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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 15th July, 2020

W.P. (C) 4138/2020

COL (TS) AJAY SANGWAN

.....Petitioner

Through: Mr. Abhishek Singh, Advocate

versus

UNION OF INDIA & OTHERS

.....Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Varun Kishore,
Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

C.M. Appls.14840/2020 & 14841/2020 (Exemption from filing original/clear/certified/official translated/typed copies of the documents and from filing attested affidavits and requisite court fees)

1. Allowed, subject to just exceptions and as per the extant rules.
2. The applications are disposed of.

W.P. (C) 4138/2020

3. The petition impugns the order dated 3rd July, 2020 of the Principal Bench of the Armed Forces Tribunal (AFT) in O.A.

726/2020, rejecting the prayer of the petitioner for interim relief and on the request of the counsel for the petitioner that he wanted to file some additional documents, posting the O.A. for 'admission' on 24th July, 2020.

4. The O.A. aforesaid has been preferred by the petitioner against the orders dated 15th June, 2020 and 17th June, 2020 of the respondents of premature retirement of the petitioner, a Colonel (Time-Scale) in the Army, with further direction for the petitioner to be relieved by 16th July, 2020.

5. The counsel for the petitioner has contended that since by 24th July, 2020, when the matter is listed next before the AFT, the petitioner, due to be relieved by 16th July, 2020, would have stood relieved by then, making the OA infructuous.

6. We have enquired from the counsel for the petitioner, the irreversible injury which would be suffered by the petitioner on being so relieved on 16th July, 2020 and which cannot be undone in the final order in the O.A. filed by the petitioner before the AFT.

7. The counsel for the petitioner states that once the petitioner is relieved, it will be very difficult to restore him.

8. We are unable to agree.

9. There are a large number of orders/judgments of the courts as well as of AFT, undoing what has happened in the interregnum

between the filing of the proceedings and the passing of the final order in the said proceedings.

10. Moreover, it cannot be forgotten that the adjournment before the AFT on the date of the impugned order, i.e., 3rd July, 2020, was on the request of the counsel for the petitioner, to file additional documents.

11. We may notice that the petitioner had earlier filed O.A. No.988/2019 before the AFT, against the order dated 5th April, 2019 prematurely retiring the petitioner on his request and during the pendency of the said OA, there was a interim stay and vide final order dated 6th January, 2020 in the said O.A., the order of premature retirement of the petitioner was set aside, with direction to reconsider the request of the petitioner for withdrawal of his application for premature retirement and conferring certain other benefits on the petitioner. The respondents, now after reconsidering the request of the petitioner for withdrawal of his request for premature retirement, vide order dated 15th June 2020, rejected the request of the petitioner for withdrawal of his application for premature retirement. It is in this context that the AFT, in the impugned order has *prima facie* observed that the principles of constructive *res-judicata* apply and no case for grant of interim relief sought even before admission of OA by the AFT was made out.

12. Once the essential ingredient of irreparable injury and balance of convenience, for grant of interim relief is not satisfied, it

cannot be said that there is any illegality or perversity in the impugned order of the AFT declining interim relief sought by the petitioner.

13. The counsel for the petitioner, on his request, has also been permitted to argue at length on the merits of his case in O.A. No.726/2020 pending before the AFT. However, since the matter is still pending before the AFT, we refrain from dealing with the said arguments.

14. The counsel for the petitioner states that he will be satisfied if it is recorded that the AFT, while hearing the petitioner on 24th July, 2020 or on any other date to which the matter is deferred, will not be swayed by the *prima facie* view on the basis on which interim relief has been denied.

15. Though it follows in law, but for the satisfaction of the counsel, we state so.

16. Else, there is no merit in the petition.

17. The petition is dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 15, 2020

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