IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17320 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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USHABEN DAYASHANKAR SHUKLA
Versus
STATE OF GUJARAT

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Appearance:
MS NIDHI K TRIVEDI(9003) for the Petitioner(s) No. 1
MR KURVEN DESAI, ASST GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 02/08/2022

CAV JUDGMENT

1. Rule returnable forthwith. Learned AGP Mr. Desai waives service of notice of rule. By way of this petition,

under Article 226 of the Constitution Of India, a retired teacher prays for quashing and setting aside the communications dated 18.09.2020 and 5.10.2020 issued by the respondents refusing to reimburse the medical expenses incurred by the petitioner of Rs.4,17,385/-.

2. The petitioner had undergone a medical procedure for implantation of a Pacemaker at CIMS Hospital on 26.12.2019. By the impugned communications, the District Primary Education Officer, Mehsana has rejected the request for reimbursement on the ground that the Education Department i.e.The Director of Primary Education has conveyed on 18.09.2020 that there is no policy of medical reimbursement in the case of teachers working in the Grant-in-Aid Primary Schools.

3. Mr.Dipak Dave, learned advocate for the petitioner would made the following submissions:

a) That the action on the part of the respondents in refusing medical reimbursement is against the provisions of the law and the rules.

b) The rejection on the ground that the petitioner is a retired primary teacher for which there is no policy is misconceived. The petitioner is a retired employee drawing pension payable by the State and she therefore is a retired government employee under the Gujarat Civil Services (Medical Treatment) Rules, 2015.

c) That the Division Bench of this Court by way of Letters Patent Appeal No. 32 of 1998 has precisely on the point of discrimination held that there can be no discrmination between primary and secondary teachers who are getting pension. That the primary teachers are being governed by the medical reimbursement policy.

d) The State cannot discriminate between the same retired class of the government servants on the ground that the petitioner is a retired primary teacher and therefore unlike any other retired government employee he/she cannot get medical reimbursement. He would rely on a certificate of the District Treasury Office wherein it is specifically stated that the petitioner has not been

given her Medical Allowance with her basic pension. He has produced the certificate and submitted that since the certificate certifies that the petitioner is not given medical allowance on her basic pension, in other words, she is not disentitled to reimbursement on account of being paid medical allowance.

e) That on an earlier occasion the petitioner was referred to SAL Hospital for the purposes of a medical procedure of installing a Pacemaker and on 28.04.2007 after the treatment and when reimbursement was prayed for after certain clarifications from the department, the petitioner was reimbursed such expenses. Now after having undertaken the same procedure after 12 years from CIMS, the respondents have rejected the request on the ground that there is no policy.

4. Mr.Kurven Desai, learned AGP for the State would submit, relying on the Affidavit-In-Reply filed that the petitioner is not entitled to be reimbursed the medical reimbursement of Rs.4,17,385/- as there is no specific

mention in the Government Resolution dated 30.10.2016 that the resolution would be applicable to the employees of the grant-in-aid primary schools. Moreover, the teachers are entitled to get benefits of Rs.300/- for their medical treatment and the Government Resolution clearly states that the prevailing policy will apply only to specific category of employees. He would further submit that even the Education Department has on 18.09.2020 rejected the application of the petitioner as there is no prevailing policy in existence for teachers of the grant-in-aid primary schools.

4.1 Mr. Desai places on record communications dated 18.07.2022 and 19.07.2022 as well as a letter of even date from Revabhai Vakil Prathmik Shala to submit that there is nothing on record to indicate that the amount of Rs.3,58,000/- was paid to the petitioner towards medical reimbursement. He would therefore submit that there is nothing on record to indicate that the amount of Rs.3,58,000/- was paid towards medical reimbursement.

5. Having considered the submissions made by the

learned advocates for the respective parties, what needs to be considered is that the Gujarat Civil Service (Medical Treatment) Rules, 2015 are applicable to government servants and retired pensioners. The petitioner, irrespective of the fact of having served as a primary teacher in a grant-in-aid school cannot now be denied medical reimbursement on the ground that there is no policy for the teacher of the primary schools working in the grant-in-aid institutions.

5.1 The Division Bench of this Court in Letters Patent Appeal No. 32 of 1998 was considering the discrimination meted out to teachers in the primary section serving in grant-in-aid institutions as compared to secondary teachers who were getting medical allowances. The primary teachers were denied the benefit on the ground that there is no policy. The Division Bench in paras 5 and 6 of the decision held as under:

> "5. We have considered the submissions made by the learned AGP. It is not in dispute that right from the beginning no option was given to the teachers working in the private Primary recognised Government aided schools to choose

between the payment of medical allowance or reimbursement. Thus right from the beginning Teachers of the Primary Schools as above were neither getting benefits of reimbursement nor they were getting medical allowance. To our utter surprise, we find that despite this, while issuing the Government Resolution no care was taken to issue any direction with regard to the payment of medical allowance to teachers of Primary Schools while the same was decided to be paid to the teachers working in the private Colleges, Higher Secondary Schools and Secondary Schools. The factual position that the medical allowance is being paid to the teachers in such private-Government recognised and Government aided Institutions i.e. Colleges, Higher Secondary Schools and Secondary Schools is not disputed. What has been argued before us is that with regard to the teachers of Government recognised and Government aided private Primary Schools, no Government Resolution had been taken by the Government. It is, therefore, transparently clear in the facts of this case that the teachers of the private Primary Schools have been subjected to hostile discrimination. We find it to be a case of class within a class. The teachers working in the private recognized Government aided institutions whether they are working in Colleges, Higher Secondary Schools or Secondary Schools or Primary Schools form the same class for the purpose of medical allowance. The need or requirement of medical aid cannot vary merely because the teachers are working in Colleges, Higher Secondary Schools, Secondary Schools and Primary Schools. In case the same had not been decided

for the teachers of Primary Schools while the same was decided in favour of the teachers in the private Government recognised and Government aided Colleges, Higher Secondary Schools and Secondary Schools, it was clearly discriminatory and for the purpose of assailing this order and for the purpose of defending the Government's case no refuge can be sustained on the basis of the provisions of Rule 106(4)(v) of the Bombay Primary Education Rules, 1949.

6. So far as the Supreme Court decision in the case of Haryana State Adhyapak Sangh v.State of Haryana (Supra) is concerned, we find that, that was a case in which the private teachers as a whole formed one class and they were claiming parity with the Government employees. Such is not the case before us. Before us the grievance of discrimination is between the teachers working in private Primary Schools on one hand and teachers in private Colleges, Higher Secondary Schools and Secondary Schools inter se and both belong to the same class of teachers working in private-Government recognised and Government aided Institution whether Colleges, Higher Secondary Schools, Secondary Schools or Primary Schools. Learned AGP has submitted that the learned single Judge could at the most issue direction for framing a proper scheme in this regard, but could not have issued directions, as have been issued by him. Very recently in the matters of pension we have issued directions in an identical matter being LPA No.788/98 decided on 31.7.2001 to evolve out a scheme for payment of pension to the teachers of Primary Schools almost on the same

reasoning because there also the pension was denied to the teachers of Government recognised and Government aided Primary Schools while the same was being paid to the teachers of Government recognised and Government aided Colleges, Higher Secondary Schools and Secondary Schools. The question of evolving a scheme arises when the dates of the commencement etc. with regard to payment of any benefit is required to be determined and there are no definite data for the purpose of giving the benefit as was the case in matters of pension. So far as the present case is concerned, the medical allowance had already been paid and it was so paid for number of years and was only stopped in the year 1991. Therefore, it is only a question of resuming the benefit which had already been paid may be without Government Resolution. Therefore, we do not find that any direction is required to be issued for the purpose of framing a scheme. The medical allowance has to be made effective in case of teachers of Government recognised and Government aided private Primary Schools from the same date as was made in the case of teachers of Government recognised and Government aided private Colleges, Higher Secondary and Secondary Schools and similar Government Resolution is required to be issued effective from the same date. Moreover, it is a case in which the benefit which was already given for certain number of years but discontinued later in 1991 is simply required to be restored and resumed. We, therefore, do not find any error in the order as has been passed by the learned single Judge. On the contrary, the order seeks to render substantial justice

> and avoids uneven treatment which was given by creating a class within a class, which is not permissible either under Article 14 or Article 16 of the Constitution of India. Working of teachers whether in Primary Schools or in Colleges/Higher Secondary Schools/Secondary Schools has no nexus with the requirement and object for payment of medical allowance. The need of medical aid is common to all and under Article 14 and 16 of Constitution of India neither equals can be treated in an unequal manner, nor unequals can be treated in an equal manner, nor the State can act in an arbitrary or unreasonable or irrational manner subject to the permissible reasonable classification. We do not find any basis for any reasonable classification to classify the teachers of Primary Schools differently vis-a-vis the teachers of similarly situated Government recognised and Government aided Colleges/Higher Secondary Schools/Secondary Schools. There is no merit in these appeals. All these three Appeals are hereby dismissed. Since the main appeals have been dismissed, there is no question of stay in the Civil Applications. All the three Civil Applications stand rejected accordingly."

6. The second aspect that needs to be considered is that the stand of the State that there is no policy for grant-in-aid primary teachers appears to be flawed in absence of denial by the State that when the petitioner in the year 2007 underwent the same procedure at SAL

Hospital, the same was reimbursed. If that be so, in absence of any denial to this fact, that ground of the policy being silent on primary teachers not being covered by the policy is illegal.

7. Moreover medical reimbursement is a right guaranteed as a right to life. The Supreme Court in the case of **State Of Punjab vs Ram Lubhaya Bagga reported in (1998) 4 SCC 117** has held as under:

> "26. When we speak about a right, it corelates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, o reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its up-keep; maintenance and cleanliness has to be beyond aspersion. To employ best of talents and tone up its administration to give effective

> contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service oriented training, not only at then try point but also during the whole tenure of their service. Since it is one of the most sacrosanct and a valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. for every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority."

8. Moreover, having reimbursed the petitioner of the Pacemaker charges in 2007 to deny the same now by the impugned communication per se is arbitrary and illegal. So far as the contention of learned AGP that there is nothing on record to indicate that the amount of Rs.3,58,000/- was paid to the petitioner towards medical reimbursement, the petitioner in her affidavit has stated as under:

> "1. I state that as stated in paragraph no. 3.2 of the Special Civil application, I suffered serious health problems and was unable to breathe properly. Therefore, I consulted physician at Ahmedabad for the purpose of EOL of CRT-P Medtronic Insync-3. Accordingly, on 28.04.2007 the aforestated treatment for implanting pacemaker was undertaken at SAL Hospital. After clarifying all the facts and figures as well as details of the medical treatment undertaken by me, respondent sanctioned medical reimbursement and the amount of Rs.3,50,000/- was directly Transferred to my bank Account. A copy of bank statement showing such transfer/transaction is annexed herewith and marked as **ANNEXURE-I**. The medical reimbursement was provided to me only after considering my eligibility for getting the benefits under relevant government resolution which was applicable. Even though in teh past medical reimbursement for the same treatment was provided, today without any basis the respondents are denying the medical reimbursement on the ground that no such policy is in existence, which according to me is completely illegal and arbitrary."

9. In view of the above, the communications dated 18.09.2020 and 5.10.2020 are quashed and set aside. The respondents are directed to reimburse the medical expenses for the pacemaker implantation undergone on 26.12.2019 carried out at CIMS at the rates of the recognised hospital, namely SAL Hospital where the

Petitioner had earlier undergone the same procedure in the year 2007. The Petitioner, is a retired pensioner, aged 74, the amount so calculated as above towards medical reimbursement shall be paid within 10 weeks from the date of receipt of this order. Petition is allowed to the aforesaid extent. Rule is made absolute. Direct service is permitted.

(BIREN VAISHNAV, J)

DIVYA