(2008) 04 RAJ CK 0129

In the Rajasthan High Court

Harneer Kaur (Smt.) APPELLANT

Vs

State and Another RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:
Constitution of India, 1950 — Article 21

Citation : (2008) 3 RLW 2483

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—This petition has been filed by petitioner for direction to the respondents to make payment of Rs. 80,000/- along with interest @ 12% till the date of realization of above amount, which she claimed for expenses incurred for permanent implantation of dual chamber pace maker during her treatment at AIIMS, New Delhi.

2. The petitioner is at present working on the post of Staff Nurse in Mardana Hospital, Bikaner under the control of respondent No. 2. Petitioner suffered Cardiac disease and on account of said disease she was admitted to hospital and thereafter looking to seriousness of her ailment she was required to undergo Electro Physiological study for which she was referred to AIIMS, New Delhi. Pursuant to diagnosis made by AIIMS, she was advised for implantation of dual chamber pace maker for which she was directed to pay cost of Rs. 1,40,000/-, which petitioner paid and is evident from invoice filed along with writ petition as Annex. 3.

3. Learned Counsel for the petitioner argued that petitioner being Government employee is entitled for reimbursement of the cost incurred on account of treatment as per Rajasthan Civil Services (Medical Attendance) Rules, 1970, therefore, she filed her claim for reimbursement of cost of dual pace maker along with other expenses which she incurred on her treatment as per Rules.

4. As per petitioner''s claim, she was to be paid Rs. 1,40,000/- which is cost of pace maker but vide Annex. 5 dated 12/7/2004 she was informed that only Rs. 60,000/-has been sanctioned that too after making relaxation in the Rules of 1970 because under the Rules there is no provision of reimbursement of implantation of pace maker. According to petitioner, respondents have denied reimbursement of complete cost of pace maker for no rhyme or reason, therefore, they may be directed to pay remaining amount of Rs. 80,000/-.

5. Learned Counsel for the petitioner argued that according to Rules petitioner is entitled for reimbursement of cost of pace maker but on technical ground respondents have denied the same, which is against the principle of natural justice so also it is violative of Article 21 of the Constitution of India. It is also argued that inaction on the part of respondents is contrary to the spirit of scheme of reimbursement of medical expenses because purpose of extending facility of reimbursement of medical expenses to Government employee is to avoid hardship which an employee may face while undergoing treatment, therefore, respondents are under obligation to make full payment of cost of pace maker, which petitioner purchased at AIIMS.

6. Learned Counsel for the petitioner further argued that no reason whatsoever has been assigned for withholding Rs. 80,000/- because entitlement of reimbursement is governed by Rule 3 of Rules of 1970 and as per Rule 3, the charges paid by the Government Servant towards cost of allopathy drugs, medicines, vaccines or other therapeutic substance not ordinarily available in Govt. Hospitals are reimbursable, therefore, there is no justification for withholding the complete payment of cost of pace maker. Learned Counsel for the petitioner vehemently argued that for all purposes Government Servant is entitled for reimbursement of medical expenses incurred for treatment then why cost of pace maker which" was implanted to cure petitioner''s disease can be withheld by the respondents and respondents are under obligation to pay full cost of pace maker which is paid by the petitioner.

7. In reply, it is contended by learned Counsel for the State that as per provisions of Rule 3 of Rules of 1970 claim for cost of dual chamber pace maker is not expressly provided and while inviting attention towards Rule 3 of Rules of 1970 it is submitted upon perusal of whole Rule it is abundantly clear that no specific provision is made by Legislature for reimbursement of cost of pace maker, whereas, vide notification dated 1/5/1983 cost wholly or partly of hearing aid or artificial limb (including cost of replacing limb) or callipers was included for the purpose of reimbursement but Legislature has not chosen to include the cost of pace maker for the purpose of reimbursement under the Rules of 1970, therefore, in absence of any Rule the welfare State while granting relaxation allowed Rs. 60,000A against cost of pace maker. Therefore, action of respondents is perfectly in accordance with Rule 3 of the Rules of 1970.

8. After hearing arguments of both the sides first of all upon perusal of Rule 3 of Rules of 1970 it is clear that there is no specific provision for reimbursement of

cost of pace maker. At the same time, the State Government took decision on 8/4/1975 whereby it is decided that cost of any artificial part of body can be reimbursed with the consultation of medical department and finance department. The said decision of the State Government reads as under:

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9. Meaning thereby, the State Government took decision that though there is no express provision of reimbursement of any artificial part of body but reimbursement can be made with the concurrence of Medical Department and Finance Department, therefore, at the time of sanctioning Rs. 60,000/- relaxation was granted for making payment of cost of pace maker.

10. Upon perusal of above decision of the Government under Rule 3(2) of Rules of 1970 its is clear that for saving life of government employee and for curing any disease, cost of any artificial part of the body can be made with the concurrence of medical department and finance department. In this case also, after considering the seriousness of the petitioner''s disease, relaxation was granted and reimbursement to the extent of Rs. 60,000/- against cost of pace maker was made but in my opinion petitioner is entitled for full cost which was incurred by her for purchase of pace maker which was implanted at AIMS, New Delhi for her survival. In the facts and circumstances of the case, when respondents have decided to reimburse the cost of pace maker then there is no justification in reimbursing only Rs. 60,000/-. Accordingly, this writ petition is allowed. Respondents are directed to pay the remaining amount of Rs. 80,000/- to the petitioner which she incurred for purchase of dual chamber pace maker during her treatment at AIIMS within a period of two months from today.