(2024) 09 PAT CK 1122

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.10889 of 2021

Alok Kumar APPELLANT

Vs

State of Bihar And Others RESPONDENT

Date of Decision : 24-09-2024

Acts Referred:

Constitution Of India, 1950 — Article 12
Bihar Medical Attendance Rules, 1947 — Rule 26

Citation : (2024) 09 PAT CK 1122

Hon'ble Judges : Harish Kumar, J

Bench : Single Bench

Advocate : Madhu Prasun, Jitendra Kumar, Shailendra Kumar Singh, Utkarsh Utpal

Final Decision : Disposed Of

Judgement

Harish Kumar, J

1. Heard learned Advocate for the petitioner and learned Advocate for the Bihar State Food and Civil Supplies Corporation Limited (hereinafter referred to as ‘Corporation’).

2. The petitioner has preferred the writ petition by invoking the prerogative writ jurisdiction seeking a direction upon the respondent Corporation to ensure payment of Rs.4,77,469/- with 18% interest along with appropriate compensation against his earned leave which could not be paid to the petitioner, irrespective of the fact that the petitioner superannuated in the year 2016 itself from the post of Assistant Manager of the Corporation. The petitioner has also prayed for arrears of salary for the different period as well as reimbursement of his medical bill to the tune of Rs.4,21,337.75/- along with statutory interest.

3. Learned Advocate for the petitioner adverting to the averments made in the writ petition as well as the counter affidavit contended that though belatedly but during the pendency of the writ petition substantive amount under the head of

leave encashment as well as arrears of salary for the period of suspension have been paid to the petitioner but without any interest.

4. It is further contended that till date the petitioner has not been paid his bill for medical reimbursement to the tune of Rs.4,21,337.75 by negating the claim of the petitioner that the provision for medical reimbursement as applicable at the relevant time clearly stipulates that "the total actual expenditure incurred over by the employees for his/her own treatment and/or his/her dependents at the AIIMS, New Delhi/Christian Medical College, Vellore or to pay a total sum of Rs. 50,000/- whichever is less subject to the reference by the Medical Board of the State Government." Learned Advocate for the petitioner also drew the attention of this Court to the medical bills and the discharge summary, as has been brought on record by way of Anneuxre-1 to the writ petition, suggesting that the petitioner had undergone cardiac surgery at Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow in its Cardiology Department on 09.07.2013 and 30.07.2013, whereafter he was discharged on 31.07.2013. The entire medical expenses was incurred to the tune of Rs.4,21,337.75/-. The aforesaid Institution is a Government Institution and non consideration of the bills submitted by the petitioner for medical reimbursement is wholly illegal and arbitrary; is the contention of the learned Advocate for the petitioner.

5. Learned Advocate for the Corporation countering the afore-noted submission and adverting to Annexure-A to the counter affidavit submitted that since the petitioner has unuathorisedly got his treatment done outside the State of Bihar without taking sanction of the competent authority and no bill has been produced in the prescribed format, the claim of the petitioner was rejected.

6. Before parting with the final outcome, the facts as narrated in the writ petition, make it clear that it was undoubtedly a case of emergency which compelled the petitioner to rush to Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow to have undergone cardiac surgery. This Court on various occasions while dealing with Rule 26 of the Bihar Medical Attendance Rules, 1947 which empowers the Government to grant concession relating to medical attendance for treatment held that the rule does not even arbitrarily suggesting that the treatment in a private hospital outside the State of Bihar is impermissible. On the contrary, it supports the case of the employees and confers wide power on the State Government to give medical benefits not indicated elsewhere in the rules. The learned Court having reiterated the mandate of the earlier decision in CWJC No. 9038 of 2000 (Arvind Prasad vs. State of Bihar) has observed that the difference in treatment within the State of Bihar and out side the State from financial angle, is primari1y one of travelling expenses payable according to the official standing of the employees along with one companion. For such a trivial matter as travelling expenses, the State Government is at war with its employees of the category of "lesser mortals." If the same hospital of outside had set-up branch in Patna, the expenses for such medical treatment would be the same and prior permission may not have been

required, travelling expense making the entire difference. [vide 2008(2) PLJR 182, Lal Bahadur Gupta v State of Bihar]

7. A Bench of this Court while considering the identical issue with regard to rejection of the claim of an employee for reimbursement of medical bills on account of non-obtaining prior permission before moving outside the State, has held that the respondents have taken heartless approach in rejecting the reimbursement bills of the deceased employee mechanically on the arbitrary grounds. Learned Court referring to the earlier decisions in the case of (i) Ran Vijay Kr.Singh Vs. State of Bihar, 2010(1) PLJR 369, (ii) Lal Bahadur Gupta Vs. State of Bihar, 2008(2) PLJR 182 (iii) Md. Ahad Raza Vs. State of Bihar, 2008(1) PLJR 337 and (iv) Biresh Chandra Chatterji Vs. State of Bihar. 2008(1) PLJR 394, has held as follows:

"Judgments in the aforesaid cases will show that this Court has repeatedly insisted that the discretion available to the respondents under Rule 26 of the Rules must be exercised by them on equitable and humanitarian grounds. It has been made clear that if the ailment and the treatment obtained by the concerned Government employee is found to be essential, urgent and genuine, discretion must be exercised in their favour. It has been noticed that by unnecessarily keeping the bills pending, compelling the Government employees to move thisCourt where orders are passed for release of the entire admitted amount with interest, burden is put on the public exchequer also as the interest has to be paid from public exchequer without actually fixing responsibility on someone for such delay. This Court need not repeat the observations and concern of the Benches in the judgments passed earlier."

8. This Court has gone through the response made on behalf of the Corporation, which comes under the definition of the State under Article 12 of the Constitution of India, there is no denial with regard to the urgency, genuineness or requirement of said treatment to the petitioner. The only stand in the counter affidavit is that the petitioner had not obtained prior sanction and at the relevant point of time the total actual expenses incurred over by the employee for his/her own treatment shall not exceed Rs.50,000/-. This Court has been apprised that the statement to this effect, as has been averred in the counter affidavit by the Corporation, is apart from misleading based upon the Circular of the year 1994. The aforesaid ceiling has been subsequently extended to Rs.2,00,000/- to be given immediately and any amount in excess to that shall be sent to the Board for decision with regard to the reimbursement. In support of the aforesaid contention, the petitioner has brought on record the noting and the official order.

9. The office order as contained in Memo No. 29 dated 02.01.1917 issued by the order of the Managing Director, Bihar State Food and Civil Supplies Corporation under the signature of Chief Finance also reveals that the Board of Directors in its 148th meeting resolved that the Managing Director shall have the power to reimburse the medical bill up to Rs,3,00,000/- and any amount in excess to that shall be sent to the Board for decision. This Court is not oblivious of the fact that

the aforenoted office order was issued on 02.01.2017 but this fact has never been controverted that the Board of Director has always been empowered to consider the amount in excess to what was sent to the Board for decision with regard to the reimbursement.

10. In the aforesaid facts and circumstances and the position obtaining in law, this Court finds substance in the writ petition. The reason assigned for negating the claim of the petitioner for medical reimbursement is not only arbitrary and unsustainable in law but also speaks about indifferent attitude and apathy on the part of the employer towards its employees who have/had been discharging their duties to the best of their ability for the continuous growth of the Corporation. It would be noteworthy that it is always a matter of satisfaction of patient to get the best possible treatment of his ailment, of course subject to financial limitation. Question of urgency is also not involved when the treatment involves complicated heart surgery involving considerable expenditure.

11. In view thereof, this Court condemning the action of the respondent Corporation, is left with no option but to direct the respondent no. 3 to consider the claim of the petitioner for payment of medical reimbursement in the light of the observations made hereinabove and ensure reimbursement of medical bills, preferably within a period of 12 weeks from the date of receipt/production of a copy of this order. Any delay in ensuring reimbursement of the medical bills beyond the period stipulated hereinabove shall carry an interest of 8% over the actual amount till the payment is made.

12. The writ petition stands disposed of with the aforesaid directions.

