
(2016) 02 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Writ Petition No. 768 of 2015.

Kishan Gopal Bansal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 149 FLR 545

Hon'ble Judges : Jaishree Thakur, J.

Bench : Single Bench

Advocate : Sushil Solanki, Advocate, for the Appellant; N.S. Rajpurohit, AGC, for the Respondent

Final Decision : Disposed off

Judgement

Jaishree Thakur, J. - By way of present writ petition, the petitioner is seeking direction to be issued to the respondents to reimburse the medical expenses borne by him on account of treatment taken at Shalby Hospital, Ahmedabad.

2. The petitioner sought Voluntary Retirement from service while working with the respondent State as a Lecturer in Government College, Pali. He developed acute pain in both his knees and thereafter, took treatment at Mahatma Gandhi Hospital, Jodhpur. Since the petitioner did not get any relief from treatment at Jodhpur, he was advised to take treatment from an expert at Shalby Hospital, Ahmedabad. While the petitioner had gone to Ahmedabad for regular check up, he was advised for immediate replacement of knees and the petitioner underwent surgery on 12.07.2012. On his return, the petitioner submitted a claim of Rs. 2,84,782/- on account of his treatment/knee replacement at Shalby Hospital, Ahmedabad. However, the claim of the petitioner came to be rejected by an order dated 29.03.2014. Aggrieved against the said impugned order, the present writ petition has been filed.

3. It is contended by Mr. Sushil Solanki, learned counsel for the petitioner that

the petitioner is entitled to reimbursement of medical expenses incurred by him on account of replacement of knees since Shalby Hospital, Ahmedabad is an approved hospital. The counsel for the petitioner also relies upon the circular dated 06.02.2009 regarding reimbursement of cost of medical attendants and treatment in private hospitals.

4. Per contra, Mr.N.S. Rajpurohit, learned Additional Government Counsel contends that the petitioner underwent treatment at Shalby Hospital, Ahmedabad which is a referral hospital as specified under the Rajasthan State Pensioners Medical Concession Scheme, 2009 and as per the scheme, medical reimbursement can be made only in case when the treatment undergone out of the State is not available in the Government Hospitals in the State of Rajasthan. Since, the petitioner had not taken prior permission or referral, as specified under the rules, he would not be entitled to claim entire medical reimbursement. It is contended that as per the circular dated 6.02.2009 relied upon by the petitioner, entire 100% medical reimbursement would be payable only in case of an emergent situation but the petitioner underwent knee replacement surgery which cannot be said to have been done in an emergent situation.

5. Heard learned counsel for the parties and also perused record of the case.

6. Admittedly, the petitioner, a retired Government Servant, underwent knee replacement surgery on 12.07.2012. He incurred medical expenses to the tune of Rs. 2,84,782/- which the petitioner certainly would have been entitled to its reimbursement as per the rules, in case, he got himself admitted into one of the approved hospitals. The argument raised by the counsel for the respondents that reimbursement cannot be made on account of the fact that he has taken treatment outside the State of Rajasthan and without prior approval/ referral of the medical board is noted to be rejected as not sustainable. Division Bench of this Court in the matter of Anil Kumar Surolia v. State of Rajasthan reported in 2005 (3) WLC Raj. 396 held as under:-

"Government cannot insist upon an employee to get himself treated at recognised Government institution. All that the Government in these circumstances can do is to reimburse the concerned employee at the rates that may be applicable in the recognised Government institution. Reference in this connection may be made to the judgment of the Hon''ble Supreme Court in Surjit Singh v. State of Punjab reported in AIR 1996 SC-1388 and State of Punjab and Ors. v. Mohan Lal Jindal reported in (2001) 9 SCC-217. Consequently, the reimbursement of the medical expenses borne by the State Government employees and pensioners has to be done even if the treatment is undertaken at unrecognised hospital outside the State even though reference may not have been taken prior to treatment."

7. Thereafter, another order came to be passed by the State Government on 21.12.2009 which reinforces the petitioner's claim for reimbursement. The said order dated 21.12.2009 is quoted herein below:-

"No. F.1(6) FD(Rules)/2012 Jaipur dated 21 DEC 2009

Subject:- Reimbursement of cost of implants and reimbursement of medical attendance and treatment in private hospitals to pensioners/family pensioners under Rajasthan Pensioners Medical Concession Scheme.

State Government has decided to extend the facility of Medical Attendance and treatment to State pensioners/family pensioners in private or charitable hospitals, as applicable to State Government servants under Finance Department order No. F.6(4)FD (Rules)/03 Pt.-I dated 27.11.2009 pertaining to the period prior to 19.06.2009.

Such claims of treatment shall be considered and decided by the Sub-Committee of the Trust."

8. By the said order, the State Government decided to extend the facility of medical attendant and treatment to pensioners and families of pensioners in private or charitable hospitals under the Rajasthan Pensioners Medical Concession Scheme, therefore, once it has been held that the State cannot insist that a person should be treated only from one approved hospital and State does reimburse medical expenses incurred from private hospital. Once, the State Government itself decided to reimburse pensioners for their medical expenses for the treatment taken at private hospital, the action of the respondents in not reimbursing the medical bills of the petitioner cannot be sustained.

9. Consequently, it is held that the petitioner is entitled to be reimbursed medical expenses borne towards replacement of knees in accordance with the Rajasthan State Pensioners Medical Concession Scheme, 2009. It is further directed that the respondents shall forthwith reimburse the amount as per the rate which is applicable for similar treatment in recognised/ Government hospitals in the State of Rajasthan. Reimbursement shall be made within a period of two months from the date of receipt of certified copy of the order failing which the amount of claim would carry interest @ 9% per annum.

10. In view of above, the writ petition stands disposed of accordingly.

11. No order as to costs.