
(2016) 11 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12057 of 2016

Lal Singh

APPELLANT

Vs

Rajasthan State Road Transport Corporation

RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
RSRTC Medical Attendance Regulations, 2011 — Regulation 5

Citation : (2017) 1 WLN 165

Hon'ble Judges : Mr. Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : Mr. Alok Chaturvedi, Advocate, for the Respondent; Mr. Vikas Kabra, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Mr. Kanwaljit Singh Ahluwalia, J. - Present writ petition has been filed under Article 226 of the Constitution of India praying that the impugned order dated 13.04.2016 (Annexure-1) and 21.07.2016 (Annexure-2), whereby application of the petitioner has been rejected and he has been denied advance towards medical expenses for treatment of wife, be quashed and set aside.

2. The petitioner initially on 11.12.2001 was appointed as a Driver on contractual basis on the rolls of Rajasthan State Road Transport Corporation. On 20.01.2005 the services of the petitioner were regularized with effect from 11.12.2004. A condition was laid in the regularization order that petitioner will undergo one year probation period.

3. Smt. Sumitra, aged 42 years, wife of petitioner has been diagnosed as patient of "Acute Myeloid Leukemia", which is a life threatening disease. To save the life of wife of the petitioner, a surgery called "Allogenic Bone Marrow Transplantation" has been proposed and same is to be conducted at Government Medical College and Hospital called SMS Medical College, Jaipur. Surgery of the wife of the petitioner has not been conducted as the petitioner is not able to

deposit Rs.10 lacs in the Government hospital. Dr. Sandeep Jasuja, Associate Professor(Medical Oncology), Head- Medical Oncology and BMT, R.K. Birla Cancer Centre at SMS Medical College and Hospital, Jaipur on 02.04.2016 had issued a certificate giving estimate of the amount which is to be incurred by the petitioner towards "Allogenic Bone Marrow Transplantation". The said certificate is reproduced as under:-

"Bone Marrow Transplantation Estimations

This is to certify that Mrs Sumitra 42 yrs, is suffering from CML transformed in to Acute Myeloid leukemia.

The treatment of choice is Identical HLA Matched Allogenic Bone Marrow Transplant(after achieving remission. This facility of bone marrow transplant is available at RKBC, SMS hospital after HLA matched donor availability. The cost of Allogenic Marrow Transplant is apprx. 10,00,000 (Ten Lac's) Rs. Which May Increase or decrease depend upon complications.

This cost will be utilized as follows:

BMT and conditioning regims: 4 lacs

Supportive therapy and Blood component therapy: 3 lacs

GVHD prophylaxis and treatment: 3 lacs

Dr Sandeep Jasuja

Associate Prof (Medical Oncology)

Head- Medical Oncology and BMT

R.K. Birla Cancer Centre,

SMS Medical College and Hospital

Jaipur."

4. The petitioner applied to the respondent-Corporation to release Rs.10 lacs as advance. As per RSRTC Medical Attendance Regulations, 2011 (in short, "the Regulations of 2011") issued by the Rajasthan State Road Transport Corporation Finance(Rules) Department, for payment of advance under clause 5(5) of the Regulations of 2011, the advance amount can be made to an employee in case the Principal of Medical College constitutes a medical board to ascertain the genuineness of the claim. It is not disputed that the Principal and Controller had constituted a medical board and the Principal of SMS Medical College being Controller of the Attached Hospitals, Jaipur had passed an Office Order (Annexure-8), dated 23.05.2016. It will be apposite to reproduce the Office Order dated 23.05.2016 passed by the Principal, SMS Medical College And Controller of the Attached Hospitals, Jaipur as under:-

"OFFICE ORDER

On the recommendation of Board permission is hereby accorded in respect of Smt. Sumitra Devi w/o Sh. Lal Singh, working in the department of Rajasthan State Roadways Transport Corporation, Kotputli Aagar as Driver to take treatment at S.M.S. Hospital, Jaipur. She is suffering from C.M.L transformed in to AML. She has been advised Allogenic bone marrow transplantation.

This treatment can be done at RKBC, SMS Hospital, Jaipur.

The cost of Allogenic bone marrow transplantation is approx. Rs 10,00,000/- (Rupees ten lac's only) which may increase or decrease depending upon complications. The Payment must be made by PAY ORDER/BANK DRAFT only in favour of RAJASTHAN MEDICARE RELIEF SOCIETY S.M.S. Hospital, Jaipur.

Principal and Controller

No. 13980-83F-4 (609) MC/GS/Refferal/2016 Dated: 23/5/16

Copy forwarded to the following for information and necessary action:-

1. Managing Director, Rajasthan State Roadways Transport Corporation, Jaipur.
2. The Convener of Medical Board Dr. Hemant Malhotra, Professor, Medicine.
3. Sh. Lal Singh, Gram Kalyan Nagar, Post Fatehpur. Tehsil Banssor, District Alwar-301402, Mobile:8503942573.

Principal and Controller"

5. Request of the petitioner to release the amount which is required for providing immediate aid to his wife who is suffering from blood cancer has been denied by the respondents vide order dated 21.07.2016(Annexure-2). The said order is reproduced as under:-

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6. On failure of the respondents to release the advance amount, present writ petition has been filed to assail the order dated 21.07.2016 (Annexure-2) along with order dated 13.04.2016(Annexure-1) , wherein it was stated that amount incurred by the petitioner shall be reimbursed after surgery is carried.

7. Shri Alok Chaturvedi, Counsel appearing for the respondent-Corporation has submitted that since the petitioner was regularly appointed with effect from 11.12.2004, he is not entitled to medical reimbursement and payment of advance amount. Thus, the question raised before this Court can be formulated as under:-

"Whether a regular employee of Rajasthan State Road Transport Corporation, who has been appointed after 01.01.2004 is entitled to benefits under the RSRTC Medical Attendance Regulations, 2011 or not."

8. The RSRTC Medical Attendance Regulations, 2011 came into force with effect from 07.06.2013. Clause 1 regarding commencement of the RSRTC Medical Attendance Regulations, 2011 reads as under:-

"1. Short Title and Commencement :- (1) These regulations may be called the RSRTC Medical Attendance Regulations, 2011

(2) These shall come into force with immediate effect."

9. Regarding application of RSRTC Medical Attendance Regulations, 2011, it will be necessary to refer to Clause 2 of the Regulations of 2011, which reads as under:-

"2. Extent of application :- These regulations shall apply to:-

(1) All Corporation employees, appointed before 1st January, 2004, whose condition of service are regulated or deemed to be regulated by the RSRTC Employees service regulations and the employees, whose service are regulated by the Standing orders, 1965, but are exempted from ESI Scheme.

(2) These regulations shall not apply to:-

(i) Corporation employees who are covered under ESI Scheme.

(ii) Corporation employees, who are abroad on leave.

(iii) Probationer trainee, Daily wages, work charged, casual and part time employees.

(iv) Persons appointed on contract basis."

10. Before this Court deal with the argument raised by the Counsel for the respondents, it will be necessary to notice that as per Clause 5 of the Regulations of 2011, all employees of the Corporation are entitled to free medical attendance and indoor/outdoor treatment for himself and his family members in Government hospitals. The relevant portion of Clause-5 of the Regulations of 2011 is reproduced as under:-

"5. Free Medical Attendance and Indoor/Outdoor Treatment to Corporation employee and his family in Government Hospital:-

(1) A Corporation employee and his family, will be provided free medical attendance and treatment, in accordance with provisions of these regulations in a Government hospital.

(2) ?....

(3) ?....

(4) ?...

(5) If the total expenditure on medical attendance and treatment as per the provisions of sub-regulation (2) is more than Rs. 5 lacs then the Head of Office will refer the case to the Principal of Medical College to constitute a Medical Board to ascertain the genuineness of the claim. The reimbursement on this account shall be governed as per opinion of the Medical Board and the excess claim, if any, shall be disallowed.

Note: In case of treatment in approved hospitals as outdoor patient, reimbursement of Registration/ Doctor fee will be made on the basis of actual amount paid or Rs.50, whichever is less.

7(A) Medical Attendance and treatment to Corporation employee and his family in hospitals under Public Private Partnership agreement- a Corporation employee and members of his family shall be entitled to medical attendance and treatment in hospitals under Public Private Partnership arrangement to the extent of provisions indicated in regulations 7 for approved hospitals within the state.

11. It is not denied by Shri Alok Chaturvedi, Counsel appearing for the respondent-Corporation that "Allogenic Bone Marrow Transplantation" of the wife of the petitioner is to be conducted at Government hospital. Shri Chaturvedi has raised a solitary argument that since petitioner's services were regularized with effect from 11.12.2004, the Regulations of 2011 shall not apply to him. These Regulations shall only apply to the employees of the Corporation who were appointed before 01.01.2004. Shri Alok Chaturvedi could not differentiate any rationale as to why the employees appointed after 01.01.2004 will not be entitled to medical reimbursement. A pointed query was raised that in the respondent-Corporation there cannot be two sets of employees, one appointed before 01.01.2004 and another after the said date and they cannot be discriminated so

far as application of RSRTC Medical Attendance Regulations, 2011 is concerned. Shri Alok Chaturvedi could not justify as to why two different classes have been created in the Corporation, one having special privilege being appointed before 01.01.2004 and others less fortunate being appointed after 01.01.2004. Thus discrimination on the part of the respondents is writ large between employees appointed before 01.01.2004 and appointed thereafter.

12. Shri Vikas Kabra appearing for the petitioner has submitted that for the employees appointed after 01.01.2004, the respondent-Corporation has not even made any scheme regarding medical reimbursement or any medical insurance. The classification between the employees, one appointed before 01.01.2004 and others appointed thereafter is bad in the eyes of law. Such a classification cannot be termed as reasonable and it has no nexus to achieve on the touchstone of Article 14 of the Constitution of India, it is apparent that Corporation has discriminated between two sets of employees, one appointed before 01.01.2004 and others appointed thereafter.

13. The validity of cut off dates for a Scheme to operate have come up for consideration in several cases before the Supreme Court. A cut off date for sending an application for selection to a post of employment or for admission to college may have relevance and its stipulation, therefor, may serve as drawing up the field of eligibility of candidates within a particular period. A Scheme providing for a benefit such as extension of pensionary benefits or medical benefits may be limited to a particular classes of persons, but if applicability of the benefit were to be restricted from a retrospective date for the same class employees, the cut off date ought to have an objective classification and bear a rational nexus to the object to be fulfilled.

14. A Constitution Bench in D.S. Nakara And Others v. Union of India (1983) 1 SCC 305 considering that liberalised pension formula has been made applicable prospectively to those who retired on or after cut off date by 31.03.1979, examined whether the classification between the persons who retired earlier to cut off date by 31.03.1979 and others who retired thereafter and examining the scope of Article 14 of the Constitution of India, in para 11 the Supreme Court observed as under:-

"11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question (see Ram Krishna Dalmia V. Justice S.R. Tendolkar). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. causal connection between the basis of classification and object of the statute under consideration.

It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

15. It further held that pension scheme must be interpreted by giving liberal construction. Medical reimbursement to the employee and his family is a beneficial act of the employer. It would be apposite here to reproduce para 30 of the judgment from D.S. Nakara's case (supra) as under:-

"30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane(see American Jurisprudence, 2d, 881)."

16. On a touchstone of principle of equality, the Court held that the persons holding identical posts cannot be treated differently. It goes without saying that petitioner as a driver is discharging same functions which are being discharged by the drivers who were recruited before 01.01.2004, date prescribed for commencement of Regulations of 2011. Following observations made in D.S. Nakara's case (supra) are required to be highlighted:-

"Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39(e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities."

17. Court after examining the classification of two pensioners, one who retired by 31.03.1979 and others who retired thereafter, in case of D.S. Nakara (supra) held that classification is wholly arbitrary being violative of guarantee of equality enshrined in Article 14 of the Constitution of India. In the present case in the reply or during the course of arguments, no reason has been furnished as to why 01.01.2004 was prescribed as a date for holding that employees appointed before the said date shall be entitled to benefit of medical reimbursement and others appointed after the said date will not be entitled to such benefit. For a division between two set of employees, no reason has been spelt out in the reply

or by the Counsel during the course of arguments. In D.S. Nakara's case (supra), reliance was placed on *Jaila Singh v. State of Rajasthan*, (1976) 1 SCC 602 and in para 54 it was held as under:-

"Similarly in *Jaila Singh v. State of Rajasthan*, this Court struck down as discriminatory the division of pre-1955 and post-1955 tenants for the purpose of allotment of land made by the Rules under the Rajasthan Colonisation Act, 1954 observing that the various provisions indicate that the pre-1955 and post-1955 tenants stand on the same footing and therefore do not form different classes and hence the division was held to be based on wholly irrelevant consideration. The court further observed that it is difficult to appreciate how it would make any difference from the point of view of allotment of land, whether a tenant has been in occupation for 16 years or 18 or 20 years and why differentiation should be made with reference to the date when Rajasthan Tenancy Act came into force. This division for the purpose of allotment of land with reference to certain date was considered both arbitrary and discriminatory on the ground that it was wholly unrelated to the objects sought to be achieved."

18. In recent decisions in *Kallakurichi Taluk Retired Officials Association, Tamil Nadu And Others v. State of Tamil Nadu*, (2013) 2 SCC 772, *Asha v. Pt. B.D. Sharma University of Health Sciences And Others*, (2012) 7 SCC 389 and *K.J.S. Buttar v. Union of India And Another*, (2011) 11 SCC 429, the Supreme Court has constantly held that a Scheme providing for some monetary benefit to accrue to the same class of persons from the date of Scheme cannot be enforced arbitrarily to same class by a reference to cut off date, when the rational for the cut off date is not explained, as in the instant case, no justification for the cut off date has been set forth and explained in the reply. Consequently, such a choice of date cannot be upheld by the Courts. In the light of decision, the denial of benefit to the applicant is arbitrary and grossly discriminatory and, hence, is violative of Article 14 of the Constitution of India.

19. Therefore, Clause 2 so far as it restricts benefit of RSRTC Medical Attendance Regulations, 2011 to the employees appointed only before 01.01.2004 is bad in the eyes of law inoperative and hence not binding on the petitioner to that extent. Therefore, the petitioner who was appointed as a regular employee on 11.12.2004 and is on the rolls of the Corporation as a Driver is entitled to all the benefits which flow from the RSRTC Medical Attendance Regulations, 2011, the cut off date being inoperative for the reasons stated above.

20. Consequently, present writ petition is allowed. The impugned order dated 21.07.2016 (Annexure-2) is set aside. As per Clause 5 of the RSRTC Medical Attendance Regulations, 2011, the petitioner is held entitled to reimbursement of all expenses incurred for treatment of his wife. Further more, the petitioner is held entitled to payment of advance as per Clause 5(5) of the Regulations of 2011. Since the Principal of SMS Medical College and Controller of the Attached Hospitals, Jaipur after constitution of a medical board has already passed an order dated 23.05.2016, the respondent-Corporation is directed to release the

amount of Rs.10 lacs (Rs. Ten lacs) as advance to the petitioner forthwith as each day is precious to save the life of the wife of the petitioner.