(2004) 12 DEL CK 0088

In the Delhi High Court

Case No : WP (C) . 5175 of 2001

Keshav Kishore Sharma APPELLANT

Vs

Municipal Corp. of Delhi RESPONDENT

Date of Decision : 13-12-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) 116 DLT 348 : (2005) 80 DRJ 180

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : G.K. Srivastava, for the Appellant; Geeta Mehrotra, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Petitioner seeks quashing of the communication dated 4.4.2001, rejecting the request for reimbursement of medical charges (Annexure P-17). Petitioner also seeks quashing of Resolution No. 4017 dated 27.9.1904, insofar as the same is pressed to deny reimbursement of expenditure incurred on diseases. Petitioner also seeks a mandamus, directing MCD to pay and reimburse the amount of medical claim.

2. Petitioner had joined MCD as a Lower-Divisional Clerk on 24.9.1998. Petitioner superannuated on 31.8.1993 in the position of Head Clerk. Petitioner suffered cardiac trouble in April, 1999 and was taken to G.B. Pant Hospital. An angiography was done and in July, 1999. Petitioner was advised surgical revascularization Petitioner thereupon applied to MCD on 6.8.1999, along with the report of G.B. Pant Hospital for sanction of the estimated amount for cardiac surgery operation. Petitioner thereafter visited Hindu Rao Hospital of MCD for getting treatment in the Cardiology Department. Dr. R.P. Mittal, Consultant and Head of the Cardiology, immediately referred the petitioner to AIIMS for treatment, since the said facilities were not available at Hindu Rao Hospital. In the event, petitioner was admitted to AIIMS on 19.9.1999. The open heart

surgery was carried out on 2.9.1999 and he was discharged on 26.9.1999. Petitioner incurred an expenses of Rs. 77,002.40 paise and he has sought reimbursement of the same. Petitioner has duly complied with the formalities required to be done for submission of the medical claim and has furnished all the requisite bills, vouchers, prescription etc.

3. Reimbursement to the petitioner has been denied by the impugned communication dated 4.4.2001, based on the following observations of the Municipal Health Officer:

"There is no policy for reimbursement of medical expenses to municipal pensioners at present. However, on representation from pensioners it has been decided to de novo examine the medical facilities being provided to employees and pensioners. A Board has been constituted to study the schemes prevalent in CGHS and Delhi Govt. and working modalities for a suitable scheme in MCD also on these lines. The scheme will have future benefits, but is not retrospectively."

It would thus be seen that the rejection of the request is on the ground that there was no existing policy for reimbursement of medical expenses to municipal pensioners and a study was being made of the schemes prevalent in CGHS and Delhi Government and working modalities for a suitable scheme in MCD on similar lines had to be worked out. respondent apart from the above, have also placed reliance on an Office Order dated 3.10.1994 on the following:

"In no case reimbursement of expenditure incurred by a pensioner on treatment will be made."

4. Let us examine the position that emerges from various Resolutions passed by MCD, its orders and Circulars, insofar as it relate to reimbursement of medical expenses to pensioners. Based on the recommendation made by the Municipal Commissioner in his letter No. F.33/Health/560/C&C dated 9.2.1984 and as recommended by the Standing Committee vide its Resolution No. 130 dated 23.3.1984, the Central Services (Medical Attendance) Rules 1944 were adopted in their application to municipal employees. Resolution No. 105 is in the following terms:-

"Resolved that as proposed by the Commissioner in his letter No. F.33/ Health/560/C&C dated 9.2.1984 and recommended by the Std. Committee vide its Res. No. 130 dt.23,3.84, adoption of Central Service (Medical Attendance) Rules, 1944 with necessary instructions and amendments as are issued from time to time after re-defining the terminology used in the rules for their proper application to Mpl. Employees as framed and mentioned in the aforesaid letter be approved."

5. It may be noted that the Central Services (Medical Attendance) Rules, 1944, hereinafter referred to as CSMA were adopted along with necessary instructions and amendments, as issued from time to time after redefining the terminology in the use for their proper application to municipal employees. On 10.7.1984, Office

Memo/circular No. F.27/7/76-M&PH(I) was issued by Delhi Administration for providing free medical facilities to the pensioners of Delhi Administration (Annexure P-3). As the CSMA Rules, orders and instructions, as applicable to Delhi Administration mutates mutandi apply to municipal employees. It is the petitioner'' case that petitioner got entitled to the same benefit. The said Resolution approved the following treatment for the pensioners:-

"(i) All the medicines etc., including diagnostics facilities as is required for the treatment of the patient (Pensioners and their families) will be provided to them free of charges at the hospitals/dispensaries.

(ii) The pensioners and their families when referred from the dispensaries to the hospitals for specified treatment will be attended to on priority basis. Such medicines etc., which are considered essential for the treatment if not available will be purchased by the hospital authorities and provided to the patients within a reasonable time.

(iii) In order to identify the pensioners for providing medical facilities they will be issued Identity cards by deptt. from where one has retired or will be retiring."

Petitioner had also become member of the scheme in terms of Resolution No. 4017 and Identity Card was issued in the name of the petitioner and his family members.

6. The Government of NCT issued an office order/Circular of streamlining the system for providing medical facilities to employees of NCT of Delhi. The benefit of the said Circular in terms of Resolution No. 105 dated 9.2.1994 and Resolution No. 4017 dated 27.9.1994 could be applicable to all the employees/pensioners of MCD, inasmuch, all the rules and changes mutates mutandi apply to the MCD. The position, which emerges is that since Delhi Administration extended the benefits by an order dated 13.3.1997, to all its pensioners and retired employees, the same benefit would become applicable to the retired employees and pensioners of MCD. Reference may also further invited to Resolution No. 77, passed by MCD, which is in the following terms:-

"Resolved that as recommended by the Standing Committee vide its Resolution No. 268 dated 15.5.2002, the proposal of the Commissioner as contained in his letter No. F.33/CED/1199/C&C dated 9.5.2002 be approved. Resolved further that the scheme of medical facilities be adopted from the date it was implemented in NCT of Delhi."

7. It may also be noted that the Office Order dated 3.10.1994, on which reliance was placed to deny reimbursement in the counter affidavit is not in consonance with the Resolution of the Municipal Corporation No. 4017 dated 27.9.2004. Besides, in view of the later Resolution of 15.5.2002, there is no doubt whatsoever left in the matter. Respondent-Corporation had also during the course of proceedings referred to the minutes of the Expert committee meeting held on 29.1.2003, wherein it is stated that the decision was taken regarding

contribution from municipal pensioners/family pensioners for joining the new scheme for providing further benefits to the pensioners. The date of 30.4.2003 was fixed for seeking application for pensioners to join the scheme. Petitioner without prejudice had exercised his option for joining the scheme.

8. The crux of the controversy is whether the pensioners of MCD are entitled to reimbursement of medical expenses? As noticed in the preceding-paras, decision to extend the benefit of medical expenses incurred was taken as far back as 9.2.1984. It was also resolved by Resolution No. 105 of 9.2.1984 and 4017 of 27.9.1994 that circulars and amendments, as applicable to the employees/ pensioners of NCT would also apply to the Corporation employees. The Government of NCT had extended these benefits to the pensioners w.e.f. 13.3.1997. Once the benefits become applicable w.e.f. March, 1997, then petitioner cannot be faulted with if the respondents themselves delay the working out of procedural formalities. Petitioner''s right to medical facilities cannot be defeated by internal nothings making it prospective. Such nothings would be of no effect in view of Resolution No. 77 extending the benefits from the same date as it was implemented in NCT of Delhi i.e. March, 1997.

9. It is not in dispute that the treatment in question was not available in the Municipal Hospitals. The Head of the Department of Municipal Hospital himself referred the case to AIIMS. Petitioner has incurred these expenses at AIIMS for his treatment. Further, keeping in mind that right to health is an integral part of life and the Government has constitutional obligation to provide health facilities to employees or retired employees, as held by the Apex Court in Surjit Singh v. State of Punjab and Ors. reported at 1996 (1) S L R 786 and in Narendra Pal Singh Vs. Union of India and Others, The LPA preferred in the case of Narender pal Singh v. Union of India and Ors., (Supra) has also been disposed of with the appellant/Delhi Administration making the payment of reimbursement of expenses to a retired employee of Delhi Administration with costs.

10. Petitioner has also opted for the new scheme, which is sought to be made out and offered to pay the subscription for life. Reference may also be invited to the decision of the Division Bench in Union of India v. T.S. Oberoi and Smt. Raj Chawla (C.M.No. Nill in LPA.NO. 898/2002), decided on 7.11.2003 wherein the claimant/Intervener was held entitled to reimbursement of medical expenses, incurred prior to acquiring life membership under CGHS. It was held while dealing with the case of a constitutional appointee that once life membership was accepted it had to relate back from the date of hospitalization and the benefit cannot be restricted from the date of membership. In the present case, it is held that in view of the Resolutions of MCD, adopting the policy, circulars and instructions of Central Government and NCT of Delhi and the application of CSMA Rules, the substantive right to claim reimbursement of expenses on treatment, which was not available in municipal hospitals stood accrued to the petitioner with effect from March,1997, the date of implementation of the benefit for Delhi Administration employees and pensioners.

11. In view of the foregoing discussion, the writ petition is allowed. A writ of mandamus shall issue to the respondents to pay the sum of Rs. 77,002.40 within a period of one month, failing which the petitioner would also be entitled to interest @ 9% per annum on the said amount in future.

