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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22.09.2022

+ W.P.(C) 2033/2022 & CM APPL. 5801/2022 & CM APPL.
19872/2022

R.S BHARGAVA

..... Petitioner

Through: Mr. Tishampati Sen, Ms. Ridhhi Sancheti, Mr. G. Karthikeyan and Mr. Anurag Anand, Advs. With Petitioner-in-person

Versus

GOVERNMENT OF NCT OF DELHI AND ORS.

..... Respondents

Through: Ms. Avnish Ahlawat, SC, GNCTD with Mr. N.K. Singh, Adv. for R-1 & 2.
Mr. Anurag Ahluwalia, CGSC with Mr. Danish Faraz Khan, Advs. for R-3.
Mr. Puneet Mittal, Sr. Adv. with Mr. Rupendra Pratap Singh, Adv. for R-4.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner, who has been working as PGT (Chemistry) in the respondent no. 4 school, has approached this Court seeking the following reliefs:

“(a) To direct that the petitioner be reinstated into service and be removed from “ON LEAVE” status and be allowed to conduct his classes on VC;

B) To Direct that the petitioner be paid his salary for the months of December and January by the respondent no. 4 and that the period of 26.10.2021 onwards not be counted as “ON LEAVE” for the petitioner.

C) To quash that the DDMA order bearing nos. F.02/07/2020/S-1/Pt-1/479 dated 08.10.2021 and hearing no. F.60/DDMA/COVID-19/2021/487 dated 29.10.2021;

D) To quash the DoE circular no. F.NO.D.E.15 (305)/PSB/2021/3912 dated 29.09.2021 and the DOE order bearing no. PS/DE/2021/278 dated 28/10/2021;

E) To quash the DoE letter bearing no. DE.15(MIS)/PSB/2020/4453-55 dated 29/10/2021;

F) To quash the order no. DPSR/PERS/(RSB)/ADM dated 02.11.2021, passed by the respondent no. 4.

G) To grant ad-interim and ex-parte relief qua prayers (s) and (b) to the petitioner during the pendency of the writ”

2. It is the case of the petitioner that he is suffering from Angio Immunoblastic T-cell Lymphoma (involving B-cell) (“AITCL”) and on account of this medical condition, he has been consistently advised by doctors from various medical institutions that, his condition may deteriorate in case he takes the vaccination as he has in the past already suffered serious allergic reactions from various drugs and medications. However, on account of the various orders passed by the Govt. of NCT of Delhi (GNCTD) and the District Disaster Management Authority (DDMA) making it mandatory for all teachers to be 100% vaccinated, he has not been allowed to discharge his duties as he has not been able to take the COVID-19 vaccination on account of his medical condition.

3. It is claimed by the petitioner that even though, on 26.10.2021, looking at his medical conditions, he was initially granted exemption by the GNCTD from taking any COVID-19 vaccination, the said exemption was unilaterally withdrawn on 29.10.2021. Consequently, the petitioner has not even been allowed to take online classes, which he was willing to always take.

4. On 25.03.2022, this Court, after taking into account the petitioner's plea that it is only after getting medical advice that he had decided not to take the Covid-19 vaccination, directed the respondent no.4 to pay 50% of the salary to the petitioner, w.e.f. February, 2022. Since, the respondent nos.1 and 2 had withdrawn the exemption earlier granted to the petitioner without granting him any opportunity to explain the reason for his reluctance to take the Covid-19 vaccination; this Court had adjourned the matter to enable the respondents to take a considered decision on the petitioner's representation seeking exemption.

5. On 06.08.2022, the respondent no.1 after reconsideration of the matter, directed the petitioner to once again appear before the concerned doctor at AIIMS and obtain a conclusive medical advice as to whether he could, without any undue risk to his health, take the vaccination for Covid-19. In the light of this decision taken by respondent no.2, this Court vide its order dated 16.08.2022, while granting liberty to the petitioner to approach the concerned doctor at AIIMS, directed the doctor to give a conclusive opinion as to whether the petitioner could take the Covid-19 vaccination, without any undue risk to his health.

6. Pursuant thereto, a report dated 08.09.2022 was received from a 5-member Board constituted by the AIIMS, which has endorsed its earlier

opinion that the petitioner was at a higher risk of developing an allergic reaction to the Covid-19 vaccine as compared to the general population. The relevant extract of the report reads as under:

“ALL INDIA INSTITUTE OF MEDICAL SCIENCES

Ansari Nagar, New Delhi - 110029

No.F.2-50/MedicalBoard/2022-Estt.(H.)

Dated:

08.09.2022

Sub.: Report of medical board constituted at AIIMS to give a conclusive advice as to whether the petitioner Mr R S Bhargava can, without any undue risk, undergo the vaccination for COVID- 19 in compliance of order dated 16.08.2022 of Hon'ble Ms. Justice Rekha Palli, High Court of Delhi vide W.P. (0) 2033/2022, CM Appl. 5801/2022 (stay) & CM Appl. 19872/2022 (interim relief) titled R.S. Bhargava Versus Govt. of NCT of Delhi & Ors.

With reference to the Hon'ble court order dated 16.08.2022 of Hon'ble Ms. Justice Rekha Palli, High Court of Delhi vide W.P. (C) 2033/2022, CM Appl. 5801/2022 (stay) & CM Appl. 19872/2022 (interim relief) titled R.S. Bhargava Versus Govt. of NCT of Delhi & Ors., regarding subject noted above. The Medical Superintendent, AIIMS Is pleased to constitute a Medical Board consisting of the following members:-

1. Dr. Anant Mohan -Chairperson

Prof. & Head, Deptt. of Pulmonary Medicine

2. Dr. Binod K. Khaitan -Member

Professor, Deptt. of Dermatology & Venereology

3. Dr. Naval K. Vikram -Member

Professor, Deptt. of Medicine

4. *Dr. Sachin Khurana* -Member

Addl. Professor, Deptt. of Medical Oncology

5. *Dr. Sandeep Boora* -Member Secy.

Department of Hospital Administration

The meeting of the board was held on Thursday 8th September 2022, at 04:00 P.M. in Consultation Room No 13 MS Office Wing, Ground Floor, AIIMS, New Delhi. All the members of the board were present. As per documents provided by Mr. R.S. Bhargava, he is suffering from following medical ailments I.e. Angioimmunoblastic T-Cell Lymphoma currently clinically in remission and not on any immunosuppressive chemotherapy. He is also suffering from Type 2 Diabetes Mellitus with history of suspicious drug induced maculopapular eruptions and documented urticarial vasculitis/ panniculitis, while on treatment of lymphoma.

Based on careful scrutiny of available records, the board members opined that, in view of his past history of maculopapular drug eruption I urticarial vasculitis I panniculitis, he may be at higher risk of developing allergic reaction due to Covid vaccination as compared to general population.

sd/-

*Chairperson, Member,
Member, Member &
Member Secy.”*

7. After this report was received the respondent no.2 was granted time to reconsider the matter. This Court is happy to note that, based on the report furnished by the Board of Doctors at AIIMS, the respondent nos. 1 to 3 have issued an order on 20.09.2022 acceding to the request of the petitioner. His

request for exemption from Covid-19 vaccination has been acceded to as a special case, with a condition that he shall observe covid appropriate behaviour and guidelines, as issued by the appropriate authorities from time to time. The relevant extract of the order dated 20.09.2022 reads as under:

**“OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
DISTRICT SOUTH WEST – A,**

No. DE/DDE/SW-A/2022/225-226 Dated: 20.09.2022

ORDER

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And whereas, Sh.R.S.Bhargava has submitted report dated 10.09.2022 of Medical Board, AIIMS, Delhi. Relevant extract of above said report of Medical Board of AIIMS, Delhi is reproduced below:

“.....Based on careful scrutiny of available records, the board members opined that, in view of his past history of maculopapular drug eruption/urticarial vasculitis/panniculitis, he may be at higher risk of developing allergic reaction due to Covid vaccination as compared to general population.”

Now therefore, keeping in view of the peculiar facts and circumstances of the case and in compliance of the Order of the Hon'ble High Court, Delhi passed in W.P.(C) No.2033/2022, it is evident that the case of Sh.R.S.Bhargava is peculiar in its kind and administration of Covid Vaccination may cause adverse effect on his health as per the abovestated report dated 10.09.2022 of Medical Board of AIIMS, Delhi. Therefore, the request of Sh.R.S.Bhargava to exempt him from Covid Vaccination is acceded a special case subject to condition that he shall observe covid appropriate behaviour and guidelines as issued by the appropriate authority(ies) in this regard from time to time.

This issues with the prior approval of the Competent Authority.

Sd/-

*DY. DIRECTOR OF
EDUCATION
DISTRICT(South
West-A)”*

8. Learned counsel for the petitioner assures, on instructions from the petitioner who is present in Court that the petitioner will ensure that he always wears the mask while in the school premises, and will also observe Covid-19 appropriate behaviour and guidelines. He therefore, prays that the respondent no. 4 be directed to forthwith permit the petitioner to join his duties and treat the period between 02.11.2021 till the date he is permitted to join duty, as ‘on duty’, for all intents and purposes. He further prays that the respondent no. 4 be also directed to release the balance salary for this entire period after deducting the amount already paid to him pursuant to the interim orders passed by this Court.

9. After some arguments, he submits on instructions from the petitioner that the petitioner would be willing to forego 10% of his salary for this entire period, by taking into account the fact that it is not the respondent no.4 which can be faulted for not permitting the petitioner to perform duties. He further submits that the petitioner duly realises the fact that all the respondents were trying their level best to resolve the matter, without compromising the interest of either the students, or the petitioner. This stand taken by the petitioner is appreciated by this Court and the writ petition is disposed of by directing the respondent no. 4 to forthwith permit the petitioner to join his duties. The respondent no.4 is further directed to release the balance salary alongwith all allowances payable to him after deducting 10% from the salary payable for the period between 02.11.2021

till the date of his rejoining duty. The said amount will be paid within a period of six weeks from today.

10. The writ petition, accordingly, stands disposed of.

(REKHA PALLI)
JUDGE

SEPTEMBER 22, 2022

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