
(2019) 12 JH CK 0227

In the Jharkhand High Court

Case No : Writ Petition (S) No. 554 Of 2016

Jagat Narayan Mishra

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Medico Attendance Rules, 1938 — Rule 2(2)(ख)

Citation : (2019) 12 JH CK 0227

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Rahul Kumar, J.F. Toppo

Final Decision : Disposed Of

Judgement

Dr. S.N. Pathak, J

1. Heard the parties.

2. The petitioner has approached this Court for direction upon the respondents for quashing the letter no. 2144 dated 03.08.2015 issued under the

signature of the Director Industry, Jharkhand, Ranchi whereby the claim of the petitioner for reimbursement of medical bills has been arbitrarily and

illegally rejected. Further prayer has been made for direction to the respondents to reimburse the medical bills expenses incurred on account of open

heart surgery of the son of the petitioner in accordance with prevalent rule and circular of the State of Jharkhand.

3. The case of the petitioner lies in a narrow compass. The petitioner is working as peon in the Office of General manager, District Industries Centre,

Hazaribagh under the respondent department. It is submitted that the Government, for disbursement of medical bills of its employees and their

dependents, which includes son, has laid down a detail procedures vide letter no. 9 dated 29.01.2004 which was notified by the Department of Health

regarding identification of hospitals for the purpose of reimbursement.

4. On 28.05.2005, the son of the petitioner namely Santosh Kumar who is unemployed and fully dependent upon the petitioner was diagnosed with

cardiac problem and he was referred to CMC, Vellore for treatment. In view of the Government notification, CMC Vellore is a notified hospital by the

Government of Jharkhand. The petitioner's son admitted to CMC, Vellore for open heart surgery and as per the hospital management an estimate

of Rs. 2,00,000/- was made for the purpose of cardiac surgery. As the petitioner was unable to meet the expenses, he made a request for advance

amount for meeting the medical expenses. Petitioner had made representation before the respondent no. 4 and the said application was duly

forwarded by him along with the estimated amount of the CMC, Vellore for sanction. Though sanction was not done by the Government at

appropriate time, in the emergent situation the petitioner's son undergone for open heart surgery on 25.01.2011 at CMC, Vellore. Immediately

after recovery of his son, the petitioner vide letter dated 09.04.2012 made a representation before the Director of Industry, Jharkhand for

reimbursement of the medical bills, expenses incurred for cardiac surgery as the son of the petitioner is fully dependent on him and also unemployed

and has no source of income. In view of a resolution/notification of the State Government, the petitioner made several request by way of

representation, but, the same was never adhered to and finally rejected by order dated 03.08.2015 which is annexed at Annexure-8 which is the letter

issued by the Director Industry, Directorate of Industry, Government of Jharkhand. The same is under challenge in the instant writ application.

5. Mr. Rahul Kumar, learned counsel for the petitioner submits that the stands of respondent State is not tenable in the eye of law as the

representation of the petitioner has been rejected in view of the Resolution dated 25.10.2014 whereas the representation of the petitioner should be

considered under rule 2(2)(k) The Secretary of State's Services (Medico Attendance Rules 1938, Appendix-2 which is at page 17 Annexure-A

of the counter affidavit. The learned counsel placed reliance on the notification itself and submits that the petitioner was treated in CMC, Vellore

hospital on 22.02.2012 and at the time of his treatment, the said notification was very much prevalent and it was clearly mentioned in 2 (2) (a)??

â?? ,

;. It has further been argued that nowhere it has been mentioned till at which age the son/daughter of the employees are entitled to get

the benefits of medical facilities. It has been clarified, subsequently, vide notification dated 25.10.2014 wherein the age of son/daughter of the

employees are fixed as 25 years or in fact the dependent children are unemployed. Learned counsel further argues that in absence of the specific age

mentioned in The Secretary of State's Services (Medico Attendance Rules 1938, the respondents cannot deny the medical benefits to the son of

the petitioner. It is also stated that in view of the notification dated 25.10.2014, the respondents cannot deny the medical benefits in the year 2012. The

notification dated 25.10.2014 can be given effect only prospectively not retrospectively. To buttress his argument, learned counsel for the petitioner

referred the judgment rendered by the Hon'ble Supreme Court in the case of N.T Devin Katti And Others v. Karnataka Public Service

Commission And Others reported in (1990) 3 SCC 157 wherein it has been held that â??it is a well-accepted principle of construction that a statutory

rule or government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effectâ?. But, so far as

nothing has been mentioned in The Secretary of State's Services (Medico Attendance Rules 1938 about the specific age of daughter or son of the

employees which is annexed at Annexure-A page 17 of the counter affidavit filed by the respondents. Learned counsel for the petitioner further

argues that there was no notification about the specific age of the son or daughter of the employees at that point of time, therefore, the petitioner is

entitled for the medical benefits and as such a direction may be given to the respondents to extend the benefits of medical facilities to the petitioner by

reimbursing the bills as the expenses incurred in treatment of his son when he had treated in CMC, Vellore for cardiac surgery.

6. Per contra, Mr. Jayant F. Toppo, learned S.C. L&C III, vehemently opposes the contention of Mr. Rahul Kumar, learned counsel appearing for the

petitioner, that there was no specific age mentioned in The Secretary of State's Services (Medico Attendance Rules 1938 which is annexed at

Annexure-A page 17 of the counter affidavit, but, in the subsequent notification i.e. 25.10.2014, the age has been clarified and the same has been

mentioned as 25 years for the dependent son. Admittedly, the son of the petitioner was fully dependent on him, but, he crossed the age limit of 25

years and as such the petitioner is not entitled for reimbursement of medical bills for treatment of his son.

7. Learned counsel, further, draws the attention of this Court towards the notification of the Central Government at Annexure-B at page 18 of the

counter affidavit and submits that even the Central Government is very clear in its notification in column-4 stating that the son is dependent â??till he

starts earning, or attains the age of 25 years whichever is earlier â??and as such the petitioner is not entitled for any reimbursement of medical bills

for treatment of his son. By justifying the impugned order, learned counsel for the respondents submits that there is no illegality and infirmity in the

impugned order.

8. Be that as it may, having gone through the rival submission of the learned counsel for the parties, this Court is of the considered view that it is

admitted that the petitioner was working in the State of Jharkhand and as per The Secretary of Stateâ??s Services (MEDICAO Attendance Rules 1938

he is entitled for reimbursement of medical bills. In the Rule, 1938 no specific age, for dependent son/daughter of the employees, has been mentioned.

The son of the petitioner was unemployed and fully dependent on him. By subsequent notification dated 25.10.2014, the State of Government has

clarified the specific age of the dependent son/daughter of employees. But, the same cannot rescue the respondents in view of the rules laid down by

the Honâ??ble Supreme court in the case of N.T Devin Katti And Others (Supra) wherein it is held that the notification or government order is

prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Admittedly, the son of the petitioner is

unemployed and dependent on him. Legislation was clear about the dependent of the family. The son was fully dependent on the petitioner which has

not been denied by the respondent authority. Nowhere, it has been mentioned that the Central Government Rule, 1944 has been adopted by the State

Government. If it was so then there was no occasion for the State Government to come out with its own notification. In view of the specific

notification of the State Government, the petitioner is entitled for reimbursement of medical bills regarding treatment of his son in CMC, Vellore for

cardiac surgery. The respondent authorities are directed to reimburse the medical bills to the petitioner within a period of two months from the date of

receipt of a copy of this order.

9. This matter relates to the IVth Grade employee of the State Government, let the matter be expedite as early as possible within the aforesaid period.

10. In view of the above, the letter no. 2144 dated 03.08.2015 which is annexed at Annexure-8 to the writ petition, is, hereby, quashed and set aside.

11. In view of the above observations and directions, the writ petition stands disposed of.