

Superintending Engineer, Vs. the Prescribed Authority (Payment of Wages Act) City Magistrate,

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SooperKanoon Citation : sooperkanoon.com/493391

Court : Allahabad

Decided On : Nov-28-2007

Reported in : [2008(116)FLR905]; (2008)IILLJ453All

Judge : Rakesh Tiwari, J.

Appellant : Superintending Engineer, ;executive Engineer, Electricity Transmission Division-1 and ;chief Enginee

Respondent : The Prescribed Authority (Payment of Wages Act) City Magistrate, ;district Judge and ;smt. Chhaya Sa

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard learned Counsel for the parties.

2. This petition has been filed challenging the validity and correctness of the appellate order 17.9.2003 passed by the District Judge, Kanpur Nagar in Appeal No. 18 of 2003, Superintending Engineer, Electricity Transmission Circle and Ors. v. Smt. Chhaya Saxena and Ors. arising from order dated 20.6.2006 passed by

the City Magistrate, Kanpur Nagar appointed as Prescribed Authority under the Payment of Wages Act, 1936.

3. The brief facts of the case are that Sri A.K. Sexena husband of respondent No. 3 Smt. Chhaya Sexena was a clerk in U.P. Power Corporation Limited (Transmission Division) at Kakadeo Kanpur. He fell seriously ill and he was initially admitted in the Mariampur Hospital Kanpur Nagar on 8.9.1998, which was recognized for the treatment of employees by the U.P. Power Corporation Limited. As the treatment of Sri A.K. Sexena required better medical facilities, which was not available in the aforesaid Mariampur Hospital, he was referred by the Superintendent Mariampur Hospital to Regency Hospital Kanpur Nagar on 13.9.1998. Accordingly, Sri A.K. Sexena was admitted there and while under treatment in the Regency Hospital died in September, 1998.

4. Respondent No. 3 Smt. Chhaya Saxena the widow moved an application before the Prescribed Authority under Section 15 of Payment of Wages Act for a direction to the employers for payment of Rs. 35000/- as medical reimbursement spent in the treatment that was given to her late A.K. Sexena husband at the Regency Hospital at Kanpur Nagar on reference by Mariampur Hospital. It appears that payment/reimbursement for treatment was not given to her on the ground that the Regency Hospital was not a recognized Hospital by U.P. ground that the Regency Hospital was not a recognized Hospital by UP. Power Corporation Limited, Kanpur Nagar for treatment of its employees and that Superintendent Mariampur Hospital had wrongly referred her late husband Sri A.K. Sexena to Regency Hospital as he had no such power.

5. The Prescribed Authority after considering the objections recorded a finding of facts that the petitioner was admittedly referred by the corporation to Mariampur Hospital, which was recognized and approved for treatment of its employees by the UP. Power Corporation Limited, Kanpur Nagar but as all medical facilities for saving the life of the deceased employee were not available the Superintendent Mariampur Hospital referred the case for emergency treatment to save the life of the deceased employee to Regency Hospital where they were available. The court noted that where such serious matter of life and death is before the

dependants/relatives of the patients it is not possible for them in such state as to first verify whether the hospital when the patient is being shifted or referred is recognized by the employer or not particularly when the Superintendent of the hospital is referring the case.

6. It also noted that neither any list of approved Hospital was made available by the U.P. Power Corporation Limited, Kanpur Nagar to the wife/relatives of the deceased nor was any objection made by the corporation on this ground at any time. It appears to be an admitted fact on record that the petitioner had been treated at Mariampur Hospital all expenses incurred by him would have been paid or reimbursement to him.

7. The other objection of the petitioner before the authority was that reimbursement of medical expenses do not fall within the purview of definition of wages under Section 2(VIII) of Payment of Wages Act, 1936.

8. Aggrieved by the order passed by the Prescribed Authority, the petitioner filed appeal under Section 17 of the Payment of Wages Act, which was registered as appeal No. 18/03. The appellate authority by its order dated 17.9.2003 allowed the appeal confirming the order passed by the Prescribed Authority aforesaid.

Aggrieved by the rejection of this appeal, the petitioner has come up in this writ petition challenging the orders of the courts below.

9. From the facts culled out from the records it appears that Mariampur Hospital, Kanpur Nagar is the authorized Hospital for treatment of the employees by the U.P. Power Corporation Limited at Kanpur Nagar. It also appears that as per circular issued by the Government dated 24.5.78, the Superintendent Mariampur Hospital was authorized to refer the case for specialized treatment of the ailing person to any other hospital for saving the life of the employees where such medical facilities are available and in that case it was not necessary that the concerned hospital may be on the approved list of the U.P. Power Corporation Limited.

10. In my opinion the courts below have committed any illegality in allowing the claim for medical treatment of the deceased employee Sri A.K. Sexena (since deceased) to his wife. The question whether the medical attendance and expenditure falls outside the ambit of definition of wages under Section 2(VI) of the Act is concerned suffice to say that the authority appointed under the Payment of Wages Act as well as the Appellate Authority under Section 17 of the Act have rightly come to the conclusion that reimbursement of medical expenses falls within the ambit of the definition the Payment of Wages Act is liable to be paid by the petitioner as it is a remuneration and capable of being expressed in terms of money being on the terms of employment being fulfilled. Medical reimbursement is given by the State Government to its employee as facility which can be computed in terms of money, therefore it falls outside the Section 2(ii) of the definition of the wages which excludes certain payment like the value of any house accommodation or of the supply of light, water, medical attendance or other amenities or any service excluded from the computation of wages by a general or special order of the Sate Government but includes payment as fulfillment of terms and conditions of service.

11. In *State of Punjab v. Ram Lubhya Bagga*, the Apex Court considered the question of medical expenses and reimbursement of government employee noting new government policy where the State Government had deleted the list of designated hospital and permitted the employees to undertake treatment in any private Hospital on reimbursement as per rates fixed by Director, Health and Family welfare. The court also held that ex post facto sanction can be obtained from Board for reimbursement. The court noted that objection to the policy cannot be raised on ground that an employee who was suffering from heart attack is to first confirm whether the hospital he is being referred to is recognized by the employer or not or to due in the hospital recognized by the corporation having no facility for the specialized treatment for saving his life. It is stated that government policy/orders are based on number of circumstances on facts, law including constraints based on its resources. Further, no State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible and the same holds good for providing medical facilities to its citizen including its employees. Provision or facilities cannot be

unlimited. It has to be to the extent finance permit.

12. Admittedly in the instant case there was no question of any unlimited finance to be made available to the employee for treatment as it is on record that the expenses of medical treatment would have been reimbursed had the husband of respondent No. 3 been treated till his last at Mariampur Hospital. Since the Superintendent had the discretion and power to refer a patient to a hospital where specialized treatment was available for him and there being limited facilities in Mariampur Hospital, the employee (since deceased) was rightly referred to Regency Hospital. The employees cannot shirk away from payment of medial reimbursement by heading behind a statement by then that they are not responsible for payment as the referred hospital is not recognized by him which statement appears to be incorrect in view of government order dated 25.1.1991.

13. For the reason stated above, the writ petition is accordingly dismissed. It is directed that amount and due by the Appellate Court alongwith 9 % interest shall be paid within one month to respondent No. 3 with cost of Rs. 5000/-.