHS facilities for the first time, after their superannuation, would no longer be extended the said facility. It appears that petitioner, on its own, has proceeded to interpret the said O.M. in this manner, which interpretation, in our view. The learned Tribunal has rightly rejected.

13. We may now also refer to the earlier O.M dated 29.05.2015, based on which the petitioner had issued the O.M dated 21.08.2015, and consequently extended the benefits of CGHS to the respondents. The same reads as under:

“OFFICE MEMORANDUM

Sub: Extension of CGHS facilities to the retired employees of Kendriya Vidyalaya Sangathan (KVS)- reg.

The undersigned is directed to refer to this Ministry's. O.M No. S 11011/16/2013-CGHS(P) dated 10th June, 2014 vide which it has been decided to extend the CGHS facilities, to the retired employees of those autonomous/statutory organization whose serving employees are already covered under CGHS In Delhi/NCR only.

2. In this connection, this Ministry is in receipt of a request from Kendriya Vidyalaya Sangathan (KVS), New Delhi to extend the CGHS facility to its retired employees. The proposal has been examined in this Ministry and



it has now been decided to extend the CGHS facilities to the retired employees of KVS subject to the following guidelines:-

- a) CGHS facilities shall be extended to the retired employees of KVS only In Delhi/NCR. They will be entitled to OPD facilities and medicines from CGHS dispensaries In Delhi/NCR only on the same lines as is being done In case of serving employees of KVS.*
- b) They may avail treatment from CGHS empanelled hospitals at CGHS approved rates. The medical expenses for IPD/hospitalization treatment will be borne by KVS and they will not be eligible for cashless medical facilities.*
- c) The pensioner's card will be issued to those pensioners who have been recommended by KVS and on payment of service charges on cost to cost basis In advance on yearly basis at the rates determined by Department of Health and Family Welfare in consultation with O/o the Chief Advisor (Cost), Department of Expenditure, Ministry or Finance.*
- d) The CGHS membership card will have to be renewed annually by KVS in advance for both serving as well as retired employees (wherever applicable). Failure to renew the CGHS membership within the specified time period will lead to de-activation of the CGHS card.*
- e) There is no provision for issue of life-time CGHS cards to the pension beneficiaries of KVS.*

3. The office of the Additional Director (HQ), CGHS, New Delhi shall be the nodal office for issue of CGHS' cards to the pensioners of KVS. Accordingly, KVS may co-ordinate with O/o the AD (HQ), CGHS with regard to the details of pensioners and payment of the requisite fees and issue of CGHS cards etc.

4 This issues with the approval of Additional Secretary & Director General, CGHS and shall be effective from the date of its issue."

14. From a perusal of the aforesaid O.M., it is clear that it was in May, 2015 that a decision was taken for the first time to extend the facilities of the CGHS to retired employees of the KVS, who were



settled in Delhi/NCR. This O.M., as the learned Tribunal has rightly observed, has not been superseded. In our considered view, once this O.M., which was the foundation for extending CGHS facilities to retired employees of the KVS in Delhi/NCR, continues to hold the field, the petitioner could not, by misinterpreting the O.M. dated 13.03.2019 issued by the MHRD, take a decision to withdraw CGHS facilities from retired employees merely because they had not chosen to become part of the CGHS, while in service.

15. We, therefore, have no hesitation with concurring with the learned Tribunal that in accordance with the O.M. dated 29.05.2015 issued by the Ministry of Health and Family Welfare, the respondent would continue to be eligible for grant of CGHS benefits.

16. For the aforesaid reasons, we, find no merit in the petition, which along with all pending applications, is accordingly dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

JANUARY 31, 2024/ib