

D/L
Item No. 8
28.09.2020
(Video Conference)
Kole

MAT 599 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-
Anil Das & 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 14 August, 2020 passed in WP 6204 (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 post where he was last appointed in terms of the order dated May, 26, 2015 (annexure P-12, page 56 of the writ petition). The termination order was directed to remain stayed during pendency of the writ petition. Direction was given for exchange of affidavits.

The writ petitioner was appointed as Management Trainee (Mining) by the appellant/respondent no. 1 by an

order dated 18 January, 2013. He underwent requisite medical examination and joined as Management Trainee (Mining) with effect from 20 February, 2013. He was thereafter posted under Bharat Coking Coal Limited, a subsidiary of the appellant. He was posted at Simlabahal Colliery.

By a communication dated 30 April, 2014, the writ petitioner and other Management Trainees (Mining) were required to be present before the Medical Board at Koyla Nagar Hospital on 20 May, 2014. The writ petitioner duly presented himself for medical examination.

Suddenly, by an order dated 12/14 November, 2014, the writ petitioner's service was terminated for suffering colour blindness which was allegedly revealed during the re-medical examination of the writ petitioner. The writ petitioner challenged such order of termination by way of departmental appeal. By an order dated 9 April, 2015, the writ petitioner was reinstated in service. He was then posted in the Quality Control Department, Head Quarters, BCCL. After about five years, the writ petitioner's service was terminated by the order dated 3 July, 2020 on the alleged ground that he was detected colour blind for red and green colours by the Review Medical Board on 20.05.2014 and as such, was unfit for appointment in mining discipline. This order was challenged by the writ petitioner before the learned Single Judge.

Upon hearing the parties, the learned Single Judge recorded that prima facie it appears that the order of termination was issued without considering the earlier medical report. Further, since the writ petitioner upon medical examination was found fit for appointment in the Quality Control Department, and not Mine, the reason for which his service has been sought to be terminated cannot be justified. On such prima facie finding, learned Single Judge granted the interim relief which is under challenge in the present 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. We agree with the prima facie findings of the learned Single Judge. Undisputedly, the writ petitioner had undergone medical examination at the time of his initial joining when he was not found to be colour blind. Even subsequently, after his re-examination he was found suitable for serving in the Quality Control Department and accordingly, was posted there in 2015. He served in that department for about five years. It is nobody's case that there was dereliction of duty or any indiscipline on his part or that he was unable to discharge his duties properly. Under those circumstances, in our opinion, whether or not the order terminating the writ petitioner's service is sustainable, needs a deeper look. The writ petitioner has raised arguable questions which need to be considered upon exchange of affidavits.

We see nothing wrong with the order challenged before us. 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 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.)