
(2020) 06 DEL CK 0111

In the Delhi High Court

Case No : Civil Writ Petition No. 3624 Of 2020, Civil Miscellaneous No. 12914, 12916 Of 2020

Durga Prasad

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 19-06-2020

Acts Referred:

Citation : (2020) 06 DEL CK 0111

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : R.K.Shukla, Gagan Deep, Amrita Prakash

Final Decision : Disposed Of

Judgement

Rajiv Sahai Endlaw, J

C.M. Nos. 12915-12916/2020 (for exemption from filing certified/ typed/ translated copies alongwith its English translation of annexures and duly affirmed affidavits and court fees)

1. Allowed, subject to just exceptions and as per extant rules.

2. The applications are disposed of.

W.P. (C) No.3624/2020 & C.M. No.12914/2020 (for stay)

3. The petitioner joined the respondents Indo Tibetan Border Police (ITBP) on 10th June, 2014 as a Constable (GD). The petitioner, on 8th August, 2016 was advised to get a kidney transplant and on 24th June, 2017 was served with a notice by the respondents to submit his representation against the opinion of the Medical Board declaring him unfit for service. The petitioner so submitted a representation and also received a kidney transplant. The petitioner earlier filed WP (C) No.6736/2017 in this Court, challenging the notice dated 24th June, 2017 aforesaid informing the petitioner of the opinion of the Medical Board of the petitioner being unfit to continue in service, though giving an opportunity to the

petitioner to represent thereagainst. By an interim order in the said writ petition, status quo was directed to be maintained and as a result whereof, the petitioner continues in service till date, in spite of three years having passed. Now, vide communication dated 19th May, 2020, the petitioner has again been notified of his dismissal from service on medical grounds, unless within 30 days gets an opinion from the requisite Medical Officer, qua his fitness.

4. This petition has been filed, stating that owing to the prevalent Covid-19 pandemic situation, the petitioner is unable to have himself examined from the requisite Medical Officer and owing whereof, may stand dismissed from service.

5. The petition is disjointed and does not convey the facts completely and the annexures to the petition also are incomplete. The English translation of the documents in vernacular has also not been filed.

6. Be that as it may, Mr. R.K. Shukla, counsel for the petitioner states that the petitioner has received a communication dated 16th June, 2020 from the respondents, granting time to the petitioner till 30 days after the opening of the OPD services of All India Institute of Medical Sciences (AIIMS), to have himself medically examined.

7. The counsel for the respondents appearing on advance notice also confirms that such a communication has been served on the petitioner.

8. We have enquired from the counsel for the petitioner, that once the relief which was sought in this petition, has already been granted to the petitioner, what survives in this petition.

9. Mr. R.K. Shukla, counsel for the petitioner states that he be granted time to place the communication dated 16th June, 2020 on record and the petition be kept pending.

10. We do not find any reason to keep the petition pending. It is not for this Court to go into the medical fitness of the petitioner or to interfere with the procedure in accordance with law for discharge/dismissal of the petitioner from service. The controversy in the present petition was only relating to grant of time to the petitioner for having himself medically examined and which time stands granted. If pursuant thereto the petitioner is dismissed from service, it is always open to the petitioner to take remedial action thereagainst. The petitioner, by pre-empting the final order to be passed by the respondents, by approaching the court against the notices as dated 19th May, 2020, is interfering with the process initiated by the respondents for discharge/dismissal of the petitioner from service and as a result whereof the petitioner continues in service in spite of having been opined to be medically unfit.

11. We accordingly dispose of the petition in view of the communication dated 16th June, 2020 addressed by the respondents to the petitioner.

12. The petition and the application stand accordingly disposed of.