

(2017) 08 DEL CK 0097

In the Delhi High Court

Case No : 5824 of 2008

KUMAR RAM KRISHNA Vs COLLEGE OF VOCATIONAL STUDIES?& ORS.

Date of Decision : 28-08-2017

Acts Referred:

Citation : (2017) 08 DEL CK 0097

Hon'ble Judges : V. Kameswar Rao

Bench : SINGLE BENCH

Advocate : Ratan K. Singh, Gaurav Lavania, Aishwary Tiwari, Sushila, Anurag Mathur, Mohinder J.S. Rupal, Anuj Aggarwal, Niti Jain

Final Decision : Allowed

Judgement

1. The present petition has been filed by the petitioner with the following prayers: "In view of the above stated facts and circumstances it is therefore respectfully prayed that this Hon''ble Court may kindly be pleased to: -

i) declare that the petitioner is entitled to reimbursement of all the medical expense already incurred and likely to be incurred by him in treatment of his mother as per relevant paras of Central Government Health Scheme.

ii) issue writ, order or direction including a writ, order or direction in the nature of writ of mandamus thereby directing the Respondents to reimburse all the medical expenses as per the bills submitted by the Petitioner for treatment of his mother till now; and / or

iii) issue a writ, order or direction including a writ, order or direction in the nature of writ of mandamus thereby directing the respondents to reimburse all the medical expenses which may be incurred by the Petitioner in future or which although already incurred but no bills in respect of which have been submitted by him, on the treatment of his mother immediately on submission of the bills; and / or pass such other and further orders as this Hon''ble Court may deem fit and proper in the present facts and circumstance of the case.

2. The facts are, the petitioner joined the respondent no.1 College as a Lecturer

on March 13, 2002. He was promoted to Senior Lecturer Grade in the month of October 2005. It is his case that his mother, who was a housewife and having no independent income has been residing with him since the date he joined the services of the respondent no.1 and was wholly dependent on him for her physical and financial support. It is also stated in the writ petition that this aspect has been noted in the service book of the petitioner inasmuch as the mother has been indicated in the list of dependants. It is averred that his mother got affected inter alia by serious heart ailments and had to be admitted to AIIMS on June 12, 2007. He accordingly lodged his claim for medical reimbursement vide his letter dated October 3, 2007 along with declaration to the effect that his mother is wholly dependent on him and is residing with him since his joining the College. Respondent no.1 College wrote to the respondent no. 2 University, whereby the College has asked the University to confirm whether the petitioner's mother is dependent upon him as per the Rules for medical reimbursement and LTC benefits. The petitioner's mother was again admitted in AIIMS from October 15, 2007 to October 24, 2007 wherein an open heart surgery requiring the replacement of Aortic Valve was conducted on her. It is the case of the petitioner that during the course of the aforesaid treatment, petitioner had to pay two bills amounting to Rs.98,975/- and Rs.6,000/- respectively. The petitioner submitted the aforesaid bills for reimbursement to the respondent no.1 immediately thereafter, which were forwarded by the respondent no.1 to the respondent no.2 vide letter dated August 13, 2008. However, no reimbursement of even a single penny has been made by the respondents. It is his case that he has been repeatedly making request to the respondent no.1 to reimburse the aforesaid medical expenses, to which he is entitled to under the Central Government Health Scheme, however of no avail. It is his case that the petitioner's mother again got critical and had to be admitted from June 16, 2008 to June 30, 2008, during which period she was kept in Emergency Ward for few days. As the situation of the mother of the petitioner did not improve, she was again admitted in AIIMS on July 3, 2008 till July 6, 2008. Thereafter also because of the critical position of his mother, she had to be rushed to Batra Hospital, which is in the vicinity of the petitioner's residence. She was admitted in the said hospital and was operated upon for process of stunting, whereof her situation became critical and she was unconscious and was kept in Medical Intensive Care. During the course of the treatment of his mother, petitioner incurred expenses to an extent of Rs.2.5 Lacs. She continued to undergo the treatment thereafter. It is his case that the petitioner submitted the bills to the respondent no.1 for reimbursement, but unfortunately, the same have not been paid till date.

3. It is the submission of Mr. Ratan K. Singh, learned counsel appearing for the petitioner that the mother of the petitioner falls within the definition of the "family" in terms of the Medical Attendance Rules. That apart he states that the father of the petitioner is a pensioner drawing an amount of Rs.5,200/- per month. He states that the mother of the petitioner was dependant on the petitioner both monetarily and physically. According to him, the stand of the

respondents that the father of the petitioner being a pensioner and drawing a sum of Rs.5,200/- which is above Rs.1,500/- as stipulated in the Medical Attendance Rules, petitioner's mother cannot be said to be dependent on the petitioner is arbitrary and contrary to the law laid down by this Court in the case of Union of India and Ors. v. Shyama Malhotra and Anr. 2007 (98) DRJ 367 (DB). That apart he would rely upon the following judgments in support of his contention: 1. (1998) 2 SCC 554 State of M.P. and Ors. v. M.P. Ojha and Anr. 2. (2008) 9 SCC 527 Union of India v. Prabhakaran Vijaya Kumar and Ors. 3. (2009) 1 SLR 550 (DB) Usha Kumari (Smt.) v. State of Punjab and Ors. 4. 2010 (2) M.P.L.J 167 Padma Sharma v. State of M.P. 5. 2014 (1) Mah. LJ 667 Anil v. State of Maharashtra 6. CWP 4892/2016 Manoj Kumar v. State of Harayana 7. W.P.(C) 12853/2009 Suraj Bhan v. Govt. of NCT of Delhi and Ors. He states that the petitioner is entitled to the relief as prayed for in the writ petition.

4. On the other hand, Mr. Anurag Mathur, learned counsel appearing for the respondent no.1 College would submit that the CGHS Scheme is not applicable to the University, but it is Medical Attendance Rules prescribed by the Govt. of India which are applicable. According to the said Rules, family of an employee includes in it husband / wife, parents and stepmother. He states there is nothing on record to show that the mother of the petitioner was staying with the petitioner. That apart he has placed before the Court a copy of the service book of the petitioner, wherein petitioner has himself declared the permanent residence of his mother at Bihar. In other words, it is his submission that the mother was not staying with the petitioner. He also states that as per the Scheme, petitioner was required to give yearly declaration showing the mother as his dependant. Unfortunately that has not been filed by the petitioner since his appointment. That apart, he states that the father of the petitioner is drawing a pension of Rs.5,200/- and the mother being dependant on father, the petitioner would not be entitled to reimbursement of the medical bills.

5. Mr. Mohinder J.S. Rupal, learned counsel appearing for the respondent no.2 makes similar submissions as has been made by Mr. Mathur. He has drawn my attention to the counter-affidavit filed by University of Delhi. I note the counter-affidavit has been filed by respondent no.3 Ministry of Health and Family Welfare. In the said affidavit a similar stand has been taken that the mother of the petitioner cannot be his dependent as she would be dependant of her husband, i.e., father of the petitioner and the petitioner shall not be entitled to reimbursement of medical bills.

6. Having heard the learned counsel for the parties, before I come to the submissions made by the learned counsel for the parties, it is necessary to reproduce the relevant provisions of the Medical Attendance Rules prescribed by the Government of India. The Rule defines the Family as under: "Family -----"Family" includes wife / husband (including more than one wife, judicially separated (wife), whether dependant or not, also includes parents, step mother, brothers, divorced / separated daughters, sisters, widowed sisters, widowed

daughters, minor brothers and children / step children / legally adopted children / wards wholly dependant on him. Parents will be treated as members of family only, if they stay either with the Government Servant at his head quarters or with rest of his family at another station".

7. Further for a family member to be considered as dependant, the relevant Rule reads as under: - "Dependency:-

The family member will be considered as dependant, if their income from all sources is less than Rs.1,500/- per month. For pensioners the original pension and pension equivalent of retirement gratuity are taken into account, but not dearness relief. Income of each members of family is to be considered separately for this purpose."

8. The plea taken by the learned counsel for the respondents is, the petitioner even though has shown his mother as dependant, she was residing in Bihar as per declaration given by the petitioner himself. That apart no yearly declaration as required under the Rules was filed by the petitioner to the College / University. The father of the petitioner being a Pensioner, she cannot be said to be dependent on the petitioner. The issue which arises for consideration is whether the mother of the petitioner was not dependant on the petitioner, and the respondents were justified in denying the reimbursement of the expenses incurred by the petitioner for her hospitalization / treatment. This court is of the view that the issue which falls for consideration is no more res integra in view of the judgment of the Supreme Court in State of M.P. and Ors. v. M.P. Ojha and Anr. (supra) wherein the Supreme court has interpreted M.P. Civil Services (Medical Attendance) Rules, 1958 which has defined the word "wholly dependent" referred therein as under: "The expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would be likely to lead to results which the relevant Rules would not have contemplated. The expression "wholly dependent" has to be understood in the context in which it is used keeping in view the object of the particular Rules where it is contained. We cannot curtail the meaning of "wholly dependent" by reading into this the definition as given in SR 8 [sic SR 2(8)] which has been reproduced above. Further, the expression "wholly dependent" as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of family it would mean other support, may be physical, as well. To be "wholly dependent" would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and was sick and it could not be said that he was not wholly dependent on his son. Son has to look after him in his old age. Even

otherwise by getting a pension of Rs. 414 per month which by any standard is a paltry amount it could not be said that the father was not "wholly dependent" on his son. That the father had a separate capacity of being a retired Government servant is immaterial if his case falls within the Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in interpreting and applying the Rules in a case like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It was submitted before us that the father being a retired Government servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter as we are satisfied that under the relevant Medical Rules, the father was member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other travelling expenses."

Even this Court in the case of Union of India and Ors. v. Shyama Malhotra (supra) in which case, respondent no.1 Shyama Malhotra who was of about 80 years of age and herself being a Pensioner was admitted in Batra Hospital and Institute approved under the Central Govt. Health Scheme in critical condition. She was operated upon and remained in hospital for 3 months and expenses of more than Rs.14 Lacs was incurred, out of which Rs.10,06,666/- was refunded by CGHS to the respondent no.2, as respondent no.1 Shyama Malhotra was shown as dependant of the respondent no.2 in the CGHS Card. One of the issues which arose for consideration was whether Shyama Malhotra being herself a Pensioner can be said to be dependant on respondent no.2, i.e., her son. This Court by relying upon the CGHS Scheme which defines the Family was of the following view: "17. CGHS is a beneficial and benevolent scheme, a welfare measure to provide for medical treatment of government servants and family members who are "mainly dependent" on the Government servant. The scheme recognises and accepts that a Government servant must take care of his old and aged parents residing with him. A narrow construction may well be self defeating and contrary to the object behind the provision. Dependency for the purpose of the clause will mean dependency for purpose of medical treatment and aid. It is ironical that when medical treatment (even in government hospitals) can land you with bills in lacs, as in the present case, for the deeming clause monthly income of Rs. 1500/- has been prescribed. This apparent contradiction, refutes and negates the primary objective. We need not go into these aspects in great detail in view of the interpretation given by us."

9. That apart, in the judgment of the Punjab and Haryana High Court in the case of Usha Kumari (Smt.) (supra), wherein the Punjab and Haryana High Court relied upon its earlier judgment in Nand Rani, Principal, Govt. Sr. Secondary School, Rajpura v. State of Punjab (2000-2) 125 PLR 617 has held as under: "8. So far as the Instructions are concerned, which have been made the basis for rejection of the claim of the petitioner and have been highlighted in Para 2 of the

preliminary objection of the written statement, this restricts the income of the dependents spouse, if his income is not more than Rs.1000/-P.M. Thus,he/she can be treated as dependent on a government employee. These Instructions are not in furtherance to or bases upon any statutory rules. Dependency can not be determined merely on the basis of financial calculation. It has to be social and in terms of the health as well.

9. In the case of Ram Lubhaya Bagga (Supra), the Court had accepted the protection to health to include care for health and being fully protected under Article 21 of the Constitution of India which casts an obligation upon the State to provide such protection under article 47 of the Constitution of India.

10. In the case of Nand Rani (Supra), the husband of the petitioner had retired from service and was getting pension of Rs.3105/-P.M. He was suffering from heart ailment and had suffered three heart attacks, thereafter, had gone by pass surgery. He was also denied medical reimbursement on the ground that as per government Instructions dated 3-1-1994, family members of the Government employees whose monthly income is more than Rs.500/- is not considered as dependent upon Government employees for reimbursement purpose and since husband of the petitioner in that case was getting Rs.3105/-P.M having retired as Senior Post Master, Ambala, he was held to be not entitled for medical reimbursement. This Court while allowing the writ petition held "husband of the petitioner would squarely fall in the definition of family inspite of the fact that he is getting some meager pension from the government. The expression "wholly dependent" would cover the husband of the petitioner as per the aforesaid decision of the Hon"ble Apex Court.

11. This Court in the aforesaid case of Nand Rani (Supra), allowed the writ petition more particularly, in view of the judgment in the case of State of M.P. vs. M.P.Ojha (Supra) and had directed the respondents to consider the case of the petitioner for reimbursement in accordance with rules and make payment without any unnecessary delay.

12. Since the present case is also covered by the decision rendered by this Court in Nand Rani's Case (Supra) as well as the decision of the Hon"ble Apex Court in M.P.Ojha's Case (Supra), the present petition is allowed and the respondents herein, are directed to reimburse medical bills to the petitioner in accordance with law without any further delay, preferably within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs."

10. Similarly in Padma Sharma (Supra) wherein the Madhya Pradesh High Court by referring to the judgment of the Supreme Court in the case of State of M.P. and Ors. v. M.P. Ojha and Anr. (supra) as in Para 11 held as under:- "11. In the present case the Petitioner a lady serving on the post of Upper Division Teacher is claiming reimbursement in respect of treatment availed by her husband at the All India Institute of Medical Sciences, New Delhi, who was pensioner and,

therefore, keeping in view the judgment delivered by the Apex Court, it can be safely gathered especially in light of the fact that the husband of the Petitioner was receiving meager pension that he was wholly dependent upon his wife. This Court while deciding almost similarly matter in the case of Vishwanath Prasad Khare (Dr.) v. State of Madhya Pradesh and Ors. (supra) has approved medical claims of the pensioner who has availed medical treatment even without permission of the State Government. This Court while deciding the aforesaid case, has held as under:

The Petitioner was immediate need of open heart surgery and he has rushed immediately to Bhopal Memorial Hospital and Research Centre, Bhopal. A Division Bench of Punjab and Haryana High Court in the case of Shakuntala v. State of Haryana reported in 2004 (1) SLR 563 has allowed the claim of Medical Reimbursement wherein the medical treatment was not availed from the approved hospital. It has been observed that saving the life of a sufferer should be the paramount consideration. Similarly the Apex Court in the case of Suman Rakheja v. State of Haryana and Anr. 2006 SCC (L and S) 890 has held that in case of emergency where a government servant has been rushed to a hospital though it is a private hospital, the employee/widow is entitled to get refund of 100 percent medical expenses at the AII Ms rate. In the present case the rate fixed by State Government for open heart surgery is Rs. 2.5 lacs and the bills submitted by the Petitioner is less than half of the rates prescribed by the State Government for such surgery. Moreover, the certificate issued by the Bhopal Memorial Hospital and Research Centre, Bhopal has not been disputed by the State Government. Resultantly, the present writ petition is allowed, Respondents are directed to reimburse the amount of Rs. 1,07,254/- of medical expenses within a period of three months positively from the date of receipt of certified copy of this order. 12. Keeping in view the totality facts and circumstances of the case and also the judgment delivered by the Apex Court, this Court is of the considered opinion that the husband of the Petitioner has to be treated wholly dependent for purpose reimbursement of medical bills amounting to Rs. 67940/=00 and, therefore, the Respondents are directed to reimburse the medical bills of the Petitioner within a period of 60 days from the date of receipt of certified copy of this Court. In the present case, the Petitioner is also a pensioner and as the Respondents have delayed the payment of medical bills, they are directed to pay interest also at the rate of 8%per annum from the date of filing of this petition."

11. In so far as the plea of Mr. Mathur that the petitioner has shown his mother staying at Bihar in the declaration form, to contend that she was not staying with him is concerned, the same is not appealing. The form has to be seen in perspective, inasmuch as, it is not only the mother but the petitioner has given the particulars of his wife and children also, and the address of Bihar was, his permanent address as also of his parents. It appears the declaration given was for LTC purposes. In any case the particulars of the form cannot be construed to mean that the mother of the petitioner was staying in Bihar. If this plea is

accepted then on the same analogy the petitioner's wife and children, whose permanent address was in Bihar, were also staying in Bihar; which is not the case of the respondents. Further the plea of the respondents that the father of the petitioner being a pensioner, his mother was dependent on him is also not appealing. Suffice to state the pension of the father being only Rs.5,200/-, the same could not have supported the medical treatment of the mother of the petitioner.

12. In view of the position of the facts and law narrated above, it must be held that the mother of the petitioner was dependant wholly on the petitioner as the dependency does not only relatable to financial dependency but also physical dependency as held by the judgments referred to above.

13. In view of the above conclusion, writ petition needs to be allowed to the extent, respondents shall consider the medical bills submitted by the petitioner from time to time in accordance with the Rules, in vogue in the College / University and shall not reject the same on the ground that the mother was not dependant on the petitioner. This exercise shall be carried out and the bills be paid accordingly within three months from today with interest @ 9% per annum to be computed from the date each of the bills was payable. No costs.