

(2223) 10 CHH CK 0005

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 4622 Of 2020

Ashok Choudhary

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 04-10-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 309
Chhattisgarh Civil Services (Medical Attendance) Rules, 2013 — Rule 2(1)(a), 3(d),
3(d)(ii), 3(d)(v), 3(j)

Citation : (2223) 10 CHH CK 0005

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : Sunil Pillai, Ruchi Nagar

Final Decision : Allowed

Judgement

1. Petitioner has filed this writ petition aggrieved by the order dated 8.9.2020 rejecting claim of petitioner for reimbursement of medical bills of Rs.3,77,298/- incurred by petitioner in treatment of his mother on the ground that income of mother of petitioner is more than Rs.3,050/- per month.

2. Facts relevant for disposal of this writ petition are that the petitioner is working as 'Head Constable' in the Police Department. Mother of petitioner due to her suffering with severe knee pain, underwent surgery in Sarwa Trauma Hospital, Raipur on 23.5.2020. She was discharged from hospital on 1.6.2020. Bill towards treatment was of Rs.3,52,000/-, which was paid by the petitioner. Some medicines were also purchased during treatment of mother of petitioner, which made total medical expenses as Rs.3,77,298/-. On 25.8.2020 petitioner submitted an application supported with affidavit for medical reimbursement of aforementioned aggregated amount. Claim of petitioner for medical reimbursement was rejected on the ground that petitioner is not eligible to get the amount reimbursed incurred by him on the treatment of his mother as she is having monthly income of more than Rs.3,050/- from pension. This made

petitioner to file this petition seeking following reliefs:-

"10.1.To call for entire records pertaining to petitioner's case for kind perusal of the Hon'ble High Court.

10.2. To quash the impugned order dated 08.09.2020 (Annexure P/5).

10.3. To direct respondents to reimburse to the petitioner an amount of Rs.377298/- as claimed by him for medical reimbursement along with interest @ 10% p.a.

10.4. To grant any other relief deemed fit and proper in facts and circumstances of the case."

3. Learned counsel for the petitioner submitted that the mother of petitioner is residing with petitioner and is fully dependent on him. As per service rules, the parents of a government employee are also included in the definition of 'family' for the benefits of free medical treatment. Claim of petitioner was rejected in a very casual and arbitrary manner only taking note of the Explanation appended to the definition of 'family' given under Rule 3 (d) of the Chhattisgarh Civil Services (Medical Attendance) Rules, 2013 (for short 'the Rules of 2013'). It is contention of the learned counsel for the petitioner that mother of petitioner gets meagre amount of Rs.6,500/- towards monthly pension, which is being expended in purchase of her routine medicines which she has to take for her old age sufferings leaving no savings to meet out expenditure of surgery as inpatient. He contended that respondent authorities have overlooked that medical expenditure of Rs.3,77,298/- incurred in treatment and surgery of petitioner's mother cannot be met out from the meagre amount of pension which mother of petitioner is getting. Relying upon the decision in the case of State of Madhya Pradesh vs. MP Ojha, reported in AIR 1998 SC 659, he submits that the word 'dependent' used in the definition of 'family' under the Rules of 2013, includes both financial and physical. Mother of petitioner is physically and financially dependent upon the petitioner and therefore, the petitioner is entitled for reimbursement of medical bills. Denial of medical reimbursement to petitioner for treatment of his mother aged about 68 years, is violative to Articles 14 & 21 of the Constitution of India. Dependency cannot be only financial but element of dependence also ways equally when the factor of dependency is to be judged. Order dated 8.9.2020 rejecting claim of medical reimbursement is liable to be quashed. He also placed reliance on the order dated 12.10.2015 passed by Division Bench of this Court in WPS No.3244/2015.

4. Learned State Counsel opposing submissions of learned counsel for the petitioner, would submit that petitioner being employee of the Police Department is a government servant. Reimbursement of medical expenses for government employees governs by the Rules of 2013. Mother of petitioner being a pensioner getting pension to the tune of Rs.6,500/- is not entitled for benefit of free medical treatment in view of the Explanation appended to Rule 3 (d) of the Rules of 2013 defining the word 'family'. Benefits are to be extended as per the Rules

framed, which are statutory in nature being framed in exercise of powers under Article 309 of the Constitution of India. She also raised a ground that petitioner has not submitted application before the Competent Authority in Form 'A' of the Chhattisgarh Pensioner Welfare Funds Rules, 1997 and as such, the petition is having no merits and it is liable to be dismissed. It is also submitted by learned State Counsel that in view of pleadings made in written statement submitted on 25.1.2021 that proposal was made for enhancement of amount of monthly income from Rs.3050 to Rs.9000/-, this Court directed to bring on record the development on the proposal so made to the State Government and vide letter dated 4.10.2021 the authority concerned sent intimation that no instruction has been issued for enhancement of maximum limit of income.

5. I have heard learned counsel for the parties and perused the documents placed in record of writ petition.

6. Indisputably, claim of petitioner is rejected considering the provisions of the Rules of 2013. In reply submitted on behalf of the State also the pleading is that petitioner is not entitled for reimbursement of medical bills paid by him for treatment/surgery of his mother in view of Explanation appended to Rule 3 (d) i.e. definition of 'family'.

7. It is not in dispute that the petitioner being employed as Head Constable in the Police Department is a government servant. Petitioner submitted medical bills of treatment of his mother for reimbursement. Mother of petitioner is a pensioner getting family pension of Rs.6,500/- per month. The State Government formulated the Rules of 2013, which came into force on 3.4.2013 i.e. the date on which it was published in official gazette. The Rules of 2013 are framed in exercise of powers under Article 309 of the Constitution of India conferred by the Governor of Chhattisgarh. Scope of application of the Rules, as provided under Rule 2 (1) (a), is to all the government employees under the control of the State Government when they are on government duty or on deputation or under training or on leave or under suspension or posted outside the State of Chhattisgarh. The word 'family' is defined in Rule 3 (d) of the Rules of 2013, which includes 'parents' along with other members of family as dependent of government employee. Explanation appended to Rule 3 (d) is material and therefore, the same is extracted below for immediate perusal:-

"Explanation- For the purpose of this rule, the members of the family shall be deemed to be "wholly dependent" on the Government servant, if are ordinarily residing with the said Government servant and the total monthly income of the said family member is Rs.3050 (three thousand fifty rupees) and does not exceed the pension and dearness allowance admissible to the pensioners of the State Government on the date of consideration.

8. Though in the above quoted Explanation, the member not having income more than Rs.3,050/- and not exceeding pension and dearness allowance admissible to the pensioners of the State Government on the date of consideration, are treated

as 'wholly dependent' on the government servant.

9. Under the definition of 'family' in Rules of 2013, the pensioner parents if require specialized treatment, is included in the family and relevant provision which is specified under Rule 3 (d) (ii) & (v) is extracted below for ready reference:-

"(ii) employee's parent, minor son, unmarried daughter, in which legally adopted child/ children and step child/children is/are also included, who is / are fully dependent on the employee.

(v) in case of specialized treatment, the pensioner parent of the government employee shall also be considered as included in the family."

10. Under Rule 3 (d) (ii) the word 'parents' who are fully dependent on the employee is used, whereas under Rule 3 (d) (v) it is mentioned that "pensioner parent of the government servant". It talks of inclusion of pensioner parent as 'family' only in exceptional circumstances i.e. for specialized treatment. In Rule 3 (d) (v), no maximum limit of pension is specifically mentioned and in the Explanation appended to the Rule 3 (d) only word 'wholly dependent' is explained. A bare reading of entire provisions under Rule 3(d) would show that pensioner parent for the purpose of specialized treatment has been set apart as a different category and benefit of the Rules of 2013 is extended to them.

11. Reimbursement of medical bills claimed by petitioner is with respect to treatment of his 68 years old mother who underwent knee surgery. Copy of discharge summary is placed on record as Annexure P-1. In the discharge summary under the heading 'Chief Complaint, it is mentioned thus:-

"Both Knee joint pain for many year pain dall in walking & difficulty, unable to squatte.

Under the heading "Surgery Performed/OT Details', the details of surgery done are specifically mentioned, which are extracted below:-

"Surgery-1 Opened with mid line incision TKR done depuy prothesis, femur-3, Tibia- 4, Spacer-10, Patella-32 done on 23/05/2020

Surgery-2 TKR with Depuy prothesis done under SA By Dr. S.Shukla & Dr. Ajay Mishra on 25/05/2020, Femur-3, Tibia-4, Patella-41, Insert-12."

12. In the medical terminology, the abbreviation 'TKR' stands for 'total knee replacement'. It seems that the mother of petitioner underwent surgery of replacement of both knee joints.

13. 'Specialized treatment' is defined under Rule 3 (j) of the Rules of 2013 which means treatment and/or surgery of diseases mentioned in Schedule-1, which may be amended by the State Government from time to time. In view of definition of 'specialized treatment', it is necessary to extract Schedule-1, which reads thus:-

"Schedule-I

[See Rule 3 (j)]

1. All types of Cancer diseases
2. All types of Heart Diseases (Open Heart Surgery / Bypass Surgery, Angioplasty with Stent, Angioplasty, without stent etc.)
3. Organ Transplantation
4. Complicated Ophthalmic Surgery.
5. Neuro surgery
6. Joint Replacement Surgery
7. Such treatment and/or surgery which is not available in Government or recognized hospitals in the State and for which, the patient has been referred to the hospital situated outside the State."

14. Perusal of Schedule-I under Rule 3 (j) of the Rules of 2013 clearly mentions that joint replacement surgery to be specialized treatment. Total knee replacement also falls within the ambit of joint replacement surgery. Therefore, conjoint reading of definition of 'family' as provided under Rule 3 (d) (ii) & (v) as also definition of 'specialized treatment' under Rule 3 (j), would reveal that mother of petitioner though receiving pension of Rs.6,500/-, but would fall within the definition of family as provided under Rule 3 (d) (v) of the Rules of 2013.

15. Provision under any statute has to be given purposive interpretation so that the object of the statute must be achieved. Law making authority was cautious while framing Rule 3 (d) (ii) and using the words 'wholly dependent'. Under the said Rule, parents, who are wholly dependent, are only included in the definition of 'family' of a government servant. After defining the 'family' under Rule 3 (d) (ii), the law makers have given relaxation to the criteria of 'fully dependent' while making Rule 3 (d) (v) in exceptional cases and provided that parents when requires 'specialized treatment', even if not wholly dependent, shall also be considered as included in 'family'.

16. From the wordings used under Rule 3 (d) (ii) and Rule 3(d) (v) and Explanation under Rule 3 (d) of the Rules of 2013, it is clear that application of Explanation is in normal circumstances and it will not attract in exceptional circumstance like when parent is/are in need of specialized treatment.

17. If two provisions under the Statute appear to be in conflict of each other then the rule of harmonious construction is to be applied. Effect of provisions should not be given to make one of the provisions under the Statute otiose or useless. Harmonious construction. The Statute has to be read as a whole to find out real intention of the legislature so that object under the provisions can be achieved. Hon'ble Supreme Court in case of Sultana Begum vs. Prem Chand Jain, reported in (1997) 1 SCC 373 has observed thus:-

"10.....That being so, the rule of interpretation requires that while interpreting two inconsistent, or, obviously repugnant provisions of an Act, the courts should make an effort to so interpret the provisions as to harmonise them so that the purpose of the Act may be given effect to and both the provisions may be allowed to operate without rendering either of them otiose.

11. The statute has to be read as a whole to find out the real intention of the legislature.

15. On a conspectus of the case law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two Sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one Section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose."

18. As discussed above, the Explanation under Rule 3 (d) of the Rules of 2013 talks of 'fully dependent' family member of a government employee and under the same provision, under Rule 3 (d) (v), the legislature has further identified and included in the 'family' a member, who is pensioner, in exceptional cases.

19. For the foregoing discussions, in view of specific definition of family provided under the Rules of 2013 including pensioner parents also for the purpose of specialized treatment, the order dated 8.9.2020 (Annexure P-5) is not sustainable. Respondent No.5 misinterpreted the explanation and observed that it will cover Rule 3 (d) (v) also. Explanation deals with Rule 3 (d) (ii) of the Rules of 2013 and explained the words 'fully dependent'. Respondent No.5 failed to take note that Rule 3 (d) (v) of the Rules of 2013 attracts only in exceptional cases i.e. when the pensioner parent requires specialized treatment, which may be expensive, and rejected claim of petitioner for medical reimbursement towards treatment of his mother.

20. The decision rejecting claim of petitioner of reimbursement of medical bills of treatment of his mother is erroneous and contrary to the object sought to be achieved under the Rules of 2013 and therefore, not sustainable.

21. In the result, writ petition is allowed. Impugned order is set aside. Respondent No.5 is directed to consider claim of reimbursement of petitioner in light of Rule 3 (d) (v) of the Rules of 2013 and reimburse the medical bills in accordance with law as per entitlement of petitioner, expeditiously, preferably within a period of two months from the date of receipt of this order.