
(2013) 09 MP CK 0007
In the Madhya Pradesh High Court
Case No : W.P. No. 5477 of 2008

Prashant Singh Baghel

APPELLANT

Vs

State of M P. and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 3 MPHT 203 : (2014) 2 MPLJ 45

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

Bench : Single Bench

Judgement

K.K. Trivedi, J.—Challenging the order dated 21-4-2004 passed by the respondent No. 2, the Director of Medical Education, M.P., Bhopal, this writ petition under Article 226 of the Constitution of India, is filed seeking quashment of the said order and a direction against the respondents to grant sanction to reimburse the amount of medical expenses incurred by the petitioner on account of ailment of his mother. It is contended that the petitioner being an employee, working as Technical Member District Project Supporting Unit of District Poverty Initiative Project (hereinafter referred to as DPIP for brevity) under the Rural Development Department, was entitled to the said benefit in terms of the provisions of M.P. Civil Services Medical Assistance Rules, 1958 (hereinafter referred to as the Rules for short). It is contended that in terms of the provisions made under the said Rules, the petitioner was entitled to the reimbursement of the amount so incurred by him for the treatment of his mother after making of a reference for such treatment by medical authorities of the State, therefore, only on lame excuses that the mother of the petitioner was a retired employee and a pensioner of the State, she would not be entitled to grant of permission of the said reimbursement, the rejection of such a reimbursement claim was improper. Facts giving rise to filing of this writ petition are that the petitioner is working in the services of the aforesaid project. From the facts as have been stated in the petition, it is clear that the petitioner was appointed on 12-1-1987 in the project in Apex Bank on the post of Assistant Engineer. The petitioner was sent to work on deputation to DPIP, which is a World Bank Aided Project run by the State of

Madhya Pradesh. For the said project, the Rules made by the State Government governing the services of the State employees are made applicable. It is contended by the petitioner that the mother of the petitioner was working as Assistant Teacher in the School Education Department of Government of Madhya Pradesh and on attaining the age of superannuation, she has retired with effect from 31-12-2001. The mother of the petitioner was receiving pension. The mother of the petitioner was suffering from hepatocellular carcinoma (liver cancer) and was referred for treatment to Bombay Hospital and Medical Research Centre, Mumbai. She was being treated at Rewa and the said Medical Officer referred the mother of the petitioner to aforesaid Hospital. Looking to such a situation, the petitioner moved an application seeking permission to take treatment for his mother out of the State. Such an application was referred to the respondent No. 2, but the same has been rejected by the order under challenge, therefore, the writ petition is required to be filed. It is contended that in terms of the provisions of the Rules, the word "dependent" has been interpreted by the M.P. Administrative Tribunal, which order has further been upheld by the Apex Court, therefore, now on such a lame excuse, the claim of petitioner could not have been rejected. The mother of the petitioner was getting a meager pension and, therefore, she was wholly dependent on the petitioner. That being so, the expression "wholly dependent" as prescribed in the Rules would be applicable and the petitioner would be entitled to get the reimbursement of medical expenses. This being so, it is contended that the order impugned is bad in law.

2. Refuting the allegations made by the petitioner, a return has been filed by the respondents No. 1 to 3 and it is contended that a pensioner cannot be termed to be wholly dependent of his/her son or daughter, whosoever in service. The State Government has made specific Rules known as Madhya Pradesh Kalyan Nidhi Niyam, 1997 (hereinafter referred to as Niyam for brevity) for the purposes of providing medical facilities to the retired Government servants and that being so, the mother of the petitioner would not be entitled to claim any reimbursement of the medical expenses. It is, thus, contended that the petition being wholly misconceived is liable to be dismissed. The respondent No. 4 has simply adopted the return of the respondents No. 1 to 3.

3. Heard learned counsel for the parties at length and perused the record.

4. It is not in dispute that the petitioner is an employee governed by the Rules, specifically the Medical Assistance Rules and other Rules made by the State Government. So far as this part is concerned, nothing has been said in the return by the respondents that the services of the petitioner are not governed by any such Rules framed by the State Government for its employees. The simple meaning is that a Rule as a whole would be applicable. It is not the case of the petitioner that he is seeking reimbursement of medical expenses of his mother under any other provisions except the Rules referred to hereinabove. Now whether because some Niyam have been made by the State giving medical

assistance to the retired employees of the State, could it be said that the benefit as claimed by the petitioner for medical reimbursement would not be available to him. The Niyam referred by the respondents in their return have not been placed on record nor has it been pointed out that there is any specific provision made in the said Rules where application of Medical Attendance Rules etc., have been barred. That being so, it is incorrect on the part of the respondents to say that the mother of the petitioner being a retired employee, the petitioner would not be entitled to reimbursement of any medical expenses incurred by him for the treatment of his mother. The Apex Court in the case of State of M.P. and Others Vs. M.P. Ojha and Another, has categorically laid down after interpreting the provision of the Rules that a Government employee in service can claim reimbursement of the amount of medical expenses of his father/mother if it is declared by him that the father or mother was wholly dependent on him and merely because the said relative of the employee of the State was receiving pension, it cannot be said that the employee would not be entitled to any reimbursement. In paragraph 13 of the report, after discussing at length and interpreting word ""wholly dependent" the Apex Court has held that such employee would be entitled to, get the reimbursement, For the convenience the said interpretation is reproduced:--

13. 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 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 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 traveling expenses.

5. Now the question which is to be seen whether the petitioner has sought permission before undertaking the journey out of the State for treatment of his mother or not and whether because of this reason, the petitioner could be denied the benefit of reimbursement. It is specifically prescribed under the Rules that an application is to be made under Rule 8 of the Rules in prescribed form. It is not specifically mentioned that any permission in advance is required to be taken. However, a procedure of referral is prescribed by issuing the administrative instructions and committees are constituted for the said purposes. Looking to the circumstances in which the mother of the petitioner was suffering, it was not possible for him to obtain a referral prior to treatment of his mother. For that purpose, the de facto permission can be granted and reimbursement of such medical expenses could be authorised. In view of this, the reimbursement of the medical expenses incurred by the petitioner for the treatment of his mother cannot be denied.

6. Consequently, this writ petition is allowed. Order dated 21-4-2004 passed by the respondent No. 2 is hereby quashed. The respondents are directed to reimburse the amount of medical expenses incurred by the petitioner for the treatment of his mother, within a period of two months from the date of receipt of the order passed today. The writ petition stands allowed to the extent indicated hereinabove. There shall be no order as to costs.