

(2010) 04 MP CK 0043
In the Madhya Pradesh High Court

L.P. Sanodia

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Madhya Pradesh Civil Services (Medical Attendance) Rules, 1958 — Rule 1(3)
Pension Welfare Funds Rules, 1997 — Rule 6

Citation : (2010) ILR (MP) 1729 : (2010) 4 MPHT 188 : (2010) 4 MPJR 142 :
(2010) 4 MPLJ 207

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Judgement

K.K. Lahoti, J.

This petition is directed against an order (Annexure P-12), dated 9-3-2004, by which respondent No. 2 declined to reimburse medical bill of the petitioner on the ground that the petitioner was not entitled for any reimbursement after the date of his retirement.

Shri Dixit, the learned Counsel appearing for the petitioner, submitted that the petitioner, while he was in service, suffered serious heart ailment. The petitioner was admitted in Escort Hospital, Delhi where he remained under treatment between 15-7-2003 and 20-9-2003. The petitioner attained age of superannuation on 31-7-2003 but his treatment was continued even after superannuation. Initially Angiography was done. But subsequently as per advise of (he doctor, the petitioner underwent Open Heart Surgery. The petitioner suffered a total expenditure of Rs. 3,20,298/-. Though the respondents reimbursed partly expenditure up to the date of retirement of the petitioner, but declined to reimburse remaining expenditure. The petitioner took medical treatment advance of Rs. 92,000/-, out of which 11,190/- were adjusted and in respect of remaining amount, the petitioner was directed either to deposit rest of the amount or the amount was directed to be adjusted towards gratuity and other retiral dues.

It is submitted that the petitioner was entitled for reimbursement of the entire medical expenses from the respondents. Reliance is placed to a judgment of Division Bench of this Court in State of M.P. and Ors. v. Dr. Vishwanath Prasad Khare reported in 2009 (3) MPJR SN 9, and also to Rule 6 of Pension Welfare Funds Rules, 1997.

Shri Sudesh Varma, the learned Counsel appearing for the State, submitted that vide order dated 16-10-2003 (Annexure P-5) the petitioner was rightly denied the reimbursement. As per Madhya Pradesh Civil Services (Medical Attendance) Rules, 1958, the petitioner was entitled for medical attendance till the date of his retirement and not thereafter. So the respondents have rightly declined reimbursement of the bills of the petitioner after the date of retirement.

From the perusal of the documents, it appears that the petitioner suffered heart ailment while he was in service. He was permitted vide order dated 28-6-2003 for the treatment at Escort Hospital, New Delhi. The petitioner was allowed Rs. 92,000/- medical advance. The petitioner after obtaining due sanction, took his treatment at Escort Hospital, New Delhi. The petitioner was admitted in the hospital on 15-7-2003. Initially, Angiography was done, but subsequently, as per the advice of the doctors, the petitioner undergone Open Heart Surgery. The petitioner submitted his bill to the respondents. It is not in dispute that the petitioner suffered aforesaid ailment while he was in service and was admitted in the hospital on 15-7-2003. Though Open Heart Surgery was performed after 31-7-2003 but a fact remains that the aforesaid ailment occurred before the date of superannuation. The petitioner was accorded permission by the respondents for the treatment at Escort Hospital, New Delhi vide Annexure P-4, dated 28-6-2003 and the petitioner took his treatment in the same hospital during the period between 15-7-2003 and 26-8-2003. The petitioner remained under treatment for the same ailment. Though Sub-rule (3) of Rule 1 of M.P. Civil Services (Medical Attendance) Rules, 1958 provides that these Rules shall not apply to a retired Government servant, but in this case fact remains that the ailment occurred before the age of superannuation of the petitioner, he was admitted in the hospital on 15-7-2003 and during the treatment he suffered an operation of Open Heart Surgery and only on 20th September, 2003, he could recover and return to home. Meaning thereby that during treatment in the hospital, petitioner attained the age of superannuation. Though Sub-rule (3) of Rule 1 of the Rules provides that the Rules shall not apply to retired employee, but factual position in this case is entirely different when the petitioner was admitted in the hospital on 15-7-2003, he was not retired and during the period of treatment in the hospital, petitioner suffered Open Heart Surgery. In the facts of this case, petitioner cannot be denied with the reimbursement of the medical expenses. In Dr. Vishwanath Prasad Khare (supra), the Division Bench of this Court considering the controversy held thus:

In the present case, for reimbursement, rules have been framed by the State Government namely Madhya Pradesh Pensions Welfare Fund Rules, 1997. From a

perusal of the said Rules, it appears that there is no provision in the aforesaid Rules, which will de-bar the petitioner from claiming the medical reimbursement on the ground that he has taken the treatment from a hospital, which is not recognized by the State Government. Open Heart Surgery is also provided in schedule one of the list framed under Rule 6 and thus, it is one of the severe illness, which provides for medical reimbursement. There is no mention of amount in the rules ceiling the expenditure for Open Heart Surgery. On the contrary, it is mentioned that in case of Open Heart Surgery, the matter shall be decided on merits. There is no rule to deny the medical reimbursement on the ground that the hospital, from where the treatment was taken by the employee was unrecognised by the State Government.

On the other hand, the Apex Court in the case of *Suman Rakheja v. State of Haryana and Anr.* 2006 SCC (L & S) 890, has laid down that in case of emergency, if a retired Government servant rushed to the hospital, which is not recognised then also the State Government is liable to make reimbursement to the extent of 100%.

In view of the aforesaid judgment, we do not find any merit in the appeal. The Writ Court has rightly directed to reimburse the entire amount to the petitioner towards medical expenses.

The Division Bench also held that such an employee shall be entitled for reimbursement of medical expenditure.

In view of the aforesaid factual and legal position, the orders in Annexures P-12 and P-13 are not sustainable and hereby quashed. The respondents are directed to reimburse the medical bill of the petitioner. The respondents shall release the amount within 90 days from the date of communication of this order.

The gratuity and other retiral dues of the petitioner, which have been withheld by the respondents for the adjustment of medical advance, shall also be released to the petitioner within 90 days from the date of communication of this order.

Considering the facts of the case, the petitioner shall be entitled for cost of this petition which is quantified Rs. 2,000/- payable by the respondents to the petitioner.