
(2010) 02 MP CK 0069

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6228 of 2006

Smt. Padma Sharma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Madhya Pradesh Civil Services (Medical Attendance) Rules, 1958 — Rule 10, 2, 3, 4, 5

Citation : (2010) ILR (MP) 1089 : (2010) 2 MPLJ 167

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Sharma, J.

The Petitioner a retired Upper Division Teacher of the School Education Department of the State of Madhya Pradesh, has filed this present writ petition being aggrieved by an order dated 18.8.2006 by which the Director, Medical Education has rejected the claim of the Petitioner, claiming reimbursement of medical bills in respect of treatment of her husband. The Petitioner is also aggrieved by an order dated 26.9.2006 passed by the Assistant Director, Public Instruction by which the District Education Officer, Guna has been directed not to reimburse the medical bills of the Petitioner.

The Petitioner before this Court has stated in the writ petition that at the relevant point of time she was working as a Upper Division Teacher in the School Education Department of State of Madhya Pradesh and her husband was a pensioner and retired on attaining the age of superannuation from the post of Reader (Clerk) from District Court, Guna. The husband of the Petitioner was a pensioner and as he was having some heart problem, was referred to All India Institute of Medical Sciences, New Delhi by the doctors at Guna in the year 2006 and as there was a medical emergency to shift the husband of the Petitioner to Delhi, he immediately shifted to Delhi and was admitted in the All India Institute

of Medical Sciences, New Delhi. The husband of the Petitioner underwent heart surgery on 16.3.2006 and as the Petitioner was holding the post of Upper Division Teacher serving the State Government, submitted a claim to the authority concerned to the tune of Rs. 67940/-00 towards the treatment availed by her husband. The Petitioner has further stated that her claim was rejected by the Director, Medical Education on the ground that there is no statutory provisions enabling a retired government servant to avail the treatment from out of State of Madhya Pradesh.

The learned Counsel for the Petitioner has argued before this Court that the husband of the Petitioner though has retired from the post of Reader from District Court and is a pensioner, has to be treated a member of a family of the Petitioner and is certainly wholly dependent upon the Petitioner and, therefore, the Petitioner was justified in submitting the claim to the tune of Rs. 67940/-00. The learned Counsel for the Petitioner has relied upon a judgment delivered by this Court in the case of Vishwanath Prasad Khare (Dr.) v. State of Madhya Pradesh and Ors. 2009 (III) M.P.J.R 8 wherein this Court has directed the authority therein to reimburse the medical bills in case of a pensioner also amounting to Rs. 107254=00.

The learned Counsel for the Petitioner has also relied upon a judgment delivered by the Apex Court in the case of State of M.P. and Others Vs. M.P. Ojha and Another, , wherein the Apex Court has also treated a pensioner to be wholly dependent in the peculiar facts and circumstances of the case.

A reply has been filed on behalf of Respondent/State and they have stated that the impugned order has rightly been passed, rejecting the claim of the Petitioner as there is no statutory provisions enabling a pensioner to avail the treatment from out of the State. The Respondents have also stated that the Petitioner has never applied for grant of permission at any point of time and there is no statutory provisions for reimbursement of medical bills in respect of the pensioner, and therefore, the claim of the Petitioner cannot be accepted. The Respondents have reiterated in the return that no permission was granted at any point of time for treatment in case of the Petitioner's husband. The Respondents have prayed for dismissal of the writ petition. The Respondents have also enclosed Annexure R/1 wherein post facto sanction was accorded for reimbursement of claim in similar nature.

Heard learned Counsel for the parties and perused the record.

The Petitioner before this Court, at the relevant point of time was serving as Upper Division Teacher in the School Education Department of the State of Madhya Pradesh and during the pendency of this present writ petition has attained the age of superannuation. The husband of the Petitioner prior to his retirement was working as Upper Division Clerk (Reader) and retired on attaining the age of superannuation on 31.5.2005. The Petitioner was residing with her husband at Guna. In the year 2006 the husband of the Petitioner was suffering

from some heart ailment and was referred by the doctor at Guna to the All India Institute of Medical Sciences, New Delhi. The husband of the Petitioner was operated upon on 16.3.2006 at the All India Institute of Medical Sciences, New Delhi and the Petitioner, who at the relevant point of time was serving in the School Education Department on the post of Upper Division Teacher submitted an application for reimbursement of medical bills amounting to Rs. 67940/=00 and the same has been turned down by the Director of Medical Education vide order dated 18.8.2006 on the ground that there is no statutory provisions with regard to treatment of a pensioner from out of State of Madhya Pradesh and the same was communicated to the Petitioner vide letter dated 26.9.2006. In the present case, the Petitioner has already stated earlier that she was serving on the post of Upper Division Teacher and her husband was receiving a meager pension at the relevant point of time.

The Apex Court in the case of State of M.P. and Others Vs. M.P. Ojha and Another, in paragraphs 6, 7, 8, 9, 10, 11, 12, 13 and 14 has held as under:

5. As the 2nd Respondent failed in his attempt to get reimbursement under the Medical Rules, he approached the Tribunal seeking relief. He impleaded the State Government, Director of Medical Education (Health) and Joint Director-cum-Superintendent, M.Y. Hospital as Respondents. His father was also made a party as a co-Petitioner. The Tribunal after considering the facts of the case and relevant Medical Rules allowed the application and directed the Respondents to reimburse the expenditure incurred by the 2nd Respondent on treatment of his father, the 1st Respondent at Bombay. Aggrieved by the said judgment, the State has filed this appeal.

It was submitted by Mr. Choudhary, learned advocate for the Appellants, that father, a retired Government servant, who lived with his son, a Government servant, could not be treated as "wholly dependent" within the meaning of "family" under Rule 2(d) of the Medical Rules and thus the 2nd Respondent was not entitled to any reimbursement for the treatment of his father. Mr. Choudhary said that to understand the expression "wholly dependent" reference should be made to Fundamental Rule (FR) 9. Mr. Gambhir, learned Counsel for the Respondents, however, submitted that reference to FR 9 was irrelevant and in any case this FR 9 was not applicable in the present case. He said that son was entitled to reimbursement as per Medical Rules. Alternatively, he submitted that permission in the present case was granted by the competent authority within the Medical Rules and reimbursement of the expenses incurred by the son for treatment of his father could not be denied to him.

Admittedly, Medical Rules do not apply to retired Government servant and Rules have been framed regarding medical attendance of Government pensioners and further that there are instructions issued from time to time entitling them to get treatment, free of charge, available in the Government hospitals of the State. However, Government pensioners are not entitled for reimbursement of expenses incurred for their treatment outside the State.

At this stage, it would be appropriate to set out the relevant Rules.

M.P. Civil Services (Medical Attendance) Rules, 1958.

1(3) These rules shall not apply to-

(a) Retired Government servants;

(b) to(c).

2(d) "Family" means -

(i) The wife or husband of a Government servant;

(ii) The parents, legitimate children including children adopted legally and step children of such Government servant residing with and wholly dependent on that Government servant.

(1) Rules 3 to 10 shall, in so far as they relate to medical attendance and treatment at hospital apply to the members of the family of a Government servant in the same manner and to the same extent as they apply to Government servant:

Provided that where another child is born to a Government servant where there are three or more children living, the additional child so born shall not be entitled to the concession admissible under these rules.

(2) A Government servant shall also be entitled for reimbursement of the charges incurred by him for the treatment of his wife during the confinement (including pre-natal and post-natal treatment and treatment for abortion):

Provided that no reimbursement shall be made if three or more children are living on the date of such confinement.

We may note that Rules 3 to 10 provide for free medical treatment to Government servant and also for reimbursement of the expenses incurred by him towards that.

We may now refer to the definition as to what "family" means under Fundamental Rules as contended by Mr. Choudhary and in that connection according to him FR9 contains the following definition of "family".

Family means (a) a Government servant's wife or husband, as the case may be, residing with the Government servant and legitimate children and step children residing with and wholly dependent upon the Government servant.

Except for purpose of Section XVI-A of the Supplementary Rules in Appendix V, it includes, in addition, parents, sisters and minor brothers, if residing with and wholly dependent upon the Government servant.

(b) For the purpose of Section XI, it includes in addition unmarried and widowed sisters and minor brother if residing with and wholly dependent upon the Govt.

servant.

Note. Govt. servant's wife or husband, as the case may be, legitimate children, step children, father, mother, step mother, unmarried and widowed sisters, minor brothers who reside and pension equivalent to death-cum-retirement gratuity does not exceed Rs. 250/- p.m. may be deemed to be wholly dependent upon the Government servant.

This amendment takes effect from the date of issue. Cases already decided will not be re-opened.

Notes (1) Not more than one wife is included in the term "family" for the purpose of these rules.

(2) An adopted child shall be considered to be a legitimate child if, under the personal law of the Government servant, adoption is legally recognised as conferring on it the status of a natural child.

According to Mr. Choudhary, therefore, to understand as to what the expression "wholly dependent" means in Medical Rules we should draw strength from the similar expression "wholly dependent" appearing in FR quoted above. The whole argument of Mr. Choudhary appears to us to be fallacious. Fundamental Rules have been framed under the Government of India Act. There is no FR 9 as such. FR 9 (32) defines as to what is "Travelling allowances". According to this definition "travelling allowances" means:

9(32). Travelling allowance" means an allowance granted to a Government servant to cover the expenses which he incurs in travelling in the interest of public service. It includes allowances granted for the maintenance of conveyances, horses and tents.

Under this FR 9 (32) Supplementary Rules have been framed and the definition of "family" on which Mr. Choudhary relied is in fact Supplementary Rule 8 (SR 8) framed under FR 9(32). Now, for one thing this definition of "family" is to be confined to the case where a Government servant on transfer seeks to draw allowances for himself and members of his family wholly dependent upon him. Secondly, this definition of "family" in SR 8 and the expression "wholly dependent" appearing therein cannot be brought in to interpret similar expression in Medical Rules.

The expression "wholly dependent" is not a term of Article. 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.

Keeping in view the judgment of the Apex Court, it is evident that the Apex Court in spite of the fact that the Respondent therein was a pensioner, has treated him as wholly dependent irrespective of the fact he himself was receiving pension. The Apex Court has held the son with whom the pensioner was residing to be entitled for reimbursement of medical expenses incurred on the treatment of his father.

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.

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 80/per annum from the date of filing of this petition.

With the aforesaid, the writ petition stands allowed and disposed of.

No order as to costs.