IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15943 of 2021

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Jahan Ara Wife of Late Hamid Hussain Resident of R.K. Nagar, Khalilpura, P.S. - Phulwari Sharif, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
3. The Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
4. The Additional Chief Secretary, Cabinet Secretariat Department, Government of Bihar, Patna.
5. The Director, Directorate of Urdu, Cabinet Secretariat (Raj Bhasha) Department, Government of Bihar, Patna.
6. The Superintendent, Patna Medical College and Hospital (PMCH), Patna.
7. The Block Development Officer, Chakia Block, District- East Champaran.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ali Muqtadir Ahmad, Adv. Mr. Amish Kumar, Adv.
For the Respondent/s	:	Mr. Binod Kr. Yadav, SC 18 Mr. Aditya Nath Jha, AC to SC 18

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 01-07-2025

Heard the parties.

2. The petitioner is the widow of the erstwhile employee who has invoked the extraordinary jurisdiction of this Court on being aggrieved with the letter bearing Memo No. 24/2007/84 dated 25.01.2021(Annexure-8), whereby and whereunder the claim of the petitioner came to be rejected for payment of medical reimbursement to the tune of Rs.6,96,594/-

which amount was spent in the right side Cochlear Implant of the petitioner's husband. The impugned order came to be passed based upon the notification of the Health Department bearing No. 946 (14) dated 14.08.2015 as also in the light of the opinion given by the Finance Department, Government of Bihar.

3. The husband of the petitioner, late Hamid Hussain was posted at the relevant time as Urdu Translator in Chakia Block, in East Champaran. On account of developed complication in the ear, he was medically advised for Cochlear Implant and thus he immediately rushed to the All India Institute of Medical Sciences, Patna, where he was advised for right side Cochlear Implant. The Cochlear Implant was done during 19.01.2015 to 30.01.2015 and thereafter the husband of the petitioner was discharged. The entire expenses of Cochlear Implant came to Rs.6,96,594/-; the bills of which was duly submitted by the husband of the petitioner to his controlling authority, who vide his letter dated 02.05.2015 forwarded the same to the respondent no. 5 for necessary action. Certain query and correspondences have been made but finally the claim of the husband of the petitioner for medical reimbursement did not finalise, in the meanwhile, the husband of the petitioner died on 05.04.2017. After the death of the husband, the petitioner

continued with the claim for medical reimbursement but finally it did not find favour and came to be rejected which is impugned herein.

4. Mr. Ali Muqtadir Ahmad, learned Advocate for the petitioner after taking this Court through Memo No. 946(14) dated 14.08.2015 has contended that the Government of Bihar in the Department of Health by way of a notification in the form of guidelines introduced Clause 6(iii) which provides for consent of Finance Department if the amount is rupees five lakhs and above. Specific prescription has also been incorporated under Clause 7(ii) thereof for medical reimbursement in case of Cochlear Implant. Further taking this Court through Rule 26 of the Bihar Medical Attendance Rules, it is contended that even if the afore noted notification dated 14.08.2015 came subsequent to the death of the petitioner, Rule 26 of the Bihar Medical Attendance Rules empowers the State Government to invoke the same in case of any emergency and need arises for in exceptional circumstances. The very rejection of the claim of the petitioner is said to be contrary to the very import and purpose of the provision contained in Rule 26. Reliance has also been placed on a decision rendered by this Court in the case of ***Maina Devi v. State of Bihar & Ors.***

(CWJC No. 2250 of 2021), wherein the Court noted that the reimbursement of medical claim is a statutory right incorporated to extend the financial succor to the employee(s) and his/her dependent, in the hour of need and, thus, such right cannot be defeated on mere technicalities.

5. Further, reliance has also been placed on a Bench decision of this Court in the case of ***Nageshwar Das vs. The State of Bihar & Ors. (CWJC No. 81 of 2020).*** Referring to the aforesaid decision, it is thus contended that in case where the expenses incurred are admitted and the treatment has not been denied in such circumstances, the respondent authorities ought to consider the claim of the employees under Rules 26 of the Bihar Medical Attendance Rules which provides the residuary power to grant concession and in respect of such cases where the treatment has been undergone without compliance with the rules.

6. On the other hand, learned Advocate, Mr. Aditya Nath Jha referring to the resolution contained in Memo No. 946(14) dated 14.08.2015 contended that the said guideline issued by the Health Department made effective with effect from 14.08.2015 whereas Cochlear Implant of the husband of the petitioner was done prior to the date of issuance of such

resolution, therefore, reimbursement can only be made under Government Order No. 1603 dated 26..03.1940 of Bihar Medical Attendance Rules. The Finance Department has also given its opinion that the afore noted resolution would not be applicable in the matter of reimbursement of medical claim of the husband of the petitioner. Under the aforesaid premise, the Director, Urdu Directorate, Cabinet Secretariat Department vide its Memo No. 84 dated 25.01.2021 informed the petitioner that the medical reimbursement of Cochlear Implant is not possible.

7. Having heard the learned Advocates for the respective parties, and after going through the materials on record, this Court finds that it is the admitted position that the husband of the petitioner had undergone Cochlear Implant at All India Institute of Medical Sciences, Patna in the year 2015. The medical expenses bill submitted before the respondent was duly forwarded; later on it was verified by the Superintendent, Patna Medical College and Hospital, Patna and after proper assessment and verification, the amount of Rs.6,87,570/- was recommended for payment as medical reimbursement. The aforesaid fact is evident from letter No. 14594 dated 18.08.2015 (Annexure-C to the counter affidavit).

8. Counter affidavit filed on behalf of the respondent

nos. 4 and 5 does not speak that the petitioner is not entitled for reimbursement rather it suggests that the case of the petitioner is required to be considered under Rule 26 of the Bihar Medical Attendance Rules. One thing is also clear that the resolution contained in Memo No. 946(14) dated 14.08.2015, duly notified by the Health Department inserted Clause-7(ii) which specifically provides for medical reimbursement in case of Cochlear Implant. Even for the sake of argument it is accepted that the afore noted resolution made effective with effect from 14.08.2015, there is admitted position that Rule 26 of the Bihar Medical Attendance Rules provides residual power for such circumstances where the treatment is not authorized as per the rule. Under the afore noted rules, it is made clear that non compliance with the rule shall not prevent the State Government to extend the medical reimbursement in respect of deserving person to whom Bihar Medical Attendance Rules applied where the treatment is not even been authorised with rules. The identical issue has come up for consideration before the learned coordinate Bench of this Court in the case of ***Ram Bilas Yadav v. State of Bihar (CWJC No. 15910 of 2014)*** wherein the authorities had rejected the claim of the petitioner by referring to the rules of Bihar Medical Attendance Rules. The Court while holding the impugned rejection order as unsustainable held as follows:

> *"In a circumstance where the factum of treatment of an employee is not disputed what is the recourse to be adopted is also to be found in para 2 of the very same resolution which refers to Rule 26 of the Bihar Medical Attendance Rules. The said rules provides a residuary power for such circumstances where the treatment is not authorised as per the Rules. Under Rule 26 it is the State Government's intention that such non-compliance with Rules shall not prevent the State Government to grant medical reimbursement in respect of deserving persons to whom Medical Attendance Rules apply and where treatment has not been authorised in accordance with Rules.*
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> *……………………………………..*
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> *The matter is required to be looked into and since the factum of treatment is not disputed or denied, the authorities in the circumstances could not have deprived the petitioner benefit of Rule 26 of the Bihar Medical Attendance Rules which provides power to grant concession in respect of such cases where the treatment has been undergone without compliance with the Rules."*

9. This Court while considering the matter in relation to reimbursement of medical claim in the case of ***Maina Devi*** (supra) has reiterated the observation ruled by the Apex Court in case of ***Shiv Kant Jha vs. Union of India [(2018) 16 SCC 187]***, wherein the Court reinforced that the

medical claim is a statutory right incorporated to extend the financial succor to the employee(s) and his/her dependent, in the hour of need and, thus, such right cannot be defeated on mere technicalities. It would be worth benefiting to encapsulate the relevant paragraphs of the decision rendered in ***Shiv Kant Jha*** (supra):-

> "*17. It is a settled legal position that the government employee during his lifetime on after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality hospitals are established for treatment of specified ailments and services of doctors specialised in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in speciality hospital by itself would deprive a person to claim reimbursement solely on the ground that the said hospital is not included in the*

government order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the government order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by doctors/hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

18. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the Central Government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the *scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the abovesaid hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent State that the rates were exorbitant whereas the rates charged for such facility shall be only at CGHS rates and that too after following a proper procedure given in the circulars issued on time to time by the Ministry concerned, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals."*

10. Considering the settled legal position and the admitted fact that the husband of the petitioner had gone for cochlear implant at All India Institute of Medical Sciences, Patna and has incurred expenses which was duly verified and recommended by the Superintendent of PMCH, Patna, the impugned order contained in Memo No. 24/2007/84 dated

25.01.2021(Annexure-8) is hereby set aside. The matter is relegated to the Additional Chief Secretary, Cabinet Secretariat Department, Government of Bihar to re-consider the case of petitioner in the light of the Rule 26 of the Bihar Medical Attendance Rules by invoking the residual power in favour of the petitioner, in accordance with the law, preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

11. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.07.2025
Transmission Date	