
(2010) 08 DEL CK 0080

In the Delhi High Court

Case No : Writ Petition (C) No. 5292 of 2010

Awadhesh Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Citation : (2010) 08 DEL CK 0080

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Jitendera Kumar Singh and Pankaj Kumar, for the Appellant; Barkha Babbar, for the Respondent

Judgement

Gita Mittal, J.—The writ petitioner employed as HAV/SKT with the Army prays for quashing and setting aside of the order of his transfer and movement dated 5th May, 2010. This communication was followed by letter dated 29th July, 2010 whereby the respondents directed handing and taking over of charge by the next incumbent. It is contended that the petitioner stands presently posted with the Headquarter 5 Signal Group since 20th July, 2006. The petitioner and his wife could not have children and for this reason his wife Smt. Sima Singh has been undergoing In Vitro Fertilization + Embryo Transfer ("IVF + ET" hereafter) treatment and procedures at the Army Hospital (R&R), Delhi Cantt. For this reason the petitioner's earlier posting vide the signal dated 10th July, 2009 was postponed and his tenure in Delhi was extended by one year.

2. As per the report of the Army Hospital (R&R), two chances for conception by the IVF + ET are permissible. The petitioner and his wife availed the first chance on 4th January, 2008 but the procedure was unsuccessful. The petitioner and his wife did not take any follow-up treatment at the said medical facility between March, 2009 to April, 2010.

3. Between February to March, 2010, the petitioner has claimed that the couple had gone to Agra to a civil private gynaecologist who had successfully treated

petitioner's cousin. This was also unsuccessful and thereafter the couple again reported to the Army Hospital (R&R) on 7th May, 2010. In this background, the Army Hospital (R&R) has on 7th May, 2010 initiated the infertility evaluation and treatment folder for the second trial of the said procedure for the petitioner's wife.

4. It is contended by learned Counsel for the petitioner that in view of the second chance for which the petitioner's wife is undergoing treatment and preparation at Army Hospital (R&R), the order of his transfer dated 5th May, 2010 deserves to be cancelled. The submission is that the petitioner and his wife would suffer irreparable loss and damage if they are deprived of the second chance to which they are entitled.

5. Ms. Barkha Babbar, learned Counsel for the respondents has placed before us a copy of letter dated 21st August, 2010 received from the Army Hospital (R&R), Delhi Cantt. wherein details of the treatment undertaken by the petitioner's wife have been mentioned. Copy of this letter has been taken on record. This communication sets out the above facts and shows that no effort for undertaking the treatment/procedure was made by the petitioner between March, 2009 to April, 2010. There is record of only one month's treatment at a private facility in Agra. As of now, the Army Hospital (R&R) has reported that the petitioner's wife is entitled to second chance for the IVF + ET facility at the Army Hospital (R&R).

6. We may note that by second communication dated 26th August, 2010, Colonel B.S. Duggal who is a Senior Advisor (Head of Department of Gynaecology and Obstetrics) at the Army Hospital (R&R) has informed that for completion of second cycle of IVF + ET treatment, the presence of the petitioner is required at Delhi for a period of three months alone. The medical specialist has also stated that subsequent management of the high risk pregnancy can be effected at any service hospital where gynaecologist may be posted.

7. The respondents have opposed the extension of the petitioner's tenure at Delhi pointing out that petitioner is not sincere about the treatment and is utilizing the same as a ruse to extend his posting at Delhi. It is contended that for this reason, no discretion ought to be exercised in his favour.

8. Having regard to the exigencies of service and in order to maintain discipline in the force, we are not prepared to accept the petitioner's request for cancellation of the transfer and movement orders. No illegality in passing these orders is pointed out. However it is on record that the petitioner has been worked up for IVF + ET procedures and has received treatment in preparation thereof as well. One attempt for the same was found unsuccessful. The petitioner's wife is undergoing the procedure for the second chance.

9. Having regard to the communications dated 21st August, 2010 and 26th August, 2010 from the Army Hospital (R & R), even if the petitioner was to be permitted extension of his stay at Delhi for the purpose of the said treatment, his presence is required here only for a period of three months. In the given facts, it

would be appropriate in these circumstances that the petitioner's movement pursuant to the transfer order is kept in abeyance for a period of three months and he is permitted to stay at Delhi during this time.

10. We make it clear that we are not expressing any opinion on the respondent's contentions that the petitioner is utilizing the treatment procedures undertaken at the Army Hospital (R&R) as a ruse to extend his stay at Delhi.

11. In view of the above, we direct as follows:

(i) The implementation of the orders of posting dated 5th May, 2010 and 29th July, 2010 shall be kept in abeyance for the period of three months from the 1st of September, 2010.

(ii) The petitioner and his wife shall report to Colonel B.S. Duggal, Senior Advisor (Head of Department of Gynaecology and Obstetrics) at the Army Hospital (R&R) on the 30th of August, 2010 for fixing the date and time for the investigations/procedures which are to be effected.

(iii) Having regard to the fact that the petitioner is under two orders of transfer, we are sure that the Army Hospital (R&R) shall ensure that the procedure which is required to be performed on the petitioner's wife is undertaken at the earliest, without any delay and all procedures requiring the petitioner's stay in Delhi are completed within three months from the receipt of this order.

12. This writ petition stands disposed of in the above terms.

13. Dasti to the parties under the signatures of the court master.