

(2010) 03 DEL CK 0239

In the Delhi High Court

Case No : Writ Petition (C) No. 889 of 2007

Kishan Chand

APPELLANT

Vs

Govt. of N.C.T. and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2010) 169 DLT 32

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Manohar Singh, for the Appellant; Sonia Sharma and Amita Arora, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By the present petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct the respondents for reimbursement of the medical expenses incurred by the petitioner.

2. A conspectus of facts as set out by the petitioner relevant for deciding the present petition are that the petitioner was serving as District Employment Officer, North-West, Kirby Place, Delhi Cantt and retired on 30th April, 2001. On 2.4.2005, the petitioner got a heart attack and was admitted in Amar Leela Hospital, Janak Puri, New Delhi and was discharged on 7.4.2005. The petitioner had paid Rs. 18,000/- to the said Hospital on his discharge and had also spent Rs. 1274/- for the purchase of medicines. But, yet again on 8.4.2005 the petitioner suffered severe chest pain and breathlessness and was admitted to Sir Ganga Ram Hospital, New Delhi and underwent a by pass surgery on 9.4.2005 and paid an amount of Rs. 1,25,032/- towards the bill raised by the said hospital. On 2.5.2005, the petitioner filed an application with the respondent No. 2 requesting them to issue medical facility card and an amount of Rs. 9000/- was deposited by the petitioner towards subscription money. Thereafter, the medical facility card was issued to the petitioner and on 5.7.2005, the petitioner moved an

application to the District Employment Officer (NW) for reimbursement of his medical bills which vide order dated 29.8.2005 was rejected. Again, on 17.3.2006 the petitioner moved an application which was disallowed vide letter dated 28.7.2006, and yet again on 22.8.2006, the petitioner moved an application which was dismissed vide letter dated 9.11.2006. Hence feeling aggrieved by the aforesaid circumstances, the petitioner has now approached this Court for relief by way of filing of the present petition.

3. On the last date of hearing, Ms. Sonia Sharma, counsel appearing for Govt. of NCT of Delhi took an adjournment on the ground that the respondent shall pay the necessary amount towards the medical reimbursement of the petitioner before the next date. Ms. Sonia Sharma today submits that such instructions were given to her by Mr. Vijay Sharma, Employment Officer, employed with respondents No. 2 and 3. Today, Mr. Umrao Singh, Employment Officer and Mr. A.K. Sharma, Superintendent with respondent No. 1 submit that under the relevant rules, the respondents are not obliged to grant the medical reimbursement to the petitioner. Ms. Sonia Sharma, counsel further submits that under the revised scheme announced by the Delhi Government vide office memorandum dated 25th October, 2007 it was for the petitioner to have opted for the scheme and once having not become a member of the said scheme, the petitioner is not entitled to the medical reimbursement. Counsel further submits that the scheme is prospective in nature and the same would be effective once an employee becomes a member of the scheme and not otherwise. The contention of counsel for the respondent is that since the petitioner on his retirement failed to opt for the said scheme, therefore, he is not entitled to the benefit of the same.

4. On the other hand, counsel for the petitioner placed reliance on the judgment of this Court in the case of V.K. Jagdhari Vs. Union of India (UOI) and Others, . The petitioner also placed reliance on the judgment of the Division Bench of this Court in Government of National Capital Territory of Delhi and The Principal, Govt. Co-ed. Sr. Sec. School Vs. Shri Som Dutt Sharma, Retired P.G.T. (Sanskrit), and S.K. Sharma and Others Vs. Union of India (UOI) and Others, .

5. I have heard counsel for the parties.

6. The issue is no more res integra as in the case of S.K. Sharma (supra), this Court clearly held that the petitioner after getting retired cannot be denied the benefit of the medical reimbursement simply because of the fact that he did not opt for the said scheme. In this case also the claim of the employee was rejected on the ground that he was not covered under the CGHS Rule not being a part of the scheme but still a retired Central Government employee residing in non-CGHS area can make a CGHS card for himself and his dependent family members from the nearest centre where CGHS is functional. Further placing reliance on some authoritative pronouncements of the Apex Court, this Court in the above case took a view that the petitioner cannot be discriminated against, merely because he is not a member of the CGHS scheme as he was staying in a

non-CGHS area. In this case also the employee had applied to become a card holder later in the period.

7. In the case of V.K. Jagdhari (supra), which has been relied by the petitioner, a similar question arose before the Court and objection was taken that since the employee had opted for the CGHS card after his surgery, therefore, he was clearly disentitled to the claim of reimbursement. Answering the said question in negative, the Court clearly held that the pensioner cannot be discriminated against merely because he has not opted for CGHS scheme or he resides outside a non-CGHS area. Taking into consideration the ratio of the judgments in the S.K Sharma (supra) and Som Dutt Sharma (supra) case, this Court consolidated the legal position and held that:

The position emerging from various decisions of this Court may be summarised as follows:

- 1) Even if employee contributes after availing medical facilities, and becoming member after treatment, there is entitlement to reimbursement (DB Government of National Capital Territory of Delhi and The Principal, Govt. Co-ed. Sr. Sec. School Vs. Shri Som Dutt Sharma, Retired P.G.T. (Sanskrit),
- 2) Even if membership under scheme not processed the retiree entitled to benefits of Scheme Mahendra Pal Vs. Union of India (UOI) and Others,
- 3) Full amounts incurred have to be paid by the employer; reimbursement of entire amount has to be made. It is for the Government and the hospital concerned to settle what is correct amount. Milap Singh Vs. Union of India (UOI) and Another, Sqn. Commandar Randeep Kumar Rana Vs. Union of India (UOI),
4. The pensioner is entitled to full reimbursement so long the hospital remains in approved list P.N. Chopra v. UOI (111) 2004 DLT 190.
- 5) Status of retired employee not as card holder: S.K. Sharma v. UOI 2002 (64) DRJ 620;
- 6) If medical treatment is availed, whether the employee is a cardholders or not is irrelevant and full reimbursement to be given, B.R. Mehta Vs. Union of India and Others,

The status of a retired Government Employee was held to be independent of the scheme and rules in so far as the entitlement to medical treatment and/or CGHS benefits were concerned ref. Shri V.K. Gupta Vs. Union of India (UOI) and Another, Similarly in Narendra Pal Singh Vs. Union of India and Others, this Court had held that a Government was obliged to grant ex-post factor sanction in case an employee requires a specialty treatment and there is a nature of emergency involved.

8. It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the pensioner is not entitled to the grant of medical

reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the said surgery undergone by him. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired. Clearly in the present case by taking a very inhuman approach, these officials have denied the grant of medical reimbursement to the petitioner forcing him to approach this Court. The respondents did not bother even after the judgment of this Court was brought to their notice and copy of the same was placed by the petitioner along with the present petition.

9. In the light of the aforesaid, the present petition is allowed.

10. The respondents are directed to pay the said medical claim of the petitioner along with 18% interest from the date of submission of his bill. The said payment shall be made by the respondent within one month from the date of this order. Additional costs of Rs. 10,000/- is also imposed on the respondents for causing delay in making the said payment to the petitioner.