
(2013) 08 AHC CK 0025
In the Allahabad High Court
Case No : Writ A. No. 1419 of 2013

Devendra Dev Pandey deceased by L.Rs.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2014) 1 ALJ 148 : (2014) 1 AWC 521

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Neelamber Tripathi, Gaurav Singh and Utkarsh Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri. Gaurav Singh, learned counsel for the petitioner and learned standing counsel for the respondents. A senior citizen and ex-employee of State Government can be harassed in multifold ways in the hands of his ex-employer in the matter of grant of admissible benefit i.e. reimbursement of medical treatment expenses incurred by such employee to the extent that expenses incurred almost more than 15 years back are yet to be reimbursed constitute the core issue in the case in hand. On the one hand, welfare State has promulgated schemes after schemes for larger benefit of its citizen, in particular, its employees including ex-employees, but on the other hand, agents of State can make a mockery of such claims is amply highlighted by the facts of this case.

2. Before going further, it would be worthy to notice brief facts giving rise to the present dispute.

3. The petitioner was a Senior Clerk in the office of District Development Officer, Mirzapur, U.P. and attained the age of superannuation of 58 years on 31.7.1993 hence retired from active service. Obviously, presently i.e. in 2013, he must be above 78 years of age. It is said that he suffered massive Heart-attack in 1997 and was treated in District Hospital at Mirzapur. Though he survived, but could

not be cured and instead his general condition continued to deteriorate. The doctor, attending him at District Hospital, Mirzapur, referred him for treatment to Dr. R.K. Agrawal, Professor and Head of Cardiology Department. Motilal Nehru Medical College, Allahabad. The treatment by Dr. R.K. Agarwal commenced on 28.01.1998 and since the ailment is perennial, its treatment is continuing. The expenses of medical treatment were born by petitioner himself since he was unaware that treatment of ex-employees was also to be reimbursed by State Government.

4. On coming to know about the reimbursement scheme available even to retired employees, he claimed reimbursement of medical bills, in respect to expenses incurred by him from 2007 to 2012, as under:

5. The medical bills from item Nos. 1 to 10 were reimbursed and hence in respect thereto, there is no dispute. The present dispute relates to medical bills at item Nos. 11, 12 and 13, which is for a total sum of Rs. 32,410/-. The medical bills submitted by petitioner at item Nos. 11 and 12 however, have already been turned down by order dated 31.8.2012 by respondent No. 2 on the ground that the same are not in accordance with U.P. Government Servants (Medical Attendance) Rules, 2011 (hereinafter referred to as "Rules, 2011"). The petitioner, therefore, has sought issuance of writ of certiorari for quashing the aforesaid order besides seeking mandamus directing for reimbursement of aforesaid medical bills, which are still unpaid.

6. The respondents have filed counter affidavit, which has been sworn by Dharamjit Singh, Block Development Officer, Seeti, Mirzapur and therein rejection of petitioner's claim has been justified with reference to Rules 11, 12 and 13 of Rules, 2011. It is also said that after 20.9.2011, Uttar Pradesh Government Servants (Medical Attendance) Rules, 1946 (hereinafter referred to as "Rules, 1946") have rendered inapplicable and petitioner cannot place reliance thereon.

7. Learned counsel for the petitioner contended that medical reimbursement to an employees is not only a condition of service constituting legal right but is also a fundamental right of petitioner governed by Article 21 of the Constitution and denial thereof is clearly illegal and unconstitutional. He further contended that respondents have not denied reimbursement on the ground that medical expenses have not been borne by the petitioner. The genuinity of medical expenses incurred by petitioner is not in dispute but taking a sheer ultra technical view of procedural non compliance, claim for reimbursement of medical expenses incurred by petitioner has been rejected/is being denied, which is wholly illegal and arbitrary.

8. Per contra, learned standing counsel-Submits that medical reimbursement is permissible strictly in accordance with Rules and not otherwise and therefore, respondents are well within their right to reject the claim submitted by petitioner for reimbursement of medical expenses when they are not in accordance with

statutory rules i.e. Rules, 2011.

9. The issue of reimbursement of medical expenses have been found connected with fundamental right to life and liberty under Article 21 of the Constitution and directive principles enshrined under Article 47. A three-Judges Bench in State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., , observed:

the State can neither urge nor say that it has no obligation to provide medical facility. If that were so it would be ex facie violative of Article 21.

10. The Court also observed that right of a citizen to live under Article 21 casts obligation on the State, which is further reinforced under Article 47 since it is for the State to secure health to its citizens its primary duty.

11. This is one aspect of the matter. But then it is also true that State has no unlimited resources to spent on any of its particular objects or projects. Therefore, if the provisions are made to provide such medical facilities keeping in view the limits of finances, such provisions, per se, cannot be said to be bad. Recognizing this fact, a Constitution Bench in Confederation of Ex-Servicemen Associations and Others Vs. Union of India (UOI) and Others, , said:

In our considered opinion, though the right to medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme of ex-servicemen and asking them to pay "one time contribution" neither violates Part III nor it is inconsistent with Part IV of the Constitution.

12. Following the above two authorities in State of Karnataka and Another Vs. Sri R. Vivekananda Swamy, , the Court said:

24. In view of the aforementioned settled principles of law there cannot be any doubt that the Rules regarding reimbursement of medical claim of an employee when he obtains treatment from a hospital of his choice can be made limited. Such a rule furthermore having been framed under the proviso to Article 309 of the Constitution of India constitutes conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognized Government hospitals and on the other he, at his option, may get himself treated from other recognized hospitals/institutions subject of course to the conditions that the reimbursement by the State therefore would be limited.

29. ...we are of the opinion, that having laid down the law for the future that claim for reimbursement must be made only in terms of the Rules and not de hors the same.

13. To sum up, it can be said that reimbursement of medical expenses incurred by a Government servant partakes the nature of a Constitutional as well as legal right, which has lifted up to the level of fundamental right under Article 21, but with respect to the amount/quantum thereof, employer or the State can make

provisions to regulate the same. In other words, an employee cannot have an absolute right to claim reimbursement of any amount, may be extravagant or which normally one may not incur if undergo the same medical treatment in a medical establishment run by State with due expertise and desired facilities. In the matter of rates of quantum of medical reimbursement, a regulatory provision can be made by State Government and unless such provisions are shown to be prima facie irrational, they have to be honoured and implemented. Therefore, a Government servant cannot be denied reimbursement of expenses incurred on medical treatment outright in its entirety but what amount shall be reimbursed, that can be controlled by making provisions governing his conditions of service, which will obviously have to be rational, reasonable i.e. not arbitrary. If any provision is made, which deny reimbursement in its entirety, though actual medical treatment undergone by Government servant or his family member is not found to be ingenuine or bogus, such an action of employer would be illegal. However, the employer can say that the employee may avail medical facilities in a medical establishment of any status whatsoever but expenses, which shall be reimbursed to him, would not exceed particular level or rate, normally, which are at par with similar kind of medical established or maintained by State itself and such provisions if made, have to be applied unless something is shown therein to be ex facie irrational or arbitrary.

14. The entitlement of medical reimbursement, therefore, of the petitioner has to be examined in the light of the above legal exposition. In the present case, right of the petitioner as such for medical reimbursement is not in dispute but what has been urged is that his claim is not strictly in accordance with Rules, 2011.

15. Before going to the aforesaid Rules, I would also find it necessary to observe that these Rules have been framed in order to give effect a fundamental right to life of a person. The interpretation, which has to be given, must be purposive, welfare oriented and benevolent. If without doing any violence with the expressed language of statute, a provision can be read in favour of the employee, the Court shall prefer such interpretation than that which would deprive him benefit of medical reimbursement.

16. It is not disputed at all that employees of State Government are entitled for reimbursement of expenses incurred on medical treatment and this formed their conditions of service. Earlier, provisions with respect to medical attendance of State Government employees were governed by Rules, 1946. The rules were made applicable to all Government Servants whether they are on duty or on leave. It included within its ambit whole time temporary Government servants paid from the Establishment Section of the budget employed and serve in connection with the affairs of State, of Uttar Pradesh. There was an exclusion of employees governed by Secretary of State's Services (Medical Attendance) Rules, 1938; All India Service (Medical Attendance) Rules, 1954; those governed by special rules in departmental manuals; and, a part-time Government servant or a piece-worker or a worker engaged, on daily wages, unless specific provision

has been made, in the term of his employment that rules shall apply to him and also to a, Government Servant who is paid from contingencies. Note (2) to Rule 1 of Rules, 1946 also clarify that concession granted under Rule 1946 shall also be applicable to the families of Government servant, subject to such conditions or exceptions, as specified in these rules. "Authorized Medical Attendant" were described in Rule 2 of Rules, 1946.

17. With the passage of time, accepting the practical difficulty etc., procedure for medical reimbursement was eased and diluted through various Government Orders, some of which are dated 1.1.1998, 28.6.2000, 7.4.2001, 27.6.2001, 9.8.2004 etc. The State Government came up with a new set of rules namely Rules, 2011, which were published vide notification dated 20.9.2011, whereby Rules, 1946 have been repealed subject to condition that medical reimbursement entitlement shall not stand reduced vide Rules, 2011 if it was admissible before enforcement of the aforesaid rules. The respondents have referred to Rules, 11, 12 and 13 thereof to deny medical reimbursement to the petitioner. The aforesaid rules read as under:

11. Treatment in Urgency/Emergency.--A beneficiary is permitted to get treatment in a private hospital in urgent/emergent condition within State or outside. The cost of treatment shall be reimbursable at the rate of Sanjay Gandhi Post Graduate Institute of Medical Sciences and Research (SGPGIMS), Lucknow in case of treatment within the State or All India Institute of Medical Science, New Delhi for treatment outside the State provided:

(a) The treating doctor certifies the urgency/emergency.

(b) The patient informs the Head of Office as soon as possible but not later than thirty days from the date of the commencement of treatment.

(c) In case of emergency, the expenditure on air ambulance shall also be admissible for reimbursement.

12. Treatment on tour.--The Government Servants on official duty to other States shall be entitled for medical attendance and treatment in the Government hospital of the concerned State and the actual expenses incurred thereon shall be wholly reimbursable:

Provided that the expenditure incurred on treatment in medical college, institutes or private hospitals shall be reimbursable at the rate of All India Institute of Medical Sciences (AIIMS).

13. Specialized treatment in private hospital.--(a) For the treatment of complicated and serious ailments for which medical facilities are not available at the Government hospitals or referring institutions, the treating doctor not below the rank of Professor or Head of the Department of referring institution may refer the patient to a private hospital or institution recognized by the State or Central Government for treatment and medical attendance.

(b) The reimbursement of the expenditure on treatment in such private hospital or institution shall be limited to the actual expenditure or the rates of SGPGIMS, Lucknow for treatment within State or the rates of the All India Institute of Medical Sciences (AIIMS), New Delhi for treatment outside the State, whichever is less.

(c) The reimbursement of the expenses on such treatment or investigations, the facilities for which do not exist in SGPGIMS, Lucknow or the All India Institute of Medical Sciences (AIIMS), New Delhi shall be made on actual basis provided the treatment is undertaken within the country.

18. Rule 11 does not prohibit treatment in private hospital or institution when in an emergency or in exigency of situation, medical attendance is immediately required whether inside the province or outside. The only restriction is that reimbursement shall be admissible at the rates as are prescribed in Sanjay Gandhi Post Graduate Institute of Medical Sciences and Research (hereinafter referred to as "SGPGIMS"), Lucknow if treatment has been undertaken in State of Uttar Pradesh and if it is outside then the rates prescribed at All India Institute of Medical Sciences (hereinafter referred to as "AIIMS"), New Delhi shall be applicable. Further restriction is that treating doctor should verify urgency/emergency and patient has informed his Head of the Department within thirty days from the date of commencement of treatment. Rule 12 is applicable when medical treatment is needed while Government servant is on travelling. Rule 13 talks of special treatment in private hospitals and institutions and only requirement is that such treatment is not available at Government Hospitals or referring institutions of medical attendant. In such case, if the attending medical attendant makes reference, such treatment can be admitted. Its proviso, therefore, says that in case of emergency, treatment may be undergone in a hospital other than that to which patient is referred and in that case Rule 11(c) shall be applicable. Rule 13(b) provides that rates at which expenses shall be reimbursed would be either as admissible at SGPGIMS, Lucknow or AIIMS, New Delhi or the actual expenses, which ever is less. Rule 14 also recognize medical treatment admitted to a Government Servant other than Allopathic and in respect thereto also reimbursement is permissible in the manner as prescribed by State Government.

19. Though not necessary for the purpose of the present case, but I may notice that enough space is available to the State to protect an otherwise valid claim of an employee for reimbursement under Rules, 2011, inasmuch as, to meet such situation, there are two provisions, which have been made in Rules, 2011 i.e. Rules 27 and 28, which read as under.

27. Removal of difficulty.--If any difficulty arises in giving effect to the provisions of Uttar Pradesh Government Servants (Medical Attendance) Rules, 2011, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of these rules, as appears necessary or expedient for removing the difficulty.

28. Interpretation and relaxation.--(a) If any doubt arises relating to the interpretation of these rules, it shall be referred to the Government, whose decision thereon shall be final.

(b) Where the Government is satisfied that the operation of any rule or order issued thereunder regulating the condition of medical attendance causes undue hardship in any particular case, it may, notwithstanding anything contained in the rule or order applicable to the case, by order, dispense with or relax the requirement of that rule or order to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

20. In the present case, medical reimbursement bills of the petitioner Devendra Dev Pandey have been rejected with reference to Rule 13 of Rules, 2011. Meaning thereby, no reference order has been appended thereto though order itself does not specifically state any particular reason except of referring in general, Rules 2011.

21. A harmonious reading of aforesaid rules makes it clear that State Government has made aforesaid rules for the benefit of its employees serving or retired, and their family members. The procedure for medical reimbursement has been endeavoured to be simplified with simultaneous precise procedure so as to avoid any mischievous or false claim by mischievous employees or their family member. The rules in question are beneficial in nature. They have to be given wider, benevolent and purposive interpretation so as to recognize all genuine claims of reimbursement of Government servants and simultaneously precludes any in-genuine, flimsy or mischievous claim, if any. The rules have no anathema for extending benefit of medical reimbursement, if treatment has been undertaken outside the Government Hospital and by medical experts, other than Authorized Medical Attendant, provided that it is necessary and in any case whatever expenses, which shall be recognized for reimbursement, shall be the actual expenses, and not more than that prescribed by SGPGIMS, Lucknow or AIIMS, New Delhi and in case exceed the aforesaid two institutions, as the case may be, the reimbursement shall be at the rates admissible in above two institution.

22. The petitioner, in the present case, had undergone medical treatment at Government Hospital. Mirzapur in 1997 and was referred for further treatment of his cardio logical ailment to Motilal Nehru Medical College, Allahabad where he underwent treatment by the then Head of the Department of Cardiology of State Medical College, Allahabad. It is matter of common knowledge that cardiology treatment is of long duration, in advanced age. Normally it persist for entire life of the patient. The petitioner, when he commenced aforesaid treatment, was already more than 60 years of age. In 2012, when medical bills in question were claimed, he must be around 78 years of age. The rules nowhere require that once there is a valid reference, and treatment has commenced, Government Servant every-time, whenever he submit medical bills, has to seek reference

order etc. Reading the rules in such a manner shall amount to reading something which is not there. It is further verified from the fact that various medical bills for the period from 2007 and onwards have actually been paid to the petitioner after being satisfied by competent authority about their genuinity and expenses actually incurred by the petitioner. Rule 26 has also protected entitlement to reimbursement, already availed by Government Servant prior to commencement of Rules, 2011 by observing that nothing inferior shall be admissible under Rules, 2011. Therefore, right of reimbursement of Government servant to the extent and to the manner in which he was entitled under the provisions applicable prior to Rule 2011, cannot be denied to him by referring to Rule 2011 and that too by reading the rules in a manner so as to put a much onerous condition upon the Government servant, which is not specifically so provided in the rules.

23. In my view, respondents have clearly misdirected themselves by disallowing petitioner's reimbursement of his medical bills under the pretext of Rules, 2011, as discussed above. The aforesaid rules do not disentitle petitioner from getting reimbursement of his medical bills, if otherwise are found genuine, so much so that he has incurred such expenses which is fortunately not in issue in the present case.

24. Harassment to the petitioner, in the case in hand, has gone to the extent that in the hope of getting reimbursement, petitioner Devendra Dev Pandey could not wait to have the fruits of this litigation and died on 12.7.2013. This is the real unfortunate part in the present case and shows how cruel respondents have been in this case to deny an old ailing ex-employee's medical reimbursement in respect to expenses, which he has actually incurred and was entitled for reimbursement under law.

25. Here is a case where an aged retired employee has been made to suffer financially in respect to a claim for which he had already incurred expenses. His right of reimbursement is not in dispute but since, in view of respondents, procedural jargon is not satisfied, therefore, reimbursement was denied. This, in my view, is nothing but a sheer harassment and harsh and apathetic treatment met to an old ex-employee in the hands of State Officials. The State and its officials being public functionary are supposed to discharge their duties for larger benefit of its citizens. It is welfare State. Under Constitution, sovereignty vest in the people. Every limb of constitutional machinery, therefore, is obliged to be people oriented. The respondents were expected to perform their duties in a more responsible, reasonable and passionate manner so as to visualize the problem and hardship faced by their old ex-colleague and there should have been an attempt to provide help to the petitioner with a more humane approach, that too when at such advanced age he was suffering heart disease for last one and half decade yet compelled for this avoidable litigation. This is nothing but harassment of a senior ailing citizen in the hands of public authorities. It is socially abhorring and legally impressible. Normally, a common man would have given up even his just and valid claims apprehending a severe harassment in a

Court of law where early disposal of a case in general has become a rare phenomena. We discuss for dispensation of justice day and night, spent time to find out the ways for speedy dispensation of justice but the end result is something startling. An early dispensation of justice is like a day dreaming for a common litigant. Very exceptionally, it comes true. Very few are fortunate enough to have fruits of justice in their hands and life. Here the petitioner was not one of those fortunates since died during pendency of this case. The situation is really disheartening and grave but still this Court has a ray of hope and confidence that with all out efforts and cooperation at all level, pious objective of speedy justice can be achieved. However, the fact remains that we have to travel a long day to achieve this objective.

26. In the present case, looking to the entire aspect of the matter as also the discussion made above, I am satisfied that here is a case where not only writ petition must succeed but the petitioner should also be allowed an exemplary cost.

27. In the result, the writ petition is allowed. The impugned order dated 31.8.2012 (Annexure No. 20 to the writ petition) is hereby quashed. The respondents competent authority are directed to take up all unpaid medical bills of the petitioner, particularly as referred to at item Nos. 11, 12 and 13 in the chart, referred in para 6 of this judgment, and ensure reimbursement thereof without any further delay, and, in any case, within two months from the date of production of a certified copy of this order. He shall also be paid interest @ 8% on the aforesaid amount of medical reimbursement which shall commence from 31.8.2012 when the impugned order was passed till the date of actual payment. The petitioner shall also be entitled to cost, which I quantify to Rs. 20,000/-.