
(2001) 07 MAD CK 0127
In the Madras High Court
Case No : Writ Petition No. 13572 of 2000

P. Subramani

APPELLANT

Vs

Government of Tamil Nadu and another

RESPONDENT

Date of Decision : 20-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 3 LW 385 : (2001) 3 MLJ 255

Hon'ble Judges : V.S. Sirpurkar, J;P.K. Misra, J

Bench : Division Bench

Advocate : Mr. G. Saravanan, for the Appellant; Mrs. T. Kokilavani, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—This writ petition is filed by the employee of the Judiciary praying therein for a writ of certiorari quashing the communication dated 13.12.1999 by the second respondent Registrar and directing the respondents to provide medical aid of Rs.50,000 to the petitioner. Following facts will highlight the controversy.

2. Petitioner who was at the relevant time working as a junior bailiff, was suffering from diabetes for a long time and on his condition becoming worse, he was admitted to J.M.Hospital, Trichy. It was diagnosed that his kidneys were affected and surgery had to be performed to save his life and accordingly two surgeries were performed; one on 15.4.1997 on the right kidney and on 10.6.1997 on the left kidney. These surgeries were performed in a private hospital.

3. The State of Tamil Nadu had floated a scheme called "Government Employees Health Fund" by its order dated 9.1.1992. Under that, the government employees were to receive the medical help from a health fund created jointly by the contributions of the government servants as also by the Government on the

other side. Rules were also framed for the creation and governance of the said fund. It was however incumbent that the treatment should be taken only from particular hospitals. However, that condition of taking the treatment from the particular government hospitals was also relaxed by the Government by its order dated 5.5.1994 bearing No.15518/SAL. 1/94-2. By that order, a clarification was provided that there was no bar in granting of assistance for the other recognised and standard private hospitals in the State, provided the Heads of Departments verified the genuineness of the treatment as also the existence of such hospital etc.. The Government also provided that the Heads of the Departments were to be solely held responsible on the correctness of such sanctions. In short, if the Head of the Department had certified that the treatment was genuinely taken in a private hospital which was in existence, the said employee was still entitled to the medical help. The petitioner therefore filed a representation to the Registrar, the second respondent on 19.12.1997 through the District Judge who was his Head of the Department. Needless to say that it is not controverted before us that the District Judge had also certified the treatment as well as the existence of the hospital in Trichy. It however seems that the second respondent returned that application as per his letter dated 13.12.1999 in ROC.No.4249/98/C4, wherein the second respondent had expressed his inability to provide the medical help by reimbursing the petitioner for the bills. It was written by the Registrar to the District Judge, Trichy that the petitioner who was a junior bailiff was not eligible to the claim as per the Government Letter dated 28.10.1999.

4. By that letter, it has been recorded by the Government that there was increasing trend in the preference of claims for undergoing major surgeries/treatment in the unapproved private hospitals resulting in increase in the out flow of the fund and the Government has therefore decided to cancel the clarification issued on 5.5.1994 which has been referred in the earlier part of this judgment. With the result, the financial assistance was to be sanctioned only for the specialised advances surgeries undergone at the accredited private hospitals listed out and notified by the Government from time to time. It is obvious that the hospital at which the petitioner took the treatment was not in this list.

5. The learned counsel appearing on behalf of the petitioner pointed out that the operations of the petitioner had taken place somewhere in the month of April and June, 1997. The claim for that was also made much earlier and yet the Registrar, relying on the letter dated 13.12.1999 had rejected the claim on the ground of ineligibility. The learned counsel pointed out that there is no fault on his part inasmuch as he has complied with all the formalities required for getting the medical reimbursement. He also points out that nobody has denied that the petitioner was actually ill and was actually operated upon as claimed in the J.M.Hospital, Trichy. The petitioner argues that the State Government could not now turn back on the basis of a subsequent decision dated 13.12.1999 and refuse to reimburse the petitioner in respect of his medical charges.

6. As against this, the learned Government Pleader tries to suggest that it was

the Government Policy now from 13.12.1999 not to honour such claims and therefore even the Registrar had sought for the explanation from the Finance Department and the Finance Department, by its letter dated 1.12,1999 had clarified to the Registrar that the petitioner was not entitled as he had undergone the surgery in an unaccredited hospital.

7. Considering the rival contentions, it is obvious that this scheme which became operative from 1992 did initially provide that the treatment was to be taken in the particular kind of hospitals. However, by the subsequent letter dated 5.5.1994 a revolutionary change was brought in, whereby the clarification was provided and it has provided that the patient could take the treatment anywhere in any private hospital. However, his Head of the Department had to vouchsafe for the existence of the hospital and the factum of such treatment being taken and that the said Head of the Department was to be held responsible for the correctness of such claim. Now, it is obvious that this state of affairs continued till 13.12.1999. If that was so, then there was no question of the petitioner being denied his reimbursement charges particularly because the Head of the Department i.e., the Principal District, Judge, Trichy had endorsed the petitioner's application. As if that was not sufficient even the Joint Director of Health Services, Perambalur District had recommended the reimbursement to the petitioner. In, his communication dated 22.4,1998, the Joint Director affirms that the treatment given to the petitioner was necessary to save his life and though the hospital in which the treatment- was taken was not a recognised one for the medical claim, a special permission could be obtained from the Government to admit the claim.

8. In our view, even if the Government had subsequently issued a communication withdrawing the earlier clarification dated 5.5.1994, the earlier cases like the one of the petitioner could not be allowed to be governed by the subsequent clarification dated 13.12.1999. From the record, we find that there is no factual dispute regarding the petitioner's ailment or the factum of his" having undergone the treatment. The only problem was that the treatment which was taken by him was not at the accredited hospital. But then, the treatment was taken in 1997 and the bills were also claimed much before the Government withdrew its clarification dated 5.5.1994. Such subsequent stand taken by the Government cannot non-suit the petitioner who would be entitled to get the benefit of the health fund scheme provided he had complied with the other conditions. It seems that the only reason given by the Government as also by the Registrar appears to be that the petitioner did not take the treatment in the recognised hospital, which according to us cannot come in the way of the petitioner.

9. Therefore, in our opinion the petition must succeed and the petitioner would be entitled to the reimbursement of his charges in the light of the provisions and the Rules of the health fund scheme. We direct the Government to consider the matter again in the light of the observations made and take the decision for

reimbursing the petitioner to the extent he is entitled to under the scheme within a reasonable time. With these observations, we allow the writ petition. No costs. Consequently, connected W.M.P.No. 19647 and 19648 of 2000 are closed.