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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 30th July, 2010*

+ **W.P.(C) 3368/2010**

MCD Petitioner

Through: Mr.Gaurang Kanth with
Ms.Biji Rajesh, Advocates

versus

CHANDER PRAKASH GUPTA Respondent

Through: Nemo

W.P.(C) 4806/2010

UOI AND ORS Petitioners

Through: Mr.M.K.Bhardwaj with
Ms.Priyanka M.Bhardwaj,
Advocates

versus

NAND RAM Respondent

Through: Mr.Inderjit Singh, Advocate

W.P.(C) 308/2009

UOI & ORS Petitioners

Through: Mr.Rajat Gaur, Advocate

versus

SHARMANAND TYAGI Respondent

Through: Mr.Vishwender Verma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. The aforesaid writ petitions are being disposed of by a common order for the reason same question of law arises for consideration in all.

2. Unfortunately counsel does not appear for the respondent in WP(C)No.3368/2010, but we note that on the last date of hearing i.e. on 20.7.2010 it was agreed that WP(C)No.3368/2010 shall be disposed of today.

3. The respondents in all the three writ petitions have succeeded before the Tribunal and have obtained directions in their favour that their respective employer would reimburse, in full, the medical expenses incurred by the respondents pertaining to medical aid received by them at various hospitals.

4. Allowing the claim of Chander Prakash Gupta the respondent of WP(C)No.3368/2010, the Tribunal has relied upon the decision reported as Promlesh Bhatnagar Vs. ESIC 129(2006) DLT 827; Deen Dayal Sharma Vs. MCD 135 (2006) DLT 32 and V.K.Jagdhari Vs. UOI & Ors. 125 (2005) DLT 636.

5. While allowing the claim of Sharmanand Tyagi, the respondent of WP(C)No.308/2009, the Tribunal has relied upon its own decision in OA No.768/2007 (V.P.Yadav Vs. Director of Education & Ors.) wherein it was held that right to medical reimbursement was enshrined under Article 21 of the Constitution of India and reflected in the relevant medical rules.

6. Allowing the claim of Nand Ram, the respondent of WP(C)No.4806/2010, the Tribunal has relied upon the decision of this Court in V.K.Jagdhari's case (supra) as also the decision

of this Court reported as S.K.Sharma Vs. Union of India 2002 (64) DRJ 620.

7. The factual matrix of the three cases is that Chander Prakash Gupta, the respondent of WP(C)No.3368/2010, retired from municipal service on 29.2.2002. He availed medical treatment in different hospitals and on different dates between 28.9.2002 and 2.12.2002. He did not opt to become a member of CGHS scheme, extended to retired municipal employees, till he submitted an application on 25.2.2003.

8. His claim for reimbursement was rejected on the ground that on the dates he availed medical treatment in hospitals he was not a member of the health scheme and that his becoming a member of the scheme on 25.2.2003 did not entitle him to any retrospective benefits.

9. Nand Ram the respondent of WP(C)No.4806/2010 retired from government service on 31.12.2006. He availed medical treatment at a hospital from 13.11.2007 to 21.11.2007 and applied to be made a member of the health scheme only on 4.12.2007. His claim for medical reimbursement was rejected on the same reasons.

10. Sharmanand Tyagi the respondent of WP(C)No.308/2009 retired from service on 31.1.2004. He availed medical treatment in a hospital in the month of February 2007 and applied for being inducted as a member of the health scheme on 20.3.2007. His claim has been rejected on the same reasoning.

11. The decisions relied upon by the Tribunal in all the three cases were considered by a Division Bench of this Court reported as 2008 VI AD (Delhi) 44 Dal Chand Vashisht Vs. Govt. of NCT of Delhi & Ors.

12. The said decision has noted 22 earlier decisions on the

subject which includes the decisions in V.K.Jagdhari's case, S.K.Sharma's case, Som Dutt Sharma's case and Promlesh Bhatnagar's case which have been referred to by the Tribunal in the three impugned decisions.

13. In a nut-shell, the Division Bench of this Court who decided Dal Chand Vashisht's case held that an employee, on retirement, is entitled to the benefit of the relevant medical health scheme framed by the employer on his becoming a member of the scheme and the date of membership would be when the retiring government employee fills up the requisite form and pays the necessary fee for becoming the member. The Division Bench held that the medical health scheme requires a corpus fund to be created, partly to be financed by the employer and partly financed from the contribution made as membership fee by the members joining the scheme. It was held that if persons who become members at a later date are held entitled to reimbursement of the medical expenses incurred by them for prior periods, the schemes would be adversely affected. Thus, it was held that a retired employee can avail benefit of a medical health scheme only prospectively i.e. after he becomes a member of the scheme.

14. V.K.Jagdhari's case as also S.K.Sharma's case were distinguished on the ground that said two persons had settled in towns where CGHS health facilities were not available and for said reasons they had a justification for not becoming a member of the scheme and that they becoming a member of the scheme at a later point of time would entitle them for reimbursement of claims for medical treatment undertaken at a prior point of time.

15. It is apparent that S.K.Sharma's case and V.K.Jagdhari's case cannot be a precedent for those government servants or

employees who settle in a town where the respective health scheme facility is available to them.

16. Promlesh Bhatnagar's case was distinguished by the Division Bench, in para 29 of the decision, noting that the employee had submitted the necessary application for being made a member of the CGHS scheme on 10.10.2002 and he died the next day i.e. did not have sufficient time to pay the necessary subscription.

17. Suffice would it be to state that the three respondents of the three writ petitions, one of whom retired from service under the corporation and the other two under the Central Government, post retirement, settled in Delhi. CGHS health facilities applicable to the employees of the Union were always available in Delhi. MCD employees have been extended the benefit of CGHS facilities and thus Chander Prakash Gupta, who settled in Delhi, was entitled to the same. Needless to state the three were entitled to the benefit of CGHS health facilities only upon becoming members of the scheme which required them to pay the necessary subscription.

18. As noted hereinabove, the facts not being in dispute, all three did not apply and did not pay the subscription for becoming a member till they suffered the sickness and undertook the treatment. Only thereafter they applied for and paid the necessary subscription for becoming a member of the CGHS scheme.

19. Thus, in all three cases, the Tribunal has incorrectly held in their favour.

20. The three writ petitions are allowed. The respective orders passed in the three writ petitions by the Tribunal are set aside and as a consequence, OA No.1149/2009, 2446/2008 and 310/2008 filed by Chander Prakash Gupta, Nand Ram and

Sharmanand Tyagi respectively, are dismissed.

21. We note that pursuant to interim orders passed in WP(C)No.308/2009 the petitioners have deposited a sum of Rs.2,17,000/- in this Court.

22. Since the writ petition has been allowed we direct the Registry to refund the said amount together with accrued interest thereon. The cheque would be drawn in the name of the authority which issued the cheque which was deposited in this Court.

23. No costs.

PRADEEP NANDRAJOG, J.

MOOL CHAND GARG, J.

JULY 30, 2010
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