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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 278 of 2019

(Arising out of order dated 18/2/2019 passed by the learned Single Judge in WPL No. 21 of 2019)

Shri Victor Fidlish Aged About 62 Years Ex. Office Superintendent Qtr. No. T/shahid Bhagat Singh Colony, Korba Area, Disrtict- Korba, Chhattisgarh.

----Appellant

Versus

1. Sub Area Manager Shri Pravakar Maduli, South Eastern Coalfield Limited, Rajgamar Colliery, Korba Area, P.O. Rajgamar, Colliery, District- Korba, Chhattisgarh.
2. State Of Chhattisgarh Through Collector, Korba, District Korba Chhattisgarh.
3. Office Of The Tahsildar Through Tahsildar, Korba, Disrtict- Korba, Chhattisgarh.

---Respondents

For Appellant	:	Mr. D.P. Sharaf, Advocate
For Respondent No. 1	:	Mr. Vinod Deshmukh & Mr. Vivek Verma, Advocates
For State	:	Mr. Vikram Sharma, Panel Lawyer

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

Per, P.R. Ramachandra Menon, Chief Justice

28.06.2019

1. The grievance projected in the present writ appeal is in respect of some serious observations made by the learned Single Judge, allegedly detrimental to the rights and interest of the appellant/employee as to the disbursement of gratuity. In turn, the writ petition preferred by the South Eastern Coalfields Limited / employer came to be allowed, without affording the opportunity of hearing to

the appellant, who actually was shown as the 3rd Respondent before the writ Court.

2. Heard Mr. D.P. Sharaf, learned counsel appearing for the appellant/employee, Mr. Vinod Deshmukh and Mr. Vivek Verma, learned consel appearing for South Eastern Coalfields Limited / employer and Mr. Vikram Sharma, learned counsel appearing for the State.

3. The crux of the factual matrix is that the appellant herein, by virtue of his employment under the respondent No. 1/employer, put forth a claim for payment of gratuity before the Controlling Authority, in terms of relevant provisions of law. After hearing both the sides and on assessing the merits involved, the claim came to be allowed, whereby gratuity was ordered to be paid, but the same was not satisfied by the respondent No. 1/employer, who took up the matter in appeal before the Appellate Authority.

4. The appellant herein, sought to get the amount covered by the order passed by the Controlling Authority, by moving the authorities concerned. At the same time, the respondent No. 1/employer moved the writ Court pointing out that the statutory appeal against the order passed by the Controlling Authority was pending consideration, despite which, recovery proceedings were sought to be proceeded against the employer by the Tahsildar and hence, it was sought to be interdicted.

5. The learned Single Judge heard the learned counsel for the writ petitioner / employer and the learned counsel representing the State. However, no notice was issued to the appellant, who was the respondent No. 3/ beneficiary/ employee in the writ petition. The aspect sought to be projected by the employer was that the statutory

appeal was preferred after depositing the entire amount covered by the order (which is a pre-condition to pursue the appeal) and in the said circumstance, there was no rhyme or reason to have the recovery proceedings pursued simultaneously during pendency of the statutory appeal. This contention was accepted and the matter was finalized by the learned Single Judge by interdicting the RRC proceedings, till the appeal was finalized by the Appellate Authority. This is under challenge in this appeal, referring to the prejudice caused to the appellant/employer.

6. After hearing the learned counsel for the parties and on going through the proceedings, including the verdict passed by the learned Single Judge on 18/02/2019, we find that some observations, particularly in Paragraph 6, as to the proper course which should have been pursued by the employee and the Tahsildar, are not liable to be sustained, particularly for not having heard the appellant herein i.e. the employee concerned. The interdiction of the revenue recovery proceedings, for realising the amount due under the order passed by the Controlling Authority, which has already been deposited, cannot be assailed. But the observation in Paragraph 6, that the employee concerned and the Tahsildar should have waited for the outcome of the appeal or at least, till the interim application in the appeal was decided, is not fully correct. It was for the employer to obtain appropriate interim orders, and in the absence of the interim order, there was no statutory or moral obligation for the beneficiary of the revenue authorities to wait till the outcome of the appeal for settling the law in motion. This alone was done, but the question is whether there should be simultaneous recovery proceedings as well, when the amount covered by the order is already deposited.

7. On viewing the matter in the said context, we are of the view that the

declaration made by the learned Single Judge interdicting the RRC proceedings, is not liable to be interdicted by this Court, in the appeal. We decline interference accordingly. At the same time, we are of the view that the 'last sentence of Paragraph 6', with regard to the course and conduct of the employee and the Tahsildar is not liable to be sustained, is not necessary to sustain the above finding. Accordingly, we delete that portion from the judgment passed by the learned Single Judge on 18/02/2019.

8. During the course of hearing, it is also brought to the notice of this Court that the appeal preferred by the employer came to be dismissed by the Appellate Authority as per order dated 17/05/2019. It is further brought to our notice that, though the employer took up the matter further by filing a writ petition before this Court, challenging the said orders, it did not turn to be fruitful, and the writ petition bearing number “W.P.(L) No. 142/2019” also came to be dismissed, as per the judgment passed by the learned Single Judge on 27/06/2019.

9. The learned counsel for the employer submits that in view of the susequent developments, there is no objection for the employer, in causing the amount already deposited, to be disbursed to the beneficiary/employee. Hence, it is open for the appellant to move the Controlling Authority, to get the amount in deposit, as covered by the order under challenge, to be disbursed forthwith.

10. With the above observations, the writ appeal is disposed off.

Sd/-	**Sd/-**
(P.R. Ramachandra Menon)	(Sanjay K. Agrawal)
Chief Justice	Judge

Harneet