

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.40 of 2017

Order reserved on: 09.03.2017

Order delivered on: 17.03.2017

1. Abhishek Sharma, S/o. Shri Chhannulal Sharma, aged about 27 years, R/o. MIG-596, Sector-2, Deendayal Upadhyay Nagar, District Raipur (Chhattisgarh).
2. Laxman Khelwar, S/o. Shri Tulsiram Khelwar, aged about 28 years, R/o. Village Mova, Ward No. 27, Near Shitla Mandir, District Raipur (Chhattisgarh).
3. Roshan Kumar Manikpuri, S/o. Shri Ganesh Das Manikpuri, aged about 31 years, R/o. Village & Post Lawan, District Baloda Bazar (Chhattisgarh).
4. Nitin Dahariya, S/o. Shri Nemudas Dahariya, aged about 27 years, R/o. Village Semradeeh, P.O. Mohra, District Baloda Bazar (Chhattisgarh).
5. Vikas Shukla, S/o. Shri Durga Prasad Shukla, aged about 35 years, R/o. Qr. No. 24/117, Tarun Nagar, Pandritarai, Near Lodhipara Chowk, District Raipur (Chhattisgarh).
6. Rupesh Kumar Pal, S/o. Shri Ramaiyya Pal, aged about 25 years, R/o. Near Water Tank, Gurunanak Ward, Bhatapara, District Baloda Bazar (Chhattisgarh).
7. Smt. Sandhya Verma, W/o. Shri Ravikant Verma, aged about 30 years, R/o. Lafarge Colony, Rasedi, B-34, Post Raseda, District Baloda Bazar (Chhattisgarh).
8. Bheekham Sahu, S/o. Shri Ramkumar Sahu, aged about 25 years, R/o. Village & Post Sisdeori, Tehsil Palari, District Baloda Bazar (Chhattisgarh).
9. Hemant Bhardwaj, S/o. Shri Ghansiram Bhardwaj, aged about 32 years, R/o. Village & Post Tarra Via Mandhar Colony, District Raipur (Chhattisgarh).
10. Pankaj Kumar Madaria, S/o. Shri Kamal Narayan Madaria, aged about 29 years, R/o. Village & Post Guma, Grasim Vihar, Rawan, P.S. Suhela, District Baloda Bazar (Chhattisgarh).

---Appellants  
Petitioners

Versus

1. State of Chhattisgarh, Through - Secretary, Department of Health and Family Welfare, New Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh).
2. Director, Health Services Directorate Health Services, 3<sup>rd</sup> Floor, Indrawati Bhawan, New Raipur, District Raipur (Chhattisgarh).
3. Collector, Baloda Bazar, District Baloda Bazar (Chhattisgarh).
4. Chief Medical and Health Officer, Baloda Bazar, District Baloda Bazar (Chhattisgarh).

---Respondents

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For appellants : Mrs. Meena Shastri, Advocate.

For respondents/State : Mr. Y.S. Thakur, Addl. Advocate General

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Hon'ble Shri Pritinker Diwaker, Ag. Chief Justice  
Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

Sanjay K. Agrawal

1. Impugning legality, validity and correctness of order passed by learned Single Judge declining to grant interim order/refusing to stay the effect and operation of order of termination dated 16.06.2016, this writ appeal has been preferred by the appellants/writ petitioners under Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 [hereinafter called as "the Act, 2006"].
2. The office has raised an objection that as per proviso to sub-section (1) of Section 2 of the Act, 2006, writ appeal against the interlocutory order is barred therefore the writ appeal is not maintainable and to

adjudicate that office objection, the matter has been placed before us.

3. Mrs. Meena Shastri, learned counsel for the appellants, would submit that since the learned Single Judge has rejected the appellant's application for interim relief *i.e.* to stay the effect and operation of order of termination by impugned order, that vitally affects petitioner's right and even otherwise, the impugned order has a bearing on the final adjudication of the case, therefore the order impugned is not an interlocutory order and as such, appeal would lie under Section 2(1) of the Act, 2006, therefore the office objection deserves to be overruled and relied upon the decision of a Full Bench rendered by this Court in the matter of **Ajay Gupta v. State of Chhattisgarh and others**<sup>1</sup>.

4. Mr. Y.S. Thakur, learned Additional Advocate General, would however submit that the impugned order is virtually an interlocutory order and cannot by any stretch of imagination said to be the final order, therefore the writ appeal is not maintainable being barred by the proviso to Section 2 (1) of the Act, 2006, as such, the office objection deserves to be accepted, and the writ appeal deserves to be dismissed.

5. We have heard learned counsel for the parties.

6. Section 2(1) of the Act, 2006 provides as under:-

**"2. Appeal to the Division Bench of the High Court from a Judgment or order of one judge of the High Court made in exercise of original jurisdiction.-** (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original Jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two

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1 AIR 2017 Chh 45

Judges of same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

7. Thus, proviso to Section 2(1) of the Act, 2006 expressly bars writ appeal. The scope and ambit of writ appeal particularly, against the interlocutory order came to be considered before the Full Bench of this Court in **Ajay Gupta** (supra).

8. Therefore, it would be appropriate to notice the judgment rendered in **Ajay Gupta** (supra) by the Full Bench. The Full Bench while dealing with the maintainability of writ appeal against the interlocutory order, held as under:-

“We therefore answer the question referred to us by holding that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 bars appeals against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finality attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it cannot be termed as interlocutory order and an appeal would lie. An appeal would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them. The orders, effect of cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders.”

9. Thus, the proviso to Section 2(1) of the Act, 2006 bars writ appeal against the interlocutory order. The Full Bench has also held that writ appeal against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of

finality attached to them and appeal would not lie under Section 2 (1) of the Act, 2006. The Full Bench has further held that if order vitally affects the right of the parties having bearing on a final adjudication of the case and which has an element of finality attached to them even though the order is interlocutory, the writ appeal would be maintainable against that order under Section 2(1) of the Act, 2006.

10. Now, the question would be whether the impugned order passed by learned Single Judge is purely an interlocutory order or an order affecting the rights of the appellants/petitioners having impact on final outcome of the case and is final to some extent making the appeal maintainable under Section 2 (1) of the Act, 2006.

11. In order to decide the dispute of maintainability of appeal, it would be appropriate to notice the operative portion of the impugned order passed by learned Single Judge refusing to stay the effect and operation of the order of termination. Paragraph 14 of the impugned order states as under:-

“Applying the aforesaid principles apart from the facts *prima facie* the documents would show that the appointments were made over and above the advertised posts at the free will of the CMHO and therefore *prima facie* case do not existing in favour of the petitioners. Having found the *prima facie* case do not exist in favour of the petitioners for interim relief, I am of the considered view the interim relief, if granted to the petitioner would amount to final relief and therefore the prayer for stay of the order of termination is hereby dismissed.”

12. In the matter of **State of Haryana v. Suman Dutta**<sup>2</sup>, Their Lordships of the Supreme Court set aside the order passed by the High Court

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<sup>2</sup> (2000) 10 SCC 311

staying the order of termination as an interim measure in the pending proceeding and it was observed as under:-

“[W]e are clearly of the opinion that the High Court erred in law in staying the order of termination as an interim measure in the pending writ petition. By such interim order if an employee is allowed to continue in service and then ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same.”

13. In the matter of **Public Services Tribunal Bar Association v. State of U.P. and others**<sup>3</sup>, the Supreme Court has held as under:-

“39. ....Interference at the interim stage with an order of dismissal, removal, termination and compulsory retirement would be giving the final relief to an employee at an interim stage which he would have got in case the order of dismissal, removal, termination and compulsory retirement is found not to be justified. If the order of dismissal, removal, termination and compulsory retirement is set aside then an employee can be compensated by moulding the relief appropriately in terms of arrears of salary, promotions which may have become due or otherwise compensating him in some other way.....”

14. The aforesaid judgment of the Supreme Court {**Public Services Tribunal Bar Association** (supra)} has clearly held that staying the order of termination would amount to giving the final relief to an employee at an interim stage which is impermissible, whereas if the order of termination is set aside, the employee can be compensated in terms of salary etc. Thus, refusal to stay the order of termination neither decides the right of writ petitioner nor it has any slightest bearing on the final adjudication of the matter and he / she can be compensated by moulding the relief appropriately, if the order of termination impugned is ultimately, set aside after final hearing. Thus, the impugned order

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<sup>3</sup> (2003) 4 SCC 104

refusing to stay the order of termination is purely an interlocutory order not deciding the rights of the parties or any bone of contention between the parties. The learned Single Judge has simply declined to arrest the operation of the order of termination meaning thereby, the order of termination will remain in force during the pendency of the proceeding or unless it is set aside in any other appropriate proceeding and it is out and out purely an interlocutory order not adjudicating any right of parties and as such, writ appeal against the interlocutory order is expressly barred by proviso to Section 2 (1) of the Act, 2006.

15. In light of aforesaid legal analysis, we are of the considered opinion that the instant appeal as framed and filed is not maintainable in law and accepting the office objection about the maintainability of writ appeal, the instant appeal is dismissed.

Sd/-  
(Pritinker Diwaker)  
Ag. Chief Justice

Sd/-  
(Sanjay K. Agrawal)  
Judge