Supreme Court of India
State Of Madhya Pradesh And Ors vs M.P. Ojha And Anr on 18 December, 1997
Bench: Sujata V. Manohar, D.P. Wadhwa

CASE NO.:
Appeal (civil) 1368 of 1990

PETITIONER:
STATE OF MADHYA PRADESH AND ORS.

RESPONDENT:
M.P. OJHA AND ANR.

DATE OF JUDGMENT: 18/12/1997

BENCH:
SUJATA V. MANOHAR & D.P. WADHWA

JUDGMENT:

JUDGMENT 1997 Supp(6) SCR 654 The Judgment of the Court was delivered by D.P. WADHWA, J. This appeal by the State of Madhya Pradesh is directed against the judgment dated June 30, 1989 of the Madhya Pradesh Administrative Tribunal (for short 'the Tribunal') holding that father of a Government servant who himself has retired as a Government servant can be wholly dependant on his son and son thus entitled to reimbursement of medical expenses incurred on the treatment of his father under the relevant M.P. Civil Services (Medical Attendance) Rules, 1958 (for short 'Medical Rules'). This, according to Tribunal, would be so even where a separate Rule is applicable for medical treatment to a retired Government servant.

There are two respondents before us. 1st respondent is the father and the 2nd respondent is his son. The 1st respondent retired from Government service of the State and at the relevant time was drawing pension of Rs. 176 with Rs. 238 as additional relief totalling Rs. 414 per month. He was living with his son, the 2nd respondent, who was also a Government servant and was working as Senior Radiographer, M.Y. Hospital, Indore. Under the relevant Medical Rules, 1st respondent would be a member of family of his son, the 2nd respondent. The controversy centred around the question if in the present case father was wholly dependant on his son.

The father developed serious heart ailment and the treatment which he required was not available in the State of Madhya Pradesh. By his application dated June 19, 1987 the son sought permission from the Director of Medical Education, M,P., for treatment and investigation respecting his father. This permission was sought on the strength of the certificate dated June 4, 1987 issued by Dr. A.K. Bharani. a Consultant in Cardiology. M.Y. Hospital, Indore. certifying that the 1st respondent had been under his treatment for hypertension and coronary artery disease (old M.I.) and that it was, therefore, essential for (he patient to get cardiological inves- tigation. Dr. Bharani also certified that the 1st respondent might need coronary angiography with a view to decide about by-pass surgery and further that these facilities were not available in the State Government Hospital and that same would be available either at Bombay, New Delhi or Madras Etc, It is not necessary to refer to the correspondence that ensued between the 2nd respondent and the concerned medical authorities of

the State except to note that permission was granted by letter dated August 12, 1987 by the Director of Medical Education Madhya Pradesh for investigation/treatment of the 1st respondent at Bombay Hospital, Bombay.

After the 2nd respondent, the son, got the necessary permission, he took his father to Bombay, where he was treated and underwent by-pass heart surgery. The 2nd respondent submitted a bill for Rs. 32,156,40 for reimbursement of the medical expenses incurred by him on the treatment of his father as per Medical Rules which amount did not include TA bills. An objection was raised that the 1st respondent being himself a Govern-ment pensioner permission could not have been granted to the 2nd respon-dent lor getting his father treated at Bombay. Another objection raised was that though the 1st respondent may be a member of the family of the 2nd respondent, he was not wholly dependent on the 2nd respondent as he was getting pension from the Stale Government.

As the 2nd respondent failed in his attempt to get reimbursement under the Medical Rules, he approached the Tribunal seeking relief. He implcaded the State Government, Director of Medical Education (Health) and Joint Director-cum-Superintendent, M.Y. Hospital as respondents. His father was also made a party as a co-petitioner. The Tribunal after considering the facts of the case and relevant Medical Rules allowed the application and directed the respondents to reimburse the expenditure incurred by the 2nd respondent on treatment of his father, the 1st respon-dent at Bombay. Aggrieved by the said judgment, the State has filed this appeal. It was submitted by Mr. Choudhary, learned advocate for the appel-lants, that father, a retired Government servant, who lived with his son, a Government servant, could not be treated as "wholly dependent" within the meaning of "family" under Rule 2(d) of the Medical Rules and thus the 2nd respondent was not entitled to any reimbursement for the treatment of his father. Mr. Choudhary said that to understand the expression "wholly dependent" reference should be made to Fundamental Rule (FR) 9. Mr. Gambhir, learned counsel for the respondents, however, submitted that reference to FR 9 was irrelevant and in any case this FR 9 was not applicable in the present case. He said that son was entitled to reimbur-sement as per Medical Rules. Alternatively, he submitted that permission in the present case was granted by the competent authority within the Medical Rules and reimbursement of the expenses incurred by the son for treatment of his father could not be denied to him.

Admittedly, Medical Rules do not apply to retired Government servant and Rules have been framed regarding medical attendance of Government pensioners and further that there are instructions issued from time to time entitling them to get treatment, free of charge, available in the Government hospitals of the State. However, Government pensioners are not entitled for reimbursement of expenses incurred for their treatment outside the State.

At this stage, it would be appropriate to set out the relevant Rules. M.P. Civil Services (Medical Attendance) Rules, 1958. "1(3) These rules shall not apply to -

(a) Retired Government servants;

(b)..... .....

(c)..... .....

2(d) "Family" means -

(i) The wife or husband of a Government servant;

(ii) The parents, legitimate children including children adopted legally and step children of such Government servant residing with and wholly dependent on that Government servant. 11. (1) Rules 3 to 10 shall, in so far as they relate to medical attendance and treatment at hospital apply to the members of the family of a Government servant in the same manner and to the same extent as they apply to Government servant :

Provided that where another child is horn to a Government servant where there are three or more children living, the addi-tional child so horn shall not be entitled to the concession admis-sible under these rules.

(2) A Government servant shall also he entitled for reimburse-ment of the charges incurred by him for the treatment of his wife during the confinement (including pre-natal and post- natal treat-ment and treatment for abortion) :

Provided that no reimbursement shall be made if three or more children are living on the date of such confinement."

We may note that Rules 3 to 10 provide for free medical treatment to Government servant and also for reimbursement of the expenses in-curred by him towards that.

We may now refer to the definition as to what "family" means under Fundamental Rules as contended by Mr. Choudhary and in that connection according to him FR 9 contains the following definition of "family" :

"Family means (a) a Government servant's wife or husband, as the ease may be, residing with the Government servant and legitimate children and step children residing with and wholly dependent upon the Government servant. Except for purpose of Section XVI-A of the Supplementary Rules in Appendix V, it includes, in addition, parents, sisters and minor brothers, if residing with and wholly dependent upon the Government servant.

(b) For the purpose of Section XI, it includes in addition unmarried and widowed sisters and minor brother if residing with and wholly dependent upon the Govt. servant.

Note:- Govt. servant's wife or husband, as the case may be, legitimate children, step children, father, mother, step mother, unmarried and widowed sisters, minor brothers who reside and pension equivalent to death-cum- retirement gratuity does not ex-ceed Rs. 250 p.m. may be deemed to be wholly dependent upon the Government servant.

This amendment takes effects from the date of issue, Cases already decided will not be re-opened.

Notes-(l) Not more than one wife is included in the term 'family' for the purpose of these rules.

(2) An adopted child shall be considered to be a legitimate child if, under the personal law of the Government servant, adop-tion is legally recognised as conferring; on it the statutes of a natural child."

According to Mr. Choudhary, therefore, to understand as to what the expression "wholly dependent" means in Medical Rules we should draw strength from the similar expression "wholly dependent" appearing in FR quoted above. The whole argument of Mr. Choudhary appears to us to be fallacious. Fundamental Rules have been framed under the Government of India Act. There is no FR 9 as such. FR 9 (32) defines as to what is "Travelling allowances". According to this definition "travelling allowances" means :

"9(32). 'Travelling allowance' means an allowance granted to a Government servant to cover the expenses which he incurs in travelling in the interest of public service. It includes allowances granted for the maintenance of conveyances, horses and tents."

Under this FR 9(32} Supplementary Rules have been framed and the definition of "family" on which Mr. Choudhary relied is in fact Supplemen-tary Rule 8 (SR 8) framed under FR 9(32). Now, for one thing this definition of "family" is to be confined to the case where a Government servant on transfer seeks to draw allowances for himself and members of his family wholly dependent upon him. Secondly, this definition of "family" in SR 8 and the expression "wholly dependent" appearing therein cannot be brought in to interpret similar expression in Medical Rules The expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to he applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would likely to lead to results which the relevant Rules would not have contemplated. 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. We cannot curtail the meaning of "wholly dependent" by reading into this the definition as given in SR 8 which has been reproduced above. Further, the expression "wholly dependent" as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of 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 othenvisc financially sound he may not necessarily be wholly dependent. Here the father was 70 years of age and 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 per month 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 the Medical Rules being a member of the family of his son and wholly dependent on him. A flexible approach has to be adopted in

interpreting and applying the Rules in a ease like the present one. There is no dispute that the son took his father to Bombay for treatment for his serious ailment after getting due permission from the competent authority. It was submitted before us that the father being a retired Government servant could himself get sanction for treatment outside the State as a special case from the competent authority. It is not necessary for us to look into this aspect of the matter as we are satisfied that under the relevant Medical Rules, the father was member of the family of his son and was wholly dependent on him and the 2nd respondent was thus fully entitled to reimbursement for the expenses incurred on the treatment of his father and other travelling expenses.

The Tribunal has taken correct view of the matter. We uphold the impugned judgment of the Tribunal and dismiss the appeal with costs.

Appeal dismissed.