
(2006) 01 RAJ CK 0076
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5083 of 2003

Uma Shankar Srivastava

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-01-2006

Acts Referred:

Citation : (2006) 2 RLW 1060 : (2006) 1 WLC 611

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Advocate : Ajay Tantiya and R.K. Mathur, for the Appellant; G.S. Gill, Additional Advocate General and Sanjeev Sogarwal, for the Respondent

Final Decision : Allowed

Judgement

Ashok Parihar, J.—Petitioner stood retired from Government service after attaining the age of superannuation. There is no dispute that the petitioner has been contributing towards the Rajasthan Pensioners Medical Fund throughout his service tenure. After retirement, wife of the petitioner was admitted in the SMS Hospital, Jaipur on 5.2.2002 where Orthopedic surgery for knee replacement was done. Petitioner submitted bills for expenditure incurred in the said surgery to the tune of Rs. 1,70,000/-before the authorities. It may be mentioned here that the bills for medical expenditure had been issued by the Rajasthan Medical Relief Society, SMS Hospital, Jaipur itself, however, the petitioner has been allowed reimbursement of the bills only to the tune of Rs. 1 lac, which comes to 59% of the expenses incurred on the treatment of his wife as referred to above.

2. The writ petition has been filed by the petitioner claiming reimbursement of the whole amount citing instances of some officers, who have been allowed 100% reimbursement for such operations of knee replacement.

3. A very vague and evasive reply has been filed on behalf of the respondents justifying payment of only Rs. 1 lac reimbursed to the petitioner against the bills for Rs. 1,70,000/-. Reliance has been placed on Para 4 of the Rajasthan

Pensioners Medical Concession Scheme, wherein, it has been stated that there is limit of Rs. 1,20,000/- or 80% of the expenses, whichever is less. On bare reading of the Scheme, as placed on record, would show that the limit of 80% of hospital expenses or Rs. 1,20,000/-, whichever is less, has been provided only for the treatment taken in a hospital/institution outside the State in case the same facility is not available in any Government hospital in the State.

4. In the present case, the treatment and the operation have been performed in the SMS Hospital, Jaipur, as such, relevant portion of Para 4 of the Scheme, as relied upon by the respondents, cannot be made applicable in the present case. It has also not been explained by the respondents as to how Rs. 1 lac has been sanctioned, which is only 59% of the actual expenses, whereas, even the limit, referred to above, has been fixed as 80% of the total expenses or 1,20,000/-, whichever is less. The same reasoning also cannot be justified in case of two officers referred by the petitioner in his writ petition who have been granted 100% reimbursement of the actual expenses.

5. Though, for in service employees, there are rules under the title of Rajasthan Civil Services (Medical Attendance) Rules, however, no such rules as such have been framed for the retired Government employees. Even the Scheme, as framed by the State Government for such retired Government employees, is absolutely vague. As has been brought to the notice of the Court that the state Government or the Board of Trustees have been changing the limits of reimbursement time and again without any justification and reasoning. The powers of the Board of Trustees have not been defined so far. In the saving clause, the Board of Trustees have been granted unfettered discretion to grant any concession to a pensioner relating to medical treatment and assistance which is not provided in the scheme and which is clear from the fact that without giving any reasons some pensioners have been provided 100% reimbursement and others have been denied the same. The limits of reimbursement in some cases under the scheme looks absurd. By a recent amendment a pensioner undergoing by-pass surgery outside the State will be paid only Rs. 48,000/- i.e., General Ward charges of AIIMS, New Delhi and as has been submitted and noted the Board of Trustees or the Committee may even allow any amount under the discretion provided in Para 16 of the Scheme. Such provision under the scheme can only be termed as highly arbitrary and discriminatory.

6. Health and medical assistance is part and parcel of right to life and liberty and it is fundamental duty of the State to provide such facilities to its citizen, more particularly, the retired Government employees, who have throughout their service tenure been contributing to the scheme. It is expected of the State Government to frame rules in regard to giving medical benefits to the retired Government employees also so that no arbitrary discretion is left with the Board of Trustees and the Committees, which decide claims of the pensioners.

7. Admittedly, wife of the petitioner has been operated in a Government hospital in the State itself and the bills have been issued by the Rajasthan Medical Relief

Society, SMS Hospital, Jaipur and, as such authenticity of the bills also cannot be disbelieved. Since, there is no limit prescribed in the Scheme for reimbursement of the expenses incurred on treatment in a Government hospital in the State, in my opinion, the petitioner is entitled for reimbursement of the entire expenses as claimed by him.

8. Accordingly, the writ petition is allowed. The respondents are directed to make payment of remaining amount of Rs. 70,000 to the petitioner within thirty days from the date of receipt of certified copy of this order. Since, wholly unreasonable and contradictory stand has been taken by the respondents in the present matter, they are further directed to pay a cost of Rs. 10,000/- also to the petitioner alongwith the amount as ordered above.