
(2013) 04 BOM CK 0144
In the Bombay High Court
Case No : Writ Petition No. 8899 of 2012

Anil Dattatraya Kulkarni

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : (2013) 5 ABR 717 : (2013) 6 ALLMR 804 : (2013) LabIC 3612 : (2014) 1 MhLj 667

Hon'ble Judges : V.M. Kanade, J;F.M. Reis, J

Bench : Division Bench

Advocate : Rahul S. Kadam, for the Appellant; S.K. Shinde, Government Pleader, for the Respondent

Judgement

V.M. Kanade, J.—Rule. Rule is made returnable forthwith. Respondents waive service. By consent of parties Petition is taken up for final hearing. Heard the learned counsel appearing on behalf of the petitioner and the learned Government Pleader appearing on behalf of the State.

2. By this petition which is filed under Article 226 of the Constitution of India, the petitioner is challenging the validity of Rule 2(3)(Seven) of the Maharashtra Civil Services (Medical Attendance) Rules, 1961 and the GR./Circular dated 11/11/2011 being (Vernacular matter omitted.) as ultra virus to the said Rules and the provisions of the Constitution of India, 1950. The petitioner is further seeking an appropriate writ, order and direction for quashing and setting aside the decision/letter dated 30/1/2011 passed by respondent No. 2 and also for setting aside the order and decision dated 27/2/2012 taken by the respondents and communicated to the petitioner by the District and Sessions Judge, Ahmednagar at Ahmednagar. He is further seeking an appropriate writ, order and direction directing respondent Nos. 1 and 2 to disburse the amount which has been spent by him towards the medical treatment of his mother.

3. Brief facts which are relevant for the purpose of deciding this petition are as under:--

4. The petitioner is working as Judicial Officer and has posted as Civil Judge, Senior Division, Kolhapur at Kolhapur. The petitioner's mother Smt. Nirmala Dattatray Kulkarni, at the time of filing of the petition, was 85 years old and suffering from various ailments such as Chronic Obstructive Pulmonary disease with left ventricular failure and had to be hospitalized in the year 2011-2012 and various procedures had to be performed in order to cure her of those ailments. The petitioner's mother was also required to take routine medical check-up and as a result of this, the petitioner had to pay for her medical bills since 2009 till filing of the petition. During the pendency of the petition, however, the petitioner's mother has expired.

5. At the time of filing of the petition, the petitioner's mother was getting pension of Rs. 7,983/- p.m. It is contended that the said amount was totally insufficient for the medical expenses incurred for her treatment.

6. It is contended by the petitioner that in the month of March, 2012, he submitted various bills in respect of the said medical expenses incurred for his mother's medical treatment to the Hon'ble District & Sessions Judge, Ahmednagar at Ahmednagar since at the relevant time he was working as Civil Judge, Senior Division in Ahmednagar District.

7. The Hon'ble District and Sessions Judge, Ahmednagar, however, refused to sanction the bills by relying on the Government Resolution dated 20/2/2003. The petitioner, on account of the refusal to grant sanction, sent a letter to respondent No. 2, Secretary of Law and Judiciary, Mantralaya, Mumbai seeking a direction to set aside that order and to reimburse the said medical expenditure incurred on his mother. Respondent No. 2, however, informed the District & Sessions Judge, Ahmednagar that in view of the Government Resolution/Circular dated 11/11/2011, since the petitioner's mother was getting basic pension of Rs. 3,500/- per month, he is not entitled to get the medical reimbursement of his mother. The said decision of respondent No. 2 was communicated to the petitioner by the District and Sessions Judge, Ahmednagar by his letter dated 27/2/2012. The Petitioner again made a representation dated 18/4/2012 to the District and Sessions Judge, Ahmednagar. However, no further reply was given by the District and Sessions Judge. Being aggrieved by the aforesaid order passed by respondent No. 2 and by the District and Sessions Judge, Ahmednagar, the petitioner has filed this petition under Article 226 of the Constitution of India.

8. The learned counsel appearing on behalf of the petitioner contended that the petitioner's mother was wholly dependent on him. It is submitted that the word "wholly dependent" includes both, physical and financial dependence. It is submitted that the distinction which is sought to be made by the respondents that since the mother of the petitioner was getting pension, she could not be said to be wholly dependent on the petitioner is erroneous. It is submitted that Rule 2(3)(Seven) of the said Rules, 1961 to that extent is therefore ultra virus the provisions of Rule 2(3) (Three) and also ultra virus to the provisions of the

Constitution of India. It is contended that for the same reason, the said G.R. dated 11/11/2011 is also ultra virus the said Rules as also the Constitution of India.

9. The learned counsel appearing for the petitioner has invited our attention to the relevant Rules and G. Rs. Passed by the State Government from time to time. He has also invited our attention to the provisions of Rule 2(3)(Three) and Rule 2(3)(Seven) and also the impugned G.Rs. which have been passed by the State Government from time to time. The learned counsel for the petitioner has relied upon the following judgments.

(1) State of M.P. and Others Vs. M.P. Ojha and Another, .

(2) Nand Rani, Principal, Govt. Sr. Sec. School Vs. The State of Punjab and Others, .

(3) Smt. Bhagwanti Vs. Union of India (UOI), .

(4) Union of India (UOI) and Others Vs. Smt. Shyama Malhotra and Another, , Judgment of Delhi High Court decided on 7/9/2007.

10. On the other hand, Shri S.K. Shinde, the learned Government Pleader appearing on behalf of the State has firstly submitted that the ratio of the judgment in State of M.P. & Ors v. M.P. Ojha & another (supra) is not applicable to the facts of the present case. Secondly, he submitted that Rule 2(3)(Seven) of the said Rules is supplementary to Rule 2(3)(Three) of the said Rules and there is no conflict between the said two Rules. He submitted that Rule 2(3)(Three) defines family which includes father and mother of the Government Servant who are wholly dependent on him. He submitted that Rule 2(3)(Seven) prescribes the income limit of the parents and divorced sister of the Government Servant. He submitted that initially the limit was Rs. 500/-. The said limit was enhanced to Rs. 3500/- vide Government Resolution issued by Public Health Department bearing No. (Vernacular matter omitted.) dated 11/11/2011. He submitted that, therefore, by virtue of the said Rules, only those parents whose basic pension is below Rs. 3,500/- are eligible for the purpose of getting medical reimbursement of their bills. It is then submitted that the Finance Department vide Government Resolution dated 5th May, 2009 revised the pension which was payable to State Government pensioners from 1st January, 2006 and revised the income limit from Rs. 1500/- to Rs. 3500/-. It is therefore submitted that the Petitioner had incurred the expenses for the medical treatment of his mother during the period 2009 to 2012. It is submitted that the Petitioner's mother was getting family pension of Rs. 7,983/- which is higher than the prescribed limit under Rule 2(3) (Seven) of the said Rules. It is, therefore, submitted that the State has rightly rejected the claim of the Petitioner after taking into consideration the provisions of the said G.R. dated 11/11/2011.

11. Before taking into consideration the rival submissions, the factual position has to be taken into consideration. It is not in dispute that at the time of filing of

the Petition, Petitioner's mother Smt. Nirmala Kulkarni was 85 years old and was suffering from various ailments and required regular hospitalization and medical check-ups. The Bills which have been submitted claiming reimbursement are not disputed by Respondents. The Bills which have been annexed to the Petition clearly indicated that Petitioner's mother was suffering from heart ailment and was required to be admitted in the hospital on number of occasions and had to be operated. The Chart of amounts spent by the Petitioner on his mother which is not disputed shows that the Petitioner's mother was hospitalized from 18/4/2011 to 06/04/2012 and she was given treatment from 28/11/2009 to 6/4/2012 and the total amount spent on medicines during this period was Rs. 12,543/- where as the amount spent for hospitalization and for treatment in the hospital comes to about Rs. 6,14,046/-, the total expenses incurred being Rs. 6,26,589/-

12. The mother of the petitioner was staying with him till she expired and she was getting pension of about Rs. 7,983/- per month which included basic pension plus DA. The application for reimbursement made by the petitioner was rejected on the ground that Clause (Seven) of sub-rule (3) of Rule 2 of the Maharashtra State Civil Services (Medical Attendance) Rules 1961, excluded a person who was getting the pension above Rs. 3500/-. It is contended by the respondents that since the pension which was received by the petitioner's mother was Rs. 7,983/-, petitioner was not entitled for reimbursement on account of the said Rule 2(3) (Seven) read with GR dated 11/11/2011. Sub-rule (3) of Rule 2, defines what is family. In the said Rules it is stated as under:--

1.....

2....

(3) "Family" means

(One)....

(Two)....

(Three) wholly dependent father and mother of the Government employee.

Note: In the case of female Government employee, she would be entitled to choose either her own father and mother who are staying with her or her father-in-law or mother-in-law.

Clause (Seven) of sub-rule (3) of Rule 2, however, clarifies Clause (Three) of sub-rule (3) of Rule 2 and it reads as under:--

(Seven) Father and mother of the Government employee who received pension as also a divorced sister whose total income is not more than Rs. 500/- per month would be considered wholly dependent.

The said limit of Rs. 500/- was further enhanced by Government Resolution dated 11/11/2011 bearing No. (Vernacular matter omitted.) to Rs. 3500/- basic.

13. The learned counsel appearing on behalf of the petitioner contended that the said Clause (Seven) is ultra vires to Clause (Three) of sub-rule (3) of Rule 2 and the provisions of the Constitution of India.

14. There is no substance in the said submission. The said Clause (Seven) obviously excludes those parents or divorced sister whose income is above Rs. 3500/-. The intention of the legislature obviously is to exclude such parents, sister who have sufficient income to look after themselves. Therefore, it cannot be said that Clause (Seven) is ultra vires to Clause (Three) of sub-rule (3) of Rule 2. However, in our view, the said Clause (Seven) has to be interpreted in the context of the purpose for which Clause (3) of sub-rule (3) of Rule 2 was framed and the purposive interpretation has to be given to the said provision. In a similar case in State of M.P. and Others Vs. M.P. Ojha and Another, the Apex Court had an occasion to consider the analogous Rules which were framed by the State of Madhya Pradesh. In the said case, the Government servant's father was 70 years of age and was sick. The son had to look after him in his old age. He was getting pension of Rs. 414/- per month. The son had to take his father to Bombay for treatment for his serious ailment after taking permission from the competent authority. The application made by the son for medical reimbursement was rejected. The Petitioner moved the Madhya Pradesh Administrative Tribunal which held that father of the Government Servant was wholly dependent on his son and the son was entitled to reimbursement of medical expenses incurred on the treatment of his father under the relevant M.P. Civil Services (Medical Attendance) Rules, 1958. The said Rules are more or less identical to the Rules framed by the State of Maharashtra. The Apex Court in the said case interpreted the expression "wholly dependent". The Apex Court observed that flexible approach had to be adopted in interpreting and applying the Rules in a case. It would be profitable to take into consideration the observations made by the Apex Court in the said case in para 13, 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 be 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 (sic SR2(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 case 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.

(Emphasis supplied)

From the aforesaid observation made by the Apex Court, it is abundantly clear that purposive interpretation has been given by the Apex Court to the said Rules and it has been observed that expression "wholly dependent" cannot be confined to mere financial dependence. In our view, ratio of the said judgment squarely applies to the facts of the present case.

15. Punjab & Haryana High Court in *Nand Rani, Principal, Govt. Sr. Sec. School Vs. The State of Punjab and Others*, has followed the ratio of the Judgment of the Apex Court in *State of M.P. and Others Vs. M.P. Ojha and Another*, . The learned single Judge Swatanter Kumar, J. (as he then was)) observed in the said case in paras 9 and 10 as under:--

9. The importance of public health in a democratic society was accepted by the Hon"ble Apex Court in the case of *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, where the Court accepted protection to health to include care for health and being fully protected under Article 21 of the Constitution of India which casts an obligation upon the State to provide such protection under Article 47 of the Constitution of India and held as under:--

The right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt Government is rendering this obligation by opening Government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, reduce the queue of waiting lists, and it has to provide all facilities for which an

employee looks for at another hospital.

Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment, investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority.

10. The controversy in the present petition does not require any detailed discussion, as it squarely has been answered by the Hon"ble Court. The material controversy is no more *res integra* and is answered in favour of the petitioner by the Hon"ble Supreme Court in M.P. Ojha's case (*supra*). In this case, father of a Government servant, who had retired from Government service, aged about 70 years was sick and treatment (*sic*) and had raised the claim for reimbursement under this relevant rules. Similar plea was taken that father was getting pension of Rs. 414/- per month and thus he was not dependent upon the Government employee. Repelling this contention, the Hon"ble Supreme Court held as under:--

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. 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. Court cannot curtail meaning of "wholly dependent" by reading into this the definition as given in Rule 8 framed under Rule 9(32).

In instant case the father of Government servant who himself has retired as Government servant 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. Therefore, under Rule 2(d) of M.P. Medical Rules the father is member of family of his son and is wholly dependent on him and son was thus fully entitled to reimbursement for expenses incurred on treatment of his father and other traveling expenses.

Similar view has been taken by Delhi High Court in Union of India (UOI) and Others Vs. Smt. Shyama Malhotra and Another, . In the said case, the words "mainly dependent" mentioned in CGHS Rules were interpreted by the Delhi High Court. In this context, Delhi High Court has observed in paras 13 and 14 as under:--

"13. A reading of the above clause shows that parents who are "mainly dependent" and residing with the Government servant concerned are treated as "family" for the purpose of the CGHS. The term "mainly dependent" however is not defined and elaborated upon. The second part of Clause 26(1) incorporates a deeming clause and parents, sisters, widowed sisters, widowed daughters, minor brother and children are deemed to be dependent on the Government servant, if they are residing with the Government servant and then-income from all sources including pension is less than Rs. 1500/- per month. A deeming provision however will not curtail the scope and ambit of the term "mainly dependent" in the first part of Clause 26(1). Scope and object of a deeming provision, is to expand and bring within the ambit of the main provision, that which may not form part of the main provision. "When a statute gives a definition and then adds that certain things shall be "deemed" to be covered by the definition, it matters not whether without that addition the definition would have covered them or not" (as per Lord President Co-oper in Ferguson V. McMillan, 1954 S.L.T. 109). It is difficult to hold that the deeming part of Clause 26 has the effect of restricting or curtailing the natural and general meaning of the term "mainly dependent" as we commonly understand in a reasonable manner.

14 The word "mainly" has been defined in Shorter Oxford Dictionary as "for most part, chiefly, principally". The said common and general meaning of the word "mainly" has been accepted by the Supreme Court in Swaran Lata Vs. Union of India and Others, . A Division Bench of this Court in Govind Dass and Others Vs. Kuldip Singh, , has held that the word "dependent" is not restricted to mere financially dependency but comprehensive enough to include persons who are dependent on the landlord for residential accommodation for the purpose of Section 14(1)(e) of the Delhi Rent Control Act, 1958. It was observed as under:

...The term must be construed as meaning somebody not wholly independent or self-supporting and in a position to set up separate residence. Dependence may not in all circumstances be entirely a matter of finance and.... To our mind this interpretation, if accepted, would tend to restrict the meaning of the word "dependant" to a person being financially dependant. In the socio-religious structure of Hindu society it is common for all the members of a family of brothers to live together while some men folk in the family may go out of town to earn a livelihood and even remit their earnings to the family. One cannot shut one's eyes to this structure of our society and so to give a restricted meaning to the word "dependant" would be to provide a definition of this word which the legislature has advisedly chosen not to do so....

16. In our view, the Apex Court, Punjab & Haryana High Court and Delhi High

Court have, therefore, given a purposive interpretation to the said words "wholly dependent" and allowed the application for medical reimbursement. Ratio of the said judgments squarely applies to the facts of the present case. The contention of the learned Government Pleader appearing on behalf of the State, therefore, cannot be accepted. The Petitioner's mother was 85 years old. She was both, physically and financially dependent on him. The said pension was wholly inadequate to meet her medical expenses. It has to be borne in mind that purpose of incorporating the said Clause (Seven) is to ensure that those parents or divorced sister who are physically fit and financially self-sufficient should not be allowed to take advantage of the fact that they are residing with the Government servant and under that pretext the Government servant should not be allowed to claim reimbursement of medical expenses. In this case, in our view, the Respondents erred in rejecting the application made by the Petitioner for medical reimbursement. In the result, the impugned order is set aside and the Petition is allowed in terms of prayer clauses (C) and (D). Rule is made absolute accordingly.