IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-01-2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.35621 of 2019
and
WMP.No.36520 of 2019

R.Kathiravan ... 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,
Perambalur 621212
Perambalur District.

4.The District Collector,
Perambalur 621212
Perambalur District.

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the 2nd 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 letter dated 24.05.2019 of the 3rd respondent in his ROC.No.2043/2019/AA2, quash the same and consequently directing the respondents 1 to 3 to reimburse the medical expenses, totalling a sum of Rs.5,72,029/-(Rupees Five Lakhs Seventy Two Thousand and Twenty Nine only) paid by the petitioner for the surgery and medical treatment incurred by his father in the 6th respondent-Apollo Hospital with 9% interest within a reasonable time to the petitioner.

For Petitioner : Mr.P.Chandrasekaran

For Respondents : Mrs.K.Bhuvaneswari
Additional Government Pleader for RR1 to 4

ORDER

By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2.This writ petition has been filed challenging the order passed by the second respondent dated 24.05.2019, disallowing the medical reimbursement incurred by the petitioner towards the expenses incurred by him for the operation undergone by the father of the petitioner and for a consequential direction to the respondents to reimburse the medical expenses.

3.The case of the petitioner is that he is working as an Assistant Agricultural Officer under the State Government and he is contributing towards the New Health Insurance Scheme and according to the petitioner he is entitled for medical reimbursement as and when he incurs medical expenses for himself or his family members.

4.The father of the petitioner was diagnosed with a tumor and therefore, he had to be admitted in the Apollo Specialty Hospitals. The operation was done on 26.09.2018 and the father of the petitioner remained to be an in-patient from 26.09.2018 till 22.10.2018. The petitioner was given a total bill amount for a sum of Rs.5,72,029/- by the hospital and he attempted to claim medical reimbursement. In the meantime, the petitioner himself paid the entire amount to the hospital. The claim made by the petitioner was rejected by an impugned letter of the third respondent dated 24.05.2019, on the ground that the father of the petitioner is not entitled for any medical reimbursement as per the Annexure-I to G.O.Ms.No.202, dated 30.06.2016. Aggrieved by the same, the present writ petition has been filed.

5.Mr.P.Chandrasekaran, learned counsel appearing on behalf of the petitioner submitted that the father of the petitioner will also fall within the definition of a 'Family Member' and therefore, the third respondent was not right

in rejecting the claim made by the petitioner. The learned counsel further submitted that the parent of the petitioner will not cease to be a parent of the petitioner after his marriage and such an understanding of the scheme will defeat the very object of the scheme. The learned counsel brought to the notice of this Court, the earlier orders passed by this Court covering the same issue and submitted that the impugned letter of the third respondent is liable to be quashed and a direction must be given to the respondents to reimburse the medical expenses incurred by the petitioner.

6.Per contra, Mrs.K.Bhuvaneswri, learned Additional Government Pleader appearing on behalf of the respondents 1 to 4 submitted that as per G.O.Ms.No.202 dated 30.06.2016 read with Annexure-I therein, 'Family Members' has been defined in Clause 4(iii). The learned counsel relied upon Clause 4(iii) and submitted that the parents of an employee will be treated as 'Family Member' until the marriage of the employee and not thereafter. The learned counsel submitted that the petitioner is admittedly married and therefore as per the Government Order, only the petitioner, his wife and children will fall within the definition of 'Family Members' and the father of the petitioner will not be covered under the Health Insurance Scheme. The learned counsel further submitted that the third respondent was perfectly right in rejecting the claim made by the petitioner.

7.This Court has carefully considered the submissions made on either side and perused the materials available on record.

8.The object of the Health Insurance Scheme 2016 is to help the employee to tide over the crisis faced by the employee due to a sudden and emergent medical emergency. The Government had thought it fit to appoint the United India Insurance Company Limited (the fifth respondent herein) for the implementation of the scheme and for the disbursement of the medical reimbursement. The scheme itself contemplates the list of hospitals where the employee and his family members can undergo treatment. It becomes important to take note of Annexure-I in G.O.Ms.202, dated 30.06.2016. Under Clause 4 of the Annexure, 'Family members' are defined. Clause 4(iii) states that the parents of the employee will also be covered only till the employee remains unmarried. The said Clause, if it is read literally, on the face of it, sounds illegal and illogical. The parents of an employee will not cease to be parents after the marriage of the employee. Unfortunately, even though this society is moving towards a state where the parents are disregarded after marriage, this Court does not expect the Government to give a similar treatment for the parents of employees, who get married. This Clause cannot be read in isolation and it cannot be given a literal meaning, since it will end up with disturbing consequences. The only way to read this Clause is that the parents will continue to be treated as family members till they continue to be the dependants of the Government employee. If this Clause is

not assigned this meaning, the poor parents will be left in lurch during the evening of their life and more particularly, considering the cost of medical care that is prevailing at present. Therefore, the real purport of this Clause is that the parents of the employee must continue to be the dependants of the employee and in which case they will also fall within the definition of 'Family members'.

9.It will also be relevant to rely upon the judgment cited by the learned counsel for the petitioner in this regard. This Court in W.P.(MD).No.4117 of 2018 dated 21.03.2018 passed an order on similar facts and the same is extracted hereunder:

> *"The petitioner is working as Salesman in a liquor outlet run by TASMAC. He is a regular employee. He is a member of the Medical reimbursement scheme introduced by TASMAC. The petitioner's father underwent a Lung surgery. When a claim for reimbursement was made, it was denied on the only ground that the petitioner got married and that therefore his father cannot be a beneficiary.*
>
> *2.This ground of rejection was specifically frowned upon by this Court in W.P.(MD)No.7365 of 2010 dated 26.07.2011. Therefore, the order impugned in this writ petition is quashed. The second respondent is directed to process the petitioner's medical reimbursement claim and effect settlement in terms of the scheme announced by the TASMAC for its employees. The medical reimbursement shall be done within a period of 8 weeks from the date of receipt of a copy of this order."*

9.The above order was taken on appeal before the Division Bench in W.A.No.1472 of 2018 and the Division Bench by an order dated 24.10.2018 dismissed the appeal. The relevant portion in the order is extracted herein:

> *"3.The learned counsel appearing for the appellants would submit that a reading of the aforesaid Rule would make it clear that only the 'wife and children' of a male working employee are entitled for the benefit under the scheme, as they alone come within the purview of "family". In support of his contention, the learned counsel has made reliance upon the following decisions:*
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> *(i) (1998) 2 SCC 554 [State of M.P. and others Vs. M.P.Ojha and another;*
> *(ii) (1991) 3 SCC 11 [Union of India and others Vs. Tejram Parashramji Bombhate and others]*
> *(iii) (2006) 4 MLJ 1183 [K.Sundararaj Vs. Management of Tamil Nadu State Transport Corporation (Madurai), Ltd., Madurai, rep.by its Managing Director, Bye-pass Road, Madurai.*
>
> *4.The learned counsel appearing for the respondents would submit that the submission of the learned counsel for the appellants on the construction of the Rule, is not correct. One has to see the object of the Rule. A restrictive interpretation cannot be given to the word "family". It merely says the other categories to be included. Thus, there is no exclusion of the father from the definition. Therefore, no interference is required. It is further submitted that any restricted interpretation, would go against the very object of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which mandates a son to maintain the aged parents. The learned counsel further submitted that Section 3 of the aforesaid enactment deals with, the act to have overiding effect on the provisions of any other enactment, which is inconsistent. The learned counsel seeks support from Section 20 of the aforesaid enactment, which provides for medical support for senior citizens by the State Government.*
>
> *5.The Rule is meant for public purpose. Therefore, a literal interpretation cannot be adopted for understanding it. As rightly submitted by the learned counsel appearing for the respondents, the Rule does not specifically exclude a dependant parent. When we interpret the word 'include', it can adverse the illustration in*

nature. To put it differently, such definition does not exclude any other category. Therefore, when the definition "family" is mentioned to include the wife and children, it cannot be stated that it excludes dependant parent. There cannot be a different yardstick that has to be adopted for a married son and an unmarried son. The question is with respect to the dependency of the parent which has got no rationale with the status of the son. After all, as per the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, a son is the duty bound to maintain the dependant parent. Though Section 3 of the aforesaid enactment has got an overriding effect, we have to read the said provision along with other provisions of different Rules and enactments by way of purposive interpretation. Even under the Hindu Law, there is an implicit obligation upon the son to maintain the dependant parent. Thus, the contention of the learned counsel for the appellants cannot be sustained.

6.Coming to the decisions relied upon by the learned counsel appearing for the appellants, in our considered view that there is no applicability to the case on hand. In fact, the decision rendered in ***(1998) 2 SCC 554 [State of M.P. and others Vs. M.P.Ojha and another]****, helps the case of the respondents. It is apposite to refer paragraph 13 of the said judgment, which reads as under:*

13.The expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to he applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would likely to lead to results which the relevant Rules would not have contemplated. The expression "wholly dependent" has to be understood in the context in which it is used keeping in view the object of the particular Rules where it is contained. We cannot curtail the meaning of "wholly dependent" by reading into this the definition as given in SR 8 which has been reproduced above. Further, the expression "wholly dependent" as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of family it would mean other support, may be physical, as well. To be "wholly dependent" would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and was sick and it could not be said that he was not wholly dependent on his son. Son has to look after him in his old age. Even otherwise by getting a pension of Rs.414 per month which by any standard is a paltry amount it could not be said that the father was not "wholly dependent" on his son. That the father had a separate capacity of being a retired Government servant is immaterial if his case falls within the

Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the Rules in a ease like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It was submitted before us that the father being a retired Government servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter as we are satisfied that under the relevant Medical Rules, the father was member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other traveling expenses.

7.From the above, one can say that it is still open to the appellants to reject a request for reimbursement, if they are satisfied that a parent is not a dependant. Secondly, in the aforesaid judgment, the Hon'ble Apex Court was dealing with the provision which defines a "family". There is a difference between the words "omits" and "includes". Hence, the aforesaid judgment cannot be read in support of the contention of the learned counsel appearing for the appellants.

8.The judgment rendered by the Hon'ble Apex Court in the case of Union of India and others Vs. Tejram Parashramji Bombhate and others reported in (1991) 3 SCC 11, also does not have an application. The facts are totally different in the said case. The respondent therein sought for regularisation,which was rejected. Much reliance has also been made on the decision of the learned Single Judge in the case of K.Sundararaj Vs. Management of Tamil Nadu State Transport Corporation (Madurai), Ltd., Madurai, rep.by its Managing Director, Bye-pass Road, Madurai, reported in (2006) 4 MLJ 1183. With due respect to the learned Single Judge, we are unable to agree with the reasoning rendered therein, particularly in the light of the reason furnished above. After all, we are dealing with the Rule, which is meant to help the members of a family in an employee and thus, requires a purposive interpretation.

9.This writ appeal is dismissed accordingly. However, we make it clear that it is still open to the appellants to consider the matter on merit and if they are satisfied that the parent of the first respondent is not dependant, then, it is open to them to reject the claim of reimbursement. No costs. Consequently, CMP(MD)No.10479 of 2018 is closed."

10.The above judgment of the Division Bench makes it clear that the parents will also be a part of family members of the employee provided that they are also dependant on the employee. This judgment will also squarely apply to the facts of the present case.

11.In view of the above discussion, this Court has no hesitation to interfere with the impugned letter of the third respondent dated 25.04.2019 and accordingly the same is quashed. There shall be a direction to the third respondent to re-consider the claim made by the petitioner and after satisfying himself that the father of the petitioner is dependant on the petitioner, the third respondent shall reimburse the medical expenses incurred by the petitioner for the surgery of his father, within a period of four weeks from the date of receipt of copy of this order. The petitioner is directed to make a fresh representation to the third respondent along with a copy of this order.

12.This writ petition is accordingly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.01.2020

Speaking Order.
Index : Yes.
Internet : Yes.
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To

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