

HIGH COURT OF CHHATTISGARH, BILASPUR
Judgment Reserved on 14.03.2018
Judgement Delivered on 26/03/2018
WA No. 469 of 2017

- Smt. Shashi Soni W/o Shri Narendra Soni, Aged About 57 Years Presiding Officer, Labour Court Janjgir Champa Janjgir District Janjgir Champa Chhattisgarh, Chhattisgarh

**---- Appellant
(Petitioner)**

Versus

1. State Of Chhattisgarh, through Additional Secretary Labour Department, Mahanadi Bhawan, Secretariate Naya Raipur Tahsil And District Raipur Chhattisgarh, Chhattisgarh
2. Registrar General, High Court Of Chhattisgarh, Bodri Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondent

For Appellant	:	Shri V.G. Tamaskar, Advocate
For Respondent No.1	:	Shri Vivek Sharma, Government Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

ORDER

P. Diwaker, J

26/03/2018

1. This writ appeal is directed against the order dated 6.10.2017 (Annexure A-5) passed by the learned Single Judge in Writ Petition (S) No.5285/2017, which is still pending before the learned Single Judge, rejecting the application for grant of interim relief as filed by the petitioner/appellant herein.
2. Brief facts of the case are that the petitioner/appellant, who was working as Presiding Officer, Labour Court, District Janjgir Champa, stood compulsorily retired vide order dated 21.9.2017 (Annexure P-4). The order of compulsory retirement has been challenged by filing a writ petition bearing WPS No.5285/17 before the writ Court *inter alia* on the ground

that the order of compulsory retirement without appointing enquiry officer and presenting officer is opposed to law. Along with writ petition, an application for grant of ad-interim relief has also been filed praying that effect and operation of the order dated 21.9.2017 may be stayed during pendency of writ petition. Learned Single Judge vide order dated 6.10.2017 (Annexure A-5) declined to grant interim relief to the petitioner/appellant by observing that the impugned order has been passed in exercise of powers under Rule 56 of the Fundamental Rules read with Rule 42 of the Chhattisgarh Civil Services (Pension) Rules, 1976 in the public interest.

3. Learned counsel for the petitioner/appellant submits that the appellant was appointed by the then State of Madhya Pradesh with the approval of Hon'ble the Chief Justice of Madhya Pradesh High Court and therefore her posting in the State of Chhattisgarh is illegal. Service record of the appellant is good and no confidential remarks adverse to her were ever communicated to her. He further submits that rejection of interim application of the appellant would amount to dismissal of her main case because the interim order by implication decided the issue finally and therefore in view of decision of the Full Bench of this Court in Writ Appeal No.255/16, parties being Ajay Gupta v. State of CG & ors, this writ appeal assailing the order dated 6.10.2017 rejecting the interim application is maintainable.
4. Learned counsel appearing on behalf the respondents raised an objection with regard to maintainability of writ appeal saying that under the Proviso to Sub-section (1) of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, no appeal shall lie against an interlocutory order passed by learned Single Judge. Therefore, the writ appeal is liable to be dismissed as not maintainable.

5. We have heard learned counsel for the parties and perused the impugned order.
6. To appreciate the rival submissions raised at the Bar, it is apposite to reproduce Section 2 of the Act, 2006. It reads 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 Judges of the 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. A bare reading of above quoted provision it is manifest that 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 is appealable. What is curtailed by the proviso is an interlocutory order.
8. The Full Bench of this Court in *Ajay Gupta v. State of Chhattisgarh & ors* reported in AIR 2017 Chh 45 has extensively dealt with the issue with regard to maintainability of writ appeal filed against an interlocutory order and held thus;-

“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 the matters of moment and do not have an element of finality attached to them. Conversely, if the order vitally affects right 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 which cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders.”

9. From perusal of above quoted judgment it is clear that writ appeal against those interim orders, which are totally interlocutory in nature, do not decide the matters of moment and do not have an element of finality attached to them, appeal would not lie under Section 2 (1) of the Act, 2006. However, if an 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. In **Abhishek Sharma & others v. State of Chhattisgarh & ors** reported in **AIR 2017 CG 113** while dealing with the identical issue involved in the present case the Division Bench of this Court has decided the same against the appellant therein following the decision of the Full Bench of this Court in Ajay Gupta (supra).
11. Now the question that arises for our consideration is whether the impugned order passed by the learned Single Judge rejecting the interim application can be said to be an interlocutory or not?
12. The expression "interlocutory order" merely denotes order of a purely interim or temporary nature which does not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of a party, or decides certain rights of the parties cannot be said

to be an interlocutory order so as to bar an appeal against that order. Orders which are matters of moment and which affect and adjudicate the rights of the parties cannot be said to be interlocutory order so as to bar appeal.

13. From perusal of the order under challenge it is clear that the learned Single Judge by the impugned order has not finally adjudicated the matter in controversy between the parties. What the learned Single Judge has done is to decline the stay of effect and operation of order compulsorily retiring the petitioner/ appellant from the service in the public interest. Thus, we are of the considered view that the impugned order is purely an interlocutory in character turning down the request of the petitioner for grant of interim relief as it does not decide or touch the matter in controversy between the parties i.e. legality and propriety of order dated 21.9.2017 (Annexure A-4). The Supreme Court in catena of judgements has consistently been of the view that by way of interim order the order of suspension, termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in the Court. If an employee is allowed to continue in service by such interim order and ultimately the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same. If the order of dismissal, removal, termination and compulsory retirement is set aside then an employee can be compensation 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. In this case also, if the petition of the petitioner/appellant is allowed, he will be entitled for all the consequential benefits from the date of passing of order dated 21.9.2017, in accordance with law.

14. In view of the above discussion, we are of the view that present writ appeal against the impugned order, which is purely interlocutory in character, is not maintainable and as such is liable to be dismissed. The same is hereby dismissed. No order as to costs.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge

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