
(2009) 02 PAT CK 0050
In the Patna High Court

Kamala Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Citation : (2009) 02 PAT CK 0050

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and the learned Counsel for the State.

2. I.A. No. 7235 of 1008 has been filed by the heirs of the original petitioner who is stated to have been deceased during pendency of the application on 26.10.2008. The claim in the writ application is for re-imbusement of medical expenses incurred by the petitioner during his service tenure. Since the matter has financial implications for the family of the deceased after hearing the Counsels for the parties this Court considers it proper to allow I.A. No. 7235 of 2008 and directs to substitute the original deceased petitioner with his legal heirs as mentioned in paragraph 1 of the Interlocutory Application.

3. The claim in the writ application is for re-imbusement of the medical expenses quantified at appropriately Rs. 4 lacs and odd in pursuance of the Kidney replacement operation undergone by the deceased at Chennai in 2000.

4. Learned Counsel for the petitioner submits that the petitioner was granted retrospective promotion on 26.3.2002 to the IPS Cadre with effect from 19.12.1996. The period of the operation would clearly fall within the portion of his tenure as a member of the IPS All India Cadre.

5. The counter affidavit of the respondents states that the petitioner proceeded for the operation out sides of the State without approval of the Finance

Department and therefore it was very difficult to ascertain the genuineness of the claim.

6. The medical facilities in the State in the year 2000 were certainly wanting in so far as Kidney transplantation operations are concerned. It is not the case of the respondents that he could have had the operation in Bihar notwithstanding which he proceeded to Chennai. A Kidney transplantation operation is life saving operation where even time may be short. The Court therefore finds no substance in the objection of the State on this ground.

7. It is precisely to meet emergent situation like the present of life threatening treatments that Rule 26 of the Medical Attendance Rules was formulated which reads as under:

26. Power of Government to grant concession relating to medical attendance or treatment not authorized by the Rules-Nothing in these Rules shall be as preventing the State Government from granting to any person to whom they apply any concession relating to medical attendance or treatment which is not authorized by these Rules.

Quite obviously in a life threatening situation there may be no time to await such permission which can easily be deemed under the aforesaid Rule.

8. In so far as genuineness of the claim is concerned, surely the State has enough resources and can easily make up its mind on the documentary evidence that may have been submitted before it. The petitioner relies upon the State Government letter dated 11.12.1999 at Annexure 3 series to submit that he was entitled to full reimbursement as a member of the All India IPS cadre.

9. While holding that the grounds urged by the respondents of the petitioner having proceeded for treatment outside State without approval is untenable, this Court directs the respondents to examine the claim of medical reimbursement in accordance with law including letter dated 11.12.1999 and take a final decision as also pay the legitimate dues in pursuance thereof within a maximum period of four months from the date of receipt and/or production of a copy of this order. If any part of the claim has to be denied the respondents shall be obliged to pass a reasoned and speaking order

10. The writ application stands allowed.