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Item No. 7
28.09.2020
(Video Conference)
Kole

MAT 595 of 2020
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IA No. CAN 1 of 2020
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IA No. CAN 2 of 2020

Coal India Limited
-Vs-
Partha Sarathi Padhiary & Ors.

Mr. Y. J. Dastoor, Ld. A.S.G.
Mr. Pradyut Kumar Das, Adv.

...for the appellant.

Mr. Soumya Majumdar, Adv.

...for the respondent No. 1.

This appeal is directed against the interim order dated 6 August, 2020 passed in WP 6047 (W) of 2020 filed by the writ petitioner/respondent no. 1 challenging the decision of termination of service of the writ petitioner, dated 3 July, 2020. By the interim order impugned herein, the Learned Judge has directed that the petitioner will continue to work in the System Department according to the Office Order dated 15 April, 2015 till 31 December, 2020 or until further order whichever is earlier. Direction was given for exchange of affidavits.

The writ petitioner joined the respondent no. 3 company, which is a subsidiary of the appellant/respondent no. 1. He was posted at the Parbelia Colliery pursuant to an

Office Order dated 26 February, 2013. A joining report was issued on 1 March, 2013. The petitioner was then on probation.

Vide letter dated 17/18 February, 2014, the writ petitioner was released for the purpose of appearing in the Probation Closure Examination to be held at IICM, Ranchi, on 20 February, 2014. The petitioner duly appeared in such examination.

By a letter dated 19 May, 2014, the writ petitioner was required to report to Dr. Manojit Ghosh (Eye Specialist) on 21 May, 2014, which the writ petitioner did. Suddenly by a letter dated 28 November, 2014, the petitioner's service was terminated on the alleged ground of he suffering from colour blindness which was allegedly revealed during the aforesaid medical examination of the writ petitioner. The petitioner challenged such order of termination by filing WP No. 1182 of 2014. By an order dated 24 November, 2014, the writ petition was allowed. The operative portion of the said order reads as follows:-

“In those circumstances, the order dated 14th November, 2014 was wrongful and illegal. I do not think that an opportunity to file affidavits can improve the matter. It is hereby set aside. However, it will be open for the respondents to prohibit the writ petitioner from entering a mine and to transfer him to another department.

It will also be open to the respondents to initiate de novo proceedings and pass a fresh order by giving an opportunity of hearing to the writ petitioner and

admitting any evidence that he may adduce on his behalf. The proceeding should be disposed of by a reasoned order.”

Pursuant to such order, the writ petitioner was posted in the System Department in 2015, where the petitioner was discharging his duties till he was served with a copy of the order of termination dated 3 July, 2020, which is impugned in this appeal.

We have heard learned Counsel for the parties. We have considered the interim order of the learned Single Judge. It is only an interlocutory order. Learned Single Judge has rightly recorded that the petitioner has raised various grounds of challenging the order of termination, e.g., that the medical finding did not support termination of service, the petitioner was confirmed in service after appropriate medical test and so on. The learned Judge has opined that these questions are prima facie arguable and have to be gone into deeper. Accordingly, the learned Judge permitted the petitioner to continue with his service in the System Department till 31 December, 2020 or until further order whichever is earlier. The writ petition was formally admitted. The Coal companies were directed to file affidavit-in-opposition by 30 September, 2020. Affidavit-in-reply, if any, was to be filed by 9 October, 2020. Liberty was granted to move the appropriate bench for early hearing of the writ petition.

We see nothing wrong with the order challenged before us. Admittedly, the writ petitioner was given appointment after medical test. There is no dispute that the writ petitioner has been discharging his duties in the System Department since 2015, i.e., for about five years. There is no complaint of any dereliction of duty or any indiscipline on the part of the writ petitioner.

The issues raised in the writ petition definitely require a deeper look upon exchange of affidavits. On a careful consideration and appreciation of the facts of the case, we are of the view that the writ petitioner was entitled to interim protection which has been rightly granted by the learned Single Judge. We find no impropriety in the order assailed before us.

Accordingly, we dismiss this appeal along with the connected applications. The respondents in the writ petition shall be at liberty to file their affidavit-in-opposition before the learned Single Judge within 2 weeks from date. Reply, if any, be filed within a week thereafter. The parties may request the learned Single Judge for an early hearing and disposal of the writ petition.

We have not gone into the merits of the case. All issues are left open for the learned Single Judge to decide after exchange of affidavits. No observation made in this order shall have any bearing on the proceeding before the learned Single Judge. However, we add that if the learned Single Judge deems it appropriate, an order may be issued

for getting the writ petitioner examined by an independent eye doctor, who will be acceptable to both the parties, since there appears to be conflicting opinions of eye doctors on record as regards the alleged colour blindness of the writ petitioner.

Since we have not called for affidavit-in-opposition, the averments made in the stay application shall be deemed not to be admitted by the writ petitioner/respondent no. 1.

The appeal and the connected applications are accordingly disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance of necessary formalities.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)