

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CJ Court

LPA No.307/2019

Mohammad Gulzar Mir ...Petitioner(s)/Appellants.

Through: Mr. Sheikh Manzoor Ahmad, Advocate.

Vs.

Union Territory of J&K and others.Respondent(s)

Through: Ms. Asifa Padroo, AAG.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

12.08.2021

01. Heard Mr. Sheikh Manzoor Ahmad, learned counsel for the petitioner and Ms. Asifa Padroo, learned AAG, for the respondents.

02. The appellant challenges the order of the Writ Court dated 27.09.2019 by which the petition filed by the petitioner/ appellant was dismissed.

03. The petitioner/ appellant is seeking reimbursement of medical claim for his treatment at Apollo Hospital, Delhi, outside the State of Jammu and Kashmir and he has been non-suited by the authorities as well as by the Writ Court on the ground that he has failed to produce the certificate of the Director Health Services as required under Rule 6 of the Jammu and Kashmir Civil Services (Medical Attendance and Allowance) Rules, 1990.

04. The facts of the case clearly reveal that the petitioner was working as a Block Manager with the State Forest Corporation. He had proceeded on ten days leave from 21.02.2011 to 02.03.2011 for the purposes of getting his son

admitted in Jamia Hamdard University Delhi. During his temporary stay at Delhi for this purpose, he suffered a severe cardiac pain and was hospitalised in Apollo Hospital, Delhi, where he incurred a expenditure of Rs. 4,68,974.66/-. The petitioner/ appellant on resuming duties claimed reimbursement of the said amount, when his claim was not considered, he filed OWP No.1747/2011 and the same was disposed of vide order dated 16.05.2017 with the direction to the respondents to consider the claim of the petitioner in accordance with the Rules and the judgment referred therein.

05. In the light of the aforesaid direction, the claim of the petitioner was considered and rejected vide order dated 09.07.2018 for want of production of the certificate in the prescribed proforma. The writ petition has also been dismissed on the same ground.

06. A perusal of the aforesaid Rules reveal that treatment outside the State and even reimbursement of expenses thereof are admissible on fulfilment of certain conditions. In this regard Rule 6(5) is relevant which provides that where a beneficiary resides temporarily outside the State and falls ill there suddenly and is advised admission in a hospital, he will, on production of necessary vouchers and certificates, be allowed reimbursement of hospital charges including cost of drugs and charges for investigations, provided it is recommended by the Director Health Services of the State after being satisfied that the beneficiary had suddenly fallen ill outside the State where he resided temporarily and was not already suffering from it before his departure from his home town.

07. There is no dispute to the fact that appellant had no previous history of heart ailment and he suffered the stroke all of a sudden while living

temporarily in Delhi and as such, has to be treated outside the State on emergency basis.

08. In this view of the matter, it was incumbent upon the Director, Health Services Kashmir to have considered the matter of the petitioner for grant of necessary certificate. The petitioner/ appellant cannot be non-suited solely on the above technicality, if otherwise his claim is genuine.

09. In view of the aforesaid facts and circumstances, we direct the petitioner/ appellant to approach the Director Health Service Kashmir for necessary certificate as contemplated by Rule 6(5) of the aforesaid Rules and in case the petitioner/ appellant so approaches him within a period of two weeks from today, the Director Health Services Kashmir shall verify the necessary facts, if necessary, after summoning the relevant record and accord due consideration to the representation preferably within six week and, if satisfied, may issue the necessary certificate. Once the said certificate is issued by the Director Health Services Kashmir, the petitioner/ appellant may produce it before the competent authority and his claim for reimbursement would be reconsidered on that basis irrespective of earlier orders.

10. The order impugned in the writ petition and the order of the learned Single Judge shall stand eclipsed.

11. The appeal is, accordingly, disposed of in the aforesaid terms.

(SANJAY DHAR)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Srinagar
12.08.2021
Abdul Qayoom, PS