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

+ **W.P.(C) 2033/2022**

**R.S BHARGAVA**

..... Petitioner

Through: Mr.Tishampati Sen, Ms.Riddhi Sancheti, Ms.Jyoti Goyal, Mr.Anurag Anand, Ms.Udita, Advocates.

versus

**GOVERNMENT OF NCT OF DELHI AND ORS. .... Respondents**

Through: Mrs.Avnish Ahlawat SC GNCTD with Ms.Tania Ahlawat, Mr.Nitesh Kumar Singh and Mr.Siddhant Tyagi, Advocates for R1.

Mr.Shadan Farasat, ASC with Mr.Shourya Dasgupta, Advocate for R2.

Mr.Anurag Ahluwalia CGSC with Mr.Danish Faraz Khan, Mr.Rishab Narayan, Advocates for R3.

Mr.Puneet Mittal, Senior Advocate with Mr.Rupendra Pratap Singh, Advocate for R4.

**CORAM:**

**HON'BLE MR. JUSTICE YOGESH KHANNA**

**ORDER**

% **02.02.2022**

1. The hearing has been conducted through Video Conferencing.

**CM APPL.5802/2022**

2. Exemption allowed, subject to all just exceptions.

3. The application stands disposed of.

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

4. This Writ Petition is filed with the following prayers:

*“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 THE DDMA ORDER BEARING NOS. F.02/07/2020/S 1/Pt 1/479 DATED 08.10.2021 AND BEARING 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.1 (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 (a), AND (b) TO THE PETITIONER DURING THE PENDENCY OF THE WRIT; AND”*

5. It is submitted by the learned counsel for the petitioner vide various orders of Govt. of NCT of Delhi (GNCTD) and District Disaster Management Authority (DDMA) all the teachers should be 100% vaccinated. However, the petitioner because of his medical condition has not taken any vaccination of COVID-19 and hence is denied even to take online classes by respondent no.4/School.

6. It is submitted on 26.10.2021 looking at his medical conditions and record, an exemption was granted to the petitioner by the GNCTD from taking vaccination, however, such approval was unilaterally withdrawn vide order dated 29.10.2021 on the basis of a circular dated 29.10.2021 of the DDMA.

7. It is stated while considering the circular dated 29.10.2021 the authorities did not consider annexure-A and SoP annexed to the said circular dated 29.10.2021 which says all *eligible* teachers need to be vaccinated.

8. It is submitted due to his health problems, the petitioner is not eligible to be vaccinated and it is more than risky for the petitioner to take vaccination. The learned counsel for the petitioner has referred to three medical documents on record. Annexure-P7 runs as under:

*“Advice:*

*In such a scenario, COVID vaccination under supervision and observation may be considered.*

*We also understand that*

*-Such patients have an altered immune response to drugs and vaccines.*

*-Kindly give your expert opinion if you would consider exemption from COVID vaccination for this patient. ”*

9. The learned counsel for the petitioner has also referred to certification dated 22.11.2021 of CHIMERA which read as under:

*“This is to confirm that I have examined Mr. R. S. Bhargava, S/o Dr. V. S. Bhargava, who is 57 years old. As per his medical records, he has the following problems:*

*Type 2 Diabetes Mellitus (T2 DM)*

*Angioimmunoblastic T-cell lymphoma (AITCL) with involvement of B cell with Splenomegaly and generalised Lymphadenopathy.*

*Autoimmune haemolytic anaemia due to which Blood Transfusions had to be done.*

*Allergic to a number of pharmaceutical products including drugs(Montreal-LC, Avil.), injectable antibiotics, chemotherapy and even certain OHA (medication-related to diabetes) also to his childhood vaccination drugs. Montair-LC and OHA had produced acute itching and MACULOPAPULAR RASHES all over the body, a severe drug reaction. some anti-allergic*

*He had been given Chemotherapy-CHOP, which included the corticosteroid Prednisone. He experienced Erythema, nodal eruptions on the skin, and subsequently wheals with sparse perivascular chronic inflammation in the upper dermis and deep dermis, as well as symptoms of Lobular Panniculitis in the deep dermis and subcutaneous tissues as a medication reaction.*

*Since people with AITCL have a weakened immune system and hence there is a potential risk of disease recurrence if he gets vaccinated. As such it is advisable to avoid social gatherings and stay away from crowded places and defer the vaccination till more data is available on the efficacy as well as side effects and complications related to vaccination in such individuals.”*

10. It is submitted once considering the medical condition of the petitioner an exemption was granted but the act of respondent nos.1 to 3 unilaterally withdrawing of such exemption despite medical condition of the petitioner was totally illegal and against medical advice as is contained in Annexure-P7.

11. In the circumstances, issue notice. The learned counsel for all the respondents appear and accept notice. Though, Mr. Shadan Farasat, Advocate for respondent no.2 had submitted the orders of GNCTD and DDMA are applicable only to the Government Schools and not to the private schools, but I do not agree with this submission.

12. However, before passing any order it would be appropriate to take on record the response(s) of all the respondents and of course, the latest medical developments if any, on this issue and hence the petitioner herein is directed to file his latest medical certification qua the fact as to if could be safe for him to step outside his house and to attend school, and also if he is entitled to any exemption from the rigors of circular/orders of DDMA/GNCT of Delhi as it is submitted by the learned senior counsel for respondent no.4 that schools are expected to be in physical mode soon.

13. Let the latest medical report be filed by the petitioner in terms of above and the counter affidavit(s) be also filed within two weeks from today by the respondents with an advance copy to the learned counsel for the petitioner.

14. List on 08.03.2022. At this stage the learned counsel for the petitioner submits the salary for the month of December, 2021 and January, 2022 has not been paid to the petitioner.

15. Since the salaries for the last two months of the petitioner are not paid, hence, it be released to the petitioner forthwith subject to the adjustments to be made on the final outcome of this petition.

**YOGESH KHANNA, J.**

**FEBRUARY 02, 2022**

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