
(2008) 05 P&H CK 0077
In the Punjab And Haryana At Chandigarh

Usha Kumari (Smt.)	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 20-05-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227, 47

Citation : (2008) 151 PLR 608

Hon'ble Judges : Rakesh Kumar Jain, J;Mehtab S. Gill, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The petitioner has filed this writ petition under Articles 226 and 227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the orders dated 21.7.2006 and 02.05.2007 attached as Annexure P-10 and P-14 respectively, whereby the claim of the petitioner for medical reimbursement of the amount spent on the heart surgery of her husband from Escort Heart Institute and Research Centre, New Delhi, has been rejected and also for a writ in the nature of mandamus directing the respondents to make payment of the medical bills submitted by the petitioner to the tune of Rs. 97,471/- and Rs. 7,000/- in view of Ex-post Facto sanction given by respondent No. 4.

2. Petitioner's husband S.P. Khanna, had retired from Privately Managed Government Aided School, Kapurthala on 31.12.1998. He suffered heart problem and was admitted in Escort Heart Institute and Research Centre, New Delhi, where Angiography and bypass surgery was conducted on him. He remained hospitalized from 16.1.2004 to 17.1.2004 and from 18.2.2004 to 02.03.2004. The petitioner had spent Rs. 15,300/- on account of Angiography and a sum of Rs. 1,98,171/- for by-pass surgery. The medical bills of the aforesaid amount was submitted by the petitioner to the District Education Officer (S), Kapurthala on 20.8.2004. The Director Health & Family Welfare Department, Chandigarh, verified the bill and granted ex-post, facto sanction on the basis of

recommendations of the District/State Medical Board for the treatment taken from Escort at the AIIMS, New Delhi/Government rates to the tune of Rs. 97,471/- and Rs. 7,000/- vide Memo No. PMH(06)Pb/05/10759 dated 12.5.2005 and PMH No. (6)Pb/05/13726 dated 24.6.2005 respectively. The petitioner who is working as a Art and Craft Teacher posted at Government Senior Secondary School, Jhanjiri, Tehsil Kharar, District Ropar, is entitled to medical expenses for her own and for her dependant under the Medical Service (Medical Attendants) Rule, 1940. The Director Public Instructions (School) Punjab, Chandigarh, sought an affidavit of the petitioner to the effect that as to whether her husband is not serving in government/semi government service and is not obtaining any pension and his income from all sources is not more that Rs. 500/- P.M. The petitioner submitted her affidavit stating therein that her husband has retired from Privately Managed Government Aided School and is not getting any medical allowance and medical assistance. It was rather mentioned that he is getting basic pension and D.A. Respondent No. 2 vide his memo No. 14/182-2005-Estt.-3(5) dated 21.7.2005 rejected the claim of the petitioner on the ground that her husband is not dependent upon her, therefore, she can not claim for the expenses on the treatment of her husband. The order of rejection dated 21.7.2005 is attached as Annexure P-10. The petitioner served a legal notice dated 22.7.2006 Annexure P-11 in which it was categorically mentioned by her that her husband was getting pension of Rs. 5,000/- P.M. sans medical allowance and, therefore, he is economically and medically dependent on her. Respondent No. 2 vide memo No. 2/221-06-5(K)2/9954 dated 2.5.2007 rejected the claim of the petitioner on the ground that since husband of the petitioner is drawing pension of Rs. 5,000/-, therefore payment of medical claim can not be made as per instructions No. 12/7/97-5 Health 5/2848 dated 20.5.2004. This order dated 2.5.2007 is attached Annexure P-14.

3. The petitioner has assailed both Annexures P-10 and P-14 in the present writ petition on the ground that husband of the petitioner has retired from Privately Managed Government Aided School and is physically and economically dependent upon her, but had not been granted medical allowance from the employer. The petitioner has relied upon the decision of the Apex Court in the cases of State of M.P. and Others Vs. M.P. Ojha and Another, , State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., and a decision of this Court in the case of Nand Rani, Principal, Govt. Sr. Sec. School Vs. The State of Punjab and Others, .

4. It has been argued by the learned Counsel for the petitioner that the present matter is fully covered by the aforesaid decisions and has prayed for grant of amount which has been spent by her on the treatment of her husband.

5. In the written statement filed by Respondent Nos. 1 to 3, they have highlighted the relevant portion of the Instructions dated 20.5.2004 to the effect "that life partner of Government employee (husband/wife) with one dependent person also involved if his income is less that Rs. 1,000/- P.M." It is further mentioned in the written statement that the petitioner is not entitled for medical

reimbursement because her husband had retired as Principal from Government Aided Recognized School and drawing pension of Rs. 5,000/- P.M.

6. We have heard learned Counsel for the parties and have perused the record.

7. In the cited case of *State of M.P. v. M.P. Ojha* (supra), the Hon"ble Apex Court was pleased to hold as under:

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. Further, the expression "wholly dependent" as appearing in the definition of "family" as given in Medical Rules can not be confined to mere financial dependence. Ordinarily, dependence means financial dependence but for a member or 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. Court cannot curtail meaning of "wholly dependent" by reading into this the definition as given in R.S. framed under R.9(32).

In the instant case the father of Government Servant who himself has retired as Government Servant was 70 years of age 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/- P.M. 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 Medical Rules being a member of the family of his son and wholly dependent on him. Therefore, under R.2(d) of M.P. Medical Rules, the father is member of family of his son and is wholly dependent on him and son was thus fully entitled to reimbursement for expenses incurred on treatment of his father and other travelling expenses.

8. As far as the instructions are concerned, which have been made the basis for rejecting of the claim of the petitioner and have been highlighted in Para 2 of the preliminary objection of the written statement, this restricts the income of the dependents spouse, if his income is not more that Rs. 1,000/- P.M. Thus, he/she can be treated as dependent on a government employee. These instructions are not in furtherance to or bases upon any statutory rules. Dependency can not be determined merely on the basis of financial calculation. It has to be social and in terms of the health as well.

9. In the case of *Ram Lubhaya Bagga* (supra), the Court had accepted the protection to health to include case for health and being fully protected under Article 21 of the Constitution of India which casts as obligation upon the State to provide such protection under Article 47 of the Constitution of India.

10. In the case of *Nand Rani* (supra), the husband of the petitioner had retired from service and was getting pension of Rs. 3,105/- P.M. He was suffering from

heart ailment and has suffered three heart attacks, thereafter, had undergone by pass surgery. He was also denied medical reimbursement on the ground that as per government instructions dated 3.1.1994, family members of the Government employees whose monthly income is more than Rs. 500/- is not considered as dependent upon Government employees for reimbursement purpose and since husband of the petitioner in that case was getting Rs. 3,105/- P.M. having retired as Senior Post Master, Ambala, he was held to be not entitled for medical reimbursement. This Court while allowing the writ petition held "husband of the petitioner should squarely fall in the definition of family inspite of the fact that he is getting some meagre pension from the government. The expression "wholly dependent" would cover the husband of the petitioner as per the aforesaid decision of the Hon"ble Apex Court.

11. This Court in the aforesaid case of Nand Rani (supra), allowed the writ petition more particularly, in view of the judgment in the case of State of M.P. v. M.P. Ojha (supra) and had directed the respondents to consider the case of the petitioner for reimbursement in accordance with rules and make payment without any unnecessary delay.

12. Since the present case is also covered by the decision rendered by this Court in Nand Rani's case (supra) as well as the decision of the Hon"ble Apex Court in M.P. Ojha's case (supra), the present petition is allowed and the respondents herein, are directed to reimburse medical bills to the petitioner in accordance with law without any further delay, preferably within a period of two months from the date of receipt of a copy of this order.

13. However, there shall be no order as to costs.