

(1996) 02 KL CK 0071

In the High Court Of Kerala

Case No : C.M.P. No. 11295/85 in O.P. No. 13295/92

T. Chandrasekhara Menon

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 12-02-1996

Acts Referred:

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 23C, 23D, 23D1

Citation : (1996) 02 KL CK 0071

Hon'ble Judges : K. Sreedharan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : K. Venu Nair, for the Appellant; C.P. Tharakan, Central Govt. Standing Counsel for 1st Respondent, A.A.G. for 2nd Respondent, P.K. Suresh, for 3rd Respondent and Thottathil B. Radhakrishnan for Additional 4th Respondent, for the Respondent

Judgement

K. Sreedharan, J.—One of the retired Judges of the Kerala High Court staying in Cochin approached this Court by filing the original petition inter alia praying for the issue of a writ of mandamus to the Union Government to apply the Central Government Health Scheme to all retired Judges irrespective of their place of residence. He also prayed for the issue of a writ of mandamus directing the State Government to issue a Notification on the same terms as in Ext. P-3 applying the benefits conferred by the said order to the retired Supreme Court Judges also to retired High Court Judges. A learned Single Judge disposed of the O.P. by judgment dated 20th October 1994 by declaring that Petitioner as well as all other retired High Court Judges and members of their families residing within the State of Kerala are entitled to the benefits envisaged under C.G.H. Scheme as for a retired Class I Officer of the Central Government. Learned Judge further observed that it is open to the Central Government or any authority prescribed under the C.G.H. Scheme to collect or realise the prescribed contribution amount from the retired High Court Judge concerned. In spite of the above direction and observation made by the learned Single Judge, nothing took place to extend the

medical benefits to retired High Court Judges who are staying within Kerala. Thereupon Petitioner in the O.P. moved C.M.P. 11295/95 praying for issue of appropriate direction to the Union and State Governments for due compliance with the judgment of the High Court. When it came before the learned Judge who disposed of the O.P. he directed it to be placed before a Bench. Thus the matter has come before us.

2. Medical facilities for retired Judges of the High Court are dealt with in Section 23D of the High Court Judges (Conditions of Service) Act, 1954. Clause (1) of that section provides that every retired Judge be entitled for himself and his family to the same facilities as respects medical treatment and on the same conditions as a retired officer of the Central Civil Services Class I and his family are entitled under any rules and orders of the Central Government in force. Clause (2) of that section further provides that notwithstanding anything contained in Sub-section (1) a retired Judge of the High Court of a State may avail, for himself and his family any facilities for medical treatment which the Government of that State may extend to him subject to the conditions and restrictions as the Central Government may impose.

3. Section 23C of the Supreme Court Judges (Conditions of Service) Act, 1958 states that every retired Judge shall be entitled, for himself and his family to the same facilities as respects medical treatment and on the same conditions as a retired officer of the Central Civil Services, Class I and his family are entitled under any rules and orders of the Central Government for the time being in force. The said provision is virtually in pari materia with Section 23D of the High Court Judges (Conditions of Service) Act referred to earlier.

4. Central Government has introduced a Scheme known as Central Government Health Scheme by which its pensioners are given certain facilities: Like (1) outdoor treatment through dispensaries/polyclinic/hospital, maternity centres etc., (2) Supply of drugs, (3) Laboratory and X-ray investigation, (4) Domiciliary visits (provided the pensioners reside within 3 kms. of C.G.H.S. dispensary), (5) Specialised consultation in selected centres and polyclinics/hospitals etc., (6) Hospital services at Government Hospitals and selected hospitals recognised by C.G.H. Scheme. It includes O.P.D., hospitalisation, specialised investigation and treatment etc., (7) Specialised treatment in specialised hospitals for Cancer, T.B., Polio and Mental Diseases, (8) Super Speciality treatment eg. kidney transplant and Coronary Artery Bypass Graft (C.A.B.G.) etc., (9) Facilities for dental treatment. However C.G.H.S. scheme has specified that the benefits would be available only to those persons residing within 15 cities mentioned therein. No city under that Scheme is situated within Kerala.

5. Petitioner approached the Central Government for getting medical facilities pursuant to the direction issued by the learned Single Judge. Registrar of this Court also wrote to the Central Government in the matter. It is worthwhile to note that an Under Secretary to Government of India in the Ministry of Law, Justice and Company Affairs wrote a letter to the Registrar of the High Court

stating that retired Judges of the High Court residing in non-C.G.H.S. areas would be eligible for availing the facilities there under by registering themselves at the dispensary in a nearby city which is covered by the Scheme. From the said letter it would appear that a retired High Court Judge staying in Kerala should go over to Madras or Bangalore the nearest city covered by the Scheme for registering him in one of the dispensaries there. If an ailing retired High Court Judge staying in Kerala is required to go over to Bangalore or Madras for getting the facility, it will be nothing but inhuman and cruel.

6. Retired Judges of the Supreme Court who were staying outside the cities covered by the Central Government Health Scheme experienced considerable difficulties in availing themselves of the medical facilities admissible under the Scheme. Central Government then requested the Kerala State Government to extend the same facilities to the retired Supreme Court Judges and their families residing within the State of Kerala as admissible to All India Service Officers borne on the State Cadre. Even before that Government of Kerala as per G.O. (Ms.) No. 323/81/GAD, dated 19th September 1981 issued orders extending the medical facilities available to the retired All India Service Officers and their families to the retired High Court Judges and their families as well. That facility was also extended to the retired Supreme Court Judges and their families. On account of the difficulties felt by the retired Supreme Court Judges, Government issued G.O. (Ms.) 223/84/GAD, dated 7th July 1984 extending the benefits covered by G.O. 323/81/GAD, dated 19th September 1981 to the retired Supreme Court Judges and their families who are residing in Kerala State as well. In relation to the above orders issued by the State Government the retired Supreme Court Judge staying in Kerala experienced further difficulties and the matter was taken up with the Central Government. Union Minister of Law, Justice and Company Affairs then requested the State Government to consider reimbursement of expenditure incurred by the retired Supreme Court Judge on his medical treatment and also medical treatment of his family members. After consultation with the Central Government on the above matter, the State Government issued G.O. (Ms.) 25/85/GAD, dated 11th January 1985. By that order, G.O. (Ms.) 223/84/GAD, dated 7th July 1984 was modified and directed that retired Supreme Court Judges and members of their family residing within the State of Kerala will be eligible for free medical treatment in all Government Hospitals in the State and for reimbursement of expenditure incurred for the purchase of medicine and for treatment not available in Government hospitals. The Government further directed Registrar, High Court of Kerala to reimburse the expenditure incurred on medical treatment by retired Supreme Court Judges and their family members. Identical benefit has not so far been extended to the retired High Court Judges and the members of their family who are staying within the State of Kerala.

7. As stated earlier, the medical facilities for retired High Court Judges and retired Judges of the Supreme Court as provided in the relevant enactments are identical. Retired High Court Judges and retired Judges of the Supreme Court

who are staying within the limits of 15 cities covered by the Central Government Health Scheme are getting identical benefits. They are treated in like manner. This shows that as far as medical facilities are concerned, the retired Judges of the High Court cannot be discriminated against and must be treated alike retired Judges of the Supreme Court who are staying within the State of Kerala. The benefits that were extended to retired Supreme Court Judges and the members of their family who are residing within the State of Kerala as per G.O. (Ms.) No. 25/85/GAD, dated 11th January 1985 must necessarily be extended to the retired Judges of the High Court and members of their family who are residing within the State. Consequently, we direct the State Government to extend the benefits conferred on retired Judges of the Supreme Court and members of their family who are staying within the State of Kerala as per G.O. (Ms.) 25/85/GAD, dated 11th January 1985 to the retired Judges of the High Court and the members of their family who are residing within the State. The benefits thus due to the retired High Court Judges and members of their family must be available to them from the date of G.O. (Ms.) 25/85/GAD., dated 11th January 1985. As stated by the Government in that Order, Registrar, High Court of Kerala should be the authorised authority to reimburse the expenditure incurred on medical treatment by retired High Court Judges and the members of their family who are residing in Kerala.

Petition is ordered in the above terms. We make no order as to costs.