

\$~34.

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

+ W.P.(C) 6324/2016

%

Judgment dated 22nd July, 2016

DR. MOHD. AJAZUR RAHMAN

..... Petitioner

Through : Mr.V.K. Garg, Sr. Adv. with Mr.Sagar
Saxena, Ms.Noopur Dubey,
Ms.Himanshi Saini and
Mr.Mohd.Tabrez Mallik, Advs.

versus

SECRETARY HEALTH, DEPARTMENT OF
HEALTH & FAMILY WELFARE, GNCTD & ORS Respondents

Through : Mr.Sanjoy Ghose, ASC, Mr.Dewan
and Ms.Pratishtha Vij, Advs. for the
respondents along with Mr.Kapil
Agnihotri, Legal Assistant, Health and
Welfare Department, and Dr.Bansal,
M.S. AAGH.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CM APPL. 25941/2016.

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

CM APPL. 25942/2016

3. This is an application filed by petitioner seeking permission of this Court to place on record additional documents.
4. Heard and for the reasons stated in the present application, the same is

allowed. Let additional documents, sought to be relied upon by the petitioner, be brought on record.

5. Application stands disposed of.

W.P.(C) 6324/2016

6. Challenge in this writ petition is to the order dated 16.7.2016 passed by Central Administrative Tribunal by which the application for interim relief filed by the petitioner along with the O.A. has been dismissed.
7. We may notice that initially when the matter came up for hearing before the Tribunal on 1.7.2016 interim protection was granted to the petitioner i.e. the order of transfer dated 30.5.2016 was stayed. Subsequently, primarily for two reasons the order dated 1.7.2016 was vacated by the Tribunal vide order dated 16.7.2016. The reasons, being firstly, that the petitioner had approached Delhi High Court by filing a writ petition, being W.P.(C)No.5707/2016 wherein the following prayers were made:

“(i) Issue appropriate writ/order thereby directing the respondents to refer the investigation of corruption and financial irregularities prevailing in the respondent no.3 to an independent agency like CBI or such agency as may be deemed fit by this Hon’ble Court;

(ii) Issue appropriate writ/order thereby quashing the impugned transfer order dated 30.05.2016 (Annexure P-19) and direct the respondents to allow the petitioner to resume his duties on the same post/position i.e. Chief Medical Officer (NFSG) in the respondent no.3 hospital, as was held by him prior to issuance of above impugned transfer order with all benefits;

(iii) Cost of the present proceeding be awarded in favour of the petitioner and against the respondents; and

(iv) Such other order(s) as this Hon'ble Court may deem fit and proper in public interest and in the interest of justice.

8. When the writ petition came up for hearing before the High Court, the respondents produced in Court a Corrigendum, based on which Prayer (ii) made in the writ petition was rendered infructuous as per the order. Leave was however sought by the counsel appearing to institute proceedings with regard to prayer (i). Order dated 22.6.2016 passed by the Delhi High Court reads as under:

“W.P.(C) 5707/2016 and CM APPL. No. 23580/2016 (Stay)

The present is a petition under Article 226 of the Constitution of India praying as follows:-

“(i) Issue appropriate writ/order thereby directing the respondents to refer the investigation of corruption and financial irregularities prevailing in the respondent no. 3 to an independent agency like CBI or such agency as may be deemed fit by this Hon'ble Court;

(ii) Issue appropriate writ/order thereby quashing the impugned transfer order dated 30.05.2016 (Annexure P-19) and direct the respondents to allow the petitioner to resume his duties on the same post/position i.e. Chief Medical Officer (NFSG) in the respondent no. 3 hospital, as was held by him prior to issuance of above impugned transfer order with all benefits;

(iii) Cost of the present proceeding be awarded in favour of the petitioner and against the respondents; and

(iv) Such other order(s) as this Hon'ble Court may deem fit and proper in public interest and in the interest of justice.”

Insofar as prayer clause (ii) is concerned, the same has been rendered infructuous in view of the corrigendum dated 21st

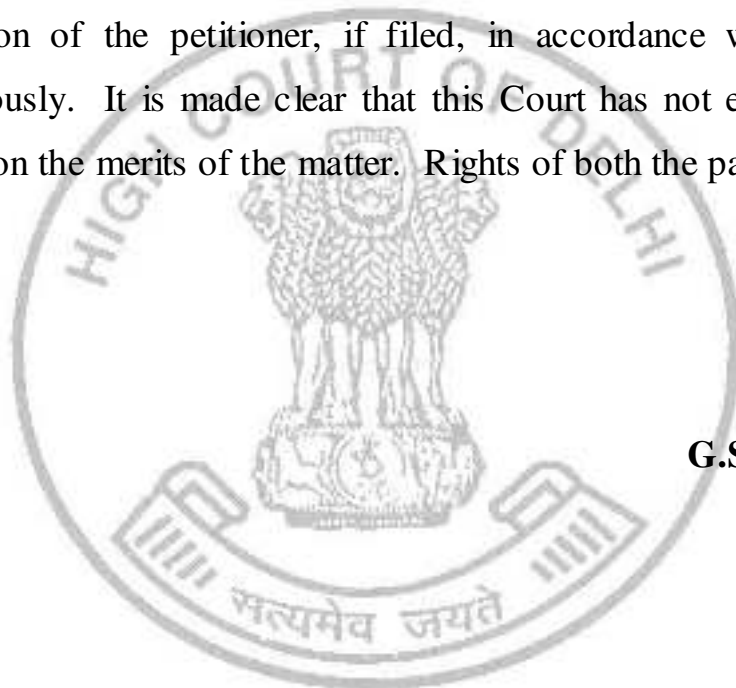
June, 2016 issued by the Government of NCT of Delhi, Health and Family Welfare Department stating that the petitioner herein has been posted as the CMO (NFSG).

Insofar as prayer clause (i) is concerned, learned counsel appearing on behalf of the petitioner seeks leave to withdraw the present writ petition with liberty to institute appropriate proceedings in accordance with law before the court of competent jurisdiction.

The writ petition is disposed of accordingly. Pending application also stands disposed of.”

9. In the order dated 22.6.2016, the Tribunal was of the view that the question relating to transfer had already been decided by the High Court. The Tribunal also rejected the prayer for interim relief based on an earlier decision rendered by the Tribunal in OA No.1064/2016.
10. Learned senior counsel for the petitioner submits that the Tribunal has failed to take into account that the prayer for transfer had not been decided by the High Court but only the prayer with regard to the post had become infructuous on account of Corrigendum dated 21.6.2016.
11. Learned counsel for the respondents has opposed this petition on the ground that there is no infirmity in the impugned order passed by the Tribunal. It is further submitted that the prayer for transfer already stands rejected by the High Court.
12. Learned senior counsel for the petitioner submits that the petitioner has filed additional documents in this Court which were not before the Tribunal when the impugned order was passed. Learned senior counsel on instructions from the petitioner seeks to withdraw the present petition and submits that he would like to file a fresh application before the Tribunal after placing additional documents on record to which the respondents have no objection.

13. Mr.Ghosh, learned counsel for the respondents, at this stage, points out that all the keys to the room and almirahs are in the possession of the petitioner as the same have not been handed over by the petitioner.
14. Mr.Garg, on instructions, from the petitioner submits that all the keys of the room and almirahs, which are in the possession of the petitioner, would be handed over during the course of the day. Petitioner shall be bound by the statement made by learned senior counsel in Court today.
15. Accordingly, writ petition stands dismissed as withdrawn. Leave, as prayed for, is granted. The Tribunal is requested to consider the application of the petitioner, if filed, in accordance with law and expeditiously. It is made clear that this Court has not expressed any opinion on the merits of the matter. Rights of both the parties are kept open.
16. DASTI.



G.S.SISTANI, J

I.S. MEHTA, J

JULY 22, 2016

msr