IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 23.07.2019

\+ **W.P.(C) 9441/2018**

SH. HUKM TEJPRATAP SINGH AND ORS. ..... Petitioners

Versus

GOVT. OF NCT DELHI AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Ms Mahima Rathi and Ms Mamta, Advocates.

For the Respondents : Mr Ramesh Singh, Standing Counsel, GNCTD with Mr Chirayu Jain and Mr Ishan Agarwal, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petition impugning the Card (no. 225215) issued to petitioner no.1 under Delhi Government Employees Health Scheme (hereafter 'DGEHS card'), denying his request to include the names of petitioner nos. 2 and 3 as beneficiaries under the said Scheme.

2. The said request was denied on the ground that petitioners nos. 2 and 3 do not fall under the definition of 'family' as per the Delhi Government Employees Health Scheme (hereafter 'DGEHS' or 'the Scheme').

3. The petitioners further challenge the policy of the respondents to exclude petitioner no.2 (widowed daughter in law of petitioner no.1) and petitioner no.3 (grandchild of petitioner no.1) as being arbitrary and violative of Article 14 of the Constitution of India inasmuch as, the said policy excludes the aforesaid petitioners from availing benefits of the Scheme, despite the said petitioners being wholly dependent on petitioner no.1 for their basic needs and amenities. It is claimed that excluding a widowed daughter-in-law from the definition of 'family' while including a widowed daughter, is *ex-facie* discriminatory.

4. The petitioners contend that the aforesaid policy must be read in an expansive manner as it is a welfare scheme and thus, it must be read to extend to all dependants of the cardholder. On the other hand, it is contended by the respondents that the definition of 'family' under the Scheme is same as provided under the Central Government Health Scheme (CGHS), which is applicable all cross the country and in that light, the Scheme is not discriminatory.

5. Briefly stated, the controversy arises in the following context:

5.1 Petitioner no.1 is a retired government employee. He served as a TGT (Hindi) in the Directorate of Education, Delhi for a period of more than thirty years (from 08.08.1985 to 31.10.2015). After retiring from the said service, he was re-employed under the prevailing re-employment scheme for the period 01.11.2015 to 09.10.2017.

5.2 Petitioner no.2 is the widowed daughter in law of petitioner no.1 and petitioner no.3 is the minor grandson of petitioner no.1.

5.3 In the year 1998, the Delhi Government formulated a scheme known as the Delhi Government Employees Health Scheme (the Scheme) for providing medical facilities and health benefits to the employees and pensioners of the Government of NCT of Delhi. The said Scheme was also extended to the dependants of the aforesaid employees and pensioners.

5.4 The son of petitioner no.1, Manoj Kumar, passed away in the year 2013 while suffering from dengue. The petitioners claim that petitioner no.1 incurred huge expenses for the treatment of his son.

5.5 In the year 2015, petitioner no.1 sought an update of his DGEHS card by seeking the inclusion of the name of his grandson and daughter in law as beneficiaries under the Scheme. The petitioners state that the said inclusion was sought as petitioner nos. 2 and 3 are family members of petitioner no.1 and are completely dependent on petitioner no.1 pursuant the death of his son.

5.6 Thereafter, in 2016, petitioner no.2 filed an application under the Right to Information Act, 2005 seeking information on the decision taken by the respondents in regard to the inclusion of petitioner nos. 2 and 3 as beneficiaries. Petitioner no.2 received a reply by way of a letter dated 18.06.2016, wherein it was stated that as per the prevalent rules, daughter in law and grandchildren are not covered as dependent family members. In this view, the names of petitioner no.2 and 3 were not included as beneficiaries in the DGEHS card.

5.7 Aggrieved by the aforesaid, the petitioners filed the present petition.

5.8 It is stated that the petitioners have been suffering from major health problems. Petitioner no.2 is suffering from gynaecological disorders and spine related problems. It is further stated that petitioner no.1 is suffering from kidney stones. The petitioners state that the definition of 'family' under the Scheme is discriminatory as it does not include a widowed dependent daughter in law and grandchildren.

6. The learned counsel appearing for the petitioners submitted that the definition of "family" for the purposes of inclusion for medical benefits under DGEHS (the Scheme) is arbitrary and violative of Article 14 of the Constitution of India. She submitted that whereas an unmarried and widowed daughter is included within the said definition; a widowed daughter-in-law of the retired employee has not been included. She submitted that the object of the medical scheme was to provide a cover to the employee and his dependants and a widowed daughter-in-law, who may be equally dependent as a widowed daughter, cannot be treated differently. She relied on the decision of the full Bench of the Allahabad High Court in ***U.P. Power Corporation, Urban Electricity Transmission Division-H, Allahabad v. Smt. Urmila Devi: 2011 (85) ALR 837*** and the decision of the Chhattisgarh High Court in ***Duliya Bai Yadav v. State of Chhattisgarh and Ors.: 2016 (III) MPJR 87*** in support of her contention that the definition of the term 'family' must be read in an expansive manner. In those cases, the Court had included the widowed daughter-in-law of a deceased

employee within the definition of "family" for the purposes of providing employment on compassionate grounds.

7. Mr Ramesh Singh, learned counsel appearing for the respondents countered the aforesaid submissions. He stated that the definition of the dependants who were covered within the definition of family was clearly stated in the Scheme and therefore, there was no occasion for reading the same in an expansive manner. He referred to the eligibility criteria as published and drew the attention of this Court to the noting which specified that grandparents, grandchildren, daughter-in-law etc. are not eligible as dependants under the Scheme under any circumstances. He stated that the contributions made by petitioner no.1 were based on the medical cover being extended to the dependants as specified under the Scheme and there was, thus, no scope for including the benefit to any other relative of petitioner no.1 irrespective of whether he / she is dependent on petitioner no.1.

8. He further stated that there was rationale in excluding a widowed daughter-in-law as she would be entitled to claim medical benefits if her father was a beneficiary under the Scheme. He stated that for the purposes of the Scheme, a widowed daughter-in-law was not considered as a part of the employee's family.

9. Next, he submitted that the Scheme was based upon the CGHS pattern which is also followed across the country and a widowed daughter-in-law and grandchildren are not included among the family members to whom the benefit of CGHS is extended. He further

submitted that excluding a widowed daughter-in-law and grandchildren of a member from the benefits of the Scheme could not be considered as a case of under-inclusiveness. He referred to the decision of the Division Bench of this Court in ***Mr M.L. Karir v. The National Small Industries Corporation Limited: LPA 808/2014, decided on 13.03.2015***, wherein a Division Bench of this Court had upheld the decision of the respondent to deny reimbursement of a medical claim made by an ex-employee for the expenditure incurred by the said employee for the medical treatment of his wife.

Reasons and Conclusion

10. There is much merit in the contention advanced on behalf of the petitioners that a widowed daughter-in-law is as much as a part of the family as a widowed daughter. In ***U.P. Power Corporation, Urban Electricity Transmission Division-H, Allahabad v. Smt. Urmila Devi*** (*supra*), a full Bench of the Allahabad High Court had observed that a daughter-in-law does not cease to be a part of the family upon the death of her husband. The concept that such daughter-in-law must go back and stay with her parents is abhorrent to a civilised society. The said observations were made in the context of the definition of 'family' under the Uttar Pradesh State Electricity Board Dying in Harness Rules, 1975. This was in the context of the right of the family members for appointment on compassionate grounds. Whereas a widowed/unmarried daughter was entitled to be considered for compassionate appointment as included in the definition of 'family' under the said Rules, a widowed daughter-in-law was not. The Court

held that it is not possible to fathom how a widowed daughter in her father's house has a better right to claim appointment on compassionate basis than a widowed daughter-in-law in her father-in-law's house. A similar view was expressed by the Chhattisgarh High Court in the decision captioned ***Duliya Bai Yadav v. State of Chhattisgarh and Ors.*** (*supra*), in the context of compassionate appointment.

11. Having stated the above, the question to be addressed is whether the Scheme can be restricted to exclude certain relatives. In other words, whether it is necessary for the respondents to extend the benefit to all dependent relatives in order to extend the same to some of them.

12. It is important to bear in mind that the aforesaid decisions relied upon by the petitioners were rendered in the context of compassionate appointment. Clearly, a widowed daughter-in-law could not be excluded as a family member for compassionate appointment since the principle object of granting such appointment was to ensure that upon the demise of a serving employee, his dependent family is not rendered destitute and at least one of the members is provided employment to ensure that other members are taken care of.

13. Keeping the aforesaid object in view, no distinction could be drawn between a widowed daughter and a widowed daughter-in-law. The question whether a classification is violative of Article 14 of the Constitution of India must be examined in the context of whether such classification has a nexus with the object. Since the object was to provide employment to one of the family members, drawing a

distinction between a widowed daughter and a widowed daughter-in-law would have no nexus with the said object.

14. The aforesaid decisions would have no application insofar as a medical scheme is concerned.

15. DGEHS is a contributory scheme and the contribution is made by an employee to seek medical cover for himself and specified members of his family. The website of the Government of NCT of Delhi has clearly listed out the contours of the said Scheme. It is clearly stated that the object of the Scheme was to provide comprehensive medical facilities to the Delhi Government employees/pensioners and members of their families on the lines of CGHS. The web page also clearly indicated that the members of family who would be covered under the Scheme on the employee/retired employee becoming a member of the Scheme. The relevant extract of the web page is reproduced below:-

> "ELIGIBILITY
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> - All Delhi Government working and retired employees (including family pensioners) and their dependent family members (As per CS (MA) rules are eligible for becoming the members of Delhi Govt. Employees Health Scheme.
>
> - The family pensioners are also eligible to become the members of the scheme.
>
> - The scheme has been made open ended i.e. the pensioner can become the member of the scheme at any time.

- As per CSMA rules/CGHS Guidelines for Serving Employees "Family" means:
    - Husband or wife as the case may be
    - Wholly dependent / minor children, (Unmarried son- up to age limit of 25 yrs, Unmarried daughter & widowed daughters (Not their children) – No age limit.
    - Sisters – unmarried or widowed sister – No age limit.
    - Brothers – Minor
    - Step children and parents.
    - Grand parents, grand children, daughter in law etc are not eligible as dependent under the scheme under any circumstances."

16. It is clear from the above that medical care facilities under DGEHS are not extended to all family members of an employee/retired employee. The medical care benefits are limited only to such members of the family as is specified under the Scheme. It is important to bear in mind that DGEHS is a contributory scheme whereby an employee/superannuated employee becomes a member by making certain contribution. The amount of such contribution has, obviously, been determined keeping in view the coverage extended under the said Scheme. Any person becoming a member of DGEHS is fully aware as to which of his family members are entitled to medical care facilities under the Scheme. Since the Scheme does not extend to all dependants of the member, the said employee is fully aware that he/she is required

to make other arrangements for taking care of the medical needs of other dependent members of his/her family who are not covered under DGEHS. The contention that since DGEHS covers some members of his/her family, the same should also extend to all other members who are equally part of his/her family, is unsustainable.

17. The right to medical aid is a fundamental right of all citizens and is guaranteed under Article 21 of the Constitution (see: ***Confederation of Ex-Servicemen Associations and Ors. v. Union of India and Ors.: (2006) 8 SCC 399***). However, the State has limited resources and medical facilities provided are necessarily confined within the resources available with the State. The manner in which the said resources have to be deployed is also to be determined by the State. Insofar as the ex-employees are concerned, the Government of NCT of Delhi has framed DGEHS to ensure medical facilities to its employees and ex-employees. Persons who do not have benefit of the said Scheme, would necessarily have to be catered to by other measures. Insofar as the decision of the respondents, to limit the Scheme to only some members of a member's family is concerned, the same cannot be faulted.

18. Petitioner no.1 has, undeniably, set up a compelling case with regard to the medical needs of his widowed daughter-in-law and her grandchildren. However, medical care facilities under DGEHS cannot be extended to them, since they were not the specified beneficiaries of the Scheme. As noted above, petitioner no.1 was fully aware of the extent of cover provided by DGEHS at the time of subscribing to the said Scheme.

19. In view of the above, the relief as sought for by the petitioners cannot be granted.

20. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

JULY 23, 2019
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