

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 03.04.2023
Pronounced on: 26.04.2023

SWP No. 1062/2016

Monica Pathania

.....Appellant(s)/Petitioner(s)

Through: Mr. Rahul Pant, Sr. Advocate with
Ms. Aarushi Shukla, Advocate.

Vs

State of J&K and others

..... Respondent(s)

Through: Mr. Amit Gupta, AAG.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. With the consent of learned counsels appearing for the parties, the present petition was considered finally.
2. The rejection of the claim of the petitioner by the respondents vide communication dated 01.06.2015, seeking reimbursement of the medical expenses incurred by the petitioner on the treatment of her husband, has prompted the petitioner to approach this Court through the medium of this writ petition for not only quashing of the communication dated 01.06.2015 (Supra), but also for directing the respondents to reimburse the medical expenses for an amount of Rs. 14,99,511/- along with interest at the rate of 12 percent per annum from the date, the bills were submitted by the petitioner with the respondents.
3. The facts necessary for the disposal of this writ petition are that while the petitioner, who was a contractual employee with the respondent No. 1, was on a private visit to Nagpur along with her husband in the year

2009, her husband fell seriously ill and was admitted in Kalaptaru Hospital in Nagpur on 15.10.2009. The husband of the petitioner was operated and he was found to be suffering from 'Carcinoma Rectum'. The husband of the petitioner underwent emergent treatment i.e. chemotherapy as well as radiotherapy at Yashodha Cancer Hospital, Nagpur. Though the petitioner claims to have spent more than Rs. 25 Lakhs upon the treatment of her husband who expired on 08.09.2011, but the petitioner further claims to have retained the bills only for an amount of Rs. 12,31,711/- regarding which she made a claim with her employer for reimbursement, but was paid an amount of Rs. 1.5 Lacs only in March, 2011. The petitioner after submitting the above mentioned bills submitted more bills for an amount of Rs. 2,67,000/- as the treatment of her husband was continuing even after 2010. The verification regarding the nature of the treatment of the husband of the petitioner was sought by the respondents vide communication dated 21.08.2010 (Annexure H to the writ petition) from the Director, Health Services in terms of Rule 6(5) of J&K Civil Services (Medical Attendance-cum-Allowance) Rules 1990. The Directorate of Health Services after examination of the claim of the petitioner found that the treatment received by the patient i.e. husband of the petitioner was genuine and intimated the same to the respondent Nos. 1 and 2 vide its communication dated 04.03.2011 (Annexure J to the writ petition). The petitioner further claims to have approached the respondent No. 3 for according sanction to the release of her medical reimbursement claim and even submitted the representation on 20.03.2014 and the respondent No. 2 submitted the claim of the petitioner to the respondent

No. 3 vide its communication dated 25.02.2015 (Annexure L to the writ petition). The claim of the petitioner was rejected by the respondent No. 3 vide its communication dated 01.06.2015 which is the subject matter of the present writ petition.

4. The petitioner has assailed the communication dated 01.06.2015 issued by the respondent No.3 on the grounds *inter alia* that the petitioner had not deliberately gone outside the erstwhile State to get the treatment for her husband but while she was on a private visit to her parental house at Nagpur along with her husband, the husband of the petitioner suddenly fell seriously ill. Then and there only malignancy was deducted and the petitioner had no time to come to Jammu to seek proper sanction for the treatment and that the respondent No. 1 which is the Society, has extended the rules in toto to its employees and under Rule 8 of the Rules (supra), the power of relaxation is there, therefore, the society can relax any aspect of the rule in question so as to give effect to the spirit of the rules.
5. The Respondents have filed their response, wherein it has been stated that no permission was obtained by the petitioner to travel outside the State from her office and had left for Nagpur on her own. Four days leave from 26.09.2009 to 29.09.2009 was sanctioned post facto by the Director Transport vide its communication dated 29.02.2012 and in absence of prior permission from her office to visit outside the then State and without authorization from the administrative department, the petitioner is not entitled to any medical reimbursement. It is further stated that as the treatment outside the then State required sanction from the Administrative Department, accordingly, the claim was forwarded

to Principal Secretary, Planning and Development Department, Civil Secretariat, Jammu and the same was returned by the administrative department vide communication dated 07.06.2011 with the observation that under what rules the file has been submitted to the Administrative Department and accordingly, the case of the petitioner was closed and Rs. 1.5 Lacs were sanctioned from Chief Minister's Cancer Relief Fund to the petitioner. It is also stated that the claim, where the treatment has been obtained from outside the State, requires dependence certificate of the beneficiary and authorization certificate of the Administrative Department to proceed outside the state for treatment which may be accorded by the concerned Administrative Department on production of certificate on the prescribed proforma. The requisite formalities were not completed by the petitioner in the instant case. Her case was reopened in the year 2015 on the request of the petitioner and forwarded to the Administrative Department vide communication dated 25.02.2015 but the Administrative Department returned the file in original with the observation that the case does not merit any consideration as the treatment outside the state has been obtained without any reference. It is also stated that the petitioner has been allowed salary for the leave period as per her entitlement on the basis of leave rules of contractual employees of ERA. Respondents have admitted that the contractual/deputation employees of the ERA have been reimbursed the medical claims only after the fulfilment of requisite formalities required under rules.

6. The Supplementary affidavit has been filed by the petitioner wherein it has been stated that the husband of the petitioner was totally dependent

upon her as he was not an employee either with the Government or with any private institution/concern. The dependence certificate dated 24.04.2010 was obtained by the petitioner in respect of financial dependence of her husband, from Tehsildar, Jammu. The petitioner has further stated that on account of unemployment of the husband of the petitioner, he was allotted Liquor Vend but the same could not be operated by the husband of the petitioner as the allotment of the Vends to different persons came to be challenged before this court and finally the same was set aside.

7. Mr. Rahul Pant, learned senior counsel for the petitioner submitted that it was not a case where the petitioner deliberately went outside the State for planned treatment of her husband and rather the petitioner along with her husband had gone for a private visit where suddenly the husband of the petitioner fell ill and the petitioner was compelled to incur huge expenditure for treatment of her husband. He further submitted that the J&K Civil Services (Medical Attendance-cum-Allowance) Rules 1990 are meant for the welfare of the employees and action of respondents in rejecting the claim of the petitioner is contrary to the spirit of the rules. Mr. Rahul Pant, has placed reliance upon judgment of Division Bench of this Court in **State of J&K Vs. Dr. Sakhi Willayat** reported in **2004 (3) JKJ 412 [HC (DB)]**.
8. Mr. Amit Gupta, learned counsel for the respondents submitted that the petitioner had not sought any prior permission for getting treatment outside the State in terms of J&K Civil Services (Medical Attendance-cum-Allowance) Rules 1990, therefore, the claim of the petitioner has been rightly rejected by the respondents.

9. Heard and perused the record.
10. The claim of the petitioner for reimbursement of her medical claim is rejected by the respondents vide impugned communication bearing No. PD/ERA/31/2014-15 dated 01.06.2015 on the following two grounds:
- (i) The treatment outside the State has been obtained without any reference which is not covered under the J&K Civil Services (Medical Attendance-cum-Allowance) Rules 1990.
 - (ii) The hospital where the treatment has been obtained is not covered under the J&K Civil Services (Medical Attendance and Allowance) Rules 1990.
11. In order to appreciate the controversy, the rule 6(5) of the J&K Civil Services (Medical Attendance-cum-Allowance) Rules 1990 is reproduced as under:
- “Treatment outside the State:- Where a beneficiary resides temporarily outside the State and falls ill there suddenly and is advised admission in a hospital, he will, on production of necessary vouchers and certificates, be allowed reimbursement of hospital charges including cost of drugs and charges for investigation, provided it is recommended by the director Health Services of the State after being satisfied that the beneficiary had suddenly fallen ill outside the State where he resides temporarily and was not already suffering from it before his departure from his home town. The Director Health Services will certify that drugs and services charged for are reasonable and the beneficiary could not wait for treatment in his home town.
12. A perusal of this rule would provide that if a beneficiary resides temporarily outside a State and falls ill there suddenly and is advised admission in a hospital, he will, on the production of necessary vouchers and certificates, be allowed reimbursement of hospital charges including cost of drugs and charges for investigation provided that it is recommended by the Director Health Services of the State. These rules

envisage a situation where the employee or his dependent falls ill outside the State suddenly and requires treatment in the hospital. So far as the present case is concerned, the case of the petitioner is that she went outside the State for a private visit along with her husband and suddenly her husband who was dependent upon her, fell seriously ill that necessitated his treatment in the Hospitals at Nagpur and Hyderabad. The respondents in their response have nowhere denied the stand of the petitioner that the petitioner along with her husband had not gone outside the State for the purpose of getting treatment of her husband deliberately. The Rule 6(5) envisages an emergent situation when it may not be possible for an employee-beneficiary to get a sanction for treatment outside the State. In view of this, this Court is of the considered view that the respondents could not have rejected the claim of the petitioner just because the petitioner had got her husband treated outside the State without prior permission of the respondents.

13. It would also be appropriate to take note of the judgment of the Division Bench of this Court in “**State of J&K Vs. Dr. Sakhi Willayat**” (**Supra**) wherein it has been held that if an employee or his dependent falls ill outside the state and requires treatment in the hospital, rules suggest that the vouchers/claim for reimbursement can be permitted though after fulfilling the requirement as contained in the Rules and it has been further held that this rule has been enacted with a purpose that in such situation, it may not be convenient for the employee to first obtain sanction and then to proceed for treatment. It is also further observed by the Division Bench that such type of cases are required to be dealt with the element of human approach. In the instant

case, the genuineness of the claim of the petitioner has been certified and verified by the Director Health Services.

- 14.** The other ground for rejection of the claim of the petitioner for reimbursement of the medical expenses is that the hospitals from where the treatment was obtained were not covered under the J&K Civil Services (Medical Attendance-cum-Allowance) Rules 1990. This is an admitted case that the hospitals where the husband of the petitioner was treated were not the approved hospitals under the Rules (supra). It would be relevant to take note of the Rule 8 of the J&K Civil Services (Medical Attendance-cum-Allowance) Rules 1990 which is reproduced here under:

“Right of changing or interpretation etc-

- (1) The Government reserves to itself the right of changing or cancelling the rules in these regulations from time to time at its discretion and of interpreting their meaning in case of dispute.
- (2) Power to relax: Where the Government is satisfied that the operation, if any, of these rules has caused undue hardship in particular case, it may, by order for reasons to be recorded in writing dispense with or relax the requirements of that rule to such extent and subject to such exception and conditions as it may consider necessary for dealing with the case in a just and equitable manner; Provided that no such order shall be made except the concurrence of the Finance Department.”

- 15.** Thus rule 8(2) of the Rules (Supra) vests the power with the Government to relax the rules in case the operation of the Rules cause undue hardship in a particular case. The power of relaxation of the Rules has been vested with the Government not for the purpose of adorning the ‘Rule Book’ only but for its exercise in genuine cases, where the strict adherence to the Rules would operate harshly against the beneficiary. In the instant case, the petitioner who was admittedly a contractual employee at the relevant point of time and her husband was

dependent upon her and further because of emergent medical situation, when she was out for private tour along with her husband, she spent huge expenditure on the treatment of her husband, itself demonstrate the pathetic case of the petitioner. The respondents were well within their power to relax these rules under Rule (Supra) to reimburse the medical claim of the petitioner for treatment obtained outside the State from hospitals which were not in the list of the approved hospitals. In such type of situation, humane view was required to be taken while considering the claim of the petitioner. It appears that the respondents have passed the order impugned, rejecting the claim of the petitioner for reimbursement of medical expenses incurred by her on the treatment of her husband being oblivious to the rules.

- 16.** In '**Badar Hussain vs. State of J& K**' bearing SWP No. 2097/2013' decided by the co-ordinate Bench of this court on 17.05.2017, the Government relaxed the rules and allowed the reimbursement of the claim of the petitioner for expenses incurred on the medical treatment of his son to the extent of rates applicable in PGI Chandigarh. In that case, the son of the petitioner was treated in a hospital, which was not in the approved list of Hospitals. The learned writ court allowed the writ and quashed the order to the limited extent of restriction placed upon the amount of reimbursement. The said order was challenged in appeal titled "Union territory of J&K and others versus Bader Hussain' bearing No. CDLSW No. 8/2018, which though was dismissed on 24.02.2020 on account of delay but it was observed by the Division Bench that even in absence of name of Appolo Hospital Ludhiana in

the Rules, the claim for reimbursement cannot be denied on the ground that it is not one of the approved Hospitals.

17. Viewed thus, **the communication/order impugned** bearing No. **PD/ERA/31/2014-15 dated 01.06.2015 is quashed** and the official respondents are directed to consider the claim of the petitioner for reimbursement of medical expenditure in accordance with the spirit of the rules and pass fresh orders in light of the judicial precedents mentioned hereinabove within a period of two months from the date copy of this order is served upon the respondents.

18. Disposed of.

Jammu:
26.04.2023
Sahil Padha

