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

Date of Decision: 18th January, 2023

+ **W.P.(C) 12985/2021 & CM APPL.4912/2022**

ISHA Petitioner

Through: Ms. Megha Bahl, Advs.

versus

STATE (NCT OF DELHI) & ORS. Respondents

Through: Mr. Santosh Kumar Tripathi, SC
(Civil) with Mr. Arun Panwar, Mr.
Siddharth Krishna Dwivedi and Mr.
Aditya S. Jadhav, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner is employed as a Lecturer- History in the Government Girls Senior Secondary School, New Usmanpur, Gautam Puri, Delhi which runs under the Respondent No. 2- Director, Directorate of Education, GNCTD. She teaches students of classes 11 & 12. She had filed the present petition seeking a declaration that she should be allowed to attend the school, conduct teaching and undertake other responsibilities without being forced to take the COVID-19 vaccine. The relief sought by the Petitioner is as under:

- i. Issue an appropriate writ, order or direction for calling of records pertaining to representations dated 11.10.2021 and 30.10.2021 made by the Petitioner to the Respondents; and*
- ii. Issue an appropriate writ, order or direction for quashing of impugned Orders dated 29.09.2021,*

08.10.2021 and 28.10.2021 passed by the Respondents; and

iii. Issue an appropriate writ, order or direction allowing the Petitioner to attend school, mark attendance, conduct teaching and other responsibilities designated upon her without forcing her to take Covid-19 vaccine; and

iv. Issue an appropriate writ, order or direction such that the Petitioner's service benefits be reinstated for days when she was forcefully marked absent 16.10.2021 onwards and leaves thrust upon her may not be debited from her Leave Account; and

v. Issue an appropriate writ, order or direction directing the Respondents to pay costs to the Petitioner incurred owing to the illegal impugned Orders including costs of the present litigation; and

vi. Pass any such other or further Orders as this Hon'ble Court may deem fit in the facts and circumstances of this case and in the interest of justice.

3. The issue related to non-vaccination has already been considered by the Supreme Court in ***Jacob Puliyel vs Union of India & Ors., [2022 SCC OnLine 748]*** and by the Delhi High Court in ***W.P. (C) 4741/2022*** titled '***Narendar Kumar vs. Government of National Capital Territory of Delhi.***

4. The summary of finding on the issues considered by the Supreme Court in ***Jacob Puliyel (Supra)*** are extracted as under:

(i) *Given the issues urged by the Petitioner have a bearing on public health and concern the fundamental rights of individuals in this country, we are not inclined to entertain any challenge to the maintainability of the Writ Petition.*

(ii) *As far as judicial review of policy decisions based on expert opinion is concerned, there is no doubt that wide latitude is provided to the executive in such matters and the Court does not have the expertise to*

appreciate and decide on merits of scientific issues on the basis of divergent medical opinion. However, this does not bar the Court from scrutinising whether the policy in question can be held to be beyond the pale of unreasonableness and manifest arbitrariness and to be in furtherance of the right to life of all persons, bearing in mind the material on record.

(iii) With respect to the infringement of bodily integrity and personal autonomy of an individual considered in the light of vaccines and other public health measures introduced to deal with the COVID-19 pandemic, we are of the opinion that bodily integrity is protected Under Article 21 of the Constitution and no individual can be forced to be vaccinated. Further, personal autonomy of an individual, which is a recognised facet of the protections guaranteed Under Article 21, encompasses the right to refuse to undergo any medical treatment in the sphere of individual health. However, in the interest of protection of communitarian health, the Government is entitled to regulate issues of public health concern by imposing certain limitations on individual rights, which are open to scrutiny by constitutional courts to assess whether such invasion into an individual's right to personal autonomy and right to access means of livelihood meets the threefold requirement as laid down in K.S. Puttaswamy (supra), i.e., (i) legality, which presupposes the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them.

(iv) On the basis of substantial material filed before this Court reflecting the near-unanimous views of experts on the benefits of vaccination in addressing severe disease from the infection, reduction in oxygen requirement, hospital and ICU admissions, mortality and stopping new variants from emerging, this Court is

satisfied that the current vaccination policy of the Union of India is informed by relevant considerations and cannot be said to be unreasonable or manifestly arbitrary. Contrasting scientific opinion coming forth from certain quarters to the effect that natural immunity offers better protection against COVID-19 is not pertinent for determination of the issue before us.

(v) However, no data has been placed by the Union of India or the States appearing before us, controverting the material placed by the Petitioner in the form of emerging scientific opinion which appears to indicate that the risk of transmission of the virus from unvaccinated individuals is almost on par with that from vaccinated persons. In light of this, restrictions on unvaccinated individuals imposed through various vaccine mandates by State Governments/Union Territories cannot be said to be proportionate. Till the infection rate remains low and any new development or research finding emerges which provides due justification to impose reasonable and proportionate restrictions on the rights of unvaccinated individuals, we suggest that all authorities in this country, including private organisations and educational institutions, review the relevant orders and instructions imposing restrictions on unvaccinated individuals in terms of access to public places, services and resources, if not already recalled. It is clarified that in the context of the rapidly-evolving situation presented by the COVID-19 pandemic, our suggestion to review the vaccine mandates imposed by States/Union Territories, is limited to the present situation alone and is not to be construed as interfering with the lawful exercise of power by the executive to take suitable measures for prevention of infection and transmission of the virus. Our suggestion also does not extend to any other directions requiring maintenance of COVID-appropriate behaviour issued by the Union or the State Governments.

(vi) As regards non-disclosure of segregated clinical data, we find that the results of Phase III clinical trials of the vaccines in question have been published, in line with the requirement under the statutory regime in place, the GCP guidelines and the WHO Statement on Clinical Trials. The material provided by the Union of India, comprising of minutes of the meetings of the SEC, do not warrant the conclusion that restricted emergency use approvals had been granted to COVISHIELD and COVAXIN in haste, without thorough review of the relevant data. Relevant information relating to the meetings of the SEC and the NTAGI are available in public domain and therefore, challenge to the procedures adopted by the expert bodies while granting regulatory approval to the vaccines on the ground of lack of transparency cannot be entertained. However, we reiterate that subject to the protection of privacy of individual subjects, with respect to ongoing clinical trials and trials that may be conducted subsequently for COVID-19 vaccines, all relevant data required to be published under the extant statutory regime must be made available to the public without undue delay.

(vii) We do not accept the sweeping challenge to the monitoring system of AEFIs being faulty and not reflecting accurate figures of those with severe reactions or deaths from vaccines. We note that the role of the Pharmacovigilance Programme of India and the CDSCO, as elaborated upon by the Union of India, collates and studies previously unknown reactions seen during monitoring of AEFIs at the time of vaccine administration and we trust the Union of India to ensure that this leg of the AEFI surveillance system is not compromised with, while meeting the requirements of the rapid review and assessment system followed at the national level for AEFIs.

(viii) We are also of the opinion that information relating to adverse effects following immunisation is

crucial for creating awareness around vaccines and their efficacy, apart from being instrumental in further scientific studies around the pandemic. Recognising the imperative need for collection of requisite data of adverse events and wider participation in terms of reporting, the Union of India is directed to facilitate reporting of suspected adverse events by individuals and private doctors on an accessible virtual platform. These reports shall be made publicly accessible, without compromising on protecting the confidentiality of the persons reporting, with all necessary steps to create awareness of the existence of such a platform and of the information required to navigate the platform to be undertaken by the Union of India at the earliest.

(ix) On paediatric vaccination, we recognise that the decision taken by the Union of India to vaccinate children in this country is in tune with global scientific consensus and expert bodies like the WHO, the UNICEF and the CDC and it is beyond the scope of review for this Court to second-guess expert opinion, on the basis of which the Government has drawn up its policy. Keeping in line with the WHO Statement on Clinical Trials and the extant statutory regime, we direct the Union of India to ensure that key findings and results of the relevant phases of clinical trials of vaccines already approved by the regulatory authorities for administration to children, be made public at the earliest, if not already done.

5. Further, in connected writ petitions being **W.P.(C) 11694/2021**, titled **Dr Ravinder Partap v. Government Of National Capital Territory of Delhi** **W.P.(C) 14705/2021** titled **Deepak Kumar and Anr. v. Government of National Capital Territory of Delhi** and **W.P.(C) 11845/2021** titled **Dr. Neetu Chaudhary and Anr. v. Government of National Capital Territory of Delhi**, where the Petitioners who were similarly placed, were also given

relief in the following terms:

“1. This batch of writ petitions had assailed the directives framed by the Delhi Disaster Management Authority [“DDMA”] for compulsory vaccination during the pandemic. The Court notes that, dealing with an identical issue, it had disposed of a writ petition, namely, Narendar Kumar vs. Government of National Capital Territory of Delhi [W.P. (C) 4741/2022] by its order of 15 July 2022 in the following terms:-

“The petitioner had approached this Court aggrieved by the insistence on the part of the respondents for him to be vaccinated against Covid-19. The grievance was raised in the backdrop of a medical opinion in terms of which it was pointed out that the pre-existing medical condition faced by the petitioner would warrant him being exempted from compulsory vaccination. Mr. Satyakam, learned ASC appearing for respondent Nos. 1 to 3, has fairly stated that in light of the judgment rendered by the Supreme Court in Jacob Puliyeel vs. Union of India & Ors. [W.P.(C) 607/2021], the respondents do not propose to insist on the petitioner being vaccinated against Covid-19. In view of the aforesaid and since nothing further would survive in the writ petition, it shall stand disposed of. The Court further observes that any salaries and other dues that may have been held back by the respondents consequent to a failure on the part of the petitioner to attend to her duties on account of the impugned directives shall be released with expedition and in any case within a period of four weeks from today.

2. Presently, the Court is apprised that no employer under the respondents is insisting upon compulsory vaccination bearing in mind the principles which were laid down by the Supreme Court in Jacob Puliyeel vs. Union of India [2022 SCC OnLine 748] and that all employees have been permitted to re-join their posts without the stipulation of vaccination being mandated.

3. In view of the aforesaid stand as taken by the respondents in the aforesaid matter and which is reiterated in the present proceedings, these writ petitions shall stand disposed of on identical terms.

4. The petitioners shall be permitted to rejoin their posts. Any issues with respect to unpaid salaries may be decided by the respective employers bearing in mind the order passed by the Court in Narendar Kumar as well as the principles laid down by the Supreme Court in Jacob Puliyeel. ”

6. In view of the above-mentioned orders relating to similar fact situations, the present petition, along with all pending applications, is disposed of with the direction that Covid-19 vaccination cannot be insisted upon by the employer, in terms of the various orders passed above. Moreover, the Petitioner, in any case, has now got vaccinated as well. Therefore, the only issues that remain in the petition are related to service benefits.

7. Insofar as the question on service benefits are concerned, the Petitioner is permitted to make representation to the concerned authority and the decision on the same shall be taken within 30 days.

8. Ld. Counsel for the Petitioner submits that the representation has been made on 14th June, 2022. Let the copy of the said representation be forwarded with a fresh covering letter to Id. Counsel for the Respondents within 1 week. A decision on the same shall be taken within four weeks by the Respondents. All remedies are left open.

9. No further orders are called for.

PRATHIBA M. SINGH
JUDGE

JANUARY 18, 2023/dk/am